

HOUSING & COMMUNITY DEVELOPMENT COMMITTEE

DATE: October 14, 2015

TIME: 5:30 pm – 7:30 pm

LOCATION: Room 209, 2<sup>nd</sup> Floor, City Hall

1. Agenda For October 14, 2015 HCDC Meeting

Documents: [10.14.2015 AGENDA.PDF](#)

2. Review And Accept Minutes Of Previous Meeting Held On September 30, 2015

Documents: [DRAFT MINUTES FROM 9-30-15 HCDC MEETING.PDF](#)

3. Consideration Of Potential Regulation Reform Of Short Term Rentals Such As Airbnb, HomeAway, Flipkey, VRBO, Craigslist And Others

Documents: [SHORT TERM RENTALS HCDC MEMO 10.9.2015.PDF](#)

4. Review And Possible Recommendation To City Council - Revisions To The Housing Replacement Ordinance

Documents: [MEMORANDUM RE HOUSING REPLACEMENT FINAL.PDF](#)

5. 2015 HCDC Work Plan

Documents: [HCDC 2015 WORK PLAN FOR 10.14.15.PDF](#)

Public Comment will be accepted on action items.

**Councilor Kevin Donoghue, Chair**

Next Meeting Date: October 28, 2015



## **HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE**

**DATE:** October 14, 2015 (Wednesday)  
**TIME:** 5:30 p.m. – 7:30 p.m.  
**LOCATION:** Room 209, Second Floor  
Portland City Hall

### **A G E N D A**

1. Review and accept Minutes of previous meetings held on September 30, 2015.
2. Consideration of potential regulation reform of short term rentals (STR's) for regulating lodging sites such as AirBnB, HomeAway, Flipkey, VRBO, Craigslist, and others.– See enclosed Memorandum from Jeff Levine and Tyler Norod.
3. Review and Possible Recommendation to City Council - Revisions to the Housing Replacement Ordinance. – See enclosed Memorandum from Jeff Levine.
4. 2015 HCDC Work Plan for Review and Discussion – See enclosed Work Plan from Jeff Levine, Greg Mitchell and Mary Davis.

Public Comment will be accepted on action items.

**Councilor Kevin Donoghue, Chair**

Next Meeting Date: October 28, 2015



## **Housing & Community Development Committee**

### **Minutes of September 30, 2015 Meeting**

A meeting of the Portland City Council's Housing and Community Development Committee (HCDC) was held on Wednesday, September 30, 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. City staff present included Housing & Community Development Division Director Mary Davis, Planning and Urban Development Director Jeff Levine, Housing Planner Tyler Norod, and HCD Program Manager Kristin Styles.

#### **Item 1: Review and accept Minutes from previous meeting held on September 9, 2015.**

On motion made and seconded, the Committee voted unanimously 3-0 to accept the minutes as published. Councilor Marshall was not present at the time of the vote.

#### **Item 2: Review and Recommendation to City Council re: HUD 5-Year Consolidated Plan Goals and Priorities.**

Mary Davis, Division Director of the Housing and Community Development Division, and Kristin Styles, the HCD Program Manager introduced the item. Ms. Davis said that HUD requires communities who receive HUD funding such as CDBG, HOME or ESG funds to develop a consolidated plan every 3-5 years. These proposed goals were initially presented in the spring and are designed to be an update to the existing priorities and goals of the City. Councilor Donoghue suggested referring to these as Community Development Policy Goals which can be utilized as a tool for prioritizing City needs and distribution of funds. Ms. Davis

began with the area of need entitled Neighborhood Investment & Infrastructure. She noted that there may be geographic priority areas associated with the process and traditionally the city has focused on the areas with the highest percentage of low-moderate income residents. Councilor Donoghue asked if this geographic priority is going to be implemented through scoring. Director Levine responded that it is unclear at this time. Councilor Donoghue followed up asking if this will be focused on the presented block groups. Ms. Davis noted that Bayside will be the first focus area.

Councilor Mavodones asked how the areas are defined. Director Levine noted that staff is still defining the neighborhood to some degree but a census tract is a good start but we could draw an area that needs support.

Councilor Donoghue stated that if we don't define the boundary now there could be mission creep in the future that gets away from the intent of today's policy. Director Levine clarified that it is not intended for every dollar to go into this area.

Councilor Brenerman asked for clarification on whether defining East Bayside includes portions of Bayside too? Councilor Mavodones noted that they could draw the boundaries as desired. Director Levine reminded the Committee that the Planning Department is working with a brown field planning grant at the moment which may offer a good boundary for this but further analysis is needed.

Councilor Donoghue mentioned that when looking at maps it would be helpful to have additional data within the map to outline other information like population, income levels, etc. In order to help make sure funds are allocated where they are most warranted it would be helpful to understand each area better.

Councilor Brenerman asked for clarification stating that the funding is only about \$2.5 million dollars, correct? Ms. Davis confirmed that he was correct. Councilor Brenerman noted that it is a relatively modest figure and could potentially be spent all on a single street.

Councilor Donoghue said the Committee could benefit from having a better sense of where geographically we need to focus. Ms. Davis said that the process offers two subjects for priority and high priority. Within the scoring system high priority uses receive 11 pts and priority would receive 7 pts. This is based on staff evaluation of the application. This would be CDBG specific.

Councilor Donoghue asked how community policing falls within this system as most of the priority items listed are physical capital improvements. Ms. Davis explained that the need is described as neighborhood investment with a goal of creating strong, safe, accessible and vibrant neighborhoods.

Councilor Donoghue asked about how the priority status relates to the “retention” of housing. Ms. Davis noted that this could be added. Councilor Donoghue said that the City is spending money to create and rehab housing and we should be able to keep that housing.

