City of Portland, Maine
Finance Committee Meeting
Wednesday, November 28, 2018
5:30 PM, City Hall, Room 24

AGENDA

1. **Introductions**

2. **Approval of October Meeting Minutes**

3. **Proposed Changes to City Contracting (Continued)**

   The Committee received a proposal from Mayor Strimling to make significant changes to City Contracting rules. This proposal, including a draft ordinance, will continue to be discussed at the current meeting. <u>This item is a discussion item only – no action will be taken at the current meeting.</u>

4. **$7M Housing Bond**

   The Committee received a proposal from Mayor Strimling for a $7M bond to fund the Housing Trust. The Housing Trust is used to assist developers to meet the goal of providing increased availability in all segments of the housing market. Staff has provided cost analysis of the proposal and backup materials including draft bond authorization orders from Bond Counsel Jim Saffian have also been provided. Additional discussion of the proposal and potential alternate proposals will occur at this meeting. The previously scheduled public hearing has been postponed. <u>This item is a discussion item only – no action will be taken at the current meeting.</u>

5. **Adjournment**

City of Portland, Maine
Finance Committee Meeting
Thursday, October 4, 2018
5:30 p.m., Room 209

MINUTES

Finance Committee MEMBERS PRESENT:
Chair Mavodones, Committee Members Costa & Strimling

Members of City Staff and Public

5:35 PM - Meeting called to order

5:36 PM - Introductions

5:37 PM - Approval of Minutes from 9/12/18 Meeting

-*Motion made by Mavodones, seconded by Strimling (Passes 3-0) Vote Time: 5:37*

5:38 PM - $7M Bond to Fund the Housing Trust – Proposal from Mayor Strimling
Mayor Strimling will present his plan for a $7M bond to fund the Housing Trust which is used to assist developers to meet the goal of providing increased availability in all segments of the housing market. Staff has provided cost analysis of the proposal and backup materials from Bond Counsel Jim Saffian are also included. <u>This item is a discussion item only – no action will be taken at the current meeting.</u>

6:36 PM - Proposed Portland Employment Disparity Study (Public Hearing and Vote)
On 9/12/18 the Committee received a proposal from Mayor Strimling on conducting a disparity study on employment in Portland. Additional materials from staff have been added to existing backup materials from the previous meeting. A public hearing and vote on this item is scheduled.

-*No vote was taken*

6:50 PM - Proposed Amendments to City Contracting (Continued from 9/12)
On 9/12/18 the Committee received a proposal from Mayor Strimling to make significant changes to City Contracting rules. At the current meeting Mayor Strimling will provide additional details on his proposal and City staff will discuss the existing procurement policy and additional information on the proposed changes. <u>This item is a discussion item only – no action will be taken at the current meeting.</u>

7:23 PM - Discussion Future Finance Committee Meeting Dates

a. **Wednesday, October 10th, 5:30PM**
    i. **Public Hearing on Proposed Amendments to City Contracting**
    ii. **Other items TBD**
b. **Thursday, October 25th, 5:30PM – TO BE RESCHEDULED**
c. **November dates TBD**

7:27 PM - Adjournment

City of Portland, Maine
Finance Committee Meeting
Wednesday, October 10, 2018
5:30 p.m., City Council Chambers

MINUTES

Finance Committee MEMBERS PRESENT:
Acting Chair Costa, Committee Member Strimling

Members of City Staff and Public

5:35 PM – Meeting called to order

5:35 PM - Introductions

5:36 PM - Proposed Amendments to City Contracting (Public Hearing)

On 9/12/18 the Committee received a proposal from Mayor Strimling to make significant changes to City Contracting rules. At the 10/4/18 meeting additional materials were presented. The Committee will continue to discuss the proposal and a Public Hearing on the proposal will be held.

6:53 PM - Future Finance Committee Meeting Dates

October and November Finance Committee meeting dates will be discussed and set.

7:20 PM - Adjournment

Office of the Mayor, Ethan K. Strimling

MEMORANDUM

To: Finance Committee

From: Ethan K. Strimling, Mayor

Date: Sept 6, 2018

Subject: Responsible Contracting

OBJECTIVE: The objective of this amendment is to strengthen the city purchasing policy to better reflect our values and to incentivize better outcomes for workers and Portland taxpayers, by adding and encouraging key components of what is commonly referred to as "responsible contracting." There are many components of responsible contracting, some of which the city already adheres to. The two areas that I am focused on at this time are (1): the payment of prevailing wages for building contracts that are funded by municipal funds; (2): requiring contractors who are awarded a municipally funded construction project to participate in a registered apprenticeship/job training program; (3) adding additional opportunities for contractors who treat their workers well to earn points toward the possible awarding of a contract. Each of these proposals will be taken up individually.

1. PREVAILING WAGE

BACKGROUND: The payment of prevailing wages by contractors to employees involved in government building contracts is not a new concept. The federal government requires contractors to pay prevailing wages to all workers employed in government construction projects.

Prevailing wage rates are also used by many states for state funded projects, including Maine. In Maine, construction projects funded and administered by a state agency that are over $50,000 must adhere to State of Maine prevailing wage and reporting guidelines.

Prevailing wage rates are also found at our municipal level. In 2017, the Portland City Council passed an ordinance requiring contractors working on any construction project receiving tax increment financing (TIF) from the City of Portland to pay its workers prevailing wages. Additionally, contractors who receive HUD and CDBG funding from the City of Portland must also adhere to federal prevailing wage reporting requirements.

RECOMMENDATION: ***Require building contractors using municipal funds to pay prevailing wages.***

Since it is imperative that workers in our city receive wages that allow them to be able to afford to live in our city, and since contractors working on federal and most state construction projects are already familiar with the payment and reporting of prevailing wages, it seems logical to extend such wage requirements to locally funded projects.

For purposes of consistency it is recommended that the minimum threshold for the prevailing wage requirement for municipally funded projects mirror the State of ME requirements of any project projected to cost over $50,000. It is further recommended that the City follow the prevailing wage construction categories already in place at the state level. These wage rates are adjusted every year, and are broken down by county to reflect local wage requirements. The wage rates are also broken down by construction category, including: 1. Building 1 - One or two family homes; 2. Building 2 - Other than one or two family homes; 3. Highway and Earthwork; 4. Heavy and Bridge.

Attachment 1 provides the 2018 prevailing wage rates for Cumberland County in these four construction categories. These are the rates I recommend we use (consistent with TIF and CDBG).

Critics will argue that such a mandate will add to the cost of municipally funded construction projects. However, construction companies working on state funded and managed projects over $50,000, as well as federal projects, are already in the habit of compensating at the prevailing wage rates as well as completing and submitting prevailing wage reports to the appropriate agencies. Plus, evidence shows that accurately tracking payroll and job classification is simply good business practice.

It is conceded that there will likely be an incremental increase in the city's cost of monitoring these projects. However, with the recent passage of TIFs for two local affordable housing projects, as well as the mechanism already in place to monitor such projects as those supported with CDBG funds, it is only a matter of time that a more fully robust reporting mechanism will be in place for monitoring of payment of prevailing wages at the city level. The expansion of prevailing wage requirements to all municipally funded construction contracts over $50,000 will only marginally increase these city costs.

Finally, the requirement for contractors to pay prevailing wage rates for all municipally funded building contracts over $50,000 will help ensure that all bidders are using similar wage rates, and that the historically awarded "low bidder" will not be cutting corners on his/her labor lines in order to achieve a competitive advantage. In fact, setting a wage floor will serve to encourage contractors to compete based on work product, creativity and ingenuity, rather than an artificially depressed wage line.

Put simply, if we as a City agree - as we have - that private companies such as the ones receiving support through a TIF should adhere to prevailing wage standards, the City then should follow its own example and adhere to the same standards on publicly-funded projects.

2. APPRENTICESHIP PROGRAM/JOB TRAINING REQUIREMENT

BACKGROUND: Presently, the bidding process and timely completion schedules for publicly funded construction projects in Southern Maine are strained by a shortage of skilled workers. Apprenticeship programs are recognized nationally and statewide as effective tools for creating pipelines of highly skilled local workers and propelling workers into secure, well-paying careers.

Currently, the State administers the Maine Apprenticeship Program which, in 2016, served 1220 apprentices across a wide range of trades. Along with quality trade-focused programming at our own Portland Arts & Technology High School and other local CTEs, community colleges such as Southern Maine Community College also offer an Associate Degree in Trade & Technical Occupations. There are also several union and non-union administered programs in occupations such as painting, masonry and carpentry. Further, there are currently apprenticeship programs in place for the state licensed trades such as plumbing and electrical.

RECOMMENDATION: ***A requirement aimed at increasing contractor participation in registered apprenticeship programs.***

This recommendation could be executed in one of two ways:

1. *Requiring Contractor Participation in Registered Apprenticeship Programs as a Stipulation for Submitting a Bid*: If this option is chosen, it is recommended that all firm(s) utilized on municipally funded construction projects be required to participate in a registered apprenticeship program for each applicable occupation in which workers will be employed. The firms must continue such participation for the duration of the project. Currently, the State of Maine defines a registered apprenticeship as, "a formal, industry-led, nationally-recognized, workforce training program for employees that provides in-house skill development through structured on-the-job learning supplemented with technical and theoretical course work."

2. *Awarding Preference Points to Bids Submitted by Contractors Participating in Registered Apprenticeship Programs*: A less restrictive alternative would be to award preference points as a part of the bid process to contractors who meet the qualifications outlined in the first recommendation option. While not an absolute requirement, it will be a definite incentive for contractors to participate in order to gain an advantage in the bid process.

As with the proposed prevailing wage amendment, there will likely be an incremental increase in the city's cost of monitoring construction projects. Many municipalities that have local responsible contracting requirements have staff who are able to monitor and enforce both the prevailing wage requirements and the apprenticeship/job training requirements.

Since many responsible employers across Maine already participate in some variation of on-the-job training program, any additional cost to certify their training program through the Maine Apprenticeship Program would be negligible. In fact, the investment in increasing the availability of a highly skilled workforce allows for contractors to access the workers they need to bid on, compete for, win and complete their current and future projects.

3. OTHER BONUS POINT PROVISIONS

BACKGROUND: As an additional way to incentivize employers to spend taxpayer monies in a way that reflects Portland's values, and that will ultimately create a higher quality product for our taxpayers, bonus provisions could be placed in our RFP scoring process. Many cities utilize this tool and most recently, Maine State Housing used it successfully for years. Four specific incentives discussed below are OSHA 10, Health Care, SS/UEI/WC and wage/hour consistency.

RECOMMENDATION: ***A bonus provision that awards additional points to contractors who provide additional safety and health related benefits to their employees.***

1. *OSHA 10*: Provide up to 3 points in scoring an RFP for contractors who will ensure that all workers on the site have gone through full OSHA 10 Certification (can be provided on-line or in person) or better.

2. *Health Care Insurance*: Provide up to 3 points in scoring an RFP for contractors who provide health care benefits above and beyond the prevailing wage.

3. *Social Security, Workers Comp and Unemployment Insurance*: Provide up to 3 points in scoring an RFP for contractors who provide social security (or a similar retirement program), Unemployment, and Workers Comp above and beyond the prevailing wage.

4. *Wage and Hour Violations*: Provide up to 3 points in scoring an RFP for contractors who have not had a recorded wage and hour violation for a period of three consecutive years prior to the project bid due date.

As with the proposed prevailing wage and apprenticeship amendments, there will likely be an incremental increase in the city's cost of monitoring construction projects. However, with the other requirements in place, monitoring these additional items will be minimal. Likewise, providing Health Care benefits, SS/UEI/WC will most likely reduce costs to the city when and if someone falls on hard times or retires.

Additionally, since many, if not most, responsible employers across Maine already provide these benefits, any additional cost to most companies would be negligible. Plus, ensuring that workers in Portland are well trained in safety will ultimately reduce a company's Workers Compensation costs.

MAINE BUREAU OF LABOR STANDARDS

2018 CUMBERLAND COUNTY *B1* PREVAILING WAGE RATE

Occupation Title	Minimum Wage	Minimum Benefit	Total
Asbestos/Lead Removal Worker	$15.10	$0.42	$15.52
Backhoe Loader Operator	$20.00	$2.16	$22.16
Boom Truck (Truck Crane) Operator	$21.66	$6.86	$28.52
Bricklayer	$24.00	$3.99	$27.99
Bulldozer Operator	$20.00	$4.06	$24.06
Carpenter	$21.00	$1.84	$22.84
Carpenter - Rough	$16.00	$0.00	$16.00
Cement Mason/Finisher	$17.00	$0.00	$17.00
Communication Equip Installer	$13.50	$0.45	$13.95
Driller - Rock	$18.38	$2.60	$20.98
Dry-Wall Applicator	$22.00	$0.70	$22.70
Dry-Wall Taper & Finisher	$18.50	$0.45	$18.95
Electrician - Licensed	$23.50	$2.20	$25.70
Electrician Helper/Cable Puller	$16.50	$1.05	$17.55
Excavator Operator	$22.00	$1.94	$23.94
Fence Setter	$17.75	$2.89	$20.64
Floor Layer	$17.00	$0.00	$17.00
Furniture Installer/Assembler	$16.00	$1.22	$17.22
Glazier	$16.88	$1.12	$18.00
Grader/Scraper Operator	$21.33	$5.13	$26.46
HVAC	$20.50	$2.09	$22.59
Insulation Installer	$20.00	$2.91	$22.91

Occupation Title	Minimum Wage	Minimum Benefit	Total
Laborers (helper/tender)	$15.00	$0.33	$15.33
Laborer - Skilled	$17.00	$2.21	$19.21
Loader Operator - Front-End	$19.13	$2.95	$22.08
Mechanic- Maintenance	$21.00	$3.84	$24.84
Oil/Fuel Burner (Service/install)	$24.50	$4.52	$29.02
Painter	$16.00	$0.00	$16.00
Pipe/Steam/Sprinkler Fitter	$23.50	$4.54	$28.04
Pipelayer	$28.00	$12.54	$40.54
Plumber (Licensed)	$25.00	$3.44	$28.44
Plumber Helper/Trainee	$20.00	$3.01	$23.01
Propane & Natural Gas (Service/install)	$26.50	$1.97	$28.47
Pump Installer	$21.00	$3.73	$24.73
Roofer	$20.63	$3.85	$24.48
Sheet Metal Worker	$22.80	$4.60	$27.40
Stone Mason	$20.00	$0.00	$20.00
Tile Setter	$23.00	$4.26	$27.26
Truck Driver - Light	$18.15	$2.88	$21.03
Truck Driver - Medium	$17.75	$1.82	$19.57
Truck Driver - Heavy	$17.00	$0.38	$17.38
Truck Driver - Tractor Trailer	$17.50	$2.42	$19.92

IMPORTANT INFORMATION: This Rate Sheet is published for reference only. A formal project specific determination is issued to the agency soliciting bids.

The Prevailing Wage rates are set for all 16 counties with 4 categories coded as follows:
B1 = One or two family homes
B2 = Other than one or two family homes

MAINE DEPARTMENT OF LABOR STANDARDS

2018 CUMBERLAND COUNTY *B2* PREVAILING WAGE RATE

Occupation Title	Minimum Wage	Minimum Benefit	Total
Asbestos/Lead Removal Worker	$15.10	$0.55	$15.65
Backhoe Loader Operator	$20.00	$2.16	$22.16
Boom Truck (Truck Crane) Operator	$21.66	$6.86	$28.52
Bricklayer	$24.00	$3.43	$27.43
Bulldozer Operator	$20.00	$4.06	$24.06
Carpenter	$23.00	$4.10	$27.10
Carpenter - Acoustical	$17.00	$2.68	$19.68
Carpenter - Rough	$19.00	$2.40	$21.40
Cement Mason/Finisher	$17.00	$0.45	$17.45
Communication Equip Installer	$22.00	$2.98	$24.98
Comm Transmission Erector-Microw	$17.00	$0.00	$17.00
Crane Operator =>15 Tons)	$25.13	$5.94	$31.07
Driller - Rock	$18.38	$2.60	$20.98
Dry-Wall Applicator	$22.42	$0.92	$23.34
Dry-Wall Taper & Finisher	$23.25	$0.00	$23.25
Electrician - Licensed	$27.55	$4.90	$32.45
Electrician Helper/Cable Puller	$17.25	$3.30	$20.55
Elevator Constructor/Installer	$57.50	$24.42	$81.92
Excavator Operator	$22.00	$2.08	$24.08
Fence Setter	$16.00	$1.17	$17.17
Flagger	$12.00	$0.00	$12.00
Floor Layer	$18.75	$3.72	$22.47
Furniture Installer/Assembler	$16.00	$1.24	$17.24
Glazier	$21.00	$3.50	$24.50
Highway Worker/Guardrail Installer	$16.75	$0.80	$17.55
HVAC	$23.84	$3.86	$27.70
Insulation Installer	$19.75	$2.42	$22.17

Occupation Title	Minimum Wage	Minimum Benefit	Total
Ironworker - Ornamental	$22.85	$4.85	$27.70
Ironworker - Reinforcing	$24.79	$10.60	$35.39
Ironworker - Structural	$21.25	$3.25	$24.50
Laborers (Helper & Tenders)	$15.00	$1.08	$16.08
Laborer - Skilled	$17.00	$2.75	$19.75
Line Erector Power/Cable Splicer	$26.00	$7.59	$33.59
Loader Operator - Front-End	$19.13	$2.95	$22.08
Mechanic- Maintenance	$25.50	$3.77	$29.27
Mechanic – Refrigeration	$23.91	$4.76	$28.67
Millwright	$26.00	$11.58	$37.58
Oil/Fuel Burner Serv/Instlr(Lic)	$26.50	$2.19	$28.69
Painter	$17.00	$0.36	$17.36
Pipe/Steam/Sprinkler Fitter	$23.00	$4.49	$27.49
Pipelayer	$28.00	$12.54	$40.54
Plumber (Licensed)	$26.00	$4.13	$30.13
Plumber Helper/Trainee (Lic)	$17.57	$3.31	$20.88
Propane/Natural Gas Serv/ Inst	$26.55	$1.93	$28.48
Rigger	$20.00	$6.12	$26.12
Roofer	$16.00	$1.18	$17.18
Sheet Metal Worker	$20.50	$4.13	$24.63
Stone Mason	$20.00	$0.00	$20.00
Tile Setter	$22.00	$4.17	$26.17
Truck Driver - Light	$18.15	$2.88	$21.03
Truck Driver - Medium	$17.75	$1.82	$19.57
Truck Driver - Heavy	$16.00	$1.96	$17.96
Truck Driver - Tractor Trailer	$17.50	$2.42	$19.92

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The Prevailing Wage rates are set for all 16 counties with 4 categories coded as follows:

B1 = One or two family homes
B2 = Other than one or two family homes
HI = Highway and Earthwork
HB = Heavy Construction and Bridge

MAINE BUREAU OF LABOR STANDARDS 2018 CUMBERLAND COUNTY *HI* PREVAILING WAGE RATE

Occupation Title	Wage	Benefit	Total	Occupation Title	Wage	Benefit	Total
Asphalt Raker	$16.00	$0.44	$16.44	Ironworker – Ornamental	$23.13	$4.80	$27.93
Backhoe Loader Operator	$20.00	$2.23	$22.23	Ironworker - Reinforcing	$24.79	$10.60	$35.39
Boom Truck (Truck Crane) Operator	$21.66	$6.86	$28.52	Ironworker - Structural	$21.80	$4.88	$26.68
Bulldozer Operator	$22.30	$4.19	$26.49	Laborer (Includes Helper-Tender)	$14.50	$0.94	$15.44
Carpenter	$21.00	$2.36	$23.36	Laborer - Skilled	$17.00	$2.22	$19.22
Cement Mason/Finisher	$17.00	$0.56	$17.56	Line Erector-Power/Cable Splicer	$26.00	$7.59	$33.59
Crane Operator =>15 Tons)	$26.00	$5.97	$31.97	Loader Operator - Front-End	$19.88	$3.74	$23.62
Crusher Plant Operator	$17.75	$2.39	$20.14	Mechanic- Maintenance	$21.00	$3.15	$24.15
Diver	$28.50	$1.48	$29.98	Painter	$17.00	$0.00	$17.00
Driller -Rock	$18.38	$2.60	$20.98	Paver Operator	$18.00	$1.57	$19.57
Earth Auger Operator	$22.97	$6.17	$29.14	Pipelayer	$18.00	$3.16	$21.16
Electrician - Licensed	$26.00	$4.67	$30.67	Pump Installer	$21.00	$3.73	$24.73
Electrician Helper/Cable Puller (Licens	$17.00	$2.84	$19.84	Reclaimer Operator	$19.13	$2.98	$22.11
Elevator Constructor/Installer	$19.25	$1.62	$20.87	Roller Operator - Earth	$16.00	$1.89	$17.89
Excavator Operator	$21.54	$3.44	$24.98	Roller Operator - Pavement	$18.00	$2.07	$20.07
Fence Setter	$17.25	$1.72	$18.97	Screed/Wheelman	$22.88	$4.25	$27.13
Flagger	$12.50	$0.00	$12.50	Truck Driver - Light	$17.83	$3.74	$21.57
Grader/Scraper Operator	$21.33	$5.65	$26.98	Truck Driver - Medium	$18.00	$1.89	$19.89
Highway Worker/Guardrail Installer	$16.50	$0.79	$17.29	Truck Driver - Heavy	$16.50	$1.53	$18.03
Hot Top Plant Operator	$23.38	$5.55	$28.93	Truck Driver - Tractor Trailer	$19.00	$2.79	$21.79

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B1 = One or two family homes

B2 = Other than one or two family homes

HI = Highway and Earthwork

HB = Heavy Construction and Bridge

MAINE BUREAU OF LABOR STANDARDS 2018 CUMBERLAND COUNTY *HB* PREVAILING WAGE RATE

Occupation Title	Wage	Benefit	Total
Backhoe Loader Operator	$20.00	$2.16	$22.16
Boom Truck (Truck Crane)Operator	$21.66	$6.86	$28.52
Bricklayer	$24.00	$3.99	$27.99
Bulldozer Operator	$20.00	$4.06	$24.06
Carpenter	$24.31	$10.41	$34.72
Carpenter - Rough	$20.67	$5.49	$26.16
Cement Mason/Finisher	$17.00	$0.56	$17.56
Communication Equipment Installer	$21.50	$3.28	$24.78
Comm Transmission Erector Microwave	$19.00	$3.57	$22.57
Crane Operator =>15 Tons)	$28.00	$7.15	$35.15
Crusher Plant Operator	$17.75	$2.48	$20.23
Diver	$32.00	$0.00	$32.00
Driller -Rock	$18.38	$2.60	$20.98
Earth Auger Operator	$23.76	$6.31	$30.07
Electrician - Licensed	$28.83	$13.97	$42.80
Electrician Helper/Cable Puller (License	$26.00	$8.68	$34.68
Excavator Operator	$23.00	$3.68	$26.68
Fence Setter	$16.00	$1.17	$17.17
Flagger	$12.00	$0.00	$12.00
Grader/Scraper Operator	$21.33	$5.13	$26.46
HVAC (Heat-Vent-Air Conditioning)	$23.00	$3.05	$26.05
Ironworker – Ornamental	$22.85	$4.85	$27.70
Ironworker - Reinforcing	$26.20	$12.15	$38.35
Ironworker - Structural	$23.00	$6.26	$29.26

Occupation Title	Wage	Benefit	Total
Laborer (Includes Helper-Tender	$16.00	$1.64	$17.64
Laborer - Skilled	$20.55	$3.62	$24.17
Line Erector-Power/Cable Splicer	$25.75	$7.59	$33.34
Loader Operator - Front-End	$19.75	$2.82	$22.57
Mechanic- Maintenance	$20.00	$5.72	$25.72
Mechanic- Refrigeration	$24.88	$4.76	$29.64
Millwright	$28.90	$22.50	$51.40
Painter	$22.00	$3.06	$25.06
Paver Operator	$20.00	$3.78	$23.78
Pile Driver Operator	$25.00	$11.13	$36.13
Pipe/Steam/Sprinkler Fitter	$22.50	$8.53	$31.03
Pipe Layer	$28.00	$12.54	$40.54
Pump Installer	$21.00	$3.73	$24.73
Reclaimer Operator	$18.50	$2.85	$21.35
Rigger	$20.00	$6.12	$26.12
Roller Operator - Earth	$15.88	$1.76	$17.64
Roller Operator - Pavement	$18.30	$1.64	$19.94
Truck Driver - Light	$18.15	$2.88	$21.03
Truck Driver - Medium	$17.75	$1.82	$19.57
Truck Driver - Heavy	$19.00	$3.17	$22.17
Truck Driver - Tractor Trailer	$21.50	$5.59	$27.09

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MEMO

TO: Jon P. Jennings, City Manager
Brendan T. O'Connell, Finance Director

FROM: Marguerite Fleming, Intern, Executive Department

CC: Mike Murray, Assistant to the City Manager

DATE: August 27, 2018

SUBJECT: Fiscal Impact of Mayor Strimling's Proposed Amendments to the City Purchasing Policy

OBJECTIVE: The Mayor has proposed amendments to the city purchasing policy which include two major changes to the City procurement policies (1): the payment of prevailing wages for building contracts that are funded by municipal funds, and (2): the requirement that contractors who are awarded municipally funded construction projects must participate in apprenticeship/job training programs. This memo addresses the fiscal impact of these two provisions.

1. PREVAILING WAGE

BACKGROUND: Requiring the payment of prevailing wages by contractors employed on public works projects is not a new concept at the federal and state levels. The Davis Bacon Act requires contractors employed on federally funded construction, alteration, repair projects in excess of $2,000 to pay their employees the prevailing wage and fringe benefits for their occupations. Prevailing wage rates are also used by 27 states for state funded projects. In Maine, with certain exceptions, construction projects administered by a state agency that are over $50,000 and funded with state funds must adhere to State of Maine prevailing wage and reporting guidelines. Several municipalities have instituted prevailing wage ordinances including Denver, CO, Springfield, MA, and Worcester, MA.

In 2017, the Portland City Council passed an ordinance requiring contractors working on any construction project receiving tax increment financing (TIF) from the City of Portland pay its workers prevailing wages as determined by the State of Maine for Cumberland County. This proposal is incredibly limited in scope and impacted a maximum of 1-3 developer funded TIF projects per year and did not impact any City projects. The Mayor's current proposal is to extend the State of Maine prevailing wage requirements to city funded projects projected to cost over $50,000.

FISCAL IMPACT: The key point of debate surrounding prevailing wage laws is whether requiring contractors to pay prevailing wage, thereby increasing labor costs, increases the total cost of construction projects. Advocacy by legislators and construction organizations concerned with potential cost increases has resulted in the repeal or invalidation by court decision of sixteen states’ prevailing wage laws, most recently Michigan’s in June 2018. Additionally, state laws and local prevailing wage ordinances regulating municipally funded projects have been challenged or repealed in Wisconsin, Ohio, Michigan, and California.

The attached bibliography includes several studies demonstrating that state and municipal prevailing wage laws/ordinances increase total project costs. Studies analyzing all construction projects funded by the selected states/localities determined that prevailing wage requirements increased total project costs by 10-30%. A group of studies specifically looking at housing development found that requiring prevailing wage on such projects increased housing construction costs by 9-37%. The last group of studies, focusing on school construction projects, found that prevailing wage laws cost the examined states an additional $127 to 480 million per year on school construction projects.
**It should be acknowledged that the generalizability of these studies is limited due to the difficulty of finding projects for comparison that are identical besides the payment of prevailing wages, disagreement amongst researchers on accepted methodology, and the fact that labor costs as a percentage of total project costs vary by project.*

The cost of prevailing wage ordinance compliance for both governments and contractors was also examined. The included notes are findings from cities with prevailing wage ordinances’ websites and conversations with compliance staff. Adjusting for population and volume of ongoing construction projects, it can be assumed that, to monitor compliance with a prevailing wage ordinance, Portland would need to hire one or two staff members. Depending on the volume of future construction projects, it may also be necessary for the City to purchase compliance software. The cities of Denver and Seattle utilize LPCtracker software which costs $25,000 or $50,000 annually depending on the total value of ongoing construction projects. The reporting requirements that the City would need to institute to monitor compliance with a prevailing wage ordinance would likely impose an administrative burden on contractors. The examined cities require extensive reporting during the bid process as well as frequent payroll reporting for the project duration.

2. APPRENTICESHIP PROGRAM REQUIREMENT

BACKGROUND: There a several existing apprenticeship training options for individuals and employers who wish to participate. The State of Maine administers the Maine Apprenticeship Program which, in 2016, served 1,220 apprentices. Currently, contractor participation in the Program is on a voluntary basis. Southern Maine Community College (SMCC) also offers several Applied Technology Degrees. Additionally, there are several union administered programs in occupations such as masonry, carpentry, plumbing, and electrical.

In 2017, the Mayor proposed requiring contractors employed on any construction project receiving tax increment financing (TIF) from the City of Portland to participate in apprenticeship programs. The proposal was not passed by the City Council. The Mayor’s current proposal is to require contractors employed on all city funded construction projects to participate in a registered apprenticeship program for each occupation in which workers will be employed. The firms would be required to participate in the programs for the duration of the project. The State of Maine defines a registered apprenticeship as, “a formal, industry-led, nationally-recognized, workforce training program for employees that provides in-house skill development through structured on-the-job learning supplemented with technical and theoretical course work.”[1]

FISCAL IMPACT: As with the proposed prevailing wage provision, implementing the proposed apprenticeship training requirement will likely impose compliance costs on both the City and contractors. The included notes are findings from cities with apprenticeship training provisions’ websites. Like the proposed prevailing wage provision, it will be necessary to devote city staff time to monitoring compliance, though, it seems that cities with ordinances including both prevailing wage and apprenticeship requirements use the same compliance staff to monitor both provisions. Seattle uses the aforementioned LPCtracker software to monitor its apprenticeship work hour reporting requirement.

Because specific contractor apprenticeship program participation requirements and reporting rules were found to differ between examined cities, the Maine Department of Labor Apprenticeship Specialist was consulted regarding the Maine Apprenticeship Program compliance requirements. The cost to contractors of sponsoring apprentices was stated to be minimal as apprentices can be made to self-fund their tuition which the State reimburses by up to 50%. However, participation in the program requires that contractors register as sponsors and keep records of apprentices’ education, experiences and progress along with the additional responsibilities included in the attached form. It was ascertained from speaking with the Apprenticeship Specialist that, as a component of becoming well-versed with the reporting requirements, contractors’ staff would need to develop an understanding of which occupations are apprenticable (essentially occupations requiring state licensure). Additionally, compliance with the required journeyman to apprentice ratios could require contractors to hire more employees than are needed for projects.

A final consideration is that the Applied Technology Degrees are core academic offerings at Southern Maine Community College (SMCC). SMCC and Contractors who support the degree programs may believe that the proposed apprenticeship provision undercuts SMCC’s offerings.

[1] https://www.maine.gov/labor/jobs_training/apprenticeship.html

Studies Indicating Prevailing Wage Laws Increase Construction Project Costs

- Flaws in Determination of Prevailing Wage Rates
  - **2015, "Prevailing Wage Reform in Pennsylvania." Commonwealth Foundation. https://www.commonwealthfoundation.org/issues/detail/prevailing-wage-reform-in-pennsylvania.**

    Pennsylvania's Prevailing Wage Law was enacted in 1961, mandating that state and local governments pay construction contractors wages that "prevail" in each region on projects costing $25,000 or more.

    Despite what its name suggests, the "prevailing wage" is an artificially-inflated wage paid to those who work on government construction projects. It is usually set at the union-inflated wage (determined by collective bargaining agreements) and is higher than the rate for identical work on private projects. The Pennsylvania Association of Boroughs compared prevailing wage rates across the commonwealth's 67 counties and found they exceed market wages by 30 to 75 percent.

- Instituting Prevailing Wage Laws Increases Overall Construction Costs
  - **Mackinac Center for Public Policy-Michigan**

    * On June 6, 2018, Michigan's Prevailing Wages on State Projects law, Act 166 of 1965 was repealed as the result of a legislative initiative; the repeal was given immediate effect.

    Kersey, Paul. 2007. "Prevailing Wage, Productivity and Cost-effectiveness." https://www.mackinac.org/8923

    Census data indicates that payroll costs per construction worker are 19.2 percent higher in the strong prevailing wage states than in states with no prevailing wage laws. If one divides construction value-added by construction labor payroll, one finds that in strong prevailing wage states, each dollar paid for construction labor generates $4.27 in value-added, but in states without prevailing wage laws, a dollar of construction labor generates $4.54 in value-added. On a dollar-by-dollar basis, construction labor is 6.3 percent more productive in states without prevailing wage laws. In 18 states without prevailing wage laws, construction workers made up 5.3 percent of the work force in 2004, compared with only 4.2 percent for strong prevailing wage states, an indication of the possibility that prevailing wage laws limit opportunities in the construction industry.

    Vedder, Richard. 1999. "Michigan's Prevailing Wage Law and Its Effect on Government Spending and Construction Employment." https://www.mackinac.org/S1999-07

    ***study's methodology has been criticized**

    Between 1994 and 1997, Michigan's prevailing wage law was not enforced, was reinstated by court decision in 1997. This study examined the performance of Michigan's economy for two 30-month periods prior to and during the law's suspension by a federal district court.
    Findings:

- Michigan's prevailing wage law reduces employment in construction: During the 30 months (December 1994 - June 1997) when the law was ruled invalid, more than 11,000 new jobs were created as a consequence of the law's invalidation
- Michigan's prevailing wage law adds at least $275 million annually to the cost of governmental capital outlays
- States without prevailing wage laws had net in-migration of over 2.5 million persons from 1990 to 1996, while strong prevailing wage law states like Michigan had out-migration of 2.7 million
- nationally, poverty rates are higher in prevailing wage law states
- Nationally, worker productivity appears to be lower in construction in states with strong prevailing wage laws, and construction costs are higher in public (prevailing wage) construction than in the private sector where market forces prevail

- **Gardner, Kent and McMahon, E.J. 2017. "Prevailing Waste: New York's Costly Public Works Mandate." The Empire Center. https://www.empirecenter.org/publications/prevailing-waste/**

Study draws attention to the fact that the terms mandating how localities set prevailing wage rates essentially ensures that rates are based upon union wages- "Prevailing rates in a locality are determined by virtue of collective bargaining agreements (CBA) between bona fide labor organizations and employers of the private sector, provided that said employers employ at least 30% of workers in the same trade or occupation in the locality where the work is being performed. "Locality" means areas of the state described and defined for a trade or occupation in the current CBAs between bona fide labor organizations and employers of the private sector." The study also points out that New York's law requires the payment of fringe benefits. If the wage rate is based off of union wages then so are the fringe benefits, by extension. The report calculated total building construction costs at prevailing union pay rates, compared to median private-sector construction wages in major metro areas of New York State. Findings: New York's prevailing wage law increases total construction costs by 13 to 25 percent. Used IMPLAN to develop an estimate of the labor component of total project cost. IMPLAN model estimates that labor is 44 percent of total cost of nonresidential construction in New York City. The more labor intensive the project, the greater the cost impact of the prevailing wage mandate.

- **San Diego**
  - The San Diego City Council initially considered including prevailing wage requirements in all City Projects in 2003. (California has a prevailing wage law but San Diego passed an

ordinance approved by the court to free the city from having to pay prevailing wage on local construction projects.)

        - **2003 Study**-Utilized certified payroll data from city projects- broke out labor cost and applied prevailing wage rates to those projects where they were not required and non-prevailing wage rates to projects that had required prevailing wage rates.
          Findings: Buildings projects – Labor cost increase of 20% resulting in total construction cost increase of 7.5%. Pipeline projects – Labor costs increase 20-40% resulting in increased total construction cost as high as 17%. Road projects – Labor increases from 20-35% resulting in increase of 16% for total construction costs.
    - Issue came back up in 2013
        - **2013 Study**-Office of the Independent Budge Analyst updated 2003 study to compare 26 project line items applying both prevailing wages and non-prevailing wages using RS Means software (leading tool used by professional engineers to estimate construction costs). **Findings:** the average percentage increase for total construction costs was 12% when prevailing wages were applied and compared to line items when non-prevailing wages were applied.

- **2015, "Prevailing Wage Reform in Pennsylvania." Commonwealth Foundation.**
  https://www.commonwealthfoundation.org/issues/detail/prevailing-wage-reform-in-pennsylvania.
  A survey conducted by the Local Government Commission found municipalities rank the prevailing wage as one of the most burdensome mandates in the state. Based on Pennsylvania wage data, prevailing wage raises the total cost of construction projects by an estimated 10 to 30 percent. This represents upwards of $1 to $3 billion in extra costs for Pennsylvania taxpayers annually. Effect has been that Local governments frequently defer routine repair and construction projects because they exceed the prevailing wage threshold, making them too expensive. Ex. In Ferguson Township, the prevailing wage increased the cost of one road maintenance project by 57 percent from $20,990 to $32,890.

- **Older Studies**
    - **Thiebolt (1975)-**cost increase of about .5% on prevailing wage projects.
    - **Gold and Bittlingmayer (1980)-**estimated cost increase resulting from prevailing wage laws to be 4-7%.
    - **Fraundorft et. al (1984)-**collected construction data in 1977 and 1978 through inperson interviews with contractors of 215 new

non-residential buildings in rural areas throughout the U.S. Half were subject to prevailing wage laws, half were private. The Davis-Bacon Act requirements were found to increase costs by an average of 26.1.

- **Bilginsoy and Philips (2000)-**conducted a six-year analysis of the British Columbia prevailing wage law-prevailing wages appeared to raise construction costs by 16%.

- Housing
  - **California**

California requires that all workers employed on public works projects (construction, alteration, demolition, installation, or repair work done under contract and paid in whole or in part out of public funds) must be paid the prevailing wage determined by the Director of the Department of Industrial Relations, according to the type of work and location of the project. The prevailing wage rates are usually based on rates specified in collective bargaining

The below studies indicate that increased wages have created in increased costs for developers' resulting in a reduction in the number of new homes under construction.

- **2017. "Regulation & Housing Effects on Housing Supply, Costs & Poverty." California Center for Jobs & the Economy. https://centerforjobs.org/ca/special-reports/regulation-housing-effects-on-housing-supply-costs-poverty**

Findings: Requiring builders to pay government-determined prevailing wage rates would raise the median price of a new home by $42,900 to $79,000, the price of a unit in a new multi-family development by $47,000 to $86,500, and the monthly rent for those units by $250 to $460. Over time, this factor alone would push housing prices up overall by about 13% primarily in inland regions, but much higher in coastal areas with significant historical building shortfalls. Combining both direct and indirect effects, the annual drop in home construction would produce a loss of $20.9 billion to total state incomes, 372,700 fewer jobs, and a $34.2 billion reduction in total California GDP.

- **Dunn, S, Quigley, J, and Rosenthal, L. 2005. "The Effects of Prevailing Wage Requirements on the Cost of Low-Income Housing." Berkeley Program on Housing and Urban Policy. https://urbanpolicy.berkeley.edu/pdf/DQR_ILRR05.pdf**

Econometric evidence based on the micro data covering 205 residential projects subsidized by the California Low Income Housing Tax Credit since 1996 and completed by mid-2002 demonstrates that construction costs increased substantially under prevailing wage requirements. Analysis controls for variations in cost by geographical location and for difference in project characteristics, financing, and developer attributes. Estimates of additional construction costs in the most extensive models range from 9% to 37%. These additional costs are associated with an estimated 3,100 unit decrease in number of new dwellings for low-income households produced under the tax credit program in California.

- **2016. "The Impact of Prevailing Wage Requirements on Affordable Housing Construction in New York City." New York City Independent Budget Office. http://www.ibo.nyc.ny.us/iboreports/the-impact-of-prevailing-wage-requirement-on-affordable-housing-construction-in-new-york-city.pdf**

  IBO compared the construction budgets of projects that were subject to federal prevailing wage requirements with other publicly subsidized affordable housing projects that were not required to pay prevailing wages while controlling for various project characteristics. Findings: IBO estimates that the average total construction costs for a project requiring prevailing wages is 23 percent higher than a project where prevailing wages are not required. This percentage cost difference translates into an estimated per unit cost increase of nearly $80,000.

- **2017. "Impacts of a Prevailing Wage Requirement for Market Rate Housing in California." Blue Sky Consulting Group. http://www.mychf.org/uploads/5/1/5/0/51506457/prevailing_wage_20170824.pdf**

  Study was done to assess impacts of proposed California legislation aimed at expanding prevailing wage requirements to include most of the new market rate housing produced throughout the state. Findings: Estimated an increase in total hourly rates ranging from a low of 39% for electricians up to a high of 116% for construction laborers Overall, estimated that hourly labor costs for residential construction statewide would be on average 89% higher if builders were to pay prevailing wage rates for all residential construction Labor currently accounts for approximately 41% of the construction costs for a typical single family home in California-estimated 89% increase in hourly labor costs would result in a 37% increase in total construction costs.

- School Construction
  - **Rosaen, Alex and Taylor, Traci. 2015. "The Impact of Michigan's Prevailing Wage Law on Education Construction Expenditures." Anderson Economic Group. http://www.andersoneconomicgroup.com/Portals/0/upload/AEG%20Prevailing%20Wage%20Update%209-17-2015.pdf**

    Purpose of the study was to estimate the average annual expenditures made for construction of public K-12 and higher education facilities in Michigan over the past 10 years as a result of Michigan's

prevailing wage law-estimated what cost savings could have been realized by state and local governments had the construction contracts for the dame education buildings not been subject to the prevailing wage law.
Findings: From 2003 through 2012, $21 billion in school construction and repair projects was subject to Michigan's prevailing wage law. Estimated that Michigan's prevailing wage law increased the financial obligations for education construction by an average of $127 million per year for the last 10 years.

- **2014. "Illinois' Prevailing Wage Law and the Cost of Education Construction." Anderson Economic Group. http://www.andersoneconomicgroup.com/Publications/Detail/tabid/125/articleType/ArticleView/articleId/8099/Illinois-Prevailing-Wage-Law-and-the-Cost-of-Education-Construction.aspx**
  Purpose of study was to estimate the portion of construction expenditures by school districts and higher education institutions in Illinois that are attributable to the state's prevailing wage law. Estimated increase in annual cost due to prevailing wage based on an estimate of the average annual increase in costs on construction projects performed in the years 2002 to 2011. Modeled construction costs subject to prevailing wage rates and assumed that those costs are passed on to the clients...assumed that there will not be a substantial change in raw material costs in the absence of a prevailing wage...did not attempt to project the behavioral responses of the client.
  Findings: In the absence of the state's prevailing wage law, estimate that Illinois state and local governments could have saved $158 million on average each of the past ten years. Total of $1.6 billion from 2002 to 2011. $124 million would have been realized by K-12 schools and $34 million by community colleges and public universities.

- **2015, "Prevailing Wage Reform in Pennsylvania." Commonwealth Foundation. https://www.commonwealthfoundation.org/issues/detail/prevailing-wage-reform-in-pennsylvania.**
  Allowing schools to opt out of the prevailing wage mandate could save taxpayers between $160 and $480 million each year. Ex. In 2011, Southwestern School District in York County, PA needed to fix a leaky roof in one of its schools. The project was originally bid out for $84,000 without the prevailing wage mandate. The district bid out the project again with the prevailing wage mandate resulting in a cost of $125,000—a 49 percent increase.

- **2002. “The Effects of the Exemption of School Construction Projects from Ohio’s Prevailing Wage Law.” Ohio Legislative Service Commission.** **https://www.lsc.ohio.gov/documents/reference/archives/specialreports/srr149.pdf**

  Asked contractors on prior school projects to come up with hypothetical bids applying prevailing wage to bids that were submitted for past projects. The difference between the bid price and the estimate of the bid price had the project been bid with prevailing wages was calculated for each respondent to provide an estimate of the savings resulting from the exemption of school districts from the state's prevailing wage laws. For most union contractors both the estimated savings and the percentage savings were zero. The contractor surveys indicate a range of savings of 5-10%. Estimated savings were slightly higher in rural counties than in urban counties. One reason for this is that under prevailing wage laws, wages from urban areas are often "imported" into rural areas. Urban wages tend to be higher than rural wages, so when the prevailing wage requirement is removed, lower rural wages may be used, resulting in savings.

Findings-Prevailing Wage Ordinance Compliance Costs

- Denver
    - Ordinance requires the payment of prevailing wages on city funded construction repair, and/or maintenance projects in excess of $2,000. https://www.denvergov.org/content/denvergov/en/denver-human-resources/search-jobs/prevailing-wage-rates.html
    - Compliance Monitoring
        - The Denver Auditor's Prevailing Wage Section is responsible for monitoring and enforcement.
        - Denver currently has $4.3 billion in ongoing construction projects (2,000-4,000 projects)
        - 12 compliance staff members (Director of Contracts & Accountability, Administrative Assistant, Supervisor, and nine investigators)
            - For reference, one investigator can manage 200-400 projects
        - Prevailing Wage Section of Auditor's Office has a $800,000 budget
        - Denver utilizes LPCTracker compliance software (contractors submit payroll through software)
            - The software cost is incremental based on the total value of contracts or how many payrolls are entered into the system
                - Under $2 billion in contracts is $25,000 a year, Over $2 billion is $50,000 a year
    - Contractor Reporting
        - Contractors or subcontractors must provide the Auditor's Office with payroll records of all workers, laborers, and mechanics employed to work on the city project.
- Worcester, MA
    - Worcester's Responsible Employer Ordinance includes prevailing wage. http://www.worcesterma.gov/uploads/f7/4d/f74d0ed6c2889010b39dfdaca0bab343/responsible-employer-ordinance.pdf
    - Compliance Monitoring
        - The city purchasing division includes 3 staff members who all work on Responsible Employer Ordinance Compliance.
        - Worcester does not use compliance software.
- Springfield, MA
    - Springfield's Responsible Employer Ordinance includes prevailing wage https://ecode360.com/14657966
    - Compliance Monitoring
        - City Compliance Officer
        - A media article from March 2018 states that the city council approved funding for a two-person compliance unit.
            - https://www.masslive.com/news/index.ssf/2018/03/springfield_hiring_staff_to_pu.html?%25%25STOP%25%25ath=%25%25eval%20lower%20$md5_email%25%25
        - Monitoring Committee
    - Contractor Reporting

        - The contractor who has been awarded a contract for public construction by the bidding authority shall complete the Springfield construction employee reporting form and submit the same to the bidding authority and monitoring committee no later than 30 calendar days before commencement of work under the contract.
        - All contractors shall maintain a weekly Springfield public construction employee tracking, keeping track on a weekly basis of the contractors' employees that are working on the project for the entire duration of their work on the project. Such records from this tracking system shall be submitted weekly to the Springfield compliance officer or his/her designee and the monitoring committee, and shall be submitted with certified payroll records.
        - An officer of each such contractor or subcontractor shall certify under oath and in writing on a weekly basis that they are in compliance with the ordinance.
- Seattle, WA does not have a municipal prevailing wage ordinance but, due to ongoing construction volume, has compliance staff in the Seattle Housing Authority and City Purchasing offices to monitor state and federal prevailing wage laws.
    - Compliance Monitoring
        - Seattle currently has $120 million in ongoing construction projects which amounts to an estimate $5,000 certified payrolls to review per year
        - The Seattle Housing Authority employs a Labor Compliance Officer, five contract administrators, and a half-time assistant (**A call has been scheduled with the City Contract Compliance Manager).*
        - Seattle has utilized compliance monitoring software for seven years. The City is currently using LPCtracker but until this year used MyLCM.
            - MyLCM cost $23,000 a year.
            - LCPtracker is incremental based on the total value of contracts or how many payrolls are entered into the system
                - Seattle will pay the $25,000 a year rate but because of additional costs related to migrating data MyLCM, Seattle paid $45,000 for the program this year.

Findings-Apprenticeship Training Provision Compliance Costs

- Worcester, MA previously included an apprenticeship training provision as a component of its Responsible Employer Ordinance, however, the provision was suspended after it was challenged in court by the Merit Construction Alliance.
- Springfield, MA
  - Springfield's Responsible Employer Ordinance includes apprenticeship training requirements. https://ecode360.com/14657966
    - "The contractor and all trade contractors and subcontractors under the contractor must, at the time of bidding, maintain or participate in a bona fide apprentice training program as defined by MGL c. 23, §§ 11H and 11I for each apprenticeable trade or occupation represented in their workforce that is approved by the Division of Apprentice Standards of the Department of Labor and Workforce Development, regardless of whether or not the program qualifies as an employee welfare benefit plan under ERISA, and must register all apprentices with the Division and abide by the apprentice-to-journeyman ratio for each trade prescribed therein in the performance of any work on the project."
  - Compliance Monitoring
    - The city appears to employ the same compliance staff and monitoring committee to monitor all the provisions in the ordinance.
  - Contractor Reporting
    - Same reporting requirements as for prevailing wage provision
    - Additionally, contractors must submit with their bid a sponsor verification letter from the Commonwealth of Massachusetts, Department of Labor and Workforce Development — Division of Apprentice Standards, issued within the past 90 calendar days, evidencing that at the time of submitting a bid or proposal, the bidder or proposer is currently an approved sponsor of apprentices
    - Contractors also must register all apprentices with the City.
- Seattle, WA
  - The City requires apprentice labor on construction projects estimated to cost $1 million or greater. Contractors must ensure that up to 15 percent of the total contract labor hours are worked by apprentices enrolled in an apprenticeship program approved or recognized by the Washington State Apprenticeship and Training Council. https://www.seattle.gov/city-purchasing-and-contracting/social-equity/apprenticeships
  - Compliance Monitoring
    - City Purchasing and Contracting Services monitors compliance with the apprenticeship requirements. **A call has been scheduled with the City Contract Compliance Manager.*
  - Contractor Reporting
    - An apprentice Utilization Plan, outlining how the requirements will be met, must be submitted at the pre-construction meeting, with revisions submitted by the prime contractor to CPCS as necessary throughout the life of the project.
    - Must submit apprenticeship hours through LCPtracker.

- Spokane, WA
    - Public Works Apprentice Program
        - On public works construction projects with an estimated cost of six hundred thousand dollars ($600,000) or more, at least fifteen (15) percent of the labor hours of each project shall be performed by apprentices enrolled in a State-approved apprenticeship program. The utilization percentages for apprenticeship labor for public works construction contracts shall also apply to all subcontracts of one hundred thousand dollars ($100,000) or more within those contracts provided there is a state-approved apprenticeship training programs for the trade of which a subcontract is issued.
          https://static.spokanecity.org/documents/business/apprentice-program/apprentice-program-faqs-022017.pdf
          https://my.spokanecity.org/smc/?Chapter=07.06
    - Compliance Monitoring
        - Unclear from website.
    - Contractor Reporting
        - Unclear from website.
- Rochester, NY
    - Apprenticeship Training Program
        - Prior to entering public works contracts in excess of $250,000, contractors must have apprenticeship agreements, appropriate to the type and scope of work to be performed, which have been registered with and approved by the New York State Commissioner of Labor
          http://www.cityofrochester.gov/apprenticeshiptraining/
          file:///C:/Users/maggi/Downloads/Apprenticeship%20Training%20Program%20for%20Construction%20Contracts%2011282012%20(2).pdf
    - Compliance Monitoring
        - Commissioner of Environmental Services monitors compliance with the apprenticeship requirements. **Plan to schedule a call with a city representative.*
    - Contractor Reporting
        - A contractor who submits a bid for a City contract for which the contract amount exceeds $250,000 shall submit with the bid package a copy of the following for each apprentice agreement intended to meet the requirements of this regulation:
            - The current New York State Department of Labor Form AT-10, “Apprentice Training Program Registration Agreement,” issued to the contractor or other sponsor of the apprentice training program; and if the apprentice training program is not sponsored by the contractor, an executed copy of City Apprenticeship Training Program Form AP3, “Agreement to Utilize Apprentices on a City of Rochester Construction Contract.”
            - The Contractor shall also submit with the bid package the following:

- A listing of any contractor proposed to hold subcontract that exceeds $100,000 in value, including the name of the subcontractor, the scope and value of work proposed to be performed, and the name of any apprenticeship trade for which an approved apprenticeship agreement will be submitted and, copies of approved apprenticeship agreements intended to meet the requirements of this regulation

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

Office of the Mayor, Ethan K. Strimling

MEMORANDUM

To: Finance Committee

From: Ethan K. Strimling, Mayor

Date: October 31, 2018

Subject: Responsible Contracting Cost Analysis

On October 4, the city manager presented an analysis to the Finance Committee on the financial impact of ensuring that workers on city construction contracts receive a reasonable wage, health care, safety protocols and high quality training. The analysis claimed that implementing such provisions could increase costs on taxpayers by a remarkable 30-37%, depending on the type of construction.

Not surprisingly, upon closer examination of the actual data reviewed, and as reported by Maine Public Radio reporter Fred Bever, the memo relied "heavily on consultant studies from other states that were conducted by free-market think-tanks with ties to conservative funders, including the Koch Brothers."

In my review of the 14 "studies" cited by the administration, it appears that at least 80% were commissioned by conservative free-market think tanks/lobbyist organizations, right-wing policy networks and/or right wing funders like the Koch Brothers and the Bradley Foundation. Many of the others have apparent flaws in their methodology or were analyzing very different ordinances than the one being considered by us.

Unfortunately, despite numerous studies (I have found close to 40 so far, including the ones Drummond Woodsum cited in their presentation) showing that prevailing wage has little to no impact on overall construction costs for states or municipalities, none of those studies was included in the administration's memo.

Specifically what I found in the studies cited by the administration is as follows:

- Three of the "studies" were from the Commonwealth Foundation [TCF]. TCF is described as a "right-wing pressure group" by SourchWatch, and they are a member of the State Policy Network [SPN], "a web of right wing think-tanks" funded by the Koch Brothers, among others. SPN is also closely connected to the American Legislative

Exchange Council [ALEC], a network of conservative legislators and businesses promoting right-wing policies, which also receives direct funding from the Koch Brothers.

- Three of the “studies” cited were from the Mackinac Center, also described as a right-wing “think tank” and also a member of the SPN. Mackinac also receives direct funding from the Koch brothers, among others.
- One of the “studies” cited, published by the Mackinac Center, was written by Paul Kersey, who spent three years as the National Right to Work Committee’s [NRWC] Director of State Legislation. Besides being an organization that openly fights against responsible contracting legislation, they also appear to have deep funding ties to the Koch brothers.
- One of the “studies” cited was from the The Empire Center [TEC]. TEC is also a member of the SPN and receives extensive funding from the Bradley Foundation, one of America’s largest right-wing foundations. It also has ties to ALEC and it also appears to receive direct funding from the Koch brothers.
- One of the “studies” was done by The California Center for Jobs and the Economy [CCJE]. CCJE is the research arm of the California Business Roundtable, a lobbying group made up exclusively of senior executives of major California corporations.
- One of the “studies” was funded by the California Homebuilding Foundation [CHF], a pro-business lobbying group. Additionally, the study is speculative, not studying actual impacts, and was commissioned to lobby the CA legislature against expanding their responsible contractor ordinance.
- Another “study,” which is an updated version from a deeply flawed and highly criticized first draft, acknowledges that it does not consider variables such as “changes in worker productivity, material costs, or labor share that may occur in the absence of a prevailing wage.” The study also appears to be of a prevailing wage law that is based on collectively bargained wages, not the prevailing wage rates of all industry workers (as is being proposed for Portland).

In light of this information, I hope the City Manager will withdraw his memo. Council committees and the public must always be provided with information from staff that is truly neutral, or, at a minimum, that is transparent about the data. Should the committee decide it needs further data to determine if implementing RC will increase costs, I would suggest we ask the Muskie School to review the literature.

Portland, Maine Yes. Life's good here.

MEMORANDUM

TO: Members of the Finance Committee

FROM: Jon P. Jennings - City Manager

DATE: November 28, 2018

SUBJECT: Re: Responsible Contracting Cost Analysis

At several occasions over the past several Finance Committee meetings Mayor Strimling has called into question my neutrality in regards to information being presented on the costs of his proposed changes to City contracting. His accusations have no basis and this memo is intended to repeat my position, which I stated in my April 2017 memo to the Economic Development Committee. It is my responsibility to ensure the City Council has all relevant information on which to make their decisions. To make it absolutely clear, my concerns around the proposed contracting changes simply relate to those requirements which would increase the cost of future City public infrastructure investment. It is likely that some requirements in the current proposal would result in future property tax increases and/or limit the available funding for the City's capital needs. The proposal in front of Finance Committee would add eleven amended and new requirements to the ordinance on City contracting and several have already been shown to increase costs. Several others have not yet been investigated in detail to determine impact to the City.

I was incredibly concerned after hearing about presentations being made to the School Board asserting that there would be no cost increases to their projects as a result of these proposed changes. Several school staff and elected officials came away with the impression that there was no potential downside risk related to these proposals. In recent meetings and in his introductory memo the Mayor himself noted there will be cost increases related to a prevailing wage requirement - which is just one of approximately eleven amended and new requirements within the proposal in front of Finance Committee. I concede that there is debate to how large the cost increases may be and that further investigation would be necessary to determine the range of potential cost increases related to each requirement. However, if the City's already small pool of vendors is further limited by any of the new requirements (most notably the apprenticeship program requirement, which would preclude nearly 95% of all current vendors bidding on projects over $50k) bid award prices would be significantly higher. In most cases, there would be no bidders who could meet the proposed requirements. In one recent example these requirements would have resulted in a bid award price of nearly 30% higher vs current City contracting rules and in many instances there would have been City projects with no bids.

In regards to the August 2018 memo *Fiscal Impact of Mayor Strimling's Proposed Amendments to the City Purchasing Policy,* I requested that staff add a backup memo on the potential downside and costs of the proposed changes in City contracting to be considered alongside the materials being prepared by Mayor Strimling and other advocates for the current proposed changes. Any questions on the memo can be routed through me. The memo focused on only two requirements of the current proposal, the prevailing wage requirement and the apprenticeship requirement. The memo fairly presented the conclusions of several studies indicating a range of between 10-30% in cost increases on construction projects and this data cannot simply be ignored. I agree that many studies on the impact of prevailing wage have been performed or funded by the "pro" prevailing wage advocates or the "con" prevailing wage advocates and there could be an endless debate and research on which data sources were or were not biased. The August 2018 memo is by no means comprehensive and is certainly not an indicator of actual market conditions here in Maine, where our pool of potential bidders is significantly smaller than those in most of the other survey areas. However, I certainly do not think 10-30% cost increases on City projects are out of the question should these propose contracting changes move forward.

If the next City Council chooses to make this topic a collective priority in their 2019 goal setting, each requirement of the current proposal should be reviewed in more detail in future Finance Committee meetings. Local data must be gathered and considered, and the real need for each requirement (i.e. whether there is currently a "problem" with contractors and contracting in Portland that needs to be corrected) should be investigated thoroughly and compared with the cost implications fully before any action is taken. Our Corporation Counsel has noted the changes could be (and have been in other municipalities) subject to costly legal challenges, particularly when such changes have been moved forward without any basis. The proposed changes could be very costly to the City budget and the City capital program, as well as damaging to our pool of local vendors, all of whom have largely done excellent work over the past several decades for the City.

VENDOR NAME	VENDOR LOCATION
ACETO CONSTRUCTION INC	ALFRED ME 04002
ACME WATERPROOFING CO., INC.	QUINCY MA 02169
ALTEC INDUSTRIES INC	BIRMINGHAM AL 35242
AMERICAN BILLING LLC	SOUTH PORTLAND ME 04106
ARCADIS U.S. INC.	HIGHLANDS RANCH CO 80129
ARTHUR C DUDLEY CONTRACTOR	STANDISH ME 04084
AUTOTRONICS	MADAWASKA ME 04756
BAYSIDE I LLC	PORTLAND ME 04101
BAYSIDE III LLC	PORTLAND ME 04101
BEAUREGARD EQUIPMENT INC	SCARBOROUGH ME 04074
BENCHMARK INC	WESTBROOK ME 04092
BUTTERFIELD HEAVY EQUIPMENT RE	CASCO ME 04015
C.N. WOOD NORTH, INC.	WESTBROOK ME 04092
CALE AMERICA, INC.	CLEARWATER FL 33760
CAMPBELL ELECTRIC	PORTLAND ME 04104
CAROUSEL INDUSTRIES OF NO. AME	EXETER RI 02822
CASCO BAY FORD	YARMOUTH ME 04096
CATHERINE MORRILL DAY NURSERY	PORTLAND ME 04101
CINCINNATI TIME RECORDER	PORTLAND ME 04101
COASTAL ENTERPRISES INC	BRUNSWICK ME 04011
COASTAL ROAD REPAIR	WINDHAM ME 04062
COLEMAN INC., R E	PORTLAND ME 04103
CPRC MANAGEMENT LLC	SCARBOROUGH ME 04074
CREATIVE OFFICE PAVILION	PORTLAND ME 04101
D & C CONSTRUCTION CO., INC.	WATERBORO ME 04087
DENNIS K BURKE INC	CHELSEA MA 02150
DIESEL DIRECT, INC.	STOUGHTON MA 02072
DIRECT ENERGY BUSINESS MARKETI	HOUSTON TX 77046
DOTEN'S CONSTRUCTION, INC.	FREEPORT ME 04032
ECO MAINE	PORTLAND ME 04102
FLOW ASSESSMENT SERVICES, LLC	AUBURN NH 03032
FREIGHTLINER OF MAINE INC	WESTBROOK ME 04092
GLIDDEN EXCAVATING & PAVING	GORHAM ME 04038
GLOBAL MONTELLO GROUP CORP	WALTHAM MA 02454
GORHAM SAND & GRAVEL INC	BUXTON ME 04093
GORRILL-PALMER CONSULTING	SOUTH PORTLAND ME 04106
GREAT FALLS BUILDERS, INC.	GORHAM ME 04038
GREATER PORTLAND COUNCIL OF	970 BAXTER BLVD. 2ND FL
GRIFFON SECURITY TECHNOLOGIES	KENNEBUNK ME 04043
GROVER INC, A H	CUMBERLAND ME 04021
HARDYPOND CONSTRUCTION INC	PORTLAND ME 04103
HASCALL AND HALL, INC	PORTLAND ME 04104
HI-LITE AIRFIELD SERVICES LLC	ADAMS CENTER NY 13606
HI-WAY SAFETY SYSTEMS INC	ROCKLAND MA 02370
HOWARD P. FAIRFIELD INC	SCARBOROUGH ME 04074
INLAND TECHNOLOGIES INTERNTNL	P.O. BOX 253

INTERMEDIX	6451 N. FEDERAL HIGHWAY,
ISS FACILITY SERVICES	DENVER CO 80211
J PRATT CONSTRUCTION, INC.	HEBRON ME 04238
JIMINOS PLUMBING AND HEATING I	PORTLAND ME 04103
JOHN B DISANTO & SONS INC	PORTLAND ME 04104
JORDAN EQUIPMENT CO. INC	W. FALMOUTH ME 04105
KLEINFELDER INC	AUGUSTA ME 04330
LABRECQUE CONSTRUCTION INC.	PORTLAND ME 04103
MAINE BEHAVIORAL HEALTHCARE	SO PORTLAND ME 04106
MAINE BOILER INC	PORTLAND ME 04101
MAINE MUNICIPAL ASSOCIATION	AUGUSTA ME 043309486
MAINE MUNICIPAL BOND BANK	AUGUSTA ME 04338
MAINE PAPER & JANITORIAL PRODU	BANGOR ME 04401
MANSFIELD OIL COMPANY	DALLAS TX 753733706
MARDIGAN, STEPHEN E.	PORTLAND ME 04103
MARITIME CONSTRUCTION & ENG.	CAPE NEDDICK ME 03902
MECHANICAL SERVICES INC	PORTLAND ME 041035292
MEDLINE INDUSTRIES INC	DALLAS TX 753121080
MILESTONE RECOVERY	PORTLAND ME 04101
MINUTEMAN SECURITY TECHNOLOGIE	PORTLAND ME 04103
MORTON SALT	CHICAGO IL 60606
MOTOROLA SOLUTIONS INC	NEWBURY MA 01951
NACHURS ALPINE SOLUTIONS LLC	DETROIT MI 482781191
NAPA DISTRIBUTION CENTER	PORTLAND ME 04101
NEXTERA ENERGY SERVICES OF MAI	DALLAS TX 752660100
NORTHCENTER FOODSERVICE INC	AUGUSTA ME 043382628
NORTRAX, INC	WESTBROOK ME 04092
O'CONNOR MOTOR COMPANY	PORTLAND ME 04103
OTIS ELEVATOR CO	WESTBROOK ME 04092
PATRIOT MECHANICAL LLC	GORHAM ME 04038
PEOPLEFIRST REHABILITATION	ATLANTA GA 303847365
PEOPLEREADY, INC	PORTLAND ME 04101
PORT CITY MECHANICAL, INC	PORTLAND ME 04103
PORTLAND WATER DISTRICT INC	LEWISTON ME 042436800
PREBLE STREET	PORTLAND ME 04101
PRECISION INDUSTRIAL MAINTENAN	SCHENECTADY NY 12308
PROCK MARINE COMPANY	ROCKLAND ME 04841
RANSOM CONSULTING, INC.	PORTLAND ME 04101
REHABCARE	ST LOUIS MO 631504469
RINCK ADVERTISING INC	LEWISTON ME 04240
SACO ROOFING	SACO ME 04072
SARGENT CORPORATION	STILLWATER ME 04489
SEABREEZE PROPERTY SERVICES	PORTLAND ME 04103
SEBAGO TECHNICS INC	SOUTH PORTLAND ME 04106
SHAW BROTHERS CONSTRUCTION	GORHAM ME 04038
SPRAGUE OPERATING RESOURCES LL	PORTSMOUTH NH 03801
STANDARD WATERPROOFING, INC.	WATERVILLE ME 04901

STANTEC CONSULTING SERVICES IN	SCARBOROUGH ME 04074
STATE OF MAINE-DOT	AUGUSTA ME
STREETSCAN INC.	BURLINGTON MA 01803
STRUCTURAL PRESERVATION SYSTEM	CHESHIRE CT 06410
SUNGUARD PUBLIC SECTOR	LAKE MARY FL 32746
SUPERION LLC	LAKE MARY FL 32746
SYSCO NORTHERN NEW ENGLAND, IN	PORTLAND ME 041124657
T BUCK CONSTRUCTION INC	TURNER ME 04282
TED BERRY CO INC	LIVERMORE ME 04253
THE OPPORTUNITY ALLIANCE	SOUTH PORTLAND ME 04106
TITO MASONRY & CONSTRUCTION, L	PORTLAND ME 04103
TYLER TECHNOLOGIES INC	FALMOUTH ME 04105
U S FOODSERVICE, INC.	PEABODY MA 01960
U. S. SECURITY ASSOCIATES INC	ATLANTA GA 31193
UNITIL	BOSTON MA 022981077
VANDERLANDE INDUSTRIES, INC	MARIETTA GA 30062
WINTON SCOTT ARCHITECTS PA	PORTLAND ME 04101
WOLF TECHNOLOGY GROUP, LLC	WINDHAM ME 04062
WOOD ENVIRONMENT & INFRASTRUCT	ALPHARETTA GA 30009
WOODARD & CURRAN INC	PORTLAND ME 04102
WOODS EXCAVATING LLC	WESTBROOK ME 040981282
WRIGHT-PIERCE	TOPSHAM ME 03101
ZONES INC.	SEATTLE WA 981241740

Sec. 2-308. Contractor or consultant qualifications.

(a) The City Manager or the Finance Director may inspect or inquire into the qualifications of any bidder or proposer to determine whether they are qualified and responsible bidders or proposers. The failure of any bidder or proposer to promptly supply information or submit to such inspection shall be grounds for a determination that the bidder or offeror is not a qualified and responsible bidder or proposer. The right to inspect shall include the plant or business of a contractor, consultant or any subcontractor or subconsultant under any procurement contract awarded or to be awarded by the city and the right to audit the books and records of any person seeking to become a contractor, consultant or subcontractor or subconsultant under any procurement contract with the city. The City Manager or Finance Director may establish rules and regulations for the qualification or prequalification of bidders or proposers. Such rules and regulations may apply to any procurement methods as set forth in this section, or may be specifically promulgated for any particular procurement situation.

(b) In determining whether a bidder or proposer is a qualified and responsible bidder or proposer, in addition to price and compliance with all applicable bid specifications, the City Manager or Finance Director may consider:

(1) The documented quality of performance of other contracts or services for the city or for others;

(2) Whether the bidder or proposer can perform the contract or service within the time specified, without delay or interference;

(3) The past and current compliance with City laws and ordinances;

(4) Whether the bidder or proposer is current on its obligations to the City, including taxes, sewer assessments and any other City accounts receivable; and

(5) The sufficiency of the manpower and financial resources of the bidder or proposer to perform the contract or provide the service.

(c)Except as provided in Section (c)(10) below, in addition to the foregoing determination, for all work on public construction and maintenance contracts valued at over $50,000.00 on any public facility or public works project, including construction, demolition, alteration, renovation, repair and contract service or maintenance work, the Finance Director shall disqualify a bidder or proposer who fails to certify that it meets the following requirements:

(1) The bidder or proposer has not been debarred or suspended by any federal, state or local government agency or authority in the past three years.

(2) The bidder or proposer shall pay its employees, and shall require its subcontractors to pay their employees, for all work performed under a contract with the City pursuant to this subsection (c)(2), the prevailing wage rates determined pursuant to Title 26, Chapter 15 of the Maine Revised Statutes by the Maine Department of Labor for Cumberland County that are in effect at the time that a request for bids or request for proposals is published pursuant to section 2-302 above.

(3) All craft labor that will be employed by the firm for the project have completed at least the OSHA 10 hour training course for safety established by the U.S. Department of Labor, Occupational Safety & Health Administration.

(4) The bidder or proposer participates in a job training or apprenticeship program registered with and approved by the Maine or U.S. Departments of Labor and shall continue to participate in such program for the duration of the contract if the bidder or proposer employs apprentices.

(5) The bidder or proposer complies with all applicable requirements of the Maine Department of Labor's Unemployment Insurance progam.

(6) The bidder or proposer complies with all applicable requirements of the Social Security Act.

(7) The bidder or proposer has not had a final judgment entered against it for violation of applicable

federal, state or municipal wage and hours laws.

(8) The bidder or proposer’s employees who will perform work on the project are:

(i) Covered under a current worker’s compensation policy; and properly classified under such policy; and

(ii) Covered by the bidder’s or proposer’s health insurance coverage.

(9) The provisions of this Subsection (c)shall also apply to any subcontractor of a bidder or proposer when such subcontractor will be paid more than $50,000.

(10) The provisions of this Subsection (c) shall not apply (1) to contracts for the construction, major alteration or repair of school buildings involving a total cost in excess of $250,000 or otherwise subject to the requirements of 5 M.R.S. § 1743-A, (2)to other contracts where such requirements are otherwise preempted by applicable state or federal law, and (3) to bidders or proposers if such application is preempted by applicable state or federal law.

(d~~c~~) In addition to the foregoing determination, the Finance Director may disqualify a bidder or proposer from contracting with the city for a period of time, up to and including two years, for good cause shown. Such cause shall include, but not be limited to, the foregoing factors used for determining the qualifications of a bidder or proposer.

MEMORANDUM

TO: Finance Committee

FROM: Danielle West-Chuhta and Michael Goldman,
Corporation Counsel's Office

DATE: November 20, 2018

RE: Responsible Contracting Ordinance & ERISA

Our understanding is that the Finance Committee is considering a "Responsible Contracting Ordinance" that, among other things, would require contractors performing work on certain public construction and maintenance contracts to participate in a job training or apprenticeship program. That requirement, in principle, is contained in a so-called "model ordinance" that we understand has been circulated to the Committee and is included, in various iterations, in similar ordinances that have been adopted around the country.

As the Committee is considering that particular proposal, it should be aware that ordinances which require participation in apprenticeship programs have been the subject of several legal challenges. The most common basis for challenge has been an allegation that mandatory apprenticeship provisions are pre-empted by the federal Employee Retirement Income Security Act (ERISA).

The courts that have considered those challenges have been split on whether ordinances mandating apprenticeship programs are preempted and therefore invalid. *See e.g. Merit Constr. Alliance v. City of Quincy*, 759 F.3d 122 (1st Cir. 2014); *and Associated Builders & Constrs., Inc. v. New Castle Cnty*., 144 F.supp.3d 633 (Dist. Del. 2015).

The issue, in sum, and as articulated by the First Circuit in *Quincy* is this:

> By its terms, ERISA "supersede[s] any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). The Supreme Court has distilled the statute's "relate to" language into two independently sufficient alternatives: "a connection with or reference to" an ERISA plan will result in preemption.

> [T]he Ordinance categorically requires all contractors on Quincy public works projects to operate a Massachusetts-approved apprentice training program. . . . Incorporating the state's standards imposes a raft of stringent conditions on would-be bidders including, among others, documenting of the program's terms and conditions. . . , the location of the program's apprentice activities . . . , training and instruction. . . , wage rates. . . , recordkeeping. . . , instructor qualifications. . . , apprentice enrollment. . . , reporting. . . , and termination. . . .
>
> With such a compendium of stipulations in place, we have no difficulty concluding that the Ordinance goes far beyond simply influencing ERISA apprentice training programs. It mandates an employee benefit structure and specifies how that structure must be administered. This is simply too intrusive to withstand ERISA preemption.

Id. The Court summarized its conclusions as follows:

> ERISA specifically includes apprentice training programs in its definition of employee welfare benefit plans. A state-law mandate regarding the structure or administration of such plans falls within the ambit of ERISA's preemption provision. The Ordinance comprises such a mandate because it dictates the establishment of an employee benefit structure and sets the standards governing that structure. Even though a non-ERISA option might be available for compliance with the Ordinance, the availability of such an option does not save the Ordinance: its mandate still has the effect of destroying the benefit of uniform administration that is among ERISA's principal goals.

So, under First Circuit precedent (which is the federal circuit that includes Maine), a local ordinance mandating participation in an apprenticeship program is vulnerable not just to challenge but to being invalidated.

Notwithstanding the *Quincy* case, there are alternative arguments not addressed in that case that could serve as the basis for a defense of such an ordinance – arguments that have been successful in other jurisdictions. For example, the “market participation” theory essentially distinguishes between a state or municipality acting as a “purchaser” and expressing purchasing preferences that advance a proprietary, rather than a regulatory, preference. Some courts have upheld apprenticeship requirements contained in procurement ordinances on that basis. *Associated Builders & Constrs., Inc. v. New Castle Cnty*., 144 F.supp.3d 633 (Dist. Del. 2015). Again, it is not clear how the First Circuit would come out on that question as it does not yet appear to have considered the "market participation" theory in connection with a mandatory apprenticeship requirement.

In summary, the mandatory apprenticeship language contained in the "model ordinance" and included in the draft being considered by the Committee has been the basis for a number of legal challenges around the country. The outcomes of those challenges have been varied but it is important to note that the prevailing case in the First Circuit invalidated similar language. There are differences in the language being proposed here (there is a choice between state and federally approved programs, for example, which might diminish the extent to which the federal program is preempted) and there are certainly arguments available in support of the ordinance that do not appear to have yet been addressed in Maine. Nevertheless, the Committee should certainly be aware of the risk of litigation and possible invalidation of that provision as it moves forward with this proposal.

Office of the Mayor, Ethan K Strimling

DISTRIBUTE TO:	Members of the Finance Committee; Councilor Nicholas Mavodones, Chair and Councilor Justin Costa
FROM:	Ethan Strimling, Mayor
DATE:	Oct 4, 2018
SUBJECT:	**Housing Bond**

Please consider this memo a formal proposal for the Finance Committee to help us meet the 2017 & 2018 Council Priorities of capitalizing the Housing Trust (see attachment #1) and the 2018 Council Priority to "Increase access to rental and ownership housing that is safe and affordable for working and low income families." (see attachment #2).

This particular proposal is to authorize $7M in borrowing to be available for our Housing Trust [HT] to then be distributed for the development of affordable and mixed use housing in Portland.

Why Capitalize the Housing Trust?

Although this has been a council priority for at least two years, it bears reminding ourselves why the Housing Trust is such a valuable tool and why capitalizing it is so essential. Here is how the fund is described by city staff in two memos to the Housing Committee this year:

"*The Housing Trust Fund is a valuable tool that can assist the City in meeting the goal of providing increased availability in all segments of the housing market. While the City has other resources such as the HUD HOME and CDBG Programs, those funds are limited in amount and scope..... The HOME program restricts rental housing assistance to households at or below 60% of the area median income and home ownership assistance to households at or below 80% of the area median income. The CDBG program is restricted to households at or below 80% of the area median income. City Ordinance allows the Housing Trust Fund to assist households at or below 120% of area median income.*" April, 2018 (see attachment #3)

Unfortunately, according to Housing staff, the lack of funding from a stable and steady source leaves our Housing Trust as an undependable source for Affordable Housing developers.

"*The Housing Trust Fund also does not provide a stable and steady source of funding for affordable housing* ***due to the lack of a dedicated funding source****. The absence of a dependable source of funding raises genuine concerns of uncertainty when addressing an issue that affects the entire community.*" (bold added) February, 2018 (see attachment #4)

- Historically, over the past 15 years, the Housing Trust alone has expended $1.9M and is responsible for building at least 229 units. That is a cost of $8,296 per unit on average. **At this average cost per unit, $7M would build 844 units of housing.**

- In the past five years, utilizing all City of Portland resources (HOME/CDBG/HT, and excluding TIF's), PHA and AVESTA have been able to produce (or are about to produce) 512 units in Portland at a city subsidy cost of only $4.5M; $8,800 per unit. (see attachment #9) **At this average cost per unit, $7M would produce 795 units.**

In sum, based on past performance, it appears that investing $7M in the HT can create from 600 to 800 units of housing over five years.

Costs to the taxpayer

According to City Staff, borrowing $7M would cost about $10.1M over the life of the bond (20 years), assuming all of it were drawn down. On an annual basis this would be about 8 cents on the Mil Rate, or approximately $20 on an average $250K home in Portland.

It should be noted that we plan to retire and replace $12.9M of bonding this year, and project to add an additional $5M on top of that. Some of the borrowing proposed here could be included in those projections, thereby reducing the impact on the budget.

Recommendation

My recommendation is to pass the $7M bond with the stipulation that up to $1.5M a year be drawn down for distribution (as determined by applications reviewed by the Housing Staff and authorized by the Housing Committee). This reduces the single year impact on taxpayers to no more than than $5 a year on an average home, assuming this debt is outside our annual replacement cap for infrastructure debt.

The committee may also want to consider that an average per-unit expenditure limit be placed on the funds. For instance, we could stipulate that the expectation of the allocation of these funds is that they will garner a return of one unit for every $10,000 spent. That will ensure a minimum of 700 units being produced, thereby ensuring that the funds continue to be utilized in a way that maximizes the return for the taxpayers and for those in need of housing.

Attachment #1

Portland City Council Goal Setting Summary - 2017

The City Council and Mayor met on January 23, 2017 to develop a clear understanding of their key priorities and goals for 2017. It was also to develop a sense of which goals the Council and Mayor are most interested in seeing developed. While each committee and the Mayor will still work on all the goals each outlined (see below), the ranking identified the top three areas of greatest interest on each list. The top 3 goals from each list are:

Economic Development
- Eastern waterfront public infrastructure investment/increase utilization of the terminal
- Broad Band Access
- TIF financing policy

Finance
- Question on the ballot regarding elementary school renovations
- Combined tax increase no greater than 2.5%
- Develop proposal for targeted tax relief

Health & Human Services
- Pursue shelter improvements: expand zoning; improvement and new shelter
- Guidance and policy suggestions on substance abuse, opioid crisis, facilities, marijuana education, zoning, operation of the needle exchange
- Seek regional solutions: homelessness, substance abuse

Housing
- Identify opportunity to demonstrate a City partnership to leverage mixed use housing
- Implement policies to capitalize the Housing Fund (*incentives for affordable housing*) added at the meeting
- Pull together a current situation report on Housing Policy, availability and affordability

Mayor
- Universal All Day Pre-K
- Increase inclusionary zoning to 20%
- Earned Paid Sick Time

Nominating & Legislative
- Increase outreach to generate applications
- Establish state and federal intergovernmental relations
- "Ban the box:" examine disclosure requirements

Sustainability & Transportation
- Pedestrian crossings, stop lights, bike lanes, review existing plans, snow removal ordinance and plowing routes, transportation bonds, parking
- Parks: zoning, interactive parks
- Review Portland Climate Action Plan

Attached is a list of each committee's and the Mayor's goals.

Attachment #1 (Cont)

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

Office of the Mayor, Ethan K. Strimling

2018 Goals

1. Ensuring Educational & Lifelong Success -- Offering Universal Pre-K in Portland

The research is clear - kids who go through high-quality pre-k programs are better prepared for kindergarten than those who don't. Right now the city is only meeting 25% of our need with the current pre-k program and our lowest income kids are being the hardest hit. This proposal is to put out an advisory referenda to ask Portland residents if they are willing to pay for a high quality universal Pre-K program for every four year old in the city. (Will work with School Board on this goal)

2. A Sustainable City – Solarize Portland

Many cities around Portland have instituted "Solarize" programs to promote solar power and help facilitate the bulk purchase of solar energy conversion. Portland should do the same, as well as switching the City's electric plan to renewable, purchasing more electric vehicles for our fleet, installing more charging stations around the city, and exempting environmental upgrades to homes from increased valuation. (Plan is to refer to Sustainability)

Already on Committee Work Plans

3. Affordable Workforce Housing - Capitalizing the Housing Trust Fund to $10 Million

One of the Council's 2017 goals was to fully capitalize the Housing Trust Fund [Trust]. This proposal will inject $8 million into the Trust by the end of 2019 - three million from the sale of the WEX property and $5 million through a bond. Growing the Trust to $10 million will leverage upwards of $50-60 million in additional money toward our housing crisis and build upwards of 1,000 units of affordable housing over the next five years. (Finance Committee)

4. A Safe, Healthy Workforce - Earned Paid Sick Time

Currently 20,000 workers in Portland can't earn even one paid day off to care for their own medical well-being or that of their child. This proposal will ensure that every worker in Portland receives at least 6 paid days off a year to take care of health or safety issues for themselves or their family. (HHS Committee)

5. Responsible Contracting for City Contracts

Last year, the council passed a revision to our TIF policy to require that all contractors that work on a project which receives a CEA, pay their workers a livable wage with benefits. This proposal will require that the same standard apply to all city contracts with private entities, plus require that they have an apprenticeship program. (Finance Committee)

Attachment #2

Portland City Council Committee on Housing

Goal/Objective: Increase access to rental and ownership housing that is safe and affordable for working and low-income families.

Safe, affordable and accessible housing remains the core objective. The 2018 Housing Committee will focus on policies that help residents match their housing needs with appropriate options over a lifetime. Success is when we have a broad array of housing choices to serve evolving individual and family housing needs.

Solid housing stock, parks and open space, quality education, proximity to jobs and entertainment are all important elements that significantly influence whether Portland can retain and sustain current residents and attract new residents of all ages, backgrounds and abilities.

2018 Committee Workplan Priorities

1. Identify an opportunity to engage the city in a public/private partnership project or projects to add rental and ownership units to our housing inventory, by leveraging policy, planning expertise, funding, zoning, public land, creating a Land Trust and /or other strategies. Towards this goal, the Committee initiated a general exploration in its February meeting of work done in other cities using surplus city property to leverage housing development through formation of a Community Land Trust (CLT). The Land Trust idea is but one of a number of strategies the Committee may explore to develop and forward to proposal to the full council.

2. Identify and recommend policy to remove barriers to Accessory Dwelling Units in residential zones – the Committee proposes to review the effectiveness of loosened ADU policy approved by the council several years ago and consider revisions or additional adjustments in tandem with the first phase of the ReCode Portland zoning rewrite.

3. Develop and recommend a Housing Advisory Board consistent with the language approved by the Council as part of the 2016 Housing security package, including housing professionals, tenant and landlord representatives, to assist the City in developing and implementing policy options to address existing and developing issues.

Other Projects highlighted for action by the Committee

Develop a proposal for a "hotel linkage fee" to fund City housing programs and recommend action to the full council.

Evaluate the condominium conversion ordinance to assess compliance with the tenant notice and relocation assistance requirements and recommend if the condominium conversion fee should be increased to fund TBRA and/or the Housing Trust Fund.

Sponsor development of a cost neutral proposal to take on administration the Portland Water District's water efficiency and repair services program and recommend action to the full council.

Attachment #3

Portland, Maine Yes. Life's good here.

Mary Davis
Division Director, Housing & Community Development Division

TO: Councilor Duson, Chair
Members of the Housing Committee

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

DATE: April 20, 2018

SUBJECT: 2018 Housing Trust Fund Annual Plan

The Housing Trust fund is established by Section 14-489 of the City's Code of Ordinances. Section 14-489 (e) states that "the city council shall adopt a housing trust fund annual plan" and that the "housing committee of the city council or such other committee as the council shall designate shall conduct public hearings on the recommended plan and refer the matter to the council for action."

The plan establishes the priorities in which the current balance of the Housing Trust Fund will be allocated. Over the last few years, the annual plan has been deliberately broad due to the relatively small amount of available resources. With an increase in resources, it is prudent that a more detailed plan be put in place. Housing Trust Fund resources should be focused on opportunities where other funding sources do not work or are not effective. As always, the City should act prudently when deciding to invest these funds.

Staff is requesting committee approval and recommendation to the City Council of the proposed 2018 Housing Trust Fund Annual Plan.

