

**City of Portland, Maine
Public Safety/Health & Human Services Committee**

**March 10, 2015
5:30 PM
Council Chambers, City Hall**

Meeting Agenda

1. Approval Of Meeting Minutes From February 10, 2015

Documents: [FEBRUARY 10 2015 MEETING MINUTES.PDF](#)

2. Staff Response To General Assistance Audit (Action Item)

Documents: [GA PSHHS COMMITTEE.PDF](#), [ATTACHMENT A.PDF](#), [ATTACHMENT B.PDF](#), [ATTACHMENT C.PDF](#), [ATTACHMENT D.PDF](#), [ATTACHMENT E.PDF](#), [ATTACHMENT F.PDF](#), [ATTACHMENT G.PDF](#)

- 2.I. Monthly GA Dashboard

Documents: [SSD DASHBOARD \(2015.02\).PDF](#)

3. Staff Recommendations Re: Feasibility Study Of Consolidation Of Services (Action Item)

Documents: [SHELTER CONSOLIDATION.PDF](#), [ATT. A SCATTERED SITE SHELTER PROPOSAL.PDF](#), [ATT. C MEMO.PDF](#)

4. Fire/Code Task Force Update And Recommendation (Action Item)

Documents: [PSHHS CMTE MEMO MARCH 10.PDF](#), [ATT A IMPLEMENTATION TIMELINE.PDF](#), [ATT B ROLES AND RESPONSIBILITIES.PDF](#), [ATT C RENTAL REGISTRATION FEE OPTIONS MEMO.PDF](#), [ATT D BUDGET REQUEST.PDF](#), [ATT E DISCLOSURES FORMS.PDF](#), [ATT F RECOMMENDATIONS TO COUNCIL PSHHS CMTE.PDF](#)

5. Ordinance Changes (Action Item)

- 5.I. Smoking Ordinance

Documents: [PSHHS CMTE 3.10.15 MEMO ENDS.PDF](#), [ANR ECIG LIST AS OF 1.1.15.PDF](#), [DRAFT CHAPTER 17 RE SMOKING AND ENDS 3.6.15.PDF](#)

- 5.II. Food Service Ordinance

Documents: [COMMITTEE MEMO 3.6.15.PDF](#), [CHAPTER011.FOOD AND FOOD HANDLERS.PDF](#)

6. Barron Center Update (Communication Only)

Documents: [BARRON CENTER UPDATE 3.2015.PDF](#)

7. Adjourn

Public Comment will be taken on action items

Portland, Maine



Yes. Life's good here.

Portland Police Department

**City of Portland, Maine
Public Safety / Health & Human Services Committee
February 10, 2015**

Meeting Minutes

Committee Attendance:

Chair Councilor Suslovic, Councilor Costa, Councilor Brenerman, Councilor Duson

City Staff Attendance:

Sheila Hill-Christian, Interim City Manager; Dawn Stiles, Director of Health and Human Services; Jessica Grondin, Communications Director; Michael Sauschuck, Police Chief; Adam Lee, Corporation Counsel; Julie Sullivan, Acting Chief of Staff; Jerome LaMoria, Fire Chief; Keith Gautreau, Acting Deputy Chief; Scott Thomes, Assistant Fire Chief; David Jackson, Assistant Fire Chief; Tammy Munson, Director of Inspections; Jon Rioux, Deputy Director of Inspections; Richard Bianculli, Neighborhood Prosecutor; Tuck O'Brien,

AGENDA ITEM 1 - Meeting Called to Order

Chair Suslovic moved to accept minutes from the January 2015 meeting. The motion was seconded with all in favor.

AGENDA ITEM 2 – 7 Point Plan Update (written communication)

The Committee received a communication regarding the 7 Point Plan update and had no questions.

AGENDA ITEM 3 – Trauma Intervention Program Introduction

Leslie Skillin, Crisis Team Manager for the TIPS program, provided an overview of the valuable services that citizen volunteers provide the City's public safety departments on scene. The volunteers are trained in emotional first aid. There are 21 volunteers and 2015 is TIP's 10th year in service. Chair Suslovic recognized Police Chief Michael Sauschuck and Fire Chief Jerome LaMoria who both thanked TIP immensely for their service and commitment.

AGENDA ITEM 4 – Fire/Code Task Force Recommendations (action item)

Julie Sullivan, Acting Chief of Staff, introduced members of the task force and described that the group reached a full consensus on their recommendations. Julie read through the back-up material to describe the purpose of the task force and its overall recommendation.

Tammy Munson reviewed options and background information included in back-up material for a risk based approach.

Deputy Chief Keith Gautreau provided a recap to the fire report that is not yet available to the public and discussed the Department's intent to increase public education regarding life safety and building occupancy beginning fall 2015. The National Fire Protection Association has offered free training for fire department members that begins in March/April of 2015.

Crandall Toothacker of the Southern Maine Landlord Association, Katie McGovern, Esq. of Pine Tree Legal Association and Jon Rioux, Deputy Director of Inspections for the City all provided an overview of the back-up material as it related to their position held on the Task Force. Julie Sullivan summarized the recommendation.

Chair Suslovic thanked the task force for their work and recommendations and opened the floor for public comment.

The following individuals spoke regarding the recommendations:

- Tom Macmillan of Munjoy Hill expressed discontent with the lack of tenant involvement.
- Carol Schiller of Longfellow Street fully supports the task force and recommendations. Ms. Schiller also provided an emailed letter to the committee that is attached to these minutes.
- Anne Pringle of Neal Street did not attend, but provided her comments via email to the committee. A copy of that email is attached.
- Laura Larkin from Bayside appreciated the efforts of the task force.
- Chris Vail supports the task force and hopes this work is not just a "reactionary condition"
- Ashley Summers provided a longer comment pushing the City to be proactive and not reactive.
- Alison Fisher from Congress Street supports tenant rights and public information sessions to allow tenants to inform themselves.

The Chair closed public comment at 7:00pm and opened the meeting to questions from councilors.

Councilor Brenerman asked how we can assure the public that only 5 additional staff are adequate. Julie Sullivan responded that 5 was the number the task force recommended at this time taking budget considerations into the recommendation. Tammy Munson provided additional background information using information based on Portland's population and properties relative to that of Boston, MA and noting that 5 was the minimum recommendation.

Chair Suslovic asked if there is a recommendation for an ordinance change to allow the fire department to inspect single family homes or 2 unit properties. Julie said that no, the proposed housing office would be charged with inspecting single family homes and 2 unit apartments. The conversation continued shortly surrounding limits on fees where corporation counsel and the neighborhood prosecutor clarified there is a limit on excessive fines. Councilors asked questions about life safety codes and requirements. Acting Deputy Chief Gautreau responded to those questions. Councilor Dusen supports a checklist idea for landlords and tenants and suggested the City fund displaced tenants where landlords have not made buildings habitable.

Chair Suslovic thanked the task force for their solid work and said the resource allocation discussion is timely given the finance committee's current status. The Chair did ask if the Task Force discussed licensure vs. registration; how expansive do we plan to be with regard to safety and legality; has a full merger of departments been considered by the task force? Are we reviewing who has the authority to

inspect? Chair supports education and outreach making use of social media to accomplish that. The Chair supports enforcement and disclosure at the time landlords and tenants sign a lease. The Chair said the next steps are for Julie Sullivan and Sheila Hill-Christian to have one list of proposed ordinance changes regarding the task force's recommendations. Sheila planned to work staffing through the budget process before showing a larger more concrete picture of all of this. The Chair was supportive of moving forward as information was available from staff and the committee agreed. Councilor Cost asked for a financial outline to illustrate this recommendation.

The Committee did not discuss the 2015 work plan and adjourned at 8:03pm.

ANNE B. PRINGLE

44 Neal Street Portland, ME 04102-3527
oldmayor@maine.rr.com

February 9, 2015

Public Safety, Health and Human Services Committee
City of Portland
389 Congress Street
Portland, ME 04102

Re: Recommendations by Fire Code/Inspections Task Force

Dear Committee Members:

I am sorry that I have a prior commitment and cannot attend your meeting tomorrow night.

Like all Portland residents, I was shocked by the tragic fire on Noyes Street and troubled by how it might have been averted by more effective code enforcement. The Fire Code/Inspections Task Force is to be thanked for its comprehensive review of the issues and for making pragmatic recommendations to the Council.

Here are a few brief comments:

1) We all agree that **more frequent code inspections**, especially on the densely populated peninsula, is warranted. **A simple solution, as recommended, is to use firefighters to conduct fire safety inspections.** I have been told this won't work because they are not trained, but why couldn't professional firefighters be trained to conduct such inspections? Who better to identify fire hazards at no extra cost to the City? I routinely see fire-fighters at Hannaford, with their trucks and gear outside in case they need to respond to a fire call – when they do, and I have seen this happen, they drop everything and run to the truck. They could do the same thing when conducting fire inspections... Firefighter inspectors could be trained on what zoning issues to look out for to assure that units are indeed, being used as they are reflected in the City's record. Follow-up enforcement inspections could be done, as needed, by appropriate inspections staff.

2) Re unit types, I have read that the property was being used as a boarding house. I am not sure how the City has made that after-the-fact determination. Under the City's current and outdated) definition of **"family"**, **up to 16 people can live together as a "single non-profit housing unit"** (what does this language mean?) and not be subject to any specific fire codes, I believe. Did the young people living together themselves constitute a "housing unit"? At the least, this language is very ambiguous. I do not believe the Task Force looked into the various housing definitions and the multiple issues they raise, including risk profile of the tenants. Several neighborhood associations have

been pressing the City on this for several years and I hope **this tragic event will finally spur re-examination of these 20+ year-old definitions.**

3) It occurs to me that the **zoning code should define a whole class of housing from which an owner derives income**, to cover (with specific language and regulation appropriate to that form of income-producing housing): lodging houses, group homes, sober houses, residential treatment facilities, nursing homes, apartments, shelters, transitional housing, etc. Some of these forms of housing require state licenses, but some do not. It seems to me that there is a public interest in assuring that people who live in buildings from which an owner derives income are entitled to regulation appropriate to the population served. As recommended, the City should require that all income-producing units be registered with the City.

4) Finally, **why shouldn't inspections also cover two-unit buildings**, which as the report notes is "the bulk of rental housing stock"? Clearly, the Noyes Street property makes the case that they should not be excluded.

Thank you for your consideration of these points.

Very truly yours,

To: Ed Suslovic, Chair

For: Public Safety, Health & Human Service Committee Members

Date: February 10, 2015

From: Carol Schiller, President, University Neighborhood Organization

Regarding: All Rental Properties in Portland, Maine

In response to the tragic November 1st, 2014 horrific 20 – 24 Noyes Street fire that killed six young people in our neighborhood, we believe fire prevention education serves to have the best long term impact on preventing future fires in Portland. On-going education efforts combined with active rental property inspections and enforcement authority is the best defense against future loss of life.

We fully support the Fire/Code Inspection Task Force recommendations. In addition please find below our suggestions for your considerations.

They are as follows:

I. City of Portland:

- Must financially support an effective, well-managed rental property housing inspection department that communicates openly with other city departments and the public. Responsibilities include:
- Issues Rental Property Certificates, collects \$100.00 annual Rental property registration fees & code violation fines.
- Creates & maintains a public database listing all rental properties interfaced with Portland Tax Assessors Office, Fire and Police departments. Assigns Risk Management identification grades.
- Creates and prints "Portland Renters & Landlord Guidebook", produces Fire Prevention educational materials & media campaigns, educational forums, and maintains informative website, etc.

Notes: The "Portland Renters & Landlord Guidebook" includes information about what to look for in off campus housing: Smoke

detectors, heat, safety rules and provide explanation. Example: Why it's a bad idea to live in third floor attic space or basement? There's only one way out.

- Must have **enforcement** authority to inspect any and all types of rental occupancy properties.
- Requires mandatory inspections & evaluates landlord's evacuation plan.
- Communicates with Landlords, Tenants & Public.
- Exhibits transparency, accountability & evaluations.
- Authority to demolish abandoned, damaged & unsafe properties at city's expense when property owners are unable or unwilling to undertake. City attaches lien against property to recoup expenses.
- Provides landlords low interest loans to repair property code violations, rental insurance policies, etc.
- Establish Medical Marijuana growing restrictions that prohibits on or in rental properties to safeguard against electrical fires.
- Establish rental property whistle blower protection measure. Tenants must be able to report violations without being evicted.
- Yearly inspections include full access to interior and exterior of rental properties, smoke detector and carbon monoxide alarms, and fire extinguishers; escape ladders, & proper ventilation. Windows must easily open & close and be large enough for occupant to fit through in the event of escape.
- No sofas, flammable items on porches or decks.
- No gas/charcoal grills and or cooking stoves of any kind on porches and or decks attached to property.
- Establish "Portland Rental Property Commission/Board" comprised of Portland Rental Property Fire/Code Inspection Dept. representatives, city officials, citizens and professionals to oversee fire prevention/inspection management.

- Host and or attend State, National fire prevention safety conferences and network with other municipalities to keep up on what's happening around the country.

II. Landlords:

- Landlord must register any and all rental property and pay annual \$100.00 Portland Certificate of Registration fee on each property.
- Install and maintain working smoke detector and carbon monoxide alarms.
- Subject to yearly Public Health, Electrical & Fire Prevention Inspections.
- Must display Portland Housing Inspection Certificate on property, city database, and notify tenants regarding failed inspections and or foreclosure.
- Landlords/Property Managers must meet and walk every tenant through property.
- Provide an evacuation plan, illuminated exit signs and run fire drill.
- Must give tenants a copy "Portland Renter & Landlord Guidebook".
- Lease Agreement must require **Renters Insurance** paid for by the landlord or the tenant. See Clark's Insurance Renters Policy Information.
- Landlords must provide and review evacuation plans & drills with tenants and display evacuation charts/plans in several locations.
- Medical Marijuana growing is not permitted on rental property to avoid electrical fire risk.

III. Tenant Responsibilities:

- Must comply with all Portland Rental Property fire codes/rules.
- Must read "Portland Renters & Landlord Guidebook "
- Exhibit Common Sense and follow all Portland & Landlord fire prevention & safety codes/ rules & recommendations

- Notify City Inspectors regarding any and all property code violations.

- Must have **Renter's Insurance Policy**

IV. Regarding theme based rental properties including Sober Living, Airbnb properties, Home Away, etc.

- All rental property must be registered with the city and be inspected on an annual basis.

- Must comply with all Portland rental property fire codes/rules.

- Must register rental property with City of Portland.

- City must inspect all rental property

- Must display Portland Rental Certificate & pay \$100.00 annual registration fees.

- Take a Fire Safety Training Course.

- Develop and Implement a Fire Evacuation Plan.

- Develop Fire Safety Signage.

- Purchase, Install and maintain smoke detector and carbon monoxide alarms and fire extinguishers.

V. Fire and Rental Living Safety Education

- Portland must fund & maintain on-going fire prevention educational campaigns and outreach.

- Portland must find ways to involve college students in fire safety prevention public awareness campaigns & materials. Use social media, facebook, twitter, and short videos to communicate with peers.

- Create community safety efforts. Connect students and young professionals to Portland Fire Dept., Red Cross together go door to door and physically install smoke detectors in Portland neighborhoods. Crucial to maintain these initiatives and not let them drop to the wayside.

- Develop peer-to-peer educational campaigns and materials.

- Create partnerships with USM, UNE, MECCA, Red Cross, Rental Insurance Carriers, Southern Maine Landlord Association, Portland Safety Office & Fire Dept. USM Fraternity and Sorority Organizations, etc. Collaborate, involve, fund and support making cutting edge fire and rental living safety public awareness campaigns and materials.

- Portland Fire Dept. launches new neighborhood outreach initiatives to prevent rental property fires, etc. Collaborates with music, theater and art performers to make fun informative Public Service Announcements. Participates in Portland First Friday Art Walks, neighborhood block parties, etc. Must think outside the box to reach young adults ages 19 and up. Conduct focus groups and market research with targeted audience.

VI. Higher Learning Institutions

- USM, UNE, MECCA, MMC must provide fire and rental living safety education seminars for students, young professionals and community.

The Noyes Street fire is in what's commonly referred to as Portland's "Education District". It's for this reason we strongly advocate using education to prevent rental property fires. Young adults just starting their lives need to know about the dangers of living in an unsafe rental property. These partnerships are paramount to Portland's success.

Sources Include:

Town of Barnstable <http://ecode360.com/27981176>

Clarks Insurance Renters Insurance Policy

<http://www.libertymutual.com/home-insurance/renters-insurance/renters-coverage-calculator>

<http://strategicfire.org/>

http://www.seattle.gov/fire/pubEd/apt/apt_managers_handbook.pdf

<http://www.firescotland.org/#>

<http://www.legislation.gov.uk/asp/2005/5/contents>

<http://www.scotland.gov.uk/Topics/archive/law-order/public-safety/Fire-Rescue>

<http://www.electricalsafetyfirst.org.uk/mediafile/100180217/Landlords-Guide-A5-Leaflet-2014.pdf>

<http://www.scotland.gov.uk/Topics/archive/law-order/public-safety/Fire-Rescue/Safety>

<http://www.electricalsafetyfirst.org.uk/mediafile/100180217/Landlords-Guide-A5-Leaflet-2014.pdf>

http://www.elecsa.co.uk/Documents/Public-Documents/Bldg-and-Property-Mngt/Landlords-Guide-to-Electrical-Safety-May-2011_01.aspx

<https://www.gov.uk/government/publications/do-you-have-paying-guests>

<http://www.elecsa.co.uk/Building---Property-Management/Fire-and-BAFE-Approval/Fire-Risk-Assessments.aspx>

<http://hotpads.com/pages/rentersGuide/safety/fire-safety.htm>

http://www.collegetownship.govoffice.com/vertical/sites/%7B6F77EE0A-5147-4D68-88D3-B3066A5A57B4%7D/uploads/Rental_Fire_Safety_Certification_Agreement.pdf

Friday, February 13, 2015 on TV ABC channel 20/20 Show features Off Campus Fire Safety program at 10:00 p.m.

**General Assistance**

Council Workshop - March 2, 2015

Overview

- Pending GA Lawsuit
- 2015 GA Audit – Legal Perspective
- 2015 GA Audit – Response to Alleged Violations
- Councilor Questions
- Short- and Long-Term Financial Impacts
- Plan of Action and Next Steps
- Attachments

While the City's administration of General Assistance has been found in compliance by the State for more than 20 years, the change in statute interpretation by the current administration puts the City in a financially untenable situation which we need to stabilize. Such changes require stakeholder involvement and discussions in greater detail with the Public Safety, Health & Human Services Committee. This document serves to provide further insight into the situation, respond to Councilor questions, and begin to lay out possible policy changes to address the financial impact on the City.

Pending General Assistance (GA) Lawsuit

Currently, this lawsuit is focused on challenging the State's issuance of so-called "guidance"/amendments to the GA rules, which did not go through the proper and established substantive rule-making process. The Maine Municipal Association (MMA), Westbrook and the City all argue that the State's failure to go through this rule-making process violated the law and so the State must be enjoined from pursuing the implementation of and requiring compliance with this new "guidance"/rule. Two parties have also intervened in the lawsuit (Maine Equal Justice Partners and the American Civil Liberties Union of Maine) on behalf of individuals (asylum seekers/refugees) who receive GA benefits. They argue that the State should have gone through rule-making and further allege that "guidance"/rule is also discriminatory.

2015 General Assistance Audit

The 2015 GA audit is attached (**Attachment A**) for your reference. This audit reviewed ninety (90) cases and found that the City had properly reviewed and administered benefits in all cases. Despite this, the auditors did request some additional documentation that they used to note some issues with the City's administration of GA that they find to be non-compliant with Maine law (they noted some of these same issues in an as yet unresolved 2013 audit). These alleged issues include: the presumption of eligibility for an indefinite period of time; the submittal of expenses related to the operation of shelters; not requiring shelter residents to use income or resources available for their current needs; and the submittal of requests for reimbursements for individuals who are not qualified to receive benefits

under 8 U.S.C. section 1621. The audit cites various state statutes (which are attached hereto – **Attachment B**). The City's GA ordinance is also attached for your reference (**Attachment C**).

Before we review the details of the audit (see below), please note that an audit occurred in 2013 which was challenged by the City (**Attachment D**). To date, we have never received a final response from the State, and so we did not take any further action with regard to the 2013 audit.

First, it is important to describe the process of responding to the audit. The process is as follows: if the City disagrees with the aforementioned audit findings, it is required to respond to the State within ten (10) days of the receipt of the audit report. In this case, we have requested and have been granted an extension of this deadline to March 16, 2015. Thereafter, if the City is still found to be out of compliance with the GA requirements (as determined by the State) the City will have thirty (30) days to submit a plan of correction, which is to specify what action shall be taken in order to achieve compliance. If the plan is accepted by the State, the City will receive a written response indicating this and another review will be done within sixty (60) days. Ultimately, if at a subsequent review the same violations are found, the State/DHHS may then (at that time only) be entitled to withhold reimbursement to the City relative to GA payments made after the initial notification of non-compliance has been issued until compliance is met.

Next, it is important to note in reviewing the 2015 GA audit and determining next steps (all of which will be discussed in detail as they relate to the City's legal rights and duties in executive session on Monday night), that the City has had numerous discussions with the State/DHHS with regard to the very same issues since the mid-1980s. In fact, correspondence/documentation (attached hereto – **Attachment E**) exchanged between the City and the State/DHHS indicates that the issues were raised in the past and ultimately resolved (with the State/DHHS's agreement and the addition in 1989 and the deletion in 1992 of statutory language in 22 M.R.S. sections 4304(3) and 4308) to allow the City to "presume eligibility" for persons to whom the City provides the services of the emergency shelter and bill the State/DHHS for the operating costs of the shelter.

2015 GA Audit – Proposed Actions in Response to Alleged Violations

The following proposed actions are indicative of City administration's desire to mitigate the negative financial impact of the Governor's and State DHHS' change in policy direction. These recommended changes should in no way be interpreted to mean that the City has not been operating in accordance with its written agreements with the State for the last 20-plus years.

Alleged Violation	Response	Proposed Action
(1) Eligibility of shelter residents for assistance is not being determined [on a monthly basis] as required by statute and eligibility applications are not being properly processed.	Shelter consumers who do not receive direct GA benefits have not been required before now, per State audits, to complete a full eligibility screen. All other GA beneficiaries have to complete the full eligibility	Comply effective May 1 (to allow time to work with stakeholders and communicate with clients). Monthly eligibility form for shelter consumers is included in Attachment E.

Alleged Violation	Response	Proposed Action
	screening process as required in statute.	
(2) Presumptive eligibility provisions...are being incorrectly applied... beyond an initial night at the shelter.	Please see Response above in (1).	Please see Proposed Action above in (1).
(3) The General Assistance program... does not permit reimbursement to municipalities for operating expenses of shelters apart from costs directly attributable to eligible individuals.	As discussed above, the City and the State have had previous discussions over the past decades about this and, until now, the City's practices were deemed in compliance. (Attachment E)	Comply effective May 1 (to allow time to work with stakeholders and communicate with clients). The potential cost to the City, at best, would be \$820,235. This estimate comes from 2014 Shelter Costs of \$ 2,780,219, with 81,666 bed nights and a cost per night of \$34.04. Even if each shelter consumer was deemed eligible for the maximum allowance per night (\$24), and assuming a stable number of bed nights, the reimbursement would be \$1,959,984, thus the loss to the City of a minimum of \$820,235.
(4) The City... is not requiring residents of an emergency shelter to utilize any income or resources they have for their current needs... nor are they requiring that eligibility for assistance be based on need...	Annual State audits and official correspondence, as noted in (3), have consistently approved this practice.	Effective May 1, the City will comply with the State's current interpretation of eligibility and utilization of income requirements. However, it is important to restate that the City is required to determine GA eligibility within 24 hours of application. Most of the verifications (see Attachment F) are supplied by the State, and the City's records show that the State takes between 1-3 months to provide this verification.
(5) The City... is incorrectly submitted reimbursement requests for individuals who are not U.S. citizens or otherwise eligible for state and local benefits...	Annual State audits and official correspondence, as noted in (3), have consistently approved this practice.	This item is the subject of pending litigation.

Councilor Questions – Questions in addition to those addressed in the first section:

- **How are Financial Eligibility staff trained?** New staff job shadow with current FES staff to learn the specific job functions and methods of interviewing applicants. All new staff also meet with each program to learn about other resources available to clients.
- **What information does the City require from GA applicants? When is that information requested and when is it received?** Applicants must provide proof of all household income and identification for themselves and all household members (i.e., driver's license, birth certificate, Social Security card, passport, immigration documents). The City's Client Intake Form, the State's DHHS/General Assistance Verification Form and Release of Information, and the City's Reapplication for General Assistance forms are attached (Attachment F). Clients presenting for emergency shelter are presumed eligible; all others complete the financial eligibility process and the City has 24 hours to make a determination. Shelter staff use a check-in software system based on a photo identification card that is scanned. The system enters the individual's data into both a MaineHousing database and a City database. Every 30 days, each shelter user is required to sign a State DHHS eligibility form (within Attachment F) which includes questions related to income.
- **How are financial resources (eg, bank records) verified?** Inquiries are submitted to the State DHHS for Temporary Assistance for Needy Families, Refugee Cash Assistance, Food Supplement, Child Support, and SSI/SSDI verification. However, there is at least a one-month response time (staff report often up to three months), which means that applicants receive assistance prior to verification because the City is required to render a decision within 24 hours of application.
- **Do we deny GA if an applicant doesn't meet a means test?** Yes. All income must be exhausted on basic necessities (rent, heat/utility, personal/household needs, and food) and receipts provided. If utility payment is requested, the applicant must provide the entire bill or disconnect notice; only bills in the applicant's name can be considered. Applicants must apply for and use all other available resources, including Federal Food Stamps, Temporary Assistance for Needy Families, MaineCare/Medicare, unemployment benefits, Heating & Energy Assistance Program, subsidized housing programs, other government and community assistance programs. In addition, the individuals mentioned in the recent Press Herald article who have significant resources are Representative Payee clients. Less than 10% of shelter clients who are Rep Payee clients have assets lower than \$2,000; most with less than \$1,000 with two exceptions, one with \$6,000 and one with \$12,000.
- **How many total applications for GA does the City receive? How many are granted and how many are denied?** For calendar year 2014:

	Unduplicated	Duplicated
Total GA Applications	2,739	16,416
Denied	301	1,686
Approved	2,438	14,730

Please note that "Duplicated" refers to applicants who need assistance beyond the initial 30 days.

- **Why does our interpretation of federal law regarding asylum seekers differs from Governor's? Consider FOAA request related to all correspondence between Governor's office, DHHS, Maine Heritage Policy Center regarding this issue.** Outside Counsel was present at last week's Council Workshop in executive session to discuss this issue in more detail.

- ***What are other resources for asylum seekers if we don't provide services?*** Food pantries, soup kitchens, community health services, church-based and other thrift stores. The City funds many of these services through CDBG and other City contracts. If the State changes the language in the GA statute to prevent asylum seekers from qualifying for GA, there will be over 500 families who will lose their housing (more than 900 individuals).
- ***What discretion would City have had to change billing practices given that already audited and approved by State?*** Assuming that the question here is whether we can determine billing practices or whether we are required to adhere to those practices already audited and approved by the State, the law states that we "may" presume eligibility but are not required to do so.
- ***What was the actual cost of what the City billed for clients with assets, what was the amount reimbursed, and were any of these cases audited by state in the past?*** Audited cases would have been for GA applicants, which would exclude shelter consumers who did not apply for any direct GA benefits. We cannot provide specific answers to these questions because we never billed for individuals because we used presumed eligibility based on the cost of operating the shelter. The individuals cited in the Press Herald article were shelter users. The City's practice has been to bill for the cost of utilizing the shelter and not an individualized amount. These costs, based on a State funding formula, have been paid to the City every year with the exception of the current year.
- ***Would the City be able to recoup and/or address any improper payment of GA benefits?*** City ordinance (Chapter 13, section 13-6, attached hereto) and State law (22 M.R.S. section 4315) specify that the City is able to review the matter and ultimately disqualify individuals who have falsely obtained a benefit and (if the individual does not appeal that determination), the law specifies that the individual would also be required to reimburse the City for any assistance he/she received to which he/she was not entitled.

Short-Term Financial Impacts

- The updated State interpretation and potential future changes in GA rules and reimbursement formula will put a significant strain on the City's finances and budgeting process. In the short term, the State has been withholding general assistance reimbursements for FY15.
- The City had budgeted for GA reimbursements from the State of over \$8 million during the current fiscal year and have received none due to the legal dispute. Over \$6 million has already been spent. These likely budget shortfalls are separate from other City budget challenges including winter operations.
- There are no short-term legal costs associated with the pending GA lawsuit.
- There are anticipated implementation costs with the proposed compliance actions to be effective May 1, and the City would also have to set aside funds to assist those who are denied services.

Long-Term Financial Impacts

- The ongoing legal dispute with the State will also cause long-term uncertainty in timing and amount of GA reimbursements.
- Based on recent calculations by the City Department of Health and Human Services, the proposed changes in GA reimbursement formula will trigger a decrease in State GA reimbursements by at least \$3 million next year. GA reimbursements are expected to decrease in each of the first 6 years under the new formula.

- Uncertainty in timing and amount of GA reimbursements will put significant strain on the City's budgeting process and the City Charter (Article VII) clearly notes that during our budgeting process the total of proposed expenditures shall not exceed the total of proposed income.
- Budget shortfalls could trigger additional adverse financial implications. The worst case scenario would be a budget shortfall caused by lack of GA reimbursement as a contributing factor in a future decrease in City credit rating. The City is in a healthy financial position but the GA reimbursements are an important component of the budget.
- A decrease in the City's credit rating would have a snowball effect on finances. Insurance on the City's pension obligation debt would become more expensive. The City's ability to refinance existing debt (which occurs on an annual basis) would be hampered, and the City's refinance options would be less attractive. New debt issued by the City would also carry a higher debt service cost.

Analyzing the City's GA budget from Fiscal Years 2009-2014 ([Attachment G](#)) shows the following trends:

- Overall, the GA costs (which includes both Oxford Street and Family Shelters) have risen by 81%.
- The numbers of GA clients has remained relatively stable. However, the percentage of clients who are not eligible for any federal benefits have increased significantly, which places a correspondingly greater burden on many of the GA budget lines. ([Attachment G](#))
- Costs for the Oxford Street shelter increased from FY09-14 by 84% due to the higher staffing required for multiple overflow shelters beginning in FY12.
- Diaper costs grew 84% with a shift to families with larger numbers of young children.
- Rent costs have expanded by 88% because of the tight housing market in Portland, economic pressures including higher rate of job loss, and increased numbers of asylum seekers.
- Prescription costs increased by 82% because of the reduction in MaineCare coverage when Maine chose not to expand under the Affordable Care Act.
- Food costs grew by 135% because of the immense growth in clients with no Food Stamps eligibility (asylum seekers). Similarly, non-food costs rose by 86%.

Updated numbers on reimbursement for GA clients who are considered "lawful" versus "unlawful" (since June 17, the first day of implementation of the new guidance/rule) are as follows ([Attachment G](#)):

- Gross expenditures for "lawful" clients – \$3.1 million
- Gross expenditures for "unlawful" clients – \$1.5 million
- Reimbursement including "unlawful" – \$3 million
- Not reimbursed – \$1 million

Plan of Action and Next Steps

While the City has been proven compliant by prior State audits for decades, we must now take action to address the financial impact on the City. Possible policy changes, as described above, could be discussed in greater detail by the Public Safety, Health & Human Services Committee. In addition, it seems prudent to also respond to the suggestions provided by State DHHS Commissioner Mary Mayhew in her 2/21/15 piece in the Press Herald:

Cmsr. Mayhew's Suggestion	Proposed Response
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(1) Audit GA rolls for fraudulent applications	(1) Increase audit frequency working within staffing constraints. Work with other municipalities both in-state and out to take responsibility for their residents who seek GA in Portland.
(2) Enforce job search requirements	(2) Increase enforcement working within staffing constraints and poor verification ...
(3) Reduce benefit amounts	(3) While benefit amounts are set by the State and not the City, staff propose suspending food vouchers for GA clients who also receive federal SNAP benefits. (estimated savings: \$155,250) Cap reimbursement for overflow families to stay in hotels at the maximum rent reimbursement rate. Cap the GA budget and cease benefits after reaching that amount and/or length of time. Hold spouses and/or parents responsible ("Under 25" rule). Collaborate with Maine Medical Center/CarePartners to provide prescription drug coverage. (estimated savings: \$40,000) End rent vouchers on leases with co-signers. Work with other Portland shelters which receive City funding to tighten eligibility requirements and verifications. Charge daily rate for individuals with resources.
(4) Limit eligibility periods	(4) State statute requires eligibility re-evaluation every 30 days at a minimum. The City would need more staff to conduct more frequently.
(5) Place heavier scrutiny on emergency applications	(5) Strengthen after-hours procedures and requirements. Define emergency as life-threatening and beyond the control of the applicant.

Attachment A

2015 State DHHS Audit of Portland's General Assistance Program

INTRODUCTION

On January 20th and 21st of 2015, Field Examiner Gerard R. Biron of the Department of Health and Human Services (DHHS) conducted a review of the administration of the General Assistance (GA) program by the City of Portland. The review took place at the Portland General Assistance office, where Field Examiner Biron was given access to the WELPAC database, which is the city of Portland's electronic GA eligibility system used to determine GA eligibility and to store case file information. He was also given access to individual paper case files as well. During this two day period he was supplied supplemental information connected to the City of Portland run shelters as well as clients who had spent time at the shelters. This review was conducted pursuant to 22 M.R.S. § 4323¹ as well as the State of Maine General Assistance Policy Manual, which includes Code of Maine Regulations (CMR) 10-144, Chapter 323, Section X, which provides for such reviews and sets forth specific procedures for conducting them. Pursuant to said Section X, the examiner reviewed 90 cases, the minimum required by the regulations given the number of monthly cases processed in Portland. In addition, the Field Examiner and DHHS GA Program Manager David MacLean interviewed a number of Portland GA administrators as part of the review of the operation of the City's program. Finally, on January 28th and 29th of 2015, Field Examiner Ellen Moore reviewed claims that the City of Portland represented it had paid to aliens that the City of Portland characterized as either "qualified" or "non-qualified," based on whether the aliens met or did not meet the eligibility criteria set forth in 8 U.S.C. § 1621(a).

Based on that review², DHHS has concluded that the City of Portland is in violation of a number of statutory and regulatory requirements, including but not limited to improper eligibility determination and reimbursement practices with respect to the operation of Portland's Oxford Street Shelter and Family Shelter. Specifically, the method by which Portland has been seeking reimbursement for

¹ Hereinafter, any reference to a statutory section shall refer to Title 22, M.R.S., unless otherwise indicated.

² A similar review in 2013 produced broadly comparable results, and supports the findings set forth herein.

costs related to these shelters is impermissible under existing law and needs to be corrected. These conclusions are, of course, based on the best available current information, and are subject to modification upon receipt of further information.

In summary, the review found the following violations:

1. Eligibility of shelter residents for assistance is not being determined as required by statute. Specifically, it is not being determined on at least a monthly basis as required by 22 M.R.S. § 4309, and eligibility applications are not being properly processed.
2. The presumptive eligibility provisions set forth in 22 MRS § 4304 are being incorrectly applied by the City to improperly permit eligibility beyond an initial night at the shelter. Eligibility beyond such initial night must be determined using the eligibility standards specified for all applicants. 'Presumptive' eligibility does not mean 'permanent' eligibility.
3. The General Assistance program is designed to permit reimbursement to municipalities for amounts paid to eligible individuals. It does not permit reimbursement to municipalities for operating expenses of shelters apart from costs directly attributable to eligible individuals. The submission of requests for reimbursement for shelter operating costs is impermissible.
4. The City of Portland, contrary to the requirements of the applicable statutes and regulations, is not requiring residents of an emergency shelter to utilize any income or resources they have for their current needs, as required by 22 MRS § 4317 and related regulations, nor are they requiring that eligibility for assistance be based on need as must be required of all applicants.

5. The City of Portland is incorrectly submitting reimbursement requests for individuals who are not US citizens or otherwise eligible for state and local public benefits under 8 U.S.C. § 1621.

REVIEW OF RELEVANT STATUTORY AND REGULATORY REQUIREMENTS

"General Assistance" is a state program involving joint municipal and state participation in aid to the poor, pursuant to Maine Revised Statutes, Title 22, Part Five, Chapter 1161, codified at § 4301 *et seq.* As a general proposition, municipalities pay benefits to eligible individuals after making a determination that such individuals meet all eligibility criteria established under relevant law (which include factors such as income and assets, economic need, residence, citizenship or immigration status, compliance with work requirements, and non-fugitive status). Municipalities are entitled to reimbursement from the state of a portion of those properly paid expenses.

Among the important statutory provisions governing the General Assistance program are the following:

8 U.S.C. § 1621 generally provides that aliens are not eligible for state and local public benefits (which includes General Assistance) unless they fall into one of the categories set forth in § 1621(a). Those categories cover: "qualified aliens" under 8 U.S.C. § 1641; non-immigrant aliens under the Immigration and Nationality Act; and aliens paroled into the United States under 8 U.S.C. § 1182(d)(5) for a period of less than one year.

22 MRSA § 4304 states that each municipality must have a general assistance office or designated place where a person may apply for assistance at regular reasonable times. Additionally, "the municipality must issue a written decision on all applications [for aid] within 24 hours." Subsection (3) further provides that "Municipalities may arrange with emergency shelters for the homeless to presume eligible for municipal assistance persons to whom the emergency shelter provides shelter services."

22 MRSA § 4308, captioned "Applications," states that "in order to receive assistance from any municipality, the applicant or a duly authorized representative must file a written application with the overseer, except as provided in section 4304, subsection 3," i.e., the 'emergency' provision cited above. The section further provides that eligibility must be "determined solely on the basis of need."

22 MRSA § 4309, captioned "Eligibility," provides that the overseer "shall determine eligibility each time a person applies or reapplies for general assistance.... The period of eligibility must not exceed one month." Sub-section 1-B further provides that "In order to determine an applicant's eligibility for general assistance, the overseer first must seek information and documentation from the applicant."

22 MRSA § 4310, captioned "Emergency benefits prior to full verification," states that whenever an applicant claims to be in an emergency situation requiring immediate assistance to meet basic necessities, the overseer shall, pending verification, provide sufficient benefits to meet basic necessities, assuming that based on an initial interview the overseer believes the applicant will probably be eligible for assistance, and that need has been either documented or supported by other witnesses. However, in no case may the authorization for benefits thereunder exceed 30 days absent full verification of eligibility.

22 M.R.S.A. § 4311 allows DHHS to pay reimbursement to a municipality only "when the department finds that the municipality has been in compliance with all requirements" of Title 22, Chapter 1161, including the requirement that municipalities pay only eligible claimants.

22 MRSA § 4317, captioned "Use of potential resources" states that "an applicant or recipient must make a good-faith effort to secure any potential resource that may be available, including, but not limited to, any state or federal assistance program, employment benefits, governmental or private pension programs, available trust funds, support from legally liable relatives, child-support payments and jointly held resources [that] may be available to the individual."

22 MRSA § 4322 provides that DHHS shall review the administration of GA by each municipality for compliance with statutory mandates, and report the results in writing to the municipality. If the Department finds any violation, it is to provide the municipality 30 days to specify what action the city proposes to take to achieve compliance. Failure to file a plan to come into compliance exposes the municipality to civil penalties and the withholding of reimbursement until compliance is achieved.

Additionally, the Maine General Assistance Policy Manual includes the following important provisions:

**1. SECTION III. DEFINITIONS-
INCOME**

Income is defined as “any form of income in cash or in kind [including] any payments received as an annuity, retirement, or disability benefits, veterans pensions, Worker’s Compensation, unemployment benefits, benefits under a state or federal categorical assistance program, supplemental security income, Social Security and any other payments from governmental sources unless specifically prohibited by any law or regulation.”

EMERGENCY SHELTER COSTS

“A municipality may choose to consider the actual cost of an emergency shelter provided by a shelter provider as a shelter cost *up to the amount allowed by ordinance*. (Emphasis added.)

In such cases the municipality may provide general assistance to the emergency shelter provider on the following criteria have been met:

- 1) The applicant (not the shelter provider) *has completed an application* for assistance.

- 2) The applicant has been found eligible for assistance *based on criteria established in the municipal ordinance.*

Municipalities may arrange with emergency shelters for the homeless to presume eligibility for persons to whom the emergency shelter provides shelter services. Individual agreements should be on file and available for review (§ 4304(3)).

When residents of an emergency shelter apply for assistance, they must be aware that *any income or resources they have are to be utilized for current needs. The same verification of income and expenditures for the previous 30 day period and 30 day perspective income procedures are to be utilized as with other applications.*"

(Emphasis added.)

2. SECTION V. ELIGIBILITY FACTORS

"22 MRSA § 4309(1) limits the period of eligibility. The period of eligibility shall not exceed one month. The one month is the maximum period of eligibility a municipality may use in determining eligibility."

"Each time the eligibility period has expired, the applicant must have his eligibility re-determined."

"Decisions are to be rendered within 24 hours of application (§ 4304)..."

"In the event of an 'emergency' sufficient assistance to alleviate emergency should be provided until the next business day."

EMERGENCY APPLICATIONS FOR ASSISTANCE

"[T]he municipality has 24 hours to grant or deny an application...."

"It is not necessary to provide long-term assistance or a permanent solution in an emergency. Assistance of a type and amount that will

alleviate immediate threat to life and safety are that will help to alleviate any undue hardship or unnecessary costs will suffice.”

INTERIM ASSISTANCE

“Municipal General Assistance Administrators must seek authorization [for payment to the State] from each applicant who, to the Administrator’s knowledge, may be eligible for SSI, has applied for SSI, or who is waiting for benefits which may have been suspended”

Further detailed sections of the Manual describe the process by which an SSI-eligible individual’s benefits must be used to reimburse the state and municipality.

3. SECTION X. REVIEW OF MUNICIPAL ADMINISTRATION OF GENERAL ASSISTANCE.

(This section reiterates much of the statutory content of § 4323.)

“It is imperative that no [municipal GA] administrative costs are billed to the Department.”

Following review, written findings indicating program violations are to be presented at an exit conference; if the municipal administrator is not in agreement with the findings, written responses are to be sent to DHHS within 10 days, to be considered before a final determination is made by the Department.

“If a plan of correction is not filed with the Department within the thirty day period [after the 10-day comment period], the Department shall send written notification that a plan of correction has been requested, that none has been received, and that withholding [of reimbursements] will take place.”

DESCRIPTION OF VIOLATIONS

1. Eligibility determinations are being made improperly, and applications are not being processed as required.

The relevant statutory provision, § 4309, states that eligibility is to be determined "each time a person applies or reapplies for general assistance," and that "[t]he period of eligibility must not exceed one month." The eligibility determination process also encompasses the requirements of §4308 which require a written application except as provided in § 4304(3), and further require that eligibility be determined solely on the basis of need.

By necessary implication, an eligibility process that purports to qualify individuals for general assistance on an ongoing basis of indefinite duration violates § 4309. Similarly, the failure to arrange for the completion and proper processing of an appropriate application violates § 4308. During the course of the review it was revealed that applications taken at Portland shelters are not being completed on a monthly basis and, insofar as they are completed, are simply put into a file and stored on-site. They are never appropriately reviewed by Portland GA staff for proper eligibility determinations. During a meeting on December 9, 2013 at the Portland GA office, DHHS program manager Dave MacLean was shown a folder containing a month's worth of abbreviated applications, none of which had been placed into the "WELPAC," the municipality-run computer system for GA eligibility, or otherwise processed as required. As a result, the review of 90 files was effectively not probative of the current issues insofar as none of the shelter files were among those available for review.

2. The presumptive eligibility provisions of § 4304(3) are being misconstrued and misapplied to allow effectively perpetual eligibility without consideration of need or assets.

As noted above, all applications for assistance must be in writing except for those which fall within the ambit of § 4304(3), which allows for a period of presumptive eligibility for individuals in emergency shelters (but which does not purport to exclude operation of all other statutory provisions). The City of

Portland has apparently taken this exception to the general rule to mean that individuals admitted to municipal shelters are to be deemed, immediately and in perpetuity, to qualify for general assistance without respect to need or assets. Further, the City proceeds from this conclusion to seek reimbursement for all costs of running such shelters, including nonrecoverable administrative costs. This is a misinterpretation of the law.

Reading the statute as Portland apparently does violates all rules of statutory construction and would lead to absurd results. To take the position that the statutory language of § 4304(3) (included in a subsection entitled "Emergencies") provides limitless assistance without ever requiring an actual determination of eligibility would ignore the clear legislative intent, create inconsistent results, and lead, finally to absurdity. Fundamentally, a literal reading of the presumptive eligibility exception in isolation from the statutory context would swallow the rule.

Multiple sections of the GA statute, including §§ 4308, 4309, and 4310, spell out in considerable detail the process of making application, determining eligibility, and providing emergency benefits where necessary. As a general proposition, applications must be in writing, must assess the applicant's financial need, must produce a determination of eligibility within 24 hours, and must cover no more than a 30 day period. If § 4304(3) trumps all other portions of the law, and allows individuals limitless use of general assistance funds in the form of a subsidy to the shelter without even a determination of eligibility, all of those provisions would be pointless, and certainly lead to inconsistent results, as 'sheltered' applicants would be favored over all others, irrespective of need. It would in effect make such persons not *presumptively* eligible but *automatically* and *indefinitely* eligible. The very nature of the term "presumptive" eligibility suggests that it is an inherently temporary status, pending a final determination of eligibility. To contend that someone who is "presumed eligible" for any status never actually has to be determined to *be* eligible would render the very word "presumed" redundant. Had the legislature wished the statute to have the effect the City urges, it could simply have said so, and stated that all residents of

emergency shelters would be “deemed” eligible – or, more simply, “are eligible” – for general assistance. It did not.

This issue was raised with the City in April 2014, at which time it suggested that “the city’s interpretation in this regard is supported by the language of the statute,” citing as support an internal advisory letter issued by Assistant Attorney General Christina Hall to DHHS in 1996. In fact, although AAG Hall found the language of the statute at issue ambiguous, she concluded that an examination of the legislative history “supports a stronger argument for the position currently and historically taken by [the] Department [to the effect that] shelter residents must apply and be found eligible for GA in order for towns to be reimbursed for costs attributable to them.” In other words, while perhaps conceding that portions of the statute were ambiguous, the opinion ultimately concluded that the proper interpretation of the issue is the one being advanced both then and now by the Department. As you will also note, part of her rationale was that the legislative Committee rewrote the broad original Statement of Fact for the bill, to observe that the purpose of the amendment was to “clarif[y] the permission to municipalities to grant assistance to residents of emergency shelters without an application *in writing*.” This does not reflect an intention to grant assistance without an application, or without meeting other qualifications. Again, this makes perfect sense: an emergency shelter will inevitably and often receive potential applicants under circumstances where the mechanisms described in the statute for determining eligibility are unavailable. A presumption of eligibility is a reasonable stopgap measure in such circumstances. A conclusive and automatic determination of eligibility is neither reasonable nor supported by the broad purpose of the statute. The directly expressed legislative intent surely supports the Department’s interpretation.

By letter of April 18, 2014 counsel to the City contended that § 4304(3) “says only that presumptive eligibility is permissible – with absolutely no limit on the application of that presumption.” (Letter from Jennifer L. Thompson, Esq., at p. 3.) In fact, however, all statutory language is necessarily “limited” by the rules of construction, even to the extent that, as noted, “a court can even ignore the literal meaning of phrases if that meaning thwarts the clear legislative objective,”

State v. Day, *supra*, at 605. The courts will defer to an agency's interpretation of an arguably ambiguous statute so long as that interpretation is a reasonable one. *State v. McCurdy*, 2010 ME 137, 10 A.3d 636 (Me. 2010). To consider the exceptional language in § 4304(3) as providing a benefit that is both unavailable under any other portion of the statutory scheme and which would render much of that scheme superfluous is unsupportable as a matter of law.

3. The City of Portland is impermissibly submitting expenses related to operation of shelters not directly attributable to GA eligible individuals.

As a result of the practices described above, the City of Portland does not in fact individually and correctly determine the eligibility for assistance of individuals housed within the City's shelters. Instead, relying upon the contention both that it is self-evident that anyone in the shelter would qualify for general assistance, and that the State has ostensibly blessed the practice in the past, it has submitted for reimbursement the total operating expenses of such shelters, regardless of whether the resident individuals actually meet the relevant eligibility criteria.

Apart from the provisions of § 4308(3), the entire statutory scheme of the general assistance program is premised on determination of need on the part of each individual for the care of whom the municipality seeks reimbursement. For the reasons described in the preceding section, the exception permitting an emergency admission to a shelter cannot be read in isolation from the remainder of the statute, and therefore, for example, cannot negate the requirement reflected in § 4308(1) that municipalities must issue written decisions on applications within 24 hours, the requirement that a period of eligibility must not exceed one month (§ 4309) or that eligibility must be based solely on need. (§ 4317).

Nothing in either the statutory or regulatory framework of the program permits reimbursement as has been sought by Portland. Administrative costs are

not reimbursable³ nor are costs not directly attributable to individual eligibility. Where the City has failed to appropriately process individual applications through their WELPAC computer system, reimbursement is unsupported and cannot be continued.

The claim that the Department's current interpretation is said to be inconsistent with prior tacit or explicit approvals is not relevant. The suggestion⁴ that the Department could be collaterally (or otherwise) estopped from enforcing its current interpretation based on past practice is unsupported. First, "collateral estoppel only prevents the relitigation of factual issues when the identical issue was already determined by a prior final judgment." *Kelley v. Maine PERS*, 2009 ME 27, ¶22, 967 A.3d 676 at 683-84. Since the dispute at hand reflects interpretation of law rather than factual issues, and there has been no determination of any such issues by any court, collateral estoppel is inapplicable. To the extent the City would alternatively contend that the doctrine of equitable estoppel applies, we note that the Law Court has held both that "compelling policy reasons discourage applying equitable estoppel to restrict the government from undertaking its essential functions," and "equitable estoppel requires a misrepresentation." It is thus applied only "carefully and sparingly," *State v. Brown*, 2014 ME 79, ¶20, ¶17, ¶15, 95 A.3d 82, 87-88. There is no such claim of misrepresentation here, much less the "clear and satisfactory proof" the Court requires, *id.* at ¶15. Similarly, nothing in past practice estops the Department from enforcing its rules in a different fashion prospectively. *See Astrue v. Ratliff*, 560 U.S. 586, 130 S.Ct. 2521, 2529 (2010) ("nothing about the Government's past payment practices [re: fee awards] altered the statutory text ...or estopped the Government" from revising them.) To the extent the Department's interpretation of the statute and rules is reasonable, even if not mandated, it will be upheld. *Lipplitt v. Board of Certification for Geologist and Soil Scientists*, 2014 ME 42, 88 A.3d 154 (2014); *Fryeburg Health Care Center v. Department of Human Services*, 1999 ME 122, 734 A.2d 1141 (1999).

³ See discussion and rule at Manual, Section XIII.

⁴ See letter of Attorney Thompson, *supra*, at 4.

4. The City of Portland is not requiring shelter residents to use income or resources for their current needs, and is failing to consider such resources in determining 'need' as the statute requires.

As described above, § 4309 and § 4317 describe a system in which the municipality identifies all resources available to the individual, which must then be considered as bearing on the level of 'need' and thus the eligibility of the individual for assistance. It is the very essence of the general assistance program that only individuals who meet the 'need' parameters of the municipalities GA ordinance may be provided reimbursable assistance.

In the course of the present and prior reviews, DHHS has determined that the perfunctory application process conducted before individuals are lodged in the City shelters fails to comply with these requirements. While it is difficult to determine precisely how many ineligible individuals may be routinely admitted to the shelter and then, indirectly, have those costs passed on for reimbursement, the Department's review has revealed that at least a substantial number of individuals who routinely stay in shelters are clearly ineligible.

Documents provided to the Department by City employees identified the "Top 30 Stayers" in City shelters based on total bed nights. Of those 30, at least 13 were determined to have more than approximately \$20,000 in savings or checking accounts in their names. Of these, the person with the single greatest number of total bed nights was reported as of November 19, 2013 to have \$92,424 in his accounts. One other individual was reported to have as much as \$161,351 in liquid assets.

The City of Portland employs a number of individuals who act as "representative payees" for individuals who receive a number of benefits including SSI and SSDI. At least 60 of those individuals stayed at least one night at the Oxford Street shelter in 2014. Many of those had combined checking and savings accounts balances as of January 2015 amounting to as much as \$50,000.

While it is difficult on this limited information to determine the precise scope of the problem, it is clear that the City's practices with respect to admitting and retaining persons in its shelter are inconsistent with the statutory requirements that those persons demonstrate 'need' for such emergency accommodations after initial admission.

5. The City of Portland is incorrectly submitting reimbursement requests for individuals who are not United States citizens or are otherwise ineligible for state and local public benefits under 8 USC § 1621.

The City of Portland has been submitting to the Department for reimbursement general assistance amounts paid to individuals who are ineligible for General Assistance pursuant to the terms of 8 U.S.C. § 1621. The City of Portland segregated its claims for reimbursement into two groups: one group it called "non-qualified," consisting of those aliens who are not included within the eligible categories set forth in 8 U.S.C. § 1621(a), and a group it called "qualified," consisting of U.S. citizens and aliens who do fall into an eligible category under 8 U.S.C. § 1621(a). DHHS's audit reveals that the City of Portland has correctly performed the segregation of claims in the manner it has described; it has not included any ineligible aliens within the group of its "qualified" claims. It has incorrectly paid those individuals benefits, however, since it has incorrectly concluded they are eligible for benefits notwithstanding 8 U.S.C. § 1621.

REMEDIAL ACTION REQUIRED

DHHS requires that the following steps be taken to bring the City of Portland into compliance with the General Assistance statute and regulations:

1. An applicant who seeks refuge at a city shelter is, pursuant to section 4304, entitled to an initial night of presumptive eligibility, assuming that

It is impractical to process his application for General Assistance benefits in the usual fashion immediately.

2. All such persons must thereafter complete the application process within the 30 day period following their sheltered admission. For each such person determined to be eligible for General Assistance, shelter costs for such period will be eligible for reimbursement based on the "bed night rate" to be established as in Paragraph 4(a) below. If the applicant is found to be ineligible, reimbursement will be provided only for the initial night of assistance.
3. With respect to any period beyond the initial 30 days, the usual General Assistance eligibility standards must be applied. City staff must process each such applicant for eligibility through the WELPAC system as it does with non-shelter applicants.
4. The methodology to be used for current reimbursement requests for the category of "Temporary Housing (Shelter, etc.)" will be as follows:
 - a. Portland will establish a bed night rate for shelter clients not to exceed the maximum housing utility allowance for a single individual in the "heated zero bedroom" category of the Appendix C as listed in the most recently adopted General Assistance ordinance. This amount shall be prorated into a daily figure and will be the amount allowed to be requested as reimbursement for a General Assistance eligible individual staying at any municipal homeless shelter;
 - b. Portland may no longer submit reimbursement requests in the "Temporary Housing (Shelter, etc.) category based on the operating expenses of municipal shelters. Such reimbursement requests will instead be made based on the number of nights that shelter was provided for General Assistance eligible individuals at the defined bed night rates.

5. Portland must continue to determine whether applicants are eligible for state and local benefits under 8 USC § 1621 as part of its overall responsibility to determine eligibility, and must pay general assistance to eligible applicants only. Portland shall not seek reimbursement from DHHS for payments made to individuals who are not eligible for state and local public benefits under 8 USC § 1621.
6. As part of the process of determining compliance, DHHS will conduct a monthly in-depth review of Portland's shelter reimbursement requests for a minimum of one year. DHHS may elect to continue these reviews if deemed necessary to verify compliance. Upon request, Portland agrees to furnish DHHS with any requested documents reasonably needed to monitor compliance.

NOTICE

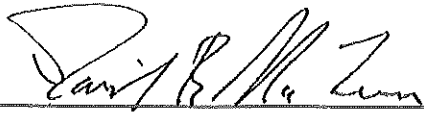
In light of the violations catalogued above, the Department is submitting this notice of the aforementioned corrections that must be made before compliance with the statute can be achieved. If the administrator is not in agreement with these findings, he or she may file a written response with the Department within 10 days of the exit conference. Such information will be considered before a final determination of noncompliance is made.

Pursuant to the General Assistance Manual Section X, if the City is found to be out of compliance following the 10 day response, it will be so notified in writing by the Department. It will have 30 days thereafter to submit a plan of correction specifically targeted to the violations found. If the plan is accepted by the Department, the City shall receive such a notice from the Department along with a notice advising that a further review will be done within 60 days. If at that subsequent review the same violations are found the Department may withhold reimbursement until compliance is achieved.

If a plan of correction is not filed with the Department within the 30 day period, the Department will send written notification to that effect and withholding will take place. If an unacceptable plan of correction is filed the Department shall so advise the City and indicate what is needed for an acceptable plan. In all respects these procedures shall be guided by and comply with the statutory provisions of § 4322.

The Department recognizes that the City of Portland disagrees with the conclusion that it is non-compliant by virtue of paying benefits to aliens who are not eligible under 8 U.S.C. § 1621(a), and that such disagreement is the subject-matter of a pending lawsuit between DHHS and the City of Portland. Pending resolution of that lawsuit, DHHS will not be paying reimbursement of claims paid to such "non-qualified" aliens, but DHHS will not be assessing any civil penalties or imposing any broader withholding remedy for the City of Portland's failure to correct this non-compliance. Assuming the lawsuit is resolved in DHHS's favor, and the City of Portland's non-compliance continues thereafter, DHHS reserves the right to assess civil penalties and impose withholding remedies from that point forward. DHHS also reserves the right to impose civil penalties or withhold all reimbursement — including reimbursement for so-called 'qualified' or 'non-qualified' claims — before resolution of the lawsuit, in accordance with law, for non-compliance unrelated to the issues of citizenship and immigration status that are the subject of that lawsuit.

The Department thanks you for your cooperation in this matter. If we can be of any assistance, please contact us at 1-207-624-4138.



DHHS General Assistance Program Manager

Date: 2/20/15

GA Administrator/Authorized representative

Date: _____

Note: your signature does not signify agreement with the review findings, but serves only to indicate that the review findings have been discussed with you.

Attachment B

Statutes Cited in 2015 DHHS Audit of Portland's General Assistance Program and Associated Legislative History

Maine Revised Statutes

§4269

Title 22: HEALTH AND WELFARE

§4302

- ☑ [§4301 PDF](#)
- ☑ [§4301 MS-WORD](#)
- ☑ [STATUTE SEARCH](#)
- ☑ [CH. 1161 CONTENTS](#)
- ☑ [TITLE 22 CONTENTS](#)
- ☑ [LIST OF TITLES](#)
- ☑ [DISCLAIMER](#)
- ☑ [MAINE LAW](#)
- ☑ [REVISOR'S OFFICE](#)
- ☑ [MAINE LEGISLATURE](#)

Subtitle 3: INCOME SUPPLEMENTATION

HEADING: PL 1973, C. 790, §1 (AMD)

Part 5: MUNICIPAL SUPPORT OF THE POOR

Chapter 1161: MUNICIPAL GENERAL ASSISTANCE

§4301. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 577, §1 (NEW) .]

1. Basic necessities. "Basic necessities" means food, clothing, shelter, fuel, electricity, nonelective medical services as recommended by a physician, nonprescription drugs, telephone where it is necessary for medical reasons and any other commodity or service determined essential by the overseer in accordance with the municipality's ordinance and this chapter. "Basic necessities" do not include security deposits for rental property, except for emergency purposes. For the purposes of this subsection, "emergency purposes" means any situation in which no other permanent lodging is available unless a security deposit is paid.

[1991, c. 9, Pt. U, §1 (AMD) .]

1-A. Direct costs. "Direct costs" means the total value of general assistance benefits paid out by a municipality that is in compliance with this chapter and the municipality's general assistance ordinance.

[1991, c. 9, Pt. U, §2 (NEW) .]

2. Dwelling unit. "Dwelling unit" means a building or part thereof used for separate living quarters for one or more persons living as a single housekeeping unit.

[1983, c. 577, §1 (NEW) .]

3. Eligible person. "Eligible person" means a person who is qualified to receive general assistance from a municipality according to standards of eligibility determined by the municipal officers whether or not that person has applied for general assistance. "Eligible person" does not include a person who is a fugitive from justice as defined in Title 15, section 201, subsection 4.

[2013, c. 368, Pt. 00, §4 (AMD) .]

4. Emergency. "Emergency" means any life threatening situation or a situation beyond the control of the individual which, if not alleviated immediately, could reasonably be expected to pose a threat to the health or safety of a person.

[1983, c. 577, §1 (NEW) .]

5. General assistance program. "General assistance program" means a service administered by a municipality for the immediate aid of persons who are unable to provide the basic necessities essential to maintain themselves or their families. A general assistance program provides a specific amount and type of aid for defined needs during a limited period of time and is not intended to be a continuing "grant-in-aid" or "categorical" welfare program. This definition shall not in any way lessen the responsibility of each municipality to provide general assistance to a person each time that the person has need and is found to be otherwise eligible to receive general assistance.

[1983, c. 577, §1 (NEW) .]

6. Household. "Household" means an individual or a group of individuals who share a dwelling unit. When an applicant shares a dwelling unit with one or more individuals, even when a landlord-tenant relationship may exist between individuals residing in the dwelling unit, eligible applicants may receive assistance for no more than their pro rata share of the actual costs of the shared basic needs of that household according to the maximum levels of assistance established in the municipal ordinance. The pro rata share is calculated by dividing the maximum level of assistance available to the entire household by the total number of household members. The income of household members not legally liable for supporting the household is considered available to the applicant only when there is a pooling of income.

[2013, c. 368, Pt. 00, §5 (AMD) .]

7. Income. "Income" means any form of income in cash or in kind received by the household, including net remuneration for services performed, cash received on either secured or unsecured credit, any payments received as an annuity, retirement or disability benefits, veterans' pensions, workers' compensation, unemployment benefits, benefits under any state or federal categorical assistance program, supplemental security income, social security and any other payments from governmental sources, unless specifically prohibited by any law or regulation, court ordered support payments, income from pension or trust funds, household income from any other source, including relatives or unrelated household members and any benefit received pursuant to Title 36, chapter 907, Title 36, section 5219-II and Title 36, section 5219-KK, unless used for basic necessities as defined in section 4301, subsection 1.

The following items are not available within the meaning of this subsection and subsection 10:

A. Real or personal income-producing property, tools of trade, governmental entitlement specifically treated as exempt assets by state or federal law; [1991, c. 9, Pt. U, §3 (AMD) .]

B. Actual work-related expenses, whether itemized or by standard deduction, such as taxes, retirement fund contributions, union dues, transportation costs to and from work, special equipment costs and child care expenses; or [1983, c. 577, §1 (NEW) .]

C. Earned income of children below the age of 18 years who are

full-time students and who are not working full time. [1991, c. 9, Pt. U, §3 (AMD) .]

In determining need, the period of time used as a basis for the calculation is the 30-day period commencing on the date of the application. This prospective calculation does not disqualify an applicant who has exhausted income to purchase basic necessities if that income does not exceed the income standards established by the municipality. Notwithstanding this prospective calculation, if any applicant or recipient receives a lump sum payment prior or subsequent to applying for assistance, that payment must be prorated over future months. The period of proration is determined by disregarding any portion of the lump sum payment that the applicant or recipient has spent to purchase basic necessities, including but not limited to: all basic necessities provided by general assistance; reasonable payment of funeral or burial expenses for a family member; reasonable travel costs related to the illness or death of a family member; repair or replacement of essentials lost due to fire, flood or other natural disaster; repair or purchase of a motor vehicle essential for employment, education, training or other day-to-day living necessities; repayments of loans or credit, the proceeds of which can be verified as having been spent on basic necessities; and payment of bills earmarked for the purpose for which the lump sum is paid. All income received by the household between the receipt of the lump sum payment and the application for assistance is added to the remainder of the lump sum. The period of proration is then determined by dividing the remainder of the lump sum payment by the verified actual monthly amounts for all of the household's basic necessities. That dividend represents the period of proration determined by the administrator to commence on the date of receipt of the lump sum payment. The prorated sum for each month must be considered available to the household for 12 months from the date of application or during the period of proration, whichever is less.

[2013, c. 551, §1 (AMD) .]

8. Just cause. "Just cause" means a valid, verifiable reason that hinders an individual in complying with one or more conditions of eligibility.

[1983, c. 577, §1 (NEW) .]

8-A. Lump sum payment. "Lump sum payment" means a one-time or typically nonrecurring sum of money issued to an applicant or recipient. Lump sum payment includes, but is not limited to, retroactive or settlement portions of social security benefits, workers' compensation payments, unemployment benefits, disability income, veterans' benefits, severance pay benefits, or money received from inheritances, lottery winnings, personal injury awards, property damage claims or divorce settlements. A lump sum payment includes only the amount of money available to the applicant after payment of required deductions has been made from the gross lump sum payment. A lump sum payment does not include conversion of a nonliquid resource to a liquid resource if the liquid resource has been used or is intended to be used to replace the

converted resource or for other necessary expenses.

[2001, c. 571, §2 (AMD) .]

9. Municipality of responsibility. "Municipality of responsibility" means the municipality which is liable for the support of any eligible person at the time of application.

[1983, c. 577, §1 (NEW) .]

10. Need. "Need" means the condition whereby a person's income, money, property, credit, assets or other resources available to provide basic necessities for the individual and the individual's family are less than the maximum levels of assistance established by the municipality.

[1985, c. 489, §§2, 14 (AMD) .]

11. Net general assistance costs. "Net general assistance costs" means those direct costs incurred by a municipality in providing assistance to eligible persons according to standards established by the municipal officers and does not include the administrative expenses of the general assistance program.

[1983, c. 577, §1 (NEW) .]

12. Overseer. "Overseer" means an official designated by a municipality to administer a general assistance program. The municipal officers shall serve as a board of overseers if no other persons are appointed or elected.

[1983, c. 577, §1 (NEW) .]

12-A. Pooling of income. "Pooling of income" means the financial relationship among household members who are not legally liable for mutual support in which there occurs any comingling of funds or sharing of income or expenses. Municipalities may by ordinance establish as a rebuttable presumption that persons sharing the same dwelling unit are pooling their income. Applicants who are requesting that the determination of eligibility be calculated as though one or more household members are not pooling their income have the burden of rebutting the presumption of pooling income.

[1991, c. 622, Pt. M, §22 (NEW) .]

13. Real estate. "Real estate" means any land, buildings, homes, mobile homes and any other things affixed to that land.

[1983, c. 577, §1 (NEW) .]

SECTION HISTORY

1983, c. 577, §1 (NEW). 1985, c. 489, §§1,2,14 (AMD). 1989, c. 322, §1 (AMD). 1989, c. 840, §§1-3 (AMD). 1991, c. 9, §§U1-3 (AMD). 1991, c. 622, §§M20-22 (AMD). 1993, c. 410, §AAA1 (AMD). 2001, c. 571, §§1,2 (AMD). 2003, c. 510, §C6 (AMD). 2013, c. 368, Pt. OO, §§4-6 (AMD). 2013, c. 551, §1 (AMD).

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Maine Revised Statutes

§4303

Title 22: HEALTH AND WELFARE

§4305

Subtitle 3: INCOME SUPPLEMENTATION

HEADING: PL 1973, C. 790, §1 (AMD)

Part 5: MUNICIPAL SUPPORT OF THE POOR

Chapter 1161: MUNICIPAL GENERAL ASSISTANCE

§4304. General assistance offices

1. Local office. There must be in each municipality a general assistance office or designated place where any person may apply for general assistance at regular, reasonable times designated by the municipal officers. Notice must be posted of these times, the name of the overseer available to take applications in an emergency at all other times, the fact that the municipality must issue a written decision on all applications within 24 hours and the department's toll-free telephone number for reporting alleged violations in accordance with section 4321.

[1991, c. 209, §1 (AMD) .]

2. District office. In situations where in the judgment of a municipality the number of applicants does not justify the establishment of a local office or designated place, or where for other reasons a local office or designated place is not necessary, 2 or more municipalities, by a vote of their respective legislative bodies, may establish a district office for the administration of general assistance and make agreements as to the payment of expenses and any other matters relevant to the operation of the office.

Any district office established pursuant to this subsection shall be located so as to be accessible by a toll-free telephone call from any part of every municipality it is designated to serve.

Every district general assistance officer shall be available for the taking of applications at least 35 hours each week and shall make provision for designated personnel to be available to take applications in an emergency 24 hours a day.

[1983, c. 577, §1 (NEW) .]

3. Emergencies. In any case when an applicant is unable, due to illness, disability, lack of transportation, lack of child care or other good cause, to apply in person for assistance or unable to appoint a duly authorized representative, the overseer shall accept an application by telephone subject to verification by mail and a visit to the applicant's home with the consent of the applicant. Municipalities may arrange with emergency shelters for the homeless to presume eligible for municipal assistance persons to whom the emergency shelter provides shelter services.

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Maine Revised Statutes

§4307

Title 22: HEALTH AND WELFARE

§4309

Subtitle 3: INCOME SUPPLEMENTATION

HEADING: PL 1973, C. 790, §1 (AMD)

Part 5: MUNICIPAL SUPPORT OF THE POOR

Chapter 1161: MUNICIPAL GENERAL ASSISTANCE

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§4308. Applications

In order to receive assistance from any municipality, the applicant or a duly authorized representative must file a written application with the overseer, except as provided in section 4304, subsection 3. [1993, c. 410, Pt. AAA, §6 (AMD).]

1. Initial and subsequent applications. Except as provided in section 4316-A, subsection 1-A, a person who makes an application for assistance, who has not applied for assistance in that or any other municipality must have that person's eligibility determined solely on the basis of need. All applications for general assistance that are not initial applications are repeat applications. The eligibility of repeat applicants must be determined on the basis of need and all other conditions of eligibility established by this chapter and municipal ordinance.

[1993, c. 410, Pt. AAA, §6 (AMD) .]

1-A. Limit on housing assistance. Except as provided in subsections 1-B and 2, housing assistance provided pursuant to this chapter is limited to a maximum of 9 months during the period from July 1, 2012 to June 30, 2013.

[2011, c. 655, Pt. R, §2 (NEW) .]

1-B. Extension of housing assistance due to hardship. An applicant is eligible for housing assistance under this chapter beyond the limit established in subsection 1-A if the applicant has a severe and persistent mental or physical condition warranting such an extension or has an application for assistance pending with the federal Social Security Administration.

[2011, c. 655, Pt. R, §2 (NEW) .]

2. Emergencies. A person who does not have sufficient resources to provide one or more basic necessities in an emergency is eligible for emergency general assistance, even when that applicant has been found ineligible for nonemergency general assistance, except as provided in this subsection.

A. A person who is currently disqualified from general assistance for a violation of section 4315, 4316-A or 4317 is ineligible for emergency assistance under this subsection. [1985, c. 489, §§5, 14 (NEW).]

B. Municipalities may by standards adopted in municipal ordinances restrict the disbursement of emergency assistance to alleviate emergency situations to the extent that those situations could not have been averted by the applicant's use of income and resources for basic necessities. The person requesting assistance shall provide evidence of income and resources for the applicable time period. [1991, c. 528, Pt. 000, §1 (AMD); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. 000, §1 (AMD).]

A municipality may provide emergency assistance when the municipality determines that an emergency is imminent and that failure to provide assistance may result in undue hardship and unnecessary costs.

[1999, c. 45, §1 (AMD) .]

3. Initial applicant. Notwithstanding section 4301, subsection 7, the household of an initial applicant that is otherwise eligible for emergency assistance may not be denied emergency assistance to meet an immediate need solely on the basis of the proration of a lump sum payment. Upon subsequent applications, that household's eligibility is subject to all the standards established by this chapter.

[2001, c. 571, §3 (NEW) .]

SECTION HISTORY

1983, c. 577, §1 (NEW). 1985, c. 489, §§5,14 (RPR). 1989, c. 322, §3 (AMD). 1991, c. 9, §§U5,6 (AMD). 1991, c. 528, §0001 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §0001 (AMD). 1993, c. 410, §AAA6 (AMD). 1999, c. 45, §1 (AMD). 2001, c. 571, §3 (AMD). 2011, c. 655, Pt. R, §2 (AMD).

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Maine Revised Statutes

§4308

Title 22: HEALTH AND WELFARE

§4310

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Subtitle 3: INCOME SUPPLEMENTATION

HEADING: PL 1973, C. 790, §1 (AMD)

Part 5: MUNICIPAL SUPPORT OF THE POOR

Chapter 1161: MUNICIPAL GENERAL ASSISTANCE

§4309. Eligibility

1. Eligibility of applicant; duration of eligibility. The overseer shall determine eligibility each time a person applies or reapplies for general assistance pursuant to this chapter and the ordinance adopted by the municipality in accordance with section 4305. The period of eligibility must not exceed one month. At the expiration of that period the person may reapply for assistance and the person's eligibility may be redetermined.

[1989, c. 840, §4 (AMD) .]

1-A. Determination of eligibility; applicant's responsibilities. Applicants for general assistance are responsible for providing to the overseer all information necessary to determine eligibility. If further information or documentation is necessary to demonstrate eligibility, the applicant must have the first opportunity to provide the specific information or documentation required by the overseer. When information required by the overseer is unavailable, the overseer must accept alternative available information, which is subject to verification.

[1989, c. 840, §5 (NEW) .]

1-B. Determination of eligibility; overseer's responsibilities. In order to determine an applicant's eligibility for general assistance, the overseer first must seek information and documentation from the applicant. Once the applicant has presented the necessary information, the overseer is responsible for determining eligibility. The overseer may seek verification necessary to determine eligibility. In order to determine eligibility, the overseer may contact sources other than the applicant for verification only with the specific knowledge and consent of the applicant, except that the overseer may examine public records without the applicant's knowledge and consent. Assistance may be denied or terminated if the applicant is unwilling to supply the overseer with necessary information, documentation, or permission to make collateral contacts, or if the overseer can not determine that eligibility exists based on information supplied by the applicant or others.

[1989, c. 840, §5 (NEW) .]

2. Redetermination of eligibility. The overseer may redetermine a person's eligibility at any time during the period that person is receiving assistance if the overseer is notified of any change in the recipient's

circumstances that may affect the amount of assistance to which the recipient is entitled or that may make the recipient ineligible, provided that once a determination of eligibility has been made for a specific time period, a reduction in assistance for that time period may not be made without prior written notice to the recipient with the reasons for the action and an opportunity for the recipient to receive a fair hearing upon the proposed change.

[1989, c. 840, §6 (AMD) .]

3. Eligibility of members of person's household. Failure of an otherwise eligible person to comply with this chapter shall not affect the general assistance eligibility of any member of the person's household who is not capable of working, including at least:

A. A dependent minor child; [1983, c. 577, §1 (NEW) .]

B. An elderly, ill or disabled person; and [1983, c. 577, §1 (NEW) .]

C. A person whose presence is required in order to provide care for any child under the age of 6 years or for any ill or disabled member of the household. [1983, c. 577, §1 (NEW) .]

[1983, c. 577, §1 (NEW) .]

4. Eligibility of minors who are parents. An otherwise eligible person under the age of 18 who has never married and who has a dependent child or is pregnant is eligible only if that person and child reside in a dwelling maintained by a parent or other adult relative as that parent's or relative's own home or in a foster home, maternity home or other adult-supervised supportive living arrangement unless:

A. The person has no living parent or the whereabouts of both parents are unknown; [1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. SS, §3 (NEW); 1991, c. 591, Pt. SS, §3 (NEW) .]

B. No parent will permit the person to live in the parent's home; [1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. SS, §3 (NEW); 1991, c. 591, Pt. SS, §3 (NEW) .]

C. The department determines that the physical or emotional health or safety of the person or dependent child would be jeopardized if that person and dependent child lived with a parent; [1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. SS, §3 (NEW); 1991, c. 591, Pt. SS, §3 (NEW) .]

D. The individual has lived apart from both parents for a period of at least one year before the birth of any dependent child; or [1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. SS, §3 (NEW); 1991, c. 591, Pt. SS, §3 (NEW) .]

E. The department determines, in accordance with rules adopted pursuant to this section, which must be in accordance with federal regulations, that there is good cause to waive this requirement. [1991, c. 528, Pt. RRR, (AFF); 1991, c. 528, Pt. SS,

§3 (NEW); 1991, c. 591, Pt. SS, §3 (NEW).]

For the purposes of this subsection, "parent" includes legal guardian.

[2013, c. 368, Pt. OO, §8 (AMD) .]

SECTION HISTORY

1983, c. 577, §1 (NEW). 1989, c. 840, §§4-6 (AMD). 1991, c. 528, §SS3 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §SS3 (AMD). 2013, c. 368, Pt. OO, §8 (AMD).

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Maine Revised Statutes
Title 22: HEALTH AND WELFARE
Chapter 1161: MUNICIPAL GENERAL ASSISTANCE

§4317. USE OF POTENTIAL RESOURCES

An applicant or recipient must make a good faith effort to secure any potential resource that may be available, including, but not limited to, any state or federal assistance program, employment benefits, governmental or private pension programs, available trust funds, support from legally liable relatives, child-support payments and jointly held resources where the applicant or recipient share may be available to the individual. Assistance may not be withheld pending receipt of such resource as long as application has been made or good faith effort is being made to secure the resource. [1993, c. 410, Pt. AAA, §11 (AMD) .]

An individual applying for or receiving assistance due to a disability must make a good faith effort to make use of any medical and rehabilitative resources that may be recommended by a physician, psychologist or other professional retraining or rehabilitation specialist that are available without financial burden and would not constitute further physical risk to the individual. [1993, c. 410, Pt. AAA, §11 (AMD) .]

An applicant who refuses to utilize potential resources without just cause, after receiving a written 7-day notice, is disqualified from receiving assistance until the applicant has made a good faith effort to secure the resource. [1993, c. 410, Pt. AAA, §11 (AMD) .]

An applicant who forfeits receipt of or causes reduction in benefits from another public assistance program because of fraud, misrepresentation or a knowing or intentional violation of program rules or a refusal to comply with program rules without just cause is not eligible to receive general assistance to replace the forfeited assistance for the duration of the forfeiture. [1993, c. 410, Pt. AAA, §11 (AMD) .]

An applicant who is found to be ineligible for unemployment compensation benefits because of a finding of fraud by the Department of Labor pursuant to Title 26, section 1051, subsection 1 is ineligible to receive general assistance to replace the forfeited unemployment compensation benefits for the duration of the forfeiture established by the Department of Labor. [2013, c. 368, Pt. OO, §12 (NEW) .]

SECTION HISTORY

1983, c. 577, §1 (NEW). 1993, c. 410, §AAA11 (AMD). 2013, c. 368, Pt. OO, §12 (AMD) .

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Maine Revised Statutes
Title 22: HEALTH AND WELFARE
Chapter 1161: MUNICIPAL GENERAL ASSISTANCE

§4322. RIGHT TO A FAIR HEARING

A person aggrieved by a decision, act, failure to act or delay in action concerning that person's application for general assistance under this chapter has the right to an appeal. If a person's application has been approved, general assistance may not be revoked during the period of entitlement until that person has been provided notice and an opportunity for hearing as provided in this section. Within 5 working days of receiving a written decision or notice of denial, reduction or termination of assistance, in accordance with the provisions of section 4321, or within 10 working days after any other act or failure to act by the municipality with regard to an application for assistance, the person may request an appeal. A hearing must be held by the fair hearing authority within 5 working days following the receipt of a written request by the applicant for an appeal. The hearing may be conducted by the municipal officers, a board of appeals created under Title 30-A, section 2691, or one or more persons appointed by the municipal officers to act as a fair hearing authority. An appeal may not be held before a person or body responsible for the decision, act, failure to act or delay in action relating to the applicant. [1993, c. 410, Pt. AAA, §13 (AMD).]

The person requesting the appeal and the municipal administrator responsible for the decision being appealed must be afforded the right to confront and cross-examine any witnesses presented at the hearing, present witnesses in their behalf and be represented by counsel or other spokesperson. A claimant must be advised of these rights in writing. The decision of such an appeal must be based solely on evidence adduced at the hearing. The Maine Rules of Evidence do not apply to information presented to the fair hearing authority. The standard of evidence is the standard set in Title 5, section 9057, subsection 2. The person requesting the appeal must, within 5 working days after the appeal, be furnished with a written decision detailing the reasons for that decision. When any decision by a fair hearing authority or court authorizing assistance is made, that assistance must be provided within 24 hours. Review of any action or failure to act under this chapter must be conducted pursuant to the Maine Rules of Civil Procedure, Rule 80-B. The municipality shall make a record of the fair hearing. The municipality's obligation is limited to keeping a taped record of the proceedings. The applicant shall pay costs for preparing any transcripts required to pursue an appeal of a fair hearing authority's decision. [2009, c. 2, §60 (COR).]

SECTION HISTORY

1983, c. 577, §1 (NEW). 1983, c. 697, §4 (AMD). 1985, c. 489, §§10,14 (AMD). 1987, c. 737, §§C66,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1993, c. 410, §AAA13 (AMD). RR 2009, c. 2, §60 (COR).

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Maine Revised Statutes
Title 22: HEALTH AND WELFARE
Chapter 1161: MUNICIPAL GENERAL ASSISTANCE

**§4323. DEPARTMENT OF HEALTH AND HUMAN SERVICES;
RESPONSIBILITIES**

The Department of Health and Human Services shall, in accordance with this section, share responsibility with municipalities for the proper administration of general assistance. [1993, c. 410, Pt. AAA, §13 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

1. Review. The department shall review the administration of general assistance in each municipality for compliance with this chapter. This review shall be made on a regular basis and may be made in response to a complaint from any person as necessary.

The department shall inspect the municipality's records and discuss the administration of the program with the overseer. The overseer or his designee shall be available during the department's review and shall cooperate in providing all necessary information.

The department shall report the results of its review in writing to the municipality and, when applicable, to the complainant. The written notice shall set forth the department's findings of whether the municipality is in compliance with this chapter.

[1985, c. 489, §§11, 14 (AMD) .]

2. Violation; penalty. If the department finds any violation of this chapter after review, it shall notify the municipality that it has 30 days in which to correct that violation and specify what action shall be taken in order to achieve compliance. The municipality shall file a plan with the department setting forth how it will attain compliance. The department shall notify the municipality if the plan is acceptable and that it will review the municipality for compliance within 60 days of accepting the plan. Any municipality which fails to file an acceptable plan with the department or which is in violation of this chapter at the expiration of the 60-day period shall be subject to a civil penalty of not less than \$500. The Department of Health and Human Services shall enforce this section in any court of competent jurisdiction. Every 30-day period that a municipality is in violation of this chapter after review and notification shall constitute a separate offense. In addition to the civil penalty, the department shall withhold reimbursement to any municipality which is in violation of this chapter until it reaches compliance.

[1983, c. 577, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

3. Departmental assistance. Whenever the department finds that a person in immediate need of general assistance has not received that assistance as a result of a municipality's failure to comply with the requirements of this chapter, the department shall, within 24 hours of receiving a request to intervene and after notifying the municipality, grant this assistance in accordance with regulations adopted by it. The expense of that assistance granted, including a reasonable proportion of the State's administrative cost that can be attributed to that assistance, shall be billed by the department to the municipality. Should that bill remain unpaid 30 days after presentation to the municipality, the department shall refer the bill to the Treasurer of State for payment from any taxes, revenue, fines or fees due from the State to the municipality.

A municipality may not be held responsible for reimbursing the department for assistance granted under this subsection if the department failed to intervene within 24 hours of receiving the request to intervene or if the department failed to make a good faith effort, prior to the intervention, to notify the municipality of the department's intention to intervene.

[1989, c. 840, §7 (AMD) .]

4. Appeal. Any municipality or person who is aggrieved by any decision or action made by the department pursuant to this section shall have the right to appeal pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. A request for that appeal shall be in writing and shall be made within 30 days of receiving notification. The appeal shall be held within 30 days of receipt of that request and shall be conducted by one or more fair hearing officers. In no event may an appeal be held before a person or body responsible for the decision or action. Review of any decision under this section shall be pursuant to the Maine Rules of Civil Procedure, Rule 80 C.

[1985, c. 489, §§11, 14 (AMD) .]

5. Emergency contact information. The department shall collect from each municipality emergency contact information for use by municipal residents in applying for assistance under this section. The department shall forward the municipal emergency contact information periodically to the statewide 2-1-1 telephone number designated pursuant to Title 35-A, section 7108.

[2007, c. 600, §1 (NEW) .]

SECTION HISTORY

1983, c. 577, §1 (NEW). 1985, c. 489, §§11,14 (AMD). 1989, c. 840, §7 (AMD). 1993, c. 410, §AAA13 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 600, §1 (AMD).

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--

USC citation: 8 U.S.C. §1621(a)

<http://www.law.cornell.edu/uscode/text/8/1621>

(a) In general

Notwithstanding any other provision of law and except as provided in subsections (b) and (d) of this section, an alien who is not—

- (1) a qualified alien (as defined in section 1641 of this title),
- (2) a nonimmigrant under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], or
- (3) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182 (d)(5)] for less than one year,

is not eligible for any State or local public benefit (as defined in subsection (c) of this section).

(b) Exceptions

Subsection (a) of this section shall not apply with respect to the following State or local public benefits:

- (1) Assistance for health care items and services that are necessary for the treatment of an emergency medical condition (as defined in section 1396b (v)(3) of title 42) of the alien involved and are not related to an organ transplant procedure.
- (2) Short-term, non-cash, in-kind emergency disaster relief.
- (3) Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.
- (4) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which
 - (A) deliver in-kind services at the community level, including through public or private nonprofit agencies;
 - (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and
 - (C) are necessary for the protection of life or safety.

(c) "State or local public benefit" defined

- (1) Except as provided in paragraphs (2) and (3), for purposes of this subchapter the term "State or local public benefit" means—

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

(2) Such term shall not apply—

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99–239 or 99–658 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Secretary of State, after consultation with the Attorney General; or

(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

(3) Such term does not include any Federal public benefit under section 1611 (c) of this title.

(d) State authority to provide for eligibility of illegal aliens for State and local public benefits

A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.

which refers to §41 definition of “Qualified Alien” :

<http://www.law.cornell.edu/uscode/text/8/1641>

8 U.S.Code §1641 - Definitions

(a) In general

Except as otherwise provided in this chapter, the terms used in this chapter have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101 (a)].

(b) Qualified alien

For purposes of this chapter, the term “qualified alien” means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is—

(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.],

(2) an alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158],

(3) a refugee who is admitted to the United States under section 207 of such Act [8 U.S.C. 1157],

(4) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182 (d)(5)] for a period of at least 1 year,

(5) an alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act [8 U.S.C. 1231 (b)(3)] (as amended by section 305(a) of division C of Public Law 104–208),

(6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. 1153 (a)(7)] as in effect prior to April 1, 1980; ⁽¹⁾ or

(7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
SEPTEMBER 30, 1989

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1989

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 15, 1989.

CHAPTER 322

H.P. 1061 - L.D. 1483

An Act to Make General Assistance More Available to Homeless People and Clarify the Definition of Need

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §4301, sub-§1, as enacted by PL 1983, c. 577, §1, is amended to read:

1. Basic necessities. "Basic necessities" means food, clothing, shelter, fuel, electricity, nonselective medical services as recommended by a physician, nonprescription drugs, telephone where it is necessary for medical reasons and any other commodity or service determined essential by the overseer in accordance with the municipality's ordinance and this chapter.

Sec. 2. 22 MRSA §4304, sub-§3, as enacted by PL 1983, c. 577, §1, is amended to read:

3. Emergencies. In any case when an applicant is unable, due to illness, disability, lack of transportation, lack of child care or other good cause, to apply in person for assistance or unable to appoint a duly authorized representative, the overseer shall accept an application by telephone subject to verification by mail and a visit to the applicant's home with the consent of the applicant. Municipalities may arrange with emergency shelters for the homeless to presume eligible for municipal assistance persons to whom the emergency shelter provides shelter services.

Sec. 3. 22 MRSA §4308, first ¶, as repealed and replaced by PL 1985, c. 489, §§5 and 14, is amended to read:

In order to receive assistance from any municipality, the applicant or a duly authorized representative must make written application to the overseer, except as provided in section 4304, subsection 3, and except that in an emergency the application may be made verbally and assistance shall be granted temporarily. Further assistance shall be granted upon completion of a written application and determination of eligibility.

See title page for effective date.

CHAPTER 323

H.P. 1086 - L.D. 1508

An Act to Regulate Water Flowage over Dams

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §840, sub-§1, as amended by PL 1987, c. 402, Pt. A, §205, is further amended to read:

1. Power. The board may on its own motion and shall at the request of the owner, lessee or person in control of a dam, the Commissioner of Inland Fisheries and Wildlife, the Commissioner of Marine Resources, or upon receipt of petitions from the lesser of at least 25% or 50 of the littoral or riparian proprietors, conduct an adjudicatory hearing for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water impounded by any dam that is neither:

A. Licensed by the Federal Energy Regulatory Commission;

B. Authorized under the Federal Power Act, Section 23;

C. Used to store water for a downstream facility licensed by the Federal Energy Regulatory Commission or authorized under the Federal Power Act, Section 23, provided that the owner of the downstream facility possessed a majority ownership of the upstream dam as of January 1, 1983; nor

D. Operating with a permit setting water levels issued under the ~~great ponds laws, sections 391 to 394; the alteration of coastal wetlands laws, sections 471 to 478; protection of natural resources laws, sections 480-A to 480-S; the site location of development laws, sections 481 to 490; the small hydroelectric generating facilities laws, sections 631 to 636; the land use regulation laws, Title 12, sections 681 to 689; the stream alteration laws, sections 425 to 430;~~ or any other statute regulating the construction or operation of dams.

Sec. 2. 38 MRSA §840, sub-§4, as enacted by PL 1983, c. 417, §6, is amended to read:

4. Evidence. At the hearing, the board shall solicit and receive testimony, as provided by Title 5, section 9057, for the purpose of establishing a water level regime and, if applicable, minimum flow requirements for the body of water. The testimony shall be limited to:

A. The water levels necessary to maintain the public rights of access to and use of the water for navigation, fishing, fowling, recreation and other lawful public uses;

B. The water levels necessary to protect the safety of the littoral or riparian proprietors and the public;

C. The water levels and minimum flow requirements necessary for the maintenance of fish and wildlife habitat and water quality;



114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1483

H.P. 1061

House of Representatives, May 4, 1989

Reference to the Committee on Human Resources suggested and ordered printed.

Ed Pert

EDWIN H. PERT, Clerk

Presented by Representative CLARK of Brunswick.

Cosponsored by Representative MANNING of Portland and Senator ANDREWS of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Make General Assistance More Available to Homeless
People and Clarify the Definition of Need.



1 Be it enacted by the People of the State of Maine as follows:

3 Sec. 1. 22 MRSA §4301, sub-§§1 and 4, as enacted by PL 1983, c.
5 577, §1, are amended to read:

7 1. Basic necessities. "Basic necessities" means food,
9 clothing, shelter, fuel, electricity, nonelective medical
11 services as recommended by a physician, nonprescription drugs,
12 telephone where it is necessary for medical reasons and any other
commodity or service determined essential by the overseer in
accordance with the municipality's ordinance and this chapter.

13 4. Emergency. "Emergency" means any life threatening
15 situation or a situation beyond the control of the individual
17 which, if not alleviated immediately, could reasonably be
expected to pose a threat to the health or safety of a person.
"Emergency" includes homelessness.

19 Sec. 2. 22 MRSA §4304, sub-§3, as enacted by PL 1983, c. 577,
21 §1, is amended to read:

23 3. Emergencies. In any case when an applicant is unable,
25 due to illness, disability, lack of transportation, lack of child
27 care or other good cause, to apply in person for assistance or
unable to appoint a duly authorized representative, the overseer
shall accept an application by telephone subject to verification
by mail and a visit to the applicant's home with the consent of
the applicant. Municipalities may arrange with emergency
29 shelters for the homeless to presume eligible for municipal
31 assistance persons to whom the emergency shelter provides shelter
services.

33 Sec. 3. 22 MRSA §4305, sub-§3, ¶¶B and C, as enacted by PL
35 1983, c. 577, §1, are amended to read:

37 B. Provide that all individuals wishing to make application
for relief shall have the opportunity to do so; and

39 C. Provide that relief shall be furnished or denied to all
41 eligible applicants within 24 hours of the date of
submission of an application; and

43 Sec. 4. 22 MRSA §4305, sub-§3, ¶D is enacted to read:

45 D. Prohibit any waiting period for emergency assistance.

47 Sec. 5. 22 MRSA §4309, sub-§1, as enacted by PL 1983, c. 577,
49 §1, is amended to read:

51 1. Eligibility of applicant. The overseer shall make a
determination of eligibility each time a person applies or
reapplies for general assistance pursuant to this chapter and the

1 ordinance adopted by the municipality in accordance with section
2 4305. The period of eligibility shall be for a period not-to
3 exceed of not less than one month, unless a change of
4 circumstances warrants redetermination under subsection 2,
5 whereupon at the expiration of that period the person may reapply
6 for assistance and his eligibility may be redetermined.
7

8
9 **STATEMENT OF FACT**

11 This bill amends the municipal general assistance law to
12 include nonprescription drugs in the definition of basic
13 necessities and homelessness in the definition of emergency. The
14 bill prohibits a municipality from imposing a waiting period for
15 emergency assistance. The bill provides that eligibility will be
16 determined for a period of at least one month, unless there is a
17 change of circumstances which warrants a redetermination of
18 eligibility. The bill permits municipalities to presume that
19 persons served by emergency shelters are eligible for general
assistance.

L.D. 1483

(Filing No. H-352)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1061, L.D. 1483, Bill, "An Act to Make General Assistance More Available to Homeless People and Clarify the Definition of Need"

Amend the bill by striking out all of section 1 and inserting in its place the following:

'Sec. 1. 22 MRSA §4301, sub-§1, as enacted by PL 1983, c. 577, §1, is amended to read:

1. Basic necessities. "Basic necessities" means food, clothing, shelter, fuel, electricity, nonelective medical services as recommended by a physician, nonprescription drugs, telephone where it is necessary for medical reasons and any other commodity or service determined essential by the overseer in accordance with the municipality's ordinance and this chapter.'

Further amend the bill by striking out sections 3, 4 and 5 and inserting in their place the following:

'Sec. 3. 22 MRSA §4308, first ¶, as repealed and replaced by PL 1985, c. 489, §§5 and 14, is amended to read:

In order to receive assistance from any municipality, the applicant or a duly authorized representative must make written application to the overseer, except as provided in section 4304, subsection 3, and except that in an emergency the application may be made verbally and assistance shall be granted temporarily. Further assistance shall be granted upon completion of a written application and determination of eligibility.'

STATEMENT OF FACT

This amendment removes the bill's requirement that assistance be granted for one month and clarifies the permission to municipalities to grant assistance to residents of emergency shelters without an application in writing.

HUMAN RESOURCES (Cont.)

HUMAN RESOU

LD 1465 SP0530

An Act to Set Up Therapeutic Foster Homes. Presented by Sen. Gill of Cumberland. Human Resources Hearing 05/25/89. LV/WD Accepted 05/31/89.

LD 1468 SP0533

An Act to Prohibit the Irradiation Within the State of Food for Human or Animal Consumption. Presented by Sen. Titcomb of Cumberland. Human Resources Hearing 05/22/89. OTP Accepted 06/06/89. Enacted, PUBLIC LAWS, Chapter 376.

LD 1483 HP1061

An Act to Make General Assistance More Available to Homeless People and Clarify the Definition of Need. Presented by Rep. Clark of Brunswick; Co-sponsored by Rep. Manning of Portland, and Sen. Andrews of Cumberland. Human Resources Hearing 05/22/89. OTP-AM Accepted 06/05/89. Amended by: CA H-352. Enacted, PUBLIC LAWS, Chapter 322.

LD 1494 HP1072

An Act to Extend Medical Assistance under and Clarify Certain Provisions of the Additional Support for People in Retraining and Education Program. Presented by Rep. Clark of Brunswick; Co-sponsored by Sen. Gauvreau of Androscoggin, Rep. Martin of Eagle Lake, and Rep. McGowan of Canaan. Human Resources Hearing 05/22/89. LV/WD Accepted 06/02/89.

LD 1504 HP1082

An Act to Continue Habilitation and Vocational Rehabilitation Services to Eligible Clients. Presented by Rep. Manning of Portland. Human Resources Hearing 05/24/89. OTP-AM Accepted 06/05/89. Amended by: CA H-350. Emergency Enacted, Approved 06/16/89, PUBLIC LAWS, Chapter 328.

LD 1509 HP1087

An Act to Provide Flexibility in the Laws on Residential Placement of Young Adults. Presented by Rep. Farnsworth of Hallowell; Co-sponsored by Rep. Clark of Brunswick, Sen. Brannigan of Cumberland, and Rep. Burke of Vassalboro. Human Resources Hearing 05/24/89. OTP-AM Accepted 06/08/89. Amended by: CA H-392. Enacted, PUBLIC LAWS, Chapter 355.

LD 1538 HP1105

An Act to Impose a 90-day Residency Requirement for Receipt of General Assistance. Presented by Rep. Sheltra of Biddeford. Human Resources Hearing 05/22/89. LV/WD Accepted 05/25/89.

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COMMITTEE ON: HUMAN RESOURCES

LD#: 1483

TITLE: An Act to Make General Assistance More
Available to Homeless People and Clarify
the Definition of Need.

HEARING DATE:

5/22/89

WORK SESSION DATE:

5/24/89

REPORTED OUT DATE:

5/31/89

COMMITTEE REPORT:

OTR AM
Ought To Pass as Amended

STATE OF MAINE
114TH LEGISLATURE

LEGISLATIVE NOTICES

Human Resources Committee

Monday, May 22, 1989 - 1:30 P.M.
Room 436 State House

- (L.D. 1468) Bill "An Act to Prohibit the Irradiation Within the State of Food for Human or Animal Consumption" !(Presented by Senator TITCOMB of Cumberland)
- (L.D. 1483) Bill "An Act to Make General Assistance More Available to Homeless People and Clarify the Definition of Need" !(Presented by Representative CLARK of Brunswick) (Cosponsored by Representative MANNING of Portland and Senator ANDREWS of Cumberland)
- (L.D. 1494) Bill "An Act to Extend Medical Assistance under and Clarify Certain Provisions of the Additional Support for People in Retraining and Education Program" !(Presented by Representative CLARK of Brunswick) (Cosponsored by Senator GAUVREAU of Androscoggin, Speaker MARTIN of Eagle Lake and Representative McGOWAN of Canaan)
- (L.D. 1538) Bill "An Act to Impose a 90-day Residency Requirement for Receipt of General Assistance" !(Presented by Representative SHELTRA of Biddeford)
- (L.D. 1554) Bill "An Act to Revise the Communicable Disease Law" !(Presented by Representative PENDLETON of Scarborough) (Cosponsored by Senator GILL of Cumberland, Representative RYDELL of Brunswick and Senator HOBBS of York) (Submitted by the Department of Human Services pursuant to Joint Rule 24.)

Contact: Mark Sirois
State House Station 115
Augusta, ME 04333

289-1317

To appear in your paper on Saturday, May 13, 1989

PLEASE SIGN-IN

11th LEGISLATURE

COMMITTEE ON HUMAN RESOURCES

LD

1483

NAME	TOWN/AFFILIATION	FAVOR	OPPOSE	NEITHER
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5/22/89

L.D. 1483

Sponsor Rep. M. Clark

Pro: Christopher St. John.

: Rick Morrow

: Doris Holman Portland.

Prepared by: Christopher St. John
Pine Tree Legal Assistance
Tel: 623-2971
and
Geoff Herman
Maine Municipal Association
Tel: 623-8428

For: Rep. Marge Clark

AMENDMENT TO L.D. 1483
AGREED BETWEEN PINE TREE LEGAL ASSISTANCE
AND MAINE MUNICIPAL ASSOCIATION

Amend the bill in Section 1 by striking the second paragraph
amending 22 M.R.S.A. § 4301 sub-4;

Amend the bill by striking section 3, 4 and 5;

Amend the bill by adding a new section 3:

Amending 22 M.R.S.A. § 4308 first sentence to read:

§ 4308 Applications

In order to receive assistance from any municipality,
the applicant or a duly authorized representative must
make written application to the overseer, except as
provided in § 4304 subsection 3, and except that in an
emergency the application may be made verbally and
assistance shall be granted temporarily.

STATEMENT OF FACT

This amendment removes the bill's requirement that
assistance be granted for 30 days and clarifies the permission to
municipalities to grant assistance to residents of emergency
shelters without an application in writing.

May 22, 1989

The Department does support this bill and would be willing to work on this change at a work session.

Members of the Special Services Unit are here to answer any questions you might have. Thank you.

Date: 5/24/89
Committee: HRS
LA: JSJ
LR (item)#: 1562()
WP Doc. #: 2978
New Title?: No
Emergency?: Yes

STATE OF MAINE
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "." TO L.D. 1483, AN ACT to Make
General Assistance More Available to Homeless People and
Clarify the Definition of Need.

Amend the bill by striking section 1 and inserting in its
place the following:

'Sec. 1. 22 MRSA § 4301, sub-§1 is amended to read:

1. Basic necessities. "Basic necessities" means food,
clothing, shelter, fuel, electricity, nonelective medical
services as recommended by a physician, nonprescription drugs,
telephone where it is necessary for medical reasons and any
other commodity or service determined essential by the overseer
in accordance with the municipality's ordinance and this
chapter.'

Further amend the bill by striking section 3, 4 and 5 and
inserting in their place the following:

'Sec. 3. 22 MRSA §4308, first sentence, is amended to read:

'In order to receive assistance from any municipality, the
applicant or a duly authorized representative must make written
application to the overseer, except as provided in section
4304, subsection 3, and except that in an emergency the
application may be made verbally and assistance shall be
granted temporarily.'

STATEMENT OF FACT

This amendment removes the bill's requirement that
assistance be granted for 30 days and clarifies the permission
to municipalities to grant assistance to residents of emergency
shelters without an application in writing.

VOTING TALLY SHEET

Committee: HUMAN RESOURCES

Date: 5/24/89

Question: L.D. 1483 OTP-AM

Motion by: Rep. Burke 2nd Rep. ~~Cathcart~~ Pendleton

SENATORS		Yea	Nay	Absent	Abstained
1	SENATOR GAUVREAU	✓			
2	SENATOR TITCOMB	✓			
3	SENATOR RANDALL	✓			
REPRESENTATIVES					
1	REPRESENTATIVE MANNING	✓			
2	REPRESENTATIVE ROLDE	✓			
3	REPRESENTATIVE BOUTILIER	✓			
4	REPRESENTATIVE CLARK	✓			
5	REPRESENTATIVE BURKE	✓			
6	REPRESENTATIVE PEDERSON	✓			
7	REPRESENTATIVE DELLERT	✓			
8	REPRESENTATIVE HEPBURN	✓			
9	REPRESENTATIVE PENDLETON	✓			
10	<u>Rep. Cathcart</u> Cathcart	✓			
TOTAL					

HOUSE REPORT

THE COMMITTEE ON
Human Resources

to which was referred the Bill

An Act to Make General Assistance
More Available to Homeless People
and Clarify the Definition of Need

HP. 1061

L.D. 1483

have had the same under consideration, and ask leave
to report that the same

Ought to Pass as Amended by

Committee Amendment " "

Rep. Manning

For the Committee.

Portland

Town

This form to be used ONLY in reporting House Bills

5/31/89

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION
October 1, 1992 to October 6, 1992

FOURTH SPECIAL SESSION
October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 13, 1993

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1993

CHAPTER 410

H.P. 215 - L.D. 283

An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1994 and June 30, 1995

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the 90-day period may not terminate until after the beginning of the next fiscal year; and

Whereas, certain obligations and expenses incident to the operation of state departments and institutions will become due and payable immediately; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. Appropriations and allocations. In order to provide for necessary expenditures of State Government and other purposes for the fiscal years ending June 30, 1994 and June 30, 1995, the following sums as designated in the following tabulations are appropriated or allocated out of any money not otherwise appropriated or allocated.

Sec. A-2. Allotments required. Upon receipt of allotments duly approved by the Governor based upon work programs submitted to the State Budget Officer, the State Controller shall authorize expenditures of these funds, together with expenditures for other purposes necessary to the conduct of State Government on the basis of these allotments and not otherwise. Allotments for Personal Services, Capital Expenditures and amounts for All Other departmental expenses may not exceed the

amounts shown in the budget document or as they may be revised by the joint standing committee of the Legislature having jurisdiction over these appropriations and allocations, unless recommended by the State Budget Officer and approved by the Governor in accordance with established law.

Sec. A-3. Personal Services funding. The amounts provided for Personal Services in appropriated and allocated accounts are subject to the provision that the total number of positions and the costs of those positions in any account may not vary, during any fiscal year, from either the positions included in computing the total dollars appropriated or allocated for Personal Services or in the specific cost of each position upon which the appropriations and allocations are based. The State Budget Officer shall take the action necessary to ensure compliance with this section except as provided for in section 6 of this Part and as follows.

An appointing authority shall comply with the Civil Service Law, rules and regulations and collective bargaining agreements pertaining to the hiring, promoting, demoting and bumping of state employees. The Legislature shall act upon any recommendation for additional appropriations or allocations in order to fund additional requirements created by complying with this paragraph.

Savings accruing from unused funding of employee benefits may not be used to increase services provided by employees. Accrued salary savings generated from vacant positions within an appropriation or allocation for Personal Services may be used for the payment of nonrecurring Personal Services costs within the account where the savings exist. Costs related to acting capacity appointments and emergency, unbudgeted overtime for which it is impractical to budget in advance may be used with the approval of the appointing authority. Other actions such as retroactive compensation for reclassifications or reallocations and retroactive or one-time settlements related to arbitrator or court decisions must be recommended by the department or agency head and approved by the State Budget Officer. Salary and employee benefits savings may not be used to fund recurring Personal Services actions either in the account where the savings exist or in another account.

The amounts appropriated or allocated for Personal Services include funds for the State's share of state employees' retirement. The State Controller shall transfer the State's share to the Maine State Retirement System as soon as practicable after each payroll is paid.

Sec. A-4. Workers' compensation positions. Limited period positions may be established for former regular employees of the State who presently are receiving workers' compensation payments from the State when that action will enable those employees to return to productive employment with the State. These positions may

SECTION 22.25
TOTAL ALLOCATIONS

(\$427,814)

(\$427,267)

PART AAA

Sec. AAA-1. 22 MRSA §4301, sub-§7, as amended by PL 1991, c. 622, Pt. M, §21, is further amended to read:

7. Income. "Income" means any form of income in cash or in kind received by the household, including remuneration for services performed, cash received on either secured or unsecured credit, any payments received as an annuity, retirement or disability benefits, veterans' pensions, workers' compensation, unemployment benefits, benefits under any state or federal categorical assistance program, supplemental security income, social security and any other payments from governmental sources, unless specifically prohibited by any law or regulation, court ordered support payments, income from pension or trust funds and household income from any other source, including relatives or unrelated household members.

