

**CHAPTER 3**  
**PUBLIC HEALTH**

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**ARTICLE I: PUBLIC HEALTH**

**Section 3.101: NUISANCES**

The Health Officer shall inquire into all nuisances and all causes of danger to the public health, and whenever he shall know, or have cause to suspect, that any nuisance or other thing injurious to the public health is in any building, vessel, or enclosure he shall make complaint under oath to some justice of the peace who shall issue a warrant directed to the proper authority to search such building, vessel or enclosure and he may enter therein and make search.

**Section 3.102: NOTICES**

The Health Officer shall notify the owner or occupant of any building, vessel or enclosure to remove or destroy any nuisance or other thing therein, deemed by him, upon careful examination, to be injurious to the public health, within a reasonable time limited, and in case such owner or occupant shall neglect to comply therewith, the Health Officer shall cause such nuisance to be removed or destroyed. And such owner or occupant shall be liable to pay the expenses of the removal or destruction of such nuisance or other thing, including all fees of the Health Officer, and the same shall be recovered by action brought by the Health Officer in the name of the City.

**Section 3.103: ASSISTANCE**

The Health Officer may employ suitable assistance to carry out the provisions of the preceding sections; and any person resisting him or them therein shall be prosecuted under the provisions of Section 5, Chapter 147, N.H. RSA.

**Section 3.104: KEEPER UNKNOWN**

Whenever the owner of any building, vessel or enclosure described in the preceding sections is unknown to the Health Officer or does not reside in the City or the same is unoccupied or the occupant is unable to remove any such nuisance or other thing, said Health Officer may proceed as in the preceding sections without notice.

**Section 3.105: VENTILATION AND TOILET FACILITIES**

No person shall occupy, lease to any other person or permit any other person to occupy any building, basement, cellar or part thereof, within the compact part of the City, as a dwelling house, office, store, shop, hotel, inn or sleeping apartment, unless the same is provided with suitable toilet facilities, properly ventilated and constructed, and kept in proper sanitary condition, provided with suitable drains or sewers to convey away sink or waste water, or filth, from the premises into some public sewer, if there be one within one hundred feet therefrom; and if not within such distance, for conveying the same away under ground or in such other way that will not be offensive.

**Section 3.106: PENALTY, VIOLATION OF SECTION 3:105**

Any person who neglects or refuses to comply with the provisions of Section 3:105 shall be fined not exceeding one hundred (\$100) dollars for each day of neglect or refusal after reasonable notice from the Board of Health who may order the discontinuance of any such nuisance.

**Section 3.107: POLLUTION OF WATER**

No person shall willfully or negligently pollute, or cause to become impure the water of any reservoir, stream, well, or spring, within the limits of the City used for domestic purposes.

**Section 3.108: DUMPING IN PONDS**

No person shall deposit any filth, rubbish, paper, or any other matter in either of the ponds of the City, or upon the flats thereof, or upon any land whereby the same may be conducted to said ponds or flats, nor in any public place, street or alley.

**Section 3.109: SWILL**

No person shall remove, transport, or carry in, or through, any of the streets, squares, courts, lanes, avenues, or alleys within the City of Portsmouth, except in covered water tight carts, casks or vessels, approved by the Board of Health annually, any swill or house offal, grease, bones, fat decayed, putrefied, or vile smelling animal or vegetable substances including vault manure, or any refuse substances from any dwelling house or other places in the City.

**Section 3.110: MANURE**

Within the compact part of the City no manure shall be allowed to accumulate until it becomes offensive to persons residing in the vicinity or passing along any highway; and no swill or garbage, or any animal or vegetable substances shall be allowed to accumulate in or about any premises until the same becomes offensive or putrid. The owner, agent, occupant, or any other person having the care of any building where swill, garbage, or animal or vegetable substance is accumulated, shall cause the same to be removed as often as requested by the Health Officer.

**Section 3.111: PENALTY OR VIOLATION**

Any person or persons, company or corporations, that shall violate or cause to be violated by agent or otherwise, any of the provisions of Article I, Chapter 3, or any of the orders, rules or regulations of the Department of Health in reference thereto, or who shall fail or neglect to comply with any of the requirements thereof, by agent or otherwise, upon conviction shall be fined not less than three dollars (\$3) nor more than one hundred (\$100) dollars, for each offense. *(Previous Section 3.111 deleted in entirety 10/22/2012)*

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## **ARTICLE II: SOLID WASTE, YARD WASTE AND RECYCLING**

### **Section 3.201: PURPOSE**

The City of Portsmouth recognizes that a comprehensive municipal program for the disposal of solid waste and yard waste, as well as the recycling of materials is necessary for the convenience of its citizens and the protection of the environment of the municipality. The City further recognizes that such program must be developed and administered in the most cost efficient manner consistent with the goals of the program.

### **Section 3.202: DEFINITIONS**

For the purposes of this ordinance, the following definitions apply:

*Bulky Waste:* any items whose large size or weight precludes or complicates their handling by normal collection, processing or disposal methods.

*Downtown Business District:* For the purposes of this section, the Downtown Business District shall mean the following areas:

Congress Street from Middle Street to Market Square;  
High Street from Congress Street to Ladd Street;  
Ladd Street from High Street to Market Street;  
Market Street from Market Square to Deer Street;  
Daniel Street from State Street to Market Square;  
State Street from Daniel Street to Middle Street;  
Pleasant Street from Court Street to Market Square;  
Chapel Street from Bow Street to State Street;  
Porter Street from Middle Street to Pleasant Street;  
Sheafe Street from Chapel Street to Penhallow Street;  
Bow Street from Daniel Street to Market Street;  
Penhallow Street from State Street to Bow Street;  
Hanover Street from Market Street to Maplewood Avenue;  
High Street from Hanover Street to Deer Street;  
Fleet Street from Hanover Street to State Street

*Non-Business Districts:* For the purposes of this section, the Non-Business Districts shall mean all areas other than those designated as being within the Downtown Business District.

*Commercial Property:* any property the predominate use of which is a structure used for commercial or business purposes including, but not limited to, the following:

- Properties containing five (5) or more dwelling units;
- Hotels, restaurants, warehouses;
- Manufactured Housing Parks;
- Markets, bakeries, grocery stores, fruit stands;
- Manufacturing or industrial;
- Business offices;
- Condominiums; and
- Any non-residential use

*Construction and Demolition (C&D):* waste from the building, tearing down or destruction of a structure or part of a structure.

*Garbage:* All putrescible waste material including, but not limited to wastes resulting from the handling, preparation, cooking and consumption of food. Garbage shall not include yard, industrial, hazardous and/or radioactive waste.

*Hazardous Waste:* A solid, semi-solid, liquid or contained gaseous waste, or combination of, which because of quantity, concentration, or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious or incapacitating illness, or pose a health hazard to humans and the environment when improperly treated, stored, transported or disposed.

*Industrial Waste:* Byproducts or scrap remaining from an industrial manufacturing process.

*Putrescible Waste:* Any organic material, which can decompose and give rise to foul odors and noxious byproducts.

*Radioactive Waste:* Material regulated by the Atomic Energy Commission.

*Recyclable Materials or Single Stream Mixed Recyclables* are defined as follows:

- “Metal” means cans made of aluminum, tin or steel
- “Glass” means jars and bottles colored green, brown or clear
- “Paper” means fibrous material derived mainly from wood, examples of such are cardboard, newspapers, junk mail, magazines, office paper, phone books, paperback books, paper board (cereal and pasta boxes), wax coated milk and juice cartons, and paper egg cartons
- “Plastic” means plastic bottles, jars, jugs and containers labeled number 1 through 7 inside a three-arrow recycling symbol
- This list of recyclables may be modified as needed by the Department of Public Works

*Refuse:* Any solid waste composed wholly or partly of garbage and rubbish.

*Residential Property:* Any property the predominate use of which is a residential structure containing at least one (1) dwelling unit but not more than four (4) dwelling units.

*Rubbish:* All nonputrescible waste material including, but not limited to, paper, cigarettes, cardboard, cans, wood, glass, bedding and crockery. Rubbish shall not include yard, industrial, hazardous and/or radioactive waste.

*Yard Waste:* Leaves, grass, clippings, garden debris, small brush (no greater than 5” in diameter) or chipped branches.

### **Section 3.203: PROGRAM COMPONENTS**

The City’s program for waste disposal and materials recycling shall consist of the following components, each of which is to be administered in accordance with the provisions of this ordinance:

#### **A. Curbside Placement Time**

The City shall maintain a regularly scheduled program of curbside solid waste pick-up from residential properties and commercial properties in the Downtown Business District.

1. Non-Business waste shall be placed curbside no earlier than 7:00 p.m. the evening before collection
2. The Department of Public Works shall determine and publish the days and hours under which the curbside collection shall be available to residents and property owners.

3. Downtown Business District Waste shall be placed curbside no earlier than two (2) hours prior to the scheduled collection time which will be determined and published by the Department of Public Works.

