

## CODE AMENDMENT REVIEW SHEET

**Amendment:** C02-2021-006 Amending Title 25-2(E) 4.3 Vertical Mixed-Use Buildings

**Description:**

In response to adopted direction from both the Planning Commission and the City Council, amend certain provisions in City Code related to the voluntary density bonus known as the Vertical Mixed-Use (VMU) program.

- Create a new tier in the VMU program that grants up to 30 feet of additional bonus height in exchange for Affordable Housing Community Benefits.
- Refine requirements for developments that participate in the VMU program including affordability requirements and general provisions to affirmatively further Fair Housing and inclusion.

**Staff Recommendation:**

Staff recommends approval of this amendment.

This amendment is supported by adopted policy direction in the Austin Strategic Housing Blueprint as well as the Displacement Mitigation Strategy and the City of Austin's Fair Housing Action Plan.

**Board and Commission Actions**

Code amendment initiated by the Planning Commission on July 27, 2021.

**City Council Action**

[Resolution No. 20211118-052](#) initiated by the City Council on November 18, 2021.

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## Vertical Mixed-Use Code Amendments Staff Report

This document provides the Housing and Planning Department staff recommendation and additional context for the Vertical Mixed Use (VMU) program amendments (C02-2021-006) in response to Planning Commission direction adopted on July 27, 2021, as well as Council [Resolution No. 20211118-052](#).

### Staff Recommendation

#### Set-Aside Rates and Affordability Levels

Staff recommends offering two options for the set-aside rate in the new tier of the VMU program that corresponds to affordability depth or the provision of onsite income-restricted housing. For rental developments, twelve percent of the units should be set-aside as income-restricted to households earning no more than 60% of the Austin-Round Rock MSA Median Family Income or ten percent of the units should be set-aside as income-restricted to households earning no more than 50% of the Austin-Round Rock MSA Median Family Income. For ownership developments, twelve percent of the units should be set-aside as income-restricted to households earning no more than 80% of the Austin-Round Rock MSA Median Family Income or the corresponding value of twelve percent of the units should be paid as a fee in-lieu of onsite income-restricted units.

A summary of the staff recommendation for affordability requirements in the Vertical Mixed-Use program is shown in the table below. Amendments to the current code provisions are shown in blue.

	Bonus Entitlements	Community Benefits	Affordability Requirements	
VMU	<ul style="list-style-type: none"> <li>Residential uses</li> <li>Unlimited FAR</li> <li>Waiver of site dimensional requirements</li> <li>60% reduction in parking minimum</li> </ul>	<ul style="list-style-type: none"> <li>Active ground floor use</li> <li>Mix of land uses near transit</li> <li>Heightened design standards</li> <li>Regulated Affordability</li> </ul>	<u>Rental Developments</u> <i>40-year affordability period</i>	<u>For-Sale Developments</u> <i>99-year affordability period</i>
			10% set-aside affordable to 60% Median Family Income	10% set-aside affordable to 80% Median Family Income <b>OR</b> Fee equivalent to 10% of total units
VMU2 <i>(proposed)</i>	<ul style="list-style-type: none"> <li>All of the above</li> <li>30ft bonus height</li> </ul>		10% set-aside affordable to 50% Median Family Income <b>OR</b> 12% set-aside affordable to 60% Median Family Income	12% set-aside affordable to 80% Median Family Income <b>OR</b> Fee equivalent to 12% of total units

The change in the affordability levels is reflective of Planning Commission-initiated changes to standardize the affordability depths of the current VMU program to 60% of MFI for rental developments and 80% of MFI for ownership developments. Staff are proposing the two options for the set-aside rate in the second tier of the VMU program to offer some flexibility within the program since it is not calibrated to current market conditions as well as to create pathways to deeper affordability levels within density bonus programs. Staff compared the cost to buy down market-rate units at the two proposed affordability levels with an equivalent bedroom mix and found approximate proportionality between the two options.

Staff were not able to calibrate the set-aside percentages in the new tier in the VMU program on the Council-requested timeline. The modeling tool developed by consultants for the purpose of supporting this type of calibration work is not yet ready for use. While the model is undergoing additional quality control measures, staff proceeded with creating the new tier in the existing VMU density bonus program with interim set-aside percentages with the acknowledgement that the program requirements should be updated in the future.

Before establishing the new tier in the VMU program, staff reviewed comparable, calibrated work from the LDC Revision. While the majority of VMU-zoned sites have Commercial Services (CS) zoning, there are at least five other base zones are paired with the “-V” combining district within the city, including Community Commercial (GR), Limited Office (LO), Neighborhood Commercial (LR), General Office (GO), and Neighborhood Office (NO). These base zones allow different heights and therefore result in different bonus heights with 30-foot height bonus. The most comparable zones from the LDC Revision were calibrated to a set-aside rate of 5% in most instances and up to 12% in some parts of West and South Austin. While this comparison may provide some frame of reference, there are inconsistencies between the proposed LDC zones and the current LDC zones beyond just their allowable heights. The housing market has also shifted substantially in some parts of town since this calibration work was conducted in 2019.

### Fee In-Lieu for Condominium Developments

Staff recommend the addition of a fee in-lieu option for ownership developments only. Rental developments that participate in the VMU program would be required to provide the affordable units onsite. If approved, the Housing and Planning Department would bring forward a recommended fee in-lieu rate for the Vertical Mixed-Use program in the City budget process within the department’s fee schedule. Staff anticipate calibrating said fee on a per unit basis and varying by the number of bedrooms corresponding to the bedroom mix in the market-rate development. An example of this format for the fees is shown in the table below, which shows the proposed fee in-lieu rates from the LDC Revision for the citywide Affordable Housing Bonus Program.

Example of proposed fees in-lieu of onsite income-restricted affordable units from the draft LDC Revision citywide Affordable Housing Bonus Program

Unit Size	Studio	1-Bedroom	2-Bedroom	3-Bedroom
Fee-in-Lieu	\$135,000	\$180,000	\$335,000	\$440,000

The Housing and Planning Department is committed to bringing affordable homeownership options to our community; however, through implementation of past affordability agreements with income-restricted homeownership units in predominantly market-rate condominium developments, staff have discovered that there are barriers to securing long-term affordability and stability for low-income homeowners in these types of developments that the City cannot control for. Both homeowners’ association fees and property tax assessments from the county appraisal district have created concerns for low and moderate-income homeowners in income-restricted units that may prevent them from maintaining housing affordability and may even put them at risk of displacement. For this reason, staff recommend collecting fees in-lieu of onsite income-restricted units within for-sale developments and directing these fees towards long-term affordable homeownership projects such as Community Land Trusts.

## Additional General Requirements

Staff recommend the inclusion of a set of general provisions that apply to all developments that voluntarily participate in the VMU program. These provisions would affirmatively further Fair Housing choice by protecting low and moderate-income people and creating more inclusive, equitable outcomes for our community. Staff recommend that these requirements be included uniformly in all density bonus programs within the LDC; however, given the current opportunity, they have been drafted to apply to the VMU section specifically.

A brief description of the proposed additional general requirements for VMU developments is provided below:

- Source of income discrimination protection
  - Ensures that a prospective tenant in a VMU development would not be denied housing based solely on their source of income, including housing vouchers.
- Dispersion of and equal access to affordable units
  - Disperses income-restricted units through the development to avoid clustering
  - Ensure access to income-restricted units through the same routes as market-rate units
  - Guarantees access to all on-site amenities for income-restricted units that are available to market-rate units, including parking facilities
- Comparable design standards for affordable units
  - Requires functionally equivalent finishes, features, and appliances within income-restricted units and market-rate units
  - Requires that all interior components in income-restricted units are durable, good quality, and consistent with federal, state, and local standards
- Proportional bedroom count
  - Requires that the income-restricted units within a development match the mix of the number of bedrooms in the market-rate units in order to create more affordable multibedroom housing units
  - Allows for two one-bedroom or efficiency units to be exchanged for one two-bedroom units or three one-bedroom or efficiency units to be exchanged for one three-bedroom unit in an effort to create more affordable multibedroom housing units
- Floating rental units
  - Allows for the location of the income-restricted units in a rental development to change over time so long as the property maintains the required total number of affordable units for the duration of the affordability period
- Simultaneous availability
  - Ensures that income-restricted affordable units are made available concurrently with market-rate units, or requires plans for sequencing construction in multi-phase developments
- Affirmative marketing
  - Requires the development to prepare and utilize an affirmative marketing and outreach plan that affirmatively furthers Fair Housing
- Tenant's Right to Organize
  - Enhances provisions provided in Texas Property Code to further protect a tenant's right to conduct activities related to a tenant organization without retaliation
  - Requires the owner of a VMU building to meet with tenants and members of a tenant organization to discuss matters related to the property as requested

### Non-Residential Bonus Area Fee

Recent questions from developers have brought it to staff's attention that there are code provisions that state that a bonus area fee will be set by Council for upper-level non-residential space within VMU buildings, but no such fee has ever been adopted by Council.

The current code provisions requires that a minimum of one floor within a VMU Building be dedicated to residential uses. With the addition of a height bonus through VMU2, there will be potential for a greater amount of upper-level non-residential space to be created within VMU Buildings.

Given this information, Council may elect to provide direction to staff to bring forward a recommendation for this non-residential bonus area fee for the Vertical Mixed-Use program in the City budget process within the department's fee schedule.



**HOUSING &  
PLANNING**

# Vertical Mixed-Use Research

February 2022

# Staff Research

- VMU Developments
  - Completed
  - In the Pipeline
  - Tenure
  - By Council District
- Dispersion of VMU Zoning
  - Number of sites
  - Total Acreage
  - By Council District
  - Displacement Risk Areas
  - High Opportunity Areas
- Other Policies Impacting VMU-Zoned Properties
  - Conditional Overlays
  - Compatibility Standards



