



Health & Human Services and Public Safety Committee

**Tuesday, April 23, 2019, 5:30 PM
Room 24**

Councilor Belinda Ray, District 1, Chair
Councilor Brian Batson, District 3
Councilor Pious Ali, At-Large

1. Announcements
2. Review and Approval of Minutes from April 16, 2019
 - a. April 16, 2019 draft meeting minutes
3. Sound Ordinance
 - a. Staff presentation
 - b. Committee questions and discussion
 - c. Next steps
4. Next Meeting: May 14, 2019

NOTE: Since there are no action items on the agenda, there will be no opportunity for public comment at this meeting. Please feel free to send comments to members of the committee on any issue at any time via email. Councilors email addresses are available on the city website: www.portlandmaine.gov

The meeting can be watched online via livestream: www.portlandmaine.gov/livestream

Keep up to date with the new shelter design and planning process at the City's website

www.portlandmaine.gov/shelterplanning



Health & Human Services and Public Safety Committee Minutes

Tuesday, April 16, 2019, 5:30pm, Council Chambers, City Hall

Committee Attendance:

Belinda Ray, Chair (District 1), Brian Batson (District 3), Pious Ali (At-Large)

Councilors in Attendance: Spencer Thibodeaux (District 2)

City Staff: Jon Jennings, City Manager; Kristen Dow, Interim Director of Health and Human Services; Sara Fleurant, Director of the Oxford Street Shelter; Christine Grimando, City Planning Director; Lena Geraghty, Director of Innovation & Performance Management; Adam Harr, Executive Assistant.

AGENDA ITEM 1 – Announcements

- None.

AGENDA ITEM 2 – Approval of Minutes

- Councilor Batson made a motion to approve the minutes, Councilor Ali seconded and the motion passed unanimously.

AGENDA ITEM 3 – Homeless Services Center

- The earliest first read could be on May 6th City Council Meeting; a first read introduces a topic and includes back-up materials.
 - The earliest possibly second read is May 20th; the Council can discuss, debate and potentially vote, including a public hearing.
- Emails today suggesting the vote should be delayed due to the odd timing.
 - The meeting is being taped and live streamed.
 - The public hearing for the vote on the HSC was at the last meeting.
- Process questions
 - Explained on Chair Ray's blog: <http://www.belindaray.me/blog>
- Councilor Batson requested some feedback on pedestrian safety near County Way; does city staff have that available?
 - Christine did not have that prepared for tonight but can prepare for future meetings.
- Chair Ray had asked if Greater Portland Health is able to give medication assisted treatment on site.
 - All three locations are able to have health services such as MAT on site based on the GPH partnership.

- How many people receiving homeless services or known to be a part of that community have died from drowning in the Old Port?
 - 9 that are known.
 - Commercial Street
 - Specifics are known, but anecdotally substance use was a likely factor.
 - Councilor Batson would like more specific information on the locations on commercial street where fatalities occurred.
 - City Manager Jennings has a map approximately where people have fallen in and drowned (not exclusive to the shelter).

Councilor Thibodeaux

- Angelo's Acre was talked about being built out to the Street.
 - Would the Front door be along the Commercial Street sidewalk:
 - Yes.
 - Camping in the adjacent Harbor View park:
 - There is some camping but no more than other parks
 - Concern of camping part of the consideration of this site.
 - There are areas hidden from the road due to topography.
 - Some brush has been cleared out to increase the visibility of the green space areas.
 - Has Social Services or Rob Parritt spoken to the local fishermen
 - No but Chair Ray has.
 - Modern Facility
 - Freezer Facility nearby
- Planning and Zoning
 - If the Council approved the Angelo's Acre site, would zoning changes need to be made?
 - No zoning changes would need to be made, just avoid building in the R6 zone up to the side walk.
 - To build in the R6 would require
 - Does a parcel in multiple zones affect the build ability of the entire area?
 - Even if it is not in the R6 zone part of the parcel, does the R6 rules apply to the entirety of the zone?
 - If you are building in the B5b part of the zone, those rules would apply unless construction crept to into R6.
 - HSC PowerPoint shows the divide between R6 and B5b and it appears that the large center may fit entirely in B5b.
 - Memo on VRAP and the Coal ash information sent to the committee.
 - Phase 1 on County Way came back with the same info in the VRAP.
 - More information would come in a phase 2.

- Any agreement with the State would include removing mounds on site.
- Chair Ray explained a chart she made to help rank the choices:
 - o Initially though County Way would be first, Angelo's Acre would be second and Riverside would be Third.
 - o Qualifications Rankings
 - Transit:
 1. County Way
 2. Angelo's Acre: surprisingly mostly South Portland transit.
 3. Riverside
 - Pedestrian Safety
 1. Riverside: has sidewalks.
 2. Angelo's Acre: busy street and waterfront.
 3. County Way has water, busy roads, highway and an active train track.
 - Space for the facility
 1. Riverside
 2. County Way
 3. Angelo's Acre
 - Neighbor Buffer
 1. Riverside: one home would be impacted.
 2. Angelo's Acre: Natural buffer with the hill.
 3. County Way: abuts bunker brewery and homes
 - Provider Feedback
 1. Angelo's Acre/County Way
 2. Riverside
 - Concentration of Services: similar uses where least got the highest marks.
 1. Riverside
 2. Angelo's Acre
 3. County Way: Emergency Shelter, Supportive Housing, cognitive and medical services.
 - Chances of City Council and Planning Board Approval
 1. Riverside
 2. -
 3. Angelo's Acre/County Way
 - o Based on these rankings, Chair Ray prefers Riverside, followed by Angelo's Acre then County Way.
- Councilor Batson does not support County Way due to the campus feel of clustering services and safety concerns.
 - o Undecided on ranking between Angelo's Acre and Riverside
 - o OK with striking County Way and hearing further committee feedback.
- Councilor Ali agreed with striking County Way.
 - o It doesn't matter where we place the shelter, movement will not be restricted?

- Correct, and transit and access will be part of the design at any location.
- Proximity to food stores; Homeless Voices for Justice expressed concern that the HSC be located near food store.
 - Each are need stores that sell groceries and fresh produce.
- Councilor Thibodeaux spoke about Angelo's Acre and Cold Storage
 - Bill Needleman can speak to how Angelo's acre has been used.
 - Lay down area for different projects along the waterfront.
 - Concerned this use won't continue.
 - From an economic development standpoint, there is a concern.
 - Proximity to Harborview park and loitering
 - Traffic and the sharp turn.
 - Waterfront central zone needs parking and housing, not a services center.
 - Riverside is his top choice.
 - Hopes the committee puts forward one site and not a choice.
 - Angelo's Acre being so close to the street sets up a choice and struggle between off or on peninsula.
 - That decision should be made at committee and then recommended to the full council.
 - Concerns at the Baron Center are shared with Angelo's Acre.
 - Councilor Thibodeaux does not think he could support County Way or Angelo's Acre.
 - A new inward-facing facility with outdoor space excited him and he is concerned that these two sites would not allow that type of build.
- Chair Ray noted the committee does not want to forward County Way and asked the committee if they would like to forward two sites or on sites of those remaining.
 - Councilor Ali and Councilor Batson favor recommending the remaining two sites: Angelo's Acre and Riverside.
 - Chair Ray believes Riverside is the clear front runner to available space and the nature of the working water front and the incoming cold storage facility at Angelo's Acre.
 - Chair Ray clarified verbiage: The committee did not have a clear front runner.
 - Forwarding the two sites, and if the Council does not accept them, the Council is choosing Oxford Street.
 - The Committee will just present the options without making the above explicit in the recommendation.
 - If Angelo's Acre was two stories there could be open space?
 - It would be possible.

Councilor Batson Made a motion to recommend Angelo's Acre and Riverside to the full council and Councilor Ali Seconded.

Discussion:

- Councilor Ali asked Chair Ray about Metro: Would the Homeless Services Center benefit from the first and last mile program?
 - There is a para transit obligation that would travel to the center.
 - RTP is currently contracted by Metro
 - The first mile last mile may not benefit due to cost.
 - Metro passes are not the answer for everyone and City provided transportation would be integral.
- If Riverside gets chosen by the full City Council, is it possible for transportation information to be provided? (Transporting people to the nearest stop?)
 - Yes, adjustments to the plan will be made based on the location; City Manager Jennings is confident on the City's ability to implement a robust transportation plan that includes a dedicated shuttle.
- What information is needed such as the Planning information to provide to the full Council?
 - Planning information on the two sites included.
 - Sample from 2016 (DRAFT and not a complete site plan)
 - Information on all services to be included
 - Information from the providers
 - Survey
 - Letter from Homeless Voices for Justice.
- Can there be a site plan for a two-story facility?
 - There is a cost but staff can try to do it but it will take time.
 - The current schematic has all of the elements to help the Councilors and note that the likely division of the elements for two stories.
 - Councilor Ali would rather not slow the process.

The Committee voted and the motion passed unanimously.

The First Read will Occur on May 6th; the City Manager and Mayor will decide if the second Read will occur on May 20th; the Council may vote to postpone the second reading to the first June Meeting. There will be a Public Hearing.

The Committee thanked those who sent emails and explained they appreciate them and cannot answer all of them.

AGENDA ITEM 2 – Next Steps

- The Committee will meet Tuesday April 23, 2019 to discuss the Sound ordinance.

Meeting Adjourned at 5:10PM

Sec. 15-12. Fees and expiration dates.

(a) Unless specified elsewhere in this Code, fees for licenses issued pursuant to this Code and the expiration date of each license shall be as follows:

...

Ch. 3, Art. II	Bottle clubs (must obtain FSE and special entertainment if applicable)	\$940.00	June 30
Ch. 3, Art. III	Brewery, Winery and Distillery License (must obtain FSE and/or special entertainment if applicable)	\$525.00	Concurrent with state liquor license

...