The following items are not available within the meaning of this subsection and subsection 10:

A. Real or personal income-producing property, tools of trade, governmental entitlement specifically treated as exempt assets by state or federal law;

B. Actual work-related expenses, whether itemized or by standard deduction, such as taxes, retirement fund contributions, union dues, transportation costs to and from work, special equipment costs and child care expenses; or

C. Earned income of children below the age of 18 years who are full-time students and who are not working full time.

In determining need, the period of time used as a basis for the calculation is a the 30-day period commencing on the date of the application. This prospective calculation does not disqualify an applicant who has exhausted income to purchase basic necessities if that income does not exceed the income standards established by the municipality. Notwithstanding this prospective calculation, if an any applicant or recipient receives a lump sum payment after an initial application prior to applying for assistance, that payment must be prorated over future months. The period of proration is determined by disregarding any portion of the lump sum payment that the applicant or recipient has spent to purchase basic necessities, including but not limited to: all basic necessities provided by general assistance; reasonable payment of funeral or burial expenses for a family member; reasonable travel costs related to the illness or death of a family member; repair or replacement of essentials lost due to fire, flood or other natural disaster; repair or purchase

of a motor vehicle essential for employment, education, training or other day-to-day living necessities; and payment of bills earmarked for the purpose for which the lump sum is paid. All income received by the household between the receipt of the lump sum payment and the application for assistance is added to the remainder of the lump sum. The period of proration is then determined by dividing the remainder of the lump sum payment by the maximum monthly amount of assistance that the household may receive aggregate maximum level of assistance designated under section 4305. That dividend represents the period of proration determined by the administrator to commence on the date of receipt of the lump sum payment. The prorated sum for each month must be considered available to the household for 12 months from the date of application or during the period of proration, whichever is less, except that an applicant may not be considered ineligible to receive emergency assistance under section 4308, subsection 2, or under section 4310 during the period of proration. The lump sum provisions of this subsection apply only to applicants or recipients who have received prior notice of the provisions:

Sec. AAA-2. 22 MRSA §4305, sub-§3-A, as enacted by PL 1985, c. 489, §§3 and 14, is amended to read:

3-A. Maximum levels of assistance. Municipalities may establish maximum levels of assistance by ordinance. The maximum levels of assistance shall must set reasonable and adequate standards sufficient to maintain health and decency. Each ordinance shall be A maximum level of assistance established by municipal ordinance is subject to a review, as provided in section 4323, of the maximum levels of assistance by the department, upon complaint, to ensure compliance with this chapter.

Sec. AAA-3. 22 MRSA §4305, sub-§3-B, as amended by PL 1991, c. 780, Pt. II, §1, is further amended to read:

3-B. Temporary maximum levels. Notwithstanding subsection 3-A, municipalities shall establish an aggregate maximum level of assistance that is 110% of the applicable existing housing fair market rents as established by the United States Department of Housing and Urban Development pursuant to 24 Code of Federal Regulations, Section 888.115, applying the zero-bedroom level for one person, the one-bedroom level for 2 persons, the 2-bedroom level for 3 persons, the 3-bedroom level for 4 persons and the 4-bedroom level for 5 persons. For each additional person, the aggregate maximum level increases by \$75. For the purposes of this subsection, municipalities with populations greater than 10,000 are deemed Standard Metropolitan Statistical Areas in those counties for which there are 2 fair market rent values and the aggregate maximum level of assistance for all Standard Metropolitan Statistical Areas is

the average of the fair market rental values for the Standard Metropolitan Statistical Areas and areas that are not Standard Metropolitan Statistical Areas for each county in which there are 2 fair market rental values.

Sec. AAA-4. 22 MRSA §4305, sub-§4, as amended by PL 1985, c. 489, §§4 and 14, is further amended to read:

4. Ordinance filed. Each municipality shall present a copy of the ordinance establishing eligibility standards, maximum levels of assistance, administration and appeal procedures to the Department of Human Services. The ordinance filed shall must include all forms and notices, including the application form, notice of decision and appeal rights. Any amendment or modification of the municipal ordinance shall must be submitted to the department for comment and filing.

Sec. AAA-5. 22 MRSA §4305, sub-§5, as enacted by PL 1991, c. 9, Pt. U, §4, is repealed.

Sec. AAA-6. 22 MRSA §4308, as amended by PL 1991, c. 591, Pt. OOO, §1, is further amended to read:

§4308. Applications

In order to receive assistance from any municipality, the applicant or a duly authorized representative must make file a written application to with the overseer, except as provided in section 4304, subsection 3, and except that in an emergency the application may be made verbally and assistance shall be granted temporarily. Further assistance shall be granted upon completion of a written application and determination of eligibility.

1. Initial and subsequent applications. Any Except as provided in section 4316-A, subsection 1-A, a person who makes an application for assistance, who has not applied for assistance in that or any other municipality during the previous 12 months, must have that person's eligibility determined solely on the basis of need. In determining an applicant's eligibility on an initial application, a municipality may not require performance of workfare except as provided in section 4316-A. All subsequent applications within 12 months in that municipality must be considered in accordance with this chapter and the municipal ordinance. In addition, when a person applies for assistance in any municipality, that person may not be considered an initial applicant in any other municipality for a period of 6 months from the date of the initial application. Any application filed within 12 months in the municipality where the initial application was filed, or within 6 months in any other municipality, must be considered a subsequent application and considered in accordance with this chapter and the municipal ordinance. All applications for general assistance that are not initial applications are repeat applications. The eligibility of repeat applicants must be determined on the basis of need and all other conditions of eligibility established by this chapter and municipal ordinance.

2. Emergencies. Any A person who does not have sufficient resources to provide one or more basic necessities in an emergency shall be is eligible for emergency general assistance, although he would be otherwise ineligible even when that applicant has been found ineligible for nonemergency general assistance, except as provided in this subsection.

A. A person who is currently disqualified from general assistance for a violation of section 4315, 4316-A or 4317 is ineligible for emergency assistance under this subsection.

B. Municipalities may by standards adopted in municipal ordinances restrict the disbursement of emergency assistance to alleviate emergency situations to the extent that those situations could not have been averted by the applicant's use of income and resources for basic necessities. The person requesting assistance shall provide evidence of income and resources for the applicable time period.

Sec. AAA-7. 22 MRSA §4311, sub-§1, as enacted by PL 1983, c. 577, §1, is amended to read:

1. Departmental reimbursement. When a municipality incurs net general assistance costs in any fiscal year in excess of .0003 of that municipality's 1981 most recent state valuation relative to the state fiscal year for which reimbursement is being issued, as determined by the State Tax Assessor in the statement filed by him as provided in Title 36, section 381, the Department of Human Services shall reimburse the municipality for 90% of the amount in excess of these expenditures when the department finds that the municipality has been in compliance with all requirements of this chapter. If a municipality elects to determine need without consideration of funds distributed from any municipally-controlled trust fund which that must otherwise be considered for purposes of this chapter, the department shall reimburse the municipality for 66 2/3% of the amount in excess of such expenditures when the department finds that the municipality has otherwise been in compliance with all requirements of this chapter.

Sec. AAA-8. 22 MRSA §4313, sub-§2, as amended by PL 1985, c. 245, is further amended to read:

2. Burial or cremation. In the event of the death of an eligible person, the funeral director shall notify the overseer prior to burial or cremation or by the end of the next business day following the funeral director's receipt of the body, whichever is earlier. Notwithstanding section 4305, subsection 3, paragraph C, a decision on any application for assistance with burial expenses need not be rendered until the overseer has verified that no relative or other resource is available to pay for the direct burial or cremation costs, but in no case shall the

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decision must be rendered more than within 10 days after receiving an application. The father, mother, grandfather, grandmother, children or grandchildren or siblings, by consanguinity, living within or owning real or tangible property within the State, shall be are responsible for the burial or cremation costs of the eligible person in proportion to their respective abilities. When no legally liable relative possesses a financial capacity to pay either in lump sum or on an installment basis for the direct costs of a burial or cremation, the contribution of a municipality under this subsection is limited to a reasonable calculation of the funeral director's direct costs, less any and all contributions from any other source.

Sec. AAA-9. 22 MRSA §4315, as amended by PL 1991, c. 622, Pt. M, §24, is further amended to read:

§4315. False representation

Whoever knowingly and willfully makes any false representation of a material fact to the overseer of any municipality or to the department or its agents for the purpose of causing that or any other person to be granted assistance by the municipality or by the State may be is ineligible for assistance for a period of 90 120 days and is guilty of a Class E crime.

No A person may be denied disqualified from receiving general assistance solely for making a false representation prior to being afforded the opportunity for an appeal. If a person's application has been approved, there shall be no revocation of general assistance during the period of entitlement, until that person has been must be provided notice and an opportunity for an appeal as provided in sections 4321 and 4322.

If the fair hearing officer finds that a recipient made a false representation to the overseer in violation of this section, that recipient is required to reimburse the municipality for any assistance rendered for which that recipient was ineligible and is ineligible from receiving further assistance for a period of 90 120 days.

Any recipient whose assistance is terminated or denied under this section shall have has the right to appeal that decision pursuant to the Maine Rules of Civil Procedure, Rule 80-B.

No recipient who has been granted assistance, in accordance with this chapter, may have that assistance terminated prior to the decision of the fair hearing officer. In the event of any termination of assistance to any recipient, the dependents of that person may still apply for and, if eligible, receive assistance.

Sec. AAA-10. 22 MRSA §4316-A, as amended by PL 1991, c. 622, Pt. M, §§25 and 26, is further amended to read:

§4316-A. Work requirement

1. Ineligibility for assistance. An applicant is ineligible for assistance for 90 120 days in all municipalities in the State when any municipality establishes that the applicant, without just cause:

A. Refuses to search for employment when that search is reasonable and appropriate;

B. Refuses to register for work;

C. Refuses to accept a suitable job offer under this section;

D. Refuses to participate in a training or, educational or rehabilitation program that would assist the applicant in securing employment;

E. Quits work after an initial application for assistance;

F. Refuses to perform or willfully fails to perform a job assigned under subsection 2; or

G. Willfully performs a job assigned under subsection 2 below the average standards of that job; or

H. Has been discharged from employment due to misconduct as defined in Title 26, section 1043, subsection 23.

A person may not be required to work under this subsection if that person is physically or mentally incapable of performing the work assigned.

If a municipality finds that an applicant has violated a work-related rule without just cause, under this subsection or subsection 1-A, it is the responsibility of that applicant to establish the presence of just cause.

1-A. Period of ineligibility. An applicant, whether an initial or repeat applicant, who quits work or is discharged from employment due to misconduct as defined in Title 26, section 1043, subsection 23, is ineligible to receive assistance for 120 days after the applicant's separation from employment.

2. Municipal work program. A municipality may require that an otherwise eligible person who is capable of working be required to perform work for the municipality or work for a nonprofit organization, if that organization has agreed to participate as an employer in the municipal work program, as a condition of receiving general assistance. The municipality may also require recipients, as a part of the municipal work program, to partici-

pate in a training or , educational or rehabilitative program which ~~that~~ would assist him ~~the~~ recipient in securing employment. The municipal work program is subject to the following requirements.

A. No ~~A~~ person may not, as a condition of general assistance eligibility, be required to do any amount of work that exceeds the value of the net general assistance that the person would otherwise receive under municipal general assistance standards. Any person performing work under this subsection shall must be provided with net general assistance, the value of which is computed at a rate of at least the State's minimum wage.

B. No ~~A~~ person may not be required to work under this subsection for a nonprofit organization if that work would violate a basic religious belief of that person.

C. ~~In no case may an~~ An eligible person performing work under this subsection may not replace regular municipal employees or regular employees of a participating nonprofit organization.

D. ~~In no case may an~~ An eligible person in need of emergency assistance may not be required to perform work under this subsection prior to receiving general assistance. An applicant who is not in need of emergency assistance may be required to satisfactorily fulfill a workfare requirement prior to receiving the nonemergency assistance conditionally granted to that applicant.

E. Expenses related to work performed under this subsection by an eligible person shall must be considered in determining the amount of net general assistance to be provided to the person.

F. General assistance provided by a municipality for work performed by an eligible person under this subsection shall must be:

(1) Included in the reimbursable net general assistance costs; and

(2) Itemized separately in reports to the Department of Human Services under section 4311.

G. A person may not be required to work under this subsection if that person is physically or mentally incapable of performing the work assigned.

3. Limitations of work requirement. In no case may any work requirement or training or educational program under this section interfere with a person's:

A. Existing employment;

B. Ability to pursue a bona fide job offer;

C. Ability to attend an interview for possible employment;

D. Participation Classroom participation in a primary or secondary educational program intended to lead to a high school diploma; or

E. Participation Classroom or on-site participation in a training program that is either approved or determined, or both, by the Department of Labor to be reasonably expected to assist the individual in securing employment. This paragraph does not include participation in a degree granting program, except when that program is a training program operated under the control of the Department of Human Services or the Department of Labor.

4. Eligibility regained. A person who has been disqualified by any municipality for not complying with any work requirement of this section may regain eligibility during the 90-day 120-day period by becoming employed or otherwise complying with the work requirements of this section. An applicant who is disqualified due to failure to comply with the municipal work program may be given only one opportunity to regain eligibility during the 90-day 120-day disqualification period, except that if an applicant who regains eligibility is again disqualified for failing to comply with the municipal work program within the initial period of disqualification, the applicant is ineligible for assistance for 120 days and does not have the opportunity to requalify during the 120-day period.

5. Just cause defined. Just cause for failure to meet work requirements or the use of potential resources shall must be found when there is reasonable and verifiable evidence of:

A. Physical or mental illness or disability;

B. Below-minimum wages;

C. Sexual harassment;

D. Physical or mental inability to perform required job tasks;

E. Inability to work required hours or to meet piece work standards;

F. Lack of transportation to and from work or training;

G. Inability to arrange for necessary child care or care of an ill or disabled family member;

H. Any reason found to be good cause by the Department of Labor; and

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L. Any other evidence which that is reasonable and appropriate.

The overseer shall may not require medical verification of medical conditions which that are apparent or which are of such short duration that a reasonable person would not ordinarily seek medical attention. In any case in which the overseer requires medical verification and the applicant has no means of obtaining such verification, the overseer shall grant assistance for the purpose of obtaining that verification.

Sec. AAA-11. 22 MRSA §4317, as enacted by PL 1983, c. 577, §1, is amended to read:

§4317. Use of potential resources

Any An applicant or recipient must make a good faith effort to secure any potential resource which that may be available, including, but not limited to, any state or federal assistance program, employment benefits, governmental or private pension programs, available trust funds, support from legally liable relatives, child-support payments and jointly held resources where the applicant or recipient share may be available to the individual. Assistance shall may not be withheld pending receipt of such resource as long as application has been made or good faith effort is being made to secure the resource.

Any An individual applying for or receiving assistance due to a disability must make a good faith effort to make use of any medical and rehabilitative resources that may be recommended by a physician which, psychologist or other professional retraining or rehabilitation specialist that are available without financial burden and which would not constitute further physical risk to the individual.

Any An applicant who refuses to utilize potential resources without just cause, after receiving a written 7-day notice, shall be is disqualified from receiving assistance until he the applicant has made a good faith effort to secure the resource.

Any An applicant who forfeits receipt of or causes reduction in benefits from another public assistance program because of fraud, misrepresentation or a knowing or intentional violation of program rules committed by the applicant within the 60 days prior to his application for assistance; or a refusal to comply with program rules without just cause is not eligible to receive general assistance to replace the forfeited assistance for a period of 60 days from the date of application for general assistance; except as provided for initial applications the duration of the forfeiture.

Sec. AAA-12. 22 MRSA §4319, as amended by PL 1991, c. 622, Pt. M, §28, is further amended to read:

§4319. Liability of relatives for support

1. Relatives liable. A parent or grandparent of a child under 25 years of age and a spouse living in or owning property in the State shall support persons for whom they are legally responsible their children or husband or wife in proportion to their respective ability. Liability for burial expenses is governed by section 4313.

2. Rental payments to relatives. A municipality or the State may decide not to make payments for rental assistance on behalf of an otherwise eligible individual when the rental payments would be made to a parent, grandparent, child, grandchild, sibling, parent's sibling or any of their children, unless the municipality finds that the rental arrangement has existed for 3 months prior to the application for assistance and is necessary to provide the relative with basic necessities.

3. Recovery of assistance provided. A municipality or the State, after providing general assistance to a dependent of a legally responsible parent or grandparent to a person's spouse who is financially capable of providing support, may then seek reimbursement or relief for that support by initiating a complaint to the Superior Court or District Court, including by small claims action, located in the division or county where the legally responsible parent or grandparent spouse resides. The court may cause the legally responsible parent or grandparent spouse to be summoned and upon hearing or default may assess and apportion a reasonable sum upon those who are found to be of sufficient ability for the support of the eligible person and shall issue a writ of execution. The assessment shall may not be made to pay any expense for relief provided more than 6 12 months before the complaint was filed. Any action brought under this section shall be is governed by the Maine Rules of Civil Procedure. The court may, from time to time, make any further order on complaint of a an interested party interested and, after notice is given, alter the assessment or apportionment.

Sec. AAA-13. 22 MRSA §4322, as amended by PL 1989, c. 104, Pt. C, §§8 and 10, is further amended to read:

§4322. Right to a fair hearing

Any A person aggrieved by a decision, act, failure to act or delay in action concerning his that person's application for general assistance under this chapter shall have has the right to an appeal. If a person's application has been approved, there shall be no revocation of general assistance may not be revoked during the period of entitlement until that person has been provided notice and an opportunity for hearing, as provided in this section. Within 5 working days of receiving a written decision or notice of denial, reduction or termination of assistance, in accordance with the provisions of section 4321,

or within 10 working days after any other act or failure to act by the municipality with regard to an application for assistance, the person may request an appeal. A hearing shall must be held by the fair hearing authority within 5 working days following the receipt of a written request by the applicant for an appeal. The hearing may be conducted by the municipal officers, a board of appeals; created under Title 30-A, section 2691, or one or more persons appointed by the municipal officers to act as a fair hearing authority. ~~In no event may an~~ An appeal may not be held before a person or body responsible for the decision, act, failure to act or delay in action relating to the applicant.

The person requesting the appeal shall and the ~~municipal administrator responsible for the decision being appealed~~ must be afforded the right to confront and cross-examine any witnesses against him presented at the hearing, present witnesses in his own ~~their~~ behalf and be represented by counsel or other spokesman, and ~~spokeperson~~. A claimant must be advised of these rights in writing. The decision of such an appeal shall must be based solely on evidence adduced at the hearing. The Maine Rules of Evidence do not apply to information presented to the fair hearing authority. The standard of evidence is the standard set in Title 5, section 9057, subsection 2. The person requesting the appeal shall must, within 5 working days after the appeal, be furnished with a written decision detailing the reasons for that decision. When any decision by a fair hearing authority or court authorizing assistance is made, that assistance shall must be provided within 24 hours. Review of any action or failure to act under this chapter shall must be conducted pursuant to the Maine Rules of Civil Procedure, Rule 80-B. The municipality shall make a record of the fair hearing. The municipality's obligation shall be limited to keep keeping a taped record of the proceedings. Costs The applicant shall pay costs for preparing any transcripts which are required to pursue an appeal of a fair hearing authority's decision shall be paid for by the applicant.

Sec. AAA-13. 22 MRSA §4323, first ¶, as enacted by PL 1983, c. 577, §1, is amended to read:

The Department of Human Services shall be responsible, in accordance with this section, share responsibility with municipalities for the proper administration of general assistance. ~~The department shall assist municipalities in complying with this chapter. The department shall annually review and comment on each municipal ordinance and any amendment filed with respect to its adequacy and compliance with this chapter and make any recommendations it deems appropriate to the municipality.~~

PART BBB

Sec. BBB-1. 12 MRSA §610 is enacted to read:

§610. Maine State Parks Fund

The Maine State Parks Fund is established within the bureau. The fund receives money from the Maine Environmental Trust Fund in accordance with section 7759, subsection 3. The bureau shall use this money for major and minor capital improvements, maintenance, repairs and operations at existing state parks and historic sites.

The fund is nonlapsing. All funds of the Maine State Parks Fund are subject to allocation by the Legislature. The Department of Conservation may use funds of the Maine State Parks Fund to buy out contracts on state land.

Sec. BBB-2. 12 MRSA §7757, sub-§1, as amended by PL 1993, c. 168, §1, is further amended to read:

1. Establishment. There is established the Maine Endangered and Nongame Wildlife Fund. It The fund receives money deposited by the Treasurer of State pursuant to section 7759 and Title 36, section 5284, revenues generated in accordance with this section and any money contributed voluntarily to the fund. All money deposited in the fund; and the earnings thereon, must on that money remain in the fund to be used for the management of nongame wildlife and for necessary administrative and personnel costs associated therewith, with the management of nongame wildlife and may not be deposited in the General Fund or any other fund, except as specifically provided by statute law.

Sec. BBB-3. 12 MRSA §7759 is enacted to read:

§7759. Maine Environmental Trust Fund

1. Fund established. The Maine Environmental Trust Fund, referred to in this section as the "fund," is established as a nonlapsing fund administered by the commissioner for the purposes of improving state parks and historic sites by supporting the Maine State Parks Fund and managing nongame wildlife by supporting the Maine Endangered and Nongame Wildlife Fund. Money deposited with the Treasurer of State to the credit of the fund may be invested as provided by law. Income from these investments must be credited to the fund.

2. Fund sources. The fund receives money deposited by the Treasurer of State pursuant to Title 29, section 252-J and any other gift, grant or other source of revenue deposited for that use.

3. Distribution from fund. After the Treasurer of State has reimbursed the Secretary of State for costs of producing and issuing environmental registration plates in accordance with Title 29, section 252-J, the Treasurer of State shall annually distribute the balance in the fund as follows:

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Attachment C

City of Portland General Assistance Ordinance

Chapter 13 GENERAL ASSISTANCE*

*Editor's note--Ord. No. 399-92, adopted June 3, 1992, amended Ch. 13 in its entirety, in effect repealing former Ch. 13, general assistance, §§ 13-1--13-7, and enacting similar new provisions as §§ 13-1--13-12. Formerly, this chapter derived from Ord. No. 305-83, adopted Dec. 5, 1983; Ord. No. 596-84, 1--6, adopted May 21, 1984; Ord. No. 549-85, adopted May 6, 1985; Ord. No. 276-85, §§ 1--14, adopted Dec. 16, 1985; Ord. No. 385-88, §§ 1, 2, adopted May 16, 1988; Ord. No. 375-90, § 1, adopted June 6, 1990; and Ord. No. 374-91, adopted May 20, 1991.

Cross reference(s)--Administration, Ch. 2.

State law reference(s)--Municipal general assistance programs, 22 M.R.S.A. § 4450.

Sec. 13-1. Statement of policy.

(a) The city administers a program of general assistance available to all persons who are eligible to receive assistance in accordance with the standards of eligibility as provided herein and in 22 M.R.S.A., Chapter 1161.

(b) When possible, the general assistance program will seek to alleviate needs other than financial, assisting recipients with arrangements for rehabilitative, preventive, and protective services. The applicant or recipient is expected to make use of all available resources. The general assistance program provides a specific amount and type of aid for current defined needs during a limited period of time and is not intended to be a continuing "grant-in-aid" or "categorical" welfare program.

(c) The goals of the program are to recognize and encourage dignity, self-respect, and self-reliance, to assist each recipient to achieve self-maintenance and adequate social functioning, and to encourage the work incentive. An important focus of attention for the general assistance program is the strengthening of family life, especially for the care and protection of children.

(d) The general assistance program will not discriminate on account of sex, sexual orientation, age, race, religion, disability, or political affiliation. Each applicant or recipient will be made aware of his or her rights and responsibilities under

general assistance. Any applicant or recipient has a right to request review of any decision concerning his or her right to assistance.

(e) Complete records will be maintained, although any information given by applicants or recipients will be recognized confidential pursuant to 22 M.R.S.A., Section 4306.

(f) The city will post a notice in the city general assistance office of the times and days that general assistance applications will be processed. This chapter will be made easily accessible to any member of the public and will be available in the welfare office.

(g) In times of emergency, general assistance will be available to eligible persons even at days and times when the general assistance office is not ordinarily open. Notice will be posted of the person to contact in an emergency in a place accessible to the public when the office or building is closed.
(Ord. No. 399-92, 6-3-92)

Sec. 13-2. Definitions.

Unless otherwise defined here or in the text or in 22 M.R.S.A., Chapter 1161, all words used will have their common meanings. Words and phrases having special definitions will be defined when they first appear in the chapter, except for the following definitions:

Administrator is the social services administrator of the city's department of health and human services to whom the day to day administration of the general assistance program is delegated. The administrator is authorized to delegate some or all of his duties to caseworkers and other employees of the city's division of social services, and references to the administrator shall include the duly authorized designees of said administrator.

Appellant is any applicant or recipient who has appealed a decision of the administrator to a fair hearing officer.

Applicant is a person who has expressed a desire to receive general assistance by means of a written application form, either directly or through a representative authorized in writing, or through an application accepted by telephone or who has, in an emergency, requested assistance without first completing an application. An applicant may simultaneously be a recipient if he

is receiving general assistance at the time of application.

Application form is a document in a form prescribed by the administrator on which a person indicates a desire to receive general assistance and states the necessary facts on which a determination of eligibility can be made.

Back bills are any charges for goods and services received prior to application. A bill that is due in the same month in which an application is made is not a back bill.

Basic necessities are food, clothing, shelter, fuel, electricity, nonelective medical services as recommended by a physician, nonprescription drugs, telephone where it is necessary for medical reasons, property taxes when a tax lien placed on the property threatens the loss of the applicant's place of residence, and any other commodity or service determined essential by the municipality. "Basic necessities" do not include security deposits for rental property, except for those situations where no other permanent lodging is available unless a security deposit is paid, and a waiver, deferral or installment arrangement cannot be made between the landlord and tenant to satisfy the need for the immediate payment of the security deposit or payment in full.

Case record is the official file of forms, correspondence, and narrative records and all other communications pertaining to an applicant or recipient, determination of initial or subsequent eligibility, reasons for decisions and actions by the general assistance administrator, and types of assistance provided each recipient.

Caseworker is any person designated by the social services administrator to assist in administering the general assistance program.

Categorical assistance is all state and federal income maintenance programs.

Disabled person is a person who is presently unable to work or maintain a home due to a physical or mental disability that is verified by a physician.

Dwelling unit is a building or part thereof used for separate living quarters for one (1) or more persons living as a single housekeeping unit.

Eligible person is a person who is qualified to receive general assistance from the city according to the standards of eligibility set forth in this chapter.

Emergency is any life threatening situation or a situation beyond the control of the individual which, if not alleviated immediately, could reasonably be expected to pose a threat to the health or safety of a person.

Fair hearing officer is a person or persons appointed by the city council who is empowered to review any decision, act, failure to act, or delay in action in regard to general assistance pursuant to 22 M.R.S.A., Section 4322.

General assistance program is a service administered by the city for the immediate aid of persons who are unable to provide the basic necessities essential to maintain themselves or their families. The general assistance program provides a specific amount and type of aid for defined needs during a limited period of time and is not intended to be a continuing "grant-in-aid" or "categorical" welfare program. This definition shall not in any way lessen the responsibility of the city to provide general assistance to a person each time that the person has need and is found to be otherwise eligible to receive general assistance.

Household is an individual or a group of individuals who share a dwelling unit. When an applicant shares a dwelling unit with one (1) or more individuals, even when a landlord-tenant relationship may exist between individuals residing in the dwelling unit, eligible applicants may receive assistance for no more than their pro rata share of the actual costs of the shared basic needs of that household according to the maximum levels of assistance established herein. The income of household members not legally liable or otherwise responsible for supporting the household shall be considered as available to the applicant only when there is a pooling of income.

Income is any form of income in cash or in kind received by the household, including net remuneration for services performed, cash received on either secured or unsecured credit, any payments received as an annuity, retirement, or disability benefits, veterans' pensions, workers' compensation, unemployment benefits, benefits under any state or federal categorical assistance program, supplemental security income, social security, and any other payments from governmental sources, unless specifically prohibited

by any law or regulation, court ordered support payments, income from pension or trust funds and household income from any other source, including relatives or unrelated household members.

The following items are not income:

- (a) Real or personal income-producing property, tools of trade, governmental entitlement specifically treated as exempt assets by state or federal law;
- (b) Actual work-related expenses, whether itemized or by standard deduction, such as taxes, retirement fund contributions, union dues, transportation costs to and from work, special equipment costs, and child care expenses; or
- (c) Earned income of children below the age of eighteen (18) years who are full-time students and who are not working full time.

In determining need, as defined herein, the period of time used as a basis for the calculation shall be the thirty-day period commencing on the date of the application. This prospective calculation does not disqualify an applicant who has exhausted income to purchase basic necessities, provided that the income does not exceed the income standards established in section 13-8 below.

Notwithstanding this prospective calculation, if any applicant or recipient receives a lump sum payment prior to applying for assistance, that payment must be prorated over future months. The period of proration is determined by disregarding any portion of the lump sum payment that the applicant or recipient has spent to purchase basic necessities, including but not limited to: all basic necessities provided by general assistance; reasonable payment of funeral or burial expenses for a family member; reasonable travel costs related to the illness or death of a family member; repair or replacement of essentials lost due to fire, flood or other natural disaster; repair or purchase of a motor vehicle essential for employment, education, training or other day-to-day living necessities; and payment of bills earmarked for the purpose for which the lump sum is paid. All income received by the household between the receipt of the lump sum payment and the application for assistance is added to the remainder of the lump sum. The period of proration is then determined by dividing the remainder of the lump sum payment by the aggregate maximum level of assistance designated under section 13-8 below. That dividend represents the period of

proration determined by the administrator to commence on the date of receipt of the lump sum payment. The prorated sum for each month must be considered available to the household for twelve (12) months from the date of application or during the period of proration, whichever is less.

Just cause is a valid, verifiable reason that hinders an individual in complying with one (1) or more conditions of eligibility.

Lump sum payment is a one-time or typically nonrecurring sum of money issued to an applicant or recipient after an initial application. Lump sum payment includes, but is not limited to, retroactive or settlement portions of social security benefits, workers' compensation payments, unemployment benefits, disability income, veterans' benefits, severance pay benefits, or money received from inheritances, lottery winnings, personal injury awards, property damage claims or divorce settlements. A lump sum payment includes only the amount of money available to the applicant after payment of required deductions has been made from the gross lump sum payment. A lump sum payment does not include conversion of a nonliquid resource to a liquid resource if the liquid resource has been used or is intended to be used to replace the converted resource or for other necessary expenses.

Maximum level of assistance is the amount of assistance as established in section 13-9 below, or the actual cost of a basic necessity, whichever is less.

Municipality of responsibility is the municipality which is liable for the support of any eligible person at the time of application.

Need is the condition whereby a person's income, money, property, credit, assets, or other resources available to provide basic necessities for the individual and the individual's family are less than the maximum levels of assistance established herein.

Overseer is the city's social services administrator.

Period of eligibility is the time for which a person has been granted assistance. Such period shall commence on the date the application for assistance is granted and shall continue for the period stated on the decision. The period of eligibility may vary depending on the type of assistance provided; however, in no event

shall such period extend beyond one (1) month.

Pooling of income is the financial relationship among household members who are not legally liable for mutual support in which there occurs any commingling of funds or sharing of income or expenses. It is a rebuttable presumption that persons sharing the same dwelling unit are pooling their income. Applicants who are requesting that the determination of eligibility be calculated as though one (1) or more household members are not pooling their income have the burden of rebutting the presumption of pooling income by providing verification that they are not doing so.

Real estate is any land, buildings, homes, mobile homes, and any other things affixed to that land.

Recipient is a person who has applied for and is currently receiving general assistance.

Resident is a person who is physically present in a municipality with the intention of remaining in that municipality in order to maintain or establish a home and who has no other residence. A person who applies for assistance who is not a resident of the city nor any other municipality is the responsibility of the municipality where the person first applies. That municipality must take an application and grant assistance to the applicant if he is eligible until he establishes a new residence in another municipality.

Resources include, but are not limited to, any program, service, or other sources of support which are an alternative or supplement to general assistance. Potential resources include, but are not limited to, any state or federal assistance program, employment benefits, governmental or private pension program, available trust funds, support from legally liable relatives, child support payments, and jointly held resources where the applicant or recipient share may be available to the individual. Potential resources include AFDC, Food Stamps, fuel assistance (HEAP), subsidized housing, and similar programs, and any medical and rehabilitative resources recommended by a physician which are available without financial burden and which would not constitute a further physical risk to the applicant.

(Ord. No. 399-92, 6-3-92; Ord. No. 84-93, § 1, 9-8-93)

Sec. 13-3. Administrative procedures.

(a) *Records.* Pursuant to 22 M.R.S.A., Section 4306, the

administrator is required to keep complete and accurate records pertaining to general assistance. These records are necessary to:

- (1) Provide a valid basis of accounting for municipal funds;
- (2) Support decisions concerning the applicant's or recipient's eligibility;
- (3) Assure availability of information if an aggrieved person seeks administrative or judicial review of the caseworker's decision.

In addition to general statistical records concerning the number of persons given assistance and the cost of such support, a separate case record is established for each individual applying for general assistance and his or her household with the exception of records of individuals presumed eligible through an approved shelter. Each case record shall contain at least the following:

- (1) The completed application for assistance;
- (2) Grounds for approval or denial of assistance;
- (3) A narrative social history containing the need for relief, the results of home visits, collateral information, referrals, changes in status, etc.;
- (4) Complete data concerning the type and amount of assistance provided.

(b) *Confidentiality.* Case records and all other information relating to an applicant or recipient of general assistance are confidential and will not be disclosed to the general public, unless expressly permitted by the applicant or recipient in writing. If the administrator releases information contained in an applicant's or recipient's case record to a person with a legal right to that information, an entry will be made in the case record, giving the reason(s) for the release.

The applicant or recipient or his legal representative will have the right to review any information contained in his case record. No record will be released to a legal representative or other third party, however, unless the administrator receives a consent form signed by the applicant or recipient expressly authorizing release of the records to the specified parties. The administrator may charge a reasonable fee for the reproduction of

records, when appropriate.

(c) *Applications; right to apply.* Any person has the right to apply for general assistance under this chapter. The head of the family, any other responsible household adult, or a duly authorized representative must apply in person, except as otherwise provided herein. The administrator may require a duly authorized representative to present a signed statement documenting that he is in fact so authorized. The applicant must complete a written application form and any other required forms. The administrator is authorized to promulgate all forms and notices necessary for the administration of this chapter and to file said forms with the state department of human services.

When a person in an emergency is unable to apply in person due to illness, disability, lack of transportation, lack of child care or other good cause, and he cannot send an authorized representative, the caseworker will accept an application by telephone or conduct a home visit, and assistance shall be granted, if at all, temporarily. Any telephone application will be subject to the caseworker receiving written verification via mail or a visit to the applicant's home with his permission. Further assistance shall be granted upon completion of a written application and determination of eligibility hereunder.

The administrator will not grant any assistance as the result of a telephone or home visit application if the applicant refuses to allow the administrator to verify the information.

Each request for assistance will be administered in accordance with this chapter. Applications will be taken during regular business hours at the general assistance office. An independent determination of eligibility for general assistance shall be made by the caseworker upon receipt of each application. The application form will give clear notice that the applicant has the right to a fair hearing if he is dissatisfied with the caseworker's decision.

The administrator is authorized to enter into contracts with emergency shelters for the presumption of eligibility of homeless persons using the shelter.

(d) *Caseworkers' responsibilities at the time of application.* At the time of application, the caseworker will inform the applicant of the eligibility requirements of the program and ask the applicant to provide all information and documentation necessary for the caseworker to make a determination of

eligibility. This information will include:

- (1) The applicant's household income, including income actually received from any source or due to be received during the period of eligibility;
- (2) Any assets or resources available to the applicant, including personal property and real estate;
- (3) Employment information; if the applicant is unemployed due to a disability, the caseworker will seek information regarding its nature and will recommend rehabilitative services when appropriate;
- (4) The amount and type of assistance requested.

The caseworker will also be responsible for informing the applicant about the possible ways to reduce his need for general assistance and the applicant's responsibility to:

- (1) Accurately report all information necessary to determine eligibility;
- (2) Fulfill the city's work requirements pursuant to section 13-4(h), below;
- (3) Make use of all available resources including, but not limited to, those of other government benefit programs and liable relatives of sufficient means;
- (4) Participate in a rehabilitation program, when appropriate in order to diminish his dependence on general assistance;
- (5) Reimburse the city for the amount of general assistance granted in the event of a subsequent ability to pay;
- (6) Notify the caseworker of any change in circumstances that will affect eligibility.

The caseworker will also inform the applicant that the parent(s) of a child under twenty-five (25) years of age and a spouse living within or owning real or tangible property in the state are required to support him in proportion to their ability to pay, and that the city can seek reimbursement therefrom. Further, if applicable, the caseworker will inform the applicant that the

city will not make payments for rental assistance on behalf of an otherwise eligible applicant when the rental payment would be made to a parent, grandparent, child, grandchild, sibling, parent's sibling or any of their children, unless the caseworker determines that the rental arrangement has existed for three (3) months prior to the application for assistance and is necessary to provide the relative with basic necessities. The applicant shall provide reasonable information to the caseworker as to the duration of the rental agreement and the resources of the relative in order to permit the caseworker to make such determination. The caseworker will also inform the applicant of the penalty for false representation and of his right to have decisions reviewed and the nature of the hearing process.

(e) *Responsibilities of each applicant and recipient.* Each applicant and recipient has a responsibility at the time of each application and thereafter to:

- (1) Provide accurate, complete, and current information concerning his or her needs, income, resources, assets, and employment and the whereabouts and circumstances of persons who may be liable for his support;
- (2) Notify the caseworker when a change in his needs, income, resources, assets, or employment will affect eligibility for general assistance;
- (3) Apply for and utilize any other available benefits or resources that will reduce or eliminate the need for general assistance;
- (4) Use all money available to him for basic necessities on a priority basis, before requesting general assistance or purchasing items not required for basic needs, except in the case of an initial application; and
- (5) Participate in a training education, or rehabilitation program, when appropriate, in order to diminish his/her need for general assistance.
- (6) Reimburse the city for assistance provided in the event he has the ability to do so.

Each applicant is responsible for requesting assistance with bills that are current. The city is not responsible for paying back bills except as provided below for emergencies.

(f) *Action on application.* The caseworker will give a written decision concerning the applicant's eligibility within twenty-four (24) hours after he has submitted a written application form, or a telephone application has been accepted, together with other documents required for verification and support of information thereon. If approved, assistance will be furnished within that period.

The written decision will inform the applicant of the following:

- (1) The type and amount of aid the applicant is eligible for and the period of eligibility; or
- (2) The reasons for denial;
- (3) The applicant's right to a fair hearing; and
- (4) The applicant's right to notify the state department of human services and the available means for notifying said department.

(g) *Withdrawal of an application.* An application is considered withdrawn if:

- (1) The applicant dies before assistance is rendered; or
- (2) The applicant requests in writing that his application be withdrawn; or
- (3) The applicant refuses to complete or sign the application or any other form needed by the general assistance administrator.

(h) *Temporary refusal to accept application.* Under special circumstances, the general assistance administrator may temporarily refuse to accept applications for twenty-four (24) hours. Such circumstances may include, but are not limited to, the following:

- (1) When the applicant's conduct is abusive, disruptive or harassing, or when the applicant is under the influence of drugs or alcohol. In these situations, the applicant will be required to leave and not to return until his conduct is under control; or

- (2) When a third person applies for assistance on behalf of the applicant. That person may be required to provide written verification that he has been duly authorized to act as a representative for the applicant.

In addition to the foregoing, if the administrator believes that an applicant's behavior presents a threat to the health or safety of the public or to city employees, or if such behavior is violent, or if an applicant has engaged in abusive, disruptive or harassing behavior and has been required to leave on more than one (1) occasion, then the applicant may be required to designate a third party to apply for assistance on his behalf and the applicant may be prohibited from entering the social services offices.

(i) *Emergencies.* Except as provided herein, any person who applies for assistance to alleviate an emergency is eligible for emergency general assistance if they do not have sufficient resources to meet an actual immediate need for basic necessities, although they have been found ineligible for nonemergency general assistance. An emergency is considered to be any life threatening situation or a situation beyond the control of the applicant, such as a natural disaster, which could reasonably be expected to pose a threat to the health and safety of the applicant if not alleviated immediately. Examples of such circumstances include, but are not limited to: fire, flood, illness or injury, imminent eviction or termination of utilities, or being stranded in the community.

If an applicant is in emergency need of a basic necessity and the only way to obtain that necessity is by paying a back bill, the administrator will attempt to negotiate with the creditor in order to determine the minimum amount which could be paid in order to meet the emergency need. Notwithstanding the foregoing, emergency assistance is not available to pay a back bill or obligation for a basic necessity if the person requesting the assistance had sufficient income, money, assets or other resources available to pay for the basic necessity when the bill was received or the obligation was due. The person requesting assistance shall be required to provide evidence of income and resources for the applicable time period.

Notwithstanding the foregoing, a person who is currently disqualified from general assistance for a violation of section 13-4(f) (use of potential resources), 13-4(g) (work requirement) or 13-6 (false representation) is ineligible for emergency assistance under this subsection.

(Ord. No. 399-92, 6-3-92; Ord. No. 84-93, §§ 2, 3, 9-8-93)

Sec. 13-4. Eligibility factors.

(a) *Residence.* The administrator shall provide general assistance to all eligible persons applying for assistance who are residents of the city. A resident is a person who has no other residence and is physically present in the city and who intends to remain here and establish a household.

The city also recognizes its responsibility to provide assistance to eligible persons who apply here and who are not residents of this city or any other municipality. If a person who is not a resident of any municipality applies in this city first, the administrator will determine his eligibility and, if eligible, will grant assistance until he establishes a residence in another municipality.

Moving/relocating. The city will not move or transport an applicant or recipient into another municipality unless the person requests assistance to relocate to another municipality. If the administrator determines the applicant is eligible and grants financial assistance to help the applicant relocate, the city will be responsible for providing assistance to him for thirty (30) days after he moves, provided the recipient remains eligible.

Institutions. If a resident of this city enters an institution located in another municipality (such as a group home, shelter, rehabilitation center, nursing home or hospital) and requests assistance while at the institution, he will be the responsibility of the city for up to six (6) months after he enters the institution. The city thereafter retains responsibility for an applicant in an institution only if the applicant has maintained a home in the city to which he intends to return. The city also recognizes its responsibility for an applicant residing in an institution in this city if he had no residence prior to entering the institution.

Temporary housing. For the purpose of this paragraph, a hotel, motel or similar place of temporary lodging is considered an institution when a municipality:

- (1) Grants financial assistance for a person to move to or stay in temporary lodging;

- (2) Makes arrangements for a person to stay in temporary lodging;
- (3) Advises or encourages a person to stay in temporary lodging; or
- (4) Illegally denies housing assistance and, as a result of that denial, the person stays in temporary lodging.

Disputes. When the administrator believes that an applicant is a resident of another municipality but that municipality disputes its responsibility, the administrator will notify the department of human services in Augusta. If the applicant applies in this city first, the administrator will determine his eligibility and, if eligible, will grant assistance until the department has concluded which municipality is responsible for providing assistance. If another municipality was responsible, the department will recover the amount due from the other municipality.

(b) *Initial application.* For initial applicants, need will be the sole condition of eligibility. An initial applicant is a person who has not applied for general assistance in this city or in any Maine municipality.

"Need" means that the applicant's income and resources are less than the overall maximum level of assistance contained in section 13-9 of this chapter or the actual thirty-day costs, whichever is less, and he does not have adequate income or other resources available to provide basic necessities.

Subsequent applications. All applications which are not initial applications are repeat applications. Persons who are not initial applicants must be in need, use their income and resources to secure basic necessities, and meet all other eligibility conditions established by state law and this chapter.

(c) *Categorical assistance.* Receipt of categorical assistance will not disqualify a person from receiving general assistance, if he is otherwise eligible. Benefits received from other assistance programs will be considered as income when determining need, with the exception of food stamps, which will not be counted as income or resources or otherwise taken into consideration when determining need. Also, any fuel assistance (HEAP/ECIP) received by an applicant will not be considered as income or resources; that is, the administrator will always compute the heating needs of an applicant who has received HEAP or ECIP as if that applicant paid

for his total fuel costs. Applicants or recipients must apply for program benefits within seven (7) days after being advised in writing to do so by the administrator. Persons who, without just cause, make no good faith effort to receive a potential resource will be disqualified from receiving assistance until they make a good faith effort to obtain the benefit.

(d) *Personal property.*

- (1) Liquid assets. No person owning assets easily convertible into cash, including but not limited to, bank deposits, stocks, bonds, certificates of deposit and other marketable security will be eligible for general assistance unless he uses such assets to provide for his basic needs and thereby exhausts them. Applicants who transfer their assets to someone else solely to appear eligible for general assistance will be denied assistance.
- (2) Tangible assets. No person owning personal property (such as motor vehicles, snowmobiles, boats, trailers, recreational vehicles) or other assets which are readily convertible to cash and are not essential to the maintenance of the applicant or his family, shall be eligible for general assistance. Exceptions may be made upon an initial application or when reasonable efforts to convert assets to cash are unsuccessful. Tools of a trade, livestock, and farm equipment used in the production of income are exempt from the above category and are not considered as available assets.

The ownership of one (1) automobile per household will not make a person ineligible for assistance if such vehicle is essential for transportation to employment, medical care, rehabilitation or training facilities; however, continued eligibility for assistance will depend upon the applicant making reasonable efforts to dispose of the automobile if his equity interest in the automobile exceeds twenty-five hundred dollars (\$2,500.00), or if it is not essential for the above-named purposes.

- (3) Insurance. Insurance that is available to an applicant on a noncontributory basis or that is required as a condition of employment will not be a factor in determining eligibility for general assistance. Life

insurance with a cash surrender value will be considered as a tangible asset and eligibility after the initial application shall depend upon the applicant's making reasonable efforts to obtain the cash surrender value.

(e) *Real estate.* Ownership of a house used as a principal residence will not affect eligibility. When an applicant who owns his own home is unable to pay his mortgage, taxes, or insurance, and is eligible for general assistance, the city will provide only the mortgage payment up to the allowable maximum for rent. Notwithstanding the foregoing, the city may provide assistance for the payment of taxes on a principal residence in the event of an emergency.

If an applicant is granted assistance in the form of a mortgage payment, the city may claim a lien against any real estate owned by that person pursuant to 22 M.R.S.A., Section 4320, which lien shall be enforceable upon sale of the property or death of the recipient.

The administrator may provide emergency assistance to persons owning real property other than their own home. However, continued future eligibility for assistance will depend upon the applicant making reasonable efforts to dispose of such real property at fair market value or obtain a loan against such property to use to meet present need.

(f) *Use of potential resources.* Any applicant or recipient must make a good faith effort to secure any potential resource which may be available, including, but not limited to, any state or federal assistance program, employment benefits, trust funds, support from legally liable relatives, child-support payments, and jointly held resources where the applicant or recipient share may be available to the individual. Assistance shall not be withheld pending receipt of such resource as long as application has been made or good faith effort is being made to secure the resource.

Any individual applying for or receiving general assistance due to a disability must make a good faith effort to make use of any medical and rehabilitative resources that may be recommended by a physician, psychologist or other professional retraining or rehabilitation specialist which are available without financial burden and would not constitute further physical risk to the individual.

"Without financial burden" shall include without financial

burden to the city to the extent such resources are available, as well as without financial burden to the individual.

Any applicant or recipient who refuses to utilize potential resources without just cause as defined in subsection (h) below, after receiving a written seven-day notice, shall be disqualified from receiving assistance until he has made a good faith effort to secure the resources.

Any applicant or recipient who forfeits receipt of or causes reduction in benefits from another public assistance program because of fraud, misrepresentation, or a knowing or intentional violation of program rules committed by the applicant or recipient or a refusal to comply with program rules without just cause is not eligible to receive general assistance to replace the forfeited assistance for the duration of the forfeiture.

(g) *Work requirement.* If unemployed, persons who receive general assistance are expected to fulfill a work requirement either by participating in a work search program, job training program, or rehabilitation program, and/or workfare, as appropriate as determined by the caseworker. Recipients are expected to fulfill the work requirement assigned to them, and will be exempted from the requirement only for just cause.

A determination of the assigned work requirement will be made at the time of application and the recipient will be given written notice of the required assignment at that time.

- (1) *Work search; rehabilitative services.* All unemployed applicants and members of their households who are over the age of seventeen (17), except as provided below, may be required to search for work, accept any suitable job offer, or job training, or opportunity for rehabilitation services. If the work search requirement is assigned, applicants must demonstrate to the administrator that they are available for work forty (40) hours a week and are actively seeking employment, except as provided in subsection (3) below.

A "suitable job offer" as used herein means any job which the applicant is mentally and physically able to perform.

"Available for work," as used herein, will mean that applicants must make themselves available for work during normal business hours prevailing in that area, Monday

through Saturday, and show that no circumstance exists which would prevent them from accepting full-time employment. Full-time employment means forty (40) hours a week.

Applicants who are employed are expected to remain on the job and not to quit employment except for just cause.

After being granted assistance at the time of initial application, applicants will be considered ineligible for further assistance for one hundred twenty (120) days if they, without just cause:

- a. Refuse to register for employment with the Maine Job Service;
- b. Refuse to search for employment when the search is reasonable and appropriate; recipients who unreasonably seek work at the same places repeatedly will not be considered to be performing a diligent work search and will be disqualified;
- c. Refuse to accept a suitable job offer;
- d. Refuse to participate in a training, education, or rehabilitation program that would assist the applicant in securing employment;
- e. Fail to be available for work; or
- f. Refuse to perform or willfully fail to perform, or perform below average standards, an assignment under subsection (2) below (work program).

An applicant, whether an initial or repeat applicant, who quits work or is discharged from employment due to misconduct as defined in Title 26, Section 1043, subsection 23, is ineligible to receive assistance for one hundred twenty (120) days after the date of the applicant's separation from employment.

- (2) Municipal work program. In addition to or alternatively to the requirements of subsection (1) above, the city may require that an otherwise eligible person who is capable of working be required to perform work for the municipality or work for a nonprofit organization, if

that organization has agreed to participate as an employer in the municipal work program, as a condition of receiving general assistance. Nonprofit organizations participating in the work program must enter into a contract with the administrator for such participation, which contracts the administrator is authorized to execute on behalf of the city. The city may also require recipients to participate in a training or educational or rehabilitative program which would assist them in securing employment. Any such work requirement shall be subject to the following provisions:

- a. A person may not, as a condition of general assistance eligibility, be required to do any amount of work that exceeds the value of the net general assistance that the person would otherwise receive under the general assistance standards herein. Any person performing work under this subsection shall be provided with net general assistance, the value of which is computed at a rate of at least the state's minimum wage.
- b. A person may not be required to work under this subsection for a nonprofit organization if that work would violate a basic religious belief of that person.
- c. An eligible person performing work under this subsection shall not replace regular municipal employees or regular employees of a participating nonprofit organization.
- d. An eligible person in need of emergency assistance (i.e., a person who is not on one-hundred-twenty-day denial) shall not be required to perform work under this subsection prior to receiving general assistance. An applicant who is not in need of emergency assistance may be required to satisfactorily fulfill a workfare requirement prior to receiving the nonemergency assistance conditionally granted to that applicant.
- e. Expenses related to work performed under this subsection by an eligible person must be considered in determining the amount of net general assistance to be provided to the applicant.

- f. A person may not be required to work under this subsection if that person is physically or mentally incapable of performing the work assigned.
- (3) In no case may the requirement to search for work or participate in a work or training program interfere with:
 - a. Existing employment;
 - b. Ability to pursue a bona fide job offer;
 - c. Ability to attend an interview for possible employment;
 - d. Classroom participation in a primary or secondary educational program intended to lead to a high school diploma; or
 - e. Classroom or on-site participation in a training program which is either approved or determined, or both, by the department of labor to be reasonably expected to assist the individual in securing employment. This paragraph does not include participation in a degree granting program, except when that program is under the control of the department of human services or department of labor (e.g., Job Training Partnership Act or the Welfare Employment Education and Training Program).
- (4) Failure of an otherwise eligible person to comply with this section shall not affect the eligibility of any member of the person's household who is not capable of working, including at least:
 - a. A dependent minor child;
 - b. An elderly, ill, or disabled person; and
 - c. A person whose presence is required in order to provide care for any child under the age of six (6) years or for any ill or disabled member of the household.
- (5) Applicants will be ineligible for assistance for one hundred twenty (120) days if they do not comply with the

requirements of this subsection (g) without just cause, as defined in subsection (h) below. Persons may regain their eligibility if they become employed or complete the workfare and work search assignments previously established in the written decision on their application sheet and meet all other eligibility requirements. An applicant disqualified for failure to comply with the municipal work program will be given only one (1) opportunity to regain eligibility during the one-hundred-twenty-day disqualification. An applicant who regains eligibility and is again disqualified for failure to comply with the municipal work program within the initial period of disqualification is ineligible for assistance for one hundred twenty (120) days and does not have the opportunity to requalify during that second one-hundred-twenty-day period.

(6) In administering the work requirement, the administrator will:

- a. Itemize work or other activities assigned to and performed by eligible persons separately in reports to the commissioner of human services;
- b. Read or have the applicant read an information sheet that must be signed prior to commencing the assignment so that the applicants will understand the conditions of their general assistance. The information sheet will detail the amount of time persons need to perform to meet their needs and the type of assignment that they are required to perform.

(h) *Just cause.* Just cause for failure to meet the work requirements in subsection (g) or the use of potential resources in subsection (f) shall be found when there is reasonable and verifiable evidence of:

- (1) Physical or mental illness or disability;
- (2) Below minimum wages;
- (3) Sexual harassment;
- (4) Physical or mental inability to perform required job tasks;

- (5) Inability to work required hours or to meet piece work standards;
- (6) Lack of transportation to and from work or training;
- (7) Inability to arrange for necessary child care or care of ill or disabled family member;
- (8) Any reason found to be good cause by the state department of labor; and
- (9) Any other evidence which is reasonable and appropriate under the circumstances.

All claims of illness or disability under this chapter are subject to verification except the caseworker shall not require medical verification of medical conditions which are apparent or which are of such short duration that a reasonable person would not ordinarily seek medical attention. In any case in which the caseworker requires medical verification, and the applicant has no means of obtaining such verification, the caseworker shall grant assistance for the purpose of obtaining such verification from a medical provider approved by the city.

No recipient will have his assistance terminated, reduced, or suspended prior to being given notice and an opportunity for a hearing as provided in section 13-12 below. If the fair hearing officer upholds the decision of the administrator, the period of ineligibility shall commence on the date the fair hearing officer renders a written decision. In the case of a person who chooses not to request a hearing, the period of ineligibility shall commence on the date the administrator renders his written decision. People who are disqualified before the period covered by any particular form of assistance expires shall be disqualified for one hundred twenty (120) days from the end of the period covered by that assistance. The period of ineligibility shall run for one hundred twenty (120) days unless a stay is ordered by a court of law.
(Ord. No. 399-92, 6-3-92; Ord. No. 84-93, §§ 4--8, 9-8-93)

Sec. 13-5. Determination of eligibility.

(a) *Determination; redetermination.* The administrator shall make a determination of eligibility each time a person applies or reapplies for general assistance. The administrator will make a redetermination of eligibility at least monthly, or within the month, as often as necessary to administer the program efficiently

and meet the needs of the applicants. Upon any application, the administrator will determine the applicant's eligibility on the basis of a thirty-day prospective analysis, but may elect to disburse the applicant's assistance periodically, e.g., daily, weekly, or throughout a thirty-day period of eligibility pursuant to that eligibility determination. Assistance will be provided for current needs only, and the city is not responsible for back bills, except as provided in section 13-3(i) above.

The administrator may redetermine a person's eligibility at any time during the period he is receiving assistance if notified of any change in the recipient's circumstances which may alter the amount of assistance which the recipient may receive. Once a recipient has been granted assistance, the administrator may not reduce or rescind the assistance without giving prior written notice to the recipient explaining the reasons for the decision and allowing the recipient to appeal the decision to the fair hearing officer.

(b) *Verification.* Each applicant and recipient has the responsibility at the time of application and continuing thereafter to provide complete, accurate, and current information and documents concerning his need, income, and other resources. For documentation, the administrator will require actual bills or receipts for rent, utilities, fuel, telephone, medical services, and other expenses for basic necessities that are reasonably obtainable, except that food and household supplies will be budgeted at the actual amount paid, subject to the maximums allowed in this chapter. The administrator will also require documentation regarding the applicant's income and assets. When determining an applicant's eligibility, the administrator will seek all necessary information first from the applicant. Information needed from other sources, with the exception of public records, will be gathered only with the knowledge of the applicant.

The administrator may seek and verify information from all appropriate sources including, but not limited to, the department of human services and any other department of the state which has information that has a bearing on an applicant's eligibility; financial institutions except national banks; employers, landlords, physicians, other service providers, and legally liable relatives. The administrator will request the applicant's written consent in order to receive necessary information. In the case of verification of employment, the administrator will give the applicant written notice that if he does not provide documentary verification of benefits received within one (1) week of application, the employer

will be contacted.

Any person who is required to but who refuses to provide necessary information to the administrator after it has been requested must state in writing the reasons for the refusal within three (3) days of receiving the request. Any person who refuses to provide the information, without just cause, commits a civil violation and may be subject to a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) which may be adjudged in any court of competent jurisdiction. Any person who willfully renders false information to the overseer or administrator is guilty of a Class E crime.

The applicant is required to provide all information necessary for the administrator to determine if he is eligible for assistance. When available information is inconclusive or conflicting regarding a material fact that is necessary to determine eligibility, the administrator will inform the applicant what further information is needed. In order to be considered inconclusive or conflicting, the information on the application must be inconsistent with other information on the application, previous applications, or other information received by the administrator.

The administrator will not grant assistance to any applicant who refuses to supply necessary information and documentation of his needs, income, and other resources, or who refuses to grant permission for the administrator to contact other persons or otherwise verify the information. If the administrator has attempted to verify the information but is unable to determine if the applicant is eligible because the applicant has refused to provide or allow the administrator to verify the necessary information, the applicant will be denied assistance until the necessary verification has been accomplished.

The applicant will be given the opportunity to provide the necessary information prior to the expiration of the twenty-four-hour time period within which the administrator must act on the application. If all the necessary information has been provided and the applicant is found to be eligible, assistance will be granted. If the applicant does not provide the required information needed within the twenty-four-hour period, and the administrator cannot determine the applicant's eligibility, the application will be denied on the basis of insufficient information and documentation. The administrator will notify the applicant that he may reapply when he can complete the application.

(c) *Eligibility of members of person's household.* Failure of an otherwise eligible person to comply with this chapter shall not affect the general assistance eligibility of any member of the person's household who is not capable of working, including at least:

- (1) A dependent minor child;
- (2) An elderly, ill, or disabled person; and
- (3) A person whose presence is required in order to provide care for any child under the age of six (6) years, or for any ill or disabled member of the household.

(d) *Minors.* A person under the age of eighteen (18) who has never married and applies for general assistance and who is pregnant or has a dependent child or children will be eligible to receive general assistance only if the minor is residing in the home of his parent, legal guardian or other adult relative, in which case the entire household will be evaluated for eligibility. Exceptions to this limitation on eligibility will be made when:

- (1) The minor is residing in a foster home, maternity home, or other adult supervised supportive living arrangement; or
- (2) The minor has no living parent or the whereabouts of both parents are unknown; or
- (3) No parent will permit the minor to live in the parent's home; or
- (4) The minor has lived apart from both parents for at least one (1) year before the birth of any dependent child; or
- (5) The department of human services determines that the physical or emotional health or safety of the minor or the minor's dependent child or children would be jeopardized if the minor and his child or children lived with a parent; or
- (6) The department of human services determines, in accordance with its regulations, that there is good cause to waive this limitation on eligibility.

Any unemancipated or unmarried minor under the age of eighteen (18) who is applying independently from his parents for general assistance will be informed that until he reaches the age of eighteen (18), the minor's parents are still legally liable for his support and the city has the right to seek recovery from the parents of the cost of all assistance granted to the minor, at least to the extent his parents are financially capable of repaying the city. With regard to any such application, the city may seek verification of the minor's need for general assistance by contacting his parents. If the applicant's parents declare a willingness to provide the applicant with his basic needs directly, and there is no convincing evidence that the applicant would be jeopardized by relying on his parents for basic needs, the administrator may find the applicant to be in no need for general assistance for the reason that his needs are being provided by a legally liable relative. Nothing herein modifies or changes parental or spousal obligation to support an applicant under the age of twenty-five (25) pursuant to section 13-3(d) above.

(e) *Benefits pending verification.* Whenever an applicant for general assistance states to the caseworker that he is in an emergency situation and requires immediate assistance to meet basic necessities, the caseworker shall, pending verification, issue to the applicant either personally or by mail, within twenty-four (24) hours of the application, sufficient benefits to provide the basic necessities needed immediately by the applicant, provided that the following conditions are met:

- (1) As a result of the initial interview with the applicant, the caseworker determines that the applicant will probably be eligible for assistance after full verification is completed.
- (2) Where possible, at the time of the initial interview, the applicant shall submit to the caseworker adequate documentation to verify that there is a need for immediate assistance.
- (3) When adequate documentation is not available at the time of the initial application, the caseworker may contact at least one (1) other person for the purpose of obtaining information to confirm the applicant's statements about his need for immediate assistance.
- (4) Limitations. In no case:

- a. May the authorization of benefits under this section exceed thirty (30) days; and
- b. May there be further authorization of benefits to the applicant until there has been full verification confirming the applicant's eligibility.

(Ord. No. 399-92, 6-3-92; Ord. No. 84-93, § 9, 9-8-93)

Sec. 13-6. False representation.

It is unlawful for a person to make knowingly and willfully a false representation of a material fact in order to receive general assistance or to cause another to receive assistance. A material fact is any information which has a direct bearing on the person's eligibility. False representation shall consist of any action by an individual to knowingly and willfully:

- (a) Make a false statement to the administrator or the state department of human services or their agents, either orally or in writing, in order to obtain assistance to which the applicant, the applicant's household or another is otherwise not entitled;
- (b) Conceal information from the overseer, administrator or the state department of human services or its agents in order to obtain assistance to which the applicant or applicant's household or another is otherwise not entitled; or
- (c) Transfer real or personal property to a third party solely to appear eligible for general assistance. There will be a rebuttable presumption that the applicant transferred his assets in order to appear eligible for general assistance if the transfer occurred within thirty (30) days prior to applying for general assistance, or if property is sold to a relative or acquaintance for less than fair market value; or
- (d) Use general assistance benefits for a purpose other than that for which they were intended.

When the administrator has reason to believe a misrepresentation of circumstances has occurred on an application, the applicant will be asked to furnish the information needed and/or verify the accuracy of the information provided. If the

applicant is unwilling or unable to produce the required verification within a reasonable period of time, and the administrator concludes that there has been a false representation of a material fact, the applicant may be ineligible for assistance for one hundred twenty (120) days, although the remainder of the applicant's household may still be eligible. False representation hereunder is a Class E crime.

A person disqualified from receiving general assistance for making a false representation will be given notice and afforded the opportunity to appeal the decision to the fair hearing officer in accordance with section 13-12 of this chapter. No recipient shall have his assistance reduced or revoked during the period of eligibility before being notified and given the opportunity to appeal the decision.

If an applicant or recipient does not appeal the decision, or if the fair hearing officer determines that an applicant or recipient did make a false representation, he will be required to reimburse the city for any assistance received to which he was not entitled. Any person who is dissatisfied with the decision of the fair hearing officer may appeal that decision to the superior court pursuant to Rule 80-B, Maine Rules of Civil Procedure.

In no event will the disqualification of a person under this section serve to disqualify any dependent in their household. In the event one (1) or more members of a household are disqualified and assistance is requested for the remaining dependents, the eligibility of those dependents will be calculated as though the household is comprised of the dependents only, except that the entire household income will be considered available to them.
(Ord. No. 399-92, 6-3-92; Ord. No. 84-93, § 10, 9-8-93)

Sec. 13-7. Determination of need.

(a) *Determination of need.* The period of time used to calculate need will be the thirty-day period starting from the date of application. Applicants will not be considered in need of general assistance if their income, property, credit, assets or other resources available to provide basic necessities for their household are greater than the applicable overall maximum level of assistance set forth in section 13-9(a). The difference between the applicant's income/resources and the overall maximum levels of assistance established by this chapter is the applicant's deficit. Once an applicant's deficit has been determined, the specific maximum levels of assistance for each basic necessity listed in

section 13-9(c) shall be used by the administrator to determine the distribution of assistance for which the applicant is eligible. The specific maximum levels of assistance for each basic necessity are intended to be reasonable and sufficient to maintain health and decency.

The administrator will calculate applicant's expenses according to the actual expense of the basic necessity or the maximum levels for the specific necessities allowed in section 13-9(b) or (c), whichever is less. Applicants will not be considered eligible if their income and other resources exceed this calculation (or the overall maximums in section 13-9(a)) except in an emergency.

The municipality will provide assistance in an amount up to the deficit to the extent the applicant is in need of basic necessities. The municipality will not grant assistance in excess of the maximum amounts allowed in section 13-9 of this chapter, except in an emergency.

(b) *Income for basic necessities.* Applicants are required to use their income for basic necessities. Except for initial applicants, no applicant is eligible to receive assistance to replace income that was spent within the thirty-day period prior to an application for assistance on goods and services that are not basic necessities. All income spent on goods and services that are not basic necessities will be considered available to the applicant and combined with the applicant's prospective thirty-day income for the purposes of computing eligibility. Applicants who have sufficient income to purchase goods or services which are not basic necessities will not be considered eligible for assistance. Persons who exhaust their income on basic necessities and who still need assistance with other basic necessities will be eligible, provided that their income does not exceed the overall maximum level of assistance.

(c) *Use-of-income requirements.* Except for initial applicants, anyone applying for general assistance must document their use of income to the administrator.

Cable television, mail orders, cigarettes/alcohol, gifts, purchases, costs of trips or vacations, court fines paid, repayments of unsecured loans, credit card debt, costs associated with pet care, legal fees, late fees or key deposits are not considered basic necessities and will not be included in the budget computation. The foregoing list is not intended to be exhaustive

and the administrator is authorized to promulgate and update as needed a list of ineligible items.

The city reserves the right to impose specific use-of-income requirements on any applicant, other than an initial applicant, who fails to use his income for basic necessities or fails to reasonably document his use of income. Those additional requirements will be applied in the following manner:

- (1) The administrator may require the applicant to use some or all of his income, at the time it becomes available, toward specific basic necessities. The administrator may prioritize such required expenditures so that most or all of the applicant's income is applied to housing (i.e., rent/mortgage), energy (i.e., heating fuel, electricity), or other specified basic necessities.
- (2) The administrator will notify applicants in writing of the specific use-of-income requirements placed on them.
- (3) If upon subsequent application it cannot be determined how the applicant's income was spent, or it is determined that some or all of the applicant's income was not spent as directed and was also not spent on basic necessities, the applicant will not be eligible to receive either regular or emergency general assistance to replace that income.
- (4) If the applicant does not spend his income as directed, but can show with verifiable documentation that all income was spent on basic necessities up to allowed amounts, the applicant will remain eligible to the extent of the applicant's eligibility and need.

(Ord. No. 399-92, 6-3-92)

Sec. 13-8. Income.

(a) *Income standards.* Applicants whose income exceeds the overall maximum level of assistance provided in section 13-9(a) shall not be eligible for general assistance except in an emergency. The administrator will conduct an individual factual inquiry into the applicant's income and expenses each time they apply.

(b) *Calculation of income.* To determine whether applicants are in need, the administrator will calculate the income they will

receive during the next thirty-day period commencing on the date of application and any assets or resources that would alleviate their need. For all applicants other than initial applicants, the administrator will also consider as available income any income that was not spent during the previous thirty-day period on basic necessities, as well as any income that was spent on basic necessities in unreasonable excess of the chapter maximums for specific basic necessities. If the applicant's income exceeds the amount needed for basic necessities, up to the maximum levels contained in section 13-9, the applicant will not be considered in need. Exceptions will be made in emergency situations which may necessitate that the maximum levels be exceeded. To calculate weekly income and expenses, the administrator will divide the applicant's monthly income and expenses by four and three-tenths ($4 \frac{3}{10}$).

(c) *Types of income.* Income, defined in section 13-2, which will be considered in determining an applicant's need includes, but is not limited to:

- (1) *Earned income.* Income in cash or in kind earned by the applicant through wages, salary, commissions or profit, whether self-employed or as an employee, is to be included. When income consists of wages, the amount computed will be that available after taxes, social security and other payroll deductions required by state, federal and local law. Rental income and profit from produce sold fall into this category. Income that is held in trust and unavailable to the applicant or the applicant's dependents will not be considered as earned income. Actual work-related expenses such as union dues, transportation to and from work, special equipment and child care costs will be deducted from income.
- (2) *Self-employment.* With respect to self-employment, total profit is arrived at by subtracting reasonable business expenses from gross income. In the event that business expenses exceed income, or there is no reasonable likelihood that the business will be profitable within a three-month period, the applicant will be required to comply with the work requirements.
- (3) *Income from spouse or support from relatives.* Contributions from a spouse or relatives who are not members of the applicant's household will be considered income only if it is actually received by the applicant

or used to pay any of his expenses. Income from unrelated household members will be considered available to the applicant, whether or not the household member is legally obligated for the support of the applicant, if the household members pool or share their income and expenses or intermingle their funds so as to provide support to one another.

- (4) *Income from other assistance or social services programs.* State categorical assistance benefits, SSI payments, social security payments, VA benefits, unemployment insurance benefits and payments from other government sources will be considered as income, unless expressly prohibited by federal law or regulation. Food stamps and fuel assistance payments made by the home energy assistance program will not be considered income.
- (5) *Court-ordered support payments.* Alimony and child support payments will be considered income only if actually received by the applicant. The administrator will refer cases where support payments are not actually received to the state department of human services' support enforcement location unit.
- (6) *Income from other sources.* Payments from pensions, annuities, trust funds, and disability or other insurance will be considered income. Income from unrelated household members who occupy the same dwelling unit and who contribute their fair share for living expenses such as rent, fuel and utilities will not be considered income that is available to the applicant unless actually received by the applicant. However, only the applicant's prorata share of expenses will be considered when determining his expenses. Income also includes gifts and cash received on secured or unsecured credit, from any source.
- (7) *Earnings of a son or daughter.* Income from children who are members of the household will be considered available. Earned income received by sons and daughters below the age of eighteen (18) who are full-time students and who are not working full-time will not be considered income.
- (8) *Income from household members.* Income from all related members of the household will be considered available

except as provided in (7) above.

- (9) *Pooling of income.* When two (2) or more individuals share the same dwelling unit but not all members of the household are applying for general assistance, there is a rebuttable presumption that the entire household is pooling income. One (1) or more applicants for assistance can successfully rebut the presumption that all household income is being pooled by providing the administrator with verifiable information affirmatively demonstrating a pattern of nonpooling for the duration of the shared living arrangement. If the applicant is unable to successfully rebut the presumption that all household income is being pooled, eligibility of the entire household will be determined based on total household income. If the applicant successfully rebuts the presumption that all household income is being pooled, the applicant's eligibility will be determined on the basis of his income and his prorata share of actual household expenses.

- (10) *Lump sum income.* The lump sum proration in section 13-2 above and herein only applies to applicants who:

- a. Are not initial applicants; and
- b. Had notice, prior to receiving the lump sum payment, of the authority to prorate eligibility.

If these conditions are met, the lump sum proration will be determined as follows:

- a. Subtract from the lump sum payment all deductions required by state or federal law;
- b. Subtract from the lump sum any amount the applicant can demonstrate was spent on basic necessities, including all basic necessities provided by general assistance up to the specific maximum levels of assistance, per month, provided in this chapter; payment of funeral or burial expenses for a family member; travel costs related to the illness or death of a family member; repair or replacement of essentials lost due to fire, flood or other natural disaster; repair or purchase of a motor vehicle essential for employment, education, training or

other day-to-day living necessities; and

- c. Divide the remaining amount by the applicant's maximum monthly allocation of general assistance.

This amount represents the number of months from the receipt of the lump sum payment that the applicant(s) will not be eligible for general assistance, except in an emergency. No proration of eligibility can extend longer than twelve (12) months from the date of application. Applicants who have been declared ineligible by reason of lump sum proration shall be eligible for emergency general assistance during the period of proration according to the standards at section 13-3(i) of this chapter.

(Ord. No. 399-92, 6-3-92)

Sec. 13-9. Basic necessities.

(a) *Overall maximum levels of assistance.* Notwithstanding any of the maximum levels of assistance for specific basic necessities listed in this section, an applicant's eligibility for general assistance will be first determined by subtracting his total income, less voluntary deductions mandated by state, federal or local law, from the overall maximum level of assistance established by 22 M.R.S.A. Sec. 4305(3-B) and published by Maine Municipal Association for the applicable household size. Except on initial applications, applicants must apply their income to basic necessities. Applicants whose income exceeds the overall maximum level of assistance and/or applicants who have not applied their income toward basic needs as required shall not be eligible for general assistance, unless they are in an emergency.

The overall maximum levels of assistance shall be periodically adjusted to conform to 22 M.R.S.A. Sec. 4305(3-B) as published in Maine Municipal Association's General Assistance Manual. A copy of the maximum levels of assistance shall be on file in, and available from the city's general assistance office.

Notwithstanding any other provision in this chapter for the period from July 1, 2012 to June 30, 2013, to comply with 22 M.R.S.A. §4305(3)(C) as enacted by the State's supplemental budget for FY'13, the overall maximum allowed shall be:

Persons in Household

1	2	3	4	5*
731	868	1124	1416	1517

***Note: Add \$68 for each additional person.**

(b) *Maximum levels of assistance for specific basic necessities.* The municipality will grant assistance to eligible applicants for basic necessities according to the maximum levels for specific types of assistance set forth below. The administrator, in consultation with the applicant, may apply the amount of the applicant's deficit toward assistance with any one (1) or combination of necessities not to exceed the total deficit. In all cases, either the actual expenses the applicant incurs for basic necessities or the maximum amount allowed in each category, whichever is less, will be used in determining need. The maximum levels will be strictly adhered to although, if the administrator determines that there are exceptional circumstances and an emergency is shown to exist, these absolute levels will be waived in order to meet immediate needs.

No assistance will be granted to an applicant for any expense which has been or will be paid by another person, or which has been incurred in another person's name.

(c) *Necessary expenses.* Assistance will be granted pursuant to the provisions of this section except that for the period from July 1, 2012 to June 30, 2013 the Administrator will provide rent or mortgage payments that are reasonable within the allowed maximum levels and in accordance with the housing assistance limits and exceptions provided in Title 22 M.R.S.A. §4308, subsections 1-A and 1-B, as enacted by the State's supplemental budget for FY'13 and as shown below:

<u>Bedrooms</u>	<u>Unheated</u>		<u>Heated</u>	
	Weekly	Monthly	Weekly	Monthly
0	100	431	112	481
1	118	507	133	572
2	150	648	172	739
3	178	765	204	879
4	225	966	264	1134

(1) *Food.* The actual expense for food will be budgeted to the

following maximums. Alcoholic beverages, tobacco products, pet food and paper products are not considered to be food.

Number in Household	Daily Food Amount	Weekly Food Amount	Monthly Food Amount
1	\$ 3.70	\$ 26.00	\$111.00
2	7.00	49.00	203.00
3	10.00	68.00	292.00
4	12.00	86.00	370.00
5	15.00	102.00	440.00
6	18.00	123.00	528.00
7	19.00	136.00	584.00
8	22.00	155.00	667.00

Additional members of household: Add \$83.00 per month (\$19.50 per week) per person. The administrator is authorized to adjust the above amounts to conform to the U.S.D.A. "Thrifty Food Plan" amounts to the extent that such amounts are recommended by the Maine State Department of Human Services.

- (2) *Housing.* The payment for rent or mortgage will be entered in the budget but may not exceed the following maximums regardless of the amount actually paid. It is the responsibility of the applicant to obtain housing that is within his ability to pay and which is the minimum size

unit needed to shelter the applicant's household.

Number in Household	Weekly Rent		Monthly Rent	
	Unheated	Heated	Unheated	Heated
1 Room & Board		\$104.00		\$447.00
1	\$ 55.00	74.00	\$235.00	315.00
2	80.00	94.00	340.00	405.00
3 and 4	95.00	115.00	410.00	495.00
5 or more	120.00	142.00	520.00	610.00

* Add \$4.00 per week or \$18.00 per month if electricity is included.

When the city issues in aggregate more than six hundred dollars (\$600.00) in rental payments to any landlord in any calendar year, a 1099 Form declaring the total amount of rental payments during the calendar year will be issued to the Internal Revenue Service. This may be adjusted by the administrator to comply with IRS regulations.

Any landlord wishing to receive rental payments from the city on behalf of any applicant must comply with all state and local licensing and land use codes. The city reserves the right to inspect any rental unit whenever an applicant applies for assistance with that rent, such inspections to determine whether that unit is in compliance with the city's housing and land use codes. The administrator is authorized to promulgate policies detailing such inspection requirements.

- (3) *Fuel.* Expense for fuel oil for heat and hot water, if not included in the rent, will be budgeted at actual cost, subject to the following maximums:

Month	Maximum Number of Gallons	
	# 2 Fuel Oil	Kerosene
September 15 to October 30	100	100
November	125	150
December	200	250
January	300	250
February	200	250
March	150	150
April 1 to May 15	150	100
May 15 to September 15 (hot water only)	120	100

If hot water is not provided by fuel oil (or kerosene as applicable), deduct thirty (30) gallons per month from the above maximums.

- (4) *Utilities.* Expenses for gas or electricity, if not included in the rent, will be budgeted at actual cost, subject to the following maximums:

Basic Amount:

Number in Household	Monthly Amount
1 or 2	\$26.00
3 or 4	53.00
5 or more	76.00

If hot water is provided by gas or electricity, and is not included in the rent, the expense will be budgeted at actual cost, subject to the following maximums to be added to the basic amount:

Number in Household	Monthly Amount
1 or 2	\$16.00
3 or 4	30.00
5 or more	42.00

If heat is provided by gas or electricity, and is not included in the rent, the expense will be budgeted at actual cost, subject to the following maximums to be added to the basic amount:

Month	Monthly Amount
September and October	\$ 72.00

November	96.00
December through February	168.00
March	96.00
April and May	72.00

- (5) *Water and sewer.* The allowed amount for water and sewer utility services will be budgeted at the actual cost, subject to the following maximums:

Number in Household	Monthly Amount	
	Water	Sewer
1	\$ 5.12	\$ 5.86
2	6.19	14.65
3	8.33	20.51
4	11.54	29.30
5	13.68	35.16

Additional members of household: Add two dollars and fifty cents (\$2.50) for water and seven dollars and fifty cents (\$7.50) for sewer per month. The administrator may adjust the foregoing maximums for water and sewer to reflect approved rate increases.

- (6) *Personal and household items.* This allowance covers necessary personal care and household supplies such as toothpaste, soap, toilet paper, etc., and will be granted according to the applicant's actual need for these items

subject to the following maximums. The maximum amounts allowed are:

Number in Household	Weekly Amount	Monthly Amount
1	\$ 5.00	\$20.00
2	7.00	28.00
3 or 4	9.00	36.00
5 or more	11.00	44.00

- (7) *Clothing.* If the applicant and his or her dependents have insufficient funds to purchase clothing, the applicant is expected to make maximum use of church and civic organizations or other sources in the community which make free or low-cost clothing available. If necessary, the city will provide payment for essential items obtainable from these sources. Exceptions to this policy will be made only for special items such as work clothes, children's shoes, and cloth or disposable diapers as provided below, which are unavailable from these sources. If a household includes children below the age of three (3) who use diapers, one (1) of the following may be authorized:

- a. Cloth diapers and/or laundry assistance; or
- b. Voucher to purchase disposable diapers in the following maximum amounts:

Number of Children	Weekly Amount	Monthly Amount
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Using Diapers		
1	\$10.00	\$ 40.00
2	15.00	60.00
3	20.00	80.00
4	25.00	100.00

- (8) *Nonelective medical expenses.* The city will pay for nonelective medical expenses, other than hospital bills (see below), provided that the city is notified and approves the expenses and services prior to their being made or delivered. The city will grant assistance for medical service only when assistance cannot be obtained from any other source and the applicant would not be able to receive necessary medical care without the city's assistance. The applicant is required to utilize any resource, including any federal or state program, that will diminish his need to seek general assistance for medical expenses. The city will grant assistance for nonemergency medical services only if a physician verifies that the services are nonelective. The administrator may require a second medical opinion from a physician designated by the city at the city's expense to verify the necessity of the services.

Notwithstanding the foregoing, the following will be considered nonelective only in exceptional circumstances which are verified by a physician of the city's choice: chiropractic, acupuncture and/or massage therapy services.

Except in the case of a medical emergency, applicants must use available medical resources including, but not limited to, medical providers readily accessible to applicant and to minimize cost thereof to the city through the use of medicaid providers. It is the applicant's responsibility to apply promptly for medicaid and to secure the services of a provider who accepts

medicaid reimbursement.

- (9) *Hospital bills.* In the event of an emergency admission to the hospital, the hospital must notify the administrator within five (5) business days of the admission. Notification must be by telephone, confirmed by certified mail, or by certified mail only. If a hospital fails to give timely notice to the administrator, the city will have no obligation to pay the bill.

Any person who cannot pay his hospital bill must apply to the hospital for consideration under the hospital's charity care program as provided in Title 22 M.R.S.A. 396-F(1). Anyone who is not eligible for the hospital's charity care program may apply for general assistance. Applicants must apply for assistance within thirty (30) days of being discharged from the hospital and provide a notice from the hospital certifying that they are not eligible for the hospital's charity care program.

Before the administrator will consider whether to allow a hospital bill as a necessary expense, the applicant must enter into a reasonable payment arrangement with the hospital. The payment arrangement will be based upon the medicaid rate. In determining an applicant's eligibility, the city will budget the monthly payment to the hospital the applicant has agreed to pay. The applicant's need for assistance with a hospital bill will be considered each time he applies by including the amount of the bill in the applicant's monthly budget, but the recipient will be responsible for making any necessary payments to the hospital pursuant to the use-of-income requirements found at section 13-7(c) above.

- (10) *Dental.* The city will pay for nonelective medically necessary dental services only. If full mouth extractions are necessary, the city will pay for dentures provided the applicant has no other resources to pay for the dentures. The applicant will be referred to a dental clinic in the area whenever possible. The administrator will expect the applicant to bear a reasonable part of the cost for dental services, including extractions and dentures, taking into account the applicant's ability to pay.

- (11) *Eye care.* In order to be eligible to receive general

assistance for eyeglasses, an applicant must have his medical need certified by a person licensed to practice optometry. The general assistance administrator will provide assistance for eyeglasses to eligible persons only after the applicant has exhausted all other available resources.

(12) *Telephone charge.* Payment for a basic telephone charge will only be authorized if a telephone is necessary for medical reasons as verified by a physician.

(13) *Burials/cremations.* Burial services will be provided only in instances where there is no other person or agency to perform the function. The administrator will respect the wishes of family members with regard to whether the deceased is interred by means of burial or cremated.

a. Burials. The maximum amount of general assistance granted for the purpose of burial is \$1,125.00, with additional payments, where there is an actual cost, for:

1. the wholesale cost of a cement liner if the cemetery by-laws require one;
2. the opening and closing of the grave site; and
3. a lot in the least expensive section of the cemetery. If the municipality is able to provide a cemetery lot in a city owned cemetery or in a cemetery under city control, the cost of the cemetery lot in any other cemetery will not be paid by the city.

The city's obligation to provide funds for burial purposes is limited to a reasonable calculation of the funeral director's direct costs, not to exceed the maximum amounts of assistance described in this section. Allowable burial expenses are limited to: removal of the body from a local residence or institution; a secured death certificate or obituary; embalming; a minimum casket; a reasonable cost for necessary transportation; and other reasonable and necessary specified direct costs, as itemized by the funeral director and approved by the administrator.

- b. Cremation expenses. In the absence of any objection by any family members of the deceased known to the administrator, or when neither the administrator nor the funeral director can locate any family members, the administrator may issue general assistance for cremation services. The maximum amount of assistance granted for a cremation shall be \$785.00, with additional payments, where there is an actual cost, for a cremation lot in the least expensive section of the cemetery, a reasonable cost for a burial urn not to exceed \$50.00, and transportation costs borne by the funeral director at a reasonable rate per mile for transporting the remains to and from the cremation facility.
- c. Application for burial/cremation expenses must be made by the closest relative available before the burial/cremation takes place to be eligible for city assistance. Such application shall be made on behalf of and in the name of the deceased. When there is no relative, the city will provide assistance only if written notification is received prior to burial or cremation or by the end of the next business day following the funeral director's receipt of the body, whichever is earlier. It is the funeral director's responsibility to make a good faith effort to determine if the family or any other persons are going to pay all or part of the burial/cremation expenses. If family members or others are unable to pay the expenses, and the funeral director wants the city to pay all or part of the expenses, the funeral director must make timely contact to the administrator. Any and all contributions or benefits from any other sources which are available must be deducted from the maximum amounts which the city will pay for burial or cremation.
- d. A decision on any application for assistance with burial/cremation expenses need not be rendered until the administrator has verified that no relative or other resource is available to pay for the burial/cremation costs, but the decision must be rendered within ten (10) days after receiving an application. The father, mother, grandfather,

grandmother, children, grandchildren or siblings, by consanguinity, living within or owning real or tangible property within the state shall be responsible for burial or cremation costs for the eligible person in proportion to their respective abilities, on either a lump sum or installment payment basis. All legally liable relatives must provide the administrator with any reasonably requested information regarding their income, assets, and basic living expenses.

- e. The administrator may adjust the maximum levels of assistance for burials and cremation expenses to conform to those adopted in the Maine Municipal Association General Assistance Manual, as it may be amended from time to time.

(14) *Property taxes.* In the event an applicant requests assistance with his property taxes, the administrator will inform the applicant that there are two (2) procedures to request that relief, i.e., the poverty abatement process under 36 M.R.S.A. § 841(2) and through general assistance. If the applicant chooses to seek property tax assistance through general assistance, or if the applicant is denied a poverty tax abatement, the administrator may consider using general assistance to meet this need only if:

- a. The property tax in question is for the applicant's place of residence; and
- b. There is a tax lien on the property which is due to mature within sixty (60) days of the date of application; and
- c. The applicant uses all available resources for property tax relief.

(15) *Transportation.* Applicants are expected to utilize all resources available for transportation, including walking reasonable distances. Assistance for transportation will be granted only if necessary to pursue a bona fide job offer or as a work-related expense or if determined to be necessary to the applicant's health and safety and transportation cannot be obtained from any other source or through any other means. Resources in the city which

minimize the need for transportation assistance must be utilized. The amount and type of assistance granted will be the minimum necessary to alleviate the need.

- (16) *Other assistance.* Assistance may be granted with household items only upon a determination by the administrator that such assistance is essential to the applicant's health and safety and cannot be obtained from any other source or through any other means. The amount and type of assistance will be the minimum necessary to alleviate the need.

(Ord. No. 399-92, 6-3-92; Ord. No. 84-93, §§ 11, 12, 9-9-93; Ord. No. 186-01/02, § 1, 2, 3-18-02; Ord. No. 216-11/12, emergency passage 6-18-12)

Sec. 13-10. Forms of assistance.

All assistance will be by purchase order, voucher or direct payments, and only for those items of basic need for which the applicant seeks assistance. Assistance will be provided in the following forms:

- (a) *Food:* City voucher;
- (b) *Rent:* Paid directly to landlords. No rent will be paid in advance;
- (c) *Fuel:* Paid directly to the vendor;
- (d) *Mortgage:* Paid directly to the mortgagee;
- (e) *Utilities:* Paid directly to the utility;
- (f) *Clothing:* By purchase order from used clothing or other retail store;
- (g) *Medication:* By purchase order to druggist;
- (h) *Nonfood:* By purchase order to grocery or department store; and
- (i) *Medical, dental, eye care, burial/cremation:* Paid directly to the agency or person rendering the service.

(Ord. No. 399-92, 6-3-92)

Sec. 13-11. Recovery of expenses.

The city may recover general assistance granted to a recipient from relatives or others pursuant to state law and to the extent of their liability thereunder. Further, the city may claim a lien for the value of all general assistance payments made to a recipient on any lump sum payment made to the recipient under the worker's compensation act or similar law of any other state. Such lien shall be claimed pursuant to state law. The city will be reimbursed for general assistance payments to a recipient who receives Supplemental Security Income pursuant to state and federal law and regulation.

(Ord. No. 399-92, 6-3-92)

Sec. 13-12. Appeals.

(a) *Grant, denial, reduction or termination to be communicated in writing; right to a hearing.* Any action relative to the grant, denial, reduction, suspension or termination of relief provided under this chapter must be communicated to the applicant or recipient in writing. The decision shall include the specific reason or reasons for that action and shall inform the person affected of his right to a hearing, the procedure for requesting such a hearing, the right to notify the state department of human services and the available means for notifying such department, if he believes that the city has acted in violation of this chapter. All proceedings relating to the grant, denial, reduction, suspension or termination of relief provided under this chapter are not public proceedings under 1 M.R.S.A., Chapter 13 unless otherwise requested by the person aggrieved.

(b) *Right to a fair hearing.* Any person aggrieved by a decision, act, failure to act or delay in action concerning his application for general assistance under this chapter shall have the right to an appeal. If a person's application has been approved, there shall be no revocation of general assistance during the period of entitlement until that person has been provided notice and an opportunity for hearing as provided in this section. Within five (5) working days of receiving a written decision or notice of denial, reduction or termination of assistance, or within ten (10) working days after any act or failure to act by the administrator with regard to an application for assistance, the person aggrieved may request an appeal. A hearing shall be held by the fair hearing officer within five (5) working days following the receipt of a written request by the person aggrieved for an appeal. The hearing will be conducted by a fair hearing officer. In no event may an appeal be held before a person or body responsible for the decision, act, failure to act, or delay in relating to the

person aggrieved.

The person requesting the appeal and the administrator shall be afforded the right to confront and cross-examine any witnesses presented at the hearing, present witnesses in their own behalf and be represented by counsel or other. The person must be advised of these rights in writing. The decision of such an appeal shall be based solely on evidence adduced at the hearing. The person requesting the appeal shall, within five (5) days after the hearing, be furnished with a written decision detailing the reasons for that decision. When any decision by a fair hearing officer or court authorizing assistance is made, that assistance shall be provided within twenty-four (24) hours.

No recipient who has been granted assistance in accordance with this chapter may have that assistance terminated prior to the decision of the fair hearing officer. In the event of any termination of assistance to any recipient, the dependents of the person may still apply for and, if eligible, receive assistance.

(c) *Fair hearing officer.* The city council shall appoint persons to act as fair hearing officers. The terms of office shall not exceed three (3) years, and such persons shall serve without compensation. Fair hearing officers shall be residents of the city during their tenure. The overseer shall designate which fair hearing officer shall hold the hearing and decide each appeal in accordance with the provisions of 22 M.R.S.A. § 4322. Whenever the overseer determines that no designated hearing officer can act within the time frames required by said Section 4322 with respect to any pending appeal, he or she shall request that the city manager hear the appeal or designate a person, who was not responsible for the decision, act, failure to act, or delay that is the subject of the appeal, which person shall then hear and decide the appeal.

(d) *Duties of fair hearing officer.* Each fair hearing officer or alternate shall exercise the powers granted to a fair hearing authority pursuant to this chapter and 22 M.R.S.A., Chapter 1161.

(e) *Time of hearing.* Upon receipt of a written request for a hearing, the administrator shall arrange for the hearing to take place. The administrator will inform the appellant of the date, time and place of the proceeding.

(f) *Review procedure.* All reviews by a fair hearing officer will be conducted in accordance with the following:

- (1) Unless otherwise requested by the appellant, the proceeding will be conducted privately and open only to:
 - a. The appellant, witnesses and legal counsel;
 - b. The overseer, administrator, the casework supervisor or caseworkers, the city manager or his or her designee, witnesses, members of the city council and legal counsel.
- (2) The proceedings will be conducted informally without technical rules of evidence, but subject to the requirements of due process. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Irrelevant or unduly repetitious evidence may be excluded.
- (3) The appellant shall present his position with the aid of legal counsel or witnesses, if the appellant so desires.
- (4) The administrator shall then present his position with the aid of legal counsel or witnesses, if he so desires.
- (5) All participants shall be given an opportunity to:
 - a. Present oral or written testimony or documentary evidence;
 - b. Offer rebuttal;
 - c. Question witnesses on matters germane to the issue at hand;
 - d. Examine all evidence presented at the hearing.
- (g) *Decisions.* Upon completion of the proceeding, the fair hearing officer shall prepare a written notice of his decision which will contain the following information:
 - (1) A statement of the issues;
 - (2) Relevant evidence presented by any participant at the proceeding;

- (3) Pertinent provisions of the general law and this chapter relating to the fair hearing officer's decision;
- (4) The fair hearing officer's decision and the reason for it.

(h) *Appeal to superior court.* Copies of the notice of decision will be provided forthwith to the appellant. When any decision by a fair hearing officer or a court authorizes assistance, that assistance will be provided within twenty-four (24) hours of notice of the decision to the city. The decision shall also state that, if the appellant is dissatisfied with the fair hearing officer's decision, he or she may seek judicial review under Rule 80B, Maine Rules of Civil Procedure. The city will keep and provide a sufficient record of the fair hearing for the court review.

(Ord. No. 399-92, 6-3-92; Ord. No. 84-93, §§ 13, 14, 9-8-93)

Attachment D

City Challenge to 2013 DHHS Audit – No Response From State

Portland, Maine



Yes. Life's good here.

Danielle P. West-Chuhta
Corporation Counsel

Jennifer L. Thompson
Associate Counsel

Lawrence C. Walden
Associate Counsel

Trish McAllister
Neighborhood Prosecutor

April 18, 2014

Dave MacLean
General Assistance Program Manager
DHHS/OFI
19 Union Street
Augusta, ME 04333

**RE: General Assistance Review of the City of Portland's General Assistance
Program Compliance for June 2013**

Dear Mr. MacLean:

This letter is in response to the preliminary findings issued by the Office of Family Independence on April 1, 2014, in connection with your recent audit of Portland's General Assistance Program.

As the report makes clear, after your office "pulled" ninety cases for review and concluded that "each met the standards applied in Section X (a-k) of the Maine General Assistance Policy Manual, it then nevertheless indicated that the City has employed "improper eligibility determination and reimbursement practices" at its Oxford Street Shelter ("Oxford Street."). Notwithstanding the inconsistency of a finding of total compliance with respect to every individual case actually reviewed by the field examiner and a finding of "improper eligibility determinations," below are our responses to each of the findings of alleged noncompliance:

1. Paragraph 1 of the Exit Conference/Review Findings concludes that "Official IAR forms (Interim Assistance Reimbursement Forms) as required by 22 M.R.S. § 4318 are not being filled out and signed by individuals staying at the Oxford Street Shelter." Respectfully, this finding is not consistent with the information that was provided to the field examiner during his visit to Oxford Street or with the City's practices.

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General Assistance Program Manager
April 18, 2014
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First, the City does in fact provide IAR forms for individuals staying at the Oxford Street Shelter who are referred to Trista Collins, DHHS Disability Advocate. In fact, the Oxford Street Shelter staff work collaboratively with Ms. Collins. In 2012, Robert Parritt, Assistant Shelter Director met with Ms. Collins and agreed to serve as the point person for the DHHS Disability Process. Mr. Parritt and staff were instructed in the process of completing the IAR forms and referring appropriate clients for DHHS Disability Advocate Services. Prior to DHHS's hiring of Ms. Collins, we were not required by the State to use IAR forms. However, since she was hired and we were asked to use those forms for consumers referred to her for disability assessment, the City has been complying with that request.

Perhaps the confusion relates to a failure earlier in 2013 by a member of City staff to timely submit the forms. However, as we explained to the Field Examiner during his audit review, that prior failure related to poor job performance by a single member of City staff – someone who no longer is in this position – rather than a systemic or ongoing failure to submit necessary forms. Indeed, when the Field Examiner brought the failing to the City's attention in October of 2013, the City investigated, discovered the problem and developed a new protocol to ensure that forms are logged and submitted in a timely fashion.

The City also notes that Ms. Collins has often praised the shelter staff and program coordinator, in public meetings where other service providers were present, for flexibility and hard work maintaining the process as required by DHHS. On May 23rd, in a meeting with City and Preble Street staff, Ms. Collins was asked by Robert Parritt what, if anything, we could be doing to improve the process and she responded that the Oxford Street Shelter was doing a great job and has also responded to similar questions in preceding months with similar positive praise for the City's efforts - sometimes contrasting how well the City was doing versus other providers. Such high praise from an agent of the DHHS is not consistent with the findings contained in Paragraph 1 and so we respectfully request that that finding be omitted from the final report as it is unsupported by the evidence.

2. With respect to the findings contained in Paragraph 2 of the Exit Conference/Review Findings, the City disagrees that eligibility is not being determined on at least a monthly basis as required by 22 M.R.S. § 4309 and that applications are not provided to Portland GA staff for eligibility. The City also disagrees that its eligibility determination practices "came to light at a meeting on December 19, 2013 at the Portland GA Offices when City of Portland shelter staff showed DHS GA Program,

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Manager, Dave MacLean, a folder containing a month's worth of condensed GA applications."

The City of Portland has consistently been adhering to the DHHS shelter procedure which was developed and implemented back in the early 1990's. The City has an outstanding record of passing DHHS GA Audit Reviews which is clearly documented in letters from DHHS. Contrary to finding number 2, the City does in fact use a shelter eligibility form in order to determine eligibility. Significantly, that form was developed in collaboration with DHHS officials and expressly approved by them. (See June 17, 1996 Letter from Acting Deputy Commissioner Walsh, attached hereto as Attachment 1.) In fact it was the former DHHS Program Manager, Cindy Boyd, who worked with the City to revise the form and agreed that because of the high volume of clients served in the shelters each night the City does not need to enter the GA application into each individual client file and could keep them in a folders which were identified by each month of the year. This process was also reviewed by previous DHHS auditors during the past two decades and was never mentioned as a practice which needed to be changed.

Accordingly, because the City's protocols for determining and documenting eligibility were developed in collaboration with DHHS and approved by it, finding number 2 is also erroneous and not supported by the evidence and we ask that it be omitted from the final report.

3. Findings 3 and 4 conclude that "[t]he emergency shelter presumptive eligibility allowance (22 M.R.S. § 4304) is being improperly utilized to determine eligibility beyond an initial night at the shelter." According to the findings, "[b]eyond the initial night, eligibility should be determined using regular general assistance eligibility standards as specified in the GA Policy Manual." Further, the report advises that the City is improperly seeking reimbursement based on the operating costs of running the shelters and must cease that practice. Under the suggested method of correction, the City would be limited to reimbursement at a "bed night rate" based not on the costs of running the shelter but on a prorated daily eligibility of a single individual.

First, nothing in the express language of the statute requires that "eligibility beyond an initial night at the shelter" be determined or that that eligibility should control reimbursement amounts. See 22 M.R.S. § 4304(3) (" . . . Municipalities may arrange with emergency shelters for the homeless to presume eligible for municipal assistance persons to whom the emergency shelter provides shelter services.") On the contrary, the language says only that presumptive eligibility is permissible – with absolutely no limit on the application of that presumption. Significantly, the State has

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April 18, 2014
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previously acknowledged that the City's interpretation in this regard is supported by the language of the statute.

I draw your attention to the opinion issued by Assistant Attorney General, Christina M. Hall (attached hereto as Attachment 2) in which she acknowledges that the language of 22 M.R.S. § 4304(3) supports the City's decades long practice of presuming eligibility for individuals seeking emergency shelter and that shelter expenses are reimbursable. Although she opines that DHHS's differing interpretation is also supported, we submit that DHHS's interpretation simply is not mandated by the language of the statute. In fact, a strong argument can (and if necessary, will) be made that to require individual determinations of eligibility for individuals staying in emergency shelters effectively reads the "presumed eligibility" language out of the statute -- something courts are hesitant to do.

Additionally, the new requirement that reimbursement be based on actual eligibility is in direct conflict with the prior approvals given of the City's shelter eligibility determinations and reimbursement practices. Significantly, the City's General Assistance program has been audited nearly every year for the last 30 years. Its use of presumptive eligibility for individuals staying in emergency shelters has remained the same since at least December 1989 when Oxford Street opened and DHHS has been well aware of the City's billing practices since that time. The statutory section relating to presumptive eligibility has not changed substantially since 1983 and, yet, the State has approved the City's presumptive eligibility practices in 2013, 2012, 2011, 2010, 2009, 2008 and for many years before that. Attached for your review are several letters issued by your office over the years validating the City's practices with respect both to presumptive eligibility and reimbursement based on shelter costs. (See Attachment 3). I draw your particular attention to the letter from Acting Deputy Commissioner Walsh in 1996 stating that "the costs of running the shelter (rent, electricity, heat, personnel and such) are operating costs, not General Assistance administrative costs. As such, these items, unless funded elsewhere, *may be included as costs in determining the daily rate of the shelter.*" (Attachment 1)

Therefore, the City's existing practices have been repeatedly approved under statutory language that is identical to the language on which this most recent determination has been made. We also attach for your information copies of the approvals most recently issued by your office.

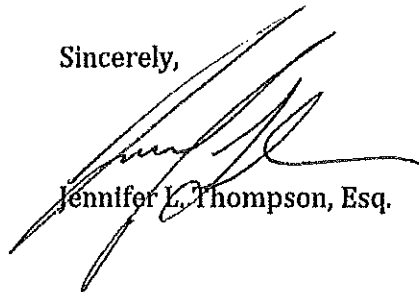
Given these prior determinations, there simply is no basis either in fact or in law for changing the interpretation and application of the GA statute to the City's shelter operations. We also remind you that collateral estoppel, the legal principle pursuant to

Dave MacLean
General Assistance Program Manager
April 18, 2014
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which prior determinations are binding and cannot be later challenged in a subsequent action, has been held by Maine's Law Court to apply to the final decisions of administrative bodies. See *Cline v. Maine Coast Nordic*, 1999 ME 72, ¶ 9, 728 A.2d 686, 688; *State v. Leduc*, 2008 Me. Super. LEXIS 178 fn. 2 (Murphy, J.) (July 22, 2008); and 22 M.R.S. § 4323(4) (determinations regarding violations are final after 30 days).

In sum, because of the ambiguity of the statute (as previously acknowledged by the Attorney General's office) and the fact that DHHS has repeatedly reviewed the City's protocols for determining eligibility and has not only repeatedly approved those protocols, but praised them as representative of an efficient and effective means of providing a necessary, emergency service, we urge you to change the findings in paragraphs 3 and 4 and specifically not to deviate from those prior determinations. To do so would not only be counter to past practices and applicable law, it would run counter to the best interests of the citizens of Portland and the State of Maine.

Sincerely,



Jennifer L. Thompson, Esq.

JLT/
Enclosures

Attachment E

Historical Correspondence and Related Documentation between the City and State

Social Services Division
Robert Duranleau
Director



Health & Human Services Department

CITY OF PORTLAND

May 17, 1991

Mr. Richard Morrow
Director Special Services Unit
Station #1
Augusta, Maine 04333

Dear Mr. Morrow:

This letter serves as a followup to our telephone conversations on May 8th and 9th and my May 9th exit conference with Donna Nickless, Field Examiner, regarding the issues of 1) costs for rental of a workfare van and 2) costs of shelter operations, and the inclusion of these costs in reimbursement reports.

I. History of the Workfare Program.

The City of Portland began operations of its Workfare Program in 1982. Throughout the years, its scope has fluctuated. In 1988, the program was nearly non-existent as employment counselors were able to assist individuals to find employment in the private sector within a short period of time. In 1989, participation in Workfare again began to increase. Due to the current economic situation, the Workfare Program has experienced drastic growth during the past year. According to the March statistical report, 211 individuals completed workfare assignments for a total of 7,493 hours worked. The G.A. program continues to experience an increase in the number of applicants eligible for general assistance. This has resulted in 100 -150 individuals reporting for their workfare assignments each day. The City of Portland currently has 20 workfare sites located throughout the City.

II. Use of a Rental Workfare Van.

With the exception of two years from approximately 1987 to 1989, the City has always rented a van to be used exclusively for the transportation of clients to their assigned workfare sites from the G.A. Office. These sites may be as much as 15 miles away, and most are not within walking distance. Currently, the City rents this van from Rent-A-Relic. In addition to transporting clients to assigned worksites, it is also used to transport clients home or to the nearest bus stop at the end of the day. It is not used for any purpose other than transporting general assistance clients.

III. Costs for Rental of the Workfare Van.

The G.A. expenditure reports indicate that the rental costs of a workfare van have been included as a client reimbursement expense since the beginning of the program. In addition, the cost of gas for the van have also been included as a reimbursable net general assistance cost. A seven year review of our expenditure reports indicate that the rental and gas costs have been included under the line item "workfare code 229". It is the City's understanding that the State has been aware of this procedure and considers this cost as directly related to client general assistance expenditures. With this understanding, the City has always considered it a direct expense, distinct from Administrative expenses for the Workfare program, which are paid by local funds. These Administrative expenses include rental of office space, office utilities, office supplies, staff costs, including workfare coordinator, site supervisors and program administrator. In addition, it is clear that the use of the van is more cost efficient for the State, since individual bus coupons to each client would be far more costly.

I. Shelter Operations: Background.

The City of Portland opened its first shelter for homeless families in 1983. Since that time the City has expanded its shelter network to include two family shelters, three transitional housing programs for families and an emergency shelter for adults. The lack of shelter space, public or private, within the City prior to 1985 resulted in substantial general assistance costs for hotel/motel expenses for the homeless. The 1985 Department of Human Services Audit of the City's G.A. costs was a direct result of the drastic increase in G.A. expenditures of motel/hotel costs to shelter homeless individuals. The City expanded its shelter capacity in 1986 and 1987 as a direct result of this 1985 audit.

II. Family and Transitional Housing.

The family shelters and transitional family housing consist of apartment buildings which the City rents from private landlords. Clients are charged rent within the City's rental allowances for use of the building. This rent is billed to the G.A. program. Each homeless family is placed into an apartment and assigned a casemanager to assist with crisis intervention and the location of permanent housing. Supervision is not provided in the building. City social workers are available for monitoring and supervision from Monday to Friday, 8 a.m. to 5 p.m. All staff costs, i.e. social workers, casemanagers, etc. are paid by the City from local funds as Administrative costs. The City's understanding is that the State has not questioned these family housing arrangements.

III. Adult Housing.

In September of 1987, the City opened its first emergency shelter for homeless adults at Wilmot Street in response to the growing problem of homelessness in the Portland community. This building consisted of a two-unit apartment building which was converted into a sixteen bed lodging facility. This facility provided shelter to the adult homeless transient population, which includes many individuals with substance abuse and psychiatric problems. Due to the population being served, it was necessary to hire shelter attendants to monitor the adult shelter. Without an attendant, it is likely the shelter would have to close. In May of 1988, the City moved the emergency shelter to a larger building at 16 Alder Street, and in December of 1989, the City opened the Oxford Street Shelter. The Cumberland County Jail which had been providing emergency shelter closed, and as of November 1989, all homeless adults were referred to the City's Emergency Shelters. Currently, the City has two shelters on Cedar Street (replacing those on Wilmot and Adler) and the Oxford Street Shelter. Only Oxford Street has an attendant. The State has questioned the inclusion of the cost of this attendant in the City's reimbursement.

IV. Shelter Cost Billing.

It is my understanding that the current shelter billing procedure which exists is a result of the 1985 Department of Human Services review of Portland's General Assistance program and was approved by Daniel O'Leary as a means of keeping shelter expenditure costs in line with resources.

In 1985, the City had been billing the State directly for rental costs of shelter and not indicating this amount in the individual client file. In March of 1985, the City's Social Services Division staff began indicating the shelter rental amount billed to the G.A. Program in each client file. It is my understanding that Doris Hohman, former City Director of Social Services, and Daniel O'Leary, former Director of the Division of Social Service for the State, agreed to this procedure. The procedure is based on the billing procedure used for the former 24 Hour Club (currently the Arnie Hanson Center) Shelter/Detox Program for substance abuse clients. Daniel O'Leary, Doris Hohman and other State officials agreed that the City could presume eligibility for homeless individuals residing at this shelter and bill the State for the operating costs of the program. I have included a copy of the letter written by Doris Hohman to John Coffey, Executive Director of the 24 Hour Club, which was copied to Daniel O'Leary. This letter explains the special billing arrangement which existed at that time, and had been approved by the Department of Human Services.