Councilor Donoghue asked about child care which could allow people to work and noted that its fall under the high priority category of economic opportunity. How would that prioritization take place? Ms. Davis explained that the determination of an activity has high priority or priority would be done under a staff review. Councilor Donoghue followed up saying he would like to see child care specifically identified so that it isn’t lost amongst other needs. Councilor Donoghue asked how you would go about making child care a top priority in this format if the Committee wanted to support that. Ms. Davis explained that could be accomplished with a set aside Councilor Donoghue asked if there could be bonus points for child

care. Director Levine noted that staff is not a fan of bonus points. Councilor Donoghue countered that set asides are essentially a limitless bonus point. Councilor Donoghue continued that it has been a priority of this committee for child care and it seems like the allocation of points to high priority and priority projects will mean every activity will get bonus points.

Councilor Donoghue asked for clarification on how to establish a set aside. Ms. Davis explained that a set-aside could be designated for a specific type of activity but not a specific organization. You would then review all applications for that activity separately. Councilor Brenerman mentioned that he believed last year \$50,000 was allocated to child care out of \$90k requested. Councilor Donoghue suggested the Committee propose a higher amount. He stated that the council were adverse to bonus points for child care but may be more open to a set aside. Councilor Donoghue asked how the HCDC might best make additional policy recommendations. Ms. Davis said that staff is asking for recommendations on four items: high priority + priority; four city goals; neighborhood investment strategy; and imbedding 60% of funding be used for public infrastructure and the Committee could make additional recommendations.

Councilor Donoghue asked where is community policing memorialized. Ms. Davis responded that item was already approved in the spring by the Council. It is in the social service funding category with a set aside of \$150,000.

Councilor Mavodones asked if there was a reason not to do a set aside. Ms. Davis noted there is not as long as it is not given to a particular organization. Councilor Mavodones acknowledged that it can be a challenge for the Council to give direction up front when there are so many good projects to fund. It could be a life of its own but identifying priorities would be helpful.

Councilor Donoghue said that he would like to see a \$100,000 set aside for child care.

Councilor Mavodones said that he would be happy to go above \$50,000 but not as high as \$100,000. Councilor Donoghue mentioned that there appeared to be consensus on establishing a set aside. Councilor Mavodones suggested \$90,000. Councilor Brenerman supported the \$90,000 figure. Councilor Donoghue also agreed to the \$90,000 figure.

Ms. Davis reminded the Committee that the only other item left to discuss is the allocation restrictions. In years past there were limits on minimum and maximum request amounts and maximum percentage of funds for city requests. Staff is not recommending changing that. Staff is asking that the public infrastructure max cumulative amount should be 60% of the existing percentage allowed for city requests in the Development Activity funding category. Councilor Donoghue noted that the City created the CEI workforce development category. Does that still exist? Ms. Davis responded that staff feels that this need is still identified in the needs and goals but there is no funding set aside. Councilor Donoghue stated that he was concerned that we may incentivize funding for job creation for low paying jobs. Ms. Davis said that it could be designed for a higher priority for better paying jobs.

Councilor Brenerman asked if there was an analysis of how well the job programs work. Ms. Davis confirmed that this analysis exists and noted that the information was provided in the spring to the Council which included a report on how many jobs, what types of jobs, etc. Councilor Brenerman noted that he would hate to continue this effort if it doesn't provide real results. Ms. Davis noted that one of the activities funded was the Portland Food Co-Op which created 12 new jobs. Councilor Brenerman asked if there was job training money available. Ms. Davis confirmed that would qualify.

Councilor Donoghue asked if under economic opportunity there were any language regarding increased property values. Is that HUD language, would we want to do this?

Ms. Davis confirmed that it is part of the goal of improving the neighborhood but this doesn't affect scoring. Councilor Donoghue suggested amending the language to "stabilize" property values instead. The current wording suggests a goal that suggests a gentrification related term that would only exacerbate issues in certain neighborhoods with already rising values.

Councilor Donoghue asked if HUD allows us to deal with emerging needs like the current heroin crisis. Ms. Davis noted that nothing we have established would prohibit such a program from applying. Substance abuse is a priority but not a high priority. Councilor Donoghue asked if the City was receiving applications related to substance abuse. Ms. Davis said not specifically but the City receives applications from organizations that offer that as part of what they do. Councilor Donoghue said that the issue is hard to ignore as it is the biggest emerging issue facing the City. Ms. Davis acknowledged that CDBG is an ever shrinking pot of money and one of our challenges is to fund everything that is worthwhile. But we could certainly move to high priority. Councilor Brenerman and Councilor Mavodones would support that move.

Councilor Brenerman asked if the CDBG applicants would receive the needs/goals chart. Ms. Davis indicated that the CDBG application will include the information outlined in the charts so that they have an understanding of what the priorities are.

Ms. Davis summarized the areas for Committee action as (1) establish 90k child care set aside; (2) public infrastructure set-aside of up to 60% of the funding available to City programs; (3) establish a targeted neighborhood investment strategy beginning with Bayside; (4) allocation

of points for high priority and priority activities; and (5) goals and priorities for the 5-Year Consolidated Plan.

On a motion made and seconded the Committee voted 3-0 to recommend the above list to the City Council for approval. Councilor Marshall recused himself prior to the beginning of the discussions and vote on this item.

**Item #3: Review of short term rental ordinance options for regulating short term lodging sites such as AirBnB, HomeAway, Flipkey, VRBO, Craigslist, and others.**

Jeff Levine described staff approach and that staff is looking for further guidance from the committee. Housing Planner Tyler Norod introduced this item and described the challenges of enforcement of a rapidly changing industry and discussed the potential impact of any policy on the industry.

Mr. Norod explained that he has been looking at short term rental websites since the summer and has estimated approximately 250 listings in Portland on Airbnb, however it is difficult to determine full time and occasional listings. Professionalization of short term rentals is becoming a problem.

Mr. Norod outlined three proposed options (1) maintaining the status quo and continue to monitor; (2) impose a ban which would level the playing field, maintains housing stock, but would be difficult to enforce and create a burden on city resources; it also denies homeowners the ability to earn additional income; (3) allow some level of short term rentals in primary dwelling units; discourage the use as a professional tool.

Councilor Donoghue indicates a preference for looking at option 3 as options 1 and 2 are the outlining extremes.

Councilor Marshall indicated at last meeting he wanted to see what already exists in state law and regulations and believes DHHS has some exemptions already in place along with requirements when life safety codes kick in.

Councilor Donoghue would like to figure out where what is going on fits into already established regulations and suggests that the new rental registration and inspection process may help with this. Mr. Levine indicated that the new process would not identify if a unit is a short term rental. Councilor Donoghue suggested that perhaps this is an opportunity to recognize this new use and have the new system adopt guidelines that will help.

Councilor Marshall agreed that the City could put enforcement around this issue within the new housing safety office which might force users to go through the licensing requirements at the state level.

Mr. Levine acknowledge the Committee's suggestion and that as the City launches the new housing inspection program it may be able to incorporate this into the process.

Councilor Marshall would like to utilize existing systems to address the safety issue. Councilor Donoghue agreed that this should be integrated with the rental registration program to encourage and enforce existing ordinances.

Councilor Brenerman agrees that it would be best to utilize registration and inspection program but feels that he does not have enough information to see if there is significant evidence that this type of use is creating a problem. Councilors Marshall and Donoghue both indicate that they have personal knowledge of this happening.

Councilor Donoghue asked if issues with state laws and regulations would be within the new inspection and registration process. Mr. Levine explained that the program is still being defined and is not sure if it will include use issues.

Councilor Donoghue would like a summary of what codes we have now that would be of use and how these issues can be integrated into the new housing registration and inspection program. A better understanding of what uses are legal now would help to clarify how to move forward.

**Item 4: Review of Housing Replacement Ordinance.**

Director Jeff Levine introduced this item to the Committee and explains that the current ordinance has been in effect for approximately 5 years. He indicated that people are finding ways to avoid paying into the fund which are often legal but not in line with the intent of the regulation. He is looking for feedback on ways to tighten up the language to limit loopholes. Mr. Levine outlined a few examples of loopholes and possible options to limit the loopholes.

Councilor Donoghue suggested the removal of the option to create units off-site and Councilor Marshall agreed with the suggestion. Councilor Brenerman asked for clarification on why allowing units to be built off-site would be a problem.

Mr Levine indicated that a fair amount of units are being torn down, but mostly for more housing. Requiring units to be built within certain distance could be a good middle ground and help limit some of the loopholes.

Councilor Donoghue opened the item for public comment. Chris O'Neil suggested a prohibition on replacing the units off-site but suggested a reduction in the replacement fee if a developer chooses not to create units.

Councilor Donoghue indicated he believes the fee is already too low.

Councilor Brenerman suggested that staff bring two options forward at the next meeting including a prohibition and limiting the area in which the replacement units can be created.

**Item 5: 2015 HCDC Work Plan for Review and Discussion.**

The Committee would like more work on short term rentals and the Housing Replacement Ordinance as well as more clarity on lodging definitions and how that relates to short term rentals.

On motion made and seconded committee adjourned at 7:36 on a unanimous vote of 3-0. Councilor Mavodones had to leave early before the motion to adjourn was made.

Respectfully,

Tyler Norod



Jeff Levine, AICP  
Director, Planning & Urban Development Department

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

**FROM:** Jeff Levine, Director  
Planning and Urban Development  
Tyler Norod, Housing Planner  
Housing and Community Development Division

**DATE:** October 9, 2015

**SUBJECT:** Consideration of potential regulation reform of short term rentals (STR's) for regulating lodging sites such as AirBnB, HomeAway, Flipkey, VRBO, Craigslist, and others.

## I. SUMMARY OF ISSUE

Cities across the country have been struggling to adapt to new market forces brought about by the rise of the “sharing economy”. Companies like Uber and Airbnb are often cited as being at the forefront of this web based movement revolutionizing commuting, shopping, and lodging. But these new models are also being scrutinized for their unintended consequences on existing businesses and communities. To date, governments have struggled to reign in these ever evolving markets to provide certainty, safety, and fairness. Given their quick ascension to prominence there has not been sufficient time for public entities to develop and evaluate best practices for how to effectively regulate these industries.

Short term rentals (STR's), such as AirBnB, have garnered significant attention in Portland and elsewhere for both their positive economic impact as well as concerns related to their effects on already tight local housing markets. Critics assert that STR's take apartments and homes out of the market limiting the supply of long term housing for local residents and in doing so increase the cost of housing. Unfortunately, it is a challenge to accurately substantiate these claims. It is difficult to understand how many units are actually being rented out and for how long. Recent surveys of online STR websites conducted during the peak tourist season such as have shown more than 250 STR's within Portland. These STR's offer an average price per night of about \$150. Each website offers its own listings but many STR units are listed on multiple sites making an accurate total count problematic.



Jeff Levine, AICP  
Director, Planning & Urban Development Department

There is clear financial incentive for property owners to prefer STR's over traditional long term tenants or to even not sell a property as they move out of their owner occupied unit to another property. If each of these units were rented out 30 days a month the average unit would generate approximately \$4,500 per month. This figure is greatly in excess of the average monthly rent for the surrounding residential market. It is unclear whether or not the limited number of STR's in Portland have a significant impact on the overall housing stock and market. According to the STR research firm AirDnA, Portland has approximately 32,700 housing units. Given the more than 250 STR's being advertised approximately less than 1% of the City's housing stock is being offered as a STR. However, most of the units offered as STR's are limited to the Peninsula which may have a disproportionate impact on those neighborhoods.

Review of STR market trends shows that the majority of hosts are likely using these units part time to generate additional income to support a variety of expenses ranging from home repair, student loans, medical bills, taxes, child expenses, or simply additional discretionary income. In Portland, these may be long term residents who utilize STR's to enable them to stay in their homes and further participate in the local economy.

Unfortunately, some STR hosts have taken advantage of the market to buy up existing housing stock for the sole purpose of using it as an STR. These units effectively operate as an unlicensed hotels or bed & breakfasts. Not only do these types of practices remove long term housing options from the City's supply but they also can increase the perceived value of real estate. Traditional buyers may now have to compete with individuals or companies who assume greater revenue capacity with STR's over long term rentals. Although difficult to confirm exact figures, recent reviews of online STR sites have shown at least four individuals or companies who have multiple properties apparently used exclusively as STR's.

## **II. REASON FOR SUBMISSION**

The Committee requested that staff research STR's in Portland and examine what regulations currently exist that STR's may fall within and where these uses may be allowed.



Jeff Levine, AICP  
Director, Planning & Urban Development Department

### **III. INTENDED RESULT**

The intended result is to determine the best policy approach for Portland that balances the pros and cons of STR's with the housing and economic goals of the City.

### **IV. COMMITTEE GOAL/COUNCIL GOAL ADDRESSED**

The potential regulation of STR's is in line with the Committee and Council's goals of providing additional housing options that are affordable to a variety of Portland residents. Potential regulation may also impact economic development goals of the City as they related to tourism.

### **V. FINANCIAL IMPACT**

Depending on policy recommendations by the Committee there is the possibility that STR regulation could result in additional registration and penalty fees to the City. Potential regulation could also result in additional lodging tax revenue for the State although that would be difficult to achieve and may not happen for a significant period after regulations are put in place. Cooperation from the various STR enabling websites would be necessary to effectively recover these tax revenues. Potential regulations may also effect tourism related revenue in the City. Potential regulation efforts could inhibit, support, or not have any effect on tourism depending on future steps taken. It is difficult to assess the total economic effect of any regulations on this nimble and evolving market but economic development issues should be taken into consideration with any policy recommendations.

### **VI. STAFF ANALYSIS AND RECOMMENDATION**

At the previous HCDC meeting on September 30, 2015, staff had researched how other states and cities were approaching the regulation of short term rental units. As mentioned above, this is a new and quickly evolving issue that makes evaluating time tested best practices difficult to come by. Committee members asked staff to examine local and state laws to provide the Committee with a better understanding of what is allowed within current regulations as well as the potential for these to be applied within the existing governing structure of the City.

After additional research it appears that there are some provisions within state and local regulations that have the potential to be applied to STR's. Section 14-404(e)



Jeff Levine, AICP  
Director, Planning & Urban Development Department

of the City's zoning ordinance allows for the letting of up to two rooms within an existing dwelling unit. Section 14-404(e) is allowed in every major residential zone in the City. There is no mention of the length of stay as this provision was likely written prior to the wide spread use of STR's through online platforms. Reforms could be directed at this section depending on the goals of the City. At the state level private homes shall not be deemed or considered lodging places and thus subject to a license where not more than three rooms are let. The state also considers Guest Homes to be allowed but the definition lacks details on the specific applicable regulations. Guest Homes must be licensed by the state. However, the issuance of a state license does not provide exemption from other local laws, ordinances, or regulations.

There is also the potential for the newly created Housing Safety Office or the Inspections Division to play a role in the enforcement of any STR policy. However, given staff constraints within the Inspection Division and the timing for the new Housing Safety Office it would be difficult to implement significant reforms quickly. Depending on the direction of the City the Landlord Registration Form and process may be able to accommodate STR registration as well but other reforms and enforcement would likely be needed to enable a well-designed STR oversight system.

The housing definitions within the existing zoning code provides a variety of lodging types including hostels, bed & breakfasts, lodging houses, tourist homes, motels, hotels, and inns. Some of these definitions, such as tourist homes, are no longer allowed within the current zoning ordinance. Most other lodging types are limited to certain zones such as the B-2 and R-6 zones. The lodging types typically stipulate that proponents must register their use with the City and prove their compliance with the various requirements of each use, including parking. Associated parking requirements may make some of these difficult to comply with for the average urban STR. Of the existing definitions in use within the zoning ordinance, lodging houses, hostels, and bed & breakfasts most closely resemble the STR structure currently being used through sites like AirBnB. However, these require state licenses and most have nuances that would not fit the modern STR business model. For example, lodging houses have a minimum rental of one week or a month. Many STR's offer nightly or weekend stays. Hostels and Bed & Breakfasts require an owner or operator to live on-site. Bed & breakfasts require that breakfast be provided. In short, it would be difficult to revise the existing uses to accommodate for the still evolving STR market without significantly altering the intention behind regulations for these already existing uses.

Portland, Maine



Yes. Life's good here.

Jeff Levine, AICP  
Director, Planning & Urban Development Department

Additional information related to lodging definitions and a zoning chart identifying where various lodging uses are allowed within the existing code are included in this package as Attachment A and Attachment B.

## **Attachment A: Housing Definitions**

### Lodging House

A house, building or portion thereof, containing two (2) or more rooming units and providing such units, with or without meals, to individuals on not less than a weekly or monthly basis for compensation. A lodging house, except for lodging houses located in the IR-2, IR-3, and I-B zones shall contain common areas for use by all residents, including a kitchen. A kitchen need not be available as part of the common areas where all meals are provided on a daily basis. No owner, operator, director, employee, shareholder, partner, corporate officer, or agent of a bed and breakfast facility, hostel, hotel, inn, lodging house, motel, or tourist home (as defined in the code) may, for direct or indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term, or overnight accommodations for an actual or potential guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized, under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel, or tourist home.

### Hostel

An overnight lodging facility for transient guests that provides sleeping rooms and common areas for cooking. A hostel shall not be used as an emergency shelter. No owner, operator, director, employee, shareholder, partner, corporate officer, or agent of a bed and breakfast facility, hostel, hotel, inn, lodging house, motel, or tourist home (as defined in the code) may, for direct or indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term, or overnight accommodations for an actual or potential guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized, under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel, or tourist home.

Hostels typically require site plan and operations plan review demonstrating compliance with the following conditions:

- a) No more than 10 or 20 overnight transient guests (depending on the zone) shall be permitted in the facility at any one time.
- b) All applicable provisions of Article V of the ordinance shall be met.
- c) Parking shall be provided in compliance with Division 20.
- d) No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.
- e) The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty (60) day period.
- f) An owner, manager or operator shall live in the building as a permanent resident.

- g) The building shall meet the applicable occupant load requirements as defined by the International Building Code and the NFPA Life Safety Code, as such codes are amended or adopted by the City.

#### Bed & Breakfasts

A building in which more than two (2) but not more than nine (9) guest rooms are used to provide or offer overnight accommodations for transient guests. An owner, manager, or operator shall live in the building as a permanent resident. No cooking facilities shall be permitted in any of the guest rooms. The only meal which may be offered is breakfast, which shall be offered only to overnight guests. No owner, operator, director, employee, shareholder, partner, corporate officer, or agent of a bed and breakfast facility, hostel, hotel, inn, lodging house, motel, or tourist home (as defined in the code) may, for direct or indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term, or overnight accommodations for an actual or potential guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized, under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel, or tourist home.

#### Transient Guest

Section 14-47 defines Transient guest as "A person who occupies a facility offering accommodations on an overnight basis for compensation and whose actual occupancy is limited to no more than fifteen (15) days out of any sixty-day period". Bed and breakfasts, hostels, hotels, motels, and tourist homes all are for transient guests. A lodging house allows the rental of rooming units on not less than a weekly or monthly basis.

Attachment B: Short Term Rental Zoning Chart

| Zone | Section 14-404( e ) | Lodging House | Hostel                                   | B&B     |
|------|---------------------|---------------|------------------------------------------|---------|
| R-1  | Allowed             | No            | No                                       | No      |
| R-2  | Allowed             | No            | No                                       | No      |
| R-3  | Allowed             | No            | No                                       | No      |
| R-4  | Allowed             | No            | No                                       | No      |
| R-5  | Allowed             | No            | No                                       | No      |
| R-6  | Allowed             | Allowed       | Allowed/Conditional<br>Depending on Size | Allowed |
| R-6A | Allowed             | Allowed       | Allowed/Conditional<br>Depending on Size | Allowed |
| R-7  | Allowed             | Allowed       | Allowed/Conditional<br>Depending on Size | Allowed |
| FH   | No                  | No            | No                                       | No      |
| B-1  | No                  | Allowed       | Allowed                                  | Allowed |
| B-2  | No                  | Allowed       | Allowed                                  | Allowed |
| B-3  | No                  | Allowed       | Allowed                                  | Allowed |
| B-4  | No                  | Allowed       | No                                       | No      |
| B-5  | No                  | Allowed       | Allowed                                  | No      |
| B-6  | No                  | No            | No                                       | No      |
| B-7  | No                  | Allowed       | Allowed                                  | Allowed |



Jeff Levine, AICP  
Director, Planning & Urban Development Department

## Memorandum

**To:** Housing and Community Development Committee  
**From:** Jeff Levine, Director  
**Date:** October 8, 2015  
**Re:** Housing Replacement Ordinance

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As per your direction at the October 7 meeting, I have prepared two draft amendments to the Housing Replacement Ordinance (Division 29.) One of these drafts would require replacement units to be on the same parcel as the demolished units. The second draft provides two options for off-site replacement. The first option requires that the replacement units be within a specific distance (1500 feet for the purposes of discussion.) The second option requires the replacement units be within the same Census Block Group as the demolished units. That could potentially be Tract if you felt Block Group was too restrictive. By comparison, the current requirement is simply that the replacement units be within the City of Portland. I also include a Census Block Group map with a scale for reference.

| <i>Current Language</i>                   | <i>Draft 1</i>                               | <i>Draft 2 Option 1</i>                         | <i>Draft 2 Option 2</i>                                 |
|-------------------------------------------|----------------------------------------------|-------------------------------------------------|---------------------------------------------------------|
| Units must be within the City of Portland | Units must be on the same parcel, as defined | Units must be within the same Block Group/Tract | Units must be within 1500 (or other finite amount) feet |

Though this issue didn't come up in your discussion, I'd also like to propose a timeframe for provision of replacement units. Presently there is no deadline. As a result, we could be asked to hold a Letter of Credit indefinitely while an owner evaluates his/her options. I would recommend a timeframe be added to this option. I'd recommend a starting point for this discussion of an outside limit of three years.

**Sec. 14-478. - 14-482. Reserved.**

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**\*Editor's Note**—Pursuant to Council Order 280-09/10 passed on 7/19/10 Division 29 (Preservation and Replacement of Housing Units) was repealed in its entirety and replaced with a new Division 29 (Housing Preservation and Replacement).  
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**DIVISION 29. HOUSING PRESERVATION AND REPLACEMENT**

**Sec. 14-483. Housing preservation and replacement.**

(a) *Purpose.* The purpose of these regulations is:

1. To promote and facilitate an adequate supply of housing, particularly affordable housing for all economic groups;
2. To limit the net loss of housing units in the city;
3. To preserve housing in zones where housing is permitted for in the city for all residents in order to promote the health, safety and welfare of its citizens.

(b) *Definitions.*

*Dwelling unit.* A dwelling unit is one (1) or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit. For purposes of this section only it also includes single family, two-family and multi-family dwellings and any dwelling units in those dwellings, or dwelling units, or rooms that people rent or sleep in within lodging houses, dormitories, shelters and sheltered care group homes.

*Loss of dwelling or dwelling unit* for purposes of this section means the elimination or conversion to nonresidential use of a dwelling or dwelling units; elimination includes dwelling units lost due to demolition unless the demolition resulted from accidents outside of the owner's control, fire, natural disasters, or acts of war.

*Original site* means the location where the demolition or conversion to non-residential use of dwellings and dwelling units

will take place.

(c) *Applicability*. Except as otherwise provided in this section, this section shall apply to the loss of three or more dwelling units in a five year period, provided that such dwelling units were a legally registered residential use as of July 1, 2002.

Except as otherwise provided in this section, this section shall also apply to proposals that (a) result in the loss of fewer than three (3) dwelling units which were legally registered residential use as of July 1, 2002, and (b) creates surface parking.

Determination of number of the dwelling units within a structure or structures and the number of units lost will be based on records in the Department of Planning and Urban Development indicating the legal, registered use of the property since July 1, 2002 through the time of application. The actual use of the property for purposes of applicability of this section may be rebutted by the owner by proof of documentary evidence including but not limited to photographs, letters, and sworn affidavits. The Planning Authority may conduct its own investigation of the actual use and shall determine the applicability of this section based on the totality of the evidence.

(d) *Exemptions*.

This section does not apply to:

1. Consolidation, elimination or reconfiguration of one (1) or more dwelling units within an existing structure, as long as all the resulting units remain as dwelling units after such consolidation, elimination or reconfiguration, except as provided by subsection 5 below. Conversion of a dwelling unit to a hotel or motel room shall not qualify for the exemption provided by the paragraph.

The amendments to paragraph (d)(1) approved by the City Council on June 6, 2011 shall have an effective date of April 25, 2011 but not apply to any final determination regarding the applicability of this section made by the Planning Authority prior to April 25, 2011.

2. Proposals that result in a number of units equal to or greater than the number of units lost as determined by

the Planning Authority; or

3. Grandfathered dwelling units existing in zones which no longer permit residential uses.
4. Property which has been ordered demolished by the City, pursuant to 17 M.R.S.A. §2851, et seq., as amended, except where it is determined by the Building Authority that the deterioration was caused by neglect or lack of maintenance.
5. Subparagraph 1, above notwithstanding, the conversion to a non-residential use of any dwelling units located on the ground floor of a building within a business zone.

(e) *Site plan administrative authorization or approval required.* Notwithstanding any other provision of this section, a person who proposes to demolish or to convert to a nonresidential use three or more dwellings or dwelling units in the City, in a zone where such use is otherwise permitted, must first obtain administrative authorization or site plan approval from the City's Planning Authority or Planning Board pursuant to Sec. 14-521, et. seq.

In addition the requirements of 14-521, et. seq., where this section is applicable, the applicant must also submit a statement certifying the number of dwelling units to be demolished or converted to nonresidential use, as well as a description of the characteristics of each of those units.

(f) *Tenant Notification Requirements.* Prior to elimination as a result of demolition or conversion to non-residential use, the owner shall:

1. Provide the Planning Authority a list containing the name of each tenant currently residing in the dwelling units to be demolished or converted to non-residential use, as well as verification of compliance with tenant notice requirements of this section.
2. Deliver to each tenant who occupies such a dwelling unit a written notice to vacate the unit. The notice shall either be sent by certified mail, return receipt requested, or served in-hand. The notice will grant the tenant not less than ninety (90) days from the date of receipt of the notice to vacate the unit; and

3. File proof of service of the notice with the Planning Authority.

(g) *Housing Replacement Requirements.* In addition to the requirements of 14-521, et. seq, the Planning Authority shall require, as a condition of approval, that an owner shall replace any dwelling units that are demolished or converted to non residential use.

This section may be satisfied in any one of the following ways:

1. Construction of Units. The construction of housing units within a new structure or a new addition either on site or off-site;
2. Residential Conversion. The conversion of a nonresidential building to residential use; or

The applicant may use either of the two methods or a combination of the two to fulfill their replacement requirement.

(h) *Replacement Unit Requirement.* In addition to the foregoing, all replacement units built pursuant to sub-section (g)(1) or (2) above shall:

1. Be located within the City of Portland.
2. Not previously have been on the market as of the date of application.
3. Be situated within a development which has not been a candidate for site plan approval as of the date of the application.
4. Be comparable in size to the units replaced; for the purpose of this section, "comparable in size" means that the aggregate size of the replacement units will be no less than 80% of the size of the aggregate of the original units.

(i) *Contribution to the Housing Trust Fund.*

1. The applicant may meet the requirements of this section by depositing \$50,000 for each dwelling unit into the City's Housing Trust Fund in section 14-489.

2. Beginning on January 1, 2004 and annually thereafter, the amount of the contribution shall be adjusted by multiplying this amount originally deposited for each unit by a fraction, the denominator of which shall be the "Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W")," U.S. City Average, "All Items Index," as published by the United States Bureau of Labor Statistics ("the Index") for January 1, 2003 Year, and the numerator of which shall be the Index for the same month in each subsequent year. In the event that the Index is not then in existence, the parties shall use such equivalent price index as is published by any successor governmental agency then in existence; or, if none, then by such nongovernmental agency as may then be publishing an equivalent price index, in lieu of and adjusted to the Index. If the Index shall cease to use 1982-84 equals 100 as the basis of calculation, or if a substantial change is made in the terms or number of items contained in the Index, the Base Index shall be adjusted to conform to such change, using such computation thereof, if available, as shall be employed by the United States Department of Labor in computing same. Notwithstanding anything herein to the contrary, contributions made after January 1, 2004 shall not be less than the amount originally required to be deposited pursuant to sub-section (i)(1) for each rooming or dwelling unit.

(j) *Performance Guaranty/Letter of Credit.* Owners or affiliates must post a performance guaranty in the form of a letter of credit, or other security acceptable to the city attorney in amount equivalent to the amount the applicant would have been required to contribute to the City's Housing Trust Fund if the applicant had chosen that option pursuant to sub-section g.

(k) *Partial waiver of replacement requirements.* Any owner who has applied for site plan review for elimination or conversion to non-residential use of dwelling units may apply to the Zoning Board of Appeals for a partial waiver from the housing replacement requirements of this section. Such waiver may be a downward adjustment of up to fifty percent (50%) of the owner's housing replacement obligation if the owner establishes to the board's satisfaction that:

1. The proposed development is consistent with the comprehensive plan;

2. The proposed development provides significant value and benefit to the immediate and surrounding neighborhood, including, but not limited to, community enhancement, social benefits or job creation;
3. The applicant demonstrates with objective evidence that the imposition of the requirements of this section would impose such an economic burden upon the project relative to its scope that it renders the project impossible to develop; and
4. The requested relief does not constitute a grant of a special privilege inconsistent with the limitations upon similar properties.

The Zoning Board of Appeals must make positive findings on each of the four (4) criteria above in order for any such adjustment to be valid. An applicant aggrieved of a decision of the Zoning Board of Appeals may appeal a decision under this subsection pursuant to Sec. 14-553 of the City Code.

(1) *Effect of Other City Ordinances.*

1. *Historic Preservation.* Nothing in this division shall permit the demolition or conversion to non-residential use, of dwelling units in residential property protected by the Historic Preservation Ordinance (Sections 14-601, et seq.), except as permitted by that ordinance.
2. *Conditional Zone.* A conditional zone may not be used to circumvent the application of this section. The terms of this section shall apply to any conditional zone which involves dwelling units affected by this section. Notwithstanding the foregoing, nothing herein shall be deemed to prevent the City and the applicant from agreeing to terms which exceed those imposed by this section by means of a conditional zone.

(m) *Appeals.* Any applicant aggrieved by a decision of the Planning Authority under this section may appeal to the Zoning Board of Appeals within 30 days of that decision.  
(Ord. No. 27-02/03, 10-7-02; Ord. No. 280-09/10, 7-19-10; Ord. No. 241-10/11, 6-6-11)

DIVISION 30. INCENTIVES FOR AFFORDABLE HOUSING

**Sec.14-484. Purpose.**

## Draft One: No Off Site Replacement Units Permitted

3. File proof of service of the notice with the Planning Authority.

(g) *Housing Replacement Requirements.* In addition to the requirements of 14-521, et. seq, the Planning Authority shall require, as a condition of approval, that an owner shall replace any dwelling units that are demolished or converted to non residential use.

This section may be satisfied ~~in any one of the following ways:-~~

~~1. Construction of Units. The by the construction of housing units within a new structure or a new addition either on site or off site on the same parcel of land. For the purposes of this section, modification of the parcel to increase its size shall invalidate this option;~~

~~2. Residential Conversion. The conversion of a nonresidential building to residential use; or~~

~~The applicant may use either of the two methods or a combination of the two to fulfill their replacement requirement.~~

(h) *Replacement Unit Requirement.* In addition to the foregoing, all replacement units built pursuant to sub-section (g) ~~(1) or (2)~~ above shall:

~~1. Be located within the City of Portland.~~

~~21.~~ Not previously have been on the market as of the date of application.

~~32.~~ Be situated within a development which has not been a candidate for site plan approval as of the date of the application, ~~and-~~

~~43.~~ Be comparable in size to the units replaced; for the purpose of this section, "comparable in size" means that the aggregate size of the replacement units will be no less than 80% of the size of the aggregate of the original units.

(i) *Contribution to the Housing Trust Fund.*

1. The applicant may meet the requirements of this section by depositing \$50,000 for each dwelling unit into the City's Housing Trust Fund in section 14-489.

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3. File proof of service of the notice with the Planning Authority.

(g) *Housing Replacement Requirements.* In addition to the requirements of 14-521, et. seq, the Planning Authority shall require, as a condition of approval, that an owner shall replace any dwelling units that are demolished or converted to non residential use.

This section may be satisfied in any one of the following ways:

1. Construction of Units. The construction of housing units within a new structure or a new addition either on site or off-site;
2. Residential Conversion. The conversion of a nonresidential building to residential use; or

The applicant may use either of the two methods or a combination of the two to fulfill their replacement requirement.

(h) *Replacement Unit Requirement.* In addition to the foregoing, all replacement units built pursuant to sub-section (g)(1) or (2) above shall:

1. Be located within the City of Portland [the same Census Block Group as] [1500 feet from] the parcel from which the units are being removed.
2. Not previously have been on the market as of the date of application.
3. Be situated within a development which has not been a candidate for site plan approval as of the date of the application; and
4. Be comparable in size to the units replaced; for the purpose of this section, "comparable in size" means that the aggregate size of the replacement units will be no less than 80% of the size of the aggregate of the original units.

(i) *Contribution to the Housing Trust Fund.*

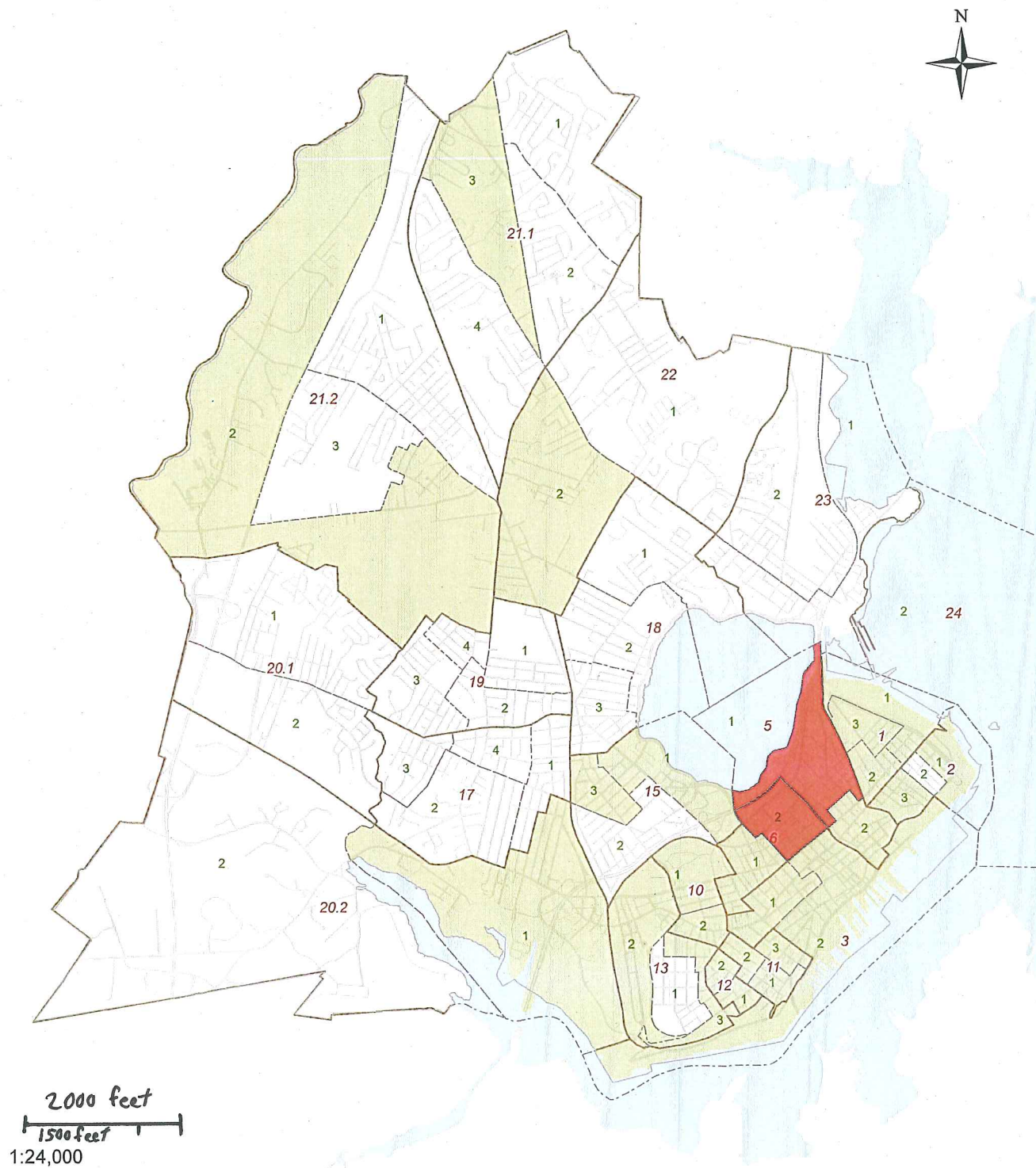
1. The applicant may meet the requirements of this section by depositing \$50,000 for each dwelling unit into the City's Housing Trust Fund in section 14-489.

