

**HOU-1.07 - Multiple-Unit Limited Tax Exemption (MULTE) Program**

**MULTIPLE-UNIT LIMITED TAX EXEMPTION (MULTE) PROGRAM**

Administrative Rule Adopted by City Council

ARC-HOU-1.07

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## **I. Definition of Administrative Rules**

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

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

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

## **II. Program Goals**

In addition to meeting the legislative goals set forth in ORS 307.600, the City of Portland and Multnomah County have established the following core goals for the MULTE Program:

- A.** Stimulate the inclusion of affordable housing in projects where it may not otherwise be made available;
- B.** Leverage market activities to advance housing and economic prosperity goals by aligning those activities with the goals of the Portland Plan and the PHB's Strategic Plan; and
- C.** Provide transparent and accountable stewardship of public investments.

## **III. Benefit of the Tax Exemption**

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

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

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

**B. Commercial portions of a project** – For exemption of the commercial portion of a mixed use development, the developer must demonstrate through community engagement and/or a market analysis that the commercial space meets a community identified need for a good or service that is not currently available within walking distance, does not compete with a similar established business within walking distance, and advances Portland Development Commission’s (PDC) Neighborhood Economic Development Goals.

**C. Parking** – The exemption may include parking constructed as part of the multiple-unit housing construction, addition or conversion; any parking available shall not be required as payable rent.

**D. Extensions for low income housing** – Extensions beyond the ten year exemption period will be granted only for projects subject to a low income housing assistance contract with an agency or subdivision of Oregon or the United States.

Extensions may be granted only for the portion of units which meet the affordability requirements through June 30 of the tax year during which the termination date of the low income housing assistance contract falls.

#### **IV. Program Requirements**

**A. Eligible areas** – 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 Main Streets with Transit Service or Metro 2040 Corridors with Frequent Transit Service within the City of Portland as illustrated on the map of the MULTE Program Eligibility Areas. (See Exhibit 1.)

**B. Site control** – Applicant must own or have site control of the project site.

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

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

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

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

**D. Accessibility** – At least 5% of units in the project will be built to be adaptable to fully ADA accessibility.

**E. Pedestrian connection** – The project must provide pedestrian design elements according to ORS 307.618 (1) (a) and be physically or functionally related to and enhance the effectiveness of a light rail line or mass transportation system.

Pedestrian design elements include continuous, unobstructed, reasonably direct route between two points that is intended and suitable for pedestrian use. Examples are sidewalks, walkways, stairways and pedestrian bridges. On developed parcels, pedestrian connections are generally hard surfaced. In parks and natural areas, pedestrian connections may be soft-surfaced pathways. On undeveloped parcels and parcels intended for redevelopment, pedestrian connection may also include rights-of-way or easements for future pedestrian improvements.

**F. Rental projects:**

**1. Financial need** – The project pro forma must show that the property tax exemption is necessary for the project to provide affordability.

**2. Project affordability** – During the term of the exemption, a minimum of 20% of the number of units must be affordable to households earning 60% or less of the area median family income (MFI), or to households earning 80% or less of the area MFI when the project's market rents are at or exceed 120% of the area MFI levels or a market study supports rents of similar units in the same geographic area at or above 120% of the area MFI.

Measurement of household 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 for a family of one person (for a studio apartment), two persons (for a one-bedroom apartment), three persons (for a two-bedroom apartment), or four persons (for a three-bedroom apartment). Affordability is defined as a rental rate which does not exceed 30% of the monthly maximum MFI levels for each bedroom size including allowances for utilities that are either directly paid by tenants or billed back to tenants by the owner for reimbursement. No utility allowance is required for utilities paid by the owner and not reimbursed by the tenant.

For approval purposes, applicants must document and use the utility estimates available from Home Forward to calculate monthly affordable rents in the pro forma. Actual project utility expenses may be averaged and submitted to PHB for approval to be used in place of the Home Forward estimates after the project has been in service for one or more years.

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

**G. For-sale units:**

- 1. Financial need/Affordability** – All for-sale units receiving the tax exemption will be sold to buyers meeting the affordability requirements. Homebuyers (who will be both on title to the property and occupying the home) must earn no more than 100% of MFI for a family of four, adjusted upward for households larger than 4 persons.

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.

