Housing & Economic Development Committee Meeting
Tuesday, August 15, 2023 at 5:30 PM

MEMBERS
Councilor Pious Ali, Chair
Councilor Roberto Rodríguez
Councilor Mark Dion
Councilor Regina Phillips

To submit written public comment on an agenda item, email edd@portlandmaine.gov. Submissions must be received by 12:00 pm the day before the Housing & Economic Development meeting to guarantee their inclusion in the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the name of the agenda item (see below).

REMOTE ACCESS INFORMATION

The Housing & Economic Development Committee will conduct this meeting remotely via Zoom pursuant to the Remote Meeting Policy adopted by the Portland City Council. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live either in person or via Zoom, a recording will be available in the Agenda Center following the meeting.

For public comment via Zoom, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

Please click the link below to join the webinar:

https://portlandmaine-gov.zoom.us/j/88317133775?pwd=SUwxaXovTU9nMHZrRi9UQmN4YXVQdz09
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Or One tap mobile :
+13052241968,,88317133775# US
+13092053325,,88317133775# US
Or Telephone:
Dial(for higher quality, dial a number based on your current location):
+1 305 224 1968 US
+1 309 205 3325 US
+1 312 626 6799 US (Chicago)
+1 646 931 3860 US
+1 929 205 6099 US (New York)
+1 301 715 8592 US (Washington DC)
+1 689 278 1000 US
+1 719 359 4580 US
+1 253 205 0468 US
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
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Webinar ID: 883 1713 3775
International numbers available: https://portlandmaine-gov.zoom.us/u/kzYxPt9Mk

1. Review and accept Minutes of previous meeting held on June 20, 2023.

a. See attached Minutes for review/approval.

2. Executive Session: Pursuant to 1 M.R.S.A. 405(6)(C) and 5 M.R.S.A. 13119-A, the Committee will go into executive session to provide staff direction on negotiations with USL Soccer proposal at Fitzpatrick Stadium.

3. Review, consideration, and feedback on proposed revisions to the Outdoor Dining on Public Property Program (sidewalks only).

a. See attached Memorandum and backup.

4. Public Comment - Review and recommendation to the City Council regarding a proposed Affordable Rental Housing Incentive Program.

a. See attached Memorandum and backup.

5. Reconsideration of changes to the City's Tax Increment Financing Policy - feedback from the Committee regarding additional information needed from staff.

a. See attached Memorandum and backup.

6. Communication - No vote or public hearing required.

a. See attached Memorandum and backup.

Next Meeting Date: September 19, 2023

Minutes

Remote Housing and Economic Development Committee

June 20, 2023

NOTE: This meeting was held via Zoom and can be viewed at this link:

https://www.portlandmaine.gov/602/Agendas-Minutes

These Minutes provide a record of those in attendance, general discussion taking place, and motions made.

A remote meeting of the Housing and Economic Development Committee (HEDC) of the Portland City Council was held on Tuesday, June 20, 2023, at 5:30 p.m. via Zoom. Present from the Committee were Chair Councilor Pious Ali, and members Councilors Mark Dion (joining the meeting shortly after it started), Regina Phillips, and Roberto Rodriguez. Present from the City staff were Interim Housing and Economic Development Department Director Mary Davis, Special Projects Director/Planning Nell Donaldson, Assistant City Manager Anne McGuire, Interim Corporation Counsel Michael Goldman, Planning and Urban Development Director Christine Grimando, Principal Adm. Officer Lori Paulette, and Housing Program Manager Victoria Volent.

Item #1: Review and vote on April 25, 2023 draft meeting Minutes.

On motion made by Councilor Phillips, seconded by Councilor Rodriguez, the Committee voted 3-0 to accept the Minutes as published.

Councilor Dion joined the meeting at this time.

Item #2: Review of 2022 Annual Housing Report

Ms. Volent provided an overview noting that the Report covers development trends, finances, and various projects. The Planning Department would provide a summary of Part I, and Housing would provide a summary of Part II.

Ms. Grimando provided a summary of Part I pertaining to housing development and policy. She noted that of the 2022 housing approvals, many were for 10+ units, showing higher density developments, while also noting that these are approvals only - not completed developments. Ms. Grimando then highlighted housing production by Certificates of Occupancy issued from 2017, and these have gone up from 504 in 2017 to 1,948 in 2022 – noting that Portland has strived to create more tools to help spur housing developments, with multi-family developments out pacing single-family developments.

Ms. Donaldson continued noting that, in 2021, more rental housing was approved than ownership, and that reversed in 2022. Most of the housing that was approved was on the peninsula. The City's Land use policy was amended to encourage more housing production and expedited review of affordable housing. This garnered strong encouragement from the public.

Ms. Donaldson then noted that staff participated as a member of the Peer Cities Network of the *Housing Solutions Lab* at New York University. At the conclusion of the year-long cohort, a list of ideas to encourage additional housing production in Portland resulted and work of pursuing concepts is expected to continue over the coming months and years.

Regarding LD2003 signed into law by Governor Mills April 2022 to increase housing opportunities, Ms. Donaldson added there will be more public engagement on this in the

Summer but, for the most part, Portland's existing Land Use Code meets and, in many cases, exceeds many of LD 2003 requirements.

Ms. Volent then highlighted Part II of the report, particularly Federal, State, and local resources to assist with more housing production. Locally, in 2022, 63 rental units were supported with AHTIF; sources to increase the Jill C. Duson Housing Trust Fund Housing Trust Fund (HTF) included over $860,000 from Inclusionary Zoning fee-in-lieu payments, and another $650,000 is anticipated from Inclusionary Zoning fee-in-lieu payments into the HTF from the project at 54 York Street. The Federal HOME program supported over $650,000 for Portland's housing programs.

These sources helped with the developments at the former West School on Dougherty Street; 83 Middle Street AHTIF project, turning a City-owned parking lot into 45 affordable housing units and 11 for long-stayers in shelters; 155 Danforth (known as the 66 State Street AHTIF) development of 30 affordable rental units, and creating transitional opportunities to stable housing opportunities; Washington Gardens AHTIF for 100 units for affordable housing to be online soon; and, Portland Housing Authority Front Street AHTIF in three phases ongoing.

Ms. Volent said that staff monitors all of these projects, which includes monitoring income qualifications, rent, onsight monitoring, meeting maintenance standards - in partnership with Maine Housing.

Councilor Rodriguez thanked staff for the presentations and report and asked Ms. Davis if the position requested in Housing in the FY2024 budget is to assist with monitoring, and Ms. Davis answered in the affirmative. Both she and Ms. Volent assist with the development process as a whole.

Councilor Rodriguez appreciated the feedback from the NYU session, and looks forward to the Recode getting to the Council for action.

Councilor Dion also appreciated the report and presentation. He then questioned future density and goals, particularly to discuss this with homeowners as to what their neighborhoods may look like in the future.

Ms. Grimando responded that density will be lower in neighborhoods and they would still feel like neighborhoods, noting more discussion and outreach will take place this Summer and Fall.

Councilor Dion requested a one-page summary to understand what density means when we move about Portland.

Ms. Donaldson noted that Recode Phase II will be releasing the first wave of edits within the next few weeks and will have various public forums to obtain feedback, including Planning Board workshops. She requested any and all assistance to get this word out. The release of this will also be posted in the weekly news roundup on the website.

Councilor Phillips thanked all for the thorough report and is very interested in continuing discussion regarding affordable housing, including inclusionary zoning and future developments. Councilor Dion also noted interest in developments such as Logan Place to take people off the street.

Staff and Committee discussed the various sources of funding for housing developments and restrictions tied to those funding sources, as well as partnerships with housing organizations such as Portland Housing and Avesta. These need to continue and grow and have an equity lens for support across diverse communities.

Item #3: Preview of Agenda for City Council Affordable Housing Workshop (June 28).

Mary Davis presented a high level overview of the information that will be provided to the full Council during their June 28 Affordable Housing Workshop. Topics to be discussed include funding resources (HOME, CDBG, Jill C. Duson Housing Trust Fund, Affordable Housing Tax Increment, and City-owned property) and how they work. Chair Councilor Ali requested the presentation memo to the Council include a link to the Power Point Presentation from Permitting and Inspections that highlights the number of improvements the Department made to streamline the permitting process.

Item #4: Approve and Recommend an Affordable Housing TIF for 15 Casco Street (Public Hearing)

Prior to the discussion on 15 Casco Street, Council Phillips recused herself from the agenda item.

Victoria Volent presented the request from Equality Community Center for an Affordable Housing TIF of 75% for 30 years to construct a five-story elevator-assisted building with 45 rental units for low income households. The building would be comprised of 12 studio (8 at 50% AMI and 4 at 60% AMI), 34 one bedroom (21 at 50% AMI and 13 at 60% AMI) and, 8 two-bedroom apartments (4 at 50% AMI and 4 at 60% AMI). Of the 54 units, 21 would be reserved for households earning at or below 60% AMI (i.e. $56,800 for two people) while the remaining 33 units would be reserved for households earning at or below 50% AMI (i.e. $47,350 for two people).

Mary Davis noted the City continues to work with the developer and is requesting the Housing and Economic Development Committee approve and recommend to the City Council support of the Affordable Housing TIF proposal at no higher than 55% for 30 years.

Committee members posed clarifying questions regarding the percentage of the request; site control; timing deadlines; scoring impacts; and density.

Chair Councilor Ali opened the meeting for public comment.

Laura Reading of Developers Collaborative noted the size of the project is based on balancing a couple of factors including the tax credit cap of $30,000 per unit and a funding cap of $1.44 million per project. Subsequently, anything above 48 units does not benefit from the primary funding source. This project has 54 units which is a balance between maximizing the footprint and the 48 units. Another factor is the wood construction which keeps the project at four stories above the first floor podium. Additional height would greatly increase the cost of construction without any additional funding sources.

Brian Eng of 33 Storer Street supports the projects and acknowledges the constraints placed on the project through LIHTC funding. He also expressed his support for the funding available through the Jill C. Duson Housing Trust fund for housing projects aimed at households earning 80 -120% AMI.

George Rheault of 28 Hanover Street referenced the downtown height overlay map and noted there are a few parcels within the overlay district that would allow buildings to be as tall as 210 feet. The parking lot at 15 Casco is one such parcel. Mr. Rheault expressed his concern the City is not ambitiously encouraging a large development in replace of the proposed low income housing project. He suggested the Council postpone action to reconsider its options so as not to miss out on this huge opportunity.

Chair Councilor Ali closed the public comment session.

On motion made by Councilor Rodriguez seconded by Councilor Dion, the Committee voted 3-0 to approve and recommend to the City Council support of the Affordable Housing TIF proposal at no higher than 55% for 30 years conditioned upon the final underwriting recommendation and evidence of site control.

Item #5: Communications: 2023 Work Plan and Schedule

Councilor Philips rejoined the meeting.

The Committee held a discussion regarding their schedule for the months of July and August. The Committee determined they would not meet in July and would meet on August 15.

On a motion made by Councilor Dion, seconded by Councilor Phillips, the Committee voted 4-0 to adjourn the meeting at approximately, 7:41 p.m.

Respectively submitted, Lori Paulette and Victoria Volent

City of Portland | Housing and Economic Development Department
Mary P. Davis, Interim Director

MEMORANDUM

To: Councilor Pious Ali, Chair
Members of the Housing and Economic Development Committee

From: Mary Davis, Interim Director, Housing and Economic Development Department

Date: August 8, 2023

RE: Proposed Revisions to the Outdoor Dining on Public Property Program

In response to inquiries from area businesses to expand the Outdoor Dining on Public Property Program, Housing and Economic Development Department staff, in partnership with the Permitting and Inspections Department and the Public Works Department, created a survey that was sent to all establishments that currently have an outdoor dining on public property license. The survey was sent to 73 email addresses and was open for responses for three weeks. Seventeen responses were received (23% response rate). Seven respondents were strongly in favor of extending the outdoor dining program in the winter with November being the month with the highest interest.

Extending the outdoor dining program through the winter months presents several challenges, the most significant being snow removal operations (see attached memo dated May 10, 2022 regarding staff feedback on the concept of a Winter Outdoor Dining Program). Given those concerns, staff is suggesting that the outdoor dining on public property be extended through November 30, for sidewalk dining only. Currently establishments that have a license for a parklet on public property can operate from April 15 – October 31. No changes are proposed for this program.

Currently, establishments that have a license to operate outdoor dining on a public sidewalk can operate from April 1 – November 15. Under this new proposal, establishments with a parklet license can apply for a sidewalk dining license and extend their outdoor dining options through November 30 and establishments with a current sidewalk license can extend their outdoor dining options through November 30.

Fees: Establishments with existing license to operate outdoor dining on a public sidewalk, will not incur additional fees.

Establishments wishing to convert from a Parklet to Sidewalk license for the time period of November 1, 2023 to November 30, 2023 will work with Permitting and Inspections Staff to convert the license. Applicants will not incur additional fees.

These changes can be made administratively and do not require council action.

Attachment:
5-10-2022 Winter Outdoor Dining Memo
Outdoor Dining on Public Property Administrative Rules
Parklet Outdoor Dining Rules

City of Portland | Executive Department
Dena Libner, *Chief of Staff*

To: Members of the Housing & Economic Development Committee
From: Dena Libner, Chief of Staff
Date: May 10, 2022
Re: Staff Feedback on Winter Outdoor Dining Program

Summary

The purpose of this memo is to share staff feedback on the concept of a Winter Outdoor Dining Program in Portland. While we share the Committee's interest in supporting small businesses, our experience in administering a winter outdoor dining program during the pandemic leads us to believe that the benefits of and demand for such a program do not justify the significant cost.

Feedback: Low Demand, High Costs

Given existing staffing levels and programs, we would not be able to develop, administer, and enforce regulations related to a winter outdoor dining program without hiring additional staff. The Permitting & Inspections Department estimates that up to three new staff members (a plan reviewer, an inspector and a licensing assistant) would be needed for these purposes, carrying a cost of approximately $200,000 annually.

The consequences of an understaffed program were obvious during the pandemic, when the City continued its outdoor dining program through the winter. In winter 2020/2021, 42 restaurants received outdoor dining permits. However, only a small minority used them. Instead, they used parking spaces intended for parklets as storage space for tables, chairs, and concrete barricades. The end result - toppled furniture, piles of dirty snow, and the unnecessary loss of parking space - created an atmosphere of neglect, not vibrancy.

A winter outdoor dining program would also require the development of seasonally-unique requirements that take into account snow removal operations, winter driving conditions, and demand for heaters, among other things. Making sure these requirements are enforced in the field and that parking spaces are used for parklets, not storage, is costly, requiring regular inspections and re-inspections.

In addition to staffing costs, the Department of Public Works' placement and removal of additional barricades would carry a cost of up to $100 per block (~$800 per parklet). In addition, the loss of wintertime parking revenue is estimated at approximately $460 per month, per parklet.

Snow removal crews also observed safety issues resulting from the buildup of snow and ice next to parklet blocks. The buildup causes the navigable part of the roadway to narrow significantly over the course of the winter, making wintertime driving more difficult than usual. Plowing alongside and around parklets also slows snow removal operations, impacting our ability to make all roads as safe as possible for drivers.

As referenced above, demand for outdoor dining in the winter has proven to be low. During the pandemic - a time when businesses were exploring every opportunity to survive - very few were interested in continuing to operate outdoors past mid-November. In the 2020 outdoor dining season (April to November), 322 outdoor dining permits were issued. That winter (December to April), only 43 outdoor dining permits were issued - most were not used. In April 2021, however, the number of active outdoor dining permits skyrocketed to 299.

Recommendation

Currently, the City of Portland's outdoor dining season for parklets runs from April 15 to October 31. This schedule was established by the City Council in 2019, and is outlined in Sec. 25-27(b)(1) of the City of Portland Code of Ordinances.[1]

To respond to the growing interest in outdoor dining, we suggest that the Housing & Economic Development Committee consider recommending an amendment to Section 25 of City Code to increase the parklet outdoor dining season by an additional month (April 1 to November 15), providing restaurant owners with more time during which they can operate outdoors.

[1] The outdoor dining season for all other public property is April 1 to November 15. This schedule is not set forth in City Code; we believe it may have been established as a Department rule, but have been unable to confirm.

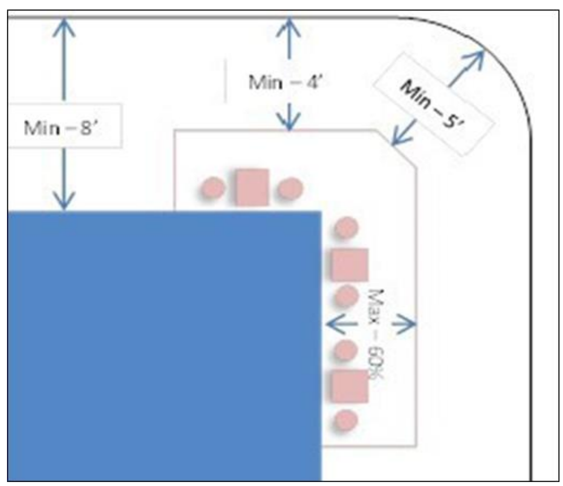
City of Portland | Permitting & Inspections Department
Jessica Hanscombe, *Director*

Outdoor Dining on Public Property
Administrative Rules

I. <u>Design and Construction</u>

- Location of proposed space must be on a sidewalk that is at least 8' in width.
- Outdoor dining area shall not exceed 60% of the sidewalk width.
- A continuous, unobstructed sidewalk passage of 4 feet from the outer boundary of the seating area to the curb must be maintained. If the passage is not straight due to existing obstacles, then additional width may be required. Any changes to existing straight passage is at the discretion of the City.

Existing Side Width (Property line to curb)	**Sidewalk Dining Allowed?**
< 8'-0"	No
≥ 8'-0"	Yes - up to 60%
Sidewalk Type	**Required Passage Width**
Straight Section	4'-0"
Corner Section	5'-0"



- Egress from buildings must be maintained free of obstruction.
- Permanent fixtures, such as awnings, require a building permit separate from the Outdoor Dining permit and subject to approval by the Building Authority.

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- Umbrellas do not require a permit.
- Umbrellas must be secured and maintain the height clearance for sidewalk passage.

II. **Barriers**

- If barriers are proposed, they must be free-standing. Physical attachments to a building are not allowed.
- Barriers are required if alcohol service is provided.
- Stanchions and ropes are encouraged. Sectional fencing is allowed with a high degree of visual transparency (at least 50% open). Solid or opaque barriers are not allowed.
- Shall not exceed 42” in height and may not include commercial signage.

Example barrier types that meet regulation

III. **Maintenance and Operations**

- Operation of outdoor dining space is allowed beginning on April 1st and ends November 15th of every year. All outdoor dining components shall be removed before snowfall and while any snow or ice exists within four feet of the outdoor dining area. The City will not be responsible for damage to any property that is not removed prior to sidewalk maintenance.
- Outdoor dining components must be within the permitted area and allow safe passage of pedestrian traffic. Failure to comply may result in a revocation of the permit.
- No food shall be prepared in the designated outdoor dining area. Outdoor dining areas are expressly designated for dining and dining service. Walk-up and take-out services are not allowed in outdoor dining spaces on public property.
- Outdoor dining areas must meet ADA regulations and accessible seating is required.
- The permit holder is responsible for keeping the outdoor seating area clean.

Approved:

______________________________ ____

Date Signed: Danielle P. West, Interim City Manager

City of Portland | Permitting & Inspections Department
Jessica Hanscombe, *Director*

Parklet
Administrative Rules

I. <u>Parklet Regulations</u>

- Any food service operation located on City property pursuant to a permit issued hereunder must comply with state and local laws with respect to service of food and/or alcohol.
- For any outdoor dining operation located in a public parking space, the permit holder shall construct a platform, on which tables and chairs will sit. The platform must be built of durable, slip resistant materials such as composite plastic or construction-grade lumber. This platform may remain for the entire outdoor dining season (April 15-October 31) but must be removed upon conclusion.
  - A Temporary Tent/Stage Permit must be applied for and approved annually before the platform is put in place.
- Any space occupied hereunder must be laid out in such a way that it complies with the requirements of the Americans with Disabilities Act, including the requirement that at least 5% of total seating be accessible. The required platform must be flush with any abutting sidewalk.
- Any movable items on the outdoor dining area must be secured against wind and theft and locked or removed when the business is closed.
- Any outdoor dining spaces permitted hereunder must be located immediately in front of the licensed business. Where parking spaces are not striped (such as in multi-space meter areas) the location of any outdoor dining space must be situated to minimize loss of available parking spaces.
- Only 2-hour, metered parking spots can be utilized. Requests for exceptions will be considered on a case-by-case basis. Parking spot size is 8 feet by 20 feet.
- Barricades will be placed at the front and rear sides of the outdoor dining platform by the Department of Public Works.
- Construction of the platform must allow water runoff to easily flow under the platform.
- No attachments to the pavement or curbing are permitted.
- No covers are permitted over the outdoor dining space other than umbrellas.
- No advertising other than labels identifying the business is permitted on the outdoor dining space.
- No outdoor dining space in the vehicular right of way is permitted within 15’ of an intersection.

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- No outdoor dining space will be permitted within the vehicular right of way on a high traffic street, as determined by Public Works. Generally, these streets have a speed limit of over 25 miles per hour, a traffic volume of over 5,000 AADT, or a functional classification of Arterial or above.
- No outdoor dining space will be permitted on a street that does not have 12' clear in the middle after all parking and platforms are accounted for.
- In any street that is entirely closed to traffic at certain times of the day, the street may be used for outdoor dining subject to relevant requirements listed above, and to reasonable adjustments for the unique condition of an entirely closed street.
- Street Closures include: Wharf Street, Dana Street, and Milk Street (between Exchange and Market only).
- The City may require a permit holder to remove its outdoor dining platform for some or part of the outdoor dining season if Public Works determines it necessary to complete work on any City infrastructure.

II. <u>Barriers</u>

- Shall not include commercial signage.
- Any outdoor dining space must provide railings or other substantive barriers along the edges to protect patrons.

III. <u>Maintenance and Operations</u>

- Operation of Parklets in the City right of way are allowed beginning on April 15th and ends October 31st of every year. All Parklet components and furniture shall be removed by November 1st. The City will not be responsible for damage to any property that is not removed prior to road maintenance.
- The permit holder is responsible for keeping the outdoor seating area clean.
- No food shall be prepared in the designated outdoor dining or parklet area. Outdoor dining areas are expressly designated for dining and dining service. Walk-up and take-out services are not allowed in outdoor dining spaces on public property.
- All outdoor dining components shall be removed before snowfall and while any snow or ice exists within four feet of the outdoor dining area. The City will not be responsible for damage to any property that is not removed prior to sidewalk maintenance.
- Outdoor dining areas must meet ADA regulations, and accessible seating is required.

A permit holder's failure to follow any of these Parklet Outdoor Dining Administrative Rules may result in fines as outlined in the City Code and/or revocation of the outdoor dining permit.

Approved:

______________________________ ____

Date Signed: Danielle P. West, Interim City Manager

City of Portland | Housing and Economic Development Department
Mary P. Davis, Interim Director

MEMORANDUM

To: Councilor Pious Ali, Chair
Members of the Housing and Economic Development Committee

From: Mary Davis, Interim Director, Housing and Economic Development Department

Date: August 6, 2023

RE: 2023 Affordable Rental Housing Incentive Program

During the pandemic, the City Council authorized a temporary Affordable Rental Housing Incentive Program to encourage owners of non-owner-occupied short-term rental (STR) units to register their units as long-term rental (LTR) units to provide housing for individuals and families receiving Section 8 or General Assistance rental assistance. The program required the property owner to relinquish their STR registration and to enter into a rental agreement for a minimum of one year. In return, they would receive a $1,000 payment from the Housing Trust Fund.

The original program was not successful. Only one owner took advantage of the incentive program. At this time, staff is proposing revisions to the program that will hopefully incentive more unit owners to participate. This would again be a temporary program funded through the Jill C. Duson Housing Trust Fund (HTF). It would require an amendment to the 2023 Jill C. Duson Housing Trust Fund Annual Plan to allow for up to $130,000 to be utilized for this program. STR owners would not be required to relinquish there STR license.

At the end of each fiscal year, the Permitting and Inspections Departments reconciles the short-term rental registration fees. After all expenses for administering the STR program are deducted, any remaining balance is transferred into the HTF. For FY2023, $129,378.47 was transferred into the HTF and would be used to cover the costs of this program.

Staff is requesting that the Housing and Economic Development Committee recommend approval of the 2023 Affordable Rental Housing Incentive Program along with an amendment to the 2023 Jill C. Duson Housing Trust Fund Annual Plan to allow for up to $130,000 in funding be set aside for this program.

Attachment: Draft Program Guidelines/Application
Amended 2023 Jill C. Duson Housing Trust Fund Annual Plan

2023 AFFORDABLE RENTAL HOUSING INCENTIVE PROGRAM
(Adopted, __________, 2023 Order ___23/24)

Effective, August 14, 2023, any person who holds a short-term rental registration for a non-owner-occupied short-term rental unit is entitled to a one-time payment of up to $2,500 ($750 efficiency unit, $1,000 1-bedroom unit, $1,750 2-bedroom unit, $2,500 3-bedroom+, so long as the following criteria are met:

a) The unit must be registered as a long-term rental unit (new or existing long-term rental registration for the unit being converted); Applicant must register with the Housing Safety Office as a long-term rental prior to applying for this incentive program.
b) Provide evidence to the City of Portland's Housing and Community Development Division that the unit owner has entered into a lease agreement for a minimum of 1 year with a tenant receiving rental assistance through either the Housing Choice Voucher Program (Section 8) or General Assistance program, with preference for housing sheltered or unsheltered homeless individuals or families.

A maximum of $130,000 has been allocated to the Affordable Rental Housing Incentive Program for Fiscal Year 2024. Applications will be accepted on a first come first served basis.

PROPERTY INFORMATION		
Street Number	Street Name	CBL- Chart, Block, Lot Number

Short Term Rental Registration Number	
Long Term Rental Registration Number (Existing or New)	

OWNER INFORMATION (COMPLETE AT LEAST ONE LISTED BELOW)				
A. Individual Ownership:				
Owner First Name	Owner Last Name	Primary Telephone Numbers		
Mailing Address		Email Address		
B. Corporate Ownership:				
Ownership form (please circle): Partnership	Corporation	LLC	Other (please explain)	
Corporate Name		Primary Telephone Numbers		
Mailing Address		Email Address		

PROPERTY MANAGER (if different than owner)	
Property Manager Name	Telephone Number
Mailing Address	Email Address

RENTAL UNIT CONVERTED FROM SHORT TERM TO LONG TERM RENTAL			
Unit #	Tenant Name(s)	Tenant Telephone #	Name of Rental Subsidy Program

REQUIRED DOCUMENTATION:

(1) Completed Application Form
(2) Fully executed lease

Please return completed application and documents to:
City of Portland
Housing and Community Development Division
389 Congress Street, Room 312
Portland, ME 04101
mpd@portlandmaine.gov

For More Information regarding the Rental Registration Program:
www.portlandmaine.gov/housingsafety

To the best of my knowledge, I certify that the information being registered is true and correct.

