

## **ORDINANCE AMENDMENT REVIEW SHEET (Planning Commission)**

**Amendment:** C20-2021-012 Residential in Commercial

**Description:** Consider an amendment to Title 25 of the City Code to create an affordable housing bonus program and allow residential development on commercially-zoned properties.

**Proposed Language:** See attached draft ordinance and background information.

### **Summary of proposed code amendment**

- The proposed amendment will create an affordable housing bonus program to allow commercially-zoned properties with no existing residential entitlements to develop projects with residential units in return for on-site affordable units.
- Eligible projects:
  - Must provide on-site affordable units
  - Cannot exceed base zoning height or impervious cover
  - Must generally comply with the standards of a mixed-use (MU) combining district

**Background:** Initiated by City Council Resolution 20211209-056.

In December 2021, City Council issued a resolution that directed staff to create a bonus program that would allow commercially zoned properties with no existing residential entitlement to develop residential units in return for providing on-site affordable units.

### **Staff Recommendation: Recommend with modifications**

As drafted, the proposed amendments to the Land Development Code would apply to 8,885 commercially zoned properties, including all properties zoned Commercial Liquor Sales (CS-1), General Commercial Services (CS), Community Commercial (GR), Neighborhood Commercial (LR), General Office (GO), and Limited Office (LO). A significant majority of these properties are located along existing transit corridors and Project Connect transit corridors, and approximately 48% of these properties are located within displacement risk areas. (See charts below for more detailed analysis.) The draft code amendments include provisions for the preservation of existing residential development as well as creative spaces. The draft code amendments would support implementation of multiple City policy goals, including goals related to transit-supportive land uses, housing production goals of the Austin Strategic Housing Blueprint, and goals related to preservation of existing affordable housing. Based on the geographic analysis, the recommended code amendments do not appear to have a disproportionate impact on racial equity or displacement risk areas.

Property owners currently have other options for developing residential units on commercially-zoned properties, including providing affordable housing that meets the deep affordability targets of the Affordability Unlocked Program and requesting a zone change through the conventional zone change request process.

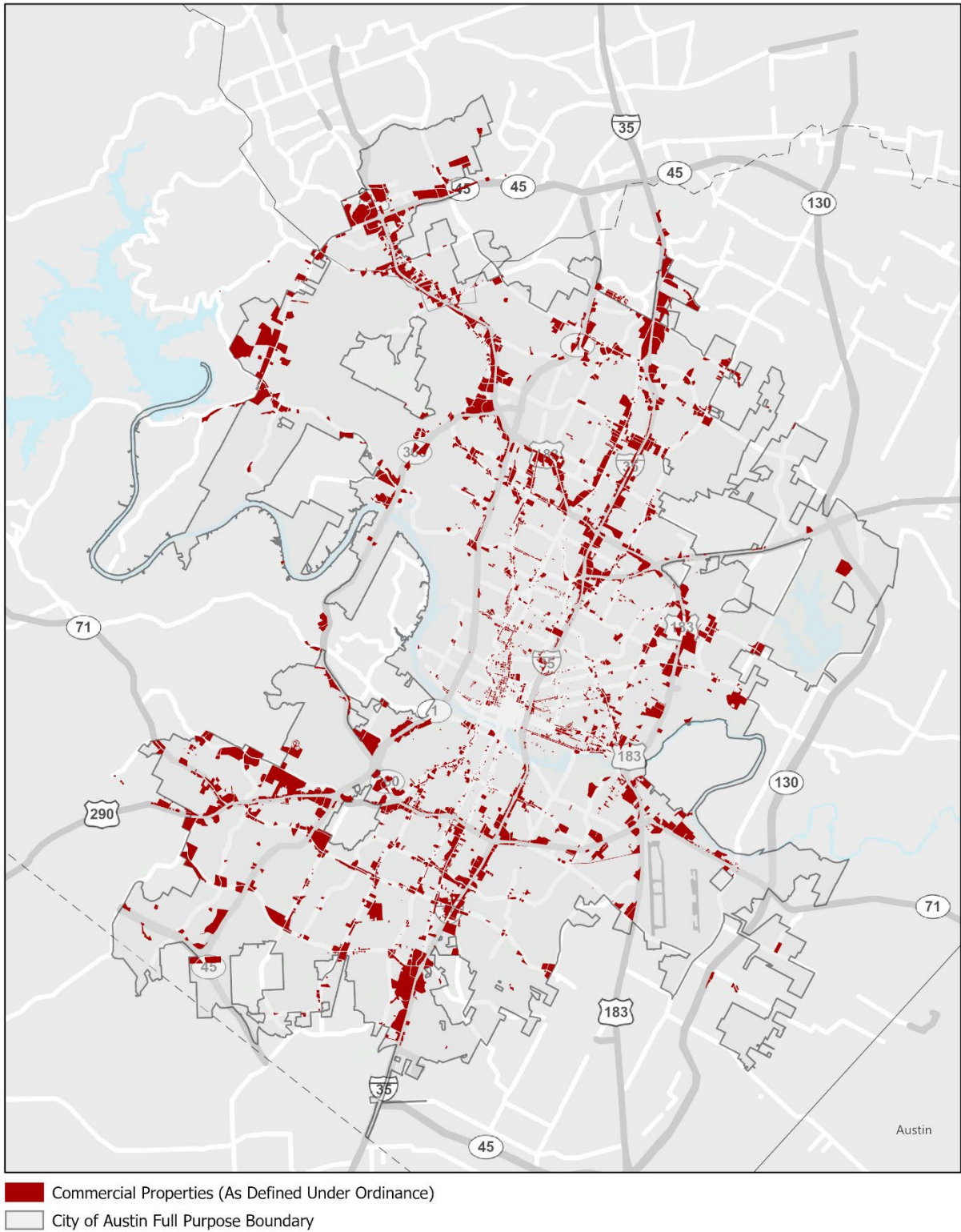
HPD staff generally supports providing additional flexibility to develop residential projects in commercial zones as described in the draft code language, but has identified several potential areas of concern:

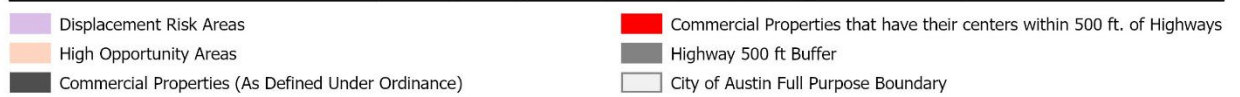
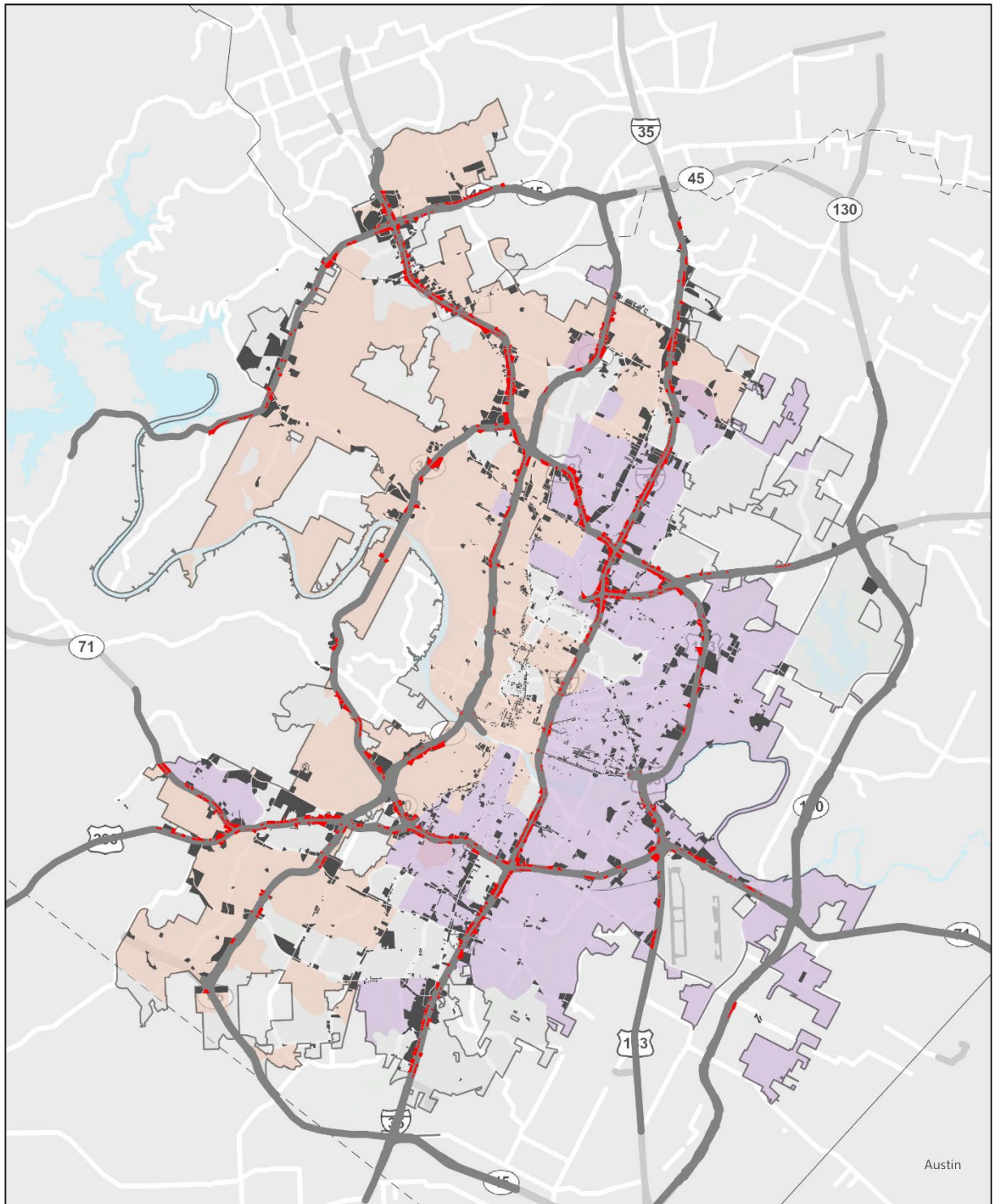
- **Compatibility of Uses.** The current proposal includes General Commercial Services and Commercial-Liquor Sales (CS and CS-1) districts, which allow for development of fairly intense commercial/light industrial uses, including vehicle storage, custom manufacturing, and limited warehousing and distribution, and many areas where these zones apply today may not be compatible with residential uses. In addition, 2,074 of the parcels eligible under the draft code amendments are along “Level 5” Regional Highways. Studies have shown that due to the increased particulates associated with freight vehicles, highways have a detrimental impact on respiratory health for people who live near them, and HPD staff generally do not recommend incentivizing additional housing development along such highways. **Recommended Modification:** Modify code amendments to not apply within 500 feet of Level 5 Regional Highways and examine ways to exclude residential uses from locating near certain CS and CS-1 uses. (Note: This option would have a substantive impact on the recommended structure of the proposed code language and approval process.)

