

Affordable Commercial Space Program

Draft Administrative Rule for review by Planning and Sustainability Commission

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I. Definition of Administrative Rules

These Administrative Rules are authorized by City Code Section 33.130.212.D in order to define the policies, processes, and procedures of implementation of the Affordable Commercial Space Program (the “ACS Program”).

II. Program Goals

The City of Portland and Prosper Portland have identified the need for affordable commercial space to serve the needs of businesses led by owners from communities of color and marginalized individuals that have not fully participated in, or benefited from, economic opportunities.

Through the ACS Program, Prosper Portland will review all developments requesting to utilize the ACS Program bonus. Depending on the ACS Program Option selected by an application, Prosper Portland staff may participate in the various phases of the development, including permitting, closing, construction, lease-up, and operations.

In implementing the ACS Program, Prosper Portland has the following goals:

- A.** Support businesses led by owners from communities of color and marginalized individuals that have not fully participated in, or benefited from, economic opportunities;
- B.** Increase the square footage of Affordable Commercial space available to businesses;
- C.** Reduce barriers of entry to new construction commercial space for those facing the greatest disparities in wealth creation;
- D.** Ease the challenge of commercial gentrification and business displacement in the City of Portland’s Mixed-Use Zones;
- E.** Advance Prosper Portland goal of building an equitable economy.

III. Permit Application and Program Options

For new developments projects proposing fewer than 20 new dwelling units which want to access an FAR bonus, the permit application must include an ACS Program option sections. Prosper Portland staff will be available to assist applicants through the permitting intake and application process to explain and clarify ACS Program requirements.

- A. Affordable Commercial Space Program Options.** ACS Program requirements will depend on the applicant’s selection from the following options:

1. Provide Affordable Commercial Space on-site.

- a.** Prosper Portland staff calculates the useable square feet of the on-site Affordable Commercial Space, and the associated FAR bonus.
- b.** Prosper Portland and the developer/owner then enter into a Regulatory Agreement regarding the Affordable Commercial Space prepared by Prosper Portland (see paragraph D).
- c.** The applicant does not need to identify specific Qualified Businesses at the time of application for the ACS Program. Leasing to Qualified Businesses may occur after the permit is issued, subject to the requirements of Section VI.

2. Fee-in-Lieu Option. Applicants may choose the fee-in-lieu option rather than including Affordable Commercial Space units in a development.

- a. Prosper Portland staff calculate the fee-in-lieu amount by multiplying the square feet of the bonus floor area, up to the available ACS maximums, by the Affordable Commercial Space Fee-In-Lieu Factor (See Appendix A).
- b. The fee-in-lieu amount is payable prior to the issuance of the building permit.
- c. Upon payment of the fee-in-lieu amount, the applicant has no additional ACS Program requirements relative to the proposed development. (This option does not require a Regulatory Agreement.)

3. Combination on-site and Fee-in-Lieu Option.

- a. Prosper Portland staff calculates the useable square feet of the on-site Affordable Commercial Space, and the associated bonus square feet.
- b. Prosper Portland and the developer/owner then enter into a Regulatory Agreement regarding the Affordable Commercial Space prepared by Prosper Portland (see paragraph D).
- c. For any additional bonus square feet, Prosper Portland staff calculate the fee-in-lieu amount by multiplying the square feet of the bonus floor area, up to the available ACS maximums, by the Affordable Commercial Space Fee-In-Lieu Factor (See Appendix A).
- d. The fee-in-lieu amount is payable prior to the issuance of the building permit.
- e. The applicant does not need to identify specific Qualified Businesses at the time of application for the ACS Program. Leasing to Qualified Businesses may occur after the permit is issued, subject to the requirements of Section VI.

B. Application requirements. Prosper Portland staff will input into TRACs and process the necessary documentation based on the option selected. At permit intake for the on-site options (i.e. Option 1 and Option 3) building permits will be conditioned on (ie. they will not be issued unless) a Regulatory Agreement has been signed and any applicable fee-in-lieu is paid. In the case of the fee-in-lieu option (Option 2), permits will be conditioned on payment of the full fee amount prior to issuance of the permit. At any time during the permit intake process the applicant may indicate that they no longer wish to participate in the ACS Program, in which case they will not be able to claim a FAR Bonus under the ACS Program.

C. Articles of Incorporation. Applicants must provide organizational documents of the entity with site control identifying signature authority (Articles of Incorporation, Corporate Resolutions, etc.) in order to enter into the Regulatory Agreement.

D. Agreement. In the case of Option 1 and Option 3, a Regulatory Agreement will be prepared by Prosper Portland staff and must be signed by the owner of the property on which the development is located prior to permit issuance. The Regulatory Agreement is a legally binding document that governs the operation and performance of Affordable Commercial Space and is recorded on the title to the property.

