

Order 146-19/20

Passage: 9-0 on 3/2/2020

KATE SNYDER (MAYOR)  
BELINDA S. RAY (1)  
SPENCER R. THIBODEAU (2)  
TAE Y. CHONG (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

Effective 3/12/2020

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

**ORDER ACCEPTING AND ADOPTING  
THE 2020 HOUSING TRUST FUND ANNUAL PLAN**

**ORDERED**, that the 2020 Housing Trust Fund Annual Plan, attached hereto, is hereby accepted and adopted.

**HOUSING TRUST FUND**  
**2020 ANNUAL PLAN**

**BACKGROUND**

The Housing Trust fund is established by Section 14-489 of the City’s Code of Ordinances. Section 14-489 (e) states that “the city council shall adopt a housing trust fund annual plan” and that the “housing committee of the city council or such other committee as the council shall designate shall conduct public hearings on the recommended plan and refer the matter to the council for action.”

The Annual Plan will establish the priorities in which the current balance of the Housing Trust Fund will be allocated. The plan is in line with the Housing Committee objective of increasing access to rental and ownership housing that is safe, affordable, and accessible for working and low-income families.

This budget is based on the balance in the Housing Trust Fund as of January 2, 2020. At this time, Housing Trust Fund revenue is generated from fees triggered by the Housing Preservation and Replacement Ordinance, a portion of revenue from the Short Term Rental Registration Program, fee-in-lieu contributions from the Inclusionary Zoning Ordinance (including the hotel inclusionary zoning fees), and other funding resources under Council consideration. The current unencumbered balance of the Housing Trust Fund is \$979,031. While staff anticipates increases in revenue in the Housing Trust Fund as a result of the Inclusionary Zoning Ordinance and other sources being considered by the City Council, those anticipated resources are not included in the 2020 Annual Plan.

**Sources and Uses of Housing Trust Fund:**

YEAR	DEPOSITS	YEAR	EXPENDITURES
2002/03	Maine Medical Center HRO	2011	Avesta Oak Street Lofts
2002	Sportsman’s Grill HRO	2014	Housing First Pre-Development RFP
2009	Berlin City Auto HRO	2015	65 Hanover & 52 Alder Sts Feasibility Study
2010	Stop n Shop HRO 2010	2017	65 Munjoy Street
2012	Rockbridge/Eastland Park HRO	2019	60 Parris Terr. Downpayment Assistance
2012	Riverwalk/Ocean Gateway HRO	2018	977 Brighton Avenue
2012	118 Congress LLC Easement	2018	37 Front Street (not yet spent)
2017	91 & 97 Belfort Street (sale of TAP)	2019	83 Middle Street (not yet spent)
2017	116 Upper A Street (sale of TAP)	2019	47 Boyd Street (not yet spent)
2017	443 Congress Street IZ	2019	18 Luther Street (not yet spent)
2018	62 India Street IZ		<b>Total Expenditures</b>
2018	Short Term Rental Fee transfer		\$ (2,486,569.00)
2018	0 Thames Street (WEX) sale		
2019	20 Thames Street IZ & Easement		
2019	20 Thames Street (for balcony overhang)		
2019	Short Term Rental Penalty		
2020	Short Term Rental Penalty		
2019	Short Term Rental Fee transfer		
2019	56 Hampshire Street Easement fee		
2019	17 Sumac Street (sale of TAP)		
2019	121 Middle Street (HOTEL IZ)		
	Previous INTEREST EARNED		
	<b>Total Deposits</b>		<b>BALANCE</b>
	\$3,465,600.20		\$979,031.20

HRO - Housing Replacement Ordinance; IZ = Inclusionary Zoning Fee-in-lieu; TAP = Tax Acquired Property  
as of 2-5-2020

City Ordinance requires that the Housing Trust Fund Annual Plan include a description of the programs to be funded, a budget for each program and identify how the funds will be distributed among very-low (at or below 50% of the area median income), low (at or below 80% of the area median income) and moderate income (at or below 120% of the area median income) households.

