

LEWISTON CITY COUNCIL
WORKSHOP AGENDA
Tuesday, November 30, 2021
City Council Chambers

6:00 pm Workshop

Pledge of Allegiance to the Flag.

WORK SESSION

1. Review and discussion of proposed ordinance amendment regarding police inquiry of immigration status.
2. Review and discussion of proposed ordinance regarding Right to Housing.

EXECUTIVE SESSION IMMEDIATELY FOLLOWING

- ES-1. Executive Session pursuant to MRSA Title 1, section 405 (6) (c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

Proposed Ordinance Amendment regarding Police Inquiry of Immigration Status

Prepared and submitted by Councilor Khalid

Whereas, the City of Lewiston has a proud history of welcoming immigrants; and

Whereas, the City of Lewiston has benefited from the contributions of immigrants for centuries and continues to do so today; and

Whereas, the people of Lewiston have a right to feel safe in their interactions with the Lewiston Police Department; and

Whereas, the people of Lewiston have a right to seek service and protection from the Lewiston Police Department without worry about negative repercussions to themselves or their families; and

Whereas, the Lewiston Police Department is not and shall not be an immigration law enforcement agency;

Now, Therefore, Be It Resolved that the Lewiston City Council adopts the following amendment to the City of Lewiston Code of Ordinances:

Section 2-387

(a) Unless otherwise required by law or by court order, no city police officer shall inquire into the immigration status of any person, or engage in activities for the purpose of ascertaining the immigration status of any person.

(b) City police officers are exempted from the limitations imposed by subsection (a) above with respect to a person whom the officer has reasonable suspicion to believe:

1. has previously been deported from the United States; and
2. is again present in the United States; and
3. is committing or has committed a felony (Class A, B or C) criminal law violation.

Police Department

TO: City Administrator Heather Hunter

FR: Chief David St. Pierre

RE: Proposal as it relates to Section 2-387 of Lewiston's Code of Ordinances

DT: November 22, 2021

I have reviewed the language as proposed by Councilor Khalid as it relates to her proposed changes / inclusion into Section 2-387 of City's City ordinances. I feel that the language she is proposing has no real value in that it does NOT change the way our police department conducts business.

As a matter of practice, the Lewiston Police Department does NOT make inquiries into a person's immigration status in the course of normal, everyday law enforcement duties nor do we target or seek out individuals who may be illegally in this city, state and country. That is solely the jurisdiction of our federal law-enforcement partners. A rare occasion may exist where an arrest is made by the Lewiston Police Department for a felony (not related to their immigration status) and we learn the suspect may be in the United States illegally. We would only then inform the proper federal authorities of what we have learned so that they can investigate further if they wish. We are also permitted by law to make an inquiry into information necessary to certify an individual as a potential crime or trafficking victim.

According to information provided by Brann & Isaacson law firm, the city's attorney;

"This proposed ordinance would prohibit Lewiston police officers from inquiring into the immigration status of any person and from engaging in activities for the purpose of ascertaining the immigration status of any person. The ordinance creates an exception to these prohibitions to the extent "otherwise required by law or by court order," and also when a police officer has reasonable suspicion to believe that a person (1) has previously been deported from the United States; (2) is again present in the United States; and (3) is committing or has committed a felony criminal law violation. Federal law provides that "[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. §1373.1

This federal statute also provides that notwithstanding any other provision of Federal, State, or local law, "no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local government entity.

We believe that the provisions of the draft ordinance that would prohibit Lewiston police officers from inquiring into the immigration status of any person and from engaging in activities for the purpose of ascertaining the immigration status would violate the federal statute by restricting police officers from specifically requesting or receiving information

regarding immigration status from the INS. Although the ordinance contains an exception that states that inquiring about immigration status or engaging in activities for the purpose of ascertaining immigration status is prohibited "[u]nless otherwise required by law or court order," we do not believe this exception prevents the ordinance from violating the statute.

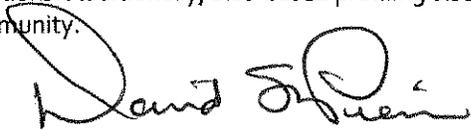
Because the statute is a prohibition on any restriction on sharing or receiving of information, and not a requirement that such information be shared, the ordinance language "except as required by law or court order" is not sufficient to make the ordinance consistent with the statute. To prevent the ordinance from running afoul of the language of the federal statute, we recommend that, if such an ordinance is considered for adoption, the ordinance contain language that makes clear that the ordinance does not restrict the sharing with or receiving of immigration status with the INS. The attached draft contains modified language to this effect."

The language Councilor Khalid is proposing, in my opinion, portrays our local police department as one that perhaps demonstrates racist attitude, beliefs or policies which is certainly not accurate and would be destructive to officer morale.

If a citizen wishes to file a complaint based on what they believe to be a violation of their civil rights, we encourage the person file a complaint. The complaint would then be impartially investigated. Our officers currently wear and utilize body worn cameras (BWC) that record their interactions with the public. Supervisors also conduct regular, random reviews of officers' BWC's. While there is no possible way that we can review ALL body camera footage to determine violations, it is certainly there at our disposal for review should a member of the public make a complaint of a violation. If a violation is discovered or substantiated either by random review or review based on a public complaint, a sworn member could face disciplinary action.

Additionally, the Lewiston Police Department has a policy in place (*Biased-Based Policing*) that would prohibit members from using the sole basis for detention, interdiction or other disparate treatment of any person by profiling and/or engaging in any other discriminatory practice. Members are prohibited from profiling a selection of individuals based solely on a common trait or group. This includes, but is not limited to, race, ethnic background, gender, sexual orientation, religion, economic status, age, cultural group or any other identifiable group.

Simply detaining a person in the absence of criminal conduct for the sole purposes of ascertaining an individual's immigration status could be construed as bias-based profiling. The Lewiston Police Department does not permit the use of bias-based profiling in its enforcement efforts. Such practices may lead to allegations of violations of the constitutional rights of the citizens served, undermines legitimate law enforcement efforts and may lead to claims of civil rights violations. Additionally, bias-based profiling also alienates citizens and fosters distrust of law enforcement by the community.



Proposed Ordinance regarding Right to Housing

Prepared and submitted by Councilor Khalid

Whereas, housing is a human right; and

Whereas, human rights are nonconditional and nonnegotiable, nonwaivable and inviolable under all common sense of justice; and

Whereas, no human right shall be denied for reason of indigence; and

Whereas, governments are instituted among the people to protect, secure, and provide their just human rights; and

Whereas, there are people in the City of Lewiston without housing or the ability to secure it; and

Whereas, the City of Lewiston has a moral and legal responsibility to provide for the welfare of its residents; and

Whereas, the City of Lewiston is capable of providing housing to all in its borders who need it;

Now, Therefore, Be It Resolved that the Lewiston City Council adopts the following amendment to the City of Lewiston Code of Ordinances:

Chapter 19

HOUSING

Article I

Right to Housing

Section 19-1

- (a) The City of Lewiston shall recognize a right to housing, and every resident shall be entitled to housing as a matter of law.
- (b) Any resident of the City of Lewiston shall be allowed to petition the Mayor or their designee for emergency shelter, and shall be provided with emergency shelter within 48 hours of the filing of their petition. The shelter provided shall be located within the borders of the City of Lewiston.
- (c) The City of Lewiston may impose a fee on those sheltered by the City but under no circumstances shall nonpayment of shelter fees constitute justification for the deprivation of shelter, nor shall shelter fees exceed 20 percent of the after-tax income of the individual upon whom fees are imposed.
- (d) An individual's right to shelter shall not be denied for any reason other than criminal conduct directly related to the provision or use of shelter provided by the City and shall be denied for only such time as the individual may be incarcerated on charges or convictions related to said conduct.
- (e) Any individual denied shelter in violation of this section shall have standing to bring civil action against the City of Lewiston for such deprivation, and such remedies shall be imposed as necessary to account for damages suffered and to ensure compliance in the future.

BRANN & ISAACSON
ATTORNEYS AND COUNSELORS AT LAW

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(207) 786-3566 Ext. 111

MEMORANDUM

TO: Heather Hunter, City Administrator
FROM: Martin Eisenstein, City Attorney
DATE: November 23, 2021
RE: Proposed Ordinances

This memorandum is in response to your request that we review two proposed ordinances, the first limiting inquiries by Lewiston police officers regarding immigration status, and the second establishing a right to housing for every resident and an obligation by the City to provide emergency shelter to any person within 48 hours of a request.

Following is a summary of our questions and concerns regarding each of the ordinances:

I. Ordinance Prohibiting Police Department Inquiries Regarding Immigration Status

This proposed ordinance would prohibit Lewiston police officers from inquiring into the immigration status of any person and from engaging in activities for the purpose of ascertaining the immigration status of any person. The ordinance creates an exception to these prohibitions to the extent “otherwise required by law or by court order,” and also when a police officer has reasonable suspicion to believe that a person (1) has previously been deported from the United States; (2) is again present in the United States; and (3) is committing or has committed a felony criminal law violation.

Federal law provides that “[n]otwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” 8 U.S.C. §1373.¹ This federal statute also provides that

¹ In 2019, a federal district court in Oregon held that the federal government exceeded its authority in adopting Section 1373 of Title 8 of the United States Code, and issued an injunction preventing the federal government from enforcing the statute against the State of Oregon and City of Portland, Oregon. *Oregon v. Trump*, 406 F.Supp.3d 940 (D. Ore. 2019). That decision is currently on appeal to the Ninth Circuit Court of Appeals.

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notwithstanding any other provision of Federal, State, or local law, “no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local government entity.

We believe that the provisions of the draft ordinance that would prohibit Lewiston police officers from inquiring into the immigration status of any person and from engaging in activities for the purpose of ascertaining the immigration status would violate the federal statute by restricting police officers from specifically requesting or receiving information regarding immigration status from the INS. Although the ordinance contains an exception that states that inquiring about immigration status or engaging in activities for the purpose of ascertaining immigration status is prohibited “[u]nless otherwise required by law or court order,” we do not believe this exception prevents the ordinance from violating the statute. Because the statute is a prohibition on any restriction on sharing or receiving of information, and not a requirement that such information be shared, the ordinance language “except as required by law or court order” is not sufficient to make the ordinance consistent with the statute. To prevent the ordinance from running afoul of the language of the federal statute, we recommend that, if such an ordinance is considered for adoption, the ordinance contain language that makes clear that the ordinance does not restrict the sharing with or receiving of immigration status with the INS. The attached draft contains modified language to this effect.

Other than this issue, we do not believe that there is any legal prohibition on adoption of the ordinance. Because the ordinance could have an impact on the operation of the Police Department and the conduct of the City’s law enforcement activities, however, we recommend that input be obtained from the Police Department regarding the potential impact of the ordinance.

II. Ordinance Creating Right to Housing and City Obligation to Provide Shelter within 48 Hours.

This proposed ordinance would create a “right to housing” by providing that “every resident shall be entitled to housing as a matter of law.” Under the ordinance, the City would have an obligation to provide any resident of Lewiston emergency shelter, located within the borders of the City, within 48 hours of a petition for emergency shelter. The City would be allowed to impose a fee on those sheltered, but could not deny shelter due to nonpayment of

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shelter fees, and would be prohibited from imposing fees that exceed 20 percent of the after-tax income of the individual upon whom fees are imposed. Under the ordinance, the City could not deny shelter for any reason other than criminal conduct directly related to the provision or use of shelter provided by the City, and the period of denial of shelter could be limited to only such time as the individual was incarcerated on charges or convictions related to said conduct. The ordinance would give individuals denied shelter in violation of the ordinance to bring a civil action against the City of Lewiston for such deprivation, and would allow remedies to be imposed as necessary to account for damages suffered and to ensure compliance in the future.

This ordinance as drafted would create broad obligations for the City to provide emergency shelter within 48 hours of a request, and significant legal exposure to the City for failing to meet the requirements of the ordinance. The draft ordinance overlaps with and to some extent is duplicative of general assistance benefits the City already provides under Maine law and local ordinance. As set forth in state law, general assistance is designed to cover “basic necessities,” which is defined in state law to include “shelter” and related expenses including utilities. 22 M.R.S. §4301 (“Basic necessities’ means food, potable water, 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.”)

The statute does not define who is a “resident” that may be entitled to emergency shelter to be provided by the City within 48 hours, in contrast to the City’s general assistance ordinance which specifically defines “residence” for purposes of benefits eligibility. Because the term “resident” suggests that an individual have a residence within the City in order to be eligible for the benefits of the ordinance, and those seeking emergency shelter may not have any residence at the time they seek emergency shelter, it would be important for the ordinance to define who is a “resident” for purposes of having a right to emergency shelter provided by the City. Failing to define resident in the ordinance could lead to significant ambiguity for the City in implementing the proposed ordinance, and potentially could allow those with no connection to the City to apply for the emergency shelter benefits and bring litigation in court if they are denied.

