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SOUTH PORTLAND CODE OF ORDINANCES

Chapter 10

HEALTH, WELFARE AND SANITATION GENERALLY\*

\* **Charter reference(s)**--Health and public welfare departments created, § 304; department heads to administer departments, § 305; director of public welfare, generally, § 306; health officer, generally, § 307.

**Cross reference(s)**--Animals and fowl, Ch. 3; garbage and refuse, Ch. 9; house-car trailers and trailer camps, Ch. 11; housing, Ch. 12; food, food handlers and food service establishments, § 14-100 et seq.; nuisances, generally, Ch. 16; parks and recreation, Ch. 18; plumbing, Ch. 20; sewers and drains, Ch. 22; swimming pools and wading pools, Ch. 25; zoning, Ch. 27.

**State law reference(s)**--Health and welfare, generally, 22 M.R.S.A. § 1 et seq.; authority to pass ordinances regulating the public health, welfare and safety, 30 M.R.S.A. § 2151(1).

- Art. I. In General, §§ 10-1--10-17
- Art. II. Rodent Control, §§ 10-18--10-199
- Art. III. General Assistance Ordinance, §§ 10-200--10-801
  - Div. 1. Statement of Policy, § 10-200
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  - Div. 7. The Fair Hearing, §§ 10-701--10-800
  - Div. 8. Recovery of Expenses
  - Div. 9. Severability
- Art. IV. Paid Sexual Contact, §§ 10-901--10-1000
- Art. V. Public Indecency Ordinance, §§10-1001--10-1100
- Art. VI. Discrimination Based On Sexual Orientation, §§10-1101--10-1115
  - Div. 1. Generally, §§ 10-1101--10-1102
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  - Div. 4. Public Accommodations, §§ 10-1107
  - Div. 5. Fair Credit Extension, §§ 10-1108--10-1109
  - Div. 6. Enforcement, §§ 10-1110--10-1113
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- Art. VII. Emergency Planning and Response §§10-1121--10-1133
- Art. VIII. Property Tax Assistance Ordinance, §§10-1201--10-1210
- Art. XI. Reserved
- Art. X. Prohibition on the Sale of Tobacco Products to individuals Under Age 21 and the Possession of Tobacco Products by Individuals Under Age 21
- Art. XI. Board of Health



**ARTICLE I. IN GENERAL**

**Sec. 10-1. Reserved.**

**Sec. 10-2. Erecting, placing, constructing pigpen or hog sty: Permit required; issuance of permit; authority to order removal of swine, hogs.**

- (a) No person shall erect, place or continue any pigpen or hog sty or keep any swine or hogs within the limits of the city without first obtaining a permit to do so from the health officer.
- (b) The health officer shall have the authority to issue permits under conditions laid down by him to owners of hogs or swine for the keeping of same.
- (c) Whenever a complaint is made to the health officer regarding any swine or hogs kept within the limits of the city, he may order the removal of the swine or hogs if, upon investigation, he deems the complaint justified.

(Code 1966, § 11-1-6)

**Secs. 10-3--10-17. Reserved.**



**ARTICLE II. RODENT CONTROL\***

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\* **Cross reference(s)**--Maintenance of dwellings in rodentproof condition, § 12-198 et seq.

**Sec. 10-18. Office of rodent control inspector created; appointment.**

There shall be a rodent control inspector, who shall be appointed by the city manager.

(Code 1966, § 2-7-3.1)

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**Charter reference(s)**--Authority for city manager to make appointments, § 302.1.  
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**Sec. 10-19. Duties of rodent control inspector.**

The rodent control inspector shall, by inspection of all buildings and premises within the city, enforce this article and provide for a rodent-free city.

(Code 1966, § 2-7-3.2)

**Sec. 10-20. Powers of rodent control inspector.**

The rodent control inspector shall have those powers necessary and proper to enforce this article, including, but not limited to, ordering the elimination of rodent harborage and unsanitary conditions attractive to rodents. He shall also be empowered to order affirmative corrective acts to be performed by the owner or agent of any building, premises or other property within the city.

(Code 1966, § 2-7-3.3)

**Sec. 10-21. Property to be free of rodents.**

All buildings, premises or other property within the city shall be free of rodents.

(Code 1966, § 11-6-2)

**Sec. 10-22. Violations enumerated.**

No person shall:

- (1) Store feed or other food for poultry or other animals unless rodentproof containers, compartments, rooms or buildings, satisfactory to the rodent control inspector, shall be used therefor;
- (2) Store or contain garbage or refuse consisting of waste, animal or vegetable matter, unless the same shall be kept in metal waste containers which shall have metal covers closing securely over such containers and which shall be satisfactory to the rodent control inspector;

- (3) Place, leave or dump any garbage, rubbish or trash, or permit the same to be done within any building, premises or property of any kind within the city;
- (4) Store or let accumulate boxes, barrels, lumber, bricks or other material, unless the same shall be placed upon open platforms not less than eighteen (18) inches above the ground, nor shall the same be stored or accumulated unless in even piles or stacks;
- (5) Remove any ratproofing material or appurtenances from a building and fail to restore the same, nor shall any person create an opening in any building which allows the entrance of rodents.

(Code 1966, § 11-6-3)

**Secs. 10-23--10-199.      Reserved.**

**ARTICLE III. GENERAL ASSISTANCE ORDINANCE\***

**ARTICLE III  
CITY OF SOUTH PORTLAND GENERAL ASSISTANCE ORDINANCE**

Editor's Note: Article III of Chapter 10, the City of South Portland General Assistance Ordinance, has intentionally not been numbered consistent with the City's standard Code Book numbering system because it is derived from a model ordinance developed by the Maine Municipal Association and used by GA Administrators throughout the State. This ordinance uses a different numbering system, which starts with Article I.

## **ARTICLE I – Statement of Policy**

The City of South Portland administers a general assistance (“GA”) program available to all persons who are eligible pursuant to the standards provided in this Ordinance, State law (22 M.R.S. §§ 4301-4326), and Department of Health and Human Services (DHHS) regulations.

The program will make every effort to recognize the dignity of applicants while helping eligible persons achieve self-maintenance by promoting the work incentive. When possible, the program will connect recipients with rehabilitative, preventive, and protective services to alleviate non-financial needs. The GA program will not place unreasonable restrictions on the personal rights of applicants or recipients, nor will it discriminate based on sex, age, race, nationality, religion, sexual orientation, or disability. The municipality is committed to including qualified individuals with disabilities in municipal services, programs, and activities. As a result, the municipality will promote a GA program that when viewed in its entirety is readily accessible to and usable by individuals with disabilities. GA applicants with physical or mental disabilities that require a reasonable accommodation in order to access and/or utilize the GA program are encouraged to contact the municipality to make an accommodation request.

The Administrator will act promptly on all applications for assistance and requests for fair hearings and will provide GA applicants with information regarding their rights and responsibilities under the program. Within 24 hours after receipt of an application, the Administrator will provide the applicant a written decision, whether or not assistance is granted, that will state the specific reasons for the decision. The Administrator will also provide the applicant written notice that the applicant may appeal to the municipal fair hearing authority if dissatisfied with the decision. When an applicant is determined to be eligible, assistance appropriate to the need will be furnished within 24 hours after the completed application is submitted except when the Administrator issues non-emergency assistance conditionally on the successful completion of a workfare assignment (*see* Ordinance § 5.6).

The Administrator will maintain complete and accurate records pertaining to each applicant and recipient. These records are confidential as a matter of law. 22 M.R.S. § 4306.

The Administrator will post notice stating the day(s) and hours the Administrator will be available. The Administrator, or other designated person/entity, will be available to take applications in the event of an emergency at all other times. A copy of this Ordinance and Maine General Assistance law will be available to any member of the public upon request. Notice to this effect will be posted.

## ARTICLE II – Definitions

### **Section 2.1—Common Meaning of Words**

Unless otherwise apparent or defined, all words in this Ordinance will have their common meaning.

### **Section 2.2—Special Definitions**

**Administrator.** See “General Assistance Administrator,” below.

**Applicant.** A person who has submitted an application for GA directly or through an authorized representative, or who has, in an emergency, requested assistance without first completing an application. All persons on whose behalf an authorized application has been submitted or on whose behalf benefits have been granted shall be considered applicants.

**Application Form.** A standardized form used by the Administrator to allow a person to apply for GA benefits. The application form also confirms that a person has made an application. The application form is not complete unless signed by the applicant.

**Basic Necessities.** Food, clothing, shelter, fuel, electricity, potable water, non-elective essential medical services as prescribed by a physician, nonprescription drugs, basic telephone service where it is necessary for medical or work-related reasons, property taxes when a tax lien placed on the property threatens the loss of the applicant’s place of residence, and any other commodity or service determined essential by the municipality.

“Basic necessities” do not include:

- Phone bills
- Cable or satellite dish television
- Mail orders
- Vehicle payments
- Credit card debt\*\*
- Furniture
- Loan re-payments\*\*
- Cigarettes
- Alcohol
- Pet care costs
- Vacation costs
- Legal fees
- Late fees
- Key deposits
- Security deposits for rental property (except when no other permanent lodging is available unless a security deposit is paid, and a waiver, deferral or installment arrangement cannot be made between landlord and tenant to avoid need for immediate payment of the security deposit in full). (22 M.R.S. § 4301(1)).

\*\* Repayments of loans or credit will be treated as having been spent on basic necessities when the applicant can provide verification of this fact.

**Case Record.** An official file containing application forms; correspondence; narrative records and all other communications pertaining to an applicant or recipient; written decisions regarding eligibility including reasons for those decisions and types and amounts of assistance provided; records concerning an applicant's request for fair hearing; and fair hearing decisions.

**Categorical Assistance.** All state and federal income maintenance programs.

**Claimant.** A person who has requested a fair hearing.

**Deficit.** An applicant's deficit is the appropriate overall maximum level of assistance for the household (*see* Ordinance § 6.8) less the household income (calculated pursuant to Ordinance § 6.7), provided that this calculation yields a positive number. If the household income is greater than the appropriate overall maximum level of assistance, the household has no deficit.

**Disabled Person.** A person who is presently unable to work or maintain a home due to a physical or mental disability that is verified by a physician or qualified mental health provider.

**Dwelling Unit.** A building or part thereof used for separate living quarters for one or more persons living as a single housekeeping unit. (22 M.R.S. § 4301(2)).

**Earned Income.** Wages or Income-in-kind derived by providing goods or services to an individual, company, organization, or other entity.

**Eligible Person.** A person who is qualified to receive GA benefits from the municipality according to the eligibility standards in this Ordinance, Maine law (22 M.R.S. ch. 1161), and DHHS regulations (10-144 C.M.R. ch. 323). If otherwise qualified, "Eligible Person" includes U.S. citizens; non-U.S. citizens who are lawfully present in the United States as described in 8 U.S.C. § 1621(a)(1)-(3); and non-U.S. citizens who are pursuing a lawful process to apply for immigration relief. Assistance for non-citizens pursuing a lawful process for immigration relief shall not exceed 24 months beginning with assistance provided after July 1, 2015. "Eligible Person" does not include a fugitive from justice as defined in 15 M.R.S. § 201(4). (See "Pursuing a Lawful Process," below)

**Emergency.** Any life-threatening situation, or a situation beyond the control of the individual which, if not alleviated immediately, could reasonably be expected to pose a threat to the health or safety of a person. At the municipality's option, it includes a situation which is imminent and which may result in undue hardship or unnecessary cost to the individual or municipality if not resolved immediately. (22 M.R.S. §§ 4301(4), 4308(2), 4310).

**General Assistance ("GA") Program.** A service administered by a municipality for the immediate aid of persons who are unable to provide the basic necessities essential to maintain themselves or their families. A GA program provides a specific amount and type of aid for defined needs during a limited period of time and is not intended to be a continuing "grant-in-aid" or "categorical" welfare program. This definition shall not lessen the municipality's responsibility to

provide GA benefits to a person each time that the person is in need and is found to be eligible to receive GA. (22 M.R.S. § 4301(5)).

**General Assistance (“GA”) Benefits.** Benefits provided to a person through the GA program.

**General Assistance (“GA”) Administrator.** A municipal official designated to receive applications, make decisions concerning an applicant’s right to receive assistance, and prepare records and communications concerning assistance. He or she may be an elected overseer or an authorized agent such as a town manager, welfare director, or caseworker. (22 M.R.S. § 4301(12)).

**Homelessness.** “Homelessness” means a situation in which a person or household is: (a) living in a place that is not fit for human habitation; (b) living in an emergency shelter; (c) living in temporary housing, including but not limited to a hotel, motel, campground, unlicensed campsite or rehabilitation facility; (d) exiting a hospital or institution licensed under 22 M.R.S. ch. 405 or a correctional facility where the person or household resided for up to 90 days if the person or household was in an emergency shelter or a place not fit for human habitation before entering the hospital, institution or correctional facility; (e) losing the person’s or household’s primary nighttime residence and lacking the resources or support networks to remain in that residence; or (f) fleeing or attempting to flee violence and has no other residence.

**Household.** “Household” means an individual or a group of individuals who share a dwelling unit. When an applicant shares a dwelling unit with one or more individuals, even when a landlord-tenant relationship may exist between individuals residing in the dwelling unit, eligible applicants may receive assistance for no more than their pro rata share of the actual costs of the shared basic needs of that household according to the maximum levels of assistance established in the municipal ordinance. The pro rata share is calculated by dividing the maximum level of assistance available to the entire household by the total number of household members. The income of household members not legally liable shall be considered as available to the applicant only when there is a pooling of income. (22 M.R.S. § 4301(6)). Residents of a Recovery Residence are not considered a shared household.

**Income.** “Income” means any form of earned or unearned income in cash or in kind received by the household including:

- Net remuneration for services performed;
- Cash received on either secured or unsecured credit;
- Payments received as an annuity, retirement or disability benefits;
- Veterans’ pensions and/or benefits;
- Retirement accounts or benefits;
- Workers’ compensation payments;
- Unemployment benefits;
- Federal and/or state tax returns;
- Income from pension or trust funds;
- Student loans;
- Benefits under any state or federal categorical assistance program such as

TANF, Supplemental Security Income, Social Security and any other payments from governmental sources (unless specifically prohibited by any law or regulation);

- Court ordered support payments (e.g., child support);
- Household income from any other source, including relatives or unrelated household members; and
- Rental income.

The following items will not be considered as income or assets that must be liquidated for the purposes of deriving income:

- Real or personal income-producing property, tools of trade, governmental entitlement specifically treated as exempt assets by state or federal law;
- Actual work-related expenses, whether itemized or by standard deduction, such as taxes, retirement fund contributions, union dues, transportation costs to and from work, special equipment costs and childcare expenses; or
- Earned income of children below the age of 18 years who are full-time students and who are not working full-time.

In determining need, the period of time used as a basis for the calculation shall be a 30-day period commencing on the date of the application. This prospective calculation shall not disqualify an applicant who has exhausted income to purchase basic necessities, provided that the income does not exceed the income standards established by the municipality. (22 M.R.S. § 4301(7)).

- Benefits received pursuant to public benefit programs that are specifically exempt from being counted as income for purposes of GA. These programs include:
  - Supplemental Nutrition Assistance Program (SNAP) (7 U.S.C. § 2017(b))
  - Li-Heap (42 U.S.C. § 8624)
  - Family Development Accounts (22 M.R.S. § 3762)
  - AmeriCorp VISTA program benefits (42 U.S.C. § 5044(f))
  - Property tax rebates issued under the Maine Property Tax Fairness Credit program, but only if the money is spent on basic necessities (22 M.R.S. § 4301(7))
  - Aspire Support Service Payments (10-144 CMR Chapter 323)

**Initial Applicant.** A person who has not previously applied for GA assistance in this or any other municipality.

**Just Cause.** A valid, verifiable reason that hinders an individual from complying with one or more conditions of eligibility or from attending a scheduled fair hearing. (22 M.R.S. §§ 4301(8), 4316-A(5)).

**Lump Sum Payment.** A one-time or typically nonrecurring sum of money issued to an applicant or recipient. Lump sum payment includes, but is not limited to, retroactive or settlement portions of social security benefits, workers' compensation payments, unemployment benefits, disability income, veterans' benefits, severance pay benefits, or money received from inheritances, lottery winnings, personal injury awards, property damage claims or divorce settlements. A lump sum payment includes only the amount of money available to the applicant after required deductions have been taken from the gross lump sum payment. A lump sum payment does not include conversion of a non-liquid resource to a liquid resource if the liquid resource has been used or is intended to be used to replace the converted resource or for other necessary expenses. (22 M.R.S. § 4301(8-A)).

**Material Fact.** A material fact is a fact that necessarily has some bearing on the determination of an applicant's GA eligibility, and which would, if disclosed to the Administrator, have some determinable effect on the calculation of eligibility or the issuance of a grant of assistance.

**Maximum Levels of Assistance.** The amount of financial assistance for a commodity or service as established in Ordinance § 6.8 or the actual cost of any such basic necessity, whichever is less.

**Misconduct.** For purposes of the GA work requirement (22 M.R.S. § 4316-A), misconduct shall have the same meaning as "misconduct" in 26 M.R.S. § 1043(23). Generally, misconduct occurs when an employee violates his or her obligations to the employer. Employees who engage in a pattern of irresponsible behavior to the detriment of the employer's interest may also be found guilty of misconduct.

**Misspent Income.** Misspent income includes income-in-kind received, or paid for, by a GA repeat applicant from sources, including friends or relatives, for the payment of bills that are considered unnecessary costs, such as cable bills, credit card debt, court fines and related court costs, payments to reimburse a municipality for false representation, tobacco and alcohol products, and similar items. Misspent income will be considered as available to the applicant when determining use of income for the previous 30-day period.

**Municipality.** Any city, town or plantation administering a GA program.

**Municipality of Responsibility.** The municipality which is financially liable for the support of an eligible person at the time of application. (22 M.R.S. §§ 4301(9), 4307).

**Need.** The condition whereby a person's income, money, property, credit, assets, or other resources available to provide basic necessities for the individual and the individual's family are less than the maximum levels of assistance. (22 M.R.S. §§ 4301(10), 4308).

**Net General Assistance Costs.** Those direct costs incurred by a municipality in providing assistance to eligible persons according to standards established by the municipal officers. These do not include the administrative expenses of the GA program. (22 M.R.S. §§ 4301(11), 4311).

**Period of Eligibility.** The time for which a person has been granted assistance. The period of eligibility may vary depending on the type of assistance provided; however, in no event shall this period extend beyond one month. (22 M.R.S. § 4309(1)).

**Pooling of Income.** "Pooling of income" means the financial relationship among household members who are not legally liable for mutual support in which there occurs any commingling of funds or sharing of income or expenses. This ordinance establishes a rebuttable presumption that persons sharing the same dwelling unit are pooling their income, except that applicants that who request assistance while residing in a Recovery Residence are not considered to be commingling funds. Applicants who request that the determination of eligibility be calculated as though one or

more household members are not pooling their income have the burden of rebutting the presumed pooling of income.

**Potential Resources.** Sources of financial assistance, including programs, services, non-liquid assets or trusts which typically require people to apply in writing and/or wait a period of time before eligibility is determined or the potential income is released.

**Pursuing a Lawful Process to Apply for Immigration Relief.** Taking reasonable, good faith steps to apply for immigration relief within twelve months of arrival to the United States, with U.S. Citizenship and Immigration Services or before an immigration judge or federal court. (See DHHS regulation, 10-144 C.M.R. ch. 323, for additional guidance).

**Real Estate.** Any land, buildings, homes, mobile homes, and any other things affixed to the land. (22 M.R.S. § 4301(13)).

**Recipient.** A person who has applied for and is currently receiving GA.

**Recovery Residence.** “Recovery residence” means a shared living residence for persons recovering from substance use disorder that is focused on peer support, provides to its residents an environment free of alcohol and illegal drugs and assists its residents by connecting the residents to support services or resources in the community that are available to persons recovering from substance use disorder. 5 M.R.S. § 20003(19-D).

**Registered Domestic Partner.** An individual registered as the domestic partner of the applicant pursuant to 22 M.R.S. § 2710.

**Rehabilitation Facility.** An inpatient facility that is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical services and other services that are provided under competent professional supervision.

**Repeat Applicants.** All applicants for GA benefits that are not initial applicants are repeat applicants. For purposes of this Ordinance “repeat” and “subsequent” shall have the same meaning.

**Resident.** A person who is physically present in a municipality with the intention of remaining in that municipality in order to maintain or establish a home, and who has no other residence. A person who applies for assistance in a municipality who is not a resident of that municipality, or any other municipality is the responsibility of the municipality where the person first applies. That municipality must take an application and grant assistance to the applicant if he/she is eligible, until he/she establishes a new residence in another municipality. (22 M.R.S. § 4307).

**Resources.** Resources include any program, service, or other sources of support which are an alternative to or supplement for GA. There are two kinds of resources: “available” and “potential”. Potential resources are programs, services, non-liquid assets, or trusts that typically require people to apply in writing and/or wait a period of time before eligibility is determined or the potential income is released.

Potential resources include, but are not limited to, state or federal assistance programs, employment benefits, governmental or private pension programs, available trust funds, support from legally liable relatives, child support payments, and jointly held resources where the applicant or recipient share may be available to the individual. (22 M.R.S. § 4317). Potential resources include the TANF (previously known as AFDC) program, Food Stamps, fuel assistance (HEAP), subsidized housing, and similar programs.

Available resources include resources which are immediately available to the applicant or which can be conveniently secured by the applicant without delay, such as cash on hand or in bank accounts, assets for which there is an immediate and available market, or support from relatives which is being made available at the time of application and for which the applicant does not have to take any unreasonable steps to secure (e.g., relocation beyond the immediate region). At the discretion of the Administrator, a minimum balance required by a financial institution in order to obtain free checking or in order to maintain the account shall not be considered an available resource.

The Administrator reserves the right to inform GA clients of services, commodities or facilities made available by private organizations or charities; however, eligibility for GA benefits shall not be based or conditioned on the use of a private charitable resource(s).

**30-Day Need.** An applicant's 30-day need is the sum of the household's prospective 30-day costs, from the date of application, for the various basic necessities. For the purpose of this calculation, the 30-day cost for any basic need shall be the household's actual 30-day cost for the basic necessity or the maximum 30-day cost for the basic necessity as established by this Ordinance, whichever is less.

**Unearned Income.** Unearned income is income acquired from investments and other sources unrelated to employment. Unearned income also includes unemployment compensation, taxable social security benefits, pensions, annuities, and distributions of unearned income from a trust or any other income not meeting the definition of earned income.

**Unforeseen Repeat Applicants.** A repeat applicant who has not applied for assistance within the last twelve months and who has been regularly employed or receiving support from a public benefit program or private source and who has unexpectedly become unemployed through no fault of their own or whose benefits (e.g., through an available resource) have ceased through no fault of their own.

**Unmet Need.** An applicant's unmet need is the household's 30-day need (established by Ordinance § 6.6) less the household income (calculated pursuant to Ordinance § 6.7), provided such a calculation yields a positive number. If the household income is greater than the household's 30-day need, the household does not have an unmet need.

**Work Requirements.** Work requirements are obligations the Administrator places on applicants as directed and/or authorized by 22 M.R.S. § 4316-A to the extent such obligations (1) ensure a continuing potential eligibility for GA when complied with, (2) result in ineligibility when violated, and (3) are not merely optional, discretionary, or advisory. Work requirements include

registering for work, looking for work in good faith, accepting all suitable job offers, maintaining employment, performing workfare, and participating in training, educational, or rehabilitation programs that will assist the participant in securing employment.

## **ARTICLE III – Administrative Rules and Regulations**

### **Section 3.1—Confidentiality of Information**

Case records and all other information relating to a GA applicant or recipient are confidential and will not be disclosed to the general public. (22 M.R.S. § 4306).