## Performance Guaranty Expiration Language

2. Beginning on January 1, 2004 and annually thereafter, the amount of the contribution shall be adjusted by multiplying this amount originally deposited for each unit by a fraction, the denominator of which shall be the "Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W")," U.S. City Average, "All Items Index," as published by the United States Bureau of Labor Statistics ("the Index") for January 1, 2003 Year, and the numerator of which shall be the Index for the same month in each subsequent year. In the event that the Index is not then in existence, the parties shall use such equivalent price index as is published by any successor governmental agency then in existence; or, if none, then by such nongovernmental agency as may then be publishing an equivalent price index, in lieu of and adjusted to the Index. If the Index shall cease to use 1982-84 equals 100 as the basis of calculation, or if a substantial change is made in the terms or number of items contained in the Index, the Base Index shall be adjusted to conform to such change, using such computation thereof, if available, as shall be employed by the United States Department of Labor in computing same. Notwithstanding anything herein to the contrary, contributions made after January 1, 2004 shall not be less than the amount originally required to be deposited pursuant to sub-section (i)(1) for each rooming or dwelling unit.

(j) *Performance Guaranty/Letter of Credit.* Owners or affiliates must post a performance guaranty in the form of a letter of credit, or other security acceptable to the city attorney in amount equivalent to the amount the applicant would have been required to contribute to the City's Housing Trust Fund if the applicant had chosen that option pursuant to sub-section g. Such a performance guaranty shall be valid for no more than three years, after which the full amount due shall be provided to the City's Housing Trust if replacement units satisfying the conditions of this Division 29 do not have Certificates of Occupancy.

(k) *Partial waiver of replacement requirements.* Any owner who has applied for site plan review for elimination or conversion to non-residential use of dwelling units may apply to the Zoning Board of Appeals for a partial waiver from the housing replacement requirements of this section. Such waiver may be a downward adjustment of up to fifty percent (50%) of the owner's housing replacement obligation if the owner establishes to the board's



- 2010 Block Groups
- 2010 Census Tracts
- Block Groups > 51% Low Income
- Bayside Neighborhood

# City of Portland Block Groups > 51% Low Income Target Area: Bayside Neighborhood

# DRAFT 2015 HOUSING & COMMUNITY DEVELOPMENT COMMITTEE MEETING CALENDAR

Meetings: 2<sup>nd</sup> & 4<sup>th</sup> Wednesday of each month

As of October 9, 2015

|                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><u>October</u></b>                  | <b><u>October 14</u></b><br><br>Short Term Rentals - Air bnb.<br>Housing Replacement Ordinance Clarifications                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|                                        | <b><u>October 28</u></b><br>Reed School Next Steps<br>Short Term Rentals - Air bnb.<br>Housing Replacement Ordinance Clarifications<br>2015 Calendar Year HCDC Accomplishments Report<br>Proposed 2016 HCDC Work Plan<br>Communication: Portland Economic Development Plan Implementation Update<br>Communication: FYE2015 Annual TIF District Report                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b><u>November</u></b>                 | Note: November 11 is Veteran's Day and November 25 is the day before Thanksgiving                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|                                        | <b><u>November 11 – Canceled</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|                                        | <b><u>November 25 - Canceled</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b><u>December</u></b>                 | <b><u>December 9 – Canceled</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|                                        | <b><u>December 23 - Canceled</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b><u>Items for 2016 Work Plan</u></b> | Update on City-owned lot at 98 High Street. - 2016<br>Police Parking lot (corner of Middle and Franklin). – 2016<br>Additional publicly owned land for housing development – 2016<br>Linking housing subsidies to other public goals<br>TIF Policy<br>Waterfront TIF District geography amendment discussions, including consideration of Portland Company as TOD TIF Discussion.<br>Tentative: Vote and recommendation to the City Council on the Assignment of the Riverwalk TIF District.<br>Lodging house as an alternative to emergency shelter<br>Housing Zoning Definitions Review of RFP Response for 157 Brackett Street<br>Tentative Executive Session for possible TIF District for city owned Riverside Street site.<br>Tentative Executive session for Wilmot Street matter resolution. |