Housing & Community Development Committee Meeting
Date: January 28, 2015
Time: **5:00 pm**
Location: Room 209, Portland City Hall

1. Agenda 01/28/2015

   Documents: 01.28.2015 AGENDA.PDF
2. Minutes For Approval 01/14/2015 Meeting

   Documents: 1-14-2015 DRAFT MINUTES - FOR CMTE APRVL.PDF
3. Review & Vote To Recommend To Council - Bid/P&S Cliff Island Tax Acquired Parcel

   Documents: ITEM 2 - CLIFF ISLAND SALE.PDF
4. Affordable Housing Demand Report - Policy Proposals

   Documents: ITEM 3- HOUSING POLICY.PDF
5. POSTPONED - Review & Discussion 157 Brackett Street RFP
6. Review/Discussion Of Feasibility Study & Possible Approval 65 Hanover/52 Alder Street RFP

   Documents: ITEM 5- HANOVER ALDER STREET STUDY AND RFP.PDF
7. 2015 HCDC Work Plan

   Documents: HCDC 2015 WORK PLAN FOR 01.28.15.PDF

## HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE

**DATE:** **January 28, 2015 (Wednesday)**
**TIME:** **5:00 p.m.**
**LOCATION:** **Room 209, Second Floor**
**Portland City Hall**

## A G E N D A

1. Review and accept Minutes of previous meeting held on January 14, 2015.

2. **Review and Vote to Recommend to City Council on award of Bid and Purchase and Sale Agreement for Cliff-Island Tax Acquired Parcel –** See enclosed Memorandum from Greg Mitchell.

   a. Pursuant to 1 M.R.S.A. 405(6)(C) and (F) and 5 M.R.S.A. 13119-A, the Committee may go into executive session to discuss negotiations on this real estate disposition.

3. **Presentation of Policy Responses re: Affordable Housing Demand Report –** See enclosed Memorandum from Jeff Levine.

4. **Review, Discussion and possible Approval of RFP related to possible sale of City-owned property at 157 Brackett Street – POSTPONED TO A FUTURE DATE TO BE DETERMINED**.

5. **Review and Discussion of Feasibility Report and possible approval of RFP for the sale of City-owned property at 65 Hanover Street/52 Alder Street –** See enclosed Memorandum from Jeff Levine.

   a. Pursuant to 1 M.R.S.A. 405(6)(C) and (F) and 5 M.R.S.A. 13119-A, the Committee may go into executive session to discuss negotiations on this real estate disposition and provide direction to staff.

6. **2015 HCDC Work Plan for Review and Discussion –** See enclosed Memorandum from Jeff Levine, Greg Mitchell and Mary Davis.

Public Comment will be accepted on action items. **Councilor Kevin Donoghue, Chair**

Next Meeting Date: February 11, 2015

# Housing & Community Development Committee

# Minutes of January 14, 2015 Meeting

A meeting of the Portland City Council's Housing and Community Development Committee (HCDC) was held on Wednesday, January 14, 2015 at 5:30 p.m. in Room 209 on the second floor of Portland City Hall. Present from the HCDC was its Chair Councilor Kevin Donoghue, and members Councilors David Brenerman, David Marshall, and Nicholas Mavodones. City staff present included Housing & Community Development Division Director Mary Davis, Planning Division Director Alex Jaegerman, Planning and Urban Development Director Jeff Levine, Economic Development Director Greg Mitchell, and Senior Executive Assistant Lori Paulette.

Chair Donoghue opened the meeting introducing the Committee members and noted that Item #6 on the Agenda has been pulled; the Committee will not be taking this up today.

**Item 1: Review and accept Minutes from previous meeting held on December 10, 2014.**

On motion made and seconded, the Committee voted unanimously (3-0 – as Councilor Mavodones had to leave the meeting, returning as noted below) to accept the minutes as published.

**Item 2: Presentation of Affordable Housing Demand Report**

Mr. Levine said that Caroline Paras from GPCOG, which organization compiled the report, was to highlight this Report to the Committee; however, she notified staff that she was unable to attend. He then handed out a brief summary of the Housing Report (copy attached), which Report was designed to assist his Department in working on a Council goal for the creation of more affordable housing in Portland, particularly questions regarding: the state of the current housing market; types of housing being developed today; existing housing stock; housing being produced compared to the City's policies for housing; and, policy options the City should address concerning what the market is producing and what the City's needs and policies require.

In summary, Mr. Levine noted that the Report shows that if trends continue, there will be a gap between supply and demand of workforce housing units - for those households earning 80%-100% of median income – a gap of about 24% to 33%. In addition, the rental market is tight for 3-bedroom units that can accommodate working families, and this holds true around the country; and, the existing housing rental stock appears to be reasonably affordable, with family sized rentals less affordable. The existing owner-occupied units appear to be primarily affordable to those making above the median income.

Mr. Levine discussed options for Portland, including: doing nothing and let market forces drive housing development; look at Portland's codes to encourage more density, and perhaps offer more density bonuses for affordable housing production; inclusionary zoning, so that with new housing produced, a certain percentage would need to meet certain income qualifications. This could be tailored to meet Portland's needs, including certain geographic areas, kinds of housing, etc. He noted that Burlington, VT has stringent rules for inclusionary zoning. Another option could be additional parking incentives, although Portland already offers some allowances for parking for affordable housing development. This option, after research, may prove to be unlikely to find that additional changes would address policy goals. Another option is rent or price control, although this is not a recommended option.

Chair Donoghue said that he would now open the meeting for public comment, and then the Committee will discuss policy.

Chris O'Neil, consultant for the Portland Regional Chamber of Commerce (PRCC), said that housing is a major issue at City Hall, and appreciated this Housing Report as the PRCC also wanted to see this kind of report. Mr. Hall noted that Section 8 or subsidized housing was not included and questioned whether this was pertinent. Regarding letting market forces drive development, he agreed with that concept but there should also be incentives for affordable housing. He supported increasing density, and was not so supportive of rent control and inclusionary zoning – although both could be further discussed/debated, perhaps under scenarios of projects under development and how incentives could have worked for those projects.

Michael Murtoch noted that the City's Comprehensive Plan goal linking Portland's population growth goals as a percentage of the County's population as questionable and which may, perhpaps, lead to an unjudicious application of City policy goals to maintain that percentage. He recommends a review of the approach by Bethesda, Maryland which preserved architecture and increased density, and it could be a model for Portland, including maintaining affordable housing. He also said that urban transit should be included in the Report.

Vin Veroneau, Portland resident and business owner, said that it is important to have housing that provides quality living for all. As noted in the Report, over 2,000 housing units have been added since 2002, with 71% of those 2,000 units being unaffordable, saying that the market demand drove that statistic. Mr. Veroneau also said that as market rate rental housing increases, other units become more affordable. There needs to be a good mix of both affordable and market rate housing for all who want to live and work in Portland, and this is a good starting point for further evaluation.

Dana Totman, Portland resident and President of Avesta, said that increasing supply of affordable rental housing is critical and important, but was not sure market forces alone could help with that goal. He said that 3,000 people came to Avesta last year, and 30-40% had an average income of $13,000. He encouraged the City to look at all options, including increasing density bonuses.

Seth Parker, Portland resident and also with Avesta, said that there is a gap for housing for those earning 80%-100% AMI and is not surprised as market forces build higher end units. Avesta works for providing housing for those at 60% AMI or below. He would like to see the City work towards getting workforce housing, which will, in turn, allow existing residential stock to fall in between the 60% AMI and the 80%-100% AMI.

There being no further public comment, the public comment session was closed.

Councilor Marshall said that Portland has low residential vacancy rates; it is not building housing fast enough; and infill housing causes issues. Options noted should be further explored, including removing density requirements in residential neighborhoods, as well as looking at dimensional standards and simplifying them, while also keeping the character of neighborhoods. Regarding parking in urban neighborhoods, families have 0 to 1 car, so perhaps dropping parking requirements altogether should be looked into so that the market would drive that issue.

Councilor Mavodones said that as this is further discussed, he would request that staff look into how to engage the development community and the community in general for their feedback. Regarding options, he would be interested in discussing all of them.

Councilor Brenerman said that as we move forward to discuss options, he questioned how additional density bonuses are working here, and anywhere, as well as with inclusionary zoning, noting Burlington, VT as one model to see if it is working. He asked staff to provide information on how Portland can attract affordable housing based on what works best in other places. His sense was that density and/or parking bonuses were not working for Portland.

Councilor Donoghue said that discussion needs to occur on what Portland's residential growth goals are and how to achieve them, noting that density and parking bonuses just remove barriers. Zoning requires bigger lots and inhibits development, which is an unnecessary barrier to housing development. Portland needs to get past bonuses and remove barriers, and discuss how to close the gap between median homes and what is affordable – both for owning and renting. Inclusionary zoning needs further exploring, particularly regarding what developments would be too small for inclusionary zoning; what income should be targeted; geographical areas targeted; opportunity to opt out for it; there are many variables to look at. Models from other cities would be helpful.

In summary, Chair Donoghue said that he is hearing requests for profile communities, and outreach and process approach to get the best feedback to close the affordability gap.

Councilor Brenerman added that it would be interesting to figure out how many people Portland can adequately support in the housing market – for instance 70,000 or 80,000 people.

Councilor Donoghue asked Committee members if there was any information not in study that they would like to see.

Councilor Marshall said that it would be interesting to see policies enacted in past 15 years and how it has generated housing units. He also noted the recent B-1 and B-2 amendments; did that provide for any housing change.

Councilor Donoghue said that he would to have information on affordability gaps for the Portland peninsula, as well as for Peaks Island.

Councilor Brenerman questioned what Westbrook and South Portland do to attract affordable housing.

Mr. Levine thanked the Committee for the feedback and would look into this and, if possible, continue discussion at the Committee's next meeting, providing any updates at that time that staff has, including models and opportunities for community/developer feedback.

Chair Donoghue thanked everyone for their input.

**Item #3: Review and approval of revisions to the guidelines for the Lead Safe Housing Program.**

Ms. Davis said that her office has received four 3-year Lead Safe Housing Grants from HUD, with the last grant awarded in 2007. With loan repayments, there is $340,000 for additional lead-safe housing loans. She has found that the City's terms are stricter than other communities, so she is requesting approval to change the forgiveness loan schedule from 10 years to 5 years. This program is more for the public health, and these revisions would make multi-family requests more approachable.

Chair Donoghue asked if there was any public comment, and there was none.

On motion made and seconded, the Committee voted unanimously to approve the request as presented by staff.

**Item #4: Update, review and approval of proposed Rosa True School Housing transaction.**

Ms. Davis said that the City owns the Rosa True School property and has been leasing it to Learning Works since 1988. There are eight affordable housing units currently in the property. It needs significant repair, and Learning Works has been divesting itself of its affordable housing portfolio. Staff is requesting guidance and direction regarding the transfer of the leasehold from Learning Works to Developers Collaborative; assumption of the remaining debt owed by Learning Works ($32,069) by Developers Collaborative; and, allocation of HOME funds to Developers Collaborative in the amount of approximately $103,500 at 0% interest for the creation of two more affordable housing units.

Councilor Donoghue asked about the benefits of this ownership to the developer and if there was a 99-year covenant for affordable housing. Ms. Davis said that because of the lease, the developer is only responsible for a portion of the property tax value. An ideal situation would be an outright sale of the property, but this option provides a workable financial model for the developer. Ms. Davis said that there would be a 90-year affordability clause with the new investment.

Chair Donoghue asked if there was any public comment.

Kevin Bunker of Developers Collaborative said that he was here for questions, and added that a re-write of the lease rather amending it would be preferable given that it was written over 25 years ago, with a long enough term for investment and affordability limit. He then noted various repairs/updates to the building, as well as the addition of two affordable rental units in the basement.

Ms. Davis added that Corporation Counsel is in favor of re-writing the lease; the City is not investing additional money for subsidizing the existing units, only to invest in the two new units.

On motion made and seconded, the Committee voted unanimously to approve the request as presented by staff and forward to the City Council for final approval.

**Item #5: Communication: Spring Street Garage/Bid for broker leasing retail/office space; Portland Technology Park/RFP for brokers.**

Mr. Mitchell said that Economic Development staff has been marketing the Portland Technology Park (PTP), but, given the present workload in the Department, staff would now like to issue an RFP for brokers for marketing the remaining two parcels. For the vacant retail/office space next to the Pirates in the Spring Street Garage, the RFP would be for leasing the space. Staff would bring back a recommendation to this Committee for approval. Staff would play an integral role with it and directing the brokers, which brokers would qualify projects before bringing them to the City.

Chair Donoghue asked if, for the remaining two PTP sites, was there an industry sector to be targeted, and Mr. Mitchell said that the biotech industry is a target. There is a growth in that industry, but biotech companies in Portland are growing where they are physically located now. The City would be open to other uses that would work there. If not for PTP, Patrons Oxford Insurance would not have located in Portland.

Chair Donoghue asked about the Spring Street retail/office vacancy, and Mr. Mitchell said that this in a Pedestrian Activities District (PAD) Zone, and, with the new investment in the Civic Center, it should provide an impetus for filling the vacancy.

Councilor Brenerman asked about the fee structure, would it be the same for leasing as for selling. Mr. Mitchell said that responses to the RFP will help shape the fee structure to the brokers. Leasing could be a percentage of the revenue, versus sale would be a one-time cost.

The Committee's consensus was to move forward with issuing the RFPs as recommended by staff.

**<u>Item #7: 2015 HCDC Work plan for Review and Discussion</u>**

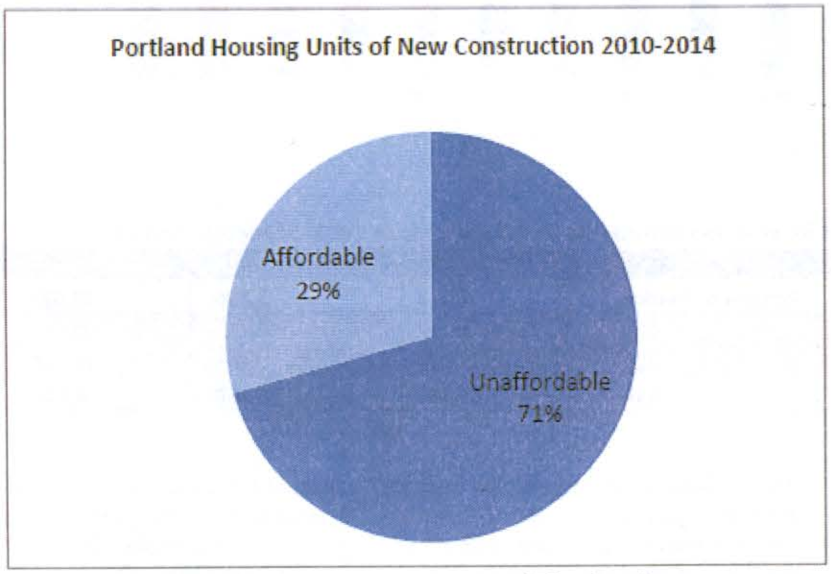
There was discussion about the upcoming Committee meetings, to take up potential sales of property, including 71 Hanover Street, 16 Fisherman's Cove on Cliff Island, among others, as well as housing issues that will be forthcoming.

The meeting then adjourned at approximately 7:10 p.m.        - Respectfully, Lori Paulette

# Portland 2030 Workforce Housing Demand

## PURPOSE

In 2002, the City of Portland adopted a Housing Plan with a policy goal to ensure an adequate supply of housing to meet the needs, preferences, and financial capabilities of all Portland households. In order to reach this goal, the City established a target of maintaining Portland's current proportion of subsidized units at 20% of the housing stock. Since the plan's adoption, over 2,000 housing units have been permitted in the city for the construction of apartments, condominiums, and single-family homes. This study examines recent trends in the Portland housing market in order to help policymakers determine what gaps, if any, may exist between what is curently being provided in the market and the city's housing needs.



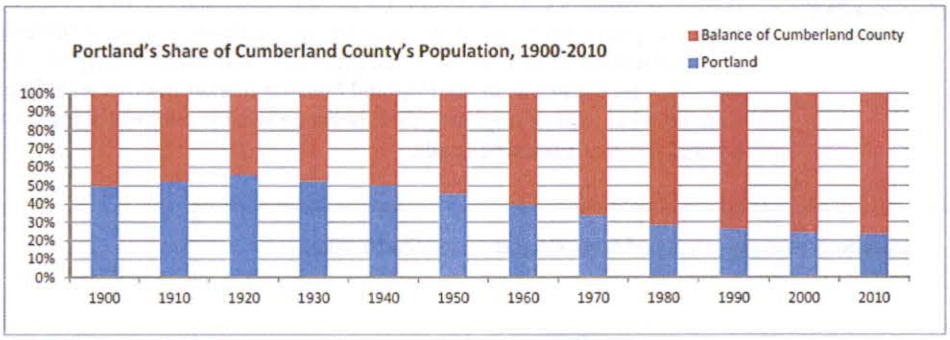

*Compiled by GPCOG based on City Assessing and Planning data*

## FINDINGS

- 62% of Portland households earn less than the county's median income, including 38% of homeowners and 81% of renters. Over the last decade, the number of households earning less than median income has increased 10%.
- The Great Recession of 2008 was a market correction that increased the affordability of existing housing – by giving wages a chance to catch up while stalling home sales and rents.
- Current housing production is not meeting the needs of households earning 80%-100% of median income. If recent trends continue, there will be a gap between supply and demand of workforce housing units ranging from 24%-33%.
- While the Portland housing market contains units in a variety of price ranges, the reality is that those with higher incomes, stable jobs, and good credit ratings are in a better position to compete for affordable units that are subsidized and unsubsidized. This creates a glut of affordable units at the low end of the range that may be in rough condition, with deferred maintenance issues.
- The rental market is extremely tight for 3-bedroom units that can accommodate working families.
- Based on the vacancy rate, the inventory of one-bedroom condos targeting households earning over the median income is reaching a point of saturation.

## MASSACHUSETTS APPROACH

This method, so named for its prevalence amongst cities and towns in the Commonwealth, is based on the goals articulated in a municipality's comprehensive plan. In the future, Portland will capture a certain percentage of the region's population growth. People form households, whose demand can be projected by the current distribution of housing units by tenure and affordability.



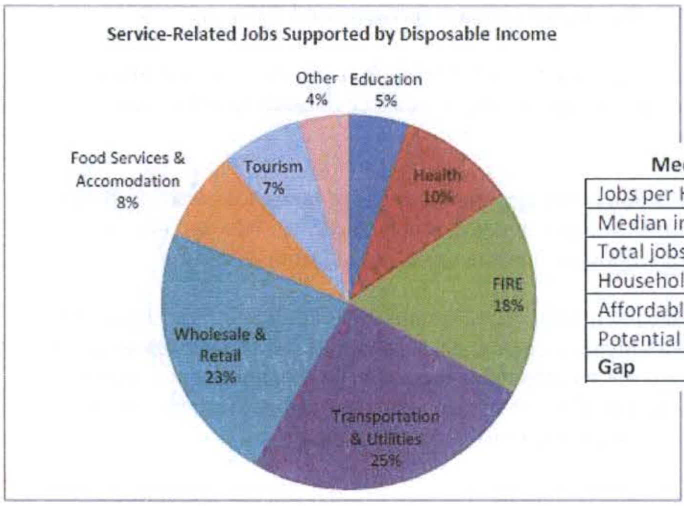

*Source: U.S. Census Bureau*

**Supply and Demand for Housing Affordable to Households at 100% of Median Income**

| | | Low Growth | Medium Growth | High Growth |
|---|---|---|---|---|
| **Housing Units** | **Percent of Market** | **4,188** | **8,636** | **13,084** |
| Projected 2030 Demand | 62% | 2,597 | 5,354 | 8,112 |
| Projected 2030 Supply | 29% | 1,215 | 2,504 | 3,794 |
| Gap | **33%** | **1,382** | **2,850** | **4,318** |

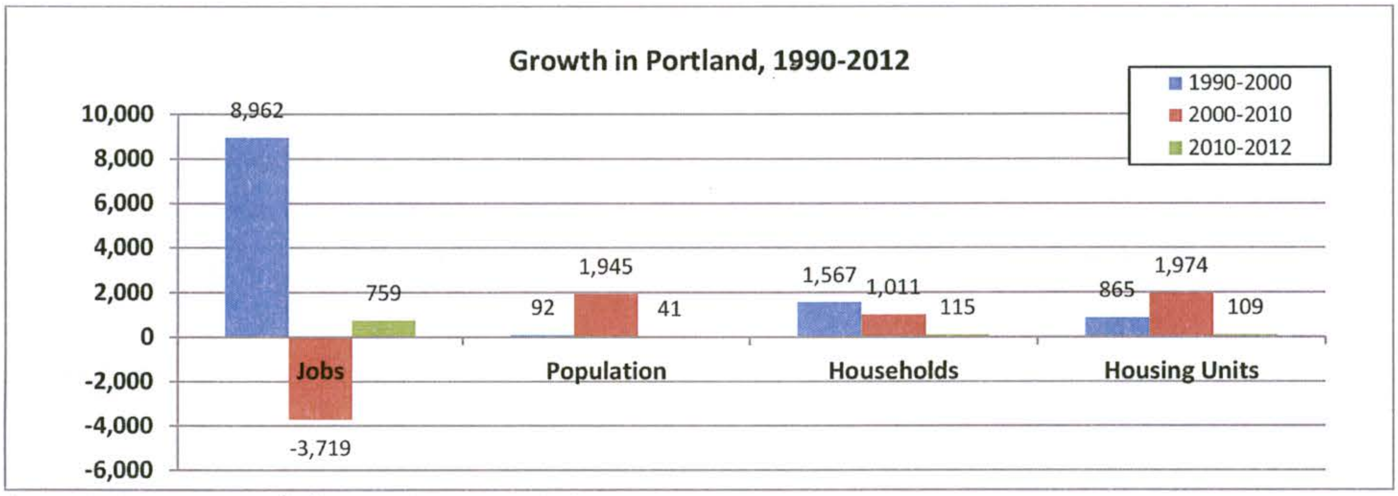
## CALIFORNIA APPROACH

This technique has been piloted in cities throughout California by the consulting firm of Keyser Marston Associates, Inc. The underlying philosophy is that the construction of market-rate units attracts high income households. Through the purchase of goods and services, these households support low-paid service jobs, which in turn support lesser income households whose needs might best be met by living near where they work.

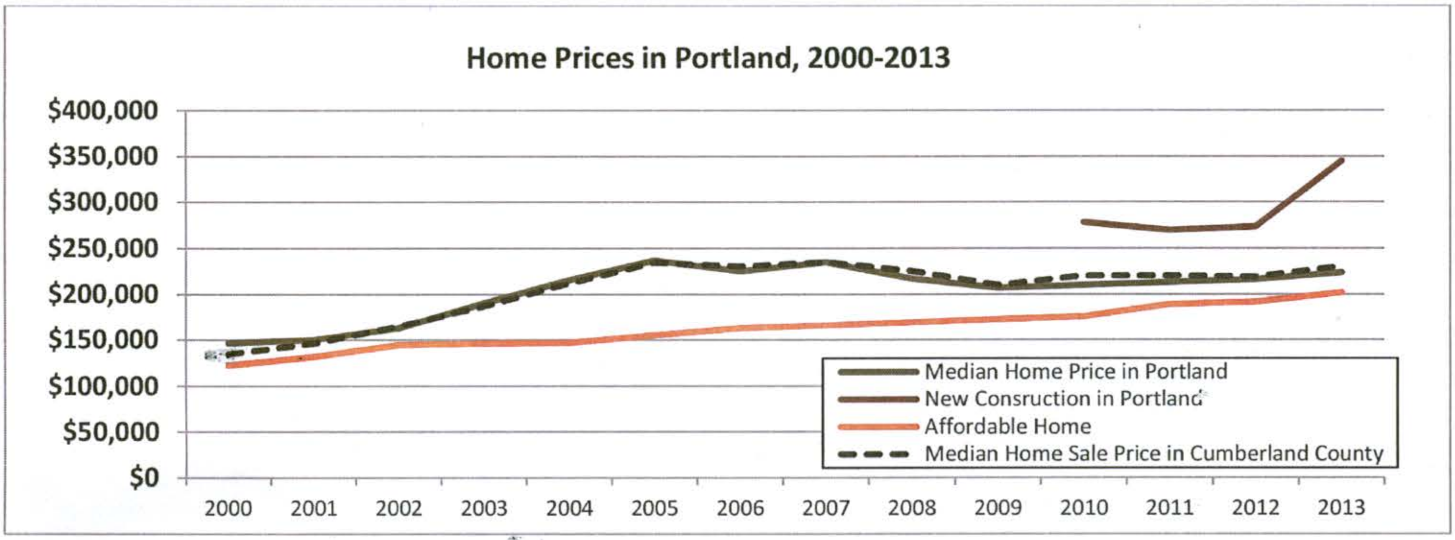



**Median Housing Demand Generated by Market Rate Households**

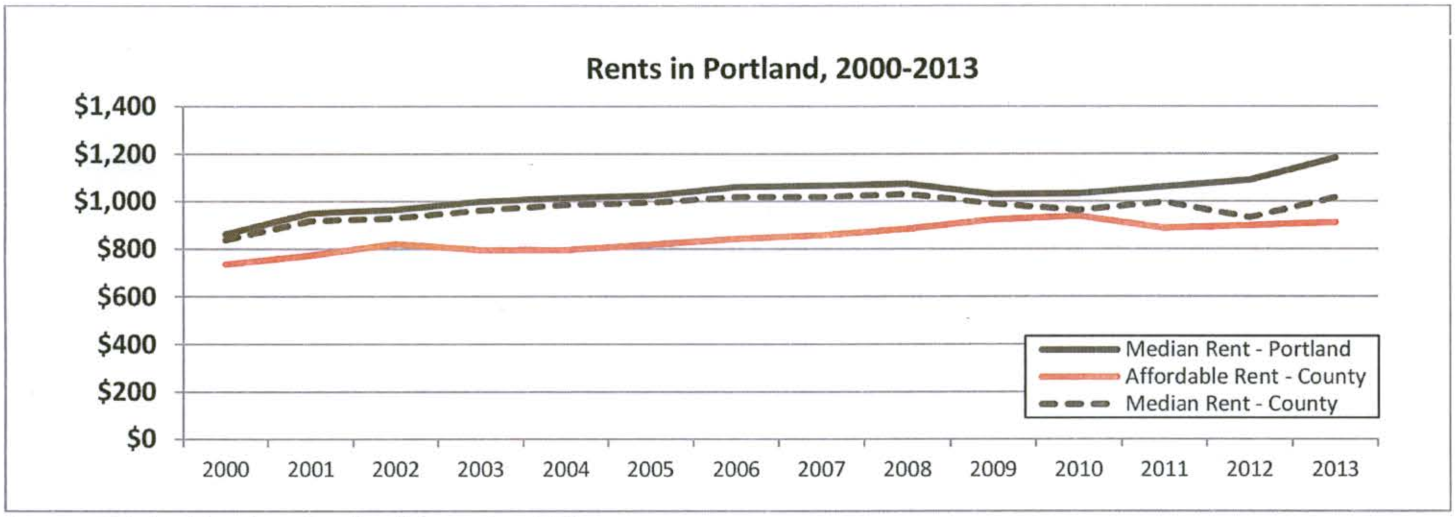
| | |
|---|---|
| Jobs per Household | 1.43 |
| Median income households in Portland | 62% |
| Total jobs generated by 100 market-rate households | 121 |
| Households supported by jobs | 85 |
| Affordable housing demand generated per job | 53% |
| Potential market supply of affordable units | 29% |
| **Gap** | **24%** |




*Source: Maine Deparment of Labor, American Community Survey*




*Source: Maine Housing, Portland Assessing Office*




*Source: Maine Housing, Portland Assessing Office*

Economic Development Department
Gregory A. Mitchell, Director

**MEMORANDUM**

**DATE**: January 22, 2015

**TO**: Chair and Members of the Housing Community Development Committee (HCDC)

**FROM**: Greg Mitchell, Economic Development Director

**RE**: Tax-Acquired Property on Cliff Island – 16 Fisherman's Cove, 109B-F-39
- Vote Requested to Recommend to the City Council Award of Bid, Purchase and Sale Agreement with Sustainable Cliff Island, and Write off Remaining Back Taxes, Interest, and Costs

## I. Summary of Request

This matter is being presented to the HCDC to recommend to the City Council award of bid and Purchase and Sale Agreement with Sustainable Cliff Island (SCI) for the sale of tax-acquired property on Cliff Island at 16 Fisherman's Cove. SCI was the sole bidder in response to the City's RFP for its sale.

## II. Reason for Submission

Under authorization from the HCDC at its November 12, 2014, staff negotiated a Purchase and Sale Agreement with SCI in the form substantially attached, for HCDC recommendation to the City Council for approval.

## III. Intended Result

The intended result is to authorize sale of the tax-acquired property to SCI, who will then return the property into a working fuel station, and renovate the single family house for year round affordable island housing.

## IV. Financial Impact

SCI has offered $10,000 for the property. Taxes, interest, and costs to date owed on the property are approximately $53,545. Based on guidance from the HCDC, staff and SCI have negotiated a forgivable Promissory Note and Mortgage included as Exhibits in the Purchase and Sale Agreement, in the amount of $43,545 that would only be due and payable to the City should any covenants be violated. The Note does not bear interest and is forgiven at the end of the 20-year "Restriction Period" as noted in the Quitclaim Deed, assuming no covenant violation. In the event that SCI is unable to raise sufficient funds to make necessary improvements to the property, the mortgage contains a subordination provision that would require the City to subordinate its mortgage to a future lender's mortgage securing a loan up to $300,000, provided that the loan is made to finance improvements that are required by the residential or commercial covenants.

As part of the Council action on this item, it would authorize writing off the remaining back taxes, interest, and costs.

## VI. Staff Analysis

### RFP Weighted Criteria

The RFP had the following weighted criteria/maximum scoring points:

| | | |
|---|---|---|
| A. | Fuel Station Kept in Operation | 50 Points |
| B. | Year Round Affordable Island Housing | 30 Points |
| C. | Total price offered for property | 20 Points |
| D. | Donation of Land for Public Services (1 to 2 acres buildable land) | 10 Bonus Points |

Because one proposal was received, no scoring of proposals was needed.

SCI met the weighted criteria, except for “bonus” Item D; no donation of land for Public Services was offered. The following provides highlights of SCI’s proposal:

### A. **Fuel Station Kept in Operation**

SCI will remove the old, existing fuel tanks and replace them with two new double-wall tanks with a total capacity of less than 1,300 gallons. These size fuel tanks are below Maine DEP guidelines threshold of 1,320 gallons; anything above would require a Spill Prevention, Control, and Countermeasure (SPCC) Plan be in place.

Additionally, SCI agreed to clean up and remove any contaminated soil and install required containment infrastructure. SCI’s proposal notes that they contracted with Woodard & Curran for a Phase II Environmental Assessment regarding clean-up of the site, and SCI is researching foreseeable expenditures for creating a near-term budget. Inasmuch, SCI has applied to the Greater Portland Council of Government for a Brownfield grant to assist with clean-up costs. That application is pending at this time.

SCI notes that over the coming decades, they will maintain an available fuel supply adequate to meet island needs. SCI’s Board includes individuals with extensive knowledge of the fuel operation.

Also, SCI in their proposal commits to rebuilding the fuel dock so that Cliff Island and other fishermen along with recreational boaters can safely use the dock.

### B. **Year Round Affordable Island Housing**

SCI commits to renovate the existing home and make it available for a tenant or tenants who meet affordable housing criteria. SCI will apply State and City standards in assessing determining affordable housing qualifications and consult with established affordable housing organizations on the other year-round Maine island communities. SCI expects to rent to a person or family who can add to the Island's labor force and which may have children to attend Cliff Island School. SCI's team includes an attorney with affordable housing experience.

## C. **Total Price Offered for the Property**

SCI offered $10,000.

SCI is a private corporation, established in 2013 and in the process of becoming a 501c3 nonprofit. Until the IRS approves their request, SCI has a formal agreement with The Island Institute to serve as its fiscal agent, a copy of which has been provided to City staff. SCI has received seed funding financial support from Cliff Island's civic organization – the Cliff Island Association. SCI states they fully understand the scope of this project and they are capable of making this project sustainable and successful. One additional noted public benefit is the employment opportunities during Project construction and on-going Project operation and maintenance.

## D. SCI Ability to Undertake the Project

SCI's Board has experience in pursuing grants and fund raising initiatives. Also, one hundred percent of the Board has made financial contributions to SCI. SCI understands this is a substantial financial undertaking and they have stated they are up for the task.

SCI will be utilizing both volunteer and paid labor for construction and will secure all required development regulatory approvals.

SCI's Business Plan calls for near-term expenditure of $30,000 including, but not limited to:

1. Purchase
2. Legal Fees
3. Site Clean-up
4. Permits
5. Taxes
6. Insurance

Expenditure of $300,000 over the next two years in the following categories includes:

1. Upgrade the fuel operation to all current standards;
2. Upgrade the septic system to legal status;
3. Gut and renovate the house suitable to rental occupancy;
4. Rebuild the former grocery store suitable to at least the level of a small convenience store, to also cater to boaters.
5. Rebuild the wharf suitable to safely and comfortably tie up boats for fueling; and,
6. Build and install a float for cultivating recreational boaters' fuel and chandlery needs.

## VII. Recommendation

Staff has reviewed the documents and recommend that they be forwarded to the City Council for their approval as follows:  award of bid and Purchase and Sale Agreement, with its Exhibits, in substantially the form as attached and any other documents that the office of the Corporation Counsel deems necessary and in the City's best interests to complete the transfer of the property to SCI, including writing off remaining back taxes, interest, and costs.

**VIII. Attachments:**

Aerial View of 16 Fisherman's Cove
Pictures of Fuel Station area, and portion of residence
Purchase and Sale Agreement, with Exhibits
Proposal from SCI

16 Fisherman's Cove, Cliff Island, ME

Imagery ©2015 U.S. Geological Survey, Map data ©2015 Google 20 ft


Mobiloil
MARINE
NO SMOKING
DANGER

## PURCHASE AND SALE AGREEMENT

**THIS AGREEMENT** for the purchase and sale of real estate made as of this ______ day of ______________, ______ by and between the **CITY OF PORTLAND**, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "**CITY**"), and **SUSTAINABLE CLIFF ISLAND**, a Maine non-profit corporation, with a mailing address of P. O. Box 84, Cliff Island, Maine 04019 (hereinafter referred to as "**BUYER**").

**W I T N E S S E T H:**

**WHEREAS**, **CITY** is the owner of certain real property located at 16 Fisherman's Cove, on Cliff Island, in Portland, Maine, as more fully described in the quitclaim deed attached hereto as Exhibit A, and incorporated herein (the "Premises"); and

**WHEREAS**, the **BUYER** desires to purchase the Premises;

**NOW THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the parties, intending to be legally bound, hereby agree as follows:

**1. SALE**

**CITY** agrees to sell to **BUYER** the Premises, and **BUYER** agrees to buy the Premises and accept the deed to the same, for the consideration set forth here.

**2. CONSIDERATION**

The consideration for the Premises shall be Fifty-Three Thousand Five Hundred Forty-Five Dollars ($53,545.00). The City acknowledges receipt of $1,000 paid to it as of the date of this Agreement. At closing, BUYER shall execute and deliver to CITY a promissory note in the amount of Forty-Three Thousand Five Hundred Forty-Five Dollars ($43,545.00) in substantially the form attached hereto as Exhibit B (to be secured by a mortgage and security agreement in substantially the form attached hereto as Exhibit C) and pay to the CITY in immediately available funds the remaining Nine Thousand Dollars ($9,000.00).

**3. TITLE**

Title to the Premises shall be conveyed by Quitclaim Deed, subject to certain residential and commercial covenants and restrictions, in substantially the form attached hereto as Exhibit A.

**4**. BUYER acknowledges that BUYER has had an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults". CITY, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Furthermore, City and its agents make no representations or warranties regarding the number, quantity, quality, or count of any items of personal property. Acceptance by BUYER of the Deed and Bill of Sale at closing and payment of the purchase price shall be deemed to be full performance and discharge by the CITY of every agreement and obligation contained herein.

5. **INDEMNIFICATION TO CITY**

BUYER hereby agrees to release, defend, indemnify and hold harmless the CITY, its officers, agents, and employees from and against any and all claims, demands, liability, loss, cost or expense (including but not limited to attorneys' fees and other costs of litigation) that may be incurred by the CITY arising out of or in any way related to the CITY'S ownership, use, or maintenance of the Premises, or the ownership, use, or maintenance of the Premises by the CITY'S predecessors in title or any other third party. BUYER'S obligations in this paragraph shall survive the BUYER'S ownership of the Premises and shall be binding upon BUYER's successors and assigns. At closing, BUYER agrees to execute a separate Agreement incorporating the terms of this paragraph and agrees that such Agreement shall be recorded with the Deed in the Registry of Deeds.

**6. CONTINGENCIES**

This Purchase and Sale Agreement is further subject to only the following contingency:

Approval of this Purchase and Sale Agreement by the Portland City Council.

While not contingent on financing, CITY understands BUYER may apply to CITY for financing in connection with BUYER's redevelopment of the Premises.

**7. CLOSING**

The closing shall be held at City Hall, within thirty (30) days after approval of this Purchase and Sale Agreement by the Portland City Council, at a time agreeable to the parties.

**8. BINDING EFFECT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

**9. GOVERNING LAW**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maine.

**10. NOTICE**

Any notice required or permitted under this Agreement shall be deemed sufficient if mailed with first class postage affixed or delivered in person to:

**FOR THE CITY**: City of Portland
ATTN: CITY MANAGER
389 Congress Street
Portland, ME 04101

**FOR BUYER**: Sustainable Cliff Island
P. O. Box 84
Cliff Island, Maine 04019

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals on the day and year first written above.

**CITY OF PORTLAND**

| | |
|---|---|
| ____________________ | ________________________________ |
| WITNESS | Sheila Hill-Christian<br>Its Acting City Manager |

**SUSTAINABLE CLIFF ISLAND**

| | |
|---|---|
| __________________________ | ________________________________ |
| WITNESS | Roger Berle<br>Its Treasurer |

| | |
|---|---|
| Approved as to Form: | Approved as to Funds : |
| ________________________________ | _____________________________ |
| Corporation Counsel's Office | Director of Finance |

**MUNICIPAL**
**QUITCLAIM DEED**

KNOW ALL PERSONS BY THESE PRESENTS, that the **CITY OF PORTLAND**, a body corporate and politic with a mailing address of 389 Congress Street, Portland, Cumberland County, Maine (the "City") for consideration paid, releases, and quitclaims without covenant, to **SUSTAINABLE CLIFF ISLAND**, a Maine non-profit corporation**,** with a mailing address of P. O. Box 84, Cliff Island, Maine 04019 (the "Grantee"), the real property in the City of Portland, County of Cumberland, State of Maine, particularly described in EXHIBIT A attached hereto and hereby made a part hereof.

The property herein conveyed is subject to the terms, restrictions and conditions in Exhibits A, B, C and D attached hereto and hereby made a part hereof.

**IN WITNESS WHEREOF**, Suzanne Knight, Acting Finance Director of the City of Portland, has hereunto executed this instrument on this ___ day of _______________, _____.

| **WITNESS** | **CITY OF PORTLAND** |
|---|---|
| ______________________________ | By:______________________<br>Suzanne Knight, Acting Finance Director |

STATE OF MAINE
CUMBERLAND, ss. _______________ ___, 20___

Personally appeared the above-named Suzanne Knight, Acting Finance Director of the City of Portland, Maine, and acknowledged the foregoing instrument to be her free act and deed and the free act and deed of said City of Portland.

Before me,

____________________________________
Notary Public/Attorney-at-Law, Bar #______

______________________________
Print Name

Approved as to form:

______________________________
Corporation Counsel's Office

## EXHIBIT A

109-F-39
16 Fisherman's Cove, Cliff Island
Liened by the City of Portland in
2008 and every year since then

A certain lot or parcel of land, with buildings thereon situated on the southeasterly side of Cliff Island in Casco Bay, in Portland, Cumberland County, Maine, bound and described as follows:

Beginning at a point in the westerly sideline of land formerly of Hannah C. Small, sixty (60) feet southeasterly from the "City Street", so-called; thence southwesterly parallel with said street, sixty-three (63) feet to land conveyed by Luch A. Small to George E. Nickerson; thence southeasterly along said Nickerson land to the seashore; thence northeasterly along said shore to land formerly of Hannah C. Small; thence northwesterly along the westerly line of land formerly of Hannah C. Small to the point of beginning; together with a right of way from the northwesterly corner of the land hereby conveyed to the "City Street" so-called, over a strip of land now or formerly of Lucy A. Small lying between lands conveyed to George E. Nickerson and Mary E. Hammond.

Also adjacent lot or parcel of land situated on the southeasterly side of Cliff Island, in Casco Bay, in Portland, Cumberland County, Maine, bounded and described as follows:

Beginning at the most northerly corner of the before described lot of land, and at a point sixty (60) feet southeasterly from the "City Street" so-called; thence northeasterly along the line of land conveyed by Hannah C. Small to Mary G. Hammond, fifty-three (53) feet to a point; thence southeasterly parallel with the northeasterly line of the before described lot of land to the seashore; thence southwesterly and southerly along the shore to the before described lot of land; thence northwesterly along the northeasterly sideline of the before described lot of land, to the point of beginning.

Subject to any encroachment that may exist now or may have existed before, caused by a wooden workshop building on the boundary of the property herein conveyed, but only to the extent that such encroachment is valid and enforceable.

Together with the buildings and improvements, including the wharf now situated on said premises, and the shore and flats abutting or appurtenant to the property herein conveyed, including all riparian rights, littoral rights and rights of fishery.

Also subject to the easement conveyed by Suzanne H. Rieth to Muriel S. Anderson by deed dated January 19, 1990 and recorded in the Cumberland County Registry of Deeds in Book 9065, Page 262.

Meaning and intending to convey, and hereby conveying, the same property as described in the tax lien certificate recorded on June 17, 2008, in the Cumberland County Registry of Deeds in

Book 26133, Page 234. Title reference is made to the Affidavit of Linda McLeod dated April 11, 2014, recorded in said Registry in Book 31598, Page 140.

Title reference is also made to the Personal Representative's Deed of Distribution from Bruce McAfee, Personal Representative of the Estate of Suzanne H. Rieth, (see Cumberland County Probate Docket No. 2003-141 to Holy Kessinger and Bruce Rieth, dated April 20, 2004) and recorded in said Registry in Book 21688, Page 1483.

## EXHIBIT B

## Residential Restrictions

1. The covenants and restrictions on the Grantee set forth herein are intended to be and shall be considered covenants which run with the real estate described in Exhibit A attached hereto and shall bind all subsequent owners of the real estate described in Exhibit A attached hereto, except to the extent provided herein, but only during the Restriction Period.

2. The covenants of the Grantee set forth herein are enforceable by City as a contract except to the extent provided herein.

3. The covenants of the Grantee set forth herein shall survive a sale, transfer, or other disposition of the Premises by the Grantee, foreclosure or transfer of title in lieu of foreclosure, or the repayment of the loan, except to the extent provided herein.

4. (a) If the Premises is sold or transferred, as an owner-occupied Premises, the Premises shall remain affordable, year round island housing – i.e., affordable to a household earning 120% or less of the then U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland County, Maine.

(b) If the Premises is sold or transferred, as non-owner-occupied Premises, the Premises shall be rented, leased or otherwise in accordance with Section 7(b) below.

5. The term "Restriction Period" as used herein shall mean the period beginning on the earlier of the date of the Certificate of Occupany granted from the City of Portland for the residential portion of the Premises or three (3) years from the date of the deed to which this Exhibit is attached, and terminating on a date twenty (20) calendar years thereafter.

6. The Grantee agrees to comply with these restrictions throughout the Restriction Period.

7. The Grantee hereby covenants and represents to City as follows:

a. The Premises shall consist of the land described in Exhibit A together with a residential building and structures and facilities functionally related and subordinated thereto; and a commercial building and structures and facilities functionally related and subordinated thereto.

b. Septic system. Grantee shall either:

(1) on or before February 15, 2015, upgrade the septic system on the Premises in accordance with all local, state, and federal laws, rules and regulations and obtain the necessary upgraded Overboard Discharge permit from

the Maine Department of Environmental Protection and any other required approvals for the septic system; or

(2) within 2 years of the date of the deed to which this exhibit is attached, install a septic system on the Premises or obtain in a form satisfactory to Grantor an easement in perpetuity to tie into and use a septic system on the property located at 155-171 Church Street, Cliff Island, Maine, such septic system and easement to comply with all local, state, and federal laws, rules, and regulations.

c. If the residential building on the Premises is rented, leased or otherwise used by a non-owner:

i. The total housing costs including rent and utilities of tenants occupying the rent restricted unit in Premises as of the date of these restrictions may not increase for twelve months beginning on the date of these restrictions.

ii. The Grantee shall maintain all of the units included in the Premises rented or available for rental on a continuous basis to members of the general public throughout the Restriction Period; unless they are used by the Grantee. Rentals shall not generally be for less than six months, but with customary rights of termination.

iii. Throughout the Restriction Period, the residential unit on the Premises must be occupied by individuals or families with households at or below 120% of area median income, but subject to the terms conditions stated herein, including (b)(vi) below.

iv. Rent may not exceed 30% of the tenant's adjusted monthly gross income (also refer to Section (b)(iii) above).

v. Income and area median income shall be as determined by the United States Department of Housing and Urban Premises and income limits shall be adjusted for family size.

vi. At least annually, City shall determine whether the income, based on the current income, of the tenants residing in the Premises exceeds the applicable income limits as described in this Section 6 (the "Determination"). The Grantee shall furnish to City such information as City shall require, including certification of occupancy and tenant income, in order to assure that the covenants set forth herein are being fully satisfied.

vii. A unit occupied by a tenant who, at the commencement of occupancy, met the applicable income limitations shall continue to be treated as occupied by a qualified tenant until the tenant's income exceeds one hundred fifty percent (150%) of the area median income, adjusted for family size, at the time of the most recent Determination. After such Determination, once the tenant departs the Premises, Landlord will rent to an income eligible tenant.

viii. Grantee agrees to furnish to City such information as City may require in form acceptable to City, including without limitation certifications and/or verification of occupancy and tenant income certifications to determine Grantee's compliance with the covenants set forth herein.

ix. Grantee shall maintain and keep current all records concerning the Premises, including, but not limited to, records related to compliance with the covenants contained in these restrictions, until the expiration of the Restriction Period. Upon reasonable notice, City may audit and examine these records, and may inspect the buildings and grounds at the Premises.

x. Grantee shall use tenant lease forms acceptable to City, or, if there are no written leases, written and signed certifications by tenants to determine whether tenants meet the applicable income limits. Such leases or certifications shall contain clauses wherein each tenant certifies as to the accuracy of statements made relating to income and agrees that family income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy, that the tenant will comply with all requests for information with respect thereto from the Grantee or City, and that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of the tenancy.

8. Grantee agrees that it will cause the residential portion of the Premises to be kept in reasonable repair, and shall see that all reasonably necessary repairs are made.

9. Grantee agrees that it shall pay real estate taxes, as assessed by City, on Premises. In the event that ownership of the Premises or a portion thereof becomes tax exempt, either by transfer, conversion or otherwise, an amount shall be paid annually to City, equal to the amount that would have been assessed as real estate taxes had the Premises or a portion thereof remained taxable. Grantee shall notify any party to whom it transfers any of its interest in the Premises of this requirement. Nothing contained herein shall be deemed to limit or waive the right of Grantee to seek abatement of real estate taxes in accordance with law.

10. Grantee covenants and agrees to take such action as City deems necessary to comply with the covenants herein or to correct or cure any failure of the Grantee to comply with the covenants herein, including, without limitation, the eviction of any tenant in accordance with applicable law. In the event the Grantee fails to comply with the covenants set forth herein, and fails to cure such non-compliance within any applicable cure period, City shall be able to maintain an action in law or in equity against the Grantee to require the Grantee (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by the Grantee.

11. Grantee shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to attorney's fees and other costs of litigation) which may be incurred by City arising out of or in any way related to the Grantee's breach of any of its obligations under these restrictions as a result of such breach. The obligations survive the termination or expiration of these restrictions as necessary to effect its provisions.

12. Grantee covenants that if a lien for the performance of work or the furnishing of labor or materials is filed against the Premises, Grantee shall cause it to be satisfied, discharged or bonded within a period of sixty (60) days after the date of filing of such lien.