Richard Morrow
May 17
Page 4

Based on the above procedures approved by the State, clients staying at the Oxford Street Shelter sign a release form stating that their name may be used to apply G.A. to cover the costs of the shelter bed (Attachment 1). Direct shelter costs, including the cost for attendants, are then allocated to G.A. clients using the shelter. This information is then entered in the client computer printout and included with the G.A. billing report. (Donna Nickless, Field Examiner, stated that it was no longer necessary for Portland to include the client computer printout of assistance authorized with monthly G.A. reports. (Attachment 2).) Administrative costs, such as supportive Social Services, are paid by local or federal funds, as is shown in Attachment 3, the Oxford Street Shelter budget.

If the City were to charge each individual utilizing the Oxford Street shelter room and board costs of \$104.00 weekly as specified in the Portland G.A. ordinance, we would be billing the Department for a much larger shelter amount. In addition, if the City were paying rent to a private, attended shelter, the attendant's cost would undoubtedly be reflected in the amount charged to the City by the private provider.

Finally, if the City had to close its Oxford Street shelter, it could well be forced again to resort to use of hotels, motels, and other temporary lodging which would be far more costly to the City and the State. Thus, the cost of maintaining an attended public shelter is the most cost-efficient and best way of providing this needed temporary shelter for this population, and the use of an attendant to enable the shelter to remain open is a direct cost of providing this service to the client.

Please call me if you have any further questions or need more information regarding either of the above issues.

Sincerely yours,

Robert Duranleau
Social Services Administrator

cc: Gary Veilleux, DHS, Special Services Supervisor
Donna Nickless, DHS, Field Examiner
Nadeen Daniels, Assistant City Manager
Elizabeth Boynton, Associate Corporation Counsel
Sabra Burdick, Director, Bureau of Income Maintenance

attachments (1) - (3)

Robert Duranleau
Director Social Services Division



Nadeen M. Daniels
Director Health and Human Services Depart.

CITY OF PORTLAND

June 26, 1991

Mr. Richard Morrow
Director Special Services Unit
Station #1
Augusta, Maine 04333

Dear Mr. Morrow,

This letter serves as a follow-up to our meeting of June 14th regarding the inclusion of Shelter Attendants salaries in the General Assistance reimbursement reports.

I. Shelter Attendants: Background

In September of 1987, the City opened its first emergency shelter for homeless adults "The Wilmot Street Shelter." Due to the transient population being served it was necessary to hire Shelter Attendants to monitor the adult shelter. The Shelter Attendants were considered temporary project employees and were not eligible for City benefits. This shelter was open from 8:00 P.M. - 8:00 A.M. seven days per week. Shelter Attendants were paid a rate of eight dollars per hour as temporary employees.

II. Oxford Street Shelter:

In December of 1989 the City opened The Oxford Street Shelter. This shelter was opened in response to the growing transient population in the City of Portland. It was also necessary at this time to increase the shelter hours to accommodate the increasing numbers of homeless individuals utilizing this facility. Winter and summer hours of operation were established. In December of 1990 the Oxford Street Shelter winter hours were increased to include Day Room hours. This shelter was open from 12:00 noon - 8:00 A.M. (closed 4 hours daily). Shelter Attendants were still considered part time temporary project employees and received no increase in pay. Due to the increase in the shelter population it was necessary to increase the Shelter Attendant Staff to include sign in coverage, day room coverage and maintenance supervision. Please see attachment # I for a breakdown of staff coverage.

III. AFSME Union

In January or 1991 the Shelter Attendant positions were incorporated into the AFSME CEBA union contract as permanent positions. Please see attachment #2 memorandum from Gloria Thomas, Director of Human Resources City of Portland.

III. AFSME Union cont.

As CEBA Union positions Shelter Attendants were eligible for retro-active pay step increases and City benefits. All benefits are paid by the City of Portland and are not included in the General Assistance reimbursement report. However, it became necessary to hire a shelter fill in staff to cover for permanent Shelter Attendants who are on vacation or out sick.

IV. Billing Procedure:

At the June 14th meeting we discussed the current billing procedure which has been in place for the past five years. The City of Portland tabulates the shelter bill based on the total monthly shelter operating costs and the number of active General Assistance clients (individuals who have received G.A. within the last six months) who stayed at the shelter during the past month.

A total of 1020 unduplicated individuals utilized the shelter in FY 90 for a total of 11,499 bed nights. A total of 1039 unduplicated individuals resided at the shelter in FY 91 (11 month period. Does not include June 1991).

The City does not submit requests for reimbursements for those individuals who are not active G.A. clients.

Please see Attachment #3 memorandum from Peggy Dunn, Special Services Supervisor.

It is my understanding that you would like us to include the following information with the reimbursement report.

- Oxford St. Shelter monthly operating expenses
- Total number of clients for month using shelter
- Total number of used shelter beds
- Total number of active General Assistance clients. (Individuals who have received G.A. during the past year).

Please call if you should have any questions.

Sincerely,

Robert Duranleau
Social Services Administrator

RD/mg



John R. McKernan, Jr.
Governor

Rollin Ives
Commissioner

STATE OF MAINE
DEPARTMENT OF HUMAN SERVICES
AUGUSTA, MAINE 04333

August 29, 1991

Mr. Robert Duranleau
Social Services Director
Health & Human Services
196 Lancaster Street
Portland, Maine 04101

Dear Bob:

As a result of the General Assistance review conducted last spring and the subsequent meetings dealing with various issues, the Department has concluded that the program, as administered by your office, is in compliance.

We agree that your billing system for shelter expenses is adequate and appropriate. We would recommend that you keep the six-month time period for "active" participants instead of changing the time period to twelve months.

On the issue of the rental van expenses for your workfare program, the Department has decided that these expenses are administrative costs and should not be included in your claims for reimbursement. We request that you subtract this expenditure from any future claims. We are in receipt of your claims for the months of May and June. It would be more easily handled if you would total the van rental expenses for those two months and subtract the total from your July report and document this action in your records. This would alleviate submitting new reports for these months.

Thank you for your patience and efforts in this matter. If you have any questions, please feel free to call me.

Sincerely,

A handwritten signature in cursive script that reads "Richard P. Morrow".

Richard P. Morrow
Program Director
General Assistance

RPM:mh

ccs: Sabra C. Burdick, Director
Bureau of Income Maintenance
Susan Dustin, Director
Policy & Programs
Bureau of Income Maintenance
Harry H. Bedigan, Director, Management and Budget
Bureau of Income Maintenance
Gary G. Veilleux, Supervisor, General Assistance
Bureau of Income Maintenance

OXFORD STREET SHELTER
SHELTER ATTENDANTS
FY 92 BUDGET

130 Shelter Attendants:

131.076

Winter - 213 hrs x 9.34 = 1991.18x26 wks = 51,770.86

Summer - 185 hrs x 9.34 = 1729.43x23 wks = 44,965.32

Meetings, Training, Holiday Coverage = 4,655.45

Vacation Coverage/Sick Time = 5,384.62

Maintenance Staff = 19,444.00

Day Room Attendant 26 wks x 20 hrs x 9.34 = 4,856.00

Total 131,076

CITY OF PORTLAND, MAINE

Memorandum

TO: Bob Duranleau, Social Services Administrator
 FROM: Gloria L. Thomas, Director of Human Resources
 DATE: January 9, 1991
 RE: Shelter Attendants' Benefit Eligibility

As you know, the recently executed CEBA contract incorporated Shelter Attendant as a permanent job classification. Those employees whose regular hours equal or exceed 20 hours per week are entitled to fringe benefits contained in the contract. The benefits are prorated on the basis of a 40 hour work week.

Shelter Attendants who are impacted by this change are:

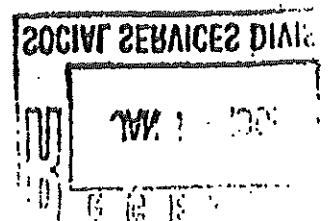
<u>Name</u>	<u>Standard Hours</u>
Marc McCutcheon	24
Deborah Rand	27
Lawrence Barker	24
Andrew LeClair	28
Patricia Young	24

They are eligible for sick and vacation leave as of 1/6/91 but January accruals are not posted until February. They are eligible for health benefits as of 2/1/91, based upon the City policy of "first of the month" coverage from the date of eligibility which is 1/6/91. Participation in Maine State Retirement System is mandatory and they can elect to purchase life insurance within 31 days.

Susan Newton will do a benefit enrollment for each of these employees. They will be invited to New Employee Orientation and they will be not be required to fulfill a six-month probationary period. Please call me if you have questions.

cc: Nadeen Daniels, Assistant City Manager
 Susan Newton, Executive Secretary
 Tricia Peightal, Labor Relations Administrator
 Kevin Carroll, CEBA President
 Karen Tyminski, Human Resources Associate/Benefits

GLT/cjw



CITY OF PORTLAND, MAINE
MEMORANDUM

TO: All Shelter Attendants

DATE: 2/28/91

FROM: Robert Duranleau, Social Services Administrator

SUBJECT: SHELTER ATTENDANTS BENEFIT ELIGIBILITY

Shelter attendants whose regular scheduled hours equal or exceed 20 hours per week are entitled to fringe benefits. The benefits are pro-rated on the basis of a 40 hour week. Shelter attendants whose regular scheduled hours do not equal at least 20 hours per week are not eligible for benefits. Shelter attendants whose regular schedule of hours are reduced to under 20 hours will no longer be entitled to receive fringe benefits.

Shelter attendants whose regular scheduled hours equal or exceed 20 hours per week are eligible for sick and vacation leave accrued as of 2/1/91 but accruals are not posted until March. Shelter attendants are also eligible for health benefits (pro-rated based on the number of hours worked). Participation in Maine State Retirement System is mandatory and you may elect to purchase life insurance with in 31 days of the date you are eligible for fringe benefits. (ie on 3/1/91 your schedule of hours is changed from 10 hours per week to 20 hours per week. You have 31 days from 3/1/91 in which to purchase life insurance).

If you are eligible for fringe benefits (work hours equal or exceed 20 hours per week) you must contact Rita Hourigan, Shelter Manager. Rita will schedule an appointment for you to meet with this Departments Benefit Specialist, Susan Newton.

In order to avoid any confusion or conflict in schedule changes which may result in a reduction or elimination of fringe benefits the following procedures have been established:

1. Request for a permanent change in schedule must be submitted in writing to Rita Hourigan, Shelter Manager and approved by Peggy Dunn, Special Services Supervisor.

You will receive written notification regarding your schedule request from Rita Hourigan, Shelter Management.

2. FILL IN TIME

You must indicate on the weekly time sheet the hours that you are covering as fill in time.

For Example: 12 hours regular.
 7 hours fill in

Total 19 hours

APPENDIX BI

AFSCME/CEBA CLASSIFICATION PLAN

Grade 9 SHELTER ATTENDANT

CEBA PAY PLAN: EFFECTIVE MARCH 4, 1990

	A	B	C	D	E	F
Grade 9	6 mo - 1 yr	1-2 yr	2-4 yr	4-6 yr	6-8 yr	8 yr
	342.30	349.15	356.13	363.26	370.52	377.93

CITY OF PORTLAND, MAINE
MEMORANDUM

TO: Robert Duranleau, Social Services Administrator
FROM: Peggy Dunn, Special Services Supervisor
SUBJECT: OXFORD STREET SHELTER

DATE: 5/14/91

During the fiscal year from 7/1/89 to 6/30/90, a total of 1020 different individuals stayed at the Alder St. Shelter (before 11/30/89) or at the Oxford St. Shelter (after 12/1/90). These different individuals accounted for a total of 11,499 bed nights used through the year.

For the same year, statistics indicate that the shelter population was 80% male, 20% female. Mental illness was an observable issue for 32% of the residents; 24% had substance abuse problems. Eighty-five percent were unemployed; twelve percent earned wages; thirty percent had some type of monthly government income.

The Oxford St. statistics for the first three quarters of FY 1990-91 are attached. Thru March, 887 different individuals have spent 8,603 nights in the Oxford St. Shelter.

Mental health clients make up 42% of the shelter population; 28% have substance abuse issues. Together these clients comprise 70% of the shelter clients (compared to 56% in the previous year).

In this softer rental economy, homeless adults with some coping skills are able to find and maintain housing in a small apartment or single-room occupancy facility.

Most Portland based clients who use the Oxford St. Shelter have chronic illnesses which render them unable to stay in regular housing. Social workers have placed them in longer term situations, only to have them return to the shelter, sometimes within a month. Many of the chronically ill shelter clients have shown themselves unable to live independently without considerable social supports. Supported living arrangements have been in short supply.

More than half of the clients who stay at Oxford St. shelter come from other towns in Maine, or from other states, as indicated below:

1/91	25%	(18 individuals)	from other towns in Maine
2/91	26%	(15 individuals)	from other towns in Maine
3/91	37%	(23 individuals)	from other towns in Maine
4/91	17%	(11 individuals)	from other towns in Maine

1/91	40%	(29 individuals)	from other states
2/91	38%	(22 individuals)	from other states
3/91	29%	(18 individuals)	from other states
4/91	62%	(40 individuals)	from other states

OXFORD STREET SHELTER
MONTHLY REPORT PROCEDURE

People check in to the Oxford Street Shelter on a daily basis. Each person must complete a check in card listing his/her name and other information. The Shelter Manager gives these cards to a clerical person shortly after the first of the following month.

This clerical person will search our computer data base, for each person's name to determine if they are a General Assistance Client. If they are the case number is recorded and they are listed on the monthly report. Only City of Portland Social Services Clients are listed on the report.

Each card (one per client) is reviewed and the total number of nights stayed are recorded on the card and on to the monthly report. The monthly report includes, the client's name, case number, number of nights stayed, cost per night, total cost per client and monthly totals.

The total monthly operating cost for the Oxford Street Shelter are tabulated from the paid invoices and shelter attendant's payroll data. Expenses include, building rental, utilities, laundry, cleaning supplies, taxi, salaries and miscellaneous expenses. (see monthly expense totals report for detail)

The total number of nights that active clients stayed in the month is divided into the total shelter operating cost to obtain the cost per night.

The procedure which the clerical staff uses to process the monthly report is explained in the attached Monthly Report Procedure form. This procedure form also indicates formulas used in processing the report.

OXFORD STREET SHELTER
MONTHLY REPORT PROCEDURE

1. Obtain shelter check in cards form the Shelter manager.
2. Check Social Services data base for case numbers to determined active clients. Only active clients are to be reported on this report.
 - a. Write case # next to each name.
3. Add the number of nights that each active SSD client stayed at Oxford. Write the total on the card. This will be used when you enter the data into the personal computer to produce the report.
4. From the expendature ledger, list the expenses for the month on the monthly expense summary. Rent, utilities, laundry, cleaning supplies, taxi and miscellaneous expenses are obtained from the expenditure ledger. The shelter attendant's salaries for the month are obtain form the finance printout.
5. Enter into the personal computer the above data in the format discribed below.
6. Add the total number of nights that active clients stayed for the month.
 - a. Take the total shelter cost and divide by the number of nights(beds).
ex. 6023.41 (total shelter cost) $\div$ 170 (total beds occupied by active SSD clients) = 35.43 (average cost per bed)
7. Enter the total number of nights stayed by the average cost per night and show the total cost per client.
ex. John Doe 5 nights @ 35.43 = 177.15
8. Do number 7 for each active SSD client who stayed in the shelter.
9. For information divide total SSD clients by number of days in the month.
ex. $176 \div 31$ days = 6 it gives you average number of SSD clients per night.
10. A copy of the report should be given to the Social Services Administrator, Shelter supervisor, and the Oxford Street Shelter Manager.

*Check In
Card*

NAME: _____ LAST RESIDENCE _____
 D.O.B. _____ INCOME: _____ S.S.# _____
 REFERRED BY DSS ___ I.V. ___ POLICE ___ HOSP. ___ AHC ___ OTHER ___
 WHITE ___ BLACK ___ AMERICAN INDIAN ___ HISPANIC ___ ASIA ___
 DATE STAYED: 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15
 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

I hereby accept shelter at the City of Portland's Homeless Shelter. I understand that the City of Portland is not responsible for lost or stolen items and furthermore agree to follow all shelter rules. Your name may be used to apply for General Assistance through the City of Portland's Division of Social Services.

CLIENT'S SIGNATURE _____ DATE _____

OXFORD STREET SHELTER
MONTHLY EXPENSE TOTALSMONTH OF Jan 91

RENTS:	\$	<u>5000.00</u>
CMP:	\$	<u>320.00</u>
NORTHERN UTIL:	\$	<u>503.68</u>
NET:	\$	<u>208.82</u>
LAUNDRY:	\$	<u>2087.05</u>
CLEANING SUPPLIES	\$	<u>22.00</u>
TAXI:	\$	<u>30.00</u>
OTHER:	\$	<u>207.69</u>
SUB TOTAL	\$	<u>8,379.34</u>
SHELTER ATTENDANT WAGES	\$	<u>10,927.00</u>
TOTAL OPERATING COST	\$	<u>19,306.34</u> =====

OXFORD STREET SHELTER
MONTHLY EXPENSE TOTALSMONTH OF Feb. 91

RENTS:	\$	<u>5000.00</u>
CMP:	\$	<u>304.00</u>
NORTHERN UTIL:	\$	<u>563.89</u>
NET:	\$	<u>184.91</u>
LAUNDRY:	\$	<u>1623.69</u>
CLEANING SUPPLIES	\$	<u>—</u>
TAXI:	\$	<u>64.30</u>
OTHER:	\$	<u>185.00</u>
SUB TOTAL	\$	<u>7,925.79</u>
SHELTER ATTENDANT WAGES	\$	<u>11,441.01</u>
TOTAL OPERATING COST	\$	<u>19,366.80</u> =====



Angus S. King, Jr.
Governor

Kevin W. Concannon
Commissioner

STATE OF MAINE
DEPARTMENT OF HUMAN SERVICES
AUGUSTA, MAINE 04333

October 3, 1995

Robert Duranleau, Director
City of Portland
Social Services Division
196 Lancaster Street
Portland, ME 04101

Dear Mr. Duranleau:

This is in reference to the General Assistance review conducted in Portland on September 15, 1995.

Our review indicates that your program is not in compliance with the statutes and policy. The following areas were found not to be in compliance:

1. Claims for reimbursement include administrative costs. The Department of Human Services has determined that it will no longer reimburse for administrative costs, even for those incurred by shelters.
2. Persons are receiving benefits from the General Assistance program without applications or determinations of eligibility.

22 MRSA 4323 requires that you submit a plan of correction advising the Department what steps your municipality will take to correct those issues found not to be in compliance.

Your plan should include the following:

1. Methods which will ensure compliance with these issues.
2. Time frames necessary for implementation.

We look forward to working with you to develop legally authorized methods to maintain the shelters.

The plan of correction must be submitted within 30 days of receipt of this letter. Should you fail to submit a plan, 22 MRSA 4323 allows the Department to withhold reimbursement until the plan is received. Any money withheld may not be returned to your municipality.

A second letter pertaining to case review findings will follow.

Robert Duranleau
October 3, 1995
Page Two

If we can be of assistance to you or you would care to discuss this,
please feel free to call on us at your convenience at 287-3654.

Sincerely,

A handwritten signature in cursive script that reads "Richard P. Morrow".

Richard P. Morrow
Program Manager
General Assistance

RPM/paw
portld2

CITY OF PORTLAND

Mr. Richard P. Morrow, Program Manager
Department of Human Services - General Assistance
STATE OF MAINE
Station #1
Augusta, ME 04333

This letter serves as response to your letter dated October 3, 1995, which stated that the City of Portland's General Assistance Program was found to be in non-compliance with the State of Maine's statutes and policies. The letter further requires that the City submit a "plan of correction" ensuring compliance.

The City of Portland's General Assistance shelter billing procedure was established in the early 1980's. The City of Portland has a history of providing shelter to Maine's homeless population, and has historically presumed eligibility for shelter costs. Our current shelter billing process was approved by your office in August of 1991. I have enclosed letters of May 17, 1991 and June 26, 1991, in which our shelter operating costs were detailed, and your response of August 29, 1991. In addition, there was an agreement on the presumption of eligibility for City operated shelters and the Arnie Hanson Substance Abuse Shelter (please see page 3, May 17, 1991 letter, and your August 29, 1991 response).

After you have reviewed the attached 1991 correspondence, we would like to discuss specifics as to City compliance with this 1991 agreement. We look forward to working with you and resolving any issues at our November 2, 1995 meeting.

Sincerely,

Robert Duranleau, Director
Social Services Division
CITY OF PORTLAND

Elizabeth Boynton, Corporation Counsel
CITY OF PORTLAND

Attachments



Angus S. King, Jr.
Governor

Kevin W. Concannon
Commissioner

STATE OF MAINE
DEPARTMENT OF HUMAN SERVICES
AUGUSTA, MAINE 04333

November 3, 1995

Mr. Robert Duranleau, Director
Social Services Division
City of Portland
196 Lancaster Street
Portland, ME 04101

Dear Mr. Duranleau:

This letter is to advise your office that the Department of Human Services received your letter of October 20, 1995 regarding our non-compliance letter and accepts the correspondence as fulfilling our request for a plan of correction at this time.

We realize the seriousness of the issues addressed in our letter and are very willing to work with your office toward resolution. At this time, there is no need for any extension for further response to our letter.

It is important that your office and the Department keep an open line of communication so that the issues regarding city shelters and General Assistance can be resolved.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Richard P. Morrow".

Richard P. Morrow
Program Manager
General Assistance

RPM/paw
ptld5

cc: Peter E. Walsh

Angus S. King, Jr.
Governor

Kevin W. Concannon
Commissioner

State of Maine
DEPARTMENT OF HUMAN SERVICES
Augusta, Maine 04333-0011

TO: Peter E. Walsh, Acting Deputy Commissioner, DHS
FROM: Judy H. M. Williams, Acting Director, Bureau of Family Independence
DATE: March 25, 1996
SUBJECT: GA/Shelter Issue

*Held
4/21
April 30th*

This memo is to review the issues discussed at the meeting with Rick Morrow, Sue Dustin, you and me on March 25, 1996 re: payment of shelter costs through the GA program.

Currently, the cities of Bangor and Portland administer shelters. They are the only municipalities which do so. Other areas are served by private or quasi-private facilities. Municipal shelters are important. They provide temporary or, in some situations, long term housing for residents. City officials in Bangor and Portland have made public statements about the impact of changes in the mental health system. They have said that the State policy of discharging individuals from AMHI and BMHI has increased the usage of the municipal shelters. They have been vocal in their opinions that the State has shared responsibility for financial assistance in meeting a problem which they see as the result of State policy decisions. The question facing the group today was the role of the General Assistance program in providing financial assistance to the municipal shelters. *not?*

The following reflects this morning's discussion:

- A unique relationship exists between the State and municipal governments which does not exist with other entities. This is reflected in the legal and fiscal interaction between the two types of governments.

As envisioned, the contract would provide funds with the understanding that no additional shelter costs would be billed to the State for individuals using the shelters during a specific month. If permanent living arrangements were developed (for instance an apartment/rooming house), the municipal GA program could bill for reimbursement from the State as in the current program for the apartment/rooming house cost in the subsequent month just as if done now.

The individual would continue to be eligible for payment of expenses beyond shelter (food and personal items).

We have scheduled a meeting with Portland and Bangor GA administrators for April 30 at 1:30 at 221 State Street to begin discussions. The result will be a bill which can be taken to the next Legislature which will clearly reflect the intent to support the municipal shelters and will provide the funding to do so.

cc.: Susan Dustin, Dir. Policies and Programs, BFI
Richard Morrow, Program Director, GA

Memo to the File

Re: Meeting with State Department of Human Services

Elizabeth Boynton, Bob Duranleau, Palmer Peters

Eric Stumpf, Maryanne

Peter Walsh, Susan Dustin, Judy , Rick Morrow

4/30/96

Peter Walsh handed out memo from State which purported to summarize the issues from our prior meeting. We went through it paragraph by paragraph. We did not agree that our treatment of the shelter clients was in violation of the GA Statutes.

1. Asked Dept to acknowledge that their current interpretation of "presumptively eligible" was a new interpretation not the "historical" interpretation that they said it was. Passed out August, 1991 letter from Rick Morrow and the backup regarding the charging of our shelter costs which he had approved in the August, 1991 letter.

2. Disagreed with Division staff re meaning of "presumptively eligible." Argued that legislature did permit us to classify someone who was in fact homeless as presumptively eligible. Said that the attorney-general's opinion also permitted this reading of the statute. Urged department to adopt a flexible reading of the statute as it was supported by attorney-general's position.

3. State staff persisted in wanting people in shelter to meet all of the qualifications for ga eligibility. Eric and ELB argued that this was reading the presumptively eligible language out of the statute entirely.

4. Original intent was to go to legislature to get all this ratified by legislature. However, ELB pointed out that it would be viewed as a Portland/Bangor bill and be lucky to get the votes of the Portland Bangor delegations at most. Peter Walsh seemed to agree with that point -- and tone of discussion changed.

5. Discussed use of "emergency" provisions of the statute. Agreed that some of our people could not meet the emergency provision because they had other resources -- but Eric pointed out that at best all we would do then is give them a 7 day notice. Discussed client population -- primarily severely mentally ill.

6. Resolution of discussion was the Portland and Bangor would write criteria for use of shelter services and keep them on file and submit them to the State for review. Criteria would be:

1. Homeless and eligible for general assistance.
2. Homeless, not eligible for ga but in an emergency, i.e. homeless. Essentially an "agreement" with our shelter. Also to do private shelter agreements (Arnie Hanson) along same lines.

*agreed
we could
continue
to charge
all
shelter
costs*

Robert Duranleau
Director Social Services Division



Health & Human Services Depart.

Mailed 5/8/96 by Soc. Serv.
cc: Gary Ward

FILE COPY

CITY OF PORTLAND

May 7, 1996

Mr. Peter Walsh, Deputy Commissioner
Maine Department of Human Services
State House Station #11
Augusta, ME 04333

RE: Meeting of April 30, 1996

Dear Peter:

I want to thank you, Rick Morrow, Susan Dustin and Judy Williams for listening patiently to the positions of Bangor and Portland in regard to reimbursement for our shelter residents. I would like to take this opportunity to summarize our discussion from Portland's viewpoint and the conclusions which were finally reached.

Our discussion was triggered by your document dated April 30 which was distributed at the meeting. While we did not finish our review of the document, we did reach some conclusions based on the discussion which followed review of the first few paragraphs.

First, we indicated that we felt that our current practice in regard to charging the City's shelter costs was approved by the Department as long ago as 1991, and we provided you with a copy of the 1991 correspondence in regard to that issue. Thus, the position outlined in your April 30 memorandum was a change in the Department's long-approved practice from the City's point of view. Then the discussion centered around the issue of the language in Section 4304 of the general assistance statute which makes clients "presumptively eligible" for emergency shelter assistance.

Both Bangor and Portland urged that the Department adopt the interpretation of this language which the Attorney-General's opinion of February 6, 1996, indicated was permissible, i.e. that clients who are homeless and in need of shelter assistance are presumed to be eligible for that assistance. You initially recommended that you seek legislative clarification on that issue; at the conclusion of the meeting, however, it was agreed that, with the changes discussed below, the practices of both Portland and Bangor come within the current statute and the interpretation of the Attorney-General, and that no further clarification was needed.

Deputy Commissioner Walsh
May 7, 1996
Page 2

We discussed the limitations which we have encountered in regard to the client population being served in our shelters, and their significant mental disabilities which make it impractical, at best, to apply full eligibility standards to their application, or even to obtain a full application. For example, a client may indeed be receiving SSI, but because of serious mental limitations, may not know whether he received it, may have lost it, or may have had it stolen. He arrives at the shelter, does not have any resources at that time, and he is homeless. It was agreed that this person would be presumed to be eligible for the shelter. Not only does this fall within the presumptive eligibility and emergency assistance language of the statute, but it also recognizes the need to accommodate the limitations of the clients who are routinely being served in our shelters.

The City did agree that it would bring its record-keeping more literally within the letter of the statute, however, by providing you with written policies (in the form of an "agreement" with our City owned shelter) articulating the "gatekeeping policies" for admission into the Oxford Street shelter. We will submit that document to the Department as soon as possible.

Secondly, the City agreed to use an abbreviated application form in regard to our shelter clients. That form will provide basic data in regard to the client (to the extent we can obtain it), including any relevant known or observed disabilities or behaviors. We will submit a copy of the form we intend to use as soon as possible. It is also our intention to have agreements with private shelters and require use of the abbreviated application form by those private providers.

Third, it was agreed that the Department would issue a formal finding that the City is in compliance at this time, and that the non-compliance finding dated October 5, 1995, regarding shelter billings has been fully resolved. I believe there was agreement that we have acted within the statutory language of presumptive eligibility and emergency assistance and that the above record-keeping changes are simply that -- i.e. prospective changes in record-keeping.

Finally, we agreed that the full costs of running the shelter are direct general assistance service costs, and that they are not "administrative costs" as referenced in Section 4301 of the statute. This also acknowledges that the City has been in compliance in its charging of those costs to General Assistance; as we noted at the meeting, more than 1/3 of those costs are, in fact, being paid for by the City of Portland.

Deputy Commissioner Walsh
May 7, 1996
Page 3

Again, I thank you for your cooperation on this issue; please let me know if you have any questions or disagreements with this letter.

Sincerely yours,

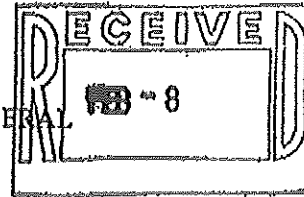
A handwritten signature in dark ink, appearing to read "Robert Duranleau". The signature is fluid and cursive, with the first name "Robert" and last name "Duranleau" clearly distinguishable.

Robert Duranleau
Social Services Administrator

pc: Judy H.M. Williams, Acting Director, Bureau of Family
Independence
Susan Dustin, Director of Policy & Programs, Bureau of Family
Independence
Richard Morrow, Program Manager, General Assistance, Bureau of
Family Independence
Mary Ann Chililia, Director of Health & Human Services, City
of Bangor
Anthony Forgione, Director of Health & Human Services, City of
Portland
Erik Stumpf, Corporation Counsel, Bangor
Elizabeth L. Boynton, Assoc. Corporation Counsel, Portland

STATE OF MAINE
DEPARTMENT OF ATTORNEY GENERAL

MEMORANDUM



TO: Richard P. Morrow, General Assistance Program Manager
Susan Dustin, Director, Programs and Policy
Bureau of Family Independence, Maine Dept. of Human Services

FROM: Christina M. Hall, Assistant Attorney General *cmh*

DATE: February 6, 1996

RE: Emergency shelter issues

You have asked for my advice regarding two issues that have arisen in the context of general assistance reimbursement to municipalities for emergency shelter expenses.

I. If a municipality operates its own emergency shelter, can the costs of operation, such as rent, utilities and staff, be considered direct costs incurred by the municipality subject to reimbursement from the Department of Human Services?

Your question arises due to the language in the general assistance laws providing that administrative expenses of the General Assistance Program are not reimbursable as net general assistance costs. 22 M.R.S.A. § 4301(11). It is my understanding that there is no issue regarding privately run shelters, which bill municipalities of residence on a cost per diem, per individual basis, presumably including a fair allocation of overhead expenses. Just as for private shelters, municipal shelters should qualify for reimbursement for the administrative expenses associated with operation of the shelter. The distinction is between administrative expenses of the shelter (reimbursable) versus administrative expenses of the GA program (nonreimbursable).

Apparently there has been some discussion that 22 M.R.S.A. § 4304(3) (attached) contemplates automatic GA eligibility for individuals in shelters. The last sentence of § 4304(3) reads: "Municipalities may arrange with emergency shelters for the homeless to presume eligible for municipal assistance persons to whom the emergency shelter provides services." Arguing that that language provides for automatic eligibility for shelter residents, some municipalities claim that all of their shelter expenses are reimbursable, and need not be attributable to a GA eligible individual. I think the language of the statute is broad enough to allow that interpretation without much of a stretch of the imagination.

Another perfectly reasonable interpretation of that section, however, is the current and historical interpretation advanced by the Department that the statute allows for a presumption of eligibility for individuals finding themselves in a shelter at a time when it is difficult or impossible to make an application for GA, provided the individual subsequently does apply and is found eligible for GA. Support for that position is found in the title and basic content of § 4304. The section covers "General assistance offices" and deals in the first two subsections with offices - location, posting of notices, accessibility, etc. The third subsection, "Emergencies," provides for application over the phone in cases where the applicant is unable to apply in person, as well as containing the above cited language on shelters. It is certainly arguable that the context of that statutory provision is such that the whole section, including the subsection on emergencies, deals only with the mechanics of eligibility (i.e. how and where to apply), and not the substantive standards of eligibility.

The legislative history of the provision is somewhat ambiguous and arguably subject to either interpretation. My reading of it, however, is that it better supports the position that the statute allows for a presumption of eligibility, and shelter residents must still apply and be eligible under the substantive standards. In 1989, the relevant provisions of the GA laws were amended by "An Act to Make General Assistance More Available to Homeless People and Clarify the Definition of Need." In addition to adding the above cited last sentence of § 4304(3), the original bill amended the definition of "emergency" in the definitions section of the GA laws, § 4301, to expressly include homelessness as an emergency. The Statement of Fact for the original bill included the broad statement that "[t]he bill permits municipalities to presume that persons served by emergency shelters are eligible for general assistance."

It is the committee amendment, which was the version ultimately adopted by the Legislature, which lends support to the Department's historical position. The committee amendment took out the proposed language in the definitions section expressly declaring "homelessness" to be an "emergency." Moreover, the Statement of Fact accompanying the amendment is narrower than that in the original bill. It reads, in pertinent part: "[the amendment] clarifies the permission to municipalities to grant assistance to residents of emergency shelters without an application in writing" (my emphasis). Those two factors tell me that the committee did not want to create an exception to the substantive eligibility requirements for homeless residents, and wanted to clarify that the change in the law was meant only to make the application process easier for shelter residents.

Using a similar analysis as for the statute, I believe that current policy as written in the GA Manual can easily be read both ways, i.e. automatic eligibility versus shelter residents must eventually apply and be eligible for general assistance. I also attach a copy of that policy for your convenience.

In conclusion, both the statute and the policy manual easily support either interpretation. The legislative history of the statute, however, in my view, supports a stronger argument for the position currently and historically taken by Department shelter residents must apply and be found eligible for GA in order for towns to be reimbursed for costs attributable to them.

II. Can the Department establish policy whereby residents of emergency shelters have different rules to follow in the determination of eligibility?

In answering this question, I am starting from the proposition, as discussed above, that under current Department policy shelter residents must apply and be eligible for GA for shelter costs attributable to them to qualify for reimbursement. The question is can GA application and eligibility mean something different for shelter residents than for other applicants. For certain purposes, e.g. the Americans with Disabilities Act, I think the Department may be required have some flexibility and make "reasonable accommodations" for disabled individuals. To what extent the Department must or may (two different issues) have exceptions or different standards for certain individuals may vary greatly depending on the particular exception or different standard and to whom it would apply. Thus, I really cannot offer an opinion on this question without more specific information.

MUNICIPAL GENERAL ASSISTANCE Ch. 1181

22 § 4304

Maine Practice

Municipal General Assistance Lien, see Real Estate Law and Practice, Vol. 1, Cowan, § 682.

(WESTLAW Research

Towns cases: SS1k[add key number].

Notes of Decisions

Attorney fees 1

I. Attorney fees

Since temporary restraining order and consent decree improved plaintiffs' positions by providing them emergency oil assistance and barring town from denying general assistance to any

applicant based on length of residency and suit acted as a catalyst in prompting town to take action to meet plaintiffs' claim that town's 30-day residency requirement for general assistance violated their constitutional rights to travel and to equal protection, they were prevailing parties in civil rights suit entitled to recover attorney fees. *Wyman v. Inhabitants of Town of Skowhegan* (1983) Me., 484 A.2d 181.

§ 4304. General assistance offices

1. **Local office.** There must be in each municipality a general assistance office or designated place where any person may apply for general assistance at regular, reasonable times designated by the municipal officers. Notice must be posted of these times, the name of the overseer available to take applications in an emergency at all other times, the fact that the municipality must issue a written decision on all applications within 24 hours and the department's toll-free telephone number for reporting alleged violations in accordance with section 4321.

2. **District office.** In situations where in the judgment of a municipality the number of applicants does not justify the establishment of a local office or designated place, or where for other reasons a local office or designated place is not necessary, 2 or more municipalities, by a vote of their respective legislative bodies, may establish a district office for the administration of general assistance and make agreements as to the payment of expenses and any other matters relevant to the operation of the office.

Any district office established pursuant to this subsection shall be located so as to be accessible by a toll-free telephone call from any part of every municipality it is designated to serve.

Every district general assistance officer shall be available for the taking of applications at least 35 hours each week and shall make provision for designated personnel to be available to take applications in an emergency 24 hours a day.

3. **Emergencies.** In any case when an applicant is unable, due to illness, disability, lack of transportation, lack of child care or other good cause, to apply in person for assistance or unable to appoint a duly authorized representative, the overseer shall accept an application by telephone subject to verification by mail and a visit to the applicant's home with the consent of the applicant. Municipalities may arrange with emergency shelters for the homeless to pre-

22 § 4304

INCOME SUPPLEMENTATION
Title 22

sume eligible¹ for municipal assistance persons to whom the emergency shelter provides shelter services.

1989, c. 577, § 1; 1989, c. 322, § 2; 1989, c. 699; 1991, c. 209, § 1.

¹ So in original. Probably should be "eligibility".

Historical and Statutory Notes

Amendments

1989 Amendments. Laws 1989, c. 322, § 2, in subsec. 3, added sentence concerning emergency shelters for the homeless.

Laws 1989, c. 699, in subsec. 1, in addition to other technical changes, added reference to the department's toll-free telephone number for reporting alleged violations in accordance with § 4301 of this title.

1991 Amendment. Laws 1991, c. 209, § 1, in subsec. 1, added reference to the municipality's

responsibility to issue a written decision within 24 hours.

Derivation:

R.S.1964, c. 94, § 44.
Laws 1969, c. 360, § 2.
Laws 1983, c. 11.
Laws 1983, c. 80, § 2.
Laws 1985, c. 232, § 1.
Laws 1973, c. 537, § 23.
Laws 1975, c. 293, § 4.
Laws 1977, c. 417, § 7.
Laws 1983, c. 577, § 2.
Former § 4492 of this title.

Library References

American Digest System

Social security and public welfare programs in general, see Social Security and Public Welfare ¶ 6.

Encyclopedias

Administration of social security law; powers and duties of officers, agencies, and commis-

sions, see C.J.E. Social Security and Public Welfare § 6 et seq.

Malne Practice

Municipal General Assistance Lien, see Real Estate Law and Practice, Vol. 1, Cowan, § 582.

WESTLAW Research

Social security and public welfare cases: 356ak[add key number].

§ 4305. Municipal ordinance required

1. Program required; ordinance. A general assistance program shall be operated by each municipality and shall be administered in accordance with an ordinance enacted, after notice and hearing, by the municipal officers of each municipality.

2. Availability of ordinance. The ordinance and a copy of this chapter shall be available in the town office and be easily accessible to any member of the public. Notice to that effect must be posted. A copy of this chapter must be distributed by the department to each municipality.

assistance program to assist with delinquent property taxes
is imminent and it is the most cost-effective avenue.

Improvements may only be made to property owned by and lived in by the client unless the client is temporarily absent due to the condition needing repair.

If such expenditures are for services determined essential by the municipal welfare official in accordance with the municipality's ordinance and Chapter 1161, they will be allowable for reimbursement under the same conditions as other expenditures. Capital improvements would include but are not limited to replacing inside fuel tanks which are improperly vented to the outside.

EMERGENCY SHELTER COSTS

A municipality may choose to consider the actual cost of an emergency shelter provided by a shelter provider as a shelter cost up to the amount allowed by ordinance.

In such cases the municipality may provide general assistance to the emergency shelter provider when the following criteria has been met:

- 1) The applicant (not the shelter provider) has completed an application for assistance.
- 2) The applicant has been found eligible for assistance based on criteria established in the municipal ordinance.

Municipalities may arrange with emergency shelters for the homeless to presume eligibility for persons to whom the emergency shelter provides shelter services. Individual agreements should be on file and available for review.

When residents of an emergency shelter apply for assistance, they must be aware that any income or resources they have are to be utilized for current needs. The same verification of income and expenditures for the previous 30 day period and 30 day prospective income procedures are to be utilized as with other applications.

ELECTRICITY, FUEL OIL, WOOD, NATURAL AND BOTTLED GAS

A municipality may elect to incorporate a list of average costs of these goods and services. It may elect to develop its own levels of assistance for each item and provide the Department with documentation justifying these levels of assistance.

Municipalities may consult with the utility in their area to determine household usage in kilowatts, cost per kilowatt hour, etc.

For example, two people live in an apartment that is heated and the hot water is provided. Your utility company advises that a two person household living in a multi-family dwelling uses approximately 700 KWH per month. The cost per KWH is \$.079; therefore, the utility bill should be \$55.30 per month.

Cost per kilowatt hour varies among utilities. Kilowatt usage may be more or less than the standard based on the condition of the apartment, the pattern of usage, weather conditions, etc.

A survey of fuel oil companies may be conducted in the local area for yearly consumption figures. These figures will vary based on levels of insulation, construction and age of the building, etc.

Angus S. King, Jr.
Governor



Kevin W. Concannon
Commissioner

STATE OF MAINE
DEPARTMENT OF HUMAN SERVICES
AUGUSTA, MAINE 04333

June 17, 1996

Mr. Robert Duranleau, Director, Social Services Division
City of Portland Health & Human Services Department
196 Lancaster Street
Portland, Maine 04101

Dear Bob:

Thank you for your letter of May 7, 1996, reviewing the meeting of staff from the Cities of Bangor and Portland and the Department of Human Services. I appreciate your taking the time to summarize the discussions and record your conclusions. I do not agree, however, that all of the issues have been resolved.

I believe that there was agreement on three items:

- The costs of running the shelter (rent, electricity, heat, personnel and such) are operating costs, not General Assistance administrative costs. As such, these items, unless funded elsewhere, may be included as costs in determining the daily rate of the shelter.
- A shorter application form than that customarily used for General Assistance can be used by shelters to gather eligibility information. You are going to develop and submit a draft form to the Department.
- The Department will not penalize Portland financially for finding shelter policies and procedures out of compliance while this discussion is on-going.

The Department is committed to supporting shelter efforts in Bangor and Portland. We do not want to increase the municipal tax burden for providing municipal shelters. Given the problems with precedents and fairness/equity issues, however, we cannot agree to covering automatically all persons who use the shelter as "presumptively eligible" for an indefinite time period. After further discussion among Bureau of Family Independence staff and the Attorney General's Office, the Department remains willing to work with the municipalities to obtain Legislative authority for funding of municipal shelters or to developing a contract mechanism within the General Assistance program.

We cannot agree, however, to provide GA funding for all of the Portland and Bangor residents using the shelter system without the Legislative or contact mechanism.

Staff and I look forward to meeting with you and Bangor's GA representatives again so that we can move toward resolution of the issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter".

Peter E. Walsh
Acting Deputy Commissioner

cc: Mary-Anne Chalila, Director of Health & Human Services, City of Bangor
Anthony Forgone, Director of Health & Human Services, City of Portland
Erik Stumpf, Corporation Counsel, Bangor
Elizabeth L. Boynton, Assoc. Corporation Counsel, Portland
Judy H. M. Williams, Acting Director, Bureau of Family Independence
Susan Dustin, Director, Policy & Programs, Bureau of Family Independence
Richard Morrow, Program Manager, General Assistance, Bureau of Family Independence

**CITY OF PORTLAND
GENERAL ASSISTANCE PROGRAM
SHELTER AGREEMENTS**

This Agreement is entered into this _____ day of _____, 200_, by and between City of Portland, a public body, corporate and politic and an instrumentality of the State of Maine (hereinafter "City") and _____, with its principal place of business at _____ Street, Portland, Maine (hereinafter "Shelter Provider").

W I T N E S S E T H:

WHEREAS, Shelter Provider is a non-profit corporation whose corporate purposes include providing decent, safe and sanitary shelter for the homeless; and

WHEREAS, State law (22 M.R.S.A. §4304.3) and the City's General Assistance Ordinance (13-3[c]) authorize agreements with facilities that provide emergency housing for the homeless, to presume the general assistance eligibility of persons to whom the emergency shelter provides shelter services; and

WHEREAS, Shelter Provider is providing _____ Portland, Maine, known as the _____ (the "Shelter"); and

WHEREAS, Shelter Provider has been selected as an approved vendor under the General Assistance Program administered by City;

NOW, THEREFORE, in consideration of the mutual covenants and

agreements contained herein, the City and Shelter Provider hereby agree as follows:

1. The City, on and after the effective date of this Agreement, shall reimburse Shelter Provider for Eligible Costs of the Shelter ("Eligible Costs") under the State and City General Assistance Program, subject to the limitation herein. Eligible Costs shall include all operating expenses customarily associated with the direct operation of a homeless shelter, including but not limited to, salaries, rent, utilities, insurance, client services, furniture and equipment. Eligible Costs shall not include real estate acquisition or rehabilitation, leasehold improvements and organizational expenses not directly related to the operation of the Shelter, without the prior written consent of the City.

Effective the first day the shelter is open, the City and Shelter Provider agree that Eligible Costs to be reimbursed by City to Shelter Provider for eligible General Assistance costs per bed night are as follows:

Twenty Dollars (\$20.00)

2. No reimbursement shall be disbursed until the City receives documentation acceptable to the City regarding persons using the Shelter, on forms to be provided by the City. The Shelter Provider shall make a good faith effort to determine each individual's eligibility for general assistance and shall use the application form attached hereto as Exhibit A for that purpose.

Shelter Provider shall inform the applicant that he/she is applying for General Assistance through the City of Portland's Social Services Division to pay for their shelter bed night stay, and that at any time in the future, he/she is found to be eligible to receive Supplemental Security benefits (SSI or SSDI), an amount equal to the amount of public assistance given may be deducted by the Maine Department of Human Services from their first retroactive payment of SSI (SSDI) benefits.

A reapplication shall be taken on a monthly basis or whenever the Shelter Provider becomes aware of a change in a client's status or income which could affect the client's eligibility, whichever occurs first. The Shelter Provider shall provide

"bed night" (occupied shelter bed) statistics to City by the 10th day of each month for the prior month.

3. Shelter Provider shall properly maintain all books, documents, payroll, papers, accounting records and other evidence pertaining to the use of the General Assistance funds and shall maintain such records on a separate ledger so as to adequately segregate transactions relating to the General Assistance funds from Shelter Provider's other activities. Shelter Provider shall make such records available at its office at all reasonable times for inspection or audit as requested from time to time by the City. Copies of these records shall be furnished if requested within 30 days.
4. The City shall have no obligation to disburse any funds to Shelter Provider, on the occurrence of any of the following:
 - a. General Assistance funds are used for purposes which, in the opinion of the City, violate this Agreement;
 - b. Shelter Provider fails to comply with the reporting requirement;
 - c. Any other breach of the covenants and agreements contained herein; and
 - d. Modification of the General Assistance statute or its interpretation by the state administrative agency, hearing officer or court of competent jurisdiction which materially affects the City's reimbursement or authority under this Agreement.
5. Shelter Provider, by execution of this Agreement, certifies that it:
 - a. is a non-profit corporation in good standing under the laws of the State of Maine;
 - b. is authorized to undertake the activities contemplated hereby and that its undersigned officer is duly authorized to bind the corporation to the terms and conditions hereof;
 - c. will provide housing available to all persons regardless of religious beliefs, that no religious activities, observances, or affiliation will be requested or required

- of any person residing in or receiving services in connection with the Shelter;
- d. provides emergency shelter to persons with no other safe place to stay overnight;
 - e. provides supervision and referrals to appropriate supportive services;
 - f. operates its shelter facility in compliance with all applicable federal, state and local codes, laws and regulations, including without limitation, all building codes, accessibility requirements and general assistance laws and regulations;
 - g. does not discriminate on the basis of age, sexual orientation, race, religion, national origin, disability, or gender except where the it is specifically authorized to serve a special needs population and such requires segregated treatment or the sponsor is administratively incapable of safely serving a particular excluded population;
 - h. will comply with City billing process as established by the Social Services Division;
 - i. will at all times maintain commercial general liability insurance in an amount not less than Four Hundred Thousand Dollars (\$400,000) and workers compensation insurance as required by Maine law; and
6. The Shelter Provider will defend, indemnify and hold the City of Portland harmless from any damages, claims, costs or expenses, including without limitation reasonable attorney's fees, to the extent that such damages, claims, costs or expenses arise out of or result from the negligent act or omission of Shelter Provider, its officers, agents or employees, and result in personal injury, death or property damage to any person or of any claim of discrimination in provision in services.
7. The provisions of this Agreement cannot be waived, modified, or amended except in writing, signed by both parties hereto.
8. This Agreement and the General Assistance funds shall not be assignable by Shelter Provider without the prior written

consent of the City.

9. All of the covenants and agreements herein contained shall extend to and be obligatory upon all successors and assigns of the respective parties. This Agreement shall be governed by Maine law.
10. Either party may terminate this Agreement in its discretion with no less than thirty (30) days' prior written notice.
11. This Agreement shall be effective as of the first day that the Shelter is open to clients.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

CITY OF PORTLAND

By: _____

WITNESS

Joseph E. Gray, Jr.
City Manager

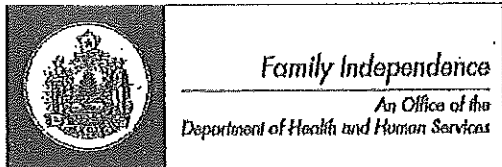
SHELTER PROVIDER

By: _____

WITNESS

Name: _____

Title: _____



Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

Department of Health and Human Services

Family Independence

19 Union Street

11 State House Station

Augusta, Maine 04333-0011

Tel.: (207) 624-4168; Fax: (207) 287-3455

Toll-Free (800) 442-6003; TTY Users: Dial 711 (Maine Relay)

May 29, 2013

Robert Duranleau
City of Portland
196 Lancaster Street
Portland, ME 04101

Dear Robert:

This letter is to acknowledge receipt of the mail in review for the town of Portland.

The review indicates that your program for the town of Portland is in compliance with the General Assistance statutes and the Department of Health and Human Services' General Assistance policy.

If this office can be of any assistance to you, please call 1-800-442-6003.

Sincerely Yours,

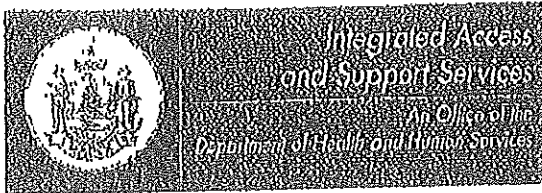
A handwritten signature in black ink, which appears to read "Gerard R. Blon".

Gerard R. Blon
Field Examiner II
General Assistance Program

JUN-26-2012 16:00

HUMAN SERVICES LEWISTON

207 795 4559 P.01/01



Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

Department of Health and Human Services
Integrated Access and Support Services
442 Civic Center Drive
11 State House Station
Augusta, Maine 04333-0011
Tel. (207) 287-2826; Fax (207) 287-3455
Toll Free (800) 442-6003; TTY (800) 606-0215

May 23, 2012

Palmer Peters
City of Portland
186 Lancaster Street
Portland, ME 04101

Dear Palmer:

This is in reference to the General Assistance audit conducted in Portland on May 21 & 22, 2012.

The review indicates that your program for the city of Portland is in compliance with the General Assistance statutes and the Department of Health and Human Services' General Assistance policy.

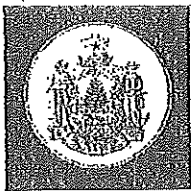
If this office can be of any assistance to you, please call 1-800-442-6003.

Sincerely Yours,

Gerard R. Biron
Field Examiner II
General Assistance Program

Caring..Responsive..Well-Managed..We are DHHS.

TOTAL P.01



*Integrated Access
and Support Services*

*An Office of the
Department of Health and Human Services*

John E. Baldacci, Governor

Brenda M. Harvey, Commissioner

Department of Health and Human Services
Integrated Access and Support Services
442 Civic Center Drive
11 State House Station
Augusta, Maine 04333-0011

Tel: (207) 287-2826; Toll-Free: 1-800-442-6003

Fax: (207) 287-3455; TTY: 1-800-606-0215

April 27, 2011

Robert Duranleau, Palmer Peters
Town of Portland
196 Lancaster Street
Portland, ME 04101

Dear Robert, Palmer:

This is in reference to the General Assistance audit conducted in Portland on April 26, 2011.

The review indicates that your program for the town of Portland is in compliance with the General Assistance statutes and the Department of Health and Human Services' General Assistance policy.

If this office can be of any assistance to you, please call 1-800-442-6003.

Sincerely Yours,

Gerard R. Biron
Field Examiner II
General Assistance Program



*Integrated Access
and Support Services*
An Office of the
Department of Health and Human Services

John E. Baldacci, Governor

Brenda M. Harvey, Commissioner

Department of Health and Human Services
Integrated Access and Support Services
268 Whitten Road

11 State House Station

Augusta, Maine 04333-0011

Tel: (207) 287-2826; Toll-Free: 1-800-442-6003

Fax: (207) 287-5096; TTY: 1-800-606-0215

April 14, 2010

Robert Duranleau
Town of Portland
196 Lancaster Street
Portland, ME 04101

Dear Robert:

This is acknowledge receipt of the mail in review for the town of Portland.

The review indicates that your program for the town of Portland in compliance with the General Assistance statutes and the Department of Health and Human Services' General Assistance policy.

If this office can be of any assistance to you, please call 1-800-442-6003.