The proposed ordinance also does not establish any eligibility criteria or “needs” standard that would define who is entitled to benefits under the ordinance, unlike the existing general assistance program that the City maintains under Maine law. For this and other reasons, we believe that the ordinance as drafted would have a significant budgetary impact on the City. These expenses would include the costs of developing the staffing and infrastructure to process petitions for emergency shelter within 48 hours, the costs of locating and placing individuals in emergency housing within this time period without any stated limit on the duration that such shelter must be provided, the costs of defending lawsuits that may be filed on behalf of those who are denied shelter, and the costs of any remedies that a court may order in the event that a denial of a shelter petition is successfully challenged.

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It is not clear from the draft ordinance language how the ordinance is intended to integrate with existing general assistance benefits that the City provides. As a matter of efficiency and consistency, we recommend that any ordinance on this topic make clear the extent to which the benefits of this ordinance, and the procedures for applying for and processing petitions for benefits under the ordinance, are separate from existing general assistance benefits and processes, or intended to be part of the existing general assistance program and processes. For example, the proposed ordinance would limit an individual's obligation to pay fees for emergency shelter provided by the City to no more than 20 percent of the individual's after-tax income. In contrast, Maine law allows the City to recover up to the full amount of assistance the City has granted to a general assistance recipient, by civil action if necessary, if and when the recipient or their spouse or immediate relatives later becomes financially able to repay the City. Lewiston Code of Ordinances, at §§46-146 & 46-147.

Following are some of the issues addressed in the general assistance law and ordinance ("GA Ordinance"), which also should be addressed in connection with the proposed ordinance, either through adoption of separate ordinance provisions or by express reference and incorporation of existing general assistance provisions and processes:

- What are the application procedures for petitioning for shelter under the ordinance? (The City's GA Ordinance contains detailed provisions for the contents of an application, the processing of an application, the applicant's responsibility to at time of application, and the definition of a "resident" for purposes of applicant eligibility, at Sections 46-31 to 46-40 of the Code of Ordinances).
- What if any eligibility criteria exist for applying for and receiving benefits under the ordinance? (The City's GA Ordinance contains detailed provisions addressing eligibility under Sections 46-61 to 46-69).
- What is the process for determining an applicant's eligibility, verifying eligibility, addressing issues of fraud, determining need (if need is to be a factor), and determining the duration of benefit? (These issues are all addressed in Sections 46-91 to 46-100 of the City's GA Ordinance).
- What due process/fair hearing rights does an applicant have under the ordinance? (These issues are defined in detail at Sections 46-121 to 46-125 of the City's GA Ordinance).
- What is the process for the City to recover its expenses, or some portion of its expenses, under the proposed ordinance? (As noted, the City's GA Ordinance at Sections 46-146 and 46-147 allows the City under to seek recovery of general assistance expenses from the recipient or the recipient's immediate relatives).

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We recommend that the City carefully evaluate the potential costs associated with the City's legal exposure in the event that civil actions are filed alleging deprivation of shelter under Subsection (e) of the proposed ordinance. We believe that it is unlikely that the City's insurance carriers would cover the costs of defending such claims, and this is an issue that should be clarified with the insurance carriers before the ordinance is considered for adoption. Litigation is expensive, and it would be important for the City to have an understanding of these potential costs in the event there is not insurance that covers the City's legal fees for these enforcement actions.

Because of the many ambiguities and issues left unaddressed in the proposed shelter ordinance, we have not attempted to draft a comprehensive ordinance revision. If the Council wishes to move forward with the proposed ordinance, it would be helpful to have an indication of whether the Council wishes to establish an entirely new ordinance to address these issues, or to incorporate and integrate it with existing benefits and provisions from the general assistance ordinance.

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Whereas, the City of Lewiston has benefited from the contributions of immigrants for centuries and continues to do so today; and

Whereas, the people of Lewiston have a right to feel safe in their interactions with the Lewiston Police Department; and

Whereas, the people of Lewiston have a right to seek service and protection from the Lewiston Police Department without worry about negative repercussions to themselves or their families; and

Whereas, the Lewiston Police Department is not and shall not be an immigration law enforcement agency;

Now, Therefore, Be It Resolved that the Lewiston City Council adopts the following amendment to the City of Lewiston Code of Ordinances:

Section 2-387

(a) Unless otherwise required by law or by court order, no city police officer shall inquire into the immigration status of any person, or engage in activities for the purpose of ascertaining the immigration status of any person. **Nothing in this ordinance shall be interpreted to restrict a city police officer from sending information regarding an individual's immigration status to the federal Immigration and Naturalization Service, or from receiving information regarding an individual's immigration status from the Immigration and Naturalization Service.**

(b) City police officers are exempted from the limitations imposed by subsection (a) above with respect to a person whom the officer has reasonable suspicion to believe:

1. has previously been deported from the United States; and
2. is again present in the United States; and
3. is committing or has committed a felony (Class A, B or C) criminal law violation.

Social Services

November 22, 2021

TO: Heather Hunter, City Administrator

FR: Elaine Brackett, Social Services Director

RE: Ordinance Proposal-Right to Housing

The addition of the proposed ordinance to the City of Lewiston Code of Ordinances would have a detrimental fiscal impact on the City of Lewiston taxpayers. Based on the language in its entirety it would eliminate any accountability of an applicant and would encourage those who have the financial means to provide for themselves to refrain from doing so. This theory is not in line with the intent of the General Assistance Ordinance which is to assist each person to achieve self-sufficiency.

Chapter 46 of the General Assistance Ordinance reads: “The city shall administer a program of General Assistance available to all persons who are eligible to receive assistance in accordance with the standards of eligibility as provided in this chapter and in 22 MRSA§4301 et seq.”

The proposed ordinance would contradict the standards of eligibility as set forth in Chapter 46 of the General Assistance Ordinance, the Maine Municipal Association Ordinance and State of Maine Statues 22 MRSA §4301-et seq thereby resulting in a loss of seventy percent reimbursement from the State of Maine Department of Health and Human Resources. Keep in mind that General Assistance costs for the prior fiscal year amounted to \$557,505.43 with reimbursement from the State of Maine at \$385,670.91

General Assistance is intended to assist the indigent in a fiscally responsible manner by placing standards of eligibility of persons applying for the program. Section 4.9 of the Maine Municipal Association Ordinance reads:

“Applicants are not automatically eligible for emergency assistance. If an applicant had income which could have been used to prevent part or all of the emergency, but they spent that income on items which are not considered basic necessities, the applicant will not be eligible to receive General Assistance to replace the misspent money (22 MRSA §4308(2) and 4315-A)” There are also other standards of eligibility which include: refusal to access available resources, work component violations and fraud disqualifications.

The proposed ordinance specifically references the residents of Lewiston. The definition of a resident as defined in the City of Lewiston General Assistance Ordinance Chapter 46 reads: “A

resident means a person who is physically present in Lewiston with the intention of remaining in Lewiston in order to maintain or establish a home and has no other residence.” There are no residency laws that prevent persons from other municipalities relocating to Lewiston to seek out a housing entitlement. All persons have the right to travel as they see fit. For the fiscal year 7/1/2019 to 6/30/2021 this department placed 57 households in motels with 12 of those households that had traveled here from other states and municipalities. The proposed ordinance would result in Lewiston being inundated with homeless persons. Municipalities such as Portland and Bangor would no longer have a homeless issue. The City of Lewiston would be required to shoulder the financial burden of providing housing to all.

Housing is in short supply and to expect that shelter can be provided within the borders of Lewiston is unreasonable if not at all possible. The September 11, 2021 Blake Street fire saw 18 families rendered homeless. These families were placed in motels in surrounding cities due to lack of vacancies at local motels. The total cost to place these families in motels exceeded \$17,000 and it was not until 1 ½ months later that all the families were able to secure permanent housing at a total cost of \$17,839. Three of those families were relocated to other municipalities for permanent placement due to lack of housing in Lewiston.

Persons requiring housing who are not eligible for emergency assistance in accordance with the standards of eligibility are referred to local shelters such as Hope Haven Mission, New Beginnings, St. Catherine’s of Siena or Shelter by Jesus. These shelters are contacted on a daily basis for room availability. Persons who receive sufficient income to provide for their basic necessities are referred to local rooming houses which on most occasions have occupancy. Persons are also referred to other social service agencies for resources to assist them. It is the choice of the individual whether they accept these referrals and are willing to use their income and resources to secure housing.

Homelessness is a regional issue and should be addressed as such. The taxpayers of Lewiston should not be responsible for shouldering this responsibility alone.

LEWISTON CITY COUNCIL

MEETING OF NOVEMBER 30, 2021

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. ES-1

SUBJECT:

Executive Session pursuant to MRSA Title 1, section 405 (6) (c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

INFORMATION:

The Maine State Statutes, Title 1, section 405, define the permissible grounds and subject matters of executive sessions for public meetings.

APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

State statutes define the purposes for entering into an executive session.

HAH/kmm

REQUESTED ACTION:

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To enter into an Executive Session pursuant to MRSA Title 1, section 405 (6) (c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.