B. Solid Waste Disposal (Curbside pick-up):

Solid waste may consist of garbage and refuse, but shall exclude other types of waste. The limitations on curbside solid waste pick-up are as follows:

1. Weekly pick-up from residential properties shall not exceed 300 U.S. gallons of solid waste
2. Weekly pick-up for commercial properties in the Downtown Business District shall not exceed 300 U.S. gallons of solid waste. Where a non-residential structure contains five or more business establishments, including multi-family housing, and is located in the Downtown Business District, that building shall be considered one unit limited to not more than 300 U.S. gallons.
3. All waste placed for curbside pick-up shall be kept in covered, sanitary containers not exceeding a volume of 100 U.S. gallons.
4. Trash containers shall not be so filled so as to be grossly unwieldy; containers smaller than a volume of 45 U.S. gallons may not exceed fifty (50) pounds each or be so worn or damaged as to make them likely to fail. Containers larger than 45 gallons but smaller than 100 gallons must have working wheels and stop bar compatible with collection trucks hydraulic tipper.
5. Every rental and leased dwelling unit shall be provided by the property owner with adequate storage receptacles with tight fitting covers for rubbish and garbage. These containers must be maintained in a clean and sanitary condition and disposal procedures must comply with this ordinance.
6. In the Downtown Business District, materials for disposal or recycling shall not be placed in plastic or paper bags, unless the bags are within covered containers.

C. Recycling:

Recycling of recyclable materials is mandatory for all residential and commercial property owners or residents who dispose of waste at the Recycling Center or who utilize the curbside collection service of the City. The recycling program shall operate under the following terms and conditions:

1. The City shall make available recycling container for use in connection with the curbside recycling program. These containers shall not be used for any materials other than specified recyclable materials.
2. All recyclable materials do not need to be separated and may be placed in a common recycling container.

3. If recycling materials exceed the capacity of one recycling container, multiple additional recycling containers may be left for pick up provided the additional containers are labeled "Recycling".
4. All fiber, metal, glass and plastic to be recycled shall be cleaned and placed together in the recycling container. Recyclables shall not be placed in plastic bags.
5. Excess paper and cardboard shall be placed on top of or next to the recycling container in a manner to prevent the scattering of paper. Paper and flattened cardboard shall either be packed in standard paper grocery bags, cardboard boxes, or securely tied in flat bundles, none of which shall weigh greater than fifty pounds.
6. If there are more recyclables than can be held in one container, the resident shall flatten those materials which can be flattened and/or place the additional recyclables next to the recycling container in a separate cardboard box or other suitable container clearly marked "recyclables."
7. No person other than an authorized agent of the City acting in the course of his/her employment shall collect or pick-up or cause to be collected or picked up any recyclable material placed at curbside.
8. Mixed recyclable materials generated at both commercial and residential properties in the City may be delivered to the City's Recycling Center.
9. Recyclable materials shall be separated from municipal solid waste when placed at curbside.

D. Bulky Waste (Curbside Collection):

Residential properties which qualify for curbside collection of municipal solid waste shall also be permitted to utilize an on demand curbside bulky waste collection service maintained by the City. Curbside pick-up of bulky waste shall be performed under the following terms and conditions:

1. The property owner or resident shall schedule bulky waste pick-up on an appointment basis by arrangement with the Department of Public Works.
2. Each property shall be allowed up to four curbside collections of bulky waste per calendar quarter, each of which shall be limited to a maximum of sixty-four cubic feet per collection (64 cubic feet is approximately the bed size of a mid-sized pick-up truck).
3. All bulky waste items set out at curbside must be properly sorted by type in accordance with categories to be established by the Department of Public Works and communicated to the property owner/resident at the scheduling of the appointment. Bulky waste shall be placed curbside no earlier than the Saturday prior to collection.

4. Any bulky waste which is not collected by the City due to lack of compliance with the provisions of this ordinance must be removed from the curbside by the property owner/resident within twenty-four (24) hours of being provided notice that the Department of Public Works will not collect the bulky waste.
5. Where bulky waste is not picked up by the City for any reason, proper disposal is the responsibility of the owner/resident.

E. Bulky Waste and Municipal Solid Waste (Recycling Center):

The City shall maintain a recycling service for bulky waste and municipal solid waste. The terms and conditions under which the Recycling Center shall operate are as follows:

1. The Department of Public Works shall determine and publish the days and hours under which the Recycling Center shall be available to residents and property owners.
2. The Recycling Center shall be available only for waste generated by residential properties.
3. The Recycling Center shall be available to Portsmouth Commercial Properties for single stream mixed recyclables only, provided an annual pass is obtained from the City. The fee, if any, for the annual pass shall be established by the City Council during its annual budget process.