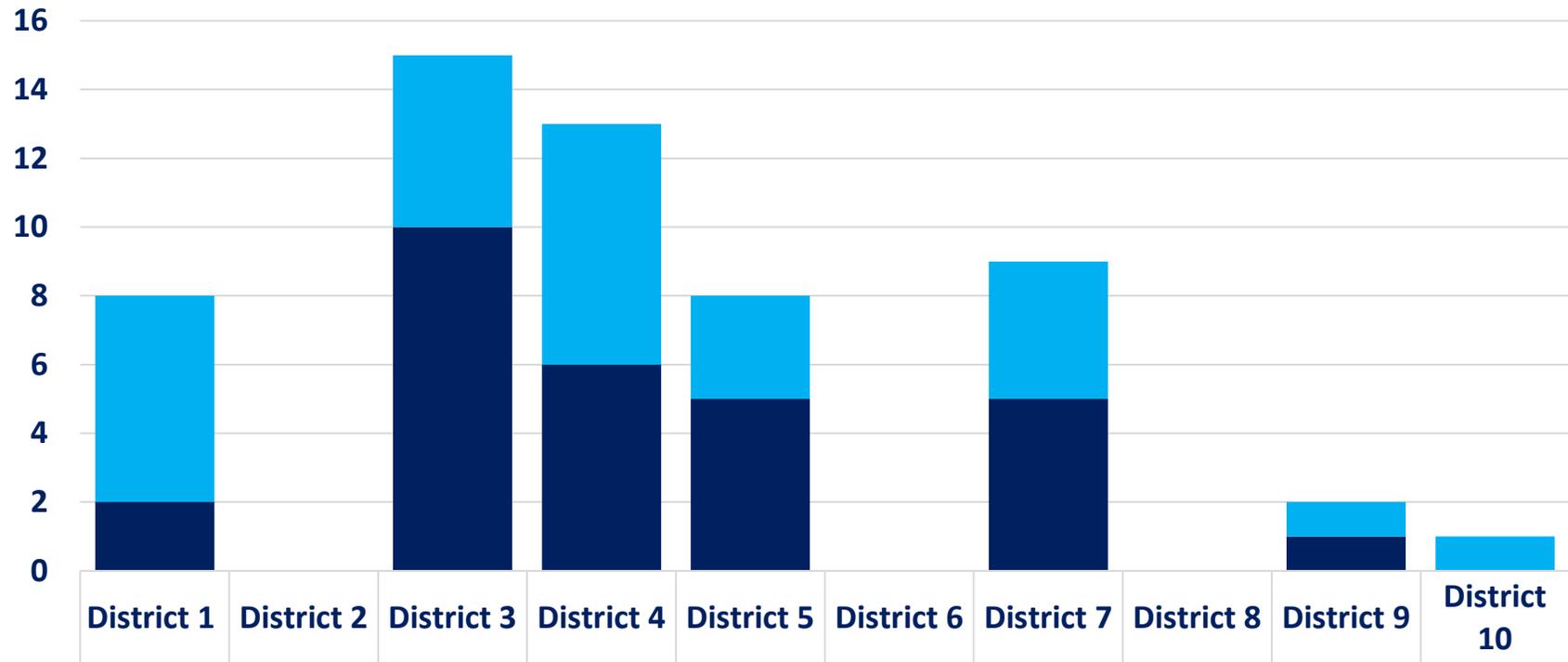
# Vertical Mixed-Use Developments

<b>VMU Developments</b>			
	<b>Completed</b>	<b>In the Pipeline</b>	<b>Notes</b>
VMU Buildings	29	9 under construction 18 in planning	<i>Buildings under construction have been issued a building permit but have not receive a Certificate of Occupancy (CO). Buildings in planning have received a certification letter to utilize VMU but may be in early stages of planning and development ranging from site plan under review to building plan under review.</i>
VMU Housing Units	5,379	2,037 under construction 3,992 in planning	<i>These totals reflect all housing units within VMU buildings including both market-rate and income-restricted housing units.</i>
Income-Restricted Affordable VMU Housing Units	540	496 under construction 404 in planning	<i>These totals reflect income-restricted affordable units within VMU buildings ranging from below 60% MFI to 100% MFI. Two projects in the pipeline are developing with higher numbers of income-restricted affordable units than required under VMU, which brings the percentage of total units that are income-restricted to over 10%.</i>
VMU Housing Units by Tenure	98% rental 2% ownership	99% rental 1% ownership	



# Vertical Mixed-Use Developments

VMU Developments By Council District

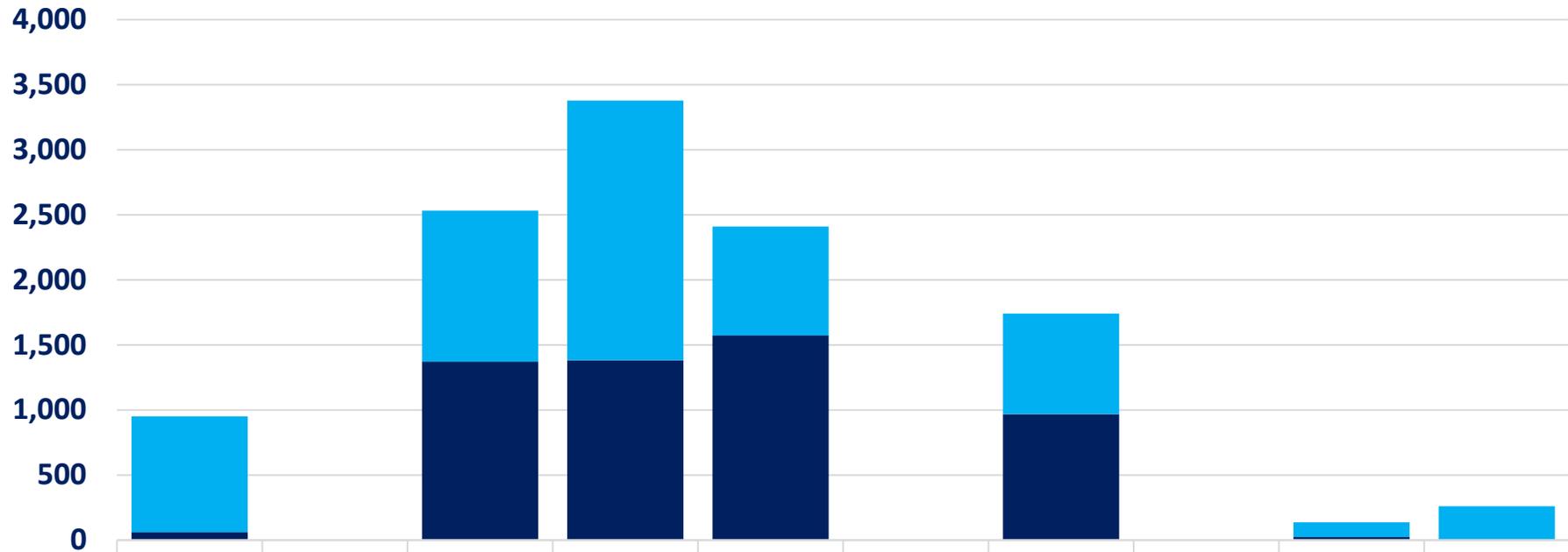


Projects In Development	6	0	5	7	3	0	4	0	1	1
Projects Completed	2	0	10	6	5	0	5	0	1	0



# Vertical Mixed-Use Developments

**VMU Housing Units by Council District**



	District 1	District 2	District 3	District 4	District 5	District 6	District 7	District 8	District 9	District 10
units in development	888	0	1,161	1,995	838	0	774	0	113	260
units completed	63	0	1,371	1,382	1,572	0	968	0	23	0

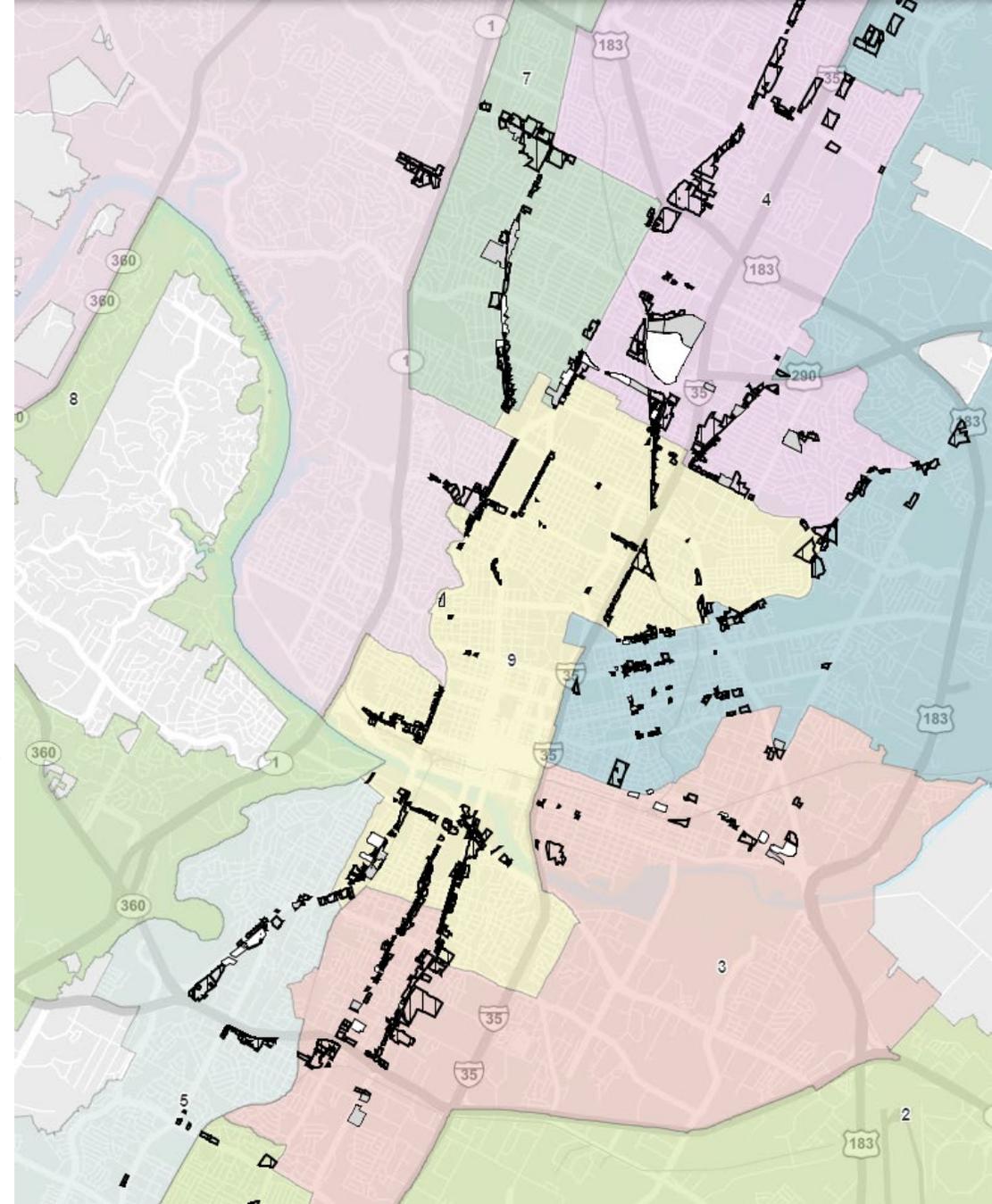


# Dispersion of VMU Zoning

VMU Zoning	
Total Sites with -V	Total Acres with -V
~ 818	~ 1,900

Council Districts

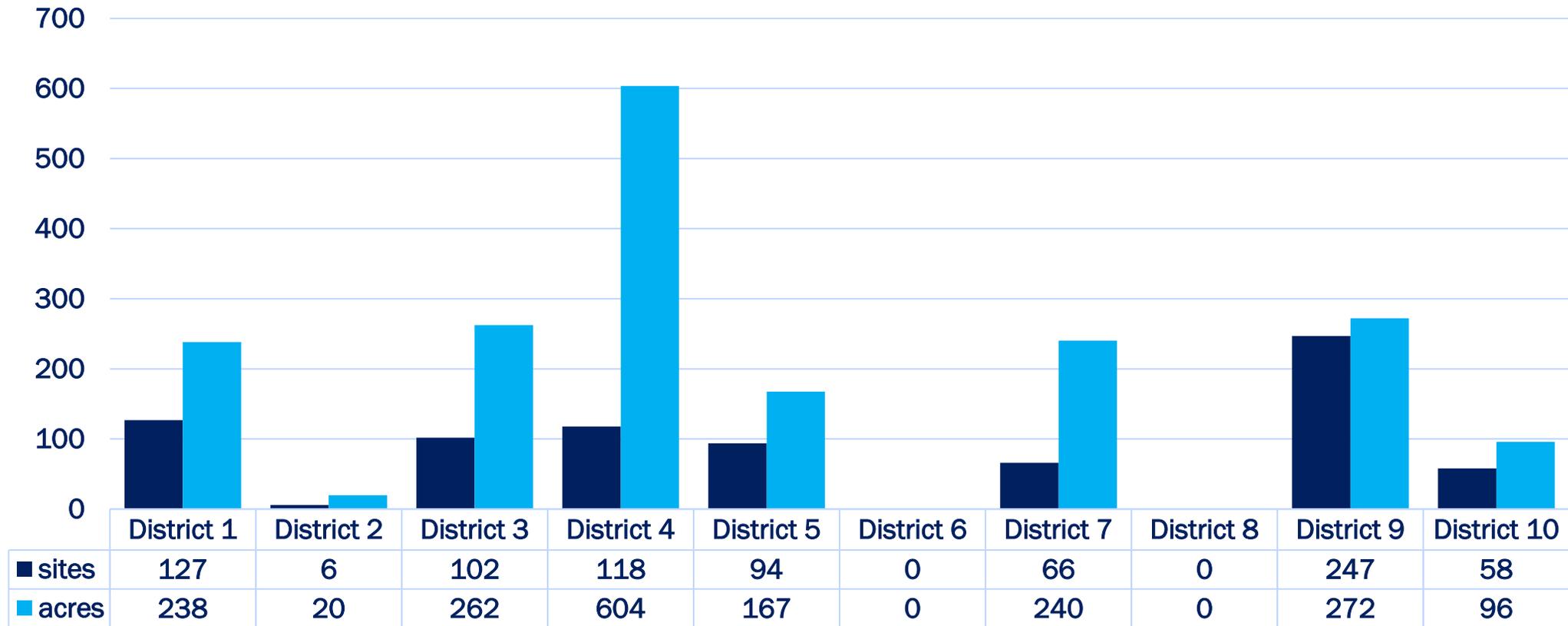
- 1
- 2
- 3
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- 7
- 8
- 9
- 10





