

Additional Information Regarding the Proposed CodeNEXT Affordable Housing Bonus Program

This document provides additional information regarding the proposed CodeNEXT Affordable Housing Bonus Program (AHBP). Much of the AHBP can be found in Article 23-3E of the draft zoning code. Other elements, including the available bonuses, can be found in each zone definition within Chapter 23-4 of the draft zoning code.

List of topics addressed in this document:

1	Current & future bonus programs	2
1.1	<i>What parts of the proposed Affordable Housing chapter currently exist in the City's code?</i>	2
1.2	<i>What existing density bonus programs are not incorporated into CodeNEXT Draft 2 and why?</i>	2
1.3	<i>What aspects of the Affordable Housing chapter are new policies?</i>	2
1.4	<i>Why is the Vertical Mixed Use (VMU) bonus option from the current code not included in CodeNEXT?</i>	3
1.5	<i>What was the “-A” designation found in the first CodeNEXT draft?</i>	4
2	Affordable bonus programs in practice	4
2.1	<i>What is the benefit of a bonus program?</i>	4
2.2	<i>What does it mean to calibrate a bonus program?</i>	4
2.3	<i>Why don't bonus programs target deeper levels of affordability?</i>	5
2.4	<i>Why do affordable unit requirements vary by zone or by geography?</i>	5
2.5	<i>Why are affordable unit requirements based on bonus area rather than the whole building?</i>	6
3	Alternatives to on-site affordable units	6
3.1	<i>What can developers do to address affordability other than build on-site units?</i>	6
3.2	<i>Why are alternatives to on-site units offered?</i>	7
3.3	<i>How and when will the fee-in-lieu be calibrated?</i>	7
4	Bonus effectiveness	7
4.1	<i>Are bonuses adequate for addressing our affordable housing needs?</i>	7
4.2	<i>How does the AHBP promote family-friendly units (2+ bedrooms)?</i>	8
4.3	<i>How is CodeNEXT helping the city affirmatively further fair housing?</i>	9
4.4	<i>How does the AHBP influence gentrification and displacement?</i>	9
5	Bonuses in CodeNEXT	10
5.1	<i>What elements of the AHBP will be found outside of CodeNEXT?</i>	10
5.2	<i>What is the designated review group?</i>	10
5.3	<i>How will the City ensure affordable bonus units remain affordable?</i>	11
5.4	<i>What will be the process for finalizing the AHBP administrative language?</i>	12
5.5	<i>Why do some zones not include a bonus as part of the AHBP?</i>	12
5.6	<i>How can we make bonuses available across more of the City?</i>	12
6	S.M.A.R.T. Housing in CodeNEXT	13
6.1	<i>What changes to S.M.A.R.T. Housing are proposed in CodeNEXT?</i>	13
6.2	<i>Are other incentives needed to attract private developer participation in S.M.A.R.T. Housing?</i>	13

1 Current & future bonus programs

1.1 What parts of the proposed Affordable Housing chapter currently exist in the City's code?

- The Affordable Housing chapter (Article 23-3E) includes sections that pull existing code sections through from current code, substantially unchanged. These code sections are:
 - Section 23-3E-2 (Downtown Density Bonus Program)
 - 23-3E-3 (Tenant Notification and Relocation)
 - 23-3E-4 (S.M.A.R.T. Housing)

The University Neighborhood Overlay (UNO) is also being carried forward in Section 23-4D-9110.

1.2 What existing density bonus programs are not incorporated into CodeNEXT Draft 2 and why?

- The following existing density bonus programs are not being incorporated into CodeNEXT:
 - Transit-Oriented Development Districts (TODs): Justin Lane/Lamar Blvd, MLK Jr., and Plaza Saltillo
 - Regulating Plan Areas: East Riverside Corridor, North Burnet-Gateway

These TOD/regulating plan areas are subject to unique rules under their regulating plans that specify zoning requirements tailored to each area and a variety of community benefits developers must provide in exchange for density bonuses, other than just affordable housing. At this time, the CodeNEXT team has not received policy direction from City Council to reassess each of these plans for inclusion in the proposed citywide Affordable Housing Bonus Program.

The Downtown Density Bonus Program and the University Neighborhood Overlay (UNO) are being carried forward into CodeNEXT substantially unchanged. These two bonus programs are not recommended to be replaced by the Affordable Housing Bonus Program because each of them deals with specific development types (high-rise construction and student housing, respectively) in unique environments (downtown and campus area, respectively).

1.3 What aspects of the Affordable Housing chapter are new policies?

- The following sections represent new policies proposed in CodeNEXT and the rationale behind the proposals:

Section	Rationale
23-3E-1: Citywide Affordable Housing Bonus Program	The City currently administers multiple density bonus programs, tailored to specific geographies and each with their own unique requirements. Utilizing a citywide bonus program based on zoning districts will allow a more consistent and streamlined approach that is clearer for City staff to administer and developers to access.
23-3E-5: Additional Affordable Housing Incentives	<p>Carries forward elements of current code that provide incentives for S.M.A.R.T. Housing-certified affordable housing, and includes a new proposal for a parking reduction per affordable unit.</p> <p>A parking reduction for affordable units was recommended by the consultant team based on their modeling of what incentives are necessary to support the production of affordable units. It responds to the current issue many non-profit affordable housing developers face: current code often requires them to provide more spaces than their residents need. For certain populations, very little parking (less than 1 space per unit) is needed, and the land can be used to build more units or provide amenities/open space.</p>
23-3E-6: Affordability Impact Statements	Ordinance No. 20071129-100 created the process and requirements for developing Affordability Impact Statements. This information is proposed to be included into the land development code. Including these requirements in the code improves transparency and makes the requirements easier to find.

1.4 Why is the Vertical Mixed Use (VMU) bonus option from the current code not included in CodeNEXT?

- VMU is a zoning category in the current land development code that allows – as part of the base zoning – the construction of commercial development or a limited number of housing units with requirements for deep setbacks, low Floor Area Ratio (FAR), high parking requirements, and limitations based on compatibility standards. If a developer chooses to participate in the optional VMU bonus option that requires the provision of affordable housing units, they are able to build many more housing units on the parcel.
- Only CodeNEXT zones with a bonus option were applied to current VMU parcels. The mapping of Draft 1 and Draft 2 strived to apply the closest possible zones, both in terms of allowed uses and scale of development. However, the bonuses in these zones were smaller than those found in VMU. If CodeNEXT were to replace VMU parcels with a base zone that required affordability when any housing was built, it would have eliminated the existing base entitlements found on VMU sites.

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- The CodeNEXT team continues to evaluate whether the large bonus potential of VMU, which has yielded many income-restricted units, can be replicated in CodeNEXT. See the discussion of “-A” below.

1.5 What was the “-A” designation found in the first CodeNEXT draft?

- The first draft of the affordability section included a special designation “-A” for certain properties that do not have residential entitlements today but would have these entitlements under CodeNEXT. The special designation would have dictated that the affordable unit requirements for these properties be calculated distinctly, which would have required more of the total units be affordable.
- Based on the complexity of the “-A” proposal, it was eliminated from Draft 2 with the anticipation that new bonus definitions, which would capture the spirit of the “-A” proposal, would be introduced in Draft 3. The potential affordable unit production of such a proposal is being evaluated.

2 Affordable bonus programs in practice

2.1 What is the benefit of a bonus program?

- Bonus programs are one of the few policy options available in Texas that results in the delivery of affordable units in high-opportunity locations without significant public subsidies.
- The principle underlying a density bonus is that the public is willing to let something “extra” be built only because of the public benefits that are provided by developers in exchange for the bonus development capacity. Because it is a regulatory relaxation, the bonus is relatively inexpensive to execute, especially in comparison to the cost of other affordable housing tools.

