



## MEMORANDUM

**TO:** Mayor and City Council

**FROM:** Jim Robertson and Michael Knox, Co-Project Managers, Downtown Austin Plan

**DATE:** 18 August 2011

**RE:** Downtown Austin Plan: Staff Response to Planning Commission's Downtown Density Bonus Program Recommendations

**CC:** Marc Ott, Sue Edwards, Robert Goode, Marie Sandoval, Greg Guernsey, George Adams

Below are staff responses to the Planning Commission's May 25, 2010, recommendations regarding the Downtown Density Bonus Program. Each of the Planning Commission's suggestions is followed by a staff response.

### Development Agreements

#### **Planning Commission Recommendation No. 1:**

An issue that transcends all others in a density bonus plan is how any agreements will be entered into and tracked for compliance. First and foremost, the Planning Commission recommends establishment of a standard operating procedure for downtown development agreements that clearly spell out 1) the density bonuses and height increases to be permitted and 2) the associated list, quantity, form, and, if possible, dollar-value of the public benefits to be provided by the developer.

#### **Staff Response:**

Staff generally concurs with this recommendation, and will take this recommendation into account as it develops the code amendments that will put in place the Density Bonus Program.

## **Open Space and Parks**

### **Planning Commission Recommendation No. 2:**

Density bonuses should be permitted in exchange for on-site open space that is publicly accessible and meets well-defined criteria or for fee-in-lieu that could be used to improve downtown parkland. The fee-in-lieu payments should go into a trust fund similar to the Housing Trust Fund for affordable housing. The trust fund should supplement, not supplant, the Parks and Recreation Department budget. Improvements involving use of trust fund dollars should be limited to the downtown area and should be spent within two to three years of receipt. City staff needs to clarify whether fee-in-lieu payments can only be used for park capital improvements or could also be used for operation and maintenance to enhance downtown parks, in which case PARD should have discretion for using the funds in either category.

### **Staff Response:**

Staff generally concurs with this recommendation. A fee-in-lieu will need to be calibrated and recalibrated on a regular basis when the rest of the community benefits are recalibrated.

## **Affordable Housing**

### **Planning Commission Recommendation No. 3:**

Some residential and mixed use development has or will occur on City-owned land downtown. When an opportunity arises renegotiate the Poleyard, AMLI, Green Water treatment, and Seaholm agreements, then new more aggressive housing affordability goals should be set.

### **Staff Response:**

The City has several public-private redevelopment agreements in place. From time to time it has been necessary to amend certain contract provisions in response to new circumstances and new terms agreed to by the parties. However, staff has never seen the City unilaterally initiate renegotiation on such a significant deal point (i.e. affordable housing commitments). The City could request and pursue renegotiation, but the other party could decline. If the other party chose to reenter negotiations, they would be entitled to compensation for any additional encumbrance placed on the property. The City's objectives might be achieved, but it would almost certainly require additional public investment in the project.

The same holds true for the redevelopment agreements currently under negotiation (e.g. Green Water Treatment Plant Redevelopment). The City of Austin is negotiating contracts on the basis of the terms specified in the Request for Proposals, and the specific proposal made by the selected firm. More aggressive affordable housing terms could be pursued, but it would almost certainly require additional public investment to achieve.

### **Planning Commission Recommendation No. 4**

The Planning Commission is anxious to see more family-friendly housing Downtown. However, density bonuses should not be available in exchange for market-rate housing, even if advertised as family-friendly housing. Density bonuses for third bedrooms should be available only for residential housing priced according to the adopted Downtown affordability levels, or for units sized smaller than a size to be selected by the Community Development Commission.

**Staff Response:**

The Neighborhood Housing and Community Development (NHCD) staff would encourage density bonuses that would not create additional regulatory barriers for developers – in an effort to increase opportunities for affordable housing downtown.

**Planning Commission Recommendation No. 5:**

As Housing Trust Funds accrue from the fee-in-lieu option, the spending should follow rules:

- a) Spend funds as quickly as practical.
- b) At least 50 percent of all fees must be spent in the Downtown.
- c) Funds spent to create affordable housing units outside of Downtown should be concentrated on or near core transit corridors within roughly 2.5 miles of the intersection of Congress Ave. and 6<sup>th</sup> Street.
- d) Funds spent to provide affordable units outside of Downtown should be spent in cooperation with a local Community Housing Development Corporation if one operates in the neighborhood.
- e) Exclude the UNO and Rainey Street Overlay areas from Downtown fee-in-lieu resources available in the Downtown Impact Area, as these areas already have affordable housing programs.

**Staff Response:**

NHCD staff recommends policies that will encourage the ongoing promotion of affordable housing core values: deeper affordability, long-term affordability and geographic dispersion of affordable housing. Designating a percentage of the Housing Trust Fund revenue to be allocated to a particular geographic area could limit Council's ability to be as flexible as possible in the creation and retention of affordable housing and may not position the City to be able to have access to all revenue streams possible in order to move on development deals as the market dictates.

**Planning Commission Recommendation No. 6:**

The distribution of affordable housing downtown should attempt to align more with the income distribution of those working downtown. See the attached tables and graphs in Figure 1 (at end of report) showing the current statistical distributions of incomes for downtown workers and residents, and costs for rents provided by the Department of Housing and Community Development. Although there are rental units priced at ranges that many two-income families working Downtown can afford, the Density Bonus report suggests the trend is toward more expensive units.

**Staff Response:**

NHCD staff would encourage density bonuses that would not create additional regulatory barriers for developers – in an effort to increase opportunities for affordable housing downtown.

**Planning Commission Recommendation No. 7:**

Measures of affordability need to include not only rent/mortgage, but also transportation and utilities.

**Staff Response:**

NHCD will continue to apply the U.S. Department of Housing and Urban Development's definition of affordability as it is the industry standard.

**Planning Commission Recommendation No. 8:**

Efforts should be made to ensure there is no net loss of affordable housing units Downtown. The count of units at different price points by number of bedrooms and floor area should be reported to the City Council each year.

**Staff Response:**

Staff resources to ensure this level of compliance would be administratively burdensome. It should be cautioned that policies that impact administrative oversight at this level should be assessed and a fiscal note/impact included.

**Planning Commission Recommendation No. 9:**

Regarding specific details as to how a given development project would provide affordable units, the Planning Commission offers two suggestions:

- a) The highest priority is to include the affordable housing on site. Second priority is nearby. Third priority is elsewhere Downtown. Fourth priority is on or near a core transit corridor within the boundaries described earlier.
- b) During the week of May 17, the Planning Commission learned of a separate effort involving several organizations representing housing and business interests to create consensus collaboration on city-wide affordability housing strategy. Thus, the Planning Commission suggests a delay in adopting any changes away from the currently adopted density bonus program or CURE regulations until this other group has completed work.

**Staff Response:**

The separate effort mentioned above is a report titled "Building and Retaining and Affordable Austin," and is a collaborative effort of the Urban Land Institute – Austin, HousingWorks Austin, Real Estate Council of Austin, Austin Area Research Organization. Only a small section of this report addresses affordable housing in relation to incentive programs such as the Downtown Density Bonus Program.

## **Compatibility and District Benefits**

### **Planning Commission Recommendation No. 10:**

Density bonuses should not be available in the Northwest District.

#### **Staff Response:**

Staff disagrees with this recommendation. While the Downtown Density Bonus report recommends that much of the Northwest District be exempt from the Downtown Density Bonus Program, there are properties on the periphery of the district that are not in close proximity to existing single-family scaled buildings that should be eligible for density bonuses.

### **Planning Commission Recommendation No. 11:**

The Planning Commission supports the Judge's Hill-specific compatibility standards.

#### **Staff Response:**

Staff concurs and will use the staff-recommended compatibility standards identified in the Downtown Austin Plan in the preparation of a Downtown Density Bonus ordinance.

### **Planning Commission Recommendation No. 12:**

Applicants that receive density bonuses should be required to comply with compatibility standards triggered by properties outside the boundaries of downtown, or should seek a variance.

#### **Staff Response:**

Staff disagrees with this recommendation. Staff believes that the application of generic, city-wide compatibility standards in downtown is inappropriate, which is why the Downtown Density Bonus report recommended a version of compatibility specific to downtown conditions.

### **Planning Commission Recommendation No. 13:**

Administrative density bonuses should not be allowed on portions of lots within a 25 or 100 year flood plain. Density bonuses may be sought through a public hearing process, however.

#### **Staff Response:**

Staff recommends that the application of density bonuses to tracts within the 25 year and 100 year floodplain be studied in greater detail during the preparation of a Downtown Density Bonus ordinance.

### **Planning Commission Recommendation No. 14:**

The lists of public benefits – aside from affordable housing – associated with density bonuses should be tailored for individual districts, and specific lists for districts may be developed over time. The Planning Commission is concerned that too long a list will result in a dilution of benefits, and suggests a structure such as the following:

- Create a master list of all possible public benefits
- Limit the list within any district to six in number
- Treat the overall master list and by-district sub-lists as guidelines that may be administratively altered.

**Staff Response:**

In general, staff agrees with the notion of limiting the number of community benefit options in order to avoid dilution. The idea of “administratively altering” the list of community benefits will need to be studied further.

**Planning Commission Recommendation No. 15:**

Any density bonus policy in the Waterfront Overlay part of downtown should be addressed by the Waterfront Planning Advisory Board.

**Staff Response:**

Staff generally concurs with this recommendation and will coordinate with the Waterfront Planning Advisory Board regarding their recommendations.

**Historic Preservation and the Warehouse District**

**Planning Commission Recommendation No. 16:**

TDRs should be transferable independently of any particular receiving site. ROMA says this is their intention, though it is not spelled out yet in their report. This would allow a *TDR market* to develop, before the time when specific projects are ready to break ground. It would allow a developer to buy TDRs for a prospective project, knowing that they could be resold if the project does not go forward or is reduced in scale. It would provide protection for sending sites, through individual landmarking, at the time TDRs are sold. Note that this creates the potential for a speculative market in Austin TDRs – which would be a good thing, if it harnessed private investment capital to create a market and create incentives for protecting downtown Austin landmarks.

**Staff Response:**

Staff generally concurs with this recommendation but additional analysis will be required to understand the full implications of this approach.

**Planning Commission Recommendation No. 17:**

TDRs should be certified and their ownership registered by the City. This is necessary as a corollary of #16. If TDRs can be detached from their sending sites before they are attached to any receiving site, there needs to be an instrument recording their existence and ownership. In theory this could all be handled by private options and contracts, but this will not work well for two reasons:

- The transaction costs of creating and enforcing those private contracts;

- The potential for fraud or confusion as to the validity of a TDR.

Other jurisdictions have addressed the question of validity by *certifying* TDRs, which can be done independently of any proposed sale. Certification makes a public determination that this property, with this building on it, is eligible to transfer this many square feet of TDRs.

**Staff Response:**

Staff generally concurs with this recommendation, and will take this recommendation into account as it develops the code amendments that will put in place the Density Bonus Program.

**Planning Commission Recommendation No. 18:**

The City of Austin should purchase some TDRs. The purpose is to help make a market. There are two parts to this: first, creating the mechanisms of the market – the documents, the procedures for certifying TDRs and maintaining records of them. No one wants to be the guinea pig. Second, the infusion of some early funding will help establish a price for TDRs. This is not a public payment in compensation for a regulation. It is a public investment in a market created and maintained through public actions. The City (like any investor in Austin TDRs) would recoup its investment by selling the TDRs later when demand increased. Unlike other investors, the City has the potential to destabilize the market by changing its rules; this would give a tangible interest in maintaining market stability.

**Staff Response:**

This recommendation will be considered during the preparation of Downtown Density Bonus code amendments. Proceeding with this approach would, of course, be dependent upon City Council designating a funding source for City purchases of TDRs.

**Planning Commission Recommendation No. 19:**

Future landmarked properties may participate in the TDR market.

**Staff Response:**

In their discussions at downtown density bonus stakeholder meetings, members of the Planning Commission Executive Committee seemed to indicate that they meant that properties *outside* the Warehouse District for which landmark status was granted would be eligible to sell their unused development rights in the TDR program. This is counter to the recommendations in the Downtown Density Bonus report, as one of the reasons to limit the sending properties to those in the Warehouse District is to limit the amount of development rights available so that the Warehouse District property owners will be more likely to be able to sell their unused development rights.

## **Green Roofs**

### **Planning Commission Recommendation No. 20:**

Green Roofs are a worthy public benefit and should be included in the Density Bonus Plan.

### **Staff Response:**

Pursuant to Council Resolution, Green Roofs will be incorporated into the Downtown Density Bonus Program.

## **Downtown Infrastructure**

### **Planning Commission Recommendation No. 21:**

The Planning Commission suggests that the Downtown Infrastructure Study be used to assess needs for capital improvements and additional requirements on new development. The Study should be completed to determine if there are portions of downtown that can not accommodate additional density without significant infrastructure upgrades.

### **Staff Response:**

As part of the Downtown Austin Plan the consultants prepared a Downtown Infrastructure Strategy. This report found that most of the Downtown has aged and undersized systems. Yet these systems function rather well to serve existing and redeveloping areas by incorporating location specific improvements. The Infrastructure Strategy includes a 20-year Implementation Program for upgrades to utility and drainage infrastructure, and for policy, organizational, and departmental procedures that will support the implementation of the plan. The focus of the implementation program is to upgrade infrastructure in a location-responsive manner as deficiencies are identified or proposed projects come to the City. In summary the Consultants findings indicate there aren't large areas of downtown unsuitable for redevelopment but rather there is the need in many cases for location specific infrastructure improvements.

### **Planning Commission Recommendation No. 22:**

Infrastructure costs to the downtown developer should not be counted as fee-in-lieu for density bonuses.

### **Staff Response:**

Staff concurs with this recommendation.

## **Parking**

### **Planning Commission Recommendation No. 23:**

Examine University Neighborhood Overlay (UNO) language on transportation items such as charging separately for parking spaces, reduced parking, reduced parking for car shares, etc. for applicability for Downtown Density Bonus applications.

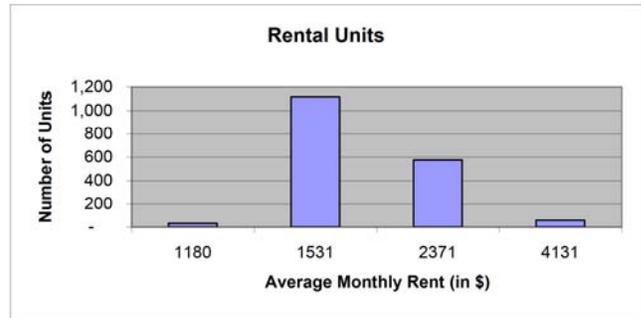
**Staff Response:**

This recommendation will be taken into account during the preparation of Downtown Density Bonus code amendments.

Figure 1 Statistics on housing and income Downtown 2009-2010

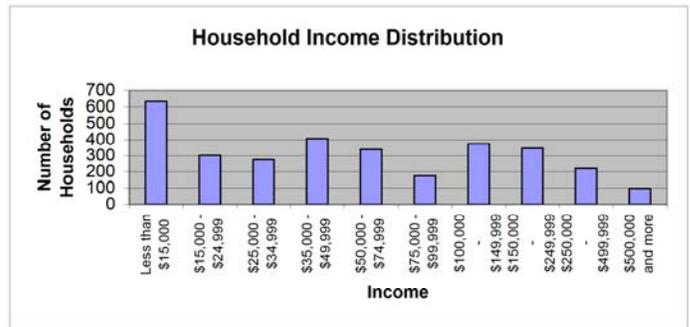
**UNIT MIX SUMMARY (All)**

Floorplan	Quantity	Avg Rent/Month	Avg Size	Avg Rent/Sq. Ft.
Efficiency	33	\$1,180	636	\$1.86
1BR	1,121	\$1,531	845	\$1.81
2BR	576	\$2,371	1358	\$1.75
3BR	59	\$4,131	2278	\$1.81
<b>All Units</b>	<b>1,789</b>	<b>\$1,881</b>	<b>1054</b>	<b>\$1.78</b>



Floorplan	If Monthly Rent is:	...then Annual Income Must be At Least:	...meaning hourly must be:
Efficiency	\$1,180	\$47,200	\$23.60
1BR	\$1,531	\$61,240	\$30.62
2BR	\$2,371	\$94,840	\$47.42
3BR	\$4,131	\$165,240	\$82.62
<b>OVERALL</b>	<b>\$1,881</b>	<b>\$75,240</b>	<b>\$37.62</b>

Description	Polygon 1	%
<b>2009 Est. Households by Household Income</b>	<b>3,179</b>	
Less than \$15,000	634	19.94
\$15,000 - \$24,999	302	9.50
\$25,000 - \$34,999	277	8.71
\$35,000 - \$49,999	406	12.77
\$50,000 - \$74,999	341	10.73
\$75,000 - \$99,999	176	5.54
\$100,000 - \$149,999	374	11.76
\$150,000 - \$249,999	348	10.95
\$250,000 - \$499,999	221	6.95
\$500,000 and more	99	3.11



2009 Jobs	Earnings	Hourly Earnings
1,316	\$8.58	\$9.09
6,392	\$9.11	\$9.75
1,063	\$10.87	\$12.04
312	\$12.63	\$12.94
156	\$11.00	\$14.36
289	\$13.03	\$14.38
408	\$13.49	\$14.74
1,004	\$14.70	\$15.86
838	\$15.16	\$15.92
8,858	\$15.01	\$15.98
6,817	\$12.99	\$16.26
1,025	\$17.13	\$17.92
2,754	\$15.44	\$18.15
1,098	\$18.69	\$20.59
916	\$21.25	\$22.73
5,114	\$20.30	\$23.85
772	\$27.03	\$29.77
1,264	\$29.23	\$31.46
4,598	\$27.41	\$31.74
446	\$32.88	\$32.74
2,192	\$32.62	\$34.97
3,947	\$35.10	\$40.21
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<b>51,585</b>	<b>\$18.56</b>	<b>\$20.89</b>

