HOUSING COMMITTEE

DATE: Wednesday, April 10, 2019
TIME: 5:30 PM
LOCATION: Room 209

AGENDA

1. Review and accept Minutes of previous meeting held on March 27, 2019

    a. Review and Accept Minutes of Previous Meeting Held on March 27, 2019

2. Housing Policy Discussion:

    a. Non-Renewal of Leases and Notification Requirements, Voucher/Rental Subsidy Discrimination, Rental Application Fee Abuse

3. Review and Approval:

    a. Affordable Housing Development Application to Issue by the Committee.
    This is an actionable item and public comment will be taken.

4. Review and Recommendation

    a. 2019 Housing Trust Fund Annual Plan Review and Recommendation to the City Council
    This is an actionable item and public comment will be taken

5. Community Development Week

    a. Community Development Week- April 22-26

6. Work Plan

    a. 2019 Work Plan Discussion

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

Next Meeting Date: May 8, 2019 City Hall, Room 209

Housing Committee
Minutes of March 27, 2019 Meeting

NOTE: The Housing Committee meetings are now live-streamed, which can be viewed at this link: http://townhallstreams.com/stream.php?location_id=42&id=16398 These minutes provide a record of those in attendance, general discussions taking place, and motions made.

A meeting of the Portland City Council's Housing Committee (HC) was held on Wednesday, March 27, 2019 at 5:30 P.M. in room 24 of Portland's City Hall. Councilors present at the meeting included Committee members Councilor Spencer Thibodeau, and Councilor Jill Duson, Chair of the Committee. City staff present included Mary Davis, Division Director Housing and Community Development, and Victoria Volent Housing Program Manager.

Item 1: Review and accept Minutes of previous meetings held on February 13, 2019

Motion by Councilor Thibodeau to accept the minutes from February 13, 2019. Motion was seconded by Councilor Duson and minutes approved 2-0.

Item 2: Review, Discussion and Recommendation to the City Council of FY 2020 Housing Program Budget

Mary Davis introduced the 2019 -2020 Housing Program Budget. The Housing Committee recommends the Housing Program Budget to the City Council for final approval. HUD has not announced the allocation amount for FY 2019-2020. The FY 19 federal spending bill was approved on February 15. It requires HUD to notify grantees of their CDBG and HOME allocations within 60 days (by April 16). Subsequently, we do not have the final allocation amounts. We are estimating the HUD HOME allocation at the same level as the previous year ($1,151,710). $445,712 is reserved for County projects. The budget proposal was developed after a historical review of HOME funding allocations, previous year's budget allocations, program expenditures, and program income (loan repayments) received.

The budget proposal recommendation is $115,171 for Administration, $65,000 for Housing Rehabilitation, $162,000 for Tenant Based Rental Assistance, and $564,954 for Affordable Housing Development including CHDO requirements. The budget proposal for CDBG/Housing Development Fund is $93,242 for housing rehabilitation. The budget proposal for the Lead Safe Housing fund is $268,741. The Housing Trust Fund Budget is $1,275,820.

Mary Davis explained that the process for reviewing applications for federal funds and Housing Trust funds will be under a consolidated application process. All resources will be reviewed against the goal of the number and type of units the city hopes to create to best utilize available funding.

Councilor Duson opened the meeting for public comment; seeing none, the public comment period was closed.

Councilor Duson asked how do citizens know how to ask for assistance. Mary Davis explained it is done through a variety of outreach programs including collaborating with social service agencies such as Opportunity Alliance, direct mailings to homes, public access TV, and providing information on our web page. Councilor Duson noted there is pending legislature in Augusta regarding lead safe housing. Mary Davis added that a Housing & Community Development staff member testified at that meeting.

Councilor Duson continues to pursue establishing an annual allocation into the Housing Trust Fund through this year's budget process and will continue discussions with the Finance Committee and the City Manager that also include a request for additional funding from the proceeds of the WEX sale.

Councilor Duson observed President Trump has proposed a zero budget for FY20 for HOME and CDBG funding. However, the Maine delegation is committed towards advocating for funding. Senator Collins in particular has been a workhorse for the state of Maine on these issues.

Councilor Duson suggested the Committee consider including a note in the RFP indicating a committed focus on workforce housing within a mixed-income project at a certain unit level and establishing a public-private partnership that includes using city-owned land. A draft of the note will help begin a conversation for the Committee whether or not to include a focus note in the RFP.

Councilor Thibodeau made a motion to recommend moving the FY 2020 Housing Program Budget to the City Council. Councilor Duson seconded the motion. The motion past 2-0.

Item 3: Review, Discussion and Recommendation to the City Council of Proposed Amendments to City Code Chapter 6, Section 6-225 Rental Housing Advisory Committee

Mary Davis introduced the item. The proposed recommendation is an amendment to the Chapter 6, Section 6-225 of the city ordinance to, among other items, clarify the legislative intent of the ordinance criteria that a member of the Rental Housing Advisory Committee be experienced in legal rights/interests of tenants and a second member be experienced in legal rights/interest of landlords. The current ordinance does not clearly highlight the experience criteria. The amendment will also allow the City Council to appoint members should Pine Tress Legal Assistance or Southern Maine Landlord Association not offer a recommendation. And, finally, the amendment changes the residency requirement of the members experienced in legal rights/interests of tenants and landlords to allow those committee members to be either be a resident of Portland or work in Portland. Approval of the amendments will facilitate appointment of the Advisory Committee.

Councilor Duson confirmed applicants can self-nominate.

Councilor Duson opened the meeting to public comment.

Carleton Winslow asked about receipt of a specific application from Pine Tree Legal. Staff confirm receipt of the application. Mr. Winslow asked a clarifying question regarding the role of the committee member experienced in legal rights/interest of tenants- would this member also be experienced in legal rights/interests of landlords and; would the other members who are landlords need to be experienced in the legal rights of landlords? Councilor Duson responded that the other members are not required to be knowledgeable of legal rights of landlords or tenants, but it is hoped they do possess a basic understanding of the laws.

Mr. Winslow noted he is disappointed at the length of time it has taken to appoint this committee. He also expressed his displeasure with the focus of the committee- the outcome is not in line with the original intent discussed at earlier meetings. The Inspections Program is not being run as it was talked about, and the budget figures are ridiculous.

Councilor Duson thanked Mr. Winslow for his feedback. She acknowledged there were implementation problems with the Inspections Program and that there is still more work needed to be done. However, the Inspections Program is not related to the Rental Housing Advisory Committee but she does hear and understand the ongoing concerns. Mary Davis noted the 2019 Workplan includes a report from Permitting and Inspections during the May 8 meeting, and a presentation from Permitting and Inspections and the Fire Department during the September 11 meeting, which will include public comment. Councilor Duson asked Mr. Winslow to share any specific data points or questions he would like to see covered in future reports from Permitting and Inspection with Mary Davis.

Wendy Harmon commented that Jon Rioux has a power point presentation regarding inspections that she felt was beneficial for landlords. However, she would like to see a presentation that includes an education component for tenants (e.g. to not disconnect smoke detectors).

Councilor Duson recalled a forum, from three years ago, attended by landlords and tenants that was very successful. She would be interested in receiving any information regarding that forum from Mr. Winslow and Ms. Harmon.

Councilor Duson closed the public comment session.

Motion by Councilor Thibodeau to move for consideration amendments to Chapter 6 Section 6-225 to the City Council. Seconded by Councilor Duson. Passed 2-0.

<u>Item 4: 2019 Work Plan Discussion</u>

Councilor Thibodeau would like to review 2 Boyd Street to discuss potential housing options on a portion of the property also known as the Franklin Reserve. A Housing Committee review is dependent upon the action taken by the City Council and a referral back to the Housing Committee by the Council.

Councilor Thibodeau would like to see if it is possible to review the zoning for the 90 Douglass Street West School site location. He would like an agenda item added to the Workplan to consider the rezoning of 90 Douglass to increase density, and a review and update of the State owned parcel abutting the property. Councilor Thibodeau is open to a contract zone.

On a motion made by Council Thibodeau and seconded by Councilor Duson (approved 2-0) the meeting adjourned at 6:25 pm.

Respectfully submitted,

Victoria Volent

CITY OF PORTLAND

Planning & Urban Development Department

Housing and Community Development Division

TO: Councilor Duson, Chair
Members of the Housing Committee

FROM: Victoria Volent

DATE: April 5, 2019

SUBJECT: Housing Policy Discussion
Non-Renewal of Leases and Notification Requirements;
Voucher/Rental Subsidy Discrimination;
Rental Application Fee Abuse

Summary

As part of the City Council 2019 strategic planning process, Mayor Ethan Strimling proposes an amendment to Chapter 6, Article XI Tenant Housing Rights to provide at least 90 days written notice to tenants at will before they must move out, and to require landlords to accept Section 8 vouchers. These amendments were included in a packet of amendments previously reviewed by the Housing Committee and Council but eventually not adopted. Mayor Strimling is reintroducing these amendments.

Non-renewal of Leases and Notification Requirements; Voucher/Rental Subsidy Discrimination

During 2016, the Housing Committee reviewed, discussed, and recommended to the City Council a package of five housing insecurity policies. The City Council voted to adopt these policies (Order 76 16/17 dated November 21, 2016) which added a Tenant Housing Rights section to Chapter 6 of the City's Code of Ordinances.

During Council deliberation of the housing insecurity policies mentioned above, additional amendments were brought forward. These amendments were ultimately not adopted by the City Council. At this time the amendments are before the Housing Committee for reconsideration.

Time Line of Previous Housing Committee Work on These Items

January 2016

The Housing Committee began an extensive public process to assess housing issues and evaluate potential new policies.

May, 2016

The Housing Committee hosted a Community Priority & Policy Discussions forum

June, 2016

The Housing Committee began evaluating a list of housing issues and potential policies developed from the Community Priority & Policy Discussions forum

July 13, 2016 Housing Committee Meeting:

- Mayor Strimling presents a memo to the Housing Committee regarding amendments to the proposed Rental Housing Security Ordinance (Attachment A)
- Corporation Counsel presents a memo to the Housing Committee regarding Response to Housing Committee Questions/Summary of Maine's Eviction Process (Attachment B)

August 24, 2016 Housing Committee Meeting:

- Corporation Counsel presents memo to the Housing Committee regarding Proposed Rental Housing Security Ordinance (Attachment C)
- Housing and Community Development presents a memo to the Housing Committee regarding Portland Rental Housing Security Ordinance (Attachment D)
- Housing and Community Development presents a memo to the Housing Committee regarding Non-Renewal of Leases and Notification Requirement (Attachment E)
- Mayor Strimling presents Rental Security Ordinance and Testimony to the Housing Committee (Attachment F)

September 14, 2016 Housing Committee Meeting

- Corporation Counsel presents a memo to the Housing Committee regarding the Revised Proposed Rental Housing Security Ordinance (Attachment G)
- Housing and Community Development presents a memo to the Housing Committee regarding Revisions to the Mayor's Proposed Rental Housing Security Ordinance (Attachment H)

October 17, 2016 City Council Meeting

Planning and Urban Development Department and Housing and Community Development Division present a memo to the City Council regarding an Order Approving the Housing Insecurity Package for Implementation into the City Code and Related Administrative Actions for a first reading

November 21, 2016 City Council Meeting (Attachment I)

Planning and Urban Development Department and Housing and Community Development Division present a memo to the City Council regarding an Order Approving the Housing Insecurity Package for Implementation into the City Code and Related Administrative Actions for a second reading. Passage on 11-21-2016

December 21, 2016

Amendment to Portland City Code, Chapter 6, Buildings and Building Regulations, re: Tenant Housing Rights becomes effective

January 2019 City Council Meeting

Mayor Strimling's 2019 Priorities (Attachment J)

April 10, 2019 Housing Committee Meeting

- Corporation Counsel Draft Amendment to Portland City Code Chapter 6 re: Housing Discrimination (Attachment K)
- Corporation Counsel Draft Amendment to Portland City Code Chapter 6 re: Termination of Tenancies-At-Will (Attachment L)

Rental Application Fee Abuse

On January 8, 2019, the Housing and Community Development Division received citizen correspondence indicating there is rampant abuse of apartment application fees being paid out by low-income people (notable in the immigrant population) seeking housing. HCD staff made initial inquiries to Social Service Division staff and Pine Tree Legal Assistance. There appears to be anecdotal evidence concerning this issue. Staff suggest that this item be taken up by the Rental Housing Advisory Committee.

Attachments:

(A). Mayor Strimling memo to the Housing Committee re Rental Housing Security Ordinance dated 7-13-2016

(B). Corporation Counsel memo to the Housing Committee re Response to Housing Committee Questions/Summary of Maine's Eviction Process dated 7-13-2016

(C). Corporation Counsel memo to the Housing Committee re Proposed Rental Housing Security Ordinance dated 8-18-2016

(D). Housing Committee memo re: Portland Rental Housing Security Ordinance dated 8-19-2016

(E). Housing Committee memo re: Non-Renewal of Leases and Notification Requirement dated 8-19-2016

(F). Mayor Strimling Rental Security Ordinance and Testimony 8-24-2016

(G). Corporation Counsel memo to the Housing Committee re Revised Proposed Rental Housing Security Ordinance dated 9-9-2016

(H). Housing Committee memo re: Revisions to the Mayor's Proposed Rental Housing Security Ordinance dated 9-9-2016

(I). City Council Agenda Item re: Order Approving the Housing Insecurity Package for Implementation into the City Code and Related Administrative Actions, and Amendment to Portland City Code, Chapter 6, Buildings and Building Regulations, re: Tenant Housing Rights

(J). Mayor Strimling's 2019 Priorities

(K). Corporation Counsel Draft Amendment to Portland City Code Chapter 6 re: Housing Discrimination

(L). Corporation Counsel Draft Amendment to Portland City Code Chapter 6 re: Termination of Tenancies-At-Will.

(M). Citizen correspondence regarding Reports of Widespread Abuse of Application Fees for Portland Apartments

Attachment A

Portland, Maine — Yes. Life's good here.

Office of the Mayor, Ethan K. Strimling

MEMORANDUM

To: Councilor Jill Duson, Housing Committee Chair
From: Ethan K. Strimling, Mayor
Date: July 13, 2016
Re: Portland Rental Housing Security Ordinance

As a result of the Housing Committee's comprehensive exploration of the city's housing stresses and possible solutions to ease the burden felt by those who currently occupy rental housing in Portland, there has been a robust and fruitful discussion that has informed both myself and the community greatly. The attached legislative proposal is the product of those many discussions as well as my meetings with individuals and groups representing various points of view on the issue.

The goals of the "Portland Rental Housing Security Ordinance" are to protect our most vulnerable citizens from being left without a safe place to live by:

- Preventing discrimination against people using rental assistance mechanisms;
- Preventing people from losing their home through no fault of their own by establishing guidelines and clarity around no cause evictions;
- Establishing the baseline for lease agreements in order to create a mutually beneficial relationship between renter and landlord;
- Helping people have a safe affordable place to live by preventing landlords from raising rents if the landlord is in violation of existing state and local ordinances, and;
- Putting in place disincentives for "bad actor" landlords and establishing a redress process for tenants who have been negatively impacted by their unjust actions.

To be sure, this legislative proposal is by no means the single answer to our housing crisis in Portland. Conversations surrounding tools such as rent control are certainly likely to continue – and I urge the constructive dialogue that you've shepherded to continue as well. I do feel, however, that the attached proposal can be a step forward as the committee moves towards recommending timely and achievable solutions to the full Council for discussion and action.

Thank you to you and the entire committee for their work and consideration of this proposal.

PORTLAND RENTAL HOUSING SECURITY ORDINANCE

DIVISION 1. GENERALLY

Sec. 13.7-21. Legislative findings and statement of policy.

The council finds that:

(a) The population of the city consists of people of every socioeconomic group, some of whom are discriminated against in housing based upon their source of income;

(b) There are currently inadequate protections to protect against discrimination in housing based upon source of income;

(c) The lack of legal protection for individuals unfairly limits their housing choices and discourages them from publicizing acts of discrimination out of fear of reprisal;

(e) It is the policy of the City to bring about through fair, orderly and lawful procedures, the opportunity of each person to obtain housing without regard to source of income;

Therefore, in order to protect the public health, safety and welfare, it is declared to be the policy of this city to prevent discrimination in housing on account of source of income.

Sec. 13.7-22. Definitions.

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

Discriminate. "Discriminate" includes, without limitation, segregate or separate.

Dwelling Unit and Multiple Dwelling Unit. is as defined in Section 6 of the City Ordinances in effect as of the date of the passage of this Ordinance.

Housing accommodation. "Housing accommodation" includes any building or structure or portion thereof, or any parcel of land, developed or undeveloped, which is occupied, or is intended to be occupied or to be developed for occupancy, for residential purposes excepting:

(a) The rental of a one-family unit of a two-family dwelling, one (1) unit of which is occupied by the owner;

(b) The rental of not more than four (4) rooms of a one-family dwelling which is occupied by the owner;

Person. "Person" includes one (1) or more individuals, partnerships, associations, organizations, corporations, municipal corporations, legal representatives, trustees, trustees in bankruptcy, receivers and other legal representatives, and includes the city and all agencies thereof.

Source of Income. "Source of Income" means any lawful source of money that is paid to or for the benefit of a person seeking to rent a dwelling and includes grants.

Tenant-Based Rental Assistance. "Tenant-Based Rental Assistance" means any and all forms of tenant-based rental assistance and vouchers, including but not limited to:

(a) Tenant-based rental assistance through the Section 8 Housing Choice Voucher Program, 42 U.S.C § 1437f (o)

(b) Tenant-based rental assistance through the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C § 12701 et seq.;

(c) Tenant-based rental assistance under the HUD-Veterans Affairs Supportive Housing (HUD-VASH), authorized by § 8 (o) (19) of the United States Housing Act of 1937, 42 U.S.C. § 1437f (o) (19);

(d) Tenant-based rental assistance through the Shelter Plus Care Program authorized by title IV, subtitle F, of the Stewart B McKinney Homeless Assistance Act, 42 U.S.C. §§ 11403-11407b, as amended;

(e) Tenant-based rental assistance through the Supportive Housing Program authorized by title IV, subtitle F, of the Stewart B McKinney Homeless Assistance Act, 42 U.S.C. §§ 11381-11389, as amended;

(f) Tenant-based rental assistance through the Section 8 Disaster Voucher Program (DVP);

(g) Tenant-based rental assistance through the Housing Opportunities for Persons with AIDS (HOPWA) Program, 42 U.S.C. § 12901 – 12912 as amended;

(h) Tenant-based rental assistance through the Community Block Grant Program, 42 U.S.C. § 5301 et seq. as amended;

(i) Tenant-based rental assistance through the Continuum of Care Program authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11381-11389; and

(j) Tenant-based rental assistance through the Rural Development Voucher Program authorized through § 542 of the Housing Act of 1949, as amended. See 78 Fed. Reg. 49374 (Aug. 14, 2013) (proposed rule); and

(k) Tenant-based rental assistance through the Maine Bridging Rental Assistance Program, authorized by M.R.S. Title 34-B § 3011; and

(l) Tenant-based rental assistance through the Maine State Housing Authority Home To Stay Program, M.R.S. Title 30-A § 4771; and

(m) Tenant-based rental assistance through the Maine State Housing Authority Stability Through Engagement Program, M.R.S. Title 30-A § 4771; and

(n) Tenant-based rental assistance through the City of Portland's Tennant Based Rental Assistance Program, M.R.S. Title 30-A § 4771;

(o) Tenant-based rental assistance through the City of Portland's General Assistance Program, authorized by M.R.S. Title 22 § 4301 et seq.; and

(p) Such other Tenant-based rental assistance or rental vouchers or rental coupons as may be authorized under any federal, state, or local program.

DIVISION 2. FAIR HOUSING

Sec. 13.7-23. Unlawful housing discrimination.

It shall be unlawful housing discrimination, in violation of this article:

(a) For a person to refuse to rent or negotiate for the rental of, or otherwise make unavailable or deny a dwelling to any person because of the person's source of income;

(b) For a person to discriminate in the terms, conditions, or privileges of rental of a dwelling or in the provision of services or facilities in connection therewith because of the person's source of income;

(c) For a person to make, print, or publish or cause to be made, printed or published, any notice, statement, or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on a person's source of income;

(d) For a person to represent to any person that any dwelling is not available because of the person's source of income or because of the requirements of the program providing the source of income;

(e) For a person to exclude any person from admission to a dwelling because of the person's source of income;

(f) For a person to refuse to rent or negotiate for the rental of, or otherwise make unavailable or deny a dwelling to any person because of the person's source of income or because of the requirements of the program providing the source of income;

(g) For a person to refuse to participate in or comply with any federal, state, or local requirements of a tenant-based rental assistance program, including, but not limited to the following:

1) Refusing to allow inspections of a dwelling by the public housing authority or other entity administering a tenant-based rental assistance program;

2) Refusing to make reasonable repairs necessary for the dwelling to meet the housing quality standards of the tenant-based rental assistance program; such repairs will be considered reasonable if they do not substantially alter or change the housing unit or do not require repairs substantially different from those that would be required to bring the rental unit into compliance with the Maine Warranty of Habitability Act or local building or housing codes applicable for new construction

3) Refusing to complete any necessary paperwork, including but not limited to such documents as the *Request for Tenancy Approval* form, the *Housing Assistance Payments Contract*, and the *Tenancy Addendum* or applicable General Assistance forms; and

4) Refusing to provide information required by the public housing authority or other entity administering the source of income or tenant-based rental assistance program;

(h) For a person to use a financial or minimum income standard for any person participating in any tenant-based rental assistance program that requires the person to have a monthly income of more than two- and one-half times the person's share of the total monthly rent payable to the owner of the dwelling unit.

(i)For a person to use any tenant screening policy that actually or predictably results in a disparate impact on any person with tenant-based rental assistance unless (i) necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the dwelling owner and (ii) those interests could not be served by another practice that has a less discriminatory effect of persons receiving tenant-based rental assistance.

(j) For a person to use any tenant screening policy that denies housing to any tenant who receives tenant based rental assistance because of any negative credit history that was incurred prior to the tenant's receipt of tenant based rental assistance.

Sec. 13.7-24. Application.
Nothing in this article shall be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person having the right to sell, rent, lease or manage a housing accommodation to set up and enforce specifications in the selling, renting, leasing or letting thereof or in the furnishings of facilities or services in connection therewith which are not based on the source of income of any prospective or actual purchaser, lessee, tenant or occupant thereof.

DIVISION 3. RENT INCREASE LIMITATIONS

Sec. 13.7-29 Declaration of Emergency

Whereas a serious shortage of affordable rental housing units in the city has resulted in abnormally high rents and has produced serious threats to the public health, safety, and general welfare of the citizens of the community, the City Council hereby establishes this rent increase limitation ordinance.

Sec. 13.7-30 Rental Increases

Rent charged for a dwelling unit or multiple dwelling unit may only be increased as follows:

1. Rent charged for a dwelling unit or multiple dwelling unit may be increased by the landlord only after providing at least 90 days written notice to the tenant.

2. Rent charged for a dwelling unit or multiple dwelling unit may not be increased prior to the expiration of a lease term, during the initial year of any tenancy and no more than one time during any calendar year.

3. Rent charged for a dwelling unit or multiple dwelling unit may be increased only if all dwelling units owned by that entity are in compliance with the state's warranty of habitability law at 14 M.R.S. § 6021 and the city's Housing Code at Sec. 6-106 et seq.

DIVISION 4 TERMINATION OF TENANCY

Sec. 13.7.24

1. A constructive lease shall be imposed upon all residential tenancies for a period of one year after the creation of the tenancy that shall prohibit the termination of the tenancy except for good cause.

2. For purposes of this ordinance a tenancy shall be deemed to be created as follows:

   A. Upon the date this ordinance becomes effective except that this ordinance shall not modify the provisions of any existing written lease agreement.
   B. When a tenant initially moves into a residential rental unit.
   C. When a new owner purchases the building in which a residential rental unit is located.
   D. Thirty (30) days after the expiration of the initial one year term where the landlord has not caused to be served upon the tenant a summons and complaint for forcible entry and detainer.
   E. Thirty (30) days after the expiration of a lease agreement in effect at the time this ordinance goes into effect where the landlord has not caused to be served upon the tenant a summons and complaint for forcible entry and detainer.

3. For the purposes of this ordinance good cause is as defined at 14 M.R.S. § 6002(1) and (2).

4. Good cause shall not include the tenant's non-payment of a rent increase may in violation of this ordinance.

5. In any action of forcible entry and detainer there is a rebuttable presumption that the action is commenced in retaliation against the tenant if within one year prior to the commencement of the action the landlord has

    A. Attempted to institute a rent increase made in violation of this ordinance;
    B. Attempted to terminate a tenancy in violation of this Ordinance;
    C. Illegally discriminated against a tenant in violation of this Ordinance.
        1. No writ of possession may issue in the absence of rebuttal of the presumption of retaliation

DIVISION 5. ENFORCEMENT

Sec. 13.7-25. Enforcement by civil action.

A violation of this article shall be a civil infraction and shall be enforceable in the Maine Superior Court in a civil action. Within the time limited, a person who has been subject to unlawful discrimination may file a civil action in the superior court against the person or persons who committed the unlawful discrimination.

Sec. 13.7-26. Burden of proof.

In any civil action under this article, there shall be a rebuttable presumption that the person seeking to enforce this ordinance shall have met the burden of proof upon a showing that the person was denied housing while being a recipient of tenant based rental assistance or that the Landlord attempted to terminate a residential tenancy within one year of the creation of said tenancy.

In all other civil actions to enforce this article the burden shall be on the person seeking relief to prove by a preponderance of the evidence that a violation of this Article has occurred.

Sec. 13.7-27. Remedies

Fair Housing

In any action filed under this article by any person:

If the court finds that unlawful discrimination occurred, its judgment shall specify an appropriate remedy or remedies therefor. Such remedies may include, but are not limited to:

1. An order to cease and desist from the unlawful practices specified in the order;

2. An order to rent a specified housing accommodation, or one substantially identical thereto if controlled by the respondent, to a victim of unlawful housing discrimination or eviction in violation of this ordinance;

3. An order requiring the disclosure of the locations and descriptions of all housing accommodations which the violator has the right to sell, rent, lease or manage;

4. An order to pay the Plaintiff's actual damages, including emotional damages, pain and suffering incurred by the Plaintiff as a result of the unlawful discrimination or eviction carried out in violation of this chapter; and

5. An order to pay to the complainant civil penal damages not in excess of one thousand dollars ($1000.00) in the case of the first order under this article against the respondent, not in excess of two thousand dollars ($2000.00) in the case of a second such order against the respondent, and not in excess of three thousand dollars ($3000.00) in the case of a third or subsequent such order against the respondent; and

(c) The action shall be commenced not more than one (1) years after the act of unlawful discrimination complained of.

Unlawful Rent Increases

Upon a finding by a court that a landlord has charged a tenant an unlawful rent increase in violation of this article, the court shall award to the tenant actual damages; liquidated damages of $500 or the equivalent of one month's rent, whichever is greatest; together with the aggregate amount of costs and expenses reasonably incurred in connection with the action. The court may also award to the tenant reasonable attorney's fees.

Illegal Eviction

Upon a finding by a court that a landlord has attempted to terminate a tenancy in violation of this article, the court shall award to the tenant actual damages; liquidated damages of $500 or the equivalent of one month's rent, whichever is greatest; together with the aggregate amount of costs and expenses reasonably incurred in connection with the action. The court may also award to the tenant reasonable attorney's fees.

Sec. 13.7-28. Attorneys' fees and costs.

In any civil action under this article, the court, in its discretion, may allow the prevailing party reasonable attorneys' fees and costs.

DIVISION 6. SEVERABILITY

Sec. 13.7-30. Severability.

If any section, phrase, sentence or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

MEMORANDUM

To:	Chair Duson and Members of the Housing Committee
From:	Danielle P. West-Chuhta, Corporation Counsel DW-C
Re:	**Responses to Housing Committee Questions/Summary of Maine Eviction's Process**
Date:	July 13, 2016

As concerns over housing increase in Portland, the City's Housing Committee is evaluating the evictions process and how to address its impacts within Portland. At a recent Housing Committee meeting, members of the public, including representatives from Pine Tree Legal Assistance (PTLA) proposed a number of goals they believe may help address the City's housing concerns and ways those goals might be implemented. Among other things, individuals advocated for the adoption by the City of policies and ordinances aimed at helping low-income tenants stay in their existing rental units. Ultimately, as a result of the public process and hearings/meetings to date, the Housing Committee had several questions:

1) Can the City of Portland Further Regulate the Evictions Process?;
2) Do Other Municipalities Regulate Evictions?; and
3) How Could the City of Portland Regulate Evictions? (i.e. Tenancy at Will/No Cause Evictions Regulation; Mandatory Acceptance of Section 8 Vouchers; Rent Control; and Regulation of Notices).

The following is a review of Maine law surrounding evictions and a brief discussion of each of the above questions.

I. Overview of Maine Tenancy and Eviction Law

Evictions in the State of Maine are handled within the state District Court system. In the District Court, the formal term for evictions is "Forcible Entry and Detainer"

("FED"), the title of the Maine State statute that governs that process. Maine's FED statute appears at 14 M.R.S §§6001-6017.

Under Maine's statutory scheme the ability of a landlord to evict a tenant depends on whether the parties have a lease agreement and, if so, on the specific provisions of that agreement.

If there is no lease agreement, a tenant is said to be renting as a "tenant at will." In that situation, Maine statute provides that a landlord may evict a tenant at will for any reason, or no reason at all, so long as they are provided with ample notice prior to the termination of the tenancy. For a "no cause" eviction, a tenant must be provided with 30-days written notice. 14 M.R.S. § 6002. The notice must inform the tenant that they have a right to contest the eviction in court.

An at will tenant can also be evicted with only 7-days written notice, but only for the following reasons: (1) the tenant (or the family or invitees of the tenant) has seriously damaged the apartment and has not repaired the damage; (2) the tenant, etc. has caused or permitted a nuisance within the premises or caused the dwelling unit to become uninhabitable; (3) the tenant has perpetrated domestic violence, sexual assault or stalking against another tenant; or, (4) the tenant is more than 7 days behind on rent. 14 M.R.S. § 6002(1). With respect to tenancies at will terminated on 7 day's notice for failure to pay rent, if the tenant pays the rental arrearages before the expiration of the notice, the notice and termination of tenancy on that basis is void.

For tenancies that are governed by a lease agreement, the procedure is largely governed by the terms of the lease agreement itself. In the absence, however, of language outlining how the tenancy is to be terminated during the term of the lease, termination can be accomplished under the same processes applicable to tenancies at will (and outlined above). *See* 14 M.R.S. § 1-B. Alternatively, at the end of a lease that does not automatically renew, where a tenant fails or refuses to move out and is "holding over" without consent, a landlord may file an eviction action with the Court without giving the tenant notice. *Irving Oil Corp. v. Maine Aviation Corp.*, 1998 ME 16, ¶ 8, 704 A.2d 872 (citing *Reed v. Reed*, 48 Me. 388 (1853)).

II. Is the City of Portland Able to Regulate Evictions?

Municipalities have broad home rule powers under Maine law. In fact, where the State has not intended to occupy the field, a municipality is said to have the broad power to further regulate. This power derives from 30-A M.R.S. §3001 which states, "any municipality, by the adoption, amendment or repeal of ordinances or bylaws, may exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution of Maine, general law or charter." *Id.* The statute goes on to state that, "the legislature shall not be held to have implicitly denied any power granted to municipalities under this section unless the municipal ordinance in question would frustrate the purpose of any state law." *Id.* Maine courts have held that, whether an ordinance frustrates State law turns primarily on whether the "application of the municipal ordinance prevents the efficient accomplishment of a defined state purpose." *Smith v. Town of Pittston*, 2003 ME 46, 820 A.2d 1200 (internal quotations omitted).

Throughout Maine's FED statute, there is little to no reference to the powers of a municipality to regulate the eviction process. There is also nothing expressly indicating that a municipality cannot further regulate in this area. It should be noted that municipalities are also expressly granted powers in a related statute, regarding rental property, which states that a municipality may intervene to provide basic necessities or repair. Given all of the above, it may be that the State did not intend to occupy the field, and a municipality can therefore also regulate the eviction process. The State law, however, is rather comprehensive and identifying areas that are not already expressly regulated such that a local regulation would not conflict or be inconsistent with the State law could most likely prove to be extremely challenging.

III. Do Other Municipalities Regulate Evictions?

Through my research I did not find any Maine municipalities that regulated the evictions process. With that said, I did find two municipalities (located in other States with different statutory schemes) that regulate the evictions process.

First, is the City of Boston which is also facing a housing crisis of its own. *See "Boston housing advocates push for eviction protections"* Boston Globe, March 13, 2016. Advocates for greater tenant protections are currently in the process of requesting that the City institute a requirement which would mandate that landlords notify the City of rent hikes that result in eviction, also known as, no fault notice to quit. Their current proposal demands that the landlord give a reason for evicting a tenant, bars full building clear outs, and exempts landlords who are Boston residents or who own five or fewer units.

At one time, proponents also requested a mandate that rent increases of 5% or more be subject to nonbinding mediation. However, that has since been taken off the table.

Lastly, the City of Boston is exploring a provision that requires landlords who are terminating a tenancy for a cause other than nonpayment or tenant violation of the rental contract, to file a notice with the City in order for the landlord to be able to move forward with eviction cases in Housing Court. The idea is that this would be a mechanism for someone to reach out to the tenant before the notice period/eviction action has begun. Push back on this movement argues that this is merely rent-control in disguise.[1]

Similarly, Portland, Oregon has reviewed and enacted an ordinance that requires 90 days' notice to tenants for "no cause" evictions. It has also required 90 days' notice prior to raising the rent more than 5% over a twelve-month period. Failure to comply with the local notice requirements results in liability on the part of the landlord of up to 3 months' rent "as well as actual damages, reasonable attorney fees and costs." That ordinance can be found at: https://www.portlandoregon.gov/citycode/article/555328.

IV. <u>How Could the City of Portland Regulate?</u>

A. <u>Evictions</u>

It is my understanding that there has been extensive discussion regarding possible regulation of the eviction process through more advanced tenant notice, a prohibition of no-cause evictions, and/or the institution of a moratorium. Each one of these possible regulations will be addressed below.

As noted above, under its broad grant of municipal home rule powers, the City is able to create and enact ordinances which are stricter than the Maine eviction laws, so long as they do not frustrate the intent of the statute or presume to legislate in an area the

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[1] For case law on the constitutionality of rent control, *see Pennell v. City of San Jose*, 485 U.S. 1, holding that a city rent control ordinance was not a taking and does not violate the equal protection clause of the U.S. Constitution.

State Legislature intended to fully occupy. Given this, with respect to residential tenancies in particular, the City could likely establish stricter regulations regarding notice to a tenant-at-will prior to termination. For example, as noted above, the State statute requires that tenancies at will being terminated for any reason other than those expressly enumerated in the statute (relating to damage, nuisance, non-payment of rent, etc.) or for no reason must be initiated "with a minimum of 30 days' notice." A local requirement that more advanced notice (for example, 60 days) be provided does not appear to conflict with the State requirement and would likely be permissible.

Of course, it should be noted, that such an increased notice requirement would not be able to be enforced through the formal FED process and may not actually provide the tenant with advanced notice. That is, under State law, a landlord could obtain an order for possession of a unit from the Court and evict a tenant even if they did not provide the additional notice required by the City (since the advanced notice is not required under the State law which governs the FED process). Instead, a separate action involving the violation of such an advanced notice requirement would need to be enforced by the City as a civil violation of the City's Code and could possibly subject a landlord to fines, similar to the way it is done in Portland, Oregon.

Next, a prohibition on all no-cause evictions has been requested. Such a prohibition, however, would prove to be even more problematic than the advanced notice requirement.

It is important to remember that "no-cause" evictions are likely to arise almost exclusively in the context of tenancies at will, where there is no lease agreement. This is because lease agreements typically entitle a tenant to remain in possession of the dwelling unit during the term of the lease unless there is a breach of a particular lease term (i.e. "cause."). Therefore, so called "no cause" evictions are a remedy that is provided by the State (FED) statute. Under the FED statute, that remedy is available "against a tenant at will, whose tenancy has been terminated as provided in section 6002 . . ." Again, section 6002 provides that a tenancy at will can be terminated if the tenant is provided with a minimum of 30 days' notice. Accordingly, under the statute, so long as a tenant at will is provided with ample notice, that tenant may be evicted for any reason. By State law landlords are entitled to that remedy and an attempt by a municipality to limit or fully proscribe a landlord's entitlement to that remedy could very well be deemed to run contrary to state law – something that is in violation of a municipality's home rule authority. Consequently, while it appears permissible to increase the period of notice required to terminate a tenancy at will, completely prohibiting landlord's from evicting tenants without cause does not.

Finally, because evictions are a remedy provided under State law, a moratorium (as has been suggested) purporting to deny that remedy to landlords for any period of time (something that has been proposed) would also likely be in direct conflict with State law and therefore be impermissible. It is also not specifically authorized by or mentioned in the State's moratorium law. *See* 30-A M.R.S. § 4356.

B. <u>Section 8 Vouchers: Mandatory Acceptance by Landlords?</u>

Currently, the Maine Human Rights Act does make it unlawful for "any person furnishing *rental premises* or public accommodations to *refuse to rent or impose different terms of tenancy* to any individual who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies, primarily because of the individual's status as recipient." 5 M.R. S. § 4581-A(4).

The prohibition against discrimination on the basis of receipt of public assistance does not, however, equate to a *requirement* that landlords accept Section 8 vouchers. Maine's Law Court has explained that the Maine Human Rights Act does not require landlord's to accept vouchers – it simply prohibits discrimination or a refusal to rent because a tenant receives public assistance. *See Dussault v. RRE Coach Lantern Holdings, LLC*, 2014 ME 8, 86 A.3d 52; and 5 M.R.S. § 4583. If, because of business necessity or some other non-discriminatory reason, a landlord chooses not to accept the rental terms that are required as part of the Section 8 voucher program, that has been held not to be discrimination in violation of the MHRA. *See* 5 M.R.S. § 4583.

However, while there may be no current state requirement under the MHRA or Maine's landlord/tenant law that landlords accept housing vouchers, the City may be able to adopt such requirement at the local level. Under the Federal Section 8 voucher program, landlord participation is voluntary – but some states (e.g. Massachusetts) have prohibited landlords from refusing to accept vouchers (and the rental terms required by HUD). It seems important to note that Massachusetts' law does not appear to also dictate rental amounts or require landlords to rent their apartments at the limited rental amounts for which the vouchers would be issued. Rather, the requirement appears to be simply that if an apartment is being rented at a rate that makes it eligible for participation in the program, the landlord must accept payment of that amount through the Section 8 program. Portland could likely do something similar. It would need to be done outside of the State FED process and the MHRA, and may prove difficult to enforce, but could possibly be somewhat akin to the protections enacted by the City Council in Chapter 13.5 of the City Code that relate to discrimination on the basis of sexual orientation.

C. Rent Control

In 1973, the State first enacted enabling legislation authorizing municipalities to enact rent control ordinances. It appears that although several municipalities considered enacting rent control policies, only Westbrook ultimately did. In 1995, the State Legislature repealed the statute and the formal process municipalities were required to undertake when adopting rent control. In doing so, the Legislature stated that it intended to allow municipalities to continue to be able to adopt rent control under their home rule authority. The legislative history for the repeal of Title 30-A M.R.S. Chapter 167, is attached and contains some discussion of the history of the statute, of rent control, and of the Legislature's intent.

Given the above, and the fact that there does not appear to be anything in current state law expressly prohibiting local rent control, it appears to also be permissible for local municipalities to enact rent control ordinances.

D. Regulation of Notices of Rent Increases and Nonrenewal of Lease

Another proposal that has been discussed is requiring additional notice to tenants before their rent is increased. Like with minimum notice requirements for no-cause evictions, this appears to be an area in which the City could (more strictly) regulate without directly contradicting State law. 14 M.R.S. § 6015 specifically provides:

> Rent charged for residential estates may be increased by the lessor only after providing at least 45 days' written notice to the tenant. A written or oral waiver of this requirement is against public policy and is void. Any person in violation of this section is liable for the return of any sums unlawfully obtained from the lessee, with interest, and reasonable attorney's fees and costs.

Id.

Because the notice that is required is a *minimum*, the City could likely require more notice – and violation of that requirement could result in civil violation fines or liability to the tenant.

As to whether the City can require advance notice of a decision on the part of a landlord (or tenant) not to renew a lease, there does not appear to be any State law prohibiting or preempting such a requirement.

V. Conclusion

Overall, it appears that the City may be able to regulate in some of the areas in question. Despite this ability, however, the remaining question appears to be a policy one about whether or not the City should regulate in this area. Evictions are a contentious and divisive issue. As it now stands, the Legislature and the Court system are the primary parties dealing with this stressful issue. Also, any City regulation in this area is likely to face challenges (both legal and logistical as described above) which may prove to be very costly and time consuming. Thus, another possible more viable solution might be for the City to focus its energies on pursuing amendments before the Maine legislature to the existing statutory provisions (outlined above).

LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 29, 1995

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4

J.S. McCarthy Company
Augusta, Maine
1995

CHAPTER 194

H.P. 474 - L.D. 655

An Act Concerning Municipal Rent Control

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA c. 167, as amended, is repealed.

Sec. 2. Legislative intent. The Legislature intends to permit municipalities to continue to adopt and enforce rent control ordinances under home rule authority. A municipality that adopted rent control under the Maine Revised Statutes, Title 30-A, former chapter 167 may continue to operate a rent control program.

See title page for effective date.

CHAPTER 195

S.P. 348 - L.D. 976

An Act Regarding Liquor Licenses for Golf Courses

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 28-A MRSA §1012, sub-§2, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

2. Auxiliary license. A Class A restaurant or a Class I hotel located at a ski area ~~may obtain for additional premises at that ski area an auxiliary license to sell spirits, wine and malt liquor to be consumed on the premises~~ or a golf course, or a Class I golf club or a Class I or a Class V club located at a golf course may apply for one additional licensed premises at the same area for consumption of spirits, wine or malt liquor on the premises.

A. The license fee is....................$ 100.

Sec. 2. 28-A MRSA §1075, as amended by PL 1993, c. 730, §45, is further amended to read:

§1075. Auxiliary licenses at ski areas and golf courses

1. Licenses. The bureau may issue one auxiliary license under this section for additional premises to any Class A restaurant or Class A restaurant/lounge, ~~lounge or any hotel licensee located at a ski area~~ Class I hotel located at a ski area or golf course, or to a Class I golf club or a Class I or Class V club located at a golf course, if the following requirements are met:

A. The additional premises are located at the same ski area or golf course where the Class A restaurant, Class A restaurant/lounge, lounge, ~~or~~ hotel, or qualified club is licensed;

B. Food is for sale at the additional premises, although not necessarily prepared there;

C. The additional premises are properly equipped, including tables ~~and~~, chairs and restrooms; and

D. The Department of Human Services licenses the additional premises.

2. Sales for consumption on slopes or courses prohibited. Nothing in this section permits a ski area to sell liquor for consumption on the slopes away from the licensed area or a golf course to sell liquor for consumption on the course away from the licensed area.

See title page for effective date.

CHAPTER 196

S.P. 384 - L.D. 1061

An Act to Amend Certain Provisions of the Law Relating to Defense

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 37-B MRSA §147, sub-§3, as enacted by PL 1983, c. 460, §3, is amended to read:

3. Active duty. Whenever the occasion requires, the Governor, the Adjutant General or Deputy Adjutant General, with the ~~officer's~~ individual's consent, may order to active ~~duty~~ state service any retired officer, warrant officer or enlisted ~~man~~ person, ~~who shall be entitled to~~ with or without pay and ~~emoluments~~ allowances of ~~his~~ that person's grade while performing the service.

Sec. A-2. 37-B MRSA §150, as enacted by PL 1983, c. 460, §3, is amended to read:

§150. Unauthorized volunteer service

~~No~~ A unit of the state military forces may not perform any voluntary ~~military~~ active state service, unless authorized by express order of the Governor.

ACTIVITY SHEET

COMMITTEE ON: STATE & LOCAL GOVERNMENT

L.D. #: 655

TITLE: AN ACT CONCERNING RENT CONTROL

HEARING DATE: March 23, 1995

WORK SESSION DATES: April 6, 1995

REPORTED OUT DATE: May 4, 1995

COMMITTEE REPORT: MAJ OTPAM A
MIN OTPAM B

117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document **No. 655**

H.P. 474 House of Representatives, February 28, 1995

An Act Concerning Municipal Rent Control.

Reference to the Committee on State and Local Government suggested and ordered printed.

Joseph W. Mayo

JOSEPH W. MAYO, Clerk

Presented by Representative WINSOR of Norway.
Cosponsored by Representatives: BOUFFARD of Lewiston, CLARK of Millinocket, DiPIETRO of South Portland, Senator: STEVENS of Androscoggin.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §3601, as amended by PL 1989, c. 104, Pt. C, §§8 and 10, is further amended to read:

§3601. Declaration of emergency

If a serious public housing emergency exists in a municipality ~~which~~ that would result in a shortage of rental housing accommodations and abnormally high rents and will produce serious threats to the public health, safety and general welfare of the citizens of the community unless residential rents are regulated and controlled, a municipality may accept this chapter, with due regard for the rights and responsibilities of its citizens. Prior to accepting this chapter, the municipal officers must conduct an analysis to support their finding that a serious public housing emergency exists. Their analysis must include, but is not limited to, all of the following:

1. Comparative housing costs. A finding that rents within the municipality are abnormally high and that sufficient alternative housing at normal rents does not exist within the municipality nor in surrounding municipalities. The finding must be based upon a comparison of the costs of all competing forms of housing within the municipality and surrounding municipalities;

2. Vacancy rates. A finding that vacancy rates are abnormally low, thus depriving renters of adequate housing alternatives. The finding must be based upon an analysis of vacancy rates in all competing forms of housing within the municipality and surrounding municipalities; and

3. Municipal restrictions. A finding that the housing shortage does not result from land use restrictions imposed by the municipality upon the development of housing. The finding must be based upon an analysis of the effect of the municipality's land use and other regulations on the cost and availability of housing.

STATEMENT OF FACT

This bill ensures that municipal officials conduct an objective analysis of housing costs within the municipality and surrounding municipalities prior to adopting municipal rent control. Factors that must be included in their analysis include, but are not limited to, rent levels, vacancy rates and the effect that restrictive land use regulations have on the supply and cost of rental housing.

STATE OF MAINE
117TH LEGISLATURE

LEGISLATIVE NOTICES

JOINT STANDING COMMITTEE ON STATE AND LOCAL GOVERNMENT

Sen. Jane A. Amero, Senate Chair
Rep. Beverly C. Daggett, House Chair

PUBLIC HEARING: Thursday, March 23, 1995, 1:00 PM, ROOM 334, STATE HOUSE

(L.D. 323) Bill "An Act to Change the Laws Pertaining to the Issuance of Copies of Marriage Certificates by Towns" (S.P.0137) (Presented by Senator MICHAUD of Penobscot)

(L.D. 392) Bill "An Act to Clarify the Collection of Sewer Charges" (H.P.0288) (Presented by Representative ROWE of Portland)

(L.D. 412) Bill "An Act Relating to Building Permit Ordinances" (H.P.0308) (Presented by Representative WINN of Glenburn)

(L.D. 439) Bill "An Act Requiring That Disbursement Warrants Receive an Affirmative Vote by Municipal Officers" (H.P.0318) (Presented by Representative LEMONT of Kittery)

(L.D. 576) Bill "An Act to Facilitate the Use of the Installment Method for the Collection of Sewer Assessments and Charges" (H.P.0419) (Presented by Representative SPEAR of Nobleboro)

(L.D. 590) Bill "An Act to Clarify Law Enforcement Relating to Junkyards and Automobile Graveyards" (H.P.0427) (Presented by Representative KILKELLY of Wiscasset)

(L.D. 655) Bill "An Act Concerning Municipal Rent Control" (H.P.0474) (Presented by Representative WINSOR of Norway)

(L.D. 662) Bill "An Act to Amend the Municipal Subdivision Laws Regarding Application Requirements" (H.P.0481) (Presented by Representative GOULD of Greenville)

CONTACT PERSON: Jackie Chamberlain
State House Station 115
Augusta, ME 04333 287-1330

TESTIMONY SIGN IN SHEET

COMMITTEE ON STATE & LOCAL GOVERNMENT

L.D. # or CONFIRMATION: 655

ME	TOWN/AFFILIATION	PROPONENT	OPPONE
Rep Winsor	Sponsor	X	
Bob Howe	Weil & Howe	X	
Carleton Winslow	Pld Housing	X	
Bill Pierce	Augusta		X
Ron Young	Me Municipal Assn		Neither
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STATEMENT IN SUPPORT OF LD 655
AN ACT CONCERNING MUNICIPAL RENT CONTROL
by ROBERT S. HOWE
on behalf of the
MANUFACTURED HOUSING ASSOCIATION OF MAINE

Last year, The New York Times had this to say about rent control: "Rent regulation is the quintessence of modern New York piety--social justice through the outlawing of greed--and *it has been the greatest physical disaster in the city's history.*" Furthermore, "After rent regulation, [housing developers] stopped building, stopped taking care of their buildings and walked away from 500,000 apartments. As a result, *neighborhoods have been ruined and there has been a perpetual housing shortage, which economists cite as a textbook case of stupidity.*"

The chairman of the Nobel Prize committee for economics, Assar Lindbeck, has said this to say about rent control: *"Next to bombing, rent control seems in many cases to be the most efficient technique so far known for destroying cities."* (Emphasis added in both quotes.)

"Rent control guarantees cheap housing to longtime residents but leaves newcomers to fend for themselves in a housing market ruined by price controls," the Times went on to say.

That last point is an important one. In the only Maine municipality to adopt rent control, it was the longtime residents who asked for it. Westbrook has one mobile home park, and rent control guarantees there won't be any more. Existing residents are protected, or so they think, but the lack of competing lots is perpetuated and newcomers who might want a lot at a competitive price are denied it.

There is much that is bad about rent control, and almost nothing good about it. Having said all this, perhaps the bill before you ought simply to abolish the enabling statute which permits municipalities in Maine to adopt rent control. The bill doesn't do that, but it does ensure that municipalities are honest in their determination that the conditions which the law now requires before adoption actually exist.

The enabling statute, 30-A MRSA §§3601-3606, was first enacted in 1973 with the passage of LD 1834 by the 106th Maine Legislature. Over the years, we know of four municipalities which have seriously considered the adoption of rent control--Bangor, Brunswick, Westbrook and Standish. Three of those municipalities rejected rent control; only Westbrook adopted it.

The law permits municipalities to adopt rent control "If a serious public housing emergency exists...which would result in a shortage of rental housing accommodations and abnormally high rents." But the law is inadequate in that it fails to ensure that municipalities undertake any sort of objective analysis of rental housing conditions to support a finding that those conditions exist. A simple statement that those conditions exist is sufficient, as was the case in the City of Westbrook. And although Standish has rejected rent control, at least for now, it was obvious that no such analysis was going to be undertaken there, either.

LD 655 seeks to remedy this by saying, in effect, if those conditions exist, prove it.

First, the bill asks municipalities to compare housing costs within and nearby that municipality. It would not be fair to look at housing costs within a single municipality since housing markets are almost always larger than a single town or city. If rents are abnormally high, provide the evidence.

Second, the bill asks municipalities to do a similar comparison of vacancy rates. If one has any faith in a competitive market place, one realizes that rent control cannot be justified unless vacancy rates are at or near zero.

Third, the bill asks municipalities to look at their own land use regulations to determine whether, if the conditions required by law exist, those regulations are at least part of the problem. While things are not as bad as they were not long ago when, for example, the Town of Raymond required a front yard setback of 900 feet if you wanted to put a mobile home on your land, municipal land use restrictions continue to perpetuate class distinctions between those who live in manufactured homes and those who don't. They restrict competition among housing providers which cause the conditions prompting calls for rent control in the first place.

You received a fiscal note from the Office of Fiscal and Program Review which indicated this bill would constitute an unfunded mandate IF it applied retroactively to the City of Westbrook. It does not. Since rent control is not a program mandated by the state, this bill does not constitute an unfunded mandate.

In any case, you may say, "Why should we impose this burden on a municipality?" I would respond with this question, "Why should government impose the regulatory burden of rent control on a private sector providing of shelter simply because he or she seeks a profit?" Mobile home parks, and the vast majority of apartments, exist only because someone is able to make a profit by constructing them and operating them. A competitive market ensures that prices are reasonable. More often than not, it is actions by the government that restrict the market. Therefore, it is patently unfair for government to punish those who are trying to thrive in a market it has restricted.

I urge the committee to give this bill your unanimous Ought To Pass report and ensure that municipalities do not enact rent control ordinances solely on the basis of political pressure from a small group of existing renters, but do so only if conditions which present law requires actually exist.

"Propinquity, Profanity, Lunch"

From the New York Times Magazine - November 27, 1994

The city offers subsidies to big established businesses that threaten to leave, but it taxes small new ones to the hilt and discourages entrepreneurs with mandarin regulations. It guarantees cheap housing to longtime residents but leaves newcomers to fend for themselves in a housing market ruined by price controls. Rent regulation is the quintessence of modern New York piety — social justice through the outlawing of greed — and it has been the greatest physical disaster in the city's history.

Before such regulation was instituted in 1943 — at La Guardia's urging — New York's housing stock had been among the world's finest, built and maintained by landlords who often had to compete fiercely for tenants. After rent regulation, they stopped building, stopped taking care of their buildings and walked away from 500,000 apartments. As a result, neighborhoods have been ruined and there has been a perpetual housing shortage, which economists cite as a textbook case of stupidity. "Next to bombing," says Assar Lindbeck, the chairman of the Nobel Prize committee for economics, "rent control seems in many cases to be the most efficient technique so far known for destroying cities, as the housing situation in New York City demonstrates."

CHAPTER 167

MUNICIPAL RENT CONTROL

Law Review Commentaries

Initiative proposal of municipal rent control ordinance. 10 Maine Bar Bull. 29 (1976).

§ 3601. Declaration of emergency

If a serious public housing emergency exists in a municipality which would result in a shortage of rental housing accommodations and abnormally high rents and will produce serious threats to the public health, safety and general welfare of the citizens of the community unless residential rents are regulated and controlled, a municipality may accept this chapter, with due regard for the rights and responsibilities of its citizens.

1987, c. 737, § A, 2.

Historical and Statutory Notes

Derivation:

Laws 1973, c. 506.
Former § 5371 of title 30.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

§ 3602. Acceptance

Rent control legislation takes effect in any municipality on the 30th day following acceptance of its provisions. A municipality which has accepted this chapter may, in the same manner, revoke its acceptance.

1987, c. 737, § A, 2.

Historical and Statutory Notes

Derivation:

Laws 1973, c. 506.
Former § 5372 of title 30.

§ 3603. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Rent. "Rent" means the consideration, including any bonus, benefits or gratuity demanded or received for or in connection with the use or occupancy of rental units or the transfer of a lease of such rental units.

2. Rental units. "Rental units" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, including houses, apartments, rooming or boarding-house units and other properties used for living or dwelling purposes, together with all services connected with the use or occupancy of the property, except:

A. Rental units which a governmental unit, agency or authority either:

(1) Owns or operates; or

(2) Finances or subsidizes, if the imposition of rent control would result in the cancellation or withdrawal, by law, of the financing or subsidy;

B. Rental units in cooperatives;

C. Rental units in any public institution or college or school dormitory operated exclusively for charitable or educational purposes;

D. Rental units in any nursing or rest homes, not organized or operated for profit; and

E. The rental unit or units in an owner-occupied, 2–family or 3–family house and rental units, the construction of which was completed on or after the date of acceptance of rent control legislation, may be exempted from the legislation by the administrator or the board.

3. **Services.** "Services" means repairs, replacement, maintenance, painting, providing light, heat, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitorial services, refuse removal, furnishings and any other benefit, privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.

1987, c. 737, § A, 2.

Historical and Statutory Notes

Derivation:
Laws 1973, c. 506.
Laws 1975, c. 722, § 1.
Former § 5373 of title 30.

§ 3604. Local rent board or administrator

1. **Appointment.** When rent control legislation is accepted, the municipality shall also determine whether the chapter will be administered by a rent control board or by a rent control administrator. Upon acceptance of rent control legislation and before its effective date, the popularly elected mayor of a city, or the council in a municipality having a council-manager form of government, or the board of selectmen in a town shall appoint a rent control administrator or a rent control board to serve at the will of the appointing authority.

2. **Compensation.** Members of rent control boards shall receive no compensation for their services, but shall be reimbursed by the municipality for necessary expenses incurred in the performance of their duties.

3. **Personnel.** Either the rent control board, referred to in this chapter as "the board," or the rent control administrator, referred to in this chapter as "the administrator," is responsible for carrying out this chapter. The board or the administrator shall:

A. With the approval of the appointing official or officials, hire any necessary personnel;

B. Adopt any policies and regulations that will further the provisions of this chapter; and

C. Recommend to the municipality for adoption any ordinances and bylaws that are necessary to carry out the purposes of this chapter.

4. **Studies.** The board or the administrator may make such studies and investigations, conduct such hearings and obtain such information considered necessary in adopting any regulation or order under this chapter or in administering and enforcing this chapter and regulations and orders adopted under this chapter. Any person who rents or offers for rent or acts as broker or agent for the rental of any controlled rental unit may be required to furnish any information required by the board or administrator and to produce records and other documents and make reports. These persons have the right to be represented by counsel.

5. **Regulations.** The board or administrator may issue orders and adopt regulations to effectuate the purposes of this chapter.

1987, c. 737, § A, 2.

Historical and Statutory Notes

Derivation:

Laws 1973, c. 506.
Laws 1975, c. 722, § 2.
Laws 1979, c. 541, § A, 204.
Former § 5374 of title 30.

§ 3605. Maximum rent adjustment

1. **Fair net-operating income.** The board or administrator shall make any individual or general adjustments, either upward or downward, of the rent for any rental property that is necessary to ensure that rents are established at levels which yield to landlords a fair net-operating income from the rental units.

2. **Determination.** The following factors, among other relevant factors, which the board or administrator may define by regulation, shall be considered in determining whether a controlled rental unit yields a fair net-operating income:

A. Increases or decreases in property taxes;

B. Unavoidable increases or any decreases in operating and maintenance expenses;

C. Capital improvement of the housing unit as distinguished from ordinary repair, replacement and maintenance;

D. Increases or decreases in living space, services, furniture, furnishings or equipment;

E. Substantial deterioration of the housing units other than as a result of ordinary wear and tear; and

F. Failure to perform ordinary repair, replacement and maintenance.

3. **Schedule of standard rental increases or decreases.** For the purpose of adjusting rents under this section, the board or administrator may adopt a schedule of standard rental increases or decreases for improvement or deterioration in specific services and facilities.

4. **Denial.** The board or administrator may refuse to grant a rent increase under this section, if determined that:

A. The affected rental unit does not comply with the state sanitary code and any applicable municipal codes, ordinances or bylaws; and

B. The lack of compliance is due to the landlord's failure to provide normal and adequate repair and maintenance.

The board or the administrator may refuse to grant a rent decrease under this section, if it is determined that a tenant is behind in the payment of rent.

5. **Termination procedure.** The board or administrator may adjust or eliminate rent controls if it is determined that the need for continuing rental levels no longer exists because of sufficient construction of new rental units or because the demand for rental units has been otherwise met. Any maximum rental level removed under this subsection shall be reimposed or adjusted and reimposed upon a finding by the board or administrator that a substantial shortage of rental units exists in the municipality and that the reimposition of rent control is necessary in the public interest. Any action under this subsection is subject to appeal under section 3606.

1987, c. 737, § A, 2; 1989, c. 104, §§ A, 32, 33.

Historical and Statutory Notes

Amendments

1989 Amendment. Laws 1989, c. 104, § A, 32, in subsec. 4, par. B, made technical correction by inserting "it is" following "under this section, if".

Laws 1989, c. 104, § A, 33, in subsec. 5, substituted provisions making any action under this subsec. subject to appeal under § 3606 for provisions making any action under this subsec. subject to hearing and notice requirements of § 3606.

Derivation:

Laws 1973, c. 506.
Laws 1973, c. 788, § 151.
Former § 5375 of title 30.

United States Supreme Court

Due process, rent assistance contracts, automatic rent increases, comparability study caps, see Cisneros v. Alpine Ridge Group, 1993, 113 S.Ct. 1898.

§ 3606. Judicial review

Any person who is aggrieved by any action, regulation or order of the board or administrator may file a complaint against the board or administrator in the District Court having jurisdiction over the area in which the property is located. Upon the filing of the complaint, an order or notice shall be issued by the court and served on the board or administrator as provided in the case of a civil action. The District Court has exclusive original jurisdiction over the proceedings. All orders, judgments and decrees of the District Court may be appealed as is provided in the case of a civil action in the District Court.

1987, c. 737, § A, 2.

Historical and Statutory Notes

Derivation:

Laws 1973, c. 506.
Former § 5376 of title 30.

R. d S.

Min

L.D. 655

DATE: (Filing No. H-)

STATE AND LOCAL GOVERNMENT

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 474, L.D. 655, Bill, "An Act Concerning Municipal Rent Control"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'**Sec. 1. 30-A MRSA §3601,** as amended by PL 1989, c. 104, Pt. C, §§8 and 10, is further amended to read:

§3601. Declaration of emergency

If a serious public housing emergency exists in a municipality ~~which~~ that would result in a shortage of rental housing accommodations and abnormally high rents and will produce serious threats to the public health, safety and general welfare of the citizens of the community unless residential rents are regulated and controlled, a municipality may accept this chapter, with due regard for the rights and responsibilities of its citizens. Prior to accepting this chapter, the municipal officers must conduct an analysis to support their finding that a serious public housing emergency exists. Their analysis must include, but is not limited to, all of the following:

1. Comparative housing costs. A finding that the average increase in rents within that municipality has exceeded twice the rate of increase in the Consumer Price Index;

2. Vacancy rates. A finding that the average vacancy rate is 4% or below in that municipality; and

3. Municipal restrictions. A finding that land use restrictions allow a range of rental housing options, including, but not limited to, apartment houses and mobile home parks, on at least 50% of the developable land within the municipality.

If land use restrictions do not allow a range of rental housing options, including, but not limited to, apartment houses and mobile home parks, on at least 50% of the developable land within the municipality, the municipality may not accept this chapter.'

STATEMENT OF FACT

This amendment is the minority report of the Joint Standing Committee on State and Local Government. This amendment sets objective standards by which to measure abnormally high rents, abnormally low vacancy rates and the effects of municipal land use restrictions.

COPY

L.D. 655

DATE: (Filing No. H-) m 4

STATE AND LOCAL GOVERNMENT

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 474, L.D. 655, Bill, "An Act Concerning Municipal Rent Control"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'**Sec. 1. 30-A MRSA c. 167,** as amended, is repealed.

Sec. 2. Legislative intent. The Legislature intends to permit municipalities to continue to adopt and enforce rent control ordinances under home rule authority. A municipality that adopted rent control under the Maine Revised Statutes, Title 30-A, former chapter 167 may continue to operate a rent control program.'