**Possible land uses to exclude:**

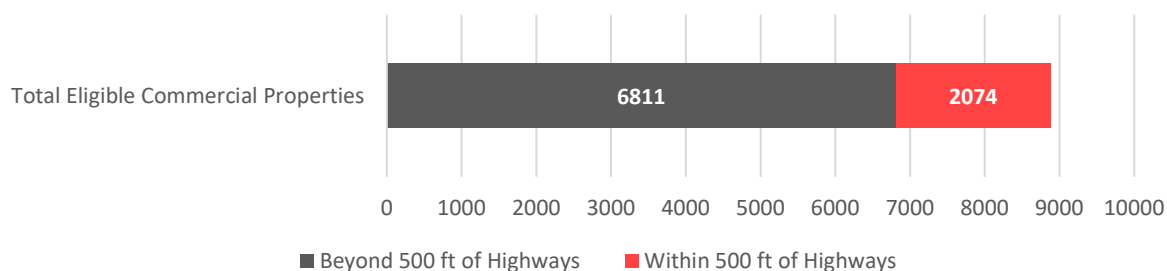
- Agricultural sales and services
- Automotive repair services
- Building maintenance and services
- Commercial blood plasma center
- Construction sales and services
- Drop-off recycling collection facility
- Equipment repair services
- Equipment sales
- Exterminating services
- Kennels
- Limited warehousing and distribution
- Maintenance and service facilities
- Monument retail sales
- Outdoor entertainment
- Vehicle storage
- Basic industry
- General warehousing and distribution
- Limited warehousing and distribution (also in CS / GR list below)
- Recycling Center
- Resource Extraction
- Scrap and salvage

**Summary of Geographic Analysis:**

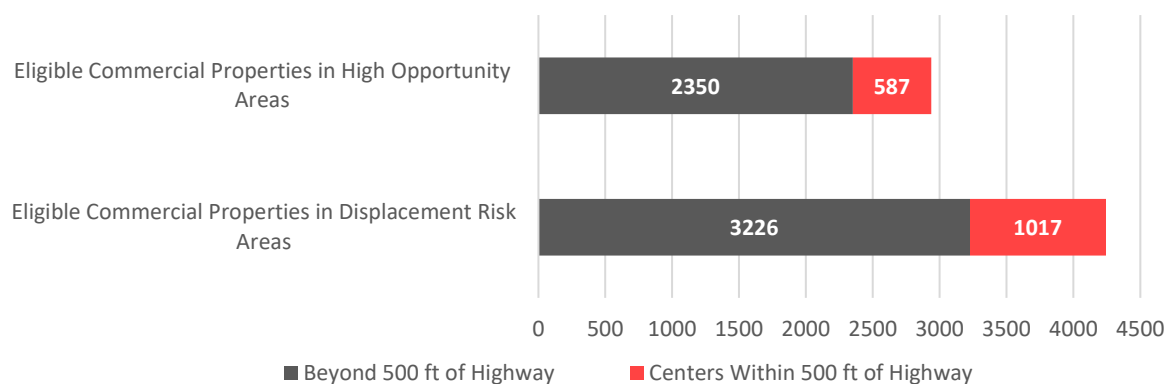




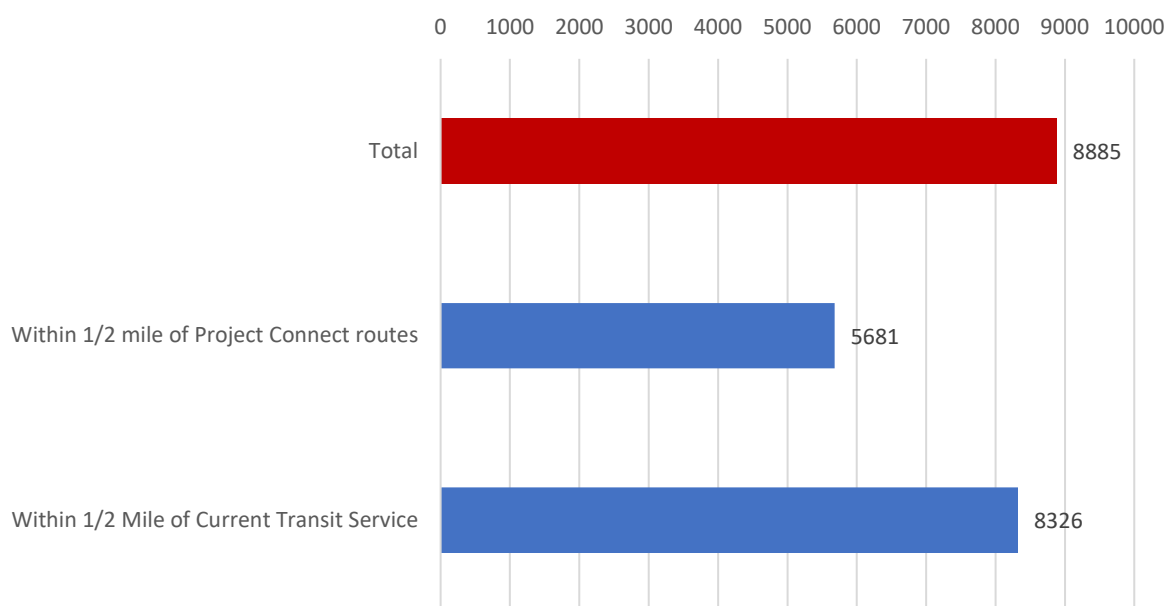
### Eligible Commercial Properties by Distance From Highway

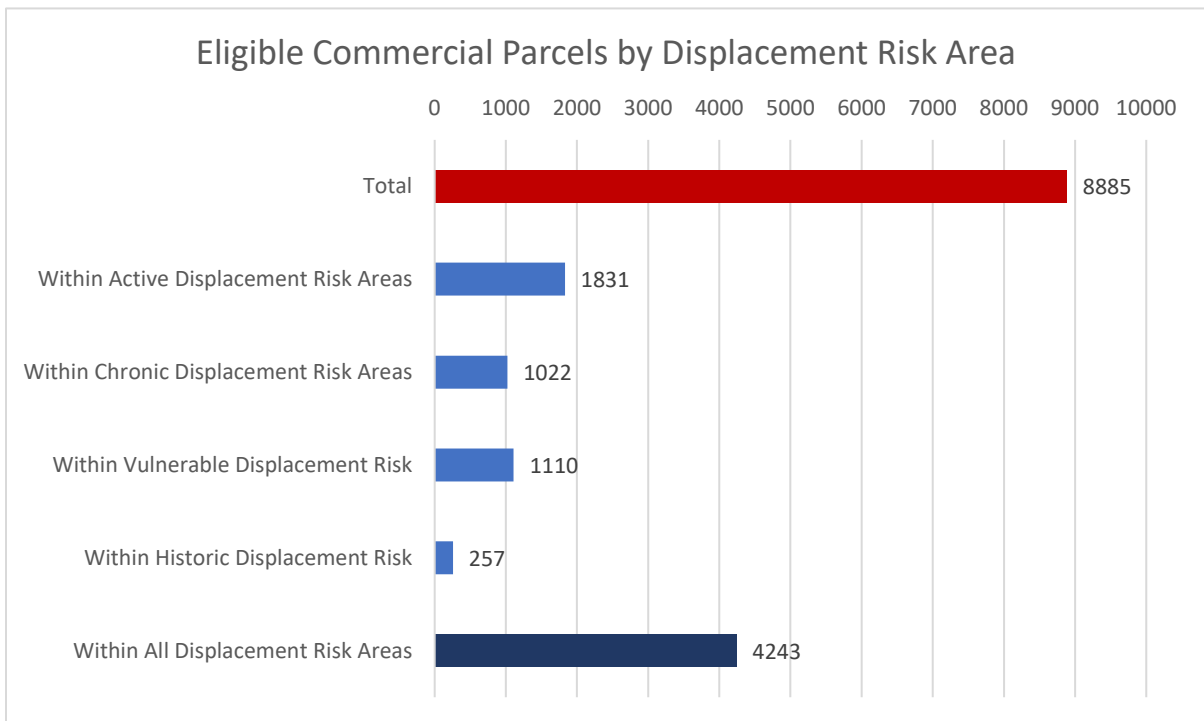
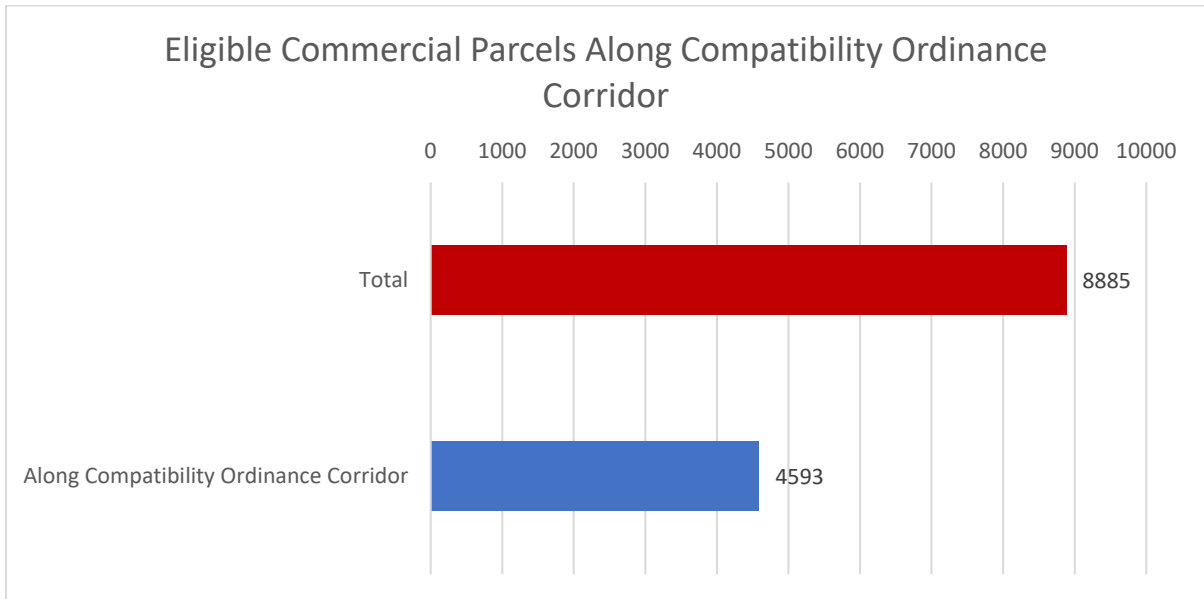


### Eligible Commercial Properties and Distance From Highway by Displacement Risk & High Opportunity Areas

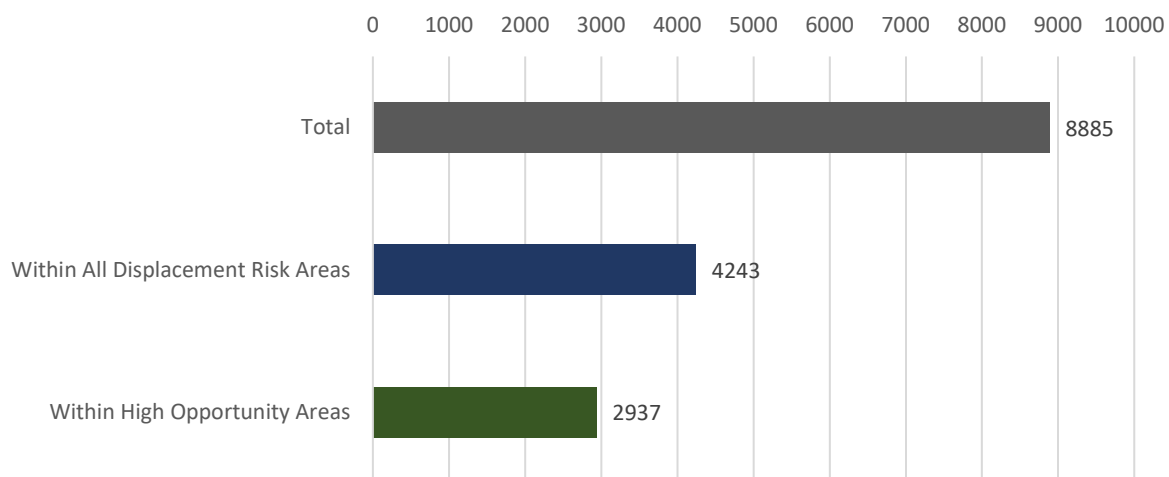


### Eligible Commercial Parcels

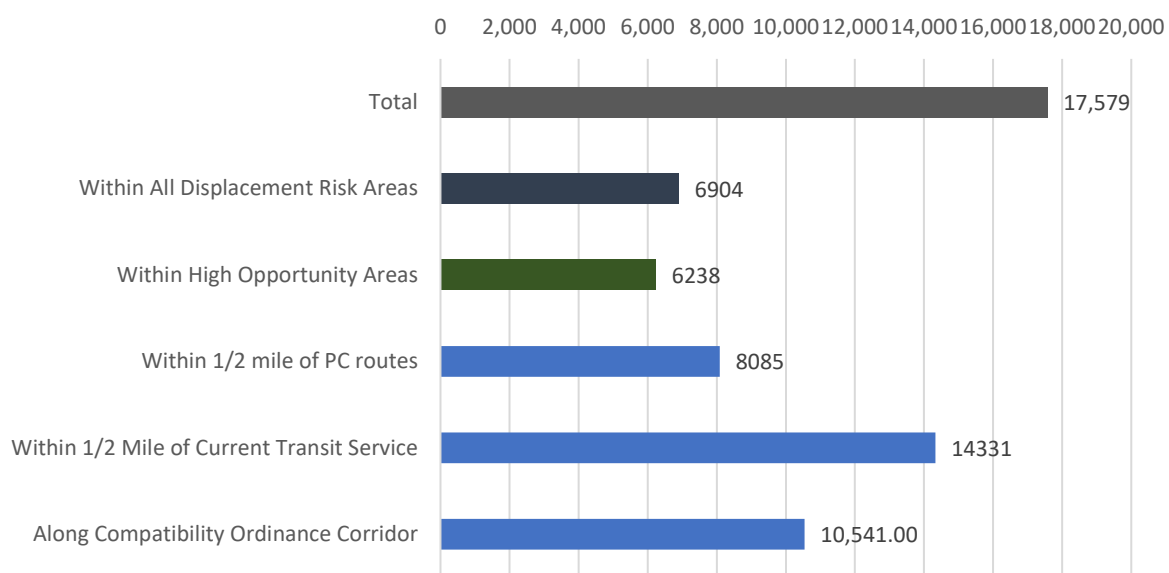




### Eligible Commercial Parcels by Displacement Risk Area & High Opportunity Area



### Area of Eligible Commercial Parcels in Acres



**Board and Commission Actions**

**October 19, 2022:** The Codes and Ordinances Joint Committee recommended the item to PC on a motion by Commissioner Anderson, seconded by Commissioner Azhar, with direction to further explore VMU-type standards for eligible properties. Vote: 4-1 (Commissioner Denkler nay, Commissioners Shaw and Hempel absent). An amendment was made by Commissioner Azhar, seconded by Commissioner Denkler, to recommend the item to PC with staff's suggested changes that address concerns about proximity to highways and more intense, objectional land uses. Vote: 5-0 (Commissioners Shaw and Hempel absent).

**October 25, 2022:** A public hearing was held and closed by Planning Commission; item postponed to the November 8, 2022 Planning Commission meeting for further discussion.

**November 2, 2022:** The item was discussed at Environmental Commission and recommended on an 8-1 vote, with amendments (see attachment).

**November 8, 2022:** The item will be discussed at the Planning Commission (public hearing closed).

**Council Action**

**December 1, 2022:** A public hearing has been scheduled.

**Ordinance Number:** NA

**City Staff:** Greg Dutton    **Phone:** (512) 974-3509    **Email:** greg.dutton@austintexas.gov





## ENVIRONMENTAL COMMISSION MOTION 20221102-004

**Date:** November 2, 2022

**Subject:** Title 25 Code Amendment, C20-2021-012 Residential in Commercial

**Motion by:** Jennifer Bristol

**Seconded by:** Kevin Ramberg

**WHEREAS**, the Environmental Commission has considered the amendment to Title 25 of the City Code to create an affordable housing bonus program and allow residential development on commercially zoned properties and;

**WHEREAS**, the Environmental Commission recognizes that this amendment was initiated by City Council Resolution 20211209-056.

**THEREFORE**, the Environmental Commission recommends the amendment with the following conditions:

**Staff recommended changes:**

1. Modify to exclude properties within 500' of "Level 5" Regional Highways
2. Modify to exclude residential uses near more intense manufacturing and/or noxious uses

**Environmental Commissions:**

1. Council should direct staff to draft guidance for residential development within commercially zoned properties to avoid and minimize the environmental exposure of residents living on commercially zoned properties. These may include, but not be limited to air quality concerns adjacent to commercial development and noise exposure adjacent to commercial development (such as airport and other loud activities).
2. Limit height to three stories where unlocked housing space is located near creeks, parks, green infrastructure, and existing neighborhoods
3. Eliminate spaces for consideration near airports, where air quality and noise are the highest
4. Create adequate setbacks from fast-food or restaurant facilities to reduce the interface of living spaces with waste and air pollution created from food establishments.
5. Soils must be tested for contaminants when installing natural spaces or play areas for children
6. Ensure that affordable housing within the commercial zones still have walking access to parks per the City's goal of all residents being within 1/4-mile in the urban core and a 1/2-mile for all other parts of the city
7. Require bird-friendly glass and bird-friendly building best practices on all projects in all zones
8. Require dark skies lighting
9. Require natural buffers such as bio-swales or tree and shrub features to separate affordable housing parking from commercial use parking

10. Increase natural spaces that use native plants and trees that can assist with slowing and filtering run-off, reduce heat island effects, reduce noise, and air pollution
11. The Environmental Commission recommends taking this Code Amendment before Public Health Commission
12. Add funeral services to the noxious use list
13. For the purposes of our motion, adult oriented businesses should include any business that requires an adult to enter or make a purchase within
14. The Environmental Commission recommends that staff conduct a study of non-Level 5 Regional Highways that may warrant buffering for air quality.

### **VOTE 8-1**

For: Aguirre, Bedford, Bristol, Qureshi, Ramberg, Schiera, Scott, and Thompson

Against: Brimer

Abstain: None

Recuse: None

Absent: Barrett Bixler and Nickells

Approved By:

A handwritten signature in dark ink that reads "KEVIN RAMBERG". The signature is written in a cursive, slightly slanted style.

Kevin Ramberg, Environmental Commission Chair

**RESOLUTION NO. 20211209-056**

**WHEREAS**, under the Land Development Code, residential development is not currently allowed in many of the commercial zoning districts in Austin; and

**WHEREAS**, City Council adopted the Austin Housing Strategic Blueprint (the Blueprint) in 2017 which called for 135,000 housing units by 2028, with 60,000 of those units at or below 80 percent of the median family income (MFI); and

**WHEREAS**, in the proposed Land Development Code Revision, residential uses were allowed in more zoning districts than in current city code; and

**WHEREAS**, allowing housing in more places provides the opportunity for increased housing supply in Austin; and

**WHEREAS**, in its 2018 report, the Planning Commission Mapping Working Group indicated that allowing mixed use in commercial zoning could lead to about 46,324 housing units in new capacity; **NOW, THEREFORE,**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

The City Council initiates amendments to the Land Development Code, codified in City Code Title 25, to allow residential uses in General Commercial Services (CS), Commercial Liquor Sales (CS-1), Community Commercial (GR), Neighborhood Commercial (LR), General Office (GO), and Limited Office (LO) zoning districts, subject to participation in a voluntary affordable housing incentive program.

**BE IT FURTHER RESOLVED:**

In developing the proposed amendments, the City Manager is directed to:

1. Require at least 10 percent of the rental units be affordable to households at 60 percent MFI for at least 40 years;
2. Require at least 10 percent of the homeownership units be affordable to households at 80 percent MFI for at least 99 years;
3. Authorize residential uses in all parcels located in the listed zoning districts except when subject to a regulating plan which prohibits residential uses on the particular parcel, subject to compliance with affordability requirements, site development regulations, parking requirements, and design standards similar to those design standards currently applicable to Vertical Mixed Use Buildings;
4. To the extent feasible, provide an incentive for ground floor retail by increasing height by 5-10 feet to accommodate the higher ceiling on the first floor when the project contains commercial uses on the ground floor and provides residential dwelling units on all upper floors;
5. Identify options for a “right to return” policy for art workshops and galleries, theater, and other creative spaces that have operated for more than 10 years on a particular site. The policy would give preference to those creative businesses within the new development and would enable them to access space of comparable size and cost so as to continue their mission and/or business.
6. Retain existing requirements of Chapter 25-2, Subchapter C, Article 10 (*Compatibility*); and
7. Extend the residential use option to all parcels in the listed zoning districts without requiring a zoning change or other discretionary approval from a city commission or city council. A property owner

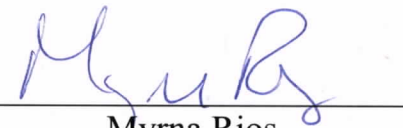
shall be allowed to use this program in addition to any other existing affordable housing bonus programs.

**BE IT FURTHER RESOLVED:**

In addition to applicable procedures required for consideration of code amendments to Title 25, the City Manager is directed to present the proposed amendments to the Housing and Planning Committee before bringing a proposed draft to Council for consideration.

**ADOPTED:** December 9, 2021

**ATTEST:**



Myrna Rios  
Interim City Clerk

TITLE 25. - LAND DEVELOPMENT.  
CHAPTER 25-1. - GENERAL REQUIREMENTS AND PROCEDURES.  
ARTICLE 15. HOUSING.  
**RESIDENTIAL IN COMMERCIAL DISTRICTS INCENTIVE PROGRAM**  
**WORKING DRAFT – SUBJECT TO CHANGE 10/14/2022**

We will update sections and references as we get closer to Council consideration.

**ARTICLE 15. HOUSING.**

This is a new division within Article 15 of Chapter 25-1.

*Division 5. Residential Uses in Commercial Districts Incentive Program.*

**§ 25-1-751 PURPOSE, APPLICABILITY, SHORT TITLE, AUTHORITY, AND CONFLICT.**

- (A) The purpose of this division is to establish a voluntary incentive program that allows residential uses in commercial districts.
- (B) This division applies within the zoning jurisdiction.
- (C) This division may be cited as "Residential in Commercial Development 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 residential-commercial development governs over a conflicting provision of this title.

**§ 25-1-752 DEFINITIONS.**

In this division,

- (1) CREATIVE SPACES means XXXX. We are working on this definition.
- (2) CREATIVE SPACE OPERATOR means a person who owns or manages a creative space.
- (3) MARKET RATE UNITS means a rental or ownership dwelling unit that is not an affordable unit.

TITLE 25. - LAND DEVELOPMENT.  
CHAPTER 25-1. - GENERAL REQUIREMENTS AND PROCEDURES.  
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- (4) MFI means median family income as defined in Section 25-1-701 (Definitions) for the Austin-Round Rock metropolitan statistical area.

**§ 25-1-753 ELIGIBILITY.**

- (A) A proposed development is eligible for this program if the development:
- (1) meets the requirements in this division; and
  - (2) is new construction; or
  - (3) will redevelop a site without existing creative spaces or multi-family structures; or
  - (4) complies with the requirements in Subsection (C).
- (B) A creative space is existing if the space has operated for at least 10 years.
- (C) Redevelopment of a Site with Existing Spaces and Structures.
- (1) A proposed development that will require the applicant to redevelop existing creative spaces is eligible for this program if:
    - (a) the proposed development:
      - (i) meets the standards imposed in this subsection;
      - (ii) will replace all existing creative spaces that were operating the previous year with comparable-sized creative spaces; and
    - (b) the applicant provides creative space operators with:
      - (i) notice and information about the proposed development on a form approved by the director;
      - (ii) relocation benefits that are consistent with the Federal Uniform Relocation Assistance and Real Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, et seq.; and
      - (iii) an option to lease a creative space of comparable size and affordability following the completion of redevelopment.



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- (2) A proposed development that will require the applicant to redevelop or rebuild an existing multi-family structure is eligible for this program if:
- (a) 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;
  - (b) 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; and
  - (c) the applicant provides current tenants with:
    - (i) notice and information about the proposed development on a form approved by the director; and
    - (ii) 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
    - (iii) the option to lease a unit of comparable affordability and size following completion of redevelopment.

**§ 25-1-754 AFFORDABILITY REQUIREMENTS.**

25-1-754 to 25-1-756 are intended to follow the Affordability Unlocked framework.

- (A) For a development with rental dwelling units, at least 10 percent of the rental dwelling units must serve households whose incomes are 60 percent MFI or below.
- (B) For a development with owner-occupied dwelling units, at least 10 percent of the owner-occupied dwelling units must serve households whose incomes are 80 percent MFI or below.
- (C) If the number of units required in this section includes less than a whole unit, the unit number is rounded up to the nearest whole unit.



TITLE 25. - LAND DEVELOPMENT.  
CHAPTER 25-1. - GENERAL REQUIREMENTS AND PROCEDURES.  
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- (D) The minimum affordability period for rental dwelling units is 40 years following the last certificate of occupancy required for the development.
- (E) The minimum affordability period for owner-occupied dwelling units is 99 years following the issuance of a certificate of occupancy for the owner-occupied dwelling unit.
- (F) In a multi-phased development, the director may begin the minimum affordability period upon the issuance of the last certificate of occupancy for each phase
- (G) 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;
    - (b) any lease addendum required as a condition to receive city or Austin Housing Finance Corporation (AHFC) funds; and
    - (c) 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; and 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*).
- (H) Simultaneous Availability of Affordable Units.
  - (1) In a single-phase housing development, affordable units must be available for occupancy concurrently with the market-rate units.

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- (2) 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 (X).

**§ 25-1-755 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 consistent with provisions applicable to a commercial-residential 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.

**§ 25-1-756 POST-CONSTRUCTION REQUIREMENTS AND PENALTY.**

- (A) For a development with rental dwelling units, 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-XXXX (*Affordability Requirements*).
- (C) 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.

**Subchapter C, Article 2, Division 2. Requirements for All Districts.**

This will be a new section in Chapter 25-2.

**§ 25-2-519 COMMERCIAL-RESIDENTIAL DEVELOPMENT.**

- (A) In this section, a commercial-residential development is a development certified under Section XXXXX (*Certification*) and participating in the Residential in Commercial Development Program.
- (B) Except as provided in Subsection (C), a commercial-residential development is a permitted use under Section 25-2-491 (*Permitted, Conditional, and Prohibited Uses*) in the following commercial base districts:
- (1) Commercial Liquor Sales (CS-1);
  - (2) General Commercial Services (CS);
  - (3) Community Commercial (GR);
  - (4) Neighborhood Commercial (LR);
  - (5) General Office (GO); and
  - (6) Limited Office (LO).
- (C) A commercial-residential development is prohibited when the property is:

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- (1) zoned “V”; or
  - (2) subject to a regulating plan that does not allow residential uses on the property.
- (D) Standards.
- (1) Multifamily residential use, a townhouse residential use, a condominium residential use, a group residential use.
    - (a) In a neighborhood office (NO) base district, the minimum site area for each dwelling unit is:
      - (i) 3,600 square feet, for an efficiency dwelling unit;
      - (ii) 4,000 square feet, for a one bedroom dwelling unit; and
      - (iii) 4,400 square feet, for a dwelling unit with two or more bedrooms.
    - (b) In a limited office (LO) or neighborhood commercial (LR) base district, the minimum site area for each dwelling unit is:
      - (i) 1,600 square feet, for an efficiency dwelling unit;
      - (ii) 2,000 square feet, for a one bedroom dwelling unit; and
      - (iii) 2,400 square feet, for a dwelling unit with two or more bedrooms.
    - (c) In a general office (GO), community commercial (GR), general commercial services (CS), or commercial services - liquor sales (CS-1) base district, the minimum site area for each dwelling unit is:
      - (i) 800 square feet, for an efficiency dwelling unit;
      - (ii) 1,000 square feet, for a one bedroom dwelling unit; and
      - (iii) 1,200 square feet, for a dwelling unit with two or more bedrooms.
  - (2) Except as provided in (D)(3), a commercial-residential development must comply with the height restrictions applicable to the base zoning district.

These standards mirror MU in Subchapter E, 4.2.1.D.

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- (3) A commercial-residential development that includes commercial uses on the ground floor may exceed the height restrictions applicable to the base zoning district by five feet provided the ground floor uses are not part of a live/work unit.
- (E) Other Density Bonus Programs.
- (1) If a commercial-residential development is also eligible to utilize a separate density bonus program that grants density bonuses for the provision of on-site affordable dwelling units or for the payment of a fee-in-lieu for affordable housing, then the commercial-residential development may comply with the least restrictive site development requirements if all affordable dwelling units are provided on-site.
  - (2) The total number of affordable dwelling units provided on-site must equal or exceed the number of on-site affordable dwelling units required by the Residential in Commercial Development Program and the other density bonus program



## Affordability Impact Statement

Housing and Planning Department

Residential In Commercial

Revised: November 3, 2022

### **Amendment: C20-2021-012 Residential in Commercial**

**Description:** Consider an amendment to Title 25 of the City Code to create an affordable housing bonus program and allow residential development on commercially zoned properties.

**Background:** Initiated by City Council Resolution 20211209-056.

### **Summary of proposed code amendment**

- The proposed amendment will create an affordable housing bonus program to allow commercially zoned properties with no existing residential entitlements to develop projects with residential units in return for on-site affordable units.
  
- Eligible projects:
  - Must provide on-site affordable units
  - Cannot exceed base zoning height or impervious cover
  - Must generally comply with the standards of a mixed-use (MU) combining district



## **Positive Impacts to Housing Affordability**

### **1) Positive Impact - Additional Housing Supply**

- As drafted, the proposed amendments would allow 8885 commercially zoned properties to develop residential units in return for providing on-site affordable units. This makes it easier to increase housing stock in Austin. In cities that are significantly built-out around the city center, like Austin, finding land for new development is incredibly difficult; the proposed amendments thus address one of the largest barriers to housing production, and a large driver of cost\*.
- The requirement for properties to provide income-restricted units will increase affordable housing stock, reducing competition for affordable units.

\*It is important to note that in a pure supply/demand scenario, increasing supply of housing will lower the cost for similar units. If a market has a large quantity of families with children, the demand for multi-bedroom units will remain high and increasing the supply of one-bedroom efficiency units is unlikely to substantially impact housing costs for these buyers.

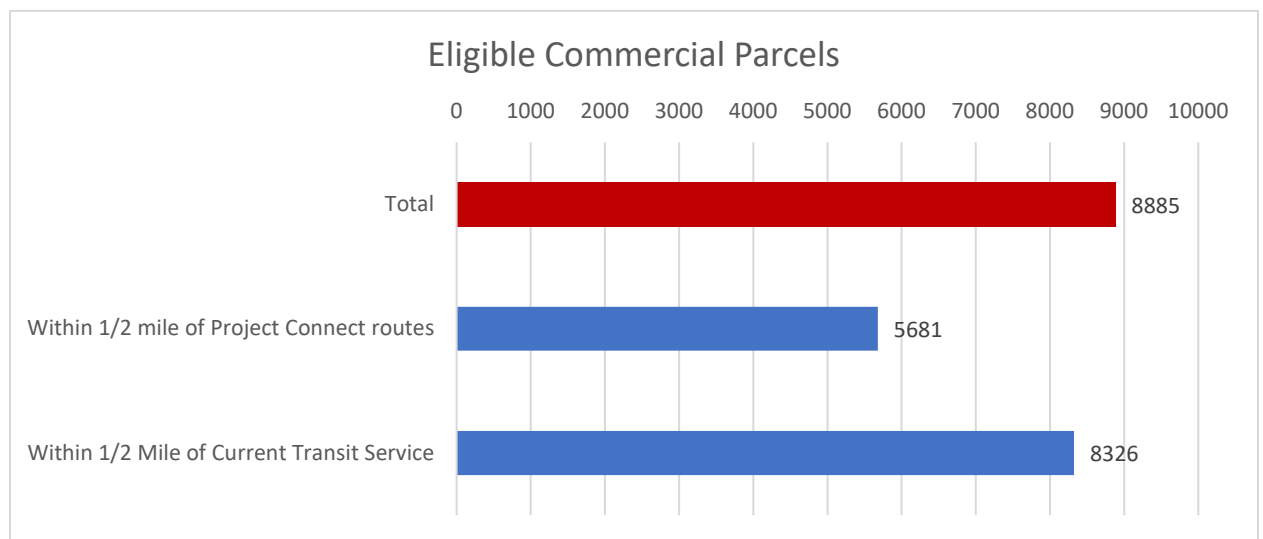
### **2) Positive Impact - Preservation of Existing Affordable Housing**

- The nation's largest source of affordable housing is not publicly funded, but older market-rate units called Naturally Occurring Affordable Housing (NOAH). Assuming that there are few legal nonconforming uses (residential uses in zones that do not allow them) in the amendments' eligible commercial zones, then the proposed amendments will increase housing stock without demolishing existing NOAH.
- For proposed redevelopments of nonconforming multi-family structures on commercially zoned land, the draft code amendments include provisions to 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, as well as stronger notification and relocation requirements than what is required by-right today.



### 3) Positive Impact - Additional Housing Supply Along Transit Corridors

- As drafted, 5681 (64%) commercially zoned properties are located within a ½ mile of Project Connect routes and 8326 (94%) are located within a ½ mile of current transit service. Locating housing with on-site affordability requirements near transit aligns with the Austin Strategic Housing Blueprint’s goal of 25% of affordable housing created or preserved to be within ¼ mile of high-frequency transit.







## Negative Impacts to Housing Affordability

### 1) Negative Impact – Health Impacts from Proximity to Highways

- **Persons living within 500 feet of highways experience the most negative respiratory health outcomes.** Seniors, minors, persons with asthma, persons with diabetes, and persons of color – particularly Black persons – are at greatest risk<sup>1,2</sup>. These health outcomes include:
  - **Premature death**
  - **Onset of childhood asthma**
  - **Cardiovascular disorders and mortality**
  - **Impaired lung function**
- **Direct costs** for these conditions (medication, specialist visits, hospitalization, emergency room visits) are high. The U.S. Centers for Disease Control estimates the direct costs of asthma at \$3,266/year in 2015, or \$4,148 in 2022, translating to a \$346/month on average for individuals<sup>3</sup>. The degree to which insurance covers this cost (for insured patients) varies by individual, and the rates of insurance coverage varies by race, with people of color being uninsured at higher rates than white people.<sup>4</sup> Cardiovascular disorders and diabetes are some of the most expensive diseases to live with, though capacity issues prevented staff from quantifying this expense.
- **Indirect costs** for these conditions include days of work lost due to illness, losing the ability to work at all because of illness, and increased home costs for managing illness (hiring housekeepers, delivery, etc.).
- **Environmental Racism** puts some groups at risk more frequently, and at greater levels, than others. For example, diabetes puts people at high risk for illness from air pollution: it is most common among First Nations, Black, Latine, Asian, and white communities, in that order. Further, Black people experience worse health outcomes from airborne pollutants than white people with equal incomes. In Austin's recent history, residents of color have fought public policy that sites dangerous uses close to their homes. There is indeed a great need for affordable housing, but Austinites have made it clear that siting housing next to environmental hazards is unacceptable. The City now has an opportunity to break from that tradition and craft public policy that protects the health of all Austinites.

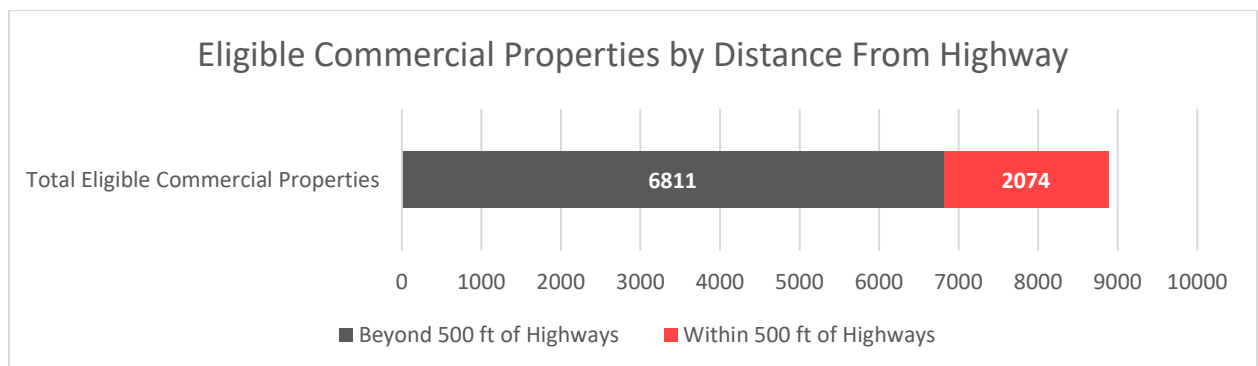


*Recommendation*

The U.S. Centers for Disease Control and Prevention recommend limiting development alongside highways and heavily trafficked roads. According to the EPA,<sup>5</sup> research findings indicate that roadways generally influence air quality within a few hundred meters – about 500-600 feet downwind from the vicinity of heavily traveled roadways or along corridors with significant trucking traffic or rail activities.

This distance will vary by location and time of day or year, prevailing meteorology, topography, nearby land use, traffic patterns, as well as the individual pollutant. In 2022, the State of California passed laws to allow residential uses in commercial development at a statewide level; these laws did not allow residential development in commercial zoning within 500 feet of a highway. Accordingly, we recommend modifying Part 3 – (C) to prohibit the use of this incentive program to develop a property located within 500 feet from the border of a highway.

- With this modification, 6,811 properties would be eligible for the Residential in Commercial bonus.
- Housing currently exists adjacent to highways in Austin and the city has allowed and, in some cases, subsidized development that increases the number of residential units within 500' of highways under other provisions of the Land Development Code. Consider evaluating other areas of the code that may incentivize housing along highways and identifying changes that would benefit public health.





## 2) Negative Impact – Housing Adjacent to Noxious Uses

- The ordinance as written does not prevent residential development of commercial parcels adjacent to noxious uses. Austin has chosen to allow noxious uses next to residential uses in the past with the 1957 Industrial Plan. This plan enabled the City to rezone large swaths of East Austin to Industrial, without regard to residential uses in the area.
- Allowing residential uses in commercial zoning **without consideration of nearby noxious uses** harkens back to the City’s “cumulative zoning” policy. Cumulative zoning meant that residential uses could be built in industrial-zoned parcels – adjacent to noxious uses – but that noxious uses could not be built on residentially-zoned parcels.

### *Recommendation*

Given the City of Austin’s history of implementing racist policy with respect to industrial zoning and communities of color, special care must be taken to engage with communities who the City has harmed in the past, so that harm is not repeated. We recommend engaging the Austin Fire Department, zoning staff, public health specialists, and community stakeholders to determine:

- Which industrial and commercial uses are noxious, and should not be sited close to residences
- A safe distance between problematic noxious uses and residences



## **Findings and Other Policy Considerations**

- HPD staff concludes an overall finding of positive affordability impact with staff recommended changes of not applying within 500 feet of Level 5 Regional Highways and further examining ways to exclude residential uses from locating near noxious uses, due to significant and disproportionate health impacts of citing residential uses adjacent to environmental hazards and noxious uses.
- To be consistent with this recommendation, HPD staff realize that additional research is needed to understand the ways the City of Austin continues to encourage residential and income-restricted residential units adjacent to highways and noxious uses.
- While the staff report includes a calculation of eligible properties within both high opportunity areas and displacement risk areas, staff recommends tracking projects that opt into this bonus program to evaluate whether it is advancing equity or resulting in unintended consequences.

### **Manager's Signature**

A handwritten signature in black ink, appearing to read "Stephanie Greathouse".

Stephanie (Stevie) Greathouse 11/3/2022  
HPD Division Manager



## Endnotes

<sup>1</sup> [Disparities in the Impact of Air Pollution | American Lung Association](https://www.lung.org/clean-air/outdoors/who-is-at-risk/disparities),

<https://www.lung.org/clean-air/outdoors/who-is-at-risk/disparities>

<sup>2</sup> [Residential Proximity to Major Highways — United States, 2010 \(cdc.gov\)](https://www.cdc.gov/mmwr/preview/mmwrhtml/su6203a8.htm),

<https://www.cdc.gov/mmwr/preview/mmwrhtml/su6203a8.htm>

<sup>3</sup> [The Economic Burden of Asthma in the United States, 2008-2013 - PubMed \(nih.gov\)](https://pubmed.ncbi.nlm.nih.gov/29323930/),

<https://pubmed.ncbi.nlm.nih.gov/29323930/>

<sup>4</sup> [There are clear, race-based inequalities in health insurance and health outcomes](https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/02/19/there-are-clear-race-based-inequalities-in-health-insurance-and-health-outcomes/),

<https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/02/19/there-are-clear-race-based-inequalities-in-health-insurance-and-health-outcomes/>

<sup>4</sup> [Near Roadway Air Pollution and Health: Frequently Asked Questions](https://www.epa.gov/sites/default/files/2015-11/documents/420f14044_0.pdf)

[https://www.epa.gov/sites/default/files/2015-11/documents/420f14044\\_0.pdf](https://www.epa.gov/sites/default/files/2015-11/documents/420f14044_0.pdf)



**HOUSING &  
PLANNING**

# Code Amendment: Residential in Commercial

Planning Commission  
November 8, 2022

# Content

- Background
- Council resolution
- Proposed draft changes
- Staff's recommendation
- Timeline



# Background

- Residential in commercial is a new concept for the draft LDC
- Basic concept is to allow residential in commercially zoned property to add housing capacity with required affordable units
- Draft LDC is suspended (March 2020)





# Council Resolution 12/9/21

- *WHEREAS, under the Land Development Code, residential development is not currently allowed in many of the commercial zoning districts in Austin; and*
- *WHEREAS, City Council adopted the Austin Housing Strategic Blueprint (the Blueprint) in 2017 which called for 135,000 housing units by 2028, with 60,000 of those units at or below 80 percent of the median family income (MFI);*



# Council Resolution 12/9/21

- *WHEREAS, in the proposed Land Development Code Revision, residential uses were allowed in more zoning districts than in current city code; and*
- *WHEREAS, allowing housing in more places provides the opportunity for increased housing supply in Austin; and*
- *WHEREAS, in its 2018 report, the Planning Commission Mapping Working Group indicated that allowing mixed use in commercial zoning could lead to about 46,324 housing units in new capacity;*



# Council Resolution 12/9/21

- Allow residential development in:
  - CS, CS-1, GR, LR, GO, LO
  - Affordable housing required
  - Right to return for creative spaces:
    - uses as defined in the Land Development Code, including but not limited to libraries, museums, public art galleries; performance venues/theaters; art, dance, martial arts, and studios for performing art, music and visual art; art workshops; live music venues; and artist live/work spaces.