2.2 What does it mean to calibrate a bonus program?

- Calibration refers to the process of determining which combination of administrative and code-based variables (amount of bonus area or units, affordable unit set aside, fee-in-lieu amount, etc.) will best incent a developer to build affordable units.
- Because bonus programs are voluntary, the bonus option must be financially attractive (offer an incentive) to developers; otherwise, developers will choose to deliver buildings that are allowed under base zoning. In some cases, building a bonus is financially beneficial for developers. In other cases, building a bonus has no financial benefit. In cases where the bonus would be attractive, developers must consider whether the benefit of using the bonus is greater than the cost of delivering the public benefits that are required when they use the bonus. In the case of housing development, they must consider whether the additional market-rate units more than offset the costs of the affordable units that are required (i.e. the foregone rental or sales revenue). Calibration aims to make sure the bonus is as attractive as possible so that developers pursue their

option of building something that delivers public benefits rather than building the base and delivering no public benefits.

- When developers are offered the option of paying fee in lieu of providing affordable units in their projects, the fees must also be calibrated. See a longer description below.

2.3 Why don't bonus programs target deeper levels of affordability?

- Generally, density bonus programs target housing in the workforce housing portion of the affordability spectrum. In fact, Draft 2 of CodeNEXT is consistent with the City of Austin's [Strategic Housing Blueprint](#), which suggests that density bonuses be used to produce housing that is affordable to households making between 60% and 80% of area median family income (MFI). This is at least in part because the City and developers have other tools that are targeted to support affordable unit construction at and below 60% MFI (such as Low Income Housing Tax Credits and federal funding sources), and a very limited toolkit to support affordability at 60 – 80% MFI.
- While deeper levels of affordability could be considered for the citywide Affordable Housing Bonus Program (AHBP), the trade-off will be the number of units produced. The deeper the level of affordability, the greater the financial burden for building owners (in general, affordable units rent for less than they cost to finance and operate, and must be sold for less than they cost to build). For a developer to choose to execute his/her option to build bonus units, more market-rate units would be required to cross-subsidize the affordable units. Therefore, the number of affordable units that policymakers could require developers to deliver (and expect them to take the bonus) would be fewer as affordability levels got deeper. If the bonus requirements are too onerous for developers to deliver, they may deliver the base building with fewer total units and zero affordable units.
- Fee-in-lieu helps with this by creating a funding source for the development and preservation of units at deeper levels of affordability, including those that house specific underserved populations.

2.4 Why do affordable unit requirements vary by zone or by geography?

- In different geographies, the market varies and, thus, the profitability of market rate development varies. For this reason, the number of market rate units required to offset the cost of affordable units varies. Therefore, the calibration of each zone must consider how the base and bonus compare in different market conditions.
- Also, zones allow different types of structures and the construction costs of those structures vary. Thus, the base building type and bonus building type may vary. Therefore, the calibration considers the different building types that might be built within zones and the calibration must be carried out independently for all zones.

2.5 Why are affordable unit requirements based on bonus area rather than the whole building?

- When a developer is considering whether or not to build the bonus, they consider whether they will make more money, adjusting for risk, by building what is allowed by the base code or taking the bonus. Rationally, they will only take the bonus option if it provides similar or better profits. Thus, the bonus must improve the financial picture for developers, which only happens when the bonus market rate units more than offset the cost of providing any bonus affordable units. In CodeNext, because the feasibility of the bonus is based principally on the ratio of market rate and affordable units within the bonus, only the bonus area is considered when calculating the affordability requirement.
- CodeNext calibrates the affordability requirement to the bonus area because a bonus calculated based on the total area would require a developer to deliver a significant portion of their building as affordable units even if the developer utilizes only a small square footage of bonus area or only one bonus unit. The cost of delivering affordable units would far outweigh the small benefit of their bonus and they would be unlikely to ever build partial bonuses. Because developers may only want to take advantage of a small part of the bonus they are offered, there could be very little bonus uptake in many circumstances. In other words, tying the affordability requirement to the bonus rather than the building more effectively allows the developer to scale the building to the site, which allows for greater total program participation if only a portion of the bonus can be built.

3 Alternatives to on-site affordable units

3.1 What can developers do to address affordability other than build on-site units?

- The AHBP offers developers the ability to:
 1. Build on-site
 2. Build units off-site within one mile of the development or in a high opportunity area, or other area approved by the Housing Director
 3. Dedicate land for future affordable housing construction
 4. Pay fees in-lieu of building on-site units
- All of the options would be subject to the approval of a review board. Details regarding the review board will be shared by staff along with CodeNEXT Draft 3. The board is intended to be comprised of subject matter experts in residential development, affordable housing, and real estate economics.
- In most cases, existing bonus program policies in the City of Austin allow developers to build on-site units or pay an in-lieu fee without passing through a review board.

3.2 Why are alternatives to on-site units offered?

- Developers are not all the same. Some may not be able to provide affordable housing in their projects and others may simply prefer not to, thus they would not deliver bonus housing on-site. However, the delivery of market-rate bonus housing can also help with overall housing affordability. So, providing options that allow developers to deliver bonus housing units while addressing affordable housing in other ways is a win-win. Attracting participation to this voluntary program is especially important since, by law, Austin cannot require developers to build affordable units or pay linkage fees to fund affordable units elsewhere.
- Furthermore, some of the alternatives have advantages. For example, the City of Austin can use fees paid in lieu of providing onsite units very flexibly. Fees can be used to preserve affordable housing, promote family-friendly units, or to build new units serving the lowest income populations in the City.
- Finally, having alternative options makes the program more resilient. If markets or other policies change more quickly than the AHBP can be adjusted, then offering alternatives to on-site housing may allow developers to pursue projects even when the on-site requirements are out of sync with the market.

3.3 How and when will the fee-in-lieu be calibrated?

- Because developers' ability to pay a fee is related to market conditions, such as labor costs and average rents, a fee schedule is expected to be initially developed in 2018, as close as possible to the day of CodeNEXT adoption to reflect market conditions, including development costs, financing and rents/sales prices.
- The fee will be calibrated using real estate pro formas to understand how much a developer could pay in fees without paying so much that they would prefer to deliver a building within the base entitlements and not execute their bonus option. The fees will be calibrated to promote the delivery of on-site affordable units by setting them high enough that they are not consistently a more attractive option than building on-site units.
- To allow for more frequent recalibration as market conditions change, it is anticipated that the designated review board referenced in the draft code (Section 23-3e-1080B) will evaluate and make recommendations on recalibrating the fees on an annual basis based on market conditions; their review of bonus projects is anticipated to give them unique insight into those changing market conditions.

4 Bonus effectiveness

4.1 Are bonuses adequate for addressing our affordable housing needs?

- No. A bonus program is just one among a suite of tools that are necessary to address the full spectrum of Austin's housing needs.

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- In most cities, bonus programs are paired with a suite of other affordable housing tools. In fact, bonus programs are well positioned to motivate developers to talk with city governments about affordable housing and give cities' housing staff a foot in the door to offer more incentives that can generate much more affordable housing than bonuses alone.
 - While Texas law prohibits the use of many policies used across the United States, many tools do exist that Austin could pair with the AHBP to make it more effective. Tools include:
 - Public Improvement Districts, Real Estate Investment Trust, Tax Increment Financing, Transfer of Development Rights, Planned Unit Developments, Homestead Preservation District (+Reinvestment Zones), Streamline City Codes and Permitting Processes, Allow development of smaller houses on smaller lots, Relax regulations for ADUs, Targeted Preservation Property Tax Exemption, Land Banking, Land Assembly, Property Price Buy Down, funding for construction or rehabilitation of units from the Austin Housing Trust Fund or NHCD Housing Development Assistance Programs

