

OREGON HOUSING AND COMMUNITY SERVICES

DIVISION 13

VERTICAL HOUSING PROGRAM

813-013-0001

Purpose and Objectives

(1) OAR chapter 813, division 013, is promulgated to carry out the provisions of ORS 307.841 to 307.867 (the "Act"), as they pertain to the administration by the Housing and Community Services Department (the "Department") of the Vertical Housing Program described herein (the "program"). The Act, this division and other applicable rules of the department's rules, related documents, and applicable the related Department determinations and orders of the Department constitute the Department's Vertical Housing Program (Pprogram). The basic purpose of the Pprogram is to encourage Cconstruction or Rrehabilitation of eligible properties in targeted areas of communities appropriately targeted under the Pprogram in order to augment the availability of suitableappropriate housing and to revitalize involvedsuch communities. Division 013 sets forth relevant aspects of the Pprogram, including processes and criteria for the designation of Vvertical Hhousing Ddevelopment Zzones ("VHDZs"), for the application and approval of Ccertified Pprojects, for the calculation of any applicable partial property tax exemptions, and for the monitoring and maintenance of properties as qualifying Ccertified Pprojects.

(2) Division 013 is not meant to interfere with the direct administration of property tax assessments by county assessors and does not supersede administrative rules of the Department of Revenue in OAR Cchapter 150 pertaining to the valuation of property for purposes of property tax assessments, including as adopted or amended in the future for such purposes.

Stat. Auth.: ORS 456.555, 307.841 - 307.867

Stats. Implemented: ORS 456.555, 307.841 - 307.867

813-013-0005

Definitions

As used in this ~~D~~ivision 013, unless the context indicates otherwise:

(1) "Certified ~~P~~roject" or "project" means a multi-story development within a VHDZ that the ~~D~~epartment certifies as a ~~V~~ertical ~~H~~ousing ~~D~~evelopment ~~P~~roject qualifying for a vertical housing partial property tax exemption under the Act based on a proposal and description from a ~~P~~roject ~~A~~pplicant that conforms to ~~D~~epartment requirements.

Certified ~~P~~rojects approved by Business Oregon (formerly known as the Economic and Community Development Department of the ~~S~~tate of Oregon ~~{ or "OECDD" }~~ prior to November 4, 2005, continue as ~~C~~ertified ~~P~~rojects notwithstanding assumption of administration of the ~~P~~rogram by the ~~D~~epartment on November 4, 2005. Such prior OECDD ~~C~~ertified ~~P~~rojects continue to maintain their accompanying partial property tax exemptions throughout their original terms unless all or part of such ~~C~~ertified ~~P~~rojects are subsequently modified or decertified by the ~~D~~epartment. The prior OECDD ~~C~~ertified ~~P~~rojects are subject to the ongoing reporting and other requirements of this division 013.

(2) "Construction" means the development of land, and the new construction of improvements to land as further described in this ~~D~~ivision 013.

(3) "Core ~~A~~rea of an ~~U~~rban ~~C~~enter" or "core area" means the central business district or downtown area of a community of any size, whether or not that community is incorporated. While VHDZs need not include a ~~C~~ore ~~A~~rea of an ~~U~~rban ~~C~~enter, an application to establish a VHDZ should identify whether or not the proposed VHDZ includes a ~~C~~ore ~~A~~rea ~~of an Urban Center~~ and describe the core areas so included.

Among other factors determined to be relevant by the department, ~~T~~he ~~D~~epartment may consider such information or the failure to provide same in determining the merits of the proposed VHDZ. It also may consider and the core area's proximity and relationship to the needs and activities of VHDZ project residents. Core ~~A~~reas of ~~U~~rban ~~C~~enters typically consist of one or more of the following:

(a) An existing central business district or downtown area according to the jurisdiction's zoning ordinances, the U.S. Census Bureau, or comparable sources of definition or designation;

- (b) A defined central city, regional center, town center, main street and/or a station community in the Portland Metro 2040 Regional Growth Concept or a nodal development area in the Eugene-Springfield Metropolitan Area Transportation Plan;
- (c) An area satisfying the definition for a commercial node, commercial center, community center, special transportation area or urban business area in the Oregon Highway Plan;
- (d) A transit-oriented development or pedestrian/restricted-access district in the acknowledged comprehensive plan of the jurisdiction; or
- (e) A similar type of area under official criteria, designation or standards.

(4) "Department" means the Housing and Community Services Department of the ~~S~~state of Oregon.

(5) "Director" means the ~~D~~irector of the ~~Housing and Community Services~~ ~~D~~epartment or someone within the ~~D~~epartment authorized to act on behalf of the ~~D~~irector for purposes of the ~~P~~rogram.

