From: **Susan Moffat**
Date: Sun, Apr 21, 2019 at 11:56 AM
Subject: Recommendations to Strengthen and Clarify Affordability Unlocked (Item 13)
To: Susan Moffat <

Dear Chair Shieh and Members of the Planning Commission,

I am submitting the following recommendations to strengthen and clarify the draft Affordability Unlocked ordinance (Item 13, April 23rd agenda). Detailed explanations for each item are provided in the attached Word document, which has been updated to reflect the Codes & Ordinance Committee's April 17th discussion. I've also attached a separate document on ADA parking, which outlines basic requirements and highlights the difficulty in meeting these through off-site parking alone outside the downtown business district.

1. **Increase affordability period to 55 years for rental units created under this program**.

2. **Strengthen and clarify penalties for non-compliance.**
(a) Require owner to record a Land Use Restriction Agreement and lien with the City for all developments created under this program granting the City foreclosure rights on the property if the project violates program requirements, as is currently required for affordable housing projects receiving City support.
(b) Correct apparent error in Lines 126-128 to clearly state that all affordability requirements will remain with the property if it is sold during the affordability period.
(c) Clearly define process and penalties for one-to-one replacement requirement for redeveloped MF properties.
(d) Clarify meaning in penalty section Lines 148-152.

3. **Address insufficiencies in ADA parking provisions to ensure housing access for people with disabilities, a protected class under the federal Fair Housing Act.** The simplest and best approach would be to require on-site ADA compliant parking for all projects built under this ordinance. Failing that, the following changes are essential:
(a) Correct apparent error in Lines 296-298 to replace "off-site" with "on-site."
(b) Require off-site ADA spaces to be within 100’ of the unit/project as measured on a fully accessible route containing ADA compliant loading aisles, sidewalks and curb cuts.
(c) Define “vicinity of use” in fee in-lieu provision for ADA compliant spaces per (b) above.
(d) Define “off-site or on-street parking space designated for persons with disabilities” per (b) above.
(e) Remove proposed waiver that could render participating projects inaccessible to people with disabilities.

4. **Consider California model for more realistic parking reductions** (page 6 at https://www.meyersnave.com/wp-content/uploads/California-Density-Bonus-Law.pdf)

5. **Advance ordinance for larger projects, but delay application for smaller projects until sound processes for eligibility, monitoring and modified site plan review are finalized and fully vetted.**

6. Prohibit Short Term Rentals in participating projects.

7. Correct Lines 185-187 to retain side setbacks and any health, safety or environmental setbacks per Council's initiating resolution.

I strongly support efforts to increase and maintain affordable housing for residents of all ages and abilities, but as always, the devil is in the details. Walter Moreau, executive director of Foundation Communities, and I met several weeks ago with Council Member Casar to discuss issues related to the Council's initiating resolution, but the draft ordinance was not available at that time so our discussion was more general.

I hope you will take the time and care to ensure this ordinance delivers on its promise with as few unintended consequences as possible. As always, please do not hesitate to contact me with any questions, and thank you for your service to our community.

Best,
Susan Moffat

Recommendations to Strengthen and Clarify
Draft Affordability Unlocked Ordinance

Submitted by Susan Moffat
4.21.19

1. Increase Affordability Period to 55 Years for Rental Units Created Under This Program. Line 112 limits the affordability period for rental properties to 40 years. Given ever-rising housing costs, Austin should achieve the longest affordability period possible for rental units. California currently uses a 55-year affordability period for rental units under similar programs (see page 6 at https://www.meyersnave.com/wp-content/uploads/California-Density-Bonus-Law.pdf).

Ideally, a 99-year affordability period for rentals would be preferable, but if City money is put into a project with a term greater than 55 years the funding is treated as an equity investment, rather than loan. As a result, the value of the federal low income housing tax credits is significantly reduced and other complications may arise. For these reasons, 55 years is the longest feasible affordability period for rentals at this time. Austin should not settle for 40 years.

2. Strengthen and Clarify Penalties for Non-Compliance.

(a) Require owner to record a Land Use Restriction Agreement and lien with the City for all developments created under this program granting the City foreclosure rights on the property if the project violates program requirements, as is currently required for projects receiving City support. Such a provision would mirror current City policy, which requires any affordable housing development that includes housing bonds or other City funding to have a loan and land use restriction agreement with the City; if the agreement is violated, then the loan is due and the City has foreclosure rights. This approach has proven sufficient to force compliance and protect the City and should be included in the ordinance to ensure ongoing compliance for all projects developed under this program.