389 Congress Street / www.portlandmaine.gov / tel. 207•756•8246 / tty. 207•874•8936 / fax. 207•874•8949

Attachment #3 (cont)

HOUSING TRUST FUND
2018 ANNUAL PLAN

BACKGROUND

The Housing Trust fund is established by Section 14-489 of the City's Code of Ordinances. Section 14-489 (e) states that "the city council shall adopt a housing trust fund annual plan" and that the "housing committee of the city council or such other committee as the council shall designate shall conduct public hearings on the recommended plan and refer the matter to the council for action."

The Annual Plan will establish the priorities in which the current balance of the Housing Trust Fund will be allocated. The plan is in line with the 2018 City Council Goal of increasing access to rental and ownership housing that is safe and affordable for working and low-income families.

This budget is based on the current balance in the Housing Trust Fund. At this time, Housing Trust Fund revenue is generated from fees triggered by the Housing Preservation and Replacement Ordinance and fee-in-lieu contributions from the Inclusionary Zoning Ordinance, along with other funding resources under Council consideration. The balance of the Housing Trust Fund is $913,502. While staff anticipates increases in revenue in the Housing Trust Fund as a result of the Inclusionary Zoning Ordinance and other sources being considered by the City Council, those anticipated resources are not included in the 2018 Annual Plan.

Sources and Uses of Housing Trust Fund:

DEPOSITS		EXPENDITURES	
Maine Medical Center 2002-2003	$ 315,580	Avesta Oak Street Lofts 2011	$ (380,585)
Sportsman's Grill 2002	$ 40,000	Housing First Pre-Development RFP 2014	$ (75,000)
Berlin City Auto 2009	$ 116,000	65 Hanover St 2015	$ (9,250)
Stop n Shop 2010	$ 289,250	65 Munjoy St 2017	$ (175,000)
Rockbridge/Eastland Park 2012	$ 42,500		
Riverwalk/Ocean Gateway 2012	$ 250,000	**Total Expenditures**	**$ (639,835)**
118 Congress LLC April 2014	$ 3,500		
Sale of Belfort Street 2017	$ 86,424		
Sale of 116 Upper A Street 2017	$ 78,527		
443 Congress Street 2017	$ 280,000		
Previous INTEREST EARNED	$ 51,556		
Total Deposits	**$1,553,337**	**BALANCE**	**$ 913,502**

City Ordinance requires that the Housing Trust Fund Annual Plan include a description of the programs to be funded, a budget for each program and identify how the funds will be distributed among very-low (at or below 50% of the area median income), low (at or below 80% of the area median income) and moderate income (at or below 120% of the area median income) households.

Attachment #: (cont)

The Housing Trust Fund is a valuable tool that can assist the City in meeting the goal of providing increased availability in all segments of the housing market. While the City has other resources such as the HUD HOME and CDBG Programs, those funds are limited in amount and scope. The proposed Housing Program budget for FY 2018-2019 includes $325,064 in HOME funding for affordable housing development, $100,000 for housing rehabilitation and $224,096 in CDBG housing program income for housing rehabilitation. The HOME program restricts rental housing assistance to households at or below 60% of the area median income and home ownership assistance to households at or below 80% of the area median income. The CDBG program is restricted to households at or below 80% of the area median income. City Ordinance allows the Housing Trust Fund to assist households at or below 120% of area median income.

As always, the City should act prudently when deciding to invest these funds. The Housing Trust Fund should maintain a minimum balance of $500,000 in order to have resources to act quickly when there is an emergency, such as a need to cure a potential mortgage default that could result in loss of an affordable unit.

FUNDING PRIORITIES

The purpose of the Housing Trust Fund is the "…promotion, retention and creation of an adequate supply of housing, particularly affordable housing, for all economic groups and to limit the net loss of housing units in the City." and "To serve as a vehicle for addressing very low, low and median income housing needs…".

A 2018 priority will be to support the Portland Housing Authority in the implementation of their Strategic Vision Plan when other funding sources are not available. The Housing Authority's current priorities in that Plan are the Boyd Street and Front Street sites.

Allocation Process

Housing Trust Funds will be distributed through a competitive application process. A Notice of Funding Availability will be issued at a minimum of an annual basis to notify potential applicants that the application is available. Applications will be reviewed by an evaluation team that will include City of Portland staff. Selection criteria as well as a point system will be used for evaluating and scoring the applications.

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

Eligible Activities

Activities eligible for funding from the Housing Trust Fund are those that promote, retain, and create an adequate supply of housing, particularly affordable housing for all economic groups, and to limit the net loss of housing units in the city. Eligible activities may include: new construction, preservation/rehabilitation of existing affordable housing, adaptive reuse, acquisition, housing first.

Attachment #3 (cont)

The Housing Trust Fund resources are also intended to promote the retention of affordable housing. Staff recommends that Housing Trust Fund resources be made available, if necessary, to exercise the City's right of first refusal in connection with potential foreclosure issues with affordable homeownership units. This is unlikely to occur in the near future but may come up as more workforce homeownership units are created through Portland's inclusionary zoning ordinance. Similarly, Housing Trust Fund resources should also be considered for aiding households that own affordable units to pay special assessments from their condominium or homeowners association in order to help maintain the unit's affordability and reduce any risk of foreclosure. It is important to allow for the consideration of using funds in these manners as foreclosure of a unit can jeopardize any affordability restrictions associated with the property.

Financing Parameters

Housing Trust Funds should be a resource of last resort.

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: Funding awards will be determined on a per affordable unit basis. The City contribution per unit will not exceed $15,000. This amount may be adjusted at the discretion of the City Council.

Income Targeting

Housing Trust Fund resources should be focused on (1) opportunities where other funding sources do not work or are not effective, (2) projects designed to create housing affordable to households earning at or below 50% of the area median income, and (3) projects designed to create housing affordable to households earning 80% to 120% of the area median income.

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

Affordability Restrictions

Affordability restrictions are required. In the case of rental or cooperative units, the units must remain affordable for the life of the housing unit which is presumed to be a minimum of thirty (30) years.

Attachment #3
(Cont)

Homeownership units must include resale restrictions that maintain an "equitable balance" between the interests of the owner and the City. These restrictions must be documented and recorded in the Cumberland County Registry of Deeds.

Sales must be made through an arms-length arrangement. No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a unit financed with Housing Trust Funds or receive any benefit related in any way to the administration or compliance with the conditions contained therein.

Implementing Regulations

Regulations to further specify the details of the parameters outlined in this Annual Plan, shall be developed, including, but not limited to:

1. Specific methodology for income verification; and
2. Underwriting criteria.

Attachments
2018 Housing Trust Fund Application

Attachment #4

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

Planning & Urban Development Department

TO: Councilor Duson, Chair
Members of the Housing Committee

FROM: Victoria Volent, Housing Program Manager

DATED: February 23, 2018

SUBJECT: Overview of the Housing Trust Fund

Background

The City of Portland's Housing Trust Fund is established by Section 14-489 of the City's Code of Ordinances. The supports 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. Grants or loans are made to fund the acquisition, construction, and substantial rehabilitation of rental, cooperative, and home ownership housing that is restricted to ensure long-term affordability. The Housing Trust Fund is a much more flexible financial tool than other sources of funding available to the City. While the city has resources such as the HUD HOME and CDBG Programs, those funds are limited in amount and scope. Revenue for the Housing Trust Fund is generated from fees triggered by the City's Housing Preservation and Replacement Ordinance, and fee-in-lieu contributions from the Inclusionary Zoning Ordinance. Each fiscal year, the City Council adopts the Housing Trust Fund annual plan which describes proposed programs, funding levels, and benefitted households. The Housing Committee conducts a public hearing on the use of the funds and refers recommendations to the City Council for action. The 2017 Housing Trust Fund Annual Plan is attached for reference purposes.

Housing Trust Fund Priorities

Priorities for the expenditure of Housing Trust funds collected pursuant to the Housing Replacement Ordinance are given to the creation of new housing stock. Priorities for the expenditure of funds collected pursuant to the Inclusionary Zoning Ordinance are not specified in Section 14-489 (Housing Trust Fund). Some communities that prioritize funding requests adopt a ranking system based on a pre-established set of criteria. The Center for Community Change; the Housing Trust Fund Project issued a report titled *Opening Doors to Homes for All. The 2016 Housing Trust Fund Survey Report* (HTFSR) which noted surveyed cities that prioritize via ranking gave more points for the following projects (from highest priority to lowest priority):

Attachment #4 (cont)

lowest incomes; leverage funds; homeless; disabled persons; specific neighborhood preservation/rehab; elderly; distressed communities; developed by nonprofits; energy efficiency; weatherization/upgrades; renewable energy; water efficiency upgrades. Other communities do not prioritize but instead set aside a portion of the trust fund revenue for specific activities. Set aside of funds were given to projects targeting: 50% AMI; 30% AMI; 80% AMI; 60% AMI; 100% AMI, and projects for: homeless services and housing; permanent supportive housing; first time homebuyers; preservation of rental housing rental assistance; persons with disabilities; and energy efficiency upgrades. A third method is the "first come, first serve" in which projects are considered for funding in the order in which they are received.

Eligible Activities

Activities eligible for funding from the Housing Trust Fund are those that promote, retain, and create an adequate supply of housing, particularly affordable housing for all economic groups, and to limit the net loss of housing units in the city. This broad language allows a fluid interpretation of the ordinance to support a full variety of housing proposals that satisfy the appropriate conditions.

Some communities have retained this degree of flexibility in their ordinance while also providing a list of eligible activities. For example, listed eligible activities may include: new construction of affordable housing; preservation/rehabilitation of existing multi-family housing; housing for elderly; or permanent homeless housing. Other communities provide a list of preferred projects such as: Housing First; Rapid Rehousing; projects that leverage additional resources; or gap financing.

As currently written, Portland's Housing Trust Fund Ordinance provides the flexibility necessary to adapt to opportunities where other sources do not work or are not effective.

Eligible Applicants

The Housing Trust Fund Ordinance does not describe eligible applicants but does identify ineligible applicants. The option is available to define the term "eligible applicants". If inclined, a definition may include for-profit businesses, local government entities, housing authorities, nonprofit agencies, community action agencies, nonprofit corporations, and private individuals or corporations.

Financing

Form of Awards

Housing trust funds provide funding in a variety of forms including no-interest loans, below-market loans, forgivable loans, and grants. Some housing trust funds restrict financing to nonprofit developers. Others provide loans to private developers while making grants available to nonprofit developers. And others only offer grants to help reduce homelessness. Portland's

Attachment #4 (Cont)

Housing Trust Fund Ordinance disburses funds "as grants or loans" (without further interpretation).

Maximum Award Amount

The level of funding from housing trust funds is usually the minimum amount necessary to achieve the desired degree of affordability, on a case-by-case basis, and subject to funding availability. Portland's Housing Trust Fund allows distributions in an amount "as the city council in its discretion has approved in the housing trust fund annual plan" (section 14-489 (f) 2). The lack of a steady stream of dedicated revenue into the City's Housing Trust Fund begets prudent decisions to preserve limited funds that fluctuate year to year.

Funding awards may be limited by specific dollar amounts per project or per affordable unit. Portland has subsidized thirty housing development projects since 2000. The total City investment of $13,826,598 created 951 units of affordable housing at an average city contribution per unit of $14,539.01.

Current Balance

The balance of the Housing Trust Fund is $913,501.54. The chart on the next page breaks down deposit and expenditure activity to date.

DEPOSITS		**EXPENDITURES**	
Maine Medical Center 2002-2003	$315,580	Avesta Oak Street Lofts 2011	($380,585)
Sportsman's Grill 2002	$40,000	Housing First Pre-Development Grants	($75,000)
Berlin City Auto 2009	$116,000	65 Munjoy Street 2017	($175,000)
Stop n Shop 2010	$289,250	65 Hanover & 62 Alder Streets Feasibility Study	($9,250)
Rockbridge/Eastland Park 2012	$42,500	**Total Expenditures**	($639,835)
Riverwalk/Eastland Park 2012	$250,000		
118 Congress LLC 2014	$3,500		
Interest earned	$51,555.81		
91 & 97 Belfort St sale 2017	$86,423.99		
116 Upper A St., Peaks Island sale 2017	$78,526.74		
443 Congress St. fee-in-lieu (IZ) 2017	$280,000		
Total Deposits	$1,553,336.54	**Balance**	$913,501.54

As noted in the above chart, projects funded with Housing Trust Funds include the Avesta Oak Street Loft project which produced 37 efficiency units of rental housing affordable at 60% of the area median income (AMI) and below (including four units at 40% of AMI); 65 Munjoy Street which produced eight condominium units available for sale to households earning at or below

Attachment #4 (cont)

120% of AMI; Avesta's Huston Commons which produced 30 efficiency Housing First units; and Community Housing of Maine purchased a property on St. John Street which produced four Housing First units.

Summary

The Housing Trust Fund is a valuable tool that can assist the City in meeting the goal of providing affordable housing for all economic groups. The benefit and advantage of the Housing Trust Fund is the local control of the funding process structured to address particular opportunities and priority housing needs. The program as designed allows for spending discretion, flexibility, and adaptive uses. The program does not restrict funding awards, determine grant or award eligibility, or provide detailed preferences or priorities. The Housing Trust Fund also does not provide a stable and steady source of funding for affordable housing due to the lack of a dedicated funding source. The absence of a dependable source of funding raises genuine concerns of uncertainty when addressing an issue that affects the entire community.

Prior to establishing the 2018 Housing Trust Fund Annual Plan, staff recommends incorporating the City Council's 2018 Goals when established, along with a review of the Housing Trust Fund administration, program parameters, and revenue source in order to design a plan that will ensure 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. The topics introduced in this memo, priorities, eligible activities, eligible applicants, types of financing, maximum award amounts are introduced as a starting point for future Committee consideration.

Attachment:

Housing Trust Fund Ordinance

Copy of the 2017 Housing Trust Fund Annual Plan

Attachment #3

The Future of Homeless Services in Portland

•••

September 8, 2018

Attachment #3 (Cont)

Why are we here? Root causes of homelessness

1 | Lack of affordable housing

- There is a lack of affordable housing options in Portland and the Greater Portland area.
- Several Housing 1st projects have helped, as well as Avesta developments.

2 | Untreated behavioral health issues

- Mental illness and lack of needed services
- Substance abuse and lack of treatment services.

3 | Unemployment & poverty

- Our HIRE and Opportunity Crew programs work with individuals to help them attain the necessary skills needed to regain employment and ultimately housing.

Attachment #6

2017 Housing Facts and Affordability Index for Cumberland County

MaineHousing
Maine State Housing Authority

HELPING MAINERS RENT, BUY & HEAT THEIR HOMES SINCE 1969

Homeownership Affordability Index

Cumberland County	Year	Index	Median Home Price[1]	Median Income[2]	Income Needed to Afford Median Home Price	Home Price Affordable to Median Income
	2013	0.88	$230,000	$58,500	$66,662	$201,839
	2014	0.87	$237,000	$58,423	$66,935	$206,862
	2015	0.89	$241,000	$60,474	$67,919	$214,584
	2016	0.81	$256,000	$59,748	$73,365	$208,484
	2017	0.82	$282,000	$66,656	$81,616	$230,310
Portland		0.56	$285,000	$49,333	$87,989	$159,791
Frye Island		0.60	$225,000	$41,000	$68,187	$135,290
Yarmouth		0.62	$450,000	$84,950	$136,867	$279,304
Harpswell		0.67	$399,500	$68,695	$102,418	$267,958
Scarborough		0.73	$395,000	$82,882	$114,313	$286,392
Cape Elizabeth		0.73	$496,000	$106,151	$146,005	$360,610
Westbrook		0.73	$231,000	$50,479	$69,044	$168,886
Brunswick		0.74	$268,000	$60,137	$81,734	$197,184
Freeport		0.76	$358,750	$79,819	$105,501	$271,420
South Portland		0.77	$260,000	$59,490	$77,018	$200,829
Falmouth		0.79	$477,000	$107,980	$136,579	$377,119
Cumberland County		0.82	$282,000	$66,656	$81,616	$230,310
North Yarmouth		0.85	$377,500	$95,306	$111,986	$321,274
Pownal		0.90	$276,000	$73,921	$82,225	$248,125
Cumberland		0.92	$410,000	$112,230	$122,476	$375,701
Casco		0.92	$215,450	$56,944	$61,897	$198,209
Maine		0.93	$197,000	$53,190	$57,089	$183,546
Bridgton		0.96	$171,500	$47,461	$49,667	$163,881
Gray		0.97	$245,000	$69,522	$71,761	$237,357
Naples		0.98	$204,750	$56,777	$57,836	$201,001
New Gloucester		0.99	$237,250	$67,305	$67,949	$235,003
Gorham		1.00	$270,000	$78,622	$78,919	$268,983
Long Island		1.00	$200,000	$52,381	$52,347	$200,129
Windham		1.01	$250,000	$72,803	$72,047	$252,625
Raymond		1.07	$259,000	$76,563	$71,680	$276,643
Harrison		1.09	$193,250	$58,269	$53,701	$209,689
Sebago		1.10	$182,250	$56,333	$51,188	$200,570
Standish		1.10	$232,000	$71,561	$64,904	$255,796
Baldwin		1.16	$175,000	$57,172	$49,331	$202,816

The Homeownership Affordability Index is the ratio of Home Price Affordable at Median Income to Median Home Price. An index of less than 1 means the area is generally unaffordable - i.e., a household earning area median income could not cover the payment on a median priced home (30 year mortgage, taxes and insurance) using no more than 28% of gross income.

Attachment #6 (cont)

Households Unable to Afford Median Home

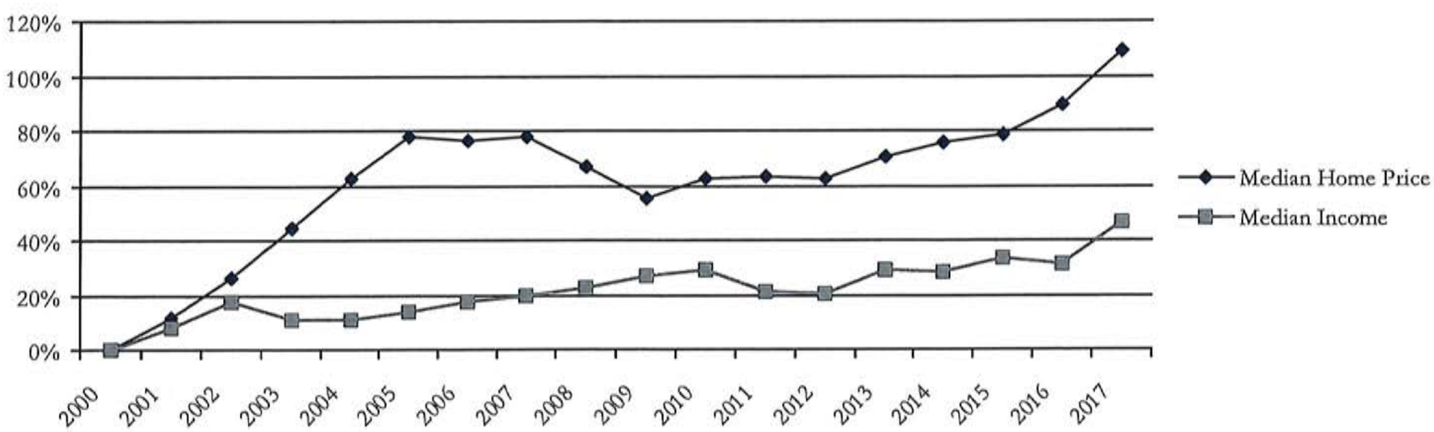
Location	Households Unable to Afford Median Home Percent	Households Unable to Afford Median Home Number	Total Households	Median Home Price[1]	Income Needed to Afford Median Home Annual	Income Needed to Afford Median Home Hourly
Portland	72.6%	23,212	31,961	$285,000	$87,989	$42.30
Frye Island	72.2%	13	18	$225,000	$68,187	$32.78
Harpswell	69.4%	1,605	2,314	$399,500	$102,418	$49.24
Westbrook	67.2%	5,385	8,008	$231,000	$69,044	$33.19
Brunswick	63.4%	5,637	8,896	$268,000	$81,734	$39.30
South Portland	63.3%	7,283	11,499	$260,000	$77,018	$37.03
Cumberland County	60.2%	74,411	123,551	$282,000	$81,616	$39.24
Freeport	59.8%	2,044	3,418	$358,750	$105,501	$50.72
Scarborough	58.7%	4,698	8,006	$395,000	$114,313	$54.96
Yarmouth	57.3%	2,101	3,665	$450,000	$136,867	$65.80
New Gloucester	56.2%	1,224	2,179	$237,250	$67,949	$32.67
Pownal	56.0%	337	602	$276,000	$82,225	$39.53
Maine	54.1%	305,534	565,115	$197,000	$57,089	$27.45
Casco	53.9%	867	1,609	$215,450	$61,897	$29.76
Gray	53.7%	1,811	3,370	$245,000	$71,761	$34.50
North Yarmouth	53.2%	734	1,379	$377,500	$111,986	$53.84
Long Island	52.8%	59	112	$200,000	$52,347	$25.17
Bridgton	52.0%	1,239	2,383	$171,500	$49,667	$23.88
Windham	51.9%	3,478	6,695	$250,000	$72,047	$34.64
Naples	51.0%	834	1,634	$204,750	$57,836	$27.81
Gorham	50.2%	3,073	6,124	$270,000	$78,919	$37.94
Raymond	48.9%	895	1,829	$259,000	$71,680	$34.46
Cape Elizabeth	47.1%	1,757	3,731	$496,000	$146,005	$70.19
Falmouth	46.4%	2,170	4,679	$477,000	$136,579	$65.66
Harrison	46.0%	551	1,198	$193,250	$53,701	$25.82
Cumberland	44.7%	1,326	2,969	$410,000	$122,476	$58.88
Sebago	44.3%	363	819	$182,250	$51,188	$24.61
Standish	44.0%	1,624	3,687	$232,000	$64,904	$31.20
Baldwin	43.7%	267	612	$175,000	$49,331	$23.72

