

## DRAFT UPDATED 3-26-18

# Proposed General Administrative Procedures for Affordable Housing Bonus and Downtown Density Bonus Programs in CodeNEXT Article 23-3E

CodeNEXT includes a proposal for a new, voluntary affordability incentive program, the citywide Affordable Housing Bonus Program, as well as updates to how fees **in lieu of** affordable housing units will be calculated for the existing Downtown Density Bonus Program. The City of Austin currently administers multiple voluntary bonus programs for affordable housing, tailored to specific geographies. However, also employing a citywide bonus program based on zoning districts will significantly increase the area in which affordable housing units created through the bonus can be built.

After CodeNEXT approval by City Council, the administrative procedures implementing the proposed Affordable Housing Bonus Program, the existing Downtown Density Bonus Program, and the existing University Neighborhood Overlay will be documented through a formal rulemaking process in compliance with City Code. Enumerating these components through rules better ensures that processes can be more quickly updated due 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 programs.

The Neighborhood Housing and Community Development Department (NHCD) has developed and is already implementing processes for placing legally-binding affordability restrictions on properties participating in existing bonus programs and for long-term monitoring of those properties for compliance with all affordability requirements. These processes will also be followed to implement the Affordable Housing Bonus Program. This document outlines the general procedures that NHCD will follow to implement the Affordable Housing Bonus Program, based on the program as proposed in CodeNEXT Draft 3, Article 23-3E-1. It also outlines the proposed approach to calculating fees in lieu of providing on-site affordable housing units in the proposed Affordable Housing Bonus Program and the updated Downtown Density Bonus Program (CodeNEXT Draft 3, Article 23-3E-2). This document is intended to be updated as calibration of the proposed policy continues. **Text that has been updated since the first draft of this document (published February 12, 2018) is shown in purple.**

### **Section 1 - Zones and Available Bonuses for the Affordable Housing Bonus Program**

Whether or not a property can participate in the Affordable Housing Bonus Program is determined by its zoning. Bonuses are available in certain zones, but not in all zones. See CodeNEXT Draft 3 **Article 23-4-D** for descriptions of each of the proposed zones and

information on whether bonuses are available. The type and size of available bonuses are uniquely calibrated to each zone, taking into account market and economic factors, development costs, construction types, and the size and scale of resulting buildings.

## **Section 2 - Affordable Housing Rent Rates and Sale Prices for the Affordable Housing Bonus Program**

Under the proposed Affordable Housing Bonus Program, an **affordable** rental unit must be offered for rent at a price affordable to a household earning at or below 60% of the Austin area's median family income (MFI). To be "affordable" to that household, the rent must be no more than 30% of the average gross monthly income **for a household at that income limit**.

An ownership unit must be offered for sale at a price affordable to a household earning at or below 80% MFI. To be "affordable" to **a household at that income limit**, the sale price must be no more than 3 times the household's annual income (or 3.5 times the household's income if someone in the household has completed approved homebuyer counseling or education).

Median family income limits are published by the US Department of Housing and Urban Development (HUD) annually for the Austin-Round Rock metropolitan statistical area. The 2017 income limits are listed in the table below.

### **2017 HUD-Issued Income Limits for the Austin-Round Rock Metropolitan Statistical Area**

<b>Median Family Income Percentage</b>	<b>Annual Income</b>			
	<b>1-Person Household</b>	<b>2-Person Household</b>	<b>3-Person Household</b>	<b>4-Person Household</b>
60%	\$34,200	\$39,120	\$43,980	\$48,840
80%	\$45,600	\$52,100	\$58,600	\$65,100

NHCD annually sets rental rates and sale prices for affordable housing units and publishes these amounts in program guidelines available online. The table below shows the rental rates and sale prices that would be required for Affordable Housing Bonus Program units using 2017 income limit information.

### **Rental Rates and Sale Prices for Affordable Housing Units, based on 2017 Income Limits**

<b>Unit Type</b>	<b>Studio</b>	<b>1-Bedroom</b>	<b>2-Bedroom</b>	<b>3-Bedroom</b>
<b>Ownership Unit Sale Price</b>	\$136,800	\$136,800	\$156,300	\$175,800
<b>Rental Unit Monthly Rental Rate</b>	\$855/mo	\$855/mo	\$978/mo	\$1,100/mo

For more detailed information on how NHCD sets rents and sale prices for affordable units and determines income eligibility of tenants or buyers see *Development Incentives and Agreements: Income Determination, Rents, Compliance & Monitoring Guidelines* at [www.austintexas.gov/page/development-incentives-and-agreements](http://www.austintexas.gov/page/development-incentives-and-agreements).

