

## The Oregonian

# Editorial: A Scare Tactic? Yes, But Warning Signs a Good Start

*By The Oregonian Editorial Board  
October 1, 2018*

The Portland City Council will vote Wednesday on whether to require warning signs on about 1,600 historic buildings that are likely to collapse in a catastrophic earthquake.

At first blush, it seems a bit ridiculous, not to mention unfair for the building owners marked with what they characterize as the "scarlet letter." What's next: Marking corners on busy streets where someone might get hit if they walk out while reading their phone? Or labeling every city tree that could blow over in a storm?

Yet while the city can - and should - do more to prepare for a Cascadia quake, the warning signs are a decent first step that Portland City Council should approve without further delay.

For purposes of transparency, it's important for Portlanders to have information about the potential risks of these buildings, which have at least one wall without steel reinforcements. And the wording - required near front doors in 50-point type -- isn't overwrought: "This is an unreinforced masonry building. Unreinforced masonry buildings may be unsafe in the event of a major earthquake."

About 1,400 of the buildings are used for office space, 44 are schools, 38 are churches and 42 are city owned. It's appropriate that city leaders set January as the earliest deadline for posting signs on their own unreinforced masonry buildings. Private owners have until March to post the signs that cost about \$20 to create. Nonprofits have until 2020.

The best argument for the signs is that about 248 of the buildings are used for housing. That breaks down to about 7,700 units, 1,800 of which are publicly financed affordable housing.

Potential renters should have this information, which the ordinance also requires to be spelled out in lease agreements. Truth be told, many renters in this housing crisis may not have the luxury of choice if proximity to the city's core is a priority for jobs or school. (The majority of the 1,600 buildings are in Northwest and inner Southeast Portland.)

But understanding the potential risk may motivate renters to craft a plan of how to shelter and escape when the big one hits.

Voting to require the signs is a start, but this move toward transparency is a weak replacement for true safety improvements. In fact, committees that worked over a period of two years called on city leaders to find ways to help fund retrofits on the most needed buildings over the next decade, such as through grants and tax exemptions. The committee recommended warning signs only as a voluntary program for nonprofits and churches, which are already exempt from taxes.

City leaders say they are committed to earthquake preparedness. They plan to push for legislation in Salem to create a statewide grant program that would reimburse business owners for up to 35 percent of the high cost to upgrade buildings. That's good, as is work to get other local taxing districts on board in providing exemptions for owners who invest in retrofits.

But City Council pushed out the committee's recommendations, setting the retrofit deadline 20 years out. That move undermined their argument that earthquake preparedness is truly a top

priority. As does their tendency to spend precious public dollars on programs outside core services.

Earthquake warning signs are a start. But if Portland's leaders want local businesses and building owners to make earthquake preparedness a priority, so should they.

## **Portland May Sue Trump's FCC Over New 5G Tech Rulings**

*By Gordon Friedman  
October 3, 2018*

The Portland City Council on Tuesday cleared the way for the city to sue the Trump administration over new rules kneecapping cities' ability to recoup fees from telecom providers.

By its action Tuesday, the City Council added Portland to a growing list of cities, primarily on the West Coast, that are preparing to fight Donald Trump's Federal Communications Commission over what officials view as a needless freebie to cable companies.

"This is a property grab by the federal government," Mayor Ted Wheeler said at the Council meeting Tuesday, called last-minute to approve legal action.

Telecom providers are hoping to deploy new 5G wireless technology in large American cities, promising superfast internet speeds to customers. But to do that, they need access to thousands of city-owned poles and fixtures, to which the companies would affix signal transmitters. Like other cities, Portland offers access to its infrastructure only if a company pays a fee.

But two new FCC rulings threaten those arrangements. They in essence limit what cities may charge for access to their rights-of-way, Maja Haium, a deputy city attorney, told the mayor and commissioners at the special City Council meeting Tuesday.

