Vertical Mixed-Use Code Amendments Staff Report

This document provides the Housing and Planning Department staff recommendation and additional context for the Vertical Mixed Use (VMU) program amendments (C02-2021-006) in response to code amendments initiated by the Planning Commission on July 27, 2021, and March 8, 2021, and by Council Resolution No. 20211118-052.

Staff Recommendation

Set-Aside Rates and Affordability Levels

Staff recommends offering two options for the set-aside rate in the new tier of the VMU program (VMU2) that corresponds to affordability depth or the provision of onsite income-restricted housing. For rental developments, twelve percent of the units should be set-aside as income-restricted to households earning no more than 60% of the Austin-Round Rock MSA Median Family Income or ten percent of the units should be set-aside as income-restricted to households earning no more than 50% of the Austin-Round Rock MSA Median Family Income. For ownership developments, twelve percent of the units should be set-aside as income-restricted to households earning no more than 80% of the Austin-Round Rock MSA Median Family Income or the corresponding value of twelve percent of the units should be paid as a fee in-lieu of onsite income-restricted units.

A summary of the staff recommendation for affordability requirements in the Vertical Mixed-Use program is shown in the table below. Amendments to the current code provisions are shown in blue.

	Bonus Entitlements	**Community Benefits**	**Affordability Requirements**	
			Rental Developments *40-year affordability period*	For-Sale Developments *99-year affordability period*
VMU	• Residential uses • Unlimited FAR • Waiver of site dimensional requirements • 60% reduction in parking minimum	• Active ground floor use • Mix of land uses near transit • Heightened design standards • Regulated Affordability	10% set-aside affordable to 60% Median Family Income	10% set-aside affordable to 80% Median Family Income ***OR*** Fee equivalent to 10% of total units
VMU2 ***(proposed)***	• All of the above • 30ft bonus height		10% set-aside affordable to 50% Median Family Income ***OR*** 12% set-aside affordable to 60% Median Family Income	12% set-aside affordable to 80% Median Family Income ***OR*** Fee equivalent to 12% of total units

The change in the affordability levels is reflective of Planning Commission-initiated changes to standardize the affordability depths of the current VMU program to 60% of MFI for rental developments and 80% of MFI for ownership developments. Staff are proposing the two options for the set-aside rate in the second tier of the VMU program to offer some flexibility within the program since it is not calibrated to current market conditions as well as to create pathways to deeper affordability levels within density bonus programs. Staff compared the cost to buy down market-rate units at the two proposed affordability levels with an equivalent bedroom mