

ORDINANCE NO. _____

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

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

PART 1. FINDINGS.

The council finds the following:

- (1) The Strategic Housing Blueprint (Blueprint) establishes a City-wide goal to produce a total of 135,000 new units with a goal of at least 60,000 new income restricted units by 2027.
- (2) There is a need for affordable housing of all types throughout the City including, but not limited, to single family, duplex, townhome, condominium, and multi-family.
- (3) The City is dedicated to finding creative, innovative solutions to address the City's affordable housing crisis, to create more affordable housing, to increase the effectiveness of public dollars used for affordable housing, and to meet the goals of the Blueprint.
- (4) In November 2018, voters approved \$250 million for affordable housing. Additionally, 4% and 9% Low Income Housing Tax Credits (LIHTC) are popular financing tools to create affordable housing and require at least 50% of a development's dwelling units to serve households that average 60% median family income.
- (5) This city-wide program, which was initiated in Resolution No. 20190221-027, is necessary to encourage the development of affordable housing throughout the City.

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

Division 4. Residential Affordable Housing Development Bonus Program.

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

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

§ 25-1-721 DEFINITIONS.

In this division,

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

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

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

§ 25-1-722 ELIGIBILITY.

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

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

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

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

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

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

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

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

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

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

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- (3) the proposed development 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;
- (4) the applicant provides current tenants with:
 - (a) notice and information about the proposed development on a 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) Except for a Type 2 owner-occupied development that complies with the requirements in Section 25-1-722(C)(3), at least 50 percent of the owner-occupied dwelling units must serve 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.

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- (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.

§ 25-1-724 CERTIFICATION.

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

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

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

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

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

§ 25-2-518 QUALIFYING DEVELOPMENT.

- (A) In this section, a qualifying development is a development certified under Section 25-1-724 (*Certification*) and participating in the Affordable Housing Bonus Program.
- (B) Notwithstanding any ordinance or City Code provision to contrary, a qualifying development is a permitted use under Section 25-2-491 (*Permitted, Conditional, and Prohibited Uses*) in:
- (1) a residential base zoning district;
 - (2) a commercial base zoning district;
 - (3) a special purpose base zoning district, except on a site designated:
 - (a) agricultural (AG),
 - (b) aviation (AV); or
 - (4) a combining and overlay district.

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

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

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

§ 25-2-534 QUALIFYING DEVELOPMENT EXCEPTIONS.

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

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

(C) A Type 1 development may:

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

(2) reduce front yard setbacks by 50 percent;

(3) reduce rear setbacks by 50 percent; and

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

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

(b) six dwelling units.

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

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

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

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

(b) eight dwelling units.

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

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

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

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

(I) In this section,

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

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

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

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

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

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

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

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

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

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

(1) The applicant pays a fee in-lieu to be used by the city to construct and maintain accessible spaces in the vicinity of the qualifying development. 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 qualifying development is ineligible for a fee in-lieu is final.

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

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

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

PASSED AND APPROVED

_____, 2019 § _____
Steve Adler
Mayor

APPROVED: _____
Anne L. Morgan
City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk