



City of Austin

Neighborhood Housing and Community
Development Department

**Affordability Unlocked
Development Bonus Program
Applicant Guide**

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Affordability Unlocked Applicant Guide

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1 Affordability Unlocked Overview

The Affordability Unlocked Development Bonus Program is designed to increase the number of affordable housing units being developed in Austin and fully leverage public funds and resources by allowing housing providers to build more units in their developments when significant amounts of affordable housing units are included. It is administered by the Neighborhood Housing and Community Development Department (NHCD). It was created through City Council's approval of [Ordinance Number 20190509-027](#).

The program applies citywide and offers extensive waivers and modifications of development regulations in exchange for setting aside at least 50% of a development's total units as affordable for a minimum of 40 years for rental and 99 years for ownership units, in addition to other requirements detailed in this guide.

The program can be combined with other City of Austin funding and development incentive programs, including Rental Housing Development Assistance (RHDA), Ownership Housing Development Assistance (OHDA), S.M.A.R.T. Housing, and density bonuses. For more information on these programs and incentives, please visit the Neighborhood Housing and Community Development website at <http://www.austintexas.gov/department/housing-developer-assistance>, call (512) 974-3100, or email NHCD@austintexas.gov.

2 Affordability Unlocked Requirements

2.1 Affordability Requirements

The Affordability Unlocked program allows applicants to select from two levels of affordability. The first level, Type 1, includes entry-level requirements that must be met to utilize the program. The second level, Type 2, includes requirements in addition to all Type 1 requirements and allows for additional development bonuses in some cases. See the Development Bonuses section for more information.

2.1.1 Type 1 (Entry-Level) Requirements

The following requirements must be met to participate in the program:

2.1.1.1 *For Developments with Rental Units*

- For developments of 1 or 2 units, all units must be affordable.
- For developments of 3 or more units, 50% of the total units must be affordable. If the number of units required would be less than a whole unit, the required number is rounded up to the nearest unit.
- Twenty percent (20%) of all units must serve households at or below 50% of the median family income for the Austin-Round Rock Metropolitan Statistical Area (MFI).

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- Rent levels for the affordable units must be affordable to households whose incomes average 60% MFI or below.

For example, in a 10-unit development, 5 units must be affordable (50% x 10 = 5). Two (2) of those units must serve households at or below 50% MFI. The remaining 3 affordable units can serve different combinations of income levels, as long as the average income level served by all 5 affordable units is less than or equal to 60% MFI. The 3 remaining affordable units could be distributed in a variety of combinations:

- ◆ 1 unit at 30% MFI and 2 units at 80% MFI
- ◆ 1 unit at 80% MFI and 2 units at 60% MFI
- ◆ all 3 units at 60% MFI

- Twenty-five percent (25%) of the affordable units must meet one of the following:
 - Include two or more bedrooms,
 - Serve as supportive housing (housing that includes non-time-limited affordable housing assistance with wrap-around supportive services for individuals experiencing homelessness or other individuals with disabilities), or
 - Serve as housing for older persons (housing for households with at least one individual who is at least 62 years of age at the time of initial occupancy).
- The affordable units must meet these affordability requirements for the entirety of the affordability period. The affordability period for rental units is at least 40 years from the issuance date of the last certificate of occupancy required for the development. For multi-phased developments, the affordability period may begin upon the issuance of the last certificate of occupancy for each phase, subject to the NHCD Director's approval.
- Unless a development is participating in another government-operated affordable housing program with stricter requirements, the following lease provisions must be incorporated into the leases for the affordable units:
 - The U.S. Department of Housing & Urban Development (HUD) Section 8 Tenant-Based Assistance Housing Choice Voucher Program related to termination of tenancy by owner,
 - 24 C.F.R. Section 245.100 related to a tenant's right to organize, and
 - Any lease addendum required as a condition to receive City of Austin or Austin Housing Finance Corporation funding for affordable housing.
- The property owner may not discriminate against prospective renters on the basis of the individual's source of income, as defined in Austin's City Code Section 5-1-13 (Definitions).

2.1.1.2 For Developments with Ownership Units

- For developments of 1 or 2 units, all units must be affordable.
- For developments of 3 or more units, 50% of the total units must be affordable. If the number of units required would be less than a whole unit, the required number is rounded up to the nearest unit.

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- Sale prices for the affordable units must be affordable to households whose incomes average 80% of the median family income for the Austin-Round Rock Metropolitan Statistical Area (MFI) or below.

