

Order 286-05/06
Given first reading 6/5/06
Passage: 6/19/06 8-0 (Duson absent)

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**PROPOSED AMENDMENT PREPARED FOR THE
PUBLIC SAFETY COMMITTEE
BY GARY WOOD**

**AMENDMENT TO PORTLAND CITY CODE
Chapter 31 SCRAP METAL RECYCLING FACILITIES**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN
CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Chapter 31 of the Portland City Code is hereby amended to read as follows:*

Sec. 31-1. Purpose.

The purpose of this ordinance is to protect the public's health, safety, and general welfare by controlling scrap metal recycling facilities.

(Ord. No. 255-03/04, 9-8-04)

Sec. 31-2. Authority.

This ordinance is enacted pursuant to the Home Rule Authority conferred on Maine municipalities by Art. VIII, Part Second., Sec.1 of the Maine Constitution and the Statutory Authority conferred by 30-A M.R.S.A. § 3001 and 30-A M.R.S.A. §§ 3751-3760.

(Ord. No. 255-03/04, 9-8-04)

Sec. 31-3. Applicability.

This ordinance shall apply to the licensing and renewal of licenses all scrap metal recycling facilities, as defined in this ordinance.

(Ord. No. 255-03/04, 9-8-04)

Sec. 31-4. Definitions.

Department: means the Department of Planning and Development or its designee.

Scrap metal recycling facility: means an area used to receive, process, or store any form of metal that is already scrap for

recycling or reuse and which handles, removes, or disposes of waste as part of the processing. The definition shall include the area within an automobile recycling facility as defined in 30-A M.R.S.A. § 3752 (1-A) within which vehicles are drained, dismantled, sorted or recycled. The definition shall not include a transfer station licensed by the State.

Motor vehicle: shall mean any self-propelled vehicle originally manufactured to include an engine of any kind which propels the vehicle across the ground on wheels, tracks or any combination thereof.

Ordinary view: means the unaided visual access from any point within six feet of ground level that a person has of a scrap metal recycling facility from the side that is furthest away from the facility of any immediately adjacent public road or 50 feet from an abutting property line. Recycled metal or metal awaiting processing or recycling shall be construed to not be in ordinary view from a public road or abutting property line when it is located more than 1000 feet from the abutting property lines or the applicant has constructed a screen between the storage area and the public road or property line in accordance with regulations promulgated by the department.

"Abutting property line" in this definition shall not include side or back property lines on or in any property zoned I-H or I-M.

Public road: shall mean a road, street, highway, easement or way over which the public has a legal right to travel. The term shall not include roads that are part of the federal interstate highway system.

Waste: means *hazardous waste* as defined or identified in Chapter 850, *oily waste*, as defined or identified in Chapter 405, Sec. 6(c) (3), *special waste* as defined or identified in Chapter 405, Sec. 6, and *universal waste* as defined in Chapter 850, Sec. 3A (13) of the Regulations of the Maine Department of Environmental Protection and shall include any amendment to those regulations after the effective date of this ordinance or regulations promulgated hereunder.

Waterbody: is any lake, pond, or reservoir of standing water one acre or more in surface area, but not including any man-made waterbodies where the entire perimeter is owned by the same landowner.

Watercourse: is any river, stream or brook which acts as the drainage mechanism for watershed areas of 100 acres or more.

Wetland: is any land area of five or more acres characterized by wetland soils (Vassalboro, Togus, Rifle or Biddeford Fibrous or

Mucky Peats; Ridgebury, Scantic or Limerick V.S.T.F. sandy loams or silts; or Saco soils); wetland vegetation (plum grass, cutgrass, carex, cattails, arrowheads, pickerel weeds, cranberries, wild rice, pond weeds, coontail, spatterdock, wild celery, water milfoil, water lilies, sphagnum moss, etc.); a high water table less than 6" from surface; or any land area mapped as wetlands by the Maine Department of Environmental Protection, the Maine Department of Conservation, or the Maine Department of Inland Fisheries and Wildlife.

(Ord. No. 255-03/04, 9-8-04)

Sec. 31-5. License Required.

No person may establish, operate or maintain a scrap metal recycling facility without first obtaining a nontransferable license from the city council. Any scrap metal recycling facility established in the city after the effective date of this ordinance must also receive site plan review approval by the planning board pursuant to the site plan review ordinance prior to receiving a license from the city council.

(Ord. No. 255-03/04, 9-8-04)

Sec. 31-6. Administration.

(a) This ordinance shall be administered by the department of planning and development, which department shall have the authority to promulgate rules to implement this ordinance utilizing the rulemaking procedure described in section 25-117 of the city code. No scrap metal recycling facility license shall be issued unless the provisions of this ordinance are met.

(b) Before approving an application, the city council shall hold a public hearing regarding the licensing or license renewal of a scrap metal recycling facility. The city shall post a notice of the hearing at least seven and not more than 14 days before the hearing in at least two public places in the municipality or unorganized territory and publish a notice in one newspaper having general circulation in the municipality or unorganized territory in which the scrap metal recycling facility is located or to be located. The city shall give written notice of the application to the Department of Transportation and abutters by mailing a copy of the application at least seven and not more than 14 days before the hearing.

(c) Licenses must be renewed annually or triennially, when allowed, on or before October 1st of each license year. In any calendar year, the city council may issue a temporary license to operate for less than the full calendar year if an applicant is making a good-faith effort to comply with the requirements of this ordinance.

(d) The applicant shall test the site of the facility for pollution annually pursuant to regulations promulgated by the

department and provide the test results to the department. The department may also annually inspect and test an applicant's site for soil or groundwater pollution, or cause the site to be tested and inspected by a consultant hired by the department, all at the applicant's expense, to ensure compliance with the provisions of this ordinance and state law. The department, at its discretion, and upon reasonable notice may also test, cause to be tested, or require the applicant to test abutting property for hazardous and special waste, at the applicant's expense, when on-site test results show levels of waste that exceed the limits of state law or the regulations promulgated hereunder, whichever are stricter, and the abutting property owner consents to such testing.

(e) The department shall collect annually, in advance from the applicant, a \$515 fee for each license for a scrap metal recycling facility, plus all costs associated with posting or publishing notice of public hearing, plus all costs to conduct the inspecting or testing allowed by this ordinance and deemed necessary or appropriate by the department pursuant to its regulations and this ordinance.

The department shall charge an applicant's account for allowed costs and expenditures and to the extent an account has funds remaining after all costs have been paid, either credit or reimburse the balance to the applicant at the applicant's discretion.

The fee for a late application is \$1,500.

The fee for any license that applies to more than a one-year period shall be \$515 for each year or part thereof.

(f) An application for a scrap metal recycling facility license or a renewal of such license must be filed at least 90 days before October of the license year. If the department determines that an application is not complete, it shall not process the application but shall inform the applicant in writing of the deficiencies. Any delays related to the filing of an incomplete application shall not extend the deadlines established in this ordinance or rules promulgated hereunder unless such deadlines are waived by the department for good cause shown.

The department may determine in its sole discretion that the lateness of a filing or an incomplete application makes it impossible to complete the inspection and testing required or allowed by the ordinance prior to the renewal date of the license and may issue a written order to the owner and operator of the facility that it must cease operation on the date on which the current license expires and remain out of operation until the new license is issued.

(Ord. No. 255-03/04, 9-8-04; Ord. No.247-05/06, 5-15-06)

Sec. 31-7. Submission requirements.

Any application for a scrap metal recycling facility license shall contain the following information and any additional information required by rules promulgated by the department:

- (a) The property owner's name, address and telephone number and the name, address and telephone number of the person or entity who will operate the site. If the property is owned by more than one person or entity, the name, address and telephone number of each owner must be listed. If the property is owned in whole or in part by a corporation, the name, address and telephone number of the corporation's registered agent in Maine must be listed. The name, address and telephone number of the person or entity to whom the city should send official notices or correspondence must also be listed.
- (b) The maximum storage height of any piles of metal or other material.
- (c) The location of any areas on the site used for processing, preparing or storage of materials.
- (d) The location of any sand and/or gravel aquifer and/or any sand and gravel aquifer recharge area as described on the Maine Geological Survey significant aquifer map for the Portland West Quadrangle (GSM Map No. 99-11) or as mapped by a State of Maine certified geologist or other competent professional.
- (e) The location of any residences, schools, public parks, public playgrounds, public bathing beaches, places of worship, or cemeteries within 500 feet of the area where metal and/or materials will be stored or processed.
- (f) The boundaries of the 100-year floodplain.
- (g) A site plan that complies with chapter 14, section 525(b) of the city code and also includes such other information as required by the rules promulgated by the department.
- (h) *Soil tests.* Results and data from soil sampling and testing will be required for licensing of scrap metal recycling facilities within the 90-day period prior to the end of the licensing period. Such testing shall comply with rules promulgated by the department.
- (i) *Groundwater tests.* Results and data from groundwater sampling and testing will be required for licensing of scrap metal recycling facilities within the 90-day period

prior to the expiration of the licensing period. Such testing shall comply with rules promulgated by the department.

(j) *Other information.*

1. The types of metal processed on the site;
2. The types of waste handled and the average volume per year per material;
3. A description of the protocol for handling waste and the destination to which that waste is sent;
4. An operations manual as described in chapter 402 of the Maine Department of Environmental Protection regulations;
5. Operational records as described in chapter 402 of the Maine Department of Environmental Protection regulations;
6. An annual report as described in chapter 402 of the Maine Department of Environmental Protection regulations.

(Ord. No. 255-03/04, 9-8-04)

Sec. 31-8. Performance standards.

The city council shall not issue a license to operate a scrap metal recycling facility unless the applicant can demonstrate that all of the following performance standards have been and will be met:

- (a) *Operation.* The facility is operated so that it does not contaminate soil or groundwater or surface water to a level prohibited by state law or rules promulgated by the department, whichever is stricter.
- (b) *Approval and Coordination with site plan review.* For facilities established after the effective date of this ordinance, the facility has received site plan approval by the planning board pursuant to the site review ordinance, and the operation of the facility is in compliance with the approved site plan.

For facilities established prior to the effective date of this ordinance, the facility has received site plan approval by the department and the operation of the facility is in compliance with the approved site plan.

- (c) *Aquifer location prohibited.* No scrap metal recycling facility shall be located over a sand and gravel aquifer or aquifer recharge areas as mapped by the Maine Geological Survey or by a licensed geologist.
- (d) *Flood plain location prohibited.* No scrap metal recycling facility shall be located within a 100-year flood plain.
- (e) *Dismantling motor vehicles.* All dismantling of motor vehicles shall be done in compliance with rules promulgated by the department.
- (f) *Storage/handling of batteries and fluids from motor vehicles.* All batteries and fluids shall be handled as required by rules promulgated by the department.
- (g) *Storage and handling of waste.* All waste shall be handled as required by rules promulgated by the department.
- (h) *Noise impact.* To reduce the impact of noise, all mechanized sorting, baling or processing of metals shall be done after 7 a.m. and before 6 p.m. Mondays through Saturdays.
- (i) *Setback from public areas.* No scrap metal recycling facility shall be located within 500 feet of any public park, public playground, and public bathing beach, school, places of worship or cemetery.
- (j) *Setback from waterways and water supplies.* No scrap metal recycling facility shall be located within 100 feet of any waterbody, watercourse or wetland, or within 300 feet of a well that serves as a public or private water supply.
- (k) *Road/property line setbacks.* No scrap metal recycling facility shall be located within 1,000 feet of the right-of-way of any highway incorporated in both the interstate system and primary system or within 600 feet of the right-of-way of any other highway or within 1,000 feet of an abutting property line except for a scrap metal recycling facility entirely screened from ordinary view from that public road or abutting property line at all times in accordance with the screening standards in the rules promulgated by the department.
- (l) *Visual impact.* Metal or other material in a scrap metal recycling facility shall be located in such a way so as not to be in ordinary view.
- (m) *Screening.* Screening may be accomplished by natural or

man-made objects, planting or properly constructed fences, or any combination thereof, any of which must entirely screen the scrap metal recycling facility from ordinary view throughout the year. Screening shall be accomplished according to the standards prescribed by rules promulgated by the department.

- (n) *Remedial action plan required.* A remedial action plan will be required of the applicant or a licensee whenever the department determines that, based upon testing data or other information it has received and verified, that the applicant or licensee is not in compliance with the requirements of this ordinance or regulations promulgated hereunder. Within 30 days after the department's written request to do so, the licensee shall submit a remedial action plan and schedule to the department, for its review and approval that removes, remediates, or abates waste contamination or any other violation of this ordinance or the rules promulgated hereunder.
- (o) *Implementation of remedial action plan.* Beginning thirty (30) days after the department's review and approval of the remedial action plan and schedule required by paragraph 31-8(n) of this article, implement the remedial action plan and schedule as modified and approved by the department.
- (p) *Exemption from specific requirements.* The requirements in subparagraphs 8(c), (d), (i) and (j) above shall not apply to facilities existing on or before the effective date of this ordinance.

(Ord. No. 255-03/04, 9-8-04; Ord. No. 136-05/06, 12-19-05)

Sec. 31-9. Process and standards for renewal of a license.

(a) An application for a renewal of a license submitted pursuant to § 31-6(c) shall identify which information, if any, required on the original application pursuant to § 31-7, has been changed or modified since the last application was filed.

(b) The applicant shall submit evidence that it conducted any soil and groundwater testing required under the scrap metal recycling facilities ordinance and its prior license and that it submitted the results of such testing to the department.

(c) If the results of the prior required testing resulted in the city requiring that the applicant submit and implement a remedial action plan, then the applicant must submit evidence that it implemented the remedial action plan.

(d) If the city council finds that the standard of subsections (a), (b) and (c) above have been met, the city council shall issue a renewal of the license.

(e) If the applicant can demonstrate that its license has been issued and renewed for a term of three (3) consecutive operating years starting from the first day of operation, the subsequent renewal of that license, assuming that subsection (d) above has been met, shall be for a three (3) year term, with consecutive three (3) year terms for renewal being issued thereafter subject to the conditions in (1) below.

(1) *Environmental testing.* If environmental testing in three consecutive operating years starting from the first day of operation demonstrates that the facility meets the environmental standards of the ordinance and any rules promulgated hereunder then environmental testing shall be conducted once every three years. If the triennial testing demonstrates that the environmental standards have not been met then the applicant must conduct annual testing until such time as the testing shows compliance for three consecutive years.

Nothing in this subparagraph (1) shall prevent the city from conducting environmental testing at its own expense in any year in which the applicant is not required to test on reasonable notice to and with the consent of the license holder, which consent shall not be unreasonably withheld.

Sec. 31-10. Rulemaking authority.

The department shall have the authority to make any rules necessary to effect the purpose of this ordinance, including but not limited to, rules that remove or add substances or allowable limits for waste, as defined herein. The department shall follow the rulemaking procedure in chapter 12, section 12-105(b) and (b) (1) of the city code. Any proposed rules resulting from that process shall be brought to the City Council for final review and action.

(Ord. No. 255-03/04, 9-8-04)

Sec. 31-11. Appeals.

(a) *Interpretation appeal.* An interpretation appeal may be taken by an applicant from an interpretation by the department of this ordinance or any rule promulgated hereunder to the board of appeals, but the board may only overturn the department's interpretation if it is clearly erroneous or without any basis in the record. The decision of the board of appeals on interpretation appeals is final and may not be appealed.

(b) *Appeals of license denial, suspension or revocation.* If the city council denies, suspends, or revokes a license, the applicant may appeal to the Maine Superior Court pursuant to Rule 80B of the Maine Rules of Civil Procedure.
(Ord. No. 255-03/04, 9-8-04)

Sec. 31-12. Enforcement.

(a) This ordinance shall be enforced by the department. An applicant or licensee shall cooperate fully with the department and allow such site inspections, record review and testing as the department deems necessary to assure compliance with this ordinance. The department shall give an applicant or licensee written notice of a site inspection, record review or testing at least five (5) business days before the site inspection, record review or testing takes place.

(b) This ordinance shall be liberally construed to accomplish its purpose of preventing environmental contamination, visual impairment and unnecessary noise. Whenever this ordinance references existing state or federal regulations, the department shall have the same authority as the Maine Department of Environmental Protection or the Federal Environmental Protection Agency as is conferred on those agencies by the relevant state or federal regulations.
(Ord. No. 255-03/04, 9-8-04)

Sec. 31-13. Penalties.

Any violation of this ordinance shall also be deemed a nuisance within the meaning of 17 M.R.S.A. § 2802, and any violator shall be subject to the penalties set forth in 30-A M.R.S.A. § 4452 and any other remedy available at law. Violation of any condition, restriction or limitation inserted in a license by the city council or imposed by this ordinance or the rules promulgated hereunder is cause for revocation or suspension of that license by the city council. The revocation process shall be conducted in accordance with the notice and hearing provisions found in 30-A M.R.S.A. § 3758(3).
(Ord. No. 255-03/04, 9-8-04)

Sec. 31-14. Transitional provision for calendar year 2005.

In calendar year 2005 only, the license required by this ordinance must be obtained on or before April 1, 2005. The submission requirements and application described in Sec. 31-7 must be filed on or before February 18, 2005.
(Ord. No. 134-04/05, 1-3-05, enacted as an emergency)

Sec. 31-15. Waiver.

Where the City Council makes written findings of fact that there are special circumstances of a particular site proposed to become a scrap metal recycling facility, it may waive some or all of the submission requirements or the standards, unless otherwise indicated in the regulations, to permit a more practical and economical development, provided the public health, safety and welfare are protected and provided the waivers do not have the effect of nullifying the intent and purpose of the Official Map, the Comprehensive Plan, this Chapter 31 and the regulations issued thereunder, and the Land Use Code.

o:/Office/Amend/Chapter 31.Scrap Metal as sent to Council 6.1.06