



## MEMORANDUM

**TO:** Mayor and Council Members

**FROM:** Rosie Truelove, Director  
Neighborhood Housing and Community Development Department

**DATE:** March 6, 2019

**SUBJECT:** Response to Resolution No. 20180823-077 regarding updates to Density Bonus Policies and Resolution No. 20180510-050 relating to source of income and good cause eviction protections in density bonus and incentive housing units

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This memorandum and attached recommendations are provided in response to [Resolution No. 20180823-077](#) which directed staff 1) to develop recommendations for code and regulating plan amendments needed to recalibrate density bonus policy affordability and fee-in-lieu requirements; and 2) to return to Council with recommendations and options that encourage on-site affordability and consider risks of diminishing the number of affordable units and fees-in-lieu. It also responds to [Resolution No. 20180510-050](#) which initiated code amendments and amendments to uncodified ordinances to prohibit source of income discrimination in all units, and require good cause eviction protections in rent-restricted units or all units in properties that participate in City density bonus or other similar incentive programs.

### **Resolution No. 20180823-077**

The City of Austin has 12 different [density bonus policies](#), each adopted independently between 2004 and 2010. Given the dynamics of housing submarkets change over time, and many affordability requirements in these policies have not been comprehensively re-evaluated since their adoption, staff recognizes this as an opportunity to not only recalibrate the City's density bonus policies, but also to offer recommendations for policy updates. To that end, the goal of the attached staff recommendations is to update Austin's density bonus policies to generate the greatest number of on-site affordable housing units (in developments with residential uses) and to maximize the fees in lieu of affordable units (in developments without residential uses).

The modeling completed for existing density bonus policies as part of CodeNEXT is not sufficient because it considered only changing fees, not reassessing the percentage of units required as called for by this resolution. Therefore, economic modeling will be necessary to assess and recommend affordable unit set-aside requirements, fee levels, and development entitlements for existing density bonus programs. Other staff recommendations described in the attachment include allowing administrative approvals of fees in lieu of affordable units in certain circumstances, instituting fees for non-residential projects participating in density bonus programs, and inserting proportionate unit mix requirements and source of income

protections into all density bonus policies. Also included is a recommendation to increase enforcement mechanisms for the policies. Staff suggests these recommendations, and the findings of the recalibration modeling, be used to make code amendments to update the density bonus policies.

**Resolution No. 20180510-050**

As stated above and on page 5 of the attachment, staff recommends the inclusion of source of income protections and good cause eviction protections in density bonus units be considered during this recalibration and code amendment process.

Under the Austin Strategic Housing Blueprint Implementation one- to two-year work plan, the City's other affordable housing incentive program, S.M.A.R.T. Housing, will be updated and enhanced. Staff recommends this update process consider the source of income and good cause eviction protections for S.M.A.R.T. Housing.

**Next Steps**

Staff will await Council direction to initiate the code amendment process to update the density bonus policies, should Council decide to move forward with these recommendations. With that direction, staff will obtain a consultant through a competitive solicitation to undertake the necessary recalibration and economic modeling.

If you have questions, please contact Rosie Truelove, Director, at (512) 974-3064 or [rosie.truelove@austintexas.gov](mailto:rosie.truelove@austintexas.gov); or Erica Leak, Acting Assistant Director, at (512) 974-9375 or [erica.leak@austintexas.gov](mailto:erica.leak@austintexas.gov).

cc: Spencer Cronk, City Manager  
J. Rodney Gonzales, Assistant City Manager  
Greg Guernsey, Director, Planning and Zoning Department

Attachment

## Background

The City of Austin has 12 different [density bonus policies](#) each adopted independently between 2004 and 2010. The policies<sup>1</sup> are voluntary development incentives tied to base zoning or overlay districts, each varying in allowable development entitlements and required community benefits, with most only available in specific parts of the city. Since inception, these policies have created 1,459 dwelling units affordable to households earning no more than 50, 60, 80, or 100 percent of the area median family income (depending on the policy used), without the use of any public subsidy. It is estimated that the cost to buy down these units from market rates to the affordable rates would be greater than \$75 million. Additionally, these policies have generated \$4,584,734 in fee-in-lieu revenue used to subsidize the provision of housing and services to persons experiencing chronic homelessness and the development of very low income housing. Perhaps most noteworthy is that the overwhelming majority of these affordable units are located in mixed income, high opportunity communities with good access to public transit, addressing several goals identified in Imagine Austin, Strategic Direction 2023, and the [Austin Strategic Housing Blueprint](#).

