



# City of Austin

# MEMORANDUM

## Neighborhood Housing and Community Development


P.O. Box 1088, Austin, TX 78767-1088

1000 East 11<sup>th</sup> Street, Ste 200, Austin, TX 78702

(512) 974-3100 ♦ Fax (512) 974-3161 ♦ [www.austintexas.gov/housing](http://www.austintexas.gov/housing)

**DATE:** July 24, 2015

**TO:** Mayor and Council

**FROM:** Betsy Spencer, Director 

**SUBJECT:** Resolution No. 20140925-090: Planned Unit Development (PUD) Density Bonus Code Amendment

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This memorandum serves as an update to Resolution No. 21040925-090, which initiates a code amendment to modify the in lieu donation option for affordable housing requirement for Planned Unit Developments (PUD). City Council requested staff consider the following options:

- Remove the fee in lieu option and require onsite affordable housing.
- Require a significant portion of the affordable housing requirement to be provided onsite and allow a portion to be provided through fee in lieu.
- Consider an exceptions process for the onsite affordable housing requirement.

Please find attached the DRAFT code amendments. The chart provides a side-by-side comparison of the current code and proposed amendments as well as staff comments, stakeholder input, and actions taken by the Community Development Commission on June 30, 2015.

Staff has conducted research on relevant policies in other communities, evaluated the City of Austin's various density bonus policies, provided a briefing to the City Council Housing and Community Development Committee and the Community Development Commission, and engaged stakeholders through a variety of feedback opportunities.

Thus far NHCD staff has completed the following research and stakeholder engagement:

- Conducted survey of development community with experience developing Planned Unit Developments (PUDs);
- Researched fee-in-lieu of affordable housing practices in other cities;
- Briefings to the Community Development Commission Housing Committee;
- Briefing and stakeholder discussion with the Real Estate Council of Austin's Policy Committee;
- Stakeholder discussion with HousingWorks Austin;
- Briefing at the City Council Housing and Community Development Committee (May 2015);
- Public stakeholder meeting to discuss draft proposed code amendments (June 2015);
- Community Development Commission (CDC) took action on the proposed code amendments and approved staff recommendations with two amendments (June 2015):
  - Remove the fee-in-lieu option. (Please note that removing the fee-in-lieu option does not have a fiscal impact as anticipated fees in lieu are not budgeted prior to collection.)
  - Require either by Ordinance or by Rules that property owners sign and file a restrictive covenant

- Require City Council Public Hearing on baseline zoning designation of PUDs prior to or at time of preliminary PUD briefing

Below please find the revised timeline for moving the proposed code amendments forward to the Planning Commission and the Austin City Council. The timeline revisions are both in response to the current boards and commissions transitioning period as well as feedback from stakeholders and the Community Development Commission recommending additional stakeholder engagement prior to any code amendment public hearings.

Dates	Stakeholder Engagement Phase	NHCD Activities/Commission Actions
July 30, 2015	<b>Stakeholder meeting to workshop draft recommendations #2:</b> workshop implementation process for fee-in-lieu appeals (targeted stakeholder outreach)	Anticipated action: Develop draft language for guidelines/rules and clarify proposed code language
July-August, 2015	Work with the Law Department to <b>finalize recommended code amendment language</b>	
August 5, 2015	<b>Stakeholder meeting to workshop draft recommendations #3:</b> provide input on PUD policy not captured in the current code or proposed amendments (open to the public)	Anticipated action: Develop recommendations to bring forward to the Council Housing and Community Development Commission
August 26, 2015	<b>City Council Housing and Community Development Committee:</b> presentation of final draft recommendations and possible action	
September 15, 2015	<b>Planning Commission Codes and Ordinances Subcommittee:</b> presentation of final draft recommendations action requested on final staff recommendations	
September 22, 2015	<b>Planning Commission:</b> public hearing and action requested	
October 8, 2015	<b>City Council:</b> public hearing and action requested	

Questions and comments can be directed to Jessi Koch, Planner Senior with Neighborhood Housing and Community Development at [Jessi.Koch@austintexas.gov](mailto:Jessi.Koch@austintexas.gov) or 512-974-3100.

