

12/13-14 AMENDMENT RECORD FOR INCLUSIONARY ZONING

The motion numbers indicate the order the amendments were made at the 12/13-14 Council meeting.

<p><u>TUESDAY, 9:00 AM, DECEMBER 13, 2016</u></p> <p>SPECIAL COUNCIL MEETING</p>	
<p>THOSE PRESENT WERE: Commissioner Saltzman, Presiding; Commissioners Fish and Novick, 3.</p>	
<p>1381 TIME CERTAIN: 9:00 AM – Provide affordable housing through an Inclusionary Housing program (Previous Agenda 1379; Ordinance introduced by Mayor Hales; amend Title 33, Planning and Zoning) 3 hours requested for items 1381-1382</p> <p>Continued to December 14, 2016 at 11:00 am Time Certain.</p> <p>2) Motion to amend Title 33 to make technical fixes: Moved by Saltzman and seconded by Fish. (Y-5)</p> <p>3) Motion to amend Title 33 to add the initial phased in inclusion rate: Moved by Saltzman and seconded by Fish. (Y-5)</p> <p>5) Motion to adopt historic transfer amendment: Moved by Novick and seconded by Fish. (Y-5)</p> <p>7) Motion to adopt family size amendment for Title 33: Moved by Novick and seconded by Fish. (Y-5)</p> <p>8) Motion to adopt parking linking amendment: Moved by Novick and seconded by Fish. (Y-4; N-1 Novick)</p>	<p>PASSED TO SECOND READING AS AMENDED DECEMBER 21, 2016 AT 9:30 AM</p>
<p>S-1382 Provide affordable housing through an Inclusionary Housing program and update the Multiple-Unit Limited Tax Exemption Program (Previous Agenda 1380; Ordinance introduced by Commissioner Saltzman; add Code Section 30.01.120, amend Section 30.01.030 and Chapter 3.103)</p> <p>Continued to December 14, 2016 at 11:00 am Time Certain.</p> <p>1) Motion to accept substitute ordinance containing a number of technical fixes to Title 30 and Title 3: Moved by Saltzman and seconded by Fish (Y-5)</p> <p>4) Motion to adopt family size amendment for Title 30: Moved by Fish and seconded by Saltzman. (Y-5)</p> <p>6) Motion to adopt FAR 5.0 amendment: Moved by Novick and seconded by Fish. (N-5) Motion failed.</p>	<p>SUBSTITUTE PASSED TO SECOND READING AS AMENDED DECEMBER 21, 2016 AT 9:30 AM</p>



CITY OF
**PORTLAND,
OREGON**

PORTLAND HOUSING

188163
12/13 AMENDMENTS

Dan Saltzman, Commissioner
Kurt Creager, Director
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Date: December 7, 2016
To: Mayor Hales
Commissioner Fish
Commissioner Fritz
Commissioner Novick
Commissioner Saltzman
From: Dory Van Bockel, Housing Program Coordinator
Matthew Tschabold, Housing Equity and Policy Manager
Kurt Creager, Housing Director
Re: Inclusionary Housing – Substitute Ordinance

The ordinance and exhibits associated with Title 3, Title 30, and Portland City Code 3.103 as originally submitted include code and administrative rule language in need of technical changes to accurately reflect the inclusionary housing program recommendation from Commissioner Saltzman, as well as a reconciliation between code changes associated with Title 33 and other sections of City Code. Attached you will find a substitute ordinance and exhibits. The Housing Bureau recommends the substitution of the original Council documents with those enclosed to accurately reflect the original inclusionary housing recommendation. Outlined below is a summary of changes.

Ordinance

- Technical change – removal of an unnecessary finding associated with the MULTE program

Exhibit A

- Technical changes – language changes and reorganization for clarity on program purpose, administration, incentives, and standards
- Code reconciliation – language changes for clarity and removal/additions of code as needed to reconcile with Title 33
- Substantive change – establishing fee-in-lieu schedule in City Code

Exhibit B

- Code reconciliation – language change to reconcile with the Oregon Structural Specialty Code

Exhibit C

- Code/rule reconciliation – language changes for clarity and removal/additions of rule as needed to reconcile with Title 33
- Technical changes – language changes and reorganization for clarity

ORDINANCE No.

Provide affordable housing through an Inclusionary Housing Program and update the Multiple-Unit Limited Tax Exemption Program (Ordinance; add Code Section 30.01.120, amend Section 30.01.030 and Chapter 3.103)

The City of Portland Ordains:

Section I. The Council finds:

1. Portland has grown by more than 80,000 people in 29,000 households since 2000, but housing supply has not come close to meeting the demand according to the City's 2015 Report on the State of Housing. The resulting low vacancy rates and price increases have been severe. Between 2006 and 2015 the Oregon Office of Economic Analysis estimated that the Portland housing market was underbuilt by approximately 23,000 units of housing - insufficient just to keep up with population growth.
2. Portland's continued population growth and ongoing economic recovery have had a significant impact on rental housing, resulting in a more than 30 percent increase in average rents over the last five years, consistently low vacancy rates between 2.6 percent and 3.2 percent over the last three years, and high occupancy rates above 96.5 percent for the last five years, as noted in the City's 2015 Report on the State of Housing in Portland. As additionally noted in the report, in the last year, average rents across the City increased between 8-9 percent, or roughly \$100 per month. At the same time, low-wage workers have experienced a decrease in inflation-adjusted wages and a reduced ability to find adequate and affordable rental housing.
3. On October 7, 2015, the Council, through Ordinance 187371, declared a housing emergency for a period of one year.
4. On February 3, 2016, the Council adopted Resolution 37187 and expressed support for considering an inclusionary housing ordinance if the Oregon Legislature eliminated the statewide statutory preemption of local inclusionary housing ordinances.
5. The 2016 Oregon Legislature passed Senate Bill 1533, which lifted the statutory preemption of local inclusionary housing ordinances and authorized local governments to require that a certain portion of housing units within a multifamily structure are sold or rented as affordable housing.
6. On September 7, 2016, the Council extended the housing emergency declared by Ordinance 187371 for one year, through October 6, 2017 (Ordinance 187793). The Council directed the Bureau of Planning and Sustainability (BPS), in coordination with the Bureau of Development Services (BDS) and the Portland Housing Bureau (PHB) to develop a legislative proposal to amend Title 33 to implement a mandatory program for inclusionary housing that is consistent with Senate Bill 1533 (2016). BPS and the Planning and Sustainability Commission (PSC) were directed to forward to the Council the PSC's recommendation on the legislative proposal.

7. On November 8, 2016, the PSC unanimously recommended Zoning Code amendments to implement an Inclusionary Housing program. Separate and apart from this Ordinance, Council will consider amendments to the Zoning Code that require mandatory and voluntary inclusionary housing.
8. Applying clear and objective criteria, PHB will evaluate whether a proposed development meets the numerical requirements for inclusionary housing set forth in the Zoning Code.

PHB will provide land use applicants with a letter certifying that any proposed development meets the numerical standard set out in Title 33.

- ~~9. PCC Chapter 3.103.030 requires Council to establish a cap on estimated foregone revenue for the Multiple-Unit Limited Tax Exemption Program ("MULTE") Program.~~

~~44.9.~~ PHB has developed Administrative Rules to guide the implementation of the IH Program authorized by PCC Section 30.01.120 that are attached as Exhibit C.

