



CITY OF
PORTLAND, OREGON

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ADMINISTRATIVE RULES

MULTIPLE-UNIT LIMITED TAX EXEMPTION (MULTE) PROGRAM

Definition of Administrative Rules

These Administrative Rules are created in accordance with the City of Portland's Administrative Rule process by the Portland Housing Bureau (PHB) in order to define the policies, processes, and procedures of implementation of the Multiple-Unit Limited Tax Exemption Program authorized by City Code 3.103 (Property Tax Exemption for Multiple-Unit Housing Development) and State Statute, ORS 307.600 through 307.637.

The Administrative Rules shall be approved through City Council annually however the Director of the PHB or a designee shall have authority to make changes to the Administrative Rules as is necessary to meet current program requirements throughout the year.

Program policies, processes, and procedures are outlined in these Administrative Rules however there may be additional program requirements necessary to maintain compliance with City Code and State Statute. The items included in these Administrative Rules are the following:

- 1. Program Goals**
- 2. Benefit of the Tax Exemption**
- 3. Minimum Threshold Requirements**
- 4. Application Review and Scoring of Public Benefits**
- 5. Application Approval**
- 6. Compliance Requirements**
- 7. Termination of Active Exemptions**
- 8. PHB Administrative Requirements and Dates**
- 9. Attachments**

Program Goals

The Legislative goals of the Multiple-Unit Limited Tax Exemption Program include:

- Stimulate the construction of transit supportive multiple-unit housing in the core areas of urban centers to improve the balance between the residential and commercial nature of those areas;
- Ensure full-time use of the areas as places where citizens of the community have an opportunity to live as well as work;
- Promote private investment in transit supportive multiple-unit housing in light rail station areas and transit oriented areas in order to maximize transit investment to the fullest extent possible; and
- Establish and design programs to attract new development of multiple-unit housing and commercial and retail property, in areas located within a light rail station area or transit oriented area.

The City of Portland and Multnomah County have established these additional core goals:

- Stimulate the construction of affordable housing and other public benefits where such housing or benefits may not otherwise be made available;
- Leverage market activities to advance housing and economic prosperity goals by aligning those activities with the goals of the Portland Plan and the PHB's Strategic Plan; and
- Provide transparent and accountable stewardship of public investments.

Benefit of the Tax Exemption

The Multiple-Unit Limited Tax Exemption Program provides a ten year property tax exemption on the residential portion of the structural improvements as long as program requirements are met. During the exemption period, property owners are still responsible for payment of the taxes on the assessed value of the land and any commercial portions of the project, except for those commercial improvements deemed a public benefit and approved for the exemption.

The value of the exemption cannot exceed 100 percent of the real market value. In the case of a structure converted in whole or in part from other uses to multiple-family, only the increase in value attributed to the conversion is eligible for the exemption.

The property is reassessed when the exemption is either terminated for noncompliance or expires after the ten years, and owners begin paying full property taxes.

- **Commercial portions of a project** – For exemption of the commercial portion of a mixed use development, the developer must demonstrate through community engagement

and/or a market analysis that the commercial space meets a community identified need for a good or service that is not currently available within walking distance, does not compete with a similar established business within walking distance, and advances Portland Development Commission's (PDC) Neighborhood Economic Development Goals.

- **Parking** – The exemption may include parking constructed as part of the multiple-unit housing construction, addition or conversion; any parking available shall not be required as payable rent.
- **Extensions for low income housing** – Extensions beyond the ten year exemption period will be granted only for projects subject to a low income housing assistance contract with an agency or subdivision of Oregon or the United States.

Applications for extensions must be submitted under the same application timeline as new applications prior to the exemption expiring. Extensions may be granted only for the portion of units which meet the affordability requirements through June 30 of the tax year during which the termination date of the low income housing assistance contract falls. Projects that propose to make changes to the affordability mix must reapply through the competitive process.