(6) "District" means a local taxing district

~~(67)~~ "Equalized ~~F~~loor" means the quotient that results from the division of the total square footage of a ~~a-~~ certified ~~P~~project, ~~(excluding land and ancillary improvements (as determined by the ~~D~~epartment) by the number of actual floors of the non-ancillary improvements of the ~~P~~project that are at least 500 square feet per floor unless the ~~D~~epartment, in its discretion, increases the minimum square footage or otherwise qualifies the actual floors of a ~~P~~project eligible to be used as a divisor in determining the ~~E~~qualized ~~F~~loor quotient. Factors that the ~~D~~epartment may consider in determining whether or not to increase the square footage minimum or to impose other conditions for a qualifying divisor floor include, but are not limited to the following:~~

- (a) The proximity of the actual floor under consideration to other floors in the ~~P~~project;
- (b) The extent of ~~C~~onstruction or ~~R~~ehabilitation on the actual floor under consideration;
- (c) The use intended for the actual floor under consideration;
- (d) The availability of the actual floor under consideration for use by prospective project tenants;

(e) No partial property tax exemption will be awarded for a partial Equalized Floor of residential housing and the maximum number of Equalized Floors in a Project is four (4). Accordingly, the Department will determine the number of residential Equalized Floors in a Project available for calculating a corresponding property tax exemption by capping potential Equalized Floors at four and by rounding down to the next complete Equalized Floor of residential housing. In other words, a Certified Project will contain exactly 1, 2, 3, or 4 residential Equalized Floors reflecting the number of complete Equalized Floors of a residential housing in a Project up to the maximum four(4) Equalized Floors;

(f) Land, Patios, deck space, ~~and~~ parking, and other ancillary improvements normally will not be included by the Department in the determination of Equalized Floors. The Department may include any or all of such space in its determination of Equalized Floors if it concludes that such space is critical for the viability of the Project. Factors that the Department may consider in reaching such a conclusion include, but are not limited to the following:

(A) The effect of such spaces upon the economic viability of the Project;

(B) The degree to which such spaces are integral to the habitability of residential housing in the Project;

(C) The benefit of such spaces with respect to the revitalization of the community in which the Project is located; and

(D) The degree to which inclusion of such spaces modifies the calculation of Equalized Floors.

(78) "Light Rail Station Area" means, consistent with ORS 307.603(3), an area defined in regional or local transportation plans to be within a one-half mile radius of an existing or planned Light Rail Station. While VHDZs need not necessarily include a Light Rail Station Area, a VHDZ Applicant must identify in a VHDZ application what part of the VHDZ, if any, does or will include a Light Rail Station Area. The Department may consider such information or the failure to provide same in determining the merits of a proposed VHDZ and its potential relationship to overall transportation needs.

(89) "Low-income Residential Housing" means housing that is restricted to occupancy by persons or families whose initial income at occupancy or initial certification of the project is no greater than 80 percent of area median income, adjusted for family size, as determined by the Department. Owners must provide evidence satisfactory to the Department of such resident eligibility as required by the Department.

(910) "Non-Residential Areas" means square footage within a Certified Project used other than primarily for Residential Use or as common areas available primarily for Residential Use by residents of the residential housing within a Certified Project. Non-residential areas may include but are not limited to building features that are elements of construction including corridors, elevators, stairways, lobbies, mechanical rooms, and community rooms. Non-residential areas may include units designated as live-work spaces in accordance with local zoning requirements.

(110) "Project Applicant" means an owner of property within a VHDZ, who applies in a manner consistent with this Division, to have any or all such property approved by the Department as a Certified Project.

(124) "Rehabilitation" means the substantial repair or replacement of improvements (including fixtures) or land developments. In determining whether or not proposed or completed Rehabilitation is satisfactory or substantial, the Department may consider factors including, but not limited to:

(a) The quality and adequacy of design, materials and workmanship;

(b) The quantity of Rehabilitation in proportion to the total cost of the Project and between the area devoted to Residential Use and area devoted to the amount of Non-Residential use area;

(c) The distribution of Rehabilitation throughout the Project, including as it relates to the habitability of residential areas, and particularly Low-income Residential Housing areas; and

(d) The value of the improvements on a project. Generally, the value of the improvements must be at least 20% of the real market value of the entire project on the

last certified assessment roll before the Department, in consideration of other factors, will deem rehabilitation to be "substantial" in nature.

Generally, the value of the improvements on a Project must be at least 20% of the real market value of the entire Project on the last certified assessment roll before the Department, in consideration of other factors, will deem a proposed Rehabilitation to be "substantial" in nature.

