**Remote HHS and Public Safety Meeting Agenda**
October 11, 2022 at 5:30 PM
**Remote Meeting**

**MEMBERS**
Councilor Tae Chong, District 3, Chair
Councilor Mark Dion, District 5
Councilor Victoria Pelletier, District 2
Councilor Anna Trevorrow, District 1

To submit written public comment on an agenda item, email HHSPS@portlandmaine.gov. Submissions must be received by 12:00 pm the day before the Health & Human Services and Public Safety meeting to guarantee their inclusion in the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the name of the agenda item (see below).

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Hi there,

You are invited to a Zoom webinar.
When: Oct 11, 2022 05:30 PM Eastern Time (US and Canada)
Topic: Remote HHS and Public Safety Meeting

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1. Announcements

2. Review and Approval of Minutes from September 13, 2022

   a. September 13, 2022 Draft Minutes

3. Staff Updates

   a. HHS Updates

4. Decriminalize Maine Presentation

5. Discussion with Associate Corporation Counsel of City Code Chapter 35 (Cannabis Businesses)

   a. Whether Ch 35 of the City Code violates Maine law

6. Workplan Review

7. Next Meeting: November 8, 2022

**Health & Human Services and Public Safety Committee Minutes**

**Tuesday, July 12, 5:30pm, Remote Meeting**

Committee Attendance: Tae Chong, Chair (District 3), Mark Dion (District 5), & Victoria Pelletier (District 2). Anna Trevorrow (District 1)

Councilors in Attendance: Mayor Kate Snyder

City Staff:

Kristen Dow, Director of HHS; Tina Pettingill, Deputy Director of HHS; Adam Harr, Executive Assistant for Social Services; Heath Gorham, Interim Police Chief; Keith Gautreau, Fire Chief; Aaron Townsend, PPS Deputy Superintendent; Terry Young, PPS Chief Operating Officer; Aaron Geyer, Director of Social Services; Mary Beth Daigneault, Barron Center Administrator; Dr. Alfredo Vergara, Director of Public Health.

Meeting called to order at 5:30 PM.

**Announcements and Approval of Minutes**

- Mary Beth Daigneault is the new Barron Center Administrator.
    - Former Executive Director of a long term care facility in RI.
- Dr. Alfredo Vergara is the new Director of Public Health.
    - 20 Years Public Health experience including working for the CDC.
- Councilor Trevorrow moved to approve the minutes and Councilor Pelletier seconded and the motion passed 3 – 0 (Councilor Dion not yet present at the meeting).

**School Safety**

- Asked Portland Public Schools to talk about safety in light of recent current events.
- School Resource officers were removed from our schools, prompting increased communication between Police and the schools.
    - Shared emergency plans.

    - Going through scenarios next week on a table top exercise.
    - School tours for all beat officers near schools.
        - Officers have an understanding of layouts and where mass gathering places and classrooms are located.
- PD has shared vital information with the schools, including social media threats.
- PPS audited police staff training on mass shooting to gain PD perspective.
- PD has access to updated floor plans.
- School Safety measures taken since Columbine.
    - Locked doors with buzzing in.
    - ID badges.
    - Drills
        - 7 fire drills
        - 2 lockdown drills
        - 1 drill where students move to another location.

Committee questions and discussion.

- Councilor Dion hoped there is intentionality from the school side to make sure the decisions adopted from PPS and PD filter down to the teachers and parents.
- Chief Gorham said this is an ongoing learning process.
    - Shared the Uvalde report with the school department and showed what went wrong.
- Deputy Superintendent Townsend appreciates the comment on parents and will boost parent university events around school safety.
- Director Daigneault said that long term care facilities also have emergency plan requirements and would like to connect with Fire and PD.
- Councilor Dion would like to see a strategy on post incident trauma response.
- Councilor Chong asked if the schools have talked to students about gun violence in the neighbors where shootings have taken place?
    - There is a fine line from highlighting violence and exacerbating anxiety.
        - Focused these conversations around the family affected by the shooting in Riverton Park.
    - Building on communication to middle and high school students.
- Councilor Chong said that our SOPs are great but Uvalde showed us that communication and trauma are areas of need.
    - Increased mental health resources and looking at what will come out of the table top exercises.
- Councilor Chong asked f beat officers are quizzed on school layout.
    - No, they are made familiar but are not quizzed.
- Councilor Chong asked if there is communication between educators, or is that only when there is an incident.
    - Adopted KLGE policy with tiers of engaging with law enforcement.
        - Call 911 for an immediate threat.

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    - Non-immediate issues consult PD.
    - Can share with the committee.
- Councilor Dion would like the PPS and PD consider paths for connection between police officers and students.
- Councilor Trevorrow said that one aspect of prevention is investing in guidance counselors and mental health as a holistic approach to preventing violence. We brought this to the committee to ease our anxiety that we can prevent and respond to mass shootings to the best of our ability.

**HHS Update**

- The nightly census has been growing at the Oxford Street Shelter due to an increase I single asylum seekers. We had an average nightly census of 149 in August, up 20 from last month and were averaging 65 last year. The contract hotel nightly census is 137.
    - 75% at the hotel are asylum seeking singles.
    - 45% at OSS are asylum seeking singles.
    - Working with the Resettlement Coordinator.
    - Many benefits and resources used at OSS are not available to asylum seekers.
- FS numbers are down from moving families to a contract hotel in Saco; it is about 50% full. Catholic Charities is staffing up to finish the move.
- Prevention and Diversion program is up and running.
    - In 3 months, 138 intakes from 4 full time staff.
        - 80 stayed at the shelter.
            - Of those 80, 29 stayed less than one week at the shelter.
        - 58 (43%) were diverted to other resources and never entered our shelter.
    - Will report out monthly.
    - Resources diverted to are not hotels; they are keeping people housed, connecting to family, and other community resources.
- Needle Exchange
    - 647 exchanges.
        - 165 Outreach
        - 482 Onsite
    - 74,706 collected
    - 74,048 distributed
    - 1,140 Doses of Narcan distributed in 570 kits.
    - 1,029 Community Sharps collected
        - 471 in community in sharps boxes.
- Annual HHS Impact Statements

    - Over $5 million non general fund revenue.
    - Over $3.7 million generated in Public Health.
    - 43,836 bed nights for 136 unique patients in the Barron Center.
    - Over 17,000 program hours in office of Elder Affairs for 62 Adult Day Program clients.
        - 94 residents received snow shoveling services.
    - 922 families and 816 singles served through General Assistance.
    - Provided emergency shelter to 690 families.
    - OSS had 76, 316 bed nights provided to 1,391 individuals.
    - Reached 3,991 children in early childcare centers and 1,842 children in school through health heating programs and HEAL including the 5210 Let's Go program.
    - 1,260 Maternal Child Healthcare visits in Public Health.
    - 1,004 individuals connected to care through the Health Equity Program (previously known as the Minority Health Program)
    - 544 patients provided primary care at the Portland Community Free Clinic.
    - 787 patients provided STI screening and treatment.
    - 566,082 syringes were collected.
        - 6,107 exchanges.
    - Passed 26 comprehensive tobacco free policies across Cumberland County by the Tobacco Prevention Program.
- Overdoses
    - Increases over the last three months, but needles are going down.
        - What does a deeper dice look like?
    - 48% increase in overdose.
        - May through August had the biggest spikes.
    - Large increase in people who legally died during their overdose but refused transport to the hospital.
    - 38 fatalities YTD.

Committee questions and discussion.

- Councilor Chong saw the increase in overdoses and asked if this is related to the violence in the area experiencing those overdoses.
    - We would need to look into if there is a correlation between the increase in needles and violence/overdoses; last month we distributed less needles than we took in.
    - Does a safe injection site make sense?
- Councilor Pelletier got a lot of positive feedback on the infographics.
    - Are we still doing the 1 to 1 distribution?
        - State did rulemaking to recommend doing away with the 1 for 1 and do a 1 to up to 100.
            - Looking at this with the City Manager.

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    - Dr. Vergara said the policies implemented make sense from a Public Health perspective to help people from an education perspective.
        - Interventions that help people out of drug use.
        - Takes time for policies to make a difference.
        - City has a comprehensive way to get needle disposal information.
            - Will monitor closely to look at seasonality and changes in distribution.
            - Will look at data in relation to overdose.
- Councilor Dion asked when and should the City engage in strategies that move from consumption to therapy?
    - How many referrals come out of exchanges?
        - We track this and can share.
    - Syringe exchanges build trusted relationships with individuals and referrals come out of those relationships.
    - We don't provide substance use treatment at the City and it is lacking in Portland; someone may be ready for treatment but there is nowhere to send them.
- Councilor Trevorrow appreciates the directions of this conversation: that policing is only one part and solutions must include treatment, etc.



