

To: Planning Board Members
From: Tex Haeuser, Planning Director 
Cc: Steve Puleo, Community Planner
Richard Steller, Building Inspector and Interim Code Enforcement Officer
Date: Planning Board Public Hearing of March 28, 2017
Re: **Proposed Inclusionary Zoning and Housing Trust Fund**

Introduction

As indicated in the memo for the proposed Suburban Commercial CS zoning amendments, there are a pair of fairly large West End residential developments that may come forward that present an opportunity to increase South Portland's stock of middle-income housing units if an inclusionary zoning ordinance can be adopted.

Inclusionary zoning is a term that refers to regulations that increase housing choice by establishing requirements and providing incentives to construct housing to meet the needs of middle-, and in some cases, lower-income households. The inclusionary zoning provisions being proposed were borrowed, closely, from those of Portland, and we have been fortunate to have had assistance from Portland staff members in understanding and adapting the ordinance. One of the reasons for using similar standards as those of Portland is to reduce the temptation for developers to "shop around" among Portland area communities in order to avoid affordable housing regulations. Cape Elizabeth is another community that has inclusionary zoning.

The Portland affordable housing zoning provisions consist of three parts: housing preservation and replacement; inclusionary zoning; and the creation of a housing trust fund. The housing preservation piece requires owners who demolish residential units or convert them to non-residential uses to replace the units or pay a compensatory fee. This is currently less of a concern in South Portland and so, for now, it is not included in the ordinance amendments; it can be added later if desired. The two items being proposed now are the inclusionary zoning and housing trust fund provisions.

It is hoped that the proposed inclusionary zoning and housing trust fund additions to the Zoning Ordinance can be adopted soon so that they are in place when the potential new housing developments at Clark's Pond and Sable Oaks move ahead. Toward this end the inclusionary zoning and housing trust fund pieces are proposed to be retroactive to the date of the February 22nd Council workshop.

Middle-income Housing

Middle-income housing units, as defined and used in this proposal, are ones that are affordable to moderate-income households. They are intended to be available to people with jobs like teachers, fire fighters, and similar professions so that the people who work in a city like South Portland and are essential to making it a well-run community are able to find housing they can afford without having to commute long distances from outside the city. (The original term was “workforce housing,” but it was changed to “middle-income housing” at the request of the City Council.)

As in Portland, we propose to define middle-income housing dwelling units, in the case of rentals, as those affordable to households earning 100% of the area median income (AMI), and, in the case of units for sale, to be those affordable to households earning 120% of AMI. These are fairly high income levels, and it reflects the reality that developers, while often being able to accommodate moderate-income units into their projects, generally cannot provide housing units for low-income households without subsidies. Other means, such as affordable housing TIFs and tax credit programs through Maine State Housing Authority grants, will continue to be needed to meet the affordable housing needs of people at lower income ranges.

Based on HUD AMI figures for this area, the income levels in 2016 at which middle-income housing units had to be affordable are contained in the following table. Note that the income levels depend on the number of people in the household:

	Household Size							
AMI	1	2	3	4	5	6	7	8
100%	\$ 59,200	\$ 61,500	\$ 69,200	\$ 76,800	\$ 83,000	\$ 89,100	\$ 95,300	\$ 101,400
120%	\$ 71,040	\$ 73,800	\$ 83,040	\$ 92,160	\$ 99,600	\$ 106,920	\$ 114,360	\$ 121,680

To give a general idea of what this translates into, at these income levels a developer could charge approximately \$1,200 per month, with utilities included, for a rental unit for a two-person household.

Proposed Inclusionary Zoning Requirements

In the Portland ordinance the threshold for when developments are required to provide middle-income units is 10 units—any development in Portland that includes 10 or more dwelling units has to provide a percentage of the units as middle-income units. In our ordinance the proposed threshold is 20 units. In both cases the required number of middle-income units is 10% of the total units being built, but in South Portland we propose to use standard rounding (rounding down for .1 - .4 and rounding up for .5 - .9) whereas in Portland all fractional amounts are rounded down. This means that in Portland a 25-unit project is required to provide two middle-income units while in South Portland three would be required.

As an alternative to providing middle-income units, the proposed South Portland ordinance, like Portland’s, would allow a builder to pay an in-lieu fee of \$100,000 per unit. This amount

would be deposited into a Housing Trust Fund as will be described below. The Portland experience is that many developers are paying the fee instead of providing middle-income units for sale but are providing the units and not paying the fee in the case of required middle-income units for rent.

Proposed Inclusionary Zoning Incentives

As with Portland, we propose to provide some carrots along with the sticks. One of these is a potentially substantial reduction in application and building permit fees for projects that provide middle-income units that otherwise would not be required. For example, a \$2M development that included 15% of the units as middle-income housing (above what would otherwise have been required) would get a building permit fee reduced from \$15/\$1,000 to \$9.35/\$1,000—a savings of \$11,300.

Other incentives include a reduction in the term of the required affordability agreement depending on the number of middle-income units provided, density bonuses ranging from 5% to 25%, a cap on required off-street parking spaces at 1.0 spaces per middle-income unit, and a twelve-foot height bonus for buildings in mixed-use or commercial zones with five or more units of which 20% or more are affordable units for rent or sale.

Bedrooms as well as Units

One of the important details of the proposed inclusionary zoning is that it applies to bedrooms as well as units. What we wouldn't want to happen is for a developer to satisfy the 10% middle-income housing units requirement by making all of the middle-income units studio apartments with no bedrooms. The proposed ordinance provides flexibility in the size of the units and where they are located in buildings, but it draws the line at bedrooms so that the affordability requirement applies to households, to a certain extent, and not just to units.

Portland has developed rules, which we intend to use also, with regard to the bedrooms calculation. First, just as at least 10% of the units in the building have to be middle-income units, so also must 10% of the bedrooms in the development be in middle-income units. However, what if the market-rate units a developer creates are, say, 2,000 sq. ft. in size but with only one bedroom each? That reduces the number of bedrooms required in the middle-income units, but chances are some of the people in the market rate units over time will put in new walls and create additional bedrooms. Therefore, there is an additional rule that says that the number of bedrooms being provided in the market rate units is determined not by counting bedrooms shown on the floor plans but by dividing the size of each market rate unit by 400 sq. feet. So in the case of the 1,200 sq. ft. unit, it would be determined to have three bedrooms even if only two were shown on the floor plan.

Housing Trust Fund

The other part of the affordability article proposed for the Zoning Ordinance is the creation of a Housing Trust Fund. The fund would be capitalized by:

- fees in lieu of creating a required middle-income housing unit
- contributions stemming from a housing replacement ordinance if enacted in the future
- any funds voted by the City Council
- voluntary contributions of money or assets
- grant or loan funds
- interest
- loan repayments

Uses of the Housing Trust Fund would be for a wide range of activities for the promotion, retention, and creation of an adequate supply of housing, particularly affordable housing.

Guidelines

The details for how the inclusionary housing program would work and be administered go beyond what can be reasonably included in an ordinance, and the fact that they change fairly frequently depending on evolving circumstances means that they need to be contained in a more flexible vehicle than an ordinance. This is often accomplished through rule-making. In Portland these supplemental rules are contained in a set of Guidelines that contain similar information to each other but are adjusted to meet the needs of the different parties: developers of ownership units; developers of rental units; owners and tenants of middle-income units; and so on. (See sample Guidelines attached.) In South Portland the corresponding rules that supplement the Zoning Ordinance are the Planning Board regulations. These are regulations that contain such details as the type of pipe that is to be used for stormwater systems and the procedures for conducting a traffic study. When it is time to update our best management practices and change some of the rules, it can be done by vote of the Planning Board without having to go through the process of amending the Zoning Ordinance. If the City Council decides to move forward with inclusionary zoning, we propose to develop similar guidelines as those created by Portland with the intention of adopting them as Planning Board regulations.

Comprehensive Plan

The proposed amendments are supported by the following section on page 5-14 of the Community Goals and Policies chapter of the 2012 Comprehensive Plan:

F. Housing

State Goal: To encourage and promote affordable, decent housing opportunities for all Maine citizens. (Growth Management Act)

Local Objectives:

- **To provide a diversity of housing to meet the needs of a wide range of residents.**
- **To assure that as new housing is built in the City, there continues to be a supply of affordable housing available to meet the needs of lower- and moderate-income households.**
- **To maintain the existing housing stock in the City and assure that it provides safe and sanitary housing while improving its energy efficiency.**

Pursuant to these objectives, the City's policies with respect to housing are:

1. **The City should support efforts by the South Portland Housing Authority and private developers to create additional affordable housing when there is a clear, demonstrated need for those units.**
2. **The City should continue to provide for the construction of both single-family and multi-family housing in a variety of locations at densities that are appropriate for the type of housing and the location. The Future Land Use Plan in Chapter 6 outlines these areas.**

Third-Party Overview

The proposed inclusionary zoning and housing trust fund amendments were discussed at a medium to high level on February 8th by a group consisting of Josh Reny, Craig Piper (CPIC Chairman), Tyler Norod (Portland Housing Planner), Isaac Misiuk and Linda Boudreau (Planning Board), and Mike Hulsey (SPHA Director). Copies were also sent to Craig Gorris (Maine Mall Manager) and Richard Berman (retired developer). A number of suggestions were made and incorporated into the draft amendments. By and large the group felt the amendments were reasonable and should proceed for Council consideration.

City Council Workshop

The City Council members considered the proposed inclusionary zoning and housing trust fund amendments in workshop on February 27, 2017. They were supportive of adding these tools to the City's affordable housing tool kit.

Recommendation

It is suggested that the Planning Board send a positive recommendation to the City Council regarding the proposed inclusionary zoning and housing trust fund amendments based on their consistency with the City's Comprehensive Plan.

Attachments

1. Proposed Affordable Housing Article -- 3-18-17.
2. Portland's *Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing*.
3. Portland's *Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing*.
4. *The Economics of Inclusionary Development*, ULI Terwilliger Center for Housing, 2016.