

1 **CITY CODE CHAPTER 25-2, SUBCHAPTER E RELATING TO VERTICAL**
2 **MIXED USE BUILDINGS.**

3
4 **PART 1.** Section 4.3.3.E. of Chapter 25-2, Subchapter E is amended to read as follows:

5 **E. Height, Dimensional and Parking Requirements.**

- 6 1. VMU building[s] height[are subject to the height restrictions as provided in
7 other sections of this Code].
- 8 a. A VMU1 building is subject to the height restrictions as provided in
9 other sections of this Code.
- 10 b. A VMU2 building may exceed the maximum building height in the
11 base zoning district by a maximum of 30 feet, subject to the
12 compatibility standards of Section 4.3.3.D.
- 13 2. Except as provided in Section 4.3.5., a VMU building that meets the
14 exemption and bonus requirements in subsection F below is not subject to
15 certain dimensional standards applicable in the base zoning district. These
16 standards include the following:
- 17 a. Minimum site area requirements (if applicable);
- 18 b. Maximum floor area ratio;
- 19 c. Maximum building coverage;
- 20 d. Minimum street side yard setback and interior yard setback; and
- 21 e. Minimum front yard setback; provided, however, that if the right-of-
22 way is less than 60 feet in width, the minimum front yard setback for
23 buildings three or more stories in height shall be 30 feet from the
24 centerline of the street to ensure adequate Fire Department access.
- 25 3. For all uses in a VMU building, the minimum off-street parking requirement
26 shall be 60 percent of that prescribed by Appendix A (*Tables of Off-Street*
27 *Parking and Loading Requirements*). This reduction may not be used in
28 combination with any other parking reduction. Only the parking
29 requirements for commercial uses are subject to modification through the
30 opt-in/opt-out process in Section 4.3.5.
- 31
32 4. VMU building includes VMU1 building and VMU2 building except as
33 otherwise defined.

34 **PART 2.** Section 4.3.3.F. of Chapter 25-2, Subchapter E is amended to read as follows:

35 **F.** **[Affordability Requirements] Exemption and Bonus Requirements.** To be
36 eligible for the dimensional or parking standards exemptions, or building height
37 bonus if applicable, in Subsection E of this section, the residential units in a VMU
38 building shall meet the following [~~affordability~~] requirements, which shall run with
39 the land. This ordinance does not amend or repeal graphics or pictures that are used
40 to illustrate various code requirements in the published version of [Chapter 25-2,](#)
41 Subchapter E (*Design Standards and Mixed Use*).

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43 1. Affordability Requirements for Owner-Occupied Units.

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45 a. ~~[Five percent of the residential units in the VMU building shall be~~
46 ~~reserved as affordable, for not less than 99 years from the date a~~
47 ~~certificate of occupancy is issued, for ownership and occupancy by~~
48 ~~households earning no more than 80 percent of the current Annual~~
49 ~~Median Family Income for the City of Austin Metropolitan Statistical~~
50 ~~Area as determined by the Director of Neighborhood Housing and~~
51 ~~Community Development Department.] A building qualifies as a~~
52 ~~VMU1 building when a minimum of ten percent of the residential~~
53 ~~units within the building are reserved as affordable, for at least 99~~
54 ~~years from the date of initial sale, for ownership and occupancy by~~
55 ~~households earning 80 percent or less of the current Austin-Round~~
56 ~~Rock Metropolitan Statistical Area Medium Family Income as~~
57 ~~determined by the Director of the Housing and Planning Department.~~

58 b. ~~[In addition, five percent of the residential units in the VMU building~~
59 ~~shall be reserved, for not less than 99 years from the date a certificate~~
60 ~~of occupancy is issued, for ownership and occupancy by households~~
61 ~~earning no more than 100 percent of the Annual Median Family~~
62 ~~Income.] A building qualifies as a VMU2 building when a minimum~~
63 ~~of 12 percent of the residential units within the building are reserved~~
64 ~~as affordable, for at least 99 years from the date of initial sale, for~~
65 ~~ownership and occupancy by households earning 80 percent or less of~~
66 ~~the current Austin-Round Rock Metropolitan Statistical Area Medium~~
67 ~~Family Income as determined by the Director of the Housing and~~
68 ~~Planning Department.~~

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70 c. An applicant for a proposed owner-occupied housing development
71 may elect to meet the affordability requirement without providing
72 income-restricted units onsite by paying a fee in-lieu to the Housing

Trust Fund. At a minimum the fee-in-lieu shall be equivalent to the required percentage of the total residential units, including the mix of bedrooms required in Section 4.3.5.c., at the rate set in the fee schedule at the time of formal site plan submission.