Sincerely Yours,

Gerard R. Biron
Field Examiner II
General Assistance Program



*Integrated Access
and Support Services*

*An Office of the
Department of Health and Human Services*

John E. Baldacci, Governor

Brenda M. Harvey, Commissioner

Department of Health and Human Services
Integrated Access and Support Services
268 Whitten Road
11 State House Station
Augusta, Maine 04333-0011

Tel: (207) 287-2826; Toll-Free: 1-800-442-6003

Fax: (207) 287-5096; TTY: 1-800-606-0215

May 26, 2009

Robert Doranleau
Town of Portland
196 Lancaster Street
Portland, ME 04101

Dear Robert:

This is in reference to the General Assistance audit conducted in Portland on May 19th, 21st and 22nd, 2009.

The review indicates that your program for the town of Portland is in compliance with the General Assistance statutes and the Department of Health and Human Services' General Assistance policy.

If this office can be of any assistance to you, please call 1-800-442-6003.

Sincerely Yours,

Gerard R. Blron
Field Examiner II
General Assistance Program



*Integrated Access
and Support Services*

*An Office of the
Department of Health and Human Services*

John E. Baldacci, Governor

Brenda M. Harvey, Commissioner

Department of Health and Human Services
Integrated Access and Support Services
268 Whitten Road
11 State House Station
Augusta, Maine 04333-0011

Tel: (207) 287-2826; Toll-Free: 1-800-442-6003
Fax: (207) 287-5096; TTY: 1-800-606-0215

March 11, 2008

Robert Duranleau
City of Portland
196 Lancaster Street
Portland, ME 04101

Dear Robert Duranleau:

This is to acknowledge receipt of the mail-in review from the City of Portland and to advise you that your municipality is in compliance with General Assistance Statutes and the Department of Health and Human Services' General Assistance policy.

If this office can be of any assistance, please feel free to call 287-2415.

Sincerely,

Ellen D. Heath
Field Examiner II
General Assistance Program

Attachment F

GA Forms

**SOCIAL SERVICES DIVISION
GENERAL ASSISTANCE GUIDELINES**

EFFECTIVE 10/02/2014-10/01/2015

GENERAL ASSISTANCE MAXIMUMS		
#HH	WEEKLY	MONTHLY
1	\$176	\$762
2	\$208	\$901
3	\$269	\$1,163
4	\$338	\$1,463
5	\$361	\$1,565
Additional person add \$69 per month		

DISPOSABLE DIAPERS		
# Children	WEEKLY	MONTHLY
1	\$12.80	\$55
2	\$17.40	\$75
3	\$23.30	\$100
4	\$27.90	\$120

FOOD ITEMS			
#HH	DAILY	WEEKLY	MONTHLY
1	6.45	45.12	194.00
2	11.86	83.02	357.00
3	16.98	118.84	511.00
4	21.56	150.96	649.00
5	25.61	179.30	771.00
6	30.73	215.12	925.00
7	33.95	237.67	1022.00
8	38.84	271.86	1169.00
Additional person add \$146 per month			

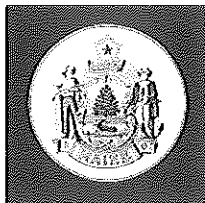
NON FOOD ITEMS		
#HH	WEEKLY	MONTHLY
1-2	\$10.50	\$45
3-4	\$11.60	\$50
5-6	\$12.80	\$55
7-8	\$14.00	\$60
For each additional person add \$1.25 per week or \$5 per month		

HOUSING						
# Bed Room	WEEKLY Unheated	WEEKLY Heated	WEEKLY Heat & Elec	MONTHLY Unheated	MONTHLY Heated	MONTHLY Heat & Elec
0	\$142	\$163	\$167	\$611	\$702	\$720
1	\$166	\$194	\$198	\$715	\$833	\$851
2	\$214	\$252	\$256	\$922	\$1,085	\$1,103
3	\$271	\$319	\$323	\$1,165	\$1,371	\$1,389
4	\$274	\$339	\$343	\$1,180	\$1,458	\$1,476
5				\$1,322	\$1,633	\$1,651
6				\$1,465	\$1,808	\$1,826
7				\$1,607	\$1,983	\$2,001
8				\$1,749	\$2,158	\$2,176

UTILITIES		
#HH	GAS & ELEC WKLY	GAS & ELEC MONTHLY
1	\$14.00	\$60.00
2	\$15.70	\$67.50
3	\$17.45	\$75.00
4	\$19.20	\$86.00
5	\$23.10	\$99.00
6	\$25.00	\$107.00
Add \$1.74 per week or \$7.50 per month for each additional person		

GAS & ELEC W/HOT WATER	
WEEKLY	MONTHLY
\$19.10	\$82.00
\$23.75	\$102.00
\$27.70	\$119.00
\$32.25	\$139.00
\$37.30	\$160.00
\$41.00	\$176.00
Add \$2.33 per week or \$10/month for each additional person	

HEATING FUEL			
MONTH	GALLONS	MONTH	GALLONS
September	50	January	225
October	100	February	225
November	200	March	125
December	200	April	125
		May	50



*Integrated Access
and Support Services*

*An Office of the
Department of Health and Human Services*

John E. Baldacci, Governor

Brenda M. Harvey, Commissioner

Department of Health and Human Services
Integrated Access and Support Services
161 Marginal Way
11 State House Station
Portland, Maine 04101-2438

Tel: (207) 822-2071; Toll Free: 1-800-482-7520

Fax: (207) 822-2310; TTY: 1-800-606-0215

DHHS/General Assistance Verification Form and Release of Information

IF NO CHANGE FROM LAST MONTH PLEASE CHECK THIS BOX

☐

Client Name _____

SSN or MaineCare ID# _____ GA Case # _____

Number of people in household _____ Month _____

Street Address _____ / TOWN _____ Apt. # _____

Amount of TANF \$ _____ (Mark "0" if applicable)

Secondary TANF (if applicable) \$ _____

Number of TANF months _____ of 60.

Amount of Food Supplement \$ _____

Amount of Refugee Cash Assistance \$ _____

Amount of benefit used this month. EA \$ _____ AA \$ _____

Amount of Child Support Non-welfare \$ _____ Pass-thru \$ _____ GAP Payment \$ _____

Amount of any other cash benefit \$ _____ Explain: _____

Amount of earned income \$ _____

Amount of unearned income: SSI/SSDI \$ _____ UIB \$ _____ OTHER \$ _____

Year, make and model of vehicle _____

Is Department paying child care? Y ☐ N ☐

This release will expire one year from the date signed below

Release of Information

I hereby authorize the **Office of Integrated Access and Support in the Department of Health and Human Services** to disclose the above information to **General Assistance** for the purpose of determining eligibility for their programs.

Signed _____ Date _____

DHHS person completing form _____ Date _____

Telephone # _____

CITY OF PORTLAND
HEALTH & HUMAN SERVICES DEPARTMENT
SOCIAL SERVICES DIVISION

CLIENT INTAKE FORM

HEAD OF HOUSEHOLD

LAST NAME - -	FIRST NAME	/ /
SOCIAL SECURITY #	MARITAL STATUS	DATE OF BIRTH
WHAT ADDRESS DID YOU STAY AT LAST NIGHT?	HOW LONG HAVE YOU LIVED IN PORTLAND?	WHERE DID YOU LIVE BEFORE PORTLAND? (City, State)
WHY DID YOU COME TO PORTLAND, MAINE?	HOW WERE YOU REFERRED TO GENERAL ASSISTANCE?	

SERVICES

ARE YOU CURRENTLY HOMELESS?

☐ YES ☐ NO

WHAT BRINGS YOU TO GENERAL ASSISTANCE TODAY?

- | | |
|--|--|
| ☐ Medical/Medication
☐ Shelter
☐ Food
☐ Non-food
☐ Job Training | ☐ Other (please list below):
<div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; height: 15px; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; height: 15px;"></div> |
|--|--|

ADDITIONAL HOUSEHOLD MEMBERS

LAST NAME	FIRST NAME	/ /	- -
LAST NAME	FIRST NAME	DATE OF BIRTH	SOCIAL SECURITY #
LAST NAME	FIRST NAME	/ /	- -
LAST NAME	FIRST NAME	DATE OF BIRTH	SOCIAL SECURITY #
LAST NAME	FIRST NAME	/ /	- -
LAST NAME	FIRST NAME	DATE OF BIRTH	SOCIAL SECURITY #
LAST NAME	FIRST NAME	/ /	- -
LAST NAME	FIRST NAME	DATE OF BIRTH	SOCIAL SECURITY #

City of Portland
Social Services Division
REAPPLICATION FOR GENERAL ASSISTANCE

☐ **INTAKE**
(First time at Oxford Street Shelter)

City of Portland
Oxford Street Shelter

☐ **EMERGENCY**

Date: _____



DOB: _____

Name: _____ M F SS#: _____

Address: Homeless Y N Other: _____



Monthly Income: \$ _____
Source (circle applicable): SSI SSDI Employed VA Other (specify): _____

Name of Employer: _____ Identification Presented: _____
(If Available)

EMERGENCY ASSISTANCE

SOCIAL SERVICES DIVISION USE ONLY

Denied Payment

Dates: _____

DO NOT MARK IN THIS AREA

Reason for Denial

____ Available Income
____ Rent Paid at Another Address
____ On G.A. Denial (120 days)
____ Exceed G.A. Income Guidelines
____ Other

I, _____, request admission to the City of Portland Oxford Street Shelter. As a shelter client, I will be provided with emergency overnight shelter. Counseling regarding current life situation will be available to me through the Oxford Street Shelter. I understand that the use of any unauthorized drugs and/or unruly behaviors are strictly forbidden and are grounds for immediate dismissal.

The City of Portland has entered into an agreement with the Oxford Street Shelter to presume the general assistance eligibility of persons to whom the Oxford Street Shelter provides services. I understand that I am applying for general assistance for shelter bed night stay(s) and that, if at any time in the future, I am found to be eligible to receive Supplemental Security Income (SSI benefits), an amount equal to the amount of public assistance given to me may be deducted by the Maine Department of Health and Human Services from my first retroactive payments of SSI benefits. I authorize the Oxford Street Shelter to release any information necessary to determine general assistance eligibility. I understand that this information may also be used in the formulation of care management plans and hereby give my consent.



Client Signature _____

Date _____

Staff Signature and Initials _____

Date _____

City of Portland will not discriminate on account of sex, sexual orientation, age, race, religion, disability, or political affiliation.

STAFF USE ONLY

Attach bed night report ☐

(Staff Initials)

** This form is due to Fiscal by the 10th day of the month, for the previous month**

Attachment G

City GA Budget Analysis, Reimbursement Status, Case Loads

GA Analysis
FY09-14
(Naviline Reports not corrected for cash basis reporting)

	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY09-FY14	Incr (Decr)	%
Family Shelter	152,347	136,743	139,490	155,521	179,641	194,387	42,040	-10,831	-15.17% No way to project deaths/burials
Oxford St Shelter	962,896	995,669	985,750	1,117,809	1,498,853	1,770,931	808,035	-9,004	-95.87% Now use "Non-food" primarily for this category
	1,115,243	1,132,412	1,125,240	1,273,330	1,678,494	1,965,318	850,075	-2,658	-100.00% No longer used
Burials	71,413	95,891	87,538	93,555	102,197	60,582	-10,831	-1,537	-93.72% Used only in cases of liens, etc.
Household	9,392	3,044	523	1,265	765	388	-9,004	38,996	45.77% # Clients increased with no Federal funds eligibility
Cl. Supplies	2,658	0	0	0	0	0	-2,658	-120	-100.00% Fed. Program eliminated need
Water	1,640	1,189	0	0	527	103	-1,537	11,316	73.87% # Clients increased with no TANF eligibility/timed out TANF
Electric	85,192	126,362	98,411	121,367	124,200	124,188	38,996	-40,111	-82.41% Increased \$ in other fuel programs
Telephone	120	193	0	0	0	0	-120	28,313	83.61% Families with larger # young children
Gas	15,318	20,226	14,692	22,638	28,831	26,634	11,316	2403,215	87.89% Housing bubble/subsequent loss of housing/Incr. immigrant pop.
Fuel	48,673	10,615	8,594	6,838	6,608	8,562	-40,111	151,804	33.31% Increase primarily hotel stays by Family Shelter clients
Diapers	33,864	29,672	18,066	19,797	38,153	62,177	28,313	15,920	19.25% FY11-12 HPRP program covered sec. depts.
Rent	2,734,391	3,694,092	4,103,023	5,032,487	5,534,373	5,137,606	2,403,215	963	28.27% Oral surgery--closure of Homeless Health--reduction in future use?
Emerg. Hsg.	455,749	567,758	468,925	495,259	515,141	607,553	151,804	128,590	82.40% Reduction in MeCare recipients
Sec. Dep.	82,685	97,811	650	0	57,923	98,605	15,920	759,349	134.90% # Clients increased with no Food Stamp eligibility (Visa holders)
Medical	3,407	1,913	5,226	5,454	6,132	4,370	963	105,729	85.64% # Clients increased with no Federal funds eligibility
RX	156,047	158,828	118,370	215,493	303,983	284,637	128,590	-8	-100.00%
Food	562,891	592,121	378,139	757,377	1,020,120	1,322,240	759,349	4,530	8.36% Program ended 07/2014
Non-Food	123,457	143,881	94,242	129,397	162,345	229,186	105,729	442,76%	Increased # clients bussed to other parts of country from OSS
Clothing	8	144	127	0	0	0	-8	47,313	
Transll Hsg	54,163	53,482	51,434	54,542	60,496	58,693	4,530	81.58%	
Transp.	10,686	8,931	23,729	31,721	36,410	57,999	47,313		
Total	4,451,754	5,606,153	5,471,689	6,987,190	7,998,204	8,083,523	3,631,769		
Total GA/Shelters	5,566,997	6,738,565	6,596,929	8,260,520	9,676,698	10,048,841	4,481,844	80.51%	
Cash Basis	5,580,648	6,733,815	6,713,884	8,284,043	9,678,537	10,100,734			
Cash Basis variance	13,651	-4,750	116,955	23,523	1,839	51,893			

Statistics from Year End Reports:

# Active Cases	2,700	2,832	2,657	2,710	2,840	2,740
# Families	721	729	632	651	663	679
# Single Adults	1979	2103	2055	2059	2177	2061
# Individuals	4,173	4,423	4,041	4,156	4,376	4,363

Although the number of cases have remained somewhat stable, the make-up of the clients has shown an increased number with no eligibility for Federal benefits. This has increased many of the General Assistance categories accordingly.

City of Portland
General Assistance
Summary Lawful/Unlawful

FY15 GA Threshold: \$2,265,485

Month	Gross Lawful	Gross Unlawful	Gross Total	Actual Reimbursement	Reimbursement Including Unlawful	Not Reimbursed
Jun 17-30, 2014	341,580.36	50,396.74	391,977.10	307,422.32	352,779.39	45,357.07
July, 2014	559,183.57	296,756.82	855,940.39	279,559.29	427,956.82	148,397.53
August, 2014	583,090.95	284,379.03	867,469.98	291,545.48	433,734.99	142,189.51
Sept, 2014	556,897.52	261,830.00	818,727.52	278,448.76	409,363.76	130,915.00
October, 2014	640,539.64	328,755.28	969,294.92	349,934.49	645,814.24	295,879.75
November, 2014	483,179.19	298,607.84	781,787.03	434,861.27	703,608.33	268,747.06
Total	3,164,471.23	1,520,725.71	4,685,196.94	1,941,771.61	2,973,257.53	1,031,485.92

Note: We have been reimbursed through June 1-16, 2014.

GENERAL ASSISTANCE

ASYLUM PENDING, VISA HOLDERS, AND REFUGEES

FY 11, FY 12, FY 13 & FY 14

CASELOADS

	FY 11	FY 12	FY 13	FY 14
	# Cases / Individuals	# Cases / Individuals	# Cases / Individuals	# Cases / Individuals
Asylum Pending	195/296	243/369	312/495	550/970
Visa Holders	108/188	340/546	502/844	435/746
All Other Clients	2354/3557	2119/3230	2026/3036	1718/2594
TOTAL	2657/4041	2702/4145	2840/4375	2703/4310

Cases receiving General Assistance: The General Assistance Program provides Portland residents with assistance for basic needs such as rent, food, non-food, medication, fuel, utilities, and other essential services. *The General Assistance Program takes walk-in applications and clients are seen on a first-come, first-serve basis.* All assistance is granted in voucher form and no cash assistance is granted. Financial Eligibility Specialists work actively with applicants to ensure that appropriate in-house and outside community referrals are made to other support services.

CITY OF PORTLAND
HEALTH & HUMAN SERVICES DEPARTMENT
SOCIAL SERVICES DIVISION

FEBRUARY 2015 DASHBOARD

OXFORD STREET SHELTER

New Intakes (unduplicated)						
February 2014	2014 YTD	February 2015	2015 YTD	Desired Trend	YTD Trend	
150	322	120	299	↓	↓	

Bed Nights						
February 2014	2014 YTD	February 2015	2015 YTD	Desired Trend	YTD Trend	
6,176	13,696	7,142	14,784	↓	↑	

Housing Placements*						
February 2014	2014 YTD	February 2015	2015 YTD	Desired Trend	YTD Trend	
25	57	11	27	↑	↓	

**Starting November, 2013, OSS shifted housing placement priorities to their long-term stayers. This was to make more quality placements, resulting in lower bed nights*

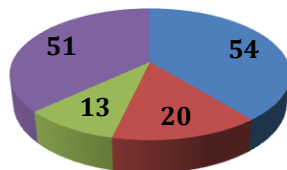
Veterans Served**						
February 2014	2014 YTD [†]	February 2015	2015 YTD [†]	Desired Trend	YTD Trend	
33	48	41	50	↑	↑	

***Veteran status is based on self-reporting*

[†] Unduplicated Veterans served

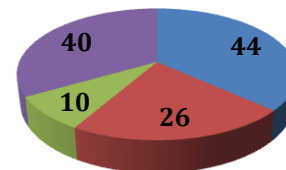
**Oxford Street Shelter
Intake Residency
Feb. 2014**

■ Out of Town ■ Out of State ■ Out of Country ■ Portland



**Oxford Street Shelter
Intake Residency
Feb. 2015**

■ Out of Town ■ Out of State ■ Out of Country ■ Portland



CITY OF PORTLAND
HEALTH & HUMAN SERVICES DEPARTMENT
SOCIAL SERVICES DIVISION

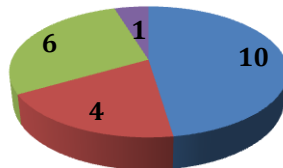
FEBRUARY 2015 DASHBOARD

FAMILY SHELTER

New Intakes (unduplicated families)					
February 2014	2014 YTD	February 2015	2015 YTD	Desired Trend	YTD Trend
21	37	14	33	↓	↓
Bed Nights					
February 2014	2014 YTD	February 2015	2015 YTD	Desired Trend	YTD Trend
3,486	7,127	3,440	7,404	↓	↑
Housing Placements (families)					
February 2014	2014 YTD	February 2015	2015 YTD	Desired Trend	YTD Trend
13	31	7	26	↑	↓
Veterans Served (families)					
February 2014	2014 YTD	February 2015	2015 YTD	Desired Trend	YTD Trend
0	2	0	2	↑	—

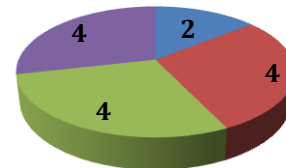
**Family Shelter
Intake Residency
Feb. 2014**

■ Out of Town ■ Out of State ■ Out of Country ■ Portland



**Family Shelter
Intake Residency
Feb. 2015**

■ Out of Town ■ Out of State ■ Out of Country ■ Portland



CITY OF PORTLAND
HEALTH & HUMAN SERVICES DEPARTMENT
SOCIAL SERVICES DIVISION

FEBRUARY 2015 DASHBOARD

GENERAL ASSISTANCE

New Intakes					
February 2014	2014 YTD	February 2015	2015 YTD	Desired Trend	YTD Trend
38	102	62	117	↓	↑

Total Applications (unduplicated)					
February 2014	2014 YTD	February 2015	2015 YTD	Desired Trend	YTD Trend
916	1,165	1,025	1,154	↓	↓

Total Applications Granted (unduplicated)					
February 2014	2014 YTD	February 2015	2015 YTD	Desired Trend	YTD Trend
859	1,074	981	1,099	↓	↑

Total Applications Denied (unduplicated)					
February 2014	2014 YTD	February 2015	2015 YTD	Desired Trend	YTD Trend
57	91	44	55	↓	↓

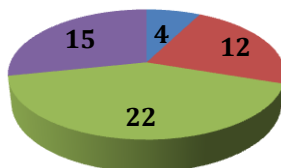
Billable Expenditures Granted					
February 2014	2014 YTD	February 2015	2015 YTD	Desired Trend	YTD Trend
\$611,556	\$1,244,793	\$191,611	\$547,862	↓	↓

Non-Billable Expenditures Granted					
February 2014	2014 YTD	February 2015	2015 YTD	Desired Trend	YTD Trend
-	-	\$361,876	\$720,881	↓	↑

All clients were "billable" until June 17, 2014

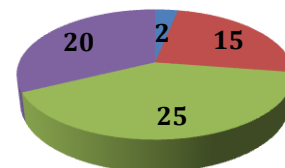
**General Assistance
Intake Residency
Feb. 2014**

■ Out of Town ■ Out of State ■ Out of Country ■ Portland



**General Assistance
Intake Residency
Feb. 2015**

■ Out of Town ■ Out of State ■ Out of Country ■ Portland



**Proposed Emergency Shelter Consolidation Study**

Public Safety, Health & Human Services Committee

March 10, 2015

Due to mounting financial pressures, the need for more efficient and effective emergency shelter service delivery is paramount. Staff have conducted preliminary explorations at various points over the last year or so, some in collaboration with Preble Street, which show that redesigning emergency shelter services will yield not only financial savings and streamline services, but also improve the quality and efficacy of such services.

We propose moving to a more formal, collaborative process including a comprehensive feasibility study.

Shelter Site Selection Criteria

There are several key internal and external stakeholders who should comprise the small group which meets over a brief period of time to develop site selection criteria. The United Way may be a good choice as a facilitator. Stakeholders should include:

- Preble Street
- City Zoning
- City Social Services
- Police
- Neighborhood Association(s)
- Homeless Voices for Justice
- Tom McLaughlin

Draft Scope for Feasibility Study

Staff proposes contracting with an external organization with expertise to examine the overall feasibility of consolidating City and Preble Street emergency shelter and other homeless services under one umbrella, run by Preble Street with the City as a partner, including:

- Number of clients to be served
- Eligibility requirements and methods of verification
- Scope of services to be provided
- Approach to securing permanent housing
- Funding sources
- Possible locations and site layouts
- Cost/benefit analyses

The study will also revisit data from Preble Street regarding the estimated cost of scattered site shelters from the Homelessness Task Force. Though this model was described as an alternative to a consolidated shelter, the costs appear to be prohibitively high and thus this model may be unrealistic

given the current environment. Please see **Attachment A** for detail on this option, with the note that these estimates are for shelter operations only. Preble Street worked from the assumption that there would be no rental costs, no case management, employment, counseling or other supportive services, and no soup kitchen services. Preble Street currently spends approximately \$3.5 million between the Resource Center and the Soup Kitchen for these programs which includes the cost of in-kind food donations and in-kind case management services.

Social Services Division leadership evaluated the costs of current emergency shelter services delivered at Oxford Street with two overflow sites (Preble Street's day room and the City's Social Services waiting room) versus a single-floor, one-building model. This analysis showed estimated savings of between \$675,448 (paying rent) and \$813,358 (not paying rent).

At the same time, Social Services leadership considered space needs for a consolidated shelter using 65 Hanover Street as a possibility, concluding that it would not be an ideal site (**Attachment C**). However, the estimated requirements for square footage would be helpful data as the site selection criteria and feasibility study are developed.

Preble Street Proposed Consolidated Expenses	City's current budget for Oxford Street Shelter operating 12 hours/day	1 - 300 Bed Shelter operating 24 hours/day	1 - 60 Bed Shelter operating 12 hours/day	Rationale For Change In Costs By Separating Shelters
Personnel	\$ 2,115,850	\$ 1,362,864	\$ 339,806	see staffing pattern below
Benefit costs		\$ 422,488	\$ 105,340	31%
Subtotal personnel costs	\$ 2,115,850	\$ 1,785,352	\$ 445,146	
Laundry	\$ 139,200	\$ 150,000	\$ 30,000	based upon continued contracting through City at Barron Center @ .30 per lb
Personal care items	\$ 18,250	\$ 48,845	\$ 10,000	estimated based upon Bob Barker purchases; less control due to more supplies at additional sites
Supplies (towels, sheets, blankets)	\$ 20,000	\$ 3,817	\$ 5,000	estimated based upon Bob Barker purchases; less control due to more supplies at additional sites
Security	\$ 102,616	\$ 105,000	\$ 52,500	estimated need based upon GA costs; increased due to presence needed at each separate shelter
Utilities	\$ 46,978	\$ 108,724	\$ 30,000	based upon current rate paid by OSS for 150 bed shelter; increased for need to heat each facility as it is not solely based upon usage
Rent	\$ 161,910	\$ -	\$ 6,120	parking costs for overnight shelter staff
Telephone	\$ 4,950	\$ 7,848	\$ 3,924	estimated 6 lines for each facility based upon number of lines for Florence House
Contractual (fire alarm, pest, trash)	\$ 18,251	\$ 19,512	\$ 5,000	5 buildings - slightly higher to treat each building
Maintenance repairs	\$ 63,118	\$ 91,320	\$ 25,000	estimate based upon current City costs, will vary depend on condition of buildings
Building supplies		\$ 55,841	\$ 11,168	estimate for cleaning needs and supplies to maintain buildings
Minor equipment/furniture	\$ 7,000	\$ 28,500	\$ 5,700	bed & mattress replacement; minor furniture items needed
IT client database		\$ 30,572	\$ 11,108	4 staff @ each site needing access to database
Computer equipment	\$ 6,000	\$ 12,000	\$ 12,000	7 computers @ each site; additional two way radios for each site
Copier	\$ 2,000	\$ 3,600	\$ 3,600	est. lease @ \$300/month - one needed per site
Office supplies, postage & printing	\$ 16,000	\$ 13,800	\$ 5,000	estimate based upon current Preble Street Florence House programming
Cell phones	\$ 1,750	\$ 2,400	\$ 1,200	estimated 2 phones @ each site
Legal & professional fees		\$ 12,016	\$ 2,500	estimate based upon current day shelter expenditures for audit and legal fees
Research & evaluation costs		\$ 3,000	\$ 600	estimated for survey and evaluation of programming
Consultants			\$ 1,200	interpreters
Insurance		\$ 10,758	\$ 6,500	liability needed for each site; based upon Preble Street insurance costs
Staff travel	\$ 5,000	\$ 7,000	\$ 1,700	additional travel between shelter sites based upon Preble Street costs
Staff development/training		\$ 10,412	\$ 3,000	additional costs to train/get in one place/coverage, etc.; based upon RC staff development costs
Payroll services	\$ -	\$ 8,624	\$ 1,725	based upon current payroll costs
Preble Street Day shelter	\$ 116,000	\$ 116,000		City's commitment to Preble Street day shelter
HOME Team	\$ 25,000	\$ 25,000		City's commitment to Milestone
Subtotal other direct costs (excludes personnel)	\$ 754,023	\$ 874,589	\$ 234,545	
Total direct shelter costs	\$ 2,869,873	\$ 2,659,941	\$ 679,691	
Indirect costs @10% rate		\$ 265,994	\$ 67,969	additional staffing for administration - HR/Finance/IT
Total shelter expenditures	\$ 2,869,873	\$ 2,925,935	\$ 747,660	Total expenditures per site
			\$ 3,738,301	x 5 sites
			\$ 85,150	Staff Director costs including benefits to manage all 5 sites
Total shelter expenditures	\$ 2,869,873	\$ 2,925,935	\$ 4,571,111	
	Single site	Single site	Scattered sites	
Staffing pattern for 5 individual shelters		# FTE's		
Program Assistant		1.00		
Supervisor		1.00		
Team Leader		1.00		
Shelter Attendants		2.00		
Custodial Staff		0.80		
Maintenance		0.20		
Total FTE needed per site		6.00		
PLEASE NOTE:				
The estimates and comparisons above are for two separate scenarios. The 300-bed shelter is based upon 24x7 operations vs. the 5 scattered site shelters being open 12 hours per day				
**No rent for shelter sites are included in either estimate.				
**Staffing coverage is the minimally required staff needed to operate each site with one Director overseeing each of the sites				
**The costs above reflect shelter operations only meaning that:				
- No case management services are being provided				
- No employment services are being provided				
- No counseling or other supportive services are being provided				
- No soup kitchen services would be provided				
** Soup kitchen and resource center services would still need to be provided; current cost of 3.5MM which includes program operations including in-kind food/services				



Memorandum

To: Mark Rees, City Manager
Sheila Hill-Christian, Deputy City Manager

From: Josh O'Brien, Director, Oxford Street Shelter

Re: Shelter Consolidation/65 Hanover Street Assessment

Cc: Julie Sullivan, Acting Director, Health and Human Services
Bob Duranleau, Director, Social Services

We have completed the requested feasibility assessment for potential shelter consolidation at the 65 Hanover Street site, with the projected annual consolidation savings to be @ \$600,000 - \$700,000 (minus any one time build-out/moving costs).

Based on this analysis, we do not believe this particular site would be adequate in terms of square footage needed for complete consolidation.

For comparison purposes, we used the square footage and layout of the Anderson Street site that was ideal in terms of size and layout in 2012, but determined to be out the proper shelter zone vs. the square footage of the 65 Hanover Street site to illustrate the size difference (see attached chart, page 3).

For reference, we were also able to provide the requested square footage per bed and per mat, based on current use:

Oxford Street Shelter

Current Square Footage for Oxford Street & Overflow Sites 16,200* sq ft
Sleeping Capacity = 230+- (inclusive of sleeping areas, bathrooms, office space, etc.)
*Note: 20-25% of all sleeping spaces at Oxford Street & Overflow are raised beds

One Raised Bed

Square Footage Needed For One Raised Bed 54 sq ft

One Floor Mat

Square Footage Needed For One Floor Mat 40.5 sq ft

The 65 Hanover Street site is listed @ .46 acres and current use is 7,000 square feet. Even if the building foot print on the existing acreage was expanded, it would not come close to matching the minimum need of about 16,000 square feet to consolidate all shelter activities (and this figure assume maintaining the current mix of raised beds to mats).

As detailed in the example below (option #2), to provide the space necessary for full consolidation and compliance with statewide shelter standards of 100% raised beds, we estimate needing about 20,000 square feet.

Below, please find the two scenarios that would allow for full consolidation:

Option #1

Single Floor/Simplified Layout - similar to Anderson Street	16,000 sq ft
Sleeping Capacity = 300	
(assumes maintaining 20-25% raised beds only)	

Option #2

Single Floor Plan/Simplified Layout	20,000 sq ft
Sleeping Capacity = 300	
(assumes capacity for 300 raised beds, if needed)	

While the 65 Hanover site may not be feasible, there is potential acreage available (in the future, as the City determines a timeframe on future Public Services program movement) on the other side of Hanover Street, currently housing the Public Service garage and other functions.

Please let me know if you would like us to review those sites, or any others, in greater detail for this purpose.

##



Fire/Code Task Force – Response to Questions from February 10, 2015 Meeting
Public Safety, Health & Human Services Committee
March 10, 2015

In response to questions posed by Committee members last month which could not be answered in full without additional work, the following information is submitted.

The Task Force was asked to provide more information on the following:

- Implementation timeline (Attachment A)
- How roles and responsibility will fall out among Planning, Fire and the proposed Housing Safety Office (Attachment B)
- Options for the landlord registration fee (Attachment C)
- Initial budget request (Attachment D)
- Councilor Costa's questions (below)
- Information on Old Orchard Beach's landlord licensing program (below)
- Possible ordinance changes (below)
- Proposed document on fire prevention and smoke alarms to be signed by tenants and landlords (to be developed)
- All other disclosures tenants sign (Attachment E)
- Recommendations document presented to the Committee 2/10/15 (Attachment F)

Councilor Costa's Questions

1. How are laws regarding owner-occupied buildings different?

On the level of the Code Enforcement Ordinances, with respect to rental units, there is no difference between Owner-Occupied and non-Owner-Occupied buildings. It is, however, relevant with respect to Housing Discrimination in the State Human Rights Act, where owner-occupied buildings of a certain size are exempt. It is also relevant for purposes of the State Foreclosure statute, triggering additional requirements that would not otherwise be present for foreclosure of a rental property.

2. What effects would landlord non-compliance have on tenants' legal rights against the landlord?

From the enforcement perspective, the presence of code violations exists independent of any recourse a tenant has against a landlord, or a landlord has against the tenant. Nevertheless, with respect to private causes of action a tenant may have against a landlord (independent of the code violations) the code violations would no doubt be relevant. Per 14 M.R.S. § 6021, landlords owe a warranty of habitability, if our Code Enforcement office, for example, posts a building against occupancy, such evidence would be highly probative on the question of whether the warranty of habitability has been breached. I could also imagine City Code violations and enforcement actions being probative of Dangerous Conditions pursuant to § 6026. Our authority, of course, is to enforce our ordinances on

behalf of the City and not prosecute the rights that tenants have against their landlords.

3. How does the City determine who is to blame for removed smoke detectors?

Both Chapter 6 (Buildings) and Chapter 10 (Fire) apply violations of the City code to any person, including occupants, not just landlords. There is a practical difficulty when it comes to enforcement of violations for the removal of smoke detectors, the Landlord will most certainly point the finger at the tenants, and the tenant at the landlord. For our purposes, the ultimate positive end effect is ensuring compliance and the non-removal of the smoke detectors. In the event we have a functioning summons process, we can notice both for the violation to ensure compliance. Of course, the fine system is often an ineffective method to obtain compliance, especially ongoing compliance, from tenants for removal of smoke detectors. We are benefited by violating landlords for removal that may be tenant removal as a means of fostering better oversight by landlords of tenant behavior with respect to smoke detectors. We must be aware, however, given that compliance is the end goal and the practical difficulties in proving who removed any particular smoke detector, education with respect to smoke detectors is likely a much more effective tool than enforcement.

4. Is there a way to limit the use of a form between landlord and tenant against the Tenant(s)?

The best limitation from the City side would be not to formalize this document in Ordinance. I assume though, that as Councilor Costa noted, even in that circumstance it would not preclude use of such a document in private actions between Landlord and Tenant. Arguably, such a document would be just as usable by a Tenant against a Landlord.

Old Orchard Beach Licensing Process

The Task Force does not recommend a licensing process, having concluded that registration meets the goal of gathering landlord and property manager information as well as statements about the number of units, etc.

OOB licensing:

Fee is \$75 for application, then \$25 per unit for year-round rentals; \$25 per unit for first 10 units, plus \$7.50 per unit thereafter for seasonal rentals. License application triggers a Life Safety Inspection.

- Date scheduled for inspection upon application, landlord is then provided 45 days to correct deficiencies and schedule a re-inspection (\$60).
- The Business Licensing Dept. fills in the Personal Property Number for the property, the Map, Block and Lot Number.
- Landlord provides on the application: Business name, location of business, phone number, business owner, name of individual applicant, property owner of the business, form of ownership (LLC, Corporation, etc.)
- Council approves licenses
- Half of the town's properties renews in even-numbered years, the other half in odd -numbered years, meaning that one renews every other year. If renewal is not paid in a timely fashion, then the Landlord must re-apply.

What would licensing in Portland look like?

- Licensing would bring the need to investigate pursuant to Chapter 15-7:
 - o “Clerk shall inquire of other city departments, as appropriate, for comments as to whether a license may be granted consistently with the provisions of the laws and ordinances enforced by such departments. In all appropriate cases, the building authority shall verify that the premises to be used for the proposed activity comply with the building code, electrical code, plumbing code and zoning ordinance, and if applicable, state junkyard screening law...the fire chief shall cause inspection to be made for the purpose of determining if city ordinances, a state law, or state regulations concerning fire and safety have been complied with...and if the license is not issuable to any class of persons, the police chief shall cause an investigation to be made of the principal officers or persons to be licensed. All such persons shall report to the clerk in writing, and copies of any such report shall be deemed a public record.”
 - o Can do a criminal background check and add costs to the fees paid by the applicant.
- With licensing there is also the ability to deny, suspend or revoke pursuant to 15-8 on one or more of the following:
 - o Failure to fully complete application;
 - o Knowingly making an incorrect statement of a material nature on the form;
 - o Failure to supply any additional documentation required or reasonably necessary to determine whether such license is issuable;
 - o Failure to pay required fee;
 - o Breaches of the peace;
 - o Clear danger that a breach of the peace will occur if licensed activity is permitted;
 - o The licensed activity will substantially and adversely affect the peace and quiet of the neighborhood;
 - o Licensee has violated the code in the course of conduct of the activity which the license has been applied for or issued;
 - o Occurrence of any event subsequent to issuance of the license that is a grounds of denial is a grounds for revocation;
 - o Taxes or judgments due to the city are in arrears or not paid prior to application
- Need to have a hearing to approve, deny, suspend or revoke

Ordinance Changes

The Task force recommends modest changes to City Ordinances. Many of the enforcement issues that need improvement can be remedied by utilizing the mechanisms for enforcement already embedded in Ordinance including utilizing the summons process more effectively and enhancing our present enforcement techniques by utilizing the new risk-based prioritization system. The space the Committee does see for beneficial Ordinance change is enhancing and enforcing the registration process already in Code. This will lead to a more comprehensive inventory of rental property and provide a means of defraying the cost of programs and staff.

The present code with respect to registration, which lacks a fee or specific penalties, provides:

ARTICLE VI. DISCLOSURE OF BUILDING OWNERSHIP

Sec. 6-150. Purpose.

The proliferation of real estate proprietorships, partnerships, and trusts having undisclosed, anonymous or otherwise unidentifiable principals, owning large numbers of multiunit residential properties, sometimes managed through unresponsive property management companies, has impeded the proper enforcement of this chapter, chapter 12 and other ordinances of the city. This article is intended to require the disclosure of the ownership of such property and to make owners and persons responsible for the maintenance of property more accessible and accountable with respect to the premises. (Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89)

Sec. 6-151. Registration required.

(a) *Registration of ownership.* The owner or owners of all buildings containing three (3) or more dwelling units, rooming units, or any combination thereof within the city shall register their ownership interest, address and telephone number and the name, address and telephone number of the person or entity responsible for managing the property, or cause such interest to be registered, with the building authority as provided in section 6-152 within ninety (90) days of the effective date of this article or within thirty (30) days of purchase of the property and/or building, whichever occurs later. The registration required hereunder shall be updated or withdrawn within thirty (30) days of transfer of ownership, change in management or change in registered agent as provided in section 6-152. Each and every owner of the property shall be responsible for the filing of the registration and for updating prior filings as required.

(b) *Registration of management companies.* Any individual, firm, corporation or purchaser under a land installment contract pursuant to Title 13 M.R.S.A. § 481 et seq. as may be amended from time to time, managing property subject to the registration requirements of subsection (a) shall register with the building authority its management responsibility within thirty (30) days of the effective date of this article or within thirty (30) days of assuming management responsibility. Any filing shall be updated, at least annually, if there are any changes whatsoever with regard to the information supplied.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. No. 246-97, 4-9-97)

Sec. 6-152. Registration form; information.

The building authority shall provide forms to be completed by the owners and managers of properties subject to registration under this article and shall maintain a file containing all registrations made under this article.

(a) The registration form for owners shall include, at a minimum, the following:

1. The street address of the building;
2. The assessor's chart, block and lot of the property on which the building is located;
3. The names, addresses and telephone numbers of all individual persons having any ownership interest in the property including, without limitation, all partners, all officers or trustees of any real estate trusts; and including the residential street address and home phone number of at least one (1) such individual person;
4. The name, address and telephone number of the manager of the property or the person or persons responsible for its regular maintenance or repair;
5. The name and address of a person designated as the agent of the owner for the service of notices and civil process by the city. Service of notice and process upon the person so designated shall be

deemed conclusive service upon the owner or owners designating that person in any litigation pertaining to the premises.

(b) The registration form for managers of property shall include, at a minimum, the following:

1. The name, address and local telephone number of the management company and of at least one (1) such individual, including the residential street address and home telephone number of that individual; and
2. A list of all buildings for which the person or firm is responsible, including the street address and chart, block and lot description of the property and the name of the owner of that building.

Sec. 6-153. Violations.

Any person failing to file the required registration, failing to file any required update to the registration or filing a false statement on any registration shall be guilty of an offense. It shall also be a violation of this article for any owner or manager to rent any apartment or other portion of any building subject to registration, not registered under this article, or to permit the occupancy of such premises. No certificate of occupancy shall be issued for property subject to the registration requirements which is not registered in accordance with this article. Each day's continuing failure to file such a registration, to update such registration or permitting the continued occupancy of such premises shall be a separate offense.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89)

Sec. 10-3. Amendments.

The NFPA 101: Life Safety Code adopted by section 10-1 is amended, modified and deleted in the following respects:

(a) Section 3.3.32.8 shall be amended to read as follows:

Historic Building: A building designated a Landmark or Contributing Building within a local or National Register historic district, pursuant to Article IX of the Portland City Code.

...

(m) The provisions of the Life Safety Code shall not apply to one and two-family occupancies existing prior to the adoption of this ordinance, unless such structures are being used for a purpose which requires a state or municipal license, including, but not limited to, daycare facilities, or are rented in their entirety and are the subject of a complaint to the City's Office of Building Inspections and Code Enforcement. _

(n) Inspections. The authority having jurisdiction, whenever any governmental agency having jurisdiction over a particular premises should request it to do so, upon proper identification, shall have the right to enter at any and all reasonable times into or upon any premises subject to this Code for the purpose of inspecting the premises in order to determine compliance with the provision of this Code. It shall be a violation of this article for any person either to interfere with or to prevent such inspection.

Although the provisions of the Life Safety Code shall not apply to one and two-family occupancies existing prior to the adoption of this ordinance, the authority having jurisdiction may, at its own election, enter at any and all reasonable times into or upon any premises and/or dwelling units that are rented in their entirety for the purposes of ensuring compliance with fire and life safety requirements.

In addition to the fees assessed for Registration, after surveying Registration Ordinances in several other municipalities, the Task Force was provided a “menu” of potential enhancements or alteration to the Ordinance. The group was able to reach consensus on some and makes recommendations that the Committee approve additions to the Ordinance to be drafted for its review along with any other additions (or deletions) the Committee suggests.

Registration in Portland

- Additions/Alterations
 - o To whom does it apply?
 - Include Two Units? **Task Force suggests yes**
 - Single Families? **Task Force suggests yes**
 - Include seasonal rentals? **Task Force suggests not distinguishing between seasonal and non-seasonal**
 - Owner occupied? **Task Force suggests including rental units within Owner-Occupied buildings, but not the unit that is Owner-Occupied**
 - o Renewal?
 - Annual? **Task Force suggests yes**
 - At change of tenancy? **Task Force suggests no**
 - At change of ownership? **Task Force suggests yes**
 - o Information Required? (in addition to present code)
 - Name of Insurance provider? **No consensus reached by Task Force**
 - Names of all lien holders? **No consensus reached by Task Force**
 - E-mail address? **Task Force suggests yes**
 - Who is responsible for payment of utilities? **No consensus reached by Task Force**
 - Include acknowledgement of review and awareness of Life Safety Codes and Building Codes? **Task Force suggests no; proposed document to be signed jointly by landlord and tenant should reach the goal intended by this**
 - o Require display in building of its registration? **Task Force suggests no; the same information can be obtained via the proposed data available on the City web site**
 - o Incentives for proper property maintenance?
 - E.g. Gold Star status for buildings that pass code (so as to use for advertising)? **Task Force suggests no**
 - Waiving renewal fee for buildings that pass code? **Task Force suggests no**
 - o Sanctions for non-registering or false information?
 - Differing penalties for failure to register and false information? **No consensus reached by Task Force**
 - Revoke certificate of occupancy? **Task Force suggests no**
 - Per unit? **No consensus reached by Task Force**

- Amount for Penalties? **No consensus reached by Task Force, however Task Force supports a system that does not penalize by day, but rather has certain penalties that increase over the course of time not registered. (e.g. penalties for 30 days, 3 months, 6 months, 9 months that increase)**

	Enforce existing re-inspection fees	Tammy, Keith													
Item	Tasks	By Whom	Now	20-Mar	3-Apr	17-Apr	1-May	15-May	29-May	12-Jun	26-Jun	10-Jul	24-Jul	7-Aug	21-Aug
(4) Technology and training	Fire Dept will train staff and use Urban Insight for all inspections	Keith, Vicki													
	Develop standardized checklist for Fire Dept inspections	Vicki	✓												
	Implement Fire checklist	Keith													
	Purchase, train and utilize tablets for Fire inspections	Keith													
	Create online capability for landlord registration	Vicki													
	Fire Dept staff training	Keith													
	New inspector training	Safety Official													
	Training for relevant City staff on housing safety/checklist	Housing Safety Official													
(5) Staffing	Post and hire Housing Safety Official	Tammy, Keith													
	Post and hire new inspectors, project manager	Safety Official													
	Post and hire new Education Officer	Keith													
	Transfer GA housing inspections to housing safety office	Housing Safety Official													

Fire/Code Task Force - Proposed Housing Safety Roles and Responsibilities Across Relevant Departments

Presentation to PSHHS Committee 3/10/15

Housing Safety Office		Inspections Division, Planning Dept		Fire Dept
Risk-based prioritization of rental housing inspections		New and rehab construction inspections		Proactive inspections of residential buildings with 3+ units
Respond to rental housing complaints		Respond to new/rehab construction-related complaints		Respond to specific life safety complaints across all rental housing; serve as back-up to housing safety inspectors for 1-2 unit buildings and primary for 3+ unit buildings
No plans review		Plans review for new/rehab construction		Conduct or subcontract life safety portion of plans review
One on one education as needed		One on one education as needed		Implement annual public education plan
Ensure inspections staff is cross-trained in building and life safety codes as well as all relevant internal soft/hardware for inspections		Ensure inspectors maintain relevant certifications and are trained internal soft/hardware		Ensure regular, comprehensive training for FD staff on inspections, checklist, and related soft/hardware
Develop materials and processes for annual landlord registration, including enforcement				
Conduct quarterly evaluation of HSO				
Regularly and frequently communicate with other relevant departments to ensure optimal service delivery				
Issue tickets and summonses when violations occur		Issue tickets and summonses when violations occur		Issue tickets and summonses when violations occur
Enforce existing re-inspection fees		Enforce existing re-inspection fees		Enforce existing re-inspection fees
Oversee public data on rental housing violations				



Tammy Munson
Division Director, Inspections Division

Memorandum

TO: Julie Sullivan, Acting Chief of Staff

FROM: Tammy Munson, Inspections Division Director
Brit Vitalius, President, Southern Maine Landlords Association

DATE: 03.05.2015

CC: Fire / Code Inspections Task Force
Sheila Hill-Christian, Acting City Manager
Jerry LaMoria, Fire Chief
Jeff Levine, Planning and Urban Development Director

RE: Possible fee scenarios for proposed rental registration program

The following represents three different scenarios regarding rental registration fees. Typically, through a minor fee assessed on a per unit basis or per building basis, rental registration programs can be self-funded. Often, the fee is passed onto the tenant and may result in an increase in rent ranging from \$2 to \$3 per month in rent. We anticipate this may happen in Portland and are sensitive to the rental market in our recommendations. The fees generated from this program will cover the majority of the expenses for the proposed housing safety office, including Staffing for program implementation.

Statistical rental information for fee basis:

There are approximately 3,600 documented rental buildings within the city containing 17,000 to 20,000 dwelling units. They are broken down by unit groups in the following list:

Portland Rental Inventory - Multis & Mixed-Use

Units	Buildings	%	Units	%
21+	90	2%	5,553	31%
11-20	95	3%	1,330	7%
5-10	467	12%	3,072	17%
4	288	8%	1,152	6%
3	921	25%	2,763	16%
2	1,775	47%	3,550	20%
Mixed-Use	118	3%	317	2%
Total	3,754		17,737	

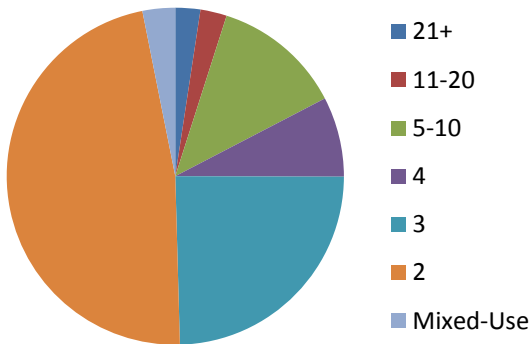


Tammy Munson
Division Director, Inspections Division

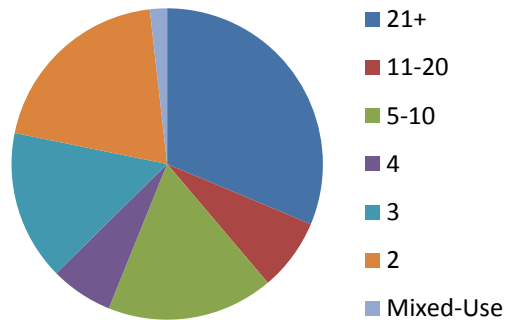
Notes From Distribution of Buildings & Units

- 2 units comprise almost half of the buildings
- 2 units & 21+ units make up half of the total units
- this relationship should be used to determine both fairness and maximization of revenue

Buildings



Units



Scenario #1:

This scenario is based on a per-unit rental fee. Charging a yearly fee of \$20 per unit based on an average of 18,500 units (we know there are between 17,000 and 20,000 documented units) yields \$355,000 in yearly rental registration fees. The impact would be minimal to tenants and would increase rents by roughly \$1.66 per month. This scenario covers the majority of the program.

Scenario 1 - Per Unit Fee

Fee per unit	Total Revenue
\$20	\$354,740
\$15	\$266,055
\$10	\$177,370

Cost to Owners based on units owned

2	25	100	500
\$40	\$500	\$2,000	\$10,000
\$30	\$375	\$1,500	\$7,500
\$20	\$250	\$1,000	\$5,000



Tammy Munson
Division Director, Inspections Division

Scenario #2:

This scenario is based on a per-building fee. Charging a yearly fee of \$100 per rental building would yield \$360,000 in yearly rental registration fees. This would cover most of the cost of a rental registration program and is more equitable to larger rental property owners as they would have a much lower fee. It also makes the rent increase on a per month basis up to \$4 in a two-unit building, for example.

Scenario 2 - Per Building Fee

Fee/building	Total Revenue
\$50	\$187,700
\$100	\$375,400

Scenario #3:

This scenario is based on a per-building fee. It offers a lower fee for 10 units and under and a higher fee for 11 units and above. There are roughly 3,409 buildings containing 2 to 10 units within the city. Charging \$100 per building yields \$340,000 per year. There are approximately 175 buildings containing 11 to 20+ units within the city. Charging \$250 per year to larger unit owners yields \$43,750. This scenario would provide \$384,650 per year in registration fees.

Scenario 3 - Split Fees based on building size

Type	Buildings	Fee	Revenue
2-4 Units	2,984	\$50	\$149,200
5-10 Units	467	\$100	\$46,700
11+	175	\$250	\$43,750
		Total	\$239,650

In closing, we recommend charging the per-unit registration fee which is demonstrated in scenario #1. We feel that it is equitable to all property owners and essentially puts owners on a sliding fee scale without complicated fee equations. Our recommendation is a \$20 per unit rental registration fee. This figure yields roughly \$355,000 in fees with an estimated \$25,000 in registration penalties totals \$380,000.

Fire/Code Task Force - DRAFT Budget Request						
Presentation to PSHHS Committee 3/10/15						
Revenues						
Landlord Registration Fees	\$20/unit for 17,000 units	\$ 340,000				
Landlord Registration Penalties	Possibly \$500 for first-level fines; \$1000 for second-level	\$ 15,000	To be further defined by Legal			
Reinspection Fees (only those generated by HSO)	\$100 per	\$ 3,500				
		\$ 358,500				
Expenses						
Personnel						
Housing Safety Officer		\$ 75,000				
Inspectors (3)	\$45,000 ea	\$ 135,000				
Project Manager		\$ 52,000				
Education Officer - Fire Dept		\$ 55,000				
Salaries		\$ 317,000				
Benefits	28.5%	\$ 90,345				
		\$ 407,345				
Equipment			Nothing included for Education Officer			
Computers	5	\$ 4,250				
Cell phones	4	\$ 1,680				
Printer	1	\$ 100				
Office Supplies		\$ 500				
Inspection Supplies	4	\$ 1,400				
		\$ 7,930				
Total Expenses		\$ 415,275				

Energy Efficiency Disclosure Form for Rental Units in Maine

Address of Rental Unit: _____

This rental unit ☐ meets/ ☐ does not meet/ ☐ partially meets (check one)
the minimum energy efficiency guidelines suggested below for rental units
in Maine.

You can expect your energy bills to be lower if your dwelling is insulated and has efficient appliances. There are several factors that affect energy costs. The areas below are the most important ones and indicate where this dwelling exceeds, meets, or falls below minimum efficiency guidelines suggested for Maine. *The **bold** items below are suggested minimum guidelines.*

Heating Systems

Space Heat

Tested heating system efficiency (minimum: 82%) ☐ % ☐ unknown Test date: _____

Exposed pipes or ducts in unheated crawl space insulated? ☐ yes ☐ no

Heating fuels: ☐ oil ☐ natural gas ☐ propane ☐ kerosene ☐ wood ☐ electric ☐ other

Water Heat

Accessible domestic hot water pipes insulated? ☐ yes ☐ no

Fuels: ☐ oil ☐ natural gas ☐ propane ☐ solar ☐ electric ☐ other

Insulation

Walls

Insulated? (minimum: cavity filled) ☐ filled ☐ partially filled ☐ no insulation ☐ unknown

Insulation thickness: ☐ less than 3" ☐ 3-6" ☐ more than 6"

Ceiling

Insulated? (minimum: R-38 or cavity filled) ☐ filled ☐ partially filled ☐ no insulation ☐ unknown

Insulation thickness: ☐ inches or R-☐

Floors over unheated areas

Insulated? (minimum: R-21 or cavity filled) ☐ filled ☐ partially filled ☐ no insulation ☐ unknown

Basement wall

Insulated? (minimum: 2' below grade) ☐ yes ☐ no ☐ unknown

Windows and Doors

Windows (minimum: 2 panes of glass) ☐ single pane ☐ single + storm ☐ double (DG) ☐ DG + low-e
☐ (DG + low-e + argon gas) ☐ triple or better

Doors (minimum: insulated or with storm) ☐ insulated ☐ storm ☐ insulated + storm ☐ neither

Appliances

Refrigerator (minimum: post-1995) ☐ yes ☐ no ☐ unknown ☐ Energy Star rated

Gas stove (suggested electronic ignition) ☐ electronic ignition ☐ pilot light ☐ no gas stove

You have the right to obtain a 12-month history of electricity used by this rental unit by calling your local electric company. If this unit uses natural gas, you have the right to obtain a 12-month history of natural gas used by the unit by calling your local natural gas company.

For further information about energy efficiency, contact *Efficiency Maine, 1-866-376-2463*

Signatures: Landlord: _____ Tenant: _____ Date: _____

This information is accurate to the best of the landlord's knowledge.

Other comments about the unit's efficiency: _____

Guidelines and Explanation of Terms

Tested heating system efficiency (minimum 82%): This is the combustion efficiency test typically performed by a heating technician when servicing and cleaning the burner.

Floors over unheated areas: Examples are an enclosed porch or a crawlspace. Doesn't refer to a basement.

Basement wall: Basements in many new buildings are insulated all the way to the floor or footings (full height). Older buildings may have poor soil drainage, e.g. a wet basement. To avoid potential foundation damage from damp soils freezing and expanding, it is generally considered safe to insulate to 1'-2' below ground level. This still saves considerable energy.

Windows: Sealed double glazing sometimes has gas fill such as argon or krypton. Low-e storm windows are also available. Either exceeds the basic single glass + storm.

Doors: A solid wood door is only a bit more insulating than a single pane of glass. Adding a storm door cuts heat loss in half. An insulated door can equal almost 10 panes of glass.

Refrigerator: Refrigerators made before 1995 have the make and model information on a metal plate inside, usually on the door. From 1995 on, the information is on a sheet of metal *foil*.

Gas stove: According to the U.S. Department of Energy, piloted gas burners can use more than twice the energy used by electric ignition gas burners.



Landlords Disclosure Of Radon Gas Hazards In A Residential Rental Property

There are possible serious health risks due to exposure to radon. Please read the attached information.

Information About Your Building

Residential Rental Unit Number Or Other Identifier: _____

Street Address (including Rental complex name if applicable): _____

A radon test in the unit identified above or in other parts of your building was completed on ____/____/____.
(day)/(month)/(year)

A Tenant may request a re-test after 10 years from the date above, unless the landlord has installed and maintains a functioning radon mitigation system.

The radon level found in the above identified unit (or, if the unit was not tested, the highest level found during testing in other parts of the building) was _____ pCi/l. A copy of the original results report is available for viewing by the Tenant. Radon mitigation is recommended, but not required, for radon levels of 4 pCi/l or higher. However, if radon levels of 4.0 pCi/l or higher are not mitigated, the landlord or Tenant have the option to end the lease after providing at least 30 days notice.

The radon was tested by (check one): A Maine Registered Radon Tester ____ /the landlord ____ /a Tenant ____
If tested by a Maine-registered radon tester, their Maine Radon ID number is _____

Under Maine law, any radon testing in residential rental buildings must be conducted according to proper protocols and in accordance with rules adopted by the Maine Department of Health and Human Services. Additionally, Maine law gives the Tenant the right to conduct radon tests in their dwelling unit. They may hire a registered radon tester or conduct the test themselves.

A page explaining the hazards of radon, *Radon in Rental Housing-A Serious Hidden Danger to Family Health*, is attached.

ACKNOWLEDGEMENT OF RADON GAS HAZARDS DISCLOSURE

The signatures below acknowledge that the landlord or their agent has disclosed to the lessee, information about radon gas as required by 14 M.R.S.A. Section 6030-D. This acknowledgement does not constitute a waiver of any rights.

Landlord or Agent (printed) Date

Landlord or Agent (signed) Date

Tenant (printed) Date
Date

Tenant (signed)

Tenant (printed) Date

Tenant (signed) Date

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) _____ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) _____ Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) _____ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

(c) _____ Lessee has received copies of all information listed above.

(d) _____ Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Agent's Acknowledgment (initial)

(e) _____ Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____ Lessor	_____ Date	_____ Lessor	_____ Date
_____ Lessee	_____ Date	_____ Lessee	_____ Date
_____ Agent	_____ Date	_____ Agent	_____ Date



Fire/Code Inspections Task Force

Public Safety, Health & Human Services Committee Presentation

February 10, 2015

Task Force Purpose

Following the tragic fire on Noyes Street on November 1, 2014, Acting City Manager Sheila Hill-Christian created a task force to recommend improvements to better ensure the safety of the city's rental housing stock. Boston Fire Department Deputy Chief Jay Fleming provided pro bono technical assistance to the task force, which was led by Acting Chief of Staff Julie Sullivan. The task force conducted its work in two phases. Phase One was an internal review of prior studies as well as applicable codes and ordinances, staffing levels, roles and responsibilities across departments, and relevant initiatives in Boston, MA; New York, NY; Providence, RI; Austin, TX; and Princeton, NJ. These discussions occurred over the course of three work sessions in December, all of which were open to the public. City staff comprising Phase One membership were: Rich Bianculli, Esq., Neighborhood Prosecutor; Keith Gautreau, Acting Assistant Chief for Fire Prevention and Community Outreach; Tammy Munson, Inspections Division Director; Jon Rioux, Inspections Division Deputy Director; Planning Board Chair Tuck O'Brien; and Acting City Manager Sheila Hill-Christian.

Phase Two added four external representatives to the task force: Julie Gregor, Inspection Manager for the Portland Housing Authority; Katie McGovern, Esq., Pine Tree Legal Assistance; and Crandall Toothaker and Carleton Winslow (alternate: Brit Vitalius) of the Southern Maine Landlord Association. Adam Lee, Esq., a new attorney with the City's Corporation Counsel's Office, also joined the task force during this phase. The task force met four times in January during Phase Two, and all meetings were open to the public.

The task force did not seek to specifically analyze or debrief the Noyes Street fire, but instead to examine the larger issues and explore options to address them. These issues include those with an external focus, such as the need for public education on fire safety and greater accountability for landlords and tenants, and those with an internal focus, such as improved and increased inspections, better use of technology, and centralized and expanded housing safety functions. Three guiding principles the task force referred to throughout the process were transparency, consistency and accountability, while also keeping in mind affordability.

Operating under a very tight timeline, the task force chose to focus on rental housing stock and not commercial or single-family properties. Sticking to the timeline allows the recommendations put forth by the task force to be considered through the City's budget process for the upcoming fiscal year, which was a priority for the task force. Thus, there are areas throughout the recommendations that require additional development, which may be accomplished by returning items to the Task Force

and/or referring these items to the proposed Housing Safety Official. Notes from each meeting are provided as attachment A.

The State Fire Marshal's Office released their report in late January. Because the report was forwarded to the District Attorney, the full text could not be made public during the task force's time frame. The task force did review the key findings (please see meeting notes from January 26) and found that the issues were in line with those already under discussion. Portland Fire Chief Jerome LaMoria requested assistance from the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives to study the fire, and the ATF conclusions corroborate those of the State Fire Marshal's Office.

Finally, as a framework to quantify the scope of rental properties, the City estimates there are approximately 3,600 rental properties with about 17,000 units to be inspected.

Recommendations

Overall, the task force identified several key strategies the City can implement to improve the safety of rental housing stock:

- 1) Implement a risk-based prioritization process for inspections
- 2) Provide public education; conduct routine inspections of housing stock with 3 or more units by fire station personnel
- 3) Hold landlords and tenants accountable
- 4) Provide better training, including cross-training, for inspectors and other City staff working in the field who can assist in identifying potentially dangerous housing safety situations. Use existing technology more efficiently
- 5) Designate a Housing Safety Official with authority over housing safety who will ensure communication, coordination, accountability, consistency, training, and technology utilization across relevant City departments and evaluation of the effectiveness of the programs. Increase the number of cross-trained inspectors. Inspect all rental properties.

So that the many issues considered by the task force can be succinctly presented and the rationale for the recommendations chosen is clear, this document illustrates the issues, the matrix of options, relevant City code when applicable, and the related recommendation.

(1) Issue: There are approximately 3,600 rental properties in Portland with about 17,000 units. How can the City have a realistic approach that improves timely inspections of the riskiest properties first?

Option	Pros	Cons
Respond to complaints (current practice)	Requires no new resources	Does not allow for prioritized inspections nor does it ensure inspections of all properties over time
District-based inspections	Small geography; inspectors get to know their area better	Does not allow for most serious violations to be addressed quickly;

		does not allow for differing density of rental housing by district; requires additional staff
Third-party inspections	Does not require increased staffing	Difficult to assure qualified third-party inspectors – eg, there is State training but none on City code, and no licensing to report inspectors; added cost for landlords; added administrative burden for City to track; potentially does not increase accountability or transparency and decreases consistency. City staff would still have to follow up on violations.
Inspections at time of sale	Minimal added burden to the City; assures inspections happen at some point.	Unknown frequency of turnover. Does not ensure regular inspections. Requires state-level legislation.
Develop list of variables to create risk-based prioritization of rental housing properties	City can utilize existing technologies/software and data with minimal expense; ensures that the riskiest buildings are addressed first.	Initial data will direct us towards chronic past violators. This data will need to be evaluated in order to identify the riskiest buildings that have never been inspected.
Other kinds of limited inspections – e.g., common areas, exterior only; randomized annual inspections	At least a minimal inspection would be done.	Does not ensure that serious life safety threats are identified.

(1) The task force believes that **risk-based prioritization** is the best option to maximize limited resources and to address the most serious issues quickly, in addition to responding to complaints. The City can build on existing technologies and software to rank properties based on risk factors. There are numerous municipalities using this approach to ensure safe housing and allocate inspections and enforcement resources according to a risk score generated by many variables, including type of construction, age of structure, number of units, location, delinquent taxes, vacancy, foreclosure, complaints/violations, and calls for service. (Please see Attachment B for a complete list of variables included at this time.) Public Safety Solutions Inc. (PSS) conducted an extensive and thorough review of the entire Portland Fire Department in 2013 and also recommends this approach. Furthermore, this approach avoids any potential for selective enforcement. The City would, of course, still follow up on complaints regarding properties that may not have come up as priorities through the risk-based analysis.

- a. Fix It Portland – complaints via web, smart phone app
- b. Urban Insight – internal software used for inspections and code enforcement functions across the City, along with other municipal functions
- c. Cost: No additional costs; will need additional staff time to process (see Staffing section)

- d. Timeline: Up and running by Feb. 28, 2015

(2) Issue: Human behaviors have the greatest impact on fire prevention. How can the City educate tenants and landlords about fire safety practices?

(2) The task force concludes that **public education** is clearly the best means of primary prevention. The Fire Department will take the lead on this through school-based programs, targeting college students and 20-somethings, General Assistance housing recipients, immigrants/refugees, landlords, and other tenants. This was a major focus in PSS's recommendations around prevention.

- a. Chief Lamoria recently named Keith Gautreau as Assistant Chief for Fire Prevention and Community Outreach.
- b. Chief Gautreau is designing a multi-pronged education plan with assistance from the State Fire Marshal's office, Deputy Chief Jay Fleming from the Boston Fire Department, and the National Fire Protection Association. The Fire Department will go to where the targeted groups already are and will work with many relevant partners, including jointly developing materials for tenants with Pine Tree Legal. Some of the key points will include the importance of:
 - i. Proper location and maintenance of smoke alarms
 - ii. Unblocked exits
 - iii. Properly disposed smoking materials
 - iv. Trash disposal/housekeeping
- c. The Southern Maine Landlord Association proposes a new document outlining fire safety expectations and responsibilities to be signed by tenants and landlords at the same time a lease is signed.
 - a. This document will be finalized jointly by the City, the SMLA, Pine Tree Legal and the tenants' group.
 - b. The City will consider requiring this document via ordinance change and associated penalties should the document not be produced when requested during an inspection.
 - c. The City and Pine Tree Legal will collaborate on a joint landlord-tenant guidebook.
- d. Cost: Please see Staffing section for reinstated Education Officer in the Fire Department; also materials and translation.
- e. Timeline: Portland Fire has the National Fire Protection Association on standby for training while they purchase computers; looking at March/April for training and subsequent initiation of improved proactive inspection program of buildings with 3 or more rental units.

(3) Issue: Currently, when Life Safety violations are noted, Fire Inspectors send a letter to the landlord who has 32 days to respond. If there is no response, a second letter is sent and another 32 days are granted.

Option	Pros	Cons	Relevant Code Citation
Ticket and fine	Quicker and clearer enforcement process; inspector can issue ticket while out in the	Could increase staff time in court; some safety concerns among staff	Penalties and specific violations – Chapter 6, Article I, pp 6-1 and following; Chapter 10, p.

	field		10-13 and following
Penalty for disabling smoke detectors	Elevates awareness of this critical device and enforces State law	Can be hard to prove whether tenants or landlords at fault	State penalty (\$500) referenced at 25 § 2464(5), (7) and (9)(B)
Landlord and licensed lodging registration	Provides more complete information including who to contact as well as insurance company and other property-specific data	Staff time to manage, enforce; increased cost to landlords	Chapter 6, Article VI, pp 6-51 and following; includes form and violations
Re-inspection fees	Helps enforcement and helps support inspection	Staff time to manage, enforce	Chapter 6, Article 1, p 6-4, refers to Section 1-16
Dedicated legal resources	Key part of timely enforcement	Staff time, workload management	N/A
Tenant notification of building violations and public access to online database of violations	Current and prospective tenants should be aware of the violations	Addition resources required – this typically includes a return visit to the property after the notices are generated to be delivered to tenants; additional staff time to create online database	N/A
Housing court	Focused resource for housing safety issues	Costly to create; already have venue to address these issues and will continue to evaluate	N/A
Low-interest loan program for landlords to address violations	City already has limited resources for landlords who meet the qualifications. Expanding the program would allow more landlords to bring their properties up to code.	Not sure of available funding source(s) for expansion – in the past, program was largely federally funded, and those funds are no longer available.	N/A
Legal use/zoning – eg, 3 rd floor units, rooming/lodging houses	Critical risk factors.	Requires zoning changes; hard to find violators; will increase the work-load for the city's zoning administration staff	City of Portland Code of Ordinances – Chapter 14 Land Use

Two-family buildings; owner-occupied buildings	Bulk of rental housing stock; not currently inspected unless subject of complaint. Fire Department inspects 3+ unit buildings. Would need to be handled by proposed Housing Safety Office.	Different rules apply for owner-occupied regarding some rental laws but they are still subject to Chapter 6 Article V	Sec. 10-3 (m)
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(3) There are many opportunities to clarify and strengthen the **enforcement** process, some of which require minor revisions to City Code.

- a. Enforce existing requirement for landlords to register with the City annually.
 - i. Contact information, type of property, insurance company information
 - ii. Annual fee options
 - 1. \$15 per unit up to 7 units; \$100 per building for 8 or more units
 - 2. \$25 per building
 - 3. \$25 per building with 4 units or less; \$100 per building with 5 or more units
 - iii. High fines for failure to register, provision of inaccurate information
- b. Move to ticket and summons (with fine) for violations. Legal staff has discretion to dismiss matters if immediate compliance occurs. Parties can agree to terms if long-term compliance is required.
- c. Also enforce existing re-inspection fees (\$75 and \$150).
- d. Dedicate legal resources – one District Court calendar day per month is currently dedicated to the Neighborhood Prosecutor’s enforcement of municipal ordinance violations.
 - i. This monthly calendar provides the City with an opportunity to enforce building and fire code violations on a regular basis.
 - ii. The City will evaluate the adequacy to ensure this process meets the enforcement needs.
 - iii. A new City attorney (Adam Lee, Esq.) will focus on building code issues.
 - iv. The Police Department’s Neighborhood Prosecutor is available to provide additional assistance to Attorney Lee in the event of a heavy caseload.
- e. City inspectors will do everything possible to ensure that tenants are not displaced while pursuing landlord enforcement actions. The City’s Social Services Division will be alerted when displacement is unavoidable.

(4) Issue: City staff do not use the same software across departments nor is there a streamlined, standardized approach to inspections. In addition, some inspectors use tablets in the field and others enter data back at their desks. In order to ensure consistency and transparency across all relevant staff, additional internal training is required.

(4) With minimal to no new resources, the City can better utilize **technology and internal training** to standardize and streamline inspection processes. The PSS study noted the need for improved use of technology in the inspections functions. Expanded use of technology also allows for greatly increased

transparency.

- a. Fire Department will move to Urban Insight.
- b. Develop and implement standardized checklists for inspectors to use in the field (drop-down boxes in Urban Insight). The Portland Housing Authority will share the checklists they use. The City checklists should be shared with landlords and tenants through public education.
- c. Purchase tablets (already budgeted) for Fire inspectors to use in the field, greatly diminishing the amount of time required to cite an owner for violations and follow up with enforcement. Ensure consistent use among all inspectors.
- d. Provide online capability for landlord registration.
- e. Work toward having a complete and accurate census of all rental properties.
- f. Inspectors across relevant departments require additional training and cross-training to improve inspections. The National Fire Protection Association is scheduled to provide free cross-training for Fire and Housing Safety in the spring.
- g. All relevant staff require additional training to use Urban Insight and to ensure thorough documentation of all inspections.
- h. All relevant staff and other City staff who work in the field will be trained on the housing safety inspections checklist so that they can easily report any concerns for follow up.

(5) Issue: Given the number of rental units and the predominance of old, stick-built construction, the City must have a minimum number of housing inspectors to ensure efficiency and timely response to complaints and inspections of all rental units over a reasonable period of time. In addition to the approaches discussed under the first issue, the following staffing options were examined.

Option	Pros	Cons	Relevant Code Citation
District-based inspections	Small geography; inspectors get to know their area better	Does not allow for most serious violations to be addressed quickly; does not allow for differing density of rental housing by district	N/A
Third-party inspections	Does not require a significant amount of city staff	Difficult to assure qualified third-party inspectors – eg, there is State training but none on City code, and no licensing to report inspectors; added cost for landlords; added administrative burden for City to track; potentially does not increase accountability	N/A

		or transparency and decreases consistency. City staff would still have to follow up on violations.	
Fire Department inspections of buildings with three or more rental units	FD needs to be familiar with buildings for fire prevention and planning; firefighters have the time to conduct these inspections; such properties are required to have advanced life safety systems.	Firefighters need training and checklists to ensure consistency. Also need tablets to input data while in the field.	N/A
Code enforcement responds to complaints	Does not require new staff	Only one code enforcement officer who responds to complaints, and he has many other duties; Does not allow for proactive inspections	N/A
Housing Safety Office	Having one official with authority over all housing safety-related issues allows for coordination across all relevant departments and quick action to be taken. Adding a minimum of 3 cross-trained inspectors for 2,400 properties and complaints allows implementation of risk-based prioritization. Revenue generated by landlord registration fees, penalties/fines, and reinspection fees is likely to cover part of the additional costs. There will also be a steep increase in the	There are concerns that there will be an increased workload when increased numbers of violations are identified, many of which are likely to require permits and perhaps zoning changes. There may be increased work for the electrical inspector as well.	N/A

	number of complaints as the FixItPortland and searchable database are fully implemented.		
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(5) Staffing – PSS’ study used a metric to recommend 10 new FTEs in the Fire Department alone to ensure widespread inspections. The task force believes we can achieve the intended goal of improving our ability to ensure the safety of Portland’s rental housing stock using a different approach. In order to ensure implementation of these recommendations and to evaluate whether there are indeed ensuing improvements to the city’s rental housing stock, the following new positions are requested.

- a. Housing Safety Official (title TBD) who reports to the City Manager, convenes and coordinates all relevant departments to address issues with a property and decide actions to be taken.
 - i. This person would be responsible for ensuring that the highest-risk properties are inspected first, inspection documentation is consistent and complete, and timely follow-up in conducted until violations are fully addressed.
 - ii. This person will also ensure data is collected to provide a robust evaluation of the implementation of task force recommendations.
 - iii. This person will also be “where the buck stops” for all issues related to housing safety.
- b. Three additional inspectors, all cross-trained in building code and life safety code, who will report to the Housing Safety Official.
- c. One project management position, who coordinates the risk-based assessment of all rental properties, the online database, landlord registration, who also reports to the Housing Safety Official.
- d. Transfer General Assistance housing inspections from the Social Services Division to this new unit.
- e. Reinstate Education Officer at the Fire Department to implement the additional training needed.
- f. Consider outsourcing the Fire Department’s plans review work currently done by the Fire Prevention Officer.
- g. Timeline: Depends upon Committee approval and budget process. If successful, would post and hire immediately following approvals.
- h. Cost: Approximately \$375,000, with estimated offsetting revenues of \$120,000 (\$90,000 from landlord registration and \$30,000 from fees, fines, and penalties).

Concluding Statement

Tragedies such as the Noyes street fire impact everyone in the Portland community. It is our hope that as time passes we will not forget why this work was important and will keep fire safety education front and center. We believe that these recommendations will improve consistency, transparency and accountability among all relevant parties – tenants, landlords, and the City. Thanks to everyone who dedicated their time and energy to this effort. We look forward to the Committee’s feedback and additional input from the public.

Attachment A

**Notes from first Fire/Code Task Force Meeting
December 3, 2014**

Phase I Task Force Members:

Rich Bianculli, City of Portland, Corporation Counsel/Police Dept

Jay Fleming, Boston Fire Dept

Keith Gautreau, City of Portland, Fire Dept

Sheila Hill-Christian, City of Portland, City Manager

Tammy Munson, City of Portland, Building Inspections

Tuck O'Brien, Portland Planning Board

Jon Rioux, City of Portland, Building Inspections

Julie Sullivan, City of Portland, City Manager's Office

1. Welcome and introductions – Sheila Hill-Christian
2. Purpose and goals
 - a. Purpose is to ascertain whether there are any codes changes, staffing, program, etc. following the Noyes Street fire to prevent future tragedies by working interdepartmentally and with key external stakeholders.
 - b. Goal is to make detailed, clear recommendations to the City Council's Public Safety, Health & Human Services Committee regarding any code/ordinance changes, staffing/program changes, etc. at their February 10, 2015 meeting.
3. Draft work plan and schedule
4. Review of existing codes
 - a. Discussed the relevant codes used by Building Inspections and by Fire as well as the State statutes.
 - b. Some cover new construction or renovations only, some cover all existing structures.
 - c. Extensive discussion of the codes and what they cover as well as potential longer-term work identified
5. Next steps
 - a. Need to identify what are code-related challenges versus implementation challenges with staffing, training, interdepartmental communication.
 - b. Julie will meet with Rich, Tammy and Jon, and Keith over this coming week to drill down and will report back for next meeting.
6. Next meeting: Wed 12/17, 2:30-4 pm. Focus on roles and what currently works and doesn't work.

**Notes from second Fire/Code Task Force Meeting
December 10, 2014**

Phase I Task Force Members:

Rich Bianculli, City of Portland, Corporation Counsel/Police Dept
Jay Fleming, Boston Fire Dept (not present)
Keith Gautreau, City of Portland, Fire Dept
Sheila Hill-Christian, City of Portland, City Manager
Tammy Munson, City of Portland, Building Inspections
Tuck O'Brien, Portland Planning Board
Jon Rioux, City of Portland, Building Inspections
Julie Sullivan, City of Portland, City Manager's Office

Note-taker – Jon Rioux (thanks, Jon!)

- I. Julie- Thanked the group for the very beneficial one-on-one meetings. There was uniform consensus that the Task Force does not need to focus on codes; we have the right codes in place; there are conflicts, but are low-level and can be worked through by staff.
 - a. Today's Agenda/ Primary area of focus
 - i. roles and staffing,
 - ii. overlapping,
 - iii. cross-training
 - iv. increased staffing,
 - v. how do we share the burden
 - vi. other-ways,
 - vii. intercity agencies- seque for (information share)
 - b. Review of Census Data
 - i. Existing housing,
 - ii. rentals
 - iii. 17,000 rental etc.,
 - iv. 1306 owner occupied
 - c. Inspection process
 - i. Inspections approach going forward
 - ii. Tenants
 - iii. Landlords
 - iv. Schools
 - v. education
 - vi. prevention
 - d. Defining Proactive Enforcement- will come later
- II. Tammy and Jon- Inspections Division

- a. Complaint Based- 1 Staff Person
 - i. We inspect existing rental units,
 - ii. document what the complaint were about
 - iii. follow-up with the landlord, tenants, and all other agencies
- b. Jurisdictional Responsibility
 - i. A priority-based complaint system includes
 - 1. Land use,
 - 2. trash on private property,
 - 3. housing complaints,
 - 4. infestation,
 - 5. outdoor dining,
 - 6. applications,
 - 7. stop work,
 - 8. street artist,
 - 9. cruise ships,
 - 10. hoarding,
 - 11. Referrals from State agencies, PD, social services, fire, public services, business licensing
 - ii. Rich - Ordinance enforcement Officer-
 - 1. Position was put on hold after initial interviews, department was in the process of hiring, this would person would have taken-over-street artist outdoor dining issues, nuisance matter
 - iii. Jon- Public Services handles- side walk/ ice matters, public property (right away) trash, and heavy item pickup
- III. Keith- Fire Department Inspections
 - a. Companies (Staffed Fire Engines/ Ladders) were doing proactive housing inspections of apartments (3 or more units) and businesses.
 - b. Unannounced (stop and knock)
 - c. 240 calls per 3 units or larger,
 - d. walking down the streets vs pre-scheduled
 - e. "Legally" they could only inspect common spaces (areas),
 - f. knock and stop for basic items only,
 - g. all matters (from each company) are then referred to the Fire Inspector in the bureau
 - i. this is because they are at a high level of training
 - h. Fire Prevention Bureaus primary focus
 - i. Permit reviews
 - ii. C of O's
 - iii. Complaints that come in through our office
- IV. Julie- Let's discuss any overlaps (Fire and Inspections)
 - a. Tuck- What is a Life Safety Inspection

- b. Jon- Clarification that when Keith speaks of "Life Safety" he is referring to NFPA 101 and NFPA 1® Codes. Certainly, there are other matters that could relate to life safety in building codes, etc.
 - c. Examples of Life Safety (Fire Codes) and overlap of both Fire and Inspections and which almost always result in joint inspections
 - i. Egress,
 - ii. Real severe life safety issues,
 - iii. Weather related disasters,
 - iv. Building fires
 - v. major code violations,
 - vi. GA social service issues
 - vii. Fire Doors,
 - viii. holes in hallways- violation notify the landlord
 - d. Rich - Ladder companies doing the roaming inspections who is writing the violation letters, legal needs access to these letter for prosecution
 - i. Keith - Fire Prevention Bureau
 - e. Keith - vacant properties list
 - i. Maintained by Inspections Division, shared with Fire Prevention
 - ii. Fire Prevention places physical plaques on the building for their own safety
 - 1. Red, Yellow, Green system
 - iii. NFPA Life Safety Code overlap taken further
 - iv. Julie - Smoke Detectors, means of egress?
 - v. Complaint- Code Entire
 - vi. Major issues
 - vii. Social Services, Public Services, Legal Issues
 - viii. Jon- Goal to only use Legal when our resources are exhausted
 - 1. Noticing
 - a. Letters, 1,2, and 3
 - 2. Posting
- V. Julie- Let's discuss what works well
- a. Unified Command at Emergency Incidents
 - i. Phone Conferences, i.e. Fore Street Fire
 - b. Agency assist, i.e. 193 Congress Street Building
 - c. Staff works well together
 - d. Tuck- information sharing?
 - i. Yes through Urban Insight (if used)
- VI. Julie- Let's discuss what doesn't work well
- a. Jon- when demands exceeds our resources
 - i. We work well at fixing complexity during an emergency

- ii. During normal business hour (inspections), a inspector has the authority to post a 20 unit building, but cannot priority the (12+ departments) involvement of other city staff with the matter
 - 1. Inspectors may need aid/ immediate resources from fire, public services, legal, social services
 - 2. Staff does not have the authority to make it "that" departments priority
 - 3. Often we need to involve the executive department for prioritizing
- iii. Julie- Anything Else?
 - 1. Tammy- See- Click Fix (Vickie), Engine Companies already have Urban Insight
 - a. Vickie could build an inspections program- tracking and follow-up on building hazards, i.e. FDNY tracking system
 - 2. Keith- The system has tracking for 17 agencies + so many different groups could respond (IT department already has the technology)
 - 3. Danielle- Follow-up, noticing with all dates, and it's hard to get the "you did nothing to notify Landlord complaints" to court (one data base would be useful for legal to access).
 - 4. Rich- Access to the violation notice is imperative for court
 - a. 1st 2nd 3rd – Date Certified,
 - b. Tammy- the G-drive is another shared network
 - 5. Types of enforcement actions
 - a. 80-K
 - b. 80-H
 - c. Insurance companies
 - d. Banks
 - 6. Jon- Foreclosures, we do not have a handle on who to serve
 - a. Often the "Owners" think they are not responsible
 - b. We have to involve legal and notice multiple out of state parties
 - c. Takes a lot of staff hours and yields low results
 - 7. Danielle- Training- Chapter 10 I wrote parts of this that even the fire department is unaware of tools for enforcement
 - 8. Jon- State Requires CEH's minimum training, and Certifies Code Enforcement Officers for each area(s) they enforce
 - a. The state language is vague and does not require state certification for Fire Inspectors
 - i. There is internationally recognized program from NFPA, CFI certification

- ii. We could provide an in-house cross-training for our local ordinances
 - 1. This could carry over to all stakeholders
- 9. Shelia- Complaint See-Click Fix- Tenant could use the system
- 10. Julia- fire risk score
- 11. Jon- Invite Public In, Educational Piece
 - a. Training for all levels involved
 - i. Internal
 - ii. Tenants
 - iii. Utility companies, etc
- 12. Tuck- what about the educational pierce for fire safety
 - a. Keith- Yes we need to do more to get into the schools
- 13. Jon- Fire and Safety Education has been around for 50+ years, we are in the schools at all levels (Except College)
 - a. The message of escape plans, blocked exits and smoke detectors is taught an early age
 - b. We need to do more enforcement of spot checking to get at the target concerns or re-think how we do Fire and Safety Education with real world examples, without scaring the public
 - c. Tuck- Education the College Students would be benefit, with real college housing issues
 - i. Provide Fact sheet,
- 14. Rich- landlord tenant handbook, like VT would be great
 - a. Pine Tree Legal- offers this

VII. Statement of Purpose

- a. Shelia- The group should establish a basic statement of purpose
- b. Jon- Defining- Pro-active code enforcement should be the basis, and thinking about the number of inspections based on type and frequency that we would like to accomplish
 - i. Shelia- I would like the group to think of a more of a statement for a general purpose for these proactive inspections
 - ii. Jon- 5 year and ten years?
 - 1. Shelia- yes that could be part of it
 - 2. Study 17,000
 - 3. Look into fire marshal's office NIFIRS report for prioritizing
 - 4. Voluntary compliance options

- VIII. Julie- recap of upcoming sessions. Next meeting: Weds 12/17, 10:30-12, rm 208, City Manager's conference room. We will consider a statement of purpose for inspections; draft roles, requirements, staffing.

**Notes from third Fire/Code Task Force Meeting
December 17, 2014**

Phase I Task Force Members:

Rich Bianculli, Neighborhood Prosecutor - City of Portland, Corporation Counsel/Police Dept
Jay Fleming, Deputy Chief - Boston Fire Dept (not present)
Keith Gautreau, Deputy Chief - City of Portland, Fire Dept
Sheila Hill-Christian, Acting City Manager - City of Portland
Tammy Munson, Inspections Division Director - City of Portland
Tuck O'Brien, Chair, Portland Planning Board
Jon Rioux, Inspections Division Deputy Director - City of Portland
Julie Sullivan, Acting Chief of Staff - City of Portland

1. Inspections statement of purpose: to assure the safety of the city's housing stock.
2. Draft roles/requirements/staffing
 - a. Proactive and/or complaint-based – how would things be different than they are now. Proactivity requires education as primary prevention, interagency collaboration to ensure easy to report potential risks to City, increased involvement with landlords and tenants on both education and enforcement.
 - i. Key component will be education – Fire should take this role. Needs to be on regular schedule.
 1. Elementary schools
 2. Tenants
 3. Landlords
 4. College students/20-somethings
 - b. Want a one-stop shop for housing inspections.
 - i. What about development, zoning, plan review
 - ii. Need authority to cite buildings
 - iii. Fire Prevention should be part of it – 2 officers? Civilians that are trained as Certified Fire Inspectors? At minimum, a strong connection with the Fire Dept.
 - iv. Need to unify the authority in the ordinance now – spread among Ch. 1, 6 and 10
 - v. Centralized new department – inspections and code enforcement
 - vi. Fire will continue to do proactive inspections of buildings with 3 or more units
 - vii. Ensure data collection so that it will be clear whether these changes are achieving the goal
 - c. Enforcement
 - i. Current citation process – 32 days to address violation/submit plan, then letter, then second letter

1. Switch to ticket and fine?
 2. Rich has 1 day every month in court to address these kinds of issues
 3. Code staff can write tickets – sworn constables
 - ii. Would like to ensure every rental property inspected at least every 3 years
 1. Landlords bring proof of passing inspection by certified code inspector. Possibly also required to submit insurance company information.
 2. City staff track and follow up
 3. Easy referral route for other “eyes” – eg, other service providers like oil/gas companies who see building conditions and fire risks through the course of their work – as well as tenants, etc. to report. See Click Fix.
 4. Risk-based prioritization via new link between See Click Fix and Urban Insight. Also make data available on web site for public to search violations on a building.
3. Next Steps
- a. Staff will flesh out draft for new education plan, new inspections and code enforcement/building department, and enforcement in preparation for Phase 2.
 - b. Phase 2 adds the external task force members:
 - i. Julie Gregor – Portland Housing Authority
 - ii. Katie McGovern – Pine Tree Legal Assistance
 - iii. Crandall Toothaker – Southern Maine Landlord Association
 - iv. Carleton Winslow – Southern Maine Landlord Association
 - c. Meeting schedule
 - i. Mon 1/5, 2:30-4, rm 24. Review initial findings from Phase 1.
 - ii. Mon 1/12, 2:30-4, rm 24. Review and prioritize recommendations from prior studies/reports.
 - iii. Mon 1/26, 2:30-4, rm 209. Analyze Phase 1 findings vs recommendations from studies/reports.
 - iv. Th 1/29, 2:30-4, rm 209. Develop recommendations for City Council’s Public Safety, Health & Human Services Committee.
 - v. Public meeting – week of Feb. 2
 - vi. Presentation to Public Safety, Health & Human Services Committee – Tues 2/10.



Fire/Code Inspections Task Force
Notes from first Phase 2 meeting
January 5, 2015

Phase 2 Task Force Members:

Julie Gregor, Inspection Supervisor – Portland Housing Authority
Katie McGovern, Tenant Advocate – Pine Tree Legal Association
Crandall Toothaker – Southern Maine Landlord Association
Carleton Winslow – Southern Maine Landlord Association
Rich Bianculli, Neighborhood Prosecutor - City of Portland, Corporation Counsel/Police Dept
Jay Fleming, Deputy Chief - Boston Fire Dept (not present)
Keith Gautreau, Assistant Chief - City of Portland, Fire Dept
Sheila Hill-Christian, Acting City Manager - City of Portland
Tammy Munson, Inspections Division Director - City of Portland
Tuck O'Brien, Chair, Portland Planning Board
Jon Rioux, Inspections Division Deputy Director - City of Portland
Julie Sullivan, Acting Chief of Staff - City of Portland

1. Welcome and introductions
2. Review phase one findings
 - a. Education plan
 - i. Tenants are fearful - worry that they have to trade safety for affordability
 - ii. Glad to hear that information will be accessible for young, low-income people via online database with information on each property
 - iii. City and Pine Tree Legal Association (PTLA) can work together on landlord/tenant handbook (each has a version currently)
 - iv. Landlords' association could have session(s) with tenants' group for education
 - v. Portland Fire could provide train-the-trainer on basic life safety – list of basic safety principles on web site currently
 - vi. Should also target General Assistance (GA) recipients for education
 - vii. Question about GA list of landlords they will not rent to – is there City action then taken against those landlords?
 - viii. Tenants may not be aware that they can let an inspector in.
 - ix. Need regular calendar of trainings for landlords – how reach those who are not part of Southern Maine Landlord Association? Cannot include information with tax bills.

- b. Inspections and Code Enforcement – staff, roles, structures, processes: What problems are we trying to solve?
 - i. Concern that third-party inspectors would write up every little thing – how make sure to prioritize? How make sure these inspectors are qualified? Consider using standardized checklist.
 - ii. City should go ahead with risk-based scoring for properties in order to prioritize
 - iii. City staff need more training – especially on software, documentation
 - iv. Need better communication among City staff who have eyes on these buildings so they can report any concerns
 - v. Having firefighters conduct inspections is good because then they are familiar with building layouts
 - vi. PHA, City and others have collaborated on hot spots (defined by calls for service) – needs better organization
 - vii. Need someone whose job it is to ensure good internal communication, training, software usage
 - viii. Concern that inspectors may be biased if a tenant complains and there is an eviction underway
 - ix. Need to ensure copies of inspection reports and communications to landlords in the public database – clear what landlord is to fix, what steps City is taking
 - x. Inspectors need to ensure their reports are clear, concise and thorough – checklist?
 - xi. Need to be sure rules are being applied consistently
 - xii. Inspection required at transfer of building ownership?
 - xiii. Need to enforce current requirement for all landlords to register with the City
 - xiv. Code enforcement has one inspector who handles all complaints, plus 3 others focused on building, plumbing and electrical for new construction and rehab.
 - xv. Fire can only do proactive inspections for buildings with 3 or more units; can only go into 1- and 2-family rentals if responding to a complaint
 - xvi. Need to see high-profile enforcement actions. And what are the consequences for disabled smoke detectors?

3. Key points

- a. Need checklists for fire, building inspectors as well as for all City staff working in the field
- b. Use risk-based scoring to prioritize buildings/units most in need of inspection
- c. Enforcement requirement for landlords to register
- d. Change enforcement to a ticket and fine process, ensuring clarity and follow-up as well
- e. Consider developing a phased process with items having most impact first

4. Next steps – summarize recommendations from relevant studies and distribute in advance of next meeting; bring more specificity to recommendations discussed above
 - a. Mon 1/12, 2:30-4, rm 24. Review and prioritize recommendations from prior studies/reports and discuss potential impacts on landlords and tenants
 - b. Mon 1/26, 2:30-4, rm 209. Draft recommendations for City Council's Public Safety, Health & Human Services Committee
 - c. Th 1/29, 2:30-4, rm 209. Finalize recommendations for Committee.
 - d. Public Meeting – Tues 2/3, 5:30-7 pm, rm 24
 - e. Presentation to Public Safety, Health & Human Services Committee – Tues 2/10, 5:30 pm, Council Chambers.



**Fire/Code Inspections Task Force
Meeting Notes
January 12, 2015**

Phase 2 Task Force Members:

Julie Gregor, Inspection Supervisor – Portland Housing Authority
Katie McGovern, Tenant Advocate – Pine Tree Legal Association
Crandall Toothaker – Southern Maine Landlord Association
Carleton Winslow – Southern Maine Landlord Association
Rich Bianculli, Neighborhood Prosecutor - City of Portland, Corporation Counsel/Police Dept
Jay Fleming, Deputy Chief - Boston Fire Dept (not present)
Keith Gautreau, Assistant Chief - City of Portland, Fire Dept
Sheila Hill-Christian, Acting City Manager - City of Portland (not present)
Tammy Munson, Inspections Division Director - City of Portland
Tuck O'Brien, Chair, Portland Planning Board
Jon Rioux, Inspections Division Deputy Director - City of Portland
Julie Sullivan, Acting Chief of Staff - City of Portland

1. Welcome
2. **Urban Insight** demo – Vicki Bourret, Assistant Director of Information Technology
 - a. Microsoft Access database which brings code enforcement and development review into one system
 - b. This system will provide the bulk of the variables for the risk assessment process to prioritize building inspections and feed the publicly accessible online property/owner look-up functions.**
 - c. Can search by property address or by owner
 - i. Data attached to each record: outstanding taxes, fees; inspection reports; site plans; permits; complaints; associated businesses; Fire Department pre-plans; relevant documents; letters; property manager
 - ii. Would see all properties someone owns through an owner-based search
 - d. Developing checklist which will automatically populate the violation list
3. **Fix It! Portland** video – this is a new smartphone app (also accessible from the City web site) to report non-emergency concerns to the City. Complaints related to rental housing safety will also populate the risk-based assessment.
4. **Discussion** of risk-based prioritization, public education, enforcement
 - a. **Risk-based prioritization of inspections** – There are numerous municipalities using this approach to ensure safe housing and allocate inspections and enforcement resources according to a risk score generated by several variables, possibly including delinquent taxes, vacancy, foreclosure, complaints/violations, and calls for service. Public Safety Solutions Inc. (PSS) conducted an extensive and thorough review of the

entire Portland Fire Department in 2013 and also recommends this approach. **What are the variables that should be included to create the risk score?**

- i. Police, Fire/Medcu calls for service
 - 1. Disorderly house via PD – based on excessive call volume (excluding domestic violence) over a 30-day period
- ii. Foreclosure
- iii. Vacancy
- iv. Number of units/number of stories
- v. Permits for certain code-related issues
- vi. Construction type
- vii. Occupancy use
- viii. Utility disconnects
- ix. Concentration of poverty
- b. **Public Education** – Clearly, this is the best means of prevention. The Fire Department will take the lead on this, by reinstating school-based programs, targeting college students and 20-somethings, landlords, and other tenants. This was a major focus in PSS’s recommendations around prevention. ***What are venues and approaches for hard-to-reach target populations?***
 - i. Carl shared a document on behalf of the Southern Maine Landlord Association proposing a Fire Safety Disclosure Form for tenants and landlords
 - 1. One-page form summarizing basic fire safety requirements, to be created with the Fire Department
 - 2. Outlines landlord obligations
 - 3. Explains tenant responsibilities
 - 4. Each party signs and dates
 - 5. Landlords required to keep it on file for any rental units in Portland
 - 6. Provides education as the document would need to be seen by all landlords and all tenants
 - 7. Enables landlords and tenants to hold each other accountable for fire safety
 - 8. City could impose a penalty for failure to provide this document when asked
 - ii. Discussion on SMLA document
 - 1. Add penalty that tenants could enforce against landlords
 - 2. City shouldn’t enforce this document; State could; City just audit to see if it’s there
 - 3. Great way to educate
 - 4. Could be featured in handbook created by City and Pine Tree Legal
 - 5. Also add who the property manager is (if applicable) and who the landlord is with contact info
 - iii. Discussion on venues/approaches for hard-to-reach populations

1. Colleges may keep lists of off-campus housing recommendations
 2. Maine State Housing Authority web site links those looking for housing with landlords with vacancies
 3. City General Assistance program's landlord list
 4. Shalom House's landlord list
 5. Older tenants – AARP, Southern Maine Agency on Aging, Legal Services for the Elderly
 6. Landlord/tenant group via City's Refugee Services Program
 7. Need materials translated into multiple languages; read for those who need that
- c. **Enforcement** – There are many opportunities to clarify and strengthen the enforcement process, some of which require minor revisions to City Code. ***What are your thoughts about the following approaches? What would you add or remove?***
- i. Enforce existing requirement for landlords to register with the City annually.
 1. Contact information, type of property, insurance company information
 2. Annual fee – maybe \$25
 3. Fines for failure to register, provision of inaccurate information
 - ii. Move to immediate ticket and fine for violations. The current process of sending a letter and giving 32 days to address the violations, then sending a second letter and another 32 days is inefficient and ineffective.
 - iii. Also enforce existing re-inspection fees (\$75).
 - iv. Dedicate legal resources – one day per month dedicated to housing-related issues. The City should evaluate to ensure this is adequate and consider the feasibility of the housing court model used in other municipalities. A new City attorney was recently hired to focus on these issues in addition to Police Department's Neighborhood Prosecutor.
 - v. Discussion
 1. Moving to immediate ticket/fine good because otherwise people at risk for too long; how prove landlord's fault vs tenant's fault; how allow time to correct violations – maybe 24 hours for serious issue; otherwise, show plan of correction; would have at least 2 weeks before court date and could grant continuance
 2. Don't have to revise ordinance to move away from 32-day time. Current ordinance also has fee/fine schedule
 3. Could we cite tenants for blocking egress, tampering with smoke detector, unsanitary living conditions – yes, but need to prove tenant(s) at fault
 4. Annual fee ok/too much
 5. Fines are good, make them high
 6. City should have low-interest loan program to provide resources for

7. landlords' to address issues
 8. Where do the fines go? City general fund
 9. How minimize displacing tenants while enforcing
 10. Train inspectors that pending eviction should be considered irrelevant when responding to complaint
- 5. What's next** – discuss technology, internal training, staffing and begin to draft final recommendations – Monday 1/26, 2:30-4:00 pm, rm 209
- a. Additional dates:
 - i. Thurs 1/29, 2:30-4:00 pm, rm 209 – finalize recommendations
 - ii. Tues 2/3, 5:30-7:00 pm, rm 24 – Public Meeting
 - iii. Tues 2/10, 5:30 pm, Council Chambers – Presentation to City Council Public Safety, Health & Human Services Committee



**Fire/Code Inspections Task Force
Meeting Notes
January 26, 2015**

Phase 2 Task Force Members:

Julie Gregor, Inspection Supervisor – Portland Housing Authority
Katie McGovern, Tenant Advocate – Pine Tree Legal Assistance
Crandall Toothaker – Southern Maine Landlord Association
Brit Vitalius for Carleton Winslow – Southern Maine Landlord Association
Rich Bianculli, Neighborhood Prosecutor, Police Dept - City of Portland
Adam Lee, Attorney, Corporation Counsel – City of Portland
Jay Fleming, Deputy Chief - Boston Fire Dept (not present)
Keith Gautreau, Assistant Chief, Fire Dept - City of Portland
Tammy Munson, Inspections Division Director - City of Portland
Tuck O'Brien, Chair, Portland Planning Board (not present)
Jon Rioux, Inspections Division Deputy Director - City of Portland
Julie Sullivan, Acting Chief of Staff - City of Portland

1. Welcome
2. Overview of **State Fire Marshal's report** re Noyes Street and discussion of relevant items for task force consideration

What does this tell us – what should we add or change in what we've already been discussing?

- a. Origin and cause: Outside on porch, Improperly discarded smoking materials (cigarettes), Improper use of cigarette receptacle, Fuel load on porch, Time of day (undetected)
 - i. Smoking is the leading cause for fatal fires.
 - ii. Can charge tenants for disconnecting smoke detectors – could even become criminal mischief charge if done repeatedly.
 1. Could be grounds to evict because endangering other tenants
 2. Landlords could put this in their leases
- b. Human behavior elements: Smoke alarms removed, Blocked egress, Drinking and smoking, Housekeeping issues
 - i. Need to educate landlords about the different kinds of smoke alarms – eg, don't use an ionization smoke detector near a kitchen or bathroom, use photoelectric.
- c. Arrangement/legal use of building
 - i. Discussed the need to ensure inspection of 2-unit rental properties – some are very large, with numerous bedrooms.

- ii. Concluded that square footage and number of bedrooms should be risk factors for prioritization. This information could be added to the annual landlord registration form to ensure that the City has complete and accurate information (currently we have this information from the Assessor's Office).
 - iii. Consider changing the code in Section 10-3(m) to say OR subject of complaint.
 - iv. Discussed lodging houses/rooming houses. Licensing should not be done through City Clerk but through registration and required annual inspection.
 - 1. Need clarification on how tenants are removed – whether the landlord is viewed as an innkeeper; different rules.
- d. State Fire Marshal inspects all fatal fires. They are forwarded their findings to the DA, which is why the full report cannot be made public at this time. Also, the ATF has corroborated the Portland Fire Department and the State Fire Marshal's theory and findings.
- e. The findings tell us that education is key – the importance of keeping egress unblocked, working smoke detectors, disposal of smoking materials.
 - i. Revisited the proposed new document for tenants and landlords to sign – should be done with a walk-through of the unit to test that smoke detectors are connected and working.
 - ii. Discussed the enforcement of this and concluded that it is an excellent education tool and the City can enforce when inspecting by asking to see the jointly signed document.
- f. The findings also underscore the importance of enforcement of working smoke detectors, removal of trash.
 - i. Discussed Heavy Item Pickup (HIP) and whether that would make an impact on the factors that were causal. Task Force believes that reinstating HIP would not make enough of a difference; this demographic is more likely to keep old furniture.
 - ii. Task Force also believes that banning couches on porches is also not a worthwhile option at this time because it would be more impactful to spend resources on education and enforcement for highest-risk properties.
- g. Portland Fire Department has already pulled a list of 67 properties recommended by USM for students and is prioritizing inspections there.
 - i. Consider putting in the area around the university as a risk factor.
 - ii. Consider changing zoning around USM to legalize rooming/lodging houses and ensure they have proper fire systems.
 - iii. Perhaps there are more illegal third floor units than illegal rooming/lodging houses – also may require a zoning change.
- h. In the current City code, there are different definitions of rooming houses in Ch. 6 and Ch. 10. Need to tighten those up.
- 3. Discussion of enforcement, technology, internal training, staffing
 - a. Finish **enforcement** discussion from last meeting

- i. Tenant notification – policy needs to be revisited and finalized. Was drafted after 10 Exchange St issues to establish more stringent fines, and post so tenants are aware of the violations.
 - ii. Discussed concerns that other subsidized housing are not well-monitored (most are under various HUD subsidies and inspected by other agencies)
- b. **Technology** – With minimal to no new resources, the City can standardize and streamline inspection reporting processes. The PSS study noted the need for improved use of technology in the inspections functions.

What else should the City consider for technological improvements?

- i. Fire Department will move to Urban Insight.
 - ii. Develop and implement standardized checklists for inspectors to use in the field. *These checklists should be shared with landlords and tenants through public education.*
 - iii. Consider having tablets for inspectors to use in the field, greatly diminishing the amount of time required to cite an owner for violations and follow up with enforcement.
 - iv. Provide online capability for annual landlord registration.
 - v. Everything needs to be online – starting with the landlord registration.
 - vi. Should work to have a complete inventory of all rental properties in the city
- c. **Internal Training** – The internal phase of this Task Force’s work illuminated several areas for improvement in staff training.

Are there other opportunities for internal training?

- i. Inspectors across relevant departments require additional training and cross-training to improve inspections.
 - ii. All relevant staff require additional training to use Urban Insight and to ensure thorough documentation of all inspections.
 - iii. Other City staff who work in the field will be trained on the checklist so that they can easily report any concerns for follow up.
- d. **Staffing** – PSS’ study used a metric to recommend 10 new FTEs in the Fire Department alone to ensure widespread inspections. We believe we can achieve the intended goal of improving our ability to ensure the safety of Portland’s rental housing stock using a different approach. In order to ensure implementation of these recommendations and to evaluate whether there are indeed ensuing improvements to the city’s rental housing stock, the following new positions are requested.
 - i. Housing Safety Official (title TBD) who reports to the City Manager, convenes and coordinates all relevant departments to address issues with a property and decide actions to be taken.
 - ii. Three additional inspectors, all cross-trained in building code and life safety code, who will report to the Housing Safety Official.
 - iii. One administrative support position, who will coordinate the risk-based assessment of all rental properties and the online database, who also reports to the Housing Safety Official.
 - iv. An Education Officer at the Fire Department to implement the additional training

needed.

v. Discussion:

1. Inspecting GA-subsidized properties needs to move to new housing safety office
2. This new housing safety office can be largely self-sustaining through registration fees

e. Should these fees be levied by unit or by property?

- i. City has approx. 17-20,000 units in 6,900 buildings. Removing 3,284 residential condos leaves 3,616 properties.
- ii. \$100/property annual fee makes the program close to self-sufficiency
- iii. Lower annual fee plus significant penalty – how find balance
- iv. By unit seems too punitive, but may need to consider way to scale fee by size/complexity of property
- v. Landlords okay with \$25/property with the revenue going to fund inspections
- vi. How “reward” landlords who are compliant
- vii. Raise reinspection fees

4. What’s next

- a. Thurs 1/29, 2:30-4:00 pm, rm 209 – discuss recommendations
- b. Tues 2/3, 5:30-7:00 pm, rm 24 – Public Meeting
- c. Weds 2/4 – Mon 2/9 – Virtual discussion of public meeting feedback
- d. Tues 2/10, 5:30 pm, Council Chambers – Presentation to City Council Public Safety, Health & Human Services Committee
- e. Weds 2/11 – Mon 2/16 – Virtual discussion of Committee meeting feedback
- f. Final recommendations issued

Attachment B

Appendix B – Initial Variables for Risk-Based Prioritization

Type of construction

Age of structure

Number of units

Location

Delinquent taxes

Vacancy

Foreclosure

Complaints

Violations

Calls for service (Police, Fire)

Issues reported via FixIt Portland

Property type

TO: Public Safety, Health and Human Services Committee

FROM: Public Health Division, Health and Human Services Department Staff

DATE: March 6, 2015

RE: Ordinance Changes, Smoking

On January 13th, the Public Safety, Health and Human Services Committee of the Portland City Council asked Public Health Division to compile information regarding electronic nicotine delivery systems (ENDS), including public health implications and draft language for consideration of the committee regarding including ENDS in the definition of smoking products in City ordinance. In preparation, staff reviewed the City's existing ordinances related to smoking in public spaces, the actions of other states, local municipalities and health organizations and the information behind the potential dangers of this relatively new tobacco product.

Health Implications

Scientific evidence regarding the human health effects of ENDS is limited. In addition to limited studies, these products are not currently regulated by the US Food and Drug Administration (FDA).

According to the FDA, "E-cigarettes have not been fully studied so consumers currently don't know:

1. the potential risks of e-cigarettes when used as intended
2. how much nicotine or other potentially harmful chemicals are being inhaled during use, or
3. whether there are any benefits associated with using these products."

Concerns about e-cigarettes and their potential impact on youth tobacco use are also emerging. In 2014, more teens used e-cigarettes than traditional cigarettes, or any other tobacco product. Additionally, a CDC studied showed that youth who used e-cigarettes were more than twice as likely to have an intention to smoke conventional cigarettes. Over 90% of lifetime smokers start before age 18, thus, youth use of a tobacco product and intention to use cigarettes are important public health data.

There is also concern that the use of electronic smoking devices in public places such as restaurants, hospitals and workplaces may cause confusion and thus hinder enforcement of existing smoke-free laws, perhaps even renormalizing smoking in places which were traditionally smoke-free. In its workplace smoking and e-cigarette use restriction regulation, Boston states that "e-cigarettes and their use in the workplace seriously compromise current laws and regulations governing indoor smoking bans and have the potential to undermine the positive health and behavioral impacts associated therewith."

Finally, Poison Centers around the nation are reporting a recent uptick in calls about exposures to e-cigarette devices and liquid nicotine. In 2014, there were 3,381 call to Poison Centers compared to 271 in 2011. Slightly more than half of these reported exposures have occurred in young children under the age of 6. CDC Director Dr. Tom Frieden has said “e-cigarette liquids as currently sold are a threat to small children because they are not required to be childproof, and they come in candy and fruit flavors that are appealing to children.”

Actions of States, Municipalities and Health Organizations

Title 22 Chapter 262-A *Maine’s Retail Tobacco Sales* laws define electronic cigarettes as tobacco products, which clarifies that e-cigarettes cannot be sold to any person under 18 years of age, and possession and use by minors is prohibited. Maine law does not currently prohibit the use of e-cigarettes in any location.

According to Americans for Nonsmokers’ Rights, which tracks state and local legislation, as of January 1, 2015, the following laws were currently in effect related to e-cigarettes and/or ENDS:

- State Laws Restricting E-cigarette Use in 100% Smokefree Venues: 3 (Utah, New Jersey and North Dakota)
- State Laws Restricting E-cigarette Use in Other Venues: 15
- Local Laws Restricting E-cigarette Use in 100% Smokefree Venues: 274
- In addition, 162 local laws restrict E-cigarette Use in Other Venues

The detailed list provided by Americans for Nonsmokers’ Rights is attached.

Staff identified numerous health organizations that have position statements supporting the inclusion of ENDS in smoke-free environment laws and/or expressing concerns about the lack of scientific data available these products, including the World Health Organization, American Lung Association, American Heart Association, American Cancer Society and the American Academy of Pediatrics.

City of Portland Ordinance

As requested by the Committee, attached is draft language which has been prepared by Corporation Counsel. The definition of smoking has been changed to include electronic smoking devices and previously removed language referring to smoke-free indoor and outdoor dining has been added back. This language was removed after the passage of state legislation regulating smoke-free indoor and outdoor dining.

U.S. State and Local Laws Regulating Use of Electronic Cigarettes

As of January 1, 2015

The following list includes states and municipalities with **laws currently in effect** that regulate where use of electronic cigarettes (e-cigarettes) is prohibited. E-cigarettes are battery-powered devices that are designed to mimic cigarettes by vaporizing a nicotine-laced liquid that is inhaled by the user. The use of e-cigarettes in workplaces and public places is a significant public health concern, not only because of their unregulated constituents and the potential health impact of the vapor on users and bystanders, but also because e-cigarette use causes public confusion as to where smoking is allowed, resulting in compliance problems with smokefree laws.

Most local and state smokefree laws were enacted before e-cigarettes were on the market, so while such laws do not explicitly mention e-cigarettes, it should not be assumed that their use is permitted. Existing smokefree laws are often interpreted to prohibit e-cigarette use in their smokefree provisions.

NOTE: In the 100% Smokefree Venues column, the following abbreviations are used: W=non-hospitality workplaces; R=restaurants; B=bars; G=gambling facilities.

For more information, please visit [ANR's e-cigarettes page](#).

State Laws Regulating Use of E-cigarettes

State Laws Restricting E-cigarette Use in 100% Smokefree Venues

Other state laws that do not explicitly address e-cigarettes might be interpreted as prohibiting the use of e-cigarettes in existing smokefree provisions.

State	100% Smokefree Venues in Which Use of E-cigarettes Prohibited	Use of E-cigarettes Specifically Permitted	Permitted In:
1. North Dakota	WRBG	No	
2. New Jersey	WRB	No	
3. Utah	WRB	Yes	Retailers that sell e-cigarettes, until 7/1/17.

State Laws Regulating E-cigarette Use in Other Venues

State	Prohibited In:	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
1. Arkansas	Use of e-cigarettes prohibited on school district property.	No	

State	Prohibited In:	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
2. Colorado	Definition of tobacco product for purposes of prohibition of use on school property amended to include e-cigarettes, unless approved by FDA as cessation devices.	No	
3. Delaware	Tobacco use, including use of e-cigarettes and hookahs, prohibited in all State workplaces, including all buildings, facilities, indoor and outdoor spaces and surrounding grounds, as well as parking lots and state vehicles operated on State workplace property.	No	
4. Georgia	Tobacco use, including use of e-cigarettes and hookahs, prohibited everywhere on campuses of University System of Georgia, with limited exceptions for educational purposes and research.	No	
5. Hawaii	Use of e-cigarettes prohibited on all Dept. of Health property where smoking is prohibited.	No	
6. Kansas	Tobacco use, including use of e-cigarettes, prohibited on all Dept. of Corrections property and grounds, by both employees and inmates. Per opinion of Attorney General, Indoor Clean Air Act of 2010 does not apply to e-cigarettes.	Partial	All places where smoking is prohibited per 3/12/10 law, including workplaces, restaurants, bars, gambling facilities, and public places generally.
7. Kentucky	Tobacco use, including use of e-cigarettes, prohibited on all properties of State Executive Branch, including buildings, vehicles, and land, but excluding specific outdoor areas such as parks, Kentucky Horse Park, and Kentucky State Fairgrounds. Per Governor's Office, does not apply to State colleges and universities.	No	
8. Maryland	Smoking, including use of e-cigarettes prohibited on MARC commuter rail system trains.	No	
9. New Hampshire	Use of e-cigarettes prohibited in public educational facilities and on grounds thereof.	No	

State	Prohibited In:	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
10. Oklahoma	Tobacco use, including use of e-cigarettes, prohibited in all Dept. of Corrections facilities, including vehicles and grounds.	No	
11. Oregon	State agency employees prohibited from using tobacco products, including e-cigarettes, in State agency buildings and on State agency grounds adjacent to buildings.	No	
12. South Dakota	Tobacco use, including use of e-cigarettes, prohibited in Dept. of Corrections facilities and on grounds thereof, by both employees and inmates.	No	
13. Virginia	Smoking, including use of e-cigarettes, prohibited on Virginia Railway Express trains and limited to 100 feet on north end of station platforms.	No	
14. Vermont	Smoking, including use of e-cigarettes, prohibited on school grounds and at child care facilities, both indoors and outdoors.	No	
15. Wisconsin	Smoking, including use of e-cigarettes, prohibited at indoor facilities of State Fair and at main stage area.	No	

Local Laws Regulating Use of E-cigarettes

Laws Restricting E-cigarette Use in 100% Smokefree Venues

Note: The jurisdiction(s) affected by county-level laws vary widely. Look for a plus symbol (+) next to each county with a law that includes both incorporated and unincorporated areas. A county without a symbol means that the county law covers unincorporated areas only.

State	City/County	100% Smokefree Venues in Which Use of E-cigarettes Prohibited	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
1. AK	Juneau	RBG	No	
2. AK	Palmer	WRB	No	
3. AL	Anniston	WRBG	No	
4. AL	Bessemer	WRG	No	

State	City/County	100% Smokefree Venues in Which Use of E-cigarettes Prohibited	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
5. AL	Clay	WRBG	No	
6. AL	Creola	WRBG	No	
7. AL	Foley	WRG	No	
8. AL	Fultondale	WRBG	No	
9. AL	Gadsden	WRBG	No	
10. AL	Midfield	WRBG	No	
11. AL	Monroeville	WRBG	No	
12. AL	Opelika	WR	No	
13. AL	Troy	WRBG	No	
14. AL	Vestavia Hills	WRBG	No	
15. AZ	Coconino County	WR	No	
16. AZ	Tempe	WRB	No	
17. CA	Arcata	WRB	No	
18. CA	Berkeley	WRBG	No	
19. CA	Beverly Hills	RBG	No	
20. CA	Campbell	RBG	No	
21. CA	Carlsbad	RBG	No	
22. CA	Contra Costa County	WRBG	No	
23. CA	Corte Madera	WRB	No	
24. CA	Davis	WRBG	No	
25. CA	Del Mar	WRB	No	
26. CA	Dublin	RBG	No	
27. CA	El Cajon	RBG	No	
28. CA	El Cerrito	WRBG	No	
29. CA	Eureka	WRBG	No	
30. CA	Fairfax	WRBG	No	
31. CA	Folsom	RBG	No	
32. CA	Foster City	RB	No	
33. CA	Fremont	WRB	No	
34. CA	Goleta	RB	No	
35. CA	Laguna Hills	WRBG	No	
36. CA	Long Beach	WRBG	No	
37. CA	Los Angeles	RBG	Partial	Retail e-cigarette stores and theatrical production sites.
38. CA	Manhattan Beach	WRBG	No	

State	City/County	100% Smokefree Venues in Which Use of E-cigarettes Prohibited	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
39. CA	Marin County	WRB	Partial	Individual apartment units in multi-unit residences.
40. CA	Mill Valley	WRB	No	
41. CA	Morgan Hill	WRB	No	
42. CA	Mountain View	WRB	No	
43. CA	Oroville	W	No	
44. CA	Petaluma	W	No	
45. CA	Richmond	WRBG	No	
46. CA	San Bernardino	W	No	
47. CA	San Diego	WRBG	Partial	E-cigarette lounges and shops.
48. CA	San Francisco	WRB	No	
49. CA	San Mateo County	W	No	
50. CA	Santa Clara County	WRB	No	
51. CA	Santa Maria	RB	No	
52. CA	Santa Monica	WRB	Partial	Two existing e-cigarette lounges/businesses.
53. CA	Seal Beach	RBG	No	
54. CA	Sebastopol	WRBG	No	
55. CA	Solana Beach	RB	No	
56. CA	Temecula	WRBG	No	
57. CA	Tiburon	WRB	No	
58. CA	Union City	WRB	No	
59. CA	Walnut Creek	RBG	No	
60. CO	Edgewater	WRBG	No	
61. CO	Lakewood	RBG	No	
62. FL	Alachua County	WRG	No	
63. FL	Bellevue	WRG	No	
64. FL	Clay County	WR	No	
65. FL	Hawthorne	WRG	No	
66. FL	High Springs	WRG	No	
67. FL	Lighthouse Point	WRG	No	
68. FL	Marion County	WRG	No	
69. FL	Newberry	WRG	No	
70. FL	Orange Park	WRG	No	
71. FL	Waldo	WRG	No	
72. GA	Chatham County	WRBG	No	

State	City/County	100% Smokefree Venues in Which Use of E-cigarettes Prohibited	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
73. GA	DeKalb County	W	No	
74. GA	Pooler	WRBG	No	
75. GA	Savannah	WRBG	No	
76. ID	Ketchum	WRBG	No	
77. IL	Arlington Heights	WR	No	
78. IL	Chicago	WRBG	Partial	Theater performances; retail tobacco stores.
79. IL	Elk Grove Village	WRB	No	
80. IL	Evanston	WRB	No	
81. IL	Schaumburg	WRBG	No	
82. IN	Indianapolis/Marion	WRB	No	
83. KS	Overland Park	WRBG	No	
84. KY	Bardstown	WRBG	No	
85. KY	Berea	WRBG	No	
86. KY	Glasgow	RBG	No	
87. KY	Kenton County ⁺	W	No	
88. KY	Lexington/Fayette	WRBG	No	
89. KY	Madison County ⁺	WRBG	No	
90. KY	Manchester	WRBG	No	
91. KY	Richmond	WRBG	No	
92. KY	Versailles	WRB	No	
93. LA	Abbeville	WRBG	No	
94. LA	Cheneyville	WRBG	No	
95. LA	Monroe	WRBG	No	
96. LA	Ouachita Parish	WRBG	No	
97. LA	West Monroe	WRBG	No	
98. MA	Acton	WRBG	No	
99. MA	Adams	WRBG	No	
100. MA	Amherst	WRBG	No	
101. MA	Arlington	WRBG	No	
102. MA	Athol	WRBG	No	
103. MA	Auburn	WRBG	No	
104. MA	Barre	WRBG	No	
105. MA	Billerica	WRBG	No	
106. MA	Bolton	WRBG	No	
107. MA	Boston	WRB	No	

State	City/County	100% Smokefree Venues in Which Use of E-cigarettes Prohibited	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
108. MA	Bourne	WRB	No	
109. MA	Bridgewater	WRBG	No	
110. MA	Buckland	WRBG	No	
111. MA	Burlington	WRBG	No	
112. MA	Cohasset	WRBG	No	
113. MA	Concord	WRBG	No	
114. MA	Dartmouth	WRBG	No	
115. MA	Dedham	WRB	No	
116. MA	Deerfield	WRBG	No	
117. MA	Dighton	WRBG	No	
118. MA	Dover	RB	No	
119. MA	Dracut	WRBG	No	
120. MA	Easthampton	WRBG	No	
121. MA	Fitchburg	WRBG	No	
122. MA	Foxborough	WRBG	No	
123. MA	Franklin	WRBG	No	
124. MA	Gardner	WRBG	No	
125. MA	Gill	WRBG	No	
126. MA	Grafton	WRBG	No	
127. MA	Great Barrington	WRBG	No	
128. MA	Greenfield	WRBG	No	
129. MA	Hatfield	WRBG	Partial	Smoking bars and hotels/motels.
130. MA	Haverhill	WRBG	No	
131. MA	Hubbardston	WRBG	No	
132. MA	Hudson	WRBG	No	
133. MA	Lee	WRBG	No	
134. MA	Leicester	WRBG	No	
135. MA	Lenox	WRBG	No	
136. MA	Lynn	WRBG	No	
137. MA	Marblehead	WRBG	No	
138. MA	Mashpee	WRBG	No	
139. MA	Medway	WRBG	No	
140. MA	Montague	WRBG	No	
141. MA	Needham	WRB	No	
142. MA	New Bedford	WRBG	No	
143. MA	Newton	WRBG	No	

State	City/County	100% Smokefree Venues in Which Use of E-cigarettes Prohibited	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
144. MA	North Attleborough	WRBG	No	
145. MA	Northampton	WRBG	No	
146. MA	Orleans	WRBG	No	
147. MA	Oxford	WRBG	No	
148. MA	Pittsfield	WRBG	No	
149. MA	Provincetown	WRBG	No	
150. MA	Salem	WRBG	No	
151. MA	Saugus	WRBG	No	
152. MA	Sharon	WRBG	No	
153. MA	Shelburne	WRB	No	
154. MA	Sherborn	WRBG	No	
155. MA	Somerset	WRBG	No	
156. MA	South Hadley	WRBG	No	
157. MA	Stockbridge	WRBG	No	
158. MA	Sunderland	WRBG	No	
159. MA	Sutton	WRBG	No	
160. MA	Swampscott	WRBG	No	
161. MA	Taunton	WRBG	No	
162. MA	Tewksbury	WRBG	No	
163. MA	Townsend	WRBG	No	
164. MA	Wendell	WRBG	No	
165. MA	Westminster	WRBG	No	
166. MA	Westport	WRBG	No	
167. MA	Westwood	WRBG	No	
168. MA	Weymouth	WRBG	No	
169. MA	Whately	WRBG	No	
170. MA	Winchendon	WRBG	No	
171. MA	Winchester	WRBG	No	
172. MD	Baltimore	W	Partial	Restaurants, bars, video lottery facilities, retail e-cigarette stores.
173. MN	Duluth	WRBG	No	
174. MN	Eden Prairie	WRBG	No	
175. MN	Edina	RBG	No	
176. MN	Ely	WRBG	No	
177. MN	Hermantown	WRB	No	
178. MN	Houston County	WRBG	No	

State	City/County	100% Smokefree Venues in Which Use of E-cigarettes Prohibited	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
179. MN	Mankato	WRB	No	
180. MN	Sleepy Eye	WRBG	No	
181. MN	St. Anthony	WRB	No	
182. MN	Waseca	WRBG	No	
183. MO	Creve Coeur	WRB	No	
184. MO	Gainesville	RB	No	
185. MO	Jefferson City	WRBG	No	
186. MO	St. Joseph	WRBG	No	
187. MO	Washington	WRBG	No	
188. MS	Anguilla	WRBG	No	
189. MS	Arcola	WRBG	No	
190. MS	Baldwyn	WRBG	No	
191. MS	Bassfield	WRBG	No	
192. MS	Bruce	WRBG	No	
193. MS	Byram	WRBG	No	
194. MS	Calhoun City	WRBG	No	
195. MS	Centreville	WRBG	No	
196. MS	Coahoma County	WRB	No	
197. MS	Crawford	WRBG	No	
198. MS	Duncan	WRBG	No	
199. MS	Durant	WRBG	No	
200. MS	Ethel	WRBG	No	
201. MS	Farmington	WRBG	No	
202. MS	Flowood	WRG	No	
203. MS	Forest	WRBG	No	
204. MS	Friars Point	WRBG	No	
205. MS	Georgetown	WRBG	No	
206. MS	Indianola	WRBG	No	
207. MS	Itta Bena	WRBG	No	
208. MS	Louisville	WRBG	No	
209. MS	Magee	WRBG	No	
210. MS	Mendenhall	WRBG	No	
211. MS	Monticello	RBG	No	
212. MS	Moorhead	WRBG	No	
213. MS	New Augusta	WRBG	No	
214. MS	Plantersville	WRBG	No	

State	City/County	100% Smokefree Venues in Which Use of E-cigarettes Prohibited	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
215. MS	Prentiss	WRBG	No	
216. MS	Rolling Fork	WRBG	No	
217. MS	Sledge	WRBG	No	
218. MS	Southaven	WRB	No	
219. MS	Sumner	WRBG	No	
220. MS	Tupelo	WRB	Yes	Retail e-cigarette stores.
221. MS	Walnut	WRBG	No	
222. MS	Wesson	WRBG	No	
223. MS	Woodville	WRBG	No	
224. ND	Bismarck	WRBG	No	
225. ND	Dickinson	WRBG	No	
226. ND	Walhalla	WRBG	No	
227. ND	Williston	WRBG	No	
228. NJ	Newark	WRBG	No	
229. NM	Carlsbad	W	No	
230. NM	Santa Fe	WRB	No	
231. NY	Cattaraugus County	RBG	No	
232. NY	New York City	WRB	Partial	Retail e-cigarette stores.
233. NY	Suffolk County ⁺	WRB	No	
234. NY	Tompkins County ⁺	WRB	No	
235. OH	Oberlin	WRB	No	
236. OR	Benton County	WRB	No	
237. OR	Corvallis	WRB	No	
238. PA	Philadelphia	R	Partial	Specialty e-cigarette establishments; tobacco products distribution businesses.
239. SC	Denmark	WRB	No	
240. SC	Estill	WRBG	No	
241. SC	West Pelzer	WRB	No	
242. SC	Yemassee	WRB	No	
243. TX	Frisco	WRB	No	
244. TX	Harlingen	WRBG	No	
245. TX	Joshua	WR	No	
246. TX	Lufkin	WRBG	No	
247. TX	San Angelo	WRB	No	
248. TX	San Marcos	WRB	No	
249. TX	Socorro	WRB	No	

State	City/County	100% Smokefree Venues in Which Use of E-cigarettes Prohibited	Use of E-cigarettes Specifically Permitted	If Partial, Permitted In:
250. TX	Waxahachie	WRBG	No	
251. TX	Weatherford	R	No	
252. TX	Wichita Falls	WRB	No	
253. WA	King County ⁺	WRBG	No	
254. WA	Pasco	WRBG	No	
255. WI	Ashwaubenon	WRBG	No	
256. WI	Greenfield	WRBG	No	
257. WI	Onalaska	WRBG	No	
258. WV	Barbour County ⁺	WRBG	No	
259. WV	Berkeley County ⁺	WRBG	No	
260. WV	Calhoun County ⁺	WRBG	No	
261. WV	Greenbrier County ⁺	WRBG	No	
262. WV	Lewis County ⁺	WRBG	No	
263. WV	Marshall County ⁺	W	No	
264. WV	Mineral County ⁺	WRBG	No	
265. WV	Nicholas County ⁺	WRBG	No	
266. WV	Pleasants County ⁺	WRBG	No	
267. WV	Randolph County ⁺	WRBG	No	
268. WV	Ritchie County ⁺	WRBG	No	
269. WV	Roane County ⁺	WRBG	No	
270. WV	Taylor County	WRBG	No	
271. WV	Upshur County ⁺	WRB	No	
272. WV	Webster County ⁺	WR	No	
273. WV	Wirt County ⁺	WRBG	No	
274. WV	Wood County ⁺	WRBG	No	

⁺Law pertains to both incorporated and unincorporated areas of county.

Laws Currently in Effect

State Laws Restricting E-cigarette Use in 100% Smokefree Venues: 3

State Laws Restricting E-cigarette Use in Other Venues: 15

Local Laws Restricting E-cigarette Use in 100% Smokefree Venues: 274

In addition, 162 local laws restrict E-cigarette Use in Other Venues (not listed above)

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[LS-44]

ARTICLE V. REGULATION OF TOBACCO*

*Editor's note--Ord. No. 241-98, § 1, adopted Apr. 7, 1998, amended this chapter by adding provisions as herein set out; such ordinance was approved at referendum on Nov. 3, 1998, with an effective date of Dec. 5, 1998.

*Editor's note—Pursuant to Council Order 39-12/13, passed by City Council on 2/4/13 repealed Article V in its entirety and replaced it with a new Article V.

DIVISION 1. GENERALLY

Sec. 17-70. Findings; purposes.

- (a) The city council hereby finds as follows:
 - (1) There is no risk-free level of contact with secondhand smoke; even brief exposure can be harmful to health;
 - (2) Secondhand smoke contains over 4,000 chemicals, more than 60 of which are known to cause cancer;
 - (3) The smoking of other substances may also cause serious health problems and risks to those who smoke; and
 - (4) The purpose of this regulation is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment.

~~In children, secondhand smoke causes ear infections, more frequent and severe asthma attacks, respiratory symptoms (e.g., coughing, sneezing, shortness of breath), respiratory infections (i.e., bronchitis, pneumonia) and a greater risk for sudden infant death syndrome (SIDS). In adults who have never smoked, a secondhand smoke can cause heart disease and/or lung cancer. Even brief exposure can be harmful; breathing secondhand smoke has immediate harmful effects on the cardiovascular system that can increase the risk of heart attack. People who already have heart disease are at especially high risk.~~

~~Recent outdoor research from Stanford University and~~

~~Repace Associates demonstrates that, when measured up to 20 feet from a person actively smoking, toxicity levels can reach those similar to indoor smoking levels.~~

(b) The city council hereby finds that it is in the public health, safety and welfare to supplement state regulation of the use of tobacco, tobacco products and other substances that emit smoke that is used and intended customarily for inhalation into the lungs in outdoor locations and the free distribution and self-service displays of tobacco and tobacco products.
(Ord. No. 39-12/13, 2-4-13)

Sec. 17-71. Definitions.

Words used in this chapter shall have their common meanings, except that definitions set forth in 22 M.R.S.A. Chapter 262-A, or this section shall apply unless the context clearly indicates that a different meaning is intended:

Designated city trail means the traveled portion of all city-owned or controlled trails open to use by the public that have been designated as a nonsmoking trail by order of the city council.

Outdoor eating areas shall mean patios, decks, public property permitted for outdoor dining and other outdoor areas under the control of a restaurant or bar for the use of its patrons.

Owner means and includes the proprietor, manager, lessee, lessor licensee or any other person exercising control over any facility or location.

Private function is a room or a hall in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements.

Smoking means the lighting, inhaling, exhaling, burning or carrying of any cigar, cigarette, pipe, electronic cigarette, electronic cigar, electronic pipe, other similar product that relies on vaporization or aerosolization, or other tobacco product, or carrying or having in one's possession any lighted object giving off smoke from tobacco or any other substance that emits smoke that is customarily used and intended for inhalation into the lungs.

Tobacco or tobacco product means any form of tobacco, including but not limited to cigarettes, cigars, pipe tobacco, chewing tobacco or snuff, and any material or device used in the smoking, chewing or other form of tobacco consumption, including but not limited to cigarette papers, ~~and pipes,~~ electronic cigarette, electronic cigar, electronic pipe, other similar product that relies on vaporization or aerosolization.

Traveled portion means that area of a trail covered by material such as concrete, pavement, stone dust, or cedar mulch, designed to bear traffic from individuals or vehicles powered by individuals.

(Ord. No.39-12/13, 2-4-13)

Sec. 17-72. Reserved.
Sec. 17-73. Reserved.
Sec. 17-74. Reserved.
Sec. 17-75. Reserved.
Sec. 17-76. Reserved.
Sec. 17-77. Reserved.
Sec. 17-78. Reserved.
Sec. 17-79. Reserved.
Sec. 17-80. Reserved.

DIVISION 2. MISCELLANEOUS PROVISIONS

Sec. 17-81.Free distribution; sampling.

The free distribution or sampling of tobacco is prohibited in the City of Portland. A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(Ord. No. 241-98, § 1, 4-7-98; Ord. No. 39-12/13, 2-4-13)

Sec. 17-82.Self-service displays.

(a) Self-service displays of tobacco products, from which individual packages, cartons, or items may be selected by the customer, are prohibited in the City of Portland.

(b) The foregoing shall not apply in a retail tobacco store which specializes in the sale of tobacco and tobacco products only.

(c) A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-83. Nonretaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to smoke-free environment afforded by this article. A violation of this section shall be a civil violation subject to the general penalty provisions of section 1-15 of this code.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-84. Reserved.

Sec. 17-85. Reserved.

DIVISION 3. NONSMOKING ON DESIGNATED CITY TRAILS

Sec. 17-86. Purpose.

This ordinance is enacted to protect, preserve, and promote the health, safety, welfare, and quality of life of the children and other people that use designated city trails.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-87. Smoking prohibited.

It shall be unlawful for any person to smoke on a designated city trail at any time.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-88. Enforcement.

The parks and recreation department shall place signs at the beginning and end point of any city trail as well as in such other locations that, in its sole discretion, the parks and recreation department deems necessary to notify the public of this ordinance. Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer or park ranger shall issue one verbal warning to an individual. If the individual fails to immediately comply after one warning, individual shall be given a citation.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-89. Reserved.

**DIVISION 4. SECONDHAND SMOKE ON
PLAYGROUNDS, BEACHES, AND ATHLETIC FACILITIES**

Sec. 17-90. Purposes.

The purpose of this regulation is to decrease the exposure of individuals, and children in particular, to secondhand smoke in their outdoor environment. ~~Exposure to secondhand smoke is the third leading cause of preventable death in America, killing 6,000 children every year. Recent outdoor research from Stanford University and Repace Associates demonstrates that, when measured up to 20 feet from a person actively smoking, toxicity levels can reach those similar to indoor smoking levels. Secondhand smoke disproportionately affects vulnerable populations such as children and the elderly, causing asthma, chronic lung disease, ear infections heart disease and Sudden Infant Death Syndrome (SIDS). In fact, secondhand smoke can triple an infant's risk of dying from SIDS. The U.S. Surgeon General's 2006 report declared that "The debate is over. The science is clear; secondhand smoke is not a mere annoyance, but a serious health hazard...for which there is no safe level of exposure."~~

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-91. Smoking prohibited at playgrounds, beaches and outdoor athletic facilities.

(a) Smoking is prohibited both at, or within, twenty (20) feet of the following outdoor areas: playgrounds, beaches and outdoor athletic facilities owned and maintained by the city where members of the general public of any age assemble to engage in physical exercise, participate in athletic competition, play or recreational activity, or to witness sports, or other outdoor recreational events.

(b) The foregoing prohibition shall not apply in an area which has been designated prior to passage of this ordinance as a designated smoking area at Hadlock Field, but such area shall not be expanded.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-92. Enforcement.

(a) The health and human services department shall work with the public services department to place signs notifying the public of this prohibition at or near playgrounds and athletic facilities, as well as in such other locations that, in its sole discretion, the health and human services department deems necessary to notify the public of this ordinance.

(b) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer or park ranger shall issue one verbal warning to an individual. If the individual fails to comply after one warning, said individual shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.

(Ord. No. 39-12/13, 2-4-13)

Sec. 17-93. Reserved.

**DIVISION 5. SECONDHAND SMOKE
INDOOR AND OUTDOOR EATING AREAS**

Sec. 17-94. Smoking Prohibited in Indoor and Outdoor Eating Areas.

(a) ~~Notwithstanding anything in division 2 of this chapter to the contrary, smoking~~ Smoking is prohibited until 10:00 p.m. within the indoor and outdoor eating areas provided by restaurants and bars while such indoor or outdoor eating areas, or any portion thereof, are open and available for dining and beverage service.

(b) "Indoor eating areas" shall mean indoor areas permitted for dining that are under the control of a restaurant or bar for the use of its patrons.

(c) "Outdoor eating areas" shall mean patios, decks, public property permitted for outdoor dining and other outdoor areas under the control of a restaurant or bar for the use of

its patrons.

(c) "Smoking" as used herein shall mean inhaling, exhaling, burning, carrying or having in one's possession any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.

Sec. 17-95. Enforcement.

(a) It shall be the responsibility of restaurants and bars to notify its customers of this prohibition and to request that customers comply with it.

(b) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code enforcement officer shall issue one verbal warning to an individual and the restaurant. If the individual or restaurant or bar fails to comply after one warning, said individual or restaurant or bar shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.

Sec. 17-94.Reserved.

Sec. 17-95.Reserved.

DIVISION 56. SMOKING PROHIBITED IN CITY PARKS AND PUBLIC GROUNDS

Sec. 17-96. Smoking prohibited in all city-owned or maintained parks.

(a) Smoking is prohibited in the City's public parks and grounds.

(b) The Council shall define by order the public parks and grounds to which this requirement shall apply and such order shall be kept on file in the Department of Public Services.
(Ord. No. 39-12/13, 2-4-13)

***Editor's Note:** Pursuant to Council Order 38-12/13, passed on 2/4/13 the following is the list of public parks to which 17-96(b) applies:

ORDERED, that smoking shall be prohibited in the following parks and public grounds as described in Section 17-96 of the Portland City Code:

Back Cove Park	Lobsterman Park
Baxter Woods	Longfellow Square
Bayside Park	Marginal Way Field
Bedford Park	Monument Square
Bell Buoy Park	Oatnuts Park
Belmeade Park	Payson Park
Boothby Square	Pleasant Street Park
Capisic Pond Park	Post Office Park
Congress Square	Presumpscot Park
Deering Oaks Park	Presumpscot River Preserve
Dougherty Field	Quarry Run Dog Park
Eastern Promenade	Riverton Park
Fessenden Park	Stroudwater Park
Fort Allen Park	Tommy's Park
Fort Sumner Park	University Park
Ganley Plaza	Valley Street Dog Park
Harbor View Park	Western Promenade
Heseltine Park	
Lincoln Park	

Sec. 17-97. Enforcement.

(a) The health and human services department shall work with the public services department to place signs notifying the public of this prohibition at or near playgrounds and athletic facilities, as well as in such other locations that, in its sole discretion, the health and human services department deems necessary to notify the public of this ordinance.

(b) Prior to issuing a citation for a violation of this section, a police officer or any law enforcement or code

enforcement officer or park ranger shall issue one verbal warning to an individual. If the individual fails to comply after one warning, said individual shall be given a citation. Failure to comply after one warning is cause for citation whether or not the failure or subsequent failures are contemporaneous in time with the initial warning.
(Ord No. 39-12/13, 2-4-13)

**Health & Human Services Department**

Dawn Stiles, Director

Public Health Division

Toho Soma, MPH, Director

To: Public Safety, Health & Human Services Committee
From: Michael Russell, Environmental Health & Safety, Program Manager
Cc: Toho Soma, Public Health Division, Acting Director
Dawn Stiles, Health and Human Services Department, Director
Subject: Revisions to Chapter 11 – Food and Food Handlers
Date: March 6, 2015

The Maine Food Code was adopted by the City of Portland on November 19, 2012. We would like to clarify the following issues:

- 2013 Maine Food Code – Revise current language to reflect adoption of the most recent 2013 Maine Food Code.
- Imminent Health Hazard (IHH) Definition – Specify no hot water as an IHH example. Hot water is vital for safe handwashing and warewashing. The current IHH definition specifies the following examples: (1) an extended loss of water supply, (2) an extended power outage, (3) flood water or sewer back-up into the establishment, (4) fire, or (5) any other violation(s) that has/have the potential to pose an imminent threat to public health.
- Consumer Advisory – Clearly link the description of raw food on a menu with an asterisk to the reminder that warns consuming raw or undercooked products can cause a higher risk of illness. The asterisk is currently not required if the description of the food mentions the raw product.
- Certified Food Protection Manager (CFPM) - Require businesses to show proof of a CFPM during their opening and subsequent inspections to maintain their license in good standing. Provide a 60 day grace period to replace a CFPM. The State of Maine provides a 180 day grace period from opening and we expend great efforts to get compliance.
- Pre-Operational Inspection Fee – Require a fee of \$150 to open new establishments. None of the current operating fees cover our inspections program. This is a small step towards becoming self-sustaining.

Update

Currently, our most significant challenge is the popularity of specialized food processing. These processes include curing, reduced oxygen packaging, sous vide and pose higher risks of illness. Many establishments are engaged in these processes without safety plans and monitoring records. We are working with the industry, Maine CDC and food safety experts at the University of Maine to clarify policies and address this safety gap as swiftly as possible. We recently sent an informational notice to over 150 establishments and received a very positive response.

Chapter 11 FOOD AND FOOD HANDLERS*

*Cross reference(s)—Reinspection fees, Ch. 15; Farmers markets, Ch. 21.
State law reference(s)--Foods and drugs, 22 M.R.S.A. § 2151 et seq.

Art. I. In General, §§ 11-1--11-15

Art. II. Food Service Establishments, §§ 11-16--11-49

Div. 1. Generally, §§ 11-16--11-45

Div. 2. License, §§ 11-46--11-49

*Editor's Note: Pursuant to Council Order 94-12/13 passed on 11/19/12 Chapter 11 was repealed in its entirety and replaced with the following language.

ARTICLE I. IN GENERAL

Sec. 11-1. Adoption of Maine State Food Code 20~~01~~13: Food Code.

There is hereby adopted for the purpose of prescribing regulations to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented, a code known as the Maine State Food Code 20~~01~~13 (hereinafter "Food Code") recommended by the health authority, being particularly the 20~~01~~13 edition thereof and the whole thereof except for such portions, as are deleted, modified or amended by section 11-4 and which code shall be controlling within the limits of the City.

(Ord. No. 94-12/13, 11-19-12)

Sec. 11-2. Copies on file with the Clerk.

Pursuant to Title 30-A M.R.S.A. §3003, at least three (3) copies of the Maine State Food Code as adopted by reference by Section 11-1 above, have been and shall be on file in the office of the City Clerk for public inspection and use.

(Ord. No. 94-12/13, 11-19-12)

Sec. 11-3. Definitions.

Wherever the words "regulatory authority" are used in the Food Code, they should be held to mean the health inspector of the City of Portland or his or her duly authorized representative.

Wherever the word "municipality" is used in the Food Code, it shall mean the City of Portland.

(Ord. No. 94-12/13, 11-19-12)

ARTICLE II. FOOD SERVICE ESTABLISHMENTS

DIVISION 1. GENERALLY

Sec. 11-4. Amendments.

The Maine State Food Code 2013: Food Code adopted by section 11-1 is amended and modified in the following respects.

(a) Section 1.201.10.B shall be amended as follows:

Approved shall mean acceptable to the city health inspector as meeting the requirements of this article and conforming to good public health practices.

Food service establishment shall include any permanent, temporary or mobile establishment including any restaurant; caterer; innholder; buffet; lunchroom; grill room; lunch counter; tavern; dining room of a hotel; coffee shop; cafeteria; sandwich shop; soda fountain; in plant feeding establishment; private club; church feeding facility; school feeding facility; institutional feeding establishment; tea room; theater refreshment stand; grocery store; meat market; retail bakery store; delicatessen; bottle club; community kitchen; shelter; food pantry; or any other establishment where food or drink is prepared, served, kept, or stored for retail sale on-site. This definition shall not include as food service establishments private homes with permanent guests.

"Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on: (a) The number of potential injuries, and (b) The nature, severity, and duration of the anticipated injury. Imminent Health Hazard includes, but is not limited to, the following: (1) an extended loss of water supply, (2) an extended power outage, (3) flood water or sewer back-up into the establishment, (4) fire, (5) a lack of hot water (minimum temperature of 100F for handwashing and 110F for warewashing) or (6) any other violation(s) that has/have the potential to pose an imminent threat to public health. Maine Food Code October 2013 Page 11 Failure to include other violations in this definition shall not be construed as a determination that other violations may not, in light of the circumstances, be found to pose an imminent health hazard. –

Temporary food service establishment shall mean any food service establishment which operates for a temporary period of time in connection with a fair, carnival, circus, public exhibition or similar transitory gathering. There shall be two (2) types of temporary food service establishment licenses: one (1) shall be for those establishments that

sell unopened prepackaged food, with a license period not to exceed three (3) months, and the other license shall be for establishments that sell or serve either food that is not prepackaged or prepackaged food that is opened prior to its sale, including the opening of one (1) or more prepackaged items for the purpose of providing free samples, with a license period not to exceed two (2) weeks.

(b) Section 1.201.10.B shall be amended to add the following:

Base station shall mean a location used by a mobile food service establishment which shall be considered part of the food service establishment for the purpose of determining compliance with this article. The mobile unit and base station shall comply with all of the requirements of this article except those relating to toilet facilities, and the additional requirements herein set forth except as herein prescribed.

Food pantries shall mean an organization or entity that acquires, stores and distributes food to the needy in their community. Food pantries are typically supported by community food drives, umbrella organizations, as well as grocery stores, local agriculture, food manufacturers and other distributors. All items are pre-packaged, properly labeled, and no food preparation occurs. If bulk food packages are divided, they shall be in properly labeled, food safe containers.

Food processing establishment shall mean a commercial establishment in which food is processed or otherwise prepared and packaged only for sale to food service establishments and other retail outlets.

Ice cream truck shall mean a motorized vehicle utilized for the sale of prewrapped or prepackaged ice cream or frozen yogurt or ice cream or frozen yogurt products or novelties.

Innholder shall mean and include any person offering to the public, generally, lodgings and food as the occasion requires where the person rents out four (4) or more rooms or cottages.

Mobile food service establishment shall mean and include only a food service establishment capable of movement over public or private ways which has all utilities and facilities contained within the unit regardless of whether it needs an outside power source or not which has no fixed location for the operation or transaction of business; and which is moved from one (1) location to a different location not less frequently than once every twelve (12) hours in any twenty-four (24) hour period in order to serve persons otherwise present at such locations at such times. For purposes of this ordinance,

mobile food service establishments include, but are not limited to, pushcarts, food vending trucks and ice cream trucks.

Shelters shall mean an establishment providing temporary housing and meals for those in difficult domestic situations, as well as for homeless families and individuals. In addition many shelters provide referrals to other social service agencies. Shelters are often considered agencies of larger food banks or food share operations.

Stationary food vending unit shall mean any vending unit from which food products are sold and which is licensed for one (1) location on private property and conducts all of its sales from that one (1) location.

(c) Section 1.201.10.B shall be amended to delete the following definitions:

Adulterated, ~~Certified food protection manager~~, Easily cleanable, Employee, Equipment, Food, Food-contact surface, Kitchenware, Poisonous or toxic materials, Potentially hazardous food, Sealed, Molluscan shellfish, Single-service articles, Tableware, and Utensil.
(Ord. No. 94-12/13, 11-19-12)

(d) Section 3-603.11.B shall be amended as follows:

(B) Disclosure shall include:

(1) A description of the animal-derived Foods, such as "oysters on the halfshell (raw oysters)," "raw-Egg Caesar salad," and "hamburgers (can be cooked to order)" with an asterisk to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients; or

(2) Identification of the animal-derived Foods by asterisking them to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients.

(C) A reminder shall include asterisking the animal-derived Foods requiring Disclosure to a footnote that states:

(2) Consuming raw or undercooked Meats, Poultry, seafood, shellfish, or Eggs may increase your Risk of foodborne illness.

Sec. 11-5. Contaminated items of food or drink.

No person shall knowingly sell, offer for sale, or hold for sale in the city any unwholesome, stale, putrid, diseased, or otherwise contaminated items of food or drink, and shall make such immediate disposition of all items found in such condition as shall be ordered by the health authority.
(Ord. No. 94-12/13, 11-19-12)

State law reference(s)--Sale or possession of unwholesome food or drink, 17 M.R.S.A. § 3451 et seq.

Sec. 11-6. Application to food prepared outside city.

No person shall sell or bring into the city food prepared outside the city for sale by a food service establishment unless such food is prepared and handled in accordance with the requirements of this article. In determining whether such food is prepared or handled in accordance with the requirements of this article, the health inspector, shall accept reports from responsible authorities in such jurisdiction that such location complies with the provisions of this article.

(Ord. No. 94-12/13, 11-19-12)

Sec. 11-7. Right to enter.

The health inspector shall be permitted to enter any food service establishment during business hours for the purpose of making inspections and of copying any and all records of food purchases and payrolls. It shall be the duty of every person responsible for the management or control of such establishment to afford free access to every part of such establishment and to render all aid and assistance necessary to enable the health authority to make a full, thorough and complete examination thereof to determine compliance with this article. Records of purchases of food shall be held for a period of three (3) months following the date of purchase either at the food service establishment or at another place where they are customarily kept and shall be made available to the health authority at the food service establishment within a reasonable time upon request.

(Ord. No. 94-12/13, 11-19-12)

Sec. 11-8. Handwashing facilities.

Handwashing sinks with hot and cold running water shall be provided in or convenient to toilet rooms and in no instance more than twenty five (25) feet from and easily accessible to the toilet room. Soap and sanitary towels or other approved drying facilities in suitable holders or dispensers shall be provided. Common towels are prohibited. No person shall resume work after using the toilet room without first washing his or her hands. If such handwashing sink is not located within ten (10) feet of the entrance to all food preparation rooms or areas, additional handwashing sinks with hot and cold running water, soap, and sanitary towels shall be provided in or within twenty five (25) feet and easily accessible to such food preparation rooms or areas. Durable, legible signs shall be posted conspicuously at each handwashing facility used by employees directing them to wash their hands before returning to work. Dishwashing vats, vegetable sinks and pot sinks shall not be approved as handwashing facilities for employees. Any self-closing, or metered faucet used shall be designed to provide a flow of water for at least fifteen (15) seconds without the need to reactivate the faucet. Steam mixing valves are prohibited. Spring type faucets which require two (2) hands to operate are prohibited.

(Ord. No. 94-12/13, 11-19-12)

Sec. 11-9. Three-bay sink.

A three-bay sink shall be provided for such manual cleaning; each compartment shall be equipped with hot and cold running water and large enough to permit complete immersion of the largest utensil, and must be within twenty five (25) feet of and easily accessible to the food preparation area.

(Ord. No. 94-12/13, 11-19-12)

Sec. 11-10. Certified Food Protection Managers.

(a) A food service establishment must have at least one employee granted supervisory and management responsibility designated a Certified Food Protection Manager (CFPM) as defined in Section 1.201.10.B of Maine State Food Code 2013: Food Code adopted in Section 11-1, above. Proof of CFPM certification is required as follows:

- (1) Prior to the issuance of any new license required by Chapter 15;
- (2) Prior to the renewal of any license required by Chapter 15.
- (3) Within 60 days of the date when a CFPM leaves employment;
- (4) At the time of any inspection by the City's Health Inspector.

(b) Proof of compliance with the requirements of this section shall be provided to the City Food Inspector. Prior to the issuance of any license required by Chapter 15, the City Food Inspector must certify to the City Clerk's Office that the requirements of this Section have been met. Failure to provide proof of compliance with the requirements of this Section will be subject to a denial, suspension or revocation of a license in accordance with the provisions of Chapter 15. In addition to license suspension or revocation, violations of subsection 11-10(a)(3)& (4), above, shall result in a penalty to the violator of \$150.00.

Sec. 11-~~11~~10. Ice cream trucks.

All ice cream trucks shall comply with the following:

(a) *General regulations.* All ice cream trucks shall comply with all requirements of section 11-35, including the requirements for a base station, and all other requirements of this article except those relating to toilet facilities, in addition to the requirements set forth in this section.

(b) *Permitted sales locations.* Ice cream trucks shall be limited to sales on or from public rights-of-way in city parks where vending is allowed or in residential zones only, where such public rights-of-way have a posted speed limit of twenty-five (25) miles per hour or less.

(c) *Sales prohibited.* No ice cream truck shall stop at any time for the purpose of making sales if such stop is located within five hundred (500) feet of a licensed food service establishment.

(d) *Length of stop.* No ice cream truck shall stop on a public right-of-way in a residential zone for more than fifteen (15) minutes. An ice cream truck shall operate its four-way flashers whenever stopped.

(e) *Manner of stops.* Ice cream trucks shall pull over to the side of the public right-of-way as far as practicable when stopping for the purpose of selling. In no event shall an ice cream truck stop for the purpose of selling if such a stop prevents the passage of other motor vehicles on the public right-of-way.

(f) *Hours of operation.* Ice cream trucks shall only operate from 11:00 a.m. until 8:00 p.m.

(g) *License, insurance required.* Each ice cream truck shall be required to be separately licensed under this article and to provide to the City Clerk evidence of public liability insurance in an amount of not less than four hundred thousand dollars (\$400,000.00) as amended, with the city named as an additional insured on the policy.

(h) *Cost of licenses and expiration date.* The cost of a license for an ice cream truck and base station and the expiration date for such licenses shall be the same as those established in section 15-12 for a mobile food service establishment license and a base station license. Each base station shall be required to have one (1) base station license, even if more than one (1) truck utilizes the same base station.

(i) *Passengers prohibited.* No ice cream truck shall carry any passenger not employed by or related to the license holder or driver.
(Ord. No. 94-12/13, 11-19-12)

Sec. 11-~~11~~12. Stationary food vending unit.

A stationary food vending unit shall be subject to the following regulations:

(a) Only nonalcoholic beverages and prepackaged foods shall be sold from a stationary food vending unit, and there shall be no cooking in or near the unit.

(b) An applicant for a stationary food vending unit license shall provide the City Clerk, in addition to any other information required by chapter

15, with acceptable proof of ownership or control of the property upon which the unit will be located. Such proof shall consist of a deed, lease or other written agreement.

(c) An applicant for a stationary food vending unit license shall submit the following information for review by the health authority:

1. A plan for waste disposal;

2. A plan for disposal of liquid waste, which shall not be allowed to run into the ground; and

| 3. A plan for provision of restrooms for employees;

4. The precise location and manner of proposed or existing electrical hookups, which must be done by a licensed master electrician, or the type and location of other proposed or existing power sources.

(d) No stationary food vending unit shall be located within sixty-five (65) feet of any other licensed food establishment, including street vending units and mobile food service units.

(e) The fees and the expiration date for a stationary food vending unit license shall be the same as those established in chapter 15 of this Code for mobile food service establishments, except that no base station or fee for a base station shall be required.

(f) The location of any stationary food vending unit shall be subject to the applicable requirements of articles III and V of chapter 14 of this Code.

(Ord. No. 94-12/13, 11-19-12)

| **Sec. 11-1~~2~~3. Community kitchens.**

(a) A community kitchen shall mean a kitchen, licensed pursuant to this chapter, that is utilized by two or more entities at differing times for preparation of food to serve to the public off-site.

(b) Not more than one entity may utilize the community kitchen at one time. Any time more than one entity is utilizing a kitchen licensed pursuant to this chapter, there must be a reasonable amount of time built in to the schedule to ensure the kitchen is cleaned prior to the next use.

(c) Schedule and records: The schedule of the use of the community kitchen shall be prominently displayed in a conspicuous location at all times and all associated records shall be available for review by the health inspector at all times.

(d) License required: Each entity utilizing a community kitchen shall procure a community kitchen license from the City Clerk's office.

(Ord. No. 94-12/13, 11-19-12)

Sec. 11-134. Penalties.

Following the issuance of a failed inspection notice and an order to correct violations, the health inspector will reinspect the premises at a fee of seventy five dollars (\$75.00); if the followup inspection results in another failed inspection, the violator will be charged a second re-inspection fee of one hundred fifty dollars (\$150.00). If the third reinspection results in a failed inspection, the third and each subsequent follow-up reinspection will result in a three hundred dollar (\$300.00) per reinspection charge. In addition, upon the third failed reinspection, the health inspector may order the establishment closed until the establishment yields a passing inspection.

The requirements set forth in this section shall apply to the entire chapter.

(Ord. No. 94-12/13, 11-19-12)

Sec. 11-145. Reserved.

Sec. 11-165. Reserved.

Sec. 11-176. Reserved.

Sec. 11-187. Reserved.

Sec. 11-198. Reserved.

Sec. 11-2019. Reserved.

Sec. 11-210. Reserved.

DIVISION 2. LICENSE*

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

Sec. 11-212. License Required.

No person shall operate any food service establishment within the city unless licensed to do so by the city.

(Ord. No. 94-12/13, 11-19-12)

Sec. 11-23. Pre-Operational Inspection.

~~Prior to applying for~~ All applications for food service establishment licenses must be accompanied by a certification, issued by the Health Inspector, certifying that the food service establishment has undergone a Pre-Operational Inspection and successfully demonstrated compliance with the provisions of this Chapter. The fee for the Pre-Operational Inspection required by this section shall be \$150.00. ~~a food service establishment license, and before any such license may be granted under Chapter 15, a food service establishment must~~

11-2~~24~~. Hearing.

A hearing shall be held upon any original and any renewal application for a license required by this division.
(Ord. No. 94-12/13, 11-19-12)

Sec. 11-2~~35~~. Suspensions and revocations.

Licenses shall be suspended or revoked pursuant to chapter 15, except that a license which has been suspended may be reinstated by the clerk upon application, in writing, from the holder if the health inspector certifies to the clerk that he or she has reinspected the premises and the condition for which the suspension was imposed has been corrected.
(Ord. No. 94-12/13, 11-19-12)

Sec. 11-2~~46~~. General provisions to apply.

Except to the extent that this division contains a contrary provision, all provisions of chapter 15 shall be additional to the provisions of this division.
(Ord. No. 94-12/13, 11-19-12)

Sec. 11-2~~57~~ thru 11-4~~57~~ Reserved.

~~DIVISION 2. LICENSE*~~

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

~~**Sec. 11-46. Required.**~~

~~No person shall operate any food service establishment within the city unless licensed to do so by the city.
(Code 1968, § 905.1; Ord. No. 231-80, 12-22-80)~~

~~**Sec. 11-47. Hearing.**~~

~~A hearing shall be held upon any original and any renewal application for a license required by this division.
(Code 1968, § 905.1; Ord. No. 231-80, 12-22-80)~~

~~**Sec. 11-48. Suspensions and revocations.**~~

~~Licenses shall be suspended or revoked pursuant to chapter 15, except that a license which has been suspended may be reinstated by the clerk upon application, in writing, from the holder if the health inspector certifies to the clerk that he or she has reinspected the premises and the condition for which the suspension was imposed has been corrected.
(Code 1968, § 905.3; Ord. No. 231-80, 12-22-80; Ord. No. 94-12/13, 11-19-12)~~

~~**Sec. 11-49. General provisions to apply.**~~

~~Except to the extent that this division contains a contrary provision, all provisions of chapter 15 shall be additional to the provisions of this~~

~~division.~~

~~(Code 1968, § 905.23; Ord. No. 231-80, 12-22-80)~~

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DRAFT

Barron Center Update

PSHHS Committee

March 10, 2015

Barron Center Director, Karen Percival, returned to work in early February from a fall that she had taken during her Christmas vacation. Staff and residents were very happy to have her back at work!

The last week of January and first three weeks of February the Barron Center voluntarily closed admissions due to an outbreak of Neuro-virus among the residents (63) and staff members (75). Everyone recovered and admissions were reopened the fourth week of February. Ed Latham, Director of Nursing, was in close communication with the Maine CDC during this time to keep them informed about the out-break. The census maintained at an average of 5 under the optimal census of 210.

The Barron Center has been notified by the Maine Department of Health & Human Services Division of Licensing that they have been given a "Special Focus Facility" designation by CMS. In 2013 the Barron Center's 5 Star Rating by CMS was 5 Star. After the 2014 licensing survey the rating dropped to 2 Star due to three life-safety violations, one of which was considered to be very significant; the hot water in each resident's room was 120 degrees. This is considered to present imminent risk to the residents and was immediately corrected. The other two violations involved three barrier doors that didn't close properly and a problem with a device connected to the fire alarm system.

There were no violations in quality of care or injuries to residents.

The identified violations have been corrected and water temperature is checked and documented daily. However, the 5 Star rating system is a national data base and is run strictly by the numbers so the Barron Center's low score and other lessor violations of a physical plant nature the previous year have caused it to be placed on this designation.

To be removed from the Special Focus Facility list the Barron Center will have two surveys a year rather than the customary one survey and it must pass the next three reviews with no significant deficiencies. If we do not pass three consecutive reviews there will be increasingly severe penalties from fines to loss of Medicaid/Medicare Certification.

The Barron Center is in the process of hiring a Continuous Quality Assurance Specialist RN who will oversee all areas of CMS licensing review.