

REPORT OF THE DOWNTOWN BUILDING TASK FORCE
NOVEMBER 2015

BACKGROUND

Mayor Robert Macdonald appointed a Downtown Building Task Force in September 2015 with the charge of addressing fire and code compliance and related issues in the City's downtown residential neighborhood. The Committee was specifically charged with reviewing the City's current compliance efforts, the need for additional compliance staff, and identifying other steps that the City might take to address building condition and safety concerns.

The Committee was composed of the following members:

Mayor Robert Macdonald
Councilor Shane Bouchard
Councilor Kristen Cloutier
City Administrator Ed Barrett
Fire Chief Paul LeClair
Police Chief Michael Bussiere
Planning and Code Enforcement Director Gil Arsenault
Assistant Fire Chief Bruce McKay
Fire Captain Rick Cailler representing the Lewiston Fire Fighters Association
Landlord Representative Rick Lachapelle
Landlord, Property Manager Steven Labreque

The following report was drafted by City Administrator Ed Barrett with the assistance of Fire Chief Paul LeClair and attempts to summarize the views and recommendations of the members of the Committee.

THE PROBLEM

Lewiston's downtown residential neighborhood originally developed to provide housing for the workforce employed in the mills located adjacent to downtown along the Androscoggin River. The result was a dense neighborhood of multi-story apartment buildings on small lots with minimal separation and open space. Primarily built of wood between the 1880s and 1930s, these structures are old, require significant maintenance, and were not constructed to today's fire and code requirements. The vast majority of these structures have interior and exterior lead paint, creating a potential health issue, particularly for children.

In and of themselves, the nature of construction and the high density of this neighborhood pose a higher risk of loss, injury, and death due to fires.

In total, Lewiston has about 9,450 residential buildings providing 16,774 dwelling units. Of, these, we have about 7,300 single family homes and 9,456 apartments in roughly 2,157 separate buildings. The majority of Lewiston’s residents rent. This includes the vast majority of low income residents.

The declining condition of this housing stock is the City’s most pressing problem. Many of these properties have been or are in a cycle of decline. As owner occupancy rates have gone down, many properties have been purchased by investors, sometimes with an initial investment that could not be supported by relatively low rents, high vacancy rates, and increasing maintenance and utility costs. In some instances, this has led to lack of maintenance and investment, resulting in further vacancies or renting to inappropriate tenants who may worsen the situation by poor housekeeping, vandalism, and failure or inability to pay rent. When these properties can’t cover expenses, their condition worsens and they may eventually be abandoned.

This has, unfortunately, been a recurrent cycle, frequently in conjunction with economic recessions that stress both landlords and tenants. This was seen most recently in the great recession of 2008, the effects of which continue today.

In response, the City has frequently taken steps to condemn and demolish the worst structures. Since 2012, when the most recent series of demolitions began, the City has demolished 58 buildings with 195 residential units. In addition, the arson fires of 2012-2013 added 9 buildings with 58 units to the total. Overall, and excluding other private demolitions, this totals 67 buildings with 253 units, or roughly 2.7% of our total rental units.

While the pace of demolitions has slowed recently, it is likely that they will continue for some time as additional buildings fail and are vacated and if currently vacant buildings are not renovated and placed back into service.

RENTAL PROPERTY INCOMES ARE TOO LOW

Underlying these problems are our low market rents. The following chart presents the General Assistance Maximums for monthly rent on a one or two bedroom heated apartment for various Maine urban areas as provided by the State Department of Health and Human Services.

COMMUNITY	1 BEDROOM	2 BEDROOM
Bangor	664	834
Lewiston/Auburn	580	767
Portland	886	1,099
Kittery York	902	1,163

In reality, we also know that some landlords will rent below these rates.

In comparison with Portland, our nearest metropolitan neighbor, our fair market rents are 30 to 35% lower.

While on the surface low rents seem to be a benefit to those who rent, particularly low-income families and individuals, rents that cannot support building operating and basic maintenance costs, let alone cover mortgages and capital improvements, are self-defeating, leading to deterioration, vacancies, and, worst case, eventual demolition.

Given these low rents, building new, market rate rental units to replace those that are being eliminated is also not supported. Notably, no new rental units have been constructed in the downtown neighborhood for many years, perhaps dating back to the 1980s, without considerable state and local funding and incentives. As a result, those units that have been built are generally subsidized and limited to low income residents.