F. Yard Waste

Yard waste shall be collected by the City in accordance with the following terms and conditions:

1. Yard waste shall be collected at curbside in accordance with a collection schedule to be determined and published by the Department of Public Works.
2. Brush which is placed at curbside must be cut into lengths not exceeding four (4) feet; contain no pieces of brush greater than five inches in diameter, and be tied in neat bundles the diameter of which shall not exceed one (1) foot and a weight of which shall not exceed greater than fifty (50) pounds.
3. Other than brush, yard waste which is placed at curbside must either:
  - A. be placed in commercially manufactured biodegradable bags which are factory labeled to indicate that they are 100% biodegradable; or
  - B. be placed in open containers which are clearly labeled, "Yard Waste."

Neither the biodegradable bags nor the open containers shall weigh more than fifty (50) pounds each when filled and placed at the curbside.

4. Any yard waste placed at curbside which the Public Works Department refuses to collect due to lack of compliance with this ordinance must be removed from the

curbside by the property owner/resident within twenty-four (24) hours of being provided notice by the Public Works Department that the yard waste will not be collected.

5. The Director of Public Works may designate a central repository to which residential properties may deliver yard waste. Landscape contractors may utilize the same repository for a fee. The fee shall be established by the City Council during its annual budget process. Yard waste must originate from Portsmouth residential property only.

**Section 3.204: PROHIBITIONS:**

The following acts are not permitted in the City of Portsmouth:

1. The disposal at City's Recycling Center or the placement at curbside for municipal pick-up of any hazardous waste or radioactive waste.
2. The disposal of any materials on public or private property in any manner not permitted by this ordinance or by state law.
3. The placement of solid waste for curbside pick-up, the placement of bulky waste for curbside pick-up or the deposit of any waste or recyclables at the City's Recycling Center or other repository by any person, firm or corporation not expressly authorized to do so under the provisions of this ordinance.
4. The bringing of materials into the City of Portsmouth from elsewhere for disposal or recycling by the City.
5. The use of public trash containers for disposal of commercial or residential garbage, rubbish or refuse.

**Section 3.205: RIGHT OF INSPECTION**

The placement of any materials at curbside for municipal pick-up conveys to the City the right to inspect such materials for compliance with this ordinance as well as local, state and federal law.

**Section 3.206: PENALTIES AND REMEDIES**

In addition to any other penalty or remedy permissible by law for violation of this ordinance, the following shall apply:

1. Any person, firm or corporation violating any provision of this ordinance shall be subject to a penalty, upon conviction, up to the maximum amount authorized under state law.
2. The Public Works Department is authorized to issue citations to persons, firms or corporations violating this ordinance in accordance with municipal citation authorization contained in the ordinances of the City of

Portsmouth. All citations issued for violation of this ordinance shall be in the amount of \$100.00 for the first violation, \$250.00 for the second violation and \$500.00 for third violation and loss of municipal services for subsequent violations.

3. The Public Works Department may refuse to accept or pick-up any waste of any kind which is not delivered or placed in accordance with the provisions of this ordinance or any rules adopted hereunder by the Department of Public Works. In all such circumstances, proper disposal of the waste is the responsibility of the owner/resident.
4. The Public Works Department has the right to refuse residents/commercial properties access to the Recycling Center who misuse the Center, are negligent and/or abusive to City employees.
5. The City Attorney is authorized to file any appropriate legal proceedings, including but not limited to requests for injunctive relief, necessary to prevent violation of this ordinance.
6. The Public Works Department may negotiate and settle civil claims involving violations of this ordinance.

**Section 3.207: SEVERABILITY**

In the event that any portion of this ordinance is found to be unenforceable for any reason, the remaining provisions shall remain in full force and effect.

(Amended Article II by deleting it in its entirety and replaced with the following on 12/16/2003).  
(This ordinance shall take effect on January 1, 2003 except for mandatory recycling in the business district which shall become effective on July 1, 2003; Amended Article II 10/17/2016).

**ARTICLE III: BURYING GROUNDS**

**Section 3.301: ESTABLISHMENT**

No interments shall be made in any other places than those acknowledged by the City as burying places and recorded as such in the City records. No new burial place shall be opened without the consent of the City Council.

**Section 3.302: MOVING BODIES**

No body previously interred in any of the City burying grounds shall be removed for the sole purpose of making room for other interments.

**Section 3.303: PENALTY**

If any person shall violate the provisions of this Ordinance he shall be fined not less than one (\$1) dollar nor more than one hundred (\$100) dollars for each offense.

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## **ARTICLE IV: NOISE CONTROL**

### **Section 3.401:**

It is found and declared that:

- A. The making and creation of excessive, unnecessary loud noises within the limits of the City of Portsmouth is a condition which has existed for some time and the extent and volume of such noises is increasing;
- B. The making, creation or maintenance of such excessive unnecessary, unnatural or unusually loud noises which are prolonged, unusual and unnatural in their time, place and use, affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the residents of the City of Portsmouth and;
- C. The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted, is declared as a matter of legislative determination and public policy, and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of Portsmouth and its inhabitants.

### **Section 3.402:**

It shall be unlawful for any person to make, continue or cause to be made or continued any excessive, unnecessary or unusually loud noise or any noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace or safety of others, within the limits of the City.

### **Section 3.403: NOISES PROHIBITED - UNNECESSARY NOISE STANDARD**

The following acts, among others, are declared to be loud disturbing and unnecessary noises in violation of this Ordinance, but said enumeration shall not be deemed to be exclusive, namely:

- A. Horns, Signaling Devices, Etc.: The sounding of any horn or signaling device on any automobile, motorcycle, street car or other vehicle on any street or public place of the City, except as a danger warning; the creation by means of any such signaling device of any unreasonable loud or harsh sound; and the sounding of any device for an unnecessary and unreasonable period of time. The use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such signaling device when traffic is for any reason being held up.
- B. Radios, Phonographs, Etc.: The using, operating, or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machines or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at

- a distance of 50 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.
- C. Loud Speakers, Amplifiers for Advertising: The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, phonograph, loud speaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is case upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.
  - D. Yelling, Shouting, Etc.: Yelling, shouting, hooting, whistling, or singing on the public street, particularly between the hours of 11:00 p.m. and 7:00 a.m., or at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any office, or in any dwelling, hotel, or other type of residence, or of any persons in the vicinity.
  - E. Animals, Birds, Etc.: The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of any persons in the vicinity.
  - F. Steam Whistles: The blowing of any locomotive steam whistle or steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request of proper City authorities.
  - G. Exhausts: The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor boats, or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
  - H. Defect in Vehicle or Load: The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise.
  - I. Loading, Unloading, Opening Boxes: The creation of a loud and excessive noise in connection with loading or unloading any vehicle or ship or the opening and destruction of bales, boxes, crates and containers. The loading or unloading of any sanitation vehicles in any district between the hours of midnight and 7:00 a.m. in such a manner as to be plainly audible in a residential district at a distance of 50 feet from such loading or unloading shall be prima facie evidence of a violation of this Section.
  - J. Construction or Repairing of Buildings: The erection (including excavation), demolition, alteration or repair of any building other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the Building Inspector, which permit may be granted for a period not to exceed three days or less while the emergency continues and which permit may be renewed for periods of three days or less while the emergency continues. If the Building Inspector should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of any building or the excavation of streets and highways within the hours of 6:00 p.m. and 7:00 a.m., and if he shall further determine that loss or inconvenience would result to any party in interest, he may grant permission for such work to be done within the hours of 6:00 p.m. and 7:00 a.m. upon application being made at the time the permit for the work is awarded or during the progress of the work.
  - K. Schools, Courts, Churches, Hospitals: The creation of any excessive noise on streets adjacent to any school, institution of learning, church or court while the same are in use, or adjacent to any hospital which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such streets indicating that the same is a school, hospital or court street.
  - L. Hawkers and Peddlers: The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.
  - M. Drums: The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale.

- N. Metal Rails, Pillars and Columns, Transportation Thereof: The transportation of rails, pillars, columns of iron, steel or other material over and along streets and other public places upon cars, trays, cars, trucks or in any other manner to loaded as to cause loud noises or as to disturb the peace and quiet of such streets or other public places.
- O. Street Railway Cars, Operation Thereof: The causing, permitting or continuing any excessive, unnecessary and avoidable noise in the operation of a street railway car.
- P. Pile Drivers, Hammers, Etc.: The operation between the hours of 10:00 p.m. and 7:00 a.m. of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other appliance, the use of which is attended by loud or unusual noise.
- Q. Blowers: The operation of any noise creating blower or power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise.
- R. Engine Compression Brakes: It shall be unlawful for the driver of any vehicle other than police or fire emergency vehicles to use, operate or cause to be used or operated, within the City of Portsmouth, any mechanical exhaust device designed to aid in the stopping or braking of said vehicle, in a manner so as to create excessive, loud, unusual or explosive noise from the vehicle. (Adopted 5/15/2006).

