

Chapter 17 OFFENSES, MISCELLANEOUS PROVISIONS*

*Cross reference(s)--Alarm systems, Ch. 2.5; rules of conduct in
cemeteries, § 7-123 et seq.; police, Ch. 20; traffic and motor vehicles, Ch. 28.

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ARTICLE I. IN GENERAL

Sec. 17-1. Loitering.

(a) The following definitions shall apply in this section:

- (1) *Loitering* shall mean remaining in essentially one (1) location, seated or standing, and shall include the concept of spending time idly; to be dilatory; to linger; to stay; to saunter; to delay; and to stand around.
- (2) *Public place* shall mean any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose, but does not necessarily mean a place devoted solely to the uses of the public. It shall also include the front or immediate area of any store, shop, restaurant, tavern or other place of business and also public streets, sidewalks, ways, grounds, schools, areas or parks.

(b) It shall be unlawful for any person to loiter either alone and/or in consort with others in a public place in such manner as to:

- (1) Obstruct any public street, public highway, public sidewalk or any other public place or building by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians;
- (2) Commit in or upon any public street, public highway, public sidewalk or any other public place or building any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress and egress therein, thereon and thereto;
- (3) Manifest a purpose to promote, engage or solicit another person to engage in sexual intercourse or a sexual act in return for a pecuniary benefit;
- (4) Manifest a purpose to traffic in or furnish what the person knows or believes to be a schedule or counterfeit drug or any hypodermic apparatus.

(c) When any person causes or commits any of the conditions enumerated in subsection (b) herein, a police officer or any law

enforcement officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such orders shall be guilty of a violation of this section.

(Code 1968, § 703.1A; Ord. No. 408-71, 8-16-71; Ord. No. 76-75, § 1, 1-20-75; Ord. No. 358-92, 6-3-92)

Cross reference(s)--Loitering in parks, § 18-18; streets, sidewalks and other public places, Ch. 25.

Sec. 17-2. Prohibition against abusive solicitation.

(a) *Purpose.* It is the intent of this chapter to impose reasonable manner of limitations on solicitation, as defined herein, in order to protect the safety of the general public against abusive solicitation while respecting the constitutional right of free speech.

(b) *Definitions.* The following words or phrases as used in this chapter shall have the following meanings:

- (1) "Solicitation" means any request made in person seeking an immediate donation of money or other item of value. A person shall not be deemed to be in the act of solicitation when he or she passively displays a sign or gives any other indication that he or she is seeking donations without addressing his or her solicitation to any specific person, other than in response to an inquiry by that person.
- (2) "Donation" means a gift of money or other item of value and shall also include the purchase of an item for an amount far exceeding its value under circumstances where a reasonable person would understand that the purchase is in substance a gift.
- (3) "Abusive solicitation" means to do one or more of the following while engaging in solicitation or immediately thereafter:
 - a. Blocking or impeding the passage of the person solicited;
 - b. Following the person solicited by proceeding behind, ahead or alongside of him or her after the person solicited declines to make a donation;

- c. Threatening the person solicited with physical harm by word or gesture;
- d. Abusing the person solicited with words which are offensive and inherently likely to provoke an immediate violent reaction;
- e. Touching the solicited person without the solicited person's consent.

(c) *Penalties.* Any person who engages in abusive solicitation as defined herein shall be guilty of a violation of this article and, upon conviction, shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred fifty dollars (\$150.00) for each offense. The city may also seek and the court may order injunctive relief designed to prevent any further violations of this article.

(Ord. No. 151-97, § 1, 12-1-97)

***Editor's note--**Ord. No. 151-97, § 1, adopted Dec. 1, 1997, repealed § 17-2, panhandling, and enacted new provisions as herein set out. Formerly, such section derived from § 703.1A of the 1968 Code; Ord. No. 408-71, adopted Aug. 16, 1971; Ord. No. 76-75, § 1, adopted Jan. 20, 1975; and Ord. No. 60-97, adopted Aug. 18, 1997.

Sec. 17-3. Handbills.

(a) No person shall throw, cast or cause or permit to be thrown or cast any handbill, circular, card, booklet, placard, paper, or any other object constituting litter, in or upon any street, way or public place; provided, however, it shall not be unlawful for any person to hand out or distribute handbills, or any other thing which is otherwise permitted by law, in any public place to any person willing to accept such handbill or other thing.

(b) No person shall place or attach any handbill, circular, card, booklet or placard on any automobile or other conveyance located in any public street or way, which is unoccupied at the time of such placement or, if occupied, without the consent of the occupant. No person shall place or attach any other object on any automobile or other conveyance located in any public street or way, which is unoccupied at the time of such placement or, if occupied, without the consent of the occupant, if such object could reasonably be expected to constitute litter if removed.

This paragraph does not apply to public service notices

distributed by the city or a department of the city. Such notices shall be placed on the driver's side of the windshield or vehicle.

(c) No person shall post or otherwise attach any handbill, circular or paper sign to or upon any sidewalk, crosswalk, curb, curbstone, street lamppost, hydrant, tree, shrub, tree stake or guard, trash receptacle, railroad trestle, utility pole or wire appurtenance, or any light pole, public bridge, drinking fountain, street sign or traffic sign, or upon any other object lawfully located in the street right-of-way. The provisions of this paragraph shall not apply to:

- (1) The posting of signs or the placement of objects permitted by Titles 23 or 35 of the Maine Revised Statutes;
- (2) Any zone within the city except the B-3 zone; or
- (3) To the posting of any handbill, circular or notice upon any bulletin board or other object provided by the city for that purpose.

(d) There shall be a rebuttable presumption that the person whose goods or services are described in any handbill, circular or other paper which was attached, placed or posted in violation of this section attached, placed or posted such handbill, circular or other paper, or knowingly caused the item to be attached, placed or posted in violation of this section.

(Code 1968, § 703.12; Ord. No. 70-90, 8-20-90; Ord. No. 120-90, 11-5-90; Ord. No. 110-94, 10-17-94)

Sec. 17-4. Control of venereal disease.

(a) The city council hereby finds that establishments catering to, or furnishing the opportunity for, anonymous sexual contact impede the effective control of venereal disease by preventing public health authorities and others from determining the source of infection.

(b) Except as expressly provided herein, all words used in this section shall have their common meanings. As used in this section, unless the context clearly indicates otherwise, the following words shall have the following meanings:

Anonymous sexual contact means sexual contact where one (1) person is hindered in, or precluded from, observing or otherwise

identifying the other by any means, arrangement, or device, fixed or portable, including but not limited to separate booths, cubicles, or enclosures, and walls, barriers, and other physical obstructions.

Sexual contact means and includes sexual act and sexual contact as defined in the Maine Criminal Code, Title 17-A, § 251.

(c) No person shall, for consideration or otherwise, maintain or operate, or permit or assist in the use, maintenance, or operation of, any premises, or portion thereof, designed or intended for, or promoting or facilitating, anonymous sexual contact. A suitable aperture in any booth, cubicle, or enclosure in a public rest room or on premises containing an adult amusement device or selling or offering for sale sexually explicit material shall be presumed to be intended for anonymous sexual contact.
(Ord. No. 90-81, §§ 325.1--325.3, 7-20-81)

Sec. 17-5. Cruising.

(a) No person shall drive or permit a motor vehicle under that person's care, custody, or control to be driven past a traffic-control point three (3) times within a two-hour period in or around a posted "no cruising" area.

(b) Every "no cruising" area shall be posted with signs to provide notice of the prohibition which shall state the following: "No Cruising. No person shall drive or permit a motor vehicle under that person's care, custody, or control to be driven past a traffic-control point three (3) times within a two-hour period in this area."

(c) A traffic-control point as used in this section means a reference point selected by a police officer within or adjacent to a designated "no cruising" area for the purpose of determining cruising.

(d) No area shall be designated or posted as a "no cruising" area except following such a designation upon order of the traffic engineer following a request from the police department.

(e) The following shall be exempted from the provisions of this section:

- (1) Any publicly owned vehicle of any city, county, state or federal, or any governmental unit, while the vehicle is

being operated for the official purposes of the governmental unit;

- (2) Any authorized emergency vehicle;
- (3) Any taxicabs for hire, public transit buses, livery, or other vehicles being operated for business purposes.

(f) Whoever violates any of the provisions of this section shall be punished by a minimum fine of one hundred dollars (\$100.00) for the first offense; a minimum fine of three hundred dollars (\$300.00) for a second offense; and a minimum fine of five hundred dollars (\$500.00) for each and every offense thereafter. In any action in which the city prevails, it shall be entitled to attorneys' fees and all costs of prosecution.

