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AFFORDABLE HOUSING

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

Chapter 30.01

**AFFORDABLE
HOUSING PRESERVATION**

Sections:

- 30.01.010 Policy.
- 30.01.020 Intent.
- 30.01.030 Definitions.
- 30.01.040 Title 30.01 Responsibilities.
- 30.01.050 Federal Preservation Projects - City Notice and Preservation Opportunities.
- 30.01.060 Federal Preservation Projects - Tenant Provisions.
- 30.01.070 Federal Preservation Projects - Civil Fines.
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30.01.010 Policy.

It is the policy of the City of Portland that publicly assisted rental housing affordable to low and moderate income persons and households should be preserved as a long-term resource to the maximum extent practicable, and that tenants of such properties should receive protections to facilitate securing new housing should the affordable units be converted to market rate units or otherwise be lost as a resource for low and moderate income housing.

30.01.020 Intent.

The intent of this Title is to protect the availability of publicly assisted affordable housing for low and moderate income households by: providing for notice to the City and tenants when transitions from current assistance programs and/or affordable housing uses are planned; providing purchase opportunities for the City to attempt to preserve the affordable housing while respecting ownership interests of building owners; providing tenant relocation assistance when the affordable housing is converted; and, ensuring long term

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affordability in future projects that the City assists with public financing designed to create or preserve affordable housing.

30.01.030 Definitions.

(Amended by Ordinance No. 186028, effective May 15, 2013.)

- A. “Affordable housing.”** The term “affordable housing”, “affordable rental housing” or “housing affordable to rental households” means that the rent is structured so that the targeted tenant population pays no more than 30 percent of their gross household income for rent and utilities. The targeted tenant populations referred to in this section include households up to 80 percent of area median family income.
- B. “PHB.”** The City of Portland’s Portland Housing Bureau.
- C. “City Subsidy.”** Locally controlled public funds administered by the Portland Development Commission, the Portland Housing Bureau, or other City bureau or agency, allocated for the purpose of creating or preserving affordable rental housing to households below 80 percent of median family income. City subsidies may be provided to developers through direct financial assistance such as low interest or deferred loans, grants, equity gap investments, credit enhancements or loan guarantees, or other mechanisms.
- D. “City Subsidy Projects.”** Privately owned properties of five or more units which receive a City subsidy after the effective date of Title 30.01 through programs designed to create or preserve rental housing affordable at or below 80 percent of area median family income.
- E. “Commercial Market Compatible Offer.”** A fair market value purchase offer made by the City or its designee which is consistent with the terms and conditions which would be made by a buyer on the open market such that a seller negotiating with the City on such terms would not experience any significant disadvantage as compared to a market rate transaction with a private party.
- F. “Fair Market Value.”** The amount of money in cash that real property would bring in the open market if it were offered for sale by one who desired, but was not obligated to sell, and was bought by one willing but not obliged to buy. It is the actual value of the property on the date when a City offer pursuant to Title 30.01.050 is made. As may be further refined by PHB through its Administrative Procedures developed in reference to the Uniform Standards of Professional Appraisal Practice, the Oregon Uniform Trial Instructions, and relevant case law, fair market value is based on the best and highest use of the property, which may be greater than the use being made of the property by the current owner. However,

fair market value does not include speculative value, or possible value based on future expenditures and improvements, or potential changes in applicable zoning regulations or laws, which are not reasonably probable. Fair market value includes assessment of environmental, structural or mechanical information derived from inspections or other due diligence activities.

- G. “Federal Preservation Projects.”** Properties having project-based rental assistance contracts for some or all of the units (such as Section 8 and Project Rental Assistance Contracts) including those developed under a variety of HUD mortgage assistance and interest rate reduction programs. Federal preservation projects include properties with loans, contracts, or insurance under the following federal subsidy programs: section 221(d)(4) with project-based Section 8; Section 202; Section 236(J)(1); Section 221(D)(3) BMIR; Section 221(D)(3) MIR; Section 811; Project based Section 8 contracts administered through HUD, Oregon Housing and Community Services, or the Housing Authority of Portland; Project Rental Assistance Contracts (PRAC); LIHPRHA capital grant program; and Section 241(f) preservation grant. An updated list of all known Federal Preservation Projects will be maintained and available upon request to the public.
- H. “HUD.”** The United States Department of Housing and Urban Development
- I. “Involuntary Displacement.”** Tenants of Federal Preservation Projects are considered to be involuntarily displaced if:
1. They are served a notice to vacate the property for reasons other than just cause as defined herein; or
 2. They are not offered a one year lease under their tenant based voucher by the property owner; or
 3. They are offered a one year lease under their tenant based voucher, but are required to pay as rent and utilities an amount greater than the tenant contribution to rent (and utilities) in effect under the project-based Section 8 contract, and they then choose to move from the property rather than enter into a lease under the voucher. This form of displacement is referred to as “economic displacement.”
- J. “Just Cause Eviction.”** Evictions for serious or repeated violations of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause (ORS 90.400).
- K. “Local Preservation Projects.”** Properties with 10 or more rental units which received financial assistance (from the programs listed below), to create or preserve

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housing serving households below 80 percent of median family income since January 1, 1988 and through the effective date of Title 30.01, which have affordability restrictions that are still in force as of the effective date of Title 30.01. Financial assistance programs include subsidies from the City of Portland through the Portland Development Commission (Rental Housing Development Loan Program, Investor Rehabilitation Loan Program, Rental Rehabilitation Loan Program, or Downtown Housing Preservation Program), and/or from the State of Oregon Housing and Community Services Department (Housing Development Grant Program, Oregon Affordable Housing Tax Credit Program, and the former Oregon Lenders Tax Credit Program, Risk Sharing Bond program, Elderly and Disabled Bond Program), and/or which have received bond financing issued by the Housing Authority of Portland or the Portland Development Commission. An updated list of all known Local Preservation Projects will be maintained and available upon request to the public.

- L. “Low Income.”** Low income individuals, households or tenants are those with a gross household income below 50 percent of the area median family income.
- M. “MFI.”** Median family income for the Portland Metropolitan Statistical Area as defined by HUD as adjusted for inflation and published periodically.
- N. “Moderate Income.”** Moderate income individuals, households or tenants are those with a gross household income below 80 percent of the area median family income.
- O. “Opt Out.”** An owner’s non-renewal of an available project-based Section 8 contract in a Federal Preservation Project. Owners may consider “opting out” when they contemplate conversion to open market rental housing, other housing or commercial uses, or a sale of the property.
- P. “PDC.”** Portland Development Commission
- Q. “Preservation Process.”** The requirements contained in 30.01.050 - 30.01.070 for Federal Preservation Projects and in 30.01.080 for Local Preservation Projects respectively.
- R. “Qualifying Household.”** A household legally residing in a federal preservation project with a gross household income at or below 50 percent of median family income.

30.01.040 Title 30.01 Responsibilities.

(Amended by Ordinance No. 186028, effective May 15, 2013.) The Portland Housing Bureau will have primary responsibility for implementation of Title 30.01. This

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responsibility will include the development and administration of operating procedures, and taking any and all City actions referenced herein as may be necessary for implementation of the requirements of this Title. The Portland Development Commission will work with the Portland Housing Bureau to implement property acquisition responsibilities described in this Title. The Portland Development Commission is also expected to develop strategies to implement the 60-year affordability requirements in 30.01.090.

30.01.050 Federal Preservation Projects - City Notice and Preservation Opportunities.
(Replaced by Ordinance No. 174180; amended by Ordinance No. 186028, effective May 15, 2013.)

- A.** Owners of Federal Preservation Projects must provide the City and each building tenant with a one year's notice of a pending HUD Section 8 contract expiration. In order to facilitate the owner's knowledge of the City's interest in notification, PHB shall provide written confirmation of the City's interest in the property to each Section 8 property within the City of which PHB is aware.
- B.** Owners of Federal Preservation Projects who have decided to "opt out" must provide to the City a notice of 210 days of intent to do so if the owner is opting out of a long-term contract, and 150 days if the owner is opting out of a one-year extension to a long-term contract. The notice shall specify:
 - 1.** whether the owner intends to withdraw the property from the Section 8 program;
 - 2.** whether the owner intends to convert the participating property to a nonparticipating use; and
 - 3.** whether the owner is involved in negotiations with HUD or the Housing and Community Services Department regarding an extension of an expiring contract.
- C.** Owners of Federal Preservation Projects who have decided to "opt out" must consent to reasonable inspection of the property and inspection of the owner reports on file with HUD or the State of Oregon Housing and Community Services Department. These inspections are designed to facilitate the City's ability to assess the fair market value of the property and evaluate status of the tenants, viability of transfer and/or continuation of a Section 8 agreement with HUD and other pertinent information.
- D.** To the extent allowed by HUD, owners of Federal Preservation Projects must maintain an available HUD Section 8 contract in good standing during the notice

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periods identified in this chapter as well as any condemnation proceeding commenced under ORS Chapter 35.

- E.** Owners of Federal Preservation Projects must refrain from taking any action, other than notifying HUD of the owner's intention to not renew the contract, that would preclude the City or its designee from succeeding to the contract or negotiating with the owner for purchase of the property during the notice periods identified in this Chapter as well as any condemnation proceeding commenced under ORS Chapter 35.
- F.** In addition to any other times, during the notice periods identified in this Chapter, the City may pursue preservation of the Project through negotiation for purchase or through condemnation under ORS Chapter 35.

30.01.060 Federal Preservation Projects - Tenant Provisions.

(Replaced by Ordinance No. 174180; amended by Ordinance No. 186028, effective May 15, 2013.)

- A.** Owners of Federal Preservation Projects who have decided to "opt out" must provide to each affected building tenant a notice of 210 days of intent to do so if the owner is opting out of a long-term contract, and 150 days if the owner is opting out of a one-year extension to a long-term contract. The notice shall specify:

 - 1.** whether the owner intends to withdraw the property from the Section 8 program;
 - 2.** whether the owner intends to convert the participating property to a nonparticipating use; and
 - 3.** whether the owner is involved in negotiations with HUD or the State of Oregon Housing and Community Services Department regarding an extension of an expiring contract
- B.** Owners of Federal Preservation Projects who have decided to "opt out" may not disturb any tenancy other than for cause defined in the contract, for a period of 180 days after expiration of the contract, if the City has paid or arranged to pay to the owner on the first day of each month, the monthly subsidy that the owner was receiving under the contract.
- C.** PHB shall identify and make available adequate financial resources for tenant relocation assistance for all tenants who experience involuntary displacement from Federal Preservation Properties. PHB shall request voluntary contributions to a

tenant relocation fund. from owners of Federal Preservation Projects who have decided to “opt out.”

30.01.070 Federal Preservation Projects - Civil Fines.

(Replaced by Ordinance No.174180; amended by Ordinance No. 186028, effective May 15, 2013.)

- A.** An owner who fails to comply with any of the requirements specified in PCC 30.01.050 A.-E., tenant notice requirements in 30.01.060 A., or PHB procedures implementing those specified provisions of this Chapter, shall pay a civil fine. The fine shall be calculated in relation to the costs and damages caused by the owner’s failure to comply, up to full replacement costs of each project-based Section 8 housing unit lost. Such civil fines shall be payable into a housing replacement fund to be established and managed by the City. If the civil fine is not received within the timeframes specified in the Administrative Procedures developed by PHB, the City may commence enforcement proceedings.
- B.** Any civil fines received shall be used only for creating replacement housing serving households at or below 50 percent MFI.

30.01.080 Local Preservation Projects - Tenant and City Notice Provisions.

(Amended by Ordinance No. 186028, effective May 15, 2013.)

- A.** When the owner of a Local Preservation Project takes action which will make the affordable housing no longer affordable, whether the affordability requirements which were established under prior agreement with the City, PDC or State have expired or are still in effect, the owner must provide a notice of 90 days to the City. The notice shall meet standards developed by PHB. During the 90-day notification period, the owner may not sell or contract to sell the property, but may engage in discussions with other interested parties. Within this period, the City or its designee may make an offer to purchase or attempt to coordinate a purchase by an owner committed to maintaining affordability.
- B.** Owners of Local Preservation Projects who have decided to take action described in 30.01.080 A., must provide a notice of 90 days to tenants. This shall be in addition to the City notice to be provided to the City under 30.01.080 A. During this notice period the Owner may not initiate a no-cause eviction. The notice must meet standards developed by PHB.

