

04192019 VERSION OF DRAFT ORDINANCE

ORDINANCE NO. _____

1 AN ORDINANCE AMENDING TITLE 25 (LAND DEVELOPMENT CODE) TO
 2 CREATE A RESIDENTIAL AFFORDABLE HOUSING DEVELOPMENT
 3 BONUS PROGRAM.

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

5 PART 1. FINDINGS.

6 The council finds the following: [to be inserted]

7 PART 2. Chapter 25-1, Article 15 (*Housing*) is amended to add a new Division 4
 8 (*Residential Affordable Housing Development Bonus Program*) to read as follows:

9 *Division 4. Residential Affordable Housing Development Bonus Program.*

10 § 25-1-720 PURPOSE, APPLICABILITY, SHORT TITLE, AND
 11 CONFLICT.

12 (A) The purpose of this division is to establish a voluntary affordable housing
 13 bonus program that allows for increased density for residential dwelling
 14 units.

15 (B) This division applies within the zoning jurisdiction.

16 (C) This division may be cited as “Affordable Housing Bonus Program”.

17 (D) A provision applicable to a qualifying development governs over a conflicting
 18 provision.

19 § 25-1-721 DEFINITIONS.

20 In this division,

21 (1) DIRECTOR means the director of Neighborhood Housing and
 22 Community Development (NHCD) or the director’s designee.

23 (2) GOVERNMENT-OPERATED AFFORDABLE HOUSING
 24 PROGRAM means a program operated by a federal, state, or local
 25 department that provides financial or other form of subsidy for the
 26 purpose of providing affordable housing.

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- 27 (3) HOUSING FOR OLDER PERSONS means housing for households
28 with at least one individual who is at least 62 years of age at the time
29 of initial occupancy.
- 30 (4) MFI means median family income for the Austin metropolitan
31 statistical area.
- 32 (5) QUALIFYING DEVELOPMENT means a development certified
33 under Section 25-1-724 (*Certification*) and participating in the
34 Affordable Housing Bonus Program.
- 35 (6) SUPPORTIVE HOUSING means housing that includes non-time-
36 limited affordable housing assistance with wrap-around supportive
37 services for people experiencing homelessness, as well as other people
38 with disabilities.

39 **§ 25-1-722 ELIGIBILITY.**

- 40 (A) A proposed development qualifies as a Type 1 development and is eligible
41 for this program if:
- 42 (1) it includes a minimum of three dwelling units or the proposed
43 development will consist only of affordable dwelling units;
- 44 (2) at least 25 percent of the affordable dwelling units include two or
45 more bedrooms or the proposed development qualifies as supportive
46 housing or housing for older persons;
- 47 (3) not more than 25 percent of the proposed development's gross floor
48 area is for non-residential uses;
- 49 (4) it is new construction, it is redevelopment of property with only non-
50 residential structures, or the existing development complies with the
51 requirements in Subsection (D); and
- 52 (5) it meets the requirements set forth in Section 25-1-723 (*Affordability*
53 *Requirements*).
- 54 (B) Except for a proposed development participating in a government-operated
55 affordable housing program with stricter requirements, the applicant:
- 56 (1) shall incorporate lease provisions that are consistent with

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- 57 (a) the U.S. Department of Housing and Urban Development
58 (HUD) Section 8 Tenant-Based Assistance Housing Choice
59 Voucher (HCV) Program related to the termination of tenancy
60 by owner; and
- 61 (b) 24 C.F.R. §245.100 related to a tenant's right to organize; and
- 62 (2) may not discriminate on the basis of an individual's source of income
63 as defined in Section 5-1-13 (*Definitions*).
- 64 (C) A proposed development qualifies as a Type 2 development and is eligible
65 for additional bonuses if it meets the standards imposed in Subsections (A)
66 and (B) plus one or more of the following:
- 67 (1) at least 50 percent of the affordable dwelling units include two or
68 more bedrooms;
- 69 (2) for a rental development:
- 70 (a) at least 75 percent of the total units serve households whose
71 incomes average 60 percent MFI or below, rounded up to the
72 nearest unit; or
- 73 (b) at least 10 percent of the affordable units serve households with
74 incomes of 30 percent MFI or below, rounded up to the nearest
75 unit; or
- 76 (3) for an owner-occupied development, at least 75 percent of the owner-
77 occupied dwelling units serve households whose incomes average 80
78 percent MFI or below; or
- 79 (4) is located within ¼ mile of an activity corridor designated in the
80 Imagine Austin Comprehensive Plan and is served by a bus or transit
81 line.
- 82 (D) A proposed development that will require the applicant to redevelop or
83 rebuild an existing multi-family building is eligible for this program if:
- 84 (1) the proposed development meets the standards imposed in
85 Subsections (A) and (B);

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- 86 (2) the existing multi-family building requires extensive repairs and for
87 which rehabilitation costs will exceed 50 percent of the market value,
88 as determined by the building official;
- 89 (3) the proposed development will replace all existing units that were
90 affordable to a household earning 80 percent MFI or below in the
91 previous year and have at least as many bedrooms;
- 92 (4) the applicant provides current tenants with:
- 93 (a) notice and information about the proposed development on a
94 form approved by the director; and
- 95 (b) relocation benefits that are consistent with Federal Uniform
96 Relocation Assistance and Real Property Acquisition Policies
97 Act of 1970, 42 U.S.C.A. 4601, *et seq.*; and
- 98 (5) the applicant grants current tenants the option to lease a unit of
99 comparable affordability and size following completion of
100 redevelopment.

