



Planning & Urban Development Department

TO: Councilor Duson, Chair
Members of the Housing Committee

FROM: Jeff Levine, Director, Planning and Urban Development Department
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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.

**4A Ordinance prohibiting landlords from refusing Section 8 or other vouchers.**

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

8 A One-page Tenant Rights Handout.

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>.

Housing Replacement Ordinance – see page 161 in the Housing Resource Binder

5B – 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

6B – 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.

7B – 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,



Planning & Urban Development Department

*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.

Affordable Housing Tax Increment Financing – See Page 7 in the Housing Resource Binder

10B – 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.

Existing Affordable Housing TIF

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.



11B – 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.

Tax Acquired Properties

3E – 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.

4E – 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.

5E – 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.

Short Term Rentals - See Page 532 in the Housing Resource Binder

I1 – 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.