**Release of Information.** Applicants, recipients, and their legal representatives have the right to review their case records. No record will be released to a third party unless the Administrator receives a signed consent form in which the applicant expressly authorizes the release of his or her records to the specified parties. Whenever the Administrator releases any information, he/she will make a notation in the applicant's file stating to whom the record was released and the date. The Administrator may charge a reasonable fee for reproduction of records.

**Information from Other Sources; Penalty.** Information concerning an applicant or recipient furnished to the municipality by DHHS or any other agency or institution pursuant to 22 M.R.S. § 4314, is confidential. The Administrator will also comply with laws requiring confidentiality of vital statistic records such as birth, marriage, and death records. (22 M.R.S. § 2706).

Any representative of a financial institution or any employer of a GA applicant who, upon receipt of a written release signed by the depositor/employee and a written request from the Administrator, refuses to provide necessary information to the Administrator in order to verify an applicant's eligibility must state in writing the reason for the refusal. National banks are also obligated to disclose deposit information to the Administrator upon receipt of a written request and release signed by the depositor. Additionally, when a municipality or its agents are acting in accordance with section 4313(2) to verify eligibility for funeral or cremation benefits, an officer of a financial institution must disclose the amount deposited upon receipt of a written request from the municipality or its agents and a notarized affidavit signed by the overseer of the municipality or its agents stating that the named depositor is deceased. Any such person who refuses to provide information, without just cause, may be subject to a civil penalty of not less than \$25 nor more than \$100. Any person, including the applicant, who knowingly and willfully makes a false representation of a material fact to the Administrator commits a Class E crime. (22 M.R.S. §§ 4314, 4315).

**Misuse of Information.** Misuse of any information relating to an applicant or recipient is a punishable offense. (22 M.R.S. § 42(2)).

### **Section 3.2—Maintenance of Records**

The Administrator will maintain complete and accurate program records. (22 M.R.S. § 4306). These records are necessary to: (a) document and account for municipal program expenditures; (b)

document and support decisions concerning applicants and recipients; and (c) ensure relevant information is available for any fair hearing or judicial review of the Administrator's decisions.

**Case Records.** The Administrator will maintain a separate case record, in paper or digital format, for each applicant or recipient. Each case record will include at least:

- household applications;
- household budget sheets;
- the types and amounts of assistance provided;
- narrative statements describing the nature of the emergency situation whenever GA is granted in amounts greater than the applicant's mathematical eligibility (i.e., deficit or unmet need, whichever is less);
- written decisions;
- requests for fair hearings and the fair hearing authority decisions;
- workfare participation records;
- repayments to the municipality;
- narrative writings documenting the need for general assistance, the results of home visits, collateral information, referrals, changes in status;
- client authorization(s) for the release of GA information and/or reason(s) for the release of confidential information;
- adjustments in aid, and suspension or termination of eligibility;
- physician's documentation;
- Supplemental Security Income (SSI) interim assistance reimbursement authorization forms; and
- vendor forms

Case records will not include information that is irrelevant to the applicant's or recipient's application or the Administrator's decisions.

**Retention of Records.** GA records shall be retained for at least three full years. The three-year period shall coincide with the state government's fiscal year which begins July 1 and ends on the following June 30. Records may be destroyed after three years by supervised shredding, burning or an appropriate digital deletion/destruction process. If a recipient's records contain SSI reimbursement forms, the recipient's records should be retained so that the municipality may seek reimbursement.

## **ARTICLE IV – Application Procedure**

### ***Section 4.1—Right to Apply***

**Who May Apply.** Any person may apply for GA. The head of the family, any other responsible household member, or an authorized representative must apply in person, except in special emergency situations (*see* Ordinance § 4.9) or when the applicant resides at an emergency shelter and the municipality has made an agreement with that emergency shelter to presume shelter residents eligible for GA benefits. (22 M.R.S. § 4304(3)). In such cases, the Administrator may require a representative to present a signed statement documenting that he/she is authorized to apply on behalf of the named applicant. The applicant or representative must complete a written application and any other forms necessary for the Administrator to determine eligibility. (22 M.R.S. §§ 4305, 4308). With notice, all members of the household receiving GA may be required to physically present themselves to the Administrator. Note that fugitives from justice are ineligible for GA benefits.

**Telephone Applications.** When a person has an emergency but is unable to apply in person due to illness, disability, lack of childcare, lack of transportation or other good cause, and he/she cannot send an authorized representative, the Administrator will accept an application by

telephone. The telephone application is subject to written verification by mail and a visit to the applicant's home with his or her permission. (22 M.R.S. § 4304).

**Written Application Upon Each Request.** Each request for assistance will be administered in accordance with these guidelines, and the Administrator will make an independent determination of eligibility for GA each time a person applies. (22 M.R.S. §§ 4308, 4309).

**Applications Accepted; Posted Notice.** Application forms will be available during regular business hours at the municipal office and when the Administrator is conducting interviews with applicants. Completed applications will be accepted and interviews given only during the regular hours established and posted by the Administrator. In an emergency, however, the Administrator or his or her designee will be available to accept applications for assistance whenever necessary.

The municipality will post notice stating the times and location where people may apply for assistance and contact information for the Administrator available to take emergency applications at all other times. In addition, the posted notice shall state that the municipality must issue a written decision on all applications within 24-hours and will include the DHHS toll-free telephone number for reporting alleged violations or complaints. (22 M.R.S. § 4304).

### ***Section 4.2—Application Interview***

Except when it is impractical, the Administrator will interview each applicant in person before making a decision. Interviews will be conducted in private, although the applicant may be accompanied by a legal representative, friend, or family member.

### ***Section 4.3—Contents of the Application***

An application must contain the following information:

- a) the applicant's name, address, date of birth, SSN or appropriate United States Customs and Immigration Services (USCIS) documentation, and phone number;
- b) the names, date(s) of birth, and SSN(s) or appropriate USCIS documentation of other household members for whom the applicant seeks assistance;
- c) the total number of individuals living with the applicant;
- d) employment and employability information;
- e) a listing of all household income, resources, assets, and property;
- f) the applicant's household expenses;
- g) the types of assistance requested;
- h) a statement of the penalty for false representation;
- i) the applicant's permission for the Administrator to verify information;
- j) the signature of applicant and date.

If an initial applicant is unable to provide identification records (e.g., SSN card/number) because the record may have been lost, stolen or misplaced, the Administrator may allow the initial applicant a reasonable amount of time (e.g., five working days), to obtain copies of identification records. Provided the initial applicant makes a good faith effort to obtain the item/record sought, GA benefits necessary to cure an immediate and/or emergency need shall not be withheld. In such

cases the Administrator may elect to provide a prorated amount of GA (e.g., five days' worth), while the applicant attempts to obtain the required information.

### **Section 4.4—GA Administrator's Responsibilities at the Time of Application**

The Administrator will inform all applicants of: (1) their rights and responsibilities; (2) general program requirements for applying for and receiving GA, and (3) application requirements, eligibility guidelines, applicant rights, and applicant reimbursement obligations.

**Application Requirements.** The Administrator will help applicants complete application forms and inform applicants of any other information or documents necessary to evaluate the applicant's eligibility. The Administrator will fully explain the purpose of any forms consenting to release of the applicant's information and any benefit reimbursement agreements before the Administrator requests the applicant's signature or written authorization.

**Eligibility Requirements.** The Administrator will inform the applicant, either orally or in writing, of the eligibility requirements of the program, including:

- the income standard of need;
- the applicant's ongoing use-of-income, work-related, and resource-related responsibilities, as described in the section immediately below;
- the reduction in assistance that results from spending household income on non-basic necessities;
- immigration status (see definition of "Eligible Person"); and
- the disqualification penalties associated with committing fraud, failing to perform work-related assignments without just cause, or failing to make a good faith effort to secure potential resources when the requirement to attempt to obtain those resources has been explained to the applicant in writing.

**Applicant Rights.** The Administrator will inform all applicants of their right to:

- review the municipal GA ordinance and Maine GA statute and regulations;
- apply for assistance;
- receive a written decision concerning eligibility within 24-hours after application;
- confidentiality of the application and other records;
- contact the DHHS with complaints;
- challenge the Administrator's decision by requesting a fair hearing.

**Reimbursement/Recovery.** The Administrator will inform the applicant/recipient that he/she must reimburse the municipality the amount of GA benefits he/she has been granted if he/she subsequently has the ability to pay. The municipality may also, as appropriate, contact and inform the applicant/recipient's legal representative of the recipient's obligation to repay the municipality.

The municipality may also recover the amount of assistance granted to a recipient during the previous 12 months from any relative legally liable for the applicant's support, such as a spouse, or the parents of persons under the age of 25. (*See Article VIII, "Recovery of Expenses"*). (22 M.R.S. §§ 4318, 4319). Whenever applicable, the Administrator will explain the liens a municipality may place against a recipient's real or personal property, such as the mortgage or

capital improvement lien, the Workers' Compensation lump sum payment lien, or the SSI "Interim Assistance Agreement" lien, described in Article VIII, "Recovery of Expenses."

### **Section 4.5—Responsibilities of the Applicant at Time of Application**

The applicant is responsible to provide accurate, complete, and current household information and verifiable documentation at the time of each application concerning:

- Income
- Resources
- Assets
- Employment
- Use of income
- Names and addresses of any relatives legally liable for the applicant's support
- Any change in this information from a previous application that would affect household eligibility. (22 M.R.S. § 4309).

In addition, the applicant must accurately report and provide verifiable documentation that shows the applicant:

- a) has remained employed, if previously employed, and has not quit work without just cause or been discharged from employment for misconduct;
- b) has been seeking employment, if previously unemployed or employed on a part-time basis, has accepted any suitable offer of employment, and has satisfactorily performed all workfare assignments or had just cause not to perform those assignments;
- c) has made use of all available and potential resources when directed in writing to such a program by the Administrator, including, but not limited to, other government benefit programs or the assistance of liable relatives of sufficient means; and
- d) has participated in any training, retraining, educational or rehabilitative program when appropriate and when directed in writing to such a program by the Administrator, in order to diminish the applicant's need for general assistance. (22 M.R.S. §§ 4316-A, 4317).

### **Section 4.6—Action on Applications**

**Written Decision.** The Administrator will issue a written decision concerning the applicant's eligibility within 24 hours after the applicant submits a written application. Assistance will be furnished to eligible applicants within that period except when the municipality is permitted by law (and pursuant to Ordinance § 5.6) to issue assistance conditionally on the successful completion of a workfare assignment. (22 M.R.S. §§ 4305, 4316-A, 4321). A written decision will be given each time a person applies, whether assistance is granted, denied, reduced, or terminated.

**Content of Decision.** The Administrator's written decision will contain:

- a) the type and amount of benefits granted, or the applicant's ineligibility for benefits;
- b) the period of eligibility if the applicant is eligible for assistance;
- c) the specific reasons for the Administrator's decision;
- d) the applicant's right to a fair hearing; and

- e) the applicant's right to notify the DHHS if he/she believes the municipality has acted illegally. (22 M.R.S. § 4321).

### ***Section 4.7—Withdrawal of an Application***

An application will be considered withdrawn if the applicant requests in writing that the application be withdrawn; or if the applicant refuses to complete or sign the application or any other document needed by the Administrator.

### ***Section 4.8—Temporary Refusal to Accept Application***

Under special circumstances, the Administrator may temporarily refuse to accept applications. Such circumstances include, but are not limited to, the following:

- a) When the applicant's conduct is abusive, disruptive, or harassing, or when the applicant is under the influence of drugs or alcohol. In these situations, the applicant will be asked to leave; if the applicant refuses to leave, the police may be summoned. The applicant will be informed that an application will only be accepted when his or her conduct is under control.
- b) If the Administrator believes that an applicant's behavior presents a threat to the health or safety of the public or to a municipal employee, if the applicant's behavior is violent, or if an applicant has engaged in abusive, disruptive or harassing behavior and has been required to leave on more than one occasion, the applicant may be required to designate a third party to apply for assistance on his or her behalf and the applicant may be prohibited from entering the municipal building;
- c) When a third person applies for assistance on behalf of the applicant that person may be required to provide written verification that he/she has been duly authorized to act as a representative for the applicant. (22 M.R.S. § 4308).

### ***Section 4.9—Emergencies***

An "emergency" means any life-threatening situation, or a situation beyond the control of the applicant which if not alleviated immediately could reasonably be expected to pose a threat to the health or safety of the applicant or a member of the household. (22 M.R.S. § 4301(4)). An emergency includes homelessness or imminent homelessness. Even if an applicant is otherwise ineligible to receive GA benefits, unless he/she is disqualified as provided below, emergency assistance may be granted to applicants who lack sufficient income and resources to meet the emergency need and also have not had sufficient income and resources to avert the emergency. (22 M.R.S. § 4308).

A municipality may provide emergency assistance when the municipality determines that an emergency is imminent and that failure to provide assistance may result in undue hardship and unnecessary costs to either the applicant or the municipality.

**Disqualification for Emergency Assistance.** A person who is currently disqualified from receiving GA due to a violation of Ordinance §§ 5.5, 5.6, 5.7, 5.8, 5.9 or 6.4 is ineligible to receive emergency assistance. (22 M.R.S. § 4308(2)(A)). However, dependents of a disqualified person may be eligible for assistance. For the purposes of this section, "dependents" are defined as: (1) a

dependent minor child; (2) an elderly, ill or disabled person; or (3) a person whose presence is required to provide care for any child under the age of 6 years or any ill or disabled member of the household. (22 M.R.S. § 4309(3)).

If one or more members of a household are disqualified and assistance is requested for the remaining dependents, the eligibility of those dependents will be calculated by dividing the maximum level of assistance available to the entire household by the total number of household members.

**Assistance Prior to Verification.** Whenever an applicant informs the Administrator that he/she needs assistance immediately, the Administrator will grant, pending verification, the assistance within 24 hours, provided that:

- a) after interviewing the applicant the Administrator has determined that the applicant will probably be eligible for assistance after a verification of information is completed; and
- b) the applicant submits documentation when possible, to verify his or her need. The Administrator may contact at least one other person to confirm the applicant's statements about his/her need for emergency assistance. No further assistance will be authorized until the applicant's eligibility is confirmed. (22 M.R.S. § 4310).

**Telephone Applications.** If a person has an emergency need and cannot apply in person due to illness, disability, lack of transportation, or other good cause, and if there is no authorized representative who can apply on behalf of the applicant, the Administrator shall accept an application over the telephone. (22 M.R.S. § 4304).

Assistance will not be granted after a telephone application if the applicant refuses to allow the Administrator to verify information provided by the applicant either by visiting his or her home or by mail, and the Administrator cannot determine eligibility through any other means.

**Limitation on Emergency Assistance.** Applicants are not automatically eligible for emergency assistance. If an applicant had income which could have been used to prevent all or part of an emergency, but he or she spent that income on items which are not basic necessities, the applicant will not be eligible to receive GA to replace the misspent money. (22 M.R.S. §§ 4308(2) & 4315A).

All applicants must provide the Administrator with verifiable documentation demonstrating that the applicant lacked sufficient income to avert the emergency situation. According to the following criteria, the Administrator may limit emergency assistance to cover only the difference between the amount of money necessary for the household to avoid the emergency and the amount of income available to the household during the applicable time period.

- a) The applicable time period shall be the 30 days preceding the application for emergency assistance, except in those cases where the emergency was created by a negative account balance for a commodity or service (such as rent, mortgage, or utility payments), and the negative account balance was created over a longer period of time. In such cases, the

applicable time period shall be the consecutive length of time the account balance has been in the negative.

- b) The Administrator shall seek from the applicant all information pertinent to the applicant's ability to provide for his or her basic necessities for the applicable time period, including evidence of all income and resources received over that period of time.
- c) The Administrator shall calculate all costs per month for the household's basic necessities during the applicable time period, consistent with the maximum levels established by this Ordinance for the specific basic necessity or the actual monthly cost, whichever is less, including all costs associated with averting the particular emergency situation for which the applicant is seeking assistance.
- d) From the total household costs for basic necessities during the applicable time period, the Administrator shall subtract the total income and lump sum payments available to the household for the applicable time period, as well as the total general assistance actually received during the applicable time period.
- e) The Administrator may restrict the issuance of emergency assistance to the difference yielded by the computation in subsection (d), even when such a grant will not totally alleviate the emergency situation.
- f) The Administrator may waive this limitation on emergency assistance in life threatening situations or for initial applicants; that is, persons who have never before applied for general assistance.
- g) Nothing in these criteria may be construed as prohibiting a municipality from electing to alleviate an emergency situation in the most cost-effective manner available, provided such a determination of eligibility for emergency assistance is in conformance with general assistance law, and provided further that the municipality will not exceed the maximum level of assistance during an emergency unless required to do so by the State of Maine.

### **Section 4.10—Residence**

The Administrator shall provide GA to all eligible applicants who are residents of this municipality. A resident is a person who has no other residence, is physically present in this municipality and who intends to remain here and establish a household.

The municipality also recognizes its responsibility to provide assistance to eligible persons who apply here and who are not residents of this municipality or any other municipality. If a person who is not a resident of any municipality applies in this municipality first, the Administrator will determine his or her eligibility and, if eligible, will grant assistance until he/she establishes a residence in another municipality. (22 M.R.S. § 4307).

**Moving/Relocating.** The municipality will not consider moving or transporting an applicant or recipient into another municipality unless the person requests assistance to relocate to another municipality. If the Administrator determines the applicant is eligible and grants financial assistance to help with the requested relocation, this municipality will be responsible for providing assistance to the applicant for 30 days after he/she moves provided the recipient remains eligible.

**Institutions.** If a resident of this municipality enters an institution located in another municipality (such as a group home, shelter, rehabilitation center, nursing home, or hospital) and

requests assistance while at the institution, he/she will be the responsibility of this municipality for up to 6 months after he/she enters the institution if the conditions of 22 M.R.S. § 4307 and § 4313 are met. The municipality thereafter retains responsibility for an applicant in an institution only if the applicant has maintained a home in this municipality to which he/she intends to return. The municipality also recognizes its responsibility for applicants residing in an institution in this municipality if such an applicant had no residence prior to entering the institution. (22 M.R.S. § 4307(4)).

**Temporary Housing.** Hotels/motels and similar places of temporary lodging are considered institutions if the municipality grants financial assistance for, makes arrangements for, or advises or encourages an applicant to stay in temporary lodging.

**Note:** A municipality which illegally denies housing assistance will be responsible for the applicant for up to 6 months if, as a result of the denial, the applicant stays in temporary lodging. The municipality may also be subject to other penalties. (22 M.R.S. § 4307(4)).

**Disputes.** When the Administrator believes that an applicant is a resident of another municipality, but that municipality disputes its responsibility, the Administrator will notify DHHS' Augusta office (2873654 or 1-800-442-6003). If the applicant applies in this municipality first, the Administrator will determine his or her eligibility and, if eligible, will grant assistance until the DHHS has concluded which municipality is responsible for providing assistance. If another municipality was responsible, the DHHS will recover the amount due from the other municipality. (22 M.R.S. §§ 4307(5), 4307(6)).

## **ARTICLE V – Eligibility Factors**

A person will be eligible for GA if he/she is an “Eligible Person” as defined in section 2.2, is in need, and has complied with the eligibility requirements set forth below. (*For guidance in determining whether an applicant is an Eligible Person, contact DHHS at (800) 442-6003 (TTY: 287-6948)*).

### **Section 5.1—Initial Application**

**Initial Application.** For initial applicants, need will be the sole condition of eligibility, except that all applicants, including initial applicants, are disqualified for a defined period (1) for quitting employment without just cause or for being discharged from employment for misconduct (*see* Ordinance § 5.5) or (2) who are fugitives from justice as defined in 15 M.R.S. § 201(4), (22 M.R.S. § 4301(3)). An initial applicant is a person who has never before applied for GA in any municipality in Maine. (22 M.R.S. § 4308(1)).

“Need” means that the applicant’s income (including prorated income, where applicable), property, credit, assets or other resources are less than the overall maximum level of assistance contained in Ordinance § 6.8 or the applicant’s 30-day need, whichever is less, and he/she does not have adequate income or other resources available to provide basic necessities.

**Repeat Applicants.** Persons who are not initial applicants are repeat applicants; these are persons who have previously applied for GA at some time, including persons on whose behalf a GA application was previously made at any time, provided that the applicant was not a dependent minor in the household at the time of the previous application. To be eligible for GA, repeat applicants must be in need and meet all other eligibility requirements. The eligibility of repeat applicants may also be adversely affected to the extent they have not used their income and resources to secure basic necessities.

### **Section 5.1A – Presumptive Eligibility**

A person who is provided shelter in an emergency shelter for the homeless located in the municipality shall be presumed to be an eligible person. Presumed eligibility may not exceed 30 days within a 12-month period. After the period of presumed eligibility, full eligibility must be verified before assistance will be issued. When presumptive eligibility is determined under this section, no other municipality may be determined to be the municipality of responsibility during that 30-day period.

### **Section 5.1B – Recovery Residences**

The Administrator will not deny GA benefits to a person for the sole reason that the person is residing in a recovery residence. Beginning July 1, 2022, housing assistance will not be provided to a person residing in a recovery residence that has not been certified in accordance with 5 M.R.S. § 20005(22), except that the person may receive housing assistance while residing in an uncertified recovery residence for one 30-day period only. The Administrator will inform the person of the requirements and time limits regarding recovery residences. A person who is ineligible for housing assistance under this subsection may remain eligible to receive GA for other basic necessities.

## **Section 5.2—Eligibility for Categorical Assistance**

Receipt of categorical assistance will not disqualify an otherwise eligible person. Benefits received from other assistance programs will be considered as income when determining need, with the exception of Food Stamps, which will not be counted as income or resources or otherwise taken into consideration when determining need. (7 U.S.C. § 2017(b)).

In addition, fuel assistance (HEAP/ECIP) received by an applicant will not be considered as income; that is, the Administrator will always compute the heating needs of an applicant who has received HEAP or ECIP as if that applicant paid all costs associated with his or her fuel needs. (42 U.S.C. § 8624(f)). When an applicant has received HEAP or ECIP, GA heating energy needs will be calculated pursuant to Ordinance § 6.7, subsection (c) under “Types of Income”. For several additional exceptions please refer to the definition of “Income” in this Ordinance (*see* Ordinance § 2.2).

Applicants or recipients must apply for other program benefits within 7 days after being advised in writing to do so by the Administrator. Persons who, without just cause, make no good faith effort to obtain a potential resource will be disqualified from receiving assistance until they make a good faith effort to obtain the benefit. (22 M.R.S. § 4317).

## **Section 5.3—Personal Property**

### **a) Liquid Assets.**

No person owning assets easily convertible into cash, including but not limited to, bank deposits, stocks, bonds, certificates of deposit, retirement accounts, life insurance policies and other marketable security will be eligible for GA unless and until he or she uses these assets to meet his or her basic needs, and thereby exhausts them. At the discretion of the Administrator, liquid assets need not include a reasonable minimum balance necessary to obtain free checking. Although one checking account per household may be allowed, any monies over the minimum required to obtain free checking are to be considered available liquid assets.

### **b) Tangible Assets.**

No person owning or possessing personal property, including but not limited to: a motor vehicle (except as provided immediately below in subsection c), or a boat, trailer, recreation vehicle or other assets that are convertible into cash and are non-essential to the maintenance of the applicant’s household will be eligible for GA. Exceptions may be made when a person is making an initial application or is an unforeseeable repeat applicant as defined in Ordinance § 2.2 or when reasonable efforts to convert assets to cash at fair market value are unsuccessful. Tools of a trade, livestock, farm equipment and other equipment used for the production of income are exempt from the above category and are not considered available assets.