13. These restrictions may be amended or modified in whole or in part only by written agreement of Grantee and City clearly expressing the intent to modify these restrictions.

14. The validity of any clause, part or provision of these restrictions shall not effect the validity of the remaining portions of thereof.

15. These restrictions shall be binding upon Grantee's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.

## EXHIBIT C

## Commercial Restrictions

1. The purpose of these restrictions is to ensure the continued availability of vehicular and marine petroleum-based fuel products, which have been sold from a portion of the Premises for many years, and by doing so, to make life on Cliff Island more easily viable.

2. The covenants and restrictions on the Grantee set forth herein are intended to be and shall be considered covenants which run with the real estate described in Exhibit A attached hereto and shall bind all subsequent owners of the real estate described in Exhibit A attached hereto, except to the extent provided herein, but only during the Restriction Period.

3. The covenants of the Grantee set forth herein are enforceable by City as a contract except to the extent provided herein.

4. The covenants of the Grantee set forth herein shall survive a sale, transfer, or other disposition of the Premises by the Grantee, foreclosure or transfer of title in lieu of foreclosure, or the repayment of the loan, except to the extent provided herein.

5. The term "Restriction Period" as used herein shall mean the period beginning on the earlier of the date of the Certificate of Occupany granted from the City of Portland for the commercial portion of the Premises or two (2) years from the date of the deed from the City of Portland to which this Exhibit is attached, and terminating on a date twenty (20) calendar years thereafter. The City reserves the right to shorten or extend this Restriction Period. Nothing herein shall prevent Grantee from applying to the City for a shortened or extended Restriction Period, and the City shall in good faith consider and act upon Grantee's application.

6. The Grantee agrees to comply with these restrictions throughout the Restriction Period, as it may reduced or enlarged as provided herein.

7. The Grantee hereby covenants and represents to City as follows:

a. The Premises shall consist of the land described in Exhibit A together with a residential building and structures and facilities functionally related and subordinated thereto; and a commercial building and structures and facilities functionally related and subordinated thereto.

b. Septic system. Grantee shall either:

(1) on or before February 15, 2015, upgrade the septic system on the Premises in accordance with all local, state, and federal laws, rules and regulations and obtain the necessary upgraded Overboard Discharge permit from

the Maine Department of Environmental Protection and any other required approvals for the septic system; or

(2) within 2 years of the date of the deed to which this exhibit is attached, install a septic system on the Premises or obtain in a form satisfactory to Grantor an easement in perpetuity to tie into and use a septic system on the property located at 155-171 Church Street, Cliff Island, Maine, such septic system and easement to comply with all local, state, and federal laws, rules, and regulations.

c. The existing commercial portion of the Premises, including the commercial building and structures and facilities functionally related and subordinated thereto, shall continue to be used only for commercial purposes, including but not limited to the sale of petroleum based fuel for vehicles and boats. Subject to the restrictions set forth herein, Grantee retains sole discretion concerning the operation of the commercial portion of the Premises, the pricing of goods and services, and the hours of operation of the commercial portion of the Premises.

8. Grantee shall maintain and keep current all records concerning the Premises, including, but not limited to, records related to compliance with the covenants contained in these restrictions, until the expiration of the Restriction Period. Upon reasonable notice, City may audit and examine these records, and may inspect the buildings and grounds at the Premises.

9. Grantee agrees that it will cause the commercial portion of the Premises to be kept in reasonable repair, and shall see that all reasonably necessary repairs are made; and that the Premises are brought into compliance with applicable laws and ordinances.

10. Grantee agrees that it shall pay real estate taxes, as assessed by City, on Premises. In the event that ownership of the Premises or a portion thereof becomes tax exempt, either by transfer, conversion or otherwise, an amount shall be paid annually to City, equal to the amount that would have been assessed as real estate taxes had the Premises or a portion thereof remained taxable. Grantee shall notify any party to whom it transfers any of its interest in the Premises of this requirement. Nothing contained herein shall be deemed to limit or waive the right of Grantee to seek abatement of real estate taxes in accordance with law.

11. Grantee shall indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to attorney's fees and other costs of litigation) which may be incurred by City arising out of or in any way related to the Grantee's breach of any of its obligations under these restrictions as a result of such breach. The obligations survive the termination or expiration of these restrictions as necessary to effect its provisions.

12. Grantee covenants that if a lien for the performance of work or the furnishing of labor or materials is filed against the Premises, Grantee shall cause it to be satisfied, discharged or bonded within a period of sixty (60) days after the date of filing of such lien.

13. The City shall have the right and option to purchase either (at its election) the Premises, or the portion of the Premises used for commercial purposes, during the later of the last full year of the Restriction Period, or the calendar year 2034. The purchase price shall be the value of of the real property, buildings, improvements and commercial fixtures related thereto, as determined by the assessor for the City of Portland. Additional terms of this option are set out in Exhibit D, attached hereto. The parties hereto hereby agree that this right and option to purchase, and the City's rights in the Premises thereby created, are immediately fully vested and are hereby deemed to be fully vested in any event, not contingent, and shall, by agreement, not be subject to the Rule Against Perpetuities, or any statutory enactment thereof, or similar law. If the City elects to separate the commercial portion of the Premises from the residential portion, it shall obtain and bear all costs of obtaining all necessary federal, state, and local permits and approvals for such separation, and shall also bear all costs associated with creating reciprocal easement agreements as to the two portions of the Premises created by the City.

14. These restrictions may be amended or modified in whole or in part only by written agreement of Grantee and City clearly expressing the intent to modify these restrictions.

15. The validity of any clause, part or provision of these restrictions shall not affect the validity of the remaining portions of thereof.

16. These restrictions shall be binding upon Grantee's respective heirs, personal representatives, executors, administrators, successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.

## EXHIBIT D

1. City, its successors or assigns, may exercise this Option only by giving written notice (hereinafter referred to as the Notice) within the Option Period, in any of the following manners: (a) by letter of City addressed and posted in the U.S. Mail by certified or registered mail, return receipt requested, addressed to the then owner of the Premises (as indicated in the records of the Assessor for the City of Portland, 16 Fisherman's Cove, Cliff Island 04019, (b) by letter of any attorney-at-law purporting to act for City or for any such assignee addressed to Grantee or its successors or assigns, in the manner aforesaid. Notice shall be effective when posted in accordance with the foregoing sentence. Notice is to be accompanied by a payment to Grantee or its successors or assigns of the Earnest Money in the amount of One Thousand Dollars ($1,000.00). City shall indicate in said Notice the date, time and place for closing, which shall be held not less than thirty (30) nor more than sixty (60) days after the giving of such Notice.

2. If City, its attorney, successors or assigns, exercises this Option to purchase the Premises, then in consideration of the terms, covenants and conditions contained herein, the parties mutually agree as follows:

a. Upon the giving of the above-mentioned Notice of election to purchase by City, its successors or assigns, together with the Earnest Money, Grantee shall thereby be bound to sell and City shall thereby be bound to purchase the Premises upon the terms and conditions set forth herein. Grantee or its successors or assigns shall convey the Premises by a good and sufficient warranty deed granting marketable title thereto, free and clear of all encumbrances and defects in title except for utility easements of record servicing the Premises. The closing shall be held at the date, time and place set forth in said Notice, or at such reasonable date thereafter as may be required to clear any encumbrance and defects in title, and Grantee or its successors or assigns shall then and there deliver the deed to City, its successors or assigns, upon tender of the balance of the purchase price by certified check, cashier's check, or cash. The balance to be tendered to Grantee or its successors or assigns shall be the Purchase Price, less the Earnest Money and any other option consideration actually received by Grantee.

b. If counsel for City, or its successors or assigns, shall be of the opinion, given in good faith, that the title to said Premises is defective or is otherwise not free and clear of all encumbrances or that the title is not marketable, then City, its successors or assigns, shall have the right, provided it or they shall have exercised this Option, to extend the time for conveyance of the Premises, during which time Grantee or its successors or assigns shall make a reasonable effort to remove such defects at its own expense, to the satisfaction of counsel of City, its successors or assigns. If record title proves defective and Grantee or its successors or assigns shall fail to remove such defect within a reasonable time after notice from City of the nature of the defect, City may, at its election, (a) cure any such defect and deduct the cost thereof from the Purchase Price at closing, or (b) elect to close notwithstanding any such defect, or (c) terminate this Option by written notice to Grantee or its successors or assigns, whereupon all Earnest Money and Option Consideration paid by City to Grantee or its successors or assigns shall immediately be returned to City and thereafter the parties shall be relieved of all obligations and this Option shall terminate.

c. If all obligations of this agreement have been performed, excepting that City does not complete the purchase, Grantee or its successors or assigns shall retain the Earnest Money as full liquidated damages, and without recourse to any other remedies, whereupon this Option shall terminate.

d. Grantee or its successors or assigns hereby agrees that the description in the warranty deed to be delivered at closing shall, at the option of City, utilize a description determined by City's survey of the Premises.

e. Full possession of the Premises, subject to the rights of tenants then present, and otherwise free of all encumbrances except as aforesaid, is to be delivered to City at closing, with the Premises to be in the reasonably functional condition, reasonable wear and tear excepted.

f. Real estate taxes shall be prorated as of the time of the passing of title. Real estate transfer taxes, if any, arising in connection with the conveyance of the Premises shall be paid by City and/or Grantee or its successors or assigns in accordance with the custom of the locality where the Premises are situated.

**PROMISSORY NOTE**
**Tax Acquired Property Located at**
**16 Fisherman's Cove, Cliff Island, Maine**

**FOR VALUE RECEIVED**, the undersigned **SUSTAINABLE CLIFF ISLAND**, a Maine non-profit corporation with a mailing address of P. O. Box 84, Cliff Island, Maine 04019 ("**OBLIGOR**"), promises to pay to the order of the **CITY OF PORTLAND**, a body politic and corporate located at 389 Congress Street, Portland, Maine (the "**CITY**"), the principal sum of **Forty-Three Thousand Five Hundred Forty-Five Dollars** (**$43,545.00**). Interest will not be charged on the principal balance of this note, and there will be no regular monthly payments. This note is secured by a mortgage and certain residential and commercial covenants and restrictions of near or even date herewith on the real property located at 16 Fisherman's Cove, Cliff Island, Maine (the "Property"). In the event that the **OBLIGOR** breaches, in the CITY's sole judgment, any of those covenants or restrictions, or sells or otherwise transfers the Property prior to the later of the expiration dates of the residential restriction period or the commercial restriction period, the full amount of the principal balance of this note shall be immediately due and payable. Upon the expiration of the residential and commercial restriction periods, if OBLIGOR has not so breached the covenants or restrictions or sold or transferred the Property, the unpaid principal balance of this note shall be forgiven.

This Note evidences the **CITY**'s assistance to the **OBLIGOR** for the cost of acquiring the Property, which was tax-acquired by the **CITY**, and is secured by a mortgage and security agreement on Property and the **OBLIGOR**'s other business property and assets, said collateral being more particularly described in a Security Agreement of near or even date herewith, which is security for this Note, and containing certain covenants and agreements with respect thereto and given by the **OBLIGOR,** as debtor, to the **CITY**, as secured party.

It is understood that this loan is made solely and expressly for the purposes noted above and that said loan is made subject to the following additional terms and conditions:

1. In the event that the **OBLIGOR** fails to pay the full amount of the Note upon the sale or other transfer of the Property prior to the later of the expiration dates of the residential restriction period or the commercial restriction period, **OBLIGOR** shall be in default under this note. In the event that **OBLIGOR** breaches, in the **CITY's** sole judgment, any of the residential or commercial covenants or restrictions on the Property prior to the expiration of the applicable restriction period, and fails to cure such breach within thirty (30) days after written notice thereof, **OBLIGOR** shall be in default under this note. Upon occurrence of an event of default as set forth in this note or any of the documents executed by the **OBLIGOR** in favor of **CITY** in connection with this note, not cured within any applicable grace period, or in the case of default (not cured within the applicable grace period) in the terms or conditions of other instruments or documents which are now or may from time to time hereafter be given as additional security herefor, or in the case of the liquidation, insolvency or business failure of any maker of any other party liable herefor, the CITY may declare the **OBLIGOR** in default hereunder, and the entire unpaid principal balance of this note shall immediately become due and payable, and the **CITY** may exercise all of its rights upon default in accord with such declaration.

2. In no event shall this Note be assigned, transferred, conveyed, or otherwise disposed of in any fashion, in whole or in part.

3. All payments due hereunder and any notice given by the **OBLIGOR** to the **CITY** hereof shall be addressed to the **CITY** at 389 Congress Street, Portland, Maine 04101 (attention: Economic Development), unless written notice of another holder or address be given to the **OBLIGOR**. Any notice by the holder to the **OBLIGOR** hereof shall be addressed to the **OBLIGOR** at Sustainable Cliff Island, P. O. Box 84, Cliff Island, Maine 04019, unless written notice of another address and/or person is given by the **OBLIGOR** to the **CITY**. Any notice shall be deemed duly given if addressed in the manner herein provided and sent postage prepaid, certified or registered mail, return receipt requested or delivered in person if a receipt therefore is executed.

4. This Promissory Note evidences a loan for business and commercial purposes.

5. The **OBLIGOR** and all other parties liable herefor, whether principal, guarantor, endorser or otherwise, hereby severally waive demand, notice and protest, and waive all recourse to suretyship and guarantorship defenses generally, including, but not limited to, any extensions of time for payment or performance which may be granted to the **OBLIGOR** or to any other party, any modifications or amendments to this Promissory Note, or any documents securing payment and performance hereof, any act or omission to act by or on behalf of the holder hereof, any release of security, and release of a liable party or parties, and all other indulgences of any type which may be granted by the holder hereof to the **OBLIGOR** or any other party liable herefor, and do also agree to pay all costs and expenses of any nature, whether incurred in or out of court, and whether incurred before or after this Promissory Note shall become due at its maturity date or otherwise, including, but not limited to, reasonable attorney's fees and costs, which the **CITY** may deem necessary or proper in connection with the collection or satisfaction of the indebtedness evidenced hereby or in the administration, supervision, preservation or protection or (including, but not limited to, the maintenance of adequate insurance) realization upon any collateral security herefor.

6. If any obligation or portion of this Promissory Note is determined to be invalid or unenforceable under law it shall not affect the validity or enforceability of the remaining obligations or portions hereof.

7. This Promissory Note is secured by a mortgage and security agreement from the **OBLIGOR**.

**IN WITNESS WHEREOF**, the Undersigned has duly executed this Promissory Note this ____ day of ___________________, 2015 at Portland, Maine.

WITNESS **SUSTAINABLE CLIFF ISLAND**

________________________ By: _______________________________________

Printed Name:______________________________

Its:_______________________________________

STATE OF MAINE
CUMBERLAND, ss. ______________________, 2014

Personally appeared the above-named ______________________, who is the __________________of **SUSTAINABLE CLIFF ISLAND,** duly authorized, and acknowledged the foregoing instrument to be his/her free act and deed in said capacity and the free act and deed of said corporation.

Before me,

____________________________________
Notary Public/Attorney-at-Law

____________________________________
Print or Type Name

## MORTGAGE AND SECURITY AGREEMENT

**KNOW ALL MEN BY THESE PRESENTS**, that **SUSTAINABLE CLIFF ISLAND**, a Maine non-profit corporation with a mailing address of P. O. Box 84, Cliff Island, Maine 04019 (hereinafter referred to as "Grantor"), for and in consideration of the sum of Forty-Three Thousand Five Hundred Forty-Five Dollars ($43,545.00), paid and advanced to Grantor by the **CITY OF PORTLAND**, a body politic and corporate located at 389 Congress Street, Portland, County of Cumberland, Maine (hereinafter referred to as "Grantee"), the receipt and sufficiency of which is hereby acknowledged, does hereby give, grant, bargain, sell, assign, and convey unto Grantee, its successors and assigns forever, the certain lots or parcels of land, and building materials and supplies and improvements thereon, and to be constructed thereon, at or near 16 Fisherman's Cove, Cliff Island, Maine, as more particularly described in Exhibit A attached hereto and incorporated herein by reference, and collectively referred to as "Premises," to secure the payment to Grantee of said Forty-Three Thousand Five Hundred Forty-Five Dollars ($43,545.00) with interest and other charges, as applicable, in accordance with the terms and conditions of a Promissory Note of even date herewith, given by Grantor to Grantee (hereinafter the "Note"), in the total principal sum of Forty-Three Thousand Five Hundred Forty-Five Dollars ($43,545.00) and to secure such other obligations as hereinafter set forth.

Also conveying and granting hereby as part of the Premises mortgaged hereunder, all of the following described property now or hereafter located on, arising in connection with or affixed to the above-described Premises or used therewith, which may now be owned or may be hereafter owned by Grantor:

A. All improvements, equipment, fixtures and articles of personal property now or hereafter affixed to, attached to or used in connection with the Premises, including without limitation thereof: hardy shrubs and perennial flowers, and all building materials, supplies and all other tangible personal property used or usable in the construction of improvements on the Premises, as well as replacements, additions, substitutions, accessions, and proceeds thereof, all of which are covered by this Mortgage and Security Agreement, (hereinafter the "Mortgage"), regardless of whether such property is subject to prior conditional sales agreements, security agreements, mortgages or other liens. If the lien of this Mortgage on any fixtures or personal property now is, or hereafter becomes, subject to a conditional sales agreement, security agreement, chattel mortgage or other lien covering such property, then, in the event of any default hereunder, all right, title and interest of Grantor in and to any and all deposits made thereon or therefor are hereby assigned to Grantee, together with the benefit of any payments now or hereafter made thereon. There are also hereby transferred, set over and assigned to Grantee, its successors and assigns, all conditional sales agreements, leases and other use agreements with respect to machinery, equipment and other personal property in the categories hereinabove set forth under which Grantor is the lessee of, or entitled to use, such items, and Grantor agrees to execute and deliver to Grantee specific separate assignments thereof when requested by the Grantee. Nothing herein shall obligate the Grantee to perform any obligations of Grantor under such leases or agreements unless Grantee so chooses, which obligations Grantor covenant and agree to well and punctually perform. The taking of an assignment of Grantor's right, title and interest in connection with any conditional sales agreement, security agreement, chattel mortgage or other lien covering the property described in this paragraph shall not be taken as evidence of Grantee's consent or permission to the entering into by Grantor of any conditional sales agreement, security agreement, chattel mortgage or other lien, all of which, if not permitted by Grantee in writing are hereby prohibited.

B. All leases, subleases, rents, profits, revenues, royalties, bonuses, rights, and benefits under any and all leases or tenancies now existing or hereafter created of the Premises or any part thereof, with the right to receive and apply the same to said indebtedness, and Grantee may demand, sue for, and recover such payments, but shall not be required to do so; provided, however, that so long as Grantor is not in default hereunder, the right to receive and retain such rents, issues and profits is reserved to Grantor. To carry out the foregoing, Grantor agrees (i) to execute and deliver to Grantee such conditional assignments of leases and rents applicable to the Premises as the Grantee may from time to time request, while this mortgage and the debt secured hereby are outstanding, and further (ii) not to cancel, accept a surrender of, reduce the rentals under, anticipate any rentals under, or modify any such leases or tenancies, or consent to an assignment or subletting thereof, in whole or in part without Grantee's written consent. Nothing herein shall obligate the Grantee to perform the duties of the Grantor as landlord or lessor under any such leases or tenancies unless and until Grantee succeeds to the position of Landlord under such leases or tenancies, which duties Grantor hereby covenants and agrees to well and punctually perform.

C. All judgments, awards of damages, and settlements hereafter made as a result or in lieu of any taking of the Premises or any interest thereon or party thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Premises or the improvements thereon or any part thereof, including any award for change of grade of streets. Grantee may apply all such sums or any part thereof so received to the indebtedness secured hereby in such manner as it elects or, at its option, the entire amount or any part thereof so received may be released. Grantor hereby irrevocably authorizes and appoints Grantee its attorney-in-fact to collect and receive any such judgments, awards, and settlements from the authorities or entities making the same, to appear in any proceeding therefor, to give receipts and acquittances therefor, and to apply the same to payment on account of the debt secured hereby, whether then matured or not; and Grantor will execute and deliver to the Grantee on demand such assignments and other instruments as the Grantee may require for said purposes and will reimburse the Grantee for its costs (including reasonable counsel fees) in the collection of such judgments and settlements.

Receipt of rents, awards, and any other monies or evidences thereof, pursuant to the provisions of the foregoing paragraphs B and C and any disposition of the same by Grantee shall not constitute a waiver of the right of foreclosure by Grantee in the event of default or failure of performance which continues beyond the expiration of any applicable notice and/or cure periods by Grantor of any covenant or agreement contained herein or any note secured hereby.

**TO HAVE AND TO HOLD** the aforegranted and bargained Premises, with all the privileges and appurtenances thereof, to Grantee, its successors and assigns, to its and their use and behoof forever; **PROVIDED NEVERTHELESS**, that if Grantor pay to Grantee the sum of Forty-Three Thousand Five Hundred Forty-Five Dollars with interest and premium thereon and other charges, if applicable, in accordance with all the terms and conditions of the said Note, and shall repay when due all other advances which shall be made by Grantee to, or for the benefit of, Grantor in accordance with other provisions hereof, as said Note of even date and any notes or evidences of such advances as may be renewed, extended, and modified from time to time, and until such payment performs all of Grantor's obligations, covenants, and agreements contained herein and contained in said Note and notes; or if, in Grantee's sole judgment, Grantor has not breached the residential or commercial covenants or restrictions set forth in the deed to the Premises from Grantee to Grantor of even date (hereinafter, the "Residential Restrictions" and the "Commercial Restrictions," respectively) as of the later of the expiration dates for the residential and commercial restriction periods, then this deed, and also said certain Note and notes, shall be void, otherwise it, or they, shall remain in full force and effect.

Grantor covenants and agrees with Grantee as follows:

1. Grantor is lawfully seized of an indefeasible estate in fee simple in the Premises, free from encumbrances, except as noted in Section 2 herein, or in Exhibit A attached hereto, or in the policy of title insurance issued to GRANTEE on even or near date and has good right, title and power to convey the Premises to Grantee to hold as aforesaid, and that Grantor shall and will Warrant and Defend the same to Grantee forever against the claims and demands of all persons, except as aforesaid.

2. Grantor agrees that any default in the performance of any other mortgage(s) of the Premises or in the payment of the debt secured thereby which continues beyond the expiration of any applicable notice and/or cure periods shall, at the option of the Grantee herein, constitute a default in this Mortgage and Security Agreement entitling Grantee to exercise one or more default remedies hereunder including foreclosure.

3. Grantor shall pay all sums secured hereby when due.

4. Grantor shall pay, when due, all taxes and assessments of every type or nature levied or assessed against the Premises within such time as they may be paid without incurring the payment of interest or penalty, and pay, when due, any claim, lien, or encumbrance against the Premises which may be or become prior to this Mortgage.

5. Grantor shall keep the Premises insured against loss or damage by fire, the perils against which insurance is afforded by the Extended Coverage Endorsement, and such other risks and perils as Grantee in its discretion may require from time to time, including, without limitation, insurance against loss of rental income. The policy or policies of such insurance shall be in such form and shall be in such amounts as Grantee may require, but in no event for less than the amount required to provide payment in full of the costs of complete reconstruction and restoration of any damage and/or destruction resulting from a casualty required to be insured hereunder, without deduction or reduction on account of any "co-insurance" (or similar provision) in such policy or policies, or otherwise; shall be issued by a company or companies approved by Grantee, and shall contain the Standard Maine Mortgagee Clause with Grantee named as an additional loss payee. Whenever required by Grantee, such policies, or certified copies thereof, shall be delivered immediately to Grantee. Any and all amounts received by Grantee under any of such policies may be applied by Grantee on the indebtedness secured

hereby in such manner as Grantee may, in its sole discretion, elect, or at the option of Grantee, the entire amount so received or any part thereof may be released. Upon foreclosure of this mortgage or other acquisition of the Premises or any part thereof by Grantee, such policies shall become the property of the Grantee, subject only to any prior rights of the First Mortgagee, but receipt of any insurance proceeds and any disposition of the same by Grantee shall not constitute a waiver of any rights of Grantee, statutory or otherwise, and specifically shall not constitute a waiver of the right of foreclosure by Grantee in the event of a default or failure of performance by Grantor of any covenants or agreements contained herein or any note secured hereby. Any insurance issued in compliance with this condition shall not be canceled without at least thirty (30) days prior written notice to Grantee.

6. Grantor (i) shall not remove or demolish nor alter the design or structural character of any buildings now or hereafter erected upon the Premises unless the Grantee shall first consent thereto in writing, which consent shall not be unreasonably withheld; (ii) shall maintain the Premises in good condition and repair; (iii) shall not commit or suffer waste thereof; (iv) shall comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Premises and will not suffer or permit any violation thereof.

7. If Grantor fails to diligently defend against or pay when due any claim, lien, or encumbrance which is alleged to be prior to this mortgage, or, when due, any tax or assessment or insurance premium, or to keep the Premises in repair, or shall commit or permit waste, or if there be commenced any action or proceeding affecting this Mortgage or the debt secured hereby, the mortgaged Premises or the title thereto, or pertaining to any other mortgage or lien on the Premises mortgaged hereby or any indebtedness secured thereby, then Grantee, at its option, may pay said claim, lien, encumbrance, tax, assessment or premium, with right of subrogation thereunder, may make such repairs and take such steps as it deems advisable to prevent or cure such waste, and with respect to any such action or proceeding, Grantee may appear in the action or proceeding, retain counsel therein at the expense of Grantor, and take such action therein as Grantee deems reasonably advisable, and for any one or more of the above purposes, Grantee may advance such sums of money as it deems necessary. Grantee shall have no responsibility with respect to the legality, validity, and priority of any such claim, lien, encumbrance, tax, assessment, premium, action or proceeding, as long as it acts reasonably, or of the amount it deems necessary to be paid in satisfaction thereof; Grantor shall pay to Grantee, immediately and without demand, all sums of money advanced or expended by Grantee pursuant to this section, together with interest on each such advancement at a rate of interest of one percent (1%) per month or such maximum rate which is allowed by law, if such rate is less, and all such sums and interest thereon shall be secured hereby.

8. If default be made in payment, when due, of any indebtedness secured hereby, or breach in performance of any of Grantor's obligations, covenants, or agreements, hereunder, in said Note, or Residential or Commercial Restrictions and such default or breach is not remedied within any applicable grace period:

8.1. Grantee is authorized at any time, without notice, in its sole discretion, to enter upon and take possession of the Premises, or any part thereof, and to perform any acts Grantee deems necessary or proper to conserve the security, and to collect and receive all rents, issues, and profits thereof, including those past due as well as those accruing thereafter; and

8.2. Grantee shall be entitled to have a receiver appointed to enter and take possession of the Premises, or any part thereof, collect the rents and profits therefrom, and apply the same as the court may direct.

In either such case, Grantee or the receiver may also take possession of, and for these purposes use, any and all personal property contained in the Premises and used by Grantor in the rental or leasing thereof, or any part thereof. The expense (including receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby. Grantee shall (after payment of all costs and expenses incurred) apply such rents, issues, and profits received by it on the indebtedness secured hereby in such order as Grantee determines; and Grantor agrees that exercise of such rights and disposition of such funds shall not constitute a waiver of any foreclosure once commenced or preclude the later commencement of foreclosure for breach hereof. The right to enter and take possession of said Premises, or any part hereof, to manage and operate the same, and to collect the rents, issues, and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independent thereof. Grantee shall be liable to account only for such rents, issues and profits actually received by Grantee. Grantee shall also have the right to enter the mortgaged Premises before and after any default by Grantor, make inspections, complete or cause to be completed construction thereon and to make the same tenantable or habitable for human occupancy under requirements of all laws and ordinances and the right to expend any balance of loan proceeds and additional sums, necessary in the judgment of Grantee, in order to complete such construction and make the same tenantable or habitable as aforesaid; all such additional sums so expended, with interest thereon at the rate of interest of one per cent (1%) per month or such maximum rate which is allowed by law, if such rate is less, shall be fully secured hereby as necessary to protect the security of this Mortgage.

In the event that no grace period is specified herein for default, then Grantor shall have thirty (30) days from the receipt of notice of default in which to cure said default prior to possession and/or foreclosure by Grantee, unless (i) the nature of the default is such that it cannot reasonably be cured within said thirty (30) days, in which case Grantor shall have such additional period of time as is reasonably necessary as determined by Grantee to effect such cure, provided Grantor commences to cure within said thirty (30) day period and diligently prosecutes the same to completion; or (ii) Grantee's security interest in the Premises could reasonably be expected to be diminished during said thirty (30) day period, in which case Grantee shall have the right to immediate possession of the Premises. The foregoing period to cure default shall not modify or prevent the imposition of any penalty or charge applicable for late payment.

9. No delay by Grantee in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

10. Without affecting the liability of Grantor or any other person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of Grantee with

respect to any security not expressly released in writing, Grantee may at any time and from time to time, either before or after the maturity of said Note and without notice or consent:

10.1. Release any person liable for payment of all or any part of the indebtedness or for performance of any obligation.

10.2. Make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation, or subordinating, modifying, or otherwise dealing with the lien or charge hereof.

10.3. Exercise or refrain from exercising or waive any right Grantee may have.

10.4. Accept additional security of any kind.

10.5. Release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the property mortgaged hereby.

11. Any agreement hereafter made by Grantor and Grantee pursuant to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance to the extent allowed by law.

12. Grantee, at its option, may accelerate the maturity of the indebtedness secured by this Mortgage and may exercise any one or more default remedies, including foreclosure of this Mortgage in whole or in part (a) in the event any owner of the mortgaged Premises during the period of such ownership (other than a mortgagee) shall make an assignment for the benefit of creditors, file a petition in bankruptcy, petition or apply to any tribunal for the appointment of a custodian, receiver or any trustee for it or a substantial part of its assets, or shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (b) if there shall have been filed any such petition or applications, or any such proceeding shall have been commenced against such owner, in which an order for relief is entered or which remains undismissed for a period of sixty (60) days or more; or (c) such owner by any act or omission shall indicate its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or any trustee for it or any substantial part of any of its properties, or shall suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of sixty (60) days or more.

13. The Grantor further covenants and agrees that this Mortgage shall constitute a security agreement with respect to any and all machinery, equipment, chattels, articles or personal property, and fixtures described and included in this Mortgage, and all additions, accessions, substitutions, and replacements thereto and therefor, together with the proceeds thereof, and all of which are hereinafter referred to as the collateral; and Grantor hereby grants and conveys to Grantee, its successors and assigns, a security interest therein. That upon default of any term, conditions, or covenant of this Mortgage and acceleration of any indebtedness hereby secured, the Grantee may, at its discretion, require the Grantor to assemble the collateral and make it available to the Grantee at a place reasonably convenient to both parties to be designated by the Grantee. The Grantee shall give Grantor notice by registered mail, postage

prepaid, of the time and place of any public sale of any of the collateral or of the time any private sale or other intended disposition thereof is to be made by sending notice to Grantor at least five (5) business days before the time of the sale or other disposition, which provisions for notice the Grantor and Grantee agree are reasonable; provided, however, that nothing herein shall preclude the Grantee from proceeding as to both real and personal property in accordance with Grantee's rights and remedies in respect to the real property. Grantee shall have all of the remedies of a secured party under the Uniform Commercial Code as now in effect in the State of Maine, and such further remedies as may from time to time hereafter be provided in Maine for a secured party. Grantor agrees that all rights of Grantee as to said collateral and as to said real estate, and rights and interest appurtenant thereto, may be exercised together or separately and further agrees that in exercising its power of sale as to said collateral and as to said real estate, and rights and interest appurtenant thereto, the Grantee may sell the collateral or any part thereof, either separately from or together with the said real estate, rights, and interest appurtenant thereto, or any part thereof, all as the Grantee may in its discretion elect.

14. The Grantor shall maintain full and correct books and records showing in detail the earnings and expenses of each of the properties constituting the mortgaged Premises; will permit the Grantee and its representatives to examine said books and records and all supporting vouchers and dated at reasonable times upon request by the Grantee at the mortgaged Premises or at such other place in the city and county in which the mortgaged Premises are located as such books and records are customarily kept. In addition, Grantor hereby agrees to furnish to Grantee: (i) within one hundred twenty (120) days after the close of each fiscal year an annual financial statement of the operation of each of the properties constituting the Premises reflecting income (including sources thereof) and expenses in reasonable detail, prepared in accordance with generally accepted accounting principles consistently applied and prepared by a certified public accountant or other competent accountant acceptable to Grantee; and (ii) such other information respecting the financial condition and operations of Grantor as the Grantee may reasonably request from time to time, including interim financial statements.

15. The Grantor, within seven (7) days upon request in person or within ten (10) days upon request by mail, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, and stating either that no offsets or defenses exist against the Mortgage debt, or if such effects or defenses are alleged to exist, the nature thereof.

16. If, at any time, the then existing use or occupancy of the mortgaged Premises shall, pursuant to any zoning or other law, ordinance, or regulation, be permitted only so long as such use or occupancy shall continue, that Grantor shall not cause or permit such use or occupancy to be discontinued without the prior written consent of the Grantee.

17. At the request of Grantee, the Grantor shall submit to the Grantee for Grantee's examination and approval in writing, all standard form or forms of leases, to be used on the Premises mortgaged hereby and any part thereof prior to the execution, delivery and commencement thereof; and any such leases, tenancies and occupancies, not in the form so approved, shall not be valid; and Grantor at its cost and expense, upon request of Grantee, shall cause any parties in possession of the Premises under any such leases, tenancies and occupancies (other than by Grantor and/or Grantor' immediate family), not in the approved form, to vacate the Premises immediately, and Grantor acknowledges that Grantee may from time to time at its

option enter upon the mortgaged Premises and take any other action in court or otherwise to cause such parties to vacate the Premises; the costs and expenses of Grantee in so doing shall be paid by Grantor to Grantee on demand thereof and shall be part of the indebtedness secured by this Mortgage as costs and expenses incurred to preserve and protect the security; such rights of Grantee shall be in addition to all its other rights as Mortgagee, including the right of foreclosure, for breach by Grantor in the requirements of this section.

18. The Grantor shall manage or provide for the management of the mortgaged premises in a manner acceptable to Grantee.

19. The Grantor shall not, without the prior written approval of the Grantee, its successors or assigns, which approval will not be withheld unreasonably, incur any liability, additional debt or encumbrance, secured by the mortgaged Premises, whether or not in the ordinary course of business of developing and operating the mortgaged Premises. In the event that Grantor requires financing in order to make improvements to the Premises consistent with the residential or commercial covenants and restrictions set forth in the deed to the Premises from Grantee to Grantor of even date herewith, Grantee agrees to subordinate the lien of this mortgage to a mortgage from Grantor to its lender securing a loan in an amount not to exceed $300,000.00.

20. It is an additional condition of this Mortgage and Security Agreement for breach of which foreclosure may be claimed and for breach of which all indebtedness secured hereby may be declared due and payable at once, that, without Grantee's prior written consent, neither the Grantor nor any subsequent owner of the Premises mortgaged hereby shall convey, mortgage, sell, contract to sell, lease or otherwise transfer or encumber the title, ownership, right of possession, or any other interest in the mortgaged Premises, or in any part thereof, nor shall any interest in said Premises pass from Grantor or from any subsequent owner, either voluntarily, involuntarily, by operation of law or otherwise. This condition shall continue until all indebtedness and obligations secured hereby are satisfied and permission given or election made not to foreclose or accelerate said indebtedness by Grantee, its successors or assigns, as to any one such event, and such permission or election shall not constitute a waiver of any rights of Grantee, its successors or assigns, as to any subsequent such event as to which this condition shall remain in full force and effect. The term <u>title</u> as used herein shall mean the estate of the Grantor subject to the lien of this Mortgage. Any change in the legal or equitable title of the Premises or in the beneficial ownership of the Premises whether or not of record and whether or not for consideration or sale or other disposition of the stock of Grantor, if Grantor is a corporation, or other ownership interest of whatever form, shall be deemed a sale of the Premises and without the prior written consent by Grantee shall constitute a default herein by Grantor.

21. The Grantor covenants that it has not discharged, dumped nor maintained, and shall not discharge, dump nor maintain, toxic, hazardous, or radioactive substances, materials or wastes, including asbestos, in or on the mortgaged Premises except in compliance with all applicable environmental laws and regulations. Further, Grantor has not knowingly allowed, suffered nor permitted, nor shall Grantor knowingly allow, suffer or permit, toxic, hazardous, or radioactive substances, materials or wastes, including asbestos, to be discharged, dumped or maintained in or on the Premises except in compliance with all applicable environmental laws and regulations. Notwithstanding the foregoing, nothing herein is intended to, nor shall it,

prohibit Grantor from removing any toxic or hazardous substances, including, but not limited to, asbestos, from the Premises which may be discovered during renovation, said removal to be done in compliance with applicable local, state and/or federal laws or regulations. The term "Hazardous Substances" as used and referred to in this Mortgage shall include, without limitation, any chemical, material or substance which is or may be regulated by any federal, state or other governmental authority or agency. If Grantor should fail to take with diligence any action required by Grantee or by any governmental entity with respect to the clean-up of any such described substances, materials or wastes on the Premises, Grantee, at its option, may retain such experts and consultants at the expense of Grantor and take such action as Grantee deems advisable; and Grantee may advance such sums of money as it deems necessary with respect to the clean-up of any such substances, materials or wastes on the Premises. Grantor shall pay to Grantee immediately and upon demand, all sums of money advanced or expended by Grantee pursuant to this section, together with interest on each such advancement at a rate allowed by law, whichever is less, and all such sums, and the interest thereon, shall be secured hereby, as sums spent to preserve and protect the security.

21.1. The Grantor hereby agrees to release, defend, indemnify, and hold harmless the Grantee, its officers, agents, and employees from and against all claims, demands, liability, damages, loss, cost or expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense, and settlement of claims) that the Grantee may incur as a result of or in connection with the assertion against the Grantee of any claim relating directly or indirectly, in whole or in part, to the presence or removal of any such Hazardous Substances, or relating to any activity on or off the Premises, whether prior to or during the term of this loan, and whether such activity was carried on by the Grantor or any predecessors in title or any employees, agents, contractors or third parties, if such activity involved Hazardous Substances, in whole or in part, directly or indirectly, or noncompliance with any federal, state or governmental laws, ordinances, rules, regulations or orders relating thereto. Grantor's obligations in this paragraph shall survive the Grantor's ownership of the Premises and the discharge of this mortgage and security agreement and shall be binding upon Grantor's successors and assigns.

21.2. The Grantor shall promptly notify the Grantee in writing of any order or pending or threatened action by any regulatory agency or other governmental body, or any claims made by any third party, relating to Hazardous Substances in or on, or emissions thereof from the Premises, and shall promptly furnish the Grantee with copies of any correspondence, documentation and legal pleadings in connection therewith.

22. The covenants and agreements herein contained shall bind, and the benefits and advantages thereof shall inure to, the respective heirs, executors, administrators, successors and assigns of the Grantor and Grantee. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

23. If any obligation or portion of this Mortgage and Security Agreement is determined to be invalid or unenforceable under law, it shall not affect the validity or enforcement of the remaining obligations or portions hereof.

24. The following documents are incorporated herein by reference and any default on the terms thereof after the expiration of any applicable notice and/or cure periods shall be a default under this Mortgage and Security Agreement:

24.1 A Security Agreement(s) and Promissory Note, with or from Grantee in the amount of Forty-Three Thousand Five Hundred Forty-Five Dollars ($43,545.00), of near or even date herewith;

24.2 An indemnification agreement between Grantor and Grantee of near or even date herewith; and

24.3 The Residential Restrictions and the Commercial Restrictions in the deed to the Premises from Grantee to Grantor or near or even date herewith.

25. The Grantee, its successors and assigns, for breach of any term, conditions, covenant or agreement contained or referred to herein, shall have the right of foreclosure and any and all other rights and remedies given to a Mortgagee and Secured Party under the law of Maine, this Mortgage and Security Agreement and any instrument it secures; and if the Grantor herein is a corporation, the Grantee, its successors and assigns, shall have the statutory power of sale in addition to all other such rights and remedies.

**IN WITNESS WHEREOF**, the Grantor has executed and delivered this instrument this ______day of _______________, 2015.

WITNESS

_______________________

SUSTAINABLE CLIFF ISLAND

By:_______________________________
Printed Name:______________________
Its:_______________________________

State of Maine
Cumberland, ss.

Dated: ____________, 2015

Personally appeared the above named ____________________, __________________ of Sustainable Cliff Island, and acknowledged the foregoing instrument to be his/her free act and deed in said capacity and the free act and deed of said Corporation.

Before me,

______________________________
Notary Public/Attorney-at-Law

______________________________
Print or type name

**EXHIBIT A**

A certain lot or parcel of land, with buildings thereon situated on the southeasterly side of Cliff Island in Casco Bay, in Portland, Cumberland County, Maine, bound and described as follows:

Beginning at a point in the westerly sideline of land formerly of Hannah C. Small, sixty (60) feet southeasterly from the “City Street”, so-called; thence southwesterly parallel with said street, sixty-three (63) feet to land conveyed by Luch A. Small to George E. Nickerson; thence southeasterly along said Nickerson land to the seashore; thence northeasterly along said shore to land formerly of Hannah C. Small; thence northwesterly along the westerly line of land formerly of Hannah C. Small to the point of beginning; together with a right of way from the northwesterly corner of the land hereby conveyed to the “City Street” so-called, over a strip of land now or formerly of Lucy A. Small lying between lands conveyed to George E. Nickerson and Mary E. Hammond.

Also adjacent lot or parcel of land situated on the southeasterly side of Cliff Island, in Casco Bay, in Portland, Cumberland County, Maine, bounded and described as follows:

Beginning at the most northerly corner of the before described lot of land, and at a point sixty (60) feet southeasterly from the “City Street” so-called; thence northeasterly along the line of land conveyed by Hannah C. Small to Mary G. Hammond, fifty-three (53) feet to a point; thence southeasterly parallel with the northeasterly line of the before described lot of land to the seashore; thence southwesterly and southerly along the shore to the before described lot of land; thence northwesterly along the northeasterly sideline of the before described lot of land, to the point of beginning.

Subject to any encroachment that may exist now or may have existed before, caused by a wooden workshop building on the boundary of the property herein conveyed, but only to the extent that such encroachment is valid and enforceable.

Together with the buildings and improvements, including the wharf now situated on said premises, and the shore and flats abutting or appurtenant to the property herein conveyed, including all riparian rights, littoral rights and rights of fishery.

Also subject to the easement conveyed by Suzanne H. Rieth to Muriel S. Anderson by deed dated January 19, 1990 and recorded in the Cumberland County Registry of Deeds in Book 9065, Page 262.

Meaning and intending to convey, and hereby conveying, the same property as described in the tax lien certificate recorded on June 17, 2008, in the Cumberland County Registry of Deeds in Book 26133, Page 234. Title reference is made to the Affidavit of Linda McLeod dated April 11, 2014, recorded in said Registry in Book 31598, Page 140.

Title reference is also made to the Personal Representative’s Deed of Distribution from Bruce McAfee, Personal Representative of the Estate of Suzanne H. Rieth, (see Cumberland County Probate Docket No. 2003-141 to Holy Kessinger and Bruce Rieth, dated April 20, 2004) and recorded in said Registry in Book 21688, Page 1483.

# SUSTAINABLE CLIFF ISLAND

P.O. Box 84
Cliff Island, Maine 04019

September 30, 2014

City of Portland
Purchasing Office
City Hall—Room 103
389 Congress Street
Portland, Maine 04101

RE: RFP #1515 – 16 Fisherman's Cove, Cliff Island, Portland, Maine

Ladies and Gentlemen:

I am pleased to enclose the response of Sustainable Cliff Island to the above referenced RFP, consisting of the following documents:

-- This letter
-- Proposal Cover Sheet and receipt for Addendum #1, signed by me.
-- Bank cashier's check payable to the City of Portland in the amount of $1,000.
-- Disclosure statement.
-- Sustainable Cliff Island Vision for 16 Fisherman's Cove
-- Proposed form of Purchase and Sale Agreement and Exhibits, marked to show changes from the form in the RFP package.

We look forward to hearing from you.

Sincerely,

Cheryl Crowley

Cheryl Crowley
President

**PROPOSAL**

***THIS PAGE MUST BE INCLUDED***

The UNDERSIGNED hereby declares that they have read and understand all conditions as outlined in the invitation for proposals, and that their proposal is made in accordance with same.

The UNDERSIGNED hereby declares that any person(s) employed by the City of Portland, Maine, who has direct or indirect personal or financial interest in this proposal or in any portion of the profits that may be derived therefrom, has been identified and the interest disclosed by separate attachment. (Please include in your disclosure any interest which you know of. An example of a direct interest would be a City employee who would be paid to perform services under this proposal. An example of indirect interest would be a City employee who is related to any officers, employees, principal or shareholders of your firm or to you. If in doubt as to status or interest, please disclose to the extent known).

TOTAL PROPOSAL FOR PROPERTY:
Cash Value: $ 10,000 *
Land Fair Market Value for Public Services: $ 0

Enclosed is a proposal surety of $ 1,000 equal to 10% of the amount being proposed (cash + land fair market value [latter if included in proposal]).
Proposed form of purchase and sale agreement is attached.
The proposer acknowledges the receipt of Addenda numbered N/A
(If Applicable)

COMPANY NAME: SUSTAINABLE CLIFF ISLAND
(Individual, Partnership, Corporation, Joint Venture)

AUTHORIZED SIGNATURE: Cheryl Crowley DATE: ____________
(Officer, Authorized Individual or Owner)

PRINT NAME & TITLE: Cheryl Crowley, President

ADDRESS: P.O. Box 84

Cliff Island, Maine 04019

TELEPHONE: (207) 781-5331 FAX: ____________

E-MAIL: rkberle@msn.com FEDERAL TAX ID NUMBER: 46-2381961

SALES TAX EXEMPTION NUMBER: N/A

**NOTE: All proposals must bear the handwritten signature of a duly authorized member or employee of the organization making the proposal. This sheet must be signed and returned with the proposal package.**

**SUSTAINABLE CLIFF ISLAND**

**DISCLOSURE STATEMENT**

**CITY OF PORTLAND RFP # 1515**

**September 30, 2014**

Sustainable Cliff Island ("SCI") is not aware of any individuals who are employed by the City of Portland who have a direct or indirect personal or financial interest in this proposal or in any portion of the profits that may be derived therefrom except as follows:

-- Cheryl Crowley, SCI Board Member, is employed by the City of Portland as a substitute teacher. Ms. Crowley serves SCI as an unpaid volunteer, receives no compensation from SCI and is prohibited by law from sharing in any profits earned by SCI derived from this proposal.

-- David Crowley, husband of Cheryl Crowley, is employed by the City of Portland as a firefighter. Mr. Crowley is not a board member of SCI and does not at the present time have any contractual right to profits from this proposal or other contractual arrangements with SCI.

O:\MAS\86700 Sustainable Cliff Island\Disclosure.docx

# *Sustainable Cliff Island*

## *The Vision for 16 Fishermen's Cove*

The parcel located at 16 Fishermen's Cove on Cliff Island is a *"three-fer"* property, critically essential to the future of the year-round Cliff Island community. To that point, **SCI** proposes to redevelop and operate the infrastructure there for the public benefit of the community in *three* direct ways.

1. **Fuel.** We will remove the old, existing fuel tanks and replace them with two new double-wall tanks with a total capacity of less than 1,300 gallons – a number which falls below some DEP requirements. We will clean up and remove any contaminated soil and install whatever containment infrastructure is required. Over the coming decades, we will keep available a fuel supply adequate to community need.

2. **Affordable Housing.** We will renovate the existing home and make it available for a tenant or tenants who meet accepted criteria for renting such a home. We will not only apply State and City standards in assessing their qualifications but will also consult with the comparable affordable housing organizations on the other year-round Maine island communities as to their selection processes.

3. **Wharf.** We will rebuild the fuel dock so that not only Cliff Island fishermen but also other fishermen in need can easily and safely bring their boats in to fuel up. Recreational boaters will of course have the same opportunity. Outreach to the pleasure boats frequenting nearby Jewell Island Harbor will provide an additional market for our fuel business.

SCI is a private corporation, established in 2013 and is in the process of becoming a 501c3 nonprofit. Until the IRS approves our request, we currently have a formal agreement with The Island Institute to serve as our Fiscal Agent. From this point on, we are able to accept and benefit from tax-deductible contribution. We are also very much a community-focused organization. We have received seed money as financial support from Cliff Island's civic organization, the Cliff Island Association.

Since the August 6th "City Fathers" meeting on Cliff Island, we have held both a full island community meeting and an abutters meeting each dedicated to this project. On both of these occasions, there was substantial positive feedback and interest in what we propose to do and no discernible negative feedback.

We have come to several general meetings in City Hall to hear about and discuss the RFP terms. We have had a small meeting in Greg Mitchell's office. And we participated in the required September 12th walk-through of the site.

From these meetings and from very long personal association with this property, we believe we fully understand the scope of this project and are capable of making it sustainable and successful. There will be direct benefits from the three initiatives described above. We will increase employment on the island both during construction and later when we are operational. We will expect to rent to a person or family who can add to the Island's labor force, perhaps bring a child or children for our School – or both.

There will also be indirect benefits – such as we experienced when we as a community put together similar initiatives in the early 1970's and in the mid 1990's . In both of those periods, Islanders' energy and involvement revitalized our community and significantly boosted our year-round population.

We have contracted with Woodard & Curran for a Phase II Environmental Assessment regarding clean-up of the site. We have researched or are researching foreseeable expenditures for building a near-term budget. We are working with a lawyer who is experienced in affordable housing.

On our Board, we have extensive knowledge of the fuel operation from running it over the past decade, we have three experienced contractors and we all have boats. We have experience in writing grants to funders and in doing individual fund raising both within and without the Island community.

100% of the Board has already made a financial contribution to SCI. We expect this to be a substantial financial undertaking and believe we are up to the task. Because we are a corporation and not simply a group of individuals, this should be sustainable as an Island institution.

Each of the four Directors has at least three generations of Cliff Island family history behind them.

We will be utilizing both volunteer and paid labor for construction and will have in hand all necessary permits.

Our SCI Business Plan calls for near-term expenditure of $30,000, including but not limited to:

1. Purchase
2. Legal fees
3. Site clean-up
4. Permits
5. Taxes
6. Insurance

We then project the expenditure of $300,000 over the next two years, to:

1. Upgrade the Fuel operation to all current standards
2. Upgrade the septic system to legal status.
3. Gut and renovate the house suitable to rental occupancy

4. Rebuild the former grocery store suitable to at least the level of a small convenience store - which will also cater to boaters, local and transient
5. Rebuild the wharf suitable to safely and comfortably tying up boats for fueling
6. Build and install a float for cultivating recreational boaters' fuel and chandlery needs.

In sum, purchasing and redeveloping #16 fishermen's Cove is a very ambitious and costly undertaking, but it is one which we believe is a top priority for the future sustainability of our Cliff Island community. All three components of the property and project will bring both short-term and long-term benefits to the year-round community. We believe that Sustainable Cliff Island has the will and can find the resources to make this project a success.

Cheryl Crowley, President; Bob Howard, Vice President; Eric Anderson, Secretary; Roger Berle, Treasurer.

Jeff Levine, AICP
Director, Planning & Urban Development Department

# Memorandum

**To:** Housing and Community Development Committee

**From:** Jeff Levine, Director

**Date:** January 22, 2015

**Re:** Requests for Additional Information on Housing Policy

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## SUMMARY OF ISSUE

Staff recommends that the HCDC consider and endorse the recommendation policy direction outlined below, with some target answers to the questions posed in that section, and instruct staff to move forward on drafting these various ordinances and bringing them forward to Planning Board review and eventual City Council votes.

At your last meeting, we presented the *2030 Workforce Housing Demand Study* prepared by the Greater Portland Council of Governments to look at the housing market in Portland. That study found that 29 percent of the housing produced is affordable to low-, moderate-, or average-income families, either intentionally or because of the type of housing and how it is priced in the market. That study further found that the need for housing at those prices is between 24 and 33 percent of production, depending on how it is calculated. There is therefore a market failure taking place, where the product being developed, welcome as it is, does not entirely match the needs of the market.

After the presentation of the housing study at your last meeting, you requested the following information as next steps:

<u>City Growth Goals and Strategies</u>
1. What is the goal of City growth and is there any indication of our "carrying capacity"?

<u>Middle Class Housing Strategies</u>
2. Examples of Inclusionary Zoning in other places and how it is working
3. How have our existing policies resulted in more affordable housing?
4. Would we consider doing something by part of the city such as by district? What about Peaks Island?
5. What are other communities in Maine doing?
6. How would increased density incentives and new requirements work together?

<u>Status and Future of Outreach</u>
7. How do we engage the business community and public?

**COMMITTEE GOAL/COUNCIL GOAL ADDRESSED**

Promote Housing Availability – Provide increased availability in all segments of the housing market while insuring that there is a suitable balance of housing opportunities among those sectors. Objective: Complete assessment of and, as appropriate, begin to offer city owned property to construct affordable housing.

**FINANCIAL IMPACT**

These actions may have a positive financial impact on the City by allowing for increased housing production at a range of income levels. Given that there is already significant growth in the housing market, however, that impact may be minimal.

**STAFF RECOMMENDATION**

**<u>City Growth Goals and Strategies</u>**
**1. What is the Goal of City Growth/Does the City have a "Carrying Capacity?"**

These are interesting questions and somewhat separate ones.

The City set a goal in 2002 of including 25% of the County's population. The purpose of that goal is to ensure that the region thrives in a sustainable and livable way. By preserving a core of population in Portland, the center of the region, quality of life can be maintained by supporting public transit, walkability, and infrastructure required for economic growth. The counterargument is that there is no public purpose in promoting urban growth and density. In this scenario, the City would have to be reimagined as just another suburban community in the region. Cities such as Youngstown, Ohio, have embraced this approach and attempted to right-size their infrastructure to their new, reduced role in their region, with mixed results. This does not appear to be consistent with City Council goals and the needs of the community.

The issue of the "carrying capacity" of the City is an interesting one. The great thing about urban development, as opposed to suburban development, is that the style of development has a dramatically increased carrying capacity. If the City did not have municipal water and sewer, and public transit, there would be a carrying capacity indicated by the limits to these services. The Cape Cod Commission conducted studies of parts of their region in the 1990's to measure the carrying capacity of those parts of Cape

Cod[1], which indicated that continued growth at the rates then occurring would result in impaired water quality as septic systems overloaded the aquifer, and in winter traffic worse than summer traffic at that time. These studies resulted in the passage of the Cape Cod Land Bank as a way of reducing the rate of growth in the region, as well as increased investment in public water and sewer systems.

In an urban area, where these capacity constraints can be offset by public infrastructure and the density to support alternatives to single-occupant vehicles, these limitations are much higher. Cities are designed to be able to grow as systems, if that is what their leaders desire. In the case of Portland, where we are advancing improvements to our sewer systems to reduce our impact on water quality; working to improve and expand our transit system; created an extensive roadway system; have a park system that exceeds national standards for open space per capita; and have worked with utilities to expand energy options, carrying capacity is not a major issue.

On the islands, carrying capacity is a real issue. Even on Peaks Island, with some water and sewer infrastructure, there is a capacity to new development and growth based on the limitations of those systems. That is why tools with limited impacts on that capacity, like Accessory Dwelling Units, make more sense on the Islands.

**Middle Class Housing Strategies**
**2. Examples of Inclusionary Zoning**

Attachment A is a summary of inclusionary zoning ordinances in a range of communities around the country. Inclusionary zoning ordinances are most popular in California, where over 30 cities have some sort of ordinance, and Massachusetts, where over 20 do. Inclusionary zoning ordinances also exist in Vermont, Rhode Island, the District of Columbia, Colorado, Maryland, and New Mexico, as well as here in Maine. The state of New Jersey has a state-wide program requiring proactive affordable housing goals be met, and Rhode Island and Massachusetts have similar state-wide requirements. For example, in Massachusetts, every city and town is expected to include at least 10 percent affordable housing, as defined by the state. In municipalities that have not met that goal, developers can seek a “Comprehensive Permit” for a project that includes at least 20 percent affordable housing. A Comprehensive Permit application must be approved unless the municipality can clearly explain why the project is not in the public interest. In effect, a Comprehensive Permit allows a developer to ignore zoning in these communities.

It is slightly more difficult to gauge how effective these inclusionary zoning ordinances have been. The attachment indicates for some communities how many affordable or workforce units have been created under the ordinance. The numbers range widely.

[1] *Outer Cape Capacity Study* (1996) and *Monomoy Capacity Study* (1997)

Attachment B is a study by the Furman Center for Real Estate and Urban Policy at New York University about the effectiveness of inclusionary zoning in various locations. Attachment B also contains some information from the State of Rhode Island about developing Inclusionary Zoning ordinances, as well as a similar document from housingpolicy.org, a web site produced by the Center for Housing Policy and the National Housing Conference.

In general, it seems that Inclusionary Zoning ordinances can be an effective part of an affordable housing program. However, the requirements should be tailored to the needs of a community and efforts should be made to ensure, as much as possible, that the inclusionary requirements will have a minimal impact on housing production and pricing.

Attachment C is a model Inclusionary Zoning ordinance drafted as part of a Smart Growth Tool Kit in Massachusetts. Attachment D is a draft ordinance that was under development in Portland as part of the India Street Sustainable Neighborhood Plan.

**3. How have existing City policies resulted in affordable housing?**

City policies are broadly divided into two categories: financial supports, and city ordinances.

City financial support for affordable housing consists of federal programs administered by the City, as well as local funding from the City's Housing Trust. Attachment E is a summary of affordable housing production from these financial supports. It is important to note that almost all of this housing is affordable at levels of 50-80% of area median income. Very few projects have produced workforce housing in Portland to date. One- at the Munjoy Street site- is currently under development. This limited production is because the Federal HOME and CDBG programs cannot be used to produce workforce housing. Instead, these projects have to rely on the City's Housing Trust, which is limited, and/or federal programs like the Neighborhood Stabilization Fund, which are only rarely available.

City ordinances include the housing replacement ordinance – which is currently the primary source of capitalization for the Housing Trust – and density bonuses offered in the Land Use Code. The housing replacement ordinance requires that, in some cases, when a housing unit of any type is demolished and not replaced, an amount be given to the Housing Trust. This amount began at a baseline of $50,000 and indexes up based on the Consumer Price Index. It is currently at about $64,700. While this is an effective tool to discourage removal of existing housing units, the amount contributed to the Housing Trust is generally not sufficient to actually replace the lost unit. In most cases, the cost of producing an affordable unit is about twice that amount. One notable exception you recently approved, the Rosa True School, was unusual in that the City was enabling the creation of two new affordable units for about $104,000. However, those were additional units in an existing building, and therefore were a low outlier.

The density bonus provision of the Land Use Ordinance allows up to a 25% bonus in density for affordable housing developments. This provision is used occasionally by developers but only in conjunction with the financial supports described above. It is likely insufficient in itself to produce affordable units that are not getting other public subsidies.

**4. Would we consider doing something by district? What about Peak's Island?**

Any inclusionary zoning requirement could theoretically be by district, as is done in some cities on Attachment A. The advantage of such an approach is that it might allow the city to target affordable and workforce housing production in some parts of the city, either where the need is greatest or where the goal is to focus such housing production.

The India Street Sustainable Neighborhood Plan's Housing and Equity Working Group studied the issue of affordable housing production and even drafted a sample ordinance (Attachment D.) In the end, however, the Working Group decided that the requirement should not only apply to the India Street neighborhood, out of concern that it would create an uneven playing field between housing production in that area as opposed to other neighborhoods. The Working Group recommended that any inclusionary requirement be applied city-wide.

If there were a determination that any requirement should be focused in one particular area, the logical divide would be I-295. Many other land use ordinance requirements, such as the parking requirement, vary between south of I-295 and north of I-295. In this case, the housing production rate south of I-295 is much higher than that north of I-295. Specifically, 995 of the 1130 units developed since 2010 have been south of I-295:

**Housing Production since 2010**

| | Peninsula | Off-Peninsula | Island | Total |
|---|---|---|---|---|
| **Affordable** | 320 | 16 | 0 | 336 |
| **Market Rate** | 675 | 108 | 11 | 794 |
| **Total** | 995 | 124 | 11 | 1130 |

*Source: Greater Portland Council of Governments*

That variation may justify focusing a requirement. On the other hand, it may also indicate that such a focus is not necessary, since the rate of production would determine the inclusionary production rate.

As for Peaks Island, there has been interest in an expansion of the existing Accessory Dwelling Unit ordinance to encourage production of affordable accessory units on Peak's Island. Such an ordinance should be considered as part of an overall package of policy changes to produce workforce and affordable housing.  A sample of such an ordinance from Wellfleet, MA, is attached as Attachment F.

**5. What are other communities in Maine doing?**

As indicated in Attachment A, Cape Elizabeth has an inclusionary zoning requirement. That requirement is the only one we are aware of in Maine. However, some other communities have incentives such as the ones already on the books here in Portland, with similarly few results. Conversations with the Town Planner in Cape Elizabeth indicate that their program has been reasonably effective and does not appear to have reduced the interest in developing housing in that town.

Many other communities in Maine use financial incentives to produce housing for low- and moderate-income residents, either through the HOME program or other federal funding. However, none appear to proactively work on production of workforce housing. This is likely because in many of the communities in Maine, either there is no shortage of housing at that price point (such as in the other urban cities) or there is not much demand for housing at that price point (such as in the more affluent suburbs.)

**6. How would increased density incentives and new requirements work together?**

Based on all this information, and additional research on best practices in housing policy, I recommend that HCDC propose that staff develop a package of policy changes to respond to the housing study as follows:

- *Changes to density of housing development allowed in key zoning districts*, such as the B-2 zone (approved by Council,) the R-6 zone (before the Planning Board,) and other business zones such as the B-6 zone. These density increases should be done with public outreach and with sensitivity to the built environment in these areas. As an example, as part of the R-6 zoning changes, staff met with all of the neighborhood organizations on the peninsula, as well as with other interested parties, to explain the goals and get feedback on how the language should read. As a result of this process, the language is both more context sensitive and more effective.
- *Limited density bonus changes for workforce and affordable housing*. The existing language should be amended to include all deed-restricted units at less than 120% of area median income. Staff should also consider increasing the density bonuses somewhat. However, given that the existing bonuses are already fairly large (25%), any changes to them should be limited. In addition, there is a concern that increasing the density bonus for affordable housing would create resentment in neighborhoods towards affordable or deed-restricted housing. The primary tool for promoting housing should be changes to the overall densities.
- *Inclusionary Zoning focused on 80-120% AMI Production*. Staff does not feel that these increased densities alone will address the need to increase the development of low-, moderate- and average-income housing by 24 to 33 percent. We strongly

recommend that the HCDC include in any package of policy responses an inclusionary zoning ordinance based on the model language enclosed.

As you can see from Attachment A, inclusionary zoning can be tailored to each community's needs and policies. For example, some ordinances have no minimum number of units, and some only apply to larger projects. Some ordinances have high affordability requirements and others have lower requirements. The type of "affordable" units also vary, with some place focusing on production of very low income housing, some on workforce housing, and some seeking a mix.

For your consideration, we offer a range of options for each of these three key issues to guide staff in this process:

| Issue | Low Option | Medium Option | High Option |
|---|---|---|---|
| Minimum Threshold | 5 units | 10 units | 20 units |
| Inclusionary Requirement | 5% of units | 10% of units | 15% of units |
| Affordability Target | 80% AMI | Mix of 80% and 100% AMI | 100-120% AMI |

Note that, for a family-sized residence (2-3 bedrooms), units for 50% AMI would have to rent for approximately $1000, or sell for about $150,000. Units for 80% of AMI would have to rent for approximately $1,800 or sell for about $250,000. "Workforce" units for 100% AMI would rent for about $2000 or sell for about $300,000.

To aid you in this consideration, Attachment G is a table developed during the India Street Sustainable Neighborhood Plan's Housing and Equity Working Group process showing the various projects that might have been required to meet an inclusionary requirement and how many units they would have had to provide in a 10% requirement beginning at 10 units.

- *Accessory Dwelling Units*: For Peaks Island, and perhaps for the other residential zones in Portland, we believe that the ability to create affordable accessory dwelling units can be a nice complement to these other strategies. We do not believe that the R-1 through R-5 zones should be changed to allow increased density generally. However, an affordable accessory dwelling unit provision that is applied to these zones, in addition to the IR (island residential) zones, may help increase appropriate, affordable housing units with minimal negative impacts to these neighborhoods.

Even this package is unlikely to meet the needs of the community entirely. However, staff is concerned that taking more aggressive action at this time might adversely impact the housing production market at a time when the City is promoting appropriate housing development at all income levels. We feel that this combination of upzoning, density increases and small affordability requirements is a prudent step to take to address the problem identified in the *2030 Workforce Housing Study*.

## Status and Future of Outreach

### 7. How do we engage the business community, housing advocates, and the public?

Staff has been meeting with interested parties on this issue over the past year. The Portland Society for Architecture is holding an event on housing just before your January 28th meeting. In addition, I have offered to present on this issue to MEREDA and/or the Portland Chamber. I am optimistic that the business community can arrange for an event on this issue in the near future, prior to a final vote by the Council on any actions.

Staff also proposed holding our own public meeting on this issue once we have a draft set of ordinances to present, based on HCDC guidance.

# ATTACHMENT A

**Sample Inclusionary Zoning Requirements from other Cities in the US**

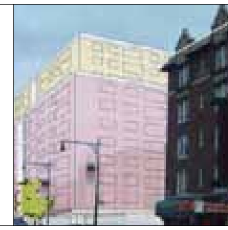
| CITY | Year Enacted (est.) | Requirement | Units Produced | Target Incomes | Notes |
|---|---|---|---|---|---|
| *Arlington, MA* | | 15% of units | | | |
| *Belmont, MA* | | 10-15%, no minimum units | | | |
| *Boulder, CO* | | 20%, no minimum units | | 60% AMI | |
| *Brookline, MA* | 1998 | 15% of 6 or more units and 15% of all bedrooms | | 80-100% AMI | Cash out up to 15 units |
| *Burlington, VT* | | 25% of 6 or more units | | | |
| *Cambridge, MA* | 1998 | 15% of 10 or more units | 450 | 65% AMI | 30% density bonus |
| *Cape Elizabeth, ME* | | 5% (low)-10% (moderate income) of 5 or more units | | Below 80% AMI | Also includes Accessory Dwelling Unit language |
| *Carlsbad, CA* | 1994 | 15% of 7 units or more | 1246 | Below 80% AMI | |
| *Emeryville, CA* | 1990 | 10-20% of 30 or more units | | | |
| *Fairfax County, VA* | 1992 | Over 20 Units | 2448 | "Affordable" | |
| *Lincoln, RI* | 2006 | 20% of over 5 units | | 80% AMI | Given density bonus |
| *Montgomery County, MD* | 1976 | Over 50 Units | 13000 | "Moderate" | |
| *Newton, MA* | | 15% of units | | | |
| *Petaluma, CA* | 1984 | 15% of 3 units or more | 1157 | | |
| *Pittsburg, CA* | 2004 | 6-20% of 5 units or more | 11 | Below 100% AMI | |
| *Santa Fe, NM* | 2006 | 15% of 25 units or more | | Up to 120% AMI | City provides up to $10,000 subsidy per unit |
| *Tallahassee, FL* | 2004 | 10% of 50 or more units | | 70-100% AMI | |
| *Waltham, MA* | | 5% (if given to WHA) or 10% | | | |
| *Washington, DC* | 2006 | 8-10% | | 50-80% AMI | |
| *Watertown, MA* | | 12.5% of 5 or more units | | 80% AMI | Rounds up to next full unit |

*Many of these requirements allow cash out (fee in lieu) as an option, although that option often only exists for smaller projects and/or fractional unit requirements*
*Some of these ordinances allow for off-site provision of affordable units*

# ATTACHMENT B

FURMAN CENTER
FOR REAL ESTATE & URBAN POLICY
NEW YORK UNIVERSITY
SCHOOL OF LAW • WAGNER SCHOOL OF PUBLIC SERVICE

CENTER FOR HOUSING POLICY



MARCH 2008

WWW.FURMANCENTER.NYU.EDU ■ WWW.NHC.ORG/HOUSING/CHP-INDEX

HOUSING POLICY BRIEF

# The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas

Inclusionary zoning (IZ) is an affordable housing tool that links the production of affordable housing to the production of market-rate housing. IZ policies either require or encourage new residential developments to make a certain percentage of the housing units affordable to low- or moderate-income residents. In exchange, many IZ programs provide cost offsets to developers, such as density bonuses that allow the developer to build more units than conventional zoning would allow, or fast-track permitting that allows developers to build more quickly.

There is tremendous diversity in the structure and goals of inclusionary zoning programs throughout the country: some IZ programs are voluntary while others are mandatory; they are triggered by different sizes and types of market-rate developments; they target the affordable units to different income levels; they have different rules about whether the affordable units must be located within the market-rate development or may be located off-site; and they impose the affordability restriction for different lengths of time.

Since the first program was established in 1972, the number of jurisdictions that have adopted inclusionary zoning policies has grown steadily, with a significant number of jurisdictions adopting programs in the last decade. While it is difficult to identify an exact number, well over 300 jurisdictions – cities, towns and counties – have an inclusionary zoning ordinance on the books.

# Arguments For and Against IZ

Despite, or perhaps because of, the rapid spread of inclusionary zoning across the nation, IZ programs often generate significant controversy. Among supporters, IZ is heralded as an important evolution in affordable housing policy because it requires less direct public subsidy than traditional affordable housing programs, and therefore is considered more fiscally sustainable. Proponents also argue that IZ programs that require affordable and market-rate units to be located in the same development promote economic and racial integration.[1] While proponents recognize that developers may lose money on the affordable units, they believe that developers can recoup lost profits through incentives such as density bonuses.

Critics, on the other hand, argue that IZ programs, particularly mandatory ones, will constrict development of market-rate housing by causing developers to build instead in jurisdictions that don't require developers to sell or rent a portion of the units at below-market levels. By constraining the supply of housing, the argument follows, IZ programs will cause the prices of market-rate housing in the jurisdiction to rise, ultimately reducing rather than increasing affordability. Opponents also argue that it is unfair to place the entire burden of providing affordable units on the developers and purchasers of new market-rate housing units; to the extent the community believes affordable housing is an important good, the whole community ought to pay for it.

# What Do We Know About the Impacts of IZ Programs?

In spite of its popularity among housing advocates and policymakers and steady opposition from critics, we know relatively little about the effects of inclusionary zoning policies. At the center of the debate over IZ are two empirical questions. First, have IZ programs had the effect of restricting the supply of market-rate housing and increasing its costs in the jurisdictions adopting IZ? Second, have IZ programs been successful at producing affordable units? Unfortunately, few researchers have tried to answer these questions, and many of the studies that have been completed suffer from significant data and methodological limitations. It is difficult to obtain accurate data on the

Poinsettia Station, Carlsbad, CA, BRIDGE Housing.

[1] Not all IZ programs require the affordable units to be produced on-site; some allow developers to build the affordable units elsewhere in the community, and some allow developers to pay an in-lieu fee that the jurisdiction can use to build affordable housing wherever it chooses.

adoption and characteristics of inclusionary zoning programs across jurisdictions and over time, and to track the number of units produced under these programs.

Recognizing the need for objective, rigorous analysis to help inform the academic and policy debate about IZ, the Center for Housing Policy asked NYU's Furman Center for Real Estate and Urban Policy to conduct an in-depth, longitudinal analysis of the effects of IZ.[2] Our research addresses three primary questions:

1) **What kinds of jurisdictions have adopted IZ?**

2) **How much affordable housing has been produced in different IZ programs, and what factors have influenced production levels?**

3) **What effects has IZ had on the price and production of market-rate housing?**

To answer these questions, we selected three metropolitan areas in which IZ programs are fairly prevalent and well-documented, and for which the data about housing supply and prices are available: the San Francisco area, suburban Boston,[3] and the Washington D.C. region. Due to data constraints, we were not able to completely and definitively answer each of these questions for each of the regions we studied. In particular, the small number of jurisdictions in the D.C. area prevented us from conducting statistical analysis on that region. Despite these challenges, our findings significantly advance the current understanding of the effects of IZ policies and have important implications that advocates, critics, and jurisdictions considering adopting an IZ program should bear in mind.

# Variation Among IZ Programs and Regions

The design of inclusionary zoning programs varies tremendously across jurisdictions. This variation reflects a number of key differences among the jurisdictions themselves, including the composition of their population and housing stock and their political goals. For example, some jurisdictions place a higher priority on achieving economic integration through IZ while others are more concerned with maximizing the number of affordable housing units produced. The diversity also reflects differences in the larger regulatory framework in which the jurisdictions work: some states allow jurisdictions a great deal of freedom to enact new forms of land use legislation, while others are more restrictive of local controls.

The IZ programs in our three study areas reflect this diversity. Table A provides an overview of some key elements of the IZ programs in these regions. Please note that these statistics reflect the data we used in our study; more recent data may now be available from each region. Because IZ programs may take some time to have an impact, we were not able to evaluate the impacts of the most recently adopted IZ policies.

Table A illustrates significant differences among the programs in our study areas. IZ programs in the San Francisco area were established earlier, are more likely to be mandatory, and are more broadly applicable to different types and sizes of developments than the programs in suburban Boston.

[2] This policy brief presents a summary of our findings; the entire study can be found at: http://furmancenter.nyu.edu/publications/index.html or http://www.nhc.org/housing/iz.

[3] While the City of Boston has an IZ program, it was not included in the database that forms the basis of our study because Boston has different authority over land use regulations than other jurisdictions in the state.

### Table A: Variation Among IZ Programs in Our Three Study Areas

| | San Francisco Area (as of 2004) | Suburban Boston (as of 2004) | Washington D.C. Area (as of 2000) |
|---|---|---|---|
| **Prevalence of IZ** (# of all jurisdictions adopting) | 7/10 counties<br>48/104 cities/towns[4] | 99/187 cities/towns | 5/23 counties |
| **Year program was adopted:**<br>***Median***<br>***Range*** | <br>1992<br>1973-2004 | <br>2001<br>1972-2004 | <br>1992<br>1974-1996 |
| **% of programs that are mandatory** | 93% | 58% | 80% |
| **Breadth of applicability to different types and sizes of developments** | Broad | Narrow | Fairly Broad |
| **% of programs providing density bonus** | 67% | 71% | 100% |
| **% of programs allowing developers to pay fees in lieu of building units** | 86% | 38% | 100% |
| **% of units that must be affordable**<br>***Median***<br>***Range*** | <br>15%<br>5-25% | <br>10%<br>5-60% | <br>8.13%<br>6.25-15% |
| **Incomes targeted for affordable units** | Very low to moderate | Low to moderate | Low to moderate |
| **How long units must remain affordable** | The median length of affordability is 45 yrs. | One-third of the programs require permanent affordability; half don't specify. | For owners, range is from 5-15 years; for renters range is 5-20. |

Source: This table combines data from various sources, including: Calavita & Grimes (1998); Brown (2001); CCRH and NPH (2003); Fox & Rose (2003); Vandell (2003), adapted from Rusk (2003); Pioneer Institute for Public Policy and the Rappaport Institute for Greater Boston Local Housing Regulation Database (2004); CCRH Inclusionary Housing Policy Database (2007); NPH (2007); and a supplemental telephone survey of the San Francisco and D.C. areas, conducted by the Furman Center in June, 2007. Because each of these data sources used a different survey methodology and because the content of IZ programs varies greatly, the data across jurisdictions are not always comparable. Our analysis excludes newer programs that have not existed long enough to produce measurable results. Data for the San Francisco region and suburban Boston cover programs enacted through 2004, and data for the Washington D.C. area include programs adopted prior to 2000. See reference list for full citations.

[4] In order to assess the impacts of IZ on housing prices and permits, our study used data on IZ programs in the San Francisco area as of 2004. According to NPH (2007), there are now 77 jurisdictions in the San Francisco area with IZ.

Programs in the San Francisco area also are more likely to allow developers to satisfy requirements by paying in-lieu fees rather than building the units themselves. In Washington D.C., most programs are mandatory, but the requirements are limited only to larger developments, rather than the broader set of developments subject to IZ in the San Francisco area. In the D.C. region, programs require the units to remain affordable for less time than in either of the other study areas. In addition to this variation across regions, there is also significant variation in the structure of IZ programs within each region.

Table A does not reveal the complicated regulatory structure within which each of these regions operate, which may affect the likelihood of adoption of IZ, the form in which IZ takes, and the ultimate impacts of an IZ policy. State or regional regulatory regimes may enhance or impede the formation and success of local IZ programs in a number of ways. For example, California grants local governments broad authority over land use decisions but also has a number of statewide affordable housing policies. Similarly,

Palmer's Dock, Brooklyn, NY, L&M Equity Participants and Dunn Development Corp. Photo: Courtney Wolf.

Massachusetts has a strong tradition of local self-governance, and towns and cities (but not counties) have a tremendous amount of authority over land use decisions. The Massachusetts state law known as Chapter 40B, which requires cities to provide expedited permitting and other benefits to developments that set aside a specified percentage of affordable units, complicates the incentives a jurisdiction has to adopt IZ. Some municipalities may adopt IZ to help them respond to 40B, while others may find 40B to be a sufficient mechanism for producing affordable housing on its own, and accordingly think they do not need an IZ program. Our study was unable to unpack these complicated incentives and constraints, but it is worth noting that state regulations play a significant and somewhat unpredictable role in jurisdictions' decisions to adopt IZ.

# Which Jurisdictions Adopt IZ and How Does it Affect Their Housing Markets?

### What kinds of jurisdictions adopt IZ?

Our analysis of jurisdictions in the San Francisco area and suburban Boston helps us understand some of the characteristics that predict whether a jurisdiction is likely to adopt an IZ program.[5] We find that larger, more affluent jurisdictions are more likely to adopt IZ. Those near other jurisdictions with IZ also are more likely to adopt IZ. For example, in suburban Boston, we find that the probability of adopting an IZ program increases as the number of other jurisdictions in the same county with IZ

[5] Because of the small number of jurisdictions in the Washington D.C. area with IZ, we were unable to perform a regression analysis for this region. Accordingly, most of the findings summarized in this brief are based only on data from the San Francisco and suburban Boston areas. However, the full report contains detailed information on IZ programs in the Washington D.C. area, as well as findings on IZ production and other observations on the effects of IZ in this area.

increases. This makes sense; if neighboring jurisdictions already have an IZ program in place, it may be less likely that IZ will scare development to other locations. It also may indicate that jurisdictions learn from the experiences of their neighbors, or that there is a "bandwagon" effect for promising or trendy policies. Finally, in suburban Boston, we find that jurisdictions with growth management policies and cluster zoning are more likely to adopt IZ.[6]

Our interviews with program administrators revealed that some jurisdictions adopt IZ programs because of a desire to satisfy state regulations or expectations, rather than out of a desire to adopt a progressive affordable housing policy. These differing motives may impact the amount of housing produced. If the program is adopted solely to satisfy external requirements, it may be written, implemented or enforced in a different way than if it resulted from more local political pressure. Specifically, one might think that communities that adopted IZ merely to satisfy a state mandate may have adopted policies that are less effective or less carefully crafted; additional research would be needed to test this hypothesis.

**KEY FINDINGS ON IZ ADOPTION**

Jurisdictions are more likely to adopt an IZ program when they:

Are larger and more affluent

■

Have more neighboring jurisdictions that have IZ

■

Have adopted other land use regulations (specifically cluster zoning or growth management)

### What influences how much affordable housing has been produced under IZ?

We find that the strongest predictor of how many affordable units a jurisdiction's IZ program has produced is the length of time the program has been in place. This makes sense for a number of reasons: projects that trigger the IZ program are likely to take several years to be completed and generate new IZ units, developers and administrators undoubtedly need some time to become more familiar with the program and work out any kinks, and the production of affordable units through IZ adds up over time.

We also find evidence that programs in the San Francisco region that exempt smaller projects or provide density bonuses tend to produce more units, indicating that more flexible programs may result in greater production.

While nearly all IZ programs in the San Francisco area have produced some affordable units, some 43% of the jurisdictions in suburban Boston with an IZ program on the books have not produced any units, and over one-third are unable to report how many units have been produced. This may indicate that jurisdictions in the Boston area have adopted IZ programs for reasons other than producing affordable housing, such as creat-

[6] Cluster zoning provisions allow developers more flexibility than conventional zoning allows, such as reductions in the minimum lot size or other dimensional requirements, in exchange for setting aside protected open space. Many of the suburban Boston IZ programs are designed as part of cluster zoning, allowing developers to receive increases in the total allowable units in return for producing affordable housing (or some other form of community benefit). The prevalence of IZ programs among jurisdictions with growth management policies, such as annual caps on building permits, may suggest that those communities are concerned both with the pace of residential growth and pressures on housing affordability.

## KEY FINDINGS ON IZ PRODUCTION

The longer IZ programs have been in place, the more affordable units they have produced

■

In the Washington D.C. area, IZ programs have produced a total of 15,252 affordable units (as of 2003).

- *Nearly three-quarters of the units come from Montgomery County which adopted one of the first IZ programs in the country, dating back to 1974.*

■

In suburban Boston:

- *As of 2004, 43% of jurisdictions with IZ had not produced any affordable units.*
- *Precise counts are not available, but surveys suggest that IZ programs have produced relatively few affordable units, probably in part because so many IZ programs in the area were enacted relatively recently.*

■

In the San Francisco area:

- *Almost all jurisdictions report having produced some affordable units.*
- *The median annual production across all programs is 9 affordable units/year.*
- *For the region as a whole, IZ programs have produced 9,154 affordable units (as of 2004).**
- *Programs with density bonuses and exemptions for smaller projects have produced more affordable units.*

* Updated production numbers are available in NPH's 2007 report, *Affordable by Choice: Trends in California Inclusionary Housing Programs* available at: http://www.nonprofithousing.org/.

ing a mechanism to satisfy the requirements of state law 40B. It also may be a function of the fact that IZ programs are a relatively new phenomenon in the region, and these jurisdictions simply have not yet brought their programs to scale. Another explanation for the low production could be that many of the Boston-area programs are voluntary and apply to a narrow range of developments.

### What effects have IZ programs had on the price and production of market-rate housing?

The final question we try to answer is the most important, and the most difficult, of the issues surrounding the debate over IZ: how do IZ programs impact housing prices and production? In order to get a better understanding of the underlying issues, it is helpful to consider a simplified theoretical model to predict developers' behavior.

The amount of revenue a developer can gain by selling or renting a unit required to be affordable by a mandatory IZ policy is generally lower than the costs of developing that unit, so unless developers can offset these losses, IZ programs may cause developers to earn lower profits. Economic models predict that developers are likely to react in a number of ways to mandatory IZ programs that do not provide meaningful benefits to offset developers' revenue losses. First, developers may build or invest in other jurisdictions that do not have IZ programs. Second, they may try to make up the lost revenues by raising the prices they charge for market-rate units. Third, they may lower the prices they are willing to pay for land. Their ability to do any of these options will depend on a number of market factors, but under each scenario, the production of housing in the jurisdiction is likely to fall. If the number of new housing units produced in the area falls, and demand and other market factors remain constant, housing prices will likely increase due to the law of supply and demand. The theoretical models predict that the size of the impact on housing production and prices will depend upon many factors, including the extent to which the IZ programs offer cost offsets such as density bonuses, the stringency of the IZ requirements, the dynamics of housing supply and demand, the extent to which other types of supply constraints have been adopted in the community and broader area, and the extent to which neighboring jurisdictions have adopted IZ.

Previous studies have tried to test these theoretical models and gauge the impact of IZ programs on prices and production, but the methodologies and data used in those studies are widely questioned.[7] We use well-accepted regression analysis techniques to isolate the effects of IZ programs on jurisdictions' housing markets. Specifically, we control for variations in the jurisdictions' characteristics that may contribute to changes in housing prices and production, such as population size, density, and demographic composition, including race, age and education levels.

### KEY FINDINGS ON IZ'S IMPACT ON PRODUCTION AND PRICES OF MARKET-RATE HOUSING

In the San Francisco area, there is no evidence that IZ impacts either the prices or production of single-family houses.

■

In suburban Boston, IZ seems to have resulted in small decreases in production and slight increases in the prices of single-family houses.

Our analysis finds no evidence that IZ programs have had an impact on either the prices or production rates of market-rate single-family houses in the San Francisco area.[8] In suburban Boston, however, we see some evidence that IZ has constrained production and increased the prices of single-family houses. The number of affordable housing units produced under the suburban Boston IZ programs, and the estimated size of the programs' impact on the supply and

[7] Previous studies include Powell and Stringham (2004a) and Powell and Stringham (2004b); for critiques of those studies, see, e.g., Basolo and Calavita (2004).

[8] We chose to use single-family permits because they make up the overwhelming majority of all housing permits issued in all three areas during the period from 1980 to 2005. In any given year, single-family permits average over 90 percent of total permits, and between 50 and 90 percent of jurisdictions in our sample issued no permits for multifamily housing.

price of housing are both relatively modest. These results reflect the most appropriate analysis of the best available data. Because of limitations in the scope and quality of the available data, however, both the San Francisco and the suburban Boston results should be interpreted with caution.[9]

Given the variation among the programs in the two regions, it is not surprising that our analysis of the two regions produced different results. As we cautioned earlier, IZ is not a one-size-fits-all tool. Not only can the design and scope of a program vary greatly, but its impacts may depend on many variables specific to the jurisdiction. The different results from the San Francisco and suburban Boston analyses are an important reminder that IZ policies come in many shapes and sizes and need to be thought of as a piece of the larger regulatory framework, not a stand-alone solution. The impact of an IZ policy may be affected by the specific design of the IZ program and the effectiveness of its cost offsets, a jurisdiction's reliance on other affordable housing tools, its reasons for adopting IZ, the nature and strength of its housing market, and the state regulatory framework in which it operates.

15 Quincy, Brooklyn, NY, BFC Partners and Pratt Area Community Council. Photo: Courtney Wolf.

# What are the Implications for IZ Policies?

The findings from our research suggest a number of points that policymakers should bear in mind as they consider whether to adopt – and if so, how to structure – inclusionary zoning policies:

**Each individual ordinance should be considered on its own merits.** We found tremendous variation in the details of IZ policies from one jurisdiction to the next. This suggests that IZ is not a single policy but rather an umbrella term for describing many different but related housing policies, each of which may well have different effects on the number of affordable housing units produced and on the price and supply of market-rate homes. In light of this variation, broad generalizations about IZ would seem to be less helpful than case-by-case analysis of particular proposals or ordinances.

**Many IZ policies produce affordable units, but IZ is not a panacea for solving a community's housing challenges.** The IZ policies that we examined had varied success in producing affordable units. Some have produced very few or no affordable units, while others have produced thousands of units, making a significant contribution to the availability of affordable homes. Even those ordinances that have produced the most affordable housing units, however, have not solved the community's housing challenges. This suggests that communities should think of IZ as one piece of a broader and more comprehensive housing strategy, rather than as a stand-alone policy response.

[9] Please consult the full study for a discussion of the data limitations.

**More flexible IZ policies may lead to greater production of affordable units.** Our analysis of the IZ programs in the San Francisco metro area found that more flexible IZ policies – those that grant density bonuses or exempt smaller projects – were associated with a greater production of affordable units. The study was not able to determine why policies that provide density bonuses and exempt smaller projects produced more affordable housing units, but one possible explanation is that this flexibility contributed to (or was a manifestation of) a regulatory climate that encouraged new development.

**In considering whether to adopt, and if so how to structure, IZ policies, the potential impacts on the price and supply of market-rate housing should be considered.** Both our theoretical analysis and our analysis of IZ policies in suburban Boston suggest that in some settings, IZ programs may lead to impacts on the price and supply of market-rate housing that reduce its affordability. While the average size of the price increases and supply decreases of market-rate housing across all jurisdictions in the Boston sample were fairly small, they were nevertheless significant and could be larger in some communities.

On the other hand, we found no evidence that IZ caused an increase in the price or a decrease in the supply of market-rate housing in the San Francisco area, despite the fact that 93 percent of those programs were mandatory. These results suggest that adverse price and supply effects are not inevitable outcomes of IZ. As explained more fully in the next point, it seems likely that the details of the policies – particularly the inclusion of effective cost offsets – matter considerably.

**IZ policies that provide meaningful and achievable density bonuses or other benefits to offset the profits lost on affordable units should be less likely to impact adversely the price and supply of market-rate housing.** Data limitations prevented us from separately analyzing how different types of IZ ordinances impacted the price and supply of market-rate housing. However, our theoretical analysis suggests that adverse impacts on the price and supply of market-rate homes can be mitigated or even avoided entirely by providing benefits to developers that fully compensate them for losses associated with selling or renting IZ units at below-market prices. The most common compensatory benefit included in the IZ ordinances we studied was an increase in allowable density. Other compensatory benefits include fast-track permitting (which decreases the time and costs of new development) and reduced parking requirements (which reduce the amount of land needed per unit). To the extent that such benefits allow developers to realize the same or similar profit under an IZ policy as might have been achieved without one, we would expect that there would be fewer impacts on the price and supply of market-rate homes.

**Different cost offsets may be needed in different communities and in different market cycles.** The economics of the development process vary significantly from community to community. They also vary significantly over time, even within a single community. For this reason, it is likely that different communities will need to adopt different offset policies to ensure that IZ policies fully compensate for losses associated with below-market units. These policies also will need to be reviewed over time to ensure they remain meaningful and effective.

**Cost offsets need to work in practice, and not just on paper.** Practitioners report that in many communities, density bonuses or other offsets that are provided in an IZ ordinance are not in fact realizable because of opposition from community members, planning department staff, and others, or because other policies – such as height caps – prevent developers from building the additional units. To the extent that promised offsets do not materialize in particular communities, developers may become less inclined to build there, or may need to raise the price of housing for market-rate customers.

**Broad-based consultations with stakeholders may be helpful in designing effective policies and monitoring their implementation.** To ensure that IZ policies are truly effective in offsetting the costs associated with below-market units, it may be helpful to engage a broad range of stakeholders, including both for-profit and nonprofit developers. These stakeholders can help communities develop policies that take into account the realities of construction costs and market dynamics and provide invaluable feedback on how the policies are working once they are implemented. These stakeholders also can help advise jurisdictions on whether there are particular types of housing or particular areas of the community in which IZ policies may not be needed, may be counterproductive, or may need to be more flexible to work effectively.

# Related Housing Policies

**The following are two housing policies that are closely related to IZ that communities may wish to consider as part of a comprehensive housing strategy;**

**Reductions in Regulatory Barriers to Development.** There are many regulations and other practices at the local level that make it difficult or expensive to develop new housing and do not produce sufficient benefits to justify those extra expenses. Other research suggests that these regulatory barriers are driving up housing prices by constraining the ability of the market to respond effectively to demand. Reducing those barriers can help to expand the supply of housing, moderating home prices, and mitigating concerns that IZ might constrain new development. By increasing the amount of new development, such policies also might increase the number of affordable units produced through an IZ ordinance.*

**Shared equity homeownership.** Units produced through IZ policies may be affordable when originally produced, but will likely become much less affordable once any affordability restrictions expire. Through community land trusts and other shared equity homeownership strategies, communities can ensure that affordable units produced through IZ stay affordable over time, while still providing residents with an opportunity to build assets.** Similar policies can be applied to retain the affordability of rental units over time, though ongoing operating subsidies may be needed in some cases.

* For more information, see HUD's Regulatory barriers clearinghouse (www.huduser.org/rbc), the Center for Housing Policy's online guide to state and local housing policy (www.housingpolicy.org) and the following publications: Glaeser et. al. (2005) and Schuetz (2007).

**For more information, see the Center for Housing Policy's suite of materials on shared equity homeownership at http://www.nhc.org/housing/sharedequity.

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Complete acknowledgements may be found in the working paper draft, available online at www.nhc.org/housing/iz or http://furmancenter.nyu.edu/publications/index.html. All opinions, errors or omissions, however, are those of the Furman Center alone.

Fairbanks Ridge, San Diego, CA, Chelsea Investment Corporation. Photo: Lynn Schmid.

*Authored by Amy Armstrong, Vicki Been, Rachel Meltzer, Jenny Schuetz*

**The Furman Center for Real Estate and Urban Policy** is a joint research center of the New York University School of Law and the Robert F. Wagner Graduate School of Public Service at NYU. Since its founding in 1995, the Furman Center has become the leading academic research center in New York City dedicated to providing objective academic and empirical research on the legal and public policy issues involving land use, real estate, housing and urban affairs in the United States, with a particular focus on New York City. More information about the Furman Center can be found at www.furmancenter.nyu.edu.

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# Handbook On:

# Developing

# Inclusionary

# Zoning

**For the Comprehensive**
**Housing Production and Rehabilitation Act of 2004**


***Harrisville Village***
***Burrillville, Rhode Island***

**Updated , 2006**
**Statewide Planning Program,**
**Division of Planning,**
**Rhode Island Department of Administration**

**www.planning.ri.gov**

# Abstract

The Rhode Island Statewide Planning Program is established by *Chapter 42-11-10 of the Rhode Island General Laws* as the central planning agency for state government. The State Planning Council comprised of state, local, and public representatives, and federal and other advisors, guides the work of the Program.

The objectives of the Program are:

(1) to prepare strategic and systems plans for the state
(2) to coordinate activities of the public and private sectors within this framework of policies and programs
(3) to assist local governments in management, and
(4) to advise the Governor and others concerned on physical, social, and economic topics.



The cover images are from the Burrillville Planning Office for the Harrisville Village redevelopment project located in Burrillville, RI. For information on the project contact Thomas Kravitz, Burrillville Town Planner and Economic Development Director, at 401-4300 ext. 130 or look on the web at

http://www.burrillville.org/Public_Documents/BurrillvilleRI_EconDev/Redevelopment_Projects.

# Preface

The affordability of housing is not a problem restricted to lower-income populations of inner cities and declining urban areas. It is, in fact, an issue for all municipalities, affecting the poor and lower-income as well as a large portion of the middle-income population of every city and town. The cost of land and basic building construction are matters largely beyond the control of local governments, but housing opportunities and affordability can be promoted through land use codes and development controls that reduce development costs.

### Factors Limiting Housing Affordability in Rhode Island

- High land costs, aggravated by requirements in excess of environmental or social need
- High construction costs
- High rents or sales prices
- High median household income and low vacancy rates
- Deterioration of older housing stock
- Elimination of housing stock by demolition or conversion to other uses
- Marginal funding of federal and state housing programs
- Unemployment and under-employment
- Attraction of employment opportunities without consideration of housing supply availability and cost for workers
- Municipal development moratoria, time-consuming procedures and permit limits, and fees
- Lack of municipal facilities and services for potentially suitable housing and development sites
- Failure to use federal, state or private programs designed to enhance housing opportunity and availability
- Local opposition to affordable housing development

This handbook examines the use of inclusionary zoning to promote affordable housing. This edition of the handbook was updated to provide Rhode Island communities with a recommended set of guidelines, derived from the "Rhode Island Five Year Strategic Housing Plan", for the drafting of inclusionary zoning provisions in order to promote affordable housing in the State. It is intended to assist municipalities in developing actions for compliance with the **Comprehensive Housing Production and Rehabilitation Act of 2004 (R.I. Gen. Law 42-128.8.1).**

The Act finds that the "state in partnership with local communities must remove barriers to housing development". It goes on to require "affordable housing plans" to be prepared and adopted by cities and towns to satisfy the requirements of the *Low and Moderate Income Housing Act* (R.I. Gen. Law 45-53.). These "affordable housing plans" developed by each community establish guidelines for higher density development including inclusionary zoning.

# Acknowledgements

In recognition of the adoption of the **Comprehensive Housing Production and Rehabilitation Act of 2004 (R.I. Gen. Law 42-128.8.1)** this handbook was prepared by the RI Statewide Planning Program to help municipal officials begin to address expanding opportunities for affordable housing in their community. The handbook represents a sum of efforts contributed by numerous individuals of the Program. The following individuals assisted with the writing of this handbook:

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Dan Varin, Associate Director, Division of Planning (Retired)

# Table of Contents

# Part 1: Introduction

This handbook is intended to be a guide for municipal governments to utilize, as a reference tool, to craft an inclusionary housing section for their zoning ordinance that fits the needs and staffing levels of their own community. This handbook is a compilation of existing work condensed for use by Rhode Island communities. This handbook does not attempt to outline all the possible options concerning affordable housing; however, it does outline those items to be considered along with legal counsel concerning inclusionary zoning for affordable housing. Furthermore, every community must realize that inclusionary zoning is not a cure-all for Rhode Island's housing problems; it is one of many tools available to local agencies to develop affordable housing units in their communities. Therefore, each community will have to draft its own text, and use the type of provisions for affordable housing that will work for them based on the advice presented herein and the requirements of the Comprehensive Housing Production and Rehabilitation Act of 2004 and recommended guidelines from the "Rhode Island Five Year Strategic Housing Plan".

