

**Chapter 25 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES\***

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**\*Cross reference(s)**--Ordinances dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way in the city saved from repeal, § 1-4(3); ordinances establishing or prescribing grades in the city saved from repeal, § 1-4(6); dogs running at large prohibited, § 5-17; buildings and building regulations, Ch. 6; cemeteries, Ch. 7; land use, Ch. 14; loitering, § 17-1; parks, recreation and public buildings, Ch. 18; peddlers and solicitors, Ch. 19; farmers markets, Ch. 21; sewers, Ch. 24; broadband communications network, Ch. 27; traffic and motor vehicles, Ch. 28; vehicles for hire, Ch. 30.

**State law reference(s)**--Highways generally, 23 M.R.S.A § 1 et seq.; local highway law, 23 M.R.S.A § 2701 et seq.  
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**ARTICLE I. IN GENERAL**

Sec. 25-1. Barbed wire prohibited.

No fence of barbed wire, or of which barbed wire is a part, shall be erected or maintained along the line of any such streets, ways, or public places in the city without a revocable permit issued by the building inspector therefor. The city council may provide by order for a reasonable fee for such permit. No permit shall be issued unless the building inspector determines that such barbed wire will be erected and maintained in such a way as to adequately protect users of such streets, ways and public places.

(Code 1968, § 703.8; Ord. No. 118-82, 8-2-82)

Sec. 25-2. Excavations to be fenced.

The owner, lessee or occupant of property adjoining any street, way or public place in the city shall provide and maintain a sufficient fence for the protection of the public upon or near the line of the street, way or public place in the event an excavation exists on the property which is deemed by the chief of police or the public works authority to be a hazard to the public upon written notice to do so from the chief of police or public works authority.

(Code 1968, § 703.9)

- Sec. 25-3. Reserved.
- Sec. 25-4. Reserved.
- Sec. 25-5. Reserved.
- Sec. 25-6. Reserved.
- Sec. 25-7. Reserved.
- Sec. 25-8. Reserved.
- Sec. 25-9. Reserved.
- Sec. 25-10. Reserved.
- Sec. 25-11. Reserved.
- Sec. 25-12. Reserved.
- Sec. 25-13. Reserved.
- Sec. 25-14. Reserved.
- Sec. 25-15. Reserved.

**ARTICLE II. OBSTRUCTIONS, ENCUMBRANCES, AND AUTHORIZED EVENTS**

DIVISION 1. GENERALLY

**Sec. 25-16. Telephone installations.**

The city manager is hereby authorized to contract for and on behalf of the city council and the city for terms not exceeding three (3) years for the placing and maintaining of public pedestal telephones and telephone booths within areas covered by municipal parking ordinances along public ways within compact or built-up sections of the city which are defined in Title 23 of the Maine Revised Statutes Annotated as "a section of the highway where structures are nearer than two hundred (200) feet apart for a distance of one-quarter of a mile," provided that telephone booths so located shall be at least four (4) feet from any curb. Such

contract shall provide that the city manager with the recommendation of the traffic engineer and with the prior written approval of abutting property owners shall issue a revocable permit for the specific locations along the ways at which such pedestal telephones or telephone booths may be located, when in his or her sole and exclusive judgment such locations are deemed feasible and safe and do not constitute an obstruction in the public way, and all such installations made under duly issued permits shall not be deemed defects in such public ways. Such contract shall further provide that such permits shall be revocable at the pleasure of the city manager upon five (5) days' written notice directed to the permit holder to remove or relocate the installation and any installation not removed or relocated within the five (5) day period shall be considered a defect in the public way and shall be removed by the city without further notice and without any liability whatsoever to the holder of the permit. Such contract shall contain such further terms and conditions as shall be deemed by the city manager to be in the best interests of the city, including the amount to be received by the city as a consideration for such permit, and all revenues so received shall be credited to the general fund of the city.

(Code 1968, § 703.14)

**Sec. 25-17. Selling and other prohibited activity; exceptions.**

(a) No person shall be or remain in or on any of the streets, ways, or public places of the city for the purpose of the sale of any article or for the exercise of any other business or calling, or event, except that for which a license has been duly issued in accordance with the provisions of article II of chapter 19, section 11-35.5, division 2 of this article, or, in relation to events, chapter 18, sections 18-40 to 18-50.

This section shall not apply to street artists who are working or selling on sidewalks or in public places other than city streets or to individuals who set up a table and chairs in compliance with Chapter 19, Section 24, paragraph (a)(1), (2), (5) to distribute political literature or gather signature on petitions.

(Code 1968, § 703.4; Ord. No. 366-77, § 1, 7-6-77; Ord. No. 318-93, § 3, 6-9-93; Ord. No. 145-96, § 1, 1-17-96; Ord. No. 147-04/05, 2-23-05; Ord. No. 57-05/06, 9-19-05; Ord. No. 266-12/13, 7-15-13; Ord. 111-15/16 repealed 25-17(b) 11-16-2015)

**Sec. 25-18. Ball playing.**

Ball playing shall be permitted on streets only in accordance with all of the following regulations:

- (a) Ball playing shall be limited to local streets, as defined below, and shall be prohibited on all other streets.
- (b) Ball players shall be required to yield the right-of-way to vehicular traffic.
- (c) No permanent structures shall be located in the right-of-way for the purposes of any type of ball playing. Temporary structures may be utilized, provided that they do not impede vehicular movement and that they have reflectors or reflective tape placed upon them. Any temporary structure for the purpose of ball playing shall be immediately removed upon the order of the police department or the public works authority, and shall be removed from the right-of-way, without prior order, during any snowstorm or other type of storm that impacts use of the street. For purposes of this section, a temporary structure shall be one that does not have a concrete foundation or any other type of foundation that adheres to or requires attachment to a roadway, sidewalk, or esplanade area. A temporary foundation is one that consists of sand, water, or some other type of weight system directly attached to the structure. The owner of a temporary structure shall provide to the police department and the public works authority a written statement identifying the owners of the structure, a telephone number at which they can be reached in the event of a problem with the structure, the street and mailing address of the owners, and the approximate street location of the temporary structure.

For purposes of this section, a local street is one that:

- 1. Is located in a residential zone;
- 2. Is not part of a bus route;
- 3. Is not more than two (2) traffic lanes in width;
- 4. Has a speed limit of twenty-five (25) miles per hour or less.

(Code 1968, § 703.5; Ord. No. 38-91, 7-1-91; Ord. No. 131-98, § 1, 10-19-98; Ord No. 34-07/08, 8-20-07)

- Sec. 25-19. Reserved.**
- Sec. 25-20. Reserved.**
- Sec. 25-21. Reserved.**
- Sec. 25-22. Reserved.**
- Sec. 25-23. Reserved.**
- Sec. 25-24. Reserved.**
- Sec. 25-25. Reserved.**

DIVISION 2. PERMIT

**Sec. 25-26. Required.**

(a) No person shall place or cause to be placed in or on, or shall suspend over any street, way or public place in the city any article or thing whatsoever, including but not limited to portable sidewalk signs, except under a duly authorized permit therefor issued pursuant to the provisions of this division.

Except during declared festivals or other approved events that require a sidewalk occupancy permit under this section, this section shall not apply to a table or other structures used by (1) street artists to create or sell works of art or (2) individuals who set up a table and/or chairs in compliance with chapter 19, article II, sec. 19-24 subparagraph (a)(1), (2), (5) and (6), to engage in an activity other than commercial speech, protected by the first amendment to the United States and Maine Constitution including but not limited to the distribution of political or religious literature, or the gatherings of signatures on petitions.

(b) No person shall expand a food service establishment to the outside on any street, way or public place in the city except under a duly authorized outdoor dining permit issued pursuant to the provisions of this division.

(c) Notwithstanding this section, business owners may place benches or flower pots on city sidewalks without obtaining a permit, provided that the benches or flower pots are located directly in front of the business, that a minimum of four feet of open sidewalk remains for the free passage of pedestrians, and that such benches and flower pots are only permitted on the sidewalk during business hours.

(Code 1968, § 703.7; Ord. No. 370-78, 7-5-78; Ord. No. 353-84, § 1, 4-23-84; Ord. No. 57-05/06, 9-19-05; Ord. No. 93-07/08, 3-3-08; Ord. No. 26-11/12, 8-15-11)

**Sec. 25-27. Fees and fines.**

(a) The following fees are hereby established for the issuance of a revocable street and sidewalk occupancy permit:

- (1) Objects other than portable signs, including but not limited to tables, chairs, barricades and bollards, ninety-two dollars (\$92.00) for one (1) fiscal year or any portion thereof;
- (2) Portable signs, twenty-five dollars (\$25.00) plus twenty cents (\$0.20) per square foot of signage. Square footage is calculated pursuant to section 14-369(b) of the land use ordinance. Permits remain valid until there is a change:
  - a. In the sign dimensions; or
  - b. In the use, lessee or ownership of the business causing a change in the business name, design or dimensions.
- (3) Vehicles, equipment, or construction materials, as follows:
  - a. The Parking Space Permit shall be \$30.00 per day or any portion thereof;
  - b. The Sidewalk Permit shall be \$25.00 per day or any portion thereof;
  - c. The Single Lane Closure Permit shall be \$100.00 per day or any portion thereof; and
  - d. the Street Closure Permit shall be \$250.00 per day or any portion thereof.
- (4) Use of city property (including but not limited to festivals, events, promotions, demonstrations, parades, marches, road races, walkathons, fundraisers, press conferences, rallies, protests, sampling, poll taking, banners and public displays), fee as provided by annual order of the city council;
- (5) Use of streets, ways or public places by street goods vendors as defined in Section 19-16 for purposes of

vending, thirty-eight dollars (\$38.00) per day or any portion thereof;

- (6) Permit to Portland's Downtown District or similar organization/business to hold events on not less than twenty-four (24) hours' notice to the city manager, within area or areas designated in permit, one hundred dollars (\$100.00) per fiscal year or any portion thereof;
- (7) Location of dumpster on city-owned property, except as part of a street festival or other special event declared by the city council, two hundred twenty-five dollars (\$225.00) per fiscal year or any portion thereof.
- (8) Operation of a bike sharing system (as defined in 25-31 below,) according to the following fee schedule:

Station-less Systems (or Hybrid systems not meeting 50% docking point threshold):

Initial Annual Permit Fee, per operator per calendar year:

Up to 250 bicycles \$1,500

251 to 500 bicycles \$2,500

More than 500 bicycles \$500 per every additional 250 bicycles or fraction thereof

Annual Renewal Fee (Station-less Systems), per operator per calendar year:

Up to 250 bicycles \$1,000

251 to 500 bicycles \$2,000

More than 500 bicycles \$ 250 per every additional 250 bicycles or fraction thereof

Bicycle Parking Mitigation: To help mitigate the increased bicycle parking demands of a Station-less Bike Sharing System, the operator will either: 1) provide and have installed within the public right-of-way bicycle parking sufficient to accommodate the

equivalent of 10% of the number of bicycles deployed in the operator's fleet with approved bicycle racks in approved locations or 2) make a financial contribution to the Sustainable Transportation Fund for the purchase and installation by the City of bicycle parking sufficient to accommodate the equivalent to 10% of the number of bicycles deployed in the operator's fleet.

Station-based/Hybrid Systems (Station-based systems must provide at least 50% as many docking points as bikes):

Initial Annual Permit Fee, per operator per calendar year:

Up to 250 bicycles \$500

251 to 500 bicycles \$1,000

More than 500 bicycles \$250 per every additional 250 bicycles or fraction thereof

Plus \$50 per approved docking station.

Annual Renewal Fee, per operator per calendar year:

Up to 250 bicycles \$500

251 to 500 bicycles \$1,000

More than 500 bicycles \$250 per every additional 250 bicycles or fraction thereof

Plus \$25 per approved docking station.

Within one year following the issuance of the first permit for a bike sharing system, the fee schedule above is to be re-assessed.

Should the number of bicycles be increased during any calendar year requiring additional fees, the difference in permit fees paid to date will be payable and a revised permit application is to be filed before their deployment. A reduction in bicycles in any one calendar year will not trigger a refund of permit fees paid.



(b) The following fees are hereby established for the issuance of a revocable outdoor dining permit:

- (1) Outdoor dining on sidewalks or public ways other than dedicated City parking spaces, eighty-four dollars (\$84.00) plus two dollars (\$2.00) per square foot of dining area per fiscal year or any portion thereof.
- (2) Outdoor dining in parks, eighty-four dollars (\$84.00) plus six dollars and thirty cents (\$6.30) per square foot of dining area per fiscal year or any portion thereof. In no instance shall the total square footage of dining area equal more than 10% of park space, unless the applicant receives a waiver from the director of parks and recreation or his or her designee. For the purposes of this section, the area abutting the buildings which border Monument Square and extending ten (10) feet from the façade of said buildings shall be considered a sidewalk. The ten (10) foot area shall be measured from that portion of the façade that protrudes furthest into the sidewalk. The area beyond the ten (10) foot sidewalk shall be considered park space.
- (3) Outdoor dining in one dedicated City parking space, \$3,000 for a full season (April 15-October 31).
- (4) Outdoor dining in two consecutive dedicated City parking spaces, \$5,000 for a full season (April 15-October 31).