Ch. 4, Art. III	Music, dancing and special eEntertainment:		
	Entertainment with dancing	\$529.00	Twelve months or concurrent with state liquor license or with any city license
	Entertainment without dancing	\$295.00	Twelve months or concurrent with state liquor license or with any city license
	After-hours Entertainment	\$595.00	Twelve months Or concurrent with state liquor license or with any city license
	Dance hall	\$147.00	June 30
	Concert hall	\$147.00	June 30
	Single dance with alcohol or with	\$38.00	Per dance

	greater than 100 attendees		
	Single concert with alcohol or with greater than 100 attendees	\$38.00	Per concert
	<u>Single Entertainment Event - Private Property</u>	<u>\$50</u>	<u>Per event</u>
	<u>Single Entertainment Event - Public Property</u>	<u>\$50</u>	<u>Per event</u>
	<u>Indoor Entertainment</u>	<u>\$500</u>	<u>12 months or concurrent with state liquor license or any city license</u>
	<u>Outdoor Entertainment</u>	<u>\$700</u>	<u>12 months or concurrent with state liquor license or any city license</u>
	<u>Combined Entertainment</u>	<u>\$800</u>	<u>12 months or concurrent with state liquor license or any city license</u>
	<u>Expanded Entertainment Addendum</u>	<u>\$100</u>	<u>Per event</u>

Sec. 15-21. Renewal hearings for state liquor licenses, or name changes, ~~or special entertainment licenses~~.

The City License Administrator is authorized to approve the renewal of State liquor licenses, name changes, ~~or special entertainment licenses~~, or any changes in license classification other than a change allowing the sale of spirituous alcohol, without holding a hearing, unless the License Administrator determines that hearing is necessary, or has received a request from a member of the City Council or a City official for a

hearing on a specific application. Hearings shall be held by the City Council.

ARTICLE III. MUSIC, DANCING AND SPECIAL ENTERTAINMENT*

*State law reference(s)--Dances, 8 M.R.S.A. § 161 et seq.; special permit
for music, dancing or entertainment, 28 M.R.S.A. § 702.

DIVISION 1. GENERALLY

Sec. 4-41. Purpose.

The purpose of this article is to control the issuance of special permits for ~~entertainment.music, dancing or entertainment in facilities licensed by the state to sell liquor as provided by state law, entertainment in bottle clubs, and permits for after-hours entertainment and to control the operation of dance halls, concert halls, single dances and single concerts.~~

(Code 1968, § 907.1; Ord. No. 231-80, 12-22-80; Ord. No. 34-95, 7-5-95; Ord. No. 165-06/07, 4-4-07)

Sec. 4-42. Definitions.

Terms used in this article shall have their common meanings except that the definitions set forth in chapter 15 and/or in this section shall apply unless the context clearly indicates that a different meaning is intended.

~~After hours entertainment shall mean music, dancing, or entertainment provided between the hours of 1:00 a.m. and 7:00 a.m.~~

~~Concert shall mean the presentation of live or amplified music for the entertainment of a live audience gathered specifically for that entertainment.~~

~~Concert hall shall mean any building, room or hall which is kept or used for concerts open to the public.~~

~~Dance shall mean every dance not held in a private residence; other than a class in which instruction in dancing is given for hire, or any dance held in a school hall under direct supervision of school authorities, or any dance conducted by and exclusively for the benefit of any bona fide charitable organization.~~

~~Dance hall shall mean any building, room, hall, or other public place which is kept or used for public dancing, or which~~

~~for compensation paid directly or indirectly to the owner, manager, or operator thereof, men, women or children are permitted to engage in dancing.~~

Entertainment shall mean and include any event to which the public is invited or allowed to watch, listen to, or participate in, or is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing patrons, including, but not limited to any of the following:

1. Dancing by patrons to live or recorded music;
2. The presentation of music played on sound equipment operated by an agent or contractor of the establishment, commonly known as 'disc jockey' or 'DJ';
3. The playing of background music, except where the background music cannot be heard beyond the limits of the premises on which the music is being played;
4. The presentation of live music whether amplified or unamplified;
5. The presentation of music videos, music concerts, or other similar forms of musical entertainment from any source; or
6. Any other live performance, including, but not limited to, presentations by single or multiple performers, such as hypnotists, comedians, spoken word presentations, dance arts, concerts, dances, live bands, karaoke or other live music.

~~amusement, performance, or exhibition or diversion for patrons or customers of the licensed premises, whether provided by professional entertainers or by full-time or part-time employees of the licensed premises whose incidental duties include activities with an entertainment value.~~

Indoor Entertainment shall mean entertainment that is conducted within a fully enclosed building or structure, including ensuring that all windows and doors remain closed during the time that entertainment is occurring.

Outdoor Entertainment shall mean entertainment that is conducted outside of a fully enclosed building or structure, or is conducted within a building or structure in any manner such that the sound generated by that entertainment is intentionally projected outside of that building or structure.

