

South Portland City Council
Position Paper of the City Manager

Subject:

ORDINANCE #1-17/18 – Amending Chapter 27, “Zoning,” regarding an Inclusionary Zoning Ordinance and a Housing Trust Fund. First Reading. Passage requires majority vote.

Position:

The City Council reviewed the Inclusionary Zoning ordinance amendments last week, on July 10, 2017. The Council agreed to bring the item to first reading, with the possibility that amendments may be made from the floor. Some Council members asked staff to consider how the ordinance could put greater emphasis on incentives and some expressed reservations about providing a density bonus in certain areas of the City. Planning Director Tex Haeuser has included two possible amendments in your meeting packet for consideration that address these issues.

The first is a text amendment to the definition of “Eligible Project”, which would provide some additional incentive (the so-called “carrot”) for projects creating units that are rent-restricted for middle-income households. Projects with 20+ units that would be required to set aside a certain number of affordable units would automatically qualify for those incentives, without having to go beyond the minimum requirements to qualify. The second is a text amendment to the section on “Density Bonus”, which would limit the bonus to zones outside the AA, A, and VR zones. There would be no density bonus in those three zones to mitigate some of the concerns that have been expressed regarding density.

The proposed zoning amendments would also accomplish two of the recommendations made by the Affordable Housing Committee in their report to City Council last year. Those include:

- “2.2.1. Amend zoning to create a density bonus that would allow additional residential units beyond current maximum density for new or existing housing, in certain zones, in exchange for keeping those units affordable for households at a certain % of Area Median Income (AMI) for the life of the building”
- “2.3.1. Establish a Housing Trust Fund (HTF) to facilitate the creation of new affordable housing units in collaboration with housing developers, and identify key sources of revenue to capitalize the fund”

Planning Director Tex Haeuser will be at the meeting to answer any questions regarding the proposed zoning amendments.

Requested Action:

Council passage of first reading of the ordinance and set August 7, 2017 as the date for the City Council's public hearing and final action on the ordinance.



City Manager

Proposed Amendment to the Definition of Eligible Project

Sec. 27-1902. Definitions

. . .

Eligible project. A development project:

- (a) That is permissible under the provisions of this Chapter in the zone in which it is proposed;
- (b) That will contain three or more dwelling units;
- (c) That creates new dwelling units, among which is at least one ~~low-income housing unit for rent or~~ middle-income housing unit for rent or ~~for~~ sale, through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements. Affordable housing units for sale or rent may not differ in exterior design from other units within an eligible project; and
- (d) ~~Projects shall not be considered “eligible projects” solely because they are subject to Sec. 27-1804 (“Ensuring Middle Income Housing”).~~

Proposed Density Bonus Amendment

Sec. 27-1905. Density bonus.

The maximum number of units that would otherwise be allowed under this Chapter shall be increased for an eligible project in the manner described in the following table:

	Percentage increase in maximum number of units allowed	
Percentage of new units that are low-income or middle-income units	<u>Zoning Districts AA, A, and VR</u>	All Other Zoning Districts in which Residential Uses are Allowed
5% up to but not including 10%	<u>None</u>	5% increase
10% up to but not including 15%	<u>None</u>	10% increase
15% up to but not including 20%	<u>None</u>	15% increase
20% up to but not including 25%	<u>None</u>	20% increase
25% or more	<u>None</u>	25% increase



CITY OF SOUTH PORTLAND

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City Manager

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City Clerk

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Jensen Baird Gardner & Henry

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District Two
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District Four
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District Five
BRAD FOX

At Large
Maxine R. Beecher

At Large
SUSAN J. HENDERSON

**IN CITY COUNCIL
ORDINANCE #1-17/18**

THE COUNCIL of the City of South Portland hereby ordains that Chapter 27, "Zoning," of the "Code of Ordinances of the City of South Portland, Maine," be and hereby is amended by adding the following:

CHAPTER 27

ZONING

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ARTICLE XIX. Affordable Housing

INCLUSIONARY ZONING

Sec. 27-1901. Purpose.

It is in the public interest to promote an adequate supply of affordable housing for the City's residents. The purpose of this article, therefore, is to offer incentives to developers to include units of affordable housing within development projects, 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 Article 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. 27-1902. Definitions.

Affordable. The percentage of income a household is charged in rent and other housing expenses, or must pay in monthly mortgage payments (including insurance and taxes), does not exceed 30% of a household's

income, or other amount established in City regulations that does not vary significantly from this amount.