Signature		Telephone Number
Relationship to Property	Date	Email Address

AMENDED

JILL C. DUSON HOUSING TRUST FUND
2023 ANNUAL PLAN

The Jill C. Duson Housing Trust Fund (also referred to as Housing Trust Fund or HTF) is established by Chapter 14, Section 18.3 of the City's Code of Ordinances. Section 18.3.4 states that "each fiscal year 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 establishes the priorities in which the current balance of the Housing Trust Fund would be allocated and should be in conformity with the 2023 City Council Common Goal *"Housing is a necessity within our community to preserve human dignity, provide shelter and safety, ensure quality of life, promote self-determination and economic growth."*

2023 ANNUAL PLAN

City Ordinance requires that the Jill C. Duson Housing Trust Fund Annual Plan include a description of funding priorities, the amount of funds budgeted, and a description of how funds will be distributed among very-low, low, and moderate income households.

Funding Budget

The funding budget is based on the balance of $4,333,535~~4,204,156~~ in the Housing Trust Fund as of August~~March~~ 1, 2023. The Housing Trust Fund designs to 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.

In addition to the funding noted above, the Portland City Council allocated $1,000,000 from the first tranche of American Rescue Plan Act (ARPA) funding and $4,110,000 from the second tranche of ARPA funding for housing development. These funds are to be administered through the Jill C. Duson Housing Trust Fund.

The funding available from the Jill C. Duson Housing Trust Fund is **$3,833,535~~3,704,156~~** ($4,333,535~~4,204,156~~ less $500,000) plus **$5,110,000** for a total of **$8,943,535~~8,814,156~~.**

Funding Priorities

Housing Trust Fund resources should focus 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 (i.e. $55,850 for a four person household), or projects designed to create housing affordable to households earning up to 100% of the area median income (i.e. $ 111,700 for a four person household).

Priority for the use of Housing Trust Funds will be to support public/private partnerships that create workforce housing units that are affordable to households earning up to 100% of the area median income with preference for households earning 50% of the area median income and below. Shovel ready projects with a mix of bedroom size are strongly encouraged.

The term shovel ready is defined as a project that has received other funding approvals from federal, state, local, or private sources and demonstrates the ability to move to a construction loan closing by January 2024.

In addition, up to $130,000 will be set aside for the 2023 Affordable Rental Housing Incentive Program. The program guidelines and application are included as Attachment 3.

Funding Distribution

Housing Trust Funds will be distributed through a competitive application process. The *Affordable Housing Development and Tax Increment Financing Application* will be issued, at a minimum, on 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 as well as the 2023 City Council Common Goal requirement to use a lens that prioritizes racial, social and justice equity in order to recommend the most qualified application based on the information submitted.

Recommendations will be forwarded to the City Council's Housing and Economic Development Committee for review. Housing and Economic Development Committee recommendations will be forwarded to the City Council for final review and approval.

Goals for Distribution

The goal for the distribution of these funds is for 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" (Chapter 14 Section 18.3.B of the City's Code of Ordinances). Development should be consistent with the Annual City Council Common Goals, the City'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. 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 incorporate quality, sustainable design.

Eligible Projects

Projects receiving Housing Trust Funds must create housing units that promote economic diversity with the development and within the neighborhood in which the development is located. New construction, conversion of non-residential property to housing and rehabilitation of existing units that creates or maintains affordable units is eligible

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.

Housing Trust Fund resources are also intended to promote the retention of affordable housing. Housing Trust Fund resources should also be made available, if necessary, to exercise the City's right of first refusal in connection with potential foreclosure issues with affordable homeownership units. 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 Housing Trust 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 documented 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

Awards will be determined on a per affordable unit basis. The average City investment per unit, excluding TIF financing, is approximately $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.

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 but may be longer. In the case of ownership housing, the units must remain affordable for the longest feasible time while maintaining an equitable balance between the interests of the owner and the interest of the City of Portland. These restrictions must be secured by a declaration of covenants and restrictions recorded in the Cumberland County Registry of Deeds

Affordable Housing Agreement

In the case of ownership housing, 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).

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.

Affordability

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.

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, maybe 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
2) Sources and Uses of Jill C. Duson Housing Trust Fund
3) 2023 Affordable Rental Housing Incentive Program

Attachment 1

Point System for Evaluating and Scoring Applications (Max 115)

Policy Objectives: Total 50 Points

Proposed use of funds to achieve the City of Portland's goals and address demonstrated need. 26 points

Maximum points will be awarded for those applications that:

1. Market Demand - 4 points
    a. 4 points - high demand, meets the City's income targeting and rental housing priority,
    b. 1 point - moderate demand, sufficiently meets the City's income targeting priority
    c. 0 points - does not demonstrate sufficient market demand, does not meet the City's income targeting priority
2. Zoning - 8 points
    a. 8 points - development requires no zoning amendments or contract or conditional zone
    b. 5 points - development requires a zoning amendment which is consistent with the City Comprehensive Plan
    c. 0 points - development requires rezoning that is not consistent with the City's Comprehensive Plan
3. Economic diversity - 6 points
    a. 6 points - creates housing options which promote economic diversity within the development **and** within in the neighborhood in which the development is located
    b. 5 points – creates housing options which promote economic diversity within the neighborhood in which the development is located
    c. 4 points – creates housing options which promote economic diversity within the development (a mixed-income development)
    d. 0 points does not promote economic diversity
4. CHDO - 2 points
    a. 2 points - developer and owner are both controlled by CHDO
    b. 1 points - either developer or owner are controlled by CHDO
    c. 0 points neither developer nor owner are controlled by CHDO
5. City Subsidy - 6 points
    a. 6 points - investment from City is <$10,000/unit
    b. 5 points - investment from City is > or = $10,000 and <$12,000/unit
    c. 4 points - investment from City is > or = $12,000 and <$14,000/unit
    d. 3 points - investment from City is > or = $14,000 and <$16,000/unit
    e. 2 points - investment from City is > or = $16,000 and <$18,000/unit
    f. 0 points - investment from City is > or = $18,000/unit

Impact on surrounding neighborhood, including design compatibility and environmental issues. 24 points

Maximum points will be awarded for those applications where:

1. Site Selection - 7 points

a. 7 points – fully appropriate for use, project supports Comprehensive Plan goal for development along transit nodes and corridors
b. 5 point – appropriate, some concerns
c. 0 points – significant concerns, project does not support Comprehensive Plan goal for development along transit nodes and corridors

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 - 7 points
   a. 7 points -amenities & unit design are well thought out and appropriate for residents,
   b. 5 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 65 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. 0 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. 0 points - more than two budget items fail to meet City guidelines or fall outside "reasonable and customary"

Applicant's ability to complete and operate project, including development team experience, capacity, property management track record, project readiness and timeframe for completion. 45 points

Maximum points will be awarded for those applications that:

1. Readiness to proceed - 10 points
    a. 10 points – project meets the shovel ready definition noted in the Funding Priorities section above.
    b. 7 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.
    c. 5 points - 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.
    d. 0 points - 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. Construction Time Line – 5 points
    a. 5 points – There is a strong likelihood the project could proceed into construction within the first six months of the year following funding appropriation based on the timeline, narrative, and supporting documents;
    b. 2 points -There is a small likelihood the project could proceed into construction within the first six months of the year following funding appropriation based on the timeline, narrative, and supporting documents;
    c. 0 points -it is unlikely the project could proceed into construction within the first six months of the year following funding appropriation based on the timeline, narrative, and supporting documents
3. Track record of development team - 10 points
    a. 10 points - every development team member has a successful track record with this type of project and at this scale
    b. 7 points - 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 points - two development team members, while having relevant experience, are new to this type of project or this scale of development
    d. 0 points - the development team does not meet the criteria above
4. Current Capacity of development team - 10 points
    a. 10 points - development team members have exceptional depth of human and financial resources to complete this project;
    b. 8 points - development team members have the human and financial resources to complete this project;
    c. 3 points - 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 points - the development team does not meet the criteria described above

5. Sound Property Management - 10 points
    a. 10 points – property manager agent demonstrates a successful track record in projects of similar size, scale, type and complexity to the proposed project. Properties under the agent's management are violation free, have not been issued an IRS form 8823 within the last three years, and have scored above average or better in physical inspection scores;
    b. 5 points -property manager agent demonstrates a successful but limited track record in projects of similar size, scale, type and complexity to the proposed project. Properties under the agent's management are violation free, have not been issued an IRS form 8823 within the last three years, and have scored satisfactory in physical inspection scores;
    c. 0 points – the property manager agent has either on-going violations, or has been issued an IRS form 8823 in the last three years, or has scored below average or lower

Attachment 2 - Amended

	Sources and Uses of Jill C. Duson Housing Trust Fund				
YEAR	DEPOSITS		YEAR	EXPENDITURES	
2002/03	Maine Medical Center HRO	$ 315,580.00	2011	Avesta Oak Street Lofts	$ (380,585)
2002	Sportsman's Grill HRO	$ 40,000.00	2014	Housing First Pre-Development RFP	$ (75,000)
2009	Berlin City Auto HRO	$ 116,000.00	2015	65 Hanover & 52 Alder Sts Feasibility Study	$ (9,250)
2010	Stop n Shop HRO 2010	$ 289,250.00	2017	65 Munjoy Street	$ (175,000)
2012	Rockbridge/Eastland Park HRO	$ 42,500.00	2018	37 Front Street (not yet spent)	$ (55,500)
2012	Riverwalk/Ocean Gateway HRO	$ 250,000.00	2018	63 Front Street (not yet spent)	$ (370,000)
2012	118 Congress LLC Easement	$ 3,500.00	2018	977 Brighton Avenue (Wessex Woods)	$ (300,000)
2017	91 & 97 Belfort Street (sale of TAP)	$ 86,423.99	2019	60 Parris Terr. Downpayment Assistance	$ (24,000)
2017	116 Upper A Street (sale of TAP)	$ 78,526.74	2019	83 Middle Street (not yet spent)	$ (136,734)
2017	443 Congress Street IZ	$ 280,000.00	2019	18 Luther Street	$ (36,000)
2018	62 India Street IZ	$ 276,500.00	2020	200 Valley Street (not yet spent)	$ (49,154)
2018	Short Term Rental Fee transfer	$ 33,138.80	2022	200 Valley Street	$ (442,386)
2018	0 Thames Street (WEX) sale	$ 1,000,000.00	2020	Affordable Rental Housing Incentive Program	$ (1,000)
2019	20 Thames Street IZ & Easement	$ 270,000.00	2021	66 State/155 Danforth (not yet spent)	$ (15,000)
2019	20 Thames Street (for balcony overhang)	$ 7,500.00	2022	37 Front Street	$ (499,500)
2019	Short Term Rental Penalty	$ 15,200.00	2023	155 Danforth Street	$ (135,000)
2020	Short Term Rental Penalty	$ 200.00		Total Expenditures	$ (2,704,109)
2020	Short Term Rental Penalty	$ 7,500.00			
2019	Short Term Rental Fee transfer	$ 176,118.00			
2019	56 Hampshire Street Easement fee	$ 12,123.00			
2019	121 Middle Street HOTEL IZ	$ 41,866.00			
2019	17 Sumac Street (sale of TAP)	$ 79,617.86			
2020	99 Capisic Street (sale of TAP)	$ 163,168.93			
2020	Short Term Rental Fee transfer	$ 122,964.50			
2020	22 Bramhall Street (MMC overhang)	$ 3,799.00			
2020	50 Monument Square IZ	$ 222,789.00			
2020	121 Middle Street HOTEL IZ	$ 30,448.00			
2020	Order 89 20/21 Appropriation	$ 500,000.00			
2021	56 Hampshire Street IZ	$ 198,928.00			
2021	40 Free Street IZ	$ 10,609.00			
2021	1 Center Street HOTEL IZ	$ 513,810.00			
2021	Short Term Rental Fee transfer	$ 109,681.26			
2021	Newell Street sale	$ 900.00			
2021	10 Hammond Street (IZ)	$ 169,744.00			
2021	22 Hope Avenue (IZ)	$ 150,000.00			
2021	ARP Allocation Order 84 21/22	$ 1,000,000.00			
2022	5 India Street (IZ)	$ 261,086.40			
2022	18 Luther Street (repayment of loan)	$ 36,000.00			
2022	Short Term Rental Fee transfer	$ 79,459.60			
2022	City Manager Allocation	$ 250,000.00			
2022	ARP Allocation Order 100 22/23	$ 4,110,000.00			
2022	Newell Street (sale of TAP)	$ 8,100.00			
2022	Stroudwater (partial IZ fee)	$ 16,233.90			
2022	75 Chestnut IZ	$ 587,444.00			
2023	Short Term Rental Transfer Fee	$ 129,378.47			
	Previous INTEREST EARNED	$ 51,555.81			
	Total Deposits	**$12,147,644.26**		**BALANCE**	**$9,443,535.26**

HRO - Housing Replacement Ordinance; IZ = Inclusionary Zoning Fee-in-lieu; TAP = Tax Acquired Property

as of 7-25-23

Attachment 3

2023 AFFORDABLE RENTAL HOUSING INCENTIVE PROGRAM
(Adopted, _________, 2023 Order ___23/24)

Effective, August 14, 2023, any person who holds a short-term rental registration for a non-owner-occupied short-term rental unit is entitled to a one-time payment of up to $2,500 ($750 efficiency unit, $1,000 1-bedroom unit, $1,750 2-bedroom unit, $2,500 3-bedroom+, so long as the following criteria are met:

a) The unit must be registered as a long-term rental unit (new or existing long-term rental registration for the unit being converted); Applicant must register with the Housing Safety Office as a long-term rental prior to applying for this incentive program.
b) Provide evidence to the City of Portland's Housing and Community Development Division that the unit owner has entered into a lease agreement for a minimum of 1 year with a tenant receiving rental assistance through either the Housing Choice Voucher Program (Section 8) or General Assistance program, with preference for housing sheltered or unsheltered homeless individuals or families.