(g) Subsection (f) notwithstanding, prior to citing the owner or operator of a vehicle for a violation of this section, the police department may give a written notice to the person operating the vehicle in violation of this section at the time of the violation informing that person of the use of the vehicle in violation of this section.

(Ord. No. 178-96, 3-4-96)

Sec. 17-6. Graffiti.

(a) *Purpose.* It is the intent of this section to prevent the spread of graffiti vandalism and to create a program for the removal of graffiti. Graffiti is a public nuisance and a visual symbol of disorder. Prompt removal is a proven deterrent to the spread of graffiti.

(b) *Definitions.* The following definitions shall apply in this section:

- (1) *Aerosol paint container* shall mean any container that is adapted or made for the purpose of applying aerosolized paint, or any other aerosolized substance capable of defacing property.
- (2) *Broad tipped marker* shall mean any marker or similar implement that contains ink and has a flat or angled writing surface that, at its broadest width, exceeds one-eighth inch.
- (3) *Etching cream* shall mean any caustic cream, gel,

liquid, or solution capable, by means of a chemical action, of defacing, damaging, or destroying hard surfaces in a manner similar to acid.

- (4) *Graffiti* shall mean any inscription, word, figure, design, painting, writing, drawing or carving that is marked, etched, scratched, drawn, painted or otherwise applied to property without the prior authorization of the owner of the property, regardless of the content or nature of the material used.
- (5) *Graffiti implement* shall mean an aerosol paint container, etching cream, a broad-tipped marker, gummed label, glass cutter, paint stick or graffiti stick.
- (6) *Minor* shall mean a person under the age of eighteen.
- (7) *Owner* shall mean the person listed on the Portland City Assessor's records as the owner of property.
- (8) *Paint stick or graffiti stick* shall mean any device containing a solid or liquid form of paint, wax, epoxy, or other similar substance that leaves a visible mark upon application to a surface.
- (9) *Property* shall mean any real or personal property, including but not limited to any portion of any premises, structure, house, building, sign, fence or vehicle.

(c) *Prohibitions.* No person shall apply graffiti to any private or public property; solicit or command another person to apply graffiti to any private or public property; or aid or abet, or agree to aid or abet another person in planning to apply or applying graffiti to any private or public property.

(d) *Possession of graffiti implements.* No person shall possess any graffiti implement under circumstances presumed to evidence the intent to violate the provisions of this section. A person is presumed to possess the graffiti implement with an intent to violate this section if he or she possesses any graffiti implement:

- (1) In or any part of a publicly-owned or privately-owned

building, facility, park, walkway or trail, school ground, library, playground, swimming pool, recreational facility, or right-of-way; or

- (2) Within fifty (50) feet of any underpass, overpass, bridge abutment, storm drain, or similar type of infrastructure.

It is a defense to the presumption of possession with intent to violate the provisions of this section if the graffiti implement was possessed on the property with consent of the Owner or possessed in a place where the implement was going to be used for a non-graffiti activity, including but not limited to an employment, school, home, church, art, or similar activity or possessed while en route to or from such activity.

(e) *Furnishing graffiti implements.* No person, other than a parent or legal guardian, may sell, exchange, give, lend, or otherwise furnish, or cause or permit to be exchanged, given, loaned, or otherwise furnished, any of the following graffiti implements to any person under the age of eighteen (18) years without the written permission of the parent(s) or guardian of the minor: aerosol paint container(s), graffiti stick(s), paint stick(s) or etching cream.

(f) *Sale of graffiti implements.* Every person who owns, conducts, operates, or manages a retail commercial establishment selling graffiti implements shall store the graffiti implements in an area continuously observable, through direct visual observation or surveillance equipment, by employees of the retail establishment during the regular course of business.

In the event that a commercial retail establishment is unable to store the graffiti implements in an area as provided above, the establishment shall store the graffiti implements in an area not accessible to the public in the regular course of business without employee assistance.

(g) *Notice to customers and employees.* Every person who owns, conducts, operates, or manages a retail commercial establishment selling graffiti implements shall:

- (1) Place a sign in clear public view at or near the display of such products stating: "Graffiti is against

the law. Any person who defaces real or personal property with paint or any other liquid or device is guilty under state law of a crime punishable by imprisonment of up to 1 year and/or a fine of \$500"; and

- (2) Place a sign in the direct view of such persons responsible for accepting customer payment for graffiti implements stating: "Selling aerosol paint containers, paint sticks, or etching cream to persons less than 18 years of age without the written permission of the person's parents or guardian(s) is against the law and punishable by a fine of \$250."

(h) *Graffiti removal.* Property owners shall remove, or shall cause to be removed, all graffiti from their property within ten (10) days from receipt of a notice from the City ordering said removal. If a property owner is unable to remove graffiti within ten (10) days from receipt of a notice, said property owner shall submit an approved graffiti removal plan to the City within ten (10) days from receipt of the notice.

- (i) *Enforcement of graffiti removal.*

- (1) Whenever the Chief of Police, or his or her designee, determines that graffiti is located on private property such that graffiti may be viewed by a person using any public right-of-way or other public property, the Chief of Police or his or her designee shall provide written notice to the Owner of said property that the graffiti shall be removed from the property within ten (10) days of receipt of such notice.
- (2) If the Owner fails to remove the graffiti, the City may undertake or arrange for its removal. Prior to entering upon private property or property owned by a public entity other than the City for the purpose of graffiti removal the City shall secure the consent of the property owner or responsible party and a release of the City from liability for property damage or personal injury. If the City removes the graffiti or arranges for its removal, the property owner shall be charged the cost of removal plus a ten (10%) percent charge for administration. A separate bill for each

such removal shall be submitted to the record owner of the property as soon as practicable after the charges are incurred.

(j) *Penalties.*

- (1) Any person who violates paragraph (c) of this section (*Prohibitions*) shall be punished by a fine of not less than five hundred dollars (\$500.00) per violation plus costs; shall reimburse the property Owner or the City for all costs reasonably incurred by the Property Owner or the City for removal of the graffiti; and shall perform no less than twenty-five (25) hours of community service. In addition, the City may seek equitable relief including, but not limited to, injunctive relief.
- (2) Every parent or legal guardian having custody or control of a minor who violates paragraph (c) of this section shall be jointly and severally liable with the minor for the penalties imposed in this paragraph.
- (3) Any person who violates paragraph (d) or (e) of this section, (*Possession of graffiti implements*) or (*Furnishing graffiti implements*), shall be punished by a fine of up to two hundred fifty dollars (\$250.00) per violation plus costs.

(Ord. No.264-10/11, 6-20-11)

Sec. 17-7. Reserved.
Sec. 17-8. Reserved.
Sec. 17-9. Reserved.
Sec. 17-10. Reserved.
Sec. 17-11. Reserved.
Sec. 17-12. Reserved.
Sec. 17-13. Reserved.
Sec. 17-14. Reserved.

ARTICLE II. OFFENSES AGAINST PUBLIC PEACE*

*Cross reference(s)--Dogs disturbing the peace, § 5-18; disorderly conduct

prohibited in cemeteries, § 7-132; noise while making excavations, § 25-133.

State law reference(s)--Offenses against public order, 17-A M.R.S.A. § 501 et seq.

Sec. 17-15. Urination and defecation in public.

(a) No person in the city shall urinate or defecate upon any sidewalk, street, public way or upon any public place or public property, or in immediate proximity thereto.

(b) Whoever violates any of the provisions of this section shall be punished by a minimum fine of one hundred dollars (\$100.00) for the first offense; a minimum fine of three hundred dollars (\$300.00) for a second offense; and a minimum fine of five hundred dollars (\$500.00) for each and every offense thereafter. In any action in which the city prevails, it shall be entitled to attorneys' fees and all costs of prosecution.
(Ord. No. 246-93, § 2, 3-22-93)

Sec. 17-16. Curfew for minors under fifteen.

No parent, legal guardian or other person having the care and control of a child under the age of fifteen (15) years shall permit such child to be or remain in or on any of the streets, ways or public places of the city after 9:00 p.m., unless such child shall be engaged in the performance of some lawfully authorized employment or shall be in the course of active travel over the streets, ways or public places between a specific point of origin and a specific destination or shall be accompanied by such parent, legal guardian or other adult person.
(Code 1968, § 703.2)

Sec. 17-17. Disorderly conduct.

(a) No person shall, in a public place, intentionally or recklessly cause annoyance to others by intentionally engaging in fighting, without being licensed or privileged to do so.

(b) No person shall, in a private or public place, knowingly accost, insult, taunt or challenge any person with offensive, derisive or annoying words, or by gestures or other physical conduct, which would in fact have a direct tendency to cause a violent response by an ordinary person in the situation of the person so accosted, insulted, taunted or challenged.

(c) No person shall in, on, or adjacent to any of the streets, ways or public places, make, continue, or cause to be made or continued any loud, unnecessary or unusual noises which shall either annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of others. The sounding of any horn or signalling device, except as a danger warning; the playing of any radio, musical instrument, phonograph or any other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of neighboring inhabitants and passers-by; the use of any loudspeaker or amplifier for the purpose of commercial advertising or attraction of the public to a specific building, location or business, yelling, shouting, hooting, whistling, or singing shall be considered to be loud, disturbing, and unnecessary noises, but such enumeration shall not be deemed exclusive.

(d) Whoever violates any of the provisions of this section shall be punished by a minimum fine of one hundred dollars (\$100.00) for a first offense; a minimum fine of three hundred dollars (\$300.00) for a second offense; and a minimum fine of five hundred dollars (\$500.00) for each and every offense thereafter. In any action in which the city prevails, it shall be entitled to attorneys' fees and all costs of prosecution.
(Code 1968, § 703.3; Ord. No. 247-93, 3-22-93)

State law reference(s)--Disorderly conduct, 17-A M.R.S.A. § 501 et seq.

Sec. 17-18. Construction activities.

(a) Within the R-zones, from September 1st to May 31st, no person shall engage in construction activities generating noise exceeding fifty (50) decibels, between the hours of 7:00 p.m. and 7:00 a.m., of the following day within five hundred (500) feet of any building used for residential, hospital or nursing home purposes. From June 1st to August 31st construction activity may continue until 8:00 p.m. Any other language notwithstanding, no construction activity shall begin before 8:00 a.m. on a Saturday, Sunday or legal holiday.

(b) Construction activities shall include, but not be limited to, the following:

- (1) The use or operation of power or heavy equipment in connection with road, street, or bridge construction, reconstruction or repair;

- (2) The use or operation of power or heavy equipment in connection with the installation or repair of utility lines, pipes, wires or cables;
 - (3) The use or operation of power or heavy equipment in connection with the construction of buildings, including specifically excavation for foundations or landscaping work of any kind;
 - (4) The renovation, repair, remodeling or demolition of the exterior or foundation of any building or structure.
- (c) This section shall not apply in the following situations:
- (1) Emergency repair work on any utility line, pipe, wire or cable required to restore normal utility service;
 - (2) Situations where the public works authority or the office of building inspections determines that the construction activity is of a unique character which cannot reasonably be completed or performed during the permitted hours and which is not of a recurring nature, provided that prior to engaging in such activity the contractor or his representatives gives notice of the time and scope of such proposed activity, the notice to be given in a manner approved by the public works authority.

(Code 1968, § 703.3A; Ord. No. 403-71, 8-16-71; Ord. No. 59-05/06, 10-17-05)

Sec. 17-19. Loading of scrap metal.

(a) Between the hours of 9:00 p.m. and 7:00 a.m. the following day, no person shall engage in the loading or unloading of scrap metal into or from ships, vessels, or barges; nor shall any person, during said hours, engage in scrap metal stacking or piling preparatory to such loading or unloading, at the site thereof, or on any property adjacent thereto.

(b) Nothing herein shall be construed to prohibit movement of metal directly related to, and in the course of, the construction, repair or refurbishing of ships, vessels or barges.

(Ord. No. 170-85, 4-1-85)

Sec. 17-20. Creation of Certain Noise Upon Public Right Of Way.

(a) *Purpose.* The Portland City Council finds that excessive noise on public ways may cause distraction to other drivers and

preclude the safe operation of motor vehicles to the detriment of the health, welfare and safety of Portland's citizens. Accordingly, it is the policy of the City of Portland to prohibit unnecessary, excessive, annoying and distracting noise on public right of ways within the City of Portland.

(b) *Definitions.* For the purpose of this article, the following words and phrases shall have the following meanings:

- (1) "City" means the City of Portland, Maine.
- (2) "Noise-creating device" means any electrical, mechanical or chemical device or instrument, or combination thereof, that creates noise during its operation by a person.
- (3) "Motorcycle" means an unenclosed motor vehicle, having a saddle for the use of the operator, with two or three wheels in contact with the ground, including, but not limited to, motorscooters and minibikes.
- (4) "Operation" means actual control by a person.
- (5) "Public right-of-way" means any street, roadway, alley, sidewalk or other area deeded or dedicated for public travel or transportation purposes.
- (6) "Straight pipe exhaust system" means any straight through muffler that does not contain baffles, including, but not limited to, glass packs, steel packs and straight pipes.

(c) Creation of certain noises upon public right of way prohibited.

- (1) No person, while occupying any public right-of-way in the City, shall operate any noise-creating device in such a manner that the public's attention is drawn to the source of the noise.

The prohibition of this section shall include, but not be limited to, the following activity or conduct:

- a. Discharging fireworks or any exploding device,
- b. Firing a starter pistol, air gun, BB gun or a firearm,
- c. Sounding a bell or whistle for so extended a period of

time as to cause annoyance to others,

- d. Rapid throttle advance and/or revving of an internal combustion engine resulting in increased noise from the engine,
- e. Operation of motor vehicle, as defined in 29-A M.R.S.A. §101(42), including but not limited to a motorcycle with a straight pipe exhaust system, an exhaust system with a cutout, bypass or similar device or an exhaust system that does not meet the requirements of Maine law, including, but not limited to, 29-A M.R.S.A. §1912.

(d) *Exceptions.* The provisions of this section shall not apply to the following activity or conduct:

- (1) Expression or communication protected by the United States Constitution, including the First Amendment, or the Maine Constitution.
- (2) Any activity or conduct the regulation of which has been preempted by Maine statute.
- (3) Any noise created by a governmental entity in the performance of an official duty.
- (4) Any noise for which a permit has been issued by an authority having jurisdiction to issue the permit.
- (5) The sounding of any signaling device permitted by law.

(e) *Penalty.*

- (1) First Offense: \$50.00
- (2) Second Offense: \$100.00
- (3) Third Offense: \$200.00
- (4) Fourth and Subsequent Offenses: \$500.00

(Ord. No. 182-02/03, 3-17-03)

Sec. 17-21. Motor vehicle alarms.

- (a) *Prohibition.* No registered owner of a motor vehicle

equipped with an audible burglar alarm shall allow the alarm to operate for more than ten (10) aggregated minutes in any sixty (60) minute period, unless the alarm was triggered by a burglary or attempted burglary in which case the alarm shall operate for no more than twenty (20) aggregated minutes in a sixty (60) minute period. If the owner asserts that a burglary or attempted burglary activated the alarm, the owner has the burden of proving that assertion by clear and convincing evidence.

(b) The registered owner of a motor vehicle is responsible for compliance with this ordinance and for any fines, penalties, fees and costs generated by non-compliance, regardless of who has custody or control of the vehicle at the time of non-compliance, unless at that time the vehicle was stolen and the owner reported that theft to a law enforcement agency within twenty-four (24) hours of the violation of this ordinance.

(c) *Penalties.* After the first offense, a notice of the violation shall be left on the vehicle in a conspicuous location or mailed to the registered owner at the owner's last known address. Notice shall be complete upon placement on the vehicle or mailing. A subsequent violation of this ordinance shall subject the registered owner of the motor vehicle to the following fines:

- (1) Second offense within a 365 consecutive day period:
\$50.
- (2) Third offense within a 365 consecutive day period:
\$100.
- (3) Fourth or any subsequent offense within a 365 consecutive day period: \$300.

(Ord. No. 159-04/05, 2-23-05)

Sec. 17-22. Reserved.
Sec. 17-23. Reserved.
Sec. 17-24. Reserved.
Sec. 17-25. Reserved.
Sec. 17-26. Reserved.
Sec. 17-27. Reserved.
Sec. 17-28. Reserved.
Sec. 17-29. Reserved.

Sec. 17-30. Reserved.

ARTICLE III. OFFENSES AGAINST PUBLIC SAFETY*

*State law reference(s)--Offenses against public order, 17-A M.R.S.A. § 501
et seq.

DIVISION 1. GENERALLY

Sec. 17-31. Selling toy balloons with flammable gas prohibited.

No person shall sell, offer for sale, or have in his possession with intent to sell, any toy balloon inflated with hydrogen or any other flammable or explosive gas.
(Code 1968, § 703.13)

Cross reference(s)--Fire prevention and protection, Ch. 10.

Sec. 17-32. Sale and use of consumer fireworks prohibited.

(a) *Definitions.* The following definitions shall apply in this section:

- (1) *Consumer fireworks* shall have the same meaning as in 27 Code of Federal Regulations, Section 555.11 or subsequent provision, but includes only products that are tested and certified by a 3rd-party testing laboratory as conforming with United States Consumer Product Safety Commission standards, in accordance with 15 United States Code, Chapter 47. "Consumer fireworks" does not include the following products:
 - a. Missile-type rockets, as defined by the State Fire Marshal by rule;
 - b. Helicopters and aerial spinners, as defined by the State Fire Marshal by rule;
 - c. Sky rockets and bottle rockets. For purposes of this paragraph, "sky rockets and bottle rockets" means cylindrical tubes containing not more than

20 grams of chemical composition, as defined by the State Fire Marshal by rule. With a wooden stick attached for guidance and stability that rise into the air upon ignition and that may produce a burst of color or sound at or near the height of flight.

(2) *Display* means an entertainment feature where the public or a private group is admitted or permitted to view the display or discharge of fireworks or special effects.

(b) *Prohibition*. No person shall use, possess with the intent to use, sell, possess with the intent to sell or offer for sale consumer fireworks in the City of Portland.*

(c) *Exception*. This section does not apply to a person issued a fireworks display permit by the City of Portland and/or the State of Maine pursuant to 8 M.R.S.A. §227-A.

(d) *Penalties*.

(1) Any person who uses consumer fireworks or possesses consumer fireworks with the intent to use in the City of Portland shall be punished by a fine of not less than two hundred dollars (\$200.00) and not more than four hundred dollars (\$400.00) plus costs. For second and subsequent offenses, a fine of not less than three hundred dollars (\$300.00) and not more than six hundred dollars (\$600.00) per violation plus costs shall be imposed.

(2) Any person who sells consumer fireworks or possesses consumer fireworks with the intent to sell in the City of Portland shall be punished by a fine of not less than five hundred dollars (\$500.00) plus costs. For second and subsequent offenses, a fine of not less than one thousand dollars (\$1,000.00) per violation plus costs shall be imposed.

(e) *Seizure and disposal of fireworks*. The City may seize consumer fireworks that the City has probable cause to believe are used, possessed or sold in violation of this section and shall forfeit seized consumer fireworks to the State for

disposal.
(Ord. No. 36-11/12, 9-19-11)

***Editor's note:** State law prohibits the sale and possession of all fireworks, with the exception of consumer fireworks, see 8 M.R.S.A. §223. By prohibiting the sale and use of consumer fireworks, the City is effectively prohibiting the use of all fireworks in the City of Portland.

- Sec. 17-33. Reserved.**
- Sec. 17-34. Reserved.**
- Sec. 17-35. Reserved.**
- Sec. 17-36. Reserved.**
- Sec. 17-37. Reserved.**
- Sec. 17-38. Reserved.**
- Sec. 17-39. Reserved.**
- Sec. 17-40. Reserved.**

DIVISION 2. WEAPONS*

***Cross reference(s)**--Weapons in cemeteries, § 7-138.

Sec. 17-41. Firearms--Shooting prohibited; exceptions.

(a) No person shall shoot with or use a bow and arrow, BB gun, air gun of any kind, gas pellet gun of any kind, slingshot, a firearm of any kind or description or any other such weapon within the city, except in the performance of official duties, at authorized galleries or ranges, or in self-defense.

(b) Notwithstanding the above, the city clerk may issue special permits, permitting the discharge of shotguns on Great Diamond Island, Little Diamond Island and Cushing Island, to any hunter who is both nominated by a property owner on Great Diamond Island, Little Diamond Island and Cushing Island and also authorized by the state to participate in the hunt.

(b-1)Notwithstanding paragraph (a) above, the City Clerk may issue special permits, permitting the discharge of rifles or bows on Peaks Island, to one or more individuals, designated by the City Manager for participation in a deer reduction program, who are also authorized by the state to participate in such a program.

(b-2) Notwithstanding paragraph (a) above, the City Clerk may issue special permits, permitting the discharge of firearms approved by the Maine Department of Inland Fisheries and Wildlife on Cliff Island to one or more individuals designated by the City Manager for participation in a deer reduction program who are also authorized by the State to participate in a deer reduction program.

(c) The permits may be issued only to persons who currently hold valid state hunting licenses. The permits shall be issued only for the purpose of reducing the deer population on Great Diamond Island, Little Diamond Island, Cushing Island, Peaks Island and Cliff Island.

(d) Permits authorized under paragraph (b) shall not permit shotguns to be fired within two hundred (200) feet of any structure or on any property which has been posted against hunting. Permits authorized pursuant to paragraph (b-1) shall not permit rifles or bow/arrows on any property which has been posted against hunting.

(e) Holders of the special permit authorized herein shall observe all hunting laws and regulations promulgated by the state.

(f) The special permits shall be effective only for the periods which will be established by order of the city manager from time to time following consultation with the state department of inland fisheries and wildlife.

(g) The permits authorized herein may be revoked by the city manager at any time.

(Code 1968, § 703.6; Ord. No. 155-72, § 1, 5-15-72; Ord. No. 155-92, 12-7-92; Ord. No. 123-93, 11-1-93; Ord. No. 320-94, 5-16-94; Ord. No. 69-99, 9-22-99; Ord. No. 16 ¾, 7-21-03)

Sec. 17-42. Same--Carrying at nighttime prohibited; exception.

(a) No person shall have in his possession in or on any street, way, sidewalk, park or other public place, or in any motor vehicle on or in any street, way, sidewalk, park, or other public place between the time of sunset of any day and sunrise of the following day any loaded BB gun, air gun of any kind, gas pellet gun of any kind, firearm of any kind or description or any other such weapon.

***Editor's Note:** State law on possession of firearms pre-empts this section. See 25 M.R.S.A. §2011: see also 25 M.R.S.A. §2001-A. Firearm is as defined in 17-A M.R.S.A. §2, 12-A: "Firearm" means any weapon, whether loaded or unloaded, which

is designed to expel a projectile by the action of an explosive and includes any such weapon commonly referred to as a pistol, revolver, rifle, gun, machine gun or shotgun. Any weapon which can be made into a firearm by the insertion of a firing pin, or other similar thing, or by repair, is a firearm.)

(b) This section shall not apply to any law enforcement official in the performance of his or her official duties or to any person defending himself or herself or his or her property.

(Code 1968, § 703.6; Ord. No. 155-72, 5-15-72)

Sec. 17-43. Sale of hand guns.

(a) *Generally.* No person in the city shall sell, give or deliver to any person any hand gun except in accordance with the provisions of this section.

(b) *Definition.* A hand gun shall mean a firearm having a barrel length of less than fifteen (15) inches and designed and intended to be fired with one (1) hand, using fixed ammunition.

(c) *Certificate required* A person selling, giving or delivering a hand gun to another person shall require the person seeking to purchase or obtain such hand gun to sign a certificate containing the following information:

Name ____ Driver's License No. ____

or

Date of Birth ____ Draft Card No. ____

Address ____ How long at such address ____

Occupation ____ Present Employer ____

Physical Description _____ Sex: _____ Ht: _____ Wgt: _____
Color Hair: _____ Color Eyes: _____

Distinguishing Marks ____

Have you ever been convicted of assault, assault and battery, or a felony? ____

If so, description thereof ____

Are you under complaint or indictment for assault, assault and battery, or a felony? _____

If so, description thereof _____

Are you a user of or addicted to marijuana or any other depressant, stimulant, or narcotic drug? _____

Have you ever been judged by a court as a mental defective or been committed to, or voluntarily been a patient at, a mental institution? _____

If, where? _____

Signature

(d) *Duties of chief of police.* Such person shall deliver such certificate to the chief of police, at police headquarters, and the chief of police shall have seventy-two (72) hours after receipt of the certificate to make an examination of the records contained in the police department and in state police headquarters at Augusta, Maine, to determine from such records whether the person signing such certificate has been convicted of, or is under complaint or indictment for, assault, assault and battery, or a felony; is a user of or addicted to marijuana or any other depressant, stimulant, or narcotic drug; or has ever been judged by a court as a mental defective or has been committed to, or voluntarily been a patient at, a mental institution and to report such finding to the person filing such certificate.

(e) *Violations.* Any person selling, giving or delivering a hand gun to any person before the expiration of the seventy-two (72) hours or when notified within the period by the chief of police, that a person signing such certificate has been convicted of, or is under complaint or indictment for, assault, assault and battery, or a felony; is a user of or addicted to marijuana or any other depressant, stimulant, or narcotic drug; or has been judged by a court as a mental defective or has been committed to, or voluntarily been a patient at, a mental institution shall be guilty of a violation of this section.

(f) *Penalty.* Any person who signs a certificate containing false information for the purpose of complying with the provisions of this section shall be guilty of a violation of this section.
(Code 1968, §§ 318.1--318.6; Ord. No. 489-69, 9-15-69; Ord. No. 145-75, 2-19-75)

ARTICLE III-A. TRIGGER LOCKS

Sec. 17-44. Findings, Purpose.

(a) The City Council hereby finds as follows:

- (1) The accidental discharge of firearms poses a threat to the health and safety of the citizens of the City of Portland;
 - (2) The risk of accidental discharge is particularly threatening in cases where children have gained access to firearms;
 - (3) Trigger locking devices can prevent the accidental discharge of a firearm; and
 - (4) 25 MRSA, Section 2012 requires gun dealers to offer to demonstrate to purchasers of firearms the use of trigger locking devices.
- (b) The City Council, accordingly, hereby finds that in the interest of promoting health, safety and welfare of the citizens of Portland, it will provide trigger locking devices, without charge, to gun dealers for distribution to purchasers of firearms.

(Ord. No. 251-01, 6-4-01)

Sec. 17-45. Definitions.

The terms "firearms," "dealer," "pawnbroker," "engaged in the business" and "secure gun storage or safety device" and other terms used herein shall, when defined in 18 USC Section 921, have the same meanings ascribed to them by that statute, as it may be amended from time to time.

(Ord. No. 251-01, 6-4-01)

Sec. 17-46. Trigger Locking Device.

The City will provide trigger locking devices to every gun dealer within the City without charge.

(Ord. No. 251-01, 6-4-01)

Sec. 17-47. Duties of Gun Dealers.

For the purpose of obtaining the free trigger locking devices, each gun dealer in the City will register with the City Clerk.

- (a) *Registration.* Gun dealers will register by providing the City Clerk with copies of the application and also the license issued thereunder, pursuant to 18 USC Section 923, as it may be amended from time to time.
- (b) *Time of Registration.*
 - (1) Gun dealers who hold federal licenses at the time of this Ordinance goes into effect will register with the City Clerk on or before July 1 of the current year. Thereafter, they shall register on July 1st of each succeeding year.
 - (2) Gun dealers who become licensed during the year, shall register with the City Clerk within 30 days from the issuance of their federal license.
- (c) *Request for Trigger Locking Devices.* At the time of their registration and not less than every six months thereafter, gun dealers shall file a request with the Police Department for the number of trigger locking devices which they reasonably anticipate (based upon the reports required by 18 USC Section 923(g)(1)(a) they will require for distribution to their customers.
- (d) *Advising Gun Purchasers of the Availability of Free Trigger Locking Devices.* Every gun dealer will post and maintain in a conspicuous place on the premises where he regularly deals in firearms a sign, furnished by the Police Department, advising customers of the availability of free trigger locking devices.
- (e) *Exceptions.* The provisions of this section will not apply to the private sale of firearms, a licensed collector, nor to antique firearms.
- (f) *Distribution.* Residents of Portland and sworn law enforcement officers may receive a free trigger locking device upon application to the Police Department.

Trigger locking devices will also be provided by the Police Department to persons who obtain a permit to carry a concealed weapon.

(g) *Availability.* Trigger locking devices will be distributed in accordance with the provisions of this ordinance to the extent that they are available.

(Ord. No. 251-01, 6-4-01)

Sec. 17-48. Reserved.
Sec. 17-49. Reserved.
Sec. 17-50. Reserved.
Sec. 17-50. Reserved.
Sec. 17-51. Reserved.
Sec. 17-52. Reserved.
Sec. 17-53. Reserved.
Sec. 17-54. Reserved.
Sec. 17-55. Reserved.
Sec. 17-56. Reserved.
Sec. 17-57. Reserved.
Sec. 17-58. Reserved.
Sec. 17-59. Reserved.
Sec. 17-60. Reserved.

ARTICLE IV. OBSCENITY*

***Editor's note--**At the editor's discretion, an ordinance adopted Nov. 2, 1982, through the initiative and referendum process, has been codified as herein set out in §§ 17-61--17-63. Subsections of § 2, containing general penalty provisions, have been omitted.

Cross reference(s)--Adult business establishments, § 14-373.

Sec. 17-61. Definitions.

As used in this article, the following words shall have the following meanings:

Material means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three-dimensional obscene device.

Obscene means material or a performance that:

- (a) The average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;
- (b) Depicts or describes:
 - 1. Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or
 - 2. Patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and
- (c) Taken as a whole, lacks serious literary, artistic, political or scientific value.

Obscene device means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.

Patently offensive means so offensive on its face as to be intolerable to the average person, applying contemporary community standards.

Performance means a play, motion picture, dance, or other exhibition performed before an audience.

Promote means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

Prurient interest in sex means a shameful or morbid interest in sex.

Wholesale promote means to manufacture, issue, sell, provide,

mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.

(Ord. of 11-2-82, § 1(a))

Sec. 17-62. Wholesale promotion of obscene material or devices.

(a) A person commits an offense if, knowing its content and character, he wholesale promotes or possesses with intent to wholesale promote any obscene material or obscene device.

(b) A person commits an offense if, knowing its content and character, he:

- (1) Promotes or possesses with intent to promote any obscene material or obscene device; or
- (2) Produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.

(c) A person who promotes or wholesale promotes obscene material or an obscene device or possesses the same with intent to promote or wholesale promote it in the course of his business is presumed to do so with knowledge of its content and character.

(d) A person who possesses six (6) or more obscene devices or six (6) or more obscene articles, whether such devices or articles are similar or identical, is presumed to possess them with intent to promote the same.

(e) This section does not apply to a person who possesses or distributes obscene material or obscene devices or participates in conduct otherwise proscribed by this section when the possession, participation, or conduct occurs in the course of law enforcement activities.

(Ord. of 11-2-82, § 2)

Sec. 17-63. Validity.

If any of the depictions or descriptions of sexual conduct described in this article are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this article as to other patently offensive sexual conduct included herein.

(Ord. of 11-2-82, § 1(b))

Sec. 17-64. Penalty.

The violation of any provision of this division shall be punished by a fine of one thousand dollars (\$1,000.00) for a first offense, one thousand five hundred dollars (\$1,500.00) for a second offense and two thousand dollars (\$2,000.00) for a third or subsequent offense regardless of the time between offenses. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the city may enjoin or abate any violation of this division by appropriate action. In addition to such penalty, if the court finds for the city, the city shall recover its costs of suit including reasonable experts' fees, reasonable attorneys' fees and reasonable investigative costs.

(Ord. No. 218-95, 4-3-95)

Sec. 17-65. Application of violations to liquor licenses.

Any violation of this division may result in the nonrenewal by the city council of the liquor license held by the violator at the time the council first considers the liquor license following adjudication under this division.

(Ord. No. 218-95, 4-3-95)

Sec. 17-66. Reserved.

Sec. 17-67. Reserved.

Sec. 17-68. Reserved.

Sec. 17-69. Reserved.

ARTICLE V. REGULATION OF TOBACCO*

***Editor's note**--Ord. No. 241-98, § 1, adopted Apr. 7, 1998, amended this chapter by adding provisions as herein set out; such ordinance was approved at referendum on Nov. 3, 1998, with an effective date of Dec. 5, 1998.

***Editor's note**--Pursuant to Council Order 39-12/13, passed by City Council on 2/4/13 repealed Article V in its entirety and replaced it with a new Article V.

DIVISION 1. GENERALLY

Sec. 17-70. Findings; purposes.

(a) The city council hereby finds as follows:

- (1) There is no risk-free level of contact with secondhand smoke; even brief exposure can be harmful to health;
- (2) Secondhand smoke contains over 4,000 chemicals, more than 60 of which are known to cause cancer;
- (3) The smoking of other substances may also cause serious health problems and risks to those who smoke; and
- (4) The purpose of this regulation is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment.

(b) The city council hereby finds that it is in the public health, safety and welfare to supplement state regulation of the use of tobacco, tobacco products and other substances that emit smoke that is used and intended customarily for inhalation into the lungs in outdoor locations and the free distribution and self-service displays of tobacco and tobacco products.

