

CITY OF PORTLAND, MAINE
Standing Committee on Sustainability and Transportation
Councilor Spencer Thibodeau (D2), Chair
Councilor Belinda Ray (D1)
Councilor Jill Duson (D3)

Agenda
February 26, 2020
5:00 PM
Council Chambers

1. Review and approve minutes from January 15, 2020

- a. Draft minutes from January 15, 2020

2. Sustainability Program Updates
Sustainability Updates

- a. Sustainability Updates

3. Presentation and Discussion

- a. Update on harbor dredging project and CAD cell
No public comment
- b. Preparing for an autonomous shuttle pilot
No public comment
 - i. AV Shuttle Presentation
- c. Residential Parking Program
No Public Comment
- d. Repeal Bag Fee Ordinance (Chapter 12)
Public Comment Taken
- e. Draft Heritage Tree Ordinance
Presentation only - no public comment
- f. Dogs in Baxter Woods
Public Comment Taken

Please see January 15, 2020 Sustainability and Transportation Committee Meeting Package for additional background information.

4. Other Business

CITY OF PORTLAND, MAINE

Standing Committee on Sustainability and Transportation

Councilor Spencer Thibodeau (D2), Chair

Councilor Belinda Ray (D1)

Councilor Jill Duson (At large)

Draft Minutes January 15, 2020

Members Present: Councilor Thibodeau, Councilor Ray, Councilor Duson

Staff Present: Troy Moon, Ashley Krulik, Jeff Tarling, Ethan Hipple, Sally Deluca, Chris Branch, Jen Ladd, Lauren Anderson, Jeff Tarling, Alex Marshall, Jill Mulkern, Councilor Kim Cook

Meeting was called to order at 5:33 PM. Councilor Ray moves to approve the minutes from November 20, 2019 with two changes. Councilor Duson, seconded. All those in favor of approving 3-0.

Sustainability Program Updates

Troy Moon reviewed the items on the Sustainability Program Update memo.

- Councilor Thibodeau asked to add Ocean Avenue testing to list of items for April
 - Chris Branch - fall results have come back and indicate nothing significant, which is consistent with past results. This testing is voluntary.

Sidewalk and Paving Backlog

Chris Branch, Public Works Director, introduced the presentation. Signed contract with Stantec 1.5 years ago to get data on condition of sidewalks and paving. In the process of adding sidewalk data to Street Logic software. Looking at 2017 data today.

Lauren Anderson, Public Engineer, presented pavement analysis.

- Councilor Duson:
 - What is the percentage of roads require each type of maintenance? Ms. Anderson - aligns with percentages in pavement condition evaluation. Mr. Branch - mix will change each year. Depends on the condition of the streets.
 - It sounds like there is an opportunity to advocate for more street maintenance. This framework helps us to closely track the data and see how quickly roads are deteriorating.
 - Mr. Branch - there are also other impacts on prioritization - input from public, street crews, etc.
- Councilor Ray:
 - Pavement maintenance estimated costs: are ADA compliance items mandatory? Mr. Branch - yes, but it depends on what is already in place. One ADA ramp costs about \$80k. Councilor Ray - so the estimated pavement costs are actually much higher? Ms. Anderson - yes.

- What roads do we have the opportunity for match from MDOT? Mr. Branch - all the roads except local roads. MDOT is currently facing a budget shortfall which is affecting matches.
- You need \$4-\$5 million per year? Mr. Branch - yes. Councilor Ray - If you are only requesting \$1.6 million in CIP where does the rest come from? Mr. Branch - MDOT.
- Councilor Thibodeau
 - Let's post a map of the street conditions on our website
 - Where do we fall in road conditions compared to other communities? Doesn't seem ideal that the backlog will take 49 years to fix. Mr. Branch - I don't think we're substantially different. Recent weather conditions have been especially tough on roads. Need to also consider the cost of damage to vehicles when advocating for maintenance.
 - What is your recommendation to address this backlog? Mr. Branch - I don't have a recommendation...there are a lot of important competing costs in the City to fix the deteriorating infrastructure. More funds will be freed up when pension bond retires in 2026. Discussing more temporary fixes until funds are available.

Jen Ladd, Senior Transportation Engineer, presented Sidewalk & Ramp Inventory Analysis.
Councilor Thibodeau:

- Is the assumption that every street has a sidewalk? Ms. Ladd - this analysis does not indicate missing sidewalks. Sidewalks with gaps would be inventoried as two separate segments.
- Have looked into sidewalk improvement districts - maybe there are some creative solutions we can look into.

Chris Branch - sidewalks typically last longer than paved streets. PWD streets and sidewalks crews have been more aligned as a maintenance crew to respond to resident requests. Priorities: 1) Condition, 2) Pedestrian use, 3) Distance from schools. No plan to add new sidewalks or fill in gaps.

Councilor Ray

- Material costs - Concrete is cheaper than brick? Mr. Branch - correct. Councilor Ray - what lasts the longest? Mr. Branch - generally concrete.
- Important to move away from mandating bricks in many places - safety hazard and seem to deteriorate quickly. Would like to advocate for smarter material.

Councilor Dusen

- Is there an industry standard for how much sidewalk or pavement should be in the green (good or better)? Mr. Branch - based on what community wants to do and funds available. In NYC, sidewalk abutters are responsible for maintenance - not proposing that we do that. Ms. Ladd - there is an ADA federal requirement but not sure how that aligns with condition.

- Are there any permeable sidewalk options? Mr. Branch - yes, have implemented in a couple of places in the City.

Parks, Recreation, and Facilities Recommendation Regarding Dogs in Baxter Woods

Troy Moon introduced the project.

Ethan Hipple, PRF Department Deputy Director, presented.

- Councilor Ray - appreciate the way that PRF has handled this issue
- Councilor Duson
 - If we establish a habitat restoration area, would there be a barrier to it? Mr. Hipple - do not plan to add fence, would likely use some sort of natural barrier - logs, brush. Use it as an environmental education opportunity.
 - How do we educate users that some guidelines are in place for 4 months and others year round? Mr. Hipple - signage and other organized educational opportunities.
- Councilor Thibodeau
 - Restoration area includes pathway - why? Mr. Hipple - plan is to keep major pathways. Habitat protection area would be on the north side of the main trail and not include the main trail.

Ann Calendar, 138 Pleasant Ave. President of Friends of Mayor Baxter Woods presented.

- Group was formed in response to PRF proposed changes to guidelines.
- Group feels that a study should be completed to better understand the user group and appropriate off-leash hours.
- 98% of users surveyed feel that Baxter Woods should remain off-leash.
- Request to pause or delay vote on changes to guidelines to gather more data.

Councilor Ray

- How did you distribute the survey? Ms. Calendar - asked people using Baxter Woods.

Councilor Thibodeau

- Next step is to determine the path forward.
 - Councilor Ray:
 - Proposed changes make sense to me. Is the intent for S&T Committee to host public comments, take a vote, and move to the full council?
Councilor Thibodeau - yes.
 - Is this time sensitive? Mr. Hipple - it would be nice to have the guidelines in place by April for bird nesting and migration.
 - Understand the uniqueness and beauty of Baxter Woods.
 - Do we know the uses of Baxter Woods? Ms. Deluca - yes. Councilor Thibodeau - wants to hear from people who are not currently using the woods via survey. Do not need this info before we vote - just as follow-up information.

- Councilor Thibodeau: We should add a timeline for implementation to the packet for the next meeting.
- Councilor Duson:
 - If we are not complying with the deed, we should do something to get back in compliance. Language of deed is more in line with a sanctuary. Feel like not allowing any off-leash dogs more closely aligns with language in deed. Compromise should include a plan (tracking, monitoring, etc.) to ensure that use of Baxter Woods gets closer to language of deed. Add language to proposal around a review process and report to determine if compromise worked.
 - Our duty is to follow the deed.
- Councilor Thibodeau:
 - Add “lookback” 2 years into compromise.
 - Feel that compromise may provide benefits to people of Portland.
 - Scratch the survey idea - create See Click Fix to track issues/complaints.
 - Plan on vote and public hearing in February.
 - Get more information on what type of barrier would be built to separate the 5 acres of habitat restoration.

Discussion of next steps for Committee engagement on the proposal to relocate the Portland Transportation Center

Nate Moulton - do not have much of an update. Looking at several sites, parking challenges, etc. Mainly eliminating options rather than coming to a conclusion. Hoping to have something to recommend in March.

Councilor Ray:

- Staff have said that they will not take a position, which does not mean that the City of Portland is not taking a position. S&T Committee should issue a letter to take a position.
- Council should be briefed.

Councilor Thibodeau:

- Come back to the Committee during the same meeting as Metro to have all involved parties come together.

Discuss 2020 Work Plan

2020 Priorities:

In addition to list that Mr. Moon provided to Committee:

- Paper streets
 - Mr. Moon - last year we voted on a 20 year extension on paper streets. Councilor Duson - staff is working on a proposal to create a separate class of streets for development. Councilor Thibodeau - we should follow-up with Corporation Council and Chris Branch. Councilor Cook - staff came forward with a proposal in 2018. Council was not satisfied that the proposal would take care of the situation

and asked staff to continue working on a proposal. Staff recommended indefinite postponement to include as part of Recode.

- Councilor Ray to email list of work plan items to Mr. Moon. Focused on transit.
 - Commercial Street plan
 - Portland Transportation Center
 - Bike Ped Infrastructure - incorporate in Smart infrastructure
 - Residential Parking Program
 - Green Building Code
 - Parking Garages - EV charger requirements
 - Staff to work with transit providers to determine pieces that help achieve our goals
 - Reconsider sidewalk materials
- Councilor Cook
 - With focus on Council transit goal - create parking benefit district in downtown/Old Port and commit new revenues to a particular purpose through:
 - extending parking meter hours
 - resident parking sticker costs
 - increase City parking garage pricing to market
- Councilor Thibodeau - given time, will submit list at a later time.

February meeting:

- Lena Geraghty - AV shuttle proposal and Resident Parking Program
- Baxter Woods dog guidelines vote
- Repeal packaging ordinances once State laws go into effect

Councilor Thibodeau to connect with Mr. Moon on meeting timing and agenda.

Motion was made by Councilor Duson to adjourn the meeting at 8:01 pm. Motion was seconded by Councilor Ray. All in favor: 3-0.

Sustainability Updates

February 2020

Climate Action Planning

We've developed the third and final survey for the One Climate Future planning process. It focuses on possible actions to reduce carbon emissions from the community. It will be available to view on www.oneclimatefuture.org very soon. We are also planning a series of events where participants can learn about the climate action planning process and talk through the survey with other meeting participants.

Energy Benchmarking

On January 28 we held a workshop for property owners affected by the Energy Benchmarking Ordinance. Approximately 50 people attended and saw presentations from the Sustainability Office, EPA Region 1, Unitil, Central Maine Power, and the Portland Water District. Attendees learned about why the City passed the ordinance and how to report. The utilities demonstrated how to access consumption data on their websites.

We're working with the GIS team at Public Works to create unique building IDs for all of the buildings in the City over 20,000 square feet in size. This will help us identify all of the buildings subject to the ordinance and will allow us to better maintain the data we receive from the reports. The GIS techs are collaborating with the Pacific Northwest National Laboratory on this project. PNNL is pioneering this approach to mapping that will be useful to several departments in the City.

Pesticide Ordinance

We received 20 reports from pesticide applicators showing their applications in Portland last year. We're going through the data and will include it in the PMAC annual report in April that we will present in March or April.

The PMAC has created a great resource to help guide customers to an organic solution for lawn and garden pests. Some retailers have agreed to display it in their stores and we'll have it linked on the website.

Straw Ordinance

We've updated the web page with information about the straw ordinance that takes effect in April. It includes an FAQ about how to comply. <http://www.portlandmaine.gov/2558/Straw-Ordinance> This week we sent a postcard to all of the businesses that may be affected by the ordinance to remind them of the effective date and to let them know how to comply. We are also training the Health Inspectors about the ordinance so they can educate the businesses they visit for inspections.

Energy

We are very excited that the City Council supported the City's participation in the solar consortium organized by CES. This will help the City take a huge step forward toward our internal renewable energy goals.

Waste Reduction

The public hearing for LD 2104 - Recycling Reform is on Wednesday, Feb. 26. The S&T Committee saw a presentation on this bill last November. In January, the Legislative Committee endorsed it. As

Sustainability Updates

February 2020

you may recall, this bill would require the producers of consumer goods to help local governments pay for the costs of collecting, recycling, and disposing of packaging. This will incentivize them to reduce the amount of packaging on consumer goods and to make sure their packaging is easily recyclable or reusable.

Outreach and Education

We are planning a week long celebration of the 50th anniversary of Earth Day in April. Activities will include events focused internally and into the community. We're currently connecting with other departments and organizations on ideas for collaboration.

On March 12 we will be holding a One Climate Future meeting in collaboration with the Planning Department to discuss how land use policies can help the City achieve climate goals. The event will be targeted toward youth as they have asked for more ways to be involved in climate action.

We continue regular social media posts. Follow us on Facebook and Instagram at @sustainableportlandme We invite people to participate in One Climate Future by visiting the webpage at www.oneclimatefuture.org



CITY OF PORTLAND
Economic Development Gregory A.
Mitchell, Director

Memorandum

To: Chair Thibodeau and members of the Sustainability and Transportation Committee

From: Bill Needelman, Waterfront Coordinator

Date: February 13, 2020

RE: Update on Portland Harbor Dredge and Confined Aquatic Disposal (CAD) Cell – Funding, process, and next steps

CC: Jon P. Jennings, City Manager
Greg Mitchell, Economic Development Director

Introduction

The City of Portland, with funding from the Maine Department of Transportation and partnership with the Portland Harbor Commission and the City of South Portland, has made significant progress toward dredging the piers, wharfs, and berthing resources of Portland Harbor. The February 26, 2020 Sustainability and Transportation Committee meeting provides a timely opportunity to update Councilors on recent progress, funding developments, process and next steps.

As further described below, the critical path timeline for this longstanding process has accelerated and keeping policy makers and stakeholders informed and engaged will be increasingly important moving forward.

Background

Most observers of Portland's waterfront are aware of the ongoing efforts by the Cities and Harbor Commission to dredge berthing and vessel support infrastructure along both shores of the Fore River.

In short, over 244,000 cubic yards of material needs to be removed from Portland Harbor to restore lost or degraded berthing areas. Given the environmental state of these sediments, disposal at sea is not an option and the project has identified a feasible site for a CAD cell to responsibly contain and sequester contaminated materials. Removal of contaminated sediments from human and ecological exposure represents a significant improvement for environmental quality in Portland Harbor.

In aggregate, +/-108,000 cubic yards of material are estimated for dredging from the Portland side of the Fore river and +/-136 000 cubic yards of material anticipated from the South Portland waterfront. City owned public facilities in Portland alone (East End boat ramps, Ocean Gateway and the Amethyst lot, Maine State Pier, and the Portland Fish Pier) will contribute nearly 52,000 cubic yards of material. The South Portland “Portland Street Pier” is a minor contributor, estimated at +/-2300 cubic yards. The balance of sediment will come from private piers, boat yards, and marinas throughout the harbor.

In addition to public facilities, the project will benefit 30 private commercial properties, supporting dozens of businesses, hundreds of jobs, thousands of vessels, and millions of dollars in annual economic activity. A comprehensive economic assessment of the direct and indirect value of the project and of the impacted properties is about to be undertaken to further refine the benefits of the project and the costs of inaction. This assessment will serve additionally as the basis for satisfying recent amendments to Chapter 8 of the City Code requiring ongoing periodic economic evaluations of the Portland Waterfront.

Additional information and background on the project is found at:

<http://www.portlandharbordredge.info/>

Current Status:

In December 2019, the project team (through the consulting team at Stantec) filed applications with the State of Maine DEP for review under the Natural Resources Protection Act and US Army Corps of Engineers for review under the Clean Water Act and impacts to the federal channel (Section 408.) The application has been determined to be complete with additional material under development for the Army Corps 408 review. Initial feedback from the agencies is encouraging.

The project team continues to engage with stakeholders and is working with the review agencies on specific issues, such as eelgrass impacts. The filing and acceptance of environmental permits is a major milestone for the process and positions the project to be viewed as ready for funding.

Funding Strategy and Timeline:

Funding to Date:

As noted previously, dredging is expensive. To date, a mix of state, federal, and municipal funding has taken the process from concept to the permit application stage. US EPA Brownfields funds awarded to the Portland Harbor Commission (with smaller amounts to the City of Portland) have totaled over \$400,000 targeted toward assessment and permitting of dredging the berthing resources themselves. The Portland Harbor Dredge project is the first Brownfields program project in the nation to fund a submerged lands assessment. MDOT has contributed \$325,000 toward the CAD cell portion of the project. The City of Portland has allocated \$100,000 of current year Waterfront TIF funding to complete the process of permitting and permit review support. Additional funds from Portland, South Portland, and MDOT will continue to fund soft costs associated with funding applications as further explained below.

Future Project Costs

The above soft costs, while significant, represent only a fraction of the anticipated construction costs moving forward.

The project estimates assume 370,000 cubic yards of material to build the CAD cell (which must be over-dredged to accommodate the contributing sediments) at an estimated \$30/cubic yard. The 244,000 cubic yards of material from the piers and wharfs is estimated to cost +/- \$40/cubic yard.

Including future soft costs for final engineering and design, bidding document prep, mobilization, mitigation fees, and contingencies the Portland Harbor dredge project is estimated at +/- \$30,000,000.

The project team is continuing to fine tune these numbers and the above estimates are intended to be conservative.

Funding Moving Forward:

Given the magnitude of the costs, the project team has always assumed a mix of funding sources needed to achieve the project outcomes. While public monies have carried the project to date, private pier and marina owners will be anticipated to contribute address the issues. Federal funds will be essential.

The general breakdown of funding will rely heavily on a federal grant from the USDOT “BUILD” program. BUILD grants, the successor to TIGER, require a significant match of non-federal monies. The State of Maine, through MDOT, has committed to support an application for the Portland Harbor Dredge project subject to an equivalent commitment from municipal and private funds. The project team has identified “tipping fees” as the equitable mechanism to distribute local share costs. In order to participate in the program, a contributing pier owner will need to pay per cubic yard of material to go into the CAD cell. Given that many pier and marina owners have thousands (or tens of thousands) of cubic yards of material, tipping fees will be significant for larger facilities.

The fee amount and distribution is still under discussion, but as much as \$20.40/cubic yard may be needed. At such a rate, the City of Portland may be subject to over \$1,000,000 in local tipping fees alone.

It should be noted that much, but not all, of the subtidal areas planned to receive dredging are owned by the State of Maine through the submerged lands program.

Assumed Funding Structure:

Federal BUILD program (formerly TIGER)	\$20,000,000 +/-
State of Maine Transportation Funds	\$5,000,000
Local Funds “Tipping fees”	\$5,000,000 Based on contributing sediment volume
	\$30,000,000 +/- Total

Funding Application Process:

Funding deadlines for the BUILD application are fast approaching. MDOT staff members have informed the City that a notice of funding opportunity for BUILD will be released any day with a 90 day window for application. In order to meet this timeline, a number of steps must be taken.

- **Convene a funding team** including the local project team members (Portland, South Portland, Harbor Commission, Stantec Consultants,) MDOT staff, MDOT grant writer. *Status: Complete*
- **Fund the grant writer** with a combination of local and state dollars. *Status: Complete*
- **Reach out to stake holders** – specifically to inform private pier and marina owners of the need to plan for tipping fee expenses. *Status: Underway (recent meetings by the Waterfront Working Group, Waterfront Alliance, and future City Council meetings are part of this effort)*
- **Conduct an economic assessment** – The BUILD application will require an estimate of direct and indirect project benefits and costs. The City of South Portland has approved an interlocal agreement to participate and fund half of this study and the Portland City Council approved the proposal on Monday, February 3. An RFP for selecting an economic consultant is complete and consultant contracting with AECOM is pending final documents review. *Status: Underway*
- **Secure commitments for local funding and tipping fees** – The project team is exploring the grant requirement for documenting and securing local dollars in advance of the application. *Status: Under discussion*
- **BUILD grant application** – Anticipated for early May. Waterfront property owners, vessel owners, environmental organizations, and other stakeholders will be asked to support this project with letters of support and data needed for the economic assessment. *Status: Underway.*

Next Steps

The BUILD grant application will require an all hands on deck effort from all Portland Harbor Dredge project team members. Given the necessity of private property participation, solid communication between the project team and all stakeholders is essential. The Sustainability and Transportation Committee meeting is one venue for such communication.

A full City Council workshop is scheduled for March 2, 2020.



Preparing for an AV Shuttle Pilot



Sustainability & Transportation Committee
February 26, 2020

What is a smart city?

Smart Cities use connected technology and data to:

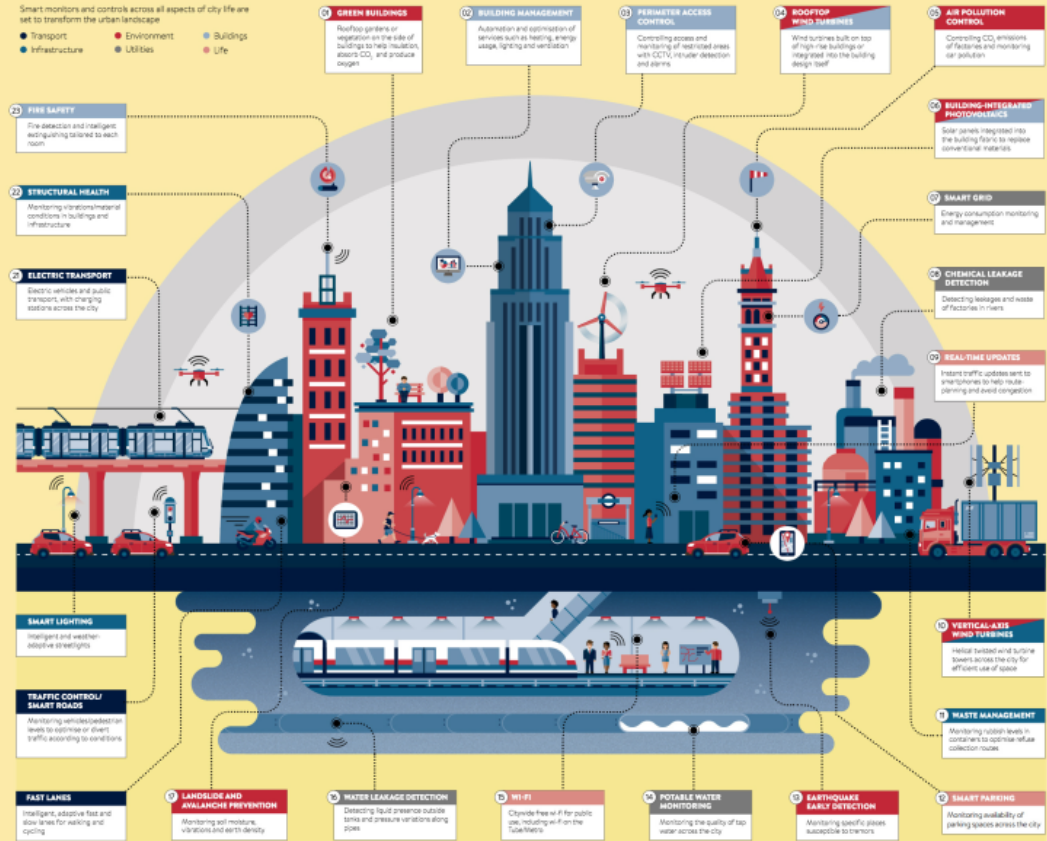
- improve the efficiency of city service delivery;
- enhance quality of life for all; and
- increase equity and prosperity for residents and businesses.

“What is a smart city?” by Digi.City

SMART SOLUTIONS FOR SMART CITIES

Smart monitors and controls across all aspects of city life are set to transform the urban landscape

● Transport ● Environment ● Buildings ● Infrastructure ● Utilities ● Life



Portland's smart city opportunity

Purchase Lights
from Utility
Company
No more rental
costs



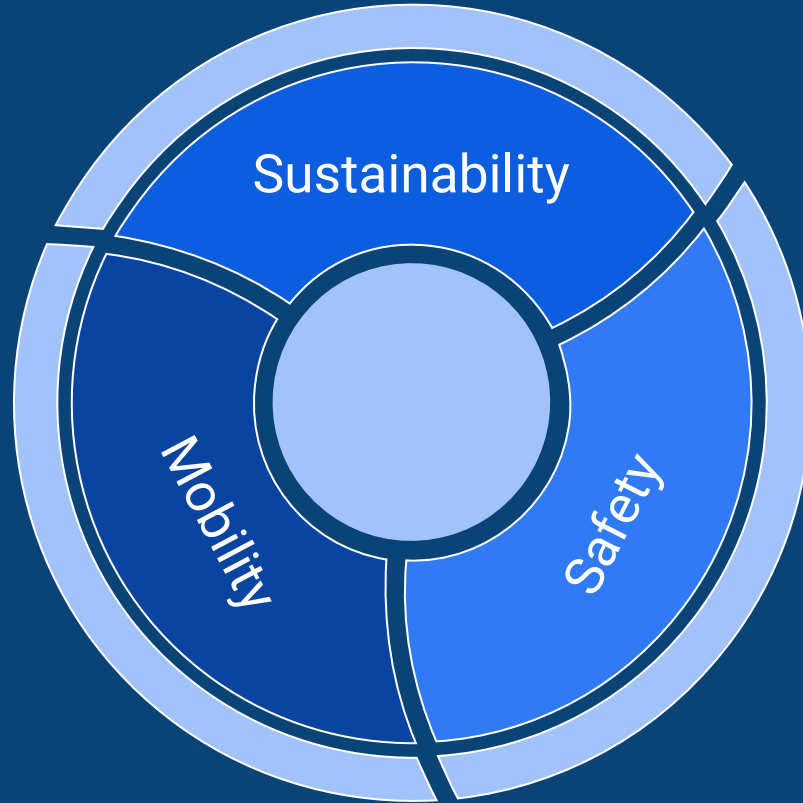
Convert to LED
Save on
maintenance and
energy costs



Save \$1 Million a
Year
Use savings for
smart cities
initiative



Focus of Portland's smart cities efforts



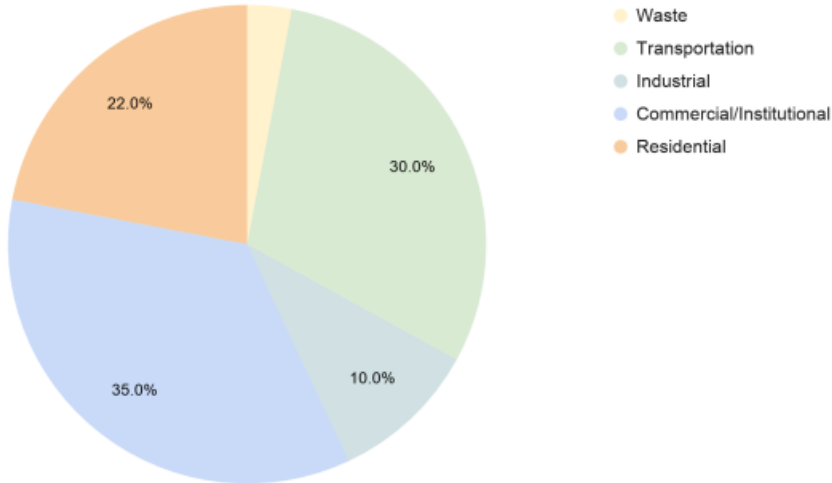
Traffic and congestion on our roadways

- Competing uses of our roadways
 - Commercial St. - 14,000-17,000 vehicles per day + significant visitor activity
- Increasing development, existing businesses, tourism, new employers
- Rising parking costs pricing service and marine industry workers out of the market



AVs for sustainability, safety, and mobility

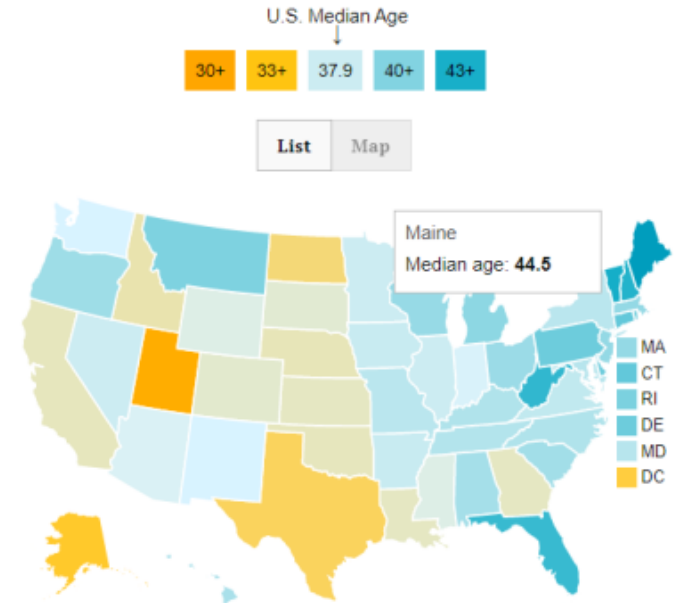
Portland's GHG Emissions by Sector



SAFETY

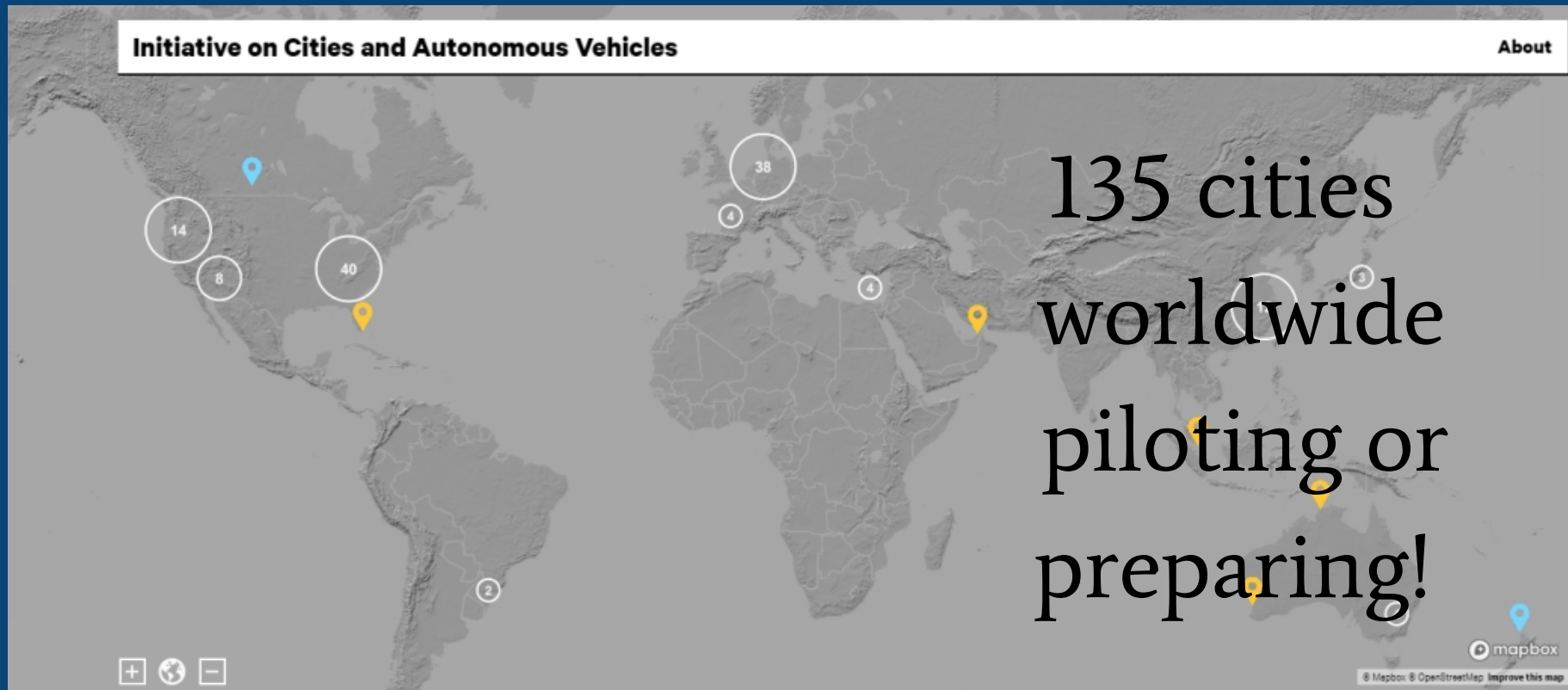
The safety benefits of automated vehicles are paramount. Automated vehicles' potential to save lives and reduce injuries is rooted in one critical and tragic fact: 94% of serious crashes are due to human error. Automated vehicles have the potential to remove human error from the crash equation, which will help protect drivers and passengers, as well as bicyclists and pedestrians. When you consider more than 37,133 people died in motor vehicle-related crashes in the U.S. in 2017, you begin to grasp the lifesaving benefits of driver assistance technologies.

