

Order 241-10/11

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Amended and Passage: 8-0 (Mavodones absent) 6-6-11

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IN THE CITY COUNCIL

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**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14 (LAND USE), ARTICLE III
RE: HOUSING PRESERVATION AND REPLACEMENT**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE
IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. That Chapter 14, Article III, Division 29 (Preservation and Replacement of Housing Units) Section 14-483 of the Portland City Code is hereby amended to read as follows:

DIVISION 29. HOUSING PRESERVATION AND REPLACEMENT

Sec. 14-483. Housing preservation and replacement.

(a) *Purpose.* The purpose of these regulations is:

1. To promote and facilitate an adequate supply of housing, particularly affordable housing for all economic groups;
2. To limit the net loss of housing units in the City;
3. To preserve housing in zones where housing is permitted for in the City for all residents in order to promote the health, safety and welfare of its citizens.

(b) *Definitions.*

Dwelling unit A dwelling unit is one (1) or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit. For purposes of this section only it also includes single family, two-family and multi-family dwellings and any dwelling units in those dwellings, shall include single family dwellings, dwellings or dwelling units within two-family and multi-family buildings, or dwelling units or rooms that people rent or sleep in within lodging houses, rooming units, dormitories, shelters and sheltered care group homes.

Loss of dwelling or dwelling unit for purposes of this section means the ~~demolition—elimination~~ or conversion to nonresidential use of a dwelling or dwelling units; ~~demolition does not include loss~~elimination includes dwelling units lost due to demolition unless the demolition result~~ed~~ing from accidents outside of the owner's control, fire, natural disasters, or acts of war.

Original site means the location where the demolition or conversion to non-residential use of dwellings and dwelling units will take place.

(c) *Applicability.* Except as otherwise provided in this section, this section shall apply to the loss of three or more dwelling units in a five year period, provided that such dwelling units were a legally registered residential use as of July 1, 2002.

Except as otherwise provided in this section, this section shall also apply to proposals that (a) result in the loss of fewer than three (3) dwelling units which were legally registered residential use as of July 1, 2002, and (b) creates surface parking.

Determination of number of the dwelling units within a structure or structures and the number of units lost will be based on records in the Department of Planning and Urban Development indicating the legal, registered use of the property since July 1, 2002 through the time of application. The actual use of the property for purposes of applicability of this section may be rebutted by the owner by proof of documentary evidence including but not limited to photographs, letters, and sworn affidavits. The Planning Authority may conduct its own investigation of the actual use and shall determine the applicability of this section based on the totality of the evidence.

(d) Exemptions.

This section does not apply to:

1. Consolidation or elimination of dwelling units within an existing structure; Consolidation, elimination or reconfiguration of one (1) or more dwelling units within an existing structure, as long as all the resulting units remain as dwelling units after such consolidation, elimination or reconfiguration, except

as provided by subsection 5 below. Conversion of a dwelling unit to a hotel or motel room shall not qualify for the exemption provided by the paragraph;

The amendments to paragraph (c)(1) approved by the City Council on _____ shall have an effective date of April 25, 2011 but not apply to any final determination regarding the applicability of this section made by the Planning Authority prior to April 25, 2011.

2. Proposals that result in a number of units equal to or greater than the number of units lost as determined by the Planning Authority; or
3. Grandfathered dwelling units existing in zones which no longer permit residential uses.

~~Determination of number of the dwelling units will be based on records in the Department of Planning and Urban Development indicating the legal, registered use of the property since July 1, 2002 through the time of application. The actual use of the property for purposes of applicability of this section may be rebutted by the owner by proof of documentary evidence including but not limited to photographs, letters, and sworn affidavits. The Planning Authority may conduct its own investigation of the actual use and shall determine the applicability of this section based on the totality of the evidence.~~

~~(d) Exemptions. The requirements of this section shall not be applicable to:~~

14. Property which has been ordered demolished by the City, pursuant to 17 M.R.S.A. §2851, et seq., as amended, except where it is determined by the Building Authority that the deterioration was caused by neglect or lack of maintenance.

52. Subparagraph 1, above, notwithstanding, the conversion to a non-residential use of any dwelling units located on the ground floor of a building within a business zone ~~shall be exempt from the provisions of this section.~~

~~(e) Conditional Use Approval/Process for determining applicability~~ Site plan administrative authorization or approval

required. Notwithstanding any other provision of this section, a person who proposes to demolish or to convert to a nonresidential use three or more dwellings or dwelling units in the City, in a zone where such use is otherwise permitted, must first obtain administrative authorization or Ssite Pplan Aapproval fromthrough the City's Planning Authority or Planning Board pursuant to Sec. 14-521, et. seq.

In addition the requirements of 14-521, et. seq., where this section is applicable, the applicant must also submit: ~~1.Aa~~ statement certifying the number of dwelling units to be demolished or converted to nonresidential use, as well as a description of the characteristics of each of those units; ~~and~~

~~2. A list containing the name of each tenant currently residing in the dwelling units to be demolished or converted to non-residential use, as well as verification of compliance with the tenant notice requirements of this section.~~

(~~g~~) Tenant Identification and Notification Requirements. Prior to elimination as a result of demolition or conversion to non-residential use, the owner shall:

1. Provide the Planning Authority a list containing the name of each tenant currently residing in the dwelling units to be demolished or converted to non-residential use, as well as verification of compliance with the tenant notice requirements of this section.

~~2~~1. Deliver to each tenant who occupies such a dwelling unit a written notice to vacate the unit. The notice shall either be sent by certified mail, return receipt requested, or served in-hand. The notice will grant the tenant not less than ninety (90) days from the date of receipt of the notice to vacate the unit; and

~~3~~2. File proof of service of the notice with the Planning Authority.

(~~h~~) Housing Replacement Requirements. In addition to the requirements ~~of pursuant to~~ 14-5217, et. seq, the Planning Authority shall require, as a condition of approval, that an owner shall replace any dwelling units that are demolished or converted to non residential use.

This section may be satisfied in any one of the following ways:

1. Construction of Units. The construction of housing units within a new structure or a new addition either on site or off-site;
2. Residential Conversion. The conversion of a nonresidential building to residential use; or

The applicant may use either of the two methods or a combination of the two to fulfill their replacement requirement.

~~(h)~~ *Replacement Unit Requirement.* In addition to the foregoing, all replacement units built pursuant to sub-section ~~(h)~~(1) or (2) above shall:

1. Be located within the City of Portland.
2. Not previously have been on the market as of the date of application.
3. Be situated within a development which has not been a candidate for site plan approval as of the date of the application.
4. Be comparable in size to the units replaced; for the purpose of this section, "comparable in size" means that the aggregate size of the replacement units will be no less than 80% of the size of the aggregate of the original units.

~~(j)~~ *Contribution to the Housing Trust Fund.*

1. The applicant may meet the requirements of this section by depositing \$50,000 for each dwelling unit into the City's Housing Trust Fund in section 14-489.
2. Beginning on January 1, 2004 and annually thereafter, the amount of the contribution shall be adjusted by multiplying this amount originally deposited for each unit by a fraction, the denominator of which shall be the "Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI-W")," U.S. City Average, "All Items Index," as published by the United States Bureau of Labor Statistics ("the Index") for January 1, 2003 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, 2004 shall not be less than the amount originally required to be deposited pursuant to sub-section (i)(1) for each rooming or dwelling unit.

(~~k~~j) *Performance Guaranty/Letter of Credit.* Owners or affiliates must post a performance guaranty in the form of a letter of credit, or other security acceptable to the city attorney in amount equivalent to the amount the applicant would have been required to contribute to the City's Housing Trust Fund if the applicant had chosen that option pursuant to sub-section (~~h~~)g.

(~~l~~k) *ReliefPartial waiver of replacement requirements.* Any owner who has applied for site plan review for ~~demolition elimination~~ or conversion to non-residential use of dwelling units may apply to the Zoning Board of Appeals for ~~relief~~a partial waiver from the housing replacement requirements of this section. Such ~~waiver~~relief may be a downward adjustment of up to fifty percent (50%) of the owner's housing replacement obligation if the owner establishes to the board's satisfaction that:

1. The proposed development is consistent with the comprehensive plan;
2. The proposed development provides significant value and benefit to the immediate and surrounding neighborhood, including, but not limited to, community enhancement, social benefits or job creation;
3. The applicant demonstrates with objective evidence

that the imposition of the requirements of this section would impose such an economic burden upon the project relative to its scope that ~~otherwise—~~it renders the project impossible to develop; and

4. The requested relief does not constitute a grant of a special privilege inconsistent with the limitations upon similar properties.

The Zoning Board of Appeals must make positive findings on each of the four (4) criteria above in order for any such adjustment to be valid. An applicant aggrieved ~~by~~of a decision of the Zoning Board of Appeals may appeal a decision under this sub-section pursuant to Sec. 14-553 of the City Code.

~~(m)~~ *Effect of Other City Ordinances.*

1. *Historic Preservation.* ~~Notwithstanding anything to the contrary in Chapter 14 Division 29,~~ nNothing in this ~~division~~ordinance shall permit the demolition or conversion to non-residential use, of dwelling units in residential property protected by the Historic Preservation Ordinance (Sections 14-601, et seq.), except as permitted by that ordinance.
2. *Conditional Zone.* A conditional zone may not be used to circumvent the application of this section. The terms of this section shall apply to any conditional zone which involves dwelling units affected by this section. Notwithstanding the foregoing, nothing herein shall be deemed to prevent the City and the applicant from agreeing to terms which exceed those imposed by this section by means of a conditional zone.

~~(n)~~ *Appeals.* Any applicant aggrieved by a decision of the Planning Authority under this section may appeal to the Zoning Board of Appeals within 30 days of that decision.