

CODE OF ORDINANCES

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CODE OF ORDINANCES

Chapter 5

BUILDINGS*

* **Cross reference(s)**--Electricity, Ch. 7; fire protection and prevention, Ch. 8; licenses, permits and business regulations generally, Ch. 14; plumbing, Ch. 20; sewers and drains, Ch. 22; numbering of buildings, § 23-25 et seq.; swimming pools and wading pools, Ch. 25.

State law reference(s)--Authority to regulate buildings and structures, 30 M.R.S.A. § 2151(4).

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ARTICLE I. IN GENERAL

Sec. 5-1. Adoption of Maine Uniform Building and Energy Code.

The City of South Portland adopts, and thereby administers and enforces the provisions of the Maine Uniform Building and Energy Code pursuant to Title 10, chapter 1103 and Title 25, chapters 313 and 314 of the Maine Statutes and 16-642 CMR chapters 1-6 of the Maine Department of Public Safety Agency Rules.

(Code 1966, § 12-1-4; Ord. No. 8-24/25, 1/21/2025 [Fiscal Note: Less than \$1000])

Editor's note--Ord. No. 2-85/86, enacted July 15, 1985, specifically repealed § 5-4, which section described the area of Fire limits No. 1 and derived from Code 1966, Title 8, App. D, § 3, § 12-4-1.

(Ord. No. 19-05/06, 6/5/06 [Fiscal Note: Less than \$1000]; Ord. No. 9-21/22, 10/26/2021 [Fiscal Note: Less than \$1000])

Secs. 5-2-5.4. Reserved.

Sec. 5-5. Repealed

(Code 1966, Title 8, App. D, § 3, § 12-4-1; Ord. No. 6-70, 2-2-70; Ord. No. 2-85/86, 7-15-85; Ord. No. 6-08/09 11/3/08 [Fiscal Note: Less than \$1000])

Sec. 5-6. Repealed

(Code 1966, Title 8, App. D, § 3; Ord. No. 14-80/81, 9-15-80; Ord. No. 2-85/86, 7-15-85; Ord. No. 6-08/09, 11/03/08 [Fiscal Note: Less than \$1000])

Sec. 5-7. When erection, continuance, use of building a nuisance.

The erection, continuance or use of any building or place for the exercise of a trade, employment or manufacture, which, by noxious exhalations, offensive smells or other annoyances becomes injurious and dangerous to the health, comfort or property of individuals, or of the public, is declared to be a public nuisance as provided by 17 M.R.S.A., Section 2802, as amended.

(Code 1966, § 6-5-4)

Secs. 5-8--5-18. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT*

* **Cross reference(s)**--Department of public works, director of public works, generally, § 2-11 et seq.

DIVISION 1. GENERALLY**Sec. 5-19. Inspector's liability.**

No inspector of the city shall be personally liable for any damage which may accrue to any person or property as the alleged result of such inspector's acts or omissions in the discharge of their lawful duties.

(Code 1966, § 12-3-8)

Sec. 5-20. Inspectors' authority to make orders to correct conditions; to whom orders directed; compliance required.

The inspectors of the city shall make such orders as are necessary to correct conditions not in accord with the municipal ordinances or state statutes. Such orders shall be directed to the holder of the building permit, who shall comply therewith.

(Code 1966, § 12-3-3)

Sec. 5-21. Work stoppage.

An inspector of the city may order the stoppage of building work which is in violation of this chapter or other municipal ordinances or statutes, or which work contravenes any lawful direction or order of such inspector. The inspector shall then notify the building inspector of the permit holder's refusal to comply with the order. The building inspector shall notify the other inspectors of the city of the permit holder's refusal to comply with an order of an inspector of the city. After such notice no inspector of the city shall approve work performed upon the premises until the building inspector shall lift the order.

(Code 1966, §§ 12-1-3.4, 12-3-4; Ord. No. 8-24/25, 1/21/2025 [Fiscal Note: Less than \$1000])

Sec. 5-22. Authority to suspend, demand return of permit for noncompliance with inspector's order; procedure.

In the event a building permit holder shall not comply with the order of any inspector of the city, the building inspector, by registered mail, return receipt requested, shall inform the permit holder that the building permit has been suspended, shall state the causes therefor and shall demand of the permit holder the immediate return of the building permit to the office.

(Code 1966, § 12-3-5)

Sec. 5-23. Enforcement responsibility of police department.

When any officer of the police department observes or obtains knowledge of building work in progress for which work no building permit required by this chapter has been obtained, the officer shall immediately notify the superior officer, who shall immediately notify the building inspector of such violation.

(Code 1966, § 12-1-3.2)

Secs. 5-24--5-28. Reserved.

DIVISION 2. BUILDING INSPECTOR

Sec. 5-29. Office created.

The office of building inspector is hereby created.

(Code 1966, § 2-2-1)

Sec. 5-30--57. Reserved.

(Code 1966, § 2-2-2; Ord. No. 19-05/06, 6/5/06 [Fiscal Note: Less than \$1000]; Ord. No. 9-21/22, 10/26/2021)

Sec. 5-58. Building inspector to issue permit upon applicant's compliance with prerequisites.

The building inspector shall issue a building permit upon the applicant's:

- (1) Completing the building permit application.
- (2) Except as provided in subsection (c) below, submitting to the building inspector:
 - (a) A site plan, which plan shall be drawn to scale and show:
 1. The size and location of all proposed building work and of all existing structures; and
 2. Documentation, certified by a land surveyor registered with the State of Maine, showing compliance with all applicable setback requirements in the following format:
 - A. For construction of a new principal structure or a detached accessory structure affixed to a permanent foundation, a full boundary survey:
 - B. For additions or alterations to an existing principal structure other than as described in paragraph (c) below: a boundary survey. No boundary survey shall be required for additions and alterations as described in paragraph (c) below.
 - C. The Code Enforcement Director may waive the requirement for boundary surveys pursuant to subsections A and B above, at their sole discretion, if the proposed work is located at least 5 feet interior to the lot from a setback boundary. If a survey requirement is waived by the Code Enforcement Director, the Director may assign conditions of approval on the permit.
 - (b) Evidence satisfactory to the building inspector that all appropriate monumentation has been placed at the site to denote boundary locations, and

that all appropriate markers have been placed at the site to denote that portion within which the proposed building work can take place in accordance with the space and bulk regulations of Chapter 27.

- (c) In the event the proposed building work consists of an accessory structure not affixed to a permanent foundation, or of an alteration to a principal structure which does not enlarge or extend beyond the footprint of that structure, the applicant must submit to the building inspector blueprints, or plans and specifications, and a plot plan of the work to be done.
 - (d) For purposes of this subsection (2), "accessory structure" shall mean a subordinate structure or a portion of the principal structure the use of which is incidental to that of the principal structure.
- (3) Paying the fee prescribed by the Schedule of License, Permit, Inspection and Application Fees (Master Fee Schedule) established by City Council order. The balance of fees due shall be paid prior to the issuance of the permit.
 - (4) Complying with the provisions of this chapter and the zoning regulations of the city and the Maine Uniform Building and Energy Codes as adopted by the State.
 - (5) In the case of all business and commercial uses, the building inspector shall not issue a permit until the following conditions have been met:
 - (a) *Landscaping adjacent in residential zones.* When such use abuts a residential zone, the use shall be screened by a fence four (4) feet in height, together with a four (4) foot planting strip on the outside of such fence, planted with shrubs or trees;
 - (b) *Signs.* Signs shall not adversely affect visibility at intersections. Such signs shall be constructed, installed and maintained so as to insure public safety and environmental quality. Such signs shall not include any general commercial advertising material unrelated to the principal use of the building. The signs shall be limited in subject matter to name, design, picture and trademark of the establishment owner, operator or agent;
 - (c) *Lighting.* All artificial lighting, including signing and illumination of the building and accessory parking areas, shall be shaded or screened from adjoining residential areas.

(Code 1966, §§ 2-2-3.2, 12-1-3.1, 12-2-1, 12-2-6; Ord. No. 1-73, 1-15-73; Ord. No. 8-86/87, 11-17-86; Ord. No. 26-86/87, 6-1-87; Ord. No. 4-87/88, 7-20-87; Ord. No. 9-21/22, 10/26/2021 [Fiscal Note: Less than \$1000]; Ord. No. 8-24/25, 1/21/2025 [Fiscal Note: Less than \$1000])

Cross reference(s)--Zoning, Ch. 27.

State law reference(s)--Building inspector to issue building permits, 30 M.R.S.A. § 4953(9).

Sec. 5-59. Term of permit; revocation.

Work under any permit issued by the building inspector shall be started within one hundred eighty (180) days from date of issuance, and such permit shall remain in force provided there shall be continuity of work from and after beginning of the work. If work under any permit issued by the building inspector is not started within one hundred eighty (180) days from date of issuance, or if continuity of work is not in evidence after a period of six (6) months from date of issuance, the permit shall automatically expire.

(Code 1966, § 12-1-5; Ord. No. 11-68, 5-20-68; Ord. No. 5-81/82, 7-20-81; Ord. No. 25-83/84, 5-21-84; Ord. No. 19-05/06, 6/5/06 [Fiscal Note: Less than \$1000]; Ord. No. 8-24/25, 1/21/2025 [Fiscal Note: Less

than \$1000])

Sec. 5-60. Reserved.

(Code 1966, § 12-2-2; Ord. No. 10-70, 2-18-70; Ord. No. 13-72, 8-7-72; Ord. No. 10-79/80, 11-1979; Ord. No. 31-80/81, 2-18-81; Ord. No. 3-84/85, 9-17-84; Ord. No. 20-86/87, 4-6-87; Ord. No. 8-87/88, 8-17-87; Ord. No. 28-89/90, 6-18-90; Ord. No. 19-05/06, 6/5/06 [Fiscal Note: Less than \$1000]; Ord. No. 3-13/14, 12/16/13 [Fiscal Note: Less than \$1000]; Ord. No. 9-21/22, 10/26/2021 [Fiscal Note: Less than \$1000])

Sec. 5-61. Refund of fees.

Refunds of any fees collected pursuant to this article shall be limited to the amounts designated in the Master Fee Schedule..

(Code 1966, § 12-2-3; Ord. No. 8-24/25, 1/21/2025 [Fiscal Note: Less than \$1000])

Sec. 5-62. Display required.

Upon the receipt of a building permit, the permittee shall conspicuously display such permit at the site of the building work.

(Code 1966, § 12-2-7)

Secs. 5-63--5-72. Reserved.

No person having charge of the construction, alteration or repair of any building shall cover or conceal, or cause to be so covered or concealed, any construction for which a permit has been issued or is required before the construction has been inspected and approved, without having officially notified the building inspector at least forty-eight (48) hours before such covering concealment.

(Ord. No. 8-24/25, 1/21/2025 [Fiscal Note: Less than \$1000])

Sec. 5-64 Reserved

DIVISION 3. PERMIT DELAY**Sec. 5-65. Purpose.**

The purpose of this Division 3 is to encourage preservation and protection of archaeological and historic resources that contribute to the City's architectural, cultural, or social history and development patterns and to limit the detrimental effect on community character and heritage that may result from the alteration or demolition of such resources. This Division sets forth the procedures to promote awareness and appreciation of South Portland's history; encourage sustainable reuse of historic resources; preserve sensitive archaeological resources; and encourage voluntary efforts to increase public information about, interaction with, or access to, historic resources.

Sec. 5-66. Definitions.

For the purposes of this Division, the following terms shall be defined as follows:

Archaeological resource. A site with established or potential value as a location of prehistoric or historic archaeological significance as recognized by the City Council and contained in the South Portland Inventory of Archaeological and Historic Resources.

Historic resource. A building, structure, site, or object with established historic significance as recognized by the City Council and contained in the South Portland Inventory of Archaeological and Historic Resources.

South Portland Inventory of Archaeological and Historic Resources. A list adopted, and amended from time to time, by the City Council pursuant to Sec. 2-145A of the Code of Ordinances, which formally recognizes those archaeological and historic resources that contain special significance in the history of the City, the State of Maine, and/or the United States of America.

Sec. 5-67. Applicability.

This Division shall apply to any building permit application for exterior work or demolition permit application for a building or structure built on or before December 31, 1940 or for a property listed on the South Portland Inventory of Archaeological and Historic Resources, except that this Division shall not apply to (1) a building or structure that the Building Inspector has determined represents an imminent hazard to the public health, safety, or welfare, which hazard cannot be abated by reasonable measures; or (2) a property that has received a previous determination by the South Portland Historical Society that it does not contain an archaeological or historic resource.

- (a) *Permits associated with Planning Board Applications.* If a proposed building permit or demolition permit is associated with a project for which a Planning Board application is either pending or will be submitted within one year of the demolition permit issuance date, such building or demolition permit for the project may not be issued without approval of the project application by the Planning Board that specifically addresses Sec. 27-1426(m) of the Code of Ordinances. If this procedure is not followed and an application for a Planning Board approval is submitted after such building or demolition permit is issued, the Planning Board application shall not be acted on by City staff for one year following the issuance of such permit.

