

Health & Human Services and Public Safety Committee Agenda

Tuesday, September 25, 2018, 5:30pm

Room 24, City Hall

Councilor Belinda Ray, District 1, Chair

Councilor Brian Batson, District 3

Councilor Pious Ali, At-Large

1. Announcements
2. Review And Approval Of Minutes From The September 25, 2018 Meeting.

Documents:

[HHS PS MINUTES SEPTEMBER 25 2018 DRAFT.PDF](#)

3. Next Meeting: October 23, 2018

NOTE: Since there are no action items on the agenda, there will be no opportunity for public comment at this meeting. Please feel free to send comments to members of the committee on any issue at any time via email. Councilors email addresses are available on the city website: www.portlandmaine.gov

The meeting can be watched online via livestream: www.portlandmaine.gov/livestream

Keep up to date with the new shelter design and planning process at the City's and Bayside Neighborhood Association's websites:

www.portlandmaine.gov/shelterplanning

<https://baysideportland.org/category/shelter/>



Health & Human Services and Public Safety Committee Minutes

Tuesday, September 25, 2018, 5:30pm, Room 24, City Hall

Committee Attendance:

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

Councilors in Attendance: Mayor, Ethan Strimling; Jill Duson (At-Large)

City Staff: Director of Health and Human Services, Dawn Stiles; Assistant City Manager, Michael Sauschuck; Director of Public Health, Dr. Kolawole Bankole; Associate Corporation Counsel, Anne Torregrossa; Director of Human Resources, Gina Tapp; Executive Assistant, Adam Harr;

AGENDA ITEM 1 – Announcements and Approval of Minutes:

Chair Ray Announce that City staff will come back with a matrix of possible locations for the proposed Homeless Services Center on the second October meeting or the first November meeting.

Chair Ray proposed the following amendments:

Page 4 of minutes, under "Chair Ray":

3rd bullet point should read:

- In terms of short-term improvements in Bayside, we have been implementing as many short-term improvements as possible over the last 2 1/2 years: new landscaping, additional crosswalks, lighting, police patrols, moving OSS to 24/7 model, enhancing security, creating neighborhood plan, etc.; not sure how much more can be done in the current facility as many have already been implemented

5th bullet point should read:

- Several providers, including Cullen Ryan, have expressed their support for a single shelter model and have said they won't be able to provide services in a scattered site model

Page 5 of minutes:

Third bullet point on page (and first two sub points under that) should read:



- Chair Ray corrected that the committee did indeed focus on one, city-run shelter.
 - The second look at zoning was to expand zoning to allow for smaller shelters run by other entities
 - It was not about the City pursuing smaller scattered sites
 - (other bullets remain the same)

Page 7:

Second bullet should read: "Chair Ray clarified that this committee did not reject residential zones."

Page 8:

Agenda Item 3 - Next Steps

Need to strike sentence/bullet about a workshop on the 24th, as that was never agreed to. The committee decided against a workshop and instead decided to proceed at the committee level without guidance from the full council.

Under "When the Homeless Services Center returns to the committee agenda, amend bullets to read as follows:

When the Homeless Services Center returns to the committee agenda:

- Staff will bring forward a matrix of options for the committee to consider, including:
 - All locations of potential sites for both a single shelter model and a model with up to three smaller shelters.
 - County Way and District Road will be included among sites to be fully vetted.
 - Councilor Batson's fully fleshed out proposal.
 - Financials for each proposed location.
 - Pros and cons of sites/models (beyond financial aspects).
 - As much as possible, the viability of acquiring non-City owned land.
- The committee will use this matrix to consider options and make recommendations to the council. The committee may also create a hierarchy of the options so that if its first recommendation to the Council fails, there will be a second and possibly third choice ready to go.

Councilor Mavodones requested that Chair Ray and City Manager Jennings confirm the outcome of the meeting.

- Chair Ray and City Manager Jennings agreed

Councilor Batson Moved to accept the minutes as amended.

Mayor Strimling asked to revisit agenda Item 2 of the July 17 meeting, Mayor Strimling asked that on the second bullet amend to PTO that covers paid sick time. Chair Ray made a motion to do so, Councilor Batson seconded and the motion passed unanimously.



AGENDA ITEM 2 – Paid Sick Time

Chair Ray explained that the Committee will go through the Memorandum and distributed a spreadsheet demonstrating sick time earned by hours worked at the proposed 0.033 accrual rate.

- Chair Ray requested that the changes in the proposed ordinance be red lined.
 - When saved as a PDF, the tracked changes were not reflected and will be reposted to show the changes.
 - Where the committee left off inside the document will be highlighted to document progress.

