



CITY COUNCIL WORKSHOP
MEETING TO BE HELD REMOTELY

DATE: September 28, 2020

TIME: 5:30 PM

ZOOM INFORMATION:

The Portland City Council will hold a remote meeting on Monday, September 28, 2020 at 5:30 PM. This meeting will take place remotely using Zoom.

Virtual meetings are allowed using emergency legislation approved by LD 2167; 1 M.R.S. §403-A, that authorizes cities and towns to conduct meetings online.

Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be uploaded to portlandmaine.gov/livestream the next day. Please click the link below to join the webinar:

**<https://us02web.zoom.us/j/88257330342?pwd=SHNHeGxqaTJRV1ZlcVlCdUNnSlZxUT09>
Passcode: 081140**

Or iPhone one-tap :

**US: +13017158592,,88257330342#,,,,,0#,,081140# or
+13126266799,,88257330342#,,,,,0#,,081140#**

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346 248 7799 or +1 669 900 6833**

Webinar ID: 882 5733 0342

Passcode: 081140

AGENDA ITEMS:

Update on Marijuana Ordinance

MEMORANDUM

TO: Mayor Snyder; Portland City Council
FROM: Anne Torregrossa, Associate Corporation Counsel
DATE: September 24, 2020
RE: Options for amending marijuana retail licensing

As you know, NPG, LLC (Wellness Connection) filed a federal lawsuit challenging the City's matrix criteria giving points for five years of Maine residency and for holding a Maine or local business license, arguing that they violated the dormant commerce clause. Although the judge in that case did not ultimately rule on the merits, she did deny the City's motion to dismiss and did grant NPG's motion for a preliminary injunction, including finding that NPG was likely to succeed on the merits of its claim.

In light of that decision, the Council has asked for options to consider in amending its marijuana licensing ordinance in order to avoid future litigation in that case.

Current Status of Applications

The City received 43 applications for retail marijuana businesses. Of those, 12 businesses received pre-denial letters for various issues including no conditional state license at the time of application, incorrect zoning, insufficient distance from a school, and disqualifying violations for things like a history of unpaid taxes and unresolved land use violations. All of those businesses will have an opportunity to provide information as to why they believe the City's initial determination on disqualification is incorrect. An additional 3 businesses will be receiving letters requesting clarification regarding their state licenses, and – depending on the businesses' answers – could ultimately also be denied licensure.

Assuming no significant additional information is supplied by the applicants, the City will be left with between 28 and 31 applications. Of those, there will be either 4 or 5 (depending on selection criteria) that will be disqualified based on distance to another applicant, bringing the total number of eligible applicants down to somewhere between 23 and 27.

Options for Amendment

Below are a few options for amending the ordinance if the Council chooses:

1. Amend the ordinance to remove the matrix criteria challenged by NPG. This is the easiest way to resolve the current litigation and keep the rest of the matrix factors intact. That said, the matrix sparked a significant amount of public comment and controversy and may lead to additional disputes over the award of licenses.
2. Amend the ordinances to award licenses by lottery. This is a simple way to distribute licenses and is less subjective than applying the factors in the matrix. However, it does run the risk that well qualified applicants who are most likely to be successful in the

marijuana market do not obtain licenses, while those who are less likely to be successful get a license. Using a lottery will likely be the fastest way to get licenses awarded.

3. Amend the ordinance to increase the number of stores/reduce the distance restriction/award licenses to all qualified applicants in the first round or some combination of these. At this juncture, it is likely that the number of qualified applicants will be close to 30. If the Council is interested in allowing the additional stores, the ordinance could be amended in a way to 1) increase the cap to a number of the Council's choosing; 2) award all eligible applicants from the first round a license, regardless of distance from each other; or 3) award all eligible applicants who are not within 250' (or other distance) of each other a license.
4. Revisit the entire matrix to award licenses based on alternative factors. If the Council chooses to take this step, I would strongly recommend sending the ordinance back to a committee for revision, as the discussion around the matrix was lengthy and involved.

Depending on how (and if) the Council decides to change the ordinance, it might be advisable for the City Manager to allow any applicants who have not been previously disqualified to change their application. For example, if the City moves to a lottery system, an applicant might wish to change its business plan that was originally designed to maximize points.