

PARKS AND RECREATION*

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SOUTH PORTLAND CODE OF ORDINANCES

Chapter 18

PARKS AND RECREATION*

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ARTICLE I. IN GENERAL

Sec. 18-1. Playing in parks.

No person shall engage or participate in any sports or games upon the premises at any city park which may result in personal injury to other persons.

(Code 1966, § 6-6-1.11; Ord. No. 15-74, 7-15-74)

Sec. 18-2. Swimming, wading in public parks.

No person shall swim, bathe or wade in any pool or body of water located upon any public park within the city, except that this restriction shall not apply to such activity at public beaches and swimming pools during hours when such use is permitted.

(Code 1966, § 6-6-1.16; Ord. No. 21-70, 8-3-70)

Sec. 18-3. Camping, sleeping in public parks, beaches, ponds.

No person shall sleep or camp in or upon any park, beach, pond or other recreational property owned by the city.

(Code 1966, § 6-6-1.17; Ord. No. 21-70, 8-3-70)

Sec. 18-4. Remaining on recreational property past nine p.m.

No person shall remain in or upon any park, beach, pond or other recreational property owned by the city from 9:00 p.m. to 6:00 a.m., except for the purpose of traveling across or through them. Nothing herein shall apply to any activity sponsored by the recreational department, the school department or duly licensed by the appropriate city authority.

(Code 1966, § 6-2-4; Ord. No. 21-70, 8-3-70, Ord. 14-01/02, 7/15/02 [Fiscal note: Less than \$1000])

Sec. 18-5. Use of public landing, ramp.

- (a) The public launching ramp is intended to be used primarily for the launching of recreational boats. Commercial boats may use the ramp only if the director of parks and recreation or his designee determine that such use does not unreasonably interfere with the launching of recreational boats. The city council may establish by order a schedule of fees for public use of the ramp.
- (b) The launching of boats from any equipment which may in the opinion of the director of parks and recreation or his designee, cause damage to the public ramp is prohibited.
- (c) The public float and landing is hereby restricted to the boating and landing from small craft only, and the mooring of small craft, storage of gear, or commercial use of same is expressly prohibited.
- (d) The boat ramp is intended for the launching of boats and may not be used for short-term or long-term storage of boats. Tying up or leaving any boat in the area is prohibited except when loading or unloading cargo and/or passengers, and except where otherwise posted by proper notice. The time limit for use of this ramp is thirty (30) minutes and no vessel shall tie to, or make use of this ramp for longer periods except under conditions determined by the Director of Parks & Recreation to be an emergency. Boats left or stored on the boat ramp property for longer than thirty minutes without the express permission of the Director of Parks and Recreation or his/her designee are subject to removal and storage off-site by the City. Before reclaiming a boat that has been removed and stored by the City, the owner shall pay to the City all fines due for violation of this provision and all costs associated with removal and storage, including but not limited to the fine of \$250 per day

established in subsection (h) below. Boats removed and stored which are not reclaimed within the statutory period for abandoned property or such other shorter time period as permitted by law may be sold by the City according to law.

- (e) No vehicles, trailers, campers, or the like shall be parked or left in the area adjoining the ramp during the hours properly posted in the area.
- (f) When approaching or leaving the area, the speed of all boats shall be reduced to head way speed, so as to provide full visibility and control and prevent their wash from being thrown onto or causing excessive rocking to other boats. "Head way speed" for the purpose of this section shall mean the slowest speed that a power boat may be operated and maintain steerage way, but in no case shall exceed six (6) miles per hour.
- (g) The director of parks and recreation is authorized to promulgate reasonable rules and regulations to carry out the intent of this section and to further govern the use of the public landing and the public launching ramp for the convenience and safety of the public.
- (h) Any person who violates a provision of this section or of any rule or regulation promulgated pursuant to subsection (g) shall be penalized by a fine of two hundred fifty dollars (\$250.00) and, in addition, shall be responsible for the cost of repair or reconstruction should damage to the public landing or public launching ramp result from the violation. Each day or portion thereof a violation is permitted to exist shall constitute a separate violation.

(Code 1966, §§ 7-7-1, 7-7-2; Ord. No. 19-78, 10-2-78; Ord. No. 12-79/80, 12-3-79; Ord. No. 41-87/88, 5-2-88; Ord. No. 11/99/00, 5/1/00, [Fiscal Note: Less than \$1000]; Ord. No. 16-19/20, 3/5/2020 [Fiscal Note: Less than \$1000])

Sec. 18-6. Littering, animal waste in parks.

