

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 July 20, 2010, at 7:00 p.m. to consider the following:

Amend Chapter 42 Parks and Recreation, Article III. Recreation Sec. 42-81 through and including 42-83, Sec. 42-145, Sec. 42-231 Sec. 42-234, Sec. 42-259, Sec. 42-261 through and including Sec. 42-266 and Chapter 50 Streets, sidewalks, and other public places, Article II Sidewalks, Sec. 50-55, Sec. 50-58, Sec. 50-113, Sec. 50-117, Sec. 50-147, Sec. 50-148, Sec. 50-150, Sec. 50-172, Sec. 50-211, Sec. 50-241, Sec. 50-243, and Sec. 50-249.

Chapter 42 PARKS AND RECREATION*

***Charter references:** Recreation board, §§ 409.3, 904.

Cross references: Memorial park advisory committee, § 2-291 et seq.; recreation board, § 2-356 et seq.; environment, ch. 26; streets, outdoor vending machines, § 38-271; sidewalks and other public places, ch. 50.

State law references: Parks, 30-A M.R.S.A. § 3252 et seq.

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ARTICLE I. IN GENERAL

Secs. 42-1--42-25. Reserved.

ARTICLE II. ADMINISTRATION*

***Cross references:** Administration, ch. 2.

DIVISION 1. GENERALLY

Secs. 42-26--42-50. Reserved.

DIVISION 2. RECREATION DIRECTOR*

***Cross references:** Officers and employees, § 2-126 et seq.

Sec. 42-51. Appointment.

The recreation director is appointed as provided in Charter sections 409.3 and 508.

(Ord. of 2-21-1995, § 4)

Sec. 42-52. Duties.

(a) The recreation director will have the following duties:

- (1) Prepare a long range recreational financial plan;
- (2) Prepare and submit a budget to the town council;
- (3) Maintain financial records and monthly reports on expenditures and activities;
- (4) Recommend land acquisition and site development for recreational activities;
- (5) Supervise program presentation and guide members of the recreation board and attend all recreation board meetings; and
- (6) Perform functions as may be required for recreational development and perform such duties as the town council may assign from time to time, provided that such duties fall within the scope of recreational activity.

(b) The director shall formulate and carry out recreational programs with the approval of the recreation board for the benefit of town citizens. The director shall cooperate with other town departments.

(Ord. of 2-21-1995, § 4)

Secs. 42-53--42-80. Reserved.

ARTICLE III. RECREATION AREA AND PARK REGULATIONS**DIVISION 1. GENERALLY****Sec. 42-81. Posting of signs.**

The chief of police shall post appropriate signs giving notice of the prohibitions of this article at the main entrance to Memorial Park and at such other parks or recreation property as he deems necessary to ensure compliance with this article.

(Ord. of 9-17-1980, § 3)

Sec. 42-82. Alcoholic beverages.

It shall be unlawful for any person to possess or to consume any alcoholic beverage or liquor, as defined by 28-A M.R.S.A. § 2, within the boundaries of any park or recreation property owned, leased, managed or controlled by the town.

(Ord. of 9-17-1980, § 1; Ord. of 4-5-1994)

Cross references: Alcoholic beverages, ch. 6.

Sec. 42-83. Hours of use.

Except for the purpose of ingress or egress in connection with the lawful parking or recovery of a vehicle in parking areas designated by the town, no person shall loiter or remain in or upon any outdoor park or recreation property owned, leased, managed or controlled by the town after the hour of ~~9:00 p.m. to 9:00 a.m.~~ 11:00 p.m. to 7:00 a.m. the following morning, prevailing time, with the exception of East and West Surf Streets, commonly referred to as "the beach."

(Ord. of 9-17-1980, § 2)

Secs. 42-84--42-90. Reserved.

DIVISION 2. MEMORIAL PARK DOG PARK*

***Editor's note:** An ordinance adopted April 19, 2005 did not specifically amend the Code; hence, inclusion as a new division 2, §§ 42-91--42-95 at the editor's discretion.

Sec. 42-91. Purpose and applicability.

This division provides rules for use of that portion of the public park known as Memorial Park which the town has fenced off and set aside for use as a "dog park," where dogs are allowed to run and play under the supervision of responsible adults. Dogs are allowed to be off-leash within the dog park and, provided all rules and regulations of this ordinance are complied with, shall not be considered "running at large" under the Old Orchard Beach Ordinance relating to dog control.
(Ord. of 4-19-2005, § 1)

Sec. 42-92. Definitions.

As used in this division, the following terms have the following meanings:

Dog park means that area within Memorial Park which the town has designated by fencing, signage or otherwise as an exercise/play area for dogs.

Owner means and includes any person or persons, firm, association or corporation owning, keeping or harboring a dog, or other person having custody, possession or control of a dog.
(Ord. of 4-19-2005, § 2)

Sec. 42-93. Rules and regulations for use of the dog park.

- (a) No person shall bring any food, treats or edible material of any kind, for dogs or humans, into the dog park.
- (b) All persons, regardless of age, who enter the dog park, do so at their own risk. It is recommended that children be accompanied and supervised by adults; reasonable use is the responsibility of the user.
- (c) No person shall bring a dog into the dog park or allow a dog to enter the dog park unless that dog is accompanied by and supervised by an owner at all times while the dog is within the dog park.
- (d) Any dog exhibiting threatening behavior, creating a disturbance or causing complaints from other users of the dog park must be removed immediately by its owner.
- (e) No person shall bring a female dog in heat into the dog park or allow a female dog in heat to enter the dog park.
- (f) The owner accompanying the dog to the dog park must remove and dispose of all feces left by the dog within the dog park, utilizing proper containers.
- (g) No person shall bring any dog into the dog park or allow any dog to enter the dog park unless the dog's legally required vaccinations are current.
- (h) No person shall bring any dog into the dog park or allow any dogs into the dog park unless the current dog license and rabies tags are displayed on the dog.
- (i) All persons who enter the dog park do so at their own risk and at risk to their animals. The Town of Old Orchard Beach does not provide any supervision for dogs or people within the dog park.

(j) Owners are responsible for the behavior and actions of their dogs within the dog park and may be liable for any damage or injury inflicted by their dog and may be subject to civil or criminal penalties under state animal control laws for the conduct or action of their dogs.

(Ord. of 4-19-2005, § 3)

Sec. 42-94. Enforcement.

This division may be enforced by the animal control officer or any officer of the Old Orchard Beach Police Department.

(Ord. of 4-19-2005, § 4)

Sec. 42-95. Penalties for violation.

Any person who violates any provision of this ordinance is subject to civil penalties in an amount of \$25.00 for the first violation and \$50.00 for each additional violation. In addition to civil penalties, the town may seek equitable or injunctive relief, including an order that the person committing the violation be prohibited from entering the dog park. In addition to civil penalties, the town may seek equitable or injunctive relief, including an order that the person committing the violation be prohibited from entering the dog park.

(Ord. of 4-19-2005, § 5; Ord. of 5-3-2005, § 5)

Secs. 42-96--42-110. Reserved.

ARTICLE IV. TOWN BEACH

DIVISION 1. GENERALLY

Sec. 42-111. Sleeping during certain time.

(a) For the purposes of this section, the term "town beach" shall mean that beach area and public parkland taken by the town for a public park on or about April 23, 1935, the record of which is on file in the office of the town clerk.

(b) It shall be unlawful and a violation of this section for any person to sleep on the town beach during the hours from 2:00 a.m. to 5:00 a.m., inclusive, prevailing time.

(Ord. of 7-25-1979, §§ 2, 3)

Secs. 42-112--42-140. Reserved.

DIVISION 2. WATER TOYS

Sec. 42-141. 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:

Adjacent tidewaters means the ocean waters along the shoreline of the town beach and extending for a distance of 300 feet from the beach, measured from the low water mark.

Commercial use means any nonrecreational use or any use or operation for profit, including but not limited to the storage or rental of water toys and nonmotorized watercraft.

Nonmotorized watercraft means inflatable tubes, rafts, surfboards, sailboats, windsurfers, paddleboats and other nonmotorized floatation devices designed for recreational use.

To park means to put or leave a water toy or nonmotorized watercraft for a limited time on the town beach.

To store overnight means to put or leave an unattended water toy or nonmotorized watercraft on the town beach for any time period in excess of six hours or between the hours of 12:00 midnight and 5:00 a.m.

Town beach means that beach area and public parkland taken by the town for a public park on or about April 23, 1935, and May 5, 1935, the records of which are on file in the office of the town clerk.

Water toy means any motorized craft, vehicle, conveyance or device for carrying or transporting persons in or on the water, including but not limited to jet skis, powerboats, amphibious vehicles and rafts or other flotation devices pushed by, pulled behind or towed by a motorized boat.

(Ord. of 4-19-1988, § IV; Ord. of 5-3-1988; Ord. of 3-4-2008)

Sec. 42-142. Purpose.

The purpose of this division is to regulate certain uses of the town beach and adjacent ocean tidewaters, specifically, the use or operation of certain water toys and nonmotorized watercraft which may create a hazard to the public health, safety and welfare by endangering swimmers, distracting lifeguards from the performance of their duties, contributing to noise and water pollution, and otherwise interfering with the public's use and enjoyment of the town beach and adjacent tidewaters, particularly during the summer months when the town beach is most congested.

(Ord. of 4-19-1988, § III; Ord. of 5-3-1988)

Sec. 42-143. Enforcement.

This division shall be enforced by any lifeguard employed by the town, by any law enforcement officer, or by any other designated town official duly authorized to enforce this division.

(Ord. of 4-19-1988, § VIII; Ord. of 5-3-1988)

Sec. 42-144. Prohibitions and restrictions.

(a) It shall be unlawful and a violation of this division to engage in any commercial use or operation of any water toy or nonmotorized watercraft on or from the town beach.

(b) It shall be unlawful and a violation of this division to park, launch, use or operate any water toy on or from the town beach and in the adjacent tidewaters during the period June 21 through Labor Day of each year, except between 5:00 p.m. and 9:00 a.m.

(c) It shall be unlawful and a violation of this division to park any nonmotorized watercraft on the town beach in the area located between Union Avenue and Walnut Street, during the hours of 9:00 a.m. through 5:00 p.m., inclusive, between June 21 through Labor Day of each year.

(d) It shall be unlawful and a violation of this division to store on the town beach any water toy or nonmotorized watercraft during the period June 21 through Labor Day of each year.

(e) The use of nonmotorized watercraft other than surfboards is permitted and shall not be a violation of this division on and from the town beach and in the adjacent tidewaters. However, the chief lifeguard may prohibit or restrict the use of such nonmotorized watercraft when in his judgment factors, including but not limited to crowd conditions,

weather conditions and tides, make such action necessary. The use of surfboards is prohibited except as allowed by subsection (f) and (g) of this section.

(f) The use of nonmotorized surfboards is permitted and shall not be a violation of this division in the following designated area of the town beach and adjacent ocean tidewaters: on the northerly side of the Old Orchard Pier from such pier to a point 125 yards from the pier. Such designated area shall be identified by appropriately placed signs, notices, ropes, buoys and/or other marks.

(g) The use of nonmotorized surfboards is permitted and shall not be in violation of this division along the entire town beach during the following dates and times:

(1) Between the dates of Labor Day and June 21, at all times; and

(2) Between the dates of June 21 and Labor Day, during the hours from 5:00 p.m. to 9:00 a.m.

(h) This section shall not apply to a marina; a passenger transportation service, such as excursion boats, charter boats, water taxis or water shuttles; or a waterborne amusement ride, which is: (i) operated at, to, from or adjacent to the pier; (ii) operated pursuant to an annual license issued by the town council under article II of chapter 18; and (iii) operated only in areas approved by the town council and marked off by buoys, ropes, floats or other devices designed to keep swimmers and bathers from entering the operations area. The town council may approve such an operation only upon finding that it will not create a hazard to the public health, safety or welfare by endangering swimmers, distracting lifeguards from the performance of their duties, contributing to noise or water pollution or otherwise interfering with the public's use and enjoyment of the town beach and adjacent tidewaters, and the town council may impose conditions to ensure compliance with such findings.*

*Notwithstanding the provisions of Title 1, section 302 of the Maine Revised Statutes, this amendment shall affect proceedings pending at the time of its passage.

(Ord. of 4-19-1988, §§ V, X; Ord. of 5-3-1988; Ord. of 6-6-2000; Ord. of 3-4-2008)

Sec. 42-145. Special events permit.

The town council may issue a special events permit, pursuant to and in accordance with division 5 of this article, which may allow certain activities, otherwise prohibited by this division, to occur ~~for limited periods of time~~ in designated areas of the town beach and adjacent tidewaters and all other town-owned lands.

(Ord. of 4-19-1988, § VI; Ord. of 5-3-1988)

Secs. 42-146--42-170. Reserved.

DIVISION 3. SURFING

Sec. 42-171. Posting of signs.

It is hereby authorized that appropriate signs be made available for posting the restrictions of this division.

(Ord. of 6-11-1974, § 5)

Sec. 42-172. General restriction.

It shall be unlawful for any person to engage in surfing or the use of surfboards in the ocean tidewaters along the shore of the town between the dates of June 21 and Labor Day of each year at times and places not provided in this division.

(Ord. of 6-11-1974, § 1)

Sec. 42-173. Areas where permitted.

(a) Surfing or use of surfboards is allowed and permitted between the hours of 5:00 p.m. and 9:00 a.m. along the entire beach.

(b) Surfing or use of surfboards is permitted at all times in the following area: on the northerly side of the Old Orchard Pier from such pier to a point 125 yards from the pier. During inclement weather, surfing shall be allowed at any time and location along the shore of the town at the discretion of the lifeguard staff.

(Ord. of 6-11-1974, §§ 2, 3; Ord. of 6-20-1995)

Secs. 42-174--42-200. Reserved.

DIVISION 4. TRAFFIC*

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

Sec. 42-201. Use of the beach areas.

No motorized or vehicular traffic of any kind may enter or use the beach for any purpose, with the exception of public safety vehicles and the town's public works vehicles, designated for public safety or beach cleaning purposes, and vehicles authorized by the Town Council as part of a Special Event Permit.

(Ord. of 6-13-1961, § 5-187)

Sec. 42-202. Horses and horse-drawn vehicles.

(a) *Authority.* This section 42-202 is enacted pursuant to the authority of 30-A M.R.S.A. § 3001 and also implements 17 M.R.S.A. § 3853-A. The town clerk shall have the powers and exercise the duties of the municipal officers under 17 M.R.S.A. § 3853-A.

(b) *Purpose.* Under 17 M.R.S.A. § 3853-A, bringing horses onto the beach is a privilege, not a right. The purpose of this section 42-202 is to allow horses to be present on Old Orchard Beach in the Town of Old Orchard Beach and Pine Point Beach in the Town of Scarborough during appropriate times of year, and subject to appropriate regulation and control. This section 42-202 recognizes that Pine Point Beach and Old Orchard Beach form a continuous strand of sand beach and establishes a system of reciprocal licensing for horses on that strand of beach.

(c) *Definitions.* As used in this section 42-202, the following terms have the following meanings:

"Beach" means Pine Point Beach and/or Old Orchard Beach.

"Old Orchard Beach" means the sand beach bordering the Atlantic Ocean from the Old Orchard Beach/Scarborough town line to the Saco city line.

"Owner" means any person or persons, firm, association, partnership or corporation owning, keeping or having custody, possession or control of a horse.

"Pine Point Beach" means the sand beach bordering the Atlantic Ocean from the mouth of the Scarborough River to the Old Orchard Beach town line.

"Rider" means any person who rides, leads or drives a horse.

"Town of Old Orchard Beach" means the municipality so named.

(d) *Permit required.* No rider shall bring a horse onto the beach without having a permit and displaying on the rider a permit number tag issued by the Town Clerk of either the Town of Old Orchard Beach or the Town of Scarborough. Every rider must have an individual permit and permit number tag.

(e) *Procedure for obtaining a permit.* A rider seeking a permit to bring a horse onto the beach must apply in writing to the Town Clerk of the Town of Old Orchard Beach or the Town Clerk of the Town of Scarborough, using forms supplied by such clerk. The application must be accompanied by identification issued by a government agency and by the application fee required by the schedule of license, permit and application fees in the municipality where the application is made. If the applicant is a minor, the application must be signed by a parent or guardian, who must supply the required identification (the minor need not supply identification). Along with the permit, the town clerk shall also issue a permit number tag, designed to be worn by the rider and visible at a distance, which shall contain the permit number in numerals at least two and one-half inches high, the name of the permit holder and the name of the issuing municipality, and may contain such other information concerning the permit as the clerk deems appropriate. A permit issued by either municipality shall be valid in both municipalities. Permits are valid only between October 15th and May 1st. All permits, whenever issued, expire on May 1st. The town clerk who issues the permit may suspend or revoke the permit if the rider violates any provision of this section 42-202 and may decline to issue a subsequent permit to a rider who has violated any provision of this section 42-202.

(f) *Regulation of horses on the beach.*

- (1) Horses are allowed on the beach only from October 15th through May 1st.
- (2) Except for gaining access to and egress from the beach, horses are allowed only in the intertidal zone (between the mean high tide line and the mean low water line).
- (3) Parking of horse trailers is limited to the Milliken Street Municipal Parking Lot in the Town of Old Orchard Beach and Hurd Park in the Town of Scarborough.
- (4) Any rider or owner who allows a horse to be present on the beach must remove and dispose of animal waste in the same manner as is required for dog feces under section 14-7 of this Code.

(g) *Violation/penalties.* Any person who violates this section 42-202 within the Town of Old Orchard Beach shall be subject to civil penalties for each violation as follows:

First violation: Not less than \$50.00 and not more than \$100.00, plus costs.

Second violation: Not less than \$100.00 and not more than \$250.00, plus costs.

Third and subsequent violations: Not less than \$250.00 and not more than \$500.00, plus costs.

A person issued a civil violation citation for violating this section 42-202 may elect to pay the minimum penalty specified above for each violation alleged in the citation, in lieu of appearing in court to answer the citation. Such payment must be received at the Office of the Old Orchard Beach Town Clerk in the amount specified in the citation prior to the court appearance date specified in the citation. Upon receipt of such payment by the clerk, the town shall cause the citation to be dismissed. However, the violations alleged in the citation shall be deemed admitted for purposes of assessing any future penalties under this section.

If a horse is present on the beach in violation of this section 42-202 and the rider is not the owner, the owner shall be jointly and severally liable with the rider for civil penalties.

(h) *Enforcement.* This section 42-202 may be enforced by any officer of the Police Department of the Town of Old Orchard Beach.

(i) *Severability clause.* If any part of this section 42-202 shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this section 42-202.

(Ord. of 6-13-1961, § 5-187; Ord. of 9-3-1974; Code of 6-18-2002; Ord. of 4-1-2003; Ord. of 10-20-09(1))

Cross references: Animals, ch. 14.

Sec. 42-203. Use of dune area.

No traffic of any kind, vehicular or pedestrian, may enter or use any area of the beach wherein so-called dune grass is growing. It shall also be a violation of this section to burn, crush, uproot, poison or in any other manner kill, injure or remove any so-called dune grass or any other vegetation growing on the beach. Any person who violates this section shall, upon adjudication, be subject to a fine as provided in section 1-14, which fine shall be recovered, upon complaint, to the use of the town.

(Ord. of 6-13-1961, § 5-187; Ord. of 9-3-1974; Ord. of 5-7-1996)

Secs. 42-204--42-230. Reserved.

DIVISION 5. SPECIAL EVENTS*

***Cross references:** Special amusements, § 6-26 et seq.

Subdivision I. In General

Sec. 42-231. 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:

Adjacent tidewaters means the ocean waters along the shoreline of the town beach and extending for a distance of 300 feet from such beach, measured from the low water mark.

Athletic event means a scheduled athletic contest including but not limited to baseball, softball, football, soccer, field hockey, lacrosse, rugby, at The Ballpark.

The Ballpark means the municipal facility located on E. Emerson Cummings Boulevard, commonly known as the Ballpark, consisting of approximately 49 acres of land improved with a stadium, playing fields and parking areas, the exact boundaries of which may be established and modified by the Town Council from time to time.

Public property means:

- (1) Any land owned by the town, including but not limited to Veterans Memorial Park, The Ballpark, the town beach; and
- (2) Adjacent tidewaters.

Special event means any event, sponsored by an individual, corporation, partnership or other entity or organization, intended primarily for recreational, entertainment or charitable purposes, which requires the use of public property, including events which might otherwise be prohibited by division 2 of this article pertaining to the use of motorized and nonmotorized water toys on the town beach. For the purposes of this Ordinance, an athletic event, as defined, is not considered a Special event.

Town beach means that beach area and public parkland taken by the town for a public park on or about April 23, 1935, and May 5, 1935, the records of which are on file in the office of the town clerk.

(Ord. of 5-17-1988, § IV; Ord. of 3-8-2000; Ord. of 4-2-2002, § IV)

Cross references: Definitions generally, § 1-2.

Sec. 42-232. Purpose.

The purpose of this division is to provide the town council with a mechanism for regulating the dates, times, location and conditions under which permittees are authorized to make use of the public property in a manner which is consistent with the public health, safety and welfare and which promotes the use of public property for special recreational, entertainment, or charitable events.

(Ord. of 5-17-1988, § III; Ord. of 4-2-2002, § III)

Sec. 42-233. Enforcement.

This division and the terms of a special events permit issued shall be enforced by any lifeguard employed by the town, by any law enforcement officer, or by any other designated town official duly authorized to enforce this division. The authority of lifeguards to enforce this division is limited to the town beach.

(Ord. of 5-17-1988, § X; Ord. of 4-2-2002, § X)

Sec. 42-234. No rights created.

This division grants no rights to and creates no property or other legal interests in any person. The town council, as trustee of public property, retains full control over public property and may in its sole and exclusive discretion issue, issue with conditions or deny special events permits. A decision of the Town Manager or his or her designee to deny an athletic event permit is subject to review by the town council on request of the applicant or on the council's initiative. Decisions of the town council under this division shall be final, and this division provides no right of appeal.

(Ord. of 5-17-1988, § XI(1); Ord. of 4-2-2002, § XI(1))

Secs. 42-235--42-255. Reserved.

Subdivision II. Permit**Sec. 42-256. Required.**

No person may conduct a special event on public property without a special events permit issued by the town council pursuant to this subdivision.

(Ord. of 5-17-1988, § V; Ord. of 4-2-2002, § V)

Sec. 42-257. Criteria for issuance.

In considering whether to issue a special events permit pursuant to this subdivision, the town council shall consider whether the proposed special event:

- (1) Is consistent with the goal of promoting use of public property for recreational, entertainment or charitable events.
- (2) Can be conducted in the location proposed without endangering the public safety or disturbing the peace and order of the public property.

(Ord. of 5-17-1988, § VI; Ord. of 4-2-2002, § VI)

Sec. 42-258. Fee.

Upon issuance of the special events permit by the town council pursuant to this subdivision and prior to the conduct of the special event, the permit holder shall pay to the town clerk a permit fee in the amount as specified in the schedule of license, permit and application fees in appendix A of this Code per day or portion thereof the special event will occur. The town council may waive at will or reduce the permit fees for

nonprofit charitable special events or for special events which are sponsored or cosponsored by the town.

(Ord. of 5-17-1988, § VIII; Ord. of 4-1-2003, § 2)

Sec. 42-259. Conditions.

Each special events permit issued pursuant to this subdivision shall, at a minimum, specify the permit holder's obligations as to the following:

- (1) Dates and times.
- (2) Designated areas of public property to be affected.
- ~~(3) An insurance policy and evidence of financial capacity, including insurance.~~
- (3) A certificate of liability insurance in the amount of \$500,000 is required prior to the issuance of a Special events permit. The policy must remain valid throughout the event. The policy must include coverage for banners installed pursuant to Section 42 Cancellation of the policy for any reason shall be considered just cause for the revocation of the permit.
- (4) Crowd control.
- (5) Parking.
- (6) Cleanup.
- (7) Any other conditions which the town council deems necessary to protect the public safety and maintain order on the public property.

(Ord. of 5-17-1988, § VII; Ord. of 4-2-2002, § VII(2), (f))

Sec. 42-260. Liability.

