

**Remote HHS and Public Safety
Meeting Agenda**
March 16, 2023 at 5:30 PM
Remote Meeting



MEMBERS
Councilor April Fournier, At-Large, Chair
Councilor Anna Trevorrow, District 1
Councilor Victoria Pelletier, District 2

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).

The Health & Human Services and Public Safety Committee will conduct this meeting remotely via Zoom pursuant to the Remote Meeting Policy adopted by the Portland City Council. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live either in person or via Zoom, a recording will be available in the [Agenda Center](#) following the meeting.

You are invited to a Zoom webinar.

When: Mar 16, 2023 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 February 14, 2023
 - a. February 14, 2023 Draft Minutes
3. Pregnancy crisis centers and deceptive advertising practices related to the centers

- a. Corporation Counsel Memo
- 4. Homeless Services Center updates and FAQ review
 - a. HSC FAQ
- 5. Emergency shelter updates
- 6. Cold weather planning- discussion around comprehensive plan
- 7. April 11th meeting agenda



Health & Human Services and Public Safety Committee Minutes

Tuesday, February 14, 2023, 5:30pm, Remote Meeting

Committee Attendance: April Fournier, Chair (At-large), & Victoria Pelletier (District 2.

City Staff:

Kristen Dow, Director of HHS; Adam Harr, Executive Assistant for Social Services; Heath Gorham, Interim Police Chief; Keith Gautreau, Fire Chief; Aaron Geyer, Director of Social Services.

Meeting called to order at 5:30 PM.

Announcements and Approval of Minutes

- Councilor Trevorrow is unable to attend the meeting so the meeting will be slightly abridged and Pregnancy Crisis Centers will be postponed to the March meeting for that robust discussion.
- Councilor Pelletier moved to approve the minutes and Councilor Fournier seconded and the motion passed 2 – 0 (Councilor Trevorrow absent).

Director Dow explained that the shelters have been at capacity for a long time, but now with an increase in asylum seekers has now seen our community partners at capacity.

- 36 people can sleep inside the day room at the Family Shelter, with 40 people outside so the decision was made to have 70 people sleep in Chairs for three days straight.
- On Thursday, there were 10 people over the maximum number of chairs, leaving a pregnant mom outside; we secured space at a school to shelter available from 8PM at night to 7AM.
- We had a high of 72 over the weekend.
- Received 8 more families last night.

- 93 people were in the warming center space and we ran out of mats and were able to get cots delivered for when more families arrive.
- Mufalo Chitam from Maine Immigrants' Rights Coalition received funding to open shelter at the Salvation Army in two weeks with space for 77 people; the school is only available to bridge the two week gap; there are 93 people in the school.
- This does not account for pastors sheltering people night to night.
- 143 people in families are looking for emergency shelter night to night.
- January 1 to date, six weeks, we received 89 families for 289 individuals and 209 singles:
 - 498 individuals received
 - Summer of 2019 we served 440 individuals over 8 weeks.
- Asking the federal government and the State for comprehensive compassionate care.
 - Director Dow has been uninvited from federal meetings because she continued to define what compassionate care is and the funding and infrastructure needed to deliver.
 - Municipalities need support.
 - We need an Office of Resettlement, not money.
- It is Black History Month and the children sleeping in chairs are the future of Maine; what do we want their history to be?
- These numbers above do not include the circumstantially homeless.
- Councilor Fournier asked if there is value engaging with our federal delegation? What would we be asking for and what would those watching ask our delegation?
 - Yes; it is a southern and northern border issue.
 - Riverside, CA is sending people to Maine to sleep in chairs; they are sending people to a dangerous situation.
 - CBP is supposed to call sponsor address to verify they have legitimate and safe destination.
 - We don't want people to be detained but there needs to be a safe destination.
 - We are asking for a system that gives people a warm handoff to safe and available shelter across the country.
- Are there bills at the state we can advocate for?
 - Yes: a state run office of resettlement out of State DHHS.
- Councilor Pelletier wants to be surprised how dire the situation, but it is not as it has been continually exacerbated since last year.
- Councilor Fournier said action items include
 - A letter advocating for the Office of Resettlement.
 - Advocate to the delegation on the bill.

