

NOTICE OF PUBLIC HEARING
MUNICIPAL OFFICERS OF THE TOWN OF
OLD ORCHARD BEACH

The Municipal Officers of the Town of Old Orchard Beach, Maine hereby give Public Notice that there will be a Public Hearing held at the Town Hall, Council Chambers, on April 20, 2010, at 7:00 p.m. to consider the following:

Be it hereby ordained, by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, that Chapter 30, Fire Prevention and Protection, Article II Uniform Fire Code, Section 30-26, and 30-59, Article IV Life Safety Code, Section 30-76 and Chapter 38, Miscellaneous Offenses, Article II, Weapons, Section 38-25 and 38-29, Article VI, Boarding Up of Seasonal Facilities, Section 38-242, of the Town of Old Orchard Beach Code of Ordinances is amended by adding the underscored language and deleting the strikethrough language:

Chapter 30 FIRE PREVENTION AND PROTECTION*

*Cross references: Emergency services, ch. 22; fire safety for housing, § 34-191 et seq.; buildings and building regulations, ch. 66.

State law references: Fire protection, 30-A M.R.S.A. § 3151 et seq.

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Secs. 30-2--30-25. Reserved.

Article II. Uniform Fire Code

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Sec. 30-27. Violation penalties.

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Article III. Sprinkler Systems, Fire Alarm Systems and Smoke Detectors, Fire Lanes

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Sec. 30-62. New building construction.

Sec. 30-63. Building additions and renovations.

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Sec. 30-65. Fire lanes required.

Secs. 30-66--30-75. Reserved.

Article IV. Life Safety Code

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ARTICLE I. IN GENERAL

Sec. 30-1. Administrative clerk to the fire chief.

There is hereby created the employment position of administrative clerk to the fire chief, who shall be appointed and removed by the fire chief and who shall perform those duties assigned by the fire chief, subject to approval by the town manager. The duties of the administrative clerk to the fire chief may include ambulance billing, secretarial support to the fire chief, preparation of inspection reports, and processing of nonemergency telephone traffic for public safety functions. The position of administrative clerk to the fire chief is an employment position, not a municipal office, is subject to annual appropriation, and may be left vacant from time to time at the discretion of the town manager.

(Ord. of 10-22-2003, § 5; Ord. of 3-15-2005, § 4)

Cross references: Officers and employees, § 2-127 et seq.

Secs. 30-2--30-25. Reserved.

ARTICLE II. UNIFORM FIRE CODE*

***Editor's note:** An ordinance adopted August 2, 2005, repealed the former Art. II., §§ 30-26, 30-27, and enacted a new Art. II as set out herein. The former Art. II pertained to adoption of BOCA Basic/National Fire Prevention Code and derived from Ord. of 12-28-1977, §§ 1, 3; Ord. of 5-20-1986.

Note: The effective date for this article is August 2, 2005.

Sec. 30-26. Adopted by reference.

~~The NFPA 1 Uniform Fire Code 2003 Edition is hereby adopted as the Uniform Fire Code of the Town of Old Orchard Beach ("the Code").~~

~~(Ord. of 8-2-2005(2), § 1)~~

The rules adopted by the State of Maine Commissioner of Public Safety pursuant to 25 M.R.S.A. § 2452 are hereby adopted as the Uniform Fire Code of the Town of Old Orchard Beach ("this Code").

Sec. 30-27. Violation penalties.

Any person who violates a provision of this Code or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the code enforcement officer, or of a permit or certificate issued under the provisions of the Code, shall be subject to penalties, upon conviction, of a fine of not less than \$100.00 and not more than \$2,500.00. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

(Ord. of 8-2-2005(2), § 2)

Secs. 30-28--30-55. Reserved.

ARTICLE III. SPRINKLER SYSTEMS, FIRE ALARM SYSTEMS AND SMOKE DETECTORS, FIRE LANES

Sec. 30-56. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approved automatic sprinkler system means a sprinkler system utilizing iron or copper pipe which is installed in accordance with the National Fire Protection Association NFPA standard 13 or NFPA standard 13D or an equivalent system which is approved by the fire chief.

Building means any structure having a roof supported by columns or walls and intended for shelter, housing, use or enclosure of persons, animals or property. Structures or portions of structures which are attached to each other by any other means, including without limitation firewalls, party walls, breezeways, garages, and enclosed walkways or hallways, shall be considered a single building.

Fire chief means the town fire chief or any deputy or firefighter authorized by the fire chief to act as the chief's agent.

Fire lane means a designated, unobstructed passageway at least 20 feet in width with an outside turning radius of 50 feet, constructed and maintained so as to permit free passage of fire apparatus and other emergency equipment and personnel to all areas surrounding buildings which, in the opinion of the fire chief, require emergency access, regardless of the season of year or weather conditions, and in which no parking is permitted.

Multifamily building means any building containing three or more dwelling and/or lodging units, including but not limited to multifamily dwellings, attached single-family dwellings, hotels, motels, roominghouses, boardinghouses and lodginghouses.

Rapid entry system means a system consisting of a locked key box secured to the exterior of a building which can be opened only with the fire department's master key. The key box shall contain all necessary keys for the building, keys for the fire alarm system, and any other keys which, in the opinion of the fire chief, would assist the fire department in rapid entry. The system must be approved by the fire chief and must be fully compatible with the equipment installed on the town's fire apparatus.

Renovation means the repair, replacement, remodeling or reconstruction of any existing building when the cost of the repair, replacement, remodeling or reconstruction exceeds 50 percent of the assessed value of the building prior to the repair, replacement, remodeling or reconstruction.

Story means that portion of a building included between the surface of any floor area and the surface of the floor or roof next above it. A basement shall be considered a story when more than half of its height is above the average level of the adjoining ground.

Supervisory alarm system means an alarm system integrated into a sprinkler system which will automatically transmit an alarm to receiving apparatus at the fire department or to a private monitoring facility approved by the fire chief when the sprinkler system is activated. If a private monitoring system is utilized, the property owner shall enter into a written contract with the private monitoring facility, a copy of which shall be provided to the fire chief.

(Ord. of 10-20-1987, § 2; Ord. of 5-3-1994)

Sec. 30-57. Purpose.

The purpose of this article is to:

- (1) Establish rules and regulations governing the installation of sprinkler systems, fire alarm systems and smoke detectors; and
- (2) Govern the utilization of fire lanes in certain buildings and properties within the town.

(Ord. of 10-20-1987, § 1; Ord. of 5-3-1994)

Sec. 30-58. Applicability.

This article shall apply to all applications for building permits or approvals required under chapter 78.

(Ord. of 10-20-1987, § 9; Ord. of 5-3-1994)

Sec. 30-59. Exception for ~~owner-occupied~~ single family and two family dwellings.

Notwithstanding any other section of this article, no approved automatic sprinkler system or supervisory alarm system or rapid entry system shall be required in any part of a building which is a single family or two family dwelling, as defined in section 78-1, ~~and which is or will be occupied as a residence by the owner of the building,~~ provided such part used as an owner-occupied dwelling is separated from any other parts of the building by fire-resistant materials which, in the opinion of the fire chief, afford adequate protection to the other parts of the building.

(Ord. of 10-20-1987, § 10; Ord. of 4-4-1989; Ord. of 5-3-1994)

Sec. 30-60. Enforcement.

This article may be enforced by the fire chief and/or the code enforcement officer.

(Ord. of 10-20-1987, § 8; Ord. of 5-3-1994)

Sec. 30-61. Penalty.

Any person who shall violate a section of this article or who shall fail to comply with any of the requirements of this article or who shall erect, construct, alter or make additions to a building in violation of this article shall commit a civil violation punishable by a fine as provided in section 1-14. Each day that a violation continues after notice from the fire chief or the code enforcement officer shall be deemed a separate violation.

(Ord. of 10-20-1987, § 7; Ord. of 5-3-1994)

Sec. 30-62. New building construction.

(a) An approved automatic sprinkler system shall be installed in all areas of all new buildings meeting any one or more of the following criteria:

- (1) Any portion of the building is three or more stories in height.
- (2) Any portion of the building is 40 or more feet in height.
- (3) The building is 100,000 cubic feet or more in volume.
- (4) The building is 10,000 square feet or more in floor area.
- (5) The building is a multifamily building and any portion of the building is three or more stories in height.

(b) A supervisory alarm system and a rapid entry system shall be installed in all new buildings meeting any one or more of the following criteria:

- (1) Any portion of the building is three or more stories in height.
- (2) Any portion of the building is 40 or more feet in height.

(3) The building is a multifamily building which requires an approved automatic sprinkler system under subsection (a) of this section and contains eight or more dwelling and/or lodging units.

(4) The building is part of a development of multifamily buildings which require approved automatic sprinkler systems under subsection (a) of this section and the development contains ten or more dwelling and/or lodging units. If approved by the fire chief, a single rapid entry system may serve two or more of the buildings in the development.

(c) Smoke detectors of the AC plus DC type shall be installed in all new buildings.

(Ord. of 10-20-1987, § 3; Ord. of 5-3-1994)

Cross references: Buildings and building regulations, ch. 66.

Sec. 30-63. Building additions and renovations.

(a) An approved automatic sprinkler system shall be installed in additions to existing buildings, but shall not be required in the existing buildings themselves, when one or more of the following criteria are met:

(1) The cumulative floor area of the building and the addition is 10,000 square feet or more.

(2) The cumulative volume of the building and the addition is 100,000 cubic feet or more.

(b) An approved automatic sprinkler system shall be installed in additions to existing buildings and in the existing buildings themselves when one or more of the following criteria are met:

(1) The addition will exceed 25 percent of the floor area of the existing building on the effective date of the ordinance from which this article derives (October 20, 1987) and the resulting building, including the addition, meets one or more of the criteria listed in section 30-62(a).

(2) The addition will exceed 25 percent of the volume of the building existing on the effective date of the ordinance from which this article derives (October 20, 1987) and the resulting building, including the addition, meets one or more of the criteria listed in section 30-62(a).

(c) An approved automatic sprinkler system shall be installed in any existing building which is renovated or changed in use and will, after the renovation or change in use, meet one or more of the criteria listed in section 30-62(a).

(d) A supervisory alarm system and a rapid entry system shall be installed in any existing building to which an addition is added or which is renovated or changed in use, when the resulting building, after the addition, renovation, or change in use, will meet one or more of the criteria listed in section 30-62(b).

(e) Smoke detectors of the AC plus DC type shall be installed in all additions to or renovations of existing buildings.

(f) The town council may waive the requirements of this section, in whole or in part, upon finding that:

(1) Due to unique circumstances of a building, compliance with the requirements of this article would be technically impractical or financially unreasonable;

(2) The building may be safely occupied without an approved automatic sprinkler system or supervisory alarm system or rapid entry system; and

(3) The owner of the building agrees to implement such reasonable alternative fire protection measures as the fire chief recommends.

(Ord. of 10-20-1987, § 4; Ord. of 4-4-1989; Ord. of 5-3-1994)

Cross references: Buildings and building regulations, ch. 66.

Sec. 30-64. Maintenance of systems.

(a) All approved automatic sprinkler systems, supervisory alarm systems and rapid entry systems must be maintained in proper working order at all times and are subject to inspection by the fire chief. No occupancy permit shall be issued for any building that requires a sprinkler system or a fire alarm system until a maintenance agreement signed by a certified sprinkler or fire alarm company has been filed with the fire chief.

(b) Approved automatic sprinkler systems, supervisory alarm systems, rapid entry systems and smoke detectors shall be tested annually, with a member of the fire department monitoring the test, and with the test results provided to the fire chief. Once an approved automatic sprinkler system, supervisory alarm system, rapid entry system or smoke detector has been installed, no one shall remove it without first notifying the fire chief, nor shall any approved automatic sprinkler system be tested without the knowledge of the fire chief. No approved automatic sprinkler system, supervisory alarm system, rapid entry system or smoke detector shall be disconnected or interrupted permanently without the express approval of the fire chief, which approval must be based on an approved alternative method of providing adequate fire protection.

(Ord. of 10-20-1987, § 5; Ord. of 5-3-1994)

Sec. 30-65. Fire lanes required.

(a) For any new building construction, building addition or building renovation governed by sections 30-62 and 30-63, the fire chief may require and designate public or private fire lanes as he deems necessary for the efficient and effective use of fire apparatus in responding to emergencies.

(b) Such fire lanes shall be maintained free of obstructions and vehicles and shall be marked in a manner prescribed by the fire chief.

(c) Fire lanes shall be kept free of ice, snow, and rubbish containers or other obstructions.

(d) The owner, owner's agent or occupant of any premises on which the fire chief has required fire lanes shall cause to be erected, installed and maintained, at no expense to the town, permanent signs bearing the words "Fire Lane--No Parking--Vehicles Will Be Towed at Owner's Expense" in or adjacent to the fire lanes. Such owner, owner's agent or occupant shall cause such other and further designations as are reasonably required by the fire chief to warn persons to keep the fire lanes unobstructed.

(Ord. of 10-20-1987, § 6; Ord. of 5-3-1994)

Secs. 30-66--30-75. Reserved.

ARTICLE IV. LIFE SAFETY CODE*

***Editor's note:** An ordinance adopted August 2, 2005, did not specifically amend the Code. Therefore, such provisions were added as a new article IV, §§ 30-76--30-78 at the editor's discretion.

Note: The effective date for this article is August 2, 2005.

Sec. 30-76. Adopted by reference.

[The rules adopted by the State of Maine Commissioner of Public Safety pursuant to 25 M.R.S.A. § 2452 are hereby adopted as the Life Safety Code of the Town of Old](#)

Orchard Beach, ~~That a certain document~~, a copy of which is on file in the office of the Town Clerk of Old Orchard Beach, being marked and designated as the Life Safety Code, ~~2003 edition~~, as published by the National Fire Protection Association, be hereby adopted as the Life Safety Code of the Town of Old Orchard Beach, in the State of Maine for the provision of minimum requirements, with due regard to function, for the design, operation, and maintenance of buildings and structures for safety to life from fire and other emergencies. These requirements will govern the issuance of permits and collection of fees therefore; and each and all of the regulations, provisions, penalties, conditions and terms of said Life Safety Code on file in the office of the Town of Old Orchard Beach are hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, deletions and changes, if any, as prescribed in section 30-77 of this article.

(Ord. of 8-2-2005(3), § 1)

Sec. 30-77. Code revisions.

The following sections are hereby revised.

Section 1.6, Enforcement, is revised to read as follows:

1.6 Enforcement. This Code shall be administered and enforced by the Code Enforcement Officer or the Fire Chief of the Town of Old Orchard Beach, each of whom shall have concurrent authority under this Code.

(Ord. of 8-2-2005(3), § 2)

Sec. 30-78. Violation penalties.

Any person who violates a provision of the Code or fails to comply with any of the requirements thereof, or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the code enforcement officer or fire chief, or of a permit or certificate issued under the provisions of the Code, shall be subject to penalties, upon conviction, of a fine of not less than \$100.00 and not more than \$2,500.00. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

(Ord. of 8-2-2005(3), § 3)

Secs. 30-79--30-90. Reserved.

ARTICLE V. PRIVATELY OWNED FIRE HYDRANTS*

***Editor's note:** An ordinance adopted March 21, 2006, did not specifically amend the Code. Therefore, such ordinance has been added as sections 30-91--30-95 at the editor's discretion.

Sec. 30-91. Definition.

As used in this article, the term "privately owned fire hydrant" means any fire hydrant which is not located within the right of way of a town way, state highway or state aid highway, as those terms are defined in 23 M.R.S.A.

(Ord. of 3-21-06(1))

Sec. 30-92. Purpose.

The purpose of this article is to establish uniform standards for privately owned fire hydrants within the Town of Old Orchard Beach so that fire protection activities are not hampered during the course of fire fighting. This article is designed to help provide for the safety of the public.

(Ord. of 3-21-06(1))

Sec. 30-93. Design standards.

All privately owned fire hydrants installed in the Town of Old Orchard Beach after the effective date of this article shall comply with the following specifications:

- (1) The hydrants shall be an AFC B62B, or a substantially similar unit, of design approved by the Biddeford and Saco Water Company.
- (2) The hydrants shall be equipped as follows:
 - a. A five and one-fourth-inch internal valve.
 - b. One four and one-half-inch port and two two and one-half-inch ports.
 - c. A six-inch mechanical joint base.
 - d. Open right design.
- (3) Hydrant gate valves shall be six inches, open right, per Biddeford and Saco Water specifications.
- (4) Hydrant tees shall be ductile iron, manufactured in accordance with standards of the American Water Works Association, current at the time of installation.
- (5) The hydrant shall have five and one-half feet depth of bury (five feet of cover).
- (6) The breakaway flange shall be between eight inches and 18 inches above the final grade. An Old Orchard Beach Fire Department representative shall inspect and give approval of the flange height before any hydrant is installed.
- (7) The hydrant shall be painted "high visibility traffic yellow".
- (8) Hydrants shall be a minimum of ten feet from all obstructions such as fences, brush, buildings, trees, mailboxes, etc.

(Ord. of 3-21-06(1))

Sec. 30-94. Installation.

Hydrants shall be set to provide a minimum horizontal distance between the hydrant and hydrant valve of ten feet. Hydrants shall be securely braced against firm undisturbed material by means of an acceptable and approved method of thrust restraint. All hydrant branch piping shall be of six-inch diameter.

(Ord. of 3-21-06(1))

Sec. 30-95. Maintenance of hydrants.

All privately owned hydrants within the Town of Old Orchard Beach, whether installed before, on or after the effective date of this article, are subject to the following provisions and owners of such hydrants shall be responsible for compliance with these provisions.

- (1) The hydrant owner shall provide for at least two maintenance inspections per year by qualified professionals such as an authorized hydrant technician or a vendor approved by Biddeford and Saco Water Company. One such inspection shall occur prior to the winter freeze period.
- (2) Each maintenance inspection shall include:
 - a. A visual inspection:
 - i. Paint shall be resplendent.
 - ii. Paint shall not be discolored, faded, or flecked.
 - iii. Rust shall be minimal.

iv. All caps shall be present and operable.

b. Opening and flushing.

c. Testing during actual operation.

(3) No later than ten days after each inspection, the hydrant owner shall submit an inspection report for each hydrant to the Old Orchard Beach Fire Department.

(4) After the pre-winter inspection, the owner shall arrange with the Biddeford and Saco Water Company, or an authorized vendor, for pumping of the hydrant.

(5) Snow and ice removal is the responsibility of the hydrant owner and all snow and ice shall be removed up to a three foot radius from the base of the hydrant after every snow storm consisting of four inches or more.

(Ord. of 3-21-06(1))

Sec. 30-96. Violations and penalties.

(1) Any person who fails or refuses to comply with any lawful order, discretion or requirement given under the authority of this article, upon adjudication, shall be subject to a fine of not less than \$50.00 per hydrant for the first (1st) violation; \$100.00 per hydrant for the second (2nd) violation; and \$300.00 per hydrant for each subsequent violation. All fines shall be recovered, upon complaint, to the use of the town.

(Ord. of 4-21-2009(2))

Chapter 38 OFFENSES AND MISCELLANEOUS PROVISIONS*

***Cross references:** Traffic and vehicles, ch. 54.

State law references: Criminal code, 17-A M.R.S.A. § 1 et seq.

Article I. In General

Secs. 38-1--38-25. Reserved.

Article II. Weapons

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Sec. 38-27. Discharge causing projectile to pass near dwelling or occupied building or structure.

Sec. 38-28. Discharge within town.

Sec. 38-29. Exceptions.

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Secs. 38-57--38-85. Reserved.

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Sec. 38-273. Location restricted.
Sec. 38-274. Enforcement; violation and penalties.
Sec. 38-275. Liability.
Secs. 38-276--38-280. Reserved.
Article VIII. Newspaper Vending Machines
Sec. 38-281. Purpose.
Sec. 38-282. Authority.
Sec. 38-283. Definitions.
Sec. 38-284. License required.
Sec. 38-285. Location standards.
Sec. 38-286. Enforcement and penalties.
Sec. 38-287. Separability.
Sec. 38-288. Effective date.
Sec. 38-289. Exemption.

ARTICLE I. IN GENERAL

Secs. 38-1--38-25. Reserved.

ARTICLE II. WEAPONS*

*State law references: Weapons, 17-A M.R.S.A. § 1051 et seq.

[Sec. 38-25. Definition](#)

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Firearm means any instrument used in the propulsion of pellets, shot, shells, or bullets by action of gunpowder, compressed air or gas exploded or released within it.

Muzzleloader means a firearm that is capable of being loaded only through the muzzle; is ignited by a matchlock, flintlock, or caplock, including an in-line caplock or shotgun or rifle primer mechanism; has a rifled or smooth-bored barrel or barrels, each barrel capable of firing only a single charge; propels a ball, bullet or charge of shot and may have any type of sights, including scopes.

Sec. 38-26. Discharge near dwelling or occupied building or structure.

It shall be unlawful for any person to shoot or discharge a firearm of any kind or description in the town within 100 yards of a dwelling or occupied building or structure without having received the prior consent in writing of the owner of such dwelling or occupied building or structure.

(Ord. of 9-17-1980, § 2)

Cross references: Buildings and building regulations, ch. 66.

Sec. 38-27. Discharge causing projectile to pass near dwelling or occupied building or structure.

It shall be unlawful for any person to shoot or discharge a firearm of any kind or description in the town which causes or permits the bullet or projectile from such firearm to pass or results in the bullet or projectile from such firearm passing within 100 yards of a dwelling or occupied building or structure without having received the prior consent in writing of the owner of such dwelling or occupied building or structure.

(Ord. of 9-17-1980, § 3)

Cross references: Buildings and building regulations, ch. 66.

Sec. 38-28. Discharge within town.

(a) It shall be unlawful for any person to shoot or discharge a firearm of any kind or description, except for shotguns, within the geographic boundaries of the town.

(b) This section shall not apply to persons having written permission to shoot or discharge firearms from the owner of the premises upon which such firearms are discharged.

(Ord. of 9-17-1980, § 4)

Sec. 38-29. Exceptions.

(a) Sections 38-26, 38-27 and 38-28 shall not apply to the following:

- (1) An approved firing area.
- (2) Raccoon hunting at night with a 0.22 caliber pistol.
- (3) A trapper tending his traps.
- (4) Rifled or ssmooth bore muzzle loaders.

(b) As used in subsection (a)(1) of this section, an approved firing range area is defined as a backstop constructed of logs or timbers of at least 12 inches in diameter with an earth barrier of suitable materials with no less than a 45-degree slope. The following shall be required for an approved firing range area:

(1) In addition to the earth barrier, there shall also be a natural obstruction of trees or terrain to the rear of the backstop.

- (2) The target area will be placed no less than three feet from the top and sides of the backstop.
- (3) The range widths to the target shall be no less than 15 feet for 50 yards, 25 feet for 100 yards and 50 feet for 200 yards.
- (4) No range will be situated less than 100 feet from the nearest roadway, and it shall not be constructed so the projectile travels toward the roadway.
- (5) No shooting will be permitted except between the hours of sunrise and sunset.
(Ord. of 9-17-1980, § 5)
Secs. 38-30--38-55. Reserved.

ARTICLE III. PUBLIC HEALTH

Sec. 38-56. Urination in public or outdoors.

(a) No person shall urinate upon any sidewalk, street, public way, public place or public property, except when using an appropriate plumbing fixture in a public restroom open for use.

(b) No person shall urinate outdoors on private property.

(Ord. of 7-20-1993, §§ 1, 2)

Cross references: Streets, sidewalks and other public places, ch. 50.

State law references: Indecent conduct, 17-A M.R.S.A. § 854.

Secs. 38-57--38-85. Reserved.

ARTICLE IV. OBSCENITY*

***State law references:** Indecent conduct, 17-A M.R.S.A. § 851 et seq.

DIVISION 1. GENERALLY

Secs. 38-86--38-110. Reserved.

DIVISION 2. EXHIBITIONS OR PERFORMANCES

Sec. 38-111. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commercial enterprise means any business, corporation, association or natural person established for pecuniary gain other than a theater.

Engage in means to solicit, produce, direct, finance, physically participate in, compensate others for, further the interest of, or be otherwise involved with the proscribed conduct.

Exhibition means any aural, visual or tactile performance, dramatization, show or display which includes any amount of human, animal or animated conduct, whether presented live or by way of mechanical reproduction, sound recording, audiovisual cassette or tape, silhouette depiction or by any other means.

Obscene means any conduct of a sexual nature which:

- (1) To the average individual, applying contemporary community standards, considered as a whole, appeals to the prurient interest;

(2) Presents in a patently offensive manner actual or simulated ultimate sexual acts; sodomy; bestiality; excretory functions; masturbation; direct physical stimulation of unclothed genitals; flagellation or torture in context of ultimate sexual acts; lewd exhibition of the human male or female genitals, pubic area, buttocks or the female breast below the top of the nipple; and

(3) Considered as a whole lacks serious literary, artistic, political or scientific value.

Present means to show, reveal, display or expose to any person.

Theater means:

(1) Any building or hall designed primarily for showing motion pictures, having a permanent movie screen and permanently fixed seats arranged in such fashion as to allow spectators an unobstructed view of the screen.

(2) An open air theater designed primarily for showing motion pictures, having a permanent movie screen and permanent devices for broadcasting movie sound tracts in motor vehicles.

(3) Any playhouse, hall, or similar structure designed primarily for legitimate artistic expression.

(Ord. of 2-16-1983, § II)

Sec. 38-112. Purpose.

The purpose of this division is to prohibit any commercial enterprise from presenting or engaging in any obscene exhibitions for profit. This division is not intended to suppress or inhibit the free exchange of ideas or artistic expression. The town council enacts this division for the purposes of promoting and protecting the general welfare, public safety, public order and morals.

(Ord. of 2-16-1983, § I)

Sec. 38-113. Exceptions.

This division is not intended to regulate any conduct expressly regulated by existing state statute.

(Ord. of 2-16-1983, § IV)

Sec. 38-114. Penalty.

(a) Any conduct made unlawful by this division and any violation of this division shall be punishable by a fine as provided in section 1-14. Each day that such unlawful act or violation continues shall be considered a separate offense.

(b) In addition to any other penalty provided by law, the commission of acts prohibited by this division shall constitute a nuisance and may be abated by the town seeking an injunction to prohibit further and continued violations.

(Ord. of 2-16-1983, § V)

Sec. 38-115. Prohibitions.

(a) It shall be unlawful for any commercial enterprise to present for profit any obscene exhibition within the town.

(b) It shall be unlawful for any commercial enterprise to engage in any obscene exhibition for profit within the town.

(c) It shall be unlawful for any commercial enterprise to solicit, permit, promote or assist any commercial enterprise or person to present or engage in any obscene exhibition within the town.

(Ord. of 2-16-1983, § III)

Secs. 38-116--38-140. Reserved.

DIVISION 3. MATERIAL AND DEVICES

Sec. 38-141. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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, as defined in this section.

Obscene means material or a device that:

(1) The average person, applying contemporary community standards, would find that, taken as a whole, appeals to the prurient interest in sex;

(2) Depicts or describes:

a. Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or

b. 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

(3) 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.

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

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

Wholesale promote means to manufacture, issue, sell, display for sale, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer to agree to do such for purpose of resale.

(Ord. of 5-2-1989, § 1)

Sec. 38-142. Enforcement.

The police department shall be responsible for enforcing this division.

(Ord. of 5-2-1989, § 3(a))

Sec. 38-143. Wholesale promotion prohibited.

(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 promotes or possesses with intent to promote any obscene material or obscene device.

(c) A person who promotes or wholesale promotes obscene material or an obscene device or possesses the material or device with intent to 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 or more obscene devices or six or more obscene materials, whether such devices or materials are similar or identical, is presumed to possess them with intent to promote them.

(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 5-2-1989, § 2)

Secs. 38-144--38-170. Reserved.

ARTICLE V. MASS GATHERINGS*

***State law references:** Mass gatherings, 22 M.R.S.A. § 1601 et seq.

DIVISION 1. GENERALLY

Sec. 38-171. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Mass gathering means a group of 2,000 or more persons assembled together for a meeting, festival, social gathering or other similar purpose that can be anticipated to exceed one hour duration. The term "mass gathering" does not include publicly or privately sponsored organized athletic events or competitions including, for example baseball, football, hockey, soccer or other similar athletic contests between competing teams or athletes.

Mass gathering area means any place privately owned, maintained, operated or used for a group gathering or assemblage. A mass gathering area shall not include any permanent facility. A permanent facility shall include a facility with permanent on-site parking, water supply, utilities, sanitation facilities, and service buildings. At no time will any cost be passed onto the town.

Nuisance means:

- (1) Any public nuisance known at common law or in equity jurisprudence.
- (2) An attractive nuisance known at common law or in equity jurisprudence.
- (3) Any condition which violates federal, state or local health or environmental laws or regulations.

Operator means the person responsible for the managing of the mass gathering area. If no operator exists, the owner or, if he is not available, the lessee of the ground encompassing the group gathering area shall be deemed to be the operator under this division.

Refuse means all combustible or noncombustible putrescible or nonputrescible solid or liquid wastes.