[Resolution No. 20180823-077](#) directed staff to 1) develop recommendations for code and regulating plan amendments needed to recalibrate density bonus policy affordability and fee-in-lieu requirements, and 2) to bring back to Council recommendations and options that encourage on-site affordability and consider risks of diminishing the number of affordable units and fees-in-lieu. Given that the dynamics of housing submarkets change over time, and that many of the affordability requirements in these policies have not been comprehensively re-evaluated since their adoption, staff recognize this as an opportunity not only to recalibrate the City's density bonus policies, but also to offer recommendations for policy updates. These recommendations are listed in the table on the next page.

## Staff Recommendations

**NHCD's central goal in providing these recommendations is to update Austin's density bonus policies to generate the greatest number of on-site affordable housing units (in developments with residential uses) and to maximize the fees in lieu of affordable units (in developments with non-residential uses).**

While maximizing the number of affordable units built and fees collected is the central goal, staff recognize that there are many other competing goals and priorities in the community. As directed in Resolution No. 20180823-077, staff have sought to incorporate these other policy goals where feasible and have noted where enforcement of these goals may diminish participation and unit yield.

### ***Consultant for Economic Modeling & Recalibration***

Should Council initiate code amendments based on these recommendations, staff will obtain a consultant through a competitive solicitation process to evaluate and recalibrate the affordable unit set-aside requirements, fee levels, and development entitlements for existing density bonus programs. The modeling will take into account various levels of affordability (income levels and numbers of affordable

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<sup>1</sup> This memo refers to both density bonus *policies*, which are regulations that reside in the City Land Development Code and Regulating Plans and are set by ordinance, and density bonus *programs*, meaning the implementation of the density bonus regulations.

units) to assess impacts to production of units. The modeling completed for existing density bonus policies as part of CodeNEXT is not sufficient because it considered only changing fees, not reassessing percentages of affordable units required as called for by this resolution. Changing market conditions and the lack of a comprehensive review of existing policies’ performance necessitate recalibration. Modeling unit production at different income levels and numbers of affordable units will help the City understand the trade-offs between height, density, deeper levels of affordability, and numbers of units.

**Other Recommendations**

The table below describes other staff recommendations, including allowing administrative approvals of fees in lieu of affordable units in certain circumstances, instituting fees for non-residential projects participating in density bonus programs, and inserting proportionate unit mix requirements and source of income protections into all density bonus policies. Staff recommend that these proposals, and the findings of the recalibration modeling, be used to make code amendments to update the density bonus policies.

**Staff Recommendations for Updating Existing Density Bonus Policies**

<b>Density Bonus Policy*</b>	<b>Recommendation</b>	<b>Justification</b>
All	Update the affordable unit set-asides and affordable housing fee rates in all policies to reflect the results of the new recalibration, and move affordable housing fee rates from disparate ordinances and land development code sections to the City’s Fee Schedule.	Updating the set-aside and fee requirements will implement the findings of the new economic modeling and recalibration. As suggested in Resolution 20180823-077, moving fee rates from many different ordinances into the City’s Fee Schedule will allow Council to annually approve the fees with the city budget and will provide for annual review and updates as necessary.
All	Standardize the basis of affordability requirements across all policies (i.e., total units, bonus units, bonus area, and net rentable area).	Currently, some policies require a percentage of units to be affordable, while some require a percentage of square footage (and define square footage in different ways, habitable versus total, for example). Standardization across policies will make administration and implementation easier and will make requirements clearer for developers and community members.
All	Define terms and address discrepancies in existing code or regulating plan language.	For transparency and ease of use/administration, clean up language in all policies where it lacks clarity (this does not alter the original requirements of the policies, it merely clarifies confusing language where needed).

