

Housing Committee Minutes of November 29, 2017 Meeting

A meeting of the Portland City Council's Housing Committee (HC) was held on Wednesday, November 29, 2017 at 5:30 P.M. in Council Chambers of Portland's City Hall. Councilors present at the meeting included Committee members Councilor David Brenerman, Councilor Brian Batson, Councilor Jill Duson, Chair of the Committee, Mayor Ethan Strimling, and Councilor Elect Kimberly Cook. City staff present included Jeff Levine, Planning and Urban Development Department Director, Mary Davis, Division Director Housing and Community Development, and Victoria Volent, Housing Program Manager.

Item 1: Review and accept Minutes of previous meeting held on November 9, 2017

Councilor Batson motioned and Councilor Brenerman seconded to accept the minutes from the November 9, 2017 Housing Committee meeting. Minutes were unanimously approved 3-0.

Item 2: Review and Vote to Recommend to the City Council Amendments to Chapter 6 re: Disorderly House Ordinance

Before the staff presentation and committee discussion, Councilor Duson indicated that she would recommend that the committee delay action until the next meeting.

Richard Bianculli, Jr., the City's Neighborhood Prosecutor introduced the item. He indicated that the proposed amendments include changes discussed with community policing coordinators and staff from Pine Tree Legal and came about as a result of the disorderly house situation on Oxford Street that occurred earlier this year.

Councilor Duson indicated her concern that any changes do not weaken the city's enforcement authority. Mr. Bianculli explained that these amendments would only apply to the disorderly house ordinance (6-202).

Councilor Brenerman explained that he was hesitant to make new law based on one example and asked if there have been other situations besides Oxford Street. Mr. Bianculli replied that they have not had other situations as flagrant. The main goal of the amendments is to address due process concerns. Councilor Brenerman has previously heard from constituents that the 7 day eviction process does not work well. Mr. Bianculli indicated that in these cases the tenant has caused a nuisance and there is evidence to support the nuisance claim. Mr. Bianculli states that the new amendments provide more transparency and avoids due process claims against the city.

Councilor Batson asks if the landlord would have any claims about unpaid rent. Mr. Bianculli explained that it would be a civil issue and believes it would be difficult for the landlord to pursue claims.

Councilor-elect Cook asked if the City provides assistance to tenants being displaced could the City add language to the ordinance that the owner of the disorderly house would be charged those costs. Mr. Bianculli stated that it is not currently in the ordinance and he would want to research before making that recommendation.

Councilor Duson indicated that additional committee questions should be directed through Mary Davis in the Housing and Community Development office so that they can be passed on to Mr. Bianculli.

Public Comment:

Carleton Winslow stated that it is difficult to do a 7 day eviction and that is the reason that 30 day evictions are used. A 7 day eviction is difficult to prove, the court usually requires witnesses as proof. He is disappointed that there was no representative from the landlord association when this was drawn up.

Brit Vitalius, President of the Southern Maine Landlord Association (SMLA). SMLA had an attorney review the proposed changes and he did not have any particular concerns. The SMLA would like to have more input in the process before the item is brought back to the committee for approval.

Councilor Duson requested that SMLA reach out to the city's attorneys.

Item 3: Discussion and Possible Recommendation to the Planning Board of Proposed Amendments to the Inclusionary Zoning Ordinance

Jeff Levine introduced the item. Blue changes are city staff proposals. Red changes are mayor's proposals. Mayor indicates his support of the staff proposals.

Mr. Levine described the two staff proposals – the fractional fee in lieu payment when units are provided on site and removal of the sunset provision.

Mr. Levine reviewed the staff memo regarding different approaches used across the country for setting the fee in lieu. The City uses the affordability gap method and staff believe that this is still the best approach and is not recommending a change to that fee.

Mayor Strimling outlined his amendments which include a change from using regional HUD AMI to Portland median income.

Councilor Batson – supportive of staff recommendations; why does staff support 10%; Mr. Levine says staff relied on Lincoln Institute studies; its about finding the sweet spot, don't make it too high, don't make it too low; seemed like a reasonable place to start. Victoria – research showed that you need to look at % hand and hand with the level of income trying to reach; relationship between % and income level.

