

## CHAPTER 8

### INCUMBRANCES AND INJURIOUS PRACTICES IN STREETS

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#### **Article I: INCUMBRANCES**

##### **Section 8.101: INCUMBRANCES, GENERAL**

No person shall, without necessity, or license from the City Council, place or leave or cause to be placed or left, any team, carriage, cart, dray, automobile, truck or other like vehicle or thing in any street, lane, alley or public place that shall in any way encumber or impede the free passage thereon or therein.

##### **Section 8.102: PEDDLING PILLS, ETC.**

No person shall distribute any headache powders, pills or any drug or substance of a poisonous nature, from house to house, or from store to store, or in any public street, playground or park.

##### **Section 8.103: DEPOSITING SNOW**

No person shall deposit, or cause to be deposited, any ice or snow, which has been removed from private property, in or upon any street, sidewalk or public place in the City.

##### **Section 8.104: HAULING PAPERS, ETC.**

No person shall carry, haul or in any other way take old papers, rags, or other similar material through any street in said City without having such materials so secured and covered as to prevent their being scattered about or in any way deposited in any street or other public place in the City.

##### **Section 8.105: DIGGING UP A STREET**

No person shall break or dig up the ground or stones in any street, lane or alley or any sidewalk or common in the City, or erect any staging for building, or place or deposit any stone, bricks, timber, or other materials thereon, or remove any building through any street or other public place without first having obtained a written license from the City Council, and complying in all respects with the conditions of said license.

### **Section 8.106: LICENSE TO OBSTRUCT STREET**

The City Council may grant a license in writing to any person for the purpose of building or removing any building or for any other lawful purpose, to dig up, obstruct, or encumber so much and such parts of any street, lane, alley, sidewalk, or other public place in the City, as may be necessary for such purpose, and on such terms and conditions as they shall deem safe and proper.

- A. Fee to be determined in accordance with Chapter 1, Article XVI or similar wording. (Amended 3/18/2002).

### **Section 8.107: RAILINGS, LIGHTS, ETC.**

Whenever any street, lane, alley, sidewalk or other public place in the City shall under license granted as provided in the preceding section, be dug up, obstructed, encumbered, or otherwise rendered thereby unsafe or inconvenient for travelers, the person so licensed shall put, and at all times keep up, a suitable railing or fence around the sections or parts of any street, lane, alley, or other public place so dug up, and shall also keep two or more lighted lanterns fixed to such fence, or in some proper manner, every night from twilight in the evening to daylight in the morning, and within such reasonable time as the City Manager or the Superintendent of Public Works shall direct, he shall amend and repair such street, lane, alley, sidewalk or other public place, to the acceptance of said City Manager or Superintendent.

### **Section 8.108: PROJECTIONS FORBIDDEN**

No person shall make, erect, maintain or continue any doorstep, portico, entrance or passageway to any cellar or basement, or any fence or other structure, in or upon any street, lane, alley or sidewalk within the City.

### **Section 8.109: GRATINGS**

No person shall suffer the platform, or grate of the entrance or passageway to his cellar or basement, heretofore constructed in any street, lane, alley, or sidewalk, to rise above the even surface of such street, lane, alley or sidewalk; and every such entrance or passageway shall at all times be kept covered, when not in immediate use, by a suitable platform or grate; or in case it shall be kept open, it shall be guarded and protected by a sufficient railing on both sides thereof, at least two and a half feet high, and well lighted at night.

### **Section 8.110: DITCHES, ETC. MUST BE RAILED**

If any person shall dig or sink, or cause to be dug or sunk, any well, cistern, cellar, drain, or other cavity in the ground, near to or adjoining any street, lane or alley in the City, or shall suffer any such cavity or well to remain open on his premises, he shall put up, so long as it shall be necessary for the purpose, a railing or fence, on or near the line of such street, lane or alley or otherwise secure said opening or cavity in such manner as sufficiently to guard and protect travelers and passengers from falling into or being injured thereby.

### **Section 8.111: DISTURBANCES FORBIDDEN**

No person shall remain upon any sidewalk, or upon any doorstep, portico, or other projection, from any house or other building to the annoyance or disturbance of any person, nor shall any person, by any noise, gesture or other means, wantonly and designedly frighten any horse in any street or public place in the City.

### **Section 8.112: GROUPS IN STREET FORBIDDEN**

Three or more persons shall not stand or remain in a group, or near each other, on any sidewalk or crosswalk, or in any street or public way, in such a manner as to obstruct a free passage thereon or therein, for a longer time than five minutes after a request made by any person to move on, and three or more persons standing or remaining in a group, or near each other, on any sidewalk or crosswalk, or in any public street or public way, in such a manner as to obstruct a free passage thereon or therein, shall move on immediately after requested to do so by the City Manager, Chief of Police, or any constable or police officer.

### **Section 8.113: LOITERING**

#### **A. Definitions used in this Ordinance:**

1. "Loitering" shall mean remaining idle in essentially one location and shall include the concepts of spending time idly, loafing or walking about aimlessly, and shall also include the colloquial expression "hanging around".
2. "Public Place" shall mean any place to which the public has access and shall include any street, highway, road, alley or sidewalk. It shall also include the front or the neighborhood of any store, shop, restaurant, tavern or other place of business, and public grounds, areas, parks, as well as parking lots or other vacant private property not owned by or under the control of the person charged with violating this Ordinance or in the case of a minor, not owned or under the control of his parent or guardian.
3. "Parent or Guardian" shall mean and include any adult person having care or custody of a minor whether by reason of blood relationship, the order or any court or otherwise.

#### **B. Certain types of loitering prohibited:**

No person shall loiter in a public place in such a manner as to:

1. Create or cause to be created a danger of a breach of peace;
2. Create or cause to be created any disturbance or annoyance to the comfort and repose of any person;
3. Obstruct the free passage of pedestrians or vehicles;

4. Obstruct, molest, or interfere with any person lawfully in any public place as defined in Section A.2. This paragraph shall include the making of unsolicited remarks of an offensive, disgusting or insulting nature or which are calculated to annoy or disturb the person to, or in whose hearing, they are made.

C. Discretion of the Police Officer:

Whenever any police officer shall, in exercise of reasonable judgment, decide that the presence of any person in any public place is causing any of the conditions enumerated in Section B., he may, if he deems it necessary for the preservation of the public peace and safety, order that person to leave that place. Any person who shall refuse to leave after being ordered to do so by a police officer shall be guilty of a violation of this Ordinance.

D. Loitering by Minors:

No parent or guardian of a minor under the age of 18 years shall knowingly permit that minor to loiter in violation of this Ordinance.

E. Notice of Violation:

Whenever any minor under the age of 18 years is charged with a violation of this Ordinance, his parent or guardian shall be notified of this fact by the Chief of Police or any other person designated by him to give such notice.

**Section 8.114: AWNING AND SIGNS**

No person shall place or establish any sign, awning or shade before his usual place of business or dwelling house, over any part of any street or sidewalk, unless the same be safety fixed and supported so as in no way in inconvenience pedestrians, and so that the lowest part of such sign, awning or shade shall be at least 7 feet in height above the sidewalk.

**Section 8.115: ANIMALS IN STREETS**

No person shall suffer or allow any horses, mules, asses, meat cattle, sheep or swine, owned by him or being in his care, to go at large without a keeper, in any street, highway, common or public place, or being in charge of such keeper to pass along and travel over any sidewalk in any compact part of the City.

**Section 8.116: SALE OF ANIMALS**

No person shall expose for sale or suffer to remain, any herds of horses, mules, asses, meat cattle, swine or sheep, within the compact part of the City, in any street, highway, common or public place, except in such places as shall be approved by the City Manager.

**Section 8.117: POSTING FORBIDDEN**

No person shall in any manner paint, put upon or affix, to a fence, bridge, or other structure, or upon a rock or other natural object, or the property of another, without his consent, any device, trademark, advertisement or notice.

**Section 8.118: HAWKERS AND PEDDLERS**

No hawker, peddler, or itinerant merchant shall cry any goods, wares or merchandise, nor shall any person whether employed by such hawker, peddler or itinerant merchant, or otherwise, call attention to or advertise such merchandise by any words or sounds or by the blowing of horns or other instruments, or by any unusual noise, in or upon any public street, lane, alley or place.

**Section 8.119: HAWKERS' WAGON**

No hawker or peddler shall allow any wagon or other vehicle owned by him or in his charge to stand or remain upon the corner of any street or at or near the junction of any two streets for the sale of goods, wares or merchandise therefrom.

**Section 8.120: DISPLAYING MERCHANDISE ON SIDEWALK**

No person shall sell, or expose for sale or place or cause to be placed in or over a space exceeding 24" (twenty-four inches) nearest the premises occupied by such person, on any sidewalk of any street, lane, or public place in this City, any article of any kind.

**Section 8.121: CUTTING SHADE TREES**

No person or persons shall without first had and obtained from the City Council, dig up, remove, destroy, or mutilate any shade tree situated and growing within the limits of any public street or highway in passing through this City.

**Section 8.122: FIREWORKS, ETC., RESTRICTED**

No person shall exhibit any fireworks, or discharge any rockets, squibs, crackers or any preparation of gunpowder, or discharge any cannon, or other firearms, within the compact part of the City, on any street, highway, common or public place, unless by permission of the City Manager, the City Council, or Police Commissioners.

**Section 8.123: ALCOHOLIC BEVERAGES**

It shall be unlawful for any person to drink any alcoholic beverage or alcoholic liquor as defined in Chapter 175 of the N.H.R.S.A., upon any public highway, or while on any public sidewalk, municipal parking lot or municipal park within the City of Portsmouth.

This provision shall not apply to that portion of the highway, sidewalk, municipal parking lot, municipal park or mall that has been specifically leased to any private individual or concern for

the purpose of establishing an outdoor restaurant or cafe, providing said restaurant or cafe meets all the requirements established by the City of Portsmouth.

It shall be unlawful for any person to use, consume, or possess in an open can, bottle, or other container, any alcoholic beverages as defined in Chapter 175 of the New Hampshire Revised Statutes Annotated while upon property owned or under the control of the City of Portsmouth, unless such property is the subject of a lease with the City of Portsmouth expressly allowing such activities. (Adopted 8/1/94)

Upon a conviction of any offense under this ordinance, which alleges that a person has had one or more convictions under this ordinance within five (5) years preceding the date of the subsequent offense, the person shall be subject to the following penalties:

First Offense	\$ 40
Second Offense	\$ 60
Third Offense	\$ 80
fourth and each subsequent offense	\$100

Any fine to which a violator is subject under this ordinance may be paid to the Clerk of Court of the Portsmouth District Court at any time prior to trial in any case charged under this ordinance. (Amended 12/15/97)

#### **Section 8.124: BENCHES**

- A. No person shall sit or stand upon the back or stand upon the seat of any municipally owned bench. (Adopted 10/6/86)
- B. No person shall continue to sit, stand or lounge in the area immediately adjacent to any municipally owned bench after having been requested to move on by any Police Officer, and at no time after such a request has been made by a Police Officer shall any person to whom such a request is made return and sit or stand or lounge in the area immediately adjacent to any municipally owned bench. (Adopted 10/6/86)

#### **Section 8.125: IDENTIFICATION OF CERTAIN WORKERS**

Every person, whether in the employ of the City or any private corporation, whose duty it shall be to visit private residence or building for the purposes of examining electric, gas and water meters or pipes or for the purpose of inspecting drains or chimneys shall wear, while making such a visit, a suitable badge or other distinctive mark, indicating his employment or authority. (Adopted 10/6/86)

**Section 8.126: CONSUMPTION AND POSSESSION OF ALCOHOLIC BEVERAGES**

No person shall consume or possess in an open can, bottle, or other container, any alcoholic liquor or beverage as defined by Chapter 175 of the New Hampshire Revised Statutes Annotated, while upon or in a motor vehicle upon any public way, as defined by Chapter 259:1 of the New Hampshire Revised Statutes Annotated, or any public sidewalk, public park or municipal parking lot within the City of Portsmouth. (Adopted 10/6/86)

Upon a conviction of any offense under this ordinance, which alleges that a person has had one or more convictions under this ordinance within five (5) years preceding the date of the subsequent offense, the person shall be subject to the following penalties:

First Offense	\$40
second offense	\$60
third offense	\$80
fourth and each subsequent offense	\$100

Any fine to which a violator is subject under this ordinance may be paid to the Clerk of Court of the Portsmouth District Court at any time prior to trial in any case charged under this ordinance. (Amended 12/15/97)

**Section 8.127: PRIVATE PROPERTY RIGHTS**

- A. No person shall enter or remain upon the property of another if such a person knows he is not licensed and privileged to do so. (Adopted 10/6/86)
- B. No person shall purposely damage the property of another if such a person has no right to do so. (Adopted 10/6/86)
- C. No person shall willfully conceal the goods of any store while upon the premises of such store unless such person is authorized to do so. (Adopted 10/6/86)
- D. No person shall possess the property of another with intent to deprive the owner thereof, knowing that such property is stolen. (Adopted 10/6/86)

**Section 8.128: PUBLIC PEACE (Adopted 10/6/86)**

- A. No person shall knowingly create a condition which is physically offensive or hazardous to that person or another in a public place by any act which serves no legitimate purpose.
- B. No person shall with the primary purpose of causing a breach of peace, public inconvenience, annoyance or alarm:
  - 1. Disrupt the orderly conduct of business in a public or governmental facility;
  - 2. Disrupt any lawful assembly of persons unless such person has lawful authority to do so;

3. Be present in a public place where that person's presence substantially interferes with a criminal investigation, firefighting operation as defined in RSA 154:17, or the provision of any emergency service where such services require traffic or pedestrian management;
  4. Refuse to comply with the lawful order of a police officer to move from a public place.
- C. No person shall recklessly risk causing a breach of the peace, public inconvenience, annoyance or alarm by:
1. Engaging in fighting or in violent, tumultuous or threatening behavior in a public place;
  2. Directing at another person in a public place obscene or offensive words which are likely to provoke a violent reaction on the part of an ordinary person;
  3. Making loud or unreasonable noises in a public place or making loud or unreasonable noises in a private place that can be heard in a public place or other private places, and such noises would disturb a person of average sensitivity;
  4. Obstructing vehicular or pedestrian traffic or potentially obstructing vehicular or pedestrian traffic on a public way or sidewalk or the entrance to any public building.
- D. No person shall urinate or defecate in public.

Upon a conviction of any offense under this ordinance, which alleges that a person has had one or more convictions under this ordinance within five (5) years preceding the date of the subsequent offense, the person shall be subject to the following penalties:

First offense	\$60
Second offense	\$80
Third and each subsequent offense	\$100

Any fine to which a violator is subject under this ordinance may be paid to the Clerk of Court of the Portsmouth District Court at any time prior to trial in any case charged under this ordinance. (Amended 12/15/97)

- E. No person shall operate any vehicle including motorcycles at any place within the City of Portsmouth in any manner hereafter described:
1. Misuse of power exceeding tire traction limits in acceleration, sometimes known as "laying down rubber" or "peeling rubber", or;
  2. Misuse of braking power exceeding tire traction limits in deceleration where there is no emergency, or;



3. Rapid acceleration by means by quick upshifting of transmission gears with either a clutch and manual transmission or automatic transmission, or;
4. Rapid deceleration by means of quick downshifting or transmission gears with either a clutch or manual transmission or an automatic transmission, or;
5. Racing of engines by manipulation of the acceleration, gas pedal, carburetor, or gear selection whether the vehicle is either in motion or standing still, or;
6. The blowing of any horn except as a warning signal or the use of any other noise-making device whether the vehicle is either in motion or standing still.

Upon a conviction of any offense under this ordinance, which alleges that a person has had one or more convictions under this ordinance within five (5) years preceding the date of the subsequent offense, the person shall be subject to the following penalties:

First offense	\$50
Second offense	\$75
Third and each subsequent offense	\$100

Any fine to which a violator is subject under this ordinance may be paid to the Clerk of Court of the Portsmouth District Court at any time prior to trial in any case charged under this ordinance. (Amended 12/15/97)

**Section 8.129: SCOPE, SIGNS INCLUDED**

- A. This ordinance shall apply to all signs placed in, on or over the public right-of-way relating to temporary events, including, but not limited to:
  1. Signs concerning temporary events;
  2. Home for Sale signs and other “For Sale” signs relating to property offered for sale;
  3. Political advertising;
  4. Signs advertising services such as painting, carpentry, plumbing and electrical;
  5. Any other sign not erected pursuant to a valid City sign permit or express authorization from the City Council;

All such signs shall be called “temporary signs” in this ordinance.

**B. Temporary Signs On City Property Prohibited**

1. No person shall post any temporary sign on any street, park, lot, right-of-way or other property owned by the City with the following exceptions:
  - a. Signs posted by candidates for elected office;

- b. Real estate “for sale” signs located immediately adjacent to the premises being offered for sale;
- c. Real estate directional signs which do not identify a particular realtor, and which do not exceed two square feet in total area which may be posted at street corners to indicate that a property is for sale on a particular street. (Amended 1/27/97)

C. Removal Required

Each permitted temporary sign displayed anywhere in the City in the public right-of-way shall be removed not more than fifteen days after the event, sale or other matter to which the sign refers. (Amended 12/17/2001)

**Section 8.130: PENALTY**

Unless otherwise provided in this Article, a person who violates any of the provisions of this chapter is punishable by a fine of up to \$1,000. (Section 8.131 deleted in its entirety and replaced 12/15/97)

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## **ARTICLE II: PARKS**

### **Section 8.201: DEFINITIONS**

- A. For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular number include the plural number. The word shall is always mandatory and not merely directory.
1. "City" is the City of Portsmouth.
  2. "Director" is a person immediately in charge of any park area and its activities, and to whom all park attendants of such area are responsible.
  3. "Park" is a park, reservation, playground, swimming pool, recreation center, or any other area in the City and devoted to active or passive recreation.
  4. "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
  5. "Vehicle" is any wheeled conveyance, whether animal drawn, motor powered, or self propelled. The term shall include any trailer in tow of any size, kind or description. Exception is made for baby carriages and vehicles in the service of the City parks.

### **Section 8.202: PARK PROPERTY**

A. Buildings and Property

No person in a park shall:

1. Willfully mark, deface, disfigure, injure, tamper with, or displace or remove, any paving or paving material, water lines or other public utilities or part or appurtenances thereof, signs, notices or placards whether temporary or permanent, monuments, stakes, posts or other boundary markers, or other structures or equipment, facilities or park property or appurtenances whatsoever, either real or personal.
2. Fail to cooperate in maintaining restrooms and washrooms in a neat and sanitary condition. No person over the age of 5 years shall use the restrooms and washrooms of the opposite sex.
3. Dig or remove any beach sand, whether submerged or not or any soil, rock, stones, trees, shrubs, plants, down-timber or other wood or materials, or make any excavation by tool, equipment, blasting or other means or agency.
4. Construct or erect any building or structure of whatever kind, whether permanent or temporary in character, or run or string any public service utility into, upon, or across such lands, except on special written permit issued hereunder.

B. Trees, Shrubbery, Lawns

No person in a park shall:

1. Damage, cut, carve, transplant or remove any tree or plant or injure the bark, or pick the flowers or seeds, of any tree or plant. Nor shall any person attach any rope, wire or other contrivance to any tree or plant. A person shall not dig or in other ways disturb grass areas, or in any other way injure or impair the natural beauty or usefulness of any area.
2. Climb any tree or walk, stand or sit upon monuments, vases, fountains, railings, fences, or gun carriages or upon any other property not designated or customarily used for such purposes.
3. Tie or hitch a horse or other animal to any tree or plant.

C. Wild Animals, Birds, Etc.

No person in a park shall:

1. Hunt, molest, harm, frighten, kill, trap, chase, tease, shoot or throw missiles at any animal, reptile, bird or shall he remove or have in his possession the young of any wild animal, or the eggs or nest, or young of any reptile or bird; nor shall he collect, remove, have in his possession, give away, sell or offer to sell, or buy or offer to buy, or accept as a gift, any specimen, alive or dead, of any of the group of tree snails. Exception to the foregoing is made in those snakes known to be deadly poisonous such as rattle snakes, moccasins, coral snakes, or other deadly reptiles, may be killed on sight.
2. Give or offer or attempt to give to any animal or bird any tobacco, alcohol or other known noxious substances.

D. Dogs

No person shall allow any dog, whether on a leash or off a leash to be in any area in any park in which the Recreation Department holds scheduled programs. Such areas shall be posted by the City to indicate that no dogs are allowed at any time. (Amended 5/16/05)

E. Use of Piers, Floats and any other docking locations

The use of piers, floats and any other docking locations at Prescott Park from the northerly boundary of the park to the Peirce Island Bridge shall be limited and regulated as follows:

1. No commercial craft shall be secured at any such docking location;
2. No pleasure craft in excess of 70 feet in length shall be secured at any such docking location without written permission from the Trustees;
3. No craft may be "rafted", (secured to another craft) which is secured at any such docking location;
4. No craft shall remain secured at the floats in excess of seventy-two (72) consecutive hours per docking, after which, at least twenty-four (24) hours shall have elapsed before the craft may be permitted to re-secure except to load or unload. A craft may be secured in 24-hour increments in excess of 72 hours when

the dockmaster has determined that there is no other demand for the space;  
(Amended 9/21/98)

5. No craft may be docked or secured at any location in Prescott Park other than at the northerly or southerly floats;
6. One float in both the northerly and southerly sections shall be designated by the Dock Master for loading and unloading and shall be restricted to one-half hour use at no cost;
7. Docking Fees:
  - a. Emergency Docking: (Adopted 6/2/86)
    1. When necessary, due to an emergency, any craft shall be permitted to secure to the pier or floats, without charge, for up to four hours, after which, docking fees will be assessed;
    2. "Emergency" is a sudden unexpected happening requiring the immediate attention of the operator or a passenger of the craft.
  - b. Daytime docking fees to be determined in accordance with Chapter 1, Article XVI or similar wording. (Amended 3/18/2002).
  - c. Persons wishing to secure a craft for a twenty-four (24) hour period shall pay a fee to be determined in accordance with Chapter 1, Article XVI or similar wording. (Amended 7/9/90) (Amended 3/18/2002).
8. The Dock Master may inquire of the person in charge of any craft to be secured to the floats, the intended length of stay and may collect in advance the appropriate fee.
9. Any person, firm, or corporation who secures a craft or allows a craft under its ownership or control to be secured in violation of the terms of this ordinance shall be subject to the following:
  - a. a fine of not more than One Hundred (\$100) dollars per day;
  - b. prosecution under the New Hampshire Criminal Code;
  - c. a civil assessment payable to the City of Portsmouth in the amount of any docking fees which are not paid.
10. The provisions of this ordinance shall be posted in plain view at the piers, floats, and along the seawall at Prescott Park.

(8.202.E Amended 7/9/84 in its entirety; 8.202.E Amended 5/6/85 in its entirety)

F. Dock Master

Enforcement of the provisions of Section 8.202.D of these ordinances and collection of any and all docking fees created thereunder, shall be within the authority and responsibility of a Dock Master, who shall be appointed by and be under the direction and control of the Trustees of Trust Funds. (Adopted 7/9/84)

G. Municipal Floats, Docks and Piers Trust

All fees collected under the provisions of Section 8.202 D shall be held in trust by the Trustees of the Trust Fund for the purpose of repair, maintenance and safe operation of municipal floats, docks and piers. (Subsection F adopted 8/18/97)

### **Section 8.203: SANITATION**

- A. **Pollution of Waters:** No person in a park shall throw, discharge, or otherwise place or cause to be placed in the waters of any fountain, pond, lake, stream, bay or other body of water in or adjacent to any park or tributary, stream, storm sewer or drain flowing into such waters, any substance, matter or thing, liquid or solid, which will or may result in the pollution of said waters.
- B. **Refuse and Trash:** No person in a park shall have brought in or shall dump, deposit or leave any bottles, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage, or refuse, or other trash. No such refuse or trash shall be placed in any waters in or contiguous to any park, or left anywhere on the grounds thereof, but shall be placed in the proper receptacles where these are provided; where receptacles are not so provided all such rubbish or waste shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere.

### **Section 8.204: TRAFFIC**

- A. **State Motor Vehicle Laws Apply:** No person in a park shall fail to comply with all applicable provisions of the state motor vehicle traffic laws in regard to equipment and operation of vehicles together with such regulations as are contained in this and other Ordinances.
- B. **Enforcement of Traffic Regulations:** No person in a park shall fail to obey all traffic officers and park employees, such persons being hereby authorized and instructed to direct traffic whenever and wherever needed in the parks and on the highways, streets or roads immediately adjacent thereto in accordance with the provisions of these regulations and such supplementary regulations as may be issued subsequently by the Director.
- C. **Obey Traffic Signs:** No person in a park shall fail to observe carefully all traffic signs indicating speed, direction, caution, stopping or parking, and all others posted for proper control and to safeguard life and property.
- D. **Speed of Vehicles:** No person in a park shall ride or drive a vehicle at a rate of speed exceeding 15 mph except upon such roads as the Director may designate, by posted signs, for speedier travel.
- E. **Operation Confined to Roads:** No person in a park shall drive any vehicle on any area except the park roads or parking areas, or such other areas as may on occasion be specifically designated as temporary parking areas by the Director.
- F. **Parking:** No person in a park shall:
  - 1. Park a vehicle in other than an established or designated parking area and such use shall be in accordance with the posted directions there at and with the instructions of any attendant who may be present.
  - 2. Leave any vehicle anywhere in the park with one or more wheels chained or with motor set in gears and doors locked, or in any manner fixed or arranged so that such vehicle cannot readily be moved by hand.

3. Double park any vehicle on any road or parkway unless directed by a park official.
- G. Bicycles: No person in a park shall:
1. Ride a bicycle on other than a vehicular road or park path designated for that purpose. A bicyclist shall be permitted to wheel or push a bicycle by hand over any grassy area or wooded trail or on any paved area reserved for pedestrian travel.
  2. Ride a bicycle other than in full compliance with the traffic regulation of the City of Portsmouth.
  3. Leave a bicycle lying on the ground or pavement or set against trees, or in any place or position where other persons may trip over or be injured by it or leave bicycle in a place other than a bicycle rack when such is provided and there is space available.
- H. Skateboards and In-line Skates (Roller Blades): In Prescott Park, no person shall ride a skateboard, or wear either roller skates or in-line skates (Roller Blades). (5/2/94)

### **Section 8.205: RECREATIONAL ACTIVITIES**

- A. Bathing and Swimming: No person in a park shall:
1. Swim, bath or wade in any waters in any park except in such waters and at such places as are provided therefor, and in compliance with such regulation as are herein set forth or may be hereafter adopted. Nor shall any person frequent any waters or places customarily designated for the purpose of swimming or bathing, or congregate there when such activity is prohibited by the Director upon a finding that such use of the water could be dangerous or otherwise inadvisable.
  2. Frequent any water or places designated for the purpose of swimming or bathing, or congregate there at except between such hours of the day as shall be designated by the Director for such purposes for each individual area.
  3. Allow himself to be so covered with a bathing suit as to indecently expose his person or call forth merited criticism. No person shall appear in bathing costume at any place in the parks except within the limits of designated bathing places or areas, and all bathing costumes shall conform to commonly accepted standards.
  4. Dress or undress on any beach, or in any vehicle, toilet or other place, except in such bathing house or structures as may be provided for that purpose.
- B. Hunting and Firearms:  
No person in a park shall hunt, trap or pursue wild life at any time. No person shall use, carry or possess firearms of any descriptions or air rifles, spring guns, bow and arrows, slings or any other forms of weapons potentially inimical to wild life and dangerous to human safety, or any instrument that can be loaded with and fire blank cartridges or any kind of trapping device. Shooting into park areas from beyond park boundaries is forbidden.

- C. Picnic Areas and Use: No person in a park shall:
1. Picnic or lunch in a place other than those designated for that purpose. Attendants shall have the authority to regulate the activities in such areas when necessary to prevent congestion and to secure the maximum use for comfort and convenience to all. Visitors shall comply with any directions given to achieve this end.
  2. Violate the regulation that use of individual fireplaces together with tables and benches follows generally the rule of "first come/first served".
  3. Use any portion of the picnic areas or of any of the buildings or structures therein for the purpose of holding picnics to the exclusion of other persons nor shall any person use such area and facilities for an unreasonable time if the facilities for an unreasonable time if the facilities are crowded.
  4. Leave a picnic area before the fire is completely extinguished and before all trash in the nature of boxes, papers, cans, bottles, garbage, and other refuse is placed in the disposal receptacles where provided. If no such trash receptacles are available, then refuse and trash shall be carried away from the park area by the picnicker to be properly disposed of elsewhere.
- D. Games
- No person in a park shall take part in or abet the playing of games involving thrown or otherwise propelled objects such as balls, stones, arrows, javelins, or model airplanes except in areas set apart for such forms of recreation. The playing of rough or comparatively dangerous games such as football, baseball and quoits is prohibited except on fields and courts provided therefore. Roller-skating and Rollerblading shall be confined to those areas specifically designated for such activities.

**Section 8.206: BEHAVIOR**

- A. Intoxicating Beverages: No person in a park shall:
1. Have brought alcoholic beverages, nor shall any person drink alcoholic beverages at any time in the park.
  2. Have entered or be under the influence of intoxicating liquor at any time in the park.

Upon a conviction of any offense under this ordinance, the person shall be subject to the following penalties: (4/1/02)

First offense	\$50
Second offense	\$75
Third offense and each subsequent offense	\$100

Any fine to which a violator is subject under this ordinance may be paid to the Clerk of Court of the Portsmouth District Court at any time prior to trial in any case charged under this ordinance. (12/15/97.)



- B. Fireworks and Explosives:  
No person in a park shall bring, or have in his possession or set off or otherwise cause to explode or discharge or burn any fire-crackers, torpedoes, rockets, or other fireworks or explosives of flammable materials, or discharge them or throw them into such area from land or highway adjacent thereto. This prohibition includes any substance, compound, mixture, or article that in conjunction with any other substance or compound would be dangerous from any of the foregoing standpoints.
- C. Domestic Animals: (deleted in its entirety 10/19/87)
- D. Reservation of Facilities  
No person in a park shall occupy any seat or bench or enter into or loiter or remain in any pavilion or other park structure or section thereof which may be reserved and designated by the Director for the use of the opposite sex. Exception is made for children under 6 years of age.
- E. Dress  
No person in a park shall appear at any place in other than proper clothing. With the exception of the restricted bathing area, "proper clothing" shall be construed to prohibit the wearing of trunks or clothing that does not cover the upper portion of the body.
- F. Alms  
No person in a park shall solicit alms for any purpose, whether public or private. Non-profit organizations may solicit contributions during those times when they have been specifically authorized to use park property by the City Council. (Adopted 3/20/89)
- G. Fires  
No person in a park shall build or attempt to build a fire except in such areas and under such regulations as may be designated by the Director. No person shall drop, throw, or otherwise scatter lighted matches, burning cigarettes or cigars, tobacco paper or other flammable material, within any park area or on any highway, road or street abutting or contiguous thereto.
- H. Closed Areas  
No person in a park shall enter an area posted as "Closed to the Public" nor shall any person use or abet the use of any area in violation of posted notices.
- I. Games of Chance  
No person in a park shall gamble or participate in or abet any game of chance.  
  
Raffles shall not be considered a game of chance for the purpose of this section and shall be permitted by non-profit organizations during those times when they have been specifically authorized to use park property by the appropriate City department. (4/03/89)
- J. Loitering and Boisterousness  
No person in a park shall sleep or protractedly lounge on the seats or benches or other areas or engage in loud, boisterous, threatening, abusive, insulting or indecent language, or engage in any disorderly conduct or behavior tending to a breach of the peace.

Upon a conviction of any offense under this ordinance, the person shall be subject to the following penalties: (Amended 4/1/2002)

First offense	\$50
Second offense	\$75
Third and each subsequent offense	\$100

Any fine to which a violator is subject under this ordinance may be paid to the Clerk of Court of the Portsmouth District Court at any time prior to trial in any case charged under this ordinance. (Amended 12/15/97)

**K. Exhibit Permits**

No person in a park shall fail to produce and exhibit any permit from the Director upon request of any authorized person who shall desire to inspect the same for the purpose of enforcing compliance with any Ordinance or rule.

**L. Interference with Permittees**

No person in a park shall disturb or interfere unreasonable with any person or party occupying any area, or participating in any activity under the authority of a permit.

**M. No person shall enter or remain in any park when such park is posted as closed pursuant to Section 8.208 (A).**

Upon a conviction of any offense under this ordinance, which alleges that a person has had one or more convictions under this ordinance within five (5) years preceding the date of the subsequent offense, the person shall be subject to the following penalties:

First offense	\$50
Second offense	\$75
Third and each subsequent offense	\$100

Any fine to which a violator is subject under this ordinance may be paid to the Clerk of Court of the Portsmouth District Court at any time prior to trial in any case charged under this ordinance. (Amended 12/15/97)

**Section 8.207: MERCHANDISING, ADVERTISING AND SIGNS**

**A. Vending and Peddling**

No person in a park shall expose or offer for sale any article or thing, nor shall he station or place any stand, cart or vehicle for transportation, sale or display of any such article or thing. Exception is here made as to any regularly licensed concessionaire acting by and under the authority and regulation of the Director.

Exception is also made for the concession stand at Prescott Park, the operation of which must be authorized through the City Council. (Adopted 3/20/89)

- B. Advertising  
No person in a park shall announce, advertise or call the public attention in any way to any article or service for sale or hire.
- C. Signs  
No person in a park shall paste, glue, tack or otherwise post any sign, placard, advertisement or inscription whatever nor shall any person erect or cause to be erected any sign whatever on any public lands or highways or roads adjacent to a park.
- D. Location of Sidewalk Vendors, Peddlers  
No vendor or peddler shall station or place one's person, stand, cart or vehicle for transportation, sale or display of any article or thing in the following locations:
1. A point measured at 124 feet from the corner of State Street and Marcy Street extending 60 feet in an easterly direction along the northerly sidewalk of Marcy Street; (Adopted 6/20/88)
  2. A point measured at 334 feet from the corner of State Street and Marcy Street extending 155 feet in an easterly direction along the northerly sidewalk of Marcy Street. (Adopted 6/20/88)

#### **Section 8.208: PARK OPERATING POLICY**

- A. Hours  
Except for unusual and unforeseen emergencies, parks shall be open to the public every day of the year during hours designated by the City Manager and approved by the Council. The opening and closing hours for each individual park shall be posted therein.
- B. Closed Areas  
Any section or part of any park may be declared closed to the public by the Director at any time and for any interval of time, either temporarily or at regular and stated intervals (daily or otherwise) and either entirely or merely to certain uses as the Director shall find reasonably necessary.
- C. Lost and Found Articles  
The finding of lost articles by park attendants shall be reported to the Director who shall make every reasonable effort to locate the owners. The Director shall make every reasonable effort to find articles reported as lost.
- D. Permit  
A permit shall be obtained from the appropriate Director before participating in the following park activity:
1. Application:
    - a. A person seeking issuance of a permit hereunder shall file an application with the appropriate Director. The application shall state:
      - (1) The name and address of the applicant;
      - (2) The name and address of the person, persons, corporation or association sponsoring the activity if any;
      - (3) The day and hours for which the permit is desired;
      - (4) The park or portion thereof for which such permit is desired;

- (5) An estimate of the anticipated attendance;
- (6) Any other information, which the Director shall find reasonably necessary to a fair determination as to whether, a permit should issue hereunder.

2. Standards for Issuance

The Director shall issue a permit hereunder when he finds:

- a. That the proposed activity or use of the park will not unreasonably interfere with or detract from the general public enjoyment of the park;
- b. That the proposed activity and use will not unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation;
- c. That the proposed activity or use is not reasonably anticipated to incite violence or crime or disorderly conduct;
- d. That the proposed activity will not entail unusual, extraordinary or burdensome expense or police operation by the City;
- e. That the facilities desired have not been reserved for other use at the day and hour required in the application.

3. Appeal

Within 5 days after receipt of an application, the Director shall apprise an applicant in writing of his reasons for refusing a permit, and any aggrieved person shall have the right to appeal in writing within 5 days to the City Council, which shall consider the application under the standards set forth in subsection 2. hereof and sustain or overrule the Director's decision within 5 days after receipt of said appeal in regular session. "Regular session" shall mean a regularly scheduled meeting of the City Council. The decision of the City Council shall be final.

4. Effect of Permit

A permittee shall be bound by all park rules and regulations and all applicable Ordinances fully as though the same were inserted in said permit.

5. Liability of Permittee

The person or persons to whom a permit is issued shall be liable for any loss, damage, or injury sustained by an person whatever by reasons of the negligence of the person or persons to whom such permit shall have been issued.

6. Revocation

The Director shall have the authority to revoke a permit upon a finding of violation of any rule or ordinance, or upon good cause shown.

E. Night Fishing on Peirce Island (Adopted 6/3/96)

Notwithstanding any other provision of this ordinance, the Chief of Police or the Chief's designee is hereby authorized to issue permits to individuals to allow such individuals to fish from Peirce Island during any period of time when the Island has otherwise been closed to the public pursuant to this ordinance. The permits shall be issued for a period of time not to exceed ninety (90) consecutive days at the discretion of the Chief. Such permits shall be issued to any individual requesting the same upon a demonstration by that individual of proper identification. The permits shall be issued free of charge. Any permit issued pursuant to this provision must be carried on the person of the permittee at

all times while on Peirce Island pursuant to the permit and presented upon demand to any law enforcement officer or municipal official making such demand and shall not be transferable to any other person. The Chief of Police or the Chief's designee may refuse to issue a permit under this provision to any individual who has previously been convicted of committing any offense within the physical boundaries of Peirce Island.

**Section 8.209: PENALTIES**

Any person violating the provisions of this Ordinance shall be fined not less than \$20.00 and not more than \$100.00 for each offense, unless otherwise provided herein. (Amended 12/15/97)

**Section 8.210: SEPARABILITY**

Should any section, clause, or provision of Article II be declared by the Court to be invalid, the same shall not effect the validity of the ordinance as a whole or any part thereof, other than the part so declared.

Not an official copy

## **ARTICLE III: PORTSMOUTH URBAN FORESTRY ORDINANCE**

*(Adopted 10/21/2013 - Replaces former Article III - Street Trees)*

### **Section 8.301: AUTHORITY**

This Ordinance is adopted with the authority of RSA 231:139 (et. seq.)

### **Section 8.302: DEFINITIONS**

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- A. "City" is the City of Portsmouth, New Hampshire.
- B. "Tree Warden" is a member of the City Administrative Staff appointed by the City Manager with an interest in trees and public greenery and may be the Director of the Department of Public Works of the City or his/her designee. The Tree Warden shall be appointed in accordance with this Ordinance and in accordance with State Statute.
- C. "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.
- D. "Street tree" or "Tree" is a tree in a public place on property owned by the City of Portsmouth or in a public right of way, or easement controlled by the City, and is defined as a woody plant with a single main stem that has the potential to grow to at least thirteen (13) feet high and two (2) inches in diameter.
- E. "Urban Forest" is defined as trees in any public park, public parking lot, or within any public right of way within the City of Portsmouth.
- F. "Public Greenery" is defined as any vegetation on public property or on public rights-of-way in the City of Portsmouth whose existence improves the aesthetics of the area where it is located and contributes to the fabric of the City of Portsmouth in a positive manner.

### **Section 8.303: FINDINGS**

The value of urban trees can hardly be overstated. In addition to conferring significant environmental value they provide equally important psychological benefits. What was said in the early 1800's remains true today: "There is not a village in America, however badly planned at first, or ill-built afterwards, that may not be redeemed, in a great measure, by the aid of shade trees in the streets... and it is never too late or too early to project improvements of this kind." [Andrew Jackson Downing (1815-1852)]

**Section 8.304: PURPOSE**

This Ordinance establishes policies, requirements, and standards to ensure a healthy and stable urban forest in Portsmouth. Its provisions are enacted to:

1. Establish on public lands and public rights of way, as many trees as can be maintained in a suitable and aesthetically pleasing way.
2. Encourage the planting of trees that will represent a diversity of species and age classes and which are not invasive.
3. Regulate and enforce the planting and maintenance of trees on City property.
4. Establish limits on the amount of disturbance of trees that may take place on public property.

**Section 8.305: POLICIES**

It shall be the policy of the City to expand the urban forest through the planting of trees alongside the streets of the City and in City parks and other public places, consistent with the best arboricultural practices, horticultural practices, aesthetic concerns, and public safety.

Whenever feasible, trees that are removed shall be replaced as soon as possible with one or more specimens appropriate to the site.

The City shall endeavor to meet the national standards set forth in the Tree City USA Program so as to qualify annually as a Tree City USA Award-Winning Community.

**Section 8.306: TREE WARDEN**

The Tree Warden, in consultation with the Trees & Public Greenery Committee, is charged with the responsibility for the enforcement of this Ordinance and all applicable provisions of state law. The Tree Warden may serve notice to any person in violation of this Ordinance or, in consultation with the Trees & Public Greenery Committee, may institute legal proceedings through the Office of the City Attorney.

**Section 8.307: AUTHORITY OF THE TREE WARDEN**

- A. The Tree Warden shall have jurisdiction and supervision over all street trees and any tree in any park, public right-of-way, easement, or any other public place within City limits.
- B. The Tree Warden, in consultation with the Trees & Public Greenery Committee, shall have the authority to plant, care for, and replace trees and other plantings.
- C. Order to Preserve or Remove:

The Tree Warden shall have the authority, and it shall be the duty of the Tree Warden, to order the trimming, spraying, preservation, or removal of trees upon property owned by or controlled by the City, or in any City right of way. The Tree Warden, subject to the approval of the Trees & Public Greenery Committee, shall take such action necessary to order the removal of street trees and trees in public places wherever necessary to preserve public safety or to prevent the spread of disease or insects to public trees and places. No street tree or tree in a public place having a diameter larger than two (2) inches as measured, four (4) feet above the ground, shall be removed without approval of the Trees & Public Greenery Committee, after a public hearing, except where delay in the removal of the tree would pose an imminent threat to public safety or property.

The Tree Warden shall have the authority, subject to applicable provisions of state law and municipal ordinance, to order the trimming or removal of a tree on private property if the Tree Warden deems such tree to be a public hazard.

The Tree Warden or designee shall provide advice to the Site Review Technical Advisory Committee on tree removal, tree selection, and placement on projects that come before the Planning Board.

**Section 8.308: PROHIBITED ACTS**

- A. No person or entity (except a public utility with the express written approval of the Tree Warden, after consultation with the Trees & Public Greenery Committee) shall cut, prune, injure, affix wires or cables, post notices, or remove any tree in any public right of way, public park, or other public property.
- B. No person shall plant a tree or shrub on City property without first obtaining the consent of the Tree Warden.
- C. Any person planting a tree between the carriage way and the sidewalk in any public street or highway on which his or her estate is situate shall consult with the tree warden concerning the location, species, size of the tree, and proper planting techniques.

**Section 8.309: PERMITS REQUIRED**

- A. No person shall trim, cut, or alter trees in public places without first filing an application and procuring a permit from the Tree Warden.
- B. No person shall remove trees in any public right of way or public place, including parks or parking lots, without a permit from the Tree Warden, which permit shall not be granted until after a hearing has been held by the Trees & Public Greenery Committee. Said hearing shall be a public hearing and shall be held within forty-five (45) days from the date of the application for removal.

Upon receipt of an application for removal of a tree, the Tree Warden shall cause to be attached to any tree sought to be removed, a conspicuous tag of a kind and color approved by the Tree Warden. Said tag shall be attached to such tree or trees not less than seven (7) days prior to the public hearing.



- C. No person shall alter or remove any tree shown on a Site Plan approved by the Planning Board without the approval of the Planning Board or the Planning Director (as determined by the Planning Board), and no tree located in a public right of way and shown on a Site Plan shall be removed without approval of the Planning Board or the Planning Director and without approval of the Trees & Public Greenery Committee.
- D. Application Data: The application required herein shall state the number and kind of trees to be trimmed, altered, or removed; the kind of treatment to be administered; the kind and condition of nearest trees upon the adjoining property; and such other information as the Tree Warden shall find reasonably necessary to a fair determination of whether a permit should be issued hereunder.
- E. Standards for Issuance: The Trees & Public Greenery Committee shall issue an approval for the removal of a tree only upon the finding that the desired action or treatment is necessary and that the proposed method and workmanship are satisfactory. It shall be the duty of the Tree Warden to coordinate with the Public Works Department all work to be done under a permit issued in accordance with the terms of this Ordinance. The Tree Warden shall have the authority to affix reasonable conditions to the granting of a permit.
- F. No person shall affix any sign or signs to any public trees except as in B. above.
- G. The Tree Warden shall order the issuance of permits for tree removal only after a public hearing is held by the Trees & Public Greenery Committee and after the Committee finds that the desired action is necessary and the proposed methods and workmanship are satisfactory. Except for exigent circumstances, the decisions of the Tree Warden shall be subject to prior review and approval by the Trees & Public Greenery Committee, which will consider the following: (1) the reason for the request; (2) the health of the tree; and (3) the importance of the tree to the streetscape and/or neighborhood.

**Section 8.310: ENFORCEMENT**

- A. Any person, natural or otherwise, who violates a provision of this ordinance, shall be:
  - a. Subject to a fine of not more than \$1,000.00 per violation; and
  - b. Shall be liable to the City of Portsmouth for all costs of treating, restoring, or replacing any trees or public greenery under the jurisdiction of this Ordinance or the Tree Warden, as well as other damages allowed by law.
- B. This ordinance may be enforced by means of a civil action seeking injunctive relief.

## **ARTICLE IV: HARBOR ORDINANCE**

### **Section 8.401: HARBOR LIMITS**

- A. The City Council of the City of Portsmouth, New Hampshire hereby ordains that it is in the best interest of said community that rules and regulations concerning the use of its' harbor waters be adopted to insure the safe and orderly development of this natural resource.
- B. The Harbor Master referred to throughout the City of Portsmouth Harbor Ordinance will be the Harbor Master as appointed by the New Hampshire Port Authority.
- C. The Harbor Limits of the City of Portsmouth for the purposes of this Ordinance shall be defined as follows:

"That portion of Portsmouth Harbor lying within Little Harbor, Sagamore Creek, the Piscataqua River (within the boundaries of the State of New Hampshire) to the extension of Gosling Road running southeasterly from southerly end of Shapleigh's Island."
- D. The following port regulations shall apply to the City of Portsmouth, New Hampshire.

### **Section 8.402: ANCHORAGES**

No person shall place or allow to anchor or lie any steamer, vessel, boat or other craft in any position in the Portsmouth Harbor as heretofore defined as is prohibited by any Ordinance, rule or regulation.

### **Section 8.403: ANNOYANCE**

No watercraft shall be operated in the Harbor so as to cause annoyance, disturbance or inconvenience to the public.

### **Section 8.404: MOORING (PLACE AND TYPE ESTABLISHED)**

The Harbor Master shall assign and indicate to the Master or Owner of boats and vessels the location which they may occupy with or for mooring purposes, the kind of mooring to be used, and shall change the location of said moorings from time to time when a crowded condition of such Harbor or other conditions render such change desirable; he shall assign mooring privileges in such orders in all cases where individuals who own the shore rights or have interest in the same are complainants and shall locate suitable mooring privileges therefore for boats and vessels, temporarily or permanently as the case may be, fronting their land, if so requested, but not thereby to encroach upon a natural channel or channels established by said Harbor Master and approved by the City Council.

**Section 8.405: MOORING (PENALTY FOR NEGLECTING TO REMOVE OR REPLACE)**

In case of neglect or refusal of the master or owner of any boat or vessel to remove this mooring or to replace it by one of different character, when so directed by the Harbor Master, said Harbor Master shall cause said mooring to be removed, or shall make such change in the character thereof as required, and shall collect from the master or owner of such boat or vessel the sum of \$20.00 for either of such services rendered and also the necessary expenses.

**Section 8.406: VESSELS OBSTRUCTING ANCHORAGE TO BE REMOVED**

The Harbor Master shall, upon complaint to him by the master, owner or agent of any vessel, cause any other vessel or vessels obstructing the free movement or safe anchorage of such vessel to remove to a position to be designated by him and to cause, without any complaint being made to him any vessels anchoring within the channel lines established as provided by law to remove to such anchorage as he may designate.

Whoever neglects or refuses to obey the orders of the Harbor Master shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by imprisonment of not more than 60 days, or by a fine of not more than \$20.00 or by both such fine and imprisonment. If such vessel has no crew on board, or if the master or other person in charge neglects or refuses to move such vessel as directed by the Harbor Master, then and in that case the Harbor Master may put a suitable crew on board and move said vessel to a suitable berth at a wharf or anchorage at the cost of the crew for removing such vessel the Harbor Master may collect by suit.

**Section 8.407: NAVIGATION INJURED (FROM VESSEL)**

If any owner, owners or master of any vessel, or any other person shall cast or throw, or cause or suffer to be cast or thrown from their vessels, or from any other place, any stone, sand or other ballast or any other thing into the channel of said Portsmouth Harbor, whereby the navigation of the same may be obstructed, he or they shall forfeit and pay for each offense a sum, as set forth in the State Litter Law currently in effect.

**Section 8.408: OBEDIENCE TO ORDERS**

No person shall fail to observe any lawful order of the Harbor Master with reference to the navigation and disposal of his watercraft within the limits of the Harbor. Any person who shall obstruct or hinder the Harbor Master in the lawful performance of his duties shall forfeit and pay for each offense a sum not less than \$10.00, nor more than \$20.00, to be recovered on complaint by the Harbor Master. The Harbor Master may arrest and deliver to the Police Department on shore any person committing an assault upon him or another person acting under his authority.

**Section 8.409: RAFTS**

Owner of rafts shall be subject to all of the provisions herein regarding vessels, except those provisions, which by their very nature can have no application.

**Section 8.410: WHARVES (OBSTRUCTION)**

No owner or master of any steamer, vessel, boat or watercraft of any kind shall permit or suffer his watercraft to be more than one tier deep, or in such a manner as to obstruct the free passage of other vessels going in and coming out, at any wharf in the City, after the master or owner of such vessel shall have been directed to remove the same by the Harbor Master.

**Section 8.411: WHARVES (REMOVAL OF VESSELS)**

The Harbor Master is hereby authorized, and it shall be his duty to remove or cause to be removed any vessel or boat from any wharf in port of Portsmouth when so requested by the owner of said wharf; and whenever he shall deem it necessary he shall remove or cause to be removed any vessel lying in tier, and if any vessel, boat or raft shall anchor or lie contrary to any ordinance, rule or regulation, said Harbor Master shall forthwith give notice to the owner or master thereof, or the person having the care of same, to remove the same and if the said notice be not complied with without delay, the Harbor Master shall make or cause said removal, at the expense of said vessel, boat or raft.

**Section 8.412: ENFORCEMENT**

It shall be the duty of the Harbor Master to enforce all of the provisions of this ordinance, and of all lawfully promulgated rules and regulations pertaining to the Harbor and waterfront of the City of Portsmouth, and watercraft by causing the person or persons offending, to be prosecuted, for the penalty or penalties incurred, immediately upon the violation of any of the provisions of said ordinance, rules or regulations.

**Section 8.413: PENALTY**

The master, owner or owners of any vessel, boat or raft or any other person who shall violate any of the provisions of this Ordinance or of any rule or regulation lawfully promulgated for the government of the Harbor, to which a specific penalty is not annexed or otherwise provided by law, shall for each offense forfeit and pay a sum not less than \$20.00.

**Section 8.414: OIL POLLUTION**

Except in case of emergency imperiling life or property, or unavoidable accident, collision, or stranding, no person shall discharge, or suffer, or permit the discharge of oil by any method, means or manner into or upon the waters of Portsmouth Harbor from vessel using oil as fuel for the generation of propulsion power, or from any vessel carrying or having oil thereon in excess of that necessary for its lubricating requirements and such as may be required under the laws of the United States and rules and regulations prescribed thereunder. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be punished as provided by law of the United States, if applicable, otherwise by a fine of not to exceed \$20.00 for each such offense.

**Section 8.415: ABANDONED BOATS, VESSELS, WRECKS, ETC.**

- A. No person shall cause to be abandoned any boat, vessel, hulk, or raft on the shores within Portsmouth Harbor.
- B. Any boat, vessel, hulk, or raft left within the confines of Portsmouth Harbor, either in or on public property or between low mean water and mean high water or on any shore and which has been unattended for a period of one year, shall be deemed to be abandoned.
- C. The Harbor Master of the City of Portsmouth, on complaint of owner of land or dock or upon his own complaint, shall order the last owner of record of any such abandoned boat, vessel, hulk, or raft to remove same within a specified reasonable period of time; and upon his failure to do same shall cause its removal or destruction at the cost of said last owner of record.
- D. Any violation of the above section shall be considered to be a misdemeanor and punishable by a fine of not exceeding \$10.00 for each offense. Each day the violation is permitted to exist beyond the limits above described, shall be considered a separate offense.

**Section 8.416: RECKLESS OPERATION**

No person shall operate any motorboat or vessel in a reckless manner so as to endanger the life, limb or property of any person.

**Section 8.417: SPEED LIMITS**

All types of watercraft, boats and vessels operating within any maintained channel, mooring areas or within 100 yards of any dock, shall maintain a speed of not more than five knots per hour.

**Section 8.418: BOAT LAUNCHING RAMP**

No person shall place, or allow to lie, any boat, skid, or any other craft on the public boat launching ramp for a period in excess of 30 minutes unless by special permission of the Harbor Master. In no case, shall such permission exceed a period of 24 hours.

**Section 8.419: PUBLIC GROUNDS**

No person shall place, or allow to lie, any boat, skiff, trailer, or any other craft on the waterfront public grounds for a period in excess of 24 hours unless by special permission of the Harbor Master.

**Section 8.420: LENGTH OF TIME PERMITTED TO DOCK  
(Deleted 7/9/84)**

**Section 8.421: PENALTY**

The master, owner or owners of any vessel, boat or raft, or any other person who shall violate any of the provisions of any rule or regulation lawfully promulgated for the government of the Harbor, to which a specific penalty is not annexed or otherwise provided by law, shall forfeit and pay a sum not more than \$100.00 per day per violation per day, to be recovered on complaint by the Harbor Master before Portsmouth District Court. (Amended 7/9/84)

**Section 8.422: SHORELINE USES**

All commercial and industrial marine uses of Portsmouth's shoreline shall be in accordance with the terms of the Zoning Ordinance.

**ARTICLE V: CONSERVATION ORDINANCE**

**Section 8.501: PURPOSE**

Those properties listed in Section 8.503 are hereby declared to be conservation properties of the City of Portsmouth. Other than the maintenance of Public Infrastructure described in Section 8.505, passive recreation is the only permitted use or activity on the conservation properties. Any other use or activity on the conservation properties must be approved by prior vote of City Council. Such approval shall be by a 2/3 majority of those present and voting on the question. Any Council vote under this provision must be preceded by a referral of the question to the Conservation Commission for its review and report back to the Council. The Council shall not vote on the question until either the report has been received from the Conservation Commission or thirty (30) days have passed from the Council vote referring the matter to the Conservation Commission.

**Section 8.502: PASSIVE RECREATION**

The term “Passive Recreation” shall mean uses of land, or activities on land, which are conducted primarily for leisure purposes and which do not cause damage to the conservation nature of the land.

**Section 8.503: CONSERVATION PROPERTIES**

<u>Map-Block-Lot</u>	<u>Location</u>	<u>Book/Page</u>	<u>Date Adopted</u>
0123-0009-000A	Maplewood Ave	3577/2037	07/16/2001
0201-0026-0000	Sagamore Ave	2299/1707	04/07/1997
0204-0007-0000	Little Harbor Rd	2395/1462	04/07/1997
0222-0073-0000	Jones Ave	2391/0386	04/07/1997
0225-0008-0000	Elwyn Rd	2289/1810	04/07/1997
0263-0003-0000	Greenland Rd	2385/0403	04/07/1997
0265-002D-0000	Banfield Rd	2413/0222	04/07/1997
0271-0001-0008	Lafayette Rd	2851/2879	04/07/1997
0274-0003-0000	Banfield Rd	2327/1314	04/07/1997
0278-0001-0000	Greenland Rd	2646/0720	04/07/1997
0278-0002-0000	Greenland Rd	2235/0417	04/07/1997
0278-0003-0000	Greenland Rd	2235/0417	04/07/1997
0280-0003-0000	Greenland Rd	2646/0720	04/07/1997
0232-0008-0001	Lois Street	6014/0575	
0283-0013-0000	Ocean Rd	2249/0432	04/07/1997
0284-0003-0000	Heritage Ave	2253/1684	04/07/1997
0284-0004-0000	Suzanne Dr	1615/0129	04/07/1997
0288-0001-0000	Lang Road	3278/1316	04/20/1998
0284-0009-0000	Heritage Ave	2253/1684	04/07/1997
0287-0003-0000	off of Lang Road	2230/0277	04/07/1997
0293-0010-0000	Ocean Rd	2299/0424	04/07/1997
0293-0013-0000	Ocean Rd	2249/0432	04/07/1997

<u>Map-Block-Lot</u>	<u>Location</u>	<u>Book/Page</u>	<u>Date Adopted</u>
0294-0009-0000	Ocean Rd	2370/1383	04/07/1997
0294-0022-0000	Ocean Rd	2249/0432	04/07/1997
0295-0001-0000	Ocean Rd	2230/0275	04/07/1997
0295-0002-0000	Ocean Rd	2156/0149	04/07/1997
0295-0003-0000	Ocean Rd	2230/0275	04/07/1997
0295-0005-0000	Ocean Rd	2230/0278	04/07/1997
0296-0001-0000	off of Lafayette Road	2747/2301	04/07/1997
0296-0004-0000	off of Lafayette Road	2230/0276	04/07/1997
0296-0006-0000	off of Lafayette Road	2230/0276	04/07/1997
0296-0011-0000	off of Lafayette Road	2484/0311	04/07/1997
0296-0012-0000	off of Lafayette Road	2484/0311	04/07/1997
0296-0013-0000	off of Lafayette Road	2484/0311	04/07/1997
0296-0008-0000	Ocean Rd	2215/1493	04/07/1997
0296-0010-0000	Ocean Rd	2249/0432	04/07/1997
0293-0016-0000	Ocean Rd	2249/0432	04/07/1997
0298-0008-0000	Lafayette Rd	2247/0237	04/07/1997
0298-0005-0001	Lafayette Rd	2549/1850	04/07/1997

**Section 8.504: ENFORCEMENT**

- A. This ordinance may be enforced against the City of Portsmouth by means of an action seeking injunctive relief, which may be filed in the Courts of the State of New Hampshire by any interested party.
- B. Any other person, firm or corporation violating any provision of this ordinance shall be subject to a penalty, upon conviction, of up to \$1,000 per occurrence.
- C. The enforcement provisions of this ordinance shall not be deemed exclusive, but shall be concurrent with any other remedies available at law.

**Section 8.505: MAINTENANCE OF PUBLIC INFRASTRUCTURE**

Nothing in this ordinance shall prohibit the maintenance of public roadways, sidewalks, drainage and stormwater structures, sewer and water lines and other utilities (“Public Infrastructure”) that cross or abut Conservation Properties. Maintenance shall include replacement if within the existing footprint of the original structure. Any expansion or new use for Public Infrastructure on any Conservation Property would require the approval described in Section 8.501.

**ARTICLE VI: CONSTRUCTION WORK REQUIRING CERTIFIED FLAG PERSONNEL**



## **Section 8.601: GENERAL REQUIREMENTS**

No entity shall perform any construction or excavation or otherwise take any action which would hinder the free passage of vehicles or pedestrians on any street or right-of-way of the City of Portsmouth except pursuant to a permit to be issued in advance by the Director of Public Works or his or her designee (hereinafter "Director"). The fee for the permit shall be as established by the City Council pursuant to its resolution process.

## **Section 8.602: APPLICATION CRITERIA**

An application for a permit under this section shall be made upon such forms as may be developed by the Director. Such forms shall include a brief sketch or diagram showing the area in which the work will be performed or the obstruction located and shall include a plain statement of what actions will be taken by the permittee to protect personal safety and property related to the work to be performed under the permit.

All applications under this Chapter shall be filed with the Director no less than 48 hours, weekends and holidays excluded, prior to the commencement any work or the placement of any obstruction in the City streets or rights-of way. Except, however, the Director shall make provision for permits to be granted in emergency situations under such terms as determined by the Director.

## **Section 8.603: AUTHORITY OF THE PUBLIC WORKS DIRECTOR**

As determined by the Director, whenever necessary to protect personal safety and property any permittee under this Chapter shall be required to retain the services of certified flaggers as defined herein. The permittee shall also provide any other protective equipment such as barriers, flashers or safety vehicles as may be required by the Director.

## **Section 8.604: CERTIFIED FLAGGER**

The term "Certified Flagger" shall mean a person who meets training and/or experience criteria to be promulgated and kept on public file by the Director. The Director shall keep a list available for public review of companies or individuals providing certified flaggers for use by any permit applicant. Any person or company desiring to provide certified flagging services on projects within the City of Portsmouth may apply for such certification to the Director for placement upon the certified flagger list.

## **Section 8.605: UNIFORMED POLICE OFFICERS REQUIRED**

Except for work performed by or under contract with the City, the permit issued pursuant to this ordinance shall require the use of uniformed police officers under the following circumstances:

- A. Whenever the Chief of Police and the Director of Public Works determine that circumstances exist creating a public safety concern such that the use of uniformed police officers should be required.