Haium said city attorneys are "very concerned" about the FCC orders, which may expose Portland to lawsuits from the federal government for rule violations. Beyond the legal problems, Haium said the orders would "significantly undercut" city cable revenues. Under one new FCC order, cities may charge cable companies only \$270 per year for each attachment of hardware to city property, Haium said, rather than the \$3,000 per year that is typically assessed.

Portland has been hugely accommodating to one internet provider in particular, Google Fiber, going so far as to waive fees that Comcast pays in exchange for Google providing internet service to nonprofits. At the time, Portland badly wanted another competitor in the high-speed internet and cable TV market.

Commissioner Chloe Eudaly did something rare for Portland politicians: She eliminated a city fee.

Google Fiber was on the cusp of launching service in Portland in July 2016 but abruptly scrapped those plans in part because it was considering less expensive, wireless alternatives to its wireline internet service.

City officials may not feel a need to be so accommodating on 5G negotiations, because at least three wireless providers are likely to offer the exceptionally fast internet access.

The City Council adopted the FCC lawsuit resolution 4-0, with Commissioner Dan Saltzman absent.

Wheeler said his administration will negotiate with telecom providers on placement of 5G technology, while also partnering with other cities "to protect the public's right" to manage city-owned property.

"We hold these public right-of-way assets in trust for the public and it's our duty to fight for the right to manage these assets," the mayor said.

Commissioner Chloe Eudaly, who as transportation commissioner will play a key role in 5G negotiations, cast Trump's FCC as inept. She said the federal commission gave cable giants a "corporate giveaway" they should not have.

"I hope the next administration will appoint competent people to the FCC, who will help us solve problems instead of creating new ones," Eudaly said.

Portland and the FCC are already at odds over net neutrality rules and local control of telecom policy. Local control is a fight Portland waged aggressively in the '90s but had largely abandoned during the Obama administration. A willingness to sue the FCC over 5G fees could be an indicator Portland has an interest in renewing its dispute.

## **Eudaly Nixes Portland Leaf Collection Fee**

*By Gordon Friedman  
October 3, 2018*

Commissioner Chloe Eudaly has done something rare for Portland politicians: She eliminated a city fee.

Eudaly, the city transportation commissioner, announced Tuesday that she has axed the leaf fee charged annually to residents of more than 50 "leaf districts," according to a news release. The districts are areas "that account for the vast majority of leaves that fall on city streets," the announcement said. The districts also encompass the city's toniest neighborhoods, and no areas east of Mt. Tabor.

The city has for decades collected leaves in the districts and since 2010 has charged for the service. The fee is \$15 for small residences and \$65 for businesses and apartment complexes with four or more units.

The Portland City Council on Tuesday cleared the way for the city to sue the Trump administration over new rules kneecapping cities' ability to recoup fees from telecom providers.

Eudaly, who last month was put in charge of the Portland Bureau of Transportation by Mayor Ted Wheeler, said the fee was "not meeting its intended goal" as a method to recoup the cost of leaf pickup and so she did away with it.

By ending the fee, she said, "we will save on administrative costs, our streets and storm drains will be cleared and Portlanders will have one less fee to pay."

Dylan Rivera, a spokesman for the Transportation Bureau, said the leaf fee brought in between \$425,000 and \$530,000 each year of its existence, and \$3.6 million over its lifetime. Leaf pickup costs during that time were \$7.6 million, including the cost to collect the fee, Rivera said.

Leaf removal costs will now be paid by the Transportation Bureau's general fund, the same fund that pays for snow and ice removal and patching potholes. Chris Warner, the bureau director, said he does not anticipate that eliminating the leaf fee will affect other bureau services, like plowing and pothole repairs.

Though the leaf collection fee is no more, the service remains the same, according to the Transportation Bureau. Leaf collection will begin November 9, the bureau said.

## **Appeals Court Revives Challenge of Portland's Anti-Camping Ordinance by Man Living Under Bridge**

*By Maxine Bernstein*

*October 2, 2018*

A federal appeals court has revived a homeless man's case challenging Portland's anti-camping ordinance as a violation of the Eighth Amendment against cruel and unusual punishment.

Michael O'Callaghan filed a lawsuit in 2012 after getting his plywood, tarps and other belongings confiscated multiple times. He contends the ordinance banning camping on public property is unconstitutional as it applies to "thousands of Oregonians who have no place to sleep."

The 9th U.S. Circuit Court of Appeals this month sent O'Callaghan's case back to U.S. District Court for consideration. It had been dismissed in 2015.

In its decision, the appeals court cited its recent ruling in a case out of Boise that found such prohibitions may be unconstitutional when enforced against homeless people who have no access to an alternative shelter.

"It's great," O'Callaghan, 74, said Tuesday, speaking by phone to The Oregonian/OregonLive from his shed beneath the Ross Island Bridge, where he now lives. "It means the court will take a serious look at this."

City attorney Tracey Reeve said she couldn't comment about the ongoing litigation.

O'Callaghan's lawsuit stemmed from a 2011 encounter he had with a park ranger and Portland police. He had put up a temporary structure using plywood and tarps at Southeast Ivan Street and Fourth Avenue. On Feb. 3, 2011, the city posted a notice of illegal camping at the site when O'Callaghan was present. A police officer also told him then that the makeshift shelter would be removed in five days and urged him to take his possessions before then.

As promised, a city cleanup crew five days later took down the plywood and tarps as O'Callaghan filmed them.

The removal followed O'Callaghan's Jan. 26, 2011, arrest on suspicion of second-degree criminal mischief and the city's issuance of a 180-day park exclusion after police officers and a park ranger found him digging a large cave with a pickax into a public embankment off the Springwater Trail. The cave was about 4 feet wide, 4 feet high and 8 feet deep, reinforced by wooden planks, the city said.

U.S. District Judge Anna J. Brown dismissed O'Callaghan's lawsuit, distinguishing Portland's ordinance from other cities' laws. Brown said it prohibited camping, not merely sleeping. She found that the city ordinance, as written, didn't criminalize status but conduct and was constitutional. She also found there was a rational and legitimate government interest to ensure public safety and sanitation.

From Michael O'Callaghan's handwritten appeal to the 9th U.S. Circuit Court of Appeals

O'Callaghan wrote an appeal on 25 pages of lined paper while sitting at the Ford, Food & Drink coffee shop in Southeast Portland. He represented himself when he filed the appeal two years ago, but the appellate court soon appointed him lawyers.

"Authorities destroyed the plaintiff's home," he wrote. "Removed it with no recovery. Nor did any law authorize destruction and removal of private property. No citation. No due process. Clear."

He and his lawyer argued that the city's anti-camping ordinance essentially bans sleeping outside and that the government can't criminalize conduct based on a person's "status or personal condition."

"Enforcing such a ban in Portland, at a time when the city has nowhere near the space to shelter all of the homeless, is unconstitutional," wrote Washington, D.C.-based lawyer Matthew Waring. "Everyone must sleep, and the only place where Portland's homeless can sleep is on public property -- where the ordinance makes their sleeping criminal."

City attorneys countered that the ordinance prohibiting camping on public property or a public right-of-way is directed at specific conduct done with a specific intention— that is, camping to establish a temporary place to live.

"It does not prohibit persons from sleeping on public property or public rights-of-way so long as they do not intend to 'dwell,' 'reside' or 'make their home' in those places," Deputy City Attorney Dennis Vannier wrote.

The city also pointed out that O'Callaghan was never charged with or convicted of violating the ordinance and argued that the Eighth Amendment applies only to criminal convictions. O'Callaghan, they also said, isn't "involuntarily homeless – quite the reverse," noting he has income from two trust funds.

But O'Callaghan's lawyer replied that Portland's ordinance defines camping as temporarily living in a place "with any bedding, sleeping bag, or other sleeping matter," suggesting that sleeping outside with a pillow and blanket would be prohibited.

The 9th Circuit ordered a U.S. District judge to decide whether the city ordinance, as applied to homeless people, is constitutional. It didn't overturn O'Callaghan's conviction for second-degree criminal mischief.

O'Callaghan said he's been living under the Ross Island Bridge for the last four months. His shed has two shelves inside, a brown tarp over it and a door that locks.

He described himself as "voluntarily homeless," saying he receives \$800 a month in Social Security income and doesn't want to spend a big chunk of it on rent. The divorced father of four children lived in Alaska for 35 years before returning to Portland, his hometown, about 12 years ago, he said. He had worked in logging, landscaping and home construction.

He doesn't want to sleep in a shelter. "Oh God, are you kidding me? With all those people coughing and hacking," he said. "Would you want to sleep in a situation like that?"

Earlier this month, O'Callaghan filed a new legal complaint against the city in federal court, arguing that the city has seized his property without due process.

## **The Portland Tribune**

# **City Hall Update: City Council Gives Marijuana-Related Businesses a Break**

*By Jim Redden  
October 2, 2018*

### **Plus, filtration project manager chosen and historic preservation project moves forward.**

The City Council lowered licensing and other fees for marijuana-related businesses in Portland last Wednesday, including providing financial incentives for small companies that are partly owned by or employ a percentage of people previously convicted of marijuana-related crimes.

The changes were submitted by Commissioner Chloe Eudaly, who oversees the Office of Community and Civic Life, which manages the city's role with marijuana-related businesses.

"Though Oregon voted to legalize cannabis in 2014, cannabis prohibition still negatively impacts individuals and entire communities today," Eudaly was quoted as saying in a news release.

### **Filtration project manager chosen**

The Portland Water Bureau has picked a California company to manage the project to build the filtration plant approved by the City Council to remove contaminants from Bull Run water.

Portland must build the plant by 2027 under a compliance schedule with the Oregon Health Authority. The management contract with Brown and Caldwell approved by the council on Aug. 29 is not to exceed around \$68 million. The total project currently is estimated at \$500 million.

The council approved construction of the plant after the potentially harmful cryptosporidium parasite repeatedly was found in water in the Bull Run Watershed, the primary source of the city's drinking water.

### **Historic preservation project moves forward**

The Historic Landmark Commission approved a project on Sept. 24 to preserve and expand the historic Buck-Prager Building as a 148-unit affordable housing project.

The building at 1727 N.W. Hoyt St. was built in 1918 as a maternity hospital. It had been proposed for demolition but now is scheduled to be redeveloped by Northwest Housing Alternatives for seniors and low-wage workers.

Some area residents oppose the project as too large and the Northwest District Association now is deciding whether to appeal the approval to the City Council.

## **PBOT Drops Leaf Day Fees**

*By Jim Redden  
October 2, 2018*

### **Interactive map shows schedule for collection service, which will begin on Sept. 9.**

The Portland Bureau of Transportation will no longer charge a fee for picking up leaves, an annual services that begins again this year on Nov. 9.

Since 2010, PBOT charged residential customers \$15 per leaf removal. Commercial and multi-family properties with over four units were charged \$65 per removal.

But, according to Transportation Commissioner Chloe Eudaly, the fee has never come close to covering the cost of the service and has discouraged residents and businesses from participating.

"When a policy is not meeting its intended goal, we shouldn't be afraid to reevaluate it and change course if necessary," said Eudaly, who assigned PBOT by Mayor Ted Wheeler in early September. It was previously overseen by Commissioner Dan Saltzman.

The service is called Leaf Day, although it actually takes weeks to provide it in the entire city.

PBOT has released an interactive map of when leaves will be picked up in the 52 collection districts across the city. You can find it at [tinyurl.com/ya4mhhs](http://tinyurl.com/ya4mhhs).

According to PBOT, the tree canopy covers a significant portion of the city. In autumn, wet fallen leaves can become very slick, creating potential hazards for people walking, biking, rolling or driving through tree-lined neighborhoods. Leaves can also clog storm drains and thus contribute to street flooding during heavy fall rains. To help address these hazards, city crews have been removing thousands of cubic yards of leaves from Portland streets for more than three decades.

## **Builder Wins Duplex Driveway Flap**

*By Jim Redden*

*October 3, 2018*

### **PBOT backs off from attempt to save on-street parking at Northeast Portland housing project, but will not change policy.**

Portland has settled a legal challenge to a year-old duplex driveway policy with a local, family-owned homebuilding company.

After months of delays and financial losses, Valhalla Custom Homes has been issued the permits it needs to build its original duplex design with two driveways and garages. The Portland Bureau of Transportation denied the original application last December, saying that a rule it adopted without public notice or input requires most new duplexes to be served by a single driveway to save on-street parking.

The small company put all of its work on hold until the dispute was resolved. Fighting the city cost \$460,000 in additional interest, attorneys fees and lost income, according to lead designer and general counsel Mary Ives.

"There is no denying the complexity of the legal issues involved in Valhalla's dispute with the city. It is this complexity which has provided PBOT the opportunity to impose conditions on the grant of driveway permits beyond its actual authority," says Ives, the wife and mother of the company's co-owners, who are her husband, Gary, and their two sons, Chris and Jonathan.

The company had challenged the rule before the Oregon Department of Land Conservation and Development (DLCD) by seeking a rare order to prevent the city from enforcing its one-driveway policy for most new duplexes. PBOT settled the challenge in the middle of the hearings process, in consultation with the City Attorneys Office. The settlement does not admit any wrongdoing and prohibits the company from suing for damages.

The Portland Tribune first reported on the dispute on May 15.

The one-driveway policy was adopted by PBOT's Development Review Division on May 31, 2017. It is headed by Kurt Krueger, who insisted the policy is not actually new, but merely a more formal statement of PBOT's longtime preference for single-driveway duplexes. The goal is to preserve as much on-street parking as possible, which is becoming increasingly important as Portland grows.

"We allowed a lot of exceptions in the past, but now more and more housing is being built, and the demand for on-street parking is increasing. We're not creating a policy, we're clarifying a policy," Krueger said at the time of the original story.

Ives' company was not aware of the pending policy in late April 2017 when it purchased the property for a duplex at 4205 N.E. Rodney Ave. It only learned of the policy when PBOT denied its request for two driveways in December 2017. Complying with the new policy would have required a complete redesign of the proposed duplex, something the company was not willing to do because it does not believe buyers want duplexes that have the "funnel" shared driveway required by the policy.

But more than that, Ives did not believe PBOT had the authority to adopt the policy in the first place. She argued it violated state land-use planning laws that require governments to have clear and objective building standards. The one-driveway policy imposed design requirements on builders that are not set forth in other construction codes, including additional setbacks to accommodate the funnel-shaped driveway, she said earlier.

The company hired Portland land-use attorney Gregory Hathaway to represent it before the DLCD. He sent the agency a request for a hearing by certified mail on Aug. 22. State staff sided with the city and scheduled a proceeding to decide whether a contested case hearing was necessary. Hathaway was prepared to counter the staff's finding when the city made the settlement offer, which the company accepted.

"In consultation with the City's Attorney Office and with the Oregon Department of Land Conservation and Development, PBOT is revising its December 1, 2017 decision," reads the Sept. 27 settlement agreement that approves the two-driveway design.

Because of the terms of the settlement, the policy could still be applied to most of the potentially new duplexes that would be built throughout Portland if the City Council approves the most recent Residential Infill Project project recommendations.

"Everything that we have learned through this process has convinced us that PBOT is creating and implementing rules on its own that do not comply with the state requirement that only clear and objective standards in the city's ordinances be applied," Ives says.

The company already has demolished the small house that was on the property and hopes to begin construction soon. Ives says the final sales price will likely be higher than originally planned because of the expenses incurred during the dispute.

## Willamette Week

# The City of Portland is No Longer Charging Fees For Leaf Pickup

*By Elise Herron  
October 2, 2018*

**Leaf Day fees began in 2010, but did little to actually cover the cost of the service.**

Good news Portland: You no longer have to pay the city to remove leaves from your street.