### **c) Automobile Ownership.**

Ownership of one automobile per household will not make a person ineligible for assistance if such vehicle is essential for transportation to employment or for seeking employment, obtaining medical care, rehabilitation, or training facilities, or for any other reason the GA Administrator determines reasonable for the maintenance of the

applicant's household. GA recipients who own an automobile with a market value greater than \$8,000 may be required, with 7-day's written notice, to make a good faith effort to trade that automobile for an automobile with a market value of less than \$8,000. Any income received by the applicant by virtue of such a trade down must be used for his or her basic necessities. Failure to liquidate or trade down the excess value of any automobile asset can result in disqualification. (22 M.R.S. § 4317).

The Administrator will neither pay nor consider as necessary any car payment or vehicle maintenance cost, including insurance, for which the applicant is responsible. However, if the vehicle's value is \$8,000 or less and the applicant is utilizing the vehicle for an "essential" reason (see above), the Administrator may choose to not consider reasonable car payments, reasonable car insurance or reasonable associated costs of maintenance as "misspent" income. GA for travel-related needs shall be computed in accordance with Ordinance § 6.8(F)(7), (8) "Work Related/Travel Expenses."

**d) Insurance.**

Insurance available to an applicant on a non-contributory basis or required as a condition of employment will not be a factor in determining eligibility for GA. Life insurance with a cash surrender value may, at the discretion of the Administrator, be considered as a tangible asset.

**e) Transfer of Property.**

Applicants who transfer assets for less than fair market value to someone else solely for the purpose of establishing eligibility for GA will not be granted GA benefits to replace the uncompensated value of the transferred asset. Assistance will be denied within a 120-day limit up to the uncompensated value of the asset which was transferred unless the transfer of asset is fraudulently misrepresented, in which case a 120-day disqualification will be issued. There will be a presumption that the applicant transferred his or her assets in order to be eligible for GA whenever property is sold for less than the fair market value or when the transfer occurred within 30 days prior to applying for GA unless the applicant can demonstrate the existence of a good faith transaction.

## ***Section 5.4—Ownership of Real Estate***

**a) Principal Residence.**

Solely for purposes of GA, the applicant's principal residence, including any adjoining land, is considered an exempt resource, even if temporarily unoccupied because of employment, job training, education, illness, or disaster, provided the applicant demonstrates an intent to return. If the applicant owns land in excess of the minimum lot size for the zone or district in which the home is located, that land may be considered a potential resource if:

1. The applicant has received GA for the last 120 consecutive days; and
2. The applicant has the legal right to sell the land (e.g., any mortgagee will release any mortgage, any co-owners agree to the sale, zoning or other land use laws do not render the sale illegal or impracticable); and
3. The applicant has the financial capability to put the land into a marketable condition (e.g., the applicant can pay for any necessary surveys); and

4. The land is not utilized for the maintenance and/or support of the household; and
5. A knowledgeable source (e.g., a realtor) indicates that the land in question can be sold at fair market value, for an amount which will aid the applicant's financial rehabilitation; and
6. No other circumstances exist which cause any sale to be unduly burdensome or inequitable.

If conditions above are met, the Administrator may condition the receipt of future assistance on the applicant's good faith efforts to sell, or render saleable, land which could be used to provide necessary support for the applicant (e.g., the applicant owns 100 "excess" acres. Sale of 10 of the acres would provide for the necessary support; therefore, the entire 100 acres need not be sold at the present time.) Assistance shall not be denied during the time that the applicant is making a good faith effort to sell or render saleable the land in question.

Once the applicant ceases to receive assistance the obligations under this section shall also cease.

#### **b) Other Property.**

If the applicant or dependents own real property other than that occupied as the principal residence, continued GA eligibility will depend on the applicant making a reasonable effort to:

1. Dispose of the property at fair market value in order to convert the property into cash which can be applied toward meeting present need; or
2. Obtain a loan against such property which may be used to meet present need. Applicants who transfer their excess property to a third party in order to become eligible for GA will be ineligible.

If an applicant is granted assistance in the form of a mortgage payment or capital improvement payment, the municipality may claim a lien against the property. The lien shall not be enforceable until the sale of the property or upon the death of the recipient (*see also Ordinance § 6.8*). 22 M.R.S. § 4320.

### **Section 5.5—Work Requirement**

All GA recipients are required to register for work, look for work, work to the extent of available employment, and otherwise fulfill the work requirements, unless the applicant is exempt from such requirements as provided below.

**Employment; Rehabilitation.** All unemployed applicants and household members who are 16 years of age or older and who are not attending a full-time primary or secondary school intended to lead to a high school diploma will be required to accept any suitable job offer and/or meet with job counselors, attend employment workshops and rehabilitative services, except as provided below (*see "Exemptions"*). Applicants must demonstrate to the Administrator that they are available for work and are actively seeking employment.

A "suitable job" means any job, which the applicant is mentally and physically able to perform. "Available for work" means that applicants must make themselves available for work during normal business hours prevailing in the area and show that no circumstance exists which would prevent them from complying with the work requirement.

**Verification.** Unemployed applicants or applicants employed on a part-time basis must provide verifiable documentation of their pursuit of employment at the time of each application. At a minimum, such documentation will consist of a list of the employers contacted, the date and time of the application contact, and the name of the employer representative contacted. “Pursuit of Employment” means actually submitting a written application or applying for a job in person when reasonable or submitting a written application or letter of inquiry to employers.

For the duration of any repeat applicant’s period of unemployment or partial employment, the Administrator will establish the number of employers per week to whom each non-exempt applicant shall be required to apply in order to fulfill his or her work search requirements. The number of weekly employer contacts required by the Administrator shall be reasonably related to the number of potential employers in the region and the number of hours per week the applicant has available for work search activities after considering all time the applicant must devote to existing employment obligations, workfare obligations, and required classroom or on-site participation in job training, educational, or rehabilitation programs. Fulfillment of these requirements will not be expected at the time of the initial application but will be a condition of eligibility for subsequent assistance.

**Ineligibility.** After being granted assistance at the time of initial application, applicants will be considered ineligible for further assistance for 120 days if they, without just cause:

- a) refuse to register for employment with the Maine Job Service;
- b) refuse to search diligently for employment when the search is reasonable and appropriate; recipients who unreasonably seek work at the same places repeatedly will not be considered to be performing a diligent work search and will be disqualified;
- c) refuse to accept a suitable job offer;
- d) refuse to participate in an assigned training, education or rehabilitation program that would assist the applicant in securing employment;
- e) fail to be available for work; or
- f) refuse to participate or participate in a substandard manner in the municipal work program (*see* Ordinance § 5.6).

**Ineligibility Due to Job Quit or Discharge for Misconduct.** No initial or repeat applicant who has quit his or her full-time or part-time job without just cause or who has been discharged from employment for misconduct will be eligible to receive GA of any kind for 120-days from the date the applicant is separated from employment. (22 M.R.S. §§ 4301(8), 4316-A (1-A)).

**Just Cause.** Applicants will be ineligible for assistance for 120 days if they refuse to comply with the work requirements of this section without just cause. With respect to any work requirement, just cause will be considered to exist when there is reasonable and verifiable evidence that:

- a) the applicant has a physical or mental illness or disability which prevents him/her from working;

- b) the work assignment pays below minimum wages;
- c) the applicant was subject to sexual harassment;
- d) the applicant is physically or mentally unable to perform required job tasks, or to meet piece work standards;
- e) the applicant has no means of transportation to or from work or a training or rehabilitation program;
- f) the applicant is unable to arrange for necessary childcare or care of ill or disabled family members; or
- g) any reason found to be good cause by the Maine Department of Labor, or any other verifiable reason the Administrator considers reasonable and appropriate will be accepted as just cause. (22 M.R.S. § 4316-A(5)).

**Applicant's Burden of Establishing Just Cause.** If the Administrator finds that the applicant has violated a work-related rule without just cause, it shall be the responsibility of the applicant to establish the presence of just cause. (22 M.R.S. § 4316-A).

**Eligibility Regained.** Persons who are disqualified for 120 days because they violated a work requirement may regain their eligibility if and only when they become employed or otherwise satisfy the Administrator that they are complying with the work requirement by fulfilling the work requirement(s) the person violated.

For the purpose of regaining eligibility by becoming employed, "employment" shall mean employment by an employer as defined in 26 M.R.S. § 1043 or the performance of a service for an employer who withholds from the employee a social security tax pursuant to federal law.

The special provisions regarding the opportunity to regain eligibility after a disqualification for workfare violations are detailed in Ordinance § 5.6, under "Eligibility Regained."

**Dependents.** Failure of an otherwise eligible person to comply with the work requirements shall not affect the eligibility of any member of the person's household who is not capable of working, including:

- a) a dependent minor child;
- b) an elderly, ill, or disabled person; and
- c) a person whose presence is required in order to provide care for any child under 6 years of age or for any ill or disabled member of the household. (22 M.R.S. § 4309(3)).

If one or more member(s) of a household is disqualified and assistance is requested for those remaining members of the household who are dependents, the eligibility of those dependents will be calculated by dividing the maximum level of assistance available to the entire household by the total number of household members.

**Exemptions.** The above work requirements do not apply to any person who is elderly, physically or mentally ill or disabled. Any person whose presence is required to care for any pre-school age child or for any ill or disabled member of the household is also exempt from these requirements.

The requirements of this section will not be imposed so as to interfere with an applicant's existing employment, ability to pursue a bona fide job offer, ability to attend an interview for possible employment, classroom participation in a primary or secondary educational program intended to lead to a high school diploma, classroom or on site participation in a training program which is either approved by the Department of Labor (DOL) or determined by the DOL to be expected to assist the applicant in securing employment, or classroom participation in a degree-granting program operated under the control of the DOL.

### **Section 5.6—Municipal Work Program**

Each applicant and any member of the household who is capable of working may be required to perform work for the municipality, including work for a non-profit organization, as a condition of receiving assistance. (22 M.R.S. § 4316-A(2)).

As part of the municipal work program, the municipality can require recipients to participate in training, education, or rehabilitative programs that will assist the recipient in securing employment. The work requirement provisions found in Ordinance § 5.5 regarding just cause, dependents, and exemptions also apply to the municipal workfare program.

**Consent.** Persons assigned to the work program are required to sign a form stating that they understand the requirements of GA and the work program. Before signing the form, the Administrator will read it to the applicants or allow the applicants to read it themselves. The form will also state the number of hours the applicants must work and the hourly rate by means of which the duration of the work assignment is calculated. In addition, the consent form shall describe the consequences of failing to adequately perform part or all of the workfare or workfare-first assignment.

**Subtracting Value of Workfare Performed from Client's GA Debt.** Pursuant to 22 M.R.S. § 4318, individuals who received GA benefits are obligated to repay the municipality when and if they become able (*see* Ordinance Article VIII (Recovery of Expenses)). However, persons performing workfare shall have the value of the workfare performed deducted from any and all GA debt including GA liens (*e.g.*, Workers' Compensation Settlement, SSI Retroactive Payment, Capital Improvement, Home Mortgage) that might exist against their settlements, payments or other such property.

**Limitations.** The work requirement is subject to the following limitations. (22 M.R.S. § 4316-A(3)).

- 1) No person shall, as a condition of eligibility, be required to perform any amount of work that exceeds the value of the net GA that the person receives under municipal GA standards. Any person performing work under this subsection shall be provided with net GA, the value of which is calculated at a rate of at least the prevailing minimum wage under state or federal law at the time the workfare was performed.
- 2) No workfare participant shall be required to work for a nonprofit organization if that work would violate the participant's basic religious beliefs.

- 3) In no case shall eligible persons performing work under this subsection replace regular municipal employees.
- 4) In no case will work performed under this subsection interfere with an eligible person's:
  - a) existing employment;
  - b) ability to follow up on a bona fide job offer;
  - c) attendance at an interview for possible employment;
  - d) classroom participation in a primary or secondary educational program intended to lead to a high school diploma; or
  - e) classroom or on-site participation in a training program which is approved by the Department of Labor (DOL) or determined by the DOL to be reasonably expected to assist the person in securing employment, or classroom participation in a degree-granting program administered by the DHHS or the DOL.
- 5) In no case may an eligible person be required to work more than 40 hours per week. An eligible person who has full or part-time employment shall be exempt from the work requirement to the extent that the work requirement in combination with his or her regular employment would result in the person working more than 40 hours per week.
- 6) In no case will an eligible person be required to perform work beyond his or her capabilities. However, when an illness or disability is claimed, an eligible person may be required as a condition of receiving assistance to present a doctor's statement detailing the extent of the disability or illness. (22 M.R.S. § 4309).

If the Administrator requires a doctor's statement to verify an applicant's illness or disability and the applicant is not currently under the care of a provider, the municipality may pay for the doctor's evaluation if the applicant has no means to pay for the exam. However, in such a case the Administrator will choose the doctor. If there is a no-cost or low-cost health care option, the municipality may elect to refer the client to such a resource. The Administrator will not require verification of medical conditions which are apparent, or which are of such short duration that a reasonable person would not ordinarily seek medical attention. (22 M.R.S. § 4316(5)).

- 7) In no case may an eligible person with an immediate need (i.e., a person in an emergency situation who has not been disqualified from receiving assistance for committing a program violation) be required to perform work under this subsection prior to receiving GA. The Administrator shall meet immediate needs upon receiving written assurance from the eligible person that he/she is willing to work to maintain eligibility for GA. When the recipient has no immediate need, workfare participation may be required prior to receiving GA in accordance with the "workfare first" policy below.

**“Workfare First” Policy.** Pursuant to 22 M.R.S. § 4316-A(2)(D), the Administrator may, in accordance with the following guidelines, require a GA recipient to perform a workfare assignment prior to the actual issuance of the GA benefit conditionally granted.

- 1) In no circumstance will emergency GA for which an applicant is eligible be withheld pending the satisfactory performance of workfare.
- 2) All workfare participants under this policy will be provided a written decision within 24 hours after submitting an application for GA and prior to performing any workfare for the municipality associated with that request for assistance.

That written decision must include:

- a) a specific description of the amount of GA being conditionally granted to the household, and for which basic needs;
  - b) the period of eligibility for which the GA grant is being issued (in days or weeks, but not to exceed 30 days);
  - c) the rate, at a dollar-per-hour basis (but not less than the prevailing minimum wage), upon which the duration of the workfare assignment is calculated;
  - d) the actual duration of the workfare assignment that must be performed, in hours, before the GA grant will be actually issued;
  - e) the specifics of the workfare assignment(s), including the general nature of the type of work being assigned, location(s) of worksite, date(s) and time(s) of assigned workfare, workfare supervisors’ names and contact telephone numbers; and
  - f) any other pertinent information related to the workfare assignment(s) the recipient will be expected to perform.
- 3) As previously provided in this section, all workfare participants must sign a consent form that informs the participant of his or her workfare-related rights and responsibilities, including the consequences of failing to perform all or part of the workfare assigned without just cause.
  - 4) If a portion of the workfare-first assignment is satisfactorily performed but there has been a failure to perform the remainder of the assignment, without just cause, the Administrator shall issue a grant of GA benefits corresponding to the number of workfare hours satisfactorily performed multiplied by the hourly rate used to calculate the workfare assignment. In addition to any disqualification penalty that may apply, the remaining value of the conditionally issued GA grant shall be terminated, and notice of the partial termination, together with the reasons; therefore, will be issued to the workfare participant in accordance with Ordinance § 6.10.
  - 5) If any part of the workfare assignment is not performed because the workfare participant was temporarily unable to perform the assignment for just cause reasons, it shall be reassigned or excused at the discretion of the Administrator.

**Work-Related Expenses.** A participant’s expenses related to work performed under this section will be added to the amount of net GA to be provided to the person (22 M.R.S. § 4316-A(2)(E)). The municipality will provide any special clothes or equipment the recipient needs to perform his or her work assignment.

**Disqualification.** Any person who either willfully fails to perform or willfully performs below average standards the work assigned by the municipality, will be ineligible for assistance for 120 days (22 M.R.S. § 4316-A(1)). As soon as the Administrator knows that a recipient failed to fulfill the work assignment, the Administrator will notify the recipient in writing that he/she is disqualified for 120 days starting from the last date of authorized assistance unless the recipient can show just cause. The workfare participant has the burden of demonstrating there was just cause for any failure to perform a workfare assignment.

**Eligibility Regained.** Recipients who are disqualified from receiving assistance because they have violated the requirements of the municipal work program may regain their eligibility under the following conditions:

- Recipients who fail to complete the first municipal work assignment they have been given will be disqualified from receiving assistance during the next 120 days, although dependents in the household may be eligible (*see* Ordinance § 5.5, “Dependents”).
- If during the 120-day disqualification period the recipient requests an opportunity to perform the work assignment which he or she, without just cause failed to perform, the disqualified recipient will be given one opportunity to regain eligibility. The Administrator will give the recipient a work assignment as soon as possible.
- If a recipient under a 120-day disqualification has an emergency need and the Administrator is unable to schedule a work assignment in time to alleviate the emergency, the Administrator will provide sufficient assistance to the recipient to avert the emergency. However, the provision of emergency assistance will not bar the Administrator from subsequently enforcing the previously issued 120-day disqualification if the recipient fails to regain eligibility by satisfactorily performing the work assignment. The amount of emergency assistance granted will be considered in the computation of the total number of hours the recipient must work.
- Recipients who have asked for the opportunity to regain their eligibility during a 120-day disqualification period and who agreed to fulfill the assignment which they previously failed to perform but who, without just cause, fail to fulfill their municipal work assignment will be considered to have acted in bad faith. In such a circumstance, the Administrator will enforce the 120-day disqualification for the term of its initial duration.
- If a workfare participant regains eligibility under this section but is subsequently disqualified within the initial 120-day period of ineligibility for failing to comply with the municipal work program, that participant will be ineligible for a new 120-day period beginning with the new disqualification date but will be provided no opportunity to requalify.
- Any recipient who intentionally causes damage to property, harasses or harms other employees or who otherwise conducts themselves in a disruptive manner and is discharged by the work supervisor will not be entitled to regain eligibility by returning to the work program. Eligibility may be regained by otherwise becoming employed and meeting the definition of need.

**Reports.** The Administrator will itemize the assistance that has been provided to persons who work for the municipality in reports to the DHHS. (22 M.R.S. § 4316-A(2)).

### **Section 5.7—Use of Resources**

Each applicant is responsible to make a good faith effort to utilize every available or potential resource that may reduce his or her need for GA (*see* Ordinance § 2.2, definition of “Resources”). Persons who refuse or fail to make a good faith effort to secure a potential resource after receiving written notice to do so are disqualified from receiving assistance until they make an effort to secure

the resource. Applicants are required to prove that they have made a good faith effort to secure the resource. (22 M.R.S. § 4317).

**Minors.** A minor under the age of 18 who has never married and is applying independently for GA and who is pregnant or has a dependent child or children will be eligible to receive GA only if the minor is residing in the home of his or her parent, legal guardian or other adult relative, in which case the entire household will be evaluated for eligibility. Exceptions to this limitation on eligibility will be made when:

- 1) the minor is residing in a foster home, maternity home, or other adult-supervised supportive living arrangement; or
- 2) the minor has no living parent or the whereabouts of both parents are unknown; or
- 3) no parent will permit the minor to live in the parent's home; or
- 4) the minor has lived apart from both parents for at least one year before the birth of any dependent child; or
- 5) the DHHS determines that the physical or emotional health or safety of the minor or the minor's dependent child or children would be jeopardized if the minor and his or her child or children lived with a parent; or
- 6) the DHHS determines, in accordance with its regulation, that there is good cause to waive this limitation on eligibility. (22 M.R.S. § 4309(4)).

Any person under the age of 25 who is applying independently from his or her parents for GA will be informed that until he or she reaches the age of 25, the applicant's parents are still legally liable for his or her support and the municipality has the right to seek recovery from the parents of the cost of all assistance granted to such a recipient to the extent his or her parents are financially capable of repaying the municipality. (22 M.R.S. § 4319).

With regard to such application, the municipality may seek verification of the applicant's need for GA by contacting his or her parents. If the applicant's parents declare a willingness to provide the applicant with his or her basic needs directly, and there is no convincing evidence that the applicant would be jeopardized by relying on his or her parents for basic needs, the Administrator may find the applicant not to be in need of GA for the reason that his or her needs can be provided by a legally liable relative.

**Mental or Physical Disability.** Any applicant who has a mental or physical disability must make a good faith effort to utilize any medical or rehabilitative services which have been recommended by a physician, psychologist or other professional retraining or rehabilitation specialist when the services are available to the applicant and would not constitute a financial burden or create a physical risk to the individual.

**Written Notice; Disqualification.** The Administrator will give each applicant written notice whenever the applicant is required to utilize any specific potential resource(s). Any applicant who refuses to utilize potential resources, without just cause, after receiving written 7-day notice will be ineligible for further assistance until he/she has made a good faith effort to utilize or obtain the resources. GA will not be withheld from the applicant pending receipt of a resource if the applicant has made, or is in the process of making, a good faith effort to obtain the resource.

**Forfeiture of Benefits.** Any applicant who forfeits receipt of, or causes a reduction in, benefits from another public assistance program due to fraud, misrepresentation, a knowing or intentional violation of program rules or a refusal to comply with that program's rules without just cause will be ineligible to receive GA to replace the forfeited benefits. To the extent the forfeited benefits can be considered income under GA law, the value of the forfeited benefits will be considered income that is available to the applicant for the duration of the forfeiture.

To the extent the forfeited benefits were provided in the form of a specific, regularly issued resource of a calculable value rather than in the form of income, that resource, up to its forfeited value, need not be replaced with GA for a period of 120 days from the date of the forfeiture—unless the municipality is prohibited by federal or state law from considering the forfeited resource as available with respect to local public assistance programs. (22 M.R.S. § 4317).

### ***Section 5.8—Period of Ineligibility***

No one will have his or her GA terminated, reduced, or suspended prior to being given written notice and an opportunity for a fair hearing. (22 M.R.S. §§ 4321-4322). Each person will be notified in writing of the reasons for his or her ineligibility, and any person disqualified for not complying with the ordinance will be informed in writing of the period of ineligibility.

**Work Requirement.** Applicants/recipients who do not comply with a work requirement are disqualified from receiving assistance for a period of 120 days (unless they regain their eligibility) (*see* Ordinance §§ 5.5, 5.6). If an applicant/recipient is provided assistance and does not comply with the work requirement, the applicant/recipient shall be disqualified for 120 days following the end of the period covered by the grant of assistance. The Administrator shall give recipients written notice that they are disqualified as soon as the Administrator has sufficient knowledge and information to render a decision of ineligibility.

**Fraud.** Persons who commit fraud are disqualified from receiving GA for a period of 120 days (*see* Ordinance § 6.4, “Fraud”). The Administrator shall give recipients written notice that they are ineligible as soon as the Administrator has sufficient knowledge and information to render a decision. If the disqualification for fraud is issued before the expiration of a grant of assistance, the period of ineligibility shall commence on the day following the end of the period covered by the grant of assistance. If fraud is discovered after the period covered by the grant of assistance has expired, the period of ineligibility will commence on the day of the written notice of ineligibility.

### ***Section 5.9 – Unemployment Fraud***

An applicant who is found ineligible for unemployment compensation benefits because of a finding of fraud by the Department of Labor pursuant to 26 M.R.S. § 1051(1) is ineligible to receive general assistance to replace the forfeited unemployment compensation benefits for the duration of the forfeiture established by the Department of Labor. 22 M.R.S. § 4317.

## **ARTICLE VI – Determination of Eligibility**

## ***Section 6.1—Recognition of Dignity and Rights***

Any determination or investigation into an applicant's eligibility will be conducted in a manner that will not violate the applicant's privacy or personal dignity or violate his or her individual rights.

## ***Section 6.2—Determination; Redetermination***

The Administrator will make an individual, factual determination of eligibility each time a person applies or reapplies for GA. The Administrator will make a redetermination of eligibility at least monthly but may do so as often as necessary to administer the program efficiently and meet the needs of the applicants. Upon any application, the Administrator will determine the applicant's eligibility on the basis of a 30-day prospective analysis, but may elect to disburse that applicant's assistance periodically, e.g., weekly, throughout a 30-day period of eligibility pursuant to that initial eligibility determination.

The Administrator may redetermine a person's eligibility at any time during the period he or she is receiving assistance if the Administrator is notified of any change in the recipient's circumstances that may alter the amount of assistance the recipient may receive. Once a recipient has been granted assistance, the Administrator may not reduce or rescind the grant without giving prior written notice to the recipient explaining the reasons for the decision and offering the recipient an opportunity to appeal the decision to the fair hearing authority. (22 M.R.S. § 4309).

## ***Section 6.3—Verification***

**Eligibility of Applicant; Duration of Eligibility.** The overseer shall determine eligibility each time a person applies or reapplies for GA. The period of eligibility will not exceed one month. At the expiration of this period applicants/recipients may reapply for assistance and the person's eligibility will be redetermined.

**Applicant's Responsibilities.** Applicants and recipients for GA are responsible for providing to the Administrator all information necessary to determine eligibility. If further information or documentation is necessary to demonstrate eligibility, the applicant must have the first opportunity to provide the specific information or documentation required by the Administrator. When such information is unavailable, the Administrator must accept alternative available information, which is subject to verification.

Each applicant and recipient has the responsibility at the time of application and continuing thereafter, to provide complete, accurate, current information and documentation concerning his/her:

- Need
- Income
- Employment
- Use of income
- Expenses
- Assets & liabilities
- Use of available resources

- Household composition

**Initial Applicants.** Persons who have not applied for assistance in this or any other municipality are considered initial applicants and must have their eligibility determined solely on the basis of need. Initial applicants are not subject to eligibility conditions placed on repeat applicants (*see below*). However, such applicants must still provide the GA Administrator with reasonably obtainable documentation adequate to verify that there is a need for assistance. In addition, initial applicants must also comply with both lump sum and relevant work rules (i.e., quit job).

**Repeat Applicants.** All applicants for GA who are not initial applicants are repeat applicants. The eligibility of repeat applicants must be determined on the basis of need and all other conditions of eligibility established by law and this municipal ordinance.

The Administrator will require documentation of a repeat applicant's income, use of income, assets and resources plus actual bills and receipts for rent, utilities, fuel, telephone, medical services, and other basic necessities. In addition, repeat applicants instructed to seek employment shall verify their work search results, (e.g., provide a list of the employers contacted, the date and time of the application contact, and the name of the employer representative contacted) as required by the Administrator.

Repeat applicants must provide updates to information reported on previous applications, including changes in his/her household or income that may affect his/her eligibility.

**Unforeseen Repeat Applicants.** Unforeseen repeat applicants are applicants who have not applied for assistance within the last twelve months and who have been regularly employed or receiving support from a public benefit or private source but who have unexpectedly become unemployed through no fault of their own or whose income and/or benefits (e.g., through an available resource) have ceased through no fault of their own. Such unforeseen repeat applicants may be considered initial applicants for purposes of verification requirements and misspent income if the Administrator finds that imposing the general verification requirements and misspent income rules imposed on repeat applicants would be unreasonable or inappropriate.

**Administrator's Responsibilities.** In order to determine an applicant's eligibility for GA, the Administrator first must seek information and documentation from the applicant. Once the applicant has presented the necessary information, the Administrator must determine eligibility. The Administrator will seek verification necessary to determine eligibility and may contact sources other than the applicant for verification only with the specific knowledge and consent of the applicant – except that the Administrator may examine public records without the applicant's knowledge and consent.

Appropriate sources, which an Administrator may contact, include, but are not limited to:

- DHHS, any other department or agency of the state, or non-profit organizations
- financial institutions
- creditors
- utility companies
- employers

- landlords
- physicians
- persons with whom the applicant/recipient is a cohabitant
- legally and non-legally liable relatives

Assistance will be denied or terminated if the applicant is unwilling to supply necessary information, documentation, or permission to make collateral contacts, or if the Administrator cannot determine that eligibility exists based on information supplied by the applicant or others.

**Redetermination of Eligibility.** The Administrator may redetermine a person's eligibility at any time during the period that person is receiving assistance if the Administrator is informed of any change in the recipient's circumstances that may affect the amount of assistance to which the recipient is entitled, or that may make the recipient ineligible, provided that once a determination of eligibility has been made for a specific time period, a reduction in assistance for that time period may not be made without prior written notice to the recipient stating the reasons for the action and an opportunity for the recipient to receive a fair hearing upon the proposed change.

**Penalty for Refusing to Release Information.** Any person governed by 22 M.R.S. § 4314 who refuses to provide necessary information to the Administrator after it has been requested must state in writing the reasons for the refusal within 3 days of receiving the request. Any such person who refuses to provide the information, without just cause, commits a civil violation and may be subject to a fine of not less than \$25 nor more than \$100 which may be adjudged in any court of competent jurisdiction. Any person who willfully renders false information to the Administrator is guilty of a Class E crime. (22 M.R.S. §§ 4314(5), 4314(6), 4315).

### ***Section 6.4—Fraud***

It is unlawful for a person to knowingly and willfully make a false representation of a material fact to the Administrator in order to receive GA or cause someone else to receive GA. (22 M.R.S. § 4315). A person who commits fraud in an effort to receive GA benefits may be prosecuted for this offense.

False representation means any individual who knowingly and willfully:

- a) makes a false statement to the Administrator, either orally or in writing, in order to obtain assistance to which the applicant or the applicant's household is not entitled;
- b) conceals information from the Administrator in order to obtain assistance to which the applicant or applicant's household is not entitled; or
- c) uses GA benefits for a purpose other than the purpose for which they were intended.

No person may be denied assistance solely for making a false representation prior to being given an opportunity for a fair hearing.

**Period of Ineligibility.** When the Administrator finds that a person has knowingly and willfully misrepresented material facts for the purpose of making himself or herself eligible for GA, the Administrator shall notify that applicant in writing that he or she must reimburse the municipality for the assistance he or she was not entitled to receive and that he/she is ineligible for assistance for the longer of: (a) a period of 120 days; (b) until he or she reimburses the municipality

for the assistance; or (c) until he or she enters a reasonable written agreement to reimburse the municipality. (22 M.R.S. § 4315).

For the purpose of this section, a material misrepresentation is a false statement about eligibility factors in the absence of which some or all of the assistance would not be or would not have been granted.

The notification of ineligibility issued by the Administrator shall inform the applicant of his or her right to appeal the Administrator's decision to the fair hearing authority (FHA) within 5 working days of receipt. The period of ineligibility shall commence on the day following the end of the period covered by the grant of assistance fraudulently received or upon the date of notification of ineligibility, whichever is later.

**Right to a Fair Hearing.** Any applicant who is denied assistance for making a false representation will be afforded the opportunity to appeal the decision to the fair hearing authority (FHA) in accordance with Article VII of this Ordinance. No recipient shall have his or her assistance reduced or revoked during the period of eligibility before being notified and given the opportunity to appeal the decision. Any person who is dissatisfied with the decision of the FHA may appeal that decision to the Superior Court pursuant to Rule 80-B of the Maine Rules of Civil Procedure. (22 M.R.S. § 4309(3)).

**Reimbursement.** If a recipient does not appeal the decision or if the FHA determines that a recipient made a false representation, the recipient will be required to reimburse the municipality for any assistance received to which he/she was not entitled. The recipient may enter a reasonable written agreement to reimburse the municipality over a period of time.

**Dependents.** In no event will the ineligibility of a person under this section serve to disqualify any eligible dependent in that household. (22 M.R.S. § 4309(3)). In the event one or more members of a household are disqualified and assistance is requested for the remaining dependents, the eligibility of those dependents will be calculated by dividing the maximum level of assistance available to the entire household by the total number of household members.

### ***Section 6.5—Period of Eligibility***

The Administrator will grant assistance to all eligible persons for a period that is sufficient to meet their need but in no event may a grant of assistance cover a period in excess of one month. (22 M.R.S. § 4309). Upon receiving a completed and signed application the Administrator will determine the applicant's eligibility on the basis of a 30day prospective analysis.

When an applicant submits an incomplete or unsigned application, due to the 24-hour decision requirement placed on the GA Administrator, the GA Administrator shall render a notice of "ineligibility" and advise the applicant that he or she has a right to reapply as soon as he or she has the necessary information and/or as soon as is practicable for the applicant.

Although eligibility is determined on a 30-day basis, for reasons of administrative efficiency, the Administrator may elect to disburse an applicant's assistance for shorter periods of time, such as

weekly, throughout the 30-day period of eligibility. When the Administrator elects to disburse GA for a period of time less than 30 days, subsequent grants of assistance during that 30-day period may be issued pursuant to the initial determination of need unless the applicant's financial situation changes substantially enough to warrant a redetermination of eligibility.

### **Section 6.6—Determination of Need**

The period of time used to calculate need will be the next 30-day period from the date of application. (22 M.R.S. § 4301(7)). The Administrator will calculate applicants' expenses according to the actual expense of the basic necessity or the maximum levels for the specific necessities allowed in Ordinance § 6.8, whichever is less. The sum of these expenses, as calculated for a prospective 30-day period, is the applicant's 30-day need. Applicants will not be considered eligible if their income and other resources exceed this calculation except in an emergency. (22 M.R.S. § 4308(2)) (*see* Ordinance § 4.9).

Applicants will also not be considered in need of GA if their income, property, credit, assets or other resources available to provide basic necessities for their household are greater than the applicable overall maximum level of assistance set forth in the beginning of Ordinance § 6.8. (22 M.R.S. §§ 4301(10), 4305(3-B)). The difference between the applicant's income and the overall maximum levels of assistance established by this Ordinance is the applicant's deficit.

Once an applicant's deficit has been determined, the specific maximum levels of assistance for each basic necessity shall guide Administrator's distribution of assistance for which the applicant is eligible. (*See* Ordinance Appendices A-H). The specific maximum levels of assistance for each basic necessity are intended to be reasonable and sufficient to help recipients maintain a standard of health and decency. (22 M.R.S. § 4305(3-A)).

**Income for Basic Necessities.** Applicants are required to use their income for basic necessities. Except for initial applicants, no *applicant* is eligible to receive assistance to replace income that was spent within the 30-day period prior to an application for assistance on goods and services that are not basic necessities. All income spent on goods and services that are not basic necessities will be considered available to the applicant and combined with the applicant's prospective 30-day income for the purposes of computing eligibility. (22 M.R.S. § 4315-A). Applicants who have sufficient income to provide their basic necessities but who use that income to purchase goods or services which are not basic necessities will not be considered eligible for assistance. Persons who exhaust their income on basic necessities and who still need assistance with other basic necessities will be eligible, provided that their income does not exceed the overall maximum level of assistance.

**Use-of-Income Requirements.** The Administrator may require that anyone applying for GA provide documentation of his or her use of income. This documentation can take the form of cancelled checks and/or receipts which demonstrate that the applicant has exhausted all household income received over the last 30-day period. Except as is deemed appropriate by the Administrator for "unforeseen" repeat applicants (*See* Ordinance § 6.3); repeat applicants may be required to verify that expenditure of income was for basic necessities. **Income expended that cannot be**

**verified will generally be considered available and in such case will be added to the 30-day prospective income.**

Allowable expenditures include reasonable shelter costs (rent/mortgage); the cost of heating fuel, electricity, and food up to the ordinance maximums; telephone costs at the base rate if the household needs a telephone for medical reasons, the cost of non-elective medical services as recommended by a physician which are not otherwise covered by medical entitlement, Hospital Free Care or insurance; the reasonable cost of essential clothing and non-prescription drugs, and the costs of any other commodity or service determined essential by the Administrator.

Items not considered to be basic necessities and thus will not be allowed in the budget computation include:

- Internet services
- Cable or satellite television
- Cellular phones, except when deemed essential by the overseer for medical or work related purposes
- Cigarettes/alcohol
- Gifts purchased
- Pet care costs
- Costs of trips or vacations
- Paid court fines
- Repayments of unsecured loans
- Legal fees
  
- Late fees
  
- Credit card debt

The municipality reserves the right to apply specific use-of-income requirements to any applicant, other than an initial applicant, who fails to use his or her income for basic necessities or fails to reasonably document his or her use of income. (22 M.R.S. § 4315-A). Those additional requirements will be applied in the following manner:

- 1) The Administrator may require the applicant to use some or all of his or her income, at the time it becomes available, toward specific basic necessities. The Administrator may prioritize such required expenditures so that most or all of the applicant's income is applied to housing (i.e., rent/mortgage), energy (i.e., heating fuel, electricity), or other specified basic necessities;
- 2) The Administrator will notify applicants in writing of the specific use-of-income requirements placed on them;
- 3) If upon subsequent application it cannot be determined how the applicant's income was spent, or it is determined that some or all of the applicant's income was not spent as directed and was also not spent on basic necessities, the applicant will not be eligible to receive either regular or emergency general assistance to replace that income; and
- 4) If the applicant does not spend his or her income as directed but can show with verifiable documentation that all income was spent on basic necessities up to allowed amounts, the applicant will remain eligible to the extent of the applicant's eligibility and need.

**Calculation of Income and Expenses.** When determining eligibility, the Administrator will subtract the applicant's net income from the overall maximum level of assistance found at the beginning of Ordinance § 6.8. If income is greater than the overall maximum level of assistance, the applicant will not be eligible except in an emergency (*see* Ordinance § 4.9). If income is less than the overall maximum level of assistance, the applicant has a deficit.

The municipality will provide assistance in an amount up to the deficit to the extent the applicant also has an unmet need and is in need of basic necessities. The municipality will not grant assistance in excess of the maximum amounts allowed in Ordinance § 6.8 for specific basic necessities except in an emergency or when the Administrator elects to consolidate the applicant's deficit, as provided immediately below.

**Consolidation of Deficit.** As a general rule, and to the extent of their deficit, applicants will be eligible for assistance for any basic necessity up to, but not exceeding, the maximum amount allowed for that necessity in this Ordinance or the actual 30-day cost of the necessity, whichever is less. Under certain circumstances, however, and in accordance with the following conditions, the Administrator may consolidate the applicant's deficit and apply it toward a basic necessity in an amount greater than the ordinance maximum for that necessity.

- 1) The practice of consolidating the deficit and applying it toward a basic necessity in amounts greater than the ordinance maximum shall be the exception rather than the rule;
- 2) The total GA grant cannot exceed the total deficit unless the applicant is in an emergency situation; and
- 3) The need for the application of the recipient's consolidated deficit toward a basic necessity was not created by the recipient mispending his or her income or resources in violation of the use-of-income requirements of this Ordinance.

## **Section 6.7—Income**

**Income Standards.** Applicants whose income exceeds the overall maximum level of assistance provided in Ordinance § 6.8 shall not be eligible for GA except in an emergency. Each time an applicant applies, the Administrator will conduct an individual factual inquiry into the applicant's income and expenses.

**Calculation of Income.** To determine whether applicants are in need, the Administrator will calculate the income they will receive during the next 30-day period commencing on the date of application and identify any assets or resources that would alleviate their need. For all applicants other than initial applicants, the Administrator will also consider as available income any income that was not spent during the previous 30-day period on basic necessities as well as any income that was spent on basic necessities in unreasonable excess of the ordinance maximums for specific basic necessities. If a household's income exceeds the amount of the household's need for basic necessities, up to the maximum levels contained in Ordinance § 6.8, applicants will not be considered in need.

Exceptions will be made in emergency situations, which may necessitate that the maximum levels be exceeded. (22 M.R.S. § 4308) (*see* Ordinance § 4.9). To calculate weekly income and expenses, the Administrator will use actual income received or actual anticipated income.

**Types of Income.** Income that will be considered in determining an applicant's need includes:

- a) ***Earned Income.*** Income in cash or in kind earned by the applicant through wages, salary, commissions, or profit, whether self-employed or as an employee, is considered earned income. If a person is self-employed, total income will be computed by subtracting reasonable and actual business expenses from gross income. When income consists of wages, the amount computed will be the income available after taxes, social security and other payroll deductions required by state, federal, and local law. Rental income and profit from produce that is sold is considered earned income. Income that is held in trust and unavailable to the applicant or the applicant's dependents will not be considered as earned income.

Note: Actual work-related expenses such as union dues, transportation to and from work, special equipment or work clothes, and childcare costs will be deducted from an applicant's income. (22 M.R.S. § 4301(7)).

- b) ***Income from Other Assistance or Social Services Programs.*** State/federal categorical assistance benefits, SSI payments, Social Security payments, VA benefits, unemployment insurance benefits, and payments from other government sources will be considered as income, unless expressly prohibited by federal law or regulation. Federal law prohibits Food Stamps and Fuel Assistance payments made by the Home Energy Assistance Program (HEAP and EPIC) from being considered income. The value of the food stamps or fuel assistance will not be used to reduce the amount of GA the applicant is eligible to receive. Although applicants may have only a limited or reduced need for GA for heating fuel or electricity if a recently received HEAP/ECIP benefit has sufficiently credited their account or otherwise prevented the fuel-related costs for the prospective 30-day period.

The Administrator's obligation is to always compute the heating needs of an applicant who has received HEAP or ECIP as if that applicant paid for his or her total fuel costs. Accordingly, in such cases, the Administrator will budget for the household's heating energy needs according to actual usage, up to the ordinance maximums, but the Administrator may, with written notice to the applicant, hold in reserve the heating energy portion of the applicant's deficit until such a time during the period of eligibility that the applicant has a demonstrable need for the disbursement of heating energy assistance; that is, the applicant's fuel tank can accept a minimum fuel delivery or the applicant no longer has a positive credit balance with his or her utility company. The municipality is not obligated to divert any recipient's heating energy allowance toward non-heating purposes solely on the basis of the recipient's receipt of HEAP/ECIP.

Other programs whose income cannot be counted for purposes of GA eligibility include:

- Family Development Accounts (22 M.R.S. § 3762)
- Americorp VISTA program benefits (42 U.S.C. § 5044(f))
- Property tax rebates issued under the Maine Property Tax Fairness Credit program, only so long as the money is spent on basic necessities. (22 M.R.S. § 4301(7))

- c) Court-Ordered Support Payments.* Alimony and child support payments will be considered income only if actually received by the applicant. The Administrator will refer cases in which support payments were not actually received to the Maine DHHS Child Support Enforcement Unit. In order to be eligible for future GA benefits, applicants referred to DHHS for support enforcement assistance shall be required to follow-through with such services. Because child support payments are considered a resource, applicants must make a good faith effort to secure such payments.
- d) Income from Other Sources.* Payments from pensions and trust funds will be considered income. Payments from boarders or lodgers will be considered income as will cash or in-kind contributions provided to the household from any other source, including relatives. (22 M.R.S. § 4301(7)).
- e) Earnings of a Son or Daughter.* Earned income received by sons and daughters below the age of 18 who are full-time students and who are not working full-time will not be considered income. The unearned income of a minor in the household will be considered available to the household.
- f) Income from Household Members.* Income from household members will be considered available to the applicant, whether or not the household member is legally obligated for the support of the applicant, if the household members pool or share their income and expenses as a family or intermingle their funds so as to provide support to one another.
- g) The Pooling or Non-Pooling of Income.* When two or more individuals share the same dwelling unit but not all members of the household are applying for GA, the Administrator shall make a finding under a rebuttable presumption that the entire household is pooling income. (22 M.R.S. § 4301(12-A)).

One or more applicants for assistance can successfully rebut the presumption that all household income is being pooled by providing the Administrator with verifiable documentation affirmatively demonstrating a pattern of non-pooling during the duration of the shared living arrangement. Such documentation would include evidence of the entire

household's expenses, bank statements, cancelled checks, receipts, landlord statements or other vendor accounts clearly supporting a claim that the applicant has been and is presently solely and entirely responsible for his or her pro-rata share of household costs.

If the applicant is unable to successfully rebut the municipality's presumption that all household income is being pooled, eligibility of the entire household will be determined based on total household income. If the applicant successfully rebuts the municipality's presumption that all household income is being pooled, the applicant's eligibility will be determined on the basis of his or her income and his or her pro-rata share of actual household expenses.

**h) Lump Sum Income.** A lump sum payment received by any GA applicant or recipient prior or subsequent to the date of application for GA will be considered as income available to the household. However, verified required payments (i.e., any third-party payment which is required as a condition of receiving the lump sum payment, or any payments of bills earmarked for the purpose for which the lump sum payment was made) and any amount of the lump sum payment which the applicant can document was spent on basic necessities, as described below, will not be considered available income.

Where a household receives a lump sum payment at any time prior or subsequent to the date of application for GA, the Administrator will assess the need for prorating an applicant's eligibility for GA according to the following criteria. (22 M.R.S. § 4301(7), (8-A)):

- 1) identify the date the lump sum payment was received;
- 2) subtract from the lump sum payment all required payments;
- 3) subtract from the lump sum any amount the applicant can demonstrate was spent on basic necessities, including all basic necessities as defined by the GA program such as: reasonable payment of funeral or burial expenses for a family member; any reasonable travel costs related to the illness or death of a family member; repair or replacement of essentials lost due to fire, flood or other natural disaster; repair or purchase of a motor vehicle essential for employment, education, training or other day-to-day living necessities. Repayments of loans or credit, the proceeds of which can be verified as having been spent on basic necessities; and payment of bills earmarked for the purpose for which the lump sum is paid must also be subtracted. (22 M.R.S. § 4301(7), (8-A));
- 4) add to the remainder all income received by the household between the date of receipt of the lump sum payment and the date of application for GA; and
- 5) divide the sum created in subsection (4) by the verified actual monthly amounts for all of the household's basic necessities. 22 M.R.S. § 4305(3-B).

This dividend represents the period of proration determined by the Administrator to commence on the date of receipt of the lump sum payment. The prorated sum for each month must be considered available to the household for 12 months from the date of application or during the period of proration, whichever is less.

The household of an initial applicant that is otherwise eligible for emergency assistance may not be denied emergency assistance to meet an immediate need solely on the basis of the proration of a lump sum payment. (22 M.R.S. § 4308).

### ***Section 6.8—Basic Necessities; Maximum Levels of Assistance***

**Overall Maximum Levels of Assistance.** Notwithstanding any of the maximum levels of assistance for specific basic necessities listed in Ordinance Appendices B-H, an applicant's eligibility for GA will be first determined by subtracting his or her income from the overall maximum level of assistance designated in Appendix A for the applicable household size. (22 M.R.S. § 4305(3-B)). The difference yielded by this calculation shall be the applicant's deficit. Appendices A-H of this Ordinance may be amended from time to time by City Council Order after notice and hearing.

Applicants will be eligible for GA up to the calculated deficit to the extent the applicant is unable to otherwise provide the basic necessities essential to maintain themselves or their families. Applicants with no deficit shall be found ineligible for GA unless they are in an emergency, in which case eligibility for emergency GA will be determined according to Ordinance § 4.9.

**Maximum Levels of Assistance for Specific Basic Necessities.** The municipality will grant assistance to eligible applicants for basic necessities according to the maximum levels for specific types of assistance set forth below. The Administrator, in consultation with the applicant, may apply the amount of the applicant's deficit toward assistance with any one or combination of necessities not to exceed the total deficit. These maximum levels will be strictly adhered to unless the Administrator determines that there are exceptional circumstances and an emergency is shown to exist, in which case these absolute levels will be waived in order to meet immediate needs. In all cases either the actual expenses the applicant incurs for basic necessities or the maximum amount allowed in each category, whichever is less, will be used in determining need.

In roommate situations, the applicant's need for common living expenses for rent, fuel, electricity, etc., will be presumed to be reduced by an amount equal to the other household members' proportionate fair share of the common living expenses. No applicant will be allowed to claim a need for any expense which has been or will be paid by another person. In addition, as a general rule the municipality will not provide a benefit toward a basic need by paying a bill that is issued to a person not living with the applicant's household or that has otherwise been incurred by a person who has not been found eligible to receive assistance.