Lines 125-130 of the draft state: *" (B) Before the director may certify that a proposed development meets the requirements of this division, the applicant shall execute an agreement and a document for recording in the real property records that provides notice of or preserves the minimum affordability requirements imposed by this division. The form of the documents described in this section must be approved by the city attorney."* However, this section stops short of requiring a lien or providing any significant penalty if the applicant fails to maintain the affordability requirements of the ordinance.

This ordinance will result in built structures that will not be feasible to demolish once they're on the ground so we must be certain there is no option

to convert them to market-rate units during their affordability period. Currently, the only penalty in the ordinance is a fine for late submission of income verification documentation. To ensure all affordable units are delivered for the entire affordability period, the ordinance should specify a strong deterrent in the form of a lien with foreclosure rights for the City in case of ongoing non-compliance, as is the current policy for housing developments receiving City funding.

(b) Correct apparent error in Lines 126-128 to clearly state that all affordability requirements will remain with the property if it is sold during the affordability period. The current draft states: "...*the applicant shall execute an agreement and a document for recording in the real property records that provides notice of **or** preserves the minimum affordability requirements imposed by this division..."* [emphasis added].

Two issues:

(1) As drafted, this would allow real property records to simply provide notice of the affordability requirements, not necessarily preserve them. If we actually want to preserve affordability requirements if/when a property is sold, the "or" should be changed to "and." Notice alone is not sufficient.

(2) Please confirm that "recording in real property records" means a restrictive covenant or the equivalent, and consider clarifying this language to state this intent more clearly.

(c) Clearly define process and penalties for the one-to-one replacement requirement for redeveloped MF properties. The draft ordinance states that when an existing multifamily rental residential property is redeveloped or rebuilt, it “will replace all existing units that were affordable to a household earning 80 percent MFI or below in the previous year and have at least as many bedrooms.” Who determines that the structure to be demolished was market affordable prior to demolition? How will city staff verify the amount the owner is currently charging for rent, other than the owner’s word? Will staff visit each proposed project before demolition to verify number of bedrooms that must be replaced for each unit? Will staff return to each project post-construction to verify that the affordable unit has been replaced with the correct number of bedrooms and that at least three of the six units are also affordably priced? What is the penalty if an owner is found to misrepresent these facts?

Please note that the proposed penalty (Lines 135-152) applies only to delays in providing post-construction income verification documentation in Subsection (A). The draft is silent on misrepresentation of facts prior to construction.

(c) Clarify meaning of "each day" in penalty section. Lines 148-152 state: *"(D) A person commits a separate offense for each day the person fails to provide income verification documentation. Each offense is punishable by a fine not to exceed $500."* Does "each day" in this context mean each day the person is late providing the verification documentation or each day they've rented a unit or units to someone who doesn't qualify? This is potentially a big difference, especially if you have multiple tenants that you've rented to for an entire year who don't actually qualify. If it only applies to the number of days the person has failed to provide documentation, this may be too easily dismissed as the cost of doing business.

Again, please note this penalty applies only to delays in providing income verification under Subsection (A). Under this wording, there is no penalty if a person fails to comply with the other provisions of the ordinance.

3. Address Insufficiencies in ADA Parking Section to ensure housing access for people with disabilities, a protected class under the federal Fair Housing Act. The simplest and best approach would be to require on-site ADA compliant parking for all projects built under this ordinance. Failing that, the following changes are essential. Information regarding ADA basic requirements and difficulty in meeting these through on-street parking is attached separately.

(a) Correct apparent error in Lines 296-298 to replace "off-site" with "on-site." These lines state: *"(1) if a qualifying development is less than 10,000 square feet and off-site parking is not provided for the qualifying development, at least one parking space for persons with disabilities is required."* I believe this language is incorrect and should read: *"(1) if a qualifying development is less than 10,000 square feet and on-site parking is not provided for the qualifying development, at least one parking space for persons with disabilities is required."*

ADA compliant parking is triggered by the provision of on-site parking, not off-site parking. Off-site parking is meaningless in this context. The Assistant Director of Transportation also noted this error at the April 17th Codes & Ordinances Committee meeting.

(b) Require off-site ADA spaces to be within 100' of the unit/project as measured on a fully accessible route containing ADA compliant loading aisles, sidewalks and curb cuts. Lines 304-310 provide that ADA compliant spaces "*may be provided on-or-off-site within 250 feet of the use,"* but make no requirement for an accessible route to the project or unit entrance, nor do they define how this distance will be measured (due to topography and street layouts, a walking distance may be far greater than a distance measured as the crow flies). At their April 17th meeting, Codes &

Ordinances Committee members strongly felt that 250' was too far for someone with a serious mobility impairment to have to navigate – potentially several times a day - simply to gain access to his or her own home. Please amend draft language to require that an off-site ADA compliant parking space must be within 100' of the entrance to the project or unit, with the distance measured along a fully accessible route that includes ADA compliant loading aisles, curb cuts and sidewalks.

(c) Define "vicinity of use" in-lieu provision for ADA compliant spaces per (b) above. Lines 311-318 would let the director *waive or reduce the number of accessible spaces required under Subsection (J) if:*
"(1) The applicant pays a fee in-lieu to be used by the city to construct and maintain accessible parking in the vicinity of the use. The availability of this option is contingent on the establishment of a fee by separate ordinance and the adoption of a program by the director to administer the fee and establish eligibility criteria. A decision by the director that a use is ineligible for a fee in-lieu is final." Please amend this provision to define "accessible parking in the vicinity of use" per (b) above.

(d) Define "off-site or on-street parking space designated for persons with disabilities" per (b) above. Lines 322-325 read: *"An off-site or on-street parking space designated for persons with disabilities that is located within 250 feet of a use may be counted towards the number of parking spaces the use is required to provide under Subsection 325(J)."* Please amend this provision to define this subsection per (b) above.

(e) Remove proposed director waiver that could render participating projects inaccessible to people with disabilities. Lines 319-321 would allow the director to entirely waive the ADA parking requirement if *"[no] accessible spaces can be provided consistent with the requirements of Subsection (J) and the use is ineligible for participation in the fee in-lieu program under Paragraph (1) of this section.* This is unacceptable. No project receiving substantial entitlements under this ordinance should be off limits to residents with disabilities, bearing in mind that any of us may become disabled at any time due to accident, injury, illness or age. Please remove this language.

4. Consider California Model for More Realistic Parking Reductions. Lines 294-295 waive all on-site parking requirements contained in Appendix A of Chapter 25-6 (Transportation). Reputable experienced affordable housing developers can likely be trusted to provide sufficient on-site parking to make their projects work for tenants (Walter Moreau, executive director of Foundations Communities, has said he generally needs about 80% of current parking requirements for a viable project). But less experienced developers, in their zeal to reduce parking, may cut it to unrealistic levels, creating greater hardships for

low-income tenants, especially families with children who need cars for jobs, school, healthcare, groceries and other essentials.

According to the 2016 *Census American Community Survey,* which included low-income households, 94% of Austin households owned a vehicle, and the average number of vehicles per household was 1.65. Reducing reliance on personal vehicles is a laudable goal, but we don't want to make life more difficult for low-income residents who generally have less flexibility in work hours and locations, or who may need to secure and transport tools or other equipment for their work, especially in the building trades.

Coupled with the occupancy limits waiver provided in Lines 199-200, drastic parking cuts have the potential to overwhelm the surrounding area with permanently parked cars, especially on narrow older streets. Beyond the hardship posed for prospective tenants, this may reduce access for emergency vehicles, as has occurred in areas where numerous "stealth dorms" were constructed without adequate parking, and will almost certainly make it harder to keep designated bike lanes free of parking vehicles. Near public schools, it will also reduce access for parents and volunteers, who rely on street parking to participate in campus activities or pick up students for appointments or in case of illness.

For a more realistic approach to parking reductions, please see page 6 of California's density bonus law here: https://www.meyersnave.com/wp-content/uploads/California-Density-Bonus-Law.pdf

5. Advance Ordinance for Larger Projects, but Delay Application for Smaller Projects Until Processes for Eligibility, Monitoring and Modified Site Plan Review Are Finalized and Fully Vetted. At this time, proposed regulations for smaller projects (3-16 units) are not available for review, and developing them is not likely to be a simple process. Large projects built by experienced affordable housing developers are more easily monitored and enforced to ensure affordable units go to eligible parties and remain affordable, and this ordinance could likely be responsibly advanced for projects of 16 units or more. However smaller projects, especially if they become numerous, may present a host of problems that are not yet fully addressed.

Because the ordinance does not require one-to-one replacement for affordable units except for rebuilt MF projects, it greatly increases demolition pressures on existing market-affordable single-family homes and duplexes, which can be replaced by up to 3-16 units, depending on lot size. In Austin's boom market, it's likely more than a few bad actors may be tempted to gamble that they can sneak by an overwhelmed city staff, particularly once they get through the first year. Due to this heightened risk of gentrification and displacement, we must be

absolutely sure we have fail-safe mechanisms in place to guarantee we're getting the affordable units promised.

Questions for smaller projects include: What kind of documentation must be provided to verify an owner is meeting affordability requirements? How will the director verify these documents (call tenants to confirm? conduct on-site spot checks?). Will affordable units enjoy the current "floating" loophole, allowing any vacant unit to qualify as an affordable unit(s)? How many additional city staff will be needed to achieve reliable monitoring for smaller projects, and what are the anticipated costs including salaries and office space? What is the modified site plan process for smaller projects and when will that draft language be available?

To date, the city has struggled to monitor the relatively few density bonus units already in existence. Until there is a clear process to ensure all resulting affordable units are used as intended, and the modified site plan proposal is fully vetted to ensure health, safety and environmental protections are retained, it would be wise to delay triggering this ordinance for smaller projects of 16 units or less to allow time to resolve these issues.

6. Prohibit Short Term Rental (STR) Use in Participating Projects. City Council recently voted to prohibit STR use in the Alamo Street case, which granted upzoning in exchange for providing one affordable unit. This prohibition should be the default for all density bonus programs or other affordable housing projects going forward.

7. Correct Lines 185-187 to Retain Side Setbacks and Health, Safety or Environmental Setbacks per Council's Initiating Resolution. Lines 185-191 state: *"(F)* A *qualifying development is not required to comply with: (1) the height and setback requirements of Article 10 (Compatibility Standards)."* However, this wording omits clear language from Council's initiating resolution (page 7) that specifies participating projects must *"maintain the side setbacks as required by the base zoning district, and maintain requirements for any health and safety or environmental related setbacks…".* Please correct this section to include setback language from Council's initiating resolution.

Affordability Unlocked and ADA Compliant Parking

ISSUE

The Affordability Unlocked resolution proposes eliminating all on-site parking requirements for any residential project built under its provisions. The resolution specifically states that it does not intend to waive federal or state ADA requirements, but this goal is not easily accomplished. According to former Assistant City Attorney Brent Lloyd, ADA compliant parking *is only mandated as a percentage of the on-site parking provided*; therefore, if no on-site parking is provided, no ADA compliant parking is required. Had CodeNEXT Draft 3 been adopted as written, it would have rendered many new businesses inaccessible to people with disabilities due to a zero on-site parking provision for businesses under 2500 square feet in certain districts.

The information below provides the governing laws for ADA compliant parking, explains the basic requirements, and notes the practical difficulties in achieving sufficient ADA compliant spaces in the absence of on-site parking.

LAWS GOVERNING ADA COMPLIANT PARKING

The Texas Accessibility Standards (TAS) regulate the size and placement of accessible parking spaces in Austin and throughout the state. The TAS has been certified as being equivalent to the Americans with Disabilities Act (ADA) standards, so parking spaces constructed using the TAS are also compliant with the federal ADA standards. In addition, people with disabilities are a protected class under the Federal Fair Housing Act, which may require the owner of a multi-family property to provide accessible parking.

