

ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C20-2023-044 Density Bonus Zoning District

Description:

Amend City Code Title 25 (Land Development) to create a new zoning district for a density bonus program that grants 30 feet in height above the base zone, to a maximum of 90 feet, and modifies site development regulations including compatibility standards.

Background: Initiated by [Resolution No. 20240201-026](#).

In 2006, City Council adopted [Ordinance No. 20060831-068](#), creating the Vertical Mixed Use Overlay (VMU Overlay) and standards for Vertical Mixed Use Buildings (VMU Building). The standards exempted VMU Buildings from certain site development regulations and reduced minimum off-street parking requirements in exchange for community benefits, including affordable housing. In 2007, [Ordinance No. 20070215-071](#) instituted an opt-in process that allowed areas within adopted neighborhood plans to incorporate properties into the VMU Overlay. In 2013, [Ordinance No. 20130606-088](#), made significant amendments to Subchapter E, including to the standards for VMU Buildings. This included site design standards applicable to sites adjacent to SF-5 or more restrictive zoning districts.

In 2021, amendments to the City's VMU Overlay, including the creation of a second-tier bonus program commonly referred to as VMU2, were initiated through City Council [Resolution No. 20211118-052](#). The Resolution directed staff to process code amendments to allow for an additional 30' in height beyond the base zone standards for developments participating in the new tier of the density bonus program and proposed affordability requirements for such developments. In June of 2022, City Council adopted [Ordinance No. 20220609-080](#), implementing the code amendments initiated through the 2021 Council resolution. In December 2023, [Ordinance No. 20220609-080](#), [Ordinance No. 20221201-056](#), and [Ordinance No. 20221201-055](#) were invalidated.

In February 2024, City Council adopted [Resolution No. 20240201-026](#), which directed staff to create a density bonus program resembling the provisions under VMU2.

Summary of Proposed Code Amendment:

The proposed code amendments will create a new combining district for an affordable housing bonus program that is similar to the City's existing Vertical Mixed Use program and:

1. Is available city-wide on parcels that have been rezoned to add the new combining district designation
2. Serves the following households and requires a minimum number of on-site affordable units:
 - a. For rental units:
 - i. 10% of units set-aside affordable to 50% Median Family Income (MFI);
or
 - ii. 12% of units set-aside affordable to 60% MFI
 - b. 12% of ownership units set-aside affordable to 80% MFI
 - i. Requirements for ownership units may be satisfied by a fee in-lieu of on-site units
3. Allows a development that provides on-site affordable units or pays a fee in-lieu to be eligible for 30 feet of additional height above the maximum height allowed by the base zoning, up to 90 feet in total height and exemptions from the following site development standards:
 - a. Minimum site area requirements
 - b. Maximum floor area ratio
 - c. Maximum building coverage
 - d. Minimum street side yard setback and interior yard setback
 - e. Minimum front yard setback
4. Modifies the applicability of Article 10 Compatibility Standards and creates compatibility requirements for a participating development as follows:
 - a. Exemption from Article 10 (Compatibility Standards) Subchapter C
 - b. A compatibility buffer including a screening zone and restricted zone for developments that share a property line with a triggering property:
 - i. Screening zone to extend 10 feet into the property and to include minimum required plantings to provide visual separation between uses
 - ii. Restricted zone to begin at the edge of the screening zone and extend 15 feet into the property allowing only low intensity uses such as trails, driveways, and fire lanes
 - iii. Stormwater infrastructure will be allowed in the screening zone and restricted use zone
 - c. Screening for certain objects including vehicle lights, mechanical equipment, and refuse collection areas

By separate ordinance, procedural provisions necessary to implement the density bonus program will be added to Chapter 4-18, including:

1. Requirement for a pre-application conference with the Housing Department
2. Defining a certification process by the Housing Department

3. Provisions for simultaneous availability of units, similar unit size and location, and prohibiting income source discrimination
4. Requirements for redevelopment of existing multifamily properties and tenant protections
5. Creating a penalty for non-compliance

The following text amendments were requested by the Planning Commission in [Recommendation No. 20241302-18](#):

1. In 25-8-700-D (D)(2)(c) change ‘10 shrubs’ to ‘10 large shrubs’
2. Examine what method may be possible to establish a waiver or variance for the requirements in §4-18-32 (Existing Multi-Family Structure)
3. Consider a fee-in-lieu option to meet the affordability requirements for ownership units
4. Prohibit STRs in all rental units, including affordable units, pending review by the Law Department

The requested amendments have been incorporated into the staff recommendation.

Proposed Text Amendment(s): See attached draft ordinance.

Staff Recommendation: Recommended

Staff recommends the creation of the new Density Bonus Zoning District, or DB-90. Density bonuses are a tool to encourage the development of affordable housing and achieve specific housing goals. Density bonuses help the City achieve the following goals and objectives:

1. **Increased Housing Supply:** Density bonuses allow more units to be built on a property than would typically be allowed under existing zoning regulations. By providing the incentive to increase housing density, the overall housing supply in the city can be expanded. To date, over 17,500 units have been completed in VMU Buildings.
2. **Affordable Housing Incentives:** Eligibility for the incentives in density bonuses are tied to the inclusion of on-site affordable housing units. This helps address the shortage of affordable housing in the city and achieve Strategic Housing Blueprint goals. Over 2,500 affordable units have been completed in VMU buildings.
3. **Mixed-Income Communities:** Density bonuses can contribute to the creation of mixed-income neighborhoods by encouraging the integration of affordable housing units within market-rate developments.
4. **Community Benefits:** To qualify for density bonuses, properties are required to provide additional community benefits, such as pedestrian-oriented commercial uses. This ensures that the increased density brings positive outcomes for surrounding communities.
5. **Holistic Approach:** Density bonuses are part of the City’s holistic approach to affordable housing that includes the production of market rate and affordable housing as well as the preservation of existing housing.

The existing Vertical Mixed Use program has successfully delivered over 17,500 housing units with over 2,500 of those being income-restricted affordable units, making it one of the City’s most effective tools in addressing the need for affordable housing and meeting the targets established under the Strategic Housing Blueprint. The following is a table describing the impact of the existing VMU program.

VMU Developments			
	Completed	In the Pipeline	Notes
VMU Buildings	83	22 under construction 17 in planning	<i>Buildings under construction have been issued a building permit but have not received a Certificate of Occupancy (CO).</i> <i>Buildings in planning have received a certification letter to utilize VMU but may be in early stages of planning and development ranging from site plan under review to building plan under review.</i>
VMU Housing Units	17,634	4,277 under construction 5,198 in planning	<i>These totals reflect all housing units within VMU buildings including both market-rate and income-restricted housing units.</i>
Income-Restricted Affordable VMU Housing Units	2,535	733 under construction 995 in planning	<i>These totals reflect income-restricted affordable units within VMU buildings ranging from below 60% MFI to 100% MFI.</i>
VMU Housing Units by Tenure	96% rental 4% ownership	97% rental 3% ownership	

Source: Affordable Housing Inventory, City of Austin Open Data Portal

Staff also recommends the changes to Chapter 4-18 to ensure the process and requirements are consistent for all density bonus programs. As identified in the [November 14, 2023 briefing to the City Council’s Housing and Planning Committee](#), the separate and redundant application processes for programs lead to confusion for staff and applicants. Staff supports the protection of tenants in existing multifamily developments through the inclusion of the requirements related to the redevelopment of existing units and requirements for tenant notification and relocation benefits. Approximately 7% of properties within eligible base zoning districts contain existing multifamily uses. However, the redevelopment requirements will not be triggered for all those existing multi-family uses.

Further, staff recommends initiation of code amendments to create additional tiers of the density bonus program that include additional height or FAR for projects that provide additional

community benefits. As part of the code amendment process, staff recommends a robust density bonus calibration analysis to ensure community benefits are tied to additional entitlements. Calibration should consider changes to required affordability periods, tenures, and targeted income levels to ensure requirements are consistent with Strategic Housing Blueprint goals and community needs. Additionally, an aspect of this analysis should include investigation into the level of required pedestrian-oriented commercial and the allowance for Live/Work spaces to ensure mixed-use programs are meeting community goals.

In response to the Planning Commission's request, staff recommends an appeals process from the requirements under 4-18-32(1) be created that enables an applicant to appeal a determination made by the Building Official to the Building and Fire Code Board of Appeals. Additionally, Staff supports Planning Commission's recommendation to allow the option of a Fee-in-Lieu for ownership units equivalent to the required percentage of the total residential units, including the mix of bedrooms required, at the rate set in the fee schedule at the time of final site plan submission. Staff recommends calculating the Fee-in-Lieu rate for ownership Units by subtracting the annually set [Maximum Sale Price under the Development Incentive Programs](#) by the Director of the Housing Department from the citywide median Condominium Sales Price by Bedroom Count, as reported by the Austin Board of Realtors. This fee will reflect the cost associated with selling the units at an affordable sales price, as opposed to the market price. If Council supports the proposed methodology, staff recommends adopting a mid-year budget amendment, and then updating the fee annually with the adoption of the City budget.

Lastly, staff recommends waivers from the fees associated with a rezoning application for certain properties within the VMU Overlay or otherwise impacted by the invalidation of [Ordinance No. 20220609-080](#), [Ordinance No. 20221201-056](#), and [Ordinance No. 20221201-055](#).

Board and Commission Action:

February 13 – Recommended as amended by the Planning Commission on a vote of 8-3 with Commissioner Philips abstaining and one vacancy on the dais.

Council Action:

February 29 – To be considered by City Council

Sponsor Department: Planning Department

City Staff:

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