

ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE AMENDING CHAPTER 25-2 (ZONING) OF THE CITY CODE  
2 TO AMEND CURE COMBINING DISTRICT REGULATIONS, REPEALING  
3 SECTION 25-2-586, ADDING A NEW SECTION OF THE CITY CODE  
4 RELATING TO DOWNTOWN DENSITY BONUSES AND ESTABLISHING THE  
5 DEVELOPMENT BONUS FEE AND SQUARE FOOTAGE FOR ON-SITE  
6 AFFORDABLE HOUSING.

7  
8 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:  
9

10 PART 1. Section 25-2-312 of the City Code (*CURE Combining District Regulations*) is  
11 amended to add a new subsection (C) to read as follows:  
12

- 13 (C) The CURE combining district may not be used to modify maximum floor area  
14 ratio or maximum height. within the area bounded by Martin Luther King, Jr.,  
15 Boulevard, Interstate Highway 35, Lady Bird Lake and Lamar Boulevard.

16  
17 PART 2. Section 25-2-586 of the City Code (*Affordable Housing Incentives in a Central*  
18 *Business District (CBD) or Downtown Mixed Use (DMU) Zoning District*) is repealed and  
19 replaced with the following:  
20

21 § 25-2-586 DOWNTOWN DENSITY BONUS  
22

23 A. **Definitions.** In this section:  
24

- 25 (1) PRIMARY ENTITLEMENT means the height and floor-to-area ratio FAR  
26 entitlement that a site derives from its current zoning. That entitlement  
27 may be derived from the base zoning or from a previous modification to  
28 the base zoning.  
29  
30 (2) BONUS AREA means the greater of:  
31  
32 (a) The gross floor area that exceeds the maximum allowable floor-to-  
33 area ratio ("FAR") allowed with the site's primary entitlements; or  
34

1 (b) The gross floor area contained within that portion of a structure that  
2 exceeds the maximum height allowed under the site's primary  
3 entitlements.  
4

5 (3) FEE FLOOR means a dollar amount determined by multiplying applicable  
6 development bonus fee times the bonus area.  
7

8 (4) DEVELOPMENT BONUS FEE means the fee paid to the City for each  
9 square foot of bonus area that a project receives under this section.  
10

11 (5) GREAT STREETS STREETSCAPE STANDARDS means design  
12 standards for streets within the boundaries of the Great Streets Master  
13 Plan.  
14

15 (6) HABITABLE SPACE means interior square footage designed for people  
16 to live in and is measured from the inside surface of the demising or  
17 exterior walls of a unit.  
18

19 (7) MIXED-USE PROJECT means a project that has 25 percent or more of its  
20 floor area in a use different from a predominant use.  
21

22 (8) NON-RESIDENTIAL PROJECT means a project for which the  
23 predominant use is not listed in Section 25-2-3 (*Residential Uses*  
24 *Described*), and which has less than 25 percent of its floor area devoted to  
25 uses described in Section 25-2-3 (*Residential Uses Described*).  
26

27 (9) RESIDENTIAL PROJECT means a project for which the predominant use  
28 falls within one or more of the classifications described in Section 25-2-3  
29 (*Residential Uses Described*).  
30

31 (10) URBAN DESIGN GUIDELINES means guidelines for public  
32 streetscapes, plazas, open space and buildings in a dense area, adopted by  
33 City Council.  
34

35 (11) DIRECTOR means director of the Planning Development and Review  
36 Department.  
37

38 **B. Downtown Density Bonus Maps.**  
39

- 1 (1) Properties in the downtown district that are eligible for density bonuses  
2 under this section are shown on the Downtown District Map (Figure 1).  
3  
4 (2) The amount of floor area ratio (“FAR”) or height that may be achieved by  
5 a downtown density bonus for a site is limited by the maximum height or  
6 FAR identified on the, Downtown Density Program FAR and Height Map  
7 (Figure 2).  
8  
9 (3) The development bonus fee may vary by use and downtown district. The  
10 applicable development bonus fee within each of the nine districts is  
11 shown on the Downtown Density Program Bonus Fee Table (Figure 3).  
12

13 **(C) Program Requirements.**

- 14  
15 (1) Gatekeeper Requirements. To receive a Downtown Density Bonus, the  
16 director must determine that the project substantially complies with the  
17 Urban Design Guidelines.  
18  
19 (a) The applicant must submit to the director a schematic level site plan,  
20 building elevations, and other drawings, simulations or other  
21 documents necessary to fully describe the urban design character of  
22 the project and relationship of the project to its surroundings.  
23  
24 (b) The Design Commission shall evaluate and make recommendations  
25 regarding the project and the director shall consider comments and  
26 recommendations of the Design Commission.  
27  
28 (2) Additional requirements.  
29  
30 (a) After the director determines the applicant meets the gatekeeper  
31 requirements, the applicant shall provide sufficient information to  
32 determine the primary entitlement, bonus area and fee floor.  
33  
34 (b) The applicant shall execute a restrictive covenant committing to  
35 provide streetscape improvements along all public street frontages,  
36 consistent with the Great Streets Standards.  
37  
38 (c) The applicant shall execute a restrictive covenant committing to  
39 achieve a minimum two star rating under the Austin Energy Green  
40 Building program using the ratings in effect at the time the ratings

1 application is submitted for the project. The applicant shall also  
2 provide the director with a copy of the project's signed Austin  
3 Energy Green Building Letter of Intent.  
4

5 (D) **Changes in Design of Proposed Building.** If the design of a building changes  
6 after bonus is granted under this section, the director shall review the new design  
7 for substantial compliance with the Urban Design Guidelines prior to building  
8 permit approval. A building permit for a final design will not be approved until  
9 the design substantially compliances with the Urban Design Guidelines and the  
10 restricted covenant is amended to reflect the new community benefits.  
11

12 (E) **Community Benefits.** A person may achieve density bonuses by providing  
13 community benefits outlined in this section.  
14

15 (1) **Affordable Housing Community Benefits**

16 (a) **Affordable Housing Community Benefit.** An applicant may use one  
17 or more of the following.  
18

19 (i) **On-site affordable housing.** A project may achieve bonus  
20 area by providing on-site affordable housing within the  
21 project. The amount of bonus area that may be achieved for  
22 each one square foot of habitable space devoted to on-site  
23 affordable housing is established by separate ordinance. The  
24 city manager shall evaluate and, if necessary, adjust the  
25 development bonus fee at least every five years. The city  
26 manager shall determine the new fee amounts and submit  
27 those amounts to the city council for approval.  
28

29 (ii) The project may achieve bonus area by paying a development  
30 bonus fee at the dollar per square foot amount ordinance. The  
31 fee will be paid into the Affordable Housing Trust Fund.  
32

33 (b) **Affordable housing community benefit percentages.**

34 (i) A project must achieve at least 50 percent of the desired  
35 bonus by providing on-site affordable housing, paying an  
36 affordable housing fee, or a combination of the two.  
37  
38  
39

1 (ii) If an applicant chooses to achieve 100 percent of the desired  
2 bonus area exclusively by providing affordable housing  
3 community benefits, the approval for the bonus area can be  
4 granted administratively by the director.

5  
6 (iii) For any portion of the desired bonus area not achieved by  
7 providing affordable housing community benefits, the  
8 applicant can seek to achieve bonus area by providing other  
9 community benefits. City Council must approve the bonus  
10 area if the applicant provides other community benefits.

11  
12 (2) **Other Community Benefits.**

13  
14 (a) If the applicant proposes to achieve bonus area by providing other  
15 community benefits, the applicant must provide sufficient  
16 information about those other community benefits for the director to  
17 determine that the other community benefits serve a public and  
18 municipal purpose and do not impose a significant burden on public  
19 resources.

20  
21 (b) The director will consider the following to make a determination:

22  
23 (i) if members of the general public will be able to enjoy the  
24 proposed benefit without paying for its access, use or  
25 enjoyment;

26  
27 (ii) if the proposed benefit will connect to and be accessible from  
28 public right of way or other publicly-accessible space;

29  
30 (iii) if the proposed benefit will provide a public amenity that is  
31 particularly lacking in the proposed location;

32  
33 (iv) if the proposed benefit will impose a significant burden on  
34 public resources; for maintenance, management, policing, or  
35 other reasons; and,

36  
37 (v) any other information provided by the applicant that shows  
38 the other benefit serves a public and municipal purpose and  
39 furthers the City's comprehensive planning goals.

1 (c) If a community benefit provides a partial benefit to a project, it will  
2 not be disqualified from being considered, the director will allocate  
3 only the cost of the public portion of the benefit to other community  
4 benefits.

5  
6 (3) If the director determines that the proposed benefit qualifies as a  
7 community benefit, the director shall:

8  
9 (a) quantify the monetary cost of the project for the proposed  
10 community benefit; and

11  
12 (b) determine the cost to be applied towards achieving the desired  
13 bonus area.

14  
15 (4) The amount determined by the director may be applied to achieve bonus  
16 area on the same basis as the development bonus fee applicable to the type  
17 and location of the project.

18  
19 (5) The director's recommendation concerning the proposed community  
20 benefit and the monetary value that is applied to achieve the bonus area  
21 shall be presented to the planning commission for recommendation and the  
22 city council for approval.

23  
24 (F) **Development Bonus Fee.**

25  
26 (1) The development bonus fee is established and adjusted by ordinance. The  
27 city manager shall evaluate and, if necessary, adjust the development  
28 bonus fee at least every five years. The city manager shall determine the  
29 new fee amounts and submit changes to the city council for approval.

30  
31 (2) Mixed-use projects shall pay development bonus fees in proportion to the  
32 amount of floor area in the project that is devoted to different use  
33 categories.

34  
35 (G) **Affordability Requirements.** For purposes of this section, a unit is affordable  
36 for purchase or rental if, in addition to the other requirements of this section, the  
37 household is required to spend no more than 30 percent of its gross monthly  
38 income on mortgage or rental payments for the unit.

39  
40 (1) Affordability requirements for owner-occupied units.

- 1
- 2 (a) On-site for sale affordable housing units shall be reserved as
- 3 affordable through a City approved affordable housing land trust or
- 4 other shared equity model approved by the director of Neighborhood
- 5 Housing and Community Development, for not less than 99 years
- 6 from the date a certificate of occupancy is issued.
- 7
- 8 (b) The units shall be made available for ownership and occupancy by
- 9 households earning no more than 120 percent of the Annual Median
- 10 Family Income for the City of Austin Metropolitan Statistical Area
- 11 as determined by the director of Neighborhood Housing and
- 12 Community Development.

13

14 (2) Affordability requirements for rental units.

- 15
- 16 (a) On-site rental affordability housing units shall be reserved as
- 17 affordable for a minimum of 40 years following the issuance of the
- 18 certificate of occupancy.
- 19
- 20 (b) The units shall be made available for rental by households earning
- 21 no more than 80 percent of the annual median family income for the
- 22 City of Austin metropolitan statistical area as determined by the
- 23 director of Neighborhood Housing and Community Development.

24

25 (H) **Applicants obligations.** Before the director may issue any type of Certificate

26 of Occupancy, all obligations must be fulfilled, including payments of fees and

27 execution of a restrictive covenant (including all commitments made as part of

28 gatekeeper requirements or community benefits provided). All approvals must

29 be obtained and evidence of the approvals must be provided to the director prior

30 to site plan submittal.

31

32 (I) **Director's approval.** Once an applicant meets the requirements of the

33 downtown density bonus program, the director will issue a notice of approval,

34 that will indicate the project's allowable FAR and height.

35

36 (J) **Appeal.**

- 37
- 38 (1) An applicant may appeal director's determination to the city council.
- 39

- 1 (2) Applicant must appeal the determination within 30 days from the date of  
2 denial.  
3  
4 (3) An appeal is subject to the procedures set forth in §25-2-282 (*Land Use*  
5 *Commission Public Hearing and Recommendation*) and §25-2-283 (*City*  
6 *Council Zoning Hearing and Action*) of the City Code.  
7

8 **PART 3.** The fee to be paid into the affordable housing trust fund for each bonus square foot  
9 as shown in 25-2-586 section B to the Downtown Density Bonus Fee table is established in  
10 Figure 3.  
11

12 **PART 4.** The on-site affordable housing bonus is ten square feet of bonus area shall be  
13 granted for each one square foot of on-site affordable housing as defined in 25-2-  
14 586(E)(1)(a).  
15

16 **PART 5.** This ordinance takes effect on \_\_\_\_\_, 2013.  
17

18 **PASSED AND APPROVED**

19  
20 §  
21 §  
22 \_\_\_\_\_, 2013 § \_\_\_\_\_  
23

24 Lee Leffingwell  
25 Mayor

26  
27 **APPROVED:** \_\_\_\_\_ **ATTEST:** \_\_\_\_\_  
28 Karen M. Kennard Jannette S. Goodall  
29 City Attorney City Clerk