

ORDINANCE NO. _____

AN ORDINANCE AMENDING CITY CODE CHAPTER 25-2, SUBCHAPTER B, REGARDING PLANNED UNIT DEVELOPMENTS.

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

PART 1. Section 2.5.1 of City Code Chapter 25-2, Subchapter B (*Zoning Procedures*) is amended to read as follows:

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*).

PART 2. Section 2.5.2 of City Code Chapter 25-2, Subchapter B (*Zoning Procedures*) is amended to read as follows:

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:
 - A. [1.] Developments with residential units, 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
 - B. [2.] Developments with no residential units, donate the amount established under Section 2.5.6 (*In Lieu Donation*) for each square foot of bonus square footage above baseline to the Affordable Housing Trust Fund to be used for producing or financing affordable housing, as determined by the Director of the Neighborhood Housing and Community Development

Department. [~~makes donations for affordable housing under Section 2.5.6 (Alternative Affordable Housing Options).~~]

PART 3. Section 2.5.4 of City Code Chapter 25-2, Subchapter B (*Zoning Procedures*) is amended to read as follows:

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 within the PUD must be:

- A. affordable to a household whose income is 80 percent or below the median family income in the Austin metropolitan statistical area; and
- B. remain affordable for 99 years from the date a certificate of occupancy is issued; and
- C. [~~B.~~] transferred to the owner subject to a shared equity agreement, land trust, or restrictive covenant approved by the Director of the Neighborhood Housing and Community Development Department.

PART 4. Section 2.5.5 of City Code Chapter 25-2, Subchapter B (*Zoning Procedures*) is amended to read as follows:

2.5.5. 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~~]: Exceptions to 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*) may be formally requested as follows:

- A. Subject to approval by the Director of the Neighborhood Housing and Community Development Department, the developer may donate[s] 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. S[s]ubject to approval by the city council, in developments with residential units, the developer may donate[s] the amount established under Section 2.5.6 (*In Lieu Donation*) for each square foot of bonus square footage above baseline to the Affordable Housing Trust Fund to be used for producing or financing affordable housing, as determined by the

Director of the Neighborhood Housing and Community Development Department. A request for in lieu donation for all or a portion of the affordability requirement in Section 2.5.2.A must be submitted in writing to the Director of Neighborhood Housing and Community Development Department. The request must include supporting documentation sufficient to demonstrate the infeasibility of compliance with Section 2.5.2.A. Any request for fee in lieu must be presented to and approved by city council.

PART 5. This ordinance takes effect on _____, 2015.

PASSED AND APPROVED

_____, 2015

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§
§

Steve Adler
Mayor

APPROVED: _____
Anne L. Morgan
Interim City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk



Neighborhood Housing and
Community Development

Planned Unit Development Density Bonus

Staff recommended amendments
related to Council Resolution
20140925-090

September 15, 2015
Planning Commission
Codes and Ordinances Subcommittee

Objectives

- I. Understand the directive from City Council**
- II. Planned Unit Development Overview (What is a PUD?)**
- III. Review current Planned Unit Development Density Bonus policies**
- IV. Stakeholder feedback**
- V. Recommended amendments and next steps**

Council Resolution No. 20140925-090

Council Resolution No. 20140925-090 initiated a code amendment to modify the in lieu donation option for affordable housing requirements for Planned Unit Developments.

Three possible amendment scenarios:

- Remove the Fee-In-Lieu option
- A significant portion of the affordability requirement must be met through onsite units and a small portion may be met through a fee-in-lieu
- Allow for exemptions from the onsite affordable unit requirement



What is a Planned Unit Development

Planned Unit Development (PUD) zoning district goals:

- preserving the natural environment
- encouraging high quality development and innovative design
- ensuring adequate public facilities and services

The Council intends PUD district zoning to produce development that achieves these goals to a greater degree than and is therefore superior to development under conventional zoning and subdivision regulations

Austin Planned Unit Development History

2008: PUD land development code was amended to include a density bonus provision

2013: Additional amendments made to the PUD code including:

- Rental units set at 60% MFI or below & ownership units set at 80% MFI
- Change from 10% of habitable square footage to 10% of bonus square footage for both onsite units and fee-in-lieu requirement

2014: Resolution No. 20140925-090 initiated a code amendment related to the fee-in-lieu option for the PUD density bonus

Developer Incentive Affordable Unit Summary

Program	Year Created	Total Affordable Units	Completed Units	Pending Units	Fee-in-lieu (anticipated and received)
SMART	2000	20,345	12,028	8,317	N/A
SMART Greenfield	2008	10	0	10	N/A
UNO	2008	626	490	136	\$1,628,867
VMU	2010	366	148	218	N/A
Rainey	2005	51	9	42	N/A
TOD	2009	304	146	158	N/A
PUD/MUD	2008	2,606	0	2,606	in review
DDB	2013	0	0	0	\$1,316,260

Some units fall under multiple categories (i.e., UNO and S.M.A.R.T. Housing)

Current PUD Density Bonus Requirements

Development in a PUD with residential uses may exceed the baseline zoning if the developer:

Provides affordable housing meeting or exceeding the following requirements:

- For Rental Housing : **10% of bonus sq. ft.** must be affordable to households at **60% MFI** or below for 40 years
- For Ownership Housing: **5% of bonus sq. ft.** affordable to households at **80% MFI** – transferred to the owner subject to a shared equity agreement

Current PUD Density Bonus Requirements

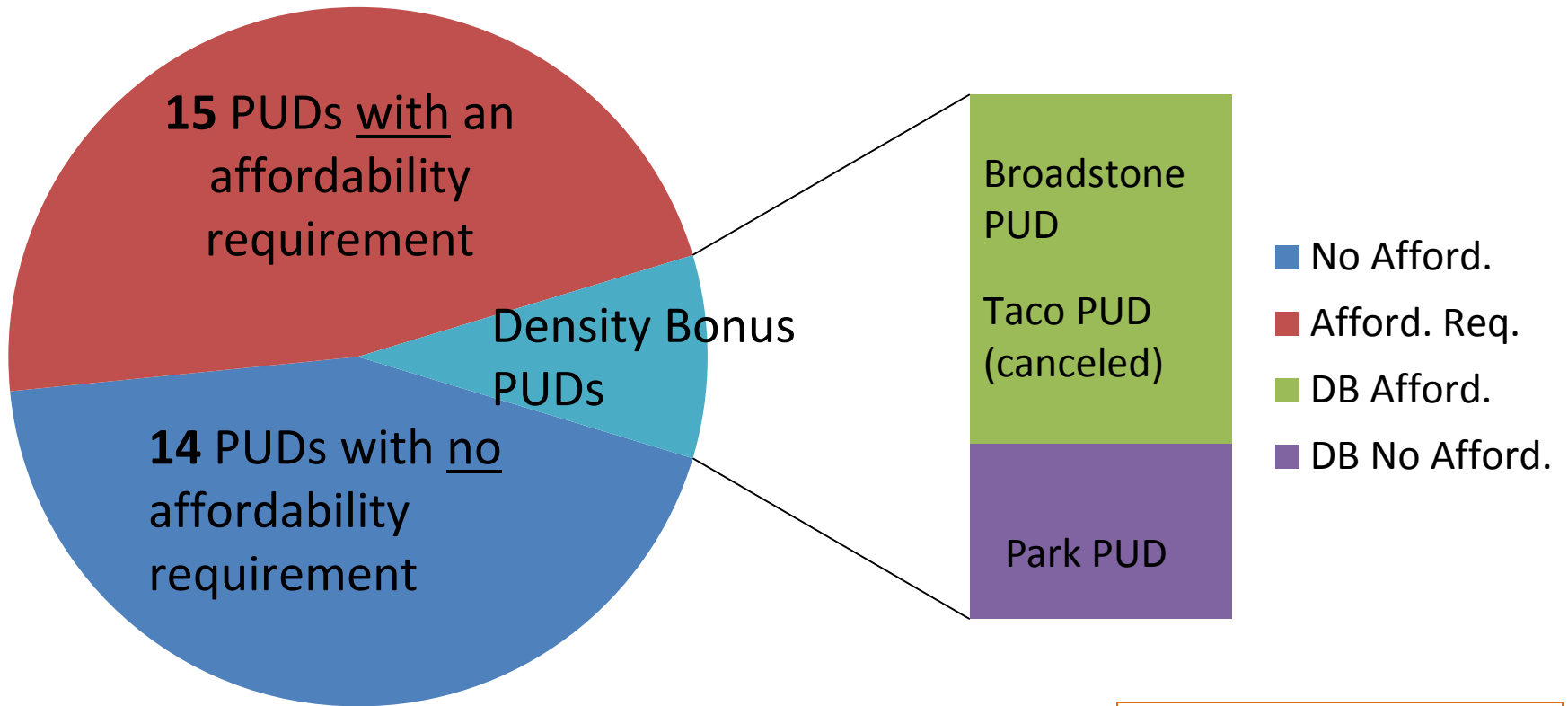
Alternative Options:

- Donates to AHFC land within the PUD that is appropriate and sufficient to develop 20% of the residential habitable square footage planned for the PUD subject to approval by the Director of NHCD
- In lieu donation of \$6/ square foot of bonus square footage subject to city council approval

PUDs with a Density Bonus since 2008

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PUDS 2008-2015



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PUDs with a Density Bonus since 2008

- **Broadstone (RunTex)**: ordinance allows for onsite units or fee-in-lieu to be determined at issuance of certificate of occupancy
- **Taco PUD**: was approved by Council to provide a fee-in-lieu of onsite affordable units. A fee was received prior to site plan approval. The developer pulled the site plan and the fee was refunded.
- **The Park PUD**: development contains no residential uses and therefore is not subject to the affordability requirements.

Council Resolution No. 20140925-090

Three possible amendment scenarios:

- Remove the Fee-In-Lieu option
- A significant portion of the affordability requirement must be met through onsite units and a small portion may be met through a fee-in-lieu
- Allow for exemptions from the onsite affordable unit requirement



Onsite Affordability vs Fee-in-lieu in Austin

Model	Affordability MFI	Fee-in-lieu
Downtown Density Bonus	120% Ownership / 80% Rental	\$3-\$10/bonus square foot
North Burnet Gateway	80% Ownership / 60% Rental	\$6/bonus square foot
East Riverside Corridor	80% Ownership / 60% Rental	\$0.5/bonus square foot*
University Neighborhood Overlay	60% AND 50% Rental	\$1/square foot of net rentable floor area in the multi-family residential use or group residential use†
Planned Unit Development	80% Ownership / 60% Rental	Fee option dependent on Council approval (\$6/bonus square foot)
Transit Oriented Development	MFI varies by district	Fee option dependent on Council approval (\$10/bonus square foot)
Rainey Street	80% Ownership / 80% Rental	No fee option
Vertical Mixed Use	100-80% Ownership / 80-60% Rental	No fee option

*fee option is limited to buildings over 90 feet

†fee option is limited to satisfying a portion of affordability req. for the Height Bonus

Austin Base in lieu donations

- **Set on a program-by-program / amendment-by-amendment basis**
- **Downtown Density Bonus fee per sq. ft. differs by zone**
- **The PUD fee was set at 60% of the high Downtown Density Bonus fee of \$10/sq. ft.**
- **UNO fee was determined by considering both the results of an economic analysis and stakeholder feedback**

Council Resolution No. 20140925-090

Phase I Stakeholder Engagement:

- Conducted online survey with members of the development community that have experience with PUDs and providing on-site affordable units through other Austin density bonus programs
- Facilitated discussion with the Real Estate Council of Austin (RECA) Policy Committee
- Facilitated discussion with HousingWorks Austin

Council Resolution No. 20140925-090

Phase I Stakeholder Engagement:

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- Facilitated discussion with HousingWorks Austin

Council Resolution No. 20140925-090

Phase II Stakeholder Engagement:

June 24th stakeholder meeting to discuss draft staff proposed amendments

July 30th stakeholder meeting to develop recommendations for the implementation of the PUD Density Bonus fee-in-lieu request process

*August 12th stakeholder meeting to solicit feedback about the PUD ordinance in general outside of the parameters of the current code amendment.

Council Resolution No. 20140925-090

Community Development Commission Action

The CDC took action on the staff recommended amendments on June 30, 2015.

- Support the staff proposed amendments to the Planned Unit Development Ordinance with the exception of Section 2.5.5 B
 - The CDC recommends deletion of this section which would eliminate the In Lieu Donation option
- Additionally recommendations:
 - that consideration be given to requiring a restrictive covenant through the rule making process
 - That consideration be given to requiring a public hearing on baseline zoning prior to the first presentation to the Austin City Council

Staff Recommended Code Amendments


Draft Staff Recommended Amendments

- **Affordability requirement will apply to all development types that participate in the density bonus**
 - Currently only applies to residential uses
- **Developments with no residential use are permitted to pay the fee-in-lieu by right**
- **Remove requirement for “prevailing level of affordability” report**
 - This requirement is no longer relevant because we lowered the rental MFI to 60% in the 2013 amendment.
- **Affordability term for ownership housing will be 99years**
 - Currently there is no affordability term tied to ownership units which we feel was an oversight

Draft Staff Recommended Amendments

- **Land donation in lieu of on-site affordable units must be approved by the Director of Neighborhood Housing and Community Development.**
 - Current practice but not explicitly codified
- **Request for approval of a fee-in-lieu of on-site affordable housing must be submitted in writing**
 - Currently no guidelines for how an exemption request is submitted
- **The written request must demonstrate the infeasibility of complying with the on-site requirement**
- Currently no guidelines for how an exemption request is submitted

Code Amendment Next Steps

Dates	Actions
 September 15, 2015	Planning Commission Codes and Ordinances Subcommittee: presentation of final draft recommendations action requested on final staff recommendations
September 22, 2015	Planning Commission: public hearing and action requested
October 8, 2015	City Council: public hearing and action requested

Staff Recommended Code Amendments

Current Ordinance Language	Proposed Amendments
<p>2.5.1. Limitation on Development. Except as provided in Section 2.5.2 (<i>Requirements for Exceeding Baseline</i>), 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 (<i>Baseline for Determining Development Bonuses</i>).</p>	<p>2.5.1. Limitation on Development. Except as provided in Section 2.5.2 (<i>Requirements for Exceeding Baseline</i>), 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 (<i>Baseline for Determining Development Bonuses</i>).</p>

Staff Recommended Code Amendments

Current Ordinance Language	Proposed Amendments
<p>2.5.2. Requirements for Exceeding Baseline. Development in a PUD with residential uses may exceed the baseline established under Section 1.3.3 (<i>Baseline for Determining Development Bonuses</i>) for maximum height, maximum floor area ratio, and maximum building coverage if:</p>	<p>2.5.2. Requirements for Exceeding Baseline. Development in a PUD with residential uses may exceed the baseline established under Section 1.3.3 (<i>Baseline for Determining Development Bonuses</i>) for maximum height, maximum floor area ratio, and maximum building coverage if:</p>

Staff Recommended Code Amendments

Current Ordinance Language	Proposed Amendments
<p>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</p>	<p>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</p>