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NOW, THEREFORE, the Council directs:

- a. Amend PCC Title 30 with the addition of Section, 30.01.120 Inclusionary Housing, attached as Exhibit A.
- b. Amend PCC Title 30 with the addition of the following definitions to Section 30.01.030:
 - A. "Administrative Rules" means the program administrative rules developed by the Portland Housing Bureau and approved through City Council which set forth program requirements, processes, and procedures, and are filed through the City's publically available Portland Policy Documents (PPD).
 - A. through S. re-lettered to B. through T.
 - U. "Receiving Site" means a new or existing housing development with transferred Inclusionary Housing requirements from a Sending Site.
 - V. "Regulatory Agreement" means a recorded agreement between the owner and PHB stating the approval and compliance criteria of a PHB program.
 - Re-letter T. to W.
 - X. "Sending Site" means a new development project which is subject to Inclusionary Housing requirements and is opting to provide affordable units off-site.
- c. Amend PCC 3.103, attached as Exhibit B.

- d. PCC Section 30.01.120 will be implemented consistent with the Administrative Rules included as Exhibit C, developed by PHB, whose Director or designee has the authority to adopt, amend, and repeal these rules.
- e. Once a year during the annual City budget process and through the State of Housing in Portland annual report, PHB shall report to Council on outcomes of the IH Program.

Section 2. This ordinance shall be effective on and after February 1, 2017. The requirements and incentives applicable to the Inclusionary Housing Program shall apply to building permit applications submitted to the Bureau of Development Services and deemed vested on and after February 1, 2017.

Passed by the Council,

MARY HULL CABALLERO
Auditor of the City of Portland

Commissioner Dan Saltzman
Prepared by: Dory Van Bockel
Date Prepared: November 16, 2016

By

Deputy

EXHIBIT A

30.01.120 Inclusionary Housing

A. Purpose Statement. ~~By implementing The purposes of the Inclusionary Housing ("IH") Program (the "IH Program"), the City has the following goals are:~~

- 1. ~~Increase the number of units available to households earning 80 percent or less of area median family income(MFI), with an emphasis on households earning 60 percent or less of area median family income(MFI);~~
- 2. ~~Responsibly allocate resources to increase housing opportunities for families and individuals facing the greatest disparities;~~
- 3. ~~Create affordable housing options in high opportunity neighborhoods, those with superior access to quality schools, services, amenities and transportation; and~~
- 4. ~~Promote a wide range of affordable housing options with regard to size, amenities and location.~~

B. Administration.

~~B.A. PHB will The Bureau of Development Services ("BDS") administers and enforces the Portland Zoning Code. BDS staff will forward multi-dwelling building permit applications to evaluate certify whether the applicant's proposed development meets the Inclusionary Housing ("IH") standard stated in Title 33 standards.~~

- 1. ~~PHB will provide the applicant with a letter certifying whether the development meets the standard and any administrative requirements set forth in this Section.~~
- 2. ~~PHB may adopt, amend and repeal Administrative Rules and prepare forms for the implementation, administration and compliance monitoring consistent with the provisions of this Section. The Director of PHB, or a designee, has authority to make changes to the Administrative Rules as is necessary to meet current program requirements. PHB Administrative Rules will set forth the clear and objective criteria for determining whether a development meets the minimum standard of affordable units ("IH Units").~~
- 3. ~~PHB will review the Inclusionary Housing outcomes periodically in order to determine if the IH Program options and incentives in Subsection 30.01.120C are consistent with City goals and market conditions.~~

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In addition to the IH Program incentives set forth in Title 33, the

- ~~D.~~ **C. Financial Incentives.** The following financial incentives are available ~~provided~~ for the respective options of IH Program compliance:

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1. When the proposed development will include 20 percent of the units at or below 80 percent MFI, or for ~~properties in mixed-use zones/developments outside of the Central City Plan District,~~ **15 percent of the units at or below 80 percent MFI to the extent that for applications are received filed on or before December 31, 2018:**
 - a. ~~Ten-year property tax exemption according to in accordance with City Code Chapter 3.103 that applies to for the IH Units. If the development is in the Central City plan/district, as designated in City Code Chapter 33.510, and has maximum base 5:1 FAR or greater than 5:0 FAR, before including density bonus granted through City Code Chapter 33.510, the tax exemption applies to all residential units; and~~
 - b. ~~Construction Excise Tax exemption for the IH Units in accordance with Subsection 6.08.060A.2.; and~~
2. When the proposed development will include 10 percent of the units at or below 60 percent MFI, or for ~~properties in mixed-use zones/developments outside the Central City Plan District,~~ **8 percent of the units at or below 60 percent MFI to the extent that for applications are received filed on or before December 31, 2018:**
 - a. ~~Ten-year property tax exemption according to City Code Chapter 3.103 that applies to for the affordable IH units. If the development is in the Central City plan/district/Plan District, as designated in City Code Chapter 33.510, and has maximum base 5:1 FAR or greater than 5:0 FAR, before including density bonus granted through City Code Chapter 33.510, the tax exemption applies to all residential units; and~~
 - b. ~~Construction Excise Tax exemption for the IH Units in accordance with Subsection 6.08.060A.2.; and~~
 - c. ~~SDC exemption on affordable units for the IH Units in accordance with Section 30.01.095.~~
3. When the proposed development elects to construct IH Units offsite:
 - a. ~~The Receiving Site IH Units benefit from the Construction Excise Tax exemption for the Receiving Site's IH Units in accordance with Subsection 6.08.060A.2.; and the~~

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

- 4. ~~There are no financial incentives for an~~ When the applicant elects ~~to dedicate IH Units in an existing units development,~~ there are no financial incentives provided under Section 30.01.120.
- 5. ~~There~~ When the applicant elects the fee-in-lieu option, ~~there are no financial incentives for an applicant electing the fee-in-lieu option~~ provided under Section 30.01.120.

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

~~4-1.~~ The IH Units must meet clear and objective administrative criteria that ensure a reasonable equivalency between the IH Units and the market-rate units in the development;

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~~1.~~ The units meeting the affordability requirements must be reasonably equivalent to the other units in the development.

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

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

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

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

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

~~4.~~ E. To the extent that a financial incentive as set forth in this Section is not available to a development that otherwise complies with City Code Chapter 33.245, the IH Program will not be applicable to the development. If the IH Program is not applicable to the development, PHB will provide a letter certifying that the development is not subject to any IH Program is not applicable requirements.

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~~G. PHB may adopt, amend and repeal Administrative Rules; and establish procedures, and prepare forms for the implementation, administration and compliance monitoring consistent with the provisions of this Section. The Director of PHB, or a designee, has authority to make changes to the Administrative Rules as is necessary to meet current program requirements.~~

~~H.1. PHB will review the Inclusionary Housing outcomes periodically in order to determine if the IH Program options and incentives in Subsection 30.01.120C are consistent with City goals and market conditions.~~

F. **Fee-In-Lieu.** When the applicant elects the fee-in-lieu option, they fee-in-lieu per gross square foot of the proposed development is:

a. For developments in zones outside the Central City Plan District

<u>Zone/FAR</u>	<u>Fee per GSF on or before December 31, 2018</u>
<u>CN1, CO1, CO2, CM, CS, CG, CX plus EG1, EG2, EX and R3, R2, R1, RH and RX zones</u>	<u>\$19.50</u>

<u>Zone/FAR</u>	<u>Fee per GSF after December 31, 2018</u>
<u>CMI at Base FAR</u>	<u>\$23.83</u>
<u>CMI with Bonus FAR</u>	<u>\$25.79</u>
<u>CM2 at Base FAR</u>	<u>\$25.79</u>
<u>CM2 with Bonus FAR</u>	<u>\$26.50</u>
<u>CM3 at Base FAR</u>	<u>\$26.03</u>
<u>CM3 with Bonus FAR</u>	<u>\$28.58</u>

b. For developments in zones within the Central City Plan District

<u>Zone/FAR</u>	<u>Fee per GSF</u>
<u>3:1/4:1 FAR</u>	<u>\$27.39</u>
<u>3:1/4:1 Base with Bonus FAR</u>	<u>\$28.57</u>
<u>5:1/6:1 FAR</u>	<u>\$28.57</u>
<u>5:1/6:1 Base with Bonus FAR</u>	<u>\$28.99</u>
<u>8:1 FAR</u>	<u>\$28.99</u>
<u>8:1 Base with Bonus FAR</u>	<u>\$29.81</u>
<u>9:1 FAR</u>	<u>\$29.81</u>
<u>9:1 Base with Bonus FAR</u>	<u>\$29.42</u>

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12:1 FAR	\$29.42
12:1 Base with Bonus FAR	\$29.85
15:1 FAR	\$27.39
15:1 Base with Bonus FAR	\$28.57

c. For Bonus FAR in non-residential developments

<i>Fee Schedule for BONUS FAR for non-residential occupancy/use</i>
\$24 per square foot of Bonus FAR

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EXHIBIT B**Chapter 3.103****PROPERTY TAX EXEMPTION FOR
MULTIPLE-UNIT HOUSING DEVELOPMENT**

(Chapter amended by Ordinance No., effective February 1, 2017)

Sections:

- 3.103.010 Purpose.
- 3.103.020 Definitions.
- 3.103.030 Benefit of the Exemption; Annual Maximum Exemption Amount.
- 3.103.040 Program Requirements.
- 3.103.050 Application Review.
- 3.103.060 Application Approval.
- 3.103.070 Rental Project Compliance.
- 3.103.080 For-Sale Unit Compliance.
- ~~3.103.090 Extension of the Exemption for Low Income Housing Projects.~~
- 3.103.100 Termination of the Exemption.
- 3.103.110 Implementation.

3.103.010 Purpose.

- A. The City of Portland adopts the provisions of Oregon Revised Statutes 307.600 through 307.637, and administers a property tax exemption program for multiple-unit housing development authorized under those provisions.
- B. In addition to meeting the legislative goals set forth in ORS 307.600, the program also seeks to accomplish the following additional core goals:
 1. Stimulate the inclusion of affordable housing where it may not otherwise be made available.
 2. Leverage market activities to advance housing and economic prosperity goals by aligning those activities with the goals of the Portland Plan and the Portland Housing Bureau's Strategic Plan.
 3. Provide transparent and accountable stewardship of public investments.

3.103.020 Definitions.

As used in this Chapter:

- A. **"Administrative Rules"** means the tax exemption program administrative rules developed by the Portland Housing Bureau and approved through City Council which set forth the program requirements, processes, and procedures.

- B. **"Applicant"** means the individual or entity who is either the owner or a representative of the owner who is submitting an application for the tax exemption program.
- C. **"~~Extended-Use~~ Regulatory Agreement"** means a low-income housing assistance contract recorded agreement between the owner and the Portland Housing Bureau stating the approval and compliance criteria of a project's tax exemption.
- D. **"Multiple-unit housing"** has the meaning set forth in ORS 307.603(5).
- E. **"Owner"** means the individual or entity holding title to the exempt project and is legally bound to the terms and conditions of an approved tax exemption, including but not limited to any ~~extended-use~~ Regulatory Agreement and any compliance requirements under this Chapter.
- F. **"Project"** means property on which any multiple-unit housing is located, and all buildings, structures, fixtures, equipment and other improvements now or hereafter constructed or located upon the property.

3.103.030 Benefit of the Exemption; Annual Maximum Exemption Amount.

- A. Multiple-unit housing that qualifies for an exemption under this Chapter is exempt from property taxes to the extent provided under ORS 307.612 and the Administrative Rules.
- B. However, the maximum amount of estimated foregone tax revenue provided as a benefit of the exemption under this Chapter may not exceed the amount approved by Council.

3.103.040 Program Requirements.

In order to be considered for an exemption under this Chapter, an applicant must verify by oath or affirmation in the application that the project meets the following program requirements as further described in the program Administrative Rules:

- A. Financial need for the exemption
 - 1. Rental projects. The project would not include low to moderate-income units because it would not otherwise be financially feasible without the benefit provided by the property tax exemption.
 - 2. For-sale projects. The units receiving tax exemption will be sold to buyers meeting the affordability requirements contained in this Section.
- B. Property eligibility
 - 1. Projects must be located within ~~identified Designated Plan Areas/Metro 2040 Centers, within a half mile radius of Max Station Areas, or within a~~

~~quarter mile from either Metro 2040 Corridors with Frequent Transit Service or Metro 2040 Main Streets with Transit Service within the City of Portland; the taxing jurisdictions of the City of Portland and Multnomah County.~~

2. Projects must conform to City of Portland's zoning and density requirements.
3. Projects must include 20 or more units.

C. Affordability

1. For rental projects, for applications received on or before December 31, 2018, during the term of the exemption, a minimum of 15 percent of the number of units must be affordable to households earning 80 percent or less of the area median family income, or a minimum of 8 percent of the number of units must be affordable to households earning 60 percent or less of the area median family income. For applications received after December 31, 2018, during the term of the exemption, a minimum of 20 percent of the number of units must be affordable to households earning ~~60~~ 80 percent or less of the area median family income, or a minimum of 10 percent of the number of units must be affordable to households earning ~~80~~ 60 percent or less of the area median family income ~~based on the market for similar units in the same geographic area.~~ The units meeting the affordability requirements must match the unit mix in the project as a whole in terms of number of bedrooms.
2. For projects containing for-sale units, those units receiving the exemption must not exceed the maximum price established under City Code Section 3.102.040 at initial sale and must sell to an initial homebuyer who income qualifies and occupies the unit as established under City Code Section 3.102.040. During the term of the exemption, the unit must be occupied by a homebuyer as established under City Code Section 3.102.040.

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D. ~~Equity~~

1. ~~Applicants must consult with Portland Housing Bureau staff and a third party technical assistance provider prior to opening up bidding for the construction and prior to application. The application must include a description of strategies identified in coordination with the technical assistance provider that will be employed to promote Minority, Women, and Emerging Small Businesses (MWESB) in construction contracting in compliance with City policies. The contractor must work with the City of Portland's Procurement Services Compliance Specialist to track results.~~

- ~~2.~~ Applicants must consult with Portland Housing Bureau staff to identify an intended population for lease up or sale of the units in the project. Applicants must commit to using Portland Housing Bureau's prescribed lease up strategy.

- ~~D.E.~~ Accessibility. At least 5 percent of the affordable units in the project must be built to be adaptable to become fully ADA accessible Type A as defined in the Oregon Structural Specialty Code.

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3.103.050 Application Review.

- A. The Portland Housing Bureau will review and approve or deny applications consistent with ORS 307.621.
- B. Applications for tax exemption must be submitted and approved prior to issuance of the project's building permit.
- C. Applications must include an application processing fee, to be established annually by the Portland Housing Bureau, including the fee to be paid to Multnomah County.

3.103.060 Application Approval.

- ~~A.~~ The Portland Housing Bureau Investment Committee will review each application's eligibility.
- ~~B.~~ Portland Housing Bureau will present the eligible applications to the Portland Housing Advisory Commission at a public hearing, for which notice will be given and public testimony will be heard.
- A. Applications will be considered based on the Inclusionary Housing Program requirements as per City Code Section 30.01.120.
- ~~C.B.~~ Portland Housing Bureau will take applications to City Council for approval in the form of an ordinance and deliver a list of the approved applications to Multnomah County within the timeframe set forth in ORS 307.621.
- ~~D.C.~~ If construction of an approved project is not completed or an application for exemption is not received within the timeframe described in ORS 307.637, Portland Housing Bureau may extend the deadline consistent with ORS 307.634.

3.103.070 Rental Project Compliance.

- A. The owner of a rental project approved for exemption will be required to sign an ~~Extended Use Regulatory~~ Agreement to be recorded on the title to the property.
- B. During the exemption period, the owner or a representative shall submit annual documentation of tenant income and rents for the affordable units in the project to the Portland Housing Bureau.

3.103.080 For-Sale Unit Compliance.

- A. Approved applicants must execute a document to be recorded on title of the project requiring Portland Housing Bureau verification of homebuyer affordability and owner-occupancy qualification prior to the sale of each for-sale unit to an initial homebuyer.
- B. For-sale units which sell to homebuyers who do not meet the affordability or owner occupancy qualifications at initial sale will have the tax exemption removed as of the next tax year.
- C. For-sale units which sell over the established sale price at initial sale will have the tax exemption terminated according to Section 3.103.100 and require the owner to repay any exempted taxes consistent with ORS 307.631.

~~3.103.090 Extension of the Exemption for Low Income Housing Projects.~~

~~Projects subject to a low income housing assistance contract may be eligible for extension pursuant to ORS 307.612.~~

3.103.100 Termination of the Exemption.

If the Portland Housing Bureau determines that the project fails to meet any of the provisions of ORS 307.600 to 307.637 or this Chapter, the Portland Housing Bureau will terminate the exemption consistent with ORS 307.627.

3.103.110 Implementation.

Portland Housing Bureau may adopt, amend and repeal the Administrative Rules, and establish procedures, and prepare forms for the implementation, administration and compliance monitoring consistent with the provisions of this Chapter.

EXHIBIT C

Inclusionary Housing Program*Administrative Rules*

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Appendices

Appendix A – Fee-in-Lieu Factor Schedule

Appendix B – Static Data Sheet Example

I. Definition of Administrative Rules

These Administrative Rules are authorized by City Code Section 30.01.120 in order to define the policies, processes, and procedures of implementation of the Inclusionary Housing Program (the "IH Program").

II. Program Goals

The City of Portland (the "City") has identified the need for a minimum of 23,000 additional housing units to serve low and moderate income households. The City has implemented the IH Program to help meet this need.

Through the IH Program, the Portland Housing Bureau ("PHB") will review all qualifying residential development projects ("developments"). Depending on the inclusion option selected by an applicant, PHB staff may participate in the various phases of the development, including permitting, closing, construction, lease-up and operations.

By implementing the IH Program, the City has the following goals:

- A. Increase the number of units available to households earning 80% percent or less of area median family income ("AMI"), with an emphasis on households earning 60% AMI percent MFI or less;
- B. Responsibly allocate resources to increase housing opportunities for families and individuals facing the greatest disparities;
- ~~B.~~
- C. Create affordable housing options in high opportunity neighborhoods, those with superior access to quality schools, services, amenities and transportation; and
- D. Promote a wide range of affordable housing options with regard to size, amenities and location.

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III. Definitions

Applicant: A person who applies for a land use review or building permit. 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.

Combined Opportunity Map Score: Score calculated for individual properties based on a number of data including access to schools, transportation and services such as medical facilities. Scores are available online at PortlandMaps.com, in the Zoning and Districts tab within the Permits and Zoning Section.

Compliance Period: the time during which the Regulatory Agreement applies to a development.

Conversion: One or more IH ~~units~~ Units that have been determined to be out of compliance with their applicable Regulatory Agreement for six (6) or more consecutive months.

Fee-in-Lieu Factor: The factor used to calculate the fee-in-lieu which may not exceed the maximum justifiable cap determined annually by PHB based on the difference in the capitalized market value between market-rate buildings and buildings with 20 percent of the units affordable to households earning 80 percent or less of the area AMI as determined annually by HUD.

IH Unit: A housing unit documented in a development's Regulatory Agreement as required in order to comply with the IH Program requirements in place at the time of execution of the Regulatory Agreement. When calculating the required percentage of IH Units in a development, any fractional result between .1 and .4 will be rounded down to the number immediately preceding it numerically, and any fractional result between .5 and .9 will be rounded up to the next consecutive whole number. However, the total IH Unit percentage cannot exceed 20 percent of the total units in the development. For example, if a minimum number of IH Units is calculated to be 1.67, it is rounded up to 2 IH Units. See also Bedroom Distribution and Unit Count below.

Market Rate Unit: All residential units within a development that are not subject to a Regulatory Agreement with regard to tenant incomes or unit rents.

Owner: The owner of the title to real property or the contract purchaser of real property of record, as shown on the latest assessment records in the Office of the County Assessor. Owner also includes a deed holder or contract purchaser whose name does not appear in the latest assessment records, but who presents to the City a copy of a deed or contract of sale showing date, book, and page of recording.

Regulatory Agreement: A recorded agreement between the owner and PHB that sets forth the approval and compliance criteria of the IH Program.

Total Development Cost: All costs associated with the development including, but not limited to:

- Land and related land acquisition costs
- Construction costs including labor, materials and all subcontracts and subcontractors
- Soft costs, such as architecture, engineering, and other consultants
- Permitting fees and costs
- Financing fees and costs

IV. Permit Application and Program Options

For both new and renovation developments proposing 20 or more new units in a development, the permit application must include an IH Program option selection. PHB staff will be available at the Bureau of Development Services ("BDS") Permit Center to assist applicants throughout the permitting intake and application process to explain and clarify IH Program requirements.

A. Inclusionary Housing options. IH Program requirements will depend on the applicant's selection from the following options:

+ a. 20% of units affordable at 80% AMI/MI option – or 15% for applications received/ filed through December 31, 2018 for

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properties in mixed-use zones outside the Central City Plan District:

~~a.~~ b. PHB staff calculate the minimum number of required IH Units—any fractional result will be rounded up to the next consecutive whole number. For example, if a minimum number of IH Units is 1.67, it is rounded up to 2 IH Units; and

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~~b.~~ c. In addition to any land use incentives provided in City Code Chapter 33.245 and determined by BDS, PHB staff determine the incentives the City is required to provide, including:

i. 10-year property tax exemption according to City Code Chapter 3.103 based on the development's zoning:

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- 1. For properties ~~in mixed-use zones outside the Central City Plan District~~ or in zones with base floor area ratio below 5:0:1, the tax exemption applies only to the IH Units; or
- 2. For properties in in the ~~Central City plan district (Title 33.510) Central City Plan District with 5:1 FAR or greater than 5:0 FAR, before including any bonus density bonus granted through City Code Chapter 33.510,~~ the tax exemption applies to all residential units; and

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ii. Construction Excise Tax exemption on the IH Units in accordance with Section 6.08.060(A)(2).

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2. 10% of units affordable at 60% ~~AMMFI~~ option – or 8% for applications received filed through December 31, 2018 for properties in mixed-use zones outside the Central City Plan District:

a. PHB staff calculate the minimum number of required IH Units—any fractional result will be rounded up to the next consecutive whole number. For example, if a minimum number of IH Units is 1.67 is rounded up to 2 IH Units; and

b. In addition to any land use incentives provided in City Code Chapter 33.245 and determined by BDS, PHB staff determine the incentives the City is required to provide, including:

i. 10-year property tax exemption according to City Code Chapter 3.103 based on the development's zoning:

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- 1. For properties ~~in mixed-use zones outside the Central City Plan District~~ or in zones with base floor area ratio below 5:0:1 FAR, the tax exemption applies only to the IH Units; or
- 2. For properties in in the ~~Central City plan district (Title 33.510) Central City Plan District with 5:1~~

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FAR or greater than 5.0 FAR, before including any bonus density bonus granted through City Code Chapter 33.510, the tax exemption applies to all residential units;

- ii. Construction Excise Tax exemption on the IH Units in accordance with Section 6.08.060(A)(2); and
- iii. SDC exemptions for the IH Units in accordance with City Code Section 30.01.095.

