

HOU-3.04 - Inclusionary Housing Program

Administrative Rules

TABLE OF CONTENTS

A. Definition of Administrative Rules

B. IH Program Goals

C. Definitions

D. Permit Application and IH Program Options

1. IH Program Options
 - (1) Option 1: Build On-Site: Provide 20% (or 15%) of Dwelling Units affordable at 80% MFI
 - (2) Option 2: Build On-Site: Provide 10% (or 8%) of Dwelling Units affordable at 60% MFI
 - (3) Option 3: Build Off-Site: New Construction
 - (4) Option 4: Provide Off-Site: Designate Dwelling Units in an Existing Receiving Building
 - (5) Option 5: Fee-in-Lieu
 - (6) Voluntary Opt-In
2. Application requirements
3. Tax-exemption
4. Articles of Incorporation

E. Development Requirements

1. Reasonable Equivalency
 - (1) Rental Buildings
 - (2) For-sale Buildings
2. Inapplicable Policies
3. Excluded Developments

F. Final Permit Approval

G. Compliance and Reporting Requirements

1. Leasing Rental Units
 - (1) Static Data Sheet
 - (2) Tenant eligibility and rent determination
 - (3) Utility allowance
 - (4) Income recertification
 - (5) Income rising in place
 - (6) Vacancies
 - (7) Marketing
 - (8) Annual reporting and review
 - (9) Transfers of Building ownership
 - (10) Default
 - (11) Penalties
2. For-Sale Units
 - (1) Eligibility
 - (2) Income verification
 - (3) Second Mortgage Documents

- (4) Pricing
 - (5) Appraisal
 - (6) Inspection
 - (7) Property taxes
 - (8) Intent to sell
 - (9) Right of first refusal
 - (10) Definition of Sale
 - (11) Listing and sale timeline
 - (12) Major improvements
 - (13) Death of sole Homeowner
 - (14) Foreclosure
 - (15) Default
 - (16) Exception for Non-Profit Housing Providers
 - (17) Penalties
3. Conversions
 4. Communication

Appendices

Appendix A – Fee-in-Lieu Factor Schedule

Appendix B – Static Data Sheet Example

Appendix C – Minimum IH Unit Examples

A. Definition of Administrative Rules

Portland City Code 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 additional housing units to serve low and moderate-income households. 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:

1. 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;
2. Responsibly allocate resources to increase housing opportunities for families and individuals facing the greatest disparities;
3. Create affordable housing options in high opportunity neighborhoods with access to quality schools, services, amenities and transportation; and
4. Promote a wide range of affordable housing options with regard to size, amenities and locations.

C. Definitions

1. **Applicant.** A Person 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. **Basement.** The portion of a Building that is partly or completely below grade. A minimum of 50% of the total combined area of the walls must be below-grade to be considered a Basement.
3. **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”.
4. **Building.** A structure that has a roof and is enclosed on at least 50% of the area of its sides.
5. **Combined Opportunity Map Score.** Score calculated for individual properties based on data including access to schools, transportation and services such as medical facilities. Scores are available online at PortlandMaps.com, in the Zoning and Districts tab within the Permits and Zoning Section.

6. 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”) of that Building from the Portland Bureau of Development Services (“BDS”).

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 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.

7. 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.

8. 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 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.

9. Continuing Care Retirement Community or CCRC. As defined in ORS 101.020.

10. Dwelling Unit. As defined by PCC Section 33.910 “Dwelling Unit”.

11. Existing Receiving Building. An Existing Receiving Building is a Building for which the Portland Bureau of Development Services (“BDS”) issued 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.

12. Fee-in-Lieu Factor. The factor used to calculate the fee-in-lieu which may not exceed the maximum justifiable cap determined annually by PHB based on the difference in the capitalized market value between market-rate Buildings and Buildings with 20% of the Dwelling Units restricted to be affordable to households earning 80% or less of the MFI as determined annually by HUD.

13. Floating. Floating is the conversion of a Market Rate Unit to a new IH Rental Unit in a Building. Buildings maintain their legally required amount of IH Rental Units while giving flexibility to Owners to fill vacancies. Floating allows IH Rental Units to be located anywhere in a Building and are not fixed by unit number. Units must continue

to meet Reasonable Equivalency standards, pursuant to Section E.1. of these Rules.

