



Administrative Rules

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Table of Contents

- I. **Definition of Administrative Rules**
- II. **Program Goals**
- III. **Program Options**
 - A. **Affordable Commercial Space Program Options**
 - B. **Application requirements**
 - C. **Articles of Incorporation**
 - D. **Agreement**
 - E. **Affordable Commercial Fund**
- IV. **Development Requirements**
 - A. **Affordable Commercial Space and Hot Shell Landlord Work Standards**
 - B. **Inapplicable Policies**
- V. **Issuance of Certification Letter**
- VI. **Compliance and Reporting Requirements**
 - A. **Leasing Affordable Commercial Space Units**
 - B. **Annual Reporting and Review**
 - C. **Transfers**
 - D. **Default and Conversion**
 - E. **Remedies**

Appendices

Appendix A – Affordable Commercial Fund Factor Schedule

Appendix B – Affordable Commercial Space and Hot Shell Landlord Work Standards

I. Definition of Administrative Rules

These Administrative Rules define the policies, processes, and procedures of implementation of the Affordable Commercial Space Program (the “ACS Program”), as contemplated in City Code Section 33.130.212.D.

II. Program Goals

The City of Portland provides a floor area ratio (“FAR”) and height bonus to developments which provide affordable commercial space pursuant to City Code Section 33.130.212.D in order to provide an incentive for development that provides a public or community benefit. Prosper Portland, at the City’s request, has established guidelines for what constitutes qualifying affordable commercial space (“Affordable Commercial Space”) for the purposes of the City’s ACS Program. In developing these rules, Prosper Portland has heard from community stakeholders about the critical need for affordable commercial space to help stabilize local and legacy businesses at potential risk of displacement. Preserving and creating opportunities for affordable commercial space is a critical benefit to the public and to the Portland community as a whole.

III. Program Options

For commercial and residential/commercial mixed-use developments projects proposing fewer than 20 new dwelling units that would like to access an ACS bonus, the applicant will work with Prosper Portland to select an ACS Program option. Portland Permitting and Development (“PPD”) and Prosper Portland staff will be available to assist applicants through the permitting intake and application process to explain and clarify ACS Program requirements. Once an applicant has selected an ACS Program option and has complied with the initial requirements of that option, Prosper Portland will give PPD a letter certifying that the applicant has enrolled in the ACS Program and that the applicant is eligible for an Affordable Commercial Space bonus pursuant to City Code 33.130.212.D (“ACS Bonus”).

A. **Affordable Commercial Space Program Options.** ACS Program requirements will depend on the applicant’s selection from the following options:

1. **Provide Affordable Commercial Space On-site.**

- a. Applicant submits to Prosper Portland and PPD a floor plan and section drawing identifying proposed location and configuration of affordable commercial space area.
- b. PPD staff determines square feet of the ACS Bonus floor area based on the square feet of the corresponding on-site qualifying Affordable Commercial Space (see Appendix B).

- c. Prosper Portland and the developer/owner then enter into a Regulatory Agreement regarding the Affordable Commercial Space prepared by Prosper Portland (see paragraph D), which Regulatory Agreement will be recorded against the property utilizing the ACS Bonus. This Regulatory Agreement is distinct from the covenant required with the City pursuant to City Code 33.130.212(D)(2).
 - d. The applicant does not need to identify specific Qualified Businesses at the time of application for the ACS Program. Leasing to Qualified Businesses may occur after the permit is issued, subject to the requirements of Section VI.
 2. **Affordable Commercial Fund Option.** Applicants may choose the Affordable Commercial Fund option rather than including Affordable Commercial Space units in a development:
 - a. PPD staff determines square feet of the Affordable Commercial Space bonus floor area. Prosper Portland staff calculate the Affordable Commercial Fund payment amount by multiplying the square feet of the Affordable Commercial Space bonus, by the Affordable Commercial Fund Factor (See Appendix A). (Note that, although Prosper Portland may provide an estimate of the associated FAR/height bonus, the ultimate FAR/height bonus awarded is determined by the City of Portland.)
 - b. The Affordable Commercial Fund payment amount is payable prior to the issuance of the certification letter.
 - c. Upon payment of the Affordable Commercial Fund payment amount, the applicant has no additional ACS Program requirements relative to the proposed development. (This option does not require a Regulatory Agreement.)
 3. **Combination On-site and Affordable Commercial Fund Option.**
 - a. Applicant submits to Prosper Portland and PPD a floor plan and section drawing identifying proposed location and configuration of affordable commercial space area.
 - b. PPD staff determines square feet of the Affordable Commercial Space bonus floor area based on the square feet of the corresponding on-site qualifying Affordable Commercial Space (see Appendix B). For any square feet of Affordable Commercial Space not provided on-site, Prosper Portland Staff calculate the Affordable Commercial Fund payment amount, by multiplying

the square feet of the corresponding bonus floor area by the Affordable Commercial Fund Factor (See Appendix A) (Note that, although Prosper Portland may provide an estimate of the associated FAR/height bonus, the ultimate FAR/height bonus awarded is determined by the City of Portland.)

- c. Prosper Portland and the developer/owner then enter into a Regulatory Agreement regarding the Affordable Commercial Space prepared by Prosper Portland (see paragraph D).
 - d. The Affordable Commercial Fund payment amount is payable prior to the issuance of the certification letter.
 - e. The applicant does not need to identify specific Qualified Businesses (defined in Section IV.A.1) at the time of application for the ACS Program. Leasing to Qualified Businesses may occur after the permit is issued, subject to the requirements of Section VI.
- B. **Application requirements.** Certification letters will be conditioned on (i.e., they will not be issued unless) any required Regulatory Agreement has been signed, notarized, and recorded, and any applicable Affordable Commercial Fund payment is paid. In the case of the Affordable Commercial Fund option (Option 2), certification letters will be conditioned on payment of the full payment amount prior to issuance of the certification letter.
- C. **Articles of Incorporation.** Applicants must provide organizational documents of the entity with site control identifying signature authority (Articles of Incorporation, Corporate Resolutions, etc.) in order to enter into the Regulatory Agreement.
- D. **Agreement.** In the case of Option 1 and Option 3, a Regulatory Agreement will be prepared by Prosper Portland staff and must be signed, notarized, and recorded by the owner of the property on which the development is located prior to issuance of the certification letter. The Regulatory Agreement is a legally binding document that governs the operation and performance of Affordable Commercial Space and is recorded on the title to the property.
- E. **Affordable Commercial Fund.** Prosper Portland's accounting and financial team will establish the Affordable Commercial Fund at Prosper Portland. Monies within the fund will be used to support affordable commercial space throughout the City of Portland and to cover Prosper Portland's staffing and administrative costs in administering the ACS Program.

IV. Development Requirements

A. **Affordable Commercial Space and Hot Shell Landlord Work Standards.**

The Affordable Commercial Space will be improved to the standards listed in the Affordable Commercial Space and Hot Shell Landlord Work Standards (Appendix B). Prosper Portland may approve exceptions to landlord work standards on a case-by-case basis, where Prosper Portland determines that due to the specific characteristics of the property that the landlord has provided the substantial equivalent of the Hot Shell Landlord Work Standards or has provided substantially equivalent offsetting concessions to tenants for any part of the Hot Shell Landlord Work Standards not performed.

B. **Inapplicable Policies.** Policies Prosper Portland applies to developments receiving direct funding from Prosper Portland or the city will not be implicated merely by receipt of an ACS Program FAR/height bonus. These include:

1. Business Equity Program
2. Workforce Equity Program
3. Green Building Policy
4. Prevailing Wage

V. Issuance of Certification Letter

Prior to certification letter issuance, in the case of Option 1 or Option 3, Prosper Portland will assign a Construction Coordinator to the development. Construction Coordinators will make contact with appropriate members of the applicant's development team to coordinate participation during the construction phase. Construction Coordinators will monitor construction progress. Applicants are required to report progress to Construction Coordinators quarterly. After a development receives sign-off from the City inspector, or one-month prior to pre-leasing, whichever comes first, the property manager must contact Prosper Portland staff to set up compliance mechanisms including lease-up, compliance, and reporting requirements. Among other things, Prosper Portland staff will require that the property manager certify that they have read and understood ACS compliance requirements.