<b>Density Bonus Policy*</b>	<b>Recommendation</b>	<b>Justification</b>
All	Strengthen compliance and enforcement mechanisms in policies and program rules. Add affirmative marketing plan requirements for affordable units.	For transparency, clarity of enforcement process, and ease of use/ administration, provide more information in policies and program rules on enforcement mechanisms and requirements. As in the CodeNEXT draft, add requirements for affirmative marketing plans for affordable units.
DDB; Rainey; UNO (has hotel only)	Add an affordable housing fee requirement for non-residential development where it does not exist today.	These policies do not currently have fee rates for non-residential development, although non-residential projects can access a bonus. The City has likely foregone revenue due to this omission, and will likely continue to do so if a non-residential fee is not adopted.
Micro Unit; Rainey; S.M.A.R.T. SF & MF Density Bonus; VMU	Add a requirement that allows the Housing Director to approve payment of a fee in lieu of on-site units for residential projects where it does not exist today. Establish decision making criteria to guide the Housing Director in making that determination.	Requiring Council approval of fees in lieu of on-site units adds significant costs, time, and uncertainty to the development process. This can negatively impact participation in the density bonus program as developers seek to avoid that increased cost and uncertainty. Setting fees that are commensurate with (or higher than) the cost to provide units on-site, combined with clear policy requirements informed by community input, will create a policy framework that is depoliticized, where on-site units are prioritized and fees are allowed only in cases that meet the policy criteria. For example, the in lieu fee amount could be set at 120% the cost of creating an affordable unit in the census tract of the development.
TOD	Change the requirement that Council must approve payment of a fee for non-residential development, by allowing the Housing Director to approve the fee payment instead.	Projects that have no residential component cannot provide affordable units on-site. Allowing an administrative approval of the fee payment makes the process clearer, fairer, and more efficient.
NBG; TOD; UNO	Remove geographic restrictions on the use of fee-in-lieu revenue	Some policies stipulate that fees collected through the density bonus program can only be spent within a specified radius of the density bonus district. This requirement limits the City's

Density Bonus Policy*	Recommendation	Justification
		ability to layer funding into affordable housing developments in a timely manner, even in developments that are serving vulnerable populations or are in gentrifying or high opportunity areas.
All (unit mix already required in DDB & Rainey)	Add the requirement that property owners provide affordable multi-bedroom units proportional to the ratio of the multi-bedroom units in the overall development. Add an option to allow property owners to provide a 2- or 3-bedroom unit in lieu of two or three 1-bedroom/efficiency units.	While this requirement increases the cost to participate in a density bonus program and can disincentivize participation, the community and Council have identified the need for more affordable units that can serve multiple-person households. The option to provide fewer units if more bedrooms are provided is an attempt to balance the cost to provide multiple bedroom units with the need to ensure that the bonus policy remains attractive to participants. This was a recommendation proposed under CodeNEXT.
All	Add the requirements that affordable units shall be of like quality to the market rate units and shall be dispersed throughout the development.	The citywide Affordable Housing Bonus Program proposed under CodeNEXT included requirements for comparable quality and unit dispersion, drawing on density bonus policies in other cities. Comparable quality and unit dispersion requirements help ensure fair and equitable housing opportunities for the residents of affordable units.
All (already exists in DDB & Rainey)	Add the requirement that property owners accept the use of rental vouchers in the affordable rental units to all policies where it does not currently exist.	<p>Although state law prohibits municipalities from requiring property owners to accept Housing Choice Vouchers, cities can incentivize acceptance of vouchers through bonus policies. Staff recommends that density bonus policies require that vouchers be accepted for the income-restricted affordable units created through density bonus programs.</p> <p>The recommendation that the requirement to accept vouchers apply only to affordable units is an attempt to balance the need for an effective voluntary program with the costs to participate. Because of the way the Housing Authority of the City of Austin (HACA) sets its payment standard (i.e., the maximum amount they will pay through</p>

