SOUTH PORTLAND CODE OF ORDINANCES

Chapter 18

PARKS AND RECREATION*

* State law reference(s)--Parks, trees and playgrounds, generally, 30 M.R.S.A. § 3801 et seq.

Art. I. In General, §§ 18–1–18–16
Art. II. Parks and Recreation Department, §§ 18–17–18–28
Art. III. Parks and Recreation Director, §§ 18–29–18–42
Art. IV. Reserved, §§ 18–43–18–62
Art. V. Willard Beach, §§ 18–63–18–69
Art. VI. Hinckley Park, §§ 18–70, 18–71
Art. VII. Open Space Preservation and Acquisition Fund, §§ 18–72–18–77
Art. VIII. Tobacco-Free Parks and Recreation Facilities, §§ 18–81–18–8

ARTICLE VII: OPEN SPACE PRESERVATION AND ACQUISITION FUND

Sec. 18–72. Purpose and Definitions.

A. Purpose. The City of South Portland recognizes that Open Space, parks, recreation areas and natural resources are desirable and beneficial to its citizens, provide South Portland residents and visitors with recreation and other outdoor opportunities throughout the year that continued public access to open space and the protection of the scenic and natural resources are essential for preserving the City's high quality of life; that sensitive lands and resources may be threatened by development; and that the long-term public interest of residents and visitors is best served by adding open space to the public domain in the long term. To further the acquisition and maintenance of open space lands, the City hereby establishes the City of South Portland Open Space Preservation and Acquisition Fund, hereafter referred to as the Open Space Fund, which shall be used to maintain, enhance, conserve, and/or acquire open space and open space lands in the City of South Portland. Property and funds held by the Open Space Fund are not intended to supplant budgetary appropriations to the Parks and Recreation Department.

B. Definitions. Notwithstanding definitions that may be provided in other section of the City's Code of Ordinances, the following definitions shall apply to terms used in this Article:

A.____________________

b.a. Real Property: An identified parcel or tract of land, including any improvements, and the interests, benefits, and rights inherent in the ownership of the land and any improvements. Real property includes the land, all permanent...
improvements to the land including structures; and all of the rights of ownership of
the land, including the right to possess, sell, lease, and enjoy the land.

b. Unimproved Real Property: Real Property that does not contain any which contains
no buildings or

c. structures permanently attached to the land; or that does not contain any buildings
or structures intended to be permanently attached to the land that are under
construction; or that has not been assigned a valuation for improvements in the
most recent assessment records of the Assessor for the City; or that only contains
improvements permanent improvements, or where permanent improvements are
not under construction, or for land which the City Assessor record has not assigned
a valuation for improvements, or which may contain improvements that are solely
designed to maintain or manage the natural condition of the site such as seawalls,
erosion control measures, improvements associated with habitat or ecological
restoration, bank stabilization, and/or similar improvements to the land.

d. Improved Real Property: Real Property that does not meet the definition of
unimproved real property.

e. Open Space: A parcel or area of land or water, the preservation of which would
achieve any of the following:

   i. Conserve and potentially enhance habitats, natural resources, or scenic
      resources;
   ii. Protect water quality;
   iii. Promote conservation of soils, wetlands, beaches, or tidal marshes,
   iv. Enhance the value to the public of abutting or neighboring parks, trails,
       forests, or nature preserves; or
   v. Enhance recreation opportunities

The intent is for this term to have the same meaning as set forth in For the
purposes of this Section, Open Space shall be as defined by Section 1.3 of the
2019 Open Space Plan, which has been adopted as Appendix Q to the 2012
Comprehensive Plan, as and may be amended from time to time.

e.f. Brownfield Properties Real property, the expansion, redevelopment, or reuse of
which may be complicated by the presence or potential presence of a hazardous
substance, pollutant, or contaminant. Brownfield sites include residential,
commercial, and industrial properties. The intent is for this term to have the same
meaning as "Brownfield Site" as it is defined in the Comprehensive Environmental
Response, Compensation, and Liability Act (CERCLA).

(Ord. 13-91/92, 3-16-92; Ord. No. 17-09/10, 7/19/10 [Fiscal Note: Less than $1000])
Sec. 18-73. Management of the Open Space Fund.

In managing the Open Space Fund, the City may:

a) Purchase and acquire fee simple interests and any lesser interests, including conservation restrictions, development rights or easements, and limited term easements for open space or public access, in any real property situated within the borders of the municipality, of the types set forth in Sec. 18-74, including any improvements on that real property, provided that all purchases or acquisitions are consistent with the purpose of this Article. While the primary intent of the fund is for purchase and acquisition of Open Space in perpetuity, acquisitions through lease may be justifiable and consistent with the purpose of this Article, subject to a formal finding by the City Council with respect to the terms of the lease that the funds expended are commensurate with the community benefit gained in furtherance of this Article;

b) Accept gifts, including real or personal property interests or funds, to further the purposes of this Article;

c) Dispose of all or any portion of the real property interests held by it, subject to the Constitution and laws of the State of Maine, this Article, and other applicable provisions of the Code of Ordinances;

d) Maintain, manage and improve land and interests in land held by it in a manner which allows public use and enjoyment consistent with the natural, historic and scenic resources of the land, including, but not limited to planting, pruning and cutting of trees and shrubs to manage and enhance natural systems, constructing public-use access trails and pathways, minor ancillary structures and improvements necessary to support the scenic and natural use of the land, community gardens, and signs. Annual expenditure of the Open Space Fund for maintenance, management and limited capital improvement of Open Space and improvements thereon shall not exceed 10% of the Open Space Fund balance at the conclusion of the prior fiscal year, unless this limitation is waived by the City Council to further the purposes of this Article, however this limitation cannot be waived for more than two (2) consecutive years. Any conditional gift or donation specifying a particular use or expenditure shall not be included in this calculation.

Any proposed acquisition or sale of any real property interest(s) and any proposed use of land pursuant to this article shall be referred to the Planning Board for review and recommendation(s) regarding consistency with the Comprehensive Plan and other adopted plans or ordinances; and to the Open Space Acquisition Committee or the any successor thereof as determined by the City Council, for review and a recommendation regarding consistency with acquisition criteria that may be prepared as may be adopted by the Open Space Acquisition Committee or and that is adopted by the City Council and as may be amended from time to time. However the City Council may, at its discretion, waive this requirement for referrals if the City Council makes a finding that the delay caused by the referrals would jeopardize the City’s ability to acquire the Open Space.

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The current ordinance lists the numbering in the format: (a) not a)... This change will need to be redlined or dropped.

Commented [N4]: From Corporation Counsel:
This is new text and needs to be redlined.

Commented [N5]: Planning Director recommendation:
Delete this as it is not necessary. Since Council must adopt the changes, if there are revisions, they need to be formally adopted and that supersedes the prior version.
Sec. 18-74. Permissible Expenditures from the Open Space Fund.

Land, interests in land, and other real property interests to be acquired and held as part of the Open Space Fund must be situated within the boundaries of the municipality and may consist of any of the following types of land and interest in land:

1. Ocean, harbor, river, stream, lake or pond frontage and adjoining backlands;
2. Fresh or saltwater marshes, estuaries, flood plains and adjoining uplands;
3. Islands;
4. Land for future active or passive public outdoor recreational use, including hiking trails, bicycle paths, green belts and high elevations with a view or other visual corridors, and Open Space;
5. Aquifers, aquifer recharge areas and other ecologically fragile or significant property;
6. Properties with unique historical or geological characteristics or which are otherwise important to the community's cultural welfare;
7. Farmland or wildlife habitat;
8. Vacant parcels of land, vacant buildings and properties or buildings and properties in significant disrepair which may be reclaimed for the purpose of establishing natural areas for Open Space or park land;
9. Brownfields properties for the sole purpose of rehabilitation and reversion wherein a significant amount of Open Space is created or preserved; or,
10. Improved Real Property wherein a significant amount of Open Space is created or preserved.

Sec. 18-75. Prohibited Uses and Activities on Land Acquired by the with Open Space Funds.

The City shall retain any real property interest acquired pursuant to this chapter or Article predominantly in its natural, scenic or open condition. Except as otherwise provided in this Article, the City shall not allow:

1. Except as provided in Section 18-73(d) or in furtherance of the purposes of this Article, construction or placement of buildings; access improvements, unless necessary for the use and enjoyment of the Open Space; signs or other advertising for commercial
purposes, other than branding on sponsored signage that does not exceed 2 square feet; utilities; or other structures on or above the surface; construction or placing of buildings; access improvements unless necessary for the use and enjoyment of the Open Space; signs or other advertising for commercial purposes except that modest branding on sponsored signage may be permitted; utilities; or other structures on or above the surface, except in furtherance of the purposes of this Article;

2. Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive material;

3. Removal or destruction of trees, shrubs or other vegetation, except where necessary for management purposes and to enhance natural systems or open-space uses;

4. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, except limited grading to enhance the open-space uses of the land;

5. Surface use except for purposes permitting the land or water area to remain predominantly in its natural, scenic or open condition;

6. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation;

7. Use of motorized vehicles, including recreational vehicles (RVs) and all-terrain vehicles (ATVs), except where used for appropriate maintenance purposes; or

8. Other acts or uses detrimental to the natural, scenic or open condition of the land or water areas.

(Ord. 13-91/92, 3-16-92)

Sec. 18-76. Contributions to the Open Space Fund

A. The City shall meet the financial obligations of the Open Space Fund by drawing upon a separate revolving or sinking account within the City. Deposits into the fund shall include:

1. Any funds appropriated to be deposited into the fund by vote of the City Council;

2. Voluntary contributions of money or other liquid assets to the fund;

3. Interest from deposits and investments of the fund; and

4. Net proceeds from disposal of real property interests pursuant to Code of Ordinances Section 2-171 as follows:

   a. Sixty percent (60%) of the net proceeds from the sale of Unimproved Real Property, unless waived by the City Council for good cause shown; and
b. No less than thirty percent (30%) of the net proceeds from the sale of Improved Real Property, unless waived by the City Council for good cause shown.

5. Any grant funds received on behalf of the Open Space Fund.

6. Subject to the annual budget process, commencing in Fiscal Year 2021-22 (April 1, 2021 assessment date), an annual contribution of at least $42,000 shall be made to the Open Space fund from the City’s budget. The City Council may consider the annual dollar amount of payment of any debt service or indebtedness issued or incurred by the City that support and maintain the purposes of the Open Space Fund as part of setting the annual contribution amount. City obligations to service bond issues associated with open space acquisition, creation, preservation, or site remediation for the same purposes, may be considered toward the City’s annual contribution goal. The City Council may also consider current economic conditions, property valuation changes, and the estimated revenue necessary to support and maintain the purposes of the Open Space Fund as part of setting the annual contribution amount.

6.7 The contribution amount initially may be equal to the amount provided in Section 18-76(A)(6) for the first July 1, 2021 – June 30, 2022 fiscal year (hereinafter the “Base Year”). At the beginning of each fiscal year after the Base Year (each such date hereinafter called an “increase date”), the contribution amount for that year may be adjusted, effective for the fiscal year commencing on each such increase date to an amount equal to the greater of (i) the prior year’s contribution amount; (ii) an annual contribution amount that bears the same proportion the annual contribution amount in effect during the calendar month immediately preceding such increase date as the Consumer Price Index (CPI Index) published for December of that fiscal year bears to such CPI Index as in effect for December of the preceding fiscal year; or (iii) the prior year’s contribution amount times the percentage increase in the City’s municipal budget (not including the school budget or county assessment) of that fiscal year from the prior fiscal year’s municipal budget plus the prior year’s contribution amount. In the event that the United States Bureau of Labor Statistics shall discontinue the issuance of such CPI Index or change such CPI Index or not publish said CPI Index for the month in question, a reasonable conversion factor may be applied or a reasonable equivalent substitute or successor index may be used as determined by the City Council for the computations set forth herein. The annual contribution shall be adjusted annually to account for inflation based on the Consumer Price Index All Urban Consumers as published by the U.S. Bureau of Labor Statistics.

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B. All expenses lawfully incurred in carrying out this Article must be evidenced by proper vouchers and accounting practices. The City shall prudently invest available assets of the fund and all income from any investment shall accrue to the fund.

(Ord. 13-91/92, 3-16-92; Ord. No. 9-03/04, 10/6/03 [Fiscal Note: Less than $1000]; Ord. No. 17-09/10, 7/19/10 [Fiscal Note: Less than $1000])

**Sec. 18-77. Records and Reporting.**

The City shall keep a full and accurate account of its actions, including a record as to when, from or to whom, and on what account money has been paid or received relative to this Article, and as to when, from or to whom, and for what consideration real property interests have been acquired, improved or disposed. The City shall regularly report all activities funded through the Open Space Fund and a summary of the balance and activities undertaken from the Open Space Fund shall be provided on the City's website and in the City's annual report.

(Ord. 13-91/92, 3-16-92)