



Health & Human Services and Public Safety Committee

Tuesday, May 14, 2019, 5:30 PM
Room 209, City Hall

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 23, 2019
 - a. April 23, 2019 Draft Meeting Minutes.
3. Sound Ordinance
 - a. Public Hearing
 - b. Committee Discussion and Vote.
4. Overdose Prevention Sites
 - a. Staff [OPS Presentation](#) by Kristen Dow, Interim Health and Human Services Director.
 - b. Committee Questions and Discussion.
5. Needle Exchange Program
 - a. Program Staff Presentation
 - b. Committee Questions and Discussion.
6. Next Meeting: May 28, 2019

NOTE: There will be public hearing and possible vote 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.

Executive Session: When there is a motion, it may go into Executive Session to discuss and consider property negotiations pursuant to 1 M.R.S. section 405(6)(C).

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 23, 2019, 5:30pm, Room 24, City Hall

Committee Attendance:

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

City Staff: Kristen Dow, Interim Director of Health and Human Services; Andy Downs, Director of Public Assembly Facilities; Anne Torregrossa, Corporation Counsel; Verne Malloch, Interim Police Chief; Jessica Hanscombe, Licensing and Registration Coordinator; Kevin Schneck, Technical Director of Recreation and Facilities; Keri Ouellete, Permitting and Intake Review Manager; Dr. Kolawole Bankole, Director of Public Health; Kevin Cashman, Police Lieutenant.

AGENDA ITEM 1 – Announcements

- The committee forwarded two sites for the Homeless Services Center to the full Council at the last meeting.
 - May 20, 2019 Council meeting will discuss and include public comment.

AGENDA ITEM 2 – Approval of Minutes

- Councilor Batson moved to approve the minutes and Councilor Ali seconded. Chair Ray added the following amendments in discussion and the minutes were approved unanimously as amended:
 - Page 4 It was not Chair Ray, rather:
 - Councilor Thibodeaux suggested there were three options with a third being to remain in OSS.
 - Open space suggestion was Councilor Batson's.

AGENDA ITEM 3 – Sound Ordinance

- Back Ground
 - Current Entertainment Licenses:
 - With dance license or without dance license
 - Indoor or outdoor
 - Single concert: one off event license
 - Dance Concert Hall License (2 in the City)
 - After-hours 1:00 AM to 3:00 AM (2 in the City)
 - Analysis
 - With or without dance
 - Noise complaints (mostly outside)

- Decibel (dB) levels measured by Acentech
 - Sound mitigation
- New License Types
 - o Indoor Entertainment License
 - Windows shut and doors closed.
 - 8:00 AM to 1: 00 AM. (no change)
 - Lowered from 92 dBa to 85 dBa
 - Note: A weighting (dBa)
 - Created a 95 C weighted limited (dBc).
 - dBc is measures more of the bass sound.
 - All new applicants have sound mitigation plans
 - New license to go before the Council
 - Require sound mitigation plan.
 - Renewals would go to the indoor entertainment license
 - Would not require sound mitigation plan.
 - o Outdoor
 - Same 85 dBa and 95 dBc limits
 - Limited hours to
 - Sunday Through Thursday 8:00 AM to 10:00 PM
 - Friday and Saturday 8:00 AM to 11:00 PM
 - Exceptions:
 - o Fourth of July to go to 11:00 PM
 - o Sundays before Memorial Day and Labor Day can also end at 11:00 PM.
 - Sound mitigation plan required for new applicants and for 1st time renewal licenses.
 - Regular renewals would be staff approved.
 - o Combined Entertainment Licenses
 - Both Indoor and outdoor would have separate mitigation plans and hours as outlined above.
 - o Single Events
 - Built in deposits for both public and private events (currently only deposits for events on public property)
 - Yearlong event licenses
 - For concert series including a sound mitigation plan.
 - Single concert events would still be issued by staff.
- Security Deposits
 - o \$100-\$1,000 based on the attendance size of the event.
 - Revoked or kept deposits are reviewed and then double the deposit for the next event.
 - o At the waterfront concerts
 - There should have been deposits for each event.
 - Complaints don't determine the keeping of deposits are kept;
 - The response to complaints determines if a deposit is kept.
 - o Deposits for a music festival of 5 events would be by event.

- After each successful event, the entity could recoup deposit.
- If an event goes over the planned attendance, the deposit could be revoked and then the next deposit would be double the money next time.
 - May require a mitigation plan.
 - A large event that had a \$1,000 deposit revoked would make the next deposit cost \$2,000.
- Violation of City Code
 - A sound deposit does not preclude fines for violating City code.
- Dance/No Dance
 - Did not want to preclude business
 - Changes were made to be good neighbors up front.
- Complaints
 - Decibel level is coming in under A scale at under 92 dBa.
 - The dBc scale was added to account for the bass
 - The majority of complaints were based on the bass
 - The new ordinance will have standards for dBa and dBc scales to
 - dBa under 85
 - dBc under 95 (standard for bass)
 - The different A and C weightings affect people differently so the dBc could be a little higher without being disruptive.

Committee Questions and Discussion

- Other Ordinances
 - Boston has nothing over 72 dBa
 - Entirely unenforceable; they don't try.
 - NY has different rules for residential.
- This ordinance governs entertainment.
 - The 85 dBc is based on other ordinances and measuring standards by 8 feet from the door closet to the source.
- Decibel levels are logarithmic meaning a decrease from 92 dBa to 85 dBa is greater than it may first seem.
- Time limitations for outdoor is 10:00 PM on weeknights and 11:00 PM Friday and Saturday.
 - Expanded Entertainment Addendum:
 - Events can request single use exemptions for extensions of hours or increases to decibel limit.
- The two businesses that have after hours levels will lose that and be a part of the new rules.
- There are sections of town that have zoning requirements that limit the amount of entertainment per week, but only the Old Port will have the 100-foot disbursement rule. (100-foot rule will remain unchanged)
- G. "Granted at the sole discretion of the City Council" but at the end of the ordinance it was changed to the City Manager
 - It should be City Manager in G.

- Chair Ray thanked the working group and is thankful it is no longer based on whether or not there is dancing.
- Under Entertainment Definition:
 - “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...”
 - This can capture private events: weddings included
 - Weddings would need an event license
 - Should patrons be attendees/guests?
 - Maybe a semicolon at participate in instead of a comma.
- Number 6:
 - Would include a poetry reading
 - If it was amplified sounds but it does not specify amplification.
 - What should be covered?
 - It would include community forums at the library
 - It sounds like it is covered but shouldn’t be.
 - How to define this line?
 - Are people coming to see or hear someone or is there something entertaining secondary to the event.
 - Churches with loud music
 - Example:
 - Loud music for service hurting the quality of life for neighbors
 - Not handled under this ordinance but looked at disorderly conduct and measured sound and found it wasn’t unreasonable.
- Number 5
 - Presentation of music videos.
 - Bars that have music videos on in the background.
 - Would they need a license?
 - Would need to be reviewed.
- Coverage Concerns
 - Are parts too broad?
 - Does not want to cover library.
 - Can be addressed by defining entertainment or through exception.
 - Exceptions in 4-59
 - Could include places of worship
 - Libraries
- Measurement of Sound
 - Outdoor is taken from property line nearest to the noise source and
 - Sound mitigation plan to capture if noise sources are located next to windows.
 - Measured 8 feet from the means of egress nearest to the noise source.
 - Possible to somehow measure from where it is noisiest.
 - And/or can be added but must be easily determined where the measurement point is.
 - From the outer wall?
 - Enforcement seeks voluntary compliance

- Which side is loudest from an event generating complaints may not be meaningful for enforcement.
 - A pattern of complaints may mitigate the above concern by pointing attention to problem locations.
 - Concern that there aren't violations from where measurements are made.
 - Even if there is not a measurable violation, the police will work with events and the noise mitigation plan to help problem solve.
 - Regardless of a violation, public can complain to the city council when business renew licenses.
 - Single events don't require a Sound Mitigation Plan.
 - The 5 event threshold should distinguish between those who should have them and those who really wouldn't need one.
- Public comment for any new event space.
 - Initial indoor entertainment will not be required to come forward to the full council if they currently have one.
 - Public is notified via public notice in the paper and on the City Website.
- Fast Track
 - Do things that are known to be non-problematic need a special license?
 - Things that would otherwise be blocked by 100-foot rule.
 - 5 event threshold was designed for this.
 - Essentially a fast track as it's just a staff approval.
 - Example: A coffee shop wanting to only play acoustic music would have a simple sound mitigation plan and head to the council for review.
 - If more than a 10% change in ownership requires a new license.
 - Under 100-foot rule
 - New ownership has a year to buy a new license to replace it.
 - Entertainment ordinance trumps separate zoning requirements.
 - Zoning is for repeated or continuous noise.
 - Section 14 will clarify.
- Double Licenses
 - Breweries need manufacturing sound mitigation and can sometimes need an entertainment license.
 - Council can make changes to licenses or sound mitigation plans.
 - Bunker had a problem until the mitigation was made around its cooler.
 - The goal of the sound mitigation plan is to this up front and get business to think how to be good neighbors at the beginning.

Next Steps

- Public Hearing and possible vote.

AGENDA ITEM 2 – Work Plan

- Goals
 - Overdose Prevention Sites (OPS)

- Info from State will be shared by Councilor Ali to the rest of the committee.
- Sober Housing/Recovery Houses.
- Councilor Batson would like to take up overdose prevention sites.
 - Information from City staff is ready.
 - Does not include state level information.
- Overdose Prevention Sites can take the second half of the next meeting.
 - Legislative committee may need to send an update.
- Sober Housing will follow in future meetings.

A public comment period was opened at 6:50 PM.

Libby Hanshee co Executive Director of Portland OPS – Spoke to the committee of creating an OPS taskforce. Who may have clearance to serve on a taskforce? This could be done

Asher Havlin of Munjoy Hill. – Portland OPS does a 101 tour. They would like to present if possible or somehow give that information to the committee.

Public comment closed at 6:54 PM.

Committee Discussion

- The committee will want to hear from City staff first then form a plan.
 - The 101 tour does not sound like something that would occur here
- Councilor Ali invited Portland OPS to Legislative Committee on Monday April 29th.
- Councilor Batson for clarification on who will present.
 - Bridget Rauscher; She oversees the overdose prevention grant, the substance use prevention program and prepared the presentation.
 - It would be a good opportunity to have the India Street Clinic staff give their update.

Next Meeting: The Committee will meet May 14, 2019.

- Public Hearing and possible vote to start the meeting.
- Overdose Prevention Sites: information, challenges and opportuneness.

The meeting adjourned at approximately 7:00 PM.

Rules & Procedure for Public Testimony

Council committees use the City Council rules for public testimony. You can find the complete rules in the *Rules of Procedure for the City Council, Rule 31. Procedure for Addressing Council*. This document is available on the City Website:

<http://www.portlandmaine.gov/DocumentCenter/View/1184>

Below is a summary of the main points:

- If you wish to speak, please raise your hand or line up.
- When you are recognized by the Chair, you will have up to three (3) minutes to offer your comments. Please begin by stating your name and where you live.
- While someone is speaking, others in attendance will not interrupt.
- There should be no expressions approval or disapproval (applause, snapping, boos, hissing).
- Remarks shall be confined to the merits of the pending item.
- The Chair may limit or cut off any commentary that is not germane or that is scurrilous, abusive, or not in accord with good order and decorum.
- Any person who shall continue to violate these rules, after warning by the Chair, may be ejected for the remainder of the meeting then in progress.

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 or guests, 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, 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~~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:

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

(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

(iv) 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 and/or 8' from any outer wall of the premises.
- (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

(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;~~ ~~(bc) school sponsored events in a school~~ under supervision of school authorities; ~~(c) City sponsored events under the supervision of City 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.

MEMORANDUM

TO: Health and Human Services and Public Safety Committee

FROM: City Staff

DATE: May 9, 2019

RE: Edits to Entertainment License Changes

At the April 23, 2019 meeting of the HHS Committee, the Committee shared some questions and concerns about the draft of the proposed ordinance. Staff has considered those comments and made the following updates to the ordinance:

1. Removed “spoken word” performances from the definition of entertainment. The Committee raised concerns that this would include book and poetry readings, and this should address that concern.
2. Amended the place of measurement for indoor entertainment to include the ability to measure from any outside wall of the building. The original draft had the measurement only being taken from the closest means of egress and the Committee expressed concern that the sound could be louder from a window or other wall nearest the entertainment.
3. Updated the exceptions to the ordinance to include all City and school sponsored events under the City or school’s supervision. Staff identified that the intent of this ordinance is not to capture high school sporting events or similar events hosted by the City or schools.

The legislation's calculated scheme includes the prohibition of certain conduct involving controlled substances. Most relevant to the suit at hand, the CSA provides that it is wholly unlawful to manage or control any place, regardless of compensation, for the purpose of unlawfully using a controlled substance. Defendant Safehouse seeks to disregard the law and override Congress' carefully balanced regulatory scheme by establishing, managing, and controlling sites in Philadelphia that will allow individuals to engage in the illicit use of controlled substances, namely, heroin and fentanyl.

For purposes of this action, it does not matter that Safehouse claims good intentions in fighting the opioid epidemic. What matters is that Congress has already determined that Safehouse's conduct is prohibited by federal law, without any relevant exception. To prevent Safehouse from violating federal law, the United States asks the Court to declare illegal the Defendants' proposed establishment and operation of a place for the unlawful use of controlled substances.

Plaintiff, the United States of America, by and through its attorneys, alleges as follows:

1. This is a civil action seeking declaratory judgment under the Declaratory Judgment Act, as amended, 28 U.S.C. § 2201, and under the Controlled Substances Act, as amended, 21 U.S.C. §§ 801 *et seq.*, and its implementing regulations, 21 C.F.R. §§ 1301 *et seq.*

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 21 U.S.C. §§ 856(e), 843(f), and 28 U.S.C. §§ 1331, 1345.

3. Venue is proper in the Eastern District of Pennsylvania pursuant to 21 U.S.C. § 843(f)(2) and 28 U.S.C. § 1391(b).

PARTIES

4. Plaintiff is the United States of America.

5. Defendant Safehouse is a privately held Pennsylvania nonprofit corporation

located at 1211 Chestnut Street, Suite 600, in Philadelphia, Pennsylvania. Safehouse was formed in or around August of 2018.

6. Safehouse seeks to establish and operate one or more sites in Philadelphia where, among other things, intravenous drug users will be permitted to use illegal controlled substances (primarily, heroin and fentanyl) in “consumption rooms” under medical supervision (hereinafter, “Consumption Room(s)").

7. Defendant Jeanette Bowles is the Executive Director of Safehouse.

FACTUAL ALLEGATIONS

8. Existing nonprofit community organizations, such as Prevention Point Philadelphia, provide a wide range of medical and non-medical services intended to reduce the harms of the opioid crisis in Philadelphia. These services include, but are not limited to, access to addiction treatment, wound care, clean needle exchange, social services, testing, free distribution of the opioid overdose reversal medication Naloxone (Narcan), and training on how to administer Naloxone.

9. Safehouse states on its website that its mission is “sav[ing] lives by providing a range of overdose prevention services” in Philadelphia, including “[m]edically supervised safe consumption and post-consumption observation.” (See Safehouse FAQ, attached hereto as Exhibit A).

10. Safehouse further states on its website that, upon arrival at “Safehouse facilities,” drug users – called “participants” – who seek supervised consumption will be directed to a

Consumption Room where they will be provided with syringes and related paraphernalia by Safehouse staff, who will observe them while they prepare and inject illegal narcotics within the Safehouse Consumption Room. (*Id.*).

11. “[P]articipants” will then be sent to an “observation room,” where they will be “offered on-site initiation of Medication Assisted Treatment (MAT), wound care, and referrals to primary care, social services, and housing opportunities.” (*Id.*). Safehouse states that it will “provide overdose reversal and other emergency care” and “advise on sterile injection technique,” but its staff will not “administer any narcotic or opioid,” nor will they make any such drug available “other than those that are FDA-approved for the treatment of opioid addiction[.]” (*Id.*).

12. Heroin and fentanyl are controlled substances. 21 U.S.C. § 812; 21 C.F.R. §§ 1308.11, 1308.12. Heroin is a Schedule I substance, and fentanyl is a Schedule II substance. 21 U.S.C. § 812(c) (“Schedule I” at (b)(10); “Schedule II” at (b)(6)).

13. Knowing or intentional possession of Schedule I or II substances such as heroin or fentanyl, without satisfying certain exceptions that do not apply to Safehouse participants, violates federal law. 21 U.S.C. § 844(a).

14. The Controlled Substances Act, 21 U.S.C. §§ 801-971, provides, in pertinent part, that:

it shall be unlawful to . . . manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

21 U.S.C. § 856(a), (a)(2).

15. Section 856(a)(2) applies to any person who “manage[s] or control[s] any place” that they “knowingly and intentionally . . . make available for use, with or without compensation . . . for the purpose of unlawfully . . . using a controlled substance.” Defendants’ operation of Consumption Rooms would do exactly that.

16. Therefore, Defendants will violate section 856(a)(2) of Title 21 if they open a Consumption Room.

17. Defendants have publically stated their position that the operation of such a Consumption Room would not violate federal law and that they intend to open one or more Consumption Rooms notwithstanding section 856 of Title 21 of the United States Code. (*See* Exhibit A).

18. By a letter to Safehouse’s President and Vice President dated November 9, 2018, the United States Attorney for the Eastern District of Pennsylvania, William M. McSwain, advised Safehouse that its planned operation of one or more Consumption Rooms would clearly violate federal law. (*See* Nov. 9, 2018, letter, attached hereto as Exhibit B). The government requested assurance that Safehouse would comply with federal law, and advised that the government would pursue appropriate legal remedies should Safehouse fail to ensure its compliance. *Id.*

19. By letter dated November 26, 2018, Safehouse’s President and Vice President advised the government that Safehouse would not comply, asserting, “[w]e respectfully disagree with the conclusion that Safehouse’s proposed consumption room would violate federal law.” (*See* Nov. 26, 2018, letter, attached hereto as Exhibit C, at 1).

20. On or about December 24, 2018, Safehouse announced that it had retained DLA Piper to represent it in potential litigation against the United States regarding Safehouse's legality.

21. In or around January 2019, Safehouse hired Defendant Jeanette Bowles as its Executive Director.

22. Upon information and belief, Defendants will imminently open one or more Consumption Rooms in Philadelphia. Defendants' initial plan was to be operational by January 2019, although they may have recently pushed back the opening to March 2019.¹

COUNT I

Violation of the Controlled Substances Act, 21 U.S.C. § 856(a)(2) -- Declaratory Judgment

23. The United States repeats and re-alleges Paragraphs 1 through 22 as if fully set forth herein.

24. Pursuant to 21 U.S.C. § 856(a) and (a)(2), "it shall be unlawful to . . . manage or control any place . . . and knowingly and intentionally . . . make available for use, with or without compensation, the place for the purpose of unlawfully . . . using a controlled substance."

25. Defendants intend to manage and control one or more Consumption Rooms in Philadelphia and they will knowingly and intentionally provide a place for drug users to use controlled substances unlawfully, such as heroin and fentanyl.

26. Accordingly, Defendants imminently will violate 21 U.S.C. § 856(a)(2).

¹ Colleen Slevin, *Denver is latest city pushing for 1st US drug injection site* (Nov. 28, 2018), <https://www.apnews.com/86a3aca99f72489082fcfa7ff0ab3a83> ("A private nonprofit is raising money for a supervised injection site in Philadelphia but has pushed back its potential opening date from January to mid-March, the group Safehouse said.").

27. Pursuant to 21 U.S.C. § 856(e), “[a]ny person who violates subsection (a) of this section shall be subject to declaratory and injunctive remedies as set forth in section 843(f) of this title.”

28. Section 843(f), provides, in turn, that “the Attorney General is authorized to commence a civil action for appropriate declaratory or injunctive relief relating to . . . [section] 856 of this title.” 21 U.S.C. § 843(f)(1).

29. Under 28 U.S.C. § 2201(a), “[i]n a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”

30. Declaratory relief is especially appropriate where illegal conduct is imminent.

31. The United States is accordingly entitled to appropriate declaratory relief through this civil action pursuant to 21 U.S.C. § 843(f) and 28 U.S.C. § 2201, stating that Defendants’ establishment and operation of any Consumption Rooms will violate section 856 of Title 21 of the United States Code.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that judgment be entered in its favor and against Defendants declaring that Defendants' establishment and operation of any Consumption Room, or similar sites made available for the unlawful use of controlled substances, will violate 21 U.S.C. § 856(a)(2).

Dated: February 5, 2019

Respectfully submitted,

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Civil Division

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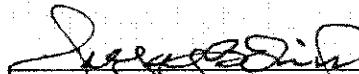
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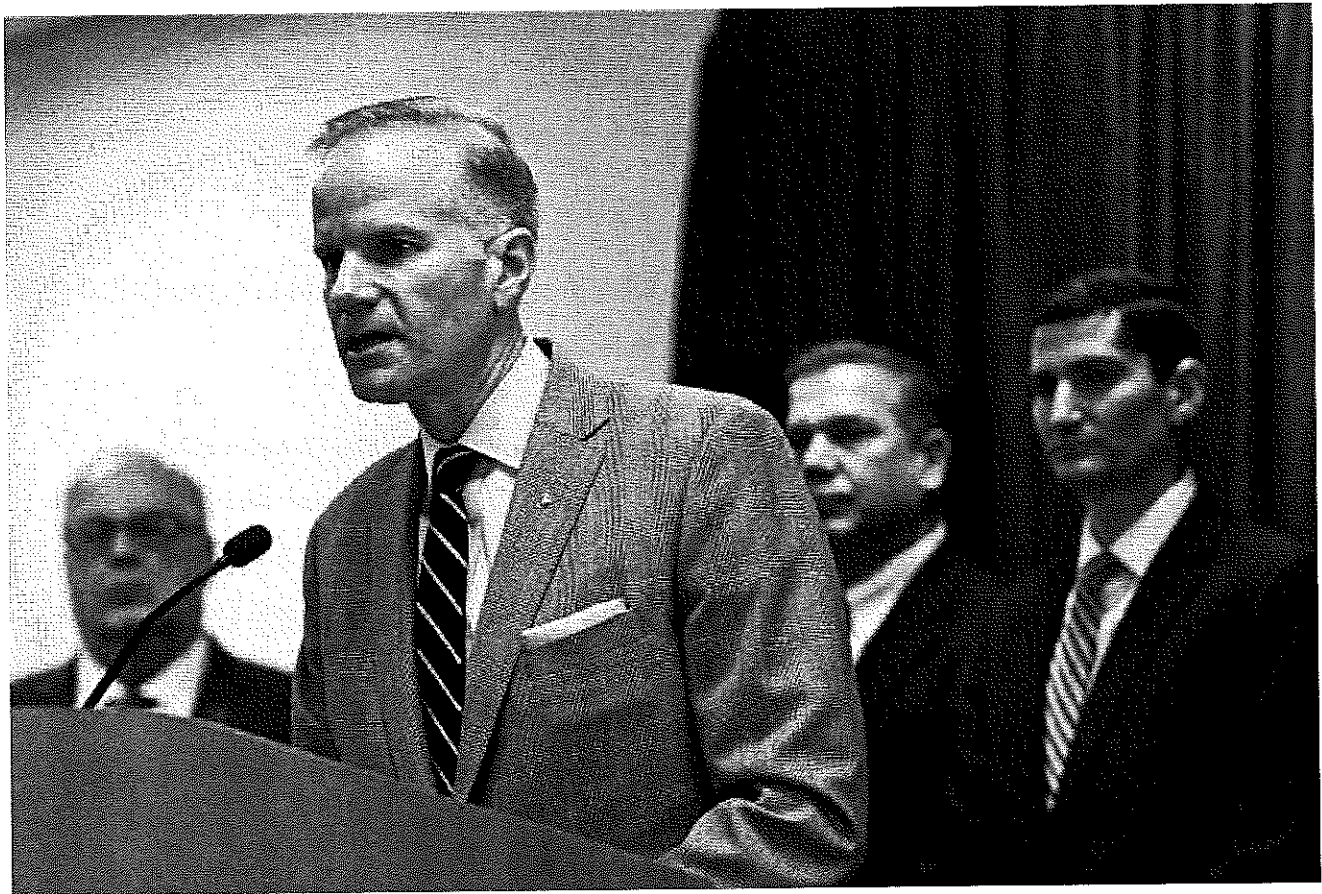
PENNSYLVANIA

PUBLIC HEALTH



Federal prosecutors sue to stop nation's first planned 'supervised injection site' in Philly

By Bobby Allyn · February 6, 2019



 U.S. Attorney William McSwain announces a lawsuit to prevent a supervised injection site from opening in Philadelphia. (Emma Lee/WHYY)

Update: 12:15 p.m.

After months of threats, federal prosecutors in Philadelphia launched a legal challenge on Wednesday against the nonprofit Safehouse, which is hoping to open what would be the nation's first site where people with opioid addiction can use drugs under medical supervision.

The civil lawsuit, which is jointly being pursued by Pennsylvania-based prosecutors and the Department of Justice in Washington, is the first time the federal government has intervened in the hotly debated issue of supervised injection sites, providing what may become an important legal test case as cities across the country consider similar proposals.

The complaint, which can be read in full below, comes just as Safehouse officials ramp up fundraising efforts and continue to scout a location for what they say is a medical facility that can save lives.

If federal officials succeed in court, the momentum behind Safehouse may be lost.

"This is in-your-face illegal activity using some of the most deadly, dangerous drugs that are on the streets. We have a responsibility to step in," said William McSwain, the U.S. Attorney for the Eastern District of Pennsylvania, in an interview in his office recently. "It's saying, 'Safehouse, we think this is illegal. Stop what you're doing.'"

According to the suit, a supervised injection site would violate a section added to the Controlled Substances Act in the 1980s during the height of the crack epidemic.

McSwain's comments affirm remarks made last year by Deputy Attorney General Rod Rosenstein, who said in an interview with WHYY that swift and aggressive action would follow the opening of a supervised injection site. Such facilities operate in Canada and Europe, but none exist in the United States. That has not stopped other cities like New York, Denver and Seattle from publicly debating similar proposals.

Last week, Pittsburgh Mayor Bill Peduto also said the city would explore the creation of supervised injection sites.

In Philadelphia, the one-count civil lawsuit is far from the most assertive posture federal prosecutors could have taken in response to a proposal sanctioning the use of illegal drugs, McSwain said.

The suit is asking U.S. District Court Judge Gerald McHugh to rule on the legality of Safehouse's plans, rather than waiting for Safehouse to open and then cracking down with arrests and a prosecution.

"We're not bringing a criminal case right now. We're not arresting anybody. We're not asking to forfeit property. We're not looking to be heavy-handed," McSwain said. "This can serve everyone's interest in order to find out what the court thinks of this. But this, in our view, is illegal."

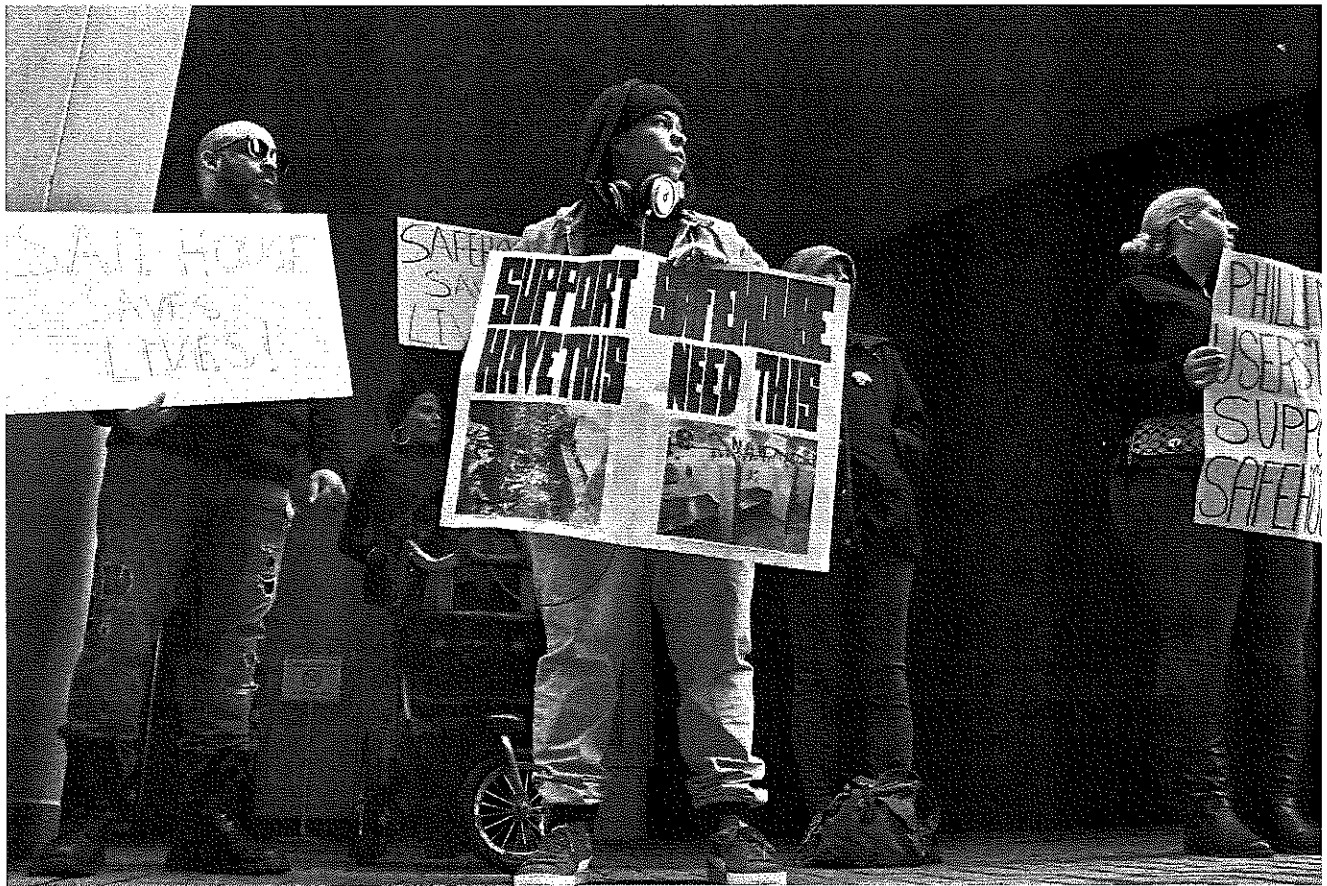
Ronda Goldfein, vice president and lawyer for Safehouse, said federal drug laws were not written to obstruct a medical facility focused on saving lives and moving those addicted to opioids treatment.