- (b) *Permits not associated with Planning Board Applications.* The Building Inspector shall delay the issuance of a building permit or demolition permit in accordance with Sec. 5-68 below.

Sec. 5-68. Delay Requirements.

If a building or demolition permit is subject to a delay requirement pursuant to Sec. 5-67 or Sec. 27-134 of the Code or Ordinances, the Building Inspector shall delay the issuance of the permit for up to ninety (90) days from the receipt of the application. During this delay period, the Building Inspector shall not issue any permits for the subject property until the expiration of the delay period. Unless the application has been withdrawn by the owner/applicant, the Building Inspector shall proceed to act on any pending permit application at the expiration of the delay period. The Building Inspector may waive or reduce the duration of the delay, following consultation with the South Portland Historical Society ("SPHS") and/or Arts & Historic Preservation Committee ("AHPC"), if the applicant can demonstrate to the Building Inspector that a significant financial hardship would be incurred by the owner/applicant if the delay transpired. The following procedures shall occur during the delay period:

- (a) Archeological or historic resource. The Building Inspector or his/her designee shall provide a copy of the permit application to the AHPC within five (5) days of receipt of the application. The AHPC shall review the application to determine whether the proposed work is in accordance with the Secretary of the Interior's Standards for the Rehabilitation of Historic Buildings and to provide the owner/applicant with a written summary of comments regarding the application. The AHPC may waive any demolition permit fee and/or reduce the building permit fee to not less than 50% of the applicable building permit fee if the proposed work is determined by the AHPC to be generally in accordance with the Secretary of the Interior's Standards for the Rehabilitation of Historic Buildings.
- (b) Non-archaeological or non-historic resource.
- (1) Within five (5) days of receipt of an application, the Building Inspector or his/her designee shall forward a copy of the application to the SPHS.
 - (2) Within twenty-one (21) days of receipt of an application, the SPHS may provide the Building Inspector and the owner/applicant with a determination listing the reason(s) that the building or structure should or should not be considered for designation as a historic resource.
 - a. If the SPHS determines that the building or structure should be considered for designation, the Building Inspector or his/her designee shall provide a copy of the permit application to the AHPC within five (5) days of receipt of the SPHS' determination for consideration under Sec. 2-145A of the Code of Ordinances. The AHPC shall promptly review the building or structure for possible addition to the South Portland Inventory of Archaeological and Historic Resources and forward any recommendations for inclusion on the Inventory to the City Council for action. If the City Council acts to add the building or structure to the Inventory during the delay period, then the AHPC shall promptly take review pursuant to Sec. 5-68(a) above. If the AHPC does not recommend inclusion on the Inventory or if the City Council fails to act on any AHPC recommendation for inclusion during

the delay period, then the Building Inspector shall proceed to act on any pending permit application at the expiration of the delay period.

- b. If the SPHS determines that the building or structure should not be considered for designation, the Building Inspector shall promptly proceed to act on any pending permit application.
- (c) Failure of the Building Inspector to provide a copy of the permit application to the AHPC and/or SPHS as provided herein does not alter the delay requirement, but the Building Inspector shall proceed to act on any pending permit application at the expiration of the delay period or 90 days after receipt of the application, whichever is earlier.

During the delay period, the owner/applicant shall give due consideration to all possible alternatives to excavation, demolition or non-rehabilitation building or structural work, including preservation, restoration, rehabilitation, or relocation. In addition, the owner/applicant shall allow the Planning Department, SPHS, and/or AHPC reasonable access to the site, including the interior and exterior areas of the building or structure, to enable review and consideration of the building, structure or site and its archeological or historic features.

ARTICLE III. OIL BURNING EQUIPMENT AND FUEL STORAGE TANKS*

* **State law reference(s)**--Oil burnermen, generally, 32 M.R.S.A. § 2301 et seq.

Sec. 5-73. General standards.

No oil burning equipment and no fuel storage tank to be used in connection therewith shall be installed, maintained or used in the city unless it conforms to the standards established by the Oil Burnermen's Licensing Board of the State of Maine and this article. No such equipment or storage tank shall be installed, maintained or used which shall be unsafe or which shall endanger life or property.

(Code 1966, §§ 12-5-1.1, 12-5-1.2)

Sec. 5-74. Installation permit required; duty to issue permit.

No person shall install any oil burning equipment or fuel storage tank without first applying for a permit from the bureau of fire prevention. The chief of the bureau or his designee shall issue the permit.

(Code 1966, § 12-5-2)

Cross reference(s)--Permit required for installation of oil burning equipment, § 8-44.

Sec. 5-75. When permit not required.

No permit shall be required for the maintenance or use of any oil burning equipment or fuel storage tank where such equipment or tank was installed prior to May 16, 1966.

(Code 1966, § 12-5-1.2)

Sec. 5-76. Who may apply for installation permit.

No application for an installation permit required by this article shall be issued unless the applicant is a licensee of the oil burnermen's licensing board or exempt under state statute.

(Code 1966, § 12-5-3)

Sec. 5-77. Permit fee.

A fee shall be charged for an installation permit required by this article in accordance with the Schedule of License, Permit, Inspection and Application Fees established by City Council order.

(Code 1966, § 12-5-4; Ord. No. 30-71, 11-1-71; Ord. No. 8-87/88, 8-17-87; Ord. No. 15-90/91, 4-17-91; Ord. No. 9-21/22, 10/26/2021 [Fiscal Note: Less than \$1000])

Sec. 5-78. Chief of bureau to record permits issued, fees collected.

The chief of the bureau of fire prevention shall keep a record of all permits

issued pursuant to this article and of all fees collected.

(Code 1966, § 12-5-4)

Sec. 5-79. Inspection of installations required; duty to register approval or disapproval.

An inspector of the bureau of fire prevention shall make an inspection of installed oil burning equipment and fuel storage tanks and before such equipment and tanks are put into operation, he shall note his approval or disapproval of the installation upon the permit to install.

(Code 1966, § 12-5-5)

Sec. 5-80. Report of inspection to be filed, recorded.

Following an inspection required by this article, the inspector of the bureau of fire prevention making the inspection shall file a report of his findings with the chief of the bureau. The chief shall record the results of such inspection upon the building inspection log.

(Code 1966, § 12-5-8)

2Sec. 5-81. Bureau chief's duties upon discovering nonconforming equipment, tanks.

Where oil burning equipment and fuel storage tanks do not conform to the standards of sections 5-73, 5-75 and 5-82, the chief of the bureau of fire prevention shall notify the installing contractor and shall set forth the reasons why the equipment or the installation does not so conform. The installing contractor shall have seven (7) days from the date of notification to comply with the standards of sections 5-73, 5-75 and 5-82. If, at the end of the seven (7) day period, the violation is still in existence, the chief shall give written notification to the installing contractor and shall notify the corporation counsel for future procedures to be taken.

(Code 1966, § 12-5-6)

Sec. 5-82. Flash point for equipment.

No person shall use oil in any oil burning equipment in this city unless its flash point is not less than one hundred (100) degrees Fahrenheit, closed cup test.

(Code 1966, § 12-5-1.3)

Secs. 5-83--5-100. Reserved.

ARTICLE IV. FLOODPLAIN MANAGEMENT *

* **Editor's note**--Ord. No. 2-90/91, adopted July 16, 1990, amended Art. IV to read as herein set out in §§ 5-101--5-153. Prior to inclusion of said ordinance, Art. IV, §§ 5-100--5-153 pertained to similar subject matter and derived from Ord. No. 42-80/81, adopted July 6, 1981 and Ord. No. 3-86/87, adopted August 8, 1986.

Cross reference(s)--House-car trailers and mobile home parks, Ch. 11; housing, Ch. 12; subdivisions, Ch. 24; zoning, Ch. 27.

DIVISION 1. GENERALLY**Sec. 5-101. Establishment.**

The City of South Portland, Maine, has chosen to become a participating community in the National Flood Insurance Program and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as set forth in this article. The National Flood Insurance Program, established in the aforesaid act, provides that areas of the city having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This article establishes a flood hazard development permit system and review procedure for development activities in the designated flood hazard areas of the city.

The city's authority to participate in the national program and to adopt the local ordinances necessary for continued participation derives from its constitutional and statutory home rule powers and its authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A M.R.S.A. §§ 3001-3007, 4352, 4401-4407, as amended from time to time, and Title 38 M.R.S.A. § 440, as amended from time to time.

It is the intent of the city to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

This article shall be known as the floodplain management ordinance of the city.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000]; Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 5-102. Findings of fact.

- (a) Certain areas of the city are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available to property owners in the form of flood insurance as authorized by the National Flood Insurance Act.
- (b) The flood hazard areas of the city are subject to periodic inundations which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely

affect the public health, safety and general welfare.

- (c) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities and, when inadequately anchored, damage uses and structures in other areas. Uses and structures that are inadequately floodproofed, elevated or otherwise protected from flood damage can also contribute to flood loss.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000])

Sec. 5-103. Purpose.

It is the purpose of this article to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in defined areas, specifically to accomplish the following:

- (1) to protect human life and health;
- (2) to minimize expenditure of public money for costly flood control projects;
- (3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) to minimize prolonged business interruptions;
- (5) to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in Areas of Special Flood Hazard;
- (6) to help maintain a stable tax base by providing for the safe use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) to ensure that prospective buyers are notified that property is in an Area of Special Flood Hazard; and
- (8) to ensure that those who occupy the Areas of Special Flood Hazard assume responsibility for their decisions.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 5-104. General principles.

In order to accomplish its goal, this article includes methods and provisions for the following:

- (1) Restricting or prohibiting development which is dangerous to health, safety and property due to water or erosion hazards or which results in damaging increases in erosion or in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel flood waters;
- (4) Controlling the filling, grading, dredging and other development which may increase flood damage; and

- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000])

Sec. 5-105. Applicability; Effective Date of Certain Amendments.

This article applies to all land areas and development lying in the Areas of Special Flood Hazard for the City of South Portland, Cumberland County, Maine, Zones A, AE, and VE, as identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study: Cumberland County, Maine (All Jurisdictions)", (FIS), dated June 20, 2024 with accompanying "Flood Insurance Rate Map" (FIRM) of the city dated June 20, 2024, as amended by subsequent Letter of Map Change actions (LOMCs), both of which are adopted by reference and declared to be a part of this Code. The amendments to this article evidenced by ORDINANCE #20-23/24, when enacted, shall become effective on June 20, 2024.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: less than \$1000]; Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 5-106. Definitions.

Unless specifically defined below, words and phrases used in this article shall have the same meaning as they have at common law and to give this article its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

Accessory structure. A structure that is on the same parcel of property as a principal structure and the use of which is incidental and subordinate to the principal structure.

Adjacent grade. The natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Agricultural structure. A structure that is used exclusively for agricultural purposes or uses in connection with the production, harvesting, storage, raising, or drying of agricultural commodities and livestock. Structures that house tools or equipment used in connection with these purposes or uses are also considered to have agricultural purposes or uses.

Area of Special Flood Hazard (ASFH) or Special Flood Hazard Area (SFHA). Land in the floodplain having a one (1) percent or greater chance of flooding in any given year, as specifically identified as Zones A, AE, and VE as designated in the City's adopted Flood Insurance Study and Flood Insurance Rate Map.

Base flood. The flood having a one (1) percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

Basement. Any area of a building having its floor subgrade (below ground level) on all sides.

Breakaway wall. A wall that is not part of the structural support of the building and that is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Building. Any structure used or intended for supporting or sheltering any use or occupancy.

Certificate of compliance. A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this article.

Code Enforcement Officer. A person certified under 30-A M.R.S.A. § 4451 (including exceptions in § 4451(1)) and employed by the city to enforce all applicable comprehensive planning and land use laws.

Conditional use. For the purposes of this article, a use that, because of its potential impact on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to Secs. 5-112--113 of this article.

Containment wall. A wall surrounding all sides of an above ground tank to contain any spills or leaks.

Coastal high hazard area. The area subject to high velocity waters, including, but not limited to, hurricane wave wash or tsunamis.

Development. Any manmade change to improved or unimproved real estate, including, but not limited to, construction of structures; placement of manufactured homes, mining, dredging, filling, grading, paving, excavation, or drilling operations; and storage of equipment or materials.

Elevated building. A non-basement building that is:

(1) built, in the case of a building in Zones A or AE so that the top of the elevated floor, or in the case of a building in Zone VE, to have the bottom of the lowest horizontal structural member of the elevated floor elevated above the ground level by means of pilings, columns, posts, or piers; and,

(2) adequately anchored so as not to impair the structural integrity of the building during a flood of up to one (1) foot above the magnitude of the base flood.

In the case of Zones A or AE "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of floodwaters as required in Sec. 5-131(7). In the case of Zone VE, "elevated building" also includes a building otherwise meeting the definition of "elevated building," even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the requirements of Sec. 5-133(3)(b)(3).

Elevation certificate. An official form (FEMA Form FF-206-FY-22-152, as amended) that is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program.

