

**Comment Matrix**  
**Proposed Director’s Rule 01-2026 (Noticed as 01-2025)**  
**Affordable Housing Standards**

<b>Key</b>																		
	<b>Comment incorporated as suggested or otherwise addressed in final rule.</b>																	
	<b>Comment not incorporated in final rule.</b>																	
<b>Comment No.</b>	<b>Commenter</b>	<b>Section of Proposed Rule</b>	<b>Summary of Comment</b>	<b>Summary of City’s Response</b>														
1	Kevin Wallace	2.C.1.a	<p>Part 2, C.1.a. For the percentage of affordable dwelling units on any given floor, the formula of 2x set-aside doesn’t work if the set-aside is a small percentage, as would be the case with the IOC’s additional development flexibility or where there are fewer than seven floors. Instead, please consider the following:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Floors</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>7+</td> <td>20%</td> </tr> <tr> <td>6</td> <td>25%</td> </tr> <tr> <td>5</td> <td>35%</td> </tr> <tr> <td>4</td> <td>50%</td> </tr> <tr> <td>3</td> <td>50%</td> </tr> <tr> <td>2</td> <td>75%</td> </tr> </tbody> </table>	Floors	Percentage	7+	20%	6	25%	5	35%	4	50%	3	50%	2	75%	<b>Revised Part 2.C.1.a to incorporate the table suggested in Comment No. 1, with a clear three-step process to apply the table to a specific project.</b>
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2	PLUSH	2.C.1.a	Location and Distribution of Units (Rule C on page 17): We support the intent of Rule C on page 17 concerning the location and distribution of affordable units. Two times the requirement may not be sufficient to distribute units in low-rise construction. We suggest matching the staff proposed Seattle MFTE proposal that creates a flat cap at 50% of affordable units on any given floor	<b>Revised Part 2.C.1.a to incorporate the table suggested in Comment 1, with a clear three-step process to apply the table to a specific project.</b>
3	PLUSH	2.C.1.b	Intermingled dwelling units: It is unclear if the draft rule proposes a cap of only three adjoining affordable units per floor. If this is the intent, that is appropriate. We want to clarify that vertical stacking in excess of three units would not be prohibited by this rule.	<b>To respond to Comment No. 3 and No. 4, Part 2.C.1.b has been clarified to allow vertical stacking.</b>
4	Kevin Wallace	2.C.1.b	Part 2, C.1.b, add the word “horizontally” after “three” so that units in towers can be stacked vertically. Seattle is OK with this. I would also prefer to see the adjoining only be adjacent and not to apply across hallways. This could get challenging if only one unit across a hallway could cause a cluster with three units on the other side. It doesn’t seem necessary to avoid the policy objective.	<b>To respond to Comment No. 3 and No. 4, Part 2.C.1.b has been clarified to allow vertical stacking.</b>

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5	PLUSH	1.C.1.d	<p>Parking (Section C.1.d): Revise last sentence of section to make clear that affordable and market rate units shall be treated equally regarding parking— i.e., no preference is given to market rate tenants or to affordable tenants in providing any parking spaces or providing cost reductions for parking spaces that might be available.</p> <p>Common Amenities and Parking (Page 5 and Page 23): Parking that market tenants pay for on top of their rent shall not be required to be included to affordable tenants without similar fees. We also support the first-come, first-serve basis for allocating spaces.</p>	<p><b>Revised language in Part 1.C.2.a.v (former 1.C.1.d) as suggested in Comment No. 5.</b></p>
6	PLUSH	1.C.1.g	<p>Timing of recording of agreement (Section C.1.g). Please make sure this aligns with the covenant timing requirements for MFTE units. It is confusing to have them be at different times. Is there a reason the covenant needs to be recorded prior to the issuance of building permits for AH and not MFTE units?</p>	<p><b>No changes to Part 1.C.1.e (former 1.C.1.g) are needed to respond to Comment No. 6, as confirmed that this section will align with when recording is required for MFTE covenants.</b></p>

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7	PLUSH	1.C.1.k	Prior Consent (Section C.1.k). No prior consent of the Director should be required to sell a project containing affordable housing units, this is an unnecessary constraint on property sales. Instead, please revise to require within 10 days after the sale notice that it has been sold. Obtaining prior written consent of the director prior to the typical sale of a building is way too onerous for both the city and the seller of a property.	<b>In response to Comment No. 7 and No. 8, this language will be removed from Part 1.C.1.i (Former 1.C.1.k). Instead, the City will rely on the notice required in relation to the sale of affordable housing required in Part 1.C.2 and .3 of the rule.</b>
8	Kevin Wallace	1.C.1.k	Assignment and Future Conveyances. Add "in effect as of the recording date" after "covenants and conditions." Can we exclude assignments for the purpose of financing or sale of the property from needing the Director's prior written consent? What happens if consent is not obtained? What is the intent of this requirement?	<b>In response to Comment No. 7 and No. 8, this language will be removed from Part 1.C.1.i (Former 1.C.1.k). Instead, the City will rely on the notice required in relation to the sale of affordable housing required in Part 1.C.2 and .3 of the rule.</b>
9	PLUSH	1.C.2.c	Annual certification: the owner should not be considered to be in default of its obligations if tenants fail to respond with certification (as they often do).	<b>Language added to Part 1.C.2.c.ii to address the concerns expressed in Comment No. 9 and to provide a process through which the City may provide outreach and support to the tenant to ensure timely completion of the Certificate. As proposed, the language is intended to express that the City’s interest will be in trying to assist the tenant in completing the Certificate, rather than attempting to hold the owner in default.</b>

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10	Kevin Wallace	2.C.3.d	Part 2, C.3.d. The long list of appliances is concerning. How is this going to be administered? Will we have to demonstrate that everything on this laundry list is available in at least 50% of the market rate units? None of this would be a problem for me with the actual provision of units – I’m just worried about the paperwork – how do we prove compliance?	<b>Language added to Part 2.C.3.d to respond to Comment No. 10. Updated language makes it clear that no inventory is required during permitting, but that the permit will be conditioned on compliance and that, upon request of the City, the owner must provide an inventory of the appliances in each unit within 30 calendar days of the request. Instead of review during the permitting process, review will occur as needed to respond to complaints from tenants of affordable housing.</b>
11	Kevin Wallace	1.C.1.e	Consider defining the term "Section 8 certificates" or referring to 9.20 definition. Avoid unnecessary duplication with 9.20.	<b>Revised language in Part 1.C.1.c (former 1.C.1.e) to respond to Comment 11 to better incorporate defined terms from state law and Chapter 9.20 BCC relating to source of income and Section 8 status and to provide consistency between this rule, state law, and other sections of the Bellevue City Code.</b>
12	Kevin Wallace	1.C.2.a	Affirmative Marketing. This is vague, Is there such a list? Where is it found? What does it mean to reasonably consider? Where is the term "eligible households" defined?	<b>Revised language in Part 1.C.2.b (the former 1.C.2.a) to respond to Comment No. 12 to reflect current practices and the requirements of current ARCH rental covenants.</b>  <b>The term “eligible households” is defined in the definitions section of the rule.</b>

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13	Kevin Wallace	1.C.2.e	Reporting Requirements. Why quarterly if annual project certification? What not just once upon attainment of 90% occupancy of the affordable units? 90% of the affordable units or 90% of all units?	<b>Language revised and broken off into new Part 1.C.2.c.iii to respond to Comment No.14. The City agrees that, as previously drafted, it was confusing to refer to a report required to be filed quarterly as an “annual project certification report.” The quarterly report is now referred to as the “Lease-Up Project Certification Report” that is only required until 90% of the rental units are occupied, at which point the reporting requirements switch to the Annual Project Certification Report. Clarified to make clear the lease-up is 90% of affordable housing.</b>
14	Kevin Wallace	1.C.2.h	Sale or Transfer of the Project. Exclude transfers arising from financing such as foreclosure of dead of trust.	<b>Added language to Part 1.C.2.e (formerly 1.C.2.h) to respond to Comment 14 to clarify that this section does not apply in the event of foreclosure.</b>
15	Kevin Wallace	3.D.a	Tenant Paid Utilities. Renter's insurance?	<b>Revised Part 3.D.a to respond to Comment 15 and to clarify that an allowance for renter’s insurance is required where a tenant is required to pay for renter’s insurance as a condition of tenancy. This allowance is separate from the utility allowance.</b>

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16	Bellwether Housing	Definitions	Unit type definitions and minimum size requirements: why would these be defined in affordable housing standards instead of referring to city-wide code requirements? One concern is that there may be different standards for affordable vs market-rate unit types and definitions. There is also a concern that these standards may conflict with other public funder standards. The specificity around size of bed and furniture elements that have to be accommodated is surprising.	<b>To respond to Comment 16, definitions of unit types have been deleted. Instead, the City will rely on citywide code requirements, including application of the state building code.</b>
17	Bellwether Housing	1.c.1.b	Compliance requirements: WSHFC charges a monitoring fee for projects that are financed with the LIHTC and/or bond program. Does this compliance charge in this rule duplicate that fee or will there be some credit for a project that is already subject to WSHFC compliance monitoring?	<b>To respond to Comment 17, revised language in Part 1.C.1.b to make clear that the Director may establish a monitoring fee schedule, which can set different tiers of fees based on certain criteria, including if such fee would be duplicative of a fee assessed by another agency, such as WSHFC.</b>

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18	Bellwether Housing	1.C.2.a	<p>Section 42 conflict: The City's language regarding over-income tenants is inconsistent with Section 42 and the Next Available Unit rule. While they have a very brief exception about "unless prohibited by law", the concern is that this is not sufficiently explicit. There is tension with ARCH on this same issue. Their regulatory agreement provides: "If in the event, at the time of recertification, Household Income exceeds the maximum recertification income limit for the income level they initially qualified for, and the household does not receive Section 8 assistance, then the Household must within ninety (90) days vacate the unit, <b>unless otherwise prohibited by binding restrictions imposed by Project financing, such as applicable law or ordinance or under applicable state or local law</b>, to make it available for a qualified Eligible Household or Section 8 Household." Presumably the City is looking for similar language in their covenant, but it will need to be more clearly conditioned on compliance with project financing requirements (such as Section 42).</p>	<p><b>To respond to Comment 18, language added to Part 1.C.2.a to make clear that state or federal law requiring a different outcome governs.</b></p>
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19	PLUSH	1.C.1.t	Ability of City to lease units. The City should not have the ability to rent units as a remedy of default; there are many other specific performance provisions in the rule/covenant that should govern.	<b>The remedy of being able to lease the units in the project has been removed in Part 1.C.1.r (former 1.C.1.t) and replaced with a remedy allowing the City to require the owner, at owner’s expense, to hire a property management company approved by the City and experienced in managing affordable housing to manage the affordable housing.</b>
20	PLUSH	1.C.2.j & 1.C.3.b	Household Size Limits and MFTE Considerations (Page 13, Section 2(j)): We are writing to advise against the potential implications and complications with household size limits outlined in section 2(j) on page 13 and its intersection with MFTE programs. The proposed rule specifies one person for a one-bedroom unit and two people for a two-bedroom unit. In previous years, the MFTE program stated that one bedrooms were for 1.5 persons and 2 bedrooms assumed to be for 3 persons. The MFTE “person standards” are standard practice for affordable units. We recommend that the City carefully assess the economic impacts this change could have on the financial feasibility of affordable housing projects. While this rule relates to	<p><b>Comment No. 20 appears to be mixing two similar, yet independent, requirements.</b></p> <p><b>The first, Part 1.C.2.a.vii (former 1.C.2.j), sets a minimum required occupancy for affordable housing. This minimum required occupancy has nothing to do with setting the affordable rent for affordable housing. Instead, the minimum required occupancy tries to ensure that, for example, a three-bedroom affordable housing unit is not rented to a single person.</b></p> <p><b>The second (definition of “household size” in the rule) sets the assumed household size for purposes of calculating affordable</b></p>