Attachment #6 (cont)

Unattainable Homes as a Percentage of Homes Sold

Location	Percentage of Unattainable Homes	Affordable Homes Sold	Unattainable Homes Sold
Portland	97.1%	27	897
Frye Island	94.1%	1	16
Westbrook	84.0%	52	272
Yarmouth	82.3%	25	116
South Portland	78.5%	84	306
Harpswell	72.1%	38	98
Scarborough	71.7%	116	294
Cape Elizabeth	71.4%	54	135
Falmouth	71.1%	67	165
Brunswick	68.6%	86	188
Cumberland County	67.7%	1,653	3,459
North Yarmouth	66.7%	24	48
Gorham	58.4%	119	167
Gray	58.0%	68	94
Cumberland	57.1%	73	97
Freeport	56.5%	60	78
Bridgton	54.2%	77	91
Maine	53.9%	9,513	11,139
Pownal	53.8%	6	7
Long Island	50.0%	5	5
New Gloucester	48.1%	42	39
Naples	48.0%	65	60
Casco	46.8%	50	44
Windham	44.8%	181	147
Raymond	43.0%	53	40
Harrison	35.8%	43	24
Sebago	33.9%	39	20
Standish	29.1%	127	52
Baldwin	23.8%	16	5

Relative Increases in Income and Home Price [3]



MaineHousing
Maine State Housing Authority

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Attachment #6 (cont)

Rental Affordability Index

Cumberland County	Year	Index	Average 2 BR Rent (with utilities)[4]	Renter Household Median Income[2]	Income Needed to Afford Average 2 BR Rent	2 BR Rent Affordable to Median Income
	2013	0.90	$1,017	$36,438	$40,667	$911
	2014	0.75	$1,124	$33,886	$44,948	$847
	2015	0.78	$1,165	$36,470	$46,604	$912
	2016	0.83	$1,024	$33,930	$40,973	$848
	2017	0.94	$1,025	$38,559	$40,988	$964
Portland		0.82	$1,053	$34,681	$42,111	$867
Gorham		0.83	$1,400	$46,505	$56,000	$1,163
Falmouth		0.86	$1,700	$58,458	$68,000	$1,461
Maine		0.88	$880	$30,804	$35,181	$770
Bridgton		0.89	$831	$29,620	$33,222	$740
Gray		0.92	$1,150	$42,320	$46,000	$1,058
Cumberland County		0.94	$1,025	$38,559	$40,988	$964
Yarmouth		0.96	$1,292	$49,850	$51,662	$1,246
South Portland		1.10	$925	$40,759	$36,990	$1,019
Freeport		1.21	$930	$44,978	$37,206	$1,124
Brunswick		1.23	$703	$34,499	$28,110	$862
Scarborough		1.27	$1,025	$52,126	$41,000	$1,303
Windham		1.29	$962	$49,683	$38,467	$1,242
Cumberland		1.80	$933	$67,240	$37,316	$1,681

The Rental Affordability Index is the ratio of 2-Bedroom Rent Affordable at Median Renter Income to Average 2-Bedroom Rent. An index of less than 1 means the area is generally unaffordable – i.e., a renter household earning area median renter income could not cover the cost of an average 2-bedroom apartment (including utilities) using no more than 30% of gross income.

Renter Households Unable to Afford Average 2 Bedroom Rent

Location	Households Unable to Afford Average 2 BR Rent		Total Renter Households	Average 2 BR Rent (with utilities)[4]	Income Needed to Afford Average 2 BR Rent	
	Percent	Number			Annual	Hourly
Gorham	57.5%	668	1,161	$1,400	$56,000	$26.92
Portland	57.0%	10,477	18,371	$1,053	$42,111	$20.25
Falmouth	56.0%	474	846	$1,700	$68,000	$32.69
Maine	55.9%	90,353	161,746	$880	$35,181	$16.91
Bridgton	53.9%	324	601	$831	$33,222	$15.97
Gray	52.8%	393	744	$1,150	$46,000	$22.12
Cumberland County	52.3%	21,362	40,812	$1,025	$40,988	$19.71
Yarmouth	51.5%	566	1,100	$1,292	$51,662	$24.84
South Portland	45.9%	2,082	4,540	$925	$36,990	$17.78
Freeport	42.2%	340	805	$930	$37,206	$17.89
Brunswick	42.1%	1,200	2,847	$703	$28,110	$13.51
Windham	40.9%	557	1,363	$962	$38,467	$18.49
Scarborough	39.8%	629	1,581	$1,025	$41,000	$19.71
Cumberland	27.9%	76	272	$933	$37,316	$17.94

Attachment #7

Housing Trust Fund Appropriation

1 message

Mark B. Adelson <madelson@porthouse.org> Thu, Aug 2, 2018 at 11:09 AM

To: "estrimling@portlandmaine.gov" <estrimling@portlandmaine.gov>, "jcosta@portlandmaine.gov" <jcosta@portlandmaine.gov>, Nick Mavodones <nmm@portlandmaine.gov>
Cc: Jon Jennings <jpj@portlandmaine.gov>, "Jill Duson (jduson@portlandmaine.gov)" <jduson@portlandmaine.gov>, Pious Ali <PALI@portlandmaine.gov>, "kcook@portlandmaine.gov" <kcook@portlandmaine.gov>, Brian Batson <bbatson@portlandmaine.gov>, "bsr@portlandmaine.gov" <bsr@portlandmaine.gov>, "sthibodeau@portlandmaine.gov" <sthibodeau@portlandmaine.gov>, Jay Waterman <jwaterman@porthouse.org>, "Dana Totman (dtotman@avestahousing.org)" <dtotman@avestahousing.org>

Members of the Finance Committee,

...Below is a table showing our current Public Housing Waiting List. Individuals, small households and the disabled are the largest groups in search of housing assistance at this time.

Thank you, Mark B. Adelson

Portland Housing Authority Public Housing Waiting List						**7/20/2018**	
BR Size Requested	**Total Applicants**	**%**	**Disabled**	**Elderly**	**Family**	**Single**	**Totals**
1	765	66.51%	417	97	53	198	765
2	199	18.24%	42	3	154	0	199
3	121	10.84%	20	2	99	0	121
4	41	3.61%	9	1	31	0	41
5	7	0.62%	0	1	6	0	7
6	2	0.18%	0	0	2	0	2
	1135	**100%**	**488**	**104**	**345**	**198**	**1135**
			43%	**9.16%**	**30.40%**	**17.44%**	**100%**
Average Days on Waiting List			363				

Mark B. Adelson, Executive Director

Attachment D

Subsidized Housing Development in Portland Since 2000

No.	Owner/Project	Units	HOME	HDF	CDBG	HTF	TIF	NSP
1	Adams School	16	$ -	$ -	$ -	$ -	$ -	$ 1,710,000
2	Bayside Anchor	45	$ 500,000	$ -	$ -	$ -	$ -	$ -
3	Bayside East	20	$ 250,000	$ -	$ -	$ -	$ -	$ -
4	58 Boyd Street	55	$ 200,000		$ 30,000		$ 2,144,566	
5	977 Brighton Avenue	40	$ -	$ -	$ -	$ 300,000	$ 1,954,486	$ -
6	17 Carleton	37	$ -	$ -	$ -	$ -	$ 726,000	$ -
7	409 Cumberland	57	$ 500,000	$ -	$ -	$ -	$ 759,392	$ -
8	53 Danforth	43	$ 325,000	$ -	$ -	$ -	$ -	$ -
9	Deering Place	80	$ 200,000	$ -	$ -	$ -	$ 4,185,757	$ -
10	Elm Terrace	38	$ 403,795	$ -	$ -	$ -	$ -	$ -
11	Florence House	25	$ 240,000	$ -	$ -	$ -	$ -	$ -
12	Fore River	20	$ 388,474	$ -	$ -	$ -	$ -	$ -
13	37 Front Street	111	$ 510,174	$ -	$ 250,000	$ 925,000	$ -	$ -
14	IRIS Park Apartments	31	$ -	$ 250,000	$ -	$ -	$ -	$ -
15	Island View Apartments	70	$ 71,015	$ 192,639	$ 136,346	$ -	$ -	$ -
16	178 Kennebec Street	46	$ 370,000	$ -	$ -	$ -	$ 2,889,164	$ -
17	Logan Place	30	$ 435,000	$ -	$ -	$ -	$ -	$ -
18	Motherhouse	88	$ 627,223	$ -	$ -	$ -	$ -	$ -
19	65 Munjoy	8	$ -	$ -	$ -	$ 175,000	$ -	$ -
20	Oak Street	37	$ -	$ -	$ -	$ 380,585	$ -	$ -
21	Pearl Place - Phase I	60	$ 427,000	$ -	$ -	$ -	$ 615,502	$ -
22	Pearl Place - Phase II	54	$ 400,000	$ -	$ -	$ -	$ -	$ -
23	Rosa True School	10	$ 118,500	$ -	$ -	$ -	$ -	$ -
24	Shalom House	10	$ 93,000	$ -	$ -	$ -	$ -	$ -
25	Peaks Senior Housing	12	$ 150,000	$ -	$ -	$ -	$ -	$ -
26	Peninsula Community II LP	16	$ 307,700	$ -	$ -	$ -	$ -	$ -
27	Peninsula Community III LP	10	$ 200,000	$ -	$ -	$ -	$ -	$ -
28	Peninsula Community LP	12	$ 300,000	$ -	$ -	$ -	$ -	$ -
29	St. Doms Family Housing	12	$ -	$ 436,500	$ -	$ -	$ -	$ -
30	Unity Village	33	$ 86,500	$ -	$ 363,863	$ -	$ -	$ -
31	Valley Street	24	$ 320,000	$ -	$ -	$ -	$ -	$ -
32	Walker Terrace	40	$ 382,000	$ 220,000	$ -	$ -	$ -	$ -
33	134 Washington Ave	18	$ 522,448	$ -	$ -	$ -	$ 207,116	$ -
34	Wellesley Estates	45	$ -	$ 256,000	$ -	$ -	$ -	$ -
35	Yale Court	30	$ 150,000	$ 200,000	$ -	$ -	$ -	$ -
		Units	HOME	HDF	CDBG	HTF	TIF	NSF
	Total	1283	$8,477,829	$1,555,139	$780,209	$1,780,585	$13,481,983	$1,710,000

Total City Investment	$	27,785,745
Avg. City Contribution/Unit	$	**21,657**
Avg. City Contribution/Unit w/o TIF	$	**11,149**

Last Updated 10-02-2018

O:\HCD\Housing\Housing Data\Housing Development:

22

Attachment #9

From: **Dana Totman** <DTotman@avestahousing.org>
Date: Mon, Oct 1, 2018 at 9:46 AM
Subject: FW: Housing Trust
To: Ethan Strimling <estrimling@portlandmaine.gov>
CC: Mark Adelson <madelson@porthouse.org>, Donna Yellen <dyellen@preblestreet.org>, Rebecca Hatfield <RHatfield@avestahousing.org>, Greg Payne <GPayne@avestahousing.org>, pmerrill@MAINEHOUSING.org <pmerrill@mainehousing.org>

Ethan,

The chart below indicates that our last seven Portland affordable housing developments cost $57,972,673. Portland's contribution (from a variety of sources) was $4,939,851 or 9% of the total. So.....Portland's $4,939,851 was combined with (leveraged?) $53,032,822 of non-Portland funds. For every $1.00 of Portland funds we had $11.74 of non-Portland funds.

The average Portland housing unit costs $191,962 and Portland's average contribution was $16,357. At these rates $7,000,000 of city funds could support the creation of 428 units.

Dana

			City of Portland					
Project	**Units**	**TDC**	**FedHOME**	**Other Grant**	**HTF**	**TIF Value***	**Total City Funds**	**% of TDC**
Brighton Ave	40 (34 affordable)	8,513,204	-	-	300,000	414,235	714,235	8%
Deering Place	75 (45 affordable)	14,685,918	500,000	-	-	1,325,715	1,825,715	12%
Carleton	37	6,290,018	-	-	-	286,024	286,024	5%
Bayside Anchor	45	7,735,003	500,000	-	-		500,000	6%
Huston Commons	30	5,893,952	-	50,000	-		50,000	1%
Thomas Heights	18	3,628,083	522,448	-	-	62,582	585,030	16%
409 Cumberland	57	11,226,495	500,000	-	-	478,846	978,846	9%
TOTAL		**57,972,673**	**2,022,448**	**50,000**	**300,000**	**2,567,403**	**4,939,851**	**9%**

***6% 30-year debt equivalent.**

Attachment #9 (cont)

From: **Mark B. Adelson** <madelson@porthouse.org>
Date: Mon, Oct 1, 2018 at 11:11 AM
Subject: FW: Housing Trust
To: estrimling@portlandmaine.gov <estrimling@portlandmaine.gov>
Cc: Dana Totman (dtotman@avestahousing.org) <dtotman@avestahousing.org>, Jay Waterman <jwaterman@porthouse.org>

Ethan, our numbers are below, we also included Bayside Anchor, so if you're totaling Avesta and PHA numbers don't count it twice. The City has provided 10% for the funds for our projects. For every $1.00 of Portland funds it helped generate $9.77 of non-Portland funds. Hope this is helpful, good luck on Thursday.
Thanks, Mark A.

From: Jay Waterman
Sent: Monday, October 1, 2018 11:01 AM
To: Mark B. Adelson <madelson@porthouse.org>
Subject: Re: Housing Trust

Mark,

Here are our numbers for City subsidy. I included Bayside Anchor. The City has provided, on average, about 10% of the funds for our recent projects.

PHA Projects			City of Portland					
Project	**Units**	**TDC**	**FedHOME**	**CDBG**	**HTF**	**TIF Value***	**Total City Funds**	**% of TDC**
Bayside Anchor	45 units (36 affordable)	7,735,003	500,000	-	-	-	500,000	6.5%
58 Boyd Street	55 (44 affordable)	12,455,989	200,000	30,000	-	842,000	1,072,000	8.6%
Front Street Re-Development	110 units (88 affordable)	31,499,787	510,174	250,000	925,000	2,031,216	3,716,390	11.8%
TOTAL		**51,690,779**	**1,210,174**	**280,000**	**925,000**	**2,873,216**	**5,288,390**	**10.2%**

* 6% / 30-year debt equivalent

Jay Waterman, LEED AP BD+C/Homes
Development Director
Portland Housing Development Corporation
Direct: 207.221.8009
Cell: 207.272.2562

Portland, Maine Yes. Life's good here.

MEMORANDUM

TO: Members of the Finance Committee

FROM: Brendan T. O'Connell - Finance Director

CC: Jon P. Jennings - City Manager

DATE: September 28, 2018

SUBJECT: **Cost Analysis - $7M Housing Trust Bond**

During the October 4, 2018 meeting of the City of Portland Finance Committee Mayor Strimling will be presenting a proposal for a $7M bond authorization. The proposal includes appropriation of these funds to capitalize the City of Portland Housing Trust Fund. The Committee requested a cost analysis of the proposal be presented at the meeting.

Assuming these bond were issued in full with a 20 year term with level principal repayments at a 4.25% interest rate, the annual debt service in the first year of bond repayment would be approximately $647,500. This additional debt service expense in the City budget would add approximately 8 cents to the mil rate (an increase of 0.4%). Debt service related to the bonds would be included in the City budget for 20 consecutive fiscal years. The impact would decrease slightly each fiscal year as the bonds were repaid (interest each year would be based on a lower outstanding principal amount) and debt service would slowly decrease down to an estimated $364,875 by the final year of the bonds. Total estimated debt service on the $7M of debt over the life of the bonds would total approximately $10.1M.

A complete estimated debt service schedule is available on Page 2 of this document.

City of Portland, Maine
2019 General Obligation Bonds (Federally Taxable)
(Affordable Housing Pioject)
Level Principal Payments

Date	Principal	Coupon	Interest	Period Total	Fiscal Total
8/1/2019			148,750.00	148,750.00	
2/1/2020	350,000.00	4.2500%	148,750.00	498,750.00	647,500.00
8/1/2020			141,312.50	141,312.50	
2/1/2021	350,000.00	4.2500%	141,312.50	491,312.50	632,625.00
8/1/2021			133,875.00	133,875.00	
2/1/2022	350,000.00	4.2500%	133,875.00	483,875.00	617,750.00
8/1/2022			126,437.50	126,437.50	
2/1/2023	350,000.00	4.2500%	126,437.50	476,437.50	602,875.00
8/1/2023			119,000.00	119,000.00	
2/1/2024	350,000.00	4.2500%	119,000.00	469,000.00	588,000.00
8/1/2024			111,562.50	111,562.50	
2/1/2025	350,000.00	4.2500%	111,562.50	461,562.50	573,125.00
8/1/2025			104,125.00	104,125.00	
2/1/2026	350,000.00	4.2500%	104,125.00	454,125.00	558,250.00
8/1/2026			96,687.50	96,687.50	
2/1/2027	350,000.00	4.2500%	96,687.50	446,687.50	543,375.00
8/1/2027			89,250.00	89,250.00	
2/1/2028	350,000.00	4.2500%	89,250.00	439,250.00	528,500.00
8/1/2028			81,812.50	81,812.50	
2/1/2029	350,000.00	4.2500%	81,812.50	431,812.50	513,625.00
8/1/2029			74,375.00	74,375.00	
2/1/2030	350,000.00	4.2500%	74,375.00	424,375.00	498,750.00
8/1/2030			66,937.50	66,937.50	
2/1/2031	350,000.00	4.2500%	66,937.50	416,937.50	483,875.00
8/1/2031			59,500.00	59,500.00	
2/1/2032	350,000.00	4.2500%	59,500.00	409,500.00	469,000.00
8/1/2032			52,062.50	52,062.50	
2/1/2033	350,000.00	4.2500%	52,062.50	402,062.50	454,125.00
8/1/2033			44,625.00	44,625.00	
2/1/2034	350,000.00	4.2500%	44,625.00	394,625.00	439,250.00
8/1/2034			37,187.50	37,187.50	
2/1/2035	350,000.00	4.2500%	37,187.50	387,187.50	424,375.00
8/1/2035			29,750.00	29,750.00	
2/1/2036	350,000.00	4.2500%	29,750.00	379,750.00	409,500.00
8/1/2036			22,312.50	22,312.50	
2/1/2037	350,000.00	4.2500%	22,312.50	372,312.50	394,625.00
8/1/2037			14,875.00	14,875.00	
2/1/2038	350,000.00	4.2500%	14,875.00	364,875.00	379,750.00
8/1/2038			7,437.50	7,437.50	
2/1/2039	350,000.00	4.2500%	7,437.50	357,437.50	364,875.00
	7,000,000.00		3,123,750.00	10,123,750.00	10,123,750.00

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER AUTHORIZING GENERAL OBLIGATION BONDS IN AN AMOUNT NOT TO EXCEED $7,000,000

FOLLOWING a public hearing of the City Council of the City of Portland, Maine, held upon due notice pursuant to Article VII, Section 9 of the City Charter, **IT IS HEREBY ORDERED THAT:**

There be and hereby is authorized and approved the incurring of indebtedness by the City of Portland and the issue and sale of general obligation bonds and notes in anticipation thereof in the aggregate principal amount not to exceed Seven Million Dollars ($7,000,000) to be used to capitalize the City's Housing Trust Fund established by Section 14-489 of the City's Code of Ordinances and distributed by the City's Division of Housing and Community Development in the form of grants to be used to provide financial support for qualified affordable housing projects, and all other costs related and ancillary thereto (the "Projects").

