TITLE 30 - AFFORDABLE HOUSING

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TITLE 30 - AFFORDABLE HOUSING

(Title added by Ordinance No. 172844, effective November 4, 1998)

CHAPTER 30.01 - AFFORDABLE HOUSING PRESERVATION AND PORTLAND RENTER PROTECTIONS

(Chapter amended by Ordinance No. 187380, effective November 13, 2015.)

Sections:

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30.01.110 No Restriction of Powers of Eminent Domain; Severability.
30.01.120 Inclusionary Housing.

30.01.010 Policy.

(Amended by Ordinance No. 187380, effective November 13, 2015.) It is the policy of the City of Portland that all Portlanders, regardless of income level, family composition, race, ethnicity or physical ability, have reasonable certainty in their housing, whether publicly assisted or on the private market. Consequently, publicly assisted rental housing affordable to low and moderate income persons and households should be preserved as a long-term resource to the maximum extent practicable, and the tenants of such properties should receive protections to facilitate securing new housing should the affordable units be converted to market rate units or otherwise be lost as a resource for low and moderate income housing. Likewise, Portland renters in unregulated housing on the private market, need additional protections to ensure that there is adequate time to find alternative housing in the case of a no cause eviction and adequate time to budget for an increase in rent.

30.01.020 Intent.

(Amended by Ordinance No. 187380, effective November 13, 2015.) The intent of this Title is to protect the availability of publicly assisted affordable housing for low and moderate income households by: providing for notice to the City and tenants when transitions from current assistance programs and/or affordable housing uses are planned; providing purchase opportunities for the City to attempt to preserve the affordable housing

while respecting ownership interests of building owners; providing tenant relocation assistance when the affordable housing is converted; and, ensuring long term affordability in future projects that the City assists with public financing designed to create or preserve affordable housing; and ensuring that all Portland renters, have additional protections to ensure more certainty in their housing security.

30.01.030 Definitions.

(Amended by Ordinance Nos. 186028, 187380, 188163 and 189323, effective December 19, 2018.)

A. **"Administrative Rules"** means the program administrative rules developed by the Portland Housing Bureau and approved through City Council which set forth program requirements, processes, and procedures, and are filed through the City's publically available Portland Policy Documents (PPD).

B. **"Affordable housing."** The term "affordable housing", "affordable rental housing" or "housing affordable to rental households" means that the rent is structured so that the targeted tenant population pays no more than 30 percent of their gross household income for rent and utilities. The targeted tenant populations referred to in this section include households up to 80 percent of MFI.

C. **"Associated Housing Costs."** include, but are not limited to, fees or utility or service charges, means the compensation or fees paid or charged, usually periodically, for the use of any property, land, buildings, or equipment. For purposes of this Chapter, housing costs include the basic rent charge and any periodic or monthly fees for other services paid to the Landlord by the Tenant, but do not include utility charges that are based on usage and that the Tenant has agreed in the Rental Agreement to pay, unless the obligation to pay those charges is itself a change in the terms of the Rental Agreement.

D. **"City Subsidy."** Locally controlled public funds administered by PDC, PHB, or other City bureau or agency, allocated for the purpose of creating or preserving affordable rental housing to households below 80 percent of MFI. City subsidies may be provided to developers through direct financial assistance such as low interest or deferred loans, grants, equity gap investments, credit enhancements or loan guarantees, or other mechanisms.

E. **"City Subsidy Projects."** Privately owned properties of five or more units which receive a City Subsidy after the effective date of Title 30.01 through programs designed to create or preserve rental housing affordable at or below 80 percent of MFI.

F. **"Commercial Market Compatible Offer."** A Fair Market Value purchase offer made by the City or its designee which is consistent with the terms and conditions which would be made by a buyer on the open market such that a seller negotiating

with the City on such terms would not experience any significant disadvantage as compared to a market rate transaction with a private party.

G. **"Fair Market Value."** The amount of money in cash that real property would bring in the open market if it were offered for sale by one who desired, but was not obligated to sell, and was bought by one willing but not obliged to buy. It is the actual value of the property on the date when a City offer pursuant to Title 30.01.050 is made. As may be further refined by PHB through its Administrative Procedures developed in reference to the Uniform Standards of Professional Appraisal Practice, the Oregon Uniform Trial Instructions, and relevant case law, Fair Market Value is based on the best and highest use of the property, which may be greater than the use being made of the property by the current owner. However, Fair Market Value does not include speculative value, or possible value based on future expenditures and improvements, or potential changes in applicable zoning regulations or laws, which are not reasonably probable. Fair Market Value includes assessment of environmental, structural or mechanical information derived from inspections or other due diligence activities.

H. **"Federal Preservation Projects."** Properties having project-based rental assistance contracts for some or all of the units (such as Section 8 and Project Rental Assistance Contracts) including those developed under a variety of HUD mortgage assistance and interest rate reduction programs. Federal preservation projects include properties with loans, contracts, or insurance under the following federal subsidy programs: section 221(d)(4) with project-based Section 8; Section 202; Section 236(J)(1); Section 221(D)(3) BMIR; Section 221(D)(3) MIR; Section 811; Project based Section 8 contracts administered through HUD, Oregon Housing and Community Services, or the Housing Authority of Portland; Project Rental Assistance Contracts (PRAC); LIHPRHA capital grant program; and Section 241(f) preservation grant. An updated list of all known Federal Preservation Projects will be maintained and available upon request to the public.

I. **"HUD."** The United States Department of Housing and Urban Development

J. **"Involuntary Displacement."** Tenants of Federal Preservation Projects are considered to be involuntarily displaced if:

1. They are served a notice to vacate the property for reasons other than just cause as defined herein; or

2. They are not offered a one year lease under their tenant based voucher by the property owner; or

3. They are offered a one year lease under their tenant based voucher, but are required to pay as rent and utilities an amount greater than the tenant contribution to rent (and utilities) in effect under the project-based Section

8 contract, and they then choose to move from the property rather than enter into a lease under the voucher. This form of displacement is referred to as "economic displacement."

K. **"Just Cause Eviction."** Evictions for serious or repeated violations of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause.

L. **"Local Preservation Projects."** Properties with 10 or more rental units which received financial assistance (from the programs listed below), to create or preserve housing serving households below 80 percent of MFI since January 1, 1988 and through the effective date of Title 30.01, which have affordability restrictions that are still in force as of the effective date of Title 30.01. Financial assistance programs include subsidies from the City of Portland through the Portland Development Commission (Rental Housing Development Loan Program, Investor Rehabilitation Loan Program, Rental Rehabilitation Loan Program, or Downtown Housing Preservation Program), and/or from the State of Oregon Housing and Community Services Department (Housing Development Grant Program, Oregon Affordable Housing Tax Credit Program, and the former Oregon Lenders Tax Credit Program, Risk Sharing Bond program, Elderly and Disabled Bond Program), and/or which have received bond financing issued by the Housing Authority of Portland or the Portland Development Commission. An updated list of all known Local Preservation Projects will be maintained and available upon request to the public.

M. **"Low Income."** Low income individuals, households or tenants are those with a gross household income below 50 percent of MFI.

N. **"Mass shelter."** A structure that contains one or more open sleeping areas or is divided only by non-permanent partitions and is furnished with cots, floor mats, or bunks. Individual sleeping rooms are not provided. The shelter may or may not have food preparation or shower facilities. The shelter is managed by a public or non-profit agency to provide shelter, with or without a fee, on a daily basis.

O. **"MFI."** Median family income for the Portland Metropolitan Statistical Area as defined by HUD as adjusted for inflation and published periodically.

P. **"Moderate Income."** Moderate income individuals, households or tenants are those with a gross household income below 80 percent of MFI.

Q. **"Opt Out."** An owner's non-renewal of an available project-based Section 8 contract in a Federal Preservation Project. Owners may consider "opting out" when they contemplate conversion to open market rental housing, other housing or commercial uses, or a sale of the property.

R. **"PHB."** The Portland Housing Bureau.

S. **"PDC."** The Portland Development Commission

T. **"Preservation Process."** The requirements contained in 30.01.050 - 30.01.070 for Federal Preservation Projects and in 30.01.080 for Local Preservation Projects respectively.

U. **"Qualifying Household."** A household legally residing in a Federal Preservation Project with a gross household income at or below 50 percent of MFI.

V. **"Receiving Site"** means a new or existing housing development with transferred Inclusionary Housing requirements from a Sending Site.

W. **"Regulatory Agreement"** means a recorded agreement between the owner and PHB stating the approval and compliance criteria of a PHB program.

X. **"Residential Landlord and Tenant Act"** or **"Act."** ORS Chapter 90.

Y. **"Sending Site"** means a new development project which is subject to Inclusionary Housing requirements and is opting to provide affordable units off-site.

Z. **"Short-term housing."** One or more structures that each contains one or more individual sleeping rooms and for which tenancy of all rooms may be arranged for periods of less than one month. A short-term housing facility may or may not have food preparation facilities, and shower or bath facilities may or may not be shared. The facility is managed by a public or non-profit agency that may or may not charge a fee. Examples include transitional housing and emergency shelters in which individual rooms are provided. Tenancy may be less than 30 days or more than 30 days.

30.01.040 Title 30.01 Responsibilities.

(Amended by Ordinance Nos. 186028 and 187380, effective November 13, 2015.) PHB will have primary responsibility for implementation of Title 30.01. This responsibility will include the development and administration of operating procedures, and taking any and all City actions referenced herein as may be necessary for implementation of the requirements of this Title. PDC will work with PHB to implement property acquisition responsibilities described in this Title. PDC is also expected to develop strategies to implement the 60-year affordability requirements in 30.01.090.

30.01.050 Federal Preservation Projects - City Notice and Preservation Opportunities.

(Replaced by Ordinance No. 174180; amended by Ordinance Nos. 186028 and 187380, effective November 13, 2015.)

A. Owners of Federal Preservation Projects must provide the City and each building tenant with a one year's notice of a pending HUD Section 8 contract expiration. In

order to facilitate the owner's knowledge of the City's interest in notification, PHB shall provide written confirmation of the City's interest in the property to each Section 8 property within the City of which PHB is aware.

B. Owners of Federal Preservation Projects who have decided to Opt Out must provide to the City a notice of 210 days of intent to do so if the owner is opting out of a long-term contract, and 150 days if the owner is opting out of a one-year extension to a long-term contract. The notice shall specify:

1. whether the owner intends to withdraw the property from the Section 8 program;

2. whether the owner intends to convert the participating property to a nonparticipating use; and

3. whether the owner is involved in negotiations with HUD or the Housing and Community Services Department regarding an extension of an expiring contract.

C. Owners of Federal Preservation Projects who have decided to Opt Out must consent to reasonable inspection of the property and inspection of the owner reports on file with HUD or the State of Oregon Housing and Community Services Department. These inspections are designed to facilitate the City's ability to assess the Fair Market Value of the property and evaluate status of the tenants, viability of transfer and/or continuation of a Section 8 agreement with HUD and other pertinent information.

D. To the extent allowed by HUD, owners of Federal Preservation Projects must maintain an available HUD Section 8 contract in good standing during the notice periods identified in this chapter as well as any condemnation proceeding commenced under ORS Chapter 35.

E. Owners of Federal Preservation Projects must refrain from taking any action, other than notifying HUD of the owner's intention to not renew the contract, that would preclude the City or its designee from succeeding to the contract or negotiating with the owner for purchase of the property during the notice periods identified in this Chapter as well as any condemnation proceeding commenced under ORS Chapter 35.

F. In addition to any other times, during the notice periods identified in this Chapter, the City may pursue preservation of the Federal Preservation Project through negotiation for purchase or through condemnation under ORS Chapter 35.

30.01.060 Federal Preservation Projects - Tenant Provisions.
(Replaced by Ordinance No. 174180; amended by Ordinance Nos. 186028 and 187380, effective November 13, 2015.)

A. Owners of Federal Preservation Projects who have decided to Opt Out must provide to each affected building tenant a notice of 210 days of intent to do so if the owner is opting out of a long-term contract, and 150 days if the owner is opting out of a one-year extension to a long-term contract. The notice shall specify:

1. whether the owner intends to withdraw the property from the Section 8 program;

2. whether the owner intends to convert the participating property to a nonparticipating use; and

3. whether the owner is involved in negotiations with HUD or the State of Oregon Housing and Community Services Department regarding an extension of an expiring contract

B. Owners of Federal Preservation Projects who have decided to Opt Out may not disturb any tenancy other than for cause defined in the contract, for a period of 180 days after expiration of the contract, if the City has paid or arranged to pay to the owner on the first day of each month, the monthly subsidy that the owner was receiving under the contract.

C. PHB shall identify and make available adequate financial resources for tenant relocation assistance for all tenants who experience involuntary displacement from Federal Preservation Properties. PHB shall request voluntary contributions to a tenant relocation fund from owners of Federal Preservation Projects who have decided to Opt Out.

30.01.070 Federal Preservation Projects - Civil Fines.
(Replaced by Ordinance No.174180; amended by Ordinance No. 186028, effective May 15, 2013.)

A. An owner who fails to comply with any of the requirements specified in PCC 30.01.050 A.-E., tenant notice requirements in 30.01.060 A., or PHB procedures implementing those specified provisions of this Chapter, shall pay a civil fine. The fine shall be calculated in relation to the costs and damages caused by the owner's failure to comply, up to full replacement costs of each project-based Section 8 housing unit lost. Such civil fines shall be payable into a housing replacement fund to be established and managed by the City. If the civil fine is not received within the timeframes specified in the Administrative Procedures developed by PHB, the City may commence enforcement proceedings.

B. Any civil fines received shall be used only for creating replacement housing serving households at or below 50 percent MFI.

30.01.080 Local Preservation Projects - Tenant and City Notice Provisions.
(Amended by Ordinance No. 186028, effective May 15, 2013.)

A. When the owner of a Local Preservation Project takes action which will make the affordable housing no longer affordable, whether the affordability requirements which were established under prior agreement with the City, PDC or State have expired or are still in effect, the owner must provide a notice of 90 days to the City. The notice shall meet standards developed by PHB. During the 90-day notification period, the owner may not sell or contract to sell the property, but may engage in discussions with other interested parties. Within this period, the City or its designee may make an offer to purchase or attempt to coordinate a purchase by an owner committed to maintaining affordability.

B. Owners of Local Preservation Projects who have decided to take action described in 30.01.080 A., must provide a notice of 90 days to tenants. This shall be in addition to the City notice to be provided to the City under 30.01.080 A. During this notice period the Owner may not initiate a no-cause eviction. The notice must meet standards developed by PHB.

30.01.085 Portland Renter Additional Protections.
(Added by Ordinance No. 187380; amended by Ordinance Nos. 188219, 188519, 188558, 188628, 188849 and 189421, effective March 13, 2019.)

A. In addition to the protections set forth in the Residential Landlord and Tenant Act, the following additional protections apply to Tenants that have a Rental Agreement for a Dwelling Unit covered by the Act. For purposes of this chapter, unless otherwise defined herein, capitalized terms have the meaning set forth in the Act.

B. A Landlord may terminate a Rental Agreement without a cause or for a qualifying landlord reason specified in the Act only by delivering a written notice of termination (the "Termination Notice") to the Tenant of (a) not less than 90 days before the termination date designated in that notice as calculated under the Act; or (b) the time period designated in the Rental Agreement, whichever is longer. Not less than 45 days prior to the termination date provided in the Termination Notice, a Landlord shall pay to the Tenant, as relocation assistance, a payment ("Relocation Assistance") in the amount that follows: $2,900 for a studio or single room occupancy ("SRO") Dwelling Unit, $3,300 for a one-bedroom Dwelling Unit, $4,200 for a two-bedroom Dwelling Unit and $4,500 for a three-bedroom or larger Dwelling Unit. For purposes of this Subsection, a Landlord that declines to renew or replace an expiring Rental Agreement is subject to the provisions of this Subsection. The requirements of this Subsection are intended to apply per Dwelling Unit, not per individual Tenant.

C. As allowed by the Act, a Landlord may not increase a Tenant's Rent or Associated Housing Costs by 5 percent or more over a rolling 12-month period unless the Landlord gives notice in writing (the "Increase Notice") to each affected Tenant: (a) at least 90 days prior to the effective date of the Rent increase; or (b) the time period designated in the Rental Agreement, whichever is longer. The Increase Notice must specify the amount of the increase, the amount of the new Rent or Associated Housing Costs and the date, as calculated under the Act, when the increase becomes effective. If, within 45 calendar days after a Tenant receives an Increase Notice indicating a Rent increase of 10 percent or more within a rolling 12-month period and a Tenant provides written notice to the Landlord of the Tenant's request for Relocation Assistance (the "Tenant's Notice"), then, within 31 calendar days of receiving the Tenant's Notice, the Landlord shall pay to the Tenant Relocation Assistance in the amount that follows: $2,900 for a studio or SRO Dwelling Unit, $3,300 for a one-bedroom Dwelling Unit, $4,200 for a two-bedroom Dwelling Unit and $4,500 for a three-bedroom or larger Dwelling Unit. After the Tenant receives the Relocation Assistance from the Landlord, the Tenant shall have 6 months from the effective date of the Rent increase (the "Relocation Period") to either: (i) pay back the Relocation Assistance and remain in the Dwelling Unit and, subject to the Act, shall be obligated to pay the increased Rent in accordance with the Increase Notice for the duration of the Tenant's occupancy of the Dwelling Unit; or (ii) provide the Landlord with a notice to terminate the Rental Agreement in accordance with the Act (the "Tenant's Termination Notice"). In the event that the Tenant has not repaid the Relocation Assistance to the Landlord or provided the Landlord with the Tenant's Termination Notice on or before the expiration of the Relocation Period, the Tenant shall be in violation of this Subsection. For purposes of this Subsection, a Landlord that conditions the renewal or replacement of an expiring Rental Agreement on the Tenant's agreement to pay a Rent increase of 10 percent or more within a rolling 12-month period is subject to the provisions of this Subsection. For purposes of this Subsection, a Landlord that declines to renew or replace an expiring Rental Agreement on substantially the same terms except for the amount of Rent or Associated Housing Costs terminates the Rental Agreement and is subject to the provisions of this Subsection. The requirements of this Subsection are intended to apply per Dwelling Unit, not per individual Tenant. For purposes of this Subsection, a Tenant may only receive and retain Relocation Assistance once per tenancy per Dwelling Unit.

