

KEY:

The last permanent IH Program Administrative Rules were published on August 16, 2022. These are referenced as “permanent rules” in the PHB commentary sections. The Interim IH Program Administrative Rules were published on March 1, 2024 to implement the changes approved by City Council through Ordinance 191610 adopted on January 31, 2024 and effective March 1, 2024. These are referenced as “interim rules” in the PHB Commentary. The changes made in the interim rules from the permanent rules are shown with an underline for added language and a strikethrough for ~~removed language~~.

PHB made further updates to the language of the Interim IH Program Administrative Rules in order to provide further transparency and to make necessary adjustments to the program based on impacts from changes made via Ordinance 191610. These are referenced as “draft rules” in the PHB Commentary. The changes made in the draft rules are highlighted yellow and are shown with underline for an added language and a strikethrough for ~~removed language~~.

Note: There are some portions of the document that show both changes in the interim rules and the draft rules. Where this occurs PHB made adjustments in the draft rules to language that was amended from the permanent rules in the interim rules.

*Minor changes of formatting and sections that have moved are not tracked in this document for ease of review. Where substantive changes were made that are not reflected in the body of the rules there is a comment in the PHB commentary section explaining the change.

HOU-3.04 – Inclusionary Housing Program

Interim Administrative Rules

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A. Definition of Administrative Rules

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

B. IH Program goals

The City of Portland (the “City”) identified the need for a minimum of ~~23,000~~ **63,000-12,379** additional housing units to serve ~~low and moderate~~ income households **earning between 60 and 80 percent of Median Family Income** by 2045, according to the City of Portland 2045 Housing Needs Analysis published in 2023. The City implemented the IH Program to help meet this need.

The Portland Housing Bureau (**“PHB”**) will review Buildings subject to the IH Program to ensure compliance with the IH Program and these Rules. Based on the IH Program option selected by an Applicant, PHB staff will monitor various phases of the Building’s development process, including permitting, closing, construction, lease-up and operations.

The City has the following goals in implementing the IH Program:

- ~~2. Increase the number of units available to households earning 80% or less of median family income (“MFI”), with an emphasis on households earning 60% MFI or less;~~
- ~~3. Responsibly allocate resources to increase housing opportunities for families and individuals facing the greatest disparities;~~
- ~~4. Create affordable housing options in high opportunity neighborhoods with access to quality schools, services, amenities and transportation; and~~
- ~~5. Promote a wide range of affordable housing options with regard to size, amenities and locations.~~

C. Definitions

1. **Applicant.** A Person **or entity** that applies for a land use review or building permit. An 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.
2. **Annual Compliance Test or ACT.** **A workbook that contains comments regarding IH Unit compliance requirements, inclusive of a list of action items that must be addressed to resolve any compliance findings.**
3. **Basement.** The portion of a Building that is partly or completely below grade. A minimum of **50% percent** of the total combined area of the walls must be below-grade to be considered a Basement.
4. **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”.

PHB Commentary on Sections A, B and C.1-4:

Section B: IH Program goals

- *The IH Program goals were updated to better reflect the current need in response to the City of Portland Audit Report published on May 15, 2024. Data was derived from the 2045 Housing Needs Analysis published in 2023.*
- *In the permanent rules the IH Program goals cited that the IH units were to serve low and moderate-income households. PHB made a correction to align with how income levels are defined in the City of Portland's 2024 Housing Production Strategy, which defines households earning between 60-80% AMI as low-income while households earning 80-120% AMI are defined as moderate-income. IH Units serve households earning 60%-80% AMI/MFI.*
- *The number identified of restricted units needed (23,000) when the program was developed was updated in the interim rules to 63,000 which was the figure identified as the total new restricted residential units needed to serve households earning 0% AMI to 80% AMI by 2045 in order to preserve Portland's income diversity. This figure was further modified to more precisely identify the minimum number of units needed to meet the needs of the low-income households served by the IH Program (12,379).*
- *In the interim rules the goals from the permanent rules were removed as the language was deemed duplicative as the same language is in PCC 30.01.120.*

Section C.1-4: Definitions

- *C.1: Definition was amended for clarity.*
- *C.2: Definition was added for a document related to the updated Compliance and Reporting Requirements section.*

5. **Building.** A structure that has a roof and is enclosed on at least 50% percent of the area of its sides.
6. **Certificate of Occupancy or COO.** As defined in PCC 30.910.
7. **Code Enforcement Hearings Officer.** As defined in PCC 22.02.030.B.
8. **Combined Opportunity Map Score.** Score calculated for individual properties based on data including its 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.
9. **Compliance Period.**
 - (1) **Rental Buildings.** The ninety-nine (99) year time period during which the IH Covenant applies to a Building containing Inclusionary Housing Units. The Compliance Period begins at the date of the final certificate of occupancy (“Certificate of Occupancy”) COO of that Building from the Portland Bureau of Development Services (“BDS”) PP&D.

When a Building that intended to apply On-Site Consolidation does not complete the transfer, the Compliance Period will begin two years from the date PHB issues written notice to the Transferring Building that it has not met the requirements for On-Site Consolidation.
 - (2) **For-Sale Homeownership** Buildings. The ninety-nine (99) year time period during which the IH Covenant applies to each IH Homeownership Unit. The Compliance Period begins upon an initial qualified sale from the Owner to a Homeowner during which the Second Mortgage Documents apply.
10. **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.
11. **Consolidated Building IH Amendment.** A type of recorded regulatory agreement between the Owner of the Consolidated Building and PHB that sets forth the approval criteria, compliance criteria, and penalty calculation IH Covenant Release Penalty associated with Default of the transferred IH Units and is recorded on the title to the property. The amendment identifies the square footage of the Transferring Building that PHB will use to calculate penalties in the event of default of the transferred IH Units.
12. **Contact Update Form.** A form provided by PHB which specifies specific required data any time a Building will be changing property management or ownership.
13. **Continuing Care Retirement Community or CCRC.** As defined in ORS 101.020.

PHB Commentary on Section C.5-13:

- ***C.6:*** *Term that was previously defined in the body of the rules have been added to this section.*
- ***C.7 & C.12:*** *New terms related to the updated Compliance and Reporting Requirements and the new Enforcement section were added.*
- ***C.9 & C.11:*** *Definitions were updated to remove requirement language or update references to defined terms in the document.*

14. **Default.** A status in which a Building enters when Owner has not addressed the action items stated in the finalized ACT by the date of expiration in the Notice of Non-Compliance.
15. **Default Daily Penalty.** A penalty of \$50 charged daily beginning the date a Building is issued a Notice of Default and Demand Statement and ending upon the payment of the penalties and fees pursuant to Section H.3. of these Rules and certification by RAC that the Building is in compliance.
16. **Default Notice Fee.** A \$1,000 fee PHB may assess upon a Building after issuing a Notice of Default and Demand Statement.
17. **Dwelling Unit.** As defined by PCC Section 33.910 “Dwelling Unit”.
18. **Eligible Neighborhood Analysis Area.** An individual and or multiple The census tracts within a neighborhood, as identified in HOU-3.02- Multiple-Unit Limited Tax Exemption (MULTE) Program administrative rule.
19. **Energy Star Certified.** A product which has been reviewed by the U.S. Department of Environmental Regulations and is determined to be Energy Star Certified or included on the Energy Star “Most Efficient” list. For purposes of determining an equal rating a product which is determined to be on the Energy Star “Most Efficient” list is determined to have a higher rating than that of a product which is only Energy Star Certified.
20. **Existing Receiving Building.** An Existing Receiving Building is a Building for which the Portland Bureau of Development Services (“BDS”) already PP&D issued a building permit or is a Building that already completed construction at the time a proposed Sending Building submits a completed “IH Receiving Building Identification Form” designating the Existing Receiving Building, located on PHB’s website.
21. **Fee-in-Lieu Factor.** The factor used to calculate the fee-in-lieu which may not exceed for Option 5 of these Rules. PHB will intermittently recalibrate 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% of the Dwelling Units restricted to be affordable to households earning 80% or less factor during regular reviews of the MFI as determined annually by HUD IH Program.
22. **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 number of IH Rental Units while giving flexibility to Owners to fill vacancies. Floating allows IH Rental Units to may be located anywhere in a Building and are not fixed by unit number. Floating IH Units must continue to meet Reasonable Equivalency standards, pursuant to established by Section E.1. of these Rules.

PHB Commentary on Section C.14- 22:

- ***C.14, C.15 & C.16:*** *New terms related to the new Enforcement, Penalties section were added.*
- ***C.18:*** *Term was added in interim rules based on changes made to the MULTE Program via Ordinance 191610.*
- ***C.19:*** *Terms that were previously defined in the body of the rules have been added to this section.*
- ***C.20, C.21 & C22:*** *Definitions were updated to remove requirement language or update references to defined terms in the document.*

23. **Gross Square Feet/Footage/Foot.** As defined through Oregon Structural Specialty Code (2014), OSSC, Chapter 2, Section 202, Definitions, an “AREA, BUILDING” means “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.”
24. **Homeowner.** The individual(s) on holding title to a specific IH Homeownership Unit as shown on the latest assessment records in the Office of the County Assessor.
25. **Housing Portland Policy Documents or HOU.** The housing policy documents for the City of Portland, administered by the Portland Housing Bureau.
26. **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.
27. **IH Covenant Release Penalty.** The financial penalty for a Building which has failed to meet the requirements set forth in these Rules and IH Covenant. The IH Covenant Release Penalty is calculated in accordance with Section H.3 of these Rules. The IH Covenant Release Penalty shall be no greater than the amount specified in the Building’s IH Covenant plus all accrued interest. PHB may assess the IH Covenant Release Penalty in addition to other penalties and fees authorized by these Rules and the IH Covenant.
28. **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.
29. **IH Rental Unit.** A Dwelling 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.
30. **IH Unit.** A Dwelling Unit documented in a Building’s IH Covenant as required in order to comply with the IH Program requirements in place at the time of execution of the IH Covenant.
31. **Market Rate Unit.** A Dwelling Unit in a Building with a documented an IH Covenant that is not required to comply with the IH Program requirements.
32. **Median Family Income or MFI.** The area median family income for the Portland-Vancouver-Hillsboro area as determined annually by HUD.

PHB Commentary on Section C.23-32:

- ***C.25 & C.32:*** *Terms that were previously defined in the body of the rules have been added to this section.*
- ***C.27:*** *New term related to the new Enforcement, Penalties section was added.*
- ***General:*** *Definitions were updated to reference to defined terms in the document or clarify language.*

33. **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% percent of their units as IH Units. IH Units must be provided at the same ratio within the Building as Market Rate Units specific to each Unit Type. When calculating the required percentage of total 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 in accordance with PCC 33.930.020. Examples of calculating the Minimum IH Units are located in Appendix ED.
34. **Multiple-Unit Limited Tax Exemption Program or MULTE Program.** One of the property tax exemption programs that provides a property tax exemption for buildings with IH Units in accordance with these Rules, PCC 3.103 and HOU-3.02.
35. **New Construction Receiving Building.** A New Construction Receiving Building is a Building for which BDS PP&D has not yet had issued a permit issued at the time a proposed Sending Building submits to PHB a completed “IH Receiving Building Identification Form” designating the New Construction Receiving Building, located on PHB’s website.
36. **Non-Compliance or Non-Compliant.** A status in which PHB has found that a Building and Owner have failed to comply with the terms of these Rules or the terms of the IH Covenant.
37. **Notice of Default and Demand Statement.** A notice sent to the Owner of a Building that has not timely cured the violations identified in the Notice of Non-Compliance. The Notice of Default and Demand Statement will include the actions required to cure the default, including the payment of any penalties and fees owed. Owner will have 30 days from the date of issuance of the Notice of Default and Demand Statement to cure the Non-Compliance before PHB may institute an action before the Code Hearings Officer.
38. **Notice of Failure to Transfer.** A notice sent to a Building, that executes an IH Covenant utilizing On-Site Consolidation, Option 3 or Option 4 with the intention to transfer its IH Unit obligation to a Consolidated or Receiving Building, for which the requirements of said IH Covenant have not been met by the selected Consolidated or Receiving Building.
39. **Notice of Non-Compliance.** A notice sent to the property management and Owner of a Building that has violated the terms of these Rules or the terms of the IH Covenant. The Notice of Non-Compliance include a description of the violations, the actions required to cure the violations, and the deadline for curing the violations.
40. **Off-Site.** Buildings not considered to be on the same “site” as defined in PCC 33.910.
41. **On-Site.** Buildings considered to be on the same “site”, as defined in PCC 33.910.

PHB Commentary on Section C.33- C.41:

- *C.33: A correction was made in the interim rules regarding rounding. Zoning code requires that any result ending in an integer be rounded to the next whole number.*
- *C.33 & C.35: Definitions were updated to correct section references or update references to defined terms in the document.*
- *C.34: Term that was previously defined in the body of the rules have been added to this section.*
- *C.36, C.38. & C.39: New terms related to the updated Compliance and Reporting Requirements were added.*
- *C.37: New term related to the updated the new Enforcement section.*

42. **On-Site Consolidation.** For developments with Buildings considered to be on the same “site,” Applicant may consolidate the IH Program obligations, as long as all Reasonable Equivalency requirements are met, pursuant to Section E.1. of these Rules.
43. **ODHS Certificate of Registration.** A registration confirmation that the Building is a CCRC with Oregon Department of Human Services, Seniors and People with Disabilities Division in accordance with OSS Chapter 411, Division 67.
44. **Oregon Revised Statute or ORS.** The codified laws of the state of Oregon.
45. **Oregon Structural Specialty Code or OSSC.** The Oregon state code which establishes the minimum requirements for the construction, reconstruction, alteration and repair of buildings and other structures, as well as the installation of mechanical devices and equipment.
46. **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.
47. **PCC.** Means Portland City Code.
48. **Person.** Any Person, partnership, association or corporation.
49. **Portland Planning and Development Bureau or PP&D.** The bureau which manages building permits, land use, inspections, code enforcement, and public works permits for the City of Portland (formerly known as Bureau of Development Services or BDS).
50. **Reasonable Equivalency or Reasonably Equivalent.** The relative equivalency of unit mix, unit size, location and amenities between IH Units to Market Rate Units in accordance with PCC 30.01.120.D. PHB assesses Reasonable Equivalency in accordance with Section E.1. of these Rules.
51. **New Construction Receiving Building IH Amendment.** A type of recorded Regulatory Agreement between the Owner of the New Construction ~~or Existing~~ Receiving Building and PHB that ~~is recorded on the title to the property and~~ sets forth the approval criteria, compliance criteria, and ~~penalty calculation~~ **IH Covenant Release Penalty associated with the release** of the transferred IH Units.
52. **Receiving Building IH Covenant.** A ~~type of recorded~~ Regulatory Agreement between the Owner of the Receiving Building, ~~that is not subject to Inclusionary Housing,~~ and PHB that is recorded on the title to the property. ~~The covenant identifies the square footage of the Sending Building that PHB will use to calculate penalties in the event of default of the IH Units received from the Sending Building and~~ sets forth the approval criteria, compliance criteria, and **IH Covenant Release Penalty associated with the release of the transferred IH Units.**

PHB Commentary on Section C.42- C.52:

- *C.43, C.44, C.45, C.49 & C.50: Terms that were previously defined in the body of the rules have been added to this section.*
- *C.51 & C.52: Definitions were updated to add clarity.*
- *C.51: Definitions were amended to update references to defined terms in the document.*

53. **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.
54. **Rent and Utility Allowance Schedule.** The workbook provided by PHB to be completed by the Building to report rent and proposed Utility Allowance for each IH Unit, as shown in Appendix B of these Rules.
55. **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 renters or homeowners 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.
56. **Restriction Period.** The time period between the effective date of the Covenant and either the receipt issuance of COO for a Rental Building or the initial qualified sale of an IH Homeownership Unit. At the time of initial qualified sale or receipt issuance of COO, the Restriction Period ends, and the Compliance Period begins. for a Rental Building or the initial qualified sale of an IH Homeownership Unit. At the time of initial qualified sale or issuance of COO, the Restriction Period ends, and the Compliance Period begins.
57. **Risk Analysis and Compliance or RAC.** The team at PHB that conducts compliance for Buildings with IH Rental Units post building permit issuance from PP&D.
58. **Second Mortgage Documents.** Documents signed by PHB and the homebuyer including a Promissory Note, Deed of Trust, Resale Restriction Agreement, or any other document PHB requires to ensure continued compliance with the IH Program and to or remedy any Default thereof during the Compliance Period. 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.
59. **Sending Building.** A Building which utilizes 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.
60. **Tenant Income Certification or TIC Form.** A form provided by PHB on which Owners can collect and verify tenant income. See an example in Appendix C of these Rules.

PHB Commentary on Section C.53- C.60:

- *C.54 & C.60: New terms related to the updated Compliance and Reporting Requirements were added.*
- *C.55, C.56 & C.58: Definitions were amended to update references to defined terms in the document and to provide further clarity.*
- *C.57: Term that was previously defined in the body of the rules have been added to this section.*

61. **Transferring Building.** A Building which utilizes On-Site Consolidation to transfer its own IH obligation to another Building on the same site, known as the Consolidated Building.
62. **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 is** 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/ **or** floor such that **it the entire room** cannot be viewed directly into from **the other levels another level** 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 is** Lofted **definition**.
 - (4) **Windowless + Lofted.** Multiple Bedroom Dwelling Unit that has both a Windowless Bedroom and a separate Lofted Bedroom.
 - (5) **Live/Work.** **A** Dwelling Units **that are** designated by **a PP&D** Life Safety Plans Examiner to meet residential occupancy requirements as a Live/Work unit, as defined in Section 419 of the current ~~Oregon Structural Specialty Code~~ **OSSC**.
63. **United States Department of Housing and Urban Development or HUD.** **The federal agency responsible for national policy and programs that address America's housing needs and administers federal housing and urban development laws.**
64. **Utility Allowance or UA.** **A reduction of the maximum allowed rent to offset utilities paid for by the renter, paid either directly from the renter to the utility provider or indirectly to the Owner.**
65. **Utility Allowance Schedule.** **PHB uses the local public housing authority's schedule of utility allowances published annually by Home Forward. The chart contains averages of utility costs based on type and age of building, location and type of utility obtained from local utility providers. The results are used to determine the Utility Allowance of the different Unit Types within each Building.**
66. **Web Compliance Management System or WCMS.** **An online platform through which Owner shares information about IH Units to RAC for annual reporting.**

PHB Commentary on Section C.61-C.66:

- ***C.63, C.64 & C.66:*** *Terms that were previously defined in the body of the rules have been added to this section.*
- ***C.65:*** *New term related to the updated Compliance and Reporting Requirements was added.*
- ***C.62.(1-5):*** *Definitions were amended to update references to defined terms in the document and to provide further clarity.*

D. Permit Application and IH Program options

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 must include an IH Program option selection. PHB staff **are available to can** assist Applicants throughout the permitting, intake, and application process to explain and clarify IH Program requirements.

1. **IH Program options.** IH Program requirements **will** depend on the Applicant's **selection from the following options: selected IH Program option.** Once **the BDS PP&D** issues a building permit **to for** the Building, the Applicant may not **opt to** change the IH Program option **selected.**

- (1) **Option 1: Build On-Site: Provide 20% percent of the Dwelling Units at 80% percent MFI.**

~~For applications filed prior to December 31, 2021 and located outside the Central City or Gateway Plan Districts, the Option 1: Build On-Site obligation is to provide 15% of the total Dwelling Units at 80% MFI.~~

- (a) PHB staff will determine the IH Unit Types and calculate the Minimum IH Units required.
 - (i) Applicant may elect to provide an alternative mix of IH Units through Reconfiguration.
 - (b) PHB staff will identify the applicable incentives for the Building. Incentives may be awarded up to but not after issuance of the building permit for the Building where the IH Units are located and include:
 - (i) A 10-year property tax exemption on the Residential and Residential Related portions of the Building in accordance with PCC 3.103.030.
 - I. For Buildings with IH Rental Units located outside the Central City Plan District the tax exemption applies only to the IH Rental Units located within the Building and the applicable percentage of Residential and Residential Related portions of the Building.
 - II. For Buildings with IH Rental Units located in the Central City Plan District ~~with a base zone or built floor area ratio of 5:1 or greater,~~ the tax exemption applies to all IH Rental Units and all Residential and Residential Related portions of the Building if the IH Rental Units are located within the Building.
 - 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 within the Building and the applicable percentage of Residential and Residential Related portions of the Building.~~
 - III. **For** Buildings with IH Homeownership Units, the tax exemption applies only to the IH Homeownership Units within the Building.
 - (ii) A Construction Excise Tax exemption on the IH Units within the Building in accordance with PCC 6.08.060(A)(2).
 - (iii) SDC exemptions for the IH Homeownership Units within the

- Building in accordance with PCC 30.01.095.
- (iv) **BDS PP&D** will determine any land use incentives provided in PCC 33, including ~~parking exemptions and~~ floor area ratio bonuses.
- (c) Applicant may choose On-Site Consolidation prior to **BDS PP&D** issuing a building permit. When Applicant elects to build IH Units On-Site in a ~~separate Building (Consolidated Building) from a Building that is subject to~~ based on the IH Program requirements of the (Transferring Building), the following additional criteria apply:
- (i) The Consolidated Building remains subject to all additional IH Program requirements and must first show how it will meet its own IH Program requirements before PHB Staff will review the Building as a proposed Consolidated Building.
 - (ii) The Owner of the Transferring Building must execute and record an IH Covenant on the Transferring Building, subject to release in accordance with the terms of these Rules and the recorded covenant. The Consolidated Building must execute and record a Consolidated Building IH Amendment on the Consolidated Building no later than five years after the first Transferring Building receives its ~~certificate of occupancy COO~~ COO from **BDS PP&D**.
 - (iii) The IH Units in the Consolidated Building must be Reasonably Equivalent, pursuant to Section V.A. E.1. of these Rules, to the Dwelling Units in the Transferring Building.
 - (iv) The Consolidated Building cannot be supported by any additional subsidy from PHB in which the subsidy would directly fund the production of the IH Units.
 - (v) The Consolidated Building must receive a ~~Certificate of Occupancy COO~~ COO from ~~the BDS PP&D~~ no later than five years from the first Transferring Building receiving its ~~Certificate of Occupancy COO~~ COO from ~~the BDS PP&D~~.
 - (vi) Prior to receiving ~~Certificate of Occupancy COO~~ COO for each Transferring Building on a site, PHB will recalculate the Minimum IH Units and Reasonable Equivalency requirements for the Transferring Building. ~~If the re-calculated Minimum IH Unit requirement PHB determines that Consolidated Building is more, or requires a different configuration of Unit Types, unable to meet these requirements PHB will issue the Transferring Building a Notice of Failure to Transfer. The Transferring Building~~ has an option to either:
 - I. Revise the floor plans of its Building to meet the Reasonable Equivalency standards of the available IH Units in the Consolidated Building;
 - II. Provide the Transferring Building's entire IH obligation within its own Building;
 - a. ~~When a Building that intended to apply On-Site Consolidation does not complete the transfer, the Compliance Period will begin two years from the date PHB issues written notice to the Transferring Building that it has not met the requirements for On-Site~~

~~Consolidation. If the Transferring Building was issued COO before PHB issued the Notice of Failure to Transfer, the Compliance Period will begin two years from the Notice of Failure to Transfer issuance date.~~

- b. If these changes occur after the receipt issuance of the Transferring Building's building permit by the BDS-PP&D, the Transferring Building will not be eligible to receive incentives otherwise available for the IH Units; or
 - III. Pay the fee-in-lieu penalties as outlined in Section H.3. of these Rules.
- (vii) The Transferring Building and Consolidated Building must meet the following conditions before PHB will authorize the release of the Transferring Building IH Covenant from a Transferring Building:
- I. BDS-PP&D must have issued the Certificate of Occupancy COO to both the Transferring Building and the Consolidated Building within the timelines stated in these Rules.
 - II. The Owner of the Consolidated Building must have executed and recorded a Consolidated Building IH Amendment on title of the Consolidated Building within the timelines stated in these Rules.
 - III. PHB has confirmed that the Transferring Building has met all IH Requirements.
 - IV. A Transferring Building may receive credit for years of Compliance for IH Units made available in a Consolidated Building that is built prior to the issuance of its own receipt of a final Certificate of Occupancy COO, if the IH Units held for the Transferring Building's IH obligations have remained in Compliance under another PHB compliance restriction until such time as the Transferring Building receives is issued its final Certificate of Occupancy COO, and the Buildings have met all conditions pursuant to Section D.1.(1)(c)(vii).
- (viii) A Consolidated Building may also be a Receiving Building, as long as the IH Units are clearly identified in the respective Consolidated Building IH Amendment and New Construction Receiving Building IH Amendment.
- (ix) ~~If PHB determines that the Transferring Building or Consolidated Building failed to meet the requirements of these rules or applicable IH Covenants, and therefore the IH Units are not transferred to the Consolidated Building, the Transferring Building will remain liable for providing the IH Units pursuant to these rules and the Transferring Building's IH Covenant and may be subject to financial penalties pursuant to Sections VII.A.11 G.1.(11) and VII.B.17 G.2.(17) of these Rules, except that interest will be computed from the date the Transferring Building received its Certificate of Occupancy from BDS.~~

PHB Commentary on Section D.1.- D.1.(1):

- ***D.1:*** Adjusted language around PHB staff's availability to assist with program questions. When the program was first adopted PHB had staff stationed within the permitting center at PP&D to speak to walk-in customers. PHB staff are now available upon request via email, phone or appointment.
- ***D.1.(1)(b)(i), D.1.(1)(c)(iii), & D.1.(1)(c)(vi)(III):*** Language was amended to update references to sections.
- ***D.1.(1)(b)(iv), D.1.(1)(c), D.1.(1)(c)(ii), D.1.(1)(c)(v), D.1.(1)(c)(vi), D.1.(1)(c)(vii), D.1.(1)(c), D.1.(1)(c)(viii):*** Language was amended to capitalize and utilize defined terms
- ***D.1., D.1.(1)(c), D.1.(1)(c)(vi):*** Language was amended to provide further clarity to requirements.
- ***D.1.(1):*** The ramp up period inclusion rates were removed in the interim rules as those rates are expired and no longer in effect.
- ***D.1.(1)(b)(i):*** In the interim rules adjustments were made to the incentives in accordance with changes made via Ordinance 191610, including a change in the Building requirements to be eligible for a full property tax exemption through the MULTE program.
 - ***D.1.(1)(b)(i)(II):*** Base or built FAR of 5:1 is no longer a requirement in any portion of the city.
 - ***D.1.(1)(b)(i)(II):*** All buildings within the Central City Plan District who comply with the IH program by providing the IH Units within the Building at either 80% or 60% MFI are eligible to receive the full exemption.
- ***D.1.(1)(b)(iv):*** Parking exemption was removed from the list of incentives in the interim rules as zoning code has been amended to a point where parking is no longer a requirement for most of the city.
- ***D.1.(1)(c)(vi) & D.1.(1)(c)(vi)(II):*** Clarified language around On-Site Consolidation and a failure to complete the transfer of IH Units. Removed language that did not add clarity to process.
- ***D.1.(1)(c)(vi)(III):*** Correction made to language stating that in a scenario where a Transferring Building fails to transfer its IH Units the Transferring Building can pay the fee-in-lieu. The scenario is contemplating a failure to transfer at a point where the Transferring Building has already received building permit. Payment of the fee-in-lieu is only available as Option 5. Buildings cannot change their IH option after building permit issuance. Thus penalties would apply.
- ***D.1.(1)(c)(ix):*** Removal of language due to language clarified in the updated sections above.

(2) **Option 2: Build On-Site: Provide 10% percent of the Dwelling Units at 60 % percent MFI.**

~~For applications filed through December 31, 2021 and located outside the Central City or Gateway Plan Districts, Option 2: Build On-Site obligation is to provide 8% of the total Dwelling Units at 60% MFI.~~

- (a) PHB staff will determine the IH Unit Types and calculate the Minimum IH Units required. Applicant may elect to provide an alternative mix of IH Units through Reconfiguration.
- (b) PHB staff will identify the applicable incentives for the Building. Incentives may be awarded up to but not after issuance of the building permit for the Building where the IH Units are located and include:
 - (i) A 10-year property tax exemption on the Residential and Residential Related portions of the Building according to PCC 3.103.030.
 - I. For Buildings with IH Rental Units located outside the Central City Plan District and outside of the boundaries of an Eligible Neighborhood Analysis Area, the tax exemption applies only to the IH Rental Units located within the Building and the applicable percentage of Residential and Residential Related portions of the Building.
 - II. For Buildings with IH Rental Units located in the Central City Plan District ~~with a base zone or built floor area ratio of 5:1 or greater or~~ within the boundaries of an Eligible Neighborhood Analysis Area, the tax exemption applies to all IH Rental Units and all Residential and Residential Related portions of the Building if the IH Rental Units are located within the Building.
 - III. ~~For 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 within the Building and the applicable percentage of Residential and Residential Related portions of the Building.~~
 - III. For Buildings with IH Homeownership Units, the tax exemption applies only to the IH Homeownership Units within the Building.
 - (ii) Construction Excise Tax exemption on the IH Units within the Building in accordance with PCC 6.08.060(A)(2); and
 - (iii) SDC exemptions for the IH Units within the Building in accordance with PCC 30.01.095.
 - (iv) **BDS PP&D** will determine any land use incentives provided in PCC 33, including ~~parking exemptions and~~ floor area ratio bonuses.
- (c) Applicant may choose On-Site Consolidation prior to **BDS PP&D** issuing a building permit. When Applicant elects to build IH Units On-Site in a ~~separate Building (Consolidated Building) from a Building that is subject to~~ based on the IH Program requirements of the (Transferring Building), the following additional criteria apply:
 - (i) The Consolidated Building remains subject to all additional IH Program requirements and must first show how it will meet its own

- IH Program requirements before PHB Staff will review the Building as a proposed Consolidated Building.
- (ii) The Owner of the Transferring Building must execute and record an IH Covenant on the Transferring Building, subject to release in accordance with the terms of these Rules and the recorded covenant. The Consolidated Building must execute and record a Consolidated Building IH Amendment on the Consolidated Building no later than five years after the first Transferring Building receives its Certificate of Occupancy COO from BDS-PP&D.
 - (iii) The IH Units in the Consolidated Building must be Reasonably Equivalent, pursuant to Section E.1. of these Rules, to the Dwelling Units in the Transferring Building. PHB staff determines whether the proposed Consolidated Building is compatible with IH Program requirements. If the proposed Consolidated Building is determined to be incompatible, the Applicant must choose one of the remaining IH Program options.
 - (iv) The Consolidated Building cannot be supported by any additional subsidy from PHB in which the subsidy would directly fund the production of the IH Units.
 - (v) The Consolidated Building must receive a Certificate of Occupancy COO from the BDS-PP&D no later than five years from the first Transferring Building receiving its Certificate of Occupancy COO from the BDS-PP&D.
 - (vi) Prior to receiving Certificate of Occupancy COO for each Transferring Building on a site, PHB will recalculate the Minimum IH Units and Reasonable Equivalency requirements for the Transferring Building. If the re-calculated Minimum IH Unit requirement PHB determines that Consolidated Building is more, or requires a different configuration of Unit Types, unable to meet these requirements PHB will issue the Transferring Building a Notice of Failure to Transfer. The Transferring Building has an option to either:
 - I. Revise the floor plans of its Building to meet the Reasonable Equivalency standards of the available IH Units in the Consolidated Building;
 - II. Provide the Transferring Building's entire IH obligation within its own Building.
 - a. If the Transferring Building was issued COO before PHB issued the Notice of Failure to Transfer, the Compliance Period will begin two years from the Notice of Failure to Transfer issuance date.
 - b. If these changes occur after the receipt issuance of the Transferring Building's building permit by the BDS-PP&D, the Transferring Building will not be eligible to receive incentives otherwise available for the IH Units.; or
 - III. Pay the fee-in-lieu IH Covenant Release Penalty.
 - (vii) The Transferring Building and Consolidated Building must meet the following conditions before PHB will authorize the release of the Transferring Building IH Covenant from a Transferring Building:

- I. **BDS-PP&D** must have issued the **Certificate of Occupancy COO** to both the Transferring Building and the Consolidated Building within the timelines stated in these Rules.
 - II. The Owner of the Consolidated Building must have executed and recorded a Consolidated Building IH Amendment on title of the Consolidated Building within the timelines stated in these Rules.
 - III. PHB has confirmed that the Transferring Building has met all IH Requirements.
 - IV. A Transferring Building may receive credit for years of Compliance for IH Units made available in a Consolidated Building that is built prior to **the issuance of** its own **receipt of a final Certificate of Occupancy COO**, if the IH Units held for the Transferring Building's IH obligations have remained in Compliance under another PHB compliance restriction until such time as the Transferring Building receives its final **Certificate of Occupancy COO**, and the Buildings have met all conditions pursuant to Sections D.1.(2)(c)(vii).
- (viii) A Consolidated Building may also be a Receiving Building, as long as the IH Units are clearly identified in the respective Consolidated Building IH Covenant Amendment and New Construction Receiving Building IH Covenant.
- (ix) ~~If PHB determines that the Transferring Building or Consolidated Building failed to meet the requirements of these rules or applicable IH Covenants, and therefore the IH Units are not transferred to the Consolidated Building, the Transferring Building will remain liable for providing the IH Units pursuant to these rules and the Transferring Building's IH Covenant and may be subject to financial penalties pursuant to Sections G.1.(11) and G.2.(17) of these Rules, except that interest will be computed from the date the Transferring Building received its Certificate of Occupancy from BDS.~~

PHB Commentary on Section D.1.(2):

- ***D.1.(2)(b)(i), D.1.(2)(c)(iii), & D.1.(2)(c)(vi)(III):*** Language was amended to update references to sections.
- ***D.1.(2)(b)(iv), D.1.(2)(c), D.1.(2)(c)(ii), D.1.(2)(c)(v), D.1.(2)(c)(vii):*** Language was amended to capitalize and utilize defined terms
- ***D.1.(2)(c)(iii), D.1.(2)(c)(vi):*** Language was amended to provide further clarity to requirements.
- ***D.1.(2):*** The ramp up period inclusion rates were removed in the interim rules as those rates are expired and no longer in effect.
- ***D.1.(2)(b)(i):*** In the interim rules adjustments were made to the incentives in accordance with changes made via Ordinance 191610, including a change in the Building requirements to be eligible for a full property tax exemption through the MULTE program. Base or built FAR of 5:1 is no longer a requirement in any portion of the city.
- ***D.1.(2)(b)(iv):*** Parking exemptions was removed from the list of incentives in the interim rules as zoning code has been amended to a point where parking is no longer a requirement for most of the city.
- ***D.1.(2)(c)(vi), D.1.(2)(b)(iv)(II) & D.1.(2)(b)(ix):*** Clarified language around On-Site Consolidation and a failure to complete the transfer of IH Units. Removed language that did not add clarity to process.
- ***D.1.(2)(c)(vi)(III):*** Correction made to language stating that in a scenario where a Transferring Building fails to transfer its IH Units the Transferring Building can pay the fee-in-lieu. The scenario is contemplating a failure to transfer at a point where the Transferring Building has already received building permit. Payment of the fee-in-lieu is only available as Option 5. Buildings cannot change their IH option after building permit issuance. Thus penalties would apply.

(3) Option 3: Build Off-Site: New Construction.

- ~~(a) Providing at least 20% percent of the total number of Dwelling Units in the Sending Building at 60% percent MFI in a New Construction Receiving Building; or. When Applicant elects to build IH Units Off-Site in a separate Building (New Construction Receiving Building) from the Building that is subject to based on the IH Program requirements of the (Sending Building), the following criteria apply:~~
- ~~(b) Providing at least 10% of the total number of Dwelling Units in the Sending Building at 30% MFI in a New Construction Receiving Building.~~
- (a) PHB staff determine the IH Unit Types and calculate the Minimum IH Units required based on the Applicant's selection of:
- (b) The Sending Building will retain any floor area ratio bonus approved by PP&D.
- (c) The New Construction Receiving Building remains subject to all additional IH Program requirements and must first show how it will meet its own IH Program requirements before PHB Staff will review the Building as a proposed New Construction Receiving Building.
- (d) The Owner of the Sending Building must execute and record an IH Covenant on the Sending Building, subject to release in accordance with the terms of these Rules and the recorded covenant.
- (e) The New Construction Receiving Building must execute and record a New Construction Receiving Building IH Amendment on the New Construction Receiving Building no later than five years after the first Transferring Building receives its Certificate of Occupancy COO from BDS PP&D.
- (f) The IH Units built in the New Construction Receiving Building must be Reasonably Equivalent, pursuant to Section E.1. of these Rules, to the Dwelling Units in the Sending Building. PHB staff determines whether the proposed New Construction Receiving Building is compatible with IH Program requirements. If the proposed New Construction Receiving Building is determined to be incompatible, the Applicant must choose one of the remaining IH Program options.
- (g) The New Construction Receiving Building cannot be supported by any additional subsidy from PHB in which the subsidy would directly fund the production of the IH Units.
- (h) The New Construction Receiving Building must receive a Certificate of Occupancy COO from the BDS PP&D no later than five years from the Sending Building receiving its Certificate of Occupancy COO from the BDS PP&D or the Sending Building may be subject to financial penalties pursuant to Sections G.1.(11) and G.2.(17)H.3. of these Rules.
- (i) Prior to receiving Certificate of Occupancy COO for a Sending Building, PHB will recalculate the Minimum IH Units and Reasonable Equivalency requirements for the Sending Building. If the re-calculated Minimum IH Unit requirement PHB determines that New Construction Receiving Building is more, or requires a different configuration of Unit Types, unable to meet these requirements PHB will issue the Sending Building a Notice of Failure to Transfer. The Sending Building has an option to

either:

- (i) Revise the floor plans of its Building to meet the Reasonable Equivalency standards of the available IH Units in the New Construction Receiving Building;
 - (ii) Provide the Sending Building's entire IH obligation within its own Building.
 - (I) If the Sending Building was issued COO before PHB issued the Notice of Failure to Transfer, the Compliance Period will begin two years from the Notice of Failure to Transfer issuance date.
 - (II) If these changes occur after the ~~receipt~~ issuance of the Sending Building's building permit by the ~~BDS PP&D~~, the Sending Building will not be eligible to receive incentives otherwise available for the IH Units; or
 - (iii) Pay the ~~fee-in-lieu~~ IH Covenant Release Penalty.
- (j) The Sending Building and New Construction Receiving Building must meet the following conditions before PHB will authorize the release of the Sending Building IH Covenant from a Sending Building:
- (i) ~~BDS PP&D~~ must have issued the Certificate of Occupancy COO to both the Sending Building and the New Construction Receiving Building within the timelines stated in these Rules.
 - (ii) The Owner of the New Construction Receiving Building must have executed and recorded a New Construction Receiving Building IH Amendment on title of the New Construction Receiving Building within the timelines stated in these Rules.
 - (iii) PHB has confirmed that the Sending Building has met all IH Requirements.
 - (iv) A Sending Building may receive credit for years of Compliance for IH Units made available in a New Construction Receiving Building that is built prior to the issuance of its own ~~receipt of a final~~ Certificate of Occupancy COO, if the IH Units held for the Sending Building's IH obligations have remained in Compliance under another PHB compliance restriction until such time as the Sending Building receives its final Certificate of Occupancy COO, and the Buildings have met all conditions pursuant to Section D.1.(3)-(9)(j).
- (k) The New Construction Receiving Building IH Units may benefit from the Construction Excise Tax exemption in accordance with PCC 6.08.060(A)(2), the SDC exemption in accordance with PCC 30.01.095, and a property tax exemption in accordance with PCC 3.103, 3.~~104~~102, or 3.101. Applications for tax exemptions must meet the requirements in Section D.3., Tax Exemption, of these Rules.
- (l) The IH Units in the Receiving Building do not need to be the same tenure as the units in the Sending Building. A Building that will have rental units may send to a Building that will have homeownership units and vice versa.
- (m) The New Construction Receiving Building must be within a ~~one-half~~ two-mile radius of the Sending Building, measured from the closest edges of the property lines of the Sending Building and the New Construction Receiving Building or in an area with an equal or higher Combined Opportunity Map Score. A Sending Building located in an area with a Combined Opportunity

Map Score of 5 may select a New Construction Receiving Building located in an area with a Combined Opportunity Map Score of a 4.

- ~~(13) The Applicant shall cause its general contractor for the New Construction Receiving 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, Emerging Small Businesses or Service Disabled Veteran Owned Business Enterprises (DMWESB-SDVBE) firms in construction contracting.~~
- ~~(14) 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.~~
- (13) If PHB determines that the Sending Building or New Construction Receiving Building failed to meet the requirements of these rules or applicable IH Covenants, and therefore the IH Units are not sent to the New Construction Receiving Building, the Sending Building will remain liable for providing the IH Units pursuant to these rules and the Sending Building's IH Covenant and may be subject to financial penalties pursuant to Sections G.1.(11) and G.2.(17) of these Rules, except that interest will be computed from the date the Sending Building received its Certificate of Occupancy from BDS.**

PHB Commentary on Section D.1.(3):

- ***D.1.(3)(h) & D.1.(3)(j)(iv):*** Language was amended to update references to sections.
- ***D.1.(3)(e), D.1.(3)(h), D.1.(3)(i)(ii)(II), D.1.(3)(j)(i), D.1.(3)(j)(ii), D.1.(3)(j)(iv):*** Language was amended to capitalize and utilize defined terms
- ***D.1.(3)(b), D.1.(3)(f), D.1.(3)(i), D.1.(3)(i)(ii)(I), D.1.(3)(i)(ii)(II), D.1.(3)(h), D.1.(3)(i)(iv):*** Language was amended to provide further clarity to requirements.
- ***D.1.(3):*** The option to select the inclusion rate of 10% of the units at 30% MFI was removed in the interim rules as that rate has been removed. To date, no Buildings have opted to utilize the inclusion rate. Restricting units for extremely low-income households generally takes additional subsidies and supports that are scarce.
- ***D.1.(3)(a):*** Edited language due to reorganization of sections because of changes in the inclusion rate option.
- ***D.1.(3)(i)(ii)(I):*** Clarified language around a failure to complete the transfer of IH Units to the Receiving Building. Removed language that did not add clarity to process.
- ***D.1.(3)(i)(iii):*** Correction made to language stating that in a scenario where a Sending Building fails to transfer its IH Units the Receiving Building can pay the fee-in-lieu. The scenario is contemplating a failure to transfer at a point where the Sending Building has already received building permit. Payment of the fee-in-lieu is only available as Option 5. Buildings cannot change their IH option after building permit issuance. Thus penalties would apply.
- ***D.1.(3)(k):*** Correction to HOLTE code section reference.
- ***D.1.(3)(m):*** In the interim rules a change to the requirements for a Receiving Building regarding distance from the Sending Building and Combined Opportunity Map Score were made based on the suggestions of the Inclusionary Housing Work Group that commenced in 2023.
- ***D.1.(3)(13) & (14):*** Requirements for the general contractor of the Receiving Building to meet the DMWESB-SDVBE requirements were removed in the interim rules.
- ***D.1.(3)(13):*** Removal of language that was repetitive in nature to other sections.

- (4) **Option 4: Provide Off-Site: Designate Dwelling Units in an Existing Receiving Building.** Providing at least 20% percent of the total number of Dwelling Units in the Sending Building at 60% percent MFI in an Existing Receiving Building. When Applicant elects to designate IH Units Off-Site in a separate Building (an Existing Receiving Building) from the Building that is subject to based on the IH Program requirements of the (Sending Building) the following criteria apply:
- (a) PHB staff determine the IH Unit Types and calculate the Minimum IH Units, based on the Applicant's selection of:
 - ~~(a) Providing at least 25% of the total number of Dwelling Units in the Sending Building at 60% MFI in an Existing Receiving Building; or~~
 - ~~(b) Providing at least 15% of the total number of Dwelling Units in the Sending Building at 30% of MFI in an Existing Receiving Building.~~
 - (b) PHB staff determines whether the proposed Existing Receiving Building is compatible with IH Program requirements. If the proposed Existing Receiving Building is determined to be incompatible, the Applicant must choose one of the remaining IH Program options.
 - (c) The Sending Building will retain any floor area ratio bonus approved by PP&D.
 - (d) The IH Units in Should the Existing Receiving Building must be reasonably equivalent pursuant subject to Section E.1. of these Rules, IH Program it remains subject to all additional IH Program requirements and must first show how it will meet its own IH Program requirements before PHB Staff will review the Dwelling Units in the Sending Building as a proposed Existing Receiving Building.
 - (e) PHB must approve the Existing Receiving Building prior to building permit issuance for the Sending Building. Applicant shall submit to PHB the following information prior to PHB's review and approval:
 - (i) Location of Existing Receiving Building;
 - (ii) Complete floor plans (all individual units, common spaces, walls, doors, and windows shown) including all square footages of the Existing Receiving Building; and
 - (iii) Leasing schedule.
 - (f) The IH Units in the Existing Receiving Building must be Reasonably Equivalent pursuant to Section E.1. of these Rules, to the Dwelling Units in the Sending Building.
 - (g) The Existing Receiving Building must be no more than within a one-half two-mile radius from the Sending Building, measured from the closest edges of the property lines of the Sending Building and the Existing Receiving Building, or is in an area with an equal or higher Combined Opportunity Map Score. A Sending Building located in an area with a Combined Opportunity Map Score of 5 may select an Existing Receiving Building located in an area with a Combined Opportunity Map Score of a 4.
 - (h) The Existing Receiving Building cannot be supported by any additional subsidy from PHB in which the subsidy directly funds the IH Units.
 - (i) ~~PHB staff determines whether~~ The IH Units in the proposed Existing Receiving Building is compatible with IH Program requirements. If must

either be occupied by an income qualified renter or homebuyer or be actively marketed for lease or sale by the time the proposed Existing Sending Building receives is issued a Certificate of Occupancy COO or the Sending Building may be subject to financial penalties pursuant to section H.3. of these Rules.

- (j) The IH Units in the Receiving Building is determined to be incompatible, the Applicant must choose one of the remaining IH Program options do not need to be the same tenure as the units in the Sending Building. A Sending Building that will have rental units may send to a Receiving Building that will have homeownership units and vice versa.
- (k) The Owner of the Sending Building must execute and record an IH Covenant on the Sending Building, subject to release in accordance with the terms of these Rules and the recorded covenant.
- (l) Prior to receiving Certificate of Occupancy COO for a Sending Building, PHB will recalculate the Minimum IH Units and Reasonable Equivalency requirements for the Sending Building. If the re-calculated Minimum IH Unit requirement PHB determines that Existing Receiving Building is more, or requires a different configuration of Unit Types, unable to meet these requirements PHB will issue the Sending Building a Notice of Failure to Transfer. The Sending Building has an option to either:
 - (i) Revise the floor plans of its Building to meet the Reasonable Equivalency standards of the available IH Units in the Existing Receiving Building;
 - (ii) Provide the Sending Building's entire IH obligation within its own Building.
 - (I) If the Sending Building was issued COO before PHB issued the Notice of Failure to Transfer, the Compliance Period will begin two years from the Notice of Failure to Transfer issuance date.
 - (II) If these changes occur after the receipt issuance of the Sending Building's building permit by the BDS PP&D, the Sending Building will not be eligible to receive incentives otherwise available for the IH Units.; or
 - (iii) Pay the fee in lieu IH Covenant Release Penalty.
- (m) The Sending Building and Receiving Building must meet the following conditions before PHB will authorize the release of the Sending Building IH Covenant from a Sending Building:
 - (i) BDS PP&D must have issued the Certificate of Occupancy COO to the Sending Building.
 - (ii) The Owner of the Receiving Building must execute and record a Receiving Building IH Covenant or a Receiving Building IH Amendment on the Receiving Building within the timelines stated within these Rules.
 - (iii) PHB has confirmed that the Sending Building has met all IH Requirements.
- (n) A Sending Building may receive credit for years of Compliance for IH Units made available in an Existing Receiving Building that is built prior to the issuance of its own COO, if the IH Units held for the Sending Building's IH obligations have remained in Compliance under another PHB

compliance restriction until such time as the Sending Building is issued its COO, and the Buildings have met all conditions pursuant to Section D.1.(4)(m). If the IH Units are not made available as set forth in the Receiving Building IH Covenant, the Receiving Building will be considered in default and penalties pursuant to Section G.1.(11) and G.2.(17) of these Rules, will be due to PHB.

PHB Commentary on Section D.1.(4):

- ***D.1.(4)(l)(i), D.1.(4)(l)(ii)(II), D.1.(4)(m)(i):*** Language was amended to capitalize and utilize defined terms
- ***D.1.(4)(b), D.1.(4)(c), D.1.(4)(d), D.1.(4)(f), D.1.(4)(i), D.1.(4)(j), D.1.(4)(n):*** Language was amended to provide further clarity to requirements.
- ***D.1.(4)(b):*** The option to select the inclusion rate of 10% of the units at 30% MFI was removed in the interim rules as that rate has been removed. To date, no Buildings have opted to utilize the inclusion rate. Restricting units for extremely low-income households generally takes additional subsidies and supports that are scarce.
- ***D.1.(4):*** Adjustment of inclusion rate to match Option 3 was made in the interim rules.
- ***D.1.(4)(g):*** In the interim rules a change to the requirements for a Receiving Building regarding distance from the Sending Building and Combined Opportunity Map Score were made based on the suggestions of the Inclusionary Housing Work Group that commenced in 2023.
- ***D.1.(4)(l):*** Clarified language around a failure to complete the transfer of IH Units to the Receiving Building. Removed language that did not add clarity to process.
- ***D.1.(4)(m):*** Correction made to language stating that in a scenario where a Sending Building fails to transfer its IH Units the Receiving Building can pay the fee-in-lieu. The scenario is contemplating a failure to transfer at a point where the Sending Building has already received building permit. Payment of the fee-in-lieu is only available as Option 5. Buildings cannot change their IH option after building permit issuance. Thus penalties would apply.
- ***D.1.(4)(n):*** Removal of language around Default that was repetitive in nature to other sections.

- (5) **Option 5: Fee-in-Lieu.** Applicants may 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 Building has no additional satisfied its obligations under the IH Program requirements relative to the proposed development.
- (6) **Voluntary Opt-In.** Developments exempt from IH Program requirements may voluntarily elect to 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. **BDS PP&D** will determine the total bonus square footage for which a development will be charged.
2. **Application Requirements.** During building permit review, PHB staff will process the necessary documentation based on the IH Program Option Applicant selects. At permit intake for options one through five above, PHB staff will provide estimates only of the various IH Program requirements and incentives. **BDS PP&D** will condition issuance of building permits on PHB making final determination of IH Program requirements and incentives, pursuant to PCC 33.245.050. Applying clear and objective criteria, PHB will evaluate whether a proposed development meets the numerical requirements set forth in Title 33 of the Zoning Code. PHB will provide Applicants with a letter certifying that any proposed Building meets the numerical requirements set out in Title 33. PCC 33.245.240.
3. **Property tax exemption.**
- (1) **Multiple-Unit Limited Tax Exemption (MULTE) Program.** If the IH Program option selected includes a tax exemption, Applicant must complete a ~~Multiple Unit Limited Tax Exemption (MULTE) Program application in accordance with PCC 3.103.~~ PHB will complete the required MULTE approval process including tracking the available foregone revenue and ~~submitting MULTE applications as ordinances to City Council for approval on a monthly basis. For the Building to receive the tax exemption from PHB, City Council must approve the MULTE ordinance prior to BDS building permit issuance. Buildings that receive a building permit prior to City Council approval of the MULTE Ordinance are ineligible for the tax exemption.~~ delivering a listing of approved applications to Multnomah County within the timeframe set forth in ORS 307.621.
- (2) **Non-Profit Limited Tax Exemption (NPLTE) Program.** A development may also qualify for the ~~Non-Profit Limited Tax Exemption (NPLTE) Program~~ authorized under 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. The qualifying non-profit sponsor must apply annually to PHB who in turn will deliver a list of approved applications to Multnomah County

within the timeframe set forth in ORS 307.547.

- (3) **Homebuyer Opportunity Limited Tax Exemption (HOLTE) Program.** A Building that has ~~for-sale units~~ **IH Homeownership Units** may qualify for the 10-year property tax exemption under the HOLTE Program for individual ~~units~~ **IH Units** within the Building which meet the HOLTE Program requirements under PCC 3.102.
4. **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 IH Covenant.

PHB Commentary on Section D.1.(5) through D.4.:

- ***D.1.(5), D.2., D.3., D.3.(1), D.3.(2) & D.3.(3):*** Language amended to add clarity.
- ***D.2., D.3.(1), & D.3.(2):*** Language was amended to update references to sections, Portland City Code, or Oregon Revised State Statute.
- ***D.1.(6), D.2. & D.3.(1):*** Language was amended to capitalize and utilize defined terms in.
- ***D.3.(1):*** The requirement for PHB to bring MULTE applications before City Council was removed in the interim rules as they requirement was amended in Ordinance 191610.
- ***D.3.(2):*** Additional language was added to the NPLTE section in the draft rules in order to provide clarity on the steps PHB takes to notify the county of approvals.
- ***D.3.(3):*** Specific language around the HOLTE program was added in the interim rules. Slight modifications were made in the draft rules.

E. Development Requirements

1. **Reasonable Equivalency.** Applicants must make IH Units “reasonably equivalent” to Market Rate Units in accordance with PCC 30.01.120.D. PHB will assess Reasonable Equivalency using the following criteria:

- (1) **Rental Buildings.**

- (a) **Bedroom Distribution and Unit Count.**

- (i) IH Rental Units must be provided at the same ratio within the Building as Market Rate Units. See Appendix C for examples.
- (ii) **Floating is not allowed in Receiving or Consolidated Buildings.**
- (iii) When using Reconfiguration:
 - I. The Minimum IH Units will be calculated.
 - II. **The total bedrooms ~~calculated~~ within the Minimum IH Units will be added up and the final count of bedrooms after Reconfiguration must be equal.**
 - III. **Units that are reconfigured** must be reconfigured into Dwelling Units of two or more Bedrooms;
 - IV. **The required family size units calculated in the Minimum IH Unit calculation must be included unless they are also reconfigured into larger type units;**
 - V. Applicant may reconfigure all or some of the Minimum IH Units; and
 - VI. After Reconfiguration is applied there must be at least one Market Rate Unit that has two or more Bedrooms per reconfigured Dwelling Unit ~~with three Bedrooms; and there must be at least one Market Rate Unit that has three or more Bedrooms per reconfigured Dwelling Unit with four Bedrooms.~~

- (b) **Unit Sizes.**

- (i) IH Rental Units must be at least ~~95~~ **85% percent** the size of the average of the total Dwelling Units with the same ~~Bedroom count~~ Unit Type, as measured in square feet.
- (ii) When using Reconfiguration:
 - ~~The reconfigured Dwelling Units must be reasonably equivalent to the size of the average square footage of the one-bedroom Dwelling Units as follows by reconfigured Bedroom count:~~
 - ~~a. — 130% for reconfigured two-Bedroom Dwelling Units;~~
 - ~~b. — 160% for reconfigured three-Bedroom Dwelling Units;~~
 - ~~and~~
 - ~~c. — 190% for reconfigured four-Bedroom Dwelling Units;~~
 - ~~II. — If are no one-Bedroom units to consider, the reconfigured Dwelling Units must be reasonably equivalent to the size of the average square footage of the studio Dwelling Units as follows by reconfigured Bedroom count:~~

- ~~a. 195% for reconfigured two Bedroom Dwelling Units;~~
 - ~~b. 240% for reconfigured three Bedroom Dwelling Units;~~
 - and
 - ~~c. 285% for reconfigured four Bedroom Dwelling Units.~~
 - (iii) the reconfigured Dwelling Units must be larger than the size of the average square footage of each of the smaller Dwelling Units by Bedroom count.
 - (c) **Unit Distribution.** Where Market Rate Units and IH Rental Units are provided in a single On-Site Building, no more than ~~25~~ **35% percent** 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 Consolidated Buildings of On-Site Consolidation options have no IH Rental Unit distribution requirements, however, IH Rental Units received from a Sending or Transferring Building may not be located in the Basement.
 - (d) **Unit Amenities.** IH Rental Units must have finishes with equal lifetime expectancies and appliances with the same **or better** Energy Star **rating Certification** as the Market Rate Units, which must be certified by a Building's architect prior to **BDS PP&D** issuing the Building's **Certificate of Occupancy COO**.
- (2) **For-sale Homeownership Buildings.**
- (a) **Bedroom Distribution and Unit Count.** IH Homeownership Units must be provided at the same ratio within the Building as Market Rate Units. See Appendix C for examples.
 - (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~~ **Unit Type**, as measured in square feet.
 - (c) **Unit Distribution.** Where Market Rate Units and IH Homeownership Units are provided in a single On-Site Building, no more than **50% percent** of the total units on any floor shall be designated as ~~IH Rental~~ **Homeownership** Units, excluding the top floor. Receiving Buildings of Off-Site options and Consolidated Buildings utilizing On-Site Consolidation options have no IH Homeownership Unit distribution requirements, however, IH Homeownership Units received from a Sending or Transferring Building may not be located in the Basement.
 - (d) **Unit Amenities.** IH Homeownership Units must have appliances with the same **or better** Energy Star **rating Certification** as the Market Rate Units, which will be certified by a Building's architect prior to **BDS PP&D** issuing the Building's **Certificate of Occupancy COO**.

PHB Commentary on Section E.1:

- ***E.1.(1)(a)(iii)(I), E.1.(1)(a)(iii)(II), E.1.(1)(a)(iii)(III), E.1.(1)(a)(iii)(IV), E.1.(1)(d), E.1.(2), E.1.(2)(b) & E.1.(2)(d):*** Language was amended to provide further clarity.
- ***E.1.(1)(d) & E.1.(2)(d):*** Language was amended to capitalize and utilize defined terms.
- ***E.1.(1)(a)(ii):*** Removed the requirement and option for buildings utilizing on-site consolidation or one of the off-site options to float IH Units based off of the recommendations made by the Inclusionary Housing Work Group.
- ***E.1.(1)(b)(i):*** Reduced the minimum unit size requirement from 95% to 85% of the average square footage of the same unit type in the interim rules based on recommendations from the Inclusionary Housing Work Group.
- ***E.1.(1)(c):*** Increased the percentage of units per floor that can be designated as IH Units from 25% to 35% in the interim rules based on recommendations from the Inclusionary Housing Work Group.
- ***E.1.(1)(a)(iii)(VI):*** Simplification of the requirements for buildings using reconfiguration in regard to family-size market rate units by removing requirements. Requirements were removed in the interim rules in response to the recommendations from the Inclusionary Housing Work Group.
- ***E.1.(1)(b)(ii):*** Simplification of the unit size requirements for units that are reconfigured by removing requirements. Requirements were removed in the interim rules in response to the recommendations from the Inclusionary Housing Work Group.

2. Inapplicable Policies. PHB does not require IH Program Buildings to follow the policies listed below:

- (1) Disadvantaged, Minority, Women, Emerging Small Businesses or Service Disabled Veteran-Owned Business Enterprises (DMWESB-SDVBE) contracting procedures and goals (~~except for Option 3: Build Off Site: New Construction~~);
- (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 Building teams to voluntarily comply with the above policies and procedures. PHB staff can provide assistance where teams choose to comply.

3. Excluded Developments. The IH Program does not apply to:

- (1) Buildings with fewer than 20 new Dwelling Units.
- (2) Applicants that submit a permit to construct a Building operating as a CCRC on or after January 1, 2020 that:
 - (a) Submit a copy of ~~their Oregon Department of Human Services (ODHS)~~ the Building's ODHS Certificate of Registration with their IH Intake Form to PHB as part of their permit application; and
 - (b) Execute and record a covenant with PHB in which the CCRC agrees to operate all units within the Building or Buildings as a CCRC indefinitely; and
 - (c) Must submit annually to PHB their receipt of ODHS Certification of Registration; and
 - (d) A CCRC that offers units for sale or rent will be subject to the penalties listed in subsection G.11 H.3. of these Rules.

PHB Commentary on Sections E.2 through E.3:

- *E.2.(1): Removal of reference that buildings which elect to utilize option 3 are subject to DMWESB-SDVBE requirements.*
- *E.3.(2)(a): Language was amended to capitalize and utilize defined terms in.*
- *E.3.(2)(d): Language was amended to update references to section.*

F. Final Permit Approval

1. Prior to the start of lease-up and at least 90 days prior to the issuance of COO, Owner or property management must submit and receive approval of the Rent and Utility Allowance Schedule by RAC. The rent roll must be approved prior to the start of leasing for the IH Units.
1. Applicants must report construction timeline progress on a quarterly basis to Inclusionary-Housing@portlandoregon.gov.
2. After a Building receives its Certificate of Occupancy from a City Inspector and prior to lease-up, PHB's Risk Analysis and Compliance (RAC) staff is issued COO, RAC will send the Owner a welcome letter detailing the Building's 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. Owners must certify that they have read and understood IH compliance requirements.
3. The architect of the project must sign and submit a self-certification of reasonable equivalency, pursuant to Section E.1. of these Rules, prior to BDS issuance of the final permit in accordance with PCC 33.245.050 Reasonable Equivalency following COO issuance.

G. Compliance and Reporting Requirements

1. **Leasing Rental Units.** Reporting and compliance requirements are contained in these Rules, the IH Covenant, and HOU-1.10- Risk Analysis & Compliance Policies & Guidelines, available on PHB's website. 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 Risk Analysis & Compliance Policies & Guidelines, the priority of the terms should be read as follows: 1) the IH Covenant, 2) these administrative Rules or the Rules in place at the time the building permit is considered vested by PP&D, Planning and Zoning, 3) HOU-1.10- Risk Analysis & Compliance Policies & Guidelines. The following requirements apply to the leasing of IH Rental Units:
 - (1) **Static Data Sheet.** Applicant must submit this form to PHB prior to lease-up and annually. Information required includes, but is not limited to: total units, Unit Type, unit size, unit location within the development, square footage, and utility allowance. See an example in Appendix B
 - (1) **Marketing.** The IH Program has no rules or guidelines about the legally permissible method Owners use to determine the order in which tenants are offered IH Rental Units. Owners are required to abide by the Fair Housing Act and Title VIII of the Civil Rights Act of 1968 and all applicable landlord tenant laws, including but not limited to ORS 90 and PCC 30.01.085, PCC 30.01.086, and PCC 30.01.087.
 - (2) **Rent determination.**
 - (a) **Maximum rent.** PHB determines The maximum rent for IH Rental Units using the MFI and Rent Chart based on the is determined by HUD's MFI estimates and Fair Market Rent area definitions for the Portland-Vancouver-Hillsboro area. PHB publishes the Median Family Income and Rent Chart annually. Maximum rent is 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 ~~the instructions on the Rent & Utility Allowance Schedule-PHB's Risk Analysis & Compliance Policies & Guidelines located on the PHB website.~~

- (b) **Rent & Utility Allowance Schedule.** Prior to lease-up, RAC must approve Owner's Rent & Utility Allowance Schedule, which must include the following information: Unit Type, unit size, unit location within the Building, and square footage. RAC may require additional information or an updated Rent and Utility Allowance Schedule as part of its review and approval.
- (c) **Utility Allowance.** IH Rental Units are subject to a utility allowance (UA). Utility allowances are passed along to the tenant in the form of reduced rent for those utilities which are paid for by the tenant. ~~Maximum rents for IH Rental Units are subject to a UA, the total of which must be subtracted from the maximum rent charged to the tenant.~~
- (i) Owner may choose from two methods of calculating the UA for the IH Units:
- (I) **Utility Allowance Schedule.** ~~The Utility Allowance Schedule takes averages obtained from local utility providers to determine the utility allowance based on the Building's types of utilities. If using this method, the UA must be calculated using the Utility Allowance Schedule each year to determine maximum rent.~~
- (II) **Energy Consumption Model Analysis.** Applicant may 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 specifics of the Building.
- (ii) To the extent IH Rental Unit ~~tenants renters~~ pay their own utilities directly or are billed back for reimbursement of utilities by the Owner, the Owner must deduct that amount from the maximum allowable rent charged to the ~~tenant renter~~.
- (iii) No UA is required for utilities ~~that are~~ paid by the Owner and not reimbursed by the ~~tenant renter~~.
- (d) **Non-optional fees.** Any non-optional fees required by the Owner to live in an IH Rental Unit (i.e. parking, meal plans, and amenities) must be deducted from the maximum rent found in the MFI and Rent Chart in order to determine the rent of an IH Unit.

Example: a one-Person household earning 80% ~~percent~~ MFI occupies a studio IH Rental Unit. The maximum monthly rent for that unit, based on the 2024 MFI and Rent Chart, is ~~\$1,140~~ ~~\$1,652~~ and the UA is ~~\$84~~ ~~\$138~~. The maximum an Owner could collect from this household is ~~\$1,056~~ ~~\$1,514~~ = (~~\$1,140~~ - ~~\$84~~ ~~\$1,652~~ - ~~\$138~~).

- (e) **Rent increases.** Owner may raise the rent up to the maximum allowed for the Unit Type in accordance with Section G.1.(2) of these Rules.

PHB Commentary on Sections F, G.1.(1) through G.1.(2):

- ***F.3., G.1.G.1.(2)(a), G.1.(2)(c), G.1.(2)(c)(i)(I), G.1.(2)(c)(ii), G.1.(2)(c)(iii) & G.1.(2)(e):*** Language was amended to clarify requirement.
- ***G.1:*** Language was amended to update references to policy documents, Portland City Code or Oregon Revised State Statute.
- ***F.1:*** Clarification of timeline, process and requirements to lease up IH Units.
- ***F.1:*** Removal of reporting requirement for construction timeline.
- ***F.2:*** Clarification of timeline, process and requirements.
- ***G.1.(1):*** Removal of inaccurate reference to Static Data Sheet.
- ***G.1.(1):*** Inclusion of updated references in statute and city code for landlord tenant law.
- ***G.1.(2):*** Reorganized and separated out sections regarding determining rent and income qualifying a tenant. This section now only covers rent determination.
- ***G.1.(2)(a):*** Added language to provide clarification on how maximum rent is determined.
- ***G.1.(2)(b):*** Added language about the Rent & Utility Allowance Schedule utilized for annual reporting.
- ***G.1.(2)(c):*** Added language to improve transparency around utility allowances.
- ***G.1.(2)(d):*** Added language around non-optional fees and how they impact maximum rent.
- ***G.1.(2)(d):*** Updated figures in example of determining maximum rent.