Existing manufactured home park or subdivision. A manufactured home park or subdivision that was recorded in the Registry of Deeds prior to July 6, 1981, the adoption date of the city's first floodplain management regulations.

Flood or Flooding:

(1) A general and temporary condition of partial or complete inundation of normally dry land areas from:

(a) the overflow of inland or tidal waters; or,

- (b) the unusual and rapid accumulation or runoff of surface waters from any source.
- (2) The collapse or subsidence of land along the shore of a body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in the overflow of inland or tidal waters as described in paragraph 1a above.

Flood elevation study. The examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood Insurance Rate Map (FIRM). The official map of the city on which the Federal Insurance Administrator has delineated both the Areas of Special Flood Hazard and the risk premium Zones applicable to the city.

Flood Insurance Study. See *Flood elevation study*.

Floodplain or flood-prone area. Any land area susceptible to being inundated by water from any source (see *Flood or Flooding*).

Floodplain management. The operation of an overall program of corrective and preventive measures for reducing future flood damage, including, but not limited to, emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain management regulations. Federal, state, or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reductions, such as zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing. Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot and, when not designated on the city's Flood Insurance Rate Map, is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark of the upland limit of the floodplain.

Floodway encroachment lines. The lines marking the limits of floodways on federal, state, and local floodplain maps.

Floodway fringe. The area of land within an Area of Special Flood Hazard beyond the limits of the floodway.

Freeboard. A factor of safety usually expressed in feet above a flood level, for purposes of floodplain management in order to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed that could contribute to flood heights greater than the height calculated

for a selected size flood and floodway conditions.

Functionally dependent use. A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water, only including docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but not including long-term storage or related manufacturing facilities.

Historic structure. Any structure that is:

- (1) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- 2) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
- (3) individually listed on the state's inventory of historic places if the historic preservation program has been approved by the Secretary of Interior; or,
- (4) individually listed on a local inventory of historic places if the city has an historic preservation program that has been certified either:
 - (a) by an approved state program as determined by the Secretary of the Interior; or,
 - (b) directly by the Secretary of the Interior in states without approved programs.

Hydraulic opening. An opening in a structure foundation or wall to provide for the unimpeded flow of floodwaters that meets the criteria of Sec. 5-131(5)(b).

Locally established datum. An elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or any other established datum and is used in areas where mean sea level data is too far from a specific site to be practically used.

Lowest floor. The lowest floor of the lowest enclosed area (including basement) of a building. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered the lowest floor of a building, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this article described in Sec. 5-131(7).

Manufactured home. "Manufactured housing" as that term is defined in 30-A M.R.S. § 4358(1)(A), as may be amended. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles when placed on a site for longer than one hundred eighty (180) consecutive days.

Manufactured home development park or subdivision. A "mobile home park" as that term is defined in 30-A M.R.S. § 4358(1)(B), as may be amended. For floodplain management purposes, the term "manufactured home development park or subdivision" includes a parcel of land under unified ownership approved by the City for the placement of two (2) or more manufactured homes.

Mean high tide. The mean height of tidal high waters at a particular point or station over a period of time to such length that increasing its length does not appreciably change this mean. For tidal waters, the cycle of change covers a period of nineteen (19) years, and mean high tide is defined as the average of the high waters over a nineteen-year period.

Mean sea level. For the purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD), or other datum, to which base flood elevations shown on the city's FIRM are referenced.

Minor development. For floodplain management purposes, all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes but is not limited to: accessory structures as provided for in Sec. 5-131(10), mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

National Geodetic Vertical Datum (NGVD). The national vertical datum, a standard established in 1929, which is used by the National Flood Insurance Program. NGVD is based upon mean sea level in 1929 and has also been called "1929 Mean Sea Level (MSL)."

New construction. Structures for which the "start of construction", as defined by this article, commenced on or after July 6, 1981, including any subsequent improvements to such structures.

North American Vertical Datum (NAVD). The national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon the vertical data used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound and subsidence, and the increasing use of satellite technology.

100-year flood - See Base flood.

Recreational vehicle. A vehicle that is:

- (1) built on a single chassis;
- (2) four hundred (400) square feet or less when measured at the largest horizontal projection, not including slideouts;
- (3) designed to be self-propelled or permanently towable by a motor vehicle; and,
- (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway - see Floodway.

Riverine. Relating to, formed by or resembling a river (including tributaries), stream, brook, etc.

Start of construction. For floodplain management purposes, the date the building permit was issued, provided the actual start of construction, repair, reconstruction,

rehabilitation, addition, placement, substantial improvement or other improvement was within thirty (30) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structure part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

Structure. For floodplain management purposes, a walled and roofed building, any gas or liquid storage tank that is principally aboveground, or any manufactured home. "Principally aboveground" as used herein means either that at least two-thirds (2/3) of its floor-to-ceiling height is above the average adjoining ground level, or at least fifty-one (51) percent of the actual cash value of the structure, less land value, is above-ground.

Substantial damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

Substantial improvement. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the Code Enforcement Officer in a written notice of violation and which are the minimum necessary to assure safe living conditions; or,
- (2) any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure" and a variance is obtained from the Board of Appeals.

Variance. A grant of relief by the Board of Appeals from any requirement of this article that permits construction in a manner that would otherwise be prohibited by this article.

Violation. The failure of a structure or other development to comply fully with the requirements of this article.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000]; Ord. No. 6-10/11, 9/20/10 [Fiscal Note: Less than \$1000]; Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 5-107. Disclaimer of Liability.

The degree of flood protection required by this article is considered reasonable but does not imply total flood protection.

(Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Secs. 5-108--5-110. Reserved.

DIVISION 2. ADMINISTRATION AND ENFORCEMENT

Sec. 5-111. Code Enforcement Officer as enforcing official.

It shall be the duty of the Code Enforcement Officer to implement and enforce the provisions of this article pursuant to Title 30-A M.R.S.A. § 4452, as amended from time to time. The penalties contained in 30-A M.R.S.A. § 4452, as amended from time to time, shall apply to any violation of this article. No permit, certificate of compliance or certificate of occupancy shall be issued for any development unless the plans, the intended use, and the completed development indicate that the development conforms in all respects to the provisions of this article. In addition to any other actions, the Code Enforcement Officer, upon determination that a violation exists, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The valid declaration shall consist of:

- (1) the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
- (2) a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
- (3) a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
- (4) evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
- (5) a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended from time to time.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000])

Sec. 5-112. Planning board standards for proposed development.

The Planning Board shall, when reviewing subdivisions and other proposed developments that require Planning Board review under federal law, state law, local ordinances or regulations, and all projects on five (5) or more disturbed acres or in the case of manufactured homes, parks divided into two (2) or more lots, determine that such developments meet the following standards, in addition to existing subdivision, site plan, and other applicable standards:

- (1) The development will minimize flood damage.
- (2) All public utilities and facilities, such as sewers, gas lines, electrical and water systems, will be located and constructed to minimize or eliminate flood damage.
- (3) Adequate drainage is provided so as to reduce exposure to flood hazards.
- (4) Subdivision and site plans of the proposed development include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the

Federal Emergency Management Agency.

- (5) Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area are to be constructed in accordance with Sec. 5-131. Such requirements must be included in any deed, lease, purchase and sale agreement, or document transferring or expressing intent to transfer any interest in real estate or a structure, including, but not limited to, a time-share interest. The condition shall clearly articulate that the city may enforce any violation of the construction requirement and that fact shall also be included in the deed or any document previously described. The construction requirements shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board as part of the approval process.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000])

Sec. 5-113. Conditional use review.

The Planning Board shall hear and decide applications for conditional uses as provided for in this article. The Planning Board shall hear and approve, approve with conditions, or deny all applications for conditional uses. An applicant for a Flood Hazard Development Permit informed by the Code Enforcement Officer that conditional use review and approval is required shall first file an application for Planning Board conditional use approval with the Planning Board.

- (a) The review procedure for Planning Board conditional use approval shall be as follows:
- (1) The Flood Hazard Development Permit application, along with additional information attached addressing how each of the conditional use criteria specified in this article, may serve as the permit application for the conditional use approval.
 - (2) Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty (30) days of its receipt of a completed application.
 - (3) If the Planning Board finds that the application satisfies all relevant requirements of this article, the Planning Board must approve the application or approve with conditions within 45 days of the public hearing.
 - (4) A Planning Board conditional use approval shall expire if the work or change involved is not commenced within 180 days of the Planning Board approval. The Flood Hazard Development Permit must still be issued by the Code Enforcement Officer, along with any other applicable permits or approvals, prior to commencement of the work or change involved.

The applicant shall be notified by the Planning Board in writing over the signature of the Chair of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

- (b) No existing building or use of premises may be expanded or enlarged without an approval granted under this section if that building or use was established or constructed under a previously issued conditional use approval or if it is a building or use which would require a conditional use approval if being newly-established or constructed under this article.

(Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Secs. 5-114--5-120. Reserved.

DIVISION 3. DEVELOPMENT PERMITTING PROCEDURES*

* **Cross reference(s)**--License, permits and business regulations generally, Ch. 14.

Sec. 5-121. Permit required.

The Code Enforcement Officer shall be designated as the local Floodplain Administrator. The Floodplain Administrator shall have the authority to implement the commitment made to administer and enforce the requirements for participation in the National Flood Insurance Program.

Before any construction or development, including the placement of manufactured homes, begins within any Special Flood Hazard Area, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer. This permit shall be required prior to issuance of a building permit, if one is required, and shall be in addition to any other permits, including site plan, special exception, shoreland zoning, and subdivision approvals, which may be required pursuant to the ordinances of the city or federal or state law.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000])

Sec. 5-122. Application for permit.

Application for a Flood Hazard Development Permit shall be made on forms provided by the Code Enforcement Officer and shall be signed by the property owner or his duly authorized agent. The application shall include the following:

- (1) The name, address, and phone number of the property owner, applicant, and contractor.
- (2) An address and a map indicating the location of the construction site.
- (3) A site plan showing the size and location of existing and/or proposed development, including, but not limited to, structures, streets, sewage disposal facilities, water supply facilities, drainage facilities, areas to be cut and filled, existing vegetation and proposed landscaping, and lot dimensions. If the proposed development requires site plan approval pursuant to Chapter 27 of the Code of Ordinances, the application may incorporate the site plan application required by the Planning Board.
- (4) If the development is located within a riverine area within Zones A or AE, the submission shall include:
 - (a) a topographic plan prepared by a registered land surveyor, civil engineer, or other qualified person showing the location of the Area of Special Flood Hazard, the floodway, and the floodway fringe and the respective flood elevations based upon NVGD 1929 or adjusted flood elevations based upon

another datum, including NVGD 1988; and,

- (b) a typical valley cross-section showing the channel of the stream, the elevation of the areas adjoining each side of the channel, the area and elevation of the Area of Special Flood Hazard, the floodway, and the floodway fringe, and the area and elevation of the proposed development, including any driveways requiring fill.
- (5) A description of the intended use of the structure and/or development.
 - (6) A description of the type of sewage system proposed.
 - (7) Specification of dimensions of the proposed structure and/or development.
 - (8) The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or to a locally established datum in Zone A only, of the following:
 - (a) the base flood at the proposed site of all new or substantially improved structures, which is determined:
 - 1. in Zones AE and VE from data contained in the Flood Insurance Study of the city, as described in Sec. 5-105 and Sec. 5-112(4); or,
 - 2. in Zone A:
 - a. from any base flood elevation data from federal, state, or other technical sources such as FEMA's Quick-2 model, FEMA 265, including information obtained pursuant to Sec. 5-132 and Sec. 5-112(4),
 - b. in the absence of all data as described in Sec. 5-122(8)(a)(2)(a), information to demonstrate that the structure shall meet the elevation requirements of Sec. 5-131(5)(b)(2), Sec. 5-131(6)(b)(2), or Sec. 5-131(8)(b)(2);
 - (b) the highest and lowest grades at the site adjacent to the walls of the proposed building;
 - (c) the lowest floor, including basement; and whether or not such structures contain a basement; and,
 - (d) the lowest machinery and equipment servicing the building; and,
 - (e) in the case of nonresidential structures only, the level to which the structure will be floodproofed.
 - (9) A description of an elevation reference point established on the site of all new or substantially improved structures for which elevation standards apply as required in Sec. 5-131.
 - (10) Written certifications by:
 - (a) a Professional Land Surveyor that the grade elevations shown on the application are accurate; and,
 - (b) A Professional Land Surveyor, or registered professional engineer or architect that the base flood elevation shown on the application is

accurate.

- (11) The following certifications by a registered professional engineer or architect as required by Division 4 of this article:
- (a) A Floodproofing Certificate (FEMA Form FF-206-FY-22-153, as amended), to verify that the floodproofing methods for any non-residential structures meet the floodproofing criteria of Sec. 5-131.
 - (b) A V-Zone Certificate to verify that the construction in coastal high hazard areas, Zone VE, meets the applicable criteria of Sec. 5-133 and other applicable standards in Sec. 5-131.
 - (c) A Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls meet the applicable criteria of Sec. 5-131(7)(b)(1).
 - (d) A certified statement that bridges meet the standards of Sec. 5-131(11).
 - (e) A certified statement that containment walls meet the applicable standards of Sec. 5-131(12).
- (12) A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.
- (13) A statement of construction plans describing in detail how each applicable development standard in Division 4 of this article will be met.
- (14) A statement of the cost of the development, including all materials and labor.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000]; Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 5-123. Application fee and expert's fee.