- (a) No person shall cause or permit any litter, debris, refuse, garbage, human or animal excrement or other objectionable wastes to be cast or deposited upon the premises of any park, beach, pond or other recreational property owned by the city. This prohibition shall not include the reasonable spreading of animal excrement or other fertilizer as part of the landscaping and maintenance activities of the parks department and other city employees or agents.
- (b) While on any public way, public street, public sidewalk, public parking lot, public park, public open space, public beach or other public space, owners and keepers of pets (i) shall maintain a pet waste pick-up bag in their possession at all times; and (ii) shall not leave used pet waste pick-up bags unattended or outside of their immediate possession and control (e.g., for later pickup). All pet wastes must be picked up and properly disposed of.
- (c) Horses, mules, donkeys, ponies and jackasses are exempt from this section.

(Code 1966, § 6-6-1.11; Ord. No. 15-74, 7-15-74; Ord. No. 26-89/90, 6-4-90; Ord. No. 20-00/01, 4/18/01 [Fiscal Note: Less than \$1000]; Ord. No. 16-19/20, 3/5/2020 [Fiscal Note: Less than \$1000]; Ord. No. 20-21/22, 5/3/2022 [Fiscal Note: Less than \$1000])

Sec. 18-7. Possession and consumption of alcoholic beverages in recreational areas.

No person shall possess or consume any malt beverages or spirituous or vinous beverages upon any park, beach, pond or other recreational property owned by the city.

(Ord. No. 15-74, 7-15-74)

Sec. 18-8. Operation of motor vehicles on city property; restricted; exceptions.

No person shall operate any automobile, truck, bus, snowmobile, motorcycle, minibike or other motorized vehicle on any park, beach, or other property owned by the city, except that this restriction shall not apply to municipal employees engaged in emergency or maintenance operations, nor to activities sponsored or sanctioned by the

parks and recreation departments.

(Ord. No. 15-74, 7-15-74; Ord. No. 26-78, 10-16-78)

Sec. 18-9. "Park" defined.

A "park" is defined as a public area of land, usually in a natural state, having facilities for rest and/or recreation, or providing public open space, shall include but not be limited to all beaches and the Greenbelt Walkway, and all of the parking facilities adjacent to those locations.

(Ord. No. 15-74, 7-15-74; Ord. No. 20-00/01, 4/18/01 [Fiscal Note: Less than \$1000]; Ord. No. 14-01/02, 7/15/02 [Fiscal Note: Less than \$1000])

Sec. 18-10. Feeding of waterfowl and gulls prohibited.

No person shall feed, provide or give any food or other edible item to any goose, duck, swan or other waterfowl or any gull within any park within the City or within any City-owned or City-controlled property, including, without limitation, hand feeding or the placing or setting out of food to be left attended or unattended.

Sec. 18-10A. Entry into and damage of sand dunes prohibited.

No person or pet shall enter upon or cross over any City-owned or controlled sand dune, whether on foot, bicycle or otherwise, except at an authorized marked crossover or designated beach access, other than in the performance of official duties of a federal, state, or City official. No person or pet shall damage, destroy or remove any City-owned or controlled sand dune, or part thereof. No person or pet shall kill, destroy or remove any grass, shrubbery, trees or other vegetation growing in a sand dune other than as authorized in the performance of official duties of a federal, state, or City official. Pet owners and keepers are responsible for keeping their pets out of City-owned or controlled sand dunes and for any prohibited acts of pets within City-owned or controlled sand dunes.

For purposes of this section, a "sand dune" shall mean sand and gravel deposits within a marine beach system, including, but not limited to, beach berms, frontal dunes, dune ridges, back dunes and other sand and gravel areas deposited by wave or wind action. A sand dune may extend into coastal wetlands. A "sand dune" includes sand dunes that may have been artificially created, sand dunes that may have been altered by development activity, and sand dunes supported by sand fencing or stabilization structures. For the purposes of this definition, a small windblown accumulation of sand within a street is not considered a sand dune. Most sand dunes have been identified by the Maine Geological Survey (MGS) and are shown on photos entitled "Beach and Dune Geology Aerial Photos dated 2001" and available from the MGS.

(Ord. No. 16-18/19, 5/4/19 [Fiscal Note: Less than \$1000]; Ord. No. 16-19/20, 3/5/2020 [Fiscal Note: Less than \$1000], Ord. No. 20-21/22, 5/3/2022 [Fiscal Note: Less than \$1000])

Sec. 18-11. Enforcement.

This Article shall be enforced by the Police Chief or his/her designee, for whom the Parks and Recreation Department shall provide investigative and enforcement assistance. Nothing in this Article shall prevent the enforcement official from obtaining voluntary compliance by way of warning, notice or education.

(Ord. No. 16-18/19, 5/4/19 [Fiscal Note: Less than \$1000]; Ord. No. 16-19/20, 3/5/2020 [Fiscal Note: Less than \$1000])

Secs. 18-12 Penalties.

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 Article shall be punished by a fine of \$150 for the first violation, \$250 for the second violation, and \$450 for the third and subsequent violations, to be recovered upon complaint to Maine District or Superior Court in Portland, for use of the City; provided, however, that every person adjudicated in a court of law to be in violation of Sec. 18-5 shall be

punished by a fine of \$250. In any court action, the City may seek injunctive relief in addition to penalties. The City shall be entitled to recover its costs of enforcement, including its reasonable attorney's fees. 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 \$35. The waiver fee shall be paid to the City via the Parks and Recreation Department or the Finance Department.

Payment of this waiver fee must be received at the Parks and Recreation Department or Finance Department within 15 calendar days of the date of the enforcement official's notice of the violation. If the waiver fee is not received within 15 calendar days of the date of the enforcement official's notice of the violation, the stated waiver fee shall be doubled. Anyone who wishes to dispute a notice of violation may request a court date and a citation and complaint will then be filled out in accordance with applicable law.

Secs. 18-13 - 18-16. Reserved

Ord. No. 16-19/20, 3/5/2020 [Fiscal Note: Less than \$1000]

ARTICLE II. PARKS AND RECREATION DEPARTMENT*

* **Charter reference(s)**--Parks and recreation department, §§ 304, 308.

Sec. 18-17. Established.

There is hereby established a parks and recreation department in accordance with section 304 of the city charter.

(Code 1966, § 2-11-1)

Sec. 18-18. Functions and duties.

It shall be the functions and duties of the parks and recreation department:

- (1) To promote, organize and supervise a comprehensive municipal park and recreation program and administer the same in the interest of the entire community;
- (2) To supervise the recreational use of playgrounds, play fields, recreation centers, swimming pools, ball diamonds and such other park and recreational areas and facilities as may be made available to carry out the city's park and recreation program;
- (3) To conduct and supervise all forms of recreational, cultural or social activity that will employ the leisure time of the citizens in a wholesome and constructive manner.

(Code 1966, § 2-11-3)

Secs. 18-19--18-28. Reserved.

ARTICLE III. PARKS AND RECREATION DIRECTOR

Sec. 18-29. Position created.

The position of parks and recreation director is hereby created.

(Code 1966, § 2-11-2)

Sec. 18-30. Position included in classification and compensation plan.

The position of parks and recreation director shall be included in the personnel classification and compensation plan of the city.

(Code 1966, § 2-11-2)

Sec. 18-31. Appointment.

As provided by section 302.1 of the city charter, the parks and recreation director shall be appointed by the city manager on the basis of merit and fitness.

(Code 1966, § 2-11-2)

Sec. 18-32. Supervisory duties.

The parks and recreation director shall supervise the entire operation of the parks and recreation department.

(Code 1966, § 2-11-2)

Secs. 18-33--18-42. Reserved.

ARTICLE IV. RESERVED*

* **Editor's note**--Ord. No. 4-80/81, adopted July 21, 1980, repealed Art. IV, §§ 18-43--18-52, pertaining to the parks and recreation advisory board. Said article was derived from Code 1966, § 2-11-4; Ord. No. 8-73, adopted Feb. 21, 1973; and Ord. No. 15-74, adopted July 15, 1974.

Secs. 18-43--18-62. Reserved.

ARTICLE V. WILLARD BEACH*

* **Editor's note**--Ord. No. 15-74, adopted July 15, 1974, repealed Art. V, §§ 18-63--18-68, containing prohibitions on the use of Willard Park and derived from Code 1966, §§ 7-6-1--7-6-2.5, and reenacted Art. V, §§ 18-63--18-65, as set out herein.

Sec. 18-63. Landing, beaching and storing boats.

- (a) No person shall land, beach or store a power boat of any kind on Willard Beach during the period from Memorial Day to Labor Day.
- (b) Nothing in this section shall prohibit the landing or beaching of boats in distress or for the purpose of making emergency repairs, provided that in no case, shall such boat remain on Willard Beach for a period in excess of three (3) days.

(Ord. No. 15-74, 7-15-74)

Sec. 18-64. Transporting, breaking glass, crockery.

No person shall transport or break any glass or crockery bottle, dish or other glass or crockery receptacle of any type upon Willard Beach.

(Ord. No. 15-74, 7-15-74)

Sec. 18-65. Playing football, baseball.

No person shall engage in playing with a football or baseball upon Willard Beach.
(Ord. No. 15-74, 7-15-74)

Sec. 18-66. Enforcement.

This Article shall be enforced by the Police Chief or his/her designee, for whom the Parks and Recreation Department shall provide investigative and enforcement assistance. Nothing in this Article shall prevent the enforcement official from obtaining voluntary compliance by way of warning, notice or education.

Sec. 18-67. Penalties.

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 Article shall be punished by a fine of \$150 for the first violation, \$250 for the second violation, and \$450 for the third and subsequent violations, to be recovered upon complaint to Maine District or Superior Court in Portland, for use of the City. In any court action, the City may seek injunctive relief in addition to penalties. The City shall be entitled to recover its costs of enforcement, including its reasonable attorney's fees. 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 \$35. The waiver fee shall be paid to the City via the Parks and Recreation Department or the Finance Department.

Payment of this waiver fee must be received at the Parks and Recreation Department or Finance Department within 15 calendar days of the date of the enforcement official's notice of the violation. If the waiver fee is not received within 15 calendar days of the date of the enforcement official's notice of the violation, the stated waiver fee shall be doubled. Anyone who wishes to dispute a notice of violation may request a court date and a citation and complaint will then be filled out in accordance with applicable law.

(Ord. No. 16-76, 7-19-76; Ord. No. 14-01/02, 7/15/02 [Fiscal Note: Less than \$1000]; Ord. No. 9-08/09, 1/21/09 [Fiscal Note: Less than \$1000]; Ord. No. 16-19/20, 3/5/2020 [Fiscal Note: Less than \$1000])

Cross reference(s)--Dogs generally, § 3-27 et seq.

Secs. 18-68--18-69. Reserved.

ARTICLE VI. HINCKLEY PARK

Sec. 18-70. Designation of park area.

Hinckley Park shall include those areas owned by the city as shown as Lot 54 on Map 19, Lots 65 and 79 on Map 20, and Lots 4A, 5A, 45A, 49 and 12 on Map 23 of the assessor's maps of the city.

(Ord. No. 16-78, 8-7-78)

Sec. 18-71. Hours of closing.

No person shall enter or remain in Hinckley Park at any time between 9:00 p.m. and 6:00 a.m. This section shall not apply to any public employees performing enforcement duties or duties of an emergency nature necessary in the scope of such employment.

Sec. 18-71A. Enforcement.

This Article shall be enforced by the Police Chief or his/her designee, for whom the Parks and Recreation Department shall provide investigative and enforcement assistance. Nothing in this Article shall prevent the enforcement official from obtaining voluntary compliance by way of warning, notice or education.

Sec. 18-71B. Penalties.

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 Article shall be punished by a fine of \$150 for the first violation, \$250 for the second violation, and \$450 for the third and subsequent violations, to be recovered upon complaint to Maine District or Superior Court in Portland, for use of the City. In any court action, the City may seek injunctive relief in addition to penalties. The City shall be entitled to recover its costs of enforcement, including its reasonable attorney's fees. 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 \$35. The waiver fee shall be paid to the City via the Parks and Recreation Department or the Finance Department.

Payment of this waiver fee must be received at the Parks and Recreation Department or Finance Department within 15 calendar days of the date of the enforcement official's notice of the violation. If the waiver fee is not received within 15 calendar days of the date of the enforcement official's notice of the violation, the stated waiver fee shall be doubled. Anyone who wishes to dispute a notice of violation may request a court date and a citation and complaint will then be filled out in accordance with applicable law.

(Ord. No. 16-78, 8-7-78; Ord. No. 14-01/02, 7/15/02 [Fiscal Note: Less than \$1000; Ord. No. 16-19/20, 3/5/2020 [Fiscal Note: Less than \$1000]]

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, as defined herein, is desirable and beneficial to its citizens, provides 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, the City hereby establishes the 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 in the City. Property and funds held by the Open Space Fund are not intended to supplant budgetary appropriations to the Parks, Recreation and Waterfront Department.
- (b) Definitions. The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them as set forth below:
1. 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.
 2. Unimproved Real Property: Real Property that does not contain any buildings or 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 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.
 3. Improved Real Property: Real Property that does not meet the definition of Unimproved Real Property.
 4. Open Space: A parcel or area of land or water, the preservation of which would achieve any of the following:
 - A. Conserve and potentially enhance habitats, natural resources, or scenic resources;
 - B. Protect water quality;
 - C. Promote conservation of soils, wetlands, beaches, or tidal marshes.
 - D. Enhance the value to the public of abutting or neighboring parks, trails, forests, or nature preserves; or
 - E. Enhance recreation opportunities.

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

5. Brownfield Property: 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), 42 U.S.C. § 9601 *et seq.*

(Ord. 13-91/92, 3-16-92; Ord. No. 17-09/10, 7/19/10 [Fiscal Note: Less than \$1000]; Ord. No. 13-21/22, 11/16/2021 [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, leasehold interests, and development rights or easements 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. The primary intent of the fund is to purchase and acquire Open Space or access to Open Space in perpetuity;
- (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, recreational, 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. Any conditional gift or donation specifying a particular use or expenditure shall not be included in this calculation.
- (e) 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 any successor thereof as determined by the City Council, for review and a

recommendation regarding consistency with acquisition criteria that may be prepared by the Open Space Acquisition Committee and that is adopted by the City Council. However, the City Council may, at its discretion, waive this requirement of a referral if the City Council makes a finding that the delay caused by the referral would jeopardize the City's ability to acquire the Open Space.

(Ord. 13-91/92, 3-16-92; Ord. #9-03/04, 10/6/03 [Fiscal Note: Less than \$1000]; Ord. No. 17-09/10, 7/19/10 [Fiscal Note: Less than \$1000]; Ord. No. 12-21/22, 11/16/2021 [Fiscal Note: Less than \$1000])

Sec. 18-74. Permissible Acquisitions of the Open Space Fund.

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

- (a) Ocean, harbor, river, stream, lake or pond frontage and adjoining backlands;
- (b) Fresh or saltwater marshes, estuaries, flood plains and adjoining uplands;
- (c) Islands;
- (d) 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;
- (e) Aquifers, aquifer recharge areas and other ecologically fragile or significant property;
- (f) Properties with unique historical or geological characteristics or which are otherwise important to the community's cultural welfare;
- (g) Farmland or wildlife habitat;
- (h) 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;
- (i) Brownfield Property for the sole purpose of rehabilitation and reversion wherein a significant amount of Open Space is created or preserved; or
- (j) Improved Real Property wherein a significant amount of Open Space is created or preserved.

(Ord. 13-91/92, 3-16-92; Ord. No. 12-21/22, 11/16/2021 [Fiscal Note: Less than \$1000])

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

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

- (a) 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 two (2) square feet; utilities; or other structures on or above the surface;

- (b) Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive material;
- (c) Removal or destruction of trees, shrubs or other vegetation, except where necessary for management purposes and to enhance natural systems or open-space uses;
- (d) 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;
- (e) Surface use except for purposes permitting the land or water area to remain predominantly in its natural, scenic or open condition;
- (f) Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation;
- (g) Use of motorized vehicles, including recreational vehicles (RVs) and all-terrain vehicles (ATVs), except where used for appropriate maintenance purposes; or
- (h) 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; Ord. No. 13-21/22, 11/16/2021 [Fiscal Note: Less than \$1000])

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

(a) Deposits into the Open Space Fund shall include:

- 1. Any funds appropriated to be deposited into the fund by vote of the City Council, including, without limitation, proceeds of any bonds issued by the City Council and subject to the terms and conditions of the applicable bond ordinance.
- 2. Voluntary contributions of money to the fund.
- 3. Interest from deposits and investments of the fund.
- 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.

(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]; Ord. No. 12-21/22, 11/16/2021 [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; Ord. No. 13-21/22, 11/16/2021 [Fiscal Note: Less than \$1000])

ARTICLE VIII. TOBACCO-FREE PARKS AND RECREATION FACILITIES

Sec. 18-81. Title.

This article shall be known as the "City of South Portland Tobacco-Free Parks and Recreation Facilities/School Bus Stops Ordinance."