### **Section 3 - Options for Meeting Affordability Requirements in the Affordable Housing Bonus Program**

To ensure the highest participation possible for the voluntary Affordable Housing Bonus Program, the program offers applicants options to meet their affordability requirements. Applicants can meet their obligation by providing affordable units on-site, or they may request to use one of the following alternatives: building affordable units off-site, dedicating land for future affordable housing, or paying a fee in lieu of building units. For more information on these alternatives, see CodeNEXT Draft 3 Section 23-3E-1050. See **Section 7 - Application and Review Process** below for information on the review process for these alternatives.

### **Section 4 - Set-Aside Requirements for Affordable Units in the Affordable Housing Bonus Program**

Applicants choosing to meet their affordability requirements through provision of affordable housing units (on- or off-site) must provide a percentage of affordable housing units that differs based on the location of their developments. In different geographies, the market varies and, thus, the feasibility of new market-rate development varies. For this reason, the number of affordable units required by this program varies based on geography.

#### *Tables of Set-Aside Requirements*

The different set-aside requirement options are listed in the following tables, which are codified in CodeNEXT Draft 3 Section 23-3E-1040.

**Proposed Affordable Unit Set-Aside Requirements in For-Rent Properties**

<b>Income (MFI)</b>	Households at or Below 60% of Median Family Income	
<b>Affordability Period</b>	40 years	
<b>Sub-Area Requirements</b>	<b>Areas</b>	<b>Units Set Aside (as % of bonus units)</b>
	A	5%
	B	10%
	C	15%
	D	20%
	E	30%
	F	40%
	G	50%

1. For a dwelling unit to qualify as "affordable" a unit must comply with CodeNEXT Draft 3 Subsection 23-3E-1090(B).
2. All unit set aside calculations resulting in fractional units must be rounded up to the next whole number.

**Proposed Affordable Unit Set-Aside Requirements in For-Sale Properties**

<b>Income (MFI)</b>	Households at or Below 80% of Median Family Income	
<b>Affordability Period</b>	99 years	
<b>Sub-Area Requirements</b>	<b>Areas</b>	<b>Units Set Aside (as % of bonus units)</b>
	T	5%
	U	10%
	V	15%
	W	20%
	X	30%
	Y	40%
	Z	50%

1. For a dwelling unit to qualify as "affordable" a unit must comply with CodeNEXT Draft 3 Subsection 23-3E-1090(A).
2. All unit set aside calculations resulting in fractional units must be rounded up to the next whole number.

CodeNEXT Draft 3 proposes that **commercially zoned** properties under the current zoning code that do not currently allow residential uses be assigned zoning under CodeNEXT that provides the option to build residential units when they participate in the Affordable Housing Bonus Program. These proposed zones are denoted with an “-A” in the zone name. The **set-aside requirements** for the “-A” zones are described in the following tables, which are codified in CodeNEXT Draft 3 Section 23-3E-1040.

**Proposed Affordable Unit Set-Aside Requirements in For-Rent Properties in “-A” Zones**

<b>Income (MFI)</b>	Households at or Below 60% of Median Family Income	
<b>Affordability Period</b>	40 years	
<b>Sub-Area Requirements</b>	<b>Area</b>	<b>Units Set Aside (as % of total units)</b>
	AA	2%
	BA	4%
	CA	6%
	DA	8%
	EA	10%
	FA	12%
	GA	14%

1. For a dwelling unit to qualify as “affordable” a unit must comply with CodeNEXT Draft 3 Subsection 23-3E-1090(B).
2. All unit set aside calculations resulting in fractional units must be rounded up to the next whole number.

**Proposed Affordable Unit Set-Aside Requirements in For-Sale Properties in “-A” Zones**

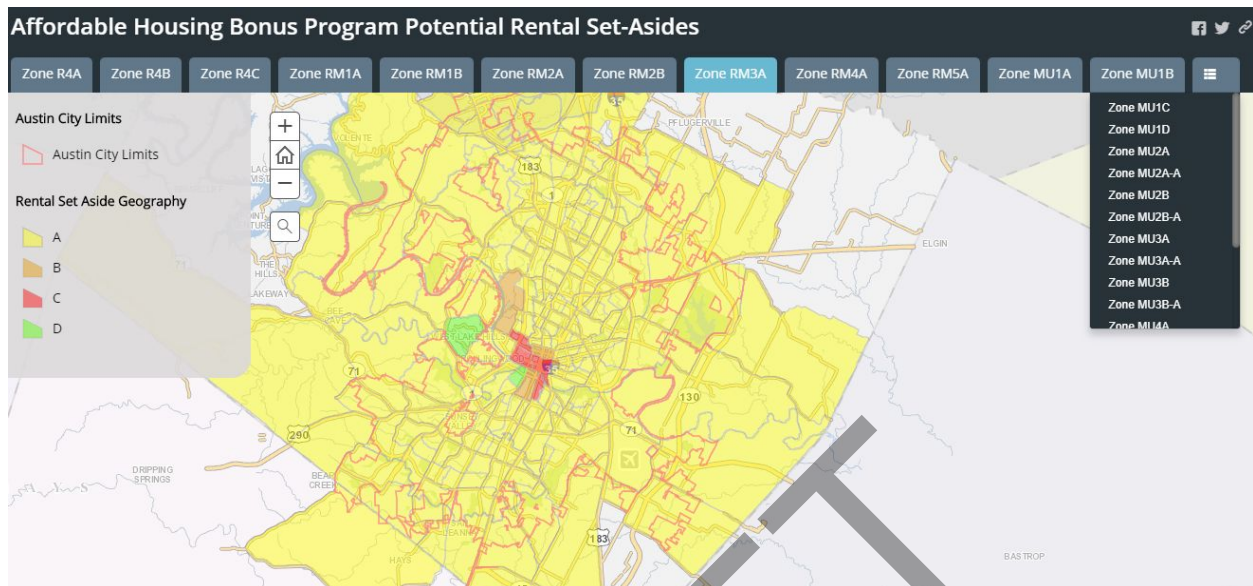
<b>Income (MFI)</b>	Households at or Below 80% of Median Family Income	
<b>Affordability Period</b>	99 years	
<b>Sub-Area Requirements</b>	<b>Areas</b>	<b>Units Set Aside (as % of total units)</b>
	TA	5%
	UA	10%
	VA	15%
	WA	20%
	XA	30%
	YA	40%
	ZA	50%

1. For a dwelling unit to qualify as “affordable” a unit must comply with CodeNEXT Draft 3 Subsection 23-3E-1090(A).
2. All unit set aside calculations resulting in fractional units must be rounded up to the next whole number.

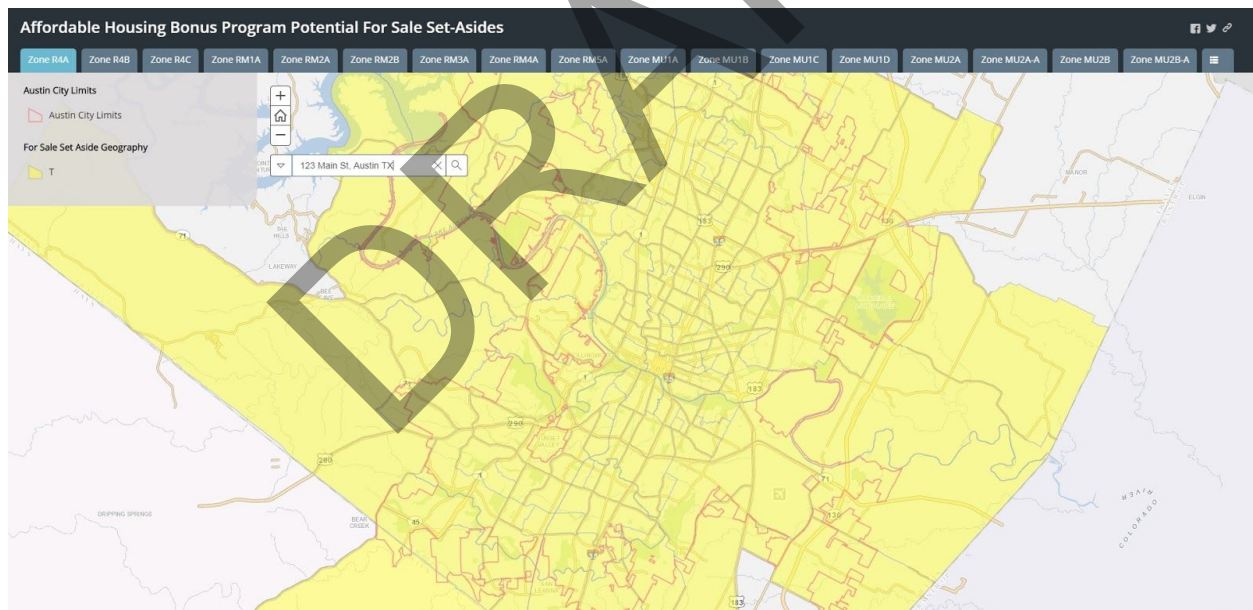
**Maps of Set-Aside Requirement Geographies**

The required affordable rental and ownership unit set-asides will be defined by census tract for all CodeNEXT zones that offer an Affordable Housing Bonus Program bonus option. Rental and ownership unit set-asides are displayed in the maps linked below. **Please note that the rental maps have been updated since the February 12, 2018 release of this document to reflect ongoing calibration.**

**Maps of Potential Affordable Rental Unit Set-Aside Requirements by Zone**  
**(<http://arcg.is/1feGHX>)**



**Maps of Potential Affordable Ownership Unit Set-Aside Requirements by Zone**  
**(<http://arcg.is/014zGG>)**



**Directions for using the maps:** To determine the affordable unit set-aside required for particular property, **1)** identify the proposed CodeNEXT zoning for the property through the Draft 3 zoning map (<https://codenext.engagingplans.org/codenext-comparison-map>). **2)** Click on the map link above and select the map tab for the correct zone. **3)** Search for the property address by clicking on the magnifying glass button or navigate in the map to the property. See pages 4-6 of this document for unit set-aside percentages associated with each geography.



## Section 5 - Fees in the Affordable Housing Bonus Program

The provision of on-site affordable units will be incentivized over alternative methods of meeting the affordability requirements: applications selecting this option will undergo a faster review process. However, in order to ensure the highest possible participation in this voluntary program, a fee in lieu of affordable units is another option offered in the proposed program. Additionally, fees will be charged to non-residential developments utilizing a bonus. If the development is required to pay a fee in lieu of affordable units, or a fee for utilizing a bonus for a non-residential development, the fee must be paid to the City before the release of the development's building permit.

As proposed, the Affordable Housing Bonus Program's fees for residential development will be set so the fee covers the typical cost for NHCD to "buy down" a market-rate unit to make that unit affordable for the affordability period required by the program (40 years for rental units and 99 years for ownership units). Fees are calibrated based on market conditions in central Austin. The fees will be included in a fee schedule that will continue to be re-calibrated up to CodeNEXT adoption to reflect the most up-to-date market conditions. The proposed fees as of February 2018 can be found in the following table.

**Proposed Fee-in-Lieu of On-Site Affordable Housing Units**

Unit Type	Studio	1-Bedroom	2-Bedroom	3-Bedroom
Fee-in-Lieu of an Affordable Unit	\$135,000	\$180,000	\$335,000	\$440,000

As proposed, the affordable housing fees charged for commercial developments that use bonus square footage would be \$2.00 per bonus square foot.

These fees would be codified in the City of Austin fee schedule, which is approved annually by City Council.

For details on how to calculate the bonus requirements for a project, see CodeNEXT Draft 3 Section 23-3E-1040. For more information on fees, see CodeNEXT Draft 3 Sections 23-3E-1050 and 1060.

## Section 6 - Reporting and Updating

NHCD will evaluate the previous year's Affordable Housing Bonus Program activity and, if necessary, may make recommendations to City Council for re-calibrating the unit set asides, fees, or geographies annually (CodeNEXT Draft 3 Article 23-3E-1070).



## **Section 7 - Application and Review Process for the Affordable Housing Bonus Program**

For any development that participates in the proposed Affordable Housing Bonus Program, the applicant (who may be the property owner, developer, or agent) must submit an application and all required attachments to NHCD.

Once a completed application package is received, NHCD will complete all necessary reviews to ensure the application meets program requirements (see CodeNEXT Draft 3 Section 23-3E-1030 for more information on requirements). For developments with a residential component that propose to meet their affordability requirements through provision of on-site affordable units, NHCD will issue a Letter of Affordability to the applicant, which will summarize the affordability requirements of the development, including number of units to be affordable, the affordability period, to what income levels the units must be made affordable, and requirements necessary to obtain Certificates of Occupancy. *The Letter of Affordability notifies development reviewers that the proposed project's applicant has committed to meeting the affordability requirements of the program.*

For developments with a residential component that seek an alternative means of meeting their affordability requirements, either through off-site units, land donation, or fees in lieu of housing units (CodeNEXT Draft 3 Section 23-3E-1050), a review of the proposed project, including pro formas, will be conducted by a designated review group (CodeNEXT Draft 3 Section 23-3E-1080-B). This group is intended to be composed of subject matter experts in real estate economics, affordable housing, and residential development and will provide feedback and recommendations to NHCD on the feasibility of the development meeting its affordability requirements through on-site units or other alternatives. Following this review, NHCD will issue the Letter of Affordability to the applicant.

Non-residential developments seeking a bonus will meet their affordability requirements through payment of a fee. Non-residential developments' Letters of Affordability will document that required fees must be paid into the City's Housing Trust Fund prior to the issuance of the development's Certificate of Occupancy.

## **Section 8 - Land Use Restrictions**

For developments with a residential component, the property owner must execute a Restrictive Covenant or other form of land use restriction with the City of Austin prior to the release of the final building permit (CodeNEXT Draft 3 Section 23-3E-1090). The restriction, at a minimum, must include the following elements:

- Project name
- Owner name
- Any ordinance, project site plan number, or development incentive/bonus program applicable to the project;
- The number of affordable units;

- The required Median Family Income (MFI) limits for eligible tenants or buyers of the affordable units;
- The required affordability period; and
- For a rental property, the affordability requirements should the property convert to ownership.

The Certificate of Occupancy will not be issued until the land use restriction is in place.

## **Section 9 - Monitoring for Compliance with Affordability Requirements**

### Rental Units

NHCD will create a Monitoring Plan for each rental development. The first monitoring assessment will occur within the first year of the development receiving its final Certificate of Occupancy.

Monitoring involves reviewing tenant income and lease documentation for a random sample of the affordable units in a development to ensure that the correct number of units is being provided at the required income levels, and that the appropriate rents are being charged.

If the monitoring assessment does not identify issues of non-compliance, monitoring continues on a rolling basis of at least every 3 years throughout the length of the required affordability period.

If the monitoring assessment identifies issues of non-compliance, monitoring will be completed more frequently on the development. Working with the property owner or property manager, NHCD will design corrective or remedial actions for failure to meet program requirements to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence, up to and including adding additional years to the affordability period to ensure the full term of compliance is achieved.

NHCD is considering additional possibilities for ongoing monitoring and enforcement of affordability requirements, including potentially requiring the payment of monitoring fees for participating properties and/or instituting fines for non-compliance with affordability requirements.

### Ownership Units

NHCD will conduct income eligibility determinations on any prospective homebuyers for ownership units. At the time of the sale of an affordable ownership unit, the qualified buyer must enter into a Resale Restriction Agreement and a Covenant Limitation on Resale Price and Buyer Income. These resale agreements 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 (who is also income

certified by NHCD). The City of Austin can also exercise a Right of First Refusal to purchase the property.

Monitoring involves desk audits of ownership inventory to verify occupancy through utility accounts and property tax records, and additional procedures as necessary.

## **Section 10 - Proposed Updates to the Downtown Density Bonus Program**

The Downtown Density Bonus Program was created in 2013. It provides an option for participating developments to meet their affordability requirements through payment of a fee in lieu of affordable housing units. The affordable housing in lieu fee is currently calculated by multiplying a dollar amount by the amount of bonus square footage granted to the development through the affordable housing community benefit. A project must achieve at least 50 percent of the desired bonus area by providing affordable housing community benefits. NHCD proposes to make calculation of the fee consistent with the approach proposed for the citywide Affordable Housing Bonus Program, as described below. See the 2014 Downtown Density Bonus ordinance <http://www.austintexas.gov/edims/document.cfm?id=206958> for more information about how other community benefits are calculated.

Residential affordable housing in-lieu fees will be charged on a per-unit basis. The developer will submit documentation of the total number of proposed units in the development by bedroom count and their average square footages. The **project's architect** will also submit calculations of the residential bonus square footage for the project. Finally, the **architect** will use the project's overall unit sizes, proportionate mix, and leasable efficiency to determine the approximate number of units that could be accommodated in the affordable bonus square footage (for example, 2.25 studio units, 3.5 one-bedroom units, 0.5 two-bedroom units of the same size and scale as the project's proposed market-rate units could fit in the project's 4,000 square feet of affordable bonus square footage). To determine the fee, the units that would have been accommodated in the affordable bonus square footage will be multiplied times the same per-unit fee-in-lieu rates proposed for the Affordable Housing Bonus Program, which are listed in **Section 5 - Fees in the Affordable Housing Bonus Program** above.

Fees for non-residential (commercial) developments utilizing a Downtown Density Bonus will continue to be determined on a per bonus square foot basis, with the proposed fee set at \$2.00 per square foot of bonus area achieved through the affordable housing development bonus fee option.