

TITLE 25. - LAND DEVELOPMENT.
CHAPTER 25-1. - GENERAL REQUIREMENTS AND PROCEDURES.
ARTICLE 15. HOUSING.

RESIDENTIAL USE IN COMMERCIAL DISTRICTS INCENTIVE PROGRAM
STAFF RECOMMENDATION UPDATED 11/23/2022

Highlighted blue text = Staff changes since Planning Commission

ARTICLE 15. HOUSING.

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 commercial-residential development governs over a conflicting provision of this title.

§ 25-1-752 DEFINITIONS.

- (A) In this division,
 - (1) CREATIVE SPACE means a use described in Subsection (B).
 - (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.

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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.
- (B) A creative space includes a use in Chapter 25-2 (*Zoning*) that allows for one or more of the following occupancies:
- (1) library, museum, art gallery;
 - (2) performance venue/theater;
 - (3) art, dance, martial arts, and studios for performing art, music, and visual art;
 - (4) art workshop;
 - (5) live music venue; or
 - (6) artist live/work space.

§ 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;

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- (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. 4601, *et seq.*; and
 - (c) the applicant grants a creative space operator the option to lease a creative space of comparable size and affordability following the completion of redevelopment.
- (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. 4601, *et seq.*; and

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- (d) the applicant grants current tenants the option to lease a unit of comparable affordability and size following completion of redevelopment.

§ 25-1-754 AFFORDABILITY REQUIREMENTS.

- (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.
- (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) 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, two-bedroom or three-bedroom affordable units may count as two or three, one-bedroom (efficiency) affordable units.
- (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 25-1-755 (*Certification*).
- (I) Affordable rental units may be rotated within the structure, provided that the total number of required affordable units remains in compliance with the affordability requirements for the affordability period.
- (J) An applicant shall prepare and follow an affirmative marketing and outreach plan for the duration of the affordable period, in a form consistent with the U.S. Department of Housing and Urban Development regulations and approved by the director

§ 25-1-755 CERTIFICATION.

- (A) The director is responsible for certifying whether a proposed development satisfies the exemption and bonus requirements
- (B) The applicant shall submit an application to the director demonstrating the proposed development satisfies the requirements in this division.
- (C) 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.
- (D) 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

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- (2) a document for recording in the real property records that provides notice of or preserves the minimum affordability requirements imposed by this division.
- (E) The form of the agreement and document described in Subsection (D) must be approved by the city attorney.
- (F) The applicant shall pay all fees, provide documentation, and fulfill any pre-occupancy requirements prior to the issuance of a certificate of occupancy.
- (G) The agreement required in Subsection (D) must, at a minimum:
 - (1) prohibit discrimination on the basis of an individual's source of income as defined in Section 5-1-13 (*Definitions*);
 - (2) require dispersion of affordable units throughout the residential units;
 - (3) require equal access and use of on-site amenities, common areas, and parking facilities;
 - (4) require shared access routes for affordable units and market-rate units;
 - (5) require that affordable units include interior components that are functionally equivalent to market-rate units;
 - (6) require the applicant to 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

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requirement; and 24 C.F.R. § 245.100 related to a tenant's right to organize; and

- (7) address obligations related to redeveloping a site with existing spaces and structures.

§ 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.
- (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 25-1-754 (*Affordability Requirements*).
- (C) 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.
- (D) 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.

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

§ 25-2-519 COMMERCIAL-RESIDENTIAL DEVELOPMENT.

- (A) In this section, a commercial-residential development is a development certified under Section 25-1-755 (*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:
 - (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;

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- (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 - 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.
- (6) Except as provided in (D)(7), a commercial-residential development must comply with the height restrictions applicable to the base zoning district.
- (7) 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

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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 **plus the number of on-site units required by the** other density bonus program.