

South Portland City Council
Position Paper of the City Manager

Subject:

ORDINANCE #8- 15/16 – Amending Chapter 8, “Fire Protection and Prevention”.
Passed first reading on 3/21/16. ROLL CALL VOTE. Passage requires majority vote.

Position:

Over the last six months, the City Council has taken up the topic of potentially amending Chapter 8 of the Code of Ordinances, the City’s Fire Protection and Prevention Ordinance, regarding bulk liquefied petroleum gas (LPG) plants. (A bulk LPG facility is one that stores LPG in containers of more than 4,000 gallons water capacity prior to further distribution as a liquid for use at other facilities.) The intent is to provide safety, health and welfare of the public through the use of reasonable fire protection measures.

At the December 28, 2015 Workshop, a citizen drafted proposal to amend Chapter 8 Fire Protection and Prevention was discussed by the City Council. The proposal went further than incorporating the most recent editions to NFPA (National Fire Protection Association) codes. The workshopped ordinance language was presented to the City Council on March 21, 2016 for first reading. The ordinance presented was based on the amendments presented at the December 28, 2015 workshop. Attorney Russell Pierce, of Norman Hanson & DeTroy, LLC reviewed the December 28, 2015 ordinance amendments and provided comments and suggestions through a cover letter, as well as proposed ordinance amendments. Based on reworked ordinance by Attorney Pierce, the City Council passed first reading and set April 4, 2016 for second reading and action.

Such an ordinance adheres to precedents found that local fire codes are appropriate for local control of land uses within a community and provides for enforcement by communities in an attempt to protect the safety, health and welfare of the community. Placement within Chapter 8, as Article XIV, a separate stand-a-lone enactment, ensures local regulation exists as a fire permitting rule.

Since the meeting of March 21st, the ordinance has continued to be tightened up with changes outlined by Attorney Pierce in the attached letter. The changes have been made to Sec. 8-14, “Definitions, - Public Infrastructure”. Attorney Pierce has stated within the attached letter that these changes are not substantive and will not require a new first reading.

The changes include the following:

Sec. 8-14 Definitions

Public Infrastructure

- (1) Airports;
- (2) Ambulance services or locations of search and rescue operations or post-emergency recovery services;
- (3) City Hall and all municipal service buildings;
- (4) Community centers and meeting halls, including churches places of worship or congregational buildings;
- (5) Court houses;
- (6) Correctional facilities;
- (7) Emergency preparedness and management services (including emergency shelter, food and water storage and distribution) and other county, state and federal government facilities providing emergency rescue or recovery services or aid;
- (8) Fire department buildings and facilities stations;
- (9) Garages and other storage facilities Regional food distribution facilities;
- (10) Government buildings, including but not limited to such as law enforcement buildings and facilities, including and local, county, state, federal , or other government departments;
- (11) Heating and power plants;
- (12) Housing identified for the elderly, elder care facilities, or care facilities for disabled or veterans;
- (13) Homeland Security buildings and facilities;
- (14) Hospitals, health and medical clinics or offices, dental clinics or offices, rehabilitation centers, nursing homes and locations which produce or store medical supplies, medical equipment, pharmaceuticals or operational supplies;
- ~~(15) Parks, museums, and public recreation areas;~~
- ~~(16) Parking lots used for any public infrastructure as defined herein;~~
- ~~(1517) Piers, wharves, docks, boat ramps, or public beaches~~
- ~~(1618) Power generation transmission facilities and high power transmission lines (135 kv and higher) and substations (but not including intra-city power lines);~~
- ~~(19) Public works facilities including but not limited water pumping or sewerage stations;~~
- ~~(20) Road clearing and repair facilities;~~
- ~~(1724) Schools, including pre-schools or daycares, and post-secondary institutions;~~
- ~~(1822) Telecommunications buildings or facilities, including any telephone offices, switching stations, above ground trunk lines (but excluding telephone poles or wires), licensed commercial or government radio transmitters and offices, television studios and~~

transmitters, and community cable facilities (but excluding aboveground cables providing local service);

(1923) Utilities including but not limited to aboveground pipelines, but excluding electronic aboveground monitoring devices; and

(24) Any other offsite buildings, structures, or facilities with a capacity to hold 25,000 gallons or more of any flammable liquid as defined by 49 C.F.R. § 173.120 (including any waste composed of 20% of the same type of liquid or any component additives used to make blended gasolines).

To incorporate the above changes, the City Council will need to amend the ordinance language and vote for final passage. Passage requires a majority vote.