For example, in a 10-unit development, 5 units must be affordable ($50\% \times 10 = 5$). The affordable units can serve different combinations of income levels, as long as the average income level served by all 5 affordable units is less than or equal to 80% MFI. Two examples are below:

- ◆ 3 units at 80% MFI, 1 unit at 100% MFI, and 1 unit at 60% MFI
- ◆ all 5 units at 80% MFI

- Twenty-five percent (25%) of the affordable units must meet one of the following:
 - Include two or more bedrooms,
 - Serve as supportive housing (housing that includes non-time-limited affordable housing assistance with wrap-around supportive services for individuals experiencing homelessness or other individuals with disabilities), or
 - Serve as housing for older persons (housing for households with at least one individual who is at least 62 years of age at the time of initial occupancy).
- The affordable units must meet these affordability requirements for the entirety of the affordability period. The affordability period for ownership units is at least 99 years from the issuance date of the certificate of occupancy for the unit.

2.1.1.3 For Co-Housing Developments

Affordability Unlocked is available for developments functioning as co-operatives or co-housing developments if they meet the following definition: *one or more structures that serve as a dwelling unit for 7 or more unrelated individuals who share amenities, such as a kitchen, bathrooms, or living areas.*

These developments must meet the following affordability requirements:

- Fifty percent (50%) of the total bedrooms must be affordable. If the number of bedrooms required would be less than a whole bedroom, the required number is rounded up to the nearest whole bedroom.
- Twenty percent (20%) of all bedrooms must serve households at or below 50% of the median family income for the Austin-Round Rock Metropolitan Statistical Area (MFI).
- Rent levels for the affordable bedrooms must average 60% MFI or below.

For example, in a co-operative with 10 rooms, 5 rooms must be affordable ($50\% \times 10 = 5$). Two (2) of those rooms must serve households at or below 50% MFI. The remaining 3 affordable rooms can serve different combinations of income levels, as long as the average income level served by all 5 affordable rooms is less than or equal to 60% MFI. The 3 remaining affordable rooms could be distributed in a variety of combinations:

- ◆ 1 room at 30% MFI and 2 rooms at 80% MFI
- ◆ 1 room at 80% MFI and 2 rooms at 60% MFI
- ◆ all 3 rooms at 60% MFI

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- The affordable rooms must meet these affordability requirements for the entirety of the affordability period. The affordability period for rental units is at least 40 years from the issuance date of the last certificate of occupancy required for the development.
- Unless a development is participating in another government-operated affordable housing program with stricter requirements, the following lease provisions must be incorporated into the leases for the affordable bedrooms:
 - The U.S. Department of Housing & Urban Development (HUD) Section 8 Tenant-Based Assistance Housing Choice Voucher Program related to termination of tenancy by owner,
 - 24 C.F.R. Section 245.100 related to a tenant's right to organize, and
 - Any lease addendum required as a condition to receive City of Austin or Austin Housing Finance Corporation funding for affordable housing.
- The property owner may not discriminate against prospective renters on the basis of the individual's source of income, as defined in Austin's City Code Section 5-1-13 (Definitions).

2.1.2 Type 2 Requirements

To meet Type 2 requirements, applicants must comply with all the requirements described in Type 1, **and** one or more of the following:

- At least 50% of the affordable units (rounded up to the nearest whole unit) must include two or more bedrooms,
- At least 75% of the total units (rounded up to the nearest whole unit) must be affordable, in compliance with the affordability levels described in Type 1,
- At least 10% of the affordable units (rounded up to the nearest whole unit) must serve households at or below 30% MFI, or
- The development is located within ¼-mile walking distance of an Imagine Austin Activity Corridor that is served by transit (to view a map of these corridors, visit: <http://arcg.is/1DX8n1>).

2.1.3 Affordable Rent Rates and Sale Prices

NHCD sets maximum rent limits and sales prices that may be charged for an affordable unit annually. These rent and sale price limits are based on the MFI limit and the unit size.

To view the most current maximum rent rates and sale prices, see the **Development Incentive Rent Rates** and **Development Incentive Sale Prices** documents published on the Development Incentives and Agreements webpage (<http://www.austintexas.gov/page/development-incentives-and-agreements>).

2.2 Certification Process

The NHCD Director must certify that a proposed development meets the requirements of the Affordability Unlocked Program **before** a development permit application can be submitted for that development. Therefore, applicants should apply for Affordability Unlocked certification as early as possible in the development process.

To obtain certification for a proposed development, applicants must complete and submit the Affordability Unlocked Application (available at: https://cityofaustin.formstack.com/forms/affordability_unlocked_application), including all required

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attachments. NHCD will not process an application until it is complete. NHCD will review completed applications within 10 business days. A meeting with NHCD may be required to process an application.

NOTE: If applicants plan to apply for S.M.A.R.T. Housing certification or funds through the Rental Housing Development Assistance or Ownership Housing Development Assistance programs, they should complete the Affordability Unlocked application first and note on the application that they plan to participate in these programs.

In addition to the application, applicants must execute a contractual agreement with the City of Austin committing the development to comply with all the requirements of the program. The agreement must be executed **before** NHCD will certify that the proposed development meets the Affordability Unlocked program requirements. NHCD staff will contact applicants with the contractual agreement after they have processed the application and found it meets the program requirements.

After the contractual agreement has been executed, NHCD staff will approve the application and issue the applicant a certification letter stating that the project has been certified for Affordability Unlocked and is eligible to receive development regulation waivers and modifications under the program. Applicants must submit this letter to the Development Services Department, along with any checklists, permit applications, and attachments required by that department for review.

See the Compliance and Enforcement Section for more information on the contractual agreement and additional compliance instruments, including a Restrictive Covenant.

2.3 Redevelopment Requirements

Affordability Unlocked is available for new construction or redevelopment. However, if a development is proposed for a site that contains existing multifamily housing units, the following requirements must be met:

- The existing multifamily structure(s) require(s) extensive repairs and rehabilitation costs will exceed 50% of the market value of the development. To show this, applicants must attach an engineering report to the Affordability Unlocked application. The City of Austin's Building Official will make the final determination as to whether this criterion is met.
- All existing income-restricted affordable units, as well as all market-rate affordable units being rented at prices affordable to households earning at or below 80% MFI, must be replaced one-for-one in the new development. These units must each have at least the same number of bedrooms in the new development as they had in the existing development.
 - To determine how many units must be replaced, the applicant must provide NHCD with information on the rents at the property in the last year. Any market-rate units that were rented at rates that are at or below the rent rates NHCD sets for 80% MFI units would be considered market-rate affordable. Any units that had income restrictions requiring residents to earn incomes at or below 80% MFI would be considered income-restricted affordable. The applicant must provide this rental information to NHCD in the Affordability Unlocked application.
- The applicant must provide tenants in the existing multifamily units with:
 - Notice and information about the proposed development on a form approved by NHCD,
 - Financial relocation assistance consistent with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, and

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- The opportunity to lease a unit of comparable size and cost in the new development.

NOTE: If your project would trigger these requirements, please email NHCD at NHCDReview@austintexas.gov before submitting an application.

3 Development Bonuses and Requirements

By participating in Affordability Unlocked, developers can access the following waivers or modifications of development regulations:

3.1 Development Regulation Waivers

Development Regulation Waived	City Code Section
Compatibility height and setback requirements (note that side setbacks required by the base zoning district are not waived)	Article 10 (Compatibility Standards) and Subchapter F (Residential Design & Compatibility Standards)
Floor-to-Area Ratio (FAR) limits of the base zoning district	Section 25-2-492 (Site Development Regulations)
Duplex regulations	Section 25-2-773
Minimum site area requirements of the base zoning district	multiple sections
Dwelling unit occupancy limits	Section 25-2-511

3.2 Development Regulation Modifications

Development Regulation Modified
Minimum lot size for a development is 2,500 square feet
Minimum lot width for a development is 25 feet
Front yard setbacks are reduced by 50%
Rear yard setbacks are reduced by 50%
For Type 1 projects, the height limit is increased by multiplying the base zoning district height limit by 1.25. For Type 2 projects, the height limit is increased by multiplying the base zoning district height limit by 1.5.
For Type 1 projects on lots where the base zoning district includes a limit on the number of dwelling units per lot, the maximum number of dwelling units per lot is 6. For Type 2 projects on lots where the base zoning district includes a limit on the number of dwelling units per lot, the maximum number of dwelling units per lot is 8.

NOTE: Applicants must comply with all other applicable development regulations, including environmental and watershed regulations. Site plan regulations and review requirements continue to apply (for example, although a lot zoned SF-3 can accommodate up to 8 dwelling units under the program, the project would still be subject to site plan review because it is over 2 units).