Sanitary facilities means toilets, privies, lavatories, urinals, drinking, fountains, and service buildings or rooms provided for installation and use of these units.

(Ord. of 2-16-1983, art. II; Ord. of 2-16-1983; Ord. of 6-1-1983; Ord. of 6-4-1985)

Sec. 38-172. Purpose.

It is recognized that a mass gathering attended by 2,000 or more persons, which is to be continued with such attendance for one hour, may create a hazard to public health and safety. Accordingly, it is deemed necessary in the interest of public welfare to regulate the conduct of such gatherings in order to protect the public health and safety. (Ord. of 2-16-1983, art. I, § 3; Ord. of 10-5-1983)
Secs. 38-173--38-200. Reserved.

DIVISION 2. PERMIT

Sec. 38-201. Required.

No person shall sponsor, promote, sell tickets to, permit on his property, or otherwise conduct a mass gathering which may, will or is intended to attract a continued attendance at such gathering of 2,000 or more persons for one or more hours until a permit therefor has been obtained from the town council. (Ord. of 2-16-1983, art. III, § 3.1; Ord. of 10-5-1983)

Sec. 38-202. Procedure.

(a) A permit application to hold one or more mass gatherings shall be submitted to the town clerk at least 20 days prior to the first gathering contemplated. The permit application shall contain the information described in section 38-203 and shall be accompanied by a nonrefundable permit fee as specified in the schedule of license, permit and application fees in appendix A of this Code.

(b) Within seven days after consideration of the permit application, the town council shall either:

- (1) Issue a permit to the operator; or
- (2) Deny a permit to the operator, which denial shall be in writing and shall set forth with specificity the reasons for such denial, together with a list of steps which, if followed by the operator, would result in a permit being issued.

(c) If the town council fails to either issue the permit or send such notice of denial, a permit shall be deemed to have been denied. A party aggrieved by the decision of the town council may appeal under rule 80B, Proceeding to Superior Court.

(d) Prior to the issuance of a permit, the operator shall furnish the town a bond of a surety company qualified to do business in this state in such amount as the town council shall reasonably determine, but in no event less than \$5,000.00. Cash or negotiable securities of equivalent value may be furnished in lieu of a bond. The bond or security shall guarantee compliance by the operator with this article. In addition, the operator shall deposit with the town an amount of money equal to 120 percent of the estimated public costs of the contemplated mass gatherings. Public costs shall be those costs incurred by the town in connection with the contemplated mass gathering which relate to the mass gathering and which would not be incurred by the town if such mass gathering were not held. Promptly after the mass gathering, the public costs shall be calculated, and the deposit shall be refunded to the operator to the extent it exceeds the actual public costs. If the actual public costs exceed the amount deposited, the operator shall pay the excess to the town within ten days after being so notified.

(Ord. of 2-16-1983, art. III, § 3.4.1; Ord. of 4-1-2003, § 2)

Sec. 38-203. Bond.

The operator, prior to the issuance of the permit, shall furnish to the town council a bond of a surety company qualified to do business in this state in such an amount as the council shall determine, but not less than \$5,000.00. Cash or negotiable securities of

equivalent value to the amount determined by the council may be furnished in lieu of a bond. The bond or security shall guarantee compliance by the operator with this article. (Ord. of 2-16-1983, art. IV, § 4.1)

Sec. 38-204. Application.

The permit application submitted pursuant to section 38-202 shall be in the form prescribed by the town council and shall show the following in reasonable detail:

(1) *Access.* Convenient and safe access for the ingress and egress of pedestrians and vehicular traffic exists and all public roadways in the proximity of the mass gathering shall be adequately staffed with traffic control personnel to ensure safety to all the public.

(2) *Grounds.* Standards for the grounds of the gathering shall be as follows:

a. Each mass gathering area shall be well drained and so arranged to provide sufficient space for persons assembled, vehicles, sanitary facilities, and appurtenant equipment.

b. Trees, underbrush, large rocks and other natural features shall be left intact and undisturbed whenever possible, and the natural vegetative cover shall be retained, protected and maintained to facilitate the drainage, to prevent erosion, and to preserve the scientific attributes.

c. The grounds shall be maintained free from accumulations of refuse and any health and safety hazards constituting a nuisance as defined.

d. Illumination shall be provided at night to protect the safety of the persons at the assembly. The assembly area shall be adequately lighted, but shall not unreasonably reflect beyond the assembly area boundaries unless adjacent properties are uninhabited.

e. On-site parking space shall be provided for persons arriving by vehicular means. The service road and parking spaces shall be located so as to permit convenient and safe movement of vehicular and pedestrian traffic and free passage of emergency vehicles. The width of the service road should not be less than the following: one traffic lane, 12 feet; two traffic lanes, 24 feet; parallel parking lanes, seven feet. Adequate parking space shall be provided. Adequate parking is construed to mean at the rate of at least one parking space to every four persons, and the density shall not exceed 100 passenger cars or 30 buses per usable acre.

f. At least ten square feet per person shall be provided on the site for daytime assemblage, and no overnight assemblage shall be permitted.

(3) *Water supply.* Water shall be supplied in accordance with the following:

a. An adequate, safe supply of potable water, meeting requirements of the state department of human services, division of health engineering, shall be provided, and common cups shall not be used.

b. Transported water shall be obtained from an approved source and shall be stored and dispensed in an approved manner. The term "approved," as used in this subsection, means in compliance with standards adopted by the state department of human services, division of health engineering.

(4) *Sanitation.* Standards for sanitation shall be as follows:

a. Where water is distributed under pressure and flush toilets are used, the water system shall deliver water at normal operating pressure, which is 20 pounds per square inch minimum to all fixtures at the rate of at least 30 gallons per person per day.

b. When water is not available under pressure and non-water-carriage toilets are used, at least three gallons of water per person per day shall be provided for drinking and lavatory purposes.

- c. Where water under pressure is not available, equivalent facilities shall be provided and installed in accordance with the requirements of the department of human services, division of health engineering.
 - d. Sanitary facilities shall be separate for males and females, set at the rate of one for each 200 persons.
 - e. Urinals for men and sanistands for women or Porta Johns may be substituted for the required number of toilets; 24 inches of a trough urinal in a men's room shall be considered the equivalent of one urinal or toilet.
 - f. Required sanitary facilities shall be conveniently accessible and well defined.
 - g. Each toilet shall have a continuous supply of toilet paper.
 - h. Service buildings or rooms housing required plumbing fixtures shall be constructed of easily cleanable, nonabsorbent materials. The buildings, service rooms, and required plumbing fixtures located therein shall be maintained in good repair and in a clean and sanitary condition.
 - i. Separate service buildings or rooms containing sanitary facilities, clearly marked, shall be provided for each sex, and each toilet room shall be provided with a door to ensure privacy, or the entrance shall be screened so that the interior is not visible from the outside.
 - j. Wastewater shall be discharged in a manner consistent with the requirements of the state department of human services, division of health engineering.
 - k. Disposal and/or treatment of any excretion or liquid waste shall be in a manner consistent with the requirements of the state department of human services, division of health engineering.
- (5) *Refuse disposal.* Disposal of refuse shall be as follows:
- a. Refuse shall be collected, stored, and transported in such a manner as to prevent odor and to protect against the infestation of insects and/or rodents and any other nuisance condition which is inconsistent with the health, safety, and welfare of the patrons of the mass gathering or the public.
 - b. Refuse containers shall be readily accessible, and one 50-gallon refuse container or its equivalent shall be provided for each 100 persons anticipated, or one 16-cubic-yard trash container shall be provided for every 5,000 persons anticipated.
 - c. The area where motor vehicles are parked shall have one 50-gallon refuse container or its equivalent for every 25 such motor vehicles or one 16-cubic-yard trash container for every 2,000 motor vehicles.
 - d. All refuse shall be collected from the assembly area at least twice each 12-hour period of the assembly, with a minimum of two such collections per gathering exceeding six hours or more often if necessary. The refuse shall be disposed of at a lawful disposal site.
 - e. The grounds and immediate surrounding property shall be cleared of refuse within 24 hours following an assembly.
- (6) *Vermin control.* Insects, rodents, and other vermin shall be controlled by proper sanitary practices, extermination or other safe and effective control methods. Where necessary animal parasites and other disease-transmitting nuisances shall be controlled.
- (7) *Safety.* Standards for safety shall be as follows:
- a. Where an electrical system is installed, it shall be installed and maintained in accordance with the provisions of the applicable state standards and regulations and the town's electrical code adopted in section 66-56.
 - b. Grounds, buildings, and related facilities shall be maintained and used in a manner as to prevent fire and in accordance with the applicable local fire prevention regulations.

- c. Internal and external traffic and security control shall meet requirements of the applicable state and local law enforcement agencies.
- d. The fire department shall have been informed of the mass gathering, and adequate fire prevention equipment is available.
- e. At least five law enforcement officers shall be on site to assist in crowd and traffic control with a minimum ratio of five officers per 2,000 additional persons.
- (8) *Medical.* Standards for medical services shall be as follows:
 - a. Emergency medical services shall be provided. All personnel must be licensed by the state as either physician assistant, registered nurse, or emergency medical technician.
 - b. A first aid building or tent with adequate medical supplies shall be available.
 - c. Adequate vehicles duly licensed by the state as ambulances shall be available on the site during the complete time of the mass gathering.
 - d. Telephone and radio communications shall be provided and kept available for emergency purposes.
 - e. The operator of the mass gathering shall contact area hospitals and advise them that a mass gathering will be held and the approximate number of people attending.
 - f. The chief of the fire department shall determine the number of E.M.T. personnel and ambulances needed and times.
- (9) *Permit fee.* The permit fee shall accompany the application.
(Ord. of 2-16-1983, art. III, § 3.5; Ord. of 2-16-1983; Ord. of 10-5-1983)

Sec. 38-205. Insurance.

The operator of the mass gathering shall carry public liability insurance in at least the following amounts:

- (1) Bodily injury per person, \$300,000.00;
 - (2) Bodily injury per occurrence, \$500,000.00; and
 - (3) Property damage, \$100,000.00.
- (Ord. of 2-16-1983, art. IV, § 4.2)

Sec. 38-206. Issuance.

The town council shall issue a permit for a mass gathering unless it finds the standards in this division are not met. When considering the issuance of a permit, the town council may seek advice from the police chief, fire chief, code enforcement officer, health officer and such other officials or persons as it deems necessary.

(Ord. of 2-16-1983, art. III, § 3.2)

Sec. 38-207. Denial.

The town council, in denying a permit for a mass gathering, shall find that one or more of the standards set forth in this division have not been met.

(Ord. of 2-16-1983, art. III, § 3.3)

Secs. 38-208--38-235. Reserved.

ARTICLE VI. BOARDING UP OF SEASONAL FACILITIES

Sec. 38-236. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Boarding up permit means a Permit issued to allow the installation of security panels in compliance with this article.

Boarding up plan means a written proposal, which may include drawings, photographs, diagrams, and samples of materials explaining how proposed security panels will meet the design criteria of section 38-241.

Building means any enclosed structure offering support, shelter, or enclosure to persons, animals, or property of any kind.

Dwelling means a building or portion thereof used exclusively for residential occupancy, including one-family, two-family and multifamily dwellings, but not including hotels, motels, lodging houses or boarding houses.

Not occupied means not in use because the building is closed for a season or for some similar extended period of time. A building will be presumed to be not occupied if it is closed for three or more consecutive weeks.

Security panel means any materials attached to cover the openings of a building when it is not occupied, and which are placed over or attached in place of the permanent windows, doors or other working coverings regularly utilized when the building is occupied. The term "security panel" includes permanently installed overhead doors, sliding gates, shutters and similar fixtures which close over the regularly utilized doors and windows.

(Ord. of 5-6-2003, § 3)

Cross references: Definitions generally, § 1-2.

Sec. 38-237. Purpose.

The town has numerous seasonal facilities, which must secure their buildings during the off-season months to protect against vandalism and the elements. The purpose of this article is to regulate the methods of boarding up buildings to promote consistency in design, materials, and installations, so as to avoid the appearance of economic depression, social blight, and to protect surrounding property values.

(Ord. of 5-6-2003, § 1)

Sec. 38-238. Applicability.

This article shall apply to all buildings, other than dwellings and their accessory structures, located in the general business districts 1 and 2 (GB-1, GB-2), the downtown design districts 1 and 2 (DD-1, DD-2), the beachfront resort district (BRD), the amusement overlay district (AO), neighborhood commercial districts 1 and 2 (NC-1, NC-2), and that portion of residential district 3 (R-3) situated between the Atlantic Ocean and West Grand Avenue, including all property with road frontage on West Grand Avenue as delineated on the official zoning map and described in chapter 78, zoning.

(Ord. of 5-6-2003, § 2)

Sec. 38-239. Enforcement.

The town code enforcement officer shall enforce the requirements of this article. If a property violates any portion of this article, the code enforcement officer shall notify the property owner of the violation by certified mail or hand delivery. Failure to correct the violation cited within seven days from the date notification was mailed or five days from the date notification was hand delivered shall subject the property owner to all penalties and legal remedies available to the town under section 38-244.

(Ord. of 5-6-2003, § 8; Ord. of 3-6-2007(2))

Sec. 38-240. Permit required.

(a) No person shall install or cause to be installed any security panel on any building subject to this article without first obtaining a boarding up permit from the town design review committee or a renewal permit from the code enforcement officer.

(b) No person who owns a building subject to this article shall permit the installation of any security panel on that building without first obtaining a boarding up permit from the town design review committee or a renewal permit from the code enforcement officer.

(c) In case of any emergency need to secure a building because of fire, storm or other sudden damage, the code enforcement officer may issue a temporary boarding up permit without review under subsection (a) or (b) of this section, such permit to expire no later than 60 days after issuance.

(d) This article shall not apply to any action taken by the town under statute, code or ordinance to protect health or safety by securing a vacant structure against unauthorized entry.

(Ord. of 5-6-2003, § 4)

Sec. 38-241. Design criteria.

(a) Security panels shall be consistent in design, texture and color with the appearance of the building to which they are attached, shall be securely installed so as to prevent removal by vandalism or dislocation by action of the elements and shall be attached so as to present a neat and orderly appearance.

(b) Oriented strand board (OSB), particleboard, homesote, or similar glue and fiber building products shall be prohibited as a suitable material for security panels.

(Ord. of 5-6-2003, § 5)

Sec. 38-242. Permit process.

(a) *Submission.* All applications for an initial boarding up permit shall be submitted to the code enforcement officer on forms provided by the building department at least ten days prior to the next regularly-scheduled meeting of the design review committee. An application for a permit under this article shall be accompanied by a nonrefundable fee as specified in the schedule of license, permit and application fees in Appendix A of this Code.

