



Memo

Date: January 3, 2024

To: Mayor and City Commissioners

From: Phil Nameny, City Planner

CC: Patricia Diefenderfer, Chief Planner; Sandra Wood, Principal Planner

Re: Housing Regulatory Relief Project –Amendments to the Recommended Draft

City Council will hold a hearing on the Housing Regulatory Relief Project on January 10, 2024. This memo includes potential amendments to the Housing Regulatory Relief Project Recommended Draft. Gray shaded text indicates where the Recommended Draft code language and accompanying commentary would be amended.

#	Amendment	Sponsor
1	33.245 Inclusionary Housing updates – Amendments align regulations with recent state law changes, remove out-of-date language, and change some regulations to align with Title 30 inclusionary housing processes.	Rubio
2	33.510.220 Central City Ground Floor Windows – Technical amendment to clarify application of the ground floor window requirement in the Central City plan district.	Rubio
3	33.825.025 Design Review Procedures – Amendment to further reduce Design Review procedures temporarily for affordable housing projects.	Rubio

How to read this document:

Strikethrough and underline font is used to mark changes relative to current code. Strikethrough font indicates text that will be deleted and underlined text indicates text what will be added. For amendments #2 and 3, text shading is for informational purposes to highlight where the text amendment from the Recommended Draft occurs. Code and commentary for amendment #1 is entirely new and so is not shaded (see below).

Amendment #1—Inclusionary Housing Clarification Amendments

These amendments align regulations with recent state law changes, remove out-of-date language, and change some regulations to align with Title 30 inclusionary housing processes. The commentary and zoning code language amendments are new to the document and would be inserted into the exhibit as follows:

Amendment #1a – 33.245.020:

Commentary:

33.245.020 Where These Regulations Apply

This amendment exempts dwelling units within a Continuing Care Retirement Community (CCRC) from the zoning code requirement to provide affordable housing. The amendment brings the zoning code into conformance with ORS 197.309 (Oregon Revised Statutes). The statute allows jurisdictions to require that a covenant be recorded to ensure that the units remain part of the CCRC to be exempt. The new exemption includes language to record a covenant per standard City procedures.

Code amendment:

33.245.020 Where These Regulations Apply

The regulations of this chapter apply to the following:

- A. New buildings with 20 or more dwelling units. Dwelling units in a continuing care retirement community (CCRC), as defined in ORS 101.020, that are operated as a CCRC do not count toward the 20 unit threshold when a covenant has been executed with the City that meets the requirements of 33.700.060, and specifies that the units will be operated as a CCRC; and
- B. Alterations to existing buildings that add 20 or more dwelling units. Dwelling units in a continuing care retirement community (CCRC), as defined in ORS 101.020, that are operated as a CCRC do not count toward the 20 unit threshold when a covenant has been executed with the City that meets the requirements of 33.700.060, and specifies that the units will be operated as a CCRC.

Amendment #1b – 33.245.040:

Commentary:

33.245.040.A Inclusionary Housing Standards

The lower inclusionary housing rates that applied outside the Central City and Gateway plan districts during the original phase-in period have expired. The lower inclusionary housing rates that

applied outside the Central City and Gateway plan districts were part of the Inclusionary Housing Project ([No. 188162](#)) adopted by City Council in 2016. The "rate phasing" was initially set to expire on January 1, 2019. The phase-in period was extended twice—first by Ordinance No. 189303 through January 1, 2021; and second by Ordinance No. 190076 through January 1, 2022. This amendment removes the zoning code language related to the expired rates.

33.245.040.A.1.c & 33.245.040.C. Alternate calculation method

Title 30 and accompanying administrative rules contain an alternate calculation method that allows the inclusionary housing units to be consolidated into fewer units with more bedrooms. This amendment clarifies that the alternate calculation method is in Title 30.

33.245.040.B Off-site affordable dwelling units

This amendment also amends the off-site affordable housing options in two ways:

1. The option to provide 10 percent of the dwelling units at 30 percent of the area median family income (AMFI) is being deleted because the option has never been used. When the required affordable dwelling units are located off-site, they will be required to provide 20 percent at 60 percent AMFI.
2. The alternate inclusionary housing calculation method that is currently available when the units will provide on-site is being added as an option for off-site compliance under 33.245.040.C.

Code amendment:

33.245.040 Inclusionary Housing Standards

Affordable dwelling units must be provided as follows, or a fee-in-lieu of providing affordable dwelling units must be paid. Adjustments are prohibited:

- A. On-site affordable dwelling units.** When the affordable dwelling units will be located on-site, affordable dwelling units must be provided at one of the following rates. For the purpose of this Section, affordable dwelling units located within the boundaries of a Central City Master Plan are considered to be on-site:
- ~~1. Central City and Gateway plan districts. Inside the Central City and Gateway plan districts, affordable dwelling units must be provided at one of the following rates:~~
 - ~~a.1. 10 percent of the total number of dwelling units in the new building or the alteration must be affordable to those earning no more than 60 percent of the area median family income; or~~
 - ~~b.2. 20 percent of the total number of dwelling units in the new building or the alteration must be affordable to those earning no more than 80 percent of the area median family income; or~~
 - ~~c. Alternate calculation method. As a way to encourage the creation of larger affordable dwelling units, using one of the percentages stated above, the number of affordable dwelling units required may be calculated based on the total number of bedrooms in the new or altered building. For example, using the 10 percent rate, a new building with 60 two-bedroom dwelling units could provide 6 two-bedroom affordable units or 4 three-bedroom affordable units.~~

~~2. Outside the Central City and Gateway plan districts. Outside the Central City and Gateway plan districts, affordable dwelling units must be provided at one of the following rates:~~

~~a. Rates before January 1, 2022:~~

- ~~(1) 8 percent of the total number of dwelling units in the new building or the alteration must be affordable to those earning no more than 60 percent of the area median family income; or~~
- ~~(2) 15 percent of the total number of dwelling units in the new building or the alteration must be affordable to those earning no more than 80 percent of the area median family income.~~
- ~~(3) Alternate calculation method. As a way to encourage the creation of larger affordable dwelling units, using one of the percentages stated above, the number of affordable dwelling units required may be calculated based on the total number of bedrooms in the new or altered building. For example, using the 10 percent rate, a new building with 60 two-bedroom dwelling units could provide 6 two-bedroom affordable units or 4 three-bedroom affordable units.~~

~~b. Rates on and after January 1, 2022. The rates shown in Paragraph A.1. apply outside the Central City and Gateway plan districts on and after January 1, 2022.~~

B. Off-site affordable dwelling units. When the affordable dwelling units will be located off-site, affordable dwelling units must be provided at one of the following rates:

1. New dwelling units. When the affordable dwelling units will be provided by constructing new dwelling units off-site, 20 percent of the total number of dwelling units in the new building or the alteration must be affordable to those earning no more than 60 percent of the area median family income~~one of the following rates apply~~. The number of affordable dwelling units required is calculated based on the development that triggers the regulations of this chapter:

~~a. 10 percent of the total number of dwelling units in the new building or alteration must be affordable to those earning no more than 30 percent of the area median family income; or~~

~~b. 20 percent of the total number of dwelling units in the new building or the alteration must be affordable to those earning no more than 60 percent of the area median family income.~~

2. Existing dwelling units. When the affordable dwelling units will be provided by dedicating existing dwelling units as affordable, 25 percent of the total number of dwelling units in the new building or the alteration must be affordable to those earning no more than 60 percent of the area median family income~~one of the following rates apply~~. The number of affordable dwelling units required is calculated based on the development that triggers the regulations of this chapter:

~~a. 15 percent of the total number of dwelling units in the new building or the alteration must be affordable to those earning no more than 30 percent of the area median family income; or~~

- b. ~~25 percent of the total number of dwelling units in the new building or the alteration must be affordable to those earning no more than 60 percent of the area median family income.~~

C. Alternate calculation method. As a way to encourage the creation of larger affordable dwelling units, Title 30 allows reconfiguration based on the total number of bedrooms in the new or altered building. See Title 30.01.120.D.

Amendment #2—Ground Floor Window Technical Amendment

This technical amendment clarifies the application of the ground floor window requirement in the Central City plan district. The commentary and zoning code language are replaced as follows:

Commentary

33.510.220.B. Ground Floor Windows:

There are two amendments to this Subsection; one is a temporary suspension and the other is a permanent clarification.

In certain locations in the Central City, the ground floor of a building must have windows covering 60% of the wall. This is an increased percentage over the ground floor window requirement in the base zones. This amendment suspends the higher ground floor window requirement in the Central City for 5 years for development that include residential uses. The base zones ground floor window standard will instead apply.

The second amendment is a permanent clarification. The ground floor window requirements in the Central City Plan District and the commercial/mixed use zones were updated as part of the update of the city's Comprehensive Plan and the Central City 2035 projects. The standards were updated to be in alignment. However, there has been confusion about the relationship between the standards in the plan district and those in the base commercial and EX zones. This is partially due to differences in measurements in the EX zone, and partially due to what development the plan district regulations apply and whether they supersede the base zone.

This amendment clarifies that these standards apply to all proposals in the Central City so that it is clear where the ground floor window standard of 33.510.220.B applies, thus superseding the base zone.

Code Amendment

33.510.220 Ground Floor Windows

- A. [No change]
- B. **Ground floor windows.** The following ground floor window standards apply in the RX, CX and EX zones. ~~The standards of B.1 and B.2 apply to new development and major remodeling projects. B.3. only applies to major remodeling projects.~~ To meet the standards, ground floor windows must be windows that allow views into work areas or lobbies, or be windows in pedestrian entrances. Windows into storage areas, vehicle parking areas, garbage and recycling

areas, mechanical and utility areas and display cases attached to outside walls do not qualify. Windows into bicycle parking areas are allowed to qualify for up to 25 percent of the ground floor windows coverage requirement. The bottom of the windows of nonresidential spaces must be no more than 4 feet above the finished grade:

1. Ground level facades that face a street or open area shown on Map 510-8 must have windows that cover at least 60 percent of the ground level wall area. For the purposes of this standard, ground level wall area includes all exterior wall area from 2 feet to 10 feet above the finished grade. Until January 1, 2029, the standard for development that includes a residential use is 40 percent of the ground level wall area.
2. All other ground level facades that face a street lot line, sidewalk, plaza, or other publicly accessible open area or right-of-way must have windows that cover at least 40 percent of the ground level wall area. For street facing facades of dwelling units the regulations of 33.130.230.B.4 apply. For the purposes of this standard, ground level wall area includes all exterior wall area from 2 feet to 10 feet above the finished grade.
3. Optional artwork. Projects proposing to use artwork as an alternative to the ground floor window requirements may apply for this through the adjustment procedure. Projects may also apply for a modification through design review if they meet the following qualifications. Buildings having more than 50 percent of their ground level space in storage, parking, or loading areas, or in uses which by their nature are not conducive to windows (such as theaters), may be allowed to use the design review process. Artwork and displays relating to activities occurring within the building are encouraged. In these instances, the artwork will be allowed if it is found to be consistent with the purpose for the ground floor window standard.

Amendment #3 – Design review reduction for affordable housing

This amendment further reduces Design Review procedures temporarily for affordable housing projects. The commentary and zoning code language is replaced as follows:

Commentary:

33.825.025 Review Procedures

Table 825-1

Currently, there is an option for some affordable housing projects to choose to go through a Type II Design Review after meeting with the Design Commission through a Design Advice Request. This is an alternative to the Type III review procedure which requires a pre-application conference with staff and a formal hearing with the Design Commission. The alternative was added during the Design Overlay Zone Amendments (DOZA) project in 2021. During the DOZA deliberation, the DAR was considered a critical component in the review process and provided the opportunity for bureaus and stakeholders to provide comments to allow issues to be identified and addressed earlier in the process.

Comments by the development community in the housing survey and information from the Inclusionary Housing study showed potential costs and time commitments for projects that did not meet the affordability criteria and required the full hearing. There was a concern about the impact

across all housing types, not just specified affordable housing. Similar to suggestions for relief from development standards, the Housing Regulatory Relief project was tasked with providing some process relief for projects subject to Design Review.

These amendments reduce the Design Review procedure type for 5 years for projects that include residential uses. For projects normally subject to a Type III review, there are two additional options available: First, for any projects with housing, the applicant will now be able to choose a Type II review in conjunction with a design advice request (DAR), similar to the current process allowed only for an affordable housing project. Second, for projects that meet the current thresholds in the chapter for an affordable housing project, the applicant will be able to choose either a Type II review or a Type Ix review (which does not provide for local appeal). The affordable housing projects would not need to go through a DAR prior to submitting.

For all housing projects that are normally subject to a Type II review, and applicant could choose to be subject to a Type Ix review.

These temporary allowances provide added flexibility for projects subject to a design review, and may reduce some time/cost commitments. This special provision would expire on January 1, 2029. At that point, the review process would return to current options.

It should be noted that in all these cases, an applicant can still choose to go through the current review processes and/or apply for a Design Advice Request or Pre-application conference on a voluntary basis.

Code Amendment:

33.825.025 Review Procedures

This section lists procedures for design review for proposals in Design overlay zones. These procedures also apply where design review is required by the regulations of a plan district or overlay zone, or as a condition of approval of a quasi-judicial decision.

The procedures stated in this section supersede procedural and threshold statements in the City's adopted design guidelines documents. Procedures for design review vary with the type of proposal being reviewed and the geographic area in which the site is located. Some proposals in the Central City plan district must provide a model of the approved proposal, as set out in Subsection D.

- A.** Proposals subject to design review are reviewed according to the procedure type listed in Table 825-1.
 1. When a proposal is subject to more than one procedure type, the higher procedure type applies. For example, a proposal may include both an alteration and an addition to a building. If the alteration is subject to a Type II procedure, but the addition is subject to a Type III procedure, the proposal would be subject to a Type III procedure.
 2. Until January 1, 2029, when a proposal includes a residential use, the proposal may be subject to a lower procedure type as follows:

- a. If the proposal is subject to a Type III procedure, the applicant may choose a Type II procedure. A design advice request is required before the application for design review is submitted. See 730.050.B;
- b. If the proposal is subject to a Type III procedure, the applicant may choose a Type Ix or Type II procedure if at least 50 percent of the total number of dwelling units on the site are affordable to those earning no more than 60 percent of the area median family income or an affordability level established by Title 30. If a Type Ix or Type II review procedure is chosen, the applicant must provide a letter from the Portland Housing Bureau certifying that the development meets the affordability requirement and any administrative requirements of the Portland Housing Bureau; and
- c. If the proposal is subject to a Type II procedure, the applicant may choose a Type Ix procedure.

B.-C. [No change]