A maximum of $130,000 has been allocated to the Affordable Rental Housing Incentive Program for Fiscal Year 2024. Applications will be accepted on a first come first served basis.

PROPERTY INFORMATION		
Street Number	Street Name	CBL- Chart, Block, Lot Number

Short Term Rental Registration Number	
Long Term Rental Registration Number (Existing or New)	

OWNER INFORMATION (COMPLETE AT LEAST ONE LISTED BELOW)		
A. Individual Ownership:		
Owner First Name	Owner Last Name	Primary Telephone Numbers
Mailing Address		Email Address
B. Corporate Ownership:		
Ownership form (please circle): Partnership Corporation LLC Other (please explain)		
Corporate Name		Primary Telephone Numbers

Mailing Address	Email Address

PROPERTY MANAGER (if different than owner)	
Property Manager Name	Telephone Number
Mailing Address	Email Address

RENTAL UNIT CONVERTED FROM SHORT TERM TO LONG TERM RENTAL			
Unit #	Tenant Name(s)	Tenant Telephone #	Name of Rental Subsidy Program

REQUIRED DOCUMENTATION:

(1) Completed Application Form

(2) Fully executed lease

Please return completed application and documents to:
City of Portland
Housing and Community Development Division
389 Congress Street, Room 312
Portland, ME 04101
mpd@portlandmaine.gov

For More Information regarding the Rental Registration Program:
www.portlandmaine.gov/housingsafety

To the best of my knowledge, I certify that the information being registered is true and correct.

Signature		Telephone Number
Relationship to Property	Date	Email Address

TO: Councilor Ali, Chair
Members of the Housing and Economic Development Committee

FROM: Mary Davis, Interim Housing and Economic Development Director

DATE: August 11, 2023

SUBJECT: Requesting Feedback from HEDC regarding Reconsideration of Proposed Revisions to the City of Portland's Tax Increment Financing Policy

At the June 26, 2023, City Council Meeting, the City Council voted 6-1 to refer the proposed amendments to the City's TIF policy back to the Housing and Economic Development Committee for reconsideration.

To provide the HEDC with background information and assist with formulating requests for additional information, the council memo and backup are included. The document entitled ***Backup included in Council Memo*** includes information from two Portland developers and provides information about three projects funded by the City of Portland through Affordable Housing Tax Increment Financing. The documents share specific information about the impact to the cost of the project due to the prevailing wage rate requirement as well as issue of confusion and cost associated with both Davis-Bacon and prevailing wage rates in projects.

The *06.26.2023 Staff Memo re Council Reconsideration of TIF Amendments* is in response to the ***Public Comment for Order 239***, which is also attached.

<u>Additional Information</u>

Since 2018, virtually every affordable housing development project receiving city financial assistance was funded, in part, through the Affordable Housing Tax Increment Financing Program, see the chart below. The projects with an asterisk reflect the projects that are under construction and being monitored by staff for wage rate compliance. Currently, the HCD Division has received and is currently evaluating five new funding applications and we are anticipating 1 or 2 additional applications to be filed in the near future. Of the five new applications received, four have requested credit enhancement agreements. The monitoring of wage rates takes a significant amount of staff time. For example, one project that is nearing completion has already submitted over 200 wage rate sheets for staff review with more anticipated as the construction portion of the project wraps up. Staff currently spends an average of 5-7 hours per week on wage rate requirements. This time includes developer and contractor training/orientation, document production, interviews and payroll reviews.

AFFORDABLE HOUSING TAX INCREMENT FINANCING			
Owner/Project	**Date**	**Units**	**TIF**
58 Boyd Street	2018	55	$ 2,144,566
977 Brighton Avenue	2018	40	$ 1,954,486
Deering Place (510 Cumberland	2018	75	$ 4,185,757
37 & 63 Front Street *	2018	60	$ 6,056,916
178 Kennebec Street	2018	51	$ 2,889,164
83 Middle Street *	2019	45	$ 1,559,287
66 State Street/155 Danforth*	2019	38	$ 2,672,169
200 Valley Avenue *	2020	60	$ 4,092,269
337 Cumberland Avenue	2020	60	$ 2,722,057
577 Washington Avenue *	2020	100	$ 3,809,991
104 Grant Street	2020	23	$ 2,749,457
73 Winter (Equinox) *	2021	43	$ 1,337,426
91 Winter (Winter Landing) *	2021	52	$ 1,473,978
45 Doherty (LITHC)	2022	63	$ 2,329,683
		Units	TIF
Total		937	$ 42,285,216

Ten of the projects in the chart above are receiving project-based housing vouchers either from Portland Housing or Maine State Housing Authority and therefore they are required to comply with Davis-Bacon

The ***06.26.2023 Staff Memo re Council Reconsideration of TIF Amendments*** memo mentions the City has not had any HOME funded projects that required Davis-Bacon compliance. Under the Community Development Block Grant (CDBG) Program, new construction of rental housing is not eligible, however, CDBG can be used to support new construction in a variety of ways that would require compliance with Davis-Bacon, such as demolition, or public infrastructure improvements like sidewalks or utilities. Since 2018, five projects have received CDBG funding, of which four are or will be required to include Davis-Bacon and prevailing wage rates. If these five projects did not receive City CDBG funding, they would still be required to comply with Davis-Bacon due to receiving project-based housing vouchers.

As also mentioned in the ***06.26.2023 Staff Memo re Council Reconsideration of TIF Amendments*** memo, Maine State Housing Authority financing programs generally do not require compliance with state prevailing wage rates.

Staff is requesting feedback from the Housing and Economic Development Committee regarding what additional information you would like to see or questions you would like answered prior to taking further action.

Attachments
Council Memo Order 239 22/23 Amending the City's TIF Policy
Proposed TIF Policy Amendments
Backup included in Council Memo
Public Comment for Order 239
06.26.23 Staff Memo re Council Reconsideration of TIF Amendments

MEMORANDUM
City Council Agenda Item

FROM:	Mary Davis, Division Director
DATE:	March 20, 2023
SUBJECT:	Order 239-22/23 Approving Changes to the Tax Increment Financing Policy - Sponsored by the Housing & Economic Development Committee, Councilor Pious Ali, Chair
SPONSOR:	On April 25, the Housing and Economic Development Committee voted 3-1 to forward this to the City Council for consideration.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st Reading 6/5/2023 **Final Action 6/5/2023**

Can action be taken at a later date: Yes If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: This item does not involve a new contract.

PRESENTATION: Mary Davis will provide a brief overview of the attached documentation including the proposed change and data received which initiated the proposed change.

I. SUMMARY

The proposed change to the TIF Policy would allow affordable housing developers who are required to use Davis-Bacon wages for their project to use these wages to meet the wage requirements in the TIF policy rather than the state prevailing wage; the Portland minimum wage would still apply.

II. AGENDA DESCRIPTION

On April 25, the Housing & Economic Development Committee voted 3-1, Phillips opposed, to forward this to the City Council for consideration.

The Portland Tax Increment Financing (TIF) Policy requires developers of affordable housing in Portland who receive Affordable Housing TIF (AHTIF) to use the greater of state prevailing wage rates and Portland minimum wage for workers during housing construction. Many of the projects receiving a TIF also have other funding sources which require the use of Davis-Bacon wages. The double requirement can be costly for developers, both in reporting time and in practice. The proposed change would allow developers who are required to use Davis-Bacon wages for other funding sources to also use these wages to meet the TIF Policy requirements.

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

On February 22, 2021 the Council passed a Tax Increment Financing (TIF) policy designed to support investment in municipal economic development programs, infrastructure investment, and individual project site specific TIF districts to support infrastructure or individual private project financing needs. This policy outlined the goals, principles, requirements, and approach for establishing TIF districts in Portland, including Affordable Housing TIF (AHTIF) Districts.

Of the 17 active AHTIF district projects, 13 projects have been, are, or will be subject to wage conditions,

which requires the greater of state prevailing wages or Portland minimum wage to be used during construction. Several of these projects use other funding sources, such as project-based vouchers, which require Davis-Bacon wages to be used. The Davis-Bacon wage rates and state prevailing wage rates are different in terms of labor classifications and wages paid to each classification. These differences can make it challenging for contractors, who are already strapped for time, to identify the appropriate classification and wage determination for each worker. There are cases in which the wages differ by $5 or more. In 2021, Davis-Bacon wage rates for carpenters were $13.13 per hour higher than state prevailing wages, while electricians' wages were $7.78 higher in state prevailing wage than in Davis-Bacon. For projects required to use both determinations, developers are paying significantly more than a project required to use either Davis-Bacon or state prevailing wage. To decrease burden on affordable housing projects, we would like to propose the following changes to Section B(3)(iii) of the TIF policy:
Current Language:
Any firms employed in the construction phase of a TIF-assisted project must compensate all employees the current wage rates and fringe benefits as required under applicable state prevailing wage law under 26 M.R.S.A. §1306, or Portland City Ordinance Ch. 33, §33-1 to 33-12, whichever is greater.
Proposed Language:
Any firms employed in the construction phase of a TIF-assisted project must compensate all employees the current wage rates and fringe benefits as required under applicable state prevailing wage law under 26 M.R.S.A. §1306, or Portland City Ordinance Ch. 33, §33-1 to 33-12, whichever is greater. **If a project is required to use Davis-Bacon wage rates as a result of another funding source, Davis-Bacon wage rates will suffice to meet this requirement, provided the minimum wage for each job is greater than the Portland City Ordinance Ch.33, §33-1 to 33-12.**

The TIF Policy, with proposed changes, is attached.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

These changes will help increase access to rental home that is safe, affordable, and accessible.

V. FINANCIAL IMPACT

This does not have a financial impact to the City of Portland; however, it will have a positive financial impact on affordable housing projects within the city.

VI. STAFF ANALYSIS AND BACKGROUND

Three developers have provided data of how the requirement to use both Davis-Bacon and Prevailing Wage has affected their projects. In addition to the analysis provided by these developers, we have anecdotally heard from contractors and developers that it can greatly complicate projects to use two different wage requirements on one job. For one project, the overall cost to the project for state prevailing wage requirement in addition to Davis-Bacon is approximately $75,000 - $100,00. The labor classifications do not line up between the two, which can cause difficulty in identifying the appropriate worker classification. The developer also analyzed actual wages being paid, and noted that in 70% of cases, the actual wages paid to workers exceeded the Davis-Bacon and state prevailing wage rates.

VII. RECOMMENDATION

Staff recommends the City Council approve the proposed change to the TIF Policy.

VIII. LIST ATTACHMENTS

1. Order Amending the Tax Increment Financing Policy 6.5.2023
2. TIF Policy proposed edits
3. 0 Backup for TIF Policy Request Revisions 2022-2023

Prepared by:
Mary Davis, Division Director

Date: 03/20/2023

PORTLAND TIF POLICY

April~~February 22~~, 2023~~1~~

I. INTRODUCTION

Tax Increment Financing (TIF) is an economic development program authorized under state law to support municipal projects. The TIF program allows municipalities to provide financial assistance to local economic development projects and programs – from infrastructure, municipal economic development programs and staff, to business expansions - by using new property taxes that result from new commercial or residential investment associated with the corresponding increase in property value.

Portland TIF Policy supports investment in municipal economic development programs, infrastructure investment (which is generally through the establishment of area wide or neighborhood TIF districts), ~~and individual~~and individual project site-~~-~~specific TIF districts to support either infrastructure or individual private project financing needs.

The City is committed to invest in infrastructure located within the public rights-of-way that encourage economic development. Use of TIF investment to invest in infrastructure recognizes the savings which occurs through the TIF Program tax sheltering benefits.

“Infrastructure” is defined, but not limited to: traffic upgrades, public parking facilities, roadway improvements, lighting, sidewalks, water and sewer utilities, storm water management improvements and placing above ground overhead electric and telecommunications lines underground.

II. STATE TIF LIMITATION

There are acreage and value cap~~s~~ limitations for municipalities to establish TIF districts along with term limits. Term limits include bonds which may be issued for a maximum of 20 years (anticipation notes for three years). TIF districts may be designated for a maximum of 30 years.

III. PURPOSE

The primary purposes of the TIF Policy include:

A. To support Portland Economic Development and Housing Plans and Policies;
B. To stimulate expansion of the City’s commercial and industrial tax base;
C. To stimulate new affordable and market rate housing investment;
D. To retain and create quality employment;
E. To support Portland’s Capital Improvement Plan; and,
F. To establish standards upon which the City Council will authorize TIF.

IV. GENERAL PRINICPLES

The three primary general principles for the City Council to establish TIF districts include:

A. Investment

***Minimum Real Property Investment*.** A minimum of $1 million in new taxable investment property value for commercial and industrial development and $500,000 for affordable housing development is needed to qualify for a TIF. This is the minimum amount which makes practical sense to consider use of the TIF program due to the amount of new municipal property tax revenue generated from new private investment.

B. Jobs Associated with Commercial and Industrial Development

Applicants for TIF participation will be required to provide a plan outlining the number and quality of jobs retained or created associated with each TIF district. While there is not a specific formula for the numbers of jobs associated with the amount of TIF financial assistance, the number and quality of the jobs will be taken into consideration for each TIF district. It is recognized that housing projects do not create many permanent jobs.

C. Maximize Tax Sheltering Benefits

A municipality's total equalized assessed value is used to calculate General Purpose Aid to Education (subsidy), State Revenue Sharing (subsidy) and County taxes (expense). When a municipality's equalized assessed value increases, State Aid for Education decreases, municipal revenue sharing decreases, and the municipality pays a greater portion of County taxes. TIF allows municipalities to "shelter" new value resulting from private investment from the calculation of its State subsidies (education and revenue sharing) and County taxes. In other words, specific municipal shelter benefits, for the term of the TIF, include:

1) No reduction in State aid for education,
2) No reduction in municipal revenue sharing and
3) No increase in County taxes.

Annually, the Council Committee with jurisdiction over housing and community development and City Council will evaluate available TIF district capacity related to State acreage and value limitations to determine whether existing TIF districts need amending and/or new TIF district establishment. Scheduled public infrastructure investments included in the City's Capital Improvement Plan will inform decisions about adjustments to existing TIF districts or establishment of new TIF districts.

V. APPROACH, POLICY, and TERM REQUIREMENTS

Must meet or exceed the below requirements.

A. Approach

There are three approaches to consider establishing TIF districts. They include:

1) ***Municipal Economic Development Programs funded directly through a pay-as-you-go approach.***

   Examples of municipal economic development programs include paying for economic development staff, annual funding to Creative Portland for city marketing/branding, and other TIF law allowable activities.

2) Area wide TIF districts financed by City Bond/Debt Issuance

   Issuance of municipal general obligation bonds or limited obligation bonds is a mechanism that may be used to fund a TIF district program. Allowable uses are spelled out in state TIF law. Generally, municipalities will issue debt to cover the cost of infrastructure investment.

3) Individual Site Specific TIF districts utilizing Credit Enhancement Agreements (CEAs)

   A CEA is a contract between a municipality and developer to assist an individual development project by using a percentage or all of the tax revenue generated by the investment to pay certain authorized project costs which could include site specific infrastructure or private individual project financing needs. Allowable project costs are spelled out in state TIF law.

B. Policy for the Three Approaches

1. Policy for Municipal Economic Development Programs.

Requires annual review and City Council financial appropriations.

2. Policy for Area wide TIF District Locations (for City Bond/Debt Issuance)

a) Area wide TIF will be established for infrastructure investment which has applications beyond one individual project.

b) City TIF emphasis will be placed upon the following general "Priority Revitalization Areas" to support commercial development, housing development, redevelopment, or to support buildings in need to redevelopment, address blight or historic preservation:

   - Affordable housing projects off peninsula;
   - Riverside Street commercial and industrial zoned areas;
   - Forest Avenue corridor from I-295 to Woodfords Corner;

- Washington Avenue corridor from Congress Street to I-295;
- Portland Technology Park ;
- Areas in which future significant wastewater and/or stormwater infrastructure investments are planned;
- West Commercial Street vacant property;
- Libbytown;
- St. Johns Street Valley;
- Other areas based upon scheduled public infrastructure investment included in the City's Capital Improvement Plan.

The above list of general priority revitalization areas serve as guides to establish specific boundaries for TIF districts at time of district establishment.

c) Market Rate Housing. Market rate rental housing projects must be located in priority revitalization areas to stimulate housing investment for the purpose of attracting 24/7 pedestrian activity. Pursuant to State Law, TIF for condominium projects are not allowed.

d) Affordable Housing**.** Affordable Housing TIF (AHTIF) may be designated on an area wide or site specific basis.

The relevant City Council Committee will complete an annual assessment of housing needs and priorities. This assessment will include a determination regarding designation of an area wide AHTIF. Site specific AHTIF requests submitted by developers will be considered on a case-by-case basis. Area wide or site specific AHTIF designations must address an identified community need.

State law requires that at least 25% of the district area must be suitable for residential use, development must be primarily residential, and at least 1/3 of the units must be for households at or below 120% of area median income which allows for individual mixed income projects or area wide affordable housing TIF districts.

Allowable uses of AHTIF revenues are defined by State law.

e) City preference is to invest in area wide public infrastructure TIF districts versus establishing individual private site specific TIF districts.

f) Area wide TIF districts also should seek to maximize the benefit of downtown and transit oriented development (TOD) districts which are exempt from State TIF law for acreage and value limitations.

g) Terms for area wide TIF districts will be considered for up to 100% of new tax revenue and upwards of thirty (30) years, the maximum allowed by State law, due to the long-term need to invest in neighborhood infrastructure.

<u>NOTE 1</u>: As of this Amended TIF Policy date, there are two existing area wide TIF Districts, i.e., Bayside and Waterfront TIF Districts.

<u>NOTE 2</u>: As of this Amended TIF Policy date, there also exists two Transit Oriented Development (TOD) District, namely the Thompson Point TOD TIF District and the Downtown TOD TIF District to support new or expanded transit services and improved transit connections between the Portland Transportation Center, Jetport and Downtown.

<u>3. Policy for Individual Site Specific TIF Districts Utilizing Credit Enhancement Agreements (CEAs)</u>

a) CEAs for individual site specific TIF districts will be considered for investment in infrastructure or project financing need and cannot be applied to any agreed upon public infrastructure improvements associated with a City Council approved conditional rezone agreement. Additional provisions related to CEAs include:

i) City Green Building Code

Compliance with the City's Green Building Code is required when TIF assistance is provided to individual private project CEAs.

ii) Affordable Housing

Affordable Housing TIF (AHTIF) may be designated on an area wide or site specific basis. Developments are encouraged to promote economic diversity.

The City Council Committee will complete an annual assessment of housing needs and priorities. This assessment will include a determination regarding designation of an area wide AHTIF. Site specific AHTIF requests submitted by developers will be considered on a case-by-case basis. Area wide or site specific AHTIF designations must address an identified community need.

State law requires that at least 25% of the district area must be suitable for residential use, development must be primarily residential, and at least 1/3 of the units must be for households at or below 120% of area median income which allows for individual mixed income projects or area wide AHTIF districts.

Affordable means that the percentage of income a household is charged in rent and other housing expenses including utilities, or must pay in monthly mortgage payments (including real estate taxes, mortgage insurance, condominium/HOA fees, insurance and utilities), does not exceed 30% of a household's gross income, or other amount established in city regulations that does not vary significantly from this amount. These restrictions must remain in place for the full term of the AHTIF district.

Allowable uses of AHTIF revenues are defined by State law.

(iii) State Prevailing Wage Requirement

Any firms employed in the construction phase of a TIF-assisted project must compensate all employees the current wage rates and fringe benefits as required under applicable state prevailing wage law under 26 M.R.S.A. §1306, or Portland City Ordinance Ch. 33, §33-1 to 33-12, whichever is greater. If a project is required to use Davis-Bacon wage rates as a result of another funding source, Davis-Bacon wage rates will suffice to meet this requirement, provided the minimum wage for each job is greater than the Portland City Ordinance Ch.33, §33-1 to 33-12.

City staff shall provide to the relevant City Council Committee an annual update on:

a) the impact of this prevailing wage requirements on CEAs;
b) feasibility of construction firms to pay prevailing wages and benefits; and
c) compliance with this section.

(iv) Equal Employment Opportunities and Nondiscrimination

The developer and its contractors employed in the construction phase of a TIF-assisted project shall -adhere to a policy of non-discrimination in all employment actions, practices, policies, procedures, phases, and conditions of employment. All employment-related decisions (including but not limited to hiring, discharge, transfers, promotions, discipline, training, job opportunities, and wage and salary levels) will be made without discrimination based on an individual's race or color, religion, age, sex (including pregnancy), sexual orientation, gender identity or expression, ancestry or national origin, physical or mental disability, veteran status, genetic information, previous assertion of a claim or right under Maine's

Workers' Compensation Act, previous actions taken protected under Maine's Whistleblowers' Protection Act, or any other protected group status as defined by applicable law. Provisions in applicable laws providing for bona fide occupational qualifications, business necessity, or age limitations will be adhered to by the developer and its contractors where appropriate. This policy shall not be construed to prohibit any employment action or policy which is required by federal law, rule or executive order.

b) Applicants for CEA participation must demonstrate and pay the following:

i) Financial Necessity.

The applicant must demonstrate the City's participation is financially necessary in order for the project to proceed.

ii) Financial Capacity**.**

The applicant must demonstrate financial capacity to support their project.

iii) Fees

A financial underwriting analysis will be conducted by a third party on all projects requesting CEA participation. Applicants for CEA assistance will be responsible for reimbursing the City for all project third party legal and financial underwriting costs***.***

C. Terms for CEA Projects

1) Maximum Percentages.

A maximum average percentage of 65% for the entire term associated with individual project CEA's. Notwithstanding the previous sentence, the maximum average percentage for the entire term associated with individual project CEAs for affordable housing shall be 75%. For the purposes of this policy, the term affordable housing shall be defined as in "V. Approach, Policy, and Term Requirements" Section B(3)(a)(ii) (Affordable Housing) of the Portland TIF Policy.

2) Maximum Number of Years.

Up to twenty (20) years to match individual private sector commercial financing terms; for Affordable Housing projects, up to thirty (30) years (affordability must be maintained for the full term of the TIF). The term of a TIF may start upon agreed trigger event, such as an increased assessed value. This would be included in a CEA on that negotiated triggering event.

3) Use of Maine Services for CEA Projects Encouraged.

VI. TIF APPLICATION AND ADMINISTRATION PROCESS

A. Application Information and Contact.

The Housing and Economic Development Department handle all TIF inquires and processes requests for TIF. An applicant must submit a letter or application to the Housing and Economic Development Department outlining the proposed project, including TIF project financial information, a plan outlining both the number of permanent and construction jobs associated with the proposed project, detailed information on housing affordability, ~~as well as~~and a demonstrated ability to meet the requirements under Section B(3)(a) of this policy.

B. Approval Process.

There is a ~~two step~~two-step approval process which includes obtaining a recommendation from the City Council Committee and City Council approval. Two meetings (or readings) by the City Council are needed. The City Council vote on the TIF occurs at the second meeting.

C. Post-Construction Report to City Council.

The Housing and Economic Development Department shall provide a post-construction report to the City Council Committee and City Council regarding each TIF-assisted project which shall include, but not be limited to, an analysis of the adherence to Section (V)(B)(3)(a) of this policy.

D. Annual Report to City Council.

The Housing and Economic Development Department shall provide annual reports to the City Council Committee and City Council regarding TIF district activity.

Portland Maine Yes. Google's good here.

Mary Davis <mpd@portlandmaine.gov>

City of Portland prevailing wage requirements and affordable housing

1 message

Greg Payne <GPayne@avestahousing.org> Wed, Apr 1, 2020 at 9:40 AM
To: Mary Davis <mpd@portlandmaine.gov>
Cc: Dana Totman <DTotman@avestahousing.org>, Rebecca Hatfield <RHatfield@avestahousing.org>

Hi Mary:

I wanted to follow up with you on the effect that the City's prevailing wage ordinance is having on our efforts to create additional affordable housing units in Portland. As you know, the new policy requires that all projects which receive a TIF from the City must pay the "prevailing wage" rates established by the Maine Department of Labor. As we have implemented this policy at Wessex Woods, the 40-unit senior affordable housing property that Avesta is currently building on Brighton Avenue, we are finding that it is adding significant costs without achieving a compelling policy objective.

When we went out to competitive bid on the Wessex Woods project, we had not understood that it was subject to the prevailing wage ordinance, so the various subcontractors offered their pricing based on the current construction market and we reached a construction loan closing with those figures last November. Shortly thereafter, we realized that the prevailing wage ordinance should have been part of our bid package and thus had to go back to all of our subcontractors and ask them to revise their bids accordingly. Attached please find a spreadsheet detailing the $121,695 cost increase that the project absorbed specifically due to the City prevailing wage ordinance. This increases the financial vulnerability of the project by taking away more than a third of its contingency funds.

One of the first things that our project team struggled with as we adjusted to comply with the City ordinance was the significant difference between the wage rates secured through the normal, competitive bidding process and those required under the ordinance as a "prevailing wage". As you know, over the past 5 years the construction sector has already experienced very significant cost increases - largely as a result of the regional labor shortage - that has driven up the cost of affordable housing construction by more than 26%. So when we saw that the City requirements were driving wage rates another 10%, 20%, up to 100% higher for some occupations, we were confused and very concerned about how "prevailing" wages could be so disconnected with the wages that we had secured through the typical, competitive bid process in a sector that had already seen such significant wage increases.

I spoke with the Maine Department of Labor and learned that the wage rates required under the City ordinance are established through a survey that the Department undertakes each fall. DOL asks companies in each trade to provide payroll data, and the median wage rate is then published as an area's "prevailing wage". One of the reasons for the discrepancy between the wage rates we were able to secure through a competitive bid and those established by DOL is perhaps that the objective in a competitive bid is not to choose the median bidder but rather to allow companies to compete with each other to offer the lowest bid they can feasibly accept for a job. Given the cost constraints that MaineHousing requires us to comply with in building affordable housing, we simply don't have the luxury of foregoing price competition among individual trades.

In addition to the fact that the construction sector - having benefitted from highly significant price increases in recent years - does not seem to need a further, artificial pricing boost, our project team also noted that very few of the affected subcontractors live in Portland... and none of the surrounding communities offer the same kind of "prevailing wage" policies. The result is that Portland is on its own in essentially applying a highly significant tax on affordable housing development, predominantly benefitting people who live in other communities.

Obviously Wessex Woods is not the only affordable housing project being affected by this policy. I expect that you will hear from other local housing organizations that have been even more negatively impacted in their efforts to build affordable homes.

Given the widespread community desire to increase affordable housing production in Portland, we recommend that the City consider taking action to exempt such projects from the prevailing wage ordinance. It is putting Portland at a competitive disadvantage to solve a problem that does not appear to exist.

Please let me know if I can help with any additional information, and thank you for your attention to this issue.

-Greg

Greg Payne
Development Officer
Avesta Housing
307 Cumberland Ave. | Portland, ME 04101

WESSEX WOODS - COST CHANGES DUE TO CITY PREVAILING WAGE ORDINANCE

Subcontractor/Vendor	Type of Work	Rate carried in Bid	Rate required by City	Difference b/t Bid Rate & City Rate	# Hours on Project	Increased Cost to Project
Tri-Stone Industries	**Concrete Found/Slabs/Site Conc/Install of GeoFoam**					**$5,497.70**
	Laborer	$15.00	$17.04	$2.04	1160	$2,366.40
	Carpenter	$19.00	$19.92	$0.92	920	$846.40
	Ironworker	$20.00	$23.13	$3.13	730	$2,284.90
Corey Electric Inc.	**Electrical & Fire Alarm**					**$13,396.50**
	Electrician	$26.00	$32.87	$6.87	1950	$13,396.50
Granite Corporation	**HVAC & Plumbing**					**$21,920.00**
	Foreman	$35.00	$40.00	$5.00	800	$4,000.00
	Licensed Plumbers	$35.00	$40.00	$5.00	1800	$9,000.00
	HVAC Licensed	$35.00	$40.00	$5.00	1600	$8,000.00
	HVAC Apprentice	$32.00	$35.00	$3.00	1200	$3,600.00
	Plumber Apprentice	$32.00	$35.00	$3.00	1200	$3,600.00
	(discount offered by subcontractor to help support the project)					-$6,280.00
Hi Tech Insulation	**Insulation**					**$14,080.00**
	Plumbing Insulation	$20.00	$40.00	$20.00	408	$8,160.00
	HVAC Insulation	$20.00	$40.00	$20.00	296	$5,920.00
Dillon Sheetmetal	**Sheetmetal**					**$13,500.00**
	Foreman	$25.00	$35.00	$10.00	900	$9,000.00
	Sheetmetal Installer	$25.00	$30.00	$5.00	900	$4,500.00
Accendo Fire Protection, LLC	**Fire Protection**					**$7,517.50**
	Sprinkler Fitter	$21.50	$31.20	$9.70	775	$7,517.50
LOCBID Construction	**Rough Framing**					**$25,484.00**
	Carpenter	$20.00	$27.73	$7.73	2000	$15,460.00
	Crane Operator	$20.00	$39.68	$19.68	400	$7,872.00

	Laborer	$15.00	$17.69	$2.69	800	$2,152.00
Industrial Roofing & Siding Co.	**Membrane Roofing**					**$3,380.40**
	Foreman	$36.53	$37.76	$1.23	180	$221.40
	Roofer	$20.76	$22.71	$1.95	1620	$3,159.00
Harvey Libby Inc.	**Structural Metal Framing**					**$396.00**
	Ironworker - Structural	$20.00	$24.29	$4.29	64	$274.56
	additional fee for payroll prep					$121.44
Simplified Green Homes	**Insulation**					**$3,480.00**
	Insulation	$20.00	$28.70	$8.70	400	$3,480.00
Phoenix Firestop Contracting	**Firestopping**					**$332.80**
	Laborer	$16.00	$17.04	$1.04	320	$332.80
Standard Waterproofing	**Dampproofing/Waterproofing**					**$438.60**
	Insulation Installer	$18.38	$28.70	$10.32	42.5	$438.60
Zachau Construction	**Exterior Finish Carpentry / Insulation**					**$5,790.40**
	Finish Carpenter	$19.00	$23.00	$4.00	1330	$5,320.00
	Insulation	$19.00	$24.88	$5.88	80	$470.40
SUBTOTAL						**$115,213.90**
ADDITIONAL CHARGES	**Increase to insurance, bonds, etc.**					**$6,481.75**
GRAND TOTAL						**$121,695.65**

Thanks. Also, could you clarify another issue. You refer several times to state/local wage rates. Is that a general reference to the language in the TIF policy or have there been instances where the local wage rate was more than the state or Davis-Bacon wage?

Mary P. Davis, Division Director
Housing & Community Development Division
Planning & Urban Development Department
City of Portland
389 Congress Street Room 312
Portland ME 04101
(207)874-8711
(207) 874-8949 FAX
mpd@portlandmaine.gov
www.portlandmaine.gov

City Hall is currently closed to the public until May 18. I am working remotely during this time.

On Mon, May 11, 2020 at 8:57 AM Jay Waterman <jwaterman@porthouse.org> wrote:

> Hi Mary,
>
> What I can say for sure is that the change order amount during construction of $46,000 was all the State/Local wage rates.
>
> The remainder of $186,140 was likely mostly Davis-Bacon wage rates.
>
> **Jay Waterman, LEED AP BD+C/Homes**
>
> Director of Real Estate Development
>
> Portland Housing Development Corporation
>
> Direct: 207.221.8009
>
> Cell: 207.272.2562
>
> PORTLAND HOUSING DEVELOPMENT CORPORATION

From: Mary Davis <mpd@portlandmaine.gov>
Date: Thursday, May 7, 2020 at 9:13 AM
To: Jay Waterman <jwaterman@porthouse.org>
Subject: Re: Affordable Housing TIF - Wage Rates

It will be important to know if the increased costs were due to Davis Bacon or the city's TIF Policy requirements.

Mary P. Davis, Division Director
Housing & Community Development Division
Planning & Urban Development Department
City of Portland
389 Congress Street Room 312
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www.portlandmaine.gov

City Hall is currently closed to the public until May 18. I am working remotely during this time.

On Wed, May 6, 2020 at 10:35 PM Jay Waterman <jwaterman@porthouse.org> wrote:

> Hi Mary,
>
> I am writing to give input on the impact of the Federal, State and Local wage rate requirements on affordable housing developments in Portland. As you know, the City's relatively new policy requires that all projects which receive a TIF from the City must pay a worker the "prevailing wage" rates established by the Maine Department of Labor as well as the City of Portland minimum wage rate, whichever is higher.
>
> Project Based Vouchers and City TIF financing both triggered our wage rate increases at 58 Boyd Street. We knew Davis Bacon was going to be a concern because our building was over four stories, moving the project into the higher "Building" (Commercial) rates. As many projects experienced from 2017-2019, construction labor and material costs have gone up significantly while MaineHousing cost caps have been flat for years and will remain flat until the 2021 tax credit allocations.
>
> **The additional wage costs to the project was $232,140**. This is approximately 2.5% of the overall construction budget for the project. The attached spreadsheet from Wright-Ryan Construction shows the total impact of Federal, State and local wage rates. At this time, I do not have a specific breakdown of the impacts of Davis-Bacon versus the City's required State/Local wages.
>
> With rising costs, our cost reduction process on 58 Boyd Street during the design process was painful, forcing us to forego Passive House energy efficiency goals that could have reduced our heating energy costs by over 75%. The additional costs when we had to update the wage rates in the first few months of construction only took away from our ability to buy back any upgrades from our contingency.

I concur with all of Greg Payne's comments to you in his email of April 1st. I have also heard that subcontractors with projects simultaneously in Portland and adjacent towns are hard-pressed to explain to their workers why those that go to Portland should get a pay raise when others with the same skills working nearby do not.

I encourage you to ask the Council to exempt affordable housing projects that receive TIF funding from the City's wage rate policy.

Thank you.

Jay

Jay Waterman, LEED AP BD+C/Homes

Director of Real Estate Development

Portland Housing Authority | Portland Housing Development Corporation

14 Baxter Blvd. Portland, Maine 04101

Direct: 207.221.8009

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PORTLAND HOUSING DEVELOPMENT CORPORATION

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58 BOYD STREET APARTMENTS
WAGE RATE COST IMPACT ANALYSIS

Prepared for Portland Housing Authority
4/27/20

Wage Premiums Captured in GMP*.		
Rough Carpentry Sub	$	46,000.00
Concrete Foundation Sub	$	16,000.00
Drywall Sub	$	65,000.00
Post GMP Premiums		
PCO # 20 (Updated Local, State &Davis-Bacon Rates)	$	46,000.00
Wage Rate Premium Subtotal	$	173,000.00
Fee, Insurance & Bond Add-ons at 6%	$	10,380.00
Total Premium	$	183,380.00

Analysis:

GMP Contract Value	$	9,655,751.00
GMP W/ PCO 20 (58 Boyd Costs w/ Wage Premium)	$	9,704,511.00
GMP less premiums w/ add ons (Potential Cost of Project at Market Rates.)	$	9,472,371.00
Delta between Market and Prescribed rates.	$	232,140.00
Labor Rate Delta / Potential market rate GMP as a %.		2.5%

*Guaranteed Maximum Price

1. Includes Davis Bacon "Residential - Commercial Tier" rates for Buildings over four stories high.
2. Includes State of Maine & City of Portland Prevailing Wage rates.

City of Portland Prevailing Wage Review

Prepared Summer 2022

Comparison of Davis-Bacon and Cumberland County Wages

The federal Davis-Bacon wage rates and the local Cumberland County wage rates both consider direct wages plus fringe benefits to compare minimum wages for each wage category. The laborer classifications do not line up exactly between the two determinations, nor do the wage rates themselves. As a whole, the Cumberland County determinations have more specific trade classifications for various types of workers. When comparing rates between the two sets of wage requirements, Davis-Bacon wages generally lower and the Cumberland County wages are generally higher.

Although there are only a few instances where the Davis-Bacon rates are higher than Cumberland County rates, when the Davis-Bacon rates are higher, they are *significantly* higher. There are more categories where Cumberland County rates are higher than Davis-Bacon. However, in those instances, the Cumberland County rates have a smaller differential to the Davis-Bacon rates (with the exception of a couple of trades, such as electricians and plumbers).

Wage Categories where Davis Bacon wages are higher than Cumberland County:

- Carpenter, by $13.13/hour
- Ironworker, by $17.16/hour
- Excavator, by $13.44/hour

Wage Categories where Cumberland County wages are higher than Davis-Bacon:

- Bricklayer, by $5.59/hour
- Cement worker, by $0.73/hour
- Electrician, by $7.78/hour
- Elevator Mechanic, by $4.27/hour
- Glazier, by $8.09/hour
- Laborer (general), by $2.07/hour
- Laborer (skilled), by $8.21/hour
- Crane Operator, by $12.35/hour
- Painter (brush), by $2.59/hour
- Painter (spray), by $0.33/hour (note that there is no “spray painter” classification for Cumberland County)
- Pipefitter, by $5.93/hour
- Plumber, by $8.26/hour
- Roofer, by $0.86/hour
- Insulation, by $1.62/hour

Impact of Cumberland County Wages

It is worth noting that the *minimum wages* required by either Davis-Bacon or Cumberland County do not necessarily equal the *actual rates paid* on this job; employers often pay rates that exceed one or both of these minimum rates. This is particularly true in the case of union shops where wages are typically higher to begin with.

To understand the cost impact of adherence to Cumberland County wages in addition to Davis-Bacon wages, we reviewed a case study of a development currently under way in Portland. In this instance, Davis-Bacon wages had been required in the contract, and the general contractor surveyed subcontractors to collect their anticipated hourly rate for all positions. Please note that subcontractors were asked to report the rates they are actually paying so we could determine if the rates met or exceeded the minimum set by Davis-Bacon.

See attached and below for a more detailed accounting of the reported wage rates. Subcontractor names were redacted from this analysis for worker and employer privacy. There are a couple of key items to note. First, when there are multiple rates reported for the same trade classification, that is because the subcontractor(s) reported a variety of wages they are paying their workers. These workers could be within the same company or could work for a variety of different companies but have the same job classification. Second, the number of different rates for a given classification may not equal the actual number of positions on the job. For example, subcontractors collectively reported eight different *carpenter rates*. However, there are likely more than eight different *individuals working as carpenters* on this job. What this means is there may be multiple individuals paid at each of the rates listed below. Second,

After receiving the anticipated rates each subcontractor is paying, we compared those rates to the Davis-Bacon required rates, as well as the Cumberland County rates. **By contract, subcontractor wages for the case study were required to meet the Davis-Bacon rates. In many cases, subcontractor wages for the case study *also* exceed the Cumberland Country rates.**

Positions where the case study pay rates exceed Cumberland County minimums:

- Carpenters – 8 of 8 rates
- Cement workers – 5 of 5 rates
- Glaziers – 1 of 1 rates
- Ironworkers – 2 of 2 rates
- Laborers – 22 of 30 rates
- Crane Operator – 1 of 1 rates
- Excavator – 1 of 1 rates
- Painters – 2 of 7 rates
- Pipefitters – 4 of 5 rates
- Plumbers – 1 of 3 rates

Classifications or positions where the anticipated pay rate is lower than the Cumberland County rate are listed below:

- **Bricklayer** – The single bricklayer rate reported for this job meets the Davis-Bacon rate but will earn $5.59/hour less than the Cumberland County rate.
- **Electricians** – Subcontractors reported four different electrician positions, three of which have rates equal to the Davis Bacon rate and one of which is paid a few cents more. Therefore, three

electricians will be paid $7.78/hour less than Cumberland County, and one will be paid $7.73/hour less.

