HOUSING & COMMUNITY DEVELOPMENT COMMITTEE
DATE: April 8, 2015
TIME: 5:30 pm – 7:30 pm
LOCATION: Room 209, 2nd Floor, City Hall

1. Review And Accept Minutes Of Previous Meeting Held On March 25, 2015

   Documents: 3-25-15 - MINS FOR CMTE APRVL.PDF
2. Review And Referral To Planning Board For Public Hearing Of Ordinance Changes (Inclusionary Zoning And Other Items) To Encourage And Ensure Housing Development Including Changes To Division 30 (Affordable Housing)

   Documents: MEMORANDUM - HOUSING DEVELOPMENT 040315 V 3.PDF

   2.I. Public Comment Received Regarding Ordinance Changes To Encourage And Ensure Housing Development

   Documents: 04_02_2015 WORKFORCE HOUSING LTR.PDF

   2.II. Portland Community Chamber Of Commerce Comments

   Documents: PRELIM IZ COMMENT TO HCDC 4-3-15.PDF

   2.III. Public Comment

   Documents: CITY OF PORTLAND - PLANNING BOARD CHAIR.PDF
3. Review Of Affordable Housing Tax Increment Financing Program

   Documents: AHTIF MEMO.DOC.PDF

   3.I. AHTIF - Additional Information

   Documents: AHTIF MEMO - ADDITIONAL INFORMATION.PDF
4. Review And Recommendation To City Council Of Loan Term Amendment For Avesta 134 Washington Avenue

   Documents: AVESTA 134 WASHINGTON AVENUE AMENDMENT OF LOAN TERMS.PDF
5. Review And Recommendation To City Council Of Financing And Lease Terms For Rosa True School

   Documents: ROSA TRUE LEASE TERMS AND ADDITIONAL FINANCING.PDF
6. 2015 HCDC Work Plan For Review And Discussion

   Documents: HCDC 2015 WORK PLAN FOR 04.08.15.PDF

Public Comment will be accepted on action items.

Councilor Kevin Donoghue, Chair

Next Meeting Date: April 22, 2015

Housing & Community Development Committee
Minutes of March 25, 2015 Meeting

A meeting of the Portland City Council's Housing and Community Development Committee (HCDC) was held on Wednesday, March 25, 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 Nick Mavodones. Mayor Brennan joined the meeting as noted herein. City staff present included Director of Public Buildings Kathy Alves, Housing & Community Development Division Director Mary Davis, Associate Corporation Counsel Michael Goldman, Planning Division Director Alex Jaegerman, Planning and Urban Development Director Jeff Levine, Economic Development Director Greg Mitchell, Waterfront Coordinator Bill Needelman, and Senior Executive Assistant Lori Paulette.

Chair Donoghue opened the meeting introducing the Committee members, noting that due to staff schedules, Item #2 would be taken up after Item #3.

Item 1: Review and accept Minutes from previous meeting held on March 11, 2015.

On motion made and seconded, the Committee voted unanimously to accept the minutes as published.

Item 3: Review and provide guidance to staff regarding proposed ordinance changes to encourage and ensure housing development.

Mr. Levine reviewed his memo (copy attached) noting that it has several proposed ordinance amendments to promote the creation of additional housing, both on and off the peninsula. At the Committee's previous meeting, it requested this listing together with the current practice, possible changes, and the economics of the proposed changes. Mr. Levine then described proposed amendments to the B2, B3, B5, B6, B7, and R6 zones that would allow for increased/elimination of housing density; decreased/elimination of parking requirements; fee-in-lieu of parking in off-peninsula business zones; amend the Downtown Height Overlay Map in the Gorham's Corner section to increase the height limit, now at 45 feet to 65-85 feet as is the height limit in abutting height districts; accessory dwelling units (ADU) in Island residential zones and R5 zones, including the reuse of existing structures in the R5 zone; and, amend Division 30 (Affordable Housing) to provide additional density through incentives, and add workforce housing requirements (Inclusionary Zoning).

Chair Donoghue thanked Mr. Levine and opened the meeting for public comment.

Vin Veroneau, President of J.B. Brown & Sons and Portland resident, complemented staff on this effort to encourage additional housing which will, in turn, help with affordability. Regarding no off-street parking requirements in the B5 zone, Mr. Veroneau said that now, for projects above 50,000 sq. ft. in the B5 zone require a parking study and Planning Board Review. He asked if the proposed change to amend B3 and B7 would require parking studies and Planning Board review for projects over 50,000 sq. ft.

Mr. Veroneau agreed with the increased height limits being proposed for the Gorham's Corner area on the peninsula.

Regarding ADUs in the R5 zone, he suggested decreasing the lot size from 6,000 sq. ft. to 5,000 sq. ft. as a majority of the size of lots in the R5 zone are 5,000 sq. ft.

Mr. Veroneau continued suggesting that amendments to Division 30 (Affordable Housing) perhaps should all be up to 120% AMI, keeping it in line with requirements of the Affordable Housing (AH) TIF statute. He also suggested clarification on the top of p. 3 of the ordinance draft for "development fees shall be reduced. . ." to be clear what fees would be reduced (street opening permit, building permit, etc.)

Regarding that draft ordinance and section 4(b), "subject to planning authority approval", he questioned if this was set by development standards requirements, rather than planning authority.

Mr. Veroneau then questioned implementation of regulations, particularly Section 8 income eligibility where the income is verified when they move in, but what about during and when moving out. He also asked about rental conversions to home ownership, suggesting again that the AMI be up to 120% rather than up to 100%.

Betsey Remage-Healey of Peaks Island and HomeStart supports ADUs throughout the City. For Peaks Island, however, it should be limited so that the ADU is not just for renting out in the Summer but rather for year-round affordable units. She also questioned why the Peaks Island proposal was not included as an addendum in the February Minutes. (This addendum is now attached to these Minutes.)

Alan Kuniholm, 63 Codman Street and President of Portland Society of Architects, read a statement on behalf of the Portland Society of Architects, copy attached.

Jay Waterman of Portland Housing Authority (PHA) said that he appreciates staff's and this Committee's work to ensure that there is adequate housing in Portland, noting increased density and parking requirements reduced. PHA has 5,000 people waiting for Section 8 vouchers, and once they get them they have to find units within 60 days, which has proven to be difficult. It is extremely important to increase housing units for all income levels. The 10-10-100 idea for Inclusionary Zoning (IZ) is not bad, which is 10% of units in a development of 10 units or more to meet affordability requirements up to 100% AMI. With less parking, more density, this should help with rental income. The IZ ordinance draft in packet is great start to these tough issues.

Steven Scharf of High street said that he appreciates looking at these standards. "Large housing development" is defined now as ten or more units, noting that this not large, suggesting that this may be somewhat confusing. Zoning should be clear and concise, and these proposals are confusing, particularly for those not accustomed to reviewing zoning to determine what they can/cannot do with their property. It would be helpful for the City to do a workshop with owners so that they know what they can be doing with their property based on zone changes.

Christian Milneil of Smith Street and Portland Housing Authority Board Chair said that he supports the comments thus far. He noted Division 30, implemented 10 years ago, and proposed revisions, particularly Section 14-488. He suggested to consider removing any parking requirements for affordable units, or one space per two units.

Chris O'Neil, consultant for the Portland Chamber, said that the Chamber is still processing these proposed amendments, noting its Task Force met last month and a report is being drafted. He estimated that 80% of Chamber will support housing goals but it needs updating. There is a strong concern that the IZ approach is harsh and not necessary. Reducing parking requirements is on the right path.

Tuck O'Brien, Planning Board (PB) Chair, said that regulatory clarity is needed for better projects. With the need to do more to increase housing, IZ can work well but you need to delve into it to see what type of structure of IZ will work well with to prepare for future development cycles. Other successful models need to be researched.

(Mayor Brennan joined the meeting.)

NOTE: Chair Donoghue suspended this item due time constraints for Item #2 that needs to be reviewed at this time. This item will resume immediately after Item #2.

Item #2: Review and vote to recommend approval to the City Council to authorize Amended and Restated Lease for the Ready Seafood Lease at the Portland Ocean Terminal.

Mr. Mitchell stated that the proposed Amended and Restated Lease (ARL) combines the original lease and two amendments into this document, as well as the now reduced leased space and associated reduced rental fees. The reduced rental fees also take into consideration the Ready's investment into the City property of over $200,000 in out-of-pocket expenses. Also, the original lease did not charge for parking; the ARL does. Ready Seafood is a great tenant; is an international company; and, its operations run seven days a week, 16 hours a day. Ready will assume greater responsibility to invest in pier and building infrastructure. Mr. Mitchell then noted that Section 10 of the ARL has been slightly revised since the packet went out, and he handed out a new Section 10, copy attached.

Mr. Goldman said that the revisions are that the City would be responsible for maintenance of the exterior walls and roof of building, and that Ready Seafood would be responsible for the structure of the pier to support their use beyond those uses that would cause ordinary wear and tear.

Brendan Ready thanked the Committee for reviewing this, and said that Ready Seafood has enjoyed the partnership with the City over the past five years since it relocated to the Portland Ocean Terminal (POT) from its start at Hobson's Wharf. When Ready started at the POT, it had 20 employees; it now has 80 with expectations of hiring more. Mr. Ready said that they also contribute to the community by hiring individuals just out of rehab to give them a chance. A majority of their employees also either ride a bike or walk to work.

Mr. Ready added that exports account for 75% of their business, and they consider to be fortunate to have Portland as a brand for them.

Chair Donoghue asked if there was public comment for this item.

Robert Hains, noting that Ready Seafood is a good company with good hiring ethics, questioned why the tenant is maintaining the property, and also questioned the parking fee now at approximately $83.33, noting normal monthly rental is higher. He also questioned the 40% reduction in rental fee for the POT space. Mr. Hains then asked why "donations" are included in the listing of Ready investments on the cover memo for this item.

Noting no further public comment, the public comment session was closed.

Mr. Mitchell said that Ready Seafood is a tenant that will immediately take care of an issue at its own expense so as not to interfere with their business. This is a true public/private partnership, and staff recommends continuing that relationship. The donation item is there as an example of that partnership. The parking fee is for a surface gravel lot versus a garage.

Councilor Brenerman asked if the City would need to approve of tenant alterations and repairs, and Kathy Alves said that it is done collaboratively, including Inspections.

Mr. Goldman noted that Section 1(a) of the lease contains the provision, "Tenant shall have no authority to modify or make any changes to the Premises without the prior consent of the Landlord."

Councilor Brenerman asked about decreasing space but having 80+ employees.

Mr. Ready said that they do not need additional space as they have invested in software and machinery that they now can do more with less space, which creates efficiencies.

Chair Donoghue said that he is comfortable with the ARL and with the private/public relationship, including Ready's investments and reductions in space and related reduction in rental fee.

On motion then made and seconded, the Committee voted unanimously to forward this ARL, in substantially the form as presented, to the City Council for its approval, substituting the new Section 10, copy attached.

Resumed Item 3: Review and provide guidance to staff regarding proposed ordinance changes to encourage and ensure housing development.

Chair Donoghue asked Mr. Levine to address some of the questions posed during public comment session.

Mr. Levine discussed parking changes in the business zones, with the intent to not have parking requirements in such zones. Regarding AMI percentages for AHTIF, he did not believe they have to line up exactly. Ms. Davis added that AHTIF regulations are up to 120% AMI, which allows for flexibility.

Mr. Levine said that regarding the developer's fee on the top of p. 3 of the draft IZ ordinance, that term was defined on p. 2 of that draft. He also agreed that Section 4(b), second sentence, "Subject to Planning Authority" could come out, as this is intended to meet development standards.

Regarding checking on AMI's periodically for those units with specific regulations regarding income levels, Mr. Levine said that other models could be reviewed to see about how others may or may not check AMI's periodically. Generally, this is checked when an occupant moves in, and not when they move out. If their wages goes up, conceivably the occupant would move into more market rate units.

Regarding conversion of units, Mr. Levine suggested a standard be created for how long the development should remain with a certain ownership structure.

Mr. Levine noted a comment that a “large” development of 10 units or more not being “large” is a relative term, but this could updated. Regarding outreach to property owners on zone changes, he agreed more is needed. He also noted that any owner, if confused, can sign up for a pre-application meeting, but the best way to develop a property is to hire an architect.

Chair Donoghue asked Mr. Levine about the best way for the Committee to move forward, and Mr. Levine said that based on this Committee’s feedback, which may need another meeting, staff will further refine this for this Committee’s recommendation to the Planning Board, and the Planning Board will make its recommendation to the City Council.

Councilor Brenerman brought up greater densities, asking how it affects family housing, i.e., would it mean more units for few people. Mr. Levine said that the ordinance does not allow for reducing units now (taking a large floor plan/unit and cutting it into smaller units). It is directed towards new development to allow smaller units, and the market will dictate how much it can take. All size units are needed.

Councilor Brenerman mentioned Deering Center, particularly Stevens Avenue from Deering High School to UNE. Mr. Levine said that it is mostly R-5 with some B-1. No changes are anticipated.

Councilor Brenerman said that there are parking issues, and Mr. Levine said that B1 does not have much of a parking requirement.

Councilor Brenerman asked how many market rate units were built over the last five years, and Mr. Levine said that during FY13 and FY14, approximately 500 units were built with approximately 80 of them being affordable housing units.

Councilor Brenerman said that he has heard developers saying that market rate rental units should be encouraged, and Mr. Levine said that that the Midtown project is permitted with market rate rental units, for one.

Ms. Davis said that from 2002 to today, through their housing programs, approximately 800 affordable housing units have been built, affordable to households at or below 60% of AMI.

Councilor Brenerman asked if development has been impeded by parking requirements, and Mr. Levine indicated that it has in the past.

There was then discussion about changes in parking requirements in business zones; building on shopping center parking lots, which are basically vacant at night; parking in lieu; as well as market forces to have the flexibility to produce needed housing.

Councilor Mavodones said that he liked the IZ concept, particularly a pilot area to test different proposals to get the zoning correct.

Chair Donoghue agreed for the pilot concept for IZ to get it right in a conservative fashion.

Councilor Marshall also agreed, saying that he would want to encourage flexibility with the IZ, which seems to be reflected in Mr. Levine's memo and is getting closer to make this zoning work. These zoning changes are mostly limited to peninsula for more housing and to reduce the development cost. Smaller units are also okay, noting the vacancy rate at 1%. Councilor Marshall suggested checking with Portland Development Corporation (PDC) Board and staff for a potential new loan program for financing the down payment cost, at a reasonable rate.

Mr. Levine said that staff has looked at this, including using the Housing Trust Fund which is the most flexible for use of funds.

Chair Donoghue said that IZ draft ordinance is done well, with further refinements needed to assure the right calculation based on a development.

Councilor Brenerman said that it would help him if the proposed amendments in Mr. Levine's memorandum could be in the form of a chart indicating what is there now and proposed (parking, density, etc.) for each zone.

Councilor Mavodones agreed, while also noting that a small geographic area to try IZ would be beneficial.

Mr. Levine said that that would need to be fleshed out for an IZ pilot area, i.e., peninsula; only business zones; business zones on peninsula – to name a few.

Councilor Brenerman said that he would like to support IZ but is concerned it would increase rental/ownership costs. He asked about the incentive you could get from an AH TIF if a third of the units are affordable, and Ms. Davis said that AHTIF statute is up to 120% AMI, for both ownership and rental, and the TIF payments could be up to 65% of the increased assessed value.

The Committee then discussed various incentives, including height and AH TIF.

Mayor Brennan asked when staff could determine whether IZ was working or stifling development, and Mr. Levine said that this could take up to six years.

Councilor Mavodones said that he would like to see how IZ has worked/hasn't worked in other communities, as well as AHTIF where 1/3 of the units were affordable. He would also like feedback from the development community.

Councilor Brenerman asked about the possibility of the Council passing an IZ ordinance with a sunset date.

Councilor Mavodones expressed concern that the HCDC Agenda did not include verbiage indicating that IZ was going to be discussed and action taken, so he felt the community was not properly notified for public weigh in.

Councilor Marshall agreed that a chart would be helpful for the Committee to move forward, including potential impacts of the changes on the chart.

Chair Donoghue also agreed, with the chart to also include pros and cons of using up to 80%, or 100% or 120% AMI as to what would be most effective on each scenario.

Mayor Brennan also suggested a yearly report back to the Council.

Chair Donoghue thanked the Committee for their feedback and staff for the work thus far.

Item #4: Review and discussion of Affordable Housing TIF Program. See enclosed memorandum from Mary Davis.

Due to the time, Committee consensus agreed to table this item.

Item #5: Executive Session: Pursuant to 1 M.R.S.A. 405(6)(C) and (F) and 5 M.R.S.A. 13119-A, the Committee will go into executive session to provide guidance to staff regarding:

a. **Direction on possible Lease Amendments with Shucks Lobster at Portland Ocean Terminal. See enclosed confidential memorandum from Greg Mitchell, Bill Needelman, and Kathy Alves.**
b. **Direction on possible Lease with New England Ocean Cluster House at Portland Ocean Terminal. See enclosed confidential memorandum from Greg Mitchell and Bill Needelman.**
c. **Direction on possible Lease Amendments to Nova Star Cruises lease. See enclosed confidential memorandum from Greg Mitchell, Bill Needelman, and Kathy Alves.**

Chair Donoghue indicated that Item #5(a) has been pulled from the Agenda as requested by staff, and then asked if there was any public comment.

Robert Hains asked for clarification on the topics to go into executions.

Steven Scharf asked if there would be any vote taken after executive session.

Mr. Mitchell indicated that Item #5(b) is for Committee guidance to staff regarding lease negotiations for a possible new lease at Portland Ocean Terminal with New England Ocean Cluster House, and Item #5(c) is for Committee guidance regarding lease negotiations for possible amendments to existing lease with Nova Star Cruises at Ocean Gateway.

Chair Donoghue then indicated that no votes would be taken after executive session.

On motion then made and seconded, the Committee voted unanimously at approximately 7:50 p.m. to go into executive session pursuant to 1 M.R.S.A. 405(6)(C) and (F) and 5 M.R.S.A. 13119-A to provide guidance to staff regarding Item #5(b) and (c) noted above. At approximately 8:30 p.m. the Committee came out of executive session.

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

Due to the time, Committee consensus agreed to table this item and the meeting was adjourned at 8:30 p.m.

Respectfully,

Lori Paulette

Attachments:

1. Jeff Levine Memo of 3/19/2015 to HCDC Re: Proposed Ordinance Changes on workforce housing development.
2. Peaks Island Commentary from 2/25/2015.
3. PSA Commentary of 3/25/2015
4. Comments electronically submitted by Justin Alfond.
5. Revised p. 10 of Amended and Restated Ready Brothers proposed lease.
6. Attachments (not attached) to 3/11/2015 HCDC Minutes.

Memorandum

To: Housing and Community Development Committee

From: Jeff Levine, Director

Date: March 19, 2015

Re: Proposed ordinance changes on workforce housing development

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At your last meeting we discussed priorities with respect to the various strategies to both encourage and ensure that housing development that meets the needs of the City. I was asked to return with some more specific thoughts about the higher priority strategies you identified.

Please refer to the zoning map at the end of this packet to help identify specific zoning districts.

Changes to the B2 and R6 Zones

<u>Current Practice</u>

The B2 zone includes commercial corridors such as Forest Avenue and Congress Street (though not others such as Brighton Avenue or Washington Street off-Peninsula) as well as most of the shopping centers in the City. This zone was amended recently to increase allowed housing densities to 100 units an acre under most conditions. The R6 zone currently allows about 45 units per acre and requires a lot size of 4,500 square feet. These zones cover over 1,000 acres of land in the City.

<u>Possible Changes</u>

The Planning Board has recommended and forwarded to Council changes to the R6 zone that would permit a higher density of housing, 60 units an acre, as well as reducing the minimum lot size.

<u>Economic of these Changes</u>

The changes to the R6 zone would allow context-sensitive, smaller scale infill housing to be built on many vacant lots on the Peninsula. We estimate that these changes reduce the cost of development on these sites by at least 20%.

Eliminate Parking Requirements for Residential Uses (B3, B5, B6 & B7 Business Zones)

<u>Current Practice</u>

Division 20 outlines most of the parking requirements for the City. Currently, parking for residential uses in the B3 zone is one space per unit on the Peninsula and two spaces per unit elsewhere. No off-street parking is required in the B5 zone. For projects above 50,000 square feet in the B3 and B5 zones, and for all projects in the B6 and B7 zones, parking requirements are set through the site plan review process. Affordable housing units also have their parking set by the Planning Board. Historic structures do not usually have to provide additional parking.

Possible Changes
This change would amend Division 20 so the B3, B6 and B7 zones match the current B5 zone requirement of no parking requirement. There would be no prohibition on providing parking if a development wishes to provide it.

Economics of this Change
This change would reduce the soft costs of developments by saving developers the cost of a parking study if they wish to vary from these parking requirements. It may also save them the cost of providing parking they don't feel they need. As a result, we could expect a reduction in development costs of approximately 0.2-0.5%.

Eliminate Residential Density Limits in B1 & B2 Business Zones

Current Practice
The B1 zone covers neighborhood business nodes both on- and off-Peninsula. Currently the B-2 zone allows up to 100 units an acre, and the B-1 zone allows 100 units per acre on the Peninsula, and generally 43.5 units per acre off the Peninsula.

Possible Changes
This change would eliminate these limits and allow as many units as could otherwise be built on a site, given setback, height, parking, and other site plan constraints.

Economics of this Change
The current 100 unit per acre limit is fairly high, and is likely not to be a limiting factor in these zones. However, eliminating it would send a message that the City supported development of additional units, and would also allow developers to consider building smaller units than they might otherwise build. Given this change might help some developers produce more units, and therefore slightly more revenue per net square foot, we would expect a small reduction in development costs from this change, perhaps in the range of 0.5%.

Allow the Use of the Fee-in-Lieu of Parking in Off-Peninsula Business Zones

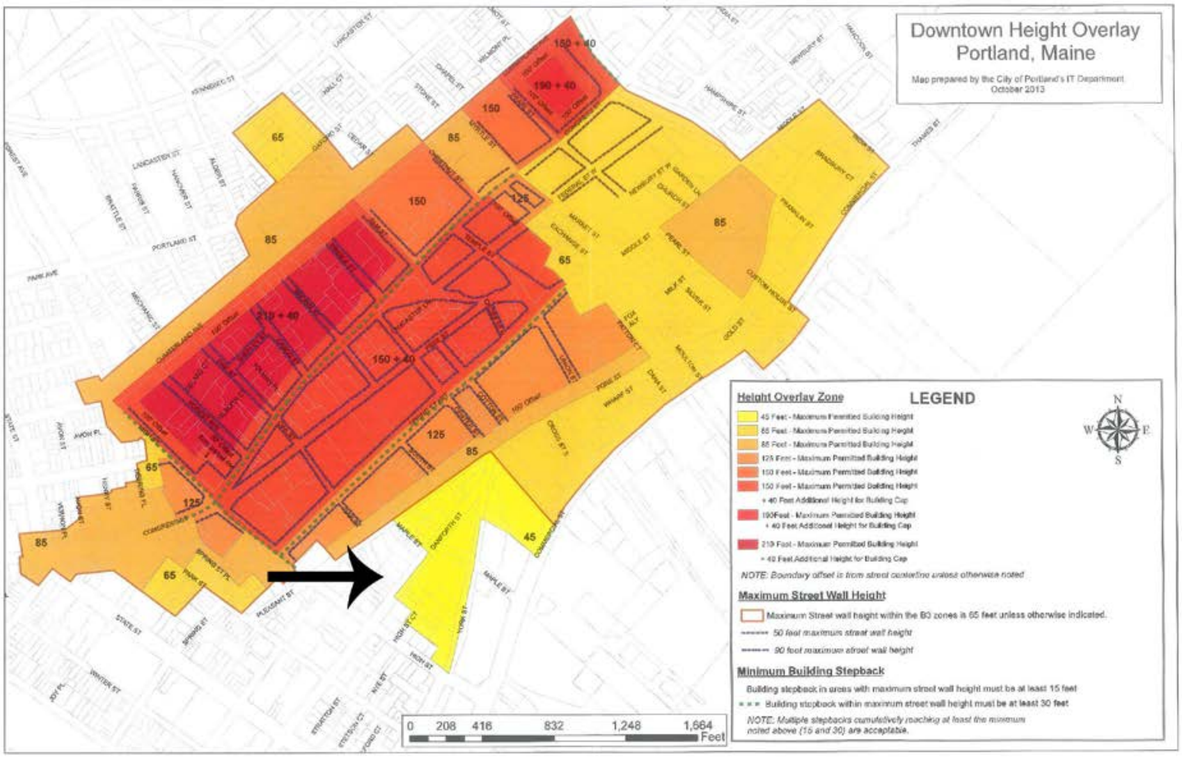
Current Practice
Section 14-345 establishes the option of a fee-in-lieu of parking for developments in non-residential zones on the Peninsula. Under this section, developers can reduce their parking requirements by paying into the City's Sustainable Transportation Fund in the amount of about $5,000 per space. In practice, most developments that have sought reduced parking requirements have been able to use other clauses in the zoning ordinance, such as the one that authorizes the Planning Board to set a parking requirement in business zones. HCDC approved some language changes last year that would help close these loopholes. In the meantime, we have seen our first projects utilizing the fee-in-lieu language in the past year.

Possible Changes

This change would expand this option to off-Peninsula business zones as well as those on the Peninsula. It would not require payment, nor would it propose any parking maximums. It would also not apply to any residential zones.

Economics of this Change

Many off-Peninsula developments provide parking because they feel they need to do so, regardless of what is required in the ordinance. However, there are some situations where the parking requirements may be excessive along major corridors where ample parking already exists. In particular, this change might encourage infill housing on commercial corridors in locations where an existing large parking field is already provided. Currently, such infill developments are hampered by the fact that not only would a development need to provide the parking for that new development, but would also have to replace the parking spaces on which that infill might occur. Remaining parking might be able to take advantage of the fact that residential parking is primarily used at night, whereas retail and office parking is primarily used during the day. A single space might therefore serve a dual purpose. We estimate that this possibility, if applied prudently, might reduce development costs significantly in these business areas by precluding a need to move towards structured parking. Structured parking spaces can cost in the range of $20-25,000 per space. Changing this requirement would therefore reduce the cost of housing development on these sites by $15-$20,000, or about 8 to 10% of total development costs on a per unit basis.



Amend the Downtown Height Overlay Map to Increase 45’ Height Limits

Current Practice

The building heights downtown are determined by a height overlay map. That map is based on a 1989 Downtown Height Study. Currently, a section of downtown around Gorham’s Corner (York and Danforth Streets) limits heights to 45 feet as per that study. The zoning district in that area was changed from R-6 and B-1 to B-3 in 2013 to allow additional development, but the heights remained at 45 feet.

Possible Changes

This change would increase that permitted height from 45 feet to a taller amount to be established through further analysis. The abutting height districts are 85 feet and 65 feet, so the recommended number would likely be in that range. There are some existing structures between Danforth, Maple and Pleasant that may be recommended for exclusion from these height changes.

Economics of this Change

The timing of this proposed change is particularly good in that some of the parcels under discussion were rezoned in the recent past to prepare them for redevelopment, likely as housing. Increasing the heights may allow that development to increase the number of units provided by up to 25 percent without changing construction types. That increase could provide additional net profits to a development. However, we would need to verify with the property owner that there is an interest and ability to go to this height.

Look at Accessory Dwelling Units in Island Residential Zones

Current Practice

The IR-1 and IR-2 (Island Residential) zones permit accessory dwelling units (ADU's) under certain circumstances. Specifically, the site must be on public sewer, the ADU must be below 400 square feet, the unit shall generally be hard to determine is a separate unit from the street, and the building must be owner-occupied. In the IR-2 zone, a minimum lot size of 30,000 square feet also applies.

Possible Changes

Peaks Island residents have suggested that some of the factors listed above limit the number of ADU's possible on the Island, particularly in the IR-2 zone. They have submitted some possible changes and a model ordinance from Wellfleet, MA, that they feel would encourage more ADU's. In their proposal, there would be an affordability requirement in order to take advantage of these relaxed requirements. Please see Attachment #1 for more information on this proposal.

Economics of this Change

The opportunities for more ADU's on Peaks Island is an interesting and context-sensitive way to look at increasing housing stock and affordability in a resource-constrained area. While they may not produce many units, we see the economics of this proposal as producing some affordability on Peaks Island.

Look at R5 Zone Accessory Dwelling Unit Requirements & Reuse of Existing Structures

Current Practice

Currently, the R-5 zoning district practically limits the number of units on a lot to two. There are some allowances for larger developments, but only at a density that is generally not feasible (requiring 6,000 square feet of land per unit.) There are some homes with carriage houses or other out-buildings that cannot currently be used for housing.

Possible Changes

There has been some interest in being able to use existing structures as accessory units in the R-5 zone. While these buildings may require some changes to bring them up to housing code, they are already part of the built environment, and like ADU's, could provide more housing with few external impacts. The proposed change would be to consider allowing these existing spaces to be used as housing provided certain conditions were met. See Attachment #2 for a proposal submitted by a property owner in the R-5 district for such a change.

Economics of this Change

This change would provide some additional housing in these traditional streetcar neighborhoods with few external impacts, and allow currently empty buildings that are potentially nuisances, or at least eyesores, to be renovated and added to the City's housing stock. Even with an affordability requirement, such changes would be profitable to a homeowner and beneficial to the neighborhood. Issues such as whether these additional units would have to provide additional parking spaces would have to be worked out.

Amend Division 30 (Affordable Housing)

(1) Provide Additional Density through Incentives

Current Practice

Division 30 provides density bonuses for housing affordable at 80% of AMI for rentals or 120% of AMI for home ownership units. The bonuses provide for up to 25% additional units as the number of units affordable at those levels increase. This bonus has been rarely used, except in cases where a development was already planning to provide affordable units.

Possible Changes

Attachment #3 outlines some possible changes to this section. Most notably, we are proposing increasing the affordability levels to allow for rental properties affordable at up to 100% AMI. In addition, we are looking at the density bonus numbers to see if they provide sufficient incentives.

Economics of this Change

Since a development can collect up to 20% additional rent from a unit at 100% AMI than from a unit at 80% AMI, this change should inherently increase revenue from those units accordingly. In a case where a development used the full 25% bonus, the revenue from the development would therefore be increased by 5%.

(2) Add Workforce Housing Requirement (Inclusionary Zoning)

Current Practice

There is currently no requirement for workforce housing as part of a development.

Possible Changes

Based on your input and the draft ordinance developed by the India Street Housing and Equity Working Group, we have drafted possible amendments to Division 30 that would:

- Require 10 percent of units in a development of 10 units or more to meet affordability requirements at 100% AMI (approximately $1,900 a month in rent for a family of four);
- Allow a cash-out option at the same level as the Housing Replacement Ordinance (currently about $63,500 per unit) with the understanding that this level of cash-out does not cover the full cost of producing a unit;
- Allow for off-site provision of workforce housing units as long as the units are in the same neighborhood;
- Not require that the units be dispersed evenly across the development, that the finishes be comparable, or that the units be of comparable size to the other units but that they have the same general number of bedrooms.

Economics of this Change

Studies cited by both our research and the research completed on behalf of the Portland Regional Chamber of Commerce by Planning Decisions indicate that inclusionary zoning requirements generally appear to increase the cost of market-rate housing in the same community by about 2 to 3%. These studies are based on inclusionary requirements at generally lower income levels than workforce housing and also do not fully account for zoning changes to encourage housing that may offset any potential increases.

Overall Economic Impact of these Changes

This package of changes would lower development costs and increase revenues for developers who wish to take advantage of them. While it is very difficult to quantify these increased revenues, they appear to be of comparable, and in some areas, significantly greater order of magnitude as the potential impacts of a modest inclusionary zoning ordinance as proposed. It is important to weight the potential market impacts with the policy goals of these various changes to determine which of these changes, if any, should be forwarded to the Planning Board, and ultimately the full City Council, at this time.

ATTACHMENT #1: Peaks Island ADU

ADU meeting 1.12.15

Present: Barbara Barhydt, Planning Review Manager, City of Portland
Mary Davis, Director of Housing and Community Development, City of Portland
Alex Jaegerman, Director of Planning, City of Portland

Betsey Remage-Healey, Homestar t
Rachel Conly, Peaks resident and architectural designer
Tim Wyant, Peaks resident, PIC member and land use planner

Positive first meeting re the possible introduction of ADUs on Peaks to address the need for year round rental housing. Issues include:

1. Size of lot to permit an ADU; currently at 30,000 sq. ft in R-2, but general agreement that is unrealistic for Peaks, with most houses currently on much smaller lots; Rachel to research more about lots of record that are much smaller but legal because deeds preceded zoning requirement.

2. Probably limiting variance to homes on city water and sewer, essentially most of R-2 zoned area on Peaks; Rachel to try to track down map of exactly where the water and sewer lines go.

3. Tim will continue his research into how many homes in R-2 currently are on lots more than 20,000 sq ft.; likely to be very few

4. Who would oversee the certification of rent and renters to meet affordability guidelines? Possibly the Housing and Community Development Dept. - to be decided later
Mary did like the review structure spelled out in Wellfleet's ordinance. Betsey mentioned that there would likely be only a small number of ADUs created (est. 5 or less) due to cost.

5. Need for tax exemption on new building to remove deterrent to building ADUs. City unlikely to be able to do that because property taxes are decided at the state level. Barbara and Mary will consult with Jennifer Thompson and Rick Blackburn to clarify.

6. City will present Housing Study on Wednesday evening, Jan 14. Would be good to learn about it and to contact Kevin Donahue, who is Peaks' rep on the Council and a long time advocate of affordable housing. Betsey will follow up.

7. Barbara suggested that ADU language might be incorporated into the Portland Land Use Code. Division 30, Section 14, items 4.8.4 tp 4.8.8 refer to incentives for affordable housing. Betsey will research this.

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
E - 1

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

ATTACHMENT #2: Possible R-5 Existing Building Language

***Proposed* Sec. 14-488 (d)**

Historical Reversion. The purpose of this section is to provide a mechanism whereby a structure that was clearly arranged and designed for more dwelling units than presently utilized may be permitted to be restored to its previous use, even if such use would result in an increase in the nonconformity of the use as it pertains to number of dwelling units. Notwithstanding the requirements of Division 23 of this ordinance, a structure may revert to a historical use as to number of dwelling units provided it meets to following criteria:

1. Restored dwelling units are affordable as defined in Division 30;
2. That the historical use for purposes of applicability of this section is demonstrated by the owner by proof of documentary evidence including, but not limited to, assessing records, building permits, photographs and sworn affidavits;
3. That it is located within the R-4, R-5, R-5A, R-6, R-6A, R-7, B-2 or B-2b zone;
4. That no portion of the structure enlarged after April 1, 1995 shall be eligible for consideration under this section;
5. Shall not restore more than two (2) dwelling units and result in not more than four (4) total dwelling units;
6. Each restored dwelling unit shall be configured utilizing its historical layout as much as practicable but shall have a minimum floor area of four hundred (400) square feet. The net finished square footage of all restored dwelling units shall not exceed 50% of the gross finished square footage of all units
7. Restored dwelling units shall comply with current standards of the National Fire Protection Association Life Safety Code (§16-1) and the National Fire Protection Association 1: Fire Prevention Code (§10-16), as amended;
8. Off-street parking is required as provided in Division 20 (off-street parking) of this article.

Attachment #3: Possible Changes to Division 30 (Affordable Housing)

DIVISION 30. ~~INCENTIVES FOR~~ AFFORDABLE HOUSING

Sec. 14-484. 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 offer incentives to developers to include units of affordable housing within development projects, thereby mitigating the impact of market rate housing construction on the limited supply of available land for suitable housing, and helping to meet the housing needs of all economic groups within the City. The City believes that this Division will assist in meeting the City's comprehensive goals for affordable housing, in the prevention of overcrowding and deterioration of the limited supply of affordable housing, and by doing so promote the health, safety and welfare or its citizens.

Sec. 14-485. Definitions.

"Affordable" means that the percentage of income a household is charged in rent and other housing expenses, or must pay in monthly mortgage payments (including insurance and taxes), does not exceed 30% of a household's income, or other amount established in City regulations that does not vary significantly from this amount.

"~~Affordable~~ Low-income housing unit for rent" means a dwelling unit for which: (1) the rent is affordable ~~to~~ a household earning 80% or less of ~~the U.S. Department of Housing and Urban Development moderate-income figure for Metropolitan Cumberland County Maine for a household of that size~~Area Median Income (AMI) as defined by the U.S. Department of Housing and Urban Development (HUD); and (2) 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 moderate-income figure for Metropolitan Cumberland County Maine for a household of that size.

"~~Affordable~~ Low-income housing unit for sale" means a dwelling unit for which: (1) the sale price is affordable to a household earning ~~120~~80% or less of the ~~U.S. Department of Housing and Urban Development moderate-income figure for Metropolitan Cumberland County Maine for a household of that size~~HUD AMI; and (2) the resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit to an amount that is affordable to a household earning 120% of the U.S. Department of Housing and Urban Development moderate-income figure for Metropolitan Cumberland County Maine for a household of that size, as calculated for the year in which the sale takes place.

"Development fees" means: (1) the following fees, as described in this chapter: site plan review and inspection fees; subdivision review and inspection fees; condominium conversion permit fees; and administrative fees; and (2) construction and permit fees as described in chapter 6. "Development fees" does not include any fees charged for reviews conducted by a party other than the City.

"Dwelling unit" has the same meaning as that term is defined in section 14-47.

"Eligible project" means a development project: (1) to which the City has not committed nor will commit any funding, reduced-interest loans or other subsidies or incentives other than those described in this Division; and (2) that creates new dwelling units, among which is at least one affordable housing unit for rent or 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. Affordable housing units for sale or rent may not differ in exterior design from other units within an eligible project.

"Workforce housing unit for rent" means a dwelling unit which: (1) Is affordable to a household earning less than 100% of HUD AMI and (2) Annual rent increases for that unit are limited 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.

"Workforce housing unit for sale" means a dwelling unit for which (1) the purchase price is affordable to a household at 120% of HUD AMI and (2) The resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit, or a lesser term as permitted in regulations, to the percentage increase in the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

Sec. 14-486. Reduction of Fees and Priority Review~~.~~

Notwithstanding any other provision of this chapter or chapter 6 to the contrary, development fees shall be reduced by the City for an eligible project in the manner described in the following table:

Percentage of new units that are ~~affordable~~ low-income or workforce housing units	**Percentage discount of development fees**
5% up to but not including 10%	5% reduction
10% up to but not including 15%	10% reduction
15% up to but not including 20%	15% reduction
20% up to but not including 25%	20% reduction
25% or more	25% reduction

~~**Sec. 14-487. Priority Review.**~~

The Planning Division shall perform its review of an eligible project in as expedited a manner as is practical. The Planning Division may adopt administrative procedures to prioritize review of eligible projects and facilitate this expedited review.

The Planning Board shall make its best efforts to hear, review, and approve, conditionally approve or deny within one workshop and one public hearing any plans or applications required for an eligible project that are within the Planning Board's jurisdiction, and shall rely on reviews prepared by the Planning Division to the greatest extent practical and appropriate. At the conclusion of these public meetings, the Planning Board shall promptly issue a decision on all such plans and applications before it for consideration.

Sec. 14-487. Ensuring Workforce Housing.

1. Purpose

Based on the City's Comprehensive Plan and the housing study completed in 2015, the City believes that it is in the public interest to promote an adequate supply of housing that is affordable to a range of households at different income levels.

The purpose of this section is to ensure that large housing developments provide a portion of workforce housing units, and by doing so, promoting the health, safety, and welfare of Portland citizens.

2. Applicability

This division shall apply to development projects that 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. This division shall not apply to projects that have submitted complete Master Development Plan, Level III Site Plan, or comparable applications to move forward prior to its effective date.

3. Workforce Housing Minimum

At least ten percent of the units in the project shall meet the definition of workforce housing unit for sale or for rent. The number of units required is rounded down to a whole number if providing units as per 4.b. below, or shall include a fractional value in cases where a project prefers to pay a fee-in-lieu as per 4.c. below.

4. Standards

a. Projects shall not be segmented or phased to avoid compliance with these provisions. In cases where projects are completed in phases, affordable units shall be provided in proportion to the development of market rate units unless otherwise permitted through regulations.

b. Workforce units are encouraged to be integrated with the rest of the development, should use a common entrance and should provide no indications from common areas that these units are workforce housing units. Subject to planning authority approval, provision of units off-site shall also be considered as meeting these standards, provided these units are located in the same neighborhood, defined as same U.S. Census Tract unless otherwise defined in regulations.

c. Workforce units need not be the same size as other units in the development but they must have the same general mix of number of bedrooms as the other units.

d. As an alternative to providing workforce housing units, projects may pay a fee in lieu of some or all of the units. 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 fee under Division 29 for Housing Replacement.

5. Implementing Regulations

Regulations to further specify the details of this section shall be developed, including, but not limited to:

- Specific methodology for income verification;
- Situations where less than permanent affordability might be considered;
- Guidelines for meeting the requirement that off-site units be "in the same neighborhood";

Sec. 14-488. Density, Parking and Dimensional Bonuses and Reductions.

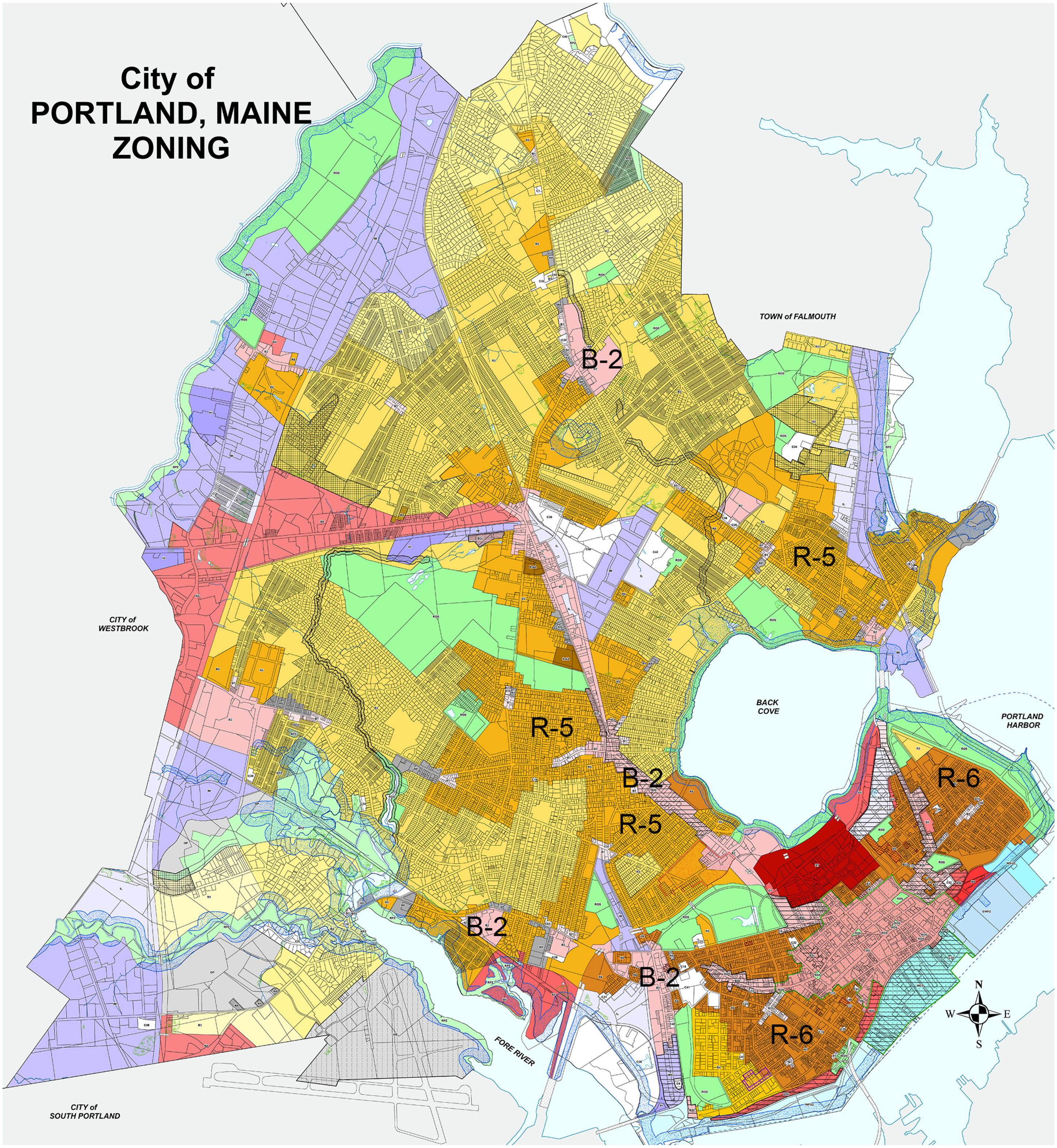
Notwithstanding any other provision of this chapter to the contrary:

(a) Density bonuses. The maximum number of units that would otherwise be allowed under this chapter shall be increased for an eligible project in the manner described in the following table:

Percentage of new units that are ~~affordable~~ low-income or workforce units	**Percentage increase in maximum number of units allowed**
5% up to but not including 10%	5% increase
10% up to but not including 15%	10% increase
15% up to but not including 20%	15% increase
20% up to but not including 25%	20% increase
25% or more	25% increase
Projects Under 14-487	25% increase

(b) Parking requirement reduction. For each ~~affordable~~ low-income or workforce housing unit for rent or sale within an eligible project, no more than one (1) parking space shall be required. The Planning Board may establish a parking requirement for affordable housing units for rent or sale within an eligible project that is less than one (1) parking space per affordable housing unit, regardless of the size of the structure.

Attachment #4: Zoning Map with Key Zones Identified



Homestart ADU proposal to Housing and Community Development Committee 2.25.15

Why

- Need for more year round rental housing
-
- Need for more affordable housing
-
- Need for income for homeowners to help with taxes

What

- Provide a zoning variance to allow current Peaks Island homeowners to build one additional rental unit; (known as an Accessory Dwelling Unit or ADU);
-
- Variance given only for providing year round rental to people with incomes no more than 120% of median income,; 2014 median household income for Portland is about $46,000

- Rents must fall within HUD Fair Market Rental Guidelines; in 2014, they are $819/month for a one-bedroom; $1012 for a 2 bedroom.

How

- Allow lot size to be the lot of record as of July 15, 1985;

- Focus on properties (primarily in IR-2 zoning area) that have City water and sewer

- Specific requirements and standards adapted from those of Wellfleet MA

- Property tax exemption for affordable unit

- No interest loans

Impact

- Because of the expense of any new construction and the rent restrictions,
- it is anticipated that only a small number of ADUs will be built; based on the experience of Wellfleet, we estimate no more than 4 units over a 6 year period.

To Be Determined

- Mechanisms for oversight/compliance (minimal due to small number of projects)

PSA

Portland Society for Architecture
PO BOX 5321
Portland, Maine 04101
www.portlandarchitects.org

PSA Testimony to Portland Housing and Community Development Committee

March 25, 2015

Chair Donahue and members of the committee, my name is Alan Kuniholm. I am president of the Portland Society for Architecture, which has as its mission **Helping Portland Build Better**. Building better can mean a more sustainable community, better architecture, better structural and surface materials. It can also mean encouraging a full diversity of housing and addressing a shortage of "work force" housing. We support the work of this committee and the City Council in increasing the stock of work force housing and are here tonight to comment on your attempts to do so through Inclusionary Zoning.

As you are no doubt aware, mandatory inclusionary zoning has variously been characterized as a tax, a subsidy, an imposition and an exaction, a carrot, or a stick or maybe just a stick. Characterizations aside, it is important that Inclusionary Zoning achieve its goal with as few adverse unintended consequences as possible. We view the current proposal before the City as a modest experiment to fill a gap in an otherwise strong housing market.

The challenge, as you know, is to understand that if you encourage or mandate a certain amount of "affordable" work force housing, it will need to be subsidized in some way. It may force the cost to own or rent housing higher up the income scale. It may eat into developer profit and, if overdone, the incentive to build at all. It may, over time, depress land values. It may lessen the quality of construction, design, materials or durability and aesthetics. And it may also, if the margins get too tight, discourage or shut down construction. We believe the City is mindful of these issues, and we merely want to point out that the current 10/10/100 proposed appears to us to be an appropriate size given the fact, that, it is an experiment subject to the law of unintended consequences. Of course the devil will be in the details.

March 25, 2015

Some of the devilish details appear to be addressed by the City and no doubt more will be addressed in the guidelines in the anticipated regulations. Among issues that we think are important, are (i) the need for flexibility; (ii) a buy-out provision that is reasonably priced given certain circumstances or locations where it makes more sense to beef up the City's affordable housing fund to leverage more units; (iii) a recognition that affordable units in any given building do not have to be the exact same size or location as market rate ones; and (iv) a recognition that it is preferable that approximate equivalence in units be measured by numbers of bedrooms rather than base unit square footage. No doubt there are other issues that will be fleshed out in the preparation of guidelines and that will make this program predictable, flexible, affordable and sustainable.

Finally, we strongly encourage the council, perhaps through the guidelines, to build-in a process for monitoring the effect of this program by getting feedback from all parties involved to make sure that it is working and to iron out the kinks and maintain flexibility and effectiveness.. It is no secret that Portland is in the middle of a housing boom fueled in part by pent up demand and in part by low interest rates and a strong economy. When the economy softens or interest rates rise, the boom will subside. That is when it will be most important to be sure that the adoption of inclusionary zoning is not a Pyrrhic victory. Thank you for your time.

The Portland Society for Architecture

JUSTIN ALFOND

Vaughan Street - (207) 232-4187

RECEIVED MAR 25 REC'D 2015

Chairman Donoghue and members of the Housing and Community Development Committee, my name is Justin Alfond and I live on Vaughan Street. I am unable to attend tonight's meeting, but I wanted to share my thoughts.

I approach this issue as a Portland resident, as a father, as a business owner, as a developer, and as a State Senator. Tonight's discussion is important for our city's future and its accessibility to all people.

I have voluntarily used inclusionary zoning on two housing projects in Portland – condos at 135 Sheridan Street on Munjoy Hill and apartments at 645 Congress Street. My business partner and I pledged 10% of our units in both projects to workforce housing and we used area median income as our threshold price.

The two projects did not receive any tangible incentives from the city for providing inclusionary zoning, but we felt it was our responsibility. Providing affordable units did not upset our financial model or profits -- in fact, the workforce units often were sold or rented first because there was, and still is, a huge shortage of this housing stock.

Inclusionary zoning combines increased regulatory efficiency and modernization with important additional tools to increase the sustainability of our community. It will push the regulatory environment to become clearer and more predictable.

The inclusionary zoning language has been drafted to be extremely flexible, allowing for unlimited cash-out at a relatively low rate and flexibility as to location and size of project. I know from first-hand experience this type of development approach can work and doesn't hurt projects if structured appropriately.

It's important to note, inclusionary zoning is not a silver bullet to making Portland livable for all working people and families. This approach is only one tool we can use to meet housing demand while keeping Portland affordable.

I will stress that Portland's future must be built on growing and maintaining diversity. We must have public policies that encourage creativity, professionalism and predictability. To do this, we must address affordable housing.

In closing, while the need for affordable housing is urgent, it is critical we get this policy right. I urge the committee to continue to educate the public and get buy-in. The city must be committed to this policy and have a great plan to roll it out. We can do this.

except only for reasonable wear and tear, and shall remove all trash and debris attributable to it from the Premises and Common Areas.

10. POT Building and Pier Infrastructure Responsibility for Repairs and Maintenance; Tenant's Acceptance Of Premises In "As Is" Condition.

Tenant is currently in possession of the Premises and does hereby accept the Premises and Common Areas in their present "AS IS" condition as of the Effective Date. During the term of the Existing Lease, Tenant has, at its sole expense, maintained and made substantial repairs to the Premises, the Common Areas, Pier, and the portion of the POT building containing the Interior Space and the Interior Common Area. Tenant shall continue to maintain and repair, at its sole expense, the Premises, the Common Areas, and all interior, exterior, and structural portions of the POT building containing the Interior Space and the Interior Common Areas, including, without limitation, the plumbing, electrical, mechanical, heating, ventilation, and air conditioning systems in the building, but not including the roof or exterior walls. The Landlord shall be responsible for the maintenance and repair of said exterior walls and roof, and Tenant shall make no alteration to them without the prior written consent of the Landlord. Tenant, at Tenant's sole expense, may conduct such inspections as are necessary to evaluate the structural integrity of the POT building and Pier to support Tenant's use and shall report the results of any such inspections to Landlord. Tenant, at its sole expense, shall be responsible for maintaining, repairing, or replacing the Pier's structural elements, including, without limitation, its pile caps, stringers, and decking, in order to support so much of Tenant's use as is beyond those uses that would cause ordinary wear and tear. Landlord shall only be responsible for maintaining the structural integrity of the Pier to the extent that the structural integrity has been jeopardized due to normal wear and tear, and not from any of Tenant's operations causing greater than normal wear and tear. Landlord may enter any portion of the POT and Pier, including the Premises, to conduct inspections, maintenance, or repairs, but will only enter the Premises upon reasonable notice to Tenant at times and in a manner that will not unreasonably interfere with Tenant's on-going business activities.

11. Traffic Control.

Tenant shall be responsible for managing truck access over the Pier to the Premises and Common Areas. In doing so, Tenant will work cooperatively with other POT tenants and the Casco Bay Lines to manage traffic and pedestrian congestion. Landlord will assist Tenant by removing illegally parked vehicles on a timely basis when requested to do so by Tenant or by any signatory to a Maine State Pier Tenant Operational Agreement. Tenant agrees to participate and work cooperatively with other POT tenants and the Casco Bay Lines to create such an operational agreement.

12 Compliance with Laws.

Tenant shall, at its own cost and expense, promptly observe and comply with all applicable laws, ordinances, requirements, orders, directives, rules and regulations of the

PORTLAND COMMUNITY CHAMBER
In Partnership with the Portland Regional Chamber

March 12, 2015

Comments on Reforms Aimed at Housing Affordability & Production

Housing & Community Development Committee

Councilor Donoghue and members of the Committee, I am Chris O'Neil. I represent the Portland Community Chamber of Commerce, one of America's longest-running trade associations, comprised of almost 700 Portland employers with 35,000 employees.

Thank you for beginning this crucial civic conversation. Housing affordability and production isn't just important to the "workforce" segment of our community, but to every segment. And it isn't just in the interest of the business community, but of the entire community.

As you know, in anticipation of this conversation, the Chamber, in partnership with Maine Real Estate Development Association and Portland Society for Architecture, has assembled a Task Force to examine the various issues in housing affordability and production. While Inclusionary Zoning (IZ) has been a dominant subject matter, our Task Force has found that it cannot - and should not - be discussed as a stand alone reform. As we move forward, the Chamber (and I expect many participants on the Task Force) will remain engaged to address issues that appear to be problems worth solving. By year-end, and possibly as soon as the fall, we should have had ample time to study the many issues before us, and we look forward to finally crafting agreeable policies that appear poised to minimize risk and maximize benefit.

The Task Force, which might meet once more, today circulated a draft report which should be ready for publication this month. While the report will not be a position paper or a prescription for housing affordability, it will help the Chamber (and hopefully you also) to articulate positions and to craft sensible policy.

Following is a foreshadowing of what will likely appear in the report:

1. The Chamber supports the housing goals of the City.

2. The Chamber opposes any implementation of IZ at this time. While the reasons and nuances for this opposition are myriad, it should be no surprise to you to hear the Chamber again invoke its cautionary principle, and assert that the reformer bears the burden of proof. We know that the effect of IZ is at its essence the same as a tax. A tax increases cost and reduces supply. Unless we can agree to some suite of reforms whose benefit exceeds its impact, the above objections will dominate.

3. The Comp Plan's Housing Element is 15 years old and must be updated.

4. That Plan contains six policies, 33 objectives, and 129 actions. Inclusionary zoning is not one of them. Perhaps it could be and should be? The Chamber would be eager to participate in a comp plan revision process.

5. Confirmed by current events, including the front page of today's Press Herald, the Chamber has not given up on the market's ability to correct some of its deficiencies.

6. The possibility of unintended consequences is a grave concern.

7. While upzoning and density reforms seem to be a fair step in a good direction, they do not seem to be a fair trade for IZ.

8. We have explored findings in Massachusetts, California, Florida, and Maryland, among other places. The findings loudly warn us of a READY-FIRE-AIM approach to something so powerful as IZ here in Portland. If we finally adopt some iteration of IZ, it must be done with extreme caution, because when it is done badly the consequences are dire.

9. There will be two very different discussions conducted regarding the rental market and the owned market. Before the benefit of deeper study, it is safe to assume that the Chamber will remain categorically opposed to any blanket imposition of mandatory IZ upon the owned market.

10. IZ has many moving parts that together can be configured to seek its desired results. For instance, balancing the cash-out amount with the possible benefit will be a delicate exercise. Again, done wrong, it can be a powerful deterrent. Another factor would be how to handle interior finish in market vs. affordable units that are co-located in one project. All of the variables (AMI level, the project size threshold, etc.) are critical factors that can greatly influence the impact and benefit of the reform.

11. There are many potential reforms, incentives, and rewards that should be considered as part of a comprehensive silver buckshot approach to housing production and affordability. The Chamber report will likely contain a recommendation for some form of Workforce Housing TIF, which can reap great benefit with minimal impact, as it is doing in Portland Oregon.

In summary, we thank you for beginning this critical conversation, and we pledge to work with you toward the sustainable fulfillment of our mutual goals.

FY 2014 Income Limit Area	Median Income	FY 2014 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
Portland, ME HUD Metro FMR Area	$77,300	30% Income Limits	16,250	18,600	20,900	23,850	27,910	31,970	36,030	40,090
		50% Income Limits	27,100	30,950	34,800	38,650	41,750	44,850	47,950	51,050
		80% Income Limits	43,300	49,500	55,700	61,850	66,800	71,750	76,700	81,650
		100% Income Limits	54,110	61,840	69,570	77,300	83,484	89,668	95,852	102,036
		120% Income Limits	64,932	74,208	83,484	92,760	100,181	107,602	115,022	122,443

FY 2015 Income Limit Area	Median Income	FY 2015 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
Portland, ME HUD Metro FMR Area	$77,100	**30% Income Limits**	16,250	18,550	20,850	24,250	28,410	32,570	36,730	40,890
		Housing Expense at 30% of Income	406	464	521	606	710	814	918	1,022
		50% Income Limits	27,100	30,850	34,700	38,550	41,650	44,750	47,850	50,900
		Housing Expense at 30% of Income	678	771	868	964	1,041	1,119	1,196	1,273
		80% Income Limits	43,200	49,400	55,550	61,700	66,650	71,600	76,550	81,450
		Housing Expense at 30% of Income	1,080	1,235	1,389	1,543	1,666	1,790	1,914	2,036
		100% Income Limits	53,970	61,680	69,390	77,100	83,268	89,436	95,604	101,772
		Housing Expense at 30% of Income	1,349	1,542	1,735	1,928	2,082	2,236	2,390	2,544
		120% Income Limits	64,932	74,208	83,484	92,760	100,181	107,602	115,022	122,443
		Housing Expense at 30% of Income	1,623	1,855	2,087	2,319	2,505	2,690	2,876	3,061

HUD 2015 Fair Market Rents	By Unit Bedrooms				
	Efficiency	1	2	3	4
Portland, ME HUD Metro FMR Area	730	869	1,074	1,421	1,492

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: April 3, 2015

Re: Inclusionary Zoning and Zoning Changes to Encourage Housing Development

---

At your last meeting, you reviewed my memorandum regarding various approaches to increasing workforce housing in Portland. You asked for some additional information on each option, including, when appropriate, additional maps or charts that would help you as you contemplate each of these options.

At the end of this memo is some information about the Portland Development Corporation (PDC) and any potential role funding from the PDC might play in workforce housing development.

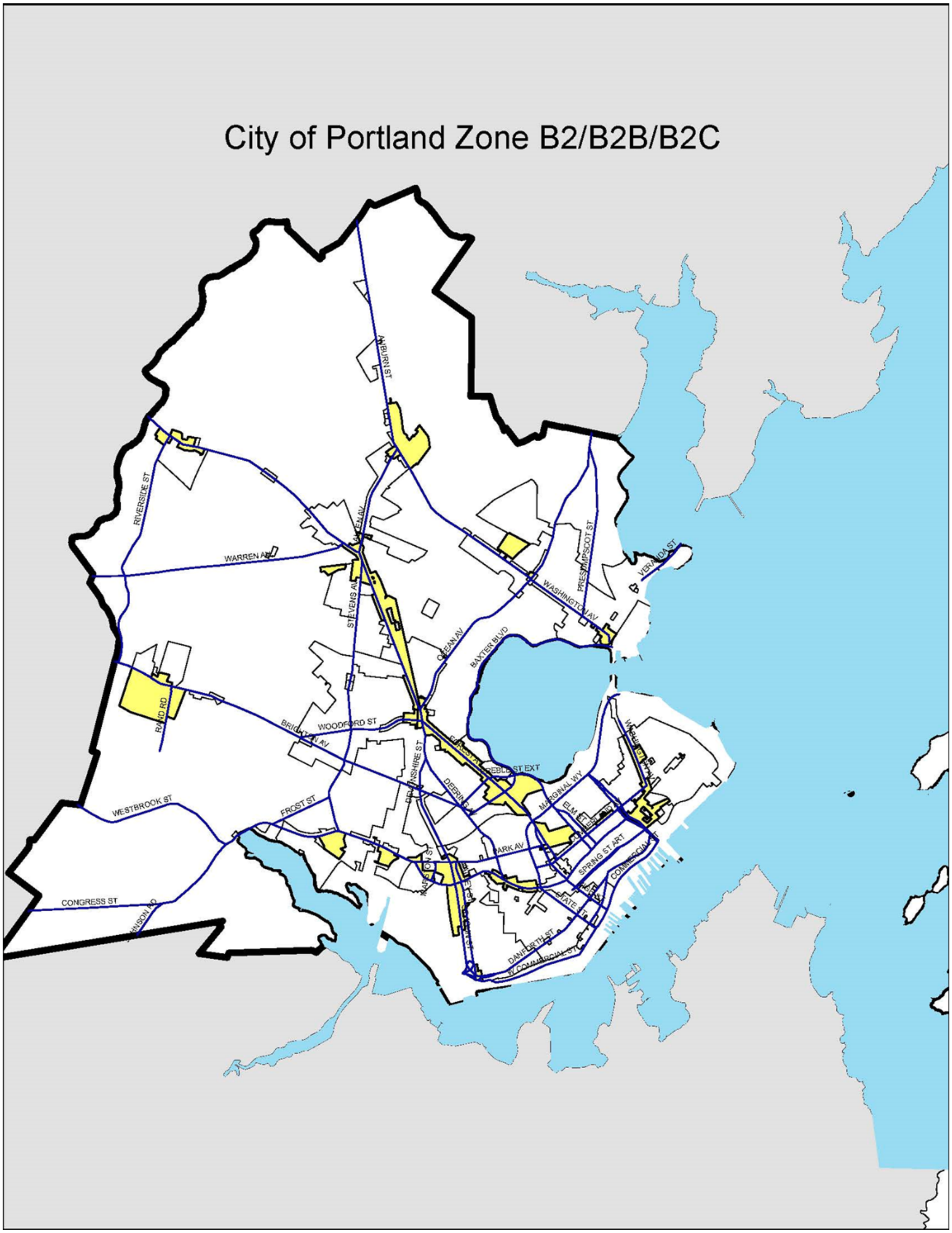
Changes to the B2/B2b/B2c Zone

The B2 zone changes have already been approved by the City Council. They affect the following areas:

- Commercial corridors on Forest Avenue and Congress Street
- Washington Street on the Peninsula
- Most of the shopping centers in the City, including Westgate and Northgate.

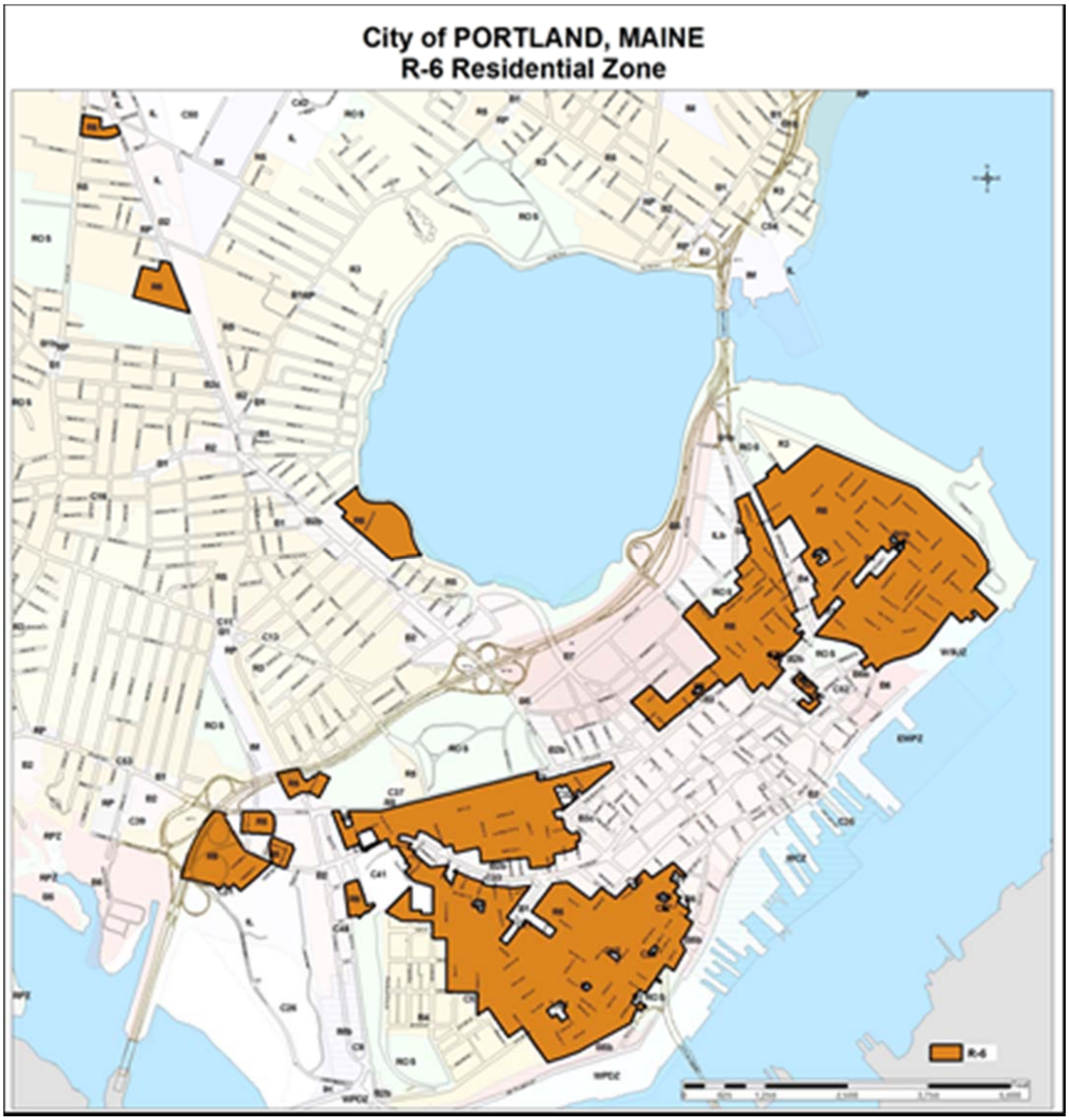
The rewrite reduced the complexity of the B2 zone and increased the allowable residential densities under certain conditions.

389 Congress Street / www.portlandmaine.gov / tel, 207•874•8720 / tty, 207•874•8936 / fax, 207•756•8258

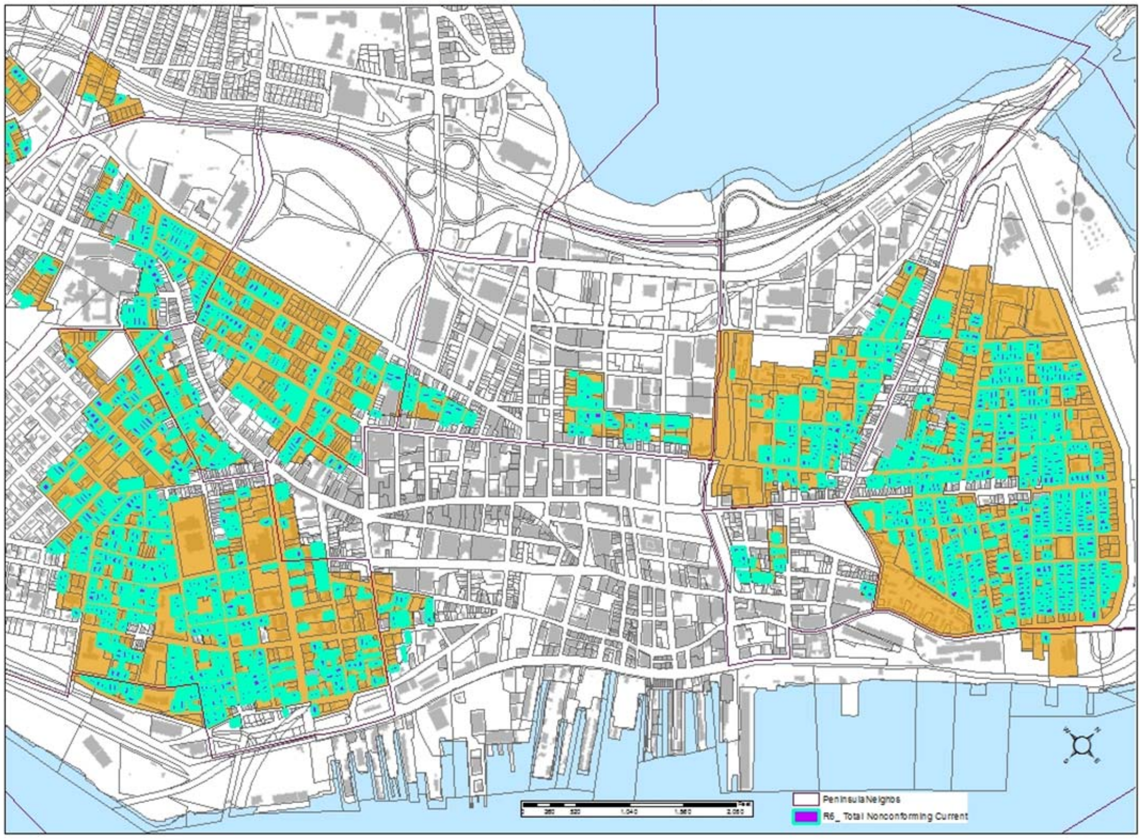

City of Portland Zone B2/B2B/B2C
RIVERSIDE ST
WARREN AV
STEVENS AV
OCEAN AV
BAXTER BLVD
WASHINGTON AV
PRESUMPSCOT ST
WOODFORD ST
RAND RD
WESTBROOK ST
FROST ST
CONGRESS ST
MARGINAL WY
PARK AV
SPRING ST ART
DANFORTH ST
W COMMERCIAL ST

Changes to the R6 Zone

The R6 zone consists of most of the residential areas on the Peninsula (other than the West End.) Two small areas off the Peninsula are zoned R-6A and therefore are shown as R-6 on the map below. There is also a map on the next page that shows how many of the parcels in that existing zone are currently not conforming to zoning requirements, and therefore would not be able to be built on today.



R-6 Total Non-Conforming Parcels (by lot size) Under Current Zoning

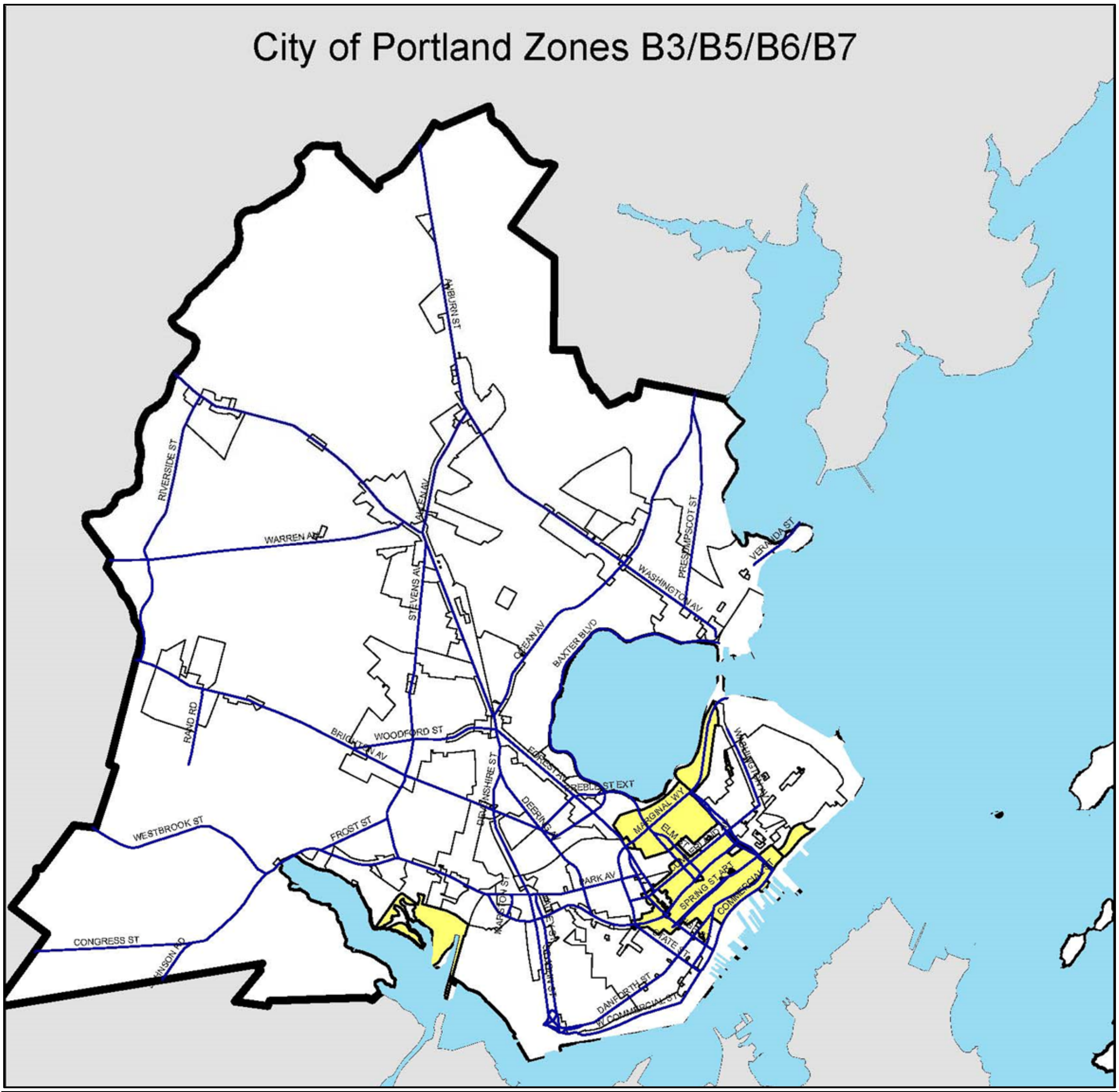


The proposed rewrite, recommended unanimously by the Planning Board, will be heard by the full City Council shortly. A chart is included below showing the most significant of the proposed changes:

R-6 Dimensional Requirements		
	Existing	***Proposed***
Minimum Lot Size	Residential Uses: 4,500 sf	Residential Uses: 2,000 sf, except that in R-6A the min. residential lot size is four (4) acres.
Min. Lot Area/Dwelling Unit	*Minimum land area per dwelling unit:* One thousand (1,000) square feet per dwelling unit; and in the case of building additions and new construction, one thousand two hundred (1,200) square feet for each dwelling unit after the first three (3) units. This requirement may be reduced by up to twenty (20) percent for a special needs independent living unit.	725 s.f.
Street Frontage	40 feet	20 feet
Minimum Front Yard Setback for Principal and Accessory Structures	Principal or accessory structurese: Ten (10) feet. A front yard need not exceed the average depth of front yards on either side of the lot. A lot of record existing as of June 5, 1957, and less than one hundred (100) feet deep need not be deeper than twenty (20) percent of the depth of the lot.	5 ft, or no more than average depths of adjacent front yards.
Minimum Rear Yard Setback for Principal and Accessory Structures	i. Principal and attached accessory structures with ground coverage greater than one hundred (100) square feet: Twenty (20) feet.	10 feet, except that accessory structures with a ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.
	ii. Detached accessory structures with a ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.	
Minimum Side Yard Setback for Principal and Accessory Structures	i. Principal and attached accessory structures with ground coverage greater than one hundred (100) square feet: Twenty (20) feet. ii. Detached accessory structures with a ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet. i. Principal and attached accessory structures with ground coverage greater than one hundred (100) square feet:	5 ft, except that a side yard in the R-6 zone may be reduced to zero, provided that the cumulative side yard setbacks are not less than 10 ft. A permanent maintenance easement a minimum of 5 ft. in width shall be provided on the parcel adjacent to the lot line with the reduced side setback. Side yards in R-6A shall be 10 ft. for principal structures up to 45 ft. in height and 15 ft. for principal structures greater than 45 ft.in height.