(132) "Residential Use" means regular, sustained occupancy of a residential unit in the improvement project by a person or family as the person's or family's primary domicile, including residential units/areas used primarily for transitional housing purposes, but not units areas and related areas used primarily as:

(a) Hotels, motels, hostels, rooming houses, bed & breakfast operations or other such temporary or transient accommodations; or

(b) Nursing homes, hospital-type in-patient facilities or other living arrangements, even of an enduring nature, where the character of the environment is predominately care-oriented rather than solely residential.

~~(13) "Special District" means a Local Taxing District that is also of a type listed under ORS 198.010 or 198.180.~~

(14) "Transit Oriented Area" means, consistent with ORS 307.603(6), an area defined in regional or local transportation plans to be within one-quarter mile of a fixed route transit service. While VHDZs need not include a Transit Oriented Area, a VHDZ Applicant must describe what parts of the proposed VHDZ, if any, includes a Transit Oriented Area. The Department may consider such information, or the failure to provide same, in determining the merits of the proposed VHDZ and its potential relationship to established transit systems within the relevant community.

(15) "Vertical Housing Development Project" or "Project" means the construction or Rehabilitation of a multiple-story building, or a group of buildings, including at least one multiple-story building, so that a portion of the Project may be dedicated to Residential Uses and a portion of the Project may be dedicated for use as Non-Residential Areas.

(16) "Vertical **H**ousing **D**evelopment **Z**one" or "VHDZ" or "**Z**one" means an area that has been and remains designated by the **D**epartment as a **V**ertical **H**ousing **D**evelopment **Z**one or an area that was officially designated by Business Oregon (formerly known as the "Economic and Community Development Department" (OECDD) prior to November 4, 2005, as a **V**ertical **H**ousing **D**evelopment **Z**one and which remains so designated.

(17) "VHDZ **A**pplicant" means one or more cities or counties or a combination thereof, or their authorized agent(s) that ~~which~~ seek the designation of a VHDZ within an area of their jurisdiction by making application to the **D**epartment.

Stat. Auth.: ORS 456.555, 307.841 - 307.867

Stats. Implemented: ORS 456.555, 307.841 - 307.867

813-013-0010

Special-Local Taxing Districts and Zone Applications

(1) To elect not to participate in a VHDZ, a **Special-D**istrict shall, within 45 days after the date on which proper written notification is mailed by the VHDZ **A**pplicant to the **Specia-D**istrict advising of the application to form a VHDZ:

(a) Inform the VHDZ **A**pplicant in writing of its decision to opt out of the VHDZ designation; and

(b) Furnish to the VHDZ **A**pplicant a copy of a resolution or other appropriate official instrument duly adopted and issued by the governing body of the **Special-D**istrict affirming its decision to opt out of the VHDZ designation.

(2)(a) Not later than 30 days after filing the application with the **D**epartment, and not later than 30 days after receiving a notice provided in 813-013-0010(4), the VHDZ **A**pplicant must submit to the **D**epartment, a final or supplemental statement, satisfactory to the **D**epartment identifying the **Special-D**istricts (if any) that have opted out of the VHDZ designation.

(b) The statement required in paragraph (2)(a) shall specifically list each **Special-D**istrict opting out of the VHDZ designation, together with a copy of the instrument(s) provided to the VHDZ **A**pplicant by each such **Special-D**istrict.

(c) Simultaneously with the submission of the statement in paragraph (2)(a), the VHDZ Applicant also shall send a copy of each statement by a Special District opting out of a VHDZ designation to the Special Districts Association of Oregon ("SDAO"), in Salem (Attn: 'Vertical Housing Development Zone') and to other affected Special Districts within the proposed VHDZ that are not part of SDAO.

(3) A Special District that fails to respond according to 813-013-0010(1) will be subject to the VHDZ designation and excluded from being listed as described in 813-013-0010(2).

(4) A Special District that forms after the approval of a VHDZ may opt out of participating in a VHDZ. To opt out, the Special District must provide:

(a) Written notice post-marked to the assessor and VHDZ Applicant on or before July 1 of the first tax year in which it would impose a tax on the Project; and

(b) A copy of a resolution or other appropriate official instrument duly adopted and issued by the governing body of the Special District affirming its decision to opt out of the VHDZ designation.

(5) The decision by a Special District to opt out of a VHDZ will be effective for the tax year that begins on the next July 1, after notification to the county assessor by the Department pursuant to OAR 813-013-0020(1), or by a new Special District pursuant to 813-013-0010(4).

Stat. Auth.: ORS 456.555, 307.841 - 307.867

Stats. Implemented: ORS 456.555, 307.841 - 307.867

813-013-0015

Content and Processing of Zone Applications

(1) A VHDZ Applicant may apply to the Department for the designation of a VHDZ as long as the VHDZ Applicant has provided notification of such intended action to Special Districts within the proposed VHDZ in form satisfactory to the Department not less than 15 calendar days prior to filing the application.

(2) The application must be made in such form and with such detail and information as the Department may require. The Department may require a VHDZ Applicant to

provide supplemental information to and clarification of its application, as the ~~D~~department deems appropriate.

(3) Applications must be delivered to the ~~D~~department at the following address: Oregon Housing and Community Services, ~~Vertical Housing Program, Housing Division~~ 725 Summer Street NE, Suite B, Attn: Vertical Housing Program, Housing Finance Division, PO Box 14508 Salem, Oregon 97301-0409.

(4) An application, at a minimum, must contain:

(a) Copies of the resolutions adopted by the governing body of each city and/or county comprising the VHDZ ~~A~~applicant and requesting (or as applicable, consenting to) designation of the proposed VHDZ;

(b) A listing of all ~~Special Districts~~~~D~~districts within the proposed VHDZ, a copy of the written notification mailed to them, and a signed certification of mailing by the VHDZ ~~A~~applicant to the ~~Special Districts~~~~D~~districts in accordance with 813-013-0015(1);

(c) A description of the area sought by the VHDZ ~~A~~applicant to be designated as the VHDZ, including but not limited to a scale map clearly showing the proposed VHDZ boundary and a complete list of property tax accounts with corresponding tax lot numbers to be encompassed by the VHDZ. A designated VHDZ may include separate, non-contiguous property areas. VHDZ boundaries also may be designated vertically to limit the height and/or the number of floors of structures that may qualify as part of a ~~C~~certified ~~P~~project within various parts of the VHDZ; and

(d) Documentation satisfactory to the ~~D~~department establishing that the area proposed for VHDZ designation is within the jurisdiction(s) of the VHDZ ~~A~~applicant.

(5) The ~~D~~department will act reasonably to review applications submitted by a VHDZ ~~A~~applicant.

(6) The ~~D~~department may conduct its own investigation, including the procurement and review of materials and information outside of the application, to assist it in its review or reconsideration of an application.

(7) The ~~D~~director will endeavor to approve or deny applications within 60 days of the ~~D~~department's receipt of a complete application, the receipt of such other information or clarification as it may require of the VHDZ ~~A~~applicant, and the completion of any

Department investigation. The Department will not approve any application before receiving statements required under 813-013-0015(4). The Department may decline further consideration of or deny any application if it determines that the VHDZ Applicant has been untimely or unresponsive with respect to providing required or requested information.

(8) If an application is denied in whole or in part, the Department will send a written explanation to the VHDZ Applicant of such determination.

(9) The Department may approve or deny any application, in whole or in part, based upon factors including but not limited to:

(a) The VHDZ Applicant's compliance with the requirements of this division 013;

(b) The proposed VHDZ's location inside or outside of the jurisdiction(s) of the VHDZ Applicant;

(c) The accuracy and completeness of the application and any other information requested from the VHDZ Applicant by the Department;

(d) Conformance by the VHDZ Applicant and the proposed VHDZ with applicable law; and

(e) The Department's determination of the suitability of the proposed VHDZ, or parts thereof, for accomplishing the purposes of the Program.

(10) A Department determination to approve or deny any or all of an application is final and not subject to further administrative or judicial review. The Department may reconsider such determinations at any time and to the degree that it determines to be appropriate.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 307.844 - 307.851

813-013-0020

Zone Designations

(1) The Department will send a copy of any designation of a VHDZ to the VHDZ Applicant, the Department of Revenue and to any affected county assessor(s) office. The Department will include with the notification to the county assessor:

- (a) Copies of materials delineating the area of the VHDZ; and
- (b) The name of any ~~Special District~~District that opted out of the VHDZ.
- (2) Once designated, a VHDZ shall continue to exist indefinitely, except as provided otherwise in this division 013.
- (3) The boundary of a VHDZ may be modified. To modify a VHDZ, the VHDZ Applicant must apply for such modification to the ~~D~~epartment in accordance with the same procedures established herein for the approval of a VHDZ, except the notice to ~~Special Districts~~Districts required under OAR 813-013-0015(4) is only required for any ~~Special Districts~~Districts that are included in new territory added by the boundary modification. A ~~C~~ertified Project will continue to have its associated tax exemptions throughout the initial designated term of those exemptions, regardless of any subsequent modification of the VHDZ.
- (4) VHDZ Applicants may seek to have the ~~D~~epartment approve multiple VHDZs within their jurisdictions.
- (5) The boundaries of VHDZs may not overlap. A property may only be in one VHDZ.
- Stat. Auth.: ORS 456.555
- Stats. Implemented: ORS 307.844 - 307.851

813-013-0035

Project Certification Applications

- (1) A Project Applicant may file an application for certification of a Project by completing the ~~V~~ertical Housing Project application form, as prescribed by and available from the ~~D~~epartment, and by delivering it during normal business hours or by mail to: Oregon Housing and Community Services, Attn: Vertical Housing Program, Housing Finance Division 725 Summer Street NE, Suite B, ~~PO Box 14508~~ Salem, Oregon 973019-0409.
- (2) Projects must be described in terms of entire tax lots. Projects may not include partial tax lots.
- (3) The Project Applicant must provide both a legible and scaled site plan and a legal description of the land for the proposed Project.

- (4) To be for 'Residential Use' or for 'Non-Residential use' does not mean that a building floor is actually being occupied accordingly, but rather that it is at least intended and ready for such use and is not converted or occupied for a contrary use.
- (5) Low-Income Residential Housing floors or units must be set-aside as such for the entire tax year and occupied only by people who are income eligible in order for the Project to qualify for the low income vertical housing exemptions on land.
- (6) The Non-Residential use of a particular floor or floors may be satisfied even if the entire floor is not devoted to that use.
- (7) The Department will review applications upon their appropriate delivery subject to, but not limited to:
- (a) Applications being complete and consistent with Department requirements; and
 - (b) Delivery to the Department of an application processing charge, monitoring charge and any other related charges. In determining charges for each Project Applicant, the Department may consider factors including, but not limited to, known and expected costs in processing the application, effecting appropriate monitoring of the Project and otherwise administering the Program with respect to the Project. Payment of charges may be made by check or money order payable to the Department and must be submitted along with the Project Application or as otherwise required by the Department.
- (8) For new Construction Projects to qualify for certification, the application must be delivered to the Department before:
- (a) The relevant permitting authority has issued a permanent certificate of occupancy; or
 - (b) If no certificate of occupancy is required, then occupancy otherwise is effectively prevented because the proposed Certified Project has not yet been completed.
- (9) For Rehabilitation Projects to qualify for certification, the application must be delivered to the Department at any stage of the Rehabilitation, but not after Rehabilitation work on the Project is complete. The Department may provide a preliminary certification of the Project pending completion of the Rehabilitation of the Project. Notification of the Project's completion, together with appropriate documentation of the actual costs of the Rehabilitation and the real market value of the

pre-rehabilitated Pproject must be forwarded by the Pproject Applicant to the Department within 90 days of Pproject completion. The Department may certify all or part of a rehabilitated Pproject or of a Pproject where the Rehabilitation is still in progress as a Certified Pproject.

(10) Project Applicants must provide the following information in a manner satisfactory to the Department:

(a) The address and boundaries of the proposed Pproject including the tax lot numbers, a legible and scaled site plan of the proposed Pproject, and a legal description of the land involved in the Pproject for which a partial tax exemption is sought by the Pproject Applicant;

(b) A description of the existing condition of the proposed Pproject property;

(c) A description of the proposed Pproject including, but not limited to current architectural plans that include verifiable square footage measurements, verified statements of Rehabilitation costs; and designation of the number of Pproject floors;

(d) A description of all Non-Residential Areas with related and total square footages, and identification of all non-residential uses;

(e) A description of all Residential Uses and residential areas with related and total residential square footages;

(f) A description of the number and nature of Low-Income Residential Housing units with related and total Low-Income Residential Housing square footages;

(g) Confirmation that the Pproject is entirely located in an established VHDZ;

(h) A commitment from the Pproject Applicant, acceptable to the Department, that the Pproject will be maintained and operated in a manner consistent with the Pproject application and the Pprogram for a time period acceptable to the Department and not less than the term of any related property tax exemption;

(i) A calculation quantifying the various uses of the Pproject in total and by each Equalized Floor including allocations to Residential Uses, the allocations to Low-Income Residential Housing uses, and the allocations to Non-Residential Areas; and;

(j) Such other information as the Department, in its discretion, may require.

(11) The Pproject application must be submitted and received by the Ddepartment on or before the new Cconstruction residential units are ready for occupancy or the Pproject Rrehabilitation is complete;

(12) The Ddepartment may request such other information from a Pproject Applicant and undertake any investigation that it deems appropriate in processing any Pproject application or in the monitoring of a Ccertified Pproject. By filing an application, a Pproject Applicant irrevocably agrees to allow the Ddepartment reasonable access to the Pproject and to Pproject-related documents, including the right to enter onto and inspect the Pproject property and to copy any Pproject-related documents.

(13) To qualify to be a Ccertified Pproject, the Rrehabilitation of any existing improvement must substantially alter and enhance the utility, condition, design or nature of the structure. In its application, the Pproject Applicant must verify such substantial alteration and enhancement. The following actions, by themselves, are not sufficient to satisfy this substantial alteration and enhancement requirement irrespective of cost or implementation throughout a Pproject:

- (a) Ordinary maintenance and repairs;
- (b) Refurbishment or redecoration that merely replaces, updates or restores certain fixtures, surfaces or components; or
- (c) Similar such work of a superficial, obligatory or routine nature.

(14) Unless an exception is granted by the Ddepartment, Pprojects "in progress" at the time of application may include only costs incurred within six (6) months of the application date. Factors that the Ddepartment may consider in determining whether or not to grant an exception to the six (6)-month limitation on costs include, but are not limited to the following:

- (a) Delay due to terrorism or acts of God;
- (b) Delay occasioned by requirements of the Ddepartment;
- (c) Resultant undue hardship to the Pproject Applicant;
- (d) The complexity of the Pproject; and
- (e) The benefit of the Pproject to the Ccommunity.

(15) For applications filed before Pproject completion, the Ddepartment may provide a conditional letter of prospective certification of the Pproject pending its completion. To obtain a final certification of the Pproject, the Pproject Applicant must provide timely notification to the Ddepartment of the Pproject's completion, together with a copy of the certificate of occupancy and other information as the Ddepartment may require. A Pproject Applicant must provide the notice and required documentation to the Ddepartment within 90 days of Pproject completion which is typically the date of the certificate of occupancy unless the Ddepartment determines that another date is more appropriate.

(16) If an application is rejected for failure to meet Ddepartment review requirements, then:

(a) The Ddepartment will notify the Pproject Applicant that the application has been rejected; and

(b) The Ddepartment, at its own discretion, may allow the resubmission of a rejected application for Pproject certification ("as is" or with appropriate corrections or supplementations) or may reconsider a determination by it to reject an application.

Factors that the Ddepartment may consider in allowing a resubmission of a rejected application or the reconsideration of a determination by it to reject an application include, but are not limited to the following:

(A) Whether or not rejection results in undue hardship to the Pproject Applicant;

(B) The best interests of the Ccommunity;

(C) The level of cooperation from the Pproject Applicant;

(D) The level and materiality of initial non-compliance by the Pproject Applicant, and;

(E) Mitigation of any initial non-compliance by the Pproject Applicant.

(c) If the Ddepartment accepts for review a previously rejected application, it may do so, at its sole discretion, on a prospective basis or based upon the original date of filing.

Factors that the Ddepartment may consider in determining the date to apply to a previously rejected application include, but are not limited to the following:

(A) Whether or not occupancy or readiness to occupy residential units in the Pproject has occurred since the original application;

- (B) Whether or not undue hardship would result to the **P**roject **A**pplicant;
 - (C) The best interests of the **C**ommunity; and
 - (D) The level and materiality of non-compliance in the initial application.
- (17) The **d**epartment will evaluate each accepted application to determine whether or not to certify the proposed **p**roject.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 307.844 & 307.857

813-013-0040

Project Criteria

- (1) A **p**roject, to qualify for **d**epartment certification, must satisfy each of the following criteria:
- (a) The **p**roject must be entirely located within an approved VHDZ;
 - (b) The **p**roject must be comprised of a multiple-story building, or a group of buildings, including at least one multiple-story building, so that a portion of the **p**roject is to be used for **n**on-**r**esidential uses and a portion of the **p**roject is to be used for **r**esidential **u**se;
 - (c) A portion of the **p**roject must be committed, to the **d**epartment's satisfaction, for **r**esidential **u**se and a portion of the **p**roject must be committed, to the **d**epartment's satisfaction, for use as **n**on-**r**esidential **u**se.
 - (d) The commitment to **n**on-**r**esidential **u**se must be accomplished as follows:
 - (A) For a **p**roject site that has frontage on one **p**ublic **s**treet, at least 50% of the **p**roject's **p**ublic **s**treet-fronting ground floor facades must be committed for **n**on-**r**esidential use;
 - (B) For a **p**roject site that has frontage on more than one **p**ublic **s**treet, the developer must designate one of the **p**ublic **s**treet as the **p**roject's primary **p**ublic **s**treet. One-hundred percent (100%) of the **p**roject's primary **p**ublic **s**treet-fronting ground floor facades must be committed for **n**on-**r**esidential use;
 - (C) "Committed for **n**on-**r**esidential **u**se" means that all interior spaces adjacent to the **p**ublic **s**treet-frontage exterior facade are constructed to building code standards

for commercial use, are planned for commercial use and/or live-work use upon completion, or both;

(D) For purposes of this rule, "pPublic sStreets" include all publicly-owned streets, but does not include alleys.

(E) For purposes of this rule, "live-work" spaces mean those areas within a project combining space for a commercial or light manufacturing business allowed by local zoning code with a residential living space for the owner of the business and space comprising that owner's household. Any live-work space is deemed to be committed for non-residential use under the program. The work portion of a Live-wWork unit must have direct access to street level entrances of the project.

(e) Each phase of a phased development, whether vertical or horizontal, will be treated as a separate pProject for application purposes.

(f) Each pProject must be on its own independent legal tax lot(s).

(g) Construction or rRehabilitation must be or have been undertaken with respect to each building or associated structure included in the pProject, including but not limited to, additions that expand or enlarge an existing building;

(h) The pProject application must be complete and fully satisfactory to the dDepartment;

(i) The pProject application must be received by the dDepartment on or before the residential units are ready for occupancy (certificate of occupancy). For rRehabilitation not involving tenant displacement, the pProject application must be filed before the rRehabilitation work is complete;

(j) Calculation of eEqualized fFloors is adequately documented;

(k) Documentation, satisfactory to the dDepartment, establishes the costs of cConstruction or rRehabilitation of pProject land developments and improvements, as applicable; and

(l) The pProject square footage calculations do not include parking, patio, or porch areas unless these elements can be demonstrated by pProject aApplicant to the satisfaction of the dDepartment that they are economically necessary to the pProject and the dDepartment otherwise determines that it is appropriate to grant an exception for the inclusion of any or all of such areas in the pProject;

(2) Certified **p**Projects with at least one **e**Equalized **f**Floor of **l**Low-**i**Income **r**Residential **h**Housing may qualify for a partial property tax exemption with respect to the land contained within the tax lot upon which the **c**Certified **p**Project stands, but will not qualify for a partial property tax exemption under the **p**Program for land adjacent to or surrounding the **c**Certified **p**Project contained in separate tax lots. Excess or surplus land that is not necessary for the **p**Project, as determined by the **d**Department, will not be eligible for partial exemption; and-

(3) Low-Income **r**Residential **h**Housing units in the **c**Certified **p**Project must continue to meet the income eligibility requirements for the definition of **l**Low-**i**Income **r**Residential **h**Housing for the entire period for which the vertical housing **p**Project is certified.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 307.844, 307.857

813-013-0050

Project Monitoring/Decertification

(1) A monitoring charge shall be paid by the **p**Project **a**Applicant to the **d**Department at the time of **p**Project application, or as otherwise directed by the **d**Department, to cover the **d**Department's actual and anticipated costs of monitoring and otherwise addressing compliance by the **c**Certified **p**Project with **p**Program requirements including, without limitation ORS 307.841 to 307.861 and other applicable law. The **d**Department may consider factors including but not limited to the following in determining the amount of this monitoring charge:

(a) The size of the **p**Project;

(b) The number of residential housing units;

(c) The amount of commercial space, including any live-work units;

(e) Project uses;

(d) Project location;

(e) The duration and complexity of compliance requirements;

(f) The level and amount of staff or other services involved;

(g) The use of supplies, equipment or fuel; and

- (hi) The number of separate sites and/or buildings.
- (2) If the pProject includes lLow-iIncome rResidential hHousing, the pProject aApplicant must pay a supplemental monitoring charge to the dDepartment at the time of pProject application, or as otherwise directed by the dDepartment, to cover the dDepartment's actual and anticipated costs of monitoring and otherwise addressing compliance by the cCertified pProject with pProgram requirements including, without limitation ORS 307.841 to 307.861 and other applicable law. The dDepartment may consider factors including, but not limited to those in 813-013-0050(1) and the nature of the lLow-iIncome rResidential hHousing population in determining the amount of this supplemental monitoring charge.
- (3) The dDepartment may condition its approval of a cCertified pProject upon payment by pProject aApplicant of the applicable charges described above in 813-013-0050(1) and (2). The dDepartment may void or terminate the certification of all or a portion of a cCertified pProject if such charges, or any part thereof, are not timely paid.
- (4) Modifications to or transfers of ownership of a cCertified pProject must receive prior written approval from the dDepartment. The dDepartment will not unreasonably withhold its approval of such modifications to or transfers of ownership. The dDepartment may void or terminate the certification of all or a portion of a cCertified pProject if modifications to or transfers of ownership are made without its prior written approval except where such modifications or transfers occur by operation of law following death or divorce.
- (5) If there are proposed or actual modifications to or transfers of ownership of the cCertified pProject, the cCertified pProject owner shall notify both the county assessor and the dDepartment of the new owner's name, contact person, mailing address and phone number within 30 days of the change.
- (6) The dDepartment may require the cCertified pProject owner to pay an administrative charge to cover the dDepartment's actual and anticipated costs of reviewing and processing such modification or transfer including, without limitation, effecting the legal review, amendment, execution or recording of related documents. The dDepartment

may consider factors including, but not limited to those in 813-013-0050(1) in determining the amount of this administrative charge.