- 2. Price cap** – For-sale units must sell for less than the sale price cap established annually by PHB.
- 3. Owner occupancy** – For-sale units may not be rented at any time (both prior to initial sale and after homebuyer qualification); properties which are rented are subject to termination of the exemption. Homebuyers must occupy the property as their primary residence.

**V. Application Process**

- A. Annual cap** – PHB will approve no more than \$3 million of projects' estimated foregone revenue for the first year of the exemption annually. The exemption amount is calculated based on the projects' total projected value upon completion. The number of projects and units approved will depend on estimates of total foregone revenue. Properties located in eligible areas within Urban Renewal Areas are exempt from the cap.
- B. Timing of application** – Applications must be submitted and approved prior to issuance of the project's building permit and prior to announcing bids for sub-contracting. Applications for extensions must be submitted prior to the exemption expiring.
- C. Pre-application meeting** – Prior to applying, applicants need to contact the MULTE Program Coordinator, who will schedule a two-hour pre-application meeting to be held within 20 business days and include the development team and general contractor representatives and PHB staff.

- D. MWESB contracting** – Applicants must consult with PHB staff and a third party technical assistance provider prior to opening up bidding for the construction and prior to application for the MULTE. The MULTE 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. Prior to MULTE approval, the applicant must provide a copy of a signed contract with a third party technical assistance provider approved by PHB. The general contractor must work with the City of Portland’s Procurement Services Compliance Specialist to report results during bidding and construction.
- E. Lease-up strategy** – Applicants must consult with PHB staff about lease-up of the project. Applicants must commit to using PHB’s prescribed lease-up strategies, which may include but is not limited to partnerships with community organizations, listing available units on Housing Connections website, accepting Rent Well certificates, and acceptance of appeals of both conditional approvals and denials.
- F. Neighborhood Contact** – Applicants are required to participate in the Neighborhood Contact process prior to applying for the building permit and tax exemption program. The Neighborhood Contact process provides a setting for the applicant and neighborhood residents to discuss a proposed project in an informal manner. By sharing information and concerns during the application process, all involved have the opportunity to identify ways to improve a proposed project, and to resolve conflicts before the tax exemption is approved.

The requirements for Neighborhood Contact are:

1. The applicant must contact the neighborhood association for the area, by registered or certified mail, to request a meeting. A copy of this request must also be sent by registered or certified mail to the district neighborhood coalition;
2. The neighborhood association should reply to the applicant within 14 days and hold a meeting within 45 days of the date of the initial contact. If the neighborhood association does not reply to the applicant's letter within 14 days, or hold a meeting within 45 days, the applicant may request a land use review or building permit without further delay. If the neighborhood requests the meeting within the time frame, the applicant must attend the meeting. The applicant may attend additional meetings on a voluntary basis. The neighborhood may schedule the meeting with its board, the general membership, or a committee;
3. After the meeting and before issuance of the building permit, the applicant must send a letter to the neighborhood association and district neighborhood coalition.

The letter will explain changes, if any, the applicant is making to the proposed project;

4. Copies of letters, and registered or certified mail receipts must be submitted with the tax exemption application.

**G. Application requirements** – Complete applications include the application processing fee, PHB Application Form, a project narrative, financial information and supporting documentation, plus any additional project specific documentation, as described below:

1. **Application processing fee** in the amount of \$1,000 – checks should be made payable to PHB;
2. **PHB Application Form** including:
  - a. Applicant’s signature verifying oath or affirmation and date;
  - b. Number, size, and type of dwelling units and key design elements;
  - c. Dimensions of the multiple-unit structure(s), parcel size, proposed lot coverage of building, and amount of open space;
  - d. Type of project (preservation, rehabilitation, conversion, and/or new construction; rental or for-sale);
  - e. Number of residential and commercial off-street parking spaces;
  - f. Parking and circulation plan;
  - g. Proposed amount of floor area dedicated to residential, residential common, and non-residential uses;
  - h. Description of the existing use of the property, including if appropriate a justification for the elimination of existing sound and rehabilitable housing;
  - i. Project schedule; and
  - j. Rent schedule (or expected purchase prices.)
3. **Project narrative** with the following sections:

- a. Project description – project location, neighborhood characteristics and any resident services;
  - b. Pedestrian design elements and connection to transit;
  - c. Description of how the project will meet the MULTE Program’s Equity, Accessibility and Affordability requirements;
  - d. Definition of the ownership structure of the development project and declaration of any mutual identity of interest between the applicant and the construction contractor or property management company.
- 4. Financial information** (for rental projects only) – Excel spreadsheet(s) to be submitted electronically/”live” (not PDF):
- a. Pro forma development budget (detailed project costs);
  - b. Pro forma Sources and Uses;
  - c. Three different 15 year pro forma operating cash flow scenarios (income and expense analyses)
    - i. Scenario 1, affordable units, **without** the exemption – demonstrate the 10 year average cash on cash return;
    - ii. Scenario 2, **with** the exemption – demonstrate the 10 year average cash on cash return; and
    - iii. Scenario 3, showing the necessary **increase in unit rents** (from scenario 1) to achieve the same cash on cash return as with the exemption (scenario 2);
  - d. Rent structure (or expected purchase price) by unit type (affordable units to be net of utility allowance). If the rent structure has varying rents within unit types (e.g. multiple rent levels for 1 bedroom), include a roll up of total count by unit type;
  - e. Breakdown of the applicable utility costs payable by the tenants for the different unit types as determined from the Schedule of Utility Allowances;
  - f. Demonstration of how real estate taxes without the exemption were determined;

- g. Demonstration of each component of developer equity including invested cash and any deferred fees; and
- h. Economic feasibility, market analysis, or evidence of cost comparisons when appropriate.

**5. Supporting documentation:**

- a. Conceptual site plan and supporting maps (drawn to a minimum scale of one inch equal to 16 feet, or a scale suitable for reproduction on 8-1/2" by 11" paper, showing the development plan of the entire project including streets, driveways, sidewalks, pedestrian ways, off street parking, loading areas, location, design, and dimension of structures, use of land and structure(s), major landscaping);
- b. Documentation of Neighborhood Contact process – copies of letters sent to the area neighborhood association and district neighborhood coalition along with copies of the certified or registered mail receipts.
- c. Documentation of site control and supporting materials: property tax printout for all parcels, showing tax account numbers and legal descriptions (include copy of deed to document ownership or full legal description if necessary);
- d. Copy of the market study provided to the senior lender for the project; and
- e. Legal articles of entity who will receive the exemption (Identifying signature block); and
- f. Copy of contract with a third party MWESB technical assistance provider (draft – final is necessary prior to application approval)

**6. Additional information** – Such other information required by state or local law or otherwise which is reasonably necessary.

**VI. Application Approval**

Approval or denial of applications will occur within 180 days of application.

- A. Review of program requirements** – The MULTE Program Coordinator will determine if applications meet the program and application requirements.
- B. URA approval** – For properties located in Urban Renewal Areas, PHB will contact Portland Development Commission (PDC) and the City’s Debt Manager for approval prior to approval of the application.

- C. Investment Committee Review** – The PHB Investment Committee will review projects recommended for approval by the MULTE Program Coordinator.
- D. Application activation fee** – Qualified applicants must pay PHB an application fee (to be established annually, including the fee to be paid to Multnomah County.) Should an application not be approved, or the exemption otherwise does not go into effect, the applicant may request a refund of fees paid less the cost of estimated staff time expended.
- E. Public hearing** – PHB will present applications at a public hearing before the Portland Housing Advisory Committee (PHAC), for which public notice will be given and public testimony will be heard.
- F. Final approval** – Exemptions will receive final approval by PHB through the filing of an ordinance with City Council. PHB will send a copy of the approved ordinance to the applicant.
- G. County activation** – PHB will send a copy of the approved ordinance and the corresponding fee to Multnomah County. Approved exemptions will go into effect July 1 of the assessment year in which construction was completed.

## **VII. Compliance Requirements**

- A. Program sunset date** – Projects must be constructed, rehabilitated or converted before January 1, 2022 unless the program is extended and a later sunset date is established through the Oregon State Legislature.
- B. Changes to projects** – If, after a project is approved for the MULTE, and prior to construction being completed, the project owner needs to make changes to the application submitted which are minor and would result in substantially the same project, PHB may allow slight variances to what was approved without a formal restructure request. Changes must be submitted to PHB using the MULTE Approved Project Change Request form. PHB will evaluate the change(s) to determine whether or not the project and the affordability will still be substantially the same if the changes are accepted. PHB will consider restructure requests as long as the project still meets the program requirements. The project owner must submit a formal restructure request to PHB including a new application form, current financial information, and an updated narrative reflecting the reasons for the changes to the project. Restructures will be reviewed by staff, presented to PHB’s Investment Committee, and go to City Council for approval.

Should any changes be approved, it may be necessary for an Amendment Agreement to be signed and recorded to amend any provisions outlined in the MULTE extended use agreement.

**C. MWESB** – To comply with MWESB contracting requirements, the contractor must complete and submit the GFE Program Bidder Checklist and report on bidding results through the City of Portland’s Procurement Services Compliance Specialist.

**D. Rental projects**

- 1. Extended Use Agreement** – The owner of a rental project approved for exemption will be required to sign an extended use agreement (EUA) to be recorded on the title to the property.
- 2. Lease-up approval** – The PHB Asset Management Department will be in contact with the owner and/or property manager prior to completion of construction to ensure proper screening and qualification of tenants prior to lease up. The owner must notify the PHB Asset Management Department if the property manager information submitted with the application changes.
- 3. Tenant screening** – Gross income from all sources must be considered for any adults living in the unit. To qualify, tenants should be allowed to spend more than 30% of their gross income on housing expenses. Any applicants not meeting the screening criteria must be given the right to appeal.

Tenants must income qualify at lease-up, but may exceed the affordability requirement by up to 20% during the exemption period (i.e. tenants who qualify for 60% of MFI restricted units at lease-up may earn up to 80% of MFI while living in the unit, or tenants who qualify for 80% of MFI restricted units at lease-up may earn up to 100% of MFI while living in the unit).

If a tenant exceeds the income requirement, plus the additional 20% allowed, then the unit is no longer considered qualified as an affordable unit. Another unit in the project may replace the affordable unit, should it otherwise meet all program criteria.

Upon termination or expiration of the tax exemption or in the case that a tenant no longer income qualifies for an affordable unit, the owner, or an agent thereof, 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 and an executed copy provided to PHB as the project is leased up and at unit turnover.

- 4. Annual reporting and review** – During the exemption period, the owner must enter tenant income and rental data into PHB’s Web Compliance Management System (WCMS) – to validate subsequent rental and household income

compliance – annually to PHB’s Asset Management Department within 90 days from the end of the project’s fiscal year.

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

Upon sale or other transfer of the project during the exemption period, the provisions of the MULTE program can 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. For-sale units**

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

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

- 3. PHB review prior to closing** – PHB will notify homebuyer and escrow of homebuyer qualification (affordability and owner-occupancy) prior to closing.
- 4. Sales over the price cap** – The seller must notify PHB if a property is selling over the established price cap. If the exemption is already in effect, it will be terminated and escrow must request the amount of any taxes exempted due from Multnomah County to be paid at closing by the seller.

5. **Construction completion** – The property must be fully constructed upon sale (documented by final permit or certificate of occupancy and usually verifiable by PHB through Portland Maps).
6. **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.
7. **Subsequent homebuyers** – If a property with a tax exemption transfers title during the ten year exemption period, the exemption will continue as long as the property remains owner occupied.
8. **Owner occupancy** – The Property may not be rented at any time (both prior to initial sale and after homebuyer approval). After initial sale, the property must be owner occupied (or listed for sale and vacant) during the exemption period.

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

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

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

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

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

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

### **VIII. Termination of Active Exemptions**

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

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

PHB will go before city council with a resolution of exemptions to be terminated prior to the next tax year.

If a rental project has not met the affordability requirements approved, the non-compliance must be cured by the next reporting year, or the project will be considered non-compliant. In the case of ceasing to provide affordability (and electing to “opt out” of the program), effectively non-compliance:

- A. The exemption will be terminated without right of notice or appeal (no show cause hearing);
- B. Property will be assessed full taxes as of the next tax year following the non-compliance; and
- C. A penalty equal to the amount of the tax exemption for the most recent tax year multiplied by the percentage of affordable units, multiplied by the years remaining in the tax exemption will be due and payable to the Portland Housing Bureau.

### **IX. PHB Administrative Requirements and Dates**

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

### **X. Attachments**

**Exhibit 1: Multiple-Unit Limited Tax Exemption Eligible Areas Map**

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## **HISTORY**

Ordinance No. 185477, passed by City Council June 27, 2012 and effective August 1, 2012.

Exhibit 1: Multiple-Unit Limited Tax Exemption Eligible Areas Map