4.2 How does the AHBP promote family-friendly units (2+ bedrooms)?

- The Draft 2 AHBP policy allows developers to produce a two-bedroom affordable unit in-lieu of providing two one-bed or studio units. Likewise, a developer can deliver a three-bedroom unit in-lieu of providing three one-bed or studio units. In-lieu fees could also be used to support to production of family-friendly affordable units.
- The policy defines on-site affordable housing provision as the norm and describes a process by which developers can seek approval to address affordability off-site or with in-lieu fees. Assuming that family-friendly units remain in short supply, the review committee overseeing those applications for off-site or in-lieu fee alternatives could support and promote proposals that address family-friendly units.
- Beyond the AHBP, any tools that promote the production of more market-rate units in Austin could lead to price stabilization and allow Austinites to have more housing options. When new housing is built, even small units, market churn allows households to make new housing choices and sort into options that best fit their needs. For example, an empty-nester household living in a single family home may opt to downsize into a newly constructed one-bedroom condo in a walkable neighborhood while a household with children may choose to purchase the newly-available single family home with access to a highly sought-after elementary school.
- Finally, the zoning code does not dictate bedroom mixes. In some instances, it defines the maximum number of units on a site. Within the constraints of zoning, one can expect that developers will deliver the most profitable bedroom mix that matches their business model. At this time, it appears that 1-bed and studio units are still undersupplied and in high demand in Austin. Most importantly, after considering costs, smaller units are currently more profitable to deliver than larger units. However, when the demand for the smaller units is met by supply, prices would be expected to adjust and developer

choices would be recalibrated. For example, in Portland, Oregon, a vast number of new 1-bed and studio units has led to downward pressure on 1-bed and studio rents such that returns for larger units are expected to be more competitive with smaller units in the years to come.

4.3 How is CodeNEXT helping the city affirmatively further fair housing?

- The Affordable Housing Bonus Program proposed in Draft 2 is available in almost half of the proposed zoning categories with residential uses. If these zones are mapped strategically, the program would create capacity for income-restricted affordable units across the city, especially in areas of high opportunity or areas that currently have low percentages of income-restricted housing.
- As proposed in Draft 2, a developer is expected to build affordable units as part of a development that utilizes the bonus. However, there may be some instances in which on-site affordable units may not be feasible. In those instances, a developer may request to meet the bonus program's affordability requirement by providing off-site affordable units. However, the location of these off-site units is subject to approval and must be within a mile of the original development or in a high opportunity area.
- Bonus program requirements related to unit dispersion and access to on-site amenities/common areas ensure that affordable units would not be located in a separate area of the development and that all residents would have the same access to amenities and common areas.
- The S.M.A.R.T. Housing program retains the current requirements around accessibility and visitability, requiring developments to surpass the base accessibility requirements of the City's building code.
- The chapter also codifies the requirement that an Affordability Impact Statement, documenting impacts to household affordability, be created for every new ordinance or rule (or change to an existing ordinance or rule). If the proposal would result in an overall negative impact on affordability, it can only move forward with approval from the City Manager.

4.4 How does the AHBP influence gentrification and displacement?

- Prices are rising, in part, because people are moving to Austin and forming new households more quickly than housing units are being produced. Austin's economy is thriving and it is a desirable place to live. Close-in neighborhoods are particularly attractive, and prices have increased within the structure of the existing land development code. Keeping zoning the same will not alter this pattern.
- Gentrification and displacement result from systemic challenges (market forces, poverty, institutionalized racism) and historic patterns of private investment and disinvestment (red-lining, lending practices) that zoning alone cannot overcome. To combat displacement, other kinds of tools are needed, perhaps including renter protection policies, tax abatements, home ownership programs, and effective social service

provision. While most of these policy solutions fall outside of the scope of CodeNEXT, Austin's [Strategic Housing Blueprint](#) provides a host of companion policies that could be pursued to increase equity and affordability.