Low-income housing unit for rent. A dwelling unit for which:

- (a) The rent is affordable to a household earning 80% or less of Area Median Income (AMI) as defined by the United States Department of Housing and Urban Development (HUD); and
- (b) Annual rent increases for that unit are limited in perpetuity by deed restriction or other legally binding agreement to the percentage increase in the U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland County, Maine, for a household of that size.

Low-income housing unit for sale. A dwelling unit for which:

- (a) The sale price is affordable to a household earning 80% or less of the HUD AMI; and
- (b) The resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit to an amount that is affordable to a household earning 120% of the U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland County, Maine for a household of that size, as calculated for the year in which the sale takes place.

Development fees:

- (a) The following fees, as described in this Chapter: site plan review application and inspection fees; subdivision review application and inspection fees; and administrative fees; and
- (b) Construction and permit fees as described in Chapter 5. “Development fees” does not include any fees charged for reviews conducted by a party other than the City.

Dwelling unit. “Dwelling unit” has the same meaning as that term is defined in Sec. 27-201.

Eligible project. A development project:

- (a) That is permissible under the provisions of this Chapter in the zone in which it is proposed;
- (b) That will contain three or more dwelling units;

- (c) That creates new dwelling units, among which is at least one low-income housing unit for rent or middle-income housing for sale, through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements. Affordable housing units for sale or rent may not differ in exterior design from other units within an eligible project; and
- (d) Projects shall not be considered “eligible projects” solely because they are subject to Sec. 27-1804 (“Ensuring Middle-Income Housing”).

Middle-Income housing unit for rent. A dwelling unit which:

- (a) Is affordable to a household earning less than 100% of HUD AMI; and
- (b) Annual rent increases for that unit are limited by deed restriction or other legally binding agreement to the percentage increase in the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

Middle-Income housing unit for sale. A dwelling unit for which:

- (a) The purchase price is affordable to a household at 120% of HUD AMI; and
- (a) The resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit, or a lesser term as permitted in regulations, to the percentage increase in the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

Sec. 27-1903. Reduction of fees.

Notwithstanding any other provision of this Chapter or Chapter 5 to the contrary, development fees shall be reduced by the City for an eligible project in the manner described in the following table:

<u>Percentage of new units that are low-income or middle-income units and that are not otherwise required according to Sec. 27-1804 (“Ensuring Middle-Income Housing”)</u>	<u>Cost of Work (Building Permit) Fees in lieu of Sec. 5-60(a)(1)</u>
<u>5% up to but not including 10%</u>	<u>\$10.50 per \$1,000</u>
<u>10% up to but not including 15%</u>	<u>\$9.90 per \$1,000</u>
<u>15% up to but not including 20%</u>	<u>\$9.35 per \$1,000</u>
<u>20% up to but not including 25%</u>	<u>\$8.80 per \$1,000</u>

25% or more	\$8.25 per \$1,000
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The Planning & Development Department shall perform its review of an eligible project in as expedited a manner as is practical, without impairing the scope or thoroughness of the review. The Planning & Development Department may adopt administrative procedures to prioritize review of eligible projects and facilitate this expedited review.

The Planning Board shall make its best efforts to give priority in scheduling workshops and public hearings related to any plans or applications required for an eligible project that are within the Planning Board's jurisdiction, without impairing the scope or thoroughness of its review. At the conclusion of these public meetings, the Planning Board shall promptly issue a decision on all such plans and applications before it for consideration.

Sec. 27-1904. Ensuring Middle-Income Housing.

- (a) Purpose. Based on the City's Comprehensive Plan and the July 8, 2016 Report to the City Council by the Affordable Housing Committee, it is in the public interest to promote an adequate supply of housing that is affordable to a range of households at different income levels. The purpose of this section is to ensure that housing developments over a certain size provide a portion of middle-income housing units and, by doing so, promote the health, safety, and welfare of South Portland citizens.
- (b) Applicability and Conditional Use Requirement. This section shall apply to development projects that create twenty (20) or more new dwelling units for rent or for sale through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements.
- (c) Middle-Income Housing Minimum. At least ten percent (10%) of the units in the project shall meet the definition of middle-income housing unit for sale or for rent. The number of units required is rounded up to a whole number if providing units as per subsection (e)(2) below, or shall include a fractional value in cases where a project prefers to pay a fee-in-lieu as per subsection (e)(3) below.
- (d) Standards.
- (1) Projects shall not be segmented or phased to avoid compliance with these provisions. In cases where projects are completed in phases, affordable units shall be provided in proportion to the development of market rate units.
 - (2) Middle-Income units are encouraged to be integrated with the rest of the development, should use a common entrance and should provide no

indications from common areas that these units are middle-income housing units.

(3) Middle-Income units need not be the same size as other units in the development but the number of bedrooms in such units, either on- or off-site, shall be ten (10) percent of the total number of bedrooms in the development. For the purposes of this section, the number of bedrooms in a market rate unit shall be the higher of the actual number of bedrooms in the unit or the total area of the market rate unit divided by 400 square feet.

(4) As an alternative to providing middle-income housing units, projects may pay a fee in lieu of some or all of the units. In-lieu fees shall be paid into the Housing Trust Fund as defined in Sec. 27-1806. The fee for affordable units not provided shall be \$100,000 per unit, adjusted annually as follows:

Beginning on January 1, 2017 and annually thereafter, the amount of the contribution shall be adjusted by multiplying this amount for each unit by a fraction, the denominator of which shall be the "Consumer Price Index for Urban Wage Earners and Clerical Workers, Northeast Region, All Items Index," as published by the United States Bureau of Labor Statistics ("the Index") for January 1, 2016 Year, and the numerator of which shall be the Index for the same month in each subsequent year. In the event that the Index is not then in existence, the parties shall use such equivalent price index as is published by any successor governmental agency then in existence; or, if none, then by such nongovernmental agency as may then be publishing an equivalent price index, in lieu of and adjusted to the Index. If the Index shall cease to use 1982-84 equals 100 as the basis of calculation, or if a substantial change is made in the terms or number of items contained in the Index, the Base Index shall be adjusted to conform to such change, using such computation thereof, if available, as shall be employed by the United States Department of Labor in computing same. Notwithstanding anything herein to the contrary, contributions made after January 1, 2017 shall not be less than the amount originally required pursuant to subsection (e)(4) for each dwelling unit.

(5) Middle-Income housing units for sale, if converted to middle-income housing units for rent, shall become subject to the income limits and other requirements of such units.

(6) If at least thirty-three (33) percent of the units in a development are middle-income units, the development is eligible for subsidy through Affordable Housing Tax Increment Financing, subject to City Council approval.

(7) The term of affordability for the required 10 percent middle-income units provided shall be defined as follows:

<u>Percentage of Middle-Income Units Provided</u>	<u>Minimum Term of Affordability for Required Middle-Income Units</u>
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<u>10%</u>	<u>Longest term permitted under federal, state and local laws and ordinances</u>
<u>25%</u>	<u>30 years</u>
<u>50%</u>	<u>20 years</u>
<u>100%</u>	<u>10 years</u>

(e) Implementing Regulations. Regulations to further specify the details of this section shall be developed, including, but not limited to:

- (1) Specific methodology for income verification;
- (2) Situations where less than permanent affordability might be considered; and
- (3) Guidelines for meeting the requirement that off-site units be “in the same neighborhood.”

(f) Reporting to City Council. The Planning & Development Director, or such other staff person as the City Manager may designate, shall annually report on developments subject to this section, the number of units produced, the amount of fee-in-lieu collected, and the overall effectiveness of this section in achieving its stated purpose.

Sec. 27-1905. Density bonus.

The maximum number of units that would otherwise be allowed under this Chapter shall be increased for an eligible project in the manner described in the following table:

<u>Percentage of new units that are low-income or middle-income units</u>	<u>Percentage increase in maximum number of units allowed</u>
<u>5% up to but not including 10%</u>	<u>5% increase</u>
<u>10% up to but not including 15%</u>	<u>10% increase</u>
<u>15% up to but not including 20%</u>	<u>15% increase</u>
<u>20% up to but not including 25%</u>	<u>20% increase</u>
<u>25% or more</u>	<u>25% increase</u>

HOUSING TRUST FUND

Sec. 27-1906. Housing trust fund.

(a) Purpose. The purpose of enacting this section is:

- (1) To establish a City housing trust fund for the promotion, retention and creation of an adequate supply of housing, particularly affordable housing, for all economic groups and to limit the net loss of housing units in the City.
- (2) To serve as a vehicle for addressing very low, low, and median income housing needs through a combination of funds.

(b) Definitions.

Very low income household. A household having an income not exceeding fifty (50%) percent of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. section 1437 et seq.

Low income household. A household having an income not exceeding eighty (80%) percent of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Moderate income household. A household having an income not exceeding one hundred twenty (120%) percent of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

(c) Establishment of the housing trust fund. The City Council shall establish a special revenue account under the name "City of South Portland Housing Trust Fund." Deposits into the fund shall include:

- (1) Payments in lieu of providing middle-income housing units per Sec. 27-1804(e)(4).
- (2) Funds appropriated to be deposited into the fund by vote of the City Council;
- (3) Voluntary contributions of money or other liquid assets to the fund;
- (4) Any federal, state or private grant or loan funds provided to the fund;
- (5) Interest from fund deposits and investments; and
- (6) Repayments of loans made from the fund.

(d) Management of the trust fund. The City Manager, or his or her designee, shall serve as the Manager of the housing trust fund. The responsibilities of the Manager, subject to the orders of the City Council, shall include:

- (1) Maintaining the financial and other records of the housing trust fund;

- (2) Disbursing and collecting housing trust fund monies in accordance with the housing trust fund annual plan; and
- (3) Monitoring the use of monies distributed to successful applicants for housing trust fund support to assure on-going compliance with the purposes of the fund and the conditions under which these monies were granted or loaned.

(e) Housing trust fund annual plan. Each fiscal year, the City Council shall adopt a housing trust fund annual plan. The City Manager shall submit to the City Council a recommended housing trust fund annual plan, utilizing the revenues of the housing trust fund as well as any other funds the Manager may propose as appropriate.

The housing trust fund annual plan shall include:

- (1) A description of all programs to be funded in part or in full by the housing trust fund;
- (2) A description of how funds from the housing trust fund will be distributed among very-low-income, low-income and moderate income households; and
- (3) The amount of funds budgeted for programs funded in part or in full from the housing trust fund.

(f) Distribution and use of the housing trust fund's assets.

- (1) All distribution of principal, interest or other assets of the housing trust fund shall be made to promote and facilitate an adequate supply of housing that is affordable for all economic groups.
- (2) During each year, the housing trust fund shall disburse as grants or loans so much of the housing trust fund's assets as the City Council in its discretion has approved in the housing trust fund annual plan.
- (3) Funds shall not be used for city administrative expenses other than those directly related to determining household eligibility and (re-)certifying middle-income units, determining affordable monthly rent or maximum allowable sale price, creating the affordable housing agreement, maintaining a waiting list of eligible households, and similar activities stemming from adoption of this article.
- (4) Funds shall not be used for property operating expenses or supporting services.
- (5) No grants or loans shall be awarded by the housing trust fund to corporations, partnerships or individuals who are delinquent, at the time of

application, in the payment of property taxes or other fees to the City, who have been convicted of arson, who have been convicted of discrimination in the sale or lease of housing under the fair housing laws of the State of Maine, or who have pending violations of current City electrical, plumbing, building, land use or housing codes, ordinances, or regulations.

(g) Term of affordability.

- (1) Whenever funds from the housing trust fund are used for the acquisition, construction or substantial rehabilitation of an affordable rental or cooperative unit, the City shall impose enforceable requirements on the owner of the housing unit that the unit remain affordable for the remaining life of the housing unit, assuming good faith efforts by the owner to maintain the housing unit and rehabilitate it as necessary. The remaining life of the housing unit shall be presumed to be a minimum of thirty (30) years.
- (2) Whenever funds from the housing trust fund are used for the acquisition, construction or substantial rehabilitation of ownership housing, the City shall impose enforceable resale restrictions on the owner to keep the housing unit affordable for the longest feasible time, while maintaining an equitable balance between the interests of the owner and the interests of the City.
- (3) The affordability restriction requirements described in this Article shall run with the land and the City shall develop appropriate procedures and documentation to enforce these requirements and shall record such documentation in the Cumberland County Registry of Deeds.

Sec. 27-1907. Applicability of 2017 amendments.

Notwithstanding the provisions of 1 M.R.S.A. § 302 or any other law to the contrary, the amendments to this ordinance evidenced by Ordinance #21-16/17, when enacted, shall govern any land use activity for which an application has not been submitted and acted on by the Code Enforcement Officer and/or Planning Board, as applicable, prior to February 27, 2017.

Fiscal Note: Less than \$1,000

Dated: July 17, 2017