- (a) A non-refundable application fee of fifty dollars (\$50.00) shall be paid by the applicant as part of the application.
- (b) An additional fee may be charged if the Code Enforcement Officer, the Board of Appeals or the Planning Board needs the assistance of a professional engineer or other expert to evaluate the application. The expert's fee shall be paid in full by the applicant within ten (10) days after the city submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the article and be grounds for the issuance of a stop work order. No expert shall be hired by the city at the expense of an applicant until the applicant has been informed of the plan to do so and has either consented to such hiring in writing or has been given an opportunity to be heard on the subject. The decision to employ an outside expert may be appealed to the Board of Appeals.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000]; Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 5-124. Review of development permit application.

- (a) Upon receipt of a completed application for a Flood Hazard Development Permit, the Code Enforcement Officer shall review it to assure that the proposed development is reasonably safe from flooding and for compliance with this article. They shall coordinate this review with that required of other federal, state and municipal officials. In reviewing all permit applications, the Code Enforcement Officer shall do the following:
- (1) Determine that the standards of this article, including all pertinent standards of Division 4 of this article, have been or will be met.
 - (2) Utilize the base flood and floodway data contained in the city's "Flood Insurance Study" in the review of applications. In Special Flood Hazard Areas where base flood elevation and floodway data are not provided, obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state or other technical sources, including information obtained pursuant to Sec. 5-122(8)(a)(2)(a), Sec. 5-132, and Sec. 5-112(4), to administer this article. If the city establishes a base flood elevation in Zone A in accordance with Sec. 5-122(8)(a), the Code Enforcement Officer shall submit that data to the Maine Floodplain Management Program.
 - (3) Make interpretations, where needed, of the boundaries of the areas of special flood hazards as shown on the city's FIRM.
 - (4) Determine compliance with shoreland zoning provisions of Article XIII of Chapter 27 of the Code of Ordinances.
 - (5) Determine that all necessary permits have been obtained from those federal, state and municipal agencies from which prior approval is required by federal or state law, including, but not limited to, Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344.
- (b) The Code Enforcement Officer shall also coordinate their review of Flood Hazard Development Permit applications with any review and approval required of the Planning Board as provided for in this article. In doing so, the Code Enforcement Officer shall:
- (1) Send all information in their possession which may be relevant to site plan, special exception, floodplain management, shoreland zoning, conditional use, and subdivision review to the Planning Director.
 - (2) Determine, prior to review by the Planning Board of any required application, whether the Flood Hazard Development Permit application is in compliance with this article.
 - (3) Issue a Flood Hazard Development Permit only after Planning Board approval of any site plan, special exception, floodplain management, shoreland zoning, subdivision, and conditional use permit application required for the proposed development.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000]; Ord. No. 6-10/11, 9/20/10 [Fiscal Note: Less than \$1000]; Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 5-125. Issuance of permit; two-part permit.

- (a) If the Code Enforcement Officer determines that the proposed development complies with the standards of this article, they shall issue one of the following Flood

Hazard Development Permits based on the type of development:

- (1) A two part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with an Elevation Certificate completed by a Professional Land Surveyor, based on the Part I permit construction, "as built", for verifying compliance with the applicable elevation requirements of Sec. 5-131(5), (6), and (8) and Sec. 5-133. Following review of the Elevation Certificate data, which shall take place within three (3) working days of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,
- (2) A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Sec. 5-131(6)(a). The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
- (3) A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, as defined in Sec. 5-106.

The Code Enforcement Officer shall issue the appropriate Flood Hazard Development Permit for any development that does not require Planning Board approval. For development that requires conditional use review and approval by the Planning Board, the Flood Hazard Development Permit shall be issued only after approval by the Planning Board.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000]; Ord. No. 6-10/11, 9/20/10 [Fiscal Note: Less than \$1000]; Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 5-126. Certificate of compliance.

- (a) No land in a Special Flood Hazard Area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a certificate of compliance is issued by the Code Enforcement Officer in accordance with the following:
 - (1) For new construction or substantial improvement of any elevated structure, the applicant shall submit the following to the Code Enforcement Officer:
 - a. an Elevation Certificate completed by a professional land surveyor for compliance with the applicable requirements of Sec. 5-131(5), (6), and (8) and Sec. 5-133; and,
 - b. for structures in Zone VE, certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with the requirements of Sec. 5-133(3).
 - (2) The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this article.

- (3) Within ten (10) working days of receiving the required information, the Code Enforcement Officer shall:
 - a. review the required certificate(s) and the applicant's written notification; and,
 - b. upon determination that the development conforms with the provisions of this article, shall issue a certificate of compliance.

(b) The certificate of compliance shall not substitute for the certificate of occupancy otherwise required pursuant to the code of ordinances.

(Ord. No. 2-90/91, 7-6-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000]; Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 5-127. Records; recordkeeping; reports.

In addition to the duties set forth in other sections, the Code Enforcement Officer shall be responsible for the following duties related to records, recordkeeping and reports:

- (1) Maintain as a permanent record copies of all Flood Hazard Area Development permit applications, the corresponding permits issued, and data relevant thereto, including any actions by the Planning Board, floodproofing certifications, elevation certificates, certificates of compliance, certification of design standards, and reports of the Board of Appeals on variances granted hereunder.
- (2) Obtain information, make records and keep as permanent records the actual elevation (in relation to mean sea level) of the lowest habitable floor (including basement) of all new or substantially improved structures in Areas of Special Flood Hazard.
- (3) Notify adjacent municipalities and the Maine Department of Environmental Protection and the Maine Floodplain Management Program in the Maine State Planning Office prior to any alteration or relocation of a watercourse and submit copies of such notifications to the Federal Emergency Management Agency.
- (4) Submit such reports regarding participation in the National Flood Insurance Program as may be required by FEMA.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000]; Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Secs. 5-128--5-130. Reserved.

DIVISION 4. DEVELOPMENT STANDARDS

Sec. 5-131. Development in all areas of special flood hazard.

In all Areas of Special Flood Hazard, except as otherwise provided in coastal high hazard areas or floodways, development shall meet the standards set forth in this section.

- (1) *General.* All development shall:

- (a) use construction materials resistant to flood damage;
 - (b) use construction methods and practices that minimize flood damage;
 - (c) be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy; and
 - (d) use electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions; and,
 - (e) if associated with an altered or relocated portion of a watercourse, be designed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
- (2) *Water supply, sewage disposal, and onsite waste.*
- (a) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
 - (b) All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
 - (c) Onsite waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- (3) *Utilities.* New construction or substantial improvement of any structure, including manufactured homes, located within:
- (a) Zones A and AE shall have the bottom of all electrical, heating, plumbing, ventilation and air conditioning equipment, permanent fixtures and components, HVAC ductwork and duct systems, and any other utility service equipment, facilities, machinery, or connections servicing a structure, elevated to at least one (1) foot above the base flood elevation.
 - (b) Zone VE shall meet the requirements of Sec. 5-133(2).
- (4) *Physical Changes to the Natural Landscape.* Certain development projects, including but not limited to, retaining walls, sea walls levees, berms, and riprap, can cause physical changes that affect flooding conditions.
- (a) All development projects in Zones AE and VE that cause physical changes to the natural landscape shall be reviewed by a Professional Engineer to determine whether or not the project changes the base flood elevation, zone, and/or the flood hazard boundary line.
 - 1. If the Professional Engineer determines, through the use of engineering judgement, that the project would not necessitate a Letter of Map Revision (LOMR), a certified statement shall be provided.
 - 2. If the Professional Engineer determines that the project may cause a change, a hydrologic and hydraulic analysis that meets current FEMA

standards shall be performed.

- (b) If the hydrologic and hydraulic analysis performed indicates a change to the base flood elevation, zone, and/or the flood hazard boundary line, the applicant may submit a Conditional Letter of Map Revision (C-LOMR) request to the Federal Emergency Management Agency for assurance that the as-built project will result in a change to the Flood Insurance Rate Map. Once the development is completed, a request for a Letter of Map Revision (LOMR) shall be initiated.
 - (c) If the hydrologic and hydraulic analysis performed show a change to the base flood elevation, zone, and/or the flood hazard boundary line, as soon as practicable, but no later than six (6) months after the completion of the project, the applicant shall submit the technical data to FEMA in the form of a Letter of Map Revision request.
- (5) *Residential.* New construction or substantial improvement of any residential structure located within:
- (a) Zone AE shall have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation.
 - (b) Zone A shall have the lowest flood (including basement) elevated:
 1. to at least one (1) foot above the base flood elevation utilizing information obtained pursuant to Sec. 5-112(4), Sec. 5-122(8)(a)(2), or Sec. 5-124(2); or,
 2. in the absence of all data described in Sec. 5-131(5)(b)(1), to at least two (2) feet above the highest adjacent grade to the structure.
 - (c) Zone VE shall meet the requirements of Sec. 5-133.
- (6) *Non-Residential.* New construction or substantial improvement of any non-residential structure located within:
- (a) Zone AE shall have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation, or together with the attendant utility and sanitary facilities shall:
 1. be floodproofed to at least one (1) foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;
 2. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 3. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit as required by Sec. 5-122(11) and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
 - (b) Zone A shall have the lowest floor (including basement) elevated:
 1. to at least one (1) foot above the base flood elevation utilizing information obtained pursuant to Sec. 5-112(4), Sec. 5-122(8)(a)(2),

or Sec. 5-124(2); or,

2. in the absence of all data described in Sec. 5-131(6)(b)(1), to at least two (2) feet above the highest adjacent grade to the structure; or,
3. together with attendant utility and sanitary facilities, be floodproofed to one (1) foot above the elevation established in Sec. 5-131(6)(b)(1-2) and meet the floodproofing standards of Sec. 5-131(6)(a)(1-3).

Zone VE shall meet the requirements of Sec. 5-133.

(7) *Hydraulic Openings/Flood Vents.* New construction or substantial improvement of any structure in Zones A or AE that meets the development standards of Sec. 5-131(5), (6), or (8) and is elevated on posts, columns, piers, or crawl spaces, may be enclosed below the base flood elevation requirements provided that all of the following criteria are met or exceeded:

- (a) Enclosed areas are not "basements" as defined in Sec. 5-106.
- (b) Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either:
 1. be engineered and certified by a registered professional engineer or architect; or,
 2. meet or exceed all of the following minimum criteria:
 - a. a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided;
 - b. the bottoms of all openings shall be below the base flood elevation and no higher than one (1) foot above the lowest grade; and,
 - c. openings may be equipped with screens, louvers or other coverings or devices, provided that they permit the entry and exit of floodwaters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means.
- (c) The enclosed area shall not be used for human habitation; and
- (d) The enclosed areas are usable solely for building access, parking of vehicles, or storage.

(8) *Manufactured homes.* New or substantially improved manufactured homes located within:

- (a) Zone AE shall:
 1. be elevated such that the lowest floor (including basement) of the manufactured home is at least one (1) foot above the base elevation;

2. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight supported by its wheels and axels; and,
3. be securely anchored to an adequately anchored foundation system to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - a. over-the-top ties anchored to the ground at the four (4) corners of the homes, plus two (2) additional ties per side at the intermediate locations (except that a manufactured home less than fifty (50) feet long requires only one (1) additional tie per side); or,
 - b. frame ties at each corner of the home, plus five (5) additional ties along each side at intermediate points (except that a manufactured home less than fifty (50) feet long requires only four (4) additional ties per side).
 - c. all components of the anchoring system described in Sec. 5-131(8)(a-b) above shall be capable of carrying a force of four thousand eight hundred (4,800) pounds and all additions to the manufactured housing shall be similarly anchored.

(b) Zone A shall:

1. be elevated on a permanent foundation as described in Sec. 5-131(8)(a)(2), such that the lowest floor (including basement) of the manufactured home is at least one (1) foot above the base flood elevation as described in Sec.5-112(4), Sec. 5-122(8)(a)(2), or Sec. 5-124(2);
2. in the absence of all data described in Sec. 5-131(8)(b)(1) above, be elevated to at least two (2) feet above the highest adjacent grade to the structure; and,
3. meet the anchoring requirements of Sec. 5-131(8)(a)(3).

(c) Zone VE shall meet the requirements of Sec. 5-133.

All manufactured home developments within Areas of Special Flood Hazard shall file an evacuation plan with the state bureau of civil emergency preparedness, indicating alternate vehicular access and escape routes.

(9) *Recreational vehicles.*

- (a) Recreational vehicles placed on sites located within Zones A and AE shall be fully licensed and ready for highway use and may remain for fewer than one hundred eighty (180) consecutive days. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by utilities and security devices capable of quick disconnection and has no permanently attached additions.

