

**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.  
-----

**Art. I. In General, §§ 17-1--17-14**

**Art. II. Offenses Against Public Peace, §§ 17-15--17-30**

**Art. III. Offenses Against Public Safety, §§ 17-31--17-60**

Div. 1. Generally, §§ 17-31--17-40

Div. 2. Weapons, §§ 17-41--17-60

**Art. III-A. Trigger Locking Devices, §§ 17-44--17-47**

**Art. IV. Obscenity, §§ 17-61--17-69**

**Art. V. Regulation of Tobacco, §§ 17-70--17-85**

Div. 1. Generally, §§ 17-70--17-74

Div. 2. Regulation of Smoking in Restaurants, §§ 17-75--17-80

Div. 3. Miscellaneous Provisions, §§ 17-81--17-85

Div. 4. Nonsmoking on Designating City Trails, §§17-86--17-98

Div. 5. Secondhand Smoke Playgrounds, Beaches, and Athletic  
Facilities §§17-90--17-92

Div. 6. Secondhand Smoke Outdoor Eating Areas §§17-93--17-95

**Art. VI. Mercury Thermometers, §§ 17-86--17-94**

Div. 1. Generally, §§ 17-86--17-87

Div. 2. Restrictions, §§ 17-88--17-94

**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. Reserved.**
- 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 1<sup>st</sup> to May 31<sup>st</sup>, 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 1<sup>st</sup> to August 31<sup>st</sup> 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. Reserved.**  
**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.

(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.

**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.

**Sec. 17-46. Trigger Locking Device.**

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

**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.  
-----

DIVISION 1. GENERALLY

**Sec. 17-70. Findings; purposes.**

- (a) The city council hereby finds as follows:
- (1) Environmental tobacco smoke is the third leading cause of death and disease in the state;
  - (2) Ninety-three (93) percent of Portland residents in a recent survey stated that they are exposed to tobacco smoke when they dine out, and seventy-six (76) percent believe that secondhand smoke is harmful;
  - (3) Recent evidence indicates that restaurant wait staff have about a fifty (50) to ninety (90) percent increased risk of lung cancer;
  - (4) Twenty-three and one-half (23.5) percent of Portland residents would dine out more often if restaurants were totally smoke free with only six and six-tenths (6.6) percent stating that they would dine out less often;

(5) The Maine Bureau of Health has estimated that ninety (90) percent of all smokers began smoking by age nineteen (19) and in the city, seventy (70) percent of all high school students who smoke started smoking by the age of fourteen (14) and by the twelfth grade, fifty (50) percent of all twelfth grade students have smoked at some time; and

(6) A recent survey of Portland residents found that the percentage of adult smokers in the city (thirty-one (31) percent) exceeded both the state (twenty-six (26) percent) and national (twenty-three (23) percent) averages.

(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 and tobacco products in restaurants, and the free distribution and self-service displays of tobacco and tobacco products.

(Ord. No. 241-98, § 1, 4-7-98)

#### **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:

*Adequate ventilation* means an enclosed area that is separately vented and under a negative pressure environment sufficient to prevent tobacco smoke from entering all nonsmoking areas in a building. The ventilation rate in a designated smoking area shall conform to the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) recommendation for a smoking lounge (a ventilation rate of sixty (60) cubic feet per minute (cfm), per person based on occupancy of no more than seven (7) people per one hundred (100) square feet of net occupied space).

*Bar* means any free-standing establishment, or an enclosed area of a restaurant all as defined below, which is primarily dedicated to the serving of alcoholic beverages for the consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. "Primarily" as used herein means that alcohol sales constitute sixty (60) percent or more of the gross sales of the establishment over the immediately preceding twelve-month period. Any new establishment which is licensed to

sell alcoholic beverages shall be deemed to be a restaurant for purposes of section 17-75 below during its first twelve (12) months of operation, after which it will be classified as a bar or restaurant based upon its percentage of gross sales as provided herein.

*Building authority* means the city's director of planning and urban development and any authorized designee thereof.

*Business* means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where services are delivered.

*Employee* means any individual who performs services for an employer in return for wages or profit, or who performs services as a volunteer.

*Employer* means any individual, partnership, association, corporation, trust, or other organized group of individuals, including the City of Portland or any agency thereof, which regularly uses the services of two (2) or more employees.

*Enclosed area* means a space between floor and ceiling which is enclosed on all sides by solid walls, exclusive of windows and doors, which extend from the floor to the ceiling and which has adequate ventilation as defined above. Partitions, partial walls or dividers that do not extend from the floor to the ceiling are not demarcations of enclosed areas.

*Owner* means and includes the proprietor, manager, lessee, lessor, licensee or any other person exercising control over any business or restaurant.

*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.

*Restaurant* means any coffee shop, cafeteria, sandwich stand, private or school cafeteria, and any other eating establishment, including any bar area of such establishment which is not an enclosed area, which gives or sells food to the public, guests or employees for consumption on the premises, as well as kitchens in which food is prepared, including catering facilities, except that the term "restaurant" shall not include a "bar" as defined herein.

*Smoking* means the lighting of any cigar, cigarette, pipe or other tobacco product, or carrying or having possession of any lighted cigar, cigarette, pipe, or other object giving off or containing any substance giving off tobacco smoke.

*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 and pipes.  
(Ord. No. 241-98, § 1, 4-7-98)

**Sec. 17-72. Reserved.**

**Sec. 17-73. Reserved.**

**Sec. 17-74. Reserved.**

## DIVISION 2. REGULATION OF SMOKING IN RESTAURANTS

### **Sec. 17-75. Smoking prohibited in restaurants.**

(a) Smoking in restaurants, including any bar area of the restaurant which is not an enclosed area, shall be prohibited, or at the owner's option, limited to a single designated smoking area which is an enclosed area. Within fifteen (15) calendar days of a request from the city's building authority, the owner of a restaurant containing a designated smoking area as permitted hereunder shall provide, to the building authority, proof of adequate ventilation from a certified heating, ventilation, and air-conditioning engineer or equally qualified professional. The number of seats in the designated smoking area shall not exceed twenty-five (25) percent of the restaurant's total seating capacity. The configuration of restaurants shall not require nonsmoking dining patrons to pass through any portion of a designated smoking area.

(b) The owner of any restaurant that contains an area where smoking is permitted hereunder must conspicuously post a sign identifying smoking and nonsmoking areas. The sign shall measure no less than eight (8) inches by ten (10) inches.

(c) Upon enactment, the determination of whether an establishment is a bar or a restaurant shall be made by the building authority based upon gross receipts for the twelve (12)

months immediately preceding the month in which this article takes effect. The owner of the establishment shall provide a written statement, under oath, as to the breakdown of its gross receipts as to alcohol and food sales to the building authority. The building authority may require reasonable backup documentation verifying such statement. In the event such statement is not submitted, or reasonable documentation which has been requested is not provided, the establishment shall be deemed to be a restaurant until such statement and/or documentation is so provided. In the case of an establishment which has been in operation less than one (1) year as of the effective date of this article, such establishment shall be treated as a new establishment as provided in section 17-71 above for purposes of determining its status as a bar or restaurant. After the initial determination, redetermination as to status as a bar or restaurant shall be made at the time of the establishment's annual liquor license renewal, with submission of a sworn statement and reasonable documentation as to food and alcohol sales as provided herein for the twelve (12) months immediately preceding the month of renewal. The burden shall be on the establishment to provide a sworn statement, with any reasonable documentation requested by the building authority, as to its status as a bar or restaurant, and in the absence of such statement and reasonable documentation, the establishment shall be deemed to be a restaurant. "Building authority" as used herein shall mean and include the director of planning and urban development and any authorized designee thereof.

(d) Failure or refusal to provide the statement and documentation required under paragraph (c) immediately above 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)

**Sec. 17-76. Where smoking not regulated.**

(a) Notwithstanding any other provision of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this division:

- (1) Bars;
- (2) Private residences;
- (3) Restaurants while in use, in their entirety or within an enclosed area, for private functions; and

- (4) Any patio or other area of a restaurant which is entirely open to the sky.

(b) Notwithstanding any other provision of this article, any owner of a restaurant may declare all of the establishment to be a nonsmoking restaurant. Nothing herein requires an owner to provide a designated smoking area.

(Ord. No. 241-98, § 1, 4-7-98)

#### **Sec. 17-77. Employee protections.**

Employees of a restaurant, including but not limited to waiters, waitresses, hostesses, and cashiers, that contains a designated smoking area as permitted hereunder shall have the right to choose not to work in a designated smoking area or at private functions when smoking is permitted. Such employees may voluntarily serve patrons in designated smoking areas or at private smoking functions but shall not be required to do so.

(Ord. No. 241-98, § 1, 4-7-98)

#### **Sec. 17-78. Penalties.**

(a) Prior to citing an owner for violation of this division, the owner shall be given a written warning for any such violation by the city's building authority. Thereafter, in the case of the first violation of this division, the owner shall be fined one hundred dollars (\$100.00). In the case of a second violation of this division within any twelve-month period, the owner shall be fined two hundred dollars (\$200.00). In the case of three (3) or more violations of this division within any twelve-month period, the owner shall be fined three hundred dollars (\$300.00) and the food service establishment permit issued under chapter 11 shall be suspended for a minimum of seven (7) days. In the case of four (4) or more violations within a twelve-month period, said food service establishment permit shall be revoked and the owner shall be fined five hundred dollars (\$500.00).

(b) License suspensions or revocations shall be imposed only after a hearing before a fair hearing officer pursuant to chapter 15 of this Code. Notwithstanding anything herein to the contrary, the hearing officer shall have the authority to impose a suspension or revocation which exceeds the expiration of a license and provide that such license shall not be renewable until completion of said suspension or revocation period. If the fair hearing officer finds for the city, the city shall be entitled to recover its costs of suit, including but not limited to reasonable hearing officer costs

and fees, experts' fees, and attorneys' fees.

