HOUSING COMMITTEE

DATE: Wednesday, February 13, 2019
TIME: 5:30 PM
LOCATION:City Hall Room 209

AGENDA

1. Review and Accept Minutes of Previous Meeting Held on January 9, 2019

    a. Draft Minutes from January 9, 2019

2. Review and Discussion of :
    Proposed Portland Development Corporation By-Laws Modification and Program Guideline Amendments to allow the use of Brownfields Funds for Residential Projects

    a. Proposed Portland Development Corp. By-Laws Modification and Program Guideline Amendments

3. Housing Committee Accomplishments 2016 - 2018

    a. Housing Committee Accomplishments 2016 - 2018

4. Update on Rental Housing Advisory Committee

    a. Update on Rental Housing Advisory Committee

5. Review and Discussion of :
    Opportunities to Engage the City in a Public/Private Partnership to Add Housing Unis to the City's Housing Inventory Utilizing City-Owned Property. The Committee May Enter Into Executive Session for Purposes of Review and Discussion Regarding the Opportunity to Engage in a Public/Private Partnership with Respect to Adding Housing Units to the City's Housing Inventory Utilizing City-Owned Property Pursuant to 1 M.R.S. Section 405 6. (c)

    a. Public/Private Partnership Memo

6. Committee Discussion re: 2019 Work Plan

   a. Draft Work Plan and Housing Committee Goals for 2019
   b. Discussion re: March Meeting Date(s)

<u>Next Meeting Date: March 13, 2019 City Hall, Room 209</u>

City of Portland Commissions are not required to take public comment under FOAA and our Ordinance is silent regarding the duties of the Commission. The Commission has the discretion to not allow or allow public comment during its meetings, including the authority to limit the duration of comments. Since the Commission makes recommendations to the City Council, public comment is available at that level.

Housing Committee
Minutes of January 9, 2019 Meeting

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

A meeting of the Portland City Council's Housing Committee (HC) was held on Wednesday, January 9, 2019 at 5:30 P.M. in room 209 of Portland's City Hall. Councilors present at the meeting included Committee members Councilor Spencer Thibodeau, and Councilor Jill Duson, Chair of the Committee. City staff present included Mary Davis, Division Director Housing and Community Development, and Victoria Volent Housing Program Manager.

<u>Item 1: Review and accept Minutes of previous meetings held on November 28, 2018</u>

Motion by Councilor Duson to accept the minutes from November 28, 2019 by pro forma. Motion was seconded by Councilor Thibodeau and minutes approved 2-0.

<u>Item 2: Committee Discussion of 2019 Work Plan and Preparation for Council Goals and Ojbectives Setting Session</u>

Councilor Duson provided an overview of goals from the 2018 Housing Committee including the topic of capitalizing the Housing Trust Fund and finding consistent means of creating affordable housing. Councilor Duson presented her "Multi-Year Affordable Housing Investment Plan" to establish a sustainable planning framework for investment of public resources to increase the number of affordable housing units in our city by leveraging new projects and identifying opportunities to capacitate completion of projects in the pipeline. At an investment goal of approximately $300,000 to $500,000 per year, the Committee hopes to provide additional funding to support an increase in the creation of affordable housing. The actual amount of the additional source of funds will be for Committee discussion. The Committee would support the sale of City-owned property towards this endeavor. The Committee is challenging itself to set a target number of units to create each year. The Committee would like to review approved projects to ensure they are moving forward and are not facing regulatory barriers.

Goal: establish a policy goal that will create a pool of $3,000,000 (with City Housing Trust fund, HOME funds and a possible annual allocation for housing to be included in the fiscal year budget) to create a set number of units (such as 200 units/year) at approximately $15,000 per unit. The Finance Committee is considering the Mayor's proposal to fund a housing bond, however Councilor Duson does not support the issuance of a housing bond.

Goal: Keep the Goal "Increase access to rental and ownership housing that is safe and affordable for working and low-income families"

Goal: Identify a city-owned property for affordable housing development. (Staff may bring forward two lots in February for Committee review).

Goal: Monitor the activity of the Housing Advisory Board. Councilor Duson would like to ensure the Housing Advisory Board moves forward. Currently only four citizens have applied for nomination to this nine person boar. Staff will work with Jessica Grondin to send out a city-wide "news blast" to re-advertise openings on the Board. Staff has reached out to Pine Tree Legal and the Landlord Association to remind them of these openings. Councilor Duson would like staff to draft a communication memo for the January 23 Council regarding openings on the Board. Staff is to update the Housing Committee on these activities and outcomes for the Committee's February meeting.

Councilor Thibodeau would like to address deficiencies in workforce housing given the impact of new businesses to the city. Do we want to create a down payment assistance program?

Councilor Thibodeau would like an annual update from the Inspections Department by September so that it may be included in the 2019 biennial Housing Report. (Permitting will submit an update-report in the spring)

Councilor Thibodeau asked for an update to the amendments to the zoning code for greater density in the R-6 zone. Per staff, since the zones (B-1, B-2, B-6, and R-6) were amended to allow for greater residential density, approximately 65 units of new housing have been permitted or built in the B-1 and B-6 zones; 25 units of new housing in the B-2 zone; and 120 units of new housing in the R-6 zone as of October of 2017.

The Committee would like an evaluation report from the Planning, and Permitting and Inspections departments on the implementation and outcome of newly adopted initiatives concerning the review process. The Committee would like this report presented in their March or April meeting.

Topics for discussion:

1) Update from Permitting and Inspections (improvements in the permitting process; time frames lowered; etc.)
2) Update from Planning (improvements in the review process; time frames lowered)
3) Update on the outcomes of amendments to zoning code regarding greater density (how are we doing, is there more to be done to reach goals; what type of housing, based on income level, has been created; how many units have been created)
4) Update on the outcome of the amendment to the calculation of the maximum sale price of Workforce ownership housing
5) Update on the hotel linkage fee (amount of funds generated; number of units; etc.)

On a motion made by Council Duson and seconded by Councilor Thibodeau (approved 2-0) the meeting adjourned at 6:45pm.

Respectfully submitted,

Victoria Volent

MEMORANDUM
Housing Committee Agenda Item

DISTRIBUTE TO: Councilor Duson, Chair and Members of the Housing Committee

FROM: Nelle Hanig, Business Programs Manager
Greg Mitchell, Economic Development Director

DATE: January 29, 2019

SUBJECT: **Portland Development Corporation (PDC) Recommendation for By-Law Amendments to Allow Use of Brownfields Funds for Multi-Family Housing Projects and Public Open Space**

PRESENTATION: Nelle Hanig and Greg Mitchell – 5 minutes

I. ONE SENTENCE SUMMARY: Amendments to the PDC By-Laws would allow the PDC Board to provide Brownfields funds for assessment activities and for remediation/cleanup of properties for multi-family housing developments and public open space.

II. AGENDA DESCRIPTION: In order for the City to use its Brownfields funds for multi-family residential development projects that have no commercial component and for public open space projects, the PDC by-laws would need to be amended to make it clear that such projects are within the PDC's purview. Without that change, solely residential projects in Portland needing Brownfields funds, especially for cleanup purposes, could only apply for such funds to the Greater Portland Council of Governments (GPCOG) for assistance.

III. BACKGROUND: The Environmental Protection Agency (EPA) provided the City with Brownfields grant funds to be used for assessment activities and cleanup of contaminated properties for commercial, mixed use, residential developments and open space. To date, the PDC has been involved in Brownfields funding for residential projects only where there was a commercial use component. In order for the City to use its Brownfields funds for multi-family residential development properties that have no commercial component, the PDC Bylaws would need to be amended. This issue came to light because the Portland Housing Authority (PHA) applied to the PDC for a subgrant of $125,000 for cleanup of soils contaminated with lead and arsenic at its 58 Boyd Street housing development site. The development will include 55 units of affordable family housing.

In 2018, the City received a $500,000 Brownfields Revolving Loan Fund grant from the EPA for cleanup projects, which became available for use on October 1, 2018. Some of these funds could be used to help the PHA but only if the PDC By-Laws are amended. The recommended amendments also would allow the use of Brownfields funds for public open space and public recreational projects that may be proposed in future by the City.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED: The PDC could approve the use of EPA Brownfields funds for multi-family development projects, with certain affordability restrictions, that are residential in their entirety along with public open space projects. The first such project will likely be the PHA that wants to apply to the PDC for a Brownfields subgrant for cleanup of environmental contamination at its 58 Boyd Street property.

V. FINANCIAL IMPACT: There will be no financial impact on the City because the Brownfields funds were granted to the City from the EPA for assessment activities, and for subgrants and loans to clean up contaminated sites in Portland.

VI. STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION: Giving the PDC the ability to use City Brownfields Funds for multi-family residential and public open space projects will allow such projects access City Brownfields funding, uses the EPA intended when it granted Brownfield Assessment and Cleanup funds to the City. However, the proposed By-Law amendments will not expand the PDC's involvement in residential projects with any of the other funds it oversees for the City.

VII. RECOMMENDATION: Staff and the PDC (5 members of the board, which was one short of a quorum of 6 at its January meeting), recommend the proposed amendments to the PDC By-Laws in order to allow it to provide EPA Brownfields funds for multi-family housing development projects and public open space projects in Portland. Corporation Counsel has reviewed the proposed By-Law amendments.

VIII. LIST ATTACHMENTS

- PDC By-Laws Redlined
- PDC By-Laws Clean

Prepared by: Nelle Hanig
Date: 1/29/2019

BYLAWS OF PORTLAND DEVELOPMENT CORPORATION

ARTICLE 1
NAME, PRINCIPAL OFFICE, CORPORATE SEAL

Section 1.1. Name. The name of this corporation shall be the Portland Development Corporation.

Section 1.2. Principal Office. The principal office for the conduct of the activities of the corporation shall be located at Portland City Hall, 389 Congress Street, Portland, Maine.

Section 1.3. Corporate Seal. The corporate seal of the corporation shall be circular in form and shall bear the words and figures "Portland Development Corporation," the word "Maine" and the year of the corporation's incorporation. The form of such seal may be altered from time to time by the Board of Directors.

Section 1.4. Registered Office. The Registered Office of the Corporation is at 389 Congress Street, Portland, Maine. The address of the Registered Office may be changed from time to time by the Board of Directors or by the Registered Agent.

Section 1.5. Registered Agent. The Registered Agent of the Corporation is the person designated in the Articles of Incorporation, as amended from time to time by the Board of Directors.

ARTICLE II
PURPOSES

Section 2.1. General Purposes. The Corporation is organized and shall be operated on a non-profit basis to receive donations and contributions in support of the City of Portland economic development efforts that enhance and create business, ~~and~~ employment and development opportunities including:

A. Implement and administer ~~economic~~ development programs ~~which~~ that enhance business opportunities ~~in the City of Portland~~ and combat community deterioration in the City of Portland~~;~~, including, but not limited to, brownfields programs that facilitate development of commercial, multi-family residential, public open space and public recreational properties;

B. Enhance employment opportunities for members of the Portland community by offering education and counseling services which support businesses in the City of Portland, thereby lessening the burdens of government;

C. Make recommendations to the City Council with respect to, but not limited to, bond and tax increment financing and the management, acquisition, disposal and general land use of City of Portland property;

D. Refer requests to acquire property via eminent domain to the City Council; and

E. Acquire, hold, own, manage, dispose or liquidate property, upon City Council approval, for the purpose of advancing economic development and promoting employment opportunities in the City of Portland;

Section 2.2. Powers. This Corporation shall have all such powers as are authorized to non-profit corporations by the Maine Nonprofit Corporations Act. The corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity that would invalidate its status (i) as a corporation which is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or (ii) as a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, as amended.

Section 2.3. Prohibition of the Inurement of Assets and Income to Private Persons. The corporation is not organized for pecuniary profit and shall not have any capital stock. No part of its net earnings or of its principal shall inure to the benefit of any officer or director of the corporation, or any other individual, partnership or corporation, but reimbursements for expenditures or the payment of reasonable compensation for services rendered shall not be deemed to be a distribution of earnings or principal.

Section 2.4. Dissolution. If this Corporation is dissolved or its legal existence terminated, either voluntarily or involuntarily, or upon final liquidation of the Corporation, none of its assets shall inure to the benefit of any private individual, and all of its assets remaining after payment of all of its liabilities shall be distributed to one or more organizations which the Board of Directors then determines is qualified both as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, and as an organization engaged in activities substantially similar to those of this Corporation (within the meaning of 13-B M.R.S.A. §407).

Section 2.5 Tax exempt Status. It is intended that the Corporation shall have and continue to have the status of a corporation which is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended, or successor provisions of federal tax law (the "Internal Revenue Code") as an organization described in Section 501(c)(3) of such Code, and to which contributions are deductible under Section 170(c)(2) and 2055(a)(2) of the Internal Revenue Code which is other than a private foundation as defined in Section 509(A) of the Internal Revenue Code. The Articles of Incorporation and these Bylaws shall be construed accordingly, and all powers and activities shall be limited accordingly.

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation; provided that the Corporation shall have the power to make an election under Section 501(h) of the Internal Revenue Code. Likewise, the Corporation shall not participate or intervene in any manner or to any extent in any political campaign on behalf of any candidate for public office. Furthermore, the Corporation shall not engage in any activities that are unlawful under applicable federal, state or local laws, including, but not limited to, activities prohibited for an exempt organization under Section 501(c)(3) of the Internal Revenue Code and regulations thereunder as they now exist or as they may hereafter be amended.

ARTICLE III
MEMBERSHIP

Section 3.1. Member. The sole member of the Corporation shall be the City of Portland, Maine. The sole member of the Corporation shall be referred to as the "Corporator" for the purposes of the Articles of Incorporation and these Bylaws.

Section 3.2 General. In addition to the other powers of the Corporator listed in Section 3.3 hereof, the Corporator shall have the responsibility for the election of the Board of Directors of the Corporation, which Board has the ultimate responsibility for governing the Corporation. The rights and responsibilities of the Corporator, may be changed from time to time by an amendment to the Articles of Incorporation (to the extent required by law) and by these Bylaws.

Section 3.3. Powers. The Corporator shall have only those rights set forth in the Articles of Incorporation, as restated in these Bylaws. Such rights are as follows:

A. The establishment of the size of the Board of Directors within the limits described in Section 4.2 hereof;

B. The election of Directors pursuant to Article IV hereof, with the exception of filling of a vacant Board seat as provided in Section 4.5 hereof;

C. The removal of Directors from the Board of Directors;

D. The amendment, restatement, or modification of the Articles of Incorporation or of the Bylaws of this Corporation;

E. The approval of the sale, lease, or other disposition (excluding by mortgage or pledge for purposes of security) of all, or substantially all, of the assets and property of the Corporation;

F. The dissolution of the Corporation or its merger with or consolidation with another corporation; and

G. Any other matter which a majority of the Board of Directors voting on the matter votes to submit to the Member.

Section 3.4 Annual Meetings. The Annual Meeting of the Corporator shall be held on such day in the month of September of each year at such place and time as shall be fixed by the Board of Directors. In the event of a failure for any reason to hold an Annual Meeting as aforesaid, any business which may properly be transacted at an Annual Meeting, including the election of Directors, may be transacted at a Special Meeting.

Section 3.5 Special Meetings. Special Meetings of the Corporator may be called at any time by the President or a majority of the Directors.

Section 3.6. Notice of Meetings. Notice of all meetings of the Corporator shall be given by the Secretary or in his or her absence or disability by the President, by mailing or emailing to the Corporator a written notice specifying the time and place of the meeting, such notice to be addressed to the Corporator and emailed or mailed (postage prepaid) at least five (5) but not more than fifty (50) days before the meeting.

Section 3.7. Action by Unanimous Consent. Any action required or permitted to be taken at a meeting of the Corporator may be taken without a meeting as long as consent in writing, setting forth the action so taken shall be signed by the Corporator, and filed with the minutes of the meetings of the Corporator.

Section 3.8. Manner of Acting. The act of the Corporator, present in person or by proxy at a meeting, shall be the valid act of the Corporator.

ARTICLE IV
BOARD OF DIRECTORS

Section 4.1. Management by Board. The affairs of the Corporation shall be managed by its Board of Directors, which may exercise all powers of the Corporation and do all lawful acts and things necessary or appropriate to carry out the purposes of the Corporation.

Section 4.2. Number of Directors; Eligibility. The Board of Directors shall consist of eleven (11) individuals, nine (9) of whom shall be Directors appointed by the Corporator through the Portland City Council and two (2) of whom shall be ex officio members of the Board pursuant to Section 4 of this Article. No fewer than six (6) of the nine (9) directors appointed by the Corporator must be a resident or property owner in the City of Portland or have an ownership interest in a business that has its principal office in the City.

Section 4.3. Nomination. The Corporator shall receive nominations from the Portland City Council Nominating ~~Appointments~~ Committee, which shall supplement its regular Committee recruitment efforts by advertising in the local media and by otherwise publicizing the vacancies as widely as possible.

Section 4.4. Ex Officio Members of the Board of Directors. There shall be two (2) individuals who shall each be deemed an ex officio member of the Board of Directors by virtue of his or her holding the position of (1) Mayor or City Council member of the City of Portland as appointed by the ~~Corporation~~ Corporator; and (2) City Manager of the City of Portland.

The provisions of these Bylaws contained in Section 5 regarding term of office, Section 3 regarding nomination of directors and Section 7 regarding vacancies shall not apply to said ex officio members. The City Manager shall be a member of the Board of Directors so long as he or she continues to serve in the office by virtue of which he or she was appointed; and the Mayor or

City Council member shall be appointed annually; and said members shall enjoy all the rights, privileges and responsibilities of all other member of the Board of Directors, including, without limitation, voting privileges, except, however that no ex officio member may serve as President of the Board of Directors. The Board of Directors may take action by unanimous consent only with the consent of said ex officio member. Ex officio members shall be counted as Directors for purposes of determination of residency requirements in Section I of this Article. Ex officio members shall be entitled to the same indemnification rights available to all Directors under the law, these Bylaws or otherwise.

Section 4.5. Terms of Office. One (1) Director shall be initially appointed by the Corporator to hold office until the Second Annual Meeting of the Corporation following the incorporation of this Corporation; two (2) Directors shall be initially appointed by the Corporator to hold office until the Third Annual Meeting of the Corporator following the incorporation of this Corporation; and two (2) Directors shall be initially appointed by the Corporator to hold office until the fourth Annual Meeting of the Corporation following the incorporation of this Corporation. The Corporator shall specify the term of office for which each Director is initially appointed. Thereafter, Directors shall be appointed by the Corporator at Annual Meetings of the ~~Corporation~~ Corporator to serve as such for a term of three (3) years. Each Director shall serve until his or her successor shall be duly qualified and appointed. Directors shall be nominated prior to the Annual Meeting of the ~~Corporation~~ Corporator. No Director shall succeed himself or herself for more than two (2) full consecutive terms, provided that no term of less than three (3) years which is served directly in advance thereof shall be counted for purposes of this limitation.

Section 4.6. Voting. Each Director shall be entitled to one (1) vote.

Section 4.7. Vacancies. Any vacancy occurring on the Board of Directors may be filled by the Corporator by appointment of an individual qualifying and eligible for such position. A person appointed to fill a vacancy which occurs other than by reason of an increase in the number of Directors shall serve until the next Annual Meeting of the Corporator.

Section 4.8. Resignation. Any Director may resign at any time by giving written notice to the President of the Corporation. Such resignation shall take effect on the date of receipt or at any later time specified therein.

ARTICLE V
MEETINGS

Section 5.1. Annual Meeting. The Annual Meeting of the Board of Directors shall be held without call at the Board's Regular Meeting in the month of September, at the principal office of the Corporation or at some other place fixed by the President.

Section 5.2. Regular Meeting. Other Regular Meetings of the Board of Directors may be held, without call, at such place, date and time as shall be fixed from time to time by resolution of the Board of Directors.

Section 5.3. Special Meetings. Special Meetings of the Board of Directors may be called by such persons as are authorized by law to call Special Meetings. The place, date and time of the Special Meeting shall be fixed in the call therefor.

Section 5.4. Notice of Meetings. Notice of each Annual, Regular or Special Meeting of the Board of Directors shall be given by the person or persons calling the same or by the President or Secretary at least three (3) days in advance thereof. Notice may be given in writing, by email, by telephone, by oral statement or by any other means to the Directors in person or by delivery of a writing to the Director's residence or business address. Notice given in writing by mail shall be deemed given on the day that the same is deposited in the U.S. mails as first class mail, postage prepaid. Neither the business to be transacted thereat, nor the purposes of any Annual, Regular or Special Meeting of the Board of Directors need to be specified in the notice of such meeting, except when otherwise provided by law.

Section 5.5. Conduct of Meetings. The final actions of the Board of Directors shall be taken openly, and subject to provisions of the Maine Freedom of Access Act, deliberations of the Board shall be conducted openly, and the records of their actions shall be open to public inspection.

Section 5.6. Quorum. Six (6) Directors shall constitute a quorum for the transaction of business. The act of at least four (4) of the Directors present at a meeting of the Board of Directors at which a quorum is present shall be the act of the Board of Directors.

Section 5.7. Informal Action by Directors. Action of the Directors may be taken in accordance with the provisions of Section 708 of the Maine Nonprofit Corporations Act, Title 13-B M.R.S.A. In amplification of, and not in limitation of the foregoing, action taken by agreement of a majority of Directors shall be deemed action of the Board of Directors if all Directors know of the action taken and no Director makes prompt objection to such action. Objection by a Director shall be effective if written objection to any specific action so taken is filed with the Secretary of this Corporation within thirty (30) days of such specific action.

Section 5.8. Notice. Whenever under the provisions of the statutes, Articles of Incorporation or these Bylaws notice is required to be given to any Director, such notice must be given in writing by personal delivery, by email, mail, or by telephone, addressed to such Director at his or her address as it appears on the records of the Corporation, with postage or other delivery fees prepaid, or at his or her telephone number as it appears on the records of the Corporation. Notice by mail shall be deemed to be given at the time it is deposited in the United States mail.

Section 5.9. Indemnification. This corporation shall in all cases indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a Director, officer, employee or agent of this corporation, against expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding to the maximum extent permitted by law, including, without limitation, 13-B M.R.S.A. §714 as it may be amended from time to time, and acts additional thereto and supplementary thereof, to which reference is made.

ARTICLE VI
OFFICERS AND AGENTS

Section 6.1. Officers. The officers of the corporation shall be chosen annually at the Annual Meeting of the Board of Directors, and shall be a President, a Treasurer and a Secretary. One individual may serve in more than one such office. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers.

Section 6.2. Term. Officers shall be elected for a term of one (1) year to serve until the next Annual Meeting of the Board of Directors or until their successors are duly chosen and qualified. Officers may succeed themselves for any period of years. The initial officers shall be appointed by the Board of Directors at their first meeting following incorporation to serve as such until the first Annual Meeting of the Board of Directors.

Section 6.3. Removal. Any officer of the corporation may be removed by the Board of Directors whenever in their judgment the best interests of the corporation will be served thereby.

Section 6.4. Vacancies. Any vacancy in any office (except the office of Director) may be filled by the Board of Directors.

Section 6.5. President. The President of the Corporation shall be elected from among the members of the Board of Directors, provided however that no ex officio member may be permitted to serve as President.

Section 6.6. Treasurer. The Treasurer shall be the chief financial officer of the corporation and, together with the Assistant Treasurer, shall have the responsibility for all corporate funds and securities and shall maintain full and accurate accounts of receipts and disbursements in a book or books kept for that purpose. The Treasurer shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Treasurer shall be.

Section 6.7. Secretary. The Secretary shall attend all meetings of Corporation and the Board of Directors and keep minutes of all meetings of the Corporation and the Board of Directors in a book or books kept for that purpose. The Secretary shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Secretary shall be. The Secretary, and any Assistant Secretaries, shall have authority to affix the corporate seal to any instrument which requires it, and when so affixed, it may be attested by the Secretary or by any Assistant Secretary.

Section 6.8. The Assistant Treasurer and Assistant Secretary. One (1) Assistant Secretary shall be appointed by the Board of Directors. The individual appointed Assistant Secretary shall be the Director of Economic Development Department of the City of Portland and shall be the principal staff person for the Corporation. The Assistant Secretary will have authority to execute documents on behalf of the Corporation should a Board officer not be available to do so. One (1) Assistant Treasurer shall be appointed by the Board of Directors. The individual appointed as the Assistant Treasurer shall be that individual who holds the position of Treasurer for the City of Portland. The Assistant Treasurer shall, together with the Treasurer, have the responsibility for all corporate funds and securities and shall maintain full and accurate accounts of receipts and disbursements in a book or books kept for that purpose. The Assistant Treasurer shall have such other powers and duties as may be prescribed from time to time by the Board of Directors. Assistant Secretaries and Assistant Treasurers shall not be members of the Board of Directors.

Section 6.9. Other Employees. Other employees of the Corporation may be appointed by the Board of Directors, and if so appointed, shall be supervised by, and shall serve under the direction of the Assistant Secretary.

ARTICLE VII
ADOPTION, AMENDMENT

Section 7.1. Generally. These Bylaws may be amended or repealed or new Bylaws adopted only by the affirmative vote of the Corporator, provided, however, that the Bylaws may not be amended in such a way as to cause the Corporation to lose its status (i) as a corporation which is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or (ii) as a corporation to which contributions are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, as amended, or (iii) as a corporation described in Section 170(b)(1)(A)(vi) of the Internal Revenue Code of 1986, as amended.

Section 7.2. Amendments. These Bylaws may be amended solely by the Corporator.

ARTICLE IX
CONFLICT OF INTEREST

Section 8.1. Avoidance of Conflict or the Appearance of such Conflict. Every Director shall endeavor to avoid conflicts of interest or the appearance of such conflicts or impropriety as provided by state statute, by full disclosure at all times and by abstention in the appropriate circumstances.

Section 8.1. Disclosure. Any Director who has a direct interest in any matter to be considered by the Board shall fully disclose that interest to the Board. If a Director is unsure whether a direct interest exists in a particular matter or if the issue is otherwise raised in good faith, the Director shall disclose the pertinent facts to the Board, and the Board shall determine the issue.

Section 8.3. Abstention. When the Director has so disclosed and is deemed to have a direct interest in a matter, the Director shall abstain from voting on the matter and from otherwise participating in the decision-making process on the matter. Notation of the disclosure and abstention of the Director shall be recorded in the minutes.

Section 8.4. Direct Interest. For purposes of this Article, direct interest in a matter shall mean:

A. A substantial financial interest of the Director or of the spouse or dependent child of the Director;

B. A substantial financial interest of any employer, partner, associate, co-shareholder or other co-venturer of the Director;

C. A substantial financial interest of the Director in any entity which has a substantial financial interest in the matter; or

B. Any other substantial interest of the Director which the Director or the Board believes might reasonably impair the Director's ability to act independently.

ATTEST:

Gregory A. Mitchell

Gregory A. Mitchell
Assistant Secretary

DATE: March 31, 2016

BYLAWS OF PORTLAND DEVELOPMENT CORPORATION

ARTICLE 1
NAME, PRINCIPAL OFFICE, CORPORATE SEAL

Section 1.1. Name. The name of this corporation shall be the Portland Development Corporation.

Section 1.2. Principal Office. The principal office for the conduct of the activities of the corporation shall be located at Portland City Hall, 389 Congress Street, Portland, Maine.

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Section 1.5. Registered Agent. The Registered Agent of the Corporation is the person designated in the Articles of Incorporation, as amended from time to time by the Board of Directors.

ARTICLE II
PURPOSES

Section 2.1. General Purposes. The Corporation is organized and shall be operated on a non-profit basis to receive donations and contributions in support of the City of Portland economic development efforts that enhance and create business, employment and development opportunities including:

A. Implement and administer development programs that enhance business opportunities and combat community deterioration in the City of Portland, including, but not limited to, brownfields programs that facilitate development of commercial, multi-family residential, public open space and public recreational properties;

B. Enhance employment opportunities for members of the Portland community by offering education and counseling services which support businesses in the City of Portland, thereby lessening the burdens of government;

C. Make recommendations to the City Council with respect to, but not limited to, bond and tax increment financing and the management, acquisition, disposal and general land use of City of Portland property;

D. Refer requests to acquire property via eminent domain to the City Council; and

E. Acquire, hold, own, manage, dispose or liquidate property, upon City Council approval, for the purpose of advancing economic development and promoting employment opportunities in the City of Portland;

Section 2.2. Powers. This Corporation shall have all such powers as are authorized to non-profit corporations by the Maine Nonprofit Corporations Act. The corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity that would invalidate its status (i) as a corporation which is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or (ii) as a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, as amended.

Section 2.3. Prohibition of the Inurement of Assets and Income to Private Persons. The corporation is not organized for pecuniary profit and shall not have any capital stock. No part of its net earnings or of its principal shall inure to the benefit of any officer or director of the corporation, or any other individual, partnership or corporation, but reimbursements for expenditures or the payment of reasonable compensation for services rendered shall not be deemed to be a distribution of earnings or principal.

Section 2.4. Dissolution. If this Corporation is dissolved or its legal existence terminated, either voluntarily or involuntarily, or upon final liquidation of the Corporation, none of its assets shall inure to the benefit of any private individual, and all of its assets remaining after payment of all of its liabilities shall be distributed to one or more organizations which the Board of Directors then determines is qualified both as an exempt organization under Section 501(c)(3) of the Internal Revenue Code, and as an organization engaged in activities substantially similar to those of this Corporation (within the meaning of 13-B M.R.S.A. §407).

Section 2.5 Tax exempt Status. It is intended that the Corporation shall have and continue to have the status of a corporation which is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended, or successor provisions of federal tax law (the "Internal Revenue Code") as an organization described in Section 501(c)(3) of such Code, and to which contributions are deductible under Section 170(c)(2) and 2055(a)(2) of the Internal Revenue Code which is other than a private foundation as defined in Section 509(A) of the Internal Revenue Code. The Articles of Incorporation and these Bylaws shall be construed accordingly, and all powers and activities shall be limited accordingly.

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation; provided that the Corporation shall have the power to make an election under Section 501(h) of the Internal Revenue Code. Likewise, the Corporation shall not participate or intervene in any manner or to any extent in any political campaign on behalf of any candidate for public office. Furthermore, the Corporation shall not engage in any activities that are unlawful under applicable federal, state or local laws, including, but not limited to, activities prohibited for an exempt organization under Section 501(c)(3) of the Internal Revenue Code and regulations thereunder as they now exist or as they may hereafter be amended.

ARTICLE III
MEMBERSHIP

Section 3.1. Member. The sole member of the Corporation shall be the City of Portland, Maine. The sole member of the Corporation shall be referred to as the "Corporator" for the purposes of the Articles of Incorporation and these Bylaws.

Section 3.2 General. In addition to the other powers of the Corporator listed in Section 3.3 hereof, the Corporator shall have the responsibility for the election of the Board of Directors of the Corporation, which Board has the ultimate responsibility for governing the Corporation. The rights and responsibilities of the Corporator, may be changed from time to time by an amendment to the Articles of Incorporation (to the extent required by law) and by these Bylaws.

Section 3.3. Powers. The Corporator shall have only those rights set forth in the Articles of Incorporation, as restated in these Bylaws. Such rights are as follows:

A. The establishment of the size of the Board of Directors within the limits described in Section 4.2 hereof;

B. The election of Directors pursuant to Article IV hereof, with the exception of filling of a vacant Board seat as provided in Section 4.5 hereof;

C. The removal of Directors from the Board of Directors;

D. The amendment, restatement, or modification of the Articles of Incorporation or of the Bylaws of this Corporation;

E. The approval of the sale, lease, or other disposition (excluding by mortgage or pledge for purposes of security) of all, or substantially all, of the assets and property of the Corporation;

F. The dissolution of the Corporation or its merger with or consolidation with another corporation; and

G. Any other matter which a majority of the Board of Directors voting on the matter votes to submit to the Member.

Section 3.4 Annual Meetings. The Annual Meeting of the Corporator shall be held on such day in the month of September of each year at such place and time as shall be fixed by the Board of Directors. In the event of a failure for any reason to hold an Annual Meeting as aforesaid, any business which may properly be transacted at an Annual Meeting, including the election of Directors, may be transacted at a Special Meeting.

Section 3.5 Special Meetings. Special Meetings of the Corporator may be called at any time by the President or a majority of the Directors.

Section 3.6. Notice of Meetings. Notice of all meetings of the Corporator shall be given by the Secretary or in his or her absence or disability by the President, by mailing or emailing to the Corporator a written notice specifying the time and place of the meeting, such notice to be addressed to the Corporator and emailed or mailed (postage prepaid) at least five (5) but not more than fifty (50) days before the meeting.

Section 3.7. Action by Unanimous Consent. Any action required or permitted to be taken at a meeting of the Corporator may be taken without a meeting as long as consent in writing, setting forth the action so taken shall be signed by the Corporator, and filed with the minutes of the meetings of the Corporator.

Section 3.8. Manner of Acting. The act of the Corporator, present in person or by proxy at a meeting, shall be the valid act of the Corporator.

ARTICLE IV
BOARD OF DIRECTORS

Section 4.1. Management by Board. The affairs of the Corporation shall be managed by its Board of Directors, which may exercise all powers of the Corporation and do all lawful acts and things necessary or appropriate to carry out the purposes of the Corporation.

Section 4.2. Number of Directors; Eligibility. The Board of Directors shall consist of eleven (11) individuals, nine (9) of whom shall be Directors appointed by the Corporator through the Portland City Council and two (2) of whom shall be ex officio members of the Board pursuant to Section 4 of this Article. No fewer than six (6) of the nine (9) directors appointed by the Corporator must be a resident or property owner in the City of Portland or have an ownership interest in a business that has its principal office in the City.

Section 4.3. Nomination. The Corporator shall receive nominations from the Portland City Council Nominating Committee, which shall supplement its regular Committee recruitment efforts by advertising in the local media and by otherwise publicizing the vacancies as widely as possible.

Section 4.4. Ex Officio Members of the Board of Directors. There shall be two (2) individuals who shall each be deemed an ex officio member of the Board of Directors by virtue of his or her holding the position of (1) Mayor or City Council member of the City of Portland as appointed by the Corporator; and (2) City Manager of the City of Portland.

The provisions of these Bylaws contained in Section 5 regarding term of office, Section 3 regarding nomination of directors and Section 7 regarding vacancies shall not apply to said ex officio members. The City Manager shall be a member of the Board of Directors so long as he or she continues to serve in the office by virtue of which he or she was appointed; and the Mayor or

City Council member shall be appointed annually; and said members shall enjoy all the rights, privileges and responsibilities of all other member of the Board of Directors, including, without limitation, voting privileges, except, however that no ex officio member may serve as President of the Board of Directors. The Board of Directors may take action by unanimous consent only with the consent of said ex officio member. Ex officio members shall be counted as Directors for purposes of determination of residency requirements in Section I of this Article. Ex officio members shall be entitled to the same indemnification rights available to all Directors under the law, these Bylaws or otherwise.

Section 4.5. Terms of Office. One (1) Director shall be initially appointed by the Corporator to hold office until the Second Annual Meeting of the Corporation following the incorporation of this Corporation; two (2) Directors shall be initially appointed by the Corporator to hold office until the Third Annual Meeting of the Corporator following the incorporation of this Corporation; and two (2) Directors shall be initially appointed by the Corporator to hold office until the fourth Annual Meeting of the Corporation following the incorporation of this Corporation. The Corporator shall specify the term of office for which each Director is initially appointed. Thereafter, Directors shall be appointed by the Corporator at Annual Meetings of the Corporator to serve as such for a term of three (3) years. Each Director shall serve until his or her successor shall be duly qualified and appointed. Directors shall be nominated prior to the Annual Meeting of the Corporator. No Director shall succeed himself or herself for more than two (2) full consecutive terms, provided that no term of less than three (3) years which is served directly in advance thereof shall be counted for purposes of this limitation.

Section 4.6. Voting. Each Director shall be entitled to one (1) vote.

Section 4.7. Vacancies. Any vacancy occurring on the Board of Directors may be filled by the Corporator by appointment of an individual qualifying and eligible for such position. A person appointed to fill a vacancy which occurs other than by reason of an increase in the number of Directors shall serve until the next Annual Meeting of the Corporator.

Section 4.8. Resignation. Any Director may resign at any time by giving written notice to the President of the Corporation. Such resignation shall take effect on the date of receipt or at any later time specified therein.

ARTICLE V
MEETINGS

Section 5.1. Annual Meeting. The Annual Meeting of the Board of Directors shall be held without call at the Board's Regular Meeting in the month of September, at the principal office of the Corporation or at some other place fixed by the President.

Section 5.2. Regular Meeting. Other Regular Meetings of the Board of Directors may be held, without call, at such place, date and time as shall be fixed from time to time by resolution of the Board of Directors.

Section 5.3. Special Meetings. Special Meetings of the Board of Directors may be called by such persons as are authorized by law to call Special Meetings. The place, date and time of the Special Meeting shall be fixed in the call therefor.

Section 5.4. Notice of Meetings. Notice of each Annual, Regular or Special Meeting of the Board of Directors shall be given by the person or persons calling the same or by the President or Secretary at least three (3) days in advance thereof. Notice may be given in writing, by email, by telephone, by oral statement or by any other means to the Directors in person or by delivery of a writing to the Director's residence or business address. Notice given in writing by mail shall be deemed given on the day that the same is deposited in the U.S. mails as first class mail, postage prepaid. Neither the business to be transacted thereat, nor the purposes of any Annual, Regular or Special Meeting of the Board of Directors need to be specified in the notice of such meeting, except when otherwise provided by law.

Section 5.5. Conduct of Meetings. The final actions of the Board of Directors shall be taken openly, and subject to provisions of the Maine Freedom of Access Act, deliberations of the Board shall be conducted openly, and the records of their actions shall be open to public inspection.

Section 5.6. Quorum. Six (6) Directors shall constitute a quorum for the transaction of business. The act of at least four (4) of the Directors present at a meeting of the Board of Directors at which a quorum is present shall be the act of the Board of Directors.

Section 5.7. Informal Action by Directors. Action of the Directors may be taken in accordance with the provisions of Section 708 of the Maine Nonprofit Corporations Act, Title 13-B M.R.S.A. In amplification of, and not in limitation of the foregoing, action taken by agreement of a majority of Directors shall be deemed action of the Board of Directors if all Directors know of the action taken and no Director makes prompt objection to such action. Objection by a Director shall be effective if written objection to any specific action so taken is filed with the Secretary of this Corporation within thirty (30) days of such specific action.

Section 5.8. Notice. Whenever under the provisions of the statutes, Articles of Incorporation or these Bylaws notice is required to be given to any Director, such notice must be given in writing by personal delivery, by email, mail, or by telephone, addressed to such Director at his or her address as it appears on the records of the Corporation, with postage or other delivery fees prepaid, or at his or her telephone number as it appears on the records of the Corporation. Notice by mail shall be deemed to be given at the time it is deposited in the United States mail.

Section 5.9. Indemnification. This corporation shall in all cases indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a Director, officer, employee or agent of this corporation, against expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding to the maximum extent permitted by law, including, without limitation, 13-B M.R.S.A. §714 as it may be amended from time to time, and acts additional thereto and supplementary thereof, to which reference is made.

ARTICLE VI
OFFICERS AND AGENTS

Section 6.1. Officers. The officers of the corporation shall be chosen annually at the Annual Meeting of the Board of Directors, and shall be a President, a Treasurer and a Secretary. One individual may serve in more than one such office. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers.

Section 6.2. Term. Officers shall be elected for a term of one (1) year to serve until the next Annual Meeting of the Board of Directors or until their successors are duly chosen and qualified. Officers may succeed themselves for any period of years. The initial officers shall be appointed by the Board of Directors at their first meeting following incorporation to serve as such until the first Annual Meeting of the Board of Directors.

Section 6.3. Removal. Any officer of the corporation may be removed by the Board of Directors whenever in their judgment the best interests of the corporation will be served thereby.

Section 6.4. Vacancies. Any vacancy in any office (except the office of Director) may be filled by the Board of Directors.

Section 6.5. President. The President of the Corporation shall be elected from among the members of the Board of Directors, provided however that no ex officio member may be permitted to serve as President.

Section 6.6. Treasurer. The Treasurer shall be the chief financial officer of the corporation and, together with the Assistant Treasurer, shall have the responsibility for all corporate funds and securities and shall maintain full and accurate accounts of receipts and disbursements in a book or books kept for that purpose. The Treasurer shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Treasurer shall be.

Section 6.7. Secretary. The Secretary shall attend all meetings of Corporation and the Board of Directors and keep minutes of all meetings of the Corporation and the Board of Directors in a book or books kept for that purpose. The Secretary shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Secretary shall be. The Secretary, and any Assistant Secretaries, shall have authority to affix the corporate seal to any instrument which requires it, and when so affixed, it may be attested by the Secretary or by any Assistant Secretary.

Section 6.8. The Assistant Treasurer and Assistant Secretary. One (1) Assistant Secretary shall be appointed by the Board of Directors. The individual appointed Assistant Secretary shall be the Director of Economic Development Department of the City of Portland and shall be the principal staff person for the Corporation. The Assistant Secretary will have authority to execute documents on behalf of the Corporation should a Board officer not be available to do so. One (1) Assistant Treasurer shall be appointed by the Board of Directors. The individual appointed as the Assistant Treasurer shall be that individual who holds the position of Treasurer for the City of Portland. The Assistant Treasurer shall, together with the Treasurer, have the responsibility for all corporate funds and securities and shall maintain full and accurate accounts of receipts and disbursements in a book or books kept for that purpose. The Assistant Treasurer shall have such other powers and duties as may be prescribed from time to time by the Board of Directors. Assistant Secretaries and Assistant Treasurers shall not be members of the Board of Directors.

Section 6.9. Other Employees. Other employees of the Corporation may be appointed by the Board of Directors, and if so appointed, shall be supervised by, and shall serve under the direction of the Assistant Secretary.

ARTICLE VII
ADOPTION, AMENDMENT

Section 7.1. Generally. These Bylaws may be amended or repealed or new Bylaws adopted only by the affirmative vote of the Corporator, provided, however, that the Bylaws may not be amended in such a way as to cause the Corporation to lose its status (i) as a corporation which is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or (ii) as a corporation to which contributions are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, as amended, or (iii) as a corporation described in Section 170(b)(1)(A)(vi) of the Internal Revenue Code of 1986, as amended.

Section 7.2. Amendments. These Bylaws may be amended solely by the Corporator.

ARTICLE IX
CONFLICT OF INTEREST

Section 8.1. Avoidance of Conflict or the Appearance of such Conflict. Every Director shall endeavor to avoid conflicts of interest or the appearance of such conflicts or impropriety as provided by state statute, by full disclosure at all times and by abstention in the appropriate circumstances.

Section 8.1. Disclosure. Any Director who has a direct interest in any matter to be considered by the Board shall fully disclose that interest to the Board. If a Director is unsure whether a direct interest exists in a particular matter or if the issue is otherwise raised in good faith, the Director shall disclose the pertinent facts to the Board, and the Board shall determine the issue.

Section 8.3. Abstention. When the Director has so disclosed and is deemed to have a direct interest in a matter, the Director shall abstain from voting on the matter and from otherwise participating in the decision-making process on the matter. Notation of the disclosure and abstention of the Director shall be recorded in the minutes.

Section 8.4. Direct Interest. For purposes of this Article, direct interest in a matter shall mean:

A. A substantial financial interest of the Director or of the spouse or dependent child of the Director;

B. A substantial financial interest of any employer, partner, associate, co-shareholder or other co-venturer of the Director;

C. A substantial financial interest of the Director in any entity which has a substantial financial interest in the matter; or

B. Any other substantial interest of the Director which the Director or the Board believes might reasonably impair the Director's ability to act independently.

ATTEST:

Gregory A. Mitchell

Gregory A. Mitchell DATE: March 31, 2016
Assistant Secretary

MEMORANDUM
Housing Committee Agenda Item

DISTRIBUTE TO: Councilor Duson, Chair and Members of the Housing Committee

FROM: Nelle Hanig, Business Programs Manager
Greg Mitchell, Economic Development Director

DATE: January 29, 2019

SUBJECT: **Proposed Amendments to PDC Brownfields Guidelines for Consistency Among Brownfields Programs, Including Requirements for the Use of Brownfields Funds for Assessment and Cleanup for Multi-Family Residential and Public Open Space Projects.**

PRESENTATION: Greg Mitchell and Nelle Hanig – 5 Minutes

I. ONE SENTENCE SUMMARY: This item is proposing Brownfields Assessment Program Guidelines and amendments to the Brownfields RLF Program and Closeout Fund Guidelines including to allow the PDC's use of Brownfields Funds for multi-family residential developments that have no less than 10 units and at least 50% of the residential units priced for households earning 100% or less of area median income (AMI), along with open space projects.

II. AGENDA DESCRIPTION: Related to the proposed amendments to the PDC By-Laws, the amendments to the Brownfields Guidelines primarily address the particulars of allowing the PDC to use these funds for assessment activities and cleanup on multi-family residential development properties and public open space projects.

III. BACKGROUND: Staff is proposing amendments to two sets of Brownfields Guidelines – the Revolving Loan Fund (RLF) Program and the Closeout Fund Program, as they relate to the proposed modifications to the PDC By-Laws regarding multi-family housing and public open space projects. Amendments to these guidelines address the specific requirements that a multi-family residential development property must meet in order to be considered for Brownfields funds. Specifically, the project must have no less than 10 residential units and at least 50% of the units priced for households earning 100% or less of area median income (AMI), as determined by the Planning Authority. This multi-family housing affordability requirement is also included in the Brownfields Assessment Program.

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED: It will result in the PDC having the ability to provide Brownfields funds for assessment and cleanup/remediation on properties for multi-family residential developments that have no commercial component and for public open space projects.

V. FINANCIAL IMPACT: There will be no cost to the City from these proposed amendments as they will draw on EPA Brownfields grants made to the City of Portland for assessment activities and cleanup.

VI. STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION: The residential amendments to the Brownfields RLF and the Brownfields Closeout Fund Programs will allow the PDC to fund assessment activities and provide loan and grant funds for remediation/cleanup for multi-family residential developments that have no commercial component and for public open space projects. The requirement that these residential projects have no less than 10 housing units and at least 50% of the units be priced for households earning 100% or less of area median income (AMI), was arrived at in cooperation with the City's Housing Division. This is proposed in order to support an increase in the development of workforce and affordable housing. 100% AMI translates into a one-person household earning no more than $58,380 and a two-person household earning no more than $66,720 as per the U.S. Department of Housing and Urban Development.

VII. RECOMMENDATION: Staff and a consensus of 5 PDC board members (as the January PDC meeting was one short of a quorum of 6) recommend approval of the proposed amendments to the Brownfields RLF Program and Closeout Fund Program Guidelines to allow the PDC to provide funding for assessment activities, and loans and grants for cleanup/remediation to multi-family residential projects that meet the affordability restrictions and to public open space projects. Further recommended by staff and the PDC is approval of the Brownfields Assessment Program which also includes the multi-family residential affordability restrictions.

Attached are the proposed guidelines for the two programs in a strike through and underline format (redlined) showing proposed new language and proposed deletions, as well as clean versions of these guidelines. Also attached are the proposed Brownfields Assessment Program Guidelines. A matrix of brownfields funds and their use is also attached for greater clarity on all the brownfields program.

VIII. LIST ATTACHMENTS

- Brownfields RFL Program Guidelines
- Clean Version of RLF Program Guidelines
- Redlined Version of Brownfields Closeout Fund Guidelines
- Clean Version of Closeout Fund Guidelines
- Brownfields Assessment Program Guidelines
- Matrix on Brownfields Funds

Prepared by: Nelle Hanig
Date: January 29, 2019

PORTLAND BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM

Amended to be applicable City-wide and passed by the City Council on 7/16/07.

Amended by Corporator at 11/7/08 Meeting adding an amendment for Requests for Amendment to Loan Terms.

Amended by Corporator at 3/6/2017 Meeting.

The Portland Brownfields Cleanup Revolving Loan Fund Program ~~(BCRLF)~~(Fund # 280) ~~provides loans and subgrants to assist those interested in remediating and redeveloping Brownfields sites within the City of Portland~~. ~~Brownfields are abandoned, idled or underused industrial or commercial properties with real or perceived environmental contamination.~~ is designed to encourage the remediation/cleanup of eligible Brownfields sites and activities associated with removing, mitigating, or preventing the release, or threat of a release, of a hazardous substance, pollutant, or contaminant from Brownfields sites.

The purpose of this Program is to facilitate the cleanup and reuse of Brownfield properties for commercial, public open space and recreation, and multi-family residential of at least 10 units in a project. At least 50% of the residential units must be priced for households earning 100% or less of area median income (AMI), as determined by the Planning Authority.

Program assistance is provided through low interest loans and subgrants, with subgrants available to non-profits. Per the EPA Revolving Loan Fund Terms and Conditions, the City may not provide a subgrant to itself or another component of its own unit of government or organization.

Brownfields Definition: A brownfield is a property whose expansion, redevelopment, or reuse is complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.

~~The funding for this P~~program funding comes from the U.S. Environmental Protection Agency (EPA) and is authorized by the ~~City of~~ Portland City Council.

1. Program Goal

To assist in financing the cleanup of Brownfields sites within the City of Portland, thereby making these properties available for redevelopment and contributing to the revitalization of the community, creation of jobs, improving the environment and eliminating the public health risks associated with these sites.

2. Program Objectives

(a) To create an incentive for private investment in Brownfields properties~~/sites~~ ~~with~~ in the City of Portland;
(b) To safely clean up Brownfields properties ~~based on end use~~ in order to facilitate their sustainable reuse;
(c) To foster development and implementation of financial and administrative approaches that can support self-sustaining efforts to facilitate Brownfields cleanup efforts; and
(d) To prevent the exacerbation, creation or spread of contamination on or between properties to protect the public health by minimizing exposure to toxic materials in the environment.

~~3. Program Description~~

~~This program is designed to encourage the cleanup of eligible Brownfields sites and activities associated with removing, mitigating, or preventing the release, or threat of a release, of a hazardous substance, pollutant, or contaminant from Brownfields sites. Assistance is provided through low interest loans and subgrants. Subgrants are available to non-profits and governmental entities.~~

~~4. Program Budget~~

The funding for the Portland Brownfields Cleanup Revolving Loan Fund is provided by the U.S. ~~Department of~~ Environmental Protection Agency (EPA) and authorized by the Portland City Council.

3~~5~~. Eligible Project Applicants

(a) The project applicant or owner is not considered potentially responsible for the contamination on the property;
(b) The project applicant or owner is not currently suspended, debarred or otherwise ineligible to participate in Federal financial assistance programs;
(c) The project applicant or owner is not in environmental non-compliance with Federal or State agencies.
(d) The project applicant or owner must owe no outstanding property taxes, fees, judgments, or liens to the City;

4. Property Threshold Requirements

(e) The property ~~to be assisted~~ is located within the City of Portland;~~.~~
~~(a)~~
~~(b)~~(f) ~~The project applicant or owner must owe no outstanding property taxes, fees, judgments, or liens to the City;~~

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~~(c)~~(g) The property must be eligible to apply to ~~meet the definition of a Brownfield and be enrolled in~~ the Maine Voluntary Response Action Program (VRAP) for site cleanup;

(h) The property must have had adequate environmental assessments completed in order to understand site conditions and necessary remediation (e.g. Phase I Environmental Site Assessment and/or Phase II Environmental Site Assessment);

~~(d)~~

(i) The ~~site~~ property meets the EPA eligibility requirements;

~~(e)~~

~~(f) The project applicant or owner is not a generator or transporter of contamination to the site;~~

~~(g) The project applicant or owner is not currently suspended, debarred or otherwise ineligible to participate in Federal financial assistance programs; and~~

~~(h) The project applicant or owner is not in environmental non-compliance with Federal or State agencies.~~

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5~~6~~. Ownership Eligibility ~~le Applicants/Entities~~

~~(a)~~ Publicly or privately owned by current or prospective property owners, banks, developers, etc., to seek loans;, ~~either directly by a municipality or indirectly through a~~

(a) ~~quasi-public entity such as a community development corporation~~Privately-owned by current or prospective non-profit owners to seek loans and/or subgrants ~~; or~~

(b) ~~Privately owned by current or prospective commercial property owners, banks, developers, non-profits, etc.;~~

(c) Applicant must own or be in the process of obtaining ownership at the time of application;

~~(c)~~(d) Applicant cannot be potentially liable under CERCA Sec. 107 for contamination on the property.

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6~~7~~. Eligible Activities

Cleanup actions associated with removing, mitigating, or preventing the release or threat of a release of a hazardous substance, pollutant or contaminant including but not limited to:

(a) Preparation of a Maine Department of Environmental Protection (DEP) VRAP application and associated application fee, Community Relations Plan (CRP), Analysis of Brownfields Cleanup Alternatives (ABCA); public meeting to present the ABCA; and preparation of meeting minutes;

(b) Fences, warning signs or other security or site control precautions;

(c) Drainage controls;

(d) Stabilization of berms, dikes or impoundments or drainage or closing lagoons;

(e) Capping of contaminated soils;
(f) Using chemicals and other materials to retard the spread of the release or mitigate its effects;
(g) Excavation, consolidation, or removal of contaminated soils from drainage or other areas;
(h) Abatement of hazardous building materials including asbestos, lead paint, mold and PCBs;
(h) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants;
(i) Containment, treatment, disposal, or incineration of hazardous materials;
(j) Provision of alternative water supply where necessary immediately to reduce exposure to contaminated household water;
(k) Site monitoring activities, including sampling and analysis, that are necessary during the cleanup process, including determination of effectiveness of a cleanup; ~~and~~
(l) Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements;~~.~~
(m) Costs associated with removal activities including demolition and/or site preparation that are part of site cleanup;
(n) Environmental Insurance Premiums;~~.~~
o) Programmatic costs for the City of Portland and its QEP to manage and oversee the work being performed under this Program.

7~~8~~. Ineligible Activities

(a) Pre-cleanup environmental response activities (i.e. site assessment, identification, and characterization); however, the Lead Agency may request EPA approval for limited site assessment on a case-by-case basis when necessary to ensure protection of the environment and public health through cleanup action.
(b) Monitoring and data collection necessary to apply for, or comply with environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action; ~~and~~
(c) Construction, demolition and development activities that are not integral to the cleanup actions, and addressing public or private drinking water supplies that have deteriorated through ordinary use. Development activities that are not removal actions (e.g. construction of a new facility or marketing of property).
(d) Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant;
(e) To pay for a penalty or fine;
(f) To pay a federal cost share requirement (for example, a cost-share required by another Federal subgrant) unless there is specific statutory authority;
(g) To pay for response costs at a Brownfields site for which the recipient of the subgrant or loan is potentially liable under CERCLA Section 107;

(h) To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable for cleanup;

(i) Unallowable costs (e.g. lobbying and fund raising) under applicable OMB Circulars.

8~~9~~. Financing Terms

The following terms will guide the actions of the Portland Development Corporation (PDC) on behalf of the City of Portland for cleanup remediation loans and subgrants:

(a) Loan amount for eligible cleanup activities will be limited to the balance of the loan fund, but generally range from a minimum of $10~~5~~0,000 to a maximum of $300,000, and will be negotiated based on project redevelopment needs. Subgrants up to $200,000 are available for eligible cleanup activities**;**

(b) Maximum loan term is up to 10 years, though shorter terms are preferred; The actual term is negotiable on a case-by-case basis, and may include a longer amortization period with a balloon at the end of the designated term. Projects must justify the need for the maximum term.

(c) Interest rate will be determined by the PDC, though Brownfields loans are usually lent at a low~~er~~ interest rate;

(d) Brownfields site, business assets, outside collateral, and/or personal guaranties may be required as security;

(e) Environmental indemnification and/or lenders environmental insurance may be required;

(f) Evidence of a cost share of at least 20% of the loan or subgrant amount will be required of all Applicants/Borrowers; in special circumstances, as determined by the PDC, the cost share may be reduced or waived.

(g) Cost share monies and or eligible in-kind cleanup activities will be specifically utilized for eligible cleanup activities;

(h) As applicable, Borrower/Subgrantee will be required to utilize Davis Bacon Wage compliance requirements and provide backup verifying compliance;

(i) Loan/Subgrant drawdown requests with sufficient backup of eligible cleanup activities will be reimbursed at the PDC approved loan or subgrant proportion to cost share prior to final d~~D~~rawdown (e.g., 80% of eligible activities will be reimbursed by the City, the remaining 20% will be considered as the Applicants cost share and shall be paid by the Applicant).

9~~10~~. Requests for Amendment to Loan Terms

A one percent fee ~~will~~ may be applied for requests for amendments to loan terms, as well as costs for legal fees and recording fees associated with preparing any additional loan documents/modifications. The one percent fee will be based on the current loan balance at the time of the request. This one percent fee will be applied to those loan amendments which require the PDC Assistant Secretary to bring the request to the PDC Board of Directors based on substantive changes.

The City's Economic Development Director (PDC Assistant Secretary) has the discretion to determine whether requested loan amendments should be brought to the Board or done administratively. If done administratively, the PDC Assistant Secretary will confer with the Business Programs Manager and the Associate Corporation Counsel to determine the fee based on hourly rates of pay, as well as recording fees and legal hourly fees.

1~~1~~0. **Underwriting Criteria**

~~Project ~~R~~r~~eview will include, but not be limited to, the following factors:

~~(a) Location of the Brownfields site within the City of Portland;~~

~~(b)~~(a) Necessity of loan and/or subgrant ~~funds~~ to make the project economically feasible with the least amount of public resources.

~~(c)~~(b) Analysis of credit reports and financial documents as well as budget feasibility analysis provided by the ~~the RLF Site Manager ((Qualified Environmental Professional ((QEP))~~ City contracted underwriter to assess that applicant is a ~~not a cleanup and/or~~ business risk.

1~~2~~1. ~~Application~~ Overall Review Criteria

The application for City of Portland Brownfields RLF funding will be evaluated using some or all of the following criteria:

(a) Cleanup activities are eligible
(b) Completeness of application
(c) Sufficient Brownfields funds available
(d) Economic/Financial benefit(s)
   1. Potential for redevelopment;
   2. Developer interest in site;
   3. Potential for job creation, workforce/affordable housing and/or sustainable economic development;
   4. Financial feasibility for cleanup/remediation of contamination
   5. Ability to leverage additional funding or other resources for cleanup/remediation.
(e) Environmental benefit(s)
   1. Potential reduction, elimination and/or control of threats/risks to human health and the environment;
   2. Creation, preservation and/or maintenance of greenspace.
(f) Community benefit(s)

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1. Likelihood for successful redevelopment, reuse and/or revitalization
2. Availability of existing infrastructure, transportation corridors and municipal services to support redevelopment;
3. Potential to enable sustainable growth, use of green building design initiatives and green/renewable energy resources;
4. Interest and presence of a willing owner, buyer or other stakeholder to invest in the property and to provide access to the property for cleanup.

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12. Application Review Process

~~The PDC, with input and recommendations made by the Maine Department of Environmental Protection, EPA, City's QEP and the City's Economic Development Department (EDD), will review project proposals to determine eligibility and negotiate with applicants to determine the least amount of public resources necessary to make the projects feasible.~~

Remediation/cleanup plans should be implemented efficiently and redevelopment projects completed on schedule and within identifiable cleanup budgets. The actions to be taken, including PDC review, are as follows:

~~The loan approval process shall be carried out efficiently and pragmatically to insure loans are approved in a timely manner, cleanup plans are implemented and redevelopment projects are completed on schedule to maximize the community benefit goals of the projects. The actions to be taken are:~~ is as follows:

~~The applicant will meet with the City and City's QEP to discuss the project;~~

(a) Applicants seeking funds for remediation/cleanup are required to be enrolled in the Maine (VRAP) or in the process of applying (that is,VRAP application and associated workplan and VRAP fees are eligible for RLF reimbursement) ;

(b) Applicant will complete the City's Brownfields RLF Application (Part 1) and provide it along with ESAs I and II and evidence of VRAP submittal ~~and provide supporting documentation~~ for review by the EDD and QEP;

~~(a)~~(c) Applicant or QEP will prepare EPA Site Eligibility form; EDD submits to EPA for approval;

~~(b)~~(d) The City's QEP ~~and Maine DEP~~ will review the environmental assessments and cleanup plan summary in addition to the Part 1 RLF Application. If the Applicant's site cleanup activities and preliminary project costs are eligible, the City's QEP will prepare a summary memo to the EDD ~~(approval or denial) for review by the Maine DEP, the EPA and the EDD;~~.

~~(c)~~(e) Applicant submits Part II RLF application (financial backup). The underwriter will proceed with the review and analysis of the financial components of the loan and/or subgrant application and prepare a report for the PDC with recommended terms and conditions;

~~(d)~~(f) The PDC will be presented with the loan report and, based on an analysis of the financial qualifications of the applicant and the merits of the project, the PDC will vote to approve or disapprove of the loan/subgrant request including terms and conditions ;

~~(e)~~(g) The EDD will prepare a loan commitment letter for the Applicant~~/Borrower~~, including terms and conditions.