(c) The following violation fines are hereby established for the failure to obtain a street occupancy permit or follow an approved management plan for vehicle traffic and/or pedestrian detours:

- (1) \$125.00 per day for failure to obtain a revocable street and sidewalk occupancy permit; and
- (2) \$100.00 a day for failure to follow an approved management plan for vehicle traffic and/or pedestrian detours

(Code 1968, § 703.7A; Ord. No. 472-71, § 1, 9-20-71; Ord. No. 409-75, 7-21-75; Ord. No. 379-79, 12-3-79; Ord. No. 353-84, § 2, 4-23-84; Ord. No. 592-84, § 1, 5-21-84; Ord. No. 145-96, § 2, 1-17-96; Ord. No. 63-98, 8-3-98; Ord. No. 76-98, § 1, 8-17-98; Ord. No. 225-00, 5-15-00; Ord. No. 279-01, 5-21-01; Ord. No. 223-01/02, § 3, 5-6-02; Ord. No. 250-04/05, 5-16-05; Ord. No. 246-05/06, 5-15-06; Ord. No. 93-07/08, 3-3-08; Ord. No. 226, 5-17-10; Ord. 247-14/15, 6-

24-2015; Ord. No. 189-17/18, 4-18-2018; Ord. No. 218-17/18, 7-1-2018; Ord. No. 217-17/18), 7-1-2018; Ord. No. 193-18/19, 4-8-2019; Ord. No. 244-18/19, 5-20-2019; Ord. No. 79-20/21, 9-21-2020; Ord. No. 46-21/22, 9-20-2021)

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**Editor's note**--The boundaries for the Portland Downtown District (formerly known as the Downtown Improvement District and Portland's Downtown District) were created by Order Number 306-92, passed on March 16, 1992, amended by Order Number 185-95, passed on February 22, 1995 and amended by Order Number 158-04, passed on March 1, 2004 with an effective date of July 1, 2004. The boundaries were expanded by Order 242-17/18, passed on June 18, 2018.

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**Sec. 25-28. Issuance after approval by city manager; regulations.**

The city manager or his or her designee is hereby authorized to issue revocable permits for the location, protection, maintenance and use of structures, trees, and other installations placed in, on, above, or beneath public ways or other property, and for outdoor dining on any street, way or public place upon receipt of proof of insurance in a form and in an amount satisfactory to the city. The director of parks and recreation or his or her designee is hereby authorized to issue revocable permits for outdoor dining in city parks. The city manager is also hereby authorized to promulgate from time to time such reasonable rules and regulations governing the design, construction, size and location of portable sidewalk signs as may be consistent with this division and in furtherance of the public interest, such rules and regulations to be submitted to the city council for approval. The city manager is further authorized to promulgate such other regulations as may be required for the location of other installations or structures in or use of the public ways, and for outdoor dining on streets, ways or other public places.

(Code 1968, § 703.7A; Ord. No. 472-71, § 1, 9-20-71; Ord. No. 409-75, 7-21-75; Ord. No. 379-79, 12-3-79; Ord. No. 353-84, § 3, 4-23-84; Ord. No. 145-96, § 3, 1-17-96; Ord. No. 93-07/08 3-3-08)

**Sec. 25-29. Content.**

The permit issued under this division shall contain such terms, conditions and restrictions as the city manager shall require.

(Code 1968, § 703.7A; Ord. No. 472-71, § 1, 9-20-71; Ord. No. 409-75, 7-21-75; Ord. No. 379-79, 12-3-79)

**Sec. 25-30. Revocation; removal of installation.**

The permit issued under this division shall be revocable by the city manager by written notice to the holder of such permit.

Any such structure, tree or other installation, or furniture utilized for outdoor dining not removed or relocated, or otherwise disposed of, in the manner and within the time specified in the notice shall be considered a defect in the public way or other public property and may be removed by the city without further notice and without any liability on the city's part whatsoever to the holder of the permit, his or her successors and assigns, and in the event the city shall be required to remove such installations, the costs of removal shall be borne by the permit holder.

(Code 1968, § 703.7A; Ord. No. 472-71, § 1, 9-20-71; Ord. No. 409-75, 7-21-75; Ord. No. 379-79, 12-3-79; Ord. No. 93-07/08, 3-3-08)

### **Sec. 25-31. Bike Sharing Systems.**

(a) A "bike sharing system" is defined as a system of bicycles, electric bicycles, helmets, or similar bike-share-related merchandise that is made available for rent for general public use, generally for short periods of time, and may include docks or stations for storing bicycles when not in use.

(b) Bike sharing systems require annual revocable street occupancy permits pursuant to this section and section 25-27(a) (8), above.

(c) The City Manager or her or his designee is hereby authorized to develop regulations to further delineate reasonable rules for operation of a bike sharing system, including limits on the number of bikes (including per operator), where bikes and other bike-share-related merchandise may be stored or parked on public ways, requirements for insurance, indemnity and bonding, the conduct and responsiveness of bike share operators, requirements for data sharing and reporting, restrictions on advertising and signage, and other relevant factors to ensure safe and effective operation of such a system. The rules will be submitted to the City's Sustainability & Transportation Committee for review and comment prior to adoption and, following adoption, shall undergo an annual review by the Committee of the rules' effectiveness.

(d) The City Manager may set a cap on the number of bike sharing systems that may operate in the city at one time. If such a limit is set, the City shall determine operators through a competitive bidding process.

(e) In addition to the street occupancy permit fees outlined in 25-27 above, in the event that any installation, reinstallation, relocation, repair or maintenance of any existing or future improvements owned by, constructed by or on behalf of the City is made costlier by virtue of a bike sharing system, the operator of that bike sharing system shall pay to the City an amount equal to such additional cost as reasonably determined by the City Manager or the City Manager's duly authorized representatives.

(f) It shall be considered a violation of the City Code to park, leave standing, or leave unattended a bicycle that is part of a bike sharing system, as defined in Sect 25-31(a), on any sidewalk, street, or public right-of-way except as authorized under a valid street occupancy permit. Bicycles parked, left standing, or left unattended constitute a public nuisance subject to abatement and removal by duly designated authorities by the City Manager. Failure to obtain a street occupancy permit as required by this section, parking or leaving unattended a bicycle in an unauthorized location, and any other violations of this Section or the Rules and Regulations governing bike sharing systems shall be subject to the fines outlined in Section 1-15 of the City Code.

(Ord. No. 189-17/18, 4-18-2018)

- Sec. 25-32. Reserved.
- Sec. 25-33. Reserved.
- Sec. 25-34. Reserved.
- Sec. 25-35. Reserved.
- Sec. 25-36. Reserved.
- Sec. 25-37. Reserved.
- Sec. 25-38. Reserved.
- Sec. 25-39. Reserved.
- Sec. 25-40. Reserved.
- Sec. 25-41. Reserved.
- Sec. 25-42. Reserved.
- Sec. 25-43. Reserved.
- Sec. 25-44. Reserved.
- Sec. 25-45. Reserved.

### ARTICLE III. STREET ACCEPTANCES

Sec. 25-46. Compliance.

No street or way shall be laid out and accepted as a public street or way by the city except in accordance with the provisions of this article.

(Code 1968, § 707.1)

**Sec. 25-47. Acceptance of streets and ways dedicated for public travel prior to July 7, 1948.**

A street or way dedicated for public travel prior to July 7, 1948, shall be laid out and accepted as a public street or way by the city only upon the following conditions:

- (a) *Minimum width.* Such street or way shall have a minimum width of fifty (50) feet unless the owners of property adjoining the street or way shall convey to the city sufficient land to lay out a fifty (50) foot street; provided, however, that the public works authority may permit a lesser width when a fifty (50) foot street is impracticable. Provided further that any such street or way located on any of the islands in Casco Bay, which is not considered to be a collector street in the opinion of the public works authority and the planning board, may have a minimum width of thirty-two (32) feet.
- (b) *Recorded plan.* A plan of the street or way shall have been recorded in the county registry of deeds prior to July 7, 1948.
- (c) *Petition by abutters.* A majority of the abutters upon the street or way shall in writing, on a form to be prescribed by the public works authority, petition the city council to improve the street by grading, curbing, gravelling, macadamizing, paving, or in any other way making a permanent street of the same, or any part thereof; and in said petition shall waive any damages resulting from the laying out and acceptance of said street or way, or any necessary changes in the grade thereof; and shall agree to pay their just proportion of one-third of the cost thereof. For purposes of this article, a majority of the abutters shall mean those abutters who own more than fifty (50) percent of the frontage, both in front-feet and in assessed value.

- (d) *Assessment of costs.* When the street or way shall have been laid out and accepted as a public street or way, and such improvements have been made, one-third of the cost thereof shall be assessed on the property adjacent to and bounded on the street or way in the manner, and with the same right of appeal, provided in 23 M.R.S.A §§ 3601--3605.

(Code 1968, § 707.2)

**Cross reference (s)**--Uniform procedure for collecting assessments, § 1-16.

**Sec. 25-48. Acceptance of streets and ways not previously dedicated for public travel.**

A street or way constructed on private lands by the owner thereof, and a street or way not dedicated for public travel prior to July 7, 1948, shall be laid out and accepted as a public street or way by the city only upon the following conditions:

- (a) *Deed from owners.* The owners shall give the city a deed to the property within the boundaries of the street.
- (b) *Minimum width.* The street or way shall have a minimum width of fifty (50) feet. However, the street or way may have a lesser width if the plan thereof, showing such lesser width, has been approved by the planning board and the public works authority; provided that any such street or way located on any of the islands in Casco Bay, which is not considered to be a collector street in the opinion of the public works authority and the planning board, may have a minimum width of thirty-two (32) feet. In such cases, all other provisions of this article shall apply except that not more than sixteen (16) feet of such street or way shall be required to be developed for travel and only six (6) inches of gravel shall be required, but the entire width of such street or way shall be cleared of all stumps, roots, brush, perishable material and trees not intended for preservation as specified by the public works authority. There shall be no exceptions to the provisions of this article in the case of collector streets as determined as set forth above.
- (c) *Recorded plan.* A plan of the street or way shall be recorded in the county registry of deeds.

- (d) *Petition.* A petition for the laying out and acceptance of the street or way shall be submitted to the city council upon a form to be prescribed by the public works authority. The petition shall be accompanied by a plan, plot plan, profile and cross-section of the street or way as follows:
1. A plan and a plot plan drawn, when practicable, to a scale of forty (40) feet to one (1) inch, and to be on one (1) or more sheets of paper not exceeding twenty-four (24) inches by thirty-three (33) inches in size. The plot plan shall show the north point, the area of all lots, the length of all lot lines, the location and ownership of all adjoining subdivisions and adjacent acreage, passageways, street lines, buildings, boundary monuments, waterways, topography and natural drainage courses with contours at not greater than six (6) foot intervals, all angles necessary for the plotting of the street and lots and their reproduction on the ground, the distance to the nearest established street line, and any buildings abutting on the street or way, together with the stations of their side lines.
  2. A profile of the street or way drawn to a longitudinal scale of forty (40) feet to one (1) inch and a vertical scale of four (4) feet to one (1) inch. The profile shall show the profile of the side lines and center lines of the street or way and the proposed grades thereof. Any buildings abutting on the street or way shall be shown on the profile.
  3. A cross-section of the street or way drawn to a horizontal scale of five (5) feet to one (1) inch and a vertical scale of one (1) foot to one (1) inch.
  4. The location and size of the proposed water mains in accordance with this article.
- (e) *Specifications.* The street or way shall be previously constructed in accordance with the following specifications:

1. *Residential areas.* The roadway shall be built with a minimum thickness of fifteen (15) inches of road gravel, and three (3) inches of aggregate base gravel, both of which shall be satisfactory to the public works authority. The roadway shall be surfaced with two (2) inches of hot bituminous concrete properly prepared and laid in two (2) courses of one (1) inch each, in accordance with specifications of the public works authority.

The sidewalks shall be built of gravel six (6) inches in depth and the driveways, including that part crossing the sidewalk, shall be built of gravel ten (10) inches in depth; both to be covered by a two (2) inch top of hot bituminous concrete, properly prepared and laid in two (2) courses of one (1) inch each, in accordance with the standard specifications of the public works authority. Curbing shall be provided as required in article IV of chapter 14.