The holder of a special events permit issued pursuant to this subdivision shall be solely responsible for conducting the special event in compliance with the conditions of the permit and for maintaining public safety and order during the special event. The town assumes no liability or responsibility by issuing the permit.

(Ord. of 5-17-1988, § XI(2))

~~Secs. 42-261--42-280. Reserved.~~

Sec. 42-261. Athletic events – Permit Required.

No person may conduct an Athletic event at The Ballpark without an Athletic Event permit issued by the town manager or his or her designee pursuant to this subdivision.

Sec. 42-262. Criteria for issuance.

In considering whether to issue an Athletic event permit pursuant to this subdivision, the town manager or his or her designee shall consider whether the proposed Athletic event:

- (1) Is consistent with the goal of promoting use of the Ballpark for recreational events.
- (2) Can be conducted in the location proposed without endangering the public safety or disturbing the peace and order of the Ballpark.

The town manager or his or her designee shall have the right to refer any Athletic event permit to the town council as a special event permit if, in the town manager or his or her designee's judgment, the application merits such scrutiny.

Sec. 42-263. Fee.

Upon issuance of the Athletic event permit by the town manager pursuant to this subdivision and prior to the conduct of the Athletic event, the permit holder shall pay to

the town a permit fee in the amount as specified in the schedule of license, permit and application fees in appendix A of this Code .

Sec. 42-264. Conditions.

Each Athletic events permit issued pursuant to this subdivision shall, at a minimum, specify the permit holder's obligations as to the following:

- (1) Dates and times.
- (2) Designated areas of the Ballpark to be affected.
- (3) A certificate of liability insurance in the amount of \$500,000 is required prior to the issuance of an Athletic event permit. The policy must remain valid throughout the Athletic event. Cancellation of the policy for any reason shall be considered just cause for the revocation of the permit.
- (4) Crowd control.
- (5) Parking.
- (6) Cleanup.
- (7) Any other conditions which the town manager deems necessary to protect the public safety and maintain order on the Ballpark.

Sec. 42-265. Liability.

The holder of an Athletic event permit issued pursuant to this subdivision shall be solely responsible for conducting the Athletic event in compliance with the conditions of the permit and for maintaining public safety and order during the special event. The town assumes no liability or responsibility by issuing the permit.

Sec. 42-266. Banners Associated with Special Events

The Town Council may authorize the installation of banners at specified locations. The Town Council may impose conditions including the dimensions, design and installation of the banner. The party responsible for the installation of the banner will be specified by the Town Council. The Town is not responsible for damages caused by a banner which becomes "free" due to weather conditions.

Secs. 42-267--42-280. Reserved.

DIVISION 6. TOWN BEACH AND ADJACENT WATERS USE REGULATIONS

Sec. 42-281. 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:

Adjacent waters means the ocean waters along the shoreline of the town beach and extending a distance of 300 feet from the beach, measured from the low water mark.

Enforcement authority means the health officer, the fire chief, or any lifeguard employed by the town, or any other designated town official duly authorized to enforce the provisions of this division.

Town beach means that beach area and public park land taken by the town for a public park on or about April 23, 1935, and May 5, 1935, the records of which are on file in the office of the town clerk.

Warning flags means flags that are posted at the lifeguard stations. A red flag means the beach is closed to swimming and/or water contact. A yellow flag indicates an advisory notice that there is a potential health risk or dangerous surf conditions; [a warning for swimming to] "swim at your own risk." A green flag indicates the beach is open for swimming and water contact.

(Ord. of 4-1-2003(1), § IV)

Cross references: Definitions generally, § 1-2.

Sec. 42-282. Purpose.

The purpose of this division is to protect the public health, safety and welfare by authorizing, among other things, the closure of, and the removal of persons from the town beach and adjacent waters due to unsafe or hazardous conditions, including but not limited to, dangerous surf or unusual wave action or unhealthy water quality.

(Ord. of 4-1-2003(1), § III)

Sec. 42-283. Powers of enforcement authority.

(a) The enforcement authority may recall and remove from the ocean waters and the surf adjoining the waters any person who shall be in the ocean waters a distance of more than 50 yards from the point where the ocean adjoins the high tide mark.

(b) The enforcement authority may recall and remove any person from the water when the person shall be in danger of drowning or becoming imperiled, or may imperil the safety of others, all of which shall be determined in the discretion of the lifeguards duly appointed by the authority having jurisdiction.

(c) The enforcement authority may recall and remove from the ocean waters and the surf adjoining the water any person who shall be in the ocean waters at any distance at any time when the condition of the wind, water, weather or a hazard, including the physical or mental condition of the person in the ocean waters, shall be such, in the discretion of those personnel, as described in section 42-281, as to constitute a danger to the health, life or safety of that person or to other persons within the ocean waters.

(d) The enforcement authority may recall and remove from the ocean waters and the surf adjoining the water any person at any distance at any time when the condition of the water is unsafe due to rainfall, urban runoff, sewage spills, microbiological contamination, or other public health concerns.

(e) The enforcement authority may, in its discretion, post or display warning flags or signs indicating the beach is closed to swimming and/or water contact.

(Ord. of 4-1-2003(1), § V)

Sec. 42-284. Violations and penalties.

Any person who fails or refuses to comply with any lawful order, discretion or command given under authority of this division, or who resists, obstructs or impedes any lawful attempt made under authority of this division to recall or remove any person from the water, commits a violation punishable by a civil penalty as provided in section 1-14.

(Ord. of 4-1-2003(1), § VI)

Sec. 42-285. Enforcement.

This division shall be enforced by the health officer, the fire chief, or any lifeguard employed by the town, or any other designated town official duly authorized to enforce the provisions of this division.

(Ord. of 4-1-2003(1), § VII)

Chapter 50 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

***Cross references:** Any ordinance dedicating, naming, establishing, locating, relocating, opening, paving, widening, repairing, vacating, etc., any street or public way in the town saved from repeal, § 1-9(a)(5); any ordinance establishing and prescribing the street grades of any street in the town saved from repeal, § 1-9(a)(10); any ordinance providing for local improvements and assessing taxes for such improvements saved from repeal, § 1-9(a)(11); department of planning and development, § 2-472; dogs on beach, public streets and sidewalks, § 14-6; environment, ch. 26; urination in public or outdoors, § 38-56; outdoor vending machines, § 38-271 et seq.; parks and recreation, ch. 42; traffic and vehicles, ch. 54; play streets, § 54-103; narrow streets, § 54-150; parades and processions, § 54-246 et seq.; obstructions on public streets, § 54-276; utilities, ch. 58; vehicles for hire, ch. 62; buildings and building regulations, ch. 66; subdivisions, ch. 74; street design and construction standards, § 74-306 et seq.; zoning, ch. 78; street trees, § 78-1771 et seq.; manufactured housing, § 78-2056 et seq.

State law references: Nuisances, 17 M.R.S.A. § 2802; obstructing public ways, 17-A M.R.S.A. § 505; removal of obstructions, 23 M.R.S.A. § 3452.

Article I. In General

Secs. 50-1--50-25. Reserved.

Article II. Sidewalks

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Secs. 50-26--50-50. Reserved.

Division 2. Construction and Maintenance

Sec. 50-51. Sidewalks and curbing required.

Sec. 50-52. Construction by town or abutting landowners.

Sec. 50-53. Reconstruction; appointment of cost.

Sec. 50-54. Waiver or amendment of requirements.

Sec. 50-55. Substitution of materials.

Sec. 50-56. Service ways and curb cuts; removal of sidewalks and curbing.

Sec. 50-57. Work done by town; lien.

Sec. 50-58. Lien procedure.

Sec. 50-59. Repair and maintenance.

Secs. 50-60--50-85. Reserved.

Article III. Streets

Division 1. Generally

Secs. 50-86--50-110. Reserved.

Division 2. Naming and Numbering

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ARTICLE I. IN GENERAL

Secs. 50-1--50-25. Reserved.

ARTICLE II. SIDEWALKS

DIVISION 1. GENERALLY

Secs. 50-26--50-50. Reserved.

DIVISION 2. CONSTRUCTION AND MAINTENANCE

Sec. 50-51. Sidewalks and curbing required.

