



## Health & Human Services and Public Safety Committee Minutes

Tuesday, October 9, 2018, 5:30pm, Room 209, City Hall

Committee Attendance:

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

Councilors in Attendance: Mayor, Ethan Strimling

City Staff: Director of Health and Human Services, Dawn Stiles; Assistant City Manager, Michael Sauschuck; Fire Chief, Keith Gautreau; Assistant Corporation Counsel, Anne Torregrossa; Executive Assistant, Adam Harr

### **AGENDA ITEM 1 – Announcements and Approval of Minutes:**

Councilor Batson moved to approve the minutes as amended; Councilor Ali seconded and the motion passed:

- Current ordinance one hour for every 40 hours worked should be for every 30.

### **AGENDA ITEM 2 – Committee Review Of Staff's NFPA 2018 Standards Including Public Testimony**

Fire Chief Gautreau introduced the coding history and changes outlined in Assistant Corporation Counsel, Anne Torregrossa's memo; it has been 10 years since codes have been updated and the State is also looking to adopt the National Fire Protection Association (NFPA) codes *Life Safety Code* (NFPA 101) and the *Fire Code* (NFPA 1).

The memo containing full list of additions, updates, deletions and clarifications is available here:

<https://www.portlandmaine.gov/AgendaCenter/ViewFile/Item/6733?fileID=38194>

#### **Major Changes include:**

- Chapter 38 of NFPA 1: this new chapter was added to as a placeholder and starting point to ensure growing and processing is safe.
- Reorganization of Chapter 10 for clarity.

#### **Life Safety Code**

- 10-3(a)(ii)
  - No partially sprinkled buildings.
- 10-3(a)(iv)



- Balconies or rooftop decks that serve multiple uses with access from common areas are protected.
- Does not apply to single unit balconies or decks.
- 10-3(a)(v) Smoke Alarms
  - Battery operated smoke alarms must be hard wired with battery back-up.
  - Photoelectric sensors will cut false alarms.
- Deleted Sections
  - 10-3(f) One or two family home renovations will require to be sprinkled
  - Historic buildings definitions and directions for rehab.
  -

### Fire Code

- 10-18(b) mirrors NFPA 101 and State statute.
- 10-18(e), (f)
  - Carnivals and Fairs.
  - Marijuana growing and processing placeholder in statute.
  - Blasting operations
    - Permits filed with Fire Department instead of in Planning.
  - Certificate of fitness for special hazards (currently no requirements for technicians working on these systems.)
    - Commercial Kitchens have hood ventilation systems
    - Marijuana growing facility placeholder
- Deleted Sections
  - 10-18(e) unvented fuel fired heaters is already addressed in the fire code.
- Article III. Enforcement and Appeals
  - Mirrors Chapter 6
- Deleted Sections in Article VIII (VI on the memo):
  - 10-103: Box alarms are no longer assigned so the language is obsolete.
  - 10-104: False alarm penalties have deleted the time requirement for the Chief to give written notice as 15 days may be too long in severe situations.

### Committee Discussion

- Councilor Batson asked what has changed in 10-3 A B; CO requirements are the same but written to be easier to understand.
- Chair Ray asked if the CO alarms are hard wired? If a building is having major renovation or new construction, hard wiring is required.
- CO alarms are required in single family homes.
- This committee will vote before going to the Council.

Public Hearing: Public comment period opened and closed without comment.



#### Committee Vote:

Chair Ray made a motion to recommend approval to the full City Council with amendments to page 10-35. Councilor Ali seconded and the motion passed unanimously

- 10-35:
  - To make it clear, the alarm system language changed to “all such buildings shall be connected to a City-Approved wireless master box alarm system.”
  - Councilor Ali asked if someone did not switch over due to hardship, what will happen? This is for commercial buildings

Chair Ray introduced the topic and explained that the committee will continue through the ordinance, starting with use of earned paid sick time.

- Use of Earned Paid Sick Time
  - OR is the only state that allows sick time to be used to bond with a new child and for a family member's death.
    - Chair inclined not to include either.
      - Should be included in policies other than Paid Sick Leave.
      - The ordinance is being created mainly for public health purposes.
    - Councilors Batson and Ali are interested in including use for the death of a family member.
    - Mayor Strimling would like to see these covered but agrees they are not necessarily appropriate for a Sick Leave ordinance.
    - Councilor Batson requested further information on bereavement leave but is not bringing an amendment at this time.
      - The death of a service member grants job protected (unpaid) leave to certain family members.
      - Bereavement leave is offered by the City; the benefit is influenced by which bargaining unit and employee is a part of and the level of family association to the deceased.
        - #2 could apply to bereavement.
        - Broad definition of family without a tiered family association would require an update to bereavement leave.
  - #4 and #5
    - Does this make a distinction or are they redundant?
    - Does the city distinguish between mental health days and sick days?
      - Currently the City would have mental health days covered under personal time or vacation time.



- Defining or distinguishing mental health day is a policy decision,
    - The committee agreed these are redundant; and confirmed that #2 covers them.
- Employer's Payroll System
  - If an employer has no system and just writes checks, how are hours calculated.
    - Most employers log up to a quarter hour (if an employee clocks in within the first fifteen minutes of an hour, they will be paid from the start of the hour.)
    - NJ does allow time accrued by the employee time needed for an employee to attend a school related event of their children.
      - Mayor Strimling suggested looking at the New Jersey language; Anne will add a copy for the next meeting.
    - A-1 Allows time for Domestic Violence related appointments.
    - C was added by the committee.
- Noticing Requirements
  - 7 days is typical
    - Chair Ray is interested into changing to 7 calendar days.
  - Foreseeable is not defined.
  - The committee agreed on 7 days' notice to employers when use of earned sick time is foreseeable.
- Section C- 2
  - When the employer requires documentation the employer is responsible for the cost of obtaining documentation.
    - This is not found in other states.
    - Chair Ray would like to strike the payment but is interested in the MA language requiring post use written verification system where employees fill out a signed form attesting the legitimate use of their sick time.
      - Employees that do not have medical care could use the form instead of obtaining a doctor's note.
    - Councilor Ali asked if there is a cost for obtaining documentation from a medical appointment the employee went to? No, but if an employee wouldn't otherwise need a healthcare provider there would be a cost.
      - Payment was added when people who do not have health insurance who are then required to see a doctor.
    - Mayor Strimling and the Chair would like the MA language looked at.
    - Anne suggested that there be mechanism for employers to address abuse.
      - The City tracks use of sick time and begins requiring a doctor's note when a pattern of use results in going over the average amount of sic time used by City employees.
      - The MA verification form addresses patterns of abuse.
      - The MA FAQ has a lot of useable language.



- The committee will
  - strike 2, requiring the employer pay for obtaining documentation
  - Adding the verification form.
  - Allow for controlling for abuse
- How does someone take DV related leave while maintaining confidentiality?
  - Should a confidentiality section be added?
    - What are the State requirements?
      - Documentation not defined but is required under the act.
    - Is there a broader category that would allow DV use without disclosing?
    - Section 9 Health and DV related information will remain confidential.
      - Still, should a box indicating DV need to be checked?
    - In order to use the State's protected leave, one must provide documentation that discloses.
    - The committee will come back to this question.
  - The reasons identified are the reasons sick leave can be used for.
- 5-C of the proposed ordinance prohibits retaliation for legitimate use of earned sick leave.
- Example of an employer with an unexcused absence policy.
  - Employers would have to adjust their policies to conform
- Amount of earned sick time used, earned, and available on each pay stubs.
  - Chair Ray would like to strike this for small businesses who do not have robust tracking sick systems.
    - Instead require to give this information at least once a month.
  - The committee agreed and add that employers should provide the information within one week upon request.
  - "...Shall be provided to the employee at least once per month and at the request of the employee."
- Accessibility: translated into languages spoken by at least 5% of the population?
  - Where did the list of languages come from? Pine Tree Legal Assistance Inc.
  - Should translations only be done when a native speaker of a language that is not yet translated is hired?
  - Be translated broadly by the City (as it is written, the City must translate the posters and make them available online.)
    - Top 5 languages.
  - Better way? One that does not necessitate an ordinance change.
- Section F Employer who willfully violates...



- Section b 4 in enforcement may make section F duplicative save for the cap outlined in F.
- Record Keeping Requirements
  - 6 years is the standard statute of limitations for civil type disputes.
  - MA only retains sick leave records for 3 years.
  - PTO: Sick leave records must only be retained if the employer tracks sick time separately from PTO.
  - 6 years versus 3 years?
    - PTO policies are not exempted from the ordinance.
    - 6 years seems long.
    - Councilor Ali explained that the records are helpful in wage theft cases.
      - Wage and hour statute of limitations is 2 years.
    - The 6 year schedule is for current and former employees.
  - The Committee agreed to change the Records Retention requirement to three years.
    - This in relation to C creates a legal presumption that the employer has violated without clear evidence.
      - Spoliation of evidence (destroying or not keeping required records)
      - Already can be fined without C
      - This impacts the burden of proof
  - The committee agreed to strike C pending resolution of enforcement.
    - Usually it is the plaintiff who has the burden of proof, but C presumes that employers have violated; this may not be honored by a court.
    - What is the penalty without C for not keeping documentation? \$100-2,000 a day until produced.
- Enforcement
  - Concerns:
    - Cost
    - Legality: limits on what a city can do to help an individual person.
      - Triple back wages to the employee?
        - Fines go to the City.
        - Benefit to employee is the earned sick time, not a penalty that goes above and beyond what they were entitled to.
        - Municipalities cannot represent individuals.
  - Mayor Strimling requested a proposal from Corporation Counsel on what a good enforcement policy would look like.
    - Anne will share the MEMO and model the section on the Minimum Wage ordinance's enforcement.
  - Could the City be a first line that explains the ordinance to employers when an employee files a complaint? Then, if an employee wants to move forward, the City could provide documentation for the private right of action.



- At this point, the City independently could fine the employer for noncompliance with the ordinance.
- Effective Date

#### **AGENDA ITEM 4 – Next Steps**

On October 23<sup>th</sup>:

The committee will come back to the items to be revisited from this and last meeting.

Mayor Strimling requested one more meeting to have a public hearing before the last two meetings.

- At the end of the next meeting, the committee will determine if another meeting is needed.

The meeting adjourned at approximately 7:45 PM