She is confident the court will rule in Safehouse's favor.

"We have a disagreement on the analysis and intention of the law," Goldfein said. "We don't think it was intended to prevent activities such as this, and perhaps it will take a court's ruling to move the issue forward."

Philadelphia's District Attorney Larry Krasner, who has promised not to prosecute anyone associated with Safehouse, was dismayed by the federal government's action.

"No one is giving drugs to people. The people coming in were going to use those drugs anyway," said Krasner, adding that the plan to have Safehouse staff watch "people who have injected their own drugs to make sure they do not fall asleep and stop breathing" should not be criminalized.



📷 Protesters gather outside the U.S. Attorney's office on Chestnut Street in support of a safe injection site for Philadelphia. (Emma Lee/WHYY)

The provision of the law in question is widely known as the crack house statute. It makes it illegal to maintain a space for the purpose of making, storing, distributing or using an illegal drug. Safehouse would not make or provide opioids to users, but it would allow people to bring in their own drugs to use while being monitored by medical staff.

A study by Alex Kreit, a drug policy expert and law professor at Thomas Jefferson School of Law in San Diego, found that the law has been successfully used to prosecute things like a drug seller operating out of a car dealership, rave parties where ecstasy was prevalent and a concert promoter who threw music festivals where illegal drugs flowed freely.

Kreit said that while the language of the Controlled Substances Act is broad enough to encompass an injection site, he can also imagine a defense gaining traction based on that idea that it is a local concern involving a medical service in the midst of an opioid crisis forcing officials to reconsider the status quo.

"It is completely untested in terms of how federal law will apply to safe injection sites," Kreit said. "People will be watching this very closely, particularly in other cities that have expressed their

intention of starting a safe injection site.”

But he says winning with that pitch would be an “uphill battle” in federal court. Even if the purpose of a site is not to encourage drug use, if illegal drugs are being used knowingly, that has been enough for courts to justify a crackdown, Kreit said.

Safehouse is a privately-run nonprofit that has the support of top city officials and former Gov. Ed Rendell, but will not receive taxpayer funding. Planners say they aspire to open a facility sometime in 2019.

Philadelphia health officials estimate that opioid-related drug overdoses kill about three people a day in the city. The more than 1,100 people who died from an overdose last year is triple the city's murder rate.

The overdose mortality rate hit a five-year low last year, and city officials attribute the decline to the distribution of naloxone, known by the brand name Narcan. Transit workers, police and paramedics now all are equipped with the overdose-reversing drug.

Studies have shown that in Canada and Europe, supervised injection sites have averted lethal overdoses and extended a link to treatment services.

McSwain remains a skeptic.

“That doesn't mean that you're not going to overdose when you're not at the site. And it doesn't mean that there couldn't be other negative effects of having a site, where more people are, for example, getting hooked on drugs or trying drugs, because they think it's safe, or they think it's legitimate, or they think it's legal,” McSwain said. “We don't attract people to go down this path of drug dependency that destroys their lives.”

McSwain said there is no evidence that such a model would definitively work in Philadelphia, saying he worries an injection site would normalize or even entice people to use unpredictable synthetic opioids like fentanyl, a drug that can be 50 times more powerful than heroin.

In November, McSwain wrote Safehouse officials a letter imploring the nonprofit to comply with federal law, writing that the federal statute “makes no exception for entities such as Safehouse who claim a benevolent purpose.”

In response, Safehouse officials told McSwain they “respectfully disagree,” because the statutes were never intended to be used to attack a medical injection site.

“We hope that the U.S. Attorney’s Office will exercise prosecutorial discretion in assessing our proposed overdose prevention services,” Goldfein wrote.

Three months later, federal officials took Safehouse to court.

“These folks have good intentions and they’re trying their best to combat the opioid epidemic, but this step of opening an injection site crosses the line,” McSwain said. “If Safehouse or others want to open this type of site, they need to steer their efforts to get the law changed.”

—

Tom MacDonald contributed to this report.

UNITED STATES OF AMERICA v... by on Scribd

The New York Times

Fight Drug Abuse, Don't Subsidize It

Americans struggling with addiction need treatment and reduced access to deadly drugs. They do not need a taxpayer-sponsored haven to shoot up.

By Rod J. Rosenstein

Mr. Rosenstein is the deputy attorney general of the United States.

Aug. 27, 2018

Almost 64,000 Americans died of drug overdoses in 2016, a shocking 54 percent increase since 2012. Dangerous opioids such as heroin and fentanyl contributed to two-thirds of the deaths. This killer knows no geographic, socioeconomic or age limits. It strikes city dwellers and Midwestern farmers, Hollywood celebrities and homeless veterans, grandparents and teenagers.

Remarkably, law enforcement efforts actually declined while deaths were on the rise. Federal drug prosecutions fell by 23 percent from 2011 to 2016, and the median drug sentence doled out to drug traffickers decreased by 20 percent from 2009 to 2016.

The Trump administration is working to reverse those trends. Prosecutions of drug traffickers are on the rise, and the surge in overdose deaths is slowing.

Unfortunately, some cities and counties are considering sponsoring centers where drug users can abuse dangerous illegal drugs with government help. Advocates euphemistically call them “safe injection sites,” but they are very dangerous and would only make the opioid crisis worse.

These centers would be modeled on those operating in Canada and some European countries. They invite visitors to use heroin, fentanyl and other deadly drugs without fear of arrest. The policy is “B.Y.O.D.” — bring your own drugs — but staff members help people abuse drugs by providing needles and stand ready to resuscitate addicts who overdose.

Last year, San Francisco assembled a task force to establish an injection site, and last week the California State Senate passed a bill that would allow San Francisco to operate such sites and grant legal immunity to the drug users who visit them. In May, the mayor of New York City announced a plan to open four injection sites. A Seattle task force approved a similar plan, and city officials have pitched outfitting a van as a mobile injection site. Numerous states, including Colorado, Massachusetts, Vermont and Maine, have explored similar options to help their residents use hard-core drugs.

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One obvious problem with injection sites is that they are illegal. It is a federal felony to maintain any location for the purpose of facilitating illicit drug use. Violations are punishable by up to 20 years in prison, hefty fines and forfeiture of the property used in the criminal activity. The law also authorizes the federal government to obtain civil injunctions against violators. Because federal law clearly prohibits injection sites, cities and counties should expect the Department of Justice to meet the opening of any injection site with swift and aggressive action.

Proponents of injection sites say they make drug use safer, but they actually create serious public safety risks. Many people addicted to opioids use illicit fentanyl or one of its analogues, which can be up to 5,000 times more powerful than heroin. Users often have no idea what they are actually buying from criminal drug dealers. Moreover, a bystander or emergency medical worker who comes into contact with such drugs can be gravely harmed.

Additionally, injection sites destroy the surrounding community. When drug users flock to a site, drug dealers follow, bringing with them violence and despair, posing a danger to neighbors and law-abiding visitors. For instance, the area near an injection site in Vancouver, British Columbia, was described by a member of the Redmond, Wash., City Council as “a war zone” with “drug-addled, glassy-eyed people strewn about” and “active drug dealing going on in plain sight.”

Injection sites do not help drug users overcome addiction. Most visitors simply walk in, get high and stumble out. Some estimates suggest that as few as 10 percent of injection site users find their way into treatment. The rest continue the downward spiral of addiction.

Supporters also ignore the unintended consequences on the next generation. Injection sites normalize drug use and facilitate addiction by sending a powerful message to teenagers that the government thinks illegal drugs can be used safely.

That is not the way to end the opioid crisis. Americans struggling with addiction need treatment and reduced access to deadly drugs. They do not need a taxpayer-sponsored haven to shoot up.

To end the drug crisis, we should educate everyone about the dangers of opioid drugs, help drug users get treatment and aggressively prosecute criminals who supply the deadly poison. Under the leadership of President Trump and Attorney General Jeff Sessions, the Department of Justice is delivering results. Many federal, state and local agencies are working with us to combat opioid addiction. Cities and counties should join us and fight drug abuse, not subsidize it.

Rod J. Rosenstein is the deputy attorney general of the United States.

Follow The New York Times Opinion section on Facebook and Twitter (@NYTopinion), and sign up for the Opinion Today newsletter.

A version of this article appears in print on Aug. 28, 2018, on Page A23 of the New York edition with the headline: The Dangers of ‘Safe Injection’

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CITY OF PORTLAND

Health & Human Services Department

Kristen Dow, Interim Director

Public Health Division

Kolawole Bankole, MD, MS, MBA, Director

Safe Consumption and Observation Sites and Engagement Centers: Public Health Review

Terms and Definitions¹¹:

Safe Injection (or Consumption) Space (or Site or Facility) (abbreviated: SIS, SCS, SIF) or Overdose Prevention Site (OPS): A medically-supervised facility designed to reduce nuisance from public drug use and provide a hygienic and safe environment in which individuals are able to consume illicit drugs, often intravenously.

Comprehensive User Engagement Site: A medically-supervised facility, similar to an SIS/SCS/SIF, offering a variety of social services, case management and access to treatment of substance use disorder.

Harm Reduction: A set of practical strategies and ideas aimed at reducing negative consequences associated with drug use. Harm Reduction is also a movement for social justice built on a belief in, and respect for, the rights of people who use drugs.

Areas of Consideration:

Cost: Effective or Prohibitive?

Efficacy: Is this evidence-based?

Local and Federal law: What are the implications?

Community Input: Who does this impact and how?

An Overview of Current Models: Insite, Vancouver, Canada

Alternate Approach: Boston Public Health - Supportive Place for Observation and Treatment (SPOT) Program

Review of Findings:

Cost: Effective or Prohibitive?

The estimated economic costs and benefits of establishing a potential safe injection facility in San Francisco utilized mathematical models that combine local public health data with previous research on existing SIFs. Potential savings from five outcomes were examined: averted HIV and hepatitis C (HCV) infections, reduced skin and soft tissue infection, averted overdose deaths, and increased medication-assisted treatment (MAT) uptake. Findings show that each dollar spent on a SIF would generate US\$2.33 in savings, for total annual net savings of US\$3.5 million for a single 13-booth SIF.³

The annual costs of operating the SIF are used to measure the social costs of Insite. Presently, Insite is funded by Vancouver Coastal Health, one of six publicly funded healthcare regions within the Canadian Province of British Columbia. Through the use of conservative estimates, Insite (Vancouver, British Columbia), on average, prevents 35 new cases of HIV and almost 3 deaths each year. This

provides a societal benefit in excess of \$6 million per year after the program costs are taken into account, translating into an average benefit-cost ratio of 5.12:1.³

Baltimore, Maryland has one of the highest overdose rates in the country. In 2016, a study was completed for the purpose of examining the health and financial costs of a hypothetical safe consumption site. Local health data and data on the impact of existing SCSs analyzed the following:

- HIV transmission
- Hepatitis C transmission
- Skin and soft tissue infection
- Overdose mortality
- Overdose-related medical care
- Increased medication assisted treatment (MAT) for opioid dependence

The study predicted that for an annual cost of \$1.8 million, a single SCS would generate \$7.8 million in healthcare savings, preventing: 3.7 HIV infections, 21 Hepatitis C infections, 374 days in the hospital for skin and soft tissue infections, 5.9 overdose deaths, 108 overdose-related ambulance calls, 78 emergency department visits and 27 hospitalizations, while bringing 121 additional individuals into treatment.¹⁴

Seattle, Washington's Human Services Department has estimated that a site would cost approximately \$2.5 million/year, in addition to capital expenditures. Seattle's US Attorney has stated that, while the City Council has committed up to \$1.5 million in one-time funding for the site, the lack of ongoing funding would be prohibitive in moving forward with the project.¹⁷

***Efficacy: Is this evidence-based?*^{34,56}**

Results of the evaluation of North America's first medically supervised consumption site have been closely examined and accepted by scientists from around the world. Insite, opened under the condition that it operate as a scientific pilot and be rigorously evaluated, due to limited peer-reviewed data specific to existing safe injection facilities in Europe, revealed that the facility was meeting its objectives: reducing public disorder, infectious disease transmission, and rates of overdose while successfully referring individuals to a range of social service and substance use disorder treatment program. Additionally, the outcomes indicated that Insite was not resulting in increases in crime or promoting initiation into injection drug use.¹³

A review of studies published in August, 2018 in the International Journal of Drug Policy, which was later retracted with the author's consent, due to methodological weaknesses, found that evidence for supervised injection is not as strong as previously thought. One addiction researcher and psychiatry professor at Stanford University believes a stronger evidence base is needed and that "nobody should be looking at this literature making confident conclusions in either direction." Particularly, it is noted that the current and limited studies reveal that evidence does not point to supervised injection as being harmful, it has not strongly demonstrated an overall reduction in overdose deaths over time.¹⁶

***Local and Federal Law: What are the implications?*^{6, 15}**

In 2003, the regional health authority in Vancouver, Canada successfully applied to the federal government for a legal operating exemption to pilot North America's first medically supervised injection facility (SIF) – Insite. The exemption was granted on the condition the program undergo rigorous scientific evaluation.

To the extent that they provide clean syringes, SIFs are required to comply with state laws which govern syringe exchange programs. Assessing the legality of a SIF requires a prediction about how

local, state, and federal officials will interpret varying state and federal laws on drug possession and the maintenance of grounds for illegal drug use. Whether the legality of a SIF would be challenged would depend on how law enforcement officials exercise their prosecutorial discretion.

On April 1, 2019, Roy McKinney, Director of the Maine Drug Enforcement Agency, under the Department of Public Safety led by Commissioner Michael Sauschuck, provided testimony urging the Joint Standing Committee on Health and Human Services to vote Ought Not To Pass on the proposed bill LD 949: An Act to Prevent Overdose Deaths. This testimony states that safe injection sites violate federal law and that legally sanctioned drug use facilities are not the right answer for Maine. McKinney's testimony also references 21 United States Code §856, which sets forth that it is unlawful to manage and maintain any place to manufacture, distribute, or use any controlled substance.²⁰

A statement from the District of Vermont's Department of Justice in December, 2017 warned against the establishment of safe injection sites, stating "SIFs are counterproductive and dangerous as a matter of policy, and they would violate federal law." The statement goes on to say "the proposed SIFs would violate several federal criminal laws, including those prohibiting use of narcotics and maintaining a premises for the purpose of narcotics use. It is a crime, not only to use illicit narcotics, but to manage and maintain sites on which such drugs are used and distributed. Thus, exposure to criminal charges would arise for users and SIF workers and overseers. The properties that host SIFs would also be subject to federal forfeiture."¹⁵

Seattle was poised to spend \$2 million on a Community Health Engagement Location in 2018. This CHEL is proposed to include: onsite post-consumption medical care, referrals to medical and social services, and peer support.⁷

In June of 2018, Seattle's efforts to find a location for its one and only supervised injection site had turned up nothing. At that time, the mayor's office proposed a fixed mobile option, stating that Seattle and King County would purchase a recreation vehicle and remodel it into a CHEL, parking either on the street or in a parking lot near a facility that would provide space for a reception area, a waiting area, restroom storage, and utility space.

Deputy US Attorney General Rod Rosenstein stated in August, 2018 that the federal government will not tolerate safe injection sites – which would violate federal drug laws – and that the Department of Justice will act against them if they open.

In April, 2019 the newly appointed US Attorney in Seattle stated that he will not allow a safe injection site for illicit drugs to open in the city. His statement included that that the site would violate federal law.

Philadelphia city officials gave the proposition of a Comprehensive User Engagement Site permission to move forward on January 23, 2018 after an in-depth investigation, which concluded the following: The Mayor's Task Force to Combat the Opioid Epidemic recommended Philadelphia consider a SIS structured as a CUES - with a specific focus of not only reducing deaths, but increasing the opportunity for engagement in treatment services. The expert report, commissioned by the City, estimates that a CUES could save as many as 75 lives per year.⁴ Despite these recommendations, Philadelphia officials and legal professionals remained concerned about potential legal barriers and implications.⁵

In February, 2019, the Justice Department filed a lawsuit against Safehouse, a supervised injection site nonprofit in Philadelphia, asking a judge to interpret the law and declare such a facility illegal. In

April, Safehouse filed a countersuit, stating that the organizers' religious beliefs compel them to save lives. The organization has asked for an injunction to prevent the government from shutting the facility down as well as a declaration that such a site would not be violating the law.¹⁷

In November, 2018 Denver City Council approved a pilot program to allow for a supervised injection site. The Colorado General Assembly would have had to pass a new bill allowing for local municipalities to develop such sites before anything could move forward. Denver's plan stated that no public funds would be used for the site; it would be operated by a nonprofit or government entity working with those with substance use disorder. Additionally, the sites would have to be more than 1,000 feet from schools and daycare centers.¹⁹

In February, 2019 the General Assembly stated that they would not be bringing a bill forward in the current year to support supervised injection sites. This announcement came after a December announcement in which the Colorado US Attorney's Office and the Denver field office for the Drug Enforcement Administration published a joint statement that the planned injection site was illegal.¹⁹

Community: Who does this impact and how?

A survey of more than 1,000 people utilizing Insite found that 75% reported changing their injecting practices. Among these individuals, 80% indicated that the SIF had resulted in less rushed injecting, 71% indicated that the SIF had led to less outdoor injecting, and 56% reported less unsafe syringe disposal⁸.

Results from the Scientific Evaluation of Supervised Injecting (SEOSI) cohort, studying Vancouver's Insite facility, revealed the following⁸:

- Increased uptake of substance use disorder treatment
- Reduction in public disorder¹
- Reduction in public injecting
- Increased public safety¹
- Attracting and retaining a population of people who inject drugs and are at a high risk for infectious disease and overdose
- Reducing HIV and hepatitis C risk behavior (syringe sharing, unsafe sex)
- Reducing the prevalence and harms of bacterial infections
- Successfully managing hundreds of overdoses and reducing drug-related overdose death rates
- Increasing the delivery of medical and social services

In the first two years of operation of an unsanctioned safe consumption site in the United States, there were 2,574 injections by over 100 participants. Prior to each visit, guests were asked a series of 12 questions. When asked "Where would you have injected if not at the site today?" Participants reported the following: Public Restroom - 34.9% Street, park or parking lot - 57.3%.^{9,12}

An Overview of Current Models: InSite, Vancouver, Canada:

Vancouver, Canada's supervised injection facility, Insite (established in 2003), the most extensively studied SIF in the world, examine effects on a range of variables, from retention to treatment referrals to cost-effectiveness. These reports are in agreement with reviews of Australian and European SIFs, which show that these facilities have been successful in attracting at-risk populations, are associated with less risky injection behavior, fewer overdose deaths, increased client enrollment in drug treatment services, and reduced nuisances associated with public injection.^{8,12}

According to the Drug Policy Alliance, there are over 100 SIFs operating in at least 66 cities around the world in nine countries (Switzerland, Germany, the Netherlands, Norway, Luxembourg, Spain,

Denmark, Australia and Canada).¹⁰

Boston Public Health: SPOT Program²:

In April 2016, Boston opened the Supportive Place for Observation and Treatment (SPOT).

