

HOU-3.04 - Inclusionary Housing Program

Administrative Rule

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I. Definition of Administrative Rules

These Administrative Rules are authorized by City Code Section [30.01.120](#) in order to define the policies, processes, and procedures of implementation of the Inclusionary Housing Program (the “IH Program”).

II. Program Goals

The City of Portland (the “City”) has identified the need for a minimum of 23,000 additional housing units to serve low and moderate income households. The City has implemented the IH Program to help meet this need.

Through the IH Program, the Portland Housing Bureau (“PHB”) will review all qualifying residential development projects (“developments”). Depending on the inclusion option selected by an applicant, PHB staff may participate in the various phases of the development, including permitting, closing, construction, lease-up and operations.

By implementing the IH Program, the City has the following goals:

- A.** Increase the number of units available to households earning 80 percent or less of area median family income (“AMI”), with an emphasis on households earning 60 percent MFI or less;
- B.** Responsibly allocate resources to increase housing opportunities for families and individuals facing the greatest disparities;
- C.** Create affordable housing options in high opportunity neighborhoods, those with superior access to quality schools, services, amenities and transportation; and
- D.** Promote a wide range of affordable housing options with regard to size, amenities and location.

III. Definitions

Applicant: A person who applies for a land use review or building permit. An applicant can be the owner of the property or someone who is representing the owner, such as a builder, developer, optional purchaser, consultant, or architect.

Combined Opportunity Map Score: Score calculated for individual properties based on a number of data including access to schools, transportation and services such as medical facilities. Scores are available online at PortlandMaps.com, in the Zoning and Districts tab within the Permits and Zoning Section.

Compliance Period: the time during which the Regulatory Agreement applies to a development.

Conversion: One or more IH Units that have been determined to be out of compliance with their applicable Regulatory Agreement for six (6) or more consecutive months.

Fee-in-Lieu Factor: The factor used to calculate the fee-in-lieu which may not exceed the maximum justifiable cap determined annually by PHB based on the difference in the capitalized market value between market-rate buildings and buildings with 20 percent of the units affordable to households earning 80 percent or less of the area AMI as determined annually by HUD.

IH Unit: A housing unit documented in a development's Regulatory Agreement as required in order to comply with the IH Program requirements in place at the time of execution of the Regulatory Agreement. When calculating the required percentage of IH Units in a development, any fractional result between .1 and .4 will be rounded down to the number immediately preceding it numerically, and any fractional result between .5 and .9 will be rounded up to the next consecutive whole number. However, the total IH Unit percentage cannot exceed 20 percent of the total units in the development. For example, if a minimum number of IH Units is calculated to be 1.67, it is rounded up to 2 IH Units. See also Bedroom Distribution and Unit Count below.

Market Rate Unit: All residential units within a development that are not subject to a Regulatory Agreement with regard to tenant incomes or unit rents.

Owner: The owner of the title to real property or the contract purchaser of real property of record, as shown on the latest assessment records in the Office of the County Assessor. Owner also includes a deed holder or contract purchaser whose name does not appear in the latest assessment records, but who presents to the City a copy of a deed or contract of sale showing date, book, and page of recording.

Regulatory Agreement: A recorded agreement between the owner and PHB that sets forth the approval and compliance criteria of the IH Program.

Total Development Cost: All costs associated with the development including, but not limited to:

- Land and related land acquisition costs
- Construction costs including labor, materials and all subcontracts and subcontractors
- Soft costs, such as architecture, engineering, and other consultants
- Permitting fees and costs
- Financing fees and costs

IV. Permit Application and Program Options

For both new and renovation developments proposing 20 or more new units, the permit application must include an IH Program option selection. PHB staff will be available at the Bureau of Development Services ("BDS") Permit Center to assist applicants throughout the permitting intake and application process to explain and clarify IH Program requirements.

A. Inclusionary Housing options. IH Program requirements will depend on the applicant's selection from the following options:

- 1. 20% of units affordable at 80% MFI option – or 15% for applications filed through December 31, 2018 for properties outside the [Central City Plan District](#):**

- a. PHB staff calculate the minimum number of required IH Units; and
- b. In addition to any land use incentives provided in City Code Chapter 33.245 and determined by BDS, PHB staff determine the incentives the City is required to provide, including:
 - i. 10-year property tax exemption according to City Code Chapter 3.103 based on the development's zoning:
 - 1. For properties outside the [Central City Plan District](#) or in zones with base floor area ratio below 5:1, the tax exemption applies only to the IH Units; or
 - 2. For properties in in the [Central City Plan District](#) with 5:1 FAR or greater, before including any bonus density bonus granted through City Code Chapter 33.510, the tax exemption applies to all residential units; and
 - ii. Construction Excise Tax exemption on the IH Units in accordance with Section 6.08.060(A)(2).

2. 10% of units affordable at 60% MFI option – or 8% for applications filed through December 31, 2018 for properties outside the [Central City Plan District](#):

- a. PHB staff calculate the minimum number of required IH Units; and
- b. In addition to any land use incentives provided in City Code Chapter 33.245 and determined by BDS, PHB staff determine the incentives the City is required to provide, including.
 - i. 10-year property tax exemption according to City Code Chapter 3.103 based on the development's zoning:
 - 1. For properties outside the [Central City Plan District](#) or in zones with base floor area ratio below 5:1 FAR, the tax exemption applies only to the IH Units; or
 - 2. For properties in in the [Central City Plan District](#) with 5:1 FAR or greater, before including any bonus density bonus granted through City Code Chapter 33.510, the tax exemption applies to all residential units;
 - ii. Construction Excise Tax exemption on the IH Units in accordance with Section 6.08.060(A)(2); and
 - iii. SDC exemptions for the IH Units in accordance with City Code Section 30.01.095.

3. Build off-site option. Applicants elect to build IH Units off-site in a separate development (Receiving Site) from the new multifamily development that is

subject to the IH Program requirements (Sending Site). The following criteria apply:

- a.** PHB staff calculate the minimum number of required IH Units under two available scenarios. The applicant can elect to provide:
 - i.** At least 20 percent of the total number of residential units in the Sending Site affordable at 60 percent AMI in a newly constructed Receiving Site; or
 - ii.** At least 10 percent of the total number of residential units in the Sending Site affordable at 30 percent of AMI in a newly constructed Receiving Site.
- b.** The Sending Site will retain any floor area ratio bonus;
- c.** The IH Units built on the Receiving Site must be reasonably equivalent to the Market Rate Units in the Sending Site;
- d.** The Receiving Site IH Units benefit from the Construction Excise Tax exemption in accordance with Section 6.08.060(A)(2) and the SDC exemption in accordance with Section 30.01.095;
- e.** The Receiving Site remains subject to any additional IH Program requirements;
- f.** The Receiving Site must be identified and approved by PHB prior to building permit issuance for the Sending Site, specifying the following information:
 - i.** Location;
 - ii.** Number of IH Units and total units proposed; and
 - iii.** Development schedule
- g.** The Receiving Site must be within a one-half mile radius of the Sending Site, unless the Receiving Site is in an area with an equal or higher Combined Opportunity Map Score;
- h.** The Receiving Site cannot be supported by any additional subsidy from PHB;
- i.** The Receiving Site must receive a Certificate of Occupancy within three years of the Sending Site's building permit issuance or be subject to financial penalties;
- j.** A penalty to the Sending Site will be due to PHB if the IH Units are not made available as set forth in the Regulatory Agreement. See Remedies section below; and
- k.** The applicant shall cause its general contractor for the Receiving Site to enter into an agreement with a third-party technical assistance provider approved by PHB prior to opening up bidding for the construction. The agreement must include the development of a plan to meet the City's goal of 20 percent or higher participation by Minority, Women, and Emerging Small Businesses (MWESB) firms in construction contracting. Prior to building permit issuance, the general contractor must provide a copy of the signed agreement. The general contractor must work with the City of Portland's Procurement Services Compliance Specialist to report results during bidding and

construction. The third-party technical assistance provider must provide a written report summarizing the outcomes of the efforts made to reach the goal, including successes, barriers and any areas of improvement.

- 4. Designate existing units (DEU) option.** Applicants elect to designate the IH Units in an existing building (Receiving Site) separate from the new multifamily development that is subject to the IH Program requirements (Sending Site). The following criteria apply:
- a.** PHB staff calculate the minimum number of required IH Units under two available scenarios. The applicant can elect to provide:
 - i.** At least 25 percent of the total number of residential units in the Sending Site affordable at 60 percent AMI in a newly constructed Receiving Site; or
 - ii.** At least 15 percent of the total number of residential units in the Sending Site affordable at 30 percent of AMI in a newly constructed Receiving Site.
 - b.** The Sending Site will retain any floor area ratio bonus;
 - c.** The IH Units built on the Receiving Site must be reasonably equivalent in size, quality and bedroom count to the units on the Sending Site;
 - d.** The Receiving Site must be identified and approved by PHB prior to building permit issuance for the Sending Site, specifying the following information:
 - i.** Location;
 - ii.** Number of affordable and total units proposed; and
 - iii.** Leasing schedule
 - b.** The Receiving Site must be no more than one-half mile from the Sending Site, unless the Sending Site is in an area with an equal or better Combined Opportunity Map Score;
 - c.** The Receiving Site cannot be supported by any additional subsidy from PHB;
 - d.** PHB staff determines whether the proposed existing multifamily residential building is compatible with IH Program requirements. If the proposed development is determined to be incompatible, the applicant must choose one of the remaining IH Program options.
 - e.** A penalty to the Sending Site will be due to PHB if the IH Units are not made available as agreed upon in the Regulatory Agreement. See Remedies section below;
 - f.** The Receiving Site development will also be subject to a Regulatory Agreement.