(Code 1968, § 907.3; Ord. No. 231-80, 12-22-80; Ord. No. 34-95, 7-5-95; Ord. No. 165-06/07, 4-4-07)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 4-43. Reserved.
Sec. 4-44. Reserved.
Sec. 4-45. Reserved.
Sec. 4-46. Reserved.
Sec. 4-47. Reserved.
Sec. 4-48. Reserved.
Sec. 4-49. Reserved.
Sec. 4-50. Reserved.

DIVISION 2. LICENSE*

***Cross reference(s)**--Licenses and permits generally, Ch. 15.

Sec. 4-51. Required.

(a) ~~No person licensed by the state to sell liquor to be consumed on the premises, and no bottle club licensed by the city, shall permit on the premises any music except that produced by radio or mechanical device, any dancing, or entertainment of any sort without an entertainment license from the city. The license required by this subsection and state law authorizes entertainment only during the hours when state law permits the sale of alcohol for consumption on the premises shall conduct, or permit to be conducted on a premises or other location owned or controlled by that person, any entertainment without first obtaining a license as provided in this Article.~~

(b) *Single Event Entertainment License - Private Property.* A Single Event Entertainment License - Private Property shall allow the licensee to conduct a single indoor or outdoor entertainment event lasting no more than eight hours in one 24-hour period at the premises for which the license is issued. No more than five Single Event Entertainment Licenses may be issued for events at any one premises in any twelve-month period.

(c) *Single Event Entertainment License - Public Property.* A Single Event Entertainment License - Public Property shall allow the licensee to conduct a single indoor or outdoor entertainment event lasting no more than eight hours in one 24-hour period on City-owned property. Multiple events by the same party and on the same City-owned property may be combined into one license.

(d) Indoor Entertainment License. An Indoor Entertainment License shall allow the licensee to conduct indoor entertainment only at the premises for which the license is issued.

(e) Outdoor Entertainment License. An Outdoor Entertainment License shall allow the licensee to conduct outdoor entertainment only at the premises for which the license is issued.

(f) Combined Entertainment License. A Combined Entertainment License shall allow the licensee to conduct indoor and/or outdoor entertainment at the premises for which the license is issued.

(g) Expanded Entertainment Addendum. An Expanded Entertainment Addendum shall be in addition to any entertainment license and shall allow the licensee to conduct after-hours entertainment and/or to exceed the applicable sound limits. Expanded Entertainment Addendum shall be at the sole discretion of the City Council.

~~After-hours entertainment shall require a separate license as provided in this division subject to the following restrictions and requirements:~~

- ~~(1) Operations under such separate license shall end at 3:00 a.m.~~
- ~~(2) Establishments that have a liquor license shall limit attendance to individuals who are at least 21 years old. Establishments that do not have a liquor license shall limit attendance to individuals who are at least 18 years old.~~
- ~~(3) Any applicant for an after-hours entertainment license shall meet with the police department for review of the security plan and a site visit before the license is brought before the city council.~~
- ~~(4) The license shall allow no more than twenty-four (24) after hour events per calendar year.~~
- ~~(5) In addition to the after-hours license, at least seven (7) days in advance of each event, the license holder shall deliver a written notice to the Permitting and Inspections Department during normal business hours~~

~~specifying the date upon which the event will be held. The Permitting and Inspections Department will forward the notice immediately to the police department, track the number and frequency of events per licensee per calendar month and inform a licensee if an event is not allowed.~~

~~(c) Exceptions: Upon application for a license for a single event, the council may allow after hours entertainment to take place after 3:00 a.m. for a public purpose and may permit individuals under the age of 21 to attend the event, subject to such conditions, if any, that the council imposes to protect the public health, safety and welfare. Any events permitted under this paragraph will not count as one of the twenty four events per year allowed by section (b)(4) above.~~

~~(d) No person shall conduct, maintain or operate a dance hall or a concert hall, as defined in section 4-42 of this code, without a license.~~

~~(e) No person shall conduct, maintain, or operate a single dance or single concert, as defined in section 4-42 of this code, on private property, where greater than 100 attendees are anticipated, or where alcohol will be consumed, without a license.~~

~~(f) No person shall conduct, maintain, or operate a single dance or single concert, as defined in section 4-42 of this code, on public property without a license from the Parks, Recreation, and Facilities Department.~~

(Code 1968, § 907.2; Ord. No. 231-80, 12-22-80; Ord. No. 34-95, 7-5-95; Substitute Ord. No. 310-A-01, § 1, 8-20-01; Ord. No. 165-06/07, 4-4-07; Ord. No. 250-07/08, 5-19-08; Ord. No. 163-11/12, 5-7-12; Ord. No. 165-15/16, 3-7-2016; Ord. No. 18-17/18, 8-21-2017)

***Editor's Note:** Sections 4-51.5 thru 4-51.7 *Moratorium on issuance of late-night entertainment licenses* expired on October 17, 2006, pursuant to Ord. No. 216-05/06, passed on 6-5-06.