The street or way shall be constructed by the following method: It shall be cleared of all stumps, roots, brush, perishable material and all trees not intended for preservation. All loam, loamy material and clay shall be removed from the street or way to the depths specified by the public works authority. The street shall then be graded to a subgrade of not less than twenty (20) inches in the roadway location and not less than twelve (12) inches in the driveway areas, below and parallel to the finished grade as shown on the plans, profiles and cross-section of the street or way. The subgrade shall be carefully shaped and thoroughly compacted before the gravel is placed. When a minimum length of three hundred (300) feet, or the entire length of street if less than three hundred (300) feet, has been excavated to subgrade and this subgrade properly prepared for the gravel, the public works authority shall be notified and after inspection his or her approval obtained for placing the gravel.

The gravel shall then be placed and compacted in layers of not more than six (6) inches in the roadway and driveway area and not more than eight



(8) inches in the sidewalk areas. Before the roadway is paved, and the bituminous concrete laid in the sidewalk and driveway areas, the work shall again be inspected and approved by the public works authority. Suitable forms or headers must be used for the construction of the bituminous top to insure proper alignment and grade.

2. *Industrial areas.* Roadways shall be paved with a high type pavement in accordance with the standard specifications of the public works authority.

(f) *Engineering work.* All engineering work, including the setting of grade stakes, necessary for the construction of the street and sidewalks, shall be performed by the developer at his or her expense.

(g) *Sewers and drains.* Any sewers and appurtenances, drains, including house drains and catch basins, which are to be built in the street or sidewalks, and all underground utilities and their respective services, shall be constructed before any road material is placed, except for house connections to serve lots where no construction has begun prior to the placing of such road material. In any event a minimum of seventy-five (75) percent of all lots on any one (1) street within the section of the subdivision being constructed shall have the house connections completed within the street right-of-way before the aggregate base course is placed thereon. If a hardship is created by strict compliance with the above requirements, request for a variance may be made in writing to the public works authority who shall respond in writing to the city council stating approval or disapproval. Whenever it shall be deemed necessary by the public works authority that a sanitary sewer or storm sewer be constructed to serve the street under consideration, such sanitary sewer or storm sewer shall be completed before the gravel or road material is placed thereon. The sewer shall be built by the developer in accordance with one (1) of the following methods:

1. The developer shall cause the sanitary sewers and storm sewers and appurtenances, including catch basins to be built to the specifications of the public works authority and under his or her supervision. Such construction shall be by

competitive bids, duly advertised, and to the satisfaction of the public works authority. When the sewer and an easement therefor have been deeded to the city, the city may make payment to the developer of the cost of any catch basins plus one-third of the total remaining costs thereof, as determined by the public works authority, the city's engineering costs to be included in the total cost and deducted from the city's payment.

2. The developer shall cause the sanitary sewers and storm sewers and appurtenances, including catch basins, to be built to the specifications of the public works authority and under his or her supervision, but without regard to competitive bids. When the street has been accepted, the sewer shall be deeded to the city as a public sewer at no cost to the city.
  3. When the public works authority requires such sewer to be of a larger size than would be needed for the development under consideration, the added cost for the excess size as determined by the public works authority may be paid by the city upon authorization by the city council, provided the sewer is built through competitive bidding, properly advertised, and to the satisfaction of the public works authority.
- (h) *Water main.* A reasonably available water main of at least eight (8) inches in diameter must exist for the use of buildings, residents and occupants of the street to be accepted and the chief of the fire department must, in writing, certify that adequate water service for sufficient fire protection hydrants exists. In the case of a street or way located on the islands in Casco Bay, no water main need be provided when the chief of the fire department and the planning board shall certify in writing that no water supply is reasonably available to serve such street or way. Provided, however, that the city council may accept a street with a water main of less than eight (8) inches in diameter when the chief of the fire department and the planning board, in writing, certify that a water main of less than eight (8) inches in diameter will furnish adequate water service for sufficient fire protection hydrants for the street to be

accepted and any future extension or extensions of the street. It shall be the policy of the city to cause the installation of such hydrants as may be required for fire protection at the same time as the installation of the water main.

(Code 1968, § 707.3; Ord. No. 405A-73, §§ 1--6, 6-18-73)

**Sec. 25-49. Streets and ways required by the general public interest.**

Notwithstanding the provisions of sections 25-45 and 25-46, the city council may, at any time, lay out and accept any street or way in the city, as a public street or way of the city, the cost thereof to be borne by the city, whenever the general public interest so requires.

(Code 1968, § 707.4)

**Sec. 25-50. No street or way to be accepted until after report by planning board and public works authority.**

No street or way shall be laid out and accepted by the city until the planning board and the public works authority shall have made careful investigation thereof and shall have reported to the city council their recommendations with respect thereto.

(Code 1968, § 707.5)

**Sec. 25-51. Improvement of streets which have been accepted but not improved or used for public travel.**

(a) When any person owning property on a street which has been accepted but has not been improved or used for public travel prior to July 7, 1948, shall petition for the improvement of such street, such improvement may be ordered by the city council. The petition shall be in writing, shall be signed by a majority of the abutters on such street, and shall contain a waiver of any damages resulting from the improvement of the street and an agreement to pay their just proportion of one-third of the cost of the improvement.

(b) When the street shall have been improved, one-third of the cost thereof shall be assessed on the property adjacent to and bounded on the street in the manner, and with the same right of appeal, provided in 23 M.R.S.A §§ 3601--3605.

(c) A street shall be deemed, for purposes of this article, to have been improved and used for public travel if at some time in

the past it has been graded to the established grade and surfaced with gravel or with some other type of street surfacing material authorized at the time by the public works authority.  
(Code 1968, § 707.6)

**Sec. 25-52. Improvement of streets required by the public interest.**

Notwithstanding the provisions of section 25-51, the city council may, at any time, order the improvement of streets which have been accepted but not improved or used for public travel, the cost thereof to be borne by the city, whenever the general public interest so requires.  
(Code 1968, § 707.7)

- Sec. 25-53. Reserved.**
- Sec. 25-54. Reserved.**
- Sec. 25-55. Reserved.**
- Sec. 25-56. Reserved.**
- Sec. 25-57. Reserved.**
- Sec. 25-58. Reserved.**
- Sec. 25-59. Reserved.**
- Sec. 25-60. Reserved.**
- Sec. 25-61. Reserved.**
- Sec. 25-62. Reserved.**
- Sec. 25-63. Reserved.**
- Sec. 25-64. Reserved.**
- Sec. 25-65. Reserved.**

**ARTICLE IV. STREET GRADES**

**Sec. 25-66. Base line.**

Mean tide elevation shall be adopted, as a base line from which all levels taken are to be measured, and to which all grades of streets, drains and sewers shall have reference.  
(Code 1968, § 708.1)

**Sec. 25-67. Reserved.**

**Editor's note**--Ord. No. 279-85, § 1, adopted Dec. 2, 1985, repealed § 25-67, relative to the line and grade of streets, which derived from Code 1968, § 708.2.

**Sec. 25-68. Reserved.**

- Sec. 25-69. Reserved.**
- Sec. 25-70. Reserved.**
- Sec. 25-71. Reserved.**
- Sec. 25-72. Reserved.**
- Sec. 25-73. Reserved.**
- Sec. 25-74. Reserved.**
- Sec. 25-75. Reserved.**
- Sec. 25-76. Reserved.**
- Sec. 25-77. Reserved.**
- Sec. 25-78. Reserved.**
- Sec. 25-79. Reserved.**
- Sec. 25-80. Reserved.**

#### **ARTICLE V. STREET NAMES AND NUMBERS**

##### **Sec. 25-81. Street names established.**

The several streets and ways, whether public or private, of the city shall continue to be known by the names previously assigned to them unless and until changed by the city council.  
(Code 1968, § 709.1; Ord. No. 607-82, 5-19-82)

##### **Sec. 25-82. Public works authority to number streets.**

The public works authority shall keep a book, in which the names of the streets and ways shall be alphabetically arranged. He or she shall assign a number for every building, and every lot thereon not exceeding twenty-five (25) feet of land, and a number for every additional twenty (20) feet, or fraction thereof, except that in cases where such streets or ways are compactly built up, he or she shall assign a number for each and every door and to adjoining lots proportionally, with corner lots being numbered on both streets, and he or she shall prepare and keep a skeleton plan of each such street and way showing the numbers and dimensions of all lots thereon in a scale of not less than one (1) inch for every fifty (50) feet.  
(Code 1968, § 709.2; Ord. No. 607-82, 5-19-82)

##### **Sec. 25-83. Numbers to be affixed; renumbered.**

Unless exempted by order of the city council, each owner, occupant or tenant of any building, or portion thereof, fronting on

any such street or way, shall affix or inscribe on such building, or portion thereof, the number assigned thereto in accordance with the plan, and the city council may, whenever it deems it necessary, cause any such street or way to be renumbered. The city manager or his or her designated representative is authorized to enforce the requirements of this article.

(Code 1968, § 709.3; Ord. No. 605-82, 5-19-82)

- Sec. 25-84. Reserved.**
- Sec. 25-85. Reserved.**
- Sec. 25-86. Reserved.**
- Sec. 25-87. Reserved.**
- Sec. 25-88. Reserved.**
- Sec. 25-89. Reserved.**
- Sec. 25-90. Reserved.**
- Sec. 25-91. Reserved.**
- Sec. 25-92. Reserved.**
- Sec. 25-93. Reserved.**
- Sec. 25-94. Reserved.**
- Sec. 25-95. Reserved.**

#### **ARTICLE VI. SIDEWALK AND CURBING CONSTRUCTION AND MAINTENANCE**

##### **Sec. 25-96. Required for nonresidential, two-family or multi-family development; exceptions.**

Where a nonresidential, or two-family or multi-family development requiring site plan approval abuts any accepted street and a sidewalk with granite curbing satisfactory to the public works authority has not already been provided, a sidewalk constructed of bituminous concrete, portland cement concrete, brick or other paving material and granite 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 authority, 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 and to the satisfaction of the public works authority at no cost to the city. In conjunction with major site plan review, the planning board, or with minor site plan review, the planning authority, may waive or modify the requirements contained herein upon a like finding and on the same terms and conditions as set forth in section 14-506(b) of this Code.

(Code 1968, § 705.1; Ord. No. 42-84, § 1, 6-18-84; Ord. No.204-02/03, 5-29-03)

**Sec. 25-97. May be required generally; apportionment of cost.**

(a) Notwithstanding the provisions of section 25-96, the city council may at any time direct the construction of a sidewalk of bituminous concrete, Portland cement concrete, brick or other paving material or granite curbing, or both, along any accepted street in the city. Such sidewalk or curbing shall be constructed by the city and the cost thereof shall be borne by the city.

(b) Such improvements 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 city in the manner provided in sections 25-102 and 25-103. (Code 1968, § 705.2; Ord. No. 30-75, § 1, 1-6-75)

**Sec. 25-98. Reconstruction; apportionment of cost.**

(a) The city 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 city and which has not been accepted as the responsibility of the city. Such sidewalk or curbing shall be reconstructed by the city and the cost thereof shall be borne by the city.

(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 city in the manner provided in sections 25-102 and 25-103. (Code 1968, § 705.3; Ord. No. 30-75, § 2, 1-6-75)

**Sec. 25-99. Waiver or amendment of requirements.**

Except as otherwise provided in section 25-96 or 14-506, the city council may, upon application to it in writing, waive or amend by order the requirements of sidewalks or curbing when it finds that the circumstances in a 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.

(Code 1968, § 705.4; Ord. No. 54-76, § 1, 1-19-76; Ord. No. 42-84, § 2, 6-18-84)

**Sec. 25-100. Substitution of materials.**

The public works authority may permit the substitution of other types of materials for sidewalks or curbing when, in his or

her sole and exclusive judgment, he or she finds such substituted materials to be equal to or better than the materials required herein.

(Code 1968, § 705.5)

**Sec. 25-101. Service ways and curb cuts; sidewalks and curbing not to be removed; exceptions.**

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

(Code 1968, § 705.6)

**Sec. 25-102. Public works authority authorized to perform work; lien.**

The public works authority is authorized in accordance with the provisions of sections 25-96, 25-97 and 25-98, to construct or reconstruct sidewalks or curbing along any accepted street in the city, and the city shall have a lien on that abutting property to which one-half of the expense thereof is properly assessable pursuant to the provisions of sections 25-96, 25-97(b) and 25-98(b).

(Code 1968, § 705.7; Ord. No. 30-75, § 3, 1-6-75)

**Sec. 25-103. Lien procedure.**

The public works authority shall keep an accurate account of the expense of work under this article and shall, as soon as practicable, after the completion thereof, make a return showing the location of each such sidewalk or curbing, its length and width, material of which constructed, cost of construction, and the names of the owners of the abutting property with the amounts properly chargeable against each. Within one (1) year after the completion of such work, the city 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 to be enforced in the manner provided for the collection of sewer assessments in the city, except that no owner shall be assessed for more than two hundred (200) feet in length of sidewalk or curbing on any one (1) street in front of any unimproved lots or parcels of



land.  
(Code 1968, § 705.8)

**Sec. 25-104. Repair and maintenance.**

The public works authority is authorized whenever he or she shall deem it expedient or necessary to repair and maintain at the sole expense of the city sidewalks or curbing previously constructed by the city or constructed under the provisions hereof. The public works authority is further authorized, whenever he or she shall deem it expedient or necessary because of a dangerous or hazardous condition, to make spot repairs at the sole expense of the city on any type of sidewalk, however constructed.  
(Code 1968, § 705.9)

- Sec. 25-105. Reserved.**
- Sec. 25-106. Reserved.**
- Sec. 25-107. Reserved.**
- Sec. 25-108. Reserved.**
- Sec. 25-109. Reserved.**

**Sec. 25-110. Driveways and curb cuts on Eastern Promenade.**

The public works authority shall not permit for a driveway access the cutting of any curb for a distance greater than thirteen (13) feet to provide access for any driveway on the Eastern Promenade between Atlantic Street and North Street. No person shall construct a driveway within the right-of-way of the said Eastern Promenade. Any driveway presently existing within said right-of-way, which exceeds thirteen (13) feet in width at the curb line or ten (10) feet in width interior of the curb line, may be reduced by the public works authority to the respective widths of thirteen (13) feet or less or ten (10) feet or less within the esplanade area and the esplanade restored at the expense of the city.  
(Ord. No. 199-87, 12-21-87; Ord. No. 230-88, 11-28-88)

- Sec. 25-111. Reserved.**
- Sec. 25-112. Reserved.**
- Sec. 25-113. Reserved.**
- Sec. 25-114. Reserved.**
- Sec. 25-115. Reserved.**

**ARTICLE VII. EXCAVATIONS\***

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**\*Editor's note--**Ord. No. 10-97, adopted June 16, 1997, amended this article in its entirety, in effect repealing former art. VII, §§ 25-116--25-143, 25-151--25-160, and enacting similar new provisions as herein set out. Formerly, such provisions derived from §§ 712.1--712.32 of the 1968 Code as amended by the following legislation:

Ord. No.	Section	Date	Ord. No.	Section	Date
201-74	--	4-17-74	635-86	--	6- 2-86
286-74	1	5- 6-74	19-88	1, 2	6-20-88
254-75	--	4-23-75	119-88	--	8-15-88
418-76	1, 2	9- 8-76	184-91	--	12- 2-91
458-76	1--4	9-20-76	185-91	1, 2	12- 2-91
99-78	--	2- 6-78	186-91	--	12- 2-91
458-78	5	9-29-78	187-91	--	12- 2-91
26-81	1--5	6- 3-81	188-91	--	12- 2-91
566-82	--	5-17-82	189-91	1, 2	12- 2-91
87-83	1, 2	7-18-83	190-91	--	12- 2-91
593-84	1, 2	5-7-84	191-91	--	12- 2-91
356-85	1--7	1-21-85	192-91	--	12- 2-91
277-85	--	12- 2-85	76-92	--	8-17-92
278-85	--	12- 2-85			

**State law reference(s)**--Excavations, 23 M.R.S.A. § 3351 et seq.

DIVISION 1. GENERALLY

**Sec. 25-116. Intent and purpose.**

The purpose of this article is the regulation of the use of public rights-of-way in the interest of public safety and convenience, and the operation and protection of public works infrastructure. Excavation and restoration standards are required to preserve the integrity, operational safety, and function of the public right-of-way.

(Ord. No. 10-97, 6-16-97)

**Sec. 25-117. Administration.**

(a) The director of the public works authority shall establish rules and regulations governing public right-of-way excavations and implementing this article.

(b) The rules shall be enacted in the same manner as the rules for solid waste disposal are promulgated, prescribed in section 12-105(b) and (b.1) of this Code, with the exception that the rules will go into effect twenty (20) days after enactment by the director unless stayed by action of the city council. Proposed rules shall be delivered to the council as a communication prior to the enactment.

(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

**Sec. 25-118. Definitions.**

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

*City* shall mean City of Portland and/or its public works authority.

*Dig-Safe* shall be the existing underground facility damage prevention system defined by 23 M.R.S.A. §3360-A as may be amended from time to time, established by the American Public Works Association and the Utilities Location and Coordination Council to provide for safe underground excavation.

*Director* shall mean director of public works and/or

designee.

*Emergency* shall mean any event which may threaten public health or safety, including, but not limited to, damaged or leaking water or gas conduit systems, damaged, plugged, or leaking sewer or storm drain conduit systems, damaged underground electrical and communications facilities, or downed or seriously damaged overhead pole structures.

*Excavation* shall mean any operation in which earth, rock, or other material below the ground is moved or otherwise displaced, by means of power tools, power equipment or explosives and including grading, trenching, digging, ditching, drilling, augering, tunneling, scraping and cable or pipe driving, except tilling of soil and gardening or displacement of earth, rock or other material for agricultural purposes, and except installation and maintenance of signs performed by the City or Department of Transportation.

*Facility* shall mean pipe, pipeline, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, wire tower, pole, pole line, anchor, cable, junction box, or any other material, structure, or object of any kind or character, whether enumerated herein or not, which is or may be lawfully constructed, left, placed or maintained in, upon, along, across, under, or over any public place.

*Licensed excavator* shall mean any person who has been issued a license by the city to excavate in public places in the city.

*Median strip* means a paved or planted area of public right-of-way, dividing a street or highway into lanes according to the direction of travel.

*Newly constructed, reconstructed or rehabilitated streets* shall mean any street which has been newly constructed, reconstructed or rehabilitated within the past five (5) years.

*Paved Area* shall mean an area with a paved surface of material such as hot-mixed asphalt, concrete, brick, cobblestone, or granite pavers. These areas are typically referred to as streets, driveways, alleys, sidewalks or walkways.

*Permittee* shall mean a person who has obtained a permit as required by this article.

*Pole placement* shall mean an excavation associated solely with a single placement or replacement of a utility pole.

*Public place* shall mean any public street, way, place, alley, sidewalk, park, square, plaza, or any other similar public property owned or controlled by the city and dedicated to public use, and any dedicated-but-unaccepted street or way.

*Rehabilitation* shall mean that activity of work on any street which provides structural improvement having a minimum service life of fifteen (15) years with minor maintenance, which includes pavement overlay of one and one-half (1 1/2) inches minimum depth, and partial or full depth reconstruction.

*Rules and regulations* shall mean the rules and regulations promulgated under section 25-117.

*Substructure* shall mean any pipe, conduit, duct, tunnel, manhole, vault, buried cable, or wire, utility system appurtenance, or any other similar structures located below the surface of any public place.

*Technical and design standards and guidelines* shall mean the standards and guidelines originally promulgated by the public works authority in September 1987 pursuant to sections 14-498 and 14-499 of the city's land use code and modified as necessary by the planning board or the public works authority pursuant to section 14-506 of the city's land use code.

*Utility* shall mean a public utility, as defined in 35-A M.R.S.A. § 102 as it may be hereinafter amended and shall specifically include the nonregulated activities of such a utility. (Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00; Ord. No. 266-12/13, 7-15-13)

**Cross reference(s)**--Definitions and rules of construction generally, § 1-2.

#### **Sec. 25-119. 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 city. The public works authority shall issue the excavator's license upon receipt of an application therefor and the annual license fee of six hundred dollars (\$600.00), 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 city 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 city that the licensed excavator has willfully disobeyed any portion of this article or the rules and regulations.

(Ord. No. 10-97, 6-16-97; Ord. No. 226-06/07, 6-21-07; Ord. No. 243-07/08, 5-19-08; Ord. No. 264-08/09, 5-18-09; Ord. No. 228-10/11, 5-16-11; Ord. No. 186-11/12, 5-21-12; Ord. 249-14/15, 6-24-2015; Ord. No. 217-17/18), 7-1-2018)

**Cross reference(s)**--Licenses and permits generally, Ch. 15.

**Sec. 25-120. Clearance for vital structures.**

The excavation work shall be performed and conducted so as not to interfere with access to fire hydrants, fire stations, fire escapes, water gates, underground vaults, valve housing structures, traffic signal cables and loops and all other vital equipment as designated by the city and/or Dig-Safe.

(Ord. No. 10-97, 6-16-97)

**Sec. 25-121. Protective measures and routing of traffic.**

(a) *Safe crossings.* The permittee shall in general maintain safe crossings for two (2) lanes of vehicle traffic where possible and safe crossings for pedestrians at intervals of not more than two hundred (200) feet. If any excavation is made across any public street, alley or sidewalk, adequate crossings shall be maintained for vehicles and for pedestrians. If the street is not wide enough to hold the excavated material without using part of the adjacent sidewalk, a passageway at least forty-eight (48) inches in width shall be maintained along such sidewalk line.

(b) *Barriers and warning devices.* It shall be the duty of every permittee cutting or making an excavation in or upon any public place, to place and maintain barriers and warning devices necessary for safety of the general public. Traffic control in the vicinity of all excavations affecting vehicular, pedestrian and

other traffic shall be subject to final review and approval of the traffic engineer. Barriers, warning signs, lights, etc., shall conform to the latest edition of the "Manual on Uniform Traffic Control Devices" (MUTCD). Warning lights shall be electrical markers or flashers used to indicate a hazard to traffic from sunset of each day to sunrise of the next day. Electrical markers or flashers shall emit light at sufficient intensity and frequency to be visible at a reasonable distance for safety. Reflectors or reflecting material may be used to supplement, but not replace light sources.

(c) *Normalizations of traffic conditions.* The permittee shall take appropriate measures to assure that during the performance of the excavation work, traffic conditions as near normal as possible shall be maintained at all times so as to minimize inconvenience to the occupants of the adjoining property and to the general public.

(d) *Closing of streets.* When traffic conditions permit, the traffic engineer, with the approval of the police and fire departments of the city, may by written approval (or by verbal approval in the case of emergency), permit the closing of streets and alleys to all traffic for a period of time prescribed by him or her, if in his or her opinion it is necessary. The written approval of the traffic engineer may require that the permittee give notification to various public agencies and to the general public. In such cases, such written approval shall not be valid until such notice is given. In case of emergency during nonbusiness hours, the utility company having such emergency shall contact the police and fire departments by phone before closing a street to traffic.

(e) *Warning signs to channel traffic.* Warning signs shall be placed in accordance with the applicable section of the most current edition of the MUTCD in advance of the construction operation to alert traffic within a public street, and cones or other approved devices shall be placed to channel traffic, in accordance with the instructions of the traffic engineer, after his or her review of the proposed traffic control measures for the project.

(f) *Special police protection for interference with school walk route map.* The permittee shall hereby be informed that the city has or may have a "school walk route map," and that the traffic engineer will require special police protection at locations where the permittee, by his or her work, interferes with these designated school walk routes or crossing locations. Copies

of school walk route maps for various locations in the city may be procured from the traffic engineer.

(g) *Interference with arterial streets.* Construction activities (unless an emergency condition exists) shall not interfere with the normal flow of traffic on arterial streets of the city. A list of arterial streets shall be kept at the offices of the public works authority. The full inbound roadway lane width shall be maintained between the hours of 7:00 a.m. and 9:00 a.m. and the full outbound roadway lane width shall be maintained between the hours of 3:30 p.m. and 6:00 p.m.

(h) *Shifting traffic to opposite side.* The permittee may shift traffic to the opposite side of the roadway to maintain the above required lane width. The permittee may only make such shift with the approval of the traffic engineer following proper review of detour plans to insure adequate safe two-way traffic flow and proper number and placement of traffic control devices, including flaggers and/or police officers.

(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

**Cross reference(s)**--Traffic and motor vehicles, Ch. 28.

**Sec. 25-122. Relocation and protection of utilities.**

The permittee shall not interfere with any existing facility without the written consent of the city and the owner of the facility. If it becomes necessary to relocate an existing facility this shall be done by or with the written consent of its owner. No facility owned by the city shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately owned facilities shall be similarly borne by the permittee unless it makes other arrangements with the person or utility owning the facility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wires or other apparatus which may be in any way affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along or across the work. The permittee shall secure approval of method of support and protection from the owner of the facility. In case any of the pipes, conduits, poles, wires or apparatus should be damaged, and for this purpose pipe coating or other encasement or devices are to be considered as part of a substructure, the permittee shall promptly notify the owner thereof. All damaged facilities shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee. It is the intent of this section that



the permittee shall assume all liability for damage to facilities and any resulting damage or injury to anyone because of such facility damage and such assumption of liability is a contractual obligation of the permittee. The only exception will be such instances where damage is exclusively due to the negligence of the owning utility. The city shall not be made a party to any action because of this section. The permittee shall inform itself as to the existence and location of all underground facilities and protect the same against damage in accordance with 23 M.R.S.A. § 3360-A as may be amended from time to time.