Median Age per State, 2016



Source: American Community Survey, 2016

AV pilots around the world



AVs in the State of Maine

- Portland is preparing for AVs with Maine DOT
- Maine DOT is leading the way in developing rules for pilot process
- Portland is the only municipality participating in the conversations



MaineDOT

H.P. 1204 - L.D. 1724

Resolve, To Establish the Commission on Autonomous Vehicles and To Allow the Testing, Demonstration and Deployment of Automated Driving Systems

Proposed route

Angelo's Acre to Casco Bay Ferry Lines

Currently unserved by transit

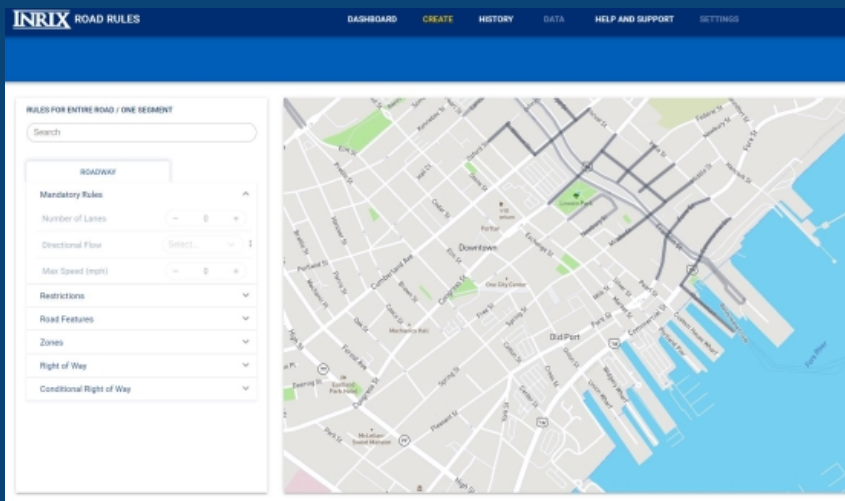
15 minute headway maximum

1 stop on each side



Smart corridors in Portland

- Controlling and managing streetlights remotely
- Mapping traffic assets
- Installing adaptive traffic signals
- Moving from copper to fiber



Preparing with willing partners

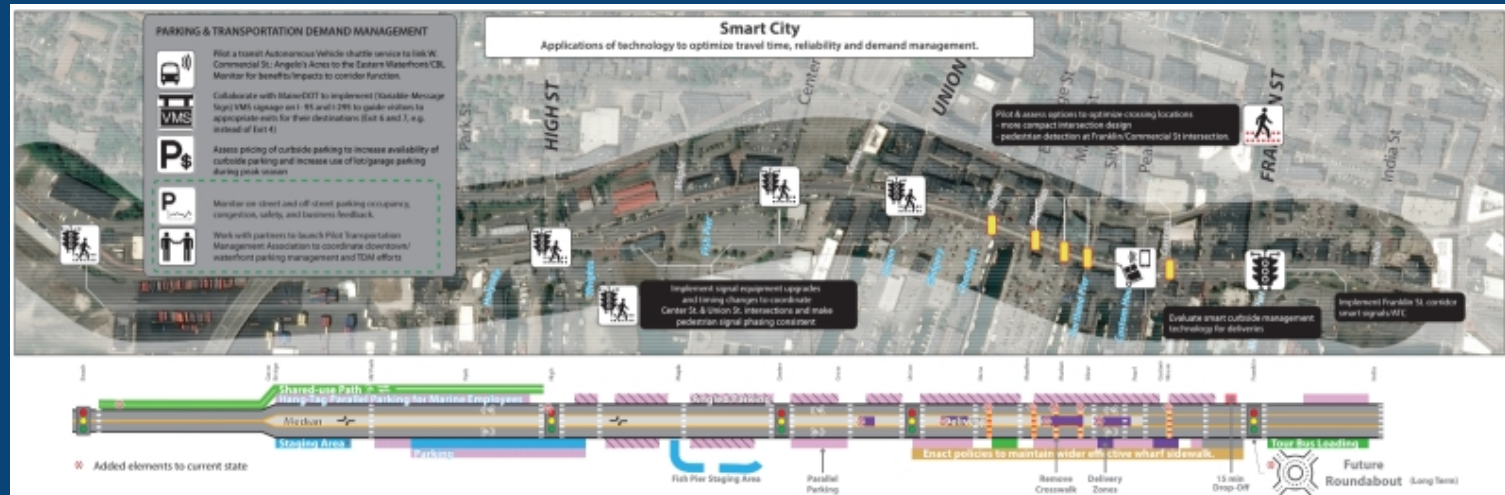
Mapping road rules with INRIX

- Digitizing “rules of the road”
- Cataloguing existing rules and control infrastructure
- Improving deficient infrastructure and amend traffic rules as needed
- Improving safety and accessibility for all users



Prioritizing internal coordination

- AV working group
- Commercial St. study team



Portland's AV Journey

LD 1724 is passed

Maine Commission on
AVs was established and
began meeting

INRIX partnership began



City Manager provided
smart city update to S&T,
including plans for AV
pilot exploration

Spring/Summer
2018

Fall 2018

AV community event held
with INRIX

S&T committee invited to
community meeting

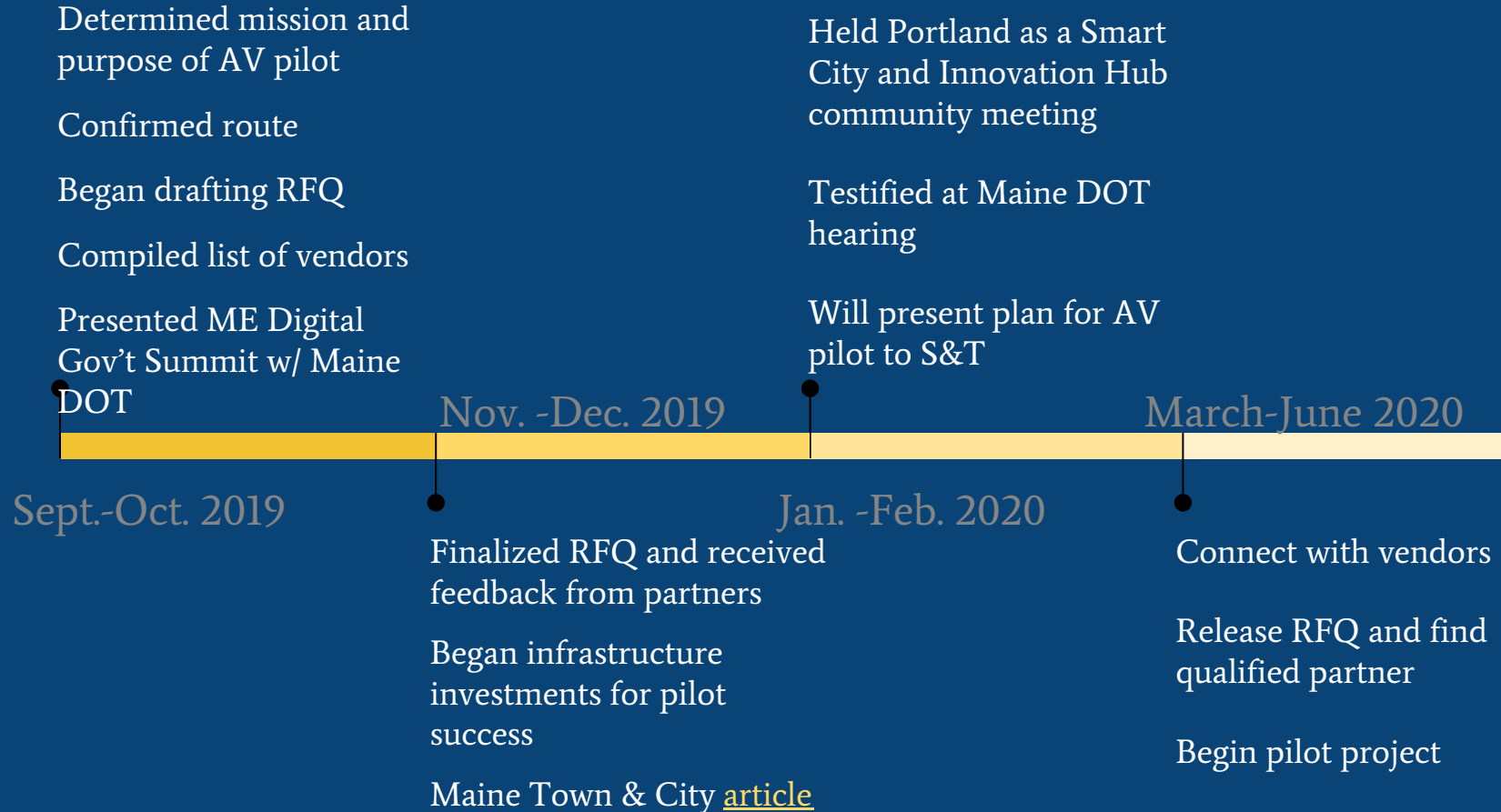
Winter 2019

Spring/Summer 2019

AV exploration a key point
in the City Manager's
FY20 Budget Memo

NewsCenter Maine [article](#)
released

AV preparation and next steps



Our lessons learned

- It doesn't pay to be first.
- Overcommunication is better than undercommunication.
- Be the right level of ambitious.
- Coordination is key.



AV RFQ

RATING CATEGORY	WEIGHT
Project Approach, including Quality Control/Safety and Performance, and Schedule – Submission addresses the full scope of services necessary to deploy the Pilot Autonomous Vehicle Service as a turnkey operation, including technology, vehicles, safety drivers and operations. Proposed Pilot aligns with stated City goals. Submission clearly discusses planning, monitoring, and internal controls to ensure quality and safety of service expectations are met. Submission will include documentation of quality control/safety from past experience. Proposal clearly outlines a schedule incorporating all elements necessary to meet the stated service start date.	40
Firm Experience and Team Qualifications – Submission demonstrates successful past experience testing and deploying AV services, including information on safety and video footage of autonomous vehicles in-service. Firm and team member qualifications will be considered	40

A low-angle photograph of a grand, classical building, likely a government or institutional structure, featuring a large column in the foreground and a domed tower in the background. The scene is framed by yellow autumn leaves in the upper right corner. The sky is a clear, deep blue. The building's facade is made of light-colored stone blocks, and several windows are visible, some of which are illuminated from within. A flag is visible on a pole near the tower.

Questions?



Time-Limited Residential Parking



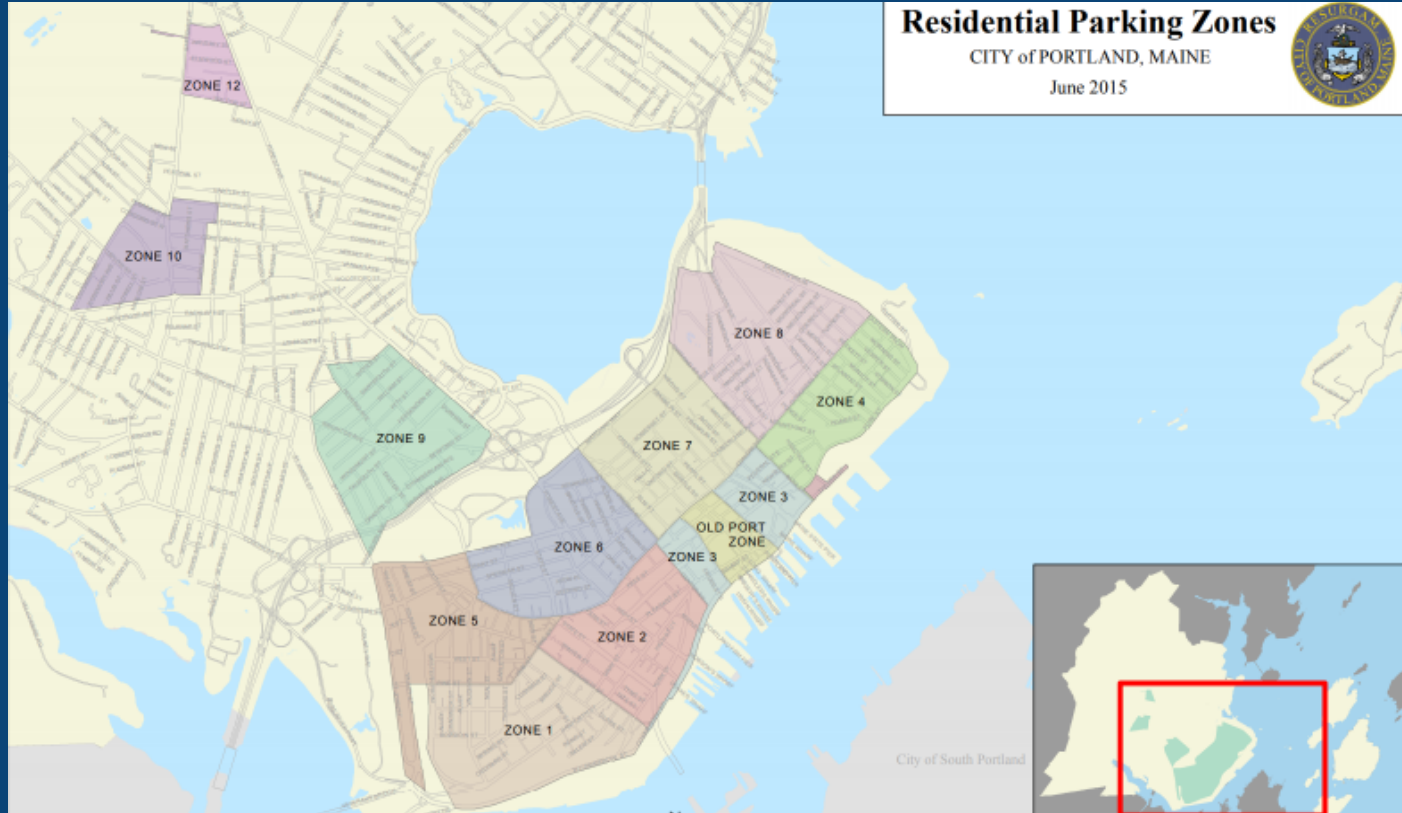
Sustainability & Transportation Committee
February 26, 2020

Purpose of time-limited residential parking

The City of Portland's time-limited residential parking program is for establishing time-limited parking in residential parking zones where there is a scarcity of convenient off-street daytime parking for residents and the majority of legal on-street parking spaces are used by commuters and non-residents.



Residential parking zones



Residential parking permit

With a residential parking permit (RPP), vehicles owned by residents and medical caregivers can park in an RPP neighborhood beyond the posted 1 or 2 hour time limits Monday through Friday, 9am-6pm, without being ticketed.

Residents can apply to participate for time limits in their residential parking zone on a block by block basis. If your block is participating in the RPP program, you will need to acquire and display an RPP decal or hang tag (for medical caregivers only) for every vehicle that will park on neighborhood streets during the specified enforcement period to be exempt from the time-limited parking.

Eligibility for residential parking permit

Who qualifies?

- Residents and property owners who reside at the address: If you live in a residential parking permit area, a residential permit will exempt you from the posted 1 or 2 hour time limit.
- Medical caregivers: Caregivers who work with residents who require home health care services are eligible for a residential permit and will be exempt from the posted time limit with a permit.

Documentation for residential parking permit

1. Must show valid Maine Driver's License & Registration, reflecting applicant's address within the zone and with the name of applicant on the Registration (Exceptions a, b,c,d below).
 - a. Students must show student I.D. from a school located in Portland, in addition to a Driver's License.
 - b. Military must show military I.D. in addition to a Driver's License.
 - c. Caregivers must have a medical affidavit for care of a resident or property owner who resides in the RPP.
 - d. Applicants who are property owners and reside at an address in the zone for at least 5 months a year, whose license and registration show a non-Portland address, are eligible but required to pay a \$50 fee per vehicle per year.
2. For proof of residency from a, b, c, and d above, applicants must provide a lease, recent utility bill, voter registration card, or document verifying residency within the zone approved by the Parking Manager.

Medical affidavit

Medical Affidavit for Caregivers

I, _____, am the ATTENDING PHYSICIAN for
_____, who resides at _____.

This address is located within the boundaries of residential permit parking zone # _____.

He/She requires health care during the time each day that the time-limited parking is in effect. I
declare under penalty or perjury that the foregoing is true and correct.

Physician's Signature

Date

Physician's License Number

I am a HEALTH CARE PROFESSIONAL caring for _____ who resides
at _____. I hereby apply for a residential parking permit for zone #
_____. I declare under penalty or perjury that the foregoing is true and correct.

Health Care Attendant's Name (Printed)

Signature

Date



Resident petition process for time-limited parking

1. Using the petition for time-limited parking in a residential parking permit zone, petitioner(s) must receive signatures of support from at least 60% of households on the block(s) listed on the petition to establish time-limited parking. A household is one unit of housing (e.g., single family home, a unit in a multi-family building, commercial businesses). Only one signature per household or business will be counted toward the total collected.
2. Petitioner must submit the petition to the Assistant to the City Manager for Constituent Services for verification.

Resident petition process for time-limited parking

3. If the petition has signatures from at least 60% of households, the petition will be referred to the Sustainability & Transportation Committee to allow for an opportunity to request a review or elect to send directly to the Council. All residents and property owners will be given notice of this meeting, and the opportunity to share their public comment.

Resident petition process for time-limited parking

4. If the petition does not have signatures from at least 60% of households, the petitioner will have the right to review the verification documentation and an opportunity to appeal or get additional signatures. Additional signatures must be resubmitted along with the original signatures within 30 days. Otherwise the petition process will begin again.
5. The Sustainability & Transportation Committee will make a recommendation on the petition and refer it to City Council.

Petitions

Petition for Time-Limited Parking in a Residential Parking Permit (RPP) Zone

Petitioner information

Name: _____

Address: _____

Email: _____

Phone #: _____

I am a: ☐ resident

Location of parking change request

Street: _____

Cross street 1: _____

Cross street 2: _____

Time limited parking requested: Odd side Even side Both

Time limit: 1 hour 2 hours

The petition must contain signatures of at least 60% of households (a unit of housing, e.g., single family home, a unit in a multi-family building) on the requested block.

Submit your petition by mail or email to:

Assistant to the City Manager for Constituent Services

Re: Residential Parking Permit Petition

389 Congress Street

Room 208

Portland, ME 04101

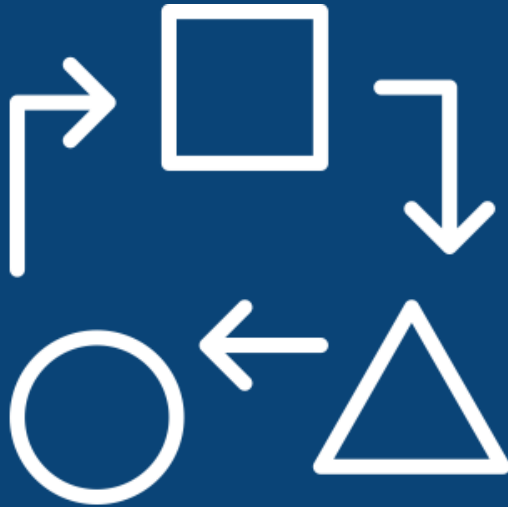
Petition for Time-Limited Parking in a Residential Parking Permit (RPP) Zone

Street: _____

Address	Unit #	Printed Name	Signature	# of vehicles in household	Email *if you wish to be contacted by email in the event of a public meeting

City staff process

City staff will receive petitions, notify internal and external stakeholders, and verify signatures within a 30-day period.



Applicability to other service requests

- Traffic mitigation requests (sidewalks, speed bumps, etc.);
- All parking changes that require a Council vote (introduction of time restrictions where there are none currently, or removal or parking restrictions entirely).

Restrictions may include but are not limited to:

- Time restrictions
- Single-side parking restrictions





CITY OF PORTLAND

Sustainability Office

Troy Moon

Sustainability Director

To: Councilor Thibodeau and members of the Sustainability and Transportation Committee

Re: Repeal of the City of Portland Green Packaging Ordinance (Chapter 12)

Date: February 21, 2020

On April 15, 2015 the City of Portland enacted a \$0.05 fee on disposable paper and plastic bags and became the first municipality in Maine to pass such an ordinance. Since that time, over twenty other municipalities across the state have enacted some sort of fee or ban. This created a patchwork of different regulations that some business argued made for a confusing regulatory landscape. To alleviate this, the Retail Association of Maine collaborated with the Natural Resources Council of Maine to develop a state-wide ordinance that would achieve the environmental goals of the communities with bag ordinances and create a single policy that would be the same throughout the state.

The resulting bill -- LD 1532 -- was signed by Governor Mills last July and takes effect on April 22, 2020. Beginning that date, retail establishments across the state will no longer be able to supply plastic bags to customers. They will be able to supply paper bags for a \$0.05 fee. Similar to the Portland ordinance, the law allows distribution of bags in certain circumstances such as dry cleaning, at pharmacies to contain prescriptions, and in grocery stores to contain loose produce. The law contains pre-emption language that nullifies local ordinances regulating bags.

Given this pre-emption, Corporation Counsel had recommended the City Council repeal the City's bag ordinance.

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

H.P. 1115 - L.D. 1532

An Act To Eliminate Single-use Plastic Carry-out Bags

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1605, as repealed and replaced by PL 1991, c. 475, §1, is repealed.

Sec. 2. 38 MRSA §1611 is enacted to read:

§1611. Plastic bag reduction

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Plastic" means an organic or petroleum derivative synthetic or a semisynthetic organic solid that is moldable, and to which additives or other substances may have been added. "Plastic" does not include natural polymers that have not been chemically modified.

B. "Point of sale" means a check-out stand, cash register or other point of departure from a retail establishment.

C. "Post-consumer recycled material" means a recycled material that if not recycled would otherwise have been destined for solid waste disposal, having completed its intended end use and product life cycle. "Post-consumer recycled material" does not include materials and by-products generated from, and commonly reused in, an original manufacturing and fabrication process.

D. "Recycled paper bag" means a paper bag that:

(1) Is 100% recyclable; and

(2) Contains at least 20% post-consumer recycled material if it has a capacity to hold at least 8 pounds.

E. "Restaurant" means an establishment that sells prepared food directly to the consumer.

F. "Retail establishment" means a store, a restaurant or a temporary business.

G. "Reusable bag" means a bag with handles that:

- (1) Is designed and manufactured to withstand a minimum of 75 repeated uses;
- (2) Is machine washable or made from a material that can be cleaned and disinfected regularly;
- (3) If made from plastic is at least 4 mils thick; and
- (4) Has the capability of carrying a minimum of 18 pounds.

H. "Single-use carry-out bag" means a bag that is made of plastic, paper or other material provided by a retail establishment at the point of sale for the purpose of transporting merchandise away from the retail establishment and that is not a recycled paper bag or a reusable bag.

I. "Store" means a retail store that engages in the retail sale of merchandise, including food, goods, products and clothing. "Store" includes grocery stores primarily engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, fresh meats, fish and poultry and convenience stores engaged in the sale of a limited line of goods, including milk, bread, soda and snack foods, and prepared foods intended to be consumed off the premises.

J. "Temporary business" means a seasonal or nonpermanent retail establishment such as a farmers' market or fair that sells merchandise including food, goods, products or clothing.

2. Prohibition; exemptions. This subsection governs the use of single-use carry-out bags.

A. Except as otherwise provided in this subsection, beginning April 22, 2020, a retail establishment may not provide a single-use carry-out bag to a customer at the point of sale or otherwise make single-use carry-out bags available to customers.

B. The prohibition in paragraph A does not apply to:

- (1) Bags provided by a pharmacy to a customer for transporting a prescription medication away from the store;
- (2) Bags without handles used to protect items from being damaged or from damaging or contaminating other purchased items placed in a recycled paper bag or a reusable bag;
- (3) Bags used by customers inside a retail establishment to package loose items, such as fruits, vegetables, nuts, coffee, grains, bakery goods, candy, greeting cards or small hardware items; to contain or wrap frozen foods, meats or fish; or to contain or wrap flowers or potted plants;
- (4) Laundry, dry cleaning or garment bags, including bags provided by a hotel to guests to contain wet or dirty clothing or bags provided to protect large garments like suits, jackets or dresses;
- (5) Newspaper bags;

(6) Bags sold in packages containing multiple bags intended to contain garbage, pet waste or yard waste;

(7) Bags used to contain live animals, such as fish or insects sold in pet stores;

(8) Bags used for vehicle tires;

(9) Bags used to transport chemical pesticides, drain cleaning chemicals or other caustic chemicals sold at a retail establishment;

(10) Bags used by a hunger relief organization such as a food pantry or soup kitchen to distribute food directly to the consumer at no charge;

(11) Bags that customers bring to the retail establishment for their own use or for carrying away from the retail establishment goods that are not placed in a bag provided by the retail establishment.

C. A retail establishment may make single-use carry-out bags made of plastic that are exempted in paragraph B available to customers to bag products within the retail establishment other than at the point of sale only if the retail establishment:

(1) Locates inside the retail establishment or within 20 feet of the main entrance to the retail establishment a receptacle for collecting any used single-use carry-out bags made of plastic; and

(2) Ensures that single-use carry-out bags made of plastic that are collected by the retail establishment are recycled or delivered to a person engaged in recycling plastics.

3. Recycled paper bag fees and reusable plastic bag fees; exemptions. This subsection governs fees assessed on recycled paper bags and on reusable bags made of plastic.

A. Beginning April 22, 2020 a retail establishment may use a recycled paper bag or a reusable bag made of plastic to bag products at the point of sale as long as the retail establishment charges a fee of at least 5¢ per bag.

(1) All amounts collected pursuant to this paragraph are retained by the retail establishment and may be used for any lawful purpose.

(2) A retail establishment may not rebate or otherwise reimburse a customer any portion of the fee charged pursuant to this paragraph.

B. The requirement to charge a fee under paragraph A does not apply to:

(1) Stores at which less than 2% of retail sales are attributed to the sale of food and that have less than 10,000 square feet of retail area;

(2) Restaurants; or

(3) Hunger relief organizations engaged in distributing food directly to consumers at no charge.

A retail establishment exempt from charging a fee under this paragraph may charge a fee for a recycled paper bag or a reusable bag made of plastic.

4. Violations. A retail establishment that violates a provision of this section is subject to civil penalties under section 349.

5. Preemption. To ensure maximum effectiveness through uniform statewide application, the State intends to occupy the whole field of regulation of single-use carry-out bags at retail establishments beginning April 22, 2020. A local government may not adopt an ordinance regulating single-use carry-out bags at retail establishments and, beginning April 22, 2020, any ordinance or regulation that violates this subsection is void and has no force or effect.

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE CHAPTER 12
RE: STATE LAW PROHIBITING SINGLE USE CARRYOUT BAGS
SUPERSEDES LOCAL ORDINANCE**

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

*That Chapter 12, Article IX, Sections 12-230 to 12-237 are
hereby amended as follows:*

~~ARTICLE IX. WASTE REDUCTION~~

~~Sec. 12-230. Findings; purposes.~~

~~The city council hereby finds as follows:~~

- ~~(a) The City Council has a duty to protect the natural environment and the health of its citizens and visitors; and~~
- ~~(b) The use of single-use carryout bags has severe environmental impacts on a local and global scale, including greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation; and~~
- ~~(c) Despite recycling and voluntary solutions to control pollution from single-use carryout bags, very few single-use carryout bags are recycled; and~~
- ~~(d) Numerous studies have documented the prevalence of single-use carryout bags littering the environment, blocking storm drains, and endangering wildlife; and~~
- ~~(e) The City of Portland's taxpayers must bear costs associated with the effects of single-use carryout bags on the solid waste stream, drainage, litter, and wildlife; and~~

~~The City, through its policies, programs, and laws, supports efforts to reduce the amount of waste that must be disposed of by supporting the waste management hierarchy (reduce, reuse, recycle, compost, waste-to-energy landfill) and supports efforts to achieve State recycle goals; and~~

~~(g) From an environmental and economic perspective, the best alternative to single-use carryout bags is to shift to reusable bags for shopping; and~~

~~(h) Whereas the City Council of the City of Portland aims to conserve resources, reduce greenhouse gas emissions, waste, and litter and to protect the public health and welfare, including wildlife, all of which increase the quality of life for the City's residents and visitors; and~~

~~(i) Evidence indicates that the vast majority of single-use carryout bags are used for the bagging and carryout of products purchased from Stores, as those business are defined in this Ordinance; and~~

~~(j) Studies document and participating municipalities report that prohibiting the free distribution of single-use carryout bags will dramatically reduce the use of those types of bags; and~~

~~(k) The City Council of the City of Portland believes that residents and visitors should use reusable bags and that prohibiting the free distribution of single-use carryout bags by stores is appropriate and will incentivize the use of reusable bags; and~~

~~(l) It is in the best interests of the health, safety and welfare of citizens and visitors of Portland to reduce the cost to the City of solid waste disposal, and to protect our environment and our natural resources by reducing the distribution of single-use carryout bags and incentivizing the use of reusable bags at Stores, as defined in this Ordinance.~~

~~12-231. Definitions.~~

~~As used in this Ordinance the following terms have the following meanings:~~

~~Single-use carryout Bag. Single-use Carryout Bag means a bag other than a Reusable bag provided at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment. The term Single-Use Carryout Bag includes compostable and biodegradable bags but does not include reusable bags, produce bags, product bags or bags provided by pharmacists to contain prescription drugs.~~

~~Produce bag or Product bag. The terms produce bag or product bag mean any bag without handles used exclusively to carry produce, meats, other food items or merchandise to the point of sale inside a store or to prevent such items from coming into direct contact with other purchased items.~~

~~Reusable Bag means a bag that is:~~

- ~~(a) Designed and manufactured to withstand repeated uses over a period of time;~~
- ~~(b) Is machine washable or, made from a material that can be cleaned and disinfected regularly;~~
- ~~(c) That is at least 2.25 mil thick if made from plastic;~~
- ~~(d) Has a minimum lifetime of 75 uses; and~~
- ~~(e) Has the capability of carrying a minimum of 18 pounds.~~

~~Store. The term Store means any of the following retail establishments located within the City of Portland:~~

- ~~(a) a full-line, self-service market located in a permanent building, operating year-round, and which sells at retail a line of staple foodstuffs, meats, produce, household supplies, dairy products or other perishable items.~~
- ~~(b) a drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods.~~

~~Store does not mean:~~

~~Businesses at which foodstuffs are an incidental part of the business. Food sales will be considered to be~~

~~"incidental" if such sales comprise no more than 2 percent of the business' gross sales in the City as measured by the dollar value of food sales as a percentage of the dollar value of total sales at any single location.~~

~~12-232. Single-Use Carryout Bag~~

- ~~(a) No Store shall provide a Single-Use Carryout Bag to a Customer at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this Section.~~
- ~~(b) A Store may make available for sale to a Customer a Single-Use Carryout Bag for a minimum charge of five cents (\$0.05).~~
- ~~(c) All monies collected by a Store for Single-Use Carryout Bags under this Chapter may be used by the Store for any lawful purpose.~~
- ~~(d) All Stores must post signage clearly indicating the per bag charge for Single-Use Carryout Bags.~~
- ~~(e) Notwithstanding this Section, no Store may make available for sale a Single-Use Carryout Bag unless the amount of the sale of the Single-Use Carryout is separately itemized on the sale receipt.~~
- ~~(f) No Store shall rebate or otherwise reimburse a customer any portion of the minimum charge required in Subsection (b).~~

~~12-233. Exemptions.~~

~~A Store shall be exempt from the provisions of this Article, in a situation deemed by the City Manager to be an emergency for the immediate preservation of the public health or safety.~~

~~12-234. Record Keeping and Inspection.~~

~~Every Store shall keep complete and accurate records or documents of the purchase and sale of any Single-Use Carryout Bag, for a minimum period of three (3) years from the date of purchase and sale, which record shall be available for inspection at no cost to the City during regular business hours~~

~~by any City employee authorized to enforce this Article. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be available at the Store's address. The provision of false information including incomplete records or documents to the City shall be a violation of this Article.~~

~~12-235. Violations and enforcement.~~

~~—The City Manager or his/her designee(s) shall have the primary responsibility for enforcement of this Article. If the City Manager or his/her designee(s) determines that a violation of this Article has occurred, he/she shall issue a written warning notice to the Store that a violation has occurred. Subsequent violations of the Article shall be subject to the penalties set forth below.~~

~~—Violations of this Article shall be punishable by fines as follows:~~

- ~~(a) A fine not exceeding \$250 for the first violation in a one-year period;~~
- ~~(b) A fine not exceeding \$500 for the second and each subsequent violation in a one-year period.~~

~~12-236. Effective Date~~

~~—The provisions of this ordinance shall become effective on April 15, 2015.~~

~~12-237. Severability.~~

~~—If any part or provision of this Article or the application thereof to any person or circumstances is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable.~~

**AMENDMENT TO PORTLAND
CITY CODE
HERITAGE TREE ORDINANCE**

WHEREAS, the City of Portland wishes to protect heritage trees from damage or removal; and

WHEREAS, the City of Portland recognizes that heritage trees provide extensive ecosystem services such as filtering storm water, sequestering carbon, and mitigating urban heat; and

WHEREAS, the City of Portland also recognizes that heritage trees enhance the neighborhoods in which they are located by adding beauty, softening the urban environment, and offering shade from summer sunlight; and

WHEREAS, the City of Portland has long been recognized as "the Forest City" because of its commitment to its heritage trees; and

WHEREAS, development threatens heritage trees with harm or removal; and

WHEREAS, many citizens desire that heritage trees be protected from unnecessary cutting; and

WHEREAS, a growing number of communities and municipalities including the City of Portland embrace the need to protect heritage trees; and

WHEREAS, the State of Maine allows municipalities, through their home rule authority, to enact ordinances dealing with municipal affairs pursuant to 30-A M.R.S. §3001;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND *That the Portland City Code is hereby amended by adding ..., which said Sections read as follows:*

Chapter XX Heritage Trees

Sec. X-1. Title.

This chapter shall be known as the City of Portland Heritage Tree Protection Ordinance (hereinafter, the "Ordinance").

Sec. X-2. Purpose.

The purpose of this ordinance is to discourage the removal or extensive pruning of Heritage Trees located in historic districts of the City of Portland on public and private property and to replace the valuable ecological services such trees provide should they be removed.

Sec. X-3. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the following meaning:

Ecological Services: Ecological Services include purification of air and water, maintenance of biodiversity, decomposition of wastes, soil and vegetation generation and renewal, greenhouse gas mitigation, and contribution to aesthetically pleasing landscapes.

Heritage Tree: A Heritage Tree must be located in a designated historic district and meet at least one of the following criteria:

- 1) Any tree that is on the State of Maine 'Big Tree List'
- 2) Certain trees 24" in diameter or greater: Oak species: White Oak, Red Oak, Pin Oak, Swamp White Oak, Burr Oak; Sugar Maple, Red Maple, Shagbark Hickory, Ginkgo, Tulip Poplar, Cucumber Magnolia, Elm, Birch species, Hemlock, Pine, Spruce, Horsechestnut, Walnut, Catalpa, Black Cherry, Linden, Sweetgum, European Beech, Honey Locust, and Sycamore,
- 3) Ornamental trees 12" in diameter or greater: Dogwood, Magnolia, Dawn Redwood, Japanese Maple, Hawthorn. Apple, Chameacyparis, Cherry, Hornbeam, Amelanchier, Sassafras, and Mulberry,

- 4) Stands of native trees that are rare or threatened including:
Shagbark Hickory, Pitch Pine, American Mountain Ash, Red Spruce,
and Atlantic White Cedar

Qualified Tree Professional: A Qualified Tree Professionals is an individual with relevant education and training in arboriculture or urban forestry who has at least one of the following credentials:

- International Society of Arboriculture (ISA) Certified Arborist
- Tree Risk Assessor Qualification (TRAQ)
- American Society of Consulting Arborists (ASCA) registered Consulting Arborist
- Society of American Foresters (SAF) Certified Forester for Forest Management Plans

Tree Trust: Fund established by the City to plant trees and to maintain street trees and trees in City owned open spaces.

Section X4: Permit Required for Removal of healthy Heritage

Trees: No person, directly or indirectly, shall remove any Heritage Tree on any property within a Historic District without first obtaining a tree removal permit as provided in this chapter, unless specifically exempted by this ordinance.

Section X5: Replacement Trees Required: When a healthy Heritage Tree is removed solely for reasons of private financial gain or personal preference, the requesting party shall mitigate the impacts of such removal by causing to be planted a sufficient number of replacement trees to replace the Ecological Services provided by the removed tree. These trees may be on the property where the Heritage Tree is removed or elsewhere in the City of Portland as recommended by the City Arborist. The City Arborist shall determine the number of trees required to planted to mitigate the loss of the Heritage Tree. Alternately, the requesting party may make a contribution to the Tree Trust in an amount sufficient to pay for replacement trees. This amount will be calculated using a schedule of costs established by the City Arborist and shall be sufficient to plant the number of new trees required to replace the Ecological Services lost due to the removal of the Heritage Tree(s). Payment must be made prior to issuance_of the permit.

Section X6. Tree Removal Permit Application Form. The Parks, Recreation, and Facilities Department shall establish and maintain a tree removal permit application to allow property owners to request City review of Heritage Tree removal for compliance with the Heritage Tree Ordinance. The Heritage Tree removal application form shall include at a minimum the following: A site plan, drawing, or screen shot showing the approximate location of Heritage Trees, their size (DBH) and their species, along with the location of structures, driveways, access ways, and easements.

Section X7. Tree Removal Permit Application Procedure and Appeals. Applicants requesting to remove Heritage trees must submit a completed permit application to the City Arborist on a form provided by the City.

- a) The City Arborist or designee shall review the application within 21 calendar days and either approve, approve with conditions or modifications, deny the application or request additional information. The City Arborist will also note any requirements for replacement trees as indicated in Section XX above or calculate the cost of replacement trees, depending on the preference of the applicant. The City Arborist's decisions shall be in writing along with the process for calculating the number of replacement trees required or the amount of the financial contribution required to the Tree Trust.
- b) The decision of the City Arborist may be appealed to the Director of Parks, Recreation, and Facilities whose decision will be final.
- c) Time Limit. If granted a permit, the applicant shall complete the removal and necessary tree replacement within one (1) year from the date of permit approval. If any trees required by the permit issued by the City Arborist remain unplanted after the one (1) year period the applicant shall instead make a contribution to the Tree Trust as outlined in Section XX above.

Section X8: Removal of hazardous Heritage Trees: A property owner may remove a Heritage Tree if it presents a hazard. Hazardous trees include those in poor health or dead, those infected by invasive insects such as Emerald Ash Borer and Hemlock Woolly Adelgid, and trees damaged by storms or other

causes that cannot be made safe by pruning. A property owner may remove such Heritage Trees after completing the following steps:

- a) Obtain a certification of hazard from a Qualified Tree Professional certifying that the tree is damaged, unhealthy, or poses a hazard to the public.
- b) Submit a notice of removal to the City Arborist (including the certification of hazard) seven (7) days prior to the intended date of removal. Unless directed otherwise by the City Arborist or designee at least one (1) business day prior to the intended removal date, the removal may proceed.
- c) Upon submission of a notice of removal to the City Arborist, the property owner shall install a sign visible from the edge of the street or roadway indicating the reason for the removal and contact information for an individual with information about the removal. The signage must be in place for at least seven (7) days prior to removing the tree.

Section X9. Emergency Removal: A Heritage tree that has damage or defects that pose an imminent threat to life or property may be removed without a permit. The City Arborist must be notified within seven (7) days of the emergency tree removal. Such notice must be accompanied by a signed statement from a Qualified Professional certifying to the emergency condition. If the City Arborist determines that the emergency tree removal was not warranted the property owner shall mitigate the impact of the lost tree by planting replacement trees or making a contribution to the Tree Trust as described in Section XX above.

Section X10. Utility Maintenance. Heritage Trees in public rights of way may be removed by the City or a utility provider if pruning proves inadequate to resolve utility service problems. Utility providers must notify the City Arborist at least seven (7) days prior to removing a Heritage Tree. The utility or city department wishing to remove the Heritage Tree must also place signage on or near the Heritage Tree it plans to remove at least seven (7) days prior to removal with a contact number for a person knowledgeable about the planned removal. Following the expiration of the

DRAFT

seven (7) day period, the utility or city department may proceed with the removal unless otherwise directed by the City Arborist

Sec. X11. Violations.

Any person violating any of the provisions of this ordinance or failing, neglecting or refusing to obey any order or notice of the City Manager or his or her designee issued hereunder shall be subject to enforcement action as provided in §XX.

Sec. X12. Enforcement and Remedies.

(a) This ordinance may be enforced by the City Manager or his or her designee;

(b) The City Manager or his or her designee shall have the authority to enact rules and regulations in order to implement the provisions of this ordinance; and

(c) Any violation of this chapter shall constitute a civil violation subject to the penalties contained in Portland City Code, Chapter 1, § 1-15.

Sec. X13. Severability.

If any section, paragraph, sentence, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court, such decision shall not affect the validity of the remaining provisions of this ordinance.

Sec. X14. Conflicts with Other Ordinances.

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation or statute, the more restrictive chapter, article or ordinance of the Portland City Code shall control.

Sec. X15. Effective date. This ordinance shall become effective ninety (90) days following passage by the City Council. During the time between passage and the effective date the City Arborist shall post notice on the City Web Page and mail a notice about the ordinance to all licensed arborists in Cumberland County.

Baxter Woods Leash Law Implementation Timeline

February 2020

Consideration by Sustainability and Transportation Committee

March 2020

Pending recommendation from Sustainability and Transportation Committee, Corporation Counsel would review the actual text changes to the ordinance to be included with proposal to full Council. (Chapter 5).

April 2020

Consideration by full City Council

April--May 2020

Habitat restoration efforts begin with community plantings (regardless of Council action). Habitat restoration can take place on an ongoing basis into the future (not dependent on any action from Council)

April--May 2020

Water quality testing to be undertaken by the City. Possible Spring bird surveys could take place in the Spring as well (previous bird surveys covered summer and fall season, so spring data would be desirable so that impacts of policy changes can be measured in the future against this baseline data).

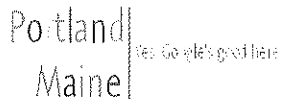
May 2020

Pending Council decision, May would serve as a month to educate visitors to Baxter Woods with signage, etc...

June 2020

Enforcement effective date June 1, 2020 (pending Council action).

Followup monitoring into the future: bird populations, water quality, forest ecology.



Ethan Hipple <ehipple@portlandmaine.gov>

your email re baxter woods.

Ethan Hipple <ehipple@portlandmaine.gov>
To: david victor <dvictor242@gmail.com>

Wed, Jan 8, 2020 at 11:40 AM

Thanks David,
I've received your comments and will pass them on to the Committee.

FYI, there are already rules regarding dogs and leashes in Baxter Woods. We are simply looking to change them to balance the needs of diverse park users and wildlife. However, we understand that there will be different opinions on the matter. Hopefully you can attend the meeting so you can learn more about the specifics and the rationale.

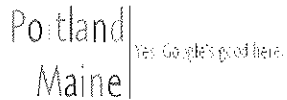
Take care,
Ethan
Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov

On Wed, Jan 8, 2020 at 10:01 AM david victor <dvictor242@gmail.com> wrote:

I'm distressed by the proposal to have onleash rules for baxter woods, especially the restrictions in april through july 31. it's especially confusing since , from what i've gathered, the parks commission is planning to build a fence around an area to accommodate groundnesting birds. why restrict dogs then. it makes no sense. i certainly hope that , if the rules currently proposed are put into effect, the numerous outraged baxter woods community members consider alternatives, such as a referendum (a la peoples park) , to overturn this thoughtless revision that will effect so many for a minimal benefit.

david victor



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods leashing

Jeff Levine <blumlevine@gmail.com>

Sat, Jan 11, 2020 at 5:36 PM

To: Ethan Hipple <ehipple@portlandmaine.gov>, Troy Moon <thm@portlandmaine.gov>

Cc: "Ray, Belinda" <bsr@portlandmaine.gov>, "Thibodeau, Spencer" <sthibodeau@portlandmaine.gov>, Jill Duson <jduson@portlandmaine.gov>

To the Committee:

I am writing as a nearby resident who frequently uses Baxter Woods for recreation and exercise. I am also a dog owner. Until recently, I supported off-leash dogs in Baxter Woods. I was encouraged by the formation of a group to encourage responsible dog stewardship in the woods and hoped that the problem of a few bad apples wouldn't ruin things for all the responsible owners.

Unfortunately, I don't think the efforts to encourage good behavior have helped. This issue has been around for at least five years (see, for example, https://www.pressherald.com/2014/04/23/a_controversy_unleashed_/) and has not improved. I am still regularly run at by strange dogs, whose owners range from apologetic to indifferent. While I have not been physically hurt yet, I have had property damage. I don't see why people should have to continually put up with poor pet behavior when trying to have quiet enjoyment, in a place that is explicitly for quiet enjoyment. I have friends who will not allow their small children in the woods as a result of the loose dogs. I also have friends who are dog owners who will not allow their dogs in the woods, due to the loose dogs.

These woods were provided to the City for residents to share. I don't see why allowing dogs off-leash is such a high priority when there are other uses who suffer as a result. This is not the only place in the area that allows off-leash dogs. The woods behind Evergreen Cemetery are nearby, and much larger, without the inevitable conflicts that will occur in a small space such as Baxter.

The proposal for allowing dogs by time of day and year is a good first step, but I am not sure how that prevents the significant damage to the natural resources of the woods. I'd encourage the Committee to look at fencing off a portion of the woods as a dog park, perhaps the area right on Stevens or Forest Avenues, and leaving the rest as a leashed area. The bulk of the woods themselves should require leashing at all times of the day and year.

thanks,

Jeff Levine
10 Amherst Street



Ethan Hipple <ehipple@portlandmaine.gov>

Re: A compromise for dogs in Baxter Woods

shambaugh@gwi.net <shambaugh@gwi.net>
To: Ethan Hipple <ehipple@portlandmaine.gov>

Tue, Jan 14, 2020 at 8:32 AM

Thank you!

On 2020-01-14 08:27, Ethan Hipple wrote:

Hi Ben,
Thanks for your thoughtful email. Your compromise proposal is very similar to the compromise proposal that will be presented to the Sustainability and Transportation Committee tomorrow night (5:30pm, Council Chambers). I've attached that for you. Hopefully you can be there.
Take care,
Ethan
Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov

On Tue, Jan 14, 2020 at 8:19 AM <shambaugh@gwi.net> wrote:

Dear friends,

I am not able to make the hearing tomorrow and so am sending this to share a few thoughts and a possible compromise regarding dogs in Baxter woods. As you can see below, I have been walking dogs in Baxter Woods daily for more than 14 years. Since my dog died, I have been walking an elderly neighbor's dog there every morning. Just this morning, I had meaningful conversations there with people there who I would not know if it wasn't for walking dogs together. This is a crucible of community, the heart and part of what makes Portland great. A point worth mentioning -- somehow strangers will talk with others who have dogs, when they wouldn't do the same with those who don't. Dogs are wonderful "ice breakers" that help people connect.

There is great value to the community of dog walkers in the woods and a great joy in having the dogs off leash, something which not only helps train and socialize the dogs but also helps burn off some energy for those who are inside all day. Contrary to those who might say that this space from non-dog folks who want to walk or want to preserve a home for birds, I would point to Evergreen Cemetery, a huge, beautiful, dog-free and bird-full place, right next door -- in fact, even more accessible than Baxter Woods. (The roads are even plowed!) The back cove trail is likewise very close and only has dogs on lead.

I also understand that there are those who would like to enjoy the woods without dogs, that there are schools who use the space -- both for young kids doing "nature" walks and for older kids with cross country meets etc.

For a compromise, I suggest that you consider the model of dogs on beaches and have specific hours for off leash and specific hours when a leash is required (and maybe some where no dogs are allowed at all.) It works very well at the East End and Scarborough beaches. For example, say dogs off leash from 7-9 am and 5-9 pm, and maybe even no dogs at all from 10-12 (though this seems excessive if the leash rules are obeyed). Unlike the beaches, these guidelines might have to be "all year" and not just summer.

Thanks for listening and considering a solution that works for everyone and preserves what is one of the gems of Portland (not just the woods but the community of people who use it). Thanks for all you do to serve this wonderful city we call home.

Sincerely,

Ben Shambaugh

147 Clinton Street

Portland, ME 04103

207 400-7516

March 1, 2019

Dear friends,

My dog Sasha died of old age a few months ago. She and I walked in Baxter Woods at least two times a day for 14 years. Baxter is just a block from my home and -- along with Portland High, Longfellow and Lincoln -- is a large part of what makes the Deering Neighborhood great. It was at Baxter Woods that I got to truly know my neighbors, catch up on people's lives, and take time to nourish my soul. This happened in many ways, because of connections made through people with dogs. Again and again, I knew the dog's name long before I knew the owner. Because the dogs were off leash, they were able to greet me as well as my dog, and we built community, one sniff and pet at a time. The pure joy of animals and owners freely wandering the woods is a gift and wonder to share. Though my dog is gone, going to Baxter woods every day fills me with joy.

Today I walked around Mackworth Island and made a point of visiting the cemetery of Baxter's many generations of Irish Setters. Yes, he loved birds. He also loved dogs and during all my time in Baxter woods, I have never seen the one bother the other. In fact, dogs keep the number of cats -- who do bother the birds -- to a minimum.

I was part of community conversations with the city regarding dogs in Baxter Woods that happened at the Wilde Chapel a few years ago. As a result of those meetings, the city put in more trash cans to collect poop and the owners picked it up. Since then, the winter snows and annual "spring thaw" have been much cleaner -- proof that the vast majority of dog owners are responsible and responsive and that we can work together, while still maintaining what is a treasure to us all.

Yes, there are rare occasions when a careless owner or poorly trained dog behave less than perfectly.

These, however, are very limited and – as those folks don't seem to worry about rules or norms I do not think that new rules will change their behavior. They would, however, have a huge negative impact on the quality of life, the sense of community, and the joy that makes our neighborhood and our city special.

Thank you for keeping it as it is today – a gift to us all. Thank you for your continued great work on our behalf.

Sincerely,

Ben Shambaugh

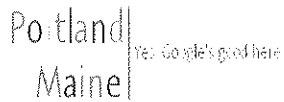
147 Clinton Street

Portland, ME 04103

207 400-7516

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 **Baxter Woods Off Leash Memo December 2019.pdf**
998K



Ethan Hipple <ehipple@portlandmaine.gov>

Re: Baxter Woods Leash Rules Workshop 1/15/20 at Sustainability and Transportation Committee

Teresa Valliere <tvallier@maine.rr.com>

To: Ethan Hipple <ehipple@portlandmaine.gov>

Hi Ethan,

Thank you for handling the Baxter Woods issues so respectfully. I personally don't want to lose access to the park of disappointment should the vote go that way.

Governing the commons is a really hard job, and I think that the process has been fair and inclusive. I know many folks. Thank you for all you do and the respectful leadership you demonstrate.

Teresa

Teresa Valliere, LCSW, LADC, CCS

Valliere Counseling and Professional Support
phone 207.233.9276

<http://valliirecps.com>

MAILING LIST

FMI about counseling, supervision, training or consultation, please contact me at tvallier@maine.rr.com

<http://Therapists.PsychologyToday.com/rms/68128>

Office: 57 Revere Street #1
Portland, ME 04103

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On Jan 15, 2020, at 1:28 PM, Ethan Hipple <ehipple@portlandmaine.gov> wrote:

Hey Teresa,

When you click on the link to the specific agenda, look to the top left corner of the page where there is a tab for "Agenda" information and the proposal there.

Let me know if that doesn't work.

Take care,

Ethan

Ethan Hipple
Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

www.portlandmaine.gov

On Wed, Jan 15, 2020 at 12:45 PM Teresa Valliere <woodfordscorner@gmail.com> wrote:

Hi Ethan,

I've been trying to find the actual proposal for the workshop tonight, but can't find it on line. I follow the link but it
Can you help?

~Teresa Valliere

President
Friends of Woodfords Corner

FMI call Teresa at 207-233-9276

MAILING LIST

PAYPAL for sponsorship/donation

email woodfordscorner@gmail.com

website Friends of Woodfords Corner

Facebook and Instagram

FMI call Teresa at 207-233-9276

Let's be the neighbors we want to have.

FWC is a 501c3 charitable organization comprised of residents, businesses and local organizations supporting the Woodfords Corner neighborhood.

On Jan 7, 2020, at 4:46 PM, Portland Parks, Recreation & Facilities Department <ehipple@portlandmaine.gov>

PORTLAND

PARKS, RECREATION & FACILITIES

Hello there,

You are receiving this email as you have expressed an interest in changes at Baxter Woods, or have submitted written comments. Please see below for an invitation to attend the Sustainability and Transportation Committee Workshop on this topic. Hope to see you there.

All the best,
Ethan Hipple

Deputy Director
Parks, Recreation and Facilities Department
City of Portland
212 Canco Rd, Suite A
Portland, Maine 04103
207-808-5400
ehipple@portlandmaine.gov

Baxter Woods Leash Rules Workshop

City Council Sustainability and Transportation Committee

Wednesday, January 15, 2020, 5:30pm

City Council Chambers, City Hall, 389 Congress Street

During this workshop, the Committee will weigh whether the establishment of an off-leash season and specific hours for dogs is in the best interest of the city in order to increase wildlife habitat and address safety and other related issues.

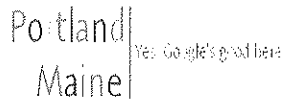
The public is welcome and encouraged to attend to lea
proposal. City staff will present background information c
the Sustainability and Transportation Committee will ask t
Woods to present information as well. As this is a Commi
will be no vote taken on this issue at this meeting, and th
comment. If and when the Committee takes a vote on tl
comment will be allowed at that time.

More information and specific proposal for rule
at: <http://portlandmaine.gov/586/Sustainability-Transpo>



This email was sent to woodfordscorner@gmail.com
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City of Portland Parks, Recreation & Facilities · 212 Canco Rd · Suite A · Por

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There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to



Ethan Hipple <ehipple@portlandmaine.gov>

Re: Question about bird survey for Mayor Baxter Woods

Patrick Keenan <patrick.keenan@briloon.org>

Tue, Jan 21, 2020 at 12:39 PM

To: Jordan Bailey <jordan@portlandphoenix.me>, Ethan Hipple <ehipple@portlandmaine.gov>, Marc Lesperance <baxterwoodsfriends@gmail.com>

Hi Jordan,

Thank you for your interest in the bird surveys that BRL conducted at Mayor Baxter Woods. These surveys are part of the cities effort to determine what species of birds use the property and habitats for breeding and during other times of the year. We conducted surveys in the summer and fall of 2019.

To answer your question, yes, that research that Mallord et al. is relevant. It is a study that documents impacts to birds and models the impact to a common European bird species, Wood Lark, at the population level. There are various studies highlighting recreational disturbance generally and disturbance and predation by dogs in a number of settings and habitats. This science is pretty consistent. Providing the citation was meant to help inform the reason(s) why we may not have found ground nesting birds at that property. I have attached another article here from a study conducted in Australia, that looked specifically at dog walking. It is important to recognize the larger picture here and the utility of the property so that the city and citizens may select management policies in line with their values as well as the intended use of the property.

I hope that it is OK that I have included Ethan Hipple at the City of Portland and Marc Lesperance of the Friends of Mayor Baxter Park here as they have supported and shown interest in the bird surveys respectively.

For added context and perspective, I have also shared Loss et al. paper investigating the impact of cats on wildlife. Also Loss, et al. related to bird-building collisions.

I hope this is helpful. Feel free to reach out if you have other thoughts/questions. My office number is 207 839 7600 x 242.

Be well,
Patrick

On Fri, Jan 17, 2020 at 4:32 PM Jordan Bailey <jordan@portlandphoenix.me> wrote:

Hello Patrick,

I'm reporting on the city's efforts to protect bird habitat in Baxter Woods and reviewed the bird survey you conducted.

I noticed that it says on page 7 that it is well documented that dog walking disturbs bird nesting, and then cites a 2007 study by Mallord et al. I looked at that study and it looks like it was conducted in England on Woodlarks. Can you tell me if you think the results of that study are comparable to the species and conditions in Baxter Woods? If not, are there any other studies you know of about dog disturbance on nesting birds that are more comparable?

Thank you,
Jordan

--

Jordan Bailey

Reporter
Portland Phoenix
251 US Route 1
Falmouth, ME 04105
207-536-5210 x 106
jordan@portlandphoenix.me

--
Jordan Bailey
Reporter
Portland Phoenix
251 US Route 1
Falmouth, ME 04105
207-536-5210 x 106
jordan@portlandphoenix.me

--
Patrick C. Keenan
Outreach Program Director, Biodiversity Research Institute, www.briloon.org
Products, Marketing, Business Support, Avinet Research Supplies, www.avinet.com
276 Canco Road, Portland, ME 04103
(207) 839-7600 x242

3 attachments



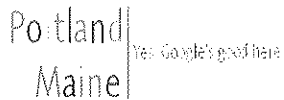
Banks and Bryant_biology letters.pdf
75K



Lossetal2013NatureCommunications-Impactofcatpredation.pdf
365K



loss_et_al_bird-building_collisions_condor_2014.pdf
353K



Ethan Hipple <ehipple@portlandmaine.gov>

Baxter Woods Leash Law

Ethan Hipple <ehipple@portlandmaine.gov>
To: Janice Charek <jbcharek@gmail.com>
Cc: Justin Costa <jcosta@portlandmaine.gov>

Sun, Jan 26, 2020 at 8:32 PM

Thanks for your comments Janice. We will make sure they are passed along to the Council committee that is considering this proposal.

Take care,
Ethan

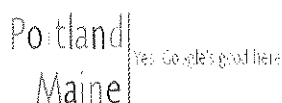
On Fri, Jan 24, 2020, 4:35 PM Janice Charek <jbcharek@gmail.com> wrote:
Dear Councilor Costa,

We are writing in support of the proposed leash law for Baxter Woods as outlined in the presentation by Ethan Hipple at the January 15th meeting of the Sustainability and Transportation Committee. Our backyard on Hartley Street abuts the Baxter Woods and we have two Jack Russell Terriers which must be walked on leash. As one of our dogs was attacked by a large off-leash dog when she was a puppy, she is naturally fearful when approached by off-leash dogs in the woods. Many times we avoid walking our dogs in the woods because of our inability to avoid stressful confrontations with off-leash dogs. It seems "voice control" as required by the current rules is more of a wish than a reality in many cases.

Should the compromise proposal be adopted we will look forward to being able to walk our dogs in peace during the hours of 9 a.m. - 3 p.m. for most of the year and at any time during the warmer months, and enjoy the wonderful resource we have in the Baxter Woods.

Sincerely,

Janice and Michael Charek
25 Hartley Street
Portland



Ethan Hipple <ehipple@portlandmaine.gov>

baxter Woods

Ethan Hipple <ehipple@portlandmaine.gov>

Thu, Jan 30, 2020 at 2:08 PM

To: Debra Flynn <debra_ann@maine.usa.com>

Cc: Alex Marshall <amarshall@portlandmaine.gov>, Sally Deluca <sld@portlandmaine.gov>

Thanks Debra. I will make sure your comments get passed along the Council as they weigh this decision.

Take care,

Ethan

Ethan Hipple

Deputy Director

Parks, Recreation and Facilities Department

City of Portland

212 Canco Rd, Suite A

Portland, Maine 04103

207-808-5400

ehipple@portlandmaine.gov

www.portlandmaine.gov

On Thu, Jan 30, 2020 at 11:55 AM Debra Flynn <debra_ann@maine.usa.com> wrote:

Hello,

The situation in Baxter Woods is now so unsafe that we can no longer go in there, even though we literally live next to it! I sent a screenshot of the latest, today, comment from another dog owner saying I should stay out of there. They do not live on this street, Hartley Street. Micheal who lives a doors up from me, also has been complaining as he has terriers that are molested constantly and has changed his walking habits as well due to these dogs. People are on their cell phones with ear pieces in not watching their off leash dog, not to mention them chasing the wildlife in a sanctuary as their owners talk umonst themselves. As you know I love these woods but now with the loose dogs even coming into our fewnced in portion of the yard it is way to stressful and unsafe please help. People are believing this is a dog park where they can bring their off leash dogs, not pick up after them or watch them.

Debra Ann Gorneault 207-387-3083

11 Hartley Street

Portland Maine

Friends of Mayor Baxter Woods (BW) Leash Law Proposal Responses

The Friends of Mayor Baxter Woods group is submitting this document to provide new information to Councilors and City Staff regarding the City's leash law proposal, and in particular, our responses to the reasons why City Staff is asking Council to revise the leash laws in the City Code only for BW. We ask you to review the data we have collected, and to consider the gathering of more information to determine what is actually happening in BW before the proposed ordinances changes are enacted into law.

Table of Contents

- Page 2:** Executive Summary that includes our suggestions to modify the City's leash law proposal
- Pages 3 – 12:** Full Responses to City's leash law memo and reasons cited by City Staff for leash law
1. Complaints: Pages 3-4
 2. Bird Habitat: Pages 5-8
 3. Other Places to walk dogs off-leash: Pages 8-9
 4. Deed Issues: Pages 10-12
- Page 12:** Our Final Thoughts & Suggestions
- Pages 13 – 15:** Summary Bird Count Data compiling the City's reports and relevant eBird.com data

References

1. Please refer to the 33-page document packet handed out at the 1/15 S&T Comm. Mtg. that includes: Our Case for more study of BW; a PowerPoint Slide Deck; the Deed; our essay about Gov. Baxter, 1946 Press Herald articles about BW; supporting documents on the bird counts/comparison charts, our request for a delay in the process, and our presentation at the 1/15 Committee Meeting
2. Visit our Friends Group's website at www.baxterwoodsfriends.com for more information about Mayor Baxter Woods, Gov. Baxter and his legacy, and the City's leash law proposal.
3. Gov. Baxter's book "My Irish Setter Dogs" can be accessed here:
<https://babel.hathitrust.org/cgi/pt?id=loc.ark:/13960/t88g98v5n&view=1up&seq=1>
Our essay about Gov. Baxter and his Legacy: <https://www.baxterwoodsfriends.com/baxters-deed.html>
4. The City's leash-law documents (Memos, the Management Plan, FFMB, etc.) for the 1/15/20 S&T Comm. meeting: <https://portlandme.civicclerk.com/Web/Player.aspx?id=1203&key=-1&mod=-1&mk=-1&nov=0>,
7/18/19 Parks Comm.: <https://portlandme.civicclerk.com/Web/Player.aspx?id=95&key=-1&mod=-1&mk=-1&nov=0>,
4/4/19 Parks Comm.: <https://portlandme.civicclerk.com/Web/Player.aspx?id=92&key=-1&mod=-1&mk=-1&nov=0>
5. Journal of the American Medical Association study on senior injuries related to leashed dog walking:
<https://www.mnn.com/family/pets/stories/seniors-dog-walking-study-tips-avoid-fall>
6. Reporting on ticks and tick borne diseases: <https://www.pressherald.com/2020/01/03/tick-borne-illnesses-lyme-anaplasmosis-increased-in-maine-in-2019/>

Executive Summary – Friends Group Responses to the City’s Baxter Woods (BW) Leash Law Proposal

The Friends of BW kindly asks City Council to delay the final vote on this proposal so that City Staff, in collaboration with our group and other members of the community, can collect all the data, work on strategies to identify and resolve issues, and produce a workable and acceptable plan for Council to consider. We pledge to work in consort with City Staff, offering a committed group of volunteers to assist in collecting data. It is our belief that together we can come up with a better proposal, one that will be accepted by the entire community that reflects collaboration rather than conflicting presentations.

A. CITY’S REASONS FOR THE LEASH LAW & OUR RESPONSES

1. Complaints against off-leash dogs – Pages 3-4

- We recognize issues exist (everywhere); request delayed leash law; collect data, develop plan
- Most complaints internal to City Staff, from years back, no City enforcement/education efforts
- Staff ignored 430+ surveyed by Friends group (98% support daily off-leash hours)

2. Bird Habitat impacted by off-leash dogs – Pages 5-7

- No evidence of any “negative impact” by dogs, conjecture only; bird population is healthy
- City Memo and presentations misrepresent information from its Management Plan
- City did not follow their own Management Plan’s guidance – “Societal Considerations”
- City’s Management Plan lists natural reasons why BW is not a suitable habitat for nesting birds

3. Other “more appropriate” places in Portland to walk dogs off-leash – Pages 8-9

- The health of our established community in BW will be negatively impacted by the leash law
- What about the other places? They are all less safe, less accessible and further away than BW
- City says BW “sanctuary” should be “on-leash”; Robinson Woods & other places allow off-leash

4. City may be in violation of the 1946 BW Deed – Pages 10-15

- City did believe it was out of compliance initially. Does it still?
- What was the intent of the words in the 1946 Deed? Gov. Baxter’s actual words as a guide
- Again - the actual bird count data show that BW is a fine “sanctuary for wild birds” already!
- If leash-law passes as it stands now, then the City WILL be out of compliance with the Deed

B. THE CITY’S LEASH LAW PROPOSAL & OUR SUGGESTED MODIFICATIONS

1. On-leash only from April 1st through July 31 annually

- Strike this section or amend to annual off-leash hours (See 2.), bird populations are healthy

2. Off-leash hours from August 1st to March 31st annually (off-leash 5am-9am and 3pm-10pm)

- Suggest amending this section; add 2 hours of off-leash hours as follows: 5am-10am, and 2pm-10pm off-leash hours to accommodate night workers, elderly walkers and stay-at-home parents

3. Establish 5.5 acre “Bird Habitat Restoration Area” (BHRA) in NW corner of BW (fenced and log/brush_barrier)

- This section, if enacted as drafted will put the City in the position of being out of compliance with the Deed – where BW is not “kept in a natural wild state” as required in the Deed
- Additional compliance issues - pedestrians “undisturbed”, “no fancy works”, no “landscaping”
- At a minimum, the BHRA should be delayed until the five-building construction project immediately adjacent to the proposed BHRA is completed.
- See Pages 10-12 for more information on the Deed and Gov. Baxter’s timely, written guidance

Friends of Baxter Woods – Responses to the Parks Department’s Reasons for the leash law

In its Memo dated December 2019 – the City presents four “reasons” for its BW leash law proposal, and seeks enactment of the ordinance by April 1, 2020. Below is our feedback to those reasons – none of which we believe rise to the level of requiring the changes to City Code that Staff are seeking.

Further, we also believe this is an unnecessarily quick turn-around time for City Council to review the data presented and consider whether there truly is a justification for this action right now. City Staff noted at the 1/15 S&T Committee meeting this is not an emergent situation requiring expedited action by the Council. We contend the City does not make its case for the ordinance changes. More data should be collected, and the current proposal be put on hold until all of the relevant data is gathered and considered ahead of any ordinance changes being made to the City Code. Here are our responses to the City’s reasons as listed in the December 2019 Memo.

1. COMPLAINTS AGAINST OFF-LEASH DOGS

The first reason for enacting the new leash law (cited by City Staff) is based entirely on complaints about “packs” of unruly dogs.

A. We are ready to work together to identify the issues at hand! We recognize that some situations around dogs create anxiety for people, and to that end, the Friends of Mayor Baxter Woods is ready to work with City Staff and the community to gain a better understanding about why some people avoid BW because of the long time (>65 years!) off-leash dog activity there. The Friends of Baxter Woods group kindly requests that Council grant it more time to work with all affected parties (teachers, kids, daycare operators, etc.) at determining what the problems truly are, and to work together to develop a plan that resolves all the perceived issues. We therefore ask for a delay in the implementation of the proposed leash law so that City Staff, our group and others can coordinate the collection of data (interviews, surveys, monitoring, etc.) and put a plan into action. The City has a resource in our Friends group of hundreds of potential volunteers, who are people committed to making BW a safe and welcoming place for everyone.

B. Complaints - Were daycare and school groups really “turned back” from BW because of “unruly dogs”? (*City Memo – p.2*), or did something different happen? Our group has communicated with staff from local Daycare Centers and a Lincoln Middle School teacher, all who visit BW with students – none of whom have ever been “turned back” or denied access to BW by dogs! This alarming accusation made in the City’s memo is not supported in any of the complaints – whether prior to or after the leash law was initially proposed. Our interactions with educators and daycare operators - who regularly use BW without incident and love the park setting, report having positive interactions between their kids and dogs. The science is clear on how dogs have a therapeutic effect on most people, and can enhance the overall educational and developmental experiences of children. We believe this is something to build on and develop, not limit, restrict or rescind.

One Lincoln Middle School teacher we contacted, who wished to remain anonymous regarding her original complaint from 2013 about dogs interrupting her classes’ visits to BW, never intended for the City to enact a leash law in BW because of her complaint. Rather, she hoped that City Staff would help get the word out to BW dog owners to help steer their dogs away or leash pets during her class’ visits to BW. **This is something that our group would love to work on with educators and others.** We strongly believe that together we can effectively resolve any issues identified without a change to the City ordinances. We are eager to work with City Staff (Parks Department, Portland Schools, etc.) to establish an effective policy that will allow all BW Park users to feel safe and still enjoy all the forest has to offer.

Outreach to the Police Department recently disclosed that the PPD has no record of any problems in BW. Even Parks Staff admits that no tickets or citations have been issued in BW for any dog -

related violations in many years. **If BW has been this unsafe place, where unruly dogs are repeatedly threatening children – surely the City would have acted in some way to protect its citizens – long before seeking a change to the City Code leash law ordinance.** However, in fact – City staff has done little or nothing to change behaviors in BW, other than place a few signs asking for dog-owners to be respectful of others who use BW.

Did the City boost enforcement in BW or monitor activity in any way? The answer is **NO!**

Did the City host a public forum to educate the users of BW about the issues? **NO!**

Did the City meaningfully inform the community about the supposed public safety issues? **NO!**

Did the City work with the users of BW in any way to problem-solve solutions prior to seeking a leash law ordinance change? Yet again, the answer is **NO!**

Regardless – we are ready to work with City Staff and all interested parties at identifying the issues that affect citizen's experiences in BW, and collaborating to determine the best course of action to resolve them. We want everyone to experience this unique park in Portland. We urge Councilors to make its decision on this leash-law proposal based on facts, a full understanding of the incidents, and the overall public benefit and general sentiments about citizen's perceived experiences. One group's views should not be discounted over the others. Councilors did not need to be presented with this frustrating, muddled, and inaccurate portrayal of BW – one that is reliant on errant assumptions, some alarmist language, and conflated or incomplete data to make its case. We can and should do better than this when impacting people's lives!

C. Not a representative vote – Despite repeatedly telling users that this proposal is not a popularity contest, City Staff (hypocritically and erroneously we add) notes in the proposal memo that:

“Before a (leash law) policy change was first publicly proposed in March 2019, the majority of public comments have been opposed to the current permissive off-leash policy”. City Memo p. 1

How could BW users have known to call the City to provide complimentary data (about off-leash dogs) when the proposal had not been publicly announced at the time? If this is not a popular vote, why does the City even make this assertion in its proposal memo?

Despite the City's intentions of proposing the leash law still being a secret, and with only inside individuals or the complainants themselves knowing about the coming initial leash-law proposal – even then there were still more positive comments about BW current policy when City Staff issued the initial proposal. A rudimentary review of the first PDF summary of communications received by the City (*a document not provided to the Committee on 1/15, but shared in July 2019*), prior to the initial proposal's roll-out in March 2019, reveals 32 communications about BW, breaking out as follows:

- 10 are indeed complaints about dogs in BW (4 internal from City staff or officials)
- 14 communications supporting the current off-leash dog walking policy
- 8 were general questions about BW signage, tree cutting, ducks in the pond, etc.

Therefore, by the numbers, **complaints were not the majority** of comments received by City Staff before the initial leash law proposal was released. As the City has acknowledged, after the proposal was released comments supporting the existing policy skyrocketed, with up to 98% supporting the current off-leash policy! Regardless of how many people have complained and how many people support the existing law – the VAST MAJORITY of citizens have stepped up to say the City's proposal is just not acceptable. We believe there should be further study about what is currently happening in BW, and a common-sense solution developed collaboratively to ensure all voices are heard and considered!

2. BIRD HABITAT IMPACTED BY OFF-LEASH DOGS

Next, the City contends that off-leash dog activity is having a “negative impact on ground-nesting and ground-feeding birds” in BW.

