



## **Proposed Regulation**

*The proposed amendments will update various sections of the Land Development Code (LDC) pursuant to Resolution No. 20220609-061. Amendments include policy changes, streamlining of current processes, and edits for clarity. Housing and Planning Department (HPD) staff evaluated the proposed amendments for their potential to impact housing affordability. The majority were found to have negligible impacts; two proposals were identified as having potential significant impacts, “significant” here defined as increasing the cost of housing development that would be feasible under current code. The rest of this staff analysis focuses on those two proposed amendments. The substance of these two amendments is paraphrased below:*

### **§ 25-8-213 WATER QUALITY CONTROL STANDARDS**

- *For developments with **up to 90%** impervious cover\*: requiring green stormwater infrastructure for water quality treatment*

### **Article 25-8, Subchapter C. Functional Green**

- *For developments allowed to contain **over 80%** impervious cover: requiring Functional Green\*\* landscape elements*

*\*Exceptions and variances apply to eligible developments.*

*\*\*Functional Green describes a set of landscape elements that are used to restore native vegetation, enhance streetscape aesthetics, and prioritize green over grey, usually concrete, infrastructure. Please see the draft ordinance for the proposed list of landscape elements that would contribute to a site’s Functional Green score.*

## **Summary**

### **Overall Evaluation**

The proposed code amendments may increase construction and maintenance costs but have environmental benefits. Due to these tradeoffs, the affordability impact is considered undetermined. HPD staff recommends modifying the code or developing programs to mitigate the costs for developments with income-restricted units. See below for more detail.

## Applicability

The Functional Green requirement **will not** apply to projects with residential base zoning, because residential zones do not exceed 80% impervious cover. However, it **will** apply to **some** projects using Vertical Mixed Use, Affordability Unlocked, and the proposed Residential in Commercial incentive program. The green stormwater infrastructure (GSI) requirement **will** apply to most multifamily or residential subdivision projects.

## Benefits

1. The requirements would increase onsite vegetation, which would mitigate the urban heat island effect.
2. The requirements would increase greenspace, thus increasing the mental and physical health benefits that it provides. This addresses disparities identified in the Equity Response, Summary, and Recommendations, which is an attachment to the code amendment staff report, which states, “Communities of color and low-income communities have been shown to have disproportionately worse physical, mental, and environmental health outcomes compared to other communities.”
3. The Fiscal Impact Analysis, which is an attachment to the code amendment staff report, found that vegetated storm water controls “enhance the removal of pollutants and provide valuable ecosystem services such as climate change resilience, carbon sequestration, improved air quality, [and] enhanced biodiversity.”
4. Functional Green and green stormwater infrastructure landscape elements increase rainwater infiltration, benefiting the local biome.

## Costs

Market rate housing and subsidized housing respond differently to increases in development cost:

**For market-rate housing, cost increases will likely be passed to the consumer.** This is theoretically limited to by consumers’ willingness to pay, but housing prices have continued to increase in Austin due to increasing numbers of higher-income people moving here who are able to pay more for housing.

**For income-restricted housing, cost increases will likely lead to the reduction of amenities or affordable units.** Unlike market rate developments, income-restricted developments have a limited income stream.

1. When Functional Green applies, it is projected to increase development costs by anywhere from \$89,000/acre to \$238,000/acre.

Functional Green landscape features may meet open space or parkland dedication requirements that developments are already responsible for providing; certain features can also satisfy green stormwater infrastructure requirements, and vice versa. The circumstances in which this can happen are still being researched.

2. The proposed green stormwater infrastructure requirement has not impacted 80% of Affordability Unlocked projects. Due to time constraints, HPD staff has not evaluated affordable projects that do not use Affordability Unlocked. Staff do not know at this time if the 20% of Affordability Unlocked projects that did not use GSI chose not to because it was financially burdensome or for other reason(s).
3. Plant-based elements of Functional Green landscape and green stormwater infrastructure generally incur ongoing maintenance costs that are higher than current requirements. These additional maintenance costs will primarily be borne by multifamily residential projects, while residential subdivisions will see minimal maintenance cost impacts. Due to time and data constraints, staff has not quantified these costs.

### Cost Mitigation

- A significant portion of income-restricted residential development takes place on parcels with base zoning that allows more than 80% impervious cover. **HPD staff recommends an exemption from the Functional Green requirement for developments that provide at least 10% of the units onsite as income-restricted affordable units serving household at or below 60% of the median family income.**
- Rather than changing the substance of the proposed green stormwater infrastructure regulation, the city could offset added costs with:
  - o **Cost-sharing:** The Watershed Protection Department (WPD) has expressed an interest in providing subsidies that could mitigate the cost of complying with water quality treatment requirements for properties with a significant percentage of income-restricted units. Further, the Equity Response, Summary, and Recommendations report recommends “[i]mmediate development of a WPD program to provide funding to cost share deeply affordable housing developments to meet existing water quality and drainage requirements as well as the proposed code amendments related to green infrastructure.” To have the greatest chance of mitigating cost impacts, a program should be created **before** passage of the amendment.
  - o **Development incentives:** These incentives would need to exceed those already provided under commonly used incentive programs such as Affordability Unlocked. Developing an incentive portfolio would require outreach to affordable housing developers and residents of affordable housing developments.

### Limitations

*Staff produces affordability impact statements for code amendments that are designed to achieve a variety of policy goals, such as improving environmental resilience, public health, and quality of life. Individually, code amendments often add a small cost to housing development but are not prohibitive. **However, HPD staff believes that evaluating code amendments in isolation is not able to capture the cumulative negative impacts on the quantity of income-***

*restricted housing and the cost of building market-rate housing in Austin. This effect is particularly pronounced when code amendments are not proposed alongside entitlement increases that would offset some of the new costs.*

*In addition, there is often insufficient time and cost data to fully explore the affordability impacts of code amendments. Staff concurs with the findings of the Equity Response, Summary, and Recommendations report, which states that “future equity assessments should be thoroughly conducted as amendments are proposed, versus as they are scheduled to be approved.” Staff believes that allotting sufficient time to meaningfully explore affordability impacts and options to offset them can support more equitable outcomes.*

## **Detailed Analysis – New Development Costs**

### **Article 25-8, Subchapter C. Functional Green**

*Functional Green landscape is required:*

- a. In an Urban watershed, for a site with a zoning impervious cover limit greater than 80%; and*
  - b. In a watershed other than Urban, for a site with total allowable impervious cover greater than 80% gross site area.*
- A Functional Green landscape that satisfies code requirements has a projected cost between \$89,000/acre and \$238,000/acre. However, it remains undetermined to what degree the costs will be new. Functional Green landscape features may meet open space or parkland dedication requirements that developments are already responsible for providing; certain features can also satisfy green stormwater infrastructure requirements, and vice versa. The circumstances in which this can happen are still being researched.
  - Residential base zones in Austin are allowed no more than 80% impervious cover. In practice, this will exempt all parcels with residential **base zoning** from Functional Green requirements. But there are some cases where residential **uses** take place in non-residential base zones:
    - o The Affordability Unlocked (AU) incentive program allows a developer to build developments with a high percentage of income-restricted affordable units on a non-residential base zone **without rezoning**. If the development has base zoning allowing greater than 80% impervious cover, the development would be subject to the Functional Green requirement.
      - As of June 2022, there are 16 multifamily developments complete or under construction that use Affordability Unlocked. Of these 16, nine have base zoning allowing greater than 80% impervious cover. Four of the nine exceed 80% impervious cover.
    - o The upcoming **Residential in Commercial** incentive program would allow residential development within some base zoning that allow more than 90% imperious cover, specifically General Commercial Services (CS) and Community

Commercial (GR). These residential developments would then be subject to the Functional Green requirement.

- o A development with commercial (CS) base zoning (95% allowable impervious cover) that makes use of the **Vertical Mixed Use** incentive program would be subject to this regulation.

### **§ 25-8-213 WATER QUALITY CONTROL STANDARDS**

*(C) The required water quality treatment [for most sites with less than 90 percent gross site area impervious cover] must be provided using green stormwater control measures, as prescribed in the Environmental Criteria Manual.*

The proposed green stormwater infrastructure requirement is based on a property's **utilized** impervious cover as a percent of gross site area rather than the proposed Functional Green requirement, which is based on a base zoning's **allowable** impervious cover.

- Residential base zones in Austin allow no more than 80% of the site area to be impervious cover. Thus, most properties with residential base zoning will be required to use green stormwater infrastructure (GSI) for water quality, unless they qualify for an exemption based on unique site conditions.
- Feedback from the income-restricted development community included concern about the cost and siting of green stormwater infrastructure elements.
- Green stormwater controls such as rain gardens and biofiltration ponds must be maintained over time to a greater degree than infrastructure without plants, such as sedimentation-filtration ponds. This represents an ongoing additional cost to operating income-restricted housing. Ensuring that property managers maintain these features will require staff time and resources.
- A sampling of 16 multifamily projects that use Affordability Unlocked projects showed that 13 of 16 (80%) are already compliant with the proposed GSI requirement.
  - o Due to time constraints, income-restricted developments that do NOT use Affordability Unlocked have not been evaluated for compliance with the proposed GSI requirement.
- HPD staff shares the assumption from the Fiscal Impact Analysis that “most private development will choose to comply with the GSI requirement using biofiltration systems, as they are the most cost-effective and space-efficient of the green controls.” Under current code, multifamily residential developments commonly choose sedimentation ponds as their water quality controls. The Watershed Protection Department estimates a 30% median increase in cost when building biofiltration ponds relative to sedimentation ponds.

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