D. A Landlord shall include a description of a Tenant's rights and obligations and the eligible amount of Relocation Assistance under this Section 30.01.085 with each and any Termination Notice, Increase Notice, and Relocation Assistance payment.

E. A Landlord shall provide notice to the Portland Housing Bureau (PHB) of all payments to Tenants of Relocation Assistance within 30 days of making such payments. This Subsection shall be effective beginning May 1, 2018.

F. For the purposes of this Section 30.01.085, the expiration of Rent concessions specified in the Rental Agreement is not considered a substantial change to a Rental Agreement.

G. For the purposes of this Section 30.01.085 and determining the amount of Relocation Assistance a Landlord shall pay, a Rental Agreement for a single bedroom in a Dwelling Unit as defined by PCC 33.910 is considered a SRO Dwelling Unit.

H. For the purposes of this Section 30.01.085 and determining the amount of Relocation Assistance a Landlord shall pay, if a Landlord is paying relocation assistance required by the Act and Relocation Assistance required by Section 30.01.085 to the Tenant for the same Termination Notice, the Relocation Assistance required by Section 30.01.085 may be reduced by the relocation assistance required by the Act if both payments are paid at the same time and as a single payment.

I. The provisions of this Section 30.01.085 that pertain to Relocation Assistance do not apply to the following so long as the Landlord has submitted a required exemption application form to PHB for which PHB shall have issued an exemption acknowledgement letter, a copy of which the Landlord shall have provided to the Tenant:

1. Rental Agreements for week-to-week tenancies;

2. Tenants that occupy the same Dwelling Unit as the Landlord;

3. Tenants that occupy one Dwelling Unit in a Duplex where the Landlord's principal residence is the second Dwelling Unit in the same Duplex;

4. Tenants that occupy an Accessory Dwelling Unit that is subject to the Act in the City of Portland so long as the owner of the Accessory Dwelling Unit lives on the site;

5. a Landlord that temporarily rents out the Landlord's principal residence during the Landlord's absence of not more than 3 years;

6. a Landlord that temporarily rents out the Landlord's principal residence during the Landlord's absence due to active duty military service;

7. a Dwelling Unit where the Landlord is terminating the Rental Agreement in order for an Immediate Family member to occupy the Dwelling Unit;

8. a Dwelling Unit regulated or certified as affordable housing by a federal, state or local government is exempt from paying Relocation Assistance for a Rent increase of 10 percent or more within a rolling 12-month period:

a. so long as such increase does not increase a Tenant's portion of the Rent payment by 10 percent or more within a rolling 12-month period; or

b. in Lease Agreements where the Rent or eligibility is periodically calculated based on the Tenant's income or other program eligibility requirements and a Rent increase is necessary due to program eligibility requirements or a change in the Tenant's income.

This exemption by Subsection 30.01.085 I.8. does not apply to private market-rate Dwelling Units with a Tenant who is the recipient of a federal, state, or local government voucher;

This exemption by Subsection 30.01.085 I.8. applies to Rent increases and does not apply to Termination Notices;

9. a Dwelling Unit that is subject to and in compliance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

10. a Dwelling Unit rendered immediately uninhabitable not due to the action or inaction of a Landlord or Tenant;

11. a Dwelling Unit rented for less than 6 months with appropriate verification of the submission of a demolition permit prior to the Tenant renting the Dwelling Unit;

12. a Dwelling Unit where the Landlord has provided a Fixed Term Tenancy and notified the Tenant prior to occupancy, of the Landlord's intent to sell or permanently convert the Dwelling Unit to a use other than as a Dwelling Unit subject to the Act.

A Landlord that authorizes a property manager that is subject to, and manages property in accordance with ORS 696, to manage a Dwelling Unit, does not waive a Dwelling Unit exemption as a result of the collective number of Dwelling Units managed by such a property manager. For purposes of the exemptions provided in this Subsection, "Dwelling Unit" is defined by PCC 33.910, and not by ORS 90.100. For purposes of the exemptions provided in this Subsection, "Accessory Dwelling Unit" is defined by PCC 33.205. For purposes of the exemptions provided in this Subsection, "Duplex" is defined by PCC 33.910. For purposes of the exemptions provided in this Subsection, "Immediate Family" is defined by PHB in administrative rules.

J. A Landlord that fails to comply with any of the requirements set forth in this Section 30.01.085 shall be liable to the Tenant for an amount up to 3 times the monthly

Rent as well as actual damages, Relocation Assistance, reasonable attorney fees and costs (collectively, "Damages"). Any Tenant claiming to be aggrieved by a Landlord's noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and such other remedies as may be appropriate.

K. In carrying out the provisions of this Section 30.01.085, the Director of PHB, or a designee, is authorized to adopt, amend and repeal administrative rules to carry out and administer the provisions of this Section 30.01.085.

30.01.090 City Subsidy Projects - Long-Term Affordability Requirements.
(Amended by Ordinance Nos. 186028, 187380 and 188440, effective July 8, 2017.)

A. City Subsidy Projects that in the future request and receive a City Subsidy from PDC, PHB or other City bureau or agency for the purpose of creating or preserving rental housing affordable to households below 80 percent of MFI, will be subject to a minimum of 60 year affordability contract requirements developed by PHB consistent with the implementing charge in Subsection 30.01.090 B. Notwithstanding the foregoing, City Subsidy Projects that receive a Rental Rehabilitation Conditional Grant will be subject to a minimum of 10 year affordability contract requirement in accordance with the Rental Rehabilitation Conditional Grant Product Guidelines.

B. All City Bureaus and agencies administering affordable rental housing subsidy programs will be responsible for implementing this section. As the primary agency charged by the City to negotiate and confer affordable housing subsidies, PHB will develop implementing strategies consistent with the 60 year affordability principles contained in this section, the Administrative Procedures Implementing Title 30.01 and the approved 1998/99 Consolidated Plan, Principle III (Ordinance No. 172259).

30.01.095 Partial and Full Exemptions of System Development Charges for Affordable Housing Developments.
(Added by Ordinance No. 183448; Amended by Ordinance Nos. 186712, 186744, 187380, 187975 and 189323, effective December 19, 2018.)

A. The purpose of this Section is to reduce the costs of developing permanent affordable housing by exempting system development charges for qualified affordable housing developments. This section advances a Council-recognized public policy goal to provide for a diversity of housing types to meet the needs of the citizens of the City.

B. The City will exempt qualified affordable housing developments from paying all or part of system development charges required by Code. The Applicant must apply for exemptions under this Section prior to the date the City issues the permit on the new development. Where new development consists of only part of one or more

of the uses described in this Section, only that portion of the development that qualifies under this Section is eligible for an exemption. The balance of the new development that does not qualify for any exemption under this Section is subject to system development charges to the full extent authorized by Code or general ordinance. The Applicant has the burden to prove entitlement to exemptions so requested.

C. The City shall calculate exemptions in the manner authorized for calculating system development charges for rented and owner-occupied residential properties. Non-residential properties or the non-residential portion of mixed-use developments are not eligible for exemptions provided by this Section. Exemptions are applicable to the portions of residential properties that are directly used in providing housing for its low-income residents such as on-site manager units and shared space including but not limited to restrooms, community rooms and laundry facilities.

D. To obtain the exemption, the applicant must present to the City, at the time of Application, documentation from PHB that the development qualifies for the exemption pursuant to this Chapter. Applicant must also pay an administration fee per unit on rental and/or owner-occupied units as determined by PHB.

E. The City shall require the recording of real property covenants in the deed records for properties receiving exemptions under this Section in order to ensure compliance, or to provide remedies for failure to restrict units, or both. Deed restrictions may be used by PHB in order to restrict sale prices and rents charged for exempt units, or to provide remedies for failure to restrict units, or both.

F. Applicants shall meet the following affordable housing qualifications to be exempt from paying all or a portion of system development charges based on the type of housing provided:

1. Rental Units.

a. For purposes of this Section, "affordable" for rental housing means that the rent and expenses associated with occupancy such as utilities or fees, does not exceed 30 percent of the gross household income at the level of the rent restrictions.

b. The units receiving an exemption shall be affordable to households earning 60 percent or less of MFI at time of occupancy and shall be leased, rented or made available on a continuous basis to persons or households whose incomes are 60 percent or less of MFI, as adjusted by household size and as determined by HUD for the Portland Metropolitan Area, except as provided for below. Such units shall remain affordable for a period of 60 years.

c. Effective July 1, 2014, developments of new buildings in Old Town/Chinatown shall be eligible for exemption subject to the following conditions:

(1) Units must be located in the Old Town/Chinatown Action Plan Focus Area;

(2) Financial need must be verified through project pro forma underwriting conducted by the PDC;

(3) All units shall remain affordable for a period of not less than 10 years, to persons or households whose incomes are 100 percent or less of MFI, as adjusted by household size and as determined by HUD for the Portland Metropolitan Area, and for not less than 5 years thereafter shall continue to remain affordable to persons or households whose incomes are 120 percent or less of MFI, as so described; and

(4) The exemption granted by this Subsection shall not be available to developments for which a building permit application is filed on or after July 1, 2019, or after permit applications have been filed for development of 500 qualifying units, in the aggregate, whichever occurs first.

