

HOU-3.04 - Inclusionary Housing Program

Administrative Rules

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I. Definition of Administrative Rules

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

II. IH 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 will, t~~The Portland Housing Bureau (“PHB”) will review Buildings subject to the IH Program to ensure compliance with the IH Program and these Rules will review all qualifying residential development projects (“developments”). Depending Based on the inclusion IH Program option selected by an aApplicant, PHB staff may will participate in monitor the various phases of the Building’s development process, including permitting, closing, construction, lease-up and operations.

~~By implementing the IH Program, t~~The City has the following goals in implementing the IH Program:

- A. Increase the number of units available to households earning ~~80% percent~~ or less of ~~area~~ median family income (“~~AMMFI~~”), with an emphasis on households earning 60% percent AMI-MFI or less;
- B. Responsibly allocate resources to increase housing opportunities for families and individuals facing the greatest disparities;
- 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 locations

III. Definitions

A. Applicant: A Person who that applies for a land use review or building permit. An applicant Applicant can be the Owner of the property or someone who is representing the Owner, such as a builder, contractor, developer, optional purchaser, consultant, or architect.

B. Basement: The portion of a building that is partly or completely below grade. A minimum of 50% of the total combined area of the walls must be below grade to be considered a Basement.

C. Bedroom: A Bedroom must be a habitable private room as defined by PCC 29.30.210 and must be enclosed by a door that separates it from the rest of the Dwelling Unit, except for a Lofted Unit Type as defined in these Rules under “Unit Type”.

D. Building: A structure that has a roof and is enclosed on at least 50% of the area of its sides.

E. 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.

F. Compliance Period: the ninety-nine (99) year time period during which the ~~Regulatory Agreement~~ IH Covenant applies to a ~~development~~ Building.

G. Consolidated Building: A Building on the same site as the Transferring Building(s) that is absorbing the IH requirements of one or more Buildings on the same site through On-Site Consolidation.

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

H. Dwelling Unit: As defined by PCC Section 33.910 “Dwelling Unit”.

I. Existing Receiving Building: An Existing Receiving Building is a Building that has either had a permit issued or has already completed construction at the time a proposed Sending Building submits a completed “IH Receiving Building Identification Form” designating the Existing Receiving Building, located at <https://www.portlandoregon.gov/phb/74461>.

J. 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 Dwelling Units ~~restricted to be affordable to households earning 80% percent~~ or less of the ~~area~~ AMI MFI as determined annually by HUD.

K. Floating: Floating is the conversion of a Market Rate Unit to a new IH Rental Unit in a Building. Buildings maintain their legally required amount of IH Rental Units while giving flexibility to Owners and property managers (“Property Managers”) to fill vacancies. Floating allows IH Rental Units to be located anywhere in a Building and are not fixed by unit number. Units must continue to meet Reasonable Equivalency standards, pursuant to Section V.A. of these Rules.

L. Gross Square Feet/Footage/ Foot: As defined through Oregon Structural Specialty Code (2014), Chapter 2, Section 202, Definitions defines “AREA, BUILDING” as “the area included within surrounding exterior walls (or exterior walls and fire walls) exclusive of vent shafts and courts. Areas of the building not provided with surrounding walls shall be included in the building area if such areas are included within the horizontal projection of the roof or floor above.”

M. ~~Regulatory Agreement~~ IH Covenant: A type of recorded regulatory agreement between the Owner and PHB that sets forth the approval and compliance criteria of the IH Program and is recorded on the title to the property. The IH Covenant will be prepared by PHB staff and must be signed by the Owner of the property on which the Building is located prior to permit issuance. PHB will not subordinate the IH Covenant to project financing commitments.

N. IH Homeownership Unit: A Dwelling Unit, to be sold individually within a Building, which is documented in the IH Covenant as required in order to comply with the IH Program requirements in place at the time of execution of the IH Covenant.

O. IH Rental Unit: A unit, to be rented within a Building, that is documented in the IH Covenant as required in order to comply with the IH Program requirements in place at the time of execution of the IH Covenant.

P. IH Unit: A housing Dwelling Unit documented in a development's Building's Regulatory Agreement IH Covenant as required in order to comply with the IH Program requirements in place at the time of execution of the Regulatory Agreement IH Covenant. 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 Distributions and Unit Count below.

Q. Market Rate Unit: A Dwelling Unit in a Building with a documented IH Covenant that is not required to comply with the IH Program requirements. All residential units within a development that are not subject to an IH Covenant or other related Regulatory Agreement with regard to tenant incomes or unit rents.

R. Minimum IH Units: Buildings must provide the minimum number of IH Units based on the IH Program option selected. Buildings that select IH Option 1 are limited to providing 20% of their units as IH Units. When calculating the required percentage of IH Units in a Building any fractional result between .1 and .4 will be rounded down to the next whole number and any fractional result between .5 and .9 will be rounded up to the next whole number.

1. Example 1. The minimum number of IH Units is calculated to be 1.67; it is rounded up to 2 IH Units.

IH Unit Types must be provided at the same ratio within the Building as Market Rate Units specific to each Unit Type.

2. Example 2. A 20% IH Unit requirement in a 100-unit Building

Market Rate Units = 80
Bedroom distribution:
20 studios (25%)
40 one-Bedrooms (50%)
20 two-Bedrooms (25%)

IH Units = 20
Bedroom distribution:
5 IH studios (25%)
10 IH one-Bedrooms (50%)
5 IH two-Bedrooms (25%)

If the total number of Dwelling Units from each Unit Type is less than the total number of required IH Units, then the Unit Type with the fraction closest to the nearest whole number above it will be rounded up.

3. Example 3. Minimum IH Units to be provided = 4.8, round up to 5. IH Units to be provided based on Unit Type:

IH Studios = 2.4, rounded to 2

IH Lofted One-Bedrooms = 1.3, rounded to 1

IH Windowed One-Bedrooms = 1.2, rounded to 1

IH Unit Type total = 4

The IH Studio Unit Type is nearest to the next whole number above it, making the final IH Unit mix:

IH studios = 3

IH Lofted one-Bedroom = 1

IH Windowed one-Bedroom = 1

IH Unit Type total = 5

If the total number of Dwelling Units from each Unit Type is more than the total number of required IH Units, then the Unit Type with the fraction closest to the nearest whole number below it will be rounded down.

4. Example 4. Minimum IH Units to be provided = 4.8, round up to 5. IH Units to be provided based on Unit Type:

IH Studios = 2.7, rounded to 3

IH Lofted one-Bedrooms = 1.5, rounded to 2

IH Windowed one-Bedrooms = .6, rounded to 1

IH Unit Type total = 6

The Lofted one-Bedroom IH Unit Type is nearest to the next whole number below it, making the final IH Unit mix:

IH Studios = 3

IH Lofted One-Bedroom = 1

IH Windowed One-Bedroom = 1

IH Unit Type total = 5

When all of the Unit Types round out to the same ending decimal, then the smallest Unit Type will be rounded up and the largest Unit Type will be rounded down.

S. New Construction Receiving Building: A New Construction Receiving Building is a Building that has not yet had a permit issued at the time a proposed Sending Building submits a completed

“IH Receiving Building Identification Form” designating the New Construction Receiving Building, located at <https://www.portlandoregon.gov/phb/74461>.

T. 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.

U. Off-Site: Buildings not considered to be on the same “site” as defined in PCC 33.910.

V. On-Site: Buildings considered to be on the same “site”, as defined in PCC 33.910.

W. On-Site Consolidation: For developments with Buildings considered to be on the same “site”, the IH Program obligations for each Building located On-Site may be consolidated into another Building on the same site as long as all Reasonable Equivalency requirements are met, pursuant to Section V.A. of these Rules.

X. PCC: Means Portland City Code.

Y. Person: Any Person, partnership, association or corporation.

Z. Reconfiguration. Applicant combines IH Units to create fewer total IH Units with a greater number of Bedrooms. Reconfiguration is available when selecting an On-Site IH Program option and is based on the total number of Bedrooms required in the Minimum IH Unit calculation. IH Units must be reconfigured in to Dwelling Units of two or more Bedrooms. Applicant may reconfigure all or some of the Minimum IH Units.

AA. Residential and Residential Related: The Gross Square Footage of all Dwelling Units, all space that is used to directly access the Dwelling Units, and all spaces tenants have access to, including but not limited to: hallways, laundry facilities, trash and recycling areas, fitness facilities, and other community and amenity spaces. For space that is the exclusive use of the occupants of the Dwelling Units, the total square footage of the space is included. For space that is shared by the occupants of the Dwelling Units and occupants of other uses in the Building, a percentage of the square footage of the space based on the percentage of the residential use portion of the Building is included in the Gross Square Footage. Square footage for vehicle and bicycle parking is excluded from the Gross Square Footage.

AB. Sending Building: A Building which is utilizing one of the Off-Site options to send its own IH Unit obligations to another Building on a different site, known as either the New Construction Receiving Building or Existing Receiving Building.

AC. Transferring Building: A Building which is utilizing On-Site Consolidation to transfer its own IH obligation to another Building on the same site, known as the Consolidated Building.

AD. Unit Type: Unit Types are categorized by the number of Bedrooms and the following characteristics within each Dwelling Unit:

1. “Windowless” – Dwelling Units with one or more Bedrooms that do not have a window or door on an exterior wall of the Building that provides natural light to the room even when closed. Units with multiple Bedrooms will be defined as a “Windowless” Unit Type if any of the Bedrooms in the Dwelling Unit meet the “Windowless” definition.
2. “Windowed”- Dwelling Units where all Bedrooms have a window or door on an exterior wall of the Building that provides natural light to the room even when closed.
3. “Lofted”- Dwelling Units where the Bedroom is located on a separate level/floor such that it cannot be viewed directly into from the other levels in the Dwelling Unit. Units with multiple Bedrooms will be defined as a “Lofted” Unit Type if any of the Bedrooms in the Dwelling Unit meet the “Lofted” definition.
4. “Windowless + Lofted” – Multiple Bedroom Dwelling Unit that has both a “Windowless” Bedroom and a separate “Lofted” Bedroom.
5. “Live/Work”- Dwelling units that are designated by Life Safety Plans Examiner to meet residential occupancy requirements as a Live/Work unit.

IV. Permit Application and IH Program Options

~~For both new and renovation developments proposing~~ Applicants that submit a permit application to construct 20 or more new Dwelling Units or alter existing Buildings that add 20 or more new Dwelling Units in a single Building, 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 Applicants throughout the permitting intake and application process to explain and clarify IH Program requirements.

- A. **IH Program Options Inclusionary Housing options.** IH Program requirements will depend on the ~~applicant’s~~ Applicant’s selection from the following options:
 1. **Option 1: Build On-Site: Provide 20% of the Dwelling Units affordable at 80% MFI.** ~~— or 15% for applications filed through December 31, 2018 for properties outside the Central City Plan District. For applications filed prior to December 31, 2020 and located outside the Central City or Gateway Plan Districts, the Option 1: Build On-Site obligation is to provide 15% of Dwelling Units at 80% MFI.~~
 - a. ~~PHB staff calculate~~ determine the IH Unit Types and calculate the ~~m~~Minimum number of required IH Units required.
 - i. Applicant may elect to provide an alternative mix of IH Units through Reconfiguration.
 - b. PHB staff identify the applicable incentives, in City Code Chapter 33.245 and determined by BDS, PHB staff determine the incentives the City is required to provide, including:
 - i. A 10-year property tax exemption on the Residential and Residential Related portions of the Building according to in accordance with PCC 3.103 based on the development’s zoning.
 1. (i) For properties Buildings with IH Rental Units located outside the Central City Plan District or in zones with a base floor area ratio below 5:1, the tax exemption applies only to the IH Rental Units and the applicable percentage of Residential and Residential Related portions of the Building.; or

2. ~~(ii) For properties~~ Buildings with IH Rental Units located in the Central City Plan District with a base zone or built floor area ratio of 5:1 FAR or greater, before including excluding any bonus density bonus granted through City Code Chapter 33.510, the tax exemption applies to all IH Rental Units and all residential-Residential and Residential Related portions of the Building units.; ~~or~~
 3. (iii) Buildings with IH Rental Units located in the Central City Plan District with a base zone and a built floor area ratio below 5:1, the tax exemption applies to the IH Rental Units and the applicable percentage of Residential and Residential Related portions of the Building.
 4. (iv) Buildings with IH Homeownership Units, the tax exemption applies only to the IH Homeownership Units.
 - ii. A Construction Excise Tax exemption on the IH Units in accordance with City Code Section PCC 6.08.060(A)(2).
 - iii. SDC exemptions for the IH Homeownership Units in accordance with PCC 30.01.095.
- c. Applicant may choose On-Site Consolidation prior to building permit issuance. The Consolidated Building may be eligible for financial incentives on any IH Units received from an approved Transferring Building if the following conditions are met prior to the permit issuance for both Buildings:
- i. The Transferring Building's proposed Consolidated Building is approved by PHB,
 - ii. Incentive program applications for the Consolidated Building have been approved by PHB, and
 - iii. Application for tax exemption must meet the requirements in Section IV.C, Tax Exemption.
 - iv. The 10-year tax exemption applies only to the Consolidated Building.
- d. Bureau of Development Services (BDS) will determine any land use incentives provided in PCC 33, including parking exemptions and floor area ratio bonuses.
2. **Option 2: Build On-Site: Provide 10% of the Dwelling Units affordable at 60% MFI.** ~~— or 8% for applications filed through December 31, 2018 for properties outside the Central City. For applications filed through December 31, 2020 and located outside the Central City or Gateway Plan Districts, Option 2: Build On-Site obligation is to provide 8% of Dwelling Units at 60% MFI.~~
- a. PHB staff determine the IH Unit Types and calculate the mMinimum number of required IH Units required.
 - i. Applicant may elect to provide an alternative mix of IH Units through Reconfiguration.
 - b. PHB staff identify the applicable incentives, ~~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. A 10-year property tax exemption on the Residential and Residential Related portions of the Building according to City Code Chapter PCC 3.103 based on the development's zoning;

~~1. (i). For properties Buildings with IH Rental Units located outside the Central City Plan District or in zones with a base floor area ratio below 5:1 FAR, the tax exemption applies only to the IH Rental Units and the applicable percentage of Residential and Residential Related portions of the Building.; or~~

~~2. (ii). For properties Buildings with IH Rental Units located in the Central City Plan District with a base zone or built floor area ratio of 5:1 FAR or greater, before including excluding any bonus density bonus granted through City Code Chapter 33.510, the tax exemption applies to all IH Rental Units and all residential Residential and Residential Related portions of the Building units.; or~~

~~(iii). Buildings with IH Rental Units located in the Central City Plan District with a base zone and a built floor area ratio below 5:1, the tax exemption applies only to the IH Rental Units and the applicable percentage of Residential and Residential Related portions of the Building.~~

~~(iv). Buildings with IH Homeownership Units, the tax exemption applies only to the IH Homeownership Units.~~

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

c. Applicant may choose On-Site Consolidation. The Consolidated Building may be eligible for financial incentives on any IH Units received from an approved Transferring Building if the following conditions are met prior to the permit issuance for both Buildings:

- iv. The Transferring Building's proposed Consolidated Building is approved by PHB.
- v. Incentive program applications for the Consolidated Building have been approved by PHB, and
- vi. Application for tax exemption must meet the requirements in Section IV.C. Tax Exemption.
- vii. The 10-year tax exemption applies only to the Consolidated Building.

d. BDS will determine any land use incentives provided in PCC 33, including parking exemptions and floor area ratio bonuses.

3. **Option 3: Build Off-Site: New Construction Build-off-site option.** Applicants elects to build IH Units ~~Off-s~~Site in a separate ~~development Building (New Construction Receiving Site Building)~~ **Building (New Construction Receiving Site Building)** from the ~~new multifamily development Building~~ that is subject to the IH Program requirements (~~Sending Site-Building~~). The following criteria apply:

- a. PHB staff determine the IH Unit Types and calculate the mMinimum number of required IH Units required under two available scenarios. The applicant can elect to provide: based on the Applicant's selection of:
 - i. Provide Aat least 20% percent of the total number of residential Dwelling Units in the Sending Site Building affordable at 60% percent AMI MFI in a newly constructed **New Construction Receiving Site Building**; or

- ii. ~~Provide At least 10% percent of the total number of residential Dwelling Units in the Sending Site Building affordable at 30% percent of AMI MFI in a newly constructed~~ New Construction Receiving Site Building.
- b. The Sending Site Building will retain any floor area ratio bonus;
- c. The IH Units built on in the New Construction Receiving Site Building must be reasonably equivalent, pursuant to Section V.A. of these Rules, to the Market Rate Units Dwelling Units in the Sending Site Building;
- d. The New Construction Receiving Site Building IH Units may benefit from the Construction Excise Tax exemption in accordance with City Code Section PCC 6.08.060(A)(2) and the SDC exemption in accordance with City Code Section PCC 30.01.095;
- e. The New Construction Receiving Site Building remains subject to any all additional IH Program requirements;
- f. The New Construction Receiving Building may be eligible for financial incentives on any IH Units received from an approved Sending Building if the following conditions are met prior to the permit issuance for both Buildings:
 - i. The Sending Building's proposed New Construction Receiving Building is approved by PHB,
 - ii. Incentive program applications for the New Construction Receiving Building have been approved by PHB, and
 - iii. Applications for tax exemptions must meet the requirements in Section IV.C, Tax Exemption.
- ~~f. g.~~ PHB must approve the New Construction Receiving Site Building must be identified and approved by PHB prior to building permit issuance for the Sending Site Building. Applicant shall submit to PHB specifying the following information, prior to PHB's review and approval:
 - i. ~~iv.~~ Location of proposed New Construction Receiving Building
 - ii. ~~v.~~ Number of IH Units and total units proposed; and Complete Floor Plans (all walls, doors and windows shown) which include all unit amenity spaces as well as the square footages of each room in the New Construction Receiving Building;
 - iii. ~~vi.~~ IH option for the New Construction Receiving Building if subject to the IH Program; and
 - ~~iii.~~ iv. Development schedule.
- ~~g. h.~~ The New Construction Receiving Site Building must be within a one-half mile radius of the Sending Site Building, measured from the closest edges of the property lines of the Sending Building and the New Construction Receiving Building, unless the Receiving Site is or in an area with an equal or higher Combined Opportunity Map Score;
- ~~h. i.~~ The New Construction Receiving Site Building cannot be supported by any additional subsidy from PHB in which the subsidy would directly fund the production of the IH Units;
- ~~i. j.~~ The New Construction Receiving Site Building must receive a Certificate of Occupancy from the Portland Bureau of Development Services within three years of the Sending Site's Building's building-permit issuance or be subject to financial penalties pursuant to Sections VII.A.11 and VII.B.17 of these Rules;

~~j.~~ k. The ~~applicant~~ Applicant shall cause its general contractor for the New Construction Receiving Site Building to enter into an agreement with a PHB approved 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 Disadvantaged, Minority, Women, and Emerging Small Businesses or Service Disabled Veteran-Owned Business Enterprises (DMWESB-SDVBE) 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.

~~k.~~ l. ~~A penalty to the Sending Site will be due to PHB if~~ If the IH Units are not made available as set forth in the Regulatory Agreement IH Covenant, the Owner for the permit for the Sending Building will be considered in default and penalties pursuant to Section VII.A.11 and VII.B.17 of these Rules, will be due to PHB. See Remedies section below; and

m. The Owner of the property for the New Construction Receiving Building is required to sign and therefore acknowledge the IH Covenant.

4. **Option 4: Provide Off-Site: Designate Dwelling Units in an Existing Building designate existing units (DEU) option.**

~~Applicants elects to designate the IH Units Off-Site in an existing a separate bBuilding (Existing Receiving Site Building) separate from the new multifamily development Building that is subject to the IH Program requirements (Sending Site Building). The following criteria apply:~~

- a. ~~PHB staff determine the IH Unit Types and calculate the mMinimum number of required IH Units under two available scenarios. The applicant can elect to provide:~~ based on the ~~applicant's~~ Applicant's selection of:
 - i. ~~Provide Aat least 25% percent of the total number of residential Dwelling Units in the Sending Site Building affordable at 60% percent AMI MFI in a newly constructed an Existing Receiving Site Building;~~ or
 - ii. ~~Provide Aat least 15% percent of the total number of residential Dwelling Units in the Sending Site Building affordable at 30% percent of AMI-MFI in a newly constructed an Existing Receiving Site Building.~~
- b. ~~The Sending Site Building will retain any floor area ratio bonus;~~
- c. ~~The IH Units built on in the Existing Receiving Site Building must be reasonably equivalent pursuant to Section V.A. of these Rules, in size, quality and bedroom count to the Dwelling Units on in the Sending Site Building;~~
- d. ~~The PHB must approve the Existing Receiving Site Building must be identified and approved by PHB prior to building permit issuance for the Sending Site Building.~~ Applicant shall submit to PHB specifying the following information prior to PHB's review and approval:
 - i. Location of Existing Receiving Building;

- ii. Number of affordable and total units proposed; and Complete Floor Plans (all individual units, common spaces, walls, doors, and windows shown) including all square footages of the Existing Receiving Building;
 - iii. Leasing schedule.
- ~~b. e.~~ The Existing Receiving Site Building must be no more than one-half mile from the Sending Site Building, measured from the closest edges of the property lines of the Sending Building and the Existing Receiving Building, unless the Sending Site or is in an area with an equal or better higher Combined Opportunity Map Score;
- ~~e. f.~~ The Existing Receiving Site Building cannot be supported by any additional subsidy from PHB in which the subsidy directly funds the IH Units;
- ~~d. g.~~ The IH Units in the Existing Receiving Building must either be occupied by an income qualified tenant or homebuyer or be actively marketed for lease or sale by the time the Sending Building receives a Certificate of Occupancy.
- PHB staff determines whether the proposed ~~existing multifamily residential building~~ Existing Receiving Building is compatible with IH Program requirements. If the proposed ~~development~~ Existing Receiving Building is determined to be incompatible, the ~~applicant~~ Applicant must choose one of the remaining IH Program options.
- ~~e. h.~~ A penalty to the Sending Site will be due to PHB if If the IH Units are not made available as agreed upon set forth in the Regulatory Agreement IH Covenant, the Sending Building will be considered in default and penalties pursuant to Section VII.A.11 and VII.B.17 of these Rules, will be due to PHB. See Remedies section below;
- ~~f i.~~ The Owner of the Existing Receiving Site ~~development~~ Building will is required to sign and therefore acknowledge the also be subject to a Regulatory Agreement IH Covenant.

~~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.~~

5. Option 5: Fee-in-Lieu. Applicants pay a fee rather than providing IH Units. PHB staff calculate the fee-in-lieu amount due by multiplying the Gross Square Feet of the Residential and Residential Related portions of the Building by the current Fee-in-Lieu factor schedule as referenced in Appendix A of these Rules. The fee-in-lieu must be paid prior to or at issuance of the building permit. Upon payment of the fee-in-lieu, the Applicant has no additional IH Program requirements relative to the proposed development.

6. Voluntary Opt-In. Developments exempt from Inclusionary Housing requirements may voluntarily participate in the IH Program and are limited to the following IH Program Options: Option 1, Option 2, and Option 5. Developments that are not subject to IH can pay a fee, as referenced in Appendix A.3 of these Rules, for bonus square footage.

Bureau of Development Services will determine the total bonus square footage a development will be charged for.

- B. **Application requirements.** PHB staff will ~~input into TRACs and~~ process the necessary documentation based on the IH Program option selected. At permit intake for options one through ~~four~~ five 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 Title 33 of the Zoning Code. PHB will provide ~~land use applicants~~ Applicants with a letter certifying that any proposed ~~development~~ Building meets the numerical ~~standard~~ requirements set out in Title 33.
- C. **Tax Exemption.** If a tax exemption will be included as an incentive, based on the IH Program option selected, a Multiple-Unit Limited Tax Exemption (MULTE) Program Application ~~Form~~ must be completed. ~~and~~ PHB will complete the required MULTE approval process ~~for approval~~ including tracking of the available ~~cap on~~ foregone revenue ~~approved~~ and submitting MULTE applications as ordinances to City Council for applications approval on a monthly basis. The MULTE Ordinance must be approved by City Council prior to permit issuance for the Building to receive the tax exemption. Buildings that receive a permit prior to City Council approval of the MULTE Ordinance are ineligible for the tax exemption. A development may also qualify for the Non-Profit Limited Tax Exemption (NPLTE) Program authorized under ~~City Code Chapter PCC~~ 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 Regulatory Agreement IH Covenant.

V. 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. Rental Developments Buildings.

a. **Bedroom Distribution and Unit Count.** IH Rental Units must be provided at the same ratio within the ~~development~~ Building as Market Rate Units. See Section III, Definitions: Minimum IH Units for example. Example of 20 percent IH Rental 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 Rental 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 Rental Units must still equal the designated percentage for the IH Program option selected.

- b. **Unit Sizes.** IH Rental 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.
- c. **Unit Distribution.** No more than 25 percent of the total units on any floor shall be designated as IH Rental Units, excluding the top floor of a development. Where Market Rate Units and IH Rental Units are provided in a single On-Site Building, no more than 25% of the total units on any floor shall be designated as IH Rental Units, excluding the top floor. Receiving Buildings of Off-Site options and an On-Site Consolidated Building have no IH Rental Unit distribution requirements, however, IH Rental Units received from a Sending Building may not be located in the Basement.
- d. **Unit Amenities.** IH Rental 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 Building's architect prior to receiving its final certificate of occupancy.

2. ~~For-sale Developments Buildings.~~

- a. **Bedroom Distribution and Unit Count.** IH Homeownership Units must be provided at the same ratio within the development Building as Market Rate Units. See Section III, Definitions: Minimum IH Units for example. Example of 20 percent IH Homeownership 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 Homeownership 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 Homeownership Units must still equal the designated percentage for the IH Program option selected.
- b. **Unit Sizes.** IH Homeownership Units must be at least 85% percent the size of the average of the total units with the same Bedroom count, as measured in square feet.
- c. **Unit Distribution.** ~~For On-Site options, no more than 50 percent of the total units on any floor shall be designated as IH Homeownership Units, excluding the top floor of a development. For Receiving Buildings of Off-Site options, there are no unit distribution requirements, however, all~~

~~IH Homeownership Units in the Receiving Building must be located fully above grade. Where Market Rate Units and IH Homeownership Units are provided in a single On-Site Building, no more than 50% of the total units on any floor shall be designated as IH Rental Units, excluding the top floor. Receiving Buildings of Off-Site options and an On-Site Consolidated Building have no IH Homeownership Unit distribution requirements, however, IH Homeownership Units received from a Sending Building may not be located in the Basement.~~

d. **Unit Amenities.** IH Homeownership Units must have Energy Star energy efficient appliances.

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

1. Minority Women and Emerging Small Business (MWESB) contracting procedures and goals (except for Option 3: Build eOff-sSite and cash incentive options);
2. Workforce Training and Hiring procedures and goals;
3. Prevailing wage;
4. Green Building (as exempted in HOU-1.07.D.2, Affordable Housing Green Building Policy); and
5. Accessibility, except as required by the MULTE Program

However, PHB encourages all ~~development~~ Building 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~~ Program does not apply to ~~developments~~ Buildings with fewer than 20 new 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 PHB Staff will monitor construction progress. Applicants are required to report construction timeline progress to Construction Coordinators Inclusionary-Housing@portlandoregon.gov on a quarterly basis. After a development Building receives sign-off its Certificate of Occupancy from the a City eever inspector-Inspector, or one month and prior to pre-leasing lease-up, whichever comes first, the property manager must contact PHB's Asset Management (AM) PHB's Risk Analysis and Compliance (RAC) staff to set up compliance mechanisms including lease-up will send the Owner or their property manager (either, in such role, a "Property Manager") a Welcome Letter detailing the annual compliance and reporting requirements. The Welcome Letter will include an option to schedule a meeting with RAC staff to answer any compliance related questions or concerns. Among other things,~~

~~PHB staff will require that the property manager~~ Property Managers are required to certify that they have read and understood IH compliance requirements. The architect of the project will also be required to sign and submit a self-certification of reasonable equivalency, pursuant to Section V.A. of these Rules, prior to final permit approval. The owner must notify the PHB RAC Department if the property manager information submitted at the time of application changes. 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 Units.** Reporting and compliance requirements are contained in these Rules, the IH Covenant, and the Risk Analysis & Compliance Policies & Guidelines, available at <https://www.portlandoregon.gov/phb/article/653266>. For purposes of interpretation, if and to the extent there is a conflict among the terms of the IH Covenant, these Rules, and the Asset Management Guidelines, the priority of the terms should be read as follows: 1) the IH Covenant, 2) these administrative rules, 3) the Asset Management Guidelines. The following requirements apply to the leasing of IH Rental Units:

1. **“Static Data, Unit Composition and Rent Schedule” Static Data Sheet.** This form is required ~~both~~ prior to lease up and ongoing annually. Information required that includes, but is not limited to: total units, Unit Type, bedroom unit size, unit location within the development, and square footage, and utility allowance. See an example in Appendix B.
2. **Income eligibility 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 m~~ Median Family Income and Rent eChart (MFI and Rent Chart) for the Portland Metropolitan Area. The MFI and Rent Chart is posted and updated annually on the PHB website. All sources of income for every adult living in an IH Rental Unit must be used to determine the household’s gross income. Eligible households may make up to or less than the income limits posted in the MFI and Rent Chart. Maximum rent for IH Rental Units is determined using the MFI and Rent Chart based on the number of Bedrooms and the restricted MFI level. Maximum rent paid by tenants includes any utility allowance or required expenses to live in an IH Rental Unit (i.e. parking, meal plans, and amenities). Details and instructions on how to apply the MFI and Rent Chart can be found in PHB’s Risk Analysis and Compliance Policies and Guidelines located on the PHB website. Leasing an IH Rental Unit to an ineligible household may constitute a default under the IH Covenant and or these Administrative Rules and cause PHB to impose penalties in accordance with Section VII.A.11 of these Rules.

3. **Utility Allowances.** IH Rental Units are subject to a utility allowance (UA). ~~Owners and their property managers~~ Property Managers can choose from one of two methods to determine UAs ~~that can be found here.~~ the utility allowance: they can choose to use the Utility Allowance Schedule, which takes averages obtained from local utility providers, or they can commission an Energy Consumption Model Analysis through an Oregon Housing and Community Service (OHCS) approved Energy Consumption Model Analyst to determine the utility allowance based on the Building. To the extent IH Rental Unit tenants pay their own utilities directly or are billed back for reimbursement of utilities by the ~~property manager~~ Property Manager, ~~owners or their property managers~~ the Property Manager are is required to deduct that amount from the maximum allowable rent charged to the tenant. ~~Example: a one-person household earning 80% 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~~ Property Manager 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.

Example: a one-Person household earning 80% ~~AFI~~ MFI occupies a studio IH Rental Unit. The maximum monthly rent for that unit, based on the MFI and Rent Chart, is \$1,140 and the UA is \$84. The maximum an ~~owner/property manager~~ Property Manager could collect from this household is \$1,056 = (\$1,140 - \$84).

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. Determine maximum qualifying household income in the then current MFI and Rent Chart, look up the maximum income 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 an 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 Administrative Rules.~~

4. **Income recertification.** Tenant incomes must be recertified annually through the Tenant Income Certification (TIC) reporting cycle as set by PHB and the Owner. If, following a TIC reporting cycle, a tenant's income is at or below the allowable income for an IH Rental Unit, as described in Section VII.5 of these Rules, the

Property Manager may raise the rent up to the maximum allowed for the tenant's household according to the current MFI and Rent Chart, considering the deduction for any utility allowance, non-optional fees, and any applicable laws, rules, or policies regarding rent increases. Leasing an IH Rental Unit to a household earning more than the income restriction may constitute a default under the IH Covenant and these Administrative Rules. If a tenant's income is above the allowable income for the IH Rental Unit, the Property Manager:

- a. Must designate the next available Dwelling Unit as an IH Rental Unit based on the Static Data Sheet, reasonable equivalency, and Unit Type in accordance with the IH Covenant;
- b. May raise the rent on the existing tenant's unit in accordance with federal, state and local laws;
- c. May revise the expiring lease to allow tenants to continue living in the unit;
- d. May not require tenants to submit additional deposits or fees;
- e. Must give at least 90 days written notice to PHB and to the tenant prior to an increase in the rent;
- f. This information must be included in the lease or lease addendum for each IH Rental Unit and an executed copy must be provided to PHB as the building is leased up and at unit turnover.

2. ~~**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.~~

5. ~~**Incomes rising in place.** PHB's Incomes Rising in Place policy is meant to allow households Households that have initially qualified for an IH Rental Unit must be able to remain in that unit and not be subject to market rate rents until unless their incomes reach or exceed the income limits contained in the this policy. After qualifying at lease up, a A tenant's income may increase above the affordability restrictions of a development income limit and still have the unit fulfill the development's Building's IH Program requirements, based on the following schedule:~~

- a. ~~Tenants in units IH Rental Units restricted at 30% of AMI MFI levels, may have income increase up to 80% of AMI MFI;~~
- b. ~~Tenants in units IH Rental Units restricted at 60% of AMI MFI levels, may have income increase up to 100% of AMI MFI; and~~
- c. ~~Tenants in units IH Rental Units restricted at 80% of AMI MFI levels, may have income increase up to 120% of AMI MFI.~~

~~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 an IH Rental Unit in order to maintain the affordability requirements as described in the Vacancy section below.

6. **7. Vacancies.** PHB requires that at any given time the number and distribution of IH Rental Units will match those specified in the IH Covenant. To help ensure the predictable leasing of IH Rental Units, Property Managers will be required to treat IH Rental Units as “Floating”, see Section III, Definitions: Floating. 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 Rental Unit can be located anywhere in a 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 for the IH Rental Unit. The following rules apply when, through the annual Tenant Income Certification (TIC) reporting cycle, a tenant’s income is above that allowable for the IH Rental Unit:
- a. ~~Owner or their property manager checks the reported income against that allowed by the incomes rising in place policy.~~
 - 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’s household according to the current MFI and Rent Chart and IH Rental Unit taking into account the deduction for any utility allowance and any applicable laws, rules, or policies regarding rent increases.~~
 - 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 may raise rent on the existing tenant’s unit at the owner or their property manager’s discretion, again taking into account any applicable laws, rules, or policies regarding rent increases.~~
 - d. ~~In the case that a tenant no longer income qualifies for a IH Rental Unit, the owner or 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 IH Rental Unit and an executed copy provided to PHB as the development is leased up and at unit turnover.~~
 - e. ~~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 an IH~~

Rental Unit in order to maintain the affordability requirements as described in the Vacancy section below.

