



Bureau of Planning and Sustainability
Innovation. Collaboration. Practical Solutions.

Effective Date: May 24, 2018

DRAFT ADMINISTRATIVE RULES

Energy Efficient Building Requirements for Planned Development Bonuses

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PART 1.0 SCOPE, PURPOSE AND BACKGROUND

These Administrative Rules describe the standards and expectations for the Energy Efficient Buildings requirements described in the City of Portland Zoning Code for Planned Development bonuses, Chapter 33.130.212 Floor Area and Height Bonus Options.

Portland's 2015 Climate Action Plan established goals to reduce carbon emission 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050. Buildings are the largest source of carbon emissions in the City. The key Climate Action Plan objective for new construction is to achieve zero net carbon emissions in all new buildings and homes by 2030. Establishing minimum energy performance targets for new construction and major renovations is identified as a near-term action to achieve this objective.

PART 2.0 AUTHORITY OF DIRECTOR

A. Director's Rulemaking Authority. The Director of the Bureau of Planning and Sustainability (BPS) [the Director] adopts these Administrative Rules under the authority granted by City Council Ordinance No. XX.

B. Adoption and Revision of Rules

1. Any rule adopted or revised according to the authority of the City Code shall require a public review process. Not less than 10 nor more than 30 days before such public review process, notice shall be given by publication in a newspaper of general local circulation. Such notice shall include the place, time, and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.
2. During the public review, the Director or the Director's designee shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendations, taking into consideration the comments received during the public review process and shall either adopt the proposed rule, modify the proposed rule or reject the comments.

If a substantial modification is made, additional public review shall be conducted, but no additional notice shall be required if such additional review is announced at the meeting at which the modification is made. The Director or the Director's designee shall determine whether a modification is substantial or not. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director.

3. Notwithstanding paragraphs 1. and 2. of this section, an interim rule may be adopted by the Director without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than one year (365 days). Within five business days of the adoption of such interim rule, BPS staff shall send notice of the rule change and invite comments by email from the BPS list of interested parties.

PART 3.0 DEFINITIONS

As used in these administrative rules, the following words and phrases shall be construed as defined in this Section, unless the context indicates a different meaning is intended.

- A. **“Director”** means the Director of the Bureau of Planning and Sustainability or his or her authorized representative, designee or agent.
- B. **“Baseline Energy Use Intensity (EUI)”** means a numerical value that is calculated using the Architecture 2030 Zero Tool for commercial buildings, and the Northwest Energy Efficiency Alliance (NEEA) 2016-2017 Residential Building Stock Assessment (RBSA II) for multifamily buildings, reported in thousand British thermal units per square foot (kBtu/sf).
- C. **“Design EUI”** means a numerical value that represents the anticipated annual energy consumed within a building relative to its Gross floor area based on an energy model, reported in kBtu/sf. If solar energy is generated onsite and consumed onsite, the annual amount of generated solar energy may be subtracted from the annual energy consumed.
- D. **“EUI Standard”** means the minimum building energy use intensity necessary to qualify for the Planned Development Bonus and is calculated as a percentage reduction from the Baseline EUI.
- E. **“Gross Floor Area”** means the total number of enclosed square feet as measured between the principal exterior surfaces of the fixed walls of a building, including all supporting functions such as offices, lobbies, rest rooms, equipment storage areas, mechanical rooms, break rooms, elevator shafts, etc. Atriums should only include the base floor area that they occupy. The total gross floor area does not include outside loading bays or docks.
- F. **“Owner”** means any Person possessing title to a property where a building is seeking the Planned Development Bonus.

- G. “Person”** means a representative of the Owner, including any natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, and/or the manager, lessee, agent, servant, officer, or employee of any of them.
- H. “Planned Development Bonus”** means the City of Portland Zoning Code for Planned Development bonuses, Chapter 33.130.212 Floor Area and Height Bonus Options.
- I. “Zero Tool”** means the scale and online tool for measuring building energy performance as maintained by Architecture 2030 (<https://zerotool.org/zerotool/>).