(7) The dDepartment may condition its approval of a modification to or transfer of ownership in a cCertified pProject upon payment by the cCertified pProject owner of the administrative charge described above in 813-013-0050(6). The dDepartment may void or terminate the certification of all or a portion of a cCertified pProject if such an administrative charge, or any part thereof, is not timely paid.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 307.857, 307.861

813-013-0054

Monitoring; Investigations; Remedies; Decertifications

(1) The Department may monitor and investigate cCertified pProjects for compliance with pProgram requirements and other applicable law as it deems appropriate. By making application for approval of a cCertified pProject, pProject aApplicants irrevocably agree and give their consent that the dDepartment may enter onto the premises of and inspect all portions of the pProject as well as review and copy pProject documents in the course of its monitoring and investigatory actions. Project aApplicants further agree to cooperate fully with such dDepartment monitoring and investigatory actions.

(2) The dDepartment may undertake any remedial action that it determines to be necessary or appropriate to enforce dDepartment interests or pProgram requirements including, without limitation, commitments provided by pProject aApplicants in the final application and cCertification. Remedial actions may include, but are not limited to:

- (a) The requesting of pProject documentation;
- (b) The issuance of orders and directives with respect to the pProject or otherwise;
- (c) The initiation and prosecution of claims or causes of action, whether by administrative hearing, civil action or otherwise (including, without limitation, actions for specific performance, appointment of a receiver for the cCertified pProject, injunction, temporary restraining order, recovery of damages, collection of charges, etc.); and

- (d) The decertification of all or a portion of a cCertified pProject.
- (3) Prior to decertifying all or part of a cCertified pProject and directing the county assessor to disqualify all or part of the pProject for partial property tax exemption treatment, the dDepartment shall issue a decertification notice to the cCertified pProject owner identifying relevant factors among the following:
- (a) The property decertified from the pProject;
 - (b) The number of eEqualized fFloors that have ceased qualifying as residential housing for purposes of the pProgram;
 - (c) The number of eEqualized fFloors that have ceased qualifying as lLow-iIncome rResidential hHousing for purposes of the pProgram;
 - (d) The remaining number of eEqualized fFloors of residential housing in the pProject and a description of the property of each remaining eEqualized fFloor;
 - (e) The remaining number of eEqualized fFloors of lLow-iIncome rResidential hHousing in the pProject and a description of the property of each remaining eEqualized fFloor of lLow-iIncome rResidential hHousing;
 - (f) If the project no longer includes commercial space consistent with the intent of the program; and
 - (fg) Such other information as the dDepartment may determine to provide.
- (4) Prior to issuance of a notice of decertification, the dDepartment will provide the cCertified pProject owner with notice of an opportunity to correct first-time pProgram non-compliance within a reasonable amount of time as determined by the dDepartment. The dDepartment also may elect to provide the cCertified pProject owner with notice of an opportunity to correct repeat pProgram non-compliance within a reasonable amount of time as determined by the dDepartment. In deciding whether or not to provide the cCertified pProject owner with notice of an opportunity to correct repeat pProgram non-compliance and in determining how much time to provide the cCertified pProject owner to correct any noticed pProgram non-compliance, the dDepartment may consider factors including, but not limited to:
- (a) The severity of the non-compliance;
 - (b) The impact of non-compliance upon pProject tenants and patrons;

- (c) The public interest in appropriate and affordable housing;
 - (d) The public interest in the revitalization of relevant communities;
 - (e) The cost and time reasonably necessary to correct pProgram non-compliance; and
 - (f) The past history of compliance and non-compliance by the pProject owner.
- (5) For those instances where the dDepartment has elected to provide notice to a cCertified pProject owner of its non-compliance, if the dDepartment determines that the cCertified pProject owner has failed to correct any noticed pProgram non-compliance within the time allowed by the dDepartment in its notice, the dDepartment may issue the notice of decertification identified above in 813-013-0054(3) and direct the county assessor to disqualify all or a portion of the pProject from property tax exemption under the pProgram. The dDepartment also may issue a notice of decertification and direct the county assessor to disqualify all or a portion of a pProject from property tax exemption under the pProgram with respect to pProgram non-compliance for which it determines not to provide prior notice and an opportunity for non-compliance correction.
- (6) The effective date of a decertification is the effective date of same provided in the notice of decertification identified above in 813-013-0054(3). The effective date of a decertification may be retroactive from the date of the actual notice of decertification only to the commencement of the non-compliance for which the decertification is issued as determined by the dDepartment. In determining whether or not to make the decertification retroactive, the dDepartment may consider factors including, but not limited to those identified above in 813-013-0054(4), the intentional nature of the non-compliance, and when the owner or its agents became aware or reasonably should have become aware of the non-compliance.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 307.861, 307.864