~~(f)~~(h) Once the commitment letter is fully executed:

1. The ~~Applicant/~~Borrower/Subgrant Recipient and their QEP will prepare a Draft Community Relations Plan (CRP) and Draft Analysis of Brownfields Cleanup Alternatives (ABCA). The Draft CRP and Draft ABCA will be submitted to the Maine DEP and EPA for approval and comment. Upon comment receipt and incorporation, the draft ABCA will be presented at a ~~public~~ community meeting ~~hearing~~ and will be subject to a 30-day public comment period;

2. The City attorney will draft loan documents which will include but not be limited to the loan agreement, promissory note, mortgage agreement and any other documentation as necessary. The loan documents and RLF Agreement with City shall include attachments including but not limited to a copy of the deed, a schedule for the cleanup activities, and costs for eligible activities associated with the cleanup.

~~(g)~~(i) Based on the community meeting~~CRP~~, a final draft of the ABCA is prepared by the ~~Applicant/~~Borrower/Subgrant Recipient, which incorporates comments received by Maine DEP, EPA and the public;

(j) Once the CRP and ABCA hasve been finalized, the Applicant/Borrower prepares ~~a Scope of Work for the cleanup activities, including~~ a ~~detailed~~ detailed cleanup budget and work schedule, a Health and Safety Plan, and a Quality Assurance Project Plan if needed (the QAPP will need to be reviewed by Maine DEP and EPA, prior to finalization); and

~~(h)~~(k) Borrower/subgrant recipient acknowledges that Davis Bacon wage compliance is mandatory for receipt of Brownfields funds;

(l) The loan agreement, promissory note, mortgage agreement, and any other loan documents are signed. Any loan fees are paid;

~~(i)~~(m) The Applicant shall prepare a project sign to be posted at the site prior to initiation of cleanup activities listing at a minimum the City, MEDEP, EPA and contact information for the Applicant's QEP. A draft mockup of the sign shall be submitted to the City for approval and provided to DEP and EPA.

City Checklist for Applicants

The ~~City will request the~~ following ~~information from the~~is a checklist of information needed from Applicants: ~~Applicant to make the loan or subgrant determination:~~

Applicant Information

(a) Applicant Overview: name, location, principal owners/stockholders, type of business and products or services, date established;
(b) Financial Overview: historical financial statements for the past three years, most recent quarter and copies of appropriate IRS Tax Returns;
(c) Management Overview: resumes of principals; and
(d) Credit References: financial institutions and other creditors.

Site Related Conditions

(a) Environmental assessments (e.g., Phase I and II in accordance with American Society for Testing and Materials (ASTM) Standards);
(b) Information regarding the status of the Applicant/ as a potentially responsible party at the site;
(c) Information on environmental compliance history;
(d) Information on whether or not the Applicant is currently or ever has been subject to any penalties resulting from environmental non-compliance at the site;
(e) Information on whether or not the Applicant is a generator or transporter of contamination at the site; and
(f) Information on whether or not the Applicant falls under a statutory exemption from liability; or that the EPA could use its enforcement discretion and not pursue the party as a responsible party under CERLA if the Applicant is currently the owner/operator of the site.

Remediation Cleanup Plan

Cleanup Plan Summary: cleanup plan including a technical description of work to be done, eligible cleanup activities and costs estimates for cleanup and project redevelopment. Cleanup Plan should also document other funding sources for cleanup and eligible activities to be utilized for cost share. The source of the 20% cost share of monies and or eligible in-kind services/materials must be provided.

Redevelopment Plan

(a) Financing Project: a description of the cleanup project and the reuse plan;
(b) Business Plan: a description of the business goals, strategies and action plans; and
(c) Financial Plan: pro-forma financial statements which demonstrates the economic viability of the project and identifies the sources of repayment for the loan.

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Community Benefits

(a) Employment Impact: number of current and new jobs, wage levels and job training anticipated to be generated from the cleanup and redevelopment of the site.

(b) Investment Impact: Serves as an incentive for investment in Brownfields areas.

(c) Multi-Family Housing~~Housing Units~~: Available for the creation of multi-family housing~~Housing Units~~ ~~located~~ in Brownfields areas.

(d) Public open space and recreation acreage for cleanup located in the brownfields area.

(e) Any other community benefits.

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PORTLAND BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM

Amended to be applicable City-wide and passed by the City Council on 7/16/07.

Amended by Corporator at 11/7/08 Meeting adding an amendment for Requests for Amendment to Loan Terms.

Amended by Corporator at 3/6/2017 Meeting.

The Portland Brownfields Cleanup Revolving Loan Fund Program (Fund # 280) . is designed to encourage the remediation/cleanup of eligible Brownfields sites and activities associated with removing, mitigating, or preventing the release, or threat of a release, of a hazardous substance, pollutant, or contaminant from Brownfields sites.

The purpose of this Program is to facilitate the cleanup and reuse of Brownfield properties for commercial, public open space and public recreation, and multi-family residential of at least 10 units in a project. At least 50% of the residential units must be priced for households earning 100% or less of area median income (AMI), as determined by the Planning Authority.

Program assistance is provided through low interest loans and subgrants, with subgrants available to non-profits. Per the EPA Revolving Loan Fund Terms and Conditions, the City may not provide a subgrant to itself or another component of its own unit of government or organization.

Brownfields Definition: A brownfield is a property whose expansion, redevelopment, or reuse is complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.

Program funding comes from the U.S. Environmental Protection Agency (EPA) and is authorized by the Portland City Council.

1. Program Goal

To assist in financing the cleanup of Brownfields sites within the City of Portland, thereby making these properties available for redevelopment and contributing to the revitalization of the community, creation of jobs, improving the environment and eliminating the public health risks associated with these sites.

2. Program Objectives

(a) To create an incentive for private investment in Brownfields properties in the City of Portland;

(b) To safely clean up Brownfields properties in order to facilitate their sustainable reuse;
(c) To foster development and implementation of financial and administrative approaches that can support self-sustaining efforts to facilitate Brownfields cleanup efforts; and
(d) To prevent the exacerbation, creation or spread of contamination on or between properties to protect the public health by minimizing exposure to toxic materials in the environment.

3. Eligible Project Applicants

(a) The project applicant or owner is not considered potentially responsible for the contamination on the property;
(b) The project applicant or owner is not currently suspended, debarred or otherwise ineligible to participate in Federal financial assistance programs;
(c) The project applicant or owner is not in environmental non-compliance with Federal or State agencies.
(d) The project applicant or owner must owe no outstanding property taxes, fees, judgments, or liens to the City;

4. Property Threshold Requirements

(a) The property is located within the City of Portland;
(b) The property must be eligible to apply to the Maine Voluntary Response Action Program (VRAP) for site cleanup;
(c) The property must have had adequate environmental assessments completed in order to understand site conditions and necessary remediation (e.g. Phase I Environmental Site Assessment and/or Phase II Environmental Site Assessment);

(d) The property meets the EPA eligibility requirements;

5. Ownership Eligibility

(a) Publicly or privately owned by current or prospective property owners, banks, developers, etc., to seek loans;, Privately-owned by current or prospective non-profit owners to seek loans and/or subgrants
(b) Applicant must own or be in the process of obtaining ownership at the time of application;
(c) Applicant cannot be potentially liable under CERCA Sec. 107 for contamination on the property.

6. Eligible Activities

Cleanup actions associated with removing, mitigating or preventing the release or threat of a release of a hazardous substance, pollutant or contaminant including but not limited to:

(a) Preparation of a Maine Department of Environmental Protection (DEP) VRAP application and associated application fee, Community Relations Plan (CRP), Analysis of Brownfields Cleanup Alternatives (ABCA); public meeting to present the ABCA; and preparation of meeting minutes;
(b) Fences, warning signs or other security or site control precautions;
(c) Drainage controls;
(d) Stabilization of berms, dikes or impoundments or drainage or closing lagoons;
(e) Capping of contaminated soils;
(f) Using chemicals and other materials to retard the spread of the release or mitigate its effects;
(g) Excavation, consolidation, or removal of contaminated soils from drainage or other areas;
(h) Abatement of hazardous building materials including asbestos, lead paint, mold and PCBs;
(i) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants;
(j) Containment, treatment, disposal, or incineration of hazardous materials;
(k) Provision of alternative water supply where necessary immediately to reduce exposure to contaminated household water;
(l) Site monitoring activities, including sampling and analysis, that are necessary during the cleanup process, including determination of effectiveness of a cleanup;
(m) Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements;
(n) Costs associated with removal activities including demolition and/or site preparation that are part of site cleanup;
(o) Environmental Insurance Premiums;
(p) Programmatic costs for the City of Portland and its QEP to manage and oversee the work being performed under this Program.

7. Ineligible Activities

(a) Pre-cleanup environmental response activities (i.e. site assessment, identification, and characterization); however, the Lead Agency may request EPA approval for limited site assessment on a case-by-case basis when necessary to ensure protection of the environment and public health through cleanup action.
(b) Monitoring and data collection necessary to apply for, or comply with environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;
(c) Construction, demolition and development activities that are not integral to the cleanup actions, and addressing public or private drinking water

supplies that have deteriorated through ordinary use; Development activities that are not removal actions (e.g. construction of a new facility or marketing of property).

(d) Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant;

(e) To pay for a penalty or fine;

(f) To pay a federal cost share requirement (for example, a cost-share required by another Federal subgrant) unless there is specific statutory authority;

(g) To pay for response costs at a Brownfields site for which the recipient of the subgrant or loan is potentially liable under CERCLA Section 107;

(h) To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable for cleanup;

(i) Unallowable costs (e.g. lobbying and fund raising) under applicable OMB Circulars.

8. **Financing Terms**

The following terms will guide the actions of the Portland Development Corporation (PDC) on behalf of the City of Portland for cleanup remediation loans and subgrants:

(a) Loan amount for eligible cleanup activities will be limited to the balance of the loan fund, but generally range from a minimum of $100,000 to a maximum of $300,000, and will be negotiated based on project redevelopment needs. Subgrants up to $200,000 are available for eligible cleanup activities**;**

(b) Maximum loan term is up to 10 years, though shorter terms are preferred; The actual term is negotiable on a case-by-case basis, and may include a longer amortization period with a balloon at the end of the designated term. Projects must justify the need for the maximum term.

(c) Interest rate will be determined by the PDC, though Brownfields loans are usually lent at a low interest rate;

(d) Brownfields site, business assets, outside collateral, and/or personal guaranties may be required as security;

(e) Environmental indemnification and/or lenders environmental insurance may be required;

(f) Evidence of a cost share of at least 20% of the loan or subgrant amount will be required of all Applicants/Borrowers; in special circumstances, as determined by the PDC, the cost share may be reduced or waived.

(g) Cost share monies and or eligible in-kind cleanup activities will be specifically utilized for eligible cleanup activities;

(h) As applicable, Borrower/Subgrantee will be required to utilize Davis Bacon Wage compliance requirements and provide backup verifying compliance;

(i) Loan/Subgrant drawdown requests with sufficient backup of eligible cleanup activities will be reimbursed at the PDC approved loan or subgrant proportion to cost share prior to final drawdown (e.g., 80% of eligible activities will be reimbursed by the City, the remaining 20% will be considered as the Applicants cost share and shall be paid by the Applicant).

9. Requests for Amendment to Loan Terms

A one percent fee may be applied for requests for amendments to loan terms, as well as costs for legal fees and recording fees associated with preparing any additional loan documents/modifications. The one percent fee will be based on the current loan balance at the time of the request. This one percent fee will be applied to those loan amendments which require the PDC Assistant Secretary to bring the request to the PDC Board of Directors based on substantive changes.

The City's Economic Development Director (PDC Assistant Secretary) has the discretion to determine whether requested loan amendments should be brought to the Board or done administratively. If done administratively, the PDC Assistant Secretary will confer with the Business Programs Manager and the Associate Corporation Counsel to determine the fee based on hourly rates of pay, as well as recording fees and legal hourly fees.

10. Underwriting Criteria

Review will include, but not be limited to, the following factors:

(a) Necessity of loan and/or subgrant to make the project economically feasible with the least amount of public resources.
(b) Analysis of credit reports and financial documents as well as budget feasibility analysis provided by the (City contracted underwriter to assess that applicant is a business risk.

11. Overall Review Criteria

The application for City of Portland Brownfields RLF funding will be evaluated using any or all of the following criteria:

(a) Cleanup activities are eligible
(b) Completeness of application
(c) Sufficient Brownfields funds available
(d) Economic/Financial benefit(s)
   1. Potential for redevelopment;
   2. Developer interest in site;
   3. Potential for job creation, workforce/affordable housing and/or sustainable economic development;
   4. Financial feasibility for cleanup/remediation of contamination
   5. Ability to leverage additional funding or other resources for cleanup/remediation.

(e) Environmental benefit(s)
    1. Potential reduction, elimination and/or control of threats/risks to human health and the environment;
    2. Creation, preservation and/or maintenance of greenspace.

(f) Community benefit(s)
    1. Likelihood for successful redevelopment, reuse and/or revitalization
    2. Availability of existing infrastructure, transportation corridors and municipal services to support redevelopment;
    3. Potential to enable sustainable growth, use of green building design initiatives and green/renewable energy resources;
    4. Interest and presence of a willing owner, buyer or other stakeholder to invest in the property and to provide access to the property for cleanup.

12. Application Review Process

Remediation/cleanup plans should be implemented efficiently and redevelopment projects completed on schedule and within identifiable cleanup budgets. The actions to be taken, including PDC review, are as follows:

(a) Applicants seeking funds for remediation/cleanup are required to be enrolled in the Maine (VRAP) or in the process of applying (that is, VRAP application and associated workplan and VRAP fees are eligible for RLF reimbursement) ;

(b) Applicant will complete the City's Brownfields RLF Application (Part 1) and provide it along with ESAs I and II and evidence of VRAP submittal for review by the EDD and QEP;

(c) Applicant or QEP will prepare EPA Site Eligibility form; EDD submits to EPA for approval;

(d) The City's QEP will review the environmental assessments and cleanup plan summary in addition to the Part 1 RLF Application. If the Applicant's site cleanup activities and preliminary project costs are eligible, the City's QEP will prepare a summary memo to the EDD ;

(e) Applicant submits Part II RLF application (financial backup). The underwriter will proceed with the review and analysis of the financial components of the loan and/or subgrant application and prepare a report for the PDC with recommended terms and conditions;

(f) The PDC will be presented with the loan report and, based on an analysis of the financial qualifications of the applicant and the merits of the project, the PDC will vote to approve or disapprove of the loan/subgrant request including terms and conditions ;

(g) The EDD will prepare a loan commitment letter for the Applicant, including terms and conditions.

(h) Once the commitment letter is fully executed:

1. The Borrower/Subgrant Recipient and their QEP will prepare a Draft Community Relations Plan (CRP) and Draft Analysis of Brownfields Cleanup Alternatives (ABCA). The Draft CRP and Draft ABCA will be submitted to the Maine DEP and EPA for approval and comment. Upon comment receipt and incorporation, the draft ABCA will be presented at a community meeting and will be subject to a 30-day public comment period;

2. The City attorney will draft loan documents which will include but not be limited to the loan agreement, promissory note, mortgage agreement and any other documentation as necessary. The loan documents and RLF Agreement with City shall include attachments including but not limited to a copy of the deed, a schedule for the cleanup activities, and costs for eligible activities associated with the cleanup.

(i) Based on the community meeting, a final draft of the ABCA is prepared by the Borrower/Subgrant Recipient, which incorporates comments received by Maine DEP, EPA and the public;
(j) Once the CRP and ABCA have been finalized, the Applicant/Borrower prepares a detailed cleanup budget and work schedule, a Health and Safety Plan, and a Quality Assurance Project Plan if needed (the QAPP will need to be reviewed by Maine DEP and EPA, prior to finalization); and
(k) Borrower/subgrant recipient acknowledges that Davis Bacon wage compliance is mandatory for receipt of Brownfields funds;
(l) The loan agreement, promissory note, mortgage agreement, and any other loan documents are signed. Any loan fees are paid;
(m) The Applicant shall prepare a project sign to be posted at the site prior to initiation of cleanup activities listing at a minimum the City, MEDEP, EPA and contact information for the Applicant's QEP. A draft mockup of the sign shall be submitted to the City for approval and provided to DEP and EPA.

City Checklist for Applicants

Applicant Information

(a) Applicant Overview: name, location, principal owners/stockholders, type of business and products or services, date established;
(b) Financial Overview: historical financial statements for the past three years, most recent quarter and copies of appropriate IRS Tax Returns;
(c) Management Overview: resumes of principals; and
(d) Credit References: financial institutions and other creditors.

Site Related Conditions

(a) Environmental assessments (e.g., Phase I and II in accordance with American Society for Testing and Materials (ASTM) Standards);
(b) Information regarding the status of the Applicant/ as a potentially responsible party at the site;
(c) Information on environmental compliance history;
(d) Information on whether or not the Applicant is currently or ever has been subject to any penalties resulting from environmental non-compliance at the site;
(e) Information on whether or not the Applicant is a generator or transporter of contamination at the site; and
(f) Information on whether or not the Applicant falls under a statutory exemption from liability; or that the EPA could use its enforcement discretion and not pursue the party as a responsible party under CERLA if the Applicant is currently the owner/operator of the site.

Remediation Cleanup Plan

Cleanup Plan Summary: cleanup plan including a technical description of work to be done, eligible cleanup activities and costs estimates for cleanup and project redevelopment. Cleanup Plan should also document other funding sources for cleanup and eligible activities to be utilized for cost share. The source of the 20% cost share of monies and or eligible in-kind services/materials must be provided.

Redevelopment Plan

(a) Financing Project: a description of the cleanup project and the reuse plan;
(b) Business Plan: a description of the business goals, strategies and action plans; and
(c) Financial Plan: pro-forma financial statements which demonstrates the economic viability of the project and identifies the sources of repayment for the loan.

Community Benefits

(a) Employment Impact: number of current and new jobs, wage levels and job training anticipated to be generated from the cleanup and redevelopment of the site.

(b) Investment Impact: Serves as an incentive for investment in Brownfields areas.
(c) Multi-Family Housing: Available for the creation of multi-family housing in Brownfields areas.
(d) Public open space and recreation acreage for cleanup located in the brownfields area.
(e) Any other community benefits.

PORTLAND BROWNFIELDS CLOSEOUT ~~CLEANUP REVOLVING LOAN~~ FUND PROGRAM

~~USING CLOSEOUT BROWNFIELDS FUNDS~~

Amended to be applicable City-wide and passed by the City Council on 7/16/07.

Amended by Corporator at 11-17-08 Meeting adding an amendment for Requests for Amendment to Loan Terms.

Amended by Corporator at 12-16-13 Meeting for Using Brownfields Closeout Fund~~s.~~

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The Portland Brownfields Closeout Fund Program (Fund #278) is designed to encourage the environmental assessment and remediation/ cleanup of eligible sites and activities associated with removing, mitigating, or preventing the release, or threat of a release, of a hazardous substance, pollutant, or contaminant from Brownfields sites.

The purpose of the Program is to facilitate the assessment, cleanup and reuse of Brownfield properties for commercial, public open space and recreation, and multi-family residential of at least 10 units in a project. At least 50% of the residential units must be priced for households earning 100% or less of area median income (AMI), as determined by the Planning Authority.

Program assistance is provided through direct funding of assessment activities including but not limited to Phase I and II environmental site assessments and through low interest loans and subgrants for remediation/cleanups. Subgrants are available to non-profits. Per the EPA Revolving Loan Fund Terms and Conditions, the City may not provide a subgrant to itself or another component of its own unit of government or organization.

Brownfields Definition: A brownfield is a property whose expansion, redevelopment, or reuse is complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.

All work under this Program is to be completed in accordance with the requirements outlined in the Closeout Agreements between the U.S. Environmental Protection Agency (EPA) and the City of Portland. Program funding was provided by the EPA and authorized by the Portland City Council.

Use of Closeout Funds Relative to Other Brownfields Funds

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Closeout Funds will be considered for RLF assessment projects and cleanup projects that are less than $100,000. Closeout funds do not trigger the significant level of public

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1. Program Goal~~s~~

~~(a) To finance the removal of hazardous substances from Brownfields sites within the City of Portland.~~

~~To support a sustainable revolving loan fund program to f~~Finance the assessment and remediation/cleanup of Brownfields properties, thereby making these properties available for redevelopment and contributing to the revitalization of the community, creation of jobs, improving the environment, and eliminating the public health risks associated with these sites. It is the intention of the City to continue to revolve (loan) these monies for remediation and cleanup however, Closeout Funds are flexible and can also be used for subgrants and assessment related activities.

~~(b)~~

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~~(c) To assist the assessment and remediation/cleanup and redevelopment of Brownfields sites within the City of Portland.~~

2. Program Objectives

(a) To create an incentive for private investment in Brownfields ~~areas~~ properties in the City of Portland;

(b) To assess and safely clean up Brownfields properties in order to facilitate their sustainable reuse;

(c) To foster development and implementation of financial and administrative approaches that can support self-sustaining efforts to facilitate Brownfields cleanup efforts; and

(d) To prevent the exacerbation, creation or spread of contamination on or between properties to protect the public health by minimizing exposure to hazardous materials in the environment.

~~3. Program Description~~

~~This program is designed to encourage the environmental assessment and remediation/ cleanup of eligible sites and activities associated with removing, mitigating, or preventing the release, or threat of a release, of a hazardous substance, pollutant, or contaminant from Brownfields sites. This will be achieved through funding Phase I and II environmental site assessments and remediation/cleanups on public properties owned by~~

~~the City of Portland, and Phase II environmental site assessments and remediation/cleanups through loans to for-profit entities and non-profit organizations for properties owned by such entities.~~

~~All work under this Program is to be completed in accordance with the requirements outlined in the Closeout Agreements between the EPA and the City.~~

~~4. Program Funding~~

~~The funding for the Portland Brownfields Cleanup Revolving Loan Fund is provided by the U.S. Department of Environmental Protection and authorized by the City Council.~~

~~5~~3. Eligible Project Applicants/~~Entities and~~

(a) The project applicant or owner is not considered potentially responsible for the contamination on the property ;
(b) The project applicant or owner is not currently suspended, debarred or otherwise ineligible to participate in Federal financial assistance programs;
(c) The project applicant or owner is not in environmental non-compliance with Federal or State agencies at the subject property;
(d) The project applicant can be the City of Portland, non- profit or private property owner or prospective commercial property owner, bank, developer, etc.;
(e) The project applicant or owner must owe no outstanding property taxes, fees, judgments, or liens to the City;

4. Property Threshold Requirements~~:~~

~~(a)~~ The property ~~to be assisted~~ is located within the City of Portland.

(a) The property must be eligible to apply to the Maine Voluntary Response Action Program (VRAP) for site cleanup;
(b) For cleanup, the property must have had adequate and recent (within the last 2-3 years) environmental assessments completed in order to understand site conditions and necessary remediation (e.g., Phase I and/or Phase II Environmental Site Assessments and Cleanup Planning, if applicable);
(c) The property meets EPA eligibility requirements;
~~(b) The project applicant or owner must owe no outstanding property taxes, fees, judgments, or liens to the City;~~
~~(c) The project applicant or owner is not considered potentially responsible for the contamination on the property ;~~
~~(d) The project applicant or owner is not currently suspended, debarred or otherwise ineligible to participate in Federal financial assistance programs;~~
(d) ~~The project applicant or owner is not in environmental non-compliance with Federal or State agencies at the subject property.~~
~~(e)~~

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~~(f) The project applicant can be the City of Portland, not-for-profit or private property owner or prospective commercial property owner, bank, developer, etc.~~

~~(g)~~ (h) ~~Funds can be used for Phase I and Phase II environmental site assessments and remediation/cleanups on public properties owned by the City of Portland, and for Phase II environmental site assessments and remediation/cleanups on non-profit and privately-owned properties.~~

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5. Ownership Eligibility for Cleanup Subgrants and Loans

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(a) Publicly or privately owned by current or prospective property owners, banks, developers, etc,;
(b) Privately-owned by current or prospective non-profit owners to seek loan and/or subgrant;
(c) Applicant must own or be in the process of obtaining ownership at the time of application
(d) Applicant cannot be potentially liable under CERCA Sec. 107 for contamination on the property.

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5~~6~~. Eligible Activities

Assessment activities and remediation/cleanup activities associated with removing, mitigating, or preventing the release or threat of a release of a hazardous substance, pollutant or contaminant including:

(a) Preparation of a Department of Environmental Protection (MDEP) VRAP application and associated application fee;
~~(a)~~(b) Installation of fences, warning signs or other security or site control precautions;
~~(b)~~(c) Drainage controls associated with assessment and remediation/cleanup activities;
~~(c)~~(d) Stabilization of berms, dikes or impoundments or drainage or closing lagoons;
~~(d)~~(e) Capping of contaminated soils;
~~(e)~~(f) Using chemicals and other materials to retard the spread of the release or mitigate its effects;
~~(f)~~(g) Excavation, consolidation, or removal of contaminated soils from the site;
~~(g)~~(h) Abatement of hazardous building materials including asbestos, lead paint, mold and PCBs;
~~(h)~~(i) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants;
~~(i)~~(j) Consolidation, containment, treatment, recycling, disposal, and/or incineration of hazardous materials, pollutants or contaminants;
~~(j)~~(k) Provision of alternative water supply where necessary immediately to reduce exposure to contaminated household water;

~~(k)~~(l) Site monitoring activities, including sampling and analysis, that are necessary during the cleanup process, including determination of effectiveness of a cleanup;

(m)Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements;

~~(l)~~(n) Costs associated with removal activities including demolition and/or site preparation that are part of site cleanup;

~~(m)~~(o) Phase I Environmental site assessments performed in accordance with EPA All Appropriate Inquiries Final Rule or most current version of ASTM E1527;

~~(n)~~(p) Phase II Environmental site assessments and remediation planning activities;

~~(o)~~(q) Programmatic costs for the City of Portland and its Qualified Environmental Professional (QEP) to manage and oversee the work being performed under this Program.

6~~7~~. Ineligible Activities

Brownfields inventory activities and ~~D~~development activities that are not necessary to implement assessment or remediation activities (e.g., construction of a new facility or marketing of a property).

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7~~8~~. Financing Terms

The following terms will guide the actions of the Portland Development Corporation (PDC) on behalf of the City of Portland for cleanup/remediation loans and subgrants:

(a) Loan and/or subgrant amount will generally be limited to ~~the balance of the loan fund but generally~~ less than ~~not exceed~~ $1~~2~~00,000 but may be increased with approval of the PDC;

(b) Maximum loan term will generally be 5 years but will be determined by the PDC;

(c) Interest rate will be determined by the PD~~-~~C;

(d) Brownfields site itself, business assets or other real property, outside collateral, and/or personal guaranties may be required as security;

~~(e) Origination fee will generally be one percent (1%) but will be determined by the PDC~~

9~~8~~. Requests for Amendment to Loan Terms:

A one (1) percent fee ~~will~~ may be applied to requests for amendments to loan terms, for consulting, legal and recording fees associated with preparing any additional loan documents/modifications. The one (1) percent fee will be based on the current loan balance at the time of the request.

The City's Economic Development Director (PDC Assistant Secretary) ~~-~~has the discretion to determine whether requested loan amendments should be brought to the PDC or addressed administratively, with follow-up communication to the Board.

10. Underwriting Criteria for Cleanup Loans and Subgrants

Project review will include, but not be limited to the following factors:

- (a) Necessity of loan and/or subgrant to make the project economically feasible with the least amount of public resources.
- (b) Analysis of credit reports and financial documents as well as budget feasibility analysis provided by the City contracted underwriter to assess that applicant is not a business risk.

~~Project review will include, but not be limited to the necessity of Brownfields funds from this Program to make the project economically feasible and at the same time have a high potential for economic success.~~

~~11~~9. Overall Review Criteria

The application for City of Portland Brownfields funding will be evaluated using some or all of the following criteria:

- a) Cleanup activities are eligible
- b) Completeness of application
- c) Sufficient Brownfields funds available
- d) Economic/Financial benefits
    1. Potential for redevelopment;
    2. Developer interest in site;
    3. Potential for job creation, workforce/affordable housing and/or sustainable economic development;
    4. Financial feasibility for cleanup/remediation of contamination
    5. Ability to leverage additional funding or other resources for cleanup/remediation.
- e) Environmental benefits
    1. Potential reduction, elimination and/or control of threats/risks to human health and the environment;
    2. Creation, preservation and/or maintenance of greenspace.
- f) Community benefits
    1. Likelihood for successful redevelopment, reuse and/or revitalization
    2. Availability of existing infrastructure, transportation corridors and municipal services to support redevelopment;
    3. Potential to enable sustainable growth, use of green building design initiatives and green/renewable energy resources;

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4. Interest and presence of a willing owner, buyer or other stakeholder to invest in the property and to provide access to the property for investigation.

12. Application Review ~~Criteria~~ Process

~~The City of Portland's Economic Development Department (EDD) will review project proposals to determine eligibility and work with applicant(s) to determine the viability of the project and the least amount of public resources necessary to make the project(s) feasible.~~

An eligibility form will be submitted to EPA for determination of project eligibility whether for assessment or remediation/cleanup. The site eligibility form will be prepared by the Applicant's QEP.

A) Assessments and/or Cleanup Planning

Closeout Funds will only be used to fund assessment activities if/when all funds from the Assessment Program have been depleted. At that point, any assessment funding requests will be submitted to the PDC as it will retain its full authority over the Closeout Funds.

Requests will be submitted via an Assessment Application to the EDD. Funding requests for assessment activities, including Phase I and Phase II Environmental Site Assessments, will be reviewed and approved by the PDC Board.

B) Loans/Subgrants

Remediation/cleanup plans should be- implemented efficiently, cost effectively, and redevelopment projects completed on schedule ~~to maximize the community benefit goals of the projects~~. The actions to be taken, including review by the PDC, are as ~~include the~~ followsing:

(a) Applicants seeking funds for remediation/cleanup are required to be enrolled ~~submit the site to~~ in the Maine Voluntary Response Action Program (VRAP);

(b) Applicant will complete the City's ~~The~~ Brownfields RLF ~~funding~~ Part 1 Aapplication and ~~will be submit~~ provide ~~ted~~ it to the ~~City of Portland~~ EDD, along with Environmental Site Assessments I and II, and evidence of VRAP submittal to the Maine ~~Department of Environmental Protection (~~MDEP~~)~~;

~~(b)~~(c) Applicant or QEP will prepare EPA Site Eligibility form; EDD submits to EPA for final eligibility approval;

~~(c)~~(d) ~~The EDD, with its~~The City's QEP, will review the ESA's and cleanup plan summary in addition to the Part 1 RLF application. If ~~determine if~~ the Applicant's site cleanup activities and preliminary project costs are eligible, the City's QEP will prepare a summary memo to the EDD, ~~site and preliminary project costs are eligible for Brownfields funding;~~

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~~(d)~~(e) ~~If Applicant, site and project costs are determined to be eligible,~~ Applicant submits Part II application (financial backup). The ~~the EDD will have its~~ underwriter prepares an analysis of the financial components of the application (whether for loan or subgrant) along with recommended terms and conditions for the PDC's review and ~~consideration~~ approval;

~~(e) Project will be publicly noticed and notice will be provided to the appropriate neighborhood organization;~~

(f) When so advised by City Corporation Counsel, the PDC chair will accept public comment on the project at the PDC meeting prior to its vote on whether to approve the funding request;

(g) Based on a favorable analysis of the financial qualifications of the applicant, and the PDC's approval, a commitment letter or will be prepared and provided to the applicant;

(h) Based on the VRAP, the Applicant should prepare a detailed cleanup budget and work schedule ~~final budget of cleanup activities~~, ~~work schedule~~, a Health and Safety Plan and a Site Specific Quality Assurance Project Plan (SSQAPP), if needed. The SSQAPP must be reviewed by Maine DEP and EPA, prior to finalization; ~~and a VRAP Work Pla n;~~

(i) The loan documents are prepared (e.g., loan agreement, promissory note, mortgage agreement).

