

South Portland City Council
Position Paper of the City Manager

Subject:

ORDINANCE #8-14/15 – Amending Chapter 9, “Garbage and Refuse” Regarding Solid Waste. First reading. Passage requires majority vote.

Position:

In the early 1990’s, Ge Erskine, then Public Works Director for the City, went before the City Council requesting new ordinance language concerning solid waste pickup. The reason for the request was two-fold. The number of apartment and condominium complexes that had been built in the 80s and 90s increased significantly and a service that once was provided by the City soon became overburdened. The second reason was the developers of the complexes built substandard driveways within the complexes that did not meet City road standards. Access driveways and parking lots within the complexes could crack and break apart with the weight of City trucks, placing the liability and financial responsibility on the City to repair.

The ordinance outlined the type and/or size of complex eligible to receive City pickup. Consistent with the ordinance, those who previously received solid waste pickup were grandfathered. This Ordinance is still in place today, even though we have changed the solid waste collection model and adopted a recycling program.

Many apartment and condominium complex’s Planning Board applications and Findings of Fact state the complex/association will be responsible for its solid waste collection and disposal. In addition the association by-laws reflect similar language. This has been a consistent practice since the mid 1990’s.

The collection of solid waste had not been an issue until the beginning of the recycling program in the early/mid 2000’s. Since that time staff has periodically been contacted by different condo/apartment complexes requesting the City begin the collection of their dumpsters. In all instances staff has denied the request. The collection of solid waste was brought forward in 2008 and 2009 to the City Council a year after the City went with automated solid waste and recycling and contracted the services through Pine Tree Waste. As a result of the workshops, the City Council directed staff not to break the current practice of collecting solid waste; however, the City Council directed staff to offer apartment/condo complexes recycling automated totes. The Council was willing to work with the complexes for the collection of recycling in hopes of increasing recycling efforts

within the city. A requirement of the recycling program for these complexes would be that the totes would have to be brought to the city curb for collection. To date, a few complexes have taken advantage of this offering.

Significant change has occurred since the existing Ordinance was written in the early 1990's. Contracting out the solid waste and recycling weekly collection has brought a slightly higher expense to the solid waste budget over and above the cost of disposal. Potentially adding additional dumpster locations or tote stops along the weekly route would increase the budget for collection as well as tipping fees at ecomaine (\$70.50 a ton). Staff feels that it is time to amend the Ordinance to reflect current practice and deter future requests that could have significant budget impacts.

The proposed amendments to the Solid Waste Ordinance would eliminate the collection of solid waste to apartment/condo complexes larger than 4 units. Those who receive collection today will continue to receive collection in the future as they have been grandfathered since the 1990's. In addition, language is included in the amended ordinance that outlines the allowance of recycling containers for those complexes that are interested in recycling as long as the complex transports the containers to the city curb for weekly collection.

The ordinance amendments were discussed at the August 11, 2014 workshop and is brought forward for first reading and set September 3, 2014 for second reading and action.

Requested Action:

Council passage of first reading and set September 3, 2014 for second reading and action.


City Manager



CITY OF SOUTH PORTLAND

GERARD A. JALBERT
Mayor

JAMES H. GAILEY
City Manager

SUSAN M. MOONEY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

IN CITY COUNCIL

District One
MICHAEL R. POCK

ORDINANCE #8-14/15

District Two
PATRICIA A. SMITH

THE COUNCIL of the City of South Portland hereby ordains that Chapter 9, "Garbage and Refuse," of the "Code of Ordinances of the City of South Portland, Maine," be and hereby is amended as follows (deletions are ~~struck through~~; additions are underlined):

District Three
MELISSA E. LINSKOTT

Chapter 9

GARBAGE AND REFUSE

District Four
LINDA C. COHEN

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ARTICLE I. IN GENERAL

District Five
GERARD A. JALBERT

Sec. 9-1. Definitions.

At Large
MAXINE R. BEECHER

As used in this chapter, the following words and phrases shall have the meanings ascribed to them in this section:

Garbage shall mean residential offal, household garbage and kitchen waste.

Person shall mean any individual, natural person, sole proprietorship, firm, partnership, association, corporation or other legal organization of any kind whatsoever.

Refuse shall mean an accumulation of any putrid substance, garbage, rubbish, old lumber, debris, rubble, abandoned appliances or abandoned household furniture.

Rendering wastes shall mean any solid waste consisting of animal, fish, poultry or beef offal or waste products, whether in the form of raw product or finished product.

At Large
THOMAS E. BLAKE

Responsible party shall mean the property owner for single-family dwellings. For multi-family dwellings, the responsible party shall be the property owner, property manager or agent.

Yard waste shall mean leaves, grass or plant cuttings, twigs, brush, branches or tree limbs.

(Code 1966, § 11-7-1; Ord. No. 7-70, 3-16-70; Ord. No. 13-83/84, 12-19-83, Ord. No. 7-92/93, 9-21-92; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000]; Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000])

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Sec. 9-6. Authority to provide for collections; where collection is prohibited.

(a) The City may provide for the regular collection of refuse as the City ~~m~~Manager may direct, pursuant to the provisions of this chapter. Such refuse shall be collected by the City from all residences except those described in the following sentence. Such refuse shall not be collected from apartment houses or apartment complexes of more than four (4) units in size if not receiving City refuse collection service as of September 3, 2014, cluster housing complexes of more than four (4) ~~eight (8)~~ units in size if not receiving City refuse collection service as of September 3, 2014 ~~except as provided in paragraph (b) or (c)~~, nor from hotels, motels, stores, office complexes, manufacturing plants, restaurants, produce houses, food processing plants or any other business or commercial establishment. Owners of properties from which refuse is not collected by the City shall be responsible for the regular collection and disposal of refuse in compliance with the provisions of this chapter. Owners or occupants of residences within an apartment house or apartment complex of four (4) units or less in size or a cluster housing complex of four (4) ~~eight (8)~~ units or less ~~or within a cluster housing complex which meets the requirements set forth in paragraph (c)~~ shall be responsible for placing their refuse at the curb of the street on which the complex has frontage and for otherwise complying with the provisions of this chapter. A list of those apartment houses, apartment complexes and cluster housing complexes receiving City refuse collection service as of September 3, 2014 is on file at the Public Works Department and available for public review and inspection.

(b) Those apartment houses, apartment complexes and cluster housing complexes receiving City refuse collection service as of September 3, 2014 ~~Such refuse shall be collected by the City from cluster housing complexes of more than eight (8) units in size which meet the requirements set forth in paragraph (c), or which must continue to provide and maintain a dumpster or dumpsters in accordance with specifications prescribed by the Director of Public Works and which comply with the following requirements~~ in order to be eligible to continue to receive City refuse collection service:

- (1) Each dumpster shall be situated at least twenty (20) feet from a street;
- (2) Each dumpster shall be situated no closer to a contiguous lot than as permitted

for accessory buildings in the zoning district within which the complex is located;

- (3) Each dumpster shall be site-oriented in such a manner that City equipment has ready and convenient access thereto, and such access route shall be kept free of any obstruction, including snow, at all times on the scheduled day of collection;
- (4) Each dumpster shall be covered at all times, and each dumpster and dumpster area shall be maintained in a clean, sanitary condition at all times with no refuse on or outside the dumpster;
- (5) Each dumpster shall be screened and buffered with landscaping or fencing such that it is not visible from the street or any contiguous lot; and
- (6) Such other requirements as the Director of Public Works or the City ~~m~~Manager may promulgate to carry out the purposes and provisions of this chapter.

~~(c) Such refuse shall be collected by the City from a cluster housing complex of more than eight (8) units in size if:~~

~~(1) The complex does not exceed twelve (12) units in size and the street frontage of the complex equals or exceeds fifty (50) per cent of the minimum frontage which would be required if each unit occupied a separate lot; or~~

~~(2) The complex through its owner's association demonstrates to the City Council, after notice and hearing, that a dumpster cannot reasonably be sited on the lot or lots on which the complex is situated in accordance with the standards prescribed in subsection (b) without undue hardship and that it has made adequate provision for the sanitary storage of refuse awaiting collection in a form and location acceptable to the Director of Public Works, in which event a variance from the requirements of subsection (b) shall be granted, subject to such conditions as the City Council deems appropriate. Such variance approval may be revoked by the City Council at any time if, after notice and hearing, it finds that the complex has failed to comply with a variance condition or the circumstances, including ordinance requirements enacted after granting of the variance, no longer warrant the granting of a variance.~~

~~(dc)~~ For purposes of this section, a cluster housing complex shall mean two (2) or more dwelling units contained in one (1) or more buildings situated on a lot of record, at least one (1) unit of which is individually owned. A lot of record shall include adjacent lots in common ownership, whenever acquired, unless any such adjacent lot was improved on the date of acquisition or unless any such adjacent lot was approved by the planning board as part of an approved final subdivision plan. Street shall mean a publicly dedicated way accepted by the City or, if not accepted, approved by the planning board with the proposed improvements conditioned by a performance bond in accord with the subdivision or site plan ordinance, as applicable.

~~(ed)~~ The City shall not be liable for damage or injury to private property or to persons on

private property caused by the reasonable operation of City refuse collection equipment.

(fe) In addition to other remedies provided in this chapter and at law, the provisions of section 16-34 relating to the abatement and removal of public nuisances shall apply to any claimed violation of this chapter, except that the petition referred to in section 16-34(b) shall require three (3), not ten (10), such signatures.

(gf) The City may provide for the collection of heavy or bulky materials as its City Manager may direct, pursuant to the provisions of this chapter. Such materials may be acceptable at either the City's sanitary landfill site or the ecomaine disposal facility and shall not exceed six (6) cubic yards from any single residential building. The City reserves the right to refuse any material not acceptable under the terms of this section, in which event the property owner shall be responsible for the disposal of any such material in compliance with the provisions of this chapter.

(Code 1966, § 11-7-2; Ord. No. 7-70, 3-16-70; Ord. No. 22-87/88, 10-5-87; Ord. No. 44-87/88, 9-19-88; Ord. No. 18-89/90, 2-5-90; Ord. No. 18-89/90, 2-5-90; Ord. No. 8-09/10, 11/2/09 [Fiscal Note: Less than \$1000])

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ARTICLE V. AUTOMATED REFUSE & RECYCLING COLLECTION ORDINANCE

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Sec. 9-740. Multi-family dwelling recycling

The responsible party for each multi-family dwelling that is provided collection containers pursuant to this Article shall work with the City to improve its recycling collection efforts in accordance with the terms set forth herein if so requested by the Public Works Director. Even if a multi-family dwelling unit is not provided City refuse collection service under Article I of this chapter, in an effort to increase multi-family dwelling unit recycling collection efforts, the Public Works Department shall issue special recyclable collection containers and provide recycling collection service to those multi-family dwellings, regardless of size, requesting such service; provided, however, that the responsible party, tenants, occupants and employees, as applicable, shall place the recycling collection container at the curb of the City street on which the unit has frontage and otherwise comply with this chapter.

To improve multi-family dwelling recycling collection efforts, the responsible party shall notify, in writing, its tenants, occupants and employees, as applicable, that recycling participation is mandatory. Written notification (e.g., letter, newsletter, e-mail notice) shall be provided by the responsible party within fifteen (15) days to all new tenants, occupants and employees and no less frequently than bi-annually thereafter to all existing tenants, occupants and employees. The written notification shall set forth the requirements of this Article and include, at a minimum, the following:

(a) What materials will be recycled;

- (b) How the recyclables are to be prepared;
- (c) Curb-side set-out requirements;
- (d) Location of recycling containers;
- (e) Prohibition against contamination or recyclables; and
- (f) Any other requirements necessary.

(Ord. No. 9-11/12, 2/22/12 [Fiscal Note: Less than \$1000])

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Fiscal Note: Less than \$1,000

Date: August 18, 2014