

Order 82-15/16

Order divided in two parts: No.1 re: Accessory Dwelling Units, No. 2 re: Affordable Housing, inclusionary zoning: 9-0 on 10/19/2015

No. 1 amended to clarify accessory dwelling unit affordability and remove requirement for city water and sewer: 9-0 on 10/19/2015

Passage of No. 1 as amended: 9-0 on 10/19/2015

Passage of No. 2: 7-2 (Brenerman, Suslovic) on 10/19/2015

Effective 11/18/2015

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**CITY OF PORTLAND
IN THE CITY COUNCIL**

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**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE, ARTICLE III. ZONING
Re: Inclusionary Zoning**

**I. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

That Chapter 14, Article III, Sections 14-118, 14-145.3, 14-145.9, 14-332.2 and 14-484 to 14-488 of the Portland City Code are hereby amended to read as follows:

Sec. 14-118. Conditional uses.

The following uses shall be permitted only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses) and any special provisions, standards or requirements specified below:

(a) *Residential:*

1. Reserved.

| ...

5. ~~Alteration Use of a single-family dwelling space existing as of September 3, 2008 on a nonconforming lot to accommodate an accessory additional dwelling units within and clearly subordinate the principal structure provided that~~under the following conditions:

a. This section shall under no conditions permit more than four dwelling units on a

~~lot and shall not allow more than two additional dwelling units on a lot above what would otherwise be permitted; The accessory unit shall have a minimum floor area of four hundred (400) square feet that represents no more than thirty (30) percent of the gross floor area of the principal dwelling unit. Gross floor area shall exclude any floor area that has less than two-thirds of its floor-to-ceiling height above the average adjoining ground level and may include the attic if such space is habitable.~~

- b. ~~Any units created under this section may not be sold as condominium units or otherwise separated from the ownership of at least one of the pre-existing units on the site. The principal dwelling unit shall be located on a lot of no less than four thousand (4,000) square feet and no more than six thousand (6,000) square feet;~~
- c. ~~Any units created under this section must be affordable to households earning up to 80% of AMI and are subject to income verification as further outlined in implementing regulations. Either the accessory or principal dwelling unit shall be occupied by the owner of the lot, except for bona fide absences of a temporary nature;~~
- d. ~~Parking shall be provided as required by Division 20 of this article. The additional units shall have a minimum floor area of four hundred (400) square feet and may not involve removing more than ten percent of the gross floor area of an existing dwelling unit into a new dwelling unit. Gross floor area shall exclude any floor area that has less than two-thirds of its floor-to-ceiling height above the average adjoining ground level and may include the attic if such space is habitable.~~

- e. ~~There shall be no open, outside stairways or fire escapes above the ground floor; and Modifications to existing structures shall be minimal, and be limited to new doors, windows and other openings;~~
- f. ~~Parking shall be provided as required by Division 20 of this article; The project shall be subject to Article V for site plan review and approval and the following additional standards:
 - i. ~~Any additions or exterior alterations such as façade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single family appearance of the building; and~~
 - ii. ~~The scale and surface area of parking, driveways and paved areas shall be arranged and landscaped properly to screen vehicles from adjacent properties and streets.~~~~
- g. ~~There shall be no open, outside stairways or fire escapes above the ground floor; and~~
- h. ~~The project shall be subject to Article V for site plan review and approval and the following additional standards:
 - i. ~~Any additions or exterior alterations such as façade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single family appearance of the building; and~~
 - ii. ~~The scale and surface area of parking, driveways and paved areas shall be arranged and landscaped properly to screen vehicles from adjacent properties and streets.~~~~

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Sec. 14-145.3. Conditional uses.

The following uses are permitted only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses) of this article and any special provisions, standards or requirements specified below:

(a) *Residential:*

1. Accessory dwelling unit within and clearly subordinate to a principal single-family detached dwelling or legal multi-family dwelling, provided that:
 - a. The accessory unit shall be no more than thirty-five (35) percent of the gross habitable floor area of the building and shall have a minimum floor area of four hundred (400) square feet;
 - b. Lot area shall be seventy thousand (70,000) square feet in area, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;
 - c. There shall be no open outside stairways or fire escapes above the ground floor;
 - d. Any additions or exterior alterations such as facade materials, building form, roof pitch and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;
 - e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;
 - f. Either the accessory unit or the principal dwelling shall be occupied by the owner of

the lot on which the principal building is located, except for bonafide temporary absences; ~~and~~

g. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations-~~;~~ and

h. For accessory units created on Peaks Island on existing lawfully non-conforming lots as of May 1, 2015:

i. Shall remain under common ownership with the primary unit on the lot;

ii. Shall not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;

iii. Shall be rented households earning up to 100% of AMI and be subject to income verification as further outlined in implementing regulations;

iv. Shall be rented on an annual basis and may not be used for seasonal or weekly rentals; and

v. Shall be built within the principal building or as an attachment in accordance with subsection (d).

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Sec. 14-145.9. Conditional uses.

The following uses are permitted only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses) of this article and any special provisions, standards or requirements specified below:

(a) *Residential:*

1. Accessory dwelling unit within and clearly subordinate to a principal single-family detached

dwelling or legal multi-family dwelling provided that:

- a. The accessory unit shall be no more than thirty-five (35) percent of the gross floor area of the principal building and shall have a minimum floor area of four hundred (400) square feet;
- b. Lot area shall be thirty thousand (30,000) square feet in area, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;
- c. There shall be no open outside stairways or fire escapes above the ground floor;
- d. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;
- e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;
- f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences; ~~and~~
- g. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations; ~~and-~~
- h. For accessory units created on Peaks Island on existing lawfully non-conforming lots as of May 1, 2015:

- i. Shall remain under common ownership with the primary unit on the lot;
- ii. Shall not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;
- iii. Shall be rented to households earning up to 100% of AMI and are subject to income verification as further outlined in implementing regulations;
- iv. Shall be rented on an annual basis and may not be used for seasonal or weekly rentals; and
- v. Shall be built within the principal building or as an attachment in accordance with subsection (d).

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DIVISION 30. ~~INCENTIVES FOR~~ AFFORDABLE HOUSING

Sec.14-484. Purpose.

~~The city believes that i~~It is in the public interest to promote an adequate supply of affordable housing for ~~its~~the city's residents. The purpose of this division therefore is to offer incentives to developers to include units of affordable housing within development projects, thereby mitigating the impact of market rate housing construction on the limited supply of available land for suitable housing, and helping to meet the housing needs of all economic groups within the city. The city believes that this division will assist in meeting the city's comprehensive goals for affordable housing, in the prevention of overcrowding and deterioration of the limited supply of affordable housing, and by doing so promote the health, safety and welfare of its citizens.

Sec. 14-485. Definitions.

Affordable means that the percentage of income a household is charged in rent and other housing expenses, or must pay in monthly mortgage payments (including insurance and taxes), does not exceed 30% of a household's income, or other amount established in city regulations that does not vary significantly from this amount.

~~Affordable~~ Low-income housing unit for rent means a dwelling unit for which:

- (a) The rent is affordable ~~to~~ a household earning 80% or less of ~~the U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland county Maine for a household of that size~~ Area Median Income (AMI) as defined by the United States Department of Housing and Urban Development (HUD); and
- (b) Annual rent increases for that unit are limited in perpetuity by deed restriction or other legally binding agreement to the percentage increase in the U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland county Maine for a household of that size.

~~Affordable~~ Low-income housing unit for sale means a dwelling unit for which:

- (a) The sale price is affordable to a household earning ~~120~~80% or less of the ~~U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland county Maine for a household of that size~~ HUD AMI; and
- (b) The resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit to an amount that is affordable to a household earning 120% of the U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland county Maine for a household of that size, as calculated for the year in which the sale takes place.

Development fees means:

- (a) The following fees, as described in this chapter: site plan review and inspection fees; subdivision review and inspection fees; and administrative fees; and
- (b) Construction and permit fees as described in chapter 6. "Development fees" does not include any fees charged for reviews conducted by a party other than the city.

Dwelling unit has the same meaning as that term is defined in section 14-47.

Eligible project means a development project:

- (a) That is permissible under the provisions of this chapter in the zone in which it is proposed;
- (b) That will be a multi-family dwelling, as defined in section 14-47, and will not be located in an R-1 or R-2 zone;
- (c) Reserve; and
- (d) That creates new dwelling units, among which is at least one affordable housing unit for rent or 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. Affordable housing units for sale or rent may not differ in exterior design from other units within an eligible project.

Workforce housing unit for rent means a dwelling unit which:

- (a) Is affordable to a household earning less than 100% of HUD AMI; and
- (b) Annual rent increases for that unit are limited by deed restriction or other legally binding agreement to the percentage increase in the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

Workforce housing unit for sale means a dwelling unit for which:

- (a) The purchase price is affordable to a household at 120% of HUD AMI; and
- (b) The resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit, or a lesser term as permitted in regulations, to the percentage increase in the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

Sec. 14-486. Reduction of fees and Priority Review.

Notwithstanding any other provision of this chapter or chapter 6 to the contrary, development fees shall be reduced by the city for an eligible project in the manner described in the following table:

Percentage of new units that are <u>affordable-low-income or workforce units</u>	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

The planning division shall perform its review of an eligible project in as expedited a manner as is practical, without impairing the scope or thoroughness of the review. The planning division may adopt administrative procedures to prioritize review of eligible projects and facilitate this expedited review.

The planning board shall make its best efforts to give priority in scheduling workshops and public hearings related to any plans or applications required for an eligible project that are within the planning board's jurisdiction, without impairing the scope or thoroughness of its review. At the conclusion of these public meetings, the planning board shall promptly issue a

decision on all such plans and applications before it for consideration.

Sec. 14-487. ~~Priority review~~Ensuring Workforce Housing.

~~The planning division shall perform its review of an eligible project in as expedited a manner as is practical, without impairing the scope or thoroughness of the review. The planning division may adopt administrative procedures to prioritize review of eligible projects and facilitate this expedited review.~~

~~The planning board shall make its best efforts to give priority in scheduling workshops and public hearings related to any plans or applications required for an eligible project that are within the planning board's jurisdiction, without impairing the scope or thoroughness of its review. At the conclusion of these public meetings, the planning board shall promptly issue a decision on all such plans and applications before it for consideration.~~

(a). Purpose. Based on the city's Comprehensive Plan and the housing study completed in 2015, it is in the public interest to promote an adequate supply of housing that is affordable to a range of households at different income levels. The purpose of this section is to ensure that housing developments over a certain size provide a portion of workforce housing units and, by doing so, promote the health, safety, and welfare of Portland citizens.

(b). Applicability/Conditional Use Requirement/Sunset. This division shall apply to development projects that create ten 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. This division shall not apply to projects that have submitted complete Master Development Plan, Level III Site Plan, or comparable applications to move forward prior to its effective date.

(c). All Developments of Ten Units or More Conditional Uses. Notwithstanding any language to the contrary in Chapter 14, all developments of ten units or more are conditional uses

subject to Planning Board review on the condition that they comply with the requirements of this section, 14-487.

This section 14-487 shall be in effect for six years following its passage, at which time the overall effectiveness of this section shall be assessed by city planning staff or their agent and either this expiration date shall be deleted or the entire section shall be removed from the Code of Ordinances.

(d) Workforce Housing Minimum. At least ten percent (10%) of the units in the project shall meet the definition of workforce housing unit for sale or for rent. The number of units required is rounded down to a whole number if providing units as per (e)2. below, or shall include a fractional value in cases where a project prefers to pay a fee-in-lieu as per (e)3. below.

(e). Standards.

1. Projects shall not be segmented or phased to avoid compliance with these provisions. In cases where projects are completed in phases, affordable units shall be provided in proportion to the development of market rate units unless otherwise permitted through regulations.
2. 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.
3. 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 10 percent of the total number of bedrooms in the development. For the purposes of this section, for 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.
4. As an alternative to providing workforce housing units, projects may pay a fee in lieu of some or all of the units. In-lieu fees shall be paid into the Housing Trust Fund as defined in Sec. 14-489. The fee for affordable units not provided shall be \$100,000 per unit, adjusted annually in the

same way as the fee under Division 29 for Housing Replacement.

5. Workforce housing units for sale, if converted to workforce housing units for rent, shall become subject to the income limits and other requirements of such units.

6. If at least 33 percent of the units in a development are workforce units, the development is eligible for subsidy through an Affordable Housing TIF, subject to City Council approval.

7. The term of affordability for the required 10 percent workforce units provided shall be defined as follows:

<u>Percentage of Workforce Units Provided</u>	<u>Minimum Term of Affordability for Required Workforce Units</u>
<u>10%</u>	<u>Longest term permitted under federal, state and local laws and ordinances</u>
<u>25%</u>	<u>30 years</u>
<u>50%</u>	<u>20 years</u>
<u>100%</u>	<u>10 years</u>

(f). Implementing Regulations. Regulations to further specify the details of this section shall be developed, including, but not limited to:

1. Specific methodology for income verification;
2. Situations where less than permanent affordability might be considered; and
3. Guidelines for meeting the requirement that off-site units be "in the same neighborhood".

(g). Reporting to City Council. In conjunction with the annual report on the Housing Trust, city planning staff shall annually report on developments subject to this section, the number of units produced, the amount of fee-in-lieu collected, and the overall effectiveness of this section in achieving its stated purpose.

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Sec. 14-332.2. Categorical exceptions and modifications to off-street parking requirements.

Regardless of which zone a project of use is located, the following exceptions to the off-street parking requirements listed above in section 14-332 are additionally hereby established.

- (a) *Home occupations, Section 14-410:* Any need for parking generated by the conduct of a home occupation allowed under section 14-410 of this article shall be met off the street and other than in a required front yard.
- (b) *Incentives for affordable housing- parking reductions:* For each affordable-low-income or workforce housing unit for rent or sale within an eligible project under the Affordable Housing Ordinance established in ~~14-488(b)~~ Division 30 of this article, no more than one (1) parking space shall be required. The planning board may establish a parking requirement for affordable housing units for rent or sale within an eligible project that is less than one (1) parking space per affordable housing unit, regardless of the size of the structure.

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Sec. 14-488. Density, parking and dimensional bonuses and reductions.

Notwithstanding any other provision of this chapter to the contrary:

(a) *Density bonuses.* The maximum number of units that would otherwise be allowed under this chapter shall be increased for an eligible project in the manner described in the following table:

Percentage of new units that are <u>affordable-low-income or workforce</u> units	Percentage increase in maximum number of units allowed
5% up to but not including 10%	5% increase
10% up to but not including 15%	10% increase

15% up to but not including 20%	15% increase
20% up to but not including 25%	20% increase
25% or more	25% increase
<u>Projects Under Section 14- 487</u>	<u>25% increase</u>

(b) *Off-street parking.* Off-street parking is required as provided in Division 20 (off-street parking) of this article.

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