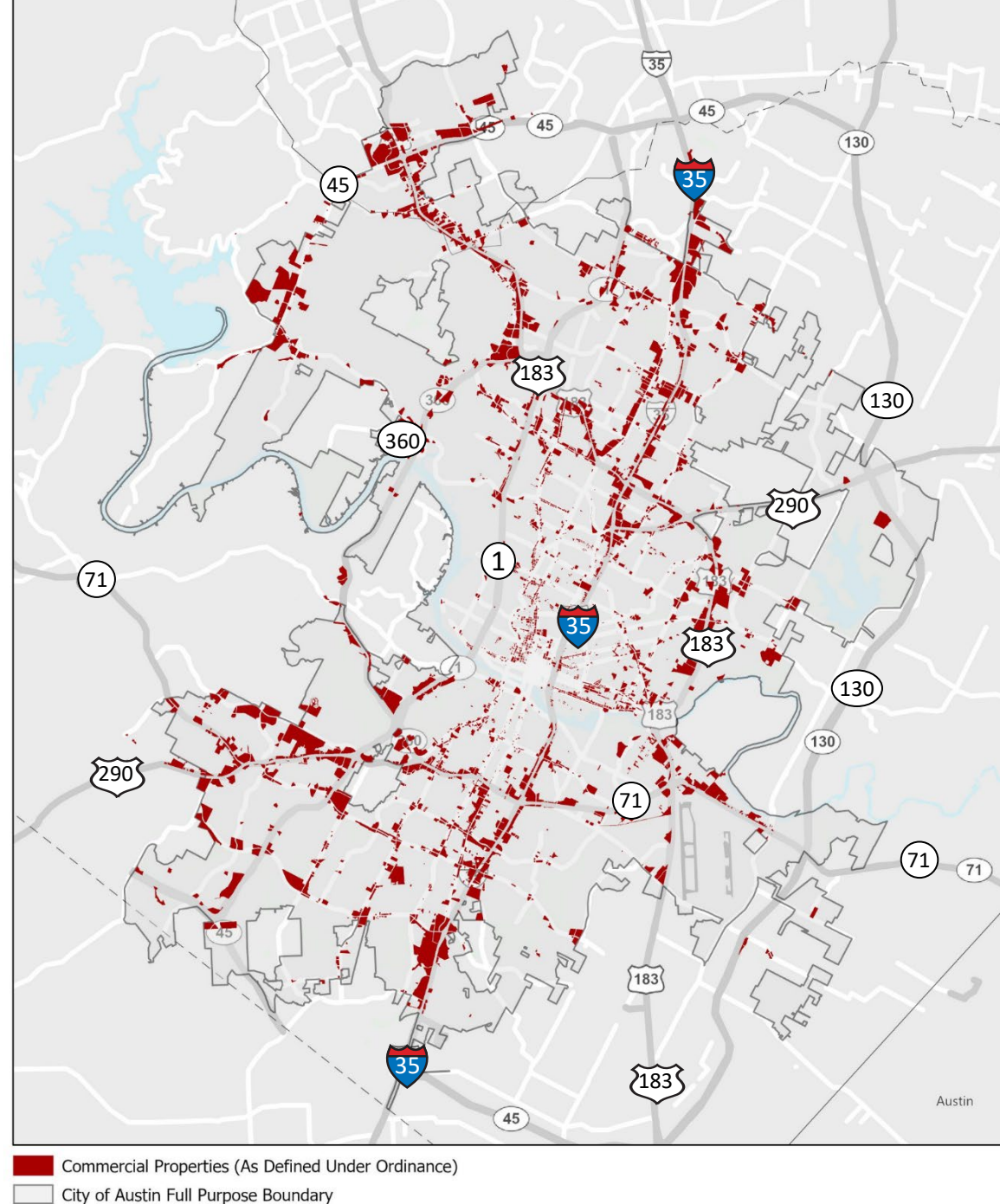


# Proposed draft changes

- Affordable housing required for residential entitlement:
  - Rental: 10% @ 60% MFI, 40 years
  - Owner: 10% @ 80% MFI, 99 years
  - Fee-in-lieu not allowed



# Proposed draft changes: Applicability



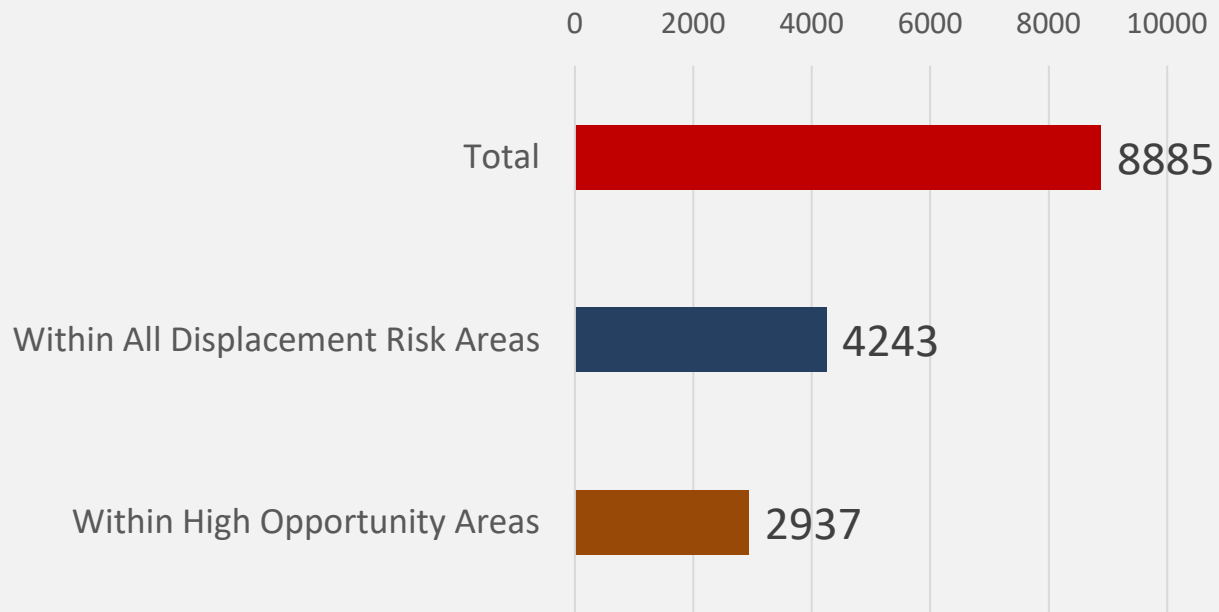


# Proposed draft changes

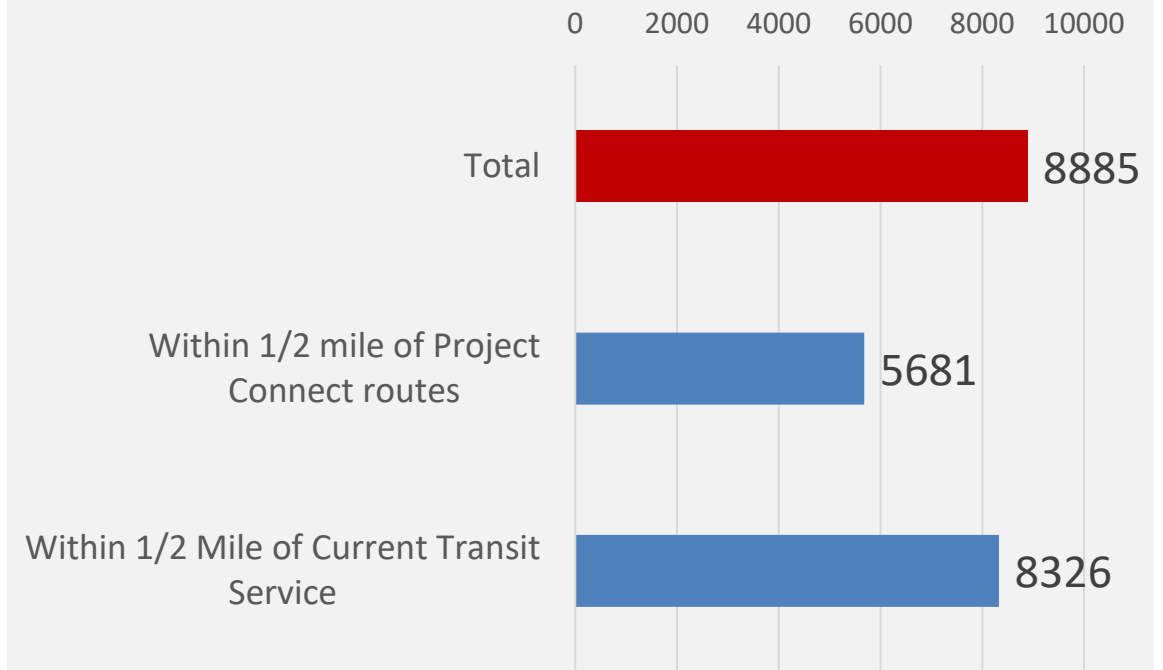
- Effectively grants MU zoning administratively when affordable housing is provided
- No other changes to site development standards: height, impervious cover, floor area ratio, parking



### Eligible Commercial Parcels by Displacement Risk Area & High Opportunity Area



### Eligible Commercial Parcels





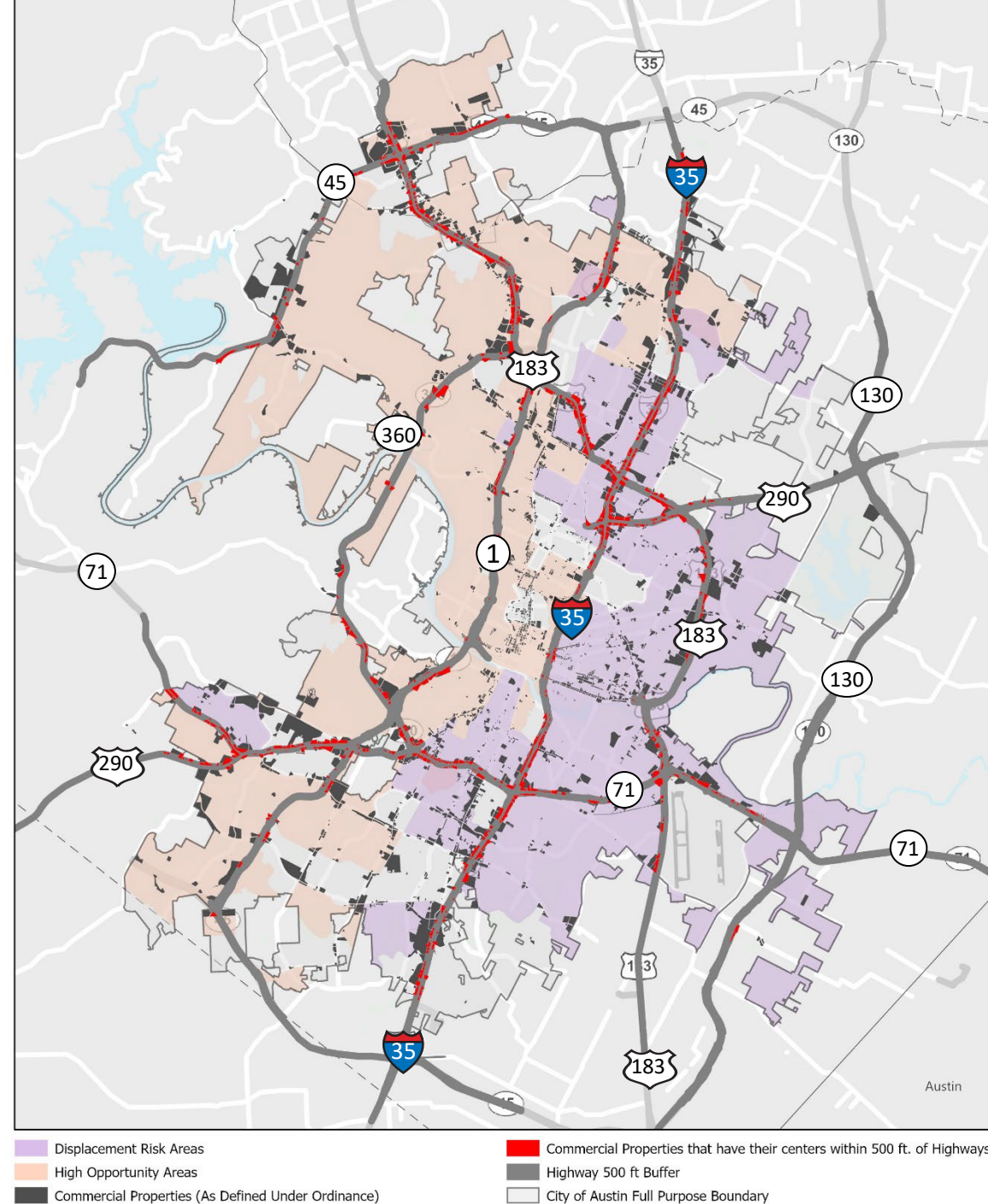
# Staff's recommendation

- Recommended with changes:
  - Modify to exclude properties within 500' of a level 5 highway
  - Modify to exclude residential uses near more intense manufacturing and/or noxious uses



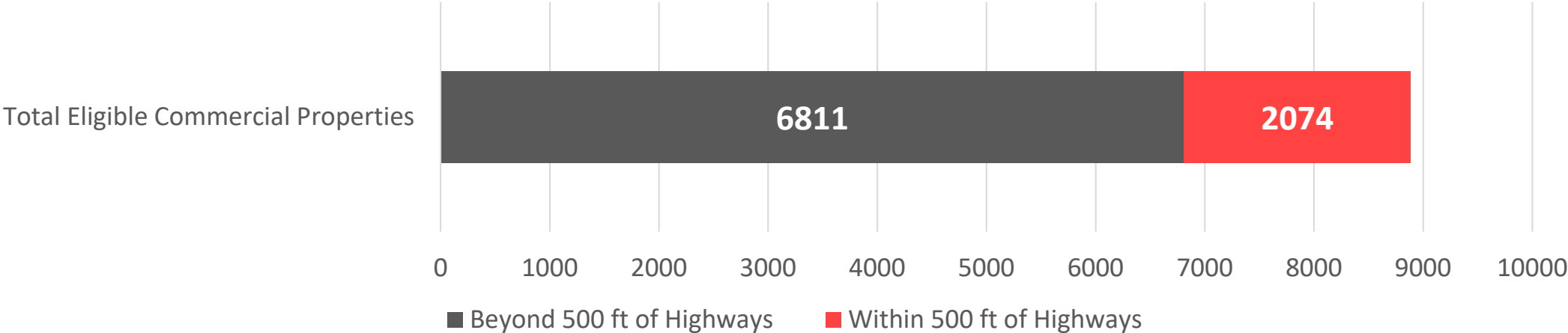


# Staff's recommendation: 500' highway buffer

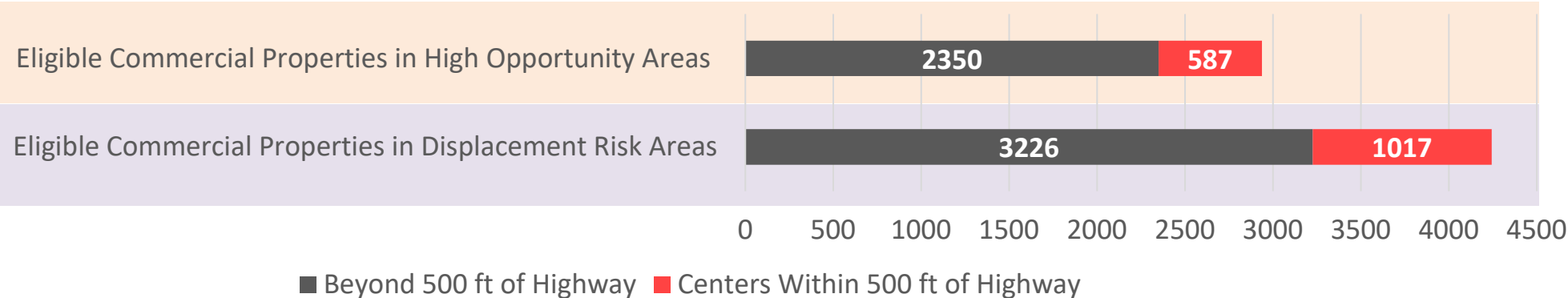




### Eligible Commercial Properties by Distance From Highway



### Eligible Commercial Properties and Distance From Highway by Displacement Risk & High Opportunity Areas





# Staff's recommendation

- Recommended with changes:
  - Modify to exclude properties within 500' of a level 5 highway
  - Modify to exclude residential uses near more intense manufacturing and/or noxious uses:
    - Adult-oriented businesses
    - Agricultural sales and services
    - Automotive repair services
    - Building maintenance and services
    - Commercial blood plasma center
    - Construction sales and services
    - Drop-off recycling collection facility
    - Equipment repair services
    - Equipment sales
    - Exterminating services
    - Kennels
    - Limited warehousing and distribution
    - Maintenance and service facilities
    - Monument retail sales
    - Outdoor entertainment
    - Vehicle storage
    - Basic industry
    - General warehousing and distribution
    - Limited warehousing and distribution
    - Recycling center
    - Resource extraction
    - Scrap and salvage



# Timeline

- 10/19/22: Codes and Ordinances Joint Committee
- 10/25/22: Planning Commission
- 11/2/22: Environmental Commission
- 11/8/22: Planning Commission
- 11/10/22: Council Housing and Planning Committee
- 12/1/22: Council