

City of Portsmouth, New Hampshire
ADA Trail Accessibility Policy

U.S. Department of Justice (DOJ) policies under the Americans with Disabilities Act (ADA) regarding the definition of a wheelchair and Other Power-Driven Mobility Devices (OPDMD), have the potential to impact the accessibility of the New Hampshire Seacoast Greenway rail trail within the City of Portsmouth. Pursuant to 5 CFR § 35.137, an assessment of the trails was conducted to determine whether particular devices can be used to access the trail. Access to trails and the use of devices as set forth below is limited to individuals with mobility disabilities and this policy does not authorize the use of these devices by others.

- A. Trails managed by the City of Portsmouth are available to individuals with a mobility disability as follows:

Wheelchairs

Wheelchairs, as defined by 28 CFR § 35.104, are permitted on the New Hampshire Seacoast Greenway and other City-managed trails approved for pedestrian access.

Other power-driven mobility devices (OPDMDs)

OPDMDs, as defined by 28 CFR § 35.104, are permitted on the New Hampshire Seacoast Greenway and other City-managed trails as follows:

1. The OPDMD must be electric-powered. Internal combustion engines are not permitted.
2. The OPDMD must have an electrical output of no more than 750 watts.

Please note that Class 1 and Class 2 electric bikes (ebikes) as defined under RSA 265:144-a, which cease to provide assistance above 20 miles per hour, are considered bicycles under state law and are permitted on all City trails approved for bicycle use.

- B. Users of an OPDMD or wheelchair must operate the device at a safe speed considering the condition of the trail and the other users traveling on the trail.
- C. The adoption of this Policy does not represent an endorsement that City trails are safe for the use of an OPDMD or wheelchairs, whether electrically-powered or human-powered. Users must exercise reasonable caution and care while operating such devices on City-managed trails.

If you have any questions regarding this policy or the accessibility of other City facilities, please contact City Hall at: 603-431-2000.

**City of Portsmouth, New Hampshire Seacoast Greenway
ADA Trail Accessibility Assessment & Policy Rationale**

Introduction:

In 2010 the US Department of Justice (DOJ) issued revisions to the Americans with Disabilities Act (ADA) addressing, among other things, the ability for individuals with mobility disabilities to use “other power driven mobility devices” (OPDMDs) to access public trails in certain circumstances. OPDMDs are distinct from motorized wheelchairs, which are allowed on public trails in all circumstances.

Based upon an evaluation of the New Hampshire Seacoast Greenway rail trail utilizing assessment criteria provided by the Department of Justice, the Portsmouth ADA Trail Accessibility Policy was developed to maximize trail accessibility for individuals with mobility disabilities while at the same time maintaining the safety of the other pedestrians, bicycle riders and horseback riders who use the trail; and to continue practices of responsible stewardship of the environment on and around the trail.

The follow principles guide Portsmouth’s approach to defining types of OPDMDs that may be operated safely on the New Hampshire Seacoast Greenway:

- Compliance with the Americans with Disabilities Act (ADA) and ensuring that individuals with mobility impairments have access to trails.
- Ensuring the safety of all trail users, including pedestrians, bicyclists, equestrian riders and their mounts, and individuals using OPDMDs.
- Ensuring that the use of OPDMDs does not cause significant harm to the natural environment, including soil erosion, damage to vegetation, and disturbance to wildlife.
- Ensuring that the use of OPDMDs does not lead to excessive wear and tear on trail surface and infrastructure, resulting in high maintenance costs.
- Compliance with the prohibitions on use of motorized vehicles on trails under Title 23 USC Chapter 2 Section 217 as required under Portsmouth's Municipal Trail Agreement with the New Hampshire Department of Transportation.

More specifically, the Department of Justice defined factors for assessing what types of OPDMDs are suitable for specific trail settings:

- I. Type, size, weight, dimensions and speed of the device
- II. Volume of pedestrian traffic (which may vary at different times of the day, week, month and year)
- III. The design and operational characteristics (e.g. square footage, density and placement of stationary devices, and the availability of storage for the devices, if requested by the user)

- IV. Can legitimate safety requirements be established to permit the safe operation of the Other Power Driven Mobility Device in the specific facility?
- V. Does the use of the other power-driven mobility device create a substantial risk of serious harm to the immediate environment or natural or cultural resources

A matrix assessing how the five DOJ factors apply to different types of OPDMDs is included at the end of this document.

Rationale:

Bearing in mind these principles, and the five DOJ factors, the City of Portsmouth has assessed the safety, environmental and other implications of different types of OPDMDs being used on the town's segment of the New Hampshire Seacoast Greenway and adopted the following standards.

OPDMDs allowed on the trail must be electric-powered rather than gas or diesel powered.

Internal combustion powered devices are prohibited as they emit exhaust that is detrimental to the health of other trail users.ⁱ In addition, the NH Seacoast Greenway runs parallel in close proximity to substantial wetlands thus creating the potential for significant environmental risk from a spill of fuel or oil used in a gas or similarly powered combustible-fuel device. Finally, the loud sound generated from combustion powered devices is neither consistent with peaceful enjoyment of the outdoors nor appreciation of nature and is thus inherently contradictory to the functions of the Greenway trail.

OPDMDs allowed on the trail may have a motor of up to 750 watts. One of the DOJ assessment parameters for regulating OPDMDs is speed. Because speed often cannot be assessed from vehicle specifications, the power of the motor is used as an equivalent, with higher power translating to higher top speed. Class 1 and Class 2 electric bicycles (e-bikes), which feature motors of up to 750 watts, are defined under New Hampshire RSA 265:144-a as bicycles and are allowed on the NH Seacoast Greenway and other rail trails in New Hampshire. Electric bicycles of Class 3 and higher feature larger motors capable of speeds of 28mph and higher, are not classified as bicycles under NH state law, and are not allowed on trails. Allowing OPDMDs with motor wattages comparable to devices that may be used on the trail by individuals without mobility impairments does not introduce additional safety hazard to other trail users. Allowing OPDMDs with motors larger than 750 watts, and thus capable of higher speeds, does present increased danger to other trail users.ⁱⁱ Based on this, 750 watts is the maximum size for an electric motor that may be used on the NHSG.

ⁱ See "[Environmental and Health Impacts of Air Pollution: A Review](#)," *Frontiers in Public Health*, 20 February 2020 is just one of many examples.

ⁱⁱ Using motor output to regulate safe trail speeds in the multiple communities through which the New Hampshire Seacoast Greenway passes is seen by these corridor communities as a preferred alternative to setting a speed limit, as regular enforcement of such limits is not practical given staff capacity of corridor communities.