- Furthermore, as proposed, CodeNEXT would allow more housing construction in high-cost, high-opportunity areas than is possible today. In addition to allowing for more overall housing production, which could alleviate price pressures on existing residents, the CodeNEXT zones that provide new housing capacity also offer affordable housing bonuses. If developers utilize these bonuses, more affordable housing could be produced in these high cost areas where gentrification and displacement pressures may be most acute.
- The mapping process used by staff to assign new CodeNEXT zones to parcels considered existing uses, including housing, and existing entitlements. Sites with existing multifamily uses were generally mapped with a CodeNEXT zone allowing multifamily. Sites with multifamily zoning were also mapped to consistent CodeNEXT zones so that their entitlements were neither significantly higher nor lower than their current entitlements. By maintaining the similar base zoning capacity of the parcels, parcels were not downzoned and landowners were not granted new rights that might encourage more redevelopment and displacement than what is occurring under current zoning.

5 Bonuses in CodeNEXT

5.1 What elements of the AHBP will be found outside of CodeNEXT?

- As is the case with existing City of Austin bonus programs, many aspects of the AHBP will be defined outside of the land use code, including:
 - Maps indicating where different affordability requirements apply
 - In-lieu fee schedule
 - Approval process rules
 - Review group designation guidelines
 - Affordability monitoring/enforcement guidelines

5.2 What is the designated review group?

- The Affordable Housing Bonus Program would offer alternatives to providing affordable units on-site if a developer was unable to include the required units in the development. In order to determine whether an alternative could be used, the code calls for review of the project by a designated review group, board, or committee.
- The designated review group would constitute a much higher level of project scrutiny than is currently required by any of the City's bonus programs.
- The review group would be comprised of members who have subject matter expertise in development and affordable housing and are qualified to assess bonus applications and projects to determine if a project cannot provide units on-site. Information on group

composition will be included at the time Draft 3 is released. It is also anticipated that the review group would be instrumental in providing recommendations to the Housing Director on adjustments to any housing fees (either fees in lieu of on-site units or fees paid by non-residential bonus projects), as their review of multiple projects over the course of a year would give them insight into how development costs, financing, and rents are changing.

5.3 How will the City ensure affordable bonus units remain affordable?

The Neighborhood Housing & Community Development Department has instituted a process for current bonus programs to ensure that land use restrictions with affordability requirements are finalized before the development is granted a Certificate of Occupancy. This process would be implemented for the proposed Affordable Housing Bonus Program as well. The general steps in this process are outlined below:

- i. Any project that is accessing a bonus program (including the proposed Affordable Housing Bonus Program) must have a Letter of Affordability from NHCD prior to Site Plan approval. This letter summarizes the affordability requirements of the development.
- ii. An administrative hold is placed on building permits for projects with an affordability requirement. Prior to a development receiving a Certificate of Occupancy, a Restrictive Covenant must be executed with the City of Austin and recorded on the land before the building permit administrative hold is released.
- iii. If the development is an ownership project, the City of Austin executes an initial Restrictive Covenant with the developer and subsequent legal instruments with the end buyer identifying the long-term affordability requirements at loan closing. These instruments ensure that if the buyer chooses to sell the unit in the future, the unit will be sold at an affordable price to another qualified buyer. NHCD also income certifies all potential buyers. When a unit is sold, the City has a Right of First Refusal option. If the City does not exercise this option, the owner must sell the unit to another income-eligible buyer.
- iv. If the development is a rental project, the property manager/owner must submit documentation of tenant incomes for the affordable units at initial occupancy and on an ongoing basis for each subsequent monitoring visit. Monitoring plans are created for each development and monitoring of the affordability requirements will be conducted by NHCD or its agent within one year of the project receiving its Certificate of Occupancy. If there are no issues, audits continue on a rolling basis of at least every three years until the end of the affordability period. If there are issues of non-compliance, the development will be subject to an increased frequency of monitoring and may incur additional years of affordability.