	Height of Structure Required Side Yard 1 story . . . . 10 feet 2 stories . . . . 10 feet 3 stories . . . . 10 feet 4 stories . . . . 12 feet 5 stories . . . . 15 feet The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than ten (10) feet. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots, the required side yard may be reduced in order to provide a buildable width of up to twenty-four (24) feet, but in no case shall the resulting side yards be less than ten (10) feet.	
Side Yard on Side Street	10 feet	None
Structure Stepbacks		Portions of a structure above 35 ft shall be no closer than 10 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone. *Does not apply to side yards on side streets.*
Maximum Lot Coverage	Forty (40) percent of lot area for lots which contain twenty (20) or more dwelling units; fifty (50) percent for lots which contain fewer than twenty (20) dwelling units.	60%
Minimum Lot Width	50 feet	20 feet
Maximum Height	Principal and attached accessory structure: Forty-five (45) feet.	Principal and attached accessory structure: 45 ft
	Accessory detached structure: Eighteen (18) feet.	Detached accessory structure: 18 ft
		In R-6A the maximum principal and attached accessory structure height shall be 65 ft.

Eliminate Parking Requirements for Residential Uses (B3, B5, B6 & B7 Business Zones)



ZONE	CURRENT REQUIREMENT	REVISED REQUIREMENT
B3	**1 space per unit on Peninsula** **2 spaces per unit elsewhere** **Set by Planning Board for large projects (over 50,000 sf.)**	**No requirement**
B5	**No requirement**	**No requirement**
B6	**Set by Planning Board for all projects**	**No requirement**
B7	**Set by Planning Board for all projects**	**No requirement**

At your last meeting, there were questions about what this proposed change might mean in terms of development. Some specific questions were:

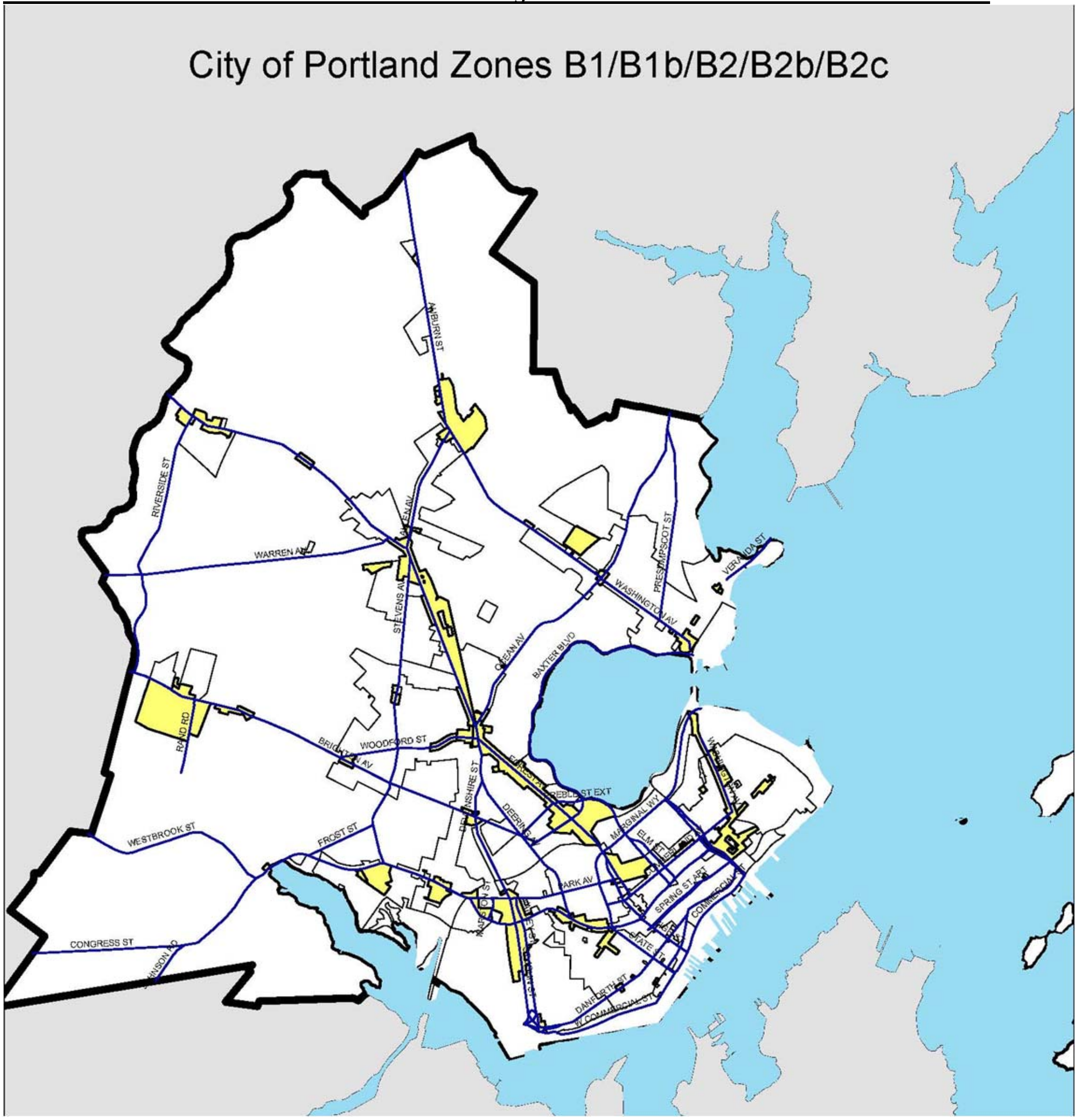
- Are there projects that are not happening because of the current parking restrictions?
- Would this change induce any new housing development?
- Would these changes result in any unintended parking issues in these zones?

We are not aware of any projects that are not happening at this time due to the current parking requirements. In reality, most large projects have their parking set by the Planning Board during review, so there is already some flexibility on these requirements. However, that process requires submission of a parking study, at some cost to the developer. In addition, needing Planning Board sign-off means that there is uncertainty about whether a development needs to provide parking at all. It seems reasonable to assume that there have been possible developments discouraged by these requirements. This issue has also been raised by the Chamber's Housing Task Force members as part of their discussion.

The issue of unintended consequences is also hard to definitely answer. However, by limiting these changes to business zones, where overnight on-street parking can be accommodated without necessarily impacting residential zones, reduces the risk.

These are all good questions, and ones that would be further explored during the Planning Board review process. Ultimately, when the Planning Board brings a recommendation back to the full Council, there would be an opportunity to explore this issue again.

<u>Eliminate Residential Density Limits in B1 & B2 Zones</u>



ZONE	CURRENT DENSITY LIMIT	REVISED DENSITY LIMIT
B1	**100 units/acre on Peninsula** **43.5 units/acre elsewhere**	**No limit**
B2	**100 units/acre generally**	**No limit**

I would not expect this change to necessarily result in immediate production of new housing. However, the amount of housing in these districts is far more likely to be limited by other dimensional requirements, and therefore I believe this change is ready for submission to the Planning Board for further study.

Allow the Use of the Fee-in-Lieu of Parking in Off-Peninsula Business Zones

Most of the off-Peninsula business zones in question are the B1 and B2 zones shown above. There are some B5 zones up by the Maine Turnpike but I would not recommend extending the fee-in-lieu option to those zones, given how auto-dependent those areas remain.

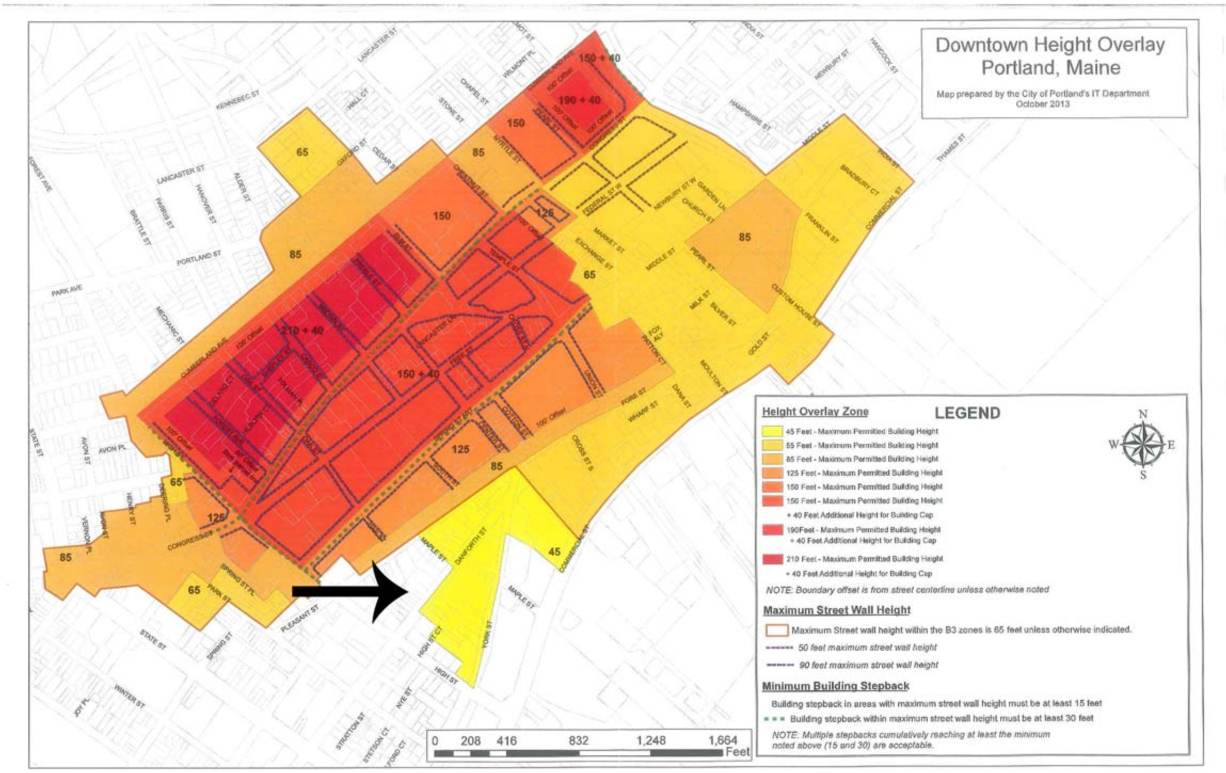
Zone	Current Requirement for Residential Parking	Proposed Requirement for Residential Parking
B1 (off-Peninsula)	2 spaces per unit	2 spaces per unit or a fee-in-lieu
B2	1 space per unit	1 space per unit or a fee-in-lieu
B5 (off-Peninsula)	2 spaces per unit	***NOT RECOMMENDED TO CHANGE***

As mentioned at your last meeting, this would not limit the ability of a developer to provide parking for residential developments in these zones. I would expect that most developments would expect to provide at least 1 space per unit at night. This change would however, allow a developer to consider using the same parking space for different uses based on time of day. For example, a retail development with a surface parking lot of 100 spaces might be able to also support 50 units of housing, given the overall use of the spaces might be as follows:

- ✓ Morning Use: 50 spaces for housing, 20 spaces for retail
- ✓ Daytime Use: 25 spaces for housing, 75 spaces for retail
- ✓ Evening Use: 50 spaces for housing, 10 spaces for retail

Under this realistic scenario, housing and retail uses could share the same spaces efficiently. Similar, and even greater, synergy exists between daytime office uses and nighttime residential uses.

Amend Downtown Height Overlay: Increase 45' Limits



At the last meeting we discussed how much of this 45' area to propose for increase. Staff proposed only including the redevelopment area south of Danforth, and there did not appear to be any objections. I don't believe there were additional questions about this item. It is ready for Planning Board review.

Look at Accessory Dwelling Units: Island Residential Zones

Below is some additional information from Homestart regarding their proposed changes to the Accessory Dwelling Units provision on the islands. We would propose to work with them to draft a proposal for Planning Board review.

Homestart ADU proposal to Housing and Community Development Committee 2.25.15

Why

- Need for more year round rental housing
- Need for more affordable housing
- Need for income for homeowners to help with taxes

What

- Provide a zoning variance to allow current Peaks Island homeowners to build one additional rental unit; (known as an Accessory Dwelling Unit or ADU);
- Variance given only for providing year round rental to people with incomes no more than 120% of median income,; 2014 median household income for Portland is about $46,000
- Rents must fall within HUD Fair Market Rental Guidelines; in 2014, they are $819/month for a one-bedroom; $1012 for a 2 bedroom.

How

- Allow lot size to be the lot of record as of July 15, 1985;
- Focus on properties (primarily in IR-2 zoning area) that have City water and sewer
- Specific requirements and standards adapted from those of Wellfleet MA
- Property tax exemption for affordable unit
- No interest loans

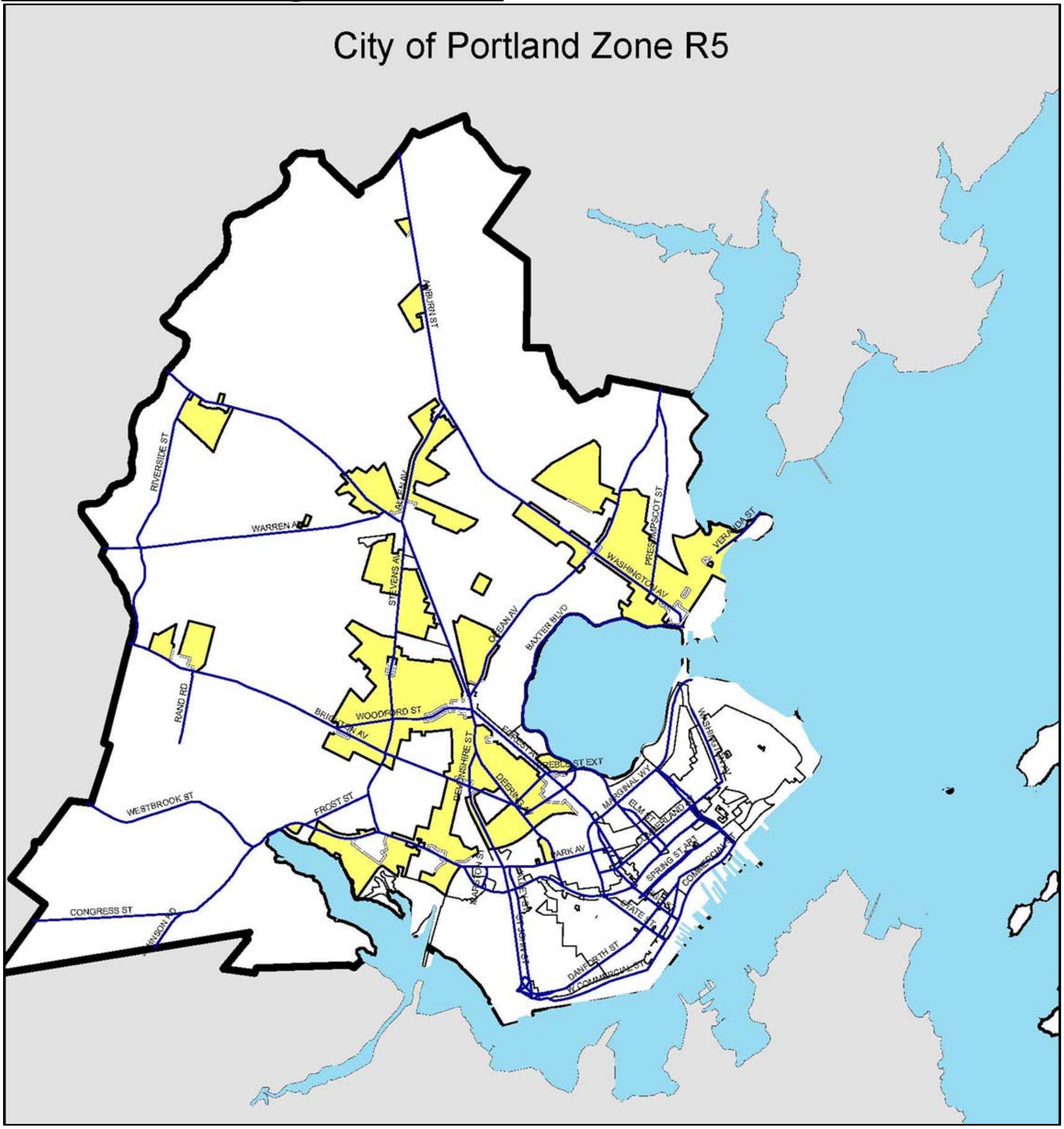
Impact

- Because of the expense of any new construction and the rent restrictions,
- it is anticipated that only a small number of ADUs will be built; based on the experience of Wellfleet, we estimate no more than 4 units over a 6 year period.

To Be Determined

- Mechanisms for oversight/compliance (minimal due to small number of projects)

Look at R5 Zone Accessory Dwelling Unit Requirements & Reuse of Existing Structures



The issues regarding possible conversion of existing structures in this district to housing are somewhat minimized by how few existing out buildings exist that could be converted to housing, and, of those, how many people would be willing to place affordability restrictions on those units.

Amend Division 30 (Affordable Housing)

(1) Provide Additional Density through Incentives
I believe there were no additional questions or information regarding this item.

(2) Add Workforce Housing Requirement (Inclusionary Zoning)
Based on your comments and public comments, I have made some changes to the draft amendments to Division 30. The changes, marked in red on the new draft, are as follows:

- Eliminating Planning Authority approval from the determination to provide off-site units;
- Providing two options for area or time limitations on the ordinance. Option 1 would provide geographic constraints on where the ordinance would apply. Option 2 would sunset the ordinance after six years;
- Suggesting additional language to clarify how the size of affordable workforce units would be determined. Under the suggested language, the total number of bedrooms in the affordable workforce units would be proportional to the overall number of bedrooms in the development. In addition, if large open-floorplan market rate units were built, they would be converted into units with a certain number of bedrooms for the purposes of this determination. Other methods of making this determination are possible as well;
- Clarifying how the affordability might be affected by a decision to convert the ownership structure of a development from condominium to rental. This change would clarify that, in this situation, the affordability threshold would convert from the ownership level to the rental level.

One additional comment that has come up relates to whether having an inclusionary workforce housing requirement begin at 10 units may result in developers deciding to produce 9 unit projects rather than larger ones, therefore reducing the amount of housing developed. However, as drafted, these changes would discourage that response. The draft ordinance provides for a 25% bonus for developments subject to the inclusionary requirement. Therefore, a developer could produce 9 units without any requirement, or 12.5 (10 + the 25% bonus) units with a 10% inclusionary requirement. The net result would be the ability to build an additional 1.25 market rate units in return for meeting the inclusionary requirement.

You also asked for a chart comparting the plusses and minuses of rentals and home-ownership units at various income levels. That chart is on the following page. I have also added some information on the current Area Median Incomes at various household sizes, and the equivalent affordable rents or mortgage costs.

Affordability Level	*Rental Units*	*Home Ownership Units*
80% of Area Median Income or less	Most likely to prefer a rental situation where unexpected costs are minimized; able to keep up with housing expenses	Least able to afford a mortgage payment and unexpected maintenance expenses
100% of Area Median Income	Depending on circumstances, may prefer a rental situation to home ownership	Generally able to afford a mortgage payment and unexpected maintenance expenses
120% of Area Median Income	Some may prefer rental situation if transient, or simply not interested in ownership. Many will want to own. Has the benefit of tying the income levels to Affordable Housing TIF levels if a project meets the 33% minimum requirement, rather than a minimum 10%	Most able to afford a mortgage payment and unexpected maintenance expenses. Has the benefit of tying the income levels to Affordable Housing TIF levels if a project meets the 33% minimum requirement, rather than a minimum 10%.

A related question that came up was whether to tie the affordability levels in this ordinance to the 120% limit in the state's Affordable Housing Tax Increment Finance program. While the current draft of the ordinance allows for such a limit for home ownership units, it has a limit of 100% of AMI for rental units. This approach raises some issues. First, the need for affordable rentals is higher at the 100% AMI level than the 120% AMI level. Second, the state's Affordable Housing TIF requires that at least 33% of the units in a TIF area be affordable at those levels. In short, there will inevitably be some differences between the use of the Affordable Housing TIF tool and any possible inclusionary zoning ordinance, whether the affordability levels are linked or not.

Median Income	**FY 2015 Income Limit s**	**Persons in Family**							
		1	**2**	**3**	**4**	**5**	**6**	**7**	**8**
$77,100	**80% Income Limits**	$ 43,200	$ 49,400	$ 55,550	$ 61,700	$ 66,650	$ 71,600	$ 76,550	$ 81,450
	Housing Expense at 30% of Income	$ 1,080	$ 1,235	$ 1,389	$ 1,543	$ 1,666	$ 1,790	$ 1,914	$ 2,036
	100% Income Limits	$ 53,970	$ 61,680	$ 69,390	$ 77,100	$ 83,268	$ 89,436	$ 95,604	$ 101,772
	Housing Expense at 30% of Income	$ 1,349	$ 1,542	$ 1,735	$ 1,928	$ 2,082	$ 2,236	$ 2,390	$ 2,544
	120% Income Limits	$ 64,932	$ 74,208	$ 83,484	$ 92,760	$ 100,181	$ 107,602	$ 115,022	$ 122,443
	Housing Expense at 30% of Income	$ 1,623	$ 1,855	$ 2,087	$ 2,319	$ 2,505	$ 2,690	$ 2,876	$ 3,061

The issue of using the Affordable Housing TIF as a way to encourage additional workforce housing is worth exploring further. There is a memo on this issue that will be discussed separately. To summarize staff view on this issue, this is a tool that should be part of our strategy but it is not likely that it will accomplish the same goals as an inclusionary zoning requirement, in part because the Affordable Housing TIF sets a minimum percentage of affordability at 33%, rather than the 10% outlined in the draft ordinance. The Affordable Housing TIF also does not appear to have a fee-in-lieu or cash out option, as proposed in the draft ordinance.

Portland Development Corporation (PDC)

You also asked if the Portland Development Corporation might be able to play a role in producing more workforce housing in the City. I have consulted with Greg Mitchell, who staffs the PDC, and he offered the following thoughts.

PDC Overview. The Portland Development Corporation (PDC) was established by the City Council as a 501(c)3 non-profit organization per their By-laws "to receive donations and contributions in support of the City of Portland economic development efforts that enhance and create business and employment opportunities." The PDC Board includes eleven members, nine of whom are appointed by the City Council and two members including the Mayor or City Council member and City Manager serve by virtue of holding their positions. PDC assets include $3.2 million in loan and grant "gap financing" sources across a number of programs designed to stimulate and leverage private sector investment associated with job retention/creation. PDC programs have been capitalized with city debt, state and federal sources.

PDC Possible Housing Role. The PDC Board at their March, 2015 Board meeting, was approached and agreed to move forward with discussion and action on playing an intermediary property ownership role to support the proposed 65 Munjoy Street residential condominium Project. The PDC's intermediary role is planned to include PDC property ownership of 65 Munjoy Street, during site environmental clean up only, to provide access to federal grant funds which otherwise could not be invested in cleaning up contaminated city property. I note that the City Council has final decision authority on PDC real estate matters. The PDC justification to become involved in the 65 Munjoy Street Housing Project is due to the city's ownership of the property and the recognition that housing is economic development. It is expected that the City/PDC/ 65 Munjoy Street Housing Project partnership documents will be presented to the PDC Board and City Council for review and action during the next sixty days. Other than this one situation, the PDC commercial loan and grant programs have not invested in housing projects nor has the PDC played a role to support housing development. Therefore, a policy discussion with the PDC Board is needed to determine the Board's interest to play an expanded role in housing program/project investment. This discussion should include the need to establish possible housing programs with funding to assist multi-family property owners to comply with life safety code requirements and create new workforce housing incentive programs which are complimentary to existing city, local and state housing agency housing programs.

In brief, while there may be a limited role for PDC to play in workforce housing, it would likely be limited at this time to serving as a holding company for land when needed, rather than a proactive lending approach. The PDC's funds are intended for commercial and industrial users.

DIVISION 30. ~~INCENTIVES FOR~~ AFFORDABLE HOUSING

Sec. 14-484. 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 offer incentives to developers to include units of affordable housing within development projects, thereby mitigating the impact of market rate housing construction on the limited supply of available land for suitable housing, and helping to meet the housing needs of all economic groups within the City. The City believes that this Division will assist in meeting the City's comprehensive goals for affordable housing, in the prevention of overcrowding and deterioration of the limited supply of affordable housing, and by doing so promote the health, safety and welfare or its citizens.

Sec. 14-485. Definitions.

"Affordable" means that the percentage of income a household is charged in rent and other housing expenses, or must pay in monthly mortgage payments (including insurance and taxes), does not exceed 30% of a household's income, or other amount established in City regulations that does not vary significantly from this amount.

"~~Affordable~~ Low-income housing unit for rent" means a dwelling unit for which: (1) the rent is affordable ~~to~~ a household earning 80% or less of ~~the U.S. Department of Housing and Urban Development moderate-income figure for Metropolitan Cumberland County Maine for a household of that size~~Area Median Income (AMI) as defined by the U.S. Department of Housing and Urban Development (HUD); and (2) 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 moderate-income figure for Metropolitan Cumberland County Maine for a household of that size.

"~~Affordable~~ Low-income housing unit for sale" means a dwelling unit for which: (1) the sale price is affordable to a household earning ~~120~~80% or less of the ~~U.S. Department of Housing and Urban Development moderate-income figure for Metropolitan Cumberland County Maine for a household of that size~~HUD AMI; and (2) the resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit to an amount that is affordable to a household earning 120% of the U.S. Department of Housing and Urban Development moderate-income figure for Metropolitan Cumberland County Maine for a household of that size, as calculated for the year in which the sale takes place.

"Development fees" means: (1) the following fees, as described in this chapter: site plan review and inspection fees; subdivision review and inspection fees; condominium conversion permit fees; and administrative fees; and (2) construction and permit fees as described in chapter 6. "Development fees" does not include any fees charged for reviews conducted by a party other than the City.

"Dwelling unit" has the same meaning as that term is defined in section 14-47.

"Eligible project" means a development project: (1) to which the City has not committed nor will commit any funding, reduced-interest loans or other subsidies or incentives other than those described in this Division; and (2) that creates new dwelling units, among which is at least one affordable housing unit for rent or 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. Affordable housing units for sale or rent may not differ in exterior design from other units within an eligible project.

"Workforce housing unit for rent" means a dwelling unit which: (1) Is affordable to a household earning less than 100% of HUD AMI and (2) Annual rent increases for that unit are limited 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.