PART 4.0 SUBMITTAL REQUIREMENTS

- A.** To qualify for the Planned Development Bonus, a Person must achieve a building Design EUI that is equal to or lower than the following EUI Standards determined by a Baseline EUI for each building use type:

Use Type	Baseline EUI (kBtu/sf)	Baseline Reduction (percentage)	EUI Standard (kBtu/sf)
Residential			
Multifamily Dwelling (1-3 stories)	64.1	50	32.1
Multifamily Dwelling (3-6 stories)	56.6	50	28.3
Multifamily Dwelling (7+ stories)	49.1	50	24.6
Commercial			
Bank Branch/Financial Office*	73.1	70	21.9
Bar	37.4	70	11.2
Bowling Alley	42.6	70	12.8
Convenience Store	239.5	70	71.9
Convention Center	30.7	70	9.2
Enclosed Mall	90.7	70	27.2
Fast Food Restaurant	526.7	70	158.0
Fitness Center	42.6	70	12.8
Food Sales	239.5	70	71.9
Food Service	281.8	70	84.5
Hotel	69.3	70	20.8
Ice Rink	42.6	70	12.8
Indoor Arena	37.4	70	11.2
Medical Office*	77.5	70	23.2
Movie Theater	37.4	70	11.2
Museum	37.4	70	11.2

Nightclub	55.0	70	16.5
Office*	79.3	70	23.8
Outpatient Center	66.2	70	19.8
Personal Services	50.4	70	15.1
Physical Therapy Center	66.2	70	19.8
Repair Services	50.4	70	15.1
Restaurant	224.1	70	67.2
Retail*	72.0	70	21.6
Roller Rink	42.6	70	12.8
Self-Storage Facility	20.4	70	6.1
Strip Mall	91.4	70	27.4
Supermarket*	260.8	70	78.2
Urgent Care Center	72.6	70	21.8
Veterinary Office	77.9	70	23.4
Wholesale Club	45.8	70	13.7
Industrial			
Distribution Center*	31.8	70	9.6
Energy Station	55.0	70	16.5
Warehouse Refrigerated*	64.4	70	19.3
Warehouse Unrefrigerated*	28.5	70	8.5
Institutional			
Adult Education	71.0	70	21.3
College	131.9	70	39.6
Hospital*	318.2	70	95.5
K-12 School*	71.1	70	21.3
Library	103.6	70	31.1
Meeting Hall	30.7	70	9.2
Performing Arts	37.4	70	11.2
Post Office	50.4	70	15.1
Preschool	73.2	70	22.0
Residence Hall*	74.2	70	22.2
Senior Care	107.5	70	32.2
Specialty Hospital	217.3	70	65.2
Swimming Pool	42.6	70	12.8
Vocational School	63.1	70	18.9
Worship Center	25.0	70	7.5

* For these building use types, the Baseline EUI and EUI Standard varies depending on building size. The online Architecture 2030 Zero Tool may be used as an alternative to the table to determine the size-specific Baseline EUI. The size-specific EUI Standard is calculated by multiplying the Baseline EUI by the Baseline Reduction percentage for the building use type listed in the table above.

- B.** For a mixed-use building, a Person may adjust the Baseline EUI and EUI Standard to be proportional to the floor area for the mix of use types in the building design.
- C.** A Person may select a custom Baseline EUI and EUI Standard by participating in the Energy Trust of Oregon Path to Net Zero program.
- D.** Qualification for the energy efficiency requirements of the Planned Development Bonus will be determined by BPS staff when a Person submits a building permit application to BDS. By email or letter, the Person must submit the following evidence to BPS:
 - 1. The building name, street address and permit application date.
 - 2. The Person's name and email address, and the property Owner's name and mailing address.
 - 3. The building Design EUI, EUI Standard and Baseline EUI, including any supporting calculations or references to Zero Tool inputs.
 - 4. A copy of the official registration and documentation that the building project is participating in at least one the following programs and meets any minimum thresholds specific to each program, as published and updated by BPS in alignment with the EUI Standards:
 - a. Earth Advantage Small Commercial or Multifamily certification,
 - b. Energy Trust of Oregon Path to Net Zero program,
 - c. Green Building Initiative Green Globes certification,
 - d. The Institute for Living Future Living Building Challenge certification,
 - e. The Passive House Institute US Passive Building Standard program, or
 - f. The US Green Building Council Leadership in Energy and Environmental Design™ (LEED) certification.
 - 5. A covenant signed by the Person to ensure that the energy efficiency features qualifying the building for the Planned Development Bonus continue to be provided for a period of 20 years after Certificate of Occupancy. The covenant must comply with the standards in 33.700.060, Covenants with the City.

- E. Within one year of receiving a Certificate of Occupancy from BDS, the Person must provide evidence of the final Design EUI, and if applicable, a copy of the official project certification from the organization responsible for the approved program in Section 4.0.E.
- F. The final Design EUI will be published by BPS.
- G. Alteration permits to existing buildings within the Planned Development Bonus are exempt from the EUI Standards in Section 4.0.A.
- H. Following every update to the State of Oregon’s Energy Efficiency Specialty Code, BPS may update Baseline EUI and EUI Standards.

PART 5.0 COMPLIANCE ENFORCEMENT

A. Standard for Determining Violation

1. Any Person who fails to meet the EUI Standard for a building that receives a Planned Development Bonus may be in violation of City Code Chapter 33.130. In determining whether a violation has occurred, the Director will evaluate the totality of the circumstances related to the violation.
2. Upon determining that a violation has occurred, the Director shall issue a written warning notice to the Person, indicating non-compliance with Section 4.0. Within 90 days after the Director notifies the Person of non-compliance, such Person will have the opportunity to take corrective action and resubmit evidence demonstrating that the building project has complied with Section 4.0.
3. If the Person fails to demonstrate compliance with Section 4.0. within the time allowed, the Director will deliver a Notice of Violation to the Person. A civil penalty may be assessed for up to five percent of the Project Valuation set forth in the building permit for the project that received the Planned Development Bonus in accordance with City Code 33.130. The amount of the civil penalty shall be a minimum of one percent of the Project Valuation and vary depending on the extent of EUI Reduction, as shown in the following table:

Penalty (percentage of Project Valuation)	Percentage of EUI Reduction
0.5	95 and greater
1	90 to 94
1.5	85 to 89

2	80 to 84
2.5	75 to 79
3	70 to 74
3.5	65 to 69
4	60 to 64
5	59 or less

Percentage of EUI Reduction = (Baseline EUI – final Design EUI) / (Baseline EUI – EUI Standard determined in Section 4.0.)

B. Right of Appeal and Payment of Assessments

1. Payment of Assessments Required or Appeal. Upon receipt of a Notice of Violation of a civil penalty for any provisions of these Administrative Rules, the alleged offender shall, within thirty (30) calendar days of BPS issuance of the written Notice of Violation, pay to BPS the stated civil penalty or request an appeal hearing by a Code Hearings Officer in accordance with the procedures set forth in Portland City Code Title 22.10 and Chapter 3.130.020.
2. 15-Day Payment Required Upon Failed Appeal. If, pursuant to said appeal hearing, an Infraction assessment is ordered, payment of said Assessment must be received by BPS or postmarked within 15 calendar days after the order becomes final.
3. Interest on Assessment. An Assessment which is not paid within the time provided shall accrue interest at the rate consistent with the City’s established accounting practices.
4. City May Take Legal Action to Collect Assessments. The City may take legal action to collect Assessments, which are not paid when due.

C. Delivery of Notices of Warning or Violation

Any notice of warning or violation provided for under these Rules shall be sufficient if in writing and accomplished by any of the following means to a Person: (1) delivered personally to the Person being notified; (2) deposited in the United States Mail, first class, postage prepaid; or (3) sent by commercial courier. Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of either (1) actual personal delivery to the Person’s address, during normal business hours; (2) three (3) business days after depositing in the United States Mail as aforesaid; or (3) one (1) business day after shipment by commercial courier as aforesaid.