

**04262019 DRAFT POST-PC RECOMMENDATIONS****ORDINANCE NO. \_\_\_\_\_**

1 **AN ORDINANCE AMENDING CITY CODE TITLE 25 (LAND DEVELOPMENT**  
2 **CODE) CREATING A RESIDENTIAL AFFORDABLE HOUSING**  
3 **DEVELOPMENT BONUS PROGRAM; WAIVING, MODIFYING, AND**  
4 **ESTABLISHING REQUIREMENTS; CREATING AN OFFENSE; AND**  
5 **ESTABLISHING A PENALTY.**

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

7 **PART 1. FINDINGS.**

8 The council finds the following:

- 9 (1) The Strategic Housing Blueprint (Blueprint) establishes a City-wide goal to  
10 produce a total of 135,000 new units with a goal of at least 60,000 new  
11 income restricted units by 2027.
- 12 (2) There is a need for affordable housing of all types throughout the City  
13 including, but not limited, to single family, duplex, townhome,  
14 condominium, and multi-family.
- 15 (3) The City is dedicated to finding creative, innovative solutions to address the  
16 City's affordable housing crisis, to create more affordable housing, to  
17 increase the effectiveness of public dollars used for affordable housing, and  
18 to meet the goals of the Blueprint.
- 19 (4) In November 2018, voters approved \$250 million for affordable housing.  
20 Additionally, 4% and 9% Low Income Housing Tax Credits (LIHTC) are  
21 popular financing tools to create affordable housing and require at least 50%  
22 of a development's dwelling units to serve households that average 60%  
23 median family income.
- 24 (5) This city-wide program is necessary to encourage the development of  
25 affordable housing throughout the City.
- 26

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

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

31 **§ 25-1-720 PURPOSE, APPLICABILITY, SHORT TITLE, AUTHORITY,**  
32 **AND CONFLICT.**

- 33 (A) The purpose of this division is to establish a voluntary affordable housing  
34 bonus program that allows for increased density for residential dwelling  
35 units.
- 36 (B) This division applies within the zoning jurisdiction.
- 37 (C) This division may be cited as “Affordable Housing Bonus Program”.
- 38 (D) The director may adopt, implement, and enforce:
- 39 (1) program guidelines; and
- 40 (2) administrative rules in accordance with Chapter 1-2 (*Administrative Rules*).
- 41 (E) A provision of this title that is specifically applicable to a qualifying development  
42 governs over a conflicting provision of this title.

43 **§ 25-1-721 DEFINITIONS.**

44 In this division,

- 45 (1) **GOVERNMENT-OPERATED AFFORDABLE HOUSING**  
46 **PROGRAM** means a program operated by a federal, state, or local  
47 department that provides financial or other form of subsidy for the  
48 purpose of providing affordable housing.
- 49 (2) **HOUSING FOR OLDER PERSONS** means housing for households  
50 with at least one individual who is at least 62 years of age at the time  
51 of initial occupancy.
- 52 (3) **MFI** means median family income for the Austin metropolitan  
53 statistical area.

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54 (4) QUALIFYING DEVELOPMENT means a development certified  
55 under Section 25-1-724 (*Certification*) and participating in the  
56 Affordable Housing Bonus Program.

57 (5) SUPPORTIVE HOUSING means housing that includes non-time-  
58 limited affordable housing assistance with wrap-around supportive  
59 services for individuals experiencing homelessness, as well as other  
60 individuals with disabilities.

61 **§ 25-1-722 ELIGIBILITY.**

62 (A) A proposed development qualifies as a Type 1 development and is eligible  
63 for this program if:

64 (1) it includes a minimum of three dwelling units or the proposed  
65 development will consist only of affordable dwelling units;

66 (2) at least 25 percent of the affordable dwelling units include two or  
67 more bedrooms, supportive housing, housing for older persons, or any  
68 combination of the three;

69 (3) not more than 25 percent of the proposed development's gross floor  
70 area is for non-residential uses;

71 (4) it is new construction, it is redevelopment of a site without existing  
72 multi-family structures, or the existing development on the site  
73 complies with the requirements in Subsection (D); and

74 (5) it meets the requirements set forth in Section 25-1-723 (*Affordability*  
75 *Requirements*).

