

ORDINANCE NO.**AN ORDINANCE AMENDING CITY CODE CHAPTER 25-2, SUBCHAPTER E RELATING TO VERTICAL MIXED USE BUILDINGS.****BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

PART 1. Section 4.3.1 of Chapter 25-2, Subchapter E is amended to amend the table to read as follows:

4.3.1 Applicability.

Standard	Applies if the Principal Street Is:	Applies to the Following:
b	Core Transit Corridor, Future Core Transit Corridor	- Mixed Use Combining District - Vertical Mixed Use Overlay District - Properties that opt in to VMU pursuant to 4.3.5.C.3. - Properties designated as V2.
	Highway, Hill Country Roadway, Suburban Roadway, or Urban Roadway	- Mixed Use Combining District - Sites of three acres or more, subject to 4.3.2.B. - Properties that opt in to VMU pursuant to 4.3.5.C.3.

PART 2. Section 4.3.2 of Chapter 25-2, Subchapter E is amended to amend Subsection 4.3.2.A and to add a new Subsection 4.3.2.D. to read as follows:

4.3.2. Where Allowed.

- A. A VMU building is allowed on properties:
1. Within the mixed use (MU) combining district;
 2. Within the Vertical mixed use (VMU) overlay district, subject to the limitations of Section 4.3.5.C **and 4.3.6**; and
 3. That are not located within the MU combining district or VMU overlay, but which have:
 - a. Opted-in under the process provided for under Section 4.3.5.C.3; or
 - b. Obtained a conditional use permit for VMU, subject to the limitations in Section 4.3.2.B.

D. A VMU building includes VMU1 building and VMU2 building except as otherwise defined.

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

E. Height, Dimensional and Parking Requirements.

1. ~~VMU building[s] height[are subject to the height restrictions as provided in other sections of this Code].~~
 - a. A VMU1 building is subject to the height restrictions as provided in other sections of this Code.
 - b. A VMU2 building may exceed the maximum building height in the base zoning district by a maximum of 30 feet, subject to the compatibility standards of Section 4.3.3.D.

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

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

1. Affordability Requirements for Owner-Occupied Units.
 - a. ~~[Five percent of the residential units in the VMU building shall be reserved as affordable, for not less than 99 years from the date a certificate of occupancy is issued, for ownership and occupancy by households earning no more than 80 percent of the current Annual Median Family Income for the City of Austin Metropolitan Statistical Area as determined by the Director of Neighborhood Housing and Community Development Department.]~~ 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 99 years from the date of initial sale, for ownership and occupancy by households earning 80 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. ~~[In addition, five percent of the residential units in the VMU building shall be reserved, for not less than 99 years from the date a certificate of occupancy is issued, for ownership and occupancy by households earning no more than 100 percent of the Annual Median Family Income.]~~ A building qualifies as a VMU2 building when a minimum of 12 percent of the residential units within the building are reserved as affordable, for at least 99 years from the date of initial sale, for ownership and occupancy by households earning 80 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.
- c. 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 15 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 12 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.

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

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

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

a. For purposes of this subsection, a unit is affordable for purchase when the unit is sold to an income-eligible household for an amount not to exceed the corresponding sales prices published annually by the Director of the Housing and Planning Department; and

b. When determining the maximum affordable sales price, the Director of Housing and Planning Department may include an assumption that a homeowner will be required to pay an ownership association fee.

c. For purposes of this subsection, a unit is affordable when the unit is leased to an income-eligible household for an amount not to exceed the corresponding rental prices published annually by the Director of the Housing and Planning Department.

4. Certification

- a. In this section, director means the director of the Housing and Planning Department.
- b. The director is responsible for certifying whether a proposed development meets the exemption and bonus requirements.
- c. The applicant shall submit an application to the director demonstrating the proposed development meets the exemption and bonus requirements.
- d. Before the director may certify the proposed development, the applicant shall execute:
 - (i) an agreement to preserve the minimum exemption and bonus requirements for the VMU building; and
 - (ii) a document for recording in the real property records providing notice of or preserves the exemption and bonus requirements for the VMU building.
- e. The form of the document described in Section 4.3.4.d. must be approved by the city attorney.
- f. If the director certifies a proposed development under this section, the accountable official is authorized to process a development application for a VMU building.
- g. The applicant for a housing development shall pay all fees, provide documentation, and fulfill any pre-occupancy requirements prior to the issuance of a certificate of occupancy for the VMU building.