VI. Compliance and Reporting Requirements

A. **Leasing Affordable Commercial Space Units.** Space meeting the requirements below is "Affordable Commercial Space" for the purposes of the ACS Program. The following requirements apply to the leasing of ACS units:

1. **Qualified Businesses.** In order to qualify as "Affordable Commercial Space," space must be leased to a "Qualified Business." In order to be a Qualified Business, an entity must be all of the following:

- a. A local business or nonprofit organization based in the Portland – Vancouver - Hillsboro Metropolitan Statistical Area.
- b. An entity with a Profit & Loss statement demonstrating to Prosper Portland’s satisfaction that the entity will be able to afford a market lease rate at the end of the affordability period.
- c. An entity owned by a principal who demonstrates business experience of two or more years in one or more of the following ways:
 - Previous experience in their industry through pop-up shops, markets, trade shows, food trucks, etc.;
 - Previously owned business in the area that closed due to displacement or lack of access to capital; or
 - Has proven concept and is looking to expand into a second location.
- d. An entity owned by a principal who identifies with one or more of the following criteria:
 - Their business or residence was displaced by urban renewal, or they have generational ties to such displacement due to urban renewal;
 - They have limited access to employment opportunities or capital and/or have not benefited from generational wealth;
 - They are a first-generation business owner and/or first-generation college graduate; and/or
 - Their business or home address is within a Census Tract scoring at an Income Threshold of 100 or below (as identified by the StatsAmerica Distress Tool, supported by the U.S. Economic Development Administration - <https://www.statsamerica.org/distress/distract.aspx>).

2. **Lease Standards**

- a. Lease agreements will be reviewed by Prosper Portland staff.
- b. Rent rates and maximum escalation rates must be approved by Prosper Portland staff as consistent with affordability for Qualified Businesses. Affordability is defined as 10-25% below average market rate.

3. **Duration and Re-tenanting**

- a. ACS unit compliance period is 10 years, from start date of initial lease (the “Compliance Period”).
- b. ACS vacated by a Qualified Business will be re-tenanted with a Qualified Business. New tenant will received tenant improvement package comparable to original Hot Shell Landlord Work Standards.
- c. During the Compliance Period, any space counted as Affordable Commercial Space for purposes of calculating the FAR/height bonus may not be subleased except to another Qualified Business (as determined by Prosper Portland consistent with the definition provided above).
- d. If a lease with a Qualified Business is not executed within twelve months after issuance of the permit, the Regulatory Agreement will require payment of an Affordable Commercial Fund payment for any unleased space that was considered Affordable Commercial Space for purposes of the FAR/height bonus calculation. Prosper Portland may, in its discretion, elect to extend the twelve-month deadline for program participants if it determines that general economic conditions in Portland warrant doing so.

B. **Annual Reporting and Review.** Developments with ACS units will be subject to Prosper Portland annual reporting requirements as set forth in the Regulatory Agreement. Owners or their property managers on an annual basis will submit information to Prosper Portland on the ACS units and the Qualified Tenants leasing the spaces. Prosper Portland staff will test this information against the contents of the Regulatory Agreement and issue written results to each development. In cases of non-compliance, Prosper Portland staff may collaborate with owners or their property managers on remedies, however, Prosper Portland also has the authority to enforce the provisions of the Regulatory Agreement without the owner’s consent.

C. **Transfers.** The Regulatory Agreement runs with the land for the length of the Compliance Period. It must be recorded in the first position (other than existing utility, access, no-build or other easements required for compliance with zoning or building codes, or as may be otherwise required by law, as determined by Prosper Portland legal counsel). Prosper Portland will not subordinate its Regulatory Agreement, except to Portland Housing Bureau, the United States of America, the State of Oregon, or to the extent required by

applicable law. In cases of foreclosure, Prosper Portland may, but will not be required to, consider modifications to the Regulatory Agreement to facilitate resolution of foreclosure proceedings.

Upon sale or other transfer of the development during the Compliance Period, the provisions of the ACS Program must transfer with the property. Prosper Portland needs to receive updated property manager information, and legal documentation about the new entity in order to prepare a Consent to Transfer and Assignment and Assumption Agreement to be executed and recorded on title.

- D. **Default and Conversion.** Specific default provisions are contained in the Regulatory Agreement. In general, there are two types of default: minor and major. Minor defaults include:
1. Non-reporting;
 2. Non-reporting by due date; and
 3. Insufficient reporting.

Major defaults occur in cases of deliberate non-compliance. Depending on their nature and the circumstances surrounding them, major defaults may also be categorized as “Conversions.” Remedies for both Conversions and default are outlined below in Remedies.

In addition, if minor defaults, become chronic, i.e. they last for more than one reporting cycle, they will be deemed “major” and the corresponding remedies may be applied.

- E. **Remedies.** Should unauthorized conversions of Affordable Commercial Space occur (including leasing or subleasing of Affordable Commercial Space to tenants other than Qualified Businesses and failure to comply with Section VI of these rules), financial penalties will be due and payable to Prosper Portland as follows:
1. Affordable Commercial Fund payment due. An Affordable Commercial Fund payment equal to square footage of the Affordable Commercial Space used in the determination of the FAR/height bonus multiplied by the Affordable Commercial Fund Factor. (See Appendix A.)
 2. Interest. Interest will be due on the entire unpaid Affordable Commercial Fund payment amount, assessed at the rate of .833 percent simple interest per month or fraction thereof (10 percent per annum), computed from the date of Conversion.

Appendix A. Affordable Commercial Fund Factor Schedule

- Projects with residential use and no commercial space may not participate in the ACS Program by making a payment to the Affordable Commercial Fund. Prosper Portland anticipates that these projects could use the Inclusionary Housing Fee in Lieu if applicable.
- Projects with no residential occupancy use will use the Affordable Commercial Fee Schedule for Bonus FAR for non-residential occupancy/use, up to the available Affordable Commercial FAR/height bonus zoning maximums. Additional FAR may be available through the Inclusionary Housing Fee-In-Lieu, up to the Inclusionary Housing FAR/height bonus zoning maximums

Fee Schedule for BONUS FAR for non-residential occupancy use.
\$24 per square foot of Bonus FAR

- Mixed-use projects (commercial and residential) will use the Affordable Commercial Fund Factor Schedule, up to the available Affordable Commercial FAR/height bonus zoning maximums. Additional FAR may be available through the Inclusionary Housing Fee-In-Lieu, up to the Inclusionary Housing FAR/height bonus zoning maximums.

Fee Schedule for BONUS FAR in Mixed-Use Zones
CM1, CM2, CM3, and CE zones, and in the CX zone outside the Central City and Gateway plan districts
\$25.00 per square foot of Bonus FAR

Appendix B. Affordable Commercial Space and Hot Shell Landlord Work Standards.

To qualify as Affordable Commercial Space for use of the zoning bonus, the affordable commercial space must meet location and dimension standards of 1 and 2. The hot shell improvement standards of 3 through 13 must be met to demonstrate full compliance with the Affordable Commercial Space on-site option.

1. Location within building.

- Affordable Commercial space will be located on the ground floor and have at least one on street entrance. The location of proposed affordable commercial space must be shown on plans submitted to Prosper Portland and the PPD.

2. Dimensional standards.

- Affordable Commercial space will have a minimum of 10-foot floor-to-ceiling height, minimum of 25-foot depth, and be a minimum of 600 square feet usable space. The ceiling height, depth of space and minimum dimensions must be shown on plans submitted to Prosper Portland and PPD.

3. Walls and Demising.

- Landlord will deliver Affordable Commercial space with all interior and exterior walls framed.
- Landlord will deliver Affordable Commercial space insulated, sound caulked, dry walled to smooth wall finish, taped and primed, ready for tenant to paint.

4. Electrical.

- Landlord will provide Affordable Commercial space code required electrical receptacles.
- Landlord will provide lighting junction boxes for storefront windows and one lighting junction box for roughly every 300 square feet of demised retail space.
- Landlord will provide basic lighting fixtures, and one fourplex outlet every ten to twelve feet along the interior walls, roughly 18 inches off the ground on center.

5. HVAC.

- Landlord will provide HVAC services to each Affordable Commercial space, including access to a rooftop unit, distribution of supply, return and exhaust spiral ducting within all demised spaces.
- Landlord will provide a Thermostat in the Affordable Commercial space.

6. Ceiling Finish.

- Each space will have insulation at the maximum practical ceiling height (spiral ducting to be below insulated ceiling).

7. Water/Sewer.

- Landlord will provide sewer stub and water stub located in space, for tenant to build out as desired.
- Landlord will provide access to central work sink.

8. Occupancy & SDC Credits.

- Landlord will provide the Affordable Commercial space to tenant with at least M mercantile retail occupancy as designated by the City of Portland
- Landlord will cover all sewer system development charges, transportation development charges and parks development charges.

9. Storefront.

- Landlord will provide a storefront structure and window glass with the highest transparency possible while still meeting energy code with the City of Portland

10. Restrooms.

- Landlord will build and finish the appropriate number of bathrooms as required by the City of Portland Code. (minimum of 1 bathroom)

11. Flooring.

- Landlord to provide Affordable Commercial space floors to be finished as sanded, polished, and sealed concrete.

12. Signage Package.

- Landlord will provide signage package with pre-engineered solutions and brackets for blade signs and flat sign erection by tenants. All signs, production, and permitting will be at Tenant's expense.

13. Fire Protection.

- Landlord will provide necessary fire protection systems to meet applicable codes for M Merchant occupancy level.

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Final Audit Report

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