(Ord. No. 39-12/13, 2-4-13, Ord. 207-14/15, 4-27-2015)

Sec. 17-71. Definitions.

Words used in this chapter shall have their common meanings, except that definitions set forth in 22 M.R.S.A. Chapter 262-A, or this section shall apply unless the context clearly indicates that a different meaning is intended:

Designated city trail means the traveled portion of all city-owned or controlled trails open to use by the public that have been designated as a nonsmoking trail by order of the city council.

Outdoor eating areas shall mean patios, decks, public property permitted for outdoor dining and other outdoor areas under the control of a restaurant or bar for the use of its patrons.

Owner means and includes the proprietor, manager, lessee, lessor licensee or any other person exercising control over any facility or location.

Private function is a room or a hall in which the sponsor of the private function and not the owner or proprietor has control

over the seating arrangements.

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 or tobacco product means any form of tobacco, including but not limited to cigarettes, cigars, pipe tobacco, chewing tobacco or snuff, and any material or device used in the smoking, chewing or other form of tobacco consumption, including but not limited to cigarette papers, pipes, electronic cigarettes, electronic cigars, electronic pipes, and other similar products that rely on vaporization or aerosolization.

Traveled portion means that area of a trail covered by material such as concrete, pavement, stone dust, or cedar mulch, designed to bear traffic from individuals or vehicles powered by individuals.

(Ord. No.39-12/13, 2-4-13, Ord. 207-14/15, 4-27-2015)

- Sec. 17-72. Reserved.**
- Sec. 17-73. Reserved.**
- Sec. 17-74. Reserved.**
- Sec. 17-75. Reserved.**
- Sec. 17-76. Reserved.**
- Sec. 17-77. Reserved.**
- Sec. 17-78. Reserved.**
- Sec. 17-79. Reserved.**
- Sec. 17-80. Reserved.**

DIVISION 2. MISCELLANEOUS PROVISIONS

Sec. 17-81. Free distribution; sampling.

The free distribution or sampling of tobacco is prohibited in the City of Portland. A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(Ord. No. 241-98, § 1, 4-7-98; Ord. No. 39-12/13, 2-4-13)

Sec. 17-82. Self-service displays.

(a) Self-service displays of tobacco products, from which individual packages, cartons, or items may be selected by the customer, are prohibited in the City of Portland.

(b) The foregoing shall not apply in a retail tobacco store which specializes in the sale of tobacco and tobacco products only.

(c) A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-83. Nonretaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to smoke-free environment afforded by this article. A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this code.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-84. Sale of tobacco products to people under 21 prohibited.

(a) Notwithstanding the provisions of 22 M.R.S. §1555-B(2) and in accordance with 22 M.R.S. 1556, in the City of Portland, no individual, corporation, partnership, unincorporated association or other entity may sell, furnish, give away or offer to sell, furnish or give away a tobacco product to any individual under 21 years of age.

(b) No individual, corporation, partnership, unincorporated association or other entity may sell or permit the sale of tobacco products in the City of Portland unless a clearly visible notice is posted at the location where tobacco products are available for purchase. The City of Portland shall provide this notice, which shall state "No person under the age of 21 may purchase tobacco products," legibly printed in letters at least one-half inch high.

(c) The City of Portland's Public Health Division Director or his or her designee(s) shall have the primary responsibility for enforcement of this section and may conduct random,

unannounced inspections at locations where tobacco products are sold to test and ensure compliance with this ordinance.

(d) A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(Ord. No. 303-15/16, 7-20-2016)

Sec. 17-85. Reserved.

DIVISION 3. NONSMOKING ON DESIGNATED CITY TRAILS

Sec. 17-86. Purpose.

This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, and quality of life of the children and other people that use designated city trails.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-87. Smoking prohibited.

It shall be unlawful for any person to smoke on a designated city trail at any time.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-88. Enforcement.

The parks and recreation department shall place signs at the beginning and end point of any city trail 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. Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer or park ranger shall issue one verbal warning to an individual. If the individual fails to immediately comply after one warning, individual shall be given a citation.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-89. Reserved.

DIVISION 4. SECONDHAND SMOKE ON
PLAYGROUNDS, BEACHES, AND ATHLETIC FACILITIES

Sec. 17-90. Purposes.

The purpose of this regulation is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment.

(Ord. No. 39-12/13, 2-4-13, Ord. 207-14/15, 4-27-2015)

Sec. 17-91. Smoking prohibited at playgrounds, beaches and outdoor athletic facilities.

(a) Smoking is prohibited both at, or within, twenty (20) feet of the following outdoor areas: playgrounds, beaches and outdoor athletic facilities owned and maintained by the city where members of the general public of any age assemble to engage in physical exercise, participate in athletic competition, play or recreational activity, or to witness sports, or other outdoor recreational events.

(b) The foregoing prohibition shall not apply in an area which has been designated prior to passage of this ordinance as a designated smoking area at Hadlock Field, but such area shall not be expanded.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-92. Enforcement.

(a) The health and human services department shall work with the public works department to place signs notifying the public of this prohibition at or near playgrounds and athletic facilities, as well as in such other locations that, in its sole discretion, the health and human services department deems necessary to notify the public of this ordinance.

(b) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer or park ranger shall issue one verbal warning to an individual. If the individual fails to comply after one warning, said individual shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.

(Ord. No. 39-12/13, 2-4-13; Ord. 108-15/16, 11-16-2015)

Sec. 17-93. Reserved.

DIVISION 5. SECONDHAND SMOKE IN
INDOOR AND OUTDOOR EATING AREAS

Sec. 17-94. Smoking Prohibited in Indoor and Outdoor Eating Areas.

(a) Smoking is prohibited within the indoor and outdoor eating areas provided by restaurants and bars while such indoor or outdoor eating areas, or any portion thereof, are open and available for dining and beverage service.

(b) *Indoor eating areas* shall mean indoor areas permitted for dining that are under the control of a restaurant or bar for the use of its patrons.

(c) *Outdoor eating areas* shall mean patios, decks, public property permitted for outdoor dining and other outdoor areas under the control of a restaurant or bar for the use of its patrons.
(Ord. 207-14/15, 4-27-2015)

Sec. 17-95. Enforcement.

(a) It shall be the responsibility of restaurants and bars to notify its customers of this prohibition and to request that customers comply with it.

(b) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer shall issue one verbal warning to an individual and the restaurant. If the individual or restaurant or bar fails to comply after one warning, said individual or restaurant or bar shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.
(Ord. 207-14/15, 4-27-2015)

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DIVISION 6. SMOKING PROHIBITED IN CITY PARKS AND PUBLIC GROUNDS

Sec. 17-96. Smoking prohibited in all city-owned or maintained parks.

(a) Smoking is prohibited in the City's public parks, squares and grounds and temporary parks requiring a permit.

(b) The Council shall define by order the City-owned or maintained public parks and grounds to which this requirement shall apply and such order shall be kept on file in the Department of Public Works.

(c) Smoking is prohibited in any temporary or "pop-up" park operated or maintained by a private person or entity, into which the public is invited and that requires an event permit under Chapter 18 for the duration of the event so approved.

(Ord. No. 39-12/13, 2-4-13; Ord. 80-15/16, 10-19-2015, Ord. 108-15/16, 11-16-2015)

***Editor's Note:** Pursuant to Council Order 38-12/13, passed on 2/4/13, and Order 76-15/16, passed on 10/19/2015, the following is the list of public parks to which 17-96(b) applies:

ORDERED, that smoking shall be prohibited in the following parks and public grounds as described in Section 17-96 of the Portland City Code:

| | |
|-------------------------------|----------------------------|
| Back Cove Park | Lobsterman Park |
| Baxter Woods | Longfellow Square |
| Bayside Park | Marginal Way Field |
| Bedford Park | Monument Square |
| Bell Buoy Park | Oatnuts Park |
| Belmeade Park | Payson Park |
| Boothby Square | Pleasant Street Park |
| Capisic Pond Park | Post Office Park |
| Compass Park/Maine State Pier | Presumpscot Park |
| Congress Square | Presumpscot River Preserve |
| Deering Oaks Park | Quarry Run Dog Park |
| Dougherty Field | Riverton Park |
| Eastern Promenade | Stroudwater Park |
| Fessenden Park | Tommy's Park |
| Fort Allen Park | University Park |
| Fort Sumner Park | Valley Street Dog Park |
| Ganley Plaza | Western Promenade |
| Harbor View Park | |
| Heseltine Park | |
| Lincoln Park | |

Sec. 17-97. Enforcement.

(a) The health and human services department shall work with the public works department to place signs notifying the public of this prohibition at or near playgrounds and athletic facilities, as well as in such other locations that, in its sole discretion, the health and human services department deems necessary to notify the public of this ordinance.

(b) Prior to issuing a citation for a violation of this

section, a police officer or any law enforcement or code enforcement officer or park ranger shall issue one verbal warning to an individual. If the individual fails to comply after one warning, said individual shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.

(Ord No. 39-12/13, 2-4-13; Ord. 108-15/16, 11-16-2015)

Sec. 17-98. Reserved.

ARTICLE VI. MERCURY THERMOMETERS

DIVISION 1. GENERALLY

Sec. 17-99. Findings, Purpose.

The purpose of this ordinance is to bar the sale of mercury thermometers (as that term is defined in 38 M.R.S.A. §1661(1) (Mercury-Added Products), as amended, as well as their use by medical facilities.

(Ord. No. 52-01/02, 9-5-01)

Sec. 17-100. Definitions.

(a) *Mercury thermometer* means an instrument containing mercury, added during its manufacture, which is used to measure body temperature.

(b) *Medical care facility* means and includes any hospital, nursing home, extended care facility, long term care facility, clinic, medical laboratory, mental health service facility, or offices of physicians or surgeons.

(Ord. NO. 52-01/02, 9-5-01)

DIVISION 2. RESTRICTIONS

Sec. 17-101. Importation and Use.

No medical care facility, as defined herein, shall distribute or use mercury thermometers, except as permitted by Sec. 17-90 below.

(Ord. No. 52-01/02, 9-5-01)

Sec. 17-102. Sale.

No person, firm or corporation shall either sell or provide a mercury thermometer to any person, after the effective date of this act, except as provided in Sec. 17-90 and Sec. 17-91 below. "Sale" shall have the same meaning described to that term in 11 M.R.S.A. §2-106, as amended.
(Ord. No. 52-01/02, 9-5-01)

Sec. 17-103. Exceptions.

(a) The provisions of this ordinance shall not apply in cases where mercury thermometers have been prescribed for patient use by a physician or surgeon licensed to practice in the State of Maine, pursuant to 32 M.R.S.A. § 3269(3), as amended.

(b) The provisions of this ordinance shall not apply to medical care facilities which employ mercury thermometers in the treatment and care of persons having communicable diseases. "Communicable Disease" shall have the same meaning ascribed to that term in 22 M.R.S.A. § 801 (2), as amended.
(Ord. 52-01/02, 9-5-01)

Sec. 17-104. Consumer Information.

In cases where mercury thermometers have been lawfully sold to consumer-purchasers, in addition to the requirements of 38 M.R.S.A. § 1662, as amended, the provider of such thermometers will also provide directions, written in clear, non-technical language, regarding their proper use and lawful disposal. Failure to provide such directions will be a violation of this ordinance.
(Ord. No. 52-01/02, 9-5-01)

Sec. 17-105. Penalty.

The violation of any provision of this ordinance will subject the offender to the penalties provided in city code §1-15, as amended. In the case of a violation involving the sale of mercury thermometers, each thermometer sold shall be deemed to constitute a separate offense.
(Ord. No. 52-01/02, 9-5-01)

Sec. 17-106. Reserved.

Sec. 17-107. Reserved.

***Editor's Note:** Sections 17-99 through 17-107 (formerly Sec. 17-86 through 17-94) were renumbered on 10-19-05 to add a new Section 17-86 through 17-94)

Article VII. RESERVED.

Sec. 17-108. Reserved.

Sec. 17-109. Reserved.

Sec. 17-110. Reserved.

Sec. 17-112. Reserved.

***Editor's note**--Ord. No. 10-14/15, adopted July 7, 2014 as an Emergency, repealed Article VII. Access to Reproductive Health Care Facilities §§ 17-108 to 17-112, following the United States Supreme Court decision, *McCullen v. Coakley*, 6-26-2014. Formerly, such section derived from Ord. No. 90-13/14, 11-18-13.

**ARTICLE VIII. RECREATIONAL USE OF MARIJUANA BY ADULTS
21 YEARS OF AGE OR OLDER**

Sec. 17-113. Recreational Use, Possession, and Engagement of Possession of Marijuana by Adults 21 years of age or older may:

- (1) Engage in the recreational use of marijuana.
- (2) Possess up to 2.5 ounces of marijuana and paraphernalia.
- (3) Engage in activities for the purpose of ascertaining the possession of marijuana and paraphernalia.

(Referendum 11-5-2013)

Sec. 17-114. Restrictions.

- (1) Recreational use of marijuana in public spaces, school grounds, and on transportation infrastructure is prohibited.
- (2) Engagement in activities for the purpose of ascertaining the possession of marijuana in public spaces, school grounds, and on transportation infrastructure is prohibited.
- (3) Adults under 21 and minors may not engage in the recreational use, possess, or engage in activities for the purpose of ascertaining the possession of marijuana and paraphernalia.
- (4) Landlords and property owners may restrict the smoking of marijuana on their property by posting "No smoking

signs," that apply to marijuana and tobacco, near the entrances.

(Referendum 11-5-2013)

Sec. 17-115. Exemption.

For the medical purposes, in accordance with State of Maine Public Law, Chapter 407, LD 1296, An Act to Amend the Maine Medical Use of Marijuana Act to Protect Patient Privacy, adults under the age of 21 and minors may engage in medical use, possess, and engage in activities for the purpose of ascertaining the possession of medical marijuana and paraphernalia.

(Referendum 11-5-2013)

Sec. 17-116. City Mayor reports to Council.

The City Mayor shall report to the City Council annually, during the month of October, as to the implementation and enforcement of this division, which report shall be put on a council agenda as a communication.

(Referendum 11-5-2013)

Sec. 17-117. Required cooperation not prohibited.

Nothing in this amendment shall be construed to prohibit any city officer or employee from cooperating with federal drug enforcement authorities as required by law.

(Referendum 11-5-2013)

Sec. 17-118. No liability.

Nothing in this chapter is intended, nor shall it be deemed, to create or form the basis for liability on the part of the city, or its officers, employees or agents. The exclusive remedy for violation of this division shall be through the City's disciplinary procedures for officers and employees.

(Referendum 11-5-2013)

Sec. 17-119. Resolve Supporting Taxation and Regulation of Marijuana by the State of Maine and Federal Government.

The City of Portland, through adoption of this ordinance, resolves to support legislation and laws to tax and regulate marijuana by the State of Maine and the Federal Government.

(Referendum 11-5-2013)

**ARTICLE IX. MORATORIUM ON RETAIL MARIJUANA ESTABLISHMENTS AND
RETAIL MARIJUANA SOCIAL CLUBS**

Sec. 17-120. Necessity.

Municipalities are authorized by 30-A M.R.S. § 4356(1)(a) and (b) to enact moratoria for the following reasons:

a. To prevent a shortage or an overburden of public facilities that would otherwise occur during the effective period of the moratorium or that is reasonably foreseeable as a result of any proposed or anticipated development; or

b. Because the application of existing comprehensive plans, land use ordinances or regulations or other applicable laws, if any, is inadequate to prevent public harm from residential, commercial or industrial development in the affected geographic area.

In accordance with 30-A M.R.S. § 4356(1)(a) and (b) and for the reasons stated above, the Portland City Council hereby finds that a moratorium on retail marijuana establishments and retail marijuana social clubs is necessary and warranted in the City of Portland.

(Ord. No. 84-16/17, 11-21-2016)

Sec. 17-121. Moratorium.

Retail marijuana establishments and retail marijuana social clubs, as defined in the Marijuana Legalization Act, are prohibited in the City of Portland. Furthermore, no approval including, but not limited to, site plan or subdivision approval, building permit, certificate of occupancy, or other permit or license shall be issued by the City of Portland for any such use.

(Ord. No. 84-16/17, 11-21-2016)

Sec. 17-122. Term.

This moratorium shall be effective through May 2, 2018. It may be extended for additional 180 day periods by the City of Portland, in accordance with 30-A M.R.S. § 4356(2).

(Ord. No. 84-16/17, 11-21-2016; Ord. No. 222-16/17, 5-1-2017; Ord. No. 58-17/18, 10-2-2017)

Sec. 17-123. Applicability.

Notwithstanding the provisions of 1 M.R.S. § 302, this moratorium shall apply retroactively and include any and all actions and proceedings pending on November 8, 2016 or thereafter.

(Ord. No. 84-16/17, 11-21-2016)

**ARTICLE X. MORATORIUM ON MARIJUANA CAREGIVER RETAIL STORES,
TESTING FACILITIES, AND MANUFACTURING FACILITIES, AND GROW
FACILITIES**

Sec. 17-124. Necessity.

Municipalities are authorized by 30-A M.R.S. § 4356(1)(a) and (b) to enact moratoria for the following reasons:

a. To prevent a shortage or an overburden of public facilities that would otherwise occur during the effective period of the moratorium or that is reasonably foreseeable as a result of any proposed or anticipated development; or

b. Because the application of existing comprehensive plans, land use ordinances or regulations or other applicable laws, if any, is inadequate to prevent public harm from residential, commercial or industrial development in the affected geographic area.

In accordance with 30-A M.R.S. § 4356(1)(a) and (b) and for the reasons stated above, the Portland City Council hereby finds that a moratorium on medical marijuana retail stores, medical marijuana testing facilities, medical marijuana manufacturing facilities, and medical marijuana grow facilities is necessary and warranted in the City of Portland.

(Ord. No. 69-18/19, 10-1-2018)

Sec. 17-125. Definitions.

Except as otherwise provided, the following definitions shall apply to this Article:

Marijuana extraction means the process of extracting marijuana concentrate from harvested marijuana using water, lipids, gases, solvents or other chemicals or chemical processes.

Manufacturing or manufacture means the production, drying, blending, infusing, compounding or other preparation of marijuana and marijuana products, including the preparation of food, drink, or similar products from marijuana or marijuana products. Manufacturing includes, but is not limited to, marijuana extraction or preparation by means of chemical synthesis.

Medical marijuana grow facility means a lot or parcel where more than one registered caregiver is growing medical marijuana for medical use.

Medical marijuana manufacturing facility means an establishment that manufactures marijuana and marijuana products produced by a registered caregiver. Medical marijuana manufacturing facility does not include a single registered caregiver who solely manufactures marijuana and marijuana products out of marijuana legally grown by that caregiver for distribution to that caregiver's own patients.

Medical marijuana retail store means an establishment having the attributes of a typical retail establishment, such as, but not limited to, signage, regular business hours, accessibility to the public, regular sales to more than five individual qualifying patients in any one week, and sales directly to the consumer of the product. This includes, but is not limited to, an establishment meeting the definition of a retail establishment in Sec. 14-47 of this Code that is used by a registered caregiver to offer harvested medical marijuana or marijuana products for sale to qualifying patients.

Medical marijuana testing facility means an establishment that tests marijuana produced by a registered caregiver. Medical marijuana testing facility does not include a single registered caregiver who solely tests the marijuana legally grown by that caregiver for distribution to that caregiver's own patients.
(Ord. No. 69-18/19, 10-1-2018)

Sec. 17-126. Conflicts/Savings Clause.

Any provisions of this Code that are inconsistent or conflicting with the provisions of this Article are hereby repealed to the extent applicable for the duration of this moratorium. If any section or provision of this Code is declared by any court of competent jurisdiction to be invalid, such a declaration shall not invalidate any other section or provision.
(Ord. No. 69-18/19, 10-1-2018)

Section 17-127. Violations.

If any medical marijuana retail store, medical marijuana testing facility, medical marijuana manufacturing facility, or medical marijuana grow facility is established in violation of this Article, it shall be subject to the penalties provided for in Sec. 1-15 of this Code.
(Ord. No. 69-18/19, 10-1-2018)

Sec. 17-128. Term.

Pursuant to Article II, section 11 of the Portland City

Charter, in order to protect the public safety and welfare of the City of Portland, this moratorium shall be enacted as an Emergency, and begin on October 1, 2018 and continue until December 13, 2018 for medical marijuana manufacturing facilities, medical marijuana retail stores and medical marijuana testing facilities. This moratorium shall begin on October 1, 2018 and continue until February 1, 2019 for medical marijuana grow facilities. It may be extended for additional 180 day periods by the City of Portland in accordance with 30-A M.R.S. § 4356(2). (Ord. No. 69-18/19, 10-1-2018)

ARTICLE XI. FACIAL RECOGNITION TECHNOLOGY

Sec. 17-129. Purpose.

The purpose of this Article to protect the privacy and civil liberties of the residents of the City of Portland.
(Ord. 72-19/20. 8-3-2020; By Referendum, 11-3-2020)

Sec. 17-130. Definitions.

For the purposes of this Article, the following terms have the following meanings:

Face surveillance means an automated or semi-automated process that assists in identifying or verifying an individual, or captures information about them, based on the physical characteristics of their face.

Face surveillance system means any computer software or application that performs face surveillance.

City of Portland means any department, agency, bureau, and/or subordinate division of the City of Portland.

City of Portland official means any person or entity acting on behalf of the City of Portland, including any officer, employee, agent, contractor, subcontractor, or vendor.
(Ord. 72-19/20. 8-3-2020; By Referendum, 11-3-2020)

Sec. 17-131. Facial Recognition Technology Prohibition.

It shall be unlawful for the City of Portland or any City of Portland official to:

(a) Obtain, retain, store, possess, access, use, or collect:

1. any face surveillance system; or

2. any data or information derived from a face surveillance system or other use of face surveillance;

(b) Enter into a contract or other agreement with any third party for the purpose of obtaining, retaining, storing, possessing, accessing, using, or collecting, by or on behalf of the City of Portland or any City of Portland official:

1. any face surveillance system; or

2. any data or information derived from a face surveillance system or other use of face surveillance; or

(c) Issue any permit or enter into a contract or other agreement that authorizes any third party to obtain, retain, store, possess, access, use, or collect:

1. any face surveillance system; or

2. any data or information derived from a face surveillance system or other use of face surveillance.

(Ord. 72-19/20. 8-3-2020; By Referendum, 11-3-2020)

Sec. 17-132. Enforcement.

Any City employee who violates a provision of this Article may be subject to discipline in accordance with the City's disciplinary policies and procedures and applicable collective bargaining agreements.

(a) Suppression. No data or information that is obtained, retained, stored, possessed, accessed, used, collected, or derived from any face surveillance system or other use of face surveillance in violation of this article, and no evidence derived therefrom, may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority. Any data or information that is obtained, retained, stored, possessed, accessed, used, collected, or derived in violation of this article shall be considered unlawfully obtained, and shall be deleted upon discovery.

(b) Private cause of action.

1. Any violation of this article constitutes an injury and any person so injured may institute proceedings in the Maine Superior Court in a civil action seeking injunctive relief, declaratory relief, damages, and attorney's fees. Any action instituted under this paragraph shall be brought against the City of Portland. If applicable, such action may also be brought against any third party with whom the City of Portland contracted or entered into an agreement, or to whom the city of Portland issued a permit, in violation of subsections (b) or (c) of Section 17-131 of this article.

2. Any person who has instituted proceedings under the previous paragraph and is found to have been subjected to face surveillance in violation of this article, or about whom data or information is found to have been obtained, retained, stored, possessed, accessed, used, or collected in violation of this article, shall be entitled to recover actual damages not less than the greater of:

- a. \$100 for each violation of this article; or
- b. \$1,000.

3. Any prevailing plaintiff in any action brought under this subsection shall be entitled to the award of costs and reasonable attorney's fees.

(c) Violation of this ordinance by any official or employee of the city of Portland is grounds for suspension or termination. The violator may also be required to participate in retraining. (Ord. 72-19/20. 8-3-2020; By Referendum, 11-3-2020)

Sec. 17-133. Exceptions and Safe Harbors

Nothing in this article shall be construed to:

(a) limit any individual's rights under state or federal law;

(b) prohibit the use of an automated or semiautomated process for the purpose of redacting a recording for release or

disclosure to protect the privacy of a subject depicted in the recording;

(c) prohibit the use of facial recognition or similar biometric technique on privately owned consumer devices for personal use or security, or for commercial use or security; or

(d) prohibit the use of facial recognition or similar biometric technique in managing secure entry or access to restricted buildings, rooms, or other secure spaces, devices, or things, provided that:

1. any data or information derived from such a system is only obtained, retained, stored, possessed, accessed, used, or collected with the knowledge and consent of any person authorized for such entry or access; and

2. no data or information derived from such a system about any persons not authorized for such entry or access may be obtained, retained, stored, possessed, accessed, used, or collected.

(Ord. 72-19/20. 8-3-2020; By Referendum, 11-3-2020)