- (b) Any recreational vehicle which remains longer than one hundred eighty (180) days or is not fully licensed and ready for highway use shall meet the permit requirements and elevation and anchoring requirements for manufactured homes.
 - (c) Any recreational vehicle located in Zone VE shall also meet the requirements of Sec. 5-131(9) (a) or Sec.5-133.
- (10) *Accessory Structures.* New construction or substantial improvement of Accessory Structures, as defined in Sec. 5-106, shall be exempt from the elevation criteria required in Sec. 5-131(5-6) above, if all other requirements of Division 4 of this article including all the following requirements are met.
- (a) Accessory Structures located in Zones A and AE shall:
 - 1. be limited to five hundred (500) square feet or less in size, fifteen (15) feet or less in height, and one (1) story, as defined in Sec. 27-201 of the Code of Ordinances;
 - 2. have unfinished interiors and not be used for human habitation;
 - 3. have hydraulic openings, as specified in Sec. 5-131(7)(b), in at least two different walls of the accessory structure;
 - 4. be located outside the floodway;
 - 5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and,
 - 6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.
 - (b) Accessory Structures located in Zone VE shall meet the requirements of Sec. 5-133.
- (11) *Bridges.* New construction or substantial improvement of any bridge in Zones A, AE, or VE shall be designed such that:
- (a) when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one (1) foot above the base flood elevation; and,
 - (b) a registered professional engineer shall certify that:
 - 1. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Sec. 5-132; and,
 - 2. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.
- (12) *Containment Walls.* New construction or substantial improvement of any containment wall located in Zones A, AE, or VE shall:

- (a) have the containment wall elevated to at least one (1) foot above the base flood elevation;
 - (b) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - (c) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit as required by Sec. 5-122(11).
- (13) *Wharves, Piers and Docks.* New construction or substantial improvement of wharves, piers, and docks as defined in Sec. 27-201 of the Code of Ordinances are permitted in Zones A, AE, and VE, in and over water and seaward of the mean high tide if the following requirements are met:
- (a) In Zones A and AE, wharves, piers, and docks shall comply with all applicable local, state, and federal regulations.
 - (b) In Zone VE, wharves, piers, and docks shall have a registered professional engineer shall prepare or review the structural design, specifications, and plans for the construction.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000]; Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 5-132. Development in floodways.

Development in the floodway shall meet the following standards in addition to the standards set forth in Sec. 5-131 and the requirements of Article XIII of Chapter 27:

- (1) In riverine areas within Zone AE, encroachments, including fill, new construction, substantial improvement, or other development shall not be permitted in a regulatory floodway which is designated on the city's Flood Insurance Rate Map unless a technical evaluation certified by a registered professional engineer is provided, demonstrating that such encroachments will not result in any increase in flood levels within the city during the occurrence of the base flood discharge.
- (2) In riverine areas within Zones A and AE, for which no regulatory floodway is designated on the city's Flood Insurance Rate Map, encroachments, including fill, new construction, substantial improvement, or other development shall not be permitted within the floodway as determined in Sec. 5-132(3) unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
 - (a) will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community; and,
 - (b) is consistent with the technical criteria contained in FEMA's guidelines and standards for flood risk analysis and mapping.
- (3) In riverine areas within Zones A and AE, in which no regulatory floodway is designated on the city's Flood Insurance Rate Map, the floodway is determined to be the channel of the river or other watercourse and the adjacent land areas to a distance of one-half (1/2) the width of the floodplain as measured from the normal high-water mark to the upland limit of the floodplain.

(Ord. No. 90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000]; Ord. No. 6-10/11, 9/20/10 [Fiscal Note: Less than \$1000]; Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 5-133. Development in coastal floodplains.

Any development in coastal floodplains, shall meet the following standards in addition to the standards set forth in Sec. 5-131:

- (1) *Location.* New construction located within Zones AE and VE shall be located landward of the reach of mean high tide except as provided in Sec. 5-133(6).
- (2) *Utilities.* New construction or substantial improvement of any structure located within Zone VE shall have the bottom of all electrical, heating, plumbing, ventilation and air conditioning equipment, permanent fixtures and components, HVAC ductwork and duct systems, and in any other utility service equipment, facilities, machinery, or connections servicing a structure, elevated to at least one (1) foot above the base flood elevation. Systems, fixtures, equipment, and components shall not be mounted on or penetrate through walls intended to break away under flood loads.
- (3) *Elevation; anchoring; space below lowest floor.* New construction or substantial improvement of any structure located within Zone VE shall:
 - (a) be elevated on posts or columns so that:
 1. the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to a minimum of one (1) foot above the base flood elevation;
 2. the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,
 3. water loading values used shall be those associated with the base flood. Wind loading values shall be those required by applicable state and local building codes.
 - (b) have the space below the lowest floor be used solely for parking of vehicles, building access, or storage and either be:
 1. free of obstruction; or,
 2. constructed with open wood latticework or insect screening intended to collapse under wind and water loads without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system; or,
 3. constructed with non-supporting breakaway walls that have a design safe loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot.
 - (c) require a registered professional engineer or architect to:
 1. develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria

contained in the *Coastal Construction Manual*, (FEMA-55; and,

2. certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Sec. 5-133(3).

- (4) *Fill*. The use of fill for the structural support in Zone VE is prohibited.
- (5) *Sand dunes*. Human alteration of sand dunes within Zone VE is prohibited unless it can be demonstrated that such alteration will not increase potential flood damage.
- (6) *Lobster sheds and fishing shacks*. New construction or substantial improvement of lobster sheds and fishing shacks located in Zone VE may be located seaward of mean high tide and shall be exempt from the elevation requirements of Division 4 only if permitted as a conditional use following review and approval by the Planning Board, and if all the following requirements and those of Sec. 5-131(1), Sec. 5-131(7), and Sec. 5-132 are met:
- (a) The conditional use shall be limited to low value structures such as metal or wood sheds, 200 square feet or less and shall not exceed more than one story.
 - (b) The structure shall be securely anchored to resist floatation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
 - (c) The structure will not adversely increase wave action or debris impact forces affecting nearby buildings.
 - (d) The structure shall have unfinished interiors and shall not be used for human habitation.
 - (e) Any mechanical, utility equipment, and fuel storage tanks must be anchored and either elevated or floodproofed to one (1) foot above the base flood elevation.
 - (f) All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on the shore above the base flood elevation, and, when possible, outside the Special Flood Hazard Area.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09[Fiscal Note: Less than \$1000]; Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Secs. 5-134--5-140. Reserved.

DIVISION 5. APPEALS AND VARIANCES

Sec. 5-141. Jurisdiction of board of appeals--General.

The Board of Appeals shall hear and decide administrative appeals and variance appeals relating to the administration and enforcement of this article.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000])

Sec. 5-142. Administrative appeals.

The Board of Appeals shall hear and decide appeals where it is alleged that there is an error in any order, decision, determination, or interpretation made by, or the failure to act by the Code Enforcement Officer, as authorized in Sec. 27-152(a) of the Code of Ordinances. Where any application is approved or denied by the Planning Board pursuant to this article, appeal of the decision on the entire application shall be taken only to Superior Court in accordance with the Maine Rules of Civil Procedure Rule 80B.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000]; Ord. No. 6-10/11, 9/20/10 [Fiscal Note: Less than \$1000]; Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 5-143. Variance appeals.

- (a) The Board of Appeals may grant variances from the substantive requirements of this article consistent with state law in accordance with the procedures of Sec. 27-152(b) of the Code of Ordinances and all of the following criteria:
- (1) A variance shall be granted for a development within the designated regulatory floodway only if no increase in flood levels during the base flood discharge will result.
 - (2) A variance may be granted only upon showing of good and sufficient cause and a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, additional public expense, or increased nuisances, or cause fraud, or victimization of the public or conflict with existing local laws or ordinances.
 - (3) A variance may be granted only upon a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances.
 - (4) A variance may be granted only upon a determination that failure to grant the variance would result in "undue hardship," which in this subsection means that:
 - (a) the land in question cannot yield a reasonable return unless a variance is granted; and,
 - (b) the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
 - (c) the granting of a variance will not alter the essential character of the locality; and,
 - (d) the hardship is not the result of action taken by the applicant or a prior owner.
 - (5) A variance may be granted only upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. The Board of Appeals may impose such conditions as it deems necessary to the variance.

- (6) A variance may be issued for new construction, substantial improvements or other development for the conduct of a functionally dependent use only if the other criteria of Sec. 5-141(1-5) and Sec. 5-132 are met and, the development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.
 - (7) A variance may be granted for the repair, reconstruction, rehabilitation, or restoration of historic structures upon a determination that the development meets the criteria of Sec. 5-143(a)(1-6) and the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as an historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (8) A variance may be granted for new construction and substantial improvement of agricultural structures being used for the conduct of agricultural uses only if the other criteria of Sec. 5-131(7), Sec. 5-132, and Sec. 5-143(1) are met, and the development is protected by methods that minimize flood damage during base flood and create no additional threats to public safety.
- (b) Any applicant who meets the criteria of Sec. 5-143(1-5) and Sec. 143(6), (7), or (8) shall be notified by the Board of Appeals in writing over the signature of the chairman of the board that:
- (1) the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;
 - (2) such construction below the base flood level increases risks to life and property; and,
 - (3) The issuance of the variance is conditioned on the applicant agreeing in writing that the applicant is fully aware of all of the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the city against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases and holds the city harmless of and from any claims the applicant may have against the city that are related to the use of land located in a floodplain.
- (c) All applications for variances under this article shall be made on forms approved by the Board of Appeals. No application shall be heard by the board until the application is complete and signed by the applicant and the property owner. The release required by Sec. 5-143(b)(3) shall be included with or on all applications for a variance hereunder as well as the following statements in substantially the following language:
- (1) The applicant understands and is fully aware of all the risks inherent in the use of land subject to flooding and understands and agrees that the applicant is fully assuming any potential or actual liability resulting therefrom. Applicant further understands and agrees that the city has no responsibility therefor, and in the event a variance is granted to applicant, applicant agrees to inform any purchaser, assignee or other transferee of the existence of said variance and of this agreement.
 - (2) The applicant understands that any variance granted is not valid until a certificate of variance is recorded in the registry of deeds by the applicant.

- (3) The applicant has read, understands and agrees to all of the stipulations in this subsection and in Sec. 5-143(b).
- (d) If the board grants a variance, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions, has been granted, and the date of its granting, shall be prepared in recordable form. This certificate must be recorded in the registry of deeds by the applicant within ninety (90) days of final approval of the variance or the variance is invalid. No building permit shall issue and no development shall begin until the certificate is recorded and evidence of the recording provided to the Code Enforcement Officer.
- (e) The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including the justification for the granting of any variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which shall include any conditions to be attached to said permit.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000]; Ord. No. 6-10/11, 9/20/10 [Fiscal Note: Less than \$1000]; Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Secs. 5-144--5-150. Reserved.

DIVISION 6. INTERPRETATION

Sec. 5-151. Abrogation.

This article repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000])

Sec. 5-152. Conflict with other ordinances.

This article shall not repeal, annul or in any way impair or remove the necessity of compliance with any applicable rules, regulations, ordinances, permits or provisions of law. Where this article imposes a greater restriction upon the use of land or structures, the provisions of this article shall control. Where one (1) section of this article imposes a greater restriction upon the use of land or structures than another section, the provisions of the stricter section shall control.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000]; Ord. No. 20-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 5-153. Validity and severability.

If any section or provision of this article is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this ordinance.

(Ord. No. 2-90/91, 7-16-90; Ord. No. 17-08/09, 4/6/09 [Fiscal Note: Less than \$1000])

ARTICLE V. ENERGY EFFICIENCY***DIVISION 1. Property Assessed Clean Energy (PACE) Ordinance*****Sec. 5 - 154. Establishment.**

The City of South Portland, Maine has chosen to become a participating community in the Maine Efficiency Trust's "Property Assessed Clean Energy" ("PACE") Program pursuant to "An Act to Increase the Affordability of Clean Energy for Homeowners and Businesses" (Public Law 2009, Chapter 591, as amended). That Act authorizes a municipality that has adopted a PACE Ordinance to establish a PACE program so that owners of qualifying property can access financing for energy saving improvements to their properties located in the municipality, financed by funds awarded to the Efficiency Maine Trust under the Federal Dept. of Energy "Energy Efficiency and Conservation Block Grant" (EECBG) Program and by other funds available for this purpose, and to enter into a contract with the Trust to administer functions of its PACE program.

The City hereby establishes a PACE program allowing owners of qualifying property located in the PACE district who so choose to access financing for energy saving improvements to their property through PACE loans administered by the Trust or its agent. PACE loan funds are available from the Trust in municipalities that: (1) adopt a PACE Ordinance; (2) adopt and implement a local public outreach and education plan; (3) enter into a PACE administration contract with the Trust to establish the terms and conditions of the Trust's administration of the City's PACE program; and (4) agree to assist and cooperate with the Trust in its administration of the City's PACE program.

This Ordinance shall be known as the Property Assessed Clean Energy (PACE) Ordinance of the City.

