

**NEWBERG AFFORDABLE HOUSING  
FEES/FINANCE SUBCOMMITTEE**

**Wednesday, February 9, 2011**

**7 p.m. to 9 p.m.**

**Newberg City Hall**

**Permit Center Conference Room**

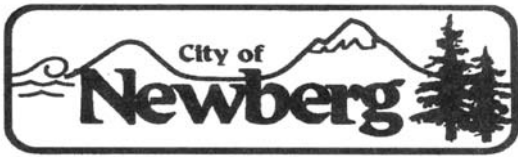
**414 E. First Street, Newberg, OR**

- I. Open meeting**
- II. Roll call**
- III. Discussion of Vertical Housing Program**
- V. Other business**
- VI. Next meetings:**  
Full committee: Wednesday, February 23, 2011
- VII. Adjourn**

**Attachments:**

Vertical Housing Program Memo  
C-3 Map  
Estimate of Financial Effect  
Vertical Housing Fact Sheet  
ORS 307.841 et seq.  
OAR 813, Division 13

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# MEMORANDUM

**Date:** January 31, 2011  
**To:** Affordable Housing Fees/Finance Subcommittee  
**From:** Barton Brierley, AICP  
**RE:** Vertical Housing Development Zones

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At your February 9, 2011 meeting, we will discuss Vertical Housing Development Zones. Vertical Housing Development Zones provide partial 10-year property tax exemption for development of mixed use multi-story projects. The subcommittee should discuss this concept, and decide whether or not to recommend it be implemented.

I have attached a program fact sheet and the applicable statutes and rules on Vertical Housing. Below is additional information.

## **Brief Description of Vertical Housing Program**

The vertical housing program provides partial property tax exemption for development of mixed-use multi-story projects. The project must be mixed-use, which typically means the ground floor is used for commercial space. The upper floors must be housing. If the building has one floor of housing, the building would be 20% tax exempt. If it has two floors of housing, it would be 40% exempt. If it has three floors of housing, it would be 60% exempt. If it has four floors, it would be 80% exempt. The exemption would last 10 years. The land would be exempt in the same manner if the project is dedicated for low income households.

## **Relationship to Affordable Housing Action Plan**

This relates to Action 6.2 of the Affordable Housing Action Plan:

### ***Action 6.2: Provide property tax abatements***

*Tax abatements are similar to tax increment financing strategies in that they involve voluntarily relinquishing expected future tax revenues for a specified period of time (say 10 years) to stimulate a public benefit. The principal difference is that tax abatements are much more focused, providing a specific tax benefit for a specific activity undertaken by the taxpayer. Tax abatements also can be applied citywide, rather than simply in a particular district. The City has the authority to only abate its own portion of the property taxes. Abatement of other property taxing entities would be at their discretion.*

*Tax abatements could be offered to:*

- *Developers who construct rental units*
- *Rental owners that rehabilitate their property*
- *Owners of older, affordable homes that rehabilitate their property.*

*Local taxing districts would forego future property tax increases for a limited period.*

**Responsible parties:** *City of Newberg and Yamhill County*

## **Potential Vertical Housing Development Zone**

Newberg downtown (C-3 zone) would be the natural candidate for designations as a vertical housing development zone. This zone allows housing on upper floors. See the attached map. Housing on upper floors also is allowed along Portland Road (C-2 zone). The committee should discuss what areas to include.

## **Estimate of Financial Effect**

In order to estimate the financial effect of this designation, I created two test cases. Note that these are theoretical cases only and do not reflect any actual proposal, but are based on actual sites and building values. In the first case, the upper floor of an existing building downtown is converted to apartments. The remodel cost is 20% of the value of the existing structure. In the second case, a new three story building is constructed on an existing vacant lot. The ground floor is commercial, and the upper two floors are residential. My calculations are shown on the attached spreadsheet.

In the first case, the annual exemption would amount to about \$900. Over 10 years, the exemption would come to about \$9,400. About \$2,500 of this would be taxes foregone by the City of Newberg. After 10 years, it would take about 4 years to generate \$9,400 in property taxes from the value of the remodel. In the second example, the exemption would come to about \$71,000 over 10 years (\$20,000 foregone by Newberg). After 10 years, it would take about 3 years to generate \$71,000 in property taxes from the new residential portion of the building. In other words, if you assume that the residential portion would not happen without an investment in the exemption, then that investment will pay off very quickly at the end of the exemption period.

The above calculations are based on my assumptions of how the tax abatement is calculated. It is not clear how that actually is calculated. I contacted Oregon Housing and Community Services, who suggested I contact the Clackamas County Assessor's office. I contacted Clackamas County, who referred me back to Oregon Housing and Community Services.

## **Experience from other communities**

14 cities have adopted vertical housing zones. There have been 8 projects certified in the communities.