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City Checklist for Applicants

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The following is a checklist of information needed from Applicants:

Applicant Information

a. Applicant Overview: name, location, principal owners/stockholders, type of business and products or services, date established;
b. Financial Overview: historical financial statements for the past three years, most recent quarter and copies of appropriate IRS Tax Returns;
c. Management Overview: resumes of principals; and
d. Credit References: financial institutions and other creditors.

Site Related Conditions

a. Environmental assessments (Phase I and II) in accordance with American Society for Testing and Materials (ASTM) Standards;
b. Status of the borrower as a potentially responsible party at the site;
c. Environmental compliance history;
d. Whether the Applicant is currently or ever has been subject to any penalties resulting from environmental non-compliance at the site;
e. Whether the Applicant is a generator or transporter of contamination at the site; and
f. Whether the Applicant falls under a statutory exemption from liability; or that the EPA could use its enforcement discretion and not pursue the party as a responsible party under CERCLA if the Applicant is currently the

owner/operator of the site.

Remediation/Cleanup Plan

Remediation/Cleanup Plan Summary: Remediation/Cleanup plan including a technical description of work to be done and costs estimates.

Redevelopment Plan

a. Financing Project: a description of the cleanup project and the reuse plan;
b. Business Plan: a description of the business goals, strategies and action plans; and
c. Financial Plan: pro-forma financial statements which demonstrates the economic viability of the project and identifies the sources of repayment for the loan.

Community Benefits

a. Employment Impact: number of current and new jobs, wage levels and job training anticipated to be generated from the cleanup and redevelopment of the site;
b. Investment Impact: Serves as an incentive for investment in the City;
c. Multi-Family Housing: ~~Housing Units~~: Available for the creation of multi-family housing ~~housing units located in~~ on brownfields properties; the City;
~~c.~~d. Public open space and recreation acreage for cleanup on brownfields property;
~~d.~~e. Any other community benefits.

PORTLAND BROWNFIELDS CLOSEOUT FUND PROGRAM

Amended to be applicable City-wide and passed by the City Council on 7/16/07.

Amended by Corporator at 11-17-08 Meeting adding an amendment for Requests for Amendment to Loan Terms.

Amended by Corporator at 12-16-13 Meeting for Using Brownfields Closeout Fund

The Portland Brownfields Closeout Fund Program (Fund #278) is designed to encourage the environmental assessment and remediation/ cleanup of eligible sites and activities associated with removing, mitigating, or preventing the release, or threat of a release, of a hazardous substance, pollutant, or contaminant from Brownfields sites.

The purpose of the Program is to facilitate the assessment, cleanup and reuse of Brownfield properties for commercial, public open space and recreation, and multi-family residential of at least 10 units in a project. At least 50% of the residential units must be priced for households earning 100% or less of area median income (AMI), as determined by the Planning Authority.

Program assistance is provided through direct funding of assessment activities including but not limited to Phase I and II environmental site assessments and through low interest loans and subgrants for remediation/cleanups. Subgrants are available to non-profits. Per the EPA Revolving Loan Fund Terms and Conditions, the City may not provide a subgrant to itself or another component of its own unit of government or organization.

Brownfields Definition: A brownfield is a property whose expansion, redevelopment, or reuse is complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.

All work under this Program is to be completed in accordance with the requirements outlined in the Closeout Agreements between the U.S. Environmental Protection Agency (EPA) and the City of Portland. Program funding was provided by the EPA and authorized by the Portland City Council.

Use of Closeout Funds Relative to Other Brownfields Funds

Closeout Funds will be considered for RLF assessment projects and cleanup projects that are less than $100,000. Closeout funds do not trigger the significant level of public involvement, review and reporting required by the active (current) RLF Brownfields Fund Program and will, thereby, facilitate faster project completion at lower consultant costs. As an example, use of Closeout Funds for a cleanup loan or subgrant do not require a Community Relations Plan (CRP), an Analysis of Brownfields Cleanup Alternatives (ABCA) or utilization of Davis Bacon wages and associated regulations because of the size of the loan and/or subgrant (i.e., less than $100,000).

1. Program Goal

Finance the assessment and remediation/cleanup of Brownfields properties, thereby making these properties available for redevelopment and contributing to the revitalization of the community, creation of jobs, improving the environment, and eliminating the public health risks associated with these sites. It is the intention of the City to continue to revolve (loan) these monies for remediation and cleanup however, Closeout Funds are flexible and can also be used for subgrants and assessment related activities.

2. Program Objectives

(a) To create an incentive for private investment in Brownfields properties in the City of Portland;
(b) To assess and safely clean up Brownfields properties in order to facilitate their sustainable reuse;
(c) To foster development and implementation of financial and administrative approaches that can support self-sustaining efforts to facilitate Brownfields cleanup efforts; and
(d) To prevent the exacerbation, creation or spread of contamination on or between properties to protect the public health by minimizing exposure to hazardous materials in the environment.

3. Eligible Project Applicants

(a) The project applicant or owner is not considered potentially responsible for the contamination on the property ;
(b) The project applicant or owner is not currently suspended, debarred or otherwise ineligible to participate in Federal financial assistance programs;
(c) The project applicant or owner is not in environmental non-compliance with Federal or State agencies at the subject property;
(d) The project applicant can be the City of Portland, non- profit or private property owner or prospective commercial property owner, bank, developer, etc.;
(e) The project applicant or owner must owe no outstanding property taxes, fees, judgments, or liens to the City;

4. Property Threshold Requirements

(a) The property is located within the City of Portland;

(b) The property must be eligible to apply to the Maine Voluntary Response Action Program (VRAP) for site cleanup;
(c) For cleanup, the property must have had adequate and recent (within the last 2-3 years) environmental assessments completed in order to understand site conditions and necessary remediation (e.g., Phase I and/or Phase II Environmental Site Assessments and Cleanup Planning, if applicable);
(d) The property meets EPA eligibility requirements;

5. Ownership Eligibility for Cleanup Subgrants and Loans

(a) Publicly or privately owned by current or prospective property owners, banks, developers, etc,;
(b) Privately owned by current or prospective non-profit owners to seek loan and/or subgrant;
(c) Applicant must own or be in the process of obtaining ownership at the time of application
(d) Applicant cannot be potentially liable under CERCA Sec. 107 for contamination on the property.

6. Eligible Activities

Assessment activities and remediation/cleanup activities associated with removing, mitigating, or preventing the release or threat of a release of a hazardous substance, pollutant or contaminant including:

(a) Preparation of a Department of Environmental Protection (MDEP) VRAP application and associated application fee;
(b) Installation of fences, warning signs or other security or site control precautions;
(c) Drainage controls associated with assessment and remediation/cleanup activities;
(d) Stabilization of berms, dikes or impoundments or drainage or closing lagoons;
(e) Capping of contaminated soils;
(f) Using chemicals and other materials to retard the spread of the release or mitigate its effects;
(g) Excavation, consolidation, or removal of contaminated soils from the site;
(h) Abatement of hazardous building materials including asbestos, lead paint, mold and PCBs;
(i) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants;
(j) Consolidation, containment, treatment, recycling, disposal, and/or incineration of hazardous materials, pollutants or contaminants;
(k) Provision of alternative water supply where necessary immediately to reduce exposure to contaminated household water;

(l) Site monitoring activities, including sampling and analysis, that are necessary during the cleanup process, including determination of effectiveness of a cleanup;
(m) Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements;
(n) Costs associated with removal activities including demolition and/or site preparation that are part of site cleanup;
(o) Phase I Environmental site assessments performed in accordance with EPA All Appropriate Inquiries Final Rule or most current version of ASTM E1527;
(p) Phase II Environmental site assessments and remediation planning activities;
(q) Programmatic costs for the City of Portland and its Qualified Environmental Professional (QEP) to manage and oversee the work being performed under this Program.

7. Ineligible Activities

Brownfields inventory activities and development activities that are not necessary to implement assessment or remediation activities (e.g., construction of a new facility or marketing of a property).

8. Financing Terms

The following terms will guide the actions of the Portland Development Corporation (PDC) on behalf of the City of Portland for cleanup/remediation loans and subgrants:

(a) Loan and/or subgrant amount will generally be limited to less than $100,000 but may be increased with approval of the PDC;
(b) Maximum loan term will generally be 5 years but will be determined by the PDC;
(c) Interest rate will be determined by the PDC;
(d) Brownfields site itself, business assets or other real property, outside collateral, and/or personal guaranties may be required as security;

9. Requests for Amendment to Loan Terms:

A one (1) percent fee may be applied to requests for amendments to loan terms, for consulting, legal and recording fees associated with preparing any additional loan documents/modifications. The one (1) percent fee will be based on the current loan balance at the time of the request.

The City's Economic Development Director (PDC Assistant Secretary)has the discretion to determine whether requested loan amendments should be brought to the PDC or addressed administratively, with follow-up communication to the Board.

10. Underwriting Criteria for Cleanup Loans and Subgrants

Project review will include, but not be limited to the following factors:

(a) Necessity of loan and/or subgrant to make the project economically feasible with the least amount of public resources.
(b) Analysis of credit reports and financial documents as well as budget feasibility analysis provided by the City contracted underwriter to assess that applicant is not a business risk.

11. Overall Review Criteria

The application for City of Portland Brownfields funding will be evaluated using some or all of the following criteria:

a) Cleanup activities are eligible
b) Completeness of application
c) Sufficient Brownfields funds available
d) Economic/Financial benefits
    1. Potential for redevelopment;
    2. Developer interest in site;
    3. Potential for job creation, workforce/affordable housing and/or sustainable economic development;
    4. Financial feasibility for cleanup/remediation of contamination
    5. Ability to leverage additional funding or other resources for cleanup/remediation.
e) Environmental benefits
    1. Potential reduction, elimination and/or control of threats/risks to human health and the environment;
    2. Creation, preservation and/or maintenance of greenspace.
f) Community benefits
    1. Likelihood for successful redevelopment, reuse and/or revitalization
    2. Availability of existing infrastructure, transportation corridors and municipal services to support redevelopment;
    3. Potential to enable sustainable growth, use of green building design initiatives and green/renewable energy resources;
    4. Interest and presence of a willing owner, buyer or other stakeholder to invest in the property and to provide access to the property for investigation.

12. Application Review Process

An eligibility form will be submitted to EPA for determination of project eligibility whether for assessment or remediation/cleanup. The site eligibility form will be prepared by the Applicant's QEP.

A) Assessments and/or Cleanup Planning

Closeout Funds will only be used to fund assessment activities if/when all funds from the Assessment Program have been depleted. At that point, any assessment funding requests will be submitted to the PDC as it will retain its full authority over the Closeout Funds.

Requests will be submitted via an Assessment Application to the EDD. Funding requests for assessment activities, including Phase I and Phase II Environmental Site Assessments, will be reviewed and approved by the PDC Board.

B) Loans/Subgrants

Remediation/cleanup plans should be implemented efficiently, cost effectively, and redevelopment projects completed on schedule. The actions to be taken, including review by the PDC, are as follows:

(a) Applicants seeking funds for remediation/cleanup are required to be enrolled in the Maine Voluntary Response Action Program (VRAP);
(b) Applicant will complete the City's Brownfields RLF Part 1 Application and provide it to the EDD, along with Environmental Site Assessments I and II, and evidence of VRAP submittal to the Maine MDEP;
(c) Applicant or QEP will prepare EPA Site Eligibility form; EDD submits to EPA for final eligibility approval;
(d) The City's QEP, will review the ESA's and cleanup plan summary in addition to the Part 1 RLF application. If the Applicant's site cleanup activities and preliminary project costs are eligible, the City's QEP will prepare a summary memo to the EDD,
(e) Applicant submits Part II application (financial backup). The underwriter prepares an analysis of the financial components of the application (whether for loan or subgrant) along with recommended terms and conditions for the PDC's review and approval;
(f) When so advised by City Corporation Counsel, the PDC chair will accept public comment on the project at the PDC meeting prior to its vote on whether to approve the funding request;
(g) Based on a favorable analysis of the financial qualifications of the applicant, and the PDC's approval, a commitment letter or will be prepared and provided to the applicant;
(h) Based on the VRAP, the Applicant should prepare a detailed cleanup budget and work schedule , a Health and Safety Plan and a Site Specific Quality Assurance Project Plan (SSQAPP), if needed. The SSQAPP must be reviewed by Maine DEP and EPA, prior to finalization;
(i) The loan documents are prepared (e.g., loan agreement, promissory note, mortgage agreement).

City Checklist for Applicants

The following is a checklist of information needed from Applicants:

Applicant Information

a. Applicant Overview: name, location, principal owners/stockholders, type of business and products or services, date established;
b. Financial Overview: historical financial statements for the past three years, most recent quarter and copies of appropriate IRS Tax Returns;
c. Management Overview: resumes of principals; and
d. Credit References: financial institutions and other creditors.

Site Related Conditions

a. Environmental assessments (Phase I and II) in accordance with American Society for Testing and Materials (ASTM) Standards;
b. Status of the borrower as a potentially responsible party at the site;
c. Environmental compliance history;
d. Whether the Applicant is currently or ever has been subject to any penalties resulting from environmental non-compliance at the site;
e. Whether the Applicant is a generator or transporter of contamination at the site; and
f. Whether the Applicant falls under a statutory exemption from liability; or that the EPA could use its enforcement discretion and not pursue the party as a responsible party under CERCLA if the Applicant is currently the owner/operator of the site.

Remediation/Cleanup Plan

Remediation/Cleanup Plan Summary: Remediation/Cleanup plan including a technical description of work to be done and costs estimates.

Redevelopment Plan

a. Financing Project: a description of the cleanup project and the reuse plan;
b. Business Plan: a description of the business goals, strategies and action plans; and
c. Financial Plan: pro-forma financial statements which demonstrates the economic viability of the project and identifies the sources of repayment for the loan.

Community Benefits

a. Employment Impact: number of current and new jobs, wage levels and job training anticipated to be generated from the cleanup and redevelopment of the site;
b. Investment Impact: Serves as an incentive for investment in the City;
c. Multi-Family Housing: : Available for the creation of multi-family housing on brownfields properties; the City;
d. Public open space and recreation acreage for cleanup on brownfields

property;

e. Any other community benefits.

3.

Portland Brownfields Assessment Program Guidelines

The Portland Brownfields Assessment Program (Fund #281) is designed to encourage the assessment of eligible Brownfields sites and activities associated with evaluating the potential for contamination on a property with either documented contamination or perceived contaminant conditions. Types of redevelopment projects that may seek assessment funds include commercial, public open space and recreation, and multi-family residential of no less than 10 units with at least 50% of the residential units priced for households earning 100% or less of area median income (AMI), as determined by the Planning Authority. Assistance is provided through covering the cost of assessment activities including but not limited to Phase I and Phase II Environmental Site Assessments and Cleanup Planning for properties that are deemed eligible by the U.S. Environmental Protection Agency (EPA).

Brownfields Definition: A Brownfield is a property whose expansion, redevelopment, or reuse is complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.

Requests will be submitted via an Assessment Application to the Economic Development Department (EDD). .

1. Program Goal

Finance the assessment of Brownfields properties, thereby determining whether or not they are contaminated and will need remediation/cleanup. With this information identified, properties can be made available for redevelopment and contribute to the revitalization of the community, creation of jobs, improvement of the environment, and elimination of public health risks associated with those sites that are found to be Brownfields.

2. Program Objectives

(a) To create an incentive for private investment in Brownfields properties in the City of Portland;
(b) To assess properties to determine the level of contamination, if any, in order to facilitate their sustainable reuse;
(c) To foster development and implementation of financial and administrative approaches that can support self-sustaining efforts to facilitate eventual Brownfields cleanup efforts; and
(d) To prevent the exacerbation, creation or spread of contamination on or between properties to protect the public health by minimizing exposure to hazardous materials in the environment.

3. Eligible Project Applicants

(a) The project applicant or owner must owe no outstanding property taxes, fees, judgments, or liens to the City;
(b) The project applicant or owner is not considered potentially responsible for the contamination on the property ;
(c) The project applicant or owner is not currently suspended, debarred or otherwise ineligible to participate in Federal financial assistance programs;
(d) The project applicant or owner is not in environmental non-compliance with Federal or State agencies at the subject property;
(e) The project applicant can be the City of Portland, non- profit or private property owner or prospective commercial property owner, bank, developer, etc.;

4. Property Threshold Requirements

(a) The property to be assessed is located within the City of Portland;
(b) The property meets EPA eligibility requirements;
(c) Funds can be used for assessment activities including but not limited to Phase I and Phase II environmental site assessments and Cleanup Planning.

5. Eligible Activities

(a) Phase I Environmental Site Assessments performed in accordance with EPA All Appropriate Inquiries Final Rule and most current version of ASTM E1527;
(b) Phase II Environmental Site Assessments and remediation/cleanup planning activities;
(c) VRAP applications and fees;
(d) Programmatic costs for the City of Portland and its Qualified Environmental Professional (QEP) to manage and oversee the work being performed under this Program.

6. Ineligible Activities

Brownfields inventory activities (with the exception of a City-initiated Brownfields inventory), remediation and or cleanup activities and development activities (e.g. construction of a new facility or marketing of a property).

7. Review Criteria

The project/property for which an applicant is applying for City of Portland Brownfields Assessment Program funds may be evaluated using any or all of the following criteria:

A) Economic/Financial Benefit
1. Potential for redevelopment;
2. Developer interest in the site;
3. Potential for job creation, workforce/affordable housing, and/or sustainable economic development;

4. Financial feasibility for additional assessment and/or future cleanup/remediation of contamination;
5. Ability to leverage additional funding or other resources for cleanup and remediation after the assessment activities have been completed.

B) Environmental Concerns/Benefits

1. Understanding of the potential reduction, elimination and/or control of threats/risks to human health and the environment based on the assessment activities conducted;
2. Anticipated creation, preservation and/or maintenance of open space once assessment activities have been completed;

C) Feasibility/Sustainability of Project

1. Likelihood for successful redevelopment, reuse and/or revitalization;
2. Availability of existing infrastructure, transportation corridors and municipal services to support redevelopment;
3. Potential to enable sustainable growth, use of green building design initiatives and green/renewable energy resources;
4. Interest and presence of a willing owner, buyer, or other stakeholder to invest in the property and to provide access to the property for investigation.

8. Application Review Process

Requests will be submitted via an Assessment Application to the Economic Development Department (EDD). All requests will be reviewed and approved by EDD staff and the City's Qualified Environmental Professional (QEP). At every PDC meeting, the Board will be provided with updates on the status of the Assessment Program Funds and the projects that are being assisted by them.

Matrix of Brownfields Programs						
Program	**Assessment Program #281 - $200,000**	**RLF Cleanup Program #280 - $500,000**		**Closeout Fund Program #278 - $372,162**		
Funding Type	Direct Payment*	Loan	Grant	Direct Payment*	Loan	Grant
Applicant	City, FP, NP	City, FP, NP	NP	City, FP, NP	City, FP, NP	NP
Purpose	Phase I & II ESAs	Cleanup	Cleanup	Phase I & II ESAs	Cleanup	Cleanup
Maximum Amt.	See ranges below**	$100,000 - $300,000	$200,000	See ranges below**	< $100,000	< $100,000
Aproval Entity	Staff and QEP	PDC	PDC	PDC	PDC	PDC

ESAs = Environmental Site Assessments, etc.

FP = For Profits

NP = Non Profits

QEP = Qualified Environmental Professional (geologist or environmental engineer)

RLF = Revolving Loan Fund

*Direct Payment = Direct payment to service provider conducting Phase I or Phase II ESA

**Ranges for Phase I & II ESAs = Generally, a Phase I ESA ranges from 2,500 - $4,000; Generally, a Phase II ESA ranges from $20,000 - $35,000

TO: Councilor Duson, Chair
Members of the Housing Committee

FROM: Mary Davis, Division Director
Victoria Volent, Housing Program Manager
Housing and Community Development Division

DATE: February 8, 2019

SUBJECT: Housing Committee Accomplishments 2016-2018

Introduction

In 2016, the Housing Committee addressed the issue of housing availability and affordability through multiple feedback opportunities aimed at creating a working agenda of ideas. Many of the ideas on the "bucket list" have been explored in detail and are now included in the city code while others were not adopted or have not been reviewed. A few of the major accomplishment highlights are:

- Short Term Rental Registration Ordinance – recommended by the 2016/2017 Housing Committee, adopted by the City Council March 2017 (Order 179-16/17). Review of year one implementation led to amendments recommended by the 2018 Housing Committee, adopted by the City Council November 2018 (Order 99-18/19).

- Tenant Housing Rights Ordinance recommended by the 2016 Housing Committee, adopted by City Council November 2016 (Order 76-16/17):
    - Increase notification for residential rent increases from 45 days to 75 days for all tenants-at-will and prior to the end of an existing lease.
    - Landlords and tenants must sign a document to be drafted by the City explaining tenancy-at-will.
    - Creation of a leaflet outlining tenant/landlord rights and responsibilities that must be distributed to all tenants.
    - Establish a tenant/landlord commission comprised of seven (7) members and co-chaired by one landlord and one tenant representative. (as amended August 2018 Order 32-18/19)
    - Incorporation of Maine Human Rights Act prohibition against income discrimination into City ordinance.

- Investment in affordable housing: since 2016 the committee has supported investment that created or will create 420 units of rental housing and 8 units of homeownership housing.
    - HOME Investment $2,207,397
    - Housing Trust Fund Investment $1,400,000
    - Affordable Housing TIF $11,173,973

- City-Owned Property Map – storyboard map that documents all city-owned property; map data is under review; map should be available on the City's website in the near future.

- Directed staff to create Housing Report
  - Robust biennial situation report on housing policy, availability and affordability.
  - Interim report on current year accomplishments

- Division 30 Amendments
  - Incentives for low income and workforce housing along some of the growth corridors identified in the Comprehensive Plan including density bonuses, building height increases, and setback reductions in the B-1, B-1b, B-2, B-2b, B-2c, B-3, B-3b, B-3c, B-5, R-7 and R-P zones.
  - Incentives for Planned Residential Unit Developments (PRUDs) that provide 50% of more workforce or low-income housing (allowed in R-3, R-5 and R-5a zones) including density bonuses and design flexibility.

- Hotel Inclusionary Zoning (Order 134-18/19)
  - Any hotel development project of 10 or more guest rooms must provide one unit of low-income housing for rent for every 28 rooms, or pay a fee-in-lieu per room which is deposited into the Housing Trust Fund.

Background

In an effort to identify and address housing related issues in Portland, the Housing Committee, in early 2016, solicited feedback from national housing policy leaders, concerned residents, real estate lawyers, tenant advocates, landlords, state officials, affordable housing developers, social service providers, senior housing advocates, advocates for the homeless, neighborhood associations, and general members of the public.

The result of this public process was over 135 policy recommendations for the consideration of the Committee. In an effort to help Committee members filter through this extensive list, the Committee held a special meeting on May 25, 2016 to solicit comments from the public as to which items on the list may provide the most value to the City. During the special meeting, attendees were asked to engage in an organized discussion about what parts of the more than 135 recommendations merit priority attention for a more detailed analysis by the City. There were smaller discussion groups with facilitators to support the dialogue as well as a concluding session with the Committee and all attending. Attached to this memo is the memo to the Housing Committee from Dr. Jack Kartez, the lead facilitator of the forum, providing an overview of the process and outcomes.

Working in concert with the efforts by the Committee, the City Manager formed a Housing Working Group in January of 2016 consisting of staff from the Planning Department, Health & Human Services, Housing & Community Development, Economic Development, and the City

Manager's Office. The Working Group was tasked with identifying a condensed list of potential housing policies that may help alleviate pressures within the local housing market from an interdepartmental perspective.

During the June 8, 2016 Housing Committee meeting, the Committee undertook a facilitated discussion, led by Dr. Kartez, to identify a working list of potential priority actions items from the "bucket lists" of ideas gathered from May 25, 2016 community forum, and the staff Housing Work Group. Attached to this memo is the memo, dated June 17, 2016, to the Housing Committee from Jeff Levine containing the Committee's discussion notes from the June 8th meeting.

The Committee, having made good progress through the initial priority list, began consideration of a new set of initiatives. During the September 26, 2017 meeting of the Housing Committee, staff presented eleven housing policy ideas from the 2016 "Bucket List". Supplementing these ideas were additional ideas from the Committee and Mayor Strimling. The public was asked to assist the Committee by identifying four or five priority topics for review during 2018. Attached to this memo is the memo from February 12, 2018 to the Housing Committee containing the proposed housing policy initiatives for the 2018 work plan.

The Committee again advanced through several items from the "Bucket List" as well as addressed many additional proposals. To bring the Committee up to date, attached is a copy of the original "Bucket List" with the public forum, staff working group and 2016 Housing Committee priority items indicated, and staff comments and status updates where applicable.

Attachments:
Housing Policy List ("Bucket List")
5-25-2016 Forum Facilitator's Report Memo
7-13-2016 Corporation Counsel Memo with Attachments
7-17-2016 Housing Policy Workplan Committee Memo
2-12-2018 Proposed Housing Policy Initiatives

Housing Policy List

A) Tenant/Landlord Regulations

(i) Amendments to Rental Regulations

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
1	A	Rent Control - limiting rent increases to a certain set amount in a certain period of time	34		Yes	Ballot measure rejected by voters (11/7/17)
2	A	Moratorium on No-Cause Evictions	34		Yes	State law covers evictions, including no-cause evictions in certain circumstances. Any City action in this area would have to be carefully examined as to whether it was preempted by state law. **2016 Housing Committee deliberated on this item and ultimately decided not to include it in the Housing Insecurity Package forwarded to the City Council**
3	A	Increase notification minimums from landlords to tenants for rent increases or non-renewal of any lease	26	X	Yes	§ 6-223 of the City Code requires a 75-day notification of any rent increase. **(Recommended by Housing Committee and approved by City Council Order 76-16/17, 11-21-2016)**.
4	A	Ordinance prohibiting landlords from refusing Section 8 or other vouchers	27	X	Yes	There is case law in Maine specifically allowing a landlord to refuse Section 8 vouchers. Any modification to that would require a new ordinance by the City, which would have to be carefully examined as to whether it was preempted by state law. **2016 Housing Committee deliberated on this item and ultimately decided not to include it in the Housing Insecurity Package forwarded to the City Council. (On Housing Committee Work Plan for discussion on 4/10/2019)**
5	A	Clarify tenant rights in foreclosed buildings	17			Tenants rights in foreclosure settings are governed by state law and also by any individual lease terms. If the City wanted to modify these rights by City ordinance, any proposal would have to be carefully examined as to whether it was preempted by state law.
6	A	Ordinance providing long-term residents of rooming houses protection under Maine's eviction statute	15			§ 6-132 of the City Code already provides "tenant at will" status to residents of lodging facilities after 30 days. Any change to those rights would require an ordinance change.
7	A	New ordinance prohibiting new development projects receiving City funding from denying tenants access to low-income units due to poor-credit history if tenant can demonstrate sufficient current income to pay the rent	16			

(ii) Education, Mediation, & Understanding

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
8	A	One page Tenant Rights Handout	10	X		Completed 6-26-17
9	A	Tenant/Landlord Ombudsman to mediate disputes	18			2016 Housing Committee deliberated on this item and ultimately decided not to include it in the Housing Insecurity Package forwarded to the City Council
10	A	Improve public understanding of tenant and landlord responsibilities	11			Staff recommends this as an item to be taken up by the Rental Housing Advisory Committee
11	A	Encourage property owners to take a long term view when renovating older homes through federal tax incentives and increased energy efficiency in an effort to improve units while keeping rents stable	18			
12	A	The City should offer regular classes for landlords that provide information on inspection/safety regulations	13			Staff recommends this as an item to be taken up by the Rental Housing Advisory Committee

B) Expanding Existing Policy Tools

(i) Inclusionary Zoning

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
1	B	Increase inclusionary zoning to require more than 10% of all new development units to be reserved as affordable	27		Later	Reviewed but not adopted by Council during 6-18-18 meeting
2	B	Revise inclusionary zoning ordinance to support lower income levels (Currently available to households earning **below** 100-120% of the area median income)	23		Later	Reviewed but not adopted by Council during 6-18-18 meeting
3	B	Amend inclusionary zoning to target income levels of existing residents in each neighborhood/census block/peninsula rather than using federal standards for the Portland area	13			Reviewed but not adopted by Council during 6-18-18 meeting
4	B	Inclusionary zoning is a good idea. Remove its six year sunset clause	17	X	Later	Sunset provision removed per Order 247 18/19

(ii) Housing Replacement Ordinance

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
5	B	Housing Replacement Ordinance - Prohibit replacement units from being "luxury"	23		Yes	2016 Housing Committee deliberated and ultimately decided not to pursue this item.
6	B	Housing Replacement Ordinance - Instead of paying fee, owners can make a market rate unit in another building affordable to low income households.	11	X	Yes	2016 Housing Committee deliberated and ultimately decided not to pursue this item.
7	B	Housing Replacement Policy - Mandate developers pay into the Housing Trust Fund when replacement units are not at "affordable" levels	24		Yes	2016 Housing Committee deliberated and ultimately decided not to pursue this item.

(iii) Other Policies: Condo Conversion & Tax Increment Financing

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
8	B	Increase the condo conversion fee	5			September 6, 2018, the Housing Committee reviewed the current Condominium Conversion Ordinance and supported the staff recommendation that no changes were required at this time.
9	B	Tighten up condo conversation regulations to clarify tenant rights, proof of notification, and timing to better capture future intent of landowners.	8	X	Yes	September 6, 2018, the Housing Committee reviewed the current Condominium Conversion Ordinance and supported the staff recommendation that no changes were required at this time.
10	B	Continue to provide tax increment financing (TIF) to housing development projects to help financially support and encourage the development of more low and middle income housing	25	X	Yes	On-going. Affordable Housing TIFs have been approved at Avesta Pearl Place Phase I, 409 Cumberland Ave., Thomas Heights 134 Washington Ave., 17 Carleton St., 58 Boyd St., Deering Place, 977 Brighton Ave., 178 Kennebec St.
11	B	Create a TIF for individual property owners who create affordable units within their properties as a means of financially encouraging the creation of more affordable units	21		Yes	Further review required
12	B	TIF projects should require units that are reserved affordable to average income levels of local residents in the surrounding neighborhood/census block rather than income levels of the entire City/metro area	11			

C) Land Use Patterns - Zoning, Density, etc.

