

City Council Workshop
August 10, 2015
6:30 P.M.
City Council Chambers

Councilors Present

Linda Cohen, Mayor
Claude Morgan
Thomas Blake
Maxine Beecher

Councilors Absent

Melissa Linscott
Patricia Smith
Brad Fox

Staff Present

Jim Gailey, City Manager
Susan Mooney, City Clerk

MINUTES

Mayor Cohen opened the meeting and welcomed all in attendance. She reminded folks that members of the public are invited to comment on each item as it comes before the Council for a period of no more than two (2) minutes. All questions or concerns would be made through the Chair and if they wished to address the City Council they would be asked to please raise their hand and upon being recognized would state their name and address for the records.

- 1. Single Use Carry Out Bags**
- 2. Ban on Polystyrene**
- 3. Tax Acquired Property – 757 Main, Unit 29, 40 Maine Turnpike Spur, 2A Gerry Avenue**
- 4. Review of Upcoming Workshops**

1. Single Use Carry Out Bags: Jim Gailey, City Manager explained that earlier this year, the City Council placed the discussion of a ban on single use bags on the workshop agenda (TBD list). The use of single-use bags has significant environmental impacts that include littering our waterways, opens spaces, getting caught up in trees and along curb lines. Many believe these bags are recyclable and/or biodegradable, making them environmentally friendly. Actually, the opposite is true. Although some bags do get recycled by the limited number of facilities that take the product, many find their way into our landfills, waste-to-energy plants and environment. Similar to the polystyrene ban, the item was not immediately scheduled for workshop by the Council on the belief that other communities in the Greater Portland area were also interested in the same type of ordinance. In April, the City of Portland implemented its prohibition of single use bags throughout its community. For consistency sake, staff believed if there were enough communities interested in such an ordinance, maybe all the communities would develop a model ordinance, creating consistency from one community to another. Staff participated in a meeting in late June at the Greater Portland Council of Governments, in which the topic of the meeting was to discuss single use bags and polystyrene. Two things became

very evident early in the meeting 1) not many communities are pursuing the ban on polystyrene; and 2) all communities at the meeting were at a different place when it came to single use bags (plastic bags).

A positive, of the meeting, was having the opportunity to hear from the Portland representatives who gave a thorough background of their committee process and ordinance development process. Being the most recent community in the region to pursue such an ordinance, Portland officials shared the positives and negatives of their process and how they arrived to the finished product. It was very informative and led staff to question our process.

Below I have highlighted points of the Portland Ordinance:

Clear definitions of single-use carryout bag; produce bag or product bag; reusable bag; store; and “store” does not mean.

Store makes available single-use bags for minimum of 5 cents.

Monies collected stays with the store to be used in a lawful purpose.

All stores must post signs indicating the single-use bag charge.

The store needs to separately itemize on the receipt the cost of the single-use bags.

No store can rebate or reimburse the cost of the single-use bag.

The City Manager can approve an exemption on an emergency basis.

The store needs to keep accurate records of the purchase and sale of single use bags for a minimum of 3 years from the date of purchase and sale. Records are open for inspection by the City.

Incomplete documentation is a violation of the ordinance.

City Manager or his/her designee has enforcement and fines ability.

He wanted to make special note of the definition of single-use carryout bag in the Portland Ordinance. He thought that many people may think that the Portland Ordinance is specifically geared towards plastic bags; however, the ordinance is much broader and includes the traditional paper bag too. The definition reads: “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. Also important is what “store” means and does not mean in the ordinance.

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’s 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.

Last week he spoke with a manager of a Portland high volume grocery store about how the single use ban ordinance is working. The manager could not be more complimentary of the process the City of Portland went through and feels that the communication and education leading up to the “effective date” was key in the implementation of the ordinance provisions. He does not hear of any

complaints or issues around the 5 cents per bag and most regulars have made the switch to reusable bags.

The manager of the grocery store in Portland made special mention that Portland's education and communication were integral in making for a smooth process and full adherence of the ordinance. Though the City Council may act on ordinance language in the coming months, staff recommends that the "effective date" is at minimum six months away if not longer. Portland adopted their Ordinance in June of 2014. Their polystyrene ban became "effective" in July 2015. This time period allows for merchants to find alternative products and for the City to educate the public and merchants of the provisions of the ordinance.

Similar to the polystyrene ban, staff believes that consistency is very important when developing and interpreting ordinance language. Knowing the process that Portland went through, it seems to make sense that we follow its lead and explore a very similar ordinance, if not the same one. This will provide consistency from one community to the next and have the same rules between the two neighboring communities. I have talked with Portland officials and they are supportive of South Portland basing our ordinance language from Portland's (they are looking to us for a pesticides ordinance).

Public Comment Opened:

Russell Lunt Brigham Street asked about the smaller stores and had concern for them and loss of revenue.

Patricia White Orchard Street felt that this was a great ordinance that Portland created and added that most people already use cloth bags. She did not feel that it should require a lot of lead time or education and would think that most people would be ok.

Rachel Berger 17 Churchill Road felt that this was a great way to move and would agree that a shorten time period to begin would be ok.

Public Comment Closed:

Councilor Beecher asked about the education provided in Portland and what the 8 month to a year wait would be for? She felt that the time is now and that she was in support to move forward, she also added that she had not heard about folks from Portland complaining about the new ordinance.

Jim Gailey explained that there would be notices posted at stores and other public buildings well as the local newspapers, etc. He added that the bag supply that each store has would not be involved here.

Councilor Morgan was in support with this entirely and felt that the sooner the better to put this into action. He felt that the recycling programs have been here and people have used them and felt that people would be ready for this. He asked about businesses and their lead time as well as expenses for them and asked if they would need more time or not. He compared this process to Portland and felt that the time is now in keeping with consistency.

Councilor Blake agreed with all who have spoken and felt that it should be done on a larger level but appreciates all that is being done. He further discussed the education to people and agreed to use the Portland ordinance which would be fair. He added that looking to the findings is what needed to be done, environmental and wildlife as well. He asked about the paper bags and why these would be included as trees are a Maine product, biodegradable and so many are made in Maine and felt that this should be taken out. He suggested using the 5 cents toward environmental education work, handouts for consumers and citizens alike and felt that the Sustainability Coordinator could help with this process.

Councilor Morgan discussed the paper bag issue and was in support of going with all bags and keeping consistent with Portland.

Councilor Beecher discussed the educational process here and how the paper bags could end up in the regular trash as well. She added that this is a good time of the year to look at this process with back to school time.

Councilor Blake suggested considering paper but would not hold back because of this and would like a reason for not accepting paper. He asked about reusable's being made elsewhere and a percentage for nonprofits.

Mayor Cohen discussed how this will affect places that have 2% of sales being food. She added that most people keep their bags in their vehicles and would also like feedback from people in the City. She further discussed having bags that are not clean which could be a problem and felt that if they take on one issue at a time that would be best, know the policy and have store follow the same rules in all communities. She agreed that something needs to be done regarding the plastic and easing into this change as well as this being a good time of the year to start the process.

Councilor Morgan added that for scooping up dog waste you can purchase bags at the local pet stores for this use.

Jim Gailey explained that stores will still be able to use the plastic bags, they will just charge the consumer 5 cents each and the stores would keep track of how many are used and sold, they will have to do the bookkeeping and will ask about the 2%.

2. Ban on Polystyrene: Jim Gailey, City Manager explained that Polystyrene, or as it is commonly referred to as Styrofoam®, is a petroleum-based plastic made from the styrene monomer. A light weight, good insulator, polystyrene is largely air. Many products use polystyrene to either keep items warm or cold, or use the product to pack and ship items safely. Polystyrene is not easily recycled and when littered or discarded, creates undesirable impacts on water quality, stormwater, and wildlife. There are alternatives that are reusable, recyclable or compostable, which are already on the market and readily available.

Earlier this year the City Council placed the topic of a ban on polystyrene on the workshop tentative agenda. The item was not immediately acted on based on the belief that other communities in the Greater Portland area were interested in the same type of ordinance (along with single use bags). Freeport was the first community in the region to ban polystyrene, which dates back to the early 1990s. As we know, the City of Portland in April implemented its ban on polystyrene throughout its community. For consistency sake, staff thought that if there were enough communities interested in such an ordinance, maybe the communities could develop a model ordinance, creating consistency from one community to another.

Staff participated in a meeting in late June at the Greater Portland Council of Governments, in which the topic of the meeting was to discuss single use bags and polystyrene. Two things became very evident early in the meeting 1) not a lot of communities are pursuing the ban on polystyrene; and 2) all communities at the meeting were at a different place when it came to single use bags (plastic bags). The communities ranged from York to Topsham, with very little representation from Greater Portland.

A positive, of the meeting, was having the opportunity to hear from the Portland representatives who gave a thorough background of their ordinance development process. Being the most recent community in the region to pursue such an ordinance, Portland officials shared the positives and negatives of their process and how they arrived with the finished project. It was very informative and led staff to question our process.

