



Hotel Project Inclusionary Zoning Implementation Guidelines for Developers of Low Income Rental Units

Applicability/Conditional Use Requirement

The City of Portland’s Hotel Project Inclusionary Zoning Ordinance (the Hotel IZ Ordinance) appears in Division 30, Section 14-488.1 of the City’s Zoning Ordinance. The Hotel IZ Ordinance requires that new Hotel Projects¹ or the expansion of existing hotel projects by 10 or more rooms within any five-year period are conditional uses subject to Planning Board review and approval. Under the Hotel IZ Ordinance, approval of all such projects shall be conditioned on compliance with the Hotel IZ Ordinance, namely that the requisite number of low-income rental units be included in the project or, in the alternative, that a fee-in-lieu be paid into the City’s Housing Trust Fund.

Low Income Housing Minimum

Under the Hotel IZ Ordinance, all hotel projects must provide one (1) unit of Low-Income Housing for rent on-site for every 28 rooms in the hotel project. The number of units required is rounded up to the nearest increment of 28 rooms. If the developer prefers to pay a fee-in-lieu of each Low-Income rental unit, as outlined in greater detail below, than the fee-in-lieu will be calculated at the then-current per hotel guest room rate. For example, a project creating 150 guest rooms would be required to provide six (6) units of on-site Low-Income dwelling units for rent. If the developer instead prefers to pay the fee in-lieu of providing Low-Income Units, the developer would be required to pay 150 times the current rate as established by the City.

¹ The Hotel IZ Ordinance defines “Hotel Project” to mean: any hotel, inn or motel, as defined in Section 14-47 of Chapter 14 of the Portland City Code, consisting of 10 or more guest rooms for rent. Any such development that exists prior to [February 22, 2019] but expands by 10 or more rooms within any 5 year period will also be considered a Hotel Project.”

Household Income Limit

In accordance with Division 30 of the City's Zoning Ordinance, the rental of Low-Income Units will be restricted to households with income at or below 80% of the area median income (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.

Eligibility of Households for Low-Income Rental Units

At the time the lease is finalized, a tenant must be a member of an Eligible Household as defined within the Household Income Limit and Eligibility of Households for Low-Income Rental Units section of the City's Hotel Project Inclusionary Zoning Implementation Guidelines. The Household must occupy the Low-Income rental unit (Low-Income Unit) as its primary residence.

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. 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 official tax statements, W-2 forms, pay stubs, credit reports, bank statements, birth certificates, and any other reasonable documents requested by the City or Owner to aid in their efforts to verify whether or not a household is eligible. The City may request additional information as needed. The City shall have the final approval of whether or not a household meets the income or size requirements of each Low-Income Unit prior to the signing of the lease.

Low-Income Units shall be a minimum of two-bedrooms. On average, there should be no fewer than one and no more than two persons per bedroom. 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. A household that consists of a pregnant woman will be treated as two people for income and household size determinations.

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

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 place an asset limitation test for eligibility.

If Owners find it difficult to rent a Low-Income Unit to an Eligible Household who meets the established minimum size requirements, they may ask for approval in writing from the City to rent the unit in this singular instance to an Eligible Household smaller than the minimum household size described herein. Reasonable marketing efforts to find Eligible Households of a qualified size should be taken for at least 30 days prior to the City granting a household minimum size waiver. The waiver is only for a single applicant and that household's recertification. Rent shall be calculated based on this smaller household size. Once the Low-Income Unit is vacant, minimum household sizes shall apply to future tenants. The City shall determine if the efforts of the owner to rent the unit to an appropriately sized household have been reasonable. Under no circumstances will households be allowed to exceed the maximum household size.

Primary Residence

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

A household must notify the City if it is absent from the Low-Income Unit for 30 days or more in any 45-day period. If the Household is absent from the Unit for a period exceeding 60 days in one consecutive 365 day period for reasons other than work obligations, health, or emergency reasons than the Household's eligibility will be terminated and their lease shall not be renewed.

Where absences in excess of the above limitation are caused by work obligations, or health reasons or other emergency, the City may require verification of the reasons for the tenants' absence.

Households must comply with such requests for verification work, health, or emergency reasons or their lease will not be renewed. For the purposes of this section, incarceration does not constitute a health or other emergency justifying prolonged absence from the home.

Determination of Affordable Monthly Rent

In accordance with Division 30, rental of Low-Income Units will be restricted to households with income at or below 80% of the Area Median Income (AMI). When determining income eligibility, the City will reference income limits and/or the AMI figures published annually by HUD for the Portland Metropolitan Statistical Area. 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.