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3. Build off-site option. Applicants elect to build IH Units off-site in a separate development (Receiving Site) from the new multifamily development that is subject to the IH Program requirements (Sending Site). The following criteria apply:

- a. PHB staff calculate the minimum number of required IH Units under two available scenarios. The applicant can elect to provide:
 - i. At least 20% percent of the total number of residential units in the Sending Site affordable at 60% percent AMI in a newly constructed Receiving Site; or
 - ii. At least 10% percent of the total number of residential units in the Sending Site affordable at 30% percent of AMI in a newly constructed Receiving Site.
- b. The Sending Site will retain any floor area ratio bonus;
- c. The IH Units built on the Receiving Site must be reasonably equivalent to the ~~units~~ Market Rate Units in the Sending Site;
- d. The Receiving Site IH Units benefit from the Construction Excise Tax exemption in accordance with Section 6.08.060(A)(2) and the SDC exemption in accordance with Section 30.01.095;
- e. The Receiving Site remains subject to any additional IH Program requirements;
- f. The Receiving Site must be identified and approved by PHB prior to building permit issuance for the Sending Site, specifying the following information:
 - i. Location;
 - ii. Number of affordable IH Units and total units proposed; and
 - iii. Development schedule
- g. The Receiving Site must be within a one-half mile radius of the Sending Site, unless the ~~Sending~~ Receiving Site is in an area with an equal or higher Combined Opportunity Mapping Map Score;
- h. The Receiving Site cannot be supported by any additional subsidy from PHB;
- i. The Receiving Site must receive a Certificate of Occupancy within three years of the Sending Site's building permit issuance or be subject to financial penalties;
- j. A penalty to the Sending Site will be due to PHB if the IH Units are not

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made available as set forth in the Regulatory Agreement. See Remedies section below; and

- k. The applicant shall cause its general contractor for the Receiving Site to enter into an agreement with a third-party technical assistance provider approved by PHB prior to opening up bidding for the construction. The agreement must include the development of a plan to meet the City's goal of 20% percent or higher participation by Minority, Women, and Emerging Small Businesses (MWESB) firms in construction contracting. Prior to building permit issuance, the general contractor must provide a copy of the signed agreement. The general contractor must work with the City of Portland's Procurement Services Compliance Specialist to report results during bidding and construction. The third-party technical assistance provider must provide a written report summarizing the outcomes of the efforts made to reach the goal, including successes, barriers and any areas of improvement.

4. Designate existing units (DEU) option. Applicants elect to designate the IH Units in an existing building (Receiving Site) separate from the new multifamily development that is subject to the IH Program requirements (Sending Site). The following criteria apply:

- a. PHB staff calculate the minimum number of required IH Units under two available scenarios. The applicant can elect to provide:
 - i. At least 25% percent of the total number of residential units in the Sending Site affordable at 60% percent AMI in a newly constructed Receiving Site; or
 - ii. At least 15% percent of the total number of residential units in the Sending Site affordable at 30% percent of AMI in a newly constructed Receiving Site.
- b. The Sending Site will retain any floor area ratio bonus;
- c. The IH Units built on the Receiving Site must be reasonably equivalent in size, quality and bedroom count to the units on the Sending Site;
- d. The Receiving Site must be identified and approved by PHB prior to building permit issuance for the Sending Site, specifying the following information:
 - i. Location;
 - ii. Number of affordable and total units proposed; and
 - iii. Leasing schedule
- e. The Receiving Site must be no more than one-half mile from the Sending Site, unless the Sending Site is in an area with an equal or better Combined Opportunity Mapping Map Score;
- f. The Receiving Site cannot be supported by any additional subsidy from PHB;

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- d. PHB staff determines whether the proposed existing multifamily residential building is compatible with IH Program requirements. If the proposed development is determined to be incompatible, the applicant must choose one of the remaining IH Program options.
- e. A penalty to the Sending Site will be due to PHB if the ~~affordable~~ IH Units are not made available as agreed upon in the Regulatory Agreement. See Remedies section below;
- f. The Receiving Site development will also be subject to a Regulatory Agreement.

5. **Fee-in-Lieu option.** Applicants may choose to use the fee-in-lieu option rather than including IH Units in a development (or building or designating IH Units off-site).

- a. PHB staff calculate the fee-in-lieu amount due by multiplying the gross square feet of the new development by the Fee-in-Lieu Factor (See Appendix A);
- b. The fee-in-lieu amount is payable prior to issuance of the building permit; and
- c. Upon payment of the fee-in-lieu amount, the applicant has no additional IH Program requirements relative to the proposed development.

B. Application requirements. PHB staff will input into TRACs and process the necessary documentation based on the option selected. At permit intake for options one through four above, PHB staff will provide estimates only of the various IH Program requirements and incentives. Building permits will be conditioned on (i.e., they will not be issued unless), PHB making final determination of IH Program requirements and incentives and, where applicable, ensuring the collection of required fees and/or bonds. Applying clear and objective criteria, PHB will evaluate whether a proposed development meets the numerical requirements for inclusionary housing set forth in the Zoning Code. PHB will provide land use applicants with a letter certifying that any proposed development meets the numerical standard set out in Title 33.

C. Tax Exemption. If a tax exemption will be included as an incentive based on the option selected, a Multiple-Unit Limited Tax Exemption (MULTE) Program Application Form must be completed and PHB will complete the required MULTE process for approval including tracking of the available cap on foregone revenue approved and City Council for applications on a monthly basis. A development may also qualify for the Non-Profit Limited Tax Exemption (NPLTE) Program authorized under City Code Chapter 3.101, in which case the NPLTE Program will be used in lieu of or in addition to the MULTE Program to provide an incentive to a development.

D. Articles of Incorporation. Applicants must provide legal articles of the entity with site control identifying signature authority (Articles of Incorporation, Corporate Resolutions, etc.) in order to enter into the Inclusionary Housing Regulatory Agreement.

E. Agreement. A Regulatory Agreement will be prepared by PHB staff and must be signed by the owner of the property on which the development is located prior to permit issuance. The Regulatory Agreement is a legally binding document that governs the long-term operation and performance of IH units and is recorded on the title to the property.

V. Project Development Requirements

A. Reasonable Equivalency. Applicants are expected to make IH Units “reasonably equivalent” to Market Rate Units. PHB will assess reasonable equivalency using the following criteria:

1. **Bedroom Distribution and Unit Count.** IH Units must be provided at the same ratio within the development as Market Rate Units. Example of 20 percent IH Units: total units = 100; Market Rate Units = 80; IH Units = 20; Market Rate Unit bedroom distribution = 20 studios (25%), 40 one-bedrooms (50%), 20 two-bedrooms (25%); the IH Unit distribution would be: 5 studios, 10 one-bedrooms and 5 two-bedrooms. Any calculations resulting in less than a whole number shall be rounded up from .5 and above or down from .4 or below, but the total number of IH Units must still equal the designated percentage for the IH Program option selected.
2. **Unit Sizes.** IH Units must be at least 90 percent the size of the average of the total units with the same bedroom count, as measured in square feet.
3. **Unit Distribution.** No more than 25 percent of the total units on any floor shall be designated as IH Units, excluding the top floor of a building development.
4. **Unit Amenities.** IH Units must have like or equal performing finishes and appliances as far as durability and sustainability to the Market Rate Units, which will be certified by a development’s architect prior to receiving its final certificate of occupancy.

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B. Inapplicable Policies. Policies PHB applies to developments receiving direct funding from PHB or the city will not be required for IH Program developments. These include:

1. Minority Women and Emerging Small Business (MWESB) contracting procedures and goals (except for off-site and cash incentive options);
2. Workforce Training and Hiring procedures and goals;
3. Prevailing wage;
4. Green Building; and
5. Accessibility.

However, PHB encourages all development teams to voluntarily comply with the above policies and procedures. PHB staff can provide assistance where development teams choose to comply.

- C. Excluded Developments.** The IH program does not apply to developments with fewer than 20 dwelling units.

VI. Final Permit Approval

Prior to or at permit issuance, PHB 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. However, for the prescriptive, build off-site and designate off-site options, Construction Coordinator participation will be limited.

Construction Coordinators will monitor construction progress. Applicants are required to report progress to Construction Coordinators quarterly. After a ~~building~~ development receives sign-off from the City cover inspector, or one month prior to pre-leasing, whichever comes first, the property manager must contact PHB's Asset Management (AM) staff to set up compliance mechanisms including lease-up, compliance and reporting requirements. Among other things, PHB staff will require that the property manager certify that they have read and understood IH compliance requirements. BDS will not issue a certificate of occupancy until such certification has been received and signed-off by PHB staff.

The owner must notify the PHB AM Department if the property manager information submitted at the time of application changes.

VII. Compliance and Reporting Requirements

A. Leasing Rental Developments

The following requirements apply to the leasing of IH Units:

1. **"Static Data, Unit Composition and Rent Schedule"**. This form is required both prior to lease up and ongoing annually that includes: total units, bedroom

size, unit location within the buildings development, and square footage. See an example in Appendix B.

2. **Tenant incomes and rent determination.** Key to IH Program compliance is the correct implementation of income restrictions relative to unit size and household composition. Measurement of household income is determined using the HUD's annually published area median family income and rent chart (MFI and Rent Chart) for the Portland Metropolitan Area.
3. **Utility Allowances.** IH Units are subject to a Utility Allowance (UA). Owners ~~and their~~ property managers have two methods for calculating UAs that can be found here. To the extent, IH Unit tenants pay their own utilities directly or are billed back for reimbursement of utilities by the property manager, owners or their property managers are required to deduct that amount from the maximum allowable rent charged to the tenant. Example: a one-person household earning 80% ~~MFI~~AFI occupies a studio IH Unit. The maximum monthly rent for that unit is \$1,027, and the UA is \$84. The maximum an owner/property manager could collect from this household is $\$1,027 - \$84 = \$943$. No UA is required for utilities paid by the owner and not reimbursed by the tenant. Utility allowances are passed along to the tenant in the form of reduced rent for those utilities which are paid for by the tenant.
4. **Tenant screening.** Details on how to apply the MFI and Rent chart can be found in PHB's Asset Management Guidelines. In summary, when owners or property managers are assessing a tenant for occupancy of an IH Unit, they should:
 - a. Determine the income restriction contained in the Regulatory Agreement for the particular unit.
 - b. Determine the size of the household (how many people) that will be living in the unit (see "Occupancy Standard" below).
 - c. In the then current ~~HUD~~ MFI Table, and Rent Chart, look up the maximum income ~~at~~ the household can have to qualify.
 - d. Through the application process, determine the household's income. Gross income from all sources must be considered for any adults living in the ~~unit~~ IH Unit.
 - e. If the household's income is equal to or less than the income restriction for the IH Unit, then the unit may be rented to that household (assuming all other qualifications have been satisfied).
 - f. Households making more than the income restriction for a given IH Unit may not be offered that unit – though they may be offered a non-IH Unit in the same development. Leasing an IH Unit to an ineligible household may constitute a default under the Regulatory Agreement and/or these ~~guidelines/rules~~ Administrative Rules.

5. **Occupancy standard.** As affordable units generally and IH Units specifically are a limited resource, PHB applies an occupancy standard to ensure that neither too many, nor too few people reside in IH Units. The occupancy standard is: the number of bedrooms multiplied by two, plus one. For example, for a two-bedroom unit, the maximum number of people that may reside in the unit is five ($2 \times 2 + 1 = 5$). To qualify for an IH Unit, there must be at least one person for each bedroom.
6. **Incomes rising in place.** PHB's Incomes Rising-in-Place policy is meant to allow households that have initially qualified for an IH ~~unit~~Unit to remain in that unit and not be subject to market rate rents until their incomes reach or exceed the income limits contained in the policy. After qualifying at lease-up, a tenant's income may increase above the affordability restrictions of a development and still have the unit fulfill the development's IH requirements, based on the following schedule:
- Tenants in units restricted at 30% of AMI levels, may have income increase up to 80% of AMI;
 - Tenants in units restricted at 50 or 60% of AMI levels, may have income increase up to 100% of AMI; and
 - Tenants in units restricted at 80% of AMI levels, may have income increase up to 120% of AMI.

The owner or property manager may revise the expiring leases with tenants who, upon recertification, no longer meet the income requirements and the Income Rising-in-Place policy, to allow tenants to continue living in a unit at market rent. The rent level must be comparable to reasonably equivalent units within the development, or a comparable development. Tenants must not be required to submit additional deposits or fees. Another unit must be designated as ~~income-restricted~~an IH Unit in order to maintain ~~their~~the affordability requirements as described in the Vacancy section below.

7. **Vacancies.** ~~Building~~Development owners and property managers will regularly face questions about what to do when a tenant's income rises above the regulated amount for the unit they are living in as well as how to fill vacant units. PHB expects that at any given time the number and distribution of IH Units will match those specified in the Regulatory Agreement. To help ensure the orderly and predictable leasing of such units, owners and property managers will be required to treat IH Units as "floating", meaning that an IH Unit can be located anywhere in a ~~building~~development and is not "fixed" by unit number. The concept of a "floating" unit comes into play especially when a tenant's income rises above the income allowable ~~in~~for the unit in which they resideIH Unit. The following rules apply when, ~~upon~~through the annual Tenant Income Certification (TIC) reporting cycle, a ~~tenant reports~~

~~tenant's~~ income that is above that allowable for the unit in which they reside ~~IH Unit~~:

- a. ~~Through the annual Tenant Income Certification (TIC), tenant reports and/or property owner/manager acknowledges tenant's income is above that allowed for the unit the tenant occupies.~~
- b.a. ~~Owner/Owner or their property manager checks the reported income against that allowed by the incomes rising in place policy.~~
- c.b. ~~When a tenant income is at or below the incomes rising in place policy, there is no action required by the owner/ or their property manager, though the owner/ or their property manager at their discretion may raise tenant rent up to the maximum allowed for the tenant/tenant's household according to the current MFI and Rent Chart and IH Unit taking into account the deduction for any utility allowance and any applicable laws, rules, or policies regarding rent increases.~~
- d.c. ~~When a tenant's income is above the incomes rising in place policy, the owner/ or their property manager is obligated to make the next available Reasonably Equivalent unit available to a new income-qualified tenant. (See tenant screening). In this situation, the owner or their property manager/owner may raise rent on the existing tenant/tenant's unit at the manager/owner's/owner or their property manager's discretion, again taking into account any applicable laws, rules, or policies regarding rent increases.~~
- e.d. ~~In the case that a tenant no longer income qualifies for an affordable IH unit, the owner, or an agent thereof, their property manager must give at least 240 days' written notice to PHB and at least 180 days' written notice to the tenant prior to an increase in the unit's rent. This information must be included in the lease or lease addendum for each designated affordable unit IH Unit and an executed copy provided to PHB as the development is leased up and at unit turnover.~~

8. **Marketing.** ~~Building Development~~ owners or their property managers are encouraged to use the same systems for attracting potential tenants and leasing up IH Units as are used for ~~non-IH units: Mart Rate Units.~~ However, PHB sponsors the NoAppFee software system. NoAppFee allows people searching for rental housing to submit a single application for all designated affordable units in the City of Portland. PHB requires that owners and property managers utilize the NoAppFee system for leasing up IH Units. Other than the N/NE Preference Policy (below), the IH program has no rules or guidelines about the method owners or their property managers should use to determine the order in which tenants are offered IH Units. Owners or their property

managers may use “first come, first served,” a ~~building development-specific~~ waiting list, a portfolio-wide waiting list or any other legally permissible system. All IH Units located within the boundaries of the N/NE Neighborhood Housing Strategy study area must also comply with the N/NE Preference Policy.

