



CITY OF MILWAUKIE
COUNCIL ORDINANCE No. 2157

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON ADOPTING CHAPTER 3.65 - VERTICAL HOUSING DEVELOPMENT ZONE PROGRAM, FOR THE PURPOSE OF ENCOURAGING DEVELOPMENT OF MIXED-USE RESIDENTIAL PROJECTS WITHIN THE ZONE BOUNDARY, ADOPTING LOCAL SUSTAINABILITY CRITERIA AND ADOPTING A SUNSET PROVISION FOR THE DEVELOPMENT ZONE.

WHEREAS, the City Council has made housing affordability a goal for the 2017-18 biennium; and

WHEREAS, the Housing and Community Services Department for the state of Oregon approved the designation of a Vertical Housing Development Zone (VHDZ) for the following zones: Downtown Mixed Use (DMU); General Mixed Use (GMU); Medium and High Density Residential (R-1-B within the Urban Renewal Boundary); and Tacoma Station Area Manufacturing (M-TSA) overlay sub areas 1 (North of Springwater, 2 (West of McLoughlin, and 3 (Mixed Employment) in the North Milwaukie Industrial Area; and

WHEREAS, the recent adoption of Senate Bill 310 with respect to the VHDZ program administration authorizes the City to designate VHDZs, adopt local criteria for certification and administer its own program;

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. Chapter 3.65, as set forth below, is hereby adopted and incorporated into the Milwaukie Municipal Code.

CHAPTER 3.65 VERTICAL HOUSING DEVELOPMENT ZONE PROGRAM

3.65.010 Purpose, Objectives and Duration

- A. Chapter 3.65 is adopted to carry out the provisions of ORS 307.841 to 307.867 as they pertain to the administration by the City of Milwaukie (the "City") of the Vertical Housing Development Zone Program described herein (the "program"). The basic purpose of the program is to encourage construction or rehabilitation of eligible properties in order to augment the availability of suitable housing and to revitalize the designated development zone. This chapter 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.

- B. This chapter is not meant to interfere with the direct administration of property tax assessments by the County Assessor and does not supersede administrative rules of the Oregon Department of Revenue in OAR chapter 150 pertaining to the valuation of property for purposes of property tax assessments, including as adopted or amended in the future.
- C. Any VHDZ within the City designated by the Housing and Community Services Department for the state of Oregon prior to adoption of this chapter shall sunset on July 1, 2022 unless extended by resolution of the Milwaukie City Council. VHDZ applications received by July 1, 2022 shall have until December 31, 2022 to obtain a Certified Project approval certificate issued by the City; otherwise the application will be deemed inactive related to the VHDZ partial property tax exemption.
- D. The program shall sunset on January 1, 2026 unless extended under the authority of state law.
- E. The termination of a VHDZ or the termination of the program under this section does not affect the exemption from tax under ORS 307.864 of any property of a vertical housing development project that was certified prior to termination of the zone or the program and that continues to qualify for the exemption at the time of the termination, up to 10 years of exemption.

3.65.020 Definitions

As used in this chapter, unless the context indicates otherwise:

"Certified Project" or "project" means a multi-story development within a VHDZ that the City certifies as a vertical housing development project qualifying for a vertical housing partial property tax exemption under this chapter based on a proposal and description from a project applicant that conforms to City requirements.

"Construction" means the development of land, and the new construction of improvements to land as further described in this chapter.

"County Assessor" means the Clackamas County Assessor

"City" means the City of Milwaukie.

"Director" means the director of the Community Development Department or someone within the City authorized to act on behalf of the director for purposes of the program.

"Displacement" means a situation in which a household is forced to move from its current residence due to conditions that affect the residence or the immediate surroundings of the residence and that:

1. A reasonable person would consider to be beyond the household's ability to prevent or control;
2. Occur despite the household's having met all previously imposed conditions of occupancy; and
3. Make continued occupancy of the residence by the household unaffordable, hazardous or impossible.

"District" means a local taxing district.

"Equalized floor" means the quotient that results from the division of the total square footage of a Certified Project, excluding land and ancillary improvements (as determined by the City) by the number of actual floors of the non-ancillary improvements of the project that are at least 500 square feet per floor unless the City, 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 City 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:

1. The proximity of the actual floor under consideration to other floors in the project;
2. The extent of construction or rehabilitation on the actual floor under consideration;
3. The use intended for the actual floor under consideration;
4. The availability of the actual floor under consideration for use by prospective project tenants;
5. 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 City 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 residential housing in a project up to the maximum four(4) equalized floors;
6. Land, patios, porches, deck space, parking, and other ancillary improvements normally will not be included by the City in the determination of equalized floors. The City 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 City 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.

"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 City of Milwaukie's median family income. Owners must provide evidence satisfactory to the City of such resident eligibility as required by the City.

"Median family income" means median family income by household size for the City of Milwaukie as defined by the United States Department of Housing and Urban Development as adjusted and published periodically.

"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 City zoning requirements.

"Project applicant" means an owner of property within a VHDZ, who applies in a manner consistent with this chapter, to have any or all such property approved by the City as a Certified Project.

"Rehabilitation" means repair or replacement of improvements, including fixtures, or land developments, the cost of which equals at least 20 percent of the real market value of the improvements or land developments being repaired or replaced. In determining whether or not proposed or completed rehabilitation is satisfactory or substantial, the City may consider factors including, but not limited to:

1. The quality and adequacy of design, materials and workmanship;

2. 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 non-residential use;
3. 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
4. The value of the improvements on a project. The value of the improvements must be at least 20 percent of the real market value of the entire project on the last certified assessment roll before the City, in consideration of other factors, will deem rehabilitation to be "substantial" in nature.

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

1. Hotels, motels, hostels, rooming houses, bed & breakfast operations or other such temporary or transient accommodations; or
2. 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.

"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.

"Vertical housing development zone" or "VHDZ" or "zone" means an area that has been and remains designated by the City as a vertical housing development zone or an area that was officially designated by the Housing and Community Services Department for the state of Oregon as a vertical housing development zone and which remains so designated.

3.65.025 Administration and Enforcement

The Director or designee is responsible for the implementation, administration and enforcement of this Chapter. The Director may adopt such policies and procedures as are necessary to efficiently and effectively carry out that responsibility, consistent with the provisions of this Chapter.

3.65.030 Zone Designations

- A. The City may designate an area within the City as a VHDZ.

- B. Before designating a VHDZ, the City must notify the local taxing districts that have territory in the proposed VHDZ of the City's intention to designate a VHDZ.
- C. A local taxing district may elect not to participate in a VHDZ. A local taxing district that elects not to participate may continue to impose taxes on property otherwise exempt from ad valorem property tax under ORS 307.864.
- D. The City must consider the potential for displacement of households within a proposed VHDZ before designating the zone.
- E. The City may designate a VHDZ by resolution. The resolution may not be adopted sooner than 60 days after sending the notice required by subsection B above. The resolution shall:
 - 1. Contain a description of the area sought to be designated as a VHDZ, including proposed zone boundaries;
 - 2. Contain a statement attesting that the notification described in subsection B was sent by regular mail to each local taxing district listed pursuant to 3.65.040 A.1.
 - 3. Contain a list of the local taxing districts that elected not to participate in the VHDZ.
 - 4. Address the reasons that the City finds the designation of the zone will improve housing affordability within the City and fulfill the purposes of ORS 307.841 to 307.867.
- F. Once designated, a VHDZ shall continue to exist indefinitely, except as provided otherwise in this chapter.
- G. The City may approve multiple VHDZs within its jurisdiction.
- H. The boundaries of VHDZs may not overlap. A property may only be in one VHDZ.

3.65.040 Local Taxing Districts and Zone Designations

- A. Prior to adoption of a resolution designating a VHDZ the City shall:
 - 1. Prepare a list of local taxing districts that have territory in the proposed VHDZ.
 - 2. By regular mail, send a notice to the local taxing districts listed pursuant to paragraph 1 of this subsection that:
 - (a) Describes the proposed VHDZ;

- (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 local taxing district may elect not to participate in the VHDZ.
- B. To elect not to participate in a VHDZ, a district shall, within 45 days after the date on which proper written notification is received by the district from the City:
 - 1. Inform the City in writing of its decision to opt out of the VHDZ designation; and
 - 2. Furnish to the City a copy of a resolution or other appropriate official instrument duly adopted and issued by the governing body of the district affirming its decision to opt out of the VHDZ designation.
- C. The City must prepare not later than 60 days after mailing notice to the districts a statement identifying the districts (if any) that have opted out of the VHDZ designation. The statement shall specifically list each district opting out of the VHDZ designation, together with a copy of the instrument(s) provided to the VHDZ applicant by each such district.
- D. A district that fails to respond according to 3.65.040 B. will be subject to the VHDZ designation and excluded from being listed as described in 3.65.040 C.
- E. A district that forms after the approval of a VHDZ may opt out of participating in a VHDZ. To opt out, the district must provide:
 - 1. Written notice post-marked to the County Assessor and the City on or before July 1 of the first tax year in which it would impose a tax on the project; and
 - 2. A copy of a resolution or other appropriate official instrument duly adopted and issued by the governing body of the district affirming its decision to opt out of the VHDZ designation.
- F. The decision by a 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 City pursuant to 3.65.050 A., or by a new district pursuant to 3.65.040 E.

3.65.050 Notice to County Assessor

- A. The City will send a copy of any designation of a VHDZ to the Department of Revenue and to the County Assessor's office. The City will include with the notification to the County Assessor:

- B. Copies of materials delineating the area of the VHDZ; and
- C. The name of any district that opted out of the VHDZ.

3.65.060 Zone Termination or Modification

- A. The City may terminate all or part of the VHDZ at any time if the City determines that the VHDZ fails to satisfy the criteria under this chapter 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 City may reconsider any such determination.
- B. The City may approve a Certified Project after VHDZ termination if the application for certification of the Project was pending with the City prior to the City terminating the VHDZ. However, the City may consider the VHDZ termination in determining whether or not to approve the application for a Certified Project.
- C. The City will send notice of its termination of a VHDZ to any pending applicant, the County Assessor, and owners of Certified Projects, of whom the City is aware.
- D. 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.

3.65.070 Municipally Sponsored Development Projects

- A. The City may acquire or dispose of real property located in a VHDZ for the purpose of developing projects. Property acquired by the City within a VHDZ may be sold by the City 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 the City that otherwise exists under the laws of this state or an act of this City to acquire or dispose of property.
- B. Development of projects may be undertaken by the City, jointly or in partnership with a private person or entity.
- C. Development of projects also may be undertaken by private persons or entities acting independently of the city ownership.

3.65.080 Project Certification Applications

- A. 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 City, and by delivering it during normal business hours or by mail to: City of Milwaukie Community Development Department, Attn: Vertical Housing Program, 6101 SE Johnson Creek Blvd, Milwaukie, Oregon 97206.

- B. Projects must be described in terms of entire tax lots. Projects may not include partial tax lots.
- C. The project applicant must provide both a legible and scaled site plan and a legal description of the land for the proposed project.
- D. 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.
- E. 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.
- F. The non-residential use of a particular floor or floors may be satisfied even if the entire floor is not devoted to that use.
- G. The City will review applications upon their appropriate delivery subject to, but not limited to:
 - 1. Applications being complete and consistent with City requirements; and
 - 2. Delivery to the City of an application processing fee, monitoring fee and any other related fees. In determining fees for each project applicant, the City 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. The fees authorized by this subsection may be established by resolution of the City Council. Payment of fees may be made by check or money order payable to the City and must be submitted along with the project application or as otherwise required by the City.
- H. For new construction projects to qualify for certification, the application must be delivered to the City before:
 - 1. The relevant permitting authority has issued a permanent certificate of occupancy; or
 - 2. If no certificate of occupancy is required, then occupancy otherwise is effectively prevented because the proposed Certified Project has not yet been completed.

- I. For rehabilitation projects to qualify for certification, the application must be delivered to the City at any stage of the rehabilitation, but not after rehabilitation work on the project is complete. The City 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 City within 90 days of project completion. The City may certify all or part of a rehabilitated project or of a project where the rehabilitation is still in progress as a Certified Project.

- J. Project applicants must provide the following information in a manner satisfactory to the City:
 1. 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;
 2. A description of the existing condition of the proposed project property;
 3. 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;
 4. A description of all non-residential areas with related and total square footages, and identification of all non-residential uses;
 5. A description of all residential uses and residential areas with related and total residential square footages;
 6. A description of the number and nature of low-income residential housing units with related and total low-income residential housing square footages;
 7. For purposes of this section, square footage does not include areas used for patios, porches, deck space, parking, unless these areas are demonstrated to the satisfaction of the City to be economically necessary to the project or the City otherwise determines that it is appropriate to include the areas in the square footage;
 8. Confirmation that the project is entirely located in an established VHDZ;
 9. A commitment from the project applicant, acceptable to the City, 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 City and not less than the term of any related property tax exemption;

10. 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;
 11. Documentation establishing the costs of construction and rehabilitation with respect to the project; and;
 12. Such other information as the City, in its discretion, may require.
- K. The complete project application must be submitted and received by the City before the date that certificate of occupancy is issued.
- L. The City 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 City 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.
- M. 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:
1. Ordinary maintenance and repairs;
 2. Refurbishment or redecoration that merely replaces, updates or restores certain fixtures, surfaces or components; or
 3. Similar such work of a superficial, obligatory or routine nature.
- N. Unless an exception is granted by the City, projects "in progress" at the time of application may include only costs incurred within six (6) months of the application date. Factors that the City 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:
1. Delay due to terrorism or acts of God;
 2. Delay occasioned by requirements of the City;

3. Resultant undue hardship to the project applicant;
 4. The complexity of the project; and
 5. The benefit of the project to the community.
- O. For applications filed before project completion, the City 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 City of the project's completion, together with a copy of the certificate of occupancy and other information as the City may require. A project applicant must provide the notice and required documentation to the City within 90 days of project completion which is typically the date of the certificate of occupancy unless the City determines that another date is more appropriate.
- P. If an application is rejected for failure to meet City review requirements, then:
1. The City will notify the project applicant that the application has been rejected; and
 2. The City, 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 City 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.
 3. If the City 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 City 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.

3.65.090 Project Criteria

- A. The City will evaluate each accepted application to determine whether or not to certify the proposed project. A project, to qualify for City certification, must satisfy each of the following criteria:
 - 1. The project must be entirely located within an approved VHDZ;
 - 2. The project must include one or more equalized floors;
 - 3. 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;
 - 4. A portion of the project must be committed, to the City's satisfaction, for residential use and a portion of the project must be committed, to the City's satisfaction, for use as non-residential use;
 - 5. The commitment to non-residential use must be accomplished as follows:
 - (a) At least 50 percent of the project's ground floor that fronts on the primary public street must be committed to nonresidential use. If a project has access to only one public street, the square footage of driveways, loading docks, bike storage, garbage receptacles and building entryways shall be excluded before applying the 50 percent test;
 - (b) For the project's ground floor to be considered committed to nonresidential use, all ground floor interior spaces that front on the primary public street must be constructed to building code standards for commercial use, are planned for commercial use and/or live-work use upon completion, or both;