14. **Gross Square Feet/Footage/Foot.** As defined through Oregon Structural Specialty Code (2014), 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.”
15. **Homeowner.** The individual(s) on title to a specific IH Homeownership Unit as shown on the latest assessment records in the Office of the County Assessor.
16. **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.
17. **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.
18. **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.
19. **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.
20. **Market Rate Unit.** A Dwelling Unit in a Building with a documented IH Covenant that is not required to comply with the IH Program requirements.
21. **Minimum IH Units.** Buildings must provide the minimum number of IH Units based on the IH Program option selected. Buildings that select IH Option 1 are limited to providing 20% of their units as IH Units. 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 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. Examples of calculating the Minimum IH Units are located in Appendix C.
22. **New Construction Receiving Building.** A New Construction Receiving Building is a Building for which BDS has not yet had 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.

23. **New Construction Receiving Building IH Amendment.** A type of recorded regulatory agreement between the Owner of the New Construction Receiving Building and PHB that sets forth the approval criteria, compliance criteria, and penalty calculation of the transferred IH Units and is recorded on the title to the property. The amendment 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.
24. **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.
25. **Off-Site.** Buildings not considered to be on the same “site” as defined in PCC 33.910.
26. **On-Site.** Buildings considered to be on the same “site”, as defined in PCC 33.910.
27. **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.
28. **PCC.** Means Portland City Code.
29. **Person.** Any Person, partnership, association or corporation.
30. **Receiving Building IH Covenant.** A type of recorded regulatory agreement between the Owner of the Receiving Building and PHB that sets forth the approval criteria, compliance criteria, and penalty calculation of the transferred IH Units and 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.
31. **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.
32. **Residential and Residential Related.** The Gross Square Footage of all Dwelling Units, all space that is used to directly access the Dwelling Units, and all spaces tenants have access to, including but not limited to: hallways, laundry facilities, trash and recycling areas, fitness facilities, and other community and amenity spaces. For space that is the exclusive use of the occupants of the Dwelling Units, the total square footage of the space is included. For space that is shared by the occupants of the Dwelling Units and occupants of other uses in the Building, a percentage of the square footage of the space based on the percentage of the residential use portion of the Building is included in the Gross Square Footage. Square footage for vehicle and bicycle parking is excluded from the Gross Square Footage.

33. **Restriction Period.** The time period between the effective date of the Covenant and either the receipt 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 of COO, the Restriction Period ends, and the Compliance Period begins.
34. **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 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.
35. **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.
36. **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.
37. **Unit Type.** Unit Types are categorized by the number of Bedrooms and the following characteristics within each Dwelling Unit:
 - (1) **Windowless.** Dwelling Units with one or more Bedrooms that do not have a window or door on an exterior wall of the Building that provides natural light to the room even when closed. Units with multiple Bedrooms will be defined as a Windowless Unit Type if any of the Bedrooms in the Dwelling Unit meet the Windowless definition.
 - (2) **Windowed.** Dwelling Units where all Bedrooms have a window or door on an exterior wall of the Building that provides natural light to the room even when closed.
 - (3) **Lofted.** Dwelling Units where the Bedroom is located on a separate level/floor such that it cannot be viewed directly into from the other levels in the Dwelling Unit. Units with multiple Bedrooms will be defined as a Lofted Unit Type if any of the Bedrooms in the Dwelling Unit meet the Lofted definition.
 - (4) **Windowless + Lofted.** Multiple Bedroom Dwelling Unit that has both a Windowless Bedroom and a separate Lofted Bedroom.
 - (5) **Live/Work.** Dwelling Units that are designated by Life Safety Plans Examiner to meet residential occupancy requirements as a Live/Work unit, as defined in Section 419 of the current Oregon Structural Specialty Code.

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 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. Once the BDS issues a building permit to the

Building, the Applicant may not opt to change the IH Program Option selected.

(1) Option 1: Build On-Site: Provide 20% of the Dwelling Units at 80% 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.
 - 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.
 - IV.** 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 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 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 the IH Program requirements (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 from BDS.
- (iii) The IH Units in the Consolidated Building must be reasonably equivalent, pursuant to Section V.A. 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 from the BDS no later than five years from the first Transferring Building receiving its Certificate of Occupancy from the BDS.
 - (vi) Prior to receiving Certificate of Occupancy for each Transferring Building on a site, PHB will recalculate the Minimum IH Units for the Transferring Building.
 - I. If the re-calculated Minimum IH Unit requirement is more, or requires a different configuration of Unit Types, the Transferring Building has an option to either revise the floor plans of its Building to meet the Reasonable Equivalency standards of the available IH Units in the Consolidated Building, provide the Transferring Building's entire IH obligation within its own Building, or pay the fee-in-lieu. If these changes occur after the receipt of the Transferring Building's building permit by the BDS, the Transferring Building will not be eligible to receive incentives otherwise available for the IH Units.
 - (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 must have issued the Certificate of Occupancy 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 its own receipt of a final Certificate of Occupancy, 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, 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 and VII.B.17 of these Rules, except that interest will be computed from the date the Transferring Building received its Certificate of Occupancy from BDS.

2. **Option 2: Build On-Site: Provide 10% of the Dwelling Units at 60% 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.
- (1) PHB staff will determine the IH Unit Types and calculate the Minimum IH Units required.
 - (a) 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.
 - 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. 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.
 - IV. 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 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 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 the IH Program requirements (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 from BDS.
- (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.
- (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 from the BDS no later than five years from the first Transferring Building receiving its Certificate of Occupancy from the BDS.
- (vi) Prior to receiving Certificate of Occupancy for each Transferring Building on a site, PHB will recalculate the Minimum IH Units for the Transferring Building.
 - I. If the re-calculated Minimum IH Unit requirement is more, or requires a different configuration of Unit Types, the Transferring Building has an option to either revise the floor plans of its Building to meet the Reasonable Equivalency standards of the available IH Units in the Consolidated Building; provide the Transferring Building's entire IH obligation within its own Building, or pay the fee-in-lieu. If these changes occur after the receipt of the Transferring Building's building permit by the BDS, the Transferring Building will not be eligible to receive incentives otherwise available for the IH Units.
- (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 must have issued the Certificate of Occupancy 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 its own receipt of a final Certificate of Occupancy, 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, 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.

3. Option 3: Build Off-Site: New Construction. When Applicant elects to build IH Units Off-Site in a separate Building (New Construction Receiving Building) from the Building that is subject to the IH Program requirements (Sending Building), the following criteria apply:

- (1) PHB staff determine the IH Unit Types and calculate the Minimum IH Units required based on the Applicant's selection of:
 - (a) Providing at least 20% of the total number of Dwelling Units in the Sending Building at 60% MFI in a New Construction Receiving Building;
 - or
 - (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.
- (2) The Sending Building will retain any floor area ratio bonus.
- (3) 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.
- (4) 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. 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 from BDS.
- (5) 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.
- (6) 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.
- (7) The New Construction Receiving Building must receive a Certificate of Occupancy from the BDS no later than five years from the Sending Building receiving its Certificate of Occupancy from the BDS or the Sending Building may be subject to financial penalties pursuant to Sections G.1.(11) and G.2.(17) of these Rules.
- (8) Prior to receiving Certificate of Occupancy for a Sending Building, PHB will

recalculate the Minimum IH Units for the Sending Building. If the re-calculated Minimum IH Unit requirement is more, or requires a different configuration of Unit Types, the Sending Building has an option to either revise the floor plans of its Building to meet the Reasonable Equivalency standards of the available IH Units in the New Construction Receiving Building; provide the Sending Building's entire IH obligation within its own Building, or pay the fee-in-lieu. If these changes occur after the receipt of the Sending Building's building permit by the BDS, the Sending Building will not be eligible to receive incentives otherwise available for the IH Units.

- (9)** 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:

 - (a)** BDS must have issued the Certificate of Occupancy to both the Sending Building and the New Construction Receiving Building within the timelines stated in these rules.
 - (b)** 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.
 - (c)** PHB has confirmed that the Sending Building has met all IH Requirements.
 - (d)** 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 its own receipt of a final Certificate of Occupancy, 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, and the Buildings have met all conditions pursuant to Section D.3.(9).
- (10)** 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, 3.101, or 3.101. Applications for tax exemptions must meet the requirements in Section D.3., Tax Exemption, of these Rules.
- (11)** 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.
- (12)** The New Construction Receiving Building must be within a one-half 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.
- (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.

- (15) 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.

4. Option 4: Provide Off-Site: Designate Dwelling Units in an Existing Receiving Building. When Applicant elects to designate IH Units Off-Site in a separate Building (Existing Receiving Building) from the Building that is subject to the IH Program requirements (Sending Building) the following criteria apply:

- (1) 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.
- (2) The Sending Building will retain any floor area ratio bonus.
- (3) 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.
- (4) 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:
 - (a) Location of Existing Receiving Building;
 - (b) Complete Floor Plans (all individual units, common spaces, walls, doors, and windows shown) including all square footages of the Existing Receiving Building; and
 - (c) Leasing schedule.
- (5) The Existing Receiving Building must be no more than one-half mile 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.
- (6) The Existing Receiving Building cannot be supported by any additional subsidy from PHB in which the subsidy directly funds the IH Units. The IH Units in the Existing Receiving Building must either be occupied by an income qualified tenant or homebuyer or be actively marketed for lease or sale by the time the Sending Building receives a Certificate of Occupancy.
 - (a) 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.

- (7) 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.
 - (8) Prior to receiving Certificate of Occupancy for a Sending Building, PHB will recalculate the Minimum IH Units for the Sending Building. If the re-calculated Minimum IH Unit requirement is more, or requires a different configuration of Unit Types, the Sending Building has an option to either revise the floor plans of its Building to meet the Reasonable Equivalency standards of the available IH Units in the Receiving Building; provide the Sending Building's entire IH obligation within its own Building, or pay the fee-in-lieu. If these changes occur after the receipt of the Sending Building's building permit by the BDS, the Sending Building will not be eligible to receive incentives otherwise available for the IH Units.
 - (9) 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:
 - (a) BDS must have issued the Certificate of Occupancy to the Sending Building.
 - (b) The Owner of the Receiving Building must execute and record a Receiving Building IH Covenant on the Receiving Building.
 - (c) PHB has confirmed that the Sending Building has met all IH Requirements.
 - (10) 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.
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 has no additional 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 will determine the total bonus square footage for which a development will be charged.
 7. **Application Requirements.** 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 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.
 8. **Tax Exemption.** If the IH Program option selected includes a tax exemption,

Applicant must complete a Multiple-Unit Limited Tax Exemption (MULTE) Program Application. 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. 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.

9. **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.

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) When using Reconfiguration:
 - I. The IH Units must be reconfigured into Dwelling Units of two or more Bedrooms;
 - II. Applicant may reconfigure all or some of the Minimum IH Units; and
 - III. After Reconfiguration is applied:
 - a. There must be at least one Market Rate Unit that has two or more Bedrooms per reconfigured Dwelling Unit with three Bedrooms; and
 - b. 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% the size of the average of the total Dwelling Units with the same Bedroom count, as measured in square feet.
- (ii) When using Reconfiguration;
 - I. 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% 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 Energy Star rating as the Market Rate Units, which must be certified by a Building's architect prior to BDS issuing the Building's Certificate of Occupancy.
- (2) **For-sale 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% the size of the average of the total units with the same Bedroom count, 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% 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 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 Energy Star rating as the Market Rate Units, which will be certified by a Building's architect prior to BDS issuing the Building's Certificate of Occupancy.

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) 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
 - (d) A CCRC that offers units for sale or rent will be subject to the penalties listed in subsection G.11. of these Rules.

F. Final Permit Approval

Applicants must report construction timeline progress on a quarterly basis to Inclusionary-Housing@portlandoregon.gov. 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 will send the Owner a Welcome Letter detailing the annual compliance and reporting requirements. The Welcome Letter will include an option to schedule a meeting with RAC staff to answer any compliance related questions or concerns. Owners must certify that they have read and understood IH compliance requirements. 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.

