

1. Agenda Housing Committee Meeting September 6, 2018

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**HOUSING COMMITTEE**

DATE: Thursday September 6, 2018
TIME: 5:30 p.m. – 9:00 p.m.
LOCATION: City Hall Council Chambers

AGENDA

1. Review and accept Minutes of previous meeting held on July 31, 2018
 - a. Public Comment on item from previous meeting agenda
2. Overview of Legal Framework for Municipal Fees, Land Use Controls and Exactions.

The Committee will enter into executive session for purposes of consultation with Corporation Counsel's Office regarding legal rights and duties with respect to imposing fees pursuant to 1 M.R.S. § 405(E).

3. Review and recommendation to the Housing Committee – Order 225-17/18 Referring an Increase in Short Term Rental Registration Fees to the Housing Committee. ***This is an actionable item and public comment will be taken***
4. Review and discussion of possible changes to the Condominium Conversion Ordinance Section 14-565 – 14-571.
5. Review and discussion of a proposed ordinance addressing new hotel developments and affordable housing demand.
6. Communication Item: Review of Map of City-owned property
7. Communication Item: Accessory Dwelling Units
8. Discussion re: 2018 Work Plan

Councilor Jill C. Duson, Chair

Next Meeting Date:
Wednesday, September 26 2018 Room 209

Housing Committee Minutes of July 31, 2018 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 Tuesday, July 31, 2018 at 5:30 P.M. in Room 209 at Portland's City Hall. Councilors present at the meeting included Committee members Councilor Pious Ali and Councilor Jill Duson, Chair of the Committee and Councilor Belinda Ray. City staff present included Mary Davis HCD Division Director, Victoria Volent Housing Programs Manager, Michael Russell Permitting & Inspections Department Director, Jon Rioux Inspections Director, and Anne Torregrossa, Associate Corporation Counsel.

Item 1: Review and accept Minutes of previous meetings held on June 27, 2018

Motion by Councilor Ali to accept the minutes. Motion was seconded by Councilor Duson and the amended minutes unanimously approved 2-0.

Item 2: Presentation of Rental Housing Safety & Inspection Program – Implementation and Financial Report and Item 3: Presentation of Short Term Rental Registration Program – Implementation, Financial Report, and possible ordinance revisions

Michael Russell introduced this item. The Housing Committee and Councilor Ray listen to the report, posed questions, and requested information. Councilor Duson asked that any policy changes be brought forward in September or October with the Housing Report.

Council Comments and Questions:

Councilor Ray: (1) with owner occupied buildings do other units in the building count under the cap? Staff replied no, that was not the original intent; Councilor Ray thinks that maybe they should. This should be clarified. (2) what are the nature of Short Term Rental violations? Staff noted it is the lack of registration. (3) does the City have the capacity needed to manage the Short Term Rental registration process? Staff noted the process is working well at this point. (4) can property managers with different landlords register their units in a manner that does not acknowledge they are operating more than five units? Staff indicated there is a difference between ownership and management and not sure if this is a problem. Councilor Duson asked staff to check their data to see if this is a problem. (5) Would like to explore the automatic registration process.

Councilor Ali: (1) inquired into the software used to track registrations. Staff responded that there are twenty-five various short term rental platforms. The company hired by the city (Host Compliance) tracks across all these platforms. (2) where are complaints directed? Staff assigns complaints to code enforcement officer.

Councilor Duson: (1) intrigued by the proposal from Permitting and Inspections regarding automatic renewals for short term rental registration. Would like to see further detail on both staff recommendations (automatic renewals, and allow tenants to register more than one bedroom as a short term rental). (2) please describe the monitoring services provided by Host Compliance. (3) please explain the citizen education portion of the program. Provide examples of what education documents are available for the public. (4) would like an update from the Fire Department regarding their inspection program. (5) please report on all expenditures (including salary and fees paid to Host Compliance). Would like to see an updated budget and registration report for next meeting.

Councilor Duson opened the meeting for public comment.

McKenzie Simpson (Portland property owner) – comments are interrupted by outbursts from a member of the public. Councilor Duson temporarily suspended the meeting. When the meeting was re-convened, Mr. Simpson indicated he would submit his comments in writing.

Karen Snyder (owner of long-term rental properties) - would like to see Portland amend their short term rental ordinance to align with those in larger cities such as New York, and London. Would like public access to view permits issued for short term rentals. Would like a change in the ordinance to limit the number of bedrooms offered as short term rentals to one bedroom.

Mary Casale (resident) - Would like public access to view permits issued for short term rentals. Would like a review regarding the proximity of short term rentals- should there be a minimum distance between buildings offering short term rental units? Would like a change in the ordinance to limit the number of bedrooms offered as short term rentals to one. Would like to see fee structure readdressed. Did not receive information regarding egress windows. Would like to see a check-off list of items inspectors will be reviewing prior to the actual review (hopes this would reduce re-inspections). How does the city track complaints? Can these complaints be tracked by citizens? What is the process regarding multiple complaints (is there a consequence of multiple complaints)? How does the Fire Department inspections factor into the information provided by Permitting and Inspections?

Kelly McDaniels (resident) - Absentee landlords of short term rentals are not properly managing the nuisance activity on their property. Are nuisance complaints track? Are there consequences for multiple complaints?

Wendy Harmon (apartment owner, also has STR) - Would like to see more details regarding the expenditures of the rental registration and STR programs. What percent are these expenditures viewed against the entire department? Does the safety inspection totals for FY 2018 include both long and short term rentals? Does the total number of Housing Safety inspections include those conducted by the Fire Department? How often are the short term rentals on Peaks Island inspected? What amount was contributed to the Housing Trust Fund? How much does it cost to run the program?

Brit Vitalius (Vitalius Real Estate Group) – Would like an audit conducted to ensure the rental registration program is being run as intended. Concerned that all size units fund Permitting and Inspections, but the department is only responsible for one and two-bedroom units. Concerned that low risk units are being inspected multiple times. Do the rental registration fees also cover general inspection costs? Concerned with the long response time, and difficulty trying to reach inspectors.

Mike Webster (resident) - would like an audit conducted. Why is the mayor increasing the fees?

Ken Thomas (Share Portland) - spent two years on this issue; major component that could have implemented is a STR liaison, go between the city, council, neighborhoods as opposed to making this an enforcement based program focused on compliance instead of cooperation; create a cooperative venture.

Seeing no further public comment, Councilor Duson closed the public comment session at 6:59. Councilor Duson requests Permitting and Inspection staff to respond to Council and Public questions and comments.

Councilor Duson asks Permitting and Inspections staff how the city is tracking compliance and complaints. Per Staff when a complaint is received, it is assigned to an inspector in the tracking system. Staff logs the complaint into the City's tracking system (energov) which triggers an inspection, and allows tracking by citizen on the self-service portal on city website. Councilor Duson is interested in knowing the process used to evaluate frequent complaints and standard operating procedures to resolve those complaints. Councilor Duson is interested in how the City might make a list of rentals and other data available and accessible to the public

Item 4: Review, Discussion and possible Recommendation of Amendment to Ordinance 6-154

Allocation of Short Term Rentals.

Councilor Duson introduced and explained that the proposed amendment to Section 6-154, Allocation of Short Term Rentals, is to clarify the renewal process of non-owner occupied mainland short-term rental units. Anne Torregrossa of Corporation Counsel reviewed the intent regarding the cap on non-owner occupied mainland short-term rental units, and explained how the lottery and waitlist are implemented.

Councilor Ray thinks automatic renewal is a good idea. Councilor Ray left the meeting at 7:30.

Councilor Duson opened the meeting to public comment.

Karen Snyder (resident) – has a question per the graph regarding the number of STR. Councilor Duson asked Ms. Snyder to forward her other question to staff in Permitting and Inspections for review and response.

George Harwood (local property owner) – would like to know how the City is verifying primary residence?
Answer – notarized statement of primary residence required.

Ralph Baldwin (local property owner) - likes the proposed changes as it captures essence of original intent. He would like the proposed language at the end of 1st paragraph under 6-154 clarified. Would not like to see a public list of STR in Portland as it creates safety and security concerns if addresses are made available to the public.

Seeing no further public comment, Councilor Duson closed the public comment session at 7:42 pm

Motion by Councilor Ali to recommend the amendment of Ordinance 6-154, Allocation of Short Term Rentals to the City Council. Motion was seconded by Councilor Duson and the recommended amendment was unanimously approved 2-0.

Item 5: Initial Discussion of Order 225-17/18 Referring an Increase in Short Term Rental Registration Fees

Mayor Strimling was not in attendance to present his proposal to increase short-term rental registration fees. Councilor Duson did not take full action on this agenda item due to the Mayor's absence. Staff provided an overview of the item. This item has been recommended to appear again on the September 6 Housing Committee agenda. The Housing Committee will take public comment during the September 6 meeting.

Item 6: HOME reconsideration and Item 7: Review and Recommendation to the City Council – Housing Trust Fund Allocation

Councilor Duson allowed agenda Item 6 and item 7 to be taken together.

Staff provided an overview and recap of prior action from last month. The packet of material includes material from June; staff's recommendation; and the Housing Committee's recommendation. A first reading has occurred. Staff explained that since the last meeting the Housing Trust funding application was issued. Three applications were received. Staff is offering a recommendation to move all three projects forward.

Councilor Duson indicates that she intends to offer at the August 13 City Council meeting an amendment to the Housing Committee recommendation. Based on clarifications extracted after the June 27 Housing Committee meeting, Councilor Duson does not see a rationale for the original recommendation and intends to ask full Council to reconsider the Housing Committee's decision.

Councilor Ali clarified through staff that this will not negatively impact the projects competing for State funding.

Councilor Duson clarified with staff the timing of additional funds into the Housing Trust Fund; timing of action on funding from the Housing Trust fund; and timing of pending action on the HOME application.

Per staff, the Brighton Avenue project is better suited for Housing Trust funding. This also contributed to how staff scored the projects.

Staff suggested moving forward with Councilor Duson's possible amendment to the HOME funding recommendations; postpone action on HOME funding recommendations from the City Council August 13 meeting to the September 5 meeting; and vote this evening to recommend fully funding the 37 Front Street, 178 Kennebec Street, and 977 Brighton Avenue projects with a combination of HOME and Housing Trust funds.

Councilor Duson made the following motion to consider: If the 0 Thames Street (aka WEX) funds are available at the September 5 meeting of the City Council then the allocation of the WEX funds from the Housing Trust fund be as follows: \$925,000 to 37 Front Street; \$0 to 178 Kennebec Street; and \$300,000 to 977 Brighton Avenue; HOME funds \$510,174 to 37 Front Street, \$370,000 to Kennebec Street and \$0 to 977 Brighton Avenue. If the WEX funds are not available at the September 5 meeting of the City Council then the allocation of HOME funds be as follows: \$510,174 to 37 Front Street; \$370,000 to 178

Kennebec Street; and \$0 to 977 Brighton Avenue, and allocation of Housing Trust fund be as follows: \$723,320 to 37 Front Street, \$0 to 178 Kennebec Street, and \$0 to 977 Brighton Avenue.

Motion by Councilor Duson second by Councilor Ali.

Councilor Duson opened the meeting to public comment

Nathan Szanton of The Szanton Company representing 178 Kennebec Street thanked the Committee for listening to concerns that the WEX money may not be available in time for their application to MSHA; and for the motion on the table as it works for their project.

Greg Payne of Avesta representing 977 Brighton Avenue. Acknowledged that from the beginning of this process they liked funding for 977 Brighton Avenue coming from the Housing Trust fund, but if a minimum balance of \$500,000 is maintained in the Housing Trust fund and the project was not funded, then that would be a frustrating result. He thanked the Committee for trying to make all the projects work.

Jay Waterman of Portland Housing Authority representing 37 Front Street. Thanked the Committee for working through this process to ensure funding for each project. He hopes “box 4” will be the outcome, otherwise “box 2” results in two underfunded projects. 37 Front Street is flexible with how they are funded, but a gap of \$201,680 as noted in “box 2” is troubling.

Seeing no further comment, Councilor Duson closed public comment at 8:41. Staff did note that the funding recommendations (boxes 1 – 4) do maintain a \$500,000 minimum balance in the Housing Trust fund.

Councilor Duson and Councilor Ali vote 2-0 in favor of the motion. Councilor Duson did not move forward with a request for reconsideration.

Item 8: Public Comment

Councilor Duson acknowledged the public comments included in the evening’s packet of material.

Item 9: Communication Item: Accessory Dwelling Units

Councilor Duson did not take action on this item as a member of the Housing Committee was absent. This item has been recommended to appear on the September 6 Housing Committee agenda. Councilor Duson requested this communication item also appear in the Housing Report.

Item 10: Communication Item site walk 622 Auburn Street

Staff presented an overview of the site walk conducted at 622 Auburn Street. Councilor Duson would like a follow-up to the city-wide review of this and neighboring parcels for potential housing consideration.

Item 11: Communication Item Map of City Owned Property

Staff presented an update on the map of city-owned property. Councilor Duson asked if the final map would be available for the September 26 meeting. Staff indicated they anticipate it will be available for that meeting.

Item 12: Committee Discussion re: 2018 Work Plan

Councilor Duson confirmed she would like to hold a meeting in November. Staff will make adjustments to the Work Plan based on action taken at this evening's meeting.

Councilor Duson opened the meeting to comments on any items not appearing on the agenda. Seeing no comments, the comment period was closed at 8:59.

On a motion made by Councilor Ali and seconded by Councilor Duson (approved 2-0) the meeting was adjourned at 8:59 pm.

Respectfully submitted,

Victoria Volent and Mary Davis



7-31-18

Re: Housing Safety Department and Budget

To the Portland Housing Committee:

In the wake of the Noyes Street fire, Portland landlords stepped up and supported, with little or no objection, the new \$35/unit registration because it was expressly and solely for fire safety inspections. The SMLA had several members on the Fire Safety Task Force and all supported the new fee because of the concern with fire safety.

For the first year or so, the program ran well and the communication between the Housing Safety Department and local landlords was excellent. During this period, all feedback from landlords to me as a representative of the SMLA was positive. The communication from the department about the code guidelines were clear, all inspectors were responsive, and follow up with timely. In addition, the department head attended nearly all SMLA meetings on his own time to ensure that he was "around" for questions, concerns, and feedback.

Today, nearly the opposite is true on all accounts. Here are a couple of the chronic issues:

- 1) Follow up communication is almost non-existent. The following is what I've heard at least 10 times in the last month: an inspection happens and one or more violations is noted. The landlord makes an effort to follow up with a question about the remedy and cannot get a response from the inspector. Multiple calls and emails go unreturned. So the landlord is stuck with violations but no clear way to fix them. It's the worst situation for a landlord be in.
- 2) The standards seem to evolve monthly with no notice to the landlord community.
 - a. Window size started being checked in the last year but had NEVER been checked previously. No notice was given of the change or the new standards.
 - b. GA inspections now go well beyond the rented GA unit but include the whole building. We don't know when this started but it is discouraging landlords from accepting GA tenants.
 - c. Unit counts are suddenly being checked such that "non-conforming" units are being discovered and shut down on a near daily basis now. There seems to be no plan in place for how to deal with them, despite my warning to the City Manager's office and the inspections department for years that this would start to happen. The result is both fewer units in the city and larger, 'Noyes Street' style units of 4 or 5 bedrooms. The city should have a better plan.
 - d. Decks seem to be the new target. Multiple landlords have been asked recently for engineer certification of a deck's safety. No rational engineer will give such a blessing to an existing deck so this sets up a no-win situation. This is just the latest example of the fact that the inspection department has moved from being predictable, accessible, and clear, to erratic, unreachable, and confusing.

Questions and Points on the Budget

- 1) Unit registration fees are collected from nearly 18,000 units but the inspection department is only inspects 1, 2, and some 3 unit buildings.

Portland Rental Inventory - Multis & Mixed-Use

Units	Buildings	%	Units	%
21+	90	2%	5,553	31%
11-20	95	3%	1,330	7%
5-10	467	12%	3,072	17%
4	288	8%	1,152	6%
3	921	25%	2,763	16%
2	1,775	47%	3,550	20%
Mixed-Use	118	3%	317	2%
Total	3,754		17,737	

This is a chart that I created based on the City's Assessor data and was used by the Fire Safety Task in 2015 to help determine the fee structure of \$35/unit. It shows that only 36% of all residential rental units in Portland are in 2 and 3 unit properties. Yet the proceeds from ALL units now go to the general inspection department. The fire department is responsible for all the other units.

- 2) The unit registration was put in place for fire safety, but the housing safety department has been merged into the general inspection department. There is no reason to think it is just funding fire safety.
- 3) Why is the inspection department now doing GA inspections, which is certainly outside the intention of the Housing Safety Department?
- 4) Is the new software/technology only for the Housing Safety Office?
- 5) There was supposed to be an education piece of the housing safety. Is that happening?
- 6) There was supposed to be a stake holders group formed to provide feedback on the Housing Safety Office and ensure it was run as intended by the Task Force. This has never happened.

It appears that the housing registration fee, which was intended only for multi-family fire safety is being used as a general fund for all inspections, not only housing safety. \$522,484 of income exceeds the \$393,003 of expenses. The additional technology line item is certainly not helping inspector's communication or reducing duplicative inspections of very safe, owner occupied 2 units. Whatever its purpose, it is beyond the scope of the original budget.

Summary and Recommendations

Ultimately, landlords feel a major violation of trust from the City. We volunteered and accepted the fees in the unit registration fees in the name of fire safety. We want our properties and our tenants to be safe and we support the City's fire inspection as a legitimate function. The fees have clearly morphed



into general budget needs while the service from the inspection department has deteriorated. As Councilors, we implore you to exercise your authority to bring this well intended effort of fire safety back in line.

Option 1 - Apply unit registration fees only to units inspected by the Housing Safety Department. That was the original intention of the Fire Safety Task Force.

Option 2 – Divide the fees between the Housing Safety Department and the Fire Department inspections in accordance with each department’s responsibility for fire safety.

Respectfully,

A handwritten signature in black ink, appearing to read 'Brit Vitalius', written in a cursive style.

Brit Vitalius
President, Southern Maine Landlord Association



Victoria Volent <vvolent@portlandmaine.gov>

Island Short Term Rental Concerns

1 message

Wed, Sep 5, 2018 at 2:19 AM

Jill Duson <jduson@portlandmaine.gov>

To: Kim Maclsaac <thegooseleroy@gmail.com>

Cc: Mary Davis <mpd@portlandmaine.gov>, Victoria Volent <vvolent@portlandmaine.gov>

Hi Kim

Thank you for spending time with me this morning.

I very much appreciated the one on one discussion of short term rentals and other island concerns.

As we noted, the proposed fees changes will likely be acted on by the Housing Committee this Thursday.

The Mayor will present his proposed changes, the Committee will take additional public comment, and work to develop a recommendation to the full council on the proposal to collapse the two tier fee structure to one and double the registration fees.

I am by copy of this communication including our exchange in the committee record on this issue.

On Tue, Sep 4, 2018, 10:45 PM Kim Maclsaac <thegooseleroy@gmail.com> wrote:

Dear Jill,

Thank you for coming over to Peaks this morning. I enjoyed chatting with you about the short term rental issue as it applies to island summer cottages as well as other concerns islanders have. I feel confident that you understand that .term Airbnb rentals are quite different from weekly or more summer cottage vacation rentals. I hope we will some clarification of what constitutes short term rentals on the islands. Our situation is quite different from short term rentals on the mainland.

Keep up the good work!

Kim Maclsaac

On Tue, Sep 4, 2018 at 3:29 PM, Matt Power <power.matt@yahoo.com> wrote:

Barbara, could you please add my comment below for the Thursday Housing Committee Meeting? Thanks
Matt Power
207-619-2713

Good Afternoon,
I am writing to offer comment on The Order Referring a Proposal to Increase Short Term Rental Registration Fees, proposed by Mayor Strimling.

While I believe the Mayor's intentions to be toward the greater good, I must side with the Staff recommendation that this proposal not go forward in its current form.

Having lived in Portland as both a tenant and a Landlord, I can give you a specific example of how short-term rentals have actually become a line of last defense in keeping rentals affordable. It's important to make clear the division between owner occupied units and non-owner-occupied units.

I own just one 3-unit building, and live in one unit that I rent out on Airbnb occasionally. The other two are long-term rentals at well below market rent. When I rent my apartment out on Airbnb, the city does not "lose" a long term rental. What happens is that I take the hit, and find temporary accommodations elsewhere, in order to raise money to cover shortfalls in maintaining my building.

Raising my registration fees 500% annually has no sound economic rationale. I assume these proposed high rates are partially intended as a deterrent, to discourage landlords from converting long-term rentals to short-term rentals. This may make sense, if the unit is **not** owner-occupied. But that's a separate issue.

This year, I am putting in a new heating system for my building that costs nearly \$12,000. My rents are several hundred dollars below market rate, and I pay utilities and heat. To keep my building in the black, I typically pay, on top of the two rents, several hundred dollars a month out of pocket. Without the addition of Airbnb earnings, I would either have to borrow more money or increase rents, or both.

Salaries are flat. Everything from the property taxes to stormwater fees to parking passes to utilities are on the rise. Airbnb, as it applies to owner-occupied units is not a golden goose. It's a necessary evil to compensate for spiraling costs and fees. No one I know likes scrubbing toilets for strangers. We're not renting out our homes and apartments to get rich. We're doing it to stay out of additional debt.

Let's leave short term rentals alone, and perhaps look at relaxing zoning restrictions and making Portland more friendly to alternative types of homes--as a better way to increase the affordable housing stock.

Matt Power, West End, Portland

On Wed, Sep 5, 2018, 8:12 AM Janine Blatt <neenb16@gmail.com> wrote:

My name is Janine Blatt. I live at 122 central avenue, peaks Island. I've lived on peaks since 1982 and was fortunate to purchase my home in 1991. As a single parent back then, I wasn't sure that home ownership would ever be a reality! I purchased the two family home with my sister and brother-in-law.

Fast forward to the present. Our children are grown. I am retired, on a limited income, and they are close to it. Our property taxes have practically doubled. From Memorial Day to Labor Day my "life" is packed away. I move into my niece's old bedroom next door, sometimes my daughter's extra bedroom in south portland. All so we can rent my half in order to pay our property taxes and be able to remain in the home we worked hard to buy and maintain.

Years ago we simply would have used the bulletin board "downfront" to advertise. We've kept up with the times and so now use air bob, following all rules and regulations.
(Please don't raise our fee to \$500)

Summer rentals have been part of peaks Island for decades, going back to times of steamships from Boston and three ferry landings!

As you discuss the issue of short term rentals in Portland, please keep in mind the unique history and situation of peaks Island short term rentals!! I also believe that these island rentals perhaps help bolster Portland's growing popularity and economic development as a destination city.

I'd be happy to discuss this more with any of you. There's certainly more to my story!

Thank you for taking the time to serve our city!

Janine Blatt
207-665-2615
Sent from my iPhone

PS. Labor Day is past and I am thrilled to be back sleeping in my own bed! Also happy to have the rental income to help pay our tax bill that just came!

MEMORANDUM

TO: Jill Duson, Chair and City of Portland Housing Committee
FROM: Jennifer Thompson, Associate Corporation Counsel
DATE: August 29, 2018
RE: Overview of Legal Framework for Municipal fees, Land Use Controls and Exactions

In connection with this Committee's consideration of a number of initiatives aimed at addressing the City's goals around affordable housing, I send along materials primarily authored by Maine Municipal Association providing a general overview of municipal authority in Maine to impose fees, levy taxes, and regulate land use. *Sections I-III of this memorandum are comprised of excerpts taken verbatim from Maine Municipal Association's website and all authorship credit is MMA's.*

I. Fees v. Tax

Generally speaking, a "fee" is a payment by an individual for the voluntary use of municipal property or services or pursuant to a regulatory scheme (*Strater v. Town of York*, 541 A.2d 938 (Me. 1988)). A fee must be proportionate or reasonably related to the actual cost of providing the service; its purpose cannot be to raise revenue for other services or general government (*State v. Brown*, 135 Me. 36, 188 A. 713 (1936)). By contrast, a "tax" is a compulsory payment that is payable by all members of a particular class and is generally based on the amount or value of something owned by the taxpayer, regardless of any service provided. Taxes are generally levied to raise revenue for the general operation of government.

The distinction between a fee and a tax is critical because the power of taxation rests *exclusively* with the State Legislature (see Maine Constitution, Art. IX, § 9, linked above). This means that municipalities cannot assess or collect a tax unless expressly authorized by law to do so. Currently, State law authorizes (and directs) municipalities to impose only two types of general taxes: property taxes and excise taxes. Thus, if a "fee" established by a municipality turns out to be an unauthorized "tax" instead, it will be invalid.

While courts will generally defer to the legislature's characterization, whether a charge or assessment is called a "fee" or a "tax" is not determinative of its legality. A charge or assessment will be judged on the basis of its characteristics and upheld or invalidated accordingly. Courts generally consider four factors when determining whether a "fee" is actually an unauthorized "tax":

- (1) whether primary purpose of the fee is to raise revenue or to further regulatory goals,
- (2) whether the fee is paid in exchange for exclusive benefits not received by the general public,
- (3) whether the fee is voluntary, and
- (4) whether the fee is a fair approximation of the cost to the municipality and the benefit to the individual for the services provided.¹

II. Statutory Fees

State law authorizes a wide variety of municipal fees, including the following (among others):

- Various license and permit fees (see MMA's *Municipal Licensing and Permitting Handbook*);
- Public records search, retrieval, compilation and copying fees (1 M.R.S.A. § 408);
- Clerk's fees, including vital record fees (30-A M.R.S.A. § 2652);
- Sewer service charges (30-A M.R.S.A. § 3406);
- Junkyard and automobile graveyard fees (30-A M.R.S.A. § 3756);
- Development impact fees (30-A M.R.S.A. § 4354);
- Land use application fees (30-A M.R.S.A. § 4355);
- Service charges on certain tax-exempt properties (36 M.R.S.A. § 508); and
- Tax lien fees (see 36 M.R.S.A. §§ 942, 943).

Some of these fees are fixed by statute, (i.e. the clerk's fee schedule (30-A M.R.S.A. § 2652), tax lien fees (36 M.R.S.A. §§ 942, 943)). Others must be established by ordinance or order. Generally, the statutes authorizing fees require that the fee be reasonably related to the municipality's cost to provide the service, (i.e. processing application fees (30-A M.R.S.A. § 4355), infrastructure improvements (30-A M.R.S.A. § 4354)), or be the actual cost for providing municipal services (i.e. for service charges on tax exempt property 36 M.R.S.A. § 508, fees to compile public records 1 M.R.S.A. § 408-A).

III. Non-statutory Fees

Because municipalities in Maine have "home rule" power (see 30-A M.R.S.A. § 3001), they are not dependent on the existence of specific State enabling laws for authority to establish fees. For example, municipalities can charge a fee for solid waste collection and/or disposal or a fee for ambulance response without express statutory authority.

Municipalities can adopt two general types of non-statutory fees: user fees, which are fees assessed for the use of municipal property or services, and regulatory fees, which are fees that are part of a regulatory scheme and are intended to cover the costs of administering a program established pursuant to the municipality's police power (*Murphy v. Massachusetts Turnpike Authority*, 462 Mass. 701, 971 N.E.2d 231 (2012)).

A municipality may distinguish between different classes of users when setting fees by ordinance. It is not an automatic constitutional violation of equal protection if one class is required to pay more than another for the same privilege or if municipal services are provided to some, but not others. However,

¹ (*City of Lewiston v. Gladu*, 2012 ME 42, 40 A.3d 964; *Butler v. Supreme Judicial Court*, 611 A.2d 987 (Me. 1992); and *Maine v. Biddeford Internet Corp.*, 2017 ME 204).

there must be a rational basis for the difference in treatment- the distinction must be reasonably related to a government interest (*Ace Tire Co., Inc. v. Municipal Officers of City of Waterville*, 302 A.2d 90 (Me. 1973); *McNicholas v. York Beach Village Corp.*, 394 A.2d 264 (Me. 1978); *Hefflefinger, Inc. v. City of Portland*, 1999 ME 153, 739 A.2d 844).

To be distinguishable from a tax, non-statutory fees must also be reasonably related to the cost incurred by the municipality to provide the service. For example, in terms of regulatory fees, a municipality can take into consideration the necessary and probable expenses to issue the license as well as to inspect, regulate, and supervise the licensee (*Ace Tire Co., Inc. v. Municipal Officers of City of Waterville*, 302 A.2d 90 (Me. 1973)).

IV. Zoning and Land Use Development

In addition to municipal authority to impose fees, municipalities also have authority to zone property and place restrictions on new development and land use. 30-A M.R.S. 4352. In doing so, municipalities are subject to constitutional restrictions on that authority as it relates both to restrictions on the use land owners can make of their property and to so called "exactions", whether in the form of land dedications or financial exactions. With respect to land use restrictions, an ordinance will not be deemed to effect an unconstitutional taking unless it either deprives a property owner "of all economically beneficial uses of the property, or decreases the value of the property so substantially so as to strip the property of all practical value, *Wyer v. Bd. of Env'tl. Prot.*, 2000 ME 45, P1, 747 A.2d 192, 193.

With respect to exactions (dedications to the public) imposed by municipalities, Maine's Law Court explained in *Curtis v. Town of S. Thomaston*, 1998 ME 63, 708 A.2d 657:

The United States and Maine Constitutions provide that private property cannot be taken for public use without just compensation. U.S. Const. amend V; Me. Const. art. 21. The general takings rule is inapplicable, however, when, as in this case, the government's physical occupation of private property constitutes a requirement imposed on the land owner as a condition for the government's approval of a land development application. See *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 833, 97 L. Ed. 2d 677, 107 S. Ct. 3141 (1987). We review such a dedication requirement to ensure that it constitutes a lawful exercise of the police power and not an attempt by the government to "force some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49, 4 L. Ed. 2d 1554, 80 S. Ct. 1563 (1960).

The Supreme Court, in its decisions of *Nollan v. California Coastal Comm'n* and *Dolan v. City of Tigard*, 512 U.S. 374, 129 L. Ed. 2d 304, 114 S. Ct. 2309 (1994), developed a two-part procedure to determine when a land dedication requirement is logically related in substance and scope to legitimate regulatory objectives and thus a

lawful exercise of the police power. First, we determine whether an essential nexus exists between the legitimate government interest and the permit condition required by the government entity -- whether the permit condition advances the same public aim as would the permit denial. See *Nollan*, 483 U.S. at 837; *Dolan*, 512 U.S. at 386. Next, we determine whether a rough proportionality exists between the conditions imposed and the effects the proposed land use will have on the community. See *Dolan*, 512 U.S. at 388. The "rough proportionality" requirement cannot be satisfied by a conclusory statement made by the government authority, *id.* at 396; it must be the product of a "determination that the required dedication is related both in nature and extent to the impact of the proposed development." *Id.* at 391.

I hope this general overview of municipal authority has been helpful. I look forward to talking with you and the Committee further on the ways that the various pending proposals fit into the frameworks outlined above. If, in the meantime, you or other members of the Committee have questions or concerns, please feel free to contact me.



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

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

DATED: July 23, 2018

SUBJECT: Proposal to Increase Short Term Rental Registration Fees

Introduction

During the May 21 meeting of the City Council, by a passage of 5 – 3, the City Council referred Order 225-17/18 (introduced by Mayor Ethan Strimling) to increase fees for registering short term rental units, and direct revenue related to the fee increase to the Housing Trust Fund. These changes would be effective January 1, 2019. The Council further ordered the Housing Committee to review the issue and provide its final recommendation to the Council.

Order 225-17/18

The *Order Referring a Proposal to Increase Short Term Rental Registration Fees to the Housing Committee* proposes to increase the fees for registering a short term rental unit to \$500 for the 1st unit; \$1,000 for the 2nd unit; \$2,000 for the 3rd unit; \$3,000 for the 4th unit; and \$5,000 for the 5th unit. The fee increase shall be applied to; an Owner-Occupied Single Family Home or Tenant Occupied Unit; Multi-Unit Owner-Occupied Buildings, and Island Short Term Rentals; and Multi-Unit Non-Owner Occupied Buildings.

Order 225-17/18 appeared as Amendment 3 to the Fiscal Year 2018 – 2019 Municipal Budget Order 218-17/18 Appropriation Resolve Prepared by Corporation Counsel for Mayor Strimling.

Section 6-152 Registration Fees

Upon initial registration, and by January 1st of each year, registrants of short term rentals shall pay the City a registration fee for each rental unit in the amounts set forth in Section 6-152 (c); Short Term Rental Registration Fee Structure.

The following chart is a redlined version of the current fee schedule with the proposed fee increases in red.

Owner Occupied Single Family Home, or Tenant Occupied	\$100 <u>500</u>
Multi-Unit Owner Occupied Building, Island Short Term Rentals	1 st Unit - \$100 <u>500</u> 2 nd Unit - \$250 <u>1,000</u> 3 rd Unit - \$500 <u>2,000</u> 4 th Unit - \$1,000 <u>3,000</u> 5 th Unit - \$2,000 <u>5,000</u>
Multi-Unit Non-Owner Occupied Building	1 st Unit - \$200 <u>500</u> 2 nd Unit - \$500 <u>1,000</u> 3 rd Unit - \$1,000 <u>2,000</u> 4 th Unit - \$2,000 <u>3,000</u> 5 th Unit - \$4,000 <u>5,000</u>

Recommendation

Staff does not recommend adopting this proposal to increase short term rental fees at this time. Current data suggest rental fees are covering the cost of program administration, which is the primary goal of the current fee schedule. The Housing Committee may review and discuss the fee schedule amendment, and consider a motion to recommend or not recommend the amendment to the City Council or table the amendment for further review.