HSC Management Plan Staff Presentation

- The HSC Management Plan is a 43-page document [available online](#).

- We try and put things in plane language, readable, and digestible.
 - 1-pagers for clients.
 - What to expect from presenting at the prevention and diversion program at 39 forest to getting their bed at the HSC.
 - 1-pager for neighbors.
 - Explains what they can expect.
- On site services
 - Healthcare, dental, mental health, and substance use services
 - Greater Portland Health will have 4,000 square feet.
 - Will serve both the people staying in shelter and the public.
 - Two entrances, one serving people staying in the shelter and one for the public to help maintain the confidentiality of people staying in shelter
 - Peer Support
 - Spurwink position.
 - Amistad has applied for a peer recovery coach onsite.
 - Homeless Voices for Justice will do monthly meetings and outreach.
 - Case management from our staff and space for outside case managers.
 - Employment assistant
 - 6 week Job training courses.
 - Mail services
 - It is extremely important for asylum seekers to reliably get theory mail from immigration.
 - Housing assistance
 - City hosing navigators and Amistad's rapid rehousing navigators.
 - Three meals per day.
 - Finalizing contract with a vendor.
 - GPH Health Clinic
 - Will include dental services and will serve shelter guests and the public.
 - Transportation
 - City Shuttle service looping between the HSC 39 Forest with services along the route.
 - Metro line.
 - Milestone has committed to help.
 - We have the ability to use taxis in an emergency.
 - Security
 - Guest info
 - No illegal drugs or drug use.
 - No alcohol or marijuana.
 - Neighborhood information

- 24-hour hotline for issues that do not reach to the level of police.
 - Safety checks every 30 minutes.
 - Security on site 24/7 includes security office in the front.
 - Will buzz people in; HSC will be a keyless system.
- Neighborhood advisory Committee is fully formed at this time.
 - Application process scored and ranked the neighborhood and business seat applications.
 - 2 current clients will be part of the committee.
 - We are the HHS department for the entire city.
- We want to make clients' time at the HSC rare and brief.
- If Councilors and the City Manager receive questions, should we collect them and respond to them at the public meeting in March?
 - Yes.
 - We can create an FAQ to post on the webpage.
- Councilor Fournier asked about metro; there is a stop less than ½ mile from the shelter. Are there reduced or no cost bus passes for when the shuttle is not available?
 - We do have bus passes as part of our annual budget to get to confirmed employment.
- Councilor Fournier asked about the amnesty locker for people to store paraphernalia outside the shelter so they can come in.
 - Every bed will have a locker.
 - They are inside the facility but outside of the security check. They will have an individual code to access their locker.
- Councilor Fournier asked about the RFP on meals; what types of meals are available?
 - Preble Street has been awarded the contract; we are just working on the details and it will be ready.
- Councilor Pelletier asked if the shuttle have a set schedule or based on need?
 - It is on a set schedule 7:30 AM to about 8:00 PM with some flexibility.
 - The neighborhood line will also be posted for people arriving outside of those hours to get connected with the shelter.
- Opening date will fall on the week of March 20th after we receive the certificate of occupancy on the 10th of March, then move in on the 13th.

Discussion on Long-Term Solutions for Extreme Weather Situations

- We had extreme weather with double digit negative temperatures and took necessary but expensive action to open a shelter.
- Cold blue law: an ordinance with budget money and resources set aside for a minimum number of times in a season to meet this need.
 - How do we create a longer term solution?
- The Winter response plan for day shelter created last year is attached.

- 5 degree or below threshold to trigger as well as 10 or more inches.
- This was for day space, but space for and night is needed.
- What is a sustainable staffing plan?
- Able to pull staff within 36 hours to serve 90 people and save lives.
- Needed for the community as a whole.
- Chief Gautreau said staffing is the hardest element.
- Councilor Fournier reiterated this is just the start of the conversation on this.
- Councilor Pelletier appreciated how quickly staff moved and it saved lives.
 - Having a plan in place to share with the public is helpful.
- Chief Gautreau said we need a comprehensive plan.
 - We were fortunate this was not a weeklong issue; that would affect housed residents that can't afford heating oil.
 - Our current shelter crisis is like having a 2 alarm fire every night.

Fire Department Update on Potential Training Facility

- CIP advanced from finance committee and now going to full council.
- Funding reduced to \$110,000
- We did not get funding from the first or second tranche of ARPA funds.
- \$110,000 is the floor, if we could increase to \$150,000, could that help us break ground?

Alternative Response Program- Update on Status of the Program

- Chief Gorham explained we've had a behavioral health response team with an officer and behavioral health clinician for 20 Years.
- We added a substance use disorder liaison.
- Community wanted clinician sent instead of police, opposed to with police.
- Awarded money to help build the program, but staffing is an issue.
 - Lifting funding would give people an end date to employment.
- Alternative response is a 2-person team
 - Proactive outreach
 - Takes calls that would mostly go to police.
 - 10:00 AM to 10:00 PM, 7 days a week.
- 3 weeks into first team being active and will bring data back once there is enough to meaningfully evaluate.
- 4 new FTEs asked for in budget to continue program in 2024.
- Northern Light may provide medical services.
- PD has sent staff to areas with alternative response programs.
- It is a cultural shift for us; we are not used to sending civilians to calls like this.

- Councilor Fournier asked how often are the categories being looked at?
 - How often are types of calls being revisited?
 - Staff has sat with dispatch to help know when alternative response is appropriate.
- Fire has already started to call.
- This will free up officers.
- Working with HHS and the mobile medical outreach team.
- PD and PRCC working through staffing level issues.

Next Meeting: March 14, 2023

The meeting adjourned at approximately 6:37 PM.

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Office of Corporation Counsel

Michael Goldman, *Acting Corporation Counsel*

Amy R. McNally, *Associate Corporation Counsel*

Nicole M. Albert, *Associate Corporation Counsel*

Rachel L. Millette, *Associate Corporation Counsel*



MEMORANDUM

To: Health and Human Services and Public Safety Committee

From: Amy McNally, Associate Corporation Counsel

Date: February 10, 2023

Subject: Crisis Pregnancy Centers

Introduction

I understand the request from this Committee was for guidance as to whether the City can pass an ordinance that either bans Crisis Pregnancy Centers (“CPC”)¹ or, in the alternative, limits certain advertising practices. The purpose of this memorandum is to highlight some of the important legal limitations around the City’s ability to restrict CPCs generally, or their solicitation practices, in the City.

The foremost concern when determining what is appropriate in this context is the First Amendment’s prohibition on the government infringing on speech. The First Amendment offers broad protection against government action and must be considered carefully before adopting legislation. This memorandum provides a brief summary of how courts around the country have addressed this issue and how this should inform the City’s consideration of an ordinance in this context.

In summary, the short answer to whether the City may adopt an ordinance which bans CPCs is: probably not. The concise answer to whether the City may restrict some CPC solicitation practices is: maybe.

¹ Also known as “Pregnancy Resource Centers,” CPCs are facilities generally known for counseling pregnant individuals against having abortions. Some facilities may provide pregnancy testing and sonograms.

Background and Summary of First Amendment Considerations

The First Amendment generally prohibits the government from limiting speech based on content or viewpoint.² There are two ways in which the First Amendment can be violated in this context, by compelling speech or by restricting speech. If challenged in court, regulations of speech will be reviewed under different levels of scrutiny based on the nature of the restriction.

Restriction of content or message-based speech will be strictly scrutinized by court. To survive “strict scrutiny,” the ordinance must be “narrowly tailored to promote a compelling government interest.”³ More specifically, courts have said any government restrictions must: 1) show a substantial interest in regulating the speech; 2) the tactic must directly advance that interest; and 3) cannot be sustained by a more limited restriction.⁴

On the other hand, restriction of “commercial speech” is protected under a more relaxed standard and therefore, limitations on commercial speech are more likely to be upheld by courts. The United States Supreme Court has described commercial speech as “purely factual and uncontroversial information about the terms under which ... services will be available.”⁵ The US Supreme Court has held that restrictions on solicitation are likely permissible “so long as they do not discriminate based on topic, subject matter, or viewpoint.”⁶ Compelling certain commercial speech may survive a constitutional challenge if it is “reasonably related” to the government’s substantial interest, is “purely factual and uncontroversial” and is not “unjustified or unduly burdensome.”⁷ Restricting commercial speech that is “patently misleading” or related to illegal activity also has a better likelihood of surviving a constitutional challenge.⁸

² *City of Austin v. Reagan Nat’l Adver. Of Austin, LLC*, 596 U.S. ___, 142 S. Ct. 1464 (2022).

³ *Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council Baltimore*, 721 F.3d 264, 279 (4th Cir. 2013).

⁴ *Fargo Women’s Health Org., Inc. v. Larson*, 38 N.W.2d 176, 180 (1986), *cert denied* 476 U.S. 1108 (May 5, 1986) (No.: 85-1801).

⁵ *National Institution of Family & Life Advocates v. Becerra*, 585 U.S. ___, 138 S. Ct. 2361 (2018).

⁶ *City of Austin v. Reagan Nat’l Adver. Of Austin, LLC*, 596 U.S. ___, 142 S. Ct. 1464 (2022).

⁷ *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 650-52 (1985).

⁸ *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 565-65 (1980).

Examples of relevant court decisions:

When a legal challenge is raised, courts undertake a careful, fact-specific analysis of the legislation at issue. For some additional context, here are a few examples of how courts have decided cases:

1. Fargo Women’s Health Org. v. Larson.⁹ In this 1986 case, a North Dakota Supreme Court issued an order ceasing a crisis pregnancy center from “*falsely and deceptively advertising that they provide elective abortions and financial assistance for such services*” when they in fact, did not provide those services. The Court found that because the advertisements were placed in the commercial context and referenced the availability of financial aid for services, it was commercial speech and appropriately limited in this instance noting “[t]here can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity or are more likely to deceive the public than to inform it.”
2. Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council Baltimore.¹⁰ This 2013 case involved a Baltimore ordinance that required a disclaimer that the center does not provide or make referrals for abortion or birth-control services. The court determined that this message was non-commercial speech and compelling the disclaimer was deemed impermissible. The Court reasoned: “[w]hether a provider of pregnancy-related services is ‘pro-life- or ‘pro-choice,’ is it for the provider - not the Government - to decide when and how to discuss abortion and birth-control methods.”
3. Evergreen Ass’n v. City of New York.¹¹ This 2014 case was the result of a challenge to a New York City Council Local Law No. 17 which required pregnancy service centers to disclose the following:
 - i. Whether they have a licensed medical provider on staff that provides the services (“Status Disclosure”);
 - ii. That “NYC Department of Health encourages women who are or who may be pregnant to consult with a license provider” (“Government Message”); and
 - iii. Whether or not the centers provide abortion services or provide referrals for abortion, emergency contraception or prenatal care (“Services Disclosure”).

⁹ 381 N.W.2d 176 (1986).

¹⁰ 721 F.3d 264 (4th Cir. 2013).

¹¹ 740 F.3d 233 (2d Cir. N.Y. 2014).

The Court found that “Status Disclosure” was permissible but the “Government Message” and “Services Disclosure” violated the First Amendment.