Sec. 5 - 155. Purpose.

The City declares as its public purpose the establishment of a municipal program to enable its citizens to participate in a PACE program so that owners of qualifying property can access financing for energy saving improvements to their properties located in the City. The City declares its purpose and the provisions of this Ordinance to be in conformity with federal and State laws.

Sec. 5 - 156. Definitions.

Except as specifically defined below, words and phrases used in this Ordinance shall have their customary meanings; as used in this Ordinance, the following words and phrases shall have the meanings indicated:

Energy saving improvement. "Energy saving improvement" means an improvement to qualifying property that is new and permanently affixed to qualifying property and that:

- (1) Will result in increased energy efficiency and substantially reduced energy use and:
 - (a) Meets or exceeds applicable United States Environmental Protection Agency and United States Department of Energy *Energy Star* program or similar energy efficiency standards established or approved by the Trust; or

(b) Involves air sealing, insulating, and other energy efficiency improvements of residential, commercial or industrial property in a manner approved by the Trust; or

(2) Involves a renewable energy installation or an electric thermal storage system that meets or exceeds standards established or approved by the trust.

City. "City" shall mean the City of South Portland.

PACE agreement. "PACE agreement" means an agreement between the owner of qualifying property and the Trust that authorizes the creation of a PACE mortgage on qualifying property and that is approved in writing by all owners of the qualifying property at the time of the agreement, other than mortgage holders.

PACE assessment. "PACE assessment" means an assessment made against qualifying property to repay a PACE loan.

PACE district. "PACE district" means the area within which the City establishes a PACE program hereunder, which is all that area within the City's boundaries.

PACE loan. "PACE loan" means a loan, secured by a PACE mortgage, made to the owner(s) of a qualifying property pursuant to a PACE program to fund energy saving improvements.

PACE mortgage. "PACE mortgage" means a mortgage securing a loan made pursuant to a PACE program to fund energy saving improvements on qualifying property.

PACE program. "PACE program" means a program established under State statute by the Trust and a City under which property owners can finance energy savings improvements on qualifying property.

Qualifying property. "Qualifying property" means real property located in the PACE district of the City.

Renewable energy installation. "Renewable energy installation" means a fixture, product, system, device or interacting group of devices installed behind the meter at a qualifying property, or on contiguous property under common ownership, that produces energy or heat from renewable sources, including, but not limited to, photovoltaic systems, solar thermal systems, biomass systems, landfill gas to energy systems, geothermal systems, wind systems, wood pellet systems and any other systems eligible for funding under federal Qualified Energy Conservation Bonds or federal Clean Renewable Energy Bonds.

Trust. "Trust" means the Efficiency Maine Trust established in 35-A M.R.S.A. § 10103 (as may be amended) and/or its agent(s), if any.

Sec. 5 - 157. Amendment to PACE program.

The City may from time to time amend this Ordinance to use any other funding sources made available to it or appropriated by it for the express purpose of its PACE program, and the City shall be responsible for administration of loans made from those other funding sources.

Sec. 5 - 158. Standards adopted; Rules promulgated; model documents.

If the Trust or other State or federal agency adopts standards, promulgates rules, or

establishes model documents subsequent to the City's adoption of this Ordinance and those standards, rules or model documents substantially conflict with this Ordinance, the City shall take necessary steps to conform this Ordinance and its PACE program to those standards, rules, or model documents.

Sec. 5 - 159. Program Administration.

- (a) PACE Administration. Pursuant to 35-A M.R.S.A. § 10154(2)(A)(2) and (B), as may be amended, the City may enter into a PACE administration contract with the Trust to administer the functions of the PACE program for the City. The PACE administration contract with the Trust will establish the administration of the PACE program including, without limitation, that:
- (1) the Trust will enter into PACE agreements with owners of qualifying property in the City's PACE district;
 - (2) the Trust, or its agent, will create and record a Notice of the PACE agreement in the appropriate County Registry of Deeds to create a PACE mortgage;
 - (3) the Trust, or its agent, will disburse the PACE loan to the property owner;
 - (4) the Trust, or its agent, will send PACE assessment statements with payment deadlines to the property owner;
 - (5) the Trust, or its agent, will be responsible for collection of the PACE assessments;
 - (6) the Trust, or its agent, will record any lien, if needed, due to nonpayment of the PACE assessment;
 - (7) the City, or the Trust or its agent on behalf of the City, promptly shall record the discharges of PACE mortgages upon full payment of the PACE loan.
- (b) Assistance and Cooperation. The City will assist and cooperate with the Trust in its administration of the City's PACE program.
- (c) Assessments Not a Tax. PACE assessments do not constitute a tax but may be assessed and collected by the Trust in any manner determined by the Trust and consistent with applicable law.

Sec. 5 - 160 Liability of Municipal Officials; Liability of City.

- (a) Notwithstanding any other provision of law to the contrary, municipal officers and municipal officials, including, without limitation, tax assessors and tax collectors, are not personally liable to the Trust or to any other person for claims, of whatever kind or nature, under or related to a PACE program, including, without limitation, claims for or related to uncollected PACE assessments.
- (b) Other than the fulfillment of its obligations specified in a PACE administration contract with the Trust entered into under Sec. 5-159 above, the City has no liability to a property owner for or related to energy savings improvements financed under a PACE program.

PART I
Purpose and Enabling Legislation

Sec. 5 - 161-1. Purpose.

By and through this Ordinance, the City declares as its public purpose the establishment of a municipal program to enable its citizens to participate in a Commercial Property Assessed Clean Energy ("C-PACE") program so that owners of qualifying property can access financing for energy savings improvements to their commercial properties located in the City. The City declares its purpose and the provisions of this Ordinance to be in conformity with federal and State laws.

Sec. 5 - 161-2. Enabling legislation.

The City enacts this Ordinance pursuant to Public Law 2021, Chapter 142 of the 130th Maine State Legislature, "An Act to Allow for the Establishment of Commercial Property Assessed Clean Energy Program," also known as "the Commercial Property Assessed Clean Energy Act" or "the Commercial PACE Act" (codified at 35-A M.R.S. § 10201 et seq.).

PART II
Title and Definitions

Sec. 5 - 161-3. Title.

This Ordinance shall be known and may be cited as "The City of South Portland's Commercial Property Assessed Clean Energy ("C-PACE") Ordinance" (this "Ordinance").

Sec. 5 - 161-4. Definitions.

Except as specifically defined below, words and phrases used in this Ordinance shall have their customary meanings. As used in this Ordinance, the following words and phrases shall have the meanings indicated:

City. The City of South Portland.

Commercial PACE or C-PACE. Means Commercial Property Assessed Clean Energy.

Commercial PACE Agreement. An agreement that authorizes the creation of a Commercial PACE Assessment on Qualifying Property and that is approved in writing by all owners of the Qualifying Property at the time of the agreement and by the City Council.

Commercial PACE Assessment. An assessment made against Qualifying Property to finance an Energy Savings Improvement.

Commercial PACE District. The area within which the City establishes a Commercial PACE Program hereunder, which is all that area within the City boundaries.

Commercial PACE Lien. A lien, secured against a Qualifying Property that is created by a Commercial PACE Assessment.

Commercial PACE Loan. A loan, payable through a Commercial PACE Assessment and secured by a C-PACE Lien, made to the owner(s) of a Qualifying Property pursuant to a

Commercial PACE Program to fund Energy Savings Improvements.

Commercial PACE Program. A program established under this Ordinance pursuant to the Commercial PACE Act under which commercial property owners can finance Energy Savings Improvements on Qualifying Property.

Energy Savings Improvement. An improvement or series of improvements to Qualifying Property that are new and permanently affixed to Qualifying Property and that:

- (a) Will result in increased energy efficiency or substantially reduced energy use and:
 - (1) Meet or exceed applicable United States Environmental Protection Agency and United States Department of Energy "Energy Star" program or similar energy efficiency standards established or approved by the Trust; or
 - (2) Involve weatherization of commercial or industrial property in a manner approved by the Trust; or
- (b) Involve a Renewable Energy Installation, an energy storage system as defined in 35-A M.R.S. § 3481(6), as may be amended, an electric thermal storage system, electric vehicle supply equipment or heating equipment that meets or exceeds standards established or approved by the Trust. Heating equipment that is not a Renewable Energy Installation must be heating equipment that produces the lowest carbon emissions of any heating equipment reasonably available to the property owner, as determined by the Trust, and must meet the requirements of 35-A M.R.S. § 10204(1)(B), as may be amended.

Qualifying Property. Real commercial property in the City that:

- (a) Does not have a residential mortgage;
- (b) Is not owned by a residential customer or small commercial customer as defined in 35-A M.R.S. § 3106(1)(C) and (D), respectively, as may be amended;
- (c) Consists of 5 or more rental units if the property is a commercial building designed for residential use;
- (d) Is not owned by a federal, state or municipal government or public school; and
- (e) Is located in a municipality that participates in a Commercial PACE Program.

Registered Capital Provider or Capital Provider. An approved lender proving financing for the Energy Savings Improvements through a C-PACE Program and registered with Efficiency Maine Trust.

Renewable Energy Installation. A fixture, product, system, device or interacting group of devices installed behind the meter at a Qualifying Property, or on contiguous property under common ownership, that produces energy or heat from renewable sources, including, but not limited to, photovoltaic systems, solar thermal systems, highly efficient wood heating systems, geothermal systems and wind systems that do not on average generate more energy or heat than the peak demand of the property.

Trust. The Efficiency Maine Trust established in 35-A M.R.S. § 10103, as may be amended, and/or its agents, if any.

PART III
Commercial PACE Program

Sec. 5 - 161-5. Program established.

The City hereby establishes a Commercial PACE Program allowing owners of Qualifying Property located in the City who so choose to access financing for Energy Savings Improvements to their Qualifying Property, with such financing to be repaid through a Commercial PACE Assessment and secured by a Commercial PACE Lien. The City may:

- (a) Administer the functions of the Commercial PACE Program, including, but not limited to, entering into Commercial PACE Agreements with commercial property owners and collecting Commercial PACE Assessments, or designate an agent to act on behalf of the City for such billing and collection purposes; or
- (b) Enter into a contract with the Trust to administer some or all functions of the Commercial PACE Program for the City, including billing and collection of Commercial PACE Assessments, subject to the limitations set forth in 35 M.R.S. § 10205(5), as may be amended.

Sec. 5 - 161-6. Amendment or repeal of Commercial PACE Program.

The City may from time to time amend this Ordinance to use any funding sources made available to it or appropriated by it for the express purpose of its Commercial PACE Program, and the City shall be responsible for administration of loans made from those funding sources. The City may also repeal this Ordinance in the same manner as it was adopted, provided, however, that such repeal shall not affect the validity of any Commercial PACE Agreements entered into by the City prior to the effective date of such repeal, or a Commercial PACE Loan or Commercial PACE Lien arising out of such Agreements.

Sec. 5 - 161-7. Financing; private lenders; terms.

C-PACE Loans may be provided by any qualified Capital Provider private lender participating in the C-PACE Program and a C-PACE Agreement may contain any terms agreed to by the lender and the property owner, as permitted by law, for the financing of Energy Savings Improvements. Unless the City specifically designates funding sources made available to it or appropriated by it for the express purpose of its Commercial PACE Program and agrees to provide financing for Energy Savings Improvements, the City will not finance or fund any loan under the Commercial PACE Program, and shall serve only as a program sponsor to facilitate loan repayment by including the Commercial PACE Assessment on the property tax bill for the property, and shall incur no liability for the loan.

PART IV
Program Administration; No Municipal Liability

Sec. 5 - 161-8. Program Requirements and Administration.