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 Guidelines, the priority of the terms should be read as follows: 1) the IH Covenant, 2) these administrative rules, 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.
- (2) **Income eligibility and rent determination.** PHB determines using the HUD's annually published Median Family Income and Rent Chart (MFI and Rent Chart) for the Portland Metropolitan Area. The MFI and Rent Chart is posted and updated annually on the PHB website. PHB will consider all sources of income for every adult living in an IH Rental Unit to determine the household's gross income. Eligible households may make up to or less than the income limits posted in the MFI and Rent Chart. PHB determines the maximum rent for IH Rental Units using the MFI and Rent Chart based on the number of Bedrooms and the restricted MFI level. Maximum rent paid by tenants includes any utility allowance or required expenses to live in an IH Rental Unit (i.e. parking, meal plans, and amenities). Details and instructions on how to apply the MFI and Rent Chart can be found in PHB's Risk Analysis & Compliance Policies & Guidelines located on the PHB website. Leasing an IH Rental Unit to an ineligible household may constitute a default under the IH Covenant and or these Administrative Rules and cause PHB to impose penalties in accordance with Section G.11. of these Rules.
- (3) **Utility allowances.** 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.
 - (a) Owners may choose from one of two methods to determine the utility allowance:
 - (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.
 - (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.
 - (b) To the extent IH Rental Unit tenants 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.
 - (c) No UA is required for utilities paid by the Owner and not reimbursed by the tenant.

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

- (b) 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.
- (c) Leasing an IH Rental Unit to a household earning more than the income restriction may constitute a default under the IH Covenant and these Administrative Rules.
- (d) If a tenant’s income is above the allowable income for the IH Rental Unit, the Owner:
 - (i) Must designate the next available Dwelling Unit as an IH Rental Unit based on the Static Data Sheet, reasonable equivalency, and Unit Type in accordance with the IH Covenant;
 - (ii) May raise the rent on the existing tenant’s unit in accordance with federal, state and local laws;
 - (iii) May revise the expiring lease to allow tenants to continue living in the unit;
 - (iv) May not require tenants 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.
- (5) **Incomes rising in place.** 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 income may increase above the income limit and still have the unit fulfill the Building’s IH Program requirements, based on the following:
 - (a) Tenants in IH Rental Units restricted at 30% MFI, may have income increase up to 80% MFI;
 - (b) Tenants in IH Rental Units restricted at 60% MFI, may have income increase up to 100% MFI; or
 - (c) Tenants in IH Rental Units restricted at 80% MFI, may have income increase up to 120% MFI.
- (6) **Vacancies.** PHB requires that at any given time the number and distribution of IH Rental Units will match those specified in the IH Covenant. To help ensure the predictable leasing of IH Rental Units, Owners must treat IH Rental Units as “Floating”, see Section III, Definitions: Floating.
- (7) **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.
- (8) **Annual reporting and review.** 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. PHB staff will test the information reported in WCMS against the contents of IH Covenant and issue written results for each Building.
 - (a) **Reporting.** An Annual Compliance Test (“ACT”) is sent to the listed

contacts on file with comments and action items to resolve any compliance issues. After the deadline to respond has elapsed, the compliance scores are final. If an ACT is finalized with outstanding compliance issues, the Owner must resolve those issues within the 90-day period to cure or will face default.

- (b) **Inspections.** PHB reserves the right to physically inspect Buildings containing IH Rental Units at any time during regular business hours with advance notice. Inspections may also include an audit of IH related files such as TICs and other information submitted through WCMS. Buildings that are out of compliance may be inspected more frequently until they are brought back into compliance. An inspection report is sent to the listed contacts on file with findings to be resolved. Issues must be resolved, and evidence of their resolution must be provided within the 30-day response period. Failure to do so may prompt additional inspections and or being placed in default.
- (c) **Non-compliance.** In cases of non-compliance, PHB staff may collaborate with 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 waiver or delay by PHB in enforcing a remedy does not constitute a waiver of the applicable reporting requirements or PHB's right to subsequent enforcement of any remedy.
- (9) **Transfers of Building Ownership.** The IH Covenant runs with the land for the length of the Restriction Period and Compliance Period. PHB will not subordinate its IH Covenant to other financing. In cases of foreclosure, PHB may, but will not be required to, consider modifications to the IH Covenant to facilitate resolution of foreclosure proceedings. Upon sale or other transfer of the Building during the Restriction Period or Compliance Period, the provisions of the IH Program must transfer with the property. PHB needs to receive updated property manager information, legal documentation about the new entity to prepare a Consent to Transfer and an Assignment and Assumption Agreement to be executed and recorded on title.
- (10) **Default.** Specific default provisions are contained in the IH Covenant. Defaults that last for more than one (1) reporting cycle will result in penalties pursuant to Section G.1.(11) of these Rules.
- (11) **Penalties.** In the event of a default, PHB may choose, but is not obligated, to negotiate with Owners to bring the Building into compliance. Should default occur and PHB and the Owner cannot agree upon an acceptable remedy, the Owner will owe financial penalties payable to PHB as follows. Failure to pursue Penalties by PHB is not a waiver of the IH Program or IH Covenant.

 - (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;
 - (b) **Interest.** Interest on the entire unpaid fee-in-lieu amount, assessed at the rate of .833% simple interest per month or fraction thereof (10% per annum), computed from the date of default;
 - (c) **Financial incentive.** Repayment of any financial incentives and exemptions received including, but not limited to, system

- development charges, property taxes, and construction excise taxes, according to each program's code and administrative rules; and
- (d) **Additional penalties.** PHB may also pursue any action available at law, in equity, or otherwise, including but not limited to foreclosure, court injunction, or receivership if the financial penalties are not paid in the timeframe prescribed by PHB.
- (e) **Penalty payment.** Once the Penalty has been paid in full the Building will cease to be bound to the restrictions of the IH Covenant.

2. **For-sale units.** 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% MFI for an 80% MFI IH Program option;
 - (ii) 80% MFI for a 60% 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. Approval is granted at the discretion of the PHB Director.
 - (c) Maintain the IH Homeownership Unit as their primary residence
 - (i) Hardship exceptions to the primary residence rule may be granted by PHB for, but not limited to, the following situations: active military duty, temporary relocation to care for an ill or dying family member, or temporary relocation caused by an employer. Hardship waivers will be effective in one-year increments and may be applied for up to three times. Approval is granted at the discretion of the PHB Director.
 - (d) PHB will maintain a list of potential buyers that meet the eligibility requirements for IH Homeownership Units. PHB's list does not preclude sellers from identifying potential buyers through other avenues.
 - (e) All-cash purchases of IH Homeownership Units are not allowed.
 - (f) Cosigners must sign an affidavit stating that they will not occupy the IH Homeownership Unit.
- (2) **Income verification.** MFI is determined using HUD's annually published Median Family Income and Rent chart for the Portland Metropolitan Area. Documentation to verify income includes but is not limited to: last two years of W-2s; most recent 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. The sale pricing calculation includes mortgage payments at 40% of monthly income in accordance with the income level and Unit Type, 5% down, conventional 60-day pricing on interest rates and mortgage insurance, taxes reflecting the average tax exemption value during the exemption period, estimated homeowner's insurance and homeowner's association fees. PHB will determine the resale price for IH Homeownership Units using the annual pricing calculation in place at the time of sale. PHB approved credits from Special Assessments and Capital Improvements, pursuant to Section 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) **Intent to sell.** Homeowners 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. of these Rules, Communication, for contact and mailing address. Homeowner's that do not inform PHB of their intent to sell as described by this rule may be subject to the penalties listed under Section G.2.(17) of these Rules.

- (9) **Right of first refusal.** The Second Mortgage Documents also provide PHB with a right of first refusal to purchase an IH Homeownership Unit intended for sale, 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 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.
- (10) **Definition of Sale.** For the purposes of the IH Program, the following events are considered a sale of the IH Homeownership Unit: selling the IH Homeownership Unit to a buyer as described under Section 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.
- (11) **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 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% MFI for a 60% MFI IH Homeownership Unit or 120% MFI for an 80% 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.
- (12) **Major improvements.** Improvements required by the homeowner's association, "special assessments", and capital improvements are major improvements. Homeowners of IH Homeownership Units may apply 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 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 Built-In appliances purchased within five years of placing the IH Homeownership Units for sale.
- (13) **Death of sole Homeowner.** In the event of the death of the sole title holder, the IH Homeownership Unit can be transferred. The IH Homeownership Unit and new title holder are bound by the Second Mortgage Documents and the IH Program for the remainder of the Compliance Period, however, the new title holder is exempt from Sections G.2.(1)(a) and G.2.(1)(b) of these Rules, Eligibility.
- (14) **Foreclosure.** If a Homeowner of an IH Homeownership Unit is at risk of a bank foreclosure, the Homeowner must notify PHB within 30 days of the default. PHB has the right, but not the obligation, to cure the loan default.
- (15) **Default.** 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.
- (16) **Exception for Non-Profit Housing Providers.** A certified 501(c)(3) housing provider may use its own homeownership program and documents to fulfill the IH 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% 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.
- (17) **Penalties.** Prior to the initial sale of individual IH Homeownership Units, Owners that violate the terms of the IH Program or the IH Covenant are subject to repayment of any and all exemptions they received including, but not limited

