



## **Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing**

### **Applicability/Conditional Use Requirement**

Division 30, Section 14-487 of the City's Zoning Ordinance requires that development projects creating ten (10) or more new dwelling units for rent or for sale through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements set aside a portion of the project as Workforce Housing.

All developments of ten (10) units or more are conditional uses subject to Planning Board review on the condition that they comply with the requirements set forth in Division 30, Section 14-487.

### **Workforce Housing Minimum**

At least ten percent (10%) of the units in the project shall meet the definition of Workforce Housing Unit for sale. The number of units required is rounded down to a whole number whether the Workforce Unit is provided on- or off-site. A fractional fee-in-lieu would result when the calculation of a project's inclusionary obligation results in a fractional unit. The fractional unit obligation would be provided in the form of a proportional fee-in-lieu. For example, a 19 unit project that provides one Workforce Unit would also pay 90% of the fee-in-lieu. If a Developer prefers to pay a fee-in lieu of each Workforce Unit, the Workforce obligation will be calculated on a fractional value to one tenth. For example, a project creating 26 units of housing would be required to provide two (2) Workforce Units and a fractional obligation of 60% as a fee-in-lieu. If the Developer instead prefers to pay the fee-in lieu of providing Workforce Units the Developer would be required to pay 2.6 times the current rate as established by the City.

### **Household Income Limits**

In accordance with Division 30 of the City's Zoning Ordinance, the sale of Workforce Units will be restricted to households at or below 120% of the area median income (AMI). In order to most effectively target this income level, and based on national best practices, these calculations allow for an "affordability window" of between 110% and 120% AMI. The City will reference Area Median Income figures published annually by HUD for the Portland Metropolitan Statistical Area (MSA) or other income limits as deemed reasonable by the City. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

### **Eligible Households for Workforce Homeownership Units**

At the time of sale, a buyer must be a member(s) of an Eligible Household as defined within the



Background and Definition section of the City's Inclusionary Zoning Guidelines. The Household must occupy the Workforce Homeownership Unit (Workforce Unit) as its principal residence. To purchase a Workforce Unit an Eligible Household must be permanent residents of the United States. The Intent is to limit the risk of a loss of the Unit's affordability restrictions due to foreclosure of a household no longer able to reside in the United States. Household size/composition upon the unit's sale should be appropriate to the size of the unit as outlined in the chart below. For the qualification of households by unit size, the head of the household and spouse/partner are assumed to share a bedroom. Two children whose ages are not excessively disparate, may share a bedroom. Legal custody is required for households including one or more minor children. There will be no fewer than one, nor more than two persons per bedroom.

The City will consider households eligible based on their gross income. The City will use a process similar to what HUD recommends for the HOME program to determine-gross income or another method as deemed reasonable by the City. The Owner or their representative will collect and compile all of the relevant paperwork needed to assess a household's eligibility.

Verification will require sufficient proof of household size and income in the form of mortgage pre-approval letters, official tax statements, W-2 forms, pay stubs, credit reports, bank statements, birth certificates, and any other reasonable documents requested by the City to aid in their efforts to verify whether or not a household is eligible. The City shall have the final approval of whether or not a household meets the income or size requirements of each Workforce Unit prior to closing. The City reserves the right to request proof of income for the last three years from an applicant. The City may request additional information if needed.

The chart below indicates the minimum household size for each unit type based on bedroom count.

	<b>Studio/One-Bed</b>	<b>Two-Bed</b>	<b>Three-Bed</b>	<b>Four-Bed</b>
<b>Minimum Household Size By Bedroom</b>	1	2	3	4

Workforce Units will also be subject to maximum household sizes based on bedroom counts. The following chart outlines the maximum persons allowable per bedroom assuming the occupants meet all other requirements related to qualifications for determining a household such as age of children sharing bedrooms.

	<b>Studio/One-Bed</b>	<b>Two-Bed</b>	<b>Three-Bed</b>	<b>Four-Bed</b>
<b>Maximum Household Size By Bedroom</b>	2	4	6	8

Eligible Households may not qualify if any member of the household owns other residential real estate at the time of application or sale.



The City reserves the right to perform an asset test to help determine a household's income. This may include making certain assumptions about the average returns that would be reasonable to expect from certain investments including stocks, bonds, annuities, mutual funds, dividends, trusts, money market accounts, certificates of deposit (CD's) or other financial instruments. The City may request documentation for the three most recent years to help determine a household's income.

The City reserves the right to perform an asset limitation test for eligibility.

Closing costs and a down payment of up to 20% of the sale price may be gifted to an Eligible Household as outlined in the Workforce Housing Background and Definitions Regulations.

**Maximum Allowable Sale Price**

The calculation of the maximum allowable sales price will be determined by the City. The price will in part be based on the minimum number of bedrooms in each Workforce Unit for sale as outlined in the chart below:

	<b>Studio/One-Bed</b>	<b>Two-Bed</b>	<b>Three-Bed</b>	<b>Four-Bed</b>
<b>Max Sale Price Basis -Household Size</b>	1	2	3	4

For example, the maximum allowable sale price of a two bedroom Workforce Unit will be based on what is affordable to a two (2) person household. A larger household of four (4) persons meeting the income qualifications for their household size would still be able to purchase this unit but the maximum allowable sale price will be calculated based on a two (2) person household. It is important to be clear that this is to calculate the maximum allowable sale price of a Workforce Unit and that units may be sold at lower prices depending on the market, location, and condition of a unit.

The maximum allowable sale price at the initial sale of a Workforce Unit and for any subsequent sales will be based on the following calculation:

- 1) Begin by calculating 30% of the gross monthly income for a household earning 110% AMI as appropriate for the minimum household size for each Workforce Unit by bedroom type.
  - o  $(\text{Household's } 110\% \text{ AMI} \times 0.30) / 12 = \text{monthly income available for housing expenses.}$
- 2) Housing expenses available for studios will be calculated at 85% of the income available for a one person household using the following formula:
  - o  $((\text{Household's } 110\% \text{ AMI} \times 0.30) \times 0.85) / 12 = \text{monthly income available for housing expenses of a studio unit.}$
- 3) That portion of monthly income may be attributed to mortgage payments less other housing related expenses such as real estate taxes, mortgage insurance, condominium/HOA fees, insurance, and utilities.



- Utilities that effect maximum sale price include electricity, heat, hot water, cooking energy, sewer, water and trash collection. The City shall make reasonable assumptions based on a unit's bedroom count as to the monthly cost of each utility. To determine what is reasonable, the City may utilize the figures estimated by HUD and distributed through the Portland Housing Authority annually for similar utility allowances based on a unit's bedroom count. The City shall reserve the right to determine a different metric should the HUD figures be unavailable.
  - Mortgage insurance will be estimated similar to current rates utilized by the Federal Housing Administration (FHA) or another reasonable method as determined by the City. Currently, for 30 year mortgages of less than \$625,000 with Loan to Value (LTV) ratios equal or less than 95%, the FHA utilizes a rate of 80 basis points on the mortgaged amount. The actual rate used in the calculation will be determined at the time the unit is marketed.
- 4) The sale price will then be based off a 30 year fixed rate mortgage with a 5% down payment.
    - It will be allowable for qualified buyers to offer a larger down payment but a down payment larger than 5% will not increase the maximum allowable sale price of a Workforce Unit.
  - 5) Interest rates for the calculation will be the average national mortgage rate over the past thirteen years as determined by the Freddie Mac Primary Mortgage Market Survey or another source as determined reasonable by the City. The interest rate for the calculation will be determined at the time the unit is marketed

The maximum allowable sale price at the initial sale of a Low-Income Unit and for any subsequent sales will be based on the following calculation:

- 1) Begin by calculating 30% of the gross monthly income for a household earning 90% AMI as appropriate for the minimum household size for each Workforce Unit by bedroom type.
  - $(\text{Household's } 90\% \text{ AMI} \times 0.30) / 12 = \text{monthly income available for housing expenses.}$
- 2) Housing expenses available for studios will be calculated at 85% of the income available for a one person household using the following formula:
  - $((\text{Household's } 90\% \text{ AMI} \times 0.30) \times 0.85) / 12 = \text{monthly income available for housing expenses of a studio unit.}$
- 3) Follow steps 3 through 5 as outlined above.

Purchase price limits establish maximum allowable sale prices. An Eligible Household's financial situation will determine the mortgage amount that can be borrowed. This amount may be more or less than the maximum allowable sales price of a particular Workforce Unit. However, at no time shall a Workforce Unit be sold for greater than the maximum allowable sale price as determined by the City.



### **Condominium/HOA Fees**

If the Developer is setting up a new condominium trust or homeownership association (HOA), then the Developer shall present to the City a draft condominium/HOA budget and related governing documents. The City may request quotes and/or justification for costs, including replacement reserves, insurance, water and sewer, utilities, management fees, and other services. The City will have final approval of the initial condominium/HOA fee to ensure that a reasonable front-end calculation of cost in setting initial fees for a Project.

The condominium/HOA fee will be shared proportionately between units based on the City's tax assessment for the value of the units. If assessed values are not available at the time of initial sale of the units than initial sale prices will be used to determine the appropriate share of costs. Workforce Units' tax assessments by the City will take into consideration the Unit's restrictions and assess the Unit's value accordingly. Voting rights within the association will be no more or less than one vote per unit and will not be based on the value of paid fees or other metric as allowable by state law. Condominium/HOA fees for Workforce Units may not increase more than 10% in a single year or 25% in any three year period without a supermajority vote gaining 100% support of the association.

The City shall have a right of first refusal if a Workforce Unit is forced to sell due to increased fees or has become delinquent in its payments and is in risk of foreclosure or any other legal threats to the Unit's affordability restrictions. The City shall also have the option of using City funds to support Workforce Units facing large special assessments that may pose a risk to the Workforce Household's ability to maintain their unit's affordability.

### **Right of First Refusal**

The City of Portland shall have the right of first refusal to purchase any Workforce Unit that is in jeopardy of losing its affordability restrictions due to foreclosure, delinquency of condominium fee payments, or any other cause outside of the agreed upon term of restriction. The City's Right of First Refusal is not intended to infringe upon the ability of a mortgage lender to recapture any money owed by the Workforce Unit's Owner. The intent is to ensure affordability of the unit for Eligible Households.

### **Phasing**

Projects shall not be segmented or phased to avoid compliance with these provisions. In cases where projects are completed in phases, Workforce Units shall be provided in proportion to the development of market rate units unless otherwise permitted through regulations.

### **Integration of Units**

Workforce Units are encouraged to be integrated with the rest of the development, should use a common entrance, and should provide no indications from common areas that these units are Workforce Housing Units.



## Size and Bedroom Count

Workforce Units need not be the same size as other units in the development but the number of bedrooms in such units, either on- or off-site, shall be ten percent (10%) of the total number of bedrooms in the development. For the purposes of this section, every 400 square feet in a market rate unit will count as a bedroom if the actual number of bedrooms in the unit is lower.

## Interior Standards

The design, quality, and materials of Workforce Units interiors need not be the same as market rate units. However, the Workforce Units may not be strategically designed to avoid offering basic amenities similar to what are included in the market rate units such as the following:

### Kitchen

- Refrigerator
- Stove or separate cook top and oven
- Sink Disposal
- Cabinets
- Range Hood
- Microwave (if provided in market rate units)
- Washer Dryer (if provided in market rate units)
- Countertop: Minimum Counter Space not including sink and stove
  - Studio – 4 linear feet
  - 1BR – 6 linear feet
  - 2BR – 8 linear feet
  - 3BR – 10 linear feet

### Bathroom

- Sink
- Shower
- Toilet
- Shower Curtain Rod or Shower Door
- Medicine Cabinet with Mirror or other storage space with a separate mirror

### Flooring

All living space and storage areas shall have a finished floor. The Workforce Units should have the same or comparable floor finishes to the market rate units. However, in order to promote respiratory health, living and dining areas and at least one bedroom should have a surface other than carpet.

### Closets

- All units shall have adequate storage (including common space storage if provided to the market rate units)
- All bedrooms shall have at least one closet including at least one closet for a studio
- All closets shall have a shelf and pole



**Public Funding Sources**

Projects that propose greater levels of affordability than what is required in Division 30 in terms of income levels, term of affordability, or number of units may be eligible for some financial resources through the City at the City's discretion.

**Tax Increment Financing Eligibility**

If at least thirty-three percent (33%) of the units in a development are Workforce Units, the development is eligible to request subsidy funding through an Affordable Housing Tax Increment Financing (TIF) deal, subject to City Council approval.

**Affordable Housing Agreement**

The buyer of each Workforce Unit will be required to sign and record in the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City and to include the affordability restrictions as a covenant to the project's deed. The Affordable Housing Agreement shall be referenced directly in the property's deed unless prohibited by federal, state, or local law. In order to guarantee affordability, this recorded covenant will limit increases in sales price according to the calculation defined by the City and the Eligible Household requirements as they relate to increases in median income. It will limit the incomes of subsequent buyers to the same income limits initially applied. It will also provide a right of first refusal and other purchase rights to the City or its designee (e.g. another Eligible Household, or a nonprofit corporation).

At the time of sale, the Workforce Unit must be the Eligible Household's primary residence. The Unit may not be rented out for short or long term periods to other households.

**Minimum Term of Affordability**

The term of affordability for the required 10% Workforce Units provided shall be defined as follows:

Percentage of Workforce Units Provided	Minimum Term of Affordability
10%	Longest term permitted under federal, state, and local laws and ordinances.
25%	30 Years
50%	20 Years
100%	10 Years

For Workforce Homeownership Units the reduced terms of affordability will apply to the minimum 10% of units required. The additional Workforce Units proposed above 10% shall be affordable at the initial sale with no restrictions placed on subsequent sales of the unit. For example, if a homeownership project proposed to develop 40 units of housing of which 10 units, or 25%, would be reserved as Workforce Units, than four (4) units would have a 30 year term of affordability while the remaining six (6) Workforce Units would be restricted only for the initial sale. Sales must be made through an arm's length arrangement as discussed in greater detail under the Non-



Eligibility/Disqualification section below.

**Reduction of Fees & Priority Review**

Notwithstanding any other provision of Chapter 14 or Chapter 6 of the City's Zoning Ordinance to the contrary, development fees shall be reduced by the City for an eligible project in the manner described in the chart below:

Percentage of new units that are low-income or Workforce Units	Percentage discount of development fees
5% up to but not including 10%	5% reduction
10% up to but not including 15%	10% reduction
15% up to but not including 20%	15% reduction
20% up to but not including 25%	20% reduction
25% or more	25% reduction

**Household Preference**

Preference for Workforce Units shall be given, to the extent permitted under law to Eligible Households, in the following order:

- 1) First time homebuyer
- 2) Current residents of the City who have lived in Portland as their primary residence for the past two years
- 3) Previous residents of the City who were displaced within the last 12 months prior to the Workforce Unit becoming available
- 4) Persons employed full time by the City
- 5) All others

The applicant for a Workforce Unit will be responsible for documenting their preference status under any of the above noted categories. Documentation may include voter registration, utility bills, confirmed leases, bank statements, tax returns, insurance statements, and other reasonable documents as requested by the City or Owner to demonstrate preference status. Households wishing to be considered as a preferred applicant must also have a pre-approval letter from a lending institution demonstrating their ability to qualify for any necessary loan.

Household preference does not preclude Owners from selling to non-preference applicants assuming applicants meet the necessary eligibility requirements and there are more Workforce Units available than preference applicants. Other preference categories may be added to specific projects or to the City's standards at a later date as appropriate.

**Marketing / Selection Process**

Unless otherwise agreed to with the City, the following system will be followed. At least 30 days prior to initial marketing, the Owner shall provide written notice to the City of the expected start of marketing process and occupancy dates of the designated Workforce Units. The Owner will place an





advertisement, approved by the City, in one or more newspapers designated by the City. Interested parties will be given sufficient time to request and return a preliminary application. The Owner will inform the City of any interest from Eligible Households that it receives. From the beginning of the marketing process the City will have the opportunity to list the property on its website for a minimum of 30 days to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their designated representative. The Owner should also reach out to local groups and non-profits who may have connections to interested Eligible Households.

The Owner shall acknowledge in writing the household income limits and max sale price restrictions on the unit to any potential buyers interested in the property prior to finalizing a Purchase and Sale Agreement. At a minimum, this shall include providing prospective buyers with the associated household income limits of 120% AMI in any listing and providing written documentation at any open house or showing stating that this unit carries with it income, maximum sale price and other restrictions.

In each instance that an Owner intends to effect a sale, transfer or disposition of the Property to a third party, prior to listing the property for sale or entering into a purchase and sale agreement, or otherwise taking any steps to consummate the sale of the property, an owner shall first give the City written notice of such intent (the "Notice of Intent") addressed to the City's Housing and Community Development Office. The City shall make the final determination whether or not a potential buyer is qualified, selection preference guidelines have been followed, and the maximum allowable sales price as determined in accordance with the calculation parameters determined by the City.

The Owner shall collect all necessary supporting documents for the City's final approval. The City will, at a minimum, monitor the process and review buyer qualifications, but may work collaboratively with Developers and Owners on marketing, selection, qualification, and orientation. All determinations regarding eligibility and sale price are subject to review and final approval by the City.

### **First Time Homebuyers**

Eligible Households will be considered first time homebuyers if the following criteria are met:

1. None of the parties within the household have had an ownership interest in their home within the last three years;
2. A single parent who has owned a residence while married but no longer holds a financial interest in the home; or

Eligibility for First Time Homebuyer status will be limited to a one time only occurrence per household.

First time homebuyer must provide documentation showing that all relevant applicants within a household have completed a homebuyer education course prior to a Purchase and Sale agreement being signed and before the City may approve the household as being eligible to purchase the Workforce Unit. Exemptions may be made for households who can sufficiently demonstrate expertise in real estate. An example of sufficient expertise would be if a member of the Eligible Household currently works in a residential real estate related field such as a Real Estate Broker. Any



exemption made must be approved by the City.

### **Enforcement**

The Owner will be required to record the AHA and conditions contained therein and shall file a copy of the recorded Agreement which copy shows the usual recording date, with the Cumberland County Registry of Deeds. In the case of off-site Workforce Units, the Owner shall record the AHA in the chain of title for both properties. No occupancy permit shall be issued until complete certified copies of the AHA with any attachment thereto with the recording date(s) noted thereon, are filed with the County and suitable evidence provided to the City.

Without limitation on any other rights of the City, in the event there is a violation of any conditions contained within the AHA, the City may take any one or combination of the following steps to ensure compliance and these enforcement provisions shall be expressly authorized by and contained within the AHA:

- Revocation or the Project's approval, Building Permit, or Certificate of Occupancy;
- Modification of the AHA;
- Injunctive relief to enforce the terms of the AHA;
- Any and all legal expenses incurred by the City or aggrieved tenant(s); and
- A cash payment, as provided for in Division 30 related to fee-in lieu payments, pro-rated to the number of required affordable units, made to the City if the Owner is unable to provide Workforce Units for occupancy as described in the AHA.
- Payment of money damages to the City in an amount at least equal to and as much as double the difference in value of the maximum allowable sale price and the actual sale price.

The Owner may request a certificate from the City stating that the Owner is in compliance with the terms and conditions of the AHA, or stating non-compliance and the actions necessary to come into compliance. The City will execute and deliver such certificate within thirty (30) business days or receipt of a written request for such a certificate.

### **Cash Payment In Lieu of Affordable Units**

All projects including ten (10) or more residential units created through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements must comply with Section 14-487 of the Code. The projects will be required to provide 10% of the total number of units as Workforce housing as defined in Section 14-485 of the Code. Developers of such units are encouraged to provide Workforce Units on-site. However, in accordance with subsection 14-487(e) 4, developers may choose to make a cash contribution to Portland's Housing Trust Fund.

The payment is the same for rental and homeownership projects. The fee for Workforce Units not provided shall be \$100,000 per unit, adjusted annually in the same manner as the fee under Division 29 for Housing Replacement. For projects that are building more than one building in phases, the fee-in lieu payment shall be paid proportionally to the project's phasing. The fee is calculated up to one



tenth of a fractional unit. For example, if a project is proposing 25 units and wants to pay the fee for all units it would be required to pay 2.5 times the current rate as established by the City.