(c) The city may prosecute the civil violation hereunder in court and/or, in addition to any other remedy hereunder, the city may enjoin or abate any violation of this division by appropriate court action. In addition to any such penalty or injunction, if the court finds for the city, the city shall recover its costs of suit, including but not limited to reasonable experts' fees, and attorneys' fees. No fine imposed under this article shall be suspended in whole or in part. In addition to any other method of collection which may be available, any penalty which is imposed but unpaid hereunder shall be considered a separate violation hereunder and shall be treated as funds due to city pursuant to chapter 2, article VI of this Code.

(Ord. No. 241-98, § 1, 4-7-98)

**Sec. 17-79. Reserved.**

**Sec. 17-80. Reserved.**

### DIVISION 3. 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)

**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. 241-98, § 1, 4-7-98)

**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 a 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. 241-98, § 1, 4-7-98)

**Sec. 17-84. Other applicable laws.**

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.  
(Ord. No. 241-98, § 1, 4-7-98)

**Sec. 17-85. Effective date; extension.**

(a) This article shall take effect one hundred twenty (120) days from its date of passage by the city council.

(b) During the above one-hundred-twenty-day period, any owner of a restaurant who intends to provide a separate designated smoking area in the restaurant as permitted under this article may file a written application with the director of public health requesting up to an additional one hundred twenty (120) days from the effective date of this article prior to any enforcement against said restaurant. The director of public health, after consultation with the building authority, may grant such reasonable extension for bringing such separate smoking area into compliance with this article upon finding that the restaurant owner has made a good faith effort to comply with this article by:

- (1) Diligently planning and/or designing any renovations needed to provide such separate smoking area; and
- (2) Diligently proceeding to implement such required renovations.

The decision of the director of public health shall be final.  
(Ord. No. 241-98, § 1, 4-7-98)

DIVISION 4. 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. 55-05/06, 9-19-05)

**Sec. 17-87. Definitions.**

(a) *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.

(b) *Smoking* means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance in any manner or in any form.

(c) *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. 55-05/06, 9-19-05)

**Sec. 17-88. Smoking prohibited.**

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

(Ord. No. 55-05/06, 9-19-05)

**Sec. 17-89. 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.

(Ord. No. 55-05/06, 9-19-05)

DIVISION 5. SECONDHAND SMOKE  
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. Exposure to secondhand smoke is the third leading cause of preventable death in America, killing 6,000 children ever year. Recent outdoor research from Stanford

University and Repace Associates demonstrates that, when measured up to 20 feet from a person actively smoking, toxicity levels can reach those similar to indoor smoking levels. Secondhand smoke disproportionately affects vulnerable populations such as children and the elderly, causing asthma, chronic lung disease, ear infections heart disease and Sudden Infant Death Syndrome (SIDS). In fact, secondhand smoke can triple an infant's risk of dying from SIDS. The U.S. Surgeon General's 2006 report declared that "The debate is over. The science is clear; secondhand smoke is not a mere annoyance, but a serious health hazard...for which there is no safe level of exposure."

(Ord. No. 31-08/09, 8-4-08)

**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.

(c) "Smoking" as used herein shall mean inhaling, exhaling, burning or carrying or having in one's possession any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.

(Ord. No. 31-08/09, 8-4-08)

**Sec. 17-92. Enforcement.**

(a) The health and human services department shall work with the public services 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.

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. 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. 31-08/09, 8-4-08)

**Sec. 17-93. Purposes.**

The purpose of this regulation is to decrease the exposure of individuals to secondhand smoke in their outdoor environment. The Environmental Protection Agency categorizes secondhand smoke, or environmental tobacco smoke, as a Class A known human lung carcinogen, the most dangerous category reserved for substances including radon, benzene, and asbestos. The California EPA issued a final regulation on February 8, 2007 identifying environmental tobacco smoke as a toxic air contaminant. Researchers from Tufts University and Stanford University have recently concluded that non-smokers in close proximity to a person actively smoking may be subjected to high levels of secondhand smoke related air pollution.

These levels may equal or exceed those smoke levels measured in indoor, fully enclosed environments. In addition, the U.S. Surgeon General declared in a 2006 report that "The debate is over. The science is clear; secondhand smoke is not a mere annoyance, but a serious health hazard... for which there is no safe level of exposure". In fact, according to the Maine Center for Disease Control and Prevention, one non-smoker a day in Maine dies from secondhand smoke exposure.

(Ord. 32-08/09, 9-3-08)

**Sec. 17-94. Smoking Prohibited in Outdoor Eating Areas.**

(a) Notwithstanding anything in division 2 of this chapter to the contrary, smoking is prohibited until 10:00 p.m. within the outdoor eating areas provided by restaurants and bars while such outdoor eating areas, or any portion thereof, are open and available for dining and beverage service.

(b) "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.

(c) "Smoking" as used herein shall mean inhaling, exhaling, burning, carrying or having in one's possession any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.

(Ord. 32-08/09, 9-3-08)

**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. No. 32-08/09, 9-3-08)

**Sec. 17-96. Reserved.**

**Sec. 17-97. Reserved.**

**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)  
-----