Where a nonresidential development or a multifamily residential development, as defined by chapter 78, abuts any accepted street and a sidewalk satisfactory to the public works department has not already been provided, a sidewalk and curbing shall be provided along the entire street frontage of the lot. If either a sidewalk or curbing, but not both, shall exist at such location which is satisfactory to the public works department, only a sidewalk or curbing, as the case may be, shall be provided. In either case, such sidewalk and curbing shall be constructed in accordance with the specifications of chapter 74 and to the satisfaction of the public works department at no cost to the town prior to issuance of any certificate of occupancy for such development.

(Ord. of 3-17-1987, § 1)

Sec. 50-52. Construction by town or abutting landowners.

(a) Notwithstanding section 50-51, the town council may at any time direct the construction of a sidewalk or curbing or both along any accepted street in the town. Such sidewalk or curbing shall be constructed by the town, and the cost thereof shall be borne by the town.

(b) Sidewalks or curbing or both may be ordered by the council upon petition of an abutting landowner, and one-half of the cost thereof shall be assessed to such abutting landowner and shall be collected by the town in the manner provided in sections 50-57 and 50-58.

(Ord. of 3-17-1987, § 2)

Sec. 50-53. Reconstruction; assessment of cost.

(a) The town council may at any time direct the reconstruction of any sidewalk or curbing which has been constructed along any accepted street by other than the town and which has not been accepted as the responsibility of the town. Such sidewalk or curbing shall be reconstructed by the town, and the cost thereof shall be borne by the town.

(b) Such improvements may be ordered by the council upon the petition of an abutting landowner, and one-half of the cost thereof shall be assessed to such abutting landowner and shall be collected by the town in the manner provided in sections 50-57 and 50-58.

(Ord. of 3-17-1987, § 3)

Sec. 50-54. Waiver or amendment of requirements.

(a) Except as otherwise provided in this division or in chapter 74, the town council may, upon application to it in writing, waive or amend by order the requirement of sidewalks or curbing when it finds that the circumstances in the specific case warrant such waiver or

amendment; however, no such order shall be construed as waiving the requirement of cost apportionment, assessment and collection unless expressly stated therein.

(b) When any multifamily residential development is reviewed by the planning board as a conditional use pursuant to chapter 78, the planning board shall have the authority to waive or amend the requirements of this division in the same manner as the town council is authorized to do by this section. Any waiver or modification by the town council or by the planning board shall be upon a like finding and upon the same terms and conditions as are set forth in section 74-34 pertaining to variances and waivers.

(Ord. of 3-17-1987, § 4)

Sec. 50-55. Substitution of materials.

The public works ~~foreman~~ director may permit the substitution of other types of materials for sidewalks or curbing when, in the sole and exclusive judgment of the public works ~~foreman~~ director, he finds such substituted materials to be equal to or better than the materials required in this division.

(Ord. of 3-17-1987, § 5)

Sec. 50-56. Service ways and curb cuts; removal of sidewalks and curbing.

The design and location of service ways and curb cuts and sidewalks and curbing shall be as approved by the public works department. No additional service ways or curb cuts and no alterations in the existing service ways or curb cuts shall be made without the prior consent of the public works department, and no such sidewalk or curbing shall be removed except by the town through its duly authorized agents or as authorized by a permit issued by the public works department.

(Ord. of 3-17-1987, § 6)

Sec. 50-57. Work done by town; lien.

The public works department is authorized in accordance with this division to construct or reconstruct sidewalks or curbing along any accepted street in the town, provided that appropriation has been made for such purpose, and the town shall have a lien on the abutting property to which one-half of the expense thereof is properly assessable pursuant to this division.

(Ord. of 3-17-1987, § 7)

Sec. 50-58. Lien procedure.

(a) The public works department shall keep an accurate account of the expense of work under this division and shall, as soon as practicable after the completion thereof, make a return showing the following:

- (1) The location of such sidewalk or curbing;
- (2) Its length and width;
- (3) The material of which it is constructed;
- (4) The cost of construction; and
- (5) The names of the owners of the abutting property with the amounts properly chargeable against each.

(b) Within one year after the completion of such work, the town council shall assess upon the abutting properties their just proportion of the cost thereof, and all assessments so made shall constitute a lien on the property in the manner provided for the collection of sewer assessments in the town, except that no owner shall be assessed for more than 200 feet in length of sidewalk or ~~curbing~~ curbing on any one street in front of any unimproved lots or parcels of land.

(Ord. of 3-17-1987, § 8)

Sec. 50-59. Repair and maintenance.

The public works department is authorized as it deems expedient or necessary to repair and maintain, at the sole expense of the town, sidewalks or curbing previously constructed by the town or constructed under this division, provided that any sum expended for such work has been previously appropriated by the town council for such purpose. The public works department is further authorized, whenever it deems such work expedient or necessary because of a dangerous or hazardous condition, to make spot repairs at the sole expense of the town on any type of sidewalk, however constructed, provided sums have been appropriated for such purpose.

(Ord. of 3-17-1987, § 9)

Secs. 50-60--50-85. Reserved.

ARTICLE III. STREETS

DIVISION 1. GENERALLY

Secs. 50-86--50-110. Reserved.

DIVISION 2. NAMING AND NUMBERING

Sec. 50-111. 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:

Driveway means any access road to private property that is wholly contained within the boundaries of that property.

Property means any land parcel on which a more or less permanent structure has been erected or could be placed.

Street means a public or private way which affords the principal means of access to abutting properties.

(Ord. of 4-1-1997, § 4)

Cross references: Definitions generally, § 1-2.

Sec. 50-112. Purpose.

The efficient and effective public safety operations are inhibited by the inconsistent street numbering process and the similarity of names of many streets within the town. It is the desire of the town to fully protect the lives and property of the town's residents. The purpose of this division is to facilitate the rapid location of properties by law enforcement, fire, rescue and emergency medical services.

(Ord. of 4-1-1997, § 2)

Sec. 50-113. Enforcement and penalty.

This division shall be enforced by the public safety ~~foreman~~ director, who shall give written notice to any owner or person in charge of a dwelling, place of business or building, advising that person of a date by which the person or owner must comply with this division. If the person to whom the notice is addressed does not correct the violation by the compliance date, such person shall commit a civil violation.

(Ord. of 4-1-1997, § 9)

Sec. 50-114. Designation of street names.

(a) The town council shall assign names to all existing and proposed streets within the town. A street name assigned by the town shall not constitute or imply acceptance of the street as a public way.

(b) No two streets shall be given the same name or similar names (e.g., Pine Lane, Pine Road). If duplication is found in existing street names, precedence shall be accorded the street which has held the name the longest or the one which has the greater number of abutting developed properties. No two streets shall have similar-sounding names (e.g., Beech Street and Peach Street).

(c) Current names of streets shall not be changed unless they are classified as prohibited as specified in subsections (a) and (b) of this section. Whenever practical, names for streets will be selected by the residents and property owners associated with the street when the road does not currently have an acceptable name.

(d) Prior to changing the name of any existing street, the town council shall hold a public hearing, which notice shall be posted and published at least ten days prior to the hearing. The notice shall include the date, time and place of the hearing. All property owners of record relative to the street name change shall be mailed a notice of hearing at least ten days prior to the hearing.

(e) Names shall not contain hyphens, apostrophes or nonalphabetic characters and shall not have more than a total of 30 characters and spaces.

(f) The design and style of street name signs and letters of accepted streets within the town shall be provided by the public works department.

(g) The entrance road to a mobile home park will be assigned a name, which it will bear for the entire distance throughout the park. The operator of the mobile park shall not name any street within the park that is not in compliance with this division.

(h) If there are three or more developed parcels that abut a private lane or way, the owners of those lots may petition the town council to name the private way. The assessor shall issue street numbers for that street. It will be the sole responsibility of the owners to maintain a street sign at the entrance to the private way in accordance with the public works department's standards for public road signs. The name of the private way shall not conflict or sound similar to any existing street name.

(Ord. of 4-1-1997, § 5)

Sec. 50-115. Designation of street numbers.

(a) The assessor, after consulting with the police chief, shall assign a street number for each dwelling, place of business or building of any type capable of use or occupancy on any street.

(b) The assessor shall keep a record of all numbers assigned under this division.

(c) Upon assigning a number to any new dwelling, place of business or building, the assessor shall send written notice of the assigned number to the owner, occupant or person in charge of the dwelling, place of business or building. Any owner, occupant or person in charge of a dwelling, place of business or building which is numbered and not in compliance with this division shall also be notified to change the existing number by the procedure set forth in subsection (a) of this section.

(d) Where a building contains more than one dwelling or place of business, the assessor shall determine whether each dwelling, place of business or building shall be assigned its own street number or whether, because of the quantity or configuration of the dwellings or places of businesses, only one street number should be assigned to the building.

(Ord. of 4-1-1997, § 6; Ord. of 1-6-1998)

Sec. 50-116. Display of numbers.

(a) The number of the dwelling, place of business or building shall be displayed upon the front of the building on the side facing the street. The number shall be plainly visible from the street. Houses or buildings that are set back out of view from the road shall have a post or sign at the driveway entrance upon which shall be affixed the specified number.

(b) Numbers shall be in Arabic figures, no less than three inches in height and a one-half inch stroke, and shall contrast in color with the color of the building or background to which they are affixed.

(c) No person shall affix or allow to be affixed a different street number from the one designated by the assessor.

(Ord. of 4-1-1997, § 7)

Sec. 50-117. New or renovated property.

(a) The code enforcement officer shall not grant a building permit for any dwelling, place of business or building until the assessor has assigned a street number to the dwelling, place of business or building.

(b) Notwithstanding anything to the contrary in 1 M.R.S.A. § 302, the requirements of subsection (a) of this section shall apply to applications for subdivision approval, building permits and certificates of occupancy pending on the effective date of the ordinance from which this section derives, except that no such approval, building permit or certificate of occupancy shall be withheld if the assessor has not yet assigned a street number to the property at the time when the application is otherwise in order for approval.

(c) Developers of subdivisions shall be required to erect signs naming streets within each approved subdivision at the onset of the construction phase. Signs shall be approved by the public works ~~foreman~~ [director](#).

(Ord. of 4-1-1997, § 8)

Secs. 50-118--50-145. Reserved.

DIVISION 3. EXCAVATIONS

Subdivision I. In General

Sec. 50-146. Effect of noncompliance.

If for any reason there is noncompliance with this division, by the applicant, of the specifications established by the town, the foreman of public works shall direct that the repair work be done at the expense of the applicant.

(Ord. of 9-18-1984, § IV)

Sec. 50-147. Temporary resurfacing of trench.

Temporary resurfacing of a trench excavation shall be completed within 48 hours of the initial excavation. A 12-inch aggregate subbase to be compacted in six-inch loose depths shall be installed. Existing surfaces of the pavement shall be cleaned, which will be bonded to the temporary pavement. Material shall consist of three-inch grade B hot bituminous concrete or bituminous cold mix during winter months. Temporary pavement shall be maintained smooth and free from potholes to a required grade for a period of 30 days. Temporary pavement areas shall be periodically inspected and repaired as

necessary, especially during winter months when temporary pavement remains in place for an extended period. The public works ~~foreman~~ director shall have the authority to order repairs done by the contractor to areas which, in his opinion, are in unsatisfactory condition.

(Ord. of 9-18-1984, § I(d); Ord. of 3-4-1986)

Sec. 50-148. Permanent resurfacing of pavement.

Permanent resurfacing of a pavement excavation shall be completed within 30 days of the initial excavation. Existing paving shall have edges sawed to provide a vertical bonding face. The contractor will also saw to the depth of 1" the surface pavement course to a minimum of 12" in all directions from the excavation and grind/mill this area to the 1" depth. Existing paving and surface material so cut shall be removed and replaced with a 12-inch aggregate subbase in six-inch loose depth lifts. A tack coat shall be applied to the cut edges, and a two-inch binder course shall be placed over the entire excavated surface and roller compacted. A one-inch state mix shall be applied over the entire excavated surface and the 1' wide minimum surface course beyond the excavation in all directions and roller compacted. All aggregates shall conform to section 704 of state department of transportation specifications. All bituminous hot or cold concrete shall conform to section 702 of state department of transportation specifications.

(Ord. of 9-18-1984, § I(e); Ord. of 12-18-1984; Ord. of 3-4-1986)

Sec. 50-149. Traffic control.

If, in the judgment of the foreman of public works, traffic control is necessary for an excavation, the applicant for the permit required in subdivision II of this division shall, at his cost, provide such control as may be required.

(Ord. of 9-18-1984, § I(g); Ord. of 12-18-1984)

Secs. 50-150--50-170. Reserved.

Sec. 50-150. Excavator license.

No person or utility shall excavate in a public place without holding a valid excavator's license and obtaining a street opening permit as provided in division 2 of this article, for such work from the Town. The public works department shall issue the excavator's license upon receipt of an application therefor and the annual license fee of \$(TBD) after having satisfied himself or herself of the competency and ability of the applicant to carry on the business of excavating. Persons or utilities without a previous work history with the Town may be required at the discretion of the director to submit references from responsible municipal officials from other municipalities. No person or utility possessing such license shall allow his or her name to be used by any person or utility, directly or indirectly, either to obtain a permit or to do any work under this license; provided, however, that nothing herein shall be construed to prohibit a licensed excavator from doing such work through an authorized agent or employee who is directly and continuously supervised by him while in the performance thereof. A license issued to an excavator may be revoked after notice and hearing, if it is determined by the Town that the licensed excavator has willfully disobeyed any portion of this article or the rules and regulations.

Subdivision II. Permit

Sec. 50-171. Required.

It shall be unlawful for any person to dig up, excavate, tunnel, undermine, or in any manner break up any street or to make or cause to be made any excavation in or under the surface of the street for any purpose or to place, deposit, or leave upon any street any earth or other material obstructing or tending to interfere with the free use of the street, unless such person shall have first obtained an excavation permit from the public works department.

(Ord. of 9-18-1984, § I(a))

Sec. 50-172. Application.

(a) No excavation permit shall be issued unless a written application for the issuance of the permit is submitted to the ~~foreman~~ director of public works for review and approval.

(b) The application shall state the following:

- (1) The name and address of the applicant;
- (2) The nature, location and purpose of the excavation;
- (3) The date of commencement of the excavation; and
- (4) The date of completion of the excavation.

(c) The application shall be accompanied by a plan showing the extent of the proposed excavation work, including its location and the dimensions and elevations of the proposed excavated surfaces and such other information as may be reasonably required by the ~~foreman~~ director of public works.

(d) The application shall be accompanied by proof of notice to the utilities as provided in 23 M.R.S.A. § 3360-A(3).

(Ord. of 9-18-1984, § II; Ord. of 12-18-1984)

Sec. 50-173. Fees.

(a) A deposit shall accompany each written application for an excavation permit and shall be posted and held by the town treasurer until the applicant has complied with all specifications of this division. The deposit shall be in the form of a certified check made payable to the town according to the rates specified in the schedule of license, permit and application fees in appendix A of this Code. The deposit shall be forfeited to the town if the foreman of public works determines that the repair work is not properly accomplished within the specified time period.

(b) An application fee as specified in the schedule of license, permit and application fees in appendix A of this Code shall be paid for each issuance and renewal of the excavation permit.

(c) Public utilities or districts may be exempt from posting a deposit only at the discretion of the public works foreman.

(Ord. of 9-18-1984, § III; Ord. of 12-18-1984; Ord. of 3-4-1986; Ord. of 9-19-1995; Ord. of 4-1-2003, § 2)

Sec. 50-174. Dates limited.

Excavation permits shall only be issued from April 1 to October 31 unless an emergency or special situation exists. A written explanation shall be submitted to the foreman of public works notifying him of the special situation or emergency prior to the issuing of a permit during the months of November 1 through March 31.

(Ord. of 9-18-1984, § I(b); Ord. of 12-18-1984)

Sec. 50-175. Starting date.

Excavation work must be started no later than 30 days from the date of issuance of the excavation permit. After the expiration of the 30-day period, such excavation permit shall become null and void and shall be renewed.

(Ord. of 9-18-1984, § I(c))

Sec. 50-176. Moratorium after reconstruction.

A three-year moratorium, except for emergency or special situations, on the issuance of any excavation permit is in effect after the completion of a newly reconstructed roadway.

(Ord. of 9-18-1984, § I(f))

Secs. 50-177--50-205. Reserved.

DIVISION 4. IMPROVEMENTS**Sec. 50-206. Applicability.**

This division shall apply to proposed streets, as defined in section 50-207, shown on a plan or a plat recorded in the county registry of deeds prior to two years before the effective date of the ordinance from which this division derives.

(Ord. of 8-15-1989, § B)

Sec. 50-207. 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:

Abutting lot means any lot which is adjacent to and bounded by a proposed street, including lots located at the end of a dead-end street or cul-de-sac.

Accepted means accepted as a town way by the town council.

Construct means to build a roadway in compliance with the requirements of chapter 74 pertaining to subdivision review standards or, when the right-of-way width of the proposed street makes such compliance impossible or impracticable, in compliance with reasonable design and construction specifications approved by the town council.

Current value means the value of land and buildings as determined by the municipal assessor on the most recent assessment date.

Frontage means the horizontal distance between the intersections of the sidelines of a lot with the sideline of the proposed street.

Majority of the abutting lots means any combination of abutting lots which meets both of the following criteria:

(1) The combined frontage of the lots exceeds 50 percent of the total frontage of all the abutting lots; and

(2) The total current value of the lots exceeds 50 percent of the total current value of all the abutting lots.

Owner means any person having any right or interest in a proposed street or abutting lot, which right or interest is recorded in the county registry of deeds.

Proposed street means any street, road or right-of-way which appears on a plat or plan recorded in the county registry of deeds prior to two years before effective date of the ordinance from which this division derives which has not been accepted or taken by the town and which has not been constructed, or any portion thereof, which will be

accepted or taken subject to apportionment and assessment of costs to construct pursuant to this division.

Taken means laid out and taken as a town way by the town council pursuant to 23 M.R.S.A. §§ 3022 and 3023.

Value means just value of land and buildings as defined in 36 M.R.S.A. § 701-A.

(Ord. of 8-15-1989, § C)

Cross references: Definitions generally, § 1-2.

Sec. 50-208. Authority.

This division is enacted pursuant to the authority of article 8, part 2, section 1 of the state constitution, 30-A M.R.S.A. § 3001 and 23 M.R.S.A. § 3606.

(Ord. of 8-15-1989, § A)

Sec. 50-209. Power of council.

Nothing in this division shall limit the authority of the town council to create a public way by any method provided by law when the cost to construct such way will not be apportioned and assessed pursuant to this division.

(Ord. of 8-15-1989, § G)

Sec. 50-210. No obligations created.

Nothing in this division shall require the town to accept, take or improve a public way unless the town council determines that the public convenience or necessity requires that such public way be accepted, taken or improved.

(Ord. of 8-15-1989, § H)

Sec. 50-211. Conditions.

A proposed street may be accepted or taken as a public way by the town council upon the following conditions:

(1) If the proposed street is to be accepted upon dedication, owners of a majority of the abutting lots shall convey their interest in the proposed street to the town without claim for damages. Owners of fee interests shall convey their interests by warranty deed. Owners of less than fee interests shall convey their interests by quitclaim deed with covenant.

(2) If the proposed street is to be taken, owners of a majority of the abutting lots shall petition the town council in writing to lay out and take the proposed street and in such petition shall waive any damages otherwise payable to them as a result of the taking.

(3) The owners or petitioners shall submit to the town council plans of the proposed street as it will be constructed after it has been accepted or taken, which plans shall include the following:

a. A plot plan drawn when practical to a scale of 40 feet to one inch and to be on one or more sheets of paper not exceeding 24 inches by 36 inches in size. The plot plan shall show the following:

1. The north point;
2. The area of all lots;
3. The length of all lot lines;
4. The location and ownership of all adjoining subdivisions and adjacent acreages;
5. Passageways;
6. Streetlight lines;
7. Buildings;

8. Boundary monuments;
 9. Waterways;
 10. Topography (USGS vertical datum) and natural drainage courses with the contour at not greater than five-foot intervals;
 11. All angles and bearings necessary for the plotting of the proposed street;
 12. The distance to the nearest established street line; and
 13. Any buildings abutting on the proposed street together with the stations of their sidelines.
- b. A profile of the proposed street drawn to a horizontal scale not larger than 50 feet to one inch with a corresponding ten to one ratio vertical scale. The profile shall show the profile of the centerlines of the proposed street and the proposed grades thereof. Any buildings abutting on the proposed street shall be shown on the profile.
 - c. A cross section of the proposed street drawn to a horizontal scale no larger than five feet to one inch and a vertical scale of one foot to one inch.
 - d. The location and size of all existing and proposed water mains, storm drains, sanitary sewers, gas mains, culverts, underdrains and underground utilities shall be shown along with the individual building service connections to each.
- (4) The owners of a majority of the abutting lots shall petition the town council in writing to construct the proposed street after it has been accepted or taken and in such petition shall agree to pay their just portion of the cost to construct the proposed street. The petition shall be accompanied by an estimate, which has been reviewed and approved by the public works ~~foreman~~ director, of the cost to construct the proposed street.
- (Ord. of 8-15-1989, § D)

Sec. 50-212. Procedure for acceptance or taking.

The procedure for acceptance or taking of a proposed street shall be as prescribed in 23 M.R.S.A. ch. 304.

(Ord. of 8-15-1989, § E)

Sec. 50-213. Apportionment and assessment of costs.

After the proposed street has been accepted or taken and has been constructed, the town council shall apportion no more than two-thirds of the cost to construct among the abutting lots in such proportions as, in the opinion of the town council, the values of the lots have been increased by the acceptance or taking and construction and shall assess such apportioned cost upon such lots, all in the manner, and with the same right of appeal provided in 23 M.R.S.A. §§ 3601--3605. The portion of the cost to be assessed upon the abutting lots may be reduced to less than two-thirds by written agreement between the town, the owners of a majority of the abutting lots and any other person who agrees to contribute to the cost.

(Ord. of 8-15-1989, § F)

Secs. 50-214--50-240. Reserved.

ARTICLE IV. OBSTRUCTION OF PUBLIC PLACES

Sec. 50-241. 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 entrance means any exterior door, doorway, entryway, portal, portico, threshold, vestibule, foyer or lobby and includes any recessed area adjacent to the doorway.

Enclosed means inside the walls, including windows of the building, and on the interior side of any exterior doors which open inward.

Front means the side of a building or lot in which the building entrance is located. Where a building has entrances facing more than one street, each side on which a building entrance is located shall be considered a front.

Sidewalk Cafe means the establishment of tables and chairs on the public or privately owned sidewalk directly in front of, and accessory to a licensed victualer. Outdoor dining on private property, other than a sidewalk is not regulated by this article, but is regulated by Chapter 78. For the purposes of this article, a sidewalk cafe is not considered an outside display.

Outside display means any deposit, pile, placement, storage or display, outside the enclosed portions of a building, of any goods, wares or merchandise that are offered or available for sale, rental or distribution either inside or outside the building. For the purposes of this article, materials placed in the building entrance as defined in this section, shall be included as an outside display.

Violator means and includes any person who commits, causes or creates a violation of this article; any owner of a business which employs a person who commits, causes or creates a violation of this article on the premises of that business; and any owner of property who permits or allows a violation to occur on that property.

(Ord. of 2-5-1991, § 2; Ord. of 8-16-1994; Ord. Of 4-6-2004)

Cross references: Definitions generally, § 1-2.

Sec. 50-242. Purpose.

This article is intended to facilitate pedestrian traffic across the public sidewalks and in areas adjacent to the sidewalks and streets in order to promote the safety of pedestrians in the town and to improve the appearance of the town, particularly in the downtown area.

(Ord. of 2-5-1991, § 1)

Sec. 50-243. Enforcement.

~~The license inspector or a~~Any officer of the police department shall investigate any alleged violation of this article. Upon verification of the alleged violation, any officer of the police department may issue a citation for a civil violation. Service of the citation may be made upon any violator, as defined in section 50-241 and service on an employee or agent of a violator shall constitute service upon the violator.

(Ord. of 2-5-1991, § 8; Ord. of 2-5-1991; Ord. of 4-6-2004)

Sec. 50-244. Exemptions.