5. Fee-in-Lieu option. Applicants may choose to use the fee-in-lieu option rather than including IH Units in a development or building or designating IH Units off-site.

- a. PHB staff calculate the fee-in-lieu amount due by multiplying the gross square feet of the new development by the Fee-in-Lieu Factor (See Appendix A);
- b. The fee-in-lieu amount is payable prior to issuance of the building permit; and
- c. Upon payment of the fee-in-lieu amount, the applicant has no additional IH Program requirements relative to the proposed development.

B. Application requirements. PHB staff will input into TRACs and process the necessary documentation based on the option selected. At permit intake for options one through four above, PHB staff will provide estimates only of the various IH Program requirements and incentives. Building permits will be conditioned on (i.e., they will not be issued unless), PHB making final determination of IH Program requirements and incentives and, where applicable, ensuring the collection of required fees and/or bonds. Applying clear and objective criteria, PHB will evaluate whether a proposed development meets the numerical requirements for inclusionary housing set forth in the Zoning Code. PHB will provide land use applicants with a letter certifying that any proposed development meets the numerical standard set out in Title 33.

C. Tax Exemption. If a tax exemption will be included as an incentive based on the option selected, a Multiple-Unit Limited Tax Exemption (MULTE) Program Application Form must be completed and PHB will complete the required MULTE process for approval including tracking of the available cap on foregone revenue approved and City Council for applications on a monthly basis. A development may also qualify for the Non-Profit Limited Tax Exemption (NPLTE) Program authorized under City Code Chapter 3.101, in which case the NPLTE Program will be used in lieu of or in addition to the MULTE Program to provide an incentive to a development.

D. Articles of Incorporation. Applicants must provide legal articles of the entity with site control identifying signature authority (Articles of Incorporation, Corporate Resolutions, etc.) in order to enter into the Inclusionary Housing Regulatory Agreement.

E. Agreement. A Regulatory Agreement will be prepared by PHB 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 long-term operation and performance of IH units and is recorded on the title to the property.

V. Development Requirements

A. Reasonable Equivalency. Applicants are expected to make IH Units “reasonably equivalent” to Market Rate Units. PHB will assess reasonable equivalency using the following criteria:

1. Rental Developments.

- a. **Bedroom Distribution and Unit Count.** IH Rental Units must be provided at the same ratio within the development as Market Rate Units. Example of 20 percent IH Rental Units: total units = 100; Market Rate Units = 80; IH Units = 20; Market Rate Unit bedroom distribution = 20 studios (25%), 40 one bedrooms (50%), 20 two-bedrooms (25%); the IH Rental Unit distribution would be: 5 studios, 10 one-bedrooms and 5 two-bedrooms. Any calculations resulting in less than a whole number shall be rounded up from .5 and above or down from .4 or below, but the total number of IH Rental Units must still equal the designated percentage for the IH Program option selected.
- b. **Unit Sizes.** IH Rental Units must be at least 90 percent the size of the average of the total units with the same bedroom count, as measured in square feet.
- c. **Unit Distribution.** No more than 25 percent of the total units on any floor shall be designated as IH Rental Units, excluding the top floor of a development.
- d. **Unit Amenities.** IH Rental Units must have like or equal performing finishes and appliances as far as durability and sustainability to the Market Rate Units, which will be certified by a development’s architect prior to receiving its final certificate of occupancy.

2. For-sale Developments.

- a. **Bedroom Distribution and Unit Count.** IH Homeownership Units must be provided at the same ratio within the development as Market Rate Units. Example of 20 percent IH Homeownership Units: total units = 100; Market Rate Units = 80; IH Units = 20; Market Rate Unit bedroom distribution = 20 studios (25%), 40 one bedrooms (50%), 20 two-bedrooms (25%); the IH Homeownership Unit distribution would be: 5 studios, 10 one-bedrooms and 5 two-bedrooms. Any calculations resulting in less than a whole number shall be rounded up from .5 and above or down from .4 or below, but the total number of IH Homeownership Units must still equal the designated percentage for the IH Program option selected.
- b. **Unit Sizes.** IH Homeownership Units must be at least 85 percent the size of the average of the total units with the same bedroom count, as measured in square feet.
- c. **Unit Distribution.** For On-Site options, no more than 50 percent of the total units on any floor shall be designated as IH Homeownership Units, excluding the top floor of a development. For Receiving Buildings of Off-Site options, there are no unit distribution requirements, however, all IH Homeownership Units in the Receiving Building must be located fully above grade.
- d. **Unit Amenities.** IH Homeownership Units must have energy efficient appliances.

B. Inapplicable Policies. Policies PHB applies to developments receiving direct funding from PHB or the city will not be required for IH Program developments. These include:

1. Minority Women and Emerging Small Business (MWESB) contracting procedures and goals (except for off-site and cash incentive options);
2. Workforce Training and Hiring procedures and goals;
3. Prevailing wage;
4. Green Building; and
5. Accessibility.

However, PHB encourages all development teams to voluntarily comply with the above policies and procedures. PHB staff can provide assistance where development teams choose to comply.

C. Excluded Developments. The IH program does not apply to developments with fewer than 20 dwelling units.

VI. Final Permit Approval

Prior to or at permit issuance, PHB 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. However, for the prescriptive, build off-site and designate off-site options, Construction Coordinator participation will be limited.

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

The owner must notify the PHB AM Department if the property manager information submitted at the time of application changes.

VII. Compliance and Reporting Requirements

A. Leasing Rental Developments

The following requirements apply to the leasing of IH Units:

1. **“Static Data, Unit Composition and Rent Schedule”.** This form is required both prior to lease up and ongoing annually that includes: total units, bedroom size, unit location within the development, and square footage. See an example in Appendix B.
2. **Tenant incomes and rent determination.** Key to IH Program compliance is the correct implementation of income restrictions relative to unit size and household composition. Measurement of household income is determined using the HUD’s annually published area [median family income and rent chart](#) (MFI and Rent Chart) for the Portland Metropolitan Area.
3. **Utility Allowances.** IH Units are subject to a Utility Allowance (UA). Owners and their property managers have two methods for calculating UAs that can be found [here](#). To the extent, IH Unit tenants pay their own utilities directly or are billed back for reimbursement of utilities by the property manager, owners or their property managers are required to deduct that amount from the maximum allowable rent charged to the tenant. Example: a one-person household earning 80% AFI occupies a studio IH Unit. The maximum monthly rent for that unit is \$1,027, and the UA is \$84. The maximum an owner/property manager could collect from this household is $\$1,027 - \$84 = \$943$. No UA is required for utilities paid by the owner and not reimbursed by the tenant. Utility allowances are passed along to the tenant in the form of reduced rent for those utilities which are paid for by the tenant.
4. **Tenant screening.** Details on how to apply the MFI and Rent chart can be found in PHB’s [Asset Management Guidelines](#). In summary, when owners or property managers are assessing a tenant for occupancy of an IH Unit, they should:
 - a. Determine the income restriction contained in the Regulatory Agreement for the particular unit.
 - b. Determine the size of the household (how many people) that will be living in the unit (see “Occupancy Standard” below).
 - c. In the then current MFI and Rent Chart, look up the maximum income the household can have to qualify.
 - d. Through the application process, determine the household’s income. Gross income from all sources must be considered for any adults living in an IH Unit.
 - e. If the household’s income is equal to or less than the income restriction for the IH Unit, then the unit may be rented to that household (assuming all other qualifications have been satisfied).
 - f. Households making more than the income restriction for a given IH Unit may not be offered that unit – though they may be offered a non-IH Unit in the same development. Leasing an IH Unit to an ineligible

household may constitute a default under the Regulatory Agreement and/or these Administrative Rules.

5. **Occupancy standard.** As affordable units generally and IH Units specifically are a limited resource, PHB applies an occupancy standard to ensure that neither too many, nor too few people reside in IH Units. The occupancy standard is: the number of bedrooms multiplied by two, plus one. For example, for a two-bedroom unit, the maximum number of people that may reside in the unit is five ($2 \times 2 + 1 = 5$). To qualify for an IH Unit, there must be at least one person for each bedroom.
6. **Incomes rising in place.** PHB's Incomes Rising-in-Place policy is meant to allow households that have initially qualified for an IH Unit to remain in that unit and not be subject to market rate rents until their incomes reach or exceed the income limits contained in the policy. After qualifying at lease-up, a tenant's income may increase above the affordability restrictions of a development and still have the unit fulfill the development's IH requirements, based on the following schedule:
 - a. Tenants in units restricted at 30% of AMI levels, may have income increase up to 80% of AMI;
 - b. Tenants in units restricted at 50 or 60% of AMI levels, may have income increase up to 100% of AMI; and
 - c. Tenants in units restricted at 80% of AMI levels, may have income increase up to 120% of AMI.

The owner or property manager may revise the expiring leases with tenants who, upon recertification, no longer meet the income requirements and the Income Rising-in-Place policy, to allow tenants to continue living in a unit at market rent. The rent level must be comparable to reasonably equivalent units within the development, or a comparable development. Tenants must not be required to submit additional deposits or fees. Another unit must be designated as an IH Unit in order to maintain the affordability requirements as described in the Vacancy section below.

7. **Vacancies.** Development owners and property managers will regularly face questions about what to do when a tenant's income rises above the regulated amount for the unit they are living in as well as how to fill vacant units. PHB expects that at any given time the number and distribution of IH Units will match those specified in the Regulatory Agreement. To help ensure the orderly and predictable leasing of such units, owners and property managers will be required to treat IH Units as "floating", meaning that an IH Unit can be located anywhere in a development and is not "fixed" by unit number. The concept of a "floating" unit comes into play especially when a tenant's income rises above the income allowable for the IH Unit. The following rules apply

when, through the annual Tenant Income Certification (TIC) reporting cycle, a tenant's income is above that allowable for the IH Unit:

- a. Owner or their property manager checks the reported income against that allowed by the incomes rising in place policy.
- b. When a tenant income is at or below the incomes rising in place policy, there is no action required by the owner or their property manager, though the owner or their property manager at their discretion may raise tenant rent up to the maximum allowed for the tenant's household according to the current MFI and Rent Chart and IH Unit taking into account the deduction for any utility allowance and any applicable laws, rules, or policies regarding rent increases.
- c. When a tenant's income is above the incomes rising in place policy, the owner or their property manager is obligated to make the next available Reasonably Equivalent unit available to a new income-qualified tenant. (See tenant screening). In this situation, the owner or their property manager may raise rent on the existing tenant's unit at the owner or their property manager's discretion, again taking into account any applicable laws, rules, or policies regarding rent increases.
- d. In the case that a tenant no longer income qualifies for a IH unit, the owner or their property manager must give at least 240 days' written notice to PHB and at least 180 days' written notice to the tenant prior to an increase in the unit's rent. This information must be included in the lease or lease addendum for each IH Unit and an executed copy provided to PHB as the development is leased up and at unit turnover.

- 8. Marketing.** Development owners or their property managers are encouraged to use the same systems for attracting potential tenants and leasing up IH Units as are used for Mart Rate Units. However, PHB sponsors the [NoAppFee](#) software system. NoAppFee allows people searching for rental housing to submit a single application for all designated affordable units in the City of Portland. PHB requires that owners and property managers utilize the NoAppFee system for leasing up IH Units. Other than the N/NE Preference Policy (below), the IH program has no rules or guidelines about the method owners or their property managers should use to determine the order in which tenants are offered IH Units. Owners or their property managers may use "first come, first served," a development-specific waiting list, a portfolio-wide waiting list or any other legally permissible system. All IH Units located within the boundaries of the [N/NE Neighborhood Housing Strategy study area](#) must also comply with the [N/NE Preference Policy](#).

9. **Additional policies.** PHB has developed a rider that contains additional policies that must be included in all IH Unit leases. Additional policies contained in the rider include that owners or their property managers are required to agree to abide by the Fair Housing Act and its amendments otherwise known as Title VIII of the Civil Rights Act of 1968.

B. For-sale units

For developments that will sell IH Units as condominiums for homeownership opportunities, the following restrictions apply:

1. **Eligibility.** Homebuyers of IH Homeownership Units must meet the following requirements to participate:
 - a. Income qualify at time of application based on Median Family Income (“MFI”) at or below:
 - i. 80% MFI for a 60% MFI development option IH Homeownership Unit
 - ii. 100% MFI for an 80% MFI development option IH Homeownership Unit
 - b. Not hold liquid assets after closing that total more than \$20,000
 - i. Applicant may request for a waiver of the asset rule to the PHB Director. Approval is granted at the discretion of PHB Director.
 - c. Must maintain the IH Homeownership Unit as the applicant’s primary residence
 - i. Hardship exceptions to the primary residence rule may be granted by PHB for, but not limited to, the following situations: active military duty, temporary relocation to care for an ill or dying family member, or temporary relocation caused by an employer. Hardship waivers will be effective in one-year increments and may be applied for up to three times. Approval is granted at the discretion of the PHB Director.
 - d. PHB will maintain a list of potential buyers that meet the eligibility requirements for IH Homeownership Units. PHB list does not preclude sellers from identifying potential buyers through other avenues.
 - e. All-cash purchases of IH Homeownership Units are not allowed.
 - f. Cosigners must sign an affidavit stating that they will not occupy the IH Homeownership Unit.
2. **Income verification.** MFI is determined using HUD’s annually published Median Family Income and Rent chart for the Portland Metropolitan Area. Documentation to verify income includes but is not limited to: last two years of W-2s, most recent thirty (30) days-worth of paystubs, and any social security, child support, alimony, and unemployment currently being received. Self-employed homebuyers must submit the last two years of federal tax returns with all schedules and a current year-to-date profit and loss statement in addition to applicable income. Income documentation should be submitted for all homebuyers who will be on title to the property. PHB

- may require additional documentation to fully verify current income of the homebuyers including letters of explanation or affidavits.
- a. **Document submission.** Homebuyers must submit a verification form and income documentation at least 30 days prior to closing on the home purchase and must not close without PHB's review, response and approval. The verification form must be signed by all homebuyers. PHB will review and respond to complete applications within fourteen (14) days.
 - b. **Verification of closing.** The IH Second Mortgage Documents prepared by PHB must be requested at least fourteen (14) days prior to closing and must be signed by PHB prior to closing. Homebuyer must coordinate the signing of the IH Second Mortgage Documents with PHB before closing. Homebuyer must send PHB documentation of the final sale price and title holders thirty (30) days after closing by submitting a copy of the Warranty Deed and the Settlement Statement.
3. **Second Mortgage Documents.** The Second Mortgage Documents are intended to ensure that the IH Homeownership Unit complies with the IH Program and provides an adequate remedy for PHB in the event of default. The Second Mortgage Documents may include a Promissory Note, Deed of Trust, Resale Restriction Agreement or any other document necessary to ensure continued compliance with the IH Program and remedy any default thereof. To effectuate this purpose, the Second Mortgage Documents intend to encumber the amount that is the difference between the appraised value and the restricted purchase price under the IH Program. The Second Mortgage is forgiven upon resale provided that the IH Homeownership Unit is sold in accordance with the IH Program requirements.
 4. **Pricing.** PHB will publish an annual schedule of sale prices based on the MFI development levels and income levels for IH Homeownership Units by June of each year. The sale pricing calculation includes mortgage payments at 40% of monthly income in accordance with the income level and bedroom size of units, 5% down, conventional 60-day pricing on interest rates and mortgage insurance, taxes reflecting the average tax exemption value during the exemption period, estimated homeowner's insurance and homeowner's association fees. PHB will determine the resale price for IH Homeownership Units using the annual pricing calculation in place at the time of sale. PHB approved credits from Special Assessments and Capital Improvements, Section B.13, will be added to the resale price to find the maximum resale price for an IH Homeownership Unit.
 5. **Appraisal.** Prior to the sale of an IH Homeownership Unit, the IH Homeownership Unit must receive an independent appraisal, paid by either the seller or the buyer, that PHB will review and use to establish the Second Mortgage Documents. The Appraisal must reflect the market value. Appraisers must be certified and licensed in the State of Oregon.

6. **Inspection.** Prior to the sale of an IH Homeownership Unit, the seller or buyer must have an inspection performed by a certified home inspector and provide documentation to PHB that the inspection has been completed.
7. **Property taxes.** It is the intention that the property taxes for IH Homeownership Units will be assessed at their restricted value for the duration of the ninety-nine (99) year affordability period.
8. **Intent to sell.** Owners of IH Homeownership Units must notify PHB of their intent to sell in writing at least 30 days prior to placing the IH Homeownership Unit on the market for sale or before entering in to a contract with another party. Refer to Section B.23, Communication, for contact and mailing address. Homeowner's that do not inform PHB of their intent to sell as described by this rule may be subject to the penalties listed under Section B.20.b, Penalties: Homeowner.
9. **Right of first refusal.** The Second Mortgage Documents also provide PHB with a right of first refusal to purchase an IH Homeownership Unit intended for sale during the affordability period, including at initial sale. This includes the right of PHB to assign the right of first refusal to another entity engaged in the preservation of affordable housing. PHB must respond within fifteen (15) days from receipt of receiving notice of intent to sell from the Homeowner to issue a letter of intent to purchase at the listed price. If PHB fails to respond within the fifteen (15) days, the IH Homeownership Unit will be released from the right of first refusal. PHB is not obligated to purchase any IH Homeownership Units.
10. **Definition of Sale.** For the purposes of the IH Program, the following events are considered a sale of the IH Homeownership Unit: selling the IH Homeownership Unit to a buyer under Inclusionary Housing Section B. For-sale units, transferring the IH Homeownership Unit in to a trust, short sale, foreclosure, and adding or removing a name from the title.
11. **Listing and sale timeline.** The intent of the listing and sale timeline is to maintain IH Homeownership Units as affordable for the duration of the affordability period. The timeline applies at initial sale and at each subsequent resale. Sale of IH Homeownership Units must use the following timeline in order:
 - a. List and market the IH Homeownership Unit within the Inclusionary Housing For-sale units program guidelines for at least 6 months.
 - b. After the 6-month period described in Subsection 11.a, Homeowner may submit a request to PHB to list and market the IH Homeownership Unit to buyers that income qualify below 100% MFI for a 60% MFI IH Homeownership Unit or 120% MFI for an 80% MFI IH Homeownership Unit. PHB has fourteen (14) days from the receipt of the owner's request to approve or deny it based on demonstrated attempts to sell.
 - c. After the 6-month period described in Subsection 11.b, Homeowner may submit a request to PHB to release the owner and the IH Homeownership Unit from the Second Mortgage Documents and sell the IH

Homeownership Unit on the open market. PHB has fifteen (15) days from the receipt of the Homeowner's request to send a letter of intent to the Homeowner to purchase.

12. **Major improvements.** Improvements required by the homeowner's association, "special assessments", and capital improvements are major improvements. Homeowners of IH Homeownership Units may apply for credit for their major improvement to PHB. Credit for major improvements approved by PHB will be added to the sales price at the time of resale.
 - a. **Special assessments.** Special assessments will be credited at the full dollar amount paid. To receive credit for the special assessment the homeowner must submit within six (6) months of payment for the special assessment:
 - i. The invoice for the special assessment and
 - ii. proof of payment, such as a cancelled check, bank account statement, or credit card statement
 - b. **Capital improvements.** Capital improvements approved by PHB will be credited commensurate with the improvement and at a dollar amount not to exceed fifteen percent (15%) of the resale price. To receive credit for capital improvements, the Homeowner must submit proof of purchase and installation. Eligible capital improvements are:
 - i. Upgrades to electrical and plumbing systems, outside of the system improvements by the homeowner's association
 - ii. Installation of energy efficient furnace or cooling system
 - iii. Updating bathroom and kitchen cabinetry, flooring, counter-tops and fixtures
 - iv. Room additions
 - v. Upgrading to double pane windows
 - vi. Upgrading to new Energy Star Built-In appliances purchased within five (5) years of placing the IH Homeownership Units for sale
13. **Death of sole Homeowner.** In the event of the death of the sole title holder, the IH Homeownership Unit can be transferred. The IH Homeownership Unit and new title holder are bound by the Second Mortgage Documents and the IH Program for the remainder of the affordability period, however, the new title holder is exempt from Sections VII.B.1.a and VII.B.1.b, Eligibility.
14. **Foreclosure.** If a Homeowner of an IH Homeownership Unit is at risk of a bank foreclosure, the Homeowner must notify PHB within 30 days of the default. PHB has the right, but not the obligation, to cure the loan default.
15. **Default.** Homeowners of IH Homeownership Units that default are subject to penalties listed in Section B.20, Penalties. The following circumstances indicate a default of the IH Program:
 - a. Sale of the IH Homeownership Unit to an ineligible buyer

- b. Sale of the IH Homeownership Unit above the maximum resale price
- c. Reverse mortgage
- d. Liens without the prior approval of PHB
- e. Failure of the Homeowner to occupy the IH Homeownership Unit as their primary residence
- f. Cosigner occupying the IH Homeownership Unit as their primary residence
- g. Homeowners may submit an appeal of a default to PHB. Approval is at the discretion of the PHB Director.

16. Exception for Non-Profit Housing Providers. A certified 501(c)(3) housing provider may use its own program and documents to fulfill the IH program requirements so long as the following conditions are met, according to a recorded IH Covenant:

- a. The IH Homeownership Units must be sold to households earning 80% MFI or less;
- b. The IH Homeownership Units must have an affordability term of at least ninety-nine (99) years; and
- c. The IH Homeownership Unit must be used for homeownership for the duration of the affordability term

17. Penalties.

- a. **Developers.** Developers that violate the terms of the IH Program or the IH Covenant are subject to repayment of any and all exemptions they received including; system development charges, property taxes and construction excise tax in addition to the penalties listed in Section F, Remedies.
- b. **Homeowners.** Homeowners that violate the terms of the IH Program or the Second Mortgage Documents are subject to:
 - i. Payment of the amount stated in the Second Mortgage Documents from the time of purchase of the IH Homeownership Unit
 - ii. Payment of the IH Homeowner's portion of the exempted property taxes

18. Conversions. Any development subject to or built under the IH Program and that provides IH Units On-Site or Off-Site where the building with the IH Units converts from a rental to a homeownership property or from a homeownership to a rental property during the ninety-nine (99) year affordability period must adhere to the IH Program requirements of the residential use type being converted to. IH developments that convert to fully market rate rentals or homeownership units are subject to repayment of any and all exemptions granted including; system development charges, property taxes, construction excise tax in addition to the penalties listed in Section F, Remedies.

19. **Communication.** All notifications, applications, requests and communications should be sent to: Portland Housing Bureau c/o Inclusionary Housing Team 421 SW 6th Ave Suite 500, Portland, Oregon 97204.

C. Annual Reporting and Review

Developments with rental units will be subject to PHB annual reporting requirements as set forth in the Regulatory Agreement. Owners or their property managers on an annual basis will submit information to PHB on IH Units and the tenants living in such units through an online platform called the [Web Compliance Monitoring System \(WCMS\)](#). PHB staff will test this information against the contents of the Regulatory Agreement and issue written results to each development. In cases of non-compliance, PHB staff may collaborate with owners or their property managers on remedies, however, PHB also has the authority to enforce the provisions of the Regulatory Agreement without the owner's consent.

Other than default provisions, remedies and exit provisions, IH compliance and reporting requirements will be the same as those for PHB's non-IH Program developments for tenant compliance and physical evaluation sections only. These requirements are contained in the [Asset Management Guidelines](#). Important aspects of PHB's compliance and reporting process include:

1. **WCMS.** On an annual basis, owners and/or property managers are required to submit information about all tenants living in IH units to PHB through WCMS. It's advisable to keep the information current and update the system for all move-out's and move-in's.
2. **Tenant income certification.** Information on tenants is gathered through the [Tenant Income Compliance \(TIC\) form](#) which must be submitted to PHB through WCMS.
3. **Inspections.** PHB reserves the right to physically inspect developments containing IH units at least once every three years. Inspections will also include audit of IH related files such as the TICs and information submitted through WCMS. Developments that are determined to be out of compliance may be inspected more frequently or until they are brought back into compliance.

D. Transfers

The Regulatory Agreement runs with the land for the length of the Compliance Period. It must be recorded in first position. PHB will not subordinate its Regulatory Agreement. In cases of foreclosure, PHB 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 IH Program must transfer with the property. PHB 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.

E. 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:
 - a. Tenant Income Certifications (TIC);
 - b. Unit rent;
 - c. Utility allowances;
 - d. Demographics;
 - e. Updating static data sheet when units float due to incomes rising in place; and
 - f. Corrections following a site inspection.

Major defaults occur in cases of deliberate non-compliance such as:

1. No tenant income screening performed;
2. Residents are deliberately not income qualified;
3. Not abiding by incomes rising in place policy and insufficient notices to either PHB or the tenant as required by the policy;
4. Not abiding by the N/NE preference policy;
5. Developments have uncorrected health or safety issues;
6. Violating Fair Housing Rules;
7. Designating IH Units which are not reasonably equivalent; and
8. Rent and utility allowance determination incorrect.

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.

F. Remedies

The dependable supply of IH Units is a critical aspect of the IH Program. As such, the City views the potential Conversion of IH Units to Market Rate Units (excepting normal unit turnover outlined in “Vacancies” above) as a serious threat to the attainment of affordable housing goals and outcomes. In general, the Remedies for program non-compliance are meant to discourage such Conversions. The following provides guidance in situations where Conversions are occurring or have occurred. Prior to taking any action which would have the effect of converting an IH Unit to a Market Rate Unit, owners or their property managers are encouraged to contact PHB staff. PHB staff are authorized to discuss the full range of options including, but not limited to: amending/changing the Regulatory Agreement requirements, addition or increase of PHB subsidy financing, and other financial restructuring options.

Prior to allowing a Conversion, PHB may choose to negotiate with owners on ways to keep IH Units affordable and retain them in the IH Program. PHB is under no obligation to allow Conversions and such requests will be assessed against, among other things, the negative effects on the supply of affordable housing units

Should unauthorized Conversions occur, financial penalties will be due and payable to PHB as follows:

1. **Fee-in-lieu due.** A fee-in-lieu equal to multiplying the gross square feet of the development by the current Fee-in-Lieu Factor (See Appendix A); and
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.

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

1. Foreclosure; and
2. Court injunction or receivership.

Appendix A – Fee-in-Lieu Factor Schedule

Fee-In-Lieu. When the applicant elects the fee-in-lieu option, the fee-in-lieu per gross residential and residential related square foot (GSF) of the proposed development is:

1. For developments in zones outside the Central City Plan District

Fee per GSF on or before December 31, 2018
\$19

Fee per GSF after December 31, 2018
\$23

2. For developments in zones within the Central City Plan District

Fee per GSF
\$27

3. For Bonus FAR in non-residential developments

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

Appendix B – Static Data Sheet Example

STATIC DATA, UNIT COMPOSITION AND RENT SCHEDULE

DEVELOPMENT: **ABC APARTMENTS**

ADDRESS: **12345 S MAIN STREET; PORTLAND, OREGON 97204**

DATE: _____

SUBMITTED BY: **JOHN DOE;
XYZ
MANAGEMENT**

The subject property has a total of _____ rental units.
 According to the executed Regulatory Agreement _____ units must be kept affordable for a period of 99 years.

In the schedule below please fill out for all Inclusionary Housing units in the development.

UNIT NUMBER	BDRM COUNT	Sqare Footage	INCOME AND RENT MFI % LEVEL as outlined in Regulatory Agreement	HUD FAIR MARKET RENT (FMR) (\$)	PROPOSED TENANT RENT (\$) (incl UA)	UTILITY ALLOWANCE (UA)	MAXIMUM ALLOWABLE RENT TO TENANT = Proposed Rent minus UA
101	2	850	80%	\$1,320	\$1,320	\$149	\$1,171
102	1	600	80%	\$1,100	\$1,000	\$126	\$874