

SOUTH PORTLAND CODE OF ORDINANCES

STREETS AND SIDEWALKS*

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SOUTH PORTLAND CODE OF ORDINANCES

Chapter 23

STREETS AND SIDEWALKS*

* **Cross reference(s)**--Department of public works to construct, repair and maintain streets and sidewalks, § 2-11; department of public works, director of public works, generally, § 2-11 et seq.; poles and wires, generally, §§ 7-2, 7-3; transportation of garbage and refuse over streets regulated, § 9-38; licenses, permits and business regulations generally, Ch. 14; removal of gravel, soil, materials from streets, § 17-7; carrying, carting night soil through streets, § 17-8; sliding in streets and sidewalks, § 17-11; playing ball, throwing stones, etc., in streets prohibited, § 17-12; littering streets with posters, handbills, cards, samples, § 17-39; placing explosives in streets, § 26-10.

State law reference(s)--Authority to set off portions of public ways for sidewalks and regulate their use, 30 M.R.S.A. § 2151(2).

- Art. I. In General, §§ 23-1--23-24
- Art. II. Numbering of Buildings, §§ 23-25--23-34
- Art. III. Entrances to Public Ways, §§ 23-35--23-40
- Art. IV. Excavations in Public Places, §§ 23-41--23-79
- Art. V. Design and Construction Standards, § 23-80
- Art. VI. Utilities, § 23-81
- Art. VII. Parklets

ARTICLE I. IN GENERAL

Sec. 23-1.

(Ord. No. 13/24/25, 1/21/2025 [Fiscal Note: Less than \$1000])

Cross reference(s)--Permit schedule, § 14-3.

(Ord. No. 13/24/25, 1/21/2025 [Fiscal Note: Less than \$1000])

Sec. 23-3. RESERVED

(Code 1966, § 7-36.2; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000]; Ord. No. 13/24/25, 1/21/2025 [Fiscal Note: Less than \$1000])

Sec. 23-4. Altering sidewalks.

No person shall make any alteration in any sidewalk in the city without first obtaining a street opening permit, which application therefor shall be filed with the Code Enforcement Office.

(Code 1966, § 6-6-1.10; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000]; Ord. No. 13/24/25, 1/21/2025 [Fiscal Note: Less than \$1000])

Sec. 23-5. Council to designate street names.

When new streets, whether public or private, are added to the city, the Council shall designate the names of such streets.

(Code 1966, § 7-4-3; Ord. No. 5-69, 5-5-69; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-6. Street names to remain until changed.

The several streets, whether public or private, of the city shall continue to be known by the names previously assigned to them, unless and until changed by the council.

(Code 1966, § 7-4-2; Ord. No. 5-69, 5-5-69)

Sec. 23-7. Municipal officers establish right-of-way indicators.

The municipal officers hereby legally establish right-of-way indicators in accordance with plots and plans on file in the office of the City Assessor.

(Code 1966, § 7-2-1; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-8. Laying out, altering, discontinuing streets.

- (A) The laying out, altering or discontinuing of streets within the city shall be in accordance with the state statutes.
- (B) Nothing in this article is to be construed as a limitation on the City Council's authority to accept any street in the city as a public street whenever the public interest so requires.

(Code 1966, § 7-1; Ord.No.6-96/97, 9-4-96)

State law reference(s)--Laying out, altering or discontinuing highways, 23 M.R.S. § 2051 et seq.

Sec. 23-9. Moving of buildings: Permit required; duties of Director of Public Works; bond; owner's, mover's responsibility.

- (a) No person shall obstruct any street or any part thereof by placing therein any house, barn, shop, store or other building, and no person shall remove or draw through or upon any street, any house, barn, stable, shop, store or other building which is more than seven (7) feet in width or more than ten (10) feet in length, without first obtaining a permit from the Director of Public Works.
- (b) The Director of Public Works shall designate the time of day such building may be moved, the streets over which such building may be moved and the length of time such street may be obstructed thereby, and he may require the filing of a bond, with sufficient securities, approved by the City Manager, conditioned to indemnify the city for any and all damages sustained by moving such building.
- (c) The owner of the building or the person moving same shall be held responsible for damages to overhead wires, streetlights, streetlight brackets, signs and trees caused by moving such building, and if any such building shall remain in any street or place beyond the time allowed by such permit, the Director may cause such building to be taken down or removed from the street at the expense of the owner thereof.

(Code 1966, § 7-3-1; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Cross reference(s)--Permit schedule, § 14-3.

State law reference(s)--Moving heavy objects over ways and bridges, 29 M.R.S. § 1703.

Sec. 23-10. Permit required for movement of large vehicles upon streets.

No truck, tractor, team, engine or any other type of vehicle or contrivance which has any flange, rib, clamp, lug or other object attached to its wheels or treads, or made a part thereof so that its movement over and upon the streets of the city is likely to bruise and injure the surface of the streets, shall be moved over and upon the streets in the city without first obtaining a permit from the Director of Public Works and paying the fee required as specified in the Schedule of License, Permit, Inspection and Application Fees established by City Council order.

(Code 1966, § 7-3-2; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-11. Obstructing streets, sidewalks with material, appliances, etc.: Permit required; space permitted to be obstructed; occupant's duty. Installations restricted in public right-of-way generally; City not liable for installations in streets, rights-of-way, and/or sidewalks;

tree roots in rights-of-way.

- (a) Except as pursuant to a utility location permit or other express lawful authority, no person shall install, erect or construct, or cause to be installed, erected or constructed, any temporary or permanent installation, such as, but not limited to, buildings or fixtures, in, upon, or near any City street, right-of-way, or sidewalk, located as follows within any portion of the full width of the right-of-way of any City street and/or sidewalk as laid out or accepted by the State, the County, or the City; provided, however, that the Public Works Director may allow the reconstruction of a building in the general location of a previously existing building if they determine that highway safety and the public welfare will not be adversely affected.
- (b) Notwithstanding subsection (a) above, the following temporary installations shall be allowed, subject to the conditions set forth herein:
- (1) Installations placed temporarily in connection with the construction, repair or alteration of any building, so long as such obstructions do not occupy more than one-third (1/3) the width of any street or right-of-way, nor more than one-half (1/2) the width of any sidewalk; provided, that the Public Works Director or their designee (a) is first notified of and approves said temporary installation, and (b) said installation does not exceed six (6) months in duration. The Public Works Director or their designee may require any additional conditions necessary to ensure public safety and welfare, and efficient provision of City services. The violation of any such conditions shall constitute a violation of this section.
 - (2) Temporary installations for the purposes of any type of athletic game, subject to the following conditions:
 - i. Limited to local streets (*i.e.*, not a state, arterial, or collector road) with speed limits of 25 miles per hour or less;
 - ii. Athletic games may occur during daylight hours only;
 - iii. Those engaged in athletic games are required to yield the right-of-way to vehicular traffic;
 - iv. The temporary installations are only utilized during the period from April 1 to October 31, provided that they do not impede vehicular movement and, if present in the right-of-way during nighttime hours, have reflectors or reflective tape placed upon them that is visible to approaching vehicles and pedestrians;
 - v. Are not within thirty (30) feet of an intersection;
 - vi. Shall be immediately removed upon the order of the Police Chief, Fire Chief, Water Resource Protection Director, or Public Works Director, where such removal is necessary as a result of an emergency situation, work in the right-of-way, or other permitted events or activities.
 - vii. For purposes of this subsection (b) (2), a temporary installation shall be one that does not have a concrete foundation or any other type of foundation that adheres to or requires attachment to a roadway, sidewalk, or esplanade area. A temporary foundation is one that consists of sand, water, or some other type of weight system directly attached to the installation and allows the installation to be moved at least in short distances without the assistance of any equipment or vehicles;
 - viii. The Public Works Director and/or Police Chief and/or their designees shall have the authority to prohibit athletic games on streets or sections of streets where it might otherwise be allowed if any of the following circumstances exist:

1. The sight distance of an approaching motorist to the area used for athletic games is less than one hundred fifty (150) feet due to topographic limitations or other visual obstructions.
 2. The activity at a particular location has resulted in documented incidents of damage to private property two (2) or more times within a thirty (30) day period.
 3. Athletic game participants at a particular location have violated the hour restrictions set forth above two (2) or more times within a thirty (30) day period.
 4. Athletic game participants at a particular location have been cited for disorderly conduct on two (2) or more occasions within a thirty (30) day period.
 5. Upon a finding by the Public Works Director and/or Police Chief and/or their designees that the activity poses a threat to the health, safety, and welfare of participants or residents within the block on which the activity occurs.
 6. A prohibition issued under subsection (b) (2) (viii) (1) shall specify the street or section of street on which athletic games are prohibited and shall remain in effect permanently or until such time as physical changes may be made which increase the sight distance sufficient to bring the area in question into compliance. A prohibition issued under subsection (b) (2) (viii) (2) through (5) shall specify the street or section of street on which athletic games are prohibited and shall remain in effect until April 1 of the following year.
- ix. The Public Works Director and/or the Police Chief, or their designees may require any additional conditions necessary to ensure public safety and welfare, and efficient provision of City services. The violation of such conditions shall constitute a violation of this section.
- (3) Temporary or permanent plantings of vegetation, such as flowers, shrubbery, or trees, subject to the following conditions:
- i. Plantings shall not exceed three (3) feet in height;
 - ii. Plantings shall not occur within thirty (30) feet of an intersection;
 - iii. Plantings by a person shall only occur within the green space right-of-way abutting their property and shall not involve the removal of City infrastructure such as sidewalks;
 - iv. Plantings shall not grow into the roadway and/or sidewalk or otherwise interfere with pedestrian or vehicular traffic. Plantings that are deemed to interfere with pedestrians and/or vehicular traffic must be trimmed by the person who planted them within 48 hours of notice from the City. If the City deems the overgrowth an immediate threat, or the situation is not remedied after 48 hours of notice, then the City may remove the plantings and recover fees as specified in subsection (f);
 - v. Plantings of invasive species as defined by the State of Maine are prohibited;
 - vi. Plantings shall not be or cause a public health or safety hazard as determined by the Public Works Director and/or Police Chief and/or their designee(s);
 - vii. The City may remove any plantings at any time for road or sidewalk improvement projects; and
 - viii. The Public Works Director or their designee may require any additional conditions necessary to ensure public safety and

welfare, and efficient provision of City services. The violation of such conditions shall constitute a violation of this section.

- (c) The City may remove roots for any tree that have encroached into a City right-of-way and has caused damage to City infrastructure, such as, but not limited to, streets, sidewalks, paths including the Greenbelt, and underground sewer/stormwater pipes after providing at least 48 hours advance notice to the affected tree owner; provided, however, if the City deems the overgrowth to be an immediate threat to public health, safety or welfare, the City may immediately remove the tree roots. The City shall not be liable for any damages caused to the trees of private property owners related to the removal of their roots from the City right-of-way.
- (d) The City shall not be liable for damage that it or others may cause to, or for damage that may be caused by, any existing or future temporary or permanent installation in, upon, or near any City street, right-of-way, and/or sidewalk, whether or not it has been allowed. The City shall not be liable for damages that it or its hired contractors may cause or for damage that may be caused by removing any building, structure, installation or planting in violation of this section from the right-of-way.
- (e) The Public Works Director, Police Chief, and/or their designee(s) shall have the power to enforce this section and to assess penalties as prescribed in subsection (f). Nothing in this section shall prevent the enforcement official from obtaining voluntary compliance by way of warning, notice or education.
- (f) Notwithstanding any other provision of the Code of Ordinances to the contrary, the following penalties apply to violations of this section.
- (1) For the first offense, the Public Works Director shall send notice to the person(s) causing the violation. The property owner shall have not less than two (2) nor longer than fifteen (15) days or prior to October 1st to remove the facility, whichever comes first. In the event the installation is causing an immediate threat to public health and/or safety, and/or the item is interfering with City operations, the Public Works Director or their designee shall remove the installation(s) immediately.
 - (2) A person who violates this section commits a civil violation for which a fine of not less than \$50 and not more than \$500 may be adjudged.
 - (3) After having been adjudicated as having violated this section, a person who unlawfully maintains any installation for fifteen (15) days after the adjudication is subject to an additional fine of not more than \$100 for each day such installation is maintained.
 - (4) If the City or its hired contractor removes an installation, the person(s) responsible for placement of the installation may be charged a removal fee for direct and/or indirect costs to the City for doing so. Examples of indirect costs include staff time (wages and benefits) and equipment and materials used in the removal of the installation(s).
- (g) This section does not apply to the installations or other property devoted to the public use of any public utility or underground pipeline.

(Ord. No. 5-23/24, 10/10/2023 [Fiscal Note: Less than \$1000])

(Code 1966, § 7-3-4)

Cross reference(s) --Disposition of sawdust, soot, etc., on streets prohibited, § 9-22.

Sec. 23-12. Prohibited placement of snow and ice.

No person shall remove, or cause to be removed, any snow or ice from any private property and place, or cause to be placed, the same on any public street or sidewalk. No person shall remove, or cause to be removed, any snow or ice from any private property and place, or cause to be placed, the same on any public or private property located across the street from that person's lot or parcel of land. A property owner utilizing an agent or contractor for snow and/or ice removal is liable for the actions of the property owner's agent or contractor.

Notwithstanding any other provision of the Code of Ordinances to the contrary, every person adjudicated in a court of law to be in violation of this section shall be punished by a fine of not more than \$500 for the first violation, \$750 for the second violation committed within one calendar year after a previous violation, and \$1,000 for the third and subsequent violations committed within two calendar years after a previous violation. A person may elect, in lieu of such penalty, to waive his/her right to a court appearance by paying the applicable waiver fee of \$150 for the first violation, \$250 for the second violation without regard to the date of the first violation, and \$450 for the third violation without regard to the date of the prior violations. The waiver fee shall be paid to the City via the City's Public Works Department.

Payment of this waiver fee must be received at the Public Works Department within 15 calendar days of the date of the Public Works Department's notice of the violation. If the waiver fee is not received within 15 calendar days of the date of the Public Works Department's notice of the violation, the stated waiver fee shall be doubled.

(Ord. No. 11-19/20, 10/29/19 [Fiscal Note: Less than \$1000])

(Code 1966, § 7-51)

Cross reference(s)--Department of public works to plow and remove snow and control ice, § 2-11.
State law reference(s)--Authority to provide for snow and ice removal, 30 M.R.S.A. § 2151(2).

Sec. 23-13. Setting trees, posts in the right-of-way.

No person shall set any posts or any trees in the public right-of-way without first obtaining a street opening permit, which application therefor shall be filed with the Code Enforcement Office, reviewed and approved by the Director of Public Works, and any actual street opening permit issued by the Code Enforcement Officer..

(Code 1966, § 6-6-1.10; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-14. Duty to furnish information upon request regarding location of poles, etc.

Upon the request of the City Manager, or their designee, persons operating electric or other wires upon, over or under any street or building shall, within fifteen (15) days thereafter, furnish accurate lists of the locations of their poles, the number of crossarms thereto affixed and the number of wires thereto attached, the locations of subways and manholes, and other information in relation to their appliances, together with the locations where service is rendered, vis.: Telegraphic,

telephones, electric lighting, specifying either arc or incandescent or for electric power.

(Code 1966, § 6-3-3.3; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Cross reference(s)--Director of public works to supervise the rights-of-way of streets with regard to erection of utility poles, § 2-13.

Sec. 23-15. Placing, throwing substances on streets; duty to remove.

No person shall throw or place or cause to be thrown or placed upon any highway any glass, glass bottle, nails, tacks, wire, scrap metal, crockery, cans or wheels of vehicles. Whoever accidentally, or by reason of an accident, drops from his hand or a vehicle any such substance upon any highway shall forthwith make all reasonable efforts to clear such highway of the same.

(Code 1966, § 4-20-5)

State law reference(s)--For similar provisions, see 29 M.R.S.A. § 1752.

Sec. 23-16. Litter, animal waste in streets.

It shall be unlawful for any person to place, deposit, or permit to be deposited any litter, debris, refuse, garbage, human or animal excrement upon any street of the city. Violation of this section shall subject a person to a fine of one hundred dollars (\$100.00 for the first offense; two hundred and fifty dollars (\$250.00) for a second offense; and five hundred dollars (\$500.00) for each violation thereafter.

(Ord. No. 26-89/90, 6-4-90; Ord. No. 24-00/01, 5/21/01 [Fiscal Note: Less than \$1000]; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-17. Parking of recreational vehicles etc. in streets

No owner, driver or person with custody or control over any trailer, boat, camper, recreational vehicle, snowmobile, snowmobile trailer all-terrain vehicle (ATV) or ATV trailer shall permit the same to stand upon any public street in the city for a longer period than twenty-four hours at any one time and at no time during a City issued parking ban. Violation of this section shall subject the owner, driver or person with custody or control to a fine of one hundred dollars (\$100) for a first offense, two hundred and fifty dollars (\$250) for a second offense, and five hundred dollars (\$500) for each violation thereafter. Each day of a continuing offense shall be deemed to be a separate offense.

(Ord. No. 27-03/04, 7/19/04; [Fiscal Note: Less than \$1000]; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-18. Appeals

All appeals by any party of decisions or actions pursuant to any provision of this chapter shall be taken to Superior Court in accordance with the Maine Rules of Civil Procedure Rule 80B or other applicable law.

(Ord. No. 1-07/08, 8/6/07; [Fiscal Note: Less than \$1000])

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

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

(Ord. No. 4-16/17, 10/3/16; [Fiscal Note: Less than \$1000])

Secs. 23-20--23-24. Reserved.

ARTICLE II. NUMBERING OF BUILDINGS**Sec. 23-25. Violations; penalties.**

Any owner or occupant of any building or part of a building who shall neglect or refuse to affix to the same the number so designated, or who shall affix to or retain thereon more than forty-eight (48) hours any number other than the properly designated number shall be subject to the provisions of section 1-8,
(Code 1966, § 7-4-1)

Sec. 23-26. Required.

There shall be inscribed on or affixed to all dwelling houses and other buildings erected or fronting on any street, lane, alley or public court within the city, numbers of regular series to be designated by the council or by some person authorized by the council to designate such numbers.
(Code 1966, § 74-1)

Sec. 23-27. Minimum height of numbers.

Numbers required by this article to be inscribed or affixed to dwelling houses and other buildings shall not be less than three (3) inches in height.
(Code 1966, § 7-4-1; Ord. No. 8-12/13, 11/19/12 [Fiscal Note: Less than \$1000])

Sec. 23-28. Numbers to be plainly visible.

Numbers required by this article to be inscribed or affixed to dwelling houses and other buildings shall be so placed as to be plainly visible and of contrasting color.

(Code 1966, § 74-1; Ord. No. 8-12/13, 11/19/12 [Fiscal Note: Less than \$1000])

Secs. 23-29--23-34. Reserved.

ARTICLE III. ENTRANCES TO PUBLIC WAYS*

* **Editor's note**--Ord. No. 2-73, adopted Jan. 15, 1973, amended this Code by adding Art. III, §§ 23-35--23-40, as herein set out.

Sec. 23-35. Permit required to construct entrance and exit driveways and curb cuts to public ways; permit classes and reviewing authority.

(a) **Permit Required.** No person shall construct or maintain any entrance or exit driveways or curb cuts (collectively "curb cuts") from private property to any public way in the City without first having secured a Curb Cut Permit to do so from the Code Enforcement Officer or their designee. In considering each application for such permit, the Code Enforcement Officer or their designee shall apply the standards and criteria set forth in Sec. 23-37 of this chapter.

(b) **Permit Classes and Reviewing Authority.**

(1) An application for a Class I Curb Cut Permit, whether for a new curb cut to be installed on or after July 1, 2023 or for the alteration/modification of an existing curb cut, is reviewed, and the permit issued by, the Code Enforcement Officer or their designee.

(2) An application for a Class II Curb Cut Permit, whether for a new curb cut to be installed on or after July 1, 2023 or for the alteration/modification of an existing curb cut, is initially reviewed by the Code Enforcement Officer, and if the curb cut request is confirmed to be beyond the limits of the Code Enforcement Officer's review authority, it is then referred to the Public Works Director pursuant to Sec. 23-38 herein. Upon receipt of all of the submittals required pursuant to Sec. 23-38(c) below, the Public Works Director becomes the sole reviewing authority, but any permit to be issued shall be issued by the Code Enforcement Officer or their designee upon completion of review by the Public Works Director.

(c) **Consultation with Other City Departments.** The Code Enforcement Officer or their designee shall be responsible for the initial investigation of the application to ensure compliance with the requirements of this Article. The Code Enforcement Officer or their designee may consult with other City Departments as part of this investigation. The Public Works Director has similar authority to consult with other City Departments as part of their review of an application.

(d) **Referral of Existing Curb Cut Reviews to Public Works Director.** The Code Enforcement Officer or their designee, the Planning Board, and other City Departments and officials may refer land use or other applications and inquiries involving existing curb cuts to the Public Works Director for review under Sec. 23-38(f) below.

Sec. 23-36. Permit fee.

Each application for a permit required by Sec. 23-35 shall be accompanied by an application fee as specified in the Schedule of License, Permit, Inspection and Application Fees (Master Fee Schedule) established by City Council order.

Sec. 23-37. Standards and criteria.

(a) In considering each application for a permit required by Sec. 23-35, the applicable reviewing authority shall apply the following standards and criteria set forth in the following Table 23-37:

TABLE 23-37

Requirement	CLASS I CURB CUT (CEO is Reviewing Authority)		CLASS II CURB CUT (Public Works Director is Reviewing Authority)	
	Minor Driveway (residential use with less than 20 dwelling units, or no more than 1,500 s.f. of non-residential use)	Major Driveway (residential use with 20 or more dwelling units, or more than 1,500 s.f. of non-residential use)	Minor Driveway (residential use with less than 20 dwelling units, or no more than 1,500 s.f. of non-residential use)*	Major Driveway (residential use with 20 or more dwelling units, or more than 1,500 s.f. of non-residential use)
A) Number of curb cuts	One (1) curb cut per 50 feet of frontage on any right-of-way, with a maximum of two (2) curb cuts per property. Properties with less than 50 feet of frontage are allowed one (1) curb cut.	Properties with 100 feet or less frontage are allowed two (2) curb cuts. Properties with more than 100 feet of frontage on a given road are allowed two (2) curb cuts plus one (1) additional curb cut per 100 feet of additional frontage.	Same as Class I	May grant an additional curb cut on a case-by-case basis
B) Minimum/maximum driveway width	10 foot minimum, 20 foot maximum	10 foot minimum, 30 foot maximum	10 foot minimum, 25 foot maximum	10 foot minimum, 40 foot maximum
C) Separation from intersections	<ul style="list-style-type: none"> •Minimum 25 feet on local roads •Minimum 50 feet on collectors and arterials 	<ul style="list-style-type: none"> •Minimum 50 feet on local roads •Minimum 100 feet on collectors and arterials 	Reduce the offset from the intersections based on the available access to the property on a case-by-case basis	Reduce the offset from the intersections based on the available access to the property on a case-by-case basis
D) Splitter Islands	Not permissible	<ul style="list-style-type: none"> •Minimum island width of 6 feet •Access ways on either side of the island shall have a minimum width of 10 feet and a maximum width of 15 feet 	Not permissible	Same as Class I
E) Driveway intersection angle and radii	<ul style="list-style-type: none"> •Driveways shall be perpendicular to the street, where possible. Only where necessary, the driveway may be constructed between 75 and 105 degrees to the street. •Driveway radii shall be constructed to accommodate site-specific design vehicles, and shall not be designed larger than necessary, as determined by turning movement diagrams or software. 		Same as Class I	

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*The Public Works Director may review a minor driveway classification on a case-by-case basis and, when determined to be appropriate based on the type of land use involved, authorize the applicant to proceed with a major driveway classification.

(b) The applicable reviewing authority shall have the authority to impose any conditions on a permit that may be necessary to (i) ensure compliance with the requirements of this Article, or (ii) address concerns about emergency vehicle access and circulation, and/or traffic volume and conditions (both motor vehicle and pedestrian) on the public way into which entrance is sought that may be resolved through the conditions. The failure to comply with such conditions shall be considered a violation of the permit.

Sec. 23-38. Code Enforcement Officer referral of an application to Public Works Director or denial of a Curb Cut Permit; action by Public Works Director.

(a) The Code Enforcement Officer or their designee shall make a written determination on an application for a Curb Cut Permit within 30 days of receipt of the application. The Code Enforcement Officer or their designee may approve or deny an application involving a Class I Curb Cut, approve a Class I Curb Cut application with conditions, or refer an application involving a Class II Curb Cut to the Public Works Director, with each such action accompanied by a written explanation of the basis of the approval with conditions, denial, or referral. The determination shall be mailed or provided electronically to the contact designated on the Curb Cut Permit application.

(b) An applicant may appeal a denial or a conditional approval of a Class I Curb Cut Permit to the Public Works Director. An applicant may pursue a referral of a Class II Curb Cut Permit from the Code Enforcement Officer to the Public Works Director. An appeal or a referral, including the associated documentation as outlined in subsection (c), must be filed in writing with the Public Works Director within 90 days of receipt of the written determination from the Code Enforcement Officer or their designee. The Public Works Director may provide a single 90day extension to the appeal/referral filing deadline upon request by the applicant prior to the expiration of the filing deadline, to allow the applicant time to compile the necessary submittal materials. Appeal/referral requests may be filed electronically with the Public Works Director. Each appeal/referral shall be accompanied by an appeal/referral fee in accordance with the City Council adopted Schedule of License, Permit, Inspection and Application Fees (Master Fee Schedule).

(c) No appeal or referral related to a Curb Cut Permit shall be considered by the Public Works Director until the applicant has provided the following:

- (1) A statement regarding the specific condition of approval, basis of denial that is being appealed, or relief sought that has been referred;
- (2) The results of a traffic count measuring the flow of traffic on the street into which access will be gained by means of the entrance or exit driveway or curb cut in question;
- (3) A plot plan, drawn to scale, showing all of the features enumerated below:
 - a. Location and boundaries of the land to be served by the proposed entrance or exit;
 - b. Location and dimensions of all public and private ways (drawn to scale and identified by name) within three hundred (300) feet distance of the land in question;
 - c. Location and identification of any and all traffic-control signs and devices within three hundred (300) feet of the proposed entrance or exit driveway;
 - d. Location of all street lights within the area of the plot plan;

- e. Indication of slope or grade of all public and private ways included on the plot plan;
- f. Location of any bus stops, parking restrictions, driveways, railroad tracks and crossings; location of utility poles; location of sidewalks and pedestrian crosswalks and any traffic channelization;
- g. Identification of the land use of all adjacent parcels of land to the land in question;
- h. A statement regarding pedestrian traffic in the area of the proposed entrance or exit driveway; and
- i. Accident frequency on public ways within three hundred (300) feet of the proposed entrance or exit driveway.

(d) The Public Works Director shall apply the standards and criteria set forth in Table 23-37 in considering any appeal or referral following just and proper consideration of motorized and non-motorized traffic in the vicinity. The Public Works Director may cause a third-party technical review of the application to be conducted by a qualified traffic engineer selected by the City, at the applicant's expense. The results of the review shall be available for public review, but such results shall be deemed to have been made solely for the benefit of the City and shall remain its property. Such technical review fee shall be assessed for the privilege of review and shall be payable without regard to consultation or technical review results or the outcome of the application.

(e) Upon completion of the Public Works Director's review of an appeal or referral, if the Public Works Director grants an appeal relating to a Class I Curb Cut Permit or authorizes the issuance of a Class II Curb Cut Permit, the Public Works Director shall notify the Code Enforcement Officer of such action so that the Curb Cut Permit may be issued by the Code Enforcement Officer or their designee. A written explanation of the basis of any approval with conditions or a denial shall be mailed or provided electronically to the contact designated on the Curb Cut Permit application.

(f) Notwithstanding any other provision of this Article to the contrary, for any existing curb cut that does not comply with the standards and criteria set forth in Table 23-37, the Public Works Director retains the authority to require a property owner, at their own expense, to close, relocate, or modify an existing curb cut if the Public Works Director determines that said existing, nonconforming curb cut poses unreasonable public road congestion or unsafe conditions with respect to the use of the existing public roads following just and proper consideration of motorized and non-motorized traffic in the vicinity. The affected property owner shall be notified of any required closure, relocation or modification to an existing curb cut at least sixty (60) days prior to the required closure, relocation or modification, and the Public Works Director shall use best efforts to coordinate such work with ongoing City or State roadway improvement projects. Closures, relocations and modifications required under this subsection are exempt from the permit application filing process, permit fees and the application review process. The Public Works Director shall document in writing any closure, relocation or modification completed pursuant to this subsection and provide a copy of the same to the Code Enforcement Officer.

Sec. 23-39. Appeals.

An appeal by any person aggrieved by a decision of or action taken by the Public Works Director pursuant to this Article shall be taken to Superior Court (Cumberland County) in accordance with Rule 80B of the Maine Rules of Civil Procedure.

Sec. 23-40. Penalty.

Any person using or permitting the use of any entrance or exit driveways or curb cuts entering their property in violation of this chapter shall be subject to a penalty not to exceed two hundred fifty dollars (\$250.00) per day. Each day of such violation shall constitute a separate offense.

(Ord. No. 28-22/23, 5/16/2023 Repealed and Replaced [Fiscal Note: Less than \$1000])

ARTICLE IV. EXCAVATIONS IN PUBLIC PLACES**Sec. 23-41. Definitions.**

Administrator shall mean the city's agent, duly authorized by the City Manager to direct the city's street opening program.

City shall mean the City of South Portland and/or its authorized agent.

Emergency shall mean any event which may threaten public health or safety, including, but not limited to, damaged or leaking water or gas conduit systems, damaged, plugged, or leaking sewer or storm drain conduit systems, damaged underground electrical and communications facilities, or downed or seriously damaged overhead pole structures.

Excavation shall mean any opening in the surface of a public place made in any manner whatsoever, except an opening in a lawful structure below the surface of a public place, the top of which is flush with the adjoining surface and so constructed as to permit frequent openings without injury or damage to the public place.

Facility shall mean pipe, pipeline, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire, tower, pole, pole line, anchor, cable, junction box, or any other material, structure, or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left, placed or maintained in, upon, along, across, under, or over any public place.

Inspector shall mean a duly authorized representative of the city its representatives, or other designee.

Licensee shall mean any person who has been issued an annual excavator license as required by this article.

Newly built, rebuilt or resurfaced streets shall mean any public place which has been newly built, rebuilt or resurfaced within the preceding five (5) years.

Permittee shall mean any person who has obtained a permit required by this article.

Person shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

Public place shall mean any public street, way, place, esplanade, alley, sidewalk, park, square, plaza or any other similar public property owned or controlled by the city and dedicated to public use.

Rehabilitation shall mean that activity of work on any street which provides structural improvement having a minimum service life of fifteen (15) years with minor maintenance, which includes pavement overlay of one and one-half (1 ½) inches minimum depth, and partial or full depth reconstruction.

South Portland Street Design Manual shall mean the most recent edition of the manual kept on file with the City Clerk and the Department of Public Works that sets forth street types, user priorities, street zone widths, and specific street design elements to use in the City's public streets, which manual is adopted by, and may be amended by, the Director of Public Works, in consultation with the Sustainability, Water Resource Protection, and Planning and Development Departments.

Utility shall mean a private company, corporation or quasi-municipal corporation under the direction and control of the public utilities commission.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92; Ord. No. 1-07/08, 8/6/07; [Fiscal Note: Less than \$1000]; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-42. License.

No person or utility shall be granted a permit to excavate in a public place without holding a valid license for such work from the city. The administrator shall issue such license upon receipt of a completed application, the required license fee, and proof of insurance as required in Sec. 23-70. No person or utility possessing such license shall allow his or her name to be used by any person or utility, directly or indirectly, either to obtain a permit or to do any work under this license; provided, however, that nothing herein shall be construed to prohibit a licensed excavator from doing such work through an authorized agent or employee who is directly and continuously supervised by them while in the performance thereof. A license issued to an excavator may be revoked by the administrator after notice to the licensee, if the administrator deems that the licensed excavator has willfully disobeyed any portion of this article. The annual excavator license is valid from January 1 to December 31 and contains no prorated provisions.

The amount of the annual excavator's license fee is as specified in the Schedule of License, Permit, Inspection and Application Fees established by City Council order.

(Ord. 14-91/92, 4-6-92; Ord. No. 17-00/01 3/19/01 [Fiscal Note: Less than \$1000]; Ord. No. 9-06/07, 11/20/06 [Fiscal Note: Less than \$1000]; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-43. Excavation permit required.

(a) General Provisions.

1. No person or utility shall make any excavation or fill any excavation in any public place without first obtaining a permit from the Administrator except as otherwise provided in this article.
2. No person or utility shall make any excavation without first complying with Maine's Dig Safe Law, 23 M.R.S. § 3360-A.
3. Excavation shall not begin within a twelve-hour period from the time the permit is issued. The applicant shall notify the city when excavation will begin at least twelve (12) hours beforehand.
4. The city shall have the authority to revoke said permit if it is found that any section of the article has been violated. Upon such action the person or utility shall cease all work and proceed to make trench conditions safe to the public. Work shall not commence until a new permit has been issued and all waiting periods have been adhered to.

(b) Application for permit.

No excavation permit shall be issued unless a written application on a form provided by the city for the issuance of an excavation permit is submitted to the Administrator. The written application shall state the name and address of the applicant and an emergency phone number that will be answered twenty-four (24) hours per day. If the applicant is other than a utility and intends to excavate in the vicinity of a facility owned or operated by a public utility or oil pipe

line owned by a person, said applicant shall provide the information required by the city under this section to the utility or person owning such facility, in addition to providing such information to the city. The application shall provide the name of the public place to be excavated, street number, the beginning date of proposed work, the type of work to be done, signatures of utility approval, the signature of city department (if involved), a diagram of the planned excavation showing trench locations, trench widths, trench depths, location of all barricades, warning signs, detour signs and detour routes. The permit shall also provide for a preconstruction meeting if so warranted by the Administrator.

The application for permit shall be accompanied by a fee as hereinafter provided. All applications shall be presented to the Administrator for the issuance of an excavation permit within thirty (30) days from the date of the last utility approval. After the expiration of this thirty-day period such application shall become null and void and shall have to be renewed.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92; Ord. No. 1-07/08, 8/6/07 [Fiscal Note: Less than \$1000]; Ord. No 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-44. Utilities required to submit annual work plan.

Each year on or about March 31, each utility shall submit to the Director of Public Works and the Administrator its planned work program for the ensuing year, which shall not include emergency work, as defined in section 23-60 hereof, or normal house service lines. Any excavation permitted to a utility company by the Administrator which is contained on the list aforementioned shall be issued for the duration depending on the complexity of the work to be performed, and supported by a work schedule which must be approved by the Administrator. Any excavation permit issued to a utility company by the Administrator which is not covered on the aforementioned list shall be issued for a period not to exceed thirty (30) days from the time of issuance.

(Ord. 14-91/92, 4-6-92; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-45. Permit fee; street and sidewalk opening fees.

(a) Each street opening permit may be assessed two (2) fees; an administrative charge, and a permanent pavement restoration charge,

(1) *Administrative*: This fee shall reimburse the city for the direct cost of labor and equipment necessary to administer this article and the rules and regulations and the rehabilitation of city streets primarily due to excavations.

(2) *Permanent pavement restoration*: This fee shall cover the city's cost of permanently restoring the disturbed pavement area and shall not exceed, the requirements in the South Portland Street Design Manual.

(a) While it is the permittee's responsibility to perform permanent pavement restoration, the City reserves the right to do this work itself in certain instances, whether with its own personnel or through a company under contract to the City. Such instances include but are not limited to failure by the permittee to complete work in a timely manner or performing work that does not meet the requirements in the South Portland Street Design Manual. When the City and not the permittee performs the work or contracts for it to be performed, the City shall invoice the permittee the actual cost to the City for the staff time, materials, equipment rental, and other costs directly attributable to the permanent pavement restoration job. The minimum restoration charge shall be for two

(2) square yards of excavation.

(b) In the case of excavations in moratorium streets, the permittee, prior to receiving a permit, shall pay a fee to the City in an amount set by the City Council order for permanent pavement restoration for moratorium streets. This fee will be held in escrow by the City as a performance guarantee and will be returned, without interest, to the permittee upon a determination by the Administrator that the pavement restoration work has been completed according to the requirements in the South Portland Street Design Manual. If the Administrator determines that the work has not been completed in a timely manner or has not been done according to the required standards, the Administrator will use as much of the escrowed fee as necessary to reimburse the City for its actual costs in doing the work itself or through a hired contractor. Any balance of the fee remaining will be returned to the permittee; any amount not fully covered by the fee shall be invoiced to the permittee.

(b) All fees shall be enacted annually by order of the City Council. The City's Administrator shall notify currently licensed excavators in advance of annual fee revisions necessary to reflect costs of program administration, permanent pavement restoration, annual excavator's license fee, and other applicable charges.

(c) Upon permit application, the administrative charge, and in the case of moratorium streets, permanent pavement restoration charge shall be paid to the Administrator unless waived by the Administrator as provided below. No permit shall be issued without appropriate payment of fees.

(d) Effective July 1, 2001, all fees and charges collected by the Administrator in the issuance of permits pursuant to this article shall be placed in a fund dedicated and utilized solely for the administration of this article and the rules and regulations, and the rehabilitation of city streets primarily due to excavations.

(e) Waiver of fees:

1. To prevent untimely delays to construction activities in a planned reconstruction area involving the removal of pavement, the Administrator shall waive payment of administrative/inspection fees for utilities and individuals having work to do in such areas. In a City planned resurfacing, repaving or rehabilitation area, the Administrator shall permit any licensed excavator to perform all excavations that can be completed in one day within the planned resurfacing, repaving or rehabilitation area under a single permit, and shall charge a single administrative/inspection fee. Any single continuous excavation in a City planned resurfacing, repaving or rehabilitation area shall require only one permit, regardless of the number of days required to complete the excavation and associated work.

2. In any emergency situation involving a residential dwelling unit the Administrator shall waive payment of administrative fee.

3. For driveway repaving that requires a permit, all but \$50 of the administrative/inspection permit fee shall be waived.

(Ord. No. 34-75, 1-19-76; Ord. No. 6-84/85, 9-17-84, Ord. 14-91/92, 4-6-92; Ord.No.1-96/97, 7-15-96; Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000]; Ord. No. 1-07/08, 8/6/07 [Fiscal Note: Less than \$1000]; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-46. Cash deposits.

Bonds or deposits shall be required of all applicants other than utilities in good standing in order to guarantee their performance. Bonds must be posted in order for an excavator's license to be issued. Current licensees at the effective date of this ordinance must post the required bond before the issuance of any street opening permit. Bonds shall be posted for a minimum of two (2) years and shall not exceed Ten Thousand Dollars (\$10,000). In lieu of a bond, an applicant may substitute a cash deposit or an irrevocable letter of credit. Deposits shall be refunded upon approved completion of all conditions of this article and the rules and regulations.

(Ord. No. 34-75, 1-19-76; Ord. No. 20-80/81, 11-3-80, Ord. 14-91/92, 4-6-92; Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000])

Sec. 23-47. Clearance for vital structures.

The excavation work shall be performed and conducted so as not to interfere with access to fire hydrants, fire stations, valve housing structures, traffic signal cables, and loops and all other vital equipment as designated by the city.

(Ord. No. 34-75, 1-19-76, Ord. No. 14-91/92, 4-6-92)

Sec. 23-48. Protective measures and routing of traffic.

The permittee shall maintain safe crossings for two (2) lanes of vehicle traffic at all street intersections where possible and safe crossings for pedestrians at intervals of not more than two hundred (200) feet. If any excavation is made across any public street, alley or sidewalk, adequate crossings shall be maintained for vehicles and for pedestrians. If the street is not wide enough to hold the excavated material without using part of the adjacent sidewalk, a passageway at least one-half (1/2) of the sidewalk width shall be maintained along such sidewalk line, unless this width becomes non-American with Disabilities Act (ADA) compliant, at which time the permittee must make other provisions to maintain ADA compliance.

It shall be the duty of every permittee cutting or making an excavation in or upon any public place, to place and maintain barriers and warning devices necessary for safety of the general public. Traffic control in the vicinity of all excavations affecting vehicular, pedestrian and bicycle traffic shall be subject to final review and approval of the traffic engineer or their designated representative.

Barriers, warning signs, lights, etc., shall conform to the latest edition of the "Manual on Uniform Traffic--Control Devices (MUTCD)." Warning lights shall be electrical markers or flashers used to indicate a hazard to traffic from sunset of each day to sunrise of the next day. Electrical markers or flashers shall emit light at sufficient intensity and frequency to be visible at a reasonable distance for safety. Reflectors or reflecting material may be used to supplement, but not replace light sources.

The permittee shall take appropriate measures to assure that during the performance of the excavation work, traffic conditions as near normal as possible shall be maintained at all times so as to minimize inconvenience to the occupants of the adjoining property and to the general public.

When traffic conditions permit, the Director of Public Works or their designated representative, with the approval of the police and fire departments of the city, may by written approval (or by verbal approval in case of emergency), permit the closing of streets and alleys to all traffic for a period of time prescribed by them, if in their opinion it is necessary. The written approval of the Director of Public Works may require that the permittee give notification to various public agencies and to the general public. In such cases, such written approval shall not be valid until such

notice is given. In case of emergency on week nights, weekends, or holidays the utility company having such emergency shall contact the police and fire departments by phone before closing a street to traffic, except in a case of immediate hazard of loss of life or serious property damage, in which event prompt notice of closing shall be given.

Warning signs shall be placed far enough in advance of the construction operation to alert traffic within a public street, and cones or other approved devices shall be placed to channel traffic, in accordance with MUTCD the instructions of the Director of Public Works, after their review of the proposed traffic-control measures for the project.

The permittee shall hereby be informed that the city has or may have a school walk route map, and that the Director of Public Works will require special police protection at locations where the permittee, by their work, interferes with these designated school walk routes or crossing locations. Copies of school walk route maps for various locations in the city may be procured from the Director of Public Works.

The permittee is also informed that construction activities (unless an emergency condition exists) shall not interfere with the normal flow of traffic on City Core Connectors or Primary Connectors, as described in the South Portland Street Design Manual, except to the extent and under conditions approved by the Director of Public Works and police and fire departments. The full inbound roadway lane width shall be maintained between the hours of 7:00 a.m. and 10:00 a.m. and the full outbound roadway lane width shall be maintained between the hours of 3:00 p.m. and 6:00 p.m.

The permittee may shift traffic to the opposite side of the roadway to maintain the above-required lane width. The permittee may only make such shift with the approval of the Director of Public Works following proper review of detour plans to insure adequate safe two-way traffic flow and proper number and placement of police officers. The permittee shall refer to the South Portland Police Department webpage for its policy regarding the need for and cost of police details.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92; Ord. No. 1-07/08, 8/6/07 [Fiscal Note: Less than \$1000]; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-49. Relocation and protection of existing utilities and oil pipe lines.

The permittee shall not interfere with any existing facility without the written consent of the city and the owner of the facility. If it becomes necessary to relocate an existing facility this shall be done by its owner. No facility owned by the city shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately owned facilities shall be similarly borne by the permittee unless it makes other arrangements with the person owning the facility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along or across said work. The permittee shall secure approval of method of support and protection from the owner of the facility. In case any of said pipes, conduits, poles, wires or apparatus should be damaged, and for this purpose pipe coating or other encasement or devices are to be considered as part of a substructure, the permittee shall promptly notify the owner thereof. All damaged facilities shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee. It is the intent of this paragraph that permittee shall assume all liability for damage to facilities and any resulting damage or injury to anyone because of such facility damage and such assumption of liability is a contractual obligation of the permittee. The only exception will be such instances where damage is exclusively due to the negligence of the owner of the facility. The city shall not be made a party to any action because of this paragraph. The permittee shall inform itself as to the existence and location of all underground facilities and

protect the same against damage

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

Sec. 23-50. Abandonment of structure.

Whenever the use of a substructure is abandoned, except the abandonment of service lines designed to serve single properties, the person or utility owning, using, controlling, or having an interest therein, shall within thirty (30) days after such abandonment, file with the city a statement in writing giving in detail the location of the substructure so abandoned. If such abandoned structure is in the way, or, subsequently becomes in the way, of an installation of the city or any other public body, the owner of such substructure, upon notice by the excavator, shall establish if the substructure is abandoned and make the first cut or tap before allowing the substructure to be removed by the excavator.

When gas or other flammable service to buildings is discontinued, the existing service line for such service shall be terminated at a point outside the building.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

Sec. 23-51. Protection of public property.

The permittee shall not remove, even temporarily, any trees or shrubs which exist in the street area without first obtaining the consent of the appropriate city department or city official having control of such property.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

Sec. 23-52. Care of excavated material.

All material excavated from trenches and piled adjacent to the trench or in any street shall be piled, and maintained in such manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining property.

Whenever necessary in order to expedite the flow of traffic or to abate the dirt or dust nuisance, toe boards or bins may be required by the city to prevent the spreading of dirt into traffic lanes.

Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, the city shall have the authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling.

It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

Sec. 23-53. Breaking through pavement in streets.

- (a) All excavation on paved street surfaces shall be precut in a neat straight line with pavement breakers or saws.
- (b) Heavy duty pavement breakers may be prohibited by the city when the use endangers existing underground facilities or other property.

- (c) Cutouts of the trench lines must be normal or parallel to the trench line.
- (d) Pavement edges shall be trimmed to a vertical face and neatly aligned with the center line of the trench.
- (e) Unstable pavement shall be removed over caveouts and overbreaks and the subgrade shall be treated as the main trench.
- (f) The permittee shall not be required to pay for repair of pavement damage existing prior to the excavation unless their cut results in small floating sections that may be unstable, in which case, the permittee shall remove the unstable portion and the area shall be treated as part of the excavation.
- (g) When three (3) or more street openings are made in sequence (fifteen (15) feet or less, center to center, between each adjacent opening), the permittee shall neatly cut and remove the area of pavement between these adjacent openings and shall patch as one trench.
- (h) All granite paving blocks, Belgian Pavers and/or cobble stones in the way of excavation shall be removed by the permittee prior to commencement of work, and transported to a storage site to be selected by the city. All excavated granite paving blocks, Belgian Pavers and/or cobble stones remain the sole property of the city.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

Sec. 23-54. Breaking through pavement in sidewalks.

- (a) All parts of section 23-52 shall apply to this section in all cases except gravel sidewalks.
- (b) On concrete sidewalks, all cuts shall be made from the nearest joint or score line on one side of the excavation to the nearest joint or score line on the other side of the excavation.
- (c) All bricks in the way of excavation shall be removed by the permittee prior to the work to be done, and transported to a storage site to be selected by the city. All bricks remain the sole property of the city.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

Sec. 23-55. Backfilling of excavation.

Upon completion of the utility installation the trench shall be backfilled to the grade of the underside of the surfacing material.

- (a) *Trench backfilling--Paved areas.* In paved areas, the backfill material up to subgrade shall be that excavated material which the inspector deems suitable and which the excavator may have stockpiled, or it shall be a granular material from off site. Granular material for trench backfill shall be approved by the inspector and shall meet the requirements of the current edition of the M.D.O.T. Standard Specification, Highways and Bridges manual. No stones over three (3) inches in size, roots or other organic matter or frozen material shall be allowed in the backfill material.

Prior to any trench backfilling with borrow material, the contractor shall submit a copy of gradation test results that support the compliance of the material to be used with the requirements stated herein.

The backfill shall be placed and compacted in layers not exceeding twelve (12) inches in depth. The moisture content of the fill material shall be such that ninety-five (95) per cent of optimum density, as determined by field tests, may be obtained. The maximum density shall be determined in accordance with the current edition of the M.D.O.T. Standard Specifications, Highways and Bridges manual. The contractor is required to retain an approved certified soil testing laboratory to perform density tests at the minimum frequency of 1 test per 50 linear feet of pipe trench, and no less than 1 test per trench at the top of the base course prior to paving to confirm that the required compaction has been attained. The independent testing laboratory shall furnish the City with certified reports of all test results and the cost of such testing and reporting shall be borne by the contractor. If it is found that the above density requirements have not been met the excavator shall re-compact and/or re-excavate and compact as necessary until the required densities have been met. Compaction methods shall be the option of the excavator providing required densities can be met without disturbing or damaging existing facilities.

Minimum depths of base and subbase materials in paved areas shall be that required in the South Portland Street Design Manual.

(b) *Trench backfilling--Nonpaved areas.* For nonpaved areas the trench may be backfilled with excavated material or with granular material described as specified in (a) above. The material shall be placed in layers not to exceed two (2) feet and compacted in accordance with the latest M.D.O.T. Standard Specification, Highways and Bridges. The permittee shall maintain any apparent trench settlement for a period of three (3) years after the excavation has been completed.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92; Ord. No. 1-07/08, 8/6/07 [Fiscal Note: Less than \$1000]; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-56. Restoration of surface in streets and sidewalks.

(a) All paved area restorations, including temporary and permanent work within any street, driveway, or sidewalk shall be performed in accordance with the city's Code of Ordinances and the South Portland Street Design Manual. The Administrator may choose to waive specific repair requirements for just cause, including utility work being conducted prior to or in conjunction with a planned City/M.D.O.T. construction project.

(b) *Refilling of bar holes.* Any person or utility making bar holes in the street or sidewalk area of any public way shall immediately, upon completion of the work, fill these bar holes by the method set forth below:

(1) Plugging of bar holes. Bar holes shall be plugged by the use of Plug-R asphalt plug made by the Package Pavement Company, Stormville, New York, or approved equal.

(2) Size of asphalt plug to be used shall be as follows:

<i>Approximate Size of Plug (inches)</i>	<i>Drill Size (inches)</i>	<i>Top Diameter Plug (inches)</i>
3/4	3/4	1
7/8	1	1 1/3
1 1/8	1 1/4	1 1/2
1 1/4	1 1/2	1 3/4
1 1/2	1 3/4	2
1 3/4	2	2 1/4

2

2 1/4

2 1/2

(c) Any bar holes left unfilled shall be repaired by the utility/contractor

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92; Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000]; Ord. No. 1-07/08, 8/6/07 [Fiscal Note: less than \$1000]; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-57. Trenches.

The maximum length of open trench permissible at any time shall be one hundred (100) feet and no greater length shall be opened for pavement removal, excavation, construction, backfilling, patching or any other operation without the written permission of the city. No trench exceeding ten (10) feet in length shall remain open through night hours or nonworking days without the written permission of the city, which permission may be made conditional upon having said excavation guarded or protected by a watchman at the permittee's expense twenty-four (24) hours a day. Trenches shall be at a width that will allow the backfill materials to be thoroughly compacted. When an excavation is within a paved area, the trench area within the pavement and road or sidewalk base area shall not be less than twenty-four (24) inches in width.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

Sec. 23-58. Prompt completion of work.

After an excavation is commenced, the permittee shall pursue with diligence and expedition all excavation work covered by the excavation permit and shall promptly complete such work and restore the street as specified herein. The permittee shall perform such restoration work so as not to obstruct, impede or create a safety hazard to public travel by foot or vehicle.

The permittee must renew the excavation permit far enough in advance of the expiration date if the terms of the permit have not been completed before expiration.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92)

Sec. 23-59. Urgent work.

When traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the city shall have the full power to order, at the time the permit is granted, that a crew of men and adequate facilities be employed by the permittee beyond normal working hours including up to twenty-four (24) hours a day to the end, that such excavation work may be completed as soon as possible.

(Ord. No. 34-75, 1-19-76)

Sec. 23-60. Emergency action.

An excavation may commence after taking all reasonable steps consistent with the emergency and premark the area as soon as possible after receiving notification of the emergency.

Nothing in this article shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipe, or for making repairs, provided that the person making such excavation shall apply to the city for such a permit on the first working

day after such work is commenced. Before any excavation work is started, the person or utility excavating must contact all utilities or persons owning underground infrastructure in the area for on the spot locations.

Within fifteen (15) days after commencing any such emergency excavation, the person performing such emergency excavation shall make a detailed report thereof to the Administrator who shall review same to determine whether or not such excavation was of an emergency nature. No further permits under this article shall be issued to the person or utility making such excavation after the expiration of the fifteen-day period until such report has been submitted.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-61. Noise, dust and debris.

Each permittee shall conduct and carry out excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris and between the hours of 10:00 p.m. and 7:00 a.m. shall not use, except with the express written permission of the city or in case of an emergency as herein otherwise provided, any tool, appliance or equipment producing noise of sufficient volume to disturb sleep of occupants of the neighboring property. In addition, reference is hereby made to the City's noise ordinance for additional requirements in this regard.

(Ord. No. 34-75, 1-19-76; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-62. Preservation of monuments.

Any monument set for the purpose of locating or preserving the lines of any street or property subdivision, or a precise survey reference point, or a permanent survey bench mark within the city, shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission in writing from the city to do so. Permission to remove or disturb such monuments, reference points or bench marks shall be granted only when no alternate route for the proposed underground pipe or conduit is available. If the city is satisfied that no alternate route is available, permission shall be granted only upon condition, by an agreement in writing, that the person or utility applying for such permission shall pay all expense incident to the proper replacement of this monument by the city.

(Ord. No. 34-75, 1-19-76; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-63. Curb.

No person or utility shall remove, damage, haul away or cause misalignment of any curbing, including radius curb and catch basin stones, for any reason whatsoever without first receiving written permission from the city. Any curb missing, damaged or misaligned shall be replaced or aligned by the permittee. Replacement or realignment shall be done in a manner and under specifications prescribed by the city and subject to inspection by the city and shall be completed within a period of ninety (90) days after such authorization to complete such work. The permittee shall, for a period of three (3) years thereafter, be fully liable for all defects in materials and workmanship relating to such work and shall promptly repair or replace the same upon notice of the public works authority and to the satisfaction thereof. This time period is for municipal enforcement of this article only and shall not be construed to alter or limit any statute of limitations established by law in the State of Maine for civil actions.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-64. [RESERVED].

Sec. 23-65. Excavation during winter.

No person or utility shall be granted a permit to excavate or open any street or sidewalk from November 15 to April 1 of the following year unless an emergency or special conditions exist and permission is obtained in writing from the Administrator. Any person or utility wishing to obtain a street opening permit between these aforementioned dates shall first explain fully in writing the emergency situation existing to the Administrator before a permit shall be issued. This prohibition shall not apply if a hazardous condition which would endanger life or property exists; however, a written explanation shall be delivered to the Administrator as soon as possible and a street opening permit obtained for any such opening made.

(Ord. No. 34-75, 1-19-76; Ord. No. 26-76, 9-8-76, Ord. 14-91/92, 4-6-92; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-66. Facilities.

- (a) No person or utility shall, without written permission of the city, install any facility, except manholes, vaults, valve casings, culverts, and catch basins at a vertical distance less than:
- (1) *Streets.* Twenty-four (24) inches below the established flow line of the nearest gutter in street areas. If said flow line is not established, then the depth shall be at a minimum of twenty-four (24) inches below the surface of the nearest outermost edge of the traveled portion of the street.
 - (2) *Other public places.* The minimum depth of any facility on any other public place shall be eighteen (18) inches below the surface; provided, however, that the city may permit a lesser depth in special cases.
- (b) Nothing in this section shall impose a duty upon the permittee to maintain said specifications as required herein upon subsequent changes of grade in the surface unless the grade in said facility interferes with the maintenance of, or travel on, a public street.

(Ord. No. 34-75, 1-19-76)

Sec. 23-67. Inspections.

The city shall make such inspections as are reasonably necessary in the enforcement of this article. The city shall have the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry out the intent of this article.

(Ord. No. 34-75, 1-19-76)

Sec. 23-68. Maintenance of drawings.

Every person or utility owning, using, controlling, or having an interest in underground infrastructure within the public way used for the purpose of supplying or conveying gas, electricity, communication, impulse, water, steam, ammonia or oil in the city, shall file with the city, after the adoption of this article a map or set of maps each drawn to a scale of not less than one inch to fifty (50) feet, showing in detail the plan, location, size and kind of installation, of all new and/or renewed underground facilities, except service lines designed to serve single properties. These maps shall be provided to the city no later than sixty (60) days after the completion date of construction.

(Ord. No. 34-75, 1-19-76; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-69. Liability of city.

This article shall not be construed as imposing upon the city or any official or employee any liability or responsibility for damages to any person injured by the performance of an excavation work for which an excavation permit is issued hereunder, nor shall the city or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit, or the approval of any excavation work.

(Ord. No. 34-75, 1-19-76)

Sec. 23-70. Insurance.

The permittee shall maintain during the life of this permit the following insurances which shall be made a part of the permit application.

(a) *Bodily injury liability and property damage liability insurance.* The contractor shall take out and maintain during the life of this permit such bodily injury liability and property damage liability insurance and automobile bodily injury liability and property damage liability insurance as shall protect them and any subcontractor performing work covered by this permit from claims for damages for personal injury, including accidental death, as well as from claims for property damage which may arise from operations under this permit, whether such operations be by themselves or by any subcontractor, or by anyone directly or indirectly employed by either of them, and the amounts of such insurances shall not be less than:

- (1) Bodily injury liability insurance, in an amount not less than one million dollars (\$1,000,000.00) for injuries, including wrongful death to any one person, and subject to the same limit for each person in an amount not less than two million dollars (\$2,000,000.00) on account of one accident.
- (2) Property damage insurance, in an amount not less than one million dollars (\$1,000,000.00) for damages on account of any one accident, and in an amount not less than two million dollars (\$2,000,000.00) for damages on account of all accidents.

(b) *Reserved.*

(Ord. No. 34-75, § 1-19-76; Ord. No. 11-76, 5-17-76, Ord. 14-91/92, 4-6-92)

Sec. 23-71. Excavation in reconstructed or resurfaced street.

Whenever the city has developed plans to reconstruct a street, the city or its representative shall give written notice thereof to all abutting property owners, to the city departments, and to all public utilities or persons which have or may wish to

lay pipes, wires, or other facilities in or under the street. Upon receipt of such written notice, such person or utility shall have sixty (60) days in which to install or lay any such facility. If an extension of time is needed by a person or utility for the installation of such facilities, the person or utility shall make a written application to the city explaining fully the reasons for requesting such an extension of time. At the expiration of the time fixed and after such street has been constructed, reconstructed or rehabilitated, the Administrator has the right to deny permits to excavate such streets for a period of five (5) years as provided in 23 M.R.S.A. Sec. 3351 as may be amended from time to time. Any excavations into such street shall be subject to moratorium restoration requirements as set forth in 23 M.R.S.A. Sec. 3351-A as may be amended from time to time. In emergency situations involving repairs to any residential dwelling unit that requires the opening of a reconstructed or resurfaced street, the Administrator shall waive payment of the administrative/inspection fee.

The above mentioned five (5) year moratorium for street openings also pertains to new public or private streets, including those in subdivisions or developments that have been accepted in accordance with city specifications.

(Ord. No. 34-75, 1-19-76; Ord. No. 31-78, 11-20-78, Ord. 14-91/92, 4-6-92; Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000])

Sec. 23-72. Corrective actions to excavations and restorations.

- (a) If any part of any excavation, including the excavation, backfilling and repairs fails to conform with the standards of this chapter and the rules, the city shall notify the permittee and require the appropriate corrective actions to be undertaken. Permittee shall take corrective action within twenty-four (24) hours after the issuance of notice if the failure could trigger tort liability or liability for a street defect, as defined in 23 M.R.S.A. § 3351, et seq, as amended from time to time. In all other instances, the permittee shall have a reasonable time to undertake corrective action.
- (b) If the permittee fails to respond within the required time period, the city shall cause the necessary repairs to be accomplished, and shall keep an account of the expense thereof, and in such case the permittee shall be billed an amount equal to one hundred fifty percent (150%) of the whole of the expense incurred by the city. Bills rendered in accordance with this section shall be due and payable by the permittee immediately upon receipt. The city shall issue no further or new permits to the permittee until full payment of the billed costs has been received.
- (c) If for any reason the city has to perform repair work to an excavation after the permittee's guarantee has started, that guarantee period shall start over again upon completion of the repairs.

(Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000]; Ord. No. 1-07/08, 8/6/07 [Fiscal Note: Less than \$1000])

Sec. 23-73. Violations.

- (a) Any person or utility failing to comply with or violating any provision of this article shall be served by the Administrator with written notice stating the nature of the failure or violation and providing a reasonable time limit for the necessary corrective actions. Such person or utility shall, within the period of time stated in such notice, permanently cease or correct all failures or violations.
- (b) In order to ensure public safety, the Administrator shall have the right to

verbally notify and require immediate corrective actions of any person or utility whose failure to comply with this article or the rules could cause a safety hazard.

- (c) Any person or utility who shall continue any failure or violation beyond the time limit required for compliance in any notice given pursuant to this article shall be guilty of a violation of this article.
- (d) Any person or utility violating any of the provisions of this article shall be liable to the city for any expense, loss, or damage occasioned by the city by reason of such violation. The city may seek injunctive relief for the purposes of enforcing this article or the guidelines.
- (e) (1) Any violation of this article which is also a violation of 35-A M.R.S. § 2509 or § 2511 or a violation of 23 M.R.S. § 3353 or § 3355 shall subject the permittee or party to a fine as provided in said statutes, as said statutes may be amended from time to time.
 (2) Any violation of this article other than the violations of state law described in the preceding paragraph shall subject the permittee or party to a court enforcement action with a penalty of a fine of not less than \$100 nor more than \$2000 per day for each day that a violation continues.
- (f) Any permittee or party who continues to violate any section of this article or the guidelines and fails to correct violations in a timely manner shall receive no further permits and will be invoiced for permanent repairs as appropriate until such time as the city is satisfied that the permittee or party shall have corrected all violations in compliance with the terms of this article and the guidelines and regulations.
- (g) The city reserves the right to notify a permittee's insurance and/or bond carrier of repeated violations.

(Ord. No. 34-75, 1-19-76, Ord. 14-91/92, 4-6-92; Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000]; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

Sec. 23-74. Failure to obtain a permit.

Any person or utility found to be conducting any excavation activity within the public right-of-way without having first obtained the required permit(s) shall immediately cease all activity (exclusive of actions required to stabilize the area) and be required to obtain a permit before work may be restarted. A surcharge of five hundred dollars (\$500.00) shall be required in addition to all applicable permit fees. This provision shall not apply to utilities or persons responding to emergency situations, which may obtain any required permit(s) within two business days after responding to the emergency.

(Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000])

Sec. 23-75. [RESERVED]

Sec. 23-76. Repealed.

(Ord. 14-91/92, 4-6-92; Ord. No. 17-00/01, 3/19/01 [Fiscal Note: Less than \$1000]; Ord. No.1-07/08, 8/6/07 [fiscal Note: Less than \$1000])

Secs. 23-77--23-79. Reserved.

ARTICLE V. DESIGN AND CONSTRUCTION STANDARDS

Sec. 23-80. Standards.

Refer to the most recent version of the South Portland Street Design Manual for street design and construction standards.

(Ord. No. 34-75, 1-19-76; Ord. No. 2-77, 3-21-77; Ord. No. 18-23/24, 4/16/2024 [Fiscal Note: Less than \$1000])

ARTICLE VI. UTILITIES

Sec. 23-81. New streets.

Section 24-38(F) of the Subdivision Ordinance shall govern for all new streets. Section 24-38(F) (2) shall read: "The following shall constitute the utilities provision of this street and sidewalk ordinance."

- (a) *Existing utilities.* Where a utility exists the new installation shall be placed in its original position or as close to its original position as possible and the old system removed.
- (b) Where there is a conflict with existing utilities the proposed location of the new utility shall be approved by the city council.

(Ord. No. 34-75, 1-19-76)

ARTICLE VII. PARKLETS**Sec. 23-100. Purpose.**

This Article is intended to regulate the temporary establishment maintenance and operation of space within certain portions of City right-of-way limits for public, private, civic and commercial use.

Sec. 23-101. Definitions.

Designated Parklet Locations (DPLs). All areas within the City that have been formally designated by the City Council, by Council order, as being eligible for establishment of a Parklet. Public sidewalks and traveled ways are not eligible for designation as a Designated Parklet Location.

Parklet. A designated area, with or without a structure, within the public right-of-way that is made available for public use or for a designated service area associated with a business operating within 250 feet of the designated area. Parklets may incorporate seating; landscaping; access accommodations; signage; temporary lighting; temporary shelter such as tent canopies; temporary heating devices; bike racks; safety improvements such as guardrails, fencing, and vehicle barriers; public art installations; and similar facilities.

Person. A natural person, partnership, association, company, corporation, limited liability company or organization or a member, manager, agent, owner, director, officer or employee thereof.

Traveled way. The portion of the right-of-way for the movement of vehicles, exclusive of the shoulders, curbs, berms, sidewalks, and parking lanes.

Sec. 23-102. Parklet Area Designation.

By Council order, the City Council may designate eligible Parklet locations (including any associated restrictions on conditions), in the form of a list or map, within one or more City right-of-way limits, to be known as Designated Parklet Locations (DPLs). In so designating DPLs, the City Council shall take into consideration potential impediments to public use of the streets, vehicular and pedestrian safety, congestion, noise, land use ordinance regulations, other nuisances, and all local, state, and federal laws, rules and regulations. The City Council may from time to time request that the Planning Division or other City department or division make a recommendation about potential addition or deletion of DPLs for its consideration. The City Council may from time to time amend DPLs, by Council order, and any amended list or map shall be filed with the City Clerk and the Public Works Department.

Sec.-103. Parklet Permit Required.

No person shall use a portion of a public right-of-way as a Parklet unless permitted therefor by the Code Enforcement Director or their designee. A permit granted pursuant to this Article obviates the need for the user to obtain a permit under Sec. 23-11 of this Chapter as it relates to use of a portion of a public right-of-way as a Parklet.

Sec. 23-104. Application Requirements.

- (a) A person or entity seeking to install a Parklet in a DPL must secure a Parklet permit issued by the Code Enforcement Director or their designee.
- (b) Applications for a Parklet permit shall include all of the following:
- i. A complete application upon a form provided by the Code Enforcement Office.
 - ii. A non-refundable application fee pursuant to the City's Master Fee Schedule.
 - iii. A scaled site plan drawing set and renderings, as may be required by the Code Enforcement Director, indicating, at a minimum:
 1. The location of all features, improvements, fixtures, and expected operational needs associated with the Parklet;
 2. The location and dimensions of seating areas, aisles, ramps, and points of ingress and egress, to ensure compliance with building codes, including, without limitation, the Americans with Disabilities Act;
 3. The location of designated emergency access through and/or surrounding the Parklet, including the width of travel paths;
 4. The location of Fire Department connections, hydrants, and other emergency services facilities within 100 feet of the proposed Parklet;
 5. The location and width of adjacent vehicle travel lanes;
 6. The location of any pedestrian crosswalks and bicycle and pedestrian facilities within 100 feet of the proposed Parklet;
 7. The location of any known collision or vehicle safety concerns within 100 feet of the proposed Parklet; and
 8. Proposed lighting and electrical improvements, if any.
 - iv. A description of the proposed use of the Parklet, including any and all improvements to accommodate such use.
 - v. Hours of operation for the Parklet, including setup and removal of the Parklet both at the start and end of each Parklet season as well as on a daily basis while in season.
 - vi. A waste management and Parklet maintenance plan;
 - vii. A description of any sound-producing equipment that will be utilized at the Parklet, as well as the intended hours of operation for the equipment.
 - viii. Evidence of comprehensive general liability coverage in an amount not less than \$400,000 combined single limit for personal injury and property damage, or such other amount as may be required to meet the maximum coverage provisions of the Maine Tort Claims Act (14 M.R.S.A. § 8001 et seq.) as it may be amended. Further insurance requirements are as set forth in Sec. 23-107 below.
 - ix. A signed affidavit from the applicant, and business owner if different from the applicant, in a form provided by the City, indicating that the applicant understands and agrees that Parklet operations are limited to the period between April 15 and November 1 in each calendar year of the permit term.

Sec. 23-105. Review Authority and Procedure.

- (a) **Review Authority.** Parklet permits are issued by the Code Enforcement Director or their designee. Prior to issuance of a Parklet permit, the Code Enforcement Director or their designee shall consult with the staff Parklet Review Team, to include the Planning Director, Public Works Director, Fire Chief, and Police Chief, or their respective designees, in order to receive input on any conditions of approval that may be necessary or appropriate in order to ensure the applicant's ability to comply with the standards of review in Sec. 23-106 below and/or the terms and conditions in Sec. 23-107 below. The Code Enforcement Director or their designee may approve, approve with conditions, or deny an application for a Parklet permit.

- (b) **Review Period.** The Code Enforcement Director or their designee shall act on an application for a Parklet permit within 30 days of receipt of a complete application. Written notice from the Code Enforcement Director or their designee on deficiencies in an application that render an application incomplete shall be provided to an applicant within 30 days of receipt of an application or an amended application that responds to comments received on deficiencies. An applicant may consent in writing to an extension of the Code Enforcement Director's decision deadline or the applicant may appeal the Code Enforcement Director's failure to act prior to their decision deadline to the Board of Appeals pursuant to Sec. 23110 below; provided, however, that the Code Enforcement Director retains jurisdiction over and authority to act on the application prior to any action by the Board of Appeals.
- (c) **Review Schedule.** In the event that more than one application is received for the same space in a DPL, the application that was first deemed complete and found to be compliant with this Chapter shall receive permit approval. Applicants whose applications are denied because another Parklet has been approved at the site may amend their application for a Parklet to select another location within a DPL. The Code Enforcement Director, at their sole discretion, and at the request of an applicant, may waive the Parklet permit application fee for such an amended application seeking an alternative location.
- (d) **Notice.** Within two (2) business days of the receipt of a complete application, the Code Enforcement Office shall mail written notice to abutting property owners within 250 feet of the proposed Parklet location. The abutting property owners shall be considered to be the parties listed by the Assessor of the City of South Portland as those against whom taxes are assessed. Failure of any property owner to receive a notice shall not invalidate any action of the Code Enforcement Director or their designee. The applicant shall be responsible for all noticing charges incurred by the City. The Notice shall include a map with the proposed location of the Parklet, the boundaries of the applicable DPL, a general description of the intended use of the Parklet, contact information for City staff where comments or questions may be submitted, a deadline to submit comments on the application that is at least seven (7) days from the date that notices are mailed, the expected date when a determination will be made on the application, and how interested parties may access the application materials for further review. The Code Enforcement Director or their designee may make a determination on a complete application immediately following the close of the comment period indicated on the notice to abutters if the staff Parklet Review Team has reviewed the application and any public comment or testimony that was received during the noticing period and has been consulted in order to provide input on any conditions of approval that may be necessary or appropriate in order to ensure the applicant's ability to comply with the standards of review in Sec. 23-106 below and/or the terms and conditions in Sec. 23-107 below.

Sec. 23-106. Standards of Review.

All of the following standards must be met before the Code Enforcement Director or their designee shall issue a Parklet permit:

- (a) **Location.** The Parklet is within a DPL approved by the City Council.
- (b) **Non-Permanent Installation.** All improvements associated with the Parklet shall be portable to allow for maintenance, installation, and seasonal removal.
- (c) **Period of Operation.** The Parklet shall be established, maintained, and operated only during the period commencing April 15th until November 1st of each year, with an additional six (6) days prior to and after these dates for set up and removal.
- (d) **Hours of Operation.** Hours of operation at the Parklet shall be limited to 7:00 a.m. through 9:00 p.m., seven days a week; provided, however, that nothing herein shall limit the Code Enforcement Director or their designee from imposing

hours that are more limited or shall authorize the permit holder to violate any more limited hours imposed by another regulatory agency or related license, permit or approval.

- (e) **Health and Safety.** The Parklet shall maintain the health, safety, and orderly operation of all users of the right-of-way based upon a consideration, without limitation, of the following factors: the location of barriers and other obstructions within the right-of-way to ensure protections and to avoid unsafe obstructions to vehicular movements; traffic movements in the vicinity; necessary signage to ensure compliance with safe circulation in the vicinity of the Parklet; existing road and traffic conditions as well as prior roadway safety concerns in the vicinity; wind stresses; traffic and pedestrian visibility; natural and artificial lighting and glare; Americans with Disabilities Act compliance; municipal emergency services operational limitations or restrictions; applicable traffic laws, rules and regulations; and any other applicable laws, rules and regulations that may otherwise apply.
- (f) **Required Safety Measures.** The following required safety measures shall be installed as part of the Parklet:
 - i. Reflective materials, soft hit posts, and object markers compliant with the Manual on Uniform Traffic Control Devices at each corner of barriers adjacent to vehicle travel lanes and/or along outside boundaries that interface with vehicle travel lanes.
 - ii. Any vehicle deflection barriers greater than 36 feet in length shall have a 3foot separation for public safety access, which public safety access way shall include a temporary barrier and appropriate signage.
- (g) **Contact Information.** Contact information for the operator responsible for managing an active Parklet shall be posted conspicuously on the Parklet.
- (h) **Waste Management and Maintenance.** All waste and repairs and maintenance associated with the Parklet shall be adequately managed by the permit holder.
- (i) **Drainage.** The Parklet shall not alter or impair drainage patterns in the right-of-way.
- (j) **Proximity to Business.** If a Parklet is being established by a business, the legal operating area of the business is located within 250 feet of the Parklet. An authorized Stationary Vending Unit or Mobile Vending Unit, as defined in the Code of Ordinances, Chapter 14, after having secured a dedicated seasonal location to operate, shall qualify as a legal operating area of a business and would be eligible to apply for a Parklet.
- (k) **Design and Placement.**
 - (i) The Parklet does not permanently impair the provision and maintenance of public or private utilities.
 - (ii) The Parklet maintains pedestrian access and ADA accessibility.
 - (iii) The Parklet does not occupy more than a 7-foot width within the right-of-way.
 - (iv) The Parklet floor is within 0.5 inches of the curb height.
 - (v) The Parklet boundaries are not closer than 2 feet from an adjacent parking space.
 - (vi) The Parklet boundaries are not within 20 feet of an approved crosswalk.
 - (vii) No single permitted Parklet shall occupy more than two on-street parking spaces, except that one additional parking space may be occupied when multiple persons are co-applicants, e.g., two neighboring businesses may cooperate to establish a larger Parklet covering three parking spaces.
 - (viii) No single permitted Parklet shall span more than 60 feet in length within a right-of-way. Parklets may abut other Parklets that individually meet the standards above; provided, however, a 3-foot separation between Parklets shall be maintained.
- (l) **Noise.** The Parklet shall not generate a nuisance, in terms of noise, for neighboring businesses and residents and shall comply with Chapter 30 of the Code of Ordinances (Noise Control Ordinance). If a Parklet is located within 300 feet of a residence that is occupied at the time the Parklet permit is issued, no amplified sound is permitted in the Parklet.