to; system development charges, property taxes and construction excise tax in addition to the penalties listed in subsection G.3. of these Rules, Conversions. Homeowners of individual IH Homeownership Units that violate the terms of the IH Program or the Second Mortgage Documents are subject to the payment of the amount stated in the Second Mortgage Documents from the time of purchase of the IH Homeownership Unit and elimination of any remaining property tax exemption.

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 or from a homeownership to a rental property during the Restriction Period or Compliance Period must adhere to the IH Program requirements of the residential use type 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 tax in addition to the penalties listed in subsection (4)(a)-(c) below.
- (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.
- (4) Penalties:
 - (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;
 - (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
 - (c) **Additional penalties.** PHB may also pursue any action available at law, in equity, or otherwise, including but not limited to foreclosure, court injunction, and or receivership if the financial penalties are not paid in the timeframe prescribed by PHB.

- 4. Communication.** All notifications, applications, requests and communications should be sent to: Portland Housing Bureau c/o Inclusionary Housing Team, 1900 SW 4th Ave, Suite 7007, Portland, Oregon 97201.

Appendix A – Fee-in-Lieu Factor Schedule

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

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

Fee per GSF
\$23

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

Fee per GSF
\$27

3. For Bonus FAR in non-residential developments

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

Appendix B – Example: Static Data Sheet

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

Example: Static Data – Utility Allowance

Property:

Address:
Street Address Zip Code

Submitted By:
Name (First, Last) Title Company

Contact Information:
Phone Email

Date Submitted:

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

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

UA: Determined by SEED Analyst	
Unit Type	UA from SEED Analyst
0	
1	
2	
3	
4	

Example: Static Data – Unit Specifics

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

Appendix C – Examples: Minimum IH Unit

Example 1. When calculating the required percentage of IH Units in a Building any fractional result between .1 and .4 will be rounded down to the next whole number and any fractional result between .5 and .9 will be rounded up to the next whole number.

Minimum IH Units to be provided = 1.67; is rounded up to 2 IH Units.

Example 2. IH Unit Types must be provided at the same ratio within the Building as Market Rate Units specific to each Unit Type.

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

Market Rate Units = 80

Bedroom distribution:

20 studios (25%)

40 one-Bedrooms (50%)

20 two-Bedrooms (25%)

IH Units = 20

Bedroom distribution:

5 IH studios (25%)

10 IH one-Bedrooms (50%)

5 IH two-Bedrooms (25%)

Example 3. When the total number of Dwelling Units from each Unit Type is less than the total number of required IH Units, then the Unit Type with the fraction closest to the nearest whole number above it will be rounded up.

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

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

IH studios = 3

IH Lofted one-Bedroom = 1

IH Windowed one-Bedroom = 1 IH Unit

total = 5

Example 4. When the total number of Dwelling Units from each Unit Type is more than the total number of required IH Units, then the Unit Type with the fraction closest to the nearest whole number below it will be rounded down. When all of the Unit Types round out to the same ending decimal, then the smallest Unit Type will be rounded up and the largest Unit Type will be rounded down.

Minimum IH Units to be provided = 4.8, round up to 5.

IH Units to be provided based on Unit Type:

IH Studios = 2.7, rounded to 3

IH Lofted one-Bedrooms = 1.5, rounded to 2 IH

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

Type total = 6

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

IH Studios = 3

IH Lofted One-Bedroom = 1

IH Windowed One-Bedroom = 1 IH Unit

Type total = 5