All money shall be due prior to the issuance of a Certificate of Occupancy or another payment method approved by the City.

### **Off-Site Units**

A Developer may choose to satisfy the Workforce Unit requirements by providing these units off-site through the construction of new units, the restriction of existing market rate units, or the conversion of non-residential uses. In addition to the foregoing, all off-site units shall be consistent with the following provisions:

1. Be located within the same Census Block Group as the parcel from which the Project triggering the creation of Workforce Units is located or within 1,500 feet of the Project;
2. Be comparable or larger in size and bedroom count to the average units being created within the associated Project.
3. Be similar in quality to the units being created within the project and if needed, as determined by the City, shall be rehabbed to be similar in quality to a newly constructed unit.

The Developer shall determine the intent for full or partial off-site placement of Workforce Units prior to a project's approval by the City. The City shall not accept off-site units that are run-down or show signs of substantial wear and deterioration. This includes heating systems, appliances, plumbing, roofing, siding, flooring, common areas, windows, landscaping/hardscape, electrical wiring and fixtures, kitchen/bath countertops, fixtures, and cabinets, bath/shower, or other typical elements of a unit or building that are nearing the end of their expected life cycle and may soon need replacement or maintenance. If other amenities such as air conditioning, dishwasher or washer and dryer are provided for the new market rate units than comparable amenities shall be provided for the off-site Workforce Units.

Off-site units shall be delivered safe in accordance with all federal, state and local environmental regulations pertaining to lead paint, asbestos, mold, radon, and any other hazardous conditions common to residential structures. All reasonable tests, including but not limited to lead paint tests and radon tests shall be completed prior to the sale or lease of a unit.

The total required number of Workforce Units off-site will be based on the total number of units created within a project. Similar to the calculation for providing on-site Workforce Units the requirement will round down to the nearest whole number. If the inclusionary obligation results in a fractional unit, then the fractional unit obligation would be provided in the form of a proportional fee-in-lieu. For example, a project creating 26 units of on-site market rate housing would be required to provide two (2) off-site Workforce Units and a fractional obligation of 60% as a fee-in-lieu.

Developers of condominium projects providing off-site Workforce Units may choose to provide the off-site Workforce Units for rent at 100% AMI with City approval. The City will only grant approval if



there is a management plan in place that provides for stable and capable long term management of the Workforce Units by the developer or agreed upon third party. These units will have the same restrictions typical of Workforce Rental Units.

### **Financing**

Workforce Units shall not have a mortgage on a unit that contains the following:

1. A pre-pay penalty or a balloon payment
2. A reverse mortgage
3. An adjustable rate mortgage (ARM)
4. A co-signer
5. An interest only loan
6. The loan to value ratio exceeds 95% of the maximum allowable purchase price

### **Appeals**

A Developer or Owner may appeal to the City Manager if they believe that City misinterpreted Division 30 or any subsequent agreements restricting the Workforce Units. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

### **Non-Eligibility/Disqualification**

No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a Workforce Unit or receive any benefit related in any way to the administration or compliance with the AHA conditions contained therein.

Employees of the Planning Authority will not be eligible for a Workforce Unit in the City.

### **Waiver**

The City reserves the right to waive or amend portions of these regulations on a case by case basis where an Owner is able to sufficiently demonstrate that the need for a waiver is due to the unique circumstances of the property (e.g. in order to make Workforce Units similar in design or size to market rate units) or due to unique physical constraints of the property. The applicant shall bear the burden of presenting substantial evidence to support the grant of a waiver from any portion of these regulations.

Waivers shall not be granted that will have the effect of removing or reducing the minimum of 10% of the total units proposed as Workforce Units available, altering the income limits on eligible households, increasing the maximum allowable sale price or rental rate, or decreasing any fee owed outside of what is stipulated in the above regulations.



Waivers shall be determined by the City's Planning Authority. Owners may appeal the Planning Authority's decision regarding waivers to the City Manager. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.