

**ORDINANCE NO. 20240229-070**

**AN ORDINANCE REPEALING ORDINANCE NO. 20220609-080 RELATED TO VERTICAL MIXED USE BUILDINGS; REPEALING ORDINANCE NO. 20221201-056 RELATED TO THE CORRIDOR OVERLAY; REPEALING ORDINANCE NO. 20221201-055 RELATED TO RESIDENTIAL USES IN COMMERCIAL DISTRICTS; AMENDING CHAPTER 4-18 OF CITY CODE RELATED TO DENSITY BONUS AND INCENTIVE PROGRAMS; AND CREATING AN OFFENSE AND PENALTY.**

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

**PART 1.** Ordinance No. 20220609-080, Ordinance No. 20221201-056, and Ordinance No. 20221201-055 are repealed.

**PART 2.** Chapter 4-18 (*General Permitting Standards*) of City Code is amended to create a new Article 1 that includes Section 4-18-1 (*Expedited Building Plan Review*) and Section 4-18-2 (*Worker Protection Certification*).

***ARTICLE 1. EXPEDITED PLAN REVIEW.***

**PART 3.** Chapter 4-18 (*General Permitting Standards*) of City Code is amended to add a new Article 2 to read:

***ARTICLE 2. DENSITY BONUS AND INCENTIVE PROGRAMS.***

**Division 1. General Provisions.**

**§ 4-18-20 PURPOSE, APPLICABILITY, SHORT TITLE, AND AUTHORITY.**

- (A) This article establishes the administrative requirements for programs that provide modifications to Title 25 (*Land Development*) and other regulatory-related benefits in exchange for community benefits.
- (B) This article applies to a program adopted or amended after February 1, 2024.
- (C) A director who is responsible for administering or implementing a specific program may adopt, implement, and enforce:
  - (1) program guidelines; and
  - (2) administrative rules in accordance with Chapter 1-2 (*Administrative Rules*).
- (D) Establishing Maximum Affordable Prices.

- (1) The Housing director is authorized to establish maximum affordable prices for affordable units on an annual basis.
- (2) When determining the maximum affordable sales price, the Housing director may include an assumption that a homeowner will be required to pay an ownership association fee.

#### **§ 4-18-21 DEFINITIONS.**

In this article,

- (1) AFFORDABLE OWNERSHIP UNIT means a dwelling unit that is for sale and is reserved for an income-eligible household.
- (2) AFFORDABLE RENTAL UNIT means a dwelling unit that is for lease and is reserved for an income-eligible household.
- (3) AFFORDABLE UNIT means an affordable rental unit and an affordable ownership unit.
- (4) DIRECTOR means the director of the city department or office that administers or implements a program.
- (5) HOUSING DIRECTOR means the director of the Housing Department or successor department.
- (6) MARKET RATE UNIT means a rental or ownership unit that is not an affordable unit.
- (7) MAXIMUM AFFORDABLE PRICE means the maximum affordable rental and sales prices established by the Housing director.
- (8) MFI means median family income for the Austin-Round Rock metropolitan statistical area.
- (9) PROGRAM means a density bonus or incentive program but does not include Affordability Unlocked, S.M.A.R.T. Housing, or Section 25-2-586 (*Downtown Density Bonus Program*).

#### **§ 4-18-22 PRE-CERTIFICATION REQUIREMENT.**

- (A) Before an applicant can apply for certification, the site's zoning must include a density bonus (DB) combining district.
- (B) Participation in a program is voluntary. If an applicant participates in a program, the applicant must be willing to comply with this article.

**§ 4-18-23 AFFORDABILITY REQUIREMENTS – DWELLING UNITS.**

- (A) This section applies to a program that requires on-site affordable units.
- (B) If the number of affordable units required by a program includes less than a whole unit, the unit number is rounded up to the nearest whole unit.
- (C) Minimum Affordability Periods.
  - (1) The minimum affordability period for affordable rental units is 40 years following the last certificate of occupancy required for the development.
  - (2) The minimum affordability period for affordable ownership units is 99 years following the issuance of a certificate of occupancy for the dwelling unit.
  - (3) In a multi-phased development, the Housing director may begin the minimum affordability period upon the issuance of the last certificate of occupancy for each phase.
- (D) Unless otherwise approved by the Housing director, the bedroom count for affordable units shall be comparable to the bedroom count for market rate units. At the discretion of the Housing director, two-bedroom or three-bedroom affordable units may count as two or three one-bedroom (efficiency) affordable units.
- (E) Simultaneous Availability of Affordable Units.
  - (1) In a single-phase development with dwelling units, affordable units must be available for occupancy concurrently with the market-rate units.
  - (2) For a multi-phase development with dwelling units, 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 4-18-25 (*Certification*).
- (F) 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.
- (G) 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 Housing director

- (H) An applicant shall not sell or lease an affordable unit for more than the maximum affordable price.