Councilor Batson – project “shall” have option to pay fee in lieu; wants it to be required to pay fractional fee in lieu; want to consider requirement that at least one unit be built on site. Supports all staff recommendations; supportive of higher % but not sure what the right % should be; would recommend 20% with no adjustment to income. In future would like to talk about requirement for building units on site.

Councilor Brenerman – Last meeting asked for analysis why local developers were choosing to pay fee in lieu instead of creating units. Mr. Levine indicates he has spoken with several developers, seems to be determined by whether they are building rental or homeownership units; developers appear to see it is too complicated for homeownership units.

Councilor Duson – asked about developments subject to ordinance; seem to be about half and half; Mr. Levine recommends keeping that option and flexibility.

Public Comment:

Ethan Boxer Macomber: 34 Glenwood Avenue; affordable housing developer; concerned with issues being discussed tonight; three questions – considering policies all over the country; but seem to cherry pick the ones being highlighted – how are comps presented relative to Portland Maine, could we find more like/kind communities; second question – why is the board considering ending the sunset clause without any evidence that it is causing problems; third question – why hanging hat on comparable data on what other communities are doing? Talking about approaches but no data on outcomes; Not aware of impacts of ordinance yet – implore wait to year 4 before considering changes.

Scott Vonneguat – 185 Congress Street; suggest do more research on raising % and reducing income requirements – will changes negatively impact creation of affordable units. Remove fee in lieu option but leave in for fractional units; build units; units would be scattered throughout developments and not concentrated. Support increase of % to 20.

Chip Newel 118 Congress Street – complement committee on timing – wise enough to adopt ordinance at right time; premature to change ordinance until more time has passed. Opportunity to use money paid into the HTF to have RFP process to see what developers come up with.

Peter Bass, Waterville Street – 65 Munjoy bit more difficult to sell units than they expected; don't change income limits which would make them more difficult to sell. Another class of housing that trying to build – building housing that fits into these income levels without subsidies – Joy Place, Jack Soley; intention to build at 120% ami; overlay IZ reduces the value of the unit. Deed restrictions reduce value of sale price; would love to see reward for developers who are trying to build these type of units.

Tom Watson, Pine Street – to date no apartments built with 10% IZ; 443 Congress had more financial strengths; construction costs gone up 20%, rents falling; sent email to councilors; developers not building units; to change the ordinance now would be even more detrimental; struggling to build already.

Mr. Levine responds to questions asked in public comment; generally agree that is fairly new which is why staff recommends moving slowly; staff believes the ordinance does provide some rewards along with “sticks”. Staff will look at actual cost to develop housing.

Councilor Duson indicates the committee previously received data on outcomes/results.

Councilor Brenerman – regarding staff proposals ok with fractional fee idea, concerned that changes are being proposed after ordinance in place for such a short time; affordable housing gets built with subsidies; not giving IZ time to work or fail; not sure that changes will have positive effect we are looking for; if rules are hard to comply with maybe we need to make changes so the ordinance is easier to work with; market has changed, rents are flat, cost of building has gone up, is it possible we are imposing requirements that may not work; need to be cautious about how we use data; does not support removal of sunset clause; does not support either of the Mayor’s proposals given how young the ordinance is at this time.

Councilor Duson – supports fractional fee argument; leave income requirements as is.

Councilor Brenerman – motion to forward to the planning board committees support to amend fractional fee payment when units are provided on site and move other planning staff proposed changes except for the sunset clause; seconded by Councilor Duson; forwarding ordinance document with marked revisions; items highlight in blue except sunset clause, with 2-0 endorsement of the committee.

Second motion to forward to the planning board a summary of the items considered by the committee but not recommended for planning board consideration with a vote of 2-0 by the committee.

Mayor’s comments – disappointed that third member of committee is not part of formal vote; disappointed that the committee is not seeking compromise. Does not feel that increasing % will hurt affordability. Asking to be more aggressive because crisis is so deep. Disagree that only way to build housing is with subsidies; believe mandates build housing, one of strongest ways to build housing. Concerned we are overly cautious on the impact to the business community.