Memorandum – “Additional information regarding proposed sick leave ordinance”:

Exemptions for Healthcare Workers and Per Diems

- Exemptions for healthcare workers in other states:
 - RI exempts licensed nurses who work a Per Diem schedule:
 1. Employed by a healthcare facility;
 2. Without obligation to a regular schedule;
 3. Only works when they indicate available with no obligation to work when availability is not indicated;
 4. Receive a higher rate of pay than an employee in the same position/facility on a regular schedule.
 - The Committee likes the RI Exemptions and to adopt in the ordinance:
 - Healthcare facility must be defined.
 - Limited to nurses, in ME could be someone licensed by the State.
 - Healthcare Professional is defined in the ordinance, but for the purpose of who can sign a doctor's note.
 - Does the committee want to limit to licensed staff (RNs, CNAs, etc.) or all staff including support staff?
 - Chair Ray and Councilor Batson prefer licensed professionals.
 - Councilor Batson would like to define license by license
 - Councilor Ali would like to see what all positions would look like.
 - Are EMTs and Paramedics included?
 - Possibly not as they could be working at fire stations, not health centers.
- If an employee does not receive a higher rate of pay as in (4), are they still exempted?
 - The way it is written in RI, an employee would not be exempted and would accrue sick leave.



- Barron Center does not offer a higher rate.
 - Mayor Strimling would want to keep (4)
 - The committee would like all four points from RI included.
 - Vermont exempts any per diem at a healthcare facility.
 - Washington DC exempts per diems who elect to receive extra pay in lieu of benefits.
- Per Diems
 - At the City
 - Back up as needed extra staff without benefits working positions in:
 - Homeless Shelters as shelter attendants
 - Barron Center
 - Includes healthcare and support staff
 - A minim time commitment (two weekends per month for example) with no set schedule.
 - On-Call Event Staff
 - Election Workers
 - Restaurant Workers
 - Dispatchers in the 911 Center
 - ACA Compliance for benefits analyzed quarterly to offer per diems benefits who over regularly work 30 hours or more a week.
 - Applies to all employers.
 - Chair Ray asked if the City Pays a higher rate to Per Diems; the City does not.
 - Chair Ray asked how many hours Per Diems work in a week; 0 to 50.
 - Benefits would only be offered to Per Diems who worked a weekly average of 30 or more hours in the previous quarter.
 - Per Diems who are on-call and must be available regardless if they are called in are compensated a low hourly rate for being on call but not working; do these hours earn paid sick leave?
 - It is not working time; the proposed ordinance states in number 2, Pg.2 that paid time where no work is done does not accrue sick time.
 - Other Exemption Categories in Other States
 - CT: Temporary and day laborers.
 - Casual Babysitters
 - An exemption if it is mutually agreed upon by the employee and employer if another benefit was conferred in exchange
 - MA: paid sick leave benefit only applies for hours that employees have been scheduled to work.



Does the committee want to exempt per diems altogether or make separate exemptions for healthcare workers? The committee is interested in the RI healthcare exemption and will address exemptions at a future meeting before the next public comment period.

Maximum Accrual Amount

Currently in the ordinance, the maximum is paid sick time accrued is 48 hours at a rate of one hour for every 40 hours worked.

- Caps in other states
 - Most States cap at 40 hours.
 - Many local jurisdictions cap at 72 hours.
 - CA is capped at 24 but there was a proposal to increase to 40 hours to accommodate recovering from the Flu.
 - OR has comments suggesting 40 hours to match work week.
 - VT employers have to provide 24 hours of leave for the first two years and then 40 hours thereafter
- Tiered System different caps for larger and smaller employers
 - Size
 - Fewer than 10 employees: 24 hours?
 - 10 employees and up: 40?
 - Chair Ray likes 40 over 48
 - Mayor Strimling supports 48 hours
 - Tiers can help smaller businesses afford the benefit
 - Mayor Strimling is cautious of tiers.
 - A sick employee needs the same amount of time for illness regardless the size of the company they work for has fewer than 10 or 10 or more employees.
 - Do tiers create an incentive to create part time employees?
- Can employees be fired for using too many sick days?
 - Yes if using unprotected leave (FMLA and State FMLA and various job protected leaves would not allow an employee to be fired)
 - Some protections in Maine are unpaid (not paid but cannot be fired)
 - In the Ordinance, it said individuals can't be fired for using the benefit
- Chair Ray asked the committee how they feel choosing 48 hours or 40 hours for the maximum accrual amount.
 - Chair Ray likes the 40 hour maximum.
 - Councilor Batson sees 40 as the consensus among the committee and the states compared.



- Is there a public health analysis between 5 and 6 days?
 - The states that chose 48 hours mainly did so for public health reason.
 - Councilor Ali Asked Dr. Bankole about the public health perspective.
 - Seven days is needed to recover from the Flu.
 - Chair Ray reiterated that the committee must be mindful of the affordability of the cost reconciled with the public health ideal.
- Councilor Ali asked the Mayor for data demonstrating that most people do not use the maximum amount of time given.
 - In a study, Eileen Applebaum found most employees do not use the maximum sick time given.
 - What was the average used?
 - Is it near 40 hours (if so does 40 make more sense than 48)?
- Paid vs Unpaid
 - Committee not interested in unpaid.
- Councilor Batson is OK with 48 hours barring adverse economic impacts that cannot be mitigated in other ways.
- Chair Ray's Chart demonstrated someone working:
 - Working 40 hours per week would not accrue 48 hours until a point between week 36 and week 37.
 - 35 hours would not accrue 48 hours until week 42.
 - Someone working 25 hours would never hit 48.
 - Mayors Strimling noted that individuals with shorter work weeks would need to earn less time to take the same number of sick days off as someone working 40 hours per week.

The committee is not ready to decide but will address 40 vs. 48-hour cap in terms of public health, economic impact, and what may pass the full council.

- Chair Ray is leaning towards 40 hours (5 days) minimum.
- Councilor Batson could be ok with 48 hours (6 days) and is looking for more information from a public health perspective.
- Counselor Ali is looking for more data on sick time use.

Chair Ray asked about the accrual rate, the committee unanimously agreed that the accrual rate is 0.033

Waiting Period

- Potentially exempting new businesses in lieu of a tiered system for smaller businesses?
 - MN: new business are exempt from one year after the hire of a business' first employee.



- Probably not an alternative to smaller tiers but a potential element of implementation.
- Must wait 90 days to use
 - Chair Ray and Councilor Batson supports 90 days, Councilor Ali is cautious to be able to include seasonal employees.
 - 90 days is a minimum Benchmark employers can allow tie to be used earlier.
 - Employers have expressed trouble with employees that turn over quickly
 - Mayor Strimling had concerns over a 90 day waiting period:
 - 90 days may exclude seasonal employees
 - People may come to work sick in the first 90 days
 - The hour or time less than a full day earned within 90 days could be used to care for sick family.
- A waiting period based on a minimum number of hours works
 - May help include seasonal workers
 - CT has 680 hours
- How can seasonal employees still be included when waiting periods effectively excludes them.
 - Could a carryover mitigate this?
 - Councilor Ali asked about the City terminated summer camp employees at the end of the season and then rehired the next year
 - 2.C If someone is rehired within 2 months, their accruals shall be reinstated
 - Increasing to within 12 months would catch the seasonal employees
- 90 Day waiting period is waived and hours carry over if someone is rehired to the same employer within one year.
 - Councilor Duson would like a mechanism that freezes the clock
 - Cumulative: working 52 days one season means the first day the next season starts at 53.

New Business Exemptions

Anne will research the definition of new business that would allow an exemption lasting one year from the hire date of the first employee.

- New business that has never existed to exclude franchises/chains?
- Should number of employees be a factor?

Exemptions for Employees Covered by a Collective Bargaining Agreement

- Some construction have this exemption.
- Waived if the Collective Bargaining Agreement specifically details sick time.
 - If unions value other benefits more, they could bargain with it.



- Mayor Strimling does not want an exemption; all employees get the minimum.
- Chair Ray supports not exempting to extend the broad definition of family to union members.
- Can be reconsidered if unions come forward feeling this impedes their ability to negotiate
 - Not likely as unions likely have a higher level and if not would may use this to increase their sick time benefit.
 - Will automatically cover unions without needing to wait for a new contract
 - An employer cannot negotiate the ordinance given benefit without; there must be an exemption
 - Loss of a bargaining chip (if unions value other things like higher wages or more vacation instead)

The committee unanimously agreed not to include exemptions for employees covered by collective bargaining contracts.

Babysitters

- Distinction between babysitter and nanny or childcare worker
 - Need a definition for babysitter?
- Under the table.
- What is the difference between per diem and contractual employees
 - Certain positions at the City are hired by contract with or without benefits written into the contract.
- Definition of Employee excludes those defined under 26MRS663 Chapter 7.

Temporary and Day Laborers

- Doesn't need special consideration.

AGENDA ITEM 4 – Next Steps

PTO exemption language was added:

This exception applies regardless of how the paid leave is designated, including “sick leave,” “paid time off,” or otherwise, If an employer has a policy that does not distinguish between sick leave and other types of leave, the employer need not track the actual reasons for leave, so long as leave is available for the same purposes and under the same conditions as earned paid sick time under this ordinance.

**Should Paid Sick Time Roll Over?**

Earned paid sick time shall not be forfeited unless paid out to employees however the employers can set a cap (currently rolls over and accrues without cap).

- Maximum accrual of 48 in one year
- Can only take 48 in one year
- Can't erase them (so you could get 1,000 hours in the bank via carry-over but only use so many in a year.)

Items to revisit from this meeting at a later date:

- Staggered implementation considered
- 40 vs. 48 Cap
- 90 days
- New Businesses
- Healthcare Exemption
 - Licenses
 - Other Categories
 - Definition of Healthcare Facility
- Language for Implementation

On October 9th:

Committee will continue through the document, addressing the below items:

- Notification requirements
- Documentation
- Enforcement and the City's role
- Minimum number of hours worked in a year
- Review Uses
- Tipped employees
- Different methods of accrual exemption provided that: X, Y, and Z are met.

Any items that need to be revisited will be decided on as Corporation Counsel is able to answer committee questions.

Councilor Batson made a motion to adjourn, Councilor Batson seconded. The motion passed unanimously. The meeting adjourned at approximately 7:30 PM.