(i) Zoning Policies for More Flexibility on Accessory Units, Parking, Lot Size, Density

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
1	C	Examine potential for more Accessory Dwelling Unit (ADU's), similar to in-law units, to be allowed in all residential zones	34	X	Later	On-going through ReCode Portland
2	C	Allow for more accessory apartments (attic, basement, garage, expansions) in East Bayside	27	X	Later	On-going through ReCode Portland
3	C	Locate higher density/larger buildings along neighborhood edges and transit corridors	35	x	Later	Division 30 Changes began this, more work to come in ReCode
4	C	Encourage the creation of denser village centers/nodes off-peninsula	37	X	Later	Division 30 Changes began this, more work to come in ReCode
5	C	Get rid of parking and height requirements in zones within walking distance of downtown	24		Later	Parking is already determined through a parking study. Height requirements need more research
6	C	Parking in new developments that are in central locations, close to public transportation should have parking ratios of less than one space per new unit	24		Later	Done
7	C	The City should allow for greater density and height while lowering parking requirements to encourage more affordable housing development	27		Later	Done
8	C	Revise zoning codes where appropriate to allow new development to better reflect the beloved historic development patterns of certain neighborhoods	12			Pilot work is under way in India Street and Munjoy Hill
9	C	Allow for greater development on undersized lots on Peaks Island in the IR-1 and IR-2 so long as the development can provide its own septic and is restricted as affordable.	6			Working with HomeStart on affordability issues on Peaks Island
10	C	Allow for more density in East Bayside in areas that are not directly adjacent to single family homes	10			Needs more research as part of ReCode effort
11	C	Locate R-6 zones in off-peninsula neighborhoods to encourage housing development	17			Residential zones off-peninsula need further analysis as part of ReCode

(ii) Zoning Policies: Amend to Protect Existing Neighborhood/Area Character

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
12	C	The recently revised R-6 zone has helped fuel a development frenzy on Munjoy Hill and should be reconsidered	9			see recent Munjoy Hill Conservation District changes.
13	C	The City should increase housing density limits within existing buildings within all zones	16			See Accessory Dwelling Unit changes
14	C	Amend the R-5 zone (Deering Center, Oakdale, and others) to allow for more housing development in a way that is consistent with the historical development patterns of the existing neighborhoods	11	X	Later	Will review this in ReCode Phase II
15	C	Develop policies to incentivize the retention, improvement, and replacement of 1, 2, and 3 unit housing structures along the streetscapes where they currently are the dominant housing typology	6			TO DO
16	C	Larger housing developments threaten the existing character of neighborhoods	7			Pilot work under way in India Street and on Munjoy Hill.
17	C	Provide greater clarity in the B2b zone language as it relates to how development in the B2b should relate to surrounding properties in abutting zones	4			Changes are proposed in B-2 zone currently. Will look at this further in ReCode Phase II

(iii) Zoning Policies: Other Items

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
18	C	Partner with organizations like Habitat for Humanity to allow for the creation of affordable units on smaller lots than what is currently allowed under zoning. Should consider having affordability and unit/building size restrictions for allowing development on these smaller lots.	20	X	Later	Meeting with Habitat for Humanity on these concepts, some in place via affordable PRUD language in Division 30.
19	C	Amend zoning ordinances to include and clarify protections for abutting residences bordered by commercial/industrial uses to help mitigate conflicts involving lighting, parking, noise, and pollution	4			Some in place via the Site Plan Ordinance - will assess as part of Site Plan rewrite in ReCode.
20	C	Update housing definitions within zoning ordinance	3	X	Later	on-going through ReCode Portland
21	C	Update and condense entire zoning ordinance for overall clarity and ease of use	17	X	Later	on-going through ReCode Portland
22	C	Amend the ILB Zone for industrial uses in East Bayside to encourage new business development in an effort to attract more living wage jobs to the neighborhood (but not national chains)	8			Planning Department will assess the Industrial LB zone (ILB).

D) Housing Safety/Quality

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
1	D	Stricter enforcement of existing health & safety laws	16			On-going through Permitting & Inspections (based on highest risk score). The city issues Notice of Violation and follows-up promptly
2	D	Regular schedule for inspecting all units	17			Permitting & Inspections implemented process (schedule of inspections is dictated by the risk score and follow-up required
3	D	Develop protocol for emergency complaints	12			Permitting & Inspections implemented process (good example: now heat complaints are investigated within 24 hours. The majority are investigate same day).
4	D	Occupied rental units in foreclosure inspected monthly	4			On-going through Permitting & Inspections. The city is working on finding better sources of date to identify properties in foreclosure. (more timely sources of data would be beneficial)
5	D	Ordinance making building owner and party bringing foreclosure complaint jointly liable for maintaining the building	5			A party bringing a foreclosure complaint can already be held liable if they have taken possession of the property. Several years ago, there was a proposal to do exactly this at the state level, which was ultimately watered down to remove this specific requirements. Any proposed City ordinance would have to be carefully examined as to whether it was preempted by state law.
6	D	Clarify role and responsibilities of various inspection offices within the City to promote efficiency and minimize overlap.	9	X	Later	Permitting and Inspections has worked diligently with the Fire and Health and Human Services Departments. This will be an on-going activity that will be monitored and evaluated.
7	D	The Housing Safety Office registration should include information on the type of rental (furnished, Airbnb, etc.) so that the public can have a better idea of who is around them.	4			On-going through Permitting & Inspections. We track rental types (short or long term, and room versus apartment or house).
8	D	Address the potential for overcrowding by revising allowable number of unrelated tenants per dwelling	3			
9	D	Gain control and rehab abandoned properties	16			If the City was to take, purchase, or otherwise take possession of, abandoned buildings for the purpose of rehabbing them, this would best be accomplished by a City policy and a budget allocation for this purpose.
10	D	More strenuous code enforcement of rental units and stricter penalties for unresponsive/absentee landlords	16			Already addressed and will be continued to be addressed through Housing Safety and Corporation Counsel
11	D	Improve communication about brownfield remediation programs/needs for developers in certain areas of the City such as East Bayside	2			The City now has EPA Brownfields funds for Phase 1 and Phase II Environmental Site Assessments as well as property cleanups. This information with details on applying for Brownfields assistance is on the City's website at the following link: http://www.portlandmaine.gov/525/brownfields-loan-program
12	D	City should require copies of all inspections done by outside parties of subsidized housing units to ensure that standards are being met that support clean, dignified, safe, affordable housing	7			Permitting & Inspections inspects all rental units within the city
13	D	Incentivize improvements to rental units in older housing stock by offering landlords reimbursements for that brings buildings up to code in return for deed restrictions regulating a units affordability	9			Any incentive program would likely require an ordinance change, depending on the nature of the incentive

E) Encourage Development & Redevelopment on City Owned Land & Private Property

(i) City Owned

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
1	E	Examine Loring House property for residential development potential	9			Loring House is being explored for supportive housing.
2	E	Embrace the redevelopment of schools or other institutional buildings into housing	25	X	Later	City code amendments encourage this reuse through density bonuses.
3	E	Utilize tax acquired properties to capitalize the Housing Trust Fund and restrict long term affordability of the unit prior to sale	7	X	Yes	On-going.
4	E	Work with non-profit like Habitat-for-Humanity to rehab city-owned tax acquired properties to turn them into affordable housing	19	X	Yes	On-going.
5	E	The City should enter into long term ground leases for City owned land as a means of supporting long term affordability rather than selling land outright to a developer (both for-profit and non-profit developers).	12	X	Yes	Exploring this option
6	E	Put City owned land out to bid to encourage diverse types of housing stock of numerous sizes and for a variety of populations	14			On a site-by-site basis, this is being explored.
7	E	The City should purchase a large tract of land and act as the developer to create a model neighborhood/village with a mix of uses and building typology that will be great places to live/work/play and showcase how quality development can happen off-peninsula	12			Financial constraints may make this infeasible.

(ii) Privately Owned

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
8	E	Examine zoning for Jewish Community Center/School near Noyes & Ashmont Streets to encourage housing development on those sites	4			This building is in the Residential-5 zone
9	E	Work with local universities to encourage the development of more student housing	22		No	The Institutional Overlay Zone process is a framework for this discussion.
10	E	Ordinance to penalize dilapidated abandoned buildings and incentivize maintenance	8			Currently, abandoned buildings are only required to meet certain minimum standards and be kept secured. These requirements are found in § 6-109.5 of the City Code. Those buildings are currently being posted against occupancy and required to remedy any unsafe conditions. If abandoned buildings are to be held to a higher standard, then the ordinance could be changed.
11	E	Strengthen local Housing Land Trust to help create and preserve affordable housing	22		No	Work is on-going on this.

F) Taxes & Fees

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
1	F	Reduce real estate related fees and taxes which harm fixed income households and cause landlords to pass along higher expenses to tenants	14			Fees set by the City are reviewed. The City does not have the authority to reduce taxes authorized by the state legislature
2	F	Create tax incentives for landlords to maintain/update units	14			Any tax exemption would need to come from legislation adopted by the state
3	F	All manners of City commerce, bills, taxes, fees, etc. should be dealt with via a single online platform	6	X	No	2016 Housing Committee determined that this item was not within their jurisdictional perview
4	F	Rising cost of taxes/fees needs better justification from the City	10			
5	F	Adopt an anti-speculation/anti-flipping tax	9			The City does not have the authority to institute or levy a new tax not authorized by the state legislature
6	F	Support tax abatement for low income households or landlords who rent income restricted units	14			Any tax exemption/abatement would need to come from legislation adopted by the state
7	F	Support tax abatement for landlords who voluntarily rent to low income tenants	20			Any tax exemption/abatement would need to come from legislation adopted by the state
12	F	Progressive property tax on new "luxury" developments that would charge a higher real estate tax rate to new units sold or rented at "luxury" levels	27		No	The City does not have the authority to institute or levy a new tax not authorized by the state legislature
13	F	Capture a portion of new property taxes for "luxury" units for a certain time period (first two years?) and place that money in the Housing Trust Fund	13			
14	F	Create a property tax work-off program where senior citizens can work for the City for a predetermined number of hours to get some tax relief on their home.	10			Permitted and authorized by legislation under Maine's Taxpayer Benefit Program statue. Http://legislature.maine.gov/statues/36/title36sec6232.html

G) Studies, Data, & Communication

(i) Studies & Data

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
1	G	Redefine how affordability is determined using more focused data on specific neighborhoods/census blocks instead of the industry standard of the City's metro area as employed by most federal housing programs	28		No	Reviewed as part of Inclusionary Zoning Ordinance, but not adopted by Council during 6-18-18 meeting
2	G	The City should evaluate the evolution and impact of changes in its demographic mix as well as housing stock. The study should not just focus on trends but also determine what the desired mix is for the City in terms of demographics and housing typology	12			Refer to the Comprehensive Plan: *Portland's Plan 2030* Population & Demographic and Housing appendices
3	G	Creation of new City Housing Board comprised of a wide range of stakeholders to carry forward additional research, advise the City, and make policy recommendations	11			see Order 32 18/19 "Rental Housing Advisory Committee"
4	G	Comprehensive Plan to outline housing goals for the City over 3, 5, and 10 year periods	21		No	Refer to the Comprehensive Plan: *Portland's Plan 2030* Housing appendix
5	G	Rental unit data collected through registration should identify ownership type and unit make up. Data should be available to the public	7			Data collected through Rental Registration Program
6	G	Housing Safety Office should track additional landlord data such as pricing, amenities, bedrooms, past violations, etc. and make the information public to help prospective tenants more informed before signing a lease	7			Permitting & Inspections tracks violation data. Other data is available through rental websites.

(ii) Communication

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
7	G	More frequent public communication about current and proposed developments including signage at proposed sites that provide sense of scale with surrounding neighborhood	8			Signage at sites will be explored as part of ReCode effort
8	G	Encourage/facilitate a better public process. Needs to be a way to encourage greater public participation and not just listen to the loudest voices who may not represent the needs of the larger community	13			Efforts to improve public outreach and process is ongoing
9	G	The City should facilitate a larger public dialogue about the overall type of development that is appropriate for Portland. Focus should be on scale of development and how urban in character Portland should be.	15			Portland's Plan 2030 provided this framework.
10	G	The City should create a new position within the City to help interested parties understand the maximum development potential for various private properties throughout the City	2			Staff requests for FY 2020 will reflect increasing this capacity.
11	G	Promote greater awareness of all the work already being done by the City to help alleviate housing concerns	9			Effort on-going

H) Senior Housing

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
1	H	The City should hire an aging in place specialist to help seniors navigate the complex zoning and home modification requirements at the state and local levels	12			Ongoing. Portland began the process of becoming an AARP certified Age-Friendly Community in 2015 and was awarded an Age-Friendly Community Certificate in June 2017; the City's Elder Affairs office manages the program. This type of home modification program is in the Age Friendly Portland workplan.
2	H	Promote/support age-in-place efforts to make the community even more "age-friendly"	18			Accessory Dwelling Unit effort will contribute towards more age-friendly efforts.
3	H	Lobby state government to release $15 million in voter approved bonds for affordable senior housing development	23	X	No	2016 Housing Committee suggested that the Legislative Committee may want to consider action on this item. **Update: Signed by Governor Mills on 1-15-19**
4	H	The City should help seniors participate in their communities	4			Ongoing. Included in Portland's Age-Friendly Community workplan
5	H	The City should help neighborhoods retain their intergenerational flavor	12			Ongoing. The 2017 Comprehensive Plan *"Portland's Plan 2030" outlines local goals including: Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents. S*trategies include: support age-friendly housing options, support for programs and tools that facilitate aging safely in place; create, promote, and facilitate safe, affordable and practical housing solutions that will meet the evolving needs of Portland residents as the age.
6	H	The City should support and encourage the creation of volunteer based "villages" to help aging seniors stay in their communities longer	15			See 5 H above
7	H	Institute a homeshare program for seniors to help share costs of their home by finding "appropriate adult guests" to live with them so that they may remain in their homes	17			Ongoing. Portland became an AARP certified Age-Friendly Community in June 2017; the City's Elder Affairs office manages the program. This type of home share program is in the Age Friendly Portland workplan.

I) Short Term Rentals (Airbnb)

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
1	I	Regulate Short Term Rentals (STR's) such as Airbnb in an effort to return existing housing stock to the long term rental market	27	X	Yes	Intial STR Ordinance recommended by the 2016 Housing Committee and adopted by the City Council, Order 179-16/17, 3-27-2017. STR review conducted and amendment adopted on 11-19-18 See Order 99 18/19
2	I	Increase General Assistance maximums to match Portland rental market funded through increased Airbnb fees	15			
3	I	Add fees/taxes to Airbnb type rentals to help capitalize the Housing Trust Fund	29	X	Yes	Intial STR Ordinance recommended by Housing Committee and adopted by City Council Order 179-16/17, 3-27-2017. STR review conducted and amendment adopted on 11-19-18 See Order 99 18/19; Excess registration fees contributed to the Housing Trust Fund on an annual basis ($33,318.80 2018)

J) Open/Green/Community/Retail Space

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
1	J	Provide greater access to green space and greater protection for existing large trees to better integrate nature into the urban environment	12			
2	J	There is a need for greater access to open spaces for leisure and sport in East Bayside	3			
3	J	The creation of community spaces within new large development projects to support a variety of community uses	8			
4	J	City should partner with the non-profit organization that works on edible landscaping to design roof top gardens or raised bed gardens as part of new project designs	10			
5	J	Increase small retail spaces in new development projects	5			Small retail spaces need to be carefully designed to be successful but activate streetscape requirements exist.

K) General - Suggestions, Comments, Complaints

#		Potential Policy	# Times Checked at Public Forum	2016 Staff Working Group	2016 Housing Committee	Comments
1	K	Strengthen and clarify sober house regulations	5			On-going
2	K	Make regulations easier to convert a single family residence into a multi-family home	15			Accessory Dwelling Unit changes will be proposed this year.
3	K	Remove barriers to expanding/renovating older homes	15			
16	K	Support the creation tiny homes to increase the housing supply	18			Tiny Homes are allowed under building code and zoning but need to meet code requirements.
17	K	Revise thresholds of commercial building codes to start at buildings larger than three units (currently a three unit building falls within commercial code instead of residential code)	8			
18	K	Develop mechanisms and incentives for long term affordability restrictions	9			Currently in place, vary by program/financing source
19	K	Limitations should be placed on how close registered sex offenders can live in proximity to schools	7			
20	K	The City should support housing availability for sex offenders previously incarcerated as they begin to reintegrate into society	4			
21	K	Regional approach to housing demand with benchmarks for each community for the creation of new housing	9			
22	K	Focus on the creation of new middle class/family housing - both rental and home ownership	11	X	No	Inclusionary Zoning and other zone changes encourage this.
23	K	Encourage/support the creation of additional low income and workforce housing	30	X	No	Inclusionary Zoning and other zone changes encourage this.
24	K	Create more Housing First projects to support long term shelter stayers	21	X	Yes	Work on-going on developing additional projects. **Housing First projects supported by the City include Logan Place, Florence House & Huston Commons**
25	K	Improve communication channels with local universities to help place local students/faculty in extra bedrooms of existing Portland residents	9			
26	K	City should support the creation and funding of a home ownership program to help households buy homes and fix up dilapidated properties	16			In the past, the City of Portland has sponsored several different home buyer programs (Portlander Program, New Neighbors, HomePort). Will explore if future programming options are feasible.
27	K	City should encourage more homeownership development as a means of reducing demand on the rental housing stock and helping to build stable long term communities	10			
28	K	The City should be more supportive of new housing development projects despite the potential for neighbors being against a project	19			
29	K	Small landlords should not be perceived as small businesses	7			
30	K	New developments need to be held to higher architectural standards in terms of design, materials, and connective space	9			Design standards exist, exploring possible changes.
31	K	Do not overreact to short term market fluctuations with overregulation and maintain a long term perspective on policy goals	22		No	2016 Housing Committee took this comment under advisement but determined no particular action was necessary
32	K	Restrict medical marijuana grow operations from residential zones	2			Marijuana zoning rewrite is going to the Council.
33	K	Increase the speed at which new development projects and renovation projects can get through the City approval/permitting process	21		No	Completed: Citizen self-service portal streamlines application intakes. Fast Track provides limited reviews for eligible projects.
34	K	Increase Tenant Based Rental Assistance (TBRA) voucher funding to support extremely low income households at risk of homelessness	29		No	2016 Housing Committee determined that TBRA funding is reviewed on an annual basis through the Housing Program Budget.
35	K	The City should come up with a policy for dealing with the closure and potential demolition of hotels by changing ordinances to encourage their use as single room occupancy (SRO's)	12			Will explore how this might be feasible

TO: Councilor Duson, Chair
Members of the Housing Committee

FROM: Dr. Jack Kartez, Lead Facilitator

DATE: June 8, 2016

SUBJECT: Facilitator's report on the special Housing Forum of the City Council's Housing Committee held on May 25th, 2016.

I. Overview:

This report focuses on some over-arching themes from the structured public meeting as a way to aid the Housing Committee with evaluating, prioritizing and pursuing a workable set of possible actions from the large set of ideas and proposals collected to date. There is a facilitator's assessment of the process, my summary of the information from the four breakout discussions and the individual facilitator's room notes, and the information from the "worksheets" or Housing Policy List that attendees were asked to mark up if possible, as a piece of supplementary information.

II. The Process:

Over one hundred people attended and participated for most or all of the breakout sessions. Eighty-eight (88) worksheets were returned to a collection point at the end of the evening, with five blank and two others not interpretable and as of June 1 three additional worksheets had been submitted to the HCD staff and included here, although a couple are from people who did not attend the process .

This was a tremendous effort by the attendees with a challenging task, which virtually all worked hard to honor. Those results are discussed later in this initial report and may be helpful to organizing the Committee's start of deliberations. There were a couple of written comments that expressed some frustration with a structured process rather than direct testimony about extreme needs. That message however does come out clearly in this report and Councilors should, if I may, be confident that this event added to the access that constituents have to address these issues to you and with you, not lessened it.

My impression of the attendance is that there were a large proportion of advocates for and those affected by availability of low-cost housing and emergency housing services and housing transition services (e.g., Housing First). There was perhaps less apparent a large showing of landlords of all kinds and for my part this has underscored to me that Portland's housing supply relies on smaller landlords to a significant degree. Other attendees included social and housing service providers, a small showing of nonprofit and other housing developers and other interests that Councilors may identify from their districts and the city at-large.

As said, these people worked very hard on this in limited time and many of those with a particular focused concern or priority also visibly listened to and discussed other aspects of the housing situation in Portland. In at least one discussion group I was struck however by the lack of knowledge of what the City is already undertaking in terms of land use and zoning by some of those with general knowledge of those topics as well as those without such general background. My impression from this is that the City perhaps has opportunities to more assertively communicate about these matters to more constituencies. Closely related to this was the often-voiced comment that it is not clear what the City's over-arching housing goals are. While the City has existing policy and programs, of course, this comment taps into the sustained need for public communication and education vital to efforts to deal with citywide housing matters. This comment comes out in the breakout discussion reports and in the worksheet results.

III. Over-Arching Themes:

To help the Committee make use of the results—a large amount of information—this report starts with a summary of the core themes that emerged at a broad level, and then with more detail from each breakout discussion and then the worksheet results so you can "drill down" in detail. This summary is the result of discussion among the facilitators, their notes and the worksheets. You have the source information before you.

The two big themes are

1. Dealing with housing insecurity and emergency situations, and;
2. Increasing housing supply of all kinds in Portland, on- and off-peninsula, and in the Greater Portland region as well.

Within each of these there are many moving parts of course, especially #2:

1. Housing Insecurity: The proposals range from rent control and eviction moratoria to other measures to support tenant rights, provide ways to prevent affordable housing losses or to replace losses, and provide means to ease housing losses such as longer eviction notifications, as well as addressing homelessness through expanding Housing First and other efforts.

2. Increasing Housing Supply: This incorporates short-term and longer-term actions including: expanding inclusionary zoning and housing replacement requirements; using city fiscal and resource tools including TIFs, public lands and bonding; reducing cost and regulatory barriers to new housing delivery; reducing failed projects due to public opposition (NIMBYism) and long permitting processes; increasing density in strategic locations along corridors, but also protecting neighborhood character during change.

There were also three cross-cutting issues that affect the two large themes above which received great attention, one of which was inadvertently poorly highlighted in the Housing Bucket List.

3. Regulating AirBnB to reduce withdrawals from the residential market;

4. Addressing Senior Housing in terms of not only units but also aging-in-place resources; and

5. Increasing Transit Access to Affordable Housing and in general.

The above is a compact summary of the sense of the meeting.

IV. Discussion Sessions (More detailed facilitator notes attached—these are most prominent items)

A. (Hutchins): Immediate need to deal with evictions, rising rents (1-4A); Increase housing supply as rapidly as possible through allowing more density, reducing regulatory barriers and oppositional blocking of projects, flexibility for ADUs, and regulation of AirBnBs; (esp. C1-7, 11C, 13C); Pointed concern about senior housing and senior community needs (H3, H5-6); Need to improve transit routes.

B. (Grommes Pulaski): Need for comprehensive goals and vision for enough and diverse housing, increasing density, more incentives for redevelopment; take some emergency measures now; Address rent control, discrimination in Sec. 8, tenant rights re: evictions; expand existing tools (i.e., inclusionary zoning), create more incentives (e.g. via expanding form-based zoning, use of new TIFs) and remove disincentives (parking, etc.); Better dialogue to get through NIMBY situation; Use AirBnB fees for affordable housing efforts; Need better data on displacement, units lost and need to drive policy; Sec. 8 process needs better organization/support; Need better transportation access including with surrounding communities affordable housing.

C. (Coxe): Four overarching themes in room: Housing Supply & Affordability (B 1-3, C1, C3, C4, C5, C7, C8, C9, E6, E7); Housing Insecurity (A1, A2, A4); Neighborhood Form & Character; and Need for Comprehensive, Goal-Based Approach (G2, G4, G9) and solutions scaled to problem; Also concerns about housing safety and senior support.

D. (Pistrang): Three big themes in room: Increase housing supply; streamline the permitting process; Equitable access to housing. Supply/Permitting—Increase diversity of housing mix, and transportation access, incentivize ADUs, use TIFs and city-owned lands (E6), increase density around villages and nodes (all C items), regulate AirBnB to reduce residential losses, use a bond to fund more housing. Equitable Housing Access—Extend housing eviction notice periods and involve City, close loopholes on Replacement policy (B6), Prohibit Sec. 8 discrimination (A4), address needs for adequate shelters (K24) and tenant-based rental assistance (TBRA—K34).

V. Worksheet Summary

Attached after the four Facilitator Room Reports is a copy of the Housing Bucket List with the tallied number of times each item has been checked off by attendees of the public meeting as having the "highest value." Remember that this is partly a function of who attended and the challenging task of working through about 130 items in an hour's discussion. As noted there were 88 worksheets collected with five blank and another three not interpretable (notes but not specific choices). This is a remarkably high participation rate. Note that three (3) responses turned in to the HCD office have been added to the tally but did not change the pattern markedly.

You have the full results here—to help review them, the items with 21 or more responses (about one-fifth of the attendees) have been highlighted, resulting in 31 items out of more than 135. The items are largely consistent with the discussion room reports but some are very broad and some very specific. Of course, this does not mean that items getting 20 or even a few less choices are not important. For example, NONE of the housing safety inspection and regulation items received more than 17 and two-thirds got less than 10—but everyone would agree this is a high priority area for City efforts. The worksheet information reflects the “sense of the room” from concerns at the meeting.

Additionally, the final column labeled “staff” in the attached list represent feedback from members of the City’s Housing Working Group which consists of City staff representing a variety of departments within the City. More information about the Housing Working Group is available as a separate memo for tonight’s meeting. In an effort to emulate the process experienced by attendees of the special May 25th public forum, the items in this column marked with an “X” represent ideas that received interest from multiple members of the Working Group. To help bring additional clarity to the Committee, items that received overlapping interest from staff and the public were highlighted in the list.

A) Tenant/Landlord Regulations

(i) Amendments to Rental Regulations

#		Potential Policy	# Times Checked at Public Forum	Staff
1	A	Rent Control - limiting rent increases to a certain set amount in a certain period of time	34	
2	A	Moratorium on No-Cause Evictions	34	
3	A	Increase notification minimums from landlords to tenants for rent increases or non-renewal of any lease	26	X
4	A	Ordinance prohibiting landlords from refusing Section 8 or other vouchers	27	X
5	A	Clarify tenant rights in foreclosed buildings	17	
6	A	Ordinance providing long-term residents of rooming houses protection under Maine's eviction statute	15	
7	A	New ordinance prohibiting new development projects receiving City funding from denying tenants access to low-income units due to poor-credit history if tenant can demonstrate sufficient current income to pay the rent	16	

(ii) Education, Mediation, & Understanding

#		Potential Policy	# Times Checked at Public Forum	Staff
8	A	One page Tenant Rights Handout	10	X
9	A	Tenant/Landlord Ombudsmon to mediate disputes	18	
10	A	Improve public understanding of tenant and landlord responsibilities	11	
11	A	Encourage property owners to take a long term view when renovating older homes through federal tax incentives and increased energy efficiency in an effort to improve units while keeping rents stable	18	
12	A	The City should offer regular classes for landlords that provide information on inspection/safety regulations	13	

B) Expanding Existing Policy Tools

(i) Inclusionary Zoning

#		Potential Policy	# Times Checked at Public Forum	Staff
1	B	Increase inclusionary zoning torequire more than 10% of all new development units to be reserved as affordable	27	
2	B	Revise inclusionary zoning ordinance to support lower income levels (Currently available to households earning **below** 100-120% of the area median income)	23	
3	B	Amend inclusionary zoning to target income levels of existing residents in each neighborhood/census block/peninsula rather than using federal standards for the Portland area	13	
4	B	Inclusionary zoning is a good idea. Remove its six year sunset clause	17	X

(ii) Housing Replacement Ordinance

#		Potential Policy	# Times Checked at Public Forum	Staff
5	B	Housing Replacement Ordinance - Prohibit replacement units from being "luxury"	23	
6	B	Housing Replacement Ordinance - Instead of paying fee, owners can make a market rate unit in another building affordable to low income households.	11	X
7	B	Housing Replacement Policy - Mandate developers pay into the Housing Trust Fund when replacement units are not at "affordable" levels	24	

(iii) Other Policies: Condo Conversion & Tax Increment Financing

#		Potential Policy	# Times Checked at Public Forum	Staff
8	B	Increase the condo conversion fee	5	
9	B	Tighten up condo converstion regulations to clarify tenant rights, proof of notification, and timing to better capture future intent of landowners.	8	X
10	B	Continue to provide tax increment financing (TIF) to housing development projects to help financially support and encourage the development of more low and middle income housing	25	X

11 B	Create a TIF for individual property owners who create affordable units within their properties as a means of financially encouraging the creation of more affordable units	21	
12 B	TIF projects should require units that are reserved affordable to average income levels of local residents in the surrounding neighborhood/census block rather than income levels of the entire City/metro area	11	

C) Land Use Patterns - Zoning, Density, etc.

(i) Zoning Policies for More Flexibility on Accessory Units, Parking, Lot Size, Density

#	Potential Policy	# Times Checked at Public Forum	Staff
1 C	Examine potential for more Accessory Dwelling Unit (ADU's), similar to in-law units, to be allowed in all residential zones	34	X
2 C	Allow for more accessory apartments (attic, basement, garage, expansions) in East Bayside	27	X
3 C	Locate higher density/larger buildings along neighborhood edges and transit corridors	35	X
4 C	Encourage the creation of denser village centers/nodes off-peninsula	37	X
5 C	Get rid of parking and height requirements in zones within walking distance of downtown	24	
6 C	Parking in new developments that are in central locations, close to public transportation should have parking ratios of less than one space per new unit	24	
7 C	The City should allow for greater density and height while lowering parking requirements to encourage more affordable housing development	27	
8 C	Revise zoning codes where appropriate to allow new development to better reflect the beloved historic development patterns of certain neighborhoods	12	
9 C	Allow for greater development on undersized lots on Peaks Island in the IR-1 and IR-2 so long as the development can provide its own septic and is restricted as affordable.	6	
10 C	Allow for more density in East Bayside in areas that are not directly adjacent to single family homes	10	
11 C	Locate R-6 zones in off-peninsula neighborhoods to encourage housing development	17	

(ii) Zoning Policies: Amend to Protect Existing

#		Potential Policy	# Times Checked at Public Forum	Staff
12	C	The recently revised R-6 zone has helped fuel a development frenzy on Munjoy Hill and should be reconsidered	9	
13	C	The City should increase housing density limits within existing buildings within all zones	16	
14	C	Amend the R-5 zone (Deering Center, Oakdale, and others) to allow for more housing development in a way that is consistent with the historical development patterns of the existing neighborhoods	11	X
15	C	Develop policies to incentivize the retention, improvement, and replacement of 1, 2, and 3 unit housing structures along the streetscapes where they currently are the dominant housing typology	6	
16	C	Larger housing developments threaten the existing character of neighborhoods	7	
17	C	Provide greater clarity in the B2b zone language as it relates to how development in the B2b should relate to surrounding properties in abutting zones	4	

(iii) Zoning Policies: Other Items

#		Potential Policy	# Times Checked at Public Forum	Staff
18	C	Partner with organizations like Habitat for Humanity to allow for the creation of affordable units on smaller lots than what is currently allowed under zoning. Should consider having affordability and unit/building size restrictions for allowing development on these smaller lots.	20	X
19	C	Amend zoning ordinances to include and clarify protections for abutting residences bordered by commercial/industrial uses to help mitigate conflicts involving lighting, parking, noise, and pollution	4	
20	C	Update housing definitions within zoning ordinance	3	X
21	C	Update and condense entire zoning ordinance for overall clarity and ease of use	17	X
22	C	Amend the ILB Zone for industrial uses in East Bayside to encourage new business development in an effort to attract more living wage jobs to the neighborhood (but not national chains)	8	

D) Housing Safety/Quality

#		Potential Policy	# Times Checked at Public Forum	Staff
1	D	Stricter enforcement of existing health & safety laws	16	
2	D	Regular schedule for inspecting all units	17	
3	D	Develop protocol for emergency complaints	12	
4	D	Occupied rental units in foreclosure inspected monthly	4	
5	D	Ordinance making building owner and party bringing foreclosure complaint jointly liable for maintaining the building	5	
6	D	Clarify role and responsibilities of various inspection offices within the City to promote efficiency and minimize overlap.	9	X
7	D	The Housing Safety Office registration should include information on the type of rental (furnished, airbnb, etc) so that the public can have a better idea of who is around them.	4	
8	D	Address the potential for overcrowding by revising allowable number of unrelated tenants per dwelling	3	
9	D	Gain control and rehab abandoned properties	16	
10	D	More strenuous code enforcement of rental units and stricter penalties for unresponsive/absentee landlords	16	
11	D	Improve communication about brownfield remediation programs/needs for developers in certain areas of the City such as East Bayside	2	
12	D	City should require copies of all inspections done by outside parties of subsidized housing units to ensure that standards are being met that support clean, dignified, safe, affordable housing	7	
13	D	Incentivize improvements to rental units in older housing stock by offering landlords reimbursements for that brings buildings up to code in return for deed restrictions regulating a units affordability	9	

E) Encourage Development & Redvelopment on City Owned Land & Private Property

(i) City Owned

#		Potential Policy	# Times Checked at Public Forum	Staff
1	E	Examine Loring House property for residential development potential	9	
2	E	Embrace the redevelopment of schools or other institutional buildings into housing	25	X
3	E	Utilize tax acquired properties to capitalize the Housing Trust Fund and restrict long term affordability of the unit prior to sale	7	X
4	E	Work with non-profit like Habitat-for-Humanity to rehab city-owned tax acquired properties to turn them into affordable housing	19	X
5	E	The City should enter into long term ground leases for City owned land as a means of supporting long term affordability rather than selling land outright to a developer (both for-profit and non-profit developers).	12	X
6	E	Put City owned land out to bid to encourage diverse types of housing stock of numerous sizes and for a variety of populations	14	
7	E	The City should purchase a large tract of land and act as the developer to create a model neighborhood/village with a mix of uses and building typology that will be great places to live/work/play and showcase how quality development can happen off-peninsula	12	

(ii) Privately Owned

#		Potential Policy	# Times Checked at Public Forum	Staff
8	E	Examine zoning for Jewish Community Center/School near Noyes & Ashmont Streets to encourage housing development on those sites	4	
9	E	Work with local universities to encourage the development of more student housing	22	
10	E	New ordinance to penalize dilapitated abandoned buildings and incentivize maintenance	8	
11	E	Strengthen local Housing Land Trust to help create and preserve affordable housing	22	

F) Taxes & Fees

#		Potential Policy	# Times Checked at Public Forum	Staff
1	F	Reduce real estate related fees and taxes which harm fixed income households and cause landlords to pass along higher expenses to tenants	14	
2	F	Create tax incentives for landlords to maintain/update units	14	
3	F	All manners of City commerce, bills, taxes, fees, etc. should be dealt with via a single online platform	6	X
4	F	Rising cost of taxes/fees needs better justification from the City	10	
5	F	Adopt an anti-speculation/anti-flipping tax	9	
6	F	Support tax abatement for low income households or landlords who rent income restricted units	14	
7	F	Support tax abatement for landlords who voluntarily rent to low income tenants	20	
12	F	Progressive property tax on new "luxury" developments that would charge a higher real estate tax rate to new units sold or rented at "luxury" levels	27	
13	F	Capture a portion of new property taxes for "luxury" units for a certain time period (first two years?) and place that money in the Housing Trust Fund	13	
14	F	Create a property tax work-off program where senior citizens can work for the City for a predetermined number of hours to get some tax relief on their home.	10	

G) Studies, Data, & Communication

(i) Studies & Data

#		Potential Policy	# Times Checked at Public Forum	Staff
1	G	Redefine how affordability is determined using more focused data on specific neighborhoods/census blocks instead of the industry standard of the City's metro area as employed by most federal housing programs	28	
2	G	The City should evaluate the evolution and impact of changes in its demographic mix as well as housing stock. The study should not just focus on trends but also determine what the desired mix is for the City in terms of demographics and housing typology	12	

3	G	Creation of new City Housing Board comprised of a wide range of stakeholders to carry forward additional research, advise the City, and make policy recommendations	11	
4	G	Comprehensive Plan to outline housing goals for the City over 3, 5, and 10 year periods	21	
5	G	Rental unit data collected through registration should identify ownership type and unit make up. Data should be available to the public	7	
6	G	Housing Safety Office should track additional landlord data such as pricing, amenities, bedrooms, past violations, etc. and make the information public to help prospective tenants more informed before signing a lease	7	

(ii) Communication

#		**Potential Policy**	**# Times Checked at Public Forum**	**Staff**
7	G	More frequent public communication about current and proposed developments including signage at proposed sites that provide sense of scale with surrounding neighborhood	8	
8	G	Encourage/facilitate a better public process. Needs to be a way to encourage greater public participation and not just listen to the loudest voices who may not represent the needs of the larger community	13	
9	G	The City should facilitate a larger public dialogue about the overall type of development that is appropriate for Portland. Focus should be on scale of development and how urban in character Portland should be.	15	
10	G	The City should create a new position within the City to help interested parties understand the maximum development potential for various private properties throughout the City	2	
11	G	Promote greater awareness of all the work already being done by the City to help alleviate housing concerns	9	

H) Senior Housing

#		**Potential Policy**	**# Times Checked at Public Forum**	**Staff**
1	H	The City should hire an aging in place specialist to help seniors navigate the complex zoning and home modification requirements at the state and local levels	12	

2	H	Promote/support age-in-place efforts to make the community even more "age-friendly"	18	
3	H	Lobby state government to release $15 million in voter approved bonds for affordable senior housing development	23	X
4	H	The City should help seniors participate in their communities	4	
5	H	The City should help neighborhoods retain their intergenerational flavor	12	
6	H	The City should support and encourage the creation of volunteer based "villages" to help aging seniors stay in their communities longer	15	
7	H	Institute a homeshare program for seniors to help share costs of their home by finding "appropriate adult guests" to live with them so that they may remain in their homes	17	

I) Short Term Rentals (AirBnB)

#		Potential Policy	# Times Checked at Public Forum	Staff
1	I	Regulate Short Term Rentals (STR's) such as AirBnB in an effort to return existing housing stock to the long term rental market	27	X
2	I	Increase General Assistance maximums to match Portland rental market funded through increased AirBnB fees	15	
3	I	Add fees/taxes to AirBnB type rentals to help capitalize the Housing Trust Fund	29	X

J) Open/Green/Community/Retail Space

#		Potential Policy	# Times Checked at Public Forum	Staff
1	J	Provide greater access to green space and greater protection for existing large trees to better integrate nature into the urban environment	12	
2	J	There is a need for greater access to open spaces for leisure and sport in East Bayside	3	
3	J	The creation of community spaces within new large development projects to support a variety of community uses	8	
4	J	City should partner with the non-profit organization that works on edible landscaping to design roof top gardens or raised bed gardens as part of new project designs	10	
5	J	Increase small retail spaces in new development projects	5	

K) General - Suggestions, Comments, Complaints

#		Potential Policy	# Times Checked at Public Forum	Staff
1	K	Strengthen and clarify sober house regulations	5	
2	K	Make regulations easier to convert a single family residence into a multi-family home	15	
3	K	Remove barriers to expanding/renovating older homes	15	
16	K	Support the creation tiny homes to increase the housing supply	18	
17	K	Revise thresholds of commercial building codes to start at buildings larger than three units (currently a three unit building falls within commercial code instead of residential code)	8	
18	K	Develop mechanisms and incentives for long term affordability restrictions	9	
19	K	Limitations should be placed on how close registered sex offenders can live in proximity to schools	7	
20	K	The City should support housing availability for sex offenders previously incarcerated as they begin to reintegrate into society	4	
21	K	Regional approach to housing demand with benchmarks for each community for the creation creation of new housing	9	
22	K	Focus on the creation of new middle class/family housing - both rental and home ownership	11	X
23	K	Encourage/support the creation of additional low income and workforce housing	30	X
24	K	Create more Housing First projects to support long term shelter stayers	21	X
25	K	Improve communication channels with local universities to help place local students/faculty in extra bedrooms of existing Portland residents	9	
26	K	City should support the creation and funding of a home ownership program to help households buy homes and fix up dilapidated properties	16	
27	K	City should encourage more homeownership development as a means of reducing demand on the rental housing stock and helping to build stable long term communities	10	
28	K	The City should be more supportive of new housing development projects despite the potential for neighbors being against a project	19	
29	K	Small landlords should not be perceived as small businesses	7	

30	K	New developments need to be held to higher achitectual standards in terms of design, materials, and connective space	9	
31	K	Do not overreact to short term market fluctuations with overregulation and maintain a long term perspective on policy goals	22	
32	K	Restrict medical marijuana grow operations from residential zones	2	
33	K	Increase the speed at which new development projects and renovation projects can get through the City approval/permitting process	21	
34	K	Increase Tenant Based Rental Assistance (TBRA) voucher funding to support extremely low income households at risk of homelessness	29	
35	K	The City should come up with a policy for dealing with the closure and potential demolition of hotels by changing ordinances to encourage their use as single room occupancy (SRO's)	12	

Portland Housing Workshop
May 25, 2016
Room A Breakout (Jennifer Hutchins Facilitating)
Approximate attendance: 45-50

1. **Rental Regulations (Section A - noted by several attendees as their priority)**

MOST NOTED: 1A: rent stabilization, 2A
ALSO NOTED: 3A: Increased Notifications, 4A: Vouchers refused, 9A
Other comments:

- Disabled and Senior Community Needs a concern cited by 3-5 attendees
- Suggestion for Relocation services to possible be the responsibility of the landlord
- Need for IMMEDIATE ACTION (i.e. moratorium on condominiums)

2. **General recommendations (Section K)**

MOST NOTED: 31. maintain long-term view and 33. increase speed of regulatory process
Also NOTED: **Housing trust fund:** create cooperative unity to purchase low-income

3. **Building New Housing** ("It's an issue of supply and demand.")

MOST NOTED: Fix zoning laws to allow for higher density,
Address short-term rental problem (regulate Air B&B)

MOST NOTED: Section C. 2; 3-7, 11 along transit corridors
Finding innovative solutions to promote density (i.e. homesharing, cooperatives)
C1&2 Accessory Dwelling Units
C13 Encourage supply rapidly
Help facilitate getting projects done and having developers work with community
NIMBYism prevents new housing/increased density, which affects supply
Multi Unit Development

- Encourage "issue friendly" housing; so, people can stay in their homes
- Cooperative/cohousing solutions

4. **Senior Housing**

MOST NOTED: H. 3,5,6 Need for tenant/landlord relationship regulations
Other comments:

- Concern for mounting health & safety issues for seniors in public housing (i.e. renting to younger than 55 and "addicts")

5. One suggestion w/ others agreeing: **G1. Redefine Affordable** with more focused data for specific neighborhoods

6. **E.11. strengthen land trust** – so as to create affordable housing

7. **Transit Routes (noted by several people as missing from original list but a priority)**
Increase access to supply off peninsula

8. F12 – progressive tax on luxury apts.

Notes from Housing Committee Forum
Facilitator: Amy Grommes Pulaski

Policy comments
- What is the overall policy goal?
- Housing is a human right, not a choice
- Take some Emergency Measures to address the crisis at hand
- Develop a long term vision and goal of housing for Portland
- Make Large Bold Steps toward BIG Solutions
- Jobs and Housing go hand in hand
- A diversity of housing is needed (on the peninsula)
- Address NIMBYism

Create More Units
- Create housing for all
    - Low income
    - Moderate income
    - Workforce housing to sustain economy
    - (H) Elderly/ Aging in place
- (C) Have a neighborhood focus because each neighborhood has different values and can accept different types of projects
- Increase the number of housing first facilities

A) Tenant/ Landlord Regulations
- Support Tenants Rights No Cause Evictions
- No Discrimination for Section 8 vouchers
- Rent Control

B) Expanding Existing Policy Tools
- Inclusionary zoning should be more than 10%, should be 50%
- There should not be an opt-out for Inclusionary Zoning or Housing Replacement
- Create form based incentives
- Don’t create regulations that discourages what we want to encourage
- Implement tools that create affordability but do not cause displacement
- Address Homeless issue in Bayside

C) Land Use Patterns
- Increase density
- Review density, R6 and Parking requirements

E) Encourage Development & Redevelopment
- Incentivize development on existing surface parking lots or add housing above parking, then create a TIF district to pay for improved transportation

G) Studies, Data & Communication
- Data:
    - Let data drive policy for vulnerable population.

- Collect data about displacement
- Q. How many units would have been built had it not been for the threat of litigation?
- Q. How many units have left the market due to Air BNB? A. AirBNB are mostly rooms within houses to rent. Right now there are 108 active units on AirBNB today. And these may only be available for some dates throughout the year (which means the owners are living in the units and renting them when they go away).

- Communication: Comments on NIMBYism
    - Neutralize NIMBYism
    - Open dialogue
    - NIMBYism leads to less units being built

I) Short Term Rental

- Create an AirBNB fee to pay for TBRA or new affordable housing.

K) General Other

- Comments on Subsidies
    - Voucher providers should pay landlords on time
    - Organize Section 8 holders so they are competitive for housing units (they are sometimes disorganized, they don't have the documentation or information needed to rent, they don't return calls, and by that time the unit is gone).

- Beyond Portland
    - Improve transportation to expand area access
    - Collaborate with nearby towns to increase transportation and housing options
    - The region is engaged and ready to add more affordable housing

- Perceptions
    - There is an increasing elderly population
    - We are Loosing Units
    - There are smaller households
    - Need more affordable housing
    - Need more housing units overall, which will allow for more income variant housing

-

Notes from Portland Housing forum – May 25, 2016
Breakout section C (Hugh Coxe Facilitating)

Themes

At least four overarching themes arose from the group:

- Housing supply and affordability
- Housing insecurity
- Neighborhood form and character
- Comprehensive approach and goal setting

Notes (*Items reflect statements made by individuals and in some instances discussions in which several participants contributed. They are not an indication of group consensus or agreement.*)

- Emphasize density particularly on bus routes; reduce parking minimums
    - C: 3,4,5, and 7 recommendations are of high value
- We need to watch the language that we use. What exactly do we mean when we talk about "housing crisis," etc.
- Property taxes are too high. We don't want to be Boston or New York.
- People who work in Portland all too often can't afford to live in Portland.
- Portland's population is growing; Affordability is linked to parking requirements which should be reduced or eliminated to reduce the cost of building new housing.
- There isn't a housing shortage off the peninsula – just because people want to live on the peninsula does not mean that we are having a housing crisis.
- Some of the city's current regulations make affordable housing development very difficult.
    - C: 7 and 8; E: 6 and 7 recommendations are of high value
- The city's development regulations and policies should align with the state policies to help ensure adequate financing for affordable housing.
- The focus should be on increasing housing supply.
    - E: 6 and 7 recommendations are of high value

- Discussion about housing insecurity – tenants are at-will and can have the rent raised or be evicted anytime and without reason. Makes people reluctant to invest time, resources, or effort in their neighborhood and leads to instability in families and lives.
    - A: 1, 2 and 4 recommendations are of high value
- Portland's landlord tenant policies should be compared with jurisdictions that have "just eviction" policies such as Oakland and Seattle.
- Tenants need to have greater protections than those that currently exist.
    - Sections A and C recommendations are of high value
- Several people stated that the city can add supply and provide more housing security and affordability.
- The group discussed housing replacement policies. Some felt the inclusionary zoning and replacement ordinances infringe too much on property rights, some felt they are not consistently administered or are subject to political whim, some felt they were too weak to achieve the desired policy goals.
    - Section B i and ii received a lot of attention and seemed to be of high value
- One participant expressed the opinion that some of the city's regulations constitute a takings.
- The minimum lot size regulation on Peaks Island limits housing supply. It was instituted in the 1980s with the intent of excluding affordable housing. There should be zoning for workforce housing.
    - C: 9 recommendations are of high value
- The city owned land could provide opportunities for housing development.
- TIFs should continue to be part of the strategy for providing affordable housing.
    - B iii recommendations are of high value
- Landlords don't like section 8 inspection requirements; Harmonize inspection regulations for all housing whether section 8 or not. Examples to draw on exist in other parts of the country.
    - Several section D recommendations are of high value

- Historically the city has found appropriately scaled solutions to spikes in housing demand. An example was providing housing for Liberty Ship workers. A contemporary solution might be more Accessory Dwelling Units or a homeshare program.
    - C: 1 and H: 7 recommendations are of high value
- Discussion about the form and function of village centers/ dense mixed-use nodes within the city. With denser development and a mix of commercial and residential in close proximity parking space could be reduced.
- All parking requirements should be removed.
- The city needs to development a vision and a plan for housing – scale and type. Should have a comprehensive approach so the city doesn't promote policies that result in unintended consequences such as a housing bubble.
    - G: 2, 4 and 9 recommendations are of high value

Portland Housing Forum – 5/25/16

Notes from Maeve's room (Facilitator: Pistrang)

Three big themes emerged from the discussion in my room:

1. The need to increase the housing supply in Portland
2. The need to streamline the permitting/development process for housing
3. Issues of social equity and equitable access to housing

Supply and Permitting/Development

- Increase the diversity of housing types available e.g. larger units for families, student housing, senior housing, low-income housing
- Increase the diversity of transportation modes to access diverse types of housing
- Prioritize "Aging in Place" and senior village models of housing (H1 and H6)
- Encourage off-peninsula development
- Incentivize the creation of accessory dwelling units (ADUs), either through tax breaks or a TIF-like tool
- Make city-owned land available for development (E6)
- Change zoning and policies around residential density to allow for greater density, particularly around arterials, transit, and neighborhood "nodes" (section C)
- Expedite zoning changes for affordable housing developments
- Increase the timeliness in the planning and permitting process overall
- Revise the inclusionary zoning ordinance to be more in line with federal standards to make obtaining the subsidy for affordable housing possible; those developments need those federal subsidies in order to move forward.
- Extend form-based codes to other areas of the City
- Issue municipal bonds for a revolving loan fund that could fund new affordable development
- Regulate Airbnb units so that housing is available for residents not visitors (I1,2,3)

Social Equity

- Tenant/Landlord regulations need to be addressed, specifically no cause evictions
    - Extend notification period for no-cause evictions to 90 days
    - When landlords are evicting multiple units, the City should be notified as well as tenants
- The City should close the loopholes on the Housing Replacement Ordinance that result in the loss of affordable units (B6)
- Prohibit landlords from refusing Section 8 and other vouchers (A4)
- The shelter system in the City is inadequate and there needs to be an increase in the housing options for the very lowest income brackets, not just the median and the wealthy. Housing First models should be used. (K24)
- Increase tenant based rental assistance (TBRA) (K34)

MEMORANDUM

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

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

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

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

I. Overview of Maine Tenancy and Eviction Law

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

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

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

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

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

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

II. <u>Is the City of Portland Able to Regulate Evictions?</u>

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

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

III. <u>Do Other Municipalities Regulate Evictions?</u>

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

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

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

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

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

IV. How Could the City of Portland Regulate?

A. Evictions

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

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

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

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

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

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

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

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

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

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

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

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

C. Rent Control

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

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

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

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

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

Id.

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

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

V. <u>Conclusion</u>

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

LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND SEVENTEENTH LEGISLATURE

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

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

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

J.S. McCarthy Company
Augusta, Maine
1995

CHAPTER 194

H.P. 474 - L.D. 655

An Act Concerning Municipal Rent Control

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

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

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

See title page for effective date.

CHAPTER 195

S.P. 348 - L.D. 976

An Act Regarding Liquor Licenses for Golf Courses

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

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

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

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

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

§1075. Auxiliary licenses at ski areas and golf courses

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

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

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

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

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

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

See title page for effective date.

CHAPTER 196

S.P. 384 - L.D. 1061

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

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

PART A

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

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

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

§150. Unauthorized volunteer service

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

ACTIVITY SHEET

COMMITTEE ON: STATE & LOCAL GOVERNMENT

L.D. #: 655

TITLE: AN ACT CONCERNING RENT CONTROL

HEARING DATE: March 23, 1995

WORK SESSION DATES: April 6, 1995

REPORTED OUT DATE: May 4, 1995

COMMITTEE REPORT: MAJ OTPAM A
MIN OTPAM B

117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document **No. 655**

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

An Act Concerning Municipal Rent Control.

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

Joseph W. Mayo

JOSEPH W. MAYO, Clerk

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

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

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

§3601. Declaration of emergency

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

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

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

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

STATEMENT OF FACT

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

STATE OF MAINE
117TH LEGISLATURE

LEGISLATIVE NOTICES

JOINT STANDING COMMITTEE ON STATE AND LOCAL GOVERNMENT

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

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

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

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

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

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

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

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

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

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

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

TESTIMONY SIGN IN SHEET

COMMITTEE ON STATE & LOCAL GOVERNMENT

L.D. # or CONFIRMATION: 655

ME	TOWN/AFFILIATION	PROPONENT	OPPONE
Rep Winsor	Sponsor	X	
Bob Howe	Weil & Howe	X	
Carleton Winslow	Aff Housing	X	
Bill Pierce	Augusta		X
Ron Young	Me Municipal Assn		Neither
r.			
).			
5.			

STATEMENT IN SUPPORT OF LD 655
AN ACT CONCERNING MUNICIPAL RENT CONTROL
by ROBERT S. HOWE
on behalf of the
MANUFACTURED HOUSING ASSOCIATION OF MAINE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Propinquity, Profanity, Lunch"

From the New York Times Magazine - November 27, 1994

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

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

CHAPTER 167

MUNICIPAL RENT CONTROL

Law Review Commentaries

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

§ 3601. Declaration of emergency

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

1987, c. 737, § A, 2.

Historical and Statutory Notes

Derivation:

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

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

§ 3602. Acceptance

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

1987, c. 737, § A, 2.

Historical and Statutory Notes

Derivation:

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

§ 3603. Definitions

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

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

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

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

(1) Owns or operates; or

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

B. Rental units in cooperatives;

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

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

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

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

1987, c. 737, § A, 2.

Historical and Statutory Notes

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

§ 3604. Local rent board or administrator

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

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

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

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

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

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

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

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

1987, c. 737, § A, 2.

Historical and Statutory Notes

Derivation:

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

§ 3605. Maximum rent adjustment

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

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

A. Increases or decreases in property taxes;

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

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

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

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

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

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

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

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

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

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

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

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

Historical and Statutory Notes

Amendments

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

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

Derivation:

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

United States Supreme Court

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

§ 3606. Judicial review

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

1987, c. 737, § A, 2.

Historical and Statutory Notes

Derivation:

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

R. d S.

Min

L.D. 655

DATE: (Filing No. H-)

STATE AND LOCAL GOVERNMENT

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

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

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

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

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

§3601. Declaration of emergency

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

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

COMMITTEE AMENDMENT

R. of S.

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

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

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

STATEMENT OF FACT

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

L.D. 655

DATE: (Filing No. H-) MY

STATE AND LOCAL GOVERNMENT

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

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

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

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

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

STATEMENT OF FACT

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

COMMITTEE AMENDMENT

JOHN D. WAKEFIELD
Director

JAMES A. CLAIR
Deputy Director

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

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

TO: Senate Chair - Sen. J. Amero

House Chair - Rep. B. Daggett

Sponsor - Rep. Winsor of Norway

FROM: Grant T. Pennoyer, Principal Analyst

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

An Act Concerning Municipal Rent Control

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

A. Line Item Summary

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

B. Fund Summary

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

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

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

III. Remarks:

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

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

VOTING TALLY SHEET

L.D.# or Confirmation: 655

Committee: STATE & LOCAL GOVERNMENT

Date: April 6, 1995

Motion: OTPAM (MAJ) / OTPAM (MIN)

Motion By: Robichaud Rosebush

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

MAJORITY

HOUSE REPORT

THE COMMITTEE ON STATE AND LOCAL GOVERNMENT

to which was referred the following:

An Act Concerning Municipal Rent Control.

H.P. 474 L.D. 655

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

OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT " ".

of
(Signature) For the Committee.

(Type) Rep. of (Town) and/or Sen. of (County)	(Signatures)
REP. DAGGETT OF AUGUSTA	[illegible]
SEN. CARPENTER OF YORK	David L Carpenter
REP. ROSEBUSH OF EAST MILLINOCKET	[illegible]
REP. ROBICHAUD OF CARIBOU	Julie-Marie Robichaud
REP. LANE OF ENFIELD	[illegible]
REP. SAVAGE OF UNION	Christine Savage
REP. YACKOBITZ OF HEBRON	Robert E Yackobitz
REP. AHEARNE OF MADAWASKA	[illegible]
SEN. AMERO OF CUMBERLAND	Jane A. Amero

HOUSE REPORT

Printed on recycled paper

MINORITY

HOUSE REPORT

THE COMMITTEE ON STATE AND LOCAL GOVERNMENT

to which was referred the following:

An Act Concerning Municipal Rent Control.

H.P. 474 **L.D. 655**

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

"OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "".

of

(Signature) For the Committee.

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

HOUSE REPORT

Printed on recycled paper

L.D. 655

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

MAJORITY

STATE AND LOCAL GOVERNMENT

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

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

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

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

STATEMENT OF FACT

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

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

Planning & Urban Development Department

TO: Councilor Duson, Chair
Members of the Housing Committee

FROM: Jeff Levine, Director, Planning and Urban Development Department
Mary Davis, Division Director
Kristin Styles, HCD Program Manager
Housing and Community Development Division

DATE: June 17, 2016

SUBJECT: Housing Policy Work Plan

At the June 8th Housing Committee meeting, the Committee undertook a facilitated discussion, led by Dr. Jack Kartez, to identify a working list of potential actions items from the "bucket list" of ideas gathered from the staff Housing Work Group and the May 25th Community Meeting. The meeting discussion is annotated on two lists which are attached to this memo.

The first list identifies all the items reviewed by the Housing Committee at the June 8th meeting and includes the committee's decision with some discussion notes.

The second list identifies the Housing Committee's final consent or "yes" list with discussion notes and staff comments. The items from this list are discussed below in more detail. This memo includes additional information and discussion that staff compiled since the June 8th meeting. In some cases, completion timelines or possible Committee actions are noted as well.

1A Rent Control. – Corporation Counsel will provide information on this issue for the July 13 Housing Committee Meeting.

2A Moratorium on No-Cause Evictions. – Corporation Counsel will provide information on this issue for the July 13 Housing Committee Meeting.

3A Increase notification minimums from landlords to tenants for rent increases or non-renewal of any lease. – Corporation Counsel will provide information on this issue for the July 13 Housing Committee Meeting.

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

<u>4A Ordinance prohibiting landlords from refusing Section 8 or other vouchers.</u>
– Corporation Counsel will provide information on this issue for the July 13 Housing Committee Meeting.

<u>8 A One-page Tenant Rights Handout.</u>

At a previous Housing Committee meeting staff from Pine Tree Legal Assistance offered to assist in the preparation of a one-page tenant rights handout. HCD staff will work with Pine Tree Legal Assistance on this and should be able to produce a one-page handout no later the Housing Committee's August 24th meeting.

Pine Tree Legal does produce a booklet entitled "*The Rights of Tenants in Maine*" that is available on their website at http://ptla.org/rights-tenants-maine.

<u>Housing Replacement Ordinance</u> – see page 161 in the Housing Resource Binder

<u>5B</u> – Housing Replacement Ordinance – Prohibit replacement units from being "luxury".

Portland's current Housing Replacement Ordinance was approved in 2010 and went through major revisions in 2012 and earlier this year. It was based on an ordinance from Burlington, Vermont. The stated purposes of the ordinance are:

"1. To promote and facilitate an adequate supply of housing, particularly affordable housing for all economic groups;

2. To limit the net loss of housing units in the city; [and]

3. To preserve housing in zones where housing is permitted for in the city for all residents in order to promote the health, safety and welfare of its citizens."

With the passage of the Inclusionary Zoning Ordinance and various upzonings approved in the past few years, the Housing Replacement Ordinance has generally focused on the second and third purposes.

The ordinance does not currently restrict any replacement units – or any existing units – from being "luxury." The only requirement is that the replacement units not be significantly smaller than the ones being replaced. The replacement units are generally significantly higher quality than the units being replaced – and are also therefore generally less affordable.

The only way to prevent replacement units from being "luxury" would be by defining what is meant by luxury. The easiest and most logical way to do so would be to require that replacement units be "Workforce Housing Units for Rent" or "Workforce Housing Units for Sale" as defined in Division 30. That would limit the rents and sales prices of units based on area-wide median income. There would need to be an additional policy decision as to whether to place a deed restriction on the units or simply require the first sale or rental of replacement units to meet that requirement.

Note that units being removed subject to this ordinance have never been "affordable" in any legal sense. Often they are vacant or perhaps de-facto affordable due to being in poor shape

<u>6B</u> – Housing Replacement Ordinance – instead of paying a fee, owners can make a market rate unit in another building affordable to low income households.

This option mirrors an option in Burlington's Housing Replacement Ordinance. Their language is as follows:

"Replacement units may be provided by the owner or by the owner's designee fully in any of the following ways …

c. Subsidy: Creation of affordable housing units that have not been affordable to low-income households for the twenty-four (24) months preceding the date of application for conditional use approval."

This is language that could easily be adopted into Portland's ordinance.

<u>7B</u> – Housing Replacement Ordinance – Mandate developers pay into the Housing Trust Fund when replacement units are not at "affordable" levels.

This discussion is similar to that of 5-B above. If units did not meet the definitions of "workforce" housing the ordinance would specify that they do not qualify as replacement units, and a Housing Trust contribution would be required.

At the last meeting, there were also some questions about how to creatively capitalize the Housing Trust. In addition to the past funding through funding in–lieu of replacement units, we are now beginning to see funding through the fee-in-lieu option for Inclusionary Zoning. Currently we are expecting just short of $300,000 in funding through that source. There is also currently a one-year policy of funding the Housing Trust through sale of any tax-acquired properties. Some other sources used in other communities include:

- In Portland, Oregon, they have funded their equivalent Trust through use of Tax Increment Financing;
- In Brookline, Massachusetts, a small percentage of any unexpended funds at the end of each fiscal year are placed in their Housing Trust;
- In Boston, Cambridge, and Somerville, Massachusetts, commercial developments pay into their respective Housing Trusts on a per-square-foot basis through a so-called "linkage" ordinance. This amount is determined through a detailed study that documents how commercial development produces a need for affordable housing.

Condominium Conversions – (this item will be added to the Housing Resource Binder)

9B – Tighten up condo conversion regulations to clarify tenant rights, proof of notifications, and timing to better capture future intent of landowners.

The purpose of the City Of Ordinance Sec. 14-565 Article VII – Condominium Conversion is to 'regulate the conversion of rental housing to condominiums; to minimize the potential adverse impacts of such conversions on tenants; to ensure that converted housing is safe and decent; and to maintain a reasonable balance of housing alternatives within the city for persons of all incomes.'

In this ordinance, a developer must give each tenant a written notice of intent to convert. For tenants living in the same building for 0-4 years, a 120 day notice period is required, an additional 30 day notice period is required for each additional year the tenant has been living in the building, up to 240 days (8 years of occupancy).

The notice is required to contain the following statement:

If you do not buy your apartment, the developer of this project is required by law to assist you in finding another place to live and in determining your eligibility for relocation payments. If you have questions about your rights under the law, or complaints about the way you have been treated by the developer, you may contact the Building Inspection Division, *Department of Planning and Urban Development, City of Portland, Maine 04101 (telephone: 874-8703).*

For a 60 day period following the giving of the notice, the developer is required to give the tenant an exclusive and irrevocable option to purchase the unit. If the tenant does not purchase the unit during this 60 day period, the developer cannot offer the unit to any other person at a lower price or more favorable terms for an additional 180 days, until the same offer is made to the tenant.

If the tenant does not purchase the unit and qualifies at or below 80% AMI, the developer must make a cash payment to the tenant in an amount equal to the amount of rent paid by the tenant for the immediately preceding two months.

If within 120 days after a tenant is required by the developer to vacate, the developer records a declaration of condominium without having given notice as required, the developer shall be presumed to have converted in violation of this article. If the developer is found to be in violation, the request for a permit to convert is denied.

As part of the application process, the developer is required to pay an application fee of $150.00 and $100.00 Certificate of Occupancy fee per unit. If, at the time of application, any unit is vacant, the Building Inspections division requires the developer to disclose the reason the unit is vacant along with the name, new address and phone number of the previous tenant. This requirement is not part of Sec. 14-565 Article VII.

Ordinance revision suggestions:

1. Revision suggestion for the following portion of Sec. 14-568. Protection of tenants
   (a) *Notice of intent to convert*. A developer shall give to each tenant written notice of intent to convert at least ~~one hundred twenty (120)~~ one hundred eighty (180) days before the tenant is required by the developer to vacate. If a tenant has been in possession of any unit within the same building for more than four (4) consecutive years, the notice period shall be increased by thirty (30) additional days for each additional year, or fraction thereof, to a maximum of ~~two hundred forty (240)~~ three hundred sixty (360) additional days.

2. Require the developer to provide the name, address, and phone number of the

current tenant or most recent tenant of each unit.

This is an item that could be moved forward quickly at the Housing Committee's direction.

<u>Affordable Housing Tax Increment Financing</u> – See Page 7 in the Housing Resource Binder

<u>10B</u> – Continue to provide tax increment financing to housing development projects to help financially support and encourage the development of more low and middle income housing.

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

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

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

<u>Existing Affordable Housing TIF</u>

Pearl Place Phase I – Oxford and Pearl Streets;
409 Cumberland Avenue – Forest and Cumberland Avenue;
Thomas Heights - 134 Washington Avenue; and
17 Carleton Street

It is the opinion of staff that the affordability requirements, on-going monitoring and reporting requirements, along with the complicated application process act as a disincentive to the use of this tool by developers of smaller projects or private property owners.

<u>11B</u> – Create a TIF for individual property owners who create affordable units within their properties as a means of financially encouraging the creation of more affordable units.

The TIF application process is complicated and may not be the appropriate tool to address this issue. As a means of determining an alternative solution, HCD staff spoke with the City's Tax Assessor to determine whether an accessory dwelling unit added to an existing residential property and subject to tenant affordability restrictions would qualify for any form of property tax exemption. It is the tax assessor's opinion, with Corporation Counsel's office agreeing after a preliminary review, that this would not be allowable under current state law. They did not find any legislation that would allow the tax assessor to exempt all or a portion of a property under this scenario.

HCD staff asked the tax assessor to estimate the possible tax impact if an accessory unit is added to an existing property. Using the assumption that the added unit would be 500 square feet of living space, including a kitchen and bath, of average quality construction, he determined the additional space might add approximately $750 to an annual tax bill. The estimate did not consider long term restrictions on affordability, however, the tax assessor indicated that it would be difficult to calculate the affect affordability restrictions may have on the property value. Property assessments are considered accurate if they deviate no more than 10% from the proven market value of the property. Therefore, depending on the amount of consideration given to the restrictions, the net final value may not fall beyond the 10% range.

Additional research would be needed to determine whether current state law would allow a local exemption or credit to address this issue. It is possible that any possible solution may require a change in state law.

As noted above, it is the opinion of staff that the affordability requirements, on-going monitoring and reporting requirements, along with the complicated application process act as a disincentive to the use of this tool by developers of smaller projects or private property owners.

<u>Tax Acquired Properties</u>

<u>3E</u> – Utilize tax acquired properties to capitalize the Housing Trust Fund and restrict long term affordability of the unit prior to sale.

As outlined above, there is a temporary policy of funding the Housing Trust through any sales of tax-acquired properties. In practice, such sales are rare and unlikely to produce any significant funding. Any resale could be subject to an affordability restriction, but any such determination should be balanced against the possible benefit of selling the property without restrictions and simply placing part of the sale price into the Housing Trust directly.

<u>4E</u> – Work with non-profits like Habitat for Humanity to rehab city-owned tax acquired properties to turn them into affordable housing.

Staff has also been evaluating any properties listed as potential tax-acquired property and indicating if the property itself may be appropriate for renovation as affordable housing. In practice, most properties listed are single-family houses that are not always good candidates for permanently affordable housing.

<u>5E</u> – The City should enter into long term ground leases for city-owned land as a means of supporting long term affordability rather than selling land outright to a developer (both for-profit and non-profit developers).

In the recent past, the City has generally offered property for sale with deed restrictions rather than using a Land Trust model of ground leasing land with restrictions. The Land Trust model provides some benefits over the deed restriction model but also involves the City continuing to be a land holder and landlord. Such a model impacts the tax value of the property and can complicate a developer's ability to finance a development. However, the benefits should be considered as well as these drawbacks.

<u>Short Term Rentals</u> - See Page 532 in the Housing Resource Binder

<u>I1</u> – Regulate Short Term Rentals (STR's) such as AirBnB in an effort to return existing housing stock to the long term rental market.

During the September 30, October 14 and October 28, 2015 meetings of the Council's Housing and Community Development Committee, the committee reviewed staff research on short term rentals along with potential regulation options. Three possible options were reviewed: (1) utilizing the Housing Safety Office to address safety and building code concerns; (2) revision of existing zoning code (Section 1404(e)) to allow for some short term rentals or (3) create a new short term rental section within the existing code. While the members of the HCDC agreed that option 3 would be the best way to proceed, there was an acknowledgement of the need for a better understanding of the extent of the short term rental problem and as the October 28, 2015 meeting was the last meeting of for the committee year, the committee did not have an opportunity to further review the matter. (The minutes from those meetings are attached).

A current review of the Airdna website, which provides "data and analytics to vacation rental entrepreneurs and investors", indicates 206 active listings for June, 2016. Of those 206 listings 142 are "entire place" listings and 42 are "private room" listings. The median nightly rate for an entire home was $150 and $82 for a private room.

The 2010-2014 American Community Survey 5-Year Demographic and Housing Estimates indicates that Portland has 33,157 total housing units of which 30,107 are occupied (13,157 owner-occupied units and 16,950 renter-occupied units). Based on this data and the data from Airdna, less than 1% of the City's housing units are being offered as short term rentals. The attached map from Airdna indicates that most of the rentals are located on the peninsula.

As Tyler Norod noted in his October 28, 2015 memo to the HCDC

"..., most of the units offered as STR's are limited to the Peninsula which may have a disproportionate impact on those neighborhoods. The Peninsula contains approximately 12,000 housing units. Assuming approximately 250 units are being listed mostly on the peninsula this would account for approximately 2% of the Peninsula's housing stock.

Considering the Peninsula's extremely low vacancy rate any significant reduction in available housing stock should be a concern for the City. For context, cities around the country with the highest percent of their housing stock being utilized as STR's are between 6.5% and 1.1% according to AirDnA. The National Association of Realtors defines a landlord's market as one where vacancy rates are less than 5%. The recently completed 2030 Workforce Housing study by the Greater Portland Council of Governments (GPCOG) estimated Portland's 2014 vacancy rate at 4.4%. This was for the entire Portland market. It would stand to reason that the Peninsula's vacancy rate is even lower. Therein it is possible to see how removing an estimated 2% of the housing stock from the Peninsula could have a significant effect on the market."

I3 – Add fees/taxes to Air BnB type rentals to help capitalize the Housing Trust Fund

Reference is made to Tyler Norod's memo of October 28, 2015. In that memo Tyler looked at how other cities were approaching this issue. Savannah, Georgia charges a $150 registration fee with a $50 annual renewal fee. Savannah also established fines ranging from $500-$1,000 for violations to their ordinance. Santa Monica, California has fines of up to $500 per day.

The regulation of short term rentals, along with the use of fees or taxes is an item that will require additional time for analysis and review.

K24 - Create more Housing First projects to support long term shelter stayers - See Page 513 in the Housing Resource Binder

Attached is a report created by the City of Portland's Health & Human Services Department, Social Services Division from March, 2016 which provides an update to the 7-Point Plan to End Homelessness.

Goal #6 refers to the Housing First Program. The City of Portland issued a RFP in February 2014 for proposals from a consultant or consultant team in the field of Permanent Supportive Housing (PSH) development, specifically the development of projects utilizing the "housing first" model. The City received two responses and awarded funding to each proposal (Avesta Housing $50,000 and Community Housing of Maine $25,000).

Avesta's proposal envisioned the creation of a traditional Housing First development. Their use of the pre-development funding resulted in a development proposal for a project at 72-78 Bishop Street which will create thirty (30) efficiency units. The development includes the construction of a new three story building containing the 30 units, along with a reception area and staff rooms. Site work and the installation of foundations has begun. The expected completion date of the project is April, 2017.

Community Housing of Maine's (CHOM) proposal envisioned "blending the population quickly and seamlessly into a combination of rehabilitated existing small multifamily apartment buildings and larger Low Income Housing Tax Credit and/or Historic Tax Credit funded properties aimed at serving the general public."

Their use of the funds resulted in a development proposal for four units of supportive housing for homeless populations, targeting long-term shelter stayers. The City of Portland will partner with CHOM and will provide referrals and support services to each individual housed. The project will be located in an existing 4-unit dwelling at 548 St. John Street and is financed by funding through Maine State Housing Authority and the City's CDBG and HOME programs.

The City Council's 2016 Common Goals includes as a goal for the Housing Committee to plan for five new "housing first" projects. To help meet this goal, the City's 2016-2017 Affordable Housing Development HOME Funds Application identified Housing First developments as a priority. The application was released on May 2nd with an initial due date for proposals of June 10. To date the HCD office has received three applications. However, none of those applications are Housing First proposals.

There are two housing first developments in the City of Portland. Logan Place and Florence House were both developed by Avesta Housing. In a presentation to the Housing and Community Development Committee (HCDC) in February, 2013, Dana Totman of Avesta Housing noted that there are three steps to the creation of a housing first development – (1) find a site (2) secure development funds and (3) secure operating funds for both the building and the resident services. As noted in the HCDC minutes, Mr. Totman indicated that securing funds for the resident services and garnering neighborhood support for the development were two of the more difficult aspects of developing housing first projects.

A Note on Zoning Changes

At the last meeting there was some discussion about whether to wait for a planned comprehensive zoning rewrite before advancing any zoning changes. While significant changes to the Zoning Ordinance are best handled at a comprehensive level, we continue to refine and rewrite the existing ordinance to make improvements. These interim changes are valuable pilots to help determine what changes may be expanded and adopted as part of a new code.

Portland, Maine Yes. Life's good here.

Planning & Urban Development Department

To:	Councilor Duson, Chair Housing Committee Members of the Housing Committee
From:	Jeff Levine, Director, Planning and Urban Development Department Mary Davis, Division Director, Housing and Community Development Victoria Volent, Housing Program Manager
Date:	February 12, 2018
Subject:	Proposed Housing Policy Proposals

Introduction

Eleven housing policy initiatives were presented by staff and introduced to the Housing Committee at the September 26, 2017 meeting. The proposed initiatives are also described in Section IV b (Analysis and Policy Proposals- Housing Policy Proposals) of the 2017 Housing Report. However, these initiatives can be traced back to the four month long public process undertaken by the 2016 Housing Committee to solicit feedback from a wide array of community stakeholders and housing experts. This effort resulted in a "bucket list" of policy ideas from which the committee addressed several items during the 2016 and 2017 Housing Committee schedule. The remainder of the items were to be a resource for future Housing Committee work plan topics.

The Committee began discussions on their 2018 work plan at the January 24, 2018 meeting. At that meeting, Councilor Cook also presented several policy proposals to be included in the work plan discussion. In addition, Mayor Strimling proposed five policy initiatives in his 2018 State of the City address on January 31. These additional policy initiatives are all included in the list of policy initiatives (now numbering twenty-four ideas), for deliberation and prioritizing to allow staff to do needed research. Note that some of these proposals are being analyzed outside of the Housing Committee process, particularly as part of the ReCode Portland zoning rewrite.

Question
1) Develop a strategic homebuyer assistance program ("HomePort 2")
2) Develop a foreclosure prevention program that will provide emergency grants to low-income homeowners in risk of foreclosure
3) Secure Tenant Based Renal Assistance (TBRA) at $250,000 a year minimum using a combination of City funds and federal funds (roughly 50/50)
4) Increase the condominium conversion fee significantly to fund TBRA and/or the Housing Trust
5) Review the current condominium conversion ordinance to assess whether the tenant notice and relocation assistance requirements are being followed
6) Create a "hotel linkage fee" to fund City housing programs
7) Have the City take the lead in exploring the creation of a Portland Community Land Trust (CLT) that would receive consideration at below-market rate for surplus city property for housing development
8) Utilize CDBG funding to establish an emergency rehabilitation program
9) Offer rehabilitation funding in conjunction with the Lead Safe Housing Program
10) Agree to administer Portland Water District's water efficiency and repair services program
11) Consider creating a Housing Advisory Board primarily consisting of housing professionals with some tenant and landlord representation, to assist City staff and Councilors in making informed policy decisions
The following four (4) proposals were taken up by the 2017 Housing Committee at their November 29, 2017 meeting. The Committee voted to forward their recommendations (both for and against) to the Planning Board. The Planning Board will hold a workshop on the proposals February 13, 2018 and a public hearing on February 27, 2018.
12) Amend the Inclusionary Zoning Ordinance to include a fractional fee-in-lieu payment when units are provided on-site
13) Amend the Inclusionary Zoning Ordinance to remove the sunset clause
14) Amend the Inclusionary Zoning Ordinance to increase the percentage of mandatory affordable units
15) Amend the Inclusionary Zoning Ordinance to lower the affordability income level
Proposals from Council Cook.
16) Remove barriers to Accessory Dwelling Units in residential zones – *being studied as part of the ReCode Portland zoning rewrite's first phase*.
17) Relax requirements for homeowners to improve or add on to existing homes – *also being studied as part of ReCode Portland's first phase*.
18) Assess premium fees on high-end development; development impact fees (this item is on the 2018 work plan for the Economic Development Committee) – *the City is under contract with TischlerBise, a national firm specializing in impact fees, to work with City staff in developing an impact fee proposal as part of ReCode Portland's first phase.*
19) Request input from developers on how to build basic family housing, workforce housing and low income housing

Proposals from the Mayor's Annual State of City Address delivered on January 31, 2018

20) Expand density incentives to other zoning districts

21) Require a 90 day notice on evictions – *this was discussed as part of the Housing Committee's work on tenants' rights in 2016*

22) Require landlords to accept housing vouchers

23) Re-exam the rent stabilization initiative

24) Issue a 5 million dollar bond for affordable housing initiatives and program sales proceeds from WEX sale to the Housing Trust

Portland, Maine Yes. Life's good here.

Planning & Urban Development Department

To: Councilor Duson, Chair Housing Committee
Members of the Housing Committee

From: Jeff Levine, Director Planning & Urban Development Department
Mary Davis, Division Director, Housing & Community Development Division
Victoria Volent, Housing Program Manager
Housing & Community Development Division

Date: November 3, 2017

Subject: Housing Policy Proposals

Summary

In continuation of the 2016 public policy initiatives (known as the bucket list) and the introduction of additional initiatives to the Housing Committee at their October 26, meeting, enclosed are the housing policy proposals (not including Inclusionary Zoning which are discussed in a separate memo) for further review by the Housing Committee.

Housing Policy Proposals

1. Develop a strategic homebuyer assistance program ("HomePort 2")

The City would provide assistance with the cost of Private Mortgage Insurance (PMI) to lower the borrower's monthly mortgage payment. PMI is a type of mortgage insurance meant to reimburse the lender if the borrower stops making payments on their home loan. Lenders require PMI if the borrower makes a down payment of less than 20% of the loan amount. PMI potentially adds hundreds of dollars to the monthly mortgage payment for at least two, but up to five years.

If the City were to provide assistance with the cost of private mortgage insurance, an upfront single payment premium program would be the most cost-effective way to assist home buyers who could not afford a 20% down payment.

From the early 1990's through FY14, the City offered a first-time homebuyer program that offered up to $30,000 in a deferred loan to be used for down payment, closing cost or rehab assistance (the "HomePort" program.) The subsidy was repaid when the property was sold or no longer occupied as the owner's primary residence. The repayment included the original subsidy amount plus a percentage of any net gain in the value of the property. The decision was made to stop the program for two reasons: (1) the subsidy amount would need to be increased to keep the cost of a home affordable to households at or below 80% of the area median income and (2) the local home prices exceeded the HOME Program maximum purchase price limit. The funding allocated to this program was transferred to the Tenant Based Rental Assistance Program that began in FY13.

Based on conversations with local lenders, we think there is an opportunity to leverage public commitment with some private funds.

A pledged asset program would allow the city to establish an account with the lender for an amount equal to the down payment. The bank would hold that account as security in the case of default by the borrower. When the borrower's loan balance reaches the required loan to value ratio, the account would be released back to the city.

Estimated costs:
Upfront private mortgage insurance $2,000-$3,000 per borrower.
Pledged Asset Account: $12,250 - $25,000 per borrower.
Second Mortgage Program: $30,000 - $50,000 per borrower.

OVERALL ESTIMATED COST*: $50,000-$200,000 (50% City/50% Private) annually*

2. Develop a foreclosure prevention program that will provide emergency grants to low-income homeowners in risk of foreclosure.

The program would be designed to assist Portland homeowners who are struggling to pay their mortgage payments because of a temporary financial hardship, for example job loss or healthcare issue. Assistance would be provided in the form of a 0% interest loan to be paid back when the temporary financial hardship has been resolved. These grants would be limited to $5,000 per household.

OVERALL ESTIMATED COST: *$50,000 (50% City/50% Private) annually*

3. Secure Tenant Based Rental Assistance (TBRA) funding at $250,000 a year minimum, using a combination of City funds and federal funds (roughly 50/50.)

The current Tenant Based Rental Assistance (TBRA) Program is funded through HUD's HOME funding program. TBRA provides security deposits, rental assistance and utility allowances on a short term basis for low-income (below 60% AMI) individuals and families who are homeless or in danger of becoming homeless. Changing the program to include local or city funds would enable the City to provide assistance to workforce (80% to 100% AMI) households that do not qualify for HOME funding.

Beginning with FY14, the City budgeted an average of $132,000 for the TBRA Program. However, in FY16 ($25,000) and FY 17 ($63,000) in additional HOME funds were allocated to the budget as the need outpaced the original budget allocation. In FY17, the TBRA Program assisted in placing 175 households into permanent housing utilizing $193,000 in HOME funding.

OVERALL ESTIMATED COST: *$250,000 to serve 200-250 households annually.*

4. Increase the condominium conversion fee significantly to fund TBRA and/or the Housing Trust Fund.

The condo conversion fee could be modeled on the fee structure in the Housing Replacement Ordinance. The fee would be set based on staff analysis and Council approval. A portion of the fee could be placed in the Housing Trust Fund and a portion used to fund the TBRA program.

Under the current ordinance, the condo conversion application fee is $150 plus the cost of work and a certificate of occupancy fee of $100 per unit. From 2012 to present there were 10 condo conversion applications which created 23 condominium units. If the Rent Stabilization referendum were to pass it may have an impact on the conversion rate.

OVERALL ESTIMATED REVENUE: *Depends on the level of the fee and the conversion rate but approximately $50,000 to $150,000 a year to fund other programs on this list.*

5. Review the current Condominium Conversion ordinance to assess whether the tenant notice and relocation assistance requirements are being followed.

Proposed changes to the Condominium Conversion ordinance would extend notice requirements; require notification of current tenant contact information to the City; and increase penalties for non-compliance with this ordinance. For long-term tenants, a year long notice period is proposed.

The purpose of the Condominium Conversion ordinance is to 'regulate the conversion of rental housing to condominiums; to minimize the potential adverse impacts of such conversions on tenants; to ensure that converted housing is safe and decent; and to maintain a reasonable balance of housing alternatives within the city for persons of all incomes.' It requires that the developer give each tenant a written notice of intent to convert. For tenants living in the same building for 0-4 years, a 120-day notice period is required, an additional 30-day notice period is required for each additional year the tenant has been living in the building, up

If you do not buy your apartment, the developer of this project is required by law to assist you in finding another place to live and in determining your eligibility for relocation payments. If you have questions about your rights under the law, or complaints about the way you have been treated by the developer, you may contact the Permitting and Inspections Department, City of Portland, Maine 04101 (telephone: 874-8703).

For a 60-day period following the giving of the notice, the developer is required to give the tenant an exclusive and irrevocable option to purchase the unit. If the tenant does not purchase the unit during this 60-day period, the developer cannot offer the unit to any other person at a lower price or more favorable terms for an additional 180 days, until the same offer is made to the tenant.

If the tenant does not purchase the unit and qualifies at or below 80% AMI, the developer must make a cash payment to the tenant in an amount equal to the amount of rent paid by the tenant for the immediately preceding two months.

If within 120 days after a tenant is required by the developer to vacate, the developer records a declaration of condominium without having given notice as required, the developer shall be presumed to have converted in violation of this article. If the developer is found to be in violation, the request for a permit to convert is denied.

At the time of application, if any unit is vacant, the Permitting and Inspections Department requires the developer to disclose the reason the unit is vacant along with the name, new address and phone number of the previous tenant. However, this disclosure is not required under the current ordinance.

OVERALL ESTIMATED COST/REVENUE*: Approximately 100 hours of staff time.*

6. Create a Hotel linkage fee to fund City housing programs

Require hotels to pay an impact fee that accounts for offsetting the increased housing demand generated by their need for low-income employees.

Since 2013, Portland experienced roughly 39 percent increase in number of hotel units. In 2015, the hotel industry on the peninsula reported a 70 percent occupancy rate (U.S.

average is 66 percent). A hotel linkage fee would be assessed through comprehensive study and analysis to link costs, project new development, and realize the feasibility for developers. Once an impact fee is set, it is routinely reevaluated and revisited and adjusted based on new data, inflation, and other trends. By using an impact fee, future hotel developers have a predictable way to factor in the mitigation cost into their pro forma, rather than having to negotiate mitigation and deal with the uncertainty based on each case-by-case basis. Currently Portland only seeks mitigation for transportation and storm water impacts in most cases.

OVERALL ESTIMATED REVENUE: *Depends on how fee is set but approximately $100,000-250,000 a year to fund other programs.*

7. Have the City take the lead in exploring the creation of a Portland Community Land Trust (CLT) that would receive consideration at below-market rate for surplus city property for housing development.

A community land trust is a non-profit, community based organization designed to ensure local stewardship of land. It is primarily used to ensure long-term housing affordability without relying on deed restrictions or sale of land to developers below cost. The land trust acquires and maintains permanent ownership of land. The land trust enters into long-term leases with perspective homeowners who earn a portion of the increased property value when they sell the property.

A CLT is typically a non-profit 501c3 organization. Initially, the CLT would need significant administrative/organizing support from the City. The board of directors would need to include experienced housing and technical advisors along with area residents and other interested parties. The City would have to be willing to provide the Land Trust with land at significant discounts in order for this approach to be successful. Since the Land Trust would be a quasi-governmental agency, the City would be retaining more control over the land than under the model of selling land for $1.

OVERALL ESTIMATED COST/REVENUE: *Approximately $0 to $100,000 annually plus the lost revenue from any surplus land placed into the Land Trust.*

8. Use CDBG funding to establish an emergency repair program.

This program would assist eligible households with repairs that are determined a necessity due to the immediate danger to the health or safety of the occupants of the household. Funding would be provided from HUD's Community Block Grant program in the form of a maximum loan of up to to $7,500 in either a forgivable or payable loan determined by the household's financial situation. Eligible applicants would own and occupy a one to four unit building; income and rent requirements would be in place for the owner occupant and tenants.

OVERALL ESTIMATED COST/REVENUE: Estimated annual program cost: $75,000 to assist 10 households

9. Offer Housing Rehabilitation Funding in conjunction with the Lead Safe Housing Program.

Local funding of a Housing Rehabilitation/Lead Safe Housing Program would allow more flexibility with assisting households that earn up to 120% AMI (workforce housing). These households do not qualify for federally funded housing rehabilitation or lead safety programs.

One of the challenges with our current Lead Safe Housing Program is a local program policy which requires that any multi-family property receiving housing financial assistance must meet building and life safety code standards. Another challenge has been qualifying multi-family properties the meet the rent limit requirements established by CDBG and HOME regulations. If local funding was available to address code issues in connection with lead abatement, the guidelines could be more flexible in regards to rent caps.

10. Administer the Portland Water District (PWD) water efficiency and repair services.

Portland Water District would provide $20,000-$30,000 per year for water efficiency and repair services to households served by PWD. The City would coordinate the application process and contractor work for a 15% administrative fee per project.

OVERALL ESTIMATED COST/REVENUE: *Approximately 100 hours of staff time to evaluate, staff management thereafter.*

11. Consider creating a Housing Advisory Board, primarily consisting of housing professionals with some tenant and landlord representation, to help City staff and Councilors make informed policy decisions.

A Housing Advisory Board has the advantage of bringing in housing professionals to provide considerable free consulting assistance to staff.

OVERALL ESTIMATED COST/REVENUE: *Approximately 40 hours of staff time to establish, about $10,000 annually thereafter for incidental expenses.*

SUMMARY

Staff is looking for direction from the Committee regarding which recommendations should be the focus of additional analysis.

Mary Davis
Division Director, Housing & Community Development Division

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

FROM: Mary Davis, Housing and Community Development Division Director

DATE: February 5, 2019

SUBJECT: Update on Rental Housing Advisory Committee

RENTAL HOUSING ADVISORY COMMITTEE

In August 2018, at the recommendation of the Housing Committee, the City Council approved changes to the composition and duties of the Rental Housing Advisory Committee. The duties of the Rental Housing Advisory Committee will include providing the Housing Committee with recommendations or proposals for improvements, modifications, or changes to the City's housing ordinance or policies. The Rental Housing Advisory Committee will also identify educational opportunities, seminars, and materials that would be useful to landlords and tenants.

The City Clerk advertised openings to the Rental Housing Advisory Committee the week of November 19 through January 25. Interviews with the City Council's Nominating Committee will occur on March 6. The City Council is expected to consider the Committee's recommendations at the March 18 City Council meeting. At this time, staff anticipates that the first meeting of the Rental Housing Advisory Committee will occur in April.

CITY OF PORTLAND
Planning & Urban Development
Jeff Levine, AICP, Director

TO: Councilor Duson, Chair
Members of the Housing Committee

FROM Jeff Levine

DATE: February 8, 2019

SUBJECT: Public/Private Partnerships to Add Housing Units Utilizing City-Owned Land

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Introduction

Two main themes from Portland's new comprehensive plan were housing insecurity and lack of sufficient and suitable housing. The City recognizes that its vitality rests on the availability of diverse, secure housing options for existing residents, new arrivals, and all stages of life. Developing city owned land provides the city with unique control over the timing, location, and affordability of housing development in Portland. It also has the added benefit of turning land with little or no tax liability into an income generating property for the city's tax rolls. Presented below are three city owned lots for an initial consideration.

622 Auburn Street and 165 Lambert Street

These lots on the Falmouth boundary (622 Auburn and 165 Lambert Sts.) represent a large amount of land (4.85 and 13.38 acres respectively) and, upon first blush, represent a significant development opportunity. There is a METRO line on Washington Avenue Extension that provides limited transit access, which would be helpful for reducing traffic impacts. This is also one of the sites under consideration for the Homeless Service Center.

However, in consulting with other City Departments and after taking a site walk, the site at 165 Lambert Street is far more challenging than it appears. A great deal of the site is wet and hilly Public Works staff feels that the site provides environmental benefits that contribute to meeting federal requirements as well as meeting other City policy goals.

There is a small area of uplands near the corner of Auburn Street and Washington Avenue Extension within 622 Auburn Street that has some potential for development. Taken by itself, it is probably not large enough to provide any significant housing, especially given the cost of providing access and utilities. The existing R-2 zone is limiting and only allows for limited transfer of development rights from the rest of the site to this upland.

If 622 Auburn Street were rezoned to R-3, it would open up the option of a Planned Residential Unit Development. That option requires a minimum of three acres in that zone, but allows for some shifting of development away from wetlands and to the uplands. The number of units allowed, most likely in a townhouse or multiplex form of development, would increase significantly. In fact, the limiting factors may be transportation infrastructure or other physical limitations, rather than zoning. However, this approach would require transferring a large portion of this land to the eventual developer. That transfer could take place with restrictions in place to preserve the key environmental benefits.

If the Housing Committee is interested in pursuing potential housing on 622 Auburn Street, staff recommends the following steps:

- Contract with a real estate expert to conduct some initial feasibility for development of this site and provide a conceptual project scope, design and cost;
- Assuming this work shows that a project is financially and logistically feasible, pursue a rezoning of this site to R-3;
- Issue a Request for Proposals for a potential developer to create mixed income, workforce and/or low-income housing on this site for consideration. Preference would be given for developments that maximize the number of affordable units on site while keeping the development generally compatible with its context.

There is also a separate lot of about 13 acres the City owns in Falmouth (0 Gray Street) contiguous with these parcels. As that parcel is in a different community it is a more complicated question as to its future. The zoning appears to allow housing and office uses, but further research is needed. Staff will need to consult further with the City Manager and the Town of Falmouth regarding the future of that undeveloped parcel. Please see the attached maps.

99 Capisic Street

This .87 acre hilly parcel, located on a curve on Capisic Street, includes a circa 1840 Greek Revival house in aesthetic disrepair. This parcel was acquired for nonpayment of taxes and is owned by the City. Staff has contracted with a historic preservation and structural consultant to evaluate the condition of that house. While there is a great deal of cosmetic damage, initial staff explorations suggest that this building might be structurally sound. The consultant's work should be very informative regarding this site.

The site is large enough to be subdivided into at least two lots. However, the curve in Capisic Street and the topography makes subdividing the lot challenging. Ideally there would be one shared driveway for any lots created on this site.

Under the existing R-3 zoning, this site could be developed into two 6,500 sf. lots with one-family houses on each lot with an accessory dwelling unit on each. However, as mentioned above, this approach is logistically challenging. In addition, the existing house has historic merit and would ideally be renovated if possible. There is also a clause in the R-3 zone that allows for additional density for adaptive reuse of buildings not in residential use as of 1984. It is possible that this clause could be amended to also apply to buildings in residential use that receive local historic designation. That could allow the site to be used for additional (albeit smaller) units.

Staff recommends the following steps on this site:

- Complete the consultant's structural evaluation of the existing house;
- Explore whether an expansion of the language related to additional density for adaptive reuse of historic buildings is appropriate and, if so, move that change through the formal process;
- Develop a Request for Proposals for renovation of the building and potential additional housing. Preference should be given for projects that renovate the building in an historically appropriate matter, and produce workforce and/or low income housing.

Please see attached maps.

West School Site

The master plan for the Dougherty Field complex involves creating additional soccer fields. However, the cost of entirely funding this plan through City resources may be prohibitive. The City Manager has proposed some Capital Improvement Plan funds for an additional field but that amount by itself is not sufficient for the significant site work required.

At the same time, this site is right of Congress Street and would be a good candidate for some additional housing development. Staff explored the possibility of taking some portion of this site for housing while taking the rest for use for an additional field. There appears to be a scenario under which the City would have this possible win-win scenario, as there is room for both another field and some housing development. At the same time, selling some portion of this site for housing may help fund the field by supplementing the CIP allocation. However, the more funding the City seeks for this site, the more challenging it will be to fund affordable housing development.

This site is zoned R-5. Under this zoning, it appears that these would be sufficient land not needed for a field to create five to seven 9,000 sf. lots for two-family houses through a small subdivision off Douglass Street. There would be additional development potential on this site through the Planned Residential Unit Development tool. However, there needs to be two acres for a PRUD, and the land not needed for the additional field is less than two acres.

There is some land owned by the Maine Department of Transportation on Congress Street that does not appear to serve any of their immediate needs. If that land were to be made available to a developer, it would likely increase the size of the available parcel to two acres. Similarly, it is possible that the City could deed some portion of the land under any expanded park to a developer – with a deed restricting limiting it to open space for the public – to increase the land under the developer to this two-acre minimum.

Alternatively, some or all of this site could be rezoned to a nearby B-1 or B-2 designation. Such a map change would allow for more development density, but would also be more complex and involve more risk for the City and a developer.

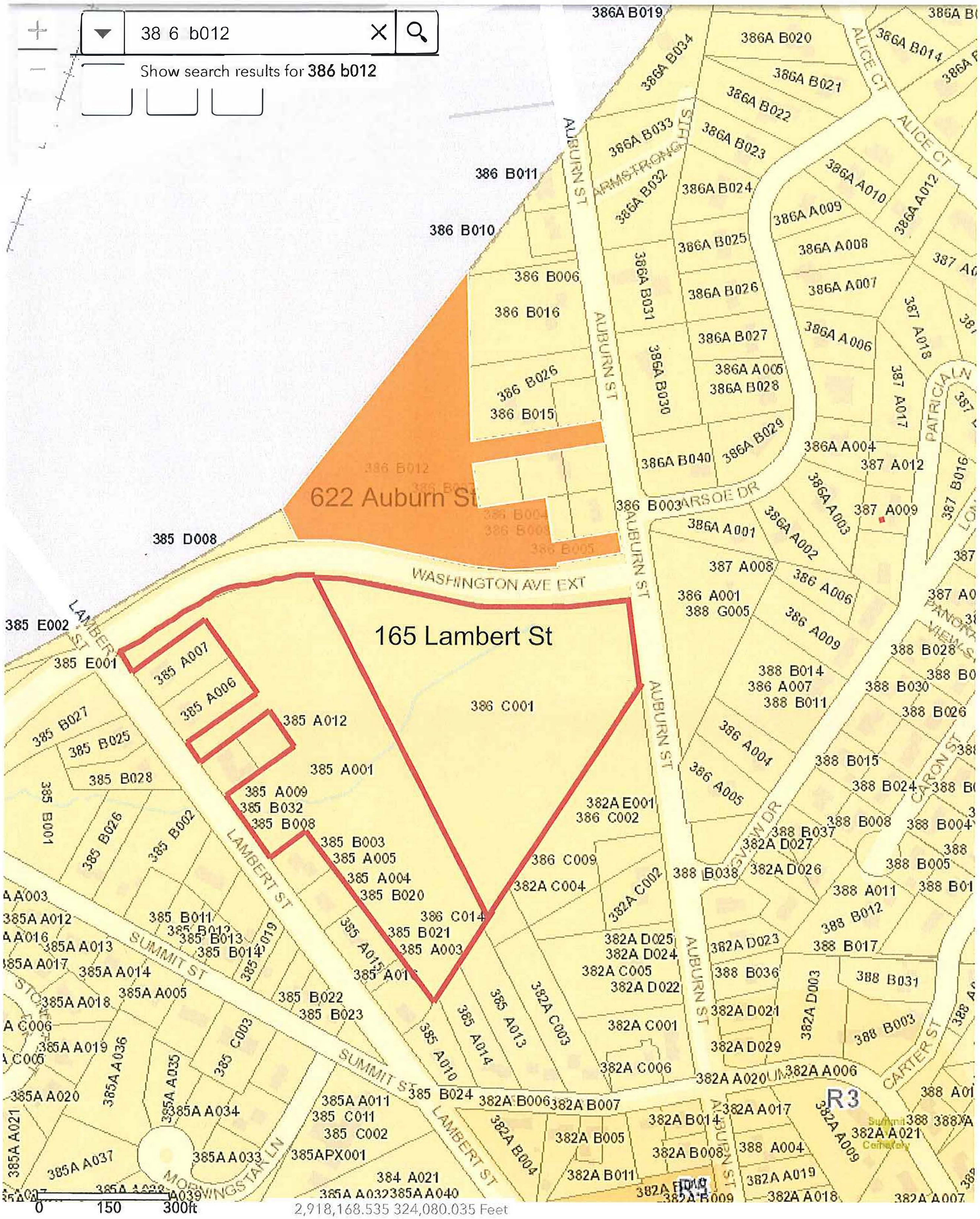
Staff recommends the following approach for this site:

- Work with other City departments to survey this land and draw potential lot lines for subdividing a portion of this land for open space;
- Approach MDOT about the possibility of acquiring additional property on Congress Street in a cost effective manner to produce additional development potential at this site;
- Once these issues have provided some resolution, offer a Request for Proposals for redevelopment as workforce or mixed income housing, with a minimum sales price for the parcel to help fund the additional field. Any rezoning of the site would be the responsibility of the developer, as it will depend largely on the specific proposal.

Please see attached map.

622 Auburn and 165 Lamber St Attachment

City of Portland Maine GIS Viewer



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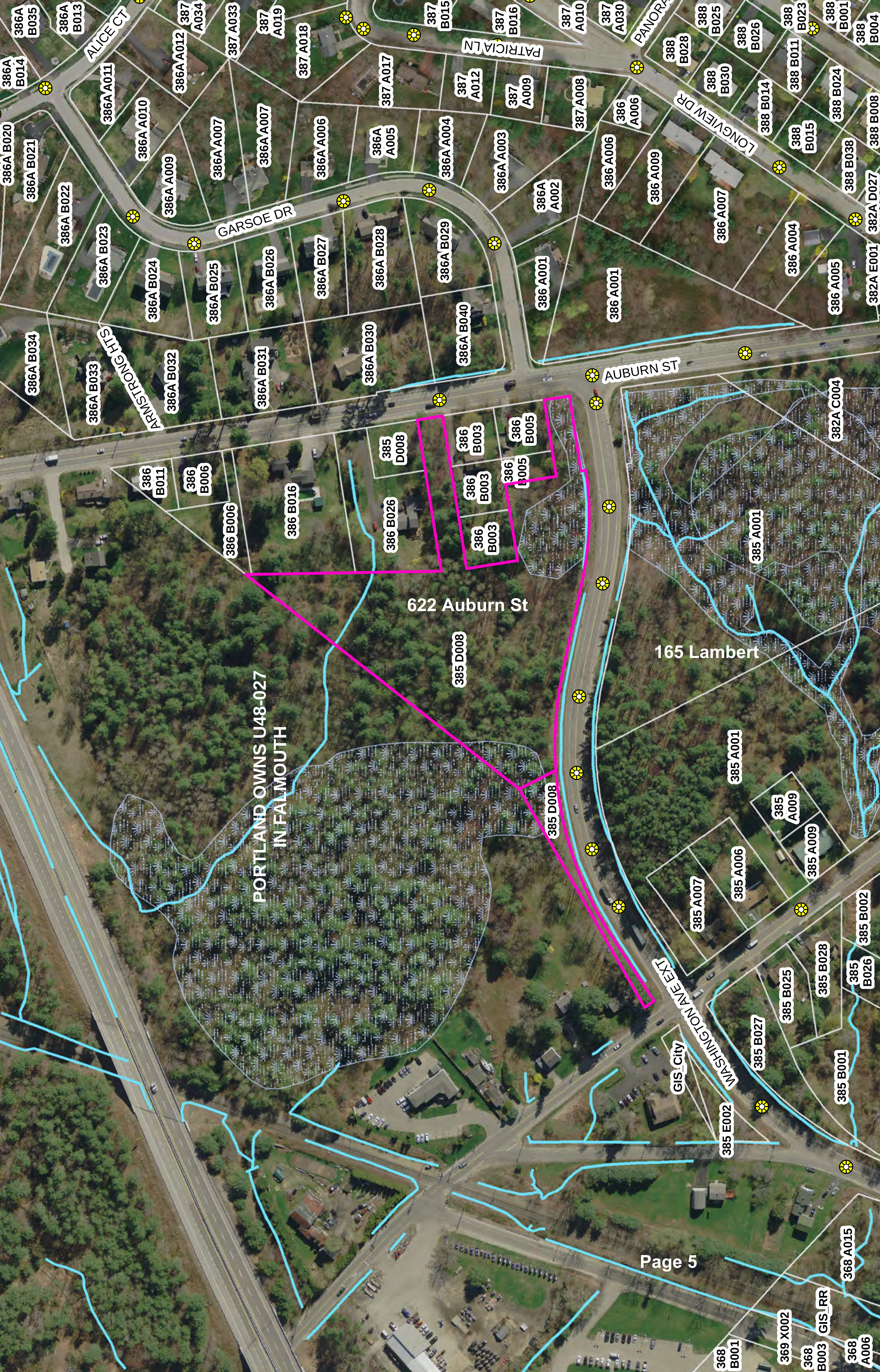

622 Auburn St
165 Lambert
PORTLAND OWNS U48-027 IN FALMOUTH
Page 5
AUBURN ST
GARSOE DR
ALICE CT
PATRICIA LN
LONGVIEW DR
ARMSTRONG HTS
WASHINGTON AVE EXT
PANORA
385 D008
386 B003
386 B005
386 B011
386 B006
386 B016
386 B026
385 A001
385 A006
385 A007
385 A009
385 B025
385 B027
385 B028
385 B001
385 B002
385 B026
385 E002
382A C004
386 A001
386 A004
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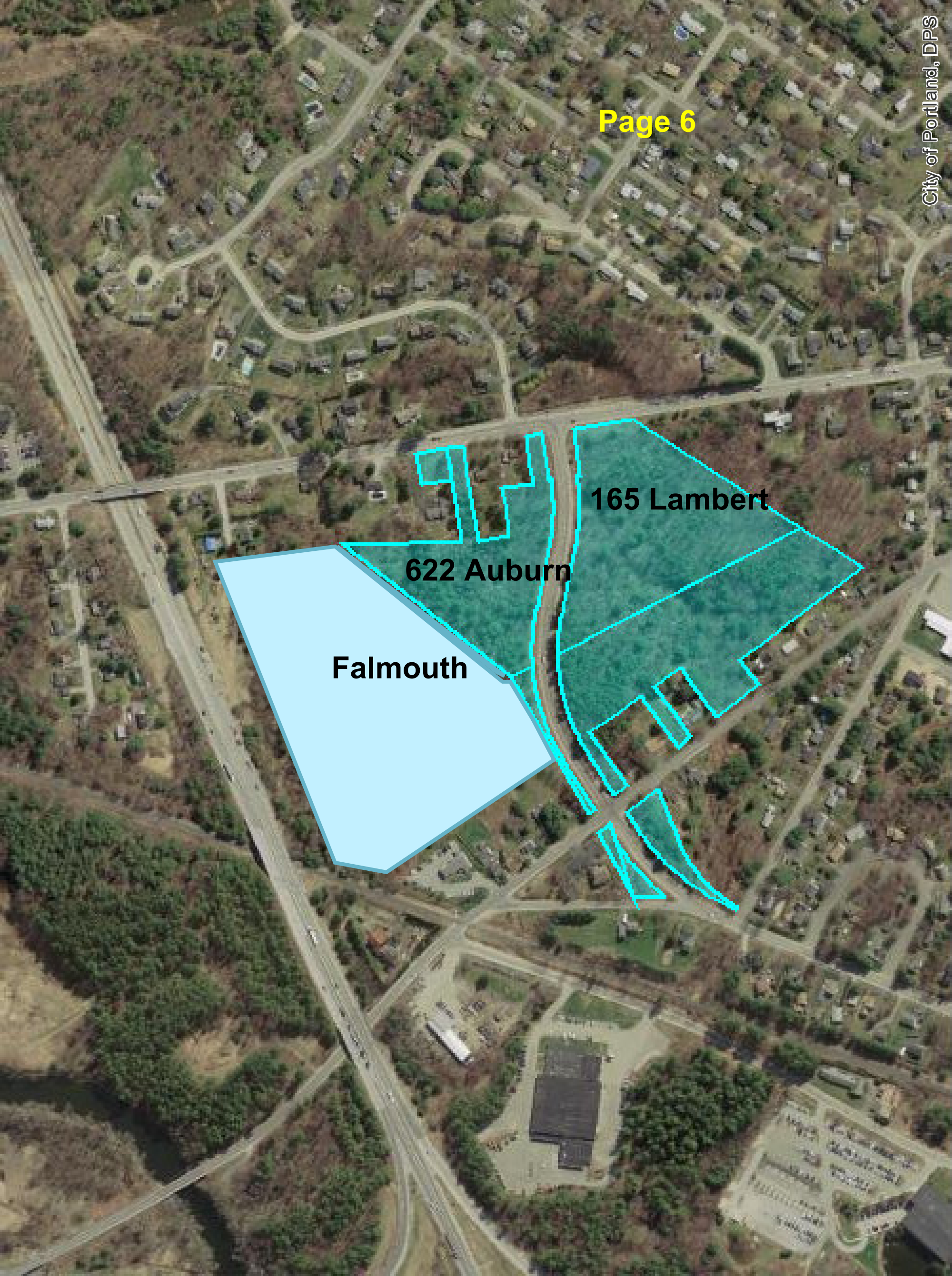
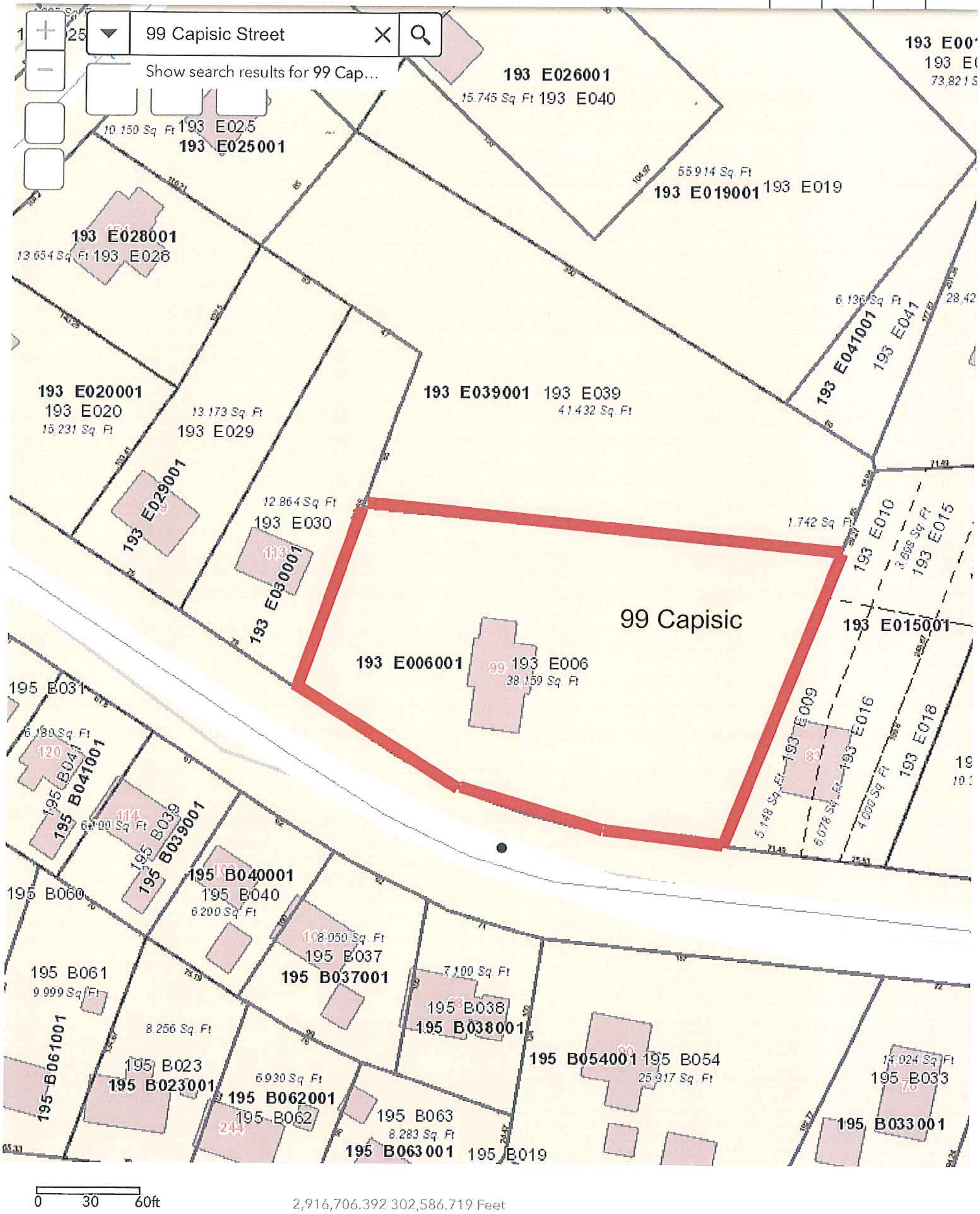
GIS_City
GIS_RR


Page 6
165 Lambert
622 Auburn
Falmouth
City of Portland, DPS

City of Portland Maine Parcel Viewer

Page 7



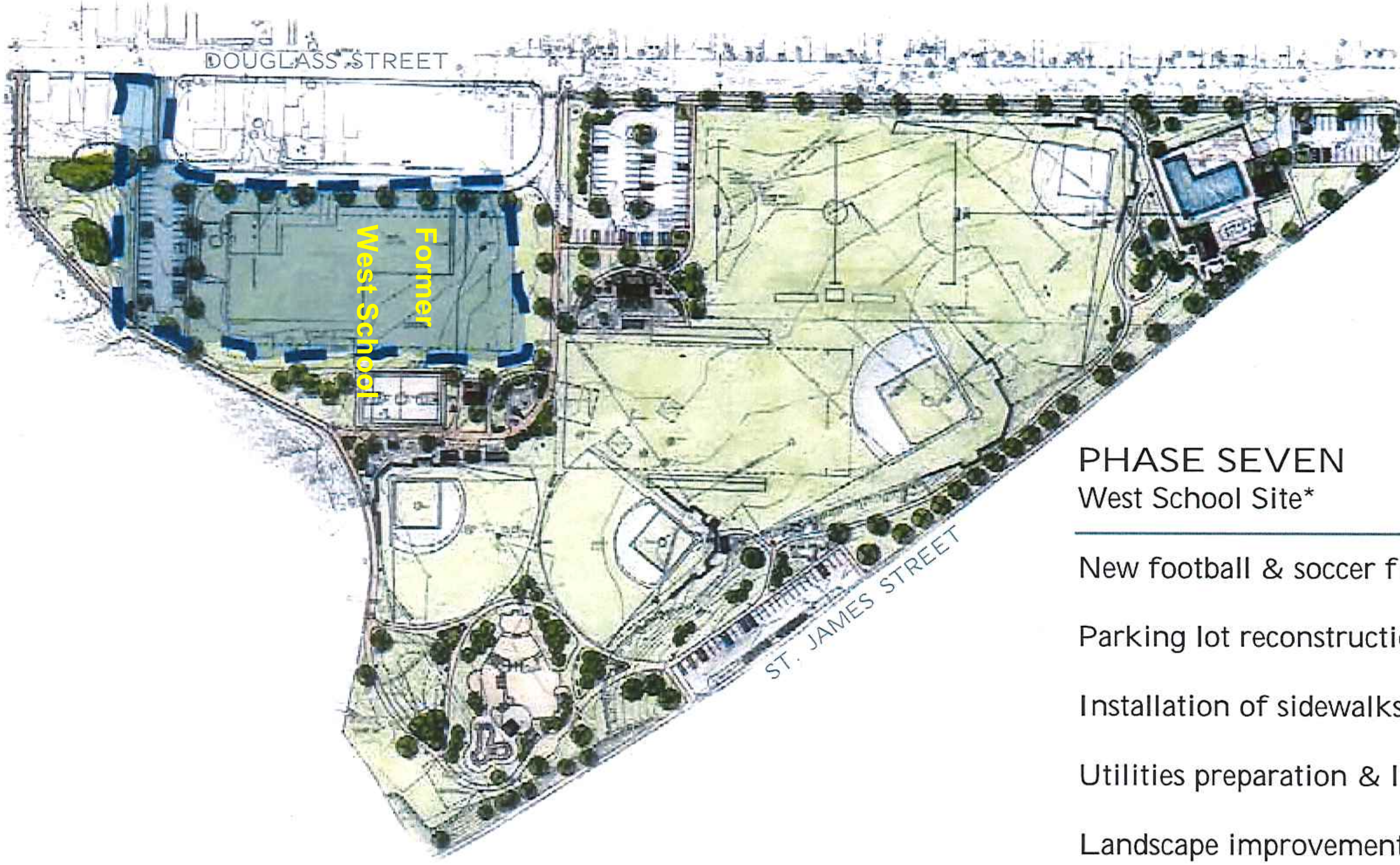
Page 8

City of Portland Maine Parcel Viewer

0 100 200ft

2,920,874.496 300,917.644 Feet

L12



SCALE: N.T.S.

PHASE SEVEN
West School Site*

New football & soccer field

Parking lot reconstruction

Installation of sidewalks & paths

Utilities preparation & lighting

Landscape improvements

$491,000

*does not include demolition of existing school buildings

DOUGHERTY FIELD
PHASING & COSTS
CITY OF PORTLAND, MAINE

Regina S. Leonard
landscape architecture & design
29 Bridge Street. Topsham, ME 04086
Tel. 207.450.9700

DATE: 12/18/08

prepared for the
Dept. of Public Services
55 Portland Street
Portland, Maine 04101

Draft 2019 Housing Committee Work Plan
as of February 8, 2019

<u>February 13, 2019</u>

1. Review and Discussion of Proposed Portland Development Corp. By-Law Modification and Program Guideline Amendments to allow the use of Brownfields Funds for Residential Projects.
2. Housing Committee Accomplishments 2016-2018
3. Update on Rental Housing Advisory Committee
4. Review and discussion of opportunities to engage the city in a public/private partnership to add housing units to the City's housing inventory utilizing city-owned property. (Auburn St., 99 Capisic St., West School Site.) **Possible Executive Session**
5. 2019 Work Plan Discussion – a. Housing Committee Goals for 2019; b. March meeting date

<u>March 7, 2019 (Joint Meeting with Finance Committee) (needs to be confirmed)</u>

1. Housing Trust Fund Discussion

<u>March **TBD**, 2019</u>

1. (Action Item) Housing Program Budget (Federal Funds)- Review and Recommendation to the City Council
2. Review and Discussion of possible revisions to City Code Chapter 14, Division 23 Nonconforming Use and Nonconforming Buildings, Section 14-391 Nonconformity as to number of dwelling units.
3. 2019 Work Plan Discussion – including a discussion of the Council's goal setting session

<u>April 10, 2019</u>

1. Report from the Permitting and Inspections Department on the implementation and outcome of initiatives concerning the permitting and review process, time frames, etc.
2. Report from Planning & Urban Development regarding development trends and the site plan review process.
3. Housing Policy Discussion – Non-Renewal of Leases and Notification Requirements, Voucher/Rental Subsidy Discrimination, Rental Application Fee Abuse
4. (Action Item) Affordable Housing Development Application - Review and Approval to Issue by the Committee
5. (Action Item) Review and Recommendation to the City Council of the 2019 Housing Trust Fund Annual Plan
6. Introduction of Rental Housing Advisory Committee
7. Community Development Week – April 22-26
8. Fair Housing Month
9. 2019 Work Plan Discussion

<u>May 8, 2019</u>

1. Review Funding Requests Received from the Affordable Housing Development Application
2. Review of FY20 HUD Annual Allocation Plan
3. 2019 Work Plan Discussion

<u>June 12, 2019</u>

1. 2019 Work Plan Discussion

<u>July 10, 2019</u>

1. 2019 Work Plan Discussion

<u>August 14, 2019</u>

1. 2019 Work Plan Discussion

September 11, 2019

1. Presentation, Overview and Integrated Report from Permitting and Inspections and Fire Department re: Short-term and Long-term Rental Housing Safety & Inspection Program - Implementation and Financial Report (Public Comment)
2. Review of FY19 HUD Consolidated Annual Performance Report
3. Communication Item: FY19 HUD Consolidated Annual Performance Report
4. 2019 Work Plan Discussion

October 9, 2019

1. Presentation of 2019 Biennial Housing Report
2. 2019 Work Plan Discussion

November 13, 2019

1. 2019 Work Plan Discussion

December 11, 2019

1. Review of 2019 Annual Committee Report
2. 2019 and 2020 Work Plan Discussion (new and/or updated recommendations to forward to the 2020 Housing Committee)

COMPLETED WORK

January 9, 2019

1. 2019 Work Plan Discussion and Preparation for Council Goals and Objectives Setting Session

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

Housing Committee Priorities

A. Leverage an increase in the # of **affordable housing** units in the City in fiscal year 2019/20 by leveraging new projects and identifying opportunities to capacitate completion of projects in the pipeline. As part of establishing the 2019 Housing Trust Fund Annual Plan (framework, policy and priorities)

… Set an annual target of new units or % of units to be ready for occupancy by the end of each fiscal year.

… Identify a specific a public/private partnership project to add rental and ownership units to our housing inventory, by leveraging policy, planning expertise, funding, zoning, public land and/or other strategies.

… Increase the dollars available for affordable housing development by **proposing a general fund allocation to the Housing Trust Fund** in the annual city budget process.

B. Spur new **workforce housing** to address demand from new businesses to the City. Evaluate recent changes to the Inclusionary Zoning Ordinance regulations to determine if a down payment assistance program is needed. Support implementation of the Hotel Linkage fee proposal and targeted use of any funds yielded to leverage development of workforce housing.

C. **Advance multi-year workplan initiatives.** Continue to serve as the lead council committee for guidance, evaluation and implementation of ongoing housing program and policy initiatives including, for example:

… HOME: Recommendation of 2019 HUD funded Community Development Budget.

… Rental Housing Safety & Inspection Program (through the Permitting & Inspection Department and the Fire Department). Continue to assess program implementation and effectiveness, receive mid-year and annual reports re: registrations and safety inspections of long and short term rental housing, and sponsor public review of rental market data.

… Density goals for transit corridors. Review to determine what more the city can do to actualize this goal identified in the Comprehensive Plan.

… Permitting & Review. Receive evaluation report from the Permitting & Inspections Department on the outcome of its initiatives to achieve customer service improvements including: transparency, process consistency, and time frames for issuance of permits, etc.

… Planning Department. Review proposed revisions to Chapter 14 Land Use Code Division 30 and the site plan review process; maintain awareness of housing development trends and review recommendations for continuous improvement of department services to the public.

…The Rental Housing Advisory Board. Prioritize the activation of this Board and incorporate a timeline for receiving policy recommendations from the RHAP into the Housing Committee Work plan.

… Biennial Housing Report and Interim Housing Report. Develop and issue in the October 2019 the full biennial State of Housing Report. The report will include housing market facts, an overview of public policy best practices and developing trends, rental& ownership affordability data, and a broad range of current housing statistics; and include outcome measurement of policies implemented by the city, including for example:

- Update on the Inclusionary Zoning Ordinance (impact of the amendment to the calculation of the maximum sale price of workforce homeownership housing)
- Hotel Linkage Fee – development, implementation, review of actual project impact?
- Incentives for Density (are they working?)
- Status of the Recode Initiative