To maintain consistency of Low-Income Units within the City, rents will be based on the minimum household size per bedroom rather than the income level of a particular applicant. For example, the minimum household size for a two-bedroom Low-Income Unit is two (2) persons. The income of a two (2) person household will be used to calculate the maximum allowable monthly rent but a family of four (4) would still be eligible to live in the unit assuming they meet the income restrictions for a four (4) person household. To calculate the maximum allowable rent of a Low-Income Unit the City will take 30% gross income per month of the minimum household size allowed per bedroom less utilities. By factoring utilities, the formula accounts the maximum amount an Eligible Household could afford to devote to housing related expenses. The formula to calculate maximum allowable Low-Income Rent is as follows:

0.30 X (annual income based on minimum household size / 12) less utilities = Low-Income Rent

Owners may choose to include some or all utilities within the total rent. Utilities that effect rent calculations include electricity, heat, hot water, cooking energy, sewer, water, and trash collection. For all utilities listed that are not included by the Owner in the rent 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 these figures from HUD at any point be unavailable or a better metric be determined.

The Owner may request first, last, and security deposit from applicants. These three expenses shall not exceed the value of one month of rent and together shall not exceed three months of rent.

Households may choose to pay for on-site parking but shall not be required to pay separately for this amenity. If the Owner requires a parking spot(s) be leased with the Low-Income Unit and charges a separate fee than parking may be counted similarly to the utilities above and shall be subtracted from housing related expenses for calculating the maximum allowable rent.

Owners may not rent to household's utilizing other rental subsidies such as vouchers without the City's approval and never shall the total rent paid be in excess of the allowable Low-Income Unit rent for a determined bedroom size.

Phasing

Projects shall not be segmented or phased to avoid compliance with these provisions.

Integration of Units

Low-Income Units must be provided with distinct entrances from the street to delineate them from the hotel itself.

Unit Size

Based on the average unit size in the City of Portland of approximately 2.2 bedrooms and the average size of affordable housing units of about 2.1 bedrooms, all units provided under this requirement shall have two (2) bedrooms. For the purposes of this section, the overall size of each unit shall be no less than 900 square feet. Final bedroom counts and unit configurations is subject to reasonable review and approval of City staff.

Interior Standards

The Low-Income Units may not be strategically designed to avoid offering basic amenities and should include the following:

Kitchen

- Refrigerator
- Stove or separate cook top and oven
- Sink disposal
- Cabinets
- Range hood
- Microwave
- Washer Dryer in the building
- Countertops: minimum counter space not including sink and stove is 8 linear feet

Bathroom

- Sink
- Shower

Toilet

Shower curtain 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. 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

All bedrooms shall have at least one closet

All closets shall have a shelf and pole

Hotel Inclusionary Zoning Housing Agreement

The Owner will be required to sign and record in the Cumberland County Registry of Deeds a Hotel Inclusionary Zoning Housing Agreement (HIZHA) with the City and to include the affordability restrictions as a covenant in the project's deed(s). The Hotel Inclusionary Zoning 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 rent 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 tenants to the same income limits initially applied.

Term of Affordability

The term of affordability for the Low-Income Units provided shall be the longest term permitted under federal, state, and local laws and ordinances.

Marketing / Selection Process

In each instance that an Owner intends to rent a Low-Income Unit, prior to listing the property for rent or renewing a lease, 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 household is qualified as well as the maximum allowable rental price as determined in accordance with the calculation parameters determined by the City.

Unless otherwise agreed to with the City, the following system will be followed. 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 City shall have the opportunity to list the property on its website for a minimum of 60 days for initial occupancy and 30 days for subsequent rentals during the marketing process to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their designated representative.

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 Owners on marketing, selection, qualification, and orientation. All determinations regarding eligibility and rental amount are subject to review and final approval by the City.

Maintenance of a Waiting List

The Owner is encouraged to maintain a waiting list of Eligible Households who have filed an application or a letter and who meet the qualifications defined herein. Such applications should include the following in order to classify the applicant: gross household income, and household eligibility. It is understood that it is the responsibility of the applicant to update information, which will affect their income, or household eligibility, and that it is not the responsibility of the Owner to verify actual status until a unit becomes available. Final approval of Eligible Households, Low-Income Units, and maximum allowable rent will be decided by the City.

Leases

All leases will be a year in length with the rent consistent throughout the term of the lease. The maximum rent allowable will be determined at initial application and during any recertification process prior to the renewal of a lease. Tenant leases for Low-Income Units shall include the method for updating rents set forth in these guidelines and as a condition of continued eligibility, obligate the household to report all information required by these guidelines, including providing copies of applications, recertifications, and supporting documentation used by administrators of rental subsidies and the City. The lease shall also include the method and implications of the recertification process for Low-Income Units as outlined in these guidelines. Eligible Households renting Low-Income Units will be recertified annually with final approval from the City before renewing a lease.

The Owner shall enforce the lease, if necessary to the point of terminating Eligible Household status, and initiating and prosecuting eviction proceedings against renters of Low-Income Units who do not report as required or whose eligibility lapses.

