

Austin's Density Bonus Program: A Good Idea Poorly Implemented!

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Legal Basis of Inclusionary Zoning and Density Bonuses in Texas

Texas Local Government Code, Section 214.905. PROHIBITION OF CERTAIN MUNICIPAL REQUIREMENTS REGARDING SALES OF HOUSING UNITS OR RESIDENTIAL LOTS.

*(a) A municipality may not adopt a requirement in any form, including through an ordinance or regulation or as a condition for granting a building permit, that establishes a maximum sales price for a privately produced housing unit or residential building lot **(Note that this does not apply to rental housing)**.*

(b) However, this section does not affect any authority of a municipality to:

- 1) create or implement an **incentive, contract commitment, density bonus, or other voluntary program** designed to increase the supply of moderate or lower-cost housing units; or*
- 2) adopt a requirement applicable to an area served under the provisions of Chapter 373A which authorizes **homestead preservation districts**.*

Density Bonuses in Austin: Observations and Opinions

*"Austin has a long history of housing segregation, and the density bonus program is **one of the best tools we have** for creating integrated and inclusive communities,"*

Heather Way, UT Law professor

*"If we are serious about creating affordable housing in all parts of town, I believe we need to really look carefully at our density bonus programs and consider whether those wouldn't be **more appropriate for units constructed onsite.**"*

Kathie Tovo, Mayor Pro Tem

*"Programs to incentivize ... below-market housing need to be clear, effective, easily implementable and uniform... Austin's current density bonus programs, for example, are vague and hard to follow as their **regulations vary widely throughout the city.**"*

Wade Tisdale, RECA President

*"Austin has 12 different density bonus programs. ... (but) **no cohesive strategy** to achieving community benefit. ... The problem is that there are **too many programs**, ... **tremendous inconsistency** ... and they have created **immense unpredictability.**"*

OTAK Consultants

***"I do not favor giving tools being discussed by CodeNext across the board to developers.** The only entity we should ... trust with the tools of radical density, new housing types and waivers of existing protections is the neighborhood residents."*

John Henneberger, Housing Advocate

Lots of Resolutions - Few Results

September 25, 2014: CCR #20140925-090

Density Bonuses and Planned Unit Developments

Be it Resolved that City Council initiates amendment to modify PUD ordinance by:

- removing fees-in-lieu option and requiring all on-site units,
- requiring significant on-site units with some fees-in-lieu, or
- considering an exception process for on-site requirement.

October 15, 2015: CCR #20151015-038

Density Bonuses and their Effectiveness

Be it Resolved:

- City Manager will report on effectiveness of density bonus programs in January;
- City Manager will review and report on density bonus “best practices;” and
- City Manager will prepare amendment to include offices and hotels downtown.

December 10, 2015: CCR #20151210-030

Fair and Affordable Housing

Be it Resolved:

- Identify innovative housing options for low and moderate-income residents;
- Provide statement for housing type and show how each can further fair housing choice;
- Provide housing opportunities for residents of all incomes (*Priority Program 6*);
- Maximize fair housing in high opportunity and rapidly-gentrifying areas;
- Evaluate if draft code will effectively accommodate future population growth;
- Analyze how number of bedrooms impacts housing choice for various size families;
- Analyze how taxes, gentrification and zoning impact housing choice;
- Analyze how access to transportation and public services affect fair housing; and
- Analyze how neighborhood plans can further fair and affordable housing.

April 7 2016: CCR #20160407-024

Housing Bonds and their Effectiveness

Be it Resolved:

- City Manager will explore using unallocated bond funds for affordable housing;
- City Manager will convene representative working group to recommend options for increasing home ownership and ways of incorporating options into bond packages; and
- City Manager will report back by 14 June 2016 with final report by 5 August 2015.

16 June 2016: CCR#20160616-035

Comprehensive Affordable Housing Program

Be it Resolved:

- Provide plan to initiate inclusionary zoning in Homestead Preservation Districts;
- Conduct study to increase housing production in SMART/density bonus programs;
- Initiate code amendments to require housing non-discrimination based on income;
- Direct property taxes from former County and State lands to Housing Trust Fund;
- Redevelop City-owned land and facilities for affordable housing;
- Conduct nexus study to determine relation between growth and housing needs;
- Lesson restrictions on low/moderate-income housing expansions and additions;
- Provide new programs to help low/moderate-income homeowners “stay-in-place;”
- Increase economic and racial integration in “high opportunity” areas; and
- Reduce unnecessary barriers created by deed restrictions and other private covenants.

***Density Bonus Program Core Values
City of Austin***

1. Deeper Affordability

- a) Decrease MFI affordability thresholds*
- b) Increase optional in-lieu (buy out) fees*

2. Longer Affordability

- a) Increase guaranteed affordability period*

3. Greater Dispersion

- a) Expand to include commercial uses*
- b) Expand to include centers and corridors*

Affordable Housing Program Audit

(November 2015)

Summary Findings:

- **No effective strategy** to create housing with deeper affordability, longer affordability and geographic dispersion.
- **Incomplete and inaccurate data** limits ability to evaluate program success and provide accurate information to public and decision makers.
- **Gaps in monitoring process** limits ability to enforce affordability restrictions and do not ensure the achievement of adopted core values.

HOUSING INCENTIVES

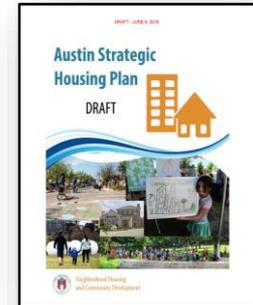
Audit: City not checking rental goals

Officials unsure whether affordable housing followed developer perks.

Program	Year Created	Total Affordable Units	Completed Units	Pending Units	Fee-in-lieu
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	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)

Austin Strategic Housing Plan CodeNEXT Recommendations



- *Ensure that New Development Covers Cost of Growth*
- *Implement Density Bonuses for Centers and Corridors*
- *Implement Density Bonuses for Missing Middle Housing*
- *Allow Development of Smaller Houses on Smaller Lots*
- *Relax Regulations on both Internal and External ADUs*
- *Relax Regulations on Housing Cooperatives (Coops)*
- *Utilize PUDs to Provide Range of Affordability*
- *Increase Housing Diversity in New Subdivisions*
- *Streamline City Codes and Permitting Processes*
- *Comprehensive Parking Reform*

Density Bonus Program Diagnosis City of Austin

MFI's
too high! ▼

Periods
too short! ▼

Density Bonus Program	Year Adopt	Percent MFI		Percent Affordable	Period (years)	FIL (psf)	Special Conditions
		Own	Rent				
West Campus	2004	65	65	10% uts	15	\$1	Limited to net rentable area
Rainey Street	2005	80	80	5%	none	none	
PUD	2008	80	60	5%/10% uts	99/40	\$6	FIL requires Council approval
Downtown	2009	120	80	10% uts	99/40	\$3-\$10	Affordable housing = min 50%
TOD	2009	varies	varies	10% BA	99/40	\$10	
Burnet Gateway	2009	80	60	10% BA	99/40	\$6	FIL requires NHCD approval
VMU	2010	100-80	80-60	5%/10% uts	99/40	none	
East Riverside	2013	80	60	4:1	99/40	\$.50	FIL limited to 90'+ buildings

Why reduce floor area?

Why not higher min.?

Percents too low and inconsistent ▲

FILs too low ▲

Density Bonus Program Prescription

City of Austin

Density Bonus Program	Year Adopt	Lower MFIs 		Percent Affordable	Longer Periods 	FIL (psf)	Special conditions
		Own	Rent				
West Campus	2004	60	40	15	99/40	\$15	
Rainey Street	2005	60	40	15	99/40	\$20	
PUD	2008	60	40	15	99/40	\$0	
Downtown	2009	80	60	15	99/40	\$25	
TOD	2009	60	40	15	99/40	\$0	
Burnet Gateway	2009	60	40	15	99/40	\$15	
VMU	2010	60	40	15	99/40	\$15	
East Riverside	2013	60	40	15	99/40	\$15	
Corridor/Center	?	60	40	15	99/40	\$15	

Higher Percents  Higher FILs 

Density Bonus Program Prescription Summary

1. MFI thresholds should be lower and more consistent
2. Percent affordables should be higher and more consistent
3. Percent affordables should be based on similar metrics
4. Fees-in-lieu should be higher and more consistent
5. West Campus and Rainey Street should have longer tenures
6. West Campus should be based on gross floor area, not net
7. Rainey Street and VMU should have fee-in-lieu options
8. Bonuses should also apply to downtown hotels and offices
9. Corridors and centers should be added to bonus program

Housing Glossary

Accessory dwelling is a small dwelling on the same grounds as and ancillary to a single-family home.