**Section 3.404: VIOLATION - MISDEMEANOR**

Any person violating any of the provisions of this Ordinance shall be fined in an amount not exceeding One Thousand (\$1000) Dollars (Amended 1-7-85). Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

**Section 3.405: MANNER OF ENFORCEMENT**

Violations of this Ordinance shall be prosecuted in the same manner as other violations of the Ordinances of the City of Portsmouth. Complaints may be brought by the Portsmouth Police or the Building Inspector of the City of Portsmouth or his agent.

**Section 3.406: ADDITIONAL REMEDY - INJUNCTION**

As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision hereof and which causes discomfort or annoyance to the reasonable persons of normal sensitiveness or which endangers the comfort, repose, health or peace of residents in the area shall be deemed, and is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

**Section 3.407: SEPARABILITY**

It is the intention of the City Council that each separate provision of this Ordinance shall be deemed independent of all other provisions herein and it is further the intention of the City Council that if any provision of this Ordinance be declared to be invalid, all other provisions thereof shall remain valid and enforceable.

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**ARTICLE V: LEAD PAINT POISONING PREVENTION AND CONTROL**

**Section 3.501:**

The provisions of the N.H. RSA, Chapter 130(A) are hereby adopted by the City of Portsmouth.

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## **ARTICLE VI: ADULT ORIENTED ESTABLISHMENTS**

### **Section 3.601: Findings and Purpose**

The City Council of the City of Portsmouth finds:

- A. That there are a number of "adult oriented establishments" located in the City which require special supervision from the City's public safety agencies in order to protect and preserve the health and welfare of the patrons of such establishments, as well as the health, safety and welfare of the citizens of the City;
- B. Statistics and studies performed by a substantial number of cities and towns in the United States indicate that:
  - 1. Large numbers of persons, primarily male, frequent such "adult oriented establishments", especially those which provide closed booths, cubicles, studios and rooms for the private viewing of so-called "adult" motion pictures and/or video tapes and/or live entertainment;
  - 2. Such closed booths, cubicles, studios and rooms have been used by patrons, clients or customers of such "adult oriented establishments" for the purpose of engaging in certain sexual acts;
  - 3. Male and female prostitutes have been known to frequent such establishments in order to provide sex for hire to the patrons, clients or customers of such establishments within such booths, cubicles and rooms;
  - 4. Doors, curtains, blinds and/or other closures installed in or on the entrances and/or exits of such booths, cubicles, studios and rooms which are closed while such booths, cubicles, studios and rooms are in use encourage patrons using such booths, cubicles, studios and rooms to engage in sexual acts therein with prostitutes and/or with other members of the same sex, thereby promoting and encouraging prostitution and the commission of sexual acts which cause blood, semen and urine to be deposited on the floors and/or walls of such booths, cubicles, studios and rooms, which deposits could prove detrimental to the health and safety of other persons who may come into contact with such deposits; and
  - 5. The reasonable regulation and supervision of such "adult oriented establishments" tends to discourage such sexual acts and prostitution, and thereby promotes the health, safety and welfare of the patrons, clients and customers of such establishments.
- C. The continued unregulated operation of adult oriented establishments including, without limitation, those specifically cited at Paragraph A hereof, is and would be detrimental to the general welfare, health and safety of the citizens of Portsmouth;

- D. It is not the intent of the Council, in enacting this ordinance, to deny to any person rights to speech protected by the United States and/or State Constitutions, nor is it the intent of the Council to impose any additional limitations or restrictions on the contents of any communicative materials, including sexually oriented films, video-tapes, books and/or other materials. Further, by enacting this Ordinance, the Council does not intend to deny or restrict the rights of any adult to obtain and/or view any sexually oriented materials protected by the United States and/or State Constitutions, nor does it intend to restrict or deny any constitutionally protected rights that distributors or exhibitors of such sexually oriented materials may have to sell, distribute or exhibit such materials.

### **Section 3.602: Definitions**

For the purpose of this Ordinance, the words and phrases used herein shall have the following meanings, unless otherwise clearly indicated by the context:

- A. "Adult-oriented Establishment", shall include, without limitation, "adult bookstores", "adult motion picture theaters", "adult mini-motion picture theaters" and further means any premises to which the public, patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, studios, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect. An "adult-oriented establishment" further includes, without limitation, any "adult entertainment studio" or any premises that are physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio, or any other term of like import.
- B. "Adult Bookstore" means an establishment having a substantial or significant portion of its stock and trade in books, films, video cassettes, or magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below, and in conjunction therewith has facilities for the presentation of adult entertainment, as defined below, and including adult-oriented films, movies or live entertainment, for observation by patrons therein.
- C. "Adult Motion Picture Theater" means an enclosed building with a capacity of fifty (50) or more persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas", as defined below, for observation by patrons therein.
- D. "Adult Mini-Motion Picture Theater" means an enclosed building with a capacity of less than fifty (50) persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas", as defined below, for observation by patrons therein.