The Portland Bureau of Transportation announced today that it is removing its leaf fee—which was put in place in 2010 during the recession to help the city recover costs associated with street cleaning in tree-lined neighborhoods.

While the service may seem trivial, last month's thunderstorm—which, in less than an hour, flooded the Laurelhurst neighborhood in calf-deep rainwater—showed what can happen when storm drains are clogged.

For nearly the last decade, homeowners have been charged \$15 by the city for leaf removal, while commercial and multifamily buildings were charged \$65. But according to PBOT's interim director, Chris Warner, most people just opted out of the program to avoid the fee.

"The fee we started collecting in 2010 never met its goal of covering the city's costs. In addition, the cost of administering the fee have been quite significant, adding up to almost 20% of program costs," Warner said in a statement. "We decided it made financial and policy sense to return to providing this service free of charge."

Commissioner Chloe Eudaly adds that the policy of charging for leaf clean-up was ineffective from the start.

"It never met its goal as a cost recovery measure," she says. "By ending it, we will save on administrative costs, our streets and storm drains will be cleared and Portlanders will have one less fee to pay."

The Portland Mercury first reported last month on Eudaly's plan to end the fee.

This year, leaf removal is scheduled to start Nov. 9. PBOT crews will patrol designated "leaf districts" collecting debris. Revenue for the removal will come from transportation dollars, which also fund snow and other vegetation removal and pothole repairs.

A map of the city's service areas along with scheduled leaf clean-up days can be [found here](#).

## The Portland Observer

# Man Killed in Police Response

*By Danny Peterson  
October 2, 2018*

**Officers confronted man after hearing shots fired**

A community is in mourning even as many questions remain unanswered in the wake of an officer-involved shooting early Sunday that left one man dead. It happened around 3:30 a.m. at

Southwest Third and Harvey Milk Street (formerly Stark) as police responded to civilian-on-civilian gunfire that left two others injured.

Patrick Kimmons, 27, died of police's gunshot wounds, the Oregon Medical Examiner confirmed.

Police said Kimmons was confronted by two officers who approached him after hearing gunshots in the vicinity. A gun was found near Kimmons and multiple other firearms were also found at the scene, police said.

The two other victims apparently were shot prior to police's arrival on the scene, and they later transported themselves to a local hospital for serious, but non-life threatening injuries. Police said they believe the initial shooting was between gang-related individuals.

It's unclear how many times police shot Kimmons, though police stated that multiple witnesses of the incident are being interviewed, as well as an examination of a video recovered at the scene, as part of the investigation. Two other police officers also witnessed the shooting.

Letha Winston, Kimmons' mother, has started a gofundme page to help cover the family's funeral costs. In the description she states Kimmons was "shot more than 15 times in the back as well as his legs," but the claim was denied later by police. "This pain has to stop! I wouldn't wish this reality on anyone," Winston said.

Community members and activists from Don't Shoot Portland held a candle light vigil for Kimmons near the area where he was shot. Mourners placed flowers, lit candles, and conveyed messages of protest, grief and love for the deceased man, who is survived by three young children and a girlfriend.

In the bureau's statement, police offered sympathy to those affected by the shooting.

"The Police Bureau is sensitive to the fact a life was lost, and many people from the Portland community are impacted, including family, community partners, and officers. We will strive to release information as quickly as possible as the investigation unfolds," the statement read.

Mayor Ted Wheeler released a statement Monday echoing the pursuit of transparency and offering sympathy to the Kimmons family and those affected by the shooting.

"In the coming days and weeks, many will rightly have questions about what happened. These questions are important; the answers are important. There are now multiple active investigations, and I am committed to ensuring accurate information is disclosed as quickly and completely as possible," Wheeler said.

The two officers involved, Sgt. Gary Britt and Officer Jeffrey Livingston have been put on paid administrative leave during the ongoing investigation, per bureau policy, police said.

A Multnomah County Grand Jury and internal police review is to follow next, and after both of those are completed, additional information could be released, authorities added.