***This handbook is not a substitute for legal advice.***

The handbook is divided into five sections. The first and second sections provide a brief explanation and general introduction to inclusionary housing. The third section contains excerpts from national, regional, and local case studies that deal with established inclusionary affordable housing programs. The fourth section looks at provisions to consider before crafting the ordinance. Lastly, the fifth section looks at the technical aspects involved in the writing of such ordinance provisions and it provides excerpts of inclusionary housing ordinances from other local New England municipalities to illustrate the various techniques in use. The fifth section, also presents recommended guidelines from the "Rhode Island Five Year Strategic Housing Plan", which have been highlighted in bold print. At the end of the handbook is the Bibliography Section, which contains the citations, world-wide-web addresses and a list of additional housing resources should the reader wish to find more information on the topics. Access is provided purely as a public service. The State of Rhode Island does not endorse any of the linked sites or any products or services found at the linked sites.

# Part 2: What is Inclusionary Zoning?

The fundamental purpose of inclusionary zoning is to allow the development of affordable housing to become an integral part of other kinds of development taking place in a community. Inclusionary housing provisions promote the production of affordable housing by requiring developers to set aside a certain percentage of the housing units in a proposed development to be priced affordable to low- and moderate-income households. It is to the benefit of the public that a minimum percentage of affordable units be constructed to meet the affordable housing needs of the community that adopts the ordinance. The goal of such a process is to establish a relatively permanent stock of affordable housing units provided by the private market. Typically, inclusionary provisions require that new developments include "mandatory set-asides" of affordable units, which are made available to low and moderate-income households within future market-level developments. According to recent studies by the American Planning Association[1], mandatory programs have produced the most affordable housing units across the United States.

The *amended Zoning Enabling Act*, R.I. Gen. Law 46-24-46.1, requires that an inclusionary housing section of a zoning ordinance must address the following:

1. Affordable housing, as defined by the Act in subsection 42-128.81(d), be constructed.
2. A minimum of 10 % of the total units in the development must comply with the above-cited affordable definition of the Act.
3. The affordable units must remain affordable for a period of not less than 30 years from initial occupancy enforced through a land lease and/ or deed restriction.

The types of housing that are required can vary from community to community as well as within a municipality and will relate to the specific needs as defined in the approved Affordable Housing Plan. Some inclusionary zoning programs include a payment in lieu of construction of affordable units option. These payments may support a dedicated fund such as a housing trust fund that would finance future affordable units. Some programs include incentives such as density bonuses, allowing a developer to create more units on a parcel of land, the relaxation of development regulations, or the reduction or waiver of fees to encourage more affordable housing than the minimum percentage mandated.

[1] *Zoning Practice*, no. 9 (Washington, DC: American Planning Association, September 2004).

# Part 3: Case Studies

There is a range of programs in use around the country as providing affordable housing is a national issue all communities face today. This part reviews several programs that have adopted procedures through zoning ordinances to provide for affordable housing. These programs vary and have been adopted to fit local housing needs and market conditions and many use a combination of providing affordable housing units along with market rate units to produce affordable housing.

## A. NATIONAL CASE STUDY

### Montgomery County, Maryland

Inclusionary zoning started in the Washington, D.C. metropolitan area. In 1973, Montgomery County, Maryland, instituted countywide mandatory inclusionary zoning, known as the Moderately Priced Dwelling Unit (MPDU) ordinance. Montgomery County is the leading national example of the use of this technique at the county level. According to the Innovative Housing Institute, the Montgomery County program has produced nearly 10,000 units of affordable housing. Most jurisdictions can trace some aspect of their inclusionary zoning ordinances to the Montgomery County program.[2]

The MPDU ordinance requires that developments of 50 units or more include 15% MPDUs. Of that 15%, two-thirds are sold to moderate-income homebuyers and the remainder is offered to housing commissions and non-profits for use in their affordable housing programs (many of which retain rental units). Developers receive a density bonus of up to 22% through this program.[3] Throughout the program's history, nearly 10,600 affordable units have been created. However, roughly 6,800 units are no longer governed by inclusionary zoning requirements or any other affordability regulations. According to the ordinance, rental units must be regulated under the inclusionary zoning provisions for 20 years and owner-occupied units for 10 years.[4] Montgomery County's program targets households earning 65% or less of the area median income of $82,800 in the fiscal year 2000.[5]

One of the greatest challenges facing the Montgomery County program is that the first units built by the program are quickly becoming unregulated and the development of new affordable units is slow. Many policy think tanks and housing advocates, including the Brookings Institution, suggest that one-way to remedy the situation is to make it easier for non-profits and housing authorities to purchase the units once the affordable price regulations expire. Perhaps by extending the non-profit agency's right of first refusal so that they may pre-empt private developers from purchasing the affordable units.[6]

## B. MASSACHUSETTS (MA) CASE STUDIES

Federal and state low and moderate-income housing programs have created more than eight % of Massachusetts's housing stock. The creation of new affordable units, however, has slowed due to scarce developable land, opposition to development in general, and the reputation of large affordable housing projects.[7] In 1975 Massachusetts enacted a state zoning act authorizing the use of incentives for the development of low and moderate-income housing. While more than a third of the communities in

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[2], Robert W. Burchell and Catherine C. Galley, "Inclusionary Zoning: A Viable Solution to the Affordable Housing Crisis? Inclusionary Zoning: Pros and Cons," *New Century Housing Newsletter* 1, no.2 (Washington DC: Center for Housing Policy, October 2000).

[3] Karen Destorel Brown, "Expanding Affordable Housing Through Inclusionary Zoning: Lessons from the Washington Metropolitan Area," *Cities and Suburbs* (Washington DC: The Brookings Institution, October 2001).

[4] Ibid.

[5] Ibid.

[6] Ibid.

[7] Phillip B. Herr & Associates, "Zoning for Affordability," *Community Strategies* (Boston, MA: Massachusetts Housing Partnership, 1999).

Massachusetts have adopted zoning incentives for affordable developments, very few units are generally created.[8] The zoning statute, Chapter 40B commonly known as the "anti-snob" zoning ordinance, exempts developers of affordable units from certain zoning regulations if 20-25% of units in municipalities have affordability restrictions. The restrictions include being affordable for households earning less than 80% of the area's median income and must remain affordable for 30 years.[9] Much of land use control is local in Massachusetts, so depending on the community, inclusionary zoning programs may or may not be directly influenced by 40B.[10] The following are two different examples of the impact of Chapter 40B, and the successes and failures of inclusionary zoning.

### Barnstable, MA.

In an attempt to address the state's 10 % affordability requirement, the town of Barnstable, Massachusetts on Cape Cod drafted an Inclusionary Housing Ordinance that charged developers a fee that was placed in an Inclusionary Housing Fund to purchase land and develop affordable units. A suit was brought against the town, claiming that the fee was an illegal tax. A Superior Court ruled in favor of the plaintiff in Dacey v. Town of Barnstable. A part of the inclusionary ordinance was struck down when the court ruled that the Town's imposition of an Inclusionary Housing Fee on developers whose projects were not covered under the ordinance constituted an exaction.[11] ***The lesson learned from Barnstable is that an inclusionary zoning program can be implemented in several different ways, and that it is important to find a program that suits an individual town.*** In the case of Barnstable, the courts ruled that imposing an exaction places the burden of developing affordable units on developers only. Rather, an inclusionary zoning program should be viewed as a community program. The Comprehensive Permit Law in Massachusetts (under Chapter 40B) expedites the permitting process for developers building affordable units, thus providing incentives for private development- making it the better option to achieve affordable housing goals.

### Newton, MA.

Newton, Massachusetts is an older suburb of Boston with a population of 85,000. In 1977, Newton drafted its own inclusionary zoning ordinance, which has since provided 225 units of affordable housing over a thirty-year period. In addition, almost 450 units have been constructed in the community under the mandate of Chapter 40B. Newton's ordinance mandates that all units created have to be rental and leased through the Newton Housing Authority. Other options for developers such as off-site units and cash payments in lieu of construction are available, although tightly regulated. Newton's program also contains strict regulation in the design of affordable units. The units must be equal in character to market rate units, in order to avoid stigmatization.

One of the challenges of the Newton program is that there is a fee for developments under 10 units that do not come under the town ordinance. Therefore, many developers choose to pay the fee and under-develop. However, the Newton Housing Authority does not have an effective method to allocate funds received by the fee and in lieu payments. This case study shows the difficulty in creating many cash payment loopholes for developers. One remedy would be to mandate the construction of affordable units in all developments in return for a density bonus.[12]

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[8] National Housing Conference (NHC), "Inclusionary Zoning: Lessons Learned in Massachusetts," *NHC Affordable Housing Policy Review* 2, no. 1 (Washington, DC: Center for Housing Policy, January 2002).

[9] Ibid.

[10] Phillip B. Herr & Associates, "Zoning for Affordability," *Community Strategies* (Boston, MA: Massachusetts Housing Partnership, 1999).

[11] Commonwealth of Massachusetts Superior Court, Civil Action No. 00-53 (October 18, 2000), *Brian Dacey vs. Town of Barnstable*.

[12] National Housing Conference (NHC), "Inclusionary Zoning: Lessons Learned in Massachusetts," *NHC Affordable Housing Policy Review* 2, no. 1 (Washington, DC: Center for Housing Policy, January 2002).

## C. RHODE ISLAND (RI) CASE STUDIES

Rhode Island's municipal affordable housing provisions within existing zoning ordinances are widely varied. In Rhode Island at this time, only East Providence and Tiverton have mandatory inclusionary zoning in use. There are 8 other municipalities that have some sort of an incentive zoning provision in the local zoning ordinance relating to affordable housing. These municipalities are Barrington, Burrillville, East Greenwich, Hopkinton, New Shoreham, North Kingstown, Richmond, and South Kingstown. This section provides a brief summary of the various incentive zoning techniques currently in use. The local ordinance citations follow each summary with a web link to the homepage of the municipality where on-line information is available for more information about each community and the ordinance cited.

- **Barrington, RI:** density bonus in an Elderly Housing District as part of a zoning ordinance amendment, with a 30-year affordability provision, but there is no provision for a percentage of low/moderate income family units. [Section 185-139-B] http://www.ci.barrington.ri.us/.
- **Burrillville, RI:** In Village Planned Development Districts flexibility in siting units is permitted by the Planning Board for all dimensional requirements but the 12,000 square feet minimum lot size. [Section 11-8.9.4] http://www.burrillville.org/Public_Documents/index.
- **East Greenwich, RI:** density bonus to a maximum of six units per acre provided that 10% of the units within the development are affordable in Mixed Use Planned Development Districts. [Article VIII, 6.3] http://www.eastgreenwichri.com/.
- **East Providence, RI:** a density bonus of up to 10% may be permitted according to the number of affordable units developed [Article VIII, Section 19-456]. Also the new Waterfront Development District (WWD) requires that all new residential development or property conversions resulting in 5 or more parcels or new dwelling units must supply a minimum of 10% of low to moderate income housing units as part of the development. An In-Lieu fee option is allowed per the rules and regulations of the East Providence Waterfront Special Development District Commission. [Article 9,(j), Affordable Housing] http://www.eastprovidence.com/.
- **Hopkinton, RI:** a density bonus of up to 10% may be permitted by the Planning Board according to the number of affordable units developed in cluster developments. [Section 14(A)(2)]
- **New Shoreham, RI:** density bonus of 100% may be granted to accommodate affordable units by the Zoning Board as a special-use permit. [Section 405]
- **North Kingstown, RI:** 10% density bonus may be granted for 10% of all dwelling units to be marketed at a moderate price in a Planned Unit Development by the Planning Commission. [Section 21-487(m)] http://www.northkingstown.org/.
- **Richmond, RI:** 20% affordable units in subdivisions (if the Planning Board determines that the development meets critical needs), the development is exempt form Growth Rate Control [Section 18.72.020(C), and affordable units are also exempt from impact fees. [Section 18.33.040(A)] http://www.richmondri.com/.
- **South Kingstown, RI:** Affordable Housing is exempted from the Fair Share Development Fee. [Section 1101 D 1] http://www.southkingstownri.com/.
- **Tiverton, RI:** A mandatory alternative concept plan for all major land developments showing a 20% set-aside for low or moderate income housing is required. Planning Board will endorse or reject concept plan. A density bonus up to 30% over allowed density for additional units of low or moderate housing may be granted at the discretion of the Planning Board. [Article XXI, Section 9, a & b]

# Part 4: Items to Consider

Developing an inclusionary housing section for a zoning ordinance is difficult, and many components of such an ordinance must be taken into consideration before the section can be written. Before proceeding, it is critical to familiarize oneself with the Rhode Island General Laws establishing the planning framework for housing development and zoning in general, along with the requirements of the *Comprehensive Housing Production and Rehabilitation Act of 2004* and the associated amendments to 7 other related enabling acts concerning affordable housing. The following 12 items are considered essential for communities to address concerning inclusionary housing and were adopted from an Enterprise Foundation Brief.[13]

**A good World Wide Web site to review the RI planning and development laws is located at:**

http://www.rilin.state.ri.us/Statutes/TITLE45/INDEX.HTM.

**To view the House and Senate bills related to the *Comprehensive Housing Production and Rehabilitation Act of 2004 see:***

H-8574A, S-3148.

## 1. How does the ordinance provision relate to adopted Municipal Plans?

When drafting inclusionary provisions for a zoning ordinance, a nexus needs to be established between the approved Affordable Housing Plan of the municipality and the purpose of the ordinance. The ordinance sections concerning Findings and Purpose should restate the community need for affordable housing, environmental and infrastructure constraints, and recommendations from the approved Affordable Housing Plan and the Housing Element of the Comprehensive Plan.

## 2. Will the inclusionary requirement be mandatory or voluntary?

The decision to make your requirement mandatory or voluntary is an important one. It seems most inclusionary zoning ordinances are voluntary. Voluntary programs are harder to challenge in court, but they should have incentives included to be successful. Mandatory programs, on the other hand, are obviously easy to enforce and evidence supports that they produce more units. The combination of approaches is probably best. Included within regulatory strategies usually are requirements to insure that developments mitigate the impacts of their projects on the community's need for affordable housing and incentives for developers to volunteer to provide affordable housing.

## 3. What will be the development threshold size for applicability?

The threshold size describes how the size of a development will trigger an affordability requirement.[14] In the examples that follow in Part 5, there is a low of 3 units to a high of 50. In the Burlington example, a redevelopment of project of 10 acres or 50 or more units or a development using more than 10 acres or 50 or more units will trigger an affordability requirement.

[13] Peter Werwath, "Program Design Considerations," *An Enterprise Issue Brief* (Columbia, MD: The Enterprise Foundation, 1994).

[14] Business and Professional People for the Public Interest. "Issues to Consider in Developing an Inclusionary Zoning Ordinance," *Inclusionary Zoning Policy Briefs*, (Chicago, IL: Business and Professional People for Regional Affordable Housing Publications, Winter 2003).

### 4. What "set aside" of affordable units must be included?

It is important to gauge your community's needs (by referencing your municipality's Affordable Housing Plan) and determine a percentage of the total development's units that will be deemed as a "set aside." Certain inclusionary zoning ordinances either only include for-sale housing or rental housing.
It appears that including both types of housing stock would benefit because the ordinance could target both low and moderate-income households. Some inclusionary programs have found that a key to success is an appropriate mix of affordable units coupled with a density bonus for market units. **Keep in mind that under the recent changes to the *Zoning Enabling Act*, any inclusionary housing zoning must provide that at least 10% of the total units in a development satisfy the affordable definition of the Act.**

### 5. What income groups are to be served?

A statement of the income group to be served must be drafted. Income eligibility standards are adjusted by family size, and most ordinances have a system for certifying income eligibility by an agreed-to standard. An ordinance may include a tiered income standard to aid developers: a lower percentage of affordable units can be built if the units are lower priced. Every ordinance should have some type of system to verify and certify incomes, or other special characteristics (such as disabilities).[15] The system will have to adjust for varying incomes and family sizes. Whose regulations will you use to target a specific income group? In some communities, nonprofit organizations qualify homebuyers and renters for inclusionary developments, and they may also regulate trust fund monies, and other monies. It is important to establish who will supervise and enforce your inclusionary zoning ordinance.

### 6. What types of housing stock will be developed?

Another element to take into consideration is the style and design of affordable housing units. Some ordinances include strict design regulations. It would be beneficial for the community if the affordable units were compatible and similar to market rate design construction in the community.[16]

### 7. When will the affordable units be developed?

A sensitive issue for the developer and the municipality involves the timing of the affordable unit construction. While a developer may argue that s/he needs revenues from the market-rate units in order to feasibly construct the affordable units, a common goal is to have both types built concurrently to avoid any community controversy or having the developer leave the affordable units un-built. A compromise solution that appears in a number of ordinances is a phased construction of affordable rate units at an agreeable ratio to market-rate construction (e.g., one affordable unit for every five market-rate units constructed). Additionally, fees would be paid at the appropriate juncture (Netter, 2000).[17]

### 8. What type of cost- offsets and / or incentive(s) will you provide the developer?

There are ways of reducing the costs of a development to enable the construction of affordable housing such as the waiving of certain review fees or the amount of parking to be provided (see Part 5 for more details). These cost offsets allow a municipality to decrease the costs developers would incur for affordable housing, and minimize the possibility of a developer showing that mandatory inclusionary zoning causes an excessive loss such that it effects a taking. The cost offsets give developers certain benefits to compensate the developer for pricing some units below market rates. One of the most common incentives for an inclusionary zoning ordinance is to provide density bonuses to developers. Density bonuses allow developers to increase the number of units allowed on a piece of property if they

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[15] Peter Werwath, "Program Design Considerations," *An Enterprise Issue Brief* (Columbia, MD: The Enterprise Foundation, 1994).

[16] Joyce Siegel, "Inclusionary Zoning Around the Country" (Baltimore, MD: Innovative Housing Institute, 2 March 2000).

[17] Edith Netter, Esq., "Inclusionary Zoning Guidelines for Cities and Towns," *Community Strategies*. (Boston, MA: Massachusetts Housing Partnership, September 2000).

agree to make some percentage of those units affordable. Developers use additional cash flow from these bonus units to offset the revenue lost from the affordable units.[18]

**9. How will the municipality sustain an ongoing inclusionary program?**

It is important to ensure a total program when adopting an inclusionary zoning ordinance. If developers create affordable units without long-term affordability controls (30 year minimum in RI) or site units close too far from community and social services then the program will fail. This is important to consider as the community may want to stipulate special conditions for preserving the affordable housing created above and beyond the provisions required by the housing program funders. Special siting factors such as proximity to employment and other public services are necessary for affordable units. For example, one siting requirement may be that affordable units be located close to major employers and or public transportation routes where possible.

**10. What will be the type of controls on rental and for-sale housing?**

A successful inclusionary zoning ordinance must include explicit restrictions on the future rental or sale of affordable units. Again, this is important to consider as the community may want to stipulate special conditions for preserving the affordable housing created above and beyond the provisions required by the housing program funders. The ordinance must require the units to remain affordable for a minimum of thirty years, and it may also specify that the affordable units must continue to be available to income-qualified occupants. Restricting income levels and rents for rental units is simple- the jurisdiction can specify rent limits and require verification of new tenant's incomes as they move into the development. Maintaining affordability on for-sale housing is more complicated. The ordinance may require that homeowners sell their unit to income-qualified buyers at a price that incorporates inflation and the cost of home improvement, but remains affordable. One compromise would be that homeowners could sell their home with affordability restrictions and donate a certain percentage of the profits to a housing trust fund.[19] The ordinance should take into consideration inflation and the cost of living adjustments over time and who will be qualified in later years (see Part 5, numbers 10 & 11 for more details).

**11. Can the developer make in-lieu-of payments?**

A town may determine that the developer not be required to build affordable units if he pays a fee-in-lieu of development either (a) in cash or (b) by dedication of land. This fee is usually dedicated to a land trust or land bank for future affordable housing for the town, which may need to be established if none exists. A dedication of land may be advantageous to a community that has prioritized conservation along with affordable housing as a complementary goal. The community should specify whether the developer has the option of a fee-in-lieu by right, or require that the developer demonstrate that building the units as required presents a financial hardship.

In deciding the amount of a fee-in-lieu the ordinance needs to consider what the developer's costs might be to produce a unit of affordable housing, including current land costs, the need for infrastructure, current construction costs, etc. The object is to create a fee that is not too low so as to make it economically advantageous for the developer to opt out of building affordable units and high enough to make a reasonable gain by the community's affordable housing trust fund or land bank if they choose to allow the developer to opt out.

**12. Can the developer build affordable units off-site?**

Allowing developers the flexibility of delivering affordable housing off-site can help them economically. For example, if they are developing on expensive land, they can build more affordable units on other land. Also, affordable units may have special needs such as proximity to transportation

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[18] Regulatory Barriers Clearinghouse , "Considerations for Density Bonus Ordinance," *Breakthroughs: Solutions that support affordable housing* 2, no. 4, Washington, DC.

[19] Anne Ray, "Inclusionary Housing A Discussion of Policy Issues," (Gainesville, FL: Shimberg Center for Affordable Housing, 15 June 2001).

and employment. Alternatively, while a municipality may allow the developer to build the affordable units off-site; however, this practice is less favored since one of the goals of inclusionary zoning is to promote the mixture of affordable units among market-rate housing to soften opposition to the construction as well as for the beneficial socio-economic impact. If off-site building is permitted, it is recommended that the units continue serving the same geographic locality.

# Part 5: Developing an Ordinance

During the development of an inclusionary housing section for a municipal zoning ordinance, it is critical to tailor the section to the unique local housing conditions/ needs, governmental structure, and staffing levels - as defined by each locally approved Affordable Housing Plan. Therefore, the drafting of an effective inclusionary zoning ordinance requires the municipality to present a wide array of options that need to be viewed separately, and then evaluated in terms of how they work together.

***This handbook is a reference tool not a model ordinance.***

This section addresses those variables and options to be weighed in developing an effective inclusionary zoning ordinance. Communities should utilize this section as a guide to explain those issues that contribute to their unique needs, as there does not exist a one-size fits all solution. A municipality seeking to draft and implement an inclusionary zoning ordinance should consult with their legal counsel. In addition, this section is formatted to resemble a general municipal zoning ordinance provision and includes the recommended guidelines presented within the "Rhode Island Five Year Strategic Housing Plan".

The eleven items below are standard items for a community to include when drafting an inclusionary zoning ordinance. These standard items were adopted from a multitude of sources and a regional housing educational publication by the Business and Professional People for the Public Interest. An explanation of each item is presented, along with a bolded description of the recommended guideline for each, if applicable, from the "Rhode Island Five Year Strategic Housing Plan". Following the explanation and recommendation is actual ordinance language examples that have been underlined to identify the illustrated State law and guideline requirements. Lastly, the language municipalities use to draft the inclusionary zoning ordinance should be checked for consistency with Rhode Island law by legal counsel.

## 1. Findings

An ordinance section on inclusionary housing should begin with findings stating the need for affordable housing in the municipality as cited in the approved local Affordable Housing Plan. Typically this is the section that would summarize the planning process the community has undertaken, trends in housing stock, the need for and benefits of affordable housing, the constraints to be addressed and the benefits anticipated by enactment of an inclusionary zoning ordinance provision.

The first findings below are citied from the newly adopted **Comprehensive Housing Production and Rehabilitation Act of 2004 (R.I.G.L 42-128-8.1)**. A findings section should mirror the general statewide findings in addition to any local findings from the local approved Affordable Housing Plan. Additional sample findings are from other places using inclusionary housing provisions in their zoning ordinances.

> ***42-128-8.1. Housing production and rehabilitation.***
> *(a) Short title. This section shall be known and may be cited as the "Comprehensive Housing Production and Rehabilitation Act of 2004."*
>
> *(b) Findings. The general assembly finds and declares that: (excerpts)*
>
> > *(2) Efforts and programs to increase the production of housing must be sensitive to the distinctive characteristics of cities and towns, neighborhoods and areas and the need to manage growth and to pace and phase development, especially in high growth areas.*
> >
> > *(3) The state in partnership with local communities must remove barriers to housing development and update and maintain zoning and building regulations to facilitate the construction, rehabilitation of properties and retrofitting of buildings for use as safe affordable housing.*

*(4) Creative funding mechanisms are needed at the local and state levels that provide additional resources for housing development, because there is an inadequate amount of federal and state subsidies to support the affordable housing needs of Rhode Island's current and projected population.*

*(5) Innovative community planning tools, including, but not limited to, density bonuses and permitted accessory dwelling units, are needed to offset escalating land costs and project financing costs that contribute to the overall cost of housing and tend to restrict the development and preservation of housing affordable to very low income, low income and moderate income persons.*

***(Lincoln, RI) [DRAFT: 02-06 Article VII]***

A *Findings: A diverse housing stock is necessary in this community in order to serve people of all income levels. Based upon the review and consideration of the recent Lincoln Affordable Housing Production Plan, it has become clear that the provisions of the Article are necessary in order to preserve some diversity of housing opportunities for the residents and the working people of Lincoln.*

*The program defined by this article is necessary to provide continuing housing opportunities for low and moderate income persons in Lincoln. It is necessary to help maintain a diverse housing stock and allow residents and employees of Lincoln to have better access to housing and jobs. The local and statewide trend of increasing housing costs as identified in the Lincoln Affordable Housing Production Plan will, without intervention; result in inadequate supplies of affordable housing here for low and moderate income residents and employees.*

*Remaining land for residential development in Lincoln is limited. It is essential that at least ten percent (10%) of such land be developed into housing units affordable to low and moderate income households. The primary objective of this article is to obtain affordable rental and homeownership units within qualified subdivisions or land development projects. Some provisions of this chapter provide for alternatives to the production of such on-site units. Those provisions recognize the fact that individual site and economic factors can make on-site production less desirable than the alternatives for particular developers. However, the intent and preference of this article is that wherever possible, affordable units constructed pursuant to this Article be located on site.*

## 2. Statement of Purpose

Purpose statements typically explain broad policy directives of an ordinance.

***(South Kingstown, RI) [FINAL DRAFT: Inclusionary Zoning Ordinance and Subdivision Regulations: Revised February, 2006]***

- *a. To encourage and perpetuate the historic diversity of the community through the development of housing and housing for all populations within the Town, including, but not limited to, housing for the resident workforce and housing for special needs populations;*
- *b. To promote mixed income Household occupancy in new subdivisions and land development projects throughout the Town;*
- *c. To promote affordable housing production in the Town in accordance with the goals and policies of the South Kingston Comprehensive Community Plan's Housing Element and Affordable Housing Production Plan;*
- *d. To encourage the development and availability of housing that qualifies as low and moderate income housing as mandated by RIGL 45-53, the Rhode Island Low and Moderate Income Housing Act, and the Rhode Island Comprehensive Housing Production and Rehabilitation Act of 2004, as amended;*
- *e. To allow landowners and/or developers a reasonable return in all zones permitting residential development where the applicant proposes a development that would be classified as a major subdivision (6 residential units or greater) or major land development project under the South Kingstown Subdivision and Land Development Regulations.*

***(Lincoln, RI) [DRAFT: 02-06 Article VII]***

*The purposes of this article are to:*

- *(1) Maintain a balanced community that provides housing for people of all income levels, and*
- *(2) Promote the construction of rental and homeownership housing that is affordable for the low and moderate income households of Lincoln.*

*(3) Implement the Lincoln Affordable Housing Production Plan, and the Housing Element of the Lincoln Comprehensive Plan, and Help Lincoln achieve the 10% low-moderate income housing goal set by the State.*

## 3. Definitions

This part provides explanations to clarify certain specific terms used in the inclusionary zoning ordinance. Any housing, planning, or zoning terms that are not commonly used should be included in this section. Knowledge of existing definitions as established by the various Rhode Island General Laws (http://www.rilin.state.ri.us/Statutes/TITLE45/INDEX.HTM) concerning housing development is necessary for this section. Definitions are already provided in the legislation for many terms relevant to an inclusionary zoning ordinance provision such as:

- Affordable Housing
- Approved Affordable Housing Plan
- Moderate Income Household
- Seasonal housing
- Year-round Housing
- Low and Moderate Income Housing

*(1)* ***"Affordable housing"*** *means residential housing that has a sales price or rental amount that is within the means of a household that is moderate income or less. In the case of dwelling units for sale, housing that is affordable means housing in which principal, interest, taxes, which may be adjusted by state and local programs for property tax relief, and insurance constitute no more than thirty percent (30%) of the gross household income for a household with less than one hundred and twenty percent (120%) of area median income, adjusted for family size. In the case of dwelling units for rent, housing that is affordable means housing for which the rent, heat, and utilities other than telephone constitute no more than thirty percent (30%) of the gross annual household income for a household with eighty percent (80%) or less of area median income, adjusted for family size. Affordable housing shall include all types of year-round housing, including, but not limited to, manufactured housing, housing originally constructed for workers and their families, accessory dwelling units, housing accepting rental vouchers and/or tenant-based certificates under Section 8 of the United States Housing Act of 1937, as amended, and assisted living housing, where the sales or rental amount of such housing, adjusted for any federal, state, or municipal government subsidy, is less than or equal to thirty percent (30%) of the gross household income of the low and/or moderate income occupants of the housing [§ 42-128-8.1(d)-1].*

*(2)* ***"Affordable housing plan" -*** *means a plan prepared and adopted by a town or city either to meet the requirements of chapter 45-53 or to meet the requirements of [§ 45-22.2-10(f)], which require that comprehensive plans and the elements thereof be revised to conform with amendments to the state guide plan.*

*(3)* ***"Approved affordable housing plan" -*** *means an affordable housing plan that has been reviewed and approved in accordance with [§ 45-22.2-9].*

*(4)* ***"Moderate income household"*** *- means a single person, family, or unrelated persons living together whose adjusted gross income is more than eighty percent (80%) but less than one hundred twenty percent (120%) of the area median income, adjusted for family size.*

*(5)* ***"Seasonal housing"*** *- means housing that is intended to be occupied during limited portions of the year.*

*(6)* ***"Year-round housing" -*** *means housing that is intended to be occupied by people as their usual residence and/or vacant units that are intended by their owner for occupancy at all times of the year; occupied rooms or suites of rooms in hotels are year-round housing only when occupied by permanent residents as their usual place of residence.*

*(7)* ***"Minor subdivision" -*** *A plan for a subdivision of land consisting of five (5) or fewer units or lots, provided that the subdivision does not require waivers or modifications as specified in this chapter [§45-23-32 (25)].*

*(8) **"Major subdivision"** - Any subdivision not classified as either an administrative subdivision or a minor subdivision [§45-23-32 (22)].*

*(9) **"Cluster" -** A site planning technique that concentrates buildings in specific areas on the site to allow the remaining land to be used for recreation, common open space, and/or preservation of environmentally, historically, culturally, or other sensitive features and/or structures. The techniques used to concentrate buildings shall be specified in the ordinance and may include, but are not limited to, reduction in lot areas, setback requirements, and/or bulk requirements, with the resultant open land being devoted by deed restrictions for one or more uses. Under cluster development there is no increase in the number of lots that would be permitted under conventional development except where ordinance provisions include incentive bonuses for certain types or conditions of development [§ 45-24-31 (13)].*

*(10)* ***"Incentive Zoning" -*** The process whereby the local authority may grant additional development capacity in exchange for the developer's provision of a public benefit or amenity as specified in local ordinances *[§* 45-24-31 *(35)].*

## 4. Standards - Threshold Size and Applicability

Threshold size and applicability is a two-fold standard requirement, by which the developer must comply. Therefore, the language within the inclusionary zoning ordinance must identify a standardized number of units or acres to be established as the threshold size. If the number of units or acres within the proposed land and/or building rehab development meets or exceeds the threshold size, then the threshold size will function as a trigger for the application of a set-aside provision requirement. For instance, **the "Rhode Island Five Year Strategic Housing Plan" guidelines suggest the minimum threshold trigger for this inclusionary zoning provision to be six for-sale or six rental units. This standard trigger of six for-sale or six rental units is based on R.I. enabling legislation, which differentiates a major subdivision from a minor subdivision based upon a standard of six or more units.** Nonetheless, the State would not discourage a reduction of this standard trigger as every municipality possesses unique local housing conditions/ needs, governmental structure, staffing levels, and locally approved Affordable Housing Plans. Furthermore, in some cases where large redevelopment projects are involved, a standardized number of acres must be identified as the trigger. Additionally, and only if applicable, this section of the ordinance should state whether the threshold size be applicable to all zoning districts or just specific zoning districts.

Details for the income groups to be served by the set-aside provision will be established in the "certifying buyers and renters and maintaining affordability" provision within the inclusionary zoning ordinance.

***(Burlington, VT)*** *The following residential development projects shall be Covered Projects and shall be subject to the requirements of this Article: <u>all development of residential property larger than 10 acres or containing 50 or more dwelling units taking place through the construction of new structures or through the substantial rehabilitation of existing structures. Covered Projects shall include all development of residential property in excess of 10 acres or containing 50 or more dwelling units in the City by the same responsible party in any calendar year.</u>*

(A covered project in Burlington, VT is defined as - units that are offered for sale via the conveyance of a deed or share for individual units).

***(Lexington, MA)*** *These provisions shall apply to <u>all residential developments with three or more dwelling units</u> which are authorized through special permits with site plan review, including residential developments in CD or RD Districts.*

***(Lincoln, RI) [DRAFT: 02-06 Article VII]***

*E. Number of Inclusionary Units: <u>Any development containing five or more dwelling units</u> is required to include at least twenty percent (20%) of the total number of dwelling units within the development as affordable units.*

***(South Kingstown, RI) [FINAL DRAFT: Inclusionary Zoning Ordinance and Subdivision Regulations: Revised February, 2006]***

*B. Applicability. This section shall be applicable in all zones permitting residential development where the applicant proposes a development that would be classified as a major subdivision (6 residential units or greater) or major land development project under the South Kingstown Subdivision and Land Development Regulations.*

## 5. Standards - Set-Asides

A set-aside provision pertains to the required percentage of a proposed development that a developer must price as affordable. There is no one-size-fits-all set-aside that can be used to do this. **The Zoning Enabling Act [R.I.G.L. 45-24-46.1] mandates that inclusionary zoning set-asides must be at least 10% of the total units proposed for development. In an attempt to maintain progress towards achieving the State's 10% goal, the "Rhode Island Five Year Strategic Housing Plan" guidelines suggest that municipalities consider a higher affordability set-aside, which will be off-set with a higher density bonus.** Based upon the State law and guidelines, perhaps the best general set-aside for a municipality would be to allow no less than 12.5% to 15%, but no greater than 25%.

Additionally, the municipality must decide what income tier to target for the affordable units, and balance those requirements with projects thought to have economic feasibility. Within this provision of the ordinance, the developer's pricing schedule must be consistent with the municipal affordable housing element of the comprehensive plan and the fiscal boundaries pre-established by the municipality. (The set-aside should be related directly to the Findings Section for ordinance consistency).

***(Lincoln, RI) [DRAFT: 02-06 Article VII]***

*E. Number of Inclusionary Units: Any development containing five or more dwelling units is required to include at least twenty percent (20%) of the total number of dwelling units within the development as affordable units.*

***(Canton, MA)***

*Ten percent (10%) of the dwelling units in the Continued Care Retirement Community shall be available to and permanently affordable for households earning less than or equal to 80% of the median income for Worcester County. An increase in the number of units of up to twenty percent (20%) of the maximum dwelling units allowed may be permitted on a one to one basis for units above and beyond the required ten percent (10%).*

***(Duxbury, MA) [DRAFT]***

*At least ten (10) percent of the lots in a division of land or units in a multiple unit development subject to this Bylaw shall be established as affordable housing units in any one or combination of methods provided for below. Fractions of a lot or dwelling unit shall be rounded up to the nearest whole number, such that a development proposing six (6) dwelling units shall require one affordable unit, a development proposing eleven (11) dwelling units shall require two affordable units and so on.*

## 6. Standards - Design and Building Requirements

Within the inclusionary zoning ordinance, it is important to establish the specific site design and architectural standards that will be implemented to move forward with the construction of the affordable housing units. In addition, while the type and design of a proposed development will be determined by the needs of the community, **the inclusionary zoning ordinance should implement guidelines that require affordable units to be similar in outward appearance to market rate units in the municipality.** More often than not, visual compatibility positively contributes to the overall aesthetic quality of the municipality; and this can make it easier for low or moderate income residents to both accommodate and assimilate themselves into the municipality. **In addition, the ordinance should provide implementation guidelines for developments that may include a mix of housing types and lot sizes, such as single-family units, duplexes, triplexes, and quadraplexes.**

Lastly, the inclusionary zoning ordinance should address two additional building alternatives: off-site construction and land dedication. In the event a developer proves that the construction of on-site affordable units is infeasible (due to environmental constraints or other fiscal considerations); he may be granted the option, with approval from the municipal Planning Board, for off-site construction. An approval of this nature should require the developer to construct both the market and the affordable units simultaneously. A land dedication provision would allow a developer, demonstrating a unique hardship, to **substitute a donation of land suitable for development that can accommodate affordable units in place of constructing the units.**

Presented below are six examples of either approved ordinances or ordinances still in the drafting phase demonstrating those guidelines set within the "Rhode Island Statewide Strategic Housing Plan". Examples one and two demonstrate guideline language for development design and location; examples three and four demonstrate guideline language for a variety of different mixed use developments; example five demonstrates guideline language for the circumstances and requirements for off-site developments; lastly, example six demonstrates guideline language for the requirements for land dedication.

**Example One**

***(Lexington, MA)***

*6. Development Design. Location and design of Inclusionary Units shall comply with the following:*

- *(a) Inclusionary Units shall be sited in no less desirable locations than the other units located on the same site.*
- *(b) The materials used and the quality of construction for Inclusionary Units, including heating, ventilation, and air conditioning systems, shall be equal to those of the other units in the development, but amenities such as designer or high end appliances and fixtures need not be provided for Inclusionary Units.*
- *(c) To be credited towards the count of Inclusionary Units any existing dwelling units must be in full compliance with all applicable construction and occupancy codes, and shall be sufficiently maintained or rehabilitated so that all major systems (including, but not limited to, roof, windows and building envelope, HVAC, plumbing, and electrical) meet standards comparable to new construction.*
- *(d) The exterior appearance of the Inclusionary Units shall be compatible with the other units on the same site.*

**Example Two**

***(Lincoln, RI) [DRAFT: 02-06 Article VII]***

*J. Design Guidelines*

- *(1.) The exterior appearance of the Inclusionary units in any development shall be visually compatible with the market rate units in the development. External building materials and finishes shall be substantially the same in type and quality for inclusionary units as for market rate units and have the appearance of a single family home.*

**Example Three**

***(Providence Inclusionary Zoning Recommendations) [PolicyLink]***

*Design Standards for Inclusionary Units*

*Affordable units must be similar to and compatible with market rate units in outward appearance and in number of bedrooms, but size of affordable units may be reduced to a minimum standard, e.g. for apartments, the minimum sizes could be:*

- *Efficiencies at 450 sq. ft.*
- *One bedrooms at 600 sq. ft.*
- *Two bedrooms at 850 sq. ft.*
- *Three bedrooms at 1,050 sq. ft.*
- *Four bedrooms at 1,120 sq. ft.*

*Townhouses, multiplex, and single family units would generally be larger than these minimums due to developer design and compatibility goals. Interior finishes, appliances, and amenities need not be compatible with market rate units.*

**Example Four**

***(South Kingstown, RI) [FINAL DRAFT: Inclusionary Zoning Ordinance and Subdivision Regulations: Revised February, 2006 ]***

C. *Permitted Uses. (Note: the section below is modeled after the existing provisions of Section 502.5 Flexible Design Residential Projects.).*

*a) The following residential uses are permitted (Y) in subdivisions or land development projects to these inclusionary provisions.*

| *Use Code* | *Description* |
|---|---|
| *10* | *Single household detached structure* |
| *11* | *Two household detached structure* |
| *12* | *Multi-household detached structure (up to four-dwelling units per structure in subdivisions, up to 12 units per structure LDP, Land Development Project)* |
| *12.1* | *Multi-household Land Development Project (see Appendix A, Use Code Descriptions)* |
| *12.2* | *Multi-household Detached Structure-Elderly Only, LDP (see Appendix A, Use Code Descriptions)* |
| *12.3* | *Multi-household Land Development Project - Elderly Only, LDP (see Appendix A, Use Code Descriptions)* |
| *12.4* | *Residential Compound (see Appendix A, Use Code Descriptions)* |
| *16.1* | *Mobile or Manufactured Home Park, Land Development Project (see Appendix A, Use Code Descriptions)* |
| *16.2* | *Senior Residential Community – LDP (Land Development Project) – Elderly-Only, (see Section 501.7, permitted only in the R40 zoning district subject to the additional requirements listed therein)* |

*I. Design Standards for Inclusionary Dwelling Units in Major Subdivisions and Major Land Development Projects*

*1 Intent*

*It is the intent of this Section to establish general design and procedural standards for the siting and construction of affordable dwelling units (inclusionary zoning) in major land developments and major subdivisions. By the application of these standards and procedural requirements it is intended to create subdivision neighborhoods and land development projects that have long desirability, provide housing opportunities for a broad range of households with varying incomes and housing needs and are compatible with the surrounding community.*

*a) Inclusionary Dwelling Unit Design Considerations -...For conventional subdivisions or Flexible Design Residential Projects (FDRP's) such units may be designed as single household units, duplexes, triplexes or in a quadraplex configuration.*

**Example Five**

***(Lincoln, RI) [DRAFT: 02-06 Article VII]***

*M. Off-site Construction of Inclusionary Units: Inclusionary units may be constructed off-site only upon the determination by the Planning Board or Zoning Board that on-site construction is infeasible. If this option is chosen, then the off-site inclusionary units must be constructed prior to or concurrently with the construction of the on-site project. The inclusionary unit size and count must meet the same requirements as if the inclusionary units were constructed on-site.*

**Example Six**

***(Towns in Barnstable County, MA) [Inclusionary Housing Bylaw]****

*05 Provision of Affordable Units:*

*4. An applicant may offer, and SPGA may accept, donations of land in fee simple, on or off-site, that the SPGA in its sole discretion determines are suitable for the construction of affordable housing units. The value of donated land shall be equal to or greater than the value of the construction or set-aside of the affordable units. The SPGA may require, prior to accepting land as satisfaction of the requirements of this provision/ordinance, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value.*

*Note: If item 4 were to be incorporated into the language of a RI ordinance, replace the “SPGA” with “Zoning Board of Review or Planning Board (ZBR or PB)”; and replace the word “bylaw” with the word “ordinance”.

## 7. Standards - Timing of construction

It is important to establish when the affordable units shall be constructed. Most municipalities require affordable units to be built concurrently with market units to ensure integration of affordable and market units, and to prevent developers from abandoning projects prior to completing the affordable units. This section can be used to stipulate when phasing is used how many affordable units are to be constructed as part of each phase. **The "Rhode Island Five Year Strategic Housing Plan" guidelines state that the inclusionary ordinance may stipulate an upfront commitment from developers to create affordable units in a timely manner through the use of bonds or the requirement of phased construction plans, encouraging developers to construct affordable units either before or concurrent with market rate units.**

***(Burlington, VT)*** *Inclusionary units shall be made available for occupancy on approximately the same schedule as a Covered Project's market units, except that certificates of occupancy for the last ten percent of the market units shall be withheld until certificates of occupancy have been issued for all of the inclusionary units. A schedule setting forth the phasing of the total number of units in a Covered Project, along with a schedule setting forth the phasing of the required inclusionary units, shall be established prior to the issuance of a building permit for any development subject to the provisions of this Article.*

(A covered project in Burlington, VT is defined as - units that are offered for sale via the conveyance of a deed or share for individual units).

***(Lexington, MA)*** *POLICY 4.15: TIMING OF CONSTRUCTION: Building permits should not be issued for the construction of any dwelling unit in the second 50% of the market rate dwelling units, which are linked to affordable dwelling units, whether on the same site or elsewhere in town, until construction has begun on ALL the affordable dwelling units.*

***(Massachusetts Smart Growth Model IZ Bylaw)***
***05.0 Provisions Applicable to Affordable Housing Units On- and Off-Site:***

*3. Timing of construction or provision of affordable units or lots. Where feasible, affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:*

| *Market rate Unit (% Complete)* | *Affordable Housing Unit (% Required)* |
|---|---|
| *<30%* | *-* |
| *30% plus 1 unit* | *10%* |
| *Up to 50%* | *30%* |
| *Up to 75%* | *50%* |
| *75% plus 1 unit* | *70%* |
| *Up to 90%* | *100%* |

*Fractions of units shall not be counted.*

***(Charlton, MA) [DRAFT]***

*(4.) The construction of the affordable units will be built (a unit is considered "built" upon the issuance of an Occupancy Permit) coincident with the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:*

| *Market rate units (% built)* | *Affordable housing units (% built)* |
|---|---|
| *Up to 30%* | *None required* |
| *30% to 50%* | *At least 30%* |
| *51% to 75%* | *At least 75%* |
| *76% or more* | *100%* |

## 8. Cost Offsets and Density Bonuses

**State inclusionary zoning guidelines suggest ways of reducing the costs of a development to enable the construction of affordable housing. Municipalities may implement cost offsets in a variety of ways. These include waivers from development standards such as set-back requirements, parking and landscaping requirements, waivers of impact fees and streamlining permitting to reduce the cost of constructing affordable units.** These cost offsets allow a municipality to decrease the developer costs to be incurred while constructing affordable housing. In addition, the cost offsets minimize the possibility of a developer showing that inclusionary zoning causes an excessive loss such that it presents itself as a taking. Furthermore, the cost offsets give developers certain benefits to compensate themselves for pricing some units at below market rates.

> ***(South Kingstown, RI) [FINAL DRAFT: Inclusionary Zoning Ordinance and Subdivision Regulations: Revised February, 2006]***
> *502.6 A. Fair Share Development Fee Exemption. Per section 1101.D. 1. of this Ordinance, required Inclusionary dwelling units in major land development projects, major subdivisions or off-site exactions shall be exempt from payment of Fair Share Development Fees for both school facilities and open space, conservation, park and recreation land and/or facilities.*

One of the most popular developer incentives used by a municipality is the density bonus. Consequently, the incorporation of the density bonus provision has become an essential component of the inclusionary zoning ordinance, as it has proven advantageous to both the developer and municipality. **The State guidelines indicate that for the density bonus provision to be effective, it must be offered at a higher percentage then the affordable set-aside requirement in order to offset the cost of the affordable unit requirements.**

> ***(Charlton, MA) [DRAFT]***
> O. ***Provision of Affordable Units and Density Bonus***
>
> *(1.) Utilizing the Affordable Housing Incentive Option will require the granting of a Special Permit from the Planning Board.*
>
> *(2.) *Density Bonus Applicability: The density bonus is only available in those areas of Charlton serviced by **both** municipal water and sewer, or upon approval of **both** the Planning Board and the Board of Health.*
>
> *(3.) Density Bonus Formula: For projects resulting in a net increase of six (6) or more dwelling units, the applicant has the option of obtaining a density bonus in exchange for the provision of affordable housing. The number of additional lots derived from the density bonus shall not exceed 25% of the total lots that could be created under a conventional definitive subdivision plan design. The density bonus shall be calculated according to the following formula:*
>
> *3-a. For those residential development projects that will set aside a minimum of fifteen percent (15%) of the total proposed housing units for affordable housing, the minimum lot area per dwelling normally required in the applicable zoning district may be reduced by the amount necessary to permit up to two (2) additional units for each one affordable housing unit provided.*
>
> *3-b. For those residential development projects that will set aside a minimum of ten percent (10%) of the total proposed housing units for affordable housing, the minimum lot area per dwelling normally required in the applicable zoning district may be reduced by the amount necessary to permit up to one (1) additional unit for each one affordable housing unit provided.*
>
> *3-c. Fractions: If when applying the above percentages to the total number of units to determine the number of affordable units, the resulting number of affordable units includes a fraction of a unit, this fraction shall be rounded up to the next whole number.*

*Note – If item (2) were to be incorporated into the language of a RI ordinance, the language would need to be specific with regard to the type of water supply (i.e. – municipal water source; or a private/public well water source) available to it and its wastewater management system. Furthermore, if specific approvals need to be obtained, the municipality would need to identify those particular municipal and state departments.

***(Lincoln, RI) [DRAFT: 02-06 Article VII]***
*Density Bonus: All projects shall be entitled to a density increase of twenty-five percent (25%) in accordance with the provisions of this section. This density bonus qualifies as a locally provided subsidy. Any project shall be entitled to an increase in the maximum lot coverage allowed for the site on which the project is located following the calculation of density, lot coverage, and setbacks.*

***(Somerville, MA)*** *The affordable housing requirements of this Article shall apply to all residential developments seeking special permits with site plan review to develop 8 or more dwelling units, whether new construction, substantial rehabilitation, or adaptive reuse. Developments shall not be segmented or phased in a manner to avoid compliance with these provisions. Developers providing more than 12.5% of the total units in the development as affordable units may apply for an additional density bonus under the terms of this Article. Bonuses may be awarded on the basis of a 2 to 1 ratio of market rate units to affordable housing units. For every additional unit provided beyond the 12.5% required, 2 additional market rate units may be authorized.*

## 9. Fee In Lieu

An inclusionary zoning ordinance may allow the option for the developer to pay a fee in lieu should it not be possible to construct the required affordable units for a variety of reasons. Several methods exist for the use of fee in lieu of construction. Such fees can be established that permit payment as a right. **In addition, an alternative is to require developers to show that constructing units would constitute a unique hardship, or that a fee would produce a greater benefit. State guidelines recommend that each community adopt a schedule of in-lieu fees that is based on a sound methodology, such as a percentage of the appraised value of the market-rate units. The fee should not exceed the difference between the cost of development and the sales price for an affordable unit.** The fee in lieu paid, is linked to the cost of producing a unit, and typically varies in every community, as the formulas for calculating an appropriate fee in lieu are dependent upon the local housing market.

***(Massachusetts Smart Growth Model IZ Bylaw)***
***07.0 Fees-in-Lieu-of Affordable Housing Unit Provision: [Commentary Included]***

*1. As an alternative to the requirements of Section 05.0 or Section 06.0, an applicant may contribute to an established local housing trust fund to be used for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the proposed development or at an off-site locus.*

*(a) Calculation of fee-in-lieu-of units. The applicant for development subject to this bylaw may pay fees-in-lieu of the construction of affordable units. For the purposes of this bylaw/ordinance the fee-in-lieu of the construction or provision of affordable units will be determined as a per-unit cost as calculated from regional construction and sales reports. The SPGA will make the final determination of acceptable value.*

***COMMENT:*** *This Section provides a cash payment option in lieu of providing affordable units. The payment value may differ for each municipality and will depend on the size of the affordable housing unit discount that would be necessary to make the unit affordable (e.g. median sale price of market rate unit minus maximum sale price of a three-bedroom affordable dwelling unit). Fees in- lieu will need to be recalculated regularly to account for inflation and other market changes. Furthermore, the local housing trust fund will need to be closely regulated to ensure that dollars contributed to the fund are spent exclusively on the provisioning of affordable housing. This is the appropriate section for specifying guidelines for administering the housing trust and stipulating the governance structure by which the trust will be managed. Municipalities that significantly lack* *affordable housing opportunities should consider heavily restricting the fee-in-lieu payment option. In built-out communities, housing trust funds often grow and sit unused because sites appropriate for affordable housing development are not available. Additionally, affordable housing trusts can force municipal agents into the role of real estate developers, which local government officials may be poorly suited for or reluctant to do. Cities such as Cambridge have eliminated the fee-in-lieu payment option in almost all cases except for extreme hardship in order to ensure that affordable housing is built by the developers at the same time that new development is under construction.*

***(Duxbury, MA) [DRAFT]***
***560.12 Fees-in Lieu of Affordable Housing Unit Provision***
*As an alternative to the requirements of Section 560.5, and as allowed by law, an applicant may contribute to the Duxbury Housing Trust Fund to be used for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the proposed development or off-site.*

*Calculation of fees-in-lieu of units. The applicant for development subject to this Bylaw may pay fees in lieu of the construction of affordable units. For the purposes of this Bylaw, the fee in lieu of the construction or provision of affordable units is determined to be $200,000 per unit. Fox example, if the applicant is required to construct two affordable income units, they may opt to pay $400,000 in lieu of constructing or providing the units. Unless and until adjusted by Town Meeting, the fee in lieu of the construction of affordable units shall increase three (3%) percent every twelve months from the effective date of this Bylaw.*

## 10. Certifying Buyers and Renters and Maintaining Affordability

An inclusionary zoning ordinance can provide regulations with extensive instructions for marketing to and certifying buyers and renters of affordable units. **Affordable dwelling units for sale cost guidelines comprise: the principal, interest, property insurance, and taxes - which may be adjusted by state and local programs for property tax relief. These consolidated costs may not constitute more than 30 percent of the gross household income for a moderate income household. In the case of affordable dwelling units for rent cost guidelines comprise: the rent, heat, and utilities - other than telephone - and may not constitute more than 30 percent of the gross annual household income for a household with 80 percent or less of Area Median Income (AMI), adjusted for household size. State guidelines suggest that income ranges targeted in local zoning ordinances be consistent with the needs identified in the community's affordable housing plan.**

In addition, the provisions must have a system to make sure that eligible families are being housed in the affordable units over the long-term. **The Zoning Enabling Act [R.I.G.L. 45-24-46] mandates that the minimum time period for affordability maintenance shall be 30 years; and the State guidelines recommend that the period of affordability can be established in the ordinance as perpetuity meaning 99 years or the useful life of the building.**

The methods utilized to maintain the time frames for affordability vary with regard to the staffing and enforcement capabilities of each municipality. Typically affordability is maintained by certain legal mechanisms such as deed restrictions and covenants that can be used to guarantee the units remain affordable for that time period maintained through deed restrictions or covenants recorded against the property. These affordability controls often specify that a unit must be sold or rented to an income eligible buyer at an affordable price. Most ordinances impose price restrictions that keep units affordable when they pass to new occupants. More recently, municipalities have incorporated specific affordability maintenance periods, which would subsequently reinstate the original time period of affordability.

Lastly, guidelines need to be provided on the subject of resale pricing and maintaining the affordability of the housing units. Municipalities must address whether sellers should be allowed to recoup the value of capital investments in their homes. All of the aforementioned considerations can be facilitated by designating a monitoring agent in the ordinance. **The State inclusionary zoning guidelines recommends that the local municipality should select an agent approved to**

**monitor the affordable units for long-term compliance from RI Housing's list of approved monitoring agents, which may include local housing authorities, RI Housing, a community housing land trust, or the state or federal agency providing subsidies.**

***(Duxbury, MA) [DRAFT]***

***560.10 Maximum Incomes and Selling Prices: Initial Sale***

*To ensure that only eligible households purchase affordable units, the purchaser of an affordable unit shall be required to submit copies of the last three years' federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following transfer of title, to the Duxbury Housing Authority, that his/her or their family's annual income level does not exceed the maximum level as established by the Commonwealth's Division of Housing and Community Development, and as may be revised from time to time.*

*The maximum housing cost for affordable units created under this Bylaw is as established by the Commonwealth's Division of Housing and Community Development or as revised by the Town.*

***560.11 Preservation of Affordability; Restrictions on Resale***

*Each affordable unit created in accordance with this Bylaw shall have the following limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a deed restriction on the property, recorded at the Plymouth County Registry of Deeds or the Land Court, and shall be in force for as long a period as is lawful.*

*Resale Price – Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price to and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property noted in Section 560.11. For example, if a unit appraised for $300,000 is sold for $225,000 as a result of this Bylaw, it has sold for 75% of its appraised value. If several years later, the appraised value of the unit at the time of proposed resale is $325,000, the unit may be sold for no more than $243,750, or 75% of the appraised value of $325,000.*

***(Lincoln, RI) [DRAFT: 02-06 Article VII]***

O. *Requirements*

*(2) Determination of Rental Rates for Affordable Units:*
*Maximum Rents: Rents charged for inclusionary rental units in any one project must average, be affordable to households earning eighty percent (80%) or less of the Area Median Income (AMI) as determined by HUD. No unit may rent at a rate, which exceeds affordability for a household earning fifty percent (50%) to eighty percent (80%) of AMI as determined by HUD. Latest AMI statistics may be obtained from Rhode Island Housing at www.rihousing.com.*

*(3) Sales Prices for Affordable Units: The maximum sales price for an affordable ownership unit shall be set by Rhode Island Housing according to their accepted formula. The home price for affordable units in any development shall be a price affordable to a household earning no more than eighty (80%) of the AMI as defined by HUD if subsidized with federal funds. The home price for affordable units in any development not being subsidized by federal funds the price must be affordable as follows:*

*a One unit shall be made available at a price affordable to a household earning no more than eighty percent (80%) of the AMI as defined by HUD.*

*b One unit shall be made available at a price affordable to a household earning no more than one hundred percent (100%) of the AMI as defined by HUD.*

*c Any additional units may be made available at a price affordable to a household earning no more than one hundred twenty percent (120%) of AMI as defined by HUD.*

*(4.) Approved Purchasers of Affordable Units: A developer or owner shall select an eligible purchaser after completing a good faith marketing and selection process. Upon request, the Town may provide the developer or owner of an affordable unit with a list of households certified by the Town as eligible to purchase the unit. However, a developer or property owner may select an income eligible purchaser who is not on a furnished list so long as the Town can verify the purchaser's income and asset eligibility and the unit is sold at an affordable price as described in this chapter.*

*(5.) Purchasers of Affordable Units Required to Reside in Those Units: A purchaser of an affordable unit shall occupy the purchased unit as their primary residence. No person shall rent an affordable*

*ownership unit. Ownership units must remain exclusively owner occupied for the entire required affordability period.*

(6.) *Resale Restrictions**;** Applicable to Affordable Units: All affordable ownership units as developed under this Article shall be subject to the following restrictions: A seller of an affordable unit must select a low-income purchaser by a method that complies with an approved good faith marketing and selection process. At the request of the applicant, the Town will provide the seller with the description of a process that meets this requirement. Upon request, the Town may provide the seller with a list of households certified by the Town as income eligible to purchase the unit. All purchasers of affordable units shall be part of an income eligible household.*

(7.) *Resale Price for Affordable Units: The resale price of any affordable unit shall not exceed that which is affordable to a household earning no more than eighty percent (80%) to one-hundred twenty percent (120%) of the AMI as defined in Section N.(3).*

## 11. Housing Agency Right to Purchase

Where appropriate, some inclusionary zoning ordinances give the municipality and/or designated not-for-profit entities a right to purchase a fixed percentage of affordable units. This can be required when the units are first offered for sale or rent, so that the units will stay permanently affordable. Lastly, the local trends in housing stock, the need for and benefits of affordable housing, and the staff capability of each community and/or the presence of a qualified community development corporation should dictate how this guideline shall be incorporated within the municipality's inclusionary zoning ordinance.

***(Duxbury, MA) [DRAFT]***

***560.11 Preservation of Affordability; Restrictions on Resale***

*Right of first refusal to purchase – The purchaser of an affordable housing unit developed as a result of this Bylaw shall agree to execute a deed rider prepared by the Town, granting, among other things, the Town's right of first refusal for a period not less than one hundred and eighty (180) days to purchase the property of assignment thereof, in the event that, despite diligent efforts to sell the property, a subsequent qualified purchaser cannot be located.*

***(Lincoln, RI) [DRAFT: 02-06 Article VII]***

O. *Requirements*

(8.) *Deed Restriction or Incorporation into a Community Land Trust Required: No person offering an affordable unit for sale shall fail to lawfully reference in the grant deed conveying title of any such unit and recorded with the Register of Deeds, a covenant or Declaration of Restrictions in a form approved by the Town. Such covenant or Declaration of Restrictions shall reference applicable contractual arrangements, restrictive covenants, and resale restrictions as are necessary to carry out the purposes of this Article.*

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## Rhode Island State Agency World Wide Web Pages:

| | |
|---|---|
| RI Statewide Planning Program | http://www.planning.state.ri.us. |
| RI Housing and Mortgage Finance Corporation | http://rihousing.com. |
| Rhode Island Government | www.ri.gov. |
| Rhode Island General Laws | http://www.rilin.state.ri.us/Statutes/TITLE45/INDEX.HTM. |

## World Wide Web Pages of Various Case Studies & Sample Ordinances

| | |
|---|---|
| Barrington, RI | http://www.ci.barrington.ri.us. |
| Barnstable, MA | www.capecodcommission.org/bylaws/affordhous.html. |
| Boston, MA | http://www.cityofboston.gov. |
| Burlington, VT | http://www.ci.burlington.vt.us. |
| Burrillville, RI | http://www.burrillville.org. |
| Cambridge, MA | http://www.cambridgema.gov/index.cfm. |
| Canton, MA | http://www.town.canton.ma.us. |
| Charlton, MA [DRAFT] | http://www.townofcharlton.net. |
| Duxbury, MA [DRAFT] | http://www.town.duxbury.ma.us. |
| East Greenwich, RI | http://www.eastgreenwichri.com. |
| East Providence, RI | http://www.eastprovidence.com. |
| Lexington, MA | http://ci.lexington.ma.us. |
| Lincoln, RI [DRAFT: 02-06 Article VII] | http://www.lincolnri.org. |
| Massachusetts | http://www.state.ma.us/dhcd/components/hac/zone.htm. |
| Massachusetts Smart Growth Model IZ Bylaw | http://www.mass.gov/ocd. |
| Montgomery County, MD | www.inhousing.org/InclusionaryZoning/zonelaws.htm. |
| North Kingstown, RI | http://www.northkingstown.org. |
| Providence Inclusionary Zoning Recommendations [PolicyLink] | http://www.policylink.org/Projects/IZ/. |
| Richmond, RI | http://www.richmondri.com. |

Somerville, MA http://www.ci.somerville.ma.us.

South Kingstown, RI [FINAL DRAFT: Inclusionary Zoning Ordinance and Subdivision Regulations; Revised February, 2006] http://www.southkingstownri.com.

## Links

If you are looking for additional housing-related information, you may want to visit one of the following sites. Access is provided purely as a public service. The State of Rhode Island does not endorse any of the linked sites or any products or services found at the linked sites.

Citizens' Housing and Planning Association www.chapa.org.

Enterprise Foundation www.enterprisefoundation.org.

Fannie Mae www.fanniemae.com.

Federal Home Loan Bank of Boston www.fhlbboston.com.

Freddie Mac www.freddiemac.com.

Grow Smart Rhode Island http://www.growsmartri.com/affordablehousing.html.

Harvard University Joint Center for Housing Studies www.jchs.harvard.edu.

HUD www.hud.gov.

LISC www.liscnet.org.

Massachusetts Housing Partnership Fund www.mhp.net/termsheets/inclusionaryzoning.pdf.

Minority Business Enterprise Commission www.rimbe.org.

National Association of Housing & Redevelopment Officials www.nahro.org.

National Association of Realtors www.realtor.com.

National Association of Home Builders www.nahb.com.

National Coalition for the Homeless www.nationalhomeless.org.

National Council of State Housing Agencies www.ncsha.org.

National Housing Conference www.nhc.org.

National Low Income Housing Coalition www.nlihc.org.

Neighborworks www.nw.org.

Pioneer Institute www.pioneerinstitute.org.

Research Institute for Housing America www.housingamerica.org.

Rhode Island Association of Realtors www.riliving.com.

RI Builders Association www.ribuilders.org.

RI Chapter of the American Planning Association www.riapa.org.

RI Coalition for the Homeless www.rihomeless.com.

RI Housing Resources Commission www.hrc.state.ri.us.

Southeastern Regional Planning and Economic Development District http://www.srpedd.org.

Statewide Housing Action Coalition www.shac-ri.org.

**Regional Inclusionary Housing Initiative**
***Policy Tools Series***

## POLICY TOOL #1
## DEVELOPING AN INCLUSIONARY ZONING ORDINANCE

Inclusionary housing programs can effectively create affordable housing in a variety of communities. The most common route to creating an inclusionary housing program is through a zoning ordinance that sets the specific requirements linking the development of new residential units with the creation of affordable housing units. This Policy Tool provides a brief overview of inclusionary housing and a detailed analysis of issues that need to be considered when developing an inclusionary zoning ordinance.

**What is Inclusionary Housing?** Inclusionary zoning requires residential developers to set aside a portion of the homes they build as affordable for low- and moderate-income families. In addition to increasing the supply of affordable housing, inclusionary zoning disperses affordable housing throughout the growth areas of a region. It enables low- and moderate- income families to live in homes indistinguishable from, and adjacent to, market-rate housing, and to live in communities with better access to employment and educational opportunities. Inclusionary zoning has been implemented in a variety of locales, ranging from older cities, such as Boston, to growing towns like Longmont, Colorado.

**What are the benefits of Inclusionary Housing?** Inclusionary housing programs help municipalities serve the needs of local employers, including business, schools, and the municipalities themselves:

- Businesses find it easier to hire and retain employees who are able to live within a reasonable commuting distance
- Municipal governments, school districts, fire and police departments benefit from employees living in the communities they serve because they are more invested in its future.

Inclusionary housing helps meet the needs of current and future residents:

- Senior citizens have the choice to remain in the communities where they have raised their children.
- Younger parents and single parent families can find homes in communities with good schools, parks and services.

Inclusionary housing is effective in a variety of housing market conditions:

- In gentrifying communities, the affordable units created through an inclusionary program can help offset the displacement of residents.
- In new and growing suburban communities, the inclusionary units can broadly disperse affordable housing needed by area jobholders and prevent exclusive communities.

## ISSUES TO CONSIDER IN DEVELOPING AN INCLUSIONARY ZONING ORDINANCE

The development of an inclusionary zoning ordinance requires consideration of a range of variables. The local decision making process that tailors the ordinance to local conditions is critical. There is no perfect inclusionary zoning ordinance but rather a range of options that need to be viewed separately and then evaluated in terms of how they work together. The following report addresses each variable and options to be weighed in developing an effective ordinance. It should be used as a guidebook through these issues, not as a magic recipe.

### #1 Findings

Many ordinances begin with findings about the need for affordable housing and planning study results. The section would summarize any planning process the community has undertaken, trends in housing stock, the need for and benefits of affordable housing, and the benefits anticipated by enactment of an inclusionary zoning ordinance. Findings sections are often lengthy. Below is language based on Sacramento's ordinance.

> The City Council makes the following findings:
>
> - It is a public purpose of the City to achieve a diverse and balanced community with housing available for households of all income levels. Economic diversity fosters social and environmental conditions that protect and enhance the social fabric of the City and are beneficial to the health, safety, and welfare of its residents.
> - The City is experiencing an increasing shortage of housing affordable to low income households. New residential development does not provide housing opportunities for low income households due to the high cost of newly constructed housing in the City. As a result, low income families are *de facto* excluded from many neighborhoods, creating economic stratification detrimental to the public health, safety, and welfare. An increasing number of low income persons live in overcrowded or substandard housing and devote an overly large percentage of their income to pay for housing.
> - The amount of land in the City available for residential development is limited by City General Plan policies and principles embodied in state law pertaining to general plans and annexation. Scarce remaining opportunities for affordable housing would be lost by the consumption of this remaining land for residential development without providing housing affordable to persons of all incomes.
> - Therefore, to implement the City General Plan, to carry out the policies of state law, and to ensure the benefits of economic diversity to the residents of the City, it is essential that new residential development in the remaining new growth areas of the City contain housing opportunities to low income households, and that the City provide a regulatory and incentive framework which ensures development of an adequate supply and mix of new housing to meet the future housing needs of all income segments of the community. (Sacramento)

### #2 Statement of Purpose

Purpose Statements typically are broad policy directives. The first purpose statement below is based on language from Fairfax County, Virginia's ordinance, and the second statement is based on language from Boulder, Colorado.

This program is established to assist in the provision of affordable housing for persons of low and moderate income. The program is designed to promote a full range of housing choices and to require the construction and continued existence of dwelling units affordable to households whose income is 115% or less than the median income for the Chicago Standard Metropolitan Statistical Area. (Fairfax County)

The purposes of this chapter are to:

(a) Implement the housing goals of the City Master Plan;
(b) Promote the construction of housing that is affordable to the community's workforce;
(c) Retain opportunities for people that work in the City to also live in the City;
(d) Maintain a balanced community that provides housing for people of all income levels; and
(e) Insure that housing options continue to be available for very low-income, low-income, and moderate-income residents, for special needs populations and for a significant proportion of those who both work and wish to live in the City. (Boulder)

## #3 Definitions

The terms that follow are typical of those that are defined in inclusionary zoning ordinances:

| | | |
|---|---|---|
| Affordable Housing Price | Eligible Homebuyer | Median Income |
| Affordable Rent | Eligible Renter | Moderate Income |
| Affordable Dwelling Unit | Extreme Hardship | Permanently Affordable |
| Control Period | Housing Commission | Residential Project |
| Developer | Housing Trust Fund | Very Low Income |
| Development Agreement | Low Income | |
| Dwelling Unit | Market Unit | |

## #4 Threshold Size

Some ordinances limit their application to developments exceeding a threshold size. The first example below is based on language from Boulder's ordinance. In one sentence, it sets a threshold size, a set-aside percentage, and a period of affordability. The second is based on Burlington, Vermont's ordinance, and is notable because it applies to rehabilitation projects and the threshold level is applicable to development on more than a single site. Either example could be abbreviated to simply state what size developments trigger application of a set aside requirement.

Any development on a site larger than 10 acres or containing 50 or more dwelling units shall include at least twenty percent of the total number of dwelling units within the development as permanent affordable units. (Boulder)

The following residential development projects shall be Covered Projects and shall be subject to the requirements of this Article: all development of residential property larger than 10 acres or containing 50 or more dwelling units taking place through the construction of new structures or through the substantial rehabilitation of existing structures. Covered Projects shall include all development of residential property in excess of 10 acres or containing 50 or more dwelling units in the City by the same responsible party in any calendar year. (Burlington)

## #5 Set-Aside—Targeted

A critical decision in developing a inclusionary zoning ordinance is the percentage of housing units required to be set aside as affordable. Often the set aside requirements are linked to specific income eligibility targets. Two examples of affordable housing set-asides targeted to specific income tiers follow below. The first example is based on language from Sacramento's ordinance. The second example, based on provisions of Davis, California's ordinance applicable to rental housing, also targets affordable housing to different income tiers, but varies the target percentages based on the size of the project. (Davis's numbers and percentages are used for ease of understanding.)

> In developments covered by this section, the inclusionary housing component shall consist of affordable units leased or sold as follows: x% to very low income families (earning no more than 50% of area median income); x% to low income (earning more than 50% of area median income but no more than 80% of area median income); and x% to moderate income families (earning more than 80% of area median income but no more than 115% of area median income). (Sacramento)
>
> A developer of multifamily rental developments containing 50 or more units shall provide at least 25% of the units affordable to low income households (earning more than 50% of area median income but no more than 80% of area median income) and at least 10% percent of the units affordable to very low income households (earning no more than 50% of area median income). A developer of multifamily rental developments containing between five and nineteen units, inclusive, shall provide 15% percent of the units to low income households and 10% percent to very low income households. (Davis)

## #6 Housing Commission Right to Purchase

Some ordinances give the municipality and not-for-profit entities a right to purchase a fixed percentage of affordable units when they are first offered for sale or rent, so that they can keep the units permanently affordable. The first example below is based on language from Montgomery County, Maryland's ordinance, and the second is based on Fairfax County, Virginia's ordinance. (The percentages identified are Montgomery County's and Fairfax County's, respectively.)

> The Housing Commission and any other not-for-profit corporation designated by the Commission has the option to buy or lease, for its own programs or programs administered by it, up to 40% percent of all affordable units. The Commission may buy or lease up to 33%. Any other designated corporation may purchase or lease any affordable units in the first 33% that the Commission has not bought or leased, and the remainder of the 40%. Units purchased or leased under this option shall be assigned to very-low or low-income persons. The Commission shall establish standards for designating not-for-profit corporations which shall require the corporations to demonstrate their ability to operate and maintain affordable units satisfactorily on a long-term basis. (Montgomery County)
>
> The Housing Commission shall have an exclusive right to purchase up to one-third of the for sale affordable dwelling units within a development for a 90 day period beginning on the date of receipt of written notification from the developer advising the Housing Commission that a particular affordable dwelling unit is or will be completed and ready for purchase. The

remaining two thirds of the for sale affordable units within a development and any units which the Housing Commission does not elect to purchase shall be offered for sale exclusively for a 90 day period to persons who meet the income criteria established by the Housing Commission. After the expiration of 60 days of the 90 day period referenced above, the affordable dwelling units not sold shall be offered for sale to nonprofit housing groups, as designated by the Housing Commission, subject to the established affordable dwelling unit prices. (Fairfax County)

## #7 Design and Building Requirements

Most ordinances require that affordable units be visually compatible with market rate units in the same development. The language below illustrates how this preference is drafted into an ordinance. The first example is based on Burlington's ordinance, the second is based on Sacramento's, and the third is based on Fairfax County's.

Affordable inclusionary units may differ from the market units in a Covered Project with regard to interior amenities and gross floor area, provided that:

(i) these differences, excluding differences related to size differentials, are not apparent in the general exterior appearance of the Project's units; and
(ii) these differences do not include insulation, windows, heating systems, and other improvements related to the energy efficiency of the Project's units;
(iii) the gross floor area of the affordable inclusionary units is not less than minimum requirements established by the City.

(Burlington)

Inclusionary Units shall be visually compatible with Market Rate Units. External Building materials and finishes shall be the same type and quality for Inclusionary Units as for Market Rate Units. Upon application by the developer to the City, the City may, to the maximum extent appropriate in light of project design elements as determined by the Planning Director, allow builders to finish out the interior of Inclusionary Units with less expensive finishes and appliances. (Sacramento)

The Housing Commission shall develop specifications for the prototype affordable housing products both for sale and rental, which shall be structured to make the units affordable to very low-, low-, and moderate-income households. All building plans for affordable dwelling units shall comply with such specifications. Any applicant or owner may voluntarily construct affordable dwelling units to a standard in excess of such specifications, but only 50 percent of the added cost for exterior architectural compatibility upgrades (such as brick facades, shutters, bay windows, etc.) and additional landscaping on the affordable dwelling unit shall be included within recoverable costs, up to a maximum of 2 percent of the sales price of the affordable dwelling unit, with the allowance for additional landscaping not to exceed one half of the above-noted 2 percent maximum. (Fairfax County)

## #8 Timing of affordable unit construction

Most municipalities require affordable units to be built concurrently with market units to ensure integration of affordable and market units, and to prevent developers from abandoning projects prior to completing the affordable units. The first example below is from Burlington's ordinance, and the second is from Montgomery County's.

Inclusionary units shall be made available for occupancy on approximately the same schedule as a Covered Project's market units, except that certificates of occupancy for the last ten percent of the market units shall be withheld until certificates of occupancy have been issued for all of the inclusionary units. A schedule setting forth the phasing of the total number of units in a Covered Project, along with a schedule setting forth the phasing of the required inclusionary units, shall be established prior to the issuance of a building permit for any development subject to the provisions of this Article. (Burlington)

The affordable dwelling unit agreement must include the number, type, location, and plan for staging construction of all dwelling units and other such information as the Commission requires to determine the applicant's compliance with this Chapter. The affordable dwelling unit staging plan must be consistent with any applicable land use plan, subdivision, plan, or site plan. The staging plan included in the affordable dwelling unit agreement for all dwelling units must be sequenced so that:

(1) no or few market rate dwelling units are built before any affordable units are built;
(2) the pace of affordable unit production must reasonably coincide with the construction of market rate units; and
(3) the last building built must not contain only affordable units.

(Montgomery County)

## #9 Fee In Lieu Formula

Some municipalities permit developers to pay a fee in lieu of developing hard affordable units. While some municipalities permit payment as a right, others require developers to show that constructing hard units would constitute a unique hardship, or that a fee would produce a greater benefit.[1] Because the fee paid is typically linked to the cost of producing a hard unit, fee in lieu formulas are necessarily dependent upon the local housing market. The first example below is based on the Boston Executive Order, and the second is based on Boulder's ordinance. The third and fourth examples, based on Montgomery County's and Brookline, Massachusetts' ordinances, respectively, authorize

[1] The following are summaries of the requirements that developers must satisfy to qualify to pay a fee in lieu of development in some municipalities:

Montgomery County: Developers may pay a fee in lieu if they can show that a resident's housing expenses for a hard unit would exceed what a participant in the affordable housing program could pay. A developer must justify why fees for facilities and services should not reasonably be excluded or reduced for affordable unit occupants. A fee paid must be sufficient to produce more units or units that are more affordable to low and moderate income families. The County has allowed fees in lieu of development on only 11 occasions.

Boulder: Fees in lieu of half of the required affordable units is permitted as a right. Developers may only pay fees in lieu of a larger percentage of units if a developer can demonstrate that payment of a fee would accomplish more benefit to the City than construction on site.

Santa Fe: Developers may pay a fee in lieu of developing hard units if they show that as a direct consequence of the inclusionary zoning ordinance they (1) are deprived of all economically viable use of their property as a whole, or (2) would lose money on the development as a whole and can demonstrate to the Housing Opportunity Program administrator's satisfaction that the loss is an unavoidable consequence of the affordable housing requirement.

a fee in lieu of development and provide that procedures for implementing such a fee shall be determined by administrative regulations.

> Subject to the approval of the head of the relevant City agency, developers may also propose to achieve these affordable housing obligations by making a dollar contribution to an affordable housing fund calculated by multiplying the total number of dwelling units in the proposed residential development by 0.15, and by multiplying the result by the Affordable Housing Cost Factor, currently standing at $52,000. This Affordable Housing Cost Factor is defined as the average total public subsidy per new construction affordable housing unit permitted in the City for the previous calendar year, and will be adjusted annually on July 1 of each year in an amount commensurate with the cost of producing affordable housing. (Boston)

> Whenever this chapter permits a cash-in-lieu contribution as an alternative to the provision of a single permanently affordable housing unit, the cash-in-lieu contribution shall be as follows:
> (a) For each unrestricted detached dwelling unit, the cash-in-lieu contribution shall be the lesser of $13,200.00, or $55.00 multiplied by twenty percent of the total floor area of the unrestricted unit.[2]
> (b) For each unrestricted attached dwelling unit, the cash-in-lieu contribution shall be the lesser of $12,000.00, or $50.00 multiplied by twenty percent of the total floor area of the unrestricted unit
> The city manager is authorized to adjust the cash-in-lieu contribution on an annual basis to reflect changes in the median sale price for detached an attached housing, using information provided by County Assessor records for the City. (Boulder)

> In exceptional cases, instead of building the required number of affordable dwelling units, a developer may offer to contribute to the Housing Initiative Fund an amount that will produce significantly more affordable dwelling units. The procedures for considering and implementing contribution offers must be established by executive regulation. To implement an offer, the developer must sign an agreement with the Director of the Department of Housing and Community Development not later than a time provided in the regulations.
> (Montgomery County)

> At the option of the City, the requirements of this Section may be met through a cash payment to the City or its designee in an amount based on the guidelines adopted as per (f) below if the cash payment is found by the City, in its discretion, to be advantageous to the City in creating or preserving affordable housing. Cash contributions shall be used only for purposes of providing affordable housing for very low, low, and moderate income persons. . . .
> (f) The Planning Commission, in consultation with the Housing Commission and after public notice and hearing, shall adopt guidelines to aid in the interpretation and determination of the requirements of this Section. (Brookline)

## **#10 Cost Offsets**

As is contemplated in the language below, some municipalities allow developers to request waivers from development standards such as set-back requirements, parking and landscaping requirements, or building material requirements, which reduce the cost of constructing affordable units. These cost offsets allow a municipality to decrease the

[2] The 20% floor area calculation reflects Boulder's 20% set-aside. The fee is based on 20% of the floor area of a development rather than 20% of the number of units. To determine the amount of the fee, Boulder conducted a study to determine the gap between the allowable sales price of an affordable unit and the actual cost to construct a unit; the gap figure was then lowered to a politically feasible amount.

burden placed on developers of affordable housing, and minimize the possibility of a developer showing that inclusionary zoning causes an excessive loss such that it effects a taking. The offsets in the examples below are incorporated into the ordinances, but municipalities may implement cost offsets in a variety of ways. For example, Brookline does not include offsets in its set-aside ordinance, but provides for an offset—a floor area bonus—in a separate ordinance. Though I am not aware of a municipality which has done so, an ordinance could generally authorize cost offsets which would be detailed in administrative regulations.[3] The first example below is based on the Santa Fe ordinance, and incorporates cost offsets mentioned in the Highland Park Affordable Housing Plan. The second is based on provisions in the Sacramento ordinance, and lists offsets from that ordinance to provide a sense of the range of offsets available.

> Impact fees, building permit fees, and tap-on fees (or portions thereof) may be waived for affordable units, subject to agreement of the entities receiving revenues from such fees. Any developer of affordable units may submit a request for a waiver of other City development standards, and the City shall respond within thirty calendar days of its receipt. The City shall approve a waiver if each of the following requirements are met:
>
> (a) The proposed waiver will make the housing more affordable. The developer must show how real costs will be reduced and how the savings will be passed on affordable home buyers or renters.
>
> (b) The proposed waiver does not compromise health, safety or welfare as determined by the City.
>
> (c) Vehicular and pedestrian circulation, storm drainage and utilities are provided for adequately.
>
> (Santa Fe)

> Upon application as provided herein, (1) the City shall make available to a Residential Project Developer a program of waiver, reduction or deferral of development fees, administrative and financing fees for affordable units; (2) the City may modify for affordable units, to the extent feasible, in light of the uses, design, and infrastructure needs of the Development Project, standards relating to road widths, curbs and gutters, parking, lot coverage, and minimum lot sizes; and (3) the City may, to the maximum extent appropriate in light of project design elements, allow builders to finish out the interior of affordable units with less expensive finishes and appliances. The Planning Director may issue Special Permits for Inclusionary Projects, and shall develop further procedures for streamlining and priority processing which relieve affordable units of permit processing requirements to the maximum extent feasible consistent with the public health, safety, and welfare. The developer may apply to the City's Housing Trust Fund for assistance in the financing and development of the affordable units in a development. (Sacramento)

### **#11 Density Bonus**

A number of municipalities grant a density bonus—permission to develop more units than zoning would otherwise allow. Like other cost offsets, density bonuses may decrease the likely success of a taking claim by mitigating the economic impact of developing affordable housing. Though some communities tout density bonuses as the most effective cost offsets, others that do not desire denser development avoid them

[3] Such a provision could look much like the Montgomery County and Brookline provisions which authorize fees in lieu of development, but leave determination of a fee formula or amount to administrative regulations.

altogether. Some municipalities automatically award a density bonus to developers of affordable housing, while others permit smaller developments as of right without any set-aside, and set up larger developments with increased density as a desirable variance, to which an affordable housing set-aside is attached. The first example below, based on Cambridge, Massachusetts' density bonus, follows the former strategy, and permits developers to split the additional density between affordable and market rate units. The bonus is structured so that the developer's profit on additional market units directly offsets the loss on affordable units. The second example is based on Somerville, Massachusetts' ordinance, and follows the latter strategy. In Somerville, up to 7 units may be developed as of right, but development of 8 or more units requires a special permit and a concomitant obligation to set aside 12.5% of all units as affordable. Some argue that structuring a density bonus as a variance with an accompanying affordable housing set-aside may prevent the set-aside from being labeled an exaction—a land use decision conditioning approval of development on the dedication of property to public use. This is advantageous because exactions are more vulnerable to taking claims than zoning of general application.

> To facilitate the objectives of this Section, modifications to the dimensional requirements in any zoning district shall be permitted as of right for an Inclusionary Project, as set forth below:
>
> (i) The Floor Area Ratio[4] (FAR) normally permitted in the applicable zoning district for residential uses shall be increased by 40% percent, and at least 50% of the additional FAR should be allocated for the Affordable Units required by this Section. In a Mixed Use Development, the increased FAR permitted in this paragraph (i) may be applied to the entire lot; however, any gross floor area arising from such increased FAR shall be occupied by residential uses, exclusive of any hotel or motel use.
>
> (ii) The minimum lot area per dwelling unit normally required in the applicable zoning district shall be reduced by that amount necessary to permit up to 2 additional units on the lot for each 1 affordable unit required by this Section.[5]
>
> (Cambridge)

> The affordable housing requirements of this Article shall apply to all residential developments seeking special permits with site plan review to develop 8 or more dwelling units, whether new construction, substantial rehabilitation, or adaptive reuse. Developments shall not be segmented or phased in a manner to avoid compliance with these provisions. Developers providing more than 12.5% of the total units in the development as affordable units may apply for an additional density bonus under the terms of this Article. Bonuses may be awarded on the basis of a 2 to 1 ratio of market rate units to affordable housing units. For every additional unit provided beyond the 12.5.% required, 2 additional market rate units may be authorized.
>
> (Somerville)

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[4] Floor Area Ratio is the ratio of gross floor area (the sum, in square feet, of the gross horizontal areas of all floors of a building) to the total area of the lot.

[5] Implementation of a density bonus under this section would work as follows: Assume a 50 unit development, and a 20% set-aside. Thus, 10 of the 50 units must be affordable. Paragraph (ii) of the density bonus above awards a bonus of two market units for every one affordable unit, so 70 units would be permitted. In addition, paragraph (i) would permit a 40% increase in the lot's FAR, which corresponds to the 40% increase in units over the original 50. If considered in reference to the base number of units, the developer essentially gets 10 additional market units to offset the 10 required affordable units.

## #12 Marketing

Some ordinances and regulations provide extensive instructions for marketing to and certifying buyers and renters of affordable units. The first example below is based on Santa Fe's ordinance pertaining to for-sale units, and provides broad guidance with regard to marketing. The second example is based on Santa Fe detailed regulations which implement the ordinance.

A. Developers shall market affordable homes in accordance with the requirements set forth in the administrative procedures. There shall be an efficient matching of the incomes of prospective affordable unit buyers to specific affordable unit prices. There shall be a reasonable matching of the household sizes of prospective affordable unit buyers to the sizes and types of affordable units. Any marketing materials shall clearly state the policies of the affordable housing program with regard to the pricing of affordable units and buyer eligibility.
B. In marketing affordable units the City or seller shall give preference to individuals who are citizens of the City or are presently employed or under contract with an employer within the City.
C. The City or its agent shall maintain and make available lists of prospective affordable unit buyers who have passed preliminary prequalifications for financing. For affordable developments for which the city expects immediate effective demand to outstrip supply, the city or its agent, at the city's sole discretion, may establish and maintain an equitable process for allocating rights to purchase the homes. For developments other than those described above, the developer shall establish and maintain an equitable process of marketing homes, including waiting lists where demand exceeds supply.
D. Prior to executing a purchase contract for any affordable unit, the prospective affordable unit buyer shall be certified as meeting affordable housing program requirements by the City or its agent. The certification process shall be set forth in the administrative procedures. Developers and affordable unit buyers may execute only purchase agreements that are approved as to form by the City and include language provided by the City which shall require that an appropriate disclosure form be provided to and explained to the affordable unit buyer prior to execution of the contract. The disclosure form shall explain any deed restrictions, restrictive covenants and/or liens that are placed on the affordable unit to ensure long-term affordability. (Santa Fe ordinance)

Developers shall market affordable homes in accordance with the following requirements:

(1) There should be an efficient matching of the incomes of prospective affordable home buyers to specific home prices, as follows:

Household income of a buyer should not exceed the price level of a home by more than five percent. For example, only households with incomes at or below 65 percent of median income should be allowed to buy a home made affordable to households at 60 percent of median income. Thus, lower priced homes will be reserved for lower-income households. Alteration of this requirement may be based only on the unavailability of a qualified buyer with the required level of income for a period of 30 days or more after the home was legally ready for occupancy (assuming good-faith marketing efforts by the developer to find a qualified buyer).

(2) There should be reasonable matching of the household sizes of prospective affordable homebuyers to the sizes/types of affordable homes as follows:

3 BR, 1.5 BA ------- Minimum household size = 4
4 BR, 2 BA ------- Minimum household size = 5

The City shall not market or sell an affordable home to a household which is smaller than the household sizes indicated, unless the City approves in writing fewer persons based on the unavailability of a buyer of the proper household size for a period of 30 days or more after the home was legally ready for occupancy (assuming good-faith marketing efforts by the developer to find a qualified buyer), or the demonstrated need of a household for a dwelling unit with more bedrooms than allowed in this section.

(3) In marketing affordable homes the City or seller shall give preferences to individuals who are citizens of the City or are presently employed or under contract with an employer within the City.

(4) Brochures, advertisements and other marketing materials shall clearly state the policies of the affordable housing program with regard to the pricing of affordable units and buyer eligibility.

(5) The City or its agent may maintain lists of prospective affordable homebuyers who have passed preliminary pre-qualifications for financing. Such lists will be made available to developers for marketing purposes.

(6) For developments for which the City expects immediate effective demand to outstrip supply, the City or its agent, at the City's sole discretion, may establish and maintain an equitable process for allocating rights to purchase the homes. For example, the City could require a lottery or use of a ranked waiting list.

(7) Prior to executing a purchase contract for any affordable home, a prospective buyer must be certified by the City or its agent as meeting program requirements. The certification must have been made within 90 calendar days immediately prior to the full execution of the purchase contract. Developers may sign purchase contracts with non-certified prospective buyers, conditional upon certification within 10 working days, if the developer is reasonably certain that he prospective buyer can be certified.

(8) Developers and buyers of affordable units may execute only purchase contracts that are approved for form by the City and include language provided by the City, which will require that an appropriate disclosure form be provided to and explained to the buyer prior to execution of the contract. The disclosure form will explain any deed restrictions, restrictive covenants, and/or liens that are placed on home to insure long-term affordability.

(Santa Fe regulations)

## **#13 Administration of Affordability Control**

Original sales prices and rental rates for affordable units are typically regulated so that that a low- or moderate-income purchaser or renter need not spend more than 30% of his or her income on housing expenses. Most municipalities also impose price restrictions which keep units affordable when they pass to new occupants. The first three examples below deal with the resale pricing of for-sale affordable housing. The first example is from Highland Park's Central Avenue Senior Development, and the second is based on the Boulder and Montgomery County ordinances. The third example is based Santa Fe regulations, and provides only general guidance on the subject of resale pricing. The last example, based on language from the Sacramento and Santa Fe ordinances deals with maintaining affordability of rental units, and is less complicated.

The resale price shall be the lower of:

(a) the then-fair market value of the unit as determined by an appraisal performed by an appraiser approved by the Housing Commission taking into account applicable use and occupancy restrictions which may be binding on the unit; and

(b) the purchase price under the agreement by which the unit owner purchased the unit, increased by an amount equal to the lesser of (i) three percent (3%) for each year (or part thereof) after the closing date during which the unit owner resided in the unit and (ii) inflation as measured by the Consumer Price Index (All Urban Consumers, All Cities average, residential real estate) for the period of time that the unit owner resided in the unit.

(Highland Park, IL)

The resale price of any permanently affordable housing unit shall not exceed the purchase price paid by the seller of that unit plus:

(a) A percentage of the unit's original purchase price equal to the increase in the cost of living since the unit was purchased by the seller, as determined by the Consumer Price Index;
(b) The fair market value of improvements made to the unit by the seller[6];
(c) Customary closing costs and costs of sale; and
(d) Costs of a real estate commission paid by the seller if a licensed real estate agent is employed.

(Boulder/Montgomery County)

The City requires that developers impose resale controls which are designed to achieve the following purposes:

(a) reducing the potential for windfall profits by an owner-occupant;
(b) recapturing any such windfall profits for use in an approved housing trust fund;
(c) providing incentives for owner-occupants to resell to lower-income households, which are most in need of affordable housing;
(d) maintaining the affordability of affordable units to subsequent buyers to a reasonable extent, while considering the sellers' rights to reasonable returns on equity; and
(e) preventing speculative profits on affordable units by renting them to another household.

(Santa Fe)

The owner of affordable rental units shall be responsible for certifying the income of eligible tenants to the Housing Commission at the time of initial rental and annually thereafter. Rental rates shall be in accordance with the formula set forth in the administrative procedures.[7] This requirement shall be made applicable to successors in title, if any, by means of a deed restriction. (Santa Fe/Sacramento)

Municipalities typically maintain affordability through deed restrictions or covenants recorded against the property. These affordability controls often specify that a unit must be sold or rented to an income eligible buyer at an affordable price; others give the municipality a right of first refusal to purchase affordable units. For a discussion of the validity and permissible duration of such affordability controls, please see the attached memorandum from BPI intern, Rebecca Onie.

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[6] In evaluating whether to allow sellers to recoup the value of capital investments in their homes, municipalities weigh a desire to provide sellers with some of the benefits of ownership against a desire to keep the sale price of the unit affordable. Some ordinances, such as Montgomery County's, Fairfax County's, and Santa Fe's do not impose restrictions on the capital expenditures homeowners may recover upon the sale of their homes. In contrast, Davis, California, in its lone for-sale development with resale restrictions, does not allow homeowners to recoup capital investments. (Davis is rethinking this issue with regard to future developments.) Boulder requires homeowners to obtain city approval for capital improvements, and limits recovery of expenditures to approximately $1000 for each year the homeowner has owned the property. (Boulder's 2001 Homeownership Capital Improvements Policy is attached.)

[7] Both ordinances target rental rates at 30% of a family's income less an allowance for tenant-paid utilities.

**#14 Other Issues for Consideration**

Land Dedication

Another possibility that may interest some municipalitites is allowing a developer, at the City's discretion, the option to satisfy some of his affordable housing obligation via dedication of land to the City's contemplated land trust.  For example, under Boulder's ordinance developers may satisfy their affordable housing obligation either by:

(1) conveying land to the City of equivalent value to the fee-in-lieu contribution that would otherwise be required, plus an additional fifty percent, to cover costs associated with holding, developing, improving, or conveying the land; or

(2) conveying land to the City that is of equivalent value to land upon which the required affordable units would otherwise have been constructed.  Such land must be zoned to allow construction of at least as many affordable units as would otherwise have been required.

# ATTACHMENT C

# Inclusionary Zoning Bylaw

**Introduction**

*This model bylaw provides a menu of options for crafting inclusionary zoning bylaws that respond directly to local housing demands and real estate financial conditions. The zoning structure begins as a mandatory inclusionary zoning provision, then offers a series of optional exemptions to affordable housing development that mitigate hardships associated with affordable housing development. Section 04.2 includes a variety of incentives that can be used spur affordable housing development and mitigate the costs borne by developers. Commentary below specific provisions details the development implications of each exemption and incentive. Municipalities should carefully consider the development consequences of each of these policy choices in order to assemble zoning bylaws that respond directly to local economies. However, note that previous studies, [http://www.mhp.net/vision/zoning.php], indicate that mandatory provisions combined with strong incentives are most effective in promoting affordable housing development.*

**01.0 Purpose and Intent:** The purpose of this bylaw is to encourage development of new housing that is affordable to low and moderate-income households. At minimum, affordable housing produced through this regulation should be in compliance with the requirements set forth in G.L. c. 40B sect. 20-24 and other affordable housing programs developed by state, county and local governments. It is intended that the affordable housing units that result from this bylaw/ordinance be considered as Local Initiative Units, in compliance with the requirements for the same as specified by the Department of Housing and Community Development. Definitions for affordable housing unit and eligible household can be found in the Definitions Section.

**02.0 Applicability**

1. In all zoning districts, the inclusionary zoning provisions of this section shall apply to the following uses:

(a) Any project that results in a net increase of [ten (10)] or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space; and

***COMMENT:*** *The number of units required to trigger the applicability of the inclusionary zoning provisions should reflect local real estate development demands. In built-out communities, inclusionary zoning could apply to developments with fewer units. For example, Brookline's affordable housing requirements apply when six new residential units are proposed. Other Massachusetts communities, including Boston and Cambridge bylaws specify ten (10) as the threshold number of new units required to trigger the application inclusionary zoning bylaws. The Cape Cod Commission regulations specify 30 units, but encourage the member towns to specify a 10-unit minimum.*

(b) Any subdivision of land for development of ten (10) or more dwelling units; and

***COMMENT:*** *It is recommended that the Town adopt a companion regulation to prevent intentional segmentation of projects designed to avoid the requirements of this bylaw (e.g. subdividing one large tract into two smaller tracts, each of which will contain fewer than 10 units or phasing a development such that each phase will contain fewer than 10 units). This "anti-segmentation" bylaw can specify that parcels held in common ownership as of the passage of this bylaw cannot later defeat the requirements of this regulation by segmenting the development. Note that the division of land trigger is accomplished by either filing a plan for the subdivision of land or the filing of a so-called approval not required plan.*

(c) Any life care facility development that includes ten (10) or more assisted living units and accompanying services.

***COMMENT:*** *It is recommended that the Town review zoning definitions for life care facilities to ensure coordination between sections.*

**03.0 Special Permit:** The development of any project set forth in Section 02.0 (above) shall require the grant of a Special Permit from the Board of Appeals or other designated Special Permit Granting Authority (SPGA). A Special Permit shall be granted if the proposal meets the requirements of this bylaw. The application procedure for the Special permit shall be as defined in Section _____ of the Town's zoning bylaw.

**04.0 Mandatory Provision of Affordable Units:**

1. As a condition of approval for a Special Permit, the applicant shall contribute to the local stock of affordable unit in accordance with the following requirements:

(a) At least ten (10) percent of the units in a division of land or multiple unit development subject to this bylaw shall be established as affordable housing units in any one or combination of methods provided for below:

(1) constructed or rehabilitated on the locus subject to the Special Permit (see Section 05.0); or

(2) constructed or rehabilitated on a locus different than the one subject to the Special Permit (see Section 06.0); or

(3) an equivalent fees-in-lieu of payment may be made (see Section 07.0); or

(4) An applicant may offer, and the SPGA may accept, donations of land in fee simple, on or off-site, that the SPGA in its sole discretion determines are suitable for the construction of affordable housing units. The value of donated land shall be equal to or greater than the value of the construction or set-aside of the affordable units. The SPGA may require, prior to accepting land as satisfaction of the requirements of this bylaw/ordinance,

that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value.

(b) The applicant may offer, and the SPGA may accept, any combination of the Section 04.1(a)(1)-(4) requirements provided that in no event shall the total number of units or land area provided be less than the equivalent number or value of affordable units required by this bylaw/ordinance.

***COMMENT:*** *The provisions above establish the minimum number of, and methods for, provision of affordable units. Note that the applicant has four choices for providing affordable units. First, they may construct or rehabilitate units on the site subject to the Special Permit. Second, they may construct or rehabilitate units at a different site than the one subject to the Special Permit. Third, they may offer fees-in-lieu of the construction of affordable housing units, more fully discussed in Section 07. Fourth, they may offer, and the SPGA may accept, land on- or off-site for the purposes of constructing affordable units, perhaps by the Town or a non-profit entity or a subsequent developer. Finally, the applicant may propose and the SPGA may accept any combination of options one through four.*

(c) As a condition for the granting of a Special Permit, all affordable housing units shall be subject to an affordable housing restriction and a regulatory agreement in a form acceptable to the Planning Board. The regulatory agreement shall be consistent with any applicable guidelines issued by the Department of Housing and Community Development and shall ensure that affordable units can be counted toward the [town]'s Subsidized Housing Inventory. The regulatory agreement shall also address all applicable restrictions listed in Section 0.9 of this bylaw. The Special Permit shall not take effect until the restriction, the regulatory agreement and the special permit are recorded at the Registry of Deeds and a copy provided to the Planning Board and the Inspector of Buildings.

***COMMENT:*** *Regulatory agreements are an essential component to any affordable housing development as they are the primary vehicle for recording these restrictions in a manner recognized by the Commonwealth. The content of agreements will vary depending on a variety of factors including: the type of housing (rental or ownership), the method of property transferal, the income limits, the town's housing administrative structure, etc. Sample restrictions can often be found attached to approved Plan Production Plans (http://www.mass.gov/dhcd/components/SCP/PProd/plans.htm).*

2. To facilitate the objectives of this Section 04.0, modifications to the dimensional requirements in any zoning district may be permitted for any project under these regulations, as the applicant may offer and the SPGA may accept, subject to the conditions below:

(a) FAR Bonus. The FAR normally permitted in the applicable zoning district for residential uses may be increased by up to thirty (30) percent for the inclusion of affordable units in accordance with Section 04.1 (above), and at least fifty (50) percent of the additional FAR should be allocated to the affordable units. In a mixed use development, the increased FAR may be applied to the entire lot, however any gross floor area increase resulting from increased FAR shall be occupied only by residential uses, exclusive of any hotel or motel use.

(b) Density Bonus. The SPGA may allow the addition of two market rate units for each affordable unit provided as part of compliance with the Special Permit. The minimum lot area per dwelling unit normally required in the applicable zoning district may be reduced by that amount necessary to permit up to two (2) additional market rate units on the lot for each one affordable unit required in Section 04.1 (above).

***COMMENT:*** *The provisions above provide a baseline density bonus of two market rate units for every one affordable unit provided by an applicant. This density bonus will likely cover the cost to the developer of providing each required affordable unit. These provisions may also make the adoption of mandatory inclusionary zoning more politically feasible. Communities may choose to omit this provision in favor of offering density bonuses for affordable units above and beyond the baseline requirement of 10%. However, the two different approaches may be used together as in this model bylaw. The following provision (04.2(c)) illustrates how density bonuses can be provided for affordable units beyond the baseline 10%.*

(c) Voluntary Inclusionary Housing Bonus. New affordable housing development that is not subject to Section 02.0 and exceeds the requirements specified in Section 04.1(a) may receive the same benefits specified in Sections 04.2(a) and 04.2(b) when the development is approved by the SPGA. The net increase in housing units shall not exceed [fifty percent 50%] of the original property yield before any density bonuses were applied.

***COMMENT:*** *Where communities are willing to allow density increases for associated with affordable units provided above and beyond the baseline 10%, the important issue to address is what the overall "cap" will be for the density bonus. The model uses a net 50% over the property yield as a potential cap for density increase, but communities could consider higher increases depending on the existing minimum lot size and the goals of their Comprehensive Plan.*

**05.0 Provisions Applicable to Affordable Housing Units On- and Off-Site:**

1. Siting of affordable units. All affordable units constructed or rehabilitated under this bylaw shall be situated within the development so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.

2. Minimum design and construction standards for affordable units. Affordable housing units shall be integrated with the rest of the development and shall be compatible in design, appearance, construction, and quality of materials with other units. Interior features and mechanical systems of affordable units shall conform to the same specifications as apply to market-rate units.

*__COMMENT:__ The provisions above provide general guidelines meant to ensure that the affordable housing is well integrated with and visually indistinguishable from market rate housing. These goals can be strengthened by specifying site plan and building material standards.*

| Market-rate Unit (% Complete) | Affordable Housing Unit (% Required) |
|---|---|
| <30% | - |
| 30% plus 1 unit | 10% |
| Up to 50% | 30% |
| Up to 75% | 50% |
| 75% plus 1 unit | 70% |
| Up to 90% | 100% |

Fractions of units shall not be counted.

3. Timing of construction or provision of affordable units or lots. Where feasible, affordable housing units shall be provided coincident to the development of market-rate units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

*__COMMENT:__ The table above establishes the required schedule for completion of affordable units in conjunction with the completion of market rate units. For example, a 100-lot subdivision requires 10 affordable units. Assume all 10 affordable units are to be constructed on-site. Upon completion of the 31st market rate unit, the developer must construct at least 1 affordable unit (10% of 10). After completion of the 50th unit, the applicant must have constructed at least 3 affordable units (30% of 10), and so on. Towns are free to adjust this schedule, but should bear in mind that a minimum number of market rate units are often needed to create sufficient cash flow to make the overall project work. To that end, it is recommended that the initial affordable unit requirement not be triggered until at least one-third of the market units are constructed.*

4. Marketing Plan for Affordable Units. Applicants under this bylaw/ordinance shall submit a marketing plan or other method approved by the Town through its local comprehensive plan, to the SPGA for its approval, which describes how the affordable units will be marketed to potential home buyers or tenants. This plan shall include a description of the lottery or other process to be used for selecting buyers or tenants.

*__COMMENT:__ A marketing plan is considered essential to the success of affordable housing development in many parts of Massachusetts. Issues of how the units are advertised, how qualified applicants are sought and determined, and methods for reducing delays for qualified applicants are key to the use of this bylaw/ordinance. As an option, the responsibilities under this provision could be transferred to a local housing partnership or authority.*

**06.0 Provision of Affordable Housing Units Off-Site:**

1. As an alternative to the requirements of Section 05.0, an applicant subject to the bylaw/ordinance may develop, construct or otherwise provide affordable units equivalent to those required by Section 04.0 off-site. All requirements of this bylaw/ordinance that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location of the off-site units to be provided shall be approved by the SPGA as an integral element of the Special Permit review and approval process.

*__COMMENT:__ Allowing off-site provision of affordable units gives flexibility to developers and allows municipalities to more carefully control the siting of new affordable housing development. Towns should add review criteria for the approval of off-site locations to ensure that new affordable housing development promotes the goal of creating mixed-income neighborhoods and encourages development or conversion of affordable units near areas with municipal services or access to public transportation may. Relegating the provision of the affordable units to undesirable portions of the community does little to promote the purposes of this bylaw/ordinance. Furthermore, towns and cities with more economically segregated neighborhoods should consider striking this provision from the bylaws to ensure that each new residential development built in any neighborhood contains some affordable housing.*

**07.0 Fees-in-Lieu-of Affordable Housing Unit Provision:**

1. As an alternative to the requirements of Section 05.0 or Section 06.0, an applicant may contribute to an established local housing trust fund to be used for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the proposed development or at an off-site locus.

(a) <u>Calculation of fee-in-lieu-of units</u>. The applicant for development subject to this bylaw may pay fees-in-lieu of the construction of affordable units. For the purposes of this bylaw/ordinance the fee-in-lieu of the construction or provision of affordable units will be determined as a per-unit cost as calculated from regional construction and sales reports. The SPGA will make the final determination of acceptable value.

*__COMMENT:__ This Section provides a cash payment option in lieu of providing affordable units. The payment value may differ for each municipality and will depend on the size of the affordable housing unit discount that would be necessary to make the unit affordable (e.g. median sale price of market rate unit minus maximum sale price of a three-bedroom affordable dwelling unit). Fees-in-lieu will need to be recalculated regularly to account for inflation and other market changes. Furthermore, the local housing trust fund will need to be closely regulated to ensure that dollars contributed to the fund are spent exclusively on the provisioning of affordable housing. This is the appropriate section for specifying guidelines for administering the housing trust and stipulating the governance structure by which the trust will be managed.*

*Municipalities that significantly lack affordable housing opportunities should consider heavily restricting the fee-in-lieu payment option. In built-out communities, housing trust funds often grow and sit unused because sites appropriate for affordable housing development are not available. Additionally, affordable housing trusts can force municipal agents into the role of real estate developers, which local government officials may be poorly suited for or reluctant to do. Cities such as Cambridge have eliminated the fee-in-lieu payment option in almost all cases except for extreme hardship in order to ensure that affordable housing is built by the developers at the same time that new development is under construction.*

(b) <u>Schedule of fees-in-lieu-of-units payments</u>. Fees-in-lieu-of-units payments shall be made according to the schedule set forth in Section 05.3, above.

*__COMMENT:__ This section establishes the fee-in-lieu of payments schedule to coincide with the schedule for provision of units established by Section 05.3. For example, a 50-lot subdivision requires five affordable units. An applicant choosing to make fee-in-lieu of payments would be required to pay $5X (5 units @ $X per unit). The payment schedule would require 10 percent of the $5X after the 16th market rate unit was built, and $100,000 after the 38th market rate unit was built and so on, according to the schedule noted in Section 05.3.*

(c) Creation of Affordable Units. Cash contributions and donations of land and/or buildings made to the Town or its Housing Trust in accordance with Section 07.1 shall be used only for purposes of providing affordable housing for low or moderate income households. Using these contributions and donations, affordable housing may be provided through a variety of means, including but not limited to the provision of favorable financing terms, subsidized prices for purchase of sites, or affordable units within larger developments.

**08.0 Maximum Incomes and Selling Prices: Initial Sale:**

1. To ensure that only eligible households purchase affordable housing units, the purchaser of a affordable unit shall be required to submit copies of the last three years' federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following transfer of title, to the local housing trust, community development corporation, housing authority or other agency as established by the Town, that his/her or their family's annual income level does not exceed the maximum level as established by the Commonwealth's Department of Housing and Community Development, and as may be revised from time to time.

2. The maximum housing cost for affordable units created under this bylaw is as established by the Commonwealth's Department of Housing and Community Development, Local Initiative Program or as revised by the Town.

*__COMMENT:__ The Department of Housing and Community Development publishes maximum income, selling prices and monthly rent ceilings for occupants of affordable income housing units (Department of Housing and Community Development, Local Initiative Program, July 1996). Individual towns are free to adjust these numbers to accommodate local needs and concerns; however, it is recommended that the Department's guidelines be reviewed prior to setting local ceilings. These provisions may be more appropriately handled by the local housing partnerships rather than the developer.*

**09.0 Preservation of Affordability; Restrictions on Resale:**

1. Each affordable unit created in accordance with this bylaw shall have limitations governing its resale through the use of a regulatory agreement (Section 0.4.1(c)). The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a restriction on the property and shall be in force in perpetuity.

(a) Resale price. Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property noted in Section 9.1, above.

***COMMENT:*** *For example, if a unit appraised for $100,000 is sold for $75,000 as a result of this bylaw, it has sold for 75 percent of its appraised value. If the appraised value of the unit at the time of proposed resale is $150,000, the unit may be sold for no more than $112,500--75 percent of the appraised value of $150,000.*

(b) Right of first refusal to purchase. The purchaser of an affordable housing unit developed as a result of this bylaw shall agree to execute a deed rider prepared by the Town, consistent with model riders prepared by Department of Housing and Community Development, granting, among other things, the municipality's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.

(c) The SPGA shall require, as a condition for Special Permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed rider noted in Section 10.1(b), above. The Building Commissioner/Inspector shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded.

***COMMENT:*** *This Section provides language to ensure that the affordable housing units remain affordable by restricting re-sales in perpetuity and by granting the Town a right of first refusal to purchase the dwelling unit should a qualified purchaser, beyond the initial purchaser, not be found. The restrictions on resale are designed to encourage the homeowner to maintain and improve the property while at the same time ensure that if and when sold, the new qualified buyer is able to enjoy the same discount between sale price and appraised value. It is important to emphasize that the restrictions on resale do not block, in any way, the property owner from realizing a profit on the resale of the dwelling unit. Rather, as noted, the resale restriction passes on the initial discounted rate enjoyed by the initial buyer to the new, qualified buyer.*

**10.0 Conflict with Other Bylaws/Ordinances:** The provisions of this bylaw/ordinance shall be considered supplemental of existing zoning bylaws/ordinances. To the extent that a conflict exists between this bylaw/ordinance and others, the more restrictive bylaw/ordinance, or provisions therein, shall apply.

***COMMENT:*** *This provision establishes that where a conflict exists between this bylaw/ordinance and an existing (or future) bylaw/ordinance, the more restrictive provisions of either would apply. For example, this bylaw/ordinance requires a Special Permit for the division of land into ten or more lots, whereas that requirement may not currently exist in existing town bylaws/ordinances. Section 10.0 states that the more restrictive provision applies during a conflict, thus the Special Permit requirements of this bylaw/ordinance would supersede (overrule) the provisions of existing bylaws/ordinances.*

**11.0 Severability:** If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the [town]'s zoning bylaw.

***COMMENT:*** *This Section is a generic severability clause. Severability clauses are intended to allow a court to strike or delete portions of a regulation that it determines to violate state or federal law. In addition, the severability clause provides limited insurance that a court will not strike down the entire bylaw should it find one or two offending sections.*

# ATTACHMENT D

**DRAFT Inclusionary Zoning Ordinance as of July 7, 2014**

*[Note: This draft is written as a city wide provision.]*

**Purpose**

The City believes that it is in the public interest to promote an adequate supply of affordable housing for its residents. The purpose of this division, therefore, is to require developers to include units of affordable housing within development projects, thereby mitigating the limited supply of affordable housing, and by doing so, promoting the health, safety, and welfare of Portland citizens.

**Definitions**

a) Affordable housing unit shall be a dwelling unit for which:
   a. The rent does not exceed 30% of the annual income for a household earning less than 80% of area median income for the Greater Portland Metropolitan Statistical Area as defined by the U.S. Department of Housing and Urban Development or
   b. Where the purchase price will not result in mortgage payments that exceed 30% of annual income for households earning less than 120% of area median income for the Greater Portland Metropolitan Statistical Area as defined by the U.S. Department of Housing and Urban Development.
   c. Annual rent increases for that unit are limited in perpetuity by deed restriction or other legally binding agreement to the percentage increase in the U.S. Department of Housing and Urban Development Greater Portland Metropolitan Statistical Area median income figures for a household of that size, or
   d. The resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit to the percentage increase in the U.S. Department of Housing and Urban Development Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

**Applicability**

This division shall apply to development projects that:

a) Are permissible under the provisions of this chapter in the zone in which they are proposed
b) Will be a multi-family dwelling as defined in section 14-47, and will not be located in an R-1 or R-2 zone
c) Reserve
d) Create ten or more new dwelling units for rent or for sale through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements.
~~d)~~e) Have not received, prior to the adoption of this ordinance, a Level III site plan approval, a Master Plan approval or a Building Permit.

**Requirement of Inclusion of Affordable Housing Units**

Such development projects shall set aside at least ten percent (10%) of the units in the project as affordable housing.

**Standards**

Projects shall not be segmented or phased to avoid compliance with these provisions and affordable units shall be provided in proportion to the development of market rate units.

Affordable housing units shall be integrated with the rest of the development and shall be reasonably compatible in unit type, appearance, construction, and quality of materials with other units as determined by the planning authority.

**In-lieu Fees**

Projects may pay a fee in lieu of providing affordable housing except that for developments of twenty (20) units or greater, all of the required affordable units shall be incorporated within the development and shall not be eligible for the substitution of the fee in lieu provision. In-lieu fees shall be paid into the Housing Trust Fund as defined in Sec. 14-489. The fee for affordable units not provided shall be equal to the number of required affordable units not provided multiplied by $*an amount to be determined*. Beginning on January 1, 2016 and annually thereafter, the amount of the in-lieu fee shall be adjusted by multiplying this amount originally deposited for each unit by a fraction, the denominator of which shall be the "Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W"), U.S. City Average, "All Items Index," as published by the United States Bureau of Labor Statistics ("the Index") for January 1, 2015 Year, and the numerator of which shall be the index for the same month in each subsequent year. In the event that the Index is not then in existence, the parties shall use such equivalent price index as is published by any successor governmental agency then in existence; or, if none, then by such equivalent price index, in lieu of and adjusted to the Index. If the Index shall cease to use 1982-84 equals 100 as the basis of calculation, or if a substantial change is made in the terms or number of items contained in the Index, the Base Index shall be adjusted to conform to such change, using such computation thereof, if available, as shall be employed by the United States Department of Labor in computing same. Notwithstanding anything herein to the contrary, contributions made after January 1, 2016 shall not be less than the amount originally required to be deposited pursuant to this sub-section.

**Incremental Unit Fee**

A development with ten units will be subject to the provision of one complete affordable unit, or 100% of the required fee in lieu of providing the affordable unit within the project. Each additional unit in excess of ten will be subject to an incremental 10% fee per unit in addition to the provision of the required affordable unit, or an incremental fee per unit in addition to the 100% fee in lieu of the one unit. A development with more than 20 units will be subject to an incremental 10% fee per unit in addition to the provision of the required affordable units. [See chart below]

| | OPTION 1 | OPTION 2 | |
|---|---|---|---|
| # of Units | Required Affordable Unit | In-Lieu Fees | Incremental Unit Fee % |
| 10 | 1 | 100% | n/a |
| 11 | 1 + Incremental Fee | 100% + Incremental Fee | 10% |
| 12 | 1 + Incremental Fee | 100% + Incremental Fee | 20% |
| 13 | 1 + Incremental Fee | 100% + Incremental Fee | 30% |
| 14 | 1 + Incremental Fee | 100% + Incremental Fee | 40% |
| 15 | 1 + Incremental Fee | 100% + Incremental Fee | 50% |
| 16 | 1 + Incremental Fee | 100% + Incremental Fee | 60% |
| 17 | 1 + Incremental Fee | 100% + Incremental Fee | 70% |
| 18 | 1 + Incremental Fee | 100% + Incremental Fee | 80% |
| 19 | 1 + Incremental Fee | 100% + Incremental Fee | 90% |
| 20 | 2 | n/a | n/a |
| 21+ | 2 + Incremental Fee | n/a | 10% |
| 30 | 3 | n/a | n/a |
| 31+ | 3 + Incremental Fee | n/a | 10% |
| 40 | 4 | n/a | n/a |
| 41+ | 4 + Incremental Fee | n/a | 10% |

# ATTACHMENT E

Affordable Housing Production and Funding Report

| Owner/Project Address | HOME Units | Low/Mod Units | Total Units | HOME $ | HDF $ (Housing Development Fund) | CDBG $ | HTF $ (Housing Trust Fund) |
|---|---|---|---|---|---|---|---|
| Rosa True School | 2 | 10 | 10 | $103,500.00 | $0.00 | $0.00 | $0.00 |
| 53 Danforth Street | 3 | 43 | 43 | $325,000.00 | $0.00 | $0.00 | $0.00 |
| Bayside Anchor (construction expected to begin in Aug or Sept) | 5 | 45 | 45 | $500,000.00 | $0.00 | $0.00 | $0.00 |
| Avesta 134 Washington Ave (constructed expected to begin in February) | 4 | 18 | 18 | $522,448.00 | $0.00 | $0.00 | $0.00 |
| Avesta 409 Cumberland | 5 | 46 | 57 | $500,000.00 | $0.00 | $0.00 | $0.00 |
| Avesta Florence House | 3 | 25 | 25 | $240,000.00 | $0.00 | $0.00 | $0.00 |
| Avesta Fore River | 4 | 20 | 20 | $388,474.00 | $0.00 | $0.00 | $0.00 |
| Avesta IRIS Park Apartments | 0 | 30 | 31 | $0.00 | $250,000.00 | $0.00 | $0.00 |
| Avesta Logan Place | 6 | 30 | 30 | $435,000.00 | $0.00 | $0.00 | $0.00 |
| Avesta Oak Street | 0 | 37 | 37 | $0.00 | $0.00 | $0.00 | $380,585.00 |
| Avesta Pearl Place  Phase I | 3 | 60 | 60 | $427,000.00 | $0.00 | $0.00 | $0.00 |
| Avesta Pearl Place Phase II | 3 | 54 | 54 | $400,000.00 | $0.00 | $0.00 | $0.00 |
| Avesta Unity Village | 1 | 26 | 33 | $86,500.00 | $0.00 | $363,863.00 | $0.00 |
| Bayside East (PROP) | 3 | 20 | 20 | $250,000.00 | $0.00 | $0.00 | $0.00 |
| CHOM - Elm Terrace | 2 | 38 | 38 | $403,795.00 | $0.00 | $0.00 | $0.00 |
| HFP Management  Shalom House | 2 | 10 | 10 | $93,000.00 | $0.00 | $0.00 | $0.00 |
| Island View Apartments | 5 | 29 | 70 | $71,015.00 | $192,639.00 | $136,346.00 | $0.00 |
| Peaks Senior Housing | 11 | 11 | 12 | $150,000.00 | $0.00 | $0.00 | $0.00 |
| PROP/Penisula Community II LP | 3 | 16 | 16 | $307,700.00 | $0.00 | $0.00 | $0.00 |
| PROP/Penisula Community IIILP | 7 | 10 | 10 | $200,000.00 | $0.00 | $0.00 | $0.00 |
| PROP/Penisula Community LP | 1 | 12 | 12 | $300,000.00 | $0.00 | $0.00 | $0.00 |
| St. Doms Family Housing | 0 | 12 | 12 | $0.00 | $260,000.00 | $0.00 | $0.00 |
| Valley Street | 3 | 24 | 24 | $320,000.00 | $0.00 | $0.00 | $0.00 |
| Walker Terrace | 4 | 20 | 40 | $382,000.00 | $220,000.00 | $0.00 | $0.00 |
| Wellesley Estates | 0 | 19 | 45 | $0.00 | $256,000.00 | $0.00 | $0.00 |
| Yale Court | 2 | 30 | 30 | $150,000.00 | $200,000.00 | $0.00 | $0.00 |
| **SubTotals =** | **82** | **695** | **802** | **$6,555,432.00** | **$1,378,639.00** | **$500,209.00** | **$380,585.00** |

| | |
|---|---|
| **TOTAL City Invesment** | **$ 8,814,865.00** |

# ATTACHMENT F

## Appendix E — Town of Wellfleet, Massachusetts, 6.21 Affordable Accessory Dwelling Units

**Purpose:** For the purpose of promoting the development of affordable rental housing in Wellfleet for year-round residents, a maximum of three affordable accessory dwelling units per lot may be allowed subject to the requirements, standards and conditions listed below:

**6.21.1** Up to three affordable accessory dwelling units per lot may be allowed in any district by Special Permit from the Zoning Board of Appeals.

**6.21.2** Affordable accessory dwelling units created under this by-law shall be occupied exclusively by income-eligible households, as defined by the guidelines in numbers 6.21.4 and 6.21.5 below. The affordability requirements of this by-law shall be imposed through conditions attached to the Special Permit issued by the Zoning Board of Appeals. No accessory apartment shall be constructed or occupied until proof of recording is provided to the Inspector of Buildings.

**6.21.3** Requirements and Standards

A. Affordable accessory dwelling units may be located within or attached to a principal dwelling, principal structure, a garage or constructed as a detached unit.

B. Affordable accessory dwelling units shall not be larger than one thousand two hundred (1,200) square feet of Livable Floor Area as that term is defined in Section II of this Zoning By-law.

C. Affordable accessory dwelling units within or attached to a principal dwelling, principal structure or garage that is pre-existing nonconforming shall not increase the nonconforming nature of that structure, except that any pre-existing accessory building may be eligible for conversion to an affordable accessory dwelling unit.

D. Newly constructed detached accessory units shall comply with all applicable provisions of the Zoning By-law unless they are specifically waived by this by-law. Newly constructed detached accessory units shall comply with all setback requirements listed in Sections 5.4.2 of this Zoning By-law.

E. Owners of residential property may occupy as a primary residence either the principal or accessory dwelling. For the purposes of this section, the “owner” shall mean one who holds legal or beneficial title.

F. Septic systems are required to meet current Title 5 standards and shall be reviewed and approved by the Health Agent.

G. The Inspector of Buildings and Health Agent shall inspect the premises for compliance with public safety and public health codes.

H. No affordable accessory dwelling unit shall be separated by ownership from the principal dwelling unit or principal structure. Any lot containing an affordable accessory dwelling unit shall be subject to a recorded restriction that shall restrict the lot owner's ability to convey interest in the affordable accessory dwelling unit, except leasehold estates, for the term of the restriction.

**6.21.4** All occupants of the affordable accessory dwelling unit shall upon initial application and annually thereafter on
the first of September, submit to the Town or its agent necessary documentation to confirm their eligibility for the dwelling unit. Specifically, all dwelling units must be rented to those meeting the guidelines for a low or moderate-income

family. For the purpose of this section, low income families shall have an income less than eighty (80) percent of the Town of Wellfleet median family income, and moderate income families shall have an income between eighty (80) and one hundred twenty (120) percent of the Town of Wellfleet median family income, as determined by the United States Department of Housing and Urban Development (HUD) Published Income Guidelines, and as may from time to time be amended.

**6.21.5** Maximum rents shall be established in accordance with HUD published Fair Market Rental Guidelines. Property owners are required to submit to the Town or its agent information on the rents to be charged. Each year thereafter on the first of September, they shall submit information on annual rents charged to the Town or its agent. Forms for this purpose shall be provided. Rents may be adjusted annually in accordance with amendments to the Fair Market Rental Guidelines.

**6.21.6 Procedure**

A. The property owner shall complete and submit an application for a Special Permit to the Zoning Board of Appeals in accordance with the Wellfleet Zoning Board of Appeals Rules and Procedures.

B. The Zoning Board of Appeals shall hold a public hearing in accordance with the procedures and requirements set forth in Section 9 of Massachusetts General Law, Chapter 40A and the Wellfleet Zoning By-law, Section 8.4.2 .

C. Appeal under this section shall be taken in accordance with Section 17 of Massachusetts General Law, Chapter 40A.

D. The property owner shall complete and submit to the Inspector of Buildings an application for a Building Permit to allow a change in use.

E. The property owner shall obtain a Certificate of Occupancy from the Inspector of Buildings prior to the affordable accessory dwelling unit being occupied.

Penalty – Failure to comply with any provision of this section may result in fines established in Section 8.3 of the Wellfleet Zoning By-laws.

E

Portland, Maine Yes. Life's good here.

Jeff Levine, AICP
Director, Planning & Urban Development Department

# Memorandum

**To:** Housing and Community Development Committee

**From:** Jeff Levine, Director

**Date:** January 22, 2015

**Re:** 65 Hanover/52 Alder Street Feasibility Report/Possible Approval of RFP

---

## SUMMARY

Since the last update to the committee in October, the Planning Department received the 65 Hanover Street & 52 Alder Street/DPW Site Affordable Workforce Housing Feasibility Study completed by Bluestone Planning Group, a copy is included. Bluestone Planning was tasked with providing physical alternatives and financial feasibility that would maximize the affordable housing options for this site. They were asked to provide development alternatives that would blend in with the size and scope of the surrounding neighborhood.

Based on previous information provided to the Committee along with the information in the study included in this packet, staff is requesting that the Committee make a determination on the issuance of an RFP for development of this site.

## COMMITTEE GOAL/COUNCIL GOAL ADDRESSED

Promote Housing Availability – Provide increased availability in all segments of the housing market while ensuring that there is a suitable balance of housing opportunities among those sectors. Objective: Complete assessment of and, as appropriate, begin to offer city owned property to construct affordable housing.

## FINANCIAL IMPACT

Building and land cost is not reflected in the financial feasibility analysis presented. This site has an approximate combined assessed value of $796,930. ***Any additional funds would have to be made available through the FY 2014-2015 HUD HOME funds set aside for affordable housing or the Housing Trust Fund.***

## STAFF ANALYSIS

Staff is seeking direction and approval from the Committee to issue a Request for Proposals based on the work in the attached study.

As mentioned above, the Bluestone Planning Group prepared the 65 Hanover Street & 52 Alder Street/DPW Site Affordable Workforce Housing Feasibility Study. The study identifies a mix of two and three bedroom units in a two and half story building as the most viable design option. This design would yield 23 units – a mix of two and three bedroom flats units of approximately 1,000 net square feet. The design would include approximately 23 parking spaces in a surface parking lot located at the rear of the building.

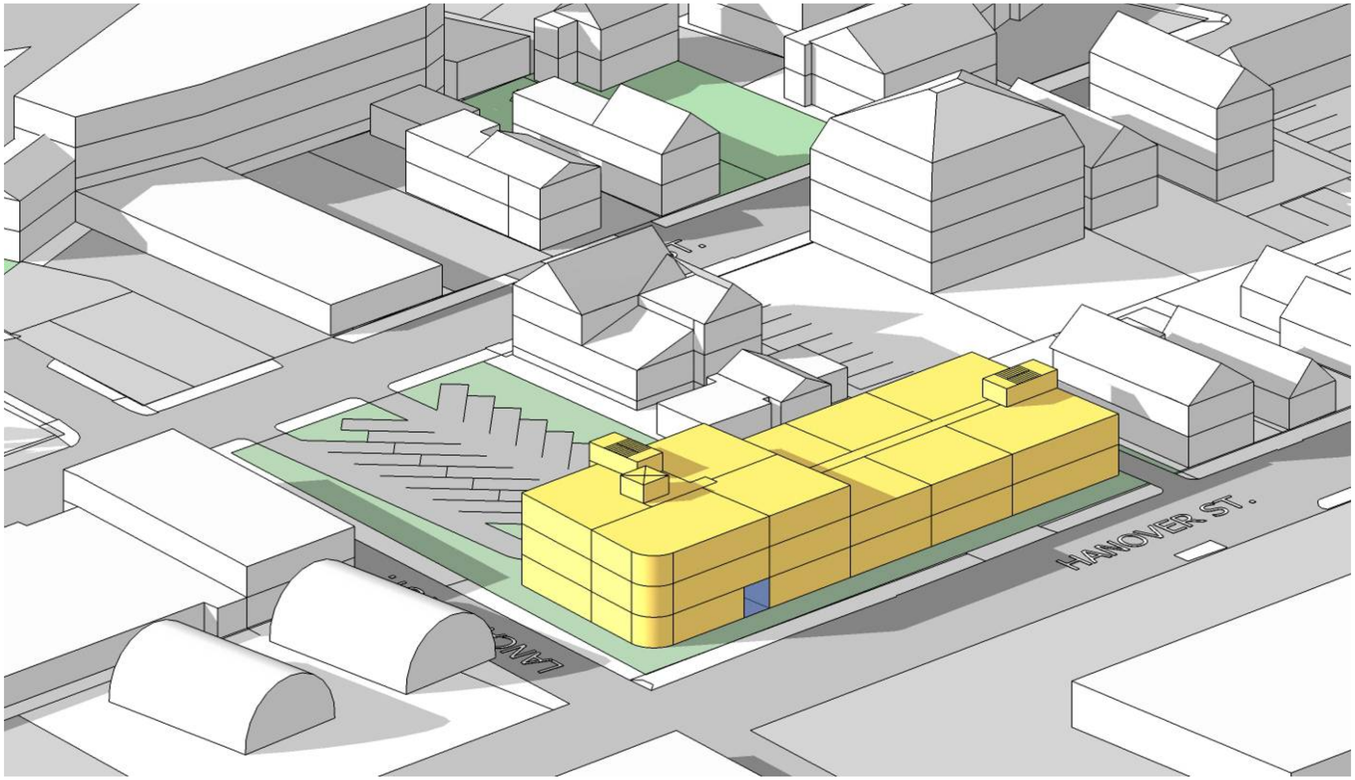
Based on this design scenario, the financial analysis indicates that these units would be more feasible as affordable home ownership units targeted to households between 100% to 120% of the area median income (Family of Two = $61,875-$74,250 & Family of Four = $77,313-$92,760). The analysis suggests a minimum average sales price of $229,000.

Housing and Community Development staff is seeking a recommendation from the Committee to proceed with an RFP process to solicit interest in this site for residential development. Staff is also seeking Committee approval of the RFP with discretion to staff to make minor edits.

**ATTACHMENTS**

- 65 Hanover Street & 52 Alder Street/DPW Site Affordable Workforce Housing Feasibility Study
- Draft RFP for the Development of 65 Hanover Street/52 Alder Street January, 2015

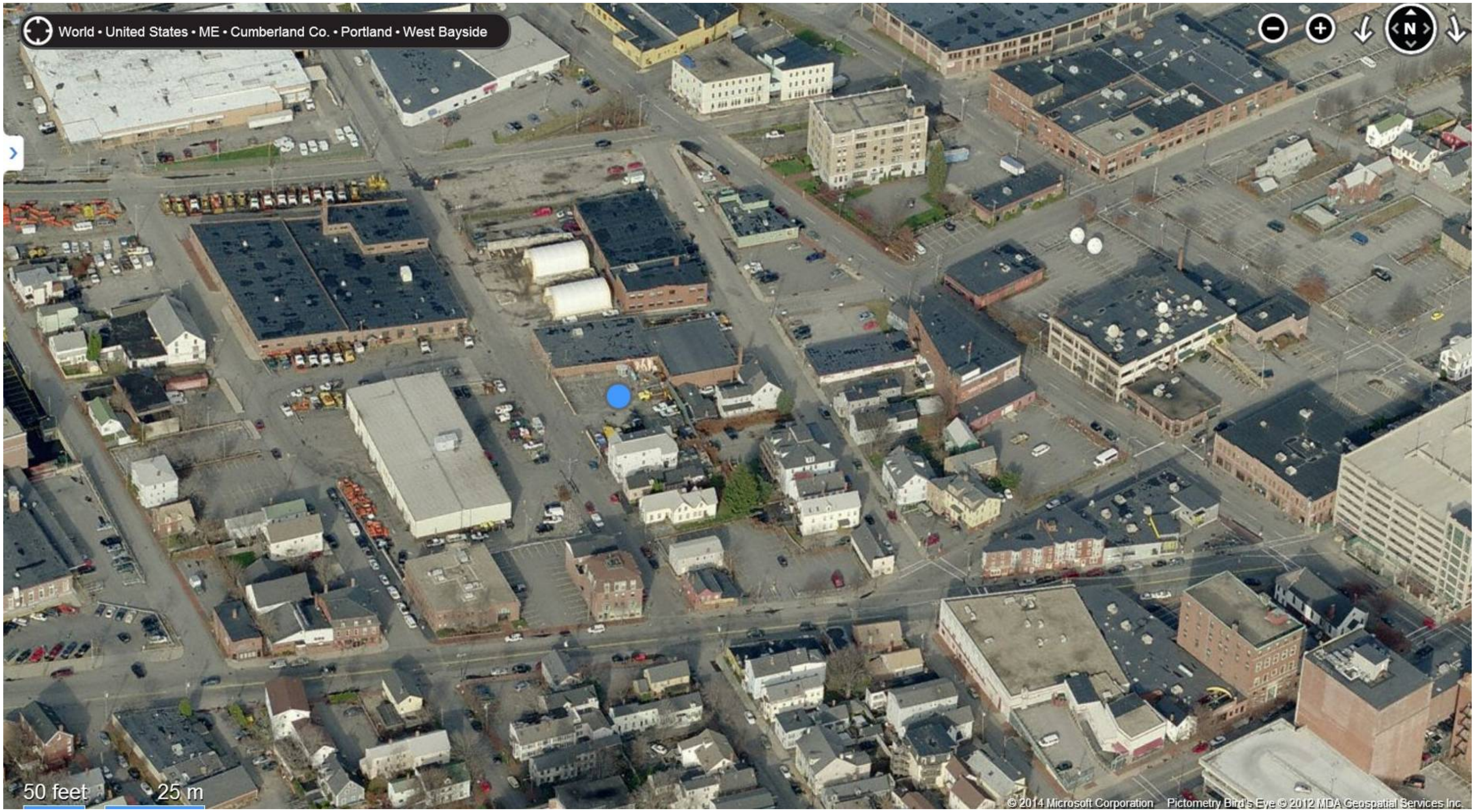
# 65 Hanover Street & 52 Alder Street / DPW Site
# Affordable Workforce Housing Feasibility Study




**City of Portland, Maine**
Planning & Urban Development Department

**BPG / Bluestone Planning Group**
Stantec Consulting Services, Inc.
S+L / Stull and Lee, Inc.

January 20, 2015




***65 Hanover and 52 Alder Streets / DPW site illustrating the adjoining Bayside neighborhood context and scale:*** *This photograph shows the City's DPW Garage site (blue dot) within the B-2b business zoning district in the Bayside neighborhood. The site lies within an evolving mixed use district of light industrial, warehouse and residential homes and apartments that is only two blocks away from Portland's downtown CBD whose edge is shown in the lower right corner of this photo.*

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Page No.




*Consultant Team:*
Lawrence Bluestone, BPG / Bluestone Planning Group
Carol Gladstone, Stantec Consulting Services, Inc. (Boston)
Emily Reith, Stantec Consulting Services, Inc (Boston).
M. David Lee, Stull and Lee Inc., Architects
Yolanda Romero, Stull and Lee Inc., Architects

# 1.0 Introduction & City Goals

In November of 2014, the City of Portland Maine and the City Council, via its Planning & Urban Development Department, asked our team of design and real estate financial and funding consultants to examine the feasibility of developing new permanently affordable workforce housing on two city-owned adjoining parcels of land on 65 Hanover Street and 52 Alder Street in the Bayside neighborhood adjacent to downtown Portland. This approximately 30,000 sq. ft. (~ 0.7 acres) combined parcel has been used over 75 years as the City's DPW garage. However, the City intends to relocate this facility, thereby making this parcel available for other uses – such as affordable housing and possibly ground floor retail space.

*Hanover and Alder Streets Affordable Housing Site at City's DPW Garage*

The neighborhood, in a B-2b zoning district (Community Business zone), is a mix of moderately-scaled residential homes and apartments, businesses, warehouses, and light manufacturing facilities. However, the site is also only two blocks from downtown Portland where much larger scaled commercial and residential development is located.

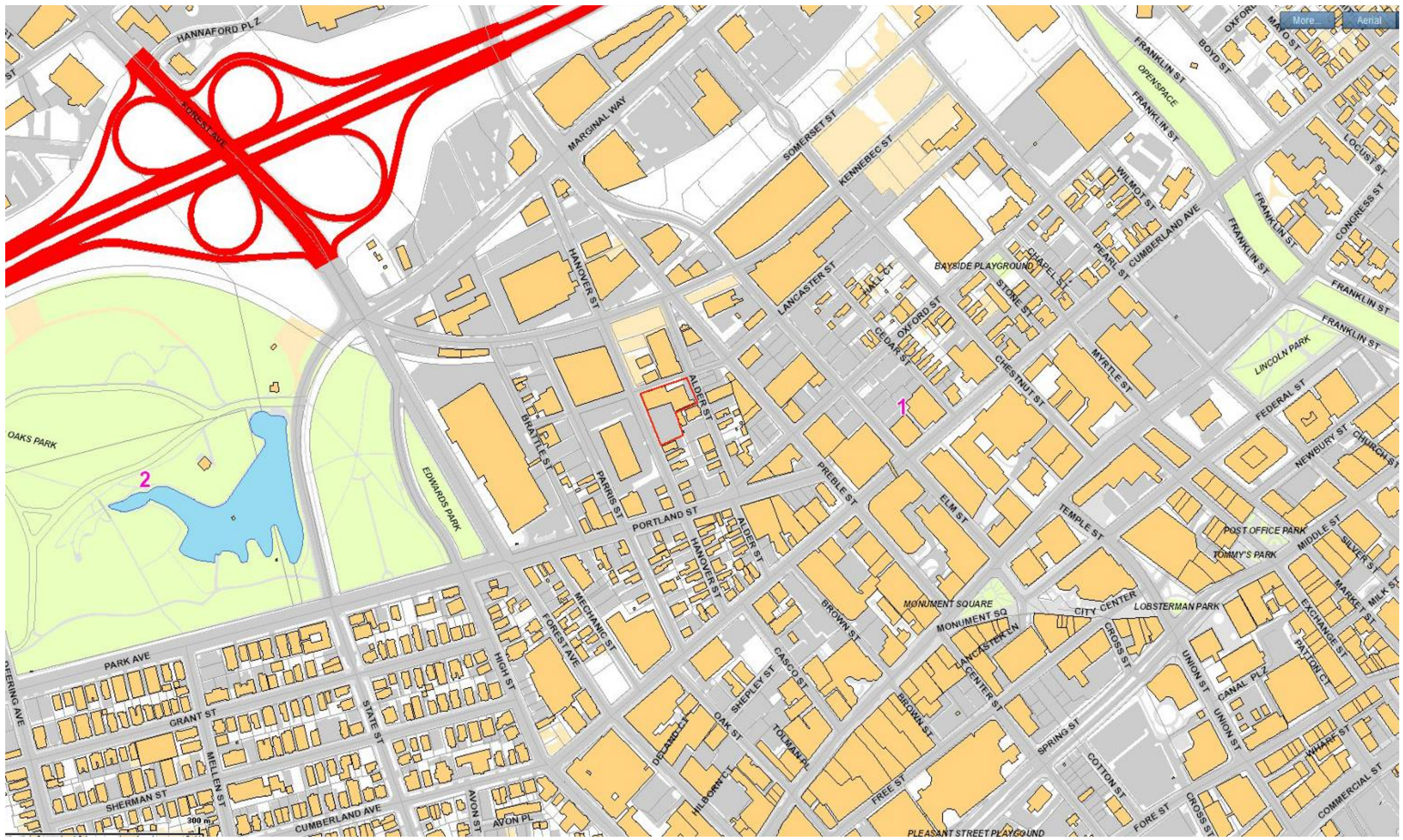
The assignment given our team was to explore physical alternatives and financial feasibility to both maximize permanently affordable housing options on the target site and provide active ground floor commercial space, if feasible, while simultaneously blending in size and scale with the surrounding parcels and blocks. Specifically, the goals of this feasibility exercise were to:

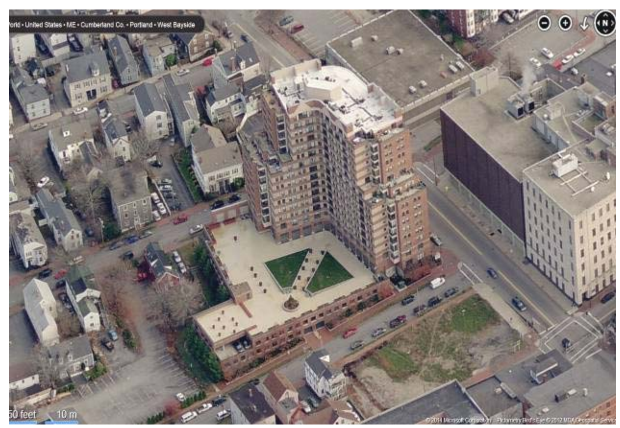
- ❑ Maximize the number of affordable family size housing units (mix of 2 and 3 bedrooms apartments) within the physical context of the surrounding neighborhood;
- ❑ Provide active ground floor commercial spaces, if financially feasible, particularly along Hanover Street;
- ❑ Develop building(s) no taller than four or five floors in height to fit the scale and height of buildings on the surrounding blocks;
- ❑ Design the housing to meet B-2b District zoning standards and dimensional criteria, or, note where standards cannot be met;
- ❑ Provide residential parking in accordance with the parking requirements in the B-2b district zoning (which is 1 on-site car space for each residential dwelling unit);
- ❑ Avoid locating new on-site visible parking spaces along street frontages;
- ❑ Examine the financial and funding feasibility of developing this housing and ground floor commercial space for permanent affordable ownership family housing; and
- ❑ Provide, if possible, on-site open space and/or play space (such as a tot lot) for the family residents of the 65 Hanover / 52 Alder Street site.

## 2.0 Background and Context

The approximately 30,000 sq. ft. (0.70 acre) Hanover / Alder Street combined city-owned parcel is located at the base of the Peninsula in a modestly scaled business, light industrial, and residential neighborhood almost immediately adjacent to downtown Portland and Deering Oaks Park - one of the city's largest parks. It is also close to the I-295 highway interchange with Forest Avenue for convenient regional access. Portland's CBD is located very nearby to the southeast of the site.

The site has been used for years as the City's DPW Garage, but, that facility will be relocated, thus making the 65 Hanover and 52 Alder Street site available for new housing or mixed use development.