**HSC Neighborhood Advisory Committee**

- Advisory committee must being place by construction finishes in February, 2023.
- Meets monthly for the first year.
- Committee membership will be comprised of representatives from:
    - The Riverton Community Association
    - Neighborhood residents
    - Area businesses
    - The Portland Police Department
    - Homeless Service Center staff
    - Homeless Service Center clients
    - The District Attorney's office
    - Portland Trails
    - The District 5 City Councilor or their designee
- The Neighborhood Advisory Committee will:
    - Meet monthly for the first year;
        - The committee will vote on shifting to quarterly meetings in year 2.
    - Be chaired by a representative of the City's executive staff;
    - Review complaints;

    - Recommend operational changes:
        - Reduce neighborhood impacts;
        - Improve client services.
    - Review the Neighborhood Engagement Strategy;
    - Record meeting minutes:
        - Maintained for a 24 month period at the HSC;
        - Available for review on request;
        - Record the specific recommendations of the advisory group;
        - Annotated to show if recommendations have been implemented.
- It does not specify how many businesses or members.
- There will be community members who want to be at the table which is why we are making this an open process.
- The HSC will be in Councilor Dion's district and several constituents were opposed; their voices and concerns will be share with his committee.
    - What are the PD and Fire's plan to deal with problems that will arise?
- Councilor Trevorrow would like to see the advisory board have as many Social and mental health professionals as possible to have the best interest of the people we serve centered.
- Councilor Pelletier asked how the formation will work; is there an opportunity for entities not on this list to apply?
    - It's affine line of not getting too big that nothing is accomplished.
    - Individuals with lived experience will need outreach.
        - Maine Trans Net
        - Immigrant Welcome Center
        - Main Disability Network.
    - This is located in district 5 but constituents from all over the city will access the shelter.
- Mayor Snyder asked about how this committee will be put together.
    - Once members are committed and start meeting, they will explore how they will do outreach.
    - It is a platform to state publically what we are doing.
    - Staff will build out the committee and relay progress to the HHS&PS committee.
        - We can do community meetings and add info to the news roundup.

2022 HHS&PS Work Plan

- Councilor Pelletier would like to add and focus on overdose prevention sites but is mindful that there are only two months left.
- Councilor Trevorrow would like to look at harm reduction strategies going forward.
    - People have reached out on cannabis delivery services.
    - Another constituent group, decriminalize Maine, reached out to this committee.
- Councilor Dion summarized the work plan is around persistent conditions around substance use and homelessness.

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    - Go through the work plan and say what progress has been made.
    - Meeting with cannabis business owners soon to identify the issue.
        - May be able to do something before the end of the year.
        - Councilor Pelletier to connect with Director Dow.
    - Decriminalizing psychedelic plants should have adequate time.
        - Could invite group to share information and the slides presented to the Mayor and Councilor Pelletier.

The meeting adjourned at approximately 6:40 PM.

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**City of Portland | Health & Human Services Department**
Kristen Dow, *Director*

**To:** Members of the Health & Human Services & Public Safety Committee
**From:** Kristen Dow, Director of Health & Human Services
**Date:** October 5 , 2022
**Re:** Month of September Health and Human Services Department Updates

The following data and information is to serve as the monthly update from the Health & Human Services Department to the HHS & PS Committee:

**Overview of Oxford Street Shelter and contract hotel:**

- OSS average nightly census: 153
- Contract hotel average nightly census: 139
- In hotels: 122

**Overview of the Family Shelter:**

- Average number of Families/individuals on site in shelter: 22 families/ 66 individuals
- Average number of families/individuals in hotel overflow: 143 families/ 519 individuals*

  *Families have been moved out of hotels in various communities and moved to the contract hotel in Saco that is being managed by Catholic Charities. Please see the Resettlement Coordinator's update for this information.

**Average Nightly Individuals in Shelter in September:**

- 999 per night between various sheltering methods

**Prevention and Diversion Program:**

- 74 intakes
  - 46 stayed at the shelter, 30% stayed less than 2 weeks
  - 28 (38%) did not stay at the shelter

**Update from the City's Resettlement Coordinator:**

- During the month of September the Resettlement Program relocated an additional 26 families for 99 individuals to the Saco hotel staffed by Catholic Charities. Planning for this involved a large group meeting with families, Catholic Charities and the South Portland School Department. A last round of moves to fill this site will occur in early October.
- The Resettlement Program held an additional Housing Education Training session at the Casco Bay Inn hotel in Freeport for guests and families to ask questions and learn about the process for locating permanent housing while accessing General Assistance. Through this

education session and work with staff members 4 families for 16 individuals secured permanent housing from this hotel location during September 2022.

- With the roll out of Mainecare coverage for children, the Resettlement Program focused on assisting any remaining families at the Casco Bay Inn and Quality Inn with completing applications for, and obtaining full Mainecare for all eligible children.
- The Americorps Vista completed field shadowing and research, and developed new materials for guests of Portland's General Assistance program to ensure they have knowledge of area food and local resources. Additional field outreach is planned for October which will shape the work for the remainder of their program year.

**The totals for the City's General Assistance Program are as follows:**

- Total Applications: 1209
- Denials: 93
- Denial rate: 7.7%

**Totals for the Needle Exchange Program (NEP) are as follows:**

- Total number of exchanges: 566 (175 outreach, 391 onsite)
- Total number of needles collected: 61,855
- Total number of needles distributed: 66,085
- Total number of new enrollees (who receive starter pack of 10 at time of enrollment): 36
- Total number of Narcan doses distributed: 485 kits (970 doses)
- Community sharps reported: 792 (504 from sharps containers, or 64% of total)

**Public Health Clinic Numbers:**

- **STD Clinic:** Patients seen: 121**,** new patients: 31, Monkeypox vaccines administered: 136
- **PCFC:** Patients seen: 46 new patients: 10
- **Maternal Child Health** patients seen: 114

**Office of Corporation Counsel**
Jen Thompson, *Acting Corporation Counsel*
Michael Goldman, *Associate Corporation Counsel*
Amy McNally, *Associate Corporation Counsel*

**To:** Health and Human Services and Public Safety Committee

**From:** Amy McNally, Associate Corporation Counsel

**Date:** October 5, 2022

**Subject:** Whether Ch 35 of the City Code [Cannabis Regulation] violates Maine law

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In response to recent public outreach concerning Chapter 35 of the City Code, this memorandum offers a summary of the interplay between state law and local ordinances and an analysis of whether Chapter 35 violates Maine law as it relates to limiting the number of caregivers in the City. In sum, based on my review and research, Chapter 35 of the City Code is a permitted exercise of the City's home rule authority to regulate the nature of cannabis business operations and is not otherwise preempted by Maine statute.

Maine's Constitution's "home rule" provision, which is manifested in statute, provides the following: "[a]ny municipality, by the adoption, amendment or repeal of ordinances or bylaws, may exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication." 30-A M.R.S. §3001. The City's ordinance power is to be liberally construed and the City enjoys a presumption that the municipal ordinance is valid. 30-A M.R.S. §3001 (1) -(2). Local ordinance will not be preempted unless it would frustrate the purpose of state law. 30-A M.R.S. §3001 (3).

Maine's Supreme Judicial Court has remained largely deferential to municipalities' home rule authority. It has noted that the Legislature has been clear in its intent to convey "a plenary grant of the state's police power to municipalities, subject only to express or implied limitations" and "[o]nly where the municipal ordinance prevents the efficient accomplishment of a defined state purpose should a municipality's home rule power be restricted, otherwise [the City is] free to act to promote the well-being of their citizens." *School Committee of Town of York v. Town of York,* 626 A.2d 935, 938, n.8 (Me. 1993); *see also Central*

*Me. Power Co. v. Town of Lebanon,* 571 A.2d at 1193; *Dubois Livestock v. Town of Arundel*, 2014 ME 122, 103 A.3d 556. The mere fact that a local ordinance may establish more rigorous or extensive procedures than state procedures does not alone render an ordinance invalid. *E. Perry Iron & Metal Co. v. City of Portland*, 2008 ME 10, ¶ 23, 941 A.2d 457. Local ordinance will be preempted "when state law is interpreted to create a comprehensive and exclusive regulatory scheme inconsistent with the local action." *Dubois Livestock v. Town of Arundel*, 2014 ME 122, ¶ 13, 103 A.3d 556.

Maine's Marijuana Legalization Act provides broad authority for municipalities to regulate cannabis establishments generally by way of land use regulations, general authorizations or limitation of cannabis establishments and licensing requirements. 28-B M.R.S. § 401 (1-3). Similarly, Maine's Medical Use of Marijuana Act explicitly recognizes the City's home rule authority to regulate registered caregivers, caregiver retail stores, registered dispensaries, cannabis testing facilities and manufacturing facilities. 22 M.R.S. §2429-D. The Act only limits the City's authority as to registered caregivers by precluding it from "prohibit[ing] or limit[ing] the number of registered caregivers." 22 M.R.S. §2429-D (1). The City also may not prohibit caregiver retail stores, registered dispensaries, cannabis testing facilities and manufacturing facilities that were operating with municipal approval before the effective date of the statute, or September 1, 2019. 22 M.R.S. §2429-D (2).