Attachments:

- Resolution No. 20140925-090
- PUD Ordinance No. 20131003-096
- Amendments chart
- Presentation from June 24<sup>th</sup> stakeholder meeting
- Stakeholder feedback from June 24<sup>th</sup> meeting
- Community Development Commission action/motion sheet from June 30<sup>th</sup> meeting

# ATTACHMENTS

- Resolution No. 20140925-090
- PUD Ordinance No. 20131003-096
- Amendments chart
- Presentation from June 24<sup>th</sup> stakeholder meeting
- Stakeholder feedback from June 24<sup>th</sup> meeting
- Community Development Commission action/motion sheet from June 30<sup>th</sup> meeting

**RESOLUTION NO. 20140925-090**

**WHEREAS**, the Imagine Austin Comprehensive Plan vision includes housing diversity and affordability throughout Austin; and

**WHEREAS**, geographic dispersion is one of the City's three core principles for affordability that were originally recommended by the Affordable Housing Incentives Task Force; and

**WHEREAS**, planned unit developments (PUDs) are located throughout the city and are able to provide a mechanism for geographic dispersion; and

**WHEREAS**, PUDs that include a residential component are required to include affordable housing if their density exceeds a baseline density; and

**WHEREAS**, the City Code allows PUDs upon approval by city council to exceed the baseline density without including affordable housing if an in lieu donation is made to the Affordable Housing Trust Fund (City Code 25-2, Article 2, Division 5, 2.5.5(B)); and

**WHEREAS**, the in lieu donation approach which has been in the City Code since 2008, has resulted in zero on-site affordable units in PUDs, with 13 affordable units proposed but not yet occupied in one recent PUD; and

**WHEREAS**, vertical mixed use zoning has an on-site affordability requirement as part of its density bonus program and has resulted in more than 300 affordable units that will be spread throughout many areas of Austin; and

**WHEREAS,** the Housing/Transit/Jobs Action Team reported its recommendation to the Council Comprehensive Plan and Transportation Committee on September 4, 2014 that the in lieu donation option for affordable housing should be removed from density bonus programs to align with Federal Transit Administration Guidelines; and

**WHEREAS,** the City is forgoing opportunities to achieve the critical goal of geographic dispersion of affordable housing with the almost uniform adoption of the in lieu donation option for PUDs; and

**WHEREAS,** the University Neighborhood Overlay, which has created almost 500 on-site affordable units and over \$2,000,000 in payments, includes a tiered affordable housing requirement in which some of the affordable housing is required to be on site and some is allowed to be satisfied via a fee-in lieu; **NOW, THEREFORE,**

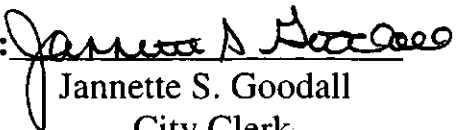
**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

The City Council initiates a code amendment to modify the in lieu donation option for affordable housing requirement for PUDs. Consider the following options:

- Remove the fee in lieu option and require onsite affordable housing.
- Require a significant portion of the affordable housing requirement to be provided onsite and allow a portion to be provided through fee in lieu.

- Consider an exceptions process for the onsite affordable housing requirement.

**ADOPTED:** September 25, 2014

**ATTEST:**   
Jannette S. Goodall  
City Clerk

**ORDINANCE NO. 20131003-096**

**AN ORDINANCE AMENDING CHAPTER 25-2 OF THE CITY CODE RELATING TO PLANNED UNIT DEVELOPMENT STANDARDS AND DECLARING AN EMERGENCY.**

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

**PART 1.** Subsection 1.3.3 (*Baseline for Determining Development Bonuses; Estimate of Development Under Existing Zoning*) of City Code Section 25-2, Division 5 (*Planned Unit Developments*) is repealed and replaced as follows:

**§ 1.3. PRE-APPLICATION FILING REQUIREMENTS AND REVIEW CRITERIA.**

**1.3.3. Baseline for Determining Development Bonuses**

- A. Unless the council establishes a different baseline as part of a comment under Section 1.3.2 (*Council Response*), the baseline for determining development bonuses under Section 2.5 (*Development Bonuses*) is determined by:
  - (1) the regulations of the base zoning district, combining district, and overlay district; and
  - (2) any other applicable site development standards.
- B. The director may recommend an alternate baseline for the property. Council may approve the director's recommendation or other baseline it determines is appropriate.
- C. Any bonuses granted under a combining district or overlay district may only be used to determine the baseline if the project complies with the requirements for the bonuses and the bonuses can be achieved without violating any other applicable site development standards.
- D. The director shall provide an estimate of the property's baseline entitlements in the project assessment report. If an alternate baseline is recommended by the director, the director shall include any assumptions used to make the estimate baseline entitlements.

**PART 2.** Sections 2.5 (*Development Bonuses*) of City Code Section 25-2, Division 5 (*Planned Unit Developments*) is amended to read as follows and renumbered accordingly:

## **§2.5 DEVELOPMENT BONUSES**

**2.5.1. Limitation on Development.** Except as provided in Section 2.5.2 (Requirements for Exceeding Baseline), site development regulations for maximum height, maximum floor area ratio, and maximum building coverage in a PUD with residential uses may not exceed the baseline established under Section 1.3.3 (Baseline for Determining Development Bonuses).