Portland's Prohibition Language:

- (a) No retail vendor in the City of Portland shall serve or sell prepared food and no food packager shall package meat, eggs, bakery products or other food in polystyrene foam containers.
- (b) No retail vendor in the City of Portland who sells tangible personal property at retail shall sell polystyrene foam food or beverage containers.
- (c) The City shall not use polystyrene foam food or beverage containers at any City facility or City-sponsored event.
- (d) No City department or facility shall purchase or acquire polystyrene foam food or beverage containers.
- (e) All parties who contract with the City shall be prohibited from using polystyrene foam food and beverage containers in City facilities or on City-funded projects within the City. Exemptions in the Portland Ordinance include:

- (a) The sale and packaging of raw seafood is exempt from the provisions of this Article.
- (b) Retail vendors and food packagers that are currently existing or are established in the city by the effective date of the ordinance will be exempted from the provision of this Article prohibiting the use of polystyrene foam for a period of time to be determined by the City Manager or his/her designee in writing on a case-by-case basis for undue hardship. Undue hardship includes, but is not limited to, situations unique to the food vendor not generally applicable to other persons in similar circumstances.

The enforcement powers are held by the City Manager or his/her designee and a stepped process of warnings and fines are included in the oversight of the ordinance. Similar to the single-use bag ordinance, staff believes consistency is very important when developing and interpreting ordinance language. Knowing the process Portland went through; it seems to make sense that we follow its lead. Adopting an ordinance similar to

Portland will provide consistency from one community to the next and have the same rules between the two neighboring communities. I have talked with Portland officials and they are supportive of South Portland basing our ordinance language off from Portland's.

Education and communication are very important through the implementation of such an ordinance. Though the City Council may act on ordinance language in the coming months, staff recommends that the "effective date" is at minimum six months away if not longer. Portland adopted its Ordinance in June of 2014 and the polystyrene ban became "effective" in April 2015. This time period allowed for merchants to find alternative products and for the City to educate the public and merchants of the provisions of the ordinance.

It is worth noting that the State of Maine has banned the service of food and beverages in polystyrene foam containers at facilities or functions of the State since 1990. Over 95 cities across the United States have in one form or another banned the use or sale of polystyrene.

For discussion, I have included Portland's and Freeport's ordinance. Staff will be looking for Council's guidance on direction. City staff has notified businesses that could be potentially impacted by such ordinance. A letter sent out to them outlining the City's intentions and invited them to Monday's meeting.

Public Comment Opened:

Patricia White Orchard Street was in support of this idea of banning polystyrene and hoped that this measure would not increase the use of plastic. She agreed with the process of getting rid of products that sit in land waste facilities forever and changing to products that are recyclable and interchangeable would be best.

Linden Thigpen 148 Hillside discussed the limiting of the use of petroleum products overall and using our own cups, etc.

Rachel Berger 17 Churchill discussed plastic can holders and areas of junk.

Andy Hackman Union Maine discussed the work of his company who makes such products and how they use less energy to make polystyrene than not. He added that it is 100% recyclable but just hard to find places that can do this and getting it back into the system. He discussed the offering of recycle options and sitting on supply if not using in time while working on recycling efforts.

Russell Lunt Brigham Street asked about restaurants and how they would be affected as well as concern for the smaller facilities as well.

Will Fitzminor Pine Street cautioned the Councilors when drafting an ordinance from folks that may have arguments with this proposal.

Councilor Morgan felt that there were great points being made and had concern for the wetlands that hold polystyrene waste along the sides. He discussed some alternatives to this use and felt that there was enough of a market to not hurt the smaller business, he was in full support to move forward and revisit in a few months to tweak, etc.

Councilor Blake was in support of this proposal and felt the need to move forward and to work with people on the transition. He asked about the exemption of seafood and felt that ice and cold should keep seafood safe for shipping. He cautioned on exempting one item and not others and wondered how and why they did this in other areas. He further discussed Freeport's findings as well.

Jim Gailey explained that it is hard to get vendors that will take this product and the need to look into shipping down to another place.

Councilor Beecher asked Mr. Hackman if his company produced the Styrofoam cup and how they would recycle these (a bin set-up for take-backs) and would be hesitant with this and did not see the efficiency here.

Mayor Cohen asked about larger stores that sell things with Styrofoam for packing large items and wondered about the impact on these stores. She did not like Styrofoam but felt that it was not quite hand and hand with the plastic as it may cost businesses more money when not using it any longer. She further discussed the easing in of this part for six months and again questioned the cost for the larger companies.