IV. **Development Requirements**

- A. Affordable Commercial Space Landlord Work Standards.** The Affordable Commercial Space will be improved to the standards listed in the Hot Shell Landlord Work Standards (Appendix B). Exceptions to landlord work standards can be made on a case-by-case basis, with Prosper Portland Staff review.
- B. Inapplicable Policies.** Policies Prosper Portland applies to developments receiving direct funding from Prosper Portland or the city will not be implicated merely by receipt of an ACS Program FAR bonus. These include:
1. Business Equity Program
 2. Workforce Equity Program
 3. Green Building Policy
 4. Prevailing Wage

V. **Final Permit Approval**

Prior to permit issuance, Prosper Portland will assign a Construction Coordinator to the development. Construction Coordinators will make contact with appropriate members of the applicant's development team to coordinate participation during the construction phase.

Construction Coordinators will monitor construction progress. Applicants are required to report progress to Construction Coordinators quarterly. After a development received sign-off from the City inspector, or one-month prior to pre-leasing, whichever comes first, the property manager must contact Prosper Portland staff to set up compliance mechanisms including lease-up, compliance, and reporting requirements. Among other things, Prosper Portland staff will require that the property manager certify that they have read and understood ACS compliance requirements. BDS will not issue a certificate of occupancy until such certification has been received and signed-off by Prosper Portland staff.

VI. **Compliance and Reporting Requirements**

- A. Leasing Affordable Commercial Space Units.** Space meeting the requirements below is "Affordable Commercial Space" for the purposes of the ACS Program. The following requirements apply to the leasing of ACS units:
1. **Qualified Businesses.** In order to qualify as "Affordable Commercial Space," space must be leased to a "Qualified Business." In order to be a Qualified Business, an entity must be all of the following:
 - a. A local business or nonprofit organizations, based in the Portland - Vancouver - Hillsboro Metropolitan Statistical Area.
 - b. A (i) woman-owned business, minority-owned business, or other business primarily owned by individuals who are members of historically underserved populations, or (ii) a non-profit organization which serves historically underserved communities, including communities of color.
 - c. An entity that has passed a Prosper Portland financial evaluation.

2. Lease Standards

- a. Lease agreements will be reviewed by Prosper Portland staff. Prosper Portland will provide a Form Lease Agreement.
- b. Rent rates must be approved by Prosper Portland staff as consistent with affordability for Qualified Businesses.
- c. Maximum rental escalation rate as provided in the Form Lease Agreement or Regulatory Agreement.

3. Duration and Re-tenanting

- a. ACS unit compliance period is 10 years, from start date of initial lease.
- b. ACS vacated by a qualified business will be re-tenanted with a qualified business.
- c. During the Compliance Period, any space counted as Affordable Commercial Space for purposes of calculating the FAR bonus may not be subleased except to another Qualified Business (as determined by Prosper Portland consistent with the definition provided above).
- d. If a lease with a Qualified Business is not executed within twelve months of issuance of the permit, the Regulatory Agreement will require payment of a fee-in-lieu for any unleased space that was considered Affordable Commercial Space for purposes of the FAR bonus calculation. Prosper Portland may, in its discretion, elect to extend the twelve month deadline for all program participants if it determines that general economic conditions in Portland warrant doing so.

B. Annual Reporting and Review

Developments with ACS units will be subject to Prosper Portland annual reporting requirements as set forth in the Regulatory Agreement. Owners or their property managers on an annual basis will submit information to Prosper Portland on the ACS units and the tenants leasing the spaces. Prosper Portland staff will test this information against the contents of the Regulatory Agreement and issue written results to each development. In cases of non-compliance, Prosper Portland staff may collaborate with owners or their property managers on remedies, however, Prosper Portland also has the authority to enforce the provisions of the Regulatory Agreement without the owner's consent.

C. Transfers

The Regulatory Agreement runs with the land for the length of the Compliance Period. It must be recorded in the first position (other than existing utility, access, no-build or other easements required for compliance with zoning or building codes, or as may be otherwise required by law, as determined by Prosper Portland legal counsel). Prosper Portland will not subordinate its Regulatory Agreement, except to Portland Housing Bureau the United States of America, the State of Oregon, or to the extent required by applicable law. In cases of foreclosure, Prosper Portland may, but will not be required

to, consider modifications to the Regulatory Agreement to facilitate resolution of foreclosure proceedings.

Upon sale or other transfer of the development during the Compliance Period, the provisions of the ACS Program must transfer with the property. Prosper Portland needs to receive updated property manager information, and legal documentation about the new entity in order to prepare a Consent to Transfer and Assignment and Assumption Agreement to be executed and recorded on title.

D. Default and Conversion

Specific default provisions are contained in the Regulatory Agreement. In general, there are two types of default: minor and major. Minor defaults include:

1. Non-reporting;
2. Non-reporting by due date; and
3. Insufficient reporting.

Major defaults occur in cases of deliberate non-compliance. Depending on their nature and the circumstances surrounding them, major defaults may also be categorized as “Conversions.” Remedies for both Conversions and default are outlined below in Remedies.

In addition, if minor defaults, become chronic, i.e. they last for more than one reporting cycle, they will be deemed “major” and the corresponding remedies may be applied.

E. Remedies

Should unauthorized conversions of Affordable Commercial Space occur (including leasing or subleasing of Affordable Commercial Space to tenants other than Qualified Businesses and failure to comply with Section VI of these rules), financial penalties will be due and payable to Prosper Portland as follows:

1. **Fee-in-Lieu due.** A fee-in-lieu equal to square footage of the Affordable Commercial Space used by Prosper Portland in the determination of the FAR Bonus multiplied by the Fee-in-Lieu Factor. (See Appendix A.)
2. **Interest.** Interest will be due on the entire unpaid fee-in-lieu amount, assessed at the rate of .833 percent simple interest per month or fraction thereof (10 percent per annum), computed from the date of Conversion

Prosper Portland may also pursue the following remedies if the financial penalties are not paid in the timeframe prescribed by Prosper Portland:

1. Foreclosure;
2. Court injunction or receivership;
3. Any remedies stated in the Regulatory Agreement; and
4. Such other remedies as may be available at law or equity.

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Appendix A. Fee-In-Lieu Factor Schedule

- Projects with residential use and no commercial space will use the Inclusionary Housing Fee-In-Lieu
- Projects with no residential occupancy use will use the Affordable Commercial Fee Schedule for Bonus FAR for non-residential occupancy/use, up to the available Affordable Commercial FAR bonus zoning maximums. Additional FAR is available through the Inclusionary Housing Fee-In-Lieu, up to the Inclusionary Housing FAR bonus zoning maximums

Fee Schedule for BONUS FAR for non-residential occupancy use.
\$24 per square foot of Bonus FAR

- Mixed-use projects (commercial and residential) will use the Affordable Commercial Fee-In-Lieu Schedule, up to the available Affordable Commercial FAR bonus zoning maximums. Additional FAR is available through the Inclusionary Housing Fee-In-Lieu, up to the Inclusionary Housing FAR bonus zoning maximums.

Fee Schedule for Mixed-Use Zones	
Zone/FAR	Fee per GSF
CM 1 at Base FAR	\$23.83
CM 1 with Bonus FAR	\$25.79
CM 2 at Base FAR	\$25.79
CM 2 with Bonus FAR	\$26.50
CM 3 at Base FAR	\$26.03
CM 3 with Bonus FAR	\$28.58

Appendix B. Hot Shell Landlord Work Standards.

- **Location within building.**
 - Affordable Commercial space will be located on the ground floor and have a least one on street entrance.
- **Dimensional standards.**
 - Affordable Commercial space will have a minimum of 12 foot floor-to-ceiling height, minimum of 25 foot depth, and be a minimum of 600 square feet usable space.
- **Walls and Demising.**
 - Landlord will deliver Affordable Commercial space with all interior and exterior walls framed.
 - Landlord will deliver Affordable Commercial space insulated, sound caulked, dry walled to smooth wall finish, taped and primed, ready for tenant to paint.
- **Electrical.**
 - Landlord will provide Affordable Commercial space code required electrical receptacles. Tenants will do their own distribution.
 - Landlord will provide lighting junction boxes for storefront windows and one lighting junction box for roughly every 300 square feet of demised retail space.
 - Land will provide basic lighting fixtures, and one fourplex outlet every ten to twelve feet along the interior walls, roughly 18 inches off the ground on center.
- **HVAC.**
 - Landlord will provide HVAC services to each Affordable Commercial space, including access to a rooftop unit, distribution of supply, return and exhaust spiral ducting within all demised spaces.
 - Landlord will provide a Thermostat in the Affordable Commercial space.
- **Ceiling Finish.**
 - Each space will have insulation at the maximum practical ceiling height (spiral ducting to be below insulated ceiling).
- **Water/Sewer.**
 - Landlord will provide sewer stub and water stub located in space, for tenant to build out as desired.
 - Landlord will provide access to central work sink.
- **Occupancy & SDC Credits.**
 - Landlord will provide the Affordable Commercial space to tenant with at least M mercantile retail occupancy as designated by the City of Portland
 - Landlord will cover all sewer system development charges, transportation development charges and parks development charges.
- **Storefront.**
 - Landlord will provide a storefront structure and window glass with the highest transparency possible while still meeting energy code with the City of Portland
- **Restrooms.**
 - Landlord will build and finish the appropriate number of bathrooms as required by the City of Portland Code. (minimum of 1 bathroom)
- **Flooring.**

- Landlord to provide Affordable Commercial space floors to be finished as sanded, polished, and sealed concrete.
- **Signage Package.**
 - Landlord will provide signage package with pre-engineered solutions and brackets for blade signs and flat sign erection by tenants. All signs, production, and permitting will be at Tenant's expense.
- **Fire Protection.**
 - Landlord will provide necessary fire protection systems to meet applicable codes for M Merchant occupancy level.

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