5.4 What will be the process for finalizing the AHBP administrative language?

- The administrative procedures implementing the Affordable Housing Bonus Program will be documented in administrative guidelines or through a formal rulemaking process in compliance with City Code Chapter 1-2 (*Adoption of Rules*). Delineating these components through administrative guidelines or rules provides flexibility in program implementation and enforcement, so that processes can be more quickly adapted to changing market or development conditions, or to respond more effectively to any issues that arise as the City of Austin enforces the affordability requirements of the program. Elements of these procedures will include:
 - Application requirements and steps in approval process for residential, mixed use, and non-residential developments accessing the program
 - How fees are collected, tracked, and eligible activities they may fund
 - Monitoring requirements post-project completion
 - Penalties for non-compliance
 - Change of ownership

5.5 Why do some zones not include a bonus as part of the AHBP?

- Additional bonuses are currently under study and it is expected that more zones could include a bonus in Draft 3 of the CodeNEXT text.
- Some zones, like Main Street zones and some others, do not offer a bonus because they were designed to address circumstances where existing entitlements left little opportunity for a bonus. That is, on many sites, the CodeNEXT mapping process has strived to use new zones that match existing entitlements to avoid downzoning. Many of those same properties also have constrained entitlements that reflect neighbors' concerns, like compatibility restrictions, which have also been respected during the CodeNEXT mapping process.

5.6 How can we make bonuses available across more of the City?

- There are three primary options:
 1. The CodeNEXT text could be revised to expand the scale of some bonuses or incorporate bonuses into zones that do not currently have them. For example, entitlements in some zones could allow a second accessory dwelling unit (ADU), perhaps an internal apartment, if one of the two ADUs on the site is income-restricted.
 2. The CodeNEXT map could be revised to expand the mapping of zones that already have bonuses to more areas. For example, middle-scale housing zones could be mapped in areas where small-scale housing zones predominate, allowing the option for bonus uptake in more parts of the city.

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3. The CodeNEXT text and map could be modified to create new zones that include bonuses and those new zones could be mapped in places where the current maps have zones with modest or no bonuses.
- There have been concerns expressed about the opportunity for bonus uptake in many parts of West Austin where housing is unaffordable to many Austin residents. The three principles above could be used to expand bonus opportunities through text and/or map revisions in these areas.

6 S.M.A.R.T. Housing in CodeNEXT

6.1 What changes to S.M.A.R.T. Housing are proposed in CodeNEXT?

- S.M.A.R.T. Housing is carried forward into CodeNEXT with the following changes:
 - Lengthening the affordability period from 5 years to 40 years for rental units and from initial sale only to 99 years for ownership units
 - Decreasing the income level for affordable rental units from 80% median family income (MFI) to 60% MFI
 - Removing tiered approach of providing a percentage of affordable units in exchange for a percentage of fee waivers, replacing this with full permitting/review fee waivers if 10% of the units are affordable
 - For rental projects, all 10% of the units would have to be affordable at or below 60% MFI
 - For ownership projects within central Austin, 5% of the units would have to be affordable at 80% MFI and below, and 5% of the units would have to be affordable at 100% MFI and below; for ownership projects outside central Austin, all 10% of the units must be affordable at or below 80% MFI

Increasing the affordability restrictions brings this program's requirements in line with other programs and helps address the City's affordability needs.

Removing the tiered approach to fee waivers is necessary because the increased requirements are not offset by the incentives offered, especially since capital recovery fee waivers are no longer being applied to all units within a S.M.A.R.T.-certified development and expedited review for S.M.A.R.T. projects is no longer offered.

6.2 Are other incentives needed to attract private developer participation in S.M.A.R.T. Housing?

- The S.M.A.R.T. Housing program does not offer sufficient incentives to attract private developers of market-rate housing. Without other incentives, the program will be utilized only by affordable housing developers who are also seeking low income housing tax credits or have other substantial subsidies. If the goal is that S.M.A.R.T.

Housing also be leveraged by private or for-profit developers, additional incentives are needed. These could include expedited permit review and waivers of more development fees. Additional incentives that could be included in other chapters in the code, or as programs outside of the code, include cost sharing for required infrastructure improvements, abatements of City taxes, or fund transfers to help buy down affordability. Additionally, these incentives could make S.M.A.R.T. Housing an option for smaller projects (like infill or ADUs).