

**Proposed Scrap Metal Recycling Facilities Rules**  
**To Be Promulgated by the Department of Planning and Urban**  
**Development pursuant to the**  
**Scrap Metal/Recycling Facilities Ordinance**

The following rules are promulgated pursuant to section \_\_\_\_\_ of the Scrap Metal Facilities Ordinance and all terms, conditions and requirements in that ordinance are hereby incorporated by reference.

**Rule #1 Baseline Testing:**

(a) An environmental waste baseline exploration and sampling plan is required which shall include the location of soil sampling and groundwater sampling locations to establish waste baseline environmental conditions at the site.

(b) A minimum of three on-site surficial soil samples, two off-site surficial soil samples, and three Geoprobe-installed or conventionally-installed overburden monitoring wells are required for all sites.

(c) The Department shall determine the number and location of soil samples and monitoring wells after reviewing the waste ~~baseline exploration and sampling plan.~~

(d) Initial waste baseline evaluation of the scrap metal recycling facility requires a waste management compliance audit of the facility by a qualified professional and the results of the audit shall be submitted to the City of Portland for evaluation prior to issuance of the license for the facility.

**Rule #2 Soil Testing:**

(a) Initial waste baseline testing shall consist of three on-site and two off-site soil samples collected according to a sampling plan developed by a qualified environmental professional and submitted to the Department for review and approval as part of the application.

(b) The three on-site samples shall be taken from soils in the principle outdoor work areas, i.e., areas in which metals to be recycled are received, processed and stored. The two off-site samples shall be taken in areas that are downgradient from the principal work areas with respect to surface runoff and/or are adjacent to property boundaries at which metals to be recycled are received, processed or stored. The soil samples

shall represent a composite of the upper six-inches of soil at the sampling location.

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(c) The soil samples shall be analyzed for volatile organic compounds (EPA Method 8260), semivolatile organic compounds (EPA Method 8270), PCBs (EPA Method 8082), the eight RCRA metals (EPA Methods 3010/6010), diesel-range organics (MDEP Method 4.1.25), and gasoline-range organics (MDEP Method 4.2.17).

(d) The criteria for evaluation of soil samples shall be the Maine DEP Remedial Action Guidelines for Soils (RAGS) of May 20, 1997.

(e) The City of Portland reserves the right to request split samples of soil taken as part of the licensing procedure. The split samples taken by the City of Portland shall be analyzed by an independent laboratory in order to provide corroboration of results.

Subsequent to receiving results of waste baseline soil sampling, the City may require additional sampling at the metal recycling facility or off-site and/or a plan for remediation of contaminated soils at on-site or off-site locations.

### Rule #3 Groundwater Testing

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(a) Initial waste baseline testing shall consist of three on-site overburden monitoring wells installed by Geoprobe or conventional hollow-stem auger drilling methods. The location and the rationale for the location of the three monitoring wells shall be developed by a qualified environmental professional and submitted to the Department for review and approval as part of the application.

(b) The three monitoring wells shall be located so as to monitor groundwater emanating from the principle outdoor work areas, i.e., areas in which metals to be recycled are received, processed and stored. Ten-foot well screens in the monitoring wells shall be placed so as to intersect the groundwater table. Groundwater samples shall be taken from the three monitoring wells in according with MDEP Low-Flow Groundwater Sampling Guidance, June 1996.

(c) The water samples shall be analyzed for volatile organic compounds (EPA Method 8260), semivolatile organic compounds (EPA Method 8270), PCBs (EPA Method 8082), the eight RCRA metals (EPA Methods 6010/7470), diesel-range organics (MDEP

Method 4.1.25), and gasoline-range organics (MDEP Method 4.2.17).

(d) The criteria for evaluation of water samples shall be the Maine DEP Maximum Exposure Guidelines (MEGs) of January 20, 2000 and the Procedural Guidelines for Establishing Action Levels and Remediation Goals for the Remediation of Oil-Contaminated Soil and Groundwater in Maine, March 13, 2000.

(e) The City of Portland reserves the right to request split samples of groundwater taken as part of the licensing procedure. The split samples taken by the City of Portland shall be analyzed by an independent laboratory in order to provide corroboration of results.

Subsequent to receiving results of waste baseline groundwater sampling, the City may require additional sampling at the metal recycling facility or off-site and/or a plan for remediation of contaminated groundwater at on-site or off-site locations.

**Rule #4 Dismantling Motor Vehicles and Other Items Containing  
Waste**

The dismantling of items containing waste shall take place in a building with an impervious floor and appropriate equipment ~~and containers to properly extract and store waste and recover~~ any spilled or escaped waste in compliance with state and federal laws.

Upon receiving a motor vehicle, the battery shall be removed and located in such a way as to ensure the battery's contents will not spill onto the ground.

When any engine lubricant, transmission fluid, brake fluid and/or engine coolant is removed from a vehicle, those fluids shall be drained into watertight containers which shall be kept covered and secured by containment in a storage building designed to contain spills. Any fluids from the motor vehicle shall be stored, recycled or disposed of according to all applicable federal and state laws. No discharge of any fluids from any motor vehicle shall be permitted into or onto the ground.

**Rule #5 Storage and handling of waste:**

Waste shall be stored and handled pursuant to and in compliance with state law and applicable regulations of the

Maine Department of Environmental Protection and any amendments thereto.

Hazardous substances and hazardous waste, including PCBs, solvents, and degreasers, and mercury and special wastes, including petroleum-related products shall be received, handled, processed, stored and disposed of in accordance with State of Maine Hazardous Waste Management Rules (06-96 DEP, January 23, 2001) and Solid Waste Management Regulations (Chapter 405, September 1, 1999).

**Rule #6 Visual Screening and Limitation on the Height of Piles of Metal or Other Material.**

In no event shall the scrap metal recycling facility be located closer than 100 feet from a public road. This setback provision shall apply to temporary or permanent storage areas for any metal or material within the scrap metal recycling facility, but shall not apply to the fences or screening which may be established to keep the facility screened from ordinary view, except such fences or screening must be outside the public road right-of-way. For the purposes of the Rules, the term "from a public road" shall mean from the far side of any immediately adjacent public road.

Visual impact standards can be met through storage, set back, or screening, or a combination thereof; however, the screening shall in no case exceed 15 feet in height and any piles of metal or other material shall not exceed 20 feet in height.

- (1) *Fencing.* Fences shall be so located and of sufficient height to completely screen the metal recycling facility and any piles of material within the facility from ordinary view. The minimum height of any fence is six feet, although the actual height must be sufficient to accomplish the complete screening from ordinary view but in no case may the height of the fence exceed 15 feet. All fences shall be well constructed and maintained. All fences shall be uniform in appearance, erected in a workmanlike manner, and constructed of sound, undamaged material.
  
- (2) *Plantings.* Screening may be accomplished through the planting and/or maintenance of trees, shrubs, or other vegetation of sufficient height, density and depth of planting or growth to completely screen the metal



recycling facility from ordinary view throughout the calendar.

(3) *Natural or man-made screening.* Screening may be accomplished by use of the following natural or man-made screens provided the scrap metal recycling facility is completely screened from ordinary view.

(a) *Hills, gullies, or embankments.* Where man-made, such screens must be constructed to blend with the landscape with loaming and seeding or other treatment as may be necessary to establish a natural appearance; or

(b) Building or other installations; or

(c) A combination of the above.

If buildings or other installations are used, they are not subject to the 15 foot height limitation on fences or other types of screening.

**Rule #7 Exemption From Specific Requirements:**

The following requirements shall not apply to facilities existing on or before the effective date of this Ordinance.

(a) Rule 6, 100 foot setback requirement.

Gary\proposed rule on metal recyclers

## DRAFT 7

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Scrap Metal Recycling Facility  
Licensing Ordinance

Sec. \_\_\_- 1. Purpose.

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

Sec. \_\_\_-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.

Sec. \_\_\_-3. Applicability.

This Ordinance shall apply to the licensing and relicensing of all scrap metal recycling facilities, as defined in this Ordinance.

**Sec. \_\_-4. Definitions.**

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

~~**Hazardous waste** means waste defined or identified as hazardous in Chapter 850 of the Maine Department of Environmental Protection's Hazardous Waste Management Rules dated January 23, 2001 and as subsequently amended.~~

**Scrap Metal Recycling Facility** means an area used to receive, process, or store any form of metal that is already scrap or that is reduced to strap for recycling or reuse and which handles, removes, or disposes of ~~hazardous waste or special waste~~ as part of the processing. The definition shall include an automobile recycling facility as defined in 30-A M.R.S.A. §1-A. 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 far side 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 Section 8(e) of this Ordinance regulations promulgated by the Department ~~between the storage area and the public road or property line.~~

**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 Limmerick 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 areas mapped as wetlands by the Maine Department of Environmental Protection, the Maine Department of Conservation, or the Maine Department of Inland Fisheries and Wildlife.

**Sec. \_\_-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.

**Sec. \_\_-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 ~~this~~ 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 relicensing of a scrap metal recycling facility. ~~The City shall mail a copy of the application to the Maine Department of Environmental Protection and to all abutters at least ten days before the hearing.~~ 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 on or before January 1<sup>st</sup> of each year except for calendar year 2003: In any calendar year, ~~2003~~ the City Council may issue a temporary license to operate to March 31, 2003 to provide applicants a reasonable opportunity for less than the full calendar year if an applicant is making a good faith effort to comply with the requirements of



this Ordinance. In calendar year 2003, applicants shall have until March 31, 2003 to comply with 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, the site of the metal recycling facility and test the site or cause it to be tested for pollution, both all at the applicant's expense, to ensure compliance with the provisions of this Ordinance and state law. The Department, at its discretion, may also test, cause to be tested, or require the applicant to test adjacent abutting property for hazardous or special wastes, at the applicant's expense, when on-site test results show unacceptable levels of hazardous or special wastes waste that exceed the limits of state law or the regulations promulgated hereunder, whichever are stricter.

(de) The Department shall collect annually, in advance from the applicant, a \$500 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 ~~by the Department or~~ allowed by this Ordinance and ~~as 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.

(e) A complete application for a scrap metal recycling facility license must be filed at least 90 days before January 1<sup>st</sup> except for an application for calendar year 2003, which must be filed on or before ~~December 31, 2002~~ January 31, 2003. 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 make 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.

**Sec. \_\_\_\_-7. Submission requirements.**

Any application for a scrap metal recycling facility license shall contain the following information ~~as~~ and any additional information required ~~pursuant to~~ 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, churches, 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;

(ag) A site plan that complies with Chapter 14, Sec. 525(b) of the City Code and also includes such other information as required by the rules promulgated by the Department.

~~(bh)~~ *Soil tests.* Results and data from on-site and off-site 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.

(ei) *Groundwater tests.* Results and data from on-site and off-site groundwater sampling and testing will be required for licensing of scrap metal recycling facilities ~~pursuant to Rules promulgated by the Department~~ within the 90-day period prior to the expiration of the licensing period. Such testing shall comply with rules promulgated by the Department.

(dj) *Other information.*

- (1) the types of metal processed on the site;
- (2) the types of ~~hazardous waste and special waste~~ handled and the average volume per year per material;

(3) a description of the protocol for handling ~~hazardous waste and special waste~~ and the destination to which ~~that material~~ waste is sent.

(4) An Operations Manual as described in C. 402 of the Maine Department of Environmental Protection regulations.

(5) Operational records as described in C. 402 of the Maine Department of Environmental Protection regulations.

(6) An Annual Report as described in C. 402 of the Maine Department of Environmental Protection regulations.

**Sec. \_\_-8. Performance standards.**

The City Council shall not issue a license to operate a scrap metal recycling facility unless the applicant can ~~positively~~ 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 ground water, 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, and the operation of the ~~metal recycling~~ facility is in ~~complete compliance with any Site Plan Review approved by the Planning Board for the facility~~ 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 ~~treated~~ handled as required by Rules promulgated by the Department.

(g) *Storage and handling of ~~hazardous and special waste.~~* All waste shall be handled as required by rules promulgated by the Department. ~~Hazardous substances and hazardous waste, including PCBs, solvents, and degreasers, and mercury and special wastes, including petroleum related products will be received, handled, processed, stored and disposed of in accordance with State of Maine Hazardous Waste Management Rules (06-96 DEP, January 23, 2001) and Solid Waste Management Regulations (Chapter 405, September 1, 1999).~~

(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, public bathing beach, school, church or cemetery.

(j) *Setback from waterways.* No scrap metal recycling facility shall be located within 300 feet of any waterbody, watercourse, or wetland.

(k) *Road/property line setbacks.* No scrap metal recycling facility shall be located within 1,000 feet of a public road or 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 completely 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) ~~Remediation~~ Remedial action plan required. A ~~remediation~~ 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 no longer not in compliance with the licensing requirements of this Ordinance or regulations promulgated hereunder. The ~~remediation~~ remedial action plan shall be provided as follows:

- (1) Within thirty (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 or abates waste contamination or any other violation of this Ordinance or the rules promulgated hereunder. ~~that is identified in the site investigation report required by Paragraph 6(c) of this Article.~~

(o) Implementation of Remedial Action Plan.

~~(2) Beginning thirty (30) days after the Department's review and approval of the remedial action plan and schedule required by Paragraph \_\_\_ 8(h)(1) 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.

**Sec. \_\_\_-9. 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 ~~hazardous waste, special waste, oily waste or universal waste~~ as defined herein. The Department shall follow the rulemaking procedure ~~pursuant to~~ in Chapter 12, Section 12-105(b) and (b)(1) of the City Code.

**Sec. \_\_\_-10. 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, ~~—~~ — However, the Board may only overturn the Department's interpretation if it is clearly erroneous or without any ~~substantial~~ 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.

**Sec.    -11. 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 ~~an~~ a site inspection, record review

or testing at least five (5) business days before the site inspection, record review ~~and~~ or testing takes place.

(b) This Ordinance shall be liberally construed to effect its purposes 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 DEP or the federal Environmental Protection Agency as is conferred on those agencies by the relevant state or federal regulations.

**Sec. \_\_\_\_-12. Penalties.**

Any violation of this Ordinance shall also be deemed a nuisance within the meaning of 17 M.S.R.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).

Sec. \_\_\_-13. Effective date and amendment.

This Ordinance shall become effective 30 days after adoption by the City Council except that any applicant for a license for the period January 1, 2003 to December 31, 2003 who operated a facility in 2002 that is subject to this Ordinance shall have until March 31, 2003 to comply and shall be granted a temporary license until that date. The temporary license shall not authorize any existing violations of state or federal law and such violations may be prosecuted to the full extent allowed by those laws.

## Rick Knowland - e.perry

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**From:** Rick Knowland  
**To:** Gary Wood  
**Date:** 3/2/2009 10:28 AM  
**Subject:** e.perry  
**CC:** Alex Jaegerman ; Mary Pereira; Penny Littell

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Gary, I'll bring my e.perry file down to Mary this morning.

On 1/15/2008 we win in court.

On 1/30/2008 G.W. sends a letter to e.perry stating they must file for scrap metal license and site plan review.

On 2/29/2008 Acadia (for e.perry) submits work plan, ground water monitoring for annual testing.

On 3/20/2008 Tewhey provides comments on the above.

On 4/07/2008 Acadia submits revised plan to address Tewheys comments.

On 4/14/2008 Acadia submits scrap metal license application. Application also includes site plan.

On 5/1/2008 Acadia submits a more complete site plan dated 4/30/2008.

Since one can't get a license without site plan review approval, we focus our efforts on the site plan. Letter dated 7/11/2008 from Planning to Acadia outlines staff comments (which are many) on the site plan.

Phone conversation with Acadia on 7/24/2008 to RK and later outlined in email 8/14/2008 indicates they won't respond to the staff review comments at this time since e.perry is looking at relocation options including conversations with the City.

Apparently they filed they filed for a license in 12/2008 which I haven't seen. Obviously they need an approved site plan before they can get a license.

That is where it stands. If anyone else has any further comments to fill in the blanks please feel free to do so.

*Alex J. Jorgensen  
20 Attn Hall*

*CC Joe Bay  
Council*

# CARDENTE PROPERTIES

34 Diamond Street, Portland, Maine 04101  
Phone (207) 775-5677 • Fax (207) 773-0066 • e-mail: cardprop@maine.rr.com

August 6, 2001

Lee Urban  
Economic Development Office  
City of Portland  
389 Congress Street  
Portland, ME 04101

Lee:

As you know, the Carbo Company owns two parcels of land on the corner of Franklin Street Arterial and Fox Street. These are the same parcels that we offered to be very flexible about in order to assist the City in getting the Idexx deal.

The recent articles about the City's desire to acquire the railroad and junkyard land to spur development in this area are very exciting to us. Our long-term goal has been to do a sizeable development in this area if we were able to acquire enough land. We applaud your efforts and, as a private developer, we want you to know that we would be most interested in further investing in this area if the City is successful in getting the ball rolling.

Sincerely,  
**COPY**

Douglas Cardente  
For the Partnership

cc: Nathan Smith  
cc: Joe Boulos



A R C H E T Y P E

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April 22, 2010

Dear Neighbor:

Please join us for a neighborhood meeting to discuss our plans for the Inn at Diamond Cove located at on McKinley Court, Great Diamond Island, ME.

**Meeting Location:** Administration Building - Diamond Cove  
**Meeting Date:** Thursday - May 27, 2010  
**Meeting Time:** 5:30 PM

The City code requires that property owners within 500 feet of the proposed development and residents on an "interested parties list", be invited to participate in a neighborhood meeting. A sign-in sheet will be circulated and minutes of the meeting will be taken. Both the sign-in sheet and minutes will be submitted to the Planning Board.

If you have any questions, please call (207) 772-2992.

Sincerely,

David Bateman  
The Inn at Diamond Cove, LLC  
PO Box 3572  
Portland, ME 04104

**Note:**

*Under Section 14-32(C) of the City Code of Ordinances, an applicant for a major development, subdivision of over five lots/units, or zone change is required to hold a neighborhood meeting at least seven days prior to the Planning Board public hearing on the proposal. Should you wish to offer additional comments on this proposed development you may contact the Planning Division at 874-8721 or send written correspondence to the Department of Planning and Development, Planning Division 4th Floor, 389 Congress Street Portland, ME 04101 or by email: to bab@portlandmaine.gov.*

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, church 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 completely 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 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. Rulemaking authority.**

The department shall have the authority to make any rules necessary to affect 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. 31-10. 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. 31-11. 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. 31-12. 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. 31-13. 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)

## Chapter 31 SCRAP METAL RECYCLING FACILITIES

### 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 relicensing of 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 an automobile recycling facility as defined in 30-A M.R.S.A. § 3752 (1-A). 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.

*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 relicensing 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 on or before January 1<sup>st</sup> of each 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, 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.



(e) The department shall collect annually, in advance from the applicant, a \$500 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.

(f) A complete application for a scrap metal recycling facility license must be filed at least 90 days before January 1<sup>st</sup>. 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)

#### **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, churches, 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 on-site and off-site 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 on-site and off-site 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, 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, church 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 completely 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 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. Rulemaking authority.**

The department shall have the authority to make any rules necessary to affect 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. 31-10. 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. 31-11. 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. 31-12. 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. 31-13. 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)

**Proposed Scrap Metal Recycling Facilities Rules  
To be Promulgated by the  
Department of Planning and Urban Development  
Pursuant to the  
Scrap Metal/Recycling Facilities Ordinance**

The following rules are promulgated pursuant to Section 31-9 of the Scrap Metal Facilities Ordinance and all terms, conditions and requirements in that ordinance are hereby incorporated by reference.

**Rule #1 Baseline Testing:**

- (a) An environmental waste baseline exploration and sampling plan is required which shall include the location of soil sampling and groundwater sampling locations to establish waste baseline environmental conditions at the site.
- (b) A minimum of three on-site surficial soil samples, on the upper six (6) inches and three Geoprobe-installed or conventionally-installed overburden monitoring wells are required for all sites.
- (c) The Department shall determine the number and location of soil samples and monitoring wells after reviewing the waste baseline exploration and sampling plan.
- (d) Initial waste baseline evaluation of the scrap metal recycling facility requires a waste management compliance audit of the facility by a qualified professional and the results of the audit shall be submitted to the City of Portland for evaluation prior to issuance of the license for the facility.

**Rule #2 Soil Testing:**

- (a) Initial waste baseline testing shall consist of three on-site and two off-site soil samples collected according to a sampling plan developed by a qualified environmental professional and submitted to the Department for review and approval as part of the application.
- (b) The three on-site samples shall be taken from soils in the principle outdoor work areas, i.e., in which metals to be recycled are received, processed and stored. The two off-site samples shall be taken in areas that are downgradient from the principal work areas with respect to surface runoff and/or are adjacent to property boundaries at which metals to be recycled are received, processed or stored. The soil samples shall represent a composite of the upper six-inches of soil at the sampling location.
- (c) The soil samples shall be analyzed for volatile organic compounds (EPA Method 8260), semivolatile organic compounds (EPA Method 8270), PCBs (EPA Method 8082),



the eight RCRA metals (EPA Methods 3010/6010), diesel-range organics (MDEP Method 4.1.25), and gasoline-range organics (MDEP Method 4.2.17).

(d) The criteria for evaluation of soil samples shall be the Maine DEP Remedial Action Guidelines for Soils (RAGS) of May 20, 1997.

(e) The City of Portland reserves the right to request split samples of soil taken as part of the licensing procedure. The split samples taken by the City of Portland shall be analyzed by an independent laboratory in order to provide corroboration of results.

Subsequent to receiving results of waste baseline soil sampling, the City may require additional sampling at the metal recycling facility or off-site and/or a plan for remediation of contaminated soils at on-site or off-site locations.

### **Rule #3 Groundwater Testing:**

(a) Initial waste baseline testing shall consist of three on-site overburden monitoring wells installed by Geoprobe or conventional hollow-stem auger drilling methods. The location and the rationale for the location of the three monitoring wells shall be developed by a qualified environmental professional and submitted to the Department for review and approval as part of the application.

(b) The three monitoring wells shall be located so as to monitor groundwater emanating from the principle outdoor work areas, i.e., areas in which metals to be recycled are received, processed and stored. Ten-foot well screens in the monitoring wells shall be placed so as to intersect the groundwater table. Groundwater samples shall be taken from the three monitoring wells in according with MDEP Low-Flow Groundwater Sampling Guidance, June 1996.

(c) The water samples shall be analyzed for volatile organic compounds (EPA Method 8260), semivolatile organic compounds (EPA Method 8270), PCBs (EPA Method 8082), the eight RCRA metals (EPA Methods 6010/7470), diesel-range organics (MDEP Method 4.1.25), and gasoline-range organics (MDEP Method 4.2.17).

(d) The criteria for evaluation of water samples shall be the Maine DEP Maximum Exposure Guidelines (MEGs) of January 20, 2000 and the Procedural Guidelines for Establishing Action Levels and Remediation Goals for the Remediation of Oil-Contaminated Soil and Groundwater in Maine, March 13, 2000.

(e) The City of Portland reserves the right to request split samples of groundwater taken as part of the licensing procedure. The split samples taken by the City of Portland shall be analyzed by an independent laboratory in order to provide corroboration of results.

Subsequent to receiving results of waste baseline groundwater sampling, the City may require additional sampling at the metal recycling facility or off-site and/or a plan for remediation of contaminated groundwater at on-site or off-site locations.

**Rule #4 Dismantling Motor Vehicles and Other Items Containing Waste:**

The dismantling of items containing waste shall take place in a building with an impervious floor and appropriate equipment and containers to properly extract and store waste and recover any spilled or escaped waste in compliance with state and federal laws.

Upon receiving a motor vehicle, the battery shall be removed and located in such a way as to ensure the battery's contents will not spill onto the ground.