7. **8. Marketing.** PHB encourages Property Managers to use OneAppOregon for leasing IH Rental Units. Development owners or their property managers are encouraged to Property Managers must use the same systems for attracting potential tenants and leasing up IH Rental Units as are used for the Mart Market 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 OneAppOregon system for leasing up IH Rental Units. Other than the N/NE Preference Policy (below), the The IH Program program has no rules or guidelines about the legally permissible method owners or their property managers should Property Managers use to determine the order in which tenants are offered IH Rental Units. Owners or their property managers may use “first come, first served,” a 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. Property Managers are required to abide by the Fair Housing Act and Title VIII of the Civil Rights Act of 1968.
9. ~~**Additional policies.** PHB has developed a rider that contains additional policies that must be included in all IH Rental 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.~~
8. **Annual reporting and review.** Buildings with IH Rental Units will be subject to PHB’s reporting requirements as set forth in the IH Covenant. On an annual basis, Property Managers will submit information to PHB on IH Rental Units and the tenants living in such units through an online platform called the [Web Compliance Management System](#) (“WCMS”). Reporting requirements are contained in the IH Covenant. PHB staff will test the information reported in WCMS against the contents of IH Covenant and issue written results for each Building.
 - a. **Reporting.** An Annual Compliance Test (“ACT”) is sent to the listed contacts on file with comments and action items to resolve any compliance issues. After the deadline to respond has elapsed, the compliance scores are final. If an ACT is finalized with outstanding compliance issues, the Property Manager must resolve those issues within the 90-day period to cure or will face default.
 - b. **Inspections.** PHB reserves the right to physically inspect Buildings containing IH Rental Units at any time during regular business hours with advance notice. Inspections may also include an audit of IH related files such as TICs and other information submitted through WCMS. Buildings that are out of compliance may be inspected more frequently until they are brought back into compliance. An inspection report is sent to the listed contacts on file with findings to be resolved.

Issues must be resolved, and evidence of their resolution must be provided within the 30-day response period. Failure to do so may prompt additional inspections and or being placed in default.

- c. **Non-compliance.** In cases of non-compliance, PHB staff may collaborate with Property Managers on remedies, however, PHB also has the authority to enforce the provisions of the IH Covenant, these Rules, and all applicable PHB policies without the Owner's consent. PHB may find Buildings and Owners non-compliant for failing to meet any reporting requirements. A waiver or delay by PHB in enforcing a remedy does not constitute a waiver of the applicable reporting requirements or PHB's right to subsequent enforcement of any remedy.

9. **Transfers of Building Ownership.** The IH Covenant runs with the land for the length of the Compliance Period. ~~It must be recorded in first position.~~ PHB will not subordinate its IH Covenant to other financing. In cases of foreclosure, PHB may, but will not be required to, consider modifications to the IH Covenant to facilitate resolution of foreclosure proceedings. Upon sale or other transfer of the Building during the Compliance Period, the provisions of the IH Program must transfer with the property. PHB needs to receive updated Property Manager information, legal documentation about the new entity to prepare a Consent to Transfer and an Assignment and Assumption Agreement to be executed and recorded on title.

10. **Default.** Specific default provisions are contained in the IH Covenant. Defaults that last for more than one (1) reporting cycle will result in penalties pursuant to Section VII.A.11 in these Rules.

11. **Penalties.** In the event of a default, PHB may choose, but is not obligated, to negotiate with Property Managers to bring the Building in to compliance. Should default occur and PHB and the Property Manager cannot agree upon an acceptable remedy, financial penalties will be due and payable to PHB as follows:
 - a. **Fee-in-lieu.** A fee-in-lieu equal to multiplying the Gross Square Feet of the Residential and Residential Related portions of the Building by the current Fee-in-Lieu Factor; and
 - b. **Interest.** Interest on the entire unpaid fee-in-lieu amount, assessed at the rate of .833% simple interest per month or fraction thereof (10% per annum), computed from the date of default.
 - c. **Financial incentive.** Repayment of any financial incentives and exemptions received including, but not limited to, system development charges, property taxes, and construction excise taxes, according to each program's code and administrative rules.
 - d. **Additional penalties.** PHB may also pursue any action available at law, in equity, or otherwise, including but not limited to foreclosure, court injunction, or receivership if the financial penalties are not paid in the timeframe prescribed by PHB.

Once the Penalty has been paid in full the Building will cease to be bound to the restrictions of the IH Covenant.

B. **For-sale units.** For ~~developments~~ Buildings that will sell IH Units ~~as condominiums~~ for homeownership opportunities, the following restrictions apply:

1. **Eligibility.** Homebuyers of individual IH Homeownership Units must meet the following requirements to participate:
 - a. Income qualify ~~at time of application based on Median Family Income (“MFI”) income~~ at or below:
 - i. 100% MFI for an 80% MFI ~~development~~ IH Program option ~~IH Homeownership Unit~~
 - ii. 80% MFI for a 60% MFI ~~development~~ IH Program option ~~IH Homeownership Unit~~
 - iii. 60% MFI for a 30% MFI IH Program option
 - b. Not hold liquid assets after closing that total more than \$20,000
 - i. ~~Applicant may request for a~~ A waiver of the asset limit rule may be submitted to the PHB Director. Approval is granted at the discretion of the PHB Director.
 - c. Must maintain the IH Homeownership Unit as their applicant’s primary residence
 - i. Hardship exceptions to the primary residence rule may be granted by PHB for, but not limited to, the following situations: active military duty, temporary relocation to care for an ill or dying family member, or temporary relocation caused by an employer. Hardship waivers will be effective in one-year increments and may be applied for up to three times. Approval is granted at the discretion of the PHB Director.
 - d. PHB will maintain a list of potential buyers that meet the eligibility requirements for IH Homeownership Units. PHB’s list does not preclude sellers from identifying potential buyers through other avenues.
 - e. All-cash purchases of IH Homeownership Units are not allowed.
 - f. Cosigners must sign an affidavit stating that they will not occupy the IH Homeownership Unit.
2. **Income verification.** MFI is determined using HUD’s annually published Median Family Income and Rent chart for the Portland Metropolitan Area. Documentation to verify income includes but is not limited to: last two years of W-2s, most recent thirty (30) days-worth of paystubs, and any social security, child support, alimony, and unemployment currently being received. Self-employed homebuyers must submit the last two years of federal tax returns with all schedules and a current year-to-date profit and loss statement in addition to applicable income. Income documentation ~~should~~ must be submitted for all homebuyers who will be on title to the property. PHB may require additional documentation to fully verify current income of the homebuyers including letters of explanation or affidavits.
 - a. **Document submission.** Homebuyers must submit a verification form and income documentation at least 30 days prior to closing on the home purchase and must not close without PHB’s review, response and approval. The verification form must be signed by all homebuyers. PHB

will review and respond to complete applications within fourteen (14) days.

- b. **Verification of closing.** The IH Second Mortgage Documents prepared by PHB must be requested at least fourteen (14) days prior to closing and must be signed by PHB prior to closing. Homebuyer must coordinate the signing of the IH Second Mortgage Documents with PHB before closing. Homebuyer must send PHB documentation of the final sale price and title holders thirty (30) days after closing by submitting a copy of the Warranty Deed and the Settlement Statement.
3. **Second Mortgage Documents.** The Second Mortgage Documents are intended to ensure that the IH Homeownership Unit complies with the IH Program and provides an adequate remedy for PHB in the event of default. The Second Mortgage Documents may include a Promissory Note, Deed of Trust, Resale Restriction Agreement or any other document necessary to ensure continued compliance with the IH Program and remedy any default thereof. To effectuate this purpose, the Second Mortgage Documents intend to encumber the amount that is the difference between the appraised value and the restricted purchase price under the IH Program at the time of purchase. The Second Mortgage is forgiven upon resale provided that the IH Homeownership Unit is sold in accordance with the IH Program requirements.
4. **Pricing.** PHB will publish an annual schedule of sale prices based on the MFI development levels and income levels for IH Homeownership Units by June of each year. The sale pricing calculation includes mortgage payments at 40% of monthly income in accordance with the income level and Unit Type bedroom size of units, 5% down, conventional 60-day pricing on interest rates and mortgage insurance, taxes reflecting the average tax exemption value during the exemption period, estimated homeowner's insurance and homeowner's association fees. PHB will determine the resale price for IH Homeownership Units using the annual pricing calculation in place at the time of sale. PHB approved credits from Special Assessments and Capital Improvements, pursuant to Section B.13VII.B.12 of these Rules, will be added to the resale price to find the maximum resale price for an IH Homeownership Unit.
5. **Appraisal.** Prior to the sale of an IH Homeownership Unit, the IH Homeownership Unit must receive an independent appraisal, paid by either the seller or the buyer, that PHB will review and use to establish the Second Mortgage Documents. The Appraisal must reflect the market value. Appraisers must be certified and licensed in the State of Oregon.
6. **Inspection.** Prior to the sale of an IH Homeownership Unit, the seller or buyer must have an inspection performed by a certified home inspector and provide documentation to PHB that the inspection has been completed.
7. **Property taxes.** It is the intention that the property taxes for IH Homeownership Units will be assessed at their restricted value for the duration of the ninety-nine (99) year affordability Compliance Period.

8. **Intent to sell.** Owners of IH Homeownership Units must notify PHB of their intent to sell in writing at least 30 days prior to placing the IH Homeownership Unit on the market for sale or before entering in to a contract with another party. Refer to Section VII.D, Communication, for contact and mailing address. ~~Homeowner's~~ Owners that do not inform PHB of their intent to sell as described by this rule may be subject to the penalties listed under Section ~~B.20.b, Penalties: Homeowner~~ VII.B.17, Penalties.
9. **Right of first refusal.** The Second Mortgage Documents also provide PHB with a right of first refusal to purchase an IH Homeownership Unit intended for sale during the affordability Compliance Period, including at initial sale. This includes the right of PHB to assign the right of first refusal to another entity engaged in the preservation of affordable housing. PHB must respond within fifteen (15) days from receipt of receiving notice of intent to sell from the Homeowner to issue a letter of intent to purchase at the listed price. If PHB fails to respond within the fifteen (15) days, the IH Homeownership Unit will be released from the right of first refusal. PHB is not obligated to purchase any IH Homeownership Units.
10. **Definition of Sale.** For the purposes of the IH Program, the following events are considered a sale of the IH Homeownership Unit: selling the IH Homeownership Unit to a buyer as described under Section VII.B. Inclusionary Housing Section B. ~~For sale units;~~ transferring the IH Homeownership Unit ~~in to~~ into a trust, short sale, foreclosure; ~~and~~ or adding or removing a name from the title.
11. **Listing and sale timeline.** The intent of the listing and sale timeline is to maintain IH Homeownership Units as affordable for the duration of the affordability Compliance Period. The timeline applies at initial sale and at each subsequent resale. Sale of IH Homeownership Units must use the following timeline in order:
 - a. List and market the IH Homeownership Unit within the ~~Inclusionary Housing~~ IH For-sale units program guidelines for at least 6 months.
 - b. After the 6-month period described in Subsection 11.a, Homeowner may submit a request to PHB to list and market the IH Homeownership Unit to buyers that income qualify below 100% MFI for a 60% MFI IH Homeownership Unit or 120% MFI for an 80% MFI IH Homeownership Unit. PHB has fourteen (14) days from the receipt of the Owner's request to approve or deny it based on demonstrated attempts to sell. Upon approval or denial of request, Homeowner must list and market the IH Homeownership Unit, pursuant to Section VII.B. of these Rules, for at least 6 months.
 - c. After the 6-month period described in Subsection 11.b, Homeowner may submit a request to PHB to release the Owner and the IH Homeownership Unit from the Second Mortgage Documents and sell the IH Homeownership Unit on the open market. PHB has fifteen (15) days from the receipt of the Homeowner's request to send a letter of intent to the Homeowner to purchase.

12. **Major improvements.** Improvements required by the homeowner’s association, “special assessments”, and capital improvements are major improvements. Homeowners of IH Homeownership Units may apply for credit for their major improvement to PHB. Credit for major improvements approved by PHB will be added to the sales price at the time of resale.
- a. **Special assessments.** Special assessments will be credited at the full dollar amount paid. To receive credit for the special assessment, the homeowner must submit the following documentation to PHB within six (6) months of payment ~~for~~ of the special assessment:
 - i. The invoice for the special assessment and
 - ii. proof of payment, such as a cancelled check, bank account statement, or credit card statement
 - b. **Capital improvements.** Capital improvements approved by PHB will be credited commensurate with the improvement and at a dollar amount not to exceed fifteen percent (15%) of the resale price. To receive credit for capital improvements, the Homeowner must submit proof of purchase and installation. Eligible capital improvements are:
 - i. Upgrades to electrical and plumbing systems, outside of the system improvements by the homeowner’s association
 - ii. Installation of Energy Star furnace or cooling system
 - iii. Updating bathroom and kitchen cabinetry, flooring, counter-tops and fixtures
 - iv. Room additions
 - v. Upgrading to double pane windows
 - vi. Upgrading to new Energy Star Built-In appliances purchased within five (5) years of placing the IH Homeownership Units for sale
13. **Death of sole Homeowner.** In the event of the death of the sole title holder, the IH Homeownership Unit can be transferred. The IH Homeownership Unit and new title holder are bound by the Second Mortgage Documents and the IH Program for the remainder of the affordability Compliance Period, however, the new title holder is exempt from Sections VII.B.1.a and VII.B.1.b, Eligibility.
14. **Foreclosure.** If a Homeowner of an IH Homeownership Unit is at risk of a bank foreclosure, the Homeowner must notify PHB within 30 days of the default. PHB has the right, but not the obligation, to cure the loan default.
15. **Default.** ~~Homeowners~~ Owners of IH Homeownership Units that default are subject to penalties listed in Section VII.B.17, Penalties. The following circumstances indicate a default of the IH Program:
 - a. Sale of the IH Homeownership Unit to an ineligible buyer
 - b. Sale of the IH Homeownership Unit above the maximum resale price
 - c. Reverse mortgage
 - d. Liens without the prior approval of PHB

- e. Failure of the Homeowner to occupy the IH Homeownership Unit as their primary residence
- f. Cosigner occupying the IH Homeownership Unit as their primary residence
- g. Other violations of the IH Program or IH Covenant
- h. Homeowners may submit an appeal of a default to PHB. Approval is at the discretion of the PHB Director.

16. **Exception for Non-Profit Housing Providers.** A certified 501(c)(3) housing provider may use its own homeownership program and documents to fulfill the IH ~~p~~Program requirements in Sections VII.B.1-15, so long as the following conditions are met, according to a recorded IH Covenant:

- a. The IH Homeownership Units must be sold to households earning 80% MFI or less;
- b. The IH Homeownership Units must have a ~~an affordability term~~ Compliance Period of at least ninety-nine (99) years; and
- c. The IH Homeownership Unit must be used for homeownership for the duration of the ~~affordability term~~ Compliance Period.

17. **Penalties. ~~a. Developers.~~ Developers** Prior to the initial sale of individual IH Homeownership Units, Owners that violate the terms of the IH Program or the IH Covenant are subject to repayment of any and all exemptions they received including, but not limited to; system development charges, property taxes and construction excise tax in addition to the penalties listed in Section F, ~~Remedies VII.C.a-c, Conversions.~~ **b. Homeowners.** Homeowners of individual IH Homeownership Units that violate the terms of the IH Program or the Second Mortgage Documents are subject to the payment of the amount stated in the Second Mortgage Documents from the time of purchase of the IH Homeownership Unit and elimination of any remaining property tax exemption.

- i. ~~Payment of the IH Homeowner's portion of the exempted property taxes~~

C. Conversions. Any ~~development~~ Building subject to or built under the IH Program and that provides IH Units On-Site or Off-Site where the ~~building~~ Building with the IH Units converts from a rental to a homeownership property or from a homeownership to a rental property during the ninety-nine (99) year affordability Compliance Period must adhere to the IH Program requirements of the residential use type being converted to. ~~IH developments~~ Buildings that convert to fully market rate rentals or homeownership units are subject to repayment of any and all exemptions granted including, but not limited to; system development charges, property taxes, construction excise tax in addition to the following penalties ~~listed in Section F, Remedies~~:

- a. **Fee-in-lieu.** A fee-in-lieu equal to multiplying the Gross Square Feet of the Residential and Residential Related portions of the Building by the current Fee-in-Lieu Factor; and

- b. **Interest.** Interest will be due on the entire unpaid fee-in-lieu amount, assessed at the rate of .833% simple interest per month or fraction thereof (10% per annum), computed from the date of default.
- c. **Additional penalties.** PHB may also pursue any action available at law, in equity, or otherwise, including but not limited to foreclosure, court injunction, and or receivership if the financial penalties are not paid in the timeframe prescribed by PHB.

D. Communication. All notifications, applications, requests and communications should be sent to: Portland Housing Bureau c/o Inclusionary Housing Team 421 SW 6th Ave Suite 500, Portland, Oregon 97204.

~~C. **Annual Reporting and Review.** Developments with IH Rental Units 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 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 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 Conversions.** 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, where applicable;~~
- ~~5. Developments have uncorrected health or safety issues;~~
- ~~6. Violating Fair Housing Rules violations;~~
- ~~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:

- a. Foreclosure; and
- b. Court injunction or receivership

Appendix A – Fee-in-Lieu Factor Schedule

Fee-In-Lieu. When the Applicant elects the fee-in-lieu option, the fee-in-lieu per Gross Square Foot (GSF) of the residential and residential-related Residential and Residential Related square foot portions of the proposed development building is:

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

Fee per GSF on or before December 31, 2018 <u>2020</u>
\$19

Fee per GSF after December 31, 2018 <u>2020</u>
\$23

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

Fee per GSF
\$27

3. For Bonus FAR in non-residential developments

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

DRAFT

Appendix B—Static Data Sheet Example

STATIC DATA, UNIT COMPOSITION AND RENT SCHEDULE

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

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

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

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)	MAX ALLO RENT TEN Propos min
101	2	850	80%	\$1,320	\$1,320	\$149	
102	1	600	80%	\$1,100	\$1,000	\$126	

Appendix B – Example: Static Data Sheet

Each Static Data Sheet will be built to the individual specifications of each Building based on the Building’s requirements as outlined in the IH Covenant and any subsequent regulatory agreements. All required items may not be shown in the following examples.

Example: Static Data – Utility Allowance

Property:
 Address:
Street Address Zip Code

Submitted By:
Name (First, Last) Title Company

Contact Information:
Phone Email

Date Submitted:

Utility Responsibility					
Type of Utility	Provided by Landlord	Paid by Tenant	Electric	Gas	Oil
Space Heating	X	X		X	
Cooking	-	X	X		-
Water Heating		X		X	
Lights/Other Electric		X			
Water		X			
Sewer					
Garbage					
Water/Sewer Pass Through*					
Water/Sewer/Garbage Pass Through*					
Refrigerator Provided By					
Range Provided By					

UA Calculation Method

Certified SEED Analyst	<input type="radio"/>
UA Schedule	<input checked="" type="radio"/>

UA: Determined by SEED Analyst

Unit Type	UA from SEED Analyst
0	
1	
2	
3	
4	

*A utility pass through is a flat fee, outlined in the lease agreement, that a landlord charges a tenant for a specific utility or group of utilities.

Example: Static Data – Unit Specifics

Unit Specifics (Complete for all units regardless of income restriction)													
Unit Number	Square Footage	Monthly Rent	Floor	Number of Bedrooms	Windowed or Windows	Convertible to Type A	IH Unit	MULTE Unit	Income Restriction	Maximum Monthly Rent (PHB MFI Ch)	Utility Allowance	Non-Optional Fees	Maximum Tenant Rent (Maximum Rent Limit - UA and Non Optional Fees)
101	299	\$760	1	0	N/A	Yes	Yes	Yes	60%	\$855	\$70	\$10	\$775
102	372	\$760	1	0	N/A	No	No	No	Market Rate	#N/A	\$70	\$10	#N/A
103	399	\$1,000	1	0	N/A	No	No	No	Market Rate	#N/A	\$70	\$10	#N/A