- **Elevator Mechanic** – The elevator mechanic will exceed the Davis-Bacon rate by approx. $2/hour, but they will still make $1.19/hour less than the Cumberland County rate.
- **Laborers** – Subcontractors reported 30 different laborer rates, eight of which would be paid below the Cumberland County rate:
  - $2.07/hour (three laborers, all paid at Davis-Bacon rate)
  - $1.19/hour (one laborer, exceeding Davis-Bacon rate)
  - $0.18/hour (one laborer, exceeding Davis-Bacon rate)
  - $0.51/hour (one laborer, exceeding Davis-Bacon rate)
  - $0.67/hour (one laborer, exceeding Davis-Bacon rate)
  - $0.98/hour (one laborer, exceeding Davis-Bacon rate)
- **Painters**: Subcontractors reported six painters on this job, four of whom would be making less than the Cumberland County rates:
  - $2.59/hour (two painters, both paid at Davis-Bacon rate)
  - $0.02/hour (one painter, exceeding Davis-Bacon rate)
  - $0.33/hour (one painter, exceeding Davis-Bacon rate)
- **Pipefitter**: One of the five pipefitters will be paid the Davis-Bacon rate and will make $0.50/hour less than the Cumberland County rate (the other pipefitters exceed both Davis-Bacon and Cumberland County).
- **Plumbers**: Of the three plumbing rates, two are less than the Cumberland County rate:
  - $6.74/hour (one plumber, exceeding Davis-Bacon rate)
  - $8.26/hour (one plumber, paid at Davis-Bacon rate)
- **Roofer**: The one roofing rate is being paid at the Davis-Bacon minimum, which is $0.96/hour less than the Cumberland County rate.

Of the estimated 70 different wage rates reported in the case study, more than 70% are compliant with both Davis-Bacon and Cumberland County wage rates. (Reminder again, there may be more than 70 different workers represented by those 70 different rates, so it is not possible to determine the exact percentage of workers that are/are not compliant with the Cumberland County wage rates). Of those 22 rates that are not compliant with Cumberland County wage requirements, most have a differential of less than a dollar (8 positions) or two dollars (7 positions). Seven positions have differences between 6-8 dollars, which are due to the Cumberland County wage rates for Electricians, Carpenters, and Plumbers.

Even though the differential on those rates is typically small, sometimes less than a dollar per hour but never more than nine dollars, Cumberland County wage rate compliance poses a significant cost to the project. Based on workhours estimated by the general contractor and relevant subcontractors, the added cost to the project for Cumberland County wage rate compliance would be in the range of $75,000 - $100,000.

City of Portland Prevailing Wage Review

Summer 2022

Job Classification	Davis-Bacon Rate	Cumberland County Rate	Difference Between Davis-Bacon and Cumberland County Rates	Davis-Bacon Rate Compliant with Cumberland County?	Additional Hourly Cost to Any Project for Cumberland County Compliance	Case Study Rate	Case Study Rate Compliant with Cumberland County?	Additional Hourly Cost to Project for Cumberland County Compliance
Bricklayer	$ 27.86	$ 33.45	$ (5.59)	NO	$ 5.59	$ 27.86	NO	$ (5.59)
Carpenter 1	$ 43.35	$ 30.22	$ 13.13	YES		$ 43.35	YES	$ -
Carpenter 2	$ 43.35	$ 30.22	$ 13.13	YES		$ 46.22	YES	$ -
Carpenter 3	$ 43.35	$ 30.22	$ 13.13	YES		$ 43.35	YES	$ -
Carpenter 4	$ 43.35	$ 30.22	$ 13.13	YES		$ 43.35	YES	$ -
Carpenter 5	$ 43.35	$ 30.22	$ 13.13	YES		$ 43.35	YES	$ -
Carpenter 6	$ 43.35	$ 30.22	$ 13.13	YES		$ 43.35	YES	$ -
Carpenter 7	$ 43.35	$ 30.22	$ 13.13	YES		$ 43.35	YES	$ -
Carpenter 8	$ 43.35	$ 30.22	$ 13.13	YES		$ 43.35	YES	$ -
Cement 1	$ 22.66	$ 23.39	$ (0.73)	NO	$ 0.73	$ 25.00	YES	$ -
Cement 2	$ 22.66	$ 23.39	$ (0.73)	NO	$ 0.73	$ 28.00	YES	$ -
Cement 3	$ 22.66	$ 23.39	$ (0.73)	NO	$ 0.73	$ 36.50	YES	$ -
Cement 4	$ 22.66	$ 23.39	$ (0.73)	NO	$ 0.73	$ 70.00	YES	$ -
Cement 5	$ 22.66	$ 23.39	$ (0.73)	NO	$ 0.73	$ 73.37	YES	$ -
Electrician 1	$ 39.53	$ 47.31	$ (7.78)	NO	$ 7.78	$ 39.53	NO	$ (7.78)
Electrician 2	$ 39.53	$ 47.31	$ (7.78)	NO	$ 7.78	$ 39.58	NO	$ (7.73)
Electrician 3	$ 39.53	$ 47.31	$ (7.78)	NO	$ 7.78	$ 39.53	NO	$ (7.78)
Electrician 4	$ 39.53	$ 47.31	$ (7.78)	NO	$ 7.78	$ 39.53	NO	$ (7.78)
Elevator Mechanic	$ 96.19	$ 100.46	$ (4.27)	NO	$ 4.27	$ 98.54	NO	$ (1.92)
Glazier	$ 16.12	$ 24.21	$ (8.09)	NO	$ 8.09	$ 25.23	YES	$ -
Ironworker 1	$ 50.82	$ 33.66	$ 17.16	YES		$ 50.82	YES	$ -
Ironworker 2	$ 50.82	$ 33.66	$ 17.16	YES		$ 53.69	YES	$ -
Laborer - General 1	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 72.01	YES	$ -
Laborer - General 2	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 16.12	NO	$ (2.07)
Laborer - General 3	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 16.12	NO	$ (2.07)
Laborer - General 4	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 16.12	NO	$ (2.07)
Laborer - General 5	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 38.50	YES	$ -
Laborer - General 6	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 27.60	YES	$ -
Laborer - General 7	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 36.48	YES	$ -
Laborer - General 8	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 27.82	YES	$ -
Laborer - General 9	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 32.39	YES	$ -
Laborer - General 10	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 35.90	YES	$ -
Laborer - General 11	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 18.54	YES	$ -
Laborer - General 12	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 24.00	YES	$ -
Laborer - General 13	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 17.00	NO	$ (1.19)
Laborer - General 14	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 20.00	YES	$ -
Laborer - General 15	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 27.00	YES	$ -
Laborer - General 16	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 19.92	YES	$ -
Laborer - General 17	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 20.46	YES	$ -
Laborer - General 18	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 25.26	YES	$ -
Laborer - General 19	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 18.01	NO	$ (0.18)
Laborer - General 20	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 17.68	NO	$ (0.51)
Laborer - General 21	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 17.52	NO	$ (0.67)
Laborer - General 22	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 31.00	YES	$ -
Laborer - General 23	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 25.00	YES	$ -
Laborer - General 24	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 21.00	YES	$ -
Laborer - General 25	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 22.50	YES	$ -
Laborer - General 26	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 18.30	YES	$ -
Laborer - General 27	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 19.35	YES	$ -
Laborer - General 28	$ 16.12	$ 18.19	$ (2.07)	NO	$ 2.07	$ 19.98	YES	$ -
Laborer - Skilled 1	$ 16.12	$ 24.33	$ (8.21)	NO	$ 8.21	$ 39.82	YES	$ -

Laborer - Skilled 2	$ 16.12	$ 24.33	$ (8.21)	NO	$ 8.21	$ 23.35	NO	$ (0.98)
Operator - Crane	$ 23.33	$ 35.68	$ (12.35)	NO	$ 12.35	$ 40.98	YES	$ -
Operator - Excavator	$ 37.29	$ 23.85	$ 13.44	YES		$ 39.87	YES	$ -
Painter - Brush 1	$ 17.43	$ 20.02	$ (2.59)	NO	$ 2.59	$ 24.00	YES	$ -
Painter - Brush 2	$ 17.43	$ 20.02	$ (2.59)	NO	$ 2.59	$ 26.00	YES	$ -
Painter - Brush 3	$ 17.43	$ 20.02	$ (2.59)	NO	$ 2.59	$ 17.43	NO	$ (2.59)
Painter - Brush 4	$ 17.43	$ 20.02	$ (2.59)	NO	$ 2.59	$ 20.00	NO	$ (0.02)
Painter - Brush 5	$ 17.43	$ 20.02	$ (2.59)	NO	$ 2.59	$ 17.43	NO	$ (2.59)
Painter - Spray	$ 19.69	$ 20.02	$ (0.33)	NO	$ 0.33	$ 19.69	NO	$ (0.33)
Pipefitter 1	$ 25.48	$ 31.41	$ (5.93)	NO	$ 5.93	$ 30.91	NO	$ (0.50)
Pipefitter 2	$ 25.48	$ 31.41	$ (5.93)	NO	$ 5.93	$ 32.89	YES	$ -
Pipefitter 3	$ 25.48	$ 31.41	$ (5.93)	NO	$ 5.93	$ 33.07	YES	$ -
Pipefitter 4	$ 25.48	$ 31.41	$ (5.93)	NO	$ 5.93	$ 35.81	YES	$ -
Pipefitter 5	$ 25.48	$ 31.41	$ (5.93)	NO	$ 5.93	$ 37.99	YES	$ -
Plumber 1	$ 25.48	$ 33.74	$ (8.26)	NO	$ 8.26	$ 25.48	NO	$ (8.26)
Plumber 2	$ 25.48	$ 33.74	$ (8.26)	NO	$ 8.26	$ 27.00	NO	$ (6.74)
Plumber 3	$ 25.48	$ 33.74	$ (8.26)	NO	$ 8.26	$ 37.00	YES	$ -
Roofer	$ 22.17	$ 23.13	$ (0.96)	NO	$ 0.96	$ 22.17	NO	$ (0.96)

Dear Mayor Snyder & Council:

I write in order to provide you with additional information regarding the prevailing wage structure at the federal, state, and county-level, specifically as it relates to the city's Tax Increment Financing (TIF) Policy, dated February 21, 2021[1]: Section V, Subsection, Paragraph 3, Sub paragraph iii. It is important for city officials to have available to them all pertinent information before making a decision to amend such a policy. Unfortunately, this doesn't seem to have been the case in this instance, as the information provided surrounding this issue was demonstrably incomplete, seemingly based on conjecture and carried certain assumptions that were not based in objective fact.

I write to you also as a Portland resident, the President of the Maine State Building & Construction Trades Council, Vice President & Secretary-Treasurer of the Laborers' International Union, Local 327, a member of the State Workforce Board and the Vice Chair of the Maine Apprenticeship Council. Throughout my career, I have gained broad and deep experience with the prevailing wage system in Maine, along with the Davis-Bacon federal wage determination process used throughout the country. I have presented as a subject matter expert panelist at regional and national conferences on this very issue. In fact, I was centrally involved in the crafting of the language in the City's TIF Policy referenced above. I advise on the state's Prevailing Wage Advisory Board, I have drafted amendments to the state law as they pertain to which projects are covered under state prevailing wage[2], as well as how the actual prevailing wage is collected[3] and calculated[4]. I have submitted state prevailing wage data on behalf of construction contractors, and have participated in federal Davis-Bacon wage surveys.

It is my understanding that it was stated that developers and contractors are perhaps confused as to which rates they have to pay when performing construction in the City of Portland and that understanding which wages pertain to their projects is difficult for them. This simply cannot be true, and if it is, we should give serious consideration to the ability for said developers and contractors to perform tasks that exceed anything more advanced than the basic and rudimentary. The law is quite clear, as is the past practice of most if not all of the contractors listed on the City's procurement list, who on a regular basis work utilizing Davis-Bacon rates as well as State Prevailing Wage Rates, as required by the RPF they are responding to.

According to the US Department of Labor, "The Davis-Bacon and Related Acts apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works."[5]

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[1] https://content.civicplus.com/api/assets/75589c73-7158-4944-8ca7-81fc55ed583a?cache=1800
[2] https://www.mainelegislature.org/legis/bills/display_ps.asp?LD=1658&snum=129
[3] https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280072700
[4] https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280088213
[5] https://www.dol.gov/agencies/whd/government-contracts/construction

In the state of Maine, “state prevailing wage rates are the minimum rates contractors must pay on State-funded public works projects estimated to cost $50,000 or more.”[6] “Public Works includes public schools and all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, demolition, waterworks, airports and all other structures upon which construction which is funded in whole or in part by state funds and for which the contract amounts to $50,000 or more.”[7]

In the City of Portland, for those projects that choose to seek a taxpayer subsidy in the form of a Credit Enhancement Agreement (CEA) under the TIF Policy, state prevailing wages (or the city’s minimum wage, whichever is higher) must be paid. The fact that an argument can be made that the very developers and contractors who participate in federally-funded and/or state-funded projects do not know how to differentiate between the wages that are **legally required** to be paid is difficult, if not impossible, to believe.

It is my understanding that it was also relayed that the TIF Policy’s CEA wage requirements are making it difficult to build affordable housing in the city. Aside from the obvious data[8] that severely undercuts this line of argument, the fact is that this is simply cannot be true. The change to the TIF Policy only relates to those developments seeking a TIF under a CEA. Affordable housing projects are most often funded by either the US Department of Housing and Urban Development-funded (which would mandate federal Davis Bacon as a floor wage, with the wages prevailing if higher) or via funds granted solely by the Maine State Housing Authority (which would mandate State Prevailing Wage). Developers and their associated contractors well know which wages to pay on which jobs they are performing, because they also well know where their funding is coming from.