Requested Action:

This Ordinance is in order for second reading and final passage.


City Manager



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March 28, 2016

SOUTH PORTLAND COMMERCIAL PROPANE FACILITY FIRE SAFETY ORDINANCE

RE: Amendments to “Public Infrastructure” Sec. 8-14 Definition.

Pursuant to further review and discussion with the City Manager on March 25, 2016, and following passage of “first reading” at the City Council meeting on March 21, 2016, attached are fine-tuned amendments to the “Public Infrastructure” definition in proposed Sec. 8-14.

These amendments between first- and second readings do not necessitate the requirement of a further “first reading” under Sec. 222 of the City of South Portland Charter, Article II. The amendments do not introduce a substantial change to the ordinance, which was introduced in writing and went through passage on first reading on March 21, 2016, pursuant to Sec. 222 of the City’s Charter. The amendments consist entirely of changes in wording (e.g., “churches” changed to “places of worship”), or deletions that lessen restrictions by, for example, removing “parks” and removing “parking lots” from the definition. The former “garage and storage facilities” category was eliminated and replaced with the less restrictive “regional food distribution facility.” These amendments do not raise substantial changes to trigger another Section 222 “first reading” or further readings of the ordinance before public hearing and second reading. Further, from a prospective applicant’s position the edits only serve to remove or lessen specific permit restrictions that were contained in the version which passed first reading.

Thus, this ordinance is in order for public hearing and second reading at the next regular meeting of the council [Charter Sec. 223]. In addition, consistent with Art. II, Sec. 224 of the City’s Charter, should the ordinance finally pass after public hearing and second reading, it may by motion pass in the amended form without the necessity of further hearings or readings.

Russell B. Pierce, Jr.



CITY OF SOUTH PORTLAND

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IN CITY COUNCIL

ORDINANCE #8-15/16

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District Two
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District Five
BRAD FOX

At Large
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THE COUNCIL of the City of South Portland hereby ordains as follows:

Section 1. Short Title

This Ordinance may be cited as the “South Portland Commercial Propane Facility Fire Safety Ordinance.”

Section 2. Findings

WHEREAS, the City of South Portland is a densely populated community of approximately 25,000 residents within 12 square miles, home to over 1200 small, medium and large businesses, and is also host to many visitors who come to South Portland to participate in local community events, businesses, and educational or recreational opportunities;

WHEREAS, the City of South Portland enjoys easy access to southern Maine’s shipping and transportation network, including road, port, and rail, and including interstate highway access, the deep water harbor of Casco Bay, and Maine’s largest rail yard;

WHEREAS, the City of South Portland has a long history of supporting industries engaged in commercial shipping and transportation, while at the same time protecting the safety, health and welfare of South Portland residents, visitors, and businesses through local regulation including Chapter 8, “Fire Protection and Prevention,” in the Code of Ordinances of the City of South Portland, which is enforced by the City’s Fire Department;

WHEREAS, propane and liquefied petroleum gas (LPG), as defined herein, is highly flammable;

WHEREAS, propane is shipped into the City of South Portland in bulk for commercial distribution;

WHEREAS, new commercial distribution facilities for the storage and handling of propane raise appreciable increased safety concerns to the City, in terms of the safety and protection of first responders, the safety and protection of public infrastructure and areas of common public use as defined herein, and the related public safety concerns for residents and visitors in the City;

WHEREAS, no commercial propane distribution facility is 100% free of any and all safety risks at all times, and any increase in the activity of commercial propane distribution facilities increases the risk of accident; and the potential harm from an accident is appreciably great or even catastrophic however well accidents are safeguarded against in this inherently dangerous activity;

WHEREAS, there have been serious commercial propane fires or explosions in relatively recent years in other localities, including Phoenix, Arizona on September 9, 2015; Gainford, Alberta, Canada on October 19, 2013; Lincoln, California on August 23, 2011; and near Toronto, Ontario, Canada on the morning of August 10, 2008;

WHEREAS, the use of regulatory safe distances pertaining to the handling, storage and distribution of propane has been employed by various federal agencies, including, by way of example: a 3000-foot distance on either side of all LPG vessels in Portland Harbor, or a 1500-foot radius around LPG vessels moored at the LPG receiving area in Newington, New Hampshire (33 C.F.R. § 165.103); a 4,708-foot minimum safe evacuation distance for the general public in the U.S. Department of Transportation's *Emergency Responders Guidebook* (ERG) (2012) at 367; and a 1,257-foot minimum safe distance for emergency personnel involved in incidents of rail cars containing propane, also in the U.S. Department of Transportation's *Emergency Responders Guidebook* (ERG) (2012) at 367;

WHEREAS, these regulatory safe distances, while varied, also bear reasonable relation to the explosion radii and safe distances from a fire or explosion event, where volumes of propane in excess of 25,000 gallons, and possibly more than one container of said capacity, are involved;

WHEREAS, the City Council deems that it is obligated to protect the safety, health and welfare of the public with reasonable fire protection measures, in light of all of the inherent risks posed by commercial propane distribution facilities and the appreciable local concern of any worse case accidents.

Section 3. Purpose

This Ordinance is enacted, consistent with the City's broad home rule authority, to protect the safety, health and welfare of its residents, visitors, and businesses, by amending certain of the City's existing Fire Protection and Prevention provisions of the City's Code Ordinance, to establish a minimum safe distance between commercial propane facilities in South Portland and other public infrastructure. The further intent is that this minimum safe distance be equally and uniformly applied regardless of the identity of the owner or operator of a commercial propane facility

Section 4. New Article to Chapter 8 of the South Portland Code of Ordinances

The following new Article XIV is added to the text of Chapter 8, "Fire Protection and Prevention," of the "Code of Ordinances, City of South Portland, Maine."

Chapter 8

FIRE PROTECTION AND PREVENTION

• • •

XIV. COMMERCIAL PROPANE FACILITY FIRE PERMIT

Sec. 8-14 Definitions

As used in this Article, the following terms shall have the meaning ascribed in this section:

Commercial propane distribution facility means any site holding, storing, containing, or distributing propane with aggregate capacity of 25,000 gallons or more of propane. A "commercial propane distribution facility" shall include transloading of liquefied petroleum gas (LPG) where this is no permanent structure or equipment for LPG unloading and loading; and in such case, the "commercial propane distribution facility" shall be deemed to be the site of the fire hydrant or any component part of fire suppression system closest to any transloading operations.

Propane means any liquefied hydrocarbon gas obtained as a by-product in petroleum refining of natural gas production, and includes **Liquefied petroleum gas (LPG)** as a liquid consisting mostly of propane or butane or both.

Public infrastructure means all buildings, structures or facilities which are above ground and occupied or used by the public, including but not limited to:

- (1) Airports;
- (2) Ambulance services or locations of search and rescue operations or post-emergency recovery services;
- (3) City Hall and all municipal service buildings;
- (4) Community centers and meeting halls, including churches places of worship or congregational buildings;
- (5) Court houses;
- (6) Correctional facilities;
- (7) Emergency preparedness and management services (including emergency shelter, food and water storage and distribution) and other county, state and federal government

facilities providing emergency rescue or recovery services or aid;

- (8) Fire department buildings and facilities stations;
- (9) Garages and other storage facilities Regional food distribution facilities;
- (10) Government buildings, including but not limited to such as law enforcement buildings and facilities, including and local, county, state, federal , or other government departments;
- (11) Heating and power plants;
- (12) Housing identified for the elderly, elder care facilities, or care facilities for disabled or veterans;
- (13) Homeland Security buildings and facilities;
- (14) Hospitals, health and medical clinics or offices, dental clinics or offices, rehabilitation centers, nursing homes and locations which produce or store medical supplies, medical equipment, pharmaceuticals or operational supplies;
- (15) Parks, museums, and public recreation areas;
- (16) Parking lots used for any public infrastructure as defined herein;
- (1517) Piers, wharves, docks, boat ramps, or public beaches
- (1618) Power generation transmission facilities and high power transmission lines (135 kv and higher) and substations (but not including intra-city power lines);
- (19) Public works facilities including but not limited water pumping or sewerage stations;
- (20) Road clearing and repair facilities;
- (1721) Schools, including pre-schools or daycares, and post-secondary institutions;
- (1822) Telecommunications buildings or facilities, including any telephone offices, switching stations, above ground trunk lines (but excluding telephone poles or wires), licensed commercial or government radio transmitters and offices, television studios and transmitters, and community cable facilities (but excluding aboveground cables providing local service);
- (1923) Utilities including but not limited to aboveground pipelines, but excluding electronic aboveground monitoring devices; and
- (24) Any other offsite buildings, structures, or facilities with a capacity to hold 25,000 gallons or more of any flammable liquid as defined by 49 C.F.R. § 173.120 (including any waste composed of 20% of the same type of liquid or any component additives used to make blended gasolines);

Sec. 8-14.1 Permits and Approvals Required.

8-14.1.1 Fire Department Permit

Notwithstanding any provision of the Code of Ordinances of the City of South Portland to the contrary, including any subsequently adopted or revised national building or national fire codes enacted after this date, unless explicitly stated otherwise:

- (i) No commercial propane distribution facility commencing operation after November 9, 2015; and
- (ii) No commercial propane distribution facility resuming operations after any cessation of commercial propane distribution facility operations, for any period of more than 120 consecutive days shall be permitted without having first notified the Fire Chief and been granted by the Fire Department an Article XIV fire safety permit for operation of a commercial propane distribution facility pursuant to the requirements of this Article XIV.

8-14.1.2 Safe Distance Measurement

The Fire Department shall not approve a permit application for a commercial propane distribution facility, as provided in Sec. 8-14.1.1, if the commercial propane distribution facility is located within 1,257 feet of any public infrastructure.

The measurement shall be made in a straight line on a horizontal plane (i.e., without regard to intervening structures, objects, topography, or slope of land) and shall be the shortest straight line between the property line of a commercial propane distribution facility and the property line of public infrastructure. In applications where the “commercial propane distribution facility” and the “public infrastructure” are situated on the same lot, the measurement shall be the shortest distance between: 1) any side of any above ground container; or, for transloading operations where this is no permanent structure or equipment for LPG unloading and loading, the site of the fire hydrant or any component part of fire suppression system closest to any transloading operations, and 2) the nearest structural support element of the infrastructure. In any case, structures or portions of structures that are underground are not included in measuring required distances. Any measurements resulting in fractions of one-half or greater shall be rounded up to the nearest whole number and fractions of less than one-half shall be rounded down to the nearest whole number.

8-14.1.3 Additional Permit Content

In addition to the posting and public inspection requirements for permits of Secs. 8-13.13 and 8-13.17, in order to further protect first responders and public infrastructure, the Fire Chief, Chief of the Bureau of Fire Prevention, or their designee within the Fire Department, shall collect, retain and promptly distribute to municipal fire departments with whom the City of South Portland may have mutual aid agreements, the following information about any permitted commercial propane distribution facility, within 60 days or less from the issuance of any such permit:

- (a) the name, physical mailing address, e-mail contact, and emergency messaging contact for the facility;

- (b) the name, physical mailing address, e-mail contact, and emergency messaging contact for the owner of the facility;
- (c) the names, addresses, phone numbers, e-mails, and messaging addresses of at least two emergency-contact employees or agents responsible for such facility, who can be reached 24 hours a day, 7 days a week including all holidays;
- (d) a copy of the site plan of the facility as of the date of the fire permit application with a notation of any changes made over the past year that may affect or impair in any manner first responder action or decision making in the event of an emergency at that facility;
- (e) a copy of any emergency and evacuation plans for the facility (which shall include a description and illustration of the fire suppression system) and the surrounding neighborhood(s) including methods of notification of danger;
- (f) a list of propane and odorant release incidents (time, date, amount, source, location, point-of-origin) at that site and any fires, explosions or damage of any kind to the site, personnel or the public, and any structural damage and corrective actions taken or yet to be undertaken for the benefit of first responders.

Sec. 8-14.2 Mandatory Enforcement

The Fire Department's measurement and enforcement of the 1,257-foot distance herein is mandatory, and shall not be waived, modified, or varied. Notwithstanding Sec. 8-4.3 "Modification of Code for Specific Cases," or any provision of the Code of Ordinances of the City of South Portland to the contrary, neither the Fire Chief nor the Chief of the Bureau of Fire Prevention, nor any of their delegees within the Fire Department, shall waive or modify any provision of this Article XIV so as to allow any less stringent requirements to be applied to commercial propane distribution facilities, and in the exercise of their permitting power herein shall not otherwise waive, modify, or vary these provisions.

Permits for commercial propane distribution facilities shall be processed pursuant to the permitting procedures of Article XIII, Sec. 8-13. The Fire Department shall not delegate or assign its permit review and approval power and enforcement under this Article XIV, and under Secs. 8-13.1.1 & 8-13.29, to the Code Enforcement Officer or the Planning Department.

Sec. 8-14.3 Appeals

Notwithstanding Sec. 8-13.24 or any provision of the Code of Ordinances of the City of South Portland to the contrary, appeals from a decision of the Fire Department denying a permit under this Article XIV shall be to the Superior Court.

Sec. 8-14.4 Penalties; Violations

The provisions of Sec. 8-13.30 apply to this Article XIV, except that in the event the City brings an action pursuant to Sec. 8-13.30, the action shall be brought in the Superior Court.

Sec. 8-14.5 Applicability Date

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this Article XIV when enacted shall govern any commercial propane distribution facility for which a permit application has not been submitted and acted on by the Fire Chief or Fire Department, as applicable, prior to November 9, 2015.

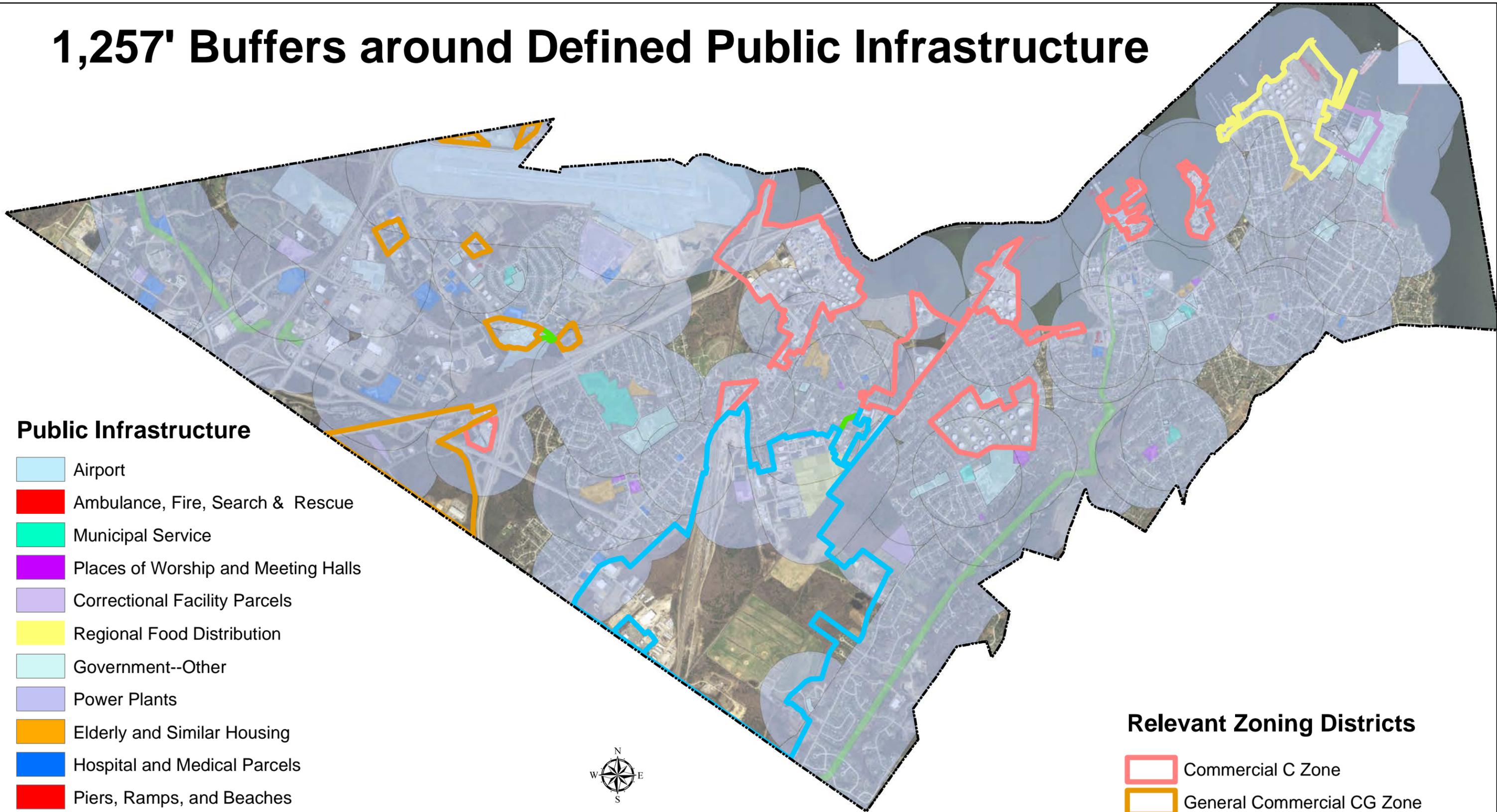
Sec. 8-14.6 Severability

The sections, paragraphs, sentences, clauses and phrases of this Article XIV are severable, and if any phrase, clause, sentence, paragraph or section of this Article shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction or of a federal agency of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Article XIV. It is further the legislative intent that if any provision of this Article XIV is so declared or determined unconstitutional, invalid or unenforceable "as applied" to a particular applicant or class of applicant, then notwithstanding said declaration or decision, all permits and all sections, paragraphs, sentences, clauses and phrases remain in full force and effect as to all other permit-holders, applicants or classes of applicants outside the scope of said declaration or decision.

Fiscal Note: Less than \$1,000

Dated: March 21, 2016

1,257' Buffers around Defined Public Infrastructure



Public Infrastructure

- Airport
- Ambulance, Fire, Search & Rescue
- Municipal Service
- Places of Worship and Meeting Halls
- Correctional Facility Parcels
- Regional Food Distribution
- Government--Other
- Power Plants
- Elderly and Similar Housing
- Hospital and Medical Parcels
- Piers, Ramps, and Beaches
- Power Transmission Lines
- School Parcels
- Communications Parcels
- Utility Facilities

Relevant Zoning Districts

- Commercial C Zone
- General Commercial CG Zone
- Industrial I Zone
- Non-Residential Industrial INR Zone
- Shipyard S Zone
- Spring Point SP Zone



1 inch = 2,500 feet

Tex Haeuser - 4-1-16

Note: Most, but probably not all, of the uses listed in the Public Infrastructure definition are included in this map.



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WHEREAS, these regulatory safe distances, while varied, also bear reasonable relation to the explosion radii and safe distances from a fire or explosion event, where volumes of propane in excess of 25,000 gallons, and possibly more than one container of said capacity, are involved;

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Section 4. New Article to Chapter 8 of the South Portland Code of Ordinances

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- (3) City Hall and all municipal service buildings;
- (4) Community centers and meeting halls, including churches or congregational buildings;
- (5) Court houses;
- (6) Correctional facilities;
- (7) Emergency preparedness and management services (including emergency shelter, food and water storage and distribution) and other county, state and federal government facilities providing emergency rescue or recovery services or aid;

- (8) Fire stations;
- (9) Garages and other storage facilities;
- (10) Government buildings, such as law enforcement buildings and facilities, including local, county, state, federal, or other government departments;
- (11) Heating and power plants;
- (12) Housing identified for the elderly, elder care facilities, or care facilities for disabled or veterans;
- (13) Homeland Security buildings and facilities;
- (14) Hospitals, health and medical clinics or offices, dental clinics or offices, rehabilitation centers, nursing homes and locations which produce or store medical supplies, medical equipment, pharmaceuticals or operational supplies;
- (15) Parks, museums, and public recreation areas;
- (16) Parking lots used for any *public infrastructure* as defined herein;
- (17) Piers, wharves, docks, boat ramps, or public beaches
- (18) Power generation facilities and high power transmission lines (135 kv and higher) and substations (but not including intra-city power lines);
- (19) Public works facilities including but not limited to water pumping or sewerage stations;
- (20) Road clearing and repair facilities;
- (21) Schools, including pre-schools or daycares, and post-secondary institutions;
- (22) Telecommunications buildings or facilities, including any telephone offices, switching stations, above ground trunk lines (but excluding telephone poles or wires), licensed commercial or government radio transmitters and offices, television studios and transmitters, and community cable facilities (but excluding aboveground cables providing local service);
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Sec. 8-14.1 Permits and Approvals Required.

8-14.1.1 Fire Department Permit

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- (i) No commercial propane distribution facility commencing operation after November 9, 2015; and

- (ii) No commercial propane distribution facility resuming operations after any cessation of commercial propane distribution facility operations, for any period of more than 120 consecutive days shall be permitted without having first notified the Fire Chief and been granted by the Fire Department an Article XIV fire safety permit for operation of a commercial propane distribution facility pursuant to the requirements of this Article XIV.

8-14.1.2 Safe Distance Measurement

The Fire Department shall not approve a permit application for a commercial propane distribution facility, as provided in Sec. 8-14.1.1, if the commercial propane distribution facility is located within 1,257 feet of any public infrastructure.

The measurement shall be made in a straight line on a horizontal plane (i.e., without regard to intervening structures, objects, topography, or slope of land) and shall be the shortest straight line between the property line of a commercial propane distribution facility and the property line of public infrastructure. In applications where the “commercial propane distribution facility” and the “public infrastructure” are situated on the same lot, the measurement shall be the shortest distance between: 1) any side of any above ground container; or, for transloading operations where this is no permanent structure or equipment for LPG unloading and loading, the site of the fire hydrant or any component part of fire suppression system closest to any transloading operations, and 2) the nearest structural support element of the infrastructure. In any case, structures or portions of structures that are underground are not included in measuring required distances. Any measurements resulting in fractions of one-half or greater shall be rounded up to the nearest whole number and fractions of less than one-half shall be rounded down to the nearest whole number.

8-14.1.3 Additional Permit Content

In addition to the posting and public inspection requirements for permits of Secs. 8-13.13 and 8-13.17, in order to further protect first responders and public infrastructure, the Fire Chief, Chief of the Bureau of Fire Prevention, or their designee within the Fire Department, shall collect, retain and promptly distribute to municipal fire departments with whom the City of South Portland may have mutual aid agreements, the following information about any permitted commercial propane distribution facility, within 60 days or less from the issuance of any such permit:

- (a) the name, physical mailing address, e-mail contact, and emergency messaging contact for the facility;
- (b) the name, physical mailing address, e-mail contact, and emergency messaging contact for the owner of the facility;
- (c) the names, addresses, phone numbers, e-mails, and messaging addresses of at least two emergency-contact employees or agents responsible for such facility, who can be reached 24 hours a day, 7 days a week including all holidays;

- (d) a copy of the site plan of the facility as of the date of the fire permit application with a notation of any changes made over the past year that may affect or impair in any manner first responder action or decision making in the event of an emergency at that facility;
- (e) a copy of any emergency and evacuation plans for the facility (which shall include a description and illustration of the fire suppression system) and the surrounding neighborhood(s) including methods of notification of danger;
- (f) a list of propane and odorant release incidents (time, date, amount, source, location, point-of-origin) at that site and any fires, explosions or damage of any kind to the site, personnel or the public, and any structural damage and corrective actions taken or yet to be undertaken for the benefit of first responders.

Sec. 8-14.2 Mandatory Enforcement

The Fire Department's measurement and enforcement of the 1,257-foot distance herein is mandatory, and shall not be waived, modified, or varied. Notwithstanding Sec. 8-4.3 "Modification of Code for Specific Cases," or any provision of the Code of Ordinances of the City of South Portland to the contrary, neither the Fire Chief nor the Chief of the Bureau of Fire Prevention, nor any of their delegees within the Fire Department, shall waive or modify any provision of this Article XIV so as to allow any less stringent requirements to be applied to commercial propane distribution facilities, and in the exercise of their permitting power herein shall not otherwise waive, modify, or vary these provisions.

Permits for commercial propane distribution facilities shall be processed pursuant to the permitting procedures of Article XIII, Sec. 8-13. The Fire Department shall not delegate or assign its permit review and approval power and enforcement under this Article XIV, and under Secs. 8-13.1.1 & 8-13.29, to the Code Enforcement Officer or the Planning Department.

Sec. 8-14.3 Appeals

Notwithstanding Sec. 8-13.24 or any provision of the Code of Ordinances of the City of South Portland to the contrary, appeals from a decision of the Fire Department denying a permit under this Article XIV shall be to the Superior Court.

Sec. 8-14.4 Penalties; Violations

The provisions of Sec. 8-13.30 apply to this Article XIV, except that in the event the City brings an action pursuant to Sec. 8-13.30, the action shall be brought in the Superior Court.

Sec. 8-14.5 Applicability Date

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, this Article XIV when enacted shall govern any commercial propane distribution facility for which a permit application has not been submitted and acted on by the Fire Chief or Fire Department, as applicable, prior to November 9, 2015.

Sec. 8-14.6 Severability

The sections, paragraphs, sentences, clauses and phrases of this Article XIV are severable, and if any phrase, clause, sentence, paragraph or section of this Article shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction or of a federal agency of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Article XIV. It is further the legislative intent that if any provision of this Article XIV is so declared or determined unconstitutional, invalid or unenforceable "as applied" to a particular applicant or class of applicant, then notwithstanding said declaration or decision, all permits and all sections, paragraphs, sentences, clauses and phrases remain in full force and effect as to all other permit-holders, applicants or classes of applicants outside the scope of said declaration or decision.

Fiscal Note: Less than \$1,000

Dated: March 21, 2016

SOUTH PORTLAND CITY COUNCIL

Subject: Summary of Proposed Amendment to Chapter 8, “Fire Protection and Prevention”

Norman Hanson & DeTroy, LLC was retained by the City to review the version of the proposed amendment to Chapter 8, “Fire Protection and Prevention,” of the City’s Code of Ordinances which had been provided to us by the City Manager. The scope of the review was to independently analyze whether the conceptual framework of that version presented a viable regulatory approach for addressing public safety issues raised by LPG handling and storage facilities and the prospects of “transloading” operations within the City’s jurisdiction. If so, then we were tasked with drafting a proposed ordinance that retains the key elements of that regulatory approach.

The conceptual framework included, significantly, the policy that LPG storage, handling and “transloading” operations be allowed within the City, but that wherever those operations take place, they occur in places within the City’s jurisdiction that are a safe distance from other public infrastructure (for example, public buildings or locations where the public is often present or would need to be evacuated in the event of a first responder call to the facility or transloading locus). This overarching policy allowing commercial LPG storage and transloading to take place, but at safe distances, is retained in the proposed amendment.

The second key component of the version we reviewed was the recognition that likely places within the City where LPG storage and transloading would occur were areas where rail carrier operations also take place, particularly Rigby Yard. The version of amendment we reviewed contained the core premise that the Council, in the exercise of its local home rule authority to protect public safety, would enact a local fire safety regulation (bearing rational basis to published or existing regulatory safe distance guidelines) in the form of a jurisdiction-wide, uniform, objectively applied safe distance permitting criterion to the conduct or activity in question. We concluded the version we reviewed to be a good regulatory approach to address these concerns.

Of course there is never an absolute guarantee that this, or any, local regulation would remain in force against a rail carrier. Yet, while this particular approach to the issues has not been raised before to our knowledge, this approach does adhere to precedent that local fire codes and local fire safety reporting requirements have typically been found to remain applicable and appropriate local regulation in those areas where localities do retain their reserved police powers to protect public health and safety. Here, the fire code amendment is contained entirely in the City’s fire code (Chapter 8, “Fire Protection and Prevention”), and is a permitting requirement enforced by the Fire Department, based on an objective and clear safe distance criterion. The

safe distance is rationally based in first responder guidelines, and allows transloading to take place without discriminating against rail carriers.

Thus, the key components of the version of amendment we reviewed have been carried through in our drafting process, and remain:

1. That Chapter 8 be amended to contain a permit requirement for commercial propane (or LPG) distribution facilities, which include facilities storing or handling LPG with aggregate capacity of 25,000 gallons or more;
2. The only permit requirement is that the facility must comply with the safe distance measurement [1,257-feet, the safe distance measure contained in the U.S. Department of Transportation's *Emergency Responders Guidebook* (ERG) (2012)] from public infrastructure; and report to the Fire Department basic information such as facility emergency contact personnel, site plans, and fire emergency/evacuation plans;

A few additional notes:

The "liquefied petroleum gas (LPG)" definition is from federal regulations, including the verbatim LPG definition used by the Coast Guard for waterfront handling and storing of LPG [33 C.F.R. § 127.005].

The list of "public infrastructure" is intended to cover those structures often used by the public or that would require evacuation in the event of a first responder call to the locus. The 1,257-foot safe distance is the guideline for first responders; it is reasonable therefore that there be no public buildings or places needing evacuation that are closer to the event or loci of the call than the very safe distance first responders themselves follow. Using a list for public infrastructures rather than a general definition also underscores the objectivity and increases the specificity of the measurement (which measurement is itself clearly defined and rationally based in the policy and intent of the permit requirement).

The permitting procedures would be the same that already exist for other forms of fire permits in Article XIII of Chapter 8, emphasizing that the Fire Department enforces Chapter 8 exclusively, and must review and approve permit applications. See Sec. 8-13.1 & 8-13.29.

The "severability" clause at the end of the proposed amendment is, in the first sentence, the verbatim severability clause existing in Sec. 1-7 of the City's Code of Ordinances. The second sentence is added to ensure that if any provision is declared invalid "as applied" to a particular permit applicant or class of applicant, the provision and safe distance permitting requirements would still apply to existing permit-holders or applicants who are not within that "as applied" class.

We chose to keep the structure of the version we reviewed as a standalone Article XIV in Chapter 8. This is to ensure that this local regulation exists as a fire permitting rule, uniformly applicable throughout the City's jurisdiction.