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30.01.090 City Subsidy Properties - Long-Term Affordability Requirements.

(Amended by Ordinance No. 186028, effective May 15, 2013.)

- A.** Properties that in the future request and receive a City subsidy from PDC, PHB or other City bureau or agency for the purpose of creating or preserving rental housing affordable to households below 80 percent of median family income, will be subject to a minimum of 60 year affordability contract requirements developed by PHB consistent with the implementing charge in 30.01.090 B.
- B.** All City Bureaus and agencies administering affordable rental housing subsidy programs will be responsible for implementing this section. As the primary agency charged by the City to negotiate and confer affordable housing subsidies, PHB will develop implementing strategies consistent with the 60 year affordability principles contained in this section, the Administrative Procedures Implementing Title 30.01 and the approved 1998/99 Consolidated Plan, Principle III (Ordinance No. 172259).

30.01.095 Partial and Full Exemptions of System Development Charges for Affordable Housing Developments.

(Added by Ordinance No. 183448; Amended by Ordinance Nos. 186712 and 186744, effective September 5, 2014.)

- A.** The purpose of this Section is to reduce the costs of developing permanent affordable housing by exempting system development charges for qualified affordable housing developments. This section advances a Council-recognized public policy goal to provide for a diversity of housing types to meet the needs of the citizens of the City.
- B.** The City will exempt qualified affordable housing developments from paying all or part of system development charges required by Code. The Applicant must apply for exemptions under this Section prior to the date the City issues the permit on the new development. Where new development consists of only part of one or more of the uses described in this section, only that portion of the development that qualifies under this Section is eligible for an exemption. The balance of the new development that does not qualify for any exemption under this Section is subject to system development charges to the full extent authorized by Code or general ordinance. The Applicant has the burden to prove entitlement to exemptions so requested.
- C.** To obtain the exemption, the applicant must present to the City, at the time of Application, documentation from Portland Housing Bureau that the development qualifies for the exemption pursuant to this Chapter. Applicant must also pay an

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administration fee per unit on rental and/or owner-occupied units as determined by the Portland Housing Bureau.

- D.** The City shall calculate exemptions in the manner authorized for calculating system development charges for rented and owner-occupied residential properties. Non-residential properties or the non-residential portion of mixed-use developments are not eligible for exemptions provided by this Section.
- E.** The City shall require the recording of real property covenants in the deed records for properties receiving exemptions under this Section in order to ensure compliance, or to provide remedies for failure to restrict units, or both. Deed restrictions may be used by the Portland Housing Bureau in order to restrict sale prices and rents charged for exempt units, or to provide remedies for failure to restrict units, or both.
- F.** Applicants shall meet the following affordable housing qualifications to be exempt from paying all or a portion of system development charges:
 - 1.** Affordability.
 - a.** For purposes of this Section, "affordable" for rental housing means that the rent and expenses associated with occupancy such as utilities or fees, does not exceed 30 percent of the gross household income at the level of the rent restrictions.
 - b.** "Affordable" for ownership units means affordable to households earning at or below 100 percent of area median income and shall be sold to persons or households whose incomes are at or below 100 percent of area median family income for a family of four as determined annually for the Portland Metropolitan Area by the U.S. Department of Housing and Urban Development as adjusted upward for a household of more than four persons.
 - 2.** Rental Units:
 - a.** The units receiving an exemption shall be affordable to households earning 60 percent or less of area median family income at time of occupancy and shall be leased, rented or made available on a continuous basis to persons or households whose incomes are 60 percent or less of area median family income, as adjusted by household size and as determined by the U.S. Department of Housing and Urban Development for the Portland Metropolitan

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Area, except as provided for below. Such units shall remain affordable for a period of 60 years.

b. Effective July 1, 2014, developments of new buildings in Old Town/Chinatown shall be eligible for exemption subject to the following conditions:

- (1)** Units must be located in the Old Town/Chinatown Action Plan Focus Area;
- (2)** Financial need must be verified through project pro forma underwriting conducted by the Portland Development Commission;
- (3)** All units shall remain affordable for a period of not less than 10 years, to persons or households whose incomes are 100 percent or less of median family income, as adjusted by household size and as determined by the U.S. Department of Housing and Urban Development for the Portland Metropolitan Area, and for not less than 5 years thereafter shall continue to remain affordable to persons or households whose incomes are 120 percent or less of median family income, as so described; and
- (4)** The exemption granted by this Subsection shall not be available to developments for which a building permit application is filed on or after July 1, 2019, or after permit applications have been filed for development of 500 qualifying units, in the aggregate, whichever occurs first.

3. Owner-Occupied Units.

- a.** The units receiving an exemption shall be affordable to households earning at or below 100 percent of area median income and shall be sold to persons or households whose incomes are at or below 100 percent of area median family income for a family of four as determined annually for the Portland Metropolitan Area by the U.S. Department of Housing and Urban Development adjusted upward for a household larger than four persons; and
- b.** The units fall within the price limit as provided by Subsection 3.102.090 D.

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4. Pursuant to Section 30.01.040, the Portland Housing Bureau is responsible for enforcing property covenants and other agreements with applicants that are conditions of receiving exemptions provided by this Section. Portland Housing Bureau may adopt, amend and appeal administrative rules, establish procedures, and prepare forms for implementation, administration and compliance monitoring consistent with the provisions of this Section.
 - a. In addition to specific covenants and agreements required by the City as a condition of approval of an exemption application, qualified rental developments must adhere to the 60-year affordability requirements for rental housing developments, including qualifying requirements related to rents and occupancy.
 - b. In addition to specific covenants and agreements required by the City as a condition of approval of an exemption application, a qualifying ownership project must comply with applicable recapture or retention covenants.
 - c. In the event that an applicant violates the covenants, agreements or other requirements that were established by the City as a condition of approval of an exemption application, the City shall terminate the exemption and make due and payable all previously exempt portions of system development charges at rates in effect on the date of the submittal of a complete exemption application, plus accrued interest calculated based on the interim interest rate in effect on the date of the termination of the exemption as set by general ordinance pursuant to Section 17.12.140, and a processing fee of \$250.
 - d. For rental properties, if the exemption terminates within five years of initial building permit issuance, additional charges will be due and owing. These charges include a processing fee of \$250, and accrued interest from the date of the issuance of the building permit to the date of the termination of the exemption. The reinstated system development charges shall be determined based on rates in effect on the date of the submittal of a complete building permit application. Accrued interest shall be calculated based on the interim interest rate in effect on the date of the termination of the exemption as set by general ordinance pursuant to Section 17.12.140. The City may collect reinstated system development charges, processing fees, carrying charges and the actual costs of collections by recording a property lien pursuant to Title 22.

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- e. For owner occupied units, if the units is not sold to a qualifying household, additional charges will be due and owing prior to change of ownership. These charges include a processing fee of \$250, and accrued interest from the date of the issuance of the building permit to the date of the termination of the exemption. The reinstated system development charges shall be determined based on rates in effect on the date of the submittal of a complete building permit application. Accrued interest shall be calculated based on the interim interest rate in effect on the date of the termination of the exemption as set by general ordinance pursuant to Section 17.12.140. The City may collect reinstated system development charges, processing fees, carrying charges and the actual costs of collections by recording a property lien pursuant to Title 22.

30.01.100 Compliance and Enforcement.

(Amended by Ordinance No. 186028, effective May 15, 2013.)

- A. PHB shall develop and implement procedures to enforce the provisions of this code. Such procedures should include, where feasible, record notice of the applicability of this code to affected properties, filing a lien to enforce the provisions of this code, and developing civil penalties or other enforcement provisions necessary or appropriate to enforce this code.
- B. The City Attorney's Office may enforce the provisions of this code on behalf of the City in any court of competent jurisdiction or City administrative body.

30.01.110 No Restriction of Powers of Eminent Domain; Severability.

- A. This Chapter shall not be construed to restrict the City's existing authority to exercise powers of eminent domain through condemnation as outlined in state law.
- B. If any part or provision of this Chapter, or application thereof to any person or circumstance, is held invalid, the remainder of this Chapter and the application of the provision or part thereof, to other persons not similarly situated or to other circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable.