

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]

No changes to this Part.

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, AND SHORT TITLE.**

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

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

Added language related to
regulatory conflicts.

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

16 **§ 25-1-721 DEFINITIONS.**

17 In this division,

18 (1) CONTINUUM OF CARE HOUSING means housing set aside for
19 individuals exiting homelessness.

Deleted

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

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

26 (4) HOUSING FOR OLDER PERSONS means housing for households
27 with at least one individual who is at least 62 years of age at the time
28 of initial occupancy.

29 (5) MFI means median family income for the Austin metropolitan
30 statistical area.

31 (6) QUALIFYING DEVELOPMENT means a development certified
32 under Section 25-1-724 (*Certification*) and participating in the
33 Affordable Housing Bonus Program.

Added
"supportive
housing"
definition

34 **§ 25-1-722 ELIGIBILITY.**

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

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

39 (2) at least 25 percent of the affordable dwelling units include two or
40 more bedrooms or the proposed development qualifies as continuum
41 of care housing or housing for older persons;

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

44 (4) it is new construction or is redevelopment of property with only non-
45 residential structures or the existing development complies with the
46 requirements in Subsection (D); and

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

Replaced
CoC with
supportive
housing.

49 (B) Except for a proposed development participating in a government-operated
50 affordable housing program with stricter requirements, the applicant:

51 (1) shall incorporate lease provisions that are consistent with

52 (a) the U.S. Department of Housing and Urban Development
53 (HUD) Section 8 Tenant-Based Assistance Housing Choice
54 Voucher (HCV) Program related to the termination of tenancy
55 by owner; and

56 (b) 24 C.F.R. §245.100 related to a tenant's right to organize; and

57 (2) may not discriminate on the basis of an individual's source of income
58 as defined in Section 5-1-13 (*Definitions*).

- 59 (C) A proposed development qualifies as a Type 2 development and is eligible
60 for additional bonuses if it meets the standards imposed in Subsections (A)
61 and (B) plus one or more of the following:
- 62 (1) at least 50 percent of the affordable dwelling units include two or
63 more bedrooms;
- 64 (2) for a rental development:
- 65 Added (a) at least 75 percent of the total units serve households with
66 "averages" incomes of 60 percent MFI or below, rounded up to the nearest
67 unit; or
- 68 (b) at least 10 percent of the affordable units serve households with
69 incomes of 30 percent MFI or below, rounded up to the nearest
70 unit; or
- 71 (3) Added for an owner-occupied development, at least 75 percent of the owner-
72 "averages" occupied dwelling units serve households with incomes of 80 percent
73 MFI or below; or
- 74 (4) is located within ¼ mile of an activity corridor designated in the
75 Imagine Austin Comprehensive Plan and is served by a bus or transit
76 line.
- 77 (D) A proposed development that will require the applicant to redevelop or
78 rebuild an existing multi-family building is eligible for this program if:
- 79 (1) the proposed development meets the standards imposed in
80 Subsections (A) and (B);
- 81 (2) the existing multi-family building requires extensive repairs and for
82 which rehabilitation costs will exceed 50 percent of the market value,
83 as determined by the building official;
- 84 (3) the proposed development will replace all existing units that were
85 affordable to a household earning 80 percent MFI or below in the
86 previous year and have at least as many bedrooms;
- 87 (4) the applicant provides current tenants with:
- 88 (a) notice and information about the proposed development on a
89 form approved by the director; and

(b) relocation benefits that are consistent with Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, *et seq.*; and

(5) the applicant grants current tenants the option to lease a unit of comparable affordability and size following completion of redevelopment.

§ 25-1-723 AFFORDABILITY REQUIREMENTS.

(A) An applicant complies with the requirements in this section if the applicant participates in a government-operated affordable housing program that imposes, at a minimum, the same affordability requirements.

(B) Except for a Type 2 rental development that complies with the requirements described in Section 25-1-722(C)(2), a rental development must comply with the following:

(1) at least 50 percent of the total units serve households whose incomes average 60 percent MFI or below; and

(2) at least 20 percent of the total units serve households with incomes of 50 percent MFI or below.

(C) For an owner-occupied development, at least 50 percent of the owner-occupied dwelling units serving households whose incomes average 80 percent MFI or below.

(D) If the number of units required in this section include less than a whole unit, the unit number is rounded up to the nearest whole unit.

(E) The minimum affordability period for a rental development is 40 years following the issuance of the last certificate of occupancy required for the qualifying development.

(F) The minimum affordability period for an owner-occupied dwelling unit is 99 years following the issuance of a certificate of occupancy for the owner-occupied dwelling unit.

(G) In a multi-phased qualifying development, the director may begin the minimum affordability period upon the issuance of the last certificate of occupancy for each phase.

121 **§ 25-1-724 CERTIFICATION.**

122 (A) If the director certifies that a proposed development meets the requirements
123 of this division, the accountable official is authorized to process a
124 development application as a qualifying development.

125 (B) Before the director may certify that a proposed development meets the
126 requirements of this division, the applicant shall execute an agreement and a
127 document for recording in the real property records that provides notice of or
128 preserves the minimum affordability requirements imposed by this division.
129 The form of the documents described in this section must be approved by the
130 city attorney.

131 (C) The director may certify an applicant who complies with the requirements in
132 Subsection (B) because the applicant participates in a government-operated
133 affordable housing program that imposes, at a minimum, the same
134 affordability requirements.

135 **§ 25-1-725 POST-CONSTRUCTION REQUIREMENTS AND**
136 **ENFORCEMENT.**

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

140 (B) If for any reason the director is unable to confirm that the affordability
141 requirements were met during any 12-month period, the preceding 12
142 months may not be used to satisfy the affordability requirements in Section
143 25-1-723 (*Affordability Requirements*).

144 (C) An applicant complies with the requirements in this section if the applicant
145 complies with monitoring and income verification requirements that are
146 imposed and enforced as part of a government-operated affordable housing
147 program.

148 (D) A person commits an offense if the person fails to comply with the
149 requirement in Subsection (A). A culpable mental state is not required, and
150 need not be proved. A person commits a separate offense for each day the
151 person fails to provide the income verification documentation. Each offense
152 is punishable by a fine not to exceed \$500.

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

156 **§ 25-2-518 QUALIFYING DEVELOPMENT.**

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

160 (B) A qualifying development is a permitted use in any residential or
161 commercial zoning district under Section 25-2-491 (*Permitted, Conditional,*
162 *and Prohibited Uses*).

163 (C) Density is calculated based on the standards in Subchapter E, 4.2.1 (*Mixed*
164 *Use Combining District*) if the existing zoning on the property where the
165 qualifying development will be located in one of the following commercial
166 base districts:

- 167 (1) neighborhood office (NO);
- 168 (2) limited office (LO);
- 169 (3) general office (GO);
- 170 (4) community commercial (GR);
- 171 (5) neighborhood commercial (LR);
- 172 (6) general commercial services (CS); or
- 173 (7) commercial-liquor sales (CS-1).

174 (D) If the existing zoning on the property where the qualifying development will
175 be located is commercial recreation (CR), lake commercial (L), central
176 business (CBD), warehouse limited office (W/LO), or commercial highway
177 services (CH), the density is calculated based on the following minimum site
178 area standards:

- 179 (1) 800 square feet, for an efficiency dwelling unit;
- 180 (2) 1,000 square feet, for a one bedroom dwelling unit; and
- 181 (3) 1,200 square feet, for a dwelling unit with two or more bedrooms.

- 182 (E) No more than 25 percent of the gross floor area of the qualifying
183 development may be comprised of non-residential uses. The permitted
184 commercial uses are determined using the base zoning district.
- 185 (F) A qualifying development is not required to comply with:
- 186 (1) the height and setback requirements of Article 10 (*Compatibility*
187 *Standards*);
- 188 (2) the maximum floor-to-area ratio for the applicable base zoning district
189 under Section 25-2-492 (*Site Development Regulations*);
- 190 (3) Subchapter F (*Residential Design and Compatibility Standards*); or
- 191 (4) Section 25-2-773 (*Duplex Residential Use*).

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

No changes to this Part.