Density Bonus Policy*	Recommendation	Justification
		<p>a voucher), rents on market-rate units in most density bonus buildings would still be out of reach for voucher holders.</p> <p>Staff have received direction from Council (via <a href="#">Resolution No. 20180510-050</a>) to require good cause tenant protections in density bonus units. Inserting these protections into a voluntary policy without damaging its ability to attract participants will require robust bonus entitlements and incentives. This can be analyzed as part of the recalibration process, but will mostly likely result in decreased participation in density bonus programs.</p>
TOD	Streamline and condense Transit-Oriented Development density bonus affordability requirements into a single tier.	For transparency and ease of use/administration, the different density bonus tiers in TOD regulating plans should be streamlined. The current structure is ambiguous and financially unviable. As of January 2019, no projects have been completed that have complied with both tiers of requirements.
All (except Micro-Unit; VMU)	Add an incentive reducing minimum parking requirements in density bonus policies where it does not exist today.	Parking requirements can be a barrier to providing housing in terms of cost and taking up usable space. To build a marketable development, developers and their investors have an incentive to provide parking necessary to meet demand. But they should be able to explore innovative methods of meeting that demand. VMU allows for a 40% reduction in required parking; Micro-Unit bonus allows a 75% reduction. Other policies can be updated to add parking reductions as an incentive.
TOD	Update income limits for affordable ownership units in TODs to a level where it is more likely for a household to qualify for a mortgage.	Currently, the MLK TOD and Plaza Saltillo TOD policies require ownership units to be available to households at 60% MFI in certain circumstances. This MFI level is too low for most households to be able to obtain a mortgage. Thus, even if these units were built (which would require substantial additional subsidy), it would be difficult to identify households at 60% MFI who would qualify for mortgages to purchase

Density Bonus Policy*	Recommendation	Justification
		the units.
NBG; Micro-Unit; S.M.A.R.T. SF & MF Density Bonus; VMU	Add an incentive waiving or modifying compatibility requirements ( <a href="#">Land Development Code, Chapter 25-2, Subchapter C, Article 10</a> ) for projects with on-site affordable housing in policies where it does not exist today.	Compatibility requirements can be a significant barrier that makes projects infeasible on some sites. When projects are providing affordable housing units on-site, waivers of compatibility requirements should be considered, especially in areas identified for dense development. This would greatly enhance the attractiveness of participating in the density bonus program.
ERC; TOD;	Expand waivers of compatibility requirements for projects with on-site affordable housing in policies that already allow waivers of some compatibility requirements.	Compatibility requirements can be a significant barrier that makes projects infeasible on some sites. When projects are providing affordable housing units on-site, waivers of compatibility requirements should be considered, especially in areas identified for dense development. This would greatly enhance the attractiveness of participating in the density bonus program.
TOD; VMU	Through the economic modeling process, consider increasing the maximum allowable height with a density bonus to 85 feet in the Vertical Mixed Use and Transit Oriented Development zoning districts, where appropriate.	This increase in allowable height for projects participating in the program would enhance the attractiveness of the bonus policy and increase participation by allowing the most profitable building typology (where market rents support it) of 5-story wood frame over 2-story podium. Focusing on TOD and VMU policies would ensure that these buildings are only allowed in areas that are already identified as appropriate for denser development.
VMU	Change the current requirement to provide retail space in VMU buildings to a requirement to provide occupied space built to commercial standards but not required to be used for commercial purposes. This would allow for changes in demand for commercial space over time.	VMU properties are struggling to find retail tenants for their ground floor spaces. This recommendation proposes a more flexible policy that would promote a better use of the building and ensure more eyes on the street. Occupied space could include leasing offices, amenities (like gyms), small groceries, or retail space. Building the space to commercial standards would allow it to be used for commercial purposes when available.

Density Bonus Policy*	Recommendation	Justification
S.M.A.R.T. SF & MF Density Bonus	<p>For the Single Family Bonus: Remove minimum 3-acre threshold that a project has to meet to take advantage of the bonus.</p> <p>For the Multifamily Greenfield Bonus: allow the bonus to be used on infill lots that have been previously developed.</p>	<p>The S.M.A.R.T. SF &amp; MF Density Bonuses allow S.M.A.R.T. Housing-certified projects to take advantage of a higher density zoning district in certain cases, enabling the developments to include a greater number of affordable units. Removing these restrictions would allow these bonuses to be utilized in more circumstances, promoting geographic dispersion of affordable units throughout high opportunity and centrally located areas.</p>

*\*Density Bonus Policy Key:*

*DDB = Downtown Density Bonus*

*ERC = East Riverside Corridor*

*NBG = North Burnet Gateway*

*TOD = Transit-Oriented Development*

*S.M.A.R.T. SF & MF Density Bonus = S.M.A.R.T. Single Family Bonus and Multifamily Greenfield Bonus*

*UNO = University Neighborhood Overlay*

*VMU = Vertical Mixed Use*