- (m) **Compliance with Other Approvals.** The Parklet does not alter a term or condition of approval associated with a Planning Board approval, Certificate of Occupancy, license, permit, or other City-issued approval that is held by a person seeking to establish a Parklet. If the Parklet alters operating terms or conditions of approval that the applicant is otherwise subject to, the Parklet permit may be issued on the condition that the Parklet may not be established unless and until the applicant applies for and receives approval to amend the existing terms and conditions regulating the operations of the person applying to operate the Parklet. If such approval is not granted by the requisite reviewing authority within 90 days, the pending Parklet permit shall expire and the applicant may re-apply at a later date upon securing the requisite approval(s) amending existing terms and conditions regulating the person's operations.
- (n) **Compliance Generally.** The Parklet operator has not received written notice from the Code Enforcement Director or their designee regarding deficiencies in the operation and maintenance of a prior or concurrent Parklet operating in the City.

Sec. 23-107. Parklet Permit Terms and Conditions.

To be issued a Parklet permit, the person (as defined herein) issued the permit must agree to all Parklet-specific conditions of approval imposed on the permit, which Parklet-specific conditions of approval are a part of any permit issued. In addition, the person issued the permit must agree to the following general terms and conditions imposed on the permit, which terms and conditions are a part of any permit issued:

- (a) **Permit Term/Period of Operation.** The Parklet permit has a designated term of three (3) years, subject to renewal, expiring on November 1st of the third year of operation. The Parklet shall be established, maintained, and operated only during the period commencing April 15th until November 1st of each year, with an additional six (6) days prior to and after these dates for set up and removal.
- (b) **Hours of Operation.** Hours of operation at the Parklet are limited to 7:00 a.m. through 9:00 p.m., seven days a week; provided, however, that nothing herein shall limit the Code Enforcement Director or their designee from imposing hours that are more limited or shall authorize the permit holder to violate any more limited hours imposed by another regulatory agency or related license, permit or approval.
- (c) **Public Use.** Parklets established by a business shall only be restricted to the visiting public during business operating and Parklet operating hours; outside of those hours, any Parklet operating under Parklet permit shall be open and accessible to the general public. All Parklets shall include signage that indicates the hours of visiting public operation and the hours the Parklet is open for general public use. The Code Enforcement Officer or designee has authority to limit hours of operation at their sole discretion.
- (d) **Safety Measures and Improvements.** All safety measures and improvements required by this Article as well as any Parklet-specific safety measures and improvements required as conditions of approval shall be adhered to as conditions of approval on the permit.
- (e) **Noise.** The Parklet shall not generate a nuisance, in terms of noise, for neighboring businesses and residents and shall comply with Chapter 30 of the Code of Ordinances (Noise Control Ordinance). If a Parklet is located within 300 feet of a residence that is occupied at the time the Parklet permit is issued, amplified sound is prohibited in the Parklet.
- (f) **Cleanliness.** The Parklet shall be cleaned as reasonably necessary, but no less than daily, using a broom, hose and/or other equipment as appropriate. The permit holder shall provide at least one trash receptacle located within the Parklet.
- (g) **Contact Information.** Contact information for the operator responsible for managing the Parklet shall be posted conspicuously on the Parklet.
- (h) **No Tobacco or Cannabis Product Use in Parklet.** The use and consumption of tobacco and cannabis products is prohibited within Parklets, and the permit

holder shall conform to all laws, rules and regulations relating to the sale and consumption of alcoholic beverages and food safety within Parklets.

- (i) **Insurance Required.** No construction, maintenance, or operation associated with a Parklet shall occur unless and until the permit holder has filed with the Code Enforcement Office a certificate, in a form satisfactory to the Corporation Counsel, evidencing comprehensive general liability coverage in an amount not less than \$400,000 combined single limit for personal injury and property damage, or such other amount as may be required to meet the maximum coverage provisions of the Maine Tort Claims Act (14 M.R.S.A. § 8001 et seq.) as it may be amended, whichever amount shall be greater, and naming the City as an additional insured. The permit holder shall maintain such insurance at all times while engaged in use of the Parklet, and the permit holder shall provide the Code Enforcement Office with not less than ten (10) days' advance written notice of the cancellation, expiration or non-renewal of said insurance.
- (j) **Indemnification.** The permit holder releases and agrees to defend, indemnify and hold harmless the City, its agents, officers and employees, from any and all liability, actions, damages and claims of any kind and nature whatsoever for any injury, harm or damage to persons or damage to property that may arise or occur during or in connection with the permit holder's use of the Parklet.
- (k) **Damage to Parklet.** The permit holder is responsible for any damage to the Parklet or any part thereof caused directly or indirectly by the permit holder or their agents, employees, guests, or invitees. The City shall not be liable for any damage or loss to any property of the permit holder from any cause whatsoever while said permit holder's personal property is located at the Parklet for storage purposes or otherwise.
- (l) **Subject to Others Laws and Approvals.** The Parklet must comply with this Article and all other applicable City, State, and other laws, rules and regulations, and has secured all necessary licenses, permits and approvals, which may include Planning Board approvals.
- (m) **City Right of Entry.** The Parklet permit holder understands and agrees that the City may at any time, in its sole discretion, order a permit holder, or undertake on its own, the immediate removal of a Parklet in the event of an emergency, street maintenance or repair, or following revocation of a Parklet permit. In the event that a Parklet permit is revoked, the Parklet shall be removed, and the City right-of-way/Parklet area shall be restored to its condition immediately preceding the establishment of the Parklet, within 5 days of issuance of the revocation notice.
- (n) **Restoration of Parklet Site.** Upon expiration of the permit, the City right-of-way/Parklet area shall be restored to its condition immediately preceding the establishment of the Parklet within 5 days. The permit holder shall be responsible for any loss or damage to the Parklet.
- (o) **Personal Property.** Any personal property not removed at the end of the season or term hereof shall be deemed abandoned by the permit holder and shall become the property of the City, and permit holder hereby waives any claim to such personal property and agrees to indemnify the City against all costs and expenses incurred by the City in storing, removing and disposing of any such personal property.
- (p) **City Reserved Rights.** The City reserves the right to take legal action to recover all costs and expenses, including reasonable attorney's fees, if the permit holder fails to remove Parklet in the required time frame and the City must undertake the Parklet removal, cleanup and site restoration itself. The permit holder is responsible for all costs and expenses, including reasonable attorney's fees, incurred by the City in remediating any non-conformance with this Article or the permit, or for Parklet removal, cleanup and site restoration after November 1st or otherwise. The permit holder shall be responsible for any loss or damage to the Parklet. In any court action, the City may seek injunctive relief and shall be entitled to recover its costs of enforcement, including its reasonable attorney's fees.
- (q) **No Assignment or Transfer.** A Parklet permit is not assignable or transferable to a new owner. Any change in ownership shall require a new permit. Permits are limited to the location for which they are issued and shall not be transferable

to a different location. A permit holder who seeks to operate in a new location shall apply for a new permit for that location.

Sec. 23-108. Enforcement.

- (a) Complaints regarding Parklets brought to the attention of any City department shall be brought to the attention of the Code Enforcement Director as soon as practicable. A person may also file a complaint with the Code Enforcement Director. The Code Enforcement Director or their designee shall establish and maintain a log of all complaints for each complaint received and substantiated by the City. The Code Enforcement Director or their designee shall seek the voluntary correction of all substantiated complaints.
- (b) When, in the judgment of the Code Enforcement Director, the nature and/or number of complaints about a registered Parklet warrants further review of the Parklet, they shall proceed to suspend the permit pursuant to Sec. 23-109 below.

Sec. 23-109. Suspension or Revocation of a Permit.

- (a) A permit may be suspended by the Code Enforcement Director or their designee for any violation of this Article, any violation of Parklet-specific terms and conditions attached to such permit, or any violation of the terms and conditions of a permit, including, without limitation, the terms and conditions set forth in Sec. 23-107 above. If a permit is suspended, the permit holder shall have 24 hours after notice of the suspension, which notice shall contain a statement of the basis of the suspension and the curative action required to be completed by the permit holder within 24 hours, to complete the curative action. If the violation is not cured within 24 hours of notice of the suspension, the Code Enforcement Director or their designee may revoke the permit. A revocation of a permit by the Code Enforcement Director or their designee may be appealed to the City Manager or their designee within seven (7) days of notice of the revocation, who shall conduct a *de novo* review of the revocation. A revocation of a license by the Code Enforcement Director or their designee shall be in writing and shall include notification of the right to and procedure for appeal. Any revocation hearing shall be conducted pursuant to the procedures set forth in Sec. 14-13 of the Code of Ordinances, as may be amended, with the City Manager or their designee serving as the hearing officer.
- (b) Prior to the City Manager or their designee's scheduling of any revocation proceedings, the City Manager or their designee may request that an appropriate department head or City official meet with the permit holder to discuss permit compliance issues; provided, however, that any delay in the conduct of revocation proceedings due to such a request shall not jeopardize the public health, safety or welfare.

Sec. 23-110. Appeals.

- (a) **Appeal of Code Enforcement Director decision on approval, approval with conditions, denial, or failure to act on an application.** Any appeal of a decision of the Code Enforcement Director or their designee to approve, approve with conditions, deny, or fail to act on an application under the provisions of this Article shall be made to the Board of Appeals as an administrative appeal within thirty (30) days after the action or the failure to act of the Code Enforcement Director or their designee. The Board of Appeals shall conduct a *de novo* hearing consistent with the same procedures as used for administrative appeals in which it will hear evidence on the action or inaction and make its own findings of fact and conclusions of law on the issue of whether the

application meets the requirements of this Article. Any person aggrieved by a decision of the Board of Appeals hereunder may appeal to the Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure.

- (b) **Appeal of City Manager decision.** Any person aggrieved by a decision of the City Manager or their designee hereunder may appeal to the Superior Court in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure.

Sec. 23-111. Severability.

The provisions of this Article 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. 23-112. Other Laws.

In the event of a conflict between the provisions of this Article and any applicable State or local law, ordinance or regulation, the more restrictive provision shall control. The issuance of any permit pursuant to this Article shall not relieve the permit holder of the obligation to comply with all provisions of the Code of Ordinances or any other applicable laws, rules or regulations.

(Ord. No. 22-22/23, 3/21/2023 [Fiscal Note: Less than \$1000])