

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, which was initiated in Resolution No. 20190221-
25 027, is necessary to encourage the development of affordable housing
26 throughout the City.
- 27

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

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

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

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

44 **§ 25-1-721 DEFINITIONS.**

45 In this division,

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

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

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

62 **§ 25-1-722 ELIGIBILITY.**

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

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

67 (2) at least 25 percent of the affordable dwelling units include two or
68 more bedrooms or the proposed development qualifies as supportive
69 housing or housing for older persons;

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

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

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

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

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

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

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

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

§ 25-1-723 AFFORDABILITY REQUIREMENTS.

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

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

151 **§ 25-1-724 CERTIFICATION.**

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

168 **§ 25-1-725 POST-CONSTRUCTION REQUIREMENTS AND PENALTY.**

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

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

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

189 **§ 25-2-518 QUALIFYING DEVELOPMENT.**

- 190 (A) In this section, a qualifying development is a development certified under
191 Section 25-1-724 (*Certification*) and participating in the Affordable Housing
192 Bonus Program.
- 193 (B) Notwithstanding any ordinance or City Code provision to contrary, a
194 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 (4) a combining and overlay district.

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

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230 (4) Section 25-2-773 (*Duplex Residential Use*).

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

234 **§ 25-2-534 QUALIFYING DEVELOPMENT EXCEPTIONS.**

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

238 (B) A qualifying development is not subject to Section 25-2-511 (*Dwelling Unit*
239 *Occupancy Limit*).

240 (C) A Type 1 development may:

241 (1) construct to a height that is the applicable base zoning district height
242 limit multiplied by 1.25;

243 (2) reduce front yard setbacks by 50 percent;

244 (3) reduce rear setbacks by 50 percent; and

245 (4) include the number of dwelling units that is the greater of:

246 (a) the maximum number of dwelling units otherwise authorized
247 by this code multiplied by 1.5; or

248 (b) six dwelling units.

249 (D) In addition to Subsection (C), a Type 2 development may:

250 (1) construct to a height that is the applicable base zoning district height
251 limit multiplied by 1.5; and

252 (2) include the number of dwelling units that is the greater of:

253 (a) the maximum number of dwelling units otherwise authorized
254 by this code multiplied by 2; or

255 (b) eight dwelling units.

256 (E) If a qualifying development is also eligible to utilize a separate density
257 bonus program that grants density bonuses for the provision of affordable

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258 dwelling units or for the payment of a fee-in-lieu for affordable housing,
259 then the qualifying development may comply with the least restrictive site
260 development requirements if all affordable dwelling units are provided on-
261 site.

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

264 **§ 25-6-471 OFF-STREET PARKING FACILITY REQUIRED.**

265 (I) In this section,

266 (1) ACCESSIBLE SPACE means a parking space for an individual with a
267 disability that complies with the Americans with Disabilities Act
268 (ADA) and Fair Housing Act Amendments (FHAA), as appropriate;
269 and

270 (2) QUALIFYING DEVELOPMENT means a development certified
271 under Section 25-1-724 (*Certification*) and participating in the
272 Affordable Housing Bonus Program.

273 (J) A qualifying development is not required to comply with Appendix A of
274 Chapter 25-6 (*Transportation*) but must comply with this section.

275 (1) If off-street parking is not provided for a qualifying development with
276 more than two units, at least one van accessible space is required.

277 (2) If off-street parking is provided for a qualifying development with
278 more than two, the minimum number of required accessible spaces is
279 the greater of the number of accessible spaces required under:

280 (a) the Building Code based on 20 percent of the parking required
281 for the use under Appendix A (*Tables of Off-Street Parking and*
282 *Loading Requirements*); or

283 (b) the ADA or the FHAA, as appropriate.

284 (3) An accessible space must be adjacent to the site and on an accessible
285 route.

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286 (4) An accessible parking space must comply with design, accessibility,
287 and location requirements imposed by the ADA and the FFHA, as
288 appropriate.

289 (K) The director may waive the accessible space required under Subsection
290 (J)(1) if one of the following applies:

291 (1) The applicant pays a fee in-lieu to be used by the city to construct and
292 maintain accessible spaces in the vicinity of the qualifying
293 development. The availability of this option is contingent on the
294 establishment of a fee by separate ordinance and the adoption of a
295 program by the director to administer the fee and establish eligibility
296 criteria. A decision by the director that a qualifying development is
297 ineligible for a fee in-lieu is final.

298 (2) The accessible space cannot be provided as required in Subsection
299 (J)(1) and the qualifying development is ineligible for participation in
300 the fee in-lieu program under Paragraph (1) of this subsection.

301 (3) An off-site or on-street parking space designated as an accessible
302 space is located within 200 feet of the qualifying development.

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

304 **PASSED AND APPROVED**

305
306 §
307 §
308 _____, 2019 § _____

Steve Adler
Mayor

313 **APPROVED:** _____
314 Anne L. Morgan
315 City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk