

City Council Workshop

Agenda Item #4

July 10, 2017

Inclusionary Zoning

The Inclusionary Zoning ordinance amendments were originally discussed at a Council workshop on February 27, 2017. The Planning Board then held a public hearing on the proposed changes at their April 4, 2017 meeting, followed by a workshop on April 25, 2017 and another public hearing on May 9, 2017. City Council held a first reading on this item at its June 5, 2017 meeting, during which time Sec. 27-1905(c)(3) was amended. Council felt the proposed ordinance needed more work and sent it back to a workshop for further discussion.

Planning Director Tex Haeuser will be at your meeting to further discuss the proposal.



City Manager

To: Scott Morelli, City Manager
From: Tex Haeuser, Planning Director
Cc: Joshua J. Reny, Assistant City Manager & Economic Development Director
Date: City Council Workshop of July 10, 2017
Re: **Inclusionary Zoning**

Introduction

As has been discussed, the purpose of the inclusionary zoning ordinance is to take advantage of the strong local housing market to achieve the creation of new middle-income housing without the need for tax dollar subsidies or other direct municipal involvement. The City has identified the lack of affordable housing as a significant challenge that should be addressed, and inclusionary zoning is a widely used tool that communities (e.g., Portland and Cape Elizabeth) use to address a part of the affordable housing crisis. Other tools are also employed to tackle distinct issues, such as tax increment financing, tax credit syndication, and community land trusts, but for meeting the needs of households in the 100% of area median income range, inclusionary zoning can be ideal. This is especially true where a strong demand for housing that helped cause the affordable housing problem in the first place exists to be able to accommodate the inclusion of affordable units in larger new residential development projects.

Chronology

- | | |
|----------|---|
| 02-27-17 | City Council workshop. Introduction of the proposed inclusionary zoning and housing trust fund ordinance. General interest in seeing it move forward. |
| 04-04-17 | Planning Board public hearing. Postponed. |
| 04-25-17 | Planning Board workshop. |
| 05-09-17 | Planning Board hearing resumed. Vote was 2 – 3 on a motion in favor of the proposed inclusionary zoning and housing trust fund ordinance. |
| 06-05-17 | City Council first reading. Amended unanimously to remove the height incentive and postponed unanimously in order to have another workshop. |

Incentives Removed from the Draft Ordinance

Incentives of various sorts are often included in inclusionary zoning ordinances as a way of providing a developer with sufficient ability to make a project work financially, despite a lower return from the affordable units, as to still pursue development in the inclusionary zoning municipality and not take his or her business elsewhere. However, one of the main concerns about the draft ordinance discussed at the Council's first reading was the inclusion of various incentives that went along with the inclusionary zoning requirement. The Council members voted at the hearing to remove the building height bonus in which a project could be eligible under certain conditions for a twelve-foot height increase above the zoning district's maximum building height limit. The current draft also removes the off-street parking incentive (which would have set a maximum of 1.0 off-street parking spaces per unit).

Incentives Preserved in the Current Ordinance

Some incentives are still included in the current draft. They include:

- **Fee reductions**, Sec. 27-1903: As a way to encourage builders to go above and beyond the minimum 10% of a project's units needing to be designated as middle-income units, there are some fee reductions for building permits, site plan applications, and the like. These are only available to developers who make more than 10% of their units affordable, and are based only on the percentage of the extra affordable units provided. So, if an applicant came forward with a proposal for 15% of the project's units to be affordable, the application would be eligible for the fee reduction at the 5% level. In this case the building permit fee would be reduced from \$15/\$1,000 of total project cost to \$10.50. For a \$2M project, that would amount to a savings of \$9,000. By itself this is not a compelling savings, but combined with other incentives it may seem worthwhile to a developer.
- **Streamlined review**, Sec. 27-1903: This section states that the Planning Department will "perform its review of an eligible project in as expedited a manner as is practical, without impairing the scope or thoroughness of a review." Planning Department reviews already are fairly speedy while still being thorough, but developers are very sensitive to regulatory delay, so keeping this provision may continue to make sense.
- **Affordability term**, Sec. 27-1904(d)(7): Inclusionary zoning requires affordable units to remain affordable for a certain number of years. As proposed, this period is the maximum allowed under federal, State, and local laws for projects that just provide the required minimum 10% of middle-income units. However, as more affordable units are included above the required minimum, the required term goes down. At 25% of the units being affordable the term is 30 years; at 100% the term is 10 years. Again, by itself this may not have much sway, but it seems reasonable as part of a package.
- **Density bonus**, Sec. 27-1905: This provision allows a percentage increase in residential density equivalent to the percentage of affordable units being provided up to a maximum increase in the number of units allowed of 25% for projects that designate 25% or more of the units as affordable. Given the trend in South Portland and many other communities away from using density as a zoning standard, this is an incentive the City likely can accommodate. Our newer mixed-use zones have dropped density (making this provision moot), and for the ones that still have it the limitations on height, lot coverage, required off-street parking, and traffic generation remain as the principal factors preventing over-development. The following are some examples:
 - **Suburban Commercial Zone**: The CS zone, which is the zone in which the Maietta and Ocean Properties potential development projects are wholly or partially included, does not have a density limit, so this bonus would be moot.
 - **Main Street Community Commercial Zone**: The MSCC zone has a maximum net residential density limit of 24 dwelling units per acre. The inclusionary zoning density bonus would increase that limit to a maximum of 30 units per acre if 25% or more of the units were affordable. If the portion of the former St. John's Church property in the MSCC zone (about 40% of the 1.81 total acres) were to be redeveloped with 25% of the