The Court concluded the “Status Disclosure” was narrowly tailored to address the problem and within the government’s policy power to regulate for health and safety. In contrast, the Court found that the “Services Disclosure” altered the center’s speech by “*mandating the manner in which the discussion of these issues begins.*” The Court also found the “Government Message” was impermissible because it “*deprived the [centers] of their right to communicate freely on matters of public concern.*”

4. National Institute of Family & Life advocates v. Becerra.¹² This 2018 United States Supreme Court case involved a challenge to a California law that required facilities without licensed medical providers on staff to post a conspicuous notice on site that the “*facility is not licensed as a medical facility by the State of California and has no licensed medical provider who provides or directly supervises the provision of services.*” The Supreme Court held that law violated facilities’ protected speech under the First Amendment. The Court found this was content-based speech rather than commercial speech and applied strict scrutiny in its review. As a result, the Court held the law was unconstitutional because it burdened protected speech in large part because “*it targets speakers, not speech, and imposes an unduly burdensome disclosure requirement that will chill their protected speech.*”¹³ This was in part because it required the facility to “*call attention to the [government’s] notice, instead of its own message.*”

While each of these cases include a fact-specific analysis, there are a few important threads to take away. One theme is that mandated content disclosures will often run afoul of the First Amendment. Courts disfavor the government compelling entities to relay a message on its behalf. On the other hand, if required disclosures are narrowly tailored and purely factual, they could survive a constitutional challenge. Similarly, restrictions on speech are most likely to survive a legal challenge if they are specific, content-neutral and related to commercial speech.

¹² 585 U.S. ___, 138 S. Ct. 2361

¹³ *Id.* at 2378.

Challenges Presented and Potential Options

It is very unlikely that a ban on CPCs in the City would survive a legal challenge in court. Based on the case law, courts would presumably find that such a restriction is a broad infringement on CPCs' anti-abortion message, which is protected speech under the First Amendment.

Implementing restrictions on specific conduct could be possible if it is narrowly tailored to address a compelling City interest. The likelihood of an ordinance surviving a legal challenge will largely depend on what precisely the ordinance is seeking to limit and how it does it. Crafting any restriction must be content-neutral. If the ordinance is tailored to "commercial speech" in a clear, concise and objective way, for example, it is more likely to survive a legal challenge.

I hope this background is helpful. It seems more than likely that any restriction adopted by the City in this context will give rise to legal challenges. Careful consideration of the City's policy goal, and keeping any ordinance objectively and narrowly tailored to that goal, while remaining content-neutral, will give any legislation the greatest chance at surviving that challenge.

I look forward to discussing this further and answering any additional questions you may have at the upcoming Committee meeting.

Health & Human Services

Kristen Dow

Director

Aaron Geyer

Social Services Director



Homeless Services Center (HSC) FAQ

- Where is the Homeless Services Center located?
 - The HSC is located at 654 Riverside Street and is also accessible via the shuttle at 39 Forest Avenue.
- How many beds will be available?
 - 208 beds.
- The hotline call, is it expanded to accommodate multilingual needs of our diverse population?
 - Yes, the City uses the Language Line to provide translation for those who need it.
- Are the Advisory groups servicing same tasks as the disciplinary committee? In this round, it would be helpful to ensure a systematic installment disciplinary process/committee so that individuals aren't evicted from the shelter without a due process.
 - No, the Neighborhood Advisory Committee will meet monthly and will be chaired by a representative of the City's executive staff. The group will review complaints made during the prior month and recommend operational changes to reduce neighborhood impacts and/or improve client services. This group will also provide the review of the Neighborhood Engagement Strategy.
- Is there free or reduced bus passes for Metro?
 - Yes, we can give bus passes for verified appointments.
- What are the shuttles hours of operation?
 - Set schedule with some flexibility 7:30 AM to 8:00 PM, Monday through Saturday.
- Is there an amnesty locker for substance-use paraphernalia so it does not come into the center?
 - Each of the 208 beds have access to a locker which are inside the facility but outside of the security check/metal detector entrance to the shelter dorms.