

ORDINANCE NO. _____

1 AN ORDINANCE AMENDING CITY CODE CHAPTER 25-2 TO ADD A NEW
2 SUBSECTION TO SECTION 25-2-312 (*CURE COMBINING DISTRICT*
3 *REGULATIONS*) AND REPEAL AND REPLACE SECTION 25-2-586 RELATING
4 TO ZONING REGULATIONS FOR THE CURE COMBINING DISTRICT AND
5 DOWNTOWN DENSITY BONUS.
6

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

8
9 **PART 1.** City Code Section 25-2-312 (*CURE Combining District Regulations*) is amended
10 to add a new subsection (C) to read as follows:
11

- 12 (C) The CURE combining district may not be used to modify maximum floor area
13 ratio or maximum height within the area bounded by Martin Luther King, Jr.,
14 Boulevard, Interstate Highway 35, Lady Bird Lake and Lamar Boulevard.
15

16 **PART 2.** City Code Section 25-2-586 (*Affordable Housing Incentives in a Central*
17 *Business District (CBD) or Downtown Mixed Use (DMU) Zoning District*) is repealed and
18 replaced with a new section 25-2-586 to read as follows:
19

20 **§ 25-2-586 DOWNTOWN DENSITY BONUS PROGRAM.**

21
22 (A) **Definitions.** In this section:

23
24 (1) BONUS AREA means the greater of:

- 25
26 (a) The gross floor area that exceeds the maximum allowable floor-to-
27 area ratio allowed with the site's primary entitlements; or
28
29 (b) The gross floor area contained within the portion of a structure that
30 exceeds the maximum height allowed under the site's primary
31 entitlements.
32

33 (2) DEVELOPMENT BONUS FEE means the dollar amount an applicant
34 pays to the City per square foot of bonus area.
35

- 1
- 2 (3) DIRECTOR means director of the Planning and Development Review
- 3 Department.
- 4
- 5 (4) DWELLING UNIT means a single unit providing complete, independent
- 6 living facilities for one or more persons, including permanent provisions
- 7 for living, sleeping, eating, cooking and sanitation.
- 8
- 9 (5) GREAT STREETS STREETSCAPE STANDARDS means design
- 10 standards for streets within the boundaries of the Great Streets Master
- 11 Plan.
- 12
- 13 (6) MIXED-USE PROJECT means a project that has 25 percent or more of its
- 14 floor area in a use different from a predominant use.
- 15
- 16 (7) NON-RESIDENTIAL PROJECT means a project for which the
- 17 predominant use is not listed in Section 25-2-3 (*Residential Uses*
- 18 *Described*), and which has less than 25 percent of its floor area devoted to
- 19 uses described in Section 25-2-3 (*Residential Uses Described*).
- 20
- 21 (8) PRIMARY ENTITLEMENT means the height and floor-to-area ratio
- 22 entitlement that a site derives from its current zoning. That entitlement
- 23 may be derived from the base zoning or from a previous modification to
- 24 the base zoning.
- 25
- 26 (9) RESIDENTIAL PROJECT means a project for which the predominant use
- 27 is within one or more of the classifications described in Section 25-2-3
- 28 (*Residential Uses Described*).
- 29
- 30 (10) URBAN DESIGN GUIDELINES means guidelines for public
- 31 streetscapes, plazas, open space and buildings in a dense area, adopted by
- 32 City Council.
- 33

1
2 (B) **Downtown Density Bonus Maps and Table.**
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- 4 (1) The downtown district boundaries are shown on the Downtown Districts
5 Map (Figure 1). Properties in the downtown district that are eligible for
6 density bonuses under this section are shown on the Eligibility, Floor-to-
7 Area Ratio and Height Maps (Figure 2).
8
9 (2) The amount of floor-to-area ratio or height that may be achieved by a
10 downtown density bonus for a site is limited by the maximum height or
11 Floor-to-Area Ratio identified on Figure 2.
12
13 (3) The development bonus fee may vary by use and downtown district. The
14 applicable development bonus fee within each of the nine districts is
15 established by ordinance.
16

17 (C) **Program Requirements.**
18

- 19 (1) Gatekeeper Requirements.
20
21 (a) To receive bonus area, the director must determine that the project
22 substantially complies with the Urban Design Guidelines.
23
24 (i) The applicant must submit to the director a schematic level
25 site plan, building elevations, and other drawings, simulations
26 or other documents necessary to fully describe the urban
27 design character of the project and relationship of the project
28 to its surroundings.
29
30 (ii) The Design Commission shall evaluate and make
31 recommendations regarding whether the project complies
32 with the Urban Design Guidelines and the director shall
33 consider comments and recommendations of the Design
34 Commission.
35
36 (b) The applicant shall execute a restrictive covenant committing to
37 provide streetscape improvements along all public street frontages,
38 consistent with the Great Streets Standards.
39

1 (c) The applicant shall execute a restrictive covenant committing to
2 achieve a minimum two star rating under the Austin Energy Green
3 Building program using the ratings in effect at the time the ratings
4 application is submitted for the project. The applicant shall also
5 provide the director with a copy of the project's signed Austin
6 Energy Green Building Letter of Intent.
7

8 (2) After the director determines the applicant meets the gatekeeper
9 requirements, the applicant shall provide sufficient written information so
10 that the director can determine:
11

12 (a) the site's primary entitlement;

13 (b) the amount of bonus area that the applicant is requesting; and,
14

15 (c) the total dollar amount the applicant will pay if the applicant
16 chooses to obtain the entire bonus area exclusively by paying a
17 development bonus fee.
18

19
20 (D) **Changes in Design of Proposed Building.** If the design of a building changes
21 after a bonus is granted under this section, the director shall review the new
22 design for substantial compliance with the Urban Design Guidelines prior to
23 building permit approval. A building permit for a final design will not be
24 approved until the design substantially compliances with the gatekeeper
25 requirements and the restrictive covenants are amended to reflect new
26 community benefits.
27

28 (E) **Community Benefits.** A person may achieve density bonuses by providing
29 community benefits outlined in this section.
30

31 (1) Affordable Housing Community Benefits
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33 (a) Affordable Housing Community Benefit. An applicant may use one
34 or more of the following.
35

36 (i) On-site affordable housing. A project may achieve bonus
37 area by providing on-site affordable housing within the
38 project. The amount of bonus area that may be achieved for
39 each one square foot of dwelling unit space that is devoted to
40 on-site affordable housing is established by ordinance.

1
2 (ii) The project may achieve bonus area by paying a development
3 bonus fee at the dollar per square foot amount set by
4 ordinance. The fee will be paid into the Affordable Housing
5 Trust Fund for the express purpose of providing permanent
6 supportive housing for the homeless.
7

8 (b) Affordable housing community benefit percentages.
9

10 (i) A project must achieve at least 50 percent of the desired
11 bonus area by providing on-site affordable housing, paying a
12 development bonus fee, or a combination of the two.
13

14 (ii) If an applicant chooses to achieve 100 percent of the desired
15 bonus area exclusively by providing affordable housing
16 community benefits, the approval for the bonus area can be
17 granted administratively by the director.
18

19 (iii) For any portion of the desired bonus area not achieved by
20 providing affordable housing benefits, the applicant shall
21 achieve bonus area by providing other community benefits.
22

23 (2) **Other Community Benefits.**
24

25 (a) The applicant must provide sufficient information about the other
26 community benefits for the director to determine whether the other
27 community benefits serve a public and municipal purpose
28 considering the criteria listed below.
29

30 (b) The director will consider the following to make a determination:
31

32 (i) if members of the general public will be able to enjoy the
33 proposed benefit without paying for its access, use or
34 enjoyment;
35

36 (ii) if the proposed benefit will connect to and be accessible from
37 public right-of-way or other publicly-accessible space;
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39 (iii) if the proposed benefit will provide a public amenity that is
40 particularly lacking in the proposed location;

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- (iv) if the proposed benefit will impose a significant burden on public resources for maintenance, management, policing, or other reasons; and,
 - (v) any other information provided by the applicant that shows the other community benefit serves a public and municipal purpose and furthers the City's comprehensive planning goals.
- (c) If a community benefit provides a partial benefit to a project, it will not be disqualified; the director will allocate only the cost of the public portion of the benefit to the other community benefits.
- (3) If the director determines that the proposed benefit qualifies as a community benefit, the director shall:
- (a) quantify the monetary cost for the proposed community benefit by using standard industry sources as well as locally based data on development costs to quantify the monetary cost, without mark-up, for the proposed community benefit; and,
 - (b) determine the cost to be applied towards achieving the desired bonus area.
- (4) The amount determined by the director may be applied to achieve bonus area on the same basis as the development bonus fee applicable to the type and location of the project.
- (5) The director's recommendation concerning the proposed community benefit and the monetary value that is applied to achieve the bonus area shall be presented to the planning commission for recommendation and the city council for approval.
- (6) If the applicant proposes to achieve bonus area by providing other community benefits, the value of the affordable housing benefits plus the value of the public portion of the other community benefits must be equal to or greater than the dollar amount that the director calculates in Section 25-2-586(C)(2)(c).

1 (F) **Development Bonus Fee and On-Site Affordable Housing Bonus.**

- 2
- 3 (1) The city manager shall evaluate and, if necessary, adjust the development
- 4 bonus fee and on-site affordable housing bonus area at least every three
- 5 years. The city manager shall determine the new fees and bonus area and
- 6 submit those changes to the city council for approval.
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- 8 (2) Mixed-use projects shall pay development bonus fees in proportion to the
- 9 amount of floor area in the project that is devoted to different use
- 10 categories.

11

12 (G) **Affordability Requirements.** For purposes of this section, a unit is affordable

13 for purchase or rental if, in addition to the other requirements of this section, the

14 household is required to spend no more than 30 percent of its gross monthly

15 income on mortgage or rental payments for the unit, utilities and transportation

16 costs.

17

18 (1) Affordability requirements for owner-occupied units.

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20 (a) On-site for sale affordable housing units shall be reserved as

21 affordable through a City approved affordable housing land trust or

22 other shared equity model approved by the director of Neighborhood

23 Housing and Community Development, for not less than 99 years

24 from the date a certificate of occupancy is issued.

25

26 (b) The units shall be made available for ownership and occupancy by

27 households earning no more than 120 percent of the Annual Median

28 Family Income for the City of Austin Metropolitan Statistical Area

29 as determined by the director of Neighborhood Housing and

30 Community Development.

31

32 (2) Affordability requirements for rental units.

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34 (a) On-site rental affordability housing units shall be reserved as

35 affordable for a minimum of 40 years following the issuance of the

36 certificate of occupancy.

37

38 (b) The units shall be made available for rental by households earning

39 no more than 80 percent of the annual median family income for the

1 City of Austin metropolitan statistical area as determined by the
2 director of Neighborhood Housing and Community Development.
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4 (H) **Applicant's obligation.** Before the director may issue any type of Certificate
5 of Occupancy, an applicant must fulfill all obligations including but not limited
6 to the payment of all fees and execution of restrictive covenants. All approvals
7 must be obtained and evidence of the approvals must be provided to the director
8 prior to site plan submittal.
9

10 (I) **Director's approval.** Once an applicant meets the requirements of the
11 downtown density bonus program, the director will issue a written notice of
12 approval that indicates the project's allowable floor-to-area ratio and height.
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14 (J) **Appeal.**

- 15
- 16 (1) An applicant may appeal to the city council the director's determination
17 that the gatekeeper requirements have not been met.
 - 18 (2) An applicant must appeal the determination within 30 days from the date
19 of the director's denial.
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 - 21 (3) An appeal is subject to the procedures set forth in Section 25-2-282
22 (*Land Use Commission Public Hearing and Recommendation*) and
23 Section 25-2-283 (*City Council Zoning Hearing and Action*) of the City
24 Code.
25
26

27 **PART 3.** The fee to be paid into the Affordable Housing Trust fund for each square foot of
28 bonus area, as set forth in 25-2-586(B), is established in the Downtown Development Bonus
29 Fee table in Figure 3.
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31 **PART 4.** Ten square feet of bonus area shall be granted for each one square foot of
32 dwelling unit devoted to on-site affordable housing as defined in 25-2-586(E)(1)(a).
33
34

1 **PART 5.** This ordinance takes effect on _____, 2013.

2
3 **PASSED AND APPROVED**

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5 §
6 §
7 _____, 2013 § _____

8 Lee Leffingwell
9 Mayor

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11
12 **APPROVED:** _____ **ATTEST:** _____

13 Karen M. Kennard
14 City Attorney

Jannette S. Goodall
City Clerk

