



Portland Housing Bureau

Mayor Ted Wheeler • Director Kurt Creager

November 27, 2017

To: Portland Housing Advisory Commission Members

From: Kurt Creager, Director

RE: Permanent Affordability

Background:

Title 30 of the Portland City Code contains the dictates and directives with which the Portland Housing Bureau operates within. Title 30.01.010 states in part "... publicly assisted rental housing affordable to low and moderate income persons and households should be **preserved as a long-term resource to the maximum extent practicable...**". A related section, Title 30.01.090, goes into further detail and expresses the intent of City Council as follows: "A. City Subsidy Projects that in the future request and receive a City Subsidy from PDC, PHB or other City bureau or agency for the purpose of creating or preserving rental housing affordable to households below 80 percent of MFI, will be subject to a **minimum of 60 year affordability** contract requirements developed by PHB consistent with the implementing charge in Subsection 30.01.090 B. Notwithstanding the foregoing, City Subsidy Projects that receive a Rental Rehabilitation Conditional Grant will be subject to a minimum of 10 year affordability contract requirement in accordance with the Rental Rehabilitation Conditional Grant Product Guidelines. (**emphasis added**).

Issue:1-Term

When the Portland City Council enacted Mandatory Inclusionary Housing (IH) December 21, 2016, the term of affordability was stipulated in Title 30.01.120 (D) "**The IH Units shall remain affordable for a period of 99 years**". Given this precedent of IH units being permanently affordable, I have with the latitude available as Director articulated in Title 30.01.090 setting 60 years as a minimum, been requiring projects receiving subsidy from PHB to adhere to and comply with a term of affordability of 99 years to ensure permanent affordability. However, this expectation has never been codified or endorsed by the City Council. I have verbally informed Council of my position and application of the policy verbally in public meetings and am on the record as having applied the Title 30 policy in this manner which I believe is an exercise of administrative authority applied in good faith to uphold their standards. Projects procured for development in the 2015 NOFA which proceeded after the December 21, 2016 enactment of IH have been held to this standard with two (2) exceptions. Gladstone Square in the Lents neighborhood and Multnomah Manor in the Montavilla neighborhood were approved as one (1) project consisting of 102 units on two sites for

which tax credit pricing was obtained by Home Forward prior to the 2016 National Elections. Application of the extended term of affordability would have caused the tax credit investors to re-bid, and in all likelihood decrease the value of the credits, not necessarily due to the term, but because investors were anticipating lower corporate tax rates and wanted to reduce their exposure in a declining market. Given that dynamic I gave Home Forward an exception to the policy. All other projects since then have adhered to the policy.

Issue:2-Tenure & Security

The PHB has also been stipulating that sites owned by the City be conveyed to project sponsors in the form of 99 year leases (subordinated to the first lien debt, as appropriate) rather than by fee simple title. Likewise, this practice has been implemented with the 2015 NOFA pipeline and all but one (1) project has been held to this standard. Home Forward will receive Block 45 in fee title at no cost. Block 45 was purchased by PDC in 2000 and conveyed to PHB in 2010. The site is valued over \$3M and has an adjusted basis of \$1,424,730 based on the purchase price in 2000. Hereafter, the leasehold structure is preferred because in a foreclosure, the development and disposition agreement and all covenants protecting renters from a mark-to-market conversion of the property are thereby extinguished. This problem was mitigated somewhat with Block 45 as the City Attorney stipulated that the rents could only increase to 80% of Area Median Income in the event of a foreclosure. This is still weak protection, albeit better than no protection whatsoever, which is what the City received in past years. This issue could be obviated by City Ownership of the land because the leasehold interest would survive foreclosure securing the public investment in the site.

It is important to note that Prosper Portland, for entirely different reasons of financial sustainability, has migrated to a capitalized lease structure and will no longer be conveying land fee title. Likewise, the Oregon Constitution (Article 9) prohibits limited tax general obligation bond revenue or land acquired with bond proceeds to be loaned to private parties. City Bond Counsel has maintained that unless and until Oregon voters amend the constitution that the City should book the assets acquired with bond proceeds as public works improvements and assets. If development occurs on such sites by private parties, they must use short term leases, which do not convey ownership of the asset.

Consequences:

Projects are experiencing a slight increase in cost (10 Basis Points or 1/10 of 1%) due to the extended term of affordability. It is a factor which should be noted, but is minor in comparison to the inflation in labor and materials experienced (1% a month across several projects) locally in PHB's pipeline. More important is the recapitalization of properties in years 60-99 to ensure they are well maintained by the project sponsors.

Request:

I respectfully request you discuss and deliberate on these matters and recommend a position or positions on these matters to Mayor Ted Wheeler.