



Portland Housing Bureau

INTERIM RULE

Title: HOU-3.09 Deeper Housing Affordability and Three-Bedroom Unit FAR Density Bonus Programs

Authority

The Portland Housing Bureau (PHB) has amended HOU-3.09, Deeper Housing Affordability and Three-Bedroom Unit FAR Density Bonus Programs, administrative rules. In accordance with Portland City Code (“PCC”) 30.01.140, PHB is responsible for the implementation, administration, monitoring and compliance of PCC 30.01.140. Under Section 30.01.140.B, the Director of PHB, or a designee, is authorized to adopt, amend, and repeal administrative rules as is necessary to meet program requirements of PCC 30.01.140. Ordinance No. 189805 adopted by Portland City Council on December 18, 2019, authorizes PHB to develop and enact administrative rules to carry out and administer PCC 30.01.140. The administrative rules for PCC 30.01.140 are found in Portland Policy Document (PPD) HOU-3.09.

PPD Provision:

HOU-3.09 Deeper Housing Affordability and Three-Bedroom Unit FAR Density Bonus Programs

The Deeper Housing Affordability and Three-Bedroom Unit FAR Density Bonus (DHA) Programs administrative rules are amended to include interim rules for the implementation of PCC 33.110.210.D.1, PCC 33.110.265.F.2, and PCC 30.01.040, including but not limited to, proposed changes in the following sections:

1. Definitions
2. Application requirements
3. Minimum units
4. Reasonable equivalency

Adoption

As provided in PCC 30.01.140 and Ordinance 189805, the Director of the Portland Housing Bureau hereby amends the administrative rules attached hereto.

Adopted: _____



Shannon Callahan, Director

August 1, 2021

Interim Administrative Rule

HOU-3.09 Deeper Housing Affordability and Three-Bedroom Unit FAR Density Bonus Programs

III. Definition of Administrative Rules

These Administrative Rules (these “Rules”) are authorized by Portland City Code (“PCC”) [30.01.140](#) and PCC 30.01.160 to define the policies, processes, and procedures of implementation of the Deeper Housing Affordability FAR Bonus Density Program (the “DHA Program”) and the Three-Bedroom Unit FAR Density Bonus Option Program (the “Three-Bedroom Bonus Program”) respectively (collectively “the Bonus Program” or “Bonus Programs”) by the Portland Housing Bureau (“PHB”).

IV. Program Goal

The City of Portland (the “City”) has identified the need for both rental and for-sale housing opportunities for low to moderate-income households. The City is implementing the Bonus Programs to help meet this need.

V. Definitions

- D. Affordable Homeownership Unit.** A Dwelling Unit, to be sold individually within a Building, which is documented in the Covenant as required to comply with the DHA or Three-Bedroom Bonus Program requirements in place at the time of execution of the Covenant.
- E. Affordable Rental Unit.** A Dwelling Unit, to be rented within a Building, that is documented in the Covenant as required to comply with the DHA or Three-Bedroom Bonus Program requirements in place at the time of execution of the Covenant.
- F. Affordable Unit.** A Dwelling Unit documented in a Building’s Covenant as required to comply with the DHA or Three-Bedroom Program requirements in place at the time of execution of the Covenant.
- G. Applicant.** A Person that applies for a density bonus through: [PCC 33.110.210.D.1](#), [PCC 33.110.265.F.2](#), or [PCC 33.120.211.C.2](#) and [PCC 30.01.140](#); or [PCC 33.120.C.3](#) and [PCC 30.01.160](#), and has submitted a completed Affordable Housing Incentive Programs Application, available on PHB’s website, to PHB for the Bonus Programs. 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.
- H. Basement.** The portion of a Building that is partly or completely below grade. A minimum of 50%percent of the total combined area of the walls must be below-grade to be considered a Basement.
- I. Bedroom.** A Bedroom must be a habitable private room as defined by [PCC 29.30.210](#) and must be enclosed by a door that separates it from the rest of the Dwelling Unit, except for a Lofted Unit Type as defined in these Rules under “Unit Type”.
- J. Building.** Building has the meaning defined in [PCC 33.910.030](#).
- K. Compliance Period.**
 - 1. DHA Program Affordable Rental Units: The Compliance Period is the 99-year time period, beginning upon the Owner’s receipt of a Certificate of Occupancy (“COO”), during which the Covenant applies.

2. Three-Bedroom Bonus Program Affordable Rental Units: The Compliance Period is the 10-year time period beginning upon the Owner's receipt of a COO, during which the Covenant applies.
3. Affordable Homeownership Units under both the DHA and Three-Bedroom Bonus Programs: The Compliance Period is the 10-year time period beginning upon an initial qualified sale from the Owner to a Homeowner, during which the Second Mortgage Documents apply.
- L. Covenant.** A written agreement between the Owner and PHB that sets forth the approval and compliance criteria of the Bonus Programs, is recorded on the title to the Property, and governs the long-term operation and performance of the Affordable Units.
- M. Dwelling Unit.** Dwelling Unit has the meaning defined in PCC 33.910.030.
- N. Floating.** Floating is the conversion of a Market Rate Unit to a new Affordable Rental Unit in a Building. Buildings maintain their legally required amount of Affordable Rental Units while giving flexibility to Owners to fill vacancies. Floating allows Affordable Rental Units to be located anywhere in a Building and are not fixed by unit number. Affordable Rental Units must continue to meet Reasonable Equivalency standards.
- O. Gross Square Feet/Footage/Foot.** As defined through Oregon Structural Specialty Code (2019), Chapter 2, Section 202, Definitions, an "AREA, BUILDING" means "the area included within surrounding exterior walls (or exterior walls and fire walls) exclusive of vent shafts and courts. Areas of the building not provided with surrounding walls shall be included in the building area if such areas are included within the horizontal projection of the roof or floor above."
- P. Homeowner.** The individual(s) on title to a specific Affordable Homeownership Unit as shown on the latest assessment records in the Office of the County Assessor.
- Q. Median Family Income ("MFI").** Determined by PHB using the Department of Housing and Urban Development's (HUD) annually published Median Family Income and Rent Chart ("MFI and Rent Chart") for the Portland Metropolitan Area.
- R. Market Rate Unit.** A Dwelling Unit in a Building or on a Site with a Covenant that is not required to comply with the Bonus Program requirements.
- S. Minimum Units.** Minimum Units means the minimum number of Affordable Units that the Building or Site must provide in accordance with the requirements for the applicable Bonus Program. Buildings must provide the minimum number of Affordable Units based on the Bonus Program requirements:
- ~~1. For the DHA Program, 50% of the Dwelling Units within each Building on the Site are Affordable Units. Affordable Units must be provided at the same ratio within the Building as Market Rate Units specific to each Unit Type; or~~
 - ~~2. For the Three Bedroom Bonus Program, 50% of the Dwelling Units within each Building on the Site are Affordable Units and are Unit Types with three or more Bedrooms.~~
- ~~When PHB calculates the required percentage of Affordable Units in a Building, any fractional result between .1 and .4 will be rounded down to the next whole number and any fractional result between .5 and .9 will be rounded up to the next whole number.~~
- T. Owner.** Owner has the meaning defined in PCC 33.910.030.
- U. Penalty Factor.** The Penalty Factor is defined within PCC 30.01.140.D.2. and PCC 30.01.160.D.
- V. PCC.** Means Portland City Code.

W. Person. Person has the meaning defined in PCC 33.910.030.

X. Property. Property means the parcel of land on which the site is legally identified and that will be encumbered by the Covenant.

Y. Residential and Residential Related. The Gross Square Footage of all Dwelling Units within a Building or Site, all space that is used to directly access the Dwelling Units, and all spaces ~~tenants-residents~~ have access to, including but not limited to: hallways, laundry facilities, trash and recycling areas, fitness facilities, and other community and amenity spaces. For space that is the exclusive use of the occupants of the Dwelling Units, the total square footage of the space is included. For space that is shared by the occupants of the Dwelling Units and occupants of other uses in the Building, a percentage of the square footage of the space based on the percentage of the residential use portion of the Building is included in the Gross Square Footage. Square footage for structured parking and required long-term bicycle parking not located in a Dwelling Unit is excluded from the Gross Square Footage.

Z. Restriction Period. The time period between the effective date of the Covenant and the initial qualified sale of an Affordable Homeownership Unit or the receipt of COO for an Affordable Rental Unit Building. At the time of initial qualified sale or receipt of COO, the Restriction Period ends, and the Compliance Period begins.

AA. Second Mortgage Documents. The Second Mortgage Documents include a Promissory Note, Deed of Trust, Resale Restriction Agreement, or any other document PHB requires to ensure continued compliance with the Bonus Programs and remedy any default thereof.

BB.Site. Site has the meaning defined in PCC 33.910.030.

CC. Static Data Sheet. A PHB-provided spreadsheet detailing the Affordable Rental Units and Market Rate Rental Units on a Property, including but not limited to, the square footages of each Dwelling Unit, the number of Bedrooms in each Dwelling Unit, and utility allowances. See example in Appendix A.

DD. Unit Type. Unit Types are categorized by the number of Bedrooms and the following characteristics within each Dwelling Unit:

1. **“Windowless.”** Dwelling Units with one or more Bedrooms that do not have a window or door on an exterior wall of the Building that provides natural light to the room even when closed. Dwelling Units with multiple Bedrooms will be defined as a “Windowless” Unit Type if any of the Bedrooms in the Dwelling Unit meet the “Windowless” definition.
2. **“Windowed.”** Dwelling Units where all Bedrooms have a window or door on an exterior wall of the Building that provides natural light to the room even when closed.
3. **“Lofted.”** Dwelling Units where the Bedroom is located on a separate level/floor such that it cannot be viewed directly into from the other levels in the Dwelling Unit. Dwelling Units with multiple Bedrooms will be defined as a “Lofted” Unit Type if any of the Bedrooms in the Dwelling Unit meet the “Lofted” definition.
4. **“Windowless + Lofted.”** Multiple-Bedroom Dwelling Unit that has both a “Windowless” Bedroom and a separate “Lofted” Bedroom.
5. **“Live/Work.”** Dwelling Units that are designated by Life Safety Plans Examiner to meet residential occupancy requirements as a Live/Work unit, as defined in Section 419 of the 2014 Oregon Structural Specialty Code.

VI. Application Requirements

Applicants requesting bonus density pursuant to ~~PCC 33.120.211.C.2 and PCC 30.01.140 or PCC 33.120.211.C.3 and PCC 30.01.160~~ must submit an Affordable Housing Incentive Programs Application to

PHB and meet the requirements of the Bonus Programs and these Rules. Applicants must also submit the following information to PHB:

- A. Documentation certifying adherence to the Minimum Units requirements and the below affordability restrictions:
 - 1. For the DHA Program, the Affordable Rental Units will be affordable to households earning up to ~~60%~~percent MFI; or
 - 2. For the DHA Program, the Affordable Homeownership Units will be affordable to households earning up to ~~80%~~percent MFI; or
 - 3. For the Three-Bedroom Bonus Program, the Affordable Units will be affordable to households earning up to ~~100%~~percent MFI.
- B. Documentation of ownership, Property's legal description, and any necessary legal articles of the entity identifying signature authority; and
- C. Any other information PHB requests to provide certification that the requirements of the Bonus Programs are met.

V. Minimum Units. Buildings must provide the minimum number of Affordable Units based on the Bonus Program requirements:

- A. For the DHA Program:
 - 1. 50 percent of the Dwelling Units within each Building on the Site are Affordable Units. Affordable Units must be provided at the same ratio within the Building as Market Rate Units specific to each Unit Type; or
 - 2. If applying under the provision allowed under PCC 110.210.D.1., one Dwelling Unit on Site must be an Affordable Unit;
- B. For the Three-Bedroom Bonus Program, 50 percent of the Dwelling Units within each Building on the Site are Affordable Units and are Unit Types with three or more Bedrooms.
- C. When PHB calculates the required percentage of Affordable Units in a Building, any fractional result between .1 and .4 will be rounded down to the next whole number and any fractional result between .5 and .9 will be rounded up to the next whole number.

VI. Reasonable Equivalency. Applicants must make Affordable Units “reasonably equivalent” to Market Rate Units. PHB will assess reasonable equivalency using the following criteria:

A. Rental Buildings.

1. Bedroom Distribution and Unit Count.

- a. For the DHA Program:
 - i. Affordable Rental Units must be provided at the same ratio within the Building as Market Rate Units; and
 - ii. If applying under the provision allowed under PCC 33.110.210.D.1., Affordable Rental Units must be the same Unit Type as the largest Unit Type on the Site; or
 - b. For the Three-Bedroom Bonus Program, the Affordable Rental Units must be Unit Types with three or more Bedrooms.
- 2. Unit Sizes.** Affordable Rental Units must be at least ~~90%~~95 percent the size of the average of the total Dwelling Units with the same Bedroom count, as measured in square feet.
- 3. Unit Distribution.**
- a. No more than ~~50%~~percent of the Dwelling Units in the Basement can be designated as Affordable Rental Units; and

b. If multiple Buildings are on a Site, each Building must meet its own Minimum Unit obligation internally. Consolidating Affordable Units from multiple Buildings on the same Site into a single Building is not allowed.

4. Unit Amenities. Affordable Rental Units must have finishes with equal lifetime expectancies and appliances with the same Energy Star rating as the Market Rate Units, which must be certified by a Building’s architect prior to BDS issuing the Building’s final certificate of occupancy.

B. For-Sale Buildings.

1. Bedroom Distribution and Unit Count.

a. For the DHA Program:

i. Affordable Homeownership Units must be provided at the same ratio within the Building as Market Rate Units;

ii. If applying under the provision allowed under PCC 33.110.210.D.1, Affordable Homeownership Units must be the same Unit Type as the largest Unit Type on the Site; or

b. For the Three-Bedroom Bonus Program, the Affordable Homeownership Units must be Unit Types with three or more Bedrooms.

2. Unit Sizes. Affordable Homeownership Units must be at least 85% the size of the average of the total Dwelling Units with the same Bedroom count, as measured in square feet.

3. Unit Distribution.

a. No more than 50%percent of the Dwelling Units in the Basement can be designated as Affordable Homeownership Units; and

b. If multiple Buildings are on the Site, each Building must meet its own Minimum Unit obligation internally. Consolidating Affordable Units from Multiple Buildings on the same Site into a Single Building is not allowed.

4. Unit Amenities. Affordable Homeownership Units must have appliances with the same Energy Star rating as the Market Rate Units, which will be certified by a Building’s architect prior to BDS issuing the Building’s final certificate of occupancy.

VII. Approval

A. Application & Approval

PHB staff will process the Bonus Program application materials. If an application is approved for the Bonus Program, PHB will require Owner to sign a Covenant prepared by PHB prior to receiving a letter certifying that the Building meets the Bonus Program requirements. The Bureau of Development Services (“BDS”) will determine the bonus square footage for which the Site is eligible.

B. Restriction Period

The Restriction Period begins at the effective date of the Covenant and terminates at the following times:

1. Affordable Rental Units. The Restriction Period terminates at the time of receipt of a COO, at which time the Compliance Period begins.

2. Affordable Homeownership Units. The Restriction Period terminates at the time of initial qualified sale for each individual Affordable Homeownership Unit, at which point the Compliance Period begins. Once all Affordable Homeownership Units have been sold to qualified buyers or Penalties paid, the Covenant can be released from the Property.

VIII. Compliance and Reporting Requirements

A. Self-Certification. For both Affordable Rental Units and Affordable Homeownership Units, the architect of the project must sign and submit to PHB a certification of reasonable equivalency, pursuant to Section ~~V~~.VI.A. or ~~V~~.VI.B. of these Rules.

B. Rental Units. After approval for the Bonus Program, PHB's Risk Analysis and Compliance ("RAC") staff will send the Owner a letter detailing the annual compliance and reporting requirements ("Welcome Letter"). Reporting and compliance requirements are contained in these Rules, the Covenant, and HOU-1.10- Risk Analysis & Compliance Policies and Guidelines. For purposes of interpretation, if and to the extent there is a conflict among the terms of the Covenant, these Rules, and the Risk Analysis & Compliance Policies and Guidelines, the priority of the terms should be read as follow: 1) the Covenant, 2) these administrative rules, 3) the Risk Analysis & Compliance Policies and Guidelines. Leasing a DHA Rental Unit to an ineligible household may constitute an event of default under the Covenant or these Rules or both and may result in penalties. The following requirements also apply to the leasing of Affordable Rental Units:

- 1. Static Data Sheet.** This completed form must be submitted to PHB 1) prior to initial leasing of units; and 2) at PHB's request through the Compliance Period including when Floating of Affordable Rental Units occurs or utility types and responsibilities change.
- 2. Income Eligibility.** PHB determines income eligibility using HUD's annually published MFI and Rent Chart. The MFI and Rent Chart is posted and updated annually on the PHB website. PHB will consider all sources of income for every adult living in an Affordable Rental Unit to determine the household's gross income. Eligible households may make up to or less than the income limits posted in the MFI and Rent Chart.
- 3. Rent Determination.** PHB determines the maximum rent for Affordable Rental Units using the MFI and Rent Chart based on the number of Bedrooms and the restricted MFI level. Maximum rent paid by tenants includes any utility allowance or required expenses to live in an Affordable Rental Unit (i.e. parking or amenities). Details and instructions on how to apply the MFI and Rent Chart can be found in PHB's Risk Analysis and Compliance Policies and Guidelines located on the PHB website.
- 4. Utility Allowances.** Affordable Rental Units are subject to a utility allowance ("UA"). Owners determine the UA with the [Utility Allowance Schedule published by PHB](#). To the extent Affordable Rental Unit tenants pay their own utilities directly or are billed back for reimbursement of utilities by the Owner, the Owner is required to deduct that amount from the maximum allowable rent charged to the tenant. No UA is required for utilities paid by the Owner and not reimbursed by the tenant. UAs are passed along to the tenant in the form of reduced rent for those utilities which are paid for by the tenant.

Example: a three-person household earning 60% MFI occupies a two-bedroom Affordable Rental Unit. The maximum monthly rent for that unit, based on the 2019 MFI and Rent Chart, was \$1,188 and the UA was \$180. The maximum an Owner could collect from this household was \$1008 = (\$1,188 - \$180).

5. Income Recertification. The Owner must annually recertify the Tenant incomes with PHB in accordance with the Tenant Income Certification ("TIC") reporting cycle. At annual recertification, if a tenant's income is at or below the 100%~~percent~~ MFI allowable income limit for an Affordable Rental Unit, the Owner may raise the rent up to the maximum allowed for the tenant's household according to the current MFI and Rent Chart, considering the deduction for the UA and any non-optional fees and in accordance with any applicable laws, rules, or policies that regulate rent increases. At annual recertification, if a tenant's income is above the allowable 100%~~percent~~ MFI income limit for an Affordable Rental Unit, the Owner:

- a. Must designate the next available Dwelling Unit of the comparable Unit Type to be rented as an Affordable Rental Unit based on the Static Data Sheet;
- b. May raise the rent on the existing tenant's Affordable Rental Unit in accordance with federal, state, and local laws;
- c. May revise the expiring lease to allow tenants to continue living in the Affordable Rental Unit provided by the Owner at market rate rent;
- d. May not require tenants to submit additional deposits or fees;

- e. Must give at least 90 days written notice to the tenant prior to an increase in the rent; and
 - f. This information must be included in the lease or lease addendum for each Affordable Rental Unit and must be produced at PHB's request. Leasing an Affordable Rental Unit to an ineligible household may constitute an event of default under the Covenant, these Rules or both and may result in Penalties.
6. **Incomes Rising in Place.** Households that have initially qualified for an Affordable Rental Unit must be able to remain in that unit and not be subject to market rate rents unless their incomes reach or exceed the income limits contained in these Rules. A tenant's income may increase up to 100%percent MFI and still have the Affordable Rental Unit fulfill the Property's Bonus Program requirements.
 7. **Vacancies.** PHB requires that at any given time the number and distribution of Affordable Rental Units will match those specified in the Covenant. To help ensure the predictable leasing of Affordable Rental Units, Owner will be required to treat Affordable Rental Units as "Floating", see Section III, Definitions: Floating.
 8. **Marketing.** The Bonus Programs have no rules or guidelines about the legally permissible method Owners use to determine the order in which tenants are offered Affordable Rental Units. Owners are required to abide by the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, and all other applicable federal, state, and local laws.
 9. **Annual Reporting and Review.** On an annual basis, Owners must submit information to PHB on the Affordable Rental Units and the tenants living in such units through an online platform called the [Web Compliance Management System \("WCMS"\)](#). Reporting requirements are contained in the Covenant. PHB staff will test the information reported in WCMS against the contents of Covenant and issue written results for each Property.
 - a. **Reporting.** Once tenant data has been uploaded into WCMS by the Owner, PHB will send an Annual Compliance Test ("ACT") to the listed contacts on file with comments and action items to resolve any compliance issues relating to the uploaded data. After the deadline to respond has elapsed, the compliance scores are final. If an ACT is finalized with outstanding compliance issues, the Owner must resolve those issues within the 90-day period to cure or will be considered in default.
 - b. **Inspections.** PHB reserves the right to physically inspect and audit Bonus Program related files such as TICs and other information submitted through WCMS. Properties that are out of compliance may be inspected more frequently until they are brought back into compliance. An inspection report is sent to the listed contacts on file with findings to be resolved. Issues must be resolved, and evidence of their resolution must be provided within the 30-day response period. Failure to do so may prompt additional inspections and being placed in default.
 - c. **Non-compliance.** In cases of non-compliance, PHB staff may collaborate with Owners on remedies, however PHB also has the authority to enforce the provisions of the Covenant, these Rules, and the Risk Analysis and Compliance Policies and Guidelines, in its sole discretion and without the Owner's consent. Other than default provisions within these Rules, Bonus Program compliance and reporting requirements will be the same as those for PHB's non-Bonus Program developments for tenant compliance and physical evaluation sections only, as contained in HOU-1.10-Risk Analysis and Compliance Policies and Guidelines. Owners may be found non-compliant for failing to meet any of the reporting requirements. A waiver or delay by PHB in enforcing a remedy does not constitute a waiver of the applicable requirements or PHB's right to subsequent enforcement of any remedy.
 10. **Transfers of Property Ownership.** The Covenant runs with the land for the length of the Regulatory Period and Compliance Period. Upon sale or other transfer of the Property during the Regulatory Period and Compliance Period, the provisions of the Bonus Programs must transfer with the Property. At least 90 days prior to transfer, the Owner must submit to PHB updated Owner information, legal documentation of the new entity, and sign a Consent to Transfer form and an Assignment and Assumption Agreement prepared by PHB, to be executed and recorded on title.
 11. **Default.** Specific default provisions are contained in the Covenant. Defaults that last for more than one reporting cycle will result in Penalties as outlined in Section ~~VIII~~VIII.B.12, Penalties of these Rules.
 12. **Penalties.** In the event of a default, PHB may choose, but is not obligated, to negotiate with Owners to bring the Property into compliance. Should default occur and PHB and the Owner fail to agree upon an acceptable remedy, financial penalties will be due and payable to PHB as follows:

- a. Affordable Rental Unit Penalty.** An amount equal to multiplying the Gross Square Feet of the Residential and Residential Related portions of the Building by the current Penalty Factor;
- b. Interest.** Interest on the entire unpaid penalty amount, assessed at the rate of .833 percent simple interest per month or fraction thereof (10 percent per annum), computed from the date of default;
- c. Financial Incentive.** Repayment of any financial incentives and exemptions received according to code and administrative rules including, but not limited to, system development charges, property taxes, and construction excise taxes; and
- d. Additional Penalties.** PHB may pursue any remedy available at law, or in equity, including but not limited to injunctive relief, and other remedies such as foreclosure, or receivership if the financial penalties established in this Section are not timely paid in accordance with the timeframe prescribed by PHB or a court of competent jurisdiction.

Once the penalty has been paid in full, the (Building/Property) Affordable Rental Units will cease to be bound to the restrictions of the Covenant.

