

South Portland City Council
Position Paper of the City Manager

Subject:

ORDER #16-16/17 – Authorizing the City Manager to sign a Memorandum of Understanding between the State of Maine Department of Health and Human Services Center for Disease Control and Prevention regarding Delegate Authority and Communications regarding Emerging Public Health Threats. Passage requires majority vote.

Position:

The City currently has a Memorandum of Understanding (MOU) with the State of Maine Department of Health and Human Services that designates our Health Inspector, Derrick Stephens, to conduct inspections of local restaurants, lodging establishments, public pools, and spas.

The State would like to now include communication and activities regarding emerging public health threats that will come under the jurisdiction Health Officer Steve Fox. Emerging threats include but are not limited to:

- Information regarding food-borne illnesses obtained during delegated inspections and information regarding reportable diseases and conditions.
- A situation that has significant public health implications (including biological/infectious, environmental and chemical health risks and/or effect), that may require immediate action to protect public health and response is time sensitive.
- A situation that may be significant in its occurrence as to require risk communication through media and other communications outlets.

This agreement outlines the roles of those involved that will provide clear and timely communications between both parties if such a health threat exists or is imminent.

Attached is a memorandum from Pat Doucette regarding this item. She will be at Monday's meeting to answer any questions.

Requested Action:

Council passage of ORDER #16-16/17.


Assistant City Manager

July 7, 2016

To: Jim Gailey, City Manager
City Council

From: Patricia Doucette, Director of Code Enforcement

Re: Memorandum of Understanding between the State and the City of South
Portland

The Department of Health and Human Services has requested that the City enter into an updated version of our current memorandum of understanding with them regarding the inspection of eating and lodging establishments and public pools and public health threats.

Derrick Stephens is the City's Health Inspector and he is the State's delegated authority within the City to conduct eating and lodging establishment inspections and public pool and spa inspections consistent with the State's rules and regulations.

Steve Fox is the City's Health Officer and he is delegated and authorized to deal with and communicate to the State situations involving public health emergencies and emerging threats.

The City has an excellent working relationship with DHHS and recommends that the City Manager sign the proposed agreement.



CITY OF SOUTH PORTLAND

THOMAS E. BLAKE
Mayor

JAMES H. GAILEY
City Manager

EMILY F. CARRINGTON
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

IN CITY COUNCIL

ORDER #16-16/17

District One
CLAUDE V. Z. MORGAN

District Two
PATRICIA A. SMITH

District Three
EBEN C. ROSE

District Four
LINDA C. COHEN

District Five
BRAD FOX

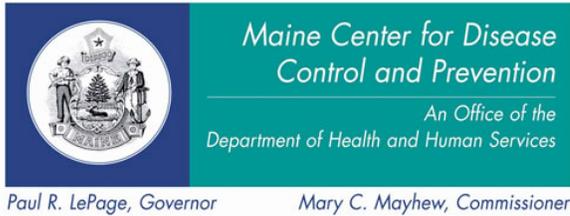
At Large
MAXINE R. BEECHER

At Large
THOMAS E. BLAKE

ORDERED, that the City Manager be and hereby is authorized to sign a Memorandum of Understanding in substantially the same form as shown attached between the State of Maine Department of Health and Human Services Center for Disease Control and Prevention regarding Delegate Authority and Communications regarding Emerging Public Health Threats.

Fiscal Note: Less than \$1,000

Dated: July 18, 2016



MEMORANDUM OF UNDERSTANDING
Between
STATE OF MAINE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTER FOR DISEASE CONTROL AND PREVENTION
And
MUNICIPALITY OF SOUTH PORTLAND
Related to
DELEGATED AUTHORITY
And
COMMUNICATIONS REGARDING EMERGING PUBLIC HEALTH
THREATS

I. PURPOSE

This Memorandum of Understanding is executed to set out the agreement between the Maine Center for Disease Control and Prevention (Maine CDC), within the Department of Health and Human Services (DHHS), and the Municipality of South Portland (the Municipality) in two areas. These are:

- A.** Municipal authority to inspect eating and lodging establishments, public pools and spas and
- B.** To coordinate communications and activities to protect Maine from emerging public health threats.

II. DELEGATED MUNICIPAL AUTHORITY TO INSPECT EATING AND LODGING ESTABLISHMENTS

This section of the MOU grants the Municipality of South Portland delegated municipal authority to inspect eating and lodging establishments and public pools and spas in accordance with the provisions outlined below.

A. Rationale

The Maine CDC's Health Inspection Program, within the Department of Health and Human Services, licenses and regulates hospitality-related industries and has statutory authority to oversee the licensing of eating and lodging establishments and public pools and spas in delegated Maine municipalities.

B. Overview of statutory obligation of Maine CDC, DHHS relevant to this section of the MOU

The DHHS oversees the activities of eating and lodging establishments and public pools and spas in accordance with the provisions of 22 MRSA §2492-2501 and the Department's implementing regulations pertaining to eating and lodging places (primarily restaurants, schools and lodging places) and public pools and spas and the rules regarding same. DHHS has for over 60 years overseen all aspects of such activities.

Pursuant to the DHHS rules adopted pursuant to 22 MRSA §2499(9), a "delegated community" means a city, town or plantation in Maine that has applied for and received authorization from the Department to conduct eating and lodging establishment and public pool and spa inspections.

The DHHS has been authorized to delegate eating and lodging establishment inspection authority to municipalities since 1975 (Public Laws of 1975, c 496 §2499.)

C. Responsibilities and Understandings of the Parties

1. No person, corporation, firm or co-partnership may conduct, control, manage or operate, for compensation, directly or indirectly, any eating establishment, eating and lodging place, lodging place, recreational camp or camping area, unless the same shall be licensed by DHHS. Licenses issued must be displayed in a place readily visible to customers or other persons using a licensed establishment. [P.L.1983, c. 553, 22 M.R.S.A. § 2492]
2. The Department may delegate authority to the Municipality to conduct eating and lodging establishment inspections and public pool and spa inspections consistent with 22 M.R.S.A. §2499(9) providing:
 - a. DHHS continues to be the licensing authority for the State license, and may issue a license to establishments on the basis of an inspection performed by a health inspector who works for and is compensated by the municipality in which such establishment is located. [P.L. 1975, c. 496]
 - b. The Municipality has adopted the most recently adopted rules, ordinances or other code of standards for such establishments which has been approved by the Department and which is consistent with the regulations used by the Department for the issuance of such licenses in effect at the time of inspection. [P.L. 1975, c. 496]

- c. A municipally-employed health inspector may not make inspections under the provisions of this Chapter unless certified as qualified by the Commissioner of Health and Human Services. [1975, c. 496.]
- d. DHHS may, from time to time, inspect such municipally-inspected establishments to ascertain that the intent of the statutes is being followed. [P.L. 1975, c. 496]
- e. The Municipality shall use the same operating system, hardware and screen resolution on which the State has tested their applications in order to use RemoteForms (or USAFoodSafety at the end of July) to record inspections and complaints. Other configurations are not supported.
- f. The Municipality shall not post or release personally identifiable medical information or medical information that could reasonably be used to identify a person except to the Maine CDC or in accordance with law, since such information is confidential under 22 MRS Section 42(5).
- g. The Municipality may not charge the Department for performing such inspections. [P.L. 1975, c. 496]
- h. When a license is issued by the Department on the basis of a municipal inspection as specified in this section, the licensee shall be required to pay DHHS a sum not to exceed \$100 to support the costs of mailing and handling. [new P.L 2011].
- i. The Municipality is responsible to ensure that all eating and lodging establishments within its jurisdiction have a State license prior to issuing a municipal license. Failure of an establishment to operate with the necessary State license will result in the eating or lodging establishment being assessed an administrative fine by DHHS as specified in DHHS rules. DHHS retains its right to pursue other sanctions against non-licensed eating and lodging establishments including seeking injunctive relief to enjoin further violations.
- j. Licenses issued by DHHS under such delegation must be displayed, renewed and in every other way treated the same as licenses issued on the basis of inspections by the DHHS. [P.L. 1975, c. 496, §3]
- k. Certification of municipally-employed health inspectors shall be in accordance with standards set by the Commissioner of DHHS and be for a period of three years. [P.L. 1975, c. 496.] No municipally-employed health inspector shall make inspections under the provisions of this Chapter unless they are duly certified. Such certification will be determined through formal and informal training and education, and other such criteria as DHHS may determine. Such standards may include items such as staff competency, enforcement and compliance status, inspection practices, attendance at training meetings and seminars, and routine reporting to DHHS. [10-144 CMR 201, Section 3.C.8]