Minimum Threshold Requirements

- **Eligible areas** – Projects must be located within identified Designated Plan Areas/Metro 2040 Centers, within a quarter mile radius of Max Station Areas, or within a quarter mile from either Metro 2040 Main Streets with Transit Service or Metro 2040 Corridors with Frequent Transit Service within the City of Portland as illustrated on the map attached as Exhibit 1.
- **Timing of application** – Applications for tax exemption must be submitted and approved prior to application for the project's building permit.
- **Rental project financial need** – Analysis of the project pro forma must establish that the project would not otherwise be financially feasible without the benefit provided by the property tax exemption; the applicant must submit documentation that the anticipated rate of return for the project for the period of the exemption will not exceed 10 percent.
- **Affordability** – For rental projects, during the term of the exemption, a minimum of 20 percent of the number of units must be affordable to households earning 60 percent or less of the area median family income upon initial occupancy of the unit by that household. In high cost market areas a project may propose 20 percent of the number of units affordable to households earning 80 percent or less of the area median family income based on the market for similar units in the same geographic area supported by a market study.

Subsequent monitoring of the incomes of these households is not required until the affordable unit again becomes available for rent, at which time it must be rented to an income qualified household earning 60 percent (or 80 percent if approved as such) of the area median income for the remaining term of the property tax exemption, unless another unit has subsequently been rented at an equivalent affordable rate to a qualified household so that the project continues to comply with the affordability guidelines.

Measurement of household income shall be determined using the U.S. Department of Housing and Urban Development's, or its successor agency's, annual household income for the Portland Metropolitan Area for a family of one person (for a studio apartment), two persons (for a one-bedroom apartment), three persons (for a two-bedroom apartment), or four persons (for a three-bedroom apartment). Affordability shall be defined as a rental rate which does not exceed 30 percent of the monthly gross income including allowances for utilities (rent burden).

Affordable units to be distributed evenly amongst unit mix (bedroom sizes). Projects must maintain the same unit distribution of affordable units during the exemption period but individual units do not need to be designated.

- **For-sale project financial need/Affordability** – Units receiving tax exemption will be sold to buyers meeting the affordability requirements. Homebuyers (who will be both on title to the property and occupying the home) must earn no more than 100% median family income for a family of four, adjusted upward for households larger than 4 persons.
- **For-sale project price cap** – The property must sell for less than the sale price cap established annually by PHB – no more than 120% of the annual median sale price (or appraised value if an owner/builder) for the City of Portland.
- **For-sale project occupancy** – For-sale units may not be rented at any time (both prior to initial sale and after homebuyer qualification); properties which are rented are subject to termination of the exemption. Homebuyers must occupy the property as their primary residence.
- **MWESB goals** – Applicants must provide a plan to meet PHB's business equity goals for participation of Minority, Women, and Emerging Small Businesses (MWESB) in professional services and construction contracting and City workforce training and hiring goals.
- **Marketing Plan** – Applicants must submit a Marketing Plan that describes elements including but not limited to engaging community stakeholders, the use of gathering and commercial space in the project, and outreach to a target audience.
- **Neighborhood Contact** – Applicants are required to participate in the Neighborhood Contact process prior to applying for the building permit and tax exemption program. The Neighborhood Contact process provides a setting for the applicant and neighborhood residents to discuss a proposed project in an informal manner. By sharing information

and concerns during the application process, all involved have the opportunity to identify ways to improve a proposed project, and to resolve conflicts before the tax exemption is approved.