9. **Additional policies.** PHB has developed a rider that contains additional policies that must be included in all IH Unit leases. Additional policies contained in the rider include that owners or their property managers are required to agree to abide by the Fair Housing Act and its amendments otherwise known as Title VIII of the Civil Rights Act of 1968.

B. For-sale units

For developments that will sell IH Units as condominiums for homeownership opportunities, the following restrictions apply:

1. **Sale price cap.** For-sale ~~units~~ IH Units must sell for less than the sale price cap established annually by PHB, both at the initial sale and for any subsequent sales during the affordability period set forth in the Regulatory Agreement. Condominium units must be sold at no more than the higher of the annually calculated amount affordable to a household earning 80% percent of AMI or 50% percent of the market price of other units, as supporting by a market comparison study.
2. **First right of refusal.** The Regulatory Agreement will provide that PHB has a right of first refusal (or an equivalent right) to purchase the IH Units.
3. **Homebuyer income verification.** All homeownership IH Units 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 80% percent of AMI. Measurement of income is determined using the U.S. Department of Housing and Urban Development’s, or its successor agency’s annually published Median Family Income and Rent chart for the Portland Metropolitan Area.
 - a. Homebuyers 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.
 - b. 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.

4. **Owner occupancy.** Homebuyers must occupy the ~~property~~ IH Unit as their primary residence. After initial sale, the ~~property~~ IH Unit must be owner occupied (or listed for sale and vacant) throughout the affordability period. Homeownership ~~units~~ IH Units may not be rented at any time (both prior to initial sale and after initial homebuyer qualification); ~~properties~~ IH Units which are rented are subject to a penalty as described under Remedies below, and removal of any incentives.
5. **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.

C. Annual Reporting and Review

Developments with rental units will be subject to PHB annual reporting requirements as set forth in the Regulatory Agreement. Owners or their property managers on an annual basis will submit information to PHB on IH Units and the tenants living in such units through an online platform called the Web Compliance Monitoring System (WCMS). PHB staff will test this information against the contents of the Regulatory Agreement and issue written results to each development. In cases of non-compliance, PHB staff may collaborate with owners or their property managers on remedies, however, PHB also has the authority to enforce the provisions of the Regulatory Agreement without the owner's consent.

Other than default provisions, remedies and exit provisions, IH compliance and reporting requirements will be the same as those for PHB's non-IH Program developments ~~and buildings~~ for tenant compliance and physical evaluation sections only. These requirements are contained in the Asset Management Guidelines.

Important aspects of PHB's compliance and reporting process include:

1. **WCMS.** On an annual basis, owners and/or property managers are required to submit information about all tenants living in IH units to PHB through WCMS. It's advisable to keep the information current and update the system for all move--out's and move--in's.
2. **Tenant income certification.** Information on tenants is gathered through the Tenant Income Compliance (TIC) form which must be submitted to PHB through WCMS.

3. **Inspections.** PHB reserves the right to physically inspect developments containing IH units at least once every three years. Inspections will also include audit of IH related files such as the TICs and information submitted through WCMS. Developments that are determined to be out of compliance may be inspected more frequently or until they are brought back into compliance.

D. Transfers

The Regulatory Agreement runs with the land for the length of the Compliance Period. It must be recorded in first position. PHB will not subordinate its Regulatory Agreement. In cases of foreclosure, PHB 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 IH Program must transfer with the property. PHB 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.

E. 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:
 - a. Tenant Income Certifications (TIC);
 - b. Unit rent;
 - c. Utility allowances;
 - d. Demographics;
 - e. Updating static data sheet when units float due to incomes rising in place; and
 - f. Corrections following a site inspection.

Major defaults occur in cases of deliberate non-compliance such as:

1. No tenant income screening performed;
2. Residents are deliberately not income qualified;

3. Not abiding by incomes rising in place policy and insufficient notices to either PHB or the tenant as required by the policy;
4. Not abiding by the N/NE preference policy;
5. Developments have uncorrected health or safety issues;
6. Violating Fair Housing Rules;
7. Designating IH Units which are not reasonably equivalent; and
8. Rent and utility allowance determination incorrect.

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.

F. Remedies

The dependable supply of IH Units is a critical aspect of the IH Program. As such, the City views the potential Conversion of IH Units to Market Rate Units (excepting normal unit turnover outlined in "Vacancies" above) as a serious threat to the attainment of affordable housing goals and outcomes. In general, the Remedies for program non-compliance are meant to discourage such Conversions. The following provides guidance in situations where Conversions are occurring or have occurred. Prior to taking any action which would have the effect of converting an IH Unit to a Market Rate Unit, owners or their property managers are encouraged to contact PHB staff. PHB staff are authorized to discuss the full range of options including, but not limited to: amending/changing the Regulatory Agreement requirements, addition or increase of PHB subsidy financing, and other financial restructuring options.

Prior to allowing a Conversion, PHB may choose to negotiate with owners on ways to keep IH Units affordable and retain them in the IH Program. PHB is under no obligation to allow Conversions and such requests will be assessed against, among other things, the negative effects on the supply of affordable housing units

Should unauthorized Conversions occur, financial penalties will be due and payable to PHB as follows:

1. **Fee-in-lieu due.** A fee-in-lieu equal to multiplying the gross square feet of the development by the current Fee-in-Lieu Factor (See Appendix A); and
2. **Interest.** Interest will be due on the entire unpaid fee-in-lieu 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.

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

1. Foreclosure; and
2. Court injunction or receivership.

Appendix A – Fee-in-Lieu Factor Schedule

November 28, 2016

Mixed Use Zones outside the Central City Fee-in-Lieu Factor Schedule

Zone/FAR	Fee per GSF for 2 Yearson or before December 31, 2018	Fee per GSF after 2 Years
CM 1 at Base FAR	\$19.46	\$23.83
CM 1 with Bonus FAR	\$19.35	\$25.79
CM 2 at Base FAR	\$19.35	\$25.79
CM 2 with Bonus FAR FARCN1, CO1, CO2, CM, CS, CG, CX plus EG1, EG2, EX and R3, R2, R1, RH and RX zones	\$19.8850	\$26.50
CM 3 at Base FAR	\$19.52	\$26.03
CM 3 with Bonus FAR	\$21.43	\$28.58

Zone/FAR	Fee per GSF after December 31, 2018
CM 1 at Base FAR	\$23.83
CM 1 with Bonus FAR	\$25.79
CM 2 at Base FAR	\$25.79
CM 2 with Bonus FAR	\$26.50
CM 3 at Base FAR	\$26.03
CM 3 with Bonus FAR	\$28.58

Zones within the Central City Fee-in-Lieu Factor Schedule

Zone/FAR	Fee per GSF
3.0/4.0 FAR	\$27.39
3.0/4.0 Base with Bonus FAR	\$28.57
5.0/6.0 FAR	\$28.57
5.0/6.0 Base with Bonus FAR	\$28.99
8.0 FAR	\$28.99
8.0 Base with Bonus FAR	\$29.81
9.0 FAR	\$29.81
9.0 Base with Bonus FAR	\$29.42
12.0 FAR	\$29.42

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12.0 Base with Bonus FAR	\$29.85
15.0 FAR	\$27.39
15.0 Base with Bonus FAR	\$28.57

<i>Fee Schedule for BONUS FAR for non-residential occupancy/use</i>
\$24 per square foot of Bonus FAR

GSF = Gross Square Feet

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Appendix B – Static Data Sheet Example

STATIC DATA, UNIT COMPOSITION AND RENT SCHEDULE

PROJECT/DEVELOPMENT: ABC APARTMENTS
 ADDRESS: 12345 S MAIN STREET; PORTLAND, OREGON 97204
 DATE: _____
 SUBMITTED BY: JOHN DOE;
 XYZ
 MANAGEMENT

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The subject property has a total of _____ rental units.
 According to the executed Regulatory Agreement _____ units must be kept affordable for a period of 99 years.