"Workforce housing unit for sale" means a dwelling unit for which (1) the purchase price is affordable to a household at 120% of HUD AMI and (2) The resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit, or a lesser term as permitted in regulations, to the percentage increase in the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

Sec. 14-486. Reduction of Fees and Priority Review~~.~~

Notwithstanding any other provision of this chapter or chapter 6 to the contrary, development fees shall be reduced by the City for an eligible project in the manner described in the following table:

Percentage of new units that are ~~affordable~~ low-income or workforce housing units	**Percentage discount of development fees**
5% up to but not including 10%	5% reduction
10% up to but not including 15%	10% reduction
15% up to but not including 20%	15% reduction
20% up to but not including 25%	20% reduction
25% or more	25% reduction

~~Sec. 14-487. Priority Review.~~

The Planning Division shall perform its review of an eligible project in as expedited a manner as is practical. The Planning Division may adopt administrative procedures to prioritize review of eligible projects and facilitate this expedited review.

The Planning Board shall make its best efforts to hear, review, and approve, conditionally approve or deny within one workshop and one public hearing any plans or applications required for an eligible project that are within the Planning Board's jurisdiction, and shall rely on reviews prepared by the Planning Division to the greatest extent practical and appropriate. At the conclusion of these public meetings, the Planning Board shall promptly issue a decision on all such plans and applications before it for consideration.

Sec. 14-487. Ensuring Workforce Housing.

1. Purpose

Based on the City's Comprehensive Plan and the housing study completed in 2015, the City believes that it is in the public interest to promote an adequate supply of housing that is affordable to a range of households at different income levels.

The purpose of this section is to ensure that ~~large~~ housing developments over a certain size provide a portion of workforce housing units, and by doing so, promoting the health, safety, and welfare of Portland citizens.

2. Applicability
This division shall apply to development projects that 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. This division shall not apply to projects that have submitted complete Master Development Plan, Level III Site Plan, or comparable applications to move forward prior to its effective date.

OPTION 1
[This section 14-487 shall only apply to developments located [in business or industrial zones] [on the Peninsula, defined as south of I-295]]

OPTION 2
[This section 14-487 shall be in effect for six years following its passage, at which time the overall effectiveness of this section shall be assessed and either this expiration date shall be deleted or the entire section shall be removed from the City's Code of Ordinances]

3. Workforce Housing Minimum
At least ten percent of the units in the project shall meet the definition of workforce housing unit for sale or for rent. The number of units required is rounded down to a whole number if providing units as per 4.b. below, or shall include a fractional value in cases where a project prefers to pay a fee-in-lieu as per 4.c. below.

4. Standards
a. Projects shall not be segmented or phased to avoid compliance with these provisions. In cases where projects are completed in phases, affordable units shall be provided in proportion to the development of market rate units unless otherwise permitted through regulations.

b. Workforce units are encouraged to be integrated with the rest of the development, should use a common entrance and should provide no indications from common areas that these units are workforce housing units. ~~Subject to planning authority approval, p~~Provision of units off-site shall also be considered as meeting these standards, provided these units are located in the same neighborhood, defined as same U.S. Census Tract unless otherwise defined in regulations.

c. Workforce units need not be the same size as other units in the development but the number of bedrooms in such units, either on- or off-site, shall be 10 percent of the total number of bedrooms in the development~~ they must have the same general mix of number of bedrooms as the other units~~. For the purposes of this section, for every 400 square feet in a market rate unit will count as a bedroom if the actual number of bedrooms in the unit is lower.

d.As an alternative to providing workforce housing units, projects may pay a fee in lieu of some or all of the units. 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 fee under Division 29 for Housing Replacement.

e.Workforce housing units for sale, if converted to workforce housing units for rent, shall become subject to the income limits and other requirements of such units.

5. Implementing Regulations
Regulations to further specify the details of this section shall be developed, including, but not limited to:

- Specific methodology for income verification;
- Situations where less than permanent affordability might be considered;
- Guidelines for meeting the requirement that off-site units be “in the same neighborhood”.~~;~~

6. Reporting to City Council
In conjunction with the annual report on the Housing Trust, City staff shall report on developments subject to this section, the number of units produced, the amount of fee-in-lieu collected, and the overall effectiveness of this section in achieving its stated purpose.

Sec. 14-488. Density, Parking and Dimensional Bonuses and Reductions.

Notwithstanding any other provision of this chapter to the contrary:

(a) Density bonuses. The maximum number of units that would otherwise be allowed under this chapter shall be increased for an eligible project in the manner described in the following table:

Percentage of new units that are ~~affordable~~ low-income or workforce units	**Percentage increase in maximum number of units allowed**
5% up to but not including 10%	5% increase
10% up to but not including 15%	10% increase
15% up to but not including 20%	15% increase
20% up to but not including 25%	20% increase
25% or more	25% increase
Projects Under 14-487	25% increase

(b) Parking requirement reduction. For each ~~affordable~~ low-income or workforce housing unit for rent or sale within an eligible project, no more than one (1) parking space shall be required. The Planning Board may establish a parking requirement for affordable housing units for rent or sale within an eligible project that is less than one (1) parking space per affordable housing unit, regardless of the size of the structure.

CREATIVE**PORTLAND**ME

April 2, 2015

Kevin Donoghue, Chair
Housing and Community Development Committee
c/o City of Portland Planning Department
Portland City Hall
389 Congress Street
Portland, Maine 04101

Dear Councilor Donoghue:

The Board of Directors of the Creative Portland Corporation met on April 1, 2015 and heard a presentation by Jeff Levine, Director of Planning and Urban Development for the City of Portland, on the status of the Workforce Housing Study and the Proposed Ordinance on Workforce Housing Development. Mr. Levine explained the specific approaches his department is offering, the reasoning behind those approaches and the anticipated effects they might produce.

After discussion, the board of Creative Portland passed a motion (9 to 1, with 4 abstentions) to express support for the proposals being made by Mr. Levine and the Planning Department, and requested that a letter be sent to the Housing and Community Development Committee expressing that support.

Since 2008, Creative Portland has focused on unique strategies to increase Portland's population as a means to support and grow the creative economy. The intention was to attract people who would support creative individuals, enterprises and organizations by becoming their patrons, customers, and advocates, and helping to ensure the creative community's long-term sustainability. Our success has contributed to higher housing costs and a dwindling supply of affordable housing.

At our last board retreat, the Board decided to expand our programmatic efforts by exploring and engaging with issues on equitable development and inclusion in Portland, especially as they pertain to our creative economy and core arts constituency.

Creative Portland supports the Planning Department, the Planning Board, and the City Council in addressing the workforce housing issue in Portland, and, specifically, endorses the ideas Mr. Levine and the Planning Department have put before you.

Thank you for your time and consideration.

Sincerely,

Jennifer Hutchins

Jennifer Hutchins
Executive Director

PORTLAND
COMMUNITY CHAMBER
In Partnership with the Portland Regional Chamber

Preliminary Findings

By the Portland Community Chamber

For the City of Portland Housing and Community Development Committee

March 31, 2015

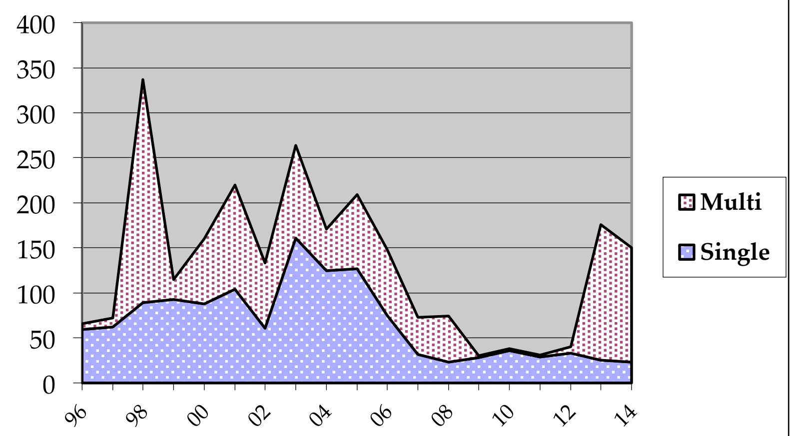
I. The Importance of Production to the Goal of Affordability

Portland is undergoing the potential beginnings of a boom in housing production. As attorney Paul Peck said at the groundbreaking of West End Place in May of 2014, "There hasn't been a market-rate apartment building built in Portland in a long, long time."

It has been a long time. The last major private apartment complex built in Portland was Back Bay Towers, erected 25 years ago. Before that, most activity had been in the 1970s, in various projects around the Back Cove and along Washington Avenue.

The word "boom" has a negative connotation in the public mind. It is associated with stock market speculation and crashes. But in housing, there is nothing wrong with booms. That is the way housing production occurs. Without booms, there would be little housing at all. Portland had a housing boom in the late 90s and early 2000s, and, with luck and supportive public policy, one may be starting again this year.

Figure 1: Housing permits in Portland (units)



Booms are fragile. They may only last a few years. They provide a window of opportunity for a community to make progress on its housing goals. Jonathan Culley, a partner in the West End Place project, has pointed out that if interest rates rise by a single percentage point in the next year, the ability of developers to produce market-rate rental projects will again be jeopardized. From the perspective of a community in the midst of a short-term boom, the first caution is not to cut the production short. The production will end soon enough on its own.

Production is essential to having an affordable stock for all residents. The Greater Portland Council of Governments, in a report prepared for the City of Portland[1], has estimated that the rate of housing production in Portland will need to be double the rate of the 2000s in order to meet the expected "medium" level of demand (see Figure 2).

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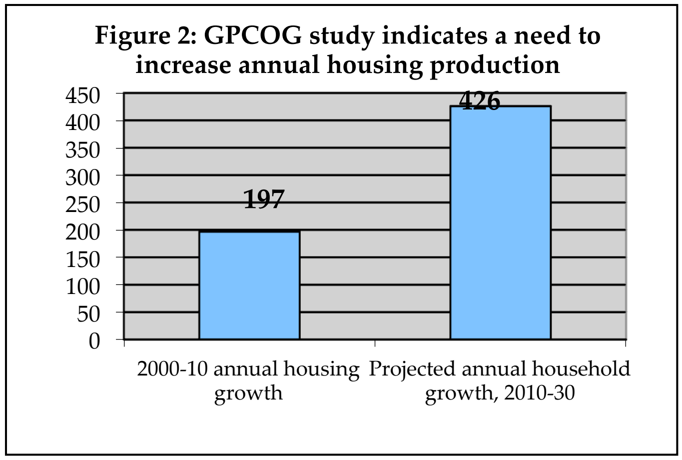
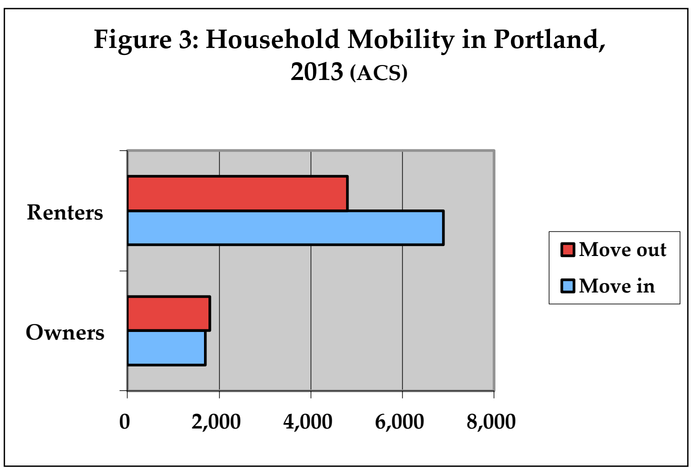
[1] Portland: 2030 Workforce Housing Demand, GPCOG, 2015.

[2] "Perspectives: The 'Trickledown' Effect; Freeing Older Housing with New," New York Times,

The current recovery, as of 2014, is still only meeting half of the GPCOG-projected level of supply needed (see Figure 1).



Why does it matter to affordability whether production is sufficient to meet new demand? It matters because when new supply keeps pace with or exceeds demand, people in the local market are able to "move up" or "upgrade." When a local household moves into a new unit, it frees up an existing home or apartment, which in turn another household can benefit from. The general consensus is that 2.0 to 3.5 households can benefit from one move into new housing[2].



However, the reverse is also true. If new demand exceeds new supply, then the higher income household is likely to move "down" into a less desirable unit. This in turn displaces lower income people, and the process known as "gentrification" occurs.

There's a lot of movement every year in the City of Portland. In 2013, the Census estimates that 40% of renters were on the move, and 13% of owners. In the case of renters, more households moved into the city than moved out. If production of rental housing does not meet the net new demand over the coming years, affordability for all Portland households will suffer. That is why the first requirement of an affordable housing strategy is to maintain an adequate level of production.

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[2] "Perspectives: The 'Trickledown' Effect; Freeing Older Housing with New," New York Times, Alan Oser, August 31, 1986 and "'The Economics of Inclusionary Zoning Reclaimed:' How Effective are price controls?" Powell and Stringham, Florida State University Law Review, 2005, pp 496.

II. Questions about Inclusionary Zoning

Inclusionary zoning is, in simplest terms, a tax. It is a tax on market-rate units, with the revenues used to subsidize rents or purchase prices of affordable units. Sometimes it is also referred to as a "price control," since it involves government setting the price for a given product.

From the point of view of economic theory, the consequences of a tax are clear. A tax can be expected to reduce the supply and raise the price of the good in question.

Of course, the real world does not always follow economic theory. Inclusionary zoning has been practiced in the Washington, DC area (particularly Montgomery County) and in California for several decades now. As inclusionary zoning is not practiced by every county or municipality in metropolitan DC or California, this situation creates the conditions for a natural experiment. How do the housing markets perform in inclusionary zoning jurisdictions compared to similar jurisdictions next door that don't have inclusionary zoning?

There are many complications in making such an analysis. Inclusionary zoning ordinances vary in their requirements from one community to another; and in fact, in a longitudinal study, they may vary considerably within the same community from year to year. Housing markets can vary from town to town; Cape Elizabeth is near to Portland, but it is hard to say that their markets behave in similar ways.

With these caveats in mind, two studies in particular have been done, one in California and one in Massachusetts, which have attempted to scientifically address these concerns. This is what the studies have found.

1. There is no conclusive evidence that inclusionary zoning ordinances have affected the overall production of units.

There are anecdotal stories of inclusionary zoning ordinances in particular communities that were poorly designed and that discouraged housing production. One example is Watsonville, California.

> *In 1990, the City (Watsonville, California) passed a law imposing price controls on 25% of new homes. The law was so restrictive that between 1990 and 1999, with the exception of a few small, nonprofit developments, almost no new construction occurred….*

> *Watsonville Mayor Judy Doering-Nielsen said, "Our inclusionary zoning ordinance was so onerous that developers wouldn't come in"… After a decade with no new developments, construction began on a 114-unit development, a 351-home development, a 389-unit development and a number of smaller developments, once affordable housing requirements were lowered."*[3]

However, the California study of 65 communities with inclusionary zoning ordinances found that inclusionary zoning programs had a "small and insignificant effect" on total housing starts[4] (the Massachusetts study did not address overall production, only single family production, as is noted in the next point).

2. There is evidence that inclusionary zoning ordinances depress the volume of market rate single family production.

The California study found that there was a 10% shift from multi-family to single family production in inclusionary zoning communities.[5] The Massachusetts study found that communities with inclusionary zoning issued 10% fewer single family permits than non-inclusionary-zoning communities[6], but additional analysis raised questions about whether this difference could be attributed to differences in local markets.

There certainly is anecdotal evidence that affordable housing ownership programs are more difficult to administer and manage then affordable housing rental programs, and this might contribute to the reported shift away from single family owner housing reported above. An extreme example was reported in the Washington Post last fall:

> *Since 2011, flawed rules and official ineptitude have blocked Linde from selling a pair of two-bedroom condos in a building she owns on Georgia Avenue NW near Howard University. There's no problem with the asking price or location. Rather, the District required him to sell the units as affordable housing to winners of a lottery for low-income residents – yet the City has repeatedly failed to meet its obligation to provide a qualified, interested buyer… He said that the District has given him more than 1,000 names of potential buyers, but none worked out. Some couldn't get mortgages or provide the necessary paperwork… an eligible buyer could have purchased one of his units in 2011*

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[3] Powell and Stringham, pp 480-481.

[4] "Housing Market Effects of Inclusionary Zoning," Bento et al, Cityscape: A Journal of Policy Development and Research, 2009, page 16.

[5] Ibid., page 17.

[6] "Silver Bullet or Trojan Horse? The Effects of Inclusionary Zoning on Local Housing Markets in Greater Boston," Schuetz et al, Harvard Kennedy School Rappaport Institute for Greater Boston, 2009, page 5.

> *for $124,900, compared with an actual sales price for an identical unit in the same building of $299,900.. Since the program began in 2009, the number of people who have used it to buy homes is only four, with three more deals under contract. One reason is that only a sliver of people have incomes that are simultaneously low enough to qualify for affordable housing – and high enough to get a mortgage.*[7]

HUD-sponsored research has raised a different problem with prospective buyers – they don't like the limitations on making money on the resale of the home:

> *A housing advocate shared anecdotal information about the drawback of the homeownership component of the ADU program. When the economy and housing markets were strong, some prospective buyers did not want to participate in the program because of the limit placed on the resale price and the requirement to share equity with the County.*[8]

Affordable housing providers at the Portland Chamber meetings reported that these kinds of issues have been experienced by Maine projects as well. One said that the group that fits the criteria for buying such homes is just a "sliver" of the market:

- well enough off to have savings for a downpayment and qualify for bank financing;
- low enough in income to qualify for the program; and
- not able to buy a comparable private unit where the full appreciation of the home value could be gained.

3. There is evidence that inclusionary zoning ordinances raise the general housing market inflation rate.

In the case of Massachusetts, the researchers found *that "Prices in jurisdictions with IZ programs in place for 5-14 years are 3.75 to 3.95 percent higher than prices in similar jurisdictions with very recent or no IZ programs."*[9] In California, the researchers reported that *"…our estimates indicate that inclusionary zoning programs raise housing prices by approximately 2.2%."*[10]

In essence, in these cases the two effects of the inclusionary zoning ordinance work at cross purposes. One effect of the ordinance is to produce units at costs below the

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[7] "Flawed DC housing program sticks developer with 2 unsold condos for 3 years," Washington Post, Robert McCartney, November 1, 2014.

[8] "Expanding Housing Opportunities through Inclusionary Zoning: Lessons from Two Counties," The Urban Institute, published at HUD User online, 2012, page 46.

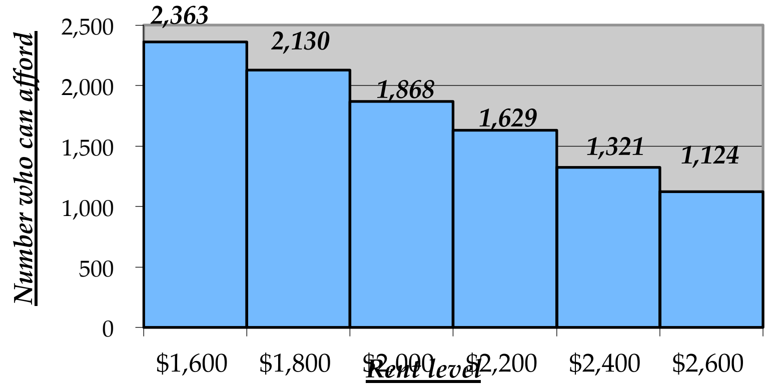
[9] "Silver Bullet," page 5.

[10] Bento et al, page 18.

market average. The other effect is to raise the market average more than it would otherwise increase.

In thinking about this effect in Portland, consider the number of renters who can afford housing at different rent levels (see Figure 4).

Figure 4: The Higher the Market Rent in Portland, the fewer who can afford it



A unit built at $1,600/month can be afforded by 2,400 Portland renters. But raise the rent by $200, and 200 fewer households can afford it. Raise it by $1,000 a month, and only 1,100 Portland renters can afford it. City policies need to be designed in ways that don't push market rates up the scale.

Sometimes when people talk about inclusionary zoning, they assume that any additional cost burdens that it causes will be borne by the developer. This is not likely to be the case, for the reasons explained below.

The additional costs imposed on a development can be made up in several ways: by raising market rental rates, by reducing the overall quality of construction, by reducing the rate of return to investors, or by reducing the price to the party who is selling the land. Of all of these options, raising the rents is the simplest. Investors and land sellers want to get a certain rate of return, regardless of the developer's problems. Reducing the quality of construction – while it can and does happen – makes units harder to sell. Raising market rate rents is the path of least resistance. This is the reason that inclusionary zoning ordinances are associated with higher rates of housing inflation.

4. The evidence shows that affordable housing gains from inclusionary zoning are modest.

Of the 99 communities in Massachusetts with inclusionary zoning who were surveyed in 2008, only 21, or a fifth, reported having had some affordable units built.[11] Of the

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[11] "Silver Bullet," page 4.

remainder, 43 reported having had no affordable units built, and 35 didn't know if any had been built at all.
Most of these communities were newer to inclusionary zoning. In the San Francisco area, where inclusionary zoning rules were adopted somewhat earlier (median of 1992), almost all of the 65 municipalities reported that some affordable housing was built. Still, the median annual production of affordable housing for each municipality was only 9 units per year.[12] In short, inclusionary zoning ordinances produce no new affordable housing in many municipalities, and when they do produce new affordable housing, the numbers are very modest.

Key lessons from inclusionary zoning experience
An excellent study of the effects of inclusionary zoning was distributed by the Portland Planning staff to the Council's Housing and Community Development Committee in January. Its title is "The Effect of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas."

After reviewing the data from these areas, the paper concluded by listing "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."[13] A few of their major points:

- *Inclusionary zoning is not a panacea for solving a community's housing challenges… communities should think of IZ as one piece of a broader and more comprehensive housing strategy, rather than as a stand-alone policy response.*

- *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.*

- *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.*

- *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*

[12] "The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC and Suburban Boston Areas," The Center for Housing Policy and the Furman Center for Real Estate and Urban Policy, page 7
[13] "The Effects," page 9.

policies to ensure that IZ policies fully compensate for losses associated with below-market units.

- *Cost offsets need to work in practice, and not just on paper.*
- *Broad-based consultations with stakeholders may be helpful in designing effective policies and monitoring their implementation.*

At this point, the Housing and Community Development Committee has an inclusionary zoning concept, with requirements and in-lieu fees and other details, but does not have a clear analysis explaining the effects of these requirements and fees on production and prices in the broader housing market. While the intent of the proposed ordinance is praiseworthy – increasing the number of affordable units in Portland -- there may be unintended consequences of the ordinance that reduce the supply of available housing in the market.

The following information could help:

1. An assessment of land that can be developed for new housing in the next 10 years in ways that are compatible with neighborhood values and scale (if such an analysis does not already exist); and

2. An economic study of the supply side costs of new housing development in Portland (to complement the demand-side study done by GPCOG), in order to get a better understanding of where incentives might be most effective (a good model of such a study was done in Sarasota, Florida in 2006[14]).

This does not contemplate years of study. These two reports could be performed over the spring and summer, and in the fall the City could use them to highlight its goals and outline its strategy. The City could also use the fall as the opportunity to engage the public to determine whether reform as drastic as inclusionary zoning is needed, and if so what precise design would cause the fewest unintended consequences and the least harm.

The Affordable Housing TIF Opportunity

[14] See http://www.sarasotagov.com/PDF/NDS/2006%20ERA-CompPlan-Downtown%20DensityReport%20.pdf

A TIF (tax increment financing) is a tool that enables a community to capture the increased property tax revenues from a development to use for special purposes. In the process, the TIF structure shields the community from the increases in county taxes and reductions in state aid that usually accompany new property tax revenues.

The TIF for economic development is commonly used in Maine, There is also a TIF for affordable housing which is less well known and less commonly used. We believe a more aggressive use of the Affordable Housing TIF could contribute to more affordable housing in a variety of ways in Portland, including by being a constant source of funds to replenish housing trust fund coffers.

When the economic development tax increment financing tool was introduced in Maine in the 1980s, it was seen as a specialized tool, only to be used for an expanding business that needed additional public infrastructure, like a sewer line extension. It was only used rarely. Over the years, municipalities saw that the tool could be adapted to meet a number of broader community redevelopment needs, such as downtown renewal, and its use has ballooned. Today the affordable housing TIF is in somewhat the same position as the economic development TIF was in during the 1980s. It is a new tool, with its use largely limited to assisting in the financing of low income tax credit projects. But its potential is much greater.

The affordable housing TIF can be used to financially support housing or neighborhoods in which one-third of the residents have incomes no more than 120% of median. The funds it generates can be used to subsidize rents for lower-income households; or to provide infrastructure for the project; or to replenish the housing trust fund; or to support child care or other social services; or to provide infrastructure elsewhere in the community in support of affordable housing.

Currently the only significant affordable housing tool in Maine is the Low Income Housing Tax Credit, and it is funding 6 projects statewide in 2015, with around 300 units. The affordable housing TIF could support this level of activity in a single community, if the market and administrative support was there. In Portland Oregon, for example, affordable housing TIF generated roughly $20 million a year between 2010 and 2014. Translating this to Portland, Maine (one-tenth the size of Portland Oregon), this would be a revenue source of $2 million/year.[15]

[15] See https://www.portlandoregon.gov/phb/article/510208

CITY OF PORTLAND, MAINE
PLANNING BOARD

April 8, 2015

Housing and Community Development Committee
Kevin Donoghue, Chair
City Hall
Room 209
389 Congress St.
Portland, ME 01401

Chairman Donoghue and Councilors Brenerman, Mavodones and Marshall,

I have been asked to comment on the package before you this evening regarding ordinance changes to encourage and ensure housing development in the Portland, specifically, whether the package has progressed to a stage where it is ready for Planning Board review and whether it provides sufficient guidance for the Planning Board to undertake a thorough analysis. After reviewing the latest package before you this evening, I feel confident that the materials and instructions are sufficiently developed for the Planning Board to schedule a workshop and begin to formulate a recommendation. The package reflects the extensive work completed by your committee to date, which makes our task more manageable.

The Planning Board's role in this process is laid out in Section 30 of Chapter 14 of the Code of Ordinances. Section 30 states that the Planning Board has the jurisdiction and authority, "to hear, review and offer its recommendations to the city council on applications for zoning changes and amendments to, or revisions of, the zoning ordinance and to initiate recommendations for zoning changes and amendments to, or revisions of, the zoning ordinance." As with any revision or amendments to the land use code, whether from a property owner or your committee, the planning board works with staff to establish a schedule for outreach and input on the changes including a variety of neighborhood meetings and/or workshops, makes a determination on the proposal with or without amendments and returns that recommendation to the council to aid in your decision making. The recently completed B-2 and R-6 processes provide an excellent blue print for how we should go about gathering additional input, testing and/or refining this package of changes. As I mentioned, in this case, there has already been a great deal of work undertaken to develop this proposal, which will clearly help to inform the Planning Board of the various opportunities, costs, strengths and weaknesses of the proposals from the viewpoint of variety of constituencies.

The City Council has been clear in its guidance to us that increasing the amount and diversity of housing supply is a priority, this proposal clearly articulates this; however, it is also clear from your process that in working toward this goal the HCDC is focused on achieving the proper balance between regulatory and market mechanisms. I don't make any comment on the contents of this specific package, other than to say it is at a point where we can undertake our review, gather additional community input and return to you with a recommendation.

Finally, the Planning Board has focused on increasing the level of predictability, clarity and efficiency in Chapter 14 and in general looking to modernize the zoning in Portland to meet the needs of the city going forward. A key requirement of zoning is to provide a coherent and concrete regulatory structure to achieve the goals of the Comprehensive Plan. We seek to advocate for zoning that treats similarly situated properties similarly, that allows for consistent interpretation and that provides for an understandable process for both project proponents and affected neighborhoods. We have attempted to rigorously test zoning language to make sure the language is precise, accessible and not overly burdened. In taking this approach, we have focused on the efficiency of the requirements and process. Inefficient process increases capital costs that in most cases are better allocated elsewhere. Efficient process does not mean less rigorous, transparent or comprehensive, but having a system where issues and concerns are able to raised, to be thoroughly addressed and a clear decision is reached promptly after properly weighing that input. I see this package as another potential step to achieving these priorities as well.

I apologize for being unable to attend the meeting this evening. Please feel free to contact me with any questions or comments.

Sincerely,

Stuart O'Brien
Chairman,
Portland Planning Board

Mary Davis
Division Director, Housing & Community Development Division

TO: Councilor Donoghue, Chair
Members of the Housing and Community Development Committee

FROM: Mary Davis, Division Director
Housing and Community Development Division

DATE: April 3, 2015

SUBJECT: Affordable Housing Tax Increment Financing Program

Affordable Housing Tax Increment Financing (AHTIF)

This is a tool used by municipalities in Maine to assist in the development of affordable housing projects. The legislation can be found at M.R.S.A. Title 30-A Chapter 206 §5245 through §5250-G. The Maine State Housing Authority is the governing authority.

Under the statute, affordable housing is defined as a "decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 120% of the median income for the area". Income limits are defined by the U.S. Department of Housing and Urban Development.

FY 2015 Income Limit Category	Persons in Family							
	1	2	3	4	5	6	7	8
120% Income Limits	64,932	74,208	83,484	92,760	100,181	107,602	115,022	122,443

Designated districts can be site specific or area-wide and must increase the amount of affordable housing or improve the health, welfare or safety of residents. Districts have to be primarily residential with at least 25% of the property within a district that is (1) suitable for residential use; (2) a blighted area; or (3) in need of rehabilitation or redevelopment. Thirty-three percent (33%) of the dwelling units within the district must be affordable.

Allowable Project Costs within the District:

1. Capital costs - acquisition of land, construction of public infrastructure, demolition, remodeling, repair of existing buildings, site prep, finishing work licensing,

permitting fees, planning, architectural, engineering, testing, legal and accounting expenses.

2. Financing costs - closing costs, administrative costs (municipal staff time to implement the development program), relocation costs, organization costs to establish the development program such as environmental studies and public notification, costs of recreational facilities, costs of child care (financing, construction, staffing, training, certification related to child care located in the district), case management and supportive services, and operating costs such as property management, utilities, repairs, maintenance, insurance real estate taxes, funding project capital reserve account;

Costs of improvements outside of the district have to be directly related to or made necessary by the improvements in the district. These can include:

1. Costs of construction, expansion or alteration of facilities not located with the district but required due to activities within the district – sewage treatment plants, water treatment plants, storm or sanitary sewer lines, water lines, electrical lines, improvements to fire stations, amenities on streets.

2. Public safety improvements made necessary by the district.

3. Costs of funding to mitigate any adverse impact of the district upon the municipality (public school K-12 costs and public facilities and improvements).

4. Costs to establish a permanent housing development revolving loan funds or investment fund.

   TIF revenue used for this purpose must be used for the development of affordable permanent housing (shelters, nursing homes, dormitories, residential treatment facilities, correctional facilities, etc. are not considered eligible types of permanent housing) anywhere within the City of Portland. The housing developed must be affordable to households earning no more than 120% AMI. Loans made through this fund must be repaid to the City and used for additional loans for the development of affordable permanent housing. The City has established, through the Avesta 409 Cumberland Avenue AHTIF and the Pearl Place Phase I AHTIF, an Affordable Housing Revolving Loan and Investment Fund. This fund is separate from the City's Housing Trust Fund. Based on the revenue designated by the district programs mentioned above, the fund will eventually receive approximately $50,000-$60,000 annually.

Funding Mechanisms

There are various mechanisms that can be used to fund approved project costs. The City can issue bonds or notes to finance project costs, provide a credit enhancement agreement to the developer to pay approved costs or reserve revenue to pay for public improvements, public facilities or other approved costs without issuing debt.

Area-Wide Affordable Housing TIF

The concept of a designated area-wide AHTIF has been discussed. I am awaiting guidance from Maine State Housing Authority on this topic. It is unclear from the language in the state statute if the designation of an area-wide affordable housing TIF must be tied to specific development(s). I expect to have information on this topic available at the April 8th meeting.

Existing Affordable Housing TIF

Avesta Pearl Place Phase I – Oxford and Pearl Streets
Duration: 30 year term (FY08 through FY37
Credit Enhancement Agreement that returns a maximum of $22,000 annually to the developer and used to cover debt service. The council approved an amendment that allows additional revenue to be returned to the City in an Affordable Housing Revolving Loan and Investment Fund and a portion to the school system to offset impacts from the development.

Avesta 409 Cumberland Avenue – Forest and Cumberland Avenue
Duration: 22 year term
Credit Enhancement Agreement that returns 50% of the annual revenue to the Developer for project operating costs; remaining 50% is reserved to the City in an Affordable Housing Revolving Loan and Investment Fund.

Avesta 134 Washington Avenue
Duration: 20 years
Credit Enhancement Agreement that returns 50% of the annual revenue to the Developer for project operating costs.

Low Income Housing Tax Credit Program

The Low Income Housing Tax Credit Qualified Application Plan (QAP) is the applicaton process by which Maine State Housing Authority allocates low income housing tax credits. The QAP requires that a minimum of 50% of the annual incremental property tax revenue be returned to the developer to pay operating costs for a minimum of 15 years. The scoring matrix provides 3 points for an application which benefits from a reduction in operating costs from tax increment financing. In a process that is highly competitive, these points can be the deciding factor for a project to receive low income housing tax credits.

Portland Oregon TIF Program

As mentioned in the report The Housing Challenge Portland, Oregon utilizes TIF revenue to finance affordable housing development. The TIF revenue is generated through designated Urban Renewal Districts throughout the city. Thirty percent (30%) of the revenue generated in Urban Renewal Districts is set-aside in an affordable housing fund and is used to "…ensure predictable and adequate funding and prioritization of housing…" for households earning at or below 100% of the area median income.

The Urban Renewal Districts are areas that are "..physically deteriorated, suffering economic stagnation, unsafe or poorly planned." The City uses the TIF revenue generated in these districts to finance capital improvements such as parks, streetscape improvements or community centers. In Oregon, the urban renewal program is authorized by the state.

The Portland, Oregon TIF program is not an affordable housing TIF program like the one in Maine. It is a general TIF with revenue set-aside to finance affordable housing development.

Conclusions:

While the Affordable Housing TIF program is a valuable resource available to the City to assist with the creation of affordable housing, it is not the sole answer to accomplishing Portland's housing goals. Used in combination with other tools, it can continue to be an effective part of our housing strategy.

Attachments
Explanation and History of Affordable Housing TIF Set-Aside in Portland, OR

AFFORDABLE HOUSING TIF SET ASIDE Q&A

WHAT IS "TIF"?

Tax Increment Financing (TIF) is the primary funding mechanism for urban renewal in Oregon and Portland. It helps fund many public projects, including affordable housing development. It is a revenue source based on local property taxes that is limited to funding the physical development of property ("bricks and mortar") for the purposes of urban renewal – including infrastructure (streets, utilities, etc.), commercial development, housing, and economic development projects.

WHAT IS THE "TIF SET ASIDE" FOR AFFORDABLE HOUSING?

It is a policy adopted by the Portland Development Commission (PDC) and Portland City Council that requires PDC to spend a minimum percentage of its total tax increment resources in urban renewal areas (URA) on eligible affordable housing activities.* The Airport Way and Willamette Industrial urban renewal areas are exempt from the policy. In most of the other URAs, the policy requires spending 30 percent of total TIF resources for affordable housing. Many other communities, including the state of California, have TIF set asides for affordable housing.

WHY DID PDC AND THE CITY ADOPT THE TIF SET ASIDE POLICY?

The City and PDC have very broad and diverse revitalization goals, and TIF is a key resource for meeting those goals. Ensuring that affordable housing options remain in Portland's neighborhoods as revitalization occurs and property values increase is an important part of the City's urban renewal strategy. The City Council and PDC adopted the TIF set aside to ensure that affordable housing goals are met in urban renewal areas, and to ensure there is a consistent and predictable level of funding.

In addition, guidelines were adopted to ensure that the focus of the TIF set aside is on implementing two primary City priorities: affordable homeownership in support of families and bridging the minority homeownership gap (Operation HOME), and low-income rental housing for extremely low-income households and formerly homeless individuals and families (the 10-Year Plan to End Homelessness). For more information about affordable housing, see a copy of PDC's ***Affordable Housing Fact Sheet***.

HOW DOES THE TIF SET ASIDE WORK?

The TIF set aside ensures that a certain amount of funding will be available for housing as part of overall urban renewal efforts in nine of Portland's 11 urban renewal areas (URAs). There are guidelines for each URA about how this funding should be spent to meet the citywide housing priorities. The level of funding for different types of housing will be forecast each year as part of PDC's annual budget process.

Investing in Portland's Future

PDC
PORTLAND DEVELOPMENT COMMISSION

WILL THE TIF SET ASIDE CHANGE HOW PDC FUNDS HOUSNG IN NEIGHBORHOODS?

No. PDC has had affordable housing programs for over 40 years. PDC will continue to fund the same type of projects and programs it is known for, including high-quality rental housing construction and rehabilitation, home repair programs, new affordable homeownership construction and homebuyer assistance. PDC's investments in housing will continue to be guided by the adopted urban renewal plans and housing strategies which were developed with community input, as well as citywide housing priorities.

HOW MUCH FUNDING IS AVAILABLE FOR THE TIF SET ASIDE? HOW MUCH HOUSING WILL RESULT?

There is approximately $120 million forecast for affordable housing funding for the next five years (through 2011), which could result in approximately 1,200 to 4,000 new and rehabilitated affordable housing units (both rental apartments and owner-occupied homes).**

The TIF Set Aside has resulted in an increase of approximately 100 percent of TIF dollars for extremely low-income rental housing, and homeownership programs will see a 300 percent increase in funding from past years. Much of the funding for affordable rental housing will focus on rehabilitating and preserving existing low-income apartments.

*Under this policy, affordable housing is rental housing affordable to households earning 60 percent MFI and below ($40,750/year for a family of four or $28,500/year for a single person), or ownership (for-sale) housing for households earning 80 percent MFI and below ($38,000/year for a single person). In the case of families with children, affordable ownership housing is for families earning up to 100 percent MFI ($66,800/year for a family of four). See the **Affordable Housing Fact Sheet** for more information.

**Subject to change.

FOR MORE INFORMATION:

see the PDC TIF Set Aside webpage at www.pdc.us/TIFSetAside.

Investing in Portland's Future

PDC
PORTLAND DEVELOPMENT COMMISSION

222 NW Fifth Avenue, Portland, OR 97209
tel: 503.823.3200 • fax: 503.823.3368

Portland Housing Bureau

Solving the unmet housing needs of the people of Portland.

Phone: 503-823-2375 fax: 503-823-2387 421 SW 6th Avenue, Suite 500, Portland, OR 97204
More Contact Info (http://portlandoregon.gov/phb/article/433750)

History of TIF Set-Aside Policy

On April 26, 2006, through Resolution No. 36404, the City Council expressed an interest in considering a policy "to dedicate a percentage of Tax Increment Financing (TIF) revenues from all Urban Renewal Districts citywide to an affordable housing set aside fund, or to create another mechanism to ensure predictable and adequate funding and prioritization of housing for individuals and families earning 80% Median Family Income (MFI) or less."

Council also "request[ed] the Portland Development Commission work in partnership with the Bureau of Housing and Community Development, the Office of Management and Finance, the Housing and Community Development Commission, and Affordable Housing Now and other interested stakeholders to develop and present to Council by September 1, 2006 either an implementation plan to create such a set aside fund or other options."

The PDC Commission directed staff to create and implement a broad and inclusive public participation effort, consistent with PDC's Public Participation Policy, which reflects perspectives from individuals and groups, including Urban Renewal Advisory Committees, involved in all aspects of tax increment financing, and other stakeholders who would benefit or would be impacted by a specific set or automatic allocation of urban renewal resources for affordable housing.

Tax Increment Expenditure Data Report

A Technical Advisory Committee was established to review PDC's historic information on affordable housing expenditures in the existing URA's as well as developing projections regarding future expenditures. The committee consisted of members representing the following: Mayor, Commissioner Sten, Bureau of Housing and Community Development, Office of Management and Finance, the Housing Development Center, Community Development Network and PDC.

The Technical Advisory Committee was charged with assisting with the Data Report on Historical and Forecasted Urban Renewal Expenditures. Their work was completed during the month of July 2006. Both the PDC Board and the City Council were briefed on their work in August.

TIF Set Aside Implementation Plan

A Project Advisory Group was established to review the data report from the technical advisory committee and discuss implementation options. Membership will include: Mayor, Commissioner Sten, Bureau of Housing and Community Development, Office of Management and Finance, the Housing Development Center, Community Development Network, Affordable Housing Now, Housing and Community Development Commission, Housing Authority of Portland, Portland Business Alliance, League of Women Voters, PDC and urban renewal advisory committees.

The Project Advisory Group was charged with assisting with the development of TIF Set Aside Implementation Recommendations. The Group met three times in August and September and provide input to PDC staff in the development of the Implementation Plan.
A public forum cosponsored by PDC and HCDC was held August 28th to allow for broad community input into the development of the Implementation Plan.

In October both the PDC Board of Commissioners and the City Council adopted the TIF Set-Aside Implementation Plan which established a 30% set aside in the new districts (Interstate Corridor Urban Renewal Area, Gateway Regional Center Urban Renewal Area, Lents Town Center Urban Renewal Area and North Macadam Urban Renewal Area) and South Park Blocks Urban Renewal Area, and includes separate percentages for Downtown Waterfront Urban Renewal Area, Oregon Convention Center Urban Renewal Area and the Central Eastside Urban Renewal Area.

TIF Set-Aside Income Guidelines

The Implementation Plan included PDC's intent to establish income guidelines that correspond to individual URA Housing Policies, current projects, per unit subsidies, and forecasted budget availability. PDC participated met with urban renewal advisory committees and stakeholder groups, as well as citywide stakeholder and advocacy group in January and February to get input on the in Preliminary Staff Recommendation for Income Guidelines.

PDC hosted a public forum on January 24, 2007, which was attended by over 60 community representatives ranging from URA representatives, neighborhood representatives, affordable housing developers and advocacy groups, homeownership advocates, community organizations and real estate professionals.

On February 28, 2007, the PDC Board of Commissioners formally adopted Income Guidelines for the TIF Set-Aside.

2011 Stakeholder Review

In early 2011, the PHB completed a thorough review of the policy. The review included a public hearing on the TIF Affordable Housing Set-Aside policy (held on August 2, and the hearing provided an opportunity for public testimony and comments on the policy and the recommendations currently under development. On November 16, 2011, the Portland City Council unanimously approved and adopted a set of recommendations that Housing Commissioner Nick Fish brought forward in order to improve the TIF 30% Set-Aside Policy. View the City Council ordinance (http://efiles.portlandoregon.gov/webdrawer/rec/4592422/view/TIF%20Set%20Aside%20Ordinance%20Packet%202011%20Policy%20Review.PDF).

Portland, Maine Yes. Life's good here.

Mary Davis
Division Director, Housing & Community Development Division

TO: Councilor Donoghue, Chair
Members of the Housing and Community Development Committee

FROM: Mary Davis, Division Director
Housing and Community Development Division

DATE: April 7, 2015

SUBJECT: Affordable Housing Tax Increment Financing (AHTIF) Program
Additional Packet Information

Area-Wide Affordable Housing TIF

As I mentioned in my previous memo dated April 3, I was awaiting guidance from Maine State Housing Authority on the topic of an area-wide affordable housing TIF. I have included an excerpt from the written guidance I received.

> *"Creating a District around an existing residential area for the purpose of funding a revolving loan fund or investment fund still requires that there be some development of affordable housing* within *the District, whether new construction or rehab of existing housing. As noted above, the TIF statute defines a District as "a specified area within the corporate limits of a municipality that has been designated . . . to be developed" under a Development Program.*
>
> *There would be little point in creating a District for which there was no plan to build new housing or improve existing housing in the District. There are only two ways to increase total taxable (i.e., assessed) value of property in a District and thereby get tax increment revenues for use as allowed by the statute - it happens either through increased development (new construction or rehab) or as a result of inflation. Since only tax increment revenues from a District are available for the revolving loan fund or investment fund (assuming that that a town wants the benefit of full sheltering of the increased assessed value of the District), without any new construction of affordable housing or rehab of existing housing in the District, the town would be relying only on inflation for value accretion. In addition, at any point when assessed value is less than or equal to original assessed value, there would be no tax increment revenues for the revolving loan fund or investment fund. Since there needs to be a plan, with a time schedule, for the use of funds in a revolving loan fund or investment fund so that we can be sure that statutory objectives are met, we have not permitted a town to create a District for the sole purpose of capturing tax increment revenues that would result*

Mary Davis
Division Director, Housing & Community Development Division

only from inflationary adjustments to property values with no development of new housing or rehab of existing housing in the District."

Based on this guidance, the City would not be allowed to designate an area-wide affordable housing district, similar to the Downtown Transit Oriented TIF recently approved by the City Council, which was not tied specifically to affordable housing development.

This is not to say that a designated AHTIF district must be site specific, such as the ones previously approved in the City of Portland (Pearl Place, 409 Cumberland Avenue and 134 Washington Avenue). For example, a new proposed affordable housing development requires the extension of a city street for access to the site. The district could be designed to include the area necessary for the street extension. Revenue generated by the AHTIF could be used to cover the cost of the extension of the street to the development site.

<u>Other Clarifying Information</u>

1. Revenue generated by an AHTIF cannot be used to subsidize rents.
2. If a revolving loan or investment fund has been designated as an approved use of AHTIF revenue, those funds must be kept separate from local housing trust funds.

Portland, Maine Yes. Life's good here.

Mary Davis
Division Director, Housing & Community Development Division

TO: Councilor Donoghue, Chair
Members of the Housing and Community Development Committee

FROM: Mary Davis, Division Director
Housing and Community Development Division

DATE: April 3, 2015

SUBJECT: Avesta 134 Washington Avenue – Loan Terms Amendment

I. SUMMARY OF ISSUE

In September 2013, the City Council approved the allocation of $522,448 in HOME Program Funds to the Avesta Housing project at 134 Washington Avenue. The project consists of the development of 18 efficiency units of rental housing at 134 Washington Avenue. Eight units will be made available to households earning at or below 50% of the area median income and ten units will be made available to households earning at or below 40% of the area median income.

The initial loan terms were a 0% interest loan, deferred for 30 years or until sale or transfer. Avesta Housing has requested that the HOME loan provided by the City of Portland be modified to extend the loan term from thirty (30) to fifty (50) years. The low income housing tax credit investor has concluded that unless the City of Portland debt, along with other project debt, is extended, the transaction would lead to adverse tax consequences for the investor.

II. REASON FOR SUBMISSION

The City Council must approve the amended loan terms.

III. INTENDED RESULT

Extension of the term of the loan from 30 years to 50 years.

IV. 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.

V. FINANCIAL IMPACT

$522,448 in a HOME funded loan at 0% interest, deferred for 50 years instead of 30 years.

VI. STAFF ANALYSIS AND RECOMMENDATION

This development will create eighteen (18) efficiency units of affordable housing. These units will be available to veterans. The market study indicated a high demand for these types of units. The City HOME Affordable Housing Development Program typically issues loan terms of 30 years with a 90 year affordability period. The proposed 50 year loan term will expire prior to the expiration of the affordability period, therefore staff does not foresee any issue in extending the term of the loan to 50 years and is recommending approval of this request.

Mary Davis
Division Director, Housing & Community Development Division

TO: Councilor Donoghue, Chair
Members of the Housing and Community Development Committee

FROM: Mary Davis, Division Director
Housing and Community Development Division

DATE: April 1, 2015

SUBJECT: Additional Financing and Lease Terms for Rosa True School
140 Park Street

I. SUMMARY OF ISSUE

At the January 14, 2015, the Committee unanimously endorsed the allocation of $103,500 in new HOME funding, the assumption of existing debt in the amount of approximately $32,069 and the assignment and assumption of the leasehold interest to Developers Collaborative for the Rosa True School Apartments at 140 Park Street.

Since that time, the developer received information from MaineHousing which indicates a decrease in state historic tax credits. This results in a budget gap of $47,000. To help fill the gap, the developer has requested $15,000 in additional HOME funds from the City and is the other financial partners to contribute towards the gap. This request would increase the City's investment to an amount not to exceed $149,500, which would consist of approximately $118,500 in new HOME Program funds along with the assumption of $31,295 in existing debt (balance as of 4/1/15).

An overview of the new lease terms is provided below. Otherwise, the lease will be substantially the same as the existing lease with LearningWorks.

Use of Premises. Provide ten (10) rental housing units affordable to households at or below 60% of the area median income.

Term. Ninety (90) years. Renewals will be subject to mutual agreement.

Rent. $1.00 per year. Tenant is required to pay real estate property tax on its leasehold interest and any improvements to the property. Tenant is responsible for all utility costs.

Renovations. Tenant is responsible to develop, repair, renovate and maintain the property at its own cost, subject to prior approval by the City. However, no changes, repairs or modifications which would result in the loss of the buildings historic designation (federal, state or local) will be allowed.

Insurance. Tenant must provide and keep in force property, liability and workers compensation insurance in an amount and form satisfactory to the City.

II. REASON FOR SUBMISSION

Lease agreements for City property require HCDC review and recommendation to the City Council and City Council approval. The allocation of HOME funds for housing development projects requires HCDC review and recommendation to the City Council and Council approval.

III. INTENDED RESULT

(1) A recommendation from the HCDC to the City Council to approve the proposed Lease Terms
(2) A recommendation from the HCDC to the City Council for City financing for this project in an amount not to exceed $149,500. The investment would include approximately $118,500 in new HOME Program funds along with the assumption of $31,295 in existing debt (balance as of 4/1/15).

IV. 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.

V. FINANCIAL IMPACT

The Project pro-forma budget provided by the developer indicates a request for City financial assistance not to exceed $149,500 in the form of a 0% interest loan, deferred for 30 years or until sale or transfer. The City's financial assistance will be a combination of approximately $118,500 in new HOME funding and $31,295 in existing project debt to be assumed by the developer. This new HOME funding will assist in creating two new units ($59,250 per new unit). A review of affordable housing developments receiving HOME assistance reveals that on average, the City has invested $76,472 per HOME unit.

As previously approved by this Committee, the developer will assume LearningWork's existing debt to the City. LearningWorks has a leasehold mortgage on the property (dated January 1994; original principal $83,000; 30 year term; 2% interest; monthly payment $306.78), with a current balance of $31,295.

Mary Davis
Division Director, Housing & Community Development Division

VI. STAFF ANALYSIS and RECOMMENDATION

Staff Analysis:

As noted in the backup for the January 14 HCDC meeting, the Rosa True School project is not performing well financially. The acquisition of this project by Developers Collaborative will enable building improvements to occur, ensure that unit affordability is maintained, create two new units of affordable rental housing and preserve the city's interest in this property.

Staff Recommendations:

Staff recommends approval of City financing for this project based on preliminary underwriting and risk analysis. Total city financing will not exceed $149,500.

Staff recommends approval of the proposed Lease terms as outlined above.

VII. Attachments

Revised Project Proforma
Existing Lease with the Rosa True School Limited Partnership

ROSA TRUE FAMILY HOUSING
140 PARK ST., PORTLAND

SOURCES AND USES OF FUNDS

SOURCES OF FUNDS	Permanent	Construction Period	Terms/Comments Rate	Term	Paymnt
Amortizing Debt					
MSHA RLP	616,956		5.50%	30	$33,933
FHLBB Debt	-		6.00%	30	$0
Subtotal Amortizing Debt	616,956				$33,933
Soft Debt					
City FedHome	149,500	149,500	-	NPV	
MSHA RLP	60,000	60,000	0.0%	30	$0
CEI @ O%	17,927	17,927			
		-			
Subtotal Soft Debt	227,427	227,427			
Construction Loan		1,262,427			
Total Debt Financing	844,383	1,489,854			
Working Capital	10,000				
Deferred Fee	-	-			
LIHTC Syndication Proceeds	411,435	82,287			
Federal Historic Credit Proceeds	211,655	42,331		Total Fed	623,090
State Historic Credit Proceeds	239,134	45,436	193,699	Total Hist	450,789
TOTAL SOURCES	1,716,607	1,659,908			

USES OF FUNDS	Total	Construction Period
Acquisition/Demo	482,767	482,767
Construction	818,202	818,202
Soft Costs	157,000	157,000
Financing Fees	37,600	37,600
Other Soft Costs	49,339	49,339
Development Fee	115,000	115,000
Reserves	105,539	-
TOTAL USES	1,765,447	1,659,908
DEVELOPMENT CONTINGENCY (GAI	**(48,840)**	**-**

		22,743	Subsidy per unit
TDC	176,545	57%	of maximum amount pe
		4%	of maximum gross amc

ROSA TRUE FAMILY HOUSING
140 PARK ST., PORTLAND

DEVELOPMENT BUDGET AND LOW INCOME HOUSING TAX CREDITS

Development Budget	Total	Acq Basis	Rehab Basis	Historic	
				Office % 0.000%	
Development Budget	**Total**	**Acq Basis**	**Rehab Basis**	**Historic**	
ACQUISITION/DEMOLITION		-			
Land	161,767				
Buildings	321,000	321,000	-		
Existing Replacement Reserves	-	-	-		
Subtotal Acquisition/Demo	482,767	321,000			
CONSTRUCTION					Construction
Site Work	28,464		28,464		GMP
					743,820
Structures	715,356		715,356	715,356	
				-	Abatement
Construction Contingency	74,382		74,382	74,382	GMP
	-	-		-	-
				-	
FFE					
Subtotal Construction	818,202	-	818,202	789,738	
SOFT COSTS					
Permits & fees	10,000		10,000	10,000	
Engineer/Survey	5,000		5,000	5,000	
Architect	25,000		25,000	25,000	
Real Estate Attorney	45,000	15,000	30,000	45,000	
Title Insurance & Recording	12,000	3,000	9,000	12,000	
Accounting/ Cost Certification	10,000		10,000	10,000	
Soft Cost Contingency	15,000	5,000	10,000	15,000	
TIF Consultant	-	-		-	
Const. Taxes & Insurance	35,000		35,000	35,000	
Subtotal Soft Costs	157,000	23,000	134,000	157,000	
FINANCING EXPENSES					
Constr. Loan Orig. Fee	17,600	5,280	12,320	17,600	
Construction Legal & Inspection	-	-		-	
Construction Interest	20,000		20,000	20,000	
Other Financing Expenses	-	-		-	
Perm. Loan Orig. Fee			-		
Subotal Financing	37,600	5,280	32,320	37,600	
OTHER SOFT COSTS					
Market Study	-	-		-	
Property Appraisals	6,000		6,000	6,000	
Environmental Report & Testing	5,000		5,000	5,000	
Historic Consultant	15,000		15,000	15,000	
Tax Credit Fees	15,339	-			
Organizational Legal	8,000	-			
Subtotal Other	49,339	-	26,000	26,000	
DEVELOPER'S FEES					
Developer's Ovhd. & Profit	115,000	20,000	95,000	115,000	
Consultant		-	-		
Subtotal development fees	115,000	20,000	95,000	115,000	
PROJECT RESERVES					
Rent Up & Marketing Reserve	10,000	-	-		
Operating Reserve	63,625	-	-		
Replacement Reserve	10,364	-	-		
Prepaid Taxes & Insurance	13,833	-	-		
Prepaid Monitoring	7,717	-			
Subtotal Reserves	105,539	-	-		
TOTAL PROJECT COST	1,765,447	369,280	1,105,522		
ELIGIBLE BASIS		369,280	1,105,522		
LESS FEDHOME			-	Fed Historic	State Historic
LIHTC ELIGIBLE BASIS		369,280	1,105,522	1,125,338	1,125,338
APPLICABLE FRACTION	100.00%		less fed HTC	20%	25%
QUALIFIED BASIS		369,280	880,454	225,068	281,335
QUALIFIED CT ADJUSTMENT		100%	130%		
CREDIT PERCENTAGE		3.23%	3.23%		
ANNUAL LIHTC ELIGIBLE		11,928	36,970	95.00%	85.00%
				213,814	239,134
ANNUAL LIHTC ALLOCATED					
NET PROCEEDS	85.00%	98.99%	411,435	211,655	239,134
					450,789
TPC/unit	176,545	1,636,569	Agg Basis & Land		
		900,112.95	55%		
credit/unit	1,491				862,224

ROSA TRUE FAMILY HOUSING

Affordability Analysis & Rent Schedule

Affordable Rents

Unit Type	HHLD Size	Fed Home	LIHTC Rent	UA	Max. Net Rent
2 BR @ 60%			1,044	51	$993
3 BR @ 60%			1,206	64	$1,142

Rent Schedule

Unit Type	# Units	Net Rent	Utility Allow.	Gross Rent	Afford. @ % Med. Inc.
n/a	0	$0	0	$0	
2 BR @ 50%	2	$993	0	$1,053	
3 BR @ 60%	8	$1,142	0	$1,217	
n/a	0	$0	0	$0	
n/a	0	$0	0	$0	
			0		
TOTAL	10				
Bedroom Mix	0 BR	1 BR	2 BR	3 BR	Total
			2	8	10
Income Mix	30%AMI	40%AMI	50%AMI	60%AMI	Sec8
Number	0	0	0	10	0
Percent	0.0%	0.0%	0.0%	100.0%	0.0%

ROSA TRUE FAMILY HOUSING

Operating Income & Expense				
Effective Gross Income		**Monthly**	**Annual**	
Gross Potential Rental Income		11,122	133,464	
Less Vacancy & Collection Loss	5.0%	(556)	(6,673)	
Laundry Revenue		90	900	
TIF				
Effective Gross Income		10,656	127,691	
Annual Expenses		**Per Unit**	**Total**	**Percent of Budget**
ADMINISTRATIVE EXPENSES				
Management Fee		1,051	8,408	
Legal		54	1,500	
Audit		196	5,000	
Marketing		50	500	
Site Manager		214	2,140	
Resident Services		336	5,460	
Broadband Service		-	-	
Other		200	2,000	
Subtotal Administrative		2,101	25,008	29%
OPERATING EXPENSES				
Water/Sewer		350	7,000	
Electric		480	4,800	
Heat/HW		2,000	12,000	
Subtotal Operating		2,830	23,800	29.0%
MAINTENANCE				
Building Maintenance		700	7,000	
Janitorial		220	2,200	
Supplies/Exterminating		140	1,400	
Painting/Decorating		75	750	
Grounds		75	750	
Snow Removal		220	2,200	
Trash Removal		165	1,650	
Subtotal Maintenance		1,595	15,950	27.6%
GENERAL EXPENSES				
Property taxes		1,125	9,000	
Insurance		800	8,000	
Management Broadband		-	-	
Subtotal General		1,925	17,000	18.5%
REPLACEMENT RESERVE				
Housing		450	4,500	
TOTAL RESERVES		450	4,500	
TOTAL EXPENSES PLUS RESERVES		8,626	86,258	
Net Income Calculation			**Annual**	
Net Operating Income			41,433	
Debt Service			$33,933	
Cash Flow			7,500	5.2%
Debt Service Coverage			1.22	
Cash Flow as % of Expenses			8.7%	80.3%
Cash Flow PUPA			750	

Income/Expenses ratio
1.48

ROSA TRUE FAMILY HOUSING

15-YEAR PROFORMA OPERATING INCOME AND EXPENSE STATEMENT

	Trend Rate	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Total
INCOME	2.00%																	
Gross Rental Income	2.25%	66,732	133,464	136,133	138,856	141,633	144,466	147,355	150,671	154,061	157,527	161,071	164,695	168,401	172,190	176,064	180,026	
Office	2.00%																	
Vacancy & Collection Loss	5.00%	(3,337)	(6,673)	(6,807)	(6,943)	(7,082)	(7,223)	(7,368)	(7,534)	(7,703)	(7,876)	(8,054)	(8,235)	(8,420)	(8,610)	(8,803)	(9,001)	
TIF Income	2.00%	-	900	918	936	955	974	994	1,014	1,034	1,054	1,076	1,097	1,119	1,141	1,164	1,188	
EFFECTIVE INCOME		63,395	127,691	130,245	132,850	135,506	138,217	140,981	144,151	147,391	150,705	154,093	157,558	161,100	164,722	168,425	172,212	
EXPENSES																		
Administrative	3.00%	17,506	25,008	25,758	26,531	27,327	28,147	28,991	29,861	30,757	31,680	32,630	33,609	34,617	35,656	36,725	37,827	
Operating	3.00%	16,660	23,800	24,514	25,249	26,007	26,787	27,591	28,418	29,271	30,149	31,054	31,985	32,945	33,933	34,951	36,000	
Maintenance	3.00%	11,165	15,950	16,429	16,921	17,429	17,952	18,490	19,045	19,616	20,205	20,811	21,435	22,079	22,741	23,423	24,126	
General	3.00%	11,900	17,000	17,510	18,035	18,576	19,134	19,708	20,299	20,908	21,535	22,181	22,847	23,532	24,238	24,965	25,714	
Replacement reserve	3.00%	3,150	4,500	4,635	4,774	4,917	5,065	5,217	5,373	5,534	5,700	5,871	6,048	6,229	6,416	6,608	6,807	
TOTAL EXPENSES		60,381	86,258	88,846	91,511	94,257	97,084	99,997	102,997	106,087	109,269	112,547	115,924	119,402	122,984	126,673	130,473	
NET OPERATING INCOME		3,015	41,433	41,399	41,338	41,250	41,132	40,984	41,154	41,305	41,436	41,546	41,634	41,699	41,738	41,752	41,739	
DEBT SERVICE		16,966	33,933	33,933	33,933	33,933	33,933	33,933	33,933	33,933	33,933	33,933	33,933	33,933	33,933	33,933	33,933	
CASH FLOW		(13,952)	7,500	7,466	7,406	7,317	7,200	7,051	7,221	7,372	7,503	7,613	7,701	7,766	7,806	7,820	7,806	98,597
			750	747	741	732	720	705	722	737	750	761	770	777	781	782	781	

Obligations of Rosa True School Limited Partnership
(as of February 28, 2014)

Mortgage Notes Payable:

1	Mortgage Note Payable to the City of Portland (2%):	
	Principal Amount Only	$32,556.00
2	Note Payable to Coastal Enterprises, Inc. (7%):	
	Principal Amount Only - interest current	$17,927.00
3	Mortgage Note Payable to MaineHousing (8.5%)	
	Principal Amount Only - current	$105,543.00
4	Note Payable to MaineHousing (0% interest)	$60,000.00
	TOTAL DEBT:	
	Principal Balance	***$216,026.00***

Amounts Owed to LearningWorks (General Partner):

1	Note Payable to General Partner (plus interest)	$52,900.00
		$100,984.25
2	Funds Advanced to the Partnership by LW	$0.00
	TOTAL PAYABLE TO LEARNINGWORKS:	***$153,884.25***
		$30,493.74

ROSATRUE.ELB.CON.11
03.24.92

LEASE AGREEMENT

ROSA TRUE SCHOOL LIMITED PARTNERSHIP

AGREEMENT made this 24th day of March, 1992, by and between the **CITY OF PORTLAND**, a body politic and corporate located in the County of Cumberland and State of Maine, (hereinafter the "City"), and **ROSA TRUE SCHOOL LIMITED PARTNERSHIP**, a limited partnership organized under the laws of the State of Maine with Portland West Neighborhood Planning Council and Youth in Action, Incorporated as general partners, located at 155 Brackett Street, Portland, Maine (hereinafter the "Tenant").

WHEREAS, the City owns the former Rosa True School located at 140 Park Street; and

WHEREAS, the said School was leased for community and social service programs from 1972-1989; and

WHEREAS, Tenant has proposed rehabilitation of the School for the development of low-income housing units; and

WHEREAS, City has determined that Tenant's proposed rehabilitation program is in the best interest of City;

NOW, THEREFORE, in consideration of the mutual promises herein, the parties do hereby agree:

1. Leased Premises: City hereby leases, demises and lets to Tenant, and Tenant hereby takes and hires from City, subject to and upon the terms, conditions, covenants and provisions herein, the parcel of land and building thereon located at 140 Park Street, Portland, Maine and described in Attachment A attached hereto and made part hereof, together with all appurtenances, rights, privileges, and easements benefitting, belonging, or pertaining thereto, including but not limited to

the equipment thereon, (all of the foregoing hereinafter sometimes referred to as the "Premises").

2. <u>Use of Premises; Renovations</u>:

2.1. <u>Use of Premises</u>: Tenant shall throughout the term of this Lease use the Premises to provide eight rental housing units for low income families, as defined in §2.1.1. below. Said use shall be as described in Attachment B, which is made a part hereof.

2.1.1. For the entire 67 year term of the Lease, the tenant agrees to rent the units to families whose incomes are at or below 55% of median income for the Portland area MSA. The MSA, or metropolitan statistical area, median income as used herein shall be that income established by the U.S. Department of Housing and Urban Development (HUD) for its Section 8 income limits, adjusted for family size, or any successor or comparable agency and/or housing assistance program.

2.1.2. Notwithstanding the foregoing, Tenant may request the City to agree to permit Tenant to modify all or part of the rent levels, which modifications continue to benefit low or moderate income persons and/or families (as defined by HUD) and which do not violate any of Tenant's funding or financing agreements. Tenant shall state the reasons for the requested changes in writing. Nothing herein shall obligate City to approve the modified rate structure, and said approval or disapproval, and the grounds therefore, shall be solely within the City's discretion.

2.1.3. To the extent permitted under law, all mortgages shall provide that the City has the right, but not the obligation, to assume Tenant's obligations thereunder, or at the City's option, to prepay any remaining mortgage amount owed, without penalty, in the event of Tenant's default under said mortgage agreement.

2.2. <u>Renovations</u>: Tenant shall at its own cost and expense, develop, repair and renovate the Premises as described in Attachment C, (hereinafter the "Project") subject to any amendments or modifications which may be required by any City, state or federal reviewing or licensing authority.

2.2.1. Tenant shall commence the renovation or rehabilitation of the Premises within Thirty (30) days of the date of issuance of a City building permit. Tenant shall require performance and payment bonds from the general contractor for the full amount of the construction contracts. If no general contractor, performance and payment bonds shall be provided by each contractor for the full amount of its contract. Tenant shall substantially complete such renovation or rehabilitation and the landscaping approved by the planning authority, or Planning Board, as applicable, on or before the expiration of eighteen (18) months from the date of this Lease, unless prevented from doing so by reasons beyond the control of Tenant, including but not limited to adverse winter conditions, fire, other natural disaster, or an inability to procure building materials or permits, strikes, riots, war, or other insurrection, in which event the performance of such act shall be excused for the period of the delay. In the event of an unexcused failure of performance by Tenant of the said conditions, City shall give written notice of such default to Tenant, and to every leasehold mortgagee then holding a recorded mortgage on the Premises or this Lease, and Tenant or any such leasehold mortgagee shall have a right, but not an obligation, within three (3) months of said notice to cure such failure. If Tenant fails to comply with the conditions set forth hereinabove, and such failure is neither excused nor cured as provided hereinabove, Tenant agrees that this Lease will terminate, and the City shall have the right, but not the obligation, to re-enter the Premises and retake possession thereof. In addition, the City shall have a right to pursue all remedies for default, both in law and equity. The re-entry of the Premises by the City of Portland and the termination of this Lease shall be subject to any prior conveyance, lease, or security interest upon the Premises, including a mortgage of this leasehold to which the City Manager of the City of Portland has given written consent, which consent shall not be withheld unless the said City Manager determines that (1) the said encumbrance is inconsistent with the said development, (2) the proceeds to Tenant from the said conveyance will not be expended on the planned improvements to the Premises, or (3) City's rights under this Lease have not been adequately provided for either in the mortgage or in a separate written agreement with the mortgagee.

2.2.2. Tenant and City recognize that there is no plain, complete or adequate remedy at law for breach of the above-described conditions, and that City shall have a right to specific performance of the obligations of Tenant, its successors and assigns, with respect to said conditions.

2.2.3. Throughout the term of this Lease, Tenant shall make no changes, repairs or modifications of the Premises which would result in the loss of its historic designation from the U.S. Department of the Interior or any successor agency thereto, nor from the City's Historic Preservation Commission.

2.3. It is understood and agreed that Tenant's ability to renovate the Premises is contingent upon obtaining necessary funds from available public and private sources. Tenant shall make diligent effort to obtain said funds from available sources. Tenant shall not begin renovations until no less than the following outside funding is committed, to the satisfaction of the City, to the Project:

<u>Permanent Outside Funding Sources:</u>	
Maine State Housing Authority	
Rental Loan Program	$112,000
Home Funds	60,000
General Partner Equity Loan	52,900
National Trust for Historic Preservation Grant	50,000
Dept. of Energy, Weatherization Program Grant	20,000
Tax Credits, cash equity (Minimum Amount)	405,000
<u>City of Portland Permanent Funding:</u>	
2%, 30 years, repayments may be deferred up to 10 years (Maximum amount of construction loan remaining to be paid)	82,973
TOTAL FUNDING	$782,873
<u>Short Term Construction Funding Sources</u>	
Key Bank	$350,000
City of Portland (Development Fund)	135,000
National Trust for Historic Preservation	54,521

If Tenant fails to obtain its funding within sixty (60) days of the date of execution of this Lease, either party may, at its option, terminate this Lease and have no further obligation of one to the other.

2.4. City Funding Assistance. Upon evidence of the above outside funding commitment letters satisfactory to the City, City agrees to provide construction and permanent funding assistance to Tenant to be used to renovate the Premises, subject to the terms and conditions established in the City's final commitment letter issued by the Office of Community Development, dated February 27, 1992, attached hereto and incorporated herein as Attachment D.

3. Term: The Term of this Lease shall begin at 12:00 noon on the date of execution of this Lease (March 24, 1992), and shall continue for a period of sixty-seven (67) years thereafter, terminating at 12:00 midnight on March 24, 2059, unless sooner terminated as provided herein.

4. Rent:

4.1. It is understood that Tenant is presently subject to local property tax on its leasehold interest and improvements to the Premises and that the Tenant shall pay said taxes when due on a timely basis. So long as Tenant is taxable as aforesaid, Tenant shall pay City a rent of one dollar ($1.00) per year, payable in one annual payment in advance. The first payment shall be due on the first day of the month following the month of execution of this Lease.

4.2.1. If Tenant becomes exempt in whole or in part from local property taxes, Tenant shall pay City an annual amount equal to the immediately prior year's local property taxes or Thirty Six Hundred Dollars, ($3,600.00) whichever is greater. If Tenant is required to make a payment-in-lieu-of-taxes, (PILOT) said PILOT plus rent shall equal the immediately prior year's local property taxes or $3,600.00, whichever is greater. Said annual payment of rent or PILOT plus rent shall be due as of the first full month following determination of Tenant's status as exempt, unless City and Tenant mutually agree to an alternative payment schedule.

4.2.2. After the first full payment year in which the Tenant is tax-exempt, the rent or the PILOT plus rent shall be increased annually, on a cumulative basis, by the percentage increase of the CPI for the twelve month period from the month which is two months prior to the last rental payment to the month which is two months prior to the due date of the next payment. For purposes hereof, "increase in the CPI" means the annual percentage increase (not less than zero) of the United States BLS Consumer Price Index of All Items for Urban Wage Earners and Clerical Workers (1984 = 100) for the Boston, Massachusetts area (the "CPI") or if said index is discontinued or substantially modified, the successor index or comparable index that most closely approximates the CPI. (By way of example, if the first rental payment is due on July 1, 1995, the second payment due on

July 1, 1996, will be increased by the percentage change in the CPI from May 1, 1995 to May 1, 1996). In no event shall the annual rental payment be less than that of the immediately prior year.

4.3. A late charge of One and One-Half (1-1/2%) percent per month shall be charged and applied to any amount, other than property taxes, not paid when due. Interest shall be charged on overdue property taxes at the same rate set for late payment of such taxes by the City. Collection costs and legal fees, associated with collection of late payments shall also be charged to the Tenant, who shall pay such costs within ten (10) days of receipt of a bill therefor and such amount shall be considered as additional rent due hereunder within said ten (10) days.

5. Net Lease: It is the intention of the parties that all amounts payable hereunder shall be net to the City so that this Agreement shall yield to the City the net annual payment specified herein during each year of the Term for which rental payments are due, and that all costs, expenses, and obligations of every kind and nature whatsoever relating to the Premises shall be paid by Tenant.

6. Utilities; Assessments:

6.1. During the term of this Lease, Tenant shall be responsible for all electricity, telephone, water, sewer, gas, heat, or other utility charge, fee, or assessment whatsoever, including any late charge, which Tenant is, or may be, subject to under State law or regulation, related to Tenant's interest in, use of, and activities on the Premises.

6.2. City agrees to consent to easements required by utility companies in order to provide said utility service to the Premises and to execute any and all documents, agreements, and instruments and to take all other actions in order to effectuate the same, all at Tenant's cost and expense.

6.3. If any taxes are assessed or levied upon Tenant, or upon the Premises or any part thereof, they shall be paid directly to the taxing authority. Tenant shall be deemed to have complied with the covenants of this Article if payment of such taxes shall have been made either within any period allowed by law, or by the governmental authority imposing the same, during which payment is permitted without penalty or interest or before the same shall become a lien upon the Premises, and upon written request by the City, Tenant shall produce and exhibit to City satisfactory evidence of such payment.

6.4. The Tenant shall have the right to contest or have reviewed all of such taxes by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant shall conduct promptly at its own cost and expense and at no expense to City, and if required by law, in the name of and with the cooperation of the City, and City shall execute all documents reasonably necessary to accomplish the foregoing.) Notwithstanding the foregoing, Tenant shall promptly pay all such taxes if at any time the Premises, improvements thereon, or any part of them, shall be imminently subject to forfeiture or if City shall be subject to any criminal or civil liability arising out of the non-payment thereof.

7. Repairs; Maintenance:

7.1. Tenant accepts the Premises as is without any warranty by the City, or reliance upon any City statement or representation whatsoever, as to the condition of the Premises or their fitness for the proposed uses. Tenant, shall, at its sole cost and expense, make all improvements, renovations and additions to the Premises which are specified in Attachment C, as may be amended, and Tenant shall, at its sole cost and expense, properly maintain, repair and replace the Premises and related facilities, including but not limited to said improvements, renovations and additions, throughout the term of this Lease upon approval by the City which approval shall not be unreasonably withheld.

7.1.1. Tenant's maintenance, repair and replacement responsibilities hereunder shall include but are not limited to, custodial services, security services, minor and major repairs and replacement, plowing, shoveling, sanding, salting and clearing the Premises, mowing and landscaping. All such responsibilities shall be at Tenant's sole cost and expense.

7.2. The City by its authorized officers, employees, agents, contractors, sub-contractors, and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Tenant's operations as is reasonably practicable) to enter upon and in the Premises without charge for the following purposes:

7.2.1. Inspection. To inspect the Premises to determine whether Tenant has complied and is complying with the terms and conditions of this Agreement; and

7.2.2. Maintenance. To perform maintenance and make repairs in any case where Tenant has failed to carry out its obligation to do so, but only after the City has given Tenant reasonable notice under the circumstances to perform its maintenance obligation and Tenant has failed to do so. In that event, Tenant shall promptly upon demand reimburse the City for the reasonable cost of the City's performing Tenant's maintenance or repair obligation. Should Tenant fail to reimburse City within Thirty (30) days' of written request therefor from City, then City shall add such amount to the annual rental payment and it shall be due and payable immediately.

8. Compliance with Laws:

8.1. Upon execution of this Lease and throughout the Term hereof, Tenant shall, at its own cost and expense, promptly observe and comply with all existing and future laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state and county and city governments, and of all other governmental or financing authorities affecting the Premises or appurtenances thereto, or any part thereof, whether the same are in force at the commencement of the term of this Lease or may in the future be passed, enacted or directed, and Tenant shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed on City because of failure of Tenant to comply with the covenants of this Article.

8.2. Tenant shall have the right but not the obligation to contest by appropriate legal proceeding conducted diligently and in good faith in the name of the Tenant or City (if legally required), or both (if legally required), without cost or expense to City, the validity or application of any law, ordinance, rule, regulations, or requirement of the nature referred to in the preceding Section 8.1., and if by the terms of any such law, ordinance, order, rule, regulation or requirement compliance therewith may be legally delayed without risk of forfeiture or lien on the Premises or penalty to the City pending the prosecution of such law, order, rule, regulation, or requirement, Tenant may delay such compliance therewith until the final determination of such proceeding.

8.3. City agrees to execute and deliver any appropriate papers or other instruments which may be reasonably necessary or proper to permit Tenant so to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement.

8.4. In the event that a law, rule, or other requirement is finally determined to apply to Tenant, or to the Premises, Tenant agrees to execute any amendment to this Lease to the extent such amendment is made necessary by the applicability of said law, rule or other requirement.

9. <u>Indemnity</u>:

9.1. To the fullest extent permitted by law, Tenant shall at its own expense defend, indemnify, and hold harmless City, its City Council, its officers, agents, and employees from and against any and all liability, claims, damages, penalties, losses, expenses, including attorney's fees, or judgment, just or unjust, arising from injury or death to any person or property damage sustained by anyone in and about the Premises or as a result of activities or service at or from the Premises and resulting from any negligence, act or omission of Tenant, its officers, agents, servants, employees, or persons in privity with Tenant. Tenant shall, at its own cost and expense defend any and all suits or actions, just or unjust, which may be brought against City or in which City may be impleaded with others upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, materialmen, and suppliers. City shall have the right to participate in such suits or actions at its own discretion and at its own expense, and no such suit or action shall be settled without prior consent of the City. Such obligation of indemnity and defense shall not be construed to negate or abridge any other right of indemnification or contribution running to the City which would otherwise exist. The extent of this indemnity provision shall not be limited by any requirement of insurance contained herein.

9.2. City shall not be responsible or liable to Tenant for any damage or injury to any property, fixtures, buildings, or other improvements, or to any person or persons, at any time on the Premises, including any damage or injury to Tenant or to any of Tenant's officers, agents, servants, employees, contractors, customers, or sublessees.

10. <u>Covenant Against Liens</u>: If any mechanics' lien or other lien, charge or order for payment of money shall be filed against City, Tenant, the Premises, or any portion thereof, Tenant shall, at its own cost and expense, cause the same to be discharged of record or secure such payment by posting a bond with the Cumberland County Superior Court in such form and amounts satisfactory to the City within sixty (60) days after written notice to Tenant of the filing thereof, and Tenant shall defend, indemnify, and save harmless the City against and from all costs, liabilities, suits, penalties, claims and demands including reasonable counsel fees, resulting therefrom. In the event Tenant shall not cause such lien, charge or order to be discharged of record or bonded within said sixty (60) day

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period, City may thereafter cause the same to be discharged and the expense thereof shall be immediately paid to City by Tenant as additional rent.

11. Insurance:

11.1. Tenant shall provide or cause to be provided at its expense, and keep or cause to be kept in force during the term of this lease, general liability insurance, and automobile liability insurance, in a good and solvent insurance company or companies licensed to do business in the State of Maine, selected by Tenant and reasonably satisfactory to the City and to the holder of any mortgage permitted pursuant to the provisions of this Lease, in the amount of at least one million dollars ($1,000,000) with respect to injury or death to any one person and one million dollars ($1,000,000) with respect to injury or death to more than one person in any one accident or other occurrence and one million dollars ($1,000,000) with respect to damage to property. Such policy or policies shall include City and each mortgagee as additional insureds thereon. Tenant agrees to deliver or cause to be delivered, certificates evidencing such insurance to the City at the beginning of the term of this Lease and thereafter not less than thirty (30) days prior to the expiration of any such policy. Such insurance shall be non-cancellable without thirty (30) days' prior written notice to City, and shall be on an occurrence basis.

11.1.1 Tenant shall provide or cause to be provided at its expense, during the construction and renovation of the premises, Builder's Risk or similar insurance protecting and insuring the interest of the City. Tenant agrees to deliver or cause to be delivered certificates evidencing such insurance prior to the commencement of any construction or renovation of the premises.

11.2. Tenant and City understand and agree that the minimum limits of the insurance herein required, or the types of coverage, may become inadequate during the Term of this Lease and Tenant agrees that it will increase such minimum limits by reasonable amounts within thirty (30) days of receipt of such notice in writing from the City Manager. In no case shall such insurance be less than the statutory limits and coverage of the Maine Tort Claims Act (14 M.R.S.A. §8101 et seq.) or any successor statute thereto.

11.3. Tenant shall, throughout the term of this Agreement, have in effect and maintain workers' compensation insurance to the extent required under Maine laws.

11.4. During the term of this Lease, Tenant shall keep the Premises insured for One Hundred Percent (100%) of the full insurable value thereof, with the lowest available deductible, and for the benefit of City and Tenant and the holder of any such mortgage as their respective interests may appear, against loss or damage by fire or vandalism with "all risk" insurance and the customary extended coverage, including fire.

11.5. Any insurance required to be provided by Tenant pursuant to this Lease may be provided by blanket insurance covering the Premises and other locations of Tenant provided such blanket insurance complies with all of the other requirements of this Lease with respect to City and all mortgagees.

11.6. Waiver of Subrogation: All insurance policies carried by the Tenant covering the Premises including, but not limited to contents, fire, and casualty, insurance, shall expressly waive any right on the part of the insurer against the City.

12. Destruction:

12.1. In the event that, at any time during the term of this Lease, the buildings and improvements on the Premises shall be destroyed or damaged in whole or in part by fire or other cause within the extended coverage of the fire insurance policies carried by Tenant in accordance with this Lease, then, Tenant, at its own cost and expense, shall cause the same to be repaired, replaced, or rebuilt within a period of time which, under all prevailing circumstances, shall be reasonable, but Tenant shall not be required hereby to expend any sums in excess of the sum of the insurance proceeds recovered by Tenant by reason of such destruction or damage plus the deductible authorized under 11.4. above. If any such insurance proceeds are insufficient to pay the costs of repair, replacement or rebuilding, then Tenant shall have no such obligation to repair, replace, or rebuild the Premises, provided Tenant shall fully comply with all health and safety codes so that a hazardous condition resulting from such destruction shall not be permitted to remain. In the event Tenant is unable to repair, replace or rebuild the Premises, mortgagees of record, City as Lessor and then Tenant shall be entitled to the insurance proceeds as their respective interests may appear.

13. No Assignment:

13.1. Tenant shall not assign this Lease, or otherwise transfer its interest, in whole or in part, in the Premises without the prior approval of the Portland City Council, except to the extent necessary to obtain funds necessary for the making of improvements and as provided in Article 2 above, and to the extent necessary to lease its rental units as planned herein, and Tenant agrees that all such funds for improvements will, in fact, be expended upon the Premises or remain available for application toward removal of any such encumbrance upon said Premises.

13.2. Tenant agrees that any mortgage, lien, or other encumbrance entered into by Tenant (other than with City) shall contain a clause that said mortgage or lien holder shall notify City of any default by Tenant in making any payment owed under said mortgage, lien or encumbrance and that City shall have the right, but not the obligation, to cure said default by making said payment. Any payment made by City to cure a default by Tenant shall be added to Tenant's annual rental owed to City. Notwithstanding the foregoing, in the event of Tenant's default as aforesaid City shall have the right, but not the obligation, upon thirty (30) days prior written notice to Tenant and to the holder of any mortgage, lien or encumbrance to assume Tenant's obligations under any outstanding mortgage, lien or encumbrance, or to prepay said amount as provided in §2.1.3 above, and to declare Tenant in default of this Lease, whereupon this Lease shall terminate.

14. <u>Eminent Domain</u>:

14.1. If the Premises, or any significant portion thereof, are taken by eminent domain by any governmental authority or corporation having the power of eminent domain so as to prevent Tenant from continuing its operations on the Premises in substantially the same manner as it operated prior to such condemnation, then at the option of the Tenant, this Lease shall terminate without penalty or termination charge and Tenant and each mortgagee shall be entitled to share in any award of damages made by the condemning authority to the extent and in the order of its interest in the Premises.

14.2. In the event Tenant can continue its operations in substantially the same manner as prior to the condemnation, or at Tenant's option despite said condemnation, Tenant may elect to continue in possession of any portion of the Premises remaining after condemnation for the balance of the Term upon the same terms and conditions herein, if it gives notice of such election to City within thirty (30) days of the taking of possession by the condemning authority.

14.3. In the event this Lease terminates pursuant to this Article, the rental paid to City shall be equitably adjusted to the date Tenant is relieved of possession.

15. Quiet Enjoyment:

15.1. Tenant shall quietly have and enjoy the Premises during the term of this Lease, without hindrance or molestation, by anyone claiming by, through or under the City.

15.2. City represents and warrants to Tenant that it has fee simple title to the Premises to the extent of all matters by, through or under it and the power and authority to execute and deliver this Lease and to carry out and perform all covenants to be performed by it hereunder. City further represents and warrants to Tenant that if City shall be in default under this Article, Tenant, in addition to any and all remedies it may have in law and/or equity, may terminate this Lease upon written notice to the City after giving written notice of such default to the City and allowing a reasonable opportunity to City to cure such defect, provided that City agrees to take all reasonable action to remedy any such defect.

16. Defaults:

16.1. In the event any one or more of the following events shall have occurred and shall not have been remedied as hereinafter provided: (1) Tenant's failure to pay or cause to be paid any installment of basic rent or additional rent when the same shall be due and payable and the continuance of such failure for a period of forty-five (45) days after receipt by Tenant of notice in writing from City specifying in detail the nature of such failure; or (2) Tenant's failure to perform or cause to be performed any of the other covenants, conditions, and agreements herein contained on Tenant's part to be kept or performed and the continuance of such failure without the curing of same for a period of sixty (60) days after receipt by Tenant of notice in writing from City specifying in detail the nature of such failure, and provided Tenant shall not cure or cause to be cured or diligently commence to cure said failure as provided in Paragraph 16.2 of this Article; then City may, at its option, give to Tenant a notice of election to end the term of this Lease upon a date specified in such notice, which date shall not be less than sixty (60) days after the date of receipt by Tenant of such notice from City, and upon the date specified in said notice, and the term and estate hereby vested in Tenant shall cease and any and all other right, title, and interest of Tenant hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire term of this

Lease had elapsed. Simultaneously with the sending of the notice to Tenant, hereinabove provided for, City shall send a copy of such notice to any mortgagee(s) of the Premises, or portions thereof, of which City has written notice and to which the City has consented pursuant to Article 2.2.1. of this Lease. The curing of any default(s) within the above time limits by any of the aforesaid parties, or combination thereof, shall constitute a curing of any default(s) hereunder with like effect as if Tenant had cured the same hereunder.

16.2. In the event that City gives notice of a default of such a nature that it cannot be cured within the sixty (60) day period, such default shall not be deemed to continue so long as Tenant, or any mortgagee, after receiving such notice, proceeds to cure, or cause to be cured the default as soon as reasonably possible and continues to take all steps reasonably necessary to complete the same within a period of time which, under all prevailing circumstances, shall be reasonable. No default shall be deemed to continue if and so long as Tenant, or any mortgagee, shall be so proceeding to cure the same in good faith or be delayed in or prevented from curing the same by any reason specified in Article 21, Force Majeure.

16.3. Notwithstanding anything to the contrary contained in this Article, in the event that any default(s) of Tenant shall be cured or are caused to be cured in any manner hereinabove provided, such default(s) shall be deemed never to have occurred and Tenant's rights hereunder shall continue unaffected by such default(s).

16.4. Notwithstanding anything to the contrary contained in this Article, default of Tenant under its Third Leasehold Mortgage, Security Agreement and Fixture Filing with City shall, at City's option, be deemed to be a default of this Lease Agreement.

17. Termination:

17.1. No notice to quit possession at the expiration date of the Term of this Lease need be given by the City, and Tenant covenants and agrees that upon expiration of the Term of this Lease, or upon earlier termination for default by either party as hereinabove provided, it will peaceably surrender possession of the Premises leased hereunder in good condition, reasonable wear and tear, acts of God, fire, public enemy, and other casualties over which Tenant has no control excepted, and City shall have the right to take possession of said Premises and all permanent improvements thereto. Tenant shall have the right, at any time during the Term of this Lease or upon termination and within sixty (60) days thereafter, to remove all trade fixtures, equipment and other personal property installed or placed by it at its expense, in, on, or about the Premises, subject, however, to any valid lien which the City may have thereon for unpaid rents or fees. All removal shall be at Tenant's sole cost and expense and all property damaged by or as the result of the removal of Tenant's property shall be restored by Tenant at its expense to the condition existing prior to such damage. Any and all property not removed by Tenant within the said sixty (60) day period shall thereupon become part of the land on which it is located and title thereto shall thereupon vest in the City.

17.2. Upon termination of this Lease for any reason, or its expiration, City shall have the right, but not the obligation, to re-enter the Premises or otherwise recover possession thereof and dispossess any or all occupants of the Premises upon no less than sixty days prior written notice. Notice of this right of repossession by City shall be included in leases between Tenant and its sublessees.

18. <u>Waivers</u>: Failure of City or Tenant to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by City or Tenant at any time, express or implied, of any breach of any provision of this lease shall be deemed a waiver or a breach of any other provision of this lease or a consent to any subsequent breach of the same or any other provision. No acceptance by City of any partial payment shall constitute an accord or satisfaction, but shall only be deemed a part payment on account.

19. <u>Signs</u>: Tenant shall have the right to install, maintain, and replace on, over, or in front of the Premises, or any part thereof, such signs as Tenant may desire only upon the approval of the City Manager and Tenant shall comply with or cause to be complied with any applicable requirements of governmental authorities having jurisdiction and shall obtain any necessary permits for such purposes. As used in this paragraph, the word "sign" shall be construed to include any placard, light, or other advertising symbol or object, irrespective of whether the same be temporary or permanent. The City Manager's approval hereunder shall not be unreasonably withheld.

20. <u>Permits</u>:

20.1. The obligations of Tenant hereunder are conditioned upon compliance with the zoning and building regulations, ordinances, codes, laws, and directives of all governmental authorities having jurisdiction, and the actions and decisions of all planning, historic preservation or zoning boards and other agencies having jurisdiction. City shall cooperate fully with Tenant in any and all applications and proceedings and appeals made or prosecuted by Tenant in connection with the Project, and shall execute any and all documents, instruments, consents, and authorizations requested by Tenant which shall be reasonably necessary with respect thereto. Tenant may file and prosecute any necessary or appropriate applications, proceedings, and appeals in its own name and through counsel of its choice, but shall do so at its own cost and expense.

20.2. Nothing herein is intended to nor shall it be deemed to waive or modify any requirement of any City reviewing authority, including but not limited to, the building authority, the planning authority, and the planning, historic preservation and zoning boards, subject to Tenant's right to contest such requirement as provided by Article 8 herein.

21. <u>Force Majeure</u>: In the event that City or Tenant shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, riots, insurrection, war, or the act, failure to act, or default of the other party, or any other reason beyond their control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. In such case, the party unable to perform shall promptly give written notice of any such delay and a reasonable estimate of the period of such delay to the other party.

22. <u>Record Keeping</u>: Tenant generally shall keep records of its operations and finances according to generally accepted accounting principles and in accord with any applicable federal or state requirements and City shall have the right, upon reasonable notice, to inspect all data and records relating to Tenant's performance under this Lease, such inspection to be done during normal business hours and at City's expense.

23. <u>Notices</u>: Every notice, approval, consent, or other communication authorized or required by this Lease shall not be effective unless the same shall be in writing and sent postage prepaid by United States registered or certified mail, return receipt requested, directed to the other party at its address herein mentioned, or such other address as either party may designate by notice given from time to time in accordance with this Article. The rent payable by Tenant hereunder shall be paid to City at the same place where a notice to City is herein to be

directed. Until otherwise directed in writing, all notices shall be sent as follows:

To CITY: City Manager
City of Portland
389 Congress Street
Portland, ME 04101

To TENANT: Executive Director
Portland West Neighborhood
Planning Council
155 Brackett Street
Portland, Maine 04102

copy to: Affordable Housing Associates, Inc.
209 Bucks Road
Holland, PA 18966

24. Certificates: Either party shall, without charge, at any time from time to time hereafter, within ten (10) days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee, or proposed mortgagee, or any other person, firm, or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Lease in accordance with its tenor as then constituted together with a schedule of all rent paid to the date thereof; (c) as to the existence of any default thereunder; (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other party; (e) as to the commencement and expiration dates of the term of this Lease; and (f) as to any other matters as may reasonably be so requested. Any such certificate may be relied upon by the party requesting it and any other person, firm, or corporation to whom the same may be exhibited or delivered, and the content of such certificate shall be binding on the party executing same.

25. Governing Law: This Lease and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of Maine.

26. City Not to Mortgage Fee: City hereby covenants and agrees that during the term of this Lease, City shall not have the right or power to mortgage or otherwise create any security interest or other liens or encumbrances upon or affecting the fee interest in the Premises, improvements, fixtures, equipment, or other property from time to time thereon, or any part thereof; provided however, City shall retain the right to convey its

entire remainder interest in the fee subject to all of the terms and conditions of this Lease and assumption of all obligations of City hereunder.

27. Partial Invalidity: If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

28. Memorandum of Lease: The parties will at any time, at the request of either one, promptly execute duplicate originals of an instrument, in recordable form, which will constitute a memorandum or short form of lease, setting forth a description of the Premises, the term of this Lease and any other portions thereof as either party may request or as may be required by law.

29. Interpretation: Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The terms "City" and "Tenant" whenever used herein shall mean only the owner for the time being of City's or Tenant's interest herein, and upon any sale or assignment of the interest of either City or Tenant herein, their respective successors in interest and/or assigns shall, during the term of their ownership or their respective estates herein, be deemed to be City or Tenant, as the case may be. Reference to "Lease, "Lease Agreement" or "Agreement" shall mean this Lease Agreement document and its attachments and said terms may be used interchangeably.

30. Entire Agreement: This document and its attachments represents the entire and integrated agreement of the parties and no oral statements or prior written matter not contained herein shall have any force or effect. City and Tenant agree that neither is relying on any representations or agreement other than those contained in this Lease. This Agreement shall not be modified or cancelled except by writing subscribed by all parties.

31. Parties: Except as herein otherwise expressly provided, the covenants, conditions, and agreements contained in this Lease shall bind and inure to the benefit of City and Tenant and their respective successors, personal representatives, administrators and permitted assigns.

IN WITNESS WHEREOF, the City and Tenant have signed this Agreement as of the day and year first above written.

WITNESS

CITY OF PORTLAND

Robert B. Ganley
Its City Manager

WITNESS

ROSA TRUE SCHOOL LIMITED PARTNERSHIP
By Portland West Neighborhood Planning Council, General Partner

JAMES V. OLIVER
(Print or type name)

Its EXECUTIVE DIRECTOR
(Print or type title)

By Youth in Action, Incorporated, General Partner

JAMES V. OLIVER
(Print or type name)

Its PRESIDENT
(Print or type title)

ROSATRUE.ELB.CON.11
03.24.92

STATE OF MAINE
CUMBERLAND, SS.

Date: 3/24/92

Personally appeared the above named Robert B. Ganley, City Manager of the City of Portland, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of the City of Portland.

Before me,

Elizabeth L. Boynton

Attorney at Law/~~Notary Public~~

STATE OF MAINE
CUMBERLAND, SS.

Date: March 24, 1992

Personally appeared the above named JAMES V. OLIVER, EXECUTIVE DIRECTOR of the Portland West Neighborhood Planning Council, General Partner of Rosa True School Limited Partnership, a Maine limited partnership, and acknowledged the foregoing instrument to be his free act and deed, in said capacity, and the free act and deed of the Rosa True School Limited Partnership.

Before me,

[illegible]

Attorney at Law/~~Notary Public~~

STATE OF MAINE
CUMBERLAND, SS.

Date: March 24, 1992

Personally appeared the above named JAMES V. OLIVER, PRESIDENT of Youth in Action, Incorporated, General Partner of Rosa True School Limited Partnership, a Maine limited partnership, and acknowledged the foregoing instrument to be his free act and deed, in said capacity, and the free act and deed of Rosa True School Limited Partnership.

Before me,

[illegible]

Attorney at Law/~~Notary Public~~

SCHEDULE A
ROSAL TRUE SCHOOL
PARK STREET, PORTLAND, MAINE

A certain lot or parcel of land with the buildings thereon, situated on the southwesterly side of Park Street, in the City of Portland, being bounded and described as follows:

Beginning at point on the southwesterly sideline of said Park Street at the southeasterly corner of land now or formerly of Stratford Management Associates, thence along the southwesterly sideline of Park Street on a bearing of S 39° 03' 40" E Eighty-nine and 54/100 (89.54') feet to the northeasterly corner of land now or formerly of the Cathedral Church of Saint Luke; thence S 49° 44'45" W along the land of the Cathedral Church Two Hundred Eleven and 35/100 (211.35') feet to a found iron and land now or formerly of the Trustees of Diocesan Funds; thence N 39° 45" 03" W along the northeasterly line of said Trustees Eighty-nine and 83/100 (89.83') feet to the southeasterly line of land of Stratford Management Associates; thence N 49° 49' 42" E Two Hundred Twelve and 43/100 (212.43') feet to the southwesterly line of said Park Street and the point of beginning.

Being a portion of the premises described in a warranty deed from Joseph B. Gardner to the City of Portland dated October 1, 1844, and recorded in the Cumberland County Registry of Deeds in Book 189, Page 18, and warranty deed from Martin Gore to The Inhabitants of the City of Portland dated August 6, 1844, recorded in said Registry of Deeds in Book 187, Page 131. Excepting and reserving therefrom outconveyance a parcel of land described in a deed from the City of Portland to The Trustees of the Diocesan Funds in the Diocese of Maine, dated February 13, 1888 and recorded in said Registry of Deeds in book 544, Page 127.

DRAFT 2015 HOUSING & COMMUNITY DEVELOPMENT COMMITTEE MEETING CALENDAR

Meetings: 2nd & 4th Wednesday of each month

As of April 2, 2015

<table>
<tr><td rowspan="2"><u>January</u></td><td><u>January 14</u>
Review and Approval of Revisions to Guidelines for Lead Safe Housing Program
Housing Study Report
Update, Review and Approval of Proposed Rosa True School Housing Transaction
Communication: Spring Street Garage/Bid for Broker for leasing Retail/Office Space; Portland Technology Park/RFP for Brokers
<s>Executive Session: Possible Disposition of City-Owned Property at 157 Brackett and 176 Clark Streets</s></td></tr>
<tr><td><u>January 28</u>
Review and vote to recommend to City Council on award of bid and purchase and sale agreement for Cliff Island tax-acquire parcel.
Review of 65 Hanover/52 Alder Street Feasibility Report and possible recommendation on RFP/Deed Options
Housing Study Policy Response- Direction from HCDC
<s>Review, Discussion and Possible Approval of RFP for 157 Brackett</s> Postponed to a later date.</td></tr>
<tr><td rowspan="2"><u>February</u></td><td><u>February 11</u>
Responses to Munjoy Street RFP
Review and recommendation to City Council award of bid and Purchase and Sale Agreement for 71 Hanover Street
Review of Revised RFP for 65 Hanover/52 Alder Street and possible recommendation to issue
Executive session: Guidance to staff on Ready Seafood Lease amendment review at Portland Ocean Terminal</td></tr>
<tr><td><u>February 25</u> HCDC Housing Production and Affordability Forum.</td></tr>
<tr><td rowspan="2"><u>March</u></td><td><u>March 11</u>
Review and recommendation to authorize staff to enter into Commercial Broker Agreement for sale of property at Portland Technology Park.
Review and guidance to staff re: proposed IZ ordinance
Review and guidance to staff re: ordinance changes to encourage and enable housing development
Review and Approval of FY15-16 Affordable Housing Application Process.
Housing Program Budget Recommendation to City Council.
Housing Trust Fund Annual Plan Recommendation to City Council.
Executive Session: Provide guidance to staff for property acquisitions to support relocation of Public Services out of Bayside; and, direction regarding possible tenant lease negotiations related to City-owned Spring Street Parking Garage commercial space.</td></tr>
<tr><td><u>March 25</u>
Review and recommendation to City Council to authorize Ready Brothers Lease Amendments at Portland Ocean Terminal.
Executive Session: Provide guidance to staff for (a) Amendments to Shucks Lobster lease at Portland Ocean Terminal; (b) proposed lease with New England Ocean Cluster House at Portland Ocean Terminal; and (c) Nova Star Cruises proposed lease amendments.
Review and guidance to staff re: ordinance changes to encourage and enable housing development
Review of Affordable Housing TIF Program</td></tr>
</table>

April	~~Short Term Rentals - Air bnb.~~ ~~India Street lot.~~ ~~Police Parking lot.~~ ~~Waterfront TIF District geography amendment discussions, including consideration of Portland Company as TOD TIF Discussion.~~ ~~Riverwalk TIF District Reduction Amendment – Discussion and director to staff.~~ Update of Tax Acquired Properties for Development Opportunities/Coordinate with Trust for Public Land Review and recommendation to City Council to authorize Purchase and Sale Agreements regarding property acquisitions to relocate Public Services out of Bayside. Nova Star Lease Amendments New England Ocean Cluster House Lease
	April 8 Loan Term Amendment – Avesta 134 Washington Avenue Project Rosa True approval of additional funding and lease terms Review and referral to Planning Board for public hearing of ordinance changes (Inclusionary Zoning and Others Items) to encourage and ensure housing development including changes to Division 30 (Affordable Housing) Review of Affordable Housing TIF Program
	April 22 CDBG Allocation Committee Funding Recommendations. Review of HUD 5-Year (2015-2020) Consolidated Plan and FY 15-16 HUD Annual Action Plan. Review and Comment/Recommendation to City Council if necessary: Improvement to CDBG process. Review and vote to City Council to authorize Amended and Restate Lease with Nova Star Cruises at Ocean Gateway. Review and recommendation to City Council regarding Spring Street Garage Lease Executive Sessions: DPS Bayside Relocation guidance; New England Ocean Cluster House potential lease guidance for Portland Ocean Terminal; direction to staff regarding Wilmot Street negotiations.
May	Wilmot Street Matter Resolution. ~~Review and Comment/Recommendation to City Council if necessary: Improvement to CDBG process.~~Update on City-owned lot at 98 High Street. Area-wide Affordable Housing TIF District discussion. Waterfront TIF District geography amendment discussions, including consideration of Portland Company as TOD TIF Discussion. Riverwalk TIF District Reduction Amendment – Discussion and direction to staff. Short Term Rentals - Air bnb. India Street lot. Police Parking lot. Review and Recommendation to City Council award of bid and Purchase and Sale Agreement for 65 Munjoy Street. Review and vote to City Council to authorize Purchase and Sale Agreement for DPS Bayside relocation.
	May 13 Review, Discussion and Possible Approval of RFP for 157 Brackett
	May 27

<u>June</u>	Begin discussion related to Riverside Street area wide needed public infrastructure status and improvements.
	<u>June 10</u>
	<u>June 24</u>
<u>July</u>	
	<u>July 8</u>
	<u>July 22</u>
<u>August</u>	
	<u>August 12</u>
	<u>August 26</u>
<u>September</u>	
	<u>September 9</u>
	<u>September 23</u>
<u>October</u>	
	<u>October 14</u>
	<u>October 28</u>
<u>November</u>	Note: November 11 is Veteran's Day and November 25 is the day before Thanksgiving Portland Economic Development Plan Implementation - Update
	<u>November 11?</u>
	<u>November 25?</u>
<u>December</u>	FYE 2015 Annual City-Wide TIF District Activity Report 2015 Calendar Year HCDC Accomplishments Report Proposed 2016 HCDC Work Plan
	<u>December 9</u>
	<u>December 23</u>