**§ 4-18-24 RESERVED.**

**§ 4-18-25 CERTIFICATION.**

- (A) The director is responsible for certifying whether a proposed development and the applicant satisfy the requirements established in this article and the program.
- (B) Certification Application.
  - (1) An applicant shall submit an application to the director that demonstrates how the proposed development satisfies this article.
  - (2) Before an applicant submits an application required by this section, the applicant must participate in a pre-application conference.
    - (a) A pre-application conference is an informal evaluation of the applicant's proposal that will include reviewing the applicable provisions of the program and other issues that may affect the applicant's proposal (e.g., accessibility requirements).
    - (b) The informal evaluation is not binding on the applicant or the city.
- (C) Before the director may certify a proposed development, the applicant shall execute:
  - (1) an agreement to preserve the minimum affordability period and related requirements imposed by the applicable program; and
  - (2) a document for recording in the real property records that provides notice of or preserves the minimum affordability requirements imposed by the applicable program.
- (D) The form of the agreement and document described in Subsection (C) must be approved by the city attorney.
- (E) The applicant shall pay all fees, provide documentation, and fulfill any pre-occupancy requirements prior to the issuance of a certificate of occupancy.

- (F) For developments with one or more affordable units, the agreement required in Subsection (C) must, at a minimum:
- (1) include the applicable affordability requirements;
  - (2) prohibit discrimination on the basis of an individual's source of income as defined in Section 5-1-13 (*Definitions*);
  - (3) require dispersion of affordable units throughout the residential units;
  - (4) require equal access and use of on-site amenities, common areas, and parking facilities;
  - (5) require shared access routes for affordable units and market-rate units;
  - (6) require that affordable units include interior components that are functionally equivalent to market-rate units;
  - (7) limit the use of an affordable unit as a Type 2 or Type 3 short-term rental (STR);
  - (8) require the applicant to incorporate lease provisions that are consistent with a tenant's right to organize under 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
  - (9) address any obligations described in Division 2 (*Redevelopment Requirements*), if applicable.

**§ 4-18-26 POST-CONSTRUCTION REQUIREMENTS AND PENALTY – DWELLING UNITS.**

- (A) For a development with affordable rental units, the property owner or the property owner's agent shall provide the Housing director with information that allows the Housing 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 Housing 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 Section 4-18-23 (*Affordability Requirements - Dwelling Units*).
- (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.

### **Division 2. Redevelopment Requirements.**

#### **§ 4-18-30 APPLICABILITY.**

This division applies to an applicant who intends to redevelop a site with existing non-residential spaces or multi-family structures and the program states that an applicant must comply with this division or a section within this division.

#### **§ 4-18-31 EXISTING NON-RESIDENTIAL SPACE.**

- (A) A program that requires an applicant to comply with this section determines:
- (1) the definition of non-residential space; and
  - (2) the minimum operating time period for the non-residential space.
- (B) For redevelopment with an existing non-residential space, an applicant must:
- (1) redevelop the site to replace all existing non-residential spaces with non-residential spaces of comparable size;
  - (2) provide current non-residential space operators with:
    - (a) notice and information about the proposed development on a form approved by the director;
    - (b) 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
  - (3) grant a non-residential space operator the option to lease a non-residential space of comparable size and affordability following the completion of redevelopment.

#### **§ 4-18-32 EXISTING MULTI-FAMILY STRUCTURE.**

- (A) For redevelopment with an existing multi-family structure, an applicant must:
- (1) establish that:

- (a) the existing multi-family structure requires extensive repairs for which costs will exceed 50 percent of the market value, as determined by the building official;
    - (b) the average rents for all units that were affordable to a household earning 80 percent MFI or below were not raised by more than 10 percent within the previous 24 months;
  - (2) replace all existing units that were affordable to a household earning 80 percent MFI or below in the previous 12 months and have at least as many bedrooms as those units;
  - (3) provide current tenants with:
    - (a) notice and information about the proposed development on a form approved by the Housing director;
    - (b) 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
  - (4) grant current tenants the option to lease a unit of comparable affordability and size following completion of redevelopment.
- (B) Appeals.
- (1) An applicant may appeal the building official's determination in Subsection (A)(1) to the Building and Fire Code Board of Appeals.
  - (2) An appeal must be filed before the 21st day after the building official issues the determination.
  - (3) The notice of appeal must be on a form prescribed by the building official and must include:
    - (a) the name, address, and telephone number of the applicant;
    - (b) the date of the decision; and
    - (c) the reasons the applicant believes the repairs costs will exceed 50 percent of the market value.
  - (4) An appeal under this subsection is treated as an appeal of a determination made by the building official and is subject to the provisions found in Section 2-1-121 (*Building and Fire Code Board of Appeals*).