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In the schedule below please fill out for all Inclusionary Housing units in the project/development.

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UNIT NUMBER	BDRM COUNT	Sqare Footage	INCOME AND RENT MFI % LEVEL as outlined in Regulatory Agreement	HUD FAIR MARKET RENT (FMR) (\$)	PROPOSED TENANT RENT (\$) (incl UA)	UTILITY ALLOWANCE (UA)	MAXIMUM ALLOWABLE RENT TO TENANT = Proposed Rent minus UA
101	2	850	80%	\$1,320	\$1,320	\$149	\$1,171
102	1	600	80%	\$1,100	\$1,000	\$126	\$874

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Nov 13 #2

188163

Amend title 30.01.120(c)(1) and (2) to provide "20 percent of the units or total number of bedrooms configured into IH units"

Insert into 30.01.120(d)(7) to state "when the IH units are configured based on a percentage of the total number of bedrooms within the proposed development, the IH units must provide 2 or more bedrooms per unit."

Amend title 3.103.040(c)(1)- to provide "percent of the number of units or bedrooms"

Directive to amend the admin rules consist with the code changes

IMPACT STATEMENT

Legislation title: Provide affordable housing through an Inclusionary Housing Program and update the Multiple-Unit Limited Tax Exemption Program (Ordinance; add Code Section 30.01.120, amend Section 30.01.030 and Chapter 3.103)

Contact name: Dory Van Bockel

Contact phone: 503-823-4469

Purpose of proposed legislation and background information:

The purpose of this legislation is to establish an Inclusionary Housing Program in order to capture affordable housing in multi-family development. Senate Bill 1533 was signed in to law on March 15, 2016 lifting the statewide ban on inclusionary zoning policies which allow cities to require affordable housing be included in new development. The City of Portland is adopting inclusionary zoning through City Code Chapter 33.245. The IH Program being enacted with this legislation include the incentives and guidelines necessary for the Portland Housing Bureau (PHB) to implement the IH Program.

Financial and budgetary impacts:

Implementation of the IH Program requires additional staffing. PHB staff will be located at the Bureau of Development Services Permitting Center in order to review new permits and to apply the IH Program requirements. Additionally, program management of the IH Program and compliance for all of the affordable units will be supported by existing staff within the Housing Investment and Portfolio Preservation and Asset Management departments at PHB. The estimated cost for administration of the program initially is \$411,008 which has been approved for the current fiscal year through the fall FY 2016-17 Budget Monitoring Process.

While the inclusionary housing program does not change current City policy with regard to property tax expenditures, or SDC waivers for affordable housing, the incentives offered in exchange for the inclusion of affordable units on site, do have an impact on City revenue. Outlined on the following page are estimates of the foregone revenue per affordable unit.

Central City: 5:1 FAR and Above

	<i>10 Year Property Tax Exemption Estimated Cost</i>	<i>SDC Waiver Cost</i>				<i>Total Cost per Unit</i>	<i>Total Cost per Year of Affordability</i>
		<i>BES</i>	<i>PBOT</i>	<i>PWB</i>	<i>PP&R</i>		
80% AMI Unit	\$100,000	\$0	\$0	\$0	\$0	\$100,000	\$1,000
60% AMI Unit	\$200,000	\$4,748	\$2,024	\$2,400	\$8,849	\$218,021	\$2,200

Central City: Below 5:1 FAR

	<i>10 Year Property Tax Exemption Estimated Cost</i>	<i>SDC Waiver Cost</i>				<i>Total Cost per Unit</i>	<i>Total Cost per Year of Affordability</i>
		<i>BES</i>	<i>PBOT</i>	<i>PWB</i>	<i>PP&R</i>		
80% AMI Unit	\$20,000	\$0	\$0	\$0	\$0	\$20,000	\$200
60% AMI Unit	\$20,000	\$4,748	\$2,024	\$2,400	\$8,849	\$38,021	\$384

Outside Central City

	<i>10 Year Property Tax Exemption Estimated Cost</i>	<i>SDC Waiver Cost</i>				<i>Total Cost per Unit</i>	<i>Total Cost per Year of Affordability</i>
		<i>BES</i>	<i>PBOT</i>	<i>PWB</i>	<i>PP&R</i>		
80% AMI Unit	\$20,000	\$0	\$0	\$0	\$0	\$20,000	\$200
60% AMI Unit	\$20,000	\$4,748	\$2,024	\$2,400	\$8,849	\$38,021	\$384

It is difficult to anticipate the number of affordable units per year that will be created through an inclusionary housing program, and thus the level of foregone revenue each year. The decision to include affordable units at 80% AMI, 60% AMI, provide units off site, or pay a fee-in-lieu is an individual economic decision each development firm will make. That being said, outlined below are projections on the total number or multifamily units between 2015 and 2035 with maximum affordable units produced at 60% AMI, the scenario with the highest level of foregone revenue.

Central City

To produce the most conservative estimates possible the calculation assumes the following:

1. 100% of buildings opt to include units on site, rather than pay a fee-in-lieu

If all 10% of all 30,000 Central City units are affordable at 60% AMI, roughly 150 60% AMI units per year would be produced.

Outside Central City

To produce the most conservative estimates possible the calculations assume the following:

1. 100% of buildings opt to include units on site, rather than pay a fee-in-lieu

If all 10% of all 60,000 Mixed Use Zones units are affordable at 60% AMI, roughly 300 60% AMI units per year would be produced.

Central City: 5:1 FAR and Above

	<i>10 Year Property Tax Exemption Estimated Cost</i>	<i>SDC Waiver Cost</i>				<i>Total Cost per Unit</i>	<i>Total Cost per Year of Affordability</i>
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Outside Central City

	<i>10 Year Property Tax Exemption Estimated Cost</i>	<i>SDC Waiver Cost</i>				<i>Total Cost per Unit</i>	<i>Total Cost per Year of Affordability</i>
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If all 10% of all 60,000 Mixed Use Zones units are affordable at 60% AMI, roughly 300 60% AMI units per year would be produced.

Community impacts and community involvement:

Affordable housing was at the forefront of discussion during the 2016 state legislative session. After many hearings and extensive involvement by community organizations, housing industry stakeholders and local government representatives, the resulting bill was a compromise authorizing the development of a mandatory inclusionary zoning program and a local construction excise tax for affordable housing. The construction excise tax was adopted locally earlier this year and went into effect on August 1 as the first step in implementing various policies and programs agreed to and authorized during the legislative session.

In addition to the community involvement during the legislative process, Commissioner Saltzman appointed a public panel of housing experts to analyze and review the process and policies under development for an Inclusionary Housing Program. The panel met publicly at least monthly between April and September, and PHB also invited questions from the community at a separate meeting. Public feedback was also shared at a Portland Planning and Sustainability Commission hearing.

Increasing the supply of affordable housing will most heavily impact low-income households and Communities of Color who have been most confronted by a lack of affordable housing which has led to disproportionate levels of displacement. The Inclusionary Housing Program has been calibrated to encourage developers to voluntarily elect to provide affordable housing to households earning no more than 60 percent of area median income, instead of the mandated 80 percent of area median income. The creation of regulated affordable housing through the IH Program is one part of an expanded effort to provide additional affordability throughout the city of Portland, specifically in high opportunity areas and available across a range of income earners.

Budgetary Impact Worksheet**Does this action change appropriations?**

- YES: Please complete the information below.
 NO: Skip this section