

## PART II

### CODE OF ORDINANCES

#### Chapter 1

#### GENERAL PROVISIONS

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#### **Sec. 1-1. Designation and citation of Code.**

The ordinances embraced in this and the following chapters shall constitute and be designated the "Code of Ordinances, City of Portland, Michigan," and may be so cited. Such ordinances may also be cited as the "Portland City Code."

(Code 1972, § 11.011; Ord. No. 131, § 1, eff. 9-27-1979)

**State Law References:** Authority to codify ordinances, MCL 117.5b.

#### **Sec. 1-2. Definitions and rules of construction.**

The following definitions and rules of construction shall apply to this Code and to all ordinances and resolutions unless the context requires otherwise:

*Generally.* When provisions conflict, the specific shall prevail over the general. All provisions shall be liberally construed so that the intent of the council may be effectuated. Terms and phrases shall be construed according to the common and approved usage of the language, but technical terms, technical phrases, and term and phrases that have acquired peculiar and appropriate meanings in law shall be construed according to such meanings.

*Charter.* The term "Charter" means the Charter of the City of Portland, Michigan.

*City.* The term "city" means the City of Portland, Michigan.

*City council and council.* The terms "city council" and "council" mean the city council of the City of Portland, Michigan.

*Civil infraction.* The term "civil infraction" means an act or omission prohibited by law which is not a

crime and for which civil sanctions may be ordered.

*Code.* The term "Code" means the Code of Ordinances, City of Portland, Michigan, as designated in section 1-1.

*Computation of time.* In computing a period of days, the first day is excluded and the last day is included. If the last day of any period or a fixed or final day is a Saturday, Sunday or legal holiday, the period or day is extended to include the next day that is not a Saturday, Sunday or legal holiday.

*Conjunctions.* In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:

- (1) The term "and" indicates that all the connected terms, conditions, provisions or events apply.
- (2) The term "or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.
- (3) The term "either . . . or" indicates that the connected terms, conditions, provisions or events apply singly, but not in combination.

*County.* The term "county" means Ionia County, Michigan.

*County health department and department of public health.* The terms "county health department" and "department of public health" mean the county health department.

*County health officer.* The term "county health officer" means the director of the county health department.

*Crime.* The term "crime" means an act or omission forbidden by law that is not designated as a civil infraction and that is punishable, upon conviction, by any one or more of the following:

- (1) Imprisonment;
- (2) A fine not designated as a civil fine; or
- (3) Other penal discipline.

*Delegation of authority.* A provision that authorizes or requires a city officer or city employee to perform an act or make a decision authorizes such officer or employee to act or make a decision through authorized subordinates.

*Gender.* Terms of one gender include the other genders.

*Highway.* The term "highway" includes any street, alley, highway, avenue or public place, or square, bridge, viaduct, tunnel, underpass, overpass or causeway, dedicated or devoted to public use.

*Includes and including.* The terms "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and the use of the terms does not create a presumption that components not expressed are excluded.

*Joint authority.* The term "joint authority" means a grant of authority to three or more persons as a public body confers the authority on a majority of the number of members as fixed by statute or ordinance.

*May.* The term "may" is construed as being permissive and not mandatory.

*May not.* The term "may not" states a prohibition.

*MCL.* The abbreviation "MCL" means the Michigan Compiled Laws, as amended.

*Month.* The term "month" means a calendar month.

*Must.* The term "must" is construed as being mandatory.

*Number.* The singular includes the plural and the plural includes the singular.

*Oath, affirmation, sworn and affirmed.* The term "oath" includes an affirmation in all cases where an affirmation may be substituted for an oath. In similar cases, the term "sworn" shall include the term "affirmed."

*Officers, departments, boards, commissions or employees.* References to "officers, departments, boards, commissions" or "employees" are to city officers, city departments, city boards, city commissions and city employees.

*Owner.* The term "owner," as applied to property, includes any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or part of such property. With respect to special assessments, however, the owner shall be considered to be the person that appears on the assessment roll for the purpose of giving notice and billing.

*Person.* The term "person" means any individual, partnership, corporation, association, club, joint venture, estate, trust, limited liability company, governmental unit and any other group or combination acting as a unit, and the individuals constituting such group or unit.

*Personal property.* The term "personal property" means any property other than real property.

*Preceding and following.* The terms "preceding" and "following" mean next before and next after, respectively.

*Premises.* The term "premises," as applied to real property, includes land and structures.

*Property.* The term "property" means real and personal property.

*Public acts.* References to "public acts" shall be references to the Public Acts of Michigan. (For

example, a reference to Public Act No. 279 of 1909 is a reference to Act No. 279 of the Public Acts of Michigan of 1909.) Any reference to a public act, whether by act number or by short title, is a reference to the act as amended.

*Public place.* The term "public place" means any place to or upon which the public resorts or travels, whether such place is owned or controlled by the city or any agency of the state, or is a place to or upon which the public resorts or travels by custom, or by invitation, express and implied.

*Real property, real estate and land.* The term "real property" includes lands, tenements and hereditaments.

*Shall.* The term "shall" is to be construed as being mandatory.

*Sidewalk.* The term "sidewalk" means that portion of a street between the curblines or lateral lines and the right-of-way lines, which is intended for the use of pedestrians.

*Signature and subscription.* The terms "signature" and "subscription" include a mark when the person cannot write.

*State.* The term "state" means the State of Michigan.

*Street, highway and alley.* The terms "street" and "highway" mean the entire width subject to an easement for public right-of-way, or owned in fee by the city, county or state, of every way or place, of whatever nature, whenever any part thereof is open to the use of the public, as a matter of right, for purposes of public travel. The term "alley" means any such way or place providing a secondary means of ingress and egress from a property.

*Swear.* The term "swear" includes the term "affirm."

*Tenses.* The present tense shall include the past and future tenses. The future tense shall include the present tense. Except as otherwise specifically provided or indicated by the context, all terms used in this Code indicating the present tense shall not be limited to the time of adoption of this Code, but shall extend to and include the time of the happening of any act, event or requirement for which provision is made therein, either as a power, immunity, requirement or prohibition.

*Week.* The term "week" means seven consecutive days.

*Written.* The term "written" includes any representation of words, letters, symbols or figures.

*Year.* The term "year" means 12 consecutive months.

(Code 1972, §§ 11.015--11.017; Ord. No. 131, § 5, eff. 9-27-1979)

**State Law References:** Definitions and rules of construction applicable to state statutes, MCL 8.3 et seq.

### **Sec. 1-3. Section catchlines and other headings.**

(a) The catchlines of the several sections of this Code, printed in boldface type, are intended as mere catchwords to indicate the contents of the section and are not titles of such sections, or of any part of the

section, nor, unless expressly so provided, shall they be so deemed when any such section, including the catchline, is amended or reenacted.

(b) The history or source notes appearing in parentheses after sections in this Code have no legal effect and only indicate legislative history. Charter references and state law references that appear in this Code after sections or subsections, or that otherwise appear in footnote form, are provided for the convenience of the user of the Code and have no legal effect.

(c) Unless specified otherwise, all references to chapters, articles, divisions and subdivisions or sections are to chapters or sections of this Code.

(d) No provision of this Code shall be held invalid by reason of deficiency in any chapter, article, division, subdivision or section heading.

(Code 1972, § 11.018; Ord. No. 131, § 8, eff. 9-27-1979)

**State Law References:** Catchlines in state statutes, MCL 8.4b.

#### **Sec. 1-4. Effect of repeal of ordinances.**

(a) Unless specifically provided otherwise, the repeal of a repealing ordinance does not revive the ordinance originally repealed, nor impair the effect of any saving provision therein.

(b) The repeal or amendment of an ordinance does not affect any punishment or penalty incurred before the repeal took effect, nor does such repeal or amendment affect any rights, privileges, suit, prosecution or proceeding pending at the time of the amendment or repeal.

**State Law References:** Effect of repeal of state statutes, MCL 8.4.

#### **Sec. 1-5. Certain ordinances not affected by Code.**

(a) Nothing in this Code or the ordinance adopting this Code affects the validity of any ordinance or portion of any ordinance:

- (1) Annexing property into the city or describing the corporate limits;
- (2) Deannexing property or excluding property from the city;
- (3) Promising or guaranteeing the payment of money or authorizing the issuance of bonds or other instruments of indebtedness;
- (4) Authorizing or approving any contract, deed or agreement;
- (5) Granting any specific right or franchise, or establishing the procedure for granting a right or franchise;
- (6) Making or approving any appropriation or budget;
- (7) Providing for the duties of city officers or employees not codified in this Code;

- (8) Providing for salaries or other employee benefits;
- (9) Adopting or amending a comprehensive plan;
- (10) Levying or imposing any special assessments;
- (11) Dedicating, establishing, naming, locating, relocating, opening, paving, widening, repairing or vacating any street, sidewalk or alley;
- (12) Establishing the grade of any street or sidewalk;
- (13) Dedicating, accepting or vacating any plat or subdivision;
- (14) Not codified in this Code that levies, imposes or otherwise relates to taxes, exemptions from taxes and fees in lieu of taxes;
- (15) Pertaining to rezoning property;
- (16) That is temporary, although general in effect;
- (17) That is special, although permanent in effect; or
- (18) The purpose of which has been accomplished.

(b) The ordinances or portions of ordinances designated in subsection (a) of this section continue in full force and effect to the same extent as if published at length in this Code.

#### **Sec. 1-6. Provisions deemed continuation of existing ordinances.**

The provisions of this Code, insofar as they are substantially the same as legislation previously adopted by the city relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

**State Law References:** Similar provisions as to state statutes, MCL 8.3u.

#### **Sec. 1-7. Code does not affect prior offenses, rights, etc.**

(a) Nothing in this Code or the ordinance adopting this Code affects any offense or act committed or done, any penalty or forfeiture incurred, or any contract or right established before the effective date of this Code.

(b) The adoption of this Code does not authorize any use or the continuation of any use of a structure or premises in violation of any city ordinance on the effective date of this Code.  
(Code 1972, § 11.023; Ord. No. 131, § 13, eff. 9-27-1979)

#### **Sec. 1-8. Altering Code.**

It shall be unlawful for any person to change or amend by additions or deletions, any part or portion of

this Code, or insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever, except by ordinance or resolution, or other official act of the council, which will cause the law of the city to be misrepresented thereby. Any person violating this section shall be punished as provided in section 1-13.

#### **Sec. 1-9. Fees.**

Where a fee is set or established by the city council and amended from time to time by resolution or ordinance, a list of such fees will be available for inspection in the office of the city clerk.

#### **Sec. 1-10. Severability of parts of Code.**

(a) It is the legislative intent of the city council in adopting this Code, that all provisions and sections of this Code be liberally construed to protect and preserve the peace, health, safety and welfare of the inhabitants of the city, and should any provision or section of this Code be held unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions or sections, notwithstanding the invalidity of any provision or section thereof.

(b) The provisions of this section shall apply to the amendment of any section of this Code, whether or not the wording of this section is set forth in the amendatory ordinance.  
(Code 1972, §§ 11.021, 11.040; Ord. No. 131, § 11, eff. 9-27-1979)

#### **Sec. 1-11. Amendments to Code; effect of new ordinances; amendatory language.**

(a) All ordinances adopted subsequent to this Code that amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of the Code and printed for inclusion in the Code. Portions of this Code repealed by subsequent ordinances may be excluded from this Code by omission from reprinted pages affected thereby.

(b) Amendments to provisions of this Code may be made with the following language: "Section \_\_\_\_\_ (chapter, article, division or subdivision, as appropriate) of the Code of Ordinances, City of Portland, Michigan, is hereby amended to read as follows: . . . ."

(c) If a new section, subdivision, division, article or chapter is to be added to the Code, the following language may be used: "Section \_\_\_\_\_ (chapter, article, division or subdivision, as appropriate) of the Code of Ordinances, City of Portland, Michigan, is hereby created to read as follows: . . . ."

(d) All provisions desired to be repealed should be repealed specifically by section, subdivision, division, article or chapter number, as appropriate, or by setting out the repealed provisions in full in the repealing ordinance.  
(Code 1972, § 11.014; Ord. No. 131, § 4, eff. 9-27-1979)

#### **Sec. 1-12. Supplementation of Code.**

(a) Supplements to this Code shall be prepared and printed whenever authorized or directed by the city. A supplement to this Code shall include all substantive permanent and general parts of ordinances adopted

during the period covered by the supplement and all changes made thereby in the Code. The pages of the supplement shall be numbered so that they will fit properly into the Code and will, where necessary, replace pages that have become obsolete or partially obsolete. The new pages shall be prepared so that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code that have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the person authorized to prepare the supplement may make formal, nonsubstantive changes in ordinances included in the supplement, insofar as necessary to do so in order to embody them into a unified code. For example, the person may:

- (1) Arrange the material into appropriate organizational units;
- (2) Supply appropriate catchlines, headings and titles for chapters, articles, divisions, subdivisions and sections to be included in the Code and make changes in any such catchlines, headings and titles or in any such catchlines, headings and titles already in the Code;
- (3) Assign appropriate numbers to chapters, articles, divisions, subdivisions and sections to be added to the Code;
- (4) Where necessary to accommodate new material, change existing numbers assigned to chapters, articles, divisions, subdivisions or sections;
- (5) Change the terms "this ordinance," or similar terms, to "this chapter," "this article," "this division," "this subdivision," "this section" or "sections \_\_\_\_\_ to \_\_\_\_\_" (inserting section numbers to indicate the sections of the Code that embody the substantive sections of the ordinance incorporated in the Code); or
- (6) Make other nonsubstantive changes necessary to preserve the original meaning of the ordinances inserted in the Code.

**Sec. 1-13. General penalty; continuing violations.**

(a) For the purposes of this section, the term "violation of this Code" shall mean any of the following:

- (1) Doing an act that is prohibited or made or declared unlawful, an offense or a violation by ordinance or by rule or regulation authorized by ordinance;
- (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance; or
- (3) Failure to perform an act if the failure is prohibited or is made or declared unlawful, an offense or a violation, or by ordinance or by rule or regulation authorized by ordinance.

(b) Any provision of this Code that is made or declared to be a misdemeanor, civil infraction or municipal civil infraction is a violation of this Code.

(c) For the purposes of this section, the term "violation of this Code" does not include the failure of a city officer or city employee to perform an official duty unless it is specifically provided that the failure to perform the duty is to be punished as provided in this section.

(d) Except as specifically provided otherwise by state law or city ordinance, all violations of this Code are misdemeanors. Except as otherwise provided by law or ordinance, a person convicted of a violation of this Code that is a misdemeanor shall be punished by a fine not to exceed \$500.00 and costs of prosecution, or by imprisonment for a period of not more than 90 days, or by both such fine and imprisonment. However, unless otherwise provided by law, a person convicted of a violation of this Code which substantially corresponds to a violation of state law that is a misdemeanor for which the maximum period of imprisonment is 93 days, is punishable by a fine not to exceed \$500.00 and costs of prosecution, or by imprisonment for a period of not more than 93 days, or by both such fine and imprisonment.

(e) Unless a different schedule of fines or penalty is provided for by any ordinance, the following schedule of municipal civil infraction fines shall apply:

- (1) First offense within a three-year period: \$100.00.
- (2) Second offense within a three-year period: \$300.00.
- (3) Third or more offense within a three-year period: \$500.00.

Whether a subsequent offense occurs within a three-year period shall be determined based on the date of the commission of the offense.

(f) Except as otherwise provided by state law or ordinance, with respect to violations of this Code that are continuous with respect to time, each day that the violation continues is a separate offense. As to other violations, each violation constitutes a separate offense.

(g) The imposition of a penalty does not prevent suspension or revocation of a license, permit or franchise, or other administrative sanctions.

(h) Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent injunctive relief or civil or quasi-judicial enforcement.

(Code 1972, § 11.020; Ord. No. 131, § 10, eff. 9-27-1979; Ord. No. 131-B, eff. 11-19-1981)

**State Law References:** Penalty for ordinance violations, MCL 117.4i(k), 117.4l.