[e]d. The city in its sole discretion may elect to subsidize ~~[an]~~ additional ~~[ten percent of the]~~ for-sale residential units in the building, at an affordability level consistent with criteria and procedures established by the Director of the Housing and Planning Department.

2. Affordability Requirements for Rental Units.

a. ~~[Ten percent of the residential units in the VMU building shall be reserved as affordable, for a minimum of 40 years following the issuance of the certificate of occupancy, for rental by households earning no more than 80 percent of the Annual Median Family Income.]~~ A building qualifies as a VMU1 building when a minimum of ten percent of the residential units within the building are reserved as affordable, for at least 40 years from the date of issuance of the certificate of occupancy, for lease and occupancy by households earning 60 percent or less of the current Austin-Round Rock Metropolitan Statistical Area Medium Family Income as determined by the Director of the Housing and Planning Department.

b. A building qualifies as a VMU2 building:

(i) When a minimum of 12 percent of the residential units within the building are reserved as affordable, for at least 40 years from the date of issuance of the certificate of occupancy, for lease and occupancy by households earning 60 percent or less of the current Austin-Round Rock Metropolitan Statistical Area Medium Family Income as determined by the Director of the Housing and Planning Department; or

(ii) When a minimum of ten percent of the residential units within a VMU building are reserved as affordable, for at least 40 years from the date of issuance of the certificate of occupancy, for lease and occupancy by households earning 50 percent or less of the current Austin-Round Rock Metropolitan Statistical Area Medium Family Income as determined by the Director of the Housing and Planning Department.

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115 [b]c. As part of the one-time opt-in/opt-out process described in Section
116 4.3.5., an applicable neighborhood association or neighborhood
117 planning team may request that the affordable rental units be available
118 for renters earning a lower percentage of the annual median family
119 income, to as low as 60 percent of the median family income. VMU
120 projects that file zoning or site plan applications after the effective
121 date of the first interim VMU ordinance and prior to September 1,
122 2006, will not be subject to this neighborhood affordability
123 customization; and instead shall set aside affordable rental units as
124 required by subsection 2.a. above or provide for affordable units as
125 otherwise agreed to by an applicable neighborhood prior to September
126 1, 2006, provided that VMU projects are allowed on the applicable
127 site following the completion of the opt-in/opt-out process.

129 [e]d. The city may elect to subsidize [~~an~~] additional [~~ten percent of the~~]
130 residential units in the building for rental purposes for residents at any
131 level of affordability pursuant to criteria and procedures established
132 by the Director of the Housing and Planning Department.

134 3. ~~Affordability Definition. For purposes of this subsection, a unit is affordable~~
135 ~~for purchase or rental if the household is required to spend no more than 30~~
136 ~~percent of its gross monthly income on utilities and mortgage or rental~~
137 ~~payments for the unit as determined by the City's Neighborhood Housing~~
138 ~~and Community Development Department, based on the current Annual~~
139 ~~Median Family Income for the Austin Metropolitan Statistical Area.~~

- 141 a. For purposes of this subsection, a unit is affordable for purchase
142 when:
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144 (i) The unit is sold to an income-eligible household for an amount
145 not to exceed the corresponding sales prices published annually
146 by the Director of the Housing and Planning Department; and
147 (ii) When determining the maximum affordable sales price, the
148 Director of Housing and Planning Department may include an
149 assumption that a homeowner will be required to pay an
150 ownership association fee.

151 b. For purposes of this subsection, a unit is affordable when the unit is
152 leased to an income-eligible household for an amount not to exceed

153 the corresponding rental prices published annually by the Director of
154 the Housing and Planning Department.

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156 4. Certification.

157 a. In this section, director means the director of the Housing and
158 Planning Department.

159 b. The director is responsible for certifying whether a proposed
160 development meets the exemption and bonus requirements.

161 c. The applicant shall submit an application to the director
162 demonstrating the proposed development meets the exemption and
163 bonus requirements.

164 d. Before the director may certify the proposed development, the
165 applicant shall execute:

166 (i) an agreement to preserve the minimum exemption and bonus
167 requirements for the VMU building; and

168 (ii) a document for recording in the real property records providing
169 notice of or preserves the exemption and bonus requirements for
170 the VMU building.

171 e. The form of the document described in Section 4.3.4.d. must be
172 approved by the city attorney.

173 f. If the director certifies a proposed development under this section, the
174 accountable official is authorized to process a development
175 application for a VMU building.

176 g. The applicant for a housing development shall pay all fees, provide
177 documentation, and fulfill any pre-occupancy requirements prior to
178 the issuance of a certificate of occupancy for the VMU building.

179 5. General Provisions.

180 a. In this section, the director means the Director of the Housing and
181 Planning Department.

182 b. The agreement required in Section 4.3.4.d. must, at a minimum:

183 (i) Prohibit discrimination on the basis of an individual's source of
184 income as defined in Section 5-1-13 (*Definitions*);

185 (ii) Require dispersion of affordable units throughout the housing
186 development;

- 187 (iii) Require equal access and use of on-site amenities, common
188 areas, and parking facilities;
- 189 (iv) Require shared access routes for affordable units and market-
190 rate units;
- 191 (v) Require that affordable units include interior components that
192 are functionally equivalent to market-rate units; and
- 193 (vi) Require the applicant to incorporate lease provisions related to a
194 tenant's right to organize that are consistent with 24 C.F.R.
195 245.100, the lease addendum required as a condition to receive
196 city of Austin Housing Finance Corporation funds, or City Code
197 requirement.

198 c. Unless otherwise approved by the director, the bedroom count for
199 affordable units shall be comparable to the bedroom count for market
200 rate units. At the discretion of the director, two-bedroom or three-
201 bedroom affordable units may count as two or three, one-bedroom
202 (efficiency) affordable units. If the number of units required in this
203 section include less than a whole unit, the unit number is rounded up
204 to the nearest whole unit.

205 d. Affordable for lease unit locations may be rotated within the building,
206 provided that the total number of required affordable units remains in
207 compliance with the exemption and bonus requirements for the
208 affordability period.

209 e. Simultaneous Availability of Affordable Units.

210 (i) In a single-phase housing development, affordable units must be
211 available for occupancy concurrently with the market-rate units.

212 (ii) For a multi-phase housing development, an applicant must
213 submit a development phasing plan that demonstrates how the
214 market rate units and the affordable units will be made available
215 concurrently. This plan must be included as an attachment to
216 the agreement described in Section 4.3.4.d.

217 f. An applicant for a VMU building shall prepare and follow an
218 affirmative marketing and outreach plan for the duration the
219 affordable period, in a form consistent with the U.S. Department of
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225 Housing and Urban Development regulations and approved by the
226 Director of the Housing and Planning Department.

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228 6. Affordability Post-Construction Compliance and Penalty.

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230 a. In this section, director means the Director of the Housing and
231 Planning Department.

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233 b. For a rental development, the owner of a VMU building with
234 affordable for lease units shall provide the director with information
235 that allows the director to verify compliance with the exemption and
236 bonus requirements. The information shall be provided on an annual
237 basis and on a form approved by the director.

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239 c. If, for any reason, the director is unable to confirm the VMU building
240 exemption and bonus requirements were met during any 12-month
241 period, the preceding 12 months may not be used to satisfy the VMU
242 building affordability period.

243
244 d. For an ownership affordable unit, each homebuyer at the time of
245 purchase shall execute a resale restriction agreement in a form
246 approved by the city attorney for recording in the real property
247 records.

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249 e. A person commits an offense if the person fails to comply with the
250 requirement in subsection (a). A culpable mental state is not required,
251 and need not be proved. A person commits a separate offense for
252 each day the person fails to provide the documentation. Each offense
253 is punishable by a fine not to exceed \$500.

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255 7. [4] Fee for Upper-Level Nonresidential Space. The developers of VMU
256 buildings that contain nonresidential uses above the ground-floor shall pay a
257 fee as set by the City Council for all climate-controlled nonresidential space
258 above the ground floor. At the same time that it sets the amount of the fee,
259 the City Council shall also identify a means by which fees paid pursuant to
260 this section shall be reserved only for expenditure within the area of the City
261 from which they were collected.

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263 8. [5] Monitoring and Enforcement. The City shall develop procedures to monitor
264 and enforce this Section.