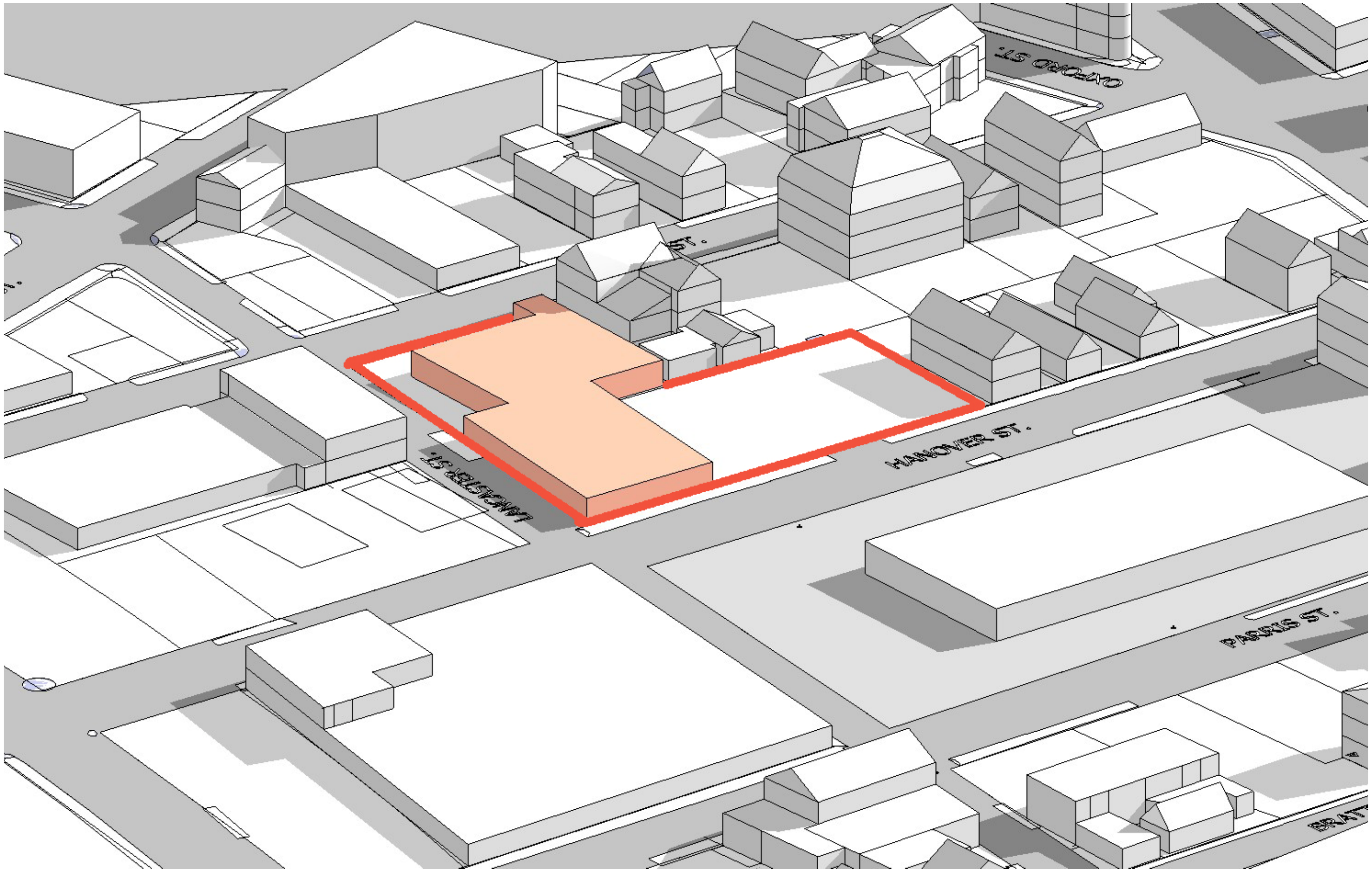
*Even though the 30,000 sf DPW site is immediately surrounded by low scale light industrial properties and residences, no more than two blocks away, newer, higher, and more dense developments have been built adjacent to the CBD, as seen at the left. These newer developments indicate the changing character of the site's context.*

# 3.0 Existing Site Conditions

## 3.1 The Site

The 30,000 sq. foot L-shaped site is topographically flat and is approximately 0.70 acres in size. It is bounded by Hanover St. to the west, Lancaster St. to the north, and Alder St. to the west. It is immediately adjoined by modestly scaled housing and light industrial and warehouse / storage properties. It is currently used as the city's DPW garage site.

## 3.2 Existing DPW Garage on Site – Axonometric View

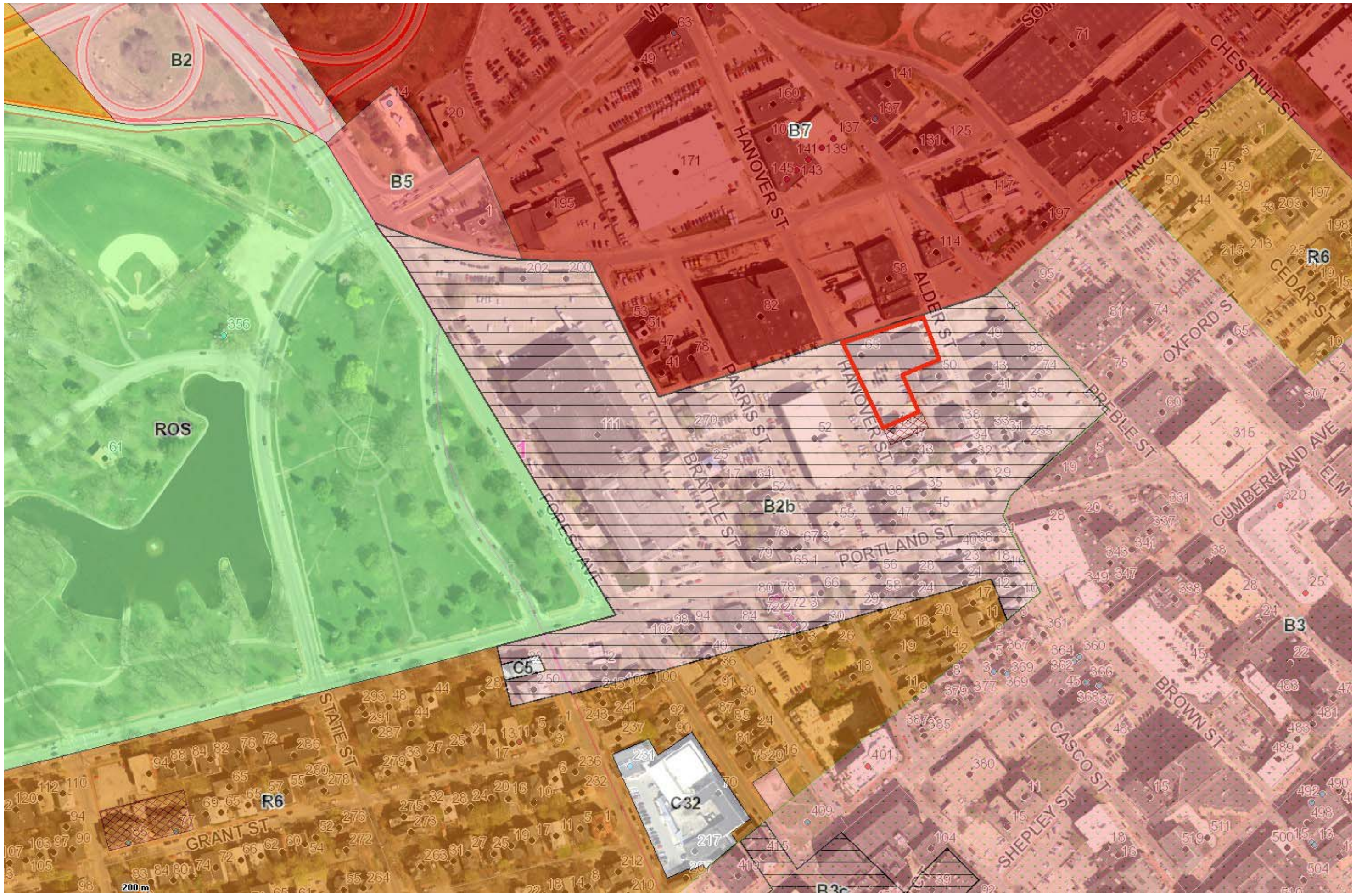


## 3.3 Existing B-2b District Zoning Standards & Zoning Map

The B-2b District is designed to support moderate to high density housing, neighborhood commercial and service spaces, and / or live-work spaces, particularly along major arterials. The B-2b zoning regulations theoretically allow up to 69 dwelling units on this 30,000 square foot site.

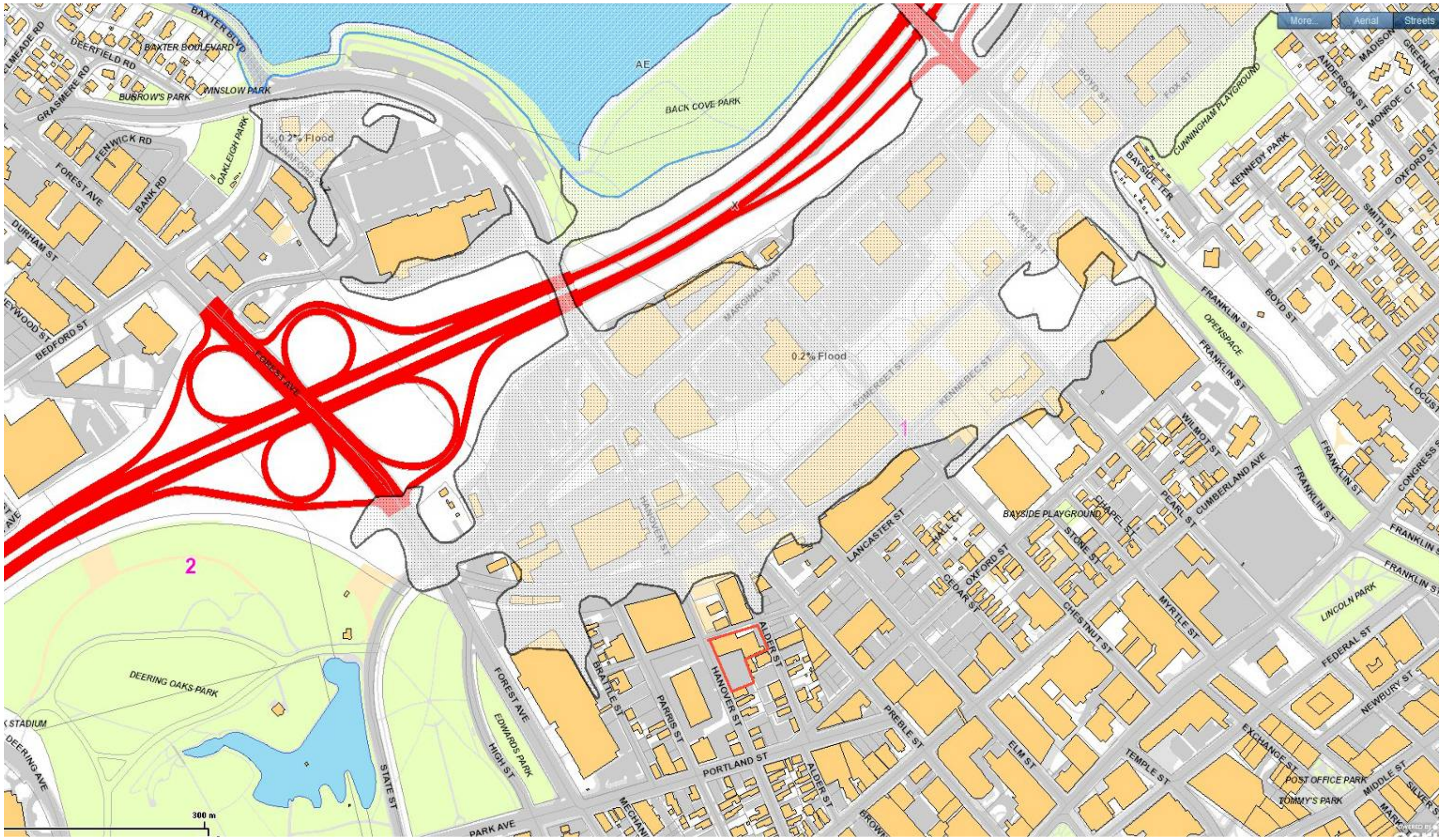
| **B - 2b Zoning District Regulations Summary** | |
|---|---|
| Allowed Uses | Multi-family & Two-Family Residential, Combined Live-Work space; Combined Artist Residence-Studio space; and Neighborhood Commercial |
| Lot Size Required – Min. | None |
| Street Frontage – Min. | 25 ft. |
| Lot Area / DU - Min. | 435 sf of lot area / ea. DU [100 DUs / acre ] ***** |
| Front Yd. Setback – Min. | 0 ft. |
| Front Yd. Setback – Max. | 10 ft. |
| Side Yd. Setback – Min. | 0 ft. |
| Rear Yd. Setback – Min. | 10 ft. |
| Allowed Height – Max. | 45 ft., except 50 ft., if ground fl. commercial use provided |
| Parking Reqts. - Residential | 1 off-street space / DU [on Peninsula] |
| Parking Reqts. - Retail | 1 off-street space per 200 sf [5 per 1,000 sf], in excess of first 2,000 sf |
| Parking Reqts. - Restaurant | 1 space per 150 sf [6.66 per 1,000 sf] |
| Parking Location Reqts. | No parking in front yard; & no parking within 35 ft. of front street line |
| Ground fl. entries orientation | Entrances must orient to street, not interior of block or on parking lot |
| Active Street Frontage | 75% of street frontage shall be in active residential or commercial use |
| Active Street Frontage | Avg. depth of active street frontage shall be 20 ft. min. |
| | |
| * 69 DUs max. allowed on this 30,000 sf site | |

## B-2b District Zoning Map & the Bayside Neighborhood



## 3.4 Preliminary 2013 FEMA Flood Zone Map (0.2% flood)

The DPW site lies just beyond the outer perimeter of the new preliminary FEMA Flood Zone caused by infiltration from Back Cove. FEMA is now in the process of finalizing their flood maps in this vicinity. Those new maps, when finalized, should be referenced to verify that the 65 Hanover / 52 Alder St. site remains outside the Flood Zone.



## 3.5 2003 Environmental Assessment Indicated Contaminants On the DPW Site

An Environmental Assessment for the "Brownfield / DPW Site" was completed in 2003 by Tewhey Associates for the City. A number of contaminants and chemicals were found on the site in shallow soils, including lead and high PAH levels likely derived from petroleum residues. Soil remediation will likely be required, but, remediation costs are unknown at this time.

# 4.0 Issues & Opportunities

## 4.1 Opportunities

- Provide an opportunity to build new affordable workforce family housing on Hanover and Alder Streets at the site of the City's DPW Garage and parking yard.

- Add active ground floor neighborhood commercial space in the new mixed use housing development, if financially feasible, to support the vibrancy of the evolving Bayside neighborhood. If not feasible, explore alternatives such as active workshop space on the ground floor as part of live-work apartments, or temporary ground-level office uses that can later be converted to retail space if and when the market warrants.

- Offer city land to developers free of charge to help subsidize the financial feasibility of providing affordable housing.

- Strengthen, through new development, the neighborhood's building street walls on Hanover, Alder and Lancaster Streets, instead of parking lots, to visually enhance the neighborhood's character.

## 4.2 Issues

### *Economics, Costs & Marketability*

- *Market for & Absorption of Homeowner Units:* The financing of affordable residential units is most likely to come from home ownership programs than from rental programs. There is therefore a question of whether a project of 39 – 45 affordable homeownership units (Alts. A - C) coming onto the market at one time can be absorbed by eligible or qualified buyers at this time and location. Therefore, a project of 39-45 units may be too large to place on the market at one time. Also, given the site's currently underdeveloped and semi-industrial context, potential sales prices may be market-limited as well as housing program limited (100-120% AMI). These market-constrained attainable sales prices in turn will limit the development and construction costs that the project can afford.

- *Financial Feasibility of Commercial Space:* Ground floor commercial or community spaces may be difficult to finance. This is due to both an uncertain market for commercial space at this location at this time, and the fact that the attainable commercial rent levels at this location will not support the construction of commercial space per square foot. Therefore, the provision of and financing of commercial space would require that the housing on the upper floors financially cross-subsidize the construction of the commercial space. This cross-subsidy *may* work if this project were a market-rate residential project. However, since this is an affordable housing development, there is no financial margin available for the housing to cross-subsidize the commercial space. Therefore, commercial space at this time will have to be subsidized.

- *Building Construction Premium Costs:* This project, in those alternatives (A-C) where parking is located beneath the upper floors of the building, according to Portland's building codes (IBC 2015), probably will be constructed with protected wood-framed construction (Type VA) on the upper residential floors. However, the ground floor base, which will host parking spaces and possibly commercial space below the residential floors, will require concrete construction to provide the required fire rating. The concrete base floor will add a construction cost premium to this project and increase the cost per parking space. The building, of course, will also need to have sprinklers as well. In Alternative D where parking is separated out from under the building in a surface lot and no commercial uses are provided on the ground floor, less expensive all-wood construction can be utilized.

- *Costs for Larger Sized 3BR Units:* It is the city's intention to provide affordable family-sized workforce housing – which manifests as a mix of two and three bedroom apartments. However, the incremental additional cost of constructing larger-sized three bedroom apartments (as compared to two bedroom apartments) exceeds the incremental increase in sales prices that can be attained for these larger three bedroom apartments. Therefore, in a development of this type, to be financially feasible, the project probably will require all 2BRs, or a very high percentage of two bedroom apartments compared to three bedroom apartments in the mix.

### *Zoning Parking Requirements*

- *Residential Parking Requirements:* Because zoning requires one parking space per each new apartment, the number of parking spaces that can fit on the site will determine and possibly limit the number of new apartments that can actually fit on the site compared to the maximum number of units that zoning would otherwise theoretically allow – 68 units, *unless*, that parking requirement per unit is reduced in the zoning ordinance. [Another solution could theoretically be to provide underground parking, but that solution is not financially feasible.]

- *Commercial Parking Space Requirements:* Even if commercial uses should eventually prove financially viable and are provided on the ground floor, an additional part of the ground level would then need to be set aside for additional parking spaces required by zoning to support these commercial uses (5 car spaces per 1,000 sf of commercial space), thereby diminishing the number of residential parking spaces otherwise available to support housing. Therefore, a zoning exemption or reduction for providing on-site commercial parking spaces will probably be needed. However, even if the commercial parking requirement is reduced, some commercial spaces would still be required in order to successfully market and rent such commercial space to prospective commercial tenants.

### *Potential Environmental Issues & Remediation Costs*

- *Site Remediation:* An Environmental Assessment for the "Brownfield / DPW Site" was completed in 2003 byTewhey Associates in behalf of the City. Since the site has been used for years as the City's DPW site, a number of contaminants were found on the site in the shallow soils. The report classified these contaminants as having 'moderate environmental impact'. A Phase I and II Environmental Assessment may be required. Based on those analyses and findings, soil remediation remedies will probably impact the costs of developing this site. These probable remediation cost impacts are unknown at this time, however.

- *Nearby Flood Zone:* Preliminary updated FEMA Flood Maps show the periphery of the mapped flood area in the Bayside neighborhood very close to the Hanover / Alder site. When FEMA finalizes its flood maps, those maps should be examined to see if they directly impact the DPW site.

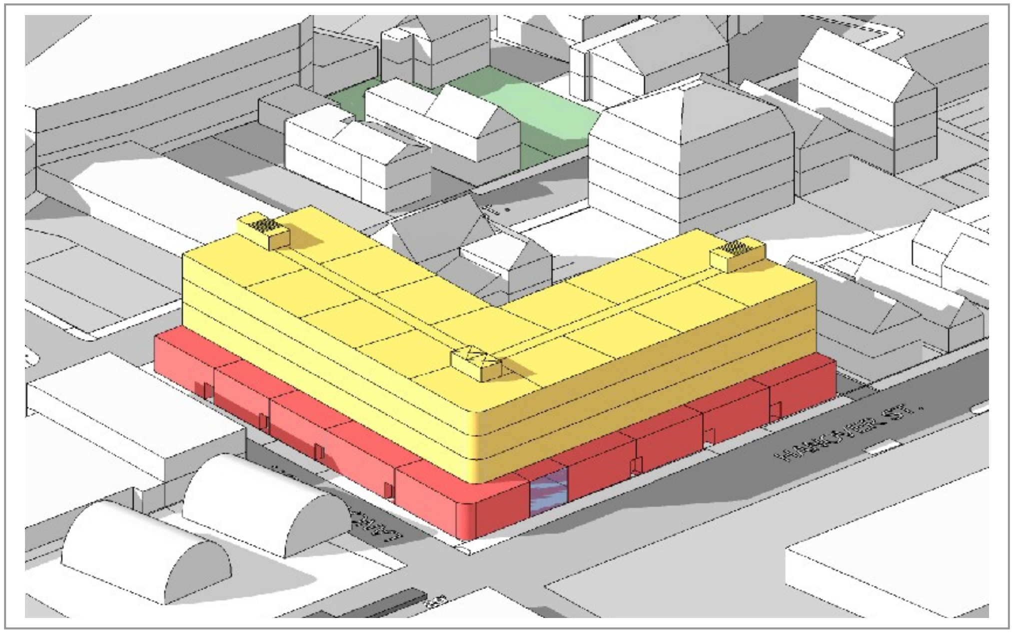
## 5.0 Alternative Housing & Mixed Use Test Scenarios

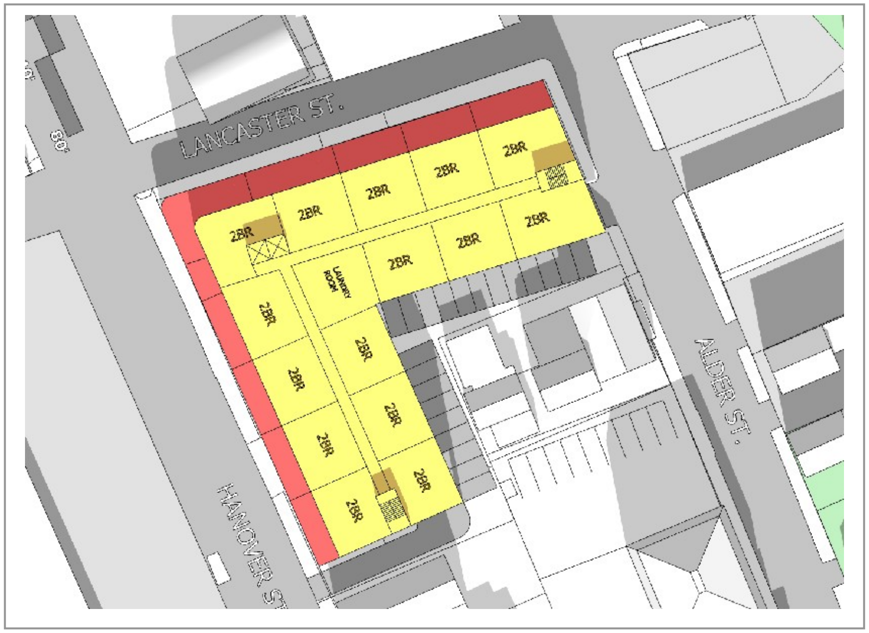
A number of alternative housing typologies and mix of uses were investigated for the Hanover / Alder Streets site before a Most Feasible Alternative was selected. These options are summarized below. The B-2b Zoning District will allow a density of up to 100 DUs / acre (or 69 DUs at this 0.7 acre site). Illustrations of each Alternative are shown on the following pages.

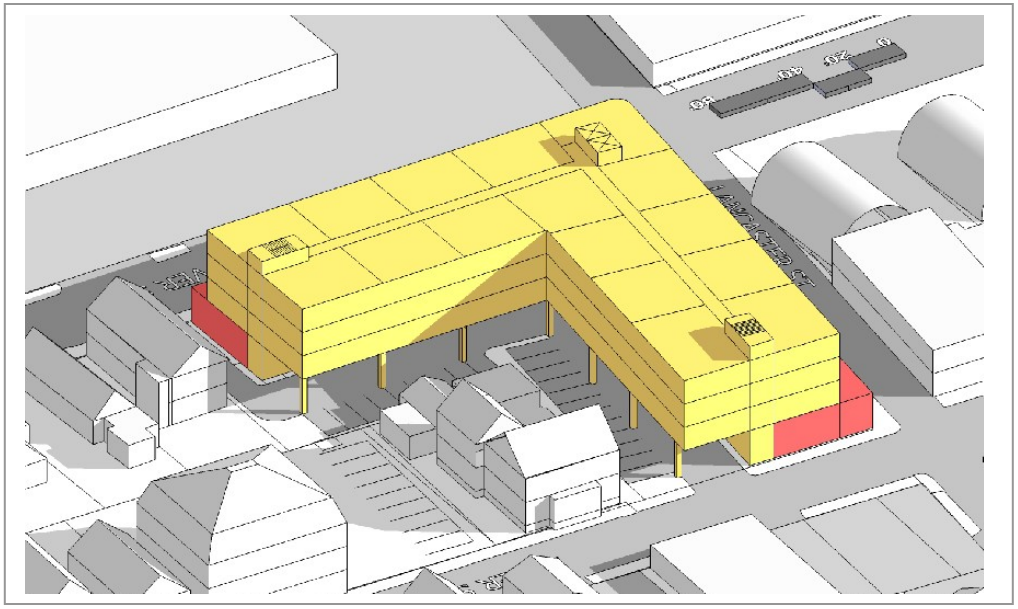
| Alternative Housing Scenarios: Summary Table | | | | | |
|---|---|---|---|---|---|
| **Alt. No.** | **Housing Type / Description** | **No. of DUs / Retail Space** | **No. of Floors / Ht.** | **No. of Parking Spaces** | **Actual Density Provided [DUs / Acre]** |
| **Alt. A1**: Flats + Retail | Double-loaded corridor multi-family apartments above ground floor parking and retail space | 45 DUs [All 2BR flats] + 12,500 sf Retail | 4 / 45 ft | 45 [At grade] | 64 DUs / acre |
| **Alt. A2**: Flats + Retail | Double loaded corridor multi-family apartments above ground floor parking and retail space | 39 DUs [21 3BRs & 18 2BRs flats] + 12,500 sf Retail | 4 / 45 ft. | 45 [At grade] | 56 DUs / acre |
| **Alt. B** Flats + 2-storey Live/Work Units + One Retail Space | Double loaded corridor multi-family apartments on floors 3 and 4 + 2-storey combination live-work spaces on floors 1 and 2. Parking on ground level and one retail space at corner | 39 DUs [15 3BRs & 18 2BRs flats + 6 3BR 2 storey live/work spaces] + 2,110 sf Retail | 4 / 45 ft. | 45 [At grade] | 56 DUs / acre |
| **Alt. C** All Flats + One Retail Space | Multi-family apartments on all floors with ground floor parking and one retail space at corner | 45 DUs [27 3BRs & 18 2 BRs flats + 2,110 sf Retail | 4 / 45 ft. | 45 [At grade] | 64 DUs / acre |
| **Alt. D** All flats | Double-loaded corridor multi-family apartments on all floors + surface parking lot | 23 DUS | 2.5 / 30 ft. | 23 [At grade] | 33 DUs / acre |

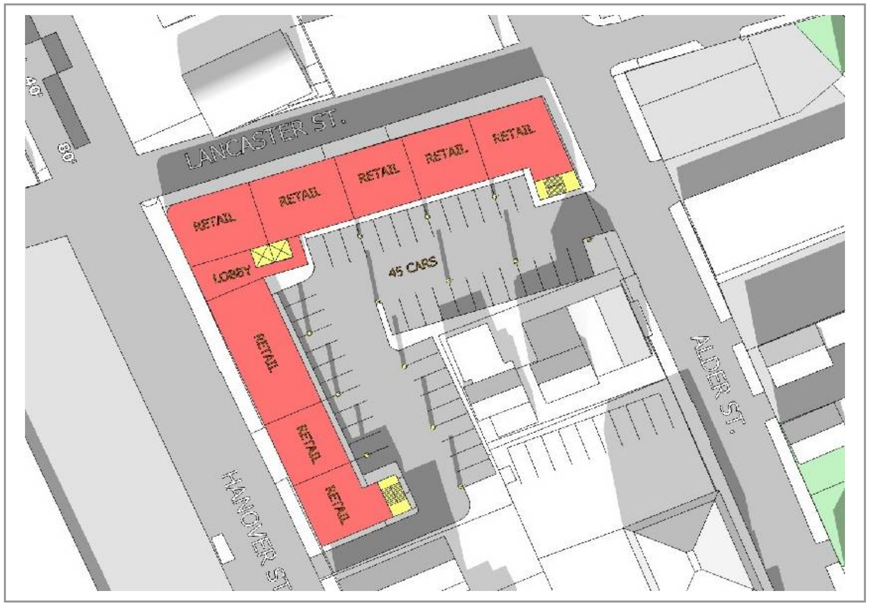
| **65 Hanover + 52 Alder St Housing Study: Building Square Footage Breakdown Table** January 15, 2015 | | | |
|---|---|---|---|
| **Alternatives / Floors** | **Gross SF** | **Net SF** | **Uses per Floor** |
| **Alt. A1** | | | |
| Floor 4 | 17,980 | 14,250 (Res.) | 15 2BRs [950 nsf/2BR] |
| Floor 3 | 17,980 | 14,250 (Res.) | 15 2BRs " |
| Floor 2 | 17,980 | 14,250 (Res.) | 15 2BRs " |
| Floor 1* | 13,500 | 12,510 (Retail) | Retail + 45 Parking Spaces |
| ***TOTAL*** | ***67,440 GSF*** | ***55,260 NSF*** | ***45 2 BRS + 12,510 nsf retail*** |
| | | | |
| **Alt. A2** | | | |
| Floor 4 | 17,980 | 13,850 (Res.) | 7 3BRs + 6 2BRs [950 nsf/2BR; 1,160 nsf/3BR] |
| Floor 3 | 17,980 | 13,850 (Res.) | 7 3BRs + 6 2BRs " " |
| Floor 2 | 17,980 | 13,850 (Res.) | 7 3BRs + 6 2BRs " " |
| Floor 1* | 13,500 | 12,510 (Retail) | Retail + 45 Parking Spaces |
| ***TOTAL*** | ***67,400 GSF*** | ***54,060 NSF*** | ***21 3BRs & 18 2BRs + 12,510 nsf retail*** |
| | | | |
| **Alt. B** | | | |
| Floor 4 | 17,980 | 13,850 (Res.) | 7 3BRs + 6 2BRs [950 nsf/2BR; 1,160 nsf/3BR] |
| Floor 3 | 17,980 | 13,850 (Res.) | 7 3BRs + 6 2 BRs " " |
| Floor 2 | 17,980 | 13,850 (Res.) | 7 3BRs + 6 2BRS " " |
| Floor 1* | 13,500 | 12,510 (10,400 Workshops + 2,110 Retail) | Workshops + Retail + 45 Parking Spaces |
| ***TOTAL*** | ***67,440 GSF*** | ***54,060 NSF*** | ***21 3BRs & 18 2BRs + 2,110 nsf retail*** |
| | | | |
| **Alt. C** | | | |
| Floor 4 | 17,980 | 13,850 (Res.) | 7 3BRs + 6 2BRs [950 nsf/2BR; 1,160 nsf/3BR] |
| Floor 3 | 17,980 | 13,850 (Res.) | 7 3BRs + 6 2BRs " " |
| Floor 2 | 17,980 | 16,850 (Res.) | 7 3BRs + 6 2BRS " " |
| Floor 1* | 13,500 | 12,510 (10,400 Res. + 2,110 Retail) | 6 3BRs + Retail + 45 Parking Spaces |
| ***TOTAL*** | ***67,440 GSF*** | ***54,060 NSF*** | ***27 3BRs & 18 2BRs + 2,110 nsf retail*** |
| | | | |
| **Alt. D** | | | |
| Floor 3 | 4,560 | 4,150 (Res.) | 1 3BRs + 3 2BRs [1,000 nsf/2BR; 1,150 nsf/3BR] |
| Floor 2 | 10,800 | 10,100 (Res.) | 3 3BRs + 7 2Brs [950 nsf/2BR; 1,150 nsf/3BR] |
| Floor 1 | 10,800 | 8,950 (Res.) | 2 3BRs + 7 2BRs [950 nsf/2BR; 1,150 nsf/3BR] |
| ***TOTAL*** | ***26,160 GSF*** | ***23,200 NSF*** | ***6 3BRS + 17 2BRs*** |

## ***Alternative A1: Multi-Family Flats + Ground Floor Retail****: 45 DUs (All 2 BRs) + 45 parking spaces*



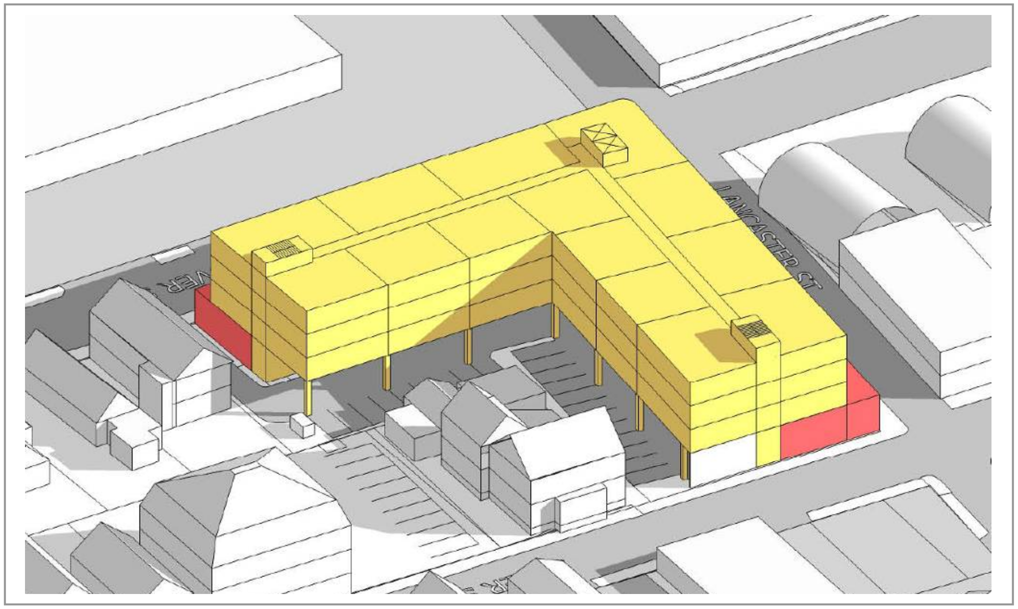


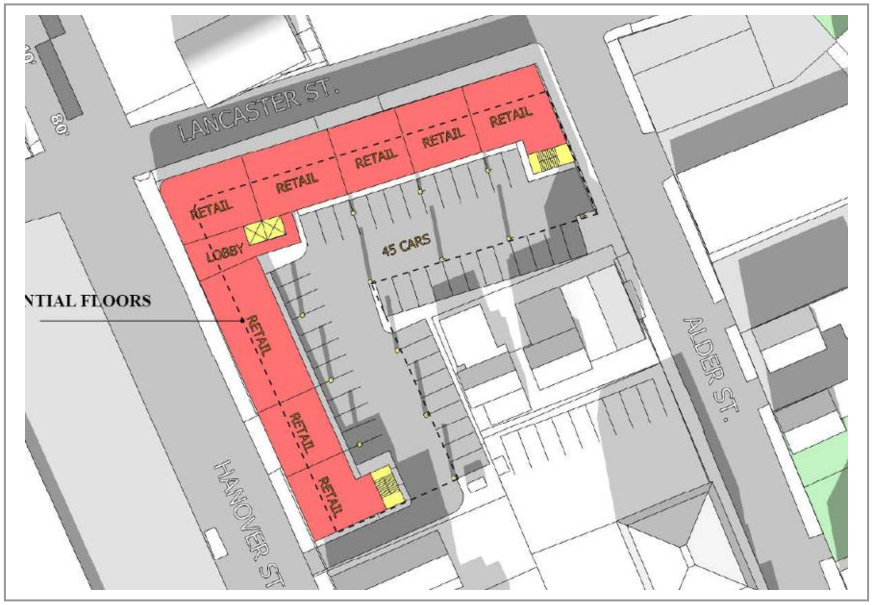





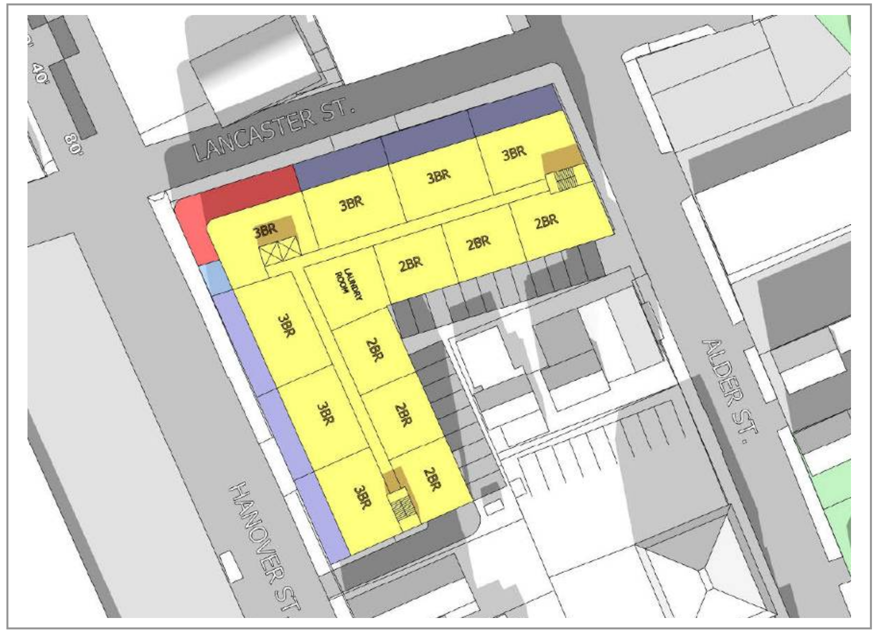
**_Alternative A2: Multi-Family Flats + Retail:_** _– 39 DUs (2 & 3 BR mix) + 45 parking spaces_



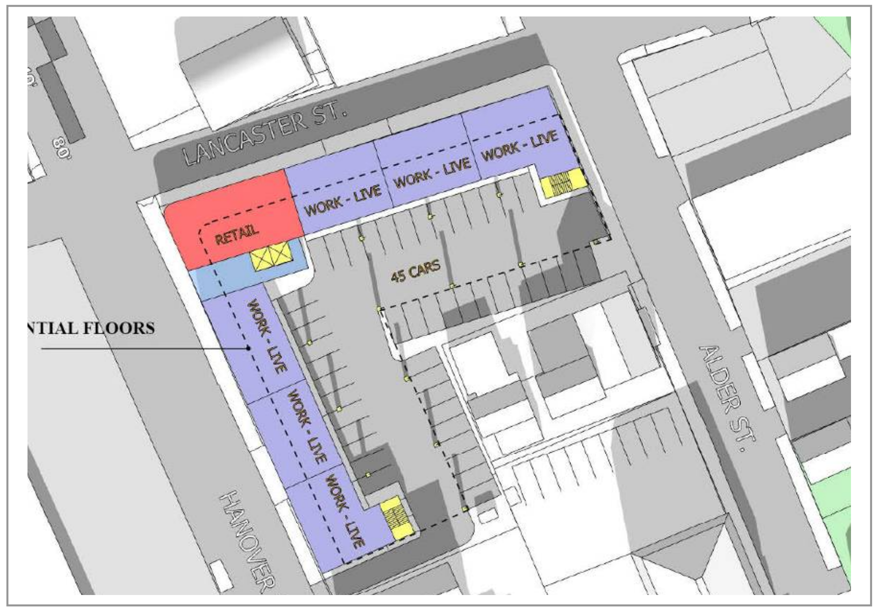


## *Alternative B: Multi-Family Flats (Flrs. 2 - 4) + Two-Story Live-Work Apartments (Flrs. 1 - 2) + 45 Parking Spaces*

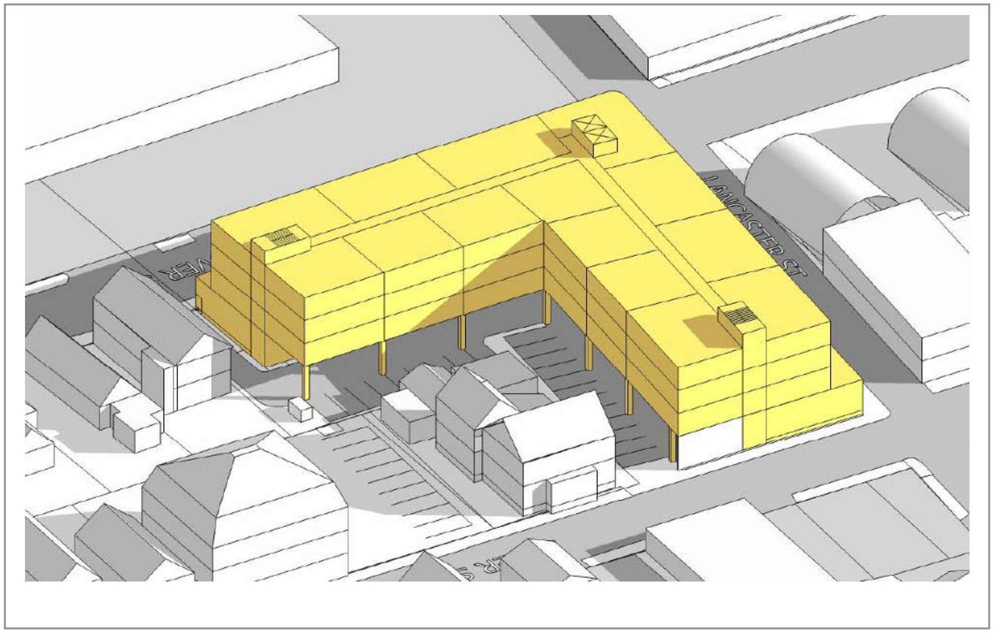



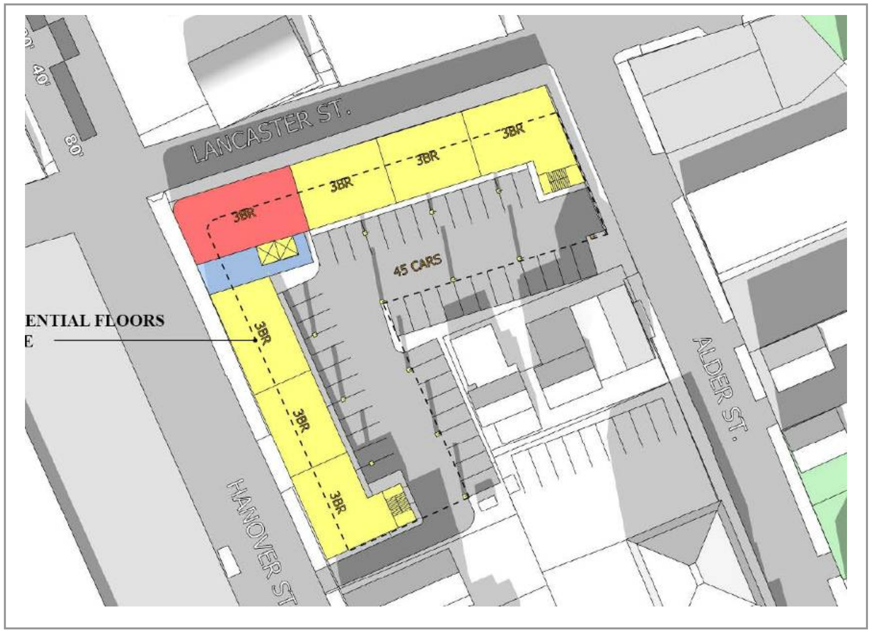




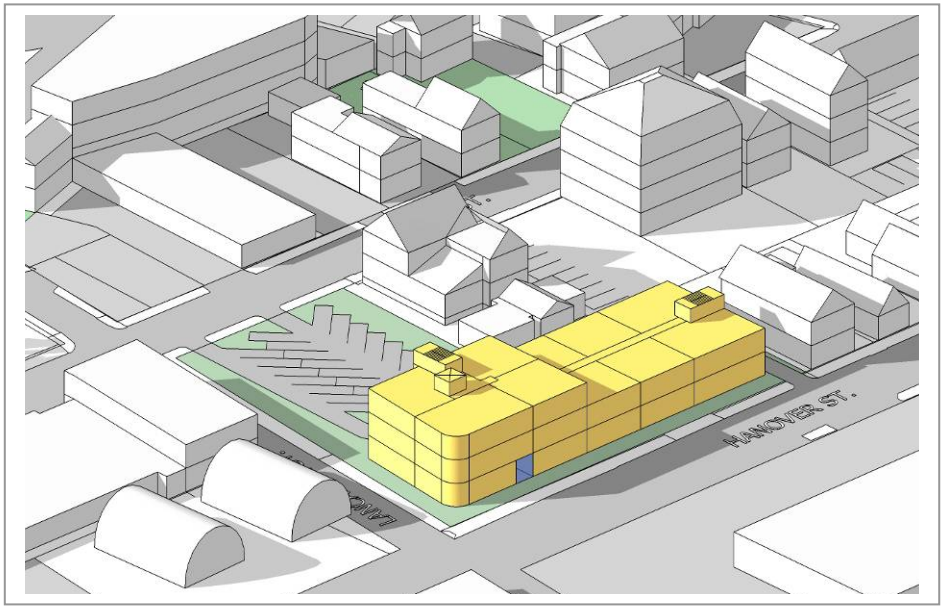
***Alternative C: Multi-Family Flats on Floors 1 through 4*** *- 45 DUs (2 and 3 BR mix) + 45 parking spaces*



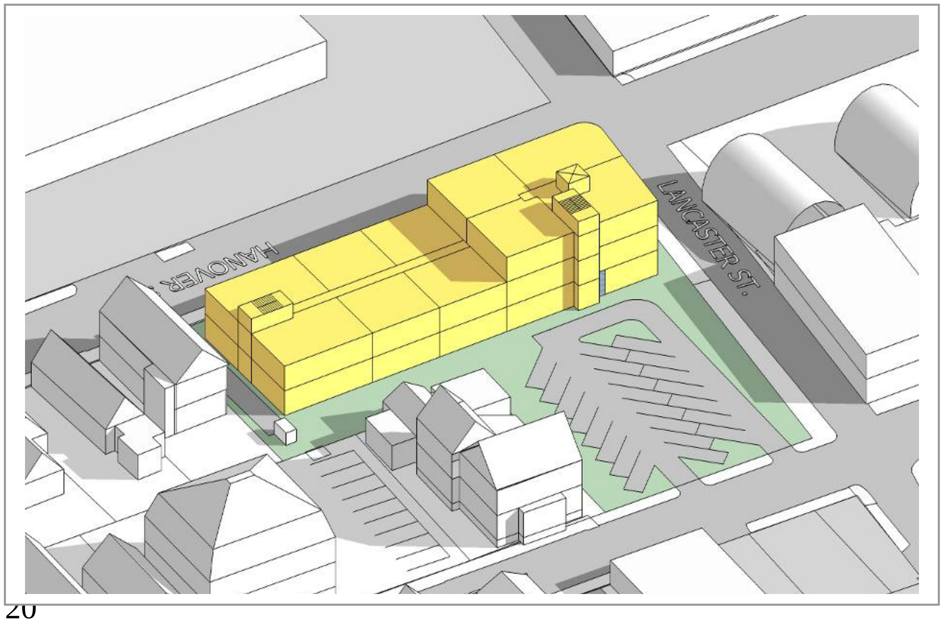


***Alternative D: Multi-Family Flats on Floors 1 through 2 1/2*** ***-*** *23 DUs (2 & 3BR Mix) +*
*23 surface parking lot spaces*








## 6.0 Summary Evaluation of Alternative Test Scenarios

### *Alternative A1*

*Alternative A1* provides 45 2BR apartment flats on floors 2 through 4, plus retail spaces along the entire ground floor frontages of Hanover and Lancaster Streets. 45 parking spaces are provided at grade level, largely tucked under the upper floors of the building. This alternative generally meets the intentions of the City to provide affordable workforce residences and active ground floor uses. However, larger three BR apartment flats are not provided in this Alternative.

The total number of housing units that can be physically supported is defined and limited by the number of parking spaces that can be provided on site - in this Alternative, approximately 45 spaces. Trying to provide the zoning requirement of 5 parking spaces per 1,000 sf of retail space would dramatically reduce the number of on-site parking spaces otherwise available to support residences. Therefore, parking exemptions will be required from the commercial parking space requirements if retail is wanted. However, retail tenants will probably want some on-site customer parking provided.

Our financial analyses indicate that these all-2BR units could be successfully financed and sold. However, these analyses also indicate that there is probably not currently sufficient market demand to support the retail spaces illustrated at this time. And, commercial construction costs / sf exceed currently attainable commercial rents / sf. Therefore, the provision of these commercial spaces would be difficult to finance without cross-subsidies from the housing above – which is simply not available. And so, the provision of ground floor retail spaces is difficult, if not unlikely at this time. An alternative approach would be to initially provide ground floor office spaces, and then later convert to retail spaces if the market develops. However, current office rents will not support commercial construction either. In the end, inclusion of unaffordable commercial space undermines the financial feasibility of this Alternative.

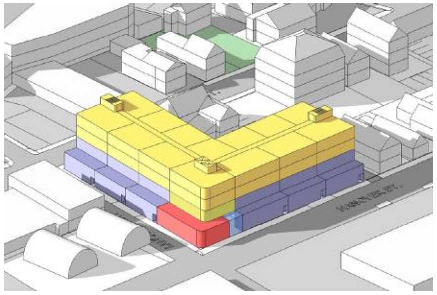
### *Alternative A2*

*Alternative A2* provides a mix of 39 two and three BR apartment flats on floors 2 through 4, plus retail spaces along the entire ground floor frontages of Hanover and Lancaster Streets. 45 parking spaces are provided at grade level, largely tucked under the upper floors of the building. This alternative meets the intentions of the City to provide affordable workforce residences and active ground floor uses.