STATEMENT OF FACT

This amendment is the majority report of the Joint Standing Committee on State and Local Government. This amendment replaces the original bill and repeals the law governing municipal rent control.

JOHN D. WAKEFIELD
Director

JAMES A. CLAIR
Deputy Director

Date: 03/10/95 ORIGINAL
Hearing Date: 03/23/95
Committee: State and Local Government

Maine State Legislature
OFFICE OF FISCAL AND PROGRAM REVIEW
Augusta, Maine 04333

TO: Senate Chair - Sen. J. Amero

House Chair - Rep. B. Daggett

Sponsor - Rep. Winsor of Norway

FROM: Grant T. Pennoyer, Principal Analyst

SUBJECT: FISCAL NOTE INFORMATION FOR **LD 655**

An Act Concerning Municipal Rent Control

I. The estimated increase (decrease) of Appropriations and Allocations required if this Legislative Document is approved.

A. Line Item Summary

	1995-96	1996-97
Positions		
Personal Services		
All Other		
Capital Expenditures		
Unallocated		
TOTAL		

B. Fund Summary

	1995-96	1996-97
General Fund		
Highway Fund		
Other Funds		

II. The estimated increase (decrease) of Revenues for the biennium is as follows.

	1995-96	1996-97
General Fund		
Highway Fund		
Other Funds		

III. Remarks:

If municipalities that have already adopted rent control must conduct the objective analysis, this bill represents a state mandate pursuant to the Constitution of Maine. The additional local costs are estimated to be minor. General Fund appropriations will be required to fund at least 90% of the additional costs unless a Mandate Preamble is amended to the bill and two-thirds of the members of each House vote to exempt this mandate from the funding requirement.

A fiscal note must be amended to the bill pursuant to Joint Rule 22.

VOTING TALLY SHEET

L.D.# or Confirmation: 655

Committee: STATE & LOCAL GOVERNMENT

Date: April 6, 1995

Motion: OTPAM (MAJ) / OTPAM (MIN)

Motion By: Robichaud Rosebush

SENATORS	YEA	NAY	ABSENT	ABSTAIN
1. SEN. JANE AMERO	✓			
2. SEN. DAVID CARPENTER			✓	
3. SEN. SUSAN LONGLEY		✓		
REPRESENTATIVES				
1. REP. BEVERLY DAGGETT	✓			
2. REP. DOUGLAS AHEARNE	✓			
3. REP. WILLIAM LEMKE			✓	
4. REP. JANE SAXL			✓	
5. REP. BELINDA GERRY		✓		
6. REP. JON ROSEBUSH	✓			
7. REP. JULIE-MARIE ROBICHAUD	✓			
8. REP. PRISCILLA LANE	✓			
9. REP. CHRISTINE SAVAGE	✓			
10. REP. ROBERT YACKOBITZ	✓			
TOTAL	8	2	3	

MAJORITY

HOUSE REPORT

THE COMMITTEE ON STATE AND LOCAL GOVERNMENT

to which was referred the following:

An Act Concerning Municipal Rent Control.

H.P. 474 L.D. 655

has had the same under consideration, and asks leave to report that the same

OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT " ".

of

(Signature) For the Committee.

REP. DAGGETT OF AUGUSTA	
SEN. CARPENTER OF YORK	
REP. ROSEBUSH OF EAST MILLINOCKET	
REP. ROBICHAUD OF CARIBOU	
REP. LANE OF ENFIELD	
REP. SAVAGE OF UNION	
REP. YACKOBITZ OF HEBRON	
REP. AHEARNE OF MADAWASKA	
SEN. AMERO OF CUMBERLAND	

(Type) (Signatures)

Rep. of (Town) and/or Sen. of (County)

HOUSE REPORT

MINORITY

HOUSE REPORT

THE COMMITTEE ON STATE AND LOCAL GOVERNMENT

to which was referred the following:

An Act Concerning Municipal Rent Control.

H.P. 474 L.D. 655

has had the same under consideration, and asks leave to report that the same

OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT " ".

of

(Signature) For the Committee.

SEN. LONGLEY OF WALDO	Susan Longley
REP. GERRY OF AUBURN	Belinda Gerry
(Type) Rep. of (Town) and/or Sen. of (County)	(Signatures)

HOUSE REPORT

L.D. 655

DATE: 5/4/95 (Filing No. H- 200)

MAJORITY

STATE AND LOCAL GOVERNMENT

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 474, L.D. 655, Bill, "An Act Concerning Municipal Rent Control"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'**Sec. 1. 30-A MRSA c. 167,** as amended, is repealed.

Sec. 2. Legislative intent. The Legislature intends to permit municipalities to continue to adopt and enforce rent control ordinances under home rule authority. A municipality that adopted rent control under the Maine Revised Statutes, Title 30-A, former chapter 167 may continue to operate a rent control program.'

STATEMENT OF FACT

This amendment is the majority report of the Joint Standing Committee on State and Local Government. This amendment replaces the original bill and repeals the law governing municipal rent control.

Attachment C

MEMORANDUM

TO: Chair Duson and Members of the City of Portland Housing Committee
FROM: Danielle P. West-Chuhta, Corporation Counsel DWC
DATE: August 18, 2016
RE: **Proposed Rental Housing Security Ordinance**

I have reviewed the draft "Rental Housing Security Ordinance" that has been submitted to the Housing Committee for its consideration. The following are some thoughts, questions, and concerns that I have regarding the proposed ordinance:

A. Current State Law

According to the proposed Findings and Statement of Policy, the proposed ordinance is aimed at addressing a belief that some members of Portland's population are discriminated against based on their source of income and that there are "inadequate" mechanisms for dealing with that discrimination.

Although the proposed ordinance does address some issues that are not covered by State law, because the Maine Legislature has adopted some protections around housing discrimination, it seems important to start a discussion of potential City Council action in this area by noting existing State law.

As the Committee knows from my prior memo on this topic, the Maine Human Rights Act ("MHRA") currently prohibits discrimination in the renting of housing based on receipt of public housing assistance or other public benefit. Title 5 M.R.S. § 4581-A specifically provides:

> It is unlawful housing discrimination, in violation of this Act . . . [f]or any person furnishing rental premises or public accommodations to refuse to rent or impose different terms of tenancy to any individual who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies, primarily because of the individual's status as recipient.

In *Dussault v. RRE Coach Lantern Holdings, LLC*, 2014 ME 8, 86 A.3d 52, the Law Court confirmed that the discrimination "the MHRA prohibits with respect to public assistance recipients is 'refus[al] to rent or impos[ition of] different terms of tenancy' based primarily on a person's status as a recipient." It also explained, however, the limits of that protection. According to the Court, there is no violation of the MHRA where a landlord does not "refuse to rent [to] or impose different terms of tenancy" on a recipient of public benefits. Rather, where a landlord is "willing to, and in fact [does], offer [a tenant] the apartment, and [is] willing to rent to her after learning of her status [as a recipient of public benefits] so long as it could do so without including the tenancy addendum," there has been no violation. By refusing to participate in the voucher program for the rental of any of its units, the Court explained, the landlord simply "offered to rent the apartment . . . on "the same terms of tenancy offered to any other individual." A landlord does not violate the MHRA by offering apartments to recipients of public assistance on the same terms as it offers apartments to other potential tenants.

The Court then went on to note that "[t]he Legislature has not required landlords to accept Section 8 vouchers. Although the Legislature has previously considered a bill that would have effectively required landlords to participate in the voucher program, it has not, to date, made this voluntary program mandatory in Maine. *See* L.D. 685, § 2 (123rd Legis. 2007) (proposing an amendment to the MHRA forbidding discrimination against recipients of public assistance "because of any requirement of such a public assistance program"); Comm. Amend. A to L.D. 685, No. S-162 (123rd Legis. 2007) (removing the language regarding discrimination based on the requirements of public assistance programs from the bill)."

So, under current Maine State law, although it is unlawful for landlords to refuse to rent to recipients of benefits or to offer rental housing on different terms, there is no requirement that landlords accept public benefits or participate in housing choice voucher programs.

B. <u>Proposed Ordinance</u>

I. <u>"Division 2: Fair Housing"</u>

- Section (a) seems to me to be somewhat redundant of the State statute and so I simply raise questions about its necessity. As noted above, rental on different terms because of receipt of public benefit is already expressly prohibited. I think (a) through (d) are therefore already covered by the State law. Given too that the State has already legislated in this specific area, I do have a concern that the State may have intended to occupy the field with respect to these protections and the requirement that violations go to the Maine Human Rights Commission such that local regulation in this area may be problematic and subject to challenge.

- I also have some concern with the use of the word "person" throughout this section of the proposed ordinance rather than owner or landlord – particularly with respect to section (e). That section purports to prohibit "a person from excluding any person from admission to a dwelling because of the person's source of income." This has the potential to be read in a manner that goes beyond regulating rentals – under a literal reading and using the proposed definition of "person", it purports to regulate what private home owners/occupants can do in their own homes and who they must allow into them. That likely was not the intent of the language, but it could be read that way. At the very least, if this proposal is going to continue to use "person," I would recommend that the definition of that term make clear that it relates to housing determinations, etc. and not to who can make a social visit, etc.

II. **A helpful sample and summary of issues regarding Division 2:**

For the Committee's information, I note that in 2014, the City of Austin, Texas enacted an ordinance very similar in purpose (and, language) to the one being proposed here. A review of that ordinance and what occurred after it was enacted may be instructive:

The ordinance was enacted on December 11, 2014 and challenged in court the next day. Importantly, the ordinance was ultimately upheld (though in the context of a motion for preliminary injunction, not after a trial on the merits) by the federal courts. Although it is very similar to the proposal that has been submitted to the committee, it differs in some important ways (for example, it uses "person" but also limits the prohibitions to specific behaviors relating to housing). I attach it for your consideration and suggest that to the extent the Committee and the City Council wish to adopt an ordinance prohibiting discrimination based on source of income, it model that ordinance after this one – because it has been upheld by the District Court.

The District Court's discussion of the ordinance and of the legal issued raised by the Austin Apartment Association is really helpful in terms of understanding the potential issues and their resolution. I also attach it for your review and reference.

It should be noted that following the decision by the U.S. Court of Appeals, the Texas State legislature enacted a State law that invalidated the local ordinance so it is no longer in effect. Here is a link to an article outlining the history: http://www.austinchronicle.com/news/2015-09-04/not-for-rent/.

III. **"Division 3: Rent Increase Limitations":**

This section requires, among other things, that all rent increases be preceded by at least ninety (90) days' written notice. Title 14 M.R.S. § 6015 provides:

> Rent charged for residential estates may be increased by the lessor only after providing at least 45 days' written notice to the tenant. A written or oral waiver of this requirement is against public policy and is void. Any person in violation of this section is liable for the return of any sums unlawfully obtained from the lessee, with interest, and reasonable attorney's fees and costs.

Given that State law sets a minimum, as I stated in my prior memo to the Committee, an argument could be made that the City can increase the notice requirement without conflicting with State law (that is, a landlord can meet both the State and the City requirements so there is no inconsistent obligation in that respect) such that it does not exceed the City's home rule authority.

IV. Division 4: Termination of Tenancy:

This section proposes to impose a "constructive lease" on tenancies that would otherwise be tenancies at will under State law and to limit the grounds for eviction to "good cause" only. This appears to me to conflict with State law which expressly recognizes and defines tenancies at will and permits eviction for any reason in those situations upon thirty (30) days' written notice. *See* 14 M.R.S. §§ 6001 & 6002. Therefore, I have a concern that this provision may exceed the City's home rule authority.

V. Enforcement and Remedies

I have some concern that the enforcement and penalty provisions of the proposed ordinance may also be contrary to State law. First, to the extent that this ordinance contains the same protections as those provided by the MHRA, I don't think the City has the authority to create a private right of action on behalf of a tenant that would circumvent or run contrary to the administrative process contemplated by the Act. Under the Act, a person aggrieved by discrimination may not recover compensatory or other damages unless they first file a complaint with the Maine Human Rights Commission. 5 M.R.S. § 4622. This proposal purports to create a private right of action for some of the same wrongs, but does not require the same administrative process. This appears to potentially exceed the City's home rule authority.

Also, 30-A M.R.S. § 3001, the State statute that authorizes municipalities to enact local ordinances, explains that "[a]ll penalties established by ordinance shall be recovered on complaint *to the use of the municipality*." (emphasis added). The proposals contained in the draft would impose penalties that are payable to an aggrieved tenant, not the City, in apparent violation of the limits of the City's home rule authority.

In other sections of the City's code, violations of City ordinances are subject to fines that are payable to the City in accordance with 30-A M.R.S. § 3001. Those violations are ultimately enforced in Court and penalties imposed on a complaint filed by the City, in its name. My recommendation is that if the Committee and the City Council wish to regulate in this area, violations be enforced in the usual course.

C. **Conclusion**

I hope this discussion of some of the threshold questions and concerns raised by this proposed ordinance are helpful to the Committee. I am happy to talk further with you about these issues and any others that you might identify at your meeting on August 24 and to assist the Committee in whatever way I can in the development of any and all proposals it may wish to craft to address these issues.

Cited
As of: August 5, 2016 12:00 PM EDT

Austin Apt. Ass'n v. City of Austin

United States District Court for the Western District of Texas, ***Austin*** Division

February 27, 2015, Decided; February 27, 2015, Filed

Case No. A-14-CA-1146-SS

Reporter
89 F. Supp. 3d 886; 2015 U.S. Dist. LEXIS 28352

AUSTIN APARTMENT ASSOCIATION, Plaintiff, -vs- CITY OF ***AUSTIN***, Defendant.

Core Terms

Ordinance, landlord, voucher, rent, housing, holders, lease, federal law, preempted, federal fair housing, fair housing, preemption, substantial equivalent, merits, inspection, Tenancy, substantial likelihood, impairing, courts, contractual obligation, preliminary injunction, terminates, requires, City's, regulations, families, fail to demonstrate, property owner, low-income, Apartment

Case Summary

Overview
HOLDINGS: [1]-A landlords' association failed to show that a city ***ordinance*** prohibiting discrimination against tenants participating in the federal housing voucher program was preempted by state and federal fair housing laws, since the city's housing laws remained substantially equivalent to the state and federal laws despite the creation of a new protected class of tenants which would advance rather than denigrate fair housing; [2]-The association also failed to show that the ***ordinance*** violated landlords' substantive due process right to contract or not to contract with tenants since the city did not act arbitrarily or irrationally in furthering the legitimate government interest in insuring affordable housing to low-income tenants; [3]-The ***ordinance*** did not constitute a taking since landlords remained free to rent their properties and receive compensation from the vouchers.

Outcome
Motion for preliminary injunction denied.

LexisNexis® Headnotes

Business & Corporate Compliance > ... > Public Health & Welfare Law > Housing & Public Buildings > Fair Housing

Governments > Local Governments > ***Ordinances*** & Regulations

HN1 ***Austin***, Tex., Ord. No. 20141211-050 amends the city's fair housing code to prohibit landlords from refusing to rent to prospective tenants on the basis of ***source of income***, which is defined to include housing vouchers and other subsidies provided by government or non-governmental entities. Consequently, under the ***ordinance***, where a person is otherwise qualified to rent a property, the landlord may not reject that person's application solely because he or she wishes to pay a portion of the rent with a voucher obtained through the federal Housing Choice Voucher Program.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

Civil Procedure > ... > Injunctions > Grounds for Injunctions > General Overview

HN2 A party seeking a preliminary injunction must satisfy each of four criteria: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction is not granted; (3) the substantial injury outweighs the threatened harm to the party against whom the injunction is sought; and (4) granting the injunction will not disserve the public interest. A preliminary injunction is an extraordinary remedy which should not be granted unless the party seeking it has clearly carried the burden of persuasion on all four requirements.

Governments > Local Governments > Police Power

Business & Corporate Compliance > ... > Public Health & Welfare Law > Housing & Public Buildings > Fair Housing

HN3 See *Tex. Loc. Gov't Code Ann. § 214.903.*

Governments > Local Governments > Home Rule

Governments > Local Governments > ***Ordinances*** & Regulations

HN4 Home-rule cities have broad discretionary powers to enact their own ***ordinances***, provided that no ***ordinance*** shall contain any provision inconsistent with the Constitution of the State of Texas, or with the general laws enacted by the Legislature of the State. Home-rule cities possess the full power of self-government and look to the Legislature not for grants of power, but only for limitations on their power. A home-rule city ***ordinance*** is unenforceable to the extent it conflicts with a state statute. However, a state statute and a home-rule city ***ordinance*** will not be held repugnant to each other if any other reasonable construction leaving both in effect can be reached. Consequently, if the Texas Legislature decides to preempt a subject normally within a home-rule city's broad powers, it must do so with unmistakable clarity.

Governments > Legislation > Interpretation

HN5 Courts are generally not free to read into statutes language that is not there.

Business & Corporate Compliance > ... > Public Health & Welfare Law > Housing & Public Buildings > Fair Housing

HN6 Under federal law, the United States Department of Housing and Urban Development may certify a particular local agency only if the rights the agency protects, the procedures the agency follows, the remedies available to the agency, and the availability of judicial review of the agency's actions under the state or municipal fair housing law are all substantially equivalent to those created by and under the federal Fair Housing Act. *42 U.S.C.S. § 3610(f)(3)(A)*.

Business & Corporate Compliance > ... > Public Health & Welfare Law > Housing & Public Buildings > Fair Housing

HN7 See *Tex. Loc. Gov't Code Ann. § 214.903(a)*.

Constitutional Law > Supremacy Clause > Federal Preemption

HN8 In determining whether federal law preempts state law, congressional intent is the paramount consideration. Preemption may manifest in several different ways. First, Congress may expressly state a federal law preempts state law (express preemption). Second, Congress's preemptive intent may be inferred where the federal scheme is so comprehensive it occupies the field, leaving no room for supplementary state law (implied preemption). Finally, federal law may preempt state law to the extent the two actually conflict (conflict preemption), either because compliance with both federal and state regulations is a physical impossibility, or because the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

Constitutional Law > Supremacy Clause > Federal Preemption

Business & Corporate Compliance > ... > Public Health & Welfare Law > Housing & Public Buildings > Fair Housing

HN9 The United States Department of Housing and Urban Development regulations implementing the Housing Choice Voucher Program specifically provide that the federal statutes creating it are not intended to preempt operation of state and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder. *24 C.F.R. § 982.53(d)*.

Constitutional Law > Congressional Duties & Powers > Contracts Clause > General Overview

HN10 *Tex. Const. art. I, § 16* prohibits any law impairing the obligation of contracts.

Constitutional Law > Congressional Duties & Powers > Contracts Clause > Application & Interpretation

HN11 *Tex. Const. art. I, § 16* applies only where parties have entered into a contract and thereafter a statute is passed that unlawfully impairs their contractual obligations.

Constitutional Law > Substantive Due Process > General Overview

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

HN12 Where a plaintiff alleges a takings claim and a substantive due process claim together, courts must determine the extent to which the due process claim rests on protections that are also afforded by the *Takings Clause* and analyze the claim accordingly.

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

HN13 The *Takings Clause of the Fifth Amendment*, made applicable to the states through the *Fourteenth Amendment*, directs that private property shall not be taken for public use, without just compensation. U.S. Const. amend. V.

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

HN14 See Tex. Const. art. I, § 17.

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Constitutional Law > The Judiciary > Case or Controversy > Ripeness

HN15 Before addressing the merits of a takings claim, the court must be convinced the claim is ripe, even if neither party has raised the issue.

Counsel: [**1] For ***Austin*** Apartment Association, Plaintiff: Craig T. Enoch, Melissa Anne Lorber, Shelby O'Brien, LEAD ATTORNEYS, Enoch Kever PLLC, ***Austin***, TX.

For City of ***Austin***, Defendant: Meitra Farhadi, LEAD ATTORNEY, Assistant City Attorney, ***Austin***, TX; Patricia L. Link, LEAD ATTORNEY, City of ***Austin*** Law Department, ***Austin***, TX.

For Doris Landrum, Dimple Smith, Gloria Middleton, Latorie Duncan, Intervenor Defendants: Fred Fuchs, Kelli Dunn Howard, Nelson H. Mock, LEAD ATTORNEYS, Texas RioGrande Legal Aid, Inc., ***Austin***, TX.

Judges: SAM SPARKS, UNITED STATES DISTRICT JUDGE.

Opinion by: SAM SPARKS

Opinion

[*889] ORDER

BE IT REMEMBERED on the 26th day of January 2015, the Court held a hearing in the above-styled cause, and the parties appeared by and through counsel. Before the Court are Plaintiff ***Austin*** Apartment Association's Motion for Preliminary Injunction [#4], Defendant City of ***Austin***'s Response [#8] thereto, Intervenors Doris Landrum, Dimple Smith, Gloria Middleton, and Latorie Duncan's Response [#7] thereto, Plaintiffs Trial Brief on Legal Authorities and Comparing ***Ordinance***-Mandated and Free-Market Lease Terms [#11], Defendant's Response [#15] thereto, and Intervenors' Response [#14] thereto. Having reviewed the documents, the arguments [**2] of the parties at hearing, the governing law, and the file as a whole, the Court now enters the following opinion and orders.

Background

On December 11, 2014, the City Council of the City of ***Austin***, Texas, enacted ***Ordinance*** Number 20141211-050 (the ***Ordinance***). ***HN1*** The ***Ordinance*** amends the City's fair housing code to prohibit landlords from refusing to rent to prospective tenants on the basis of "***source of income***," which is defined to include "housing vouchers and other subsidies provided by government or non-governmental entities." Prelim. Inj. Hrg. Ex. P-8 (the ***Ordinance***) at 2. Consequently, under the ***Ordinance***, where a person is otherwise qualified to rent a property, the landlord may not reject that person's application solely because he or she wishes to pay a portion of the rent with a voucher obtained through the federal Housing Choice Voucher Program (HCVP or the Program), formerly known as Section 8.

Plaintiff ***Austin*** Apartment Association (the Association), a trade association whose members control rental properties serving over 192,000 households, claims the ***Ordinance*** is invalid and seeks a preliminary injunction against its enforcement pending resolution of this action. Specifically, the Association argues [**3] the ***Ordinance*** is preempted by Texas and federal law, impairs the obligation of contracts in violation of the Texas Constitution, and constitutes a regulatory taking and due process violation under the Texas and United States Constitutions. As set forth below, the Court finds the Association has failed to demonstrate a substantial likelihood of success on the merits of its claims, and therefore DENIES the motion for preliminary injunction.

A. The Housing Choice Voucher Program

Congress created the Housing Choice Voucher Program to "aid[] low-income families in obtaining a decent place to live" and to "promot[e] economically mixed housing." 42 U.S.C. § 1437f(a). The Program is funded by the United States Department of Housing and Urban Development (HUD) and administered by state and local public housing authorities (PHAs) in accord with the regulations promulgated [*890] by HUD. Families (or individuals) who wish to receive housing vouchers must apply with their local PHA, which is responsible for screening prospective participants for federal eligibility, issuing vouchers, and contracting with landlords who lease to HCVP participants. *See* Prelim.

Inj. Hrg. Ex. P-12 (HCVP Guidebook) at 1-12.

Once a family is approved by and receives a voucher from **[**4]** the PH A—a process that may take years, as demand for vouchers far outstrips supply and waiting lists are very long—the family is responsible for finding a landlord in the private rental market willing to lease to them. *See* 24 C.F.R. § 982.302(a). Federal law does not require landlords to accept housing vouchers, and landlords who do accept vouchers are not required to approve tenants merely because they are voucher holders. Rather, landlords who participate in the Program may screen prospective tenants and reject them if screening reveals red flags in terms of paying rent and utility bills, caring for rental housing, respecting neighbors, criminal activity, and the like. *See* 24 C.F.R. § 982.307(a) (discussing landlord's obligation to screen prospective tenants and factors properly considered in so doing).

Once the family has located a willing landlord and the family and landlord have negotiated the terms of the lease, the PHA must also approve the prospective tenancy. The landlord and family fill out and submit to the PHA a two-page Request for Tenancy Approval, which provides the PHA with basic information such as the address and size of the unit to be rented and the utilities and appliances provided by the landlord versus **[**5]** paid for by the tenant. *See* Prelim. Inj. Hrg. Ex. P-2 (Request for Tenancy Approval) at 1. The Request for Tenancy Approval also requires landlords who rent more than four units to disclose the rent charged for comparable units, so the PHA can ensure the rent charged to the voucher holder is comparable to that charged to unassisted tenants. *Id.* at 2.

The portion of the rent paid by the government is pegged to the PHA's schedule of "payment standards," dollar amounts based on the local fair market rent for apartments or houses of a certain size. HCVP Guidebook at 7-1. The PHA will never pay more than its fixed share, equal to the applicable payment standard less the dollar amount for which the voucher holder is responsible. *Id.* at 6-2. Typically, a family must pay thirty percent of its monthly adjusted income toward rent. *Id.* at 6-1; *see* 42 U.S.C. § 1437f(o)(2)(A). If a family wants to rent a unit which costs more than thirty percent of its monthly adjusted income plus the PHA's fixed share, the family may do so and pay the additional cost—but the amount paid by the family may never exceed forty percent of its monthly adjusted income. 42 U.S.C. § 1437f(o)(3); *see* HCVP Guidebook at 6-2. If the family's responsibility would exceed forty percent of its monthly adjusted income, the family may not rent that **[**6]** unit. HCVP Guidebook at 6-2.

If the PHA approves the tenancy, an inspection of the house or apartment to be leased to the family is scheduled. The inspection ensures the unit passes basic federal housing quality standards (HQS) geared toward ensuring tenant health and safety; for example, the property must have "a shower or bathtub with hot and cold running water," lockable exterior doors, "a safe heating system," permanently installed electrical outlets, and the like. *See* Prelim. Inj. Hrg. Ex. P-3 (HQS Checklist) at 5-7. All utilities must be turned on prior to the inspection. *Id.* at 9. According to the HQS Checklist, some of the most common reasons a unit fails inspection include broken smoke detectors, **[*891]** missing or cracked electrical outlet covers, peeling paint, trip hazards from carpet or other permanent floor coverings, cracked windowpanes, and inoperable stove burners. *Id.* at 4. If a property fails inspection, the landlord is required to make any needed repairs and notify the PHA when the property is ready for re-inspection.

Once the unit has passed inspection, the landlord and the PHA must execute the HUD-prepared Housing Assistance Payments Contract. *See* Prelim. Inj. Hrg. Ex. P-4 (HAP Contract). Execution of the HAP Contract is required **[**7]** by HUD, and without an executed HAP Contract covering a particular family's tenancy, the PHA will not pay any rent to the landlord. *See id.* at 4 ("During the HAP contract term, the PHA will pay housing assistance payments to the owner[.]"). The landlord cannot modify or negotiate the HAP Contract; it "must be word-for-word in the form prescribed by HUD." *Id.* at 1. Further, the landlord must append a Tenancy Addendum to the landlord-tenant lease agreement, which controls in the event the two conflict. Prelim. Inj. Hrg. Ex. P-5 (Tenancy Addendum) at 1 § 1(b).

Under the HAP Contract, the PHA's responsibility to pay rent terminates automatically under a number of circumstances, including if the tenant terminates the lease, moves out of the unit, or is dropped from HCVP, or if the PHA determines there is not enough funding to continue the Program. *See* HAP Contract at 4 § 4(b)(1)—(6) (detailing situations in which the HAP Contract automatically terminates). The PHA has discretion to terminate payments if the family leasing the property breaks up, "if the PHA determines that the [property] does not provide adequate space . . . because of an increase in family size or a change in family composition," or if the landlord violates the HAP

Contract. *Id.* at 5 § 4(b)(7)—(9). Additionally, [**8] the HAP Contract governs the timing of payment of rent. Although the PHA "must pay housing assistance payments promptly when due," it will only be obligated to pay late fees for tardy payments if (1) charging late fees is general practice in the community, (2) charging late fees is the landlord's general practice, and (3) the landlord also charges the leasing family late fees. *Id.* at 5 § 7(a). Additionally, the PHA is not required to pay late fees, even where those three conditions are met, "if HUD determines that late payment by the PHA is due to factors beyond the PHA's control." *Id.* at 5 § 7(a)(3). Late payment of rent by the PHA is not a violation of the lease, and the landlord cannot terminate a tenancy because the PHA fails to pay its share. *Id.* at 9 § 5(d).

B. Procedural History

On December 12, 2014, the Association filed suit in the 345th Judicial District Court of Travis County, Texas, seeking a declaration the ***Ordinance*** is invalid, a temporary restraining order, and preliminary and permanent injunctive relief. *See* Notice Removal [#1-3] at 2 (Orig. Pet.). The City removed to this Court on December 31, 2014, invoking federal question jurisdiction. *Id.* [#1] ¶ 1. Intervenors Latorie Duncan, Doris Landrum, Gloria Middleton, [**9] and Dimple Smith, all current HCVP voucher holders, filed a Plea in Intervention prior to removal and then a Motion to Intervene in this Court, seeking to intervene in support of the City. *See* Mot. Intervene [#12]. The Court granted the motion on January 23, 2015. *See* Order of Jan. 23, 2015 [#18].

The Association filed the instant "Emergency Motion for Temporary Restraining Order [TRO] and, Thereafter, Motion for Preliminary Injunction" [#4] on January 5, 2015. Following hearing on the motion, the Court granted the TRO and held the [*892] motion for preliminary injunction in abeyance pending further development of the record and a second hearing. See Order of Jan. 6, 2015 [#10]. During the second hearing, which took place on January 26, 2015, the Court heard testimony from witnesses, received exhibits, and entertained argument on the motion.

Analysis

I. Legal Standard

HN2 A party seeking a preliminary injunction must satisfy each of four criteria: (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not granted, (3) the substantial injury outweighs the threatened harm to the party against whom the injunction is sought, and (4) [**10] granting the injunction will not disserve the public interest. *Planned Parenthood Ass'n of Hidalgo Cnty., Tex., Inc. v. Suehs, 692 F.3d 343, 348 (5th Cir. 2012)*. "'[A] preliminary injunction is an extraordinary remedy which should not be granted unless the party seeking it has clearly carried the burden of persuasion on all four requirements.'" *Id.* (quoting *Tex. Med. Providers Performing Abortion Servs. v. Lakey, 667 F.3d 570, 574 (5th Cir. 2012)*).

II. Application

The Association argues the ***Ordinance*** is invalid for four reasons: first, it is preempted by state law; second, it is preempted by the federal Fair Housing Act; third, it unconstitutionally burdens the freedom to contract guaranteed by *Article 1, § 16 of the Texas Constitution*, which prohibits laws impairing the obligation of contracts; and fourth, it constitutes a regulatory taking and due process violation under both the Texas and United States Constitutions. The Association fails to demonstrate a substantial likelihood of success on the merits under any of its theories.

A. State Preemption

The Association first argues the ***Ordinance*** is preempted by Texas law because it is not "substantially equivalent" to federal law, as required by *§ 214.903 of the Texas Local Government Code*. *Section 214.903* provides:

> ***HN3*** (a) The governing body of a municipality may adopt fair housing ***ordinances*** that provide fair housing rights, compliance duties, and remedies that are substantially equivalent to those granted under federal law. [**11] Enforcement procedures and remedies in fair housing ***ordinances*** may vary from state or federal fair housing law.
>
> (b) Fair housing ***ordinances*** that were in existence on January 1, 1991, and are more restrictive than federal fair housing law shall remain in effect.

Tex. Local Gov't Code § 214.903. In the Association's view, *§ 214.903* preempts the ***Ordinance*** because the ***Ordinance*** "attempts to add a new protected class" that is different from those protected under the federal Fair Housing Act. Mot. Prelim. Inj. [#4] at 6—7. The Court is unpersuaded.

HN4 Home-rule cities, like the City of ***Austin***, "have broad discretionary powers" to enact their own ***ordinances***, "provided that no ***ordinance*** 'shall contain any provision inconsistent with the Constitution of the State, or [with] the general laws enacted by the Legislature of this State.'" *Dall. Merch.'s & Concessionaire's Ass'n v. City of Dall., 852 S.W.2d 489, 490 (Tex. 1993)* (quoting *Tex. Const. art. XI, § 5*). Home-rule cities "possess the full power of self-government and look to the Legislature not for grants of power, but only for limitations on their power." *Id. at 490—91* (citing *MJR's Fare v. City of Dall., 792 S.W.2d 569, 573 (Tex. App.—Dallas 1990, writ denied))*. A home-rule city ***ordinance*** **[*893]** is unenforceable to the extent it conflicts with a state statute. *Id. at 491* (citing *City of Brookside Vill. v. Comeau, 633 S.W.2d 790, 796 (Tex. 1982))*. However, a state statute and a home-rule city ***ordinance*** "'will not be held repugnant to each **[**12]** other if any other reasonable construction leaving both in effect can be reached.'" *Id.* (quoting *City of Beaumont v. Fall, 116 Tex. 314, 291 S.W. 202, 206 (Tex. 1927))*. Consequently, if the Texas legislature decides to preempt a subject normally within a home-rule city's broad powers, "'it must do so with unmistakable clarity.'" *S. Crushed Concrete, LLC v. City of Hous., 398 S.W.3d 676, 678 (Tex. 2013)* (quoting *In re Sanchez, 81 S.W.3d 794, 796 (Tex. 2002))*.

The Court finds the Association has failed to demonstrate a likelihood of success on the merits of its state preemption claim, as nothing in the record suggests *§ 214.903* preempts the ***Ordinance*** with "unmistakable clarity." The Association, without attempting to define "substantially equivalent," asserts the ***Ordinance*** is not substantially equivalent to the federal Fair Housing Act simply because the federal Fair Housing Act does not include ***source of income*** as a protected class. The Association cites no authority in support of that bold proposition, however, and the Court declines to embrace it. Construing *§ 214.903* as the Association urges would mean the City has long been violating the statute, as the City's fair housing code protects a number of classes of persons not protected by the federal Fair Housing Act. "Substantially," moreover, is defined by the Oxford English Dictionary as "[i]n all essential characters or features[.]"[1] It seems **[**13]** to the Court the salient "essential features" of the federal Fair Housing Act are the classes of persons it protects. The ***Ordinance***, in protecting from discrimination ah of the classes protected under federal law and then some, exhibits the essential features of federal fair housing law. *Cf. 24 C.F.R. § 115.204(h)* (stating, in context of making substantial equivalency determination under federal law, if a local law "is different from the [Fair Housing] Act in a way that does not diminish coverage of the Act, including . . . the protection of additional prohibited bases, then the . . . local law may still be found substantially equivalent.").

That being said, the Court notes it is unsure what to make of the City's argument on this point. The City claims "substantially equivalent" is a term of art in fair housing law, referring to HUD's federal statutory authority to "certify" a local (or state) PHA, which requires HUD to determine whether the local (or state) law the PHA administers is "substantially equivalent" to the federal Fair Housing Act. *See 42 U.S.C. § 3610(f)(3)* (explaining HUD may certify an agency if the fair housing law it administers is substantially equivalent to federal law). ***Austin***'s **[**14]** PHA is certified by HUD; the City therefore concludes "unless and until HUD revokes the City's substantial equivalency certification, there is no violation of *[§ 214.903]*." Def.'s Resp. Mot. Prelim. Inj. [#8] at 6.

To the extent the City is claiming "substantially equivalent" as used in *§ 214.903(a)* should be read coextensively with federal law, two unaddressed problems arise. First, that argument inserts the phrase "as determined by HUD" into *§ 214.903(a)*: "The governing body of a municipality may adopt fair housing ***ordinances***... that are substantially equivalent[, *as determined by HUD*,] to those under federal law." ***HN5*** Courts are **[*894]** generally not free to read into statutes language that is not there. *See, e.g., Lamie v. U.S. Trustee, 540 U.S. 526, 538, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004)*. Second, there appears to be a material difference between the federal and Texas statutes in employing the concept of substantial equivalency. ***HN6*** Under federal law, HUD may certify a particular local agency only if (1) the rights the agency protects, (2) the procedures the agency follows, (3) the remedies available to the agency, and (4) the availability of judicial review of the agency's actions under the state or municipal fair housing law are all substantially equivalent to those created by and under the federal **[**15]** Fair Housing Act. *42 U.S.C. § 3610(f)(3)(A)*. Under *§ 214.903*, however, ***HN7*** "[enforcement procedures and remedies . . . may vary from . . . federal fair housing law." *Tex. Local Gov't Code § 214.903(a)*. It is not entirely clear to the Court

[1] *Substantially, adv.*, OED ONLINE, *http://www.oed.com/view/Entry/193055?redirectedFrom=substantially&*.

whether or how the variance permitted by § 214.903 squares with the federal concept of substantial equivalency since, in order to certify a local agency, the federal statute requires the procedures followed by and remedies available to the local agency be substantially equivalent to federal fair housing law. Further, even if the Court accepted the City's argument § 214.903 could not be violated unless HUD revoked the City's substantially-equivalent status, the City conceded at hearing there was no evidence HUD had reviewed the ***Ordinance*** and made that determination.

The burden of demonstrating a substantial likelihood of success on the merits, however, belongs to the Association, not to the City. On the present record, the Court concludes the Association has not carried that burden on the question whether the ***Ordinance*** is preempted by § 214.903.

B. Federal Preemption

The Association next argues the ***Ordinance*** is preempted by the federal Fair Housing Act. Specifically, the Association claims because the ***Ordinance*** makes participation **[**16]** in HCVP mandatory under certain circumstances, it is preempted by the Act, which makes participation in HCVP voluntary. *See* 42 U.S.C. § 1437f(d)(1)(A) ("[T]he selection of tenants shah be the function of the owner."). The Court disagrees with the Association.

HN8 In determining whether federal law preempts state law, Congressional intent is the paramount consideration. *Cal. Fed. Sav. & Loan Ass'n v. Guerra, 479 U.S. 272, 280, 107 S. Ct. 683, 93 L. Ed. 2d 613 (1987)*. Preemption may manifest in several different ways. First, Congress may expressly state a federal law preempts state law (express preemption). *Id.* Second, Congress's preemptive intent may be inferred where the federal scheme is so comprehensive it "occupies the field," leaving no room for supplementary state law (implied preemption). *Id. at 280—81*. Finally, and most relevant for present purposes, federal law may preempt state law to the extent the two actually conflict (conflict preemption), either because "compliance with both federal and state regulations is a physical impossibility," or because the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id. at 281* (internal quotes omitted).

The Association argues conflict preemption applies, and specifically that the ***Ordinance*** "stands as an obstacle to the **[**17]** accomplishment and execution of the full purposes and objectives of Congress." *See* Pl.'s Trial Brief [#11] at 3. According to the Association, "[t]he voluntary nature of the [Program] lies at the heart of the federal law," as evidenced by Congress's two previous experiments with "mandating **[*895]** property owner participation": the "take one, take ah" provision, which prohibited a landlord from declining to rent to a voucher holder if the landlord had done so in the past, and the "endless lease" provision, which prohibited landlords from refusing to renew voucher holders' leases at the expiration of the initial lease term. *See id.*; *see also* Pub. L. No. 105-276, §§ 549, 554, 112 Stat. 2461 (1996) (repealing "take one, take all" and "endless lease" provisions). The Association notes both provisions were repealed "because of their chilling effect" on landlords' willingness to participate in the program, given its "burdensome requirements." *Id.* (citing S. REP. No. 104-195, at 31-32 (1995)).

To date, the Association's argument has been rejected by every court which has confronted it. *See Bourbeau v. Jonathan Woodner Co., 549 F. Supp. 2d 78, 88—89 (D.D.C. 2008)* (finding prohibiting discrimination against voucher holders will "advance rather than denigrate" Congress's objectives); *Montgomery Cnty. v. Glenmont Hills Assocs. Privacy World, 402 Md. 250, 936 A.2d 325, 336 (Md. 2007)* ("There is nothing in any of the relevant **[**18]** Federal statutes even to indicate, much less establish, that voluntary participation by landlords was an important Congressional objective. The only declared objective is to assist State and local governments in expanding affordable housing for low-income families . . . ."); *Franklin Tower One, L.L.C. v. N.M., 157 N.J. 602, 725 A.2d 1104, 1113 (N.J. 1999)* ("[T]he voluntary nature of the Section 8 program is not at the heart of the federal scheme."); *Comm'n on Human Rights & Opportunities v. Sullivan Assocs., 250 Conn. 763, 739 A.2d 238, 246 (Conn. 1999)* ("Requiring landlords to extend rental opportunities to otherwise eligible section 8 recipients . . . is not an obstacle to the congressional agenda but serves instead to advance its remedial purpose."); *Attorney General v. Brown, 400 Mass. 826, 511 N.E.2d 1103, 1106 (Mass. 1987)* (reasoning helping low-income families obtain decent housing, not voluntary landlord participation, is at the heart of the federal scheme).

The Court can see no reason to swim against the current. The undersigned is of the opinion Congress's decision to repeal the "take one, take all" and "endless lease" provisions provides no support for a conflict preemption argument. The provisions in question were repealed in order to encourage landlords to participate in the voucher program such that more housing would be available to voucher holders, not to protect landlords from being required to rent to voucher holders.[2] *See* Franklin Tower One, 725 A.2d at 1113 (concluding repeal of **[**19]** "take one, take all" supports conclusion Congress's goal "has always been to assist in providing housing to low-income families"). Further, the Court agrees with the City and the decisions cited above that the purposes and objectives of HCVP are "to remedy the unsafe housing conditions and the acute shortage of decent and safe dwellings for low-income families," not to protect landlords' rights. *42 U.S.C. § 1437(a)(1)(A)* (declaring Congressional policy). The ***Ordinance*** clearly serves those purposes and objectives by increasing the number of houses and apartments available to voucher holders, **[*896]** and in doing so, "advance[s] rather than denigrate[s]" the Program's objectives. *Bourbeau, 549 F. Supp. 2d at 88* (citing *Glenmont Hills, 936 A.2d at 336*).

In support of its contrary position, the Association cites *Salute v. Stratford Greens Garden Apartments, 136 F.3d 293 (2d Cir. 1998)*, and *Knapp v. Eagle Property Management Corp., 54 F.3d 1272 (2d Cir. 1995)*. Neither case directly addresses federal **[**20]** preemption. The question before the *Salute* court was whether the provision of the Fair Housing Act that requires landlords to make "reasonable accommodations" for disabled tenants required landlords to accept disabled tenants' housing vouchers. *Salute, 136 F.3d at 301*. In holding it did not, the Salute court did discuss the "burdensome requirements" of the voucher program, but the underpinning of its decision was that the disabled plaintiffs, in asking the landlords to accommodate them by accepting their vouchers, sought "to remedy economic discrimination of a kind that is practiced without regard to handicap." *Id. at 302*. Consequently, the *Salute* panel reasoned, it was not necessary to require landlords to accept disabled persons' housing vouchers "to afford handicapped persons equal opportunity to use and enjoy a dwelling." *Id.* (internal quotes omitted).

Similarly, the *Knapp* court did not confront a preemption question. The issue before the panel was whether a Wisconsin statute that prevented discrimination in housing based upon "lawful ***source of income***" encompassed housing vouchers. *Knapp, 54 F.3d at 1282*. In holding housing vouchers were outside the statute's purview, the court noted the contrary result would mean any landlord who **[**21]** did not accept vouchers could be liable for discrimination, and observed: "It seems questionable . . . to allow a state to make a voluntary federal program mandatory." *Id.* Even in so observing, however, the *Knapp* court included a qualifying citation to *Attorney General v. Brown*, which found the Fair Housing Act did not preempt a state ***source-of-income*** statute—the only reported decision discussing the question as of 1995, the year *Knapp* was decided. *Id.* (citing *511 N.E.2d at 1106*). The Court finds the decisions from those courts directly presented with the federal preemption question far more persuasive than dicta from those which were not.

HN9 Finally, the Court notes the HUD regulations implementing HCVP specifically provide the federal statutes creating it are not intended "to pre-empt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder." *24 C.F.R. § 982.53(d)*. The Court owes deference to HUD's interpretation of the laws it administers. *See* *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 844, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984)* ("We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer[.]").

Given all of the above, the Court concludes **[**22]** the Association has failed to show a substantial likelihood of success on the merits of its federal preemption claim.

C. Texas Constitution

The Association next argues the ***Ordinance*** violates ***HN10*** *Article I, § 16 of the Texas Constitution*, which prohibits any law impairing the obligation of contracts. The Association contends an individual may not be forced to contract against his will under *Article I, § 16*; thus, in the Association's view, by prohibiting landlords from rejecting applicants because they wish to pay with housing vouchers, the ***Ordinance*** unconstitutionally forces unwilling **[*897]** landlords to sign the HAP

[2] The Court further notes the inference HCVP is voluntary comes from solely from the previously quoted subsection of the statute which states "[c]ontracts to make assistance payments entered into by a [PHA] with a [landlord] shall provide that...the selection of tenants shall be the function of the owner[.]" *42 U.S.C. § 1437f(d)(1)(A)*. Nothing in that provision implies a landlord should have the right to discriminate against a voucher holder simply because he or she is a voucher holder. *Franklin Tower One, **725 A.2d at 1113***.

Contract. *See* Mot. Prelim. Inj. [#4] at 8; Pl.'s Trial Brief [#11] at 4—5.

The Association misapprehends the nature of the constitutional protection. ***HN11*** Article I, § 16 applies "only where parties have entered into a contract and *thereafter* a statute is passed that unlawfully impairs their contractual obligations." Cessna Fin. Corp. v. Morrison, 667 S.W.2d 580, 584 (Tex. App.—Houston [1st Dist.] 1984, no writ); *see also* Travelers' Ins. Co. v. Marshall, 124 Tex. 45, 76 S.W.2d 1007, 1011 (Tex. 1934) ("[S]ection 16 of article 1 of the constitution of Texas protects all obligations of contracts from destruction or impairment by *subsequent* legislation.") (emphasis added); Henderson v. Love, 181 S.W.3d 810, 814 (Tex. App.—Texarkana 2005, no pet.) ("The 'obligation of a contract,' for purposes of the constitutional prohibition of impairment of contractual obligations, is defined as the law which binds the parties to perform their **[**23]** agreement. The laws in effect *at the time a contract is executed* are considered part of that contract.") (emphasis added) (internal citations omitted); City of Brownsville v. Pub. Util. Comm'n of Tex., 616 S.W.2d 402, 410 (Tex. App.—Texarkana 1981, writ ref'd n.r.e.) ("The obligations of a contract are not impaired . . . by a statute in effect when the contract was made."); Barton v. Wichita River Oil Co., 187 S.W. 1043, 1044—45 (Tex. App.—Fort Worth 1916, writ ref'd) ("The provision of the Constitution which declares that no state shall pass any law impairing the obligation of contracts does not apply to a law enacted prior to the making of the contract... but only to a statute of a state enacted after the making of the contract."). Because the Association has not alleged the obligations of any existing contract are impaired by the **Ordinance**, Article I, § 16 does not apply.

Urging a different conclusion, the Association cites to St. Louis Southwestern Railway Co. of Texas v. Griffin, 106 Tex. 477, 171 S.W. 703 (Tex. 1914). *Griffin* provides no support for the Association's argument. In *Griffin*, a railway worker (Griffin) sued his employer under what was then known as the "Blacklisting Law." Id. at 703. The Blacklisting Law required an employer, after firing an employee, give the employee a "true statement" explaining the reasons for his termination. *Id.* Considering the constitutionality of the Blacklisting Law, the court noted when Griffin entered the railway's employ, Griffin had the right to leave his job without **[**24]** cause or notice, and the railway had the right to fire Griffin without cause or notice. Id. at 704. The court then observed the Blacklisting Law, by requiring the railway give Griffin a statement of the "true cause" of his termination, denied the railway its right to fire Griffin without cause, because a requirement the employer give a "true cause" for firing an employee necessarily implies a "true cause" exists. *Id.* The court concluded:

> The value of the contract to each party consisted largely in the mutual right to dissolve the relation of master and servant at will. The destruction of that right in the corporation was a violation of its liberty of contract and a denial of the equal protection of the law[] in violation of . . . the *fourteenth amendment*.

Id. The court was concerned with the effect of the law on the railway's contractual right to terminate Griffin without cause. The question before the *Griffin* court thus had nothing to do with whether a law should be held unconstitutional because it "compelled the entering of contracts," as the Association claims. Pl.'s Trial Brief [#11] at 5.

Article I, § 16 of the Texas Constitution does not apply on these facts. The Association **[*898]** has therefore failed to demonstrate a substantial likelihood of success **[**25]** on the merits of its obligation-of-contracts claim.

D. "Liberty of Contract"

In making its obligation-of-contracts argument, the Association heavily relies on dicta from the *Griffin* court: "The liberty to make contracts includes the corresponding right to refuse to accept a contract[.]" Griffin, 171 S.W. at 704. An argument the **Ordinance** is unconstitutional because it will require property owners to sign a contract, however, sounds in substantive due process, not in impairment of the obligation of contracts. *See, e.g.*, Andrada v. City of San Antonio, 555 S.W.2d 488, 491 (Tex. App.—San Antonio 1977, writ dism'd) ("[L]iberty of contract is generally said to be a part of that 'liberty' which is protected by *due process clauses*."). The Court thus considers the argument under a due process rubric.

The Association's reluctance to locate its claim in due process is unsurprising, since in the federal context "[t]he traditional view . . . is that the [Supreme] Court exceeded its legitimate judicial role by reading the right of 'liberty of contract' into the *Fourteenth Amendment's Due Process Clause*, despite the absence of textual support for this right." David E. Bernstein, *Lochner's Legacy's Legacy*, 82 Tex. L. Rev. 1, 3—4 (2003). Since the era of *Lochner v. New York*[3] drew to a close in the late 1930s, the Supreme Court has reviewed economic legislation affecting liberty of contract with great deference **[**26]** to the legislature. *See, e.g., Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 15, 96 S. Ct. 2882, 49 L. Ed. 2d 752 (1976)* ("It is by now well established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way."); *Ferguson v. Skrupa, 372 U.S. 726, 730, 83 S. Ct. 1028, 10 L. Ed. 2d 93 (1963)* ("We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws."); *see also Chi. B. & Q. R. Co. v. McGuire, 219 U.S. 549, 567, 31 S. Ct. 259, 55 L. Ed. 328 (1911)* ("The Constitution does not speak of freedom of contract. . . . There is no absolute freedom to do as one wills or to contract as one chooses.").

A federal "liberty of contract" substantive due process claim is thus a veritable non-starter, and in any event, the Association has made no allegation the City acted in an arbitrary or irrational way by passing the ***Ordinance***. Moreover, the ***Ordinance*** advances an obviously legitimate government interest: ensuring low-income persons—many of whom are racial minorities, children, disabled, or elderly—have access to affordable housing (and thus to better schools and safer neighborhoods) throughout **[**27]** the City of ***Austin***. *See* Prelim. Inj. Mot. Hrg. Ex. D-1 (City Council Resolution) at 2—3 (noting 91% of rental units in Travis County do not accept vouchers and high occupancy rates exacerbate the difficulties voucher holders face in finding housing); *id.* Ex. D-4 (Demographics Rep.) (indicating among heads-of-household who hold vouchers in ***Austin***, 43% are disabled, 84% are female, and 16% are elderly, and stating 50.8% of HCVP beneficiaries are children); *see also Blue Cross & Blue Shield Mut. v. Blue Cross & Blue Shield Ass'n, 110 F.3d 318, 333 (6th Cir. 1997)* ("[F]reedom of contract entails the freedom not to contract, . . . *except as* ***[*899]*** *restricted by* antitrust, *antidiscrimination*, and other statutes." (emphasis added)).

A Texas liberty-of-contract due process claim might present a slightly different question. Texas courts have been inconsistent in describing the scope of substantive due process under the Texas Constitution as compared to the federal Constitution, sometimes stating the Texas Constitution provides "an identical guarantee" and sometimes "attempt[ing] to articulate [Texas'] own independent due [process] standard, which some courts have characterized as more rigorous than the federal standard." *Tex. Workers' Comp. Comm'n v. Garcia, 893 S.W.2d 504, 525 (Tex. 1995)*. The "more rigorous" standard cited is a 1957 formulation:

> The line where the police power of the state encounters the barrier **[**28]** of substantive due process is not susceptible of exact definition. As a general rule the power is commensurate with, but does not exceed, the duty to provide for the real needs of the people in their health, safety, comfort and convenience as consistently as may be with private property rights. . . A large discretion is necessarily vested in the Legislature to determine not only what the interests of the public require, but what measures are necessary for the protection of such interests. If there is room for a fair difference of opinion as to the necessity and reasonableness of a legislative enactment on a subject which lies within the domain of the police power, the courts will not hold it void.

State v. Richards, 157 Tex. 166, 301 S.W.2d 597, 602 (1957) (emphasis added). One Texas court, in dicta, agreed "in general" with the proposition that *Article I, § 19* "guarantees broader due process protection for substantive economic rights than does the United States Constitution." *Yorko v. State, 681 S.W.2d 633, 636 (Tex. App.—Houston [14th Dist.] 1984)*, *aff'd*, *690 S.W.2d 260 (Tex. Crim. App. 1985)*. "More frequently, however," Texas courts have "relied on both state and federal authorities in discussing" *Article I, § 19*, and a "substantial number of Texas cases" have held or implied that the federal and Texas clauses are "identical," in contrast with only a "handful" **[**29]** of opinions suggesting the Texas clause has independent meaning. *Lucas v. United States, 757 S.W.2d 687, 712—13 (Tex. 1988)* (collecting cases).

Whichever standard is applied, however, the Court finds the Association has failed to demonstrate a substantial likelihood of success on the merits. There is, at the very least, "room for a fair difference of opinion" as to the necessity and reasonableness of the ***Ordinance*** in providing for "the real needs of the people . . . as consistently as may be with private property rights." The record shows HCVP participants suffer serious discrimination in the ***Austin*** private housing market and,

[3] *198 U.S. 45, 25 S. Ct. 539, 49 L. Ed. 937 (1905)*.

to the extent they are able to find housing, are concentrated in the poorest areas of the city. *See* City Council Resolution at 3 (stating 91% of ***Austin*** landlords do not accept vouchers); Prelim. Inj. Hrg. Ex. D-3 (indicating concentration of voucher holders by zip code); *id.* Ex. D-5 (explaining the units in ***Austin*** available to voucher holders "are located in low-opportunity areas and lack high-performing schools, sustainable employment, and low-crime neighborhoods"). The City determined the public interest required discrimination against voucher holders be prohibited, as have dozens of states and municipalities around the nation. *See* POVERTY & **[**30]** RACE RESEARCH ACTION COUNCIL, APPENDIX B: STATE, LOCAL, & FEDERAL LAWS BARRING ***SOURCE-OF-INCOME*** DISCRIMINATION 1—2 (2014) (listing state and local ***source-of-income*** **[*900]** laws)[4]; *see also, e.g., Godinez v. Sullivan-Lackey, 352 Ill. App. 3d 87, 815 N.E.2d 822, 824, 287 Ill. Dec. 178 (Ill. App. Ct. 2004)* (finding refusal to rent to voucher holder a violation of ***source-of-income*** anti-discrimination provision in Chicago's Fair Housing ***Ordinance***); *Glenmont Hills, 936 A.2d at 327* (same, as to Montgomery County, Maryland housing ***ordinance***); *Timkovsky v. 56 Bennett, LLC, 23 Misc. 3d 997, 881 N.Y.S.2d 823, 829 (N.Y. App. Div. 2009)* (same, as to New York City housing ***ordinance***).

The counterargument, of course, is that the ***Ordinance*** goes too far in attempting to accomplish its goal, since at least some landlords who do not wish to do so will be required to sign the HAP Contract and subject themselves to the regulations governing the Program. Orig. Pet. ¶ 31. While the parties dispute the precise extent of the differences between the terms of a tenancy governed solely by the Association's standard lease and one governed by the standard lease plus the HAP Contract and Tenancy Addendum, it is clear the latter requires a landlord to shoulder different burdens and accept different risks than the former. As previously explained, the PHA's responsibility for making rent payments terminates automatically under certain circumstances; **[**31]** the PHA has discretion to stop making payments under certain circumstances; the PHA is only obligated to pay late fees for tardy payments under certain circumstances; units rented to Program participants must be inspected, and the PHA will not begin paying rent on a unit until it passes inspection; and the landlord will not receive the entirety of the first month's rent until thirty to forty-five days after the unit passes inspection.[5]

The Court agrees these regulations place some burden on the landlords subject to them, and acknowledges the potential for lost revenue while a PHA inspection is scheduled and a unit sits vacant. It is likely there are different, less burdensome ways the City could entice property owners to participate in the Program. It is also conceivable an individual landlord could experience an unusually significant financial burden flowing from participation in the Program so great it could support an as-applied constitutional claim warranting an exception from participation.[6] In the context of a facial due process challenge, however, this Court cannot say there is no room for a "fair difference of opinion" regarding the need for the ***Ordinance*** **[**32]** and the weight of the burdens it imposes, and will not substitute its judgment for the City Council's.

Further, courts that have considered versions of the so-called administrative-burdens defense have rejected it. *See Bourbeau, 549 F. Supp. 2d. at 87*; *Glenmont Hills, 936 A.2d at 339-40*. Landlords remain free to reject voucher holders provided they do so on other legitimate, nondiscriminatory grounds, and are not required to reduce the rent they charge even if that means their units are too expensive for voucher holders to rent. Further, testimony at hearing indicated the housing quality standards a unit must satisfy to pass the PHA inspection are no more onerous than those already imposed by the ***Austin*** City Code. These burdens are not **[*901]** so severe as to constitute a violation of due process.

The Court concludes, to the extent the Association raised a "liberty of contract" due process claim, it has failed to demonstrate a substantial likelihood of success on the merits.

E. Regulatory Taking

Finally, **[**33]** the Association rather weakly asserts the ***Ordinance*** is so burdensome it amounts to a regulatory

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[4] *Available at http://www.prrac.org/pdf/AppendixB-Feb2010.pdf.*

[5] *See* Background, subsection A, *supra*.

[6] *Cf.* Krista Sterken, *A Different Type of Housing Crisis: Allocating Costs Fairly and Encouraging Landlord Participation in Section 8*, *43 Colum. J.L. & Soc. Probs. 215, 227—30 (2009)* (advocating for a "narrow" equitable exception to landlord participation applicable under "unusual circumstances").

taking under the Texas and United States Constitutions and a violation of substantive due process. *See* U.S. CONST. amends. V, XIV; *Tex. Const. art. I, § 17(a)*. ***HN12*** Where a plaintiff alleges a takings claim and a substantive due process claim together, courts must determine the extent to which the due process claim "rests on protections that are also afforded by the *Takings Clause*" and analyze the claim accordingly. *John Corp. v. City of Hous., 214 F.3d 573, 583 (5th Cir. 2000)*. Here, the Court finds, to the extent it is unaddressed by the Court's discussion in section 11(D), *supra*, the Association's due process claim is subsumed within its takings claim. The petition contains very few allegations concerning due process, merely asserting the right to be free from a "substantial burden" that "deprives property owners of use of their property," *see* Orig. Pet. [#1-3] ¶¶ 30—31; further, the Association fails to develop a due process theory in its briefing, *see* Pl.'s Trial Brief [#11] at 6—7. The right to be free from a "burden" that "deprives property owners of use of their property" falls squarely within the ambit of the *Takings Clause*. *See Yee v. City of Escondido, Cal., 503 U.S. 519, 522—23, 112 S. Ct. 1522, 118 L. Ed. 2d 153 (1992)* (explaining the *Takings Clause* requires compensation where "the extent to which [the regulation] deprives **[**34]** the owner of the economic use of the property suggest[s] that the regulation has unfairly singled out the property owner to bear a burden that should be borne by the public as a whole"). It is therefore the *Takings Clause*, "not the more generalized notion of 'substantive due process,' [that] must be the guide for analyzing" the Association's claim. *John Corp., 214 F.3d at 582*.

On to the analysis. ***HN13*** The *Takings Clause of the Fifth Amendment*, made applicable to the States through the *Fourteenth Amendment*, directs that private property shall not "be taken for public use, without just compensation." *U.S. CONST. amend. V*; *Chi., B. & Q.R. Co. v. Chicago, 166 U.S. 226, 234, 17 S. Ct. 581, 41 L. Ed. 979 (1897)*. The Texas Constitution contains a similar mandate: ***HN14*** "[n]o person's property shall be taken. . . for or applied to public use without adequate compensation being made." *Tex. Const. art. I, § 17*. Federal and Texas courts apply the same standards in evaluating takings claims. Hearts *Bluff Game Ranch, Inc. v. State, 381 S.W.3d 468, 477 (Tex. 2012)* ("We consider the federal and state takings claims together, as the analysis for both is complementary.").

HN15 Before addressing the merits of a takings claim, the Court must be convinced the claim is ripe, even if neither party has raised the issue. *Urban Developers, L.L.C. v. City of Jackson, Miss., 468 F.3d 281, 292 (5th Cir. 2006)*. Here, the Intervenors raise the ripeness issue, arguing adjudication of the takings issue is premature and speculative because the ***Ordinance***, on its face, does not require landlords to reduce **[**35]** the rents or security deposits they typically charge. While the Intervenors fail to further elaborate, their ripeness objection appears to be that because the ***Ordinance*** has yet to take effect, we cannot know whether any landlord will actually lose money due to operation of the ***Ordinance***.

The Intervenors approach the problem incorrectly. To the extent the Intervenors **[*902]** are pointing out the Association's challenge presents no concrete controversy concerning application of the ***Ordinance*** to *specific landlords*, the Court agrees. The Association *has* raised, however, a pre-enforcement facial challenge to the constitutionality of the ***Ordinance*** itself. Thus, "'the only question before this court is whether the mere enactment of [the ***Ordinance***] constitutes a taking,'" and the applicable test is whether the ***Ordinance*** "'denies an owner economically viable use of his land.'" *Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 493, 107 S. Ct. 1232, 94 L. Ed. 2d 472 (1987)* (some internal quotes omitted) (quoting *Hodel v. Va. Surface Mining & Reclamation Ass'n, Inc., 452 U.S. 264, 295—96, 101 S. Ct. 2352, 69 L. Ed. 2d 1 (1981)*).[7]

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[7] The Intervenors cite *Pennell v. City of San Jose, 485 U.S. 1, 108 S. Ct. 849, 99 L. Ed. 2d 1 (1988)*, in support of their contrary position. *Pennell* is distinguishable. *Pennell* involved a rent-control ***ordinance*** requiring city officers to consider "hardship to the tenant" in deciding whether to approve certain rent increases. *Id. at 10*. Importantly, the ***ordinance*** also provided **[**36]** that in making the ultimate decision to approve or disapprove a rent increase, the officer "may" disapprove an increase because of tenant hardship. *Id.* Because there remained a material question, given the discretion afforded city officers, as to how the ***ordinance*** would ultimately be applied, the *Pennell* court found the case did not present a sufficiently concrete factual setting for adjudication of the takings claim. *Id.* Here, the ***Ordinance*** involves no such discretion: the City has not contested the fact it intends to apply the ***Ordinance*** such that all landlords subject to its strictures are prohibited from discriminating against voucher holders solely because they are voucher holders. "'One does not have to await the consummation of threatened injury to obtain preventive relief.'" *Blanchette v. Conn. Gen. Ins. Corps., 419 U.S. 102, 143, 95 S. Ct. 335, 42 L. Ed. 2d 320 (1974)* (quoting *Pennsylvania v. West Virginia, 262 U.S. 553, 593, 43 S. Ct. 658, 67 L. Ed. 1117, 1 Ohio Law Abs. 627 (1923)*).

The Association argues the ***Ordinance*** does just that, but the Court is unpersuaded. Landlords remain free to rent their property to paying tenants. No landlord is required to lower the rent he or she charges for a unit because a voucher holder cannot afford to rent it. Property owners who accept HCVP tenants receive compensation for doing so in the form of rent payments from the government. Further, **[**37]** the ***Ordinance*** substantially advances an obviously legitimate government interest: ensuring low-income persons will have access to affordable housing throughout the City of ***Austin***. *See* *Dolan v. City of Tigard, 512 U.S. 374, 385, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994)* ("A land use regulation does not effect a taking if it substantially advances legitimate state interests and does not deny an owner economically viable use of his land." (internal quotes omitted)); *Mayhew v. Town of Sunnyvale, 964 S.W.2d 922, 933—34 (Tex. 1998)* (discussing substantial-advancement requirement).

The Court concludes the Association has failed to carry its burden to show a substantial likelihood of success on the merits of its takings claim.

Conclusion

The Association has failed to demonstrate a substantial likelihood of success on the merits on any of its challenges to the ***Ordinance***. The Court therefore need not consider the other preliminary injunction factors before denying the motion for injunctive relief.

Accordingly,

> IT IS ORDERED that Plaintiff ***Austin*** Apartment Association's Motion for Preliminary Injunction [#4] is DENIED.

SIGNED this the 27th day of February 2015.

/s/ Sam Sparks

SAM SPARKS

UNITED STATES DISTRICT JUDGE

End of Document

ORDINANCE NO. 20141211-050

AN ORDINANCE AMENDING CITY CODE CHAPTER 5-1 RELATING TO SOURCE OF INCOME AND HOUSING DISCRIMINATION.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Sections 5-1-1 (*Declaration of Policy*) and 5-1-2 (*Scope*) are amended to read as follows:

§ 5-1-1 DECLARATION OF POLICY

(A) It is the policy of the City to bring about through fair, orderly and lawful procedures, the opportunity of each person to obtain housing without regard to race, color, creed, religion, sex, national origin, disability, student status, marital status, familial status, sexual orientation, gender identity, [~~or~~] age, or source of income.

(B) This policy is established upon a recognition of the inalienable rights of each individual to obtain housing without regard to race, color, creed, religion, sex, national origin, disability, student status, marital status, familial status, sexual orientation, gender identity, [~~or~~] age, or source of income; and further that the denial of such rights through considerations based on race, color, creed, religion, sex, national origin, disability, student status, marital status, familial status, sexual orientation, gender identity, [~~or~~] age, or source of income, is detrimental to the health, safety and welfare of the inhabitants of the City and constitutes an unjust denial or deprivation of such inalienable rights which is within the power and the proper responsibility of the government to prevent.

§ 5-1-2 SCOPE

(A) To provide a procedure for investigating and settling complaints of discriminatory housing practices which are violations of state and federal law, to provide rights and remedies substantially equivalent to those granted under federal law and to permit the director to accept referrals of complaints from the Secretary of Housing and Urban Development and from the Civil Rights Division of the Texas Workforce Commission. Article 2 (*Discrimination in Housing – Fair Housing Act Compliance*) prohibits discrimination in housing on the basis of race, color, sex, religion, disability, familial status or national origin and establishes procedures to enforce the provisions of federal and state law.

(B) Even though federal law protects individuals against discrimination in housing based on race, color, sex, religion, disability, familial status or national origin, it is the policy of the City that no person should be denied opportunity to obtain housing on the basis of creed, student status, marital status, sexual orientation, gender identity, [~~or~~] age, or source of income.

PART 2. City Code Section 5-1-13 (*Definitions*) is amended to add a new definition of "Source of Income" to read as follows and to renumber the remaining definitions accordingly.

(24) SOURCE OF INCOME means lawful, regular, and verifiable income including, but not limited to, housing vouchers and other subsidies provided by government or non-governmental entities, child support, or spousal maintenance, but does not include future gifts.

PART 3. City Code Sections 5-1-51 (*Discrimination in Sale or Rental of Housing*), 5-1-52 (*Publication Indicating Discrimination*), 5-1-53 (*Availability for Inspection, Sale, or Rental*), 5-1-54 (*Entry Into Neighborhood*), 5-1-56 (*Residential Real Estate Related Transactions*), and 5-1-57 (*Brokerage Services*) are amended to read as follows:

§ 5-1-51 DISCRIMINATION IN SALE OR RENTAL OF HOUSING.

(A) A person may not refuse to sell or rent a dwelling to a person who has made a bona fide offer; refuse to negotiate for the sale or rental of a dwelling; or otherwise make unavailable or deny to a dwelling to any person based on race, color, religion, sex, sexual orientation, gender identity, age, familial status, disability, marital status, student status, creed, [~~or~~] national origin, or source of income.

(B) A person may not discriminate against a person in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with the sale or rental, based on race, color, religion, sex, sexual orientation, gender identity, age, familial status, disability, marital status, student status, creed, [~~or~~] national origin, or source of income.

(C) This section does not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance, but does not permit discrimination based on a disability.

§ 5-1-52 PUBLICATION INDICATING DISCRIMINATION

A person may not make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, sexual orientation, gender identity, disability, age, familial status, marital status, student status, creed, [~~or~~] national origin, or source of income, or an intention to make such a preference, limitation, or discrimination.

§ 5-1-53 AVAILABILITY FOR INSPECTION, SALE, OR RENTAL

A person may not represent to a person based on race, color, religion, sex, sexual orientation, gender identity, disability, age, familial status, marital status, student status, creed, [~~or~~] national origin, or source of income that a dwelling is not available for inspection, sale or rental when the dwelling is available for inspection.

§ 5-1-54 ENTRY INTO NEIGHBORHOOD

A person may not, for profit, induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, sex, sexual orientation, gender identity, disability, age, familial status, marital status, student status, creed, [~~or~~] national origin, or source of income.

§ 5-1-56 RESIDENTIAL REAL ESTATE RELATED TRANSACTIONS

(A) A person whose business includes engaging in residential real estate related transactions may not discriminate against a person in making a real estate related transaction available or in the terms or conditions of a real estate related transaction because of race, color, religion, sex, sexual orientation, gender identity, disability, age, familial status, marital status, student status, creed, [~~or~~] national origin, or source of income.

(B) In this section "residential real estate related transaction" means:

(1) Making or purchasing loans or providing other financial assistance:

(a) To purchase, construct, improve, repair, or maintain a dwelling; or

(b) Secured by residential real estate; or

(2) Selling, brokering, or appraising residential real property.

§ 5-1-57 BROKERAGE SERVICES

A person may not deny any person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership, or participation in such an organization, service, or facility because race, color, religion, sex, sexual orientation, gender identity, disability, age, familial status, marital status, student status, creed, [~~or~~] national origin, or source of income.

PART 4. This ordinance takes effect on January 12, 2015.

PASSED AND APPROVED

December 11, 2014 § § § Lee Leffingwell
Mayor

APPROVED: Karen M. Kennard
City Attorney

ATTEST: Jannette S. Goodall
City Clerk

Attachment D

Portland, Maine | Yes. Life's good here.

Planning & Urban Development Department

TO: Councilor Jill Duson, Chair
Members of the Housing Committee

FROM: Tyler Norod, Housing Planner

DATED: August 19, 2016

RE: Portland Rental Housing Security Ordinance

On July 13, 2016, Mayor Ethan Strimling submitted a proposal for a new Rental Housing Security Ordinance to the Housing Committee. The Mayor's ordinance combined policy ideas discussed in the previous memo's submitted for your review. The Housing Committee's positions on these aforementioned policy ideas will likely address the majority of the content within the Mayor's proposal. Attached to this memo is a copy of the Mayor's ordinance covering voucher discrimination, rent increase limitations, non-renewal of leases, and enforcement measures.

Division 2: Fair Housing

This Division is focused on mitigating the potential for landlords to discriminate based on the source of potential tenants income, i.e. vouchers. Corporation Counsel has expressed a belief that sections (a) through (d) of the Mayor's proposal are already covered by State law which expressly prohibits discrimination based on source of income. Corporation Counsel also expressed concern that since the State already legislated in this area that they intended to occupy this field making additional regulation potentially problematic. Some states, such as Massachusetts, do require landlords not to discriminate against tenants' sources of incomes because of any associated requirements the income sources may have. However, the Massachusetts law does not dictate rental amounts or require landlords to set rents at the limited amounts for which vouchers would cover. To do this, the City would need to require landlords to accept all associated inspections, mandated repairs, terms, contracts, paperwork, addendums, etc. that may be part of vouchers or other forms of housing subsidies. According to Corporation Counsel this would need to be done outside the FED process and the MHRA, and may prove difficult to enforce, but could possibly be somewhat similar to protections described under Chapter 13.5 of the City Code that relate to discrimination on the basis of sexual orientation. It should be noted that under the proposed ordinance in Section (g)(2) that landlords could be required to make improvements to their units applicable for new construction. Building codes for existing buildings are intentionally different from building codes for new buildings. Enforcement of this specific part of the proposed ordinance could prove extremely problematic.

Sections (h) and (j) may represent another problematic area for the City to legislate given the results of the recent court case Dussualt v. Ren Coach Lantern Holdings, LLC. Et. Al. which determined that landlords do not have to rent to tenants despite their source of income if their decision is consistent with a business necessity. Section (h) would prohibit landlords from using a metric to determine an income to rent ratio. Section (j) prohibits landlords from using credit checks when screening tenants.

Section (i), although well intentioned, appears ambiguous and difficult to enforce. More information may be needed to understand the proposed parameters that would govern this subsection.

Division 3: Rent Increase Limitations

The Mayor's ordinance proposes increased notification minimums similar to what has been discussed in other memos before the Committee. It also proposes that rents not be increased during the term of a lease, the first year of tenancy, and no more than once per year. This language appears redundant. If the City pursued legislation that only allowed rents to be increased once per year than the ordinance could be drafted to read that the one year period would begin from the first month's rent paid. If this legislation is pursued, staff would also recommend clarifying that once per year means 12 months or 365 days rather than calendar year.

Division 3 also contains a provision that would restrict landlords owning multiple units from increasing rents on the units if any units owned by the landlord are not in compliance with existing building or safety codes. Unfortunately, this may have unintended consequences and be challenging to enforce. Earlier in the year, the Committee heard testimony from members of the Fire Department and the City's Housing Safety Office. They expressed to the Committee that there were often small code violations that landlords are cited for but allowed to continue renting their buildings. These include issues with missing smoke detectors that are sometimes removed by tenants. Staff noted that most landlords, once informed of their violations correct any issues in a reasonable amount of time and there are already policies in place for dealing with landlords who do not comply.

Division 4: Termination of Tenancy

Corporation Counsel has expressed concerns about this section of the Mayor's proposal as it appears to conflict with State law which expressly recognizes and defines tenants at will.

Division 5: Enforcement

Corporation Counsel expressed concerns related to the Enforcement language proposed in the Mayor's ordinance. Based on their review parts of this proposal may run contrary to State Law and be outside the boundaries of home rule.

Attachment E

Portland, Maine | Yes. Life's good here.

Planning & Urban Development Department

TO: Councilor Duson, Chair
Members of the Housing Committee

FROM:
Tyler Norod, Housing Planner
Housing and Community Development Division

DATE: August 19, 2016

SUBJECT: Non-Renewal of Leases and Notification Requirements

The Housing Committee solicited significant public comment over the last seven months asking for feedback on the most pressing housing issues facing Portland. Concerns related to low vacancy rates, increases in rent, and insufficient notification from landlords to tenants were themes. If the landlord chooses to not renew a tenant's lease, Maine currently mandates that the landlord provide tenants-at-will -- those tenants who do not have a signed lease -- with a minimum notification of 30 days. A landlord must also provide a minimum of 45 days written notice to increase a tenant's rent. Given the extremely tight rental market in Portland it can be challenging for tenants to find adequate new housing should their lease not be renewed or the rent increase be more than they are able or are willing to pay. This challenge is often more evident for low income residents who do not have as many housing options and may need additional time to organize and complete a move.

To this end, it has been suggested that the City increase the minimum notification periods for non-renewal of leases and rent increases. Suggestions were made to increase the notification period for both non-renewal and rent increases to either 90 or 60 day minimums. The general idea of increasing notification minimums appears to be helpful to tenants and reasonable for most landlords. The City's Corporation Counsel has also noted that increasing minimum notifications would likely be in line with what is allowed under state law but would need to be issued with associated fines as a civil violation and may not help a tenant avoid the state FED (eviction) process. The state's FED process only requires a 30 day notice. That said, the FED process typically can last several months due to long waits in the court system so the process may not hamper the City's ability to effectively require longer notification periods.

The key consideration is the length of any increase and implications for potential unintended consequences. Staff received concerns from landlords that combined with an already lengthy eviction process, a 90 day minimum notification requirement may cause significant financial risk to landlords. For example, if a tenant is upset that their rent is increasing or that their tenancy will not be renewed they may choose to not pay the remainder of their lease. Currently this would mean that the landlord would miss one month's rent, which, assuming no significant damage to the unit, could be accounted for using the tenant's security deposit. If the period were longer, such as 90 days, an aggrieved tenant may again choose to withhold the remaining rent. The landlord would be able to start a lengthy and expensive eviction process for prolonged overdue rent payment but this is not ideal nor would the security deposit come close to covering the missing rent. The Committee may want to instead consider a 60 day minimum for both rent increases and non-renewal of leases. This would have the potential to be a reasonable middle ground from which to assess the impacts of any shift in notification requirements. These changes could be reviewed and increased at a later date in the near future to better determine the effects of an even greater increase.

In other states and municipalities that have similar extended notification minimums, it is often typical for similar notification periods to apply to both the tenant and the landlord. The Committee will want to consider whether or not any extension of the notification period in Portland would apply to both parties.

It should also be noted that significant public feedback was received requesting a moratorium on landlords who choose not to renew a tenant-at-will's lease. This scenario has often been referred to as a "no cause eviction". State law clearly defines causes for evictions under state law and allows landlords who provide at least 30 days written notice to not renew a lease to any tenant-at-will for any reason. Corporation Counsel already advised the Housing Committee that any effort on the part of the City to pursue such a moratorium may prove problematic and run counter to state law.

Attachment F

Madame Chair and Members of the Housing Committee,

First and foremost, let me thank you and this committee for your hard work over the past nine months. As a result of your comprehensive exploration of the city's housing crisis, there has been a robust and fruitful discussion that has greatly informed both the community and me. I am pleased that from that conversation you are now on the verge of moving forward much needed initiatives to confront the current crisis and prevent future similar ones. As your workplan and schedule clearly indicates - the time to act is upon us.

What I have learned from your work is that we have two major issues confronting our city. One: immediate housing insecurity for our middle and low income families who are being squeezed out of their homes and two: longer term supply issues strangled by procedural bottlenecks and uneasy financing. Both certainly need to be addressed. But today I am offering a number of ideas designed to confront the housing insecurity side of the equation.

When I ran for Mayor last fall, there was no issue I heard about more than our housing crisis. Not a day went by in the campaign that someone didn't come up to me, send a note or call talking about their fear of being evicted through no fault of their own, being squeezed out by a large rent increase with little notice, or having their building sold into the hands of an uncertain future. And then, within weeks of being sworn in, our city was confronted with the crisis of a landlord handing out 60-day eviction notices to over 20 families on Christmas Eve. Thankfully, we were able to slow down those evictions. But, in the end, almost all of those tenants still had to vacate their homes, with a dozen of them needing to utilize city services to survive.

And while the emotional impact of those 20 families being evicted all at once certainly got press, I know that all of us on this Council understand that the crisis has not passed simply because it is no longer leading the evening news or on the front page of the paper. The continuing loss of housing to rent increases, buildings being sold, and evictions is a constant drip. To this day, not a week goes by that I don't hear from multiple people who are living with housing insecurity. Just two weeks ago, as I was walking through the Italian Heritage Festival, I wasn't there twenty minutes before two different people came up to me asking for help as their buildings on Hampshire Street were being sold out from under them. One of them has called, emailed or stopped my office almost every day since asking for assistance. While we have searched and sent her listings from Craigslist, it breaks my heart knowing that we will probably not be able to find her a home within a range she can afford.

Which brings me to the proposal I lay out for you today. This proposal is the product of my meeting with hundreds of residents, hearing hours of testimony in this Chamber, sitting down with landlords and business leaders, and listening to advocates for our most vulnerable neighbors. It doesn't come close to pleasing all of these groups, or any one of them in totality. But it does try to find a reasonable balance.

In particular, this ordinance:

- Prevents discrimination against people based on their source or history of income. Whether your rent is paid straight from your checking account, a former spouse, or through a government assistance program, the only factor in deciding whether someone can pay the expected rent should be whether they are able to pay the rent.

- Provides families and landlords with predictability by starting all tenants on one-year leases. These leases can renew annually through mutual agreement or either party may end the agreement with 90 days notice at the end of the lease term. Additionally, both parties can agree to a new term lease of nearly any length (and at any point in the tenancy), as long as both agree. There are some who say that offering the simple solution of a one year and/or mutually agreed upon lease somehow sits out of bounds of the current legal parameters. Reasonable and educated minds disagree on this point, but if we feel like our residents deserve the security of a lease, we should be prepared to fight for it.

- Protects families from surprise rent increases by:
    - a) prohibiting any rent increase in the first year of a tenancy.
    - b) requiring 90 days' notice of any future increase (currently 45 days).
    - c) prohibiting more than one rent increase a year.

- Protects a landlord's right to raise the rent, as long as they do it within the guidelines outlined above (no more than one increase a year, 90 days notice, and no increases in the first year of tenancy).

- Protects landlords by requiring that tenants give 90 days' notice before breaking a lease (unless mutually agreed to) or not renewing an annual lease.

- Prevents people from losing their home through no fault of their own by establishing clear guidelines and clarity around for-cause evictions.

- Prevents mass-evictions by placing limits on the percent of families a landlord may vacate without cause annually. For instance, if you own or buy a 20 unit building, you may only, after following clear guidelines, "no-cause" evict seven families a year. If you own a 100 unit building, you may only evict 25 families a year. There is no limit on evicting tenants "for-cause."

- Places no additional burdens on a landlord's ability to evict "bad-actor" tenants on seven days notice.

- Establishes a Rental Housing Ombudsperson in City Hall who can field complaints, explain the rules and point to available resources for both landlords and tenants. Some may say that ensuring someone in City Hall is empowered to answer questions and act as a resource to tenants and landlords creates an undue burden on the City's budget. I would ask us to consider the cost of sheltering and providing services to a family who has been evicted through no fault of their own. I'd argue that our assisting even one family as they attempt to navigate our rental housing crisis and keeping that one family off the streets or out of the shelter would more than make up for the staff time it would take to answer a ringing phone.

- Helps ensure that families have a safe place to live by preventing landlords from raising rents if the landlord is in violation of state's habitability laws. A landlord must be compliant in all of their buildings, if they want to raise the rent in any of their units.

- Puts in place a redress process for tenants who have been negatively impacted by "bad actor" landlords such as allowing for civil action by tenants that could impose fines up to $3,000 plus actual damages for discrimination or a $500 fine or one month's rent for violation of the lease/eviction/rent increase provisions of the law.

The goals of this "Portland Ordinance for Rental Housing Security" are to protect our middle and low income residents from being left without a safe place to live, while ensuring that landlords have the resources they need to make an honest living; all without putting restrictions on the market that could slow opportunity for growth.

There will be some who say that we should wait and let the issue resolve itself. Indeed, some say market forces are already poised to resolve the issue as more rental units are slated to come on the market in the coming year. Although I disagree that these new higher-end units will reduce the burden on low and middle income families (in fact, I believe they will actually push lower end rents higher), why would we not have these simple protections of standard leases, increased time for rent increases and evictions, and discrimination protection no matter whether the market is hot or warm? I don't want us to wait until we are five years into the next crisis, before we consider action.

To be sure, this proposal is by no means the single answer to housing insecurity in Portland. Other members of this committee and Council have proposed ideas I think are excellent steps forward including Councilor Thibodeau's leeway program and Councilor Hinck's transition assistance. I hope you give both equally diligent consideration.

I do feel, however, that the proposal I have just outlined will be a concrete and demonstrable step forward in dealing with the housing insecurity crisis we now face. I hope you will give it your full attention and will pass it unanimously for the Council to consider.

Once again, thank you to you and the entire committee for your work. I am happy to answer any questions.

PORTLAND RENTAL HOUSING SECURITY ORDINANCE

DIVISION 1. GENERALLY

Sec. 13.7-21. Legislative findings and statement of policy.

The council finds that:

(a) The population of the city consists of people of every socioeconomic group, some of whom are discriminated against in housing based upon their source of income;

(b) There are currently inadequate protections to protect against discrimination in housing based upon source of income;

(c) The lack of legal protection for individuals unfairly limits their housing choices and discourages them from publicizing acts of discrimination out of fear of reprisal;

(e) It is the policy of the City to bring about through fair, orderly and lawful procedures, the opportunity of each person to obtain housing without regard to source of income;

Therefore, in order to protect the public health, safety and welfare, it is declared to be the policy of this city to prevent discrimination in housing on account of source of income.

Sec. 13.7-22. Definitions.

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

Discriminate. "Discriminate" includes, without limitation, segregate or separate.

Dwelling Unit and Multiple Dwelling Unit. is as defined in Section 6 of the City Ordinances in effect as of the date of the passage of this Ordinance.

Housing accommodation. "Housing accommodation" includes any building or structure or portion thereof, or any parcel of land, developed or undeveloped, which is occupied, or is intended to be occupied or to be developed for occupancy, for residential purposes excepting:

(a) The rental of a one-family unit of a two-family dwelling, one (1) unit of which is occupied by the owner;

(b) The rental of not more than four (4) rooms of a one-family dwelling which is occupied by the owner;

(c) The rental of a unit that are licensed by the State of Maine as lodging places pursuant the provisions 22 M.R.S. § 2492.

(d) The rental of any portion of a dwelling for less than six months in any calendar year where the dwelling is the primary residence of the owner. For purposes of this section primary residence is defined a dwelling occupied by the owner for at least six months of every year.

Person. "Person" includes one (1) or more individuals, partnerships, associations, organizations, corporations, municipal corporations, legal representatives, trustees, trustees in bankruptcy, receivers and other legal representatives, and includes the city and all agencies thereof.

Source of Income. "Source of Income" means any lawful source of money that is paid to or for the benefit of a person seeking to rent a dwelling and includes grants.

Tenant-Based Rental Assistance. "Tenant-Based Rental Assistance" means any and all forms of tenant-based rental assistance and vouchers, including but not limited to:

(a) Tenant-based rental assistance through the Section 8 Housing Choice Voucher Program, 42 U.S.C § 1437f (o)

(b) Tenant-based rental assistance through the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C § 12701 et seq.;

(c) Tenant-based rental assistance under the HUD-Veterans Affairs Supportive Housing (HUD-VASH), authorized by § 8 (o) (19) of the United States Housing Act of 1937, 42 U.S.C. § 1437f (o) (19);

(d) Tenant-based rental assistance through the Shelter Plus Care Program authorized by title IV, subtitle F, of the Stewart B McKinney Homeless Assistance Act, 42 U.S.C. §§ 11403-11407b, as amended;

(e) Tenant-based rental assistance through the Supportive Housing Program authorized by title IV, subtitle F, of the Stewart B McKinney Homeless Assistance Act, 42 U.S.C. §§ 11381-11389, as amended;

(f) Tenant-based rental assistance through the Section 8 Disaster Voucher Program (DVP);

(g) Tenant-based rental assistance through the Housing Opportunities for Persons with AIDS (HOPWA) Program, 42 U.S.C. § 12901 – 12912 as amended;

(h) Tenant-based rental assistance through the Community Block Grant Program, 42 U.S.C. § 5301 et seq. as amended;

(i) Tenant-based rental assistance through the Continuum of Care Program authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11381-11389; and

(j) Tenant-based rental assistance through the Rural Development Voucher Program authorized through § 542 of the Housing Act of 1949, as amended. See 78 Fed. Reg. 49374 (Aug. 14, 2013) (proposed rule); and

(k) Tenant-based rental assistance through the Maine Bridging Rental Assistance Program, authorized by M.R.S. Title 34-B § 3011; and

(l) Tenant-based rental assistance through the Maine State Housing Authority Home To Stay Program, M.R.S. Title 30-A § 4771; and

(m) Tenant-based rental assistance through the Maine State Housing Authority Stability Through Engagement Program, M.R.S. Title 30-A § 4771; and

(n) Tenant-based rental assistance through the City of Portland's Tennant Based Rental Assistance Program, M.R.S. Title 30-A § 4771;

(o) Tenant-based rental assistance through the City of Portland's General Assistance Program, authorized by M.R.S. Title 22 § 4301 et seq.; and

(p) Such other Tenant-based rental assistance or rental vouchers or rental coupons as may be authorized under any federal, state, or local program.

DIVISION 2. FAIR HOUSING

Sec. 13.7-23. Unlawful housing discrimination.

It shall be unlawful housing discrimination, in violation of this article:

(a) For a person to refuse to rent or negotiate for the rental of, or otherwise make unavailable or deny a dwelling to any person because of the person's source of income;

(b) For a person to discriminate in the terms, conditions, or privileges of rental of a dwelling or in the provision of services or facilities in connection therewith because of the person's source of income;

(c) For a person to make, print, or publish or cause to be made, printed or published, any notice, statement, or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on a person's source of income;

(d) For a person to represent to any person that any dwelling is not available because of the person's source of income or because of the requirements of the program providing the source of income;

(e) For a person to exclude any person from admission to a dwelling because of the person's source of income;

(f) For a person to refuse to rent or negotiate for the rental of, or otherwise make unavailable or deny a dwelling to any person because of the person's source of income or because of the requirements of the program providing the source of income;

(g) For a person to refuse to participate in or comply with any federal, state, or local requirements of a tenant-based rental assistance program, including, but not limited to the following:

1) Refusing to allow inspections of a dwelling by the public housing authority or other entity administering a tenant-based rental assistance program;

2) Refusing to make reasonable repairs necessary for the dwelling to meet the housing quality standards of the tenant-based rental assistance program; such repairs will be considered reasonable if they do not substantially alter or change the housing unit or do not require repairs substantially different from those that would be required to bring the rental unit into compliance with the Maine Warranty of Habitability Act or local building or housing codes applicable for new construction

3) Refusing to complete any necessary paperwork, including but not limited to such documents as the *Request for Tenancy Approval* form, the *Housing Assistance Payments Contract*, and the *Tenancy Addendum* or applicable General Assistance forms; and

4) Refusing to provide information required by the public housing authority or other entity administering the source of income or tenant-based rental assistance program;

(h) For a person to use a financial or minimum income standard for any person participating in any tenant-based rental assistance program that requires the person to have a monthly income of more than two- and one-half times the person's share of the total monthly rent payable to the owner of the dwelling unit.

(i) For a person to use any tenant screening policy that actually or predictably results in a disparate impact on any person with tenant-based rental assistance unless (i) necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the dwelling owner and (ii) those interests could not be served by another practice that has a less discriminatory effect of persons receiving tenant-based rental assistance.

(j) For a person to use any tenant screening policy that denies housing to any tenant who receives tenant based rental assistance because of any negative credit history that was incurred prior to the tenant's receipt of tenant based rental assistance.

Sec. 13.7-24. Application.
Nothing in this article shall be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person having the right to sell, rent, lease or manage a housing accommodation to set up and enforce specifications in the selling, renting, leasing or letting thereof or in the furnishings of facilities or services in connection therewith

which are not based on the source of income of any prospective or actual purchaser, lessee, tenant or occupant thereof.

DIVISION 3. RENT INCREASE LIMITATIONS

Sec. 13.7-29 Declaration of Emergency

Whereas a serious shortage of affordable rental housing units in the city has resulted in abnormally high rents and has produced serious threats to the public health, safety, and general welfare of the citizens of the community, the City Council hereby establishes this rent increase limitation ordinance.

Sec. 13.7-30 Rental Increases

Rent charged for a dwelling unit or multiple dwelling unit may only be increased as follows:

1. Rent charged for a dwelling unit or multiple dwelling unit may be increased by the landlord only after providing at least 90 days written notice to the tenant.

2. Rent charged for a dwelling unit or multiple dwelling unit may not be increased prior to the expiration of a lease term, during the initial year of any tenancy and no more than one time during any calendar year.

3. Rent charged for a dwelling unit or multiple dwelling unit may be increased only if all dwelling units owned by that entity are in compliance with the state's warranty of habitability law at 14 M.R.S. § 6021 and the city's Housing Code at Sec. 6-106 et seq.

DIVISION 4 TERMINATION OF TENANCY

Sec. 13.7.24

1. A constructive lease shall be imposed upon all residential tenancies for a period of one year after the creation of the tenancy that shall prohibit the termination of the tenancy except for good cause.

2. A tenant must serve upon the effected landlord a notice to quit at least 90 days prior to the expiration of the tenancy that advises the landlord that the tenant will not be renewing the tenancy.

3. For purposes of this ordinance a tenancy shall be deemed to be created as follows:

   A. Upon the date this ordinance becomes effective except that this ordinance shall not modify the provisions of any existing written lease agreement.
   B. When a tenant initially moves into a residential rental unit.

C. When a new owner purchases the building in which a residential rental unit is located.
D. Thirty (30) days after the expiration of the initial one year term where the landlord has not caused to be served upon the tenant a summons and complaint for forcible entry and detainer.
E. Thirty (30) days after the expiration of a lease agreement in effect at the time this ordinance goes into effect where the landlord has not caused to be served upon the tenant a summons and complaint for forcible entry and detainer.
F. The service of a summons and complaint under paragraphs D and E of this section shall only be deemed effective to terminate a tenancy if a landlord first serves upon the effected tenant a notice to quit at least 90 days prior to the expiration of the tenancy that advises the tenant that the landlord will not be renewing the tenancy.
G. In any one year period a landlord who rents a building with the following number of units may not refuse to renew more than the following percentages of the tenancies created by this section except for cause:
   1. Between five and 10 units: 40 percent
   2. Between 11 and 15 units: 33 percent
   3. Between 16 and 21 units: 30 percent
   4. Over 21 units: 25 percent.

H. Notwithstanding another provision of this Ordinance, a landlord and tenant may mutually agree to modify the length of a tenancy created under this section. Any such modification must be in writing and may not be for a period of time that is less than 30 days. The notice required to terminate any mutually agreed tenancy of less than 90 days shall not be less than the term of the tenancy agreed to between the parties.

4. For the purposes of this ordinance good cause is defined as set forth in the written lease agreement entered into between the parties, or, in the event that there is no written lease agreement between the parties, good cause is defined at 14 M.R.S. § 6002(1) and (2).

5. Good cause shall not include the tenant's non-payment of a rent increase may in violation of this ordinance.

6. In any action of forcible entry and detainer there is a rebuttable presumption that the action is commenced in retaliation against the tenant if within one year prior to the commencement of the action the landlord has

   A. Attempted to institute a rent increase made in violation of this ordinance;
   B. Attempted to terminate a tenancy in violation of this Ordinance;
   C. Illegally discriminated against a tenant in violation of this Ordinance.
      1. No writ of possession may issue in the absence of rebuttal of the presumption of retaliation

DIVISION 5. ENFORCEMENT

Sec. 13.7-25. Enforcement by civil action.

A violation of this article shall be a civil infraction and shall be enforceable in the Maine Superior Court in a civil action. Within the time limited, a person who has been subject to unlawful discrimination may file a civil action in the superior court against the person or persons who committed the unlawful discrimination.

Sec. 13.7-26. Burden of proof.

In any civil action under this article, there shall be a rebuttable presumption that the person seeking to enforce this ordinance shall have met the burden of proof upon a showing that the person was denied housing while being a recipient of tenant based rental assistance or that the Landlord attempted to terminate a residential tenancy within one year of the creation of said tenancy.

In all other civil actions to enforce this article the burden shall be on the person seeking relief to prove by a preponderance of the evidence that a violation of this Article has occurred.

Sec. 13.7-27. Remedies

Fair Housing

In any action filed under this article by any person:

If the court finds that unlawful discrimination occurred, its judgment shall specify an appropriate remedy or remedies therefor. Such remedies may include, but are not limited to:

1. An order to cease and desist from the unlawful practices specified in the order;

2. An order to rent a specified housing accommodation, or one substantially identical thereto if controlled by the respondent, to a victim of unlawful housing discrimination or eviction in violation of this ordinance;

3. An order requiring the disclosure of the locations and descriptions of all housing accommodations which the violator has the right to sell, rent, lease or manage;

4. An order to pay the Plaintiff's actual damages, including emotional damages, pain and suffering incurred by the Plaintiff as a result of the unlawful discrimination or eviction carried out in violation of this chapter; and

5. An order to pay to the complainant civil penal damages not in excess of one thousand dollars ($1000.00) in the case of the first order under this article against the respondent, not in excess of two thousand dollars ($2000.00) in the case of a second such order against the respondent, and not in excess of three thousand dollars ($3000.00) in the case of a third or subsequent such order against the respondent; and

(c) The action shall be commenced not more than one (1) year after the act of unlawful discrimination complained of.

Unlawful Rent Increases

Upon a finding by a court that a landlord has charged a tenant an unlawful rent increase in violation of this article, the court shall award to the tenant actual damages; liquidated damages of $500 or the equivalent of one month's rent, whichever is greatest; together with the aggregate amount of costs and expenses reasonably incurred in connection with the action. The court may also award to the tenant reasonable attorney's fees.

Illegal Eviction

Upon a finding by a court that a landlord has attempted to terminate a tenancy in violation of this article, the court shall award to the tenant actual damages; liquidated damages of $500 or the equivalent of one month's rent, whichever is greatest; together with the aggregate amount of costs and expenses reasonably incurred in connection with the action. The court may also award to the tenant reasonable attorney's fees.

Sec. 13.7-28. Attorneys' fees and costs.
In any civil action under this article, the court, in its discretion, may allow the prevailing party reasonable attorneys' fees and costs.

DIVISION 6. HOUSING OMBUDSPERSON

The City Manager shall create the Office of Housing Ombudsperson.

The Ombudsperson shall be available to receive questions or complaints from either tenants or landlords. The Ombudsperson shall act as a clearinghouse of information regarding applicable laws, ordinances and rules regarding residential tenancies in the City of Portland. In response to any such inquiry or complaint the Ombudsperson shall direct the landlord or tenant to appropriate legal information regarding their inquiry or complaint.

DIVISION 7. SEVERABILITY

Sec. 13.7-30. Severability.

If any section, phrase, sentence or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Attachment G

MEMORANDUM

TO: Chair Duson and Members of the City of Portland Housing Committee
FROM: Danielle P. West-Chuhta, Corporation Counsel
DATE: September 9, 2016
RE: **Revised Proposed Rental Housing Security Ordinance**

I have reviewed the *revised* draft "Rental Housing Security Ordinance" that has been submitted to the Housing Committee (hereinafter "the Committee") for its consideration. The following are some thoughts, questions, and concerns that I have regarding the revisions in the proposed ordinance (please note that some of the revisions will be addressed in Tyler's memo to the Committee as they relate to practical or policy matters and not legal matters):

The new provisions in the revised proposal include (but are not limited to) amendments to address so-called "mass evictions," language regarding tenant notice to landlords under the constructive lease provisions, and the creation of the Office of Housing Ombudsperson.

First, the revised ordinance contains language restricting so-called "mass-evictions." The section in question specifically provides as follows:

> A. In any one year period a landlord who rents a building with the following number of units may not refuse to renew more than the following percentages of the tenancies created by this section except for cause:
>
> 1. Between five and 10 units: 40 percent
> 2. Between 11 and 15 units: 33 percent
> 3. Between 16 and 21 units: 30 percent
> 4. Over 21 units: 25 percent.

This entire section regarding constructive leases in which this language appears (including all the revised language) is problematic since it purports to alter a landlord's ability to seek no cause evictions, which (as my prior memos discussed) is specifically allowed under Maine law. Basically, this limitation relies on taking away a right of action that is expressly provided for in Maine statutory law. Under the statute in question, a landlord can exercise his/her right to evict a tenant for no cause so long as they follow the notice requirements. Thus, by either creating constructive leases that remove that right and require cause for eviction or by limiting the number of tenants against whom the no cause eviction right can be exercised, the City would be exceeding its home rule authority (as it would be directly conflicting with Maine law).

Additionally, this revised section seeks to alter the burden of proof and when a writ of possession may issue. A municipality does not have authority to impose or alter the burden of proof or alter the writ of possession process in a Forcible Entry and Detainer ("FED") action. As we have discussed, this is a right of action created by State statute and the City does not have any authority to intervene in that process.

Next, you requested some additional research regarding the enforcement section and the creation of a private right of action between a tenant and landlord if a violation of the ordinance language should occur.

Maine has a myriad of case law discussing the power or lack thereof for municipalities to create a private right of action. The first case to touch upon the issue is Larrabee v. Penobscot Frozen Food, Inc., 486 A.2d 97 (Me 1984). The claim made by the plaintiff is that the defendant misstated the reason for termination and therefore committed unemployment fraud and failure to provide employee with written reasons for termination, both governed by state statue. *Id*. at 101. The plaintiff sought damages resulting from this conduct. *Id*. The court found that the statue did not expressly create a private right of action. *Id*. In addition, the plain language and the legislative history did not imply a creation of a private cause of action. *Id*. In holding, the court stated that if the legislature intended for a party to have a private right of action it would have stated so. *Id*.

Continuing through the case history, it is to be highlighted that cases dealing specifically with land use laws and zoning ordinances have a state statute on point to provide guidance. 30-A M.R.S. §4452(4) provides that enforcement of land use laws and ordinances that have been created locally must be brought by the municipality. Herrle v. Town of Waterboro, 2001 ME 1, 763 A.2d 1159. This statute is an explicit constraint on home rule power, cities are allowed to enact and enforce ordinances, but enforcement must come from the City. The statute further provides the mechanisms for enforcement of land use laws and ordinances, when an ordinance is enacted it is enacted pursuant to home rule as well as 30-A M.R.S. §4452. Charlton v. Town of Oxford, 2001 ME 104, 774 A.2d 366.

Turning to the proposed revised ordinance, as my prior memo stated, the enforcement section would allow tenants to bring a civil action against landlords whom have committed unlawful discrimination. The case law, as well as the statute provisions explicitly say that violations of a municipal ordinance must be brought by the municipality and is therefore beyond the City's home rule authority.[1]

Finally, as requested, I have reviewed the memo provided to the Committee by Attorney David Lourie. We both seem to agree on most of the legal analysis regarding the proposal, and I would note that it would seem to be prudent to address his suggestion to tighten up the language in the "Declaration of Emergency" section of the proposed ordinance if the Committee would like to move forward with any portion of the proposal.

[1] Please note that citing to and requiring a tenant to follow the Maine Human Rights Commission process would not remedy this issue. This is because, the City still would have to bring an action to enforce any ordinance violations.

Attachment H

Portland, Maine Yes. Life's good here.

Planning & Urban Development Department

TO: Councilor Jill Duson, Chair
Members of the Housing Committee

FROM: Tyler Norod, Housing Planner

DATED: September 9, 2016

RE: Revisions to the Mayor's Proposed "Rental Housing Security Ordinance"

On the afternoon of August 24, 2016, Mayor Ethan Strimling submitted to the Housing Committee revisions to his proposal for a new Rental Housing Security Ordinance. Given the timing of the submission staff and Corporation Counsel did not have an opportunity to review the proposed revisions prior to discussing the item with the Committee at that evening's meeting. This memo examines the proposed revisions from a policy and enforcement perspective. Corporation Counsel will submit a separate memo highlighting any potential legal concerns with the new aspects of the ordinance. For analysis of other components of the proposed ordinance please refer to the staff and Corporation Counsel memos written for the July 13th and August 24th meetings. Attached to this memo is a copy of the revised ordinance with new language highlighted in yellow.

<u>Division 4: Termination of Tenancy</u>

Revisions to Section 13.7.24 (2) included language that would require tenants to provide similar notice of 90 days to landlords when a tenant-at-will intends to move from an apartment. Markets typically fluctuate and although we are in the middle of what realtors call a "Landlords Market" things could change in the future making it seem reasonable and fair to require the same notification minimums for both tenants and landlords.

Revisions to Section 13.7.24(3)(F) may have certain legal concerns that have been addressed in previous memos from Corporation Counsel.

Revisions to Section 13.7.24(3)(H) regulating landlords of larger buildings appears to run into similar legal issues that were cited in previous memos from Corporation Counsel relating to constructive leases. Although well intentioned this section appears to have several logistical and practical problems that may make it difficult to enforce. With Maine's housing stock amongst the oldest in the nation, it is not uncommon for our buildings to often be in need of significant repairs. Placing limitations on how a building of a certain size may be vacated would likely place significant hurdles in terms of construction logistics and financing that would disincentivize the maintenance and upkeep of our City's aging housing stock. In addition, the City currently does not track how many units in buildings are turned over at any one time. Doing so would likely require additional oversight and be difficult to effectively enforce as it is unclear how the City would accurately track how many units were not renewed within any time frame other than a 100% complaint based system.

Revisions to Section 13.7.24(3)(H) allow landlords and tenants to come to a written mutual agreement to modify the length of any agreement governed by this ordinance. The intent appears to be to allow for situations where both the tenant and landlord do not want to have a "constructive lease" of one year and would like to contractually agree to a mutually beneficial shorter period.

Division 6: Housing Ombudsperson

This section proposes the creation of a new Office of Ombudsperson within City Hall. It is unclear what the costs of this position would be but given previous analysis for a potential mediation program it would likely be more than $47,000-$59,000 in salary and could potentially include other expenses related to funding a new office within City Hall. This proposal also does not clarify who the Office would report to and lacks a clear framework for responsibilities, budget, and oversight.

According to the proposal the Office would be a "clearinghouse of information regarding applicable laws, ordinances, and rules regarding residential tenancies in the City of Portland". The job responsibilities and capacity noted in the revised ordinance are already possible and often occur within both existing City departments and outside organizations. The creation of this new office as proposed appears to be redundant. The City may be better served by simply working to improve communication with interested members of the public and relevant city departments or focus more on mediation services.

In past discussions it was assumed that the role of any ombudsman would be to serve as a mediator in tenant/landlord disputes. A memo delivered to the Committee on August 24th discussed why it would be better logistically and financially for the City not to hire an ombudsman but rather release an RFP for mediation services from other organizations already offering similar mediation services or higher additional personnel to help facilitate a tenant/landlord mediation program with outside mediators.

Attachment I

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Planning and Urban Development Department
Housing and Community Development Division

DATE: September 30, 2016

DISTRIBUTION: City Manager, Mayor, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

SUBJECT: Order Approving the Housing Insecurity Package for Implementation into the City Code and Related Administrative Actions by City Staff.

SPONSOR: Jill Duson, Chair, David Brenerman, Vice Chair
Housing Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading October 17, 2016 **Final Action** November 7, 2016

Can action be taken at a later date: __X__ **Yes** ____ **No (If no why not?)**

PRESENTATION: (List the presenter(s), type and length of presentation)

Jeff Levine, Planning & Urban Development Director and Tyler Norod, Housing Planner will be available to provide information as requested.

I. SUMMARY OF ISSUE (Agenda Description)

On September 28, 2016, the Housing Committee voted to recommend a package of five (5) housing insecurity policy items to the Council for their consideration. The package includes the following items:

1. Increase notification for residential rent increases from 45 days to 75 days for all tenants-at-will and prior to the end of an existing lease.
2. Landlords and tenants must sign a document to be drafted by the City explaining tenancy-at-will.
3. Creation of a leaflet outlining tenant/landlord rights and responsibilities that must be distributed to all tenants.
4. Establish a tenant/landlord commission comprised of 7 members and co-chaired by one landlord and one tenant representative.
5. Incorporation of Maine Human Rights Act prohibition against income discrimination into City ordinance.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

Over the past few months the Housing Committee has gathered public feedback and reviewed potential policy directions to recommend to the City Council. Following a robust public process two themes emerged for addressing housing concerns in Portland; housing insecurity and housing supply. The Housing Committee spent their most recent meetings examining potential policy directions for dealing with issues related to housing insecurity for tenants in Portland. The following policy package is the outcome of this effort. The Committee acknowledges more work needs to be done as it pertains to housing supply issues and anticipates working towards these measures in subsequent meetings.

III. INTENDED RESULT

The housing insecurity package is intended to engage and educate both landlords and tenants as to their rights and responsibilities while ensuring more predictability and stability for tenants.

IV. COUNCIL GOAL ADDRESSED

Assess the housing problem; look regionally; develop agreement on specific market goals and which kinds of housing needs the most focus.

To encourage and promote affordable, decent housing opportunities for all citizens.

V. FINANCIAL IMPACT

The creation of a tenant/landlord commission, will require additional staff resources. While the meetings themselves will not take much staff time, the additional requirement for staff to provide analysis, data collection, expertise, and organization for a new committee and all of its members will require staff support. Depending on the final design and requirements for the Committee, it is anticipated that the new Committee would require the equivalent of at least ¼ FTE of a Planner position. Additional recommendations from the Housing Committee may similarly require additional staff resources.

Given existing staff responsibilities and potential future workloads such as the development and implementation of short term rental regulations, continued zoning reforms and other policy additions that may come out of the Committees efforts there may be a need for a new planner position within the Housing & Community Development Division at some point. Traditionally similar Planning staff work has been funded through federal resources such as HOME and CDBG funds. Unfortunately, these funding sources are at capacity. The cost to the City would likely need to be paid through the general fund or some other source. Including benefits, a full time position would cost approximately $62,000 - $88,000 per year. Proportionately, the ¼ FTE required of this commission would therefore cost about $15,500-$22,000 per year.

VI. STAFF ANALYSIS

The following proposal outlines a housing insecurity package recommended by the Housing Committee.

<u>Proposed Housing Insecurity Package Items</u>

1) Increase notification for rent increases.
Increase minimum notifications for rent increases from 45 days to 75 days for both tenants-at-will and prior to the end of an existing lease.

2) For tenant at will, landlord and tenant must sign a document that explains what tenancy-at-will means.

This document will be created by the City and be available online for download/printing. The document will use easily understandable language. Signing the document indicates an understanding of the provisions of at-will-tenancies. A copy of this signed document must be kept on file by the landlord and be available to the City upon request.

During the annual landlord registration process, landlords will be required to check a box (online or on a document) stating that this form (explanation of terms of at-will tenancy) has been signed by both tenant and landlord and that they are maintaining a copy for their records. They will not be able to complete the registration process without checking this box.

At this time, there is no fine associated with this requirement, but if it is determined that landlords are not generally complying, a fine may be established at a future time.

3) The City will require landlords to distribute a leaflet outlining rights, responsibilities and privileges of tenants and landlords.

Links to the leaflet and expanded information will be available online for all. The City will develop a template for a rights and responsibilities leaflet based on similar existing documents such as "The Rights of Tenants in Maine", which was developed by Pine Tree Legal and has been attached to this memo.

Landlords will be asked to distribute this leaflet to tenants, and as with #2, above, they will need to check a box on their annual registration form stating that they have done so. They will not be able to complete the registration process without checking this box.

At this time no fine is being suggested with this requirement, but if it is determined that landlords are not generally complying, a fine may be established at some point in the future.

4) Establish a Landlord-Tenant Committee
The Landlord-Tenant Committee will work with City staff to collect housing market data, report annually on the state of the housing market, recommend policy changes, and report to the Council's Housing Committee. The Committee and staff will also act as a clearinghouse for tenants and landlords connecting them to resources such as mediators, legal services, advocates, and programs related to landlord or tenant issues.

The Committee shall meet not less than quarterly. Committee to be co-chaired by one tenant and one landlord elected from among the seven members. The seventh member will be neither a landlord nor tenant but must be a resident of Portland.

5) Incorporation of the Maine Human Rights prohibitions against income discrimination into City ordinance.

The following language based on the Maine Human Rights Act prohibiting discrimination against tenants based on their source of income will be incorporated into City ordinance. Language would be included requiring a complainant to follow the process outlined in the Maine Human Rights statute.

It will be prohibited for any person furnishing rental premises or public accommodations to refuse to rent or impose different terms of tenancy to any individual who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies, primarily because of the individual's status as recipient.

Nothing in this ordinance may be construed to prohibit or limit the exercise of the privilege of every person and the agent of any person having the right to sell, rent, lease or manage a housing accommodation to set up and enforce specifications in the selling, renting, leasing or letting or in the furnishings of facilities or services in connection with the facilities that are consistent with business necessity and are not based on the receipt of public assistance payments by any prospective or actual purchaser, lessee, tenant or occupant. Nothing in this ordinance may be construed to prohibit or limit the exercise of the privilege of every person and the agent of any person making loans for or offering financial assistance in the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations to set standards and preferences, terms, conditions, limitations or specifications for the granting of loans or financial assistance that are consistent with business necessity and are not based the receipt of public assistance payments by the applicant for a loan or financial assistance or of any existing or prospective owner, lessee, tenant or occupant of housing accommodation.

VII. RECOMMENDATION

The Housing Committee is recommending approval of the five (5) items listed above as part of the housing insecurity package.

It is requested that the City Council set the Public Hearing on this item for the City Council meeting scheduled on November 7, 2016 at 7:00 p.m.

✞✋✋✋✍ LIST ATTACHMENTS

✋✠✍ The related Housing Committee memo from September 28, 2016 outlining the proposed package.

Prepared by:

____

Tyler Norod, Housing Planner
Housing & Community Development Division

Date: September 30, 2016

TO: Councilor Duson, Chair
Members of the Housing Committee

FROM: Mary Davis, Division Director
Tyler Norod, Housing Planner
Housing and Community Development Division

DATE: September 23, 2016

SUBJECT: Housing Insecurity Package

Over the past few months the Housing Committee has gathered public feedback and reviewed potential policy directions to recommend to the City Council. Recently the Committee has focused on similarly themed policy ideas associated with housing insecurity. A variety of policy elements were discussed including but not limited to items listed below:

1. Rent control/Rent increase limitations
2. Increases to notification minimums for rent increases and non-renewal of leases
3. Voucher discrimination
4. Tenant/Landlord mediation/ombudsman
5. Tenant relocation payments
6. Restrictions on unit turn over in large buildings

Attached to this memo is also a chart outlining Corporation Counsel's past legal analysis to the Committee on many of the items listed above. The chart is intended to serve as a general reference to help the Committee keep in mind the various legal issues associated with each element as the discuss a possible package to recommend to the Council. For more detailed information about this legal analysis please see past memos written by Corporation Counsel to the Committee over the last several meetings.

The Committee received analysis and public testimony on these general topics. The next step is for the Committee to formulate a final package on housing insecurity issues to recommend to the Council for their consideration. To that end, the Committee Chair and Vice Chair have assembled a proposed package containing various elements of the items above aimed at mitigating concerns related to housing insecurity. The package is outlined below for further discussion and input by Committee members.

1. Increase notification for rent increases from 45-60 days.
2. Landlords and tenants must sign a document to be drafted by the City explaining tenancy-at-will.
3. Creation of a leaflet outlining tenant/landlord rights and responsibilities that must be distributed to all tenants.
4. Establish a tenant/landlord commission comprised of 6 members and co-chaired by one landlord and one tenant representative.
5. Incorporation of Maine Human Rights Act prohibition against income discrimination into City ordinance.

The Chair and Vice Chair also propose that the Committee take time to further study the potential implications and feasibility of instituting a Tenant Relocation Assistance Fund for households earning below 50% of Area Median Income (AMI) that are asked to relocate due to substantial rehabilitation or renovations to their unit. Outstanding questions that would need to be considered would include possible funding amounts/sources, definitions that trigger "substantial renovation", income thresholds, enforcement, and payment amounts.

The chart below represents a brief outline of Corporation Counsel's opinion as to the potential legal issues to be considered for any of the general proposed policy ideas described during recent public discussions. Please refer to Corporation Counsel's prior legal memos to the Housing Committee on each proposed ordinance provision mentioned in this chart for more specific information and legal research about each provision.

Most Likely Legal Under Maine Law (i.e. Maine law seems to specifically allow enactment of these possible ordinance requirements)*	**Maybe Legal Under Maine Law (i.e. these possible ordinance requirements have not been tested yet under Maine law)***	**Most Likely Not Legal Under Maine Law (i.e. the City Council does not have home rule authority to enact these possible ordinance requirements)***
Rent Control (i.e. similar to Westbrook's Ordinance for mobile home parks).	Extend Notice Provisions for Evictions and Rent Increases. (Please note that any violation of the proposed increased notice requirement would not impact an Forcible Entry and Detainer ("FED") action filed by a landlord, but would instead be enforced by the City through fines or some other penalty in a separate City-initiated court action).	Some of the Enforcement Provisions including the private right of action (since anything enacted would need to be enforced by the City itself), and anything that attempts to circumvent the Maine Human Rights Commission's required process for discrimination complaints.
Mediation Program (but may be redundant and unnecessary with other existing programs).	Requiring Acceptance of Housing Vouchers (including, but limited to, section 8 vouchers).	Entire Constructive Lease Section in the proposed ordinance.
Prohibit Discrimination based on source of income (but is redundant and unnecessary given the existing requirements in Maine law).	Tenant Relocation Payment Ordinance.	

Order 76-16/17
Second read postponed to 11/21/2016: 7-0 (Ray, Thibodeau absent) on 10/17/2016
Passage: 9-0 on 11/21/2016 Effective 12/21/2016

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS,
Re: TENANT HOUSING RIGHTS

I. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

WHEREAS, the Portland City Council Housing Committee (the Committee) has been working on behalf of City residents who rent and/or reside in rental properties as their home, with the goal of educating these persons of their rights and seeking to ensure through the imposition of regulations, among other things, that their housing is secure; and

WHEREAS, according to public testimony given to the Committee, tenants have lost their homes as the price of real estate increased in the last few years, and the monthly rent has risen; and

WHEREAS, after taking a significant amount of public testimony and after researching and reviewing this issue for numerous months, the Committee recommends to the Portland City Council that it should enact certain tenant protections, including but not limited to a longer notice period of an impending rent increase and clear and straightforward written information to help tenants and also for the property owners who rent to tenants, maintain and improve their properties and who must comply with those protections; and

WHEREAS, these actions are necessary in order to protect the City of Portland residents’ public health, and welfare;

NOW, THEREFORE, BE IT ORDERED, that, pursuant to its authority in 30-A M.R.S. §3001, the Code of Ordinances, City of Portland, Maine, is hereby amended by adding the following Article, to be numbered City of Portland General Provisions Code of Ordinances Chapter 6 Article IX, which shall read as follows:

ARTICLE XI. TENANT HOUSING RIGHTS

6-219. Purpose.

The purpose of this Article is to address housing insecurity in the City of Portland; to minimize the potential adverse impacts of un-noticed or short-notice rent increases; to educate at-will Tenants of their rights; and to help bring about through fair, orderly and lawful procedures, the opportunity of each person within the City of Portland without regard to, among other things, receipt of public benefits, to rent, enjoy and retain secure housing.

6-220. Applicability.

This article shall apply to any and all rental housing units in the City limits of Portland.

6-221. Definitions.

Discrimination means the unjust or prejudicial treatment of different categories of people, when those categories are protected from discrimination by municipal, state and federal law, including, but not limited to, categories based on race, color, religious creed, sex, sexual preference, national origin, age, physical handicap or mental handicap, and based on receipt of public assistance, as provided in 5 M.R.S. §4581-A and as amended from time to time.

Housing unit means one (1) or more rooms forming a single unit including food preparation, living, sanitary and sleeping facilities used or intended to be used by two (2) or more persons living in common or by a person living alone.

Landlord means an owner, manager, lessee, sublessee, managing agent or other person having the right to rent or sell or manage any housing unit or rental property or any agent of these individuals or entities.

Tenant means an individual, individuals, an entity, entities, a lessee or sub-lessee, or other person having the right to rent any housing unit or rental property or any agent of these individuals or entities. This definition includes a Tenant at will as described in 14 M.R.S. §6002, as amended from time to time.

6-222. Discrimination prohibited in sale or rental of housing units.

(a) A Tenant shall have the right to secure a rental housing unit without being refused that right on the basis of discrimination because of race, color, sex, sexual orientation, physical or mental disability, ancestry, national origin, or family status, pursuant to 5 M.R.S. Section 4581-A, et. seq., as amended from time to time.

(b) A Landlord shall not refuse to rent or impose terms of tenancy on any Tenant who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies primarily because of the individual's status as a recipient as described in 5 M.R.S. §4581-A(4), as amended from time to time.

6-223. Notification of rent increases.

Notwithstanding 14 M.R.S. Section 6015, a Landlord shall give seventy-five (75) days' written notice of any rent increase to a Tenant.

6-224. Protection of Tenants.

(a) The Planning Department or its designee shall create and make available on the City's publically accessible web site a plain language document that explains Tenancy at Will and the rights and responsibilities of Tenants and Landlords of rental housing units. That document shall also include a checklist of required notices concerning environmental lead hazards, energy efficiency or radon testing, pursuant to 14 M.R.S. Sections 6030-B, 6030-C, and 6030-D, respectively, as amended from time to time.

(b) The document referenced above shall be provided by Landlords to all Tenants in the City of Portland at the commencement of the rental of a housing unit and shall be provided again upon any update to the document made by the Planning Department.

(c) An acknowledgement of receipt of the documents described above must be signed by all Tenants, and a copy of the acknowledgement kept on file by the Landlord for at least three (3) years and made available for inspection at the request of the City of Portland.

(d) At the time of the annual registration required by Chapter 6, Article VI of the City of Portland Code of Ordinances, all Landlords must certify to the City that they have provided the above-referenced documents to each of their respective Tenants.

6-225. Rental Housing Advisory Committee

(a) There is hereby created a Rental Housing Advisory Committee (the "Committee").

(b) The Committee shall be comprised of seven (7) members, including three (3) Landlord representatives, three (3) Tenant representatives and one (1) at-large resident representative who is neither a Tenant nor a Landlord of rental property, all of whom shall be appointed by the City Council. All members of the Committee shall be residents of the City of Portland and shall serve staggered terms set by City Council order.

(c) The Committee shall be co-chaired by one (1) Landlord representative and one (1) Tenant representative as agreed to by the members of the Committee.

(d) The Committee shall meet not less than quarterly and shall undertake the following duties:

1. Compile and provide the Housing Committee with City of Portland housing market data;
2. Report annually to the Housing Committee on the state of the housing market in the City of Portland; and
3. Provide the Housing Committee with recommendations or proposals for improvements, modifications, or changes to the City's housing ordinances or policies.

6-226. Variation by agreement.

No provision of, or right conferred by, this Article may be waived by a Tenant, by agreement or otherwise, and any such waiver shall be void. Any attempt to require, encourage or induce a Tenant to waive any provision hereof or right hereby shall be a violation of this Article. Nothing herein shall be construed to void any term of a lease that offers greater rights than those conferred hereby.

6-227. Limitation of liabilities.

(a) Nothing in this Article shall be interpreted to contravene the general laws of the State of Maine; and

(b) Nothing in this Article shall be construed to create additional liabilities greater than those already existing under law or to create new private causes of action.

6-228. Enforcement and remedies.

(a) Any violation of sections 6-223, 6-224 and 6-225 of this Article may be considered a civil infraction and may be enforced pursuant to the Portland City Code Chapter 1, §1-15.

(b) Any violation of §6-222 of this Article shall be enforced as required by the Maine Human Rights Act, 5 M.R.S. §§4551, et seq.

6-229. Severability.

The provisions of this Article are severable. If any of its provisions are held invalid by act of competent jurisdiction, all other provisions of this Article shall continue in full force and effect.

Attachment J

Portland, Maine | Yes. Life's good here.

Office of the Mayor, Ethan K. Strimling

2019 Priorities

1. **Ensuring Educational & Lifelong Success**

Universal Public Pre-K for all four-year olds in Portland: Create universal high quality pre-k for all four-year olds in Portland. (Working with School Department)

Fully fund the Portland Promise: Ensure the school budget has the revenue to fully fund our efforts to ensure academic excellence and equity for every student. (Working with School Department)

2. **Confronting Climate Change**

SolaRise Our Schools: Install solar arrays on the roofs and grounds of our schools to generate 100% of our school electricity. (Working with School Department)

15 Buses for 15 minutes: Add 15 new buses to our fleet, allowing us to reduce peak hour wait times from an hour to 15 minutes. (Working with METRO)

Light Hybrid Rail to the Eastern Waterfront: Install hybrid electric rail cars to come into Portland's Eastern Waterfront to reduce traffic. (Working with Sierra Club and Transportation Committee)

3. **Housing**

Fully Capitalize the Housing Trust: Invest $7M more dollars into our Housing Trust over the next five years, in order to help leverage a thousand more units of housing. (On FC Workplan)

90 Days Notice for Tenants: Change the city ordinance to incentivize landlords to allow tenants 90 days notice before they have to vacate an apartment. (On HC Workplan)

Allow Sec. 8 holders access to all rentals: Amend city ordinance to stop landlords from banning Section 8 tenants (On HC Workplan)

4. **A Safe, Healthy Well Paid Workforce**

Paid Sick Leave for all Portland Workers: Amend city ordinance so that all workers in Portland receive paid time off to use when they or a loved one is sick.(On HHS Workplan)

Responsible Contracting: Amend City ordinance to require that contractors on public contracts pay workers Prevailing Wage, have quality training, and ensure worker safety. (On FC Workplan)

Attachment K

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS,
RE: HOUSING DISCRIMINATION

Sponsored by Mayor Ethan Strimling

6-221. Definitions.

Discrimination means the unjust or prejudicial treatment of different categories of people, when those categories are protected from discrimination by municipal, state and federal law, including, but not limited to, categories based on race, color, religious creed, sex, sexual preference, national origin, age, physical handicap or mental handicap, and based on receipt of public assistance, as provided in 5 M.R.S. §4581-A and as amended from time to time.

...

Tenant-Based Rental Assistance means any and all forms of tenant-based rental assistance and vouchers, including but not limited to:

(a) Tenant-based rental assistance through the Section 8 Housing Choice Voucher Program, 42 U.S.C § 1437f (o)

(b) Tenant-based rental assistance through the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C § 12701 et seq.;

(c) Tenant-based rental assistance under the HUD-Veterans Affairs Supportive Housing (HUD-VASH), authorized by § 8 (o) (19) of the United States Housing Act of 1937, 42 U.S.C. § 1437f (o) (19);

(d) Tenant-based rental assistance through the Shelter Plus Care Program authorized by title IV, subtitle F, of the Stewart B McKinney Homeless Assistance Act, 42 U.S.C. §§ 11403-11407b, as amended;

(e) Tenant-based rental assistance through the Supportive Housing Program authorized by title IV, subtitle F, of the Stewart B McKinney Homeless Assistance Act, 42 U.S.C. §§ 11381-11389, as amended;

(f) Tenant-based rental assistance through the Section 8 Disaster Voucher Program (DVP);

(g) Tenant-based rental assistance through the Housing Opportunities for Persons with AIDS (HOPWA) Program, 42 U.S.C. § 12901 – 12912 as amended;

(h) Tenant-based rental assistance through the Community Block Grant Program, 42 U.S.C. § 5301 et seq. as amended;

(i) Tenant-based rental assistance through the Continuum of Care Program authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11381-11389; and

(j) Tenant-based rental assistance through the Rural Development Voucher Program authorized through § 542 of the Housing Act of 1949, as amended. See 78 Fed. Reg. 49374 (Aug. 14, 2013) (proposed rule); and

(k) Tenant-based rental assistance through the Maine Bridging Rental Assistance Program, authorized by M.R.S. Title 34-B § 3011; and

(l) Tenant-based rental assistance through the Maine State Housing Authority Home To Stay Program, M.R.S. Title 30-A § 4771; and

(m) Tenant-based rental assistance through the Maine State Housing Authority Stability Through Engagement Program, M.R.S. Title 30-A § 4771; and

(n) Tenant-based rental assistance through the City of Portland’s Tennant Based Rental Assistance Program, M.R.S. Title 30-A § 4771;

(o) Tenant-based rental assistance through the City of Portland’s General Assistance Program, authorized by M.R.S. Title 22 § 4301 et seq.; and

(p) Such other Tenant-based rental assistance or rental vouchers or rental coupons as may be authorized under any federal, state, or local program.

6-222. Discrimination prohibited in sale or rental of housing units.

(a) A tenant shall have the right to secure a rental housing unit without being refused that right on the basis of discrimination because of race, color, sex, sexual orientation, physical or mental disability, ancestry, national origin, or family status, pursuant to 5 M.R.S. Section 4581-A, et. seq., as amended from time to time.

(b) A landlord shall not refuse to rent or impose terms of tenancy on any tenant who is a recipient of federal, state or local public assistance, including medical assistance and housing subsidies primarily because of the individual's status as a recipient as described in 5 M.R.S. §4581-A(4), as amended from time to time.

(c) It shall be prohibited for a landlord to refuse to rent or negotiate for the rental of, or otherwise make unavailable or deny a dwelling to any tenant because of the tenant's source of income or because of the requirements of any program providing the source of income;

(d) It shall be prohibited for or a landlord to refuse to participate in or comply with any federal, state, or local requirements of a tenant-based rental assistance program, including, but not limited to the following:

1) Refusing to allow inspections of a dwelling by the public housing authority or other entity administering a tenant-based rental assistance program;

2) Refusing to make reasonable repairs necessary for the dwelling to meet the housing quality standards of the tenant-based rental assistance program; such repairs will be considered reasonable if they do not substantially alter or change the housing unit or do not require repairs substantially different from those that would be required to bring the rental unit into compliance with the Maine Warranty of Habitability Act or local building or housing codes applicable for new construction

3) Refusing to complete any necessary paperwork, including but not limited to such documents as the *Request for Tenancy Approval* form, the *Housing Assistance Payments Contract*, and the *Tenancy Addendum* or applicable General Assistance forms; and

~~1)~~4) Refusing to provide information required by the public housing authority or other entity administering the source of income or tenant-based rental assistance program.

Attachment L

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6, BUILDINGS AND BUILDING REGULATIONS,
RE: Termination of Tenancies-At-Will

Sponsored by Mayor Ethan Strimling

6-223.5. Termination of Tenancies-At-Will

(a) In order to be terminated by a Landlord, tenancies-at-will must be terminated by providing a minimum of 90 days' written notice to Tenant except as provided below:

1. "For Cause" tenancies terminable on 7 days' notice pursuant to 14 M.R.S. § 6002(1) may be terminated in accordance with Section 6002(1);

2. Short-term rentals with a term of fewer than 30 days' are exempt from the 90-day notice period outlined herein;

3. Holdover tenancies are exempt from the 90 day notice period outlined herein;

4. Where a Landlord provides $500.00 reimbursement to Tenant for the inconvenience of termination, tenancies-at-will may be terminated by notice to the Tenant of sixty (60) to eighty-nine (89) days;

5. Where a Landlord provides $1000 reimbursement to Tenant for the inconvenience of termination, tenancies-at-will may be terminated by notice to the Tenant of thirty (30) to fifty-nine (59) days.

(b) Reimbursement amounts outlined in subsections (c) and (d) above are lump-sum amounts payable in a single installment for the collective benefit of all tenants of a unit. Tenants are responsible for allocating the reimbursement amount among themselves.

1. *That Chapter 6, Section 6-228 of the Portland City Code is hereby amended as follows:*

6-228. Enforcement and remedies.

(a) Any violation of sections 6-223, 223.5, 6-224 and 6-~~225~~ 226 of this Article may be considered a civil infraction and may be enforced pursuant to the Portland City Code Chapter 1, §1-15.

(b) Any violation of §6-222 of this Article shall be enforced as required by the Maine Human Rights Act, 5 M.R.S. §§4551, et seq.

Attachment M

Portland Maine | Yes. Google's good here.

reports of widespread abuse of application fees for Portland Apartments

7 messages

Zack Barowitz <zbarowitz@gmail.com> Tue, Jan 8, 2019 at 8:33 PM
To: vvolent@portlandmaine.gov

Victoria,
I was speaking to a friend who works with immigrant populations who told me that she is seeing rampant abuse of apartment application fees being paid out by low income people seeking housing.
As this area is entirely unregulated it would be very easy to monetize virtually any apartment for the purpose of collecting fees. For example, I could create a craigslist ad for my house. I would list the price well below market, show it to prospective renters, and collect application fees at $60 a pop for months and months without ever having any intention of moving out and putting it on the market. This is apparently what is happening in Portland.

Are you aware of this situation? Are there any plans to address it?

I happen to work at a Property Management company who does apartment leasing. We collect application fees ($40 per tenant) which includes credit/background screening. We only process applications for available apartments and we refund the fees for people whose application we did not process (c.98% of our applicants qualify).

I would like to see this issue come in front of the Council Housing Committee. I think a crackdown on this practice could end it swiftly.

Thank you for your kind attention to this matter.
Zack Barowitz

CITY OF PORTLAND
Planning & Urban Development Department
Housing and Community Development Division

TO: Councilor Duson, Chair
Members of the Housing Committee

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

DATE: April 5, 2019

SUBJECT: 2019 Affordable Housing Development Application

It has been the policy of the City of Portland to utilize an annual application and/or RFP process for the allocation of city resources budgeted for the development of affordable housing. This year the Housing and Community Development Division is proposing a single application process for allocation of HOME and Housing Trust Funds budgeted for affordable housing development. This will allow staff to determine which funding source is best for each project and then make funding recommendations to the Housing Committee and City Council for final approval.

The 2019 Affordable Housing Development Application will make available $1,325,356 from the 2019-2020 HOME ($549,536, including CHDO budget allocations) and Housing Trust ($775,820) funds budgeted for affordable housing development. The anticipated annual production rate of housing units is 65 - 90 units.

If the committee endorses the proposed application, it will be released upon receipt of HOME allocation amount from HUD and after approval by the City Council of the Housing Program Budget (4/22/2019).

Revisions from 2018 Application

Financing Terms - Over the last ten years, financing has been offered at 0% interest, 30 year deferred loans. The 2019 application includes flexibility by establishing funding terms based on the financial structure of each development project. Financing terms will range from 30 years non-amortizing, deferred at 0% interest, to 30 year, amortizing loans depending on a financial analysis of the development project.

Based on the investments made by the City in 2018, the average City investment per unit, excluding TIF financing is $10,000. The contribution per unit, excluding TIF financing will not exceed $18,000.

Point System for Evaluating and Scoring Applications – The 2019 application includes a more detailed scoring matrix that will enable a more in depth evaluation of development proposals.

Staff Recommendation

Staff is seeking Committee approval of the application criteria for the 2019-2020 Affordable Housing Development Application and requesting committee approval to make minor amendments to the application prior to its release.

City of Portland

Affordable Housing Development Application

July 1, 2019 – June 30, 2020

Applications will be accepted until all budgeted funds have been allocated.

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I. GENERAL INFORMATION

A. Availability of Funding

The City of Portland has made the development of affordable ~~rental~~ housing a priority, as identified in the City of Portland's 2016-2020 HUD 5-year Consolidated Plan, ~~and the~~ City Council Common Goals and the Comprehensive Plan. To accomplish this priority, the City of Portland will accept applications for the development of affordable ~~rental~~ housing in the City of Portland.

Certified Community Housing Development Organizations (CHDO's) or organizations eligible for CHDO certification are strongly encouraged to apply ~~for these funds~~. The HUD definition of a CHDO organization is attached as Exhibit #1 entitled Definition of a Community Housing Development Organization (CHDO).

The City of Portland's Division of Housing and Community Development uses an application process to ensure that public funds are utilized for maximum public benefit to accomplish specific objectives and provide fair access to all applicants. Applications will be accepted until all budgeted funds are allocated. The City of Portland reserves the right to partially fund application requests or deny any application that does not meet the application criteria.

The City of Portland is making a combination of FY 2019-2020 HUD Home Investment Partnership Program (HOME) funds (which includes a mandatory set-aside for CHDO organizations or organizations eligible for CHDO certification) and local Housing Trust Funds (HTF). The Housing and Community Development Division is utilizing a single application process for these funds. City staff will determine which funding source is best for each project and then make funding recommendations to the City Council for final approval.

Total Funding Available: $1,325,356.

B. General Guidelines

D~~Rental d~~evelopments shall provide units to households earning up to 100% of area median. ~~Mixed income projects are eligible and encouraged, however not all units in a mixed income project will be eligible for HOME funding~~. Projects with mixed income targeting and a mix of bedroom size are encouraged~~ligible~~. The minimum term of affordability depends on the funding source, but is not generally less than 30 years, and in some cases much be 90 years. The affordability term is to be secured by a declaration of covenants and restrictions recorded in the Cumberland County Registry of Deeds~~land use restriction covenant in the deed~~.

This application outlines the selection criteria which all projects applying for these funds must meet, as well as scoring factors which will be used by the City of Portland to evaluate the applications.

C. Federal Requirements

These requirements will apply for any project that is awarded HOME or other federal funding.

Environmental Review Requirements

Projects receiving HOME funding are subject to environmental review, clearance and release of funds by the U.S. Department of Housing and Urban Development. Once an application has been submitted, the applicant cannot take any "choice limiting actions" prior to receiving notification from the City that the environmental review process, including historic preservation review and clearance, has been completed and a release of funds has been received. A Phase I ESA along with a lead and asbestos testing report is required before HUD Environmental Review Requirements can be completed.

Federal Labor Standards

As may be applicable, projects receiving HOME funding must ensure that they and all contractors and subcontractors meet requirements for federal prevailing wage rates specified under the Davis-Bacon Act. The Act requires all laborers and mechanics employed by contractors or subcontractors in the performance of construction work over $2,000, financed in whole or in part with assistance received under HUD programs, shall be paid the prevailing wage as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-5). Projects that include 12 or more HOME-assisted units must meet the requirements of the Davis-Bacon Act.

Section 3

All HOME projects must comply with Section 3 of the Housing and Urban Development Act of 1968. Contractors and subcontractors performing work on Section 3-covered projects must provide, to the greatest extent feasible, opportunities for the employment of low- and very low-income residents of the local community and the businesses that substantially employ these persons.

Minority and Women Owned Business (MWBE) Participation

All HOME projects must complete, track and report on outreach and contracts given to women- and minority-owned businesses to ensure their inclusion, to the maximum extent possible, in the procurement of property and services. Applicants are encouraged to utilize firms certified as a Minority Business Enterprise or Woman's Business Enterprise as part of the development team. The development team members include the developer, architect, attorney, general contractor and management agent.

Lead-Based Paint

All HOME funded residential rehabilitation, adaptive re-use and construction activities must comply with 24 CFR Part 35 and Section 401(b) of the Lead-Based Paint Poisoning Prevention Act.

Access to the Internet

All new construction and substantial rehabilitation projects of multifamily rental housing will be required to provide the installation of broadband internet access to its residents to help narrow the digital divide for households in need.

Fair Housing and Equal Opportunity

[Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.) (HUD implementation regulations 24 CFR Part 1); The Fair Housing Act (42 U.S.C. 3601-3620)(24 CFR Part 100-115(; Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259)(24 CFR Part 107); Age Discrimination Act of 1975, as amended (42 U.S.C. 6101)(24 CFR Part 146).]

The Fair Housing Act prohibits discrimination in all housing-related transactions based on race, color, national origin, religion, sex, disability, age or familial status. It also includes minimum accessibility design requirements for all new construction and rehabilitation projects and requires that reasonable accommodations be made in rules, policies, practices, services and reasonable structural modifications. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability and requires that everyone have equal opportunity to obtain housing built with federal funds.

Affirmative Marketing

Developers must have tenant selection policies and criteria to ensure that tenants are selected for occupancy at the property in a fair and equitable manner. Tenant selection policies must be based on objective criteria that expressly prohibit bias. Tenant selection procedures should be clear and easily understood by prospective tenants. An affirmative marketing plan is required to ensure that the property serves a diverse cross-section of the population of the market area, must consist of actions to provide information and otherwise attract eligible persons in the housing market area that might not otherwise apply without special outreach, and ensure that the housing is available to qualified applicants without regard to race, color, national origin, religion, sex, disability, or familial status.

Violence Against Women Act

Developers must comply with the Violence Against Women Act (VAWA) requirements in 24 CFR §92.359 and 24 CFR Part 5, subpart L. VAWA provides protections and options for victims of domestic violence, dating violence, sexual assault and stalking.

D. Goals for the Distribution of Funds

The goal for the distribution of these funds is to increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents. Development should be ~~promote and finance the development of affordable rental housing~~ consistent with the City of Portland's Comprehensive Plan and the HUD Five-Year Consolidated Plan. The City of Portland seeks development projects that create contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods.~~with a high standard of quality, design, and livability.~~ Projects should not require a contract or conditional zone (although other rezoning consistent with the City's Comprehensive Plan may be considered). Resolution of any zoning issues is required before City Council approval of the applicants funding request. Developments should ~~promote efficient use of land, locations proximate to shopping, work places and community facilities. They should also~~ incorporate quality, sustainable design~~high standards of energy efficiency, "green" design and socially sustainable criteria~~.

II. SCOPE OF SERVICES

A. General Specifications

All applications submitted for this funding must meet the following selection criteria to be considered further in the review process.

Eligible Projects

1) Projects must create rental housing units which promote economic diversity in the neighborhood in which the development is located. New construction, conversion of non-residential property to housing and rehabilitation of existing rental units that creates accessible or maintains affordable units is eligible. Projects that have previously received HOME funds are not eligible for additional HOME assistance.

2) All projects must provide rental units to households earning up to 100~~60~~% of area median income and meet the income and rent restrictions of the HOME and/or Housing Trust Fund Programs.

~~2)~~3) Projects must ensure that the affordable units within a mixed income development will be equal in square footage and comparable to the market rate units.

~~3)~~4) *Housing First* developments are encouraged~~a priority under this application~~.

~~4)~~5) Single Room Occupancy (SRO) and other supportive housing projects specifically for special needs populations are eligible under this application.

~~5)~~6) Projects receiving funding through this application must include a written occupancy policy that prohibits smoking in the units and the interior common areas of the project in addition to including a non-smoking clause in the lease for every household and making educational materials on tobacco treatment programs available to residents through the residence service coordinator, occupancy specialist, or property manager, such as the phone number for the statewide Maine Tobacco HelpLine.

~~6)~~7) Projects receiving funding through this application must set aside 10% of the units in the project for individuals or families residing in a Portland shelter. The City's Health and Human Services Department would be responsible for providing referrals, providing or coordinating supportive services and financial resources to assist with monthly rent payments. A Supportive Housing Agreement between the City and the Developer would document the services and expectations. At the time of loan closing or prior to disbursement of the City's funding, the requirements would be secured by a Declaration of Covenants which will be recorded in the Cumberland County Registry of Deeds.

B. Site Information and Criteria

1) Site Control: Land or buildings proposed as part of a project under this application must have site control at the time the application is submitted in the form of title, purchase and sale agreement, option, long-term lease for a minimum of 90 years, or other acceptable method. At a minimum, site control must extend through December 31, 2019~~8~~.

2) Local Approvals: Local land use approval is not required prior to submittal of the application, however approval is required before the City Council will approve the funding request. The

applicant must submit an analysis of the project in relation to local land use regulations and site feasibility.

3) Applications must not require a contract or conditional zone. Resolution of any zoning issues is required before City Council approval of the applicants funding request.

C. *Financial Feasibility*

1) Financial applications must be developed in accordance with the underwriting guidelines of the primary funding source, including adequate cash flow and debt coverage ratio, and conform to the City of Portland's underwriting criteria.

2) Use of Funds: All projects will be reviewed for the proposed use of ~~HOME~~ funds compared to other resources. Applicants must describe the proposed mortgage and security position for the City of Portland's funding. The average City investment per unit, excluding TIF financing, is $10,000. The City contribution per unit will not exceed $18,000. This amount may be adjusted at the discretion of the City Council, only for unusual circumstances where a larger amount is the only way a project that meets other City goals is needed. In those cases, the higher cost per unit ratio must be tied into the goals outlined in the City's Comprehensive Plan.

D. *Market Demand*

Applicants must provide an analysis and discussion of market demand justifying the need for the proposed project.

E. *Applicant Capacity*

All applicants must demonstrate capacity to develop, own and manage the proposed project. All applications must provide evidence of a development team with the capacity to successfully complete the project including:

1) Key staff members assigned to the project with the abilities and experience to successfully complete the project within the proposed timeframe.

2) An architect, general contractor and professionals on the team with the experience and capacity to complete the project.

3) A management team with qualified personnel and the capacity and experience to operate, manage and maintain the affordable rental property of size and mix of the proposed project.

4) Qualified staff with the capacity to perform ongoing property ownership requirements such as budgeting, tax accounting and oversight of management and maintenance.

5) A portfolio of current affordable housing projects that are financially sound and meeting their established goals.

6) Support Services: Applications containing rental units targeted to special needs populations must include commitments for support services to be provided to the residents and have in place a policy to make accessible units available when needed if units are occupied by someone that does not need the accessible features.

F. Term of Affordability

All projects must have a minimum affordability period of 90 years, secured by a land use restriction covenant in the deed.

G. Financing Terms

The following are general guidelines and the City reserves the right to adjust the terms of funding on a case-by-case basis based on changes in conventional lending and other financing sources.

The City's funding is generally in the form of soft "gap" financing. To allow for future investment in affordable and workforce housing, the City seeks to achieve a reasonable return of capital and where possible a return on investment based on the financing features of each funding request. The City allows flexibility for creativity by development teams by establishing funding terms based on the financial structure of each development project.

Funding in the form of loans may range from 30 years non-amortizing, deferred at 0% interest, to 30 year, amortizing loans based on a financial analysis of the development project. A key tool used to perform the financial analysis is the Debt Coverage Ratio (DCR). Projects with a DCR greater than or equal to 1.25 will be considered for a fully amortizing loan with a corresponding rate that either achieves a DCR of 1.15. Other DCR features are as such:

- Projects that have a DCR of less than 1.25 will be considered for interest only loans. The interest rate will be set at a percentage rate that will achieve a DCR of 1.15.
- Projects that are submitted at a DCR of 1.15 will be considered for a deferred cash flow loan.
- Grants may be considered when a project serves a substantially underserved population.
- A project with a sustained DCR greater than 1.5, after the application of a fully amortizing loan will be considered over subsidized. The funding request will be reduced to achieve a sustained DCR of no more than 1.4. This may result in the funding request being reduced to zero. Projects of this nature are candidates for private financing.

~~G.~~H. Design Compatibility

Projects must be designed to contribute to the character of their neighborhood and adhere to the following general guidelines.

Project designs:

1) MUST comply with the City's Green Building Ordinance (Chapter 6, Article VII, Sec. 6-165) (http://www.portlandmaine.gov/DocumentCenter/Home/View/1070). **Please note** that the Green Building Ordinance may be more restrictive than the requirements in Maine Housing's Quality Standards and Procedure Manual.

2) Should establish a building form, scale, massing and rhythm appropriate for the surrounding neighborhood.

3) Should provide a quality design that, where possible, reinforces the public realm of open space, sidewalks and streets through appropriately scaled entries that orient to the street instead of interior blocks or parking lots, and incorporate porches, fenestration, landscaping, and architectural details.

4) MUST meet the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, and the Maine Human Rights Act for multi-family housing. Provide for universal accessibility to the extent possible.

5) Should provide visual and acoustical privacy between units while maximizing natural light and ventilation within units.

~~H.~~I. Timeframe

The applicant must describe projected dates by which commitments will be obtained; the closing will take place, construction start-up, substantial completion, final completion and occupancy. Timeframes must be realistic and achievable. All funded projects must be able to start construction within 12 months of notice of award.

III. APPLICATION REQUIREMENTS

Complete responses to this application, should include one (1) original printed version of the application with original signatures **plus** one (1) full electronic version, submitted via email, USB drive or CD. Printed version must be signed by an officer or employee having authority to bind the organization.

Applications must be submitted electronically and in paper form to:

City of Portland: Housing and Community Development Division
Attention: Mary Davis
389 Congress Street, Room 312
Portland, ME 04101
mpd@portlandmaine.gov
207-874-8711

Applicants who require a conditional commitment of funds as part of other financing applications, such as the Low Income Housing Tax Credit Program, must apply no later than ____________, 2019. The

City of Portland will consider applications received after ________, 2019 if funds are available. Applicants applying after _________ should contact the City of Portland to confirm the availability of funds prior to submitting an application.

A. Project Summary

A brief description of the project, no longer than two pages, to include the number and type of units, tenants or owners to be served, special features, the impact on the neighborhood and other ways the application meets the selection criteria and preference guidelines.

<u>Photographs and maps of the site and area are required.</u>

Note: All respondents should investigate legal and zoning requirements for proposed projects prior to submission of application.

B. All Applications Must Provide The Following:

1) Evidence of site control

2) A zoning opinion from an attorney or land use professional indicating if the project meets current zoning, or if zoning amendments will be required.

3) Conceptual architectural and site plans

4) A project schedule showing critical path events and their timeframe for completion;

5) Map showing location of site

6) Corporation/partnership articles and by-laws

7) Organization's DUNS Number

8) Applicant's audits for 3 most recent years. (If audits are not available, applicant must submit 3 years of internally prepared or CPA compiled statements AND 3 years of tax returns WITH attachments).

9) Most recent quarterly income and expense report (management prepared).

10) Documentation demonstrating certification or eligibility to obtain certification as a CHDO (if seeking the CHDO funds)

11) A brief development team summary, including:

- The type of organization/ownership structure <u>and</u> organization chart if developer is not the same legal entity as the ultimate owner of the project
- The names of Board of Directors, Corporate Officers, or Owners, as appropriate

- Name, title and relevant experience of individuals involved in managing the business entity and this proposed project. A copy of the 501(3)(c) exemption certification
- Brief description of similar projects completed for developer, architect, and General Contractor (if selected)
- A list of all projects currently in development with status and projected timeframe

12) A sources and uses funding statement *

13) A detailed development budget including all acquisition, construction, and soft costs, including any prefunded reserves and developer fee*

14) Cost estimates for construction, signed by architect or GC

15) For renovation projects, a capital needs assessment completed by an independent party, including their qualifications to perform such assessment

16) Preliminary operating budget identifying rents and expenses for the first year*

17) Projected prefunded project reserves and annual contributions to reserves*

18) Debt service coverage ratio over the 15-year operating pro forma timeline*

19) A 15-year operating pro forma for the project with inflators of 2% on income and 3% on expenses*

20) Evidence of financial commitments, or explanation of the ability and timing to secure those commitments. A statement describing the applicant's capacity for and experience in raising the type of capital needed to finance projects of this size and type.

21) Projects serving special needs populations must provide evidence of commitments of support services, and a description of the service provider and funding cycle for those services.

22) Applicant must include a management plan for the long-term management of the project including manager's experience and capacity.

23) An analysis and discussion of market demand justifying the need for the proposed project.

24) **<u>For Renovation of Operational Projects</u> (or projects with operational components) the following items are also required:**

- Relocation plan budget
- Description of all current debt, operation subsidies, and services provided (as applicable)
- Current rent roll
- 2 years of audits for project property (if available) OR 2 years of management income and expense statements for project property
- Most recent Quarter internally prepared income and expense statement.

*Please use the Maine Housing Underwriting spreadsheet or its tax credit equivalent

IV. SELECTION PROCESS

Selection criteria will be used in reviewing and scoring the applications.

A. Point System for Evaluating and Scoring Applications (Max 100)

Policy Objectives: Total 50 Points

Proposed use of funds to achieve the City of Portland's goals and address demonstrated need. 30 points

Maximum points will be awarded for those applications that:

1. Market Demand— 2 points
   a. 2 points high demand,
   b. 1 point moderate demand,
   c. 0 points does not demonstrate sufficient market demand
2. Zoning – 10 points
   a. 10 points Development requires no zoning amendments or waivers (include language which clarifies this also insures access to transit & consistency with Consolidated Plan)
   b. 5 points development requires waiver, but not amendment
   c. 0 points development requires zoning amendment
3. Economic diversity – 4 points
   a. 4 points creates housing options which promote economic diversity in the neighborhood in which the development is located
   b. 0 points does not promote economic diversity
4. CHDO – 4 points
   a. 4 points Developer and owner are both controlled by CHDO
   b. 2 points either developer or owner are controlled by CHDO
   c. 0 points neither developer nor owner are controlled by CHDO
5. City Subsidy – 10 points
   a. 10 points investment from City is <$10,000
   b. 8 points investment from City is <$12,000
   c. 6 points investment from City is <$14,000
   d. 4 points investment from City is <$16,000
   e. 2 points investment from City is <$18,000
   f. 0 points investment from City is > or = $18,000

Impact on surrounding neighborhood, including design compatibility and environmental issues. 20 points

Maximum points will be awarded for those applications where:

1) site selection -- 5 points
   a) 5 points -- fully appropriate for use,
   b) 3 points – appropriate, some concerns
   c) 0 points – significant concerns
2) Exterior Design -- 5 points
   a) 5 points -- the design is fully consistent with neighborhood design characteristics,

b) 3 points – the design is an adequate fit with the neighborhood design,
c) 0 points – the design is a significant outlier

3) Amenities and unit design -- 5 points
   a) 5 points – amenities & unit design are well thought out and appropriate for residents,
   b) 3 points -- amenities & unit design are adequate,
   c) 0 points – amenities and unit design raise significant concerns that resident needs will not be adequately addressed
4) Environmental -- 5 points
   a) 5 points – Phase I identifies no environmental issues
   b) 3 points – Phase I identifies an environmental issue, but a Phase II shows a feasible, economically viable resolution which is included in the budgets;
   c) 0 points – there are significant unresolved environmental issues, or no Phase I has been received.

Underwriting Criteria: Total 50 Points

Financial feasibility, including cost, development budget operating pro forma and the provision of secured and leverage funds. 20 points

Maximum points will be awarded for those applications that:

1. Development budget & sources and uses – 10 points
   a. 10 points – EVERY development budget line item for which there is a City of Portland guideline complies with that guideline AND all other line items are reasonable and customary;
   b. 8 points – ONE budget line item falls outside City guidelines or outside the standard of "reasonable & customary";
   c. 6 points – TWO budget line items item falls outside City guidelines or outside the standard of "reasonable & customary";
   d. Zero points – more than two budget items fail to meet City guidelines or fall outside "reasonable and customary"
2. Operating pro forma – 10 points
   a. 10 points – EVERY operating pro forma line item for which there is a City of Portland guideline complies with that guideline AND all other line items are reasonable and customary;
   b. 8 points – ONE budget line item falls outside City guidelines or outside the standard of "reasonable & customary";
   c. 6 points – TWO budget line items item falls outside City guidelines or outside the standard of "reasonable & customary";
   d. Zero points – more than two budget items fail to meet City guidelines or fall outside "reasonable and customary"

Applicant's ability to complete project, including development team experience, capacity, project readiness and timeframe for completion. 30 points

Maximum points will be awarded for those applications that:

1. Readiness to proceed – 10 points
   a. 10 points – at least one letter of commitment or interest is included and ALL projected sources are projected at terms and conditions consistent with the City's prior experience with the funder.

b. 5 – ALL projected sources of funding include letters of commitment, letters of interest, or, if no letter is included, are projected at terms and conditions consistent with the City's prior experience with this funder.
c. 0 – one or more sources are projected on terms that are not consistent with the City's prior experience with the funder and are not documented by letter(s) from funder(s).

2. Track record of development team – 10 points
    a. 10 – every development team member has a successful track record with this type of project and at this scale
    b. 7 – all but one development team members have a successful track record with this type of project and at this scale; one development team member has relevant experience but at a smaller scale or not of this project type
    c. 3 – two development team members, while having relevant experience, are new to this type of project or this scale of development
    d. 0 – the development team does not meet the criteria above
3. Current Capacity of development team – 10 points
    a. 10 – development team members have exceptional depth of human and financial resources to complete this project;
    b. 8 -- development team members have the human and financial resources to complete this project;
    c. 3 – development team has a staffing gap in a significant role and a plan to address that gap, OR there are some concerns about the financial resources of the team to move the development forward;
    d. 0 -- the development team does not meet the criteria described above

B. Evaluation and Selection Process and Timeframe

Applications will be reviewed by an evaluation team that will include City of Portland staff. The following process will be used:

1) All applications will be reviewed for completeness. Only complete applications will be reviewed under the scoring factors in order to recommend the most qualified applications based on the information submitted. The application review team may confer with the applicants and/or third parties to clarify or verify information and request additional information.

2) Recommendations, along with all applications and scoring information, will be forwarded to the City Council's Housing Committee for review and approval. Their recommendations will be forwarded to the City Council for final review and approval.

3) Applicants will be kept informed throughout the review process, specifically in regard to recommendations and funding levels.

4) The evaluation and review process should be substantially complete within 30 days of receipt of complete application. Applicants will be notified of their application status as soon as possible.

5) Based on City Council approval, successful applicants will receive a letter of funds reservation. A letter of funds reservation is not a commitment letter but an agreement to set aside budgeted funds for up to six months, to allow the project sponsor to proceed with securing other commitments.

V. Instructions and Other Information

The City of Portland reserves the right, at its sole discretion, to award all, a portion, or none of the available funding from this application, as well as reject any and all applications for city funding, based on the quality and merits of the applications received, or when it is determined to be in the public interest to do so. Furthermore, the City of Portland may extend deadlines and timeframes, as needed.

Confidentiality: Applications received by the City of Portland shall become a matter of public record subject to public inspection, except to the extent, which an applicant designates in writing, proprietary data to be confidential and submits that data under separate cover, such information may be held from public inspection, as provided in Maine law: 5 MRSA Sections 13119-A and 13119-B.

Compliance with Federal Law: The selected applicant will be required to certify that the development and management of the proposed housing will be in compliance with all applicable laws, executive orders, OMB Circulars and federal regulations, including but not limited to: Fair Housing Act, Equal Opportunity and Non-discrimination, National Environmental Policy Act (NEPA), the Uniform Relocation Assistance and Real Property Acquisition Policies Act, the Davis-Bacon Act, the Lead-Based Paint Poisoning Prevention Act, Flood Disaster Protection Act, Conflict of Interest, Contractor Debarment and Cost Principles.

Projects funded through HOME ~~All applications~~ must meet the rules and regulations of the HOME Program as noted in 24 CFR Part 92, as amended, and the requirements of the Consolidated and Further Continuing Appropriations Act of 2012 and 2013. Any costs incurred by the City to meet HOME Program regulations, such as newspaper advertisements, underwriting fees, etc., shall be passed along to the selected applicant.

VI. Equal Employment Opportunities

Vendor shall comply fully with the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998, as amended (WIA, 29 CFR part 37); the Nontraditional Employment for Women Act of 1991; title VI of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; title IX of the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR part 37.

VII. Reservation of Rights

The City of Portland reserve the right, at its sole discretion, to award all, a portion, or none of the available funding from this application, as well as reject any and all applications based on the quality and merits of the applications received, or when it is determined to be in the public interest to do so. Furthermore, the City of Portland may extend deadlines and timeframes, as needed.

The selection of a proposal through this application process does not guarantee any other City approvals. All projects will be subject to the City's standard development review process. Similarly, *selection of a proposal through this application process does not signify that the City will not request modifications to* *the proposed development plan or negotiate additional details, covenants or terms that are not specifically outlined in this application*.

The City of Portland reserves the right to substantiate any proposers' qualifications, capability to perform, availability, past performance records and to verify that the applicant is current in its financial obligations to the City of Portland.

All materials and equipment used as well as all methods of installation shall comply at a minimum with any and all Federal, OSHA, State and/or local codes, including applicable municipal ordinances and regulations.

The successful applicant shall agree to defend, indemnify and save the City of Portland harmless from all losses, costs or damages caused by its acts or those of its agents, and, before signing the contract, will produce evidence satisfactory to the City of Portland's Corporation Counsel of coverage for General Public and Automobile Liability insurance in amounts not less than $400,000 per person, for bodily injury, death and property damage, protecting the contractor and the City of Portland, and naming the City of Portland as an additional insured from such claims, and shall also procure Workers' Compensation insurance.

Pursuant to City of Portland procurement policy and ordinance, the City of Portland is unable to contract with businesses or individuals who are delinquent in their financial obligations to the City of Portland. These obligations may include but are not limited to real estate and personal property taxes and sewer user fees. Applicants who are delinquent in their financial obligations to the City of Portland must do one of the following: bring the obligation current, negotiate a payment plan with the City of Portland's Treasury office, or agree to an offset which shall be established by the contract which shall be issued to the successful applicant.

The City of Portland, Maine, reserves the right to waive any informalities in applications, to accept any application or portion thereof, and, to reject any and all applications, should it be in the best in the best interest of the City of Portland to do so.

It is the custom of the City of Portland, Maine to pay its bills 30 days following the receipt of correct invoices for all items covered by the approved application.

VIII. Appendices

Exhibit #1. HUD definition of a Community Housing Development Organization (CHDO)

IX. APPLICATION SIGNATURE PAGE *THIS PAGE MUST BE INCLUDED*

The UNDERSIGNED hereby declares that he/she or they are the only person(s), firm or corporation interested in this application as principal, that it is made without any connection with any other person(s), firm or corporation submitting an application for the same.

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

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

The proposer acknowledges the receipt of Addenda numbered ______________________________
If Applicable

COMPANY NAME: ____
(Individual, Partnership, Corporation, Joint Venture)

AUTHORIZED SIGNATURE: ______________________________ DATE: _______________
(Officer, Authorized Individual or Owner)

PRINT NAME & TITLE: ____

ADDRESS: ____

TELEPHONE: ___________________________ E-MAIL: ___________________________

FEDERAL TAX ID #: ______________________ DUNS #: ___________________________

In your organizations preceding completed fiscal year, did the organization receive:
(1) 80 percent or more of its annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements; and
(2) $25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements? ☐ Yes ☐ No

Does the public have access to information about the compensation of the executives in the organization through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (18 U.S.C. 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986? ☐ Yes ☐ No

NOTE: All bids must bear the handwritten signature of a duly authorized member or employee of the organization making the bid. **<u>This sheet must be signed and returned with the application package</u>**.

X. EXHIBIT #1 – DEFINITION OF A COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (24 CFR §92.2 and §92.300-303)

1. Is a private nonprofit organization under State or local laws;

2. Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

3. Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A community housing development organization may be sponsored or created by a for-profit entity, but:

    i. The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm.
    ii. The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for profit entity may not appoint the remaining two-thirds of the board members; and
    iii. The community housing development organization must be free to contract for goods and services from vendors of its own choosing;
    iv. The officers and employees of the for-profit entity may not be officers or employees of the community housing development organization;

4. Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)-1 or 1.501(c)(4)-1)), is classified as a subordinate of a central non-profit under section 905 of the Internal Revenue Code of 1986, or if the private nonprofit organization is a wholly owned entity that is disregarded as an entity separate from its owner for tax purposes (e.g., a single member limited liability company that is wholly owned by an organization that qualifies as tax-exempt), the owner organization has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 and meets the definition of "community housing development organization";

5. Is not a governmental entity (including the participating jurisdiction, other jurisdiction, Indian tribe, public housing authority, Indian housing authority, housing finance agency, or redevelopment authority) and is not controlled by a governmental entity. An organization that is created by a governmental entity may qualify as a community housing development organization; however, the governmental entity may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials or employees of governmental entity. Board members appointed by a governmental entity may not appoint the remaining two thirds of the board members. The officers or employees of a governmental entity may not be officers or employees of a community housing development organization;

6. Has standards of financial accountability that conform to 24 CFR 84.21, "Standards for Financial Management Systems;"

7. Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or bylaws;

8. Maintains accountability to low-income community residents by:

    i. Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations. For urban areas, "community" may be a neighborhood or neighborhoods, city, county or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire State); and
    ii. Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;

9. Has a demonstrated capacity for carrying out housing projects assisted with HOME funds. A designated organization undertaking development activities as a developer or sponsor must satisfy this requirement by having paid employees with housing development experience who will work on projects assisted with HOME funds. For its first year of funding as a community housing development organization, an organization may satisfy this requirement through a contract with a consultant who has housing development experience and will advise and train appropriate key staff of the organization. An organization that will own housing must demonstrate capacity to act as owner of a project and meet the requirements of §92.300(a)(2). A nonprofit organization does not meet the test of demonstrated capacity based on any person who is a volunteer or whose services are donated by another organization; and

10. Has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community before HOME funds are reserved for the organization. However, a newly created organization formed by local churches, service organizations or neighborhood organizations may meet this requirement by demonstrating that its parent organization has at least a year of serving the community.

CITY OF PORTLAND
Planning & Urban Development Department
Housing and Community Development Division

TO: Councilor Duson, Chair
Members of the Housing Committee

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

DATE: April 5, 2019

SUBJECT: 2019 Housing Trust Fund Annual Plan

The Housing Trust Fund is established by Section 14-489 of the City's Code of Ordinances. Section 14-489 (e) states that "the city council shall adopt a housing trust fund annual plan" and that the "housing committee of the city council or such other committee as the council shall designate shall conduct public hearings on the recommended plan and refer the matter to the council for action." The plan establishes the priorities in which the current balance of the Housing Trust Fund will be allocated.

Proposed Revisions to 2019 Housing Trust Fund Annual Plan

Funding Priorities: creation of workforce housing units through a public/private partnership.

Point System for Evaluating and Scoring Applications: added more detail and clarity to scoring categories.

Maximum Award Amount: Average city investment, excluding TIF financing, is $10,000. Maximum city contribution per unit will not exceed $18,000.

Staff Recommendation

Staff is requesting that the Housing Committee recommend to the City Council approval of the 2019 Housing Trust Fund Annual Plan.

389 Congress Street Room 312 · Portland, Maine 04101
207- 874- 8711 mpd@portlandmaine.gov · www.portlandmaine.gov

HOUSING TRUST FUND
2019 ANNUAL PLAN

BACKGROUND

The Housing Trust fund is established by Section 14-489 of the City's Code of Ordinances. Section 14-489 (e) states that "the city council shall adopt a housing trust fund annual plan" and that the "housing committee of the city council or such other committee as the council shall designate shall conduct public hearings on the recommended plan and refer the matter to the council for action."

The Annual Plan will establish the priorities in which the current balance of the Housing Trust Fund will be allocated. The plan is in line with the 2019 Housing Committee objective of increasing access to rental and ownership housing that is safe, affordable, and accessible for working and low-income families.

This budget is based on the balance in the Housing Trust Fund as of March 1, 2019. At this time, Housing Trust Fund revenue is generated from fees triggered by the Housing Preservation and Replacement Ordinance, a portion of revenue from the Short Term Rental Registration Program, fee-in-lieu contributions from the Inclusionary Zoning Ordinance (including the hotel inclusionary zoning fees), and other funding resources under Council consideration. The current unencumbered balance of the Housing Trust Fund is $1,275,820. While staff anticipates increases in revenue in the Housing Trust Fund as a result of the Inclusionary Zoning Ordinance and other sources being considered by the City Council, those anticipated resources are not included in the 2019 Annual Plan.

Sources and Uses of Housing Trust Fund:

YEAR	DEPOSITS		YEAR	EXPENDITURES	
2002/03	Maine Medical Center HRO	$ 315,580.00	2011	Avesta Oak Street Lofts	$ (380,585.00)
2002	Sportsman's Grill HRO	$ 40,000.00	2014	Housing First Pre-Development RFP	$ (75,000.00)
2009	Berlin City Auto HRO	$ 116,000.00	2015	65 Hanover & 52 Alder Sts Feasibility Study	$ (9,250.00)
2010	Stop n Shop HRO 2010	$ 289,250.00	2017	65 Munjoy Street	$ (175,000.00)
2012	Rockbridge/Eastland Park HRO	$ 42,500.00	2018	37 Front Street	$ (925,000.00)
2012	Riverwalk/Ocean Gateway HRO	$ 250,000.00	2018	977 Brighton Avenue	$ (300,000.00)
2012	118 Congress LLC Easement	$ 3,500.00		**Total Expenditures**	$ (1,864,835.00)
2017	Sale of Tax Acquired Property 91 & 97 Belfort Street	$ 86,424.00			
2017	Sale of Tax Acquired Property 116 Upper A Street	$ 78,527.00			
2017	443 Congress Street IZ	$ 280,000.00			
2018	62 India Street IZ	$ 276,500.00			
2018	Short Term Rental Fee transfer	$ 33,318.80			
	Previous INTEREST EARNED	$ 51,556.00			
2018	0 Thames Street (WEX) sale	$1,000,000.00			
2019	20 Thames Street IZ & Easement	$ 277,500.00			
	Total Deposits	**$3,140,655.80**		**BALANCE**	**$1,275,820.80**
HRO - Housing Replacement Ordinance; IZ = Inclusionary Zoning Fee-in-lieu					
as of 3-1-2019					

City Ordinance requires that the Housing Trust Fund Annual Plan include a description of the programs to be funded, a budget for each program and identify how the funds will be distributed among very-low (at or below 50% of the area median income), low (at or below 80% of the area median income) and moderate income (at or below 120% of the area median income) households.

The Housing Trust Fund is a valuable tool that can assist the City in meeting the goal of providing increased availability in all segments of the housing market. While the City has other resources such as the HUD HOME and CDBG Programs, those funds are limited in amount and scope. The proposed Housing Program budget for FY 2019-2020 includes $549,536 in HOME funding for affordable housing development. The HOME program restricts rental housing assistance to households at or below 60% of the area median income and home ownership assistance to households at or below 80% of the area median income. The CDBG program is restricted to households at or below 80% of the area median income. City Ordinance allows the Housing Trust Fund to assist households at or below 120% of area median income.

As always, the City should act prudently when deciding to invest these funds. The Housing Trust Fund should maintain a minimum balance of $500,000 in order to have resources to act quickly when there is an emergency, such as a need to cure a potential mortgage default that could result in loss of an affordable unit. This right to cure will be included in the affordable housing covenants that are recorded in the Cumberland County Registry of Deeds for each affordable unit.

FUNDING PRIORITIES

The purpose of the Housing Trust Fund is the "…promotion, retention and creation of an adequate supply of housing, particularly affordable housing, for all economic groups and to limit the net loss of housing units in the City." and "To serve as a vehicle for addressing very low, low and median income housing needs…". In an effort to ensure that these purposes are met, the Housing Trust Fund Annual Plan may identify specific priorities that support other city goals and priorities, for example goals from the Comprehensive Plan or the City Council Common Goals. A 2019~~8~~ priority will be to support the creation of workforce housing units through a public/private partnership to add rental and/or ownership units to the City's housing inventory.~~ the Portland Housing Authority in the implementation of their Strategic Vision Plan when other funding sources are not available. The Housing Authority's current priorities in that Plan are the Boyd Street and Front Street sites~~.

Allocation Process

Housing Trust Funds will be distributed through a competitive application process. A Notice of Funding Availability will be issued at a minimum of an annual basis to notify potential applicants that the application is available. Applications will be reviewed by an evaluation team of City of Portland staff who will evaluate and score each application utilizing the scoring factors outlined in Attachment #1 in order to recommend the most qualified application based on the information submitted. This information will also be included in the Affordable Housing Development Application.

- ~~*Proposed use of funds to achieve the City of Portland's goals and address demonstrated need.* 30 points~~

~~Maximum points will be awarded for those applications that demonstrate sufficient market demand, create housing options which promote economic diversity in the neighborhood in which the development is located, are consistent with the Comprehensive Plan, leverage funds efficiently, and include a policy prohibiting smoking.~~

- ~~*Financial feasibility, including cost, development budget operating pro forma and the provision of secured and leverage funds.* 25 points~~

~~Maximum points will be awarded for those applications that include a complete set of financial documents to support the financing request, contain a realistic set of sources and uses development budgets and a pro forma operating budget, include sufficient reserves for operations and maintenance, including pre-funded reserves, and long-term financial sustainability of the project is highly likely.~~

- ~~*Applicant's ability to complete project, including development team experience, capacity, project readiness and timeframe for completion.* 25 points~~

~~Maximum points will be awarded for those applications that demonstrate the readiness of the project to proceed, a development team with a successful track record in projects of similar size, scale, type and complexity to the proposed project and the capacity to fulfill their responsibilities.~~

- ~~*Impact on surrounding neighborhood, including design compatibility and environmental issues.* 20 points~~

~~Maximum points will be awarded for those applications where site selection is appropriate for use, no zoning amendments are required, the design is consistent with neighborhood design characteristics, amenities and unit design are well thought out and appropriate, where no environmental issues have been identified and meet the requirements of the City of Portland's Green Building Ordinance.~~

Recommendations will be forwarded to the City Council's Housing Committee for review. Housing Committee recommendations will be forwarded to the City Council for final review and approval.

Eligible Activities

Activities eligible for funding from the Housing Trust Fund are those that promote, retain, and create an adequate supply of housing, particularly affordable housing for all economic groups, and to limit the net loss of housing units in the city. Eligible activities may include: new construction, preservation/rehabilitation of existing affordable housing, adaptive reuse, acquisition, housing first.

In this Plan, adaptive reuse is defined as creating housing in an existing building that was originally built or designed for a use other than housing.

The Housing Trust Fund resources are also intended to promote the retention of affordable housing. Staff recommends that Housing Trust Fund resources be made available, if necessary, to exercise the City's right of first refusal in connection with potential foreclosure issues with affordable homeownership units. This is unlikely to occur in the near future but may come up as more workforce homeownership units are created through Portland's inclusionary zoning ordinance. The City shall have a right of first refusal if an affordable unit is forced to sell due to increased fees or has become delinquent in its payments and is in risk of foreclosure or any other legal threats to the Unit's affordability restrictions. The City shall also have the option of using City funds to support affordable units facing large special assessments that may pose a risk to the owner household's ability to maintain their unit's affordability. The City of Portland shall have the right of first refusal to purchase any affordable unit that is in jeopardy of losing its affordability restrictions due to foreclosure, delinquency of condominium fee payments, or any other cause outside of the agreed upon term of restriction. The City's Right of First Refusal is not intended to infringe upon the ability of a mortgage lender to recapture any money owed by the affordable unit owner. The intent is to ensure affordability of the unit for eligible households.

Financing Parameters

Housing Trust Funds should be a resource of last resort and should be focused on opportunities where other funding sources do not work or are not effective. Applicants requesting financial assistance from the Housing Trust Fund must provide document efforts made to obtain other private, federal, state or local resources for the project.

Form of Awards: A variety of funding mechanisms will be utilized including no-interest loans, below-market loans, forgivable loans, and grants. Type of funding will be determined after review of a number of factors including amount necessary to make the project feasible, the project type, income targeting, number of affordable units, and duration of the affordability period.

Maximum Award Amount: ~~An analysis of housing development subsidized by the City of Portland since 2000, shows that City has invested over $13 million, using various resources such as the HOME and CDBG Programs. That investment leveraged the creation of 951 units of housing. The average City investment per unit was $14,539. Based on this analysis, Housing Trust Fund awards will be determined on a per affordable unit basis. The City contribution per unit will not exceed $15,000. This amount may be adjusted at the discretion of the City Council. See the attached spreadsheet Subsidized Housing Development Since 2000.~~ Awards will be determined on a per affordable unit basis. The average City investment per unit, excluding TIF financing, is $10,000. The City contribution per unit will not exceed $18,000. This amount may be adjusted at the discretion of the City Council, only for unusual circumstances where a larger amount is the only way a project that meets other City goals is needed. In those cases, the higher cost per unit ratio must be tied into the goals outlined in the City's Comprehensive Plan.

Income Targeting

Housing Trust Fund resources should be focused on opportunities where other funding sources do not work or are not effective, such as projects designed to create housing affordable to households earning at or below 50% of the area median income, or projects designed to create housing affordable to households earning 80% to 120% of the area median income. Often, other funding sources, such as the Low Income Housing Tax Credit Program or the HOME Program, have restrictions or requirements that limit or prohibit the creation of housing affordable to those in the very low and moderate income ranges.

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.

Affordability Restrictions

Affordability restrictions are required. In the case of rental or cooperative units, the units must remain affordable for the life of the housing unit which is presumed to be a minimum of thirty (30) years.

Homeownership units must include resale restrictions that maintain an "equitable balance" between the interests of the owner and the City. These restrictions must be documented and recorded in the Cumberland County Registry of Deeds.

Sales must be made through an arms-length arrangement. No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a unit financed with Housing Trust Funds or receive any benefit related in any way to the administration or compliance with the conditions contained therein.

Affordable Housing Agreement

The owner of each affordable unit will be required to sign and record in the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City and to include the affordability restrictions as a covenant to the project's deed. The Affordable Housing Agreement shall be referenced directly in the property's deed unless prohibited by federal, state, or local law. In order to guarantee affordability in homeownership units, this recorded covenant will limit increases in sales price according to the calculation defined by the City as defined in the implementation regulations. It will limit the incomes of subsequent buyers to the same income limits initially applied. It will also provide a right of first refusal and other purchase rights to the City or its designee (e.g. another eligible household, or a nonprofit corporation).

Right of First Refusal

The City of Portland shall have the right of first refusal to purchase any affordable unit that is in jeopardy of losing its affordability restrictions due to foreclosure, delinquency of condominium fee payments, or any other cause outside of the agreed upon term of restriction. The City's Right of First Refusal is not intended to infringe upon the ability of a mortgage lender to recapture any money owed by the affordable unit's owner. The intent is to ensure affordability of the unit for eligible households.

Implementing Regulations

Regulations to further specify the details of the parameters outlined in this Annual Plan, shall be developed, including, but not limited to:

1. Specific methodology for income verification; and
2. Underwriting criteria.

Attachments

#1 Point System for Evaluating and Scoring Applications

Attachment #1

Policy Objectives: Total 50 Points

Proposed use of funds to achieve the City of Portland's goals and address demonstrated need. 30 points

Maximum points will be awarded for those applications that:

1. Market Demand— 2 points
   a. 2 points high demand,
   b. 1 point moderate demand,
   c. 0 points does not demonstrate sufficient market demand
2. Zoning – 10 points
   a. 10 points Development requires no zoning amendments or waivers (include language which clarifies this also insures access to transit & consistency with Consolidated Plan)
   b. 5 points development requires waiver, but not amendment
   c. 0 points development requires zoning amendment
3. Economic diversity – 4 points
   a. 4 points creates housing options which promote economic diversity in the neighborhood in which the development is located
   b. 0 points does not promote economic diversity
4. CHDO – 4 points
   a. 4 points Developer and owner are both controlled by CHDO
   b. 2 points either developer or owner are controlled by CHDO
   c. 0 points neither developer nor owner are controlled by CHDO
5. City Subsidy – 10 points
   a. 10 points investment from City is <$10,000
   b. 8 points investment from City is <$12,000
   c. 6 points investment from City is <$14,000
   d. 4 points investment from City is <$16,000
   e. 2 points investment from City is <$18,000
   f. 0 points investment from City is > or = $18,000

Impact on surrounding neighborhood, including design compatibility and environmental issues. 20 points

Maximum points will be awarded for those applications where:

1) site selection -- 5 points
   a) 5 points -- fully appropriate for use,
   b) 3 points – appropriate, some concerns
   c) 0 points – significant concerns
2) Exterior Design -- 5 points
   a) 5 points -- the design is fully consistent with neighborhood design characteristics,
   b) 3 points – the design is an adequate fit with the neighborhood design,
   c) 0 points – the design is a significant outlier
3) Amenities and unit design -- 5 points
   a) 5 points – amenities & unit design are well thought out and appropriate for residents,
   b) 3 points -- amenities & unit design are adequate,
   c) 0 points – amenities and unit design raise significant concerns that resident needs will not be adequately addressed

4) Environmental -- 5 points
   a) 5 points – Phase I identifies no environmental issues
   b) 3 points – Phase I identifies an environmental issue, but a Phase II shows a feasible, economically viable resolution which is included in the budgets;
   c) 0 points – there are significant unresolved environmental issues, or no Phase I has been received.

Underwriting Criteria: Total 50 Points

Financial feasibility, including cost, development budget operating pro forma and the provision of secured and leverage funds. 20 points

Maximum points will be awarded for those applications that:

1. Development budget & sources and uses – 10 points
   a. 10 points – EVERY development budget line item for which there is a City of Portland guideline complies with that guideline AND all other line items are reasonable and customary;
   b. 8 points – ONE budget line item falls outside City guidelines or outside the standard of "reasonable & customary";
   c. 6 points – TWO budget line items item falls outside City guidelines or outside the standard of "reasonable & customary";
   d. Zero points – more than two budget items fail to meet City guidelines or fall outside "reasonable and customary"
2. Operating pro forma – 10 points
   a. 10 points – EVERY operating pro forma line item for which there is a City of Portland guideline complies with that guideline AND all other line items are reasonable and customary;
   b. 8 points – ONE budget line item falls outside City guidelines or outside the standard of "reasonable & customary";
   c. 6 points – TWO budget line items item falls outside City guidelines or outside the standard of "reasonable & customary";
   d. Zero points – more than two budget items fail to meet City guidelines or fall outside "reasonable and customary"

Applicant's ability to complete project, including development team experience, capacity, project readiness and timeframe for completion. 30 points

Maximum points will be awarded for those applications that:

1. Readiness to proceed – 10 points
   a. 10 points – at least one letter of commitment or interest is included and ALL projected sources are projected at terms and conditions consistent with the City's prior experience with the funder.
   b. 5 – ALL projected sources of funding include letters of commitment, letters of interest, or, if no letter is included, are projected at terms and conditions consistent with the City's prior experience with this funder.
   c. 0 – one or more sources are projected on terms that are not consistent with the City's prior experience with the funder and are not documented by letter(s) from funder(s).
2. Track record of development team – 10 points

a. 10 – every development team member has a successful track record with this type of project and at this scale
b. 7 – all but one development team members have a successful track record with this type of project and at this scale; one development team member has relevant experience but at a smaller scale or not of this project type
c. 3 – two development team members, while having relevant experience, are new to this type of project or this scale of development
d. 0 – the development team does not meet the criteria above

3. Current Capacity of development team – 10 points
   a. 10 – development team members have exceptional depth of human and financial resources to complete this project;
   b. 8 -- development team members have the human and financial resources to complete this project;
   c. 3 – development team has a staffing gap in a significant role and a plan to address that gap, OR there are some concerns about the financial resources of the team to move the development forward;
   d. 0 -- the development team does not meet the criteria described above

CITY OF PORTLAND
Planning & Urban Development Department
Housing and Community Development Division

MEMORANDUM

To: City of Portland Housing Committee
From: Amanda Methot, HCD Program Manager
RE: Community Development Week and National Fair Housing Month
Date: April 4, 2019

Community Development Week: A National Affair

National Community Development Week (CD week) was created in 1986 to bring national attention to the Community Development Block Grant (CDBG) Program at a time when the program was facing scrutiny by Congress. The week-long celebration has expanded to include the HOME Investment Partnerships (HOME) Program. National Community Development Week provides the opportunity for communities to promote, educate and advocate on behalf of both programs. It is intentionally held during the Congressional appropriations season to allow for a concerted grassroots effort and voice to be heard on the importance of both programs and their impact on communities nationwide. This year the week will run from April 22- April 26

Currently the CDBG and HOME programs have been zeroed out in the 2020 Federal Budget proposal by the President. Communities across the country are hopeful that participating in National Community Development Week will provide insight into the success and need of these programs to the general public as well as our Congressional Delegates.

April is National Fair Housing Month

National Fair Housing Month promotes a national concerted effort to end housing discrimination and raise awareness of fair housing rights. The city will host an event that will include a panel of legal and lead professionals will discuss tenant rights and lead testing practices. The event will also have public health nurses on site to test blood lead levels in children.

City of Portland Community Development Week

History and Background

The City of Portland has been a recipient of CDBG funds for almost 5 decades and HOME funds since 1992. Each year the staff ensures that a proclamation is made publically recognizing CD week, as well as a press conference to discuss the accomplishments of the year. A display is set up in the city hall rotunda to promote the City's CDBG and HOME programs. In addition, federal and state representatives are invited to attend the press conference as well as additional events that have been planned.

HCD staff take this opportunity to be creative in presenting the work CDBG and HOME funding makes possible, and to get the public engaged. In 2017 the City received a John A. Sasso National Community Development Week Award. The award is given to Grantees as a means of recognizing outstanding member efforts to promote and celebrate the Community Development Block Grant (CDBG) Program and the HOME Investment Partnerships (HOME) Program during National Community Development Week. The City of Portland, along with 13 other communities were awarded and recognized at the 48th NCDA Annual Conference in 2017.

2019 Community Development Week and National Fair Housing Month

HCD Staff have been working hard on creating a memorable week. The rotunda will have a completely new display this year consisting of professionally made banners and informational signs. In addition, staff created a running slide show of past and future projects to have on display for staff and patrons of City Hall. In addition to the events celebrating CD Week, we will also be highlighting National Fair Housing Month with a Fair and Healthy Housing Event scheduled for Wednesday, April 24th.

In addition, on April 22, the City Council will be asked to approve amendments to Chapter 6, Section 6-225 of the City's Ordinance to assist with the recruitment of the first members to the Rental Housing Advisory Committee. The Committee will be tasked with providing the Housing Committee with recommendations or proposals for improvements, modifications, or changes to the City's housing ordinance or policies and identifying educational opportunities, seminars, and materials that would be useful to landlords and tenants.

The tentative event schedule is as follows:

- Monday April 22:
  - Unveiling of the Rotunda display
  - Online voting opens for public input on goals and priorities of the next 5 year consolidated plan
  - Subrecipient Spotlight (online event)
  - Final Council vote on CDBG allocations, HOME budget, and ESG budget
- Tuesday April 23
  - Press Conference in the Rotunda
  - Open House tour- Wayside Food 11:00am-12:00pm
  - Subrecipient Spotlight (online event)
  - Tasters and Makers Expo, an exposition open to the public highlighting our Business Assistance Program Subrecipients of past and present, 4:00pm-6:00pm in the Merrill Auditorium Rehearsal Hall (tentative)
- Wednesday April 24
  - Subrecipient Spotlight (online event)
  - Walking Tour of affordable development projects on the peninsula, 11:00am-1:00pm
  - Open House Tour – Milestone Recovery 4:00pm-5:00pm
  - Fair and Healthy Housing Event, a panel of legal and lead professionals will discuss tenant rights and lead testing practices. The event will also have public health nurses on site to test children, 5:30pm-7:30pm space TBD
- Thursday April 25
  - Subrecipient Spotlight (online event)
  - Open House Tour- Catherine Morrill Day Nursery, 9:30am-10:30am

    - Open House Tour- Wayside Food, 11:00am-12:00am
- Friday April 26
    - Subrecipient Spotlight (online event)
    - Open House Tour- Immigrant Legal Advocacy Project, 9:00am-10:00am

The City will be advertising the events heavily for a week leading up the CD Week as well as sending out news flashes and reminders to community groups throughout the week. In addition, staff has been in contact with multiple media outlets regarding CD Week to ensure there is coverage at the major events. Media coverage is key to keeping the conversation about housing and community development going after the week has passed.

Draft 2019 Housing Committee Work Plan
as of April 2, 2019

April 10, 2019

1. Housing Policy Discussion – Non-Renewal of Leases and Notification Requirements, Voucher/Rental Subsidy Discrimination, Rental Application Fee Abuse
2. (Action Item) Affordable Housing Development Application - Review and Approval to Issue by the Committee
3. (Action Item) Review and Recommendation to the City Council of the 2019 Housing Trust Fund Annual Plan
4. Community Development Week – April 22-26/Fair Housing Month
5. 2019 Work Plan Discussion

May 8, 2019

1. Report from the Permitting and Inspections Department on the implementation and outcome of initiatives concerning the permitting and review process, time frames, etc.
2. Report from Planning & Urban Development regarding development trends and the site plan review process.
3. Review and Discussion of possible revisions to City Code Chapter 14, Division 23 Nonconforming Use and Nonconforming Buildings, Section 14-391 Nonconformity as to number of dwelling units.
4. Review of FY20 HUD Annual Allocation Plan
5. 2019 Work Plan Discussion

June 12, 2019

1. Review Funding Requests Received from the Affordable Housing Development Application
2. 2019 Work Plan Discussion

July 10, 2019

1. 2019 Work Plan Discussion

August 14, 2019

1. 2019 Work Plan Discussion

September 11, 2019

1. Presentation, Overview and Integrated Report from Permitting and Inspections and Fire Department re: Short-term and Long-term Rental Housing Safety & Inspection Program - Implementation and Financial Report (Public Comment)
2. Review of FY19 HUD Consolidated Annual Performance Report
3. Communication Item: FY19 HUD Consolidated Annual Performance Report
4. 2019 Work Plan Discussion

October 9, 2019

1. Presentation of 2019 Biennial Housing Report
2. 2019 Work Plan Discussion

November 13, 2019

1. 2019 Work Plan Discussion

December 11, 2019

1. Review of 2019 Annual Committee Report
2. 2019 and 2020 Work Plan Discussion (new and/or updated recommendations to forward to the 2020 Housing Committee)

COMPLETED WORK

January 9, 2019

1. 2019 Work Plan Discussion and Preparation for Council Goals and Objectives Setting Session

February 13, 2019

1. Review, Discussion and Recommendation to the City Council of Proposed Portland Development Corp. By-Law Modification and Program Guideline Amendments to allow the use of Brownfields Funds for Residential Projects.
2. Housing Committee Accomplishments 2016-2018

3. Update on Rental Housing Advisory Committee
4. Review and discussion of opportunities to engage the city in a public/private partnership to add housing units to the City's housing inventory utilizing city-owned property. (Auburn St., 99 Capisic St., West School Site.) **Possible Executive Session**
5. 2019 Work Plan Discussion – a. Housing Committee Goals for 2019; b. March meeting date

March 7, 2019 (Joint Meeting with Finance Committee)

1. Housing Trust Fund Discussion

March 27, 2019

1. (Action Item) Housing Program Budget - Review and Recommendation to the City Council
2. (Action Item) Rental Housing Advisory Committee Update and Proposed Ordinance Amendments
3. 2019 Work Plan Discussion