- (a) Agreement Required. All commercial property owners seeking financing for Energy Savings Improvements on Qualifying Property pursuant to the Commercial PACE Program must enter into a Commercial PACE Agreement, approved as to form and substance by the City, authorizing the creation of a Commercial PACE Assessment and acknowledging the creation of a Commercial PACE Lien. A notice of the Commercial PACE Agreement will be filed in the Registry of Deeds, which filing will create a lien until the amounts due under the agreement are paid in full.
- (b) Underwriting Standards. A Commercial PACE Agreement entered into pursuant to the Commercial PACE Program must satisfy the minimum underwriting requirements of the Commercial PACE Act and such additional requirements established by the Trust.
- (c) Collection of assessments. A commercial property owner participating in the Commercial PACE Program will repay the financing of Energy Savings Improvements through an assessment on their property similar to a tax bill. A Commercial PACE Assessment constitutes a lien on the Qualifying Property until it is paid in full and must be assessed and collected by the City or its designated agent, the Trust, or a 3rd-party administrator contracted by the Trust, consistent with applicable laws. The City may, by written agreement, designate the applicable third-party Capital Provider as its agents for the billing and collection of Commercial PACE Assessment payments in satisfaction of the Commercial PACE Loan. Where Commercial PACE Assessment payments are received directly by the City along with other municipal tax payments, such payments received from property owners shall first be applied to City taxes, assessments, and charges. The City shall have no ownership of the Commercial PACE Assessments collected except for any administrative costs provided under the Commercial PACE Program. The City shall pay all Commercial PACE Assessment payments in any calendar month to the applicable Capital Provider or the Commercial PACE Program administrator within 30 days after the end of the month in which such amounts are collected. The City shall have no obligation to make payments to any Capital Provider with respect to any Commercial PACE repayment amounts or loan obligations other than that portion of the Commercial PACE Assessment actually collected from a property owner for the repayment of a Commercial PACE Loan.
- If the Trust or a 3rd-party administrator contracted by the Trust or an agent of the City collects Commercial PACE Assessments on behalf of the City, the Trust or agent shall periodically report to the City on the status of the Commercial PACE Assessments in the City and shall notify the City of any delinquent Commercial PACE Assessments. Upon receiving notification from the Trust or agent of a delinquent Commercial PACE Assessment, the City shall notify the holder of any mortgage on the property of the delinquent assessment.
- (d) Notice; filing. A notice of a Commercial PACE Agreement must be filed in the appropriate Registry of Deeds. The filing of this notice creates a Commercial PACE Lien against the property subject to the Commercial PACE Assessment until the amounts due under the terms of the Commercial PACE Agreement are paid in full. The notice must include the information required by the Commercial PACE Act.
- (e) Priority. A Commercial PACE Lien secures payment for any unpaid Commercial PACE Assessment and, together with all associated interest and penalties for default and associated attorney's fees and collection costs, takes precedence over all other liens or encumbrances except a lien for real property taxes of the municipality and liens of municipal sewer, sanitary and water districts. From the date of recording, a Commercial PACE Lien is a priority lien against a property, except that the priority of such a Commercial PACE Lien over any

lien, except a lien for real property taxes of the City or a lien of a municipal sewer, sanitary or water district, that existed prior to the Commercial PACE Lien is subject to the written consent of such existing lienholder.

- (f) Mortgage lender notice and consent. Any financial institution holding a lien, mortgage or security interest in or other collateral encumbrance on the property for which a Commercial PACE Assessment is sought must be provided written notice of the commercial property owner's intention to participate in the Commercial PACE Program and must provide written consent to the commercial property owner and City that the borrower may participate and enroll the collateral property in the Commercial PACE Program. This written consent must be filed in the Registry of Deeds and must include a written acknowledgement and understanding by the financial institution holding the lien, mortgage or security interest in or other collateral encumbrance on the property as required by the Commercial PACE Act.

Sec. 5 - 161-9. Collection, default; foreclosure.

- (a) A Commercial PACE Assessment and any interest, fees, penalties and attorney's fees incurred in its collection must be collected in the same manner as the real property taxes of the City. A Commercial PACE Assessment for which notice is properly recorded under this section creates a lien on the property. The portion of the assessment that has not yet become due is not eliminated by foreclosure, and the lien may not be accelerated or extinguished until fully repaid.
- (1) If a Commercial PACE Assessment is delinquent or in default and the borrower or property owner is delinquent in any tax debt due to the City, collection may occur only by the recording of liens and by foreclosure under 36 M.R.S. §§ 942 and 943, as may be amended. Liens must be recorded and released in the same manner as liens for real property taxes.
- (2) If only a Commercial PACE Assessment is delinquent but the borrower or property owner is current on payment of all municipal taxes due to the City, then a Commercial PACE lienholder shall accept an assignment of the Commercial PACE Lien, as provided in the written agreement between City and the Capital Provider. The assignee shall have and possess all the same powers and rights at law as the City and its tax collector with regards to the priority of the Commercial PACE Lien, the accrual of interest and fees and the costs of collection. The assignee shall have the same rights to enforce the Commercial PACE Lien as any private party or lender holding a lien on real property, including, but not limited to, the right of foreclosure consistent with 14 M.R.S. §§ 6203-A and 6321, as may be amended, and any other action in contract or lawsuit for the enforcement of the Commercial PACE Lien.
- (b) Judicial or non-judicial sale or foreclosure. In the event of a judicial or non-judicial sale or foreclosure of a property subject to a Commercial PACE Lien by a lienholder that is not a Commercial PACE lienholder, the Commercial PACE Lien must survive the foreclosure or sale to the extent of any unpaid installment, interest, penalties or fees secured by the lien that were not paid from the proceeds of the sale. All parties with mortgages or liens on that property, including, without limitation, Commercial PACE lienholders, must receive on account of such mortgages or liens sale proceeds in accordance with the priority established in the Commercial Pace Act and by applicable law. A Commercial PACE Assessment is not eliminated by foreclosure and cannot be accelerated. Only the portion of a Commercial PACE Assessment that is in

arrears at the time of foreclosure takes precedence over other mortgages or liens; the remainder transfers with the property at resale.

- (c) Unless otherwise agreed upon by the Capital Provider, all payments on a Commercial PACE Assessment that become due after the date of transfer by judicial or non-judicial sale or foreclosure must continue to be secured by a lien on the property and are the responsibility of the transferee.
- (d) Release of lien. The City will discharge a Commercial PACE Lien created under the Commercial PACE Act and this Ordinance upon full payment of the amount specified in the Commercial PACE Agreement. A discharge under this subsection must be filed in the appropriate Registry of Deeds and must include reference to the notice of Commercial PACE Agreement previously recorded pursuant to the Commercial PACE Act and this Ordinance.
- (e) No City Responsibility for Commercial PACE Assessment Payments. The City shall not be obligated to make any Commercial PACE Assessment payment during any period in which the City is deemed to be the owner of the Qualified Property by virtue of the automatic foreclosure of a tax lien mortgage, pursuant to 36 M.R.S. § 943, as may be amended, provided that the City includes such a provision in the Commercial PACE Agreement for that Qualified Property.

Sec. 5 - 161-10. Liability of municipal officials; liability of City.

- (a) Notwithstanding any other provision of law to the contrary, City officers and City officials, including, without limitation, Tax Assessors and Tax Collectors, are not personally liable to the Trust or to any other person for claims, of whatever kind or nature, under or related to a Commercial PACE Program, including, without limitation, claims for or related to uncollected Commercial PACE Assessments under this Ordinance.
- (b) Other than the fulfillment of its obligations specified in a Commercial PACE Agreement, the City has no liability to a commercial property owner for or related to Energy Savings Improvements financed under a Commercial PACE Program.

PART V

Conformity with Trust Requirements

Sec. 5 - 161-11. Conformity to Changed Standards.

This Ordinance is intended to comply with the Commercial PACE Act and the administrative rules of the Trust issued in connection with the Commercial PACE Act, as the same may be amended. If the Trust or any State or federal agency adopts standards, promulgates rules, or establishes model documents subsequent to the City's adoption of this Ordinance and those standards, rules or model documents substantially conflict with this Ordinance, the City shall take necessary steps to conform this Ordinance and its Commercial PACE Program to those standards, rules or model documents.

(Ord. No. 17-23/24, 3/19/2024 [Fiscal Note: Less than \$1000])

DIVISION 3. [Reserved]

DIVISION 4. *Stretch Energy Code***Sec.5-169A. International Energy Conservation Code Adopted.**(a) **Title.**

The City hereby adopts, in accordance with 10 M.R.S. § 9722(6)(O) and 30-A M.R.S. § 3003, both as may be amended from time to time, the International Energy Conservation Code of the International Code Council (2021 edition) (the "Stretch Energy Code") as the energy conservation and efficiency requirements for the City which are based on national voluntary efficiency standards that exceed the energy code requirements established in the Maine Uniform Building and Energy Code, the whole thereof save and except such portions as are hereinafter deleted, modified or amended, of which code at least one copy has been and now is filed in the Office of the City Clerk and the same is hereby adopted and incorporated as fully as if set out at length herein.

(b) **Copy to be Maintained in City Clerk's Office.**

The City Clerk shall keep on file in the City Clerk's office one copy of the Stretch Energy Code, which copy shall be kept available for public use, inspection and examination.

(c) **Conflicts with Other Enactments.**

In the event that there is any federal, state or local provision of law more restrictive than any provision in the Stretch Energy Code, such federal, state or local provision of law shall prevail.

(d) **Amendments to Published Version.**

Said Stretch Energy Code is adopted in its published form as if fully set forth herein, except as deleted, modified or amended by the City as follows:

(1) Section **C101** is amended to read as follows:

Section **C101.1** is deleted and replaced with the following:

C101.1 Title. This code shall be known as the *Stretch Energy Code of the City of South Portland*, and shall be cited as such. It is referred to herein as "this code."

(2) Section **C110** is amended to read as follows:

Section **C110.1** is deleted and replaced with the following:

C110.1 General. The Board of Appeals shall act as the Stretch Energy Code board of appeals in order to hear appeals of orders, decision or determinations made by the code official relative to the application and interpretation of this code. Appeals to the Board of Appeals shall be submitted as otherwise set forth in the City's Zoning Ordinance regarding administrative appeals, subject to the payment of any fees as may be determined by the City Council from time to time.

(3) Section **C202** is amended to read as follows:

Section **C202's** definition "CODE OFFICIAL" is deleted and replaced with the following:

CODE OFFICIAL. References in this code to the "code official" shall be interpreted to mean the Code Enforcement Officer of the City of South Portland.

(4) Section **R101** is amended to read as follows:

Section **R101.1** is deleted and replaced with the following:

R101.1 Title. This code shall be known as the *Stretch Energy Code of the City of South Portland*, and shall be cited as such. It is referred to herein as "this code."

(5) Section **R110** is amended to read as follows:

Section **R110.1** is deleted and replaced with the following:

R110.1 General. The Board of Appeals shall act as the Stretch Energy Code board of appeals in order to hear appeals of orders, decision or determinations made by the code official relative to the application and interpretation of this code. Appeals to the Board of Appeals shall be submitted as otherwise set forth in the City's Zoning Ordinance regarding administrative appeals, subject to the payment of any fees as may be determined by the City Council from time to time.

(6) Section **R202** is amended to read as follows:

Section **R202's** definition of "CODE OFFICIAL" is deleted and replaced with the following:

CODE OFFICIAL. References in this code to the "code official" shall be interpreted to mean the Code Enforcement Officer of the City of South Portland.

(7) **Appendix RA** and **Appendix CA** are deleted.

(e) **Penalties.**

The penalty for violating the provisions of the Stretch Energy Code, in addition to injunctive relief, shall be a fine as provided for by 30-A M.R.S. § 4452, as may be amended from time to time. Each day during which a violation of the said Code continues shall constitute a separate violation.

(f) **Savings Clause.**

Nothing in this Division or in the Stretch Energy Code hereby adopted shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing under any existing ordinance, nor shall any just or legal right or remedy of or any character be lost, impaired or affected by this Division.

(g) **Severability.**

If any section or provision of this Division is, for any reason, declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Division.

(h) **Effective Date; Applicability Date.**

This Division shall become effective pursuant to Section 225 of the City Charter. In order to allow time for residents and property owners to become familiar with the requirements of this Division, the requirements of this Division shall become applicable April 1, 2022 to any project that is not a "Protected Project." For purposes of the amendments evidenced by Ordinance #8-21/22, the term "Protected Project" shall be limited to the following:

- (i) For projects that do not require Planning Board review and approval, an application for a building permit has been both applied for and approved prior to April 1, 2022 (notwithstanding the provisions of 1 M.R.S. § 302); or
- (ii) For projects that require Planning Board review and approval, the Planning and Development Department has, prior to April 1, 2022 (notwithstanding the provisions of 1 M.R.S. § 302), issued a completeness review letter indicating that the application is complete and that the project has been tentatively scheduled for a Planning Board public hearing agenda. In the case of a "major subdivision" as defined in Chapter 24 of the Code of Ordinances, a project for which the Planning and Development Department has, prior to April 1, 2022, issued a completeness review letter indicating that the preliminary plan application is complete and that the preliminary plan has been tentatively scheduled for a Planning Board public hearing agenda shall be considered a Protected Project.

(Ord. No. 8-21/22, 10/26/2021 [Fiscal Note: Less than \$1000])

ARTICLE VI. DISORDERLY HOUSES

Sec. 5-170. Title.

This Article shall be known as the "City of South Portland Disorderly House Ordinance."

Sec. 5-171. Purpose.

The purpose of this Article is to protect the health, safety, and welfare of the residents of the City of South Portland by eliminating the proliferation of properties with occupants who disturb the peace and tranquility of their neighborhoods.

Nothing contained in the Article is intended to dissuade, discourage or prohibit any person whose safety is in jeopardy, or who is a victim of domestic abuse, from contacting the appropriate authorities, including, but not limited to, the South Portland Police Department.

(Ord. No. 14-17/18, 2/20/18 [Fiscal Note: Less than \$1000])

Sec. 5-172. Legislative findings.

The City Council hereby finds that:

(a) The City has a substantial and compelling interest in protecting the health, safety, property, and welfare of its citizens and the neighborhoods affected by chronic unlawful or nuisance activity as well as in not dissuading, discouraging or prohibiting any person whose safety is in jeopardy, or who is a victim of domestic violence, from contacting the appropriate authorities.