Texas Accessibility Standards are available here:
https://gov.texas.gov/uploads/files/organization/disabilities/Accessible_Parking_for_Texans_with_Disabilities_2011_Rev._March12_.pdf

Federal ADA standards are available here: https://adata.org/factsheet/parking)

Fair Housing Act information regarding accommodations for people with disabilities is available here:

https://www.hud.gov/program_offices/fair_housing_equal_opp/reasonable_accommodations_and_modifications

ADA/TAS REQUIREMENTS

Texas Accessibility Standards mandate basic standards for ADA compliant parking - number of spaces, location, design, size, signage, etc. In the absence of on-site parking, city staff has suggested using on-street parking to meet these standards, as has previously been done downtown. Unfortunately, many ADA design and size requirements will be difficult-to-impossible to meet through on-street parking because these generally depend on the availability of head-in parking, which does not typically exist on residential streets outside the central business district. In fact, the TAS specifically discourages parallel parking unless the entrance and exit are out of the flow of traffic. Nor is there room to install head-in parking on many of the older narrow residential streets prevalent in much of the urban core.

I've summarized the key ADA/TAS requirements below, with my comments in italics.

Number of Spaces. Texas Accessibility Standards require that a minimum number of accessible parking spaces must be provided, consistent with the chart on page 9 at this link:

https://gov.texas.gov/uploads/files/organization/disabilities/Accessible_Parking_for_Texans_with_Disabilities_2011_Rev._March12_.pdf.

For example, a lot with 1-25 spaces must provide at least one accessible space and one van-accessible space. A lot with 26-50 spaces must provide at least two accessible spaces and one van-accessible space, and so on.

> *To ensure Austin maintains current ADA parking standards in the absence of required on-site parking, use the current code's on-site parking requirements to create a chart showing the required number of ADA compliant spaces for both residential and commercial projects (residential requirements are generally based on the number of units, commercial requirements on use and square footage). Then require new or substantially rehabilitated projects to provide the same number of ADA spaces as a minimum, either on-site or on the shortest accessible route]*

Distance From Entrance. Per ADA/TAS, accessible parking spaces must be located on the shortest accessible route of travel to an accessible entrance.

> *No specific distance in feet is stipulated, but if you picture the narrow side streets coming off corridors like Burnet or Lamar, you're going to have to travel a pretty long way if you're relying on street parking for ADA purposes – plus many of these streets don't even have sidewalks.*

Parallel Parking Spaces. Per ADA/TAS, parallel parking is specifically discouraged unless it can be situated so that persons entering and exiting vehicles will be out of the flow of traffic.

As noted, parallel parking is generally the only type of on-street parking available in most residential areas outside downtown, and there is not enough width on many older streets to accommodate head-in parking typically used for ADA compliant spaces. The Mueller development does have some parallel ADA parking spaces, but these are installed on newer, wider streets with adjacent curb cuts, modern sidewalks and level surroundings. Retrofitting older smaller residential streets for ADA parking will be far more challenging, and in some cases, simply not possible.

Space Size and Access Aisles. Per ADA/TAS:

• Accessible parking spaces must be at least 8 feet wide.
• Each accessible parking space must have either an access aisle at least 5 feet wide or a van-accessible aisle at least 8 feet wide. Two parking spaces may share the same access aisle.
• Passenger loading zones shall provide an access aisle at least 5 feet wide and wide and 20 feet long parallel to the vehicle pull-up space.

Again, the above requirements will be difficult/impossible to meet through on-street parking, especially on older narrow streets.

Level Surface Requirements. Per ADA/TAS, parking spaces and access aisles must be level, with a maximum allowable slope of 2% in all directions.

It's impossible to meet this requirement via on-street parking in many areas of Austin due to hilly terrain.

Signage. Per TAS, each accessible parking space shall be designated as a reserved space with a sign showing the symbol of accessibility, located 60" above the ground.

Signage is relatively easy, but who provides for on-street ADA spaces – city or property owner?

In addition, while the TAS doesn't specifically mention the following ADA requirements, they still apply as controlling federal law.

• Access aisles must be marked (e.g., painted with hatch marks) to discourage parking in them. *Would city or property owner be responsible for this?*

• Accessible parking spaces, aisles, and routes must be maintained in good repair and kept clear of snow, ice, or fallen leaf build-up. *City? Property owner?*

FAIR HOUSING ACT

Under the Fair Housing Act, multi-family property owners are required to provide "reasonable accommodations" to tenants with disabilities. Tenants with disabilities may

ask the owners to create accessible parking spaces so that they can access their apartments. A request for an accessible parking space would be considered a "reasonable accommodation," unless it would be difficult or impractical to provide such a space.

Given that Austin currently requires on-site parking that results in ADA compliant spaces, it would be hard to argue that continuing to provide ADA parking is difficult or impractical.