# Dispersion of VMU Zoning

VMU Zoning by Council District



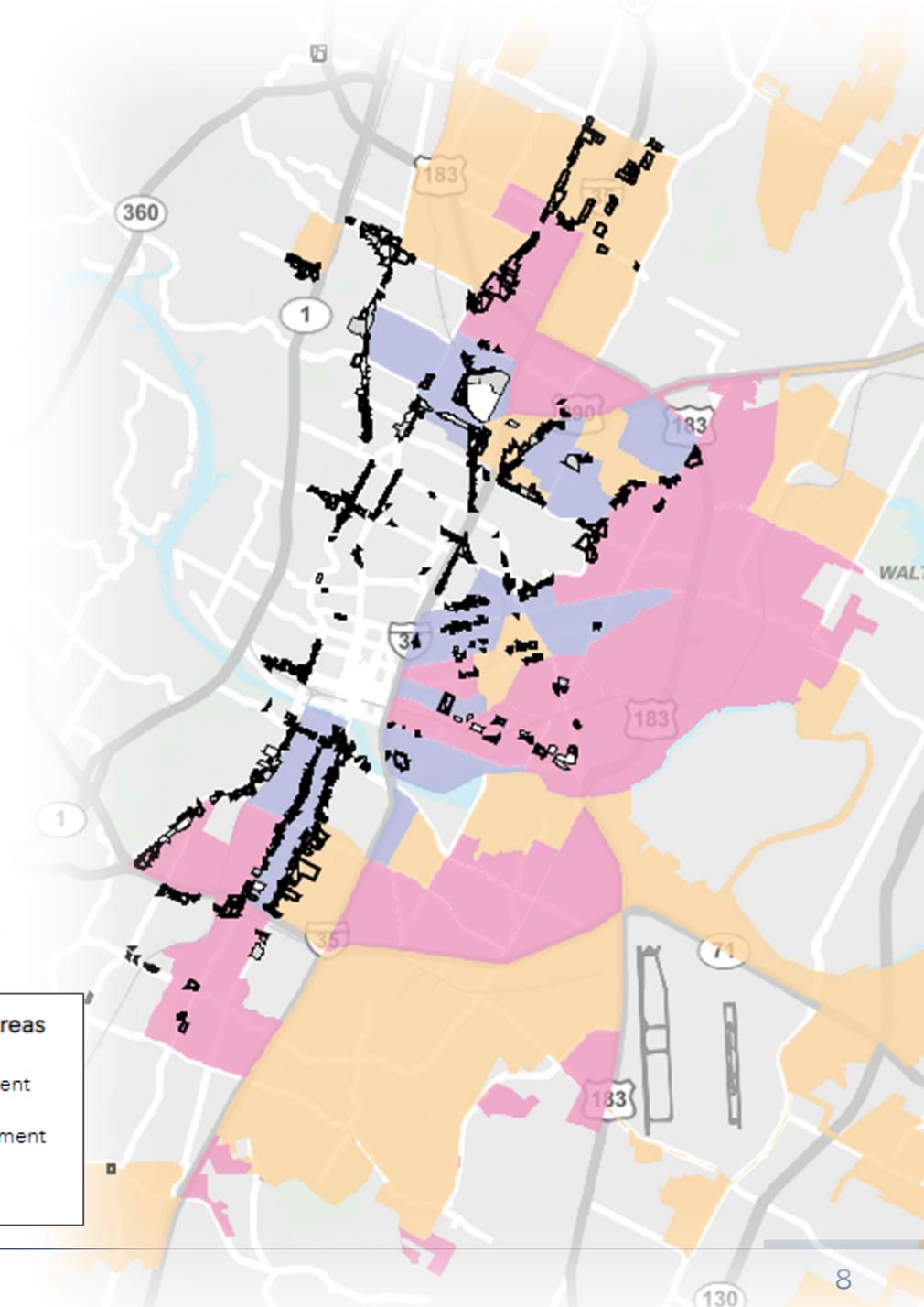
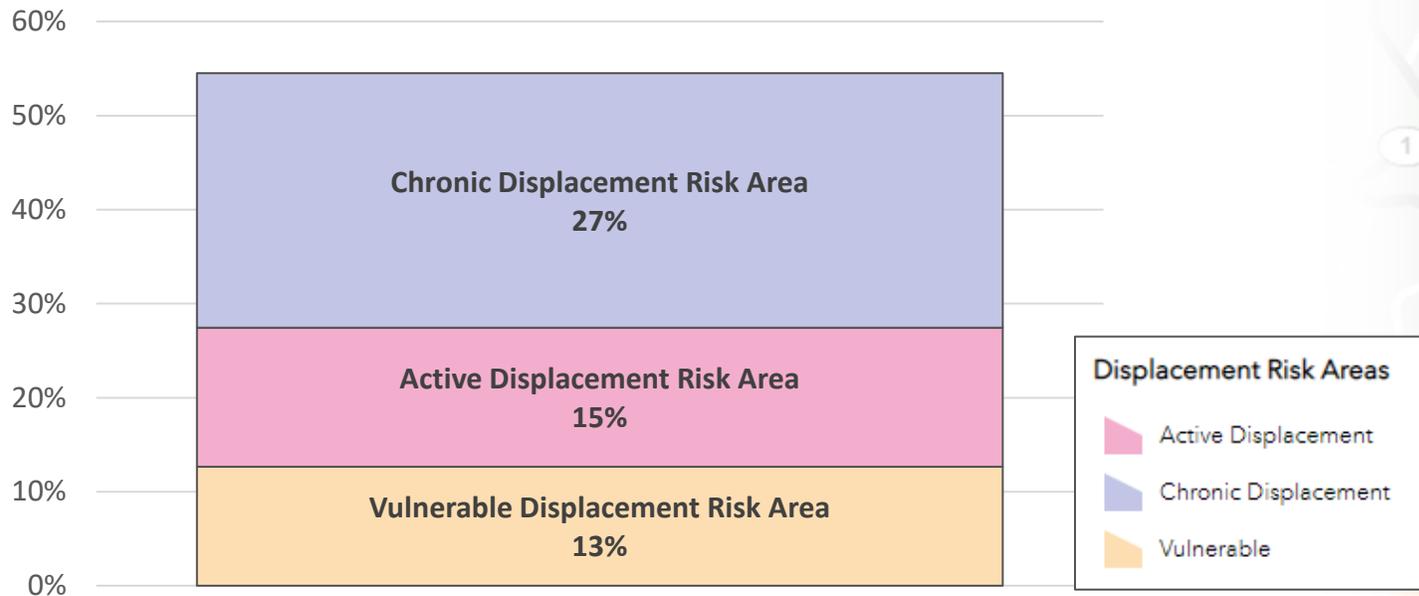


# Dispersion of VMU Zoning

## Displacement Risk Areas

- 55% of VMU-Zoned Sites are within Displacement Risk Areas

VMU-Zoned Sites within Displacement Risk Areas

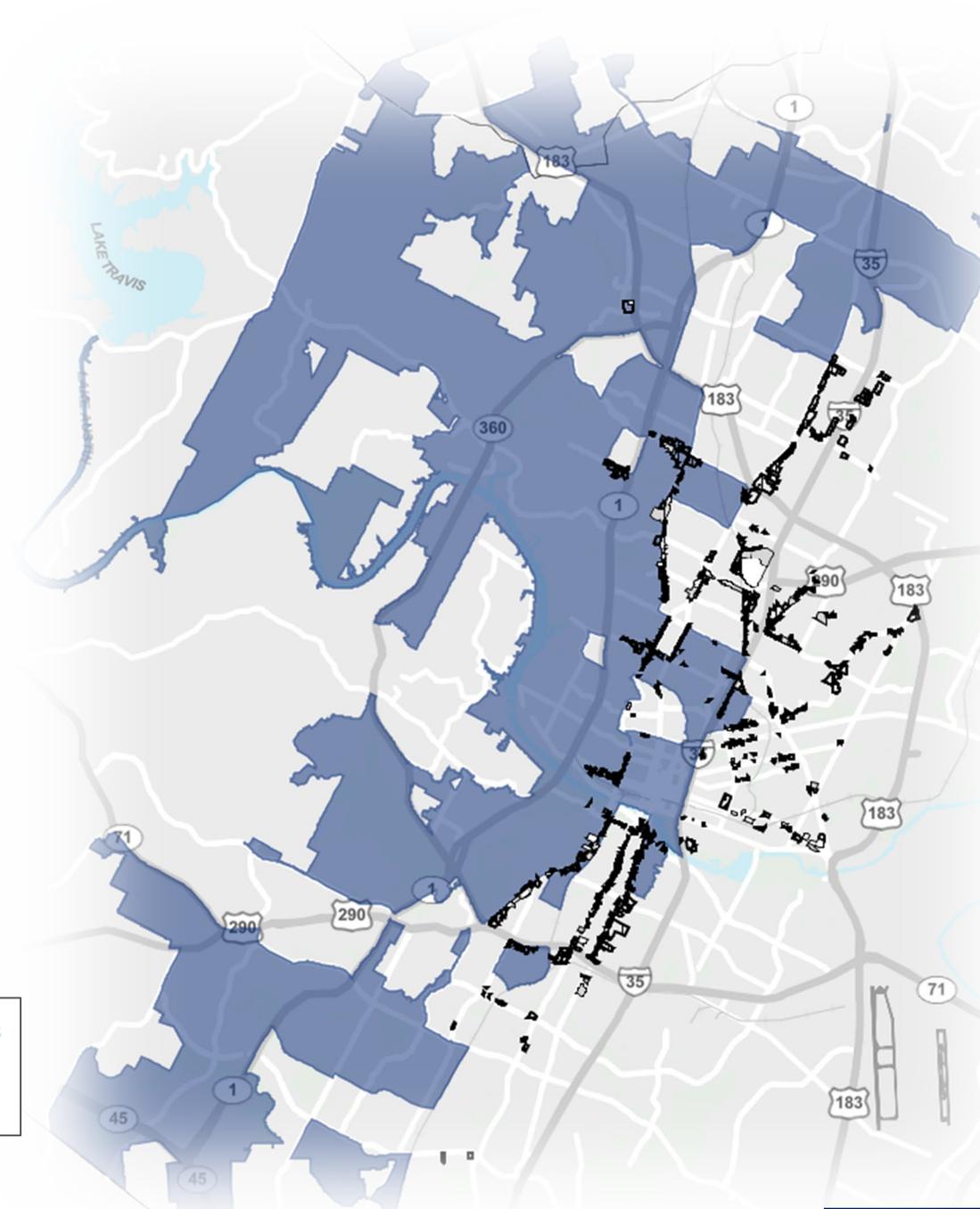
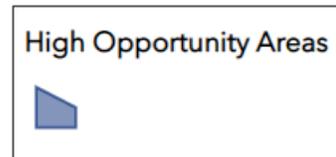




# Dispersion of VMU Zoning

## High Opportunity Areas

- 33% of VMU-Zoned Sites are within High Opportunity Areas



*High Opportunity Areas are defined by Enterprise Community Partners Opportunity360 Index.*

# Other Policies Impacting VMU-Zoned Sites

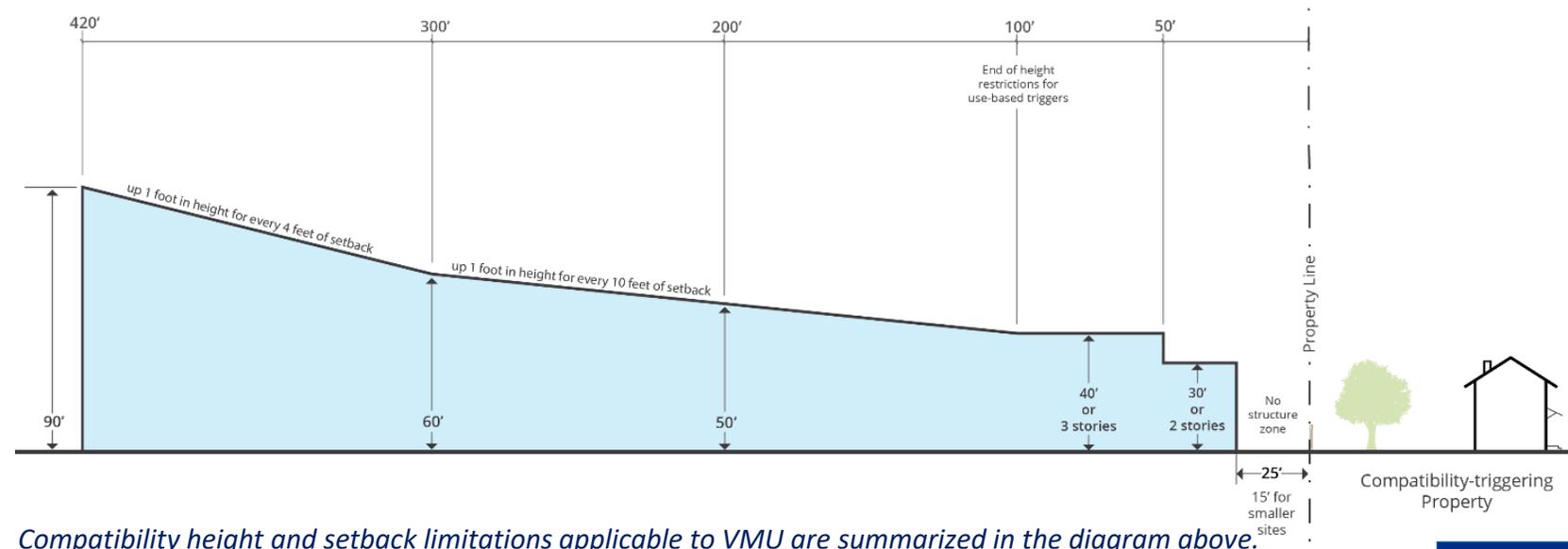
## Conditional Overlays (CO's)

- Conditional Overlay Combining Districts, or CO's, are used to modify use and site development regulations on a site-by-site basis. CO's are always more restrictive than the restrictions otherwise applicable to the property. CO's can regulate many site development regulations, including lowering the maximum allowable building height on a site.
- **67% of VMU-zoned sites have a Conditional Overlay.** Staff did not research specific CO's on VMU-zoned sites; however, it is possible that many of these sites with CO's have additional height restrictions that may limit the ability to utilize the 30-foot height bonus outlined in the new tier of the VMU program.

# Other Policies Impacting VMU-Zoned Sites

## Compatibility Standards

- Compatibility standards apply to sites that are within 540 feet of the property line of an urban family residence (SF-5) or more restrictive *zoning* district.
  - For the purposes of the new VMU height bonus, the distance that could affect a VMU building's maximum height is 420 feet.
- Compatibility standards also apply when a site is adjacent to a lot on which a *use* permitted in an SF-5 or more restrictive zoning district is located.
- Compatibility Standards require:
  - Height and Setback Limitations
  - Scale and Clustering Requirements
  - Screening Requirements
  - Design Regulations



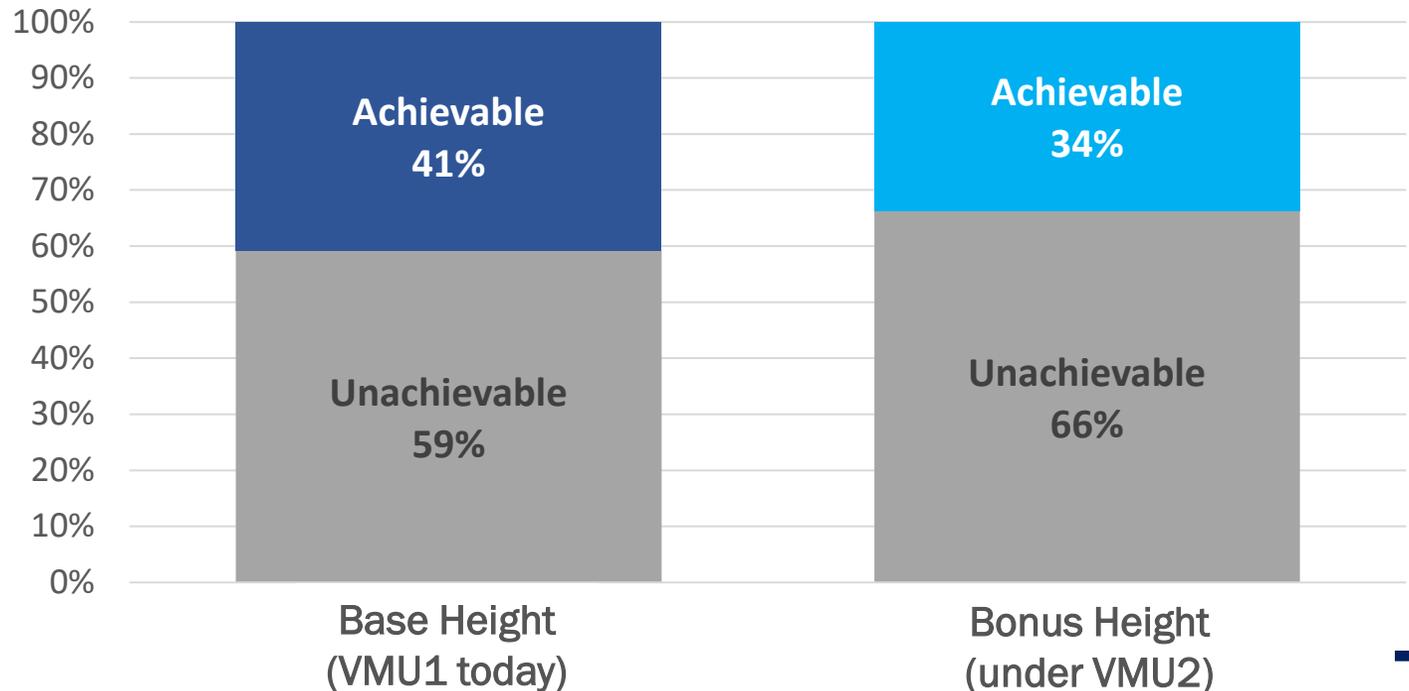
# Other Policies Impacting VMU-Zoned Sites

