

City of Portland, Maine

Public Safety/Health & Human Services Committee

November 10, 2015

5:30 PM

Room 209, City Hall

1. Review And Accept Minutes From October 13, 2015 Meeting

Documents: [OCTOBER 13 2015 MEETING MINUTES.PDF](#)

2. Report On Marijuana
Chief Sauschuck

Documents: [CITY ORDINANCE 17-113.PDF](#)

3. Tour Company Licensing Ordinance Amendment (Action Item)

Documents: [LICENSING OF TOUR COMPANIES - 11-2-15_2.PDF](#), [MEMORANDUM LIMITATION ON SOLICITATION IN TOUR COMPANY ORDINANCE.PDF](#)

4. 2015 Work Plan Review

Documents: [2015 YEAR END REVIEW.PDF](#), [2016 MEETING SCHEDULE.PDF](#), [2016 WORKPLAN ITEMS TO CONSIDER.PDF](#)



**City of Portland, Maine
Public Safety / Health & Human Services Committee
October 13, 2015**

Meeting Minutes

Committee Attendance:

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

City Staff Attendance:

Michael Sauschuck, Police Chief; Adam Lee, corporation counsel; Richard Bianculli, Neighborhood prosecutor; David Jackson, Acting Fire Chief; Keith Gautreau, Assistant Fire Chief; Richard Andrews, Fire Electrician;

AGENDA ITEM 1 - Meeting Called to Order at 5:35pm

Chair Suslovic moved to accept minutes from the June 9, 2015 meeting. The motion was seconded and approved unanimously.

Agenda Item #2: Health and Human Services Department Updates (communication only)

Dawn Stiles provided an overview of the back-up material for this item to include a \$500k continuation of the defending childhood project; Apothecary by design is donating 1000 flu vaccines this year in place of vaccines typically free from the state; 71 permanent housing placements are completed; and the family shelter is down 35% for intakes. A short discussion was had regarding the success at the health and human services department. The Chair would like to point out the hiring freeze did impact staff's ability to find permanent housing and asked how we can keep up with housing if the numbers of folks coming from elsewhere are increasing. Dawn noted those numbers are actually low right now and that HHS is working with other municipalities to make connections in advance of homelessness. The Chair pointed out the GA numbers are moving in a favorable direction and would like to communicate that to change public perception of general assistance in Portland. A short discussion of homelessness, drugs and general assistance was had and Steve Hirschon from 18 Hanover Street was permitted to speak and said the numbers don't seem to go down and thought it may be weather related (summer).

Agenda Item #4 Tour Company Licensing Ordinance Amendment (action item)

This item was taken out of order at the request of staff to accommodate a staff member who had presentations in two committees in one evening.

Adam Lee provided an overview of the process and who was involved with the discussion. Rich Bianculli went over the topic of inspections and items in the memo provided in back-up materials including some information regarding previous licensing of motor vehicles and this application at the jetport and noted tour companies in the area were in support of licensing.

The Chair asked to change section 30-99 to include code enforcement officers and constables.

Public comment on this item was opened at 6:30pm.

Twain Brayden, representative of the Portland Discovery Tours spoke in support of the proposal and supports language similar to restaurants with regard to a 65 foot buffer zone.

Public comment on this item closed at 6:34pm.

Staff suggested not supporting a 65 foot rule at this time. Councilor Costa asked how long staff would need to evaluate effectiveness of this based on seasons. Adam said the end of next summer would suffice.

Councilor Costa moved to edit 30-99 to include the city manager or designee, the motion was seconded and passed unanimously 4-0.

Councilor Costa moved to forward this item to the council now instead of waiting and entire season, the motion was seconded and passed unanimously 4-0. The committee asked staff to come back with a review of fixed based operations.

Quick update from Dawn Stiles

Dawn updated the committee to let them know that refugee services lost two significant federal grants recently and a 3rd is at risk in the coming year and this division operates on 4 grants. Two case managers have been lost, half a project coordinator and ¾ of an executive assistant. She is working with the city manager's office on moving forward. Councilor Costa recommended a communication be sent to the full council.

Agenda Item # 3 Municipal Fire Alarm System

Assistant Chief Keith Gautreau provided an update of the back-up material and Richard Andrews, Fire Electrician provided a detailed explanation of the need to migrate to a wireless master box system. The overall cost and timeline were presented and the committee heard the urgency needed to move forward with the migration and agreed to a compliance date of January 1, 2017.

With no further business to attend to the committee adjourned at 7:24pm

PORTLAND POLICE DEPARTMENT

MEMORANDUM

October 21, 2015

TO: Mayor Michael F. Brennan
Councilor Edward J. Suslovic, Chair, Public Safety, Health and Human Services Comm.
Councilor Justin Costa, Vice Chair
Councilor Jill C. Duson
Councilor David Brenerman

FR: Michael J. Sauschuck, Chief of Police

RE: City Ordinance 17-113

On November 5, 2013, Portland voters supported the passage of a City ordinance which allows the possession of up to 2.5 ounces of marijuana by adults age 21 and older. Section 17-113 went into effect almost two years ago on December 6, 2013. The ordinance allows for the possession of marijuana in a public place but it prohibits the use of marijuana in public and the furnishing of or trafficking in the drug. Section 17-116 requires the Mayor to "report to the City Council annually ... as to the implementation and enforcement" of the ordinance.

The possession, use and sale of marijuana is still illegal under State and Federal law and it is the responsibility of the police department to enforce those laws. Maine decriminalized the possession of small amounts of marijuana in the early 1970's. The decriminalization of marijuana was further expanded in 2009 and, at present, possession of less than 2.5 ounces of the drug is a civil infraction that is punishable by a fine only.

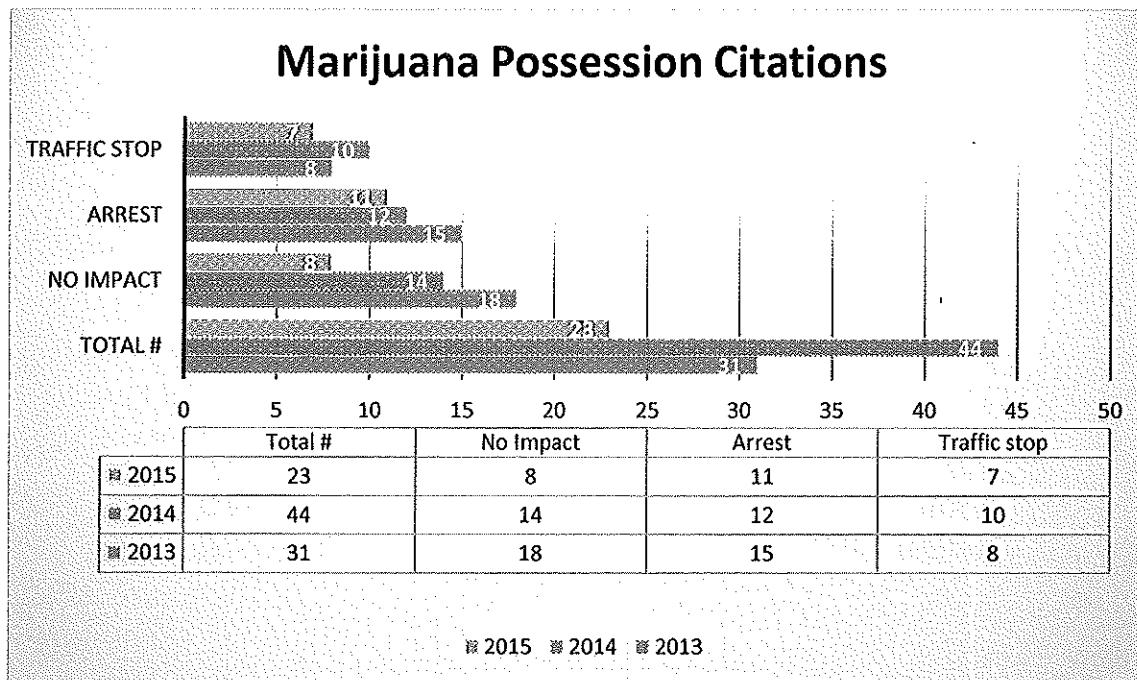
From January 1, 2015 to September 30, 2015, the department has tracked the civil possession of marijuana summonses issued by officers. During that time period, the department has issued twenty-three citations for the civil possession of marijuana. During the same time period in 2014, forty-four citations were issued. In 2013, pre-ordinance, thirty-one citations were issued from January 1st to September 30th.

This year, the ordinance would have had no effect on the person's possession of marijuana in eight cases. Three citations were issued to juveniles (under 18) and five were issued to minors (18-20).

Of the remaining fifteen citations, eleven were issued to adults who were also arrested on criminal charges. These charges included: Operating Under the Influence (one case), Burglary to a Motor Vehicle (a felony), Carrying a Concealed Weapon, Furnishing Alcohol to a Minor, Refusal to Submit to Arrest, Unlawful Possession of a Firearm, Unlawful Possession of Medical Marijuana, Unlawful Possession of a Scheduled Drug (methadone), and Violation of Bail

Conditions (by possessing marijuana). In two cases, the person summonsed also had an outstanding arrest warrant for other charges.

Four civil citations were issued in the course of traffic stops. In those cases, the operator appeared to be impaired to some degree and/or there was a pronounced smell of marijuana within the vehicle. The reasons for the initial traffic stops included: erratic operation, expired registration, no headlights, a defective plate light, and a stop sign violation. It is troubling that officers continue to encounter individuals impaired by or actively using marijuana while operating a motor vehicle.



Based on my review of the marijuana citations issued in 2015 to date, I am satisfied that Portland's officers are mindful of the ordinance but are also taking appropriate enforcement action when it is warranted. Officers are not seeking out violations of Maine's civil possession law nor are they failing to enforce the law when the situation requires it.

PROPOSED AMENDMENTS TO ALLOW LICENSING OF TOUR COMPANIES

PORTLAND CITY CODE OF ORDINANCES.

CHAPTER 15. LICENSES AND PERMITS.

ARTICLE I. IN GENERAL.

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Ch. 30, Art. III <u>IV</u>	Bicycle cabs	100.00, plus 20.00 per driver	January 31
<u>Ch. 30, Art. V</u>	<u>Tour companies</u>	<u>300.00, plus 30.00 per vehicle/ operator</u>	<u>March 31</u>
Ch. 30, Art. III	Horse-drawn cabs	200.00, plus 20.00 per driver	April 30

PORTLAND CITY CODE OF ORDINANCES.

CHAPTER 30. VEHICLES FOR HIRE.

ARTICLE V. TOUR COMPANIES

DIVISION 1. GENERAL PROVISIONS

Secs. 30-93. Definitions.

As used in this article, unless the context otherwise indicates, the following words shall have the following meanings:

Tour company means any individual, group, or entity that provides tours for profit to the public of any portion of the City of Portland.

Tour vehicle means any motorized vehicle or apparatus that is used to transport individuals or passengers during a tour of any portion of the City. Tour vehicles shall include, but shall not be limited to, cars, trucks, vans, buses, motorcycles, mopeds, and segways.

Street, way, or public place means any street, way, trail, path, promenade, park, plaza, square, or other public property, or portion thereof.

To operate means to pedal, push or otherwise cause the tour vehicle to move.

Sec. 30-94. General licensing provisions to apply.

Except to the extent that this article contains a contrary provision, all general licensing provisions of chapter 15 shall apply to this article.

DIVISION 2. LICENSES

Sec. 30-95. License Required.

No tour company shall operate a tour vehicle on any street or way or in any public place without a tour owner/operator license. A separate vehicle license shall be required for each motorized tour vehicle. A non-owner tour leader or driver shall also be required to obtain a separate tour operator license. Any license issued to an operator who is less than eighteen (18) years old shall be restricted to operation between the hours of 8 a.m. to 6 p.m.

Sec. 30-96. Applications.

In addition to the general provisions of chapter 15 relating to the contents of applications, applications for tour company licenses shall contain the following:

(a) A complete listing of all operators to be employed by or associated with the applicant, giving each person's full name, age and present address.

(b) A complete record (Maine Criminal History Record search) of disqualifying criminal convictions or civil offenses as defined in Section 30-33(b)(3-6), if any, for all operators to be employed by or associated with the applicant, and for the applicant, or if the applicant is other than an individual, for each principal officer of the applicant.

(c) A detailed description of each tour vehicle and any other equipment to be used by the applicant, including a photograph of each tour vehicle and the make, model, color, year, power, and seating capacity specifications of each such vehicle.

Sec. 30-97. Licensing authority and regulations.

Notwithstanding any provision of chapter 15 to the contrary, the City Manager or his or her designee shall be the licensing authority for the owner/operator, vehicle, and operator licenses. The City Manager or his or her designee shall also have the authority to promulgate rules and regulations for tour licenses as he or she may deem necessary.

Sec. 30-98. Conditions precedent to issuance.

Prior to the issuance of any tour company license, and in addition to any other requirements of this article or chapter 15, the applicant shall file with the City Manager or his or her designee the following:

(a) A certificate issued by the applicant that the tour company to be licensed and all operators operating thereunder shall comply with the rules made under authority of this article by the licensing authority; and

(b) An insurance policy covering the term of the license and executed by an insurance company authorized to issue such policies in this state in the usual form of vehicle or other liability

insurance policies in this state for injuries to persons and property resulting from the use and operation of the tour company to be licensed. Such policy of insurance shall be issued for a principal sum sufficient to provide indemnity in the amount of not less than four hundred thousand dollars (\$400,000.00) combined single limit, for bodily injury, death and property damage. A certificate of insurance bearing an endorsement thereon by the issuing agent shall be deposited with the director. Such certificate shall state that the issuing agent shall notify the director in writing no less than thirty (30) days prior to the cancellation thereof. The City of Portland shall be included in the policy as an additional named insured.

Sec. 30-99. Denial, suspension, or revocation.

In addition to the general provisions of chapter 15 relating to the grounds for denial, suspension or revocation of license, a tour company, tour operator, or tour vehicle license may be denied, suspended or revoked on any of the following grounds:

(a) The applicant or licensee or any operator is less than seventeen (17) years of age or has had a disqualifying criminal conviction or civil offense as provided in Section 30-33(b)(3-6);

(b) Disobeying any order or direction of the City Manager or his or her designee, including, but not limited to, the city traffic engineer, license inspector, or any police officer; or

(c) Causing or permitting any violation of this article or chapter 25.

DIVISION 3. OPERATING REQUIREMENTS

Sec. 30-100. Operation limited to roadways; carrying of passengers; prohibited locations.

Licensed tour vehicles shall be operated within roadways only. Tour vehicles shall not be operated upon sidewalks or bicycle paths, except those paths specifically designated for that purpose by the Director of Parks and Recreation. Tour vehicles may carry passengers to locations chosen by the passengers or may follow an agreed-upon route for sightseeing purposes. The City Manager or his or her designee shall have the right to prohibit tour vehicles from streets or roadways where the operation of such vehicles will present a threat to the safety of the tour vehicle operator and passengers or to other users of the street or roadway. The City Manager or his or her designee also shall have the authority to erect appropriate signs or markers, and to impose such conditions on the use of routes and locations as he or she deems proper, including limiting the number of such tour vehicles in operation on the same route or at the same location at any one (1) time, and restricting the days, times, or other circumstances of operation on any such route or at any such location. No such vehicle shall stop, stand, or park in any place while on route, to load or unload passengers or otherwise, except in accordance with traffic regulations, traffic-control devices, or the directions of a police officer or other authorized person. In no event shall a tour vehicle utilize a designated taxicab stand for any purpose whatsoever, unless required for an immediate response to an emergency situation. Tour vehicles shall not be permitted at the Jetport.

Sec. 30-101. Not to obstruct traffic; police orders.

No tour company or tour vehicle shall be operated in any manner which unreasonably or unnecessarily obstructs or impedes the free flow of vehicular or pedestrian traffic or otherwise endangers public safety. Any designee of the City Manager, including, but not limited to, police officers and the city traffic engineer, may at any time order the operator of any such company or vehicle to move along, pull over, make way, or temporarily discontinue the use of any such route or location, or any portion thereof, for the public safety or reduction of high-traffic areas convenience.

Sec. 30-102. Traffic regulations to apply.

Except to the extent that this article contains a contrary provision, all traffic regulations of chapter 28, article III, shall apply to the operation of licensed tour companies and tour vehicles.

Sec. 30-103. Display of plate and badge.

A plate, to be issued by the licensing authority ~~director~~ and bearing an identification number shall be displayed in a conspicuous place on each licensed tour vehicle at all times while in service. A badge, to be issued by the director and identifying the wearer by number as a licensed operator of such tour company or tour vehicle, shall be worn prominently on his or her person by each such operator at all times while on duty.

Sec. 30-104. Solicitation of business.

No person shall solicit business in any manner for any licensed tour company or tour vehicle while on route. Prohibited solicitation while standing shall include shouting, hollering, whistling, clapping, or making other loud noises, grabbing or otherwise annoying or harassing passersby, or any other conduct detrimental to the image or reputation of the trade or the public safety or convenience.

No tour company or individual acting on behalf of or for the benefit of said tour company shall solicit for or promote a tour company within ten (10) feet of a property occupied by a fixed-base tour company. This provision shall not apply to employees or agents of said fixed-base tour company.

The City Manager or his or her designee may restrict the solicitation of business to certain designated areas within a specified zone in certain high-traffic areas.

Sec. 30-105. Passengers to be seated and well-behaved.

No operator of any tour company or tour vehicle shall load or admit more passengers at any one (1) time than may be fully seated in such tour vehicle. Every passenger in any such tour vehicle shall be and remain fully seated at all times while on route and shall refrain from any other conduct or behavior detrimental to the safety or comfort of passengers or others.

Sec. 30-106. Care and maintenance of tour vehicle.

Each licensed tour vehicle shall be at all times clean and in good repair.

Sec. 30-107. Conduct and appearance of operators; rule-making authority.

Every operator of a licensed tour company or tour vehicle shall be courteous at all times when on duty and shall refrain from any loud argument, fight or disturbance, or any other conduct or behavior detrimental to the image or reputation of the trade or the safety or comfort of passengers or others. The City Manager or his or her designee shall have authority to make reasonable rules and regulations, consistent with the public safety and the image and reputation of the trade, governing the training and qualifications of such operators.

Sec. 30-108. Unsafe vehicles; inspections; order from service.

No licensed tour vehicle shall be operated at any time while unsafe, defective or in disrepair. The City Manager or his or her designee, including, but not limited to, any police officer or the license inspector may inspect a tour vehicle at any and all reasonable times, prior to being placed into service, while in service, or otherwise, and may at any time order such vehicle to be removed from service for any defect, unsafe condition, or want of repair. No such vehicle shall be returned to service except upon re-inspection by such officer, the license inspector or the licensing authority, and upon a finding that such repair has been made or that such defect or unsafe condition has been corrected.

Sec. 30-109. Storage of vehicles and equipment.

No tour vehicle or related equipment shall be kept or stored on any street or way or in any public place while not in service.

