



# Director's Rule 01-2026

## Version

Final

## Summary

Adopts affordable housing standards to govern the construction, repair, modification, and operation of affordable housing created by operation of the Land Use Code. Interprets and defines key provisions contained in LUC 20.20.128. Interprets and further defines the term "housing expenses" for the purposes of LUC 20.50.024.

## Supersedes

N/A

## Effective Date

February 25, 2026

## Page Count

28

## Rulemaking Authority

LUC 20.20.128; LUC 20.40.100; and LUC 20.50.024

## LUC or BCC Provisions Implemented or Interpreted

LUC 20.20.128; and LUC 20.50.024.

## Decision

Approved

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Rebecca Horner  
AICP Director  
Development Services Department  
Date: February 25, 2026

Development Services Department  
Director's Rule 01-2026  
Final Version

# DSD Director's Rule - Affordable Housing Standards

## A. Purpose:

The purposes of this rule are as follows:

1. Implement LUC 20.20.128.A.2 by adopting affordable housing standards to govern the construction, repair, modification, and operation of affordable housing created by operation of the Land Use Code; and
2. Implement and interpret key requirements contained in LUC 20.20.128.A.3 and LUC 20.50.024 relating to the construction, repair, modification, or operation of affordable housing within the City.

## B. Background:

The Land Use Code contains development regulations requiring or incentivizing the construction, repair, modification, and operation of affordable housing within the City of Bellevue.

Under LUC 20.20.128.A.2, the Director must adopt by rule affordable housing standards to govern the construction, repair, modification, and operation of affordable housing created by operation of the Land Use Code. Such standards shall be consistent with the requirements of the Land Use Code.

In addition, several development regulations contained in the Land Use Code also require the Director to define by rule certain terms relating to the construction, repair, modification, and operation of affordable housing, including LUC 20.20.128.A.3 and LUC 20.50.024.

## C. Rule:

This rule consists of three parts:

*Part 1:* Implementation of LUC 20.20.128.A.2 – Adoption of Affordable Housing Standards Generally Applicable to Affordable Housing Created by Operation of the Land Use Code.

*Part 2:* Implementation of LUC 20.20.128.A.3 – Interpretation of Codified Affordable Housing Standards.

*Part 3:* Implementation of LUC 20.50.024 – Interpretation of the Definition of “Housing Expense.”

## D. Definitions Applicable to this Rule.

For the purposes of this rule, the definitions contained in Chapter 20.50 LUC and in LUC 20.20.128 shall apply, except that the definition of “affordable housing” contained in Chapter 20.50 LUC shall not apply. In addition, the following definitions shall also apply unless the context clearly requires otherwise:

1. “Affordable” means that housing expenses are no greater than 30 percent of the applicable percentage of area median income specified in the land use code for the affordable housing, as adjusted for household size.
2. “Affordable Housing” means dwelling units that are affordable, reserved for occupancy by eligible households as a primary residence, and that meet all applicable affordable housing standards.
3. “Affordability level” means the amount of household income, expressed as a percentage of the Area Median Income King County Median Income, that provides the basis for determining the maximum sale price or monthly housing expense of an Affordable Unit.
4. “Area Median Income” or “AMI” means the median income for the Seattle-Bellevue, WA Housing and Urban Development Metro Fair Market Rent Area (“Seattle-Bellevue FMR Area”) as most recently published by the United States Department of Housing and Urban Development (“HUD”). In the event that HUD no longer publishes median family income figures for Seattle-Bellevue FMR Area, the Director may estimate the applicable median income, in such manner as the Director shall determine by rule.
5. “Bedroom” means space within a dwelling unit that may be fully or partially enclosed and having the primary use of sleeping and the accessory use of clothing storage.
6. “City” means the City of Bellevue or its designee.
7. “Eligible Households” mean households that are eligible to rent or own affordable housing under all applicable requirements governing the occupancy of the affordable housing.
8. “Household Size” means the assumed household size by unit type that is used for purposes of calculating whether dwelling units are sufficiently affordable to constitute affordable housing. Assumed household size by unit types are as follows:

Unit Type	Assumed Household Size
Very Small Unit/Studio/Micro	1 Person
1 Bedroom (including Open 1 Bedroom)	1.5 Persons
2 Bedroom (Including Open 2 Bedroom)	3 Persons
3 Bedroom (Including Open 3 Bedroom)	4.5 Persons

9. “Set-aside” means the percentage of dwelling units of a project or property that must be Affordable Units.

## E. Rulemaking Criteria:

Under LUC 20.20.128.A.2, the Director is required to consider each of the following criteria when adopting affordable housing standards:

affordable housing

- Consistency with the City’s Comprehensive Plan;
- Whether consistency with the City’s other, non-Land-Use-Code-based affordable housing programs is beneficial to the City;
- Whether consistency with affordable housing standards adopted by neighboring jurisdictions is beneficial to the City;
- The impact on the City’s affordable housing goals;
- The impact on the cost of development; and
- The impact on the quality of life of residents of affordable units.

Throughout the process of drafting and adopting this Director’s Rule, the Director has considered these criteria and offered the community opportunities to provide input on the Director’s Rule. As described below in more detail, the adopted Director’s Rule is consistent with the applicable criteria and will serve to benefit the City, its residents, and affordable housing.

### 1. Consistency with the City’s Comprehensive Plan.

The proposed Director’s Rule is consistent with the following Comprehensive Plan Policies:

HO-10. Work to identify and eliminate current city policies, practices and regulations that perpetuate housing disparities and discrimination.

HO-15. Streamline permitting processes and create objective development regulations that encourage housing development throughout the city.

HO-33. Address the need for housing affordable to extremely low-, very low-, low- and moderate-income households, through funding, regulations, policies, procedures and other mechanisms.