The total number of housing units that can be physically supported is defined and limited by the number of parking spaces that can be provided on site - in this Alternative, approximately 45 spaces. Trying to provide the zoning requirement of 5 parking spaces per 1,000 sf of retail space dramatically reduces the number of on-site parking spaces otherwise available to support residences. Therefore, parking exemptions will be required from the commercial parking space requirements. Moreover, our financial analyses indicate that there may not currently be sufficient market demand to support the amount of retail spaces illustrated at this time; and, the provision of these commercial spaces would be difficult to finance without cross-subsidies from the housing above – which is simply not available. Therefore, the provision of ground floor commercial spaces is difficult, if not unlikely. Furthermore, our financial analyses indicate that with this Alternative's mix of 2 and 3 bedroom units, the larger-sized 3 BR units' additional construction costs exceed the additional revenue attainable from the sales of these larger units. Therefore, the financial feasibility of this Alternative will be difficult.

## *Alternative B*

*Alternative B* provides a mix of 33 two and three BR apartment flats on floors 2 through 4, and 6 combined two-story live-work spaces on floors 1 and 2, for a total of 39 DUs. Additionally, one community retail space is provided at the corner of Hanover and Lancaster Streets. Approximately 45 parking spaces are provided at grade level, largely tucked under the upper floors of the building. This alternative meets the intentions of the City to provide affordable multi-family residences and semi-active ground floor uses, in this case provided by workshop spaces plus one retail space on the ground level.



The total number of housing units that can be physically supported is defined and limited by the number of parking spaces that can be provided on site - in this Alternative, approximately 45 spaces. In this Alternative, the single retail space can also be supported by the parking spaces provided without requiring a commercial space parking exemption.

Our financial analyses indicate that it will be difficult if not impossible to finance the large artisan live-work two-story apartments. However, the City may have other available funds to support and subsidize artisan housing. Without this additional public funding, the provision of these live-work spaces will be difficult to finance without cross-subsidies from the affordable housing above – which is simply not available..

## *Alternative C*

*Alternative C* provides a mix of 45 two and three BR apartment flats on floors 1 through 4, in addition to one community retail space at the corner of Hanover and Lancaster Streets. The ground floor flats are vertically raised 3 feet above grade to provide some privacy from the adjacent sidewalk edge. Approximately 45 parking spaces are provided at grade level, largely tucked under the upper floors of the building. This alternative meets the intention of the City to provide affordable workforce residences. However, by providing apartment flats on the ground floor, the city's goal to provide active ground floor uses along street frontages is not met. Also, providing flats on the ground level, on or near the street line with minimal or no setbacks, raises privacy concerns for the occupants of those apartments, particularly along busy Hanover Street.

The total number of housing units that can be physically supported is defined and limited by the number of parking spaces that can be provided on site - in this Alternative, approximately 45 spaces.

Based upon our financial analyses, and even though the unaffordable commercial portion of the project has been eliminated from this Alternative, this all-residential project cannot be successfully financed because of the inclusion of the larger and more costly 3BR apartments in the residential mix.

## Alternative D

*Alternative D* provides 23 DUs in a mix of 2 and 3BR apartment flats on floors 1 through 2 ½. Approximately 23 parking spaces are provided in a surface parking lot located at the rear of the building. This alternative meets the intention of the City to provide affordable workforce residences. However, this scheme is designed to reduce construction costs by providing only a less expensive surface parking lot. That decision reduces the available parking spaces to 23 (as compared to the 45 spaces in the other alternatives), which in turn reduces the number of apartments to the same number. Therefore cost saving measures to achieve project financial feasibility rather than maximizing units on the site is this alternative's primary goal.

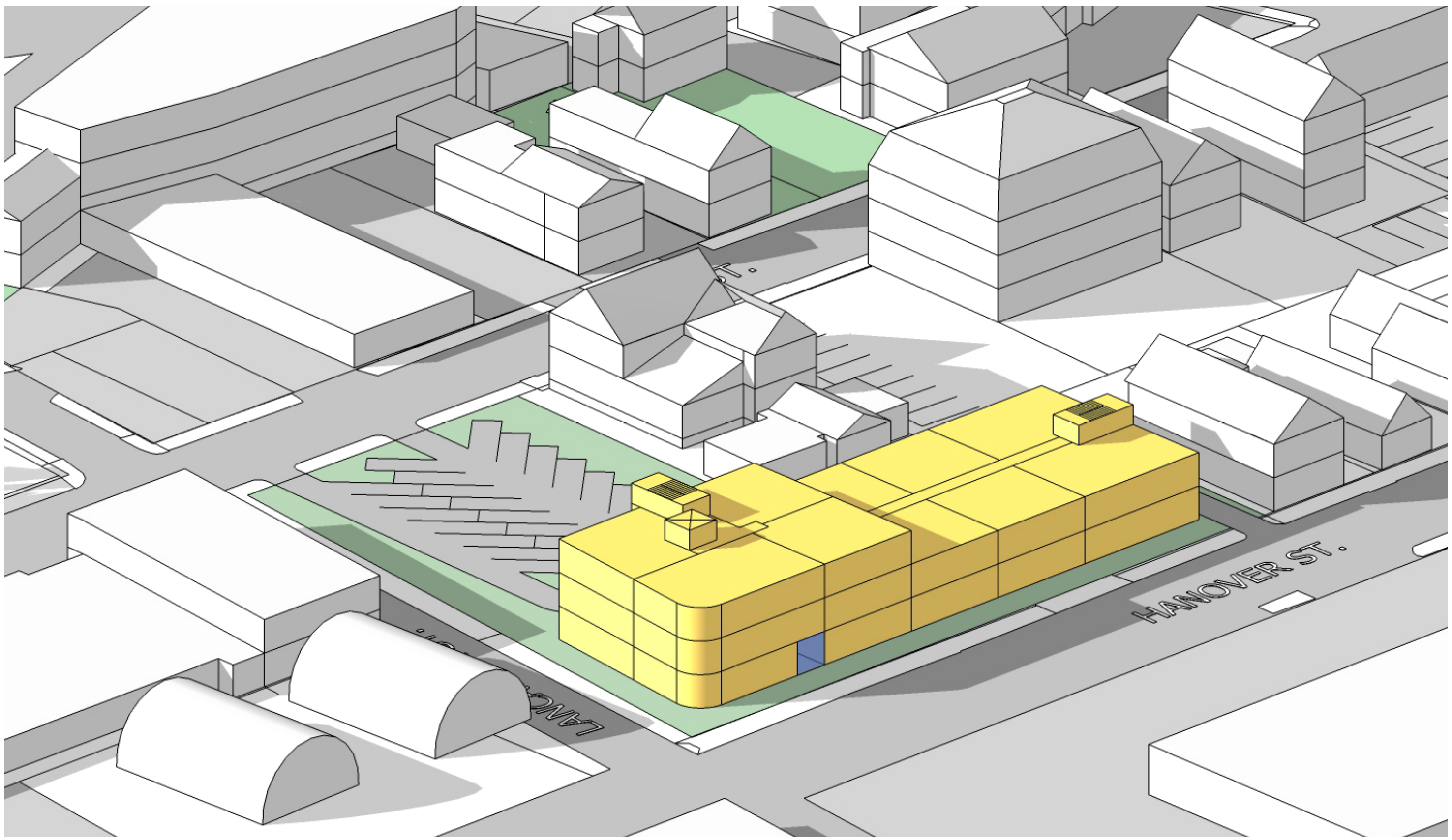
The ground floor flats are set back ten feet from both the Hanover St. and Lancaster St property lines to provide some landscaped privacy from the adjacent sidewalk edge. There is also sufficient ground level open space to provide room for play space and / or a tot lot. However, by providing apartment flats on the ground floor, the city's goal to provide active ground floor commercial uses is not met. Also, although the city's zoning requirement of not having surface parking lots visible from a 'front' street is technically achieved, neighbors and passersby will see the outdoor surface parking lot from Lancaster and Alder Streets, which are probably considered by zoning as 'side' and 'back' streets.

Based upon the financial analysis, it is likely that this all-residential project can be successfully financed. The approximately 23 units provided also are more likely to be absorbed into the market upon project completion as compared to the larger sized projects in Alts. A-C.

## 7.0 Most Feasible Housing Alternative: 2 ½ Story Multi-Family Flats [23 DUs]

Based upon our financial analyses of Alternatives A through D, the most financially feasible project at this time is Alternative D which will provide 23 DUs together with a surface parking lot. Given the currently attainable commercial rents and home sale prices at this location, other alternatives that either include costly ground floor commercial spaces, costly parking located under the raised portion of the building, and/or the inclusion of more costly 3BR units in the residential mix are too expensive and not supportable at this time. [See Section 4.0 for an outline of these issues.]

The Hanover St. / Alder St. site holds much promise in the future for the construction of affordable home ownership housing, but, except for Alternative D, it may be premature to offer this site at this time for a larger-sized development until the market strengthens and matures at this location. Conceivably, a revised version of the larger sized 45 DU all-residential Alternative C that includes only 2BR units rather than a mix of both 2 and 3 BR units *may* be marginally feasible, but that would have to be tested in the development marketplace; and, it is unclear whether 45 new affordable homeownership units can be successfully absorbed into the market all at once now and in the immediate future.



## 8.0 Financial & Funding Analyses of Alternatives

[Stantec Consulting Services, Inc.]

**Hanover Street Affordable Housing** *1/8/2015*

## Program & Development Cost Summary

**Alternate** **A1**

### Site and Building Area

| | | | |
|---|---|---|---|
| Site SF | | | 30,000 |
| Gross Building Area SF | | | 67,440 |
| Net rentable SF (NSF) | | | 55,260 |
| **Total Usable** | 82% | net-to-gross | **55,260** |
| Site Uses | | | |
| Parking Spaces on site | 12,400 | 45 | *276* |
| Covered | 9,000 | 24 | |
| Open | 3,400 | 21 | |
| Landscaped Areas | | | |
| Building Footprint | 13,500 | SF | |

### Building Program

| | GSF | NSF | Total DU | 2BR | 3BR |
|---|---|---|---|---|---|
| Level 1 - Retail | 12,750 | 12,510 | NA | 0 | 0 |
| Level 1 & 2 - Live/Work | 0 | 0 | 0 | 0 | 0 |
| Level 1 | 750 | | 0 | 0 | 0 |
| Level 2 | 17,980 | 14,250 | 15 | 15 | 0 |
| Level 3 | 17,980 | 14,250 | 15 | 15 | 0 |
| Level 4 | 17,980 | 14,250 | 15 | 15 | 0 |
| Total | 67,440 | 55,260 | 45 | 45 | 0 |
| | | | | | |
| Total Excluding Retail | 54,690 | 42,750 | 45 | | |
| *Average Unit Size (NSF)* | | *950* | | | |
| *Average Unit Size (GSF)* | | *1215* | | | |

### Development Costs Summary

| | | | Residential | Retail | Total |
|---|---|---|---|---|---|
| **Acquisition** | | | $0 | $0 | $0 |
| **Construction** | | | | | |
| Site Work + Remediation | | | $100,000 | $0 | $100,000 |
| Parking - 100% residential | | | $484,000 | $0 | $484,000 |
| Construction - Residential or L/W | | | $6,836,250 | $0 | $6,836,250 |
| Construction - Retail | | | *0* | $1,466,250 | $1,466,250 |
| *Subtotal* | | | *$7,420,250* | *$1,466,250* | *$8,886,500* |
| *Construction Costs Ratio* | | | *84%* | *16%* | |
| Construction Contingencies | | 10% | *$710,592.37* | $140,413.88 | $851,006 |
| **Construction total** | | | **$8,130,842** | **$1,606,664** | **$9,737,506** |
| **Soft Costs** | | | | | **$1,410,899** |
| A&E + related fees | | $624,210 | *$521,217.24* | $102,993.13 | |
| Project legal & insurance | | $224,689 | *$187,615.52* | $37,073.04 | |
| Financing & Interest | | $562,000 | *$469,271.42* | $92,728.58 | |
| **Developer Fee** | | 4% | **$353,206** | **$69,794** | **$423,000** |
| **Project Contingency** | | 5% | **$465,447** | **$91,973** | **$557,420** |
| **TOTAL DEVELOPMENT COST** | | | **$10,127,600** | **$2,001,225** | **$12,128,825** |
| | **Cost/GSF** | | **$185.18** | **$156.96** | **$179.85** |
| | **Cost/ Unit** | | **$225,057.78** | **$159.97** | |
| | **Sales Price/ Unit** | | **$235,000.00** | **$1,668,000** | |
| | Profit / (Loss) | | $9,942.22 | ($333,225) | |

**Hanover Street Affordable Housing** *1/8/2015*

## Program & Development Cost Summary

**Alternate** **A2**

### Site and Building Area

| | | | |
|---|---|---|---|
| Site SF | | | 30,000 |
| Gross Building Area SF | | | 67,440 |
| Net rentable SF (NSF) | | | 54,060 |
| **Total Usable** | 80% | net-to-gross | **54,060** |
| Site Uses | | | |
| Parking Spaces on site | 12,400 | 45 | *276* |
| Covered | 9,000 | 24 | |
| Open | 3,400 | 21 | |
| Landscaped Areas | | | |
| Building Footprint | 13,500 | SF | |

### Building Program

| | GSF | NSF | Total DU | 2BR | 3BR |
|---|---|---|---|---|---|
| Level 1 - Retail | 12,750 | 12,510 | NA | 0 | 0 |
| Level 1 & 2 - Live/Work | 0 | 0 | 0 | 0 | 0 |
| Level 1 | 750 | | 0 | 0 | 0 |
| Level 2 | 17,980 | 13,850 | 13 | 6 | 7 |
| Level 3 | 17,980 | 13,850 | 13 | 6 | 7 |
| Level 4 | 17,980 | 13,850 | 13 | 6 | 7 |
| Total | 67,440 | 54,060 | 39 | 18 | 21 |
| | | | | | |
| Total Excluding Retail | 54,690 | 41,550 | 39 | | |
| *Average Unit Size (NSF)* | | *1,065* | | | |
| *Average Unit Size (GSF)* | | *1402* | | | |

### Development Costs Summary

| | | Residential | Retail | Total |
|---|---|---|---|---|
| **Acquisition** | | $0 | $0 | $0 |
| | | | | |
| **Construction** | | | | |
| Site Work + Remediation | | $100,000 | $0 | $100,000 |
| Parking - 100% residential | | $484,000 | $0 | $484,000 |
| Construction - Residential or L/W | | $6,836,250 | $0 | $6,836,250 |
| Construction - Retail | | 0 | $1,466,250 | $1,466,250 |
| *Subtotal* | | *$7,420,250* | *$1,466,250* | *$8,886,500* |
| *Construction Costs Ratio* | | *84%* | *16%* | |
| Construction Contingencies | 10% | *$710,592.37* | $140,413.88 | $851,006 |
| **Construction total** | | **$8,130,842** | **$1,606,664** | **$9,737,506** |
| | | | | |
| **Soft Costs** | | | | **$1,410,899** |
| A&E + related fees | $624,210 | *$521,217.24* | $102,993.13 | |
| Project legal & insurance | $224,689 | *$187,615.52* | $37,073.04 | |
| Financing & Interest | $562,000 | *$469,271.42* | $92,728.58 | |
| | | | | |
| **Developer Fee** | 4% | **$353,206** | **$69,794** | **$423,000** |
| | | | | |
| **Project Contingency** | 5% | **$465,447** | **$91,973** | **$557,420** |
| | | | | |
| **TOTAL DEVELOPMENT COST** | | **$10,127,600** | **$2,001,225** | **$12,128,825** |

| | | |
|---|---|---|
| **Cost/GSF** | **$185.18** | **$157** |
| **Cost/ Unit** | **$259,682.05** | **$160** |
| **Avg Sales Price/ Unit** | **$240,000.00** | **$1,668,000** |
| Profit / (Loss) | ($19,682.05) | ($333,225.49) |

**Hanover Street Affordable Housing** *1/15/2015*

## Program & Development Cost Summary

### Alternate C

**Site and Building Area**

| | | | |
|---|---|---|---|
| Site SF | | | 30,000 |
| Gross Building Area SF | | | 67,440 |
| Net rentable SF (NSF) | | | 54,060 |
| **Total Usable** | 80% | net-to-gross | **54,060** |
| Site Uses | | | |
| Parking Spaces on site | 12,400 | 45 | *276* |
| Covered | 9,000 | 24 | |
| Open | 3,400 | 21 | |
| Landscaped Areas | | | |
| Building Footprint | 13,500 | SF | |

**Building Program**

| | GSF | NSF | Total DU | 2BR | 3BR |
|---|---|---|---|---|---|
| Level 1 - Retail | 2,350 | 2,110 | NA | 0 | 0 |
| Level 1 & 2 - Live/Work | 0 | 0 | 0 | 0 | 0 |
| Level 1 | 11,150 | 10,400 | 6 | 0 | 6 |
| Level 2 | 17,980 | 13,850 | 13 | 6 | 7 |
| Level 3 | 17,980 | 13,850 | 13 | 6 | 7 |
| Level 4 | 17,980 | 13,850 | 13 | 6 | 7 |
| Total | 67,440 | 54,060 | 45 | 18 | 27 |
| | | | | | |
| Total Excluding Retail | 65,090 | 51,950 | 45 | | |
| *Average Unit Size (NSF)* | | *1,154* | | | |
| *Average Unit Size (GSF)* | | *1446* | | | |

| **Development Costs Summary** | | Residential | Retail | Total |
|---|---|---|---|---|
| **Acquisition** | | $0 | $0 | $0 |
| | | | | |
| **Construction** | | | | |
| Site Work + Remediation | | $100,000 | $0 | $100,000 |
| Parking - 100% residential | | $484,000 | $0 | $484,000 |
| Construction - Residential or L/W | | $8,430,000 | $0 | $8,430,000 |
| Construction - Retail | | *0* | $270,250 | $270,250 |
| *Subtotal* | | *$9,014,000* | *$270,250* | *$9,284,250* |
| *Construction Costs Ratio* | | *97%* | *3%* | |
| Construction Contingencies | 10% | *$818,461.59* | $24,538.41 | $843,000 |
| **Construction total** | | **$9,832,462** | **$294,788** | **$10,127,250** |
| | | | | |
| **Soft Costs** | | | | **$1,438,571** |
| A&E + related fees | $647,595 | *$628,744.52* | $18,850.48 | |
| Project legal & insurance | $228,976 | *$222,310.62* | $6,665.13 | |
| Financing & Interest | $562,000 | *$545,641.06* | $16,358.94 | |
| | | | | |
| **Developer Fee** | 4% | **$427,192** | **$12,808** | **$440,000** |
| | | | | |
| **Project Contingency** | 5% | **$561,458** | **$16,833** | **$578,291** |
| | | | | |
| **TOTAL DEVELOPMENT COST** | | **$12,217,808** | **$366,304** | **$12,584,112** |
| | | | | |
| | **Cost/GSF** | **$181.17** | **$155.87** | |
| | **Cost/ Unit** | **$271,506.84** | **$173.60** | **Cost/ NSF** |
| | | | | |
| | **Minimum Avg Sales Price Per Unit** | **$277,000** | **$16** | Break even rent/ SF |
| | | | **$12** | Current Rent/ SF |

**Hanover Street Affordable Housing** *1/16/2015*

## Program & Development Cost Summary

### Alternate D

**Site and Building Area**

| | | | |
|---|---|---|---|
| Site SF | | | 30,000 |
| Gross Building Area SF | | | 26,160 |
| Net rentable SF (NSF) | | | 23,200 |
| **Total Usable** | 89% | net-to-gross | **23,200** |
| Site Uses | | | |
| Parking Spaces on site | 8,050 | 23 | *350* |
| Covered | 0 | 0 | |
| Open | 8,050 | 23 | |
| Landscaped Areas | 11,150 | | |
| Building Footprint | 10,800 | SF | |

**Building Program**

| | GSF | NSF | Total DU | 2BR | 3BR |
|---|---|---|---|---|---|
| Level 1 - Retail | 0 | 0 | NA | 0 | 0 |
| Level 1 & 2 - Live/Work | 0 | 0 | 0 | 0 | 0 |
| Level 1 | 10,800 | 8,950 | 9 | 7 | 2 |
| Level 2 | 10,800 | 10,100 | 10 | 7 | 3 |
| Level 3 | 4,560 | 4,150 | 4 | 3 | 1 |
| Level 4 | 0 | 0 | 0 | 0 | 0 |
| Total | 26,160 | 23,200 | 23 | 17 | 6 |
| Total Excluding Retail | 26,160 | 23,200 | 23 | | |
| *Average Unit Size (NSF)* | | *1,009* | | | |
| *Average Unit Size (GSF)* | | *1137* | | | |

| **Development Costs Summary** | | **Residential** | **Retail** | **Total** |
|---|---|---|---|---|
| **Acquisition** | | $0 | $0 | $0 |
| **Construction** | | | | |
| Site Work + Remediation | | $211,500 | $0 | $211,500 |
| Parking - 100% residential | | $80,500 | $0 | $80,500 |
| Construction - Residential or L/W | | $3,139,200 | $0 | $3,139,200 |
| Construction - Retail | | *0* | $0 | $0 |
| *Subtotal* | | *$3,431,200* | *$0* | *$3,431,200* |
| *Construction Costs Ratio* | | *100%* | *0%* | |
| Construction Contingencies | 10% | *$313,920.00* | $0.00 | $313,920 |
| **Construction total** | | **$3,745,120** | **$0** | **$3,745,120** |
| **Soft Costs** | | | | **$1,006,172** |
| A&E + related fees | $282,187 | *$282,187.20* | $0.00 | |
| Project legal & insurance | $161,984 | *$161,984.32* | $0.00 | |
| Financing & Interest | $562,000 | *$562,000.00* | $0.00 | |
| **Developer Fee** | 4% | **$168,000** | **$0** | **$168,000** |
| **Project Contingency** | 5% | **$237,565** | **$0** | **$237,565** |
| **TOTAL DEVELOPMENT COST** | | **$5,156,856** | **$0** | **$5,156,856** |

**Cost/GSF** **$197.13**

**Cost/ Unit** **$224,211.13**

**Minimum Avg Sales Price Per Unit** **$229,000**

# City of Portland
# Request for Proposals
# For the Sale and Reuse of Property
# Located at 65 Hanover Street
# and 52 Alder Street

## RFP #

Notice and Specifications

Sealed proposals for furnishing the City of Portland with the Development of Affordable Housing, as specified herein, will be received by the Purchasing Office, Room 103, City Hall, 389 Congress Street, Portland, Maine 04101, until Tuesday, XXXXXXX, 2015 at 3:00 p.m. at which time they will be publicly opened. Proposals shall be submitted with the attached forms, and returned in sealed envelopes plainly marked on the outside "**SALE AND REUSE OF 65 HANOVER STREET AND 52 ALDER STREET**." Proposals that are late, faxed or submitted electronically will not be accepted. All proposals shall be held open to acceptance for sixty days from opening.

Copies of the above documents will be available at the Purchasing Office, Room 103, City Hall, 389 Congress Street, Portland, ME 04101. Each prospective proposer will be required to obtain from the City each copy of the proposal form and each set of plans; e-mail jrl@portlandmaine.gov , phone (207) 874-8654, or fax (207) 874-8652. Six (6) complete copies of your proposal submission, including any descriptive literature, shall be submitted on the forms provided and in an envelope plainly marked on the outside with the RFP's title and number

All questions must be submitted in writing to the Purchasing Office. These may be mailed; hand delivered, faxed to (207) 874-8652 or e-mailed to mff@portlandmaine.gov and be received no later than five (5) business days prior to the opening date. Questions received after this time will not be addressed. Any interpretation, correction, or change of this document will be made only by written addenda. Changes in any other manner will not be binding on the City of Portland.

The disposal of this real estate shall be on the basis of a negotiated proposal, with the City of Portland reserving the right to refuse any or all proposals. *All proposers are advised that the property will be sold "as-is" and "where-is", in its existing condition, with no warranties either expressed or implied.* The City disclaims any and all responsibility for injury to proposers, their agents or others while examining the property or at any other time.

Proposals from vendors not registered with the Purchasing Office may be rejected; receipt of this document directly from the City of Portland indicates registration. Should a vendor receive this Request from a source other than the City of Portland, please contact (207) 874-8654 to ensure that your firm is listed as a vendor for this RFP.

## GENERAL INFORMATION

The City of Portland, Maine seeks proposals from qualified developers for the purchase and development of the property located at 65 Hanover Street and 54 Alder Street (hereafter, "the lot"). The site is designated on the City of Portland Tax Assessor's Map as Map 33, Block C, Lot 3 and Map 33, Block C, Lot 15.

### Summary of Request

The City of Portland is committed to provide a balance of housing opportunities and has set a goal to evaluate the use of city-owned property to construct affordable housing. As one step in accomplishing this goal, the City of Portland will accept proposals for the development of affordable housing on the lot located at 65 Hanover Street and 52 Alder Street, Portland, Maine (Map 33, Block C, Lot 3 and Map 33, Block C, Lot 15).

An environmental assessment was conducted on the 5-acre parcel that houses the Public Services Department in June 2003 by Tewhey Associates and is attached to the RFP as Exhibit 2.

To facilitate the development of this site, the City of Portland may make funding available from the City resources noted below: However, strong preference will be given where the value of the property is the only source of subsidy provided by the City of Portland.

1. FY 2014-2015 HUD Home Investment Partnership Program (HOME) Funds (which may include a mandatory set-aside for CHDO organizations or organizations eligible for CHDO certification). The HUD definition of a CHDO organization is attached as Exhibit #1 entitled Definition of a Community Housing Development Organization (CHDO).

2. 

3. FY 2014 City Housing Trust Funds

The City of Portland's Division of Housing and Community Development uses the RFP process to ensure that public resources are utilized for maximum public benefit while accomplishing specific objectives and providing fair access to all applicants.

**General Guidelines**

Developments shall provide affordable rental or home ownership units. Note that "affordability" is defined by the standards outlined in Division 30 Section 14-485 of the City's Land Use Code. Proposals which include the use of HOME funds must meet the income and/or rent restrictions of the HOME program. Rental developments shall provide units to households earning no more than 60% of the area median income and ownership developments shall provide units to households earning no more than 80% of area median income.

Proposals which include the use of City Housing Trust Funds must meet the income and rent restrictions outlined in City Ordinance Chapter 14, Division 30, Section 14-485 which requires that rental developments shall be affordable to households earning no more than 80% of the area median income and ownership developments shall be affordable to households earning no more than 120% of the area median income.

The minimum term of affordability is ***90*** years, to be secured by a land use restriction covenant in the deed.

Redevelopment should incorporate costs and measures to properly manage contaminated soil in compliance with state and federal regulations. *In general, any soil disturbance should be conducted in accordance with the requirements of the Maine DEP.*

The proposed use of funds, leveraging of other public and private resources, terms of affordability, design compatibility, readiness, financial feasibility, development experience, management capacity, and unit mix are among the scoring factors to be used in the review process.

This RFP outlines the selection criteria which all projects applying for these funds must meet, as well as scoring factors which will be used by the City of Portland to evaluate the proposals.

## I. Background

The site at 65 Hanover Street contains approximately 20,273 square feet and the site at 52 Alder Street contains approximately 9,500 square feet. The Hanover Street property is currently used by the City's Traffic Division. The Alder Street property is currently used by the City's Trades Division. Both sites are located on the south side of Lancaster Street and share a common wall, essentially creating one building with a common parking area. The site is zoned B-2b.

## II. Goals for This RFP

The goal for the sale and development of the property at 65 Hanover Street and 52 Alder Street is to promote the development of affordable housing with a high standard of quality, design, and livability. Proposals should not require a contract or conditional zone (although other rezoning consistent with the City's Comprehensive Plan may be considered). Design should reflect the concepts outlined in *A New Vision for Bayside* *as well as the design standards in the Land Use Ordinance.* They should also incorporate high standards of energy efficiency and "green" design criteria.

Proposals should consider the recommendations outlined in the Affordable Housing Feasibility Study completed by Bluestone Planning Group a copy of which is included as Exhibit #2. In summary, the study identifies the preferred design concept as a double-loaded "L"-shaped, four story tall apartment building with three floors of apartments sitting above a ground floor of parking spaces and perimeter retail spaces along Hanover and Lancaster Streets. . The design would create up to 45 dwelling units units targeted to households with incomes between 100% to 120% of the area median income (Family of Two = $61,875-$74,250 & Family of Four = $77,313-$92,760). The design concept suggests – fifteen two 2-bedroom apartments per floor and includes a maximum of 45 surface parking spaces.

## SCOPE OF SERVICES

### General Specifications

All proposals submitted for this funding must meet the following selection criteria to be considered further in the review process.

### A. Eligible Projects

1) Projects must create affordable housing units targeted to households with incomes between 100% and 120% of the area median income (Family of Two = $61,875-$74,250 & Family of Four = $77,313-$92,760).

2) Projects requesting HOME funds must provide home ownership units to households that meet the income the HOME Program.

3) Projects receiving funding through this RFP must include a written occupancy policy that prohibits smoking in the units and the interior common areas of the project in addition to including a non-smoking clause in the lease for every household and making educational materials on tobacco treatment programs available to residents through the resident

service coordinator, occupancy specialist, or property manager, such as the phone number for the statewide Maine Tobacco HelpLine.

4) Projects that will properly manage contaminated soil in accordance with state and federal regulations.

**B. Site Information and Criteria**

1) Purchase Price: The City of Portland is willing to consider the value of the property as a subsidy source for projects that provide at least 20 units with a preference for a higher number of units. The average number of bedrooms overall should be 2.5, with a preference for 2 and 3 bedroom units. . The use of the City's Housing Trust Fund will be considered, however, strong preference will be given to proposals where the value of the property is the only source of subsidy by the City of Portland.

2) Local Approvals: Local land use approval is not required prior to submittal of the proposal.

3) The applicant must submit an analysis of the project in relation to local land use regulations and site feasibility.

4) Proposals must not require a contract or conditional zone (although other rezoning consistent with the City's Comprehensive Plan may be considered).

5) Proposal must include language indicating the applicant has considered the environmental conditions of the lot and understands the implications of these conditions. The proposal may include a plan summary for addressing said environmental conditions and any planning institutional controls to be applied to the property.

**C. Financial Feasibility**

1) Financial Projections: Financial proposals must be developed in accordance with the underwriting guidelines of the primary funding source, including adequate cash flow and debt coverage ratio.

2) Use of City funding resources: All projects will be reviewed for the proposed use of City funds compared to other resources. Applicants must describe the proposed mortgage and security position for the City of Portland's funding.

## D. Applicant Capacity

All applicants must demonstrate capacity to develop, own and manage the proposed project. In the case of a proposal for home ownership housing, applicants must demonstrate capacity to market the units for the sale. All proposals must provide evidence of a development team with the capacity to successfully complete the project including;

1) Key staff members assigned to the project with the abilities and experience to successfully complete the project within the proposed timeframe.

2) An architect, general contractor and professionals on the team with the experience and capacity to complete the project.

3) An environmental consultant to ensure proper management and handling of contaminated soils as well as establish an environmental management plan after development.

4) A management team with qualified personnel and the capacity and experience to operate, manage and maintain the affordable rental property of size and mix of the proposed project and/or effectively market affordable home ownership housing.

5) Qualified staff with the capacity to perform ongoing property ownership requirements such as budgeting, tax accounting and oversight of management and maintenance.

6) A portfolio of current affordable housing projects that are financially sound and meeting their established goals. Projects that successfully redeveloped contaminated properties should be highlighted.

7) Support Services: Proposals containing rental units targeted to special needs populations must include commitments for support services to be provided to the residents.

## E. Term of Affordability

The minimum term of affordability is ***90*** years, to be secured by a land use restriction covenant in the deed. Proposals which include the use of HOME funds for home ownership projects must have a plan for long-term affordability that meets HOME Program recapture or resale regulations.

## F. Design Compatibility

Projects must be designed to contribute to the character of the neighborhood and adhere to the following guidelines.

1) **Connect the Neighborhood** The development should not be an island unto itself, but rather blend into and enhance the surrounding Bayside Neighborhood community.

**2) Design Considerations**

a. **High Quality Design** Excellence in architectural and landscape design is expected.
b. **Traditional Design** *Design shall be reflective of the surrounding traditional neighborhood and shall create an infill development that reflects and respects the existing pattern, streetscape, density, scale, massing, exterior materials and design elements of the neighborhood. Buildings should orient to the street.*
c. **Green Design** The site and buildings shall be designed to meet the City's Green Building Code.
d. **Streetscape** The development shall enhance the pedestrian experience and the public realm. Alternative transportation modes shall be accommodated and incorporated in the project.
e. **Height** Heights shall be consistent with the Land Use Ordinance requirements for the B-2 zoning district..
f. **Permeability** Design shall be permeable or porous. View corridors are encouraged.
g. **Heterogeneity** Design of the buildings on the site shall be heterogeneous, not homogenous.
h. **Accessibility** Universal Design principles shall be incorporated wherever feasible, to ensure that the design is physically accessible to the greatest range of users.

## G. Timeframe

The applicant must describe projected dates by which commitments will be obtained; the closing will take place, construction start-up, substantial completion, final completion and occupancy. Timeframes must be realistic and achievable. All funded projects must be able to start construction within 12 months of notice of award.

## PROPOSAL REQUIREMENTS

Complete responses to this RFP, should include six (6) complete copies of each proposal including one original bearing the hand written signature of an officer or employee having authority to bind the organization and the following, in the order outlined below.

***Note: All respondents should investigate legal and zoning requirements for proposed projects prior to submission of proposal.***

### i. Project Summary

A brief description of the project, no longer than two pages, to include the number and type of units, tenants or owners to be served, special features, the impact on the neighborhood and other ways the proposal meets the selection criteria and preference guidelines.

<u>Photographs and maps of the site and area are required.</u>

**ii. All Proposals Must Provide The Following:**

1) Conceptual architectural and site plans

2) A soil management plan or provision to prepare one including who shall prepare the document and their qualifications upon award

3) A project schedule showing critical path events and their timeframe for completion;

4) Map showing location of site

5) Corporation/partnership articles and by-laws

6) Most recent audit or federal tax returns for the last three years, and financial statements for the last two years

7) Documentation demonstrating certification or eligibility to obtain certification as a CHDO (if seeking HOME CHDO funds)

8) A brief development team summary, including:

- The type of organization/ownership structure
- The names of Board of Directors, Corporate Officers, or Owners, as appropriate
- Name, title and relevant experience of individuals involved in managing the business entity and this proposed project. A copy of the 501(3)(c) exemption certification
- Brief description of similar projects completed
- A list of all projects currently in development with status and projected timeframe

9) A sources and uses funding statement

10) Evidence of financial commitments, or explanation of the ability and timing to secure those commitments. A statement describing the applicant's capacity for and experience in raising the type of capital needed to finance projects of this size and type.

11) Applicant must include a marketing plan for the sale of home ownership units.

12) An analysis and discussion of market demand justifying the need for the proposed project.

## SELECTION PROCESS

Selection criteria will be used in reviewing and scoring the proposals.

I. Point System for Evaluating and Scoring Proposals (Maximum Points 100)

1. Proposed use of resources to achieve the City of Portland's goals and address demonstrated need. **25 points**

   Maximum points will be awarded for those proposals that demonstrate sufficient market demand, create housing options which promote economic diversity in the neighborhood in which the development is located, include a policy prohibiting smoking and where the value of the property is the only source of subsidy by the City of Portland.

2. Financial feasibility, including cost, development budget, operating pro forma and the provision of secured and leverage funds. **25 points**

   Maximum points will be awarded for those proposals that include a complete set of financial documents to support the financing request, contain a realistic set of sources and uses development budgets.

3. Applicant's ability to complete project, including development team, experience, capacity, project readiness and timeframe for completion. **20 points**

   Maximum points will be awarded for those proposals that demonstrate a development team with a successful track record in projects of similar size, scale, type and complexity to the proposed project and capacity to fulfill their responsibilities and the readiness of the project to proceed.

4. Impact on surrounding neighborhood, including design compatibility and environmental issues. **30 points**

   Maximum points will be awarded for those proposals where the design is consistent with neighborhood design characteristics and minimizes the impact of shadows on the adjacent public playground, amenities and unit design are well thought out and appropriate, meet the requirements of the City of Portland’s Green Building Code, and where provisions to protect the surrounding community during contaminated soil disturbance are proposed.

II. RFP Evaluation and Selection Process and Timeframe

Proposals will be reviewed by an evaluation team that will include City of Portland staff. The following process will be used:

1) Upon closing of the RFP application period, all proposals will be reviewed for completeness.

2) Complete proposals will be reviewed under the scoring factors in order to recommend the most qualified proposals based on the information submitted. The proposal review team may confer with the applicants and/or third parties to clarify or verify information and request additional information.

3) Recommendations, along with all proposals and scoring information, will be forwarded to the City Council's Housing and Community Development Committee for review and approval. Their recommendations will be forwarded to the City Council for final review and approval. Public presentations may be required.

4) Applicants will be kept informed throughout the review process, specifically in regard to recommendations and funding levels.

5) The evaluation and review process should be substantially complete by January 30, 2015. Applicants will be notified of their proposal status as soon as possible.

6) Based on City Council approval, a purchase and sale agreement will be negotiated (see legal requirements) and as appropriate, successful applicants will receive a letter of funds reservation. A letter of funds reservation is not a commitment letter but an agreement to set aside budgeted funds for up to six months, to allow the project sponsor to proceed with securing other commitments.

**INSTRUCTIONS AND OTHER INFORMATION**

A. The City of Portland reserves the right, at its sole discretion, to award all, a portion, or none of the available funding from this RFP, as well as reject any and all proposals for city funding, based on the quality and merits of the proposals received, or when it is determined to be in the public interest to do so. Furthermore, the City of Portland may extend deadlines and timeframes, as needed.

B. Confidentiality: Proposals received by the City of Portland shall become a matter of public record subject to public inspection, except to the extent, which an applicant designates in writing, proprietary data to be confidential and submits that data under separate cover, such information may be held from public inspection, as provided in Maine law: 5 MRSA Sections 13119-A and 13119-B

C. Compliance with Federal Law: The selected applicant will be required to certify that the development and management of the proposed housing will be in compliance with all applicable laws, executive orders, OMB Circulars and federal regulations, including but not limited to: Fair Housing Act, Equal Opportunity and Non-discrimination, National Environmental Policy Act (NEPA), the Uniform Relocation Assistance and Real Property Acquisition Policies Act, the Davis-Bacon Act, the Lead Based Paint Poisoning Prevention Act, Flood Disaster Protection Act, Conflict of Interest, Contractor Debarment and Cost Principles.

**D. All applications seeking HOME Program funding must meet the rules and regulations of the HOME Program as noted in 24 CFR Part 92, as amended, and the requirements of the Consolidated and Further Continuing Appropriations Act of 2012 and 2013.**

## LEGAL REQUIREMENTS

The selected developer will be required to provide a performance guaranty in the form of a letter of credit or a performance bond, the performance of the developer's obligations outlined in this Request for Proposal and subsequent contract to be negotiated with the City. This performance guaranty is separate from any performance guaranty that will be required as a result of the City's site plan review process.

The City shall convey the described real estate by quitclaim deed to the developer, or where the City has obtained a warranty deed for the real estate, it shall provide a warranty deed for the same to the developer. Any deed from the City will contain a restriction in the deed that the property must meet the permanent affordability requirements as described in this Request for Proposals.

In the event the City makes a financial contribution to a developer and to secure the developer's obligations, the City shall have a security interest in the form of a mortgage in the real estate to be developed. The terms of the mortgage shall be negotiated with the developer at the time of the commitment of funds.

## EQUAL EMPLOYMENT OPPORTUNITIES

Vendor shall comply fully with the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998, as amended (WIA, 29 CFR part 37); the Nontraditional Employment for Women Act of 1991; title VI of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR part 37.

## Reservation of Rights

The City of Portland reserve the right, at its sole discretion, to award all, a portion, or none of the available funding from this RFP, as well as reject any and all proposals based on the quality and merits of the proposals received, or when it is determined to be in the public interest to do so. Furthermore, the City of Portland may extend deadlines and timeframes, as needed.

The City of Portland reserves the right to substantiate any proposers' qualifications, capability to perform, availability, past performance records and to verify that the bidder is current in its financial obligations to the City of Portland.

All materials and equipment used as well as all methods of installation shall comply at a minimum with any and all Federal, OSHA, State and/or local codes, including applicable municipal ordinances and regulations. Additionally, all contaminated soil should be managed in accordance with state and federal regulations.

The successful bidder shall agree to defend, indemnify and save the City of Portland harmless from all losses, costs or damages caused by its acts or those of its agents, and, before signing the contract, will produce evidence satisfactory to the City of Portland's Corporation Counsel of coverage for General Public and Automobile Liability insurance in amounts not less than $400,000 per person, for bodily injury, death and property damage, protecting the contractor and the City of Portland, and naming the City of Portland as an additional insured from such claims, and shall also procure Workers' Compensation insurance.

Pursuant to City of Portland procurement policy and ordinance, the City of Portland is unable to contract with businesses or individuals who are delinquent in their financial obligations to the City of Portland. These obligations may include but are not limited to real estate and personal property taxes and sewer user fees. Bidders who are delinquent in their financial obligations to the City of Portland must do one of the following: bring the obligation current, negotiate a payment plan with the City of Portland's Treasury office, or agree to an offset which shall be established by the contract which shall be issued to the successful bidder.

The City of Portland, Maine, reserves the right to waive any informality in proposals, to accept any proposal or portion thereof, and, to reject any and all proposals, should it be in the best in the best interest of the City of Portland to do so.

It is the custom of the City of Portland, Maine to pay its bills 30 days following equipment delivery and acceptance, and following the receipt of correct invoices for all items covered by the purchase order. In submitting bids under these specifications, bidders should take into account all discounts; both trade and time allowed in accordance with this payment policy and quote a net price. The City of Portland is exempt from the State's sales and use tax as well as all Federal excise taxes.

XXXXXX, 2015 Matthew F. Fitzgerald
Purchasing Manager

**Appendices**

Exhibit #1. HUD definition of a Community Housing Development Organization (CHDO)

Exhibit # 2. Affordable Housing Feasibility Study completed by Bluestone Planning Group

**PROPOSAL**

***THIS PAGE MUST BE INCLUDED***

The UNDERSIGNED hereby declares that he/she or they are the only person(s), firm or corporation interested in this proposal as principal, that it is made without any connection with any other person(s), firm or corporation submitting a proposal for the same.

The UNDERSIGNED hereby declares that they have read and understand all conditions as outlined in the invitation for bids, and that their proposal is made in accordance with same.

The UNDERSIGNED hereby declares that any person(s) employed by the City of Portland, Maine, who has direct or indirect personal or financial interest in this proposal or in any portion of the profits that may be derived there from, has been identified and the interest disclosed by separate attachment. (Please include in your disclosure any interest which you know of. An example of a direct interest would be a City of Portland employee who would be paid to perform services under this proposal. An example of indirect interest would be a City of Portland employee who is related to any officers, employees, principal or shareholders of your firm or to you. If in doubt as to status or interest, please disclose to the extent known).

The proposer acknowledges the receipt of Addenda numbered ______________________________
If Applicable

COMPANY NAME: ______________________________________________________
(Individual, Partnership, Corporation, Joint Venture)

AUTHORIZED SIGNATURE: ______________________________ DATE: ______________
(Officer, Authorized Individual or Owner)

PRINT NAME & TITLE: __________________________________________________

ADDRESS: ___________________________________________________________

____________________________________________________________________

TELEPHONE: ______________________________ FAX: __________________________

E-MAIL: ________________________FEDERAL TAX ID NUMBER: __________________

NOTE: All bids must bear the handwritten signature of a duly authorized member or employee of the organization making the bid. This sheet must be signed and returned with the proposal package.

## EXHIBIT #1 – DEFINITION OF A COMMUNITY HOUSING DEVELOPMENT ORGANIZATION

1. Is a private nonprofit organization under State or local laws;

2. Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

3. Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A community housing development organization may be sponsored or created by a for-profit entity, but:

    i. The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm.
    ii. The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for profit entity may not appoint the remaining two-thirds of the board members; and
    iii. The community housing development organization must be free to contract for goods and services from vendors of its own choosing;

4. Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986;

5. Does not include a public body (including the participating jurisdiction). An organization that is State or locally chartered may qualify as a community housing development organization; however, the State or local government may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials or employees of the participating jurisdiction or State recipient. Board members appointed by the State or local government may not appoint the remaining two thirds of the board members;

6. Has standards of financial accountability that conform to 24 CFR 84.21, "Standards for Financial Management Systems;"

7. Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or bylaws;

8. Maintains accountability to low-income community residents by:

    i. Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations. For urban areas, "community" may be a neighborhood or neighborhoods, city, county or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire State); and

ii. Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;

9. Has a demonstrated capacity for carrying out activities assisted with HOME funds. An organization may satisfy this requirement by hiring experienced key staff members who have successfully completed similar projects, or a consultant with the same type of experience and a plan to train appropriate key staff members of the organization; and

10. Has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community before HOME funds are reserved for the organization. However, a newly created organization formed by local churches, service organizations or neighborhood organizations may meet this requirement by demonstrating that its parent organization has at least a year of serving the community.

**DRAFT 2015 HOUSING & COMMUNITY DEVELOPMENT COMMITTEE MEETING CALENDAR**

*Meetings: 2nd & 4th Wednesday of each month*

*As of January 23, 2015*

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| **January** | **January 14**<br>Review and Approval of Revisions to Guidelines for Lead Safe Housing Program<br>Housing Study Report<br>Update, Review and Approval of Proposed Rosa True School Housing Transaction<br>Communication: Spring Street Garage/Bid for Broker for leasing Retail/Office Space; Portland Technology Park/RFP for Brokers<br>~~Executive Session: Possible Disposition of City-Owned Property at 157 Brackett and 176 Clark Streets~~ |
| | **January 28**<br>Review and vote to recommend to City Council on award of bid and purchase and sale agreement for Cliff Island tax-acquire parcel.<br>Review of 65 Hanover/52 Alder Street Feasibility Report and possible recommendation on RFP/Deed Options<br>Housing Study Policy Response- Direction from HCDC |
| **February** | Ocean Cluster House Tenant Lease at POT vote and recommendation to City Council.<br>Ready Seafood Company Lease Amendment vote and recommendation to City Council.<br>Shucks Maine Lobster Lease Amendment vote and recommendation to City Council.<br>Review of 71 Hanover RFP Proposals<br>Update of Tax Acquired Properties for Development Opportunities/Coordinate with Trust for Public Land<br>Review, Discussion and Possible Approval of RFP for 157 Brackett |
| | **February 11**<br>Responses to Munjoy Street RFP |
| | **February 25**<br>Housing Program Budget Recommendation to City Council.<br>Housing Trust Fund Annual Plan Recommendation to City Council. |
| **March** | Update on City-owned lot at 98 High Street.<br>Area-wide Affordable Housing TIF District discussion. |
| | **March 11**<br>CDBG Allocation Committee Funding Recommendations.<br>Review and Approval of FY15-16 Affordable Housing Application Process. |
| | **March 25** |
| **April** | Short Term Rentals - Air bnb.<br>India Street lot.<br>Police Parking lot.<br>Waterfront TIF District geography amendment discussions, including consideration of |

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| | Portland Company as TOD TIF.<br>Riverwalk TIF District Reduction Amendment – vote and recommendation to City Council. |
| | **April 8**<br>Review of HUD 5-Year (2015-2020) Consolidated Plan and FY 15-16 HUD Annual Action Plan. |
| | **April 22** |
| **May** | Wilmot Street Matter Resolution.<br>Review and Comment/Recommendation to City Council if necessary: Improvement to CDBG process. |
| | **May 13** |
| | **May 27** |
| **June** | Begin discussion related to Riverside Street area wide needed public infrastructure status and improvements. |
| | **June 10** |
| | **June 24** |
| **July** | |
| | **July 8** |
| | **July 22** |
| **August** | |
| | **August 12** |
| | **August 26** |
| **September** | |
| | **September 9** |
| | **September 23** |
| **October** | |
| | **October 14** |
| | **October 28** |
| **November** | Note: November 11 is Veteran's Day and November 25 is the day before Thanksgiving<br>Portland Economic Development Plan Implementation - Update |
| | **November 11?** |
| | **November 25?** |
| **December** | FYE 2015 Annual City-Wide TIF District Activity Report<br>2015 Calendar Year HCDC Accomplishments Report<br>Proposed 2016 HCDC Work Plan |
| | **December 9** |
| | **December 23** |