

Outline for Inclusionary Zoning Regulations for Middle-Income Rental Units

Eligibility of Households

- **Eligible Household:** Means a household (1) which qualifies, at the time of the mortgage or rental application, with regard to household income as per the U.S. Department of Housing and Urban Development's (HUD) Metropolitan Statistical Area (MSA) for Portland, or for a subsequent metric as approved by the City of South Portland; and (2) the members of which do not, at the time of the mortgage or rental application, own residential real estate. Eligible Households may consist of a single individual of at least 18 years of age or a family. However, households headed by students or other individuals whose principal sources of financial support are from family members and/or are listed as dependents by others are not eligible; (4) Heads of household must be U.S. citizens or permanent resident aliens.
- Unit has to be primary residence. May not be rented out. No extended absences other than for work, health, emergency.
- Unlike Portland, let's reduce complexity by not regulating household size in relation to unit size.
- Income eligibility will be based on adjusted gross income using the federal tax return, or, if not available, other reasonable documents (W-2 forms, pay stubs, etc.). Owner will collect the paperwork.
- City reserves right to perform an asset test to help determine a household's income.

Determination of Affordable Monthly Rent

- City will publish on its website a list of income limits by household (HH) size based on HUD Area Median Income (AMI) figures. HH income may not exceed 100% of AMI.
- To maintain consistency of workforce units across the City, Portland bases rents on the minimum HH size per bedroom rather than on the income level of a particular applicant. Again, let's not do that.
- Maximum allowable Middle-Income Rent = $0.30 \times (\text{adjusted gross income}/12)$ less utilities.
 - Studio apartments = $0.30 \times (\text{AGI}/12) \times 0.85$ less utilities.

- City will use figures estimated by HUD and distributed through the South Portland Housing Authority annually for utility allowances based on bedroom counts for the cost of utilities not included in the rent.
- Owner may request first, last, and security deposit, but the three may not add up to more than three months of rent.
- If there is a parking fee that is not included in the rent, it is counted in the same way as a utility expense.
- Owners may not rent to HHs using other rental subsidies without City approval, and never can the total rent paid exceed the allowable Middle-Income Unit rent.

Affordable Housing Agreement

- Owner will need to sign and record at the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City. It will limit the incomes of subsequent tenants to the same income limits initially applied.

Household Preference

- Preference will be given in the following order:
 - Current residents who have lived in South Portland for the past two years.
 - Previous residents who were displaced within 12 months prior to the Middle-Income Unit becoming available.
 - Persons employed full-time by the City
 - All others

Marketing/Selection Process

- Owner has to give City notice of intent to rent a Middle-Income Unit. City will make the final determination whether a potential HH is qualified.
 - Owner places an ad, approved by the City, in one or more newspapers designated by the City.
 - City shall have the opportunity to list the property on its website for 30 days; any inquiries will be forwarded to the Owner.
 - Owner collects all necessary supporting documents for City's final approval; City may work collaboratively with Owner on marketing, selection, etc.

Maintenance of a Waiting List

- The Owner is encouraged to maintain a waiting list of Eligible Households with information that includes preferred status and HH eligibility.

Leases

- All leases will be a year in length.
- Leases shall include the method for updating rents and obligate the HH to report all required information.
- Lease will include the provisions related to the required annual recertification of the HH's eligibility. HH's need to be recertified annually prior to renewing a lease.

"Floating" Workforce Units

- Prior to project approval, the Owner and City will agree on the distribution, size, and bedroom type of the Middle-Income Units.
- Different units can be designated as Middle-Income Units over the life of the development with City approval.

Recertification of Workforce Units

- Prior to lease renewal the HH has to again meet the eligibility requirements.
- Owner has to continue to lease to that HH if it remains eligible and has not violated the terms of the lease.

Loss of Household Eligibility

- A unit loses its designation as a Middle-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. If this happens, the 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 next available unit of that type should be rented to an Eligible Household in order to restore and maintain the mix originally intended.
- If no suitable alternative unit becomes available to rent as Middle-Income Unit within a year of the formerly eligible HH now paying Market Rent, then the Owner shall not renew the formerly eligible HH's lease and shall return the unit to its use as a Middle-Income Unit for Eligible Households.
- When a tenant has been accepted as a market rate tenant, the Owner shall pay to the City Housing Trust the cash value of the difference between the maximum

allowable Middle-Income rent and the market rent until such time as another unit has been approved by the City and been occupied by an Eligible Household.

Household Failure to Participate in Recertification

- A HH is considered to have failed to participate in the recertification process after not sufficiently responding to three written requests by the Owner of City with a 60-day period.

Eviction

- Nothing in the regulations are meant to restrict an Owner's right to evict any tenant who breaches the lease in any way.

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 Department will not be eligible for a Workforce Unit in the City.

Enforcement

- No occupancy permit (OC) shall be issued until the Affordable Housing Agreement (AHA) is recorded at the County.
- Steps the City may take in the event of violations to ensure compliance with the AHA:
 - Revocation of the project's approval, building permit, or OC.
 - Modification of the AHA.
 - Injunctive relief.
 - Payment of money damages to the City in an amount at least equal to and as much as double the [difference between?] 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).
 - A pro-rated fee-in-lieu cash payment, as set out in the Ordinance, if the Owner is unable to provide Middle-Income Units for occupancy as described in the AHA.

Administration and Record Keeping

- The Owner must keep the Eligible Household's application, recertification forms and documentation, and any third-party verifications for at least seven (7) years.
- The Owner shall provide the City with an annual report within 60 days of the end of each calendar year providing information related to Middle-Income Unit vacancies, waitlists, HH turnover, HH size, HH income, market rate rents, recertifications, and any other relevant information.

Appeals

- An Owner or Tenant may appeal to the City Manager if they believe the City has misinterpreted the Ordinance or AHA.

Waiver

- The City reserves the right to waive or amend portions of the regulations on a case by case basis where an Owner can demonstrate that the need for a waiver is due to the unique circumstances of the property (e.g. in order to make Middle-Income Units similar in design or size to market rate units) or due to unique physical constraints of the property. The applicant has the burden of presenting substantial evidence to support the grant of a waiver.
- Waivers shall not be granted that will have the effect of removing or reducing the minimum of 10% of the total units proposed as Middle-Income 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 Director. Owners may appeal the Planning Director'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.