The requirements for Neighborhood Contact are:

- The applicant must contact the neighborhood association for the area, by registered or certified mail, to request a meeting. A copy of this request must also be sent by registered or certified mail to the district neighborhood coalition.
- The neighborhood association should reply to the applicant within 14 days and hold a meeting within 45 days of the date of the initial contact. If the neighborhood association does not reply to the applicant's letter within 14 days, or hold a meeting within 45 days, the applicant may request a land use review or building permit without further delay. If the neighborhood requests the meeting within the time frame, the applicant must attend the meeting. The applicant may attend additional meetings on a voluntary basis. The neighborhood may schedule the meeting with its board, the general membership, or a committee.
- After the meeting and before pulling the building permit, the applicant must send a letter to the neighborhood association and district neighborhood coalition. The letter will explain changes, if any, the applicant is making to the proposed project.
- Copies of letters, and registered or certified mail receipts must be submitted with the tax exemption application.
- **Green building** – The project must be built to meet healthy and resource efficient environmental building standards. The applicant must certify in the application to build the project using one of the following standards:
 - Register and certify at the silver level for US Green Building Council's Leadership and Energy in Environmental Design (LEED);
 - Register and certify at the silver level for Earth Advantage Multifamily;
 - Build to meet Oregon's Reach Code for Commercial or Residential Buildings; or
 - Comply and certify for Enterprise Green Communities' criteria for affordable housing.

Certification must be submitted to PHB with the first year's financial document submission. If the project is not built to meet one of the standards, the exemption will be terminated.

- **Eligible project types** – Projects must be proposed construction, additions to existing structures or conversion of existing non-residential property to housing.

Projects must have at least ten units with a minimum density of 35 units per net acre of site area (residential only); or at least ten units with a minimum density of 20 units per net acre of site area (mixed use with ground floor commercial space) and at least two times the amount of residential floor area to non-residential floor area; home ownership projects are exempt from this requirement.

A row-house or townhouse development containing for-sale or rental units is eligible as long as all other eligibility criteria are met.

The project must not be designed or used as transient accommodation, including but not limited to hotels and motels.

Existing multiple-unit housing projects which are currently or will become subject to a low income housing assistance contract with an agency or subdivision of Oregon or the United States are eligible to apply through the competitive process to receive an exemption in order to preserve or establish existing housing that is affordable to low income persons.

- **Pedestrian connection** – The project must provide a pedestrian connection and be physically or functionally related to and enhance the effectiveness of a light rail line or mass transportation system

Pedestrian connection means a continuous, unobstructed, reasonably direct route between two points that is intended and suitable for pedestrian use. Pedestrian connections include but are not limited to sidewalks, walkways, stairways and pedestrian bridges. On developed parcels, pedestrian connections are generally hard surfaced. In parks and natural areas, pedestrian connections may be soft-surfaced pathways. On undeveloped parcels and parcels intended for redevelopment, pedestrian connection may also include rights-of-way or easements for future pedestrian improvements.

- **Qualified applicant** – Applicant must own or have site control of the project site.
- **Additional application requirements** – Applicant must provide the following information in the completed application and supporting documentation:

Project description:

- Number, size, and type of dwelling units;
- Dimensions of the multiple-unit structure(s), parcel size, proposed lot coverage of building, and amount of open space;
- Type of construction;
- Public and private access;
- Parking and circulation plan;
- Number of residential and commercial off-street parking spaces;
- Proposed amount of floor area dedicated to residential and nonresidential uses;

- Description of the existing use of the property, including if appropriate a justification for the elimination of existing sound and rehabilitable housing;
- Conceptual site plan and supporting maps (drawn to a minimum scale of one inch equal to 16 feet, or a scale suitable for reproduction on 8-1/2" by 11" paper, showing the development plan of the entire project including streets, driveways, sidewalks, pedestrian ways, off street parking, loading areas, location, design, and dimension of structures, use of land and structure(s), major landscaping);
- Public benefits description (including any extension of public benefits from the project beyond the period of the exemption); and
- Project schedule.

Financial Information (for rental projects only) – spreadsheet(s) to be submitted electronically/”live” (not PDF):

- Pro forma development budget (detailed project costs);
- Pro forma Sources and Uses;
- 15 year pro forma operating cash flow (income and expense analysis) **without** the exemption – demonstrate the 10 year average cash on cash return;
- 15 year pro forma operating cash flow (income and expense analysis) **with** the exemption – demonstrate the 10 year average cash on cash return;
- 15 year pro forma operating cash flow (income and expense analysis) showing the necessary increase in unit rents to achieve the same return as **with** the exemption – demonstrate the average cash on cash return;
- Rent structure by unit type (affordable units to be net of utility allowance);
- Description of how real estate taxes without the exemption were determined;
- All components of developer equity including invested cash; and
- Copy of the market study provided to the senior lender for the project.

Legal:

- Property tax printout for all parcels, showing tax account numbers and legal descriptions (include copy of deed to document ownership or full legal description if necessary);
- Legal articles of entity who will receive the exemption (Identifying signature block);
- Applicant should identify any mutual identity of interest between themselves and the construction contractor;
- Such other information required by state or local law or otherwise which is reasonably necessary; and
- Application provided by PHB with applicant’s signature verifying oath or affirmation.

Application Review and Scoring of Public Benefits

- **Annual cap** – PHB will approve no more than \$1 million of estimated and projected foregone revenue each year. Properties located in eligible areas within the Gateway and Lents Urban Renewal Areas are exempt from the cap.
- **Time frame** – PHB will have an annual open application window through a competitive process. The first application round is expected to start on August 15, 2012. Applicants will have 45 days to submit an application for review. Approved exemptions will go into effect July 1 of the assessment year in which construction was completed, but no earlier than July 1, 2014.
- **Threshold requirements** – Applications will be reviewed to determine if the program minimum threshold requirements are met and if there is a financial need for the exemption. Projects meeting the minimum threshold requirements will be weighed for the largest benefits to the city.
- **Public Benefits** – Applicants must commit to providing public benefits to the community and will receive points for the level of commitment made, allowing them to compete against other applicants. Projects must achieve a minimum score to reach a “medium” level in the scoring in order to be competitive. The possible public benefits include but are not limited to the following:

Priority points for:

- Affordability in addition to threshold requirement, balanced with market rents (rental projects) or sale prices (for-sale unit) in the area;
- Applicant’s demonstration in the MWESB and Affirmative Marketing Plans of how the project will help PHB achieve the vision contained in PHB’s “Guiding Principles on Equity and Social Justice” through partnerships with community based organizations, the use of any commercial space, etc.; and
- Units accessible to persons with special needs, such as the mentally or physically disabled or other categories of persons as defined by the Federal Fair Housing Amendments Act of 1988 in addition to ADA and Fair Housing minimum requirements (i.e. all units “accessible ready”, a portion of or all units fully “accessible”, and incorporation of established accessible design features, such as Universal Design, at both unit and site level.)

Bonus points available for:

- Family sized units (2+ bedrooms) in areas lacking housing units with two or more bedrooms (as defined in a map attached as Exhibit 2) with appropriate family

friendly amenities (family oriented recreational facilities for the children of project residents such as secure on-site play area, on-site garden area, etc.);

- Access to grocery stores, schools, day care, etc. (within ¼ mile);
 - Quality gathering space (exterior or interior) available to the community at large (on-going or by reservation) such as permanent dedications for public use including open space, community gardens, or pedestrian and bicycle connections to public trails and adjoining neighborhood areas; and
 - A portion of units reserved for and an established partnership with an agency to provide services to vulnerable populations (i.e. youth who have transitioned or are transitioning out of foster care, women fleeing domestic violence, veterans).
- **PHIC Review** – The PHB Housing Investment Committee will confirm the projects selected based on the scoring of the public benefits.
 - **Application fee** – Applicants must pay PHB an application fee (to be established annually, including the fee to be paid to Multnomah County) for each selected application.
 - **Public hearing before PHAC** – PHB will present the selected applications to the Portland Housing Advisory Committee at a public hearing, for which public notice will be given and public testimony will be heard.
 - **URA approval** – For properties located in Urban Renewal Areas, PHB will contact Portland Development Commission (PDC) for approval prior to approval of the application.