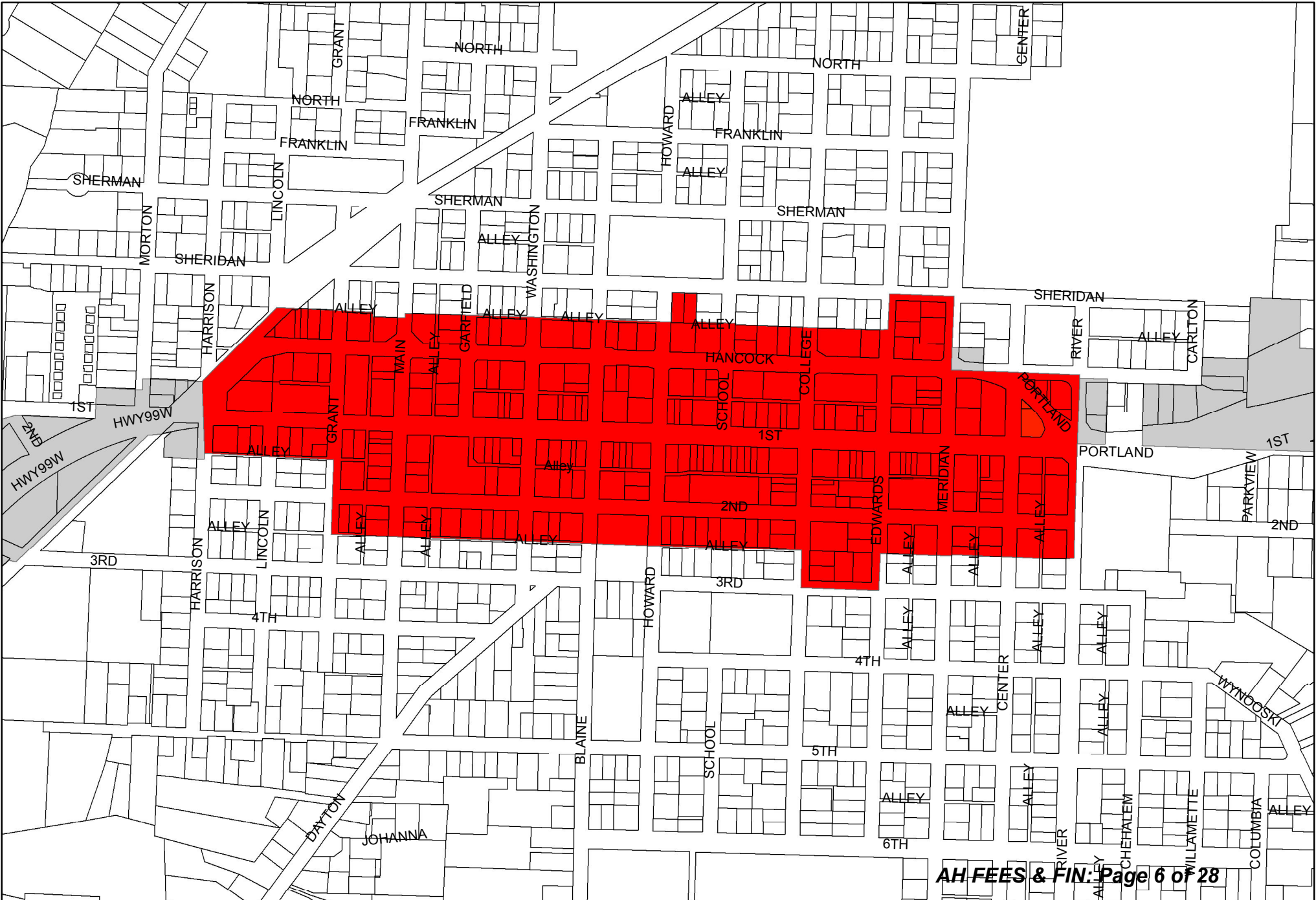
I contacted two other communities, Grants Pass and Klamath Falls, who have established vertical housing zones. In both cases, they indicated that establishing the district was not too complicated or controversial. Grants Pass had one small building take advantage of the program. Klamath Falls said that they have not had any developments take advantage of the program.

## **Committee Actions**

The committee should make recommendations on the following questions:

1. *Should the city pursue creation of the Vertical Housing Development Zone?*
2. *If so, what should the boundaries of the zone be?*

# Newberg C-3 Zone



**Estimate of Financial Effect  
Vertical Housing Development Zone**

Property	Remodel Existing Building	New 3 story Project
Lot Size (sf)	5,200	11,300
Building sf	7,040	16,950
Building Stories	2	3
Market Land Value	\$ 101,903	\$ 249,072
Market Structure Value	\$ 504,972	\$ 1,900,000
Total Market Value	\$ 606,875	\$ 2,149,072
Assessed Value	\$ 308,686	\$ 1,093,122
Structure/Total Value	83%	88%
Assessed/Market Value	50.9%	50.9%
Levied Tax	\$ 5,409	\$ 19,153
Tax rate	0.0175217	0.0175217
Tax code	29.2	29.2
Residential Floors	1	2
Exemption	20%	40%
Annual exemption	\$ 900	\$ 6,773
10-year exemption (@ 3% increase per year)	\$ 9,419	\$ 70,876
Estimated Years to Recover Foregone taxes	4	3

Annual Exemption by Tax District		
Yamhill County	\$ 132.41	\$ 996.39
Yam. Co. Ext. Serv.	\$ 2.31	\$ 17.36
Yam. Co. Soil & Water	\$ 1.82	\$ 13.68
S.D. 29J - Newberg	\$ 427.87	\$ 3,219.77
Willamette Regional ESD	\$ 15.24	\$ 114.70
City of Newberg	\$ 241.17	\$ 1,814.85
CPRD	\$ 46.62	\$ 350.85
Portland Community College	\$ 32.67	\$ 245.82
<b>Total</b>	<b>\$ 900.10</b>	<b>\$ 6,773.42</b>



## Vertical Housing Program

(Program Factsheet)

**Multifamily Quality Controller**

Debie Zitzelberger

Ph: (503) 986-2038

Email: [Debie.Zitzelberger@hcs.state.or.us](mailto:Debie.Zitzelberger@hcs.state.or.us)

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### Program Overview

The 2005 Legislature passed legislation moving the Vertical Housing Program from Oregon Economic and Community Development Department (OECD) to Oregon Housing and Community Services (OHCS) beginning in November 2005. The purpose of the Program is to encourage investment in and rehabilitation of properties in targeted areas of a city or community, to augment the availability of appropriate housing, and to revitalize communities. The program encourages mixed-use developments that contain both non-residential and residential uses in areas (zones) designated by local jurisdictions. The residential portion may be for market rate or lower income households. Eligible projects receive a partial property tax exemption which varies with the number of "Equalized Floors" in a project, with a maximum property tax exemption of 80 percent over a 10 year term. An additional partial property tax exemption on the land may be given if some or all of the residential housing is for low-income persons (80 percent of area median income or below).

### Eligible Zones

Any area that meets the criteria for a Vertical Housing Zone which has been designated by the local jurisdiction and has been approved by the Department.

### Eligible Projects

A mixed-use project that contains both non-residential and residential uses that meets the certified project criteria located in a Vertical Housing Zone designated by the local jurisdiction and approved by the Department. The project can be new construction or rehabilitation of a multiple-story building, or group of buildings with at least one multiple-story building.