**2.5.2. Requirements for Exceeding Baseline.** Development in a PUD with residential uses may exceed the baseline established under Section 1.3.3 (Baseline for Determining Development Bonuses) for maximum height, maximum floor area ratio, and maximum building coverage if:

- A. the application for PUD zoning includes a report approved by the Director of the Neighborhood Housing and Community Development Department establishing the prevailing level of affordability of housing in the vicinity of the PUD, expressed as a percentage of median family income in the Austin metropolitan statistical area; and
- B. the developer either:
  - 1. provides contract commitments and performance guarantees that provide affordable housing meeting or exceeding the requirements of Section 2.5.3 (Requirements for Rental Housing) and Section 2.5.4 (Requirements for Ownership Housing); or
  - 2. makes donations for affordable housing under Section 2.5.5[6] (Alternative Affordable Housing Options).

**2.5.3. Requirements for Rental Housing.** If rental housing units are included in a PUD, dwelling units equal to at least 10 percent of the bonus area square footage [~~rental units or rental habitable square footage~~] within the PUD must:

- A. be affordable to a household whose income is 60 percent or below the median family income in the Austin metropolitan statistical area [~~less than the affordability level established under Section 2.5.5 (Affordability Levels)~~];
- B. remain affordable for 40 years from the date a certificate of occupancy is issued; and



- C. be eligible for federal housing choice vouchers.

**2.5.4. Requirements for Ownership Housing.** If owner occupied housing is included in a PUD, dwelling units equal to at least five percent of the bonus area square footage ~~[owner occupied units or owner occupied habitable square footage]~~ within the PUD must be:

- A. affordable to a household whose income is 80 percent or below the median family income in the Austin metropolitan statistical area ~~[less than the affordability level established under Section 2.5.5 (Affordability Levels)]~~; and
- B. transferred to the owner subject to a shared equity agreement approved by the Director of the Neighborhood Housing and Community Development Department.

~~[2.5.5]~~**[Affordability Levels.** For purposes of this subchapter, the affordability level is:]

- ~~[A.] [for a portion of a PUD within the urban roadway boundary depicted in Figure 2 of Subchapter E of Chapter 25-2 (Design Standards and Mixed Use), 80% of the median family income in the Austin metropolitan statistical area;]~~
- ~~[B.] [for a portion of a PUD outside the urban roadway boundary depicted in Figure 2 of Subchapter E of Chapter 25-2 (Design Standards and Mixed Use), 60% of the median family income in the Austin metropolitan statistical area; or]~~
- ~~[C.] [if the Council finds that the prevailing level of affordability of housing in the vicinity of the PUD is lower than the level applicable under Paragraph A or B, any lesser percentage of the median family income in the Austin metropolitan statistical area established by the Council.]~~

**2.5.5[6] Alternative Affordable Housing Options.** Development within a PUD may exceed baseline standards as provided in Section 2.5.2.B.2 (Requirements for Exceeding Baseline) if the developer:

- A. donates to the Austin Housing Finance Corporation land within the PUD that is appropriate and sufficient to develop 20 percent of the residential habitable square footage planned for the PUD, as determined by the Director of the Neighborhood Housing and Community Development Department; or
- B. subject to approval by the city council, donates the amount established under Section 2.5.6[7] (In Lieu Donation) for each square foot of bonus square footage above baseline ~~[of climate controlled space within the PUD to a]~~ to the Affordable Housing Trust [Assistance] Fund to be used for producing or financing affordable housing, as determined by the Director of the Neighborhood Housing and Community Development Department.

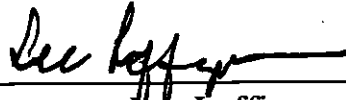
**2.5.6[7] In Lieu Donation.** The amount payable under Section 2.5.5[6].B (Alternative Affordable Housing Options) shall be \$6 for each square foot of bonus square footage above baseline ~~[60 percent of the fee established under Section 25-2-586(I) (Affordable Housing Incentives in a Central Business District or Downtown Mixed Use Zoning District) or any successor fee established under the Austin Downtown Plan]~~. Such fee will be adjusted annually in accordance with the Consumer Price Index all Urban Consumers, US City Average, All Items (1982-84=100), as published by the Bureau of Labor Statistics of the United States Department of Labor or other applicable standard as defined by the director of the Neighborhood Housing and Community Development Office. The city manager shall annually determine the new fee amounts for each fiscal year, beginning October 1, 2014 and report the new fee amounts to the city council.

**PART 3.** The Council finds that the need to clarify the development bonuses in the PUD regulations constitutes an emergency. Because of this emergency, this ordinance takes effect at time it is approved by the City Council.

**PASSED AND APPROVED**

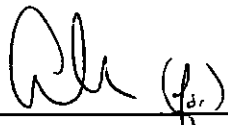
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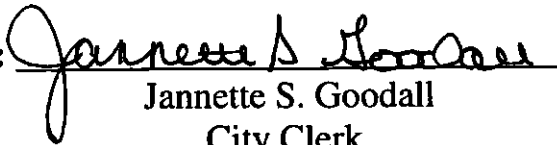
Lee Leffingwell  
Mayor

**APPROVED:**



Karen M. Kennard  
City Attorney

**ATTEST:**



Jannette S. Goodall  
City Clerk

**Planned Unit Development Ordinance**  
**Staff Recommendations**  
**May 27, 2015 (Revised July 6, 2015)**

Current Ordinance Language	Proposed Amendments	Staff Comments	Stakeholder Input	CDC Action <sup>1</sup>
<b>2.5.1. Limitation on Development.</b> Except as provided in Section 2.5.2 ( <i>Requirements for Exceeding Baseline</i> ), site development regulations for maximum height, maximum floor area ratio, and maximum building coverage in a PUD with residential uses may not exceed the baseline established under Section 1.3.3 ( <i>Baseline for Determining Development Bonuses</i> ).	<b>2.5.1. Limitation on Development.</b> Except as provided in Section 2.5.2 ( <i>Requirements for Exceeding Baseline</i> ), site development regulations for maximum height, maximum floor area ratio, and maximum building coverage in a PUD <del>with residential uses</del> may not exceed the baseline established under Section 1.3.3 ( <i>Baseline for Determining Development Bonuses</i> ).	Strike “with residential uses”. A development accessing the density bonus should pay a fee in exchange for the benefit received.	<u><b>Require developments with non-residential uses to pay a fee-in-lieu of affordable housing units</b></u> <ul style="list-style-type: none"> <li>Planned Unit Developments with no residential use provide community benefits in the form of additional tax revenue and jobs</li> <li>There is a nexus between the additional jobs created by commercial developments and an increased demand for affordable housing and therefore commercial developments receiving a density bonus should make a contribution to affordable housing</li> <li>Adding a fee on non-residential uses could create a disincentive for participation in the density bonus program</li> </ul>	<b>Support staff recommendations for section 2.5.1.</b>
<b>2.5.2. Requirements for Exceeding Baseline.</b> Development in a PUD with residential uses may exceed the baseline established under Section 1.3.3 ( <i>Baseline for Determining Development Bonuses</i> ) for maximum height, maximum floor area ratio, and maximum building coverage if:	<b>2.5.2. Requirements for Exceeding Baseline.</b> Development in a PUD <del>with residential uses</del> may exceed the baseline established under Section 1.3.3 ( <i>Baseline for Determining Development Bonuses</i> ) for maximum height, maximum floor area ratio, and maximum building coverage if:	Strike “with residential uses”. A development accessing the density bonus should pay a fee in exchange for the benefit received.		<b>Support staff recommendations for section 2.5.2. A &amp; B</b>

<sup>1</sup> CDC = Community Development Commission

Current Ordinance Language	Proposed Amendments	Staff Comments	Stakeholder Input	CDC Action <sup>1</sup>
A. the application for PUD zoning includes a report approved by the Director of the Neighborhood Housing and Community Development Department establishing the prevailing level of affordability of housing in the vicinity of the PUD, expressed as a percentage of median family income in the Austin metropolitan statistical area; and	<del>A. the application for PUD zoning includes a report approved by the Director of the Neighborhood Housing and Community Development Department establishing the prevailing level of affordability of housing in the vicinity of the PUD, expressed as a percentage of median family income in the Austin metropolitan statistical area; and</del>	This section was tied to language previously removed through the 2013 ordinance amendment process and the requirement is no longer relevant.		
B. the developer either:	<del>B. the developer either:</del>			
1. provides contract commitments and performance guarantees that provide affordable housing meeting or exceeding the requirements of Section 2.5.3 ( <i>Requirements for Rental Housing</i> ) and Section 2.5.4 ( <i>Requirements for Ownership Housing</i> ); or	<del>1A. Developments with residential units, provide contract commitments and performance guarantees that provide affordable housing meeting or exceeding the requirements of Section 2.5.3 (<i>Requirements for Rental Housing</i>) and Section 2.5.4 (<i>Requirements for Ownership Housing</i>); or</del>			
2. makes donations for affordable housing under Section 2.5.5 ( <i>Alternative Affordable Housing Options</i> ).	<del>2B. Developments with no residential units, donate the amount established under Section 2.5.6 (<i>In Lieu Donation</i>) for each square foot of bonus square footage above baseline to the Affordable Housing Trust Fund to be used for producing or financing affordable housing, as determined by the Director of the Neighborhood Housing and Community Development Department. makes donations for affordable housing under Section 2.5.5 (<i>Alternative Affordable Housing Options</i>).</del>	Developments with no residential uses may pay a fee-in-lieu by right and are not required to secure City Council approval.	<ul style="list-style-type: none"> <li>In place of a fee-in-lieu of on-site affordable units in commercial developments, a portion of the additional tax revenue created by new commercial developments could be dedicated to the City's Housing Trust Fund (ex: a percent of the bonus area)</li> </ul>	

Current Ordinance Language	Proposed Amendments	Staff Comments	Stakeholder Input	CDC Action <sup>1</sup>
<b>2.5.3 Requirements for Rental Housing.</b> If rental housing units are included in a PUD, dwelling units equal to at least 10 percent of the bonus area square footage within the PUD must:		No change to Section 2.5.3.		
A. be affordable to a household whose income is 60% or below the median family income in the Austin metropolitan statistical area;				
B. remain affordable for 40 years from the date a certificate of occupancy is issued; and				
C. be eligible for federal housing choice vouchers.				
<b>2.5.4 Requirements for Ownership Housing.</b> If owner occupied housing is included in a PUD, dwelling units equal to at least five percent of the bonus area square footage within the PUD must be:				Support staff recommendations for section 2.5.4. A, B, & C
A. affordable to a household whose income is 80% or below the median family income in the Austin metropolitan statistical area;	A. affordable to a household whose income is 80% or below the median family income in the Austin metropolitan statistical area;			
	<u>B. remain affordable for 99 years from the date a certificate of occupancy is issued; and</u>	We believe the exclusion of an affordability period for ownership units was an oversight in the 2013 code amendments		

Current Ordinance Language	Proposed Amendments	Staff Comments	Stakeholder Input	CDC Action <sup>1</sup>
B. transferred to the owner subject to a shared equity agreement approved by the Director of the Neighborhood Housing and Community Development Department.	<u>B.</u> transferred to the owner subject to a shared equity agreement, <u>land trust, or restrictive covenant</u> approved by the Director of the Neighborhood Housing and Community Development Department.	Explicitly states the range of tools available to administer an income restricted home ownership program		
<b>2.5.5 Alternative Affordable Housing Options.</b> Development within a PUD may exceed baseline standards as provided in Section 2.5.2.B.2 ( <i>Requirements for Exceeding Baseline</i> ) if the developer:	<b>2.5.5 Alternative Affordable Housing Options.</b> Development within a PUD may exceed baseline standards as provided in Section 2.5.2.B.2 ( <i>Requirements for Exceeding Baseline</i> ) <del>if the developer:</del> <u>Exceptions to contract commitments and performance guarantees that provide affordable housing meeting or exceeding the requirements of Section 2.5.3 (<i>Requirements for Rental Housing</i>) and Section 2.5.4 (<i>Requirements for Ownership Housing</i>) may be formally requested as follows:</u>			Support staff recommendations for section 2.5.5.A but recommends the deletion of section 2.5.5. B
A. donates to the Austin Housing Finance Corporation land within the PUD that is appropriate and sufficient to develop 20 percent of the residential habitable square footage planned for the PUD, as determined by the Director of the Neighborhood Housing and Community Development Department; or	A. <u>Subject to approval by the Director of the Neighborhood Housing and Community Development Department, the developer may</u> donates to the Austin Housing Finance Corporation land within the PUD that is appropriate and sufficient to develop 20 percent of the residential habitable square footage planned for the PUD. <del>as determined by the Director of the Neighborhood Housing and Community Development Department;</del> or			