(a) Sections 50-245 and 50-246 do not apply to the following:

- (1) The otherwise lawful outside storage, display or sale of new or used motor vehicles, boats or other machinery or equipment customarily stored in a yard or display lot;
- (2) The otherwise lawful storage, display or sale of supplies incidental to the rendering of a service at the point of sale, such as motor oil to be dispensed at the gasoline pump island of an automobile service station;
- (3) The otherwise lawful nonalcoholic beverage machines and/or ice machines; or
- (4) The otherwise lawful, temporary, noncommercial yard sales, garage sales or charitable fundraising events.

(b) Also exempt is a retail sidewalk sale as authorized by the town council. Mobile ice cream trucks shall also be exempt from this article and shall be governed by article VII of chapter 18 pertaining to ice cream trucks.

(Ord. of 2-5-1991, § 10; Ord. of 8-3-1993; Ord. of 8-16-1994; Ord. of 6-15-1999)

Sec. 50-245. Outside displays.

(a) No person shall cause or permit any outside display to exist, except as authorized by subsection (b) of this section.

(b) If a building is set back 35 feet or more from the edge of the blacktopped portion of the street adjacent to the front property line of the lot where located and upon issuance of a license by the town council pursuant to article II of chapter 18 and upon compliance with other applicable laws and ordinances, including chapter 78 pertaining to zoning, outside displays may be located within five feet, measured at right angles, of the front wall of the building, but no closer than five feet, measured parallel to the building, from either side of the building entrance. No parking of vehicles shall be permitted within five feet of any outside display permitted by this subsection.

(Ord. of 2-5-1991, §§ 3, 4; Ord. of 5-4-1993)

Sec. 50-246. Outside solicitation of sales.

No person shall engage in the solicitation, sale or rental of any goods, wares or merchandise outside the enclosed portion of a building.

(Ord. of 2-5-1991, § 5)

Sec. 50-247. Obstruction of public passage.

No person shall hinder or impede the free and uninterrupted passage of pedestrians on, upon, across, or over any sidewalk, walkway, pathway or any other area, public or private, which is customarily used by the public for access to or passage by any business, public place or public building.

(Ord. of 2-5-1991, § 6; Ord. of 4-6-2004)

Sec. 50-248. Placement of posters.

No person shall place or cause to be placed any advertising poster or notice on any utility pole or other pole or on any tree located on town property or on any public way, unless such poster or notice is expressly permitted by statute or ordinance.

(Ord. of 2-5-1991, § 7)

Secs. 50-249--50-270. Reserved.

Sec. 50-249. Sidewalk Cafés

No person shall expand a food service establishment to the outside on any sidewalk in the Town except under a duly authorized outdoor dining permit issued provisions of this division.

a) Regulations and Restrictions

1. Sidewalk cafés are only allowed for restaurants and food-serving establishments.

2. Sidewalk cafés shall be contiguous with the establishment with which they are associated .

3. Sidewalk cafés can project no more than 7' onto town property provided a minimum width of six (6) feet of sidewalk is left unoccupied and unobstructed in order to allow adequate pedestrian movement. The width of the sidewalk is measured from the property line to curbside obstacles, including but not limited to trees, parking meters, light poles, flag poles, utility poles, and fire hydrants.

4. Sidewalk Café Permits are valid from April 1st to October 31st of each year. Chairs, tables and appurtenances may only be located on the sidewalk area during the time period.

5. No permanent structure or device shall be erected or placed in, on, or about any public sidewalk; however, temporary poles, railings, or similar supports or dividers may be anchored to the building but not in the sidewalk.

6. Any damage done to the public right-of-way by the applicant or by its patrons shall be repaired promptly by the applicant.

7. Refuse receptacles shall be covered at all times.

8. Litter emanating from the sidewalk café area, and from whatever area to which it may flow, shall be collected by the permittee as often as may be required to keep the sidewalk clear of litter and debris.

9. Sidewalks shall be swept and cleaned at the close of business each day.

10. There shall be no outdoor music associated with any eating establishment that is wholly or partially on municipal property.

11. There shall be no additional signage for the outdoor dining.

11. Aside from individual table lighting, such as candles, there shall be no additional exterior lighting installed.

Failure to adhere to these standards may result in the revocation of the permit until such time that the violation has been corrected.

b) Permit Procedures

1. The applicant shall apply for a Café Permit from the Code Enforcement Officer on an annual basis.

2. The applicant shall provide a plan showing the area intended for outdoor dining, the proposed seating, the barrier fencing and the ingress and egress. In addition, the plan shall also include the dimensions of the seating area, the projection onto the town sidewalk or walkway and the distance from the barrier fencing to any curbside obstacles.

3. The applicant shall also provide a Certificate of Liability Insurance covering the effective dates of the permit in the amount of \$500,000. In addition, the Town of Old Orchard Beach shall be named as an additional insured.

4. In the event alcoholic beverages are to be sold, a copy of a valid and current liquor permit from the State Liquor Commission shall be presented.

5. Café Permits effective as of May 1st 2010 are subject to an annual application fee as set forth in appendix A of this Code.

ARTICLE V. OPERATION OF NOISE-CREATING DEVICES ON PUBLIC RIGHTS-OF-WAY*

***Cross references:** Noise, § 26-56 et seq.; traffic and vehicles, ch. 54.

Sec. 50-271. 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:

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.

Noise-creating device means any electrical, mechanical or chemical device or instrument, or combination thereof, that creates noise during its operation by a person.

Operation means actual control by a person.

Public right-of-way means any street, roadway, alley, sidewalk or other area deeded or dedicated for public travel or transportation purposes.

Straight pipe exhaust system means any muffler that does not contain baffles, including, but not limited to, glass packs, steel packs, straight pipes and drag pipes.

(Ord. of 5-20-2003, § b)

Cross references: Definitions generally, § 1-2.

Sec. 50-272. Purpose and policy.

(a) The town council finds that excessive noise on public ways may:

- (1) Cause distraction to other drivers which impairs the safe operation of motor vehicles;
- (2) Unreasonably disturb the quiet and normal functioning of the town's residential neighborhoods;
- (3) Threaten and intimidate pedestrians; and
- (4) Project a negative image of the town, all to the detriment of the health, welfare and safety of the citizens and guests.

(b) Accordingly, it is the policy of the town to prohibit unnecessary, excessive, annoying or distracting noise on public rights-of-way within the town.

(Ord. of 5-20-2003, § a)

Sec. 50-273. Certain noises prohibited.

(a) No person, while occupying any public right-of-way in the town, shall operate any noise-creating device in such a manner that the level of noise causes the public's attention to be drawn to the source of the noise, subject to the exceptions provided in section 50-274.

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

- (1) Discharging fireworks or any exploding device;
- (2) Firing a starter pistol or firearm;

- (3) Sounding a bell or whistle, alarm or horn for so extended a period of time as to cause annoyance to others;
 - (4) Rapid throttle advance and/or revving of an internal combustion engine resulting in increased noise from the engine and exhaust system, including the [so-called] practice of motorcycle "blipping"; and
 - (5) Operation of an unmuffled motor vehicle or a motor vehicle, including motorcycles, 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 state law, including, but not limited to, 29-A M.R.S.A. § 1912.
- (Ord. of 5-20-2003, § c)

Sec. 50-274. Exceptions.

- The provisions of this article shall not apply to the following activities or conduct:
- (1) Expression or communication protected by the United States Constitution, including the First Amendment, or the state constitution.
 - (2) Any activity or conduct the regulation of which has been preempted by state 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.
 - (6) Properly licensed common carriers and service vehicles in the performance of their customary duties.
- (Ord. of 5-20-2003, § d)

Sec. 50-275. Violation and penalty.

Violations of this article constitute civil violations, punishable by the following penalties:

First offense . . . \$50.00
Second offense . . . 100.00
Third offense . . . 200.00
Fourth and subsequent offenses . . . 500.00

(Ord. of 5-20-2003, § e)

Sec. 50-276. Controlling provisions.

This article does not preempt, supercede or repeal any provision of chapter 26, article III, noise. In the event of a conflict or inconsistency between chapter 26, article III, noise and any provision of this article, the more restrictive provision shall apply.

(Ord. of 5-20-2003, § f)

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

A True Copy

Attest:

s/Kim M. McLaughlin

Kim M. McLaughlin, Town Clerk