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/**ORDINANCE AMENDMENT REVIEW SHEET****Amendment:** C20-2013-014 Planned Unit Development Affordability

**Description:** Amend Title 25 of the City Code to clarify that the affordable housing requirement for Planned Unit Developments, and fee in lieu of, are calculated using the amount of building square footage in the proposed PUD that exceeds the baseline height or floor to area ratio.

**Proposed Language:** See attached draft language.

**Background:** Initiated by Council Resolution 20130606-51.

The intention of PUD zoning is to create superior projects that might not occur using conventional zoning and site development standards; certain superiority elements are typically used in a PUD development that provide greater environmental protections, connectivity, innovative design and affordable housing, and other community benefits in return for additional density and flexible site development regulations. The existing PUD regulations include a provision for establishing a baseline in order to calculate a density bonus; PUDs requesting height or floor to area ratios (FAR) above the baseline amount are required to contribute in some manner to affordable housing, either by providing units on site or by a payment of a fee in lieu of construction.

Recently, the interpretation of the density bonus section of the PUD ordinance that applies to the affordable housing requirement has been scrutinized. As a result, the City Council initiated amendments to the PUD section of the City Code such that the affordable housing requirement, and fee in lieu of, are calculated using the amount of building square footage in the proposed PUD that exceeds the baseline height or floor to area ratio.

**Staff Recommendation:** Staff recommends the proposed code amendment with the following concerns:

1. Staff does not support changing language to indicate that existing zoning shall prevail as the baseline for purposes of determining development bonuses. Staff feels that existing language in the PUD ordinance to establish the baseline for determining development bonuses and estimating development under existing zoning is appropriate.

**Board and Commission Actions**

**August 26, 2013:** Recommended by the Sustainable Food Policy Board on a 6-0 vote.

**September 17, 2013:** Recommended by the Codes and Ordinances Subcommittee on a 5-0 vote, with the following amendments:

1. Change language to clarify that existing zoning shall prevail as the baseline for purposes of determining development bonuses.

**September 24, 2013:** To be reviewed by Planning Commission.

**Council Action**

**October 17, 2013:** A public hearing has been set for City Council.

**Ordinance Number:** NA

**City Staff:** Greg Dutton  
Jerry Rusthoven

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## **PROPOSED LANGUAGE PUD AFFORDABILITY**

**2.5.1. Limitation on Development.** Except as provided in Section 2.5.2 (*Requirements for Exceeding Baseline*), site development regulations for maximum height, maximum floor area ratio, and maximum building coverage in a PUD with residential uses may not exceed the baseline established under Section 1.3.3 (*Baseline for Determining Development Bonuses*).

**2.5.2. Requirements for Exceeding Baseline.** Development in a PUD with residential uses may exceed the baseline established under Section 1.3.3 (*Baseline for Determining Development Bonuses*) for maximum height, maximum floor area ratio, and maximum building coverage if:

- A. the application for PUD zoning includes a report approved by the Director of the Neighborhood Housing and Community Development Department establishing the prevailing level of affordability of housing in the vicinity of the PUD, expressed as a percentage of median family income in the Austin metropolitan statistical area; and
- B. the developer either:
  - 1. provides contract commitments and performance guarantees that provide affordable housing meeting or exceeding the requirements of Section 2.5.3 (*Requirements for Rental Housing*) and Section 2.5.4 (*Requirements for Ownership Housing*); or
  - 2. makes donations for affordable housing under Section 2.5.65 (*Alternative Affordable Housing Options*).

**2.5.3 Requirements for Rental Housing.** If rental housing units are included in a PUD, dwelling units equal to at least 10 percent of the bonus area square footage ~~rental units or rental habitable square footage~~ within the PUD must:

- A. be affordable to a household whose income is ~~less than the affordability level established under Section 2.5.5 (*Affordability Levels*)~~ 60% or below the median family income in the Austin metropolitan statistical area;
- B. remain affordable for 40 years from the date a certificate of occupancy is issued; and
- C. be eligible for federal housing choice vouchers.

**2.5.4 Requirements for Ownership Housing.** If owner occupied housing is included in a PUD, dwelling units equal to at least five percent of the bonus area square footage ~~owner-occupied units or owner-occupied habitable square footage~~ within the PUD must be:

- B. transferred to the owner subject to a shared equity agreement approved by the Director of the Neighborhood Housing and Community Development Department.
- A. affordable to a household whose income is ~~less than the affordability level established under Section 2.5.5 (*Affordability Levels*)~~ 80% or below the median family income in the Austin metropolitan statistical area; and

**2.5.5. Affordability Levels.** ~~For purposes of this subchapter, the affordability level is:~~

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~~A. for a portion of a PUD within the urban roadway boundary depicted in Figure 2 of Subchapter E of Chapter 25-2 (Design Standards and Mixed Use), 80% of the median family income in the Austin metropolitan statistical area;~~

~~B. for a portion of a PUD outside the urban roadway boundary depicted in Figure 2 of Subchapter E of Chapter 25-2 (Design Standards and Mixed Use), 60% of the median family income in the Austin metropolitan statistical area; or~~

~~C. if the Council finds that the prevailing level of affordability of housing in the vicinity of the PUD is lower than the level applicable under Paragraph A or B, any lesser percentage of the median family income in the Austin metropolitan statistical area established by the Council.~~

**2.5.65 Alternative Affordable Housing Options.** Development within a PUD may exceed baseline standards as provided in Section 2.5.2.B.2 (*Requirements for Exceeding Baseline*) if the developer:

A. donates to the Austin Housing Finance Corporation land within the PUD that is appropriate and sufficient to develop 20 percent of the residential habitable square footage planned for the PUD, as determined by the Director of the Neighborhood Housing and Community Development Department; or

B. subject to approval by the city council, donates the amount established under Section 2.5.67 (*In Lieu Donation*) for each square foot of bonus square footage above baseline of climate controlled space within the PUD to a to the Affordable Housing Assistance Trust Fund to be used for producing or financing affordable housing, as determined by the Director of the Neighborhood Housing and Community Development Department.

**2.5.67. In Lieu Donation.** The amount payable under Section 2.5.56.B (*Alternative Affordable Housing Options*) shall be \$6 for each square foot of bonus square footage above baseline. ~~60 percent of the fee established under Section 25-2-586(I) (*Affordable Housing Incentives in a Central Business District or Downtown Mixed Use Zoning District*) or any successor fee established under the Austin Downtown Plan.~~ Such fee will be adjusted annually in accordance with the Consumer Price Index all Urban Consumers, US City Average, All Items (1982-84=100), as published by the Bureau of Labor Statistics of the United States Department of Labor or other applicable standard as defined by the director of the Neighborhood Housing and Community Development Office. The city manager shall annually determine the new fee amounts for each fiscal year, beginning October 1, 2014 and report the new fee amounts to the city council.



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**COMMUNITY DEVELOPMENT COMMISSION RECOMMENDATION 20130820-06a**

Date: August 20, 2013

Subject: PUD Amendments Recommendations

Motioned By: Commissioner Mueller

Seconded By: Commissioner Langley

**Recommendation**

Approve staff recommendations with additional comments

**Description of Recommendation to Council**

The CDC supports staff recommendations with the following additional comments:

- To promote affordable housing opportunities for lower income people throughout Austin, the CDC strongly supports including affordability benefits on site over in-lieu fees. The CDC notes that 10 percent of the 247 housing units being built under VMU are affordable. In contrast to the units in VMU with programs with in-lieu fees, as shown in the attached chart prepared by NHCD;
- Additional refinements should be made in the administration so that PUD zoning is not used on single buildings;
- PUD zoning should not be used in downtown zoning cases;
- The baseline should be actual base zoning; and,
- The CDC also endorses the points made in the attached letter from Housing Works.

**Vote 8-0-0**

For: Chair Rivera, Vice Chair Paup. Commissioners Coles, Langley, Mueller, Nelson, Reyes, and Taylor

Against: 0

Abstain: 0

Absent: Commissioners Decierdo, Montoya, Noyola, Seals, and Walters

Attest:

Kathleen Saenz, Board Liaison



**HousingWorks**  
AUSTIN

**Board of Directors**

*Andrew Childers*  
ARA Austin

*Ashton Cumberbatch*  
Seton Family of Hospitals &  
Austin Bridge Builders Alliance  
*Catharina Echols*  
Liveable City

*Frances Ferguson*  
NeighborWorks America

*Frank Fernandez*  
Green Doors  
Capital Metro Board of Directors

*John Limon*  
Plaza Saltillo Redevelopment  
*Veronica Mascon*  
Housing Authority of the City of  
Austin

*Terry Mitchell*  
MOMARK Homes  
Austin Chamber of Commerce Board  
of Directors

*Karen Paap*  
Texas Low Income  
Housing Information Service

*Wes Peoples*  
Wes Peoples Homes  
Homebuilders Association of Greater  
Austin

*Cookie G. Ruiz, C.F.R.E.*  
Ballet Austin  
*Dave Sullivan*

UT Center for Energy and  
Environmental Resources &  
City of Austin Bond Oversight  
Committee

*Kathy Tyler*  
Motivation Education and  
Training, Inc.

August 20, 2013

Dear Mayor Leffingwell, Mayor Pro Tem Cole, and Council Members Riley, Martinez, Tovo, Morrison and Spelman:

As you contemplate revisions to the PUD ordinance, on behalf of HousingWorks, I would like you to consider the following recommendations that are related to affordability and equity:

1. With rare exception, PUDs should not be used on a single building or a small, single tract of land. PUD is a special designation for larger tracts of land that enables a developer to create a cohesive and superior development.
2. PUDs should not be allowable within the downtown area. With the closing of the CURE "loophole," it is increasingly important to maintain distinction between density bonus programs.
3. Residential developers should be required to develop on-site affordable units in PUDs, rather than paying a fee-in-lieu. On-site affordability is a proven and effective strategy to incorporate affordable housing in high opportunity areas. In fact, there are currently 247 affordable units that have been created or are in the pipeline as the result of Vertical Mixed Use (VMU) zoning regulations.
4. In exceptional cases, a fee-in-lieu payment may be warranted. In these rare cases, the PUD fee in lieu should be no case less than \$6/square foot of bonus area. Smaller fees mitigate the incentive to incorporate affordability, decrease the ability to replicate the affordable units in another development, and are counter to the ordinance's original intention.
5. The rewrite of the PUD Ordinance should clarify that existing zoning shall prevail as baseline for purposes of determining development bonuses. Departmental discretion with respect to baseline zoning is too ambiguous and highly subjective.
6. In order to achieve deeper affordability in geographically diverse areas, on-site affordable housing in PUDs should be limited to 60% MFI income levels. The City of Austin has a responsibility to affirmatively further fair housing. Requiring deeper levels of affordability (e.g. 60% MFI) in all areas (regardless of prevailing levels of affordability in the surrounding area), would help to achieve greater geographic dispersion and facilitate affordability in higher opportunity areas.

Thank you for your consideration of our input. If you have any questions, or require any additional information, please feel free to contact me at (512) 466-0574.

Sincerely,

Frances Ferguson  
President, Board of Directors

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**RESOLUTION NO. 20130606-051**

**WHEREAS**, in the early 2000's property owners started to request planned unit development (PUD) district zoning for urban infill projects; and

**WHEREAS**, the City Council at that time found the existing PUD process and regulations were not well suited to addressing urban infill projects; and

**WHEREAS**, on April 7, 2007, the City Council passed a resolution directing the City Manager to provide staff support to a Council-led stakeholder process to recommend revisions to the PUD sections of the City Code; and

**WHEREAS**, on June 18, 2008, the City Council passed an ordinance amending the PUD regulations and process; and

**WHEREAS**, the ordinance passed in 2008 included provisions to address PUD requests for urban infill projects; and

**WHEREAS**, the intention of PUD zoning is to create superior projects than would not occur using conventional zoning and site development regulations; and

**WHEREAS**, the superiority elements are typically those that provide greater environmental protections, connectivity, innovative design and affordable housing, and other community benefits in return for additional density and flexible site development regulations; and

**WHEREAS**, the ordinance includes a baseline determination in a section on density bonus; and

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**WHEREAS,** given the limitations of Texas zoning laws, density bonuses are a way to create or pay for, additional affordable housing; and

**WHEREAS,** the ordinance requires the construction of affordable housing or the payment of a fee in lieu of construction for PUDs requesting height or floor to area ratios (FAR) above the baseline amount; and

**WHEREAS,** recently the interpretation of the density bonus section of the ordinance that applies to the affordable housing requirement has been questioned; **NOW, THEREFORE,**


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

The City Council initiates amendments to the PUD section of the City Code such that the affordable housing requirement, and fee in lieu of, are calculated using the amount of building square footage in the proposed PUD that exceeds the baseline height or floor to area ratio.

**BE IT FURTHER RESOLVED:**

The City Manager is directed to process the Code amendment and to present the proposed amendments to the Community Development Commission for review, in addition to the Code-required Planning Commission review, before placement on the City Council agenda.

**ADOPTED:** June 6, 2013

**ATTEST:**   
Jannette S. Goodall  
City Clerk