SPOT is:

- 1) A safe drop-in facility for people who are intoxicated from the use of drugs.
- 2) Medical care if overdose occurs: A registered nurse monitors vital signs and assesses level of sedation. In consultation with a 'rapid response clinician' (physician, nurse practitioner, or physician assistant), additional interventions are introduced as needed.
- 3) A gateway to treatment and other services. Participants are offered connection to treatment, case management by a harm reduction specialist and access to peers in recovery.

SPOT is not:

- 1) A supervised injection facility. People are not allowed to inject substances inside the building.
- 2) A needle exchange program. Needle exchange is available next door. The Boston Public Health Commission and SPOT collaborate closely. Since opening, SPOT has diverted emergency department use for about a third of their encounters. While referral rates are difficult to track, it is estimated that less than 10% have been linked to opioid agonist therapy or detoxification.

Policy Lessons Learned Creating SPOT:

- Consumer outreach and ongoing input is crucial
- Manage the media message
- Engage policy officials as early as possible
- Leverage partnerships with harm reduction programs
- Secure third party reimbursement

MEMORANDUM

TO: Kristen Dow, Interim Director of the Department of Health and Human Services

FROM: Jennifer L. Thompson, Associate Corporation Counsel

DATE: May 10, 2019

RE: Overdose Prevention Sites

Kristen – I understand that the City’s Health and Human Services Committee is considering a proposal to open a City-operated Overdose Prevention Site that would, among other things, permit the intravenous use of illegal controlled substances on the premises under the supervision of City staff with the objective of preventing and/or timely treating drug overdoses.

In advance of the Committee’s discussion of this topic at its upcoming meeting, you have asked whether there are any legal concerns of which the Committee should be aware as it considers this proposal. Below, I outline some issues that have arisen in other communities in the U.S. that have opened “Safe injection sites” and that Portland should likely consider before it moves in this direction.

I. Federal Criminal Law

As you are aware, “safe injection” facilities are operating in a number of communities in Canada and Europe but very few are currently operating in the United States. It appears that Seattle, New York, Denver, Boston, Philadelphia and other communities have either approved or are discussing opening safe injection facilities. The facilities that have been discussed and/or approved in the U.S. include both facilities proposed to be operated by the municipalities themselves (e.g. Seattle) and facilities operated by private, non-profit organizations (e.g. Philadelphia).

In all instances, it would appear that the primary challenge facing communities in the U.S. that wish to open safe injection or overdose prevention sites is the Federal “Controlled Substances Act.” That federal criminal law prohibits the possession of controlled substances such as heroin or fentanyl. It also provides that:

it shall be unlawful to . . . manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, mortgagee, and knowingly and intentionally rent, lease, profit from, or *make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.*

21 U.S.C. § 856(a)(2) (emphasis added).

Penalties for violating the Act include criminal penalties (imprisonment of not more than 20 years or a fine of not more than \$500,000 or both for an individual and a fine of \$2,000,000 for someone other than an individual (an entity)) and civil penalties (\$250,000).

Recently, the United States Attorney's Office filed a complaint in the U.S. District Court for the Eastern District of Pennsylvania against Safehouse, a non-profit company seeking to open "safe injection sites" in Philadelphia. That complaint seeks a declaration from the court that such a facility would violate the Controlled Substances Act. The complaint also names the Director of Safehouse, individually.

Threats of similar enforcement action have been made by U.S. Attorneys in other communities (e.g. Boston and Seattle) as well as by former Deputy Attorney General Rod Rosenstein who, in 2018, said that "swift and aggressive action" would follow the opening of safe injection sites in the U.S. In his letter, Mr. Rosenstein expressly mentions Maine as one state considering safe injection sites.

I attach a copy of the complaint filed in Philadelphia for the Committee's information, a newspaper article discussing it, and a copy of the OpEd from Mr. Rosenstein.

II. Existing Federal Grant Agreements

As you know, the City of Portland, including its Health and Human Services Department, is the recipient of federal grant monies under a number of different grant agreements. Although this office has not yet had an opportunity to review each of those grant agreements to determine whether funding is expressly conditioned or contingent on compliance with federal drug laws, including the Controlled Substances Act, impacts on specific grant funds should be explored - particularly if the City intends to use any federal monies to support a facility that the federal government has deemed a violation of federal law.

III. Debarment

41 U.S.C. § 8103, one of the statutes outlining the federal government's procurement policies, requires that all federal grant recipients provide a drug-free workplace for its employees by, among other things: 1. prohibiting the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the grantee's workplace; 2. notifying the grant agency within 10 days of any conviction of an employee for drug violations; 3. imposing sanctions on any employee convicted of a drug violation; and 4. continuing to make a good faith effort to maintain a drug free workplace. Violation of this statute by a grant recipient can result in debarment not just of the program operated under the grant but of the whole entity. When an entity has been debarred, it is not eligible to receive any federal grant monies for a specified period, not to exceed 5 years.

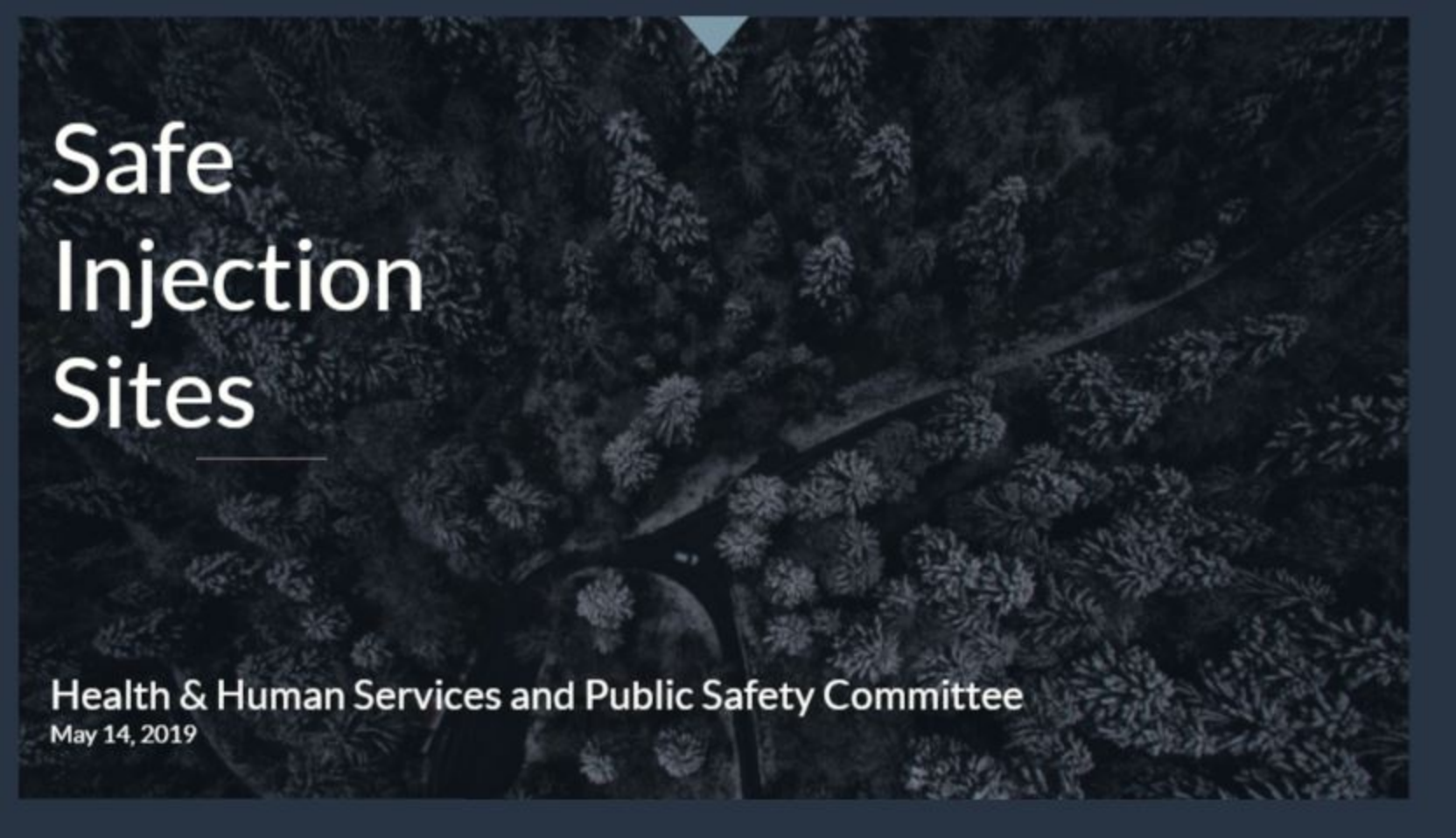
Although the requirements of 41 U.S.C. 8103 are primarily focused on preventing and prohibiting drug use, possession, sale, etc. *by employees*, another issue that warrants exploration is whether a violation might also be found if either: 1. unlawful use of controlled substances are permitted

in a facility staffed by employees of a grant recipient;¹ or 2. a grant recipient's employees are convicted for violations of those portions of the Controlled Substance Act that prohibit making a facility available for unlawful drug use by others.² Given the impact of debarment on City-wide eligibility for federal grant funding, this is a question that should be considered more fully if this proposal moves forward.

This list of potential legal issues and questions is not intended to be exhaustive or definitive. Rather, it simply aims to bring to the Committee's attention some questions of which it should be aware as it considers this proposal. I will be present at the Committee's May 14, 2019 meeting should it desire further guidance on the specific proposal being considered.

¹ Given that Section 8193 requires that grant recipients provide a workplace free of possession or use of controlled substances, it is conceivable that the federal government might not consider a City-run safe injection site a "drug free workplace" for City employees.

² As noted above, 21 U.S.C. § 856(a)(2)'s prohibition against making a space available for the unlawful use of controlled substances applies to owners as well as to employees.

An aerial photograph of a dense forest with a winding road or path cutting through it. The image is in grayscale and serves as the background for the slide.

Safe Injection Sites

Health & Human Services and Public Safety Committee

May 14, 2019

Areas of Consideration



Terminology



Cost: Effective or Prohibitive



Efficacy: Is This Evidence Based



Local & Federal Law: Implications



Community Impact



Insite: Vancouver, British Columbia



Boston Public Health



Summary

Terminology

Safe Injection (or Consumption) Space (or Site or Facility) or Overdose Prevention Site

A medically supervised facility designed to reduce nuisance from public drug use and provide a hygienic and safe environment in which individuals are able to consume previously obtained illicit drugs, often intravenously.

Abbreviations

Safe Injection Space/Site: SIS
Safe Injection Facility: SIF
Overdose Prevention Site: OPS
Comprehensive User Engagement Site: CUES

Harm Reduction

A set of practical strategies and ideas aimed at reducing negative consequences associated with drug use.
Harm reduction is also a movement for social justice built on a belief in, and respect for, the rights of people who use drugs.

Community Impact

A survey of more than 1000 people utilizing Insite found that 75% reported changing their injecting practices. Among these individuals, 80% indicated that the SIF had resulted in less rushed injecting, 71% indicated that the SIF had led to less outdoor injecting , and 56% reported less unsafe syringe disposal.

Harm Reduction

Reducing the prevalence of harm.
Successfully managing overdoses.

Public Safety

Reduction in public disorder.
Increased public safety.
Reduction in public injecting.

Infection

Reducing HIV & Hepatitis C risk behavior.

Social Services

Increasing the delivery of services.

Treatment

Increased uptake in SUD treatment.

Cost: Effective



A Canadian study of Insite - measuring cost savings based on HIV and overdose death prevention - found that after operating costs (approximately \$3 million/year), there is a societal benefit in excess of \$6 million/year.

Another study predicted that for an annual cost of \$1.8 million, a single SIF would generate \$7.8 million in health care savings.

Cost: Prohibitive

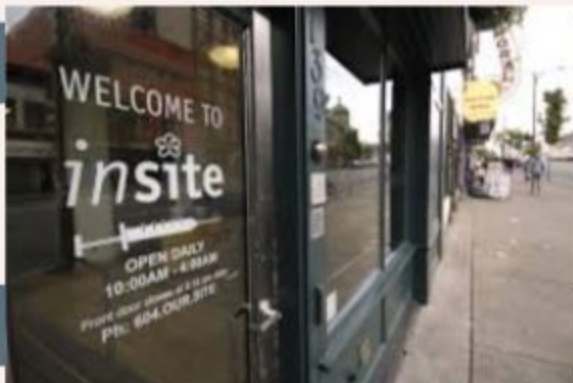
Seattle, Washington's Human Services Department has estimated that a site would cost approximately \$2.5 million per year in addition to capital expenditures.



Seattle's US Attorney has stated that, while the City Council has committed up to \$1.5 million in one-time funding for the site, the lack of ongoing funding would be prohibitive in moving forward with the project.

Insite: Vancouver, British Columbia

Est. 2003: Insite is the most extensively studied SIF in the world.



Received federal exemption to open as a pilot program with the agreement to undergo rigorous evaluation.

Presently funded by Vancouver Coastal Health, one of six publicly funded healthcare regions within the Canadian Province of British Columbia.



On average, Insite prevents 35 new cases of HIV and almost three deaths each year.

Efficacy:

Is this evidence based?

Results of the evaluation of North America's first medically supervised consumption site have been closely examined and accepted by scientists around the world.

Insite, opened under the condition that it operate as a scientific pilot and be rigorously evaluated, revealed that the facility was meeting its objectives: reducing public disorder, infectious disease transmission, and rates of overdose while successfully referring individuals to a range of social service and substance use disorder treatment programs.

Additionally, the outcomes indicated that Insite was not resulting in increases in crime or promoting initiation into injection drug use.



A review of studies published in August, 2018 in the International Journal of Drug Policy, which was later retracted for with the author's consent - due to methodological weaknesses - found that evidence for supervised injection is not as strong as previously thought.

An addiction researcher and psychiatry professor at Stanford University believes a stronger evidence base is needed and that "nobody should be looking at this literature making confident conclusions in either direction." It is also noted that while the current and limited studies reveal that evidence does not point to supervised injection as being harmful, it has not strongly demonstrated an overall reduction in overdose deaths over time.

Boston Public Health: SPOT Program

In April, 2016, Boston opened the Supportive Place for Observation and Treatment

SPOT is:	SPOT is not:	Policy Lessons Learned:
A safe drop in facility for people who are intoxicated from drug use.	A supervised injection facility. People are not allowed to inject substances inside the building.	Consumer outreach and ongoing input is crucial.
Medical care if overdose occurs: a registered nurse monitors vital signs and assesses level of sedation. Additional interventions are introduced as needed.	A needle exchange program. The Boston Public Health Commission and SPOT collaborate closely.	Engage policy officials as early as possible and leverage partnerships with harm reduction programs.
A gateway to treatment and other services. Participants are offered connection to treatment, case management, and access to peers in recovery.	Since opening, SPOT has diverted emergency department use for about one third of their encounters.	Secure third party reimbursement.



LOCAL & FEDERAL LAW

Assessing the legality of a SIF requires a prediction about how local, state, and federal officials will interpret varying state and federal laws on drug possession and the maintenance of grounds for illegal drug use.

City of Portland of Portland Legal Department outlined areas of concern that have arisen in other communities in the U.S. in memo dated May 10, 2019.

December, 2017



Vermont

The District of Vermont's Department of Justice warned against the establishment of safe injection sites, stating "SIFs are counterproductive and dangerous as a matter of policy, and they would violate federal law."

February, 2019



Colorado

The General Assembly states that they would not be bringing a bill forward in the current year to support SIS. This came after a December, 2018 announcement from the CO US Attorney's Office & the Denver DEA stated the planned site was illegal.

February, 2019



Philadelphia, PA

The Justice Department filed a lawsuit against Safehouse, a SIS nonprofit, asking a judge to interpret the law and declare such a facility illegal.

April, 2019



Seattle, WA

Newly appointed US Attorney states that he will not allow a SIS for illicit drugs to open in the city, referencing the violation of federal law.

April, 2019

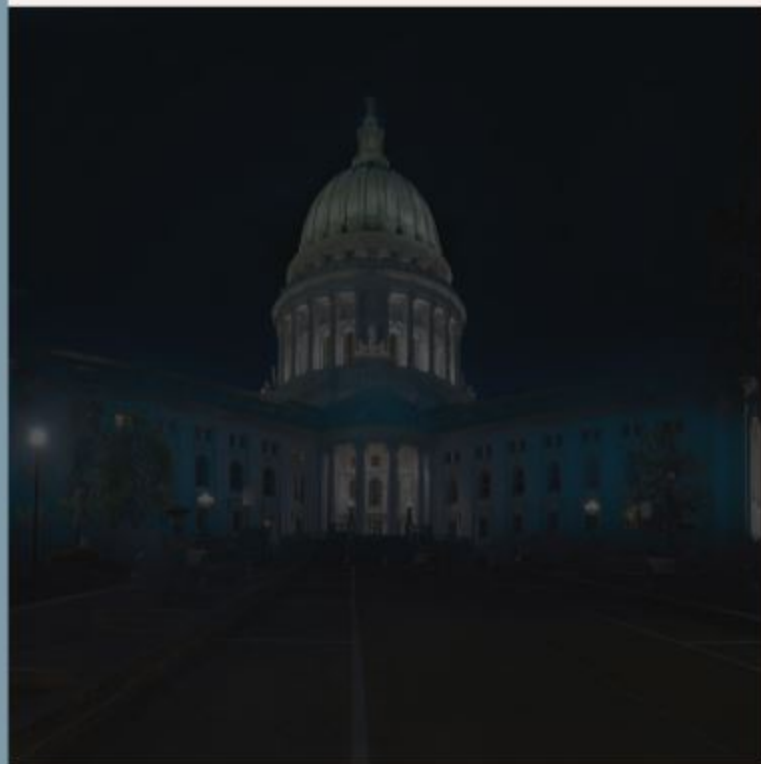


Boston, MA

Despite his support, Mayor Walsh states that MA absolutely cannot open a SIF until there is a change in law at the federal level.

UNITED STATES

Deputy US Attorney General Rod Rosenstein stated in August, 2018 that the federal government will not tolerate safe injection sites - which would violate federal drug laws - and that the Department of Justice will act against them if they open.



MAINE



On April 1, 2019, Roy McKinney, Director of the Maine Drug Enforcement Agency, under the Department of Public Safety led by Commissioner Michael Sauschuck, provided testimony urging the Joint Standing Committee on Health and Human Services to vote Ought Not To Pass on the proposed bill LD 949: An Act to Prevent Overdose Deaths. This testimony states that safe injection sites violate federal law and that legally sanctioned drug use facilities are not the right answer for Maine. McKinney's testimony also references 21 United States Code subsection 856, which sets forth that it is unlawful to manage and maintain any place to manufacture, distribute, or use any controlled substance.