Temporary exceptions to this general rule may be made by the Administrator in the following circumstances: (1) a recent, unplanned separation has occurred in the household resulting in the sustained or permanent absence of a former household member in whose name the bill was customarily issued; (2) the applicant and members of the applicant's household were or will be the sole recipients of the commodities or services covered by any bill to be paid or partially paid with GA; and (3) the applicant will make a good faith effort to direct the vendor to issue future bills in the name of the applicant or other responsible person residing in the household.

- (A) **Food.** The Administrator will provide food assistance to eligible persons up to the allowed maximum amounts designated by the U.S.D.A. Thrifty Food Plan for the appropriate household size.

For this purpose, the municipality hereby incorporates by reference the U.S.D.A. Thrifty Food Plan, as distributed by the Maine DHHS on or about October of each year. *See* Ordinance Appendix B for the current year's food maximums.

In determining need for food, the Administrator will not consider the value of the food stamps an applicant receives as income. (22 M.R.S. § 4301.7(A); 7 U.S.C. § 2017(b)). The municipality will authorize vouchers to be used solely for approved food products.

The Administrator will exceed the maximums when necessary for households having members with special dietary needs. The Administrator may require a doctor's statement verifying there is a special dietary need requiring an expenditure for food that is greater than the ordinance maximums.

- (B) **Housing.** The Administrator will provide assistance with rent or mortgage payments that are reasonable and/or within the allowed maximum levels. *See* Ordinance Appendix C for the current year's housing maximums. It is the applicant's responsibility to find suitable housing, although the Administrator may help the applicant find housing when appropriate. The Administrator will inform the applicant of the allowed housing maximums to assist the applicant in his or her search for housing. The allowed maximum for any applicant will be the categorical housing maximum representing the minimum dwelling unit space necessary to adequately shelter the applicant household. Applicants requesting assistance for housing that contains more bedrooms than are necessary for the number of household members will be provided assistance according to the maximum level for the number of rooms actually needed.

**Rental Payments to Relatives.** The municipality may elect to not issue any rental payment to an applicant's relatives unless the rental relationship has existed for at least three months and the applicant's relative(s) rely on the rental payment for their basic needs. For the purpose of this section, a "relative" is defined as the applicant's parents, grandparents, children, grandchildren, siblings, parent's siblings, or any of those relative's children. (22 M.R.S. § 4319(2)).

**Rental Payments to Non-Relatives.** When applicants are living in private homes with the owner or sharing dwelling units with people who are not pooling income or who are not legally liable relatives, the amount allowed as the applicant's shelter expense will be the applicant's pro rata share of the actual, total shelter cost, up to the ordinance maximum. (22 M.R.S. § 4301(6)).

Any housing assistance issued to a recipient in such a circumstance will be issued, whenever reasonably possible, to the landlord or property owner with the most superior interest in the property; i.e., to a landlord before a tenant, or to a mortgagee before a mortgagor.

When the municipality issues in aggregate more than \$600 in rental payments to any landlord in any calendar year, a 1099 form declaring the total amount of rental payments issued during the calendar year will be forwarded to the Internal Revenue Service (IRS) pursuant to IRS regulation (see § 6041(a) of Internal Revenue Code).

Any landlord wishing to regularly receive rental payments from the municipality on behalf of applicants renting rooms from the landlord's own residence must, at a minimum, make a good faith effort to obtain a lodging license from the DHHS Division of Health Engineering, pursuant to 10-144A CMR, Chapter 201, as a condition of that landlord receiving future GA payments on behalf of his or her tenants.

**Mortgage Payments.** In the case of a request for assistance with a mortgage payment, the Administrator will make an individual factual determination of whether the applicant has an immediate need for such aid. In making this determination, the Administrator will consider the extent and liquidity of the applicant's proprietary interest in the housing. Factors to consider in making this determination include:

- (1) the marketability of the shelter's equity;
- (2) the amount of equity;
- (3) the availability of the equity interest in the shelter to provide the applicant an opportunity to secure a short-term loan in order to meet immediate needs;
- (4) the extent to which liquidation may aid the applicant's financial rehabilitation;
- (5) a comparison between the amount of mortgage obligations and the anticipated rental charges the applicant would be responsible for if he/she were to be dislocated to rental housing;
- (6) the imminence of the applicant's dislocation from owned housing because of his or her inability to meet the mortgage payments;
- (7) the likelihood that the provision of housing assistance will prevent such dislocation; and
- (8) the applicant's age, health, and social situation.

These factors shall be considered when determining whether the equity in the shelter is an available asset which may be substituted for the assistance the municipality would otherwise be required to provide.

The Administrator shall consider issuing a benefit in response to the applicant's request for mortgage assistance to the extent the applicant is otherwise eligible for GA if after review of the criteria above, the Administrator determines that:

- (1) the monthly mortgage obligation is in accordance with the maximum levels of assistance available for housing appropriate to the applicant's household size;
- (2) there is no capacity in the accumulated equity in the property, when considered in the context of the applicant's borrowing capacity with the mortgagee or the general lending community, to suspend the mortgage obligation temporarily or re-amortize the mortgage in such a way as to suspend or reduce the mortgage obligation; and

- (3) the failure to provide a mortgage payment in a timely manner could jeopardize the applicant's continued right of possession of the property.

If a mortgage payment is necessary, the Administrator will pay the actual amount due, up to the amount allowed according to the maximum levels listed below. After an initial application, assistance with such payments will be given only after the applicant has made all reasonable efforts to borrow against the equity of his or her home. If there is not sufficient equity in the home with which to secure a loan, and if the monthly mortgage payments are not realistically in line with the rental rates for similar housing in the area that could meet the applicant's needs, the Administrator will inform the applicant that he/she is responsible for finding alternative housing within his or her ability to pay and will be obligated to make all reasonable efforts to secure such housing.

**Liens.** The municipality may place a lien on the property in order to recover its costs of granting assistance with mortgage payments. In addition, a municipality may claim a lien against the owner of real estate for the amount of money spent by it to make capital improvements to the real estate. (22 M.R.S. § 4320). No lien may be enforced against a recipient except upon his or her death or the transfer of the property. Further, no lien may be enforced against a person who is currently receiving any form of public assistance, or who would again become eligible for GA if the lien were enforced.

If the municipality determines that it is appropriate to place a lien on a person's property to recover its costs of providing GA for a mortgage payment or capital improvement it must file a notice of the lien with the county registry of deeds where the property is located within 30 days of making the mortgage payment. That filing shall secure the municipality's or the state's interest in an amount equal to the sum of that mortgage or capital improvement payment and all subsequent mortgage or capital improvement payments made on behalf of the same eligible person, plus interest and costs.

Not less than 10 days prior to filing the lien in the registry, the municipal officers must send notice to the owner of the real estate, the GA recipient, and any record holder of the mortgage by certified mail, return receipt requested, that a lien on the property is going to be filed with the registry. This notice must clearly inform the recipient of the limitations upon enforcement plus the name, title, address and telephone number of the person who granted the assistance. The municipal officers must also give written notice to the recipient each time the amount secured by the lien is increased because of an additional mortgage payment. This notice must include the same information that appeared on the original intent-to-file notice sent to the recipient.

The municipality may charge interest on the amount of money secured by the lien. The municipal officers will establish the interest rate not to exceed the maximum rate of interest allowed by the State Treasurer to be charged against delinquent taxes. The interest will accrue from the date the lien is filed.

**Property Taxes.** In the event an applicant requests assistance with his or her property taxes, the Administrator will inform the applicant that there are two procedures on the local level to

request that relief: the poverty abatement process (36 M.R.S. § 841(2)) and GA. If the applicant chooses to seek property tax assistance through GA, or if the applicant is denied a poverty tax abatement, the Administrator may consider using GA to meet this need only if:

- a) the property tax in question is for the applicant's place of residence;
- b) there is a tax lien on the property which is due to mature within 60 days of the date of application;
- c) as a matter of municipal policy or practice, or on the basis of information obtained from the applicant's mortgagee, if any, it is reasonably certain that a tax lien foreclosure will result in subsequent eviction from the residential property; and
- d) the applicant, with sufficient notice, applies for property tax relief through the Maine Property Tax Fairness Credit program, when available.

**Housing Maximums.** The maximum levels of housing assistance contained in this Ordinance have been derived either from a locally accomplished fair market rental survey or the fair market rental values developed by the U.S. Department of Housing and Urban Development (HUD). If the maximum levels of housing are derived from the HUD values made effective as of every October 1, and adjusted to disregard the current and averaged utility allowances as developed by the Maine State Housing Authority, those levels are hereby incorporated by reference. *See* Ordinance Appendix C for the current year's housing maximums.

If and when the maximum levels of housing assistance in this Ordinance are derived from a locally developed fair market rental survey, a record of that survey will be submitted to the DHHS, General Assistance Unit, and the maximum levels of housing assistance will be incorporated into this Ordinance pursuant to the ordinance adoption and amendment procedures found at 22 M.R.S. § 4305.

- (C) **Utilities.** Expenses for lights, cooking, and hot water will be budgeted separately if they are not included in the rent. Applicants are responsible for making arrangements with the utility company regarding service, including entering into a special payment arrangement if necessary.

Assistance will be granted to eligible applicants on the basis of their most recent bill. The municipality is not obligated to pay back bills or utility security deposits. Exceptions may be made in emergency situations pursuant to section 4.9.

Disconnection of utility service will not be considered an emergency in all cases. The Administrator will make an individual, factual analysis to determine if the termination of utility service constitutes an emergency. The Administrator will consider the household composition, the time of year, the age and health of the household members, and other appropriate factors in reaching a decision. Applicants who had sufficient income, money, assets or other resources to pay their utility bill when it was received, but who spent all or part of their income on items which were not basic necessities, will not be eligible to receive GA to replace those funds.

Applicants have the burden of providing evidence of their income and use of income for the applicable time period (22 M.R.S. § 4308(2)) (*see* Ordinance §§ 4.9; 6.3). The Administrator

will notify applicants in writing that they must give the Administrator prompt notice if their utility service is to be terminated or if their fuel supply is low. It is the applicant's responsibility to attempt to make arrangements with the utility company to maintain their service and to notify the Administrator if assistance is needed with a utility bill prior to service being terminated.

**Electricity Maximums for Households Without Electric Hot Water.** See Ordinance Appendix D for the current year's electricity maximums.

**Electricity Maximums for Households that Use Electrically Heated Hot Water.** See Ordinance Appendix D for the current year's electricity maximums.

**Non-Electric Utilities.** The allowed amount for water and sewer utility service will be budgeted at a 30-day reasonable usage rate.

- (D) **Fuel.** Expenses for home heating will be budgeted according to the actual need for fuel during the heating season (September through May) provided such expenses are reasonable, and at other times during the year when the Administrator determines the request for fuel assistance is reasonable and appropriate.

Assistance will be granted to eligible applicants on the basis of their most recent bill. The municipality is not responsible for back bills except in an emergency as provided in Ordinance § 4.9. Applicants are responsible for monitoring their fuel supply and requesting assistance prior to depleting their fuel supply. When applicants who have been informed of this responsibility run out of fuel nonetheless, and can show no just cause for failing to give the Administrator timely notice of their need for fuel, the Administrator shall find that the emergency was not beyond the applicants' control, and process the emergency request accordingly, pursuant to Ordinance § 4.9. See Ordinance Appendix E for the current year's fuel maximums.

- (E) **Personal Care and Household Supplies.** Expenses for ordinary personal and household supplies will be budgeted and allowed according to the applicant's actual need for these items. Personal and household supplies include: hand soap, toothpaste, shampoo, shaving cream, deodorant, dish detergent, laundry supplies and costs, household cleaning supplies, razors, paper products such as toilet paper, tissues, paper towels, garbage/trash bags light bulbs and supplies for children under 5 years of age. See Ordinance Appendix F for the current year's personal care and household supplies maximums.

- (F) **Other Basic Necessities.** Expenses falling under this section will be granted when they are deemed essential to an applicant's or recipient's health and safety by the Administrator and, in some cases, upon verification by a physician. Assistance will be granted only when these necessities cannot be obtained through the utilization of available resources.

- 1) **Clothing.** The municipality may assist a household with the purchase of adequate clothing. Before assistance will be granted for clothing, the general assistance Administrator must be satisfied that the applicant has utilized all available resources to secure the necessary clothing. In some circumstances, clothing will be a postponable

item. Exceptions to this would be, for example, if fire, flood or unusually cold weather makes extra clothing an immediate necessity, special clothing is necessary for the applicant's employment, or a household member is without adequate clothing.

- 2) **Medical.** The municipality will pay for essential medical expenses, other than hospital bills (*see below*), provided that the municipality is notified and approves the expenses and services prior to their being made or delivered. Medical expenses include prescriptions, devices, treatments, or services that are determined to be 'medically necessary' by a licensed physician. The municipality will grant assistance for medical services only when assistance cannot be obtained from any other source and the applicant would not be able to receive necessary medical care without the municipality's assistance. The applicant is required to utilize any resource, including any federal or state program, that will diminish his or her need to seek general assistance for medical expenses. The municipality will grant assistance for non-emergency medical services only if a physician verifies that the services are essential. Provided there is no cost to the applicant, the Administrator may require a second medical opinion from a physician designated by the municipality to verify the necessity of the services.

Generally, the municipality will issue GA at the established Medicaid rates for all medical services, prescriptions, or other medical commodities. Before authorizing GA for any medical expenses, the Administrator will inform the pharmacy or medical service provider of the municipality's intention to pay for the medical service at the Medicaid rate and ask to be billed accordingly.

Ordinary medical supplies/non-prescription drugs will be budgeted at the actual amount when the applicant can demonstrate a need for such items. Allowable supplies include bandages, aspirin, cough syrup, and other generic brand, non-prescription medicines. In addition, the basic monthly rate for telephone service will be budgeted when a telephone is essential to the health and safety of the household. In order for telephone service to be considered an allowable expense the applicant must provide a written statement from a physician certifying that the telephone is essential.

- 3) **Hospital Bills.** In the event of an emergency admission to the hospital, the hospital must notify the Administrator within 5 business days of the admission. Notification must be by telephone, confirmed by certified mail, or by certified mail only. If a hospital fails to give timely notice to the Administrator, the municipality will have no obligation to pay the bill.

Any person who cannot pay his or her hospital bill must apply to the hospital for consideration under the Hospital's Free Care Program as provided in Title 22 M.R.S. § 1716. Anyone who is not eligible for the hospital's free care program may apply for GA. Applicants must apply for assistance within 30 days of being discharged from the hospital and provide a notice from the hospital certifying that he or she is not eligible for the hospital's free care program.

Before the Administrator will consider whether to allow a hospital bill as a necessary expense, the applicant must enter into a reasonable payment arrangement with the hospital. The payment arrangement will be based upon the Medicaid rate. In determining an applicant's eligibility, the municipality will budget the monthly payment to the

hospital the applicant has agreed to pay. The applicant's need for assistance with a hospital bill will be considered each time he/she applies by including the amount of the bill in the applicant's monthly budget, but the recipient will be responsible for making any necessary payments to the hospital pursuant to the use-of-income requirements found at Ordinance § 6.6.

- 4) **Dental.** The municipality will pay for medically necessary dental services only. As is the case with medical services generally, the municipality will issue GA for dental services at the established Medicaid rates for those services, and before authorizing the GA benefit for dental services, the Administrator will inform the dentist or dental surgeon of the municipality's intention to pay at the Medicaid rate. If full mouth extractions are necessary, the municipality will pay for dentures provided the applicant has no other resources to pay for the dentures. The applicant will be referred to a dental clinic in the area whenever possible. The Administrator will expect the applicant to bear a reasonable part of the cost for dental services, including extractions and dentures, taking into account the applicant's ability to pay.
- 5) **Eye Care.** In order to be eligible to receive GA for eyeglasses, an applicant must have his or her medical need certified by a person licensed to practice optometry. The Administrator will provide assistance for eyeglasses to eligible persons only after the applicant has exhausted all other available resources and generally only at the Medicaid rate.
- 6) **Telephone Charge.** A payment for basic telephone will only be allowed if a telephone is necessary for medical reasons as verified by a physician. At the discretion of the GA Administrator, minimum/basic telephone services may be allowed for households with children, for households where job search or work-related reasons exist and/or for any other reasons the Administrator deems necessary.
- 7) **Work-Related Expenses.** In determining need, reasonable and actual work-related expenses will be deducted from earned income. These expenses include childcare costs, work clothes, supplies and transportation at the actual costs not to exceed the ordinance maximum. *See* Ordinance Appendix G for the current maximum mileage allotment. The applicant is required to provide documentation substantiating the costs and that the expenses were necessary.
- 8) **Travel Expenses.** In determining need, necessary travel which is not work-related will be budgeted if the applicant can satisfy the Administrator that the prospective need for travel is necessary. For applicants in rural areas, weekly transportation to a supermarket will be considered, as will any medically necessary travel. *See* Ordinance Appendix G for the current rate at which such necessary travel will be budgeted. This rate shall be construed to subsidize all costs associated with automobile ownership and operation, including gas/oil, tires, maintenance, insurance, financing, licensing/registration, excise tax, etc.
- 9) **Burials, Cremations.** Under the circumstances and in accordance with the procedures and limitations described below (*see* Ordinance § 6.9), the municipality recognizes its responsibility to pay for the burial or cremation of eligible persons. *See* Ordinance Appendix H for the current maximums.
- 10) **Capital Improvements.** The costs associated with capital improvements/repairs (e.g., heating/water/septic system repair) will generally not be budgeted as a basic necessity. Exceptions can be made only when the capital improvement/repair has been pre-approved by the Administrator as a necessary expense and the monthly cost of the capital

improvement/repair has been reduced as far as reasonably possible; for example, by means of the applicant entering into an installment payment arrangement with the contractor. The Administrator may grant GA for capital improvements when:

- 1) the failure to do so would place the applicant(s) in emergency circumstances;
- 2) there are no other resources available to effect the capital repair; and
- 3) there is no more cost-effective alternative available to the applicant or municipality to alleviate an emergency situation.

In some cases, the entire immediate cost of the capital improvement can be mitigated by the applicant entering into an installment payment arrangement with a contractor. The municipality reserves the right to place a lien on any property pursuant to 22 M.R.S. § 4320 when GA has been used to effect a capital improvement. The lien process shall be accomplished in the same manner as for mortgage payments, as described in subsection (B) "Liens", above.

### ***Section 6.9—Burials; Cremations***

**Funeral Director Must Give Timely Notice.** In order for the municipality to be liable for a burial or cremation expense, the funeral director must notify the Administrator prior to the burial or cremation or by the end of three business days following the funeral director's receipt of the body, whichever is earlier. (22 M.R.S. § 4313(2)). This contact by the funeral director shall begin the process of developing an application for burial/cremation assistance on behalf of the deceased. It is the funeral director's responsibility to make a good-faith effort to determine if the family or any other persons are going to pay all or part of the burial expenses. If family members or others are unable to pay the expenses, and the funeral director wants the municipality to pay all or part of the expenses, the funeral director must make timely contact to the Administrator. In addition, the funeral director may refer legally liable relatives to the Administrator so that a timely determination of financial capacity may be accomplished.

**Application for Assistance Shall be Calculated on Behalf of the Deceased.** For the purposes of determining residency, calculating eligibility and issuing GA for burial or cremation purposes, an application for assistance shall be completed by the Administrator on behalf of the deceased.

With regard to residency, the municipality of responsibility for burial expenses shall be the municipality in which the eligible deceased person was a resident at the time of death as residency is determined under Ordinance § 4.10.

Although legally liable relatives may be asked to provide information regarding their income, assets, and basic living expenses, that information will not be construed as an application for GA in as much as living persons are not eligible for burial assistance. To clarify this point of law, although legally liable relatives have a financial responsibility to pay for the burial or cremation of their relatives, that financial responsibility only exists to the extent the legally liable relatives have a financial capacity to do so. Therefore, legally liable relatives who are themselves eligible for GA, have no legal obligation to pay for the burial or cremation of their relatives. For these

reasons, all GA issued for burial or cremation purposes shall be issued on behalf of, and in the name of, the deceased.

**The Financial Responsibility of Certain Family Members.** Grandparents, parents, children and grandchildren of the deceased whether or not living in or owning property in Maine, and the spouse or registered domestic partner of the deceased, are financially responsible for the burial or cremation of the deceased to the extent those relatives, individually or as a group, have a financial capacity to pay for the burial or cremation either in lump sum or by means of a budgeted payment arrangement with the funeral home. Accordingly, at the request of the Administrator, all legally liable relatives must provide the Administrator with any reasonably requested information regarding their income, assets, and basic living expenses. The Administrator may also seek information from financial institutions holding assets of the deceased. Maine law requires a financial institution to disclose the amount deposited in the corporation or association when the municipality or its agents are acting in accordance with section 4313(2) and provide a written request and a notarized affidavit signed by the Administrator of the municipality or its agents stating that the named depositor is deceased.

**Consideration of the Financial Responsibility of Family Members.** Generally, when the Administrator can make a finding that one or more of the deceased's legally liable relatives have an obvious and demonstrable financial capacity to pay for the burial or cremation, by lump sum payment or by means of a reasonable payment arrangement, the municipality will not grant the requested burial or cremation assistance. When the Administrator is unable to make such a finding, the following proration of familial responsibility will be implemented.

**Proration of Familial Responsibility.** A proration of familial financial responsibility will be used when no legally liable relative possesses an obvious and demonstrable capacity to pay for the burial or cremation, but one or more of the financially liable relatives is found to have a financial capacity to make a partial financial contribution, or the Administrator is unable to determine the financial capacity of one or more of said relatives.

Under these circumstances, each legally liable relative is considered to be responsible for his or her pro rata share of the total municipal contribution that would exist if no legally liable relatives had a financial capacity to contribute. Furthermore, and as long as all other eligibility factors have been satisfied, the municipality will provide as a burial or cremation benefit the aggregate of all pro rata shares less the share of any legally liable relative who refuses to cooperate with the Administrator by providing information or documentation reasonably necessary to determine that relative's financial capacity, and less any share or part of a share attributable to a legally liable relative who can financially contribute or partially contribute toward the burial or cremation to the extent of that relative's share.

**Eight Days to Determine Eligibility.** The Administrator may take up to 8 days from the date of an application for burial/cremation assistance to issue a written decision regarding the amount of the municipal contribution toward the burial or cremation. The 8-day eligibility determination period from the date of application shall be used as necessary to make third-party collateral contacts, verify the listing of legally liable family members and determine their

respective financial capacities to contribute to the burial or cremation, contact the personal representative of the deceased's estate, if any, and other related administrative tasks. The Administrator shall not use this 8-day period allowed by law to unreasonably delay the municipality's decision.

**The Municipal Obligation to Pay When Legally Liable Relatives or Others Can Contribute.** The figures provided in this section are the maximum benefits provided by the municipality when no contributions toward the burial or cremation are available from any other source. To the extent any legally liable relatives of the deceased have a financial capacity to pay for the burial or cremation, that financial capacity shall be deducted from the maximum burial costs allowed by this section. In addition, any other benefits or resources that are available, such as Social Security burial benefits, veterans' burial benefits, or contributions from other persons, will be deducted from the maximum amount the municipality will pay, except there will be no deduction from the municipal benefit level with respect to any contribution provided for the purpose of publishing an obituary notice up to an aggregate contribution limit for this purpose of \$75 when a paid receipt demonstrating the purchase of an obituary notice is provided to the Administrator.

**Burial Expenses.** The Administrator will respect the wishes of family members concerning whether the deceased is interred by means of burial or cremated. *See* Ordinance Appendix H for the maximum levels of burial assistance.

**Cremation Expenses.** In the absence of any objection by any family members of the deceased, or when neither the Administrator nor the funeral director can locate any family members, the Administrator may issue GA for cremation services. *See* Ordinance Appendix H for the maximum assistance levels for cremations.

### ***Section 6.10—Notice of Decision***

**Written Decision.** Each time a person applies, the Administrator will provide a written decision to the applicant after making a determination of eligibility. The decision will be given to the applicant within 24 hours after a completed and signed application is received (22 M.R.S. § 4305(3)) (*see* Ordinance § 4.6).

In order to comply with the statutory requirement to issue a decision within 24 hours, if an applicant submits an incomplete or unsigned application, the Administrator may decide to issue a notice of "ineligibility" and provide the applicant with another application to submit as soon as is practicable for the applicant.

The Administrator must explain the applicant's right to a fair hearing in the Administrator's written notice of decision.

**Contents of Decision.** After an application has been completed, applicants will be given written notice of any decision concerning their eligibility for assistance. In addition to the items listed in Ordinance § 4.6, the notice of decision will include a statement that:

- a) the applicant has the right to a fair hearing and how to request a fair hearing, and;
- b) the applicant has the right to contact the DHHS if he or she believes the municipality has violated the law. The decision will include contact information for the appropriate DHHS office.

**Disbursement of General Assistance.** Except when the Administrator determines it is impractical, all GA will be provided as a voucher or purchase order payable to a vendor or through direct municipal payment to a provider of goods or services. GA will not be issued in the form of a cash payment to an applicant unless there is no alternative to the cash payment, in which case the Administrator shall document the circumstances requiring GA to be issued in the form of cash. (22 M.R.S. § 4305(6)).

## **ARTICLE VII – The Fair Hearing**

### ***Section 7.1—Right to a Fair Hearing***

Within 5 working days of receipt of a written notice of denial, reduction or termination of assistance, or within 10 working days after any other act or failure to act, the applicant or his or her authorized representative has the right to request a fair hearing. (22 M.R.S. § 4322). The right to review a decision of the Administrator is a basic right of the applicant to a full evidentiary hearing and is not limited solely to a review of the decision.

### ***Section 7.2—Method of Obtaining a Fair Hearing***

Upon receiving notification of the decision of the Administrator, all claimants will be informed of how to request a fair hearing. All complaints that are not clear requests for a fair hearing will be answered by a personal interview or in writing by the Administrator. If the client is satisfied with the adjustment or explanation, the Administrator will make an entry in the case record and file any correspondence involved.

**Written Request.** To obtain a fair hearing, the claimant, or his or her authorized representative, must make a written request within 5 working days of receipt of the Administrator's decision to grant, deny, reduce or terminate assistance, or within 10 working days after any other act or failure to act. The Administrator will make a form available to request a fair hearing and will assist the claimant in completing it if necessary. On the printed form, the claimant will give the following information:

- a) the decision on which review is sought;
- b) the reason(s) the claimant is dissatisfied and why the claimant believes he/she is eligible to receive assistance; and
- c) the relief sought by the claimant.

The Administrator may not deny or dismiss a request for a hearing unless it has been withdrawn (in writing) by the claimant.

**Scheduling the Fair Hearing.** Upon receipt of the completed written request, the FHA must meet and hold the hearing within 5 working days. The Administrator will notify the claimant in writing when and where the hearing will be held. (22 M.R.S. § 4322). In addition to the date, time and place of the hearing, the notice of fair hearing shall include, at a minimum, the claimant's rights to:

- a) be his or her own spokesperson at the fair hearing, or at the claimant's own expense be represented by legal counsel or another;
- b) confront and cross-examine any witnesses presented at the hearing; and
- c) present witnesses on his or her own behalf.

Arrangements for the date, time, and place of the hearing will take into consideration the convenience of the claimant and hearing authority. The claimant will be given timely notice to allow for preparation and will also be given adequate preliminary information about the hearing procedure to allow for effective preparation of his or her case.

### ***Section 7.3—The Fair Hearing Authority***

The municipal officers will appoint a fair hearing authority (FHA) that will determine, based on all the evidence presented at the fair hearing, whether the claimant(s) were eligible to receive assistance at the time they applied for GA. The FHA is charged with ensuring that GA is administered in accordance with state law and this Ordinance.

The FHA may consist of the municipal officers, one or more persons appointed by the municipal officers to act as the FHA, or, if designated by ordinance, a municipal board of appeals created under 30-A M.R.S. § 2691. (22 M.R.S. § 4322). In determining the FHA, the municipal officers will ensure that all person(s) serving as FHA must:

- a) have not participated in the decision which is the subject of the appeal;
- b) be impartial;
- c) be sufficiently skilled in interviewing techniques to be able to obtain evidence and the facts necessary to make a fair determination; and
- d) be capable of evaluating all evidence fairly and realistically, explaining to the claimant the laws and regulations under which the Administrator operated, and conveying to the Administrator any evidence of unsound, unclear, or inadequate policies, practices or actions.

### ***Section 7.4—Fair Hearing Procedure***

At the time that written notice of the date, time, and place of the fair hearing is provided to a claimant, he/she will also be given adequate information about the hearing procedure to allow him/her to effectively prepare his or her case. The claimant shall be permitted to review his or her file before the hearing. At a minimum, the claimant will be provided with the following information regarding fair hearing procedures. All fair hearings will:

- a) be conducted in private, with only to the claimant, witnesses, the claimant's legal counsel, others whom the claimant wants present, and Administrator, the Administrator's agents, counsel and witnesses present;
- b) be opened with a presentation of the issue by the FHA;
- c) be conducted informally, without technical rules of evidence, but subject to the requirements of due process;
- d) allow the claimant and the Administrator the option to present their positions for themselves or with the aid of others, including legal counsel;
- e) give all participants an opportunity to present oral or written testimony or documentary evidence, offer rebuttal; question witnesses presented at the hearing; and examine all evidence presented at the hearing;
- f) result in a decision, based exclusively on evidence or testimony presented at the hearing; and
- g) be tape recorded, and result in a written decision that is given to the claimant and filed with evidence introduced at the hearing. The FHA will allow the claimant to establish all pertinent facts and circumstances, and to advance any arguments without undue interference. Information that the claimant does not have an opportunity to hear or see will not be used in the fair hearing decision or made part of the hearing record. Any material reviewed by the FHA must be made available to the claimant or his or her representative. The claimant will be responsible for preparing a written transcript if he/she wishes to pursue court action.

The FHA shall admit all evidence if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. (22 M.R.S. § 4322).

**Claimant's Failure to Appear.** If the claimant fails to appear at the hearing, the FHA will send a written notice to the claimant indicating that the Administrator's decision remains unchanged because of the claimant failure to appear. The notice will state that the claimant has 5 working days from receipt of the notice to provide the Administrator with information demonstrating "just cause," for failure to appear.

"Just cause" for a claimant's failure to appear at a fair hearing, may include:

- a) a death or serious illness in the family;
- b) a personal illness which reasonably prevents the party from attending the hearing;
- c) an emergency or unforeseen event which reasonably prevents the party from attending the hearing;
- d) an obligation or responsibility which a reasonable person in the conduct of his or her affairs could reasonably conclude takes precedence over the attendance at the hearing; or
- e) lack of receipt of adequate or timely notice; excusable neglect, excusable inadvertence, or excusable mistake.

If the claimant (or his/her attorney) establishes that just cause existed, the request for the hearing will be reinstated and a hearing rescheduled.

If a claimant who is represented by legal counsel fails to appear at a fair hearing, legal counsel shall not testify in place of the claimant on matters of 'fact' but may cross examine witnesses and make 'legal' arguments on behalf of the claimant.

### ***Section 7.5—The Fair Hearing Decision***

The FHA's decision will be binding on the Administrator, and will be communicated in writing to the claimant within 5 working days after completion of the hearing. Written notice of the decision will contain:

- a) a statement of the issue;
- b) relevant facts brought out at the hearing;
- c) pertinent provisions in the law or GA ordinance related to the decision; and
- d) the FHA's decision and the reasons for it.

A copy of the decision will be given to the claimant. The hearing record and the case record will be maintained by the Administrator.

The written decision will state that if the claimant is dissatisfied with the fair hearing decision, he/she may appeal pursuant to Maine Rule of Civil Procedure, Rule 80B. To take advantage of this right, the claimant must file a petition for review with the Superior Court within 30 days of receipt of the fair hearing decision.

When the decision by the FHA or court authorizes assistance to the claimant, the assistance will be provided within 24 hours.

## **ARTICLE VIII – Recovery of Expenses**

**Recipients.** The municipality may recover the full amount of assistance granted to a person from either the recipient or from any person liable for the recipient, or his or her executors or administrators in a civil action. However, prior to recovering assistance granted, the municipality shall “offset” the value of any workfare performed by a GA recipient against the repayment obligation, at a rate not less than minimum wage.

Before filing a court action to seek repayment of GA benefits previously provided to a recipient, the municipality will seek voluntary repayment after written notice and discussion with the recipient. However, the municipality will not attempt to recover such amounts if, as a result of the repayment, the recipient would again become eligible for GA. (22 M.R.S. § 4318).

**Recipients Anticipating Workers’ Compensation Benefits.** The municipality shall claim a lien on any lump sum payment under the Workers’ Compensation Act or similar law of any other state, which lien shall equal the value of all GA payments made to a recipient of any such lump sum payment. (22 M.R.S. § 4318, 39-A M.R.S. § 106). After issuing any GA on behalf of a recipient who has applied for or is receiving Workers’ Compensation, the municipality shall file a notice of the municipal lien with the GA recipient and the Maine Office of Secretary of State, Uniform Commercial Code division.

The notice of lien shall be filed on a UCC-1 form which must be signed by the GA recipient who has applied for or is receiving Workers’ Compensation. Any GA applicant who has applied for or who is receiving Workers’ Compensation benefits and who refuses to sign a properly prepared UCC-1 form will be found ineligible to receive GA until he or she provides the required signature. The municipality shall also send a photocopy of that filing to the recipient’s Worker’s Compensation attorney, if known, the applicant’s employer or the employer’s insurance company, and, at the Administrator’s discretion, to the Workers’ Compensation Board. The lien shall be enforced at the time any lump sum Workers’ Compensation benefit is issued.

**Recipients of SSI.** All applicants who receive GA while receipt of their Supplemental Security Income (SSI) assistance is pending or suspended (and which therefore may be retroactively issued to the applicant at a later date), will be required to sign a statement on an Interim Assistance Agreement form distributed by the DHHS that authorizes the Social Security Administration to direct a portion of any retroactive SSI payment to the municipality and/or the state in repayment for the GA granted. Any GA applicant who has applied for or who may be applying for SSI, or who may be required to apply for SSI pursuant to 22 M.R.S. § 4317, and who refuses to sign the Interim Agreement SSI authorization form will be found ineligible to receive GA until he or she provides the required signature. (22 M.R.S. § 4318).

**Relatives.** The spouse of an applicant, and the parents of any applicant under the age of 25, are liable for the support of the applicant (22 M.R.S. § 4319). In addition, the grandchildren, children, parents, grandparents, the spouse and a registered domestic partner, are liable for the burial costs of each other. The municipality considers these relatives to be available resources and liable for the support of their relatives in proportion to their respective ability. The municipality may complain to any court of competent jurisdiction to recover any expenses made on behalf of a recipient if the relatives fail to fulfill their responsibility. (22 M.R.S. § 4319).

## **ARTICLE IX – Severability**

If any provision of this Ordinance is declared invalid by a court of competent jurisdiction, such decision shall not invalidate any other provision of the ordinance.

## **APPENDICES**

**APPENDIX A – 2022-2023 GA Overall Maximums**

**APPENDIX B – 2022-2023 Food Maximums**

**APPENDIX C – 2022-2023 GA Housing Maximums, including Recovery Residences**

**APPENDIX D – 2022-2023 Electric Utility Maximums**

**APPENDIX E – 2022-2023 Heating Fuel Maximums**

**APPENDIX F – 2022-2023 Personal Care & Household Supplies Maximums**

**APPENDIX G – Mileage Rate**

**APPENDIX H – Funeral Maximums/Burial Maximums and Cremation Maximums**

## APPENDIX A – 2025-2026 GA Overall Maximums

Effective: 10/1/25 - 9/30/26

### Metropolitan Areas

#### Persons in Household

COUNTY	1	2	3	4	5*
<b>Bangor HMFA:</b> Bangor, Brewer, Eddington, Glenburn, Hampden, Hermon, Holden, Kenduskeag, Milford, Old Town, Orono, Orrington, Penobscot Indian Island Reservation, Veazie	1,137	1,225	1,566	2,008	2,401
<b>Cumberland County HMFA:</b> Baldwin, Bridgton, Brunswick, Harpswell, Harrison, Naples, New Gloucester, Pownal, Sebago	1,317	1,463	1,920	2,410	2,934
<b>Lewiston/Auburn MSA:</b> Auburn, Durham, Greene, Leeds, Lewiston, Lisbon, Livermore, Livermore Falls, Mechanic Falls, Minot, Poland, Sabattus, Turner, Wales	988	1,093	1,395	1,829	2,030
<b>Penobscot County HMFA:</b> Alton, Argyle UT, Bradford, Bradley, Burlington, Carmel, Carroll plantation, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Drew plantation, East Central Penobscot UT, East Millinocket, Edinburg, Enfield, Etna, Exeter, Garland, Greenbush, Howland, Hudson, Kingman UT, Lagrange, Lakeville, Lee, Levant, Lincoln, Lowell town, Mattawamkeag, Maxfield, Medway, Millinocket, Mount Chase, Newburgh Newport, North Penobscot UT, Passadumkeag, Patten, Plymouth, Prentiss UT, Seboeis plantation, Springfield, Stacyville, Stetson, Twombly UT, Webster plantation, Whitney UT, Winn, Woodville	923	968	1,271	1,601	1,895
<b>Portland HMFA:</b> Cape Elizabeth, Casco, Chebeague Island, Cumberland, Falmouth, Freeport, Frye Island, Gorham, Gray, Long Island, North Yarmouth, Portland, Raymond, Scarborough, South Portland, Standish, Westbrook, Windham, Yarmouth; Buxton, Hollis, Limington, Old Orchard Beach	1,571	1,721	2,212	2,798	3,429
<b>Sagadahoc HMFA:</b> Arrowsic, Bath, Bowdoin, Bowdoinham, Georgetown, Perkins UT, Phippsburg, Richmond, Topsham, West Bath, Woolwich	1,141	1,285	1,579	2,212	2,651

COUNTY	1	2	3	4	5*
<b>York County HMFA:</b> Acton, Alfred, Arundel, Biddeford, Cornish, Dayton, Kennebunk, Kennebunkport, Lebanon, Limerick, Lyman, Newfield, North Berwick,	1,278	1,443	1,778	2,347	2,586

Ogunquit, Parsonsfield, Saco, Sanford, Shapleigh, Waterboro, Wells					
<b>York/Kittery/S.Berwick HMFA:</b> Berwick, Eliot, Kittery, South Berwick, York	1,487	1,681	2,168	2,807	3,641

\*Note: Add \$75 for each additional person.

## Non-Metropolitan Areas

### Persons in Household

COUNTY	1	2	3	4	5*
Aroostook County	803	871	1,085	1,486	1,569
Franklin County	842	936	1,228	1,621	1,816
Hancock County	1,139	1,140	1,349	1,787	1,791
Kennebec County	985	991	1,276	1,599	1,913
Knox County	972	987	1,200	1,597	1,780
Lincoln County	1,190	1,213	1,375	1,807	2,217
Oxford County	937	942	1,223	1,623	2,024
<b><i>Piscataquis County</i></b>	848	943	1,236	1,489	1,738
Somerset County	932	1,002	1,177	1,532	1,661
Waldo County	1,117	1,123	1,347	1,734	1,661
Washington County	871	875	1,136	1,582	1,695

\* Please Note: Add \$75 for each additional person.

## **APPENDIX B – 2025-2026 Food Maximums**

Effective: 10/01/25 to 09/30/26

Please Note: The maximum amounts allowed for food are established in accordance with the U.S.D.A. Thrifty Food Plan. As of October 1, 2025, those amounts are:

<b>Number in Household</b>	<b>Weekly Maximum</b>	<b>Monthly Maximum</b>
1	\$ 69.30	\$ 298.00
2	126.98	546.00
3	182.56	785.00
4	231.16	994.00
5	275.12	1,183.00
6	330.47	1,421.00
7	365.35	1,571.00
8	416.05	1,789.00

**Note: For each additional person add \$2185per month.**

## APPENDIX C – 2025-2026 GA Housing Maximums

Effective: 10/01/25 to 09/30/26

### (Heated & Unheated Rents)

#### Metropolitan FMR Areas

<u>Penobscot Cty. HMFA</u>	<u>Unheated</u>		<u>Heated</u>	
Bedrooms	<u>Weekly</u>	<u>Monthly</u>	<u>Weekly</u>	<u>Monthly</u>
0	181	779	210	902
1	183	786	220	945
2	242	1,040	289	1,244
3	308	1,323	365	1,570
4	363	1,560	432	1,859
<b>Portland HMFA</b>				
Bedrooms	<u>Weekly</u>	<u>Monthly</u>	<u>Weekly</u>	<u>Monthly</u>
0	319	1,373	348	1,496
1	358	1,539	395	1,698
2	461	1,981	508	2,185
3	586	2,520	644	2,767
4	720	3,094	789	3,393
<b>Sagadahoc Cty. HMFA</b>				
Bedrooms	<u>Weekly</u>	<u>Monthly</u>	<u>Weekly</u>	<u>Monthly</u>
0	232	997	261	1,120
1	256	1,103	293	1,262
2	313	1,348	361	1,552
3	450	1,934	507	2,181
4	539	2,316	608	2,615
<b>York Cty. HMFA</b>				
Bedrooms	<u>Weekly</u>	<u>Monthly</u>	<u>Weekly</u>	<u>Monthly</u>
0	264	1,134	292	1,257
1	293	1,261	330	1,420
2	360	1,547	407	1,751
3	481	2,069	593	2,316
4	524	2,251	593	2,550
<b>York/Kittery/S. Berwick HMFA</b>				
Bedrooms	<u>Weekly</u>	<u>Monthly</u>	<u>Weekly</u>	<u>Monthly</u>
0	312	1,343	341	1,466
1	349	1,499	386	1,658
2	450	1,937	498	2,141
3	588	2,529	646	2,776
4	769	3,306	838	3,605

## APPENDIX D – 2025-2026 Electric Utility Maximums

Effective: 10/01/25 to 09/30/26

### ELECTRIC

**NOTE:** For an electrically heated dwelling also see “Heating Fuel” maximums below. But remember, an applicant is *not automatically* entitled to the “maximums” established↓applicants must demonstrate need.

1) **Electricity Maximums for Households Without Electric Hot Water:** The maximum amounts allowed for utilities, for lights, cooking and other electric uses *excluding* electric hot water and heat:

a) Number in Household	b) Weekly	Monthly
1	\$19.95	\$ 85.50
2	\$22.52	\$ 96.50
3	\$24.97	\$107.00
4	\$27.53	\$118.00
5	\$29.88	\$128.50
6	\$32.55	\$139.50

**NOTE:** For each additional person add \$10.50 per month.

2) **Electricity Maximums for Households With Electrically Heated Hot Water:** The maximum amounts allowed for utilities, hot water, for lights, cooking and other electric uses *excluding* heat:

Number in Household	Weekly	Monthly
1	\$29.63	\$127.00
2	\$34.07	\$146.00
3	\$39.67	\$170.00
4	\$46.32	\$198.50
5	\$55.65	\$238.50
6	\$58.68	\$251.50

**NOTE:** For each additional person add \$14.50 per month.

**NOTE:** For electrically heated households, the maximum amount allowed for electrical utilities per month shall be the sum of the appropriate maximum amount under this subsection and the appropriate maximum for heating fuel as provided below.

## APPENDIX E – 2022-2023 Heating Fuel Maximums

Effective: 10/01/22 to 09/30/23

<u>Month</u>	<u>Gallons</u>	<u>Month</u>	<u>Gallons</u>
September	50	January	225
October	100	February	225
November	200	March	125
December	200	April	125
		May	50

**NOTE:** When the dwelling unit is heated electrically, the maximum amount allowed for heating purposes will be calculated by multiplying the number of gallons of fuel allowed for that month by the current price per gallon. When fuels such as wood, coal and/or natural gas are used for heating purposes, they will be budgeted at actual rates, if they are reasonable. No eligible applicant shall be considered to need more than 7 tons of coal per year, 8 cords of wood per year, 126,000 cubic feet of natural gas per year, or 1000 gallons of propane.

## APPENDIX F – 2024-2025 Personal Care & Household Supplies Maximums

Effective: 10/01/24 to 09/30/25

<u>Number in Household</u>	<u>Weekly Amount</u>	<u>Monthly Amount</u>
1-2	\$10.50	\$45.00
3-4	\$11.60	\$50.00
5-6	\$12.80	\$55.00
7-8	\$14.00	\$60.00

**NOTE:** For each additional person add \$1.25 per week or \$5.00 per month.

### SUPPLEMENT FOR HOUSEHOLDS WITH CHILDREN UNDER 5

When an applicant can verify expenditures for the following items, a special supplement will be budgeted as necessary for households with children under 5 years of age for items such as cloth or disposable diapers, laundry powder, oil, shampoo, and ointment up to the following amounts:

<u>Number of Children</u>	<u>Weekly Amount</u>	<u>Monthly Amount</u>
1	\$12.80	\$55.00
2	\$17.40	\$75.00
3	\$23.30	\$100.00
4	\$27.90	\$120.00

## **APPENDIX G – Mileage Rate**

This municipality adopts the State of Maine travel expense reimbursement rate as set by the Office of the State Controller. The current rate for approved employment and necessary medical travel, etc. is 54 cents (54¢) per mile.

Please refer to the Office of State Controller for changes to this rate: Telephone: 626-8420 or visit: <http://www.state.me.us/osc/>.

## APPENDIX H – Funeral Maximums /Burial Maximums and Cremation Maximums

Effective: 10/01/25 to 09/30/26

The maximum amount of general assistance granted for the purpose of burial is **\$1,620**.

The municipality's obligation to provide funds for burial purposes is limited to a reasonable calculation of the funeral director's direct costs, not to exceed the maximum amounts of assistance described in this section. Allowable burial expenses are limited to:

- removal of the body from a local residence or institution
- a secured death certificate or obituary
- embalming
- a minimum casket
- a reasonable cost for necessary transportation
- other reasonable and necessary specified direct costs, as itemized by the funeral director and approved by the municipal Administrator.

Additional costs may be allowed by the GA Administrator, where there is an actual cost, for:

- the wholesale cost of a cement liner if the cemetery by-laws require one;
- the opening and closing of the grave site; and
- a lot in the least expensive section of the cemetery. If the municipality is able to provide a cemetery lot in a municipally owned cemetery or in a cemetery under municipal control, the cost of the cemetery lot in any other cemetery will not be paid by the municipality.

### Cremation Maximums

The maximum amount of assistance granted for a cremation shall be \$1,125.

The municipality's obligation to provide funds for cremation purposes is limited to a reasonable calculation of the funeral director's direct costs, not to exceed the maximum amounts of assistance described in this section. Allowable cremation expenses are limited to:

- removal and transportation of the body from a local residence or institution
- professional fees
- crematorium fees
- a secured death certificate or obituary
- other reasonable and necessary specified direct costs, as itemized by the funeral director and approved by the municipal administrator.

Additional costs may be allowed by the GA Administrator where there is an actual cost, for:

- a cremation lot in the least expensive section of the cemetery
- a reasonable cost for a burial urn not to exceed \$55
- transportation costs borne by the funeral director at a reasonable rate per mile for transporting the remains to and from the cremation facility.

**ARTICLE IV. PAID SEXUAL CONTACT ORDINANCE**

**Sec. 10-901. Definitions.**

For the purposes of this Article, the following definitions apply:

*Sexual contact* means any touching of the genitals, directly or through clothing, for the purpose of arousing or gratifying sexual desire.

*Pecuniary benefit* means any direct or indirect payment of money or any other object of value.

(Ord. No. 8-92/93, 10-19-92)

**Sec. 10-902. Sexual contact for pecuniary benefit prohibited.**

- (a) Engaging in, or agreeing to engage in, or offering to engage in sexual contact in return for a pecuniary benefit to be received by the person engaging in the sexual contact or by a 3rd person is prohibited.
- (b) Providing or agreeing to provide a person for purposes of engaging in sexual contact in return for a pecuniary benefit to be received by the person engaging in the sexual contact or by a 3rd person is prohibited.
- (c) Causing or aiding another person to engage in sexual contact in return for a pecuniary benefit to be received by the person engaging in the sexual contact or by a 3rd person is prohibited.
- (d) Leasing or otherwise permitting a place controlled by the defendant in any action to enforce this Article, alone or in association with others, to be used as a site for sexual contact for pecuniary benefit to any person is prohibited.

(Ord. No. 8-92/93, 10-19-92)

**Sec. 10-903. Penalties.**

The violation of any provision of this article shall be punished by a fine not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1000) for each offense. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the city may enjoin or abate any violation of this article by appropriate action, including but not limited to revocation of any city license for a premises or business in which sexual contact for pecuniary benefit is transacted.

(Ord. No. 8-92/93, 10-19-92)

**Sec. 10-904. Severability.**

If any section, phrase, sentence or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

(Ord. No. 8-92/93, 10-19-92)

**Sec. 10-905 to 10-1000. Reserved.**

(Ord. 17-92/93, 4-5-93 & Referendum confirmation 11-2-93)

**ARTICLE V. PUBLIC INDECENCY ORDINANCE****Sec. 10-1001. Purpose.**

The two purposes of this ordinance are (1) to prohibit certain acts of commercial exploitation of human sexuality in commercial or business establishments within the City of South Portland in order to reduce the likelihood of criminal activity, moral degradation, sexually transmitted diseases and disturbances of the peace and good order of the community which may occur when such commercial exploitation is permitted in such places, and (2) to protect the health, safety, welfare and morals of the community by using the government's recognized and traditional police power to protect societal order, morality and physical and emotional health in public places without infringing on protected First Amendment rights.

(Ord. No. 17-92/93, 4-5-93 & Referendum confirmation 11/2/93)

**Sec. 10-1002. Definitions.**

For the purposes of this section, the following definitions apply:

- (a) *Sexual intercourse* means any penetration of the female sex organ by the male sex organ. Emission is not required.
- (b) *Sexual act* means any act of sexual gratification between 2 persons involving direct physical contact between the sex organs of one and the mouth or anus of the other or direct physical contact between the sex organs of one and the sex organs of the other, or direct physical contact between the sex organs of one and an instrument or device manipulated by the other. A sexual act may be proved without allegation or proof of penetration.
- (c) *Sexual contact* means any touching of the genitals, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire.
- (d) *Nudity* means the showing of a person's genitals, pubic area, or buttocks with less than a fully opaque covering.
- (e) *Public place* means a placeto which the public at large or a substantial group has access, including but not limited to commercial or business establishments, public ways, schools, government-owned facilities, and the lobbies, hallways and basement portions of apartment houses, hotels, motels, public buildings and transportation terminals.
- (f) *Public indecency* means the knowing or intentional commission of an act of sexual intercourse, a sexual act, sexual contact or nudity in a public place.

(Ord. No. 17-92/93, 4-5-93 & Referendum confirmation 11/2/93; Ord. No. 21-21/22, 5/17/2022 [Fiscal Note: Less than \$1000])

**Sec. 10-1003. Public indecency prohibited.**

- (a) Engaging in public indecency is prohibited.
- (b) Encouraging or permitting another person or persons to engage in an act or acts of public indecency by the person who or entity which owns, leases or otherwise controls a premises on which the act or acts of public indecency occur(s) is

prohibited.

(Ord. No. 17-92/93, 4-5-93 & Referendum confirmation 11/2/93)

**Sec. 10-1004. Penalties.**

The violation of any provision of this article shall be punished by a fine not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for each offense. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the city may enjoin or abate any violation of this article by appropriate action, including but not limited to revocation of any City license for a premises or commercial or business establishment in which the public indecency occurs.

(Ord. No. 17-92/93, 4-5-93 & Referendum confirmation 11/2/93)

**Sec. 10-1005. Severability.**

If any section, phrase, sentence or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

(Ord. No. 17-92/93, 4-5-93 & Referendum confirmation 11/2/93)

**Sec. 10-1006. Nursing women.**

Notwithstanding any City ordinance to the contrary, no City ordinance shall prohibit, or be interpreted or construed to prohibit or regulate, women from nursing or breast-feeding in public or private.

(Ord. 23-92/93, 7-7-93)

**Sec. 10-1007 to 10-1100. Reserved.**

(Ord. No. 17-92/93, 4-5-93 & Referendum confirmation 11/2/93)

**ARTICLE VI. DISCRIMINATION BASED ON SEXUAL ORIENTATION****DIVISION 1. GENERALLY****Sec. 10-1101. Legislative findings and statement of policy.**

The City finds that:

(1) The population of the City of South Portland is diverse and includes people of every sexual orientation, some of whom are at risk of being discriminated against in employment opportunities, housing, access to public accommodations and in the extension of financial credit; and

(2) Neither the federal government, nor the state, nor the city currently has any law prohibiting discrimination based on sexual orientation.

Therefore, to protect the public health, safety and welfare, it is declared to be the policy of this City to prevent discriminatory practices that infringe on the basic human right to a life with dignity, and the causes of such practices, so that corrective measures may, where possible, be promptly recommended and implemented, and to prevent discrimination in employment, housing, access to public accommodations or in the extension of credit on account of sexual orientation.

**Sec. 10-1102. Definitions.** As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

*Discriminate.* "Discriminate" includes, without limitation, segregate or separate.

*Employee.* "Employee" does not include any individual employed by his parents, spouse or child. For the purpose of this Article, "Employee" includes but is not limited to, unpaid volunteers.

*Employer.* "Employer" includes any person in this city employing any number of employees, whether paid or volunteer, whatever the place of employment of such employees, and any person outside this city employing any number of employees whose usual place of employment is in this city; any person acting in the interest of any employer, directly or indirectly; and labor organizations, whether or not organized on a religious, fraternal or sectarian basis, with respect to their employment of employees; but does not include a religious or fraternal corporation or association, not organized for private profit and in fact not conducted for private profit, with respect to employment of its members of the same religion, sect or fraternity.

*Employment agency.* "Employment agency" includes any person undertaking with or without compensation to procure opportunities to work, or to procure, recruit, refer or place employees; it includes, without limitation, placement services, training schools and centers, and labor organizations, to the extent that they act as employee referral sources; and it includes any agent of such person.

*Housing accommodation.* "Housing accommodation" includes any building or structure or portion thereof, or any parcel of land, developed or undeveloped, which is occupied, or is intended to be occupied or to be developed for occupancy, for residential purposes excepting:

(1) The rental of a one-family unit of a two-family dwelling, one (1) unit of which is occupied by the owner;

(2) The rental of not more than four (4) rooms of a one-family dwelling which is

occupied by the owner;

(3) The rental of any dwelling owned, controlled or operated for other than a commercial purpose by a religious corporation to its membership unless such membership is restricted on account of sexual orientation.

*Person.* "Person" includes one (1) or more individuals, partnerships, associations, organizations, corporations, municipal corporations, legal representatives, trustees, trustees in bankruptcy, receivers and other legal representatives, and includes the city and all agencies thereof.

*Place of public accommodation.* "Place of public accommodation" means any establishment which in fact caters to, or offers it goods, facilities or services to, or solicits or accepts patronage from, the general public; and it includes, but is not limited to: inns, taverns, roadhouses, hotels, whether conducted for the entertainment or accommodation of transient guests or of those seeking health, recreation or rest, restaurants, eating houses or any place where food is sold for consumption on the premises; buffets, saloons, barrooms or any store, park or enclosure where spirituous or malt liquors are sold, ice cream parlors, confectioneries, soda fountains and all stores where beverages of any kind are retailed for consumption on the premises; retail stores and establishments; dispensaries, clinics, hospitals, rest rooms, bathhouses, barber shops, beauty parlors, theaters, motion picture houses, music halls, airdromes, roof gardens, race courses, skating rinks, amusement and recreation parks, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool parlors, swimming pools, seashore accommodations and boardwalks, public libraries, garages and gasoline stations; all public conveyances operated on land, water or in the air as well as the stations and terminals thereof; public halls and public elevators of buildings occupied by two (2) or more tenants or by the owner and one (1) or more tenants; and educational institutions.

*Real estate broker and salesman.* "Real estate broker" and "real estate salesman" have the same definitions as are given respectively in Title 32, Section 4001, subsections 2 and 3 of the Maine Revised Statutes Annotated; but include all persons meeting those definitions, whether or not they are licensed or required to be licensed.

*Sexual orientation.* "Sexual orientation" means having an orientation for, or being identified as having an orientation for, heterosexuality, homosexuality or bisexuality, having a history of that preference or being identified with that preference.

## ***DIVISION 2. FAIR EMPLOYMENT***

### **Sec. 10-1103. Unlawful employment discrimination.**

It shall be unlawful employment discrimination, in violation of this article, except where based on a bona fide occupational qualification:

(1) For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of sexual orientation or because of such reason to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment, or in recruiting of individuals for employment or in hiring them, to utilize any employment agency which such employer knows, or has reasonable cause to know, discriminates against individuals because of their sexual orientation.

(2) For any employment agency to fail or refuse to classify properly or refer for employment or otherwise discriminate against any individual because of sexual orientation, or to comply with an employer's request for the referral of job

applicants, if such request indicates whether directly or indirectly that such employer will not afford full and equal employment opportunities to individuals regardless of their sexual orientation.

(3) For any labor organization to exclude from apprenticeship or membership, or to deny full and equal membership rights, to any applicant for membership, because of sexual orientation, or because of such reason to deny a member full and equal membership rights, expel from membership, penalize or otherwise discriminate in any manner with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, representation, grievances or any other matter directly or indirectly related to membership or employment, whether or not authorized or required by the constitution or bylaws of such labor organization or by a collective labor agreement or other contract, or to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against any member because of such sexual orientation, or to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(4) For any employer or employment agency or labor organization, prior to employment or admission to membership of any individual, to:

a. Elicit or attempt to elicit any information directly or indirectly pertaining to sexual orientation except where some privileged information is necessary for an employment agency or labor organization to make a suitable job referral;

b. Make or keep a record of sexual orientation;

c. Use any form of application for employment or personnel or membership blank containing questions or entries directly or indirectly pertaining to sexual orientation;

d. Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon sexual orientation;

e. Establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of sexual orientation; or

(5) For an employer or employment agency or labor organization to discriminate in any manner against any individual because they have opposed any practice which would be a violation of this article, or because they have made a charge, testified or assisted in any manner in any investigation, proceeding or hearing under this article.

**Sec. 10-1104. Not unlawful employment discrimination.**

It shall not be unlawful employment discrimination:

(1) *Records.* After employment or admission to membership, to make a record of such features of an individual as are needed in good faith for the purpose of identifying them, provided such record is intended and used in good faith solely for such identification, and not for the purpose of discrimination in violation of this article.

(2) *Required records.* To record any data required by law, or by the rules and regulations of any state or federal agency, provided such records are kept in good faith for the purpose of complying with law, and are not used for the purpose of discrimination in violation of this article.

**DIVISION 3. FAIR HOUSING****Sec. 10-1105. Unlawful housing discrimination.**

It shall be unlawful housing discrimination, in violation of this article:

(1) For any owner, lessee, sublessee, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation, or any agent of these to make or cause to be made any written or oral inquiry concerning the sexual orientation of any prospective purchaser, occupant or tenant of such housing accommodation; or to refuse to show or refuse to sell, rent, lease, let or otherwise deny to or withhold from any individual such housing accommodation because of sexual orientation of such individual; or to issue any advertisement relating to the sale, rental or lease of such housing accommodation which indicates any preference, limitation, specification or discrimination based upon sexual orientation; or to discriminate against any individual because of sexual orientation in the price, terms, conditions or privileges of the sale, rental or lease of any such housing accommodations or in the furnishing of facilities or services in connection therewith, or to evict or attempt to evict any tenant of any housing accommodation because of sexual orientation;

(2) For any real estate broker or real estate sales person, or agent of one (1) of them, to fail or refuse to show any applicant for a housing accommodation any such accommodation listed for sale, lease or rental, because of sexual orientation of such applicant or of any intended occupant of such accommodation, or to misrepresent for the purpose of discriminating on account of sexual orientation of such applicant or intended occupant the availability or asking price of a housing accommodation listed for sale, lease or rental; or for such a reason to fail to communicate to the person having the right to sell or lease such housing accommodation any offer for the same made by any applicant thereof; or in any other manner to discriminate against any applicant for housing because of sexual orientation of such applicant or of any intended occupant of the housing accommodation, or to make or cause to be made any written or oral inquiry or record concerning the sexual orientation of any such applicant or intended occupant, or to accept for listing any housing accommodation when the person having the right to sell or lease the same has directly or indirectly indicated an intention of discriminating among prospective tenants or purchasers on the ground of their sexual orientation; or

(3) For any person to whom application is made for a loan or other form of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, whether secured or unsecured, or agent of such person, to make or cause to be made any oral or written inquiry concerning the sexual orientation of any individual seeking such financial assistance, or of existing or prospective occupants or tenants of such housing accommodations; or to discriminate in the granting of such financial assistance, or in the terms, conditions or privileges relating to the obtaining or use of any such financial assistance, against any applicant because of the sexual orientation of such applicant or of the existing or prospective occupants or tenants.

**Sec. 10-1106. Application.**

Nothing in this article shall be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person having the right to sell, rent, lease or manage a housing accommodation to set up and enforce specifications in the selling, renting, leasing or letting thereof or in the furnishings of facilities or services in connection therewith which are not based on the sexual orientation of any prospective or actual purchaser, lessee, tenant or occupant thereof. Nothing in this article contained shall be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person making loans for or offering financial assistance in the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations to set

standards and preferences, terms, conditions, limitations or specifications for the granting of such loans or financial assistance which are not based on the sexual orientation of any existing or prospective owner, lessee, tenant or occupant of such housing accommodation.

#### **DIVISION 4. PUBLIC ACCOMMODATIONS**

##### **Sec. 10-1107. Unlawful public accommodations.**

It shall be unlawful public accommodations discrimination, in violation of this article:

(1) For any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, to directly or indirectly refuse, withhold from or deny to any person, on account of sexual orientation, any of the accommodations, advantages, facilities or privileges of such place of public accommodation, or for such reason in any manner to discriminate against any person in the price, terms or conditions upon which access to such accommodations, advantages, facilities and privileges may depend; or

(2) For any person to directly or indirectly publish, circulate, issue, display, post or mail any written, printed, painted or broadcast communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any place of public accommodation shall be refused, withheld from or denied to any person on account of sexual orientation, or that the patronage or custom thereof of any person belonging to or purporting to be of any particular sexual orientation is unwelcome, objectionable or not acceptable, desired or solicited, or that the clientele thereof is restricted to members of particular sexual orientation. The production of any such written, printed, painted or broadcast communication, notice or advertisement, purporting to relate to any such place, shall be presumptive evidence in any action that the same was authorized by its owner, manager or proprietor.

#### **DIVISION 5. FAIR CREDIT EXTENSION**

##### **Sec.10-1108. Unlawful credit extension discrimination.**

It shall be unlawful credit discrimination for any creditor to refuse the extension of credit to any person solely on the basis of sexual orientation in any credit transaction. It shall not be unlawful credit discrimination to comply with the terms and conditions of any bona fide group credit life, accident and health insurance plan, for a financial institution extending credit to a married person to require both the husband and the wife to sign a note and a mortgage and to deny credit to persons under the age of eighteen (18) or to consider a person's age in determining the terms upon which credit will be extended.

##### **Sec. 10-1109 Definitions.**

As used in this division, unless the context otherwise requires, the following words shall have the following meanings:

*Application for credit.* "Application for credit" means any communication, oral or written, by a person to a creditor requesting an extension of credit to that person or to any other person, and includes any procedure involving the renewal or alteration of credit privileges or the changing of the name of the person to whom credit is extended.

*Credit.* "Credit" means the right granted by a creditor to a person to defer payment of debt or to incur debt and defer its payment, or purchase property or services and defer payment therefor.

*Credit sale.* "Credit sale" means any transaction with respect to which credit is granted or arranged by the seller. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become the owner of the property upon full compliance with his obligations under the contract.

*Credit transaction.* "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit or credit sale.

*Creditor.* "Creditor" means any person who regularly extends or arranges for the extension of credit for which the payment of a finance charge or interest is required, whether in connection with loans, sale of property or services or otherwise.

*Extension of credit.* "Extension of credit" means any acts incident to the evaluation of an application for credit and the granting of credit.

*Invitation to apply for credit.* "Invitation to apply for credit" means any communication, oral or written, by a creditor which encourages or prompts an application for credit.

## **DIVISION 6. ENFORCEMENT**

### **Sec. 10-1110          Enforcement by City or Private Individual.**

The City Council recognizes that both government and private individuals have legitimate interests in preventing and responding to human rights violations. Therefore, the provisions of this Article may be enforced by either one or both of the following procedures:

(a) City enforcement. This Article may be enforced by the South Portland Police Chief, or his/her designee in the South Portland Police Department, in conjunction with the Corporation Counsel or other authorized legal counsel for the City. An enforcement action pursuant to this authority may be initiated by a complaint from a person alleging discrimination or may be initiated by the City.

(b) Private enforcement. This Article may be enforced in Maine District Court as a local ordinance enforcement action brought by a private individual alleging discrimination in violation of this Article. Within the time limit stated in Section 10-1112(3) below, a person who has been subject to unlawful discrimination may directly file a private enforcement action against the person or persons who committed the unlawful discrimination.

### **Sec. 10-1111.          Burden of proof.**

In any civil action under this article, the burden shall be on the person seeking relief to prove, by a fair preponderance of the evidence, that the alleged unlawful discrimination occurred.

### **Sec. 10-1112.          Actions filed under this article.**

In any action filed under this article by any person:

(1) Where any person who has been the subject of alleged unlawful housing discrimination has not acquired substitute housing, temporary injunctions against the sale or rental to others of the housing accommodations as to which the violation allegedly occurred, or against the sale or rental of a single housing accommodation substantially identical thereto and controlled by the alleged violator shall be liberally granted in the interests of furthering the purposes of this article, when it appears probable that the plaintiff will succeed upon final disposition of the case.

(2) If the court finds that unlawful discrimination occurred, its judgment shall specify an appropriate remedy or remedies therefor. Such remedies may include, but are not limited to:

- a. An order to cease and desist from the unlawful practices specified in the order;
- b. An order to employ or reinstate a victim of unlawful employment discrimination, with or without back pay;
- c. An order to accept or reinstate such a person in a union;
- d. An order to rent or sell a specified housing accommodation, or one (1) substantially identical thereto if controlled by the respondent, to a victim of unlawful housing discrimination;
- e. An order requiring the disclosure of the locations and descriptions of all housing accommodations which the violator has the right to sell, rent, lease or manage;
- f. An order to pay in cases of unlawful price discrimination the victim thereof three (3) times the amount of any excessive price demanded and paid by reason of such unlawful discrimination; and
- g. An order to pay to the complainant civil penal damages not in excess of one thousand dollars (\$1,000.00) in the case of the first order under this article against the respondent, not in excess of two thousand dollars (\$2,000.00) in the case of a second such order against the respondent, and not in excess of three thousand dollars (\$3,000.00) in the case of a third or subsequent such order against the respondent.

(3) The action shall be commenced not more than two (2) years after the act of unlawful discrimination complained of.

**Sec. 10-1113. Attorneys' fees and costs.**

In any civil action under this article, the court, in its discretion, may allow the prevailing party reasonable attorneys' fees and costs.

**DIVISION 7. MISCELLANEOUS**

**Sec. 10-1114. Exceptions.**

In addition to the other exceptions and exemptions provided in this Article, this Article does not:

- (1) Require the teaching of any particular subject in the public schools;

- (2) Apply to a religious corporation, association or organization; or
- (3) Require any form of affirmative action based on sexual orientation.

**Sec. 10-1115. Severability.**

If any section, phrase, sentence or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

(Referendum 11/3/98, effective 11/9/98)

**Sec. 10-1116–10-1120. Reserved.**

**ARTICLE VII. RESERVED**

**Sec. 10-1121. -- Sec. 10-1133. Repealed**

(Ord. No. 6-98/99, 9/9/98 [Fiscal Note: Less than \$1000]; Ord. No. #8-12/13, 11/19/12 [Fiscal Note: Less than \$1000])



**ARTICLE VIII. PROPERTY TAX ASSISTANCE ORDINANCE****Sec. 10-1201. Purpose**

The purpose of this Ordinance is to establish a program pursuant to Chapter 907-A of Title 36 of the Maine Revised Statutes to provide property tax assistance to persons 68 years of age and over who reside in the City of South Portland. Under this program, the City of South Portland will provide refund payments to those individuals who qualify as South Portland resident beneficiaries of the State of Maine Residents Property Tax Fairness Credit pursuant to Title 36 of the Maine Revised Statutes, as may be amended from time to time and meet the criteria established by this Ordinance.

(Ord. No. 9-13/14, 3/3/14 [Fiscal Note: Less than \$1000], Ord. No. 8-18/19, 1/15/19 [Fiscal Note: Less than \$1000])

**Sec. 10-1202. Definitions**

**Finance Director:** The Finance Director or his/her designee.

**Homestead:** A homestead is a dwelling owned or rented by the person seeking tax assistance under this Ordinance or held in a revocable living trust for the benefit of that person. The dwelling must be occupied by that person and that person's dependents as a home.

**Property Tax Assistance Program:** The program established by the City of South Portland under this Ordinance. Also referred to as the "Program."

**Qualifying applicant:** A qualifying applicant is a person who is determined by the Finance Director, after review of a complete application under Section 10-1204 of this Ordinance, to be eligible for a refund payment under the terms of this Ordinance.

**Sec. 10-1203. Criteria for Participation**

In order to participate in the Property Tax Assistance Program, an applicant shall demonstrate all of the following:

- a. The applicant is 65 years of age or older at the time of application.
- b. The applicant has owned or rented a homestead in the City of South Portland at the time of the application and for the entire two years prior to the date of application.
- c. The applicant has qualified to receive a tax credit under the provisions of the State of Maine Residents Property Tax Fairness Credit Program.
- d. The applicant has been a resident of the City of South Portland for at least seven out of the last ten years immediately preceding the date of application for participation in the Program.
- e. If the applicant owns the homestead, the applicant shall have applied for a homestead property tax exemption pursuant to the Maine Resident Homestead Property Tax Exemption program.

(Ord. No. 9-13/14, 3/3/14 [Fiscal Note: Less than \$1000] Ord. No. 8-18/19, 1/15/19 [Fiscal Note: Less than \$1000])

**Sec. 10-1204. Application and Payment Procedures**

Persons seeking to participate in the Property Tax Assistance Program shall submit no more than one written application to the Finance Director between **January 1st** and **May 1st** of each year. Applications are required every year to participate in the Program. The Finance Director shall provide an annual application form for the Program, which shall include, at a minimum, the applicant's name, homestead address and contact information. Applicants shall submit with the application a signed copy of their Form 1040ME, including Schedule PTFC (Property Tax Fairness Credit), as proof and dollar amount of State Property Tax Fairness Credit eligibility. The Program is based on the State Property Tax Fairness Credit and relates to taxes paid or rent paid in the preceding calendar year. The Finance Director shall review and determine if the application is complete and accurate and if the applicant is otherwise eligible to participate in the Program. The Finance Director shall notify an applicant if an application is determined to be incomplete. The Finance Director's decision on eligibility to participate in the Program shall be final.

(Ord. No. 9-12/13, 12/3/12 [Fiscal Note: Less than \$1000]; (Ord. No. 9-13/14, 3/3/14 [Fiscal Note: Less than \$1000]; Ord. No. 8-18/19, 2/5/19 [Fiscal Note: Less than \$1000] Ord. No. 8-18/19, 1/15/19 [Fiscal Note: Less than \$1000])

**Sec. 10-1205. Determination of Eligibility and Amount of Eligibility**

If the Finance Director determines that the applicant is eligible to participate in the Program, he/she shall determine the total amount of such eligibility. Eligibility shall be the lesser of the following amounts:

- a. The amount of credit qualified for under the Property Tax Fairness Credit program.
- b. A pro rata share of available monies in the Program Fund based on the amount of one's State Property Tax Fairness Credit; or
- c. \$500.00.

The Finance Director shall report to the City Council in May of each year the projected payments and number of eligible applicants requesting assistance from the Program Fund.

(Ord. No. 9-12/13, 12/3/12 [Fiscal Note: Less than \$1000]; (Ord. No. 9-13/14, 3/3/14 [Fiscal Note: Less than \$1000]; Ord. No. 17, 3/15/2022 [Fiscal Note: Less than \$1000])

**Sec. 10-1206. Program Fund - Limitations upon Payments**

Payments under this Ordinance shall be conditioned upon the existence of sufficient monies in the Program Fund for the fiscal year in which participation is sought. If there are not sufficient monies in the Program Fund to pay all qualifying applicants per application phase under this Ordinance, payments shall be limited to the amounts available in the Fund on a pro rata basis to each eligible participant based on the amount of one's State credit under the Property Tax Fairness Credit Program. In the event that a lack of funding results in no payment or less than the full payment to a qualifying applicant, the request will not carry over to the next year.

(Ord. No. 9-12/13, 12/3/12 [Fiscal Note: Less than \$1000]; (Ord. No. 9-13/14, 3/3/14 [Fiscal Note: Less than \$1000])

**Sec. 10-1207. Creation of the Program Fund**

The Program Fund from which payments shall be made under the terms of this

Ordinance shall be created as follows:

As funds are available, the City Council shall annually appropriate funding from the General Fund or other sources to support this Program. Any surplus monies available after all payments have been made shall remain in the dedicated reserve account hereby established for this Program and shall not lapse into the City's undesignated fund balance.

**Sec. 10-1208. Timing of Payments**

A person who qualifies for a refund under the Program shall have his/her property tax account credited (if the account related to the homestead is still in the name of the eligible applicant) or, if the property tax account related to the homestead is not in the name of the eligible applicant, be mailed a check for the amount of the refund no later than May 1.

(Ord. No. 9-12/13, 12/3/12 [Fiscal Note: Less than \$1000]; (Ord. No. 9-13/14, 3/3/14 [Fiscal Note: Less than \$1000])

**Sec. 10-1209. Limitations upon Payments**

Only one qualifying applicant per homestead shall be entitled to payment under the Program each year. The right to file an application under this Ordinance is personal to the applicant and does not survive the applicant's death, but the right may be exercised on behalf of an applicant by the applicant's legal guardian or attorney-in-fact. If an applicant dies after having filed a timely complete application that results in a determination of qualification, the amount determined by the Finance Director shall be disbursed to another member of the household as determined by the Finance Director. If the applicant was the only member of a household, then no payment shall be made under this Ordinance.

**Sec. 10-1210. Relationship to Poverty Abatement and General Assistance Applications**

The amount of any refund received by a qualifying applicant under this Program may be considered by the City in determining eligibility for a poverty abatement or general assistance.

(Ord. No. 13-10/11, 6/6/11 [Fiscal Note: Less than \$1000])

**Sec. 10-1211. Applicability**

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, the amendments to this Ordinance, as evidenced by Ordinance #9-13/14, when enacted, shall govern applications relating to property tax paid and/or rent paid in calendar year 2013 and thereafter, such that applications relating to property tax paid and/or rent paid in calendar year 2013 must be filed no later than April 15, 2014 and those applications will be processed and any payments will be made.

(Ord. No. 9-12/13, 12/3/12 [Fiscal Note: Less than \$1000]; (Ord. No. 9-13/14, 3/3/14 [Fiscal Note: Less than \$1000])





## ARTICLE IX

**PROHIBITION ON THE SALE OF FLAVORED TOBACCO PRODUCTS****Sec. 10-1301. Title.**

This article shall be known as the "City of South Portland Prohibition on the Sale of Flavored Tobacco Products Ordinance."

**Sec. 10-1302. Purpose.**

This ordinance is enacted pursuant to the City's home rule authority, including, without limitation, 30-A M.R.S. § 3001 and 22 M.R.S. § 1556, both as may be amended from time to time, to protect, preserve, and promote the health, safety, and welfare of City residents by reducing the availability of flavored tobacco products in the City's corporate limits and thereby protecting our residents from a potential lifetime of nicotine addiction and the associated health risks. Flavors in tobacco products increase the appeal of those tobacco products to youth (under age 18) and promote youth initiation to the use of tobacco products. Flavors in tobacco products are also attractive to established tobacco product users.

**Sec. 10-1303. Definitions.**

The following definitions apply to this ordinance:

*Consumer* means an individual who purchases, receives or possesses tobacco products for personal consumption and not for resale.

*Flavored tobacco product* means any tobacco product that imparts a taste or smell, other than the taste or smell of tobacco, either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice. Specifically excluded from this definition are any product(s) containing cannabis, as defined by State law, unless these products contain, are made of, or are derived from tobacco or nicotine.

*Person* means an individual, corporation, limited liability company, partnership or unincorporated association or a member, manager, agent, owner, director, servant, officer or employee thereof.

*Smoking* means the lighting, inhaling, exhaling, burning or carrying of any cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, other similar product that relies on vaporization or aerosolization, or other tobacco product, or carrying or having in one's possession any lighted object giving off smoke from tobacco or any other substance that emits smoke that is customarily used and intended for inhalation into the lungs.

*Tobacco product* means: (1) any product containing, made of, or derived from tobacco or nicotine, natural or synthetic, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or (3) any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, hookahs, and pipes. "Tobacco product" does not include drugs, devices or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined

in the Federal Food, Drug, and Cosmetic Act.

*Tobacco retailer* or *retailer* means a person located within or outside the State who sells tobacco products to a person in the State for personal consumption.

**Sec. 10-1304. Sale of Flavored Tobacco Products Prohibited.**

- (a) No person may sell or permit the sale of any flavored tobacco product, or display, market, or advertise for sale in the City, or display, market, or advertise for sale in the City, any flavored tobacco product.
- (b) There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer of tobacco products, or any employee or agent of a manufacturer of tobacco products, or any person that sells tobacco in the City, has: (1) made a public statement or claim that the tobacco product imparts a taste or smell other than the taste or smell of tobacco; (2) used text or images, or both, on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or smell other than tobacco; or (3) taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a taste or smell other than tobacco.

**Sec. 10-1305. Enforcement.**

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

**Sec. 10-1306. Violations and Penalties.**

Violations shall be subject to fines as set forth in this ordinance. Any person who violates this ordinance shall be penalized with a fine of \$500 for the first violation, and not more than \$500 for each additional violation found on that day; and a fine of \$1,000 for a second violation on a subsequent day, and not more than \$1,000 for each additional violation found on that day; and a fine of \$2,500 for a third violation on a subsequent day and all subsequent violations. A proceeding to recover any such fine shall be commenced by notice of violation issued by the Police Chief or his/her designee to the violator in person or at the violator's last known address. Said fines are to be recovered upon complaint to Maine District or Superior Court in Portland, for use of the City. In any court action, the City may seek injunctive relief to ensure compliance with the terms of this ordinance in addition to fines. The City shall be entitled to recover its costs of enforcement, including its reasonable attorney's fees and court costs.

**Sec. 10-1307. Construction; Severability.**

This ordinance shall be liberally construed and applied to promote its underlying purposes as contained in Sec. 10-1302 of this ordinance. The provisions of this ordinance are severable, and if any provision shall be declared to be invalid or void, the remaining provisions shall not be affected and shall remain in full force and effect.

**Sec. 10-1308. Other Laws.**

Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or State law.

**Sec. 10-1309. Effective Date; Applicability Dates.**

This ordinance shall become effective pursuant to Section 225 of the City Charter. In order to allow time for tobacco retailers to become familiar with the

requirements of this ordinance and to sell existing inventory, the enforcement of this ordinance shall be phased in as follows:

- (a) For any person not holding a State of Maine retail tobacco license or not lawfully operating as such as of the effective date of this ordinance, this ordinance shall become enforceable on the effective date of this ordinance; and
- (b) For any person that holds a State of Maine retail tobacco license and that is lawfully operating as such as of the effective date of this ordinance, this ordinance shall become enforceable as of April 1, 2023.

(Ord. No. 12-22/23, 12/6/2022 [Fiscal Note: Less than \$1000])



**ARTICLE X.****PROHIBITION ON THE SALE OF TOBACCO PRODUCTS TO INDIVIDUALS UNDER AGE 21 AND THE POSSESSION OF TOBACCO PRODUCTS BY INDIVIDUALS UNDER AGE 21****Sec. 10-1401. Title.**

This Article shall be known as the "City of South Portland Prohibition on the Sale of Tobacco Products to Individuals Under Age 21 and the Possession of Tobacco Products by Individuals Under Age 21 Ordinance."

(Ord. No. 13-18/19, 5/14/19 [Fiscal Note: Less than \$1000])

**Sec. 10-1402. Purpose.**

This ordinance is enacted pursuant to the City's home rule authority, including, without limitation, 30-A M.R.S. § 3001 and 22 M.R.S. § 1556, both as may be amended from time to time, to protect, preserve, and promote the health, safety, and welfare of City residents by reducing the availability of tobacco products to individuals under 21 years of age in the City's corporate limits and thereby protecting our residents from a potential lifetime of nicotine addiction and the associated health risks.

(Ord. No. 13-18/19, 5/14/19 [Fiscal Note: Less than \$1000])

**Sec. 10-1403. Definitions.**

The following definitions apply to this ordinance:

*Person* means an individual, corporation, limited liability company, partnership or unincorporated association or a member, manager, agent, owner, director, servant, officer or employee thereof.

*Smoking* means the lighting, inhaling, exhaling, burning or carrying of any cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, other similar product that relies on vaporization or aerosolization, or other tobacco product, or carrying or having in one's possession any lighted object giving off smoke from tobacco or any other substance that emits smoke that is customarily used and intended for inhalation into the lungs.

*Tobacco product* means (1) any product containing, made of, or derived from tobacco or nicotine, natural or synthetic, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or (3) any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, hookahs, and pipes. "Tobacco product" does not include drugs, devices or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(Ord. No. 13-18/19, 5/14/19 [Fiscal Note: Less than \$1000], Ord. No. 12-22/23, 12/6/2022 [Fiscal Note: Less than \$1000])

**Sec. 10-1404. Prohibition against sale or offer for sale of tobacco products to individuals under 21 years of age.**

It shall be unlawful for any person to sell, furnish, give away or offer to sell, furnish, or give away any tobacco product to an individual under 21 years of age.

(Ord. No. 13-18/19, 5/14/19 [Fiscal Note: Less than \$1000])

**Sec. 10-1405. Prohibition against possession of tobacco products by individuals under 21 years of age.**

- (a) Except as provided in subsection (b), it shall be unlawful for an individual under 21 years of age to possess, use or smoke any tobacco product.
- (b) An individual under 21 years of age may transport or permit to be transported in a motor vehicle tobacco products in the original sealed package in which they were placed by the manufacturer if the transportation is in the scope of that individual's employment.

(Ord. No. 13-18/19, 5/14/19 [Fiscal Note: Less than \$1000])

**Sec. 10-1406. Enforcement.**

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

(Ord. No. 13-18/19, 5/14/19 [Fiscal Note: Less than \$1000])

**Sec. 10-1407. Violations and Penalties.**

Violations shall be subject to fines or other penalties as set forth in this ordinance.

- a) Any person who violates Sec. 10-1404 of this ordinance shall be penalized with a fine of \$500 for the first violation, and not more than \$500 for each additional violation found on that day; and a fine of \$1,000 for a second violation on a subsequent day, and not more than \$1,000 for each additional violation found on that day; and a fine of \$2,500 for a third violation on a subsequent day and all subsequent violations. A proceeding to recover any such fine shall be commenced by notice of violation issued by the Police Chief or his/her designee to the violator in person or at the violator's last known address. Said fines are to be recovered upon complaint to Maine District or Superior Court in Portland, for use of the City. In any court action, the City may seek injunctive relief to ensure compliance with the terms of this ordinance in addition to fines. The City shall be entitled to recover its costs of enforcement, including its reasonable attorney's fees and court costs.
- b) Any person who violates Sec. 10-1405 of this ordinance commits a civil violation and may be subject to completing tobacco-related education classes, diversion programs or specified work for the benefit of the City or other public entity or a charitable institution.

(Ord. No. 13-18/19, 5/14/19 [Fiscal Note: Less than \$1000])

**Sec. 10-1408. Construction; Severability.**

This ordinance shall be liberally construed and applied to promote its underlying purposes as contained in Sec. 10-1402 of this ordinance. The provisions of this ordinance

are severable, and if any provision shall be declared to be invalid or void, the remaining provisions shall not be affected and shall remain in full force and effect.

(Ord. No. 13-18/19, 5/14/19 [Fiscal Note: Less than \$1000])

**Sec. 10-1409. Other Laws.**

Nothing in this ordinance shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or State law.

(Ord. No. 13-18/19, 5/14/19 [Fiscal Note: Less than \$1000])

**Sec. 10-1410. Effective Date.**

This ordinance shall become effective pursuant to Section 225 of the City Charter.

(Ord. No. 13-18/19, 5/14/19 [Fiscal Note: Less than \$1000])



**ARTICLE XI. BOARD OF HEALTH****Section 10-1411. Title.**

This Ordinance shall be known as the "City of South Portland Board of Health Ordinance."

**Section 10-1412. Purpose.**

The purpose of this Ordinance is to establish a South Portland Board of Health, as expressly authorized by 22 M.R.S. § 453, as may be amended from time to time.

**Section 10-1413. Definitions.**

The following definition applies to this ordinance:

*Health Officer.* The term "Health Officer" shall mean the City's Local Health Officer appointed pursuant to Charter Sec. 307 and State Law.

**Sec. 10-1414. Powers.**

The powers and duties of the Board of Health shall be to serve as an advisory body to the Health Officer. The City Council may refer specific health-related matters to the Board of Health for its review and recommendation. Such referrals must be done by an Order duly passed by the City Council, and such referred matters must be within the jurisdiction of the Health Officer as defined by State and local law. Unless expressly authorized by the City Council, the Board of Health shall not expend funds. The Board of Health shall not direct the work of the Health Officer or any other employee or appointed official of the City.

**Sec. 1415. Membership and Officers.**

The City Council shall appoint three members, one of whom shall be a physician if available in the community, and one of whom shall be a woman. Nothing herein shall prevent the designated female appointee from also serving as the designated physician appointee. Appointees must have significant knowledge and experience in either a medical or scientific field related to public health. All voting members shall be South Portland residents. Appointments shall be for three year terms, except that when Board members are first appointed, one member shall be appointed for one year, one for two years and one for three years. The Health Officer shall be a non-voting member of the Board and shall serve as Secretary *ex-officio*, keeping a record of all meetings.

At the first meeting of each year, the Board of Health shall meet to elect officers, to include a Chair and Vice Chair, for one-year terms. The Chair shall be responsible for presiding over meetings of the Board of Health, working with the Health Officer to create meeting agendas, and serving as spokesperson for the Board of Health. The Vice Chair shall perform the functions of the Chair in the Chair's absence.

(Ord. No. 20-24/25, 2/4/2025 [Fiscal Note: Less than \$1000])

**Sec. 10-1416. Meetings.**

The Board of Health shall meet at least quarterly. A quorum shall consist of at least two members, exclusive of the Health Officer. Notice of each meeting shall comply with the City's notice policies and Maine's Freedom of Access Act.

Sections 2-121, 2-122, and 2-123 of the Code of Ordinances apply to the Board of Health.

**Sec. 10-1417. Reports.**

Starting January 1, 2021, an annual written report of the Board of Health's activities shall be submitted to the City Council in January of each year.

(Ord. No. 10-19/20, 10/15/19 [Fiscal Note: Less than \$1000])



**ARTICLE XII. HUMAN RIGHTS COMMISSION ORDINANCE****Sec. 10-1510. Title.**

This Article shall be known as the "City of South Portland Human Rights Commission Ordinance."

**Sec. 10-1511. Purpose.**

The South Portland Human Rights Commission ("SPHRC" or "Commission") is hereby established to provide support for the people of South Portland, specifically marginalized groups, in order to build community; provide education and training; celebrate diversity and inclusion; increase community engagement; and review policies and provide policy recommendations to the City Council and the City Manager. The SPHRC will work closely with Black, indigenous and people of color; LGBTQ people; people with disabilities; and low-income families. The SPHRC will work to prevent hate and discrimination in the City.

**Sec. 10-1512. Composition; Qualifications; Quorum; and Officers.**

There shall initially be thirteen (13) members of the Commission as follows:

- (a) Voting members. The eight voting members shall be appointed by the City Council, with one nominated by each of the five district Councilors from within their respective voting districts, and two nominated by each of the two at-large Councilors from any of the five voting districts. The remaining at-large voting member shall be nominated by the Mayor from a list of interested applicants. All voting members shall be South Portland residents and shall serve in staggered, three-year terms as follows:
- Districts 1, 2, & 3: Beginning in 2020 for a one-year term, with three-year terms to follow beginning in 2021.
  - Districts 4, 5, and one Councilor-nominated At-Large: Beginning in 2020 for a two-year term, with three-year terms to follow beginning in 2022.
  - Councilor-nominated At-Large (1) and Mayor-nominated At-Large (1): Beginning in 2020 for a three-year term, with three-year terms to follow beginning in 2023.

No person shall serve as a voting member for more than two consecutive three-year terms. Individuals from Districts 1 - 5 and the one at-large initially appointed to the Commission for a one- or two-year term as outlined above may serve for two consecutive three-year terms after their initial appointment of one or two years. Individuals appointed to serve the remainder of a term due to a vacancy in office may also serve for two consecutive three-year terms after their initial appointment to fill such a vacancy.

- (b) *Ex-officio*, non-voting members. Four (4) of the Commission members shall be *ex-officio* (non-voting) members. Each of the following departments, in consultation with the City Manager, shall annually select a representative to serve in this capacity on the Commission: Police Department, Planning Department, Human Resources Department, and School Department. A Diversity and Inclusion Coordinator, if such a position is so created by the City, shall also serve as a fifth *ex-officio* member of the Commission and thereby increase the membership of the Commission to fourteen (14) members.
- (c) Youth representative member. The Commission shall have one (1) youth representative subject to the conditions set forth in Sec. 2-68. This member may either be *ex-officio* or voting subject to the requirements of Sec. 2-68.
- (d) Qualifications. It is desirable that Commission members be representative of the broad spectrum of the citizens of the City. Commission members should be willing

to attend training sessions for the purpose of facilitating the discharge of their duties. Members shall serve without compensation.

- (e) Quorum. A quorum shall consist of at least six (6) voting members.
- (f) Officers. Annually, the Commission shall select from amongst its membership a Chair, Vice Chair, and Secretary. All officers shall be voting members of the Commission.

(Ord. No. 6-24/25, 10/22/2024 [Fiscal Note: Less than \$1000]; Ord. No. 20-24/25, 2/4/2025 [Fiscal Note: Less than \$1000])

#### **Sec. 10-1513. Meetings.**

- (a) Regular meetings of the SPHRC shall be scheduled on at least a quarterly basis to handle regular Commission business and further information dissemination efforts. Special meetings shall be held at the call of the Chair. Such meetings shall be open for public attendance. Minutes shall be kept of all Commission proceedings. The Diversity and Inclusion Coordinator, if such a position is so created by the City, shall be responsible for all minute and record-keeping duties; otherwise, these duties shall fall to the Secretary.
- (b) No meeting shall be conducted by the Commission without a quorum being present. Decisions on any matters before the Commission shall require the affirmative vote of a majority of the members present and voting.
- (c) Sections 2-121, 2-122, and 2-123 of the Code of Ordinances apply to the Commission.
- (d) The Commission shall establish its own rules of procedure.

#### **Sec. 10-1514. Powers and Duties.**

The SPHRC shall have the following powers and duties:

- (a) To initiate policy recommendations to the City Council with respect to preventing and prohibiting all discrimination on account of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin, marital status, familial status, and age.
- (b) To assess the human relations and civil rights needs of the community and to advise the City Manager and the City Council of the results of these assessments.
- (c) To cooperate with other groups and governmental agencies concerned with human rights.
- (d) To refer allegations or complaints of human rights violations to the Maine Human Rights Commission. The Commission will refer any allegations or complaints of human rights violations involving a City employee, elected or appointed official to the City Manager, to be handled consistent with City policy, collective bargaining agreements, and/or State law. The Commission shall not participate in the review, assessment or investigation of any allegations or complaints of human rights violations.
- (e) To initiate data collection and evaluation activities that will identify minority and low-income concentrations within the City, and to prepare recommendations for submission to the Planning Board and the City Council that will contribute to lessening such concentrations, strengthen the fair housing policies of the City, and eliminate discrimination on the account of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin, marital status, familial status, and age.
- (f) To aid the City in attracting qualified employment candidates from minority constituencies to help improve the diversity of the City's workforce so as to

be reflective of the population for which it serves.

- (g) To aid the City in providing training opportunities to employees regarding topics such as implicit bias and diversity.
- (h) To seek outside funding sources, in addition to any resources supplied by the City, to assist in its mission. All outside monies or grants are subject to the City's established financial processes and procedures.
- (i) To organize or support events, as deemed necessary by the Commission, which celebrate and educate the public on various forms of diversity.
- (j) To review and make recommendations on the City Manager's proposed annual budget. Commissioners shall be provided a copy of the City Manager's proposed budget and explanatory budget message within 24 hours of the City Council being provided with the same. Notwithstanding any ordinance or rule to the contrary, the Commission shall be provided an opportunity to be heard at the public hearing on the budget for up to 30 minutes.

(Ord. No. 14-20/21, 2/9/2021 [Fiscal Note: Less than \$1000])

**Sec. 10-1515. Intergovernmental Cooperation.**

All City departments, boards, and commissions shall cooperate with and provide assistance to the Commission, including the provision of information for inspection and copying in response to reasonable requests from the Commission made through the City Manager and consistent with the Maine Freedom of Access Act. The Commission shall not direct the work of the City Manager or any other employee or appointed official of the City.

**Sec. 10-1516. Staffing.**

The City Manager may assign a staff person to provide administrative support to the Commission. Alternatively, subject to available funding within the Commission's annual budget allocation and with the assistance of the City's Human Resources Department, the City may hire, in consultation with the Commission, a part-time administrative assistant to provide administrative support to the Commission. In the event that the City creates a Diversity and Inclusion Coordinator position, such duties may be incorporated into that position.

**Sec. 10-1517. Budget.**

The Commission may submit a yearly budget request for the City Council's consideration and approval. This budget request must be submitted in accordance with the regular City budgeting processes and procedures on a yearly basis, and it is to cover all costs and expenses related to the Commission's activities.

**Sec. 10-1518. Annual Report.**

Starting January 1, 2022, an annual written report of the Commission's activities shall be submitted to the City Council in January of each year.

**Sec. 10-1519. Dissolution.**

To ensure the Commission's long-term viability, dissolution of the Commission can only occur if dissolved by a two-thirds (2/3) vote of the entire membership of the City Council and provided that all City Charter and Code of Ordinance provisions relating to notice and hearing are observed.

**Sec. 10-1520. Severability.**

If any portion of this Ordinance shall be found by a court of competent jurisdiction to be invalid, the remaining provisions shall remain in full force and effect.

(Ord. No. 3-20/21, 9/15,2020 [Fiscal Note: Less than \$1000])