The criticisms of the City Code as I understand them do not stem from the City revoking prior approval of retail stores, dispensaries, testing or manufacturing facilities, but instead appear to be grounded largely in a perception that the Code prohibits or limits the number of registered caregivers.[1] Accordingly, the question becomes whether Chapter 35 expressly prohibits or limits the number of registered caregivers. Although the City Code once included a cap on the number of retail locations (formerly Section 35-43(i) repealed in November 2020), the Code does not contain any such limitation on caregivers.

In general, the City Code regulates the operations of cannabis businesses at large, not the quantity of registered caregivers. For example, retail stores, small scale caregivers and dispensaries may only sell cannabis out of a fixed and licensed location. Sec 35- 43(f)(1). Mobile sales, mail order/online orders, drive-through windows and catering are prohibited.

[1] It is important to note that a "registered caregiver" is distinct under the statute from "caregiver retail store." A registered caregiver is defined as a caregiver registered with the state. 22 M.R.S. §2422 (11). A "caregiver retail store" is defined as a "store that has attributes generally associated with retail stores, including but not limited to, a fixed location, a sign, or regular business hours, accessibility to the public and sales of goods or services directly to a customer, and that is used by a registered caregiver to offer [cannabis] plants or harvested [cannabis] for sale to qualifying patients." 22 M.R.S. §2422 (1-F).

Sec 35- 43 (f)(2) - (3); (g). However, small scale caregiver and cannabis retail stores and/or dispensaries can make deliveries to qualifying patients in certain circumstances.[2] I understand these Sections have come under scrutiny as potentially creating a "de facto" limitation on the number of caregivers. To the extent one may argue these regulations have a practical effect of limiting the number of caregivers who operate in Portland, it is difficult to conclude the regulations alone create that result. Any reduction in participation is a result of caregiver choice not to be bound by the City's reasonable regulations, and not quantity limits imposed by the City. Deference is also owed to the City here, and because the Legislature did not specifically preclude these types of operational regulations on caregivers, the City is not preempted from imposing them.

The City Code's "dispersal requirement" prohibits, with some exceptions, a cannabis retail facility or dispensary from being located within one hundred (100) feet of any other cannabis retail facility or cannabis dispensary. While there may be an argument that this requirement may have the effect of limiting the number of caregivers from operating in the City due to a practical shortage of space, I understand the City is not saturated to a point where this requirement is turning potential caregivers away. Even in that event, because it is not an express limitation on the number of caregivers, and does not otherwise frustrate the purpose of the state statute, it would not be preempted thereby.

Another regulation I understand has been criticized as inconsistent with state law is Section 35-27(e) which requires small scale caregivers to serve no more than five clients per month. Although this may limit the pool of clients a small scale caregiver may serve, it does not prohibit or restrict the number of *caregivers*, and therefore does not run afoul of Maine law.

Chapter 35 also regulates cannabis businesses generally by prohibiting on-premises consumption, outdoor growing and giveaways. Sec 35-45 (a)-(d). Other Sections limit the production or sale of cannabis in a shape or design that would appeal to minors and prohibits adding cannabis derivatives to commercially available products that do not otherwise contain cannabis. Sec 35 - 42(a) - (b). Air quality at establishments must not be compromised. Sec 35 - 42(c). Retail operations are also required to adhere to specific hours of operation and age restrictions under Sections 35-43(a) -(c). Retail stores must be used exclusively for cannabis

[2] "Small scale caregiver, medical [cannabis] retail store, and/or dispensary may make deliveries of [cannabis] products to a qualifying patient with whom that small scale caregiver, medical [cannabis] retail store, and/or dispensary has an existing relationship with and whose written certification regarding medical use of [cannabis] the small scale caregiver, medical [cannabis] retail store, and/or dispensary has [been] previously verified in person." Sec 35- 43 (f)(4).

sales, with the exception of prepackaged food and nonalcoholic beverages. Sec 35-43 (d). Of course, none of these provisions expressly prohibit or limit the number of caregivers in the City, they only serve to regulate the nature of business operations, which is consistent with Maine's Marijuana Legalization Act and Maine's Medical Use of Marijuana Act.

Although this memorandum is not an exhaustive analysis of each performance standard included in Chapter 35, I hope it addresses the recent concerns raised by the public around the City's regulation of registered caregivers. Please let me know if you have further questions on the interplay between Chapter 35 and Maine law, or any of the issues discussed herein.