76 (B) Except for a proposed development participating in a government-operated  
77 affordable housing program with stricter requirements, the applicant for a  
78 proposed rental development:

79 (1) shall incorporate lease provisions that are consistent with:

80 (a) the U.S. Department of Housing and Urban Development  
81 (HUD) Section 8 Tenant-Based Assistance Housing Choice  
82 Voucher (HCV) Program related to the termination of tenancy  
83 by owner;

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- 84 (b) any lease addendum required as a condition to receive city or  
85 Austin Housing Finance Corporation (AHFC) funds; and
- 86 (c) 24 C.F.R. § 245.100 related to a tenant's right to organize; and
- 87 (2) may not discriminate on the basis of an individual's source of income  
88 as defined in Section 5-1-13 (*Definitions*).
- 89 (C) A proposed development qualifies as a Type 2 development and is eligible  
90 for additional bonuses if it meets the standards imposed in Subsections (A)  
91 and (B) plus one or more of the following:
- 92 (1) at least 50 percent of the affordable dwelling units include two or  
93 more bedrooms;
- 94 (2) for a rental development:
- 95 (a) at least 75 percent of the total units serve households whose  
96 incomes average 60 percent MFI or below, rounded up to the  
97 nearest unit; or
- 98 (b) at least 10 percent of the affordable units serve households with  
99 incomes of 30 percent MFI or below, rounded up to the nearest  
100 unit; or
- 101 (3) for an owner-occupied development, at least 75 percent of the owner-  
102 occupied dwelling units serve households whose incomes average 80  
103 percent MFI or below; or
- 104 (4) is located within ¼ mile of an activity corridor designated in the  
105 Imagine Austin Comprehensive Plan and is served by a bus or transit  
106 line.
- 107 (D) A proposed development that will require the applicant to redevelop or  
108 rebuild an existing multi-family structure is eligible for this program if:
- 109 (1) the proposed development meets the standards imposed in  
110 Subsections (A) and (B);
- 111 (2) the existing multi-family structure requires extensive repairs and for  
112 which rehabilitation costs will exceed 50 percent of the market value,  
113 as determined by the building official;

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- 114 (3) the proposed development will replace all existing units that were  
115 affordable to a household earning 80 percent MFI or below in the  
116 previous year and have at least as many bedrooms;
- 117 (4) the applicant provides current tenants with:
- 118 (a) notice and information about the proposed development on a  
119 form approved by the director; and
- 120 (b) relocation benefits that are consistent with Federal Uniform  
121 Relocation Assistance and Real Property Acquisition Policies  
122 Act of 1970, 42 U.S.C.A. 4601, *et seq.*; and
- 123 (5) the applicant grants current tenants the option to lease a unit of  
124 comparable affordability and size following completion of  
125 redevelopment.

**§ 25-1-723 AFFORDABILITY REQUIREMENTS.**

- 127 (A) An applicant complies with the requirements in this section if the applicant  
128 participates in a government-operated affordable housing program that  
129 imposes, at a minimum, the same affordability requirements.
- 130 (B) Except for a Type 2 rental development that complies with the requirements  
131 described in Section 25-1-722(C)(2), a rental development must comply  
132 with the following:
- 133 (1) at least 50 percent of the total units serve households whose incomes  
134 average 60 percent MFI or below; and
- 135 (2) at least 20 percent of the total units serve households with incomes of  
136 50 percent MFI or below.
- 137 (C) Except for a Type 2 owner-occupied development that complies with the  
138 requirements in Section 25-1-722(C)(3), at least 50 percent of the owner-  
139 occupied dwelling units must serve households whose incomes average 80  
140 percent MFI or below.
- 141 (D) If the number of units required in this section include less than a whole unit,  
142 the unit number is rounded up to the nearest whole unit.

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- 143 (E) The minimum affordability period for a rental development is 40 years  
144 following the issuance of the last certificate of occupancy required for the  
145 qualifying development.
- 146 (F) The minimum affordability period for an owner-occupied dwelling unit is 99  
147 years following the issuance of a certificate of occupancy for the owner-  
148 occupied dwelling unit.
- 149 (G) In a multi-phased qualifying development, the director may begin the  
150 minimum affordability period upon the issuance of the last certificate of  
151 occupancy for each phase.

**§ 25-1-724 CERTIFICATION.**

- 153 (A) If the director certifies that a proposed development meets the requirements  
154 of this division, the accountable official is authorized to process a  
155 development application as a qualifying development.
- 156 (B) Before the director may certify that a proposed development meets the  
157 requirements of this division, the applicant shall execute:
- 158 (1) an agreement to preserve the minimum affordability period and  
159 related requirements imposed by this division; and
- 160 (2) a document for recording in the real property records that provides  
161 notice of or preserves the minimum affordability requirements  
162 imposed by this division.
- 163 (C) The form of the documents described in Subsection (B) must be approved by  
164 the city attorney.
- 165 (D) The director may certify an applicant who complies with the requirements in  
166 Subsection (B) because the applicant participates in a government-operated  
167 affordable housing program that imposes, at a minimum, the same  
168 affordability requirements.

**§ 25-1-725 POST-CONSTRUCTION REQUIREMENTS AND PENALTY.**

- 170 (A) For a rental development, the property owner or the property owner's agent  
171 shall provide the director with information that allows the director to verify  
172 compliance with the affordability requirements. The information shall be  
173 provided on an annual basis and on a form approved by the director.

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- 174 (B) If, for any reason, the director is unable to confirm that the affordability  
175 requirements were met during any 12-month period, the preceding 12  
176 months may not be used to satisfy the minimum affordability requirements  
177 in Section 25-1-723 (*Affordability Requirements*).
- 178 (C) An applicant complies with the requirements in this section if the applicant  
179 complies with monitoring and income verification requirements that are  
180 imposed and enforced as part of a government-operated affordable housing  
181 program.
- 182 (D) A person commits an offense if the person fails to comply with the  
183 requirement in Subsection (A). A culpable mental state is not required, and  
184 need not be proved. A person commits a separate offense for each day the  
185 person fails to provide the documentation. Each offense is punishable by a  
186 fine not to exceed \$500.

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

190 **§ 25-2-518 QUALIFYING DEVELOPMENT.**

- 191 (A) In this section, a qualifying development is a development certified under  
192 Section 25-1-724 (*Certification*) and participating in the Affordable Housing  
193 Bonus Program.
- 194 (B) A qualifying development is a permitted use under Section 25-2-491  
195 (*Permitted, Conditional, and Prohibited Uses*) in:
- 196 (1) a residential base zoning district;
- 197 (2) a commercial base zoning district;
- 198 (3) a special purpose base zoning district, except on a site designated:
- 199 (a) agricultural (AG),
- 200 (b) aviation (AV), or
- 201 (c) development reserve (DR); and
- 202 (4) a combining and overlay district.

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- 203 (C) Density is calculated based on the standards in Subchapter E, 4.2.1 (*Mixed*  
204 *Use Combining District*) if the existing zoning on the site where the  
205 qualifying development will be located is in one of the following  
206 commercial base districts:
- 207 (1) neighborhood office (NO);
  - 208 (2) limited office (LO);
  - 209 (3) general office (GO);
  - 210 (4) community commercial (GR);
  - 211 (5) neighborhood commercial (LR);
  - 212 (6) general commercial services (CS); or
  - 213 (7) commercial-liquor sales (CS-1).
- 214 (D) If the existing zoning on the site where the qualifying development will be  
215 located is commercial recreation (CR), lake commercial (L), central business  
216 (CBD), warehouse limited office (W/LO), or commercial highway services  
217 (CH), the density is calculated based on the following minimum site area  
218 standards:
- 219 (1) 800 square feet, for an efficiency dwelling unit;
  - 220 (2) 1,000 square feet, for a one bedroom dwelling unit; and
  - 221 (3) 1,200 square feet, for a dwelling unit with two or more bedrooms.
- 222 (E) No more than 25 percent of the gross floor area of the qualifying  
223 development may be comprised of non-residential uses. The permitted  
224 commercial uses are determined using the base zoning district.
- 225 (F) A qualifying development is not required to comply with:
- 226 (1) the height and setback requirements of Article 10 (*Compatibility*  
227 *Standards*);
  - 228 (2) the maximum floor-to-area ratio for the applicable base zoning district  
229 under Section 25-2-492 (*Site Development Regulations*);
  - 230 (3) Subchapter F (*Residential Design and Compatibility Standards*); or

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- 231 (4) Section 25-2-773 (*Duplex Residential Use*); and  
232 (5) minimum site area requirements.
- 233 (G) This section applies to a qualifying development located in urban residence  
234 (SF-5) or more restrictive zoning district.
- 235 (1) A qualifying development must comply with:
- 236 (a) Section 25-2-1066 (*Screening Requirements*); and  
237 (b) Subsections (A) and (B) in Section 25-2-1067 (*Design*  
238 *Regulations*).
- 239 (2) A person must enclose a refuse receptacle, including a dumpster.
- 240 (3) The location of and access to a refuse receptacle is subject to review  
241 and approval by the accountable official.
- 242 (4) A person may not collect or allow another to collect refuse receptacles  
243 between 10:00 p.m. and 7:00 a.m.

244 **PART 4.** City Code Chapter 25-2, Subchapter C, Article 2, Division 3  
245 (*Exceptions*) is amended to add a new Section 25-2-534 (*Qualifying Development*  
246 *Exceptions*) to read as follows:

247 **§ 25-2-534 QUALIFYING DEVELOPMENT EXCEPTIONS.**

- 248 (A) In this section, a qualifying development is a development certified under  
249 Section 25-1-724 (*Certification*) and participating in the Affordable Housing  
250 Bonus Program.
- 251 (B) A qualifying development is not subject to Section 25-2-511 (*Dwelling Unit*  
252 *Occupancy Limit*).
- 253 (C) A Type 1 development may:
- 254 (1) construct to a height that is the applicable base zoning district height  
255 limit multiplied by 1.25;
- 256 (2) reduce front yard setbacks by 50 percent;
- 257 (3) reduce rear setbacks by 50 percent; and
- 258 (4) include the number of dwelling units that is the greater of:

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- 259 (a) the maximum number of dwelling units otherwise authorized  
260 by this code multiplied by 1.5; or
- 261 (b) six dwelling units.
- 262 (D) In addition to Subsection (C), a Type 2 development may:
- 263 (1) construct to a height that is the applicable base zoning district height  
264 limit multiplied by 1.5; and
- 265 (2) include the number of dwelling units that is the greater of:
- 266 (a) the maximum number of dwelling units otherwise authorized  
267 by this code multiplied by 2; or
- 268 (b) eight dwelling units.
- 269 (E) If a qualifying development is also eligible to utilize a separate density  
270 bonus program that grants density bonuses for the provision of affordable  
271 dwelling units or for the payment of a fee-in-lieu for affordable housing,  
272 then the qualifying development may comply with the least restrictive site  
273 development requirements if all affordable dwelling units are provided on-  
274 site.

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

277 **§ 25-6-471 OFF-STREET PARKING FACILITY REQUIRED.**

278 (I) In this section,

- 279 (1) ACCESSIBLE SPACE means a parking space for an individual with a  
280 disability that complies with the Americans with Disabilities Act  
281 (ADA) and Fair Housing Act Amendments (FHAA), as appropriate;  
282 and
- 283 (2) QUALIFYING DEVELOPMENT means a development certified  
284 under Section 25-1-724 (*Certification*) and participating in the  
285 Affordable Housing Bonus Program.

286 (J) A qualifying development with more than two dwelling units is not required  
287 to comply with Appendix A of Chapter 25-6 (*Transportation*) but must  
288 comply with this section.

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- 289 (1) If off-street parking is not provided for the qualifying development, at  
290 least one van accessible space is required.
- 291 (2) If off-street parking is provided, the minimum number of required  
292 accessible spaces is the greater of the number of accessible spaces  
293 required under:
- 294 (a) the Building Code based on 20 percent of the parking required  
295 for the use under Appendix A (*Tables of Off-Street Parking and*  
296 *Loading Requirements*); or
- 297 (b) the ADA or the FHAA, as appropriate.
- 298 (3) An accessible space must be adjacent to the site and on an accessible  
299 route.
- 300 (4) An accessible parking space must comply with design, accessibility,  
301 and location requirements imposed by the ADA and the FFHA, as  
302 appropriate.
- 303 (K) The director may waive the accessible space required under Subsection  
304 (J)(1) if one of the following applies:
- 305 (1) The applicant pays a fee in-lieu to be used by the city to construct and  
306 maintain accessible spaces in the vicinity of the qualifying  
307 development. The availability of this option is contingent on the  
308 establishment of a fee by separate ordinance and the adoption of a  
309 program by the director to administer the fee and establish eligibility  
310 criteria. A decision by the director that a qualifying development is  
311 ineligible for a fee in-lieu is final.
- 312 (2) The accessible space cannot be provided as required in Subsection  
313 (J)(1) and the qualifying development is ineligible for participation in  
314 the fee in-lieu program under Paragraph (1) of this subsection.
- 315 (3) An off-site or on-street parking space designated as an accessible  
316 space is located within 200 feet of the qualifying development.

317 **PART 6.** This ordinance takes effect on \_\_\_\_\_, 2019.

