

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER THIBODEAU (2)
TAE Y. CHONG (3)
JUSTIN COSTA (4)

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

REMOTE JULY 27, 2020 SPECIAL CITY COUNCIL AGENDA

The Portland City Council will hold a City Council Meeting remotely using Zoom. The Honorable Kate Snyder, Mayor, will preside.

ZOOM INFORMATION:

The Portland City Council will hold a remote meeting on Monday, July 27, 2020 at 5:30 PM. This meeting will take place remotely using Zoom.

Virtual meetings are allowed using emergency legislation approved by LD 2167; 1 M.R.S. §403-A, that authorizes cities and towns to conduct meetings online.

Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be uploaded to portlandmaine.gov/livestream the next day.

For public comment, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be un-muted by the host when it is time for public comment.

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/88491067464?pwd=ZEEwQkZHcm96bitFOXNxWktQRG5odz09>
Passcode: 243460

Or iPhone one-tap :

US: +13017158592,,88491067464#,,,,,0#,,243460# or
+13126266799,,88491067464#,,,,,0#,,243460#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099 or +1 253 215 8782 or +1
346 248 7799 or +1 669 900 6833

Webinar ID: 884 9106 7464

Passcode: 243460

PLEDGE OF ALLEGIANCE

ROLL CALL

ANNOUNCEMENTS

RESOLUTIONS:

Resolution 2-2020 Creating an Ad Hoc Committee to Recommend Appointees to the 2020 Charter Commission - Sponsored by Kate Snyder, Mayor

This Resolve creates an Ad Hoc Committee to advance a slate of three members to the 2020 Charter Commission. City of Portland voters approved the establishment of a new Charter Commission to review and recommend changes to the City Charter at the July 13, 2020 election. Three members are appointed, and the other commission members will be elected by the voters at a later election.

Five affirmative votes are required for passage after public comment.

COMMUNICATION

Communication re 2020 Charter Commission Ad Hoc Committee

6:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS

COUNCIL WORKSHOP

Following the adjournment of the Special City Council meeting, the Council will host a workshop to discuss issues related to those experiencing homelessness, Deering Oaks Park, and City Hall Plaza.

MEMORANDUM
City Council Agenda Item

FROM:

DATE: July 23, 2020

SUBJECT: Resolution 2-2020 Creating an Ad Hoc Committee to Recommend Appointees to the 2020 Charter Commission - Sponsored by Kate Snyder, Mayor

SPONSOR:

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

Final Action

Can action be taken at a later date: No (If no why not?)

PRESENTATION: (List the presenter(s), type and length of presentation)

I. SUMMARY

II. AGENDA DESCRIPTION

This Resolve creates an Ad Hoc Committee to advance a slate of three members to the 2020 Charter Commission. City of Portland voters approved the establishment of a new Charter Commission to review and recommend changes to the City Charter at the July 13, 2020 election. Three members are appointed, and the other commission members will be elected by the voters at a later election.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis and Background that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Resolve re Ad Hoc Committee to Appoint the Charter Commission of 2020 7.27.2020
2. DW-C Memo re Charter Commission w ex. 7.23.2020
3. City of Portland Mail - Fwd_ Concerns on Charter Commission Next Steps and DW-C Reply 7.27.2020

Prepared by:

Date: 7/23/2020

KATE SNYDER (MAYOR)
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**CITY OF PORTLAND
IN THE CITY COUNCIL**

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**RESOLUTION CREATING AN AD HOC COMMITTEE
TO RECOMMEND APPOINTEES TO THE 2020 CHARTER COMMISSION**

WHEREAS, on July 13, 2020, the voters of the City of Portland approved a referendum question asking if a Charter Commission should be appointed to review and adopt changes to the City Charter; and

WHEREAS, pursuant to 30-A M.R.S. §2103(B), the members appointed to the Charter Commission must be approved in accordance with municipal bylaws within 30 days of the election, or August 12, 2020;

WHEREAS, as authorized by the Portland City Charter Article 2, Section 5(l), the Mayor shall appoint the members of Ad Hoc Committees and communicate those appointments to the City Council;

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the City Council do hereby establish the Charter Commission Ad Hoc Committee; and

BE IT FURTHER RESOLVED, that the members of the Charter Commission Ad Hoc Committee shall review applications and resumes and interview candidates for the 2020 Charter Commission; and

BE IT FURTHER RESOLVED, that the Charter Commission Ad Hoc Committee shall provide recommendations for appointees to the full City Council for approval on or before August 10, 2020.

MEMORANDUM

TO: Mayor Snyder and Members of the Portland City Council
CC: Jon Jennings, City Manager; and Katherine Jones, City Clerk
FROM: Danielle P. West-Chuhta, Corporation Counsel
DATE: July 23, 2020
RE: **Charter Commission Next Steps**

On July 14, 2020, the voters of the City of Portland approved the creation of a Charter Commission (13,220 in favor vs. 4998 opposed). A quick review of the state law surrounding the creation of Charter Commissions reveals that there are several next steps that must now occur.¹ The following memorandum provides a summary of those next steps.

I. Next Steps in the Process

Once a question seeking a Charter Commission is approved (i.e. on July 14, 2020 in Portland), the members of the Commission must be appointed and elected. First, three (3) “appointive” members must be appointed by the City Council within thirty (30) days after the election or by August 13, 2020 in this case. 30-A M.R.S. § 2103(1)(B). These members “appointive” members need not be residents of the municipality, and only one may be a member of the City Council. *Id.*

Next, election of “voter” members needs to occur. Under state law, election of the “voter” members may be conducted at the next scheduled regular or special municipal or state election. 30-A M.R.S. § 2103(1)(A). Prior to the election, the City Council must choose one of the following methods for electing the “voter” members:

- (1) Six voter members are elected in the same manner as the municipal officers, except that they must be elected at-large and without party designations;
- (2) One voter member is elected from each voting district or ward in the same manner as municipal officers, except that the voter member must be elected without party designation; *or*

¹ Attached for your reference as *Exhibit A* are the City Council Orders from 2008 and 2009 which lay out the exact process used by the City during the creation of the last Charter Commission.

(3) Voter members are elected both at-large and by district or ward, as long as the number of voter members is the same as the number of municipal officers on the board or council of that municipality and the voter members are elected in the same manner as the municipal officers, except that they must be elected without party designation.”

30-A M.R.S. § 2103(B) (emphasis added). During the last Charter Commission process the City Council chose to use option three (3) above to elect the various “voter” members to the Commission. *See Exhibit A.*

It is important to note that since each of the methods in section 2103(B) requires that the “voter” members be elected “in the same manner” as the City Council members, it is necessary to review the election requirements provided for in the City Charter. *Id.* The Charter first provides that Council members (and thus Commission members) are to be elected using a ranked choice voting protocol. Portland City Charter, Article II, section 3.

The Charter next requires the nomination of all Council members (and thus Commission members) to be as follows:

[t]he nominations of all candidates for elective offices provided for by this charter shall be by petition. The petition of a candidate for an at large council seat or at large school board seat shall be signed by not less than three hundred (300) nor more than five hundred (500) registered voters of the city. The petition of a candidate for a district council seat or a candidate for a district school board seat shall be signed by not less than seventy-five (75) nor more than one hundred fifty (150) registered voters of the respective district.

Id. at Article IV, section 4. The City Clerk also must “make [these] nomination petitions available to the candidates one hundred and twenty-seven (127) days prior to the election.” *Id.* at Article IV, section 6. Given these requirements, the election of the “elective” members will need to be scheduled for either the June 2021 regular municipal election or an alternative special election date chosen by the City Council. *See* Election Process Memorandum from the City Clerk attached hereto as *Exhibit B.*

Once the Commission has been elected, the Clerk must promptly notify its members of the date and time of the required organizational meeting of the body at least seven (7) days in advance of said meeting. 30-A M.R.S. § 2103(2). Within thirty (30) days after the organizational meeting, the Commission must then hold a public hearing (with at least ten (10) days’ published

newspaper notice) “to receive information, views, comments and other material relating to its functions.” 30-A M.R.S. § 2103(5)(A).

Thereafter, within nine (9) months after its election, the Commission must also prepare and circulate a *preliminary* report proposing a new charter or charter revisions, and within twelve (12) months after its election submit a *final* report to the City Council. 30-A M.R.S. § 2103(5)(C) and (D).² “When the final report is filed, the [City Council] shall order the proposed new charter or charter revision[s] to be submitted to the voters at the next regular or special municipal election held at least 35 days after the final report is filed.” 30-A M.R.S. § 2103(6).

II. Staffing and Funding the Charter Commission

The City must provide the Charter Commission with suitable office space and with reasonable access to facilities for holding public hearings free of charge. 30-A M.R.S. § 2103(4). The City may also contribute clerical and other assistance to the commission and shall permit it to consult with and obtain advice and information from the City Council, City officials and City employees during ordinary working hours. *Id.*

Additionally, within twenty (20) days after the members of a Charter Commission are elected and appointed, the City Council shall credit \$100 to the Commission’s account. 30-A M.R.S. § 2103(4). The City may also appropriate additional funds to that account, as necessary. *Id.* The Commission’s account may additionally receive funds from other other public or private sources. *Id.*

² The nine (9) and twelve (12) month requirements to submit a preliminary and final report, respectively, may be extended by the City Council for up to twenty-four (24)-months for certain reasons. *See* 30-A M.R.S. §2103(5)(E).

EXHIBIT A

Order 122-08/09

Passage: 12/1/08 7-1 (Skolnik; Leeman absent)

JILL C. DUSON (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
DORY RICHARDS WAXMAN (A/L)
NICHOLAS M. MAVODONES (A/L)

**ORDER APPOINTING THREE MEMBERS TO THE PORTLAND CHARTER
COMMISSION**

ORDERED, that the following individuals are hereby appointed to the Portland Charter Commission:

	<u>Name</u>	<u>Address</u>
1.	Pamela Plumb	104 Park Street
2.	Naomi Mermin	83 Madeline Street
3.	Thomas Valleau	65 Rockland Avenue

Order 122A-08/09

Passage: 12/1/08 8-0 (Leeman absent)

JILL C. DUSON (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
DORY RICHARDS WAXMAN (A/L)
NICHOLAS M. MAVODONES (A/L)

**ORDER RE: ELECTION OF NINE MEMBERS TO THE
PORTLAND CHARTER COMMISSION**

ORDERED, that pursuant to 30-A M.R.S.A. § 2103 (A)(3) nine members shall be elected to the Portland Charter Commission, without party designation, and in the same manner as provided by Article II, Section 2 of the City Charter which requires that 4 members shall be elected At-Large and by the registered voters of the entire City and one member shall be elected from each of the 5 election districts by the registered voters of each district.

Order 137A – 08/09
Postponed on 1/5/09 and 1/21/09
Amended & Passed 2/2/09 9-0

JILL C. DUSON (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
DORY RICHARDS WAXMAN (A/L)
NICHOLAS M. MAVODONES (A/L)

**ORDER CALLING SPECIAL ELECTION OF NINE MEMBERS TO THE
PORTLAND CHARTER COMMISSION**

ORDERED, that pursuant to 30-A M.R.S.A. § 2103(1)(A), a special election is hereby called on June 9, 2009 to elect nine (9) members to the Portland Charter Commission. four (4) of whom shall be elected at large by the registered voters of the entire City and one (1) of whom shall be elected from each of the five (5) election districts, from and by the registered voters of each district.

Order 146-09/10

Passage: 1/20/10 9-0

NICHOLAS M. MAVODONES (MAYOR)

KEVIN J. DONOGHUE (1)

DAVID A. MARSHALL (2)

DANIEL S. SKOLNIK (3)

CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JOHN R. COYNE (5)

JOHN M. ANTON (A/L)

DORY RICHARDS WAXMAN (A/L)

JILL C. DUSON (A/L)

ORDER APPROVING EXTENSION OF TIME FOR COMPLETION OF REPORTS FROM CHARTER COMMISSION

ORDERED, that pursuant to 30-A M.R.S.A. sec. 2103(5)(E), the Charter Commission is hereby granted an extension of time to May 21, 2010 to complete its preliminary report and to July 16, 2010, to complete its final report.

Order 273-07/08

Postponed on 6/2/08

Passage: 7/21/08 5-3 (Mavodones, Duson, Skolnik opposed, Leeman absent)

EDWARD J. SUSLOVIC (MAYOR)

KEVIN J. DONOGHUE (1)

DAVID A. MARSHALL (2)

DANIEL S. SKOLNIK (3)

CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JAMES I. COHEN (5)

JOHN M. ANTON (A/L)

JILL C. DUSON (A/L)

NICHOLAS M. MAVODONES (A/L)

ORDER ESTABLISHING A CHARTER COMMISSION

ORDERED, that pursuant to 30-A M.R.S.A. § 2102(1), the Portland City Council hereby determines that the revision of the City Charter shall be considered or that adoption of a new municipal charter shall be considered; and

BE IT FURTHER ORDERED, that a Charter Commission shall be established to carry out that purpose.

Order 274-07/08

Postponed on 6/2/08

Passage 7/21/08 5-3 (Mavodones, Duson opposed, Leeman absent)

EDWARD J. SUSLOVIC (MAYOR)

KEVIN J. DONOGHUE (1)

DAVID A. MARSHALL (2)

DANIEL S. SKOLNIK (3)

CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JAMES I. COHEN (5)

JOHN M. ANTON (A/L)

JILL C. DUSON (A/L)

NICHOLAS M. MAVODONES (A/L)

ORDER SUBMITTING THE QUESTION FOR THE ESTABLISHMENT OF A CHARTER COMMISSION TO THE VOTERS AT THE MUNICIPAL ELECTION ON TUESDAY, NOVEMBER 4, 2008

ORDERED, that the following question shall be submitted to the voters at the municipal election on November 4, 2008:

“Shall a Charter Commission be established for the purpose of revising the Municipal Charter or establishing a New Municipal Charter?”

