MEMORANDUM

TO: Mayor and City Council of Augusta

FROM: Stephen E.F. Langsdorf, Corporation Counsel

DATE: September 6, 2018

RE: Food Sovereignty Ordinance

Following the August 9, 2018 Council meeting, I was asked to prepare an ordinance adopting the Food Sovereignty Act (7 MRSA §281 et. seq. adopted in 2017). Attached is a draft Food Sovereignty Ordinance. What this ordinance does is, pursuant to §284 of the Act, it specifically exempts the City of Augusta from State and City food regulations with respect to direct producer to consumer transactions. State law provides that a municipality must opt-in, as this ordinance does, to avoid local food regulations.

The ordinance covers only “face to face transactions involving food or food products at the site of production of those food or food products.” The definition of “food or food products”, which is taken verbatim from State law needs clarification. “Food or food products” are defined as:

“Food or food products intended for human consumption, including, but not limited to, milk or milk products, meat or meat products, poultry or poultry products, fish or fish products, seafood or seafood products, cider or juice, acidified foods or canned fruits or vegetables.”

Defining “food or food products” as food or “food products” is obviously circular. The list of examples is helpful, but is stated to be non-inclusive. It is clear that what was intended was that all local products which are grown or raised and processed on the premises may be sold directly to consumers at the site of production without health regulations. What is less clear is whether the ordinance is intended to include products that are not only produced, but actually cooked on the premises such as baked goods, sauces and even prepared meals (could the meals be eaten on the premises?). The list doesn’t give any examples of prepared foods like pies, breads or sauces. It is unclear to what degree products which are not produced locally may be used in the production process. The best way to handle this will be for the Council to make a determination as to how to define food or food products, including the possibility of language stating that as long as a majority of ingredients in the food product were produced on the premises, that is sufficient to avoid regulation.
The Food Sovereignty Ordinance does not make any changes to the Land Use Ordinance. There are only certain areas of the city where direct retail is allowed and there are specific restrictions on home occupations in all parts of the City. Further work may be necessary to determine whether amendments to the LUO should be considered to effectuate the intent of this ordinance. To be clear, this Ordinance only exempts direct food regulations and inspections.

I do not see a liability risk for the City as State law specifically sets up this process whereby municipalities may exempt local food producers from State and local food regulation. Choices of whether or not to have government regulations are protected by immunity under the law.

SEFL:ecr
FOOD SOVEREIGNTY ORDINANCE

1. Authority and Purpose: This Ordinance is intended to provide Augusta residents unimpeded access to local food and to reduce governmental regulation of local foods to the extent permitted by home rule authority under 30-A M.R.S.A. § 3001, the Constitution of Maine, Article VIII, Part Second, and pursuant to 7 M.R.S. § 281 et seq.

2. Definitions: As used in this ordinance, unless the context otherwise indicates, the following terms have the meanings stated below:

A. Direct Producer-to-Consumer Transaction: A face-to-face transaction involving food or food products at the site of production of those food or food products.

B. Food or Food Products: Any food or food product intended for human consumption, including, but not limited to, milk or milk products, meat or meat products, poultry or poultry products, fish or fish products, seafood or seafood products, cider or juice, acidified foods or canned fruits or vegetables.

C. State and City Food Law: Any provision of Title 7 or Title 22 of the Maine Revised Statutes, or rules adopted under Title 7 or Title 22 of the Maine Revised Statutes, or provision of the City of Augusta Code that regulates direct producer-to-consumer transactions.

3. Exemption from Licensure and Inspection: Producers and processors of local food intended for direct producer-to-consumer transactions in the City of Augusta shall be exempt from state and City licensure and inspection under State and City Food Laws. In accordance with Section 284 of the Maine Food Sovereignty Act, the State of Maine and the City of Augusta shall not enforce State and City Food Laws with respect to direct producer-to-consumer transactions.

4. Exception for Meat and Poultry Inspections: In accordance with Section 285 of the Maine Food Sovereignty Act, the exemption provided in Section 3 of this Ordinance does not apply to any meat or poultry product inspection and licensing requirements that are specified under applicable federal acts.
MEMORANDUM:

TO: City Council
    William Bridgeo, City Manager

FROM: Matt Nazar, Director of Development Services

DATE: October 22, 2018

RE: Home Occupations

The regulation of Home Occupations is a complex one from any community. But let’s start with the simple issue. Augusta’s Land Use Ordinance contains standards for home occupations but does not require a permit to operate a home occupation. Nonetheless, the Bureau of Code Enforcement has been issuing home occupation permits during my entire twelve year tenure with the City of Augusta. Development Services recommends that language be added to the Land Use Ordinance requiring that home occupations get permits for a nominal processing fee to provide added information to the public about non-residential uses occurring in residential areas and aid in enforcement of home occupation standards through education during the permitting process. The Planning Board can create and recommend relatively simple language that codifies the permit practice that has been in place for decades in Augusta.

The regulating of home occupations themselves is a thorny one that frankly sprung from the seminal zoning case in 1926, Euclid v. Ambler Realty. That U.S. Supreme Court case confirmed the Constitutionality of zoning regulations that cities began creating a decade earlier to deal with slum, blight, and incompatible uses. Pure “Euclidian Zoning” would say that all uses are perfectly separated. All residential uses in one place, all commercial uses in another place, and all industrial uses in another place. However, politicians, the public, and planners recognize that communities are not built that way. Uses intermingle. The situation to address is the deeper one that Euclid looked at, preventing incompatible uses from having negative impacts on their neighbors, not the pure segregation of uses.

By the early 1950’s the American Society of Planning Officials, the national professional organization for planners, had tackled the issue of home occupations in a lengthy Planning Advisory Service document detailing how local jurisdictions were dealing with commercial uses that were clearly linked to the residential use. Doctors, lawyers, accountants, writer, seamstresses, hairdressers and many other occupations didn’t fall neatly into the “commercial” realm when they operated out of a room or two inside someone’s home. Each community dealt with home occupations a little differently based on what uses were customarily operated on a small scale by individuals in their homes. In rural areas, home occupations were typically
allowed in such a way as to enable family economic viability, where the use was a low impact operation.

With modern changes in the way people are working, the concept of a home occupation is continuing to change. Telecommuting and internet based businesses have boomed and clearly meet the legal definition of a home occupation, although many people might not think of those uses that way. An individual who operates an Ebay store and makes $5,000 or $55,000 per year by buying and reselling products via the internet using UPS, Fed Ex, or the USPS as their shipping agent is clearly operating a home occupation. Someone may be making thousands of dollars per year operating a YouTube channel from their home. Under Augusta’s ordinance, small auto repair shops run out of a person’s home also qualify as a home occupation. A writer who has a home office and publishes novels is also a home occupation as is a “home day care”. Clearly these uses all have a very different impact on their neighbors.

Many of these home occupations are businesses that provide flexibility and convenience for families where two adults need to work, but there may also be a need to care for children or elderly family members. Sometimes the home occupations provide extra income for an individual without them having to get a second job outside the home, or a more traditional part-time job in retirement. Some of the more difficult modern home occupation issues deal with adult oriented businesses. Individuals with an internet connection can bring in thousands of dollars creating adult content from their home that is distributed worldwide via the internet with no indication in the neighborhood that such an activity is taking place.

My advice is to provide the Planning Board with some broad guidance on the concerns that the Council has related to Home Occupations and the issues the Council would like addressed. Then suggest that the Planning Board take their time to review the modern home occupation landscape. This isn’t an easy topic, but the Council is right to be concerned about the very broad standard that exists in Augusta today that could have a significant impact on neighborhoods.
MEMORANDUM:

TO: City Council
    William Bridgeo, City Manager
    Kristen Collins, Corporation Counsel

FROM: Matt Nazar, Director of Development Services

DATE: October 22, 2018

RE: Medical Marijuana Caregiver Regulation

The Augusta Land Use Ordinance is structured primarily as a “permissive” ordinance, outlining the list of uses allowed in certain zoning districts. If the use isn’t listed in the district, it’s not allowed. Medical and Adult Use Marijuana regulations should follow this same ordinance structure to reduce confusion.

I believe that what we heard from many on the Council, but not all, was that there was a desire to eliminate caregivers from the parts of the city that are primarily residential in nature and allow them in the parts of the city that are primarily commercial in nature. I don’t believe we talked about the rural areas, but for now I’m going to assume they are like the residential area and the Council can provide clearer instruction moving forward.

Add a new use definition to the Land Use Ordinance for Registered Caregiver matching the state law.

Registered Caregiver. "Registered Caregiver" means a caregiver who is registered by the department pursuant to 22 MRSA subsection 2425-A.

Add Registered Caregiver as a Conditional Use in the following zoning districts:

KBD1, KBD2, CB, CC, CD, PD, PD2, MED, BP, KL.

This would eliminate both the residential and rural areas of the city as places for Registered Caregivers to conduct business.

Add a sunsetting clause to the Land Use ordinance that states all existing Registered Caregivers in zoning districts where they are not allowed by Conditional Use shall cease to operate on or before December 31, 2020, giving existing businesses 2 years to find an alternative location if they need to.
Memorandum

To: William R. Bridgeo, City Manager
From: Chief Jared J. Mills
Date: 10/22/2018
Re: Tip411 APP

We are very excited to report that the Tip411 Application we purchased, which is free to the user, is taking off with such great success. Both the civilian and law enforcement communities are embracing it with an increased volume of reporting. The system is anonymous, and we have the default settings to immediately notify our dispatch center with all tips that come in. This allows the dispatcher(s) to quickly receive and review the tip, and then consult with the on duty supervisor to have a call created and officer assigned.

This system also allows for reverse tips, so we have an added resource available for public service announcements; events, road closures, river updates, etc.

Here is a brief snapshot of some of the calls we have received that have resulted in us solving crimes or providing efficient service to the community thanks to the new Tip411:

10-21-18: Domestic
10-18-18: Disturbance call, possible Domestic
10-18-18: Intoxicated drivers leaving Western View Golf Course
10-17-18: Student threatened to bring a gun to Cony High
October 17, 2018

Mr. William Bridgeo, City Manager
City of Augusta
16 Cony Street
Augusta, ME 04330-5201

Dear Bill:

In follow-up to my message featured in the July issue of the Maine Town & City magazine, I wish to apprise you of a change in the Maine Municipal Association’s (MMA) dues formula for 2019. The intent of this change is to provide greater equity and fairness in the formula. Some background information may be helpful to you.

The MMA Executive Committee worked diligently with MMA staff back in 2013 to update a 30-year-old membership dues formula to address concerns that the corridor around the average dues adjustment, which was 25 percent at the time, was unintentionally, preventing the formula from adequately adjusting to changes in members’ population and valuations. Valuation was changing more often and more dramatically than population. At that time, the Executive Committee decided on a gradual timeline to align these variances which would take place over several years. The phased-in realignment progress has been evaluated each year by the Strategic & Finance Committee of the Executive Committee.

In the fall of 2017, the Strategic & Finance Committee worked with MMA staff to develop a project outline for addressing the imbalances in the municipal dues formula in a more concerted manner than established over the past five years. This review was completed in June 2018 and the Executive Committee made the decision to eliminate the corridor and bring all municipalities to their actual indicated dues as part of the annual membership dues process for 2019. The corridor has been 50% since 2014.

It is important to note that some municipalities will experience fairly substantial increases in their membership dues with the elimination of the corridor. The Executive Committee has addressed this result by providing a credit to those members whose dues adjustment will exceed $1,000 or 15%. The credit provides these members options for adjusting their membership dues, for up to three years, incrementally.

The elimination of the 50% corridor provides for a more equitable distribution of dues and for some members results in a reduction in their membership dues. Your municipality is one of those members.

Based on adopted changes to the Municipal Membership Dues Formula, we are providing an estimate of your 2019 membership dues, assuming an average dues adjustment of 2%. Please note that the actual average adjustment will not be determined until after the MMA operating budget review and adoption in December by the MMA Executive Committee.

The following is a breakdown for the City of Augusta

<table>
<thead>
<tr>
<th>2018 MMA Dues</th>
<th>$21,214.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated 2019 MMA Dues</td>
<td>$16,433.00</td>
</tr>
</tbody>
</table>

Please let me know if you have any questions or would like additional information.

We appreciate your support of the Maine Municipal Association and value your membership. We hope that this change in the MMA dues formula which results in a reduction in your annual dues provides some budgetary relief.

Sincerely yours,

[Signature]

Stephen W. Gove
Executive Director