### Certified Project

Any project that has made application to and has been approved by the Department may receive a partial tax exemption as determined by the number of Equalized Floors for a maximum of 10 years.

### Equalized Floors

The tax exemption will be based on the number of Equalized Floors as determined by the total square footage divided by the number of actual floors of the project that are at least 500 square feet per floor. Equalized floors will be rounded down to the nearest whole number (e.g., any equalized quotient between 1.0 and 1.99 will have a rounded Equalized Floor equivalent of 1.0).







## Vertical Housing Program

(Program Factsheet)

### Multifamily Quality Controller

Debie Zitzelberger

Ph: (503) 986-2038

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### Charges

A non-refundable Project Application charge of \$550. A one-time Monitoring charge of \$150 for projects with no low-income units, and \$200 for projects with low-income units.

### Applications

Applications can be accessed via the OHCS Web site. Eligible criteria and instructions can be accessed through the Oregon Administrative Rules for the Vertical Housing Program.

Applications are to be submitted to OHCS, Vertical Housing Program, 725 Summer Street NE, Suite B, Salem, OR 97301-1266.

### For More Information

For more information, contact Debie Zitzelberger, Multifamily Quality Controller, at 503.986.2038 or by E-mail [Debie Zitzelberger](mailto:Debie.Zitzelberger@hcs.state.or.us).

To talk with someone about developing affordable housing in your area, contact a [Regional Advisor to the Department](#) or call 503.986.2000.

OHCS is the state housing finance agency, providing financial and program support to create and preserve opportunities for quality, affordable housing for lower income Oregonians. The agency also administers federal and state antipoverty, homeless and energy assistance community service programs.



## VERTICAL HOUSING DEVELOPMENT ZONES

### **307.841 Definitions for ORS 307.841 to 307.867.** As used in ORS 307.841 to 307.867:

- (1) "Construction" means the development of land and the construction of improvements to land, and may be further defined by the Housing and Community Services Department by rule.
- (2) "Equalized floor" means the quotient determined under ORS 307.857 (3)(b).
- (3) "Light rail station area" has the meaning given that term in ORS 307.603.
- (4) "Low income residential housing" means housing that is restricted to occupancy by persons or families whose income is no greater than 80 percent of area median income, adjusted for family size, as determined by the department.
- (5) "Rehabilitation" means the substantial repair of improvements or land developments, and may be further defined by the department by rule.
- (6) "Transit oriented area" has the meaning given that term in ORS 307.603.
- (7) "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 is to be used for nonresidential uses and a portion of the project is to be used for residential uses.
- (8) "Vertical housing development zone" or "zone" means an area that has been designated a vertical housing development zone under ORS 307.847. [Formerly 285C.450]

**307.844 Zone designation; application; special district election to not participate in zone.** (1)(a) A city may apply to the Housing and Community Services Department for designation of an area within the city as a vertical housing development zone.

(b) A county may apply to the Housing and Community Services Department for designation of an unincorporated area within the county as a vertical housing development zone.

(2) With the prior consent of the governing body of each city in which a proposed zone is to be located, a county may apply to the department for designation of any area within each city that has given consent for vertical housing development zone designation.

(3) A city and a county, or any combination of cities and counties, may apply to the department for designation of an area situated within each applying jurisdiction as a vertical housing development zone.

(4) A district listed in ORS 198.010 or 198.180 may elect not to participate in a vertical housing development zone. A district that elects not to participate may continue to impose taxes on property otherwise exempt from ad valorem property tax under ORS 307.864.

(5) An application for designation of a vertical housing development zone must be submitted to the department. The application shall be in the form and contain the information required by the department, including:

(a) A list of local taxing districts, other than the applicant, that have territory in the proposed vertical housing development zone.

(b) A copy of a written notification that the applicant mailed to the districts listed pursuant to paragraph (a) of this subsection that:

(A) Describes the proposed vertical housing development zone;

(B) Explains the exemption described in ORS 307.864 that would apply if the proposed zone is designated;

(C) Explains the process by which a district listed in ORS 198.010 or 198.180 may elect not to participate in the vertical housing development zone; and

(D) Is in a form that is satisfactory to the department.

(c) A statement signed by the applicant attesting that the notification described in paragraph (b) of this subsection was sent by regular mail to each district listed pursuant to paragraph (a) of this subsection.

(6) The application shall:

(a) Be filed on behalf of one or more local government units as described in subsections (1) to (3) of this section by action of the governing body of each applicant;

(b) Contain a description of the area sought to be designated as a vertical housing development zone, including proposed zone boundaries;

(c) Contain the reasons that all or a portion of a proposed zone constitutes a core area of an urban center, a light rail system area or a transit oriented area; and

(d) Contain any other information required by the department.

(7) The applicant shall submit to the department, within 30 days following the date the application is filed with the department, a list of the districts that elected not to participate in the vertical housing development zone. [Formerly 285C.453]

**307.847 Approval or disapproval of application.** (1) The Housing and Community Services Department shall review each application filed under ORS 307.844 and shall approve or disapprove each application.

(2) The department may approve an application and designate all or a portion of the area that is the subject of the application as a vertical housing development zone if the department determines that the area meets the criteria set forth in ORS 307.851.

(3) The determination of the department to approve or disapprove an application is a discretionary determination. The determination is final and is not subject to judicial or administrative review. [Formerly 285C.456]

**307.850** [1965 c.278 §1; 1993 c.70 §1; 1997 c.499 §1; renumbered 285A.325 in 1997]

**307.851 Criteria for designation of zone; notice to county assessor.** The Housing and Community Services Department shall:

(1) Designate a vertical housing development zone upon application made under ORS 307.844 if the department determines that the proposed zone meets the criteria established by the department by rule for a zone.

(2) Notify the county assessor of the county in which the vertical housing development zone is located of the designation of that zone and of the districts that elected not to participate in the zone. [Formerly 285C.459]

**307.854 Acquisition, disposition and development of real property within zone.** Following the designation of a vertical housing development zone under ORS 307.847, the city or county that sought zone designation may acquire or dispose of real property within the zone for the purpose of developing vertical housing development projects within the zone. The development of projects may be undertaken by the city or county independently, jointly or in partnership with a private entity or may be undertaken by a private entity acting independently. The entities undertaking the development of property under this section may own and operate the developed property or may sell or otherwise dispose of the property at any time during or after development. The property may be sold at the property's real market value or at a lesser value. [Formerly 285C.462]

**307.857 Application for exemption; review; certification; fees.** (1) Following the designation of a vertical housing development zone under ORS 307.847, a person proposing to undertake a proposed vertical housing development project and seeking the partial property tax exemption set forth in ORS 307.864 shall apply to the Housing and Community Services Department for certification of the project.

(2) The application must be satisfactory to the department in form and content and shall contain any information required by the department, including all of the following:

(a) The address and boundaries of the proposed vertical housing development project;

(b) A description of the existing state of the property;

(c) A description of the proposed project construction or rehabilitation, including the design of the construction or rehabilitation, the cost of the construction or rehabilitation and the number of floors and residential units to be constructed or rehabilitated;

(d) A description of the nonresidential uses to which any portion of the proposed project is to be put, including the proportion of total square footage of the project proposed for nonresidential uses;

(e) A description of the proposed portion of the project to be used for residential uses, including the proportion of total square footage of the project proposed for residential uses;

(f) A description of the number and nature of residential units in the proposed project that are to be low income residential housing, including the proportion of total square footage of the project proposed for low income residential housing uses;

(g) The calculation and allocations described under subsection (3) of this section; and

(h) A commitment that is satisfactory to the department, including documentation and evidence of recording of the documentation, that the project will be maintained and operated in a manner consistent with the application submitted under this section for the duration of the commitment. The duration of the commitment may not be less than the number of tax years for which the project is intended to be partially exempt from ad valorem property taxes under ORS 307.864.

(3)(a) Each application filed under this section shall contain a calculation of equalized floors, an allocation of equalized floors to residential uses and an allocation of equalized floors to low income residential housing uses as determined under this subsection.

(b) An equalized floor is the quotient that results from the division of total square footage of a project by the number of actual floors of the project that are at least 500 square feet per floor, or as may be increased or otherwise qualified by the department by rule.

(c) To allocate equalized floors to residential uses, divide the total square footage of residential property in the project

by the square footage of an equalized floor.

(d) To allocate equalized floors to low income residential housing use, divide the total square footage of low income residential housing property in the project by the square footage of an equalized floor. In determining the square footage of low income residential housing property, include that proportion of the square footage of residential common space that is the same as the proportion of the total square footage of low income residential housing units to the total square footage of all residential housing units.

(4) The application must be filed under this section on or before the date residential units that are a part of the vertical housing development project are ready for occupancy.

(5) The department shall review each application submitted under this section and shall certify or deny certification based on whether the proposed vertical housing development project meets criteria established by the department by rule that are consistent with ORS 307.841 to 307.867.

(6) The department may request any documentation or undertake any investigation necessary to ascertain the veracity of any statement made on an application under this section.

(7) The certification issued by the department shall:

(a) Identify the property included in the certified vertical housing development project;

(b) Identify the number of equalized floors of residential housing in the project and include a description of the property of each equalized floor;

(c) Identify the number of equalized floors of low income residential housing in the project and include a description of the property of each equalized floor; and

(d) Contain any other information prescribed by the department.

(8) The determination of the department to certify or deny certification is a discretionary determination. The determination is final and is not subject to judicial or administrative review.

(9) The department may charge appropriate fees to offset the cost of administering the application and certification process under this section and any other related costs. [Formerly 285C.465]

**Note:** Section 11, chapter 119, Oregon Laws 2005, provides:

**Sec. 11.** (1) Property that was constructed pursuant to a certification for a partial property tax exemption under ORS 285C.465 [renumbered 307.857], prior to the effective date of this 2005 Act [November 4, 2005], shall continue to receive the exemption according to the same schedule and subject to the disqualification provisions of ORS 285C.450 to 285C.480 [renumbered 307.841 to 307.867] that were in effect and applied at the time the vertical housing development project was certified for partial property tax exemption.

(2) If an application for certification was filed with the Economic and Community Development Department prior to the effective date of this 2005 Act but not acted upon as of the effective date of this 2005 Act, the Economic and Community Development Department shall forward the application to the Housing and Community Services Department. [2005 c.119 §11]

**Note:** Section 13, chapter 119, Oregon Laws 2005, provides:

**Sec. 13.** The Housing and Community Services Department may not issue a certification under ORS 285C.450 to 285C.480 [renumbered 307.841 to 307.867] on or after January 1, 2016. [2005 c.119 §13]

**307.861 Monitoring of certified projects; decertification.** (1) Upon determining to certify a vertical housing development project, the Housing and Community Services Department shall send a copy of the certification to the county assessor of the county in which the project is to be located.

(2) At any time after certification and prior to the end of the exemption period, the department may:

(a) Request documentation, undertake investigations or otherwise review and monitor the project to ensure ongoing compliance by project applicants and owners; and

(b) Undertake any remedial action that the department determines to be necessary or appropriate to fulfill the purposes of ORS 307.841 to 307.867, including issuing a notice of decertification directing the county assessor to disqualify all or a portion of a project. The decertification notice shall identify:

(A) The property decertified from the vertical housing development project;

(B) The number of equalized floors that have ceased qualifying as residential housing for purposes of ORS 307.841 to 307.867;

(C) The number of equalized floors that have ceased qualifying as low income residential housing for purposes of ORS 307.841 to 307.867;

(D) The remaining number of equalized floors of residential housing in the project and include a description of the property of each remaining equalized floor; and

(E) The remaining number of equalized floors of low income residential housing in the project and include a description of the property of each remaining equalized floor of low income residential housing.

(3) A notice of decertification issued under subsection (2) of this section shall include any other information prescribed by the department.

(4) The department shall send copies of a notice of decertification issued under subsection (2) of this section to the property owner and the county assessor of the county in which the property is located. [Formerly 285C.468]

**307.864 Partial property tax exemption; disqualification.** (1) For the first tax year in which, as of the assessment date, a vertical housing development project is occupied or ready for occupancy following certification under ORS 307.857, and for the next nine consecutive tax years:

(a) The property of the vertical housing development project, except for the land of the project, shall be partially exempt from ad valorem property taxes imposed by local taxing districts, other than the districts that elected not to participate in the vertical housing development zone as described in ORS 307.844 (4), according to the following schedule and as identified in the certification issued by the department under ORS 307.857 (7):

(A) If the project consists of the equivalent of one equalized floor allocated to residential housing, the project shall be 20 percent exempt.

(B) If the project consists of the equivalent of two equalized floors allocated to residential housing, the project shall be 40 percent exempt.

(C) If the project consists of the equivalent of three equalized floors allocated to residential housing, the project shall be 60 percent exempt.

(D) If the project consists of the equivalent of four or more equalized floors allocated to residential housing, the project shall be 80 percent exempt.

(b) The land of the vertical housing development project shall be partially exempt from ad valorem property taxes imposed by local taxing districts, other than the districts that elected not to participate in the vertical housing development zone as described in ORS 307.844 (4), in the same percentages determined under paragraph (a) of this subsection, for each equalized floor allocated to low income residential housing, as identified in the certification issued by the department under ORS 307.857 (7).

(2) In order to receive the partial property tax exemption described in subsection (1) of this section, the vertical housing development project property owner, project applicant or other person responsible for the payment of property taxes on the project shall notify the county assessor of the county in which the project exists, that the project meets the requirements of subsection (1) of this section. The notification must be given to the assessor in writing on or before April 1 preceding the first tax year for which the partial property tax exemption is sought.

(3) During the period in which property would otherwise be partially exempt under subsection (1)(a) of this section, if all or a portion of a project has been decertified by the Housing and Community Services Department under ORS 307.861, the property shall be disqualified from exemption under this section in proportion to the equivalent of each equalized floor that has ceased qualifying as residential housing, as set forth in the notice of decertification.

(4) During the period in which land would otherwise be partially exempt under subsection (1)(b) of this section, if all or a portion of a project has been decertified by the Housing and Community Services Department under ORS 307.861, the land shall be disqualified from exemption under this section in proportion to the equivalent number of equalized floors that have ceased qualifying as low income residential housing, as set forth in the notice of decertification. [Formerly 285C.471]

**307.867 Termination of zone; effect of termination.** (1) Following vertical housing development zone designation under ORS 307.847, if the Housing and Community Services Department receives a request to terminate a vertical housing development zone from the applicant for zone designation under ORS 307.844, the department shall terminate the zone.

(2) The termination of a zone under this section does not affect the exemption of any property from tax under ORS 307.864 if an application for the exemption was approved prior to the zone termination. [Formerly 285C.480]

**PENALTIES**

**307.990 Penalties.** If any person shall willfully deliver any statement to the officer charged with assessment of property for tax purposes in the county of the person containing a false statement of a material fact, whether it be an owner, shipper, the agent of the person, or a storageman or warehouseman of the agent of the person, the person shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$500 or by imprisonment in the county jail for not more than six months. [1959 c.659 §5]

## Oregon Administrative Rules

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**The Oregon Administrative Rules contain OARs filed through December 15, 2010**

### HOUSING AND COMMUNITY SERVICES DEPARTMENT

#### 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, as they pertain to the administration by the Housing and Community Services Department ( Department) of the Vertical Housing Program. These rules and the related determinations and orders of the Department constitute the Department's Vertical Housing Program (Program). The purpose of the Program is to encourage Construction or Rehabilitation of properties in targeted areas of communities in order to augment the availability of appropriate housing and to revitalize such communities. Division 013 sets forth relevant aspects of the Program, including processes and criteria for the designation of Vertical Housing Development Zones (VHDZs), for the application and approval of Certified Projects, for the calculation of any applicable partial property tax exemptions, and for the monitoring and maintenance of properties as qualifying Certified Projects.

(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 Chapter 150 pertaining to the valuation of property for purposes of property tax assessments 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

Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06

##### 813-013-0005

##### Definitions

As used in this Division 013, unless the context indicates otherwise:

(1) "Certified Project" means a multi-story development within a VHDZ that the Department certifies as a Vertical Housing Development Project qualifying for a vertical housing partial property tax exemption based on a proposal and description from a Project Applicant that conforms to Department requirements. Certified Projects approved by the Economic and Community Development Department of the State of Oregon (OECDD) prior to November 4, 2005, continue as Certified Projects notwithstanding assumption of administration of the Program by the Department on November 4, 2005. Such prior OECDD Certified Projects continue to maintain their accompanying partial property tax exemptions throughout their original terms unless all or part of such Certified Projects are subsequently modified or decertified by the Department. The prior OECDD Certified Projects are subject to the ongoing reporting and other requirements of this division 013.

(2) "Construction" means the development of land, and the construction of improvements to land as further described in this

Division 013.

(3) "Core Area of an Urban Center" means the central business district or downtown area of a community of any size. While VHDZs need not include a Core Area of an Urban Center, an application to establish a VHDZ should identify whether the proposed VHDZ includes a Core Area of an Urban Center and describe the areas so included. The Department may consider such information or the failure to provide same in determining the merits of the proposed VHDZ and its proximity and relationship to the needs and activities of VHDZ project residents. Core Areas of Urban Centers typically consist of one or more of the following:

(a) An existing central business district or downtown area according to the jurisdictions zoning ordinances, U.S. Census Bureau or comparable source 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 State of Oregon.

(5) "Director" means the Director of the Housing and Community Services Department or someone within the Department authorized to act on behalf of the Director for purposes of the Program.

(6) "Equalized Floor" means the quotient that results from the division of the total square footage of a Project (as determined by the Department) by the number of actual floors of the Project that are at least 500 square feet per floor unless the Department, in its discretion, increases the minimum square footage or otherwise qualifies the actual floors of a Project eligible to be used as a divisor in determining the Equalized Floor quotient. Factors that the Department 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 Project;

(b) The extent of Construction or Rehabilitation 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) Patios, deck space, and parking 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.

(7) "Light Rail Station Area means, consistent with ORS 307.603(3), an area defined in regional or local transportation plans to be within an 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.

(8) "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.

(9) "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.

(10) "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.

(11) "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 the amount of Non-Residential 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) 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.

(12) "Residential Use" means regular, sustained occupancy of a residential improvement by a person or family as the person's or family's primary domicile, including areas used primarily for transitional housing purposes, but not 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 Housing Development Zone" or "VHDZ" or "Zone" means an area that has been and remains designated by the Department as a Vertical Housing Development Zone or an area that was officially designated by the Economic and Community Development Department (OECD) prior to November 4, 2005, as a Vertical Housing Development Zone and



which remains so designated.

(17) "VHDZ Applicant" means one or more cities or counties or a combination thereof, or their authorized agent(s) which seek the designation of a VHDZ within an area of their jurisdiction by making application to the Department.

Stat. Auth.:ORS 456.555, 307.841 - 307.867

Stats. Implemented: ORS 456.555, 307.841 - 307.867

Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06

### **813-013-0010**

#### **Special Districts and Zone Applications**

(1) To elect not to participate in a VHDZ, a Special District shall, within 45 days after the date on which proper written notification is mailed by the VHDZ Applicant to the Special District advising of the application to form a VHDZ:

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

(b) Furnish to the VHDZ Applicant 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.

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

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

(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

Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06

### **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 Department deems appropriate.
- (3) Applications must be delivered to the Department at the following address: Oregon Housing and Community Services Vertical Housing Program, Housing Division 725 Summer Street NE, Suite B PO Box 14508 Salem, Oregon 97309-0409.
- (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 Applicant and requesting (or as applicable, consenting to) designation of the proposed VHDZ;
  - (b) A listing of all Special Districts within the proposed VHDZ, a copy of the written notification mailed to them, and a signed certification of mailing by the VHDZ Applicant to the Special Districts in accordance with 813-013-0015(1);
  - (c) A description of the area sought by the VHDZ 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 Certified Project within various parts of the VHDZ; and
  - (d) Documentation satisfactory to the Department establishing that the area proposed for VHDZ designation is within the jurisdiction(s) of the VHDZ Applicant.
- (5) The Department will act reasonably to review applications submitted by a VHDZ Applicant.
- (6) The 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 Director will endeavor to approve or deny applications within 60 days of the Department's receipt of a complete application, the receipt of such other information or clarification as it may require of the VHDZ 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

Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06

## **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 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 Department in accordance with the same procedures established herein for the approval of a VHDZ, except the notice to Special Districts required under OAR 813-013-0015(4) is only required for any Special Districts that are included in new territory added by the boundary modification. A Certified 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 Department 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

Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06

## **813-013-0025**

### **Municipally Sponsored Development Projects**

(1) Cities and Counties may acquire or dispose of real property located in a VHDZ for the purpose of developing Projects. Property acquired by a city or county within a VHDZ may be sold by the city or county at real market value or, if it will prudently encourage the development of a Project, at a lesser value. This authority is in addition and without prejudice to any authority by a city or county that otherwise exists under the laws of this state to acquire or dispose of property.

(2)(a) Development of Projects may be undertaken by a city or county independently, jointly or in partnership with a private person or entity.

(b) Development of Projects also may be undertaken by private persons or entities acting independently of city or county ownership.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 307.854

Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06

## **813-013-0030**

### **Zone Termination or Modification**

(1) A VHDZ Applicant that initiated the designation of a VHDZ may request that the Department terminate all or part of the VHDZ provided that:

(a) The VHDZ Applicant furnishes to the Department copies of resolution(s) from the applicable governing body(ies), adopted not more than 60-days prior to the termination request, that approve the request to terminate the VHDZ; and

(b) The request otherwise contains such information and is in such form as the Department may require.

(2) The Department may waive the requirement for approval by all VHDZ Applicant(s) if the requested termination is partial in nature and applies only to areas exclusively within the jurisdiction of those VHDZ Applicant(s) seeking the partial termination.

(3) In issuing a VHDZ termination determination, the Department may make the termination effective at any time within 90 days from receiving a conforming request, taking into account factors including, but not limited to, pending applications for approval of Certified Projects.

(4) The Department may approve a Certified Project between the time of a request for VHDZ termination and its termination if the application for certification of the Project was pending with the Department prior to the Department's receipt of a request for VHDZ termination. However, the Department may consider the request for VHDZ termination in determining whether or not to approve the application for a Certified Project.

(5) The Department will send notice of its termination of a VHDZ to the VHDZ Applicant, affected county assessors, and owners of Certified Projects, of whom the Department is aware.

(6) Subsequent VHDZs may include areas from a terminated VHDZ. A new VHDZ may be designated, or an existing VHDZ expanded or reduced, so that there is no discontinuance of a VHDZ designation for any areas where the VHDZ designation is intended to endure.

(7) VHDZ Applicants seeking to form a new VHDZ from the territory of an existing VHDZ or to expand a VHDZ, will follow the procedures and other directives of the Department for seeking approval of a VHDZ designation from the Department.

(8) The Department may terminate all or part of a VHDZ on its own initiative, or at the request of any person, if the Department determines that the VHDZ fails to satisfy the criteria under this Division 013 for the establishment or maintenance of a VHDZ. Any such termination determination will not affect existing Certified Projects and is not subject to administrative or judicial review. The Department may reconsider any such determination.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 307.844 - 307.851, 307.857, 307.861

Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06

### **813-013-0035**

#### **Project Certification Applications**

(1) A Project Applicant may file an application for certification of a Project by completing the Vertical Housing Project application form, as prescribed by and available from the Department, and by delivering it during normal business hours or by mail to: Oregon Housing and Community Services Vertical Housing, Housing Division 725 Summer Street NE, Suite B PO Box 14508 Salem, Oregon 97309-0409.

