

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

**AN ORDINANCE AMENDING TITLE 25 (LAND DEVELOPMENT CODE) TO  
CREATE A RESIDENTIAL AFFORDABLE HOUSING DEVELOPMENT  
BONUS PROGRAM.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**  
**PART 1. FINDINGS.**

The council finds the following: [to be inserted]

**PART 2.** Chapter 25-1, Article 15 (*Housing*) is amended to add a new Division 4 (*Residential Affordable Housing Development Bonus Program*) to read as follows:

***Division 4. Residential Affordable Housing Development Bonus Program.***

**§ 25-1-720 PURPOSE, APPLICABILITY, AND SHORT TITLE.**

- (A) The purpose of this division is to establish a voluntary affordable housing bonus program that allows for increased density for residential dwelling units.
- (B) This division applies within the zoning jurisdiction.
- (C) This division may be cited as “Affordable Housing Bonus Program”.

**§ 25-1-721 DEFINITIONS.**

In this division,

- (1) CONTINUUM OF CARE HOUSING means housing set aside for individuals exiting homelessness.
- (2) DIRECTOR means the director of Neighborhood Housing and Community Development (NHCD) or the director’s designee.
- (3) GOVERNMENT-OPERATED AFFORDABLE HOUSING PROGRAM means a program operated by a federal, state, or local department that provides financial or other form of subsidy for the purpose of providing affordable housing.
- (4) HOUSING FOR OLDER PERSONS means housing for households with at least one individual who is at least 62 years of age at the time of initial occupancy.

(5) MFI means median family income for the Austin metropolitan statistical area.

(6) QUALIFYING DEVELOPMENT means a development certified under Section 25-1-724 (*Certification*) and participating in the Affordable Housing Bonus Program.

**§ 25-1-722 ELIGIBILITY.**

(A) A proposed development qualifies as a Type 1 development and is eligible for this program if:

- (1) it includes a minimum of three dwelling units or the proposed development will consist only of affordable dwelling units;
- (2) at least 25 percent of the affordable dwelling units include two or more bedrooms or the proposed development qualifies as continuum of care housing or housing for older persons;
- (3) not more than 25 percent of the proposed development's gross floor area is for non-residential uses;
- (4) it is new construction or is redevelopment of property with only non-residential structures or the existing development complies with the requirements in Subsection (D); and
- (5) it meets the requirements set forth in Section 25-1-723 (*Affordability Requirements*).

(B) Except for a proposed development participating in a government-operated affordable housing program with stricter requirements, the applicant:

- (1) shall 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; and
  - (b) 24 C.F.R. §245.100 related to a tenant's right to organize; and
- (2) may not discriminate on the basis of an individual's source of income as defined in Section 5-1-13 (*Definitions*).

- (C) A proposed development qualifies as a Type 2 development and is eligible for additional bonuses if it meets the standards imposed in Subsections (A) and (B) plus one or more of the following:
- (1) at least 50 percent of the affordable dwelling units include two or more bedrooms;
  - (2) for a rental development:
    - (a) at least 75 percent of the total units serve households with incomes of 60 percent MFI or below, rounded up to the nearest unit; or
    - (b) at least 10 percent of the affordable units serve households with incomes of 30 percent MFI or below, rounded up to the nearest unit; or
  - (3) for an owner-occupied development, at least 75 percent of the owner-occupied dwelling units serve households with incomes of 80 percent MFI or below; or
  - (4) is located within ¼ mile of an activity corridor designated in the Imagine Austin Comprehensive Plan and is served by a bus or transit line.
- (D) A proposed development that will require the applicant to redevelop or rebuild an existing multi-family building is eligible for this program if:
- (1) the proposed development meets the standards imposed in Subsections (A) and (B);
  - (2) the existing multi-family building requires extensive repairs and for which rehabilitation costs will exceed 50 percent of the market value, as determined by the building official;
  - (3) 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;
  - (4) the applicant provides current tenants with:
    - (a) notice and information about the proposed development on a form approved by the director; and

(b) relocation benefits that are consistent with Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, *et seq.*; and

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

**§ 25-1-723 AFFORDABILITY REQUIREMENTS.**

(A) An applicant complies with the requirements in this section if the applicant participates in a government-operated affordable housing program that imposes, at a minimum, the same affordability requirements.

(B) Except for a Type 2 rental development that complies with the requirements described in Section 25-1-722(C)(2), a rental development must comply with the following:

(1) at least 50 percent of the total units serve households whose incomes average 60 percent MFI or below; and

(2) at least 20 percent of the total units serve households with incomes of 50 percent MFI or below.

(C) For an owner-occupied development, at least 50 percent of the owner-occupied dwelling units serving households whose incomes average 80 percent MFI or below.

(D) If the number of units required in this section include less than a whole unit, the unit number is rounded up to the nearest whole unit.

(E) The minimum affordability period for a rental development is 40 years following the issuance of the last certificate of occupancy required for the qualifying development.

(F) The minimum affordability period for an owner-occupied dwelling unit is 99 years following the issuance of a certificate of occupancy for the owner-occupied dwelling unit.

(G) In a multi-phased qualifying development, the director may begin the minimum affordability period upon the issuance of the last certificate of occupancy for each phase.

**§ 25-1-724 CERTIFICATION.**

- (A) If the director certifies that a proposed development meets the requirements of this division, the accountable official is authorized to process a development application as a qualifying development.
- (B) Before the director may certify that a proposed development meets the requirements of this division, the applicant shall execute an agreement and a document for recording in the real property records that provides notice of or preserves the minimum affordability requirements imposed by this division. The form of the documents described in this section must be approved by the city attorney.
- (C) The director may certify an applicant who complies with the requirements in Subsection (B) because the applicant participates in a government-operated affordable housing program that imposes, at a minimum, the same affordability requirements.

**§ 25-1-725 POST-CONSTRUCTION REQUIREMENTS AND ENFORCEMENT.**

- (A) The property owner or the property owner's agent shall provide the director with documentation on an annual basis that allows the director to verify compliance with the affordability requirements.
- (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 affordability requirements in Section 25-1-723 (*Affordability Requirements*).
- (C) An applicant complies with the requirements in this section if the applicant complies with monitoring and income verification requirements that are imposed and enforced as part of a government-operated affordable housing program.
- (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 income verification documentation. Each offense is punishable by a fine not to exceed \$500.

**PART 3.** Chapter 25-2, Subchapter C, Article 2, Division 2 (*Requirements for All Districts*) is amended to add a new Section 25-2-518 (*Qualifying Development*) to read as follows:

**§ 25-2-518 QUALIFYING DEVELOPMENT.**

- (A) In this section, a qualifying development is a development certified under Section 25-1-724 (*Certification*) and participating in the Affordable Housing Bonus Program.
- (B) A qualifying development is a permitted use in any residential or commercial zoning district under Section 25-2-491 (*Permitted, Conditional, and Prohibited Uses*).
- (C) Density is calculated based on the standards in Subchapter E, 4.2.1 (*Mixed Use Combining District*) if the existing zoning on the property where the qualifying development will be located in one of the following commercial base districts:
- (1) neighborhood office (NO);
  - (2) limited office (LO);
  - (3) general office (GO);
  - (4) community commercial (GR);
  - (5) neighborhood commercial (LR);
  - (6) general commercial services (CS); or
  - (7) commercial-liquor sales (CS-1).
- (D) If the existing zoning on the property where the qualifying development will be located is commercial recreation (CR), lake commercial (L), central business (CBD), warehouse limited office (W/LO), or commercial highway services (CH), the density is calculated based on the following minimum site area standards:
- (1) 800 square feet, for an efficiency dwelling unit;
  - (2) 1,000 square feet, for a one bedroom dwelling unit; and
  - (3) 1,200 square feet, for a dwelling unit with two or more bedrooms.

- 182 (E) No more than 25 percent of the gross floor area of the qualifying  
183 development may be comprised of non-residential uses. The permitted  
184 commercial uses are determined using the base zoning district.
- 185 (F) A qualifying development is not required to comply with:
- 186 (1) the height and setback requirements of Article 10 (*Compatibility*  
187 *Standards*);
- 188 (2) the maximum floor-to-area ratio for the applicable base zoning district  
189 under Section 25-2-492 (*Site Development Regulations*);
- 190 (3) Subchapter F (*Residential Design and Compatibility Standards*); or
- 191 (4) Section 25-2-773 (*Duplex Residential Use*).

192 **PART 4.** Chapter 25-2, Subchapter C, Article 2, Division 3 (*Exceptions*) is  
193 amended to add a new Section 25-2-534 (*Qualifying Development Exceptions*) to  
194 read as follows:

195 **§ 25-2-534 QUALIFYING DEVELOPMENT EXCEPTIONS.**

- 196 (A) In this section, a qualifying development is a development certified under  
197 Section 25-1-724 (*Certification*) and participating in the Affordable Housing  
198 Bonus Program.
- 199 (B) A qualifying development is not subject to Section 25-2-511 (*Dwelling Unit*  
200 *Occupancy Limit*).
- 201 (C) A Type 1 development may:
- 202 (1) construct to a height that is the applicable base zoning district height  
203 limit multiplied by 1.25;
- 204 (2) reduce front yard setbacks by 50 percent;
- 205 (3) reduce rear setbacks by 50 percent; and
- 206 (4) include the number of dwelling units that is the greater of:
- 207 (a) the maximum number of dwelling units otherwise authorized  
208 by this code multiplied by 1.5; or
- 209 (b) six dwelling units.
- 210 (D) In addition to Subsection (C), a Type 2 development may:



(1) construct to a height that is the applicable base zoning district height limit multiplied by 1.5; and

(2) include the number of dwelling units that is the greater of:

(a) the maximum number of dwelling units otherwise authorized by this code multiplied by 2; or

(b) eight dwelling units.

(E) If a qualifying development is also eligible to utilize a separate density bonus program that grants density bonuses for the provision of affordable dwelling units or a fee-in-lieu for affordable housing, then the qualifying development may comply with the least restrictive development requirements if all affordable dwelling units are provided on-site.

**PART 5.** Section 25-5-3 (*Small Projects*) is amended to amend Subsection (B) and to add a new Subsection (E) to read as follows:

**§ 25-5-3 SMALL PROJECTS.**

(A) The director shall determine whether a project is a small project described in this section.

(B) The following are small projects:

(1) construction of a building or parking area if the proposed construction:

(a) does not require a variance from a water quality regulation;

(b) does not exceed 5,000 square feet of impervious cover; and

(c) the construction site does not exceed 10,000 square feet, including the following areas:

(i) construction;

(ii) clearing;

(iii) grading;

(iv) construction equipment access;

(v) driveway reconstruction;



- (vi) temporary installations, including portable buildings, construction trailers, storage areas for building materials, spoil disposal areas, erosion and sedimentation controls, and construction entrances;
  - (vii) landscaping; and
  - (viii) other areas that the director determines are part of the construction site;
- (2) construction of a storm sewer not more than 30 inches in diameter that is entirely in a public right-of-way or an easement;
- (3) construction of a utility line not more than eight inches in diameter that is entirely in a public right-of-way;
- (4) construction of a left turn lane on a divided arterial street;
- (5) construction of street intersection improvements;
- (6) widening a public street to provide a deceleration lane if additional right-of-way is not required;
- (7) depositing less than two feet of earth fill, if the site is not in a 100 year floodplain and the fill is not to be deposited within the dripline of a protected tree;
- (8) construction of a boat dock as an accessory use to a single-family residential use, duplex residential use, two-family residential use, or secondary apartment special use if shoreline modification or dredging of not more than 25 cubic yards is not required; or
- (9) construction of a retaining wall, if the wall is less than 100 feet in length and less than eight feet in height, and the back fill does not reclaim a substantial amount of land except land that has eroded because of the failure of an existing retaining wall;
- (10) minor development that the director determines is similar to that described in Subsections (B)(1) through (9) of this section;
- (11) the replacement of development that is removed as a result of right-of-way condemnation; ~~and~~

(12) the construction of a telecommunications tower described in Subsection 25-2-839(F) or (G) (*Telecommunication Towers*); and[-]

(13) the construction of a qualifying multi-family development described in Subsection (E).

(C) Notwithstanding any other provisions in this section, construction of Shoreline Access, as defined in Section 25-2-1172, that exceeds 50 feet in length and is constructed on slopes exceeding 35% gradient does not constitute a small project.

(D) For a small project, the director may waive a submittal requirement that the director determines is not essential to demonstrate compliance with this title. The director shall maintain a record of submittal requirements that are waived under this subsection.

(E) In this section, a qualifying multi-family development is a development certified under Section 25-1-724 (*Certification*) and participating in the Affordable Housing Bonus Program and is:

(1) a Type 1 development consisting of at least three but no more than 12 dwelling units; or

(2) a Type 2 development consisting of at least three but no more than 16 dwelling units.

**PART 6.** Section 25-6-471 (*Off-Street Parking Facility Required*) is amended to add new Subsections (I), (J), and (K) to read as follows:

**§ 25-6-471 OFF-STREET PARKING FACILITY REQUIRED.**

(I) In this section, a qualifying development is a development certified under Section 25-1-724 (*Certification*) and participating in the Affordable Housing Bonus Program.

(J) A qualifying development is not required to comply with Appendix A of Chapter 25-6 (*Transportation*) but must comply with the following:

(1) if a qualifying development is less than 10,000 square feet and off-site parking is not provided for the qualifying development, at least one parking space for persons with disabilities is required;

(2) if a qualifying development is less than 10,000 square feet and off-street parking is provided, it must include parking for persons with disabilities as required by the Building Code and may not include fewer accessible spaces than would be required under Paragraph (3) of this subsection; or

(3) if an qualifying development is 10,000 square feet or more, then the minimum number of parking spaces for persons with disabilities is calculated by taking 20 percent of the parking required for the use under Appendix A (*Tables of Off-Street Parking and Loading Requirements*) and using that result to determine the number of accessible spaces required under the Building Code, which may be provided on-or-off-site within 250 feet of the use.

(K) The director may waive or reduce the number of accessible spaces required under Subsection (J) if:

(1) The applicant pays a fee in-lieu to be used by the city to construct and maintain accessible parking in the vicinity of the use. The availability of this option is contingent on the establishment of a fee by separate ordinance and the adoption of a program by the director to administer the fee and establish eligibility criteria. A decision by the director that a use is ineligible for a fee in-lieu is final.

(2) No accessible spaces can be provided consistent with the requirements of Subsection (J) and the use is ineligible for participation in the fee in-lieu program under Paragraph (1) of this section.

(3) An off-site or on-street parking space designated for persons with disabilities that is located within 250 feet of a use may be counted towards the number of parking spaces the use is required to provide under Subsection (J).

**PART 7.** Chapter 25-7, Article 3 (*Requirements for Approval*) is amended to add a new Section 25-7-67 (*Qualifying Multi-family Development*) to read as follows:

**§ 25-7-67 QUALIFYING MULTI-FAMILY DEVELOPMENT.**

(A) In this section, a qualifying multi-family development is a development located on a lot platted as residential, certified under Section 25-1-724 (*Certification*) and participating in the Affordable Housing Bonus Program, and is:

(1) a Type 1 development consisting of at least three but no more 12 dwelling units; or

(2) a Type 2 development consisting of at least three but no more than 16 dwelling units.

(B) A qualifying multi-family development must comply with the following regulations:

(1) [to be inserted]

**PART 8.** This ordinance takes effect on \_\_\_\_\_, 2019.

**PASSED AND APPROVED**

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\_\_\_\_\_, 2019

\_\_\_\_\_  
Steve Adler  
Mayor

**APPROVED:** \_\_\_\_\_

Anne L. Morgan  
City Attorney

**ATTEST:** \_\_\_\_\_

Jannette S. Goodall  
City Clerk