(Ord. 4-16/17, 10/3/16 [Fiscal Note: Less than \$1000])

Sec. 18-82. Purpose.

This ordinance is enacted to protect, preserve, and promote the health, safety and welfare of the residents and visitors that use the City of South Portland's parks, beaches, outdoor recreation facilities, and school bus stops. The purpose of this ordinance is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment.

(Ord. 4-16/17, 10/3/16 [Fiscal Note: Less than \$1000])

Sec. 18-83. Definitions.

The following definitions apply to this ordinance:

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

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

(Ord. 4-16/17, 10/3/16 [Fiscal Note: Less than \$1000]; Ord. No. 12-22/23, 12/6/2022 [Fiscal Note: Less than \$1000])

Sec. 18-84. Tobacco use prohibited.

a) It shall be unlawful for any person to use tobacco products at or within 20 feet of all parks, beaches and outdoor recreation facilities owned and/or maintained by the City, including, but not limited to, the following:

Anthoine Creek Park
Bug Light Park
Clarks Pond Trail System
Dows Woods
Firefighters Park
Fisherman's Point
Arvin "Ge" Erskine Memorial Park
Greenbelt Walkway
High Street Park
Hinckley Park
Fisherman's Point Park
Legere Park
Legion Square Park

Long Creek Trail
Mill Creek Park
Mountain View/Nelson Park
Pierce Street Park
Public Tennis Courts
Redbank Community Center Park
Ridgeland Heights
Santo "Sam" DiPietro Memorial Park
Sawyer Park
School Street Park
South Portland Municipal Golf Course
Spring Point Shoreway
Thomas Knight Park
Wainwright Recreation Complex
Wilkinson Park
Willard Beach
Yerxa Park

b) It shall be unlawful for any person to use tobacco products at or within 20 feet of all designated school bus stops within the City limits. The designated school bus stops are posted annually on the City of South Portland School Department website.

c) Nothing in this ordinance shall prohibit smoking on privately owned residential property.

(Ord. 4-16/17, 10/3/16 [Fiscal Note: Less than \$1000]; Ord. No. 2-17/18, 8/7/17 [Fiscal Note: Less than \$1000] Order 9-17/18, 7/10/17 [Fiscal Note: Less than \$1000]; Ord. No. 16-19/20, 3/5/2020 [Fiscal Note: Less than \$1000]))

Sec. 18-85. Signage.

The Parks and Recreation Department shall work with the Public Works Department to post signage notifying the public of this prohibition at or near the parks, beaches and outdoor recreation facilities specified herein, as well as in such other locations that, in its sole discretion, the Parks and Recreation Department deems necessary to notify the public of this ordinance.

Sec. 18-86. Enforcement.

This ordinance shall be enforced by the Police Chief or his/her designee, for whom the Parks and Recreation Department shall provide investigative and enforcement assistance. Nothing in this ordinance shall prevent the enforcement official from obtaining voluntary compliance by way of warning, notice or education.

(Ord. 4-16/17, 10/3/16 [Fiscal Note: Less than \$1000]; Ord. No. 16-19/20, 3/5/2020 [Fiscal Note: Less than \$1000])

Sec. 18-87. Penalties.

Notwithstanding any other provision of the Code of Ordinance to the contrary, every person adjudicated in a court of law to be in violation of this Ordinance shall be punished by a fine of \$150 for the first violation, \$250 for the second violation, and \$450 for the third and subsequent violations, to be recovered upon complaint to Maine District or Superior Court in Portland, for use of the City. In any court action, the City may seek injunctive relief in addition to penalties. The City shall be entitled to recover its costs of enforcement, including its reasonable attorney's fees. 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 \$35. The waiver fee shall be paid to the City via the Parks and Recreation Department or the Finance Department.

Payment of this waiver fee must be received at the Parks and Recreation Department or Finance Department within 15 calendar days of the date of the enforcement official's notice of the violation. If the waiver fee is not received within 15 calendar days of the date of the enforcement official's notice of the

violation, the stated waiver fee shall be doubled. Anyone who wishes to dispute a notice of violation may request a court date and a citation and complaint will then be filled out in accordance with applicable law.

(Ord. 15-10/11, 6/20/11 [Fiscal Note: Less than \$1000]; Ord. 4-16/17, 10/3/16 [Fiscal Note: Less than \$1000]; Ord. No. 16-19/20, 3/5/2020 [Fiscal Note: Less than \$1000])