101 § 25-1-723 AFFORDABILITY REQUIREMENTS.

- 102 (A) An applicant complies with the requirements in this section if the applicant
103 participates in a government-operated affordable housing program that
104 imposes, at a minimum, the same affordability requirements.
- 105 (B) Except for a Type 2 rental development that complies with the requirements
106 described in Section 25-1-722(C)(2), a rental development must comply
107 with the following:
- 108 (1) at least 50 percent of the total units serve households whose incomes
109 average 60 percent MFI or below; and
- 110 (2) at least 20 percent of the total units serve households with incomes of
111 50 percent MFI or below.
- 112 (C) Except for a Type 2 owner-occupied development that complies with the
113 requirements in Section 25-1-722(C)(3), at least 50 percent of the owner-
114 occupied dwelling units must serve households whose incomes average 80
115 percent MFI or below.

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- 116 (D) If the number of units required in this section include less than a whole unit,
117 the unit number is rounded up to the nearest whole unit.
- 118 (E) The minimum affordability period for a rental development is 40 years
119 following the issuance of the last certificate of occupancy required for the
120 qualifying development.
- 121 (F) The minimum affordability period for an owner-occupied dwelling unit is 99
122 years following the issuance of a certificate of occupancy for the owner-
123 occupied dwelling unit.
- 124 (G) In a multi-phased qualifying development, the director may begin the
125 minimum affordability period upon the issuance of the last certificate of
126 occupancy for each phase.

127 § 25-1-724 CERTIFICATION.

- 128 (A) If the director certifies that a proposed development meets the requirements
129 of this division, the accountable official is authorized to process a
130 development application as a qualifying development.
- 131 (B) Before the director may certify that a proposed development meets the
132 requirements of this division, the applicant shall execute an agreement and a
133 document for recording in the real property records that provides notice of or
134 preserves the minimum affordability requirements imposed by this division.
135 The form of the documents described in this section must be approved by the
136 city attorney.
- 137 (C) The director may certify an applicant who complies with the requirements in
138 Subsection (B) because the applicant participates in a government-operated
139 affordable housing program that imposes, at a minimum, the same
140 affordability requirements.

141 § 25-1-725 POST-CONSTRUCTION REQUIREMENTS AND
142 ENFORCEMENT.

- 143 (A) The property owner or the property owner's agent shall provide the director
144 with documentation on an annual basis that allows the director to verify
145 compliance with the affordability requirements.

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- 146 (B) If, for any reason, the director is unable to confirm that the affordability
147 requirements were met during any 12-month period, the preceding 12
148 months may not be used to satisfy the affordability requirements in Section
149 25-1-723 (*Affordability Requirements*).
- 150 (C) An applicant complies with the requirements in this section if the applicant
151 complies with monitoring and income verification requirements that are
152 imposed and enforced as part of a government-operated affordable housing
153 program.
- 154 (D) A person commits an offense if the person fails to comply with the
155 requirement in Subsection (A). A culpable mental state is not required, and
156 need not be proved. A person commits a separate offense for each day the
157 person fails to provide the income verification documentation. Each offense
158 is punishable by a fine not to exceed \$500.

159 **PART 3.** Chapter 25-2, Subchapter C, Article 2, Division 2 (*Requirements for All*
160 *Districts*) is amended to add a new Section 25-2-518 (*Qualifying Development*) to
161 read as follows:

162 **§ 25-2-518 QUALIFYING DEVELOPMENT.**

- 163 (A) In this section, a qualifying development is a development certified under
164 Section 25-1-724 (*Certification*) and participating in the Affordable Housing
165 Bonus Program.
- 166 (B) A qualifying development is a permitted use in any residential or
167 commercial zoning district under Section 25-2-491 (*Permitted, Conditional,*
168 *and Prohibited Uses*).
- 169 (C) Density is calculated based on the standards in Subchapter E, 4.2.1 (*Mixed*
170 *Use Combining District*) if the existing zoning on the property where the
171 qualifying development will be located in one of the following commercial
172 base districts:
- 173 (1) neighborhood office (NO);
 - 174 (2) limited office (LO);
 - 175 (3) general office (GO);
 - 176 (4) community commercial (GR);

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- 177 (5) neighborhood commercial (LR);
- 178 (6) general commercial services (CS); or
- 179 (7) commercial-liquor sales (CS-1).
- 180 (D) If the existing zoning on the property where the qualifying development will
181 be located is commercial recreation (CR), lake commercial (L), central
182 business (CBD), warehouse limited office (W/LO), or commercial highway
183 services (CH), the density is calculated based on the following minimum site
184 area standards:
- 185 (1) 800 square feet, for an efficiency dwelling unit;
- 186 (2) 1,000 square feet, for a one bedroom dwelling unit; and
- 187 (3) 1,200 square feet, for a dwelling unit with two or more bedrooms.
- 188 (E) No more than 25 percent of the gross floor area of the qualifying
189 development may be comprised of non-residential uses. The permitted
190 commercial uses are determined using the base zoning district.
- 191 (F) A qualifying development is not required to comply with:
- 192 (1) the height and setback requirements of Article 10 (*Compatibility*
193 *Standards*);
- 194 (2) the maximum floor-to-area ratio for the applicable base zoning district
195 under Section 25-2-492 (*Site Development Regulations*);
- 196 (3) Subchapter F (*Residential Design and Compatibility Standards*); or
- 197 (4) Section 25-2-773 (*Duplex Residential Use*).