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			performance units, we should avoid different standards for performance vs. MFTE units whenever practicable and frankly should consider applying these requirements to MFTE units so that all income-restricted units in the City have the same and very clear obligations. In short, please align all of these requirements with MFTE unit requirements.	<p><b>rent, the formula for which is described in Part 1.C.2.a.iii. This rule proposes no changes in assumed household sizes for the purposes of determining the affordable rent and no changes in methodology.</b></p> <p><b>Revisions have been made throughout the rule to ensure that it’s clear that these two requirements are independent of one another.</b></p>
21	PLUSH	1.C.3	Appliance Functionality and Comparability (Pages 20 and 22): We support the intent of the language on 20 and 22 but prefer harmonizing with the staff-proposed language in Seattle that uses the term “generally comparable” functionality of appliances, which strikes a reasonable balance between quality for residents and cost predictability for developers.	<p><b>The Land Use Code currently contains the words "substantially the same functionality as" and "substantially comparable with." The Director's Rule cannot amend the Land Use Code.</b></p>

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22	PLUSH	1.C.1.t	Assignment of Rents (Pages 8 and 9): We do not believe that the assignment of rents outlined in the enforcement section on pages 8 and 9 is an appropriate remedy. Such a provision could create significant administrative burdens, increase project risk perception with lenders, and decrease certainty for future investors. We recommend that the City reconsider this provision and explore alternative enforcement mechanisms that are less disruptive to project operations and financial stability. This assignment of rents provision is also inconsistent with most lending documents and certainly affordable housing lending documents. It should be stricken.	<b>Standard remedy across ARCH jurisdictions and is included in current and prior MFTE and LUC-Based Affordable Housing Covenants. This remedy has also been included in prior affordable housing covenants.</b>
23	Bellwether Housing	1.C.1.t	Assignment of rents and subordination agreements: The remedies in the event of a default by owner look similar to the ARCH covenant remedies. The City, however, adds an "assignment of rents" provision which would typically be a remedy that the senior lender would hold under their deed of trust. It creates conflict for the City to include an assignment of rents provision in their covenant, or otherwise, that should be subordinated to any senior lender remedies.	<b>Standard remedy across ARCH jurisdictions and is included in current and prior MFTE and LUC-Based Affordable Housing Covenants. This remedy has also been included in prior affordable housing covenants.</b>

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24	Kevin Wallace	1.C.1.i & 2.C.4	Part 1, C.1.i. Term and Part 2, C.4 Duration of Affordability. I don’t understand the phrase “shall not be less than 50 years”. Who determines whether it’s longer than 50 years? The affordable housing provisions would be easier to use if it were just “50 years”.	<b>This language is set out in the Land Use Code and cannot be changed through a Director's Rule. Historically, life of the project has been the term required under the City’s Land Use Code for affordable housing, and projects have been able to receive financing and be built previously. The addition of the wording “shall not be less than 50 years” is to ensure compliance with RCW 36.70A.540.</b>
25	Bellwether Housing		Regulatory term: The term of the City’s covenant is "not less than 50 years" but for the "life of the project". It’s unclear how we are going to work with that standard. For the purposes of the residual (true debt) analysis, we need to know the length of the covenant. A soft term such as "life of the project" would be too difficult to underwrite to.	<b>This language is set out in the Land Use Code and cannot be changed through a Director's Rule. Historically, life of the project has been the term required under the City’s Land Use Code for affordable housing, and projects have been able to receive financing and be built previously. The addition of the wording “shall not be less than 50 years” is to ensure compliance with RCW 36.70A.540.</b>