The Housing Trust Fund is a valuable tool that can assist the City in meeting the goal of providing increased availability in all segments of the housing market. While the City has other resources such as the HUD HOME and CDBG Programs, those funds are limited in amount and scope. The proposed Housing Program budget for FY 2020-2021 includes \$497,545 in HOME funding for affordable housing development. The HOME program restricts rental housing assistance to households at or below 60% of the area median income and home ownership assistance to households at or below 80% of the area median income. The CDBG program is restricted to households at or below 80% of the area median income. City Ordinance allows the Housing Trust Fund to assist households at or below 120% of area median income.

As always, the City should act prudently when deciding to invest these funds. The Housing Trust Fund should maintain a minimum balance of \$500,000 in order to have resources to act quickly when there is an emergency, such as a need to cure a potential mortgage default that could result in loss of an affordable unit. This right to cure will be included in the affordable housing covenants that are recorded in the Cumberland County Registry of Deeds for each affordable unit.

## **FUNDING PRIORITIES**

The purpose of the Housing Trust Fund is 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." and "To serve as a vehicle for addressing very low, low and median income housing needs...". In an effort to ensure that these purposes are met, the Housing Trust Fund Annual Plan may identify specific priorities that support other city goals and priorities, for example goals from the Comprehensive Plan or the City Council Common Goals. A 2020 priority will be to support public/private partnerships that create workforce housing units that are affordable to households earning 60% to 120% of the area median income.

### Allocation Process

Housing Trust Funds will be distributed through a competitive application process. A Notice of Funding Availability will be issued at a minimum of an annual basis to notify potential applicants that the application is available. Applications will be reviewed by an evaluation team of City of Portland staff who will evaluate and score each application utilizing the scoring factors outlined in Attachment #1 in order to recommend the most qualified application based on the information submitted. This information will also be included in the Affordable Housing Development Application.

Recommendations will be forwarded to the City Council's Housing Committee for review. Housing Committee recommendations will be forwarded to the City Council for final review and approval.

## Eligible Activities

Activities eligible for funding from the Housing Trust Fund are those that promote, retain, and create an adequate supply of housing, particularly affordable housing for all economic groups, and to limit the net loss of housing units in the city. Eligible activities may include: new construction, preservation/rehabilitation of existing affordable housing, adaptive reuse, acquisition, housing first.

In this Plan, adaptive reuse is defined as creating housing in an existing building that was originally built or designed for a use other than housing.

The Housing Trust Fund resources are also intended to promote the retention of affordable housing. Staff recommends that Housing Trust Fund resources be made available, if necessary, to exercise the City's right of first refusal in connection with potential foreclosure issues with affordable homeownership units. This is unlikely to occur in the near future but may come up as more workforce homeownership units are created through Portland's inclusionary zoning ordinance. The City shall have a right of first refusal if an affordable unit is forced to sell due to increased fees or has become delinquent in its payments and is in risk of foreclosure or any other legal threats to the Unit's affordability restrictions. The City shall also have the option of using City funds to support affordable units facing large special assessments that may pose a risk to the owner household's ability to maintain their unit's affordability. The City of Portland shall have the right of first refusal to purchase any affordable unit that is in jeopardy of losing its affordability restrictions due to foreclosure, delinquency of condominium fee payments, or any other cause outside of the agreed upon term of restriction. The City's Right of First Refusal is not intended to infringe upon the ability of a mortgage lender to recapture any money owed by the affordable unit owner. The intent is to ensure affordability of the unit for eligible households.

## Financing Parameters

Housing Trust Funds should be a resource of last resort and should be focused on opportunities where other funding sources do not work or are not effective. Applicants requesting financial assistance from the Housing Trust Fund must provide document efforts made to obtain other private, federal, state or local resources for the project.

**Form of Awards:** A variety of funding mechanisms will be utilized including no-interest loans, below-market loans, forgivable loans, and grants. Type of funding will be determined after review of a number of factors including amount necessary to make the project feasible, the project type, income targeting, number of affordable units, and duration of the affordability period.

**Maximum Award Amount:** Awards will be determined on a per affordable unit basis. The average City investment per unit, excluding TIF financing, is approximately \$10,000. The City contribution per unit will not exceed \$18,000. This amount may be adjusted at the discretion of the City Council, only for unusual circumstances where a larger amount is the only way a project that meets other City goals is needed. In those cases, the higher cost per unit ratio must be tied into the goals outlined in the City's Comprehensive Plan.

## Income Targeting

Housing Trust Fund resources should be focused on opportunities where other funding sources do not work or are not effective, such as projects designed to create housing affordable to households earning at or below 50% of the area median income, or projects designed to create housing affordable to households earning 60% to 120% of the area median income. Often, other funding sources, such as the Low Income Housing Tax Credit Program or the HOME Program, have restrictions or requirements that limit or prohibit the creation of housing affordable to those in the very low and moderate income ranges.

Affordable means that 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.

## Affordability Restrictions

Affordability restrictions are required. In the case of rental or cooperative units, the units must remain affordable for the life of the housing unit, which is presumed to be a minimum of thirty (30) years.

Homeownership units must include resale restrictions that maintain an "equitable balance" between the interests of the owner and the City. These restrictions must be documented and recorded in the Cumberland County Registry of Deeds.

Sales must be made through an arms-length arrangement. No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a unit financed with Housing Trust Funds or receive any benefit related in any way to the administration or compliance with the conditions contained therein.

## Affordable Housing Agreement

The owner of each affordable unit will be required to sign and record in the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City and to include the affordability restrictions as a covenant to the project's deed. The Affordable Housing Agreement shall be referenced directly in the property's deed unless prohibited by federal, state, or local law. In order to guarantee affordability in homeownership units, this recorded covenant will limit increases in sales price according to the calculation defined by the City as defined in the implementation regulations. It will limit the incomes of subsequent buyers to the same income limits initially applied. It will also provide a right of first refusal and other purchase rights to the City or its designee (e.g. another eligible household, or a nonprofit corporation).

### Right of First Refusal

The City of Portland shall have the right of first refusal to purchase any affordable unit that is in jeopardy of losing its affordability restrictions due to foreclosure, delinquency of condominium fee payments, or any other cause outside of the agreed upon term of restriction. The City's Right of First Refusal is not intended to infringe upon the ability of a mortgage lender to recapture any money owed by the affordable unit's owner. The intent is to ensure affordability of the unit for eligible households.

### Implementing Regulations

Regulations to further specify the details of the parameters outlined in this Annual Plan, shall be developed, including, but not limited to:

1. Specific methodology for income verification; and
2. Underwriting criteria.

### Attachments

#1 Point System for Evaluating and Scoring Applications

## Attachment #1

### *Point System for Evaluating and Scoring Applications (Max 100)*

Policy Objectives: Total 50 Points

Proposed use of funds to achieve the City of Portland's goals and address demonstrated need. 26 points

Maximum points will be awarded for those applications that:

1. Market Demand— 4 points
  - a. 4 points high demand, meets the City's income targeting priority,
  - b. 2 point moderate demand,
  - c. 0 points does not demonstrate sufficient market demand
2. Zoning – 8 points
  - a. 8 points Development requires no zoning amendments or contract or conditional zone
  - b. 5 points development requires a zoning amendment which is consistent with the City Comprehensive Plan
  - c. 0 points development requires rezoning that is not consistent with the City's Comprehensive Plan
3. Economic diversity – 6 points
  - a. 6 points creates housing options which promote economic diversity in the neighborhood in which the development is located
  - b. 0 points does not promote economic diversity
4. CHDO – 2 points
  - a. 2 points Developer and owner are both controlled by CHDO
  - b. 1 points either developer or owner are controlled by CHDO
  - c. 0 points neither developer nor owner are controlled by CHDO
5. City Subsidy – 6 points
  - a. 6 points investment from City is <\$10,000/unit
  - b. 5 points investment from City is > or = \$10,000 and <\$12,000/unit
  - c. 4 points investment from City is > or = \$12,000 and <\$14,000/unit
  - d. 3 points investment from City is > or = \$14,000 and <\$16,000/unit
  - e. 2 points investment from City is > or = \$16,000 and <\$18,000/unit
  - f. 0 points investment from City is > or = \$18,000/unit