Affordable housing is housing deemed affordable for low to moderate-income persons and families.

Affordability period is the length of time that bonus housing must maintain its affordability status.

Assisted living is housing intended for those who need on-site assistance and care with their daily living.

Condominium is housing where residents own their own unit and share ownership of common areas.

Cooperative (co-op) is housing where residents own shares and occupy a specific apartment or unit.

Density bonus is a regulation that allows more than permitted in exchange for certain public benefits.

Fee-in-lieu is a cash equivalency optional payment allowed in substitution for another obligation.

Gatekeepers are base requirements that must be met before bonus incentives may be considered.

Group home is housing intended for occupancy by disturbed, disadvantaged or disabled persons.

Halfway house is housing intended for persons in transition from institutions to regular homes.

Homestead preservation districts are areas in which taxes are reinvested to promote housing.

Incentive zoning is a reward-based regulation that encourages the provision of community benefits.

Inclusionary zoning is a regulation that mandates the provision of units at below-market prices.

Linkage Fee is a charge levied on commercial development to offset employee housing needs.

Manufactured home is a wheelless mobile home on a permanent foundation connected to utilities.

Market-rate is the price one must pay to purchase or rent a home on the open real estate market.

Micro-unit is a small, self-contained living space designed to accommodate basic human needs.

Missing middle is the range of dwelling types between detached homes and mid-rise apartments.

Short term rental is a furnished unit temporarily available to tourists as an alternative to hotels.

Single room occupancy (SRO) is housing intended for the basic needs of only one person at a time.

Subsidized housing is publicly-assisted housing for low to moderate-income persons and families.

Transitional housing is housing intended for relatively short-term occupancy (usually 24 months or less).

Temporary housing is housing intended for very short-term occupancy (usually 2-3 months or less).

City of Austin Density Bonus Policy

(June 2016, NHCD Draft)

Conduct comprehensive analysis of density bonus program that will include experts in inclusionary housing policy, inform an expanded density bonus program under CodeNEXT, and consider impact on market-rate housing prices.

Staff Recommendations

- Explore possibility of extending affordability periods.
- Add Housing Choice Voucher to all density bonus programs.
- Amend TOD to minimize requests for fee-in-lieu option.
- Define how to determine if fees-in-lieu are “compelling.”
- Identify factors that lead developers to request fees-in-lieu.
- Include affordable housing benefits in PUD Tier 1 provisions.

(NHCD does not recommend interim changes to ERC or UNO)

2014 Housing+Transit+Jobs Team Recommendations:

- Align programs with Federal Transit Administration guidelines.
- Change rental housing requirements to no more than 60% MFI.
- Remove fee-in-lieu option along core transit corridors.
- Connect added entitlements to provision of affordable housing.

CodeNEXT Prescription Paper:

- Expand to include Imagine Austin centers and corridors.
- Introduce density bonuses for “missing middle” housing.

2015 Fair Housing Action Plan

- Expand housing choice and reduce housing access barriers.
- Strengthen and align density bonus programs and formulas.
- Provide incentives for below 50%, 60% and 80% MFI families.
- Revise VMU, PUD to 60% MFI rental and 80% on-site owner.
- Lengthen affordability periods for VMU and other programs.
- Require incentivized or subsidized units to accept vouchers.

Model	Affordable Units	Year Introduced	Total Developments Participating	Total Fees-in-lieu	Fee investment Dedication
Downtown Density Bonus (DDB)	0	2013	3	\$2,352,960	Permanent Supportive Housing
North Burnet Gateway (NBG)	14	2009	1	\$0	Within 2 miles of NBG boundaries
East Riverside Corridor (ERC)	0	2013	0	\$0	Fees are paid into the Transit Area Housing Assistance Fund
University Neighborhood Overlay (UNO)	814	2004	50	\$1,695,252	Fees are paid into the University Neighborhood Overlay Trust Fund
Planned Unit Development (PUD)	0	2008	2*	\$23,250	No restrictions
Transit Oriented Development (TOD)	302	2009	12	\$759,902	Within ½ mile of the TOD boundaries