When any engine lubricant, transmission fluid, brake fluid and/or engine coolant is removed from a vehicle, those fluids shall be drained into watertight containers which shall be kept covered and secured by containment in a storage building designed to contain spills. Any fluids from the motor vehicle shall be stored, recycled or disposed of according to all applicable federal and state laws. No discharge of any fluids from any motor vehicle shall be permitted into or onto the ground.

**Rule #5 Storage and Handling of Waste:**

Waste shall be stored and handled pursuant to and in compliance with state law and applicable regulations of the Maine Department of Environmental Protection and any amendments thereto.

Hazardous substances and hazardous waste, including PCBs, solvents, and degreasers, and mercury and special wastes, including petroleum-related products shall be received, handled, processed, stored and disposed of in accordance with State of Maine Hazardous Waste Management Rules (06-96 DEP, January 23, 2001) and Solid Waste Management Regulations (Chapter 405, September 1, 1999).

**Rule #6 Setback Requirement; Visual Screening and Limitation on the Height of Piles of Metal or Other Material.**

In no event shall the scrap metal recycling facility be located closer than 100 feet from a public road. The setback provision shall apply to temporary or permanent storage, weighing, or processing areas for any metal or material within the scrap metal recycling facility, but shall not apply to any driveways or administrative buildings, and shall not apply to the fences or screening which may be established to keep the facility screened from ordinary view, except such fences or screening must be outside the public road right-of-way. For the purposes of the Rules, the term "from a public road" shall mean from the far side of any immediately adjacent public road.

Visual impact standards can be met through storage, setback, or screening, or a combination thereof; however, the screening shall in no case exceed 15 feet in height and any piles of metal or other material shall not exceed 20 feet in height.

(a) *Fencing.* Fences shall be so located and of sufficient height to completely screen the metal recycling facility and any piles of material within the facility from ordinary view. The minimum height of any fence is six feet, although the actual height must be sufficient to accomplish the complete screening from ordinary view but in no case may the height of the fence exceed 15 feet. All fences shall be well constructed and maintained. All fences shall be uniform in appearance, erected in a workmanlike manner, and constructed of sound, undamaged material.

(b) *Plantings.* Screening may be accomplished through the planting and/or maintenance of trees, shrubs, or other vegetation of sufficient height, density and depth of planting or growth to completely screen the metal recycling facility from ordinary view throughout the calendar.

(c) *Natural or man-made screening.* Screening may be accomplished by use of the following natural or man-made screens provided the scrap metal recycling facility is completely screened from ordinary view.

- (1) *Hills, gullies, or embankments.* Where man-made, such screens must be constructed to blend with the landscape with loaming and seeding or other treatment as may be necessary to establish a natural appearance; or
- (2) Building or other installations; or
- (3) A combination of the above.

If buildings or other installations are used, they are not subject to the 15 foot height limitation on fences or other types of screening.

**Rule #7 Exemption from Specific Requirements:**

The following requirements shall not apply to facilities existing on or before the effective date of this Ordinance.

- (a) Rule 6, 100' setback requirement.

## Chapter 31 SCRAP METAL RECYCLING FACILITIES

### 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 relicensing of 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 an automobile recycling facility as defined in 30-A M.R.S.A. § 3752 (1-A). 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.

*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 relicensing 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 on or before January 1<sup>st</sup> of each 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, 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.

(e) The department shall collect annually, in advance from the applicant, a \$500 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.

(f) A complete application for a scrap metal recycling facility license must be filed at least 90 days before January 1<sup>st</sup>. 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)

#### **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, churches, 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 on-site and off-site 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 on-site and off-site 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, 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, church 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 completely 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 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. Rulemaking authority.**

The department shall have the authority to make any rules necessary to affect 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. 31-10. 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. 31-11. 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. 31-12. 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. 31-13. 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)

**Proposed Scrap Metal Recycling Facilities Rules  
To be Promulgated by the  
Department of Planning and Urban Development  
Pursuant to the  
Scrap Metal/Recycling Facilities Ordinance**

The following rules are promulgated pursuant to Section 31-9 of the Scrap Metal Facilities Ordinance and all terms, conditions and requirements in that ordinance are hereby incorporated by reference.

**Rule #1      Baseline Testing:**

- (a) An environmental waste baseline exploration and sampling plan is required which shall include the location of soil sampling and groundwater sampling locations to establish waste baseline environmental conditions at the site.
- (b) A minimum of three on-site surficial soil samples, on the upper six (6) inches and three Geoprobe-installed or conventionally-installed overburden monitoring wells are required for all sites.
- (c) The Department shall determine the number and location of soil samples and monitoring wells after reviewing the waste baseline exploration and sampling plan.
- (d) Initial waste baseline evaluation of the scrap metal recycling facility requires a waste management compliance audit of the facility by a qualified professional and the results of the audit shall be submitted to the City of Portland for evaluation prior to issuance of the license for the facility.

**Rule #2      Soil Testing:**

- (a) Initial waste baseline testing shall consist of three on-site and two off-site soil samples collected according to a sampling plan developed by a qualified environmental professional and submitted to the Department for review and approval as part of the application.
- (b) The three on-site samples shall be taken from soils in the principle outdoor work areas, i.e., in which metals to be recycled are received, processed and stored. The two off-site samples shall be taken in areas that are downgradient from the principal work areas with respect to surface runoff and/or are adjacent to property boundaries at which metals to be recycled are received, processed or stored. The soil samples shall represent a composite of the upper six-inches of soil at the sampling location.
- (c) The soil samples shall be analyzed for volatile organic compounds (EPA Method 8260), semivolatile organic compounds (EPA Method 8270), PCBs (EPA Method 8082),

the eight RCRA metals (EPA Methods 3010/6010), diesel-range organics (MDEP Method 4.1.25), and gasoline-range organics (MDEP Method 4.2.17).

(d) The criteria for evaluation of soil samples shall be the Maine DEP Remedial Action Guidelines for Soils (RAGS) of May 20, 1997.

(e) The City of Portland reserves the right to request split samples of soil taken as part of the licensing procedure. The split samples taken by the City of Portland shall be analyzed by an independent laboratory in order to provide corroboration of results.

Subsequent to receiving results of waste baseline soil sampling, the City may require additional sampling at the metal recycling facility or off-site and/or a plan for remediation of contaminated soils at on-site or off-site locations.

**Rule #3 Groundwater Testing:**

(a) Initial waste baseline testing shall consist of three on-site overburden monitoring wells installed by Geoprobe or conventional hollow-stem auger drilling methods. The location and the rationale for the location of the three monitoring wells shall be developed by a qualified environmental professional and submitted to the Department for review and approval as part of the application.

(b) The three monitoring wells shall be located so as to monitor groundwater emanating from the principle outdoor work areas, i.e., areas in which metals to be recycled are received, processed and stored. Ten-foot well screens in the monitoring wells shall be placed so as to intersect the groundwater table. Groundwater samples shall be taken from the three monitoring wells in according with MDEP Low-Flow Groundwater Sampling Guidance, June 1996.

(c) The water samples shall be analyzed for volatile organic compounds (EPA Method 8260), semivolatile organic compounds (EPA Method 8270), PCBs (EPA Method 8082), the eight RCRA metals (EPA Methods 6010/7470), diesel-range organics (MDEP Method 4.1.25), and gasoline-range organics (MDEP Method 4.2.17).

(d) The criteria for evaluation of water samples shall be the Maine DEP Maximum Exposure Guidelines (MEGs) of January 20, 2000 and the Procedural Guidelines for Establishing Action Levels and Remediation Goals for the Remediation of Oil-Contaminated Soil and Groundwater in Maine, March 13, 2000.

(e) The City of Portland reserves the right to request split samples of groundwater taken as part of the licensing procedure. The split samples taken by the City of Portland shall be analyzed by an independent laboratory in order to provide corroboration of results.

Subsequent to receiving results of waste baseline groundwater sampling, the City may require additional sampling at the metal recycling facility or off-site and/or a plan for remediation of contaminated groundwater at on-site or off-site locations.

**Rule #4 Dismantling Motor Vehicles and Other Items Containing Waste:**

The dismantling of items containing waste shall take place in a building with an impervious floor and appropriate equipment and containers to properly extract and store waste and recover any spilled or escaped waste in compliance with state and federal laws.

Upon receiving a motor vehicle, the battery shall be removed and located in such a way as to ensure the battery's contents will not spill onto the ground.

When any engine lubricant, transmission fluid, brake fluid and/or engine coolant is removed from a vehicle, those fluids shall be drained into watertight containers which shall be kept covered and secured by containment in a storage building designed to contain spills. Any fluids from the motor vehicle shall be stored, recycled or disposed of according to all applicable federal and state laws. No discharge of any fluids from any motor vehicle shall be permitted into or onto the ground.

**Rule #5 Storage and Handling of Waste:**

Waste shall be stored and handled pursuant to and in compliance with state law and applicable regulations of the Maine Department of Environmental Protection and any amendments thereto.

Hazardous substances and hazardous waste, including PCBs, solvents, and degreasers, and mercury and special wastes, including petroleum-related products shall be received, handled, processed, stored and disposed of in accordance with State of Maine Hazardous Waste Management Rules (06-96 DEP, January 23, 2001) and Solid Waste Management Regulations (Chapter 405, September 1, 1999).

**Rule #6 Setback Requirement; Visual Screening and Limitation on the Height of Piles of Metal or Other Material.**

In no event shall the scrap metal recycling facility be located closer than 100 feet from a public road. The setback provision shall apply to temporary or permanent storage, weighing, or processing areas for any metal or material within the scrap metal recycling facility, but shall not apply to any driveways or administrative buildings, and shall not apply to the fences or screening which may be established to keep the facility screened from ordinary view, except such fences or screening must be outside the public road right-of-way. For the purposes of the Rules, the term "from a public road" shall mean from the far side of any immediately adjacent public road.