If the proposed development will be located in a locally designated historic district, contact the City of Austin's Historic Preservation Office at preservation@austintexas.gov or (512) 974-3584.

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3.3 Zoning and Applicability

Developments that meet the requirements of the Affordability Unlocked Program can be built as a permitted use on any site that is in:

- A residential base zoning district
- A commercial base zoning district
- A special purpose base zoning district, except on a site designated agricultural (AG) or aviation (AV), and/or
- A combining and overlay district.

Applicants do not need to seek a rezoning to use this program if the proposed development is located on a site that meets the above criteria.

To qualify for the Affordability Unlocked program, developments may not designate more than 25% of their gross floor area for commercial uses. This does not include space for resident amenities including laundry rooms, business centers, fitness centers, or leasing offices. Only those commercial uses permitted in the site's base zoning district are allowed.

In general, conditional overlays (CO's) that directly conflict with the development bonuses offered by Affordability Unlocked are superseded by Affordability Unlocked. In general, CO's that govern other issues will continue to apply.

3.4 Screening and Design Requirements

Developments located in urban residence (SF-5) zoning districts or more restrictive zoning districts that have heights over 35 feet or 3 stories must comply with the following:

- Section 25-2-1066 (Screening Requirements),
- Section 25-2-1067 subsections A & B (Design Regulations),
- All refuse receptacles, including dumpsters, must be enclosed,
- The Development Services Department must review locations of and access to refuse receptacles, and
- Refuse collection is prohibited between 10:00 pm and 7:00 am.

3.5 Off-Street Parking Requirements

Applicants are not required to construct non-accessible parking spaces. However, for developments over 2 units, applicants must construct accessible parking spaces. The Affordability Unlocked ordinance defines an accessible parking space as *a parking space for an individual with a disability that complies with the Americans with Disabilities Act (ADA) and Fair Housing Act Amendments (FHAA) as appropriate.*

If a development is proposed to contain fewer parking spaces than is required by City Code 25-6 Appendix A (Tables of Off-Street Parking and Loading Requirements), the minimum required number of accessible parking spaces is the greater of:

- One accessible parking space,
- The number of accessible parking spaces required under the Building Code based on the amount of parking required for the development by Appendix A, or
- The number of accessible parking spaces required by the ADA or FHAA, if applicable.

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Accessible parking spaces must be adjacent to the development and located on an accessible route from the development. Accessible parking spaces must also comply with all design, accessibility, and location requirements of the ADA and FHAA as appropriate.

4 Compliance and Enforcement

As part of the certification process, the City of Austin will enter into a contractual agreement with each development utilizing Affordability Unlocked to enforce the requirements of the program before the development permit application can be submitted. For developments with ownership units, this agreement will grant the City of Austin a right of first refusal to purchase any affordable ownership unit upon sale. For all developments, the agreement will also include provisions related to penalties for violations of program requirements and other provisions the City deems appropriate. This agreement must be executed before NHCD will approve a project's Affordability Unlocked application and issue a certification letter for the project.

The developer or property owner must notify NHCD when building permits are issued for the development. NHCD will place an administrative hold on the building permit, preventing the issuance of the certificate of occupancy. This administrative hold will be removed when the following items have been completed:

1. The project's architect submits a sealed calculation of the project's total and affordable units, including numbers of bedrooms.
2. The project's landowner executes a Restrictive Covenant to be recorded by the City of Austin in the Official Records of Travis County, Williamson County, or Hays County as applicable. The Restrictive Covenant will include, at a minimum, the following information:
 - a. The Median Family Income (MFI) limits for eligible tenants or buyers;
 - b. The number of required affordable units, including bedrooms,
 - c. The required affordability period (based on the number of compliant years); and
 - d. The required rent limits or sale prices.

4.1 Compliance for Developments with Rental Units

To comply with the monitoring requirements of the program, property owners or their agents must provide NHCD with tenant income information that allows NHCD to verify compliance with the affordability requirements. The information must be provided on a form approved by NHCD and submitted within 30 days of the issuance of the last certificate of occupancy for the development and on a monthly basis thereafter until the property owner has demonstrated compliance with the affordability requirements for all the affordable units. The information must be maintained in the tenant file for each affordable unit annually thereafter for the entirety of the affordability period. NHCD will conduct periodic monitoring of affordable units throughout the affordability period.