units being affordable under inclusionary zoning, it would mean there could be up to 4 more units allowed on that part of the property than otherwise. For the rest of the property, in the A zone, a maximum of one additional unit would be allowed (see below). (This is a hypothetical example only; there is no proposal or application pending for the redevelopment of the former St. John's Church property.)

- Residential A Zone: The A zone has a limit of 4 units per acre (for cluster development and subdivisions). If the O'Neil Street property, for example, were to be redeveloped with 25% or more of the units being designated as affordable under inclusionary zoning, the allowed density would increase to 5 units per acre. The O'Neil Street property is six acres, so that would mean up to six more homes than if the project were developed without inclusionary zoning. (This is a hypothetical example only; there is no recommendation or decision yet on the reuse of the O'Neil Street property.)

Reduction in Fees Table, Sec. 27-1903

As discussed at the hearing, the middle column in the table, which gave the fee reductions in percentages, wasn't mathematically correct. It has been eliminated.

Housing Trust Fund

At least two of the Council members at the first reading hearing expressed concern or opposition to the creation of a housing trust fund. The primary purpose of the fund is to give residential developers an alternative to providing required inclusionary zoning affordable housing units by allowing them instead to make a payment in lieu of building the units. These funds can then be used by the City to create or assist in the development of affordable housing.

Part of the concern appeared to be that if the government creates a fund of this sort it will be secret and able to be used for who knows what purpose. Really, however, municipalities have many special purpose funds, all of which have rules and are subject to audit. Examples include TIF funds (which are limited in use to the purposes in the TIF development program), equipment replacement reserve accounts, various enterprise funds, and so on. In the proposed inclusionary zoning ordinance, Sec. 27-1906 would require management of the fund by the City Manager or his or her designee, the annual submission to the City Council of a housing trust fund annual plan, and limits on the use of the fund's assets. The funds could only be used in accordance with the City Council approved annual plan, and they could only be spent to promote affordable housing—a provision which has been made clearer by a tightening of the wording in Sec. 27-1906(f)(1).

Inclusionary Zoning Administration

If inclusionary zoning is adopted, and if residential development projects come forward that include affordable units under the inclusionary zoning provisions, there will be various administrative tasks associated with determining household eligibility, determining affordable monthly rents or maximum sales prices, drafting the affordable housing agreement that binds the developer or project owner to the inclusionary zoning requirements, and so on. Given that the South Portland Housing Authority already does these kinds of tasks on a day-to-day basis, a request was made to SPHA for an estimate of what they would charge for these services. The Housing Authority generously agrees to provide such

services at an estimated fee of \$60 for initial certification and \$30 for annual certification thereafter. If after ten years we were fortunate enough to have created 300 inclusionary zoning affordable housing units, this would mean an annual fee of \$9,000 (or a bit more if the fee increases over time). If desired, the housing trust fund could be used to cover these charges.

Thank you.



CITY OF SOUTH PORTLAND

PATRICIA A. SMITH
Mayor

SCOTT T. MORELLI
City Manager

EMILY F. SCULLY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

Draft July 6, 2017

District One
CLAUDE V.Z. MORGAN

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

District Two
PATRICIA A. SMITH

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:

District Three
EBEN ROSE

ARTICLE XIX. Affordable Housing

District Four
LINDA C. COHEN

INCLUSIONARY ZONING

District Five
BRAD FOX

Sec. 27-1901. Purpose.

At Large
Maxine R. Beecher

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.

At Large
SUSAN J. HENDERSON

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>
<u>25% or more</u>	<u>\$8.25 per \$1,000</u>

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>
<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.