

**ORDINANCE NO. 20071129-100**

**AN ORDINANCE ADDING NEW ARTICLE 15 TO CHAPTER 25-1 OF THE CODE RELATING TO AFFORDABLE HOUSING INCENTIVES; AND REPEALING AND REPLACING SECTION 25-9-347 OF THE CODE RELATING TO IMPACT FEE EXEMPTIONS FOR AFFORDABLE HOUSING.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** The Council finds that:

- (A) S.M.A.R.T. Housing is housing that is safe, mixed-income, accessible, reasonably priced, transit-oriented, and compliant with the City's Green Building Standards.
- (B) The City Council adopted the S.M.A.R.T. Housing program through Resolution Nos. 990909-61, 000420-76, 040115-44, and 20070607-013, encouraging the development of housing that meets S.M.A.R.T. housing standards by waiving certain development related fees and exempting the developments from impact fees.
- (C) The Austin Housing Incentives Task Force ("AHITF") submitted its report to the City Council on February 20, 2007 recommending that the City enhance incentives for developers of S.M.A.R.T. Housing.
- (D) The City desires to adopt an ordinance codifying the City's current S.M.A.R.T. Housing program and to improve the program by incorporating AHITF recommendations.

**PART 2.** Chapter 25-1 of the City Code is amended by adding Article 15 to read as follows:

***ARTICLE 15. S.M.A.R.T. HOUSING.***

**§ 25-1-701 Definitions.**

In this article:

- (1) **DIRECTOR** means the director of the City's Neighborhood Housing and Community Development Department.
- (2) **HOUSING COSTS** means:

- (a) for an owner-occupied dwelling unit, the average monthly cost for mortgage, utilities, and, if applicable, condominium dues; or
  - (b) for a dwelling unit for lease, the average monthly cost for rent and utilities.
- (3) **MEDIAN FAMILY INCOME** means the median family income for the Austin statistical metropolitan area as determined by the director of the City's Neighborhood Housing and Community Development Department.

**§ 25-1-702 ADMINISTRATION.**

The director of the City's Neighborhood Housing and Community Development Department shall administer the S.M.A.R.T. Housing program and may adopt and implement program guidelines and establish the requirements for an application under the program.

**§ 25-1-703 PROGRAM REQUIREMENTS.**

- (A) S.M.A.R.T. Housing is housing that is safe, mixed-income, accessible, reasonably priced, transit-oriented, and compliant with the City's Green Building Standards.
- (B) S.M.A.R.T. Housing must:
  - (1) be safe by providing housing that complies with Title 25 of the City Code (*Land Development*);
  - (2) provide mixed-income housing by including dwelling units that are reasonably-priced, as described in Subsections (C) and (D);
  - (3) provide for accessibility by:
    - (a) including dwelling units that comply with the accessibility requirements of the Building Code in:
      - (1) each building with four or more dwelling units; and
      - (2) at least 10 percent of the dwelling units in each development; or
    - (b) for a development with three or fewer dwelling units, complying with the design and construction requirements of Chapter 5-1, Article 3, Division 2 (*Design and Construction Requirements*); and

- (4) comply with the transit oriented guidelines adopted by the director; and
  - (5) achieve at least a one star rating under the Austin Green Building program.
- (C) Except as provided in Subsection (D), a reasonably-priced dwelling unit is one that is affordable for purchase or rental by a household that meets the housing costs and income qualifications of this subsection.
- (1) This paragraph provides qualifications on the amount of household income spent on housing costs.
    - (a) Except as provided by Subparagraphs (b) and (c), housing costs of a household may not exceed 30 percent of its gross income.
    - (b) A household may spend up to 35 percent of its gross income on housing costs if a household member receives City-approved homebuyer counseling.
    - (c) A household that complies with other federal, state, or local income eligibility standards is not subject to the expenditure qualifications of Paragraphs (a) and (b).
  - (2) This paragraph provides qualifications on household income.
    - (a) Except as provided in Subparagraph (b), the household income may not exceed 80 percent of the median family income.
    - (b) In a Downtown Mixed Use (DMU) or Central Business District (CBD) base zoning district, household income may not exceed:
      - (i) 120 percent of the median family income for an owner-occupied dwelling unit; or
      - (ii) 80 percent of the median family income for a rental dwelling unit.
- (D) For a Vertical Mixed Use (VMU) building, a reasonably priced dwelling unit is one that meets the affordability requirements of Chapter 25-2, Subchapter E, Section 4.3.3.F (*Affordability Requirements*).

**§ 25-1-704 FEE WAIVERS.**

- (A) The director may, in accordance with Subsection (B), waive all or a portion of the following fees, as set by the City's annual fee ordinance, for a S.M.A.R.T. Housing development:

- (1) Public Works Construction Inspection Fee;
- (2) Watershed Protection and Development Review - Development Assessment Fee;
- (3) Watershed Protection and Development Review - Traffic Impact Analysis Fee;
- (4) Watershed Protection and Development Review - Traffic Impact Analysis Revision Fee;
- (5) Regular Zoning Fee;
- (6) Interim to Permanent Zoning Fee;
- (7) Miscellaneous Zoning Fee;
- (8) Zoning Verification Letter Fee;
- (9) Board of Adjustment Fee;
- (10) Managed Growth Agreement Fee;
- (11) Planned Development Area Fee;
- (12) Preliminary Subdivision Fee;
- (13) Final Subdivision Fee;
- (14) Final Without Preliminary Subdivision Fee;
- (15) Miscellaneous Subdivision Fee;
- (16) Consolidated Site Plan Fee;
- (17) Miscellaneous Site Plan Fee;
- (18) Site Plan Revision Fee;
- (19) Site Plan – Construction Element Fee;
- (20) Building Review Plan Fee;
- (21) Building Permit Fee;
- (22) Electric Permit Fee;
- (23) Mechanical Permit Fee;

- (24) Plumbing Permit Fee;
  - (25) Concrete Permit Fee;
  - (26) Demolition Permit Fee;
  - (27) Electric Service Inspection Fee;
  - (28) Move House Onto Lot Fee; and
  - (29) Move House Onto City Right-of-Way Fee.
- (B) A developer is eligible for a waiver of the fees described in Subsection (A) if the director determines that the S.M.A.R.T. housing development provides the percentage of reasonably-priced dwelling units prescribed by this section.
- (1) Except as provided in Paragraph (2):
    - (a) if at least ten percent of the dwelling units are reasonably-priced, the development is eligible for a waiver of 25 percent of the fees;
    - (b) if at least 20 percent of the dwelling units are reasonably-priced, the development is eligible for a waiver of 50 percent of the fees;
    - (c) if at least 30 percent of the dwelling units are reasonably-priced, the development is eligible for a waiver of 75 percent of the fees; and
    - (d) if at least 40 percent of the dwelling units are reasonably-priced, the development is eligible for a waiver of 100 percent of the fees.
  - (2) The development is eligible for a waiver of 100 percent of the fees if:
    - (a) except as provided in Subparagraphs (c) and (d), the development is located within the Urban Roadways boundary described by Chapter 25-2, Subchapter E (*Design Standards and Mixed Use*), and at least five percent of the dwelling units are reasonably priced and are transferred to a City approved affordable housing land trust or other similar entity approved by the director;
    - (b) except as provided in Subparagraph (c), the development is located outside the Urban Roadways boundary described by Chapter 25-2, Subchapter E (*Design Standards and Mixed Use*), and at least ten percent of the dwelling units are reasonably priced and are transferred to a City approved affordable housing land trust or other similar entity approved by the director;

- (c) the development is a Vertical Mixed Use (VMU) building that complies with the affordability requirements of Chapter 25-2, Subchapter E, Section 4.3.3.F (*Affordability Requirements*); or
- (d) the development is located in either a Downtown Mixed Use (DMU) or Central Business District (CBD) base zoning district, and at least ten percent of the dwelling units are reasonably-priced.

**§ 25-1-704 REQUIRED AFFORDABILITY PERIOD.**

- (A) To be eligible for the S.M.A.R.T. Housing program, unless a longer term is required by law, private agreement, or another provision of this Code, all reasonably-priced dwelling units in a S.M.A.R.T. Housing development must remain reasonably-priced for the following affordability periods commencing on the date of initial occupancy:
  - (1) except as provided in Paragraphs (3) and (4), for dwelling units within the University Neighborhood Overlay District, a period of at least fifteen years;
  - (2) except as provided in Paragraphs (3) and (4), for dwelling units outside the University Neighborhood Overlay District:
    - (a) if the unit is owner-occupied, a period of at least one year, or if the owner is receiving federal housing assistance, a period of at least five years; or
    - (b) if the unit is a rental unit, a period of at least five years.
  - (3) for dwelling units in a DMU or CBD base zoning district, a period of at least 99 years for owner-occupied units, and a period of at least 40 years for rental units; and
  - (4) for dwelling units in a VMU building that has or will benefit from an exemption from dimensional standards available under Chapter 25-2, Article 4, Section 4.3.3.E (*Dimensional and Parking Requirements*), the applicable affordability period set forth Chapter 25-2, Article 4, Section 4.3.3.F (*Affordability Requirements*).
- (B) If a reasonably-priced dwelling unit within a S.M.A.R.T. Housing development is converted from a rental unit to an owner-occupied dwelling unit during the applicable affordability period, the dwelling unit shall be subject to the affordability period applicable to an owner-occupied dwelling unit, and the new affordability period begins on the date that the converted dwelling unit is available for owner occupancy.

- (C) If the development does not comply with the requirement to maintain the applicable percentage of dwelling units as reasonably-priced for the duration of the applicable affordability period, the developer shall reimburse the City for all fees.
- (D) The director may require the developer to execute an agreement and restrictive covenant or other binding restriction on land use that preserves affordability in accordance with the S.M.A.R.T. Housing program. The agreement may include:
  - (1) terms that require a defaulting applicant to pay the otherwise applicable fees;
  - (2) liquidated damages in an amount up to twice the amount of fees waived, being such an amount that will fairly compensate the City for administrative costs incurred; and
  - (3) liquidated damages that will fairly compensate the City for any breach that results in the loss of reasonably-priced dwelling units during the affordability period.

**PART 3.** Section 25-9-347 (*Exemption for Certain Affordable Housing*) of the City Code is repealed and replaced to read as follows:

**§ 25-9-347 EXEMPTION FOR CERTAIN AFFORDABLE HOUSING.**

- (A) The community development officer may exempt not more than 1,500 service units of affordable housing constructed each fiscal year from the requirement to pay impact fees under this article. Service units of affordable housing within the development known as the Robert Mueller Municipal Airport development that are granted exemptions from paying impact fees do not count against the annual cap of 1,500.
- (B) The community development officer shall establish guidelines for the selection of the service units to receive an exemption under this section. The guidelines must include a requirement for a written application.
- (C) To be eligible for an exemption under this section, affordable housing must:
  - (1) meet design and construction guidelines established by the community development officer for habitability, affordability, accessibility, water conservation, and energy efficiency;
  - (2) be served by existing City infrastructure and services; and

- (3) be a newly constructed single family home or multifamily housing unit located within the corporate limits of the City that is:

  - (a) approved for assistance under an affordable housing program funded with Community Development Block Grant or federal HOME program assistance funds administered by the City;
  - (b) approved for assistance under a program for affordable housing construction funding or down payment assistance administered by the Austin Housing Finance Corporation; or
  - (c) approved under guidelines for non-assisted affordable housing units established by the community development officer that meet the requirements of this section.
  
- (D) To receive an exemption under this section, an applicant who is approved for an exemption must provide to the community development officer an agreement, a restrictive covenant, a deed of trust, a promissory note, or other documents determined to be necessary by the city attorney to establish an enforceable obligation by the applicant to:

  - (1) pay to the City an amount equal to the impact fee otherwise applicable to the housing unit if the applicant does not comply with this section and applicable guidelines;
  - (2) reserve by covenant the applicable affordable dwelling units for the duration of the affordability period prescribed by Subsection (E); and
  - (3) pay liquidated damages that will fairly compensate the City for any breach.
  
- (E) To retain an exemption under this section, a unit of affordable housing must comply with the requirements of this subsection.

  - (1) Except as provided in Paragraphs (2) and (3), a unit must be available for occupancy by a person whose gross household income does not exceed 80 percent of the median household income for the Austin Standard Metropolitan Statistical Area for the following affordability period:

    - (a) in the university neighborhood overlay district, a period of no less than 15 years; or



- (b) outside the university neighborhood overlay district:
    - (i) for rental housing, a period of no less than five years; or
    - (ii) for owner-occupied housing a period of no less than one year, unless the owner is receiving federal housing assistance, in which case, a period of no less than five years.
- (2) A unit within a Vertical Mixed Use building must comply with the affordability requirements for the affordability period under Chapter 25-2, Subchapter E, Section 4.3.3.F (*Affordability Requirements*).
- (3) In Downtown Mixed Use (DMU) or Central Business District (CBD) base zoning district:
  - (a) an owner-occupied unit must be available for occupancy for a period of not less than 99 years by an occupant whose gross household income does not exceed 120 percent of the median family income for the Austin Standard Metropolitan Statistical Area; or
  - (b) a rental unit must be available for occupancy for a period of not less than 40 years by an occupant whose gross household income does not exceed 80 percent of the median family income for the Austin Standard Metropolitan Statistical Area.
- (4) An affordability period prescribed by this subsection begins on the date that an affordable unit is available for occupancy.
- (F) If an applicant who receives an exemption under this section does not comply with Subsection (E), defaults on its obligations under documents executed under Subsection (D), or does not perform in accordance with the conditions for receipt of the exemption, the City may initiate legal proceedings to recover the impact fees that would have applied to the housing unit and damages. Funds recovered for impact fees shall be deposited in the impact fee account of the Water Utility. Damages collected to compensate the City for loss of affordable housing units shall be deposited into the S.M.A.R.T. Housing CIP Fund account of the Neighborhood Housing and Community Development Department.

- (G) Before the director of the Water Utility may issue a tap permit authorizing connection to the City water or wastewater system for a property receiving an exemption under this section, the community development officer must provide a written certification to the director of the Water Utility identifying the service address of the affordable housing unit.
- (H) The community development officer may revoke a certification under Subsection (G) if the applicant does not finish construction of the approved affordable housing unit:

  - (1) within 15 months after certification; or
  - (2) for a multifamily housing unit, 24 months after certification.
- (I) This section does not require a refund by the Water Utility of impact fees previously paid.
- (J) An exemption under this section may not be assigned or transferred by the applicant to another property.

**PART 4.** Affordability impact statements shall be prepared in accordance with this part.

- (A) A City department may not propose a change to an ordinance, rule, or process that impacts housing affordability unless the City's Neighborhood Housing and Community Development Department (NHCD) has prepared an affordability impact statement for the proposed regulation before the initiation of external stakeholder discussion.
- (B) If an affordability impact statement shows a negative impact on housing affordability, the proposed change may only go forward upon approval by the city manager.
- (C) A City board, commission, or subcommittee may offer recommendations to the city council on issues affecting housing affordability only after NHCD has prepared an affordability impact statement.
- (D) An affordability impact statement is not required for council adoption of annexations, budgets, or budget amendments except for those that increase development fees that impact housing affordability that are not otherwise waived.

**PART 5.** The City's Neighborhood Housing and Community Development Department is charged as the lead department on housing policy and the single point of contact to facilitate S.M.A.R.T. Housing development.

**PART 6.** The City recognizes the role that the Austin Housing Finance Corporation (AHFC) has regarding S.M.A.R.T. Housing development and charges the AHFC with the responsibilities in this part. All applicable operating agreements between the City and AHFC shall include the following responsibilities of AHFC regarding S.M.A.R.T. Housing:

- (A) AHFC is charged as the lead agency to foster partnerships with neighborhoods and the home building industry in order to develop, finance, rehabilitate, relocate, and operate S.M.A.R.T. Housing in the City.
- (B) AHFC shall verify that all AHFC financed developments comply with all S.M.A.R.T. Housing standards.

- (C) Except for land with an adopted master plan, AHFC has a right of first refusal for receiving any City owned surplus real property for development as S.M.A.R.T. Housing. Subject to any limitations in the Texas Local Government Code, the City may transfer surplus real property to AHFC for development for S.M.A.R.T. Housing without regard to any restrictions on transfer of the real property prescribed by the City Code.

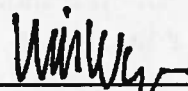
**PART 7.** This ordinance takes effect on December 10, 2007.

**PASSED AND APPROVED**

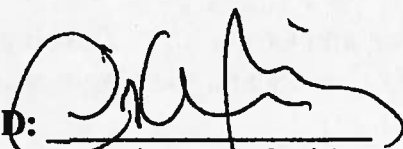
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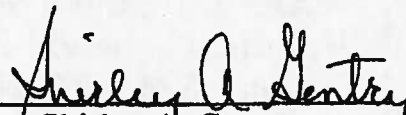
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Will Wynn  
Mayor

**APPROVED:**

  
\_\_\_\_\_  
David Allan Smith  
City Attorney

**ATTEST:**

  
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Shirley A. Gentry  
City Clerk