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

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

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

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

(c) A description of the proposed Project 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 Project 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 Project is entirely located in an established VHDZ;

(h) A commitment from the Project Applicant, acceptable to the Department, that the Project will be maintained and operated in a manner consistent with the Project application and the Program 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 Project 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 Project application must be submitted and received by the Department on or before the new Construction residential units are ready for occupancy or the Project Rehabilitation is complete;

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

(13) To qualify to be a Certified Project, the Rehabilitation of any existing improvement must substantially alter and enhance the utility, condition, design or nature of the structure. In its application, the Project 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 Project:

(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 Department, Projects "in progress" at the time of application may include only costs incurred within six (6) months of the application date. Factors that the Department 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 Department;

(c) Resultant undue hardship to the Project Applicant;

(d) The complexity of the Project; and

(e) The benefit of the Project to the Community.

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

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

(a) The Department will notify the Project Applicant that the application has been rejected; and

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

(B) The best interests of the Community;

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

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

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

(c) If the Department 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 Department 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 Project has occurred since the original application;

(B) Whether or not undue hardship would result to the Project Applicant;

(C) The best interests of the Community; and

(D) The level and materiality of non-compliance in the initial application.

(17) The Department will evaluate each accepted application to determine whether or not to certify the proposed Project.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 307.844, 307.857

Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06

## **813-013-0040**

### **Project Criteria**

(1) A Project, to qualify for Department certification, must satisfy each of the following criteria:

(a) The Project must be entirely located within an approved VHDZ;

(b) The Project 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 Project is to be used for Non-Residential uses and a portion of the Project is to be used for Residential Use;

(c) A portion of the Project must be committed, to the Department's satisfaction, for Residential Use and a portion of the Project must be committed, to the Department's satisfaction, for use as Non-Residential Use.

(d) The commitment to Non-Residential Use must be accomplished as follows:

(A) For a Project site that has frontage on one Public Street, at least 50% of the Project's Public Street-fronting ground floor facades must be committed for Non-Residential use;

(B) For a Project site that has frontage on more than one Public Street, the developer must designate one of the Public Streets as the Project's primary Public Street. One-hundred percent (100%) of the Project's primary Public Street-fronting ground floor facades must be committed for Non-Residential use;

(C) "Committed for Non-Residential Use" means that all interior spaces adjacent to the Public Street-frontage exterior facade are constructed to building code standards for commercial use, are planned for commercial use upon completion, or both;

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

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

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

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

(h) The Project application must be complete and fully satisfactory to the Department;

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

(j) Calculation of Equalized Floors is adequately documented;

(k) Documentation, satisfactory to the Department, establishes the costs of Construction or Rehabilitation of Project land developments and improvements, as applicable; and

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

(2) Certified Projects with at least one Equalized Floor of Low-Income Residential Housing may qualify for a partial property tax exemption with respect to the land contained within the tax lot upon which the Certified Project stands, but will not qualify for a partial property tax exemption under the Program for land adjacent to or surrounding the Certified Project contained in separate tax lots. Excess or surplus land that is not necessary for the Project, as determined by the Department, will not be eligible for partial exemption; and ;(3) Low-Income Residential Housing units in the Certified Project must continue to meet the

income eligibility requirements for the definition of Low-Income Residential Housing for the entire period for which the vertical housing Project is certified.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 307.844, 307.857

Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06

### **813-013-0045**

#### **Department Certification of Projects**

(1) The Department will endeavor to process each accepted application and make a determination whether or not to approve such application, in whole or in part, within 60 days of when the accepted application is received by the Department at its Salem Office.

(2) If the application is approved, the Department will:

(a) Issue a letter to the Project Applicant describing the Certified Project with an explanation of the partial property tax exemption effective for the Certified Project; and

(b) Send a copy of the Project information to the county assessor(s) of the county or counties in which the Certified Project is located.

(3) The owner of a Certified Project must execute and record a Project Use Agreement, including restrictive covenants running with the land and equitable servitudes, satisfactory to the Department in the appropriate county or counties of record. Recordation of such instruments satisfactory to the Department constitutes a condition precedent to the approval of the Certified Project taking legal effect. The Department may void any Certified Project approval for failure to timely record and provide the Department with a copy of any such instruments. The owner shall be responsible for the cost of recording and providing satisfactory evidence to the Department that such instruments have been properly recorded.

(4) If the application is denied, the Department will send written notice of the denial to the Project Applicant. At its option, the Department may allow reapplication by the Project Applicant consistent with 813-013-0035. .

(5) Certification by the Department of a Project may be partial in scope. The Department's letter of approval will identify what portions of the property and improvements included in the Project application constitute the Certified Project.

(6) The letter of approval from the Department also may include such information and instructions as the Department deems appropriate.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 307.857, 307.861

Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06

### **813-013-0050**

#### **Project Monitoring/Decertification**

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

(a) The size of the Project;

(b) The number of residential housing units;

(c) 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
- (h) The number of separate sites and/or buildings.

(2) If the Project includes Low-Income Residential Housing, the Project Applicant must pay a supplemental monitoring charge to the Department at the time of Project application, or as otherwise directed by the Department, to cover the Department's actual and anticipated costs of monitoring and otherwise addressing compliance by the Certified Project with Program requirements including, without limitation ORS 307.841 to 307.861 and other applicable law. The Department may consider factors including, but not limited to those in 813-013-0050(1) and the nature of the Low-Income Residential Housing population in determining the amount of this supplemental monitoring charge.

(3) The Department may condition its approval of a Certified Project upon payment by Project Applicant of the applicable charges described above in 813-013-0050(1) and (2). The Department may void or terminate the certification of all or a portion of a Certified Project if such charges, or any part thereof, are not timely paid.

(4) Modifications to or transfers of ownership of a Certified Project must receive prior written approval from the Department. The Department will not unreasonably withhold its approval of such modifications to or transfers of ownership. The Department may void or terminate the certification of all or a portion of a Certified Project 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 Certified Project, the Certified Project owner shall notify both the county assessor and the Department of the new owner's name, contact person, mailing address and phone number within 30 days of the change.