EXHIBIT B



Office of the City Clerk
Katherine L Jones, CMC

MEMORANDUM

TO: Mayor Snyder and Members of the Portland City Council

FROM: Katherine L. Jones, City Clerk

DATE: July 23, 2020

RE: Election of Charter Commission Members

The following is a proposed timeline and outline of the costs for conducting an election for the Charter Commission members:

As required by the City Charter, the Charter Commissioner members papers must be made available 127 days before the scheduled election of the members. In order to comply with this requirement, the election of the elective Commission members will have to occur at the June 2021 regular municipal election date or at an alternative special election date selected by the City Council.

If the June 2021 date were to be selected as the date of the election for Commission members, petition papers would be made available to candidates on February 2, 2021; March 15, 2021 would be the earliest candidates could turn their papers in, and March 29, 2021 would be the final petition paper submission deadline. Based on my review of the records from 2008, this proposed timeline would be consistent with how the prior Charter Commission was established. More specifically, in 2008 the election on whether or not to establish the Commission occurred in November, and then the Council voted to appoint three (3) members to the body and chose the composition of how the voter members (i.e. one (1) from each District and 4 at large) in December 2008. Thereafter, in January and February 2009, the Council reviewed and ultimately decided to set the election date for the voter members in June 2009.

Finally, please note that if the City Council were to instead select an alternative specific municipal election date the costs for holding that election (by rank choice voting as required by the City Charter) would be as follows:

\$10,000 for the Ballot Order;

\$30,000.00 for the rental of Polling place locations, payments for the election officials, and other routine election costs; and

\$21,400.00 for the Tabulations of Results.

Overall, the cost of such a special election would estimated to be \$61,400.



Nancy English <nle@portlandmaine.gov>

Fwd: Concerns on Charter Commission Next Steps

Danielle West-Chuhta <dwchuhta@portlandmaine.gov>

Mon, Jul 27, 2020 at 3:39 PM

To: Nancy English <nle@portlandmaine.gov>

Cc: Kate Snyder <ksnyder@portlandmaine.gov>, Jon Jennings <jpj@portlandmaine.gov>

Nancy:

Please include this in the back-up materials for tonight's meeting re: Charter Commission.

Thanks,

Danielle

----- Forwarded message -----

From: **Danielle West-Chuhta** <dwchuhta@portlandmaine.gov>

Date: Mon, Jul 27, 2020 at 3:37 PM

Subject: Re: Concerns on Charter Commission Next Steps

To: Glen Gallik <glen.s.a.gallik@gmail.com>

Cc: Spencer Thibodeau <sthibodeau@portlandmaine.gov>, Pious Ali <pali@portlandmaine.gov>, Kate Snyder (Mayor)

<ksnyder@portlandmaine.gov>, Mavodones, Nicholas <nmm@portlandmaine.gov>, Jill Duson

<jduson@portlandmaine.gov>, Kim Cook <kcook@portlandmaine.gov>, Tae Chong <tchong@portlandmaine.gov>, Justin

Costa <jcosta@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>

Mr. Gallik:

Thank you for your questions and interest in the Charter Commission process. I will respond to each of your questions below:

- 1) The specific provision in state law that requires that the elections be conducted in the same manner as the municipal officers (i.e. City Council members). Thus, it would require that the elections be conducted (i.e. re: petition papers, and the use of rank choice voting, etc.) the same as the Council members.
- 2) Since we were unsure of the outcome of the July 14th election we did not get into the specifics (i.e. petition papers, etc.) of the election of voter members to the Charter Commission.
- 3) We did not place anything on the June 30th Council meeting since the election was not held until July 14, 2020 and so the result was still unknown.
- 4) The provision in the City Charter, Article II, relates only to City Council seats that are vacant for one of the reasons described therein. It does not describe a method of election of Council members as described in State law and so it is not applicable to the situation presented.
- 5) The City Charter still complies (and does not conflict) with State law. This is because the City Council is still able to schedule the election of Charter Commission voter members for the next regular municipal election, or June 2021, or a special election date set by the Council (both of which will be after the expiration of the 127 day period).
- 6) I have not contacted the Secretary of State's or AG's office since this is a local election issue that is handled by the municipality directly.

Thanks,

Danielle

On Sun, Jul 26, 2020 at 2:45 PM Glen Gallik <glen.s.a.gallik@gmail.com> wrote:

Dear Ms. West-Chuhta, Mayor Snyder, and City Council,

My name is Glen Gallik, and I am resident of Portland - I am currently living on Congress Street. I recently read your July 23rd memo re Charter Commission Next Steps and became deeply concerned with your interpretation of state and municipal law as it relates to the timing of the charter commission election. My specific concerns are listed below. I welcome all personal communication on this issue, but I would prefer these questions be addressed publicly at Monday's city council meeting.

The people have chosen to begin the charter commission process. I urge the mayor and council not to accept a needless seven month delay and take whatever action is necessary to elect commission members in November.

Best,

Glen Gallik, he/him

1. In your memo dated October 2, you wrote, "By statute, the election of members of the Charter Commission can be at the same election as the vote on whether to create a Charter Commission or it can take place at the next scheduled regular or special municipal or state election that is no more than 200 days after the date on which voters approve the establishment of a commission (either March 3, 2020 if a special election is called or June 9, 2020, the next regular municipal election)." What changed in your understanding of the statute since then?
2. In that memo, you further instructed the Council that, "If a special election were called for March 3, 2020, there would be 98 days between that vote and the June 9, 2020 municipal election. That time frame may not allow sufficient time for candidate registration and campaigning." Why did you not raise the concern of not having the requisite 127 days at that time?
3. If we were permitted to order the election for the commission members to be held at the same election as the question approving the commission, why couldn't we have passed an order on or before June 30, so that the Clerk could have made petition papers available 127 prior to the November election?
4. Article II, Section 7 of the Charter allows us to call a special election to fill a vacancy on the Council in less than 127 days, provided only that "the council, by a vote of at least six (6) of its members, calls a special election on an earlier date." Why can't we use that procedure to call an election for Charter Commission members for November 3?
5. If our charter conflicts with state law, wouldn't the state law provision requiring us to set the election for the next scheduled regular or special election take precedence over our charter?
6. Have you consulted with the Secretary of State or Attorney General's office on the requirements of sec. 2103 for scheduling this election? If not, why not? If so, can we review that correspondence?

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Danielle P. West-Chuhta
Corporation Counsel
City of Portland, Maine
(207) 874.8480
dwchuhta@portlandmaine.gov

--

Danielle P. West-Chuhta
Corporation Counsel
City of Portland, Maine
(207) 874.8480
dwchuhta@portlandmaine.gov

MEMORANDUM

TO: City of Portland City Council
FROM: Kate Snyder, Mayor
DATE: July 27, 2020
RE: Appointees to the Charter Commission Ad Hoc Committee

Upon approval of the establishment of the Charter Commission Ad Hoc Committee, and as authorized by the Portland City Charter Article 2, Section 5(l), I am appointing three councilors to the Charter Commission Ad Hoc Committee: Councilor Tae Chong, Councilor Nicholas Mavodones, Councilor Pious Ali and myself, as Chair, of the Charter Commission Ad Hoc Committee.

The Charter Commission Ad Hoc Committee is tasked with a rapid review of applications for the 2020 Charter Commission and is asked to provide recommendations for three appointed members of the 2020 Charter Commission to the full City Council for approval at a Special City Council Meeting to be held August 10, 2020.

MEMORANDUM

TO: City of Portland City Council
FROM: Danielle West-Chuhta, Corporation Counsel
DATE: July 27, 2020
RE: Issues re: Public Parks/Grounds

The following applicable City Code provisions are regarding the use of public parks/grounds that I believe may be useful background information for the City Council workshop Monday night:

A) First, Chapter 18 (Parks); section 18-18 provides regarding loitering or staying in parks/public grounds: "Except as provided below for Tommy's Park and Post Office Park, no person shall stop, loiter, be or remain in any of the parks of the city or in any of the paths, drives, streets, boulevards or roadways of the parks between the hours of 10:00 p.m. and 6:30 a.m. of the day immediately following, except for the purpose of traveling across or through such parks; nor shall any person park an automobile and remain therein between the hours of 10:00 p.m. and 6:30 a.m. of the day immediately following on any of the drives, streets, boulevards, promenades or roadways within the parks of the city, unless said person or persons has the prior written authorization of the city manager to be in said park or parks or their drives, streets, boulevards, promenades or roadways during the aforementioned hours. No person shall stop, loiter, be or remain in Tommy's Park or Post Office Park or in any of the paths of these two parks between the hours of 1 a.m. and 6:30 a.m. on any given day, except for the purpose of traveling across or through such parks.";

B) Next, Chapter 18 (Parks); section 18-41 provides, in part, regarding permits for events held on public grounds (including Ganley Plaza): "The director of parks and recreation or his designee shall be the permitting authority for events in which it could reasonably be assumed that twenty-five (25) or more persons might gather or participate . . . The city council shall be the permitting authority for events in which it could reasonably be assumed that two thousand (2,000) or more persons might gather or participate; or any event which is proposed to last longer than three (3) consecutive days, regardless of the number of persons anticipated to gather or participate."; and

C) Finally, Chapter 6, section 6-133 provides as follows regarding "recreational shelters" located within the City: "For purposes of this section, "recreational shelter" means any building, structure, vehicle, trailer, or other enclosure used or intended for human habitation that does not meet the standards set forth in Articles II through IV of this Chapter, or the State of Maine Manufactured Housing Act. This includes, but is not limited to, recreational vehicles, motor homes, campers, camp or truck trailers, tents, shelters, and structures on trailers capable of being towed by a motor vehicle . . . A recreational shelter may not be occupied as living quarters, unless it meets all of the following requirements: (1) The recreational shelter is a vehicle or trailer eligible for registration under Title 29-A, Chapter 5 of the Maine Revised Statutes; (2) The recreational shelter is fully inspected, registered and ready for highway use, except that a moveable recreational shelter that does not move under its own power may be temporarily disconnected from the vehicle used to haul it, only for the time period contained in subsection (b)(8) below; (3) The recreational shelter meets all of the applicable fire and life safety

requirements; (4) The recreational shelter is weathertight, watertight, vermin proof, structurally sound and in good repair; (5) The use of the recreational shelter, and its connection to utilities, if any, complies with all other applicable sanitary, electrical, fire, and life safety requirements of this Code; (6) The recreational shelter is located entirely on residential property and is used solely by residents of that residential property or guests of those residents; (7) The recreational shelter, or space for the recreational shelter, is not rented or let; (8) The recreational shelter is not occupied as living quarters anywhere within the City of Portland for more than 30 days in any one-year period; and (9) No more than one occupied recreational shelter may be located on a single parcel or lot at a time."

MEMORANDUM

TO: City of Portland City Council
FROM: Danielle West-Chuhta, Corporation Counsel
DATE: July 27, 2020
RE: *Martin v. City of Boise*

Councilor Ali requested that I review the case *Martin v. City of Boise* (attached hereto as *Exhibit A*) and discuss its potential applicability. That case was brought under the 8th Amendment, which prohibits so-called "cruel and unusual punishment." In it, the court of appeals held that it was a violation of the 8th amendment to enforce against homeless people local ordinances prohibiting camping in public places. A review of the court's holding reveals, however, that it was very narrow and only applies if the people against whom it is enforced truly are homeless and there is no alternative shelter available. The following language from the opinion is helpful:

This principle compels the conclusion that the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter. As Jones reasoned, "[w]hether sitting, lying, and sleeping are defined as acts or conditions, they are universal and unavoidable consequences of being human." Jones, 444 F.3d at 1136. Moreover, any "conduct at issue here is involuntary and inseparable from status — they are one and the same, given that human beings are biologically compelled to rest, whether by sitting, lying, or sleeping." Id. As a result, just as the state may not criminalize the state of being "homeless in public places," the state may not "criminalize conduct that is an unavoidable consequence of being homeless — namely sitting, lying, or sleeping on the streets." Id. at 1137. Our holding is a narrow one. Like the Jones panel, "we in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place." Id. at 1138. We hold only that "so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters]," the jurisdiction cannot prosecute homeless individuals for "involuntarily sitting, lying, and sleeping in public." Id. That is, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter. We are not alone in reaching this conclusion. As one court has observed, "resisting the need to eat, sleep or engage in other life-sustaining activities is impossible. Avoiding public places when engaging in this otherwise innocent conduct is also impossible. . . . As long as the homeless plaintiffs do not have a single place where they can lawfully be, the challenged ordinances, as applied to them, effectively punish them for something for which they may not be convicted under the [E]ighth [A]mendment — sleeping, eating and other innocent conduct." Pottinger v. City of Miami, 810 F. Supp. 1551, 1565 (S.D. Fla. 1992); see also Johnson v. City of Dallas, 860 F. Supp. 344, 350 (N.D. Tex. 1994) (holding that a "sleeping in public ordinance as

applied against the homeless is unconstitutional"), rev'd on other grounds, 61 F.3d 442 (5th Cir. 1995).

Naturally, our holding does not cover individuals who do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. Nor do we suggest that a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible. See *Jones*, 444 F.3d at 1123. So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures. Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the 'universal and unavoidable consequences of being human' in the way the ordinance prescribes. *Id.* at 1136.

Overall, based on the above holding, if there is shelter available or someone isn't actually homeless, the Court has held there is no violation of the 8th amendment. And, for challenges made under the 1st amendment (the City Hall encampment seems more a protest than camping due to lack of shelter), the *OccupyMaine* case (decided by the Superior Court in 2012) established that the City's ordinance is not a violation of that provision (see case attached as *Exhibit B*).

PORTLAND POLICE DEPARTMENT
MEMORANDUM

July 27, 2020

TO: Jon Jennings, City Manager
FM: Frank Clark, Chief of Police
RE: Deering Oaks/City Hall

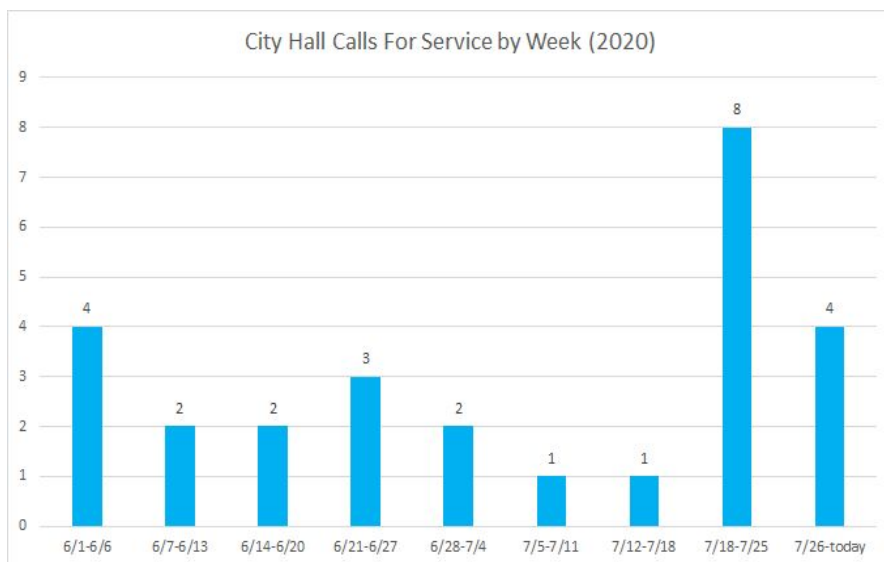
As you know, large groups (30+ each) of people have been gathering in Deering Oaks Park and in front of City Hall. These groups are generating calls for service that raise crime, safety, nuisance and quality of life concerns for residents and city employees, especially in the midst of a pandemic.

Based upon the climate and sensitive nature of the situation, our officers continue to take action in response to crime, but have not enforced the City's ordinance provision related to overnight presence in the parks and public spaces until guidance is received from the City Council. During this time, the Police Department has been part of a team with City staff and social service entities that have been conducting outreach and addressing basic needs. Those efforts remain ongoing, but public safety and health concerns continue to be problematic..

Police resources are being increasingly utilized at both locations. Calls for service have included fights, reports of open air drug use and overdoses. There have been 13 overdoses at Deering Oaks since July 12, 2020, six of which happened yesterday. Two have also occurred at City Hall, both this morning. This weekend there were also two assaults associated with each location. One involved an unlawful sexual contact, and the second involved a stabbing during an argument by another person with a switchblade type knife. We also hear the public's concerns related to discarded needles, human waste, lack of social distancing and access to those public spaces.

The following data provides a broader overview of the calls for service and incident reports at each location:

City Hall - Calls for Service:



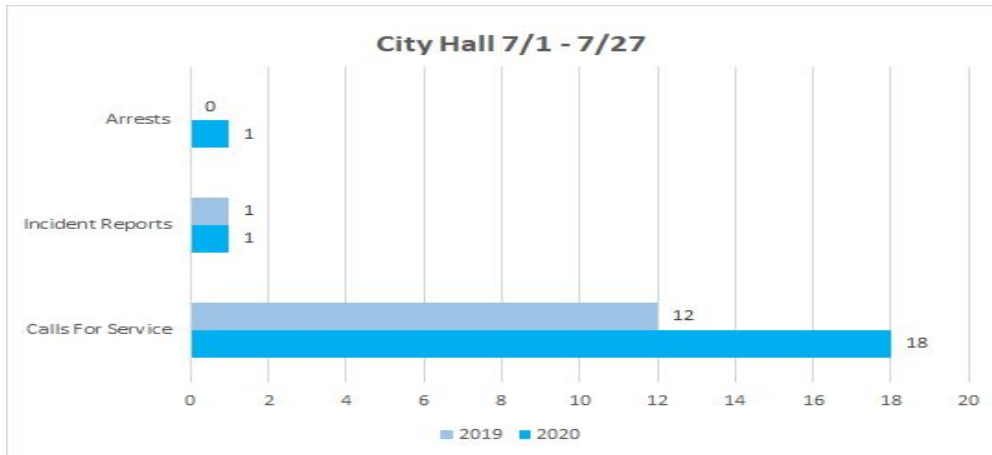
July 23 - 2 drug possessions
1 person bothering
1 assist MedCU