Councilor Beecher felt that these were separate issues as well and agreed to move forward but with some time to phase in.

Councilor Blake was also ok with a phase-in period but was not sure on the costs involved for the companies. He asked about the packaging regarding TV's, food, etc.

Councilor Morgan agreed on taking time to roll out and move away from the expended resource of packaging. He further discussed the reuse of these products and thanked the City Manager for all of the work that went into this proposed item.

Mayor Cohen felt that there was a lot of things to work on and fix but would like to do more research first and then come back to further discuss as well as looking into the question regarding seafood.

3. Tax Acquired Property – 757 Main, Unit 29 40 Maine Turnpike Spur, and 2A

Gerry Avenue: Jim Gailey, City Manager explained that this item is brought forward to discuss the disposition tax-acquired property located at 757 Main Street, Unit 29, 40 Maine Turnpike Spur and 2A Gerry Avenue

Annually staff is required to bring forth the tax-acquired property for review by the Planning Board, who makes a recommendation to the City Council. Below is the Chapter 2 Ordinance provision that governs tax-acquired properties.

Ord. Section 2-171(2)(a) Tax Acquired.

1. The director of finance shall maintain a list of all tax acquired property and shall send a list of the most recent tax acquired property to the planning board each year for its recommendation as to the disposition thereof.

2. The planning board shall review said annual list and forward its written recommendation to the city council indicating whether said properties should be retained by the city. The city council shall then review the planning board's recommendation and determine which properties, if any, to offer for public sale. Residential properties which are occupied by the prior owner and for which regularly scheduled payments are being made shall not be offered for sale.

3. If a property to be offered for sale is prior owner occupied single-family property, it shall first be offered to the previous owner for a price to be determined by the city council; provided, however, that in no event shall such price be less than the total of all back taxes, interest, costs, and any and all other charges properly assessed thereon by the city.

4. Thereafter for those properties to be offered for sale, the city council shall determine the method of sale. Methods may include, but are not limited to, brokerage sale, negotiated sale or public bid process. The city reserves the right to establish such conditions or restrictions on the subsequent use of the property as it deems in the best interest of the city. If the property is put out to public bid for sale to the highest bidder, the city shall reserve the right to establish a minimum bid, to reject any bid less than the stated minimum bid, and to establish such other conditions or restrictions on the bid it deems in the best interest of the city.

5. Following approval of the method of sale by the city council, the city manager is authorized to complete the sale, including execution and delivery of the deed and such other paperwork reasonably incident to the sale. The proceeds of the sale shall be distributed in the following manner to the extent that funds are received from the sale: first, all taxes, interest and cost under the tax lien foreclosure process shall be paid to the city, including all costs incident to the sale of the property; and second, all outstanding assessments or other lawful charges incurred by the city in providing services to the property. Any such distributions shall not be considered part of the "net proceeds" of the sale for purposes of Section 18-76(4) of the Code of Ordinances. This past January, three properties fell into tax-acquired status. Below is a brief description of each property.

757 Main Street

The property is shown on the City's tax maps as Map 63, Block 29A, Lot 113. The property is a one bedroom condominium unit and is zoned Residential District A. The assessed valuation is \$89,600. The unit has been vacant since 2011 and has been maintained by the condo association. Trash and food were removed and spraying for bugs was done. The condo association is charging the City monthly condo fees of \$184.00.

2A Gerry Avenue

The property is shown on the City's tax maps as Map 53, Block 2A, Lot 85. The property is a two bedroom condominium unit and is zoned Residential District G. The assessed valuation is \$148,500, but has not been adjusted based on the property's current very poor condition. The property has experienced ruptured pipes, water damage and related serious mold issues and it is anticipated that the property will require substantial mold remediation. The former owners abandoned the property about 4 years ago. The property was in bankruptcy and in foreclosure with their mortgage company. After the property was released from bankruptcy, the City initiated final foreclosure proceedings and the mortgage company elected not to pay the back taxes. In January of 2015, an investment firm, Asset Management Holdings 707, LLC, purchased the mortgage to this property without knowing it had been tax acquired. This firm has offered to buy the unit from the City for \$10,000. This would pay off the outstanding taxes and sewer. This condo is one of three condo's occupying the property at 2 Gerry Avenue. Two of the three condos are vacant; however,

the one occupied condominium on the property is upstairs from unit 2A. Staff has been in contact with the owner of the upstairs condo 2B and has received keys to unit 2A.

40 Maine Turnpike Spur

The property is shown on the City's tax maps as Map 78, Lot 119 and is a vacant piece of land. The assessed value is \$9,100. It is zoned Residential District A. It does not have legal street frontage. The Planning Board held a public hearing on June 9, 2015. By a vote of (5-0) (E. Giles absent, District 3 vacant) recommended the City Council sell all three properties. I have included a copy of the Planning Board report.

Public Comment Opened:

Chris Crawford Scarborough owns and manages four condominiums at Kingswood Park Condos and would like to purchase the property from there. He understood that it is in need of large improvements which may be \$20,000 and also asked about a warranty deed.

Public Comment Closed:

Jim Gailey added that he understood that there would not be a warranty deed but only a quick claim deed and asked that the Council let him know if they have interest in selling the properties. He added that the one on Gerry Ave. is full of mold and they at least need to remove this and try it get it suitable to sell.

Councilor Morgan asked about bid methods and if there were several ways of doing this. He had no problem with the Main Street condo being sold as a private sale to someone who owns several others nearby. He had concern with Gerry Ave. and having the City profit from a troubled homeowner and would like to go back to see about reversing this order of moving ahead.

Greg L'Heureux Finance Director let the mortgage company know that they were foreclosing and the owners had walked away from the home, the company then sold it to a 3rd party after the City had begun to process the fore closer.

Mayor Cohen explained that the process of reconsideration can't be done unless it is right after a meeting.

Councilor Morgan did not like the way this was done and asked about a surplus and if the money goes to the next in line. He urged for reconsideration and added that they only need back taxes for this property and felt that they are in a little triangle here.

Councilor Blake discussed the triangle land piece and the larger piece of land next to this one in regards to buying it he felt that it made sense. He further discussed Kingswood Park, Mr. Crawford and having no special interest here, simply wanting an investment, fix it up for a market that is doing well right now. He felt the need to get it cleaned up and ready to sell.

Jim Gailey discussed the unit being below market value unless it is fixed and brought up-to-date, and added that Mr. Crawford has seen this.

Councilor Blake discussed Gerry Ave., voting on this and offer additional to this one or if there was an interest in this spot. He discussed cleaning this up, getting rid of the mold and putting it up for auction if this works out to be the most cost effective for the City.

Councilor Beecher asked about the current bid out there on this property and if this would make a difference. (no) Agreed with the cleaning out of the mold and dirt and putting this up for auction. With Kingswood Park she was not sure regarding presenting of this and auctioning off as well and added that this would be a triangle and offering it to the neighbor.

Jim Gailey discussed that this would work out fine if they were just doing a quick claim but people are leery of that process as they do not want to end up with other problems.

Mayor Cohen discussed the triangle here and about offering this to the neighbor or MDOT, she did not like the foreclosure process in which they need to get back taxes and sewer payments but not happy with the process. She suggested not removing the mold, but letting the buyer do it as we may worry about not getting it all completely. She felt putting both of these out to bid was the best answer.

Councilor Blake was ok with an auction without mold removal but added that there are companies that do this and do it well.

Jim Gailey discussed stripping this out, spraying it to get rid of all mold and having assurance and peace of mind was the original thought process. He discussed acquiring a perfected title on the two condos as well.

4. Review of Upcoming Workshops: Jim Gailey, City Manager explained that this item was brought forward to discuss upcoming City council Workshops. This discussion is done on a monthly basis.

Mayor Cohen asked if they could leave August 31 open if possible.

Councilor Morgan asked about the item of legalization of Marijuana and if there was interest in this discussion? (no)

Councilor Beecher asked about Standing Rules, Goal Setting, Team Work Building and Spring Point Marina as well as an offsite retreat place that may offer sessions in Team Building.

Councilor Blake seconded this one and felt that there was room for improvement.

Jim Gailey added that August was hard as Craig Freshly who would facilitate/coordinate the Team Building is very busy and they may need to wait until after election time.

Councilor Blake Old Joes Pond discussion on keeping this on the list for a few months, zoning for solar panels and making alternative energy uses easier for folks.

Mayor Cohen seconded that idea.

Jim Gailey discussed a possible NGL proposal for Sept. 14, 2015, Off-street Parking issue and parking lot use, update on Public Works Facility, Environmental report, movement on new facility, natural gas, bio-mass, costs and benefits to this.

Susan Mooney added that the Standing Rules were all ready for adoption.

August 24, 2015

Public Works Facility Updates

Standing Rules

September 14, 2015

NGL Proposal

Off-Street Parking

Review of upcoming workshops

September 28, 2015

Tour of Thornton Heights

The City Council Workshop Adjourned at 8:45 p.m.