Staff Recommended Code Amendments

Current Ordinance Language	Proposed Amendments
<p data-bbox="189 344 722 394">B. the developer either:</p> <p data-bbox="189 415 803 1189">1. provides contract commitments and performance guarantees that provide affordable housing meeting or exceeding the requirements of Section 2.5.3 (<i>Requirements for Rental Housing</i>) and Section 2.5.4 (<i>Requirements for Ownership Housing</i>); or</p>	<p data-bbox="933 344 1466 394">B. the developer either:</p> <p data-bbox="933 415 1798 972"><u>1A. Developments with residential units</u>, provide contract commitments and performance guarantees that provide affordable housing meeting or exceeding the requirements of Section 2.5.3 (<i>Requirements for Rental Housing</i>) and Section 2.5.4 (<i>Requirements for Ownership Housing</i>); or</p>

Staff Recommended Code Amendments

Current Ordinance Language	Proposed Amendments
<p>2. makes donations for affordable housing under Section 2.5.5 (<i>Alternative Affordable Housing Options</i>).</p>	<p>2B. <u>Developments with no residential units, donate the amount established under Section 2.5.6 (<i>In Lieu Donation</i>) for each square foot of bonus square footage above baseline to the Affordable Housing Trust Fund to be used for producing or financing affordable housing, as determined by the Director of the Neighborhood Housing and Community Development Department.</u> makes donations for affordable housing under Section 2.5.5 (<i>Alternative Affordable Housing Options</i>).</p>

Staff Recommended Code Amendments

Current Ordinance Language	Proposed Amendments
A. affordable to a household whose income is 80% or below the median family income in the Austin metropolitan statistical area;	A. affordable to a household whose income is 80% or below the median family income in the Austin metropolitan statistical area;
	<u>B. remain affordable for 99 years from the date a certificate of occupancy is issued; and</u>

Staff Recommended Code Amendments

Current Ordinance Language	Proposed Amendments
<p>B. transferred to the owner subject to a shared equity agreement approved by the Director of the Neighborhood Housing and Community Development Department.</p>	<p><u>C</u>B. transferred to the owner subject to a shared equity agreement, <u>land trust, or restrictive covenant</u> approved by the Director of the Neighborhood Housing and Community Development Department.</p>

Staff Recommended Code Amendments

Current Ordinance Language	Proposed Amendments
<p>2.5.5 Alternative Affordable Housing Options. Development within a PUD may exceed baseline standards as provided in Section 2.5.2.B.2 <i>(Requirements for Exceeding Baseline)</i> if the developer:</p>	<p>2.5.5 Alternative Affordable Housing Options. Development within a PUD may exceed baseline standards as provided in Section 2.5.2.B.2 <i>(Requirements for Exceeding Baseline)</i> if the developer: <u>Exceptions to contract commitments and performance guarantees that provide affordable housing meeting or exceeding the requirements of Section 2.5.3 <i>(Requirements for Rental Housing)</i> and Section 2.5.4 <i>(Requirements for Ownership Housing)</i> may be formally requested as follows:</u></p>

Staff Recommended Code Amendments

Current Ordinance Language	Proposed Amendments
<p>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</p>	<p>A. <u>Subject to approval by the Director of the Neighborhood Housing and Community Development Department,</u> <u>the developer may</u> 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</p>

Staff Recommended Code Amendments

Current Ordinance Language	Proposed Amendments
<p>B. subject to approval by the city council, donates the amount established under Section 2.5.6 (<i>In Lieu Donation</i>) for each square foot of bonus square footage above baseline to the Affordable Housing Trust Fund to be used for producing or financing affordable housing, as determined by the Director of the Neighborhood Housing and Community Development Department.</p>	<p>B. Subject to approval by the city council, <u>in developments with residential units, the developer may</u> donate the amount established under Section 2.5.6 (<i>In Lieu Donation</i>) for each square foot of bonus square footage above baseline to the Affordable Housing Trust Fund to be used for producing or financing affordable housing, as determined by the Director of the Neighborhood Housing and Community Development Department.</p>

Staff Recommended Code Amendments

Current Ordinance Language	Proposed Amendments
<p>B. subject to approval by the city council, donates the amount established under Section 2.5.6 (<i>In Lieu Donation</i>) for each square foot of bonus square footage above baseline to the Affordable Housing Trust Fund to be used for producing or financing affordable housing, as determined by the Director of the Neighborhood Housing and Community Development Department.</p>	<p><i>(B Continued)</i></p> <p><u>A request for in lieu donation for all or a portion of the affordability requirement in Section 2.5.2.A must be submitted in writing to the Director of Neighborhood Housing and Community Development Department. The request must include supporting documentation sufficient to demonstrate the infeasibility of compliance with Section 2.5.2.A. Any request for fee in lieu must be presented to and approved by city council.</u></p>

**Planned Unit Development Ordinance
Staff Recommendations
May 27, 2015 (Revised July 6, 2015)**

Current Ordinance Language	Proposed Amendments	Staff Comments	Stakeholder Input	CDC Action ¹
<p>2.5.1. Limitation on Development. Except as provided in Section 2.5.2 (<i>Requirements for Exceeding Baseline</i>), 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 (<i>Baseline for Determining Development Bonuses</i>).</p>	<p>2.5.1. Limitation on Development. Except as provided in Section 2.5.2 (<i>Requirements for Exceeding Baseline</i>), 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 (<i>Baseline for Determining Development Bonuses</i>).</p>	<p>Strike “with residential uses”. A development accessing the density bonus should pay a fee in exchange for the benefit received.</p>	<p><u>Require developments with non-residential uses to pay a fee-in-lieu of affordable housing units</u></p> <ul style="list-style-type: none"> Planned Unit Developments with no residential use provide community benefits in the form of additional tax revenue and jobs There is a nexus between the additional jobs created by commercial developments and an increased demand for affordable housing and therefore commercial developments receiving a density bonus should make a contribution to affordable housing 	<p>Support staff recommendations for section 2.5.1.</p>
<p>2.5.2. Requirements for Exceeding Baseline. Development in a PUD with residential uses may exceed the baseline established under Section 1.3.3 (<i>Baseline for Determining Development Bonuses</i>) for maximum height, maximum floor area ratio, and maximum building coverage if:</p>	<p>2.5.2. Requirements for Exceeding Baseline. Development in a PUD with residential uses may exceed the baseline established under Section 1.3.3 (<i>Baseline for Determining Development Bonuses</i>) for maximum height, maximum floor area ratio, and maximum building coverage if:</p>	<p>Strike “with residential uses”. A development accessing the density bonus should pay a fee in exchange for the benefit received.</p>	<ul style="list-style-type: none"> Adding a fee on non-residential uses could create a disincentive for participation in the density bonus program 	<p>Support staff recommendations for section 2.5.2. A & B</p>

¹ CDC = Community Development Commission

Current Ordinance Language	Proposed Amendments	Staff Comments	Stakeholder Input	CDC Action ¹
<p>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</p>	<p>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</p>	<p>This section was tied to language previously removed through the 2013 ordinance amendment process and the requirement is no longer relevant.</p>		
<p>B. the developer either:</p>	<p>B. the developer either:</p>			
<p>1. provides contract commitments and performance guarantees that provide affordable housing meeting or exceeding the requirements of Section 2.5.3 (<i>Requirements for Rental Housing</i>) and Section 2.5.4 (<i>Requirements for Ownership Housing</i>); or</p>	<p>1A. Developments with residential units, provide contract commitments and performance guarantees that provide affordable housing meeting or exceeding the requirements of Section 2.5.3 (<i>Requirements for Rental Housing</i>) and Section 2.5.4 (<i>Requirements for Ownership Housing</i>); or</p>			
<p>2. makes donations for affordable housing under Section 2.5.5 (<i>Alternative Affordable Housing Options</i>).</p>	<p>2B. <u>Developments with no residential units, donate the amount established under Section 2.5.6 (<i>In Lieu Donation</i>) for each square foot of bonus square footage above baseline to the Affordable Housing Trust Fund to be used for producing or financing affordable housing, as determined by the Director of the Neighborhood Housing and Community Development Department.</u> makes donations for affordable housing under Section 2.5.5 (<i>Alternative Affordable Housing Options</i>).</p>	<p>Developments with no residential uses may pay a fee-in-lieu by right and are not required to secure City Council approval.</p>	<ul style="list-style-type: none"> In place of a fee-in-lieu of on-site affordable units in commercial developments, a portion of the additional tax revenue created by new commercial developments could be dedicated to the City's Housing Trust Fund (ex: a percent of the bonus area) 	

Current Ordinance Language	Proposed Amendments	Staff Comments	Stakeholder Input	CDC Action ¹
<p>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 within the PUD must:</p>		No change to Section 2.5.3.		
<p>A. be affordable to a household whose income is 60% or below the median family income in the Austin metropolitan statistical area;</p>				
<p>B. remain affordable for 40 years from the date a certificate of occupancy is issued; and</p>				
<p>C. be eligible for federal housing choice vouchers.</p>				
<p>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 within the PUD must be:</p>				<p>Support staff recommendations for section 2.5.4. A, B, & C</p>
<p>A. affordable to a household whose income is 80% or below the median family income in the Austin metropolitan statistical area;</p>	<p>A. affordable to a household whose income is 80% or below the median family income in the Austin metropolitan statistical area;</p>			
	<p><u>B. remain affordable for 99 years from the date a certificate of occupancy is issued; and</u></p>	<p>We believe the exclusion of an affordability period for ownership units was an oversight in the 2013 code amendments</p>		

Current Ordinance Language	Proposed Amendments	Staff Comments	Stakeholder Input	CDC Action ¹
<p>B. transferred to the owner subject to a shared equity agreement approved by the Director of the Neighborhood Housing and Community Development Department.</p>	<p><u>CB.</u> transferred to the owner subject to a shared equity agreement, <u>land trust, or restrictive covenant</u> approved by the Director of the Neighborhood Housing and Community Development Department.</p>	<p>Explicitly states the range of tools available to administer an income restricted home ownership program</p>		
<p>2.5.5 Alternative Affordable Housing Options. Development within a PUD may exceed baseline standards as provided in Section 2.5.2.B.2 (<i>Requirements for Exceeding Baseline</i>) if the developer:</p>	<p>2.5.5 Alternative Affordable Housing Options. Development within a PUD may exceed baseline standards as provided in Section 2.5.2.B.2 (<i>Requirements for Exceeding Baseline</i>) if the developer: <u>Exceptions to contract commitments and performance guarantees that provide affordable housing meeting or exceeding the requirements of Section 2.5.3 (<i>Requirements for Rental Housing</i>) and Section 2.5.4 (<i>Requirements for Ownership Housing</i>) may be formally requested as follows:</u></p>			<p>Support staff recommendations for section 2.5.5.A but recommends the deletion of section 2.5.5. B</p>
<p>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</p>	<p>A. <u>Subject to approval by the Director of the Neighborhood Housing and Community Development Department, the developer may</u> 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</p>			

Current Ordinance Language	Proposed Amendments	Staff Comments	Stakeholder Input	CDC Action ¹
<p>B. subject to approval by the city council, donates the amount established under Section 2.5.6 (<i>In Lieu Donation</i>) for each square foot of bonus square footage above baseline to the Affordable Housing Trust Fund to be used for producing or financing affordable housing, as determined by the Director of the Neighborhood Housing and Community Development Department.</p>	<p>B. Subject to approval by the city council, <u>in developments with residential units, the developer may donate the amount established under Section 2.5.6 (<i>In Lieu Donation</i>) for each square foot of bonus square footage above baseline to the Affordable Housing Trust Fund to be used for producing or financing affordable housing, as determined by the Director of the Neighborhood Housing and Community Development Department. <u>A request for in lieu donation for all or a portion of the affordability requirement in Section 2.5.2.A must be submitted in writing to the Director of Neighborhood Housing and Community Development Department. The request must include supporting documentation sufficient to demonstrate the infeasibility of compliance with Section 2.5.2.A. Any request for fee in lieu must be presented to and approved by city council.</u></u></p>	<p>Process and procedures will be established through department guidelines or rules.</p> <p>All requests for fee-in-lieu approval will go before City Council.</p>	<p><u>Fee-in-Lieu option vs. Onsite only</u></p> <ul style="list-style-type: none"> • on-site affordable units requirement helps City to achieve geographic dispersion goals • fee-in-lieu option should be an administrative process rather than require City Council approval • in the staff recommended amendments the “infeasibility” required for fee approval should be tied to more than just economics alone • fee-in-lieu should also be considered in low opportunity areas with a high concentration of affordable units • staff should clarify language in recommended amendments to reflect that all requests for a fee-in-lieu approval will be taken forward to City Council <ul style="list-style-type: none"> ○ this could be stated explicitly in procedural guidelines or rules 	<p>recommends the deletion of section 2.5.5. B</p>

Current Ordinance Language	Proposed Amendments	Staff Comments	Stakeholder Input	CDC Action ¹
<p>2.5.6. In Lieu Donation. The amount payable under Section 2.5.5.B (<i>Alternative Affordable Housing Options</i>) shall be \$6 for each square foot of bonus square footage above baseline. 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.</p>		<p>No change to Section 2.5.6.</p>		

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Additional Recommendations for Consideration

Stakeholder Input	Community Development Commission Action (CDC)	Staff Comments
<p>There should be a set process for determination of Planned Unit Development baseline zoning that is inclusive of many departments including Neighborhood Housing and Community Development</p>	<p>The CDC recommends that consideration be given to requiring a public hearing on baseline zoning prior to the first presentation to the Austin City Council</p>	<p>Staff agrees with stakeholder input and supports the CDC recommendation</p>
<p>The City should review the current policy related to requests for a fee-in-lieu payment refund</p>		<p>Staff agrees with stakeholder input and plans to address this policy for a developer incentive programs through the development of rules. This will allow for further stakeholder feedback on a proposed policy.</p>
<p>Could the options of all on-site affordable units, all fee-in-lieu, or a portion of each be handled administratively rather than the fee requiring City Council approval?</p>	<p>The CDC recommends the deletion of Section 2.5.5. B which would eliminate the In Lieu Donation option</p>	
<p>It is important to have the fee-in-lieu requests be approved by City Council because the affordability question should be a public conversation</p>	<p>The CDC recommends the deletion of Section 2.5.5. B which would eliminate the In Lieu Donation option</p>	
<p>The City should review the set fee-in-lieu amount for Planned Unit Developments</p>		<p>Staff would recommend working with an outside consultant to conduct an analysis of the PUD fee-in-lieu structure and make recommendations on this fee as well as other density bonus fees in lieu of onsite affordable units</p>



**COMMUNITY DEVELOPMENT COMMISSION
RECOMMENDATION 20150630-04b**

Date: July 1, 2015

Subject: Recommended Code Amendments to the Planned Unit Development Ordinance

Motioned By: Vice Chair Karen Paup

Seconded By: Commissioner Elizabeth Mueller and Commissioner Karen Langley

Recommendation: See the recommendation below from the Community Development Commission (CDC) concerning recommended Code amendments concerning the Planned Unit Development Ordinance.

The CDC supports the staff proposed amendments to the Planned Unit Development Ordinance presented on June 30, 2015 with the exception of section 2.5.5 B. The CDC recommends deletion of 2.5.5 B, which would eliminate the In Lieu Donation option.

The CDC also recommends that consideration be given to requiring a restrictive covenant through the rule making process, and to requiring a public hearing on baseline zoning prior to the first presentation to the Austin City Council.


Date of Approval: June 30, 2015

Record of the Vote: Approved on a 9-0-0 vote. Those members voting aye were Chair Rivera, Vice Chair Paup, and Commissioners Amin, Harrison, Langley, Mueller, B. Taylor, C. Taylor, and Valadez.

Attest: *[CDC Liaison, Jim Padilla]*



Neighborhood Housing and Community Development: Anticipated Code Amendment Work Plan

Dates	Stakeholder Engagement Phase	NHCD Activities/Commission Actions
November-January, 2014		Research national best practices and Austin trends
November 12, 2014	CDC Housing Committee: briefing	
January/February	Surveyed development community with experiences in Planned Unit Development	
February 13, 2015	RECA Austin Policy Committee: briefing and discussion	
April 15, 2015	HousingWorks Committee: briefing and discussion	
April-May, 2015		Finalize draft scenarios for stakeholder review
May 27, 2015	City Council Housing and Community Development Committee: briefing and presentation of draft recommendations	
June 1, 2015	CDC Housing Committee: briefing and presentation of draft recommendations	
June 24, 2015	Stakeholder meeting to workshop draft recommendations #1: review proposed amendments and discuss major themes	Documented stakeholder feedback
June 30, 2015	CDC and Housing Committee : presentation of final draft recommendations action requested on final staff recommendations	CDC Action: Approved staff recommendations with two amendments (see linked document)
July 30, 2015	Stakeholder meeting to workshop draft recommendations #2: workshop implementation process for fee-in-lieu appeals (targeted stakeholder outreach)	Anticipated action: Develop draft language for guidelines/rules and clarify proposed code language
July-August, 2015	Work with the Law Department to finalize recommended code amendment language	
August 12, 2015	Stakeholder meeting to workshop draft recommendations #3: provide input on PUD policy not captured in the current code or proposed amendments (open to the public)	Anticipated action: Develop recommendations to bring forward to the Council Housing and Community Development Commission
 August 26, 2015	City Council Housing and Community Development Committee: presentation of final draft recommendations and possible action	
September 15, 2015	Planning Commission Codes and Ordinances Subcommittee: presentation of final draft recommendations action requested on final staff recommendations	
September 22, 2015	Planning Commission: public hearing and action requested	
October 8, 2015	City Council: public hearing and action requested	

Stakeholder Feedback Summary: Planned Unit Development Density Bonus Program

On June 24th, 2015 Neighborhood Housing and Community Development facilitated a stakeholder meeting to review draft staff recommended amendments to the Planned Unit Development Density Bonus Program. Meeting attendees included representatives from:

- Austin Tenants Council (ATC)
- Ending Community Homelessness (ECHO)
- Home Builders Association (HBA)
- Housing Works Austin
- Real Estate Council of Austin (RECA)
- Affordable and market rate housing development community
- Private citizens
- Neighborhood Housing and Community Development
- Planning and Zoning Department
- City Council offices

In response to City Council Resolution 20140925-090 NHCD has prepared draft recommendations for potential code amendments to the Planned Unit Development Density Bonus Program specifically related to the sections regulating the requirement for on-site affordable housing units and the potential for developers to pay a fee-in-lieu of this requirement.

Stakeholder feedback was focused on three major themes:

1. Benefits and challenges of required on-site affordable units versus a fee-in-lieu of on-site affordable units.
2. Should developments made up solely of non-residential uses be subject to an affordability requirement in exchange for receiving a density bonus?
3. Additional recommendations and concerns related to the Planned Unit Development ordinance but not addressed in the staff recommended amendments

Fee-in-Lieu option vs. Onsite only

- on-site affordable units requirement helps City to achieve geographic dispersion goals
- fee-in-lieu option should be an administrative process rather than require City Council approval
- in the staff recommended amendments the “infeasibility” required for fee approval should be tied to more than just economics alone
- fee-in-lieu should also be considered in low opportunity areas with a high concentration of affordable units
- staff should clarify language in recommended amendments to reflect that all requests for a fee-in-lieu approval will be taken forward to City Council
 - this could be stated explicitly in procedural guidelines or rules

Require developments with non-residential uses to pay a fee-in-lieu of affordable housing units

- Planned Unit Developments with no residential use provide community benefits in the form of additional tax revenue and jobs
- There is a nexus between the additional jobs created by commercial developments and an increased demand for affordable housing and therefore commercial developments receiving a density bonus should make a contribution to affordable housing
- Adding a fee on non-residential uses could create a disincentive for participation in the density bonus program
- In place of a fee-in-lieu of on-site affordable units in commercial developments, a portion of the additional tax revenue created by new commercial developments could be dedication to the City's Housing Trust Fund (ex: a percent of the bonus area)

Additional recommendations and comments

- There should be a set process for determination of Planned Unit Development baseline zoning that is inclusive of many departments including Neighborhood Housing and Community Development
- The City should review the current policy related to requests for a fee-in-lieu payment refund
- Could the options of all on-site affordable units, all fee-in-lieu, or a portion of each be handled administratively rather than the fee requiring City Council approval?
- It is important to have the fee-in-lieu requests be approved by City Council because the affordability question should be a public conversation
- The City should review the set fee-in-lieu amount for Planned Unit Developments

PUD Density Bonus code amendments Stakeholder Meeting #2

July 30, 2015

Summary of Stakeholder Feedback

In our July 30th meeting a diverse group of more than 25 stakeholders gathered to collaboratively develop recommendations related to implementing the Planned Unit Development Density Bonus request for fee-in-lieu process.

Organizations represented:

- Ambrust & Brown, PLLC
- Austin Interfaith
- Austin Neighborhoods Council
- City of Austin Planning and Zoning Department
- Drenner Group
- Home Builders Association of Austin
- HousingWorks Austin
- Real Estate Council of Austin
- Texas Low Income Housing Information Service
- Transwestern
-

Proposed code language for fee-in-lieu of onsite units:

Subject to approval by the city council, in developments with residential units, the developer may donate the amount established under Section 2.5.6 (*In Lieu Donation*) for each square foot of bonus square footage above baseline to the Affordable Housing Trust Fund to be used for producing or financing affordable housing, as determined by the Director of the Neighborhood Housing and Community Development Department. A request for in lieu donation for all or a portion of the affordability requirement in Section 2.5.2.A must be submitted in writing to the Director of Neighborhood Housing and Community Development Department. The request must include supporting documentation sufficient to demonstrate the infeasibility of compliance with Section 2.5.2.A. Any request for fee in lieu must be presented to and approved by city council.

Participants were asked to respond to the following questions in small groups:

1. What do you think are general reasons a developer may find it infeasible to provide on-site affordable units?
2. What information should be required to clearly demonstrate infeasibility?
3. Should the City Council evaluate requests against standardized criteria? If so what should those criteria be?
4. Should any other information be considered in the review of a fee-in-lieu request?

After working in small groups participants reported out on their group discussions and we opened up the conversation to all participants. There was no consensus amongst the group but a lot of important comments were made which led to great discussion.

Below is a summary of the feedback captured during this meeting:

Overall feedback relating to the four questions and more:

Question #1 - #2

- Every PUD is unique and are responding to specific site challenges
- Return on Investment always informs the feasibility of a development.
- Financing certain product types is complicated and lacks certainty.
- A PUD might demonstrate that projected rents result in insufficient income to justify project cost and risk
- Should the code language be “infeasibility” or “viability”

Question #3 -

- Standardized process is more valuable than set criteria for developers and other stakeholders.
- Development financials should be transparent
- Things to be considered about each PUD – baseline zoning, unit bedroom composition, educational impact statement, geographic dispersion, area median rent, how the City plans to use the fee-in-lieu
- Economic feasibility should not be the deciding criteria for approval of a fee-in-lieu request
- Standardized criteria could be a good idea but would require in-depth conversation

Question #4 –

- Geographic dispersion should be part of standardized evaluation of fee-in-lieu requests
- Consider if the fee-in-lieu would support a more urgent public benefit/need

Other Comments –

- Cost delta between onsite units and fee-in-lieu – fee is the cheaper option
- Difficult to establish baseline for multi-zoned properties
- Affordability could be an assumed cost by developers like all other development costs

- The City's approach should convey s spirit of partnership
- There should be discussion about whether the fee-in-lieu is ever more valuable to the community than onsite affordable units.

RESOLUTION NO. 20140925-090

WHEREAS, the Imagine Austin Comprehensive Plan vision includes housing diversity and affordability throughout Austin; and

WHEREAS, geographic dispersion is one of the City's three core principles for affordability that were originally recommended by the Affordable Housing Incentives Task Force; and

WHEREAS, planned unit developments (PUDs) are located throughout the city and are able to provide a mechanism for geographic dispersion; and

WHEREAS, PUDs that include a residential component are required to include affordable housing if their density exceeds a baseline density; and

WHEREAS, the City Code allows PUDs upon approval by city council to exceed the baseline density without including affordable housing if an in lieu donation is made to the Affordable Housing Trust Fund (City Code 25-2, Article 2, Division 5, 2.5.5(B)); and

WHEREAS, the in lieu donation approach which has been in the City Code since 2008, has resulted in zero on-site affordable units in PUDs, with 13 affordable units proposed but not yet occupied in one recent PUD; and

WHEREAS, vertical mixed use zoning has an on-site affordability requirement as part of its density bonus program and has resulted in more than 300 affordable units that will be spread throughout many areas of Austin; and

WHEREAS, the Housing/Transit/Jobs Action Team reported its recommendation to the Council Comprehensive Plan and Transportation Committee on September 4, 2014 that the in lieu donation option for affordable housing should be removed from density bonus programs to align with Federal Transit Administration Guidelines; and

WHEREAS, the City is forgoing opportunities to achieve the critical goal of geographic dispersion of affordable housing with the almost uniform adoption of the in lieu donation option for PUDs; and

WHEREAS, the University Neighborhood Overlay, which has created almost 500 on-site affordable units and over \$2,000,000 in payments, includes a tiered affordable housing requirement in which some of the affordable housing is required to be on site and some is allowed to be satisfied via a fee-in lieu; **NOW,**

THEREFORE,

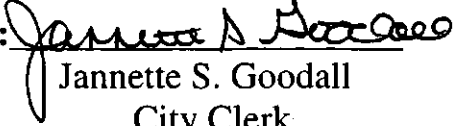
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Council initiates a code amendment to modify the in lieu donation option for affordable housing requirement for PUDs. Consider the following options:

- Remove the fee in lieu option and require onsite affordable housing.
- Require a significant portion of the affordable housing requirement to be provided onsite and allow a portion to be provided through fee in lieu.

- Consider an exceptions process for the onsite affordable housing requirement.

ADOPTED: September 25, 2014

ATTEST: 
Jannette S. Goodall
City Clerk