The values set on many older multi-family buildings in the downtown are based on the income they produce and the property value that such income can support. Some of these buildings are valued in the \$25 per square foot range. Since new construction costs are generally \$125 per square foot or more, it is obvious that new construction simply cannot be supported today.

CURRENT HOUSING POLICIES

The City's overall housing policy has not been clearly defined or set forth. In general, however, its major elements are:

- Pursuing demolition of the buildings in worst repair which pose a hazard to surrounding structures;
- Focusing the City assistance that is available (almost totally through federal funding) on existing buildings that can be successful, either due to owner occupancy, relative size, limited debt, and acceptable cash flow;
- Given the current \$3.2 million Green and Healthy Homes grant, supporting efforts to eliminate lead and other environmental issues from downtown properties, recognizing that these efforts can continue only to the extent that federal funding is and remains available;
- Supporting the development of non-subsidized market rate units in the main commercial corridors and mill and riverfront districts;
- Improving the area's public spaces and infrastructure to enhance its appearance and add amenity value;
- Focusing law enforcement efforts to improve both the reality and perception of neighborhood safety; and
- Support for the current federal Section 8 housing voucher program and its expansion. Under this program, low income individuals are provided vouchers to

subsidize rent payments that can be used for any apartment that meet's the program's condition standards. The vouchers usually carry a higher rent than the local market provides, giving landlords with a higher and more dependable revenue stream.

The City currently does not have a definitive policy regarding support for 100% low income, subsidized housing developments. In the past, the City has supported such projects. However, recent controversies surrounding the St. Laurent Pierce Street project (which is intended to replace prior units lost as a result of a fire) have called this support into question given that the Council's vote to support it was subjected to a citizen initiated referendum and over-turned. Given this, it may be unlikely that the City would support any similar such projects in the near-term future, although support may be possible for mix income projects with both market and subsidized units. The Council to take office in January should consider clarifying the City's overall policy in this regard.

FIRE AND CODE ENFORCEMENT APPROACH

The City has traditionally taken an approach that emphasizes working with property owners to rectify problems and eliminate violations, not fining or penalizing them, actions which could potentially worsen the situation and add to vacancy and abandonment. In many instances, this has been successful; in others, it has not.

Recently, the City has tightened its enforcement efforts to distinguish between property owners who are cooperative and those who are unresponsive. For example, engine company multi-family inspections historically were only conducted after an appointment had been made with an owner and all tenants had been notified so that the entire building, both public and private areas, could be inspected. This system works well for owners who are cooperative. Too often, however, other owners have been unresponsive – delaying or refusing to schedule inspections; cancelling them at the last minute; or failing to show up as scheduled.

Our current policy is to conduct inspections, even when the owner has been unresponsive. These inspections focus on the public areas of the building and, where tenants are present and allow entry, individual apartments. Identified violations are noted and pursued, up to and including court action to force compliance. This approach directly targets those owners who prevaricate and delay and underscores the message that we need to work together and cooperate to address problems.

SOME POSITIVES

While the housing issues facing this area are daunting, some positives should also be noted. These include:

- The removal of the worst of the dilapidated buildings

- Improving vacancy rates
- An apparent slight uptick in rental rates
- Some properties undergoing renovations and improvements
- The successful effort to address security and safety through focused police efforts
- A generally improved appearance

OVERARCHING RECOMMENDATIONS

In the sections that follow, the task force will provide specific recommendations addressing individual issues. The recommendations below, however, are more sweeping in their scope, speaking directly to the larger policy issues involved.

1. Allow buildings to fail. Some of the buildings in the area are simply no longer economically viable and have far exceeded their useful lives. These buildings should be allowed to stand or fall on their own. The City should not invest resources in a building unless it is clear that the building can survive economically, nor should it “live with” inadequate efforts to eliminate violations just to “keep it going.”
2. Continue to demolish dangerous buildings. As buildings deteriorate and become vacant, the City should continue to condemn and demolish them. Their presence poses an inherent safety risk and is a negative influence on the neighborhood.
3. Maintain and strengthen the recently adjusted enforcement approach of working with those who cooperate and taking firm action against those who do not, even if such action leads to building abandonment.
4. Recognizing that firmer enforcement will result in complaints, the City’s elected officials must stand together to support enforcement staff.
5. To the greatest extent possible, City aid and assistance should be limited to buildings that can stand on their own economically; to do otherwise is to put a band aid on a gaping wound and misuse limited resources.
6. The newly elected Council should clearly define the City’s policy toward subsidized housing and the extent to which the city will/will not support future such projects.
7. Address the negative impact of vacant lots. The presence of vacant lots in an area speaks to its desirability (or lack thereof), even when they are relatively clean and free of debris. When they are weed covered and trash filled, the impression is immeasurably worse. Lots that the City owns should be well maintained and, given Public Works’ staff limitations, the City should consider hiring contractors to maintain them. Trash and weed ordinances should be strictly enforced on private lots. Where possible, the City should work to either return properties to private owners where they would support the viability of existing buildings or manage these lots as amenities to the area through the development of pocket parks, gardens, or other uses.

8. Continue to develop and emphasize a close working relationship between Code and Fire Prevention in identifying and addressing code and life safety issues.

SPECIFIC RECOMMENDATIONS

1. Staffing Recommendations

The consensus of the Committee is that staff reductions in the area of Fire Prevention have reduced the ability of the department to complete multi-family inspections. Similarly, while an additional position has been added to the Code Enforcement Department, additional staffing in that area could also enhance inspections. Higher staffing levels would also allow for devoting more time and attention to compliance efforts. In many ways, identifying code issues is a relatively straightforward process. Working to bring properties into compliance is often more time consuming and difficult. The committee recommends that the following three positions be added in the priority in which they are presented. The committee also recommends that these positions be included in the Administrator's base budget recommendation for FY17, not separately as an additional program or service. This will force the Council to choose to eliminate these positions from the budget proposal rather than simply fail to consider including them.

1. Full Time Fire Inspector assigned to the Fire Department.
2. Full Time Fire Prevention Clerk position (Current Position is Part Time).
3. Full Time Staff Position for Code Enforcement. ¹

Legal and Mandatory Action options associated with a Notice of Violations:

City Staff enlisted the assistance of the City Attorney's office to develop a recommendation to establish an effective, succinct, and legally sound process for Fire Department and Code Enforcement Staff to follow when faced with critical life safety issues and those issues that do not create an imminent danger. The Committee worked through potential enforcement limitations attributable to current City Code and Ordinances and requested City Attorney assistance in the review of said codes so the City Council may consider revisions intended to provide City Staff with the ability to take action to correct unsafe conditions. Based on these conversations, the following is recommended:

¹ The Committee notes that the Director of Planning and Code recommended that an additional planning position be created on the basis that this would free up more of his time to devote to Code Enforcement efforts while increasing staffing to deal with planning issues, particularly in light of the work that will soon be required to begin implementing the new comprehensive plan.

2. Implement variable time limits for correcting notices of violation

The Fire Department's current practice is to provide a notice of violation when problems are identified and to allow the property owner a thirty day period to correct. The Committee recommends that variable times to correct be adopted with the time correlated to the nature of the violations. Those that involve an immediate life safety issue should be addressed immediately or within 24 hours. Other serious but less immediate threats should be corrected within a seven to ten day period, while items not creating an imminent danger could remain at thirty days. Code Enforcement currently uses such a variable time approach. Fire Prevention staff should review the nature of frequent violations and assign an appropriate time limit for correction in the notice of violation.

3. Use of Optional enforcement Procedures

A variety of enforcement options are available to address situations where property owners fail to make corrections within the time period specified in a notice of violation.

Option #1: 80 K Process. Historically, the City has primarily relied on the 80K process. Rule 80K provides a simpler, speedier, and less costly procedure for the prosecution of violations in District Court. Under Rule 80K, the District Court can order violators to pay fines and to stop or correct a violation. Unfortunately, this process can be quite time consuming depending upon the workload of the District Court and, although the Court can impose fines and order corrections, continued monitoring to ensure compliance is required.

Option #2: 80K Process with a Temporary Restraining Order. This option can be used if immediate action is required (i.e. under the 80K rule). If the enforcement official finds a violation which must be stopped quickly before a full court hearing can be scheduled on whether a violation legally exists, the court can be asked to issue a Temporary Restraining Order (TRO) or Preliminary Injunction that requires that the violation be immediately addressed. This brings the weight of the Court and the potential for sanctions such as contempt of court to come into play.

Option #3: Citation with a fine structure as provided in Chapter 50 of the City Code of Ordinances. A number of minor violations require significant staff time that could be better utilized in addressing more serious issues. One example is trash/debris on private property. As currently structured, enforcing a violation in this area may require a lengthy and time consuming 80K action. The City currently has the option of citing and fining violations involving trash and debris left on the city's right of way adjacent to a property. This option could be extended to other minor but time

consuming violations such as the accumulation of trash and debris on private property.

