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Public Access: A Case Study

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Public Access: A Case Study

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For the public to be able to exercise its right to access shoreline areas held in trust, the public must be granted reasonable access.¹ The State of Rhode Island “has traditionally defined the boundaries of the shore for purposes of the public trust doctrine as the mean high tide mark” seaward.² In Rhode Island, there are “236 public beach access points along about 400 miles of Atlantic Ocean and Narragansett Bay waters” presently identified.³ The State’s Constitution ensures that individuals “shall continue to enjoy... the privileges of the shore.”⁴ The right to fish from shore; pass along the shore (horizontal access); gather seaweed; and recreation rights such as to swim to sea from the shore and strolling along the shore are all recognized activities.⁵

In the areas surrounding heavily used public rights of way, the areas often become repositories for trash from food wrappers and fishing gear debris left by visitors. Trash is a problem that not only deters use of public access points, but is also a health concern and can pose a risk to swimmers.⁶ Oftentimes, a volume of debris left by visitors results in closed beach access.⁷ The implementation of a parking meter system could ensure continued, uninhibited access to beach access points. A city choosing to implement a parking meter system, where there was not one previously, may generate revenue from the overdue fines to cover trash collection costs.⁸ Other important benefits to such a system are revenue generation that could be funneled

¹ See Erika Kranz, Sand for the People, 83-JUN Fla. B.J. 10, 13 (June 2009).

² See Cavanaugh v. Town of Narragansett, No. WC 91-0496, 1997 WL 1098081, at 9 (R.I. Supp. Ct. 1997).

³ See Testing the Waters, Natural Resources Defense Council, at 227, (2011), available at <https://www.nrdc.org/water/oceans/ttw/ttw2011.pdf>.

⁴ See R.I. Const. Art. I, §17 (1986).

⁵ See Cavanaugh v. Town of Narragansett, No. WC 91-0496, 1997 WL 1098081, at 9 (R.I. Supp. Ct. 1997); *See also* Public Access Brochure, Coastal Resources Management Council, available at http://www.crmc.ri.gov/publicaccess/PublicAccess_Brochure.pdf.

⁶ See September Cleanup Targets Beach Trash, Improving Great Lakes Coasts, Alliance for the Great Lakes, (Sept. 12, 2011), <http://www.greatlakes.org/Page.aspx?pid=1320&frcrld=1>.

⁷ See Kelly Bouchard, Trash Problem Shuts Down Raymond Beach, The Bangor Daily News, (July 23, 2010, 11:27 AM), available at <http://bangordailynews.com/2010/07/23/news/trash-problem-shuts-down-raymond-beach>.

⁸ See Douglas Kolozsvari and Donald Shoup, Turning Small Change into Big Changes, Access, Number 23, at 4, (Fall 2002), available at <http://shoup.bol.ucla.edu/SmallChange.pdf>.

into constructing, cleaning, or improving support infrastructure in the immediate area for enhanced public access enjoyment.

It is possible that a parking meter system could benefit two public right of way sites in Middletown, Rhode Island. Recreational users year round and anglers throughout the warmer months frequent both sites. The first location has been the site of many cleanup events, and is located on the corner of Tuckerman Avenue and Wolcott Avenue (41°28'52.11"N, 71°16'30.76"W). The Coastal Resources Management Council (CRMC), describes this site as consisting of "a very tricky dirt path, but well worth the effort."⁹ This rocky shoreline offers a great place to sit and take in a beautiful ocean view, in addition to being a prime fishing location in the spring.¹⁰ It is located within a primarily residential neighborhood, in close proximity to points of interest that include Easton Beach and Sachuest Beach. Both beaches are municipal beaches, but the Easton Beach facility, located in Newport, offers metered street parking in addition to municipal parking lots. The daily parking fees at both municipal beach range from \$10 to \$20 per car, from Memorial Day until Labor Day.¹¹

The second site is located east of the intersection of Peckham Avenue and Indian Avenue (41°30'54.54"N, 71°14'11.55"W). The right of way is located in a residential area and has no proximity to points of interest, aside from Pebble Beach. This right of way extension of Peckham Avenue runs along a dirt road for a distance of 600 feet to the Sakonnet River.¹² The right of way consists of a wide path narrowing close to the water and it is bounded on the north and south by private parcels.¹³ There is a posted public shoreline access sign identifying the site.¹⁴

⁹ CRMC Rights-of-Way Appendix, at 2, (2010), [available at http://www.middletownri.com](http://www.middletownri.com).

¹⁰ See CRMC Rights-of-Way Appendix, at 2, (2010), [available at http://www.middletownri.com](http://www.middletownri.com).

¹¹ Middletown, R.I., Fee Schedule, ch. 36, art. I (33)(a)-(d) (1973).

¹² See CRMC Rights-of-Way Appendix, at 2, (2010), [available at http://www.middletownri.com](http://www.middletownri.com).

¹³ *Id.*

¹⁴ RCOS Inventory, at 2, (2009), [available at http://www.middletownri.com](http://www.middletownri.com).

At both sites, garbage is not regularly collected by the contracted refuse collection company, and is often left for neighbors to collect. However, the town will retrieve garbage collected after beach cleanup events, but rely on volunteers' collection and pre-arrangement for pickup.¹⁵ In the Town of Middletown, a 'Pay As You Throw' garbage collection program was implemented and is funded through annual user fees, as well as the purchase of certified trash bags. Nonetheless, this type of system creates a perverse incentive for beach-goers to leave their trash, as there is a direct cost of approximately \$2.00 per large garbage bag for at-home disposal.¹⁶ A possible solution to this problem is to use a metered parking system to fund waste pickup at beach access sites.

For valid implementation, municipalities without a regulatory framework for a meter system will need an ordinance authorizing such a system. In establishing that a municipality should provide dedicated public parking for beach access, it will likely be "under the guise of the public trust doctrine."¹⁷ However, this does not mean that the municipality "could not attach a "reasonable" fee" to the exercising of that right of access.¹⁸ Currently, Middletown does not have a parking ordinance for a metered parking system. To date, relevant parking regulations include prohibition of parking in specified places, obstruction of traffic, and require compliance with traffic control devices.¹⁹ In addition, the town has imposed parking fee penalties, prohibited of parking on town beaches, and a fee schedule for beach access.²⁰

¹⁵ Refuse Collection Department, Town of Middletown: Refuse Collection Department, (2011), <http://www.middletownri.com/government/11/63/Drop-Off-Area-Behind-the-DPW>.

¹⁶ See Middletown PAYT User Fee Information, Town of Middletown: Refuse Collection Department, (2011), <http://www.middletownri.com/government/11/92/middletown-new-payt-user-fee-information>.

¹⁷ See Cavanaugh v. Town of Narragansett, No. WC 91-0496, 1997 WL 1098081, at 11 (R.I. Supp. Ct. 1997).

¹⁸ See *id.*

¹⁹ See Middletown, R.I., Traffic Code, §72.01 (1996); Middletown, R.I., Traffic Code, §72.03 (1996); See also Middletown, R.I., Traffic Code, §72.07 (1996).

²⁰ See Middletown, R.I., Traffic Code, §72.36 (1996); Middletown, R.I., Fee Schedule, ch. 36, art. I (33)(a)-(d) (1973).

The estimated costs for execution include, but are not limited to, purchase of the physical meters, installation, and maintenance costs. A higher end, more user-friendly credit parking meter could cost more than \$500 per unit.²¹ A credit card accepting unit would also incur a transactional fee of approximately 13¢ per meter.²² There are also fees associated with the electronic services offered on some meters. For example, wireless internet and online reporting services that accept credit cards could cost more than \$5.75 per month and meter, in addition to per transaction costs.²³

The process of determining parking costs is subject to political influence. “Cities can change the politics of parking if they earmark curb parking revenue to pay for public goods” in generating locations.²⁴ Aside from parking meters being generally unfavorable politically, a new system could also compound problems associated with parking around a public right of way. Depending on the selected metered system, those producing paper tickets would generate refuse.²⁵ There are also concerns that parking meters could be disproportionately affecting the poor.²⁶ However, in areas where municipal beaches charge a flat day or sticker parking option, metered parking may be the least expensive option. For example, municipal beaches can charge a

²¹ Request for Proposal, City of Memphis, at 30 (Aug. 15, 2012), [available at](http://www.memphistn.gov/Portals/0/pdf_forms/RFP_12507_ParkingMeterReplacementUpgrade.pdf) http://www.memphistn.gov/Portals/0/pdf_forms/RFP_12507_ParkingMeterReplacementUpgrade.pdf.

²² Parktel Credit Card Module, POM Inc., 2012, <http://www.pom.com/ParktelCC.htm>.

²³ See Thomas Caywood, [Rubbish Bins Talking Trash; Waste Cans, Parking Meters can Converse Electronically](#), Worcester Telegram & Gazette Corp. (Nov. 7, 2010), [available at](http://www.telegram.com/article/20101107/NEWS/11070544/0/RSS01) <http://www.telegram.com/article/20101107/NEWS/11070544/0/RSS01>.

²⁴ See Douglas Kolozsvari and Donald Shoup, Chp. 16, [Turning Small Change into Big Changes](#), The High Cost of Free Parking (March 2005), [available at](http://www.sonomatlc.org/Parking/PBDs/BusinessPBD/SmallChange-1.htm) <http://www.sonomatlc.org/Parking/PBDs/BusinessPBD/SmallChange-1.htm>.

²⁵ See Scott Robbin and Andrew Huff, [Parking’s a Mess: 45 Tons of Non-Recyclable Stickers](#), Gapers Block, (Feb. 19, 2013), <http://gapersblock.com/mechanics/2013/02/19/parkings-a-mess-45-tons-of-non-recyclable-stickers>.

²⁶ See Scott James, [Parking Meter Plan Would Punish the Poor, Neighbors Argue](#), The Bay Citizen, (Feb. 9, 2012, 9:15 PM), <https://www.baycitizen.org/columns/scott-james/parking-meter-plan-would-punish-poor>.

maximum of \$20 per day, where metered parking could cost disproportionately less for time actually spent at the beach.²⁷

In summary, proper implementation requires a municipality to pass an ordinance approving a public parking system, amend its current parking regulation penalty fee schedule, and have a zoning board approve the targeted parking areas. A parking pricing study should be conducted to capture the benefits of revenue generation, reduction in vehicle traffic, changes in parking space turnover, and long-term parking within less convenient parking areas.²⁸ Also, an agency, individual, or private company should be enlisted to take the lead on implementation and maintenance of the parking system. Lastly, a five-year review study should be conducted to determine the cost benefits generated by the proposed plan and to determine whether further steps for safety, such as the installation of cross walks and stop signs, are needed in the vicinity.

²⁷ Newport RI Beaches, DestinationNewport.com, LLC, 2013, <http://www.destinationnewport.com/recreation/beach.asp>.

²⁸ See Todd Litman, Parking Pricing Implementation Guide, Victoria Transport Policy Institute, at 2 (Mar. 1, 2011), available at <http://www.vtpi.org/parkpricing.pdf>.