BE IT FURTHER ORDERED:

1. That the Finance Director be and hereby is authorized to prepare, issue, and sell such bonds in the name of and on behalf of the City, in the aggregate amount of $7,000,000 (the "Bonds") at one time, or from time to time, as one or more separate bond issues, which may be in a issued on a lump sum or on an as-needed basis, and to determine the date, form, minimum denomination, interest rates (as term bonds or serial bonds or some combination thereof, and which may be a fixed or variable rate, or some combination thereof), maturities (with the last maturity not to exceed the maximum term permitted by law) and all other details, terms and provisions, not inconsistent herewith, including the form and manner of their sale and award as he may approve, such approval to be conclusively evidenced by the execution thereof;

2. That the Finance Director be and hereby is authorized to borrow money in anticipation of said Bonds by the issuance and sale of notes or renewal notes in anticipation of said Bonds ("BANs"), at one time or from time to time, as one or more separate BANs, which may be in a issued on a lump sum or on an as-needed basis (which may be in the form of a line of credit obligation), and to determine the date, form, minimum denominations, interest rate (which may be a fixed or variable rate, or some combination thereof), maturities (with the last maturity not to exceed 3 years from its date of issuance) and all other details of each issue of BANs, including the form and manner of their sale and award, subject to the provisions of the law, the City Charter and this Order;

3. That the Finance Director be and hereby is authorized to provide that any of the Bonds and BANs be made subject to call for redemption, with or without premium, prior to their stated dates of maturity, as provided in 30-A M.R.S.A. §5772(6), as amended;

4. That the Bonds and BANs issued hereunder shall be signed by the Finance Director and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof;

5. That the Finance Director is authorized to negotiate, execute, and deliver, in the name of and on behalf of the City such contracts, agreements, loan or line of credit agreements, instruments and other documents and certificates as may be necessary or appropriate, as determined and approved by the Finance Director, in connection with the financing of the Projects, which contracts, agreements, loan or line of credit agreements, instruments and other documents and certificates shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Finance Director, such approval to be conclusively evidenced by his execution thereof;

6. That the Finance Director be and hereby is authorized to select the underwriter or bank, as applicable, for underwriting or purchase of the Bonds or BANs and the Finance Director be and hereby is authorized and empowered to execute and deliver such contracts, agreements or loan or line of credit agreements as may be necessary or appropriate in connection therewith;

7. That the Finance Director be and hereby is authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement for use in the offering and sale of the Bonds or BANs, such Preliminary Official Statement and Official Statement to be in such form and contain such information as may be approved by the Finance Director, with the advice of the bond counsel for the City, and that the use and distribution of the Preliminary Official Statement and the Official Statement in the name of and on behalf of the City in connection with offering the Bonds or BANs for sale be and hereby is approved;

8. That the Finance Director be and hereby is authorized to select the registrar, paying agent and transfer agent (the "Transfer Agent") for the Bonds or BANs and to execute and deliver such contracts and agreements as may be necessary or appropriate to secure their services;

9. That the Bonds or BANs shall be transferable only on the registration books of the City kept by the Transfer Agent, and said principal amount of the bonds of the same maturity (but not of other maturity) in minimum denominations of $5,000 and any integral multiple in excess thereof upon surrender thereof at the principal office of the transfer agent, with a written instrument of transfer satisfactory to the transfer agent duly executed by the registered owner or his attorney duly authorized in writing. Upon each exchange or transfer of a bond the City and the Transfer Agent shall make a charge sufficient to cover any tax, fee or any other governmental charge required to be payable with respect to such exchange or transfer, and with respect to such exchange or transfer, and subsequent to the first exchange or transfer, the cost of preparing new bonds upon exchanges or transfer thereof to be paid by the person requesting the same;

10. That the Finance Director be and hereby is authorized to undertake all acts necessary to provide for the issuance and transfer of such Bonds or BANs in book-entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraph above regarding physical transfer of Bonds or BANs, and the Finance Director be and hereby is authorized and empowered to enter into a Letter of Representation or any other contract, agreement or understanding necessary or, in his opinion, appropriate in order to qualify the Bonds or BANs for and participate in the Depository Trust Company Book-Entry Only System;

11. That the Finance Director and Mayor from time to time shall execute such Bonds or BANs as may be required to provide for exchanges or transfers of Bonds or BANs, all such Bonds or BANs to bear the original signature of the Finance Director and Mayor, and in case any officer of the City whose signature appears on any Bond or BAN shall cease to be such officer before the delivery of said Bond or BAN, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery thereof;

12. That if the Bonds or BANs, or any part of them, are issued on a tax-exempt basis, the Finance Director be and hereby is authorized and directed to covenant and certify on behalf of the City that no part of the proceeds of the issue and sale of the Bonds or BANs authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such Bonds or BANs to be "private activity bonds" or "arbitrage bonds" within the meaning of Sections 141 and 148 of the Internal Revenue Code of 1986, as amended;

13. That if the Bonds or BANs, or any part of them, are issued on a tax-exempt basis, the officers or officials executing the Bonds or BANs be and hereby are individually authorized to covenant and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports and take any other action that may be necessary to insure that interest on the notes will remain exempt from federal income taxation, and that the City will refrain from any action that would cause interest on the Bonds or BANs to be subject to federal income taxation;

14. That the officers executing the Bonds or BANs be and hereby are individually authorized to covenant, certify and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to insure that the disclosure requirements imposed by Rule 15c2-12 of the Securities and Exchange Commission, if applicable, are met;

15. That any or all of the Bonds or BANs may be consolidated with and become a part of any other issue of temporary notes or general obligation bonds authorized to be issued by any previous or subsequent order of the City Council of the City of Portland;

16. That the Finance Director, Mayor and Clerk and other proper officials of the City be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds or BANs;

17. That if any of the officers or officials of the City who have signed or sealed the Bonds shall cease to be such officers or officials before the Bonds or BANs so signed and sealed shall have been actually authenticated or delivered by the City, such Bonds or BANs nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds or BANs had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed on behalf of the City by those persons who, at the actual date of the execution of such Bonds or BANs, shall be the proper officers and officials of the City, although at the nominal date of such Bonds or BANs any such person shall not have been such officer or official;

18. That if the Finance Director, Mayor or Clerk are for any reason unavailable to approve and execute the Bonds or BANs or any other documents necessary or convenient to the issuance, execution and delivery of the Bonds or BANs, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had performed such act.

19. That the Bonds or BANs authorized by this Order are in addition to any bonds or notes previously authorized for the same or similar purposes;

20. That to the extent not payable from other funds, an amount sufficient for the payment of the annual payments of principal and interest on the Bonds or any BANs issued hereunder shall be included in the tax levy of each year until the debt represented by said Bonds or BANs is extinguished;

21. That during the term any of the Bonds (or bonds issued to refund such Bonds) are outstanding, the Finance Director be and hereby is authorized to issue and deliver refunding bonds to refund some or all of the Bonds then outstanding, and to determine the date, form, interest rate, maturities and all other details of such refunding bonds, including the form and manner of their sale and award. The Finance Director be and hereby is further authorized to provide that any of such refunding bonds be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond shall be signed by the Finance Director and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof.

CITY OF PORTLAND
IN THE CITY COUNCIL

ORDER APPROPRIATING BOND PROCEEDS IN AN AMOUNT NOT TO EXCEED $7,000,000

IT IS HEREBY ORDERED THAT:

1. The sum of $7,000,000 be and hereby is appropriated to be used to capitalize the City's Housing Trust Fund established by Section 14-489 of the City's Code of Ordinances and distributed by the City's Division of Housing and Community Development in the form of grants to be used to provide financial support for qualified affordable housing projects.

2. The appropriation set forth in Section 1 above is and shall be contingent upon the approval by the City Council of general obligation bonds for such purpose (the amount appropriated in said Section 1 to be adjusted to reflect the principal amount of bonds so authorized) and the issuance and delivery of such bonds (or notes in anticipation thereof) for such purposes. The foregoing appropriations shall also be applied to issuance costs for such bonds (or notes in anticipation thereof).

Portland Maine Yes. Google's good here.

Fwd: affordable housing bond and CIP questions

2 messages

Wed, Nov 14, 2018 at 10:41 AM

---------- Forwarded message ---------
From: **Jennifer Thompson** <jlt>
Date: Wed, Nov 14, 2018 at 10:29 AM
Subject: affordable housing bond and CIP questions
To: Ethan Strimling <estrimling>
Cc: Danielle West-Chuhta <dwchuhta>

Mr. Mayor - It was nice to talk with you yesterday. To follow up, I have done some additional looking and my opinion remains the same. If there is a desire to fund affordable housing projects in Portland, there are likely a couple of ways that can be done.

First, if Jim Saffian has indicated that funding the Affordable Housing fund is an appropriate bond item, then I certainly defer to his determination on that. My understanding is that, under that approach, there would be a separate bond taken out for the specific and limited purpose of funding the Affordable Housing fund and/or funding grants to private property owners to support those developments.

Alternatively, if the City wants to appropriate monies from the General Fund for that same purpose, that seems doable to me. However, as we discussed, and as I've confirmed after further research, use of the City's capital improvement monies is not appropriate.

The term "capital improvement" is a defined term of art. Under multiple dictionary definitions, it is specif to real property or fixed physical facilities and assets and improvements to those. In Maine, according to GPCOG, a "capital improvement" is "a major project *acquisition* or *construction* that requires expenditure of funds from sources other than normal operating expenses. Capital improvements usually: are relatively expensive, don't recur annually, last a long time, and **result in fixed assets (of the municipality, not a private property owner). If you check out this guide, particularly pages 3-4, you'll see the kinds of facilities that constitute capital facilities. https://www.maine.gov/dacf/municipalplanning/docs/DevelopingCIP_GPCOG.pdf**

In Portland, as in most Maine communities, we have put together a list of those City-owned facilities together with a 5-year plan for maintenance, improvement, and acquisition. That plan is necessarily limited to City-owned facilities and does not contain property owned by private parties. That is the purpose and the focus of a capital improvement budget. That budget simply cannot be used to fund initiatives other than those that involve City-owned assets or facilities. So, grants or other funding of **private property** interests would be a mis-use of capital improvement monies. Importantly, though, you'll see that the State of Maine in the rules relating to Maine State Housing Authority has contemplated both separate bonding and appropriations from State general fund monies for a very similar purpose **in the attached.** So, the options both Danielle and I have outlined seem consistent with how the State has approached this issue as well.

So, my recommendation, again, is that the Committee consider either of those two options if it has an interest in moving in that direction.

I hope this helps. Please do let me know if there are further questions or concerns.

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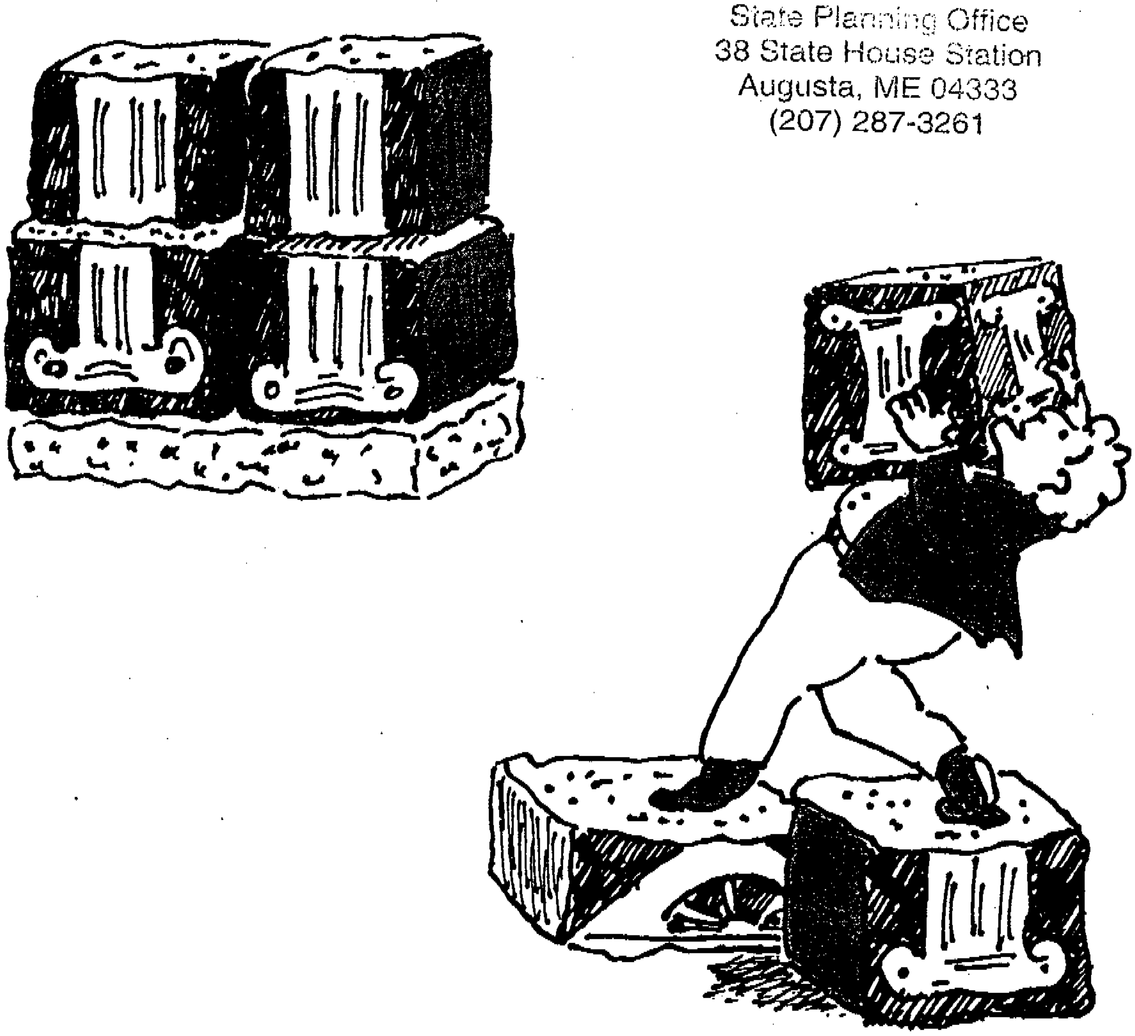
Developing a

CAPITAL IMPROVEMENTS PROGRAM



Prepared by the
Greater Portland Council of Governments

Advance scheduling of construction permits engineering design to be carried out on an orderly basis. Work forecasting allows equipment to be scheduled to eliminate conflicting demands. A CIP may show that the acquisition of special equipment can be justified because it can be put to continuous use on several projects in sequence. Programming of projects may also allow a smaller staff to carry out the projects because the work load is equally scheduled over a longer period, instead of intermittent rush periods followed by slack time.

* *To Improve Basis for Intergovernmental Cooperation -*

  A CIP informs local governments of one another's intentions. Too frequently, needed public facilities are constructed without consideration of the service programs of other governments. For example, knowing about an adjoining town's plans for a new fire station might lead to a consideration to share fire protection services rather than build two fire stations in close proximity. Taxpayers may be inclined to vote down seemingly uncoordinated bond issues.

WHAT
Is a Capital Improvement?

A capital improvement is a major project acquisition and/or construction that requires expenditure of funds from sources other than normal operating expenses. Capital improvements usually:

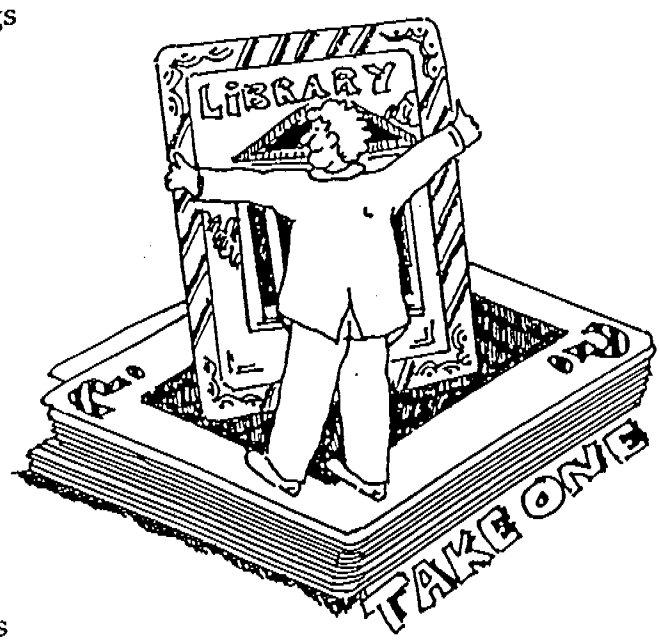
- are relatively expensive (for example, an acquisition cost of $5,000 or more).
- don't recur annually.
- last a long time (for example, at least 3 years).
- result in fixed assets.

EXAMPLES OF CAPITAL PROJECTS

- New and expanded physical facilities for the town which are relatively large and expensive.
- Large scale rehabilitation or replacement of existing facilities.
- Major pieces of equipment which are expensive and have a relatively long period of usefulness.
- Purchase of equipment for any public improvements when first erected or acquired.
- The cost of engineering or architectural studies and services relative to a public improvement.
- The acquisition of land for a community facility such as a park, street, sewer line, etc.

Capital facilities and equipment range from A to Z. Examples of capital facilities and improvements found in a town are listed below.

Airport
Cemeteries
Community Buildings
Computer
Fire Engine
Firehouse
Library
Parks
Playgrounds
Police Stations
School Buildings
Sewer Lines
Sidewalks
Streets & Curbs
Street Lights
Storm Drains
Swimming Pools
Town Hall
Treatment Plants
Waste Disposal Sites
Water Lines
Zoo



99 INDEPENDENT AGENCIES - NOT PART OF STATE GOVERNMENT

346 MAINE STATE HOUSING AUTHORITY

CHAPTER 21 Land Acquisition/Improvement and Housing Opportunity Zones Programs

Summary: The Affordable Housing Partnership Act of 1989 establishes programs for land acquisition and assistance to municipalities and nonprofit housing corporations to be administered by the Maine State Housing Authority. This rule establishes the procedures and selection criteria for the use of funds to finance the acquisition and improvement of land to be used in the development of affordable housing and the designation of housing opportunity zones.

1. Definitions

A. "Act" means the Affordable Housing Partnership Act, 30-A M.R.S.A. §5001 et seq., as amended.

B. "Affordable housing" means decent, safe and sanitary dwellings, apartments or other living accommodations for low-income and moderate-income households including:

1. Government-assisted housing;

2. Manufactured housing;

3. Multifamily housing; and

4. Group and foster care facilities.

C. "Authority" means the Maine State Housing Authority.

D. "Homeless" means a person or family that lacks, or is in imminent danger of losing legal access to, a fixed, regular and adequate nighttime residence or a person or family that has a primary nighttime residence that is:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations;

2. An institution that provides a temporary residence for individuals intended to be institutionalized; or

3. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

E. "Homestead land trust" means a nonprofit housing corporation that is organized to hold in trust land and interests in land for affordable housing and leases land or interests in land to lower income households for affordable housing.

F. "Land trust" means land or interests in land, the title of which is held by a nonprofit housing corporation or a municipality to provide affordable housing for Maine citizens.

G. "Low income household" means a low-income or very low-income household as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, as amended.

H. "Minor capital improvements" means any site preparations or other capital improvements made to land to facilitate its use for housing, not including the actual construction of the housing units.

I. "Moderate income household" means a household with a gross income not exceeding 120% of the median income of the county or metropolitan statistical area in which the household is located.

J. "Municipal housing alliance" means a committee formed on behalf of a municipality with broad based citizen representation whose purpose is to develop and implement a housing agenda for the municipality.

K. "Nonprofit housing corporation" means a nonprofit corporation organized in the State of Maine under Title 13-B of the Maine Revised Statutes which qualifies for tax exemption under the Section 501(c) of the Internal Revenue Code of 1986, as amended, and which has as one of its corporate purposes the construction, rehabilitation, ownership or operation of housing.

2. <u>Maine Affordable Housing Land Trust Fund</u>

There is created and established under the jurisdiction of the Authority the Maine Affordable Housing Land Trust Fund. The Fund shall be a revolving fund with all money in the Fund being continuously applied to carry out the purposes of the Fund. There shall be paid into the Fund:

A. All money appropriated from the General Fund for inclusion in the Fund.

B. All proceeds from the issuance of bonds on behalf of the State for inclusion in the Fund.

C. All interest, dividends and pecuniary gains from investment of money of the Fund.

D. All proceeds from the sale of land purchased with money from the Fund.

E. Any other money available to the Authority and directed by the Authority to be paid into the Fund.

The Authority shall apply money in the Fund for grants, low-interest loans or no-interest loans to nonprofit housing corporations to finance the acquisition of land or interests in land in accordance with Chapter 202, subchapter IV and Chapter 201, subchapters III-A and XI of the Maine Revised Statutes and to finance minor capital improvements on acquired lands.

3. Municipal Land Acquisition Revolving Fund

There is created and established under the jurisdiction of the Authority the Municipal Land Acquisition Revolving Fund. The Fund shall be a revolving fund with all money in the Fund being continuously applied to carry out its purposes. There shall be paid into the Fund:

A. All money appropriated from the General Fund for inclusion in the Fund.

B. All proceeds from the issuance of bonds on behalf of the State for inclusion in the Fund.

C. All interest, dividends and pecuniary gains from investment of money of the Fund.

D. Any other money available to the Authority and directed by the Authority to be paid into the Fund.

The Authority shall apply money in the Fund for loans to municipalities to finance the acquisition of land or interests in land and to finance minor capital improvements on acquired lands in accordance with Chapter 202, subchapter IV of the Maine Revised Statutes.

4. Municipal Revolving Loan Fund

There is created and established under the jurisdiction of the Authority the Municipal Revolving Loan Fund. The Fund shall be a revolving fund with all money in the Fund being continuously applied to carry out its purposes. There shall be paid into the Fund:

A. All money appropriated from the General Fund for inclusion in the Fund.

B. All proceeds from the issuance of bonds on behalf of the State for inclusion in the Fund.

C. All interest, dividends and pecuniary gains from investment of money of the Fund.

D. Any other money available to the Authority and directed by the Authority to be paid into the Fund.

The Authority shall apply money in the Fund for loans and grants to municipalities to finance capital and public service infrastructure improvements necessary for the development of affordable housing in accordance with Chapter 202, subchapter II of the Maine Revised Statutes.

5. Purposes of the Land Acquisition/Improvement and Housing Opportunity Zones Programs

A. The purpose of the municipal and nonprofit housing corporation Land Acquisition Programs is to provide money and other resources to municipalities and nonprofit housing corporations to acquire or preserve land for affordable housing. Funds available under this program shall be used to acquire or preserve land for affordable housing for the homeless and lower and moderate-income households and to make minor capital improvements to land acquired under the programs.

B. The purpose of the municipal Land Improvement Program is to finance improvements to land such as public service infrastructure improvements necessary for the development of affordable housing.

C. The purpose of the Housing Opportunity Zones Program is to designate up to four demonstration zones as a means of determining the effectiveness of zones as a tool for stimulating residential revitalization in deteriorating neighborhoods.