If NHCD cannot confirm that the affordability requirements were met during any 12-month period, the affordability period may be increased by the amount of time for which compliance could not be verified. Failure to provide compliance information to NHCD could result in a \$500 fine for each day that the information is not provided.

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4.2 Compliance for Developments with Ownership Units

Prior to the sale of a unit to an eligible buyer, NHCD will income-qualify potential buyers, or review the certifications done by affordable housing providers that income-certify buyers, and execute legal instruments for ensuring affordability for ownership units. A buyer's income eligibility begins on the date the sales contract is signed and is valid for 180 calendar days or until the closing on the sale of the unit, whichever comes first.

5 Application Process

The steps below outline the general process that applicants and the City will take to comply with the Affordability Unlocked program:

1. Applicant completes and submits to NHCD the Affordability Unlocked Application and required attachments.
2. NHCD staff process the completed application and, if it meets the program requirements, staff contact the applicant to execute a contractual agreement to enforce the program requirements.
3. Applicant and the City of Austin execute the contractual agreement.
4. NHCD staff provide applicant with a letter certifying that the development meets the program requirements.
5. Applicant applies for S.M.A.R.T. Housing, Housing Development Assistance gap financing, or other City of Austin affordability incentive programs as needed.
6. Applicant submits Affordability Unlocked certification letter to Development Services Department reviewers along with any other required checklists, permit applications, or other attachments.
7. The permit application for the proposed development is reviewed and approved.
8. Applicant notifies NHCD when a building permit is issued for the development. If any changes to unit or bedroom counts have been made, applicant submits these to NHCD as well.
9. After the development is complete, applicant and the City of Austin execute a restrictive covenant on the property to maintain the affordability requirements for the duration of the affordability period. Once this restrictive covenant is recorded and NHCD has verified that the required number of affordable units has been built, the administrative hold NHCD placed on the certificate of occupancy will be released. (If a development is also receiving funding from the City of Austin, a loan agreement and related instruments may be used instead of a restrictive covenant to ensure long-term affordability.)
10. For ownership units:
 - a. The developer or authorized representative sends a draft of the condo declarations to NHCD for review, to ensure the required City of Austin language has been included (if applicable).
 - b. The developer or authorized representative sends NHCD a complete income documentation packet for an eligible buyer at least 45 days prior to the scheduled closing. Buyers must be pre-qualified for a mortgage; this information must be in the packet.
 - c. If NHCD determines that the household is eligible, NHCD alerts interested parties that the buyer's eligibility has been confirmed and the eligible buyer can then enter into a sales contract.

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- d. At least 30 days prior to closing, the developer or authorized representative requests from NHCD the following documents, as applicable: a partial release of lien, long-term affordability restrictive covenant for the eligible buyer, and/or the partial release of any blanket restrictive covenants placed on the development. Before NHCD will process this request, the developer or representative must provide the following documents:
 - i. Recorded condo declaration (including the required City of Austin language) (if applicable)
 - ii. Draft deed
 - iii. Title
 - iv. Appraisal
 - v. Draft information on homeowners association or condo association dues (if applicable)
 - vi. Draft closing disclosures/settlement statements
 - vii. Sales contract (signed by buyer)
 - viii. Ground lease or restrictive covenant between buyer and developer/ownership entity (if applicable)
 - ix. Other documents as required by NHCD
 - e. NHCD reviews the documents above. If approved, NHCD sends the completed partial release of lien, the long-term affordability restrictive covenant, ground lease agreement, and/or the partial release of any blanket restrictive covenants to the Title Company for the buyer's signature and notarization.
 - f. After closing, the Title Company provides NHCD with a packet that includes the following recorded documents, as applicable: the signed partial release of lien, the recorded deed, the ground lease agreement, and/or the signed restrictive covenant for that unit.
 - g. NOTE: Entities that have a Memorandum of Understanding with the Travis County Central Appraisal District (or Williamson County or Hays County Central Appraisal Districts, as applicable) may use their own long-term affordability Restrictive Covenants and Community Land Trust documents, pending City of Austin approval. City of Austin will require that the Austin Housing Finance Corporation be a responsible party, able to take over the ground lease or right of first refusal in the event that the original land trust entity no longer exists.
11. For rental units, the property owner submits income compliance information to NHCD within 30 days of the issuance of the certificate of occupancy, and monthly until all affordable units are leased to income-qualified households. NHCD will conduct periodic monitoring on affordable units throughout the length of the affordability period.