(b) *Site walk.* The design review committee may, at its discretion, conduct a public site walk of the property to acquaint members with the subject property and investigate the compliance of the proposed boarding up scheme with this article.

(c) *Decision.* Within 30 days of receiving a boarding up application, the design review committee shall render a decision to grant or deny the boarding up permit. ~~Failure by the committee to render a decision within the 30-day review period shall represent a denial of the application by default.~~

(d) *Renewals.* Annual renewals of boarding up permits shall be issued by the code enforcement officer under the conditions of section 38-243.

(Ord. of 5-6-2003, § 6)

Sec. 38-243. Duration of boarding up permits.

(a) All boarding up permits shall be valid for a period of one year from the date of issuance.

(b) Permits may be renewed on a yearly basis by the code enforcement officer and without review by the design review committee under section 38-242, provided that all of the following conditions are fulfilled:

(1) The color, texture, or design of the security panels or the building facade has not been substantially altered during the permit period.

(2) The security panels remain in good structural, physical, and visual condition as originally approved by the design review committee, and there is no evidence of peeled, faded, or flaking paint, damage to support and structural elements of the panel, or deterioration of the panel fastens.

(3) The applicant has submitted a completed boarding up permit renewal application on forms available from the building department, prior to the expiration date of the boarding up permit.

(c) Expired boarding up permits and all applicants that have failed to submit renewal applications before the expiration period shall be required to submit new permit applications to the design review committee in accordance with section 38-242.

(d) Security panels shall not be installed before November 1 and must be removed no later than May 1 each year.

(Ord. of 5-6-2003, § 7; Ord. of 3-6-2007(2))

Sec. 38-244. Penalties.

Any person who violates any provision of this article and any person who owns a building which is boarded up in violation of this article commits a civil violation punishable as provided in 30-A M.R.S.A. section 4452.

(Ord. of 5-6-2003, § 9; Ord. of 3-6-2007(2))

Sec. 38-245. Appeals.

Appeals of the decision of the code enforcement officer in enforcement of this article shall be made to the design review committee on forms provided by the building department. Appeals from the decisions and actions of the design review committee shall be made to the York County Superior Court pursuant to rule 80E of the section.

(Ord. of 5-6-2003, § 10)

Secs. 38-246--38-270. Reserved.

ARTICLE VII. OUTDOOR VENDING MACHINES*

***Cross references:** Businesses, ch. 18; parks and recreation, ch. 42; streets, sidewalks, and other public places, ch. 50; buildings and building regulations, ch. 66.

Sec. 38-271. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Building means any enclosed structure offering support, shelter, or enclosure to persons, animals, goods or property of any kind. Any structure which houses only vending machines shall not be considered a building for purposes of this article, and any vending machines located within such a structure shall be deemed to be located outdoors.

Outdoors means any location which is not inside a building.

Vending machine means any self-service mechanical device available for public use which, upon insertion of money, dispenses food or beverages.

(Ord. of 8-19-2003, § 1)

Cross references: Definitions generally, § 1-2.

Sec. 38-272. Findings.

The town council finds that the uncontrolled proliferation of outdoor vending machines in inappropriate locations during the past several years has contributed to crowding and congestion, both actual crowding by occupying space which would otherwise be available for pedestrian traffic and perceived congestion resulting from the visual impact of numerous vending machines scattered throughout the community; and the town council finds that reasonable regulation of the location of outdoor vending machines is necessary to protect the public health, safety and welfare.
(Ord. of 8-19-2003)

Sec. 38-273. Location restricted.

(a) No person shall locate any vending machine outdoors unless such vending machine is kept at least 20 feet from the right-of-way of any street, and 20 feet from all other boundaries of the lot on which the vending machine is located.

(b) A vending machine may be placed outdoors only if it is accessory to a principal use which customarily provides vending machine services to its customers or patrons. Examples of such uses include hotels, motels, campgrounds, amusement parks, recreational facilities and gasoline filling stations. A vending machine cannot be located further than three feet from the building or area in which the principal use is conducted.

(c) No vending machine shall be located on a lot where one or more vending machines would be the sole or principal structure or use on the lot. Vending machines are allowed only as accessory uses/structures.

(Ord. of 8-19-2003, § 2)

Sec. 38-274. Enforcement; violation and penalties.

(a) This article shall be enforced by the code enforcement officer of the town.

(b) Violations of this article are punishable under the provisions of 30-A M.R.S.A. § 4452. Each vending machine located in violation of this article shall constitute a separate violation and each day a violation continues shall constitute a separate violation.

(Ord. of 8-19-2003, § 3)

Sec. 38-275. Liability.

When a vending machine is located in violation of this article, the owner of the vending machine, the owner of the property upon which the vending machine is located, and the person placing the vending machine outdoors shall each be liable for the violation.

(Ord. of 8-19-2003, § 3)

Secs. 38-276--38-280. Reserved.

ARTICLE VIII. NEWSPAPER VENDING MACHINES**Sec. 38-281. Purpose.**

The Town Council of the Town of Old Orchard Beach finds that, if newspaper vending machines are not regulated and subjected to reasonable controls on the time, place and manner of their location, then the uncontrolled placement and proliferation of newspaper vending machines and similar devices in areas used for pedestrian passage can:

(1) Create a hazardous condition for the safety and welfare of pedestrians;

- (2) Give rise to potential liability claims against the town in the case of injuries to pedestrians;
 - (3) Result in unsightly nuisances;
 - (4) Present an inconvenience to the public;
 - (5) Interfere with motor vehicle traffic and persons performing essential emergency services;
- (Ord. of 3-21-06(2))

Sec. 38-282. Authority.

This article is enacted pursuant to the authority of Title 30-A, M.R.S.A. § 3001 and § 3009.
(Ord. of 3-21-06(2))

Sec. 38-283. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Newspaper vending machine. Any device, box, container, rack, storage unit or other dispenser installed, used or maintained outdoors for the external display, sale or distribution of newspapers, periodicals or commercial flyers, including, but not limited to real estate brochures and want ads.

Owner. Any person who distributes, operates, maintains, stocks, re-stocks, places or installs a newspaper vending machine within the confines of the corporate limits of the Town of Old Orchard Beach, to include the newspaper publishers and contracted delivery services personnel with an interest therein.

Private property. Land that is located beyond the limits of a public right-of-way and all land that is not owned or controlled by the Town of Old Orchard Beach.

Sidewalk. That portion of a public right-of-way or private property that is designed, improved, customarily used or set aside for pedestrian travel.

Travel way. That portion of a public right-of-way or private property that is designed, improved, customarily used or set aside for motor vehicle travel.

(Ord. of 3-21-06(2))

Sec. 38-284. License required.

(a) After May 26, 2006, it shall be a violation of this ordinance for any person to install, place or maintain a newspaper vending machine outdoors in Old Orchard Beach without first obtaining a license for each device as provided herein and as otherwise set forth in Chapter 18, Article II of the Old Orchard Beach Municipal Code.

(b) In addition to meeting all license application requirements as otherwise set forth herein and in Chapter 18, Article II, an applicant for a license for a newspaper vending machine to be located on public property shall also provide the town, at the time of application, with proof of insurance in an amount not less than \$400,000.00 per occurrence providing general liability coverage for bodily injury and property damage arising out of the installation, use or maintenance of the newspaper vending machines.