5. General Provisions.

- a. In this section, the director means the Director of the Housing and Planning Department.
- b. The agreement required in Section 4.3.4.d. must, at a minimum:
 - (i) Prohibit discrimination on the basis of an individual's source of income as defined in Section 5-1-13 (*Definitions*);
 - (ii) Require dispersion of affordable units throughout the residential units;
 - (iii) Require equal access and use of on-site amenities, common areas, and parking facilities;
 - (iv) Require shared access routes for affordable units and market-rate units;

- (v) Require that affordable units include interior components that are functionally equivalent to market-rate units; and
- (vi) Require the applicant to incorporate lease provisions related to a tenant's right to organize that are consistent with 24 C.F.R. 245.100, the lease addendum required as a condition to receive city of Austin Housing Finance Corporation funds, or City Code requirement.
- c. Unless otherwise approved by the director, the bedroom count for affordable units shall be comparable to the bedroom count for market rate units. At the discretion of the director, the mix of bedroom count may be adjusted but the overall number of required affordable units may not be reduced. 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.
- d. Affordable rental units locations may be rotated within the building, provided that the total number of required affordable units remains in compliance with the affordability requirements for the affordability period.
- e. Simultaneous Availability of Affordable Units.
 - (i) In a single-phase housing development, affordable units must be available for occupancy concurrently with the market-rate units.
 - (ii) For a multi-phase housing development, an applicant must submit a development phasing plan that demonstrates how the market rate units and the affordable units will be made available concurrently. This plan must be included as an attachment to the agreement described in Section 4.3.4.d.
- f. An applicant for a VMU building shall prepare and follow an affirmative marketing and outreach plan for the duration the affordable period, in a form consistent with the U.S. Department of Housing and Urban Development regulations and approved by the Director of the Housing and Planning Department.

6. Affordability Post-Construction Compliance and Penalty.

- a. In this section, director means the Director of the Housing and Planning Department.
- b. For a rental development, the owner of a VMU building with affordable for lease units 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.

- c. If, for any reason, the director is unable to confirm the VMU building affordability requirements were met during any 12-month period, the preceding 12 months may not be used to satisfy the VMU building affordability period.
- d. For an ownership affordable unit, each homebuyer at the time of purchase shall execute a resale restriction agreement in a form approved by the city attorney for recording in the real property records.
- e. A person commits an offense if the person fails to comply with the requirement in subsection (b). 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.

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

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

PART 5. Section 4.3 of Chapter 25-2, Subchapter E is amended to add a new 4.3.6 (*Applicability of VMU2 Building Requirements*) to read as follows:

4.3.6 Applicability of VMU2 Building Requirements

A. Purpose: The purpose of this subsection is to establish when a property zoned or rezoned after the effective date of this subsection may include a VMU2 building.

B. Zoning Map.

1. A property that may include a VMU2 building shall be designated on the zoning map with the code "V2".
2. A property designated on the zoning map as V2 is less restrictive and more intense than a property designated on the zoning map as V.

C. Procedure:

1. Upon the effective date of this subsection, the director may accept an application to initiate zoning or rezoning that will make a property eligible to include a VMU2 building.
2. The City Manager shall forward any application to initiate zoning or rezoning described in this subsection to the applicable Land Use Commission to review and recommendation to the City Council.
3. After considering the Land Use Commission's recommendation, the Council may by ordinance approve, approve with conditions, or deny an application for a property to include a VMU2 building.

D. Effect of Approval. A property designated with the code "V2" may include a VMU2 building subject to Section 4.3.3.F (*Exemption and Bonus Requirements*) of this subchapter.

PART 6. This ordinance takes effect on _____, 2022.