MEMORANDUM

To: Public Safety, Health and Human Services Committee

cc: Mayor Brennan and Members of the Portland City Council and
Jon Jennings, City Manager

From: Adam R. Lee, Esq., Associate Corporation Counsel

Date: November 10, 2015

Re: **Limitation on Solicitation of Tour Companies within a Distance of a Fixed-Base Tour Company**

At the October 13, 2015 meeting, this Committee approved Ordinance amendments creating a process by which Tour Companies are required to obtain licenses. The Committee suggested modifications to the amendments permitting the City Manager or his/her designee to issue and enforce the provisions of the Ordinance. The Committee also suggested an amendment that precludes solicitation by non-fixed-base tour companies within a certain distance of fixed-base tour companies. The Committee suggested that such amendment should be provided to the full Council at the time the Ordinance was placed on the Council's agenda. As a result of scheduling and additional research, Corporation Counsel determined it would be useful to present the issue again for discussion to the Committee before presentation to the full Council.

The amendment requested by the Committee to prevent solicitation within a distance of a fixed-base company is a regulation on commercial speech. While the First Amendment affords less protection to commercial speech, it "does not fall outside the purview of the First Amendment." *Lorillard Tobacco v. Reilly*, 533 U.S. 525, 554 (2001). The U.S. Supreme Court established a four-part test in *Central Hudson Gas & Elect. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557 to determine whether regulations of commercial speech violate the First Amendment: 1) Is the commercial speech protected (does it concern lawful activity and is not misleading)?; 2) Is the asserted governmental interest substantial?; If the answer to both of the first two questions is yes, 3) does the regulation directly advance the governmental interest asserted?; and 4) Is the regulation more extensive than necessary to serve the interest?

From Corporation Counsel's perspective, the most likely issue on which this Ordinance would be challenged is what government interest it serves and whether it is narrowly tailored to serve that interest. Those challenging the Ordinance may argue that it was enacted for purposes of protecting certain companies from economic competition. Courts have held that such purposes are not legitimate government interests. *St. Joseph Abbey v. Castille*, 700 F.3d 154, 161 (5th Cir. 2012) ("As we see it, neither precedent nor broader principles suggest that mere economic protection of a pet industry is a legitimate governmental purpose[.]"); *Craigsmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002) ("Courts have repeatedly recognized that

protecting a discrete interest group from economic competition is not a legitimate governmental purpose.”).

Economic protectionism is distinct from another governmental purpose that has been discussed by the Committee and may be served by the proposed amendment, that of public safety. There is no doubt that protection of public safety – specifically in the context of pedestrian and traffic safety – is a legitimate and significant governmental interest. See *McCullen v. Coakley*, 134 S.Ct. at 2535 and *Cutting v. City of Portland*, 2015 U.S. App. Lexis 16206. If the proposed amendment is enacted, it should be enacted on the basis of protecting public safety and any such amendment must be the most narrow way to address the issue in question. It is Corporation Counsel’s advice that prior to enactment of an amendment that would prohibit solicitation within a distance from fixed-base tour companies, the Committee/City Council should take additional testimony regarding public safety including, but not limited to, the congregating of solicitors in front of fixed-base establishments, and ensure that any proposed amendment is the most narrowly tailored option available and not more extensive than necessary to serve the public safety interest.

Public Safety/ HHS Committee 2015 Year End Review

- January 2015:** Following a shelter & services consolidation discussion, the committee did not vote to recommend to the full council that staff perform a feasibility study, rather the committee asked staff to develop a robust proposal regarding a feasibility study for the committee's review and
- February 2015** The committee heard the proposal of the Fire/Code task force and public comment on this item. The committee did not vote and asked staff to have one list of proposed ordinance changes regarding the task force's recommendations. It was agreed this proposal would work through the budget process before moving forward.
- March 2015** E-Cigarette Smoking Ordinance, City Code Article V. Regulation of Tobacco
- Motion to recommend passage of the proposed ordinance changes. **Passed unanimously 4-0.**
- Food Service Ordinance, City Code Ch. 11, Articles I & II.
- Motion to recommend passage of the proposed ordinance changes. **Passed unanimously 4-0.**
- Feasibility Study of Consolidation of Services
- Motion to recommend to the full council to establish a task force to develop a feasibility study. **Passed unanimously 4-0.**
 - o Discussion was had between committee members and then Acting City Manager, Sheila Hill-Christian regarding the task force and whether or not the Manager needed permission to develop the TF. It was determined the manager did not need the committee's or the full council's permission.
- Fire/Code Task Force Update and Recommendation
- No motion made, but the committee anticipated ordinance changes on the next agenda in April for review and a vote in May.
- April 2015** **Meeting canceled**
- May 2015** Fire/Code Task Force Update and Recommendation
- Following staff presentation and public comment, the committee postponed any action on this item to the June meeting pending clarification from staff regarding questions Councilors had.

Overflow Shelter Closure

Staff presentation was given, as well as public comment. A lengthy discussion followed. No committee action was taken.

June 2015

Fire/Code Task Force Report and Recommendations

- Motion to pass ordinance changes to sections 6 and 10 as amended to the full council. Passed unanimously 4-0.

July 2015

Update on Implementation of Portland Community Support Fund

- Update only, no action

Update on Shelter Planning Task Force

- Update only, no action

August 2015

Meeting canceled

September 2015

Housing Safety Office Update

- Motion to change the base minimum fee to \$15. **Passed 3-1.**
- Motion to include the above mentioned motion as amended in the staff's proposed recommendation. **Passed 3-1.**

Smoking Ordinance Changes (smoking in private clubs)

- Motion to postpone this item to the October agenda to learn more about the legality of the City proposing to ban smoking in private clubs. The **motion failed 2-2** and will not be on future agendas in 2015.

October 2015

Tour Company Licensing Ordinance Amendment

- Motion to pass ordinance as amended in the meeting. Passed 4-0. (staff to come back with a review of fixed based operations)

Municipal Fire Alarm System Update

- Gave permission to the fire department to accelerate the requirements for the wireless migration of the master box system for January 1, 2017.



Public Safety/Health & Human Services Committee

2016 Meeting Schedule

January 12, 2016 @ 5:30pm – room 209

February 9, 2016 @ 5:30pm – room 209

March 8, 2016 @ 5:30pm – room 209

April 12, 2016 @ 5:30pm – room 209

May 10, 2016 @ 5:30pm – room 209

June 14, 2016 @ 5:30pm – room 209

July 12, 2016 @ 5:30pm – room 209

August 9, 2016 @ 5:30pm – room 209

September 13, 2016 @ 5:30pm – room 209

October 11, 2016 @ 5:30pm – room 209

November 18, 2016 @ 5:30pm – room 209

December 13, 2016 @ 5:30pm – room 209



Public Safety, Health & Human Services Committee

2016 WORKPLAN ITEMS TO CONSIDER

Police department

- o regular updates
- o October marijuana report update
- o Noise ordinance review

Public Health

- o The Barron Center – Financial & Physical Plant Analysis
- o Social Services – Quarterly Updates on General Assistance Reimbursements & Program – Quarterly Updates on Shelter Data
- o Oxford Street Shelter LTS initiative and closure of overflow
- o Public Health – Population Health & Direct Services
- o Elder Affairs – Age Friendly Communities – Overview and updates

Fire Department

- o Communications System upgrade
- o Municipal Alarm System upgrade to wireless technology
- o Potential of adopting new edition of NFPA Codes (Action Item, ordinance change)
- o Update on Fire Inspections Program (#'s, summons, compliance rate, etc.)
- o General Dept. Update requested in March
- o General Dept. Update requested in September
- o Possible Ordinance change on Mass Gatherings

Misc

- o PEARL study from Maine Med
- o Housing Safety Office Update
- o Brewery/Winery Licensing (clerks office and corp counsel)
- o Quarterly Update on the Mayor's Substance Abuse Sub-committee
- o City Council asked that PSHHS develop a tracking and reporting mechanism for CT notices issued by constables. Reason for CT notice issued should be included. This item added following 11.17.14 Council meeting.