Visual impact standards can be met through storage, setback, or screening, or a combination thereof; however, the screening shall in no case exceed 15 feet in height and any piles of metal or other material shall not exceed 20 feet in height.



(a) *Fencing.* Fences shall be so located and of sufficient height to completely screen the metal recycling facility and any piles of material within the facility from ordinary view. The minimum height of any fence is six feet, although the actual height must be sufficient to accomplish the complete screening from ordinary view but in no case may the height of the fence exceed 15 feet. All fences shall be well constructed and maintained. All fences shall be uniform in appearance, erected in a workmanlike manner, and constructed of sound, undamaged material.

(b) *Plantings.* Screening may be accomplished through the planting and/or maintenance of trees, shrubs, or other vegetation of sufficient height, density and depth of planting or growth to completely screen the metal recycling facility from ordinary view throughout the calendar.

(c) *Natural or man-made screening.* Screening may be accomplished by use of the following natural or man-made screens provided the scrap metal recycling facility is completely screened from ordinary view.

(1) *Hills, gullies, or embankments.* Where man-made, such screens must be constructed to blend with the landscape with loaming and seeding or other treatment as may be necessary to establish a natural appearance; or

(2) Building or other installations; or

(3) A combination of the above.

If buildings or other installations are used, they are not subject to the 15 foot height limitation on fences or other types of screening.

**Rule #7 Exemption from Specific Requirements:**

The following requirements shall not apply to facilities existing on or before the effective date of this Ordinance.

(a) Rule 6, 100' setback requirement.

## Chapter 31 SCRAP METAL RECYCLING FACILITIES

### 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 relicensing of 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 an automobile recycling facility as defined in 30-A M.R.S.A. § 3752 (1-A). 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.

*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 relicensing 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 on or before January 1<sup>st</sup> of each 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, 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.

(e) The department shall collect annually, in advance from the applicant, a \$500 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.

(f) A complete application for a scrap metal recycling facility license must be filed at least 90 days before January 1<sup>st</sup>. 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)

#### **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, churches, 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 on-site and off-site 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 on-site and off-site 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, 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

# Planning and Capacity Building

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## Eligible Activities

CDBG funds may be used for:

- ✓ Studies,
- ✓ Analysis,
- ✓ Data gathering,
- ✓ Preparation of plans, and
- ✓ Identification of actions that will implement plans.

## Example

The types of plans which may be paid for with CDBG funds include, but are not limited to:

- Comprehensive plans;
- Individual project plans;
- Community development plans;
- Capital improvement programs;
- Small area and neighborhood plans;
- Analysis of impediments to fair housing choice;
- Environmental and historic preservation studies; and
- Functional plans (such as plans for housing, land use, energy conservation or economic development).

A more detailed description of planning and capacity building activities is located at §570.205 of the regulations.

Such funds may also be used under this category for activities designed to improve the grantee's capacity (or that of its subrecipients) to plan and manage programs and activities for the grantee's CDBG program. However, the amount of CDBG funds which may be used for activities under this category (whether by the grantee or its subrecipients) is subject to the statutory limitation on planning and administrative cost. Note that the planning and administrative costs of subrecipients subject to the 20% cap are limited to those related to the CDBG program as a whole and not for activity-specific administrative costs related to carrying out other eligible Subpart C activities which are considered part of the cost of those activities. (See also the discussion describing the 20% cap which is contained in the Program Administration Costs category section and the description on how to calculate the cap following that section.) *References: §570.200(g) and §570.205*



April 17, 2006

Mike Komich  
Cheverus High School  
267 Ocean Avenue  
Portland, Maine  
04103

Dear Mike,

I am addressing this letter to you and hope that you will be able to help resolve the ongoing situation. On April 14, 2005, you were given approval by the planning board to allow baseball practice on the field next to my property subject to a following condition. That a baseball net shall be installed so that a misdirected ball will not harm someone.

I am that someone, Mike. Since that net has been installed, I have retrieved 3 baseballs to add to the collection that I have accumulated over time. My lawyer tried to contact Rick Knowland about a month ago, but to no avail.

Today, Patriot's Day, I was working in my garden and I was surprised to see one of your students on a baseball retrieving mission in between our two fences, yours and mine. This happened not once, but twice.

Obviously, the baseball netting system that has been installed is not working. It was supposed to be suitable, appropriate, and functional for the purpose for which it was intended.

Please respond and let me know how you intend to resolve this matter. I would appreciate hearing from you within the week.

Sincerely,

Leah Cohen  
288 Clifton Street  
Portland, Maine  
04103



Cc: Rick Knowland, Planning Board  
City of Portland, Maine