Impact on surrounding neighborhood, including design compatibility and environmental issues. 24 points

Maximum points will be awarded for those applications where:

- 1) site selection -- 7 points
  - i) 7 points -- fully appropriate for use,
  - ii) 5 points – appropriate, some concerns
  - iii) 0 points – significant concerns
- 2) Exterior Design -- 5 points
  - i) 5 points -- the design is fully consistent with neighborhood design characteristics,
  - ii) 3 points – the design is an adequate fit with the neighborhood design,
  - iii) 0 points – the design is a significant outlier
- 3) Amenities and unit design -- 7 points
  - i) 7 points – amenities & unit design are well thought out and appropriate for residents,

- ii) 5 points -- amenities & unit design are adequate,
  - iii) 0 points – amenities and unit design raise significant concerns that resident needs will not be adequately addressed
- 4) Environmental -- 5 points
- i) 5 points – Phase I identifies no environmental issues
  - ii) 3 points – Phase I identifies an environmental issue, but a Phase II shows a feasible, economically viable resolution which is included in the budgets;
  - iii) 0 points – there are significant unresolved environmental issues, or no Phase I has been received.

Underwriting Criteria: Total 50 Points

Financial feasibility, including cost, development budget operating pro forma and the provision of secured and leverage funds. 20 points

Maximum points will be awarded for those applications that:

1. Development budget & sources and uses – 10 points
  - a. 10 points – EVERY development budget line item for which there is a City of Portland guideline complies with that guideline AND all other line items are reasonable and customary;
  - b. 8 points – ONE budget line item falls outside City guidelines or outside the standard of “reasonable & customary”;
  - c. 6 points – TWO budget line items item falls outside City guidelines or outside the standard of “reasonable & customary”;
  - d. Zero points – more than two budget items fail to meet City guidelines or fall outside “reasonable and customary”
2. Operating pro forma – 10 points
  - a. 10 points – EVERY operating pro forma line item for which there is a City of Portland guideline complies with that guideline AND all other line items are reasonable and customary;
  - b. 8 points – ONE budget line item falls outside City guidelines or outside the standard of “reasonable & customary”;
  - c. 6 points – TWO budget line items item falls outside City guidelines or outside the standard of “reasonable & customary”;
  - d. Zero points – more than two budget items fail to meet City guidelines or fall outside “reasonable and customary”

Applicant's ability to complete project, including development team experience, capacity, project readiness and timeframe for completion. 30 points

Maximum points will be awarded for those applications that:

1. Readiness to proceed – 10 points
  - a. 10 points – at least one letter of commitment or interest is included and ALL projected sources are projected at terms and conditions consistent with the City’s prior experience with the funder.
  - b. 5 – ALL projected sources of funding include letters of commitment, letters of interest, or, if no letter is included, are projected at terms and conditions consistent with the City’s prior experience with this funder.



- c. 0 – one or more sources are projected on terms that are not consistent with the City’s prior experience with the funder and are not documented by letter(s) from funder(s).
- 2. Track record of development team – 10 points
  - a. 10 – every development team member has a successful track record with this type of project and at this scale
  - b. 7 – all but one development team members have a successful track record with this type of project and at this scale; one development team member has relevant experience but at a smaller scale or not of this project type
  - c. 3 – two development team members, while having relevant experience, are new to this type of project or this scale of development
  - d. 0 – the development team does not meet the criteria above
- 3. Current Capacity of development team – 10 points
  - a. 10 – development team members have exceptional depth of human and financial resources to complete this project;
  - b. 8 -- development team members have the human and financial resources to complete this project;
  - c. 3 – development team has a staffing gap in a significant role and a plan to address that gap, OR there are some concerns about the financial resources of the team to move the development forward;
  - d. 0 - the development team does not meet the criteria described above