HO-36. Involve state and regional housing partners, developers and housing providers in the development of affordable housing incentives or requirements.

HO-45. Ensure that all affordable housing created in the city with public funds or by regulation remains affordable for the longest possible term.

### 2. Whether Consistency with the City’s Other, Non-Land-Use-Code-Based Affordable Housing Programs is Beneficial to the City.

The proposed Director’s Rule benefits both the City and its residents by setting clear guidelines and standards for all affordable housing units created by operation of the Land Use Code. The proposed

Development Services Department

Director’s Rule 01-2026

Final Version

Director's Rule also has been drafted to be as consistent as possible with affordable housing standards governing the City's MFTE Program. This consistency will ensure that affordable units created through City mechanisms maintain affordability for the longest term possible and are substantially similar in quality to market-rate housing. It also ensures predictability for residents and developers in what standards will apply to affordable units regardless of how they are created.

### 3. Whether Consistency with Affordable Housing Standards Adopted by Neighboring Jurisdictions is Beneficial to the City.

During the development of the proposed Director's Rule, the City consulted with A Regional Coalition for Housing (ARCH) staff. ARCH is a partnership of King County and East King County cities working to preserve and increase housing for low and moderate income households in the region. In developing this rule, the Director has attempted to be as consistent as possible with ARCH's practices in other neighboring jurisdictions, while recognizing that Bellevue's size in comparison to other ARCH jurisdictions necessitates some differences in approach. This consistency will assist ARCH staff during both the review and post-construction monitoring process, thereby providing more consistency for residents and developers.

### 4. The Impact on the City's Affordable Housing Goals.

The Director's Rule creates a singular set of standards for affordable housing, streamlining permitting and review and encouraging additional affordable housing production to meet the City's stated housing goals.

### 5. The Impact on the Cost of Development.

The proposed Director's Rule may increase the cost of development by requiring developers to provide equivalent amenities in affordable units as they are in market-rate units. Without this rule developers will often provide lower-cost, lower quality appliances and finishes in affordable units. There are slight cost savings as the Director's Rule should streamline and expedite review and permitting.

### 6. The Impact on the Quality of Life of Residents of Affordable Units.

The Director's Rule will improve the quality of life for the units of affordable units by requiring equality between the affordable units and market-rate units in a building. The Director's Rule requires that residents have access to all common building amenities, and that finishes and appliances are generally the same as those for market-rate units. The Director's Rule also requires that affordable units be spread throughout the building, ensuring they are not segregated from other, more expensive, units in the building.

# Part 1: Implementation of LUC 20.20.128.A.2 – Adoption of Affordable Housing Standards Generally Applicable to Affordable Housing Created by Operation of the Land Use Code.

## A. Purpose.

The purpose of *Part 1* of this rule is to implement LUC 20.20.128.A.2, which requires the Director to adopt by rule affordable housing standards to govern the construction, repair, modification, and operation of affordable housing created by operation of the Land Use Code.

## B. Applicability.

The affordable housing standards contained in this *Part 1* shall apply to any affordable housing created by operation of the Land Use Code.

In the event of a conflict between an applicable standard listed in this *Part 1* and an applicable standard included in the Land Use Code, the Land Use Code shall control.

In the event of a conflict between an applicable provision of this *Part 1* and an applicable provision contained in another Part to this Rule, the other Part shall control.

## C. Rule.

### 1. Generally Applicable to All Affordable Housing.

The standards contained in this Subsection C shall apply to all affordable housing created by operation of the Land Use Code within the applicability of this rule, regardless of whether they are for rent or for sale.

- a. The Affordable Housing Standards Contained in LUC 20.20.128.A.3, as implemented and interpreted in *Part 2* to this Rule.

The affordable housing shall be constructed, maintained, and operated in accordance with the standards contained in LUC 20.20.128.A.3, as implemented and interpreted in *Part 2* to this rule.

- b. Affordable Housing Monitoring Fee

The Director may develop a monitoring fee schedule, and assess fees under such schedule, to cover the costs of monitoring an Owner's compliance with income and affordability restrictions governing the construction, repair, modification, and operation of affordable housing created by operation of the Land Use Code.

If adopted, the Director shall publish such monitoring fee schedule online with the Department of Development Service's general fee schedule.

Following initial adoption, the Director may amend such fees from time to time, but no more than once every 12 months.

#### c. No Discrimination

The Owner shall not discriminate on the basis of race, creed, religion, color, sex, sexual orientation, gender identity, age, national origin, marital status, or presence of any mental or physical handicap as set forth in RCW 49.60.030, as now existing and as may be amended, in the lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

The Owner shall accept as tenants for affordable housing, on the same basis as all other prospective households, households regardless of source of income, as defined in RCW 59.18.255, and regardless of Section 8 status, as defined in BCC 9.20.020.

The Owner shall not apply or permit the application of management policies or lease provisions with respect to the Project which have the effect of precluding occupancy of affordable housing by any household on the basis of source of income or of Section 8 status.

The Owner shall comply with the requirements of Chapter 9.20 BCC as well as all applicable provisions of state law prohibiting discrimination relating to housing, including RCW 59.18.255.

#### d. Covenant Securing Affordable Housing

The owner of affordable housing and the Director, on behalf of the City, must fully execute and record a covenant, which shall run with the land and bind all successors and assigns, to secure compliance with the applicable requirements of this Rule, the Land Use Code, and the Affordable Housing Permit and Inspection Fee Waiver Program.

#### e. Timing of Execution

The owner must fully execute and record the covenant prior to issuance of any above-ground building permits for any phase of the development containing any affordable housing.

#### f. Recording Required

The owner shall cause the covenant to be recorded in the real property records of King County, Washington. The owner shall pay all fees and charges incurred in connection with such recording and shall provide the City with a copy of the recorded document.

**g. Term.**

The covenant shall become effective upon its execution and shall continue in full force and effect for the life of the project, which shall not be less than 50 years, unless sooner modified or terminated with the consent of the City.

For purposes of this rule, the term “life of the project” shall mean the end of the constructed building’s useful life, which shall require repurposing, decommissioning, dismantling, and/or demolition.

**h. Form.**

The covenant shall be in a form acceptable to the Director and be consistent with the applicable requirements of this rule and the Land Use Code. The Director shall consult with the City Attorney’s Office before approving the form of the covenant.

**i. Assignment and Future Conveyances.**

Each and every contract, deed, or other instrument executed conveying an interest in any project subject to a covenant recorded pursuant to the City’s land use code or this rule shall contain an express provision making such conveyance subject to the covenant’s terms and conditions; Provided, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants and conditions, regardless of whether or not such covenants and conditions are set forth or incorporated by reference in such contract, deed, or other instrument.

**j. Hold Harmless.**

The Owner shall agree to defend, indemnify, and hold the City and any other party authorized by the City to enforce the terms of the covenant harmless from any and all costs, expenses, and fees, including all attorneys’ fees which may be incurred by the City or any other authorized party is enforcing or attempting to enforce the covenant following any default on the part of the Owner or its successors, whether the same shall be enforced by suit or otherwise; together with all costs, fees, and expenses which may be incurred in connection with any amendment to the covenant or otherwise by the City at the request of the Owner.

**k. Third Party Beneficiaries**

The provisions of any covenant recorded pursuant to the City’s land use code or this rule will be for the benefit of the owner and the City only and are not for the benefit of any third party (including, without limitation, any tenants or tenant organizations), and accordingly, no third party shall have the right to enforce the provisions of said covenant or of the documents to be executed and delivered in connection with said covenant.

**l. Applicable Laws.**

Any covenant recorded shall be governed by and construed in accordance with the laws of the State of Washington, except to the extent such laws conflict with the laws of the United States . Code sections from the RCW, the Bellevue City Code, or the Land Use Code referenced in the Covenant shall refer to those in effect on the date that the Covenant was fully executed.

**m. Warranty.**

The Owner must warrant that it has not executed and will not execute, any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event the requirements of any covenant recorded under the City's land use code or this rule are paramount and controlling as to the rights and obligations set forth in the covenant and supersede any other requirements in conflict with the covenant.

**n. Subordination**

In the event additional financing, public or private, is required for any project subject to a recorded covenant under the City's land use code and this rule, then the Director may agree to subordinate any covenant provided there is sufficient assurance, acceptable to the Director in his/her sole discretion, that the project will continue to meet or exceed all provisions intended to maintain the project's affordability requirements.

**o. Partial Release of Covenant**

The Director shall have the discretion and authority to release any portion of the property subject to a covenant recorded pursuant to the City's land use code and this rule, provided there is sufficient property to protect the City's interest in said covenant and any and all affordability requirements. For purposes of an example, the Director will have the authority to execute a partial release if a portion of the property is required for rights-of-way or utility facilities.

**p. Termination of Covenant.**

Notwithstanding any provision to the contrary, all provisions of any covenant recorded pursuant to the City's land use code and this rule shall terminate and have no further force and effect upon the occurrence of one of the following events:

- i. The term's expiration.
- ii. The mutual agreement of the City and the Owner.

**q. Modification of Covenant.**

This Covenant shall be amended only by a written instrument executed by the parties hereto or their respective successors in title and duly recorded in the real property records of King County, Washington.

#### r. Enforcement

The Owner shall exercise reasonable diligence to comply with the requirements of any covenant and shall correct any such noncompliance within sixty (60) days after such noncompliance is first discovered by the owner or would have been discovered by the exercise of reasonable diligence, or within 60 days after the owner receives notice of such noncompliance from the City; provided however, that such period for correction may be extended by the City if the owner is exercising due diligence to correct the noncompliance.

If such noncompliance remains uncured after such period, then the owner shall be in default and the City on its own behalf may take any one or more of the following steps:

- By any suit, action, or proceeding at law or in equity, require the owner to perform its obligations under the covenant, or enjoin any acts or things which may be unlawful or in violation of the rights of the City thereunder; it being recognized that the beneficiaries of the owner's obligations thereunder cannot be adequately compensated by monetary damages in the event of the owner's default.
- Have access to, and inspect, examine, and make copies of, all of the books and records of the owner pertaining to the Project; provided, however, the City shall not divulge such information to any third party unless required by law or unless the same is necessary to enforce the City's rights under the covenant, the land use code, or this rule.
- Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, conditions, and agreements of the owner under the covenant.
- Upon the owner's failure to timely cure a default under the covenant, land use code, or this rule, to require the owner to hire a property management company approved by the City and experienced in managing affordable housing to manage the affordable housing in compliance with the provisions of the covenant, the land use code, and this rule. The owner shall be responsible for paying all fees associated with the property management company and complying with the covenant, the land use code, and this rule.
- Assignment of Rents. The owner shall assign to the City the right to receive the rents due or collected during the entire period that affordable housing is occupied in violation of this covenant, the land use code, or this rule. Any funds collected shall be deposited into the City's housing fund for use consistent with the City's affordable housing policies, plans, or initiatives. The owner shall be responsible for all costs to the City, including reasonable attorney fee, to recover such rents.

If legal costs are incurred by the City as a result of the owner’s violation of the terms of the covenant, the land use code, or this rule, then the owner shall be responsible for all legal costs, including attorney fees and court costs, incurred by the City to enforce the terms of the covenant, the land use code, or this rule.

## 2. Applicable to Rental Affordable Housing.

### a. Designation/Re-Designation of Affordable housing.

#### i. Designation of Affordable housing.

Through a covenant recorded on title, the owner of the affordable housing shall designate the dwelling unit(s) that will be affordable.

#### ii. Re-Designation of Affordable housing.

The Owner, from time to time, may propose to change the particular dwelling units designated as being affordable, provided that at all times the following remains true:

- At all times, at least the same number of affordable housing are maintained;
- The affordable housing remains in compliance with all applicable requirements contained in LUC 20.20.128; and
- The affordable housing are in compliance with all applicable requirements contained in *Part 1*, *Part 2*, and *Part 3* of this rule.

The Owner shall notify the City of the proposed change in writing for the City’s approval. The City will review the proposed changes and shall approve or deny the proposed changes based upon the criteria set forth in this subsection. The Owner shall receive the City’s approval prior to changing the designation of any affordable housing. If needed, the Director may require that the Owner amend the covenant to reflect the change to the designation of affordable housing in the development.

#### iii. Affordable Housing Rent Level.

The monthly rent for the affordable housing occupied by eligible households shall not exceed the applicable affordable rent, and for each specific tenant, shall be adjusted no more than once every twelve (12) months, and in no event within the first twelve months of occupancy by an eligible household.

Affordable rent shall be calculated using the following formula:

$$[4\text{-Person AMI}]/12 * [\text{Unit Type Rent Factor}] * [\text{Required Affordability Level}] * [\text{Percentage of Income for Housing Expenses}] - [\text{Allowances}] = \text{Affordable Rent}$$

The following charts explain the components of the formula:

4-Person AMI	The AMI for four-person household.
Required Affordability Level	The applicable percentage of AMI required under the Land Use Code for the affordable housing.
Percentage of Income for Housing Expenses	30% (i.e., the percentage of household expenses that is affordable).
Allowances	Utility Allowance or Renter’s Insurance Allowance, where either or both are applicable by operation of Part 3 to this Rule.

Unit Type:	Very Small Unit/Studio/Micro	1 Bedroom (including Open 1 Bedroom)	2 Bedroom (including Open 2 Bedroom)	3 Bedroom (including Open 3 Bedroom)	4 Bedroom (including Open 4 Bedroom)
Unit Type Rent Factor:	0.7	0.75	0.9	1.04	1.16
Assumed Occupancy of Unit Type:	1 person	1.5 persons	3 persons	4.5 persons	6 persons

iv. Renting Affordable Housing to Eligible Households.

During the required term, the Owner shall rent or lease the affordable housing to eligible households and, if at any time the Owner is unable to rent or lease the affordable units, the affordable units shall remain vacant pending rental or lease to eligible households.

It is the owner’s responsibility to screen and select tenants in accordance with local, state, and federal laws and the requirements of this rule and all applicable covenants.

v. Equal Access to Common Facilities.

Tenants occupying affordable housing shall have equal access to enjoyment of all common facilities contained in the project. For purposes of this rule, “common facilities” means any space or physical installation belonging to the property that the Owner makes available to tenants, whether or not the use of such facilities requires a fee.

The owner is not required to set aside parking spaces for affordable unit tenants, but shall rent available parking spaces on a first-come, first-served basis. The Owner shall not give preference to market-rate tenants over affordable housing tenants, or to affordable housing tenants over market-rate tenants, in providing any parking spaces that may be available.

vi. **Qualifying Eligible Household Income for Affordable Units at Initial Occupancy and Recertification.**

The household income at the time of occupancy of affordable housing by an eligible household may not exceed the applicable percentage of area median income required by operation of the Land Use Code.

At the time of annual recertification, a household will remain eligible to occupy affordable housing as long as household income does not exceed the maximum recertification income set forth in the table below.

Unless otherwise prohibited state or federal laws or regulations, if at the time of annual recertification, household income exceeds the maximum recertification income limit for the income level initially qualified for by a household, then within 90 days either: (1) such household must pay market rent and the next available comparable market rate unit must be rented as affordable housing; or (2) the household must vacate the dwelling unit, unless otherwise prohibited by law, to make it available for an eligible household.

Maximum Permitted Income Levels

Income Level at Initial Occupancy	Income Level at Recertification
80% AMI	100% AMI
60% AMI	80% AMI
50% AMI	70% AMI

vii. **Minimum Required Occupancy for Affordable Housing.**

In order to occupy affordable housing, a household must satisfy the minimum required occupancy specified below for the applicable unit type of affordable housing proposed to be occupied by that household.

Unit Type	Minimum Required Occupancy

Very Small Unit/Studio/Micro	1 Person
1 Bedroom (including Open 1 Bedroom)	1 Person
2 Bedroom (Including Open 2 Bedroom)	2 Persons
3 Bedroom (Including Open 3 Bedroom)	3 Persons
4 Bedroom (Including Open 4 Bedroom)	4 Persons

b. Marketing of Affordable Housing

i. Prior to Initial Lease-Up.

Prior to lease-up of the Project, the Owner shall submit pre-leasing period materials, in a form approved by the Director, to the City to confirm compliance with the affordability requirements at the Property. The pre-leasing materials shall include, but not be limited to, monthly rent and housing expenses, model leases and attachments, affordable dwelling unit designation, and parking requirements. The materials shall be submitted no later than two weeks before any leasing activity of the affordable housing begins. Additionally, the Owner shall coordinate with the City prior to the start of leasing activities for the purposes of marketing, outreach, and communications notifying the public of the Project. In determining which eligible applicants shall be rented affordable housing, the Owner shall reasonably consider persons who received marketing information from the City.

ii. Ongoing Marketing.

The Owner shall make diligent efforts to market and lease vacant affordable housing to eligible households. The Owner shall notify the City of any extended vacancies greater than sixty days and provide marketing information to the City to share with the public.

c. Reporting Requirements

Prior to allowing any household to occupy any affordable dwelling unit, the owner shall require the prospective tenant to complete a Certificate of Household Eligibility.

i. Completion of Certificate of Household Eligibility.

Prior to allowing any household to occupy any affordable dwelling unit, the owner shall require the prospective tenant to complete a Certificate of Household Eligibility in a form approved by the Director.

The owner shall also undertake a good faith effort to verify the applicant's household income, as reported on the completed Certificate. The owner's obligation to verify the reported household income shall be limited to requesting copies of and reviewing the applicant's federal income tax returns, unless the owner has actual knowledge, or reason to believe, that the information provided by the applicant is materially inaccurate.

In the event federal income tax returns are not available, the owner shall verify household income using wage or salary statements, or other income records that the Director may consider appropriate.

## ii. Annual Recertification.

At every lease renewal or twelve months from the most recent Certificate of Household Eligibility for an affordable dwelling unit, whichever occurs first, the owner shall require the household occupying that affordable dwelling unit to complete and return to the owner an updated Certificate of Household Eligibility in a form approved by the Director.

The owner shall undertake a good faith effort to verify the reported household income, as reported in the completed Certificate. The Owner's obligation to verify the household income shall be limited to obtaining a copy of and reviewing the tenant's federal income tax returns, unless the Owner has actual knowledge or reason to believe that the information provided by the household is materially inaccurate.

In the event federal income tax returns are not available, the owner shall verify household income using wage or salary statements, or other income records the Director may consider appropriate.

If a household occupying an affordable dwelling unit fails to complete and return to the Owner an updated Certificate of Household Eligibility within 14 calendar days of the request from the Owner, then the Owner shall provide notice to the City and the City, in its sole discretion, may provide outreach and support to the tenant to help them complete and return the required Certificate. If the tenant fails to provide a Certificate of Household Eligibility within 30 calendar days of the request from the owner, then the Owner may either continue to work with the tenant or begin the process specified in Section C.2.a.ii of this rule to designate a new dwelling unit as affordable housing and rent the dwelling unit in question as market-rate housing.

## iii. Lease-Up Project Certification Report

After the Completion Date and until 90% of the affordable housing is occupied, the Owner shall, on a quarterly basis, file with the City a Lease-Up Project Certification Report in a form provided by the Director.

iv. Annual Project Certification Report.

After the Completion Date and until 90% of the rental units are occupied, the Owner shall, on a quarterly basis, file with the City an Annual Project Certification Report in a form provided by the Director. After 90% of the rental units in the Project are occupied, the Owner shall file the Annual Project Certification Report annually on or before March 31<sup>st</sup>. The Annual Certification Report shall report on information including but not limited to occupancy and vacancy, households occupying the Affordable Units, lease dates and length, and monthly rent and other charges. The Owner shall note any vacancies in the Project that extended beyond sixty days the previous year and provide supporting documentation as requested by the Designee. In the event there are extended vacancies and less than 90% of the rental units are occupied, the City, at its sole discretion, may require additional reporting until 90% of the rental units in the Project are occupied. The Annual Project Certification Report shall also include copies of Certificates of Household Eligibility submitted to, and reviewed by, the Owner during Annual Recertification during the preceding 12-month period.

v. Maintain Complete Records.

The owner shall maintain complete and accurate records pertaining to the affordable housing and shall permit any duly authorized representative of the City to inspect the books and records of the owner pertaining to the affordable housing, and if applicable, incomes of eligible households residing in the project.

The owner's failure to maintain such records or failure to allow examination by the City or any duly authorized representative shall constitute a default of the covenant securing the construction, maintenance, and operation of the affordable housing.

d. Lease Provisions.

The Owner shall include the following provisions in all leases for affordable housing in the Project:

i. General.

All leases for affordable housing shall contain clauses wherein each individual lessee:

- Certifies the accuracy of the statements made in the Certificate of Household Eligibility completed at initial occupancy and during any Annual Recertification;
- Agrees that the household income and other eligibility requirements shall be deemed substantial and material obligations of the tenancy; and
- Agrees that misrepresentation in any Certificate of Household Eligibility is a material breach of the lease, entitling the owner to terminate the lease for the affordable dwelling unit.

ii. Similar Terms to Leases for Market Rate Dwelling Units.

Leases for affordable housing shall have similar terms to leases for market rate dwelling units, except when necessary to comply with the requirements of the Land Use Code, this rule, or any other applicable affordability requirements.

iii. ARCH Lease Rider.

All leases must attach a copy of the ARCH Lease Rider in a form approved by the Director.

e. Sale or Transfer of the Project

The owner must covenant and agree not to sell, transfer, or otherwise dispose of the project or any portion thereof without first providing a written notice from the purchaser stating that the purchaser understands, and will comply with the owner's duties and obligations under the covenant, this rule, and the Land Use Code, as applicable to the Project. Such notice must be received by the City at least 30 days prior to the close of escrow. This section does not apply in the event of foreclosure.

f. Conversion to Condominium, Owner-Occupied, or Non-Rental Residential Use.

In the event the project is proposed for conversion to condominium, owner-occupied, or non-rental residential use, the Owner must submit to the City for its review a plan for preserving the affordable housing. The City can consider options which would convert the affordable housing to owner occupancy by eligible households. The Owner must receive authorization from the City prior to conversion to condominium, owner-occupied, or non-rental residential use. The City shall require the Owner to record a revised covenant to ensure compliance with all applicable requirements containing in this rule and in the Land Use Code. This section does not waive the owner's obligations to comply with any other law or regulations pertaining to conversion to ownership use.

3. Applicable to For Sale Affordable Housing.

This subsection applies to affordable housing that is sold to a buyer who will occupy the affordable housing as their primary dwelling.

a. Homebuyer Certification.

The City must certify the eligibility of any potential buyer of affordable housing prior to the closing of any sale of a dwelling unit of affordable housing.

**b. Minimum Required Occupancy for Affordable Housing.**

At the time of purchasing a dwelling unit of affordable housing, a buyer’s household must satisfy the following occupancy standards:

<u>Unit Size</u>	<u>Minimum Required Occupancy</u>
Studio	1 Person
Open 1 Bedroom	1 Person
1 Bedroom	1 Person
Urban 2 Bedroom	1 Person
2 Bedroom	1 Persons
Urban 3 Bedroom	2 Persons
3 Bedroom	2 Persons
4 Bedroom	3 Persons

**c. Maximum Household Income.**

At the time of initial purchase, the household income of the buyer shall be less than, or equal to, the applicable area median income required under the Land Use Code.

If the affordable housing is later sold, the buyer of the affordable housing shall have a household income less than the percentage of area median income as shown in the following table.

Initial Affordability Level	Household Income Limit for Subsequent Buyer
80% of Area Median Income	90% of Area Median Income
100% of Area Median Income	110% of Area Median Income

**d. Timing of Availability of the Affordable Units.**

This subsection applies where the affordable housing is for sale and are included in a development with market-rate dwelling units that are also for sale. In such circumstances, the affordable housing shall be made available for sale and occupancy in a timely manner and generally made available at the same time that market rate units are made available. Unless otherwise approved by the City, the City shall not issue building permits for more than one-half the of market-rate units in the project prior to issuing building permits for all of the affordable housing, and also shall not issue certificates of occupancy for more than one-half the number of market-rate units in the project prior to issuing certificates of occupancy for all of the affordable housing.

**e. Sale or Transfer of the Affordable Housing**

Whenever the owner no longer desires to own the affordable housing, the owner shall notify the City in writing to that effect. Such notice (“Notice of Intent to Sell”) shall be provided to the Director.

Following receipt of a Notice of Intent to Sell, the City shall fix the maximum resale price of the affordable housing at the Formula Value or the Current Market Value, whichever is less, as such values may be adjusted pursuant to this section. The maximum resale price shall not be less than the base price, which shall equal the price that the owner paid to originally acquire the property, plus inflation.

- 1) Formula Value. The Formula Value shall be equal to the base price plus an appreciation factor. The appreciation factor shall be based on the change in median income in the Seattle-Bellevue HMFA as published by the United States Department of Housing and Urban Development (HUD). For this purpose, the median income prevailing on the date a recorded interest in the affordable housing was first acquired by the owner shall be compared with the latest median income available on the date of receipt by the City of the Notice of Intent to Sell. The percentage increase in the median income, if any, shall be computed and the base price shall be adjusted by that percentage. At the Director's sole discretion, the Formula Value may be further adjusted to account for expenses incurred by the owner to make significant capital improvements to the affordable housing.
- 2) The City may have an appraisal of the affordable housing prepared at its own expense by an MAI appraiser to establish the Current Market Value. The owner may also have an appraisal prepared at the owner's expense by a different MAI appraiser for the same purpose. If the two appraisals show different value, then the average of the two values shall be deemed and established as the Current Market Value.

#### **I. Principal Residence.**

The owner must occupy the affordable housing as their principal residence for the term of the covenant. The owner shall be considered as occupying the property as a principal place of residence if the owner is living on the property for at least ten months out of each calendar year. In the event the affordable housing is vacant while being actively offered for sale by the owner, this requirement shall not apply; however, the owner may not rent or lease the affordable housing during such period unless otherwise approved in writing by the City.

#### **m. Leasing.**

During the term of the covenant, the owner shall not rent or lease the affordable housing without prior written approval by the City. The City may, at its sole discretion, approve renting or leasing the Property for a period of up to twelve (12) months in order to avoid hardships resulting from the owner's employment transfer, reduction, termination, or similar reasons, or resulting from separation, dissolution, or similar domestic occurrences, or from the illness or disability of the owner or the owner's dependents, or from similar reasons beyond the reasonable control of the owner; provided further, that a copy of any lease or rental agreement shall be provided to the City; and provided further the City in the exercise of its reasonable discretion may extend said 12-month period.

#### **n. Homeowner Reporting Requirements.**

The owner must submit a status report of the owner's occupancy of the affordable housing within 10 calendar days of receipt of any such request from the City. The report must include an

explanation of any rental or vacancy questions raised by the City over the time period specified by the City in its request for a status report.

o. **City's Rights of First Refusal.**

Except as otherwise required by local, state, or federal law, the covenant shall grant the City a right of first refusal to purchase the affordable housing and any improvements located thereon under the following conditions:

- 1) The City may designate a governmental or non-profit organization to exercise its right of first refusal.
- 2) The City may assign this right to an individual private buyer who meets the City's eligibility qualifications.

## Part 2: Implementation of LUC 20.20.128.A.3 – Interpretation of Codified Affordable Housing Standards.

### A. Purpose.

The purpose of *Part 2* of this rule is to both implement and interpret LUC 20.20.128.A.3. Specifically, LUC 20.20.128.A.3.a requires the Director to implement the subsection by defining two terms by rule: “generally distributed” and “intermingled.” Similarly, LUC 20.20.128.A.3.e requires the Director to implement the subsection by defining the term “bedroom” by rule. The Director has determined that additional interpretation of LUC 20.20.128.A.3, as provided in this *Part 2*, is appropriate to ensure no ambiguity as the subsection is applied during the City’s development review process.

### B. Applicability.

The affordable housing standards contained in LUC 20.20.128.A.3 and the provisions of this *Part 2* shall apply to any affordable housing created by operation of the Land Use Code.

In the event of a conflict between an applicable standard listed in LUC 20.20.128.A.3 and an applicable standard included elsewhere in the Land Use Code, the standard included elsewhere shall control.

In the event of a conflict between an applicable standard of this *Part 2* and an applicable standard contained in another Part to this Rule, the other Part shall control.

### C. Rule.

#### 1. Location of Affordable Housing.

LUC 20.20.128.A.3.a states that affordable housing “shall be generally distributed throughout the residential portions of a development and, where market-rate dwelling units are provided, intermingled with market-rate dwelling units.” The Director is then directed to define the terms “generally distributed” and “intermingled” for the purposes of this subsection.

##### a. Definition of “Generally Distributed”

The term “generally distributed” shall require affordable housing to be placed or located more or less evenly throughout the entire development so as to avoid any form of improper segregation or clustering.

To determine if affordable housing is “generally distributed” a three-step process shall be used:

Step 1: For each building that will contain affordable housing, identify the number of floors that will contain one or more dwelling units.

Step 2: For each floor containing one or more dwelling units, calculate the percentage of total dwelling units on that floor that will be affordable housing.

Step 3: For each floor, determine if the percentage calculated in Step 2 is less than, or equal to, the maximum percentage specified in the following table for the applicable building size. If it is, then the affordable housing is generally distributed. If it is not, then the applicant needs to distribute affordable housing differently until such time that this three-step process is satisfied.

Number of Floors Containing One or More Dwelling Units	Maximum Percentage of Dwelling Units that May be Affordable Housing on any Floor
7+	20%
6	25%
5	35%
4	50%
3	50%
2	75%
1	100%

This three-step process means that, in most cases, owners will not have to designate affordable housing on the highest floor or floors of mid-rise or high-rise buildings.

#### b. Definition of “Intermingled”

“Intermingled” shall mean that affordable housing is mixed among the market-rate units in such a way that they are indistinguishable and integrated throughout the floors where they exist. Owners may not cluster or designate more than three adjoining dwelling units as affordable housing; in this context, “adjoining” includes dwelling units across a hallway as well as those sharing common walls but does not include dwelling units located above or below on different floors.

### 2. Mix of Rental and Sale Affordable housing.

LUC 20.20.128.A.3.d, .e, and .f provide restrictions relating to the mix of rental and sale affordable housing. This subsection interprets how to apply LUC 20.20.128.A.3.d, .e, and .f to phased development as well as how to calculate a “proportionate mix of rental and for sale units” for the purposes of LUC 20.20.128.A.3.d.

#### a. Application to Phased Development.

Where a development occurs in phases, each phase shall be reviewed as a distinct development for the purposes of LUC 20.20.128.A.3.d, .e, and .f.

b. Calculation of a “Proportionate Mix of Rental and For Sale Units.”

LUC 20.20.128.A.3.d states that where the “market-rate dwelling units in the development are a mix of dwelling units that are for rent and for sale, then the affordable dwelling units shall be a proportionate mix of rental and for sale units.”

To determine the “proportionate mix,” a three-step process shall be used:

Step 1: Divide the number of market-rate ownership units by the number of market-rate rental units.

Step 2: Divide the number of affordable ownership units by the number of affordable rental units.

Step 3: Compare the results of Step 1 and Step 2. If the results are the same, or are within one whole number of each other, then a proportionate mix has been achieved. If the results are different, then the mix of rental and ownership units needs to be adjusted until the results are the same.

c. Number of Bedrooms in Affordable housing.

LUC 20.20.128.A.3.e states that the affordable housing “shall consist of a mix of number of bedrooms that is in the same proportion as the bedroom mix of market-rate dwelling units in the overall development.” The Director is then directed to define the term “bedroom” for the purposes of this subsection.

i. Definition of “Bedroom”

The term “bedroom” shall have the meaning set out in the definitions section of this rule.

ii. Calculation of a “Proportionate Mix of Bedrooms”

To determine the “proportionate bedroom mix,” a three-step process shall be used for each unit type of market-rate dwelling units contained in the development:

Step 1: Divide the number of market-rate dwelling units of the specified unit type by the total number of market-rate dwelling units in the development.

Step 2: Multiply result from Step 1 by the total number of dwelling units of affordable housing to derive the required number of dwelling units of affordable housing of that unit type. If the result is a fraction, then the owner may round the fraction up or down to the next whole number.

Step 3: Total the number of affordable housing of all unit types to confirm that it matches the applicable set-aside requirement for the project. If rounding causes an

incorrect total, then, for one or more unit types, the owner may change the rounding decisions in Step 2 to achieve the correct total.

A development may meet the proportionate bedroom requirement by providing affordable housing which have the same or greater number of bedrooms than the market rate dwelling units. For example, if, by operation of the steps above, a development is required to provide 10% of the affordable housing as one-bedroom units, then the development may choose to provide two or more bedroom units to meet the 10% requirement. In no case shall the number of bedrooms be less than the number required by the steps above.

#### d. Size of Affordable Housing.

LUC 20.20.128.A.3.f states that affordable housing “shall be provided in a range of sizes comparable to the size of market-rate dwelling units in the development.” This subsection focuses on the square footage of each dwelling unit of affordable housing.

For each unit type, the average square footage of affordable housing may not be less than 90 percent of the average square footage of market-rate dwelling units of the same unit type in the development. However, no dwelling unit of affordable housing shall be smaller than the smallest market-rate dwelling unit of that unit type in the development.

### 3. Materials, Finishes, Design, Amenities, and Appliances of Affordable Housing.

LUC 20.20.128.A.3.g states that “[t]he materials, finishes, design, amenities, and appliances of affordable dwelling units shall have substantially the same functionality as, and be substantially comparable with, those of the other dwelling units in the development.” Through use of the phrases “substantially the same functionality as” and “substantially comparable with” it is clear that the intent of this subsection is not to require identical materials, finishes, design, amenities, and appliances for both affordable housing and market-rate dwelling units.

#### a. Materials and Finishes

LUC 20.20.128.A.3.g states that the “materials” and “finishes” of affordable housing must have “substantially the same functionality as, and be substantially comparable with, those of the other dwelling units in the development.”

The material and finishes of affordable housing have substantially the same functionality as, and are substantially comparable with, those of market-rate dwelling units in the development when the material and finishes of the affordable housing are the same as those for at least 50% of the market-rate dwelling units of the same unit type in the project.

#### b. Design

LUC 20.20.128.A.3.g states that the “design” of affordable housing must have “substantially the same functionality as, and be substantially comparable with, those of the other dwelling units in the development.” This standard applies to both the interior and exterior design of the affordable housing.

The design of affordable housing has substantially the same functionality as, and is substantially comparable with, those of market-rate dwelling units in the development when the design of the affordable housing is the same as for at least 50% of the market-rate dwelling units of the same unit type in the project.

#### c. Amenities

LUC 20.20.128.A.3.g states that affordable housing contain “amenities” that “have substantially the same functionality as, and be substantially comparable with, those of the other dwelling units in the development.”

For the purposes of LUC 20.20.128.A.3.g, the term “amenities” shall refer to the various features, facilities, and services provided within a dwelling unit that enhance the living experience and well-being of the occupying household, including, but not limited to, the following:

- Balconies or private outdoor space;
- Number of bathrooms;
- Number of sinks;
- Number of showers and bathtubs; and
- Number of toilets;

The amenities contained in affordable housing have substantially the same functionality as, and are substantially comparable with, those of market-rate dwelling units in the development when the amenities contained in the affordable housing are the same as for at least 50% of market-rate dwelling units of the same unit type in the project.

#### d. Appliances

LUC 20.20.128.A.3.g states that affordable housing contain “appliances” that “have substantially the same functionality as, and be substantially comparable with, those of the other dwelling units in the development.”

For the purposes of LUC 20.20.128.A.3.g, the term “appliance” shall refer to the various durable consumer goods provided within a dwelling unit that enhance the living experience and well-being of the occupying household, including, but not limited to, the following:

- Buzzer or intercom system;
- Door locks;
- Security alarms;
- Garbage disposal;
- Refrigerator;

- Cooking range;
- Microwave;
- Air conditioner;
- Heater;
- Washer;
- Dryer; and
- Dishwasher.

The appliances contained in affordable housing have substantially the same functionality as, and are substantially comparable with, those of market-rate dwelling units in the development when the appliances contained in the affordable housing are the same as for at least 50% of market-rate dwelling units of the same unit type in the project.

As part of the permitting process for the development, the owner shall not be required to provide an inventory to demonstrate compliance with LUC 20.20.128.A.3.g. Instead, project permit applications for the project will be conditioned on compliance with LUC 20.20.128.A.3.g and that, as a condition of approval, the owner must provide an inventory of the appliances in each unit to the City within 30 calendar days of such a request by the City.

#### 4. Duration of Affordability.

Under LUC 20.20.128.A.3.h, affordable housing “shall remain affordable for the life of the project, which shall not be less than 50 years.”

For purposes of this rule, the term “life of the project” shall mean the end of the constructed building’s useful life, which shall require repurposing into a nonresidential use, decommissioning, dismantling, demolition, or some combination of the foregoing.

## Part 3: Implementation and Interpretation of LUC 20.50.030 – Definition of “Housing Expense”

### A. Purpose

The purpose of this *Part 3* is to both implement and interpret LUC 20.50.030’s definition of “Housing Expenses,” which authorizes, but does not require, the Director to further define by rule what constitutes “housing expenses” and establish monthly allowances (i.e., rent reductions) to cover residents’ reasonable utility costs and other expenses required by the owner as a condition of tenancy.

### B. Applicability

The affordable housing standards contained in this *Part 3* shall apply to any affordable housing created by operation of the Land Use Code.

In the event of a conflict between an applicable standard listed in this *Part 3* and an applicable standard included in the Land Use Code, the Land Use Code shall control.

In the event of a conflict between an applicable provision of this *Part 3* and an applicable provision contained in another Part to this Rule, this Part shall control.

### C. Background.

LUC 20.50.024

Housing Expenses. For rental affordable dwelling units, housing expenses include any expenses required by the owner as a condition of tenancy, including, but not limited to, rent and utilities. For ownership affordable dwelling units, housing expenses include mortgage payments, property taxes, property hazard insurance, and homeowner’s association dues. For purposes of this definition, housing expenses do not include parking expenses, unless parking is required as a condition of tenancy or ownership. The Director may further define “Housing Expense” by rule, which may also establish monthly allowances (i.e., rent reductions) to cover residents’ reasonable utility costs and other expenses required by the owner as a condition of tenancy.

### D. Rule.

#### a. Tenant Paid Utilities

If a tenant pays for Utilities separately from their monthly rent, then the affordable rent will be reduced by the amount of the applicable utility allowance. For purposes of this rule, the term “applicable utility allowance” shall be determined by the Director and apply to electricity, gas, water, sewer, storm, and solid waste utilities.

**b. Tenant Paid Renter’s Insurance.**

If a tenant pays for renter’s insurance separately from their monthly rent as a condition of tenancy, then the affordable rent will be reduced by the amount of the applicable renter’s insurance allowance. For the purposes of this rule, the term “renter’s utility allowance” shall be determined by the Director and apply to renter’s insurance.