2. Owner-Occupied Units.

a. For the purposes of this Section, "Affordable" means that ownership units are sold to persons or households whose incomes are at or below 100 percent of MFI for a family of four as determined annually for the Portland Metropolitan Area by HUD, which income may be adjusted upward for households with more than four persons; and

b. The ownership units sell at or below the price limit as provided by Subsection 3.102.090 D.

G. Pursuant to Section 30.01.040, the PHB is responsible for enforcing property covenants and other agreements with applicants that are conditions of receiving exemptions provided by this Section. PHB may adopt, amend and appeal administrative rules, establish procedures, and prepare forms for implementation, administration and compliance monitoring consistent with the provisions of this Section.

In the event that an applicant violates the covenants, agreements or other requirements that were established by the City as a condition of approval of an

exemption application, or the owner of the property wants to remove the affordability covenants of Subsection 30.01.095 F., the City shall terminate the exemption and make due and payable all previously exempt portions of system development charges based on rates in effect on the date of the submittal of a complete building permit application, plus accrued interest from the date of the issuance of the building permit to the date of the termination of the exemption calculated with the interim interest rate in effect on the date of the termination of the exemption as set by general ordinance pursuant to Section 17.12.140, and a processing fee of $250 due to each City bureau exempting system development charges and to PHB as the administrator. The City may collect reinstated system development charges, processing fees, carrying charges and the actual costs of collections by recording a property lien pursuant to Title 22.

30.01.096 Partial and Full Exemptions of System Development Charges for Mass Shelters and Short-Term Housing.

(Added by Ordinance No. 189323, effective December 19, 2018.)

A. The purpose of this Section is to reduce the costs of developing permanent transitional housing in the form of mass shelters and short-term housing by exempting system development charges for qualified developments. This section advances a Council-recognized public policy goal of providing a continuum of safe and affordable housing opportunities including transitional housing, emergency shelters, and campgrounds/rest areas to meet the needs of Portland residents.

B. The City will exempt qualified mass shelter and short-term housing developments from paying all or part of system development charges required by Code. The applicant must apply for exemptions under this Section prior to the date the City issues the permit on the new development. Where new development consists of only part of one or more of the uses described in this Section, only that portion of the development that qualifies under this Section is eligible for an exemption. The balance of the new development that does not qualify for any exemption under this Section is subject to system development charges to the full extent authorized by Code or general ordinance. The applicant has the burden to prove entitlement to exemptions so requested.

C. The City shall calculate exemptions in the manner authorized for calculating system development charges. Exemptions are applicable to the portions of mass shelter and short-term housing projects that are directly used in providing shelter and services for their residents such as on-site manager facilities and shared space including but not limited to restrooms, kitchens, community rooms, social service facilities, and laundry facilities.

D. To obtain the exemption, the applicant must present to the City, at the time of application, documentation from the Joint Office of Homeless Services, or other

designated agency, that the development qualifies for the exemption pursuant to this Chapter.

E. The applicant must provide permit drawings that clearly note the exemption, if granted, in order to ensure compliance. Alternatively, the drawings must provide remedies for failure to comply that are acceptable to the City. Permit drawings must state the following, "This project received SDC exemptions for mass shelters or short-term housing. The exemptions only apply to the mass shelter or short-term housing development and associated facilities including social services. If a future tenant improvement or change of occupancy creates a use that is not a mass shelter or short-term housing or associated service, system development charges will be assessed for the new use. It is the permittee's responsibility to maintain proper documentation of the continued mass shelter or short-term housing use."

30.01.100 Compliance and Enforcement.
(Amended by Ordinance No. 186028, effective May 15, 2013.)

A. PHB shall develop and implement procedures to enforce the provisions of this code. Such procedures should include, where feasible, record notice of the applicability of this code to affected properties, filing a lien to enforce the provisions of this code, and developing civil penalties or other enforcement provisions necessary or appropriate to enforce this code.

B. The City Attorney's Office may enforce the provisions of this code on behalf of the City in any court of competent jurisdiction or City administrative body.

30.01.110 No Restriction of Powers of Eminent Domain; Severability.

A. This Chapter shall not be construed to restrict the City's existing authority to exercise powers of eminent domain through condemnation as outlined in state law.

B. If any part or provision of this Chapter, or application thereof to any person or circumstance, is held invalid, the remainder of this Chapter and the application of the provision or part thereof, to other persons not similarly situated or to other circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable.

30.01.120 Inclusionary Housing.
(Added by Ordinance No. 188163; amended by Ordinance Nos. 189071, 189213 and 189302, effective December 12, 2018.)

A. **Purpose Statement.** The purposes of the Inclusionary Housing ("IH") Program are:

1. Increase the number of units available to households earning 80 percent or less of MFI, with an emphasis on households earning 60 percent or less of MFI;

2. Responsibly allocate resources to increase housing opportunities for families and individuals facing the greatest disparities;

3. Create affordable housing options in high opportunity neighborhoods, those with superior access to quality schools, services, amenities and transportation; and

4. Promote a wide range of affordable housing options with regard to size, amenities and location.

B. Administration.

1. PHB will certify whether the applicant's proposed development meets the standards and any administrative requirements set forth in this Section.

2. PHB may adopt, amend and repeal Administrative Rules and prepare forms for the implementation, administration and compliance monitoring consistent with the provisions of this Section. The Director of PHB, or a designee, has authority to make changes to the Administrative Rules as is necessary to meet current program requirements. PHB Administrative Rules will set forth clear and objective criteria for determining whether a development meets the minimum standard of affordable units ("IH Units").

3. PHB will review the Inclusionary Housing outcomes periodically in order to determine if the IH Program options and incentives in Subsection 30.01.120 C. are consistent with City goals and market conditions.

C. Financial Incentives. The following financial incentives are provided for the respective options of IH Program compliance:

1. When the proposed development will include 20 percent of the units or total number of bedrooms configured into IH Units at or below 80 percent MFI, or for developments outside of the Central City Plan District, 15 percent of the units or total bedrooms configured into IH units at or below 80 percent MFI for applications filed on or before December 31, 2020:

a. Ten-year property tax exemption in accordance with City Code Chapter 3.103 for the IH Units. If the development is in the Central City Plan district, as designated in City Code Chapter 33.510, and has a built or base FAR of 5:1 or greater the tax exemption applies to all residential units; and

b. Construction Excise Tax exemption for the IH Units in accordance with Subsection 6.08.060 A.2.

2. When the proposed development will include 10 percent of the units or total number of bedrooms configured into IH units at or below 60 percent MFI, or for developments outside the Central City Plan District, 8 percent of the units or total number of bedrooms configured into IH units at or below 60 percent MFI for applications filed on or before December 31, 2020:

a. Ten-year property tax exemption according to City Code Chapter 3.103 for the IH units. If the development is in the Central City Plan District, as designated in City Code Chapter 33.510, and has a built or base FAR of 5:1 or greater, the tax exemption applies to all residential units; and

b. Construction Excise Tax exemption for the IH Units in accordance with Subsection 6.08.060 A.2.; and

c. SDC exemption for the IH Units in accordance with Section 30.01.095.

3. When the proposed development elects to construct IH Units offsite:

a. Construction Excise Tax exemption for the Receiving Site's IH Units in accordance with Subsection 6.08.060 A.2.; and

b. SDC exemption for the Receiving Site's IH Units in accordance with Section 30.01.095.

4. When the applicant elects to dedicate IH Units in an existing development, there are no financial incentives provided under Section 30.01.120.

5. When the applicant elects the fee-in-lieu option, there are no financial incentives provided under Section 30.01.120.

D. **Standards.** Developments providing IH Units must satisfy the following standards:

1. The IH Units must meet clear and objective administrative criteria that ensure a reasonable equivalency between the IH Units and the market-rate units in the development;

2. The IH Units shall remain affordable for a period of 99 years;

3. Owners of property subject to the IH Program are required to sign a Regulatory Agreement to be recorded with the property where the IH Units are located;

4. The owner or a representative shall submit annual documentation of tenant income and rents for the IH Units to PHB;

5. The City may inspect the IH Units for fire, life and safety hazards and for compliance with IH Program requirements and may inspect files documenting tenant income and rents of the IH Units; and

6. Subsequent failure to meet the requirements of the IH Program previously determined at the time the permit is reviewed will result in a penalty equal to the amount of the current fee-in-lieu calculation plus accrued interest, and could result in legal action if unpaid.

7. When the IH Units are configured based on a percentage of the total number of bedrooms within the proposed development, the IH Units must be provided in 2 or more bedrooms per unit.

E. To the extent that a financial incentive as set forth in this Section is not available to a development that otherwise complies with City Code Chapter 33.245, the IH Program will not be applicable to the development. If the IH Program is not applicable to the development, PHB will provide a letter certifying that the development is not subject to any IH Program requirements.

F. **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, 2020
$19
Fee per GSF after December 31, 2020
$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