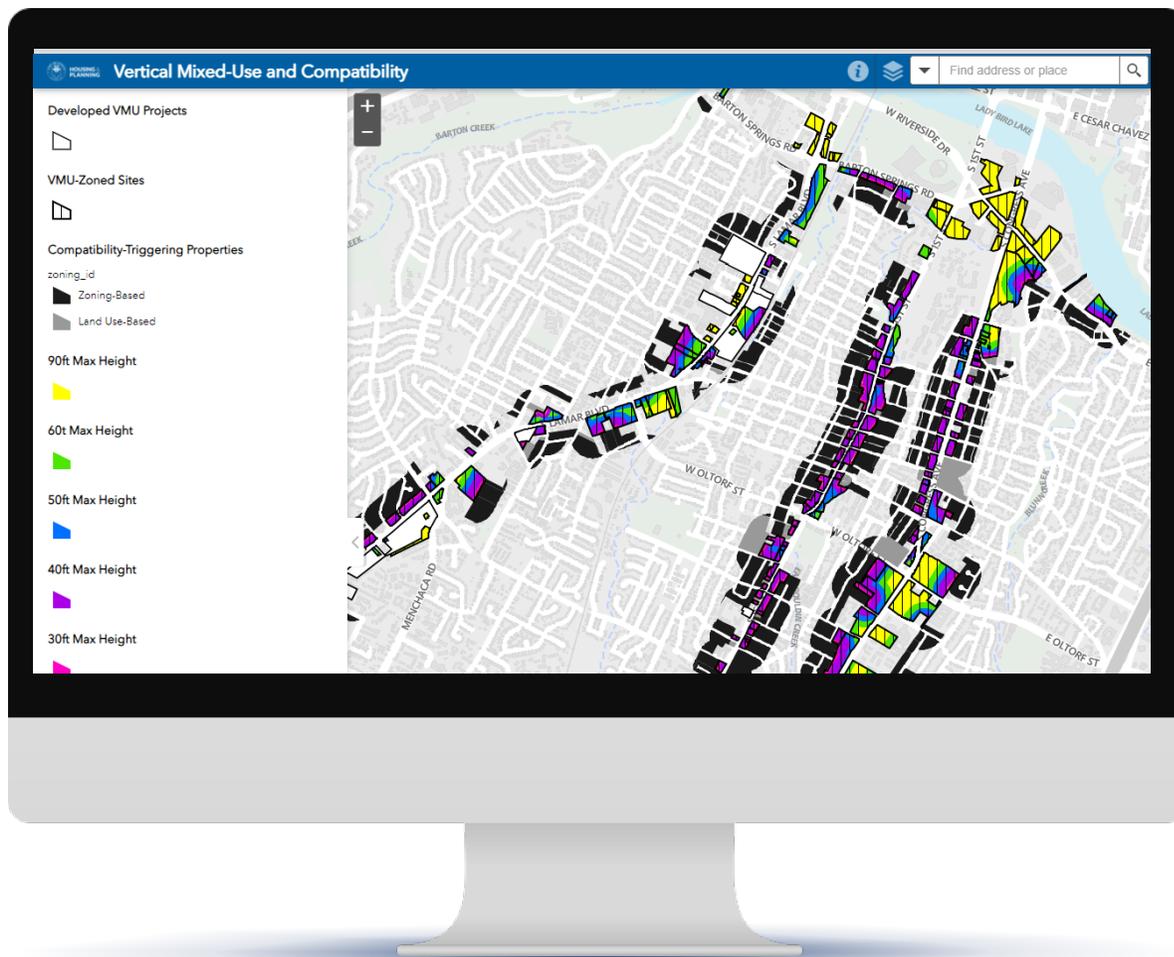
## Compatibility Standards

- 41% of VMU-zoned sites could build to their **base** height after compatibility standards are applied.
  - The remaining 59% of VMU-zoned sites are prohibited from building to the maximum height allowed by their base zoning due to compatibility standards.
- 34% of VMU-zoned sites could potentially build to the **bonus** height under VMU2 after compatibility standards are applied.
  - The remaining 66% of VMU-zoned sites would be prohibited from building to the maximum height allowed with the 30-foot height bonus.

*\*For purposes of this analysis, a site was considered buildable if the maximum height could be achieved for at least 10,000 square feet. This analysis included all sites with VMU zoning and did not exclude undevelopable or recently developed sites.*

VMU-Zoned Sites Allowable Heights with Compatibility Standards





## Compatibility + VMU Web Map

- Interactive Map
- View where VMU-Zoned Sites are Located
  - Including layers for Displacement Risk Areas, High Opportunity Areas, and the Transit Priority Network
- View allowable heights with the new bonus on VMU-Zoned sites after Compatibility Standards
- View VMU-Developed and Developing Buildings

The web map can be accessed here:

<https://austin.maps.arcgis.com/apps/webappviewer/index.html?id=bff1cf81f6534a0bb2f8a23988d499c2>