Item 4: Review and Recommendation to Forward to the City Council as a Communication Item – 2017 Committee Report

Councilor Duson thanked Councilor Brenerman for his work and time with the committee;

Councilor Duson explained that the end of the year report allows the committee to document its work and make it part of public record.

Councilor Duson made a motion to forward the report as a communication item to the City Council and referred to new housing committee when established. Motion approved 2-0.

Item 5: Committee discussion re: 2018 Work Plan

Councilor Duson motioned to refer the 2018 work plan suggestions to the next housing committee. Motion approved 2-0.

Councilor Brenerman motion to adjourn. Motioned approved 2-0. The meeting was adjourned at 8:26 p.m.

Respectfully submitted, Mary Davis



Mary Davis <mpd@portlandmaine.gov>

Comments re Inclusionary Zoning

1 message

Jonathan Culley <jonathan@redfernproperties.com>

Wed, Nov 29, 2017 at 1:12 PM

To: Brian Batson <bbatson@portlandmaine.gov>, "District 5: David Brenerman" <dbrenerman@portlandmaine.gov>,
jduson@portlandmaine.gov

Cc: jlevine@portlandmaine.gov, mpd@portlandmaine.gov, Vvolent@portlandmaine.gov

Dear Councilors,

Unfortunately, I am unable to attend tonight's Housing Committee Meeting, so I offer my comments in writing regarding potential changes to the Inclusionary Zoning ordinance. Because Redfern Properties' focus is on developing rental housing in Portland, I speak only about the provisions related to rental housing and not those pertaining to condominiums. It is important to note the significant differences between these two markets and how the ordinance impacts them differently.

Since the current Inclusionary Zoning ordinance took effect roughly two years ago, there have been ZERO new construction apartment buildings started that were impacted by the ordinance. Unfortunately, we are not getting the rental housing that our city desperately needs. The reason is simple – the economics of market rate rental housing development are not currently feasible. Since Redfern built our three larger apartment buildings in [Portland \(183 Brackett St., 89 Anderson St., 667 Congress St.\)](#), the cost to develop has increased by nearly 20%. At the same time rents have plateaued. Right now, there is not an adequate return on investment to build without tax credits or subsidies.

So the Mayor's proposal to increase the affordable unit percentage (from 10-20%) and decrease the affordability level (from 100% AMI to 80%) is not sensible given the reality of our market. The logic seems to be that we are not getting enough, so let's try to get more by making it more expensive for those who create the housing that we need. It is nothing more than wishful thinking.

Inclusionary Zoning works essentially as a tax on "windfall profits" on Developers. And when there are "windfall profits" it is a reasonable way for Developers to support those who are less fortunate. But the lack of recent apartment development is absolute proof that in Portland's current market there are no "windfall profits" – there are not even "ample profits". If they were, Developers would be building. While when looking at some policies, benchmarking other cities makes sense. But in this case, we need not look past what has happened in the last two years in Portland, to know that a more aggressive Inclusionary Zoning Policy would be foolish.

Portland's Inclusionary Zoning ordinance is still brand new. It is far too soon to be tweaking the major provisions of the policy. While the modest adjustments recommended by Staff are thoughtful and reasonable, the Mayor's proposals to increase the unit percentage to 20% or decrease the affordability level to 80% will ensure that we don't see any new apartments built in Portland for the foreseeable future.

Thank you for your consideration.

Jonathan Culley**Redfern Properties LLC**cell: [207.776.9715](tel:207.776.9715)jonathan@redfernproperties.comwww.redfernproperties.com



Mary Davis <mpd@portlandmaine.gov>

Fwd: Thoughts on the Inclusionary Zoning regulations

1 message

Victoria Volent <vvolent@portlandmaine.gov>

Mon, Nov 27, 2017 at 4:26 PM

To: Jeff Levine <jlevine@portlandmaine.gov>, Mary Davis <mpd@portlandmaine.gov>, James Dealaman <jdealaman@portlandmaine.gov>

Attached are comments from Josh Benthien regarding the IZ Ordinance.

(I thanked Josh for his feedback and mentioned I was forwarding his e-mail on to you)

Victoria

Victoria Volent
Housing Program Manager
Housing and Community Development
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www.portlandmaine.gov

----- Forwarded message -----

From: Josh Benthien <josh@northlandus.com>

Date: Mon, Nov 27, 2017 at 1:56 PM

Subject: Thoughts on the Inclusionary Zoning regulations

To: "jduson@portlandmaine.gov" <jduson@portlandmaine.gov>, "bbatson@portlandmaine.gov" <bbatson@portlandmaine.gov>, "dbrenerman@portlandmaine.gov" <dbrenerman@portlandmaine.gov>

Cc: Victoria Volent <vvolent@portlandmaine.gov>

Councilors,

Thank you for the opportunity to provide developer feedback on the current Inclusionary Zoning ('IZ') regulations. I was at the housing committee earlier this month, and spoke to my experience in working through the IZ regulations for the project my partners and I are developing at 443 Congress Street (retrofitting 4 floors of former office space into 28 units of apartments). Our project was the first rental project to obtain planning board approval after the council approved the IZ ordinance, but prior to the planning board's approving of the final regulations. In the last 90 days we have worked out a short term master lease with a local college to take all 28 apartment units. This change in direction required us to go back to Planning Board to request to pay the "fee in lieu" because college students who are claimed as dependents by their parents for tax purposes are not allowed to occupy IZ units; Planning Board approved this request on November 14th.

Without the master lease with the college, we had been prepared to move ahead with the IZ units in place and deed restricted for 99 years. We agree with the goal to increase moderate income/affordable housing options, although after going through the process of negotiating a workforce housing agreement with the city, we have concerns that the current IZ regulations will prevent housing development of rental housing resulting in further constraint on supply and increasing housing costs.

Before increasing the required IZ unit percentage, or reducing the AMI targets, we think that the city should consider adjusting the regulations to encourage more units to be placed in service. Attached is a letter with some areas of the IZ regulations that believe are preventing market rate housing developers of rental housing from moving forward with projects with IZ units in place, rather than paying the "fee".

I hope to make it to the meeting on Wednesday to answer any questions you may have. Thank you all for your service to our city and thoughtful attention to this complex issue.

Josh

11/29/2017

City of Portland Mail - Fwd: Thoughts on the Inclusionary Zoning regulations

Josh Benthien

Partner

Northland Enterprises, LLC

[207.780.0223](tel:207.780.0223) (ext 203)

 **Northland IZ Commentary- 1.27.17.pdf**
566K

Northland Enterprises Comments on how to improve the Inclusionary Zoning ordinance in Portland:

We are writing to voice our concerns about the current Inclusionary Zoning (“IZ”) ordinance and the Mayor’s proposed changes to the ordinance. We recognize that Portland needs a variety of housing types to thrive as a city, and we know that the best way to create a range of housing options is for the City to foster a regulatory climate that is conducive to development.

The Inclusionary Zoning ordinance in its current form is a strong *disincentive* for developers to build multi-family housing projects that have more than nine units. We are unaware of any onsite rental IZ units created in the City to date. The program is failing at creating affordable units in Portland because it poses many impractical restrictions on developers.

We present the following observations and recommendations regarding the IZ, in hopes of improving the existing policy and fostering the development of badly-needed modern rental housing stock:

Tenant Selection

The most glaring shortcoming of the current IZ policy is the City’s involvement with tenant screening. The Agreement requires that prospective IZ tenants be approved by the City. That means a property owner cannot lease a unit to an IZ tenant without City staff reviewing the application and retaining the right to apply their own screening methods to verify the prospective tenant’s income. Practically speaking, this provision is unworkable for the property owner, as few prospective tenants will be willing to wait for the City to approve their application. After much back-and-forth with the City planning staff, we negotiated a 5-day turnaround time for City approval of tenants, and we believe that timeframe would still lead to tenants finding housing elsewhere before signing a lease with us.

Further, the City staff are not equipped to screen tenants or determine income eligibility. That is a specialized task best left to experienced property managers. Additionally, the IZ has no provision that would eliminate the IZ requirements in the event that the City reorganizes its operations, experiences staff layoffs, or simply chooses to not direct adequate attention to the IZ tenant screening.

Also, the IZ provides no legal protection or indemnification to the property owner should the City’s screening method be discriminatory or otherwise impermissible by law.

We recommend that property owners should have the option to be solely responsible for screening tenants in compliance with the IZ guidelines, with the income eligibility portions of tenant files being available to the City for review with reasonable notice. This would be consistent with the Maine Housing regulations that owners would adhere to under a Low-Income Housing Tax Credit (“LIHTC”) project. Those projects are not subject to the IZ, so it seems that the LIHTC screening methods are deemed to be appropriate (i.e. the city doesn’t want to double check the AVESTA or Szanton Company screening). This would allow larger, more sophisticated developers and landlords to utilize the screening software that we already have paid for, while still allowing smaller landlords to have the City do the screening if they would rather not take the risk or invest in the income screening protocols.

Duration of Affordability Requirements

The current regulations require IZ units to remain affordable for terms ranging from 10 years, if 100% of a project’s units meet IZ affordability, to 99 years if 10% of a project’s units meet IZ affordability. As a practical matter, 10% is the most IZ units that most projects can afford to have, so the IZ units are required

to remain affordable for 99 years. There is no telling what the City's housing needs will be 10 years from now, let alone a century into the future, and the City is under no obligation to fund the employment of staff to actually oversee the IZ program now or in the future.

We recommend that the IZ affordability term be capped at 10 years, with the provision that property owners be required to allow IZ tenants to remain in their units at the IZ rent levels until such time as that tenant vacates. Thus, no tenant would lose their housing as a result of their unit coming out of the IZ compliance period.

In the case of LIHTC development, the developers do agree to 99-year deed restrictions, but that is because a large portion of the development costs are being funded by the tax credit investor. They're willing to give up the ability to raise rents beyond AMI increases for 99 years, because MSHA is providing the majority of the funding for the project. In the case of the IZ, the city is providing no such funding or benefit to the development in exchange for the 99-year deed restriction. It is important to also note that in the case of LIHTC deals, the permanent debt is required to be non-recourse to the developer. Meaning the developer is not signing their life's work away to secure the debt. The situation is often quite different in market rate development, where developers are personally guaranteeing the loans; therefore, the risk is much higher for market rate development. The prospect of agreeing to a multigenerational deed restriction becomes a very real risk to the long-term viability of the project.

The current IZ deed restriction structure feels like a penalty on the developer, rather than a partnership to provide the affordable units. When a developer considers a 99 years of having the city screen the IZ tenants every year and the resulting increase in vacancy and headache, it is often enough to justify payment of the fee in lieu.

Future Payment-In-Lieu

Given the long affordability terms mentioned above, IZ would potentially be more palatable to developers if it included the option of removing IZ units via the fee-in-lieu at a future date. For example, say a 10-unit apartment building has 1 IZ unit that must remain affordable for 99 years. The developer should have the option to operate the IZ unit and pay the fee-in-lieu at any time in the future, removing the affordability restrictions on that unit once the current tenant terminated their lease; the owner would not be able to suddenly charge market rate for the existing tenant, but would have to wait until they leave before paying the fee and repositioning the unit as a market rate unit. The flexibility to buy out of the IZ requirement in the future will help alleviate the risk that a property will be less valuable to prospective purchasers in the future.

Interior Standards for Workforce Units

The current Workforce Rental Housing Agreement includes many specific requirements for IZ units, right down to bathroom fixtures and linear feet of kitchen counter space. These requirements are too specific, particularly given that the affordability requirements will be in place for many decades. We don't know what design standards and technology will hold in the future. A better approach would be to simply require that the IZ units feature a level of fit and finish comparable to the building's market rate units.

Thank you for your time and consideration,

Josh Benthien
Northland Enterprises, LLC
207-780-0223