D. Assistance to nonprofit housing corporations provided by the Authority under this program may be in the form of grants, low-interest loans or no-interest loans. Assistance to municipalities provided by the Authority under this program shall be in the form of low-interest loans for land acquisition and loans or grants for capital improvements to land. With regard to preservation of land for affordable housing, the Authority, nonprofit housing corporations and municipalities may use deed restrictions, trust agreements and any other type of agreement designed to maintain land for affordable housing.

6. Eligible Applicants

To be eligible to receive assistance made available by the Authority under these programs, an applicant must:

A. Develop a plan with long-term and short-term goals for developing and providing low-income housing in the region that the applicant serves.

B. Inventory housing programs and agencies in the area served by the applicant, including resources for the homeless.

C. Prepare a plan for the coordination of housing programs, services and resources in the area served by the applicant specifically for each project funding request.

D. Prepare information for each project funding request, as requested by the Authority, which shall include:

1. The number and development costs of units to be developed;

2. The cost of each unit to the buyer or renter;

3. The size of each housing unit;

4. The availability and cost of existing housing in the area; and

5. Household income in the area served by the proposed project.

E. Agree to report annually to the Authority with respect to the activities, accomplishments and problems of the applicant throughout the period of low-income affordability of the project.

F. Agree to comply with the rules of the Authority including record-keeping and accounting, reporting, and reserve funding.

G. Agree to publish a detailed annual report of its activities, including income and expenditures for the most recent fiscal year completed, throughout the period of low-income affordability of the project, and contract for an independent annual audit of its books and records as required by the Authority.

H. In the case of municipalities, have created a municipal housing alliance.

7. Forms of Assistance

Subject to the availability of funds, the Authority shall provide assistance under the Land Acquisition/Improvement Programs as follows:

A. Predevelopment loans for nonprofit housing corporations to cover mortgageable predevelopment costs directly related to the acquisition of the land. Predevelopment loans shall be unsecured and may be forgiven if the proposed project does not proceed for reasons which, in the opinion of the Authority, are beyond the control of the developer. The maximum term of predevelopment loans shall be thirty months and the maximum loan amount shall be $2,500 per proposed housing unit or $40,000 per applicant, whichever is less. The interest rate on predevelopment loans shall be 0%. Repayment shall be deferred until acquisition loan closing.

B. Mortgage financing for nonprofit housing corporations and municipalities for the acquisition of land for affordable housing and to make minor capital improvements to land acquired under the Program. Acquisition and improvement financing shall be secured by a Mortgage and Security Agreement at least through the completion of the project, which Mortgage and Security Agreement may be subordinated to additional debt financing at the discretion of the Authority. The long-term affordability of the housing units created will be assured either through the Mortgage and Security Agreement or through restrictive covenants recorded in the appropriate Registry of Deeds which shall require repayment in full if the low-income benefit is not maintained. The maximum acquisition and improvement loan amount shall be the appraised value of the land and improvements or $250,000 per application, whichever is less. The interest rate on acquisition and improvement loans shall be 3% per annum or such lower rate determined by the Authority based on the financial feasibility of the project. Repayment shall be deferred as necessary to accomplish the low-income goals of the project. Prepayment may be prohibited or subject to penalties.

C. Loans or grants for municipalities for improvements to land, including necessary public service infrastructure, for the development of affordable housing. Mortgage financing shall be evidenced by a general obligation promissory note from the municipality and may be secured by a Mortgage and Security Agreement at least through the completion of the project, which Mortgage and Security Agreement may be subordinated to additional debt financing at the discretion of the Authority. The long-term affordability of the housing units created will be assured either through a Mortgage and Security Agreement or through restrictive covenants recorded in the appropriate Registry of Deeds which shall require repayment in full if the low-income benefit is not maintained. The maximum amount of infrastructure and improvement financing per project shall be $400,000. The interest rate on improvement and infrastructure loans shall be 3% per annum or such lower rate determined by the Authority based on the financial feasibility of the project. Repayment shall be deferred as necessary to accomplish the low-income goals of the project. Prepayment may be prohibited or subject to penalties.

D. Technical assistance to aid non-profit housing corporations in meeting the eligibility and threshold planning and development requirements of this program will be provided through the Authority's Office of Nonprofit Housing.

8. Application Process

A. Applications seeking financing for eligible initiatives will be accepted on an on-going basis. Completed applications for predevelopment loans will be reviewed for selection on an on-going basis, subject to the availability of funds. Completed applications for land acquisition financing and land improvement financing will be reviewed for selection on a calendar quarterly basis, subject to the availability of funds. The Authority may elect to make minor changes in these selection review dates based on scheduling conflicts and program activity. Unsuccessful applications may be carried forward to a future quarterly selection period.

B. Applications for predevelopment loans shall be on such form provided by the Authority and shall contain the following:

1. Evidence satisfactory to the Authority that the applicant has satisfied the eligibility requirements of Section 6.

2. Identification of the site or sites to be evaluated for acquisition, including preliminary site description, plot plan, zoning designation, topographical map and description of adjoining properties.

3. A predevelopment workplan and budget which identifies the activities necessary to secure site control and site plan approval, including all applicable state and local permits and approvals required prior to proceeding to construction and the projected timetable for the completion of this predevelopment activity.

4. Projected sales price information for the property or properties under consideration.

5. Identification of the development team, including professional service providers whose services will be funded with the predevelopment loan, and their experience and qualifications.

6. Description of the mechanism to be used to assure long-term affordability of the housing.

7. Such additional or follow-up information the Authority deems necessary in order to process an application.

C. Applications for land acquisition financing and land improvement financing shall be on such form provided by the Authority and shall contain the following:

1. Evidence satisfactory to the Authority that the applicant has satisfied the eligibility requirements of Section 6.

2. Evidence of satisfactory site control.

3. Evidence of site plan approval and all applicable state and local permits and approvals required to proceed to construction having been obtained.

4. Evidence of preliminary construction and permanent loan commitments or identification of a source of construction and permanent financing.

5. Market appraisal, in form satisfactory to the Authority, which supports the anticipated purchase price.

6. Project source and use statement, operating pro forma and cash flow statement for the project.

7. Project management plan/timetable.

8. Marketing plan for the project.

9. Description of the mechanism to be used to assure long-term affordability of the housing.

10. In the case of municipal applicants, evidence of satisfactory matching resources.

11. Such additional or follow-up information the Authority deems necessary in order to process an application.

D. The Authority reserves the right to set aside monies in the various funds created hereunder for financing particular types of projects, such as single-family subdivisions, rental housing projects or manufactured housing parks and to finance particular types of project sponsors, such as homestead land trusts. These set-asides may be established at any time and targeted to particular types of sponsors, housing types, geographic or market areas, etc., either through a specific request for proposals or, upon reasonable notice, with a regular quarterly funding cycle.

9. Selection Priorities

Selection of applicants for assistance shall be based on the following affordable housing goals/priorities:

A. Increasing the level of activity of municipal housing alliances to address the affordable housing crisis.

B. Providing a balance of homeownership and rental housing opportunities which are suitable and accessible to low and moderate income residents of the State.

C. Stimulating the leverage of local, state and federal resources, including self-help and volunteer efforts, for the creation of affordable housing.

D. Maximizing the long-term affordability of housing financed under the program.

E. Building the housing capacity of municipalities and nonprofit housing corporations.

F. Recycling and continued use of the monies in the various funds created hereunder.

10. Selection Criteria

A. The Authority shall select projects for financing after consideration of the following criteria:

1. The extent of the affordable housing crisis in the municipality or area in which the land will be acquired, improved or preserved for affordable housing.

2. The degree of impact that the grant or loan will have on the affordable housing problem.

3. The size of the lower income population in the area to be served.

4. The demonstrated interest and the ability of the applicant to address the affordable housing crisis.

5. The degree to which the grant or loan will serve very low-income households.

6. The degree to which the grant or loan will increase the economic activity of the eventual residents of the housing.

7. For nonprofit housing corporation applicants, the degree to which it provides for significant representation on its board of directors for both residents and community residents.

8. The degree to which the project will have significant self-help or volunteer labor in the development of the housing.

9. The degree to which the grants and loans will assure the long-term affordability of the housing by use of a homestead land trust or other technique.

10. The readiness of the project to proceed to construction and occupancy.

11. The relative cost-effectiveness of the proposed project, including the amount of subsidy per affordable housing unit, the per unit development cost, the net housing cost to the ultimate residents of the project compared to the average housing costs in the area, the proportion of program subsidy which is passed directly to the ultimate residents of the project in the form of reduced housing costs and the anticipated duration of the housing benefit contributing to long-term affordability.

12. The level of financing which will be recycled to the Authority for continued program activities hereunder.

11. <u>Housing Opportunity Zones</u>

A. The Authority may establish up to four demonstration housing opportunity zones, each comprised of a different municipality or portion of a municipality. These demonstration zones shall serve as a means of determining the effectiveness of zones as a tool for stimulating residential revitalization in deteriorating neighborhoods. There is created and established under the jurisdiction of the Authority the Housing Opportunity Zones Fund. The Fund shall be a revolving fund with all money in the Fund being continuously applied to carry out the purposes of the Fund. There shall be paid into the Fund:

1. All money appropriated from the General Fund for inclusion in the Fund.

2. All proceeds from the issuance of bonds on behalf of the State for inclusion in the Fund.

3. All interest, dividends and pecuniary gains from investment of money of the Fund.

4. Any other money available to the Authority and directed by the Authority to be paid into the Fund.

The Authority shall apply money in the Fund for direct financial assistance to municipalities selected as housing opportunity zones in the form of loans and grants in accordance with Chapter 202, subchapter VI of the Maine Revised Statutes.

B. The Authority shall select housing opportunity zones based on the selection priorities and criteria set forth in Sections 9 and 10, above, and the following:

1. The zones must be located in urban areas experiencing significant deterioration in residential neighborhoods.

2. All areas wishing to be designated as zones must demonstrate actual or potential local capacity for residential revitalization and the willingness to cooperate with the Authority.

3. The level of general assistance by the State and the municipality, as well as the level of federal assistance to persons in these areas, shall be considered.

4. The level of crime problem in the area requesting designation will be considered.

5. All municipalities requesting zone designation for areas within the municipality must have a municipal housing alliance which shall help develop a plan of action to revitalize deteriorating residential dwellings and neighborhoods. The plan shall address the major problems of these deteriorating areas, including a law enforcement component to significantly reduce crime in these areas and shall specify the type, amount and priority of assistance being requested in the categories set forth in subsection C, below.

Applications for designation of housing opportunity zones shall not be accepted on an on-going basis. Processing of applications shall be done periodically on a direct solicitation basis until up to four zones have been designated.

C. Subject to the availability of funds, the Authority may provide direct financial assistance to municipalities with designated housing opportunity zones in the form of loans and grants for the following:

1. Restoration of residential dwelling units.

2. Shelters for the homeless.

3. Removal of structures which are beyond rehabilitation.

4. Creation of recreational and park areas.

5. Such other types of assistance which the Authority determines are eligible under both the provisions of the Act and the restrictions on the available sources of funds.

Direct financial assistance shall be provided under the processing guidelines set forth in Section 8, above, and based on the selection priorities and criteria set forth in Sections 9 and 10, above.

12. Additional Requirements

A. Any provision of applicable Federal or Maine law, including without limitation, the Act and the Maine Housing Authorities Act, shall take precedence over this rule in the event of any inconsistency.

B. This rule does not preclude such additional or alternative requirements as may be necessary to comply with the Act or the Maine Housing Authorities Act.

C. This rule establishes a pool of eligible applicants but does not preclude additional reasonable criteria and does not confer any automatic right or entitlement to credit on any person or entity eligible hereunder.

D. The Director of the Authority, individually or by exercise of the delegation powers contained in the Act, shall make all decisions and take all action necessary to implement this rule. Such action of the Director shall constitute final agency action.

FISCAL IMPACT NOTE: The proposed rule will not impose any direct required cost on municipalities or counties for implementation or compliance. Municipalities are eligible applicants under the programs established hereunder and they may incur costs as a result of applying for financing and developing projects under these programs. Most of these costs would be development costs eligible for financing under the programs. Participation in these programs is voluntary and municipalities would be aware of the potential costs before proceeding.

BASIS STATEMENT: The rule sets forth the criteria and procedures for the awarding of grants and loans to nonprofit housing corporations for the acquisition or preservation of land for affordable housing. A public hearing was held on June 12, 1990 at which twelve people testified. In addition, the Authority received one written comment during the comment period. A summary of these comments and the Authority's responses follows.

Numerous comments were made on the need for technical assistance. The Authority is well aware of this need. Section 5, subsection C. has been added in response to these comments.

One comment raised a concern about the order of priority of the selection criteria set forth in Section 8. These criteria are not set forth in any particular order and are not given any specific weight based on the order in which they appear. They are general criteria which will be applied equally. Another comment recommended adding housing quality standards to the criteria set forth in Section 8. The Authority feels this concept is embodied in Section 8, subsection A(11).

Another comment recommended that sweat equity and volunteer efforts be considered when measuring a project's leveraging of other resources. The selection criteria in Section 8 already recognizes these items, but language has been added to the selection priorities set forth in Section 7 to make this a consistent approach.

A number of comments raised concern with the comprehensive nature of the threshold application requirements set forth in Section 6, subsection C. These requirements apply only to the land acquisition loans, not the predevelopment funds. The latter funds are designed to assist the applicants in obtaining local approvals, etc. so that land actually financed through the program is assured of moving forward to the creation of affordable housing. Allowing for the acquisition loans without these approvals would heighten the risk of purchasing land which is not suitable for housing development which would frustrate the program's purpose. Language has been added to allow identification of financing sources in lieu of binding commitments. Another comment questioned the threshold application requirements for predevelopment loans set forth in Section 6, subsection B. In order to screen applicants for predevelopment loans, the Authority must be able to review the scope of what the applicant is proposing to accomplish. The Authority feels that the application requirements are the minimum necessary in order to have the information available on which to base selection decisions

A question was raised concerning the definition of homeless. This definition is taken directly from the Act and cannot be changed. However, the Authority does not interpret the reference to nighttime residence in such a way as to penalize people who worked at night.

A recommendation was made that applicants be required to prepare and submit a financial plan in order to be eligible for funds. The applicant eligibility requirements set forth in Section 4 include threshold strategic planning and organizational development requirements, including preparation of a financial plan for the organization and the project to be financed.

One comment pointed out the lack of reliable data available to satisfy Section 4, subsection D(4) and suggested that a minimum standard be established. It is precisely because available data varies significantly that no format or approach is being dictated at this time. The Authority has a significant amount of data now and will be accumulating more as the Municipal Growth Management Plan process continues. All of this data will be made available to potential applicants and technical assistance will be provided.

Questions were posed regarding the length and scope of the reporting requirements referenced in Section 4, subsections E-G. Clarifying language has been added to establish the term of these requirements. As for the need for a formal annual report versus audited financials, the combination of subsections E and G would require something more than just financial information but the intent is not to require expensive, formal reports. Subsection F refers to Authority procedures on a number of items, not just accounting practices. Obviously, the Authority does follow generally accepted accounting principals and would impose no different standard here. The term "publish" in subsection G simply means to produce and distribute. The distinction between the reports required in subsection E and G is that the former is a project-specific report while the latter is a general report of the applicant's overall activities.

One comment recommended a number of changes be made to shift the emphasis of the program away from perpetual or long-term affordability of the housing created. The emphasis on the long-term affordability of the housing and the underlying standard that the longer the low-income benefit the better is clearly stated in the statute and the purposes of the program. Being faced with the problems inherent in programs where the subsidies "purchase" only a short-term low-income benefit and the added costs resulting from having to "repurchase" that benefit the Authority sees no public purpose in moving away from long-term affordability.

A suggestion was made that the monies in the land acquisition trust fund be used to insure or guarantee loans obtained from other sources in order to stretch the impact. This use of the funds was not contemplated by the Act establishing the trust fund nor the bond issue which supplied the current funding of the trust. It is an additional purpose or use of the trust fund that the Authority may explore for future expansion of the program. Another comment suggested that funding be given to cover the applicant's long-term administrative costs of managing or operating the project. Again, this is not contemplated by the Act or the bond issue. Applicants must recognize the on-going cashflow requirements of proposed projects and build this into the project's overall financial plan.

A question was raised on the scope of the management plan requirement set forth in Section 6, subsection C(7). The Authority interprets this requirement to encompass both the oversight of the project during the development stage and the on-going management of the completed project.

A recommendation was made to include the concept of social diversity in the selection criteria. This was explained to mean diversity in the types of housing produced. The program already provides for substantial local discretion in the design and development of housing which is suitable to the meet local housing needs and objectives. The need for, and approach to, achieving social and economic integration is best achieved through significant local participation which is clearly encouraged in the program.

One comment suggested that if predevelopment funds and acquisition loans are provided from the bond issue monies rather than other funds available to the Authority, deferments and grants should be used only as a last resort. Obviously, the Authority shares the concern on the expenditure of public resources and will make every attempt to maximize the public benefit of every dollar spent. However, the Authority realizes that there is risk in real estate development and not every project attempted will be completed. To the extent that the bond issue monies are authorized to be used for predevelopment expenses associated with the land acquisition they will be so utilized. Other expenses will be paid for from other available funds. Forgivable loans and grants will only be used where they are needed to accomplish a significant low-income benefit. Clearly, the predevelopment funds present the highest degree of risk since there is no land acquired at this stage with which to secure the funds. These loans can only be obtained after significant project planning and are limited to a maximum of $40,000.

Another comment proposed increasing the caps on both the predevelopment loans and the acquisition loans. Given the limited amount of funds available and the fact that this program has not been tested yet, the Authority believes the current caps are justified in order to stretch the resources as far as possible. The Authority believes the limits are high enough on both to achieve the goals of the Program.

A question was raised on the definition of minor capital improvements. This definition is from the Act and is somewhat vague. Obviously, it does not include the actual construction of the housing units. The Authority will interpret this definition as generously as it can under the statute to use the funds for minor site improvements to the full extent contemplated by the Act.

One comment questioned the eligibility of land banking, or acquiring land to hold for later development. While this is an eligible use of the funds, the selection priorities and criteria in the Act and the rule are structured to give significant priority to those projects which will produce affordable housing now. The housing shortage is significant and the resources in the trust fund are small so the Authority feels the emphasis on current production over land banking is justified.

Section 6, subsection D provides that the Authority may establish set-asides for certain program purposes. One comment suggested that if this was going to be done it should be done in the rule now. The trust fund established in the Act is on-going. The availability of funds, however, will vary. The Authority does not want to establish rigid percentage standards for set-asides. The preference is to budget for these set-asides in response to changing market conditions and the availability of funds.

STATUTORY AUTHORITY: 30-A MRSA §5031 et seq. and 30-A MRSA §4741(1)

EFFECTIVE DATE: July 4, 1990

BASIS STATEMENT: Recent emergency legislation amended the Affordable Housing Partnership act of 1989 to abolish the Affordable Housing Alliance and shift administrative responsibility for all of the programs established in the Act to the Authority. The rule is being amended to expand its focus to cover the addition of municipal applicants for land acquisition loans and for infrastructure improvement loans and for the designation of housing opportunity zones. The Authority finds that delay in adopting these amendments will delay pending actions under the programs and frustrate the purposes of the Act. The Authority finds that emergency adoption of these amendments is necessary to avoid an immediate threat to public health, safety and the general welfare of the people of the State.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 5001 et seq., PL 1991, c. 610

EFFECTIVE DATE: August 20, 1991

BASIS STATEMENT: The amendments previously adopted by emergency were put out for public comment for permanent adoption. Seven written comments were received during the initial comment period. Six of these comments wanted clarification on the separation of the Funds and the programs and requested a public hearing on the proposed amendments. A public hearing was held and the comment period was extended. Two people testified at the hearing and three additional written comments were received. A summary of the comments and the Authority's response follows.

In response to the numerous comments regarding the separation of the programs and the segregation of Funds established hereunder, a number of minor clarifying amendments and modifications have been made. The trust funds established hereunder are separate funds each with their own authorized sources and uses and each with their own eligible applicants. This separation has been reinforced by the added language. Language has also been added to Section 7, subsections B and C, regarding loan security and interest rates to reflect needed program flexibility.

The remaining comments dealt with the Housing Opportunity Zones (HOZ) program. The first comment sought clarification as to whether financial assistance provided to municipalities with designated zones would have to be repaid by the municipality. Section 11, subsections A and C, state that funds held for this program may be made available for direct financial assistance in the form of loans or grants. Obviously, the distinction is that loans have to be repaid and grants do not. The selection priorities and criteria set forth in Sections 9 and 10, which have been incorporated into Section 11 to govern the assistance component of the HOZ program, clearly favor applications for loans over grants since the funds will be recycled for further housing purposes.

The rest of the comments sought clarification on the categories of expenditures which will be eligible for funding with financing provided under the HOZ program. The Act lists the types of financial assistance which are eligible under this program. The legislation authorizing the bond issue a portion of the proceeds of which are intended to finance this program set forth the four general categories of assistance listed in Section 11 as the only types of assistance which the proceeds can finance. These are simply categories of eligible assistance. It would be impossible to list every individual expense which the program can finance. Many of the specific items raised in the comments will fit under the general categories, some may not. Language has been added to Section 11, subsection C, to clarify that the Authority does not intend to narrow through rulemaking the list of eligible expenditures authorized under the Act and the bond issue. Paragraph 1 of subsection C has also been amended to broaden the eligible use to all residential dwelling units which the Authority believes is authorized under the Act and bond issue legislation.

STATUTORY AUTHORITY: 30-A MRSA §§4741(1) and 5001 et seq., PL 1991, c. 610 and P&SL 1989, c.84.

EFFECTIVE DATE: November 27, 1991

EFFECTIVE DATE (ELECTRONIC CONVERSION):   May 8, 1996

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