- (3) **Income eligibility.** PHB determines using Income eligibility is based on the IH Program option selected and the MFI and Rent Chart for the Portland Metropolitan Area. The MFI and Rent Chart is posted and updated annually on the PHB website annually.
- (a) **Initial income certification.** Owner must verify renter income prior to move-in by completing and verifying Tenant Income Certification (TIC) form (Appendix C) for each IH Unit. Refer to HOU-1.10- Risk Analysis & Compliance Policies & Guidelines for guidance on how to complete the TIC form.
- (b) **Income sources & documentation.** Before executing a lease agreement, Owner must verify all sources of income must be considered for every adult living in an IH Rental Unit to determine the household's gross income, utilizing the HUD Occupancy Handbook, Sections 1 and 2 of Chapter 5, "Guidance on Determining Income and Calculating Rent". Use of HUD's Enterprise Income Verification (EIV) system is not required. Eligible households may make up to or less than the income limits posted in the MFI and Rent Chart. To qualify, tenants must be allowed to spend more than 30 percent of their gross income on rent. Any Applicants not meeting the screening criteria must be given the right to appeal.
- (c) **Annual income recertification.** The Owner must require that renters complete a TIC form annually recertify the Tenant incomes annually with PHB in accordance with the Tenant Income Certification (TIC) reporting cycle as set by PHB and the Owner. Recertifications may be completed and signed up to 120 days before the recertification date in accordance with the date set in the welcome letter sent out by RAC as described in Section F.2. of these Rules. Third-party verification and review of source documentation is not required at annual recertification.
- (d) **Incomes rising in place.** 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 G.1.(5) of these Rules, the Owner 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. 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 unless their incomes reach or exceed the income limits contained in this policy. A tenant's renter's income may increase above the income limit and still have the unit fulfill the Building's IH Program requirements, based on the following:
- Tenants in IH Rental Units restricted at 30% MFI, may have income increase up to 60% MFI;
- (i) Tenants Renters in IH Rental Units restricted at 60% percent MFI, may have income increase up to 100% percent MFI; or
- (ii) Tenants Renters in IH Rental Units restricted at 80% percent MFI, may have income increase up to 120% percent MFI.
- (e) **Ineligible households.** 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 G.1.(11) of these Rules.

- (e) **Over-income renter.** If a renter's income is above the allowable rising in place income for the IH Rental Unit, where IH Units are intermixed with Market Rate Units, the Owner must Float the requirements of the IH Unit in accordance with Section G.1.(3)(i) of these Rules.
 - (f) **Floating.** Must Float the requirement and designate the next available Dwelling Unit as an IH Rental Unit based on the Static Data Sheet, reasonable equivalency and that is the same Unit Type and is Reasonably Equivalent, in accordance with the IH Covenant Section E.1 of these Rules as an IH Rental Unit. Owner must submit a revised Rent and Utility Allowance Schedule to RAC and receive approval prior to designating the new IH Unit. Floating is not allowed in Receiving or Consolidated Buildings. Owner:
 - (i) May raise the rent on the existing renter's unit in accordance with federal, state and local laws;
 - (ii) May revise the expiring a lease at the end of its initial term to allow tenants renters to continue living in the unit in accordance with federal, state and local laws; and
 - (iii) May not require renters to submit additional deposits or fees; and
 - (v) Must give at least 90 days written notice to PHB and to the tenant prior to an increase in the rent.
- (4) **Vacancies.** PHB requires that at any given time The number and distribution of IH Rental Units will must match those specified in the IH Covenant. To help ensure the predictable leasing of IH Rental Units, Owners must treat IH Rental Units as "Floating", see as defined in Section C, Definitions: Floating. of these Rules.

PHB Commentary on Section G.1.(3) through G.1.(4):

- ***G.1.(3), G.1(3)(f), & G.1.(4):*** Language was amended to clarify requirement.
- ***G.1(3)(a), G.1(3)(b), G.1(3)(c) & G.1(3)(e):*** Added language to improve transparency to process.
- ***G.1.(3)(b) & G.1(3)(f)(v):*** Removed language that was in conflict or is duplicative of updated Landlord Tenant laws.
- ***G.1.(3)(d):*** Removed language that was duplicative of updated language in the maximum rent calculation section. Removed income rising in place cap for 30% MFI incomes as this is no longer a restriction option under the program.
- ***G.1.(3)(e):*** Removed language for purposes of clarity. Any violation of these Rules constitutes a breach of the program requirements; therefore the language is unnecessary as it is already implied.

(5) Annual reporting and review.

- (a) **Reporting.** Buildings with IH Rental Units are subject to PHB’s reporting requirements as set forth in the IH Covenant. ~~On an annual basis, Owners must 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. Owner must annually submit to RAC certain information about IH Units through WCMS on the date specified by RAC.~~
- (b) **Compliance findings.** ~~PHB staff will~~ RAC may test the information reported in WCMS against the terms of the IH Covenant and issue written ~~results~~ compliance scores for each Building.
- (i) **ACT results.** ~~An Annual Compliance Test (“ACT”) is sent~~ RAC may send to the ~~listed contacts~~ Owner, or designated contact on file with comments and action items ~~to resolve any compliance issues, an ACT if it identifies violations of the IH Covenant or these Rules.~~
- (ii) **Response time to ACT.** ~~After the deadline to respond has elapsed, the compliance scores are final. The Owner shall have 30 days to respond to the initial ACT and address any action items. RAC will evaluate responses provided to the ACT findings for accuracy and completion. Should RAC have additional questions or determine that the violations were not addressed, then RAC may send a revised ACT requesting additional follow up prior to providing a finalized compliance score. Should the Owner fail to respond or fail to address the action items notated within the ACT, RAC will finalize the ACT as Non-Compliant.~~

(6) Non-Compliance or Non-Compliant.

~~In cases of non-compliance, PHB staff may collaborate with Owners 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) **Notice of Non-Compliance.** ~~For any Buildings RAC determines to be Non-Compliant, RAC will send a Notice of Non-Compliance and finalized ACT.~~
- (b) **Period to cure Non-Compliance.** ~~If an ACT is finalized with outstanding compliance issues, the Owner must resolve those issues within the 90-day period to cure or will face default. The Owner shall have 90 days from the date of the Notice of Non-Compliance to cure the violations identified in the Notice of Non-Compliance, unless another date is agreed upon or a longer period is required by the applicable IH Covenant.~~
- (c) **Waiver or delay.** ~~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.~~

(7) Inspections.

- (a) **Standard 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 include an audit of IH Program related files such as TICs and other information submitted through WCMS.
- (b) **Inspections due to Default, Non-Compliant or IH Units in violation.** Any Building that is in Default, is in Non-Compliant status, or has IH Units which are in violation of IH Program requirements, Buildings that are out of compliance may be inspected more frequently until they the Building are brought back into compliance either cures its non-compliance issues or is released from its IH Program obligations after complete payment of the IH Covenant Release Penalty.
- (c) **Inspection report.** PHB will send an inspection report is sent to the listed property management contacts on file with findings to be resolved.
- (d) **Resolution of findings from inspection.** Issues Findings must be resolved, and evidence of their resolution must be provided to PHB within the 30-day response period. Failure to do so, may prompt additional inspections and the Building being placed deemed in Default.
- (8) **Property management changes.** Owner must report changes in submit updated property management contact information to RAC within 30 days prior to the transition or start date of the change new property management by completing and submitting a Contact Update Form.

PHB Commentary on Sections G.1.(5) through G.1.(8):

- ***G.1.(5)(a), G.1.(5)(b):*** Language was amended to clarify requirement.
- ***G.1.(5)(a):*** Language was removed as it is now reflected in the definitions.
- ***G.1.(5)(b)(i), G.1.(5)(b)(ii):*** Language added to provide transparency to the process and requirements when compliance findings are identified.
- ***G.1.(6):*** Language added to provide transparency to the process once a Building is determined to be Non-Compliant.
- ***G.1.(7)(a):*** Language was added for purposes of clarity.
- ***G.1.(7)(b):*** Language was amended to provide transparency to the inspection process when a Building is determined to be Non-Compliant, in Default or has IH Units in violation.
- ***G.1.(7)(c) & G.1.(7)(d):*** Language was amended for purposes of clarity.
- ***G.1.(8):*** Language was amended to clarify requirement around reporting changes in property management.

2. **For-sale Homeownership Units.** Reporting and compliance requirements are contained in these Rules, the IH Covenant, and the Second Mortgage documents. For purposes of interpretation, if and to the extent there is a conflict among the terms of the IH Covenant and Second Mortgage documents and these Rules, the priority of the terms should be read as follows: 1) the IH Covenant, 2) the Second Mortgage documents, 3) these Rules or the Rules in place at the time the building permit is considered vested by PP&D, Planning and Zoning. For Buildings that will sell IH Units 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 or below:
 - (i) 100% percent MFI for an 80% percent MFI IH Program option; or
 - (ii) 80% percent MFI for a 60% percent MFI IH Program option; or
 - (iii) 60% MFI for a 30% MFI IH Program option.
 - (b) Not hold liquid assets after closing that total more than \$20,000
 - (i) A waiver of the asset limit rule may be submitted to the PHB Director.
 - (ii) Approval of the waiver of the asset limit rule is granted at the discretion of the PHB Director.
 - (c) Maintain the IH Homeownership Unit as their primary residence. Exceptions to the primary residence rule may be applied for by completing a primary residence hardship waiver. Approval is granted at the discretion of the PHB Director. If granted the hardship-waiver will be effective in one-year increments and may be applied for up to three times. Primary residence hardship exceptions waivers to the primary residence rule may be granted by PHB for, but not limited to, the following situations:
 - (i) Active military duty;
 - (ii) Temporary relocation to care for an ill or dying family member; or
 - (iii) Temporary relocation caused by an employer.
 - ~~(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.~~
 - (d) All-cash purchases of IH Homeownership Units are not allowed.
 - (e) 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 eligibility is based on the MFI and Rent chart for the Portland Metropolitan Area Chart, according to the IH Program option selected. The MFI and Rent Chart is posted and updated annually on the PHB website. Documentation to verify income includes but is not limited to: last two years of W-2s; most recent 30 days-worth of paystubs; and any social security, child support, alimony, and unemployment currently being received. Self-employed homebuyers must submit to PHB 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. Homebuyers must submit to PHB income documentation 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 to PHB 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 14 days.
 - (b) **Verification of closing.** The IH Second Mortgage Documents prepared by PHB must be requested at least 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 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.
 - (a) **Pricing methodology.** The sale pricing calculation includes:
 - (i) Mortgage payments at 40% percent of monthly income in accordance with the income level and Unit Type;
 - (ii) 5% Five percent down payment;
 - (iii) Conventional 60-day pricing on interest rates and mortgage insurance;
 - (iv) Property taxes reflecting the average tax exemption value during the exemption period;
 - (v) Estimated homeowner's insurance; and
 - (vi) Estimated homeowner's association fees.
 - (b) **Sale price determination.** During the Restriction Period, the Owner may sell IH Homeownership Units at the sale price calculated according to Section G.4.(2)(a) of these Rules at either the time of execution of the IHH Covenant or at the time the IH Homeownership Unit is listed for sale.
 - (c) **Resale price.** During the Compliance Period, 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 G.2.(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 is complete.
- (7) **Property taxes.** It is the intention of PHB that the property taxes for IH Homeownership Units will be assessed at their restricted value for the duration of the 99-year Compliance Period.
- (8) **Refinance and additional liens against property.** PHB must approve additional liens prior to recording. Reverse Mortgages are not allowed.
- (9) **Intent to sell.** Homeowners Sellers 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 into a contract with another party. Refer to Section G.4 I.2. of these Rules, Communication, for contact and mailing address. Homeowner's Seller's that do not inform PHB of their intent to sell as described by this rule may be deemed in Default and subject to the penalties listed under Section G.2.(17) H.2.(2) of these Rules.
- (10) **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, at the initial sale and during the Compliance Period. 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 15 days from receipt of receiving notice of intent to sell from the Owner or Homeowner to issue a letter of intent to purchase at the listed price. If PHB fails to respond within the 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.
- (11) **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 G.2. of these Rules; transferring the IH Homeownership Unit into a trust, short sale, foreclosure; or adding or removing a name from the title.
- (12) **Listing and sale timeline.** The intent of the listing and sale timeline is to maintain IH Homeownership Units as affordable from the initial sale through the duration of the Compliance Period. The timeline applies during the Restriction

Period, for the purpose of the initial sale, and at each subsequent resale during the Compliance Period. Sale of IH Homeownership Units must use the following timeline in order:

- (a) List and market the IH Homeownership Unit within the IH For-sale units program guidelines for at least **6 six** months.
- (b) After the six-month period described in Subsection (11)(a), Owner or Homeowner may submit a request to PHB to list and market the IH Homeownership Unit to buyers that income qualify below **100% percent** MFI for a **60% percent** MFI IH Homeownership Unit or **120% percent** MFI for an **80% percent** MFI IH Homeownership Unit. PHB has 14 days from the receipt of the Owner's or Homeowner's request to approve or deny it based on demonstrated attempts to sell. Upon approval or denial of request, Owner or Homeowner must list and market the IH Homeownership Unit, pursuant to Section G.2. of these Rules, for at least six months.
- (c) After the six-month period described in Subsection (11)(b), Owner or Homeowner may submit a request to PHB to release the Owner or Homeowner and the IH Homeownership Unit from the Second Mortgage Documents and sell the IH Homeownership Unit on the open market. PHB has 15 days from the receipt of the Owner or Homeowner's request to send a letter of intent to the Homeowner to purchase.

(13) Major improvements. Improvements required by the homeowner's association, "special assessments", and capital improvements are major improvements. Homeowners of IH Homeownership Units may apply to PHB for credit for their major improvement. Credit for major improvements approved by PHB will be added to the sales price at the time of resale.

- (a) **Special assessments.** PHB will credit special assessments at the full dollar amount paid. To receive credit for the special assessment, the homeowner must submit the following documentation to PHB within six months of payment 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 of the resale price. To receive credit for capital improvements, the Homeowner must submit to PHB 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 **Certified** furnace or cooling system;
 - (iii) Updating bathroom and kitchen cabinetry, flooring, counter-tops and fixtures;
 - (iv) Room additions;
 - (v) Upgrading to double pane windows; and
 - (vi) Upgrading to new Energy Star **Certified** built-in appliances

purchased within five years of placing the IH Homeownership Units for sale.

- (14) **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 Compliance Period, however, the new title holder is exempt from Sections G.2.(1)(a) and G.2.(1)(b) of these Rules, Eligibility.
- (15) **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.
- (16) **Exception for Non-Profit Housing Providers.** A Subject to review and approval by PHB, a certified 501(c)(3) housing provider may use its own homeownership program and documents covenant to fulfill the IH Program requirements in Sections G.2.(1)-(15) of these Rules, 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% percent MFI or less;
 - (b) The IH Homeownership Units must have a Compliance Period of at least 99 years; and
 - (c) The IH Homeownership Units must be used for homeownership for the duration of the Compliance Period.
 - (d) Maintain the IH Homeownership Unit as the Homeowner's primary residence.
 - (e) The Non-Profit Housing Provider must execute with each Homeowner of an IH Homeownership Unit, enforce, and record on the fee or leasehold estate, an affordable housing covenant, subject to PHB's review and approval, to ensure the IH Homeownership Units remain affordable during the Compliance Period. PHB must be a third-party beneficiary of to the covenant.
 - (f) During the Compliance Period, the Non-Profit Housing Provider, or an assignee, will report to PHB annually any transfers of IH Homeownership Units and provide a copy of the newly executed and recorded covenant.
 - (g) During the Compliance Period, PHB may audit the IH Homeownership Units for compliance and the Non-Profit Housing Provider as applicable, must provide any documents pertaining to the IH Homeownership Units and compliance with these rules, within thirty (30) days of receipt of a request by PHB's request.

(17) Non-compliance.

Owners or Homeowners of IH Homeownership Units that default are subject to penalties listed in Section G.2.(17) of these Rules, 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; or~~
 - ~~(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.~~
- (a) Prior to the initial sale of individual IH Homeownership Units, Owners that Any violation of the terms of the IH Program or the IH Covenant in these Rules or the terms of Second Mortgage Documents 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 subsection G.3. of these Rules, Conversions constitute an occurrence of non-compliance.
 - (b) Upon discovery of non-compliance during the Restriction Period, PHB will send the Owner a Notice of Non-Compliance and Demand Statement requiring payment of penalties as described in Section H.3. of these Rules. PHB must receive payment upon the sale of the IH Homeownership Unit, or within 60 days, whichever is sooner.
 - (c) Homeowners of individual IH Homeownership Units that violate the terms of the IH Program or the Second Mortgage Documents are subject to the Upon discovery of non-compliance during the Compliance Period, PHB will send the Homeowner a Notice of Non-Compliance and require payment of the amount stated in listed on the Second Mortgage Documents. Payment must be received by PHB upon the from the time of purchase sale of the IH Homeownership Unit and elimination of any remaining property tax exemption, or within 60 days, whichever is sooner.
 - (d) Homeowners may submit an appeal of the Non-Compliance to PHB. Approval is at the discretion of the PHB Director.
 - (e) If Non-Compliance is unresolved, the penalties are not paid, or the Second Mortgage Documents amount is not paid within the timeframe required in G.2.(17)(b) or (c), then the IH Homeownership Unit will be deemed in Default in accordance with Section H.2.(2) of these Rules.

PHB Commentary on Sections G.2:

- ***G.2, G.2.(4)(b), G.2.(4)(c), G.2.(8), G.2.(16), G.2.(16)(d), G.2.(17)(b), G.2.(17)(d) & G.2.(17)(e):*** Language added or amended to provide transparency to the process and requirements.
- ***G.2.(1)(a):*** Removed income cap for 30% MFI option as this is no longer a restriction option under the program.
- ***G.2.(1)(b), G.2.(1)(c), G.2.(2), G.2.(4)(a), G.2.(9), G.2.(10), G.2.(17)(a) & G.2.(17)(c):*** Language was added or amended to clarify requirement.
- ***G.2.(1)(d):*** Language was removed due to inaccuracies with procedures in the interim rules.
- ***G.2.(13)(b):*** Language was amended to reference a defined term.
- ***G.2.(17):*** Removed section around default as it is located in other sections with the updates of this draft and would be redundant and add confusion.

3. Conversions.

- (1) Any Building subject to or built under the IH Program and that provides IH Units On-Site or Off-Site where the Building with the IH Units converts from a rental to a homeownership property Building or from a homeownership to a rental property Building during the Restriction Period or Compliance Period must adhere to the IH Program requirements of the residential-use type tenure to which the Building is converted.
- (2) IH 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, and construction excise taxes, in addition to the penalties listed in subsection (4)(a)-(c) below Section H.3. of these Rules.
- (3) A CCRC with a recorded covenant with PHB excluding the CCRC from the IH Program that offers units in the CCRC for sale or rent are subject to the penalties listed in subsection (4)(a)-(c) below Section H.3. of these Rules.

4. Transfers of Building ownership or property management.

- (1) Covenants runs with the land. The IH Covenant runs with the land for the length of the Restriction Period and Compliance Period.
- (2) Non-subordinate. 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.
- (3) Transference of provisions. Upon sale or other transfer of the Building during the Restriction Period or Compliance Period, the provisions of the IH Program must transfer with the property.
- (4) Contact Update Form. ~~PHB needs to receive updated property manager information~~ Owner must submit updated property management and ownership contact information to RAC 30 days prior to the change of property management company or sale by submitting a complete Contact Update Form.
- (5) Assignment and Assumption Agreement. Any transfer of ownership of Buildings during the Restriction Period or of Buildings with IH Rental Units during the Compliance Period requires the Owner to submit to PHB legal documentation about the new entity, to prepare a Consent to Transfer and An Assignment and Assumption Agreement provided by PHB which must to be executed and recorded on title.

PHB Commentary on Sections G.3 through G.4:

- ***G.4.(4) & G.4.(5):*** Language added or amended to provide transparency to the process and requirements.
- ***G.3.(1) & G.4.:*** Language was added or amended to clarify requirement.
- ***G.3.(2) & G.3.(3):*** Language was amended to reference a defined term.
- ***G.4.:*** Moved section from the rental section and created its own section as it applies to both tenancy types.

H. **Enforcement**

1. **Rental Buildings**

- (1) **Default process.** 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 G.1.(11) of these Rules. If Owner has not addressed the action items stated in the finalized ACT by the date of expiration in the Notice of Non-Compliance, PHB may issue a Notice of Default and Demand Statement. Owner will have 30 days from the date of the Notice of Default and Demand Statement to cure the non-compliance before PHB pursues legal enforcement, as follows:
 - (a) Meet the requirements necessary to become compliant, to be confirmed by RAC.
 - (b) Pay penalties and fees in accordance with Section H.3 of these Rules.
- (2) **Legal enforcement.** To enforce any of the requirements of this Title, the Director may institute an action before the Code Hearings Officer as set out in Title 22 of City Code.
- (3) **Settlement authority.**
 - (a) At any time between the issuance of a Notice of Default and Demand Statement and the entry of a Final Order by the Code Enforcement Hearings Officer, PHB may negotiate and execute a Settlement Agreement with the Owner.
 - (b) Upon request from PHB and Owner, the Code Hearings Officer will enter the Settlement Agreement as a Final Order and direct the Revenue Division to enter any associated lien on the City of Portland Docket of City Liens.

2. **Homeownership Units.**

- (1) **Default during Restriction Period.** An Owner of IH Homeownership Units that is in default is subject to penalties listed in Section H.3. of these Rules.
 - (a) **Notice of Default and Demand Statement.** PHB will issue a Notice of Default and Demand Statement.
 - (b) **Period to cure Default.** Owner will have 30 days from the date of the Notice of Default to pay all fees and penalties due.
 - (c) **Legal enforcement.** If the Owner does not cure the Default prior to the expiration of the Notice of Default and Demand Statement, PHB will follow the legal enforcement steps in accordance with Section H.1.(2) of these Rules.
- (2) **Default during Compliance Period.**
 - (a) **Notice of Default and Demand Statement.** PHB will issue a Notice of Default and Demand Statement reflecting the amount due from the Second Mortgage Documents and all fees.
 - (b) **Period to cure default.** The Homeowner will have 30 days from the date of the Notice of Default and Demand Statement to pay all fees and the amount due from the Second Mortgage Documents.

- (c) **Legal enforcement.** If the Homeowner does not cure the Default prior to the expiration of the Notice of Default and Demand Statement, PHB will use enforcement as described in the Second Mortgage Documents.
 - (3) **Property tax exemption.** Any remaining property tax exemption will be terminated according to PCC 3.102 or PCC 3.103, as applicable.
3. **Penalties.** Upon issuing a Notice of Default and Demand Statement, PHB may assess and require payment of the following fees:
- (1) **IH Covenant Release Penalty calculation.** PHB will calculate the IH Covenant Release Penalty 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 **Replacement Value.** The number of Minimum IH Units (prior to any Reconfiguration) will be multiplied by \$450,000 to determine the replacement value for the IH Units (Replacement Value);
 - (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; and **Appreciation.** A three percent (3%) simple appreciation per year will be applied to the Replacement Value, rather than a compounded appreciated value, computed from the date of the Notice of Default; and
 - (c) **Years of compliance discount.** The appreciated Replacement Value will be divided by the 99-year Compliance Period. The result will be multiplied by the years remaining in the Compliance Period;
 - (2) **Administrative fees.** PHB will charge administrative fees for processing the Default, based on the fee schedule in effect upon the date of the Notice of Default and Demand Statement;
 - (3) **Default Notice Fee.** PHB may assess a single \$1,000 administrative fee per Building;
 - (4) **Default Daily Penalty.** PHB may assess a daily fee of \$50 that shall begin accruing on the day the Notice of Default and Demand Statement is sent and continuing until all Defaults have been cured;
 - (5) **Repayment of financial incentives.** The Owner is responsible for the repayment of any financial incentives and exemptions received based on the IH Covenant including, but not limited to, property taxes, system development charges, and construction excise taxes, according to each program's code and administrative rules:
 - (a) **Property Tax Exemption.** Pursuant to PCC 3.102 or PCC 3.103, PHB may terminate any property tax exemption at a property that has failed to timely cure a Default under these Rules.
 - (b) **System Development Charges Exemption.** Pursuant to PCC 30.01.095.G. and the terms of any applicable Regulatory Agreement.

PHB may terminate the exemption and make due and payable all previously exempt portions of system development charges applied to IH Units in a Building that has failed to timely cure a Default under these Rules.

- (c) **Affordable Housing Construction Excise Tax Exemption.** Pursuant to PCC 6.08.090 and the terms of any applicable Regulatory Agreement, PHB may terminate the exemption and make due and payable all previously exempt portions of the construction excise tax applied to IH Units in a Building that has failed to timely cure a Default under these Rules; and
- (6) **Additional penalties fees.** PHB The City 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. Failure to pursue penalties by PHB is not a waiver of the IH Program requirements or IH Covenant.
- (7) **Penalties and fees payment and release.** Once all penalties, and any additional fees have been paid in full, the Building will cease to be bound to the restrictions of the IH Covenant.

PHB Commentary on Section H:

- ***H.1. through H.2.:*** *New section was added. Language around default was removed. New language was added to provide transparency to the enforcement process.*
- ***H.3.:*** *The IH Penalty was reformulated to better align with the program. It is no longer tied to the fee-in-lieu. The penalty is now based off of the replacement value of the IH Unit lost. Appreciation is applied. In the original penalty formula the penalty only increased as the compliance period progressed. A discount for years of affordability provided is now included in the formula.*
- ***H.3.(6) & H.3.(7):*** *Language added or amended to provide transparency to the process and requirements.*

I. Communication.

1. Rental Units

- (1) **Building permit review process.** All notifications, applications, requests and communications prior to and during the building permit application review process should be sent to:

Inclusionary-Housing@portlandoregon.gov; or

Portland Housing Bureau c/o Inclusionary Housing Team
1900 SW 4th Ave, Suite 7007
Portland, Oregon 97201

- (2) **Construction & active leasing.** All notifications, applications, requests and communications during the construction of the building and throughout the Compliance Period should be sent to:

assetmanagement@portlandoregon.gov; or

Portland Housing Bureau c/o RAC Team
1900 SW 4th Ave, Suite 7007
Portland, Oregon 97201

2. Homeownership Units

- (1) **Building permit review process.** All notifications, applications, requests and communications prior to the initial sale to a qualified homebuyer should be sent to:

Inclusionary-Housing@portlandoregon.gov; or

Portland Housing Bureau c/o Inclusionary Housing Team
1900 SW 4th Ave, Suite 7007
Portland, Oregon 97201

- (2) **Initial sale & subsequent sales.** All notifications, applications, requests and communications following the sale of the IH Unit to the first homebuyer and throughout the duration of the Compliance Period should be sent to:

indirect@portlandoregon.gov; or

Portland Housing Bureau c/o Development Incentives Team
1900 SW 4th Ave, Suite 7007
Portland, Oregon 97201

PHB Commentary on Section I:

- ***I.1. & I.2.:*** *Language added or amended to provide transparency to the process and requirements of who to communicate with at PHB dependent on the tenancy type of the Building and the stage of construction or Compliance Period.*

Appendix A – Fee-in-Lieu Factor Schedule

Fee-In-Lieu. When the Applicant elects the fee-in-lieu option, the **fee-in-lieu Fee-In-Lieu Factor** per Gross Square Foot (GSF) of the Residential and Residential Related portions of the proposed Building is:

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

Fee per GSF
\$23

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

Fee per GSF
\$27

Fee-In-Lieu Calculation Example:

Occupancy Type	GSF	Percentage of Total GSF
Residential Dwelling Units	25,000	59.52%
Residential Related Space	+ 5,000	11.90%
Combined dedicated Residential & Residential Related	30,000	71.43%
Commercial Space (Does not serve residential units)	10,000	23.81%
Residential and Commercial Shared Spaces	2,000	4.76%
Total	42,000	100.00%

GSF of Residential Dwelling Units	25,000
GSF of Residential Related Space	+ 5,000
GSF of Shared Space	+ 1,429 (71.43% x 2,000 SF)
Total GSF (for FIL calculation)	= 31,429
Central City Plan District Fee-In-Lieu Factor	X \$27/GSF
FIL Payment	= \$848,583 (31,429 X \$27)

3. **Non-IH Program subject.** For Bonus **FAR Floor Area** in non-residential developments **& residential buildings that are not subject to IH Program**

Fee for Bonus Floor Area

\$24 per bonus square foot of Floor Area*

Fee-In-Lieu Calculation Example:

Example of Bonus Floor Area fee calculation	
Project's Proposed Floor Area:	11,326 square feet
Allowable Floor Area:	-10,000 square feet
Bonus Floor Area Needed:	=1,326 square feet
Non-IH Program Subject FIL Factor	\$24/GSF
Bonus Floor Area Fee:	\$31,824 (\$24 x 1,326 square feet)
*A project's eligibility for, and the amount of, bonus floor area is determined by PP&D during the building application review process.	

PHB Commentary on Appendix A:

- *Headers and examples were added to provide transparency to the process regarding how the Fee-In-Lieu is calculated..*

Appendix B – Rent and Utility Allowance Schedule 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: Utility Allowance:

RENT AND UTILITY ALLOWANCE SCHEDULE – DEVELOPMENT INCENTIVES PROJECTS (SDC/MULTE/IH)

Project Information

PROJECT NAME: _____

ALTERNATE NAME: _____

PROJECT ADDRESS: _____

ALTERNATE ADDRESS: _____

SUBMITTED BY: _____

DATE: _____

Unit Information

Number of residential units in project _____

Number of affordable units per the Regulatory Agreement _____

Number of years of affordability per the Regulatory Agreement _____

Utility Allowance Supporting Documentation

With the submission of this Rent and Utility Allowance Schedule, I will provide documentation to support the utility allowance method that will be used. For the Public Housing Authority (PHA) schedule, I will provide the most current schedule with applicable utilities circled or highlighted. For the Energy Consumption Model (ECM), I will provide the report from the DHCS-approved ECM contractor. For all required non-optional fees, I will provide itemized details and amounts. **Note- if utilities are included in the Tenant's Gross Rent and there are NO Non-Optional Fees then the utility allowance is zero(\$0.00).**

In addition to Tenant Paid Rent, please check all applicable utilities that the tenant is **required** to pay:

Utility Responsibility			Non-Optional Fees		
Type of Utility	Provided in Tenant Paid Rent	Paid by Tenant	Fee Type	Is the Fee Optional or Required?	Amount
Heating Utility Expense			Parking		
Cooking Utility Expense			Storage		
Water Heating Utility Expense			Internet/Wi-Fi		
Lights/Other Electric			Renter's Insurance		
Water(W)			Other(s):		
Sewer(S)			Optional Fees Total		\$0.00
Garbage(G)					
Water/Sewer Pass Through*					
W/SLG Pass Through*					

*A utility pass through relates to the pass through of expenses associated with a specific utility or group of utilities. A utility pass through or utility bill-back shall be outlined in the rental agreement. The landlord is responsible for ensuring compliance with all applicable municipal and state laws related to charging and/or billing back a tenant for utility related expenses.

Example: Rent Schedule

Rent Schedule

UNIT NUMBER	UA Method (See tab)	BUILDING IDENTIFICATION NUMBER	INCLUSIONARY HOUSING UNIT?	BEDROOM COUNT	SQUARE FOOTAGE	ADA ACCESSIBLE UNIT?	ADA ADAPTABLE UNIT?	WINDOWLESS UNIT?	BASEMENT UNIT?	INCOME AND RENT MFI LEVEL	2024 HUD BOSTON BOSTON RENT LIMIT	PROPOSED GROSS RENT	ALLOWANCE (UA) & non-optional fees- Submit Supporting	MAXIMUM ALLOWABLE RENT TO TENANT = Proposed Rent minus UA & fees
A-100	PHA	EXAMPLE	Yes	1	450	No	Yes	No	No	60%	\$ 1,269	\$ 1,123	\$ 76	\$ 1,048
														\$0
														\$0
														\$0
														\$0
														\$0
														\$0
														\$0
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														\$0
														\$0
														\$0
														\$0

PHB Commentary on Appendix B:

- *The Static Data Sheet was removed and the Rent and Utility Allowance Schedule Example was added in its place.*

Appendix C- Example: Tenant Income Certification

TENANT INCOME CERTIFICATION <input type="checkbox"/> Initial Certification <input type="checkbox"/> Recertification <input type="checkbox"/> Other _____	Move-In Date: _____ Effective Date: _____
--	--

PART I. DEVELOPMENT DATA		
Property Name: _____	County: _____	BIN: _____
Address: _____	Unit #: _____	# of Bedrooms: _____

PART II. HOUSEHOLD COMPOSITION										
HHI Mbr #	Last Name	First Name	Middle Initial	Relation to Head of Household	Race	Ethnicity	Disabled (Yes/No)	Date of Birth	Full Time Student (Yes/No)	Last 4 Digits of SSN
1										
2										
3										
4										
5										
6										
7										

PART III. GROSS ANNUAL INCOME				
HHI Mbr #	(A) Employment or Wages	(B) Social Security / Pensions	(C) Public Assistance	(D) Other Income
TOTALS				
Add totals from above, (A) - (D), to determine total income.				TOTAL INCOME (E) =

PART IV. INCOME FROM ASSETS				
HHI Mbr #	(F) Type of Asset	(G) CI	(H) Cash Value of Asset	(I) Annual Income From Asset
Enter Column (H)		Current Passbook Rate %	TOTALS	
Total (If over \$5,000) \$ _____ X _____ % = \$ _____			IMPUTED INCOME (J) =	
Enter the greater of: Total of column (I) <u>or</u> Imputed Income (J)			TOTAL INCOME FROM ASSETS (K) =	

Add (E) + (K)	TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES (L) =	
---------------	---	--

HOUSEHOLD CERTIFICATION & SIGNATURES

I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income and assets. I/we agree to notify the landlord immediately if there are changes to the household composition or if any member becomes a full time student during the course of this tenancy. I/we will report any changes in income or household composition that occur between the time this form is signed and the date it takes effect.

Under penalties of perjury, I/we certify that the information presented above is true and correct to the best of my/our knowledge and belief. I/we further understand that providing false representations (to include misleading or incomplete information) herein constitutes an act of fraud and may result in the termination of my/our lease.

Resident Signature	Signature Date	Resident Signature	Signature Date
Resident Signature	Signature Date	Resident Signature	Signature Date

Effective Date of Income Certification: _____ Household Size at Certification: _____

PART V. DETERMINATION OF INCOME ELIGIBILITY

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (k.) on page 1 **\$** _____

RECERTIFICATION ONLY:
 Household Income at Move-in: \$ _____
 Household Size at Move-in: _____
 Current Income Limit Per Family Size: \$ _____
 Increases Rising in Place Limit: \$ _____
 Household Meets Income Restriction at:
 60% 50% 40% 30% _____ %
 Household Income Exceeds Rising in Place Limit at Recertification: Yes No

PART VI. RENT

Tenant Paid Rent (TP) \$ _____ Other non-optional charges: \$ _____
 Utility Allowance (UA) \$ _____ Rent Assistance*: \$ _____
 (*For LIHTC/HOME units only, include as GROSS RENT)

GROSS RENT FOR UNIT: (TP + UA + Other non-optional charges) **\$** _____

Unit Meets Rent Restriction at:
 60% 50% 40% 30% _____ %

Maximum Rent Limit for this unit: \$ _____

PART VII. STUDENT STATUS

ARE ALL OCCUPANTS FULL TIME STUDENTS?
 Yes* No

If yes, enter student exemption*
 Enter Exemption: _____

*Student Exemptions:
 1. TANF assistance
 2. Job Training Program
 3. Single person/dependent child
 4. Married joint return
 5. Previous Foster Care Assistance
 6. **HMULTI/SDC**: All students meet eligibility criteria outlined in section 3-43.B.3 of HUD Handbook 4350.3

PART VIII. PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

<input type="checkbox"/> a. Tax Credit	<input type="checkbox"/> b. HOME	<input type="checkbox"/> c. Risk-Rating Tax Exempt Bond/Conduit	<input type="checkbox"/> d. HOME/Dest-Pool CREATES/PIRE	<input type="checkbox"/> e. _____ <small>(Name of Program)</small>
Income Status	Income Status	Income Status	Income Status	Income Status
<input type="checkbox"/> 50% MFI	<input type="checkbox"/> 50% MFI	<input type="checkbox"/> 50% MFI	<input type="checkbox"/> 50% MFI	<input type="checkbox"/> _____
<input type="checkbox"/> 60% MFI	<input type="checkbox"/> 60% MFI	<input type="checkbox"/> 60% MFI	<input type="checkbox"/> 60% MFI	<input type="checkbox"/> _____
<input type="checkbox"/> 80% MFI	<input type="checkbox"/> 80% MFI	<input type="checkbox"/> 80% MFI	<input type="checkbox"/> 80% MFI	<input type="checkbox"/> _____
<input type="checkbox"/> OI**	<input type="checkbox"/> OI**	<input type="checkbox"/> OI**	<input type="checkbox"/> OI**	<input type="checkbox"/> OI**

**Upon recertification, household may be determined over-income (OI) according to eligibility requirements of the program(s) marked above.

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proof and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible to live in an income/rent-restricted unit in this Project.

 Printed Name of Owner/Representative

 Signature of Owner/Representative

 Signature Date

Appendix D – Examples: Minimum IH Unit calculations

Example 1. Total Minimum IH Unit calculation.

When calculating the required percentage of IH Units in a Building any fractional result will be rounded up to the next whole number. When calculating the 20% percent requirement for Option 1, any partial unit requirement will be rounded down to not exceed 20% percent.

Example A-10 percent of Units: Minimum IH Units to be provided = 1.37; is rounded up to 2 IH Units.

Example B- 20 percent of Units: Minimum IH Units to be provided = 4.67; is rounded down to 4 IH Units

Example 2. Minimum IH Units by Unit Type calculation.

IH Unit Types must be provided at the same ratio within the Building as Market Rate Units specific to each Unit Type. When calculating the required percentage of IH Units by Unit Type 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.

A 20% percent 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%)

Example 3. Unit Types rounding to less than total Minimum IH Units.

When the total number of Minimum IH 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.

Option 2 Selected: Total 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 total = 4 (1 less than required for the total Minimum IH Units)

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

IH Studios = **3**

IH Lofted one-Bedroom = **1**

IH Windowed one-Bedroom = **1**

IH Unit total = 5

Example 4. Unit Types rounding to less than total Minimum IH Units.

When the total number of Minimum IH 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. When all of the Unit Types round out to the same ending decimal, then the Unit Type with the least number of Bedrooms will be rounded up and the Unit Type with the greatest number of Bedrooms will be rounded down.

Option 2 Selected: Total 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 total = 6 (1 more than required for the total Minimum IH Units)

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

IH Studios = **3**

IH Lofted One-Bedroom = **1**

IH Windowed One-Bedroom = **1**

IH Unit total = 5

PHB Commentary on Appendix D:

- *Language added or amended to provide transparency to the process and requirements.*