- E. "Common Areas" as used in Section 3.603 (b) means an adjacent public room or rooms, so that the area inside a booth is visible to persons in the adjacent public room. "Common areas" shall not be construed to mean a hallway or passageway. (Adopted 5/2/94)
- F. "Council" means the City Council of the City of Portsmouth, New Hampshire.
- G. "Employee" means any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of an adult-oriented establishment.
- H. "Entertainer" means any person who provides entertainment within an adult-oriented establishment.
- I. "Adult Entertainer" means any exhibition of any adult-oriented motion pictures, live performance, display or dance or any type which has as a significant or substantial portion of such performance any actual or simulated performance of "specified sexual activities" or exhibition and viewing of "specified anatomical areas", removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal services offered customers.
- J. "Minor" shall be deemed to be a person under the age of eighteen (18) years.
- K. "Operator" means any person, partnership or corporation operating, conducting or maintaining an adult-oriented establishment.
- L. "Specified Sexual Activities" means:
1. Human genitals in a state of sexual stimulation or arousal;
  2. Acts of human masturbation, sexual intercourse or sodomy;
  3. Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.
- M. "Specified Anatomical Areas" means:
1. Less than completely and opaquely covered;
    - a. human genitals, pubic region;
    - b. buttocks;
    - c. female breasts below a point immediately above the top of the areola; and
  2. Human male genitals in a discernibly turgid state, even if completely opaquely covered.

- N. "Sexual Activities", as used in this Article, is not intended to include any medical publication or films or bona fide educational publication or films, nor does it include any art or photography publications which devote at least 25 per cent of the lineage of each issue to articles and advertisements dealing with subjects or art or photography. Nor does this definition apply to any news periodical which reports or describes current events and which from time to time, publishes photographs of nude or semi-nude person in connection with the dissemination of the news. Nor does this definition apply to publications or films which describe and report different cultures and which, from time to time publish or show photographs or depictions of nude or semi-nude persons when describing cultures in which nudity or semi-nudity is indigenous to the population.

### **Section 3.603: Requirements for Adult-Oriented Establishments**

- A. No operator or employee of an adult-oriented establishment shall allow or permit any minor to loiter in any part of such establishment, including parking lots immediately adjacent to such establishment used by patrons of such adult-oriented establishment.
- B. Every adult-oriented establishment doing business in the City on and after January 1, 1994 shall be well lighted at all times and be physically arranged in such a manner that the entire interior portion of the booths, cubicles, rooms or stalls, wherein adult entertainment is provided, shall be clearly visible from the common areas of the premises. Visibility into such booths, cubicles, rooms or stalls shall not be blocked or obscured by doors, curtains, partitions, drapes, or any other obstruction whatsoever. It shall be unlawful to install enclosed booths, cubicles, rooms or stalls within adult-oriented establishments for whatever purpose, but especially for the purpose of providing for the secluded viewing of adult-oriented motion pictures, or other types of adult-oriented entertainment.
- C. On and after January 1, 1994, operator of each adult-oriented establishment shall be responsible for and shall provide that any room or other area used for the purpose of viewing adult-oriented motion pictures or other types of live entertainment shall be well lighted and readily accessible at all times and shall be continuously open to view in its entirety. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) foot-candle as measured at the floor level. It shall be the duty of the operator and its agents to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- D. No apertures or openings of any kind shall be allowed to exist between any two booths, cubicles, rooms or stalls used for the purpose of viewing adult-oriented motion pictures or other types of adult entertainment.

- E. Every act or omission by an employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator if such act of omission occurs either with the authorization, knowledge or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.
- F. An operator shall be responsible for the conduct of all employees while on the licensed premises, and any act or omission of any employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator for purpose of determining whether the operator shall be subject to the penalties imposed by this Ordinance.
- G. All adult-oriented establishments shall be open to inspection at all reasonable times by the Portsmouth Police Department, Inspectors employed by the City, or such other persons as the Council may designate.

**Section 3.604: Penalties and Prosecution**

- A. Any person, partnership or corporation who is found to have violated this Ordinance shall be fined a definite sum not exceeding One Thousand (\$1,000) Dollars for each such violation.
- B. Each violation of this Ordinance shall be considered a separate offense, and any violation continuing more than one hour of time shall be considered a separate offense for each hour of violation.

**Section 3.605: Savings Clause**

Should any court of competent jurisdiction declare any section, clause or provision of this Ordinance to be unconstitutional, such decision shall affect only such section. Clause or provision so declared unconstitutional, and shall not affect any other section, clause or provision of this Ordinance. (Adopted 10/4/93)

## **ARTICLE VII: DRUG-FREE ZONES**

### **Section 3.701: Purpose**

The purpose of this Ordinance is to establish certain drug-free zones in the City of Portsmouth, pursuant to the authority and terms of New Hampshire RSA 47:17, XVII.

### **Section 3.702: Establishment**

Any area inclusive of the Portsmouth Housing Authority properties known as Gosling Meadows and Wamisett Place and within one thousand (1,000) feet of such Portsmouth Housing Authority properties in the City of Portsmouth, is hereby established as a Drug-Free Zone.

### **Section 3.703: Delineation of Drug-Free Zones**

In accordance with New Hampshire RSA 47:17, XVII, the Drug-Free Zones established by this Ordinance shall be delineated and published on a map clearly indicating the boundaries of the Zone, which shall be posted in a prominent place in the Portsmouth District Court, the Portsmouth Police Department and on the affected Portsmouth Housing Authority properties. The Zone shall also be marked by signs posted in one or more prominent places in or near the affected Portsmouth Housing Authority properties, which indicated that the posted area is a Drug-Free Zone extending to one thousand (1,000) feet surrounding such properties and which warn that a person who violates RSA 318-B, the Controlled Drug Act, within the Zone, shall be subjected to severe criminal penalties under that statute and an additional possible penalty of up to \$1,000.00 under this Ordinance.

### **Section 3.704: Violations and Penalties**

Pursuant to the provisions of New Hampshire RSA 47:17, XVII and this Ordinance, any person convicted of a crime under New Hampshire RSA 318-B in a drug-free zone, in addition to any penalties imposed by the Courts under RSA 318-B, shall be subject to a penalty of up to one thousand (\$1,000.00) dollars.

## **ARTICLE VIII: MOSQUITO PREVENTION CONTROL**

### **Section 3.801: Purpose**

This ordinance shall be to protect the public health, safety and general welfare of person in the City and to prevent the spread of disease from mosquito transmission by preventing the development of mosquito larvae in the following:

- A. Pool Water that is not maintained properly
- B. Water that accumulates in tires
- C. Accumulation of water in or upon any premises, improved or vacant, or on any open lot or alley, any lumber, boxes, barrels, bottles, cans, glass or rubbish of any kind, unless the same is kept in approved covered receptacles.

### **Section 3.802: Pools**

#### **A. PROPER POOL MAINTENANCE**

Pools located within the City shall be properly maintained to prevent the existence or presence of any water in which mosquito larvae may mature and grow or exist.

#### **B. POOL COVERS**

Any pool cover must be maintained in a way as to prevent the collection of stagnant water.

### **Section 3.803: Tires**

#### **A. PROPER STORAGE OF TIRES**

Tires shall be stored in a totally enclosed structure or covered to prevent the existence or presence of any water in which mosquito larvae may mature and grow or exist. If stored outside, tires must be stored and covered in a manner to prevent standing water.

#### **B. UNUSABLE TIRES**

Tires shall be disposed of in a manner to prevent the collection of stagnant rainwater in said tires.

**Section 3.804: General Regulations**

**A. COLLECTION OF WATER**

No person shall have, keep, maintain, cause or permit any collection of standing or flowing water in which mosquitoes breed or are likely to breed, unless such collection of water is treated or maintained effectually so as to prevent such breeding.

**Section 3.805: Notification**

A written notice of the violation shall be issued to the owner of any property found by the City to be in violation of this ordinance and shall include the following:

- A. The location of the property.
- B. The notice shall indicate any and all violation(s), indicate alternative techniques or practices to correct the violation(s) must be given and the necessary methods to be employed in the correction.
- C. A time limit within which to correct the violation(s).

**Section 3.806: Penalties**

Any person or person violating any act or provision of this ordinance shall be fined not more than \$100 for each offense unless mandated correction is completed within the time period contained in the notification.

**Section 3.807: Injunction**

Notwithstanding any permissible provision contained herein, the City Attorney is hereby authorized to pursue injunctive proceedings in a Court of competent jurisdiction to protect the public health.

(Article VIII adopted 8/6/2001).

Not an Official Document