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AFFORDABLE HOUSING

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Chapter 30.01

**AFFORDABLE
HOUSING PRESERVATION**

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

Sections:

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30.01.010 Policy

It is the policy of the City of Portland that 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 that 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.

30.01.020 Intent

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.

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30.01.030 Definitions

- A. “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% of their gross household income for rent and utilities. The targeted tenant populations referred to in this section include households up to 80% of area median family income.
- B. “BHCD.”** The City of Portland’s Bureau of Housing and Community Development.
- C. “City Subsidy.”** Locally controlled public funds administered by the Portland Development Commission, the Bureau of Housing and Community Development, or other City bureau or agency, allocated for the purpose of creating or preserving affordable rental housing to households below 80% of median family income. 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.
- D. “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% of area median family income.
- E. “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.
- F. “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 BHCD 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.

- G. “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.
- H. “HUD.”** The United States Department of Housing and Urban Development
- I. “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.”
- J. “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 (ORS 90.400).
- K. “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% of median family income 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

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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.

- L. “Low Income.”** Low income individuals, households or tenants are those with a gross household income below 50% of the area median family income.
- M. “MFI.”** Median family income for the Portland Metropolitan Statistical Area as defined by HUD as adjusted for inflation and published periodically.
- N. “Moderate Income.”** Moderate income individuals, households or tenants are those with a gross household income below 80% of the area median family income.
- O. “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.
- P. “PDC.”** Portland Development Commission
- Q. “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.
- R. “Qualifying Household.”** A household legally residing in a federal preservation project with a gross household income at or below 50% of median family income.

30.01.040 Title 30.01 Responsibilities

The Bureau of Housing and Community Development 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. The Portland Development Commission will work with the Bureau of Housing and

Community Development to implement property acquisition responsibilities described in this Title. The Portland Development Commission 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, effective March 17, 2000.)

- 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, BHCD shall provide written confirmation of the City's interest in the property to each Section 8 property within the City of which BHCD 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.

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- F.** In addition to any other times, during the notice periods identified in this Chapter, the City may pursue preservation of the 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, effective March 17, 2000.)

- 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.** BHCD shall identify and make available adequate financial resources for tenant relocation assistance for all tenants who experience involuntary displacement from Federal Preservation Properties. BHCD 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, effective March 17, 2000.)

- 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 BHCD 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 BHCD, 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% MFI.

30.01.080 Local Preservation Projects - Tenant and City Notice Provisions

- 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 BHCD. 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 BHCD.

30.01.090 City Subsidy Properties - Long-Term Affordability Requirements

- A.** Properties that in the future request and receive a City subsidy from PDC or other City bureau or agency for the purpose of creating or preserving rental housing affordable to households below 80% of median family income, will be subject to a minimum of 60 year affordability contract requirements developed by PDC consistent with the implementing charge in 30.01.090 B.
- 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, PDC 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).

30.01.100 Compliance and Enforcement

- A.** BHCD 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.

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- 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.