It is further my understanding that the Council was told that the change contemplated to the TIF Policy would make a decrease in wages “a possibility but not a given.” The plain fact is that it would demonstrably lower wages in 14 of the 18 trades that pertain to the building of multi unit structures or larger. Setting aside the impending change to the calculation of state prevailing wage that will ensure a most fulsome data comparison and more consistent wage application[9], we know the differences in wages based on a simple analysis of the Davis Bacon rates and the state prevailing wage rates, both for Cumberland County. If the City’s policy for developers receiving tax subsidies is to utilize Davis-Bacon, *when developers are required to pay it* (which also begs the question as to which wages they are to pay when there is no specified requirement all all), the table below shows the impacts of the changes contemplated by Council action:

[6] https://www.maine.gov/labor/labor_stats/publications/wagerateconst/index.shtml
[7] https://legislature.maine.gov/statutes/26/title26sec1304.html
[8]https://wgme.com/news/local/maine-housing-crisis-report-portland-track-reach-goal-new-units-city-council-pious-ali-cooperative-development-partners
[9] https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280088213

Trade	Davis-Bacon Wages + Fringe[10]	State Prevailing Wage + Fringe[11]	Reduction/hr for Portland Workers
Bricklayer	$27.86	$37.62	- $9.76
Cement Mason	$22.66	$28.36	- $5.70
Mechanical Insulator	$22.43	$26.26	- $3.83
General Laborer	$16.12	$24.80	- $8.68
Millwright	$29.92	$44.27	- $14.35
Operator (crane)	$23.33	$45.01	- $21.68
Painter	$17.43	$25.38	- $7.95
Plumber	$25.48	$36.76	- $11.28
Roofer	$22.17	$26.08	- $3.91
Sheet Metal Worker	$19.87	$28.87	- $9.00

Based upon this information, I urge the Council to reconsider their action surrounding wages on projects built under a Credit Enhancement Agreement as a part of the City's TIF Policy. Upon reconsideration, I urge the Council to postpone action indefinitely so that the Council and staff can get a better understanding of the implications of their actions on working Portlanders, as well as how upcoming changes to the State Prevailing Wage calculations may impact the projects in question. It is only then when a truly well-informed proposal can be assembled and presented.

Please do not hesitate to contact me with any questions you may have. I can be reached at (207) 317-1447 or JShedlock@LNEROF.org. I look forward to your prudent and favorable action.

Sincerely,

Jason J. Shedlock
199 Prospect Street, Portland
President, Maine State Building & Construction Trades Council
Regional Organizer, Vice President & Secretary-Treasurer, Laborers' International Union Local 327

[10] https://sam.gov/wage-determination/ME20230016/4
[11] https://www.maine.gov/labor/docs/2023/laborstats/prevailingwage/Cumberland/2023%20B2%20Cumberland%20County.pdf

City of Portland | Housing and Economic Development Department
Mary P. Davis, Interim Director

MEMORANDUM

To: Mayor Kate Snyder
Members of the Portland City Council

From: Mary Davis, Interim Director, Housing and Economic Development Department

Date: June 25, 2023

RE: Reconsideration of Order 239-22/23 Approving Changes to the Tax Increment Financing Policy

At the June 26 City Council meeting, Council Members will be asked to reconsider action taken at the June 5th City Council. On June 5th, the City Council voted 9-0 to approve amendments to the City's Tax Increment Financing Policy. The amendments specifically related to Section V.B.3.a.iii State Prevailing Wage Rate Requirement. The amendment was intended to provide clarity to the requirement and reduce administrative burden and confusion, to facilitate the development of affordable housing in the City of Portland.

Davis-Bacon

Compliance with this federal regulation is required for HUD-assisted and insured housing and community development programs funded through the U.S. Department of Housing and Urban Development (HUD). The next two sections describe when Davis-Bacon applies to HUD-funded programs or projects.

HOME Program

The City of Portland, as a member of the Cumberland County HOME Consortium, receives funding from the HUD HOME Program. The HOME Program is one of the HUD funded community development programs that must comply with the Davis-Bacon federal prevailing wage requirements. In the HOME Program, any HOME funded project that has 12 or more HOME-assisted units, must comply with the Davis-Bacon. The number of HOME-assisted units is determined during the project underwriting process and is dictated by the level of HOME assistance provided to a project, using a cost allocation review that is based on maximum HOME per-unit subsidy limits. If multiple jurisdictions, like MaineHousing and the City, are investing HOME funding in a project, and the combined HOME investment results in 12 or more HOME-assisted units, Davis-Bacon requirements would be triggered. However, in more than 25 years working with the HOME Program, I do not recall any HOME project that had 12 or more HOME-assisted units, by individual or combined jurisdictions.

Community Development Block Group (CDBG) Program

When CDBG funding is used to pay, in whole or in part, for any direct costs of construction over $2,000, the project must comply with Davis-Bacon requirements. Davis-Bacon does not apply to rehabilitation of residential buildings with less than eight units.

Generally, new construction of housing is not eligible under the CDBG program; however, CDBG can be used to support new construction; examples include assistance with public infrastructure improvements such as sidewalks or water/sewer connections, site clearance, demolition. This type of activity would trigger compliance with Davis-Bacon.

CDBG funding can be used to pay for non-construction costs, such as architectural/engineering, acquisition of real property, financing costs, purchase of equipment, relocation costs, and other services such as legal, accounting, construction management. These soft-costs generally do not trigger Davis-Bacon.

If federal and state rates differ, the more stringent wage rates must be followed.

Other HUD Programs

Other HUD program funding, provided by other organizations or entities may trigger requirements to comply with Davis-Bacon. For example, a new project being developed may be awarded project-based housing vouchers (PBV). In certain cases, the award of PBVs may trigger the need for the project to comply with Davis-Bacon.

Maine State Housing Authority

I have confirmed with Maine State Housing Authority that their programs generally do not require compliance with state prevailing wage rates. They have a program, a 4% Tax Credit Walk-in Funding Program, that was funded through the ARP State Fiscal Recovery Program, that does require project labor agreements but that program is currently funding only one project.

Administration of Davis-Bacon and State Prevailing Wage Rate Requirements

Labor Classifications may not be the same between Davis-Bacon and State Prevailing Wage. If a classification is used in one but not the other, staff must contact the appropriate agency to seek the appropriate wage classification.

Workers performing similar but slightly different work may be classified differently. For example, the 2023 State Prevailing Wage (B2 Cumberland County) includes two classifications – Carpenter ($44.97) and Drywall and Ceiling Tile Installers ($30.41). The Davis-Bacon determination for Cumberland County includes Drywall Hanging in the Carpenter ($46.60) category.

In what type of cases would the amended policy be applicable?

If a project is receiving a Credit Enhancement Agreement through Tax Increment Financing, and there are no funding sources that require Davis-Bacon wage rates, the project would be subject to the state prevailing wage rates.

If a project is receiving a Credit Enhancement Agreement through Tax Increment Financing, and there is a federal funding source requiring compliance with Davis-Bacon wage rates, (project based housing vouchers, for example) the Davis-Bacon wage rates would be used to meet the TIF Policy's prevailing wage rate requirement.

City of Portland | Housing and Economic Development Department
Mary P. Davis, Interim Director

MEMORANDUM

To: Councilor Pious Ali, Chair
Members of the Housing and Economic Development Committee

From: Mary Davis, Interim Director, Housing and Economic Development Department

Date: August 11, 2023

RE: 2023 Housing and Economic Development Committee Proposed Work Plan

The work plan and draft schedule for the Housing and Economic Development Committee is attached.

As has been the practice of the committee, the work plan and schedule will be included on every HEDC meeting agenda to provide an opportunity for committee members to provide updates and direction on the agenda schedule.

389 Congress Street, Portland, ME 04101 – www.portlandmaine.gov – (207) 874-8683

DRAFT
Housing & Economic Development Committee
2023 Work Plan Schedule
as of August 11, 2023

August 15, 2023
1. Executive Session USL Soccer Proposal
2. Review, Consideration and Feedback on Revisions to the Outdoor Dining on Public Property Program (Sidewalks only)
3. (Public Comment) Review and Recommendation regarding a proposed Affordable Rental Housing Incentive Program
4. Reconsideration of Changes to the City's Tax Increment Financing Policy - Feedback from the Committee regarding additional information needed from staff

September 19, 2023
1. USL Soccer Proposal (Tentative)
2. (Public Comment) Review and Recommendation to the City Council of an Affordable Housing TIF/CEA and Affordable Housing Development Subsidy- Portland Housing Development Corp. Riverton Park Project
3. Maine Cooperative Development Partners Update
4. (Public Comment) Review and Recommendation to the City Council of an Affordable Housing TIF/CEA - Lambert Woods North Project (622 Auburn Street) and Amendment to Purchase and Sale Agreement for 622 Auburn Street/0 Gray Road, Falmouth

October 17, 2023
1. Review of FYE 2023 TIF Annual Report
2. Analysis of the Role of the Rental Housing Advisory Committee
3. Discussion of Possible Housing Summit in 2024

November 21, 2023
1. Review of the 2023 Annual Accomplishment Report for the Housing and Economic Development Committee

December 19, 2023
1.

COMPLETED WORK

January 17, 2023

1. Facilitated Work Plan Discussion

February 21, 2023

1. Workshop - Responsibilities of the Housing and Economic Development Department
2. Review Letter from the Rental Housing Advisory Committee
3. (Public Hearing) Review and Recommendation to the City Council – FY24 Housing Program Budget
4. (Public Hearing) Review and Recommendation to the City Council - HOME-ARP Program Plan
5. (Public Hearing) Review and Recommendation to the City Council - Thames Street Purchase and Sale Agreement

March 21, 2023

1. (Public Hearing) Review and Recommendation to the City Council – 2023 Jill C. Duson Housing Trust Fund Annual Plan
2. (Public Hearing) Review and Vote to Approve the Issuance of 2023 Affordable Housing TIF and Affordable Housing Development Fund Application for the Jill C. Duson Housing Trust Fund, HOME Program
3. (Public Hearing) Review and Recommendation to the City Council to continue to Participate in the Cumberland County HOME Consortium
4. Executive Session Review and Direction to Staff on Negotiations with USL Soccer Proposal at Fitzpatrick Stadiums

April 4, 2023

1. Presentation of Annual Report from Permitting & Inspections Dept. Re: Short/Long Term Rental Registration Program and Housing Safety.
2. Communication - Memo from City Staff regarding the Franklin Street Redesign Plan
3. Communication - Findings of January 2023 Housing Supply Boot Camp
4. Communication - Memo from City Staff regarding City Owned Property - 0 Marginal Way Parking Lot

April 25, 2023

1. (Public Hearing) Review and Recommendation to the City Council - Amendment to the City's Tax Increment Financing Policy
2. (Public Hearing) Review and Recommendation to the City Council - Report to HUD on Analysis of Impediments to Fair Housing
3. (Public Hearing) Review and Update regarding Portland Adult Ed FY23 Workforce Development Programs and FY24 Funding Request.
4. (Public Hearing) Review and Recommendation to the City Council - Regarding establishing a Tourism Improvement District.

May 16, 2023 - Canceled

June 20, 2023

1. Review of 2022 Annual Housing Report
2. Preview of Agenda for City Council Affordable Housing Workshop (June 28)
3. (Public Comment) Approve and Recommend an Affordable Housing TIF - 15 Casco Street

July 18 2023 - Canceled

2023 Housing and Economic Development Committee Draft Work Plan August 10, 2023

	Annual Committee Work	Staff Recommendations	Committee Members' Priorities	Status
ECONOMIC DEVELOPMENT POLICY				
Review Tax Increment Financing (TIF) investment in workforce training for FY2024 funding.		X		4.25.23
Vote on Tourism Improvement District proposal		X		4.25.23
Research and present options for public-private partnerships to support parking garage and possible new affordable housing - City-owned Bayside Lot 6, (corner of Somerset & Chestnut St) acquired by the City Council through eminent domain		X		
Waterfront Activity Workshop including - Harbor Dredge Project, Portland Harbor Commons, Off-Shore Wind, and other items		X	X	
Accessibility of Public Buildings, ADA Compliance			X	
Consideration of year-round outdoor dining on public property (excluding streets)				

	Annual Committee Work	Staff Recommendations	Committee Members' Priorities	Status
AFFORDABLE HOUSING POLICY AND BUDGETS				
Policy Discussion re: (1) Guidelines and Priorities for the allocation of city resources for housing development (2) use of priority nodes and corridors for housing development (possible committee workshop with Planning Dept staff)	X	X	X	3.21.23
Review of FY 2024 Housing Program Budget	X			2.21.23
Review of 2023 Jill C. Duson Housing Trust Fund Annual Plan and the 2023 Affordable Housing Development Application	X			3.21.23
Review and Analysis of the Role of the Rental Housing Advisory Committee		X	X	

	Annual Committe e Work	Staff Recommendations	Committee Members' Priorities	Status
AFFORDABLE HOUSING/ECONOMIC DEVELOPMENT - PUBLIC-PRIVATE PARTNERSHIPS, REAL ESTATE TRANSACTIONS				
Review/ Vote to Approve Funding Requests Received from the Affordable Housing Development Applications -Housing Trust, HOME & AHTIF CEA Requests.	X	X		
Review City Owned property to sell/lease to support affordable housing		X		
Portland United Soccer League Proposal				
Purchase & Sale Agreement - Sale of a portion of City-owned Thames St. Property		X		2.21.23
Kennebec Street Realignment (from Brattle to Forest)				
Review of Franklin Street Plan and Possible Use of Federal Reconnecting Communities Grant - Possible Joint Meeting with Sustainability & Transportation			X	4.4.23

	Annual Committe e Work	Staff Recommendations	Committee Members' Priorities	Status
ANNUAL REPORTS AND ACTIONS				
Presentation of 2022 Housing Report	X			6.20.23
FY24 Annual Allocation Plan (Jan-April) & Analysis of Impediments to Fair Housing	X	X		4.25.23
Annual Presentation,-Permitting & Inspections, Short/Long-term Rental Housing Registration, Safety & Inspection Program - Implementation & Financial Report Discussion of Dept. Staff Needs	X		Process established under prior Housing Committee X	4.4.23
City TIF District Annual Activity Report (November)	X			
Committee Annual Accomplishment Report (November)	X			