Option #4: Summons which triggers a court date. This is similar to a police officer issuing a moving violation ticket. Once ticketed, violators are assigned a court date. They can avoid appearing in court by paying the fine specified for the offense. A similar process can be followed for code and fire violations. The Summons process could be applied to those situations where the property owner has demonstrated clear intent "TO NOT" cooperate with the Fire Department and Code Staff.

Given these alternative enforcement options, the City Attorney should be requested to review the Code of Ordinances and provide recommendations for any changes necessary to strengthen the City's enforcement capabilities or to amend the language of the Code to improve the guidance it provides to city enforcement personnel. Both Code and Fire staff should also work to take a similar approach to enforcement whenever possible.

4. Removal of Debris.

When an accumulation of debris near the exterior of a property is identified and if the debris is not removed within twenty-four hours, the City Administrator should be authorized to direct the Public Works Department to remove this debris if the Fire Chief or Director of Planning and Code determine that the location and nature of the debris constitutes a significant threat to adjacent properties if the debris were to catch fire. The responsible property owner should be fined and all costs associated with debris removal should be charged to that owner. The City Attorney should be requested to draft an ordinance providing the necessary authority.

5. Authorizing Additional Staff to Issue Notices of Violations and Citations

The necessary steps should be taken to authorize designated Fire Department staff to issue citations and notices of violation. Specifically, the Fire Prevention Officer should be authorized to issue citations and Company Officers supervising fire company property inspections should be authorized to issue 24 hour notices of violations for issues that pose an extreme risk to the public.

6. Legal Review of Enforcement Paperwork

The City attorney should review the forms currently used by various personnel including the notice of violation, citations, and Fire Department Order to Comply to ensure that they meet all legal requirements. In addition, staff should review this paperwork to identify any changes required to add greater clarity to the violations and compliance requirements.

7. Fire Department Smoke Detector Loan Program

The Fire Department should be authorized to install "loaner" smoke detectors when Departmental personnel, during an inspection or as a result of a call for service, find detectors to be removed or inoperative. At the same time, a notice of violation should be issued to the property owner with a requirement that an operating detector be in place and the loaned unit returned to Central Fire within 24 hours.

8. Resetting Fire Alarms

It is not unusual for the Department to respond to calls where a building's fire alarm system is sounding but there is no fire. Current practice is to attempt to contact the building owner to reset the alarm. If the owner cannot be contacted or fails to respond in a timely fashion, the alarm continues to sound posing issues for tenants who must either remain outside the building or contend with the continuing alarm. This creates a hazard should a fire occur while the alarm is already sounding and residents have returned to the building. If the owner cannot be contacted or fails to respond in a reasonable time, the Fire responders should be authorized to silence and or reset fire alarms. In addition, property owners should be allowed to authorize the Department to silence and reset alarm systems as an alternative to avoid the necessity of traveling to the site and delaying action. A fee should be established when owners request such a service. In instances where the owner cannot be contacted or fails to respond, City ordinances should be amended to institute a fine. This will also allow fire units to return more quickly to service and provide an incentive for property owners to respond to problems.

9. Re-establish a Fire Prevention Education Program.

The addition of a Fire Inspector will provide the opportunity to re-establish community based fire prevention education at the following levels:

- a. Childhood/school fire safety education
- b. Immigrant education
- c. Landlord education
- d. Tenant education
- e. Establishing a System for Community reporting of Fire Prevention issues (hotline or web site)
- f. Fire Setter program
 - i. Early outreach
 - ii. Training regarding at risk youth
- g. Firefighter Education regarding common code violations that are not necessarily a violation of a Fire Prevention inspection

10. Improve Availability of Property Owner Information

The Fire Department frequently encounters difficulty in contacting property owners when problems arise, particularly after normal business hours. The most accurate and up to date information available to the City is often found in our utility billing system. The Fire Department should be granted electronic read only access to this data base (down to the mobile units in its vehicles) or, if there are technical or cost issues with such access, the Department should be provided with a hard copy of ownership and contact information on a monthly basis.

11. Contact Information for Properties in Foreclosure.

A recently enacted state law requires financial institutions to provide an in-state contact for properties they are foreclosing. Not all institutions are aware of this requirement. A local ordinance should be adopted require the same thing. This would allow the City to issue citations and potentially fine institutions failing to provide the required notice.

12. Address Tenant Issues

Not all problems with multi-family buildings are caused by a failure of the owners to maintain them to code standards. Certain issues, such as deactivated or missing smoke alarms, blocked exits, and trash issues, are often the result of tenant actions. The City should work with landlords and their organizations to strengthen state legislative sanctions against improper behavior by tenants, including sanctions against willful damage caused by tenants to rental units.

13. Establish a Property Owner Recognition Program.

The City should consider establishing a program to recognize Landlords who are meeting their responsibilities and/or exceeding expectations. The Mayor has suggested a "gold star" property award. Committee members suggested presenting this award at a noteworthy community event.

14. Maintain a Voluntary Vacancy Registry.

Although this registry would remain voluntary, it would be an opportunity to voluntarily inform the City of buildings that are vacant and not in service. This information could be shared with the Police and Fire Departments to ensure that the properties are periodically checked to verify that they are secured.

15. Work to Change the Perception of Lewiston's In-Town Residential Neighborhoods.

A number of current initiatives should continue or be expanded in this area. The Police Department should be encouraged to continue its disorderly building,

community policing efforts, and project hot spots, all of which have already had a positive effect on crime and the quality of life in the area. The City should reach out to other organizations involved, including tenant groups, to enlist their assistance in communicating the positive aspects of Lewiston and the community's willingness to advocate for positive change.

16. Support the Expansion of the Section 8 Voucher Program.

The federal Section 8 program provides rental subsidies to low income individuals and families who otherwise might not be able to afford housing. The program requires that rental units meet code requirements, and units are periodically inspected to ensure that they do so with financial penalties assessed if they do not. In addition, Section 8 frequently pays landlords at a higher rate than other programs. On a related note, the City should review the limits on housing payments made through its General Assistance Program to verify that they are an accurate reflection of the area's fair market rents.

SUGGESTIONS CONSIDERED BUT NOT RECOMMENDED

1. Multi-Family Property Licensing.

Some jurisdictions require that the owners of multi-unit buildings be licensed. This requires the periodic payment of a licensing fee and the provision of current contact information. The Committee concluded not to recommend such a program because it would place an additional financial burden on property owners who are already frequently facing financial challenges. While such a system could be implemented without requiring a fee, the City does not have adequate staff to handle and maintain such a process and additional personnel would be required.

2. Responsible Party Ordinance.

An alternative to licensing is a responsible party ordinance that would require owners to post contact information in public areas of multi-family properties above a certain size. Landlords expressed concerns that this could result in frequent, unnecessary calls to them.

The following is the initial list of talking points/issues developed by the Downtown Building Task Force as a guide to its work.

DT Task Force Committee meeting: September 8, 2015 –Talking Points: Below is the list of talking points referenced by the committee as the guide of discussion topics for each meeting.

- Discussion on the potential of a major fire due to conditions of many in town tenement buildings.
- What can be done to demolish more of the current vacant buildings?
- What can be done to quicken the cleanup of occupied problem buildings?
- How to enforce and initiate action when staff identifies a problem with landlords who do not respond or correct the problem immediately.
- The historical impact of Fire Prevention staff cuts.
- Review of the Fire Department inspection program and how enforcement is achieved.
- Difficulty with achieving compliance and continuing a voluntary inspection program.
- Concerns the committee might villainize the landlord.
- The current market rate makes it difficult for many landlords to generate a profit.
- LHA inspects buildings on a regular basis and if not compliant rent is withheld.
- Lead Poisoning and Tax law changes have impacted landlords.
- Over 90 Buildings were torn down in the 1990's. Over the last three years the City has torn down 70 buildings with more to be demolished as City Council and Court action allow.
- Compliance requirements can come with a huge price tag.
- The general opinion of the committee is that older housing stock is not viable.
- The Government competes with the independent owner and outpaces the rent they can reasonably collect. Market housing rents are not subsidized.
- Insurance companies are also requiring compliance of the Landlords.
- It is an academic and social challenge to manage property in the downtown.
- Bad tenants have the ability to move around.
- Should there be a limit on the number of buildings so less subsidized housing is available.
- Discussion on the difficulty of operating an apartment building in the inner city.
- Landlord – Tenant issues. Many buildings are beyond their useful life.
- Discussion on how to deal with bad tenants and how to address issues with the unresponsive landlord.
- How do we address the landlord, tenant related issues?

- Any submissions for the Legislative Session coming up the 20th? Please forward to the Mayor.
- Discussion on how to use the Committee's findings in a positive way.
- City guidelines on the number of tenants that can live in an apartment unit.
- Education for people new to our community.