C. For-Sale Units. For Buildings that will sell Affordable Units for homeownership opportunities, the following restrictions apply:

- 1. Eligibility.** Homebuyers of Affordable Homeownership Units must meet the following requirements to participate:
 - a. Income Qualification.** Homebuyers must income qualify at time of purchase at or below 80%percent MFI under the DHA Program, or at or below 100%percent MFI under the Three-Bedroom Bonus Program.
 - b. Liquid Assets.** Homebuyers must not hold liquid assets after closing that total more than ~~\$20,000~~ \$50,000. A waiver of the asset limit rule may be submitted to the PHB Director. Approval is granted at the discretion of the PHB Director.
 - c. Primary Residence.** Homebuyers must maintain the Affordable Homeownership Unit as their primary residence. 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. All-Cash Purchases.** All-cash purchases of Affordable Homeownership Units are not allowed.
 - e. Cosigners.** Cosigners must sign an affidavit stating that they will not occupy the Affordable 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 income currently being received. Self-employed homebuyers must submit to PHB 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. Homebuyers must submit to PHB income documentation 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 to PHB 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 14 days.

- b. Verification of Closing.** Homebuyer's must request from PHB the Second Mortgage Documents at least 14 days prior to closing and the documents must be signed by PHB prior to closing. Homebuyer must coordinate the signing of the Second Mortgage Documents with PHB before closing. Homebuyer must send PHB documentation of the final sale price and title holders 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 Affordable Homeownership Unit complies with the Bonus Program and provides an adequate remedy for PHB in the event of default. 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 Bonus Program at the time of purchase. The Second Mortgage is forgiven upon resale provided that the Affordable Homeownership Unit is sold in accordance with the Bonus Program requirements.
 - 4. Pricing.** PHB will publish an annual schedule of sale prices based on the MFI development levels and income levels for Affordable Homeownership Units by June of each year. The sale pricing calculation includes mortgage payments at 40% percent of monthly income in accordance with the income level and Unit Type, 5% five percent 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 Affordable Homeownership Units using the annual pricing calculation in place at the time of sale.
 - 5. Appraisal.** Prior to the sale of an Affordable Homeownership Unit, the Affordable 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 Affordable Homeownership Unit, the seller or buyer must have an inspection performed by a certified home inspector and provide documentation to PHB that the inspection is complete.
 - 7. Intent to Sell.** Homeowners of Affordable Homeownership Units must notify PHB of their intent to sell in writing at least 30 days prior to placing the Affordable Homeownership Unit on the market for sale or before entering into a contract with another party. Refer to Section ~~VH.VIII.E.~~, Communication of these Rules, 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 ~~VH.VIII.C.15.~~, Penalties of these Rules.
 - 8. Right of First Refusal.** The Second Mortgage Documents also provide PHB with a right of first refusal to purchase an Affordable Homeownership Unit intended for sale during the Compliance 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 Affordable Homeownership Unit will be released from the right of first refusal. PHB is not obligated to purchase any Affordable Homeownership Units.
 - 9. Definition of Sale.** For the purposes of the Bonus Programs, the following events are considered a sale of an Affordable Homeownership Unit: selling an Affordable Homeownership Unit to a buyer as described under Section ~~VH.VIII.C.1.~~, Eligibility of these Rules; transferring an Affordable Homeownership Unit into a trust, short sale, foreclosure; or adding or removing a name from the title.
 - 10. Listing and Sale Timeline.** The intent of the listing and sale timeline is to maintain Affordable Homeownership Units as affordable for the duration of the Compliance Period. The timeline

applies at initial sale and at each subsequent resale. Sale of Affordable Homeownership Units must use the following timeline in order:

- a. List and market the Affordable Homeownership Unit according to Section VII.C. of these Rules for at least ~~six~~ months.
 - b. After the ~~six~~-month period described in Subsection 10.a, Owner or Homeowner may submit a request to PHB to list and market the Affordable Homeownership Unit to buyers that income qualify at or below 100%~~percent~~ MFI within the DHA Program, or to buyers that income qualify at or below 120%~~percent~~ MFI. PHB has 14 days from the receipt of the Owner's or Homeowner's request to approve or deny it based on demonstrated attempts to sell. Upon approval or denial of request, Owner or Homeowner must list and market the Affordable Homeownership Unit, pursuant to Section ~~VH.VIII.C.~~ VIII.C. of these Rules, for at least ~~six~~ months.
 - c. After the ~~six~~-month period described in Subsection 10.b, Owner or Homeowner may submit a request to PHB to release the Owner or Homeowner and the Affordable Homeownership Unit from the Second Mortgage Documents and sell the Affordable Homeownership Unit on the open market. PHB has 15 days from the receipt of the Owner or Homeowner's request to send a letter of intent to the Homeowner to purchase.
- 11. Death of Sole Homeowner.** In the event of the death of the sole title holder, the Affordable Homeownership Unit can be transferred. The Affordable Homeownership Unit and new title holder are bound by the Second Mortgage Documents and the Bonus Program for the remainder of the Compliance Period, however, the new title holder is exempt from Section ~~VH.VII.C.1.~~ VIII.C.1., Eligibility of these Rules.
- 12. Foreclosure.** If a Homeowner of an Affordable 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.
- 13. Default.** Owners or Homeowners of Affordable Homeownership Units that default are subject to penalties listed in Section ~~VH.VII.C.15.~~ VIII.C.15., Penalties of these Rules. The following circumstances indicate a default of the DHA Program:
- a. Sale of the Affordable Homeownership Unit to an ineligible buyer;
 - b. Sale of the Affordable 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 Affordable Homeownership Unit as their primary residence;
 - f. Cosigner occupying the Affordable Homeownership Unit as their primary residence; or
 - g. Other violations of the Bonus Program or Covenant.
- Homeowners may submit an appeal of a default to PHB. Approval is at the discretion of the PHB Director.
- 14. Exception for Non-Profit Housing Providers.** A certified 501(c)(3) housing provider may use its own homeownership program and documents to fulfill the Bonus Program requirements in Sections ~~VH.VIII.C.1-13~~ VIII.C.1-13 of these Rules, so long as the following conditions are met, according to a recorded Covenant:
- a. The Affordable Homeownership Units must be sold to households earning 80%~~percent~~ MFI or less;
 - b. The Affordable Homeownership Units must have a Compliance Period of at least ten years; and
 - c. The Affordable Homeownership Units must be used for homeownership for the duration of the Compliance Period.

15. Penalties. Prior to the initial sale of individual Affordable Homeownership Units, Owners that violate the terms of the Bonus Program or the Covenant are subject to repayment of any and all exemptions they received including, but not limited to; system development charges, property taxes and construction excise tax in addition to the penalties listed in subsection ~~VII~~.VIII.D., Conversions of these Rules.

Homeowners of individual Affordable Homeownership Units that violate the terms of the Bonus Program, or the Second Mortgage Documents, are subject to the payment of the amount stated in the Second Mortgage Documents from the time of purchase of the Affordable Homeownership Unit and elimination of any remaining property tax exemption.

D. Conversions. Any Building subject to or built under the Bonus Programs where the Affordable Units convert from rental to homeownership or from homeownership to rental property during the Compliance Period must adhere to the Bonus Program requirements of the residential use type to which the Building is converted. Conversions from homeownership to rental after initial sale during the Compliance Period is not allowed and would result in Penalties.

Buildings with Affordable Units that convert to fully market rate rental or homeownership units are subject to repayment of any and all exemptions granted including, but not limited to; system development charges, property taxes, and construction excise tax in addition to the penalties below.

- 1. Penalty.** An amount equal to multiplying the Gross Square Feet of the Residential and Residential Related portions of the Building by the current Penalty Factor;
- 2. Interest.** Interest will be due on the entire unpaid penalty, assessed at the rate of .833%~~percent~~ simple interest per month or fraction thereof (10%~~percent~~ per annum), computed from the date of default; and
- 3. Additional Penalties.** PHB may also pursue any action available at law, in equity, or otherwise, including but not limited to foreclosure, court injunction, and or receivership if the financial penalties are not paid in the timeframe prescribed by PHB.

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

Responsibility

PHB is responsible for managing and implementing this rule.

History

Date adopted: **August 1, 2021**

Date effective: **August 1, 2021**