195 **§ 25-2-534 QUALIFYING DEVELOPMENT EXCEPTIONS.**

- 196 (A) In this section, a qualifying development is a development certified under
197 Section 25-1-724 (*Certification*) and participating in the Affordable Housing
198 Bonus Program.
- 199 (B) A qualifying development is not subject to Section 25-2-511 (*Dwelling Unit*
200 *Occupancy Limit*).
- 201 (C) A Type 1 development may:
- 202 (1) construct to a height that is the applicable base zoning district height
203 limit multiplied by 1.25;
- 204 (2) reduce front yard setbacks by 50 percent;
- 205 (3) reduce rear setbacks by 50 percent; and
- 206 (4) include the number of dwelling units that is the greater of:
- 207 (a) the maximum number of dwelling units otherwise authorized
208 by this code multiplied by 1.5; or
- 209 (b) six dwelling units.
- 210 (D) In addition to Subsection (C), a Type 2 development may:

- 211 (1) construct to a height that is the applicable base zoning district height
212 limit multiplied by 1.5; and
- 213 (2) include the number of dwelling units that is the greater of:
- 214 (a) the maximum number of dwelling units otherwise authorized
215 by this code multiplied by 2; or
- 216 (b) eight dwelling units.
- 217 (E) If a qualifying development is also eligible to utilize a separate density
218 bonus program that grants density bonuses for the provision of affordable
219 dwelling units or a fee-in-lieu for affordable housing, then the qualifying
220 development may comply with the least restrictive development
221 requirements if all affordable dwelling units are provided on-site.

222 **PART 5.** Section 25-5-3 (*Small Projects*) is amended to amend Subsection (B)
223 and to add a new Subsection (E) to read as follows:

Removed this part in its entirety.

224 **§ 25-5-3 SMALL PROJECTS.**

- 225 (A) The director shall determine whether a project is a small project described in
226 this section.
- 227 (B) The following are small projects:
- 228 (1) construction of a building or parking area if the proposed
229 construction:
- 230 (a) does not require a variance from a water quality regulation;
- 231 (b) does not exceed 5,000 square feet of impervious cover; and
- 232 (c) the construction site does not exceed 10,000 square feet,
233 including the following areas:
- 234 (i) construction;
- 235 (ii) clearing;
- 236 (iii) grading;
- 237 (iv) construction equipment access;
- 238 (v) driveway reconstruction;

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- 239 (vi) temporary installations, including portable buildings,
240 construction trailers, storage areas for building materials,
241 spoil disposal areas, erosion and sedimentation controls,
242 and construction entrances;
- 243 (vii) landscaping; and
- 244 (viii) other areas that the director determines are part of the
245 construction site;
- 246 (2) construction of a storm sewer not more than 30 inches in diameter that
247 is entirely in a public right-of-way or an easement;
- 248 (3) construction of a utility line not more than eight inches in diameter
249 that is entirely in a public right-of-way;
- 250 (4) construction of a left turn lane on a divided arterial street;
- 251 (5) construction of street intersection improvements;
- 252 (6) widening a public street to provide a deceleration lane if additional
253 right-of-way is not required;
- 254 (7) depositing less than two feet of earth fill, if the site is not in a 100 year
255 floodplain and the fill is not to be deposited within the dripline of a
256 protected tree;
- 257 (8) construction of a boat dock as an accessory use to a single-family
258 residential use, duplex residential use, two-family residential use, or
259 secondary apartment special use if shoreline modification or dredging
260 of not more than 25 cubic yards is not required; or
- 261 (9) construction of a retaining wall, if the wall is less than 100 feet in
262 length and less than eight feet in height, and the back fill does not
263 reclaim a substantial amount of land except land that has eroded
264 because of the failure of an existing retaining wall;
- 265 (10) minor development that the director determines is similar to that
266 described in Subsections (B)(1) through (9) of this section;
- 267 (11) the replacement of development that is removed as a result of right-of-
268 way condemnation; [~~and~~]