Sec. 4-52. Application.

(a) Application for a license under this division shall, in addition to the requirements of chapter 15, be submitted on forms provided by the City. Applications shall specifically include/contain:

- (1) ~~†~~The name and contact information of the owner or person in control of the building and/or premises;
- (2) The name and contact information of the person responsible for the entertainment, who shall be available to respond to inquiries of the City at all times while entertainment is taking place;
- (3) ~~†~~The location of the premises; and
- (4) ~~†~~A plan of the premises, giving in detail the dimensions and diagram of space to be used for dancing, seating, dressing rooms, check rooms, toilet rooms, and means of egress entrances, exits, stairways and fire escapes.

Applicants must provide all required information and pay all required fees before a license application will be considered.

(b) Location of Application. Applications for a Single Event Entertainment License - Public Property shall be submitted to the Parks, Recreation, and Facilities Department for approval. All other applications shall be submitted to the Permitting and Inspections Department.

(c) Timing of Application. Applications must be submitted no later than the following:

- (1) For a Single Event Entertainment License - Private Property or Single Event Entertainment License - Public Property, a complete application, including license fee and noise deposit, must be submitted no later than seven business days prior to the licensed event.
- (2) For all other licenses, a complete application, including license fee, sound mitigation plan, and review fee, must be submitted no later than four weeks prior to the City Council Meeting at which the applicant wishes the application to be considered.

(d) Noise Deposits. Applications for a Single Event Entertainment License - Private Property and Single Event Entertainment License - Public Property must include a noise deposit as follows:

- (1) The noise deposit must be paid before a Single Event Entertainment License will be issued.
- (2) The noise deposit shall be calculated based on the reasonably anticipated number of attendees:

Anticipated Attendees	Noise Deposit
Less than 200	\$100
200-500	\$250
500-1,000	\$500
1,000+	\$1,000

- (3) The noise deposit shall be double the amount listed above for any licensee who has forfeited a noise deposit within the previous two years.
- (4) The noise deposit shall be forfeited automatically, and in the City's sole discretion, if the licensee fails to adequately mitigate any noise impacts of the event after being given notice of the impact by the City and an opportunity to correct.
- (5) Forfeiture of the noise deposit shall be in addition to any civil penalties or other remedies provided for in this Code, including the denial of a future license.

(e) Sound Mitigation Plan.

- (1) A sound mitigation plan shall be required for the following applications:
 - (i) All initial applications for an Outdoor Entertainment License;
 - (ii) All initial applications for a Combined Entertainment License;
 - (iii) All initial applications for an Indoor Entertainment License if the licensee did not hold an entertainment license for the premises in the previous license year; and
 - (iv) All renewal applications that are required to go before the City Council for consideration.
- (2) A sound mitigation plan shall consist of the following:
 - (i) The sound mitigation plan must be prepared and certified by a professional sound engineer with appropriate experience and training.

(ii) The sound mitigation plan shall be designed to minimize the impact of entertainment on the surrounding uses, and detail the methods by which the applicant will accomplish those goals.

(iii) The sound mitigation plan shall include, at a minimum, speaker location and direction; sound system details and controls; stage and site layout and direction; any noise cancelling or mitigating measures proposed; and anticipated sound readings at the proposed source of the sound, at a location 8' from the means of egress nearest to the sound source (for indoor entertainment), at each property line of the premises (for outdoor entertainment), and at the closest residence.

(iv) The sound mitigation plan shall require an on-site monitor when the number of attendees at an entertainment event is expected to exceed, or does exceed, 250. The on-site monitor shall be equipped with a dedicated SPL meter, and shall be available to respond to any inquiry of a City official during the time that the entertainment is being conducted.

(5) The City and/or its designee will review the sound mitigation plan and will provide written recommendations to the City Council with respect to the proposed sound mitigation plan and license application. The applicant shall pay a sound mitigation review fee, as established by the City Council, to cover the costs of review.

(6) The applicant shall be responsible for the City's cost of reviewing the sound mitigation plan.

(7) Compliance with the sound mitigation plan, as approved by the City Council, shall be a condition of the applicant's license, if granted.

(Code 1968, § 907.4; Ord. No. 231-80, 12-22-80; Ord. No. 34-95, 7-5-95)

Sec. 4-53. Hearings.

(a) A public hearing shall be held prior to issuance of ~~any original license under this division other than a single dance license or a single concert license~~the following:-

(i) All initial applications for an Outdoor Entertainment License;

(ii) All initial applications for a Combined Entertainment License;

(iii) All initial applications for an Indoor Entertainment License if the licensee did not hold an entertainment license for the premises in the previous license year; and

(v) All renewal applications that are required to go before the City Council for consideration in accordance with subsection (b) below.

(b) At the request of the City Manager or his/her designee, or at the request of any member of the City Council or the Mayor, a public hearing shall be held prior to the issuance of any renewal under this division other than a Single Event Entertainment License - Private Property or Single Event Entertainment License - Public Property.

(Code 1968, § 907.5; Ord. No. 231-80, 12-22-80; Ord. No. 34-95, 7-5-95)

Sec. 4-54. Appeals.

Appeal from the denial, suspension revocation or issuance with a condition or conditions of an entertainment license to a person ~~licensed by the state to sell liquor~~ shall be taken to the municipal board of appeals within thirty (30) days of such denial, suspension or revocation. The municipal board of appeals may grant or reinstate the permit if it finds that the permitted activities would not constitute a detriment to the public health, safety or welfare, or that the denial, suspension or revocation was arbitrary or capricious. If a license is issued with a condition or conditions and the board concludes that the condition or conditions do not protect the public health, safety or welfare or are arbitrary or capricious, the board shall refer the license back to the city council to determine whether the license will issue without the condition or conditions or whether the application will be denied. ~~The denial, suspension revocation or issuance with a condition or conditions of all other licenses or permits required hereunder shall be to the superior court under the provisions of Maine Rules of Civil Procedure 80B.~~

(Code 1968, § 907.6; Ord. No. 231-80, 12-22-80; Ord. No. 34-95, 7-5-95; Ord. No. 186-02/03, 4-7-03)

Sec. 4-55. Duration.

(a) *Granting of Licenses.* Licenses shall be granted, denied, suspended, revoked, or granted with a condition or conditions as necessary to protect the public health, safety and welfare and in accordance with chapter 15, except for the following, ~~but in the case of a special entertainment license, it:~~

- (1) A Single Event Entertainment License - Public Property shall be granted, denied, suspended, revoked, or granted with conditions at the sole discretion of the Parks, Recreation, and Facilities Department.
- (2) An Expanded Entertainment Addendum shall be granted, denied, suspended, revoked, or granted with conditions at the sole discretion of the city manager.

(b) *Expiration of Licenses.* Licenses shall be valid for one year from the date they are granted, except in the following situations:

- (1) Where the licensee holds a state liquor license or a municipal bottle club license, an Indoor, Outdoor, and/or Combined Entertainment License shall be deemed terminated upon expiration or revocation of the respective state license ~~to sell alcoholic beverages~~ or the municipal bottle club license, as the case may be, prior to the expiration of the one-year period.
- (2) Where the licensee does not hold a state liquor license or a municipal bottle club license, but does hold a food service establishment license, an Indoor, Outdoor, and/or Combined Entertainment License shall be deemed terminated upon expiration or revocation of the food service establishment license prior to the expiration of the one-year period.
- (3) Chapter 15 notwithstanding, the city council may also grant temporary entertainment licenses for a period of less than one (1) year when, in its sole discretion, it determines that one (1) or more trial periods is necessary to evaluate the impact of the entertainment on the peace and quiet of the neighborhood and on the public health, safety and welfare.

(Code 1968, § 907.7; Ord No. 231-80, 12-22-80; Ord. No. 92-95, 10-16-95; Ord. No. 186-02/03, 4-7-03; Ord. No. 165-06/07, 4-4-07)

Sec. 4-56. Reserved.

*Editor's Note: Pursuant to Order 165-06/07, passed on 4-4-07 this section was relocated to section 4-1.

DIVISION 3. STANDARDS FOR ENTERTAINMENT PURSUANT TO A LICENSE

Sec. 4-57. Conditions; sound and noise limitation.

(a) Any other provision of this Code notwithstanding, a licensee shall not allow the licensed activity or any other activities on the licensed premises to generate sound or noise that exceeds either of the following standards without an Expanded Entertainment Addendum:

(1) Eighty-five (85) dBA; and

(2) Ninety-five (95) dBC.

(b) The standards set forth in subsection (a) above shall be measured as follows:

(1) For indoor entertainment, measurements shall be taken ~~ninety-two (92) decibels, A-weighted, averaged over one (1) minute, when measured~~ eight feet (8') from the means of egress located nearest to the noise source.

(2) For outdoor entertainment, measurements shall be taken from the property line of the premises nearest to the noise source and/or nearest to the complainant's location, if any., ~~or eight feet (8') from the noise source if it is generated outdoors.~~

(b) A licensee shall not allow the licensed activity to be conducted outside of the following times, without an Expanded Entertainment Addendum.

(1) Outdoor entertainment, Sunday through Thursday: 8 a.m. to 10 p.m., except for the Sunday before Labor Day, the Sunday before Memorial Day, and the Fourth of July, when entertainment may continue until 11 p.m.;

(2) Outdoor entertainment, Friday through Saturday: 8 a.m. to 11 p.m.; and

Commented [AT1]: Add exceptions

(3) Indoor entertainment: 8 a.m. to 1 a.m. the following day.

~~—The city council may impose conditions for protecting the public health, safety and welfare on any entertainment license it issues.~~

(Ord. No. 34-95, 7-5-95; Ord. No. 186-02/03, 4-7-03; Ord. No. 23-10/11, 9-13-10)

Sec. 4-57.1. Sound oversight committee.

(a) There shall be a sound oversight committee of four (4) members appointed by the city council. One (1) member shall be a city employee nominated by the city manager; one (1) member shall be a police officer nominated by Portland's Downtown District board; and one (1) member shall be an entertainment licensee nominated by the nightlife oversight committee. The police officer shall be the chair of the sound oversight committee and shall be a non-voting member, except that the police officer shall cast the tie-breaking vote in the event of a tie.

(b) The sound oversight committee shall meet with ~~new entertainment license~~ applicants and licensees when ~~the license application is~~ referred to the ~~team committee~~ either by the city council or by the nightlife oversight committee. The sound oversight committee shall make recommendations to the applicant or licensee regarding actions it can take to mitigate noise and shall make any recommendations regarding noise mitigation it deems necessary to the city council for consideration.

(c) ~~Whenever the police receive two (2) or more verified noise complaints from two (2) separate individuals in any seven (7) day period or five (5) or more verified noise complaints in any thirty (30) day period regarding a particular entertainment licensed establishment a licensee exceeds the standards in § 4-57 of this Article,~~ the police department shall notify the licensee to meet with the sound oversight committee within five (5) business days from the date of the written notification, or such other time as is agreed upon by the sound oversight committee, to identify ways in which the noise problems which have been identified can be mitigated. The sound oversight committee shall notify ~~the any~~ complainants with respect to that licensee in the previous twelve months of the date and time of the meeting.

The licensee shall agree to take effective measures to address the noise issues as recommended by the sound oversight committee,

which measures shall be memorialized in a written agreement at the conclusion of the meeting with the sound oversight committee and shall be implemented within one (1) week of said meeting unless another date is agreed upon by the sound oversight committee. Failure to implement the plan in a timely fashion or to comply with all recommendations in the plan will result in a recommendation by the sound oversight committee to the city council to place conditions on or revoke the establishment's entertainment license.

If ~~the police receive two (2) or more verified noise complaints from two (2) separate individuals in any seven (7) day period or five (5) or more verified noise complaints in any thirty (30) day period regarding~~ the same licensed establishment on a subsequent occasion again exceeds the standards in § 4-57 of this Article, then the sound oversight committee is under no obligation to meet with the licensee but may make recommendations to the city council licensing authority to place conditions on or revoke the entertainment license.

(d) The sound oversight committee may also meet with liquor license applicants upon referral by the city council or the nightlife oversight committee and may recommend noise mitigation measures to liquor licensees upon referral by the Portland police department or the city council.
(Ord. No. 23-10/11, 9-13-10)

Sec. 4-57.5. Restricted locations.

Notwithstanding any other provision of this article, no new licenses shall be issued in the B-3c zone to drinking establishments and chemical-free night clubs, as defined in section 14-47. For purposes of this section, renewal of an existing license by the party holding the license on the date of enactment shall not be considered a new license. Any transfer of ownership shall be considered a new license.
(Ord. No. 47-97, 8-4-97)

Sec. 4-58. Penalties.

In addition to suspending or revoking a license, the city may prosecute violations in court. A violation of this division Article shall be punished by a fine of five hundred dollars (\$500.00) for a first offense, one thousand dollars (\$1,000.00) for a second offense and two thousand dollars (\$2,000.00) for a third or subsequent offense regardless of the time between offenses. Each act of violation and every day upon which any such violation shall

occur shall constitute a separate offense. In addition to such penalty, the city may enjoin or abate any violation of this division by appropriate action. In addition to such penalty, if the court finds for the city, the city shall recover its costs of suit including reasonable experts' fees, attorneys' fees and investigative costs.
(Ord. No. 34-95, 7-5-95)

Sec. 4-59. Applicability.

This division shall not apply to events held: ~~(a) in a private residence;~~ ~~(ab)~~ in a class in which instruction in music is given for hire; ~~or~~ ~~(be)~~ in a school under supervision of school authorities; ~~or (d) by and exclusively for the benefit of any bona fide charitable organization.~~
(Ord. No. 34-95, 7-5-95)

Sec. 4-60. Severability.

The provisions of section 1-14 of this Code shall apply to this division.
(Ord. No. 34-95, 7-5-95)

*Editor's Note-Pursuant to Council Order No. 63, 06/07 passed 10-16-06, the moratorium issued for late-night entertainment expired on November 20, 2006.

Sec. 4-61. Reserved.
Sec. 4-62. Reserved.
Sec. 4-63. Reserved.
Sec. 4-64. Reserved.
Sec. 4-65. Reserved.
Sec. 4-66. Reserved.
Sec. 4-67. Reserved.
Sec. 4-68. Reserved.

