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ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C20-2013-027 Downtown Density Bonus and Rainey Subdistrict Amendments

Description: Consider an ordinance to Title 25 of the City Code to codify the of remainder of the community benefits of the Downtown Density Bonus Program, make the Rainey Street Subdistrict eligible to participate in the Downtown Density Bonus Program, and to create an affordability period and mechanism for an affordable housing land trust for affordable housing units in the Rainey Street Subdistrict.

Proposed Language: See attached draft language.

Background: Initiated by Council Resolution 20130808-052 and 20131017-032.

City Council has taken action on a number of items related to density bonus programs in the Downtown area, and staff wanted would like to provide an update about those items, the code amendments for which will be processed together, as they are all related.

The “streamlined” Downtown Density Bonus Program adopted onin June 27, 2013, did not include all of the community benefits identified in the Downtown Austin Plan, so one element of the code amendments will be to codify the other community benefits identified in the plan. In addition, staff will move forward with code amendments to make the Rainey Street Subdistrict eligible to participate in the Downtown Density Bonus Program (Resolution 20131017-032), and to create an affordability period and mechanism for an affordable housing land trust for affordable housing units in the Rainey Street Subdistrict (Resolution 20130808-052).

Staff Recommendation: Staff recommends the proposed code amendment.

Board and Commission Actions

January 14, 2014: Recommended by the Community Development Commission on a 11-0 vote, with additional recommendations (see attached).

January 15, 2014: Recommended by the Downtown Commission on a 13-0 vote with additional recommendations (see attached).

January 21, 2014: Recommended by Codes and Ordinances Subcommittee on a 5-0 vote.

January 28, 2014: To be reviewed by the Planning Commission.

Council Action

February 13, 2014: A public hearing has been set.

Ordinance Number: NA

City Staff: Erica Leak

Phone: 974-2856 **Email:** Erica.Leak@austintexas.gov



HousingWorks
AUSTIN

Board of Directors

- Andrew Childers*
ARA Austin
- Ashton Cumberbatch*
Seton Family of Hospitals &
Austin Bridge Builders Alliance
- Catharine Echols*
Liveable City
- Frances Ferguson*
NeighborWorks America
- Frank Fernandez*
Green Doors
Capital Metro Board of Directors
- John Limon*
Plaza Saltillo Redevelopment
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- Karen Paup*
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

December 9, 2013

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

As you know, codification of both the Downtown Density Bonus Program and the Rainey Street Subdistrict amendments are up for consideration by boards and commissions during the next two months. City Council will consider the final recommendations in February 2014. On behalf of HousingWorks, I would like you to consider the following recommendations to enhance both affordability and equity in our city:

1. **Onsite Affordable Housing.** Maintain 5% onsite affordability requirements in the Rainey Street Subdistrict. The City of Austin has a responsibility to affirmatively further fair housing; onsite affordable housing would help to achieve greater geographic dispersion and facilitate affordability in higher opportunity areas. In addition, Rainey Street has a unique cultural and socioeconomic history that should be honored by inclusion of affordable housing.
2. **Serving the Needs of Austin's Downtown Workers.** Utilize existing data on the need for workforce housing in the area. There are more than 12,000 workers in downtown Austin (78701) earning \$1,250/month or less (approximately 30% MFI). There are more than 35,000 workers in 78701 earning between \$1,250/month and \$3,333/month (approximately 80% MFI). These numbers represent a large pool of potential renters and owners for affordable units in the Rainey Street Subdistrict.
3. **Affordability Terms.** Require rental units to be affordable for a minimum of 40 years and ownership units to be affordable for a minimum of 99 years. This policy aligns with other density bonus programs and reflects the city's core values with respect to affordability terms.
4. **Monitoring Requirements.** Ensure that units developed under these density bonus programs are identified, tracked, and monitored for the length of the affordability period. In order to ensure the success of the density bonus programs, it is imperative that these affordable units are affirmatively and aggressively marketed to income-qualified residents.
5. **Fair Housing.** Require that all developments taking advantage of density bonus provisions be prohibited from discrimination against people with housing assistance.

The Imagine Austin comprehensive plan calls on us to develop and maintain household affordability throughout Austin. The Rainey Street Subdistrict amendments and related density bonus provisions present us with a unique opportunity to work toward that vision.

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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BOARD/COMMISSION RECOMMENDATION

Downtown Commission

Recommendation Number: 20140115-005

Recommendations regarding the Downtown Austin Density Bonus Program Extension to the Rainey District

WHEREAS, the Austin City Council adopted a resolution directing city staff to prepare an ordinance extending the Downtown Austin Density Bonus Program to the Rainey District for increases in density above 8:1 FAR, while preserving the current Rainey density bonus program for increases in density up to 8:1 FAR; and

WHEREAS, the Austin City Council adopted a resolution directing city staff to prepare an ordinance providing for an affordability term for the on-site affordable housing units in the Rainey density bonus program, in order to correct an oversight in the prior ordinance; **NOW THEREFORE**

BE IT RESOLVED that the Downtown Commission supports the policies prepared by staff and recommends that the Austin City Council adopt the proposed policies subject to the following:

- 1) Include a provision in the ordinance that prohibits discrimination based on a tenant's source of income including housing voucher assistance, thereby aligning the Rainey density bonus program with the PUD ordinance and the City of Austin's federal legal duties to affirmatively further fair housing.
- 2) Modify the Rainey density bonus program so that the number of on-site units required is based on 5% percentage of the additional square footage versus 5% of the additional units, thereby increasing the opportunity for family-sized affordable units and aligning the Rainey density bonus program with the Downtown Austin Density Bonus Program and the PUD ordinance, which are both based on square footage. Moreover, to encourage the creation of affordable family units, the ordinance should provide that the bedroom-count mix for the affordable units must be proportional to the overall bedroom-count mix in the development. For example, if there are 100 units overall in the development, with 20 three-bedroom units and 80 one-bedroom units, of the 5 affordable units overall in the development, then 1 of the affordable units must be three-bedroom units, and 4 must be one-bedroom units.
- 3) Direct staff to develop a system for identifying and adequately monitoring compliance with the City's density bonus programs and to develop a leasing agent or other program to market and connect the City's affordable density bonus units to eligible low-income households.

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- 4) Provide in the ordinance that the program is subject to rules created by the Director of the Neighborhood Housing and Community Development governing tenant eligibility and monitoring requirements, and direct staff to develop such rules. The rules should include a bar on occupancy in the affordable units by full-time students who are the head of household unless such person is eligible to file a joint federal income tax return, has dependents living in the household, or is attending a job training program. The program rules should also address mechanisms to ensure that larger units serve households with children.

Date of Approval: January 15, 2014

Record of the vote: 13-0, with Commissioners MacKinnon and Simonich absent

Attest: Michael R. Knox
Michael Knox, Executive Liaison

City of Austin Downtown Austin Density Bonus Program

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Downtown Commission Recommendation on the Implementation of the Downtown Austin Plan

We recommend the following regarding the City staff proposals for the Downtown Austin Density Bonus Program and promulgation of standards governing eligible community benefits:

1. Cultural Uses Community Benefit: We recommend that the ordinance clarify that for a cultural use to be eligible, the bonus area must be leased to a 501(c) nonprofit organization that meets the city's eligibility requirements for the City's core cultural funding program and that the space is actively used for cultural programming and/or projects.

2. Live Music Community Benefit: We recommend that the ordinance eliminate the eligibility of outdoor music facilities downtown to qualify. We also recommend that staff tighten up the language to specify that the space would have to be open to the public (versus a private hotel pool deck) and that music would need to be played on a regular basis for the venue to qualify.

3. Family-Friendly Housing Community Benefit: We recommend that the ordinance integrates the family-friendly housing community benefit into the affordable housing community benefit option. We recommend that staff develop program rules governing eligibility requirements for the on-site affordable units, including rules that provide a preference to households with children for any affordable units created with more than one bedroom. We also recommend that the City develop a plan for marketing the affordable units, such as a contract with a leasing agent who could keep an updated list of the affordable units available downtown and across the city and market these to low-income households, including families with children, through entities such as the housing authority, local CDCs, etc. This list would be posted publicly within six months with a marketing strategy implemented within nine months. To further incentivize the creation of family-friendly units, we recommend that the density bonus program include a provision that provides a one-for-one square footage bonus for any onsite children's play areas and common open space for children that meets certain standards developed by city rule, modeling the program developed in Portland.

4. Open Space Development Bonus Fee Community Benefit: Limiting this fee to parkland, as currently proposed by staff, is too narrow. We recommend that other types of publicly-owned public open space, such as alleys, parklets, and other public open spaces, be eligible for funding generated by this fee. We also recommend that the developer providing the fee should have an opportunity to offer input into where the fee is directed. The fund would be overseen by the Parks Department and dispersed after receiving recommendation from the Parks and Recreation Board.

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5. On-site Improvements for Historic Preservation Community Benefit. As worded, this community benefit is too vague and needs further definition as to what qualifies as the bonus area and what a developer needs to provide to qualify, and how this incentivized historical preservation over and above existing legal requirements.

6. Other Community Benefits. We recommend that the provision of the current ordinance allowing for “other community benefits” under the program be removed from the ordinance. This provision has the potential to gut the intention of the codification of the density bonus program, which is to provide clearer expectations and equitably-applied rules as to what level of community benefits count and how to measure such benefits, as well as to focus on higher priority areas that further the goals of the Downtown Austin Plan.

7. Next Steps—Targeted Community Benefits in Individual Districts: We recommend after adopting the current package of community benefits, the city prioritize the range of the non-affordable housing bonuses available individual downtown districts, through the development of district plans that include a set of limited community benefits based on the top priorities for that district. Thus, by way of example, in the Rainey District, the city might focus on public open space and family-friendly housing, while in the Red River District, the city might focus just on live music uses and open space.

Adopted: January 15, 2014, on a 13-0 vote, with Commisisoners MacKinnon and Simonich absent. The Commission asked that it be noted that a motion to remove Recommendation #6 failed on a vote of seven ayes and six nays, with eight votes needed for approval.

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RESOLUTION NO. 20130808-052

WHEREAS, the City of Austin has expressed its dedication to preserve and create affordable housing through principles and goals as outlined in the Imagine Austin Comprehensive Plan, the creation of the Community Development Commission, and many resolutions and ordinances directed to address the growing lack of affordable housing options in the city; and

WHEREAS, a Rainey Street Subdistrict regulation in Section 25-2-793 of the Land Development Code incorporates a strategy to achieve onsite affordable housing by allowing additional height beyond a 40 foot maximum for certain properties if at least five percent of the dwelling units on the site are available to households with an income less than 80 percent of the median income in the Austin statistical metropolitan area; and

WHEREAS, the Rainey Street Subdistrict regulations do not specify a time period for which housing must remain affordable; and

WHEREAS, the Land Development Code has been enhanced to include the provision of affordable housing as an important public benefit through many other mechanisms, such as Planned Unit Development (PUD) and Vertical Mixed Use (VMU) Zoning, Transit Oriented Development, the East Riverside Corridor, the North Burnet Gateway District, the Waterfront Overlay, and the University Overlay, as well as density bonus programs for Downtown and Multi-Family greenfield development; and

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WHEREAS, in most of these instances, the Land Development Code includes a requirement that affordable housing remain affordable for 99 years for owner occupied housing and 40 years for rental housing; and

WHEREAS, the affordable housing benefit in the Rainey Street Subdistrict is the only affordable housing regulation in the Land Development Code that does not specify an affordability period; and

WHEREAS, a key component of achieving the city's goal is promoting long-term affordability, as specified in the Imagine Austin Priority Program #6, "Develop and maintain household affordability throughout Austin"; **NOW, THEREFORE,**

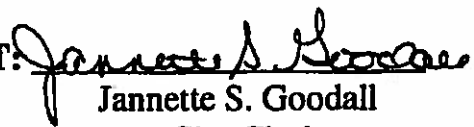
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Council initiates amendments to City Code that are necessary to ensure the affordable housing units in the Rainey Street Subdistrict, that allow for waiver of the 40 foot height limit per 25-2-739(C)(2) of the Land Development Code, remain affordable for not less than 40 years for rental housing and for 99 years for on-site for sale housing from the date of certificate of occupancy is issued. Further, on-site for sale affordable units shall be reserved as affordable through a City approved affordable housing land trust or through another method that is, or is similar to, a shared equity model approved by the director of Neighborhood Housing and Community Development.

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BE IT FURTHER RESOLVED:

The City Manager is directed to process the code amendment and present the amendment to City Council on or before November 7, 2013.

ADOPTED: August 8, 2013 **ATTEST:** 
Jannette S. Goodall
City Clerk

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RESOLUTION NO. 20131017-032

WHEREAS, the Council-adopted Downtown Austin Plan articulated a vision for Downtown as “dense and livable” with a “vibrant day and nighttime environment”; and

WHEREAS, the Downtown Austin Plan Density Bonus Program calls for a 15:1 floor area ratio (FAR) in the Rainey Street Subdistrict; and

WHEREAS, under existing density bonus regulations in the City Code the maximum FAR a developer can achieve in the Rainey Street Subdistrict is 12:1; and

WHEREAS, to achieve the above 12:1 FAR a developer must comply with a points system that is different from the existing downtown density bonus program in the City Code; and

WHEREAS, the Downtown Austin Plan Density Bonus Program provides a mechanism for achieving community benefits by having developers comply with various gatekeeper requirements; and

WHEREAS, one of the stated goals of the Downtown Austin Plan can be achieved by making the Rainey Street Subdistrict part of the downtown density bonus program in order to allow for an FAR of 15:1; and

WHEREAS, the City recently completed a market study with HR&A which concluded that the market in the Rainey Street District could support a \$5 per square foot fee for bonus area above 8:1 (FAR), which could be applied to affordable housing; and

WHEREAS, the Downtown Austin Plan Density Bonus Program allows for increased FAR in the form of project specific, unique community benefits; **NOW, THEREFORE**,