- A. **No documented evidence of the supposed “...negative impact...”**: The City memo misstates what the Management Plan actually says; the premise is that off-leash dogs are some sort of a “threat” to birds in BW. The Management Plan actually reads as follows (emphasis added),

*“Off-leash dogs are **likely** having a negative impact on ground-nesting and ground-feeding birds as well as the associated shrubs and small trees. A related concern is that **the high density of trails and foot traffic adds to wildlife disturbances whether or not dogs are leashed.**” Management Plan, p.6*

Unfortunately, in the Management Plan, there is NO evidence that dogs have harmed any birds, damaged any shrubs or trees, or even “likely” had a “negative impact” on the natural habitat of BW. The City’s assertion is just not supported anywhere in the Management Plan, or other City documents for that matter. We even Googled “dogs damage bird habitat”, and what comes up are reports of feral dogs harming habitats in Third World countries, where foraging for food affected some bird and mammal species. We suggest our domesticated, well fed and much loved family pets are not negatively affecting the bird population of BW. None of the pronouncements in the City’s Management Plan, memo or leash law proposal provides any evidence or observations to support the claims made. We are a neighborhood City Park with hundreds of pet cats nearby and many predator species often observed in BW. These are the real threat to birds in BW and elsewhere as cited in the City’s Management Plan, the BRI study and world-wide-web.

- B. **“likely having a negative impact...”** - Even so – when the draft Management Plan was released by the author, one member of the City Parks Staff requested that the word “likely” be removed from the report to indicate that (emphasis added) “off-leash dogs **are having** a negative impact...”. The e-mail below, secured by the Friends group via a Freedom of Access request in April 2019, illustrates this interaction between City Staff about the Management Plan and how it has been utilized by the City (emphasis added)...

From: [Joe Dumais](#)
Sent: Thursday, February 15, 2018 8:52 AM
To: [Jeff Tarling](#)
Cc: [Ethan Hipple](#)
Subject: Re: Management plan draft

*I read the whole thing, let's make some signs and require dogs to be on leash April 1 through July 30 as prescribed on the bottom of page 54. **We should go in saying year round then negotiate the limited restriction. (or not)** because they are going to go nuclear when we do this. I do wish he would not say "likely having an impact" and would say are definitely having an impact, can you get him to change that, he says it a couple times.*

This is great stuff, good luck with implementation. (I'm not being sarcastic here, I mean it)

Saw two typos pg 6, sort should be short, & page 16, ever should be never.

The word “likely” as written in the Management Plan is important, because it shows that the author/forester was not certain himself if dogs were truly having a negative impact on BW. That is why he advised the City to conduct further study to confirm if his assertion was indeed correct. **The City has done no further analysis or study of this in any way** as illustrated below.

C. City did not adhere to the Management Plan's suggestions & there was no user input...

- 1. A full-time leash-law?** A full time (24/7/365) leash-law was not something suggested in the Management Plan, but it was the very first thing City Staff initially proposed at the 4/4/2019 Parks Commission meeting. Then, only after it was urged to do so by the Commission Chair did City Staff then draft and submit the "compromise" proposal for consideration by the Parks Commission at the 7/18/19 meeting. That second version of the proposal was amended again, to include user suggestions of an earlier start time to off-leash activity in the afternoons, but other suggested amendments (a later end time for off-leash activities in the morning and off-leash allowed in the 4-1 – 7/31 period) were either ignored by City Staff or were subverted inappropriately by the Commission Chair.
- 2. Commission vote:** Although the revised proposal passed by a 10-1 vote at the 7/18/2019 meeting – the final vote was taken out of order and was therefore rendered meaningless. In the midst of the Commission's deliberations the Chair interrupted a Commissioner, who held the floor, and who we have confirmed was in the process of further amending the proposal (to remove the April 1 – July 31 full-time on-leash requirement – much to our delight). Our enthusiasm was quashed though – as the Chair cut-off the Commissioner and quickly redirected to a vote on the proposal as amended – resulting in the 10-1 vote, with the interrupted Commissioner being the sole "No" vote. The "compromise" proposal (a compromise only with itself), was therefore not even fully heard by the Parks Commission, and certainly wasn't done in consultation with the actual users and caretakers of Baxter Woods.
- 3. Presentation:** While our group appreciated being allowed to present at the 1/15/2020 S&T Committee Workshop, this was the first time we were given a voice in this entire process. Back in May 2019, when we met with Staff to learn about the "compromise" proposal – we were told we could make a presentation at the 7/18 meeting if we met certain criteria. Despite jumping through several hoops to be allowed to make a brief presentation, we were denied the opportunity to speak beyond our individual three minutes of public comment, even when we requested additional time for one individual to speak, if others gave up their 3 minutes of public comment time. City Staff denied us this reasonable request as well. The City has excluded our unified voices and denied the Commission an opportunity to hear our point of view and witness the evidence we have collected. Is it not clear why this process has been perceived as anti-democratic by a majority of the 250+ citizens on our e-mail list, who are consistent BW caretakers?
- 4. Shut out:** From the outset the actual daily users of BW were shut out of this process. We were not consulted with or even appraised of the City's desire to enact a leash law, or that the City had even contracted with a consultant to develop a Management Plan for Baxter Woods. We first learned of all this in late March 2019, just weeks prior to the first Commission meeting on 4/4. Perhaps most discouraging, the Management Plan included a section suggesting a public review of the plan before it was finalized:

Societal Considerations

Public forest management should include opportunities for members of the public to ask questions about and provide comments on draft plans before they are finalized. **Management Plan, p. 34**

The City ignored this consideration of it' own Management Plan, never consulting with the users of BW until the "compromise" leash proposal had already been developed in May 2019 – over one year after the Management Plan had been finalized and the initial proposal published.

5. **The meeting:** In its memo City Staff says it met with BW users, but that was only after the initial proposal was published. The request for a meeting went to one user of Baxter Woods (who runs a BW Facebook Page on social media), who graciously invited a second user to attend. That meeting took place on 5/31/19 and was more a one-way communication than a collaboration or problem-solving session. City Staff was not interested in or receptive to any suggestions our user group offered at the meeting, and discounted all of our requests.

D. **What does the Management Plan really say?** Back to the purported “likely negative impact” off-leash, dogs may have on the BW habitats. The Management Plan actually does say a few things.

1. **No ground cover/under-growth:** A deeper review of the forest analysis in the Management Plan reveals the true reasons why Baxter Woods is not a suitable/preferred habitat for forest birds. One reason is that 81% of BW acreage (24 of the 30 acres) has little or no undergrowth due to the Hemlock/Pine/Oak high canopy blocking sunlight from reaching the lower canopy and ground level.

*“Nearly all stands have moderate to full canopy cover of mature trees...which limits the light available for forest regeneration. While attractive from a visual perspective, the lack of understory cover **limits the habitat for species that nest and forage in the lower canopy layers.** Old field, shrub, and young saplings, and important habitat type for some species, represent less than 3% of the area (in Baxter Woods).” **Management Plan, p. 25***

2. **BW size diminishes the habitat:** As reported in the Management Plan and the Audubon Forestry for Maine Birds (FFMB) manual (see the City’s documents linked at p.1), the key forest birds to watch for locally likely prefer nesting and foraging in larger forest blocks >250 acres in size. BW, a forest of just 30 acres is too small in size for the key species.

*“This stand provides habitat values of mature mixed hardwood-conifer forest, but has a minimal understory and ground cover layers favored by some species, and **(bird) species characteristic of larger forest blocks are unlikely to nest here.**” **Management Plan, p. 43***

3. **The shape of BW even diminishes the habitat:** The City’s own documents clearly show that the context of forest shape and landscape impacts the habitat for forest bird species:

*“The size and shape of a forest block matters to many bird species. A long, thin block of forest has less interior and more edge compared to a square block, and many birds are sensitive to these features. **Wood thrush, tanagers and ovenbirds prefer forest interior and avoid edges.**” **FFMB, p. 70***

BW is approximately 10 acres (L) x 3 acres (W), running between Hartley Street and the sprawling 100+ unit Motherhouse Complex (under construction) and the 200 unit/11 story Deering Pavilion apartment building. This narrow woodland park provides little “interior” forest that most wild bird species prefer. All of BW is essentially dangerous edge forest where wild birds are at more risk from their common predators – cats, hawks, owls and even raccoons or squirrels who will raid nests. Lastly – other than in the City’s Management Plan, dogs are not mentioned in any of the City’s other reference documents as a threat to forest birds. The two studies referenced in the BRI document (one from Australia and the second from Great Britain) conclude that dogs are no more of a risk to wild birds than human activity, such as bird watching. There is just no evidence indicating that domestic dogs (cats are a whole other matter) are a serious or even recognized danger to wild, forest bird populations.

3. THERE ARE “MORE APPROPRIATE” PLACES TO WALK DOGS OFF-LEASH

The City contends there are other “**more appropriate locations**” where people can walk their dogs off-leash in Portland.

A. Our community - While we agree there are other places to walk dogs off-leash in Portland, BW is where we have built our community and established our club so to speak of active walkers, runners and riders. Foremost, BW is where we have developed friendships, fostering relationships over years that transcend our dog’s lives, the lives of family-members, and even our own lives. We take care of each other, our families and our pets. We celebrate one another and we have mourned the passing of dear friends. You cannot just recreate or relocate to a different place in the City, the kinship and community we have developed in BW! The City should not force us to relocate to other places unless there is an urgent public need or crisis at hand.

In fact, many of BW Seniors face significant safety hazards by being tethered to their dogs during walks – especially in the icy winter months. Most relevant to our situation, a comprehensive, up-to-date investigation into fracture risk in older adults who use leashes when walking dogs has shown that fractures related to walking dogs on leash have more than doubled between 2004 and 2017 in patients 65 and older, with hip and upper extremity breaks being the most common . (Kevin Pirruccio; Yeo Myoung Yoon; Jaimo Ahn, MD; JAMA Surgery, 2019).

Research by the National Institutes on Aging has linked social isolation and loneliness to higher risks for a variety of physical and mental conditions, including high blood pressure, heart disease, obesity, weakened immune system, anxiety, depression, cognitive decline, and even death. BW’s dog-walking community is an essential aspect of life for many of Portland’s adults, offering an opportunity to meet and socialize within their local community. (National Inst. Of Health, 2019)

B. What about all those other places the City says we can go to walk our dogs off-leash in Portland? Speaking just to the acreage and aesthetics of BW – it is unlike any other park in Portland. Easily accessible to thousands of people in the third-densest zip code in Maine, the wide and relatively flat central trails of BW naturally accommodate many: elderly walkers, the handicapped, strollers, bicyclists, XC skiers/runners and snowshoers. There is also a gentle slope from Stevens to Forest Ave. for a bit of an uphill climb or downhill run or both if you make the full circuit. BW is big enough to find solitude if desired on the secondary trails, but small enough to run into friends for communing and connection. BW also has ample parking, again with easy access to the trails for elderly walkers or the disabled.

While the City notes in its memo there are 495 acres of City space for off-leash walking, it does not say that just 200 acres are woodland forest spaces like BW. Here is a table of the forest/woodland areas where off-leash dogs are allowed that shows the other locations do not compare:

City Woodland Parks	Acreage	Notes about the Parks
Evergreen Cemetery Woods	100	Ticks, Steep, Rough, Steep Terrain , Limited Parking
Presumpscot River/Oat Nuts	40	Ticks, Steep, Rough/Steep Terrain , Limited Parking
Canco Woods Park	10	Ticks, Steep, Rooted Terrain , No Parking, Small
Riverton Trolley Park	20	Ticks, Very Steep, Rough Terrain , Safety concerns
Virginia Woods/Landfill	30	Ticks, Rooted Terrain , No Parking, Pollutants, Safety Concerns
Hall School Woods	5	Steep, Rough/Steep Terrain , Small, No Parking
Pine Grove Park	5	Steep, Rough Terrain , Small, No Parking
Baxter Woods	30	Minimal Ticks*/Fleas, Level Trails, No Roots, Ample Parking, NO Safety Concerns Now

*Please note that ticks are rarely seen in BW, most likely due to the lack of understory. In 2019, the Maine Center for Disease Control and Prevention reported a record number of Lyme disease cases. As the Director of the Maine CDC noted in a press release:

“Lyme disease and other tickborne diseases (e.g., anaplasmosis and babesiosis) are on the rise, so Mainers need to proactively protect themselves.” **Portland Press Herald, 1/3/2020**

All alternative sites recommended by the City are known for having abundant tick populations, and we are very concerned about being forced to walk in these habitats.

- C. Other off-leash sites - an apples-to-oranges comparison:** BW 30 acres accounts for approximately 15% to 20% of the available woodland acreage – but BW is by far the hands-down best place for walking dogs off-leash in the Portland, ME. The City's assertion that we can go elsewhere does not take into account that all other dog parks or off-leash areas are just not up to the quality of BW. Some of the issues identified above apply to other parks as well – see our PowerPoint for pictures and more info. Comparing BW to all locations and acreage just doesn't make sense – since most of the acreage sighted by the City is not woodland/forest space like BW, and most of it is miles away from our Deering Center neighborhood. The other places are not as accommodating to our elderly population. Our large group of Deering Center Seniors who frequent BW – typically during the late morning and early afternoon hours - are an inspiration to us “late-boomers” who hope to be as active and vibrant in our senior years. The leash law will be a severe disruption to the lives of many of Portland's most vulnerable midday-walkers!
- D. Does BW need to be a managed as a wildlife or conservation preserve?** In its December 2019 Memo the City contends that BW is a stand-alone wildlife sanctuary in Maine that allows off-leash dog activity. This is not the case, as Robinson Woods, one of the preserves cited by the City does allow off-leash walking as noted at its website (link below):

***NOTICE FOR DOG OWNERS**

Please keep dogs within sight at all times and remove all dog waste. Please keep dogs out of sensitive habitat areas. Reminder: Maine Law requires dog license and rabies tag on collar at all times.

****NOTICE FOR DOG OWNERS:** Off-Leash use is regulated on this property. **Dogs are allowed off-leash at Robinson Woods II Pond Trail before 10am daily. Dogs are allowed off-leash at Robinson Woods I after 4pm daily (3pm daily during standard time – November – March).** Dog waste bags are available at the kiosk at Shore Rd. Please clean up after your dog. Please do not allow dogs to swim in ponds or streams. <https://www.capelandtrust.org/properties-trails/property/robinson-woods-preserve/>

While Robinson Woods allows year-round off-leash dog activity, the City's leash law proposal for BW would only allow off-leash walking for 8 months of the year – much more restrictive and certainly not one that is “innovative” or “stand-alone” (City Memo p. 5), or again, collaborative.

Once more, we are ready and willing to work with the City on making BW welcoming to all who may not feel it is to their enjoyment now. We seek a stay or delay on enactment of the leash law, until a more reasonable, workable and less disruptive proposal is developed collaboratively – so all voices can be heard. We are a group of citizens who hold annual clean ups, and a group who wants to be a part of the solution, to help!

4. CITY MAY BE IN VIOLATION OF THE 1946 DEED

In its initial proposals, City Staff contended that it was out of compliance with the 1946 Deed, asserting that BW was not being preserved "...as a sanctuary for wild birds."

- A. The City has said it is not compliant with the Deed.** While it did not clearly make this argument in its December 2019 Memo to the Council, City Staff did make the assertion that it was out of compliance with the Deed in its presentation to the S&T Committee on 1/15/2020, and in its prior two leash law memos issued in March and July 2019. In its current Memo the City does mention the Deed on 3 occasions, finally alluding that it would be "better in compliance" with the Deed if the leash law were to be enacted.

As we have said before - we disagree with both contentions City Staff have made, that it is currently out of compliance, and that it will be in better compliance with the Deed if the leash law is passed. We further argue that should the leash law pass as currently proposed –the City will become out of compliance with the Deed for several reasons as detailed below.

- B. What did the Deed mean to Gov. Baxter and the City in 1946?** As a land grant contract, we believe the 1946 Deed must be considered in context to the times when the Deed was written. It should honor the express written intent of Gov. Percival Baxter as publicly communicated to the City and people of Portland upon the presentation of BW to City officials in April 1946. What did Gov. Baxter mean by a "sanctuary for wild birds" in the 1946 Deed? It is clear that he meant to preserve BW as a place where there was to be NO HUNTING, and where birds and other wildlife could live in a natural state, undisturbed by the City commotion and development outside the confines of the park. The historical definition from the time is here:

"It has long been recognized that refuges and sanctuaries, in which no shooting is permitted at any time, are needed as resting places for game birds. Moreover, with the constantly increasing use of the land for lumbering, grazing, agriculture or settlement, it becomes a pressing necessity to set aside portions as "wilderness areas" in which all wildlife may work out its natural balance under the closest approach to undisturbed conditions..." Compton's Encyclopedia - Vol. B, p.208 (1957)

To gain a better understanding of what Gov. Baxter's intents were for his gift of BW to the City and the 1946 Deed – we have timely documents available and newspaper articles from the day to guide us (*see 33 pg. document, p.7*). This is how the City received BW as a gift, how the City has historically managed BW as a park and City property since 1946. We contend that since 1946 the City has generally taken care of BW how Gov. Baxter intended. Only a few times over the years has the City stepped across a line on projects inside the boundaries of BW, but for the most part it has been prudent and well in compliance with the BW Deed.

What do we know about Gov. Baxter and off-leash dogs? We know that he took his dogs everywhere he went, and always off leash. That included to Bowdoin College – from the dorm, to his classrooms, and even the chapel for Sunday services or convocations. Later he took his off-leash dogs (plural) to the Governor's Mansion and the State Capitol Building in Augusta. He also traveled extensively and took his dogs with him abroad and to U.S. cities such as New York and Philadelphia – always off-leash. Gov. Baxter believed dogs had "rights" like humans and should be allowed to run free with their humans. We believe Gov. Baxter would oppose the leash law being proposed by the City.

In his book "My Irish Setter Dogs", Gov. Baxter documented many stories about his dogs and their daily life, including many off-leash romps in the "Woods". It is clear to us that by naming "Mayor Baxter Woods" a "Woods" in the 1946 Deed – clearly exemplifies Gov. Baxter's intent that BW be a place where off-leash dogs would be welcomed forever.

- C. What about the birds?** Clearly, Gov. Baxter honored birds and wanted them to be safe in BW. We contend that they are and always have been, and that our off-leash, well fed, cared for and loved, domesticated dogs pose little or no risk to forest birds, song birds or any other birds in BW.

