

PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7277

**ADOPTING ADMINISTRATIVE RULES FOR THE AFFORDABLE
COMMERCIAL SPACE PROGRAM**

WHEREAS, the City of Portland (“City”) is currently engaged in the 2035 Comprehensive Plan Code Reconciliation Project (the “Reconciliation Project”), which was adopted by the Portland City Council on June 6, 2018;

WHEREAS, the Reconciliation Project involves amendments to City Code Section 33.130.212.D that revise the affordable commercial space floor area ratio (“FAR”) and height bonus provisions and delegate to Prosper Portland the role of creating administrative rules to define the parameters of qualifying affordable commercial space;

WHEREAS, Prosper Portland staff, in collaboration with the City Bureau of Planning and Sustainability, the Planning and Sustainability Commission, and a stakeholder advisory committee, has developed the administrative rules attached as Exhibit A, which establish guidelines for what constitutes qualifying affordable commercial space;

WHEREAS, the amendments to City Code Section 33.130.212.D anticipate that the City would use Prosper Portland’s determination of qualifying affordable commercial space in determining whether an applicant for a building permit is entitled to a corresponding FAR and/or height bonus; and

WHEREAS, the attached administrative rules reflect Prosper Portland’s desire to increase the supply of long-term affordable commercial space throughout the city, in alignment with Prosper Portland’s 2015-2020 Strategic Plan.

NOW, THEREFORE, BE IT RESOLVED, that the Prosper Portland Board of Commissioners hereby adopts the affordable commercial space program administrative rules attached hereto as Exhibit A;

BE IT FURTHER RESOLVED, that the Executive Director is authorized to modify the affordable commercial space program administrative rules so long as such changes do not materially alter the program or increase Prosper Portland’s risks or obligations, as determined by the Executive Director in consultation with the General Counsel; and

BE IT FURTHER RESOLVED, that this resolution shall become effective immediately upon its adoption.

Adopted by the Prosper Portland Commission on June 13, 2018



Pam Micek, Recording Secretary

Affordable Commercial Space Program

Administrative Rule

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I. Definition of Administrative Rules

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

II. Program Goals

The City of Portland provides a floor area ratio (FAR) and height bonus to developments which provide affordable commercial space pursuant to City Code Section 33.130.212.D in order to provide an incentive for development that provides a public or community benefit. Prosper Portland, at the City’s request, has established guidelines for what constitutes qualifying affordable commercial space for the purposes of the City’s affordable commercial space bonus program as well as identifying the type of tenants and businesses to be targeted.

In developing these guidelines, Prosper Portland has determined that there is a critical need for affordable commercial space to serve the needs of businesses led by owners from communities of color and marginalized individuals that have not fully participated in, or benefited from, economic opportunities, particularly local businesses. The City of Portland has wide disparities in employment, income, and wealth between white communities and communities of color, resulting in gentrification, displacement, and concentrations of poverty in North, Northeast, and increasingly, East Portland. Preserving and creating opportunities for affordable commercial space is a crucial part of tackling these disparities and is of critical benefit to the public and to the Portland community as a whole.

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

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

These goals flow from City Code Section 33.130.212’s stated purpose of providing an incentive for development that “provides a public or community benefit,” as well as City Code Section 33.130.212.D’s drafting commentary that the ACS Program will identify the type of tenants and businesses to be targeted.

III. Program Options

For commercial and mixed-use developments projects proposing fewer than 20 new dwelling units which want to access an ACS bonus, the applicant will work with Prosper Portland to select an ACS Program option. Bureau of Development Services (BDS) and Prosper Portland staff will be available to assist applicants through the permitting intake and application process to explain and clarify ACS Program requirements. Once an applicant has selected an ACS Program option

and has complied with the initial requirements of that option, Prosper Portland will give the Bureau of Development Services a letter certifying that the applicant has enrolled in the ACS Program and that the applicant is eligible for an affordable commercial space bonus pursuant to City Code 33.130.212.D.

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

1. Provide Affordable Commercial Space On-site.

- a. Applicant submits to Prosper Portland and BDS a floor plan and section drawing identifying proposed location and configuration of affordable commercial space area.
- b. BDS staff determines square feet of the Affordable Commercial Space bonus floor area based on the square feet of the corresponding on-site qualifying Affordable Commercial Space (see Appendix B).
- c. Prosper Portland and the developer/owner then enter into a Regulatory Agreement regarding the Affordable Commercial Space prepared by Prosper Portland (see paragraph D).
- d. The applicant does not need to identify specific Qualified Businesses at the time of application for the ACS Program. Leasing to Qualified Businesses may occur after the permit is issued, subject to the requirements of Section VI.

2. Affordable Commercial Fund Option. Applicants may choose the Affordable Commercial Fund option rather than including Affordable Commercial Space units in a development.

- a. BDS staff determines square feet of the Affordable Commercial Space bonus floor area. Prosper Portland staff calculate the Affordable Commercial Fund payment amount by multiplying the square feet of the Affordable Commercial Space bonus, by the Affordable Commercial Fund Factor (See Appendix A). (Note that, although Prosper Portland may provide an estimate of the associated FAR/height bonus, the ultimate FAR/height bonus awarded is determined by the City of Portland.)
- b. The Affordable Commercial Fund payment amount is payable prior to the issuance of the certification letter.
- c. Upon payment of the Affordable Commercial Fund payment amount, the applicant has no additional ACS Program requirements relative to the proposed development. (This option does not require a Regulatory Agreement.)

3. Combination On-site and Affordable Commercial Fund Option.

- a. Applicant submits to Prosper Portland and BDS a floor plan and section drawing identifying proposed location and configuration of affordable commercial space area.
- b. BDS staff determines square feet of the Affordable Commercial Space bonus floor area based on the square feet of the corresponding on-site qualifying Affordable Commercial Space (see

Appendix B). For any square feet of Affordable Commercial Space not provided on-site, Prosper Portland Staff calculate the Affordable Commercial Fund payment amount, by multiplying the square feet of the corresponding bonus floor area by the Affordable Commercial Fund Factor (See Appendix A) (Note that, although Prosper Portland may provide an estimate of the associated FAR/height bonus, the ultimate FAR/height bonus awarded is determined by the City of Portland.)

- c. Prosper Portland and the developer/owner then enter into a Regulatory Agreement regarding the Affordable Commercial Space prepared by Prosper Portland (see paragraph D).
- d. The Affordable Commercial Fund payment amount is payable prior to the issuance of the certification letter.
- e. The applicant does not need to identify specific Qualified Businesses at the time of application for the ACS Program. Leasing to Qualified Businesses may occur after the permit is issued, subject to the requirements of Section VI.

B. Application requirements. Certification letters will be conditioned on (ie. they will not be issued unless) a Regulatory Agreement has been signed and any applicable Affordable Commercial Fund payment is paid. In the case of the Affordable Commercial Fund option (Option 2), certification letters will be conditioned on payment of the full payment amount prior to issuance of the certification letter.

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

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

E. Affordable Commercial Fund. Prosper Portland's accounting and financial team will establish the Affordable Commercial Fund at Prosper Portland. Monies within the fund will be used to support affordable commercial space throughout the City of Portland and to cover Prosper Portland's staffing and administrative costs in administering the ACS Program.

IV. Development Requirements

A. Affordable Commercial Space and Hot Shell Landlord Work Standards. The Affordable Commercial Space will be improved to the standards listed in the Affordable Commercial Space and Hot Shell Landlord Work Standards (Appendix B). Exceptions to landlord work standards can be made on a case-by-case basis, with Prosper Portland Staff review, where Prosper Portland determines that due to the specific characteristics of the property that the landlord has provided the substantial equivalent of the Hot Shell Landlord Work Standards or has provided substantially

equivalent offsetting concessions to tenants for any part of the Hot Shell Landlord Work Standards not performed.

B. Inapplicable Policies. Policies Prosper Portland applies to developments receiving direct funding from Prosper Portland or the city will not be implicated merely by receipt of an ACS Program FAR/height bonus. These include:

1. Business Equity Program
2. Workforce Equity Program
3. Green Building Policy
4. Prevailing Wage

V. Issuance of Certification Letter

Prior to certification letter issuance, in the case of Option 1 or Option 3, Prosper Portland will assign a Construction Coordinator to the development. Construction Coordinators will make contact with appropriate members of the applicant's development team to coordinate participation during the construction phase.

Construction Coordinators will monitor construction progress. Applicants are required to report progress to Construction Coordinators quarterly. After a development received sign-off from the City inspector, or one-month prior to pre-leasing, whichever comes first, the property manager must contact Prosper Portland staff to set up compliance mechanisms including lease-up, compliance, and reporting requirements. Among other things, Prosper Portland staff will require that the property manager certify that they have read and understood ACS compliance requirements.

VI. Compliance and Reporting Requirements

A. Leasing Affordable Commercial Space Units. Space meeting the requirements below is "Affordable Commercial Space" for the purposes of the ACS Program. The following requirements apply to the leasing of ACS units:

1. Qualified Businesses. In order to qualify as "Affordable Commercial Space," space must be leased to a "Qualified Business." In order to be a Qualified Business, an entity must be all of the following:

- a. A local business or nonprofit organizations, based in the Portland - Vancouver - Hillsboro Metropolitan Statistical Area.
- b. A (i) woman-owned business, minority-owned business, or other business primarily owned by individuals who are members of historically underserved populations, or (ii) a non-profit organization which serves historically underserved communities, including communities of color.
- c. An entity that has passed a Prosper Portland financial evaluation.

2. Lease Standards

- a. Lease agreements will be reviewed by Prosper Portland staff. Prosper Portland will provide a form Lease Agreement.
- b. Rent rates must be approved by Prosper Portland staff as consistent with affordability for Qualified Businesses.

- c. Maximum rental escalation rate as provided in the form Lease Agreement or Regulatory Agreement.

3. Duration and Re-tenanting

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

B. Annual Reporting and Review

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

C. Transfers

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

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

D. Default and Conversion

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

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

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

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

E. Remedies

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

1. **Affordable Commercial Fund payment due.** An Affordable Commercial Fund payment equal to square footage of the Affordable Commercial Space used in the determination of the FAR/height bonus multiplied by the Affordable Commercial Fund Factor. (See Appendix A.)
2. **Interest.** Interest will be due on the entire unpaid Affordable Commercial Fund payment amount, assessed at the rate of .833 percent simple interest per month or fraction thereof (10 percent per annum), computed from the date of Conversion.

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

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

Appendix A. Affordable Commercial Fund Factor Schedule

- Projects with residential use and no commercial space may not participate in the ACS Program by making a payment to the Affordable Commercial Fund. Prosper Portland anticipates that these projects could use the Inclusionary Housing Fee in Lieu if applicable.
- Projects with no residential occupancy use will use the Affordable Commercial Fee Schedule for Bonus FAR for non-residential occupancy/use, up to the available Affordable Commercial FAR/height bonus zoning maximums. Additional FAR is available through the Inclusionary Housing Fee-In-Lieu, up to the Inclusionary Housing FAR/height bonus zoning maximums

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

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

Fee Schedule for BONUS FAR in Mixed-Use Zones CM1, CM2, CM3, and CE zones, and in the CX zone outside the Central City and Gateway plan districts	
On or before December 31, 2018	\$19.50 per square foot of Bonus FAR
After December 31, 2018	\$23.00 per square foot of Bonus FAR

Appendix B. Affordable Commercial Space and Hot Shell Landlord Work Standards.

To qualify as Affordable Commercial Space for use of the zoning bonus, the affordable commercial space must meet location and dimension standards of 1 and 2. The hot shell improvement standards of 3 through 13 must be met to demonstrate full compliance with the Affordable Commercial Space on-site option.

1. Location within building.

- Affordable Commercial space will be located on the ground floor and have a least one on street entrance. The location of proposed affordable commercial space must be shown on plans submitted to Prosper Portland and the Bureau of Development Services.

2. Dimensional standards.

- Affordable Commercial space will have a minimum of 12-foot floor-to-ceiling height, minimum of 25 foot depth, and be a minimum of 600 square feet usable space. The ceiling height, depth of space and minimum dimensions must be shown on plans submitted to Prosper Portland and the Bureau of Development Services.

3. Walls and Demising.

- Landlord will deliver Affordable Commercial space with all interior and exterior walls framed.
- Landlord will deliver Affordable Commercial space insulated, sound caulked, dry walled to smooth wall finish, taped and primed, ready for tenant to paint.

4. Electrical.

- Landlord will provide Affordable Commercial space code required electrical receptacles.
- Landlord will provide lighting junction boxes for storefront windows and one lighting junction box for roughly every 300 square feet of demised retail space.
- Landlord will provide basic lighting fixtures, and one fourplex outlet every ten to twelve feet along the interior walls, roughly 18 inches off the ground on center.

5. HVAC.

- Landlord will provide HVAC services to each Affordable Commercial space, including access to a rooftop unit, distribution of supply, return and exhaust spiral ducting within all demised spaces.
- Landlord will provide a Thermostat in the Affordable Commercial space.

6. Ceiling Finish.

- Each space will have insulation at the maximum practical ceiling height (spiral ducting to be below insulated ceiling).

7. Water/Sewer.

- Landlord will provide sewer stub and water stub located in space, for tenant to build out as desired.
- Landlord will provide access to central work sink.

8. Occupancy & SDC Credits.

- Landlord will provide the Affordable Commercial space to tenant with at least M mercantile retail occupancy as designated by the City of Portland
- Landlord will cover all sewer system development charges, transportation development charges and parks development charges.

9. Storefront.

- Landlord will provide a storefront structure and window glass with the highest transparency possible while still meeting energy code with the City of Portland

10. Restrooms.

- Landlord will build and finish the appropriate number of bathrooms as required by the City of Portland Code. (minimum of 1 bathroom)

11. Flooring.

- Landlord to provide Affordable Commercial space floors to be finished as sanded, polished, and sealed concrete.

12. Signage Package.

- Landlord will provide signage package with pre-engineered solutions and brackets for blade signs and flat sign erection by tenants. All signs, production, and permitting will be at Tenant's expense.

13. Fire Protection.

- Landlord will provide necessary fire protection systems to meet applicable codes for M Merchant occupancy level.



**PROSPER
PORTLAND**
Building an Equitable Economy

RESOLUTION NO. 7277

RESOLUTION TITLE:

ADOPTING ADMINISTRATIVE RULES FOR THE AFFORDABLE COMMERCIAL SPACE PROGRAM

Adopted by the Prosper Portland Commission on June 13, 2018

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Gustavo J. Cruz, Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Alisha Moreland-Capuia MD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Francesca Gambetti	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Peter Platt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner William Myers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Consent Agenda Regular Agenda

CERTIFICATION

The undersigned hereby certifies that:

The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Prosper Portland Commission and as duly recorded in the official minutes of the meeting.

	Date: June 18, 2018
Pam Micek, Recording Secretary	