198 **PART 4.** Chapter 25-2, Subchapter C, Article 2, Division 3 (*Exceptions*) is
199 amended to add a new Section 25-2-534 (*Qualifying Development Exceptions*) to
200 read as follows:

201 **§ 25-2-534 QUALIFYING DEVELOPMENT EXCEPTIONS.**

- 202 (A) In this section, a qualifying development is a development certified under
203 Section 25-1-724 (*Certification*) and participating in the Affordable Housing
204 Bonus Program.

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- 205 (B) A qualifying development is not subject to Section 25-2-511 (*Dwelling Unit*
206 *Occupancy Limit*).
- 207 (C) A Type 1 development may:
- 208 (1) construct to a height that is the applicable base zoning district height
209 limit multiplied by 1.25;
- 210 (2) reduce front yard setbacks by 50 percent;
- 211 (3) reduce rear setbacks by 50 percent; and
- 212 (4) include the number of dwelling units that is the greater of:
- 213 (a) the maximum number of dwelling units otherwise authorized
214 by this code multiplied by 1.5; or
- 215 (b) six dwelling units.
- 216 (D) In addition to Subsection (C), a Type 2 development may:
- 217 (1) construct to a height that is the applicable base zoning district height
218 limit multiplied by 1.5; and
- 219 (2) include the number of dwelling units that is the greater of:
- 220 (a) the maximum number of dwelling units otherwise authorized
221 by this code multiplied by 2; or
- 222 (b) eight dwelling units.
- 223 (E) If a qualifying development is also eligible to utilize a separate density
224 bonus program that grants density bonuses for the provision of affordable
225 dwelling units or a fee-in-lieu for affordable housing, then the qualifying
226 development may comply with the least restrictive development
227 requirements if all affordable dwelling units are provided on-site.

228 **PART 5.** Section 25-6-471 (*Off-Street Parking Facility Required*) is amended to
229 add new Subsections (I), (J), (K), and (L) to read as follows:

230 **§ 25-6-471 OFF-STREET PARKING FACILITY REQUIRED.**

231 **(I)** In this section,

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- 232 (1) ACCESSIBLE SPACE means a parking space for an individual with a
233 disability that complies with the Americans with Disabilities Act
234 (ADA); and
- 235 (2) QUALIFYING DEVELOPMENT means a development certified
236 under Section 25-1-724 (Certification) and participating in the
237 Affordable Housing Bonus Program.
- 238 (J) A qualifying development is not required to comply with Appendix A of
239 Chapter 25-6 (Transportation) but must comply with the following:
- 240 (1) if off-street parking is not provided for the qualifying development, at
241 least one van accessible space is required that is adjacent to the site
242 and on an accessible route; or
- 243 (2) if off-street parking is provided, the minimum number of required
244 accessible spaces
- 245 (a) is calculated by taking 20 percent of the parking required for
246 the use under Appendix A (Tables of Off-Street Parking and
247 Loading Requirements) and using that result to determine the
248 number of accessible spaces required under the Building Code;
249 and
- 250 (b) must be adjacent to the site and on an accessible route.
- 251 (K) The director may waive or reduce the number of accessible spaces required
252 under Subsection (J) if:
- 253 (1) The applicant pays a fee in-lieu to be used by the city to construct and
254 maintain accessible spaces in the vicinity of the qualifying
255 development. The availability of this option is contingent on the
256 establishment of a fee by separate ordinance and the adoption of a
257 program by the director to administer the fee and establish eligibility
258 criteria. A decision by the director that a qualifying development is
259 ineligible for a fee in-lieu is final.
- 260 (2) No accessible spaces can be provided consistent with the requirements
261 of Subsection (J) and the qualifying development is ineligible for
262 participation in the fee in-lieu program under Paragraph (1) of this
263 subsection.

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264 (3) An off-site or on-street parking space designated as an accessible
265 space is located within 250 feet of the qualifying development.

266 (L) A qualifying development must comply all with all ADA design,
267 accessibility, and location requirements for accessible parking spaces.

268 **PART 6.** This ordinance takes effect on _____, 2019.

269 **PASSED AND APPROVED**

270
271 §
272 §
273 _____, 2019 § _____
274 Steve Adler
275 Mayor
276

277
278 **APPROVED:** _____ **ATTEST:** _____
279 Anne L. Morgan Jannette S. Goodall
280 City Attorney City Clerk