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26	Kevin Wallace	References appear throughout the rule.	Referenced documents, like Covenant and Certificate of Household Eligibility should be completed and attached to the DR as an Exhibit. E.g., 1.C.1.e, 1.C.2.b, 1.C.2.c.i, 1.C.2.e,	<b>These change over time without the Director’s Rule changing. Therefore, it would create redundant work to consistently have to go back to update the Director’s Rule. The templates for each are public records that can be requested and then provided.</b>
27	PLUSH	1.C	It appears that the standard covenant language that ARCH uses throughout the eastside and is problematic was cut and pasted into the director’s rule. Each section of the covenant and rules should be analyzed as against City of Bellevue code and how it could impact lending documents. Consider attaching a sample covenant (that is consistent with normal building and market operations as well as City of Bellevue code) rather than including the entire covenant as the director’s rule.	<b>Though both will remain consistent with one another, the form of the covenant may change over time without the Director’s Rule changing. Therefore, it would create redundant work to consistently have to go back to update the Director’s Rule. The templates for the covenant are public records that can be requested and then provided.</b>

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28	Kevin Wallace	1.C.1.l	Hold Harmless. Exclude liability arising from gross negligence and willful acts.	<p><b>The suggested language would render Part 1.C.1.j (former 1.C.1.l) ineffective, as the Owner could willfully violate the terms of the covenant in order to avoid their obligations to indemnify, defend, and hold harmless. In addition, this is standard language that the City has consistently included in prior covenants. This language has been reviewed and vetted by the City Attorney’s Office, ARCH, and outside counsel, most recently through the process to update ARCH’s templates. Amendments have been made to be consistent with ARCH’s templates. Amendments have been made to Part 1.C.1.j to clarify its intent and to be consistent with ARCH templates.</b></p>
29	Kevin Wallace	1.C.2.i	Conversion to Condominium, Owner-Occupied, or Non-Rental Residential Use. Is conversion allowed before expiration of 50 year period? Can it be clear that the affordable housing requirements on the condos expires 50 years after the Completion Date?	<p><b>Part 1.C.2.f (former 1.C.2.i) has been revised to make clear that a revised covenant will be required in the event of conversion. Conversion is allowed, provided that the affordable housing is preserved, which could be in the form of for-sale affordable housing. LUC 20.20.128.A.3.h sets out the required term for all affordable housing, which cannot be modified by this Director’s Rule.</b></p>

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30	Kevin Wallace	1.C.3.m	Leasing. Can the affordable units be retained by the owner and rented as affordable apartments? This would potentially conflict with 20.20.128.A.3.c., but could be a nice option for condo developers/converters, and would maintain affordable rental stock.	<b>Need to follow LUC 20.20.128.A.3 as written. Cannot modify the Land Use Code through a Director’s Rule.</b>
31	PLUSH	1.C.1.k	Deed Restriction (Section C.1.k). This provision can be construed as a deed restriction. It is important to include in a purchase and sale contract the buyer’s express acceptance of the project as containing affordable housing units. However, requiring it to be in the deed is too onerous and atypical.	<b>The language included in Part 1.C.1.i (formerly 1.C.1.k) is consistent with language included in the City’s past and current affordable housing covenants.</b>
32	PLUSH	1.C.3.e	Subordination Language and Sale Restrictions (Page 14, Section 3(o)): We are concerned about the implications of the sale restriction in provision 3(o) on page 14 for securing financing. The subordination language should explicitly state that the lien priority of a lender will supersede the City’s rights under that specific covenant provision to alleviate lender concerns and ensure project funding viability. We recommend that clear subordination language be incorporated within the covenant documentation to ensure that lenders’ security interests are protected.	<b>This language is only applicable to affordable dwelling units that are intended for sale and that will be occupied by an eligible household that is the owner of the dwelling unit. This language does not apply to the sale of a multi-family or mixed-use development containing affordable dwelling units available for rent.</b>