July 24 - 1 special attention
1 assist MedCU
1 threats / terrorizing

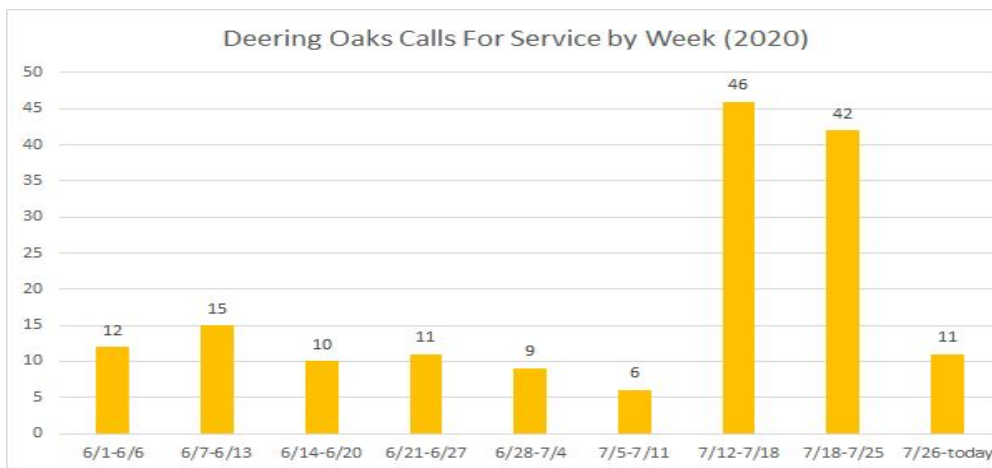
July 25 - 1 sexual assault

July 27 - 2 drug overdoses
1 crash
1 large fight

City Hall - Incident Reports:



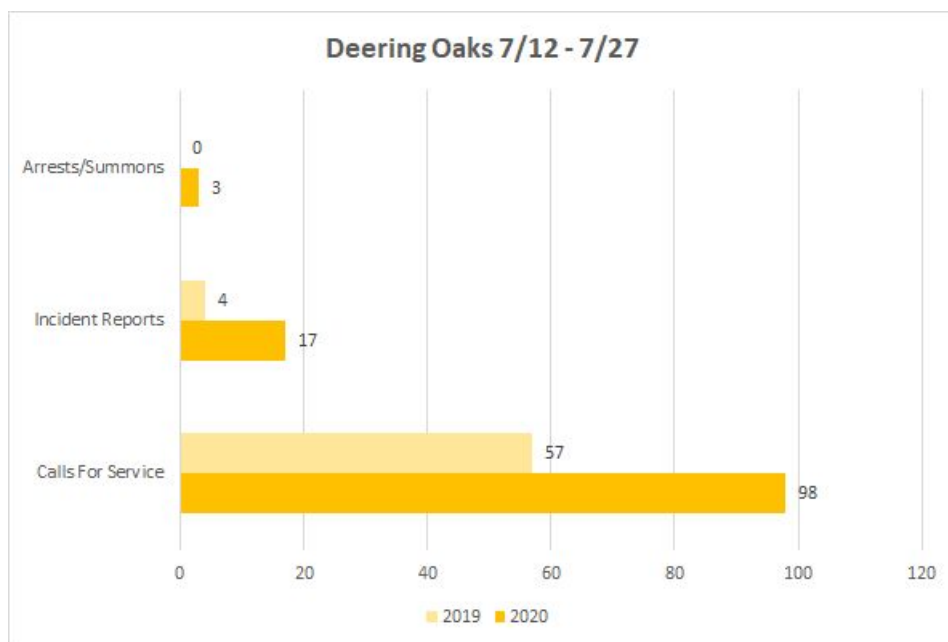
Deering Oaks - Call for Service:



Call Type	# of Calls	Call Type	# of Calls	Call Type	# of Calls
Assault	1	Pedestrian Check	31	Suspicious Activity	2
Assist Citizen	1	Persons Bothering	3	Unknown Medical Problem	3
Assist Fire Department	1	Special Attention Check	20	Walking A Foot beat	4
Drug Overdose	8	Check Well Being	1	911 Hang Up	5
Flagged Down	4	PI Crash	1	Assist Other Agency	1
General	6	Layout	1	Assist MedCu	2

Disturbance					
Indecent Exposure	3	Juvenile Offense	1	TOTAL	99

Deering Oaks - Incident Reports:



During our responses, our officers are being increasingly met by confrontational individuals and groups, some who self-identify as the “police liaisons” and some who link arms and attempt to physically prevent our officers from responding to the situation in question. Our officers have done well to de-escalate these situations, to date, but we are concerned that such behavior may escalate and lead to future confrontations and / or arrests. Although this is a community problem requiring a community solution, as we’ve discussed, I believe the Police Department can assist with making positive impacts on the current situation at both locations and play our part in the ultimate solution.