Recertification of Low-Income Units

Prior to the renewal of a Low-Income Unit's lease, the tenant shall recertify that their household meets the eligibility and household size requirements for the Unit. The same process and documentation will occur as with the initial lease up of the Unit. Unless the Owner can substantiate claims that the tenant has violated terms of the lease or is refusing to adequately comply with the recertification process no other households may be considered to lease the Low-Income Unit unless the current tenant chooses not to renew their lease. The Owner or their representative shall collect and compile the necessary recertification documentation. The City shall have the right of final approval. The Owner or their representative shall maintain records of the recertification process as described in greater detail in the Administration & Record Keeping section below.

Loss of Household Eligibility

A unit shall lose its designation as a Low-Income Unit when it no longer houses an Eligible Household. This will occur upon two consecutive recertifications wherein a once Eligible Household's income is greater than the allowed AMI and is no longer considered eligible. The recertification of all applicants may be subject to final approval from the City. In this scenario, an Owner may, with 90 days' notice, charge Market Rent. The tenant is then eligible for continued occupancy in the particular unit for one additional year following the date of the most recent recertification.

The Owner shall not renew the former Eligible Household's lease and shall return the unit to its use as a Low-Income Unit for Eligible Households.

In the case where the tenant has been accepted as a market rate tenant, the Owner shall pay to the City's Housing Trust the cash value of the difference between the maximum allowable Low-Income rent and the market rent until such time as another Eligible Household has been approved by the City. Occupancy during this transition period by an over-income household will not constitute default under the conditions set forth in the Hotel Inclusionary Zoning Housing Agreement.

Household Failure to Participate in Recertification

A household is considered to have failed to participate in the recertification process after not sufficiently responding to three written requests by the Owner or City within a 60-day period. Tenants may not be asked to participate in a recertification process more than one time per 365 day period. The City shall have final approval in regards to whether sufficient evidence has been provided to substantiate a household's failure to participate in the recertification process.

Eviction

Assuming the lease meets all federal, state, and local requirements, nothing in these guidelines are meant to restrict the right of the Owner to evict any tenant who fails to participate in the recertification process or breaches the lease with the Owner in any way. In no case shall the Owner be required to support an overall higher level of subsidy than intended by the initial distribution as outlined in the Hotel Inclusionary Zoning Agreement. Any and all costs associated with said enforcement or eviction shall be born by the Owner.

Enforcement

The Owner will be required to record the HIZHA 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. No occupancy permit shall be issued until complete certified copies of the HIZHA with any attachment thereto and 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 HIZHA, 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 HIZHA:

- Revocation or the Project's approval, Building Permit, or Certificate of Occupancy;
- Modification of the HIZHA;
- Injunctive relief to enforce the terms of the HIZHA;
- Payment of money damages to the City in an amount at least equal to and as much as double the required rent and the rent being charged for the period of non-compliance;
- 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, prorated to the number of required affordable units, made to the City if the Owner is unable to provide Low-Income for occupancy as described in the HIZHA.

The Owner may request a certificate from the City stating that the Owner is in compliance with the terms and conditions of the HIZHA, 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. Certificates of compliance shall not be required for the leasing of any Low-Income Units.

Administration & Record Keeping

The Eligible Household's application, recertification forms and documentation, and any third

party verifications must be maintained by the Owner throughout the Eligible Household's occupancy and for a period of at least seven (7) years thereafter. These records must be available to the City within ten (10) business days if requested. Applications and waiting lists shall also be kept on file for a period of at least seven (7) years or some other period of time if deemed reasonable by the City.

The Owner will file an annual report to the City within 60 days of the end of each calendar year providing information related to Low-Income Unit vacancies, waitlists, household turnover, household size, household income, market rate rents, recertifications, and any other relevant information.

Cash Payment In Lieu of Affordable Units

All hotel projects shall provide one unit of Low-Income Housing for rent on-site for every 28 rooms in the hotel project which shall meet the standards outlined in Sections 14-488.1 (c) and 14-487 of the code. Developers of such units are encouraged to provide Low-Income Units on-site. However, in accordance with subsection 14-488.1 (d), developers may choose to make a cash contribution to Portland's Housing Trust Fund.

The fee for Low-Income Units not provided shall be \$3,806 per hotel guest room or such different amount as may be set in Chapter 14.

Appeals

A Developer or Owner or Tenant may appeal to the City Manager if they believe that City misinterpreted Division 30 or any subsequent agreements restricting the Low-Income 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 Low-Income Unit or receive any benefit related in any way to the administration or compliance with the HIZHA conditions contained therein.

Employees of the Planning Authority will not be eligible for a Low-Income Unit in the Hotel project.

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 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 requirement that all hotel projects shall provide one unit of Low-Income Housing for rent on-site for every 28 rooms in the hotel project, 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.