Attachments

Order 225-17/18 Order Referring a Proposal to Increase Short Term Rental Registration Fees to the Housing Committee

Chapter 6, Article VI, Residential Rental Unit Registration Requirements

Order 225-17/18

Passage: 5-3 (Mavodones, Costa, Duson) on 5/21/2018

Effective 5/31/2018

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER REFERRING A PROPOSAL TO INCREASE
SHORT TERM RENTAL REGISTRATION FEES TO THE HOUSING COMMITTEE**

ORDERED, that the City Council hereby refers a proposal to increase the fees for registering short term rental units to \$500.00 for the 1st unit, \$1,000 for the 2nd unit; \$2,000 for the 3rd unit, \$3,000 for the 4th unit and \$5,000 for the 5th unit, increasing revenues by \$250,000 in the Permitting and Inspections Department account 100-25-03, and that the revenue from the increase be allocated to the Housing Trust Fund, to the Housing Committee; and

BE IT FURTHER ORDERED, that the Housing Committee review the issue and provide its final recommendation to the City Council.

2. Whether the rental unit is owner-occupied, tenant-occupied, or non-owner occupied;
 - a. For Short Term Rental units that are owner-occupied, the registrant must provide a notarized primary residence affidavit, on forms provided by the City.
 - b. For Short Term Rental units that are tenant-occupied, the registrant must provide a notarized primary residence affidavit, a notarized statement of permission by his/her landlord, both on forms supplied by the City.
3. The address and tax assessor's chart, block, and lot number of all other short term rentals in the City in which the registrant has an ownership interest;

(d) *Display of Short Term Rental Registration Number Required.*

Once registration is approved by the City, each short term rental shall be given a registration number, which must be displayed in the rental unit and in any and all advertisements for the rental unit.

(e) Upon request by the City, at any time, all registrants and/or agents of short term rental units must provide the City with their registration information, rental history, and upcoming reservation information. Failure of short term rental unit owners, tenants, and/or their representatives to adequately respond to inquiries by the City within a forty-eight (48) hour period shall be considered a violation under this ordinance.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. No. 246-97, 4-9-97; Ord. 298-14/15, 7-6-2015; Ord. 69-15/16, 10/5/2015; Ord. 179-16/17, 3-27-2017)
)

Sec. 6-152. Registration Fees.

(a) *Annual Registration Fee.* Upon initial registration and by January 1st of each year, registrants shall pay the City a registration fee for each rental unit, in the amounts set forth below. A rental unit shall not be considered registered unless and until this fee is paid in full.

(b) *Long Term Rental Registration Fee.* The registrant of a long term rental shall pay thirty five dollars (\$35.00) to the City by January 1st of each year.

(c) *Short Term Rental Registration Fee Structure.* The registrant of a short term rental shall pay the fee specified in the chart below. All fees will be cumulative and will increase based on the number of total units registered by the owner. The fee total will accumulate first by counting any short term rental units operating in a single family home or owner occupied multi-family buildings and then fees will be attributed at the higher rate for any units located in non-owner occupied buildings. If an owner registers units in both owner occupied and non-owner occupied buildings then the owner occupied fees will be considered the first unit under the fee structure starting with the 1st unit fee as described in the chart below regardless of the order in which the units are registered.

Owner Occupied Single Family Home , or Tenant Occupied	\$100
Multi-Unit Owner Occupied Building Island Short Term Rentals	1 st Unit - \$100 2 nd Unit - \$250 3 rd Unit - \$500 4 th Unit - \$1,000 5 th Unit - \$2,000
Multi-Unit Non-Owner Occupied Building	1 st Unit - \$200 2 nd Unit - \$500 3 rd Unit - \$1,000 4 th Unit - \$2,000 5 th Unit - \$4,000

(d) *Registration and Renewal Fee Discounts.* The following discounts shall apply to the registration and renewal fees:

- (1) \$10 discount for each rental unit within a fully-sprinkled building as verified by a testing report, maintenance report or a maintenance contract, which shall be provided at the time of registration and upon each registration renewal;
- (2) \$7.50 discount for each rental unit within a building with a centrally-monitored fire alarm as verified by Fire Department logs or an alarm contract, which shall be provided at the time of registration and upon each registration renewal;

- (3) \$5.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Housing Quality Standard (HQS) inspection within the preceding year as verified by the HQS inspection report, which shall be provided at the time of registration and upon each registration renewal;
- (4) \$10.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Uniform Physical Condition Standard (UPCS) inspection within the preceding year as verified by the UPCS inspection report, which shall be provided at the time of registration and upon each registration renewal;
- (5) \$2.50 for a rental unit that is subject to a signed lease which prohibits smoking by tenants as verified by a copy of the current lease, which shall be provided at the time of registration and upon each registration renewal. The existence of and enforcement of this provision may be verified through an inspections of each rental unit.

The total amount of discounts from the annual registration or renewal fee as described above shall not exceed \$20.00, and the minimum annual fee for registration or renewal shall be \$15.00 per unit.

(Ord. No. 443-89, 6-7-89; Ord. No. 53-89, 7-17-89; Ord. 298-14/15, 7-6-2015; Ord. 179-16/17, 3-27-2017)

Sec. 6-153. Violations.

(a) *Occupancy Limit.* Overnight short term rental guest occupancy in each rental unit will be limited to two (2) guests per bedroom plus no more than two (2) additional guests.

(b) *Limitation on Total Number of Short Term Rentals.* No more than 300 non-owner occupied mainland short term rental units shall be registered in any one calendar year.

(c) *Limitations on number of Short Term Rentals an Individual or Entity May Register.* An individual or entity may only register up to five (5) short term rentals in the City, including the Islands, in any one (1) calendar year. For purposes of this section, short term rentals registered by an entity in which the registrant has an ownership interest shall be counted towards this limit.



Jeff Levine, AICP
Director, Planning & Urban Development Department

Memorandum

To: Housing Committee, Mayor Strimling
From: Jeff Levine, Director
Date: August 29, 2018
Re: Short Term Rentals and the Rental Housing Market

I have been asked to put together some information on the short-term rental (STR) market in Portland and how it may affect the overall housing market in the City. While there is no easy answer to that question, attached and below are some summary data that frame the debate.

According to Permitting & Inspections, there are currently 17,774 registered rental housing units in the City. There are 726 STR registrations. That means that 4.08% of the registered rental housing stock is registered for STR use as well.

However, there is no easy way to determine how often those units are actually used as STR's, as they are required to register if they are used for even a short period of time over the course of a year. This is a critical piece of data in determining the impact of STR's on the overall housing market. Even a small swing in available rental units can affect a tight housing market. On the other hand, having the ability to use your rental unit for short term use if you wish, or having the flexibility to rent out a room in your unit as an STR, can increase the affordability of your housing as you are able to collect supplemental income to pay the rent.

There are therefore two extreme scenarios we can outline. On the one hand, if all of these STR's were operating full time, the removal of that number of units from the market would have a significant increase on median rents and reduction of available vacancies. On the other hand, if all of these STR registrations are for convenience and flexibility only, the impact on median rents and vacancies would be minimal.

The reality is most likely somewhere in the middle. There is probably some increase in median rents and decrease in vacancies for long-term rentals as a result of the STR market. However, the precise level and overall impact on housing in Portland is difficult to pinpoint.

For additional reference, I attached the report provided by Permitting & Inspections on the registration programs from the July 31st Housing Committee meeting. You may also

want to look back to the work that was done in October of 2016 while the Housing Committee was debating the STR issue and developing the current ordinance.

I hope this background information is helpful.



Permitting and Inspections Department
Michael A. Russell, MS, Director

Housing Committee Update July 30, 2018

FY18 Financials

	Total	Long term	Short term
Revenue	\$614,266***	\$522,484	\$91,782***
Expenditures	\$484,785*	\$393,003	\$91,782
Tyler Technology	\$129,481**	-	-

*Staff expenditures represent 91% of all expenditures.

**Contribution towards City's \$2 million investment.

***After contributing \$33,139 to the Housing Trust Fund

FY18 Short Term Rental Registration by Number of Properties and Units

	Total	Island*	Non Owner Occupied	Owner Occupied	Tenant Occupied**
Properties	605	116	110	354	25
Units	729	116	149	439	25

* No multi-family properties are currently registered on the islands.

**Tenants are allowed to register only one unit.

FY18 Rental Registration by Total Number of Units and Properties

	Long term	Short term
Units	17,774	726
Properties	4,376	605

FY18 Rental Registration Follow-up Efforts by Number of Landlords

Type of Follow-up*	Total	Long term	Short Term
Email**	4,000	4,000	0
Letter or Notice of Violation	2,168	1,700	468
Summons	39	39	0

*Some landlords own multiple properties and receive one notice for all.

**Approximate number of emails.

FY18 Rental Inspections by Number and Type

	Total
Housing Safety	3,802
Infestation/Insects	68
Legalization of Unit	37
Total	3,907



Permitting and Inspections Department
Michael A. Russell, MS, Director

Successes

- Short term rental registrations far exceeded the initial estimate, however, the non-owner mainland cap is not close to the maximum allowed. The current number registered is 110 properties and 151 units.
- Short term revenue surpassed budgeted estimate by 108.2%.
 - Budgeted \$60,000; collected \$124,921, exceeding projections by \$64,921
- Delinquent rental registrations have been greatly reduced by concentrated outreach efforts during the first half of this calendar year.
- Following up on Two Family properties for a second inspection and collaborating with the Fire Department on 3+ Family properties.
- Egress window informational bulletin to clarify the Office of the State Fire Marshal's policy.

Challenges

- Unresponsive landlords to registration and inspection requests.

Recommendations

- Automatic renewals for short term rental registrations.
- Allow tenants to register more than one bedroom as a short term rental.



TO: Councilor Duson, Chair
Members of the Housing Committee

FROM: Victoria Volent, Housing Program Manager

DATED: August 23, 2018

SUBJECT: Condominium Conversion Ordinance

Introduction

The City Council's 2018 Goals include action by the Housing Committee to evaluate the condominium conversion ordinance to assess compliance with the tenant notice and relocation assistance requirements, and recommend if the condominium conversion fee should be increased to fund Tenant Based Rental Assistance and/or the Housing Trust Fund.

The City of Portland's Condominium Conversion regulations are established by Section 14-565 of the City's Code of Ordinances. The purpose of the article is to regulate the conversion of rental housing to condominiums; to minimize the potential adverse impacts of such conversion 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.

Staff has evaluated the Ordinance and its implementation. At this point, staff is not recommending any significant changes, as there is no indication it is not working as intended.