Application Approval

- **Final approval** – Exemptions will receive final approval by PHB through the filing of an ordinance with City Council within 180 days of application. PHB will send a copy of the approved resolution to the applicant.
- **County activation** – PHB will send a copy of the approved ordinance and list of approved properties along with the corresponding fee to Multnomah County no later than April 1 each year.

Compliance Requirements

- Eligible multiple-unit housing shall be constructed, converted, or preserved after the date of adoption of this program, and completed on or before January 1, 2022 unless the program is extended and a later sunset date is established through the Oregon State Legislature.

- Project owners must submit certification including any necessary supporting documentation of the public benefits and other project requirements identified in the approved application to PHB with the first annual financial documentation submitted.

Rental projects

- **Extended Use Agreement** – The owner of a rental project approved for exemption will be required to sign an extended use agreement (EUA) to be recorded on the title to the property.
- **Annual reporting and review** – During the exemption period, the owner must submit project financial information annually to PHB within 45 days from the end of the project’s fiscal year. The financial information shall include, but is not limited to the following:
 - Full project-based audited financial statements
 - Internal Revenue Services tax information (tax returns)
 - Ten year operating cash flow statement, showing actual cash flow for all prior years and the current year and shall include a to-date calculation of the rate of return for the project
 - Electronic Operating Statement (EOS) or similar form
 - Electronic Tenant Survey (ETS) (to validate subsequent rental and household income compliance, when unit becomes available for rent after initial occupancy)
 - Every fifth year, the tenant income qualification submitted shall be certified by a third party.
 - Any other documentation deemed necessary by PHB to calculate or evaluate the rate of return for the project

PHB will prepare an annual analysis of the project’s financial data including a to-date calculation of the rate of return for the project using the same method utilized in its initial recommendation for the tax exemption within 180 days of receipt of all required financial information.

PHB will advise the owner in writing whether the projected rate of return will exceed 10 percent for the entire exemption period and may result in an Accrued Payment Liability (APL).

If PHB determines that the number and unit mix of affordable units is less than the approved percentage or does not match the unit mix of the project, the next available units must be rented to households meeting the income requirements and the project must be brought into compliance before the next reporting period.

- **Project rate of return** – At the end of the final year of the exemption, PHB will calculate the rate of return for the project during the exemption.

If the rate of return does not exceed 10 percent, then the EUA terminates at the end of exemption.

If the rate of return exceeds 10 percent, then PHB sends a written notice to the last known address of the owner requiring the owner to elect one of the following:

- The EUA may remain in full force and effect for an additional 5 years after the end of the tax exemption , extending the affordability requirements approved for the exemption; provided that the number of units subject to the rent restrictions as approved is the same number necessary to reduce the net present value, using a 10 percent annual discount rate of the project’s projected market-rate (unrestricted) annual cash flows by an amount equal to the APL; or
- The owner pays an APL in an amount equal to the lesser of either:
 - The net present value using a 10 percent annual discount rate of the difference between the project’s actual annual cash flows during the exemption and the proforma projected cash flows for the project that would provide a 10 percent rate of return during the exemption; or
 - The maximum amount of the property taxes that would have been assessed if no exemption had been granted.

For-sale units

- **Agreement/Notice** – Prior to approval, applicants must execute a document to be recorded on title to the property requiring PHB verification of homebuyer affordability and owner-occupancy qualification prior to the sale of the property to the initial homebuyer.
- **Homebuyer verification** – The initial homebuyer must submit a verification form and supporting documentation at least 10 business days prior to closing on the home purchase and must not close without PHB review and response. The verification form must be signed by all homebuyers; income documentation should be submitted for all homebuyers who will both be on title to the property and living in the home.

Supporting income documentation includes the last two years of W2s, the most current month’s worth of paystubs, and documentation of any additional income received such as social security, child support, alimony, or unemployment; self-employed homebuyers must submit two years of filed federal tax returns with all schedules and a current year-to-date profit and loss statement. PHB may require additional documentation in order to fully verify current income of the homebuyers including letters of explanation or affidavits.

- **PHB review prior to closing** – PHB will notify homebuyer and escrow of homebuyer qualification (affordability and owner-occupancy) prior to closing.

- **Sales over the price cap** – Escrow must notify PHB if a property is selling over the established price cap. If the exemption is already in effect, it will be terminated and escrow must request the amount of any taxes exempted due from Multnomah County to be paid at closing by the seller.
- **Construction completion** – The property must be fully constructed upon sale (documented by final permit or certificate of occupancy and usually verifiable by PHB through Portland Maps).
- **Verification of closing** – Homebuyers must send PHB documentation of the final sale price and title holders within 30 days of closing by submitting a copy of the recorded Warranty Deed or the Final HUD-1 Settlement Statement.
- **Subsequent homebuyers** – If a property with a tax exemption transfers title during the ten year exemption period, the exemption will continue as long as the property remains owner occupied.
- **Owner Occupancy** – The Property may not be rented at any time (both prior to initial sale and after homebuyer approval). After initial sale, the property must be owner occupied (or listed for sale and vacant) during the exemption period.

Multnomah County will provide an annual list to PHB of all multiple-unit for-sale exemptions where the property (situs) address differs from the mailing address on record for the tax bill prior to June 30 each year. Properties with a post office box as the mailing address will be included in this list.

PHB will send a letter to property owners on the list provided by Multnomah County at both the property and mailing addresses requesting documentation that a property is being occupied as the owner's primary residence and that the property is not rented. Documentation includes but is not limited to copies of the prior year's complete federal tax return, government issued photo identification showing the property address, and a recent (within two months) utility bill showing the mailing address and billing address as the property address.

PHB will determine if documentation submitted is sufficient to document owner occupancy. If PHB finds that the property is not owner occupied, the exemption will be terminated.

Hardship exception process – If PHB determines that a property owner is not meeting the owner occupancy requirement of the program, a property owner may submit a letter to PHB asking for a hardship exception to the requirement.

Hardship exceptions may be granted for (but are not limited to) the following situations: active military duty outside of the area, temporary relocation to care for an ill or dying family member, or temporary relocation caused by an employer. Hardship exceptions are allowed for one year so a property owner would need to request an additional exception

each year should the hardship situation continue.

PHB will review the hardship situation and determine whether or not an exception to the owner occupancy requirement can be granted for one year. PHB will not accept a hardship exception if the property has been rented.

Termination of Active Exemptions

If the property no longer qualifies for the tax exemption prior to the exemption expiring, the exemption will be terminated.

PHB will send a certified letter to the mailing addresses on record with the date of a hearing where the property owner may show cause why the exemption should not be terminated. The hearing will be scheduled at least 20 days from the mailing of the letter. PHB staff will determine whether or not the property owner has presented sufficient cause to not terminate the exemption. PHB will also send a letter to the lender on record from recorded documents notifying them of their right to attempt to cure or remedy the non-compliance within 30 days.

PHB will go before city council annually in late August with a list of all exemptions to be terminated for the current tax year.

PHB Administrative Requirements and Dates

- **Annual review of market value/price cap for for-sale units** – PHB must review and establish an annual maximum market value and price cap based on data of the previous year's sales within the city of Portland provided by Multnomah County. PHB must present a resolution to City Council to approve the cap prior to January 1.

Attachments

Exhibit 1: Multiple-Unit Limited Tax Exemption Eligible areas map (approved by Portland Bureau of Planning and Sustainability's Planning and Sustainability Commission on June 12, 2012).

Exhibit 2: Map of citywide family-sized unit deficiencies.