1. The Municipality shall determine the primary language of individuals requesting licensing and inspection services and ensure that the services are provided either by a qualified interpreter when English is not the primary language or a qualified sign language interpreter. The Municipality shall obtain these services at its own expense. The Municipality shall not charge the establishment or DHHS for this service.

The Municipality shall use only qualified in-house interpreters or Maine State Government approved interpreters found at the following link:

<http://www.maine.gov/purchase/contracts/index.shtml>.

There are approved vendors in each of the following areas.

- [American Sign Language Interpretation Services](#)
 - [In-Person Spoken Language Interpreting](#)
 - [Telephonic Interpreting Services](#)
 - [Video Remote Interpreting Services](#)
- m. The Municipality shall respond to after-hour calls and holiday emergencies to the greatest extent practicable, understanding that vacation and sick time may prevent the health inspector from responding. Expenses shall be incurred by the Municipality and the Municipality may not charge DHHS for expenses associated with these calls. DHHS shall provide back-up coverage for after-hour calls and holiday emergencies in the event the inspector is on vacation or sick.
 - n. In the event of suspected or confirmed food-borne disease outbreaks, the Municipality and Maine CDC will as soon as practical, but no longer than one hour after the outbreak is suspected or confirmed, contact the other. [CMR 258] Outbreaks suspected or confirmed outside of business hours shall be reported to the Maine CDC Disease Reporting and Consultation Line at 1-800-821-5821, as soon as practical, but no longer than one hour after the outbreak is suspected or confirmed.
 - o. Every three years, DHHS shall review the restaurant and lodging inspection program of the Municipality to which authority to conduct inspections has been delegated.

III. COMMUNICATIONS REGARDING EMERGING PUBLIC HEALTH THREATS

A. Overview of Statutory Obligation of DHHS relevant to this Section

Pursuant to 22 MRS §802(2), DHHS has the authority to adopt emergency procedures for the control of persons exposed to public health threats and to adopt emergency procedures to disinfect, seize or destroy contaminated property. DHHS has adopted rules to address declared public health emergency situations (See 10-144 CMR CH 258, Section 10.) Pursuant to 22 MRS §802(1), DHHS has authority to investigate outbreaks of communicable, environmental and occupational disease and to adopt appropriate public health countermeasures. DHHS's authority to establish specific countermeasures to address nascent public health emergencies are identified

specifically in sections of Chapter 250, including §807 (control of communicable diseases), §808 (investigations); §§810-812 (court measures); §815 (abrogation of privileged communications); and §820 (extreme public health emergencies.)

Pursuant to 22 MRS §824, Maine CDC is authorized to share identifiable public health data it has collected or developed as appropriate to protect the public's health. Moreover, in the event of an emergency declared by the Governor pursuant to 37-B MRS Ch. 13, §742, the Governor can suspend State regulatory statutes, commandeer property and take such other necessary measures necessary to mitigate or address the specific public health emergency which gave rise to the emergency declaration.

Pursuant to 22 MRSA §1692, Maine CDC has the statutory obligation to:

- “monitor the health status of people of the State and establish and maintain the necessary data banks for broad surveillance of human health and disease in Maine;”
- “conduct and contract for investigations as necessary to determine whether particular problems are related to environmental factors;” and
- “provide the public with information, and advise them as to preventive and corrective actions in the area of environmental health.”

The Legislature has declared that “local health, fire, police, safety and other government officials require information about the identity, characteristics and quantities of hazardous substances used and stored in communities within their jurisdictions in order to adequately plan for, and respond to, emergencies and enforce compliance with applicable laws and rules concerning these substances” 22 MRSA §1696-A. However, identifying information may be “used only to gain access to medical records and other medical information pertaining to an investigation designed to accomplish public health research of substantial public importance” 22 MRSA §1692-B (3)(A).

Among other things, Maine CDC is responsible for controlling access to confidential or restricted data for the Divisions of Infectious Disease, Public Health Systems, Population Health, Environmental Health, as well as the Office of Health Equity. Data classified as restricted data by the Maine CDC are collected and stored to assist in the operation of these programs, to assess the health of the people of Maine, to identify specific health threats in Maine, to support research into the causes of diseases and injuries and to improve the public health of Maine.

The following State laws require that DHHS and, therefore, Maine CDC, hold information collected confidentially and under the following conditions:

1. DHHS “may disclose [HIV test] results to other persons only if that disclosure is necessary to carry out its duties as provided in Title 22, section 42 and chapters 250 and 251.” 5 MRSA §19203
2. “Department records that contain personally identifying medical information that are created or obtained in connection with the department's public health activities or programs are confidential. These records include, but are not limited

to, information on genetic, communicable, occupational or environmental disease entities, and information gathered from public health nurse activities, or any program for which the department collects personally identifying medical information.” Such records “may not be open to public inspection, are not public records ... and may not be examined in any judicial, executive, legislative or other proceeding as to the existence or content of any individual’s records obtained by the department.” 22 MRSA §42 (5)

3. “Exceptions to this subsection include release of medical and epidemiological information in such a manner that an individual cannot be identified; disclosures that are necessary to carry out the provisions of chapter 250 [Control of Notifiable Diseases and Conditions]; ... and disclosures that are specifically provided for by statute or by departmental rule.” 22 MRSA §42 (5)
4. “Nothing in this subsection precludes the department, during the data collection phase of an epidemiologic investigation, from refusing to allow the inspection or copying of any record or survey instrument, including any redacted record or survey instrument, containing information pertaining to an identifiable individual that has been collected in the course of that investigation. The department’s refusal is not reviewable.” 22 MRSA §42 (5)
5. “Any person who receives information pursuant to this chapter shall treat as confidential the names of individuals having or suspected of having a notifiable disease or condition, as well as any other information that may identify those individuals. This information may be released...to other public health officials...for public health purposes. ... Information not reasonably required for the purposes of this section may not be released. All information submitted pursuant to this chapter that does not name or otherwise identify individuals having or suspected of having a notifiable disease or condition may be made available to the public at the sole discretion of the department. ... Any person receiving a disclosure of identifying information pursuant to this chapter may not further disclose this information without the consent of the infected person.” 22 MRSA §824
6. “[T]he department may not release any information ... regarding the screening of children for lead poisoning or the source of any lead exposure if that information identifies children, families or other persons, directly or indirectly. The department may disclose information that relates to the address of a residential unit in which an environmental lead hazard or case of lead poisoning has been identified if the disclosure contains only the information necessary to advance the public health and does not directly identify an individual.” 22 MRSA §1317-C (3)
7. “The names and related information which may identify individuals having an occupational disease shall be confidential and may be released only to other public health officials, agents or agencies, or by court order or by written authorization of the individual being reported on.” 22 MRSA §1494
8. “Medical information about an identified patient is not sought from any person without the consent of that patient except when the information sought pertains solely to verification or comparison of health data that the department is otherwise authorized by law to collect and the department finds that

confidentiality can be adequately protected without patient consent.” 22 MRSA §1692-B (3)(B)

9. “Those persons conducting the investigation do not disclose medical information about an identified patient to any other person except a health care practitioner responsible for treating the patient.” 22 MRSA §1692-B (3)(C)
10. “Those persons gaining access to medical information about an identified patient use that information to the minimum extent necessary to accomplish the purposes of the investigation.” 22 MRSA §1692-B (3)(D)
11. “Custodians of certificates and records of birth, marriage and death may permit inspection of records, or issue certified copies of certificates or records, or any parts thereof, when satisfied that the applicant therefore has a direct and legitimate interest in the matter recorded, the decision of the state registrar or the clerk of a municipality being subject to review by the Superior Court, under the limitations of this section. ...The state registrar may permit the use of data contained in vital records for purposes of statistical research. Such data shall not be used in a manner which will identify any individual.” 22 MRSA §2706
12. “The name and related information which may identify individuals reported to the Department shall remain confidential and may be released only to other public health and school officials or agencies for public health purposes. ...Any other information, not reasonably related to public health responsibilities of the Department, may not be disclosed. ...No person may disclose the results of an HIV test except as permitted in 5 MRSA §19203.” 10-144 CMR Chapter 258
13. “All data reported to the Maine Birth Defects Program, which contains either direct or indirect individually identifiable information, shall be confidential. Information submitted to the Birth Defects Program shall only be available to qualified organizations with a documented history of scientific research or other researchers determined to be appropriate by the Program. In any event, disclosure of any individually identifiable information will be in conformity with applicable state and federal law.” 10-144 CMR Chapter 280
14. “All data contained in the sections specified as confidential on the ‘Certificate of Live Birth,’ ‘Certificate of Fetal Death,’ and ‘License and Certificate of Marriage’ are confidential. All information on the ‘Certificate of Death’ is confidential, except the name and age of the decedent, date of death, and city or town where the death occurred, as specified in Title 22 M.R.S.A. Sec. 2706(4). All information on the ‘Report of Induced Abortion’ and the ‘Report of Miscarriage’ is confidential.” 10-146 CMR Chapter 8
15. “Maine municipal governments ... may require such [vital statistics] data for administrative purposes in the conduct of their official duties” defined as “planning, program management, eligibility determination, provision of services, quality control, and program evaluation.” 10-146 CMR Chapter 8
16. “[I]nformation received pursuant to this chapter will not be used in any manner which will disclose the identity of registrants or other individuals named on the records, other than for the administrative or research purposes specified” in a request for release of restricted data, which “must be submitted to the municipal clerk or to the Office of Vital Statistics on the application form prescribed and

furnished by the state registrar for the purpose of determining the requester's eligibility to receive such data." 10-146 CMR Chapter 8

B. Rationale

Maine CDC and the Municipality both have roles in protecting the public's health in the event of an emerging public health threat. For the purposes of this MOU, an emerging threat includes but is not limited to:

- information regarding food-borne illnesses obtained during delegated inspections and information regarding reportable diseases and conditions,
- a situation that has significant public health implications (including biological/infectious, environmental and chemical health risks and/or effect), may require immediate action to protect public health and response is time sensitive and
- may be significant in its occurrence as to require risk communication through media and other communications outlets.

In order to perform these roles well, agreement on the roles beforehand, as well as clear and timely communication between the parties is critical.

The Municipality will keep any personally identifying medical information it obtains through delegated inspections or regarding notifiable diseases and conditions (under 10-144 CMR Chapter 258, confidential and shall only be released pursuant to law, or to Maine CDC and in accordance with this Agreement.

C. Responsibilities

1. In addition to the functions laid out in the statutes described in Section II.A above, **Maine CDC** agrees to the following communication roles/responsibilities in situations involving an "emerging threat" (as defined in Section III.A above) or related to the Municipality.
 - a. Work with the Municipality to determine the key messages related to the incident and identify a lead spokesperson; Maine CDC will consult with the Municipality in the development of the key messages for news releases and other health communications.
 - b. Include in relevant protocols and Standard Operating Procedures (SOPs) a step to inform the Municipality that an incident involving an "emerging threat" is occurring, as well as sharing appropriate information about containment/mitigation strategies, key messages to reinforce, who the State spokesperson is and whether proactive dissemination of key messages locally is desired. Relevant protocols and SOPs include but are not limited to Infectious Disease Epidemiology, After Hours Protocol, the Health Alert Network and Public Health Emergency Preparedness.

- c. Collaborate with the Municipality to identify needs and resources for translation of critical information.
 - d. Collaborate with the Municipality in order to ensure consistent messaging to local partners (food service establishments, schools, daycares, hospitals, nursing facilities, shelters, cruise ships, the public, etc.)
 - e. Collaborate with the Municipality to align and coordinate prevention strategies designed to avoid future similar incidents.
 - f. Compare City All Hazards Plan and Maine CDC All Hazards Plan to ensure roles are aligned.
 - g. Lead after-action reviews when warranted and invite the Municipality's participation when the incident involves the Municipality's jurisdiction.
2. **The Municipality** agrees to the following communication roles/responsibilities in situations involving an "emerging threat" (as defined in Section III.A above.)
- a. If the Municipality takes calls from providers or others with information about reportable conditions, direct them to the DHHS disease reporting line and notify the DHHS when redirecting calls in case the situation does not get directly reported.
 - b. Serve on outbreak teams when appropriate and provide surge capacity to assist with investigations as needed.
 - c. Collaborate with the Maine CDC to identify needs and resources for translation of critical information.
 - d. Identify a lead spokesperson for the Municipality and lead contact for communication with Maine CDC.
 - e. Respond to media, staff and local partner calls in coordination with Maine CDC and using the identified key messages.
 - f. Assist with proactive communication on the key messages, when appropriate, for partners such as food service establishments, schools, daycares, hospitals, nursing facilities, shelters, cruise ships and the public in order to ensure consistent messaging from Maine CDC and the Municipality.
 - g. Provide local insights on strategies that might prevent similar situations and collaborate to implement and align strategies locally, as resources allow.
 - h. Participate in after-action reviews convened by Maine CDC, as appropriate.

IV. CONFIDENTIALITY

The Municipality is obligated to maintain the confidentiality of all information and documents either provided to or reviewed by them, in accordance with State law. The Municipality shall maintain the confidentiality of the information received from Maine CDC in accordance with Maine law and applicable DHHS policies. In compliance with 22 MRSA §§42(5) 824 and 1494, The Municipality shall only disclose such information received from Maine CDC when required by State or federal law.

To the extent that the services carried out under this MOU involve the use, disclosure, access to or acquisition or maintenance of personally identifying medical information or medical information that could reasonably be used to identify an individual, the

Municipality agrees to a) maintain the confidentiality of such information as required by applicable local, State and federal laws, rules, regulations and DHHS policy, b) contact DHHS within 24 hours of a privacy or security incident that actually or potentially could be a breach of such information and c) cooperate with DHHS in its investigation and potential reporting of such incident. To the extent that breach of DHHS-related information is caused by the Municipality or one of its subcontractors or agents, the Municipality agrees to pay the cost of notification and financial costs and/or penalties incurred by DHHS as a result of such breach.

The Municipality will notify DHHS immediately and before replying to any FOAA request, subpoena or other compulsory process regarding personally identifying medical information or information regarding an emerging public health threat.

V. BREACH OR SUSPECTED BREACH

The Municipality shall promptly report any suspected inappropriate, unauthorized, wrongful or negligent release of identifiable or potentially identifiable data, any violation of the applicable DHHS policies, or other reportable incident to the Maine CDC and the DHHS Privacy Official. The initial report shall be submitted **by phone** and detail the date of the suspected breach, the nature of the suspected breach, a description of any identified information disclosed, the parties involved in the suspected breach and any other relevant information. No personally-identifying information need be included in this initial phone call. All suspected breaches will be investigated by the DHHS Privacy Official or his or her designee(s), who shall submit a detailed report of findings to the contacts listed above and other parties as necessary and appropriate.

Data sharing may be suspended during an investigation of any reportable incident, at the discretion of the Maine CDC or by DHHS.

In the event of a breach, data sharing may be suspended until satisfactory assurances have been made that further breaches will not occur. Notification of breach shall be made pursuant to § 13402 of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) for data originating from programs deemed covered entities; notification shall occur for data originating from non-covered entities at the discretion of Maine CDC's senior management. Maine CDC's senior management may require the Municipality to take additional steps to mitigate the consequences of a breach; failure to do so will result in immediate termination of this MOU.

VI. TERM

This MOU shall remain in effect from the date of execution through three years, at which time the parties shall renew this Memorandum or execute a modified version, if they mutually agree that a renewed Memorandum is appropriate and useful. Either signatory may cancel this MOU at an earlier date for any reason upon thirty days advance written notice to the other signatory.

The confidentiality and security provisions of this MOU survive indefinitely, even beyond the termination of this MOU, or as defined by federal and State law.

VII. SIGNATURES

Department of Health and Human Services

Mary C. Mayhew
Commissioner

Date

Municipality of South Portland

Date