(c) As an express condition of acceptance of a license for a newspaper vending machine to be located on public property, the licensee and owners thereby agree to indemnify and hold harmless the town, its officers, agents and employees against any loss, claims, liability or damages, including expenses and costs for bodily or personal injury and for property damages sustained by any person as the result of the installation, use or maintenance of a newspaper vending machine.

(d) Upon receipt of a completed application for a newspaper vending machine license, the license administrator (or his/her designee) may inspect the proposed location to ensure compliance with the terms of this ordinance and other applicable ordinances. Action by the license administrator on a completed application in the form of an approval or denial must be made within 14 days.

(e) The fees for such license shall be as prescribed in Appendix A of the Municipal Code.

(f) Notwithstanding Chapter 18, Article II, the license administrator shall substitute for the town council as the issuing authority for a newspaper vending machine license, and no public hearing shall be required for a newspaper vending machine license. In the event of a denial of a license by the license administrator, an applicant may resubmit the application to the town council, which shall act as the issuing authority for the reapplication.

(Ord. of 3-21-06(2))

Sec. 38-285. Location standards.

(a) *Permitted locations.* Except where expressly prohibited herein or as otherwise regulated by ordinance, a duly licensed newspaper vending machine may be located (a) on private property with the expressed written permission of the land owner, proof of which shall be provided to the town at the time of application, or (b) on a public sidewalk opposite from the street edge, provided that a minimum of six feet of unimpeded pedestrian access shall be required at all times, or (c) behind the public sidewalk opposite from the street edge where the existing public sidewalk is less than six feet in width.

(b) *Basic requirements.* Each licensed newspaper vending machine:

(1) Shall be labeled to clearly indicate the license number along with the name, address and telephone number of the person to notify in the event of a malfunction or to secure a refund or to give notice as provided in this article;

(2) Shall be maintained in a neat and clean condition and in good repair at all times. The owner shall be responsible for removing any discarded copies of the publication dispensed by the newspaper vending machine from the immediate vicinity of the machine each time the machine is restocked. The owner shall not deposit such discarded copies or any unsold or surplus copies of the publication in any public trash container.

(3) If there is a charge for the publication, such vending machines shall be equipped with a coin return mechanism, maintained in good working order, to permit a person using the machine to secure an immediate refund in the event the publication paid for is not received.

(c) *Prohibitions.* No newspaper vending machines shall be placed, located, used or maintained as follows:

(1) In such a way as to endanger the general public;

(2) If located on or visible from a public way or public property, attached to any fixture, including poles, posts, trees, traffic signs or other newspaper vending machines;

(3) Within five feet of a hydrant, handicap ramp, crosswalk, fire call box, driveway, parking space, loading zone, bus stop, street intersection, building entrance/exit, pay phone, park bench, business order or display window, parking meter, or a town-owned park or public area improved with lawn, flowers, shrubs or trees unless specifically authorized by the town;

(4) On a vacant lot, unless approved by the town planner and code enforcement officer utilizing the standards and procedures of administrative site plan review under Chapter 78, Article IV;

- (5) If located on or visible from a public way or public property, with any type of signage not related to the publication contained therein;
 - (6) In such a way as to impede vehicular or pedestrian entrance to private property;
 - (7) If located on or visible from a public way or public property, with any type of illumination;
 - (8) If located on a public way or public property, with any electrically operated component which requires connection to an external power source;
 - (9) Located within any portion of a travel way;
 - (10) In such a way as to interfere with sidewalk maintenance, snow removal, public utility purpose or some other governmental use of the sidewalk;
 - (11) In the historic overlay district as described in Chapter 78 of the Code;
 - (12) Upon, across or over any sidewalk, walkway, pathway or any other area which is customarily used by the general public for access or passage, whether such area is public or private property, in such a way as to hinder or impede the free and uninterrupted passage of pedestrians;
 - (13) Within six feet of any customer entrance to any business establishment.
 - (d) *Size restrictions.* No newspaper vending machine shall exceed five feet in height, thirty inches in width and two feet in depth. Any appendages or signage (which is otherwise allowed under this article) must be contained within the limits of those dimensions. No double-decker devices are allowed.
 - (e) *Number restrictions.* Except within a kiosk approved by the town, the number of newspaper vending machines located in front of any one business establishment shall not exceed a ratio of one machine per 15 feet of storefront, up to a limit of six machines in front of any one business.
 - (f) *Abandonment.* In the event any newspaper vending machine remains empty for a period of fourteen continuous days, such a device shall be deemed abandoned and may be treated in the manner as provided in subsection 38-286(c) herein.
 - (g) *Winter maintenance during the period between October 15 through April 15.* Newspaper vending machines shall not be located on any public sidewalk where they would interfere with snowplowing or snow removal operations on the sidewalk or adjacent streets.
- (Ord. of 3-21-06(2))

Sec. 38-286. Enforcement and penalties.

- (a) This article may be enforced by the license administrator or any of the town's code enforcement officers or police officers.
- (b) The town may initiate enforcement of this ordinance by mailing a written notice of violation to the owner of the offending vending machine at the address listed in the license application. Such notice shall set forth the nature of the violation, the action necessary to correct the violation, and a date, at least five days after the notice is mailed, by which the violation must be corrected (the "correction date"). If the violation is not corrected by the correction date, the owner commits a civil violation and shall be subject to a civil penalty of \$100.00 for the first day after the correction date that the violation occurs. The civil penalty for the second day the violation occurs after the correction date shall be \$250.00. For the third day and subsequent days, the civil penalty shall be \$500.00 per day, with each day of continued violation considered a separate offense. All fees, fines and civil penalties collected under this article shall inure to the Town of Old Orchard Beach.
- (c) In addition to the town's authority to prosecute a violation as set forth in subsection 38-286(b) above, the town reserves the right to (a) immediately remove any newspaper vending machine from public property when such a device poses an imminent threat to

public safety or is installed without a license or is abandoned; or (b) notify, in writing, the owner or licensee of any violations whereby said owner or licensee shall be given seven days to comply with the terms of this article or the town shall thereafter revoke the license and remove the newspaper vending machine from public property. Any newspaper vending machine that is removed by the town shall be placed at the public works garage for a period not to exceed 30 days, whereafter it may be destroyed if not reclaimed by its owner. The Town of Old Orchard Beach, its officers, agents and employees shall not be liable for any damages or claims for any newspaper vending machine that is removed as otherwise provided herein.

(d) In the event a private property land owner revokes permission for a newspaper vending machine and provides written notice to the town and licensee, the license for such a machine shall be considered revoked seven days thereafter. However, the town shall not remove newspaper vending machines from private property.

(e) In addition to civil penalties, license revocation and machine removal, the town may enforce the provisions of this article by seeking injunctive relief, declaratory relief and any other remedy available at law or equity.

(Ord. of 3-21-06(2))

Sec. 38-287. Separability.

If any section, subsection, sentence, clause or phrase of this article is for any reason held to be invalid by a court of competent jurisdiction or inconsistent with state or federal law, such action shall not affect the validity of the remaining portions of this article.

(Ord. of 3-21-06(2))

Sec. 38-288. Effective date.

This article shall become effective immediately upon approval by the Old Orchard Beach Town Council.

(Ord. of 3-21-06(2))

Sec. 38-289. Exemption.

This article shall not apply to newspaper vending machines located within campgrounds, as defined in Chapter 78.

(Ord. of 3-21-06(2))

Per Order of the Municipal Officers this 6th day of April, 2010.

A True Copy

Attest:

s/Kim M. McLaughlin

Kim M. McLaughlin, Town Clerk