City of Portland
Code of Ordinances
Sec. 4-30

Amusements
Chapter 4
Rev. 6-7-12

MEMORANDUM

TO: Health and Human Services and Public Safety Committee

FROM: Jon P. Jennings, City Manager, and staff

DATE: March 13, 2019

RE: Proposed Changes to Entertainment Licenses

City staff has been working diligently on proposed changes to the City's entertainment licensing scheme with the goals of allowing the licensing process to be more informed with respect to potential sound impacts on neighboring uses, requiring business owners to be more proactive in managing noise concerns, and reducing the number of noise related complaints, all while still allowing for a robust entertainment scene.

This memo is designed to give an overview of the proposed changes for the Committee's consideration.

Current Licensing

Currently, the City has four types of entertainment licenses:

1. Entertainment without Dance
2. Entertainment with Dance
3. After Hours Entertainment
4. Dance Hall/Concert Hall
5. Single Dance/Single Concert on Private Property
6. Single Dance/Single Concert on Public Property

Initial applications for entertainment licenses are considered and granted by the City Council, and licensees are subject to a 92 dbA sound limit.

Proposed Changes

New Licensing Categories

As an initial matter, staff is proposing to change the licensing categories to more accurately track the concerns that different types of entertainment pose. The addition of dancing at a particular venue does not seem to have any correlation with neighborhood impact, but whether the entertainment is indoors or outdoors does. Staff proposes the following licenses:

1. Indoor Entertainment License: allows indoor entertainment only; doors and windows must remain closed during entertainment.
2. Outdoor Entertainment License: allows outdoor entertainment only.
3. Combined Entertainment License: allows both indoor and outdoor entertainment.
4. Expanded Entertainment Addendum: one-time addendum to allow an event to exceed the time and/or dbA level restrictions; granted by the City Manager.
5. Single Event Entertainment License – Private Property: one-time event on private property.

6. Single Event Entertainment License – Public Property: one-time event on public property.

Additionally, only five single event entertainment licenses will be issued for any one property. If a property owner plans to allow or host more than five events at the property in a calendar year, the owner will need to apply for a full entertainment license. This will ensure that people are not circumventing the licensing process – including a Council hearing, a sound mitigation plan (as proposed), and other requirements – by applying for numerous single event licenses.

Noise Deposit

Currently, the Parks and Recreation Department (which approves Single Dance/Concert licenses on public property) collects a noise deposit from groups conducting events on public property. They have found this to be an effective way to incentivize groups who hold single events to comply with noise restrictions and cooperate with staff in mitigating noise complaints. Staff's proposal is to formalize this noise deposit program and make it apply to any single event on either public or private property. The amount of the noise deposit increases as the number of anticipated attendees increases, reflecting the fact that larger groups are more likely to generate noise issues than smaller groups. The noise deposit is forfeited only if the group is 1) warned about noise issues and 2) fails to adequately mitigate those issues.

Sound Mitigation Plan

Staff has observed that many noise issues could likely be mitigated with forethought and planning by those groups hosting entertainment. Therefore, staff is proposing that certain applicants be required to submit a sound mitigation plan with their application for an entertainment license. A sound mitigation plan would require the applicant to think through ways to mitigate the impact of any entertainment on neighboring uses, with the help of an expert.

The sound mitigation plan would be reviewed either internally by qualified City staff, or would be sent out for review by a qualified third party. The recommendations of the reviewer would be submitted to Council for its consideration, similar to how recommendations from Zoning, the Police Department, etc. are currently submitted. The sound mitigation plan would also require that the applicant have an on-site sound monitor when the number of attendees is expected to exceed 250.

As proposed, the following applicants would have to submit a sound mitigation plan:

- Any applicant for an Outdoor Entertainment License (including those that currently have an entertainment license)
- Any applicant for a Combined Entertainment License (including those that currently have an entertainment license)
- Any new applicant for an Indoor Entertainment License
- Any applicant who is required to go back before Council for any renewal license

Staff does not anticipate that the preparation of a sound mitigation plan will be a substantial financial burden on any particular applicant, but do hope that it will lead to greater forethought in

designing sound systems and mitigation measures, and will also give the Council additional information when considering the impacts that an entertainment license is likely to have on the neighborhood.

Decibel Limitations

The current ordinance allows sound levels to reach 92 dbA, as measured eight feet from the source of the sound or from the means of egress. The City routinely receives numerous complaints from neighbors and others about entertainment that is within those limitations. Staff is proposing to adjust the dbA limit to 85, which is consistent with other similarly-sized cities. Staff is also proposing to add a cap on the dbC limit, which is intended to address issues where the sound itself is not loud on the dbA range, but the base is still causing a disturbance.

Time Limitations

Currently, entertainment can continue until 1:00 a.m., regardless of whether it is indoors or outdoors. Staff is recommending that additional time limits be placed on outdoor entertainment, requiring that it end at 10:00 p.m. on weeknights, except for a few holidays, and at 11:00 p.m. on Friday and Saturday nights, and the few holiday exceptions. Indoor entertainment can continue until 1:00 a.m. Any party wanting a one-time extension for a special event could request an Expanded Entertainment Addendum.