To rebut the City's assertion that the bird population of BW is impaired - please consider the eBird data and BRI comparisons we have provided (*see pages 13-15 in this document*). Using data contracted for by City Staff (utilizing over \$10,000 in Motherhouse developer funding), we feel the data shows that BW is already a thriving bird sanctuary, and well in line with the species observed at other parks in Portland and outside the City – whether dogs visit them or not. We have normalized the data to show information for 20 species of forest bird identified in Audubon's FFMB as referenced in the City's Management Plan. Here is a summary of the bird study and eBird data we have compiled for the 20 species at four local forest areas (see p.13 for details).

Audubon's FFMB - 20 Forest Birds Watch List (See p.13 for details)	Gilsland Farm-Audubon 50 acres/ No Dogs (eBird, FFMB)	Baxter Woods 30 acres / +Dogs (BRI Study/eBird)	EvergreenCem. - Ponds 100 acres / +Dogs (eBird Data only)	Hinckley Woods 50 acres / +Dogs (eBird data only)
Forest Bird Species Observed (BRI Study – late June – early Oct):	16 species by 3570 eBird Observers (all seasons)	11 species by 36 Observers (Study – late June - Oct only)	17 species by 529 eBird Observers	18 species by 418 eBird Observers
Nesting Forest Birds Observed:	4 regular nesters 7 occasional nester 9 never nesters	3 nesting species obs No data –Occasional and Never nesters...	No data – Regular/ Occasional and Never nesters...	No data – Regular/ Occasional and Never nesters

Variations in the data show the following:

- BW has 3,534 fewer observers than Gilsland Farm, or just 1% of Gilsland's observers
- Despite having only 36 observers, BW still has 11 of the 20 key species documented, with 3 actually observed nesting by the BRI observers in June/July 2019.
- If 3,500 more observers visited BW, how many more bird species would be observed?
- No bird study was completed in BW during the busiest (April – June) period in 2019, we contend depressing the full count of key species observed in BW
- Audubon's Gilsland Farm has 16 of the 20 key species observed, with 4 nesting regularly (just 5 more observed than BW, and only 1 more nesting species) – and no dogs EVER!
- More of the key species have been observed at Evergreen-Ponds and Hinckley Park (where off-leash dogs are allowed), than at Gilsland Farm – with just 1/7th the observers at those dog-friendly places
- These bird counts clearly refute the assertion that dogs hamper bird observations in the Woods, or negatively impact the habitats for wild forest birds!

The City's Bird Survey report admittedly missed the busiest part of the spring/summer nesting season, the three months from April through June. We contend before making any ordinance changes the City should first conduct the April - June bird count and collect the data. Only after the City has the full set of data and the accurate count of bird species and nesting species in BW should the leash law proposal be considered. We predict if surveyed properly the data will show that BW bird counts for the key forest birds will mirror those of Gilsland Farm and other local birding hotspots. We further contend the full collection of data will demonstrate that off-leash dogs do not detract from the number of bird species observed, and that BW is a fine "sanctuary for wild birds" as it currently exists.

- D. The City will be out of compliance with the Deed** – If the proposed ordinance is passed, we contend the City's proposal to erect a fence or develop landscaping around the "Bird Habitat Restoration Area" in the northwest corner of BW is itself a clear violation of the Deed. In his letter

to the City that accompanied the 1946 Deed (gifting BW to the people of Portland) Gov. Baxter wrote (emphasis added),

*“The conditions imposed upon this gift are simple and understandable. I want it to remain in its natural wild state for the use of pedestrians only, without what may be called “landscaping”. (And) there should be no fancy work of any kind. I want it to remain about as it is now...so that people undisturbed may enjoy its simplicity, its beauty and it’s quiet...”. **Portland Sunday Telegram, 4/14/1946 p. 1a and 2a***

Clearly erecting fencing and blocking off trails through brush piles, equate to “fancy work” and inappropriate “landscaping” that do not comport with the “wild natural state” requirement of the Deed. Fencing and landscaping are also most assuredly “disturbances” to pedestrians, another violation of the Deed. We believe the City is not now in violation of the BW Deed, but for these reasons and the above – if the ordinance change is enacted as it is currently worded, the City will become out of compliance with the Deed.

We therefore urge Councilors to vote no on this proposal as it is currently drafted. We also ask that Council request City Staff to work more closely with the Friends and other local groups to collect more data about BW before any restrictions to off-leash dog walking are considered. **The time to collect data is BEFORE the leash law is passed – NOT AFTER.**

OUR FINAL THOUGHTS AND SUGGESTIONS

The Friends of BW kindly ask City Council to **delay the implementation of this proposal for one-year**, so that City Staff, in collaboration with our group and other members of the community, can collect data, work on a strategy for resolving the issues identified and present a more workable and viable plan to Council.

Missing data: As key April – June data is missing from the City’s analysis of bird populations, we request that this survey data be collected to complete the annual bird survey before the Council votes on the leash law proposal. In addition, the City has no data on park usage, visit timing or visit types. We offer to work with City Staff to collect the information needed for Council to be truly “informed” and make a sound decision about BW – only after it receives this information.

The Management Plan: The City did not follow the Management Plan’s suggestion for user input, and ignored the advice in the plan to collect data. Open the process up to citizen input.

The Deed: If the proposal is enacted as it currently stands, the City will be out of compliance with the “natural wild state” requirement of the Deed, and furthermore dishonoring the express written wishes of Gov. Percival Baxter!

We pledge to work in consort with City Staff and offer a committed group of volunteers to assist in collecting data and developing the plan. It is our belief that together we can come up with a better proposal, one that will be acceptable to the whole group as a true compromise. We ask you to please not take a vote on and implement this proposal before gathering and considering all relevant data!

Short of a delay in implementation, we ask that the following changes be made to the proposal:

1. The 4/1 through 7/31 full time leash law (24/7 on-leash only) be removed from the proposal
2. Off-leash hours be amended to go from 5am-10am, and 2pm-10pm (10am-2pm on-leash only)
3. Establishment of the Bird Habitat Restoration Area be removed from the proposal

Thank you!

Bird Count Data (Baxter Woods and other forests with off-leash dogs vs. Audubon's Gilsland Farm)...

This table summarizes the City's Biodiversity Research Institute (BRI) Study and eBird (eB) data for Baxter Woods (BW) and three other local forest areas. Three areas welcome off-leash dogs: BW, Evergreen Cemetery—Ponds (EC-P), and Hinckley Woods (HW). The fourth, Audubon's Gilsland Farm (GF) has not allowed any dogs on its property since the 1980's. Our focus at these four locations is on 20 species of forest birds identified in Audubon's Forestry for Maine's Birds (FFMB) Manual, as referenced in the City's Management Plan (p. 50). It is our position that the key variance in the data relates to the number of observers documented – with 35 eBird observers for BW, versus GF's 3,570 observers and roughly 500 each at EC-P and HW. It is well understood that with increased observers more species will be observed over time at any location. We therefore contend City Staff has wrongfully concluded that Baxter Woods is deficient as a "sanctuary for wild birds". The data below shows it is evident that BW is already a healthy and thriving sanctuary for wild birds! The collection of new data in the spring and early-summer season, we contend will show the actual bird population in BW is comparable to the other locations, and will demonstrate that dogs are NOT having a "negative impact" on the natural habitat of Mayor Baxter Woods.

Audubon's FFMB - 20 Forest Birds Watch List...	Gilsland Farm 50 acres/ No Dogs (eBird, FFMB)	Baxter Woods 30 acres / +Dogs (BRI Study/eBird)	Evergreen- Ponds 100 acres / +Dogs (eBird Data only)	Hinckley Woods 50 acres / +Dogs (eBird data only)
Forest Bird Species Observed:	16 species by 3570 Observers	11 species by 36 Observers	17 species by 529 Observers	18 species by 418 Observers
# Canada Warbler	1		1	1
* Chestnut-sided Warbler	1	*1(BRI) +3 (eB) = 4	1	2
^ Mourning Warbler				1
^ Black-throated Blue Warbler	1	1(BRI) + 1(eB) = 2	1	1
^ Bay-breasted Warbler	1	2 (BRI)	1	1
* Black-throated Green Warbler	1	*10(BRI)+1(eB)=11	1	1
^ Blackburnian Warbler	1		2	1
^ Magnolia Warbler	1	0(BRI) + 1 (eB)= 1	1	3
^ Yellow-bellied Sapsucker	1	1 (BRI)	1	1
# Scarlet Tanager	3	0(BRI) + 1 (eB)= 1	2	1
* Ovenbird	1	0(BRI) + 1 (eB)= 1	1	2
^ Woodthrush	1		1	1
# Northern Flicker	1	2(BRI) + 1(eB)= 3	3	1
^ Veery			1	1
# Woodcock	1		1	7
* Eastern Pee-Wee	1	*3(BRI)+1 (eB)= 4	1	2
# Northern Parula	1	0(BRI) + 1 (eB)= 1	2	1
^ Black-sided Woodpecker				
^ Boreal Chickadee				
^ Olive-sided Flycatcher	1		2	1
TOTAL Species Observed	16 species/18 count	11 spec/ 31 count	17 species/ 21 count	18 species/ 29 count
Nesting Forest Birds Observed:	* 4 common nesters # 7 occasional nester ^ 9 never nesters	* 3 actual nesting birds #,^ No data occasional /never nester	*,#,^ No data for reg./occasional/never nester	*,#,^ No data for reg./occasional/never nester

* = Observed nesting in Baxter Woods (2019) by BRI (3 species)// Common nesters at Audubon's GF per the FFMB (4 species)

= 7 species - occasional nesters at Audubon GF – and we assume all the other locations as well – no data available online...

^ = 9 species - never observed nesting at GF per J. Witham, 2016 - See the City's Management Plan and FFMB. No other data...

Baxter Woods Portland, ME

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eBird.org/hotspot/L5960768

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Mayor Baxter Woods

Cumberland County, Maine, US — Get Directions

All Months All Years Set Submit Data

Overview Recent Visits Illustrated Checklist

70 Species | 35 Checklists Updated 11 sec ago

Last Seen First Seen High Counts Bar Charts Printable Checklist Show All Details

	SPECIES NAME	COUNT	DATE	BY
1	Hairy Woodpecker	1	9 Dec 2019	Erin Barber
2	Black-capped Chickadee	3	9 Dec 2019	Erin Barber
3	Carolina Wren	2	9 Dec 2019	Erin Barber
4	American Goldfinch	2	9 Dec 2019	Erin Barber
5	Rock Pigeon	8	22 Nov 2019	Doug Hitchcox

Evergreen Cemetery

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Recent Visits

9:37 AM 1/10/2020

Gilsland Farm (Audubon HQ – no dogs allowed at all) in Falmouth, ME

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eBird.org/hotspot/L251783

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Gilsland Farm Audubon Center

Cumberland County, Maine, US — Get Directions

All Months All Years Set Submit Data

Overview Recent Visits Illustrated Checklist

258 Species | 3570 Checklists Updated 8 sec ago

Last Seen First Seen High Counts Bar Charts Printable Checklist Show All Details

	SPECIES NAME	COUNT	DATE	BY
1	Mourning Dove	6	7 Jan 2020	Turk Duddy
2	Downy Woodpecker	2	7 Jan 2020	Turk Duddy
3	American Crow	1	7 Jan 2020	Turk Duddy
4	Black-capped Chickadee	2	7 Jan 2020	Turk Duddy
5	Tufted Titmouse	3	7 Jan 2020	Turk Duddy

Portland Country Club

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9:51 AM 1/10/2020

Evergreen Cemetery in Portland, ME

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Evergreen Cemetery--ponds

Cumberland County, Maine, US — Get Directions

All Months All Years Set Submit Data

Overview Recent Visits Illustrated Checklist

157 Species | 529 Checklists Updated 7 sec ago

Last Seen First Seen High Counts Bar Charts Printable Checklist Show All Details

	SPECIES NAME	COUNT	DATE	BY
1	Mallard	7	22 Oct 2019	sophia r
2	Hooded Merganser	1	22 Oct 2019	kieran r
3	Great Blue Heron	1	22 Oct 2019	sophia r
4	Downy Woodpecker	1	20 Oct 2019	Peter Carpenter
5	Blue Jay	2	20 Oct 2019	Peter Carpenter

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Evergreen Cemetery

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9:39 AM 1/10/2020

Hinckley Park in South Portland, ME

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Hinckley Park, South Portland

Cumberland County, Maine, US — Get Directions

All Months All Years Set Submit Data

Overview Recent Visits Illustrated Checklist

159 Species | 418 Checklists Updated 12 sec ago

Last Seen First Seen High Counts Bar Charts Printable Checklist Show All Details

	SPECIES NAME	COUNT	DATE	BY
1	Herring Gull	1	25 Nov 2019	Donald Thompson
2	Downy Woodpecker	1	25 Nov 2019	Donald Thompson
3	American Crow	3	25 Nov 2019	Donald Thompson
4	Black-capped Chickadee	7	25 Nov 2019	Donald Thompson
5	Tufted Titmouse	5	25 Nov 2019	Donald Thompson

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Hinckley Park

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Recent Visits

9:40 AM 1/10/2020

MEMORANDUM

TO: Sally DeLuca, Director
Department of Parks, Recreation & Facilities

FROM: Jen Thompson, Associate Corporation Counsel

DATE: February 10, 2020

Re: Leash Restrictions for Dogs in Baxter Woods

I understand that the Sustainability & Transportation Committee is considering a recommendation, advanced by the Department of Parks, Recreation & Facilities, to amend Chapter 5 of the City's Code of Ordinances in order to place new restrictions on the presence of off-leash dogs in Baxter Woods. Currently, Chapter 5 of the City's Code permits dogs to be off-leash in Baxter Woods so long as they are under voice control. See Chapter 5, Section 5-15.1(e). The proposal now being advanced by staff seeks to impose limited restrictions on the presence of off-leash dogs in Baxter woods in order to better fulfill the City's charge to maintain Baxter Woods as a bird sanctuary and to address public safety concerns. Specifically, staff are recommending the following restrictions:

- April 1 through July 31, annually: Dogs on 8-foot leash at all times (to coincide with migratory bird nesting season).
- August 1 through March 31, annually: Dogs permitted off-leash and under voice control from 5am to 9am, and from 5pm to 10pm. From 9am to 5pm, dogs must be on 8-foot leash. During the July 18, 2019 meeting, the evening start time for off leash hours was amended from 5pm to 3pm.
- Habitat Restoration Area: In addition to the off-leash schedule, staff would work with various conservation, school and community groups to create a habitat restoration area where restoration efforts would contribute to creating habitat that can support migratory bird reproduction. The habitat restoration area would be roughly 5.5 acres (out of 32.5 acres total) and would be off limits to off-leash dogs year-round. This is similar to efforts on the Eastern Promenade where there are designated off-leash areas, as well as wildlife habitat meadow areas.

In connection with staff's recommendation and the Committee's consideration of the pending proposal, this office has been asked to provide guidance on the extent to which imposing leash restrictions for dogs in Baxter Woods is necessary or permissible under the City's Code and/or the 1946 deed from Governor Percival Baxter, conveying the land to the City of Portland.

As requested, I offer the following thoughts as guidance for the Committee and the Council:

The City Council has broad discretion to manage its parks as it sees fit, so long as it does so in a manner that is consistent with the City Code and any other regulations governing the use of those lands. It is under this broad authority that the City has long regulated where in the City dogs may be off leash and where leashes are strictly required. Those restrictions are outlined in Chapter 5 of the City's Code. As with all of its ordinances, the City Council is free to amend Chapter 5 in order to revise existing leash requirements as it sees fit in its legislative discretion – again, so long as it is not otherwise prohibited from doing so. Given the City's broad discretion under its police powers, the only restriction other than the

City Code that might limit the Council's regulatory authority over Baxter Woods is the language of the deed conveying the land to the City.

As the Committee is aware, one of the bases for staff's recommendation that off-leash dogs be restricted in Baxter Woods is a requirement outlined in the language of the deed that Baxter Woods be maintained as a "bird sanctuary." According to staff, the presence of off-leash dogs in the park have negatively impacted bird and wildlife habitat and breeding, particularly by ground-nesting birds, thereby inhibiting the City's ability to optimally satisfy the purpose of Governor Baxter's vision for the use of the land.

The deed from Governor Baxter to the City requires that "Mayor Baxter Woods," so-called, must be retained by the City for the benefit of the people of Portland subject to a number of terms, restrictions, reservations and conditions. The restrictions enumerated in the deed include, in pertinent part, requirements that the land:

1. Shall forever be retained and used by [the City] in trust for the benefit of the people of Portland as a Municipal Forest and park and for public recreational and educational purposes the same forever to be known as "Mayor Baxter Woods;"
2. shall forever be kept in its natural wild state and as a sanctuary for wild birds, with no streets for public conveyances and no cement walks therein and with only paths and trails for pedestrians . . .
3. shall forever be maintained for the sole use of pedestrians; and horses, automobiles and all motor vehicles, except those of the City used solely in caring for said woods, shall forever be excluded therefrom

Although the language of the deed expressly requires that the land be "kept in its natural wild state and as a sanctuary for wild birds," there is no mention of dogs or any requirement as to whether they be permitted or excluded. As such, it does not appear to me that the City Council is required to permit dogs to be off leash dogs in Baxter Woods, nor is it required to prohibit them. Rather, the Council is free to exercise its broad discretion to decide, as a policy matter, whether and to what extent it wishes to apply its leash laws in Baxter Woods, just as it does in other City parks. In making that decision, it is certainly free to weigh whether, as staff suggests, limiting off leash dogs will better allow the City to meet its obligation to maintain the park as a bird sanctuary or, as suggested by others, doing so would negatively impact its use as a "park . . . for public recreational . . . purposes." That consideration and balancing of differing policy objectives is entirely in line with the Council's authority over its public spaces and with its exercise of legislative discretion.