(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

**Sec. 25-122.5. Location of tape required for sewers.**

(a) Upon new installation or reinstallation (in the case of repair or reconstruction) of sanitary and/or storm sewers, the permittee shall be responsible for the installation of locating and warning material over the centerline of all pipes carrying sanitary, storm or combined wastewater, including main lines, laterals and catch basin pipes. Installation of the locating and warning material shall be as prescribed by the public works authority.

(b) If the permittee fails to comply with this section, the city may cause the locating and warning material to be installed and shall keep an account of the expense thereof. Permittee shall then be liable to the city for an amount equal to the expense incurred by the city, plus an additional fifty (50) percent.

(Ord. No. 10-97, 6-16-97)

**Sec. 25-123. Abandonment of structure.**

(a) Whenever the use of a substructure is abandoned, except the abandonment of service lines designed to serve single properties, the person or utility owning, using, controlling, or having an interest therein, shall within thirty (30) days after such abandonment, file with the city a statement in writing giving in detail the location of the substructure so abandoned. If such abandoned substructure is in the way, or subsequently becomes in the way, of an installation of the city or any other public body, the owner of such substructure, after having been contacted by the excavator, shall establish if the substructure is abandoned and make the first cut or tap before allowing the substructure to be removed by the excavator.

(b) When gas or other flammable service to buildings is

discontinued, the existing service line for such service shall be terminated at a point outside the building.  
(Ord. No. 10-97, 6-16-97)

**Sec. 25-124. Protection of public property.**

The permittee shall not remove, even temporarily, any trees or shrubs which exist in a public place without first obtaining the consent of the appropriate city department or city official having control of such property.  
(Ord. No. 10-97, 6-16-97)

**Sec. 25-125. Restoration of paved areas.**

All paved area restorations, including temporary and permanent work within any street, driveway or sidewalk shall be performed in accordance with the city's Code of Ordinances and technical and design standards and guidelines available through the public works authority, and according to the rules and regulations promulgated by said authority pursuant to § 25-117 of this Code. The director may choose to waive specific repair requirements for just cause, including utility work being conducted prior to or in conjunction with a planned City/MDOT construction project.  
(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 8-19-00)

**Sec. 25-126. Prompt completion of work.**

After an excavation is commenced, the permittee shall carry out with diligence and expedition all excavation work covered by the street opening permit and shall promptly complete such work and restore the street or sidewalk as specified in this article and the rules and regulations enacted by the public works authority. The permittee shall perform such restoration work so as not to obstruct, impede or create a safety hazard to public travel.  
(Ord. No. 10-97, 6-16-97)

**Sec. 25-127. Urgent work.**

When traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the city shall have the full power to order, at the time the permit is granted, that a crew and adequate facilities be employed by the permittee beyond normal working hours, including up to twenty-four (24) hours a day, to the end that such excavation work may be completed as soon as possible.  
(Ord. No. 10-97, 6-16-97)

**Sec. 25-128. Emergency action.**

Nothing in this article shall be construed to prevent the making of such excavations as may be necessary for the preservation of life or property or for the location of trouble in conduit or pipe which may be a threat to life or property, or for making emergency repairs, provided that the person making such excavation shall apply to the city for such a permit on the first working day after such work is commenced. Before any emergency excavation work is started, the person or utility excavating must take all reasonable steps to properly notify Dig-Safe for on the spot utility locations.

(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

**Sec. 25-129. Noise, dust and debris.**

Each permittee shall conduct and carry out excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. To the fullest extent practicable, the permittee shall take appropriate measures to reduce noise, dust and unsightly debris in the performance of the excavation work. Excavation work, including the use of any tool, appliance, or equipment, shall be performed between the hours of 7:00 a.m. and 10:00 p.m. only, exclusive of emergency work. Time waiver requests may be submitted to the public works authority for work outside of this time period and will be subject to neighborhood concerns. Excavation work shall not occur on Sundays, holidays or on major holiday weekends, unless expressly authorized by the public works authority or as a result of emergency need.

(Ord. No. 10-97, 6-16-97)

**Cross reference(s)**--Offenses against public peace, § 17-16 et seq.

**Sec. 25-130. Preservation of monuments.**

Any monument set for the purpose of locating or preserving the lines of any street or property subdivision, or a precise survey reference point, or a permanent survey bench mark within the city, shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission in writing from the city to do so. Permission to remove or disturb such monuments, reference points or bench marks shall be granted only when no alternate route for the proposed substructure or conduit is available. If the city is satisfied that no alternate route is

available, permission shall be granted only upon condition, by an agreement in writing, that the person or utility applying for such permission shall pay all expenses incident to the proper replacement of this monument by the city.  
(Ord. No. 10-97, 6-16-97)

**Sec. 25-131. Preservation of curbing.**

No person or utility shall remove, damage, haul away or cause misalignment of any curbing, including radius curb and catch basin stones, for any reason whatsoever without first receiving written permission from the city. Any curb missing, damaged or misaligned shall be replaced or aligned by the city and will be charged to the permittee; provided, however, that the city, at its option, may allow the permittee to replace or realign that portion of curb damaged by the permittee's excavation. In such event, replacement or realignment shall be done in a manner and under specifications prescribed by the city and subject to inspection by the city and shall be completed within a period of thirty (30) days after such authorization to complete such work. If such replacement or realignment is satisfactory to the city, all charges therefor except for permit fees, long-term maintenance reserves, if applicable, and city inspection charges, will be canceled. The permittee shall, for a period of three (3) years thereafter, be fully liable for all defects in materials and workmanship relating to such replacement or realignment and shall promptly repair or replace the same upon notice of the public works authority and to the satisfaction thereof.  
(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

**Sec. 25-132. Manholes and/or catch basins.**

No person or utility shall remove, damage, haul away, or otherwise disturb any manhole and/or catch basin castings, frames, and/or covers owned by the city without first receiving written permission from the city. Any manhole and/or catch basin castings, frames and/or covers missing, damaged, or disturbed shall be repaired and/or replaced by the city, and the cost will be charged to the permittee.  
(Ord. No. 10-97, 6-16-97)

**Sec. 25-133. Excavations during winter.**

(a) No person or utility shall be granted a street opening permit or open any paved area from the time of November fifteenth of each year to April fifteenth of the following year unless an

emergency or special condition exists and permission is obtained in writing from the city.

(b) Any person or utility wishing to obtain a street opening permit between these aforementioned dates shall first explain fully in writing the emergency situation or special condition existing to the city before a permit application will be considered for approval. If an emergency condition which could endanger life or property exists, excavation work shall not be delayed by this section; however, a written explanation shall be delivered to the city as part of the street opening permit application made in accordance with §25-128. In the rare event that a non-emergency permit is issued between the aforementioned dates for an excavation into a paved area, a moratorium surcharge of one thousand dollars (\$1,000.00) will be added to the regular permit fee. This moratorium surcharge may be waived by the director if specific weather conditions exist and paved area restorations are in compliance with normal construction season standards, as described in the rules and regulations.

(c) For the purpose of this section, an emergency shall be defined as one (1) of the following: damaged or leaking water or gas conduit systems, damaged, plugged or leaking sewer or storm drain conduit systems, damaged underground electrical and communications facilities, or downed or seriously damaged overhead pole structures; all remaining excavations will be considered non-emergency situations and may only be authorized upon written documentation of special circumstances.

(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00; Ord. No. 253-15/16, 7/1/2016)

#### **Sec. 25-134. Inspections.**

(a) The city shall make such inspections as are reasonably necessary in the enforcement of this article and the rules and regulations.

(b) The public works authority may order such actions as it deems necessary to ensure that this article and the rules and regulations implementing it are not violated.

(c) In the event that any dispute exists as to the amount, nature, or scope of the work required under this article or the rules and regulations, the decision and judgment of the responsible city official will be final and binding unless appealed to or stayed by a court of competent jurisdiction.

(Ord. No. 10-97, 6-16-97)

**Sec. 25-135. Testing requirements.**

The city may order a test (at its own initial expense) on any subsequent restoration of a street excavation in order to determine if the work has been or is being completed in accordance with city specifications and regulations. If the test shows the street restoration phase or phases to be in material violation of this article and the rules and regulations, the permittee shall pay the cost of the testing and all required subsequent tests to verify the proper restoration in accordance with this article and the rules and regulations.

(Ord. No. 10-97, 6-16-97)

**Sec. 25-136. Maintenance of drawings.**

Every person or utility owning, using, controlling or having an interest in substructures under the surface of the public way or public property, used for the purpose of supplying or conveying gas, electricity, communications, impulse, water, steam, ammonia or oil in the city, shall file with the city a map or set of maps each drawn to a scale of not less than one (1) inch to fifty (50) feet, showing in detail the location, depth, size and kind of installation, if known, of all new or renewed substructures. These maps shall be provided to the city no later than sixty (60) days after the completion date of construction in paper and, if available, digital file form acceptable to the public works authority. Gas utilities shall also provide maps of existing substructures in accordance with 23 M.R.S.A. § 3360-A 3-C as may be amended from time to time.

(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

**Sec. 25-137. Liability of city; insurance.**

This article shall not be construed as imposing upon the city or any official or employee any liability or responsibility for damages to any person injured by the performance of an excavation work for which a street opening permit is required under this article, nor shall the city or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit, or the approval of any excavation work. In the case of a dedicated-but-unaccepted street or way, this article shall not be construed as authorizing any action which is inconsistent with any private rights in said street or way, nor shall the issuance of any

permit hereunder be construed as an acceptance of said street or way by the city for highway or any other purposes. For purposes of this section, every licensed excavator shall maintain at all times comprehensive general liability and property damage insurance coverage in a suitable amount, not less than four hundred thousand dollars (\$400,000.00), protecting himself, his agents and the city from all such claims for damages or injuries and naming the city as an additional insured. All such insurance shall include, without being limited to, endorsements for completed operations and special hazards/underground collapse, and shall be primary to any insurance or self-insurance of the city. Evidence of such coverage shall be a condition precedent to the issuance of any license hereunder and shall be submitted in a form satisfactory to the public works authority.

(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

**Sec. 25-138. Excavation in reconstructed streets.**

Whenever the city has developed plans to construct, reconstruct or rehabilitate a street, the city or its representative shall give written notice thereof to all abutting property owners, to the city departments, and to all public utilities which have or may wish to lay pipes, wires or other facilities in or under the highway. Upon receipt of such written notice, such person or utility shall have sixty (60) days in which to repair, install or lay any such facility. If an extension of time is needed by a person or utility for the repair and/or installation of such facilities, the person or utility shall make a written application to the city explaining fully the reasons for requesting such an extension of time. At the expiration of the time fixed and after such street has been constructed, reconstructed or rehabilitated, the director has the right to deny permits to excavate such streets for a period of five (5) years as provided in 23 M.R.S.A. § 3351 as may be amended from time to time. Any excavations into such streets shall be subject to moratorium restoration requirements as set forth in 23 M.R.S.A. § 3351-A as may be amended from time to time. A current list showing newly constructed or reconstructed streets shall be available at the street opening desk located at 55 Portland Street, and is on file at the city clerk's office.

(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

**Sec. 25-139. Corrective actions to excavations and restorations.**

(a) If any part of any excavation, including the excavation, backfilling and repairs fails to conform with the standards of this

chapter and the rules, the city shall notify the permittee and require the appropriate corrective actions to be undertaken. Permittee shall take corrective action within twenty-four (24) hours after the issuance of notice if the failure could trigger tort liability or liability for a street defect, as defined in 23 M.R.S.A. § 3651 et seq., as amended from time to time. In all other instances, the permittee shall have a reasonable time as provided in section 25-160 to undertake corrective action.

(b) If the permittee fails to respond within the required time period, the city shall cause the necessary repairs to be accomplished, and shall keep an account of the expense thereof, and in such case the permittee shall be billed an amount equal to one hundred fifty (150) percent of the whole of the expense incurred by the city. Bills rendered in accordance with this section shall be due and payable by the permittee immediately upon receipt. The city shall issue no further or new permits to the permittee until full payment of the billed costs has been received.

(c) If for any reason the city has to perform repair work to an excavation after the permittee's guarantee period has started, that guarantee period shall start over again upon completion of the repairs.

(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

**Sec. 25-140. Revocation of excavator's license.**

An excavator's license may be revoked after notice and subsequent hearing for the violation of any provisions of this article or the rules and regulations promulgated by the public works authority. The hearing on the license revocation shall be conducted by the city manager in the same manner as prescribed by chapter 15 of this Code for hearings of the city clerk.

(Ord. No. 10-97, 6-16-97)

- Sec. 25-141. Reserved.**
- Sec. 25-142. Reserved.**
- Sec. 25-143. Reserved.**
- Sec. 25-144. Reserved.**
- Sec. 25-145. Reserved.**
- Sec. 25-146. Reserved.**
- Sec. 25-147. Reserved.**
- Sec. 25-148. Reserved.**
- Sec. 25-149. Reserved.**
- Sec. 25-150. Reserved.**



DIVISION 2. STREET OPENING PERMIT

**Sec. 25-151. Required.**

No person or utility shall make any excavation, modify, or fill any excavation excluding previously permitted locations in any public place without first obtaining a permit to do so from the city except as otherwise provided in this article or the rules and regulations. Any excavation within the city's streets, sidewalks, esplanades or other public rights-of-way shall only be permitted in accordance with this Code or the rules and regulations. The granting of such a permit shall cover all required activities to conform with this article and the rules and regulations.

(Ord. No. 10-97, 6-16-97)

**Sec. 25-152. Application.**

(a) No street opening permit shall be issued unless a written application on a form provided by the city for the issuance of a street opening permit is submitted to and approved by the city. The written application shall contain such information as reasonably required by the public works authority and identified in section 3.02 of the rules and regulations. Applications shall be submitted at least two (2) business days prior to the anticipated excavation. The permit shall expire thirty (30) days from the date of issuance.

(b) In order to protect underground facilities and public safety all permit applications must provide the City with documentation of the applicant's proper notification to the underground facilities damage prevention system. This will typically be provided by indicating the applicant's Dig Safe number on the application.

(c) In order to obtain a permit, the applicant must be current on all of its financial obligations to the city.

(d) All applicants with the exception of utilities in good standing as defined in the rules and regulations shall be required to post a two-year bond or appropriate security deposit in order to apply for any permits.

(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

**Sec. 25-153. General conditions.**

(a) Permits shall be issued only after security acceptable to the public works authority has been given to the city to insure the proper restoration and subsequent maintenance of the street, sidewalk, curb, esplanade, or other public right-of-way. Any utility in good standing is exempt from this security requirement.

(b) Permits shall be issued only to persons or utilities in possession of a current excavator license granted by the public works authority.

(c) Permits shall be granted only if the applicant has properly notified all utilities, typically done by contacting "Dig-Safe," and obtaining an authorization number to proceed. Any conflicts with utilities shall be the sole responsibility of the applicant and shall be resolved to the utilities' satisfaction and per the city's technical and design standards and guidelines.

(d) Issuance of a street opening permit shall not imply a waiver of other city permit requirements such as sealed drains, sewer or storm drain connections, sign installation, or building permits.

(e) The director has the right to deny permit applications if the street has been newly constructed, reconstructed, or rehabilitated; if excavation is proposed between the dates of November 15 and April 15; if a significant public safety hazard could result; as indicated in section 25-154 below; or for just cause.

(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

**Sec. 25-154. Annual work program to be submitted by utilities.**

Each year on or before March thirty-first, each utility shall submit to the public works authority its planned work program for the ensuing year, which shall not include emergencies defined in section 25-118 and normal house service lines. Thereafter, the city shall have the right to deny permit applications for excavations not specifically contained within each utility's respective planned work program, except for emergencies and house service lines.

(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

**Sec. 25-155. Issuance of blanket permits.**

The city may issue an annual blanket permit to the public works authority for the purpose of placing, replacing or repairing any facility within a public place as long as the utilities are

properly notified through Dig-Safe and a record of the completed work is submitted to the city in a timely fashion.

(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

**Sec. 25-156. Duration.**

Excavation work must be started no later than thirty (30) days from the date of issue of the street opening permit. After the expiration of this thirty-day period, such permit shall become null and void and shall have to be renewed.

(Ord. No. 10-97, 6-16-97)

**Sec. 25-157. Fees and charges.**

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**\*Editor's Note:** Pursuant to Order No. 243-15/16 passed 5/16/2016, the fees for street opening permits are as follows:

Street opening permit	\$360.00
Sidewalk opening permit	\$252.00
Esplanade/other permit	\$180.00

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(a) Each street opening permit may be assessed two (2) fees: an administrative charge and a permanent pavement restoration charge.

- (1) *Administrative:* This fee shall reimburse the city for the direct cost of labor and equipment necessary to administer this article and the rules and regulations and the rehabilitation of city streets primarily due to excavations.
- (2) *Permanent pavement restoration:* This fee shall cover the city's cost of permanently restoring the disturbed pavement area and shall be based on the final measured size of each permitted street opening.

(b) All fees shall be enacted annually by order of the city council. The public works authority shall notify currently licensed excavators in advance of annual fee revisions necessary to reflect costs of program administration, permanent pavement restoration, annual excavator's license fee, and other applicable charges.

(c) Upon permit application, the administrative charge, estimated permanent pavement restoration charge shall be paid to the street openings clerk unless waived by the public works

authority as provided below. No permit shall be issued without appropriate payment of fees. Utility applicants in good standing shall be granted the option of being invoiced by the city for these fees.

(d) All fees and charges collected by the public works authority in the issuance of permits pursuant to this article shall be placed in a fund dedicated and utilized solely for the administration of this article and the rules and regulations, and the rehabilitation of city streets primarily due to excavations.

(e) Waiver of fees:

- (1) To prevent untimely delays to construction activities within the limits of city and/or MDOT planned reconstruction areas, the city shall waive all street opening permit fees for utilities and individuals having work to do in such areas until the time reconstruction takes place. This waiver can only be applied if the applicant clearly indicates the nature and limits of work on their permit application.
- (2) The director may waive all permit fees in streets or sidewalk/driveway areas to contractors under contract to the city or MDOT.
- (3) To promote the use of trenchless technologies and minimize pavement disturbance, the permanent restoration fee will not be assessed to any excavation area achieved by trenchless technologies which do not result in pavement damage.
- (4) No permanent pavement restoration fee will be assessed for excavations into streets classified with a pavement condition index (PCI) requiring total reconstruction per the city's pavement management and maintenance program.
- (5) No permanent pavement restoration fee will be assessed to public utilities in good standing under the rules and regulations who are allowed to perform their own permanent pavement restorations in conformance with the rules and regulations.
- (6) The city manager may authorize special waivers of permit fees if special conditions exist, including public health

issues and significant financial hardship to a homeowner,  
which can be supported by the director in writing.  
(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

**Sec. 25-158. Reserved.**

(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

**Sec. 25-159. Bonds.**

Bonds or deposits shall be required of all applicants other than utilities in good standing under the rules and regulations in order to guarantee their performance. Bonds shall be posted for a minimum of two (2) years and shall not exceed twenty-five thousand dollars (\$25,000.00). The required bond value shall be equivalent to the estimated cost of the number of excavations performed in the previous season, or twenty-five thousand dollars (\$25,000.00), whichever is less. In lieu of a bond, an applicant may substitute a deposit equal to the anticipated cost of excavation repair for each application it seeks. Deposits shall be refunded upon approved completion of all conditions of this article and the rules and regulations.

(Ord. No. 10-97, 6-16-97)

**Sec. 25-160. Violations.**

(a) Any person or utility failing to comply with or violating any provision of this article or the rules shall be served by the public works authority with written notice stating the nature of the failure or violation and providing a reasonable time limit for the necessary corrective actions. Such person or utility shall, within the period of time stated in such notice, permanently cease or correct all failures or violations.

(b) In order to ensure public safety, the public works authority shall have the right to verbally notify and require immediate corrective actions of any person or utility whose failure to comply with this article or the rules could cause a safety hazard.

(c) Any person or utility who shall continue any failure or violation beyond the time limit required for compliance in any notice given pursuant to this article or the rules shall be guilty of a violation of this article.

(d) Any person or utility violating any of the provisions of this article or the rules shall be liable to the city for any

expense, loss, or damage occasioned by the city by reason of such violation. The city may seek injunctive relief for the purposes of enforcing this article or the rules.

(e) (1) Any violation of this article which is also a violation of 35-A M.R.S.A. § 2509 or 2511 or a violation of 23 M.R.S.A. § 3353 or 3355 shall subject the permittee or party to a fine as provided in said statutes, as said statutes may be amended from time to time.

(2) Any violation of this article other than the violations of state law prescribed in the preceding paragraph shall subject the permittee or party to a fifty-dollar fine per day for each day that a violation continues.

(f) Any permittee or party who continues to violate any section of this article or the rules and fails to correct violations in a timely manner shall receive no further permits and will be invoiced for permanent repairs as appropriate until such time as the city is satisfied that the permittee or party shall have corrected all violations in compliance with the terms of this article and the rules and regulations.

(g) The city reserves the right to notify a permittee's insurance and/or bond carrier of repeated violations.  
(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

#### **Sec. 25-161. Failure to obtain permit.**

Any person or utility found to be conducting any excavation activity within the public right-of-way without having first obtained the required permit(s) shall immediately cease all activity (exclusive of actions required to stabilize the area) and be required to obtain a permit before work may be restarted. A surcharge of five hundred dollars (\$500.00) shall be required in addition to all applicable permit fees.

(Ord. No. 10-97, 6-16-97; Ord. No. 71-00, 9-18-00)

#### **Sec. 25-162. Appeals process.**

(a) Whenever a person shall deem themselves aggrieved by an order made by the public works authority, the person may file an appeal to the city manager within ten (10) days of the date of the order, and the person shall be afforded a hearing on the matter before the city manager or a designee, and unless by their

authority the aggrieved order is revoked, such order shall remain in force and be forthwith complied with by the person.

(b) In cases of applicability or interpretation of the rules, the city manager may revoke such order made by the public works authority.

(c) In cases where compliance with such order made by the public works authority would cause undue hardship, the city manager may extend the time limit of such order, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of the rules, subject always to the rule that the city manager shall give due consideration to the purposes of the rules in preserving public safety and convenience, integrity of public infrastructure, and the operational safety and function of the public right-of-way.

(Ord. No. 10-97, 6-16-97)

- Sec. 25-163. Reserved.**
- Sec. 25-164. Reserved.**
- Sec. 25-165. Reserved.**
- Sec. 25-166. Reserved.**
- Sec. 25-167. Reserved.**
- Sec. 25-168. Reserved.**
- Sec. 25-169. Reserved.**
- Sec. 25-170. Reserved.**

#### ARTICLE VIII. REMOVAL OF SNOW AND ICE\*

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**\*Editor's note**--Ord. No. 132A-93, adopted Nov. 15, 1993, repealed former Art. VIII, §§ 25-171--25-179, of this chapter, relative to snow, ice and litter removal, and added similar new provisions in lieu thereof as herein set out. Formerly, such provisions derived from §§ 705.10 and 706.1--706.7 of the city's 1968 Code as amended by the following legislation:

Ord. No.	Section	Date	Ord. No.	Section	Date
752-74	1	11-18-74	251-88		12-12-88
165-75		2-19-75	123-89		10- 2-89

31-76	1	1- 5-76	96-91		8-19-91
574-80		3-19-80	97-91		8-19-91
530-84	1--5	4-18-84	98-91		8-19-91
250-88		12-12-88			

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**Sec. 25-171. Purpose.**

The purpose of this article is to regulate the removal of snow and ice in the city.  
 (Ord. No. 132A-93, 11-15-93; Ord. No. 92-07/08 emergency passage 11-19-07)

**Sec. 25-172. Definitions.**

For the purposes of this article, the following words shall have the meanings set forth below:

*Business-pedestrian district* shall be coterminous with the Portland Downtown Improvement District as established by order # 0306 (3/16/92) of the city council, as amended by order # 0185 (2/22/95), as it may be further amended from time to time, and the map and related descriptions of that district kept on file in the city clerk's office which are hereby incorporated by reference.

*Charges* means penalties, fees, fines, costs or other financial levies.

*Commercial property owner* shall mean the owner of any real property other than a residential property owner.

*Residential property owner* shall mean the owner of property that contains a building with 1 to 4 residential dwelling units or a vacant lot that is in an R-zone.

*Repeat Offender* means any Residential Property owner or Commercial Property owner that shall receive three (3) or more Charges per snow season.



*Sidewalk* means the entire paved surface, intended primarily for use by pedestrians, between the boundaries of a street's public right-of-way and the curb, including any curb ramps and the area that crosses a driveway.

*Street* means all public ways or easements and includes courts, lanes, alleys or squares.