(6) The Department may require the Certified Project owner to pay an administrative charge to cover the Department'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 Department may consider factors including, but not limited to those in 813-013-0050(1) in determining the amount of this administrative charge

(7) The Department may condition its approval of a modification to or transfer of ownership in a Certified Project upon payment by the Certified Project owner of the administrative charge described above in 813-013-0050(6). The Department may void or terminate the certification of all or a portion of a Certified Project 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

Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06

## **813-013-0054**

### **Monitoring; Investigations; Remedies; Decertifications**

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

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

- (a) The requesting of Project documentation;

(b) The issuance of orders and directives with respect to the Project 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 Certified Project, injunction, temporary restraining order, recovery of damages, collection of charges, etc.); and

(d) The decertification of all or a portion of a Certified Project.

(3) Prior to decertifying all or part of a Certified Project and directing the county assessor to disqualify all or part of the Project for partial property tax exemption treatment, the Department shall issue a decertification notice to the Certified Project owner identifying relevant factors among the following:

(a) The property decertified from the Project;

(b) The number of Equalized Floors that have ceased qualifying as residential housing for purposes of the Program;

(c) The number of Equalized Floors that have ceased qualifying as Low-Income Residential Housing for purposes of the Program;

(d) The remaining number of Equalized Floors of residential housing in the Project and a description of the property of each remaining Equalized Floor;

(e) The remaining number of Equalized Floors of Low-Income Residential Housing in the Project and a description of the property of each remaining Equalized Floor of Low-Income Residential Housing; and

(f) Such other information as the Department may determine to provide.

(4) Prior to issuance of a notice of decertification, the Department will provide the Certified Project owner with notice of an opportunity to correct first-time Program non-compliance within a reasonable amount of time as determined by the Department. The Department also may elect to provide the Certified Project owner with notice of an opportunity to correct repeat Program non-compliance within a reasonable amount of time as determined by the Department. In deciding whether or not to provide the Certified Project owner with notice of an opportunity to correct repeat Program non-compliance and in determining how much time to provide the Certified Project owner to correct any noticed Program non-compliance, the Department may consider factors including, but not limited to:

(a) The severity of the non-compliance;

(b) The impact of non-compliance upon Project 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 Program non-compliance; and

(f) The past history of compliance and non-compliance by the Project owner.

(5) For those instances where the Department has elected to provide notice to a Certified Project owner if its non-compliance, if the Department determines that the Certified Project owner has failed to correct any noticed Program non-compliance within the time allowed by the Department in its notice, the Department 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 Project from property tax exemption under the Program. The Department also may issue a notice of decertification and direct the county assessor to disqualify all or a portion of a Project from property tax exemption under the Program with respect to Program 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 Department. In determining whether or not to make the decertification retroactive, the Department 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

Hist.: OHCS 8-2006, f. & cert. ef. 6-28-06

### **813-013-0061**

#### **Partial Property Tax Exemptions for Certified Projects**

(1) In order to receive a partial property tax exemption under this Division 013, the Certified Project owner, the Project Applicant or other person responsible for the payment of property taxes on the Certified Project must notify the county assessor of the county in which the Certified Project exists, that the Project has been approved by the Department as a Certified Project and qualifies for a partial property tax exemption.

(2) The notification described above in 813-013-0061(1) must be delivered to the county assessor in writing on or before April 1 preceding the first tax year for which the partial property tax exemption is sought.

(3) Except as modified by 813-013-0061(4) and (5) of this rule, the exemption applies to the Construction or Rehabilitation of real property improvements associated with the Certified Project or the inclusion of affordable housing on the Certified Project, in each of the tax years for which the exemption is available, including but not limited to land development.

(4) The property exemption rate equals 20 percent (0.2) multiplied by the number of fully Equalized Floors (among all associated buildings exempt in that year), up to but not exceeding four such Equalized Floors, that are:

(a) For Residential Use; and

(b) Constructed or Rehabilitated as part of the Vertical Housing Development Project. For purposes of calculating the partial property exemption, the Equalized Floor quotient is rounded down to whole numbers reflecting only fully Equalized Floors up to a maximum of four such Equalized Floors.

(5) Consistent with 813-013-0061(2), the partial property tax exemption on a Certified Project is available for ten consecutive tax years beginning with the first tax year in which, as of the assessment date, the Project is occupied or ready for occupancy following its approval by the Department as a Certified Project.

(6) If during the period of partial tax exemption, any part of a Project dedicated for Residential Use is converted to or used as Non-Residential Area, the county assessor and the Department shall be notified by the Project owner of such change. Similarly, the county assessor and the Department shall be notified in writing by the Project owner if any part of a Project dedicated to Low-Income Residential Housing is converted to other purposes or otherwise used in a manner that does not comply with Low-Income Residential Housing requirements.

(7) In order to receive partial property tax exemption with respect to a Certified Project, the Certified Project owner shall apply to the county assessor of the county in which the Project exists. Upon written application for partial exemption to the appropriate county assessor, the Certified Project owner will provide the county assessor:

(a) A letter specifically requesting the partial tax exemption in accordance with the Certified Project approval certification;

(b) A copy of the final Project application for certification,

(c) A copy of the Certified Project approval certificate issued by the Department,

(d) A copy of the certificate(s) of occupancy for the entire Certified Project; and,

(e) Such fee(s), if any, as the county assessor may require.

(8) The certificate of occupancy or temporary certificate of occupancy must be dated prior to January 1 of the assessment year for which the exemption is requested.

(9) The written application for exemption must be made to the county assessor on or before April 1 of the assessment year for which the exemption is sought and the exemption will be effective for the first year for which the partial property tax exemption

is available and for the next nine consecutive tax years.

(10) If all or a portion of a Certified Project is decertified by the Department, that portion of the Certified Project shall be disqualified from partial property tax exemption as set forth in the notice of decertification.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 307.861, 307.864

Hist.: OHCS 8-2006, f. & cert. ef. 6-28-06

### **813-013-0065**

#### **Waiver**

The Department may waive or modify any requirements of OAR 813, division 013, unless such waiver or modification would violate applicable federal or state statutes or regulations.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 307.841 - 307.867

Hist.: OHCS 8-2006, f. & cert. ef. 6-28-06

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