(b) Chronic unlawful or nuisance activity of various kinds on and near disorderly houses adversely affects the health, safety and welfare of citizens and diminishes the quality of life in neighborhoods where this chronic activity occurs. Chronic unlawful or nuisance activity constitutes a public nuisance and should be subject to abatement.

(c) The existing ordinances and enforcement processes do not adequately control chronic unlawful or nuisance activity or its detrimental effects on citizens and neighborhoods where such chronic activity occurs.

(d) Establishing the regulatory scheme contained herein will alleviate the problems created by chronic unlawful or nuisance activity through early intervention by the Police Department.

(Ord. No. 14-17/18, 2/20/18 [Fiscal Note: Less than \$1000])

Sec. 5-173. Disorderly houses prohibited.

(a) No person shall occupy as owner-occupant or shall allow another to occupy any dwelling, dwelling unit, small-scale shelter as that term is defined in Article I of Chapter 14 (Licensing) of the Code of Ordinances, rooming house, or rooming unit (hereinafter jointly and severally "building") which is a disorderly house as defined herein.

(b) A "disorderly house" is any building which:

- (1) The police have visited a minimum number of times in any thirty (30) day period, as set forth in paragraph (3) below, in response to situations which are created by the owner, tenants, or owner's or

tenants' cohabitees, guests or invitees and that would have a tendency to unreasonably disturb the community, the neighborhood or an ordinary individual in the vicinity of said building, including, but not limited to: loud music; boisterous parties; sounds emanating from within the structure which are audible outside the building; loud noise or fights within the building or in its vicinity involving tenants of the building or their invitees (excluding any request for police protection or any police intervention in the face of a threat or a perceived threat to person or property, or any request for the assistance of the police to enforce a court order, including, but not limited to, circumstances in which the request for assistance or other police intervention arises from an incident relating to domestic violence, dating violence, sexual assault or stalking against any person at or near the building); tenants or invitees of tenants being intoxicated on public ways in the vicinity of the building; other similar activities in the building or outside the building itself; or

- (2) The police have visited three (3) or more times in any thirty (30) day period in response to situations which are created by the owner, tenants, or owner's or tenants' cohabitees, guests or invitees and involve the arrest or summons of owners or tenants or their invitees for activities which constitute either a crime or civil infraction under either state or local law (excluding arrests or summonses arising from an incident relating to domestic violence, dating violence, sexual assault or stalking against any person at or near the building), or create a reasonable suspicion that illegal drug use or sales under 17-A M.R.S.A. Chapter 45 or prostitution or public indecency under 17-A M.R.S.A. Chapter 35 has occurred.
- (3) The following table delineates the number of police visits per dwelling size which create a disorderly house under paragraph (1) above:

UNITS PER BUILDING	NUMBER OF VISITS BY POLICE IN ANY 30-DAY PERIOD
5 or fewer	3
6 to 10	4
11 or more	5

(c) The situation to which the visit pertains shall be documented by the Police Department. Such documentation may include sworn affidavits by named citizens that may be sufficient to create a reasonable suspicion said illegal activity has occurred.

(Ord. No. 14-17/18, 2/20/18 [Fiscal Note: Less than \$1000]; Ord. No. 20-22/23, 3/7/2023 [Fiscal Note: Less than \$1000])

Sec. 5-174. Notice of disorderly house.

(a) Whenever the Police Department has identified a building as a disorderly house, it shall cause written notification of the events that form the basis for that designation to be given to the owner as long as that owner has registered in accordance with Article VII of this Chapter (Disclosure of Building Ownership). Such notice shall be sufficient for all legal purposes. The notice shall require the owner to meet with representatives of the City (including the Police Department) within ten (10) business days from the date of the written notification, or such other time as is agreed upon by the Police Chief or his or her designee, to identify ways in which the problems that have been identified will be eliminated.

(b) At the time of said meeting, the owner shall be obligated to provide to

the City the following documentation:

- (1) A copy of the names of all tenants or other persons authorized to reside or presently residing in the building and the units they occupy;
- (2) Copies of all leases or occupancy agreement(s) with tenants or other persons residing in the building (confidential personal or financial information may be omitted);
- (3) Contracts with any property manager or other person responsible for the orderly operation of the building; and
- (4) An accurate and up to date disclosure of building ownership form as required by Article VII of this Chapter.

In addition, the owner will agree to take effective measures to address the disorderly house, which measures shall be memorialized in a written agreement at the conclusion of the meeting with the City and shall be implemented within one (1) week of said meeting unless another date is agreed upon by the Police Department. The Police Chief or his or her designee has authority to execute such agreements on behalf of the City. Failure to enter into such an agreement at the conclusion of the meeting will be deemed a violation of this ordinance, and the City may file a complaint in court seeking all remedies permitted by law as set forth in Sec. 5-176.

(c) If the same building should be classified as a disorderly house by the Police Department on a subsequent occasion within three (3) years, then the City is under no obligation to meet with the owner but may, after notice and hearing before the City Council, condemn and post the building or any units therein against occupancy as set forth in Sec. 5-176, and/or proceed directly with a complaint to court seeking all remedies permitted by law as set forth in Sec. 5-176. In the event of a hearing, the City Clerk will provide the property owner, non-owner occupants (if known), and the Police Chief within seven (7) days' advance notice of a hearing date and time. At such hearing, the property owner and the Police Chief shall have the right to present oral or documentary evidence for the City Council's consideration. The non-owner occupants shall have the right to explain the events or any mitigating circumstances surrounding the alleged violation(s) and to present oral or documentary evidence for the City Council's consideration.

(d) The notices provided for in this section may be given to an owner who has not complied with Article VII of this Chapter, but are not required. If an owner has not complied with Article VII of this Chapter, notice given to any person, including any legal entity having the right of legal title or the beneficial interest in the disorderly house or any portion thereof, as that interest is recorded in the assessing records of the City or the Registry of Deeds of Cumberland County, shall be sufficient for all legal purposes.

(Ord. No. 14-17/18, 2/20/18 [Fiscal Note: Less than \$1000])

Sec. 5-175. Appeal process.

The owner of property that has been classified as a disorderly house by the Police Department may appeal such classification in writing to the City Manager within twenty one (21) days of notification of such classification or within seven (7) days of any meeting with representatives of the City pursuant to Sec. 5-174(b), whichever is later. In the event of a timely appeal, the City Manager will provide the property owner, non-owner occupants (if known), and the Police Chief with seven (7) days notice of a hearing date and time. At such hearing, the property owner and the Police Chief shall have the right to present oral or documentary evidence for the City Manager's consideration. The non-owner occupants shall have the right to explain the events or any mitigating circumstances surrounding the alleged violation(s) and to present oral or documentary evidence for the City Manager's consideration. The City Manager shall issue a written decision on the appeal, determining whether the violation(s) occurred

within fourteen (14) days of the hearing. Any appeal of a decision of the City Manager 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.

(Ord. No. 14-17/18, 2/20/18 [Fiscal Note: Less than \$1000])

Sec. 5-176. Enforcement.

(a) It shall be the duty of the Police Department to administer and enforce the provisions of this Article. If the owner (a) refuses to meet with representatives of the City as set forth in Sec. 5-174(a) above, (b) refuses to agree to take effective measures to address the disorderly house, (c) takes ineffective measures to address the disorderly house as determined by the City, (d) fails to implement the agreement reached with the City to address the disorderly house, or (e) if, in the discretion of the City, the disorderly house requires immediate posting, the City may condemn and post the building or any units therein against occupancy, and/or may file a legal action against the owner and/or violator seeking any and all remedies to which it is entitled pursuant to State and local laws, including, without limitation, declaratory and injunctive relief.

(b) In the event that condemnation and posting the building or any units therein against occupancy is necessary to address the disorderly house, the City shall provide all non-owner occupants of the building with written notice of said condemnation at least thirty (30) days in advance of the act of condemnation or the posting against occupancy.

(c) In the event of legal action against an owner and/or violator for a disorderly house violation, the City shall name the non-owner occupants of the building as parties-in-interest to said legal action.

(Ord. No. 14-17/18, 2/20/18 [Fiscal Note: Less than \$1000])

Sec. 5-177. Violations.

Any person violating any of the provisions of this Article or failing or neglecting or refusing to obey any order or notice of the Police Department issued hereunder shall be subject to a penalty as provided herein.

Sec. 5-178. Civil penalties.

Any person who is found to be in violation of any provision of this Article shall be subject to a civil penalty of not less than one thousand dollars (\$1,000.00) and not more than two thousand dollars (\$2,000.00), or as otherwise provided by 30-A M.R.S.A. § 4452, as may be amended from time to time. 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, staff time, reasonable attorney's fees, and costs. All civil penalties shall inure to the benefit of the City of South Portland.

(Ord. No. 14-17/18, 2/20/18 [Fiscal Note: Less than \$1000])

Sec. 5-179. Reserved.

(Ord. No. 4-11/12, 9/19/11 [Fiscal Note: Less than \$1000])

ARTICLE VII. DISCLOSURE OF BUILDING OWNERSHIP**Sec. 5-180. Title.**

This Article shall be known as the "City of South Portland Disclosure of Building Ownership Ordinance."

Sec. 5-181. Purpose.

The proliferation of real estate proprietorships, partnerships, and trusts having undisclosed, anonymous or otherwise unidentifiable principals, owning large numbers of multi-unit residential properties, sometimes managed through unresponsive property management companies, has impeded the proper enforcement of this Chapter, Chapter 12 and other ordinances of the City. This Article is intended to require the disclosure of the ownership of such property and to make owners and persons responsible for the maintenance of property more accessible and accountable with respect to the premises.

Sec. 5-182. Registration required.

(a) *Registration of ownership.* The owner or owners of all buildings containing three (3) or more dwelling units, rooming units, or any combination thereof within the City shall register their ownership interest, address and telephone number and the name, address and telephone number of the person or entity responsible for managing the property, or cause such interest to be registered, with the Code Enforcement Officer as provided in Sec. 5-183 by January 1, 2012 or within thirty (30) days of purchase of the property and/or building, whichever occurs later.

The registration required hereunder shall be updated or withdrawn within thirty (30) days of transfer of ownership, change in management or change in registered agent as provided in Sec. 5-183. Each and every owner of the property shall be responsible for the filing of the registration and for updating prior filings as required.

(b) *Registration of management companies.* Any individual, firm, corporation or purchaser under a land installment contract pursuant to 13 M.R.S.A. § 481 *et seq.*, as may be amended from time to time, managing property subject to the registration requirements of subsection (a) shall register with the Code Enforcement Officer its management responsibility by January 1, 2012 or within thirty (30) days of assuming management responsibility, whichever occurs later. Any filing shall be updated annually as well as when there are any changes whatsoever with regard to the information supplied.

Sec. 5-183. Registration form; information.

The Code Enforcement Officer shall provide forms to be completed by the owners and managers of properties subject to registration under this Article and shall maintain a file containing all registrations made under this Article.

(a) The registration form for owners shall include, at a minimum, the following:

- (1) The street address of the building;
- (2) The Assessor's map and lot of the property on which the building is located;
- (3) The names, addresses and telephone numbers of all individual persons having any ownership interest in the property including, without limitation, all partners, all officers or trustees of any real estate trusts; and including the residential street address and home telephone number of at least one (1) such individual person;

- (4) The name, address and telephone number of the manager of the property or the person or persons responsible for its regular maintenance or repair;
- (5) The name and address of a person designated as the agent of the owner for the service of notices and civil process by the City. Service of notice and process upon the person so designated shall be deemed conclusive service upon the owner or owners designating that person in any litigation pertaining to the premises.

(b) The registration form for managers of property shall include, at a minimum, the following:

- (1) The name, address and local telephone number of the management company and of at least one (1) such individual, including the residential street address and home telephone number of that individual; and
- (2) A list of all buildings for which the person or firm is responsible, including the street address and Assessor's map and lot description of the property and the name of the owner of that building.

Sec. 5-184. Violations.

Any person failing to file the required registration, failing to file any required update to the registration or filing a false statement on any registration commits a civil violation. It shall also be a violation of this Article for any owner or manager to rent any apartment or other portion of any building subject to registration, not registered under this Article, or to permit the occupancy of such premises. No certificate of occupancy shall be issued for property subject to the registration requirements that is not registered in accordance with this Article. Each day's continuing failure to file such a registration or to update such registration and each day of permitting the continued occupancy of such premises shall be a separate offense.

Sec. 5-185. Enforcement and civil penalties.

It shall be the duty of the Code Enforcement Officer to administer and enforce the provisions of this Article. Any person who is found to be in violation of any provision of this Article shall be subject to a civil penalty of not less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1,000.00). Each violation of a separate provision of this Article, and each day of violation, shall constitute separate offenses. Violators may be subject to legal action brought by the City seeking any and all remedies to which it is entitled pursuant to State and local laws, including, without limitation, declaratory and injunctive relief. 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, staff time, attorney's fees, and costs. All civil penalties shall inure to the benefit of the City of South Portland.

(Ord. No. 4-11/12, 9/19/11 [Fiscal Note: Less than \$1000])