*Snow season* shall mean the period beginning November 1 and ending April 30 of the following year.  
(Ord. No. 132A-93, 11-15-93; Ord. No. 194-77, § 1, 2-3-97; Ord. No. 31-04/05, 10-4-04; Ord. No. 249-17/18, 6-18-2018)

**Cross reference(s)**--Definitions and rules of construction generally, § 1-2.

**Sec. 25-173. Snow and ice to be removed from sidewalks.**

(a) *Commercial property* - the following provisions apply to commercial property owners and commercial property:

- (1) Commercial property owners, or the manager or any person having responsibility for any commercial building or lot of land which abuts any street where there is a sidewalk shall remove snow from the sidewalk in such a manner as to clear a path four (4) feet wide within twelve (12) hours after snow has ceased to fall and shall thereafter keep the sidewalk clear of snow from that storm including snow placed on the sidewalk as a result of subsequent snow removed by the city from the adjacent street. Property owners whose property abuts a sidewalk containing a curb cut and/or leading to an intersection shall clear a path four (4) feet wide through the curb cut or to be the curb at the intersection, giving access to the street and abutting ADA ramps.
- (2) Whenever the sidewalk or any part thereof adjoining any building or lot of land on any street shall be encumbered with ice for six (6) hour or more during the daytime, it shall be the duty of the commercial property owners and any person having the responsibility for such building or lot to cause such sidewalk to be made safe and convenient by removing the ice therefrom or by covering the same with sand or some other suitable substance and reapply as needed.
- (3) Either the Director of Public Works, or the Director of

the Permitting and Inspections Department, or their respective designees, may arrange for the removal of snow or removal or covering of ice which exists in violation of the provisions of subsections (1) and (2) above. If the city removes the snow or ice which exists in violation of subsections (1) and (2) above, or arranges for its removal, a commercial property owner shall also be charged the cost of removal of the snow or ice, plus a ten (10%) percent charge for administration. A separate bill for each such removal shall be submitted to the record owner of the abutting property as soon as practicable after the charges are incurred. For the purposes of this Article, the record owner of each such abutting property shall be the owner of record as of April 1st of that year as designated in the office of the city tax assessor.

- (4) In addition to any cost of removal charged under subsection (3) above, penalties shall accrue for violations of subsections (1) and (2). The penalty for a first offense shall be two hundred fifty dollars (\$250.00). The penalty for a second offense in the same winter season shall be five hundred dollars (\$500.00). The penalty for any subsequent offense in the same winter season shall be one thousand dollars (\$1,000.00).

(b) *Residential property owner* - the following provisions apply to residential property owners and their properties:

- (1) Residential property owners, or the manager or any person having the responsibility for any residential property building or lot of land which abuts a street where there is a sidewalk shall remove snow from the sidewalk in such a manner as to clear a path four (4) feet wide within eighteen (18) hours after snow has ceased to fall or within eighteen (18) hours after the city conducts its last snow clearing for that storm on the adjacent street, whichever is later. In cases where a sidewalk is less than four (4) feet wide, the entire sidewalk shall be cleared. Property owners whose property abuts a sidewalk containing a curb cut and/or leading to an intersection shall clear a path four (4) feet wide through the curb cut or to the curb at the intersection, giving access to the street and abutting ADA ramps.

- (2) Whenever the sidewalk or any part thereof adjoining any building or lot of land on any street shall be encumbered with ice for eighteen (18) hours or more, it shall be the duty of the residential property owner and any person having the responsibility for such building or lot to cause such sidewalk to be made safe and convenient by removing the ice therefrom or by covering the same with sand or some other suitable substance and reapply as needed, so that the sidewalk is suitable for pedestrian use, to a width of four (4) feet. In cases where a sidewalk is less than four (4) feet wide, ice on the entire sidewalk shall be cleared or covered.
- (3) Either the Director of the Public Works Department, or the Director of the Permitting and Inspections Department, or their respective designees, may arrange for the removal of snow or removal or covering of ice which exists in violation of the provisions of subsections (1) and (2) above. If the City removes snow or ice which exists in violation of the provisions of subsections (1) or (2) above or arranges for its removal, such owner shall be responsible for the cost of removal of the snow or ice plus a ten (10%) percent charge for administration. A separate bill for each such removal shall be submitted to the record owner of the abutting property as soon as practicable after the charges are incurred. For the purposes of this Article, the record owner of each such abutting property shall be the owner of record as of April 1<sup>st</sup> of that year as designated in the office of the City Tax Assessor.
- 4) In addition to any cost of removal charged under subsection (3) above, penalties shall accrue for violations of subsections (1) and (2). The penalty for a first offense shall be seventy-five dollars (\$75.00). The penalty for a second offense in the same winter season shall be one hundred and twenty-five dollars (\$125.00). The penalty for any subsequent offense in the same winter season shall be two hundred and fifty dollars (\$250.00).

(Ord. No. 132A-93, 11-15-93; Ord. No. 31-04/5, 10-4-04; Ord. No. 92-07/08-emergency passage 11-19-07; Ord. No. 135-08/09, emergency passage 11-17-08; Ord. 108-15/16, 11-16-2015; Ord. No. 249-17/18, 6-18-2018)

**Cross reference(s)** - Uniform procedures for collecting assessments, § 1-16.

**Sec. 25-174 Snow or ice threatening use of streets or sidewalks.**

(a) *Commercial property* - the following provisions apply to commercial property owners and commercial property:

- (1) When an accumulation of snow or ice on a building poses the threat of falling onto streets or sidewalks, it shall be the duty of the commercial property owner to remove such accumulations in order to make a passage along the streets and sidewalks safe and convenient.
- (2) Such removal shall begin either: (i) whenever a threatening condition occurs; or (ii) within four (4) hours after the head of building inspections or his or her designee has verbally or in writing notified the owner of the condition and ordered the owner to remove such accumulations, whichever occurs first. Whenever snow or ice accumulates in such a manner as to hang over a street or sidewalk, such a condition shall constitute prima facie evidence that the condition is a threatening condition. A determination by the building inspector or his or her designee that an accumulation of snow or ice is a threatening condition shall be conclusive and not subject to challenge or appeal until after the building owner has removed the snow or ice. Notice shall be given to the owner or to an owner's agent who has maintenance responsibility for such building.
- (3) The Director of the Permitting and Inspections Department or his or her designee may arrange for the removal of snow and ice accumulations which exist in violation of subsection (2) above.
- (4) The penalty for an offense shall be two hundred fifty dollars (\$250.00), plus attorney's fees and costs. When the city removes or arranges for the removal of snow or ice accumulations the owner shall also be charged the costs of removal, plus a ten (10%) percent charge for administration. A separate bill for each such removal shall be submitted to the record owner of the building as soon as practicable after the charges have been incurred. The record owner of each such building shall be deemed to be the owner as of April 1<sup>st</sup> that year as designated in the office of the city tax assessor.

(5) Pursuant to 30-A M.R.S.A. § 3007, after a building owner or lessee has been given one (1) notice and order under subsection (2) above and failed to comply and the city has removed the snow or ice, or when a building has been the subject of three (3) or more notices within an eighteen-month period, the head of building inspections or his or her designee may require the owner of a building to install roof guards, or take other measures approved by the building inspector or his or her designee, at the owner's expense to prevent the fall of snow or ice.

(b) Residential property:

(1) This section (25-174) shall not apply to residential property owners or residential property.

(Ord. No. 194-77, § 2, 2-3-97; Ord. No. 31-04/05, 10-4-04; Ord. No. 92-07/08, emergency passage 11-19-07; Ord. No. 249-17/18, 6-18-2018)

**Sec. 25-175. Regulations relating to snow storage and removal from specified areas.**

(a) When snow is to be plowed or removed from privately owned or operated expansive parking, storage or other open areas, such as, but not limited to, filling stations, parking lots, used car lots, hospitals and truck terminals, no such snow shall be placed within the area reserved for sidewalk or street purposes. All snow plowed or removed from such areas shall either be stored within the boundaries of the premises for which it is plowed or removed or hauled to the city snow dump or other location suitable to the public works authority.

(b) Either the Director of Public Works, or the Director of the Permitting and Inspections Department, or their respective designees, may arrange for the removal of snow which exists in violation of the provisions of subsection (a) above.

(c) The penalty for an offense shall be two hundred fifty dollars (\$250.00), plus attorney's fees and costs. When the City removes or arranges for the removal of snow or ice accumulations the owner shall also be charged the costs of removal, plus a ten (10%) percent charge for administration. A separate bill for each such removal shall be submitted to the record owner of the building as soon as practicable after the charges have been incurred. The record owner of each such building shall be deemed to be the owner as of April 1<sup>st</sup> that year as designated in the office of the city

tax assessor.

(Ord. No. 132A-93, 11-15-93; Ord. No. 92-07/08, emergency passage 11-19-07; Ord. No. 135-08/09, emergency passage 11-17-08; Ord. 108-15/16, 11-16-2015; Ord. No. 249-17/18, 6-18-2018)

**Sec. 25-176. Snow removal provided by city; when and under what conditions.**

In the business-pedestrian district and in other areas where snow is removed and hauled away by the city, the city will move any and all snow removed from private property, except in the cases covered by section 25-175, which has been placed within the street area from curb to curb, provided that such snow has not been piled in one (1) spot or area but spread evenly within such street area abutting property from which it was removed before removal operations by the city are commenced. On those portions of streets from which the city removes snow by loading and hauling away, snow may be removed from roofs of buildings or sidewalks and deposited evenly within the street area where it shall be accessible for removal by the city, provided that such depositing is done prior to commencement of removal operations by the city and provided that such snow is spread in the manner provided above.

(Ord. No. 132A-93, 11-15-93)

**Sec. 25-177. Snow not to be stored within street and sidewalk areas; exception.**

In all cases, after a street area has been plowed or cleared of snow, no snow shall be placed therein beyond the windrowed accumulation along the curbline, and in those areas where snow is removed by the city, no snow shall be deposited within the street or sidewalk area after completion of removal operations by the city. Snow removed from driveways shall be stored within the boundaries of the premises from which it is removed and shall not be plowed into or deposited in the area reserved for street or sidewalk purposes. In cases of driveways which do not come within the provisions of section 25-175 hereof and where there is no room on the premises for such storage, snow plowed or removed therefrom may be spread in the street area along the curb frontage of the premises from which it is plowed or removed, provided that such storage is done before the city has plowed or cleared the street. Such snow must be spread along the curb outside of the sidewalk area in such manner as not to impede traffic and must not be pushed or moved into or across the street to the opposite curb.

(Ord. No. 132A-93, 11-15-93)

**Sec. 25-177.5. Rules and regulations.**

(a) Prior to October 1, 2012, the public works authority shall establish rules and regulations governing exceptions to the requirement for residential property owners to clear the sidewalk abutting their property under 25-173(b) (1). Such exceptions shall take into account pedestrian safety, the city's priority snow removal areas, and whether the property is on a street where sidewalks are to be plowed by the city on at least one side.

(b) No less than 7 days before promulgating any rules or regulations under paragraph (a) above, the public works authority shall notify the public through notice to the media, posting on the city website, Facebook and other available electronic media, that the public works authority will be promulgating such rules, that a copy of the proposed rules or amendments may be obtained at the public works authority office and on the city website, and that a public hearing will be held at a specified date, time and place. A copy of the rules shall be placed upon the city council agenda as a communication after such public hearing. The rules will take effect within 15 days after being placed on the council agenda, unless disapproved or amended by the city council.

(c) The director shall review any rules promulgated under paragraph (a) annually and shall ensure that the city council and the public are notified of the rules through the media, website, Facebook and e-mail lists prior to November 1 of each year. Any amendments to such rules shall be promulgated in the same manner as provided in paragraph (b) above by October 1 of such year.

(Ord. No.28-12/13, 9-19-12; Ord. 108-15/16, 11-16-2015; Ord. No. 249-17/18, 6-18-2018)

**Sec. 25-178. Enforcement.**

(a) This article shall be enforced by the Director of Public Works, or the Director of the Permitting and Inspections Department or their respective designees.

(b) The city manager, or his or her designee, may declare a delay of enforcement of this article. Such a declaration shall be for the purpose of giving property owners additional time to clear their sidewalks of snow or ice which has accumulated, or for other good cause state in the declaration. Any such declaration shall be reduced to writing as soon as practicable thereafter, stating the reasons therefore. Such declaration shall be communicated to such

representatives of the communications media as the city manager may direct.

(Ord. No. 132A-93, 11-15-93; Ord. No. 31-04/05, 10-4-04; Ord. No. 92-07/08, emergency passage 11-19-07; Ord. No. 135-08/09, emergency passage 11-17-08; Ord. No. 28-12/13, 9-19-12; Ord. 108-15/16, 11-16-2015; Ord. No. 249-17/18, 6-18-2018)

### **Sec. 25-179. Penalties and liens.**

In addition to other collection methods authorized by law, and the penalties provided herein and in section 1-15, charges assessed pursuant to this article shall be enforceable by lien for the benefit of the city pursuant to section 1-16 of this Code.

(Ord. No. 132A-93, 11-15-93; Ord. No. 194-77, § 3, 2-3-97; Ord. No. 139-00, §1, 1-3-00; Ord. No. 31-04/05, 10-4-04)

### **Sec. 25-180. Appeals.**

(a) *Procedure.* An appeal to the City Manager may be taken by a person in receipt of a notice of violation of this Article within ten (10) days of the mailing of notice of the violation or receipt of written notice of the violation, whichever occurs first. The appeal shall be in writing and shall state the basis for appeal. The City Manager shall designate himself/herself or any agent or employee to act as hearing officer in the appeal. The hearing officer shall provide such person with the opportunity to be heard and to demonstrate why the decision is in error.

(b) *Notice of hearing.* Notice of the hearing shall be given by regular United States mail at least seven (7) days in advance of the hearing date.

(c) *Action by hearing officer.* The hearing officer may affirm, modify or vacate the decision of the Public Works authority. The written decision of the hearing officer shall be issued to the appellant. Any person aggrieved by a decision of the hearing officer may obtain review available by law in the superior court in accordance with the Maine Rules of Civil

Procedure 80B.

(Ord. No. 249-17/18, 6-18-2018)

**Sec. 25-181. Reserved.**

**Sec. 25-182. Reserved.**

**Sec. 25-183. Reserved.**

**Sec. 25-184. Reserved.**

**Sec. 25-185. Reserved.**



- Sec. 25-186. Reserved.**
- Sec. 25-187. Reserved.**
- Sec. 25-188. Reserved.**
- Sec. 25-189. Reserved.**
- Sec. 25-190. Reserved.**

#### **ARTICLE IX. MOVING OF STRUCTURES\***

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**\*Editor's note**--Ord. No. 138-91, adopted Jan. 23, 1991, repealed former Art. IX of this chapter, substantive §§ 25-201--25-203, relative to permits for moving of structures, and enacted new provisions in lieu thereof as §§ 25-191--25-205. Formerly, this article derived from § 703.11 of the city's 1968 Code as amended by Ord. No. 57-69, adopted Jan. 6, 1969; Ord. No. 292-75, adopted May 19, 1975; and Ord. No. 549-86, adopted May 12, 1986.

**Cross reference(s)**--Buildings and building regulations, Ch. 6.  
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#### DIVISION 1. GENERALLY

##### **Sec. 25-191. Purpose.**

This article is intended to protect the public health, safety and general welfare, to ensure maximum safety to persons and property in the city from the dangers inherent in moving large, heavy structures over, along or across the city streets, and to minimize congestion and traffic hazards on public streets.  
(Ord. No. 138-91, 1-23-91)

##### **Sec. 25-192. Definitions.**

Terms used in this article shall have their common meanings, except that the definitions set forth in this section shall apply unless the context clearly indicates that a different meaning is intended:

*Structure* includes, but is not limited to, any object, building or load, which is nondivisible and, when prepared to be moved on city streets, has at least one (1) dimension greater than the following:

Width: Eleven (11) feet six (6) inches;

Height: Thirteen (13) feet six (6) inches; or

Length: Seventy (70) feet.

"Structure" also includes any object, building or load having a weight greater than the gross limits established by 29 M.R.S.A § 1652 and 29 M.R.S.A § 1655 as amended from time to time.

Notwithstanding the foregoing, "structure" shall not include manufactured housing, as defined in section 14-47 of this Code, and construction equipment which is within the dimensional limits of its state permit.

(Ord. No. 138-91, 1-23-91)

## DIVISION 2. PERMIT

### **Sec. 25-193. Permit required.**

(a) *State permit required.* No person shall move any structure over, along or across any highway, street or alley maintained by the city without first obtaining the appropriate permit from the State of Maine. Failure to obtain the required permit shall be deemed a violation of this Code.

(b) *City permit required.* No person shall move any structure over, along or across any highway, street or alley maintained by the city without first obtaining a permit from the public works authority. Such permit shall be valid only for a specified one (1) trip and for the time period designated on the permit, not to exceed thirty (30) days.

(c) *Exemptions from permit requirement.* All vehicles and loads carried thereon permitted on the interstate highway system and those qualifying federal and primary system highways shall be exempt from the permit provisions of this division when travelling between the interstate highway system and any other qualifying federal aid primary system highways and terminals, facilities for food, fuel, repairs and rest and points of loading and unloading for household goods carriers. Qualifying federal aid primary system highways are those designated by the Secretary of the United States Department of Transportation, pursuant to the United States Surface Transportation Assistance Act of 1982.

(Ord. No. 138-91, 1-23-91)

### **Sec. 25-194. Permit fee.**

(a) A fee in the amount of two hundred dollars (\$200.00) shall be charged by the public works authority for the one-way or one (1) round-trip movement of a building or portion thereof.

(b) The fee for all objects and loads, other than buildings or portions thereof, shall be charged in accordance with the rate schedule established for overweight vehicles by the State of Maine, Secretary of State, division of motor vehicles. A copy of such rate schedule shall remain on file at the department of public works.

(c) Late fee. In the event that an application is filed after the structure has been moved, the permit fee shall be double the fee established by this division.  
(Ord. No. 138-91, 1-23-91)

**Sec. 25-195. Application for a permit.**

(a) *For movement of a structure.* Any person desiring a permit for the movement of a structure shall file a written application with the public works on a form furnished by the city for that purpose. The application must be filed at least five (5) working days prior to the proposed date of the move.

(b) *For movement of construction equipment which exceeds limits established by state permit.* Notwithstanding paragraph (a) of this section, any person desiring a permit for the movement of construction equipment which exceeds the limits established by its applicable state permit shall contact the public works authority by telephone at least one (1) hour prior to the proposed move. The information provided to the public works authority shall include the information required in paragraph (c) of this section.

(c) *Contents.* The application shall specify the following:

- (1) A description of the structure, object or load proposed to be moved, including the exact weight, dimensions and axle placement;
- (2) The reason for the move;
- (3) The locations from which and to which the structure is to be moved;
- (4) The streets on which it is desired to move the structure;
- (5) Proposed moving date and hours;

- (6) Any additional information which the public works authority shall find necessary to a fair determination of whether a permit should be granted.

(Ord. No. 138-91, 1-23-91)

**Sec. 25-196. Additional requirements.**

(a) *Bond required.* The applicant shall file with the director of finance cash or a surety bond, approved as to form by the corporation counsel, or certified check, in an amount to be determined by the public works authority for each move, as an indemnity for any damage to the property of the city and to the property of third parties, including utilities, caused by or incidental to the removal of any structure over any street in the city. The bond shall run to the city for the use and benefit of any person or persons intended to be protected thereby, after satisfaction of the claims of the city.

(b) *Insurance required.* The applicant shall file with the director of finance a certificate of public liability insurance in the amount of at least three hundred thousand dollars (\$300,000.00) combined single limit for bodily injury, death and property damage, or such higher amount as may be required by the Maine Tort Claims Act as amended from time to time. Such certificate shall name the city of Portland as an additional insured and shall remain in full force and effect throughout the period that the permit shall remain valid and for two (2) years thereafter, unless the insurance coverage provided is on an occurrence basis. Such certificate shall also state that it shall not be renewed, cancelled or otherwise materially modified without ten (10) days prior written notice to the director of finance. Replacement certificates of insurance shall be delivered to the director of finance prior to the date of renewal, cancellation, expiration or other material modification of the insurance coverage required hereunder.

(Ord. No. 138-91, 1-23-91)

**Sec. 25-197. Removal of utility wires or poles.**

If it is necessary to cut, disconnect or remove any wires or poles belonging to a public utility to move the structure, it shall be the responsibility of the applicant to obtain written approval from the utility prior to the issuance of such permit.

(Ord. No. 138-91, 1-23-91)

**Sec. 25-198. Standards for denial of permit.**

The public works authority shall issue a permit unless it finds that:

- (a) Any application requirement or any fee or deposit requirement has not been complied with;
- (b) The applicant has failed to comply with applicable federal or state law requirements including, but not limited to, the acquisition of any permits from the State of Maine;
- (c) The structure exceeds the legal dimension and weight limit requirements established by the State of Maine and cannot be legally permitted by the State of Maine under state law;
- (d) The structure cannot be moved without endangering persons or property in the city, or would cause excessive damage to city streets and infrastructure including, but not limited to, curbing, sidewalks and esplanades, or would cause unreasonable damage to the trees, plants and shrubs on and along the city streets by reason of excessive weight or size; by reason of structural instability; or for other good reason;
- (e) The applicant's equipment is unsafe and that persons and property would be endangered by its use;
- (f) No safe route for the structure to reach the desired location can be found;
- (g) An outstanding balance is due to the city for services associated with prior permits issued for movement of structures;
- (h) An outstanding balance is due to the city for damages arising out of prior movements of structures.

(Ord. No. 138-91, 1-23-91)

**Sec. 25-199. Deposit to cover cost to city.**

In addition to the bond required under section 25-196, upon notification from the public works authority, the applicant shall deposit with the director of finance a cash deposit sufficient to

cover the cost to the city as estimated by the director of parks and public works for trimming, moving, removing or replanting of trees and shrubs, and for moving, removing or displacing any pole or other structure supporting any wires, cables or other equipment belonging to the city, or the cutting, displacing or changing the location of any wire, cable or other equipment upon any poles or structures belonging to the city.

(Ord. No. 138-91, 1-23-91)

**Sec. 25-200. Duties of permittee.**

Every permittee under this article shall:

- (a) *Use designated streets.* Move a structure only over streets designated for such use in the written permit, which streets shall be designated by the public works authority;
- (b) *Move at designated time.* Move a structure only on the date designated in the permit, unless otherwise authorized by the public works authority. The permittee must notify the public works authority of any desired change in moving date and hours designated in the permit. The public works authority reserves the right to restrict hours of movement when the size of the load, in the sole judgment of the city's traffic engineer, shall impede normal traffic flows or cause possible traffic delays;
- (c) *Notify of damage.* Notify the public works authority in writing of any and all damage done to property within the city within twenty-four (24) hours after the damage or injury has occurred;
- (d) *Display lights.* Display lights during the nighttime on every side of the structure visible to oncoming traffic while on a street, in such manner as to warn the public of the obstruction and, if required by the public works authority, shall erect and maintain barricades across the appropriate streets to protect the public from damage or injury by reason of the removal of the structure or construction equipment;
- (e) *Obstructing streets.* With the exception of construction equipment, remove the structure from the city streets after twenty-four (24) hours of such occupancy, unless a written extension is granted by the public works

authority;

- (f) *Comply with all laws.* Comply with all applicable ordinances and laws while moving the structure or construction equipment in the city;
- (g) *Pay expense of city employees.* Pay the expense of a traffic officer, who shall accompany the movement of the structure, protect the public if the public works authority after consultation with the chief of police determines such an officer is necessary, and pay the expense of any public works employees, equipment or material required to safely complete the move; and
- (h) *Trees, plants and shrubs.* Notify the public works authority at least forty-eight (48) hours prior to moving the structure of any necessity to trim, move, remove or replant any tree, plant or shrub belonging to the city or any part of which is located within the city right-of-way. The permittee shall not trim, move, remove, replant or otherwise disturb such trees, plants or shrubs. The work shall be done only by the authorized workmen employed by the city unless otherwise approved by the public works authority. The permittee shall pay to the city any and all costs or expenses for the trimming, moving, removing or replanting of any-trees, plants or shrubs, or of any damage to them.

(Ord. No. 138-91, 1-23-91)

#### **Sec. 25-201. Return of deposits.**

After the structure has been moved, the public works authority shall furnish the director of finance with a written statement of all expenses incurred in removing and replacing all property belonging to the city, and of all material used in the making of the removal and replacement, together with a statement of all damage caused to or inflicted upon property belonging to the city and a statement of all expenses for any traffic officer, public works employees, equipment or material utilized to complete the move. The director of finance shall authorize the public works authority to return to the applicant all deposits after the director of finance deducts the sum sufficient to pay for all of the costs and expenses and for all damage done to property of the city by reason of the removal of the structure and for all expenses for utilization of city employees, equipment and materials. Permit fees shall not be returned.

(Ord. No. 138-91, 1-23-91)

**Sec. 25-202. Enforcement.**

(a) *Enforcing officers.* The public works authority, building inspector and the police department shall enforce and carry out the requirements of this article.

(b) *Permittee liability in excess of deposit.* The permittee shall be liable for any expenses, damages or costs in excess of deposited amounts or securities, and the city may prosecute a court action against the permittee for the recovery of any excess amount.  
(Ord. No. 138-91, 1-23-91)

**Sec. 25-203. Revocability of permit.**

Permits issued pursuant to this division may be revoked by the public works authority after notice and hearing for violation of any provisions of this Code regulating such permit or violation of the terms of the permit granted.  
(Ord. No. 138-91, 1-23-91)

**Sec. 25-204. Appeals.**

Any decisions by any qualified city officials under this article shall be subject to review by the superior court under Rule 80B of the Maine Rules of Procedure within thirty (30) days of the decision.  
(Ord. No. 138-91, 1-23-91)

**Sec. 25-205. Severability.**

Should any provision or section of this article be held unconstitutional or invalid, such holding shall not be construed as affecting the remaining provisions or sections of this article.  
(Ord. No. 138-91, 1-23-91)