- 269 (12) the construction of a telecommunications tower described in
270 Subsection 25-2-839(F) or (G) (*Telecommunication Towers*); and[-]
- 271 (13) the construction of a qualifying multi-family development described
272 in Subsection (E).
- 273 (C) Notwithstanding any other provisions in this section, construction of
274 Shoreline Access, as defined in Section 25-2-1172, that exceeds 50 feet in
275 length and is constructed on slopes exceeding 35% gradient does not
276 constitute a small project.
- 277 (D) For a small project, the director may waive a submittal requirement that the
278 director determines is not essential to demonstrate compliance with this title.
279 The director shall maintain a record of submittal requirements that are
280 waived under this subsection.
- 281 (E) In this section, a qualifying multi-family development is a development
282 certified under Section 25-1-724 (*Certification*) and participating in the
283 Affordable Housing Bonus Program and is:
- 284 (1) a Type 1 development consisting of at least three but no more 12
285 dwelling units; or
- 286 (2) a Type 2 development consisting of at least three but no more than 16
287 dwelling units.

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

Renumbered Part.

290 **§ 25-6-471 OFF-STREET PARKING FACILITY REQUIRED.**

- 291 (I) In this section, a qualifying development is a development certified under
292 Section 25-1-724 (*Certification*) and participating in the Affordable Housing
293 Bonus Program.
- 294 (J) A qualifying development is not required to comply with Appendix A of
295 Chapter 25-6 (*Transportation*) but must comply with the following:
- 296 (1) if a qualifying development is less than 10,000 square feet and off-site
297 parking is not provided for the qualifying development, at least one
298 parking space for persons with disabilities is required;

Removed square footage provisions.

If parking is not provided, must provide at least one van accessible space.

Added language that requires the accessible spaces to be adjacent to the site and on an accessible route.

299 (2) if a qualifying development is less than 10,000 square feet and off-
300 street parking is provided, it must include parking for persons with
301 disabilities as required by the Building Code and may not include
302 fewer accessible spaces than would be required under Paragraph (3) of
303 this subsection; or

Removed square footage. Require spaces to be adjacent to the site and on an accessible route. Removed 250 feet.

304 (3) if an qualifying development is 10,000 square feet or more, then the
305 minimum number of parking spaces for persons with disabilities is
306 calculated by taking 20 percent of the parking required for the use
307 under Appendix A (Tables of Off-Street Parking and Loading
308 Requirements) and using that result to determine the number of
309 accessible spaces required under the Building Code, which may be
310 provided on-or-off-site within 250 feet of the use.

311 (K) The director may waive or reduce the number of accessible spaces required
312 under Subsection (J) if:

313 (1) The applicant pays a fee in-lieu to be used by the city to construct and
314 maintain accessible parking in the vicinity of the use. The availability
315 of this option is contingent on the establishment of a fee by separate
316 ordinance and the adoption of a program by the director to administer
317 the fee and establish eligibility criteria. A decision by the director that
318 a use is ineligible for a fee in-lieu is final.

"Use" changed to "qualifying development"

319 (2) No accessible spaces can be provided consistent with the requirements
320 of Subsection (J) and the use is ineligible for participation in the fee
321 in-lieu program under Paragraph (1) of this section.

322 (3) An off-site or on-street parking space designated for persons with
323 disabilities that is located within 250 feet of a use may be counted
324 towards the number of parking spaces the use is required to provide
325 under Subsection (J).

326 **PART 7.** Chapter 25-7, Article 3 (*Requirements for Approval*) is amended to add a
327 new Section 25-7-67 (*Qualifying Multi-family Development*) to read as follows:

328 **§ 25-7-67 QUALIFYING MULTI-FAMILY DEVELOPMENT**

Part 7 was removed in its entirety.

329 (A) In this section, a qualifying multi-family development is a development
330 located on a lot platted as residential, certified under Section 25-1-724
331 (*Certification*) and participating in the Affordable Housing Bonus Program,
332 and is:

333 (1) a Type 1 development consisting of at least three but no more 12
334 dwelling units; or

335 (2) a Type 2 development consisting of at least three but no more than 16
336 dwelling units.

337 (B) A qualifying multi-family development must comply with the following
338 regulations:

339 (1) [to be inserted]

340 **PART 8.** This ordinance takes effect on _____, 2019.

341 **PASSED AND APPROVED**

342
343 §
344 §
345 _____, 2019 § _____
346 Steve Adler
347 Mayor
348

349
350 **APPROVED:** _____ **ATTEST:** _____
351 Anne L. Morgan Jannette S. Goodall
352 City Attorney City Clerk