Protection of Tenants

Prior to a condominium conversion, developers are required to provide each tenant written notice of intent to convert at least one hundred twenty days before the tenant is required by the developer to vacate. The notice period is extended based on how long the tenant has been in possession of any unit within the same building. The notice of intent to convert must contain a statement explaining the requirement of the developer to; provide the tenant a sixty-day option to purchase; assist the tenant in finding another place to live if the tenant does not wish to purchase their apartment and; help determine the tenant's eligibility for relocation payments.

Condominium Conversion Permit

A conversion permit must be obtained before an owner offers to convey a converted unit. Within the permit is a submission checklist that includes a Tenant Data Form requiring the owner to provide the name, occupancy length, date of notice, and eligibility for relocation payment of each tenant. Copies to each tenant of the Notice of Intent to Convert must be attached to the permit application. No permit will be issued without copies of the notices.

Assessment

Based on internal discussions and examination of the data, there is no indication of any significant abuse of Section 14-568 regarding protection of tenants. Permitting & Inspections and the Assessor's Department maintain databases that confirm developers are obtaining permits and filing the necessary documents to record their condominium conversions. There is a time delay from when the developer first obtains the building permit to when the Assessor records the condominium conversion. For that reason, a straight comparison of permitting and assessor's records may suggest that not all condominium conversions are following the ordinance. However, when comparing permits to real estate transactions staff has found they do not neatly line-up, as they do not occur concurrently. There is no record of a condominium conversion that did not have the appropriate permits.

Fee

The condominium conversion fee is \$150 per unit. A fee increase beyond the cost of program administration should be considered in conjunction with a nexus study to connect the impact of the activity to funding Tenant Based Rental Assistance and/or the Housing Trust Fund. One change staff recommends is to consider adjusting the per unit fee to more closely match the actual cost of processing a conversion. Such an adjustment would allow the City to recover the cost of administering the program, as is the intent of the fee.

Summary

Our review of the Condominium Conversion Ordinance does not suggest any significant issues with how it currently functions. In addition, based on the level of condominium conversion over the past two years, there is no indication that there are negative affordability impacts from conversions. In most cases, units that are converted would likely have been renovated into high-end rentals if they were not converted to

condominiums. In addition to possible adjustments in the fee to cover actual costs, staff also recommends the Tenant Data for Condominium Conversion application be updated to provide the 2018 income limits for determining relocation payments or amended to remove the income limits and only provide a link to HUD's Income Limits data.

Attachments:

Article VII Condominium Conversion (download from Permitting & Inspections web site)
Condominium Conversion Permit Application and Checklist (download from Permitting & Inspections web site)



Permitting and Inspections Department
Michael A. Russell, MS, Director

Condominium Conversion Permit Application and Checklist

A conversion permit shall be obtained before an owner offers to convey a converted unit. Condo conversions are not a change of use. They are considered a change of ownership of building area, not land. Subdivision is not involved. Only the legal number of dwelling units may be condominiumized. Any illegal units shall be removed or made legal by proper permitting.

Notice of intent to convert: All tenants shall be given a specific notice of the intent to convert their unit to a condominium from the owner. This notice shall contain a specific offer and terms for the tenant to purchase their unit. The notice shall contain specific wording outlined in Chapter 14, Article VII of the City Code that notifies the tenants of irrevocable rights and how to contact the City of Portland. The tenant shall also be given a specific time to vacate based upon the number of years that they have occupied their unit. The minimum notice to vacate is 120-day notice:

0-4 years = 120 days notice

7 years = 210 days notice

10 years = 300 days notice

5 years = 150 days notice

8 years = 240 days notice

11 years = 330 days notice

6 years = 180 days notice

9 years = 270 days notice

12+years=360 days notice

Sixty days after their notice, the tenant has an exclusive, irrevocable option to purchase their own unit. During that time, the owner/developer may not convey, the unit to any other person. For the next 180 days, the owner/developer cannot offer a more favorable price or term to any other person unless the same terms are offered to the original tenant first.

Rent may not be altered during the official noticing period unless expressly provided in a pre-existing written lease. The owner/developer shall post a copy of the issued permit in a conspicuous place in each unit, and make copies available to prospective purchasers upon request.

Relocation payments: If the tenant does not purchase, the owner shall (before the tenant vacates) make a cash payment to the tenant in the amount of rent for the preceding two months only if the tenant meets the current 80% of the low/moderate income rules adjusted for family. Additionally, the developer shall provide other assistance to the tenant in the form of reasonable accommodations, referrals, and determining tenant eligibility.

Submission Checklist

All applications shall be submitted online via the Citizen Self Service portal. Refer to the attached documents for complete instructions. The following items shall be submitted (please check and submit all items):

- Condominium Conversion Checklist (this form)
- Tenant Data Form
- Evidence of right, title and interest (e.g. deed, purchase and sale agreement with current deed)
- Copy of notices of intent to convert, for each tenant* (refer to Section 14-568 of the City Code for requirements)
- A plot plan, including the shape and dimension of the lot, footprints of structures, and the location and dimensions of parking areas and driveways
- Dimensioned floor plans for each unit

****Any proposed construction or building alteration requires a separate building permit application.****

***Copies of your notice to each tenant must be attached to the permit application. No permit will be issued without copies of the notices. If there are building vacancies, you must provide the reason why the unit is vacant and the previous tenant's name, new address, and phone number.**



Permitting and Inspections Department
 Michael A. Russell, MS, Director

Tenant Data for Condominium Conversion
 (submit with Condominium Conversion Permit Application)

Project Address: _____ Number of legal dwelling unit in building: _____

Provide the following information for each tenant (if vacant, for the tenant from the past 6 months):

	Tenant Name	Tenant Phone #	Occupancy Length	Date of Notice	Eligible for Relocation Payment?
Unit 1					
Unit 2					
Unit 3					
Unit 4					
Unit 5					
Unit 6					
Unit 7					
Unit 8					
Unit 9					
Unit 10					

If more than 10 units, submit the same information for all units on a separate piece of paper.

Income Limits for Relocation Payments (per HUD FY2016 Income Limits, effective 3/28/2016)

Number of people in household and income limits:

- 1 - \$43,050
- 2 - \$49,200
- 3 - \$55,350
- 4 - \$61,450
- 5 - \$66,400
- 6 - \$71,300
- 7 - \$76,200
- 8 - \$81,150

For the most up-to-date information on income limits, visit: <https://www.huduser.gov/portal/datasets/il.html>



Permitting and Inspections Department
Michael A. Russell, MS, Director

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ARTICLE VII. CONDOMINIUM CONVERSION

Sec. 14-565. Purpose.

The purpose of this article is to regulate the conversion of rental housing to condominiums; to minimize the potential adverse impacts of such conversion on tenants; to ensure that converted such housing is safe and decent; and to maintain a reasonable balance of housing alternatives within the city for persons of all incomes. To these ends, this article shall be liberally construed. (Ord. No. 213-81, § 608.1, 11-16-81)

Sec. 14-566. Applicability.

This article shall apply to the conversion of any rental unit to a condominium unit. (Ord. No. 213-81, § 608.2, 11-16-81)

Sec. 14-567. Definitions.

For the purpose of this article, the following terms shall be defined as follows, unless otherwise clearly implied:

Condominium means any interest in real estate created pursuant to the Unit Ownership Act, 33 M.R.S.A. § 560 et seq., or its equivalent, as it may from time to time be amended.

Developer means and includes any person or other legal entity, but not including an established lending institution unless it is an active participant in a common promotional scheme, who, whether acting as principal or agent, records a declaration of condominium that includes real estate, any portion of which was previously a rental unit.

Tenant means and includes any occupant in lawful possession of a rental unit, whether by lease, sublease, or otherwise.

Unit means any building, or portion thereof, used or intended to be used primarily as a separate dwelling. (Ord. No. 213-81, § 608.3, 11-16-81)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 14-568. Protection of tenants.

Notice of intent to convert. A developer shall give to each tenant written notice of intent to convert at least one hundred twenty (120) days before the tenant is required by the developer to vacate. If a tenant has been in

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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) additional days. The notice shall set forth specifically the rights of tenants under subsections (a) and (b) of this section and section 14-569, and **shall 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, 389 Congress Street, Portland, Maine 04101 (telephone: 874-8703).

If the notice specifies a date by which the tenant is required to vacate, the notice may also serve as a notice of termination under the applicable law of forcible entry and detainer, if it meets the requirements thereof. The notice shall be hand-delivered to the tenant or mailed, by certified mail, return receipt requested, postage prepaid, to the tenant at the address of the unit or such other address as the tenant may provide. The notice shall be effective when actually received. No tenant may be required by a developer to vacate without having been given notice as required herein, except for the reasons specified in the applicable law of forcible entry and detainer, and in accordance with the procedures thereof. The terms of a tenancy, including rent, may not be altered during the notice period, except as expressly provided in a preexisting written lease. If, within one hundred twenty (120) days after a tenant is required by a developer to vacate, the developer records a declaration of condominium without having given notice as required herein, the developer shall be presumed to have converted in violation of this article.

(b) *Option to purchase.* For a sixty-day period following the giving of notice as required in subsection (a), the developer shall grant to the tenant an exclusive and irrevocable option to purchase the unit of which the tenant is then possessed, which option may not be assigned. If the tenant does not purchase or contract to purchase the unit during the sixty-day period, the developer may not convey or offer to convey the unit to any other person during the following one hundred eighty (180) days at a price or on terms more favorable than the price or terms previously offered to the tenant, unless the more favorable price or terms are first offered exclusively and irrevocably to the tenant for an additional sixty-day period. This subsection shall not apply to any rental unit that, when converted, will be restricted exclusively to nonresidential use. If, within two (2) years after a developer records a declaration of condominium, the use of any such unit is changed such that but for the preceding sentence,

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this subsection would have applied, the developer shall be presumed to have converted in violation of this article. (Ord. No. 213-81, § 608.4, 11-16-81)

Sec. 14-569. Relocation payments.

If the tenant does not purchase the unit, the developer shall, before the tenant is required by the developer to vacate, 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 (2) months; provided that this requirement shall not apply to any tenant whose gross income exceeds eighty (80) percent of the median income of the Portland SMSA, adjusted for family size, as determined by the U.S. Department of Housing and Urban Development at the time notice is given as required in section 14-568(a). Additionally, the developer shall, upon demand, provide assistance to the tenant in the form of referrals to other reasonable accommodations and in determining the tenant's eligibility for relocation payments as provided herein. (Ord. No. 213-81, § 608.5, 11-16-81)

Sec. 14-570. Conversion permit.

Before conveying or offering to convey a converted unit, the developer shall obtain a conversion permit from the building inspection division of the department of planning and urban development. The permit shall issue only upon receipt of a completed application therefor in a form to be devised for that purpose, payment of a fee of one hundred and fifty dollars (\$150.00) per unit, and a finding, upon inspection, that each unit, together with any common areas and facilities appurtenant thereto, is in full compliance with all applicable provisions of article II of chapter 6 (building code), article III of chapter 6 (electrical installations), article V of chapter 6 (minimum standards for dwellings) and article II of chapter 10 (fire prevention code) of this Code, and the Life Safety Code as adopted by the state. The developer shall post a copy of the permit in a conspicuous place in each unit, and shall make copies available to prospective purchasers upon request. (Ord. No. 213-81, § 608.6, 11-16-81)

Sec. 14-571. Variation by agreement.

No provision of, or right conferred by, this article may be waived by a tenant, by agreement or otherwise, and any such waiver shall be void. Any attempt to require, encourage, or induce a tenant to waive any provision hereof, or right conferred hereby, shall be a violation of this article. Nothing herein shall be construed to void any term of a lease which offers greater rights than those conferred hereby. (Ord. No. 213-81, § 608.7, 11-16-81)

Sec. 14-572. - 14-582. Reserved.



Jeff Levine, AICP
Director, Planning & Urban Development Department

Memorandum

To: Housing Committee
From: Jeff Levine, Director
Date: August 29, 2018
Re: Hotel Linkage Update

Since you referred the issue of a proposed hotel linkage program to the Planning Board, staff has had additional internal discussion, as well as a constructive set of meetings with representatives from the hospitality industry to better understand their market. As a result of these discussions, we are bringing this item back to the Housing Committee for an update and potential revised referral.

- Change to the Draft Ordinance: Based on additional conversations with Corporation Counsel – which we mentioned at the previous discussion – we are recommending a revision to the draft ordinance that adopts a methodology similar to the inclusionary zoning ordinance in 14-387. That revision would provide a first option for all hotel uses to provide low-income housing units for sale or rent on-site. Those units would have to be differentiated from the rest of the development through deed restrictions and other requirements to ensure that they would be used for permanent affordable housing.

If the hotel developer does not want to provide these units on-site, then the option would exist for a fee-in-lieu. That fee-in-lieu, which we think many hotel developers would prefer, would be based on the nexus study. We think these revisions result in a stronger ordinance and tie the goals of the ordinance more closely to the process that would be used to implement it.

- Updated GPCOG Study: We asked the Greater Portland Council of Governments to update their hotel linkage study with additional data we have collected from the Maine Innkeepers Association. They have been kind enough to provide comments on the earlier study and pointed us to additional data sources that we asked GPCOG to incorporate into an updated study. As a result, they have a revised study with a range of possible fees in lieu that could be provided should a hotel development choose not to provide their units on-site. GPCOG's revised range is from \$2,622 to \$5,165 per room. This range includes a fee-in-lieu of \$2,622 based on Maine Department of Labor Data – which is more specific in some ways but does not differentiate between types of employees in the accommodation sector. It also includes a fee-in-lieu of \$3,806 if the more differentiated American

Community Survey data is utilized, but an assumption is added that no employee earns less than they would earn at the City's minimum wage at a full-time position. Finally, it includes a fee-lieu number of \$5,165 if the original assumptions and methodology is used.

Staff feels that any of these three options are reasonable. However, staff recommends that the ordinance utilize the \$3,806 per room fee, as it incorporates the minimum wage requirement in effect, but also retains the diversity of employment types captured in the American Community Survey data.

To: Jeff Levine, Planning & Urban Development Director
From: Stephanie Carver, GPCOG Planning Director
Date: 8/29/18
RE: Proposed Hotel Linkage Fee: Supportable Range

This memo has been expanded and updated based on additional data provided by the Maine Innkeepers Association.

Introduction

The City of Portland's Department of Planning & Urban Development is examining the feasibility of a proposal for assessing hotel linkage fees that would recover the cost of producing housing that is affordable for hotel employees. The purpose of this memo is to provide information to the City regarding the use of linkage fees for this purpose and outline a potential methodology for the calculation of a fee.

We have used the best available data to demonstrate how this methodology could be used to estimate a potential hotel linkage fee, but this does not constitute a recommendation from GPCOG as to the amount the City of Portland should charge for the hotel linkage fee nor is it a recommendation for the City of Portland to enact a hotel linkage fee ordinance.

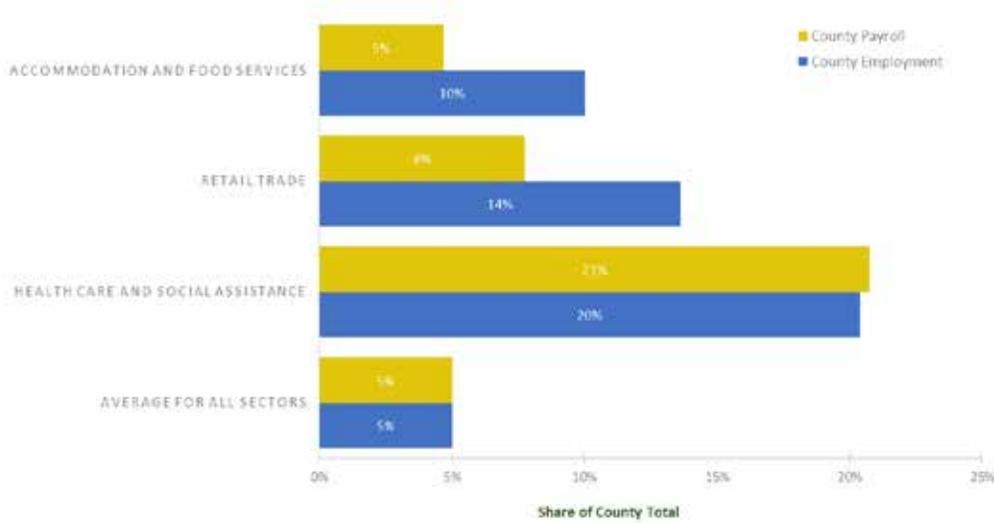
Background

Linkage fees are fees that cities may choose to implement to help mitigate the impact of new commercial development on the demand and availability of affordable housing. Prior to implementing a fee policy, communities often conduct a study to identify the connection, or “nexus” between new commercial development and the need for additional affordable housing. It is assumed that new commercial development contributes additional workers to a city's workforce and adds new worker households. In many industries, a percentage of these households do not make enough to live and work in the same city. Looking outside the city to find affordable housing often results in longer commute times and higher transportation costs. If implemented, a linkage fee is typically charged to a developer as a condition of approval and it is assessed based on total square footage or number of units in the development.

The City's Comprehensive Plan identifies the increasing demand for affordable housing as an emerging issue and sets a goal of pursuing “policies to enable people who work in Portland to have the option to live in Portland.” To be considered affordable, housing should consume no more than 30% of a household's income including rent, mortgage, utilities and other household related costs. Of the 1,130 housing units that were permitted and/or built in Portland between 2010 to 2014,

including apartments, condominiums and single-family homes, just 29% were offered at a rent or sales price affordable to a household earning the median incomeⁱ.

CUMBERLAND COUNTY EMPLOYMENT 2016



Source: US Census County Business Patterns, 2016

The Maine Office of Tourism estimates over 6 million tourists visited Portland in 2017. Hotel development is steadily increasing, with 1,811,050 square feet of hotel development - representing 2,647 units - currently in operation throughout the City. According to the US Census, the accommodation and food service sector is the third largest share of employment in Cumberland County, representing 10% of the County's workforce but only 5% of the County's payroll.

According to the Maine State Housing Authority the average rent (including utilities) for a two-bedroom apartment in Portland is \$1,053 per month, and the household income needed to afford the average rent in Portland is \$42,111 per year. However, this is the average rent paid by existing renters in Portland and new households moving to Portland will pay the current market rate, which is generally higher than the average rent. As of June 15, 2018, there are roughly 60 two-bedroom apartments listed for rent in Portland on Zillow, with monthly rents ranging between \$1,300-\$3,500. One third of those apartments are listed with rents between \$1,500 and \$2,000, and another third of those apartments are listed for more than \$2,000 per month. Therefore, a new household moving to Portland will expect to pay between 120%-330% of the average rent to live in the City.

There are a range of estimates available regarding the average wages of a full-time employee in this sector, and all are well below the household income needed to afford housing in Portland. According to the US Census, the average Cumberland County employee in this sector earns \$312 a week or \$16,227 per year. The Maine Department of Labor (DOL) estimates the median income for a full-time

Cumberland County employee in this sector to be significantly higher, \$24,908 per year. Additionally, as of 2017 the minimum wage in Portland is \$10.68/hour, so a full-time employee making this salary would earn an annual income of \$22,214. This affordability gap may force accommodation workers employed in Portland to seek housing outside of Portland.

Data

The minimum justified fee per square footage of hotel development outlined in this memo is based on data from both the US Census American Community Survey (ACS), and wage data from the Maine Department of Labor (DOL).

The US Census American Community Survey (ACS) data in this memo was used because it is the most comprehensive and consistent data source for demographic and economic characteristics of the population in GPCOG's service area. However, there are some limitations to the ACS data. First, it is 5-year sample data because this is the only data consistently available at the municipal, county, and state level. The drawback to using data pooled over five years is it averages out any short-term changes in income due to economic cycles or Portland's more recent minimum wage increase. Second, the median earnings reported by the ACS are based on what individuals report for their earnings regardless of whether they work full-time or part-time. As a result, these earnings may be skewed lower by individuals who work part-time, which may be more common for employment in the retail, food service, or accommodation sectors.

To balance these limitations, the median weekly wage data from the Maine DOL was also included in the analysis. The Maine DOL wage data is from the Quarterly Census of Employment and Wages (QCEW), which is based on employment and wage data reported to the Unemployment Insurance (UI) of the United States. The Maine DOL data also has some limitations. First, the data are only available at the industry level, so it is not possible to calculate the affordability gap for different occupations in the hotel sector. Second, the average weekly wage reported by the QCEW also does not differentiate between full-time and part-time employment. As a result, the weekly wage data reported by the Maine DOL may be skewed both by higher wage occupations and by part-time employment. The average weekly wage reported by Maine DOL was used to calculate yearly income based on full-time employment. This also assumes individuals employed in the accommodation sector can work full-time if they are willing and able toⁱⁱ.

Methodology

Methodologies used to calculate linkage fees vary, but in most cases the analysis begins with an estimation of the number of new employees associated with a typical development, in this case a hotel. In this methodology, a formula is used to calculate the affordability gap between what workers can afford to pay for housing and the average cost of market rate housing.

In Portland’s case, a link is established between the creation of new jobs in the hotel sector and the increased demand for affordable housing through the following steps:

- New Jobs.** Industry data was used to estimate the number of direct jobs that will be created by a new hotel with 180 units. According to the Urban Land Institute the typical hotel employs between 0.5-0.8 employees per hotel room. Using an average value of 0.65 employees per hotel room, it is estimated that a hotel with 180 rooms will employ 117 people. The current ratio of jobs per household was used to estimate how many households will be created by this new employment.
- Households.** Currently there are 37,737 employed civilians aged 16 and over within the 30,211 total households in Portland. This means that on average there are 1.2 jobs per every household in Portland. Based on this ratio it is estimated that the 117 additional jobs created by a new hotel will create 94 new households in Portland. However, it is assumed employment in these households will be split up between different occupations, such as management, sales, service, and maintenance. The wages for each specific occupation may be higher or lower than the median wage for the hotel industry. Therefore, industry occupation employment and wage data examined from the ACS was used to estimate how many new households will be low income.

EMPLOYED POPULATION PER HOUSEHOLD 2016

	Portland	Cumberland County	Maine
Employed Civilian Population 16+	37,737	155,014	652,638
Total Households	30,211	117,871	551,109
Jobs/Household	1.2491	1.3151	1.1842

Source: American Community Survey 2016 5-year estimate

- Jobs by Occupation.** Based on industry and occupation employment data from the ACS 64% of jobs in the hotel industry are service occupations, 19% of hotel jobs are management occupations, 13% of hotel jobs are sales and office occupations, and the remainder are maintenance and transportation occupations. The total number of jobs and households that will be created in each occupation was calculated by multiplying the share of hotel employment by occupation by the total number of new hotel jobs created.

NEW JOBS AND HOUSEHOLDS BY OCCUPATION CREATED BY NEW HOTEL EMPLOYMENT

	Share of Hotel Employment	Number of New Jobs	Number of New Households
Service	64%	74	60
Sales and Office	13%	15	12
Transportation	4%	4	3
Maintenance	1%	1	1
Management	19%	22	18
Total - All Occupations	100%	117	94

Source: American Community Survey 2016 5-year estimate; GPCOG Analysis

- **Household Income.** Median wage by occupation data for Cumberland County from the ACS was used to calculate the household income for each household in each occupation category. This calculation assumes 1 person in each new household works full-time in the hotel industry and any additional workers in the household earn the area median income:

NEW HOUSEHOLDS AND HOUSEHOLD INCOME BY OCCUPATION (ACS DATA)

	Number of New Households	Median Wage for Hotel Income Earner	Median Wage for Second Income Earner	Total Household Income
Service	60	\$18,109	\$9,015	\$27,124
Sales and Office	12	\$30,444	\$9,015	\$39,459
Transportation	3	\$31,695	\$9,015	\$40,710
Maintenance	1	\$33,421	\$9,015	\$42,436
Management	18	\$52,910	\$9,015	\$61,925

Source: GPCOG Analysis and American Community Survey 2016 5-year estimates

Median wage by industry data from the Maine DOL was also used to calculate the average household income for the 94 new households created by hotel employment:

NEW HOUSEHOLDS AND HOUSEHOLD INCOME (MAINE DOL DATA)

	Number of New Households	Median Wage for Hotel Income Earner	Median Wage for Second Income Earner	Total Household Income
Accommodation	94	\$24,908	\$12,164	\$37,072

Source: GPCOG Analysis and Maine DOL OCEW 2016

- Affordability Gap.** These estimates for household income by occupation were compared to housing affordability data from the Maine State Housing Authority to show the difference between what the new households created by hotel employment earn and the minimum income needed to afford a two-bedroom apartment in Portland. These results show that households with Service, Sales and Office, and Transportation occupations have a household income that is lower than the minimum income needed to afford rental housing in Portland. This household affordability gap is largest (\$14,987) for households with Service occupations, which also represent nearly 2/3 of households created by the new hotel employment.

AFFORDABILITY GAP ANALYSIS (ACS DATA)

	Number of New Households	Total Household Income	Income Needed to Afford Rent in Portland	Household Affordability Gap	Total Affordability Gap
Service	60	\$27,124	\$42,111	\$14,987	\$892,820
Sales and Office	12	\$39,459	\$42,111	\$2,652	\$32,048
Transportation	3	\$40,710	\$42,111	\$1,401	\$4,856
Maintenance	1	\$42,436	\$42,111	NA	\$0
Management	18	\$61,925	\$42,111	NA	\$0
Total					\$929,724

Source: Maine State Housing Authority, 2017; American Community Survey 2016 5-year estimates

The household affordability gap using the median wage by industry data from the Maine DOL was also calculated:

AFFORDABILITY GAP ANALYSIS (MAINE DOL DATA)

	Number of New Households	Total Household Income	Income Needed to Afford Rent in Portland	Household Affordability Gap	Total Affordability Gap
Accommodation	94	\$37,072	\$42,111	\$5,039	\$472,007

Source: Maine State Housing Authority, 2017; Maine DOL OCEW 2016

- Aggregate Affordability Gap.** The household affordability gap for each occupation was multiplied by the number of households with employment in each occupation to arrive at a total affordability gap that ranges between \$472,007 and \$929,724 per year. This number represents the difference between these households' ability to pay for their housing and the market cost of their housing based on the median monthly rent, for one year. In reality these

households may face higher rental housing costs since current Portland rents for new units are significantly higher than the median rent.

- **Final Calculation.** Dividing the affordability gap by the number of new hotel rooms results in an average affordability gap that ranges between \$2,622 and \$5,165 per room, or between \$3.91 and \$7.70 per square foot. Therefore, a fee between **\$3.90-\$7.70 per square foot** would cover a minimum justified housing affordability gap for the 94 new households created by a new 180-unit hotel employment for one year. This methodology assumes the median wage for a hotel income earner in the service industry, including full-time and part-time employees, is \$18,109 based on US Census ACS data. If it is instead assumed that hotel service industry employees are working full-time at the City's minimum wage of \$10.68/hour and making \$22,241 annually, then the minimum justified fee would be between \$2,622 and \$3,806 per room or **\$3.90-\$5.67 per square foot** of hotel development for one year. However, this assumes individuals working in the service sector are able to procure full-time employment, which is not always the caseⁱⁱ.

This example estimate represents the full cost of the affordability gap for employment in one hotel for one year as calculated by the proposed methodology. Multiple factors could potentially impact the demand for affordable housing and the City may determine a higher or lower percentage of this fee based on these variables. Furthermore, this fee could be re-evaluated periodically as circumstances such as inflation, rents, and rental housing supply change.

ⁱ Portland 2030 Housing Demand, GPCOG 2015

ⁱⁱ According to a 2016 study (<https://www.epi.org/publication/still-falling-short-on-hours-and-pay-part-time-work-becoming-new-normal/#epi-toc-21>) from the Economic Policy Institute the retail trade and leisure and hospitality sectors contributed to 63% of the growth in part-time employment and 54% of the growth in involuntary part-time employment from 2007-2015. Involuntary part-time employment is defined as individuals who are working part time because full time work could not be found or hours were reduced due to economic conditions (slack work).

Sec.14-484. Purpose.

It is in the public interest to promote an adequate supply of affordable housing for the city's residents. The purpose of this division therefore is to offer incentives to developers to include units of affordable housing within development projects or based on demonstrated need caused by creation of new lower-income jobs, thereby mitigating the impact of market rate housing construction on the limited supply of available land for suitable housing, and helping to meet the housing needs of all economic groups within the city. The city believes that this division will assist in meeting the city's comprehensive goals for affordable housing, in the prevention of overcrowding and deterioration of the limited supply of affordable housing, and by doing so promote the health, safety and welfare of its citizens.

Sec. 14-485. Definitions.

...

Hotel Project is any hotel, inn or motel, as defined in this ordinance, consisting of 10 or more rooms for rent. Any such development that expands by 10 or more rooms within any 5 year period will also be considered a Hotel Project.

14-489 Housing Linkage for Hotel Projects

- (a) **Purpose:** This section is based on City analysis, most specifically documented in the Greater Portland Council of Government study "Proposed Hotel Linkage Fee: Supportable Range" dated 8/29/18, that finds that new hospitality developments create a need for new affordable housing. This need is the result of the fact that these uses create a number of jobs that do not pay sufficiently to afford housing provided in the market.
- (b) **Applicability:** This section applies to all Hotel Projects as defined in 14-485 that have not submitted complete applications as of the effective date of this section.
- (c) **Housing Linkage:** All Hotel Projects shall provide one unit of Low Income Housing for Rent in the City of Portland for every [XX] rooms in the Hotel Project. This amount shall be rounded up to the nearest increment of [XX] rooms. These units shall be deed restricted for the longest period permitted by law; shall not be used for Short Term Rentals of less than 30 days; and must be provided with distinct entrances from the street to delineate them from the hotel itself.

- (d) **Fee in Lieu Alternative:** As an alternative to providing units as per (c) above, a Hotel Project may pay a linkage fee of [XX] per room. This amount shall be paid into the City's Housing Trust and used for the purposes set forth in the ordinance and regulations applicable to that trust:
- (e) **Annual Adjustments:** The amounts in (d) above shall be adjusted annually in the same way as the fee under Division 29 for Housing Replacement.
- (f) **Regulations:** The Planning Board may promulgate implementing regulations based on this ordinance.

Sec. 14-490. Housing trust fund.

DRAFT



TO: Councilor Duson, Chair
Members of the Housing Committee

FROM: Victoria Volent, Housing Program Manager

DATED: September 5, 2018

SUBJECT: Communication Item: Annotated City-Owned Property Map

Introduction

An annotated interactive map of city-owned property has been prepared for the Housing Committee to view. The map provides both an overview of all city-owned properties as well as a breakdown by parcel categories such as Land Bank/Parklands, Schools, Services & Industry, Deed-Restricted, Island, and Other Parcels.

Due to the nature of parcel activity (i.e. purchases, sales, land bank designations, etc.), continued up-dates to the browser will be necessary to ensure future accuracy.

The city-owned property map will be an accessible tool to assist with the comprehensive and focused comparison and understanding of constraints and opportunities of city-owned parcels. Created through the vision of the Housing Committee, the map is another land-use tool to add to the City's existing planning tool box. This preview is to update the Housing Committee on the status of the requested map.



TO: Councilor Duson, Chair
Members of the Housing Committee

FROM: Victoria Volent, Housing Program Manager

DATED: August 22, 2018

SUBJECT: Communication Item: Accessory Dwelling Units

Introduction

A 2018 Housing Committee goal is to increase access to rental and ownership housing that is safe and affordable for working and low-income families. As part of achieving that goal, the Committee prioritized the objective of identifying and recommending policy to remove barriers to Accessory Dwelling Units (ADU) in residential zones.

Removing Barriers

As part of the ReCode Portland initiative to rewrite the City's zoning code, staff is actively reviewing ADU regulations. While the first phase of the ReCode work is primarily focused on organizational issues such as formatting and readability, there are some substantive policy issues that will be taken up in that phase. The current disjointed approach to ADU's is one of those policy issues that will be tackled in the first phase.

Most of Portland's residential zoning districts permit some form of an accessory dwelling unit. ReCode Portland will explore establishing a more uniform definition and set of requirements across Portland's various zoning districts to broaden opportunities for implementation, reduce unwanted regulatory constraints and employ consistent terminology. It will also look at streamlining the process for ADU permitting to encourage ADU's as a method of increasing the quantity and diversity of Portland's housing stock. Current thinking is that ADU rules will be made consistent across the mainland, with a slightly different set of rules for the islands.

ADU Update

A summary update explaining the use of accessory dwelling units is posted on the ReCode Portland's web page. That update explains the role ADUs play in diversifying

housing options, and next steps towards broadening opportunities for implementation, reducing unwanted regulatory constraints, and employing consistent terminology.

The link to ReCode Portland's update on Accessory Dwelling Units is found at:

<https://www.recodeportland.me/accessory-dwelling-units/>

Attachment:

ReCode Portland ADU webpage

Accessory Dwelling Units

The City is reviewing existing standards for accessory dwelling units (ADU's) with the goal of establishing a more uniform definition and set of requirements across Portland's various zoning districts. The effort to standardize ADU terms and standards is a vital component of the ReCode process.

What is an Accessory Dwelling Unit (ADU)?

An ADU is an additional living quarter that is independent of and wholly contained within a principal building or attached/detached accessory structure (such as a garage) on property where a single-family dwelling-unit or multi-family dwelling-unit is the principal use. ADU's are equipped with kitchen and bathroom facilities and are typically subject to standards related to location of the ADU within a site, interface of entrances and ADU size. An ADU within a single family home is distinguished from a duplex, for example, because the ADU is intended to be clearly subordinate in scale and placement in relation to the primary residence.

Why do Accessory Dwelling Units Matter?

ADU's have the potential to increase the city's supply of affordable housing (both for rental and home ownership), augment the diversity of housing options available to Portland's residents, provide flexibility for property owners, address shifting demographic trends towards smaller households, allow more possibilities for aging in place, and allow for the more efficient use of existing housing stock and infrastructure. ADUs can be utilized to provide living quarters for family members, such as aging parents or college students, as well as offering greater flexibility and independence to retirees by potentially allowing them to remain in their home and age in place. In short, ADUs are one important element of Portland's approach to creating a well-rounded housing supply and an organic way to allow neighborhoods to retain their character as they grow.

How does Portland currently REGULATE Accessory Dwelling Units?

At present, some form of accessory dwelling unit is permitted within most of Portland's residential zoning districts, with some exceptions. The terms used for this land use tool vary, and may be listed as either an accessory dwelling unit, such as in the R-1, R-2, R-3 and several island zones, or as an additional dwelling unit, such as in the R-5 zone. All zones consider this a Conditional Use, and standards, dimensions, and requirements vary. For example, the R-1, R-2 and R-3 permit ADU's so long as the total floor area of the ADU does not exceed 30% of the total gross floor area of the property, whereas in the IR-1 and IR-2, ADU's are limited to 35% of the total gross floor area. In all cases, as Conditional Uses, they are subject to additional standards and increased oversight by the Zoning Board of Appeals (ZBA).

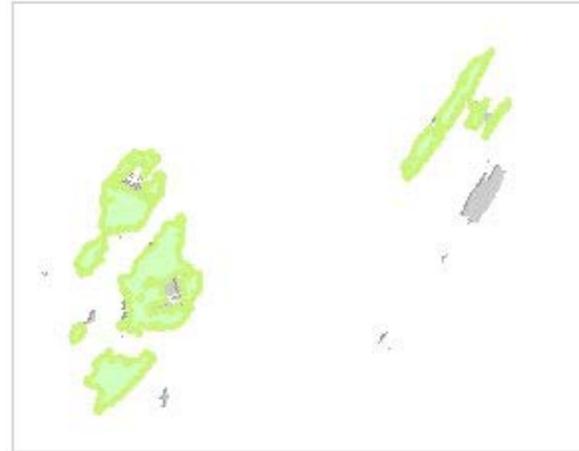
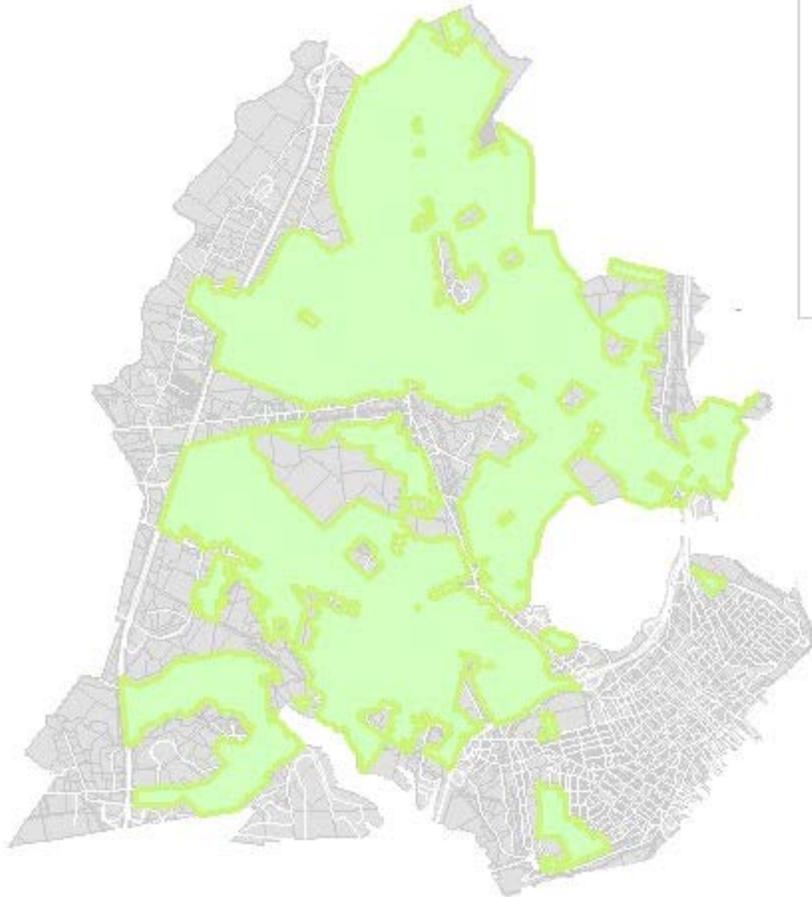
What are the next steps?

Portland allows accessory dwellings in many areas of the city, but there's not yet a unified approach to them, and the current requirements may be more restrictive than they should be. This is a perfect opportunity to gather community input, conduct research on ADU best practices and comprehensively revisit this topic, with the goal of broadening opportunities for implementation, reducing unwanted regulatory constraints and employing consistent terminology. Watch this space for updates later this summer.

Contact

Please send questions or comments about existing ADU standards or upcoming changes to recodeportland@portlandmaine.gov.

Areas Where Accessory Dwelling Units or
Equivalent are Currently Permitted



Click to enlarge

ReCode Portland
389 Congress Street,
Portland, ME, 04101,

[207874800](tel:207874800) recodeportland@portlandmaine.gov

DRAFT

2018 Housing Committee Work Plan

August 30, 2018

September 6, 2018

1. Overview of Legal Framework for Municipal Fees, Land Use Controls, and Exactions
2. (Action Item) Review and Recommendation to the Housing Committee re: Order 225-17/18 Referring an Increase in Short Term Rental Registration Fees to the Housing Committee
3. Review and Discussion of possible changes to the Condominium Conversion Ordinance Section 14-565 to 14-571.
4. Review and discussion of a proposed ordinance addressing new hotel developments and affordable housing demand
5. Communication Item: Review of Map of City-Owned Property
6. Communication Item: Accessory Dwelling Units
7. 2018 Work Plan Discussion

September 26, 2018

1. (Action Item) Review and Recommendation to Planning Board proposed Ordinance addressing new hotel developments and affordable housing demand
2. (Action Item) Review and Recommendation to Planning Board Amendments to Condo Conversion Ordinance
3. Communication Item: Permitting and Inspections response to questions from July 31 meeting regarding rental housing safety and inspections program, and short term rental registration program
4. Communication Item: FY18 HUD Consolidated Annual Performance Report
5. Review and Discussion of City-Owned Property re: housing development potential
6. 2018 Work Plan Discussion

October 11, 2018

1. Presentation Overview and Integrated Report from Permitting and Inspections and Fire Department re: Short-term and Long-term Safety Inspections and Program Budgets

October 24, 2018

1. Presentation of Key Updates to the 2017 Housing Report
2. Presentation and Discussion of Community Land Trust model
3. Tentative PHA RAD presentation
4. 2018 Work Plan Discussion

November 28, 2018

1. Review of 2018 Annual Committee Report
2. 2018 and 2019 Work Plan Discussion

December 26, 2018 – canceled

COMPLETED WORK

January 24, 2018

1. Review 2017 Housing Policy Proposals.
2. Review 2017 Housing Committee Report; Goals, Work Plan, and Accomplishments.
3. Review Summary of Feedback of Housing Policy Proposals.
4. First Review of Developer Feedback on the Inclusionary Zoning Ordinance.
5. Update on 2018 Short Term Rental registration process.
6. 2018 Work Plan Discussion

February 12, 2018

1. Review Housing Policy Proposals

2. Review Public Feedback on Housing Policy Proposals
3. 2018 Work Plan Discussion

February 28, 2018

1. Housing Program Budget - Review and Recommendation to the City Council
2. Overview of the Housing and Community Development Division
3. Overview of the Housing Trust Fund
4. Communication Items: Community Land Trust Information; City-owned property information; Text Analysis of Housing Report Survey
5. 2018 Work Plan Discussion

March 28, 2018

1. 14-403
2. HomeStart
3. Affordable Housing Development HOME Fund Application - Review and Approval to Issue by the Committee
4. Franklin Reserve Massing Study/GPCOG overview of Brownfields Planning Grant
5. 2018 Work Plan Discussion – including a discussion of the Council’s goal setting session

April 25, 2018

1. Rental Market Survey results presentation
2. Review and Vote to Recommend to the City Council Amendments to Chapter 6 re: Disorderly House Ordinance.
3. Housing Trust Fund Annual Plan
4. Tax Acquired and City-Owned Property – Westbrook Street
5. 2018 Work Plan Discussion

Communication Items:

Portland Water District water efficiency and repair services program

Inclusionary Zoning Workflow Update

May 23, 2018

1. Review Funding Requests Received from the Affordable Housing Development HOME Fund Application
2. (Action Item) Review and Recommendation to the City Council of the 2018 Housing Trust Fund Annual Plan
3. Review of Amendments to Ordinance: Section 6-225 of the Tenant Housing Rights Ordinance. (Housing Advisory Board) (Pubic Comment)
4. Communication Item: HUD FY18/19 Funding Update
5. 2018 Work Plan Discussion

June 5, 2018

1. (Action Item) 5:30 pm to 6:30 pm - Joint meeting with the Economic Development Committee to Review and Recommend to the City Council Affordable Housing TIF Requests
2. (Action Item) Review and Recommendation to the City Council – Funding Requests Received from the Affordable Housing Development HOME Fund Application
3. (Action Item) Review and Recommendation to City Council of Amendments to Ordinance: Section 6-225 of the Tenant Housing Rights Ordinance. (Housing Advisory Board)
4. Hotel Linkage Fee Discussion
5. 2018 Work Plan Discussion

June 27, 2018

1. Presentation of City-Owned Property Map - housing development potential
2. (Action Item) Review and Recommendation to the City Council – HOME Affordable Housing Development Funding Requests Received from the Affordable Housing Development HOME Fund Application
3. (Action Item) Review and Recommendation to the Planning Board - Hotel Linkage Fee
4. 2018 Amended Housing Committee Schedule
5. Communication Item: FY19 HUD Annual Allocation Plan
6. Communication Item: Accessory Dwelling Units – site page review
7. 2018 Work Plan Discussion

July 31, 2018

1. Rental Housing Safety & Inspection Program - Implementation and Financial Report
2. Short Term Rental Registration Program – Implementation, Financial Report and possible Ordinance revisions
3. Initial Discussion of Order 225-17/18 Referring an Increase in Short Term Rental Registration Fees to the Housing Committee
4. (Action Item) Reconsideration of the Committee’s HOME Funding Recommendation
5. (Action Item) Review and Recommendation to the City Council Housing Trust Fund Allocation(s)
6. Public Comment Received since the last meeting: topics include allowing housing in “Franklin Reserve” and the City’s short term rental policy
7. Communication Item: Accessory Dwelling Units
8. Communication Item: Site Walk 622 Auburn Street
9. Communication Item: Map of City Owned Property
10. 2018 Work Plan Discussion

August 22, 2018 - canceled