SUMMARY

BENEFITS

- Access to clean syringes and supplies
- Distribution of naloxone
- Access to medical and social services
- Reduction in infectious disease transmission (including testing and referrals for treatment)
- Healthcare cost savings
- Safe place for injecting illicit substances
- Medical management of overdose

VS

RISKS

- Violation of federal criminal law
- Potential loss of federal grant funding for both existing and future grants
- Potential debarment
- Cost prohibitive

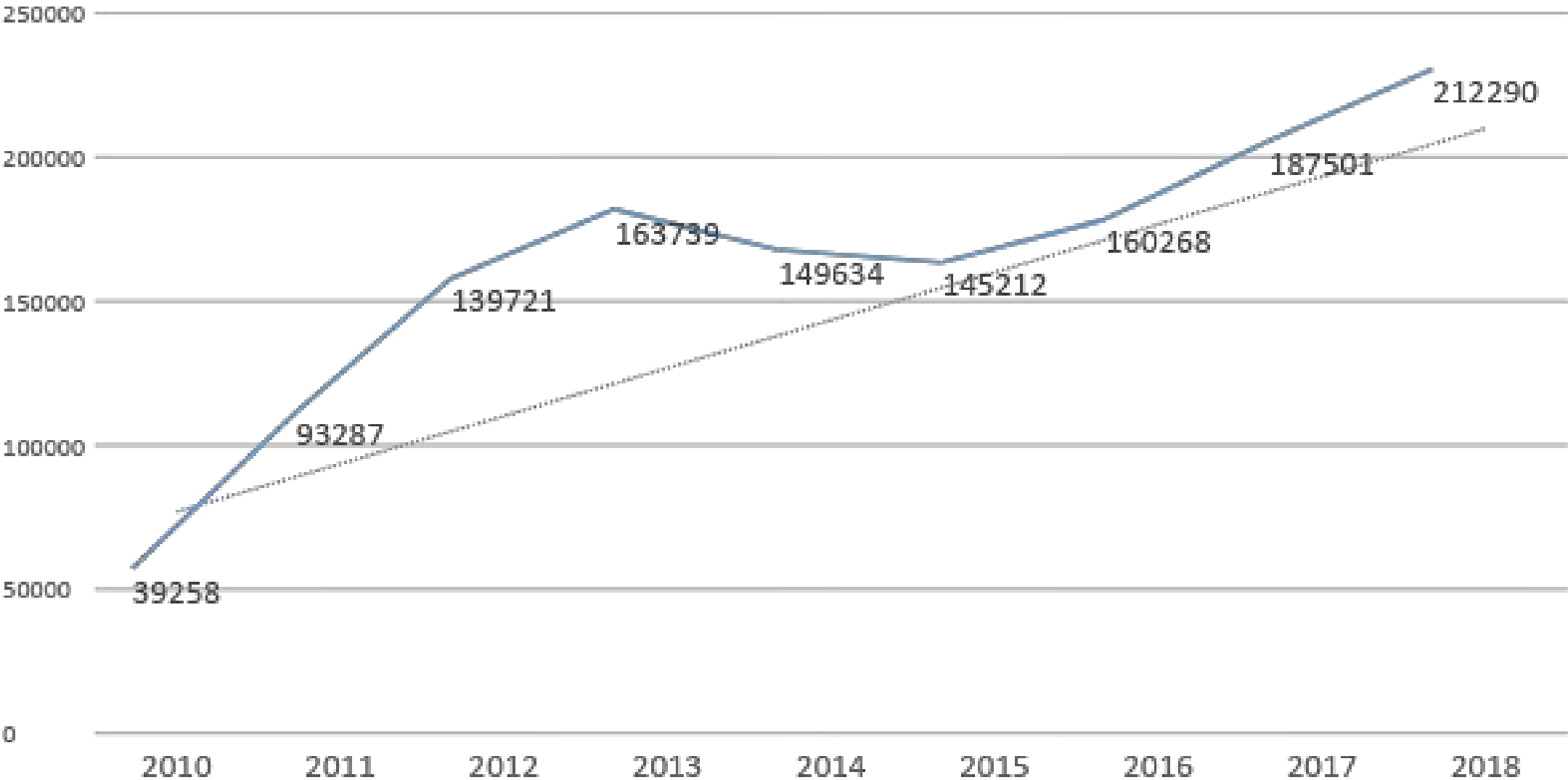
Needle Exchange Program 2018

City of Portland, Public Health Division

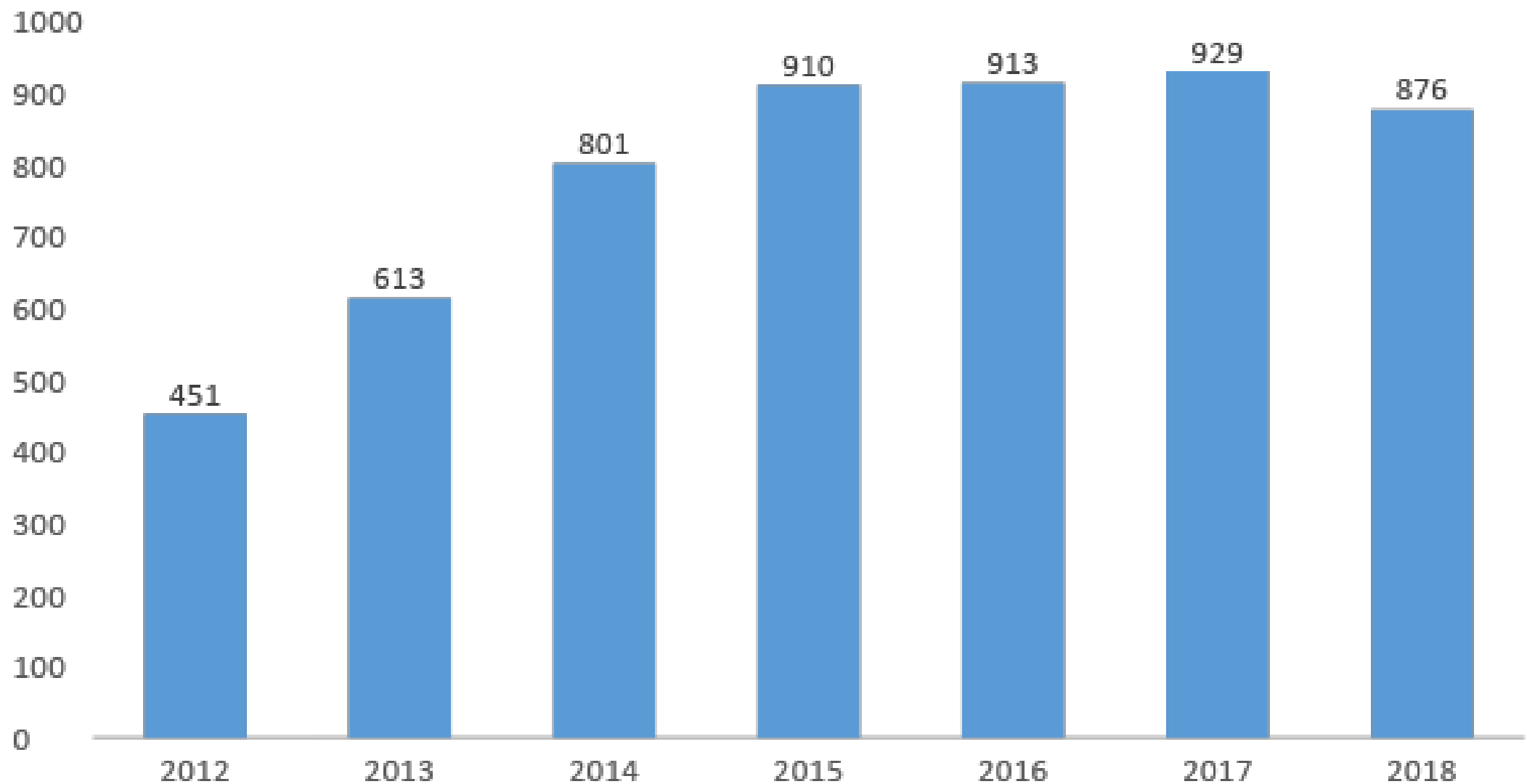
Zoe Brokos

Lizzy Garnatz

Number of Needles Collected 2010-2018



Number of Enrollees 2012-2019





Needle Exchange 2018

- Total number of enrollees in the Needle Exchange Program: 3,316
 - Number of enrollees seen in 2018: 876
 - Number of exchanges: 5,991
 - Number of exchanges at outreach 1,636
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- Individual clients currently enrolled in the naloxone distribution program: 715
 - Doses of naloxone distributed to NEP clients: 1,314
 - Reported Overdose Reversals: 190



Referrals and Linkage to Care

We work closely with other local service providers to help our clients access a range of different services. We strive to identify and prioritize the needs each client brings to us and refer to appropriate community resources.

Referrals to treatment: 1,081

Referrals to case management/housing: 4,189

Referrals to primary care: 3,889

Referrals to STD Clinic and HIV/HCV testing: 2,564



Overdose Recognition and Response Training

Over 150 educational training sessions and presentations across
Southern Maine including:

- Oxford Street Shelter
- York County Shelter Programs
- Maine Medical Partners
- Maine Behavioral Health Care
- Maine Fishermens' Forum
- Kennebunk Clergy Association/Kennebunk Adult Education
- Lakes Region Substance Awareness Coalition
- University of New England Athletic Trainers' Department
- University of Southern Maine Public Safety

Community Collaborations and Partnerships

- Partnered with Maine Family Planning's reproductive empowerment project (REP) to offer birth control to clients in the exchange.
- Partnered with the City's Substance Use Prevention community Paramedicine project to offer wound care and medical care to exchange clients. We also offer wound care kits and supplies to clients when paramedics are not onsite.
- Partnered with the Preble Street Learning Collaborative to offer STD/HIV/HCV testing at their office once a month.
- Partnered with USM School of Nursing and UNE College of Medicine to provide harm reduction education and overdose recognition and response for nursing and medical students.

Community Collaborations and Partnerships

- Worked with the Minority Health program through the Public Health Division to develop translated materials with overdose prevention messaging.
- Worked with the Minority Health Program to develop a translated Overdose Recognition and Response Training, which will be presented in Spanish and French later this summer.

Other Achievements

- Presented at the Maine Public Health Association Conference
- Presented at the State of Maine Infectious Disease Conference
- Organized the first annual Southern Maine Harm Reduction Conference
- Expanded the Community Sharps Container Project
- Supervised social work intern from the University of Southern Maine
- Enhanced partnership with the Virology Treatment Center at Maine Medical Center to provide treatment for Hepatitis C