Current Ordinance Language	Proposed Amendments	Staff Comments	Stakeholder Input	CDC Action <sup>1</sup>
B. subject to approval by the city council, donates the amount established under Section 2.5.6 ( <i>In Lieu Donation</i> ) for each square foot of bonus square footage above baseline to the Affordable Housing Trust Fund to be used for producing or financing affordable housing, as determined by the Director of the Neighborhood Housing and Community Development Department.	B. Subject to approval by the city council, <u>in developments with residential units, the developer may donate the amount established under Section 2.5.6 (<i>In Lieu Donation</i>) for each square foot of bonus square footage above baseline to the Affordable Housing Trust Fund to be used for producing or financing affordable housing, as determined by the Director of the Neighborhood Housing and Community Development Department. A request for in lieu donation for all or a portion of the affordability requirement in Section 2.5.2.A must be submitted in writing to the Director of Neighborhood Housing and Community Development Department. The request must include supporting documentation sufficient to demonstrate the infeasibility of compliance with Section 2.5.2.A. Any request for fee in lieu must be presented to and approved by city council.</u>	<p>Process and procedures will be established through department guidelines or rules.</p> <p>All requests for fee-in-lieu approval will go before City Council.</p>	<p><u>Fee-in-Lieu option vs. Onsite only</u></p> <ul style="list-style-type: none"> <li>on-site affordable units requirement helps City to achieve geographic dispersion goals</li> <li>fee-in-lieu option should be an administrative process rather than require City Council approval</li> <li>in the staff recommended amendments the “infeasibility” required for fee approval should be tied to more than just economics alone</li> <li>fee-in-lieu should also be considered in low opportunity areas with a high concentration of affordable units</li> <li>staff should clarify language in recommended amendments to reflect that all requests for a fee-in-lieu approval will be taken forward to City Council <ul style="list-style-type: none"> <li>this could be stated explicitly in procedural guidelines or rules</li> </ul> </li> </ul>	<b>recommends the deletion of section 2.5.5. B</b>



Current Ordinance Language	Proposed Amendments	Staff Comments	Stakeholder Input	CDC Action <sup>1</sup>
<b>2.5.6. In Lieu Donation.</b> The amount payable under Section 2.5.5.B ( <i>Alternative Affordable Housing Options</i> ) shall be \$6 for each square foot of bonus square footage above baseline. Such fee will be adjusted annually in accordance with the Consumer Price Index all Urban Consumers, US City Average, All Items (1982-84=100), as published by the Bureau of Labor Statistics of the United States Department of Labor or other applicable standard as defined by the director of the Neighborhood Housing and Community Development Office. The city manager shall annually determine the new fee amounts for each fiscal year, beginning October 1, 2014 and report the new fee amounts to the city council.		No change to Section 2.5.6.		

Additional Recommendations for Consideration

Stakeholder Input	Community Development Commission Action (CDC)	Staff Comments
There should be a set process for determination of Planned Unit Development baseline zoning that is inclusive of many departments including Neighborhood Housing and Community Development	The CDC recommends that consideration be given to requiring a public hearing on baseline zoning prior to the first presentation to the Austin City Council	Staff agrees with stakeholder input and supports the CDC recommendation
The City should review the current policy related to requests for a fee-in-lieu payment refund		Staff agrees with stakeholder input and plans to address this policy for a developer incentive programs through the development of rules. This will allow for further stakeholder feedback on a proposed policy.
Could the options of all on-site affordable units, all fee-in-lieu, or a portion of each be handled administratively rather than the fee requiring City Council approval?	The CDC recommends the deletion of Section 2.5.5. B which would eliminate the In Lieu Donation option	
It is important to have the fee-in-lieu requests be approved by City Council because the affordability question should be a public conversation	The CDC recommends the deletion of Section 2.5.5. B which would eliminate the In Lieu Donation option	
The City should review the set fee-in-lieu amount for Planned Unit Developments		Staff would recommend working with an outside consultant to conduct an analysis of the PUD fee-in-lieu structure and make recommendations on this fee as well as other density bonus fees in lieu of onsite affordable units

## **Stakeholder Feedback Summary:**

### **Planned Unit Development Density Bonus Program**

On June 24<sup>th</sup>, 2015 Neighborhood Housing and Community Development facilitated a stakeholder meeting to review draft staff recommended amendments to the Planned Unit Development Density Bonus Program. Meeting attendees included representatives from:

- Austin Tenants Council (ATC)
- Ending Community Homelessness (ECHO)
- Home Builders Association (HBA)
- Housing Works Austin
- Real Estate Council of Austin (RECA)
- Affordable and market rate housing development community
- Private citizens
- Neighborhood Housing and Community Development
- Planning and Zoning Department
- City Council offices

In response to City Council Resolution 20140925-090 NHCD has prepared draft recommendations for potential code amendments to the Planned Unit Development Density Bonus Program specifically related to the sections regulating the requirement for on-site affordable housing units and the potential for developers to pay a fee-in-lieu of this requirement.

Stakeholder feedback was focused on three major themes:

1. Benefits and challenges of required on-site affordable units versus a fee-in-lieu of on-site affordable units.
2. Should developments made up solely of non-residential uses be subject to an affordability requirement in exchange for receiving a density bonus?
3. Additional recommendations and concerns related to the Planned Unit Development ordinance but not addressed in the staff recommended amendments

#### Fee-in-Lieu option vs. Onsite only

- on-site affordable units requirement helps City to achieve geographic dispersion goals
- fee-in-lieu option should be an administrative process rather than require City Council approval
- in the staff recommended amendments the “infeasibility” required for fee approval should be tied to more than just economics alone
- fee-in-lieu should also be considered in low opportunity areas with a high concentration of affordable units
- staff should clarify language in recommended amendments to reflect that all requests for a fee-in-lieu approval will be taken forward to City Council
  - this could be stated explicitly in procedural guidelines or rules

#### Require developments with non-residential uses to pay a fee-in-lieu of affordable housing units

- Planned Unit Developments with no residential use provide community benefits in the form of additional tax revenue and jobs
- There is a nexus between the additional jobs created by commercial developments and an increased demand for affordable housing and therefore commercial developments receiving a density bonus should make a contribution to affordable housing
- Adding a fee on non-residential uses could create a disincentive for participation in the density bonus program
- In place of a fee-in-lieu of on-site affordable units in commercial developments, a portion of the additional tax revenue created by new commercial developments could be dedication to the City's Housing Trust Fund (ex: a percent of the bonus area)

#### Additional recommendations and comments

- There should be a set process for determination of Planned Unit Development baseline zoning that is inclusive of many departments including Neighborhood Housing and Community Development
- The City should review the current policy related to requests for a fee-in-lieu payment refund
- Could the options of all on-site affordable units, all fee-in-lieu, or a portion of each be handled administratively rather than the fee requiring City Council approval?
- It is important to have the fee-in-lieu requests be approved by City Council because the affordability question should be a public conversation
- The City should review the set fee-in-lieu amount for Planned Unit Developments



Neighborhood Housing and  
Community Development

# Planned Unit Development Density Bonus

Review of draft staff recommended  
amendments

June 24, 2015  
Stakeholder Work Session  
\*revised version

# Objectives

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- I. Understand the directive from City Council**
- II. Planned Unit Development Overview (What is a PUD?)**
- III. Review current Planned Unit Development Density Bonus policies**
- IV. Stakeholder feedback**
- V. Recommended amendments and next steps**

# Council Resolution No. 20140925-090

Council Resolution No. 20140925-090 initiated a code amendment to modify the in lieu donation option for affordable housing requirements for Planned Unit Developments.

## Three possible amendment scenarios:

- Remove the Fee-In-Lieu option
- A significant portion of the affordability requirement must be met through onsite units and a small portion may be met through a fee-in-lieu
- Allow for exemptions from the onsite affordable unit requirement



# What is a Planned Unit Development

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Planned Unit Development (PUD) zoning district goals:

- preserving the natural environment
- encouraging high quality development and innovative design
- ensuring adequate public facilities and services

The Council intends PUD district zoning to produce development that achieves these goals to a greater degree than and is therefore superior to development under conventional zoning and subdivision regulations



# Austin Planned Unit Development History

**2008:** PUD land development code was amended to include a density bonus provision

**2013:** Additional amendments made to the PUD code including:

- Rental units set at 60%MFI or below & ownership units set at 80% MFI
- Change from 10% of habitable square footage to 10% of bonus square footage for both onsite units and fee-in-lieu requirement

**2014:** Resolution No. 20140925-090 initiated a code amendment related to the fee-in-lieu option for the PUD density bonus

# Current PUD Density Bonus Requirements

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Development in a PUD with residential uses may exceed the baseline zoning if the developer:

Provides affordable housing meeting or exceeding the following requirements:

- For Rental Housing : **10% of bonus sq. ft.** must be affordable to households at **60% MFI** or below for 40 years
- For Ownership Housing: **5% of bonus sq. ft.** affordable to households at **80% MFI** – transferred to the owner subject to a shared equity agreement

# Current PUD Density Bonus Requirements

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## Alternative Options:

- Donates to AHFC land within the PUD that is appropriate and sufficient to develop 20% of the residential habitable square footage planned for the PUD subject to approval by the Director of NHCD
- In lieu donation of \$6/ square foot of bonus square footage subject to city council approval

# PUDs with a Density Bonus since 2008

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- **Broadstone (RunTex):** ordinance allows for onsite units or fee-in-lieu to be determined at issuance of certificate of occupancy
- **Taco PUD:** was approved by Council to provide a fee-in-lieu of onsite affordable units. A fee was received prior to site plan approval. The developer pulled the site plan and the fee was refunded.
- **The Park PUD:** development contains no residential uses and therefore is not subject to the affordability requirements.

# Council Resolution No. 20140925-090

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## Three possible amendment scenarios:

- Remove the Fee-In-Lieu option
- A significant portion of the affordability requirement must be met through onsite units and a small portion may be met through a fee-in-lieu
- Allow for exemptions from the onsite affordable unit requirement



# Council Resolution No. 20140925-090

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## Phase I Stakeholder Engagement:

- Conducted online survey with members of the development community that have experience with PUDs and providing on-site affordable units through other Austin density bonus programs
- Facilitated discussion with the Real Estate Council of Austin (RECA) Policy Committee
- Facilitated discussion with HousingWorks Austin

# Onsite Affordability vs Fee-in-lieu in Austin

Model	Affordability MFI	Fee-in-lieu
Downtown Density Bonus	120% Ownership / 80% Rental	\$3-\$10/bonus square foot
North Burnet Gateway	80% Ownership / 60% Rental	\$6/bonus square foot
East Riverside Corridor	80% Ownership / 60% Rental	\$0.5/bonus square foot*
University Neighborhood Overlay	60% AND 50% Rental	\$1/square foot of net rentable floor area in the multi-family residential use or group residential use†
Planned Unit Development	80% Ownership / 60% Rental	Fee option dependent on Council approval (\$6/bonus square foot)
Transit Oriented Development	MFI varies by district	Fee option dependent on Council approval (\$10/bonus square foot)
Rainey Street	80% Ownership / 80% Rental	No fee option
Vertical Mixed Use	100-80% Ownership / 80-60% Rental	No fee option

\*fee option is limited to buildings over 90 feet

†fee option is limited to satisfying a portion of affordability req. for the Height Bonus

# Draft Staff Recommended Amendments

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- **Affordability requirement will apply to all development types that participate in the density bonus**
  - Currently only applies to residential uses
- **Developments with no residential use are permitted to pay the fee-in-lieu by right**
- **Remove requirement for “prevailing level of affordability” report**
  - This requirement is no longer relevant
- **Affordability term for ownership housing will be 99years**
  - Currently there is no affordability term tied to ownership units which we feel was an oversight



# Draft Staff Recommended Amendments

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- **Land donation in lieu of on-site affordable units must be approved by the Director of Neighborhood Housing and Community Development.**
  - Current practice but not explicitly codified
- **Request for approval of a fee-in-lieu of on-site affordable housing must be submitted in writing**
  - Currently no guidelines for how an exemption request is submitted
- **The written request must demonstrate the infeasibility of complying with the on-site requirement**
- Currently no guidelines for how an exemption request is submitted

# Code Amendment Next Steps

Dates	Stakeholder Engagement Phase	NHCD Research and Recommendations
June 24, 2015	stakeholder meeting to workshop draft recommendations	
June 30, 2015	<u>CDC and Housing Committee</u> : presentation of draft recommendations action requested on staff recommendations	
July, 2015		Work with the Law Department to draft recommended code amendment language
July 21, 2015	<u>Planning Commission Codes and Ordinances Subcommittee</u> : presentation of final draft recommendations action requested on final staff recommendations	
July 28, 2015	<u>Planning Commission</u> : public hearing and action requested	
August 26, 2015	<u>City Council Housing and Community Development Committee</u> : presentation of final draft recommendations and possible action	
September 17, 2015	<u>City Council</u> : public hearing and action requested	



**COMMUNITY DEVELOPMENT COMMISSION  
RECOMMENDATION 20150630-04b**

**Date:** July 1, 2015

**Subject:** Recommended Code Amendments to the Planned Unit Development Ordinance

**Motioned By:** Vice Chair Karen Paup

**Seconded By:** Commissioner Elizabeth Mueller and Commissioner Karen Langley

**Recommendation:** See the recommendation below from the Community Development Commission (CDC) concerning recommended Code amendments concerning the Planned Unit Development Ordinance.

The CDC supports the staff proposed amendments to the Planned Unit Development Ordinance presented on June 30, 2015 with the exception of section 2.5.5 B. The CDC recommends deletion of 2.5.5 B, which would eliminate the In Lieu Donation option.

The CDC also recommends that consideration be given to requiring a restrictive covenant through the rule making process, and to requiring a public hearing on baseline zoning prior to the first presentation to the Austin City Council.

**Date of Approval:** June 30, 2015

**Record of the Vote:** Approved on a 9-0-0 vote. Those members voting aye were Chair Rivera, Vice Chair Paup, and Commissioners Amin, Harrison, Langley, Mueller, B. Taylor, C. Taylor, and Valadez.

**Attest:** *[CDC Liaison, Jim Padilla]*