- (c) The “primary public street” shall be designated by applying the City’s zoning code requirements or by mutual agreement between the applicant and the City.
 - (d) For purposes of this rule, "public streets" 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 as allowed by City 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-work unit must have direct access to street level entrances of the project.
6. Each phase of a phased development, whether vertical or horizontal, will be treated as a separate project for application purposes;
 7. Each project must be on its own independent legal tax lot(s);
 8. Construction or rehabilitation must have been started on each building included in the project, including but not limited to, additions that expand or enlarge an existing building;
 9. The project application must be complete and fully satisfactory to the City;
 10. The project application must be received by the City 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;
 11. Calculation of equalized floors is adequately documented;
 12. Documentation, satisfactory to the City, which establishes the costs of construction or rehabilitation of project land developments and improvements, as applicable; and
 13. 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 City that they are economically necessary to the project and the City otherwise determines that it is appropriate to grant an exception for the inclusion of any or all of such areas in the project.

- B. 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 City, will not be eligible for partial exemption; and
- C. 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.
- D. All new buildings or major rehabilitations as Certified Projects of the City are required to meet a green building certification level and associated energy use standards set within the Milwaukie Municipal Code Title 19 based on the date of land use approval.

3.65.100 City Certification of Projects

- A. The City 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 City.
- B. The determination of the City to certify or deny certification is a discretionary determination. The determination is final and is not subject to judicial or administrative review.
- C. If the application is approved, the City will:
 - 1. 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
 - 2. Send a copy of the project information to the County Assessor.
- D. 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 City in the Clackamas County records. Recordation of such instruments satisfactory to the City constitutes a condition precedent to the approval of the Certified Project taking legal effect. The City may void any Certified Project approval for failure to timely record and provide the City with a copy of any such instruments. The owner shall be responsible for the cost of recording and providing satisfactory evidence to the City that such instruments have been properly recorded.

- E. If the application is denied, the City will send written notice of the denial to the project applicant. At its option, the City may allow reapplication by the project applicant consistent with 3.65.080 P.
- F. Certification by the City of a project may be partial in scope. The City's letter of approval will identify what portions of the property and improvements included in the project application constitute the Certified Project.
- G. The letter of approval from the City also may include such information and instructions as the City deems appropriate.

3.65.110 Project Monitoring Fee/Modification or Transfer of Ownership

- A. A monitoring fee shall be paid by the project applicant to the City at the time of project application, or as otherwise directed by the City, to cover the City'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 City may consider factors including but not limited to the following in determining the amount of this monitoring fee:
 - 1. The size of the project;
 - 2. The number of residential housing units;
 - 3. The amount of commercial space, including any live-work units;
 - 4. Project uses;
 - 5. Project location;
 - 6. The duration and complexity of compliance requirements;
 - 7. The level and amount of staff or other services involved;
 - 8. The use of supplies, equipment or fuel; and
 - 9. The number of separate sites and/or buildings.
- B. The City may condition its approval of a Certified Project upon payment by project applicant of the applicable fee described above in 3.65.110 A. The City may void or terminate the certification of all or a portion of a Certified Project if such fees, or any part thereof, are not timely paid.

- C. Modifications to or transfers of ownership of a Certified Project must receive prior written approval from the City. The City will not unreasonably withhold its approval of such modifications to or transfers of ownership. The City 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.
- D. 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 City of the new owner's name, contact person, mailing address and phone number within 30 days of the change.
- E. The City may require the Certified Project owner to pay an administrative fee to cover the City'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.
- F. The City 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 fee described above in subsection E. The City may void or terminate the certification of all or a portion of a Certified Project if such an administrative fee, or any part thereof, is not timely paid.

3.65.120 Monitoring; Investigations; Remedies; Decertifications

- A. The City 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 City 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 shall prepare an annual report to the City on the number of residential housing units; number of low-income residential housing units, amount of commercial space, including live-work units; and building energy usage. Project applicants further agree to cooperate fully with such City monitoring and investigatory actions.
- B. The City may undertake any remedial action that it determines to be necessary or appropriate to enforce City 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:
 - 1. The requesting of project documentation including but not limited to current rents on an annual basis and lease agreements with redacted personal information;

2. The issuance of orders and directives with respect to the project or otherwise:
 3. 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 fees, etc.); and
 4. The decertification of all or a portion of a Certified Project.
- C. 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 City shall issue a decertification notice to the Certified Project owner identifying relevant factors among the following:
1. The property decertified from the project;
 2. The number of equalized floors that have ceased qualifying as residential housing for purposes of the program;
 3. The number of equalized floors that have ceased qualifying as low-income residential housing for purposes of the program;
 4. The remaining number of equalized floors of residential housing in the project and a description of the property of each remaining equalized floor;
 5. 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;
 6. If the project no longer includes commercial space consistent with the intent of the program;
 7. If the project fails to meet the green building certification level outlined in the Milwaukie Municipal Code Title 19; and
 8. Such other information as the City may determine to provide.
- D. Prior to issuance of a notice of decertification, the City 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 City. The City 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 City. 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 City may consider factors including, but not limited to:

1. The severity of the non-compliance;
 2. The impact of non-compliance upon project tenants and patrons;
 3. The public interest in appropriate and affordable housing;
 4. The public interest in the revitalization of relevant communities;
 5. The cost and time reasonably necessary to correct program non-compliance; and
 6. The past history of compliance and non-compliance by the project owner.
- E. For those instances where the City has elected to provide notice to a Certified Project owner of its non-compliance, if the City determines that the Certified Project owner has failed to correct any noticed program non-compliance within the time allowed by the City in its notice, the City may issue the notice of decertification identified above and direct the County Assessor to disqualify all or a portion of the project from property tax exemption under the program. The City 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.
- F. The effective date of a decertification is the effective date of same provided in the notice of decertification identified above in 3.65.120 C. 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 City. In determining whether or not to make the decertification retroactive, the City may consider factors including, but not limited to those identified above in 3.65.120 D, 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.

3.65.130 Partial Property Tax Exemptions for Certified Projects

- A. In order to receive a partial property tax exemption under this chapter, 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 that the project has been approved by the City as a Certified Project and qualifies for a partial property tax exemption.

- B. The notification described above in subsection A 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.
- C. Except as modified by subsections D and E of this section, 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.
- D. 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:
 - 1. For residential use; and
 - 2. 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.
- E. 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 City as a Certified Project.
- F. 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 City shall be notified by the project owner of such change. Similarly, the County Assessor and the City 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.
- G. In order to receive partial property tax exemption with respect to a Certified Project, the Certified Project owner shall apply to the County Assessor. Upon written application for partial exemption to the County Assessor, the Certified Project owner will provide the County Assessor:
 - 1. A letter specifically requesting the partial tax exemption in accordance with the Certified Project approval certification;
 - 2. A copy of the final project application for certification,
 - 3. A copy of the Certified Project approval certificate issued by the City,

- 4. A copy of the certificate(s) of occupancy for the entire Certified Project; and,
 - 5. Such fee(s), if any, as the County Assessor may require.
- H. 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.
- I. 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.
- J. If all or a portion of a Certified Project is decertified by the City, that portion of the Certified Project shall be disqualified from partial property tax exemption as set forth in the notice of decertification.

3.65.140 Waiver

The City may waive or modify any requirements of this chapter unless such waiver or modification would violate applicable federal or state statutes or regulations.

Section 2. This Ordinance shall become effective on January 5, 2018.

Read the first time on 12/5/17, and moved to second reading by 4:0 vote of the City Council.

Read the second time and adopted by the City Council on 12/5/17.

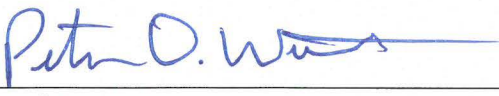
Signed by the ~~Mayor~~ on 12/12/17
 Council President


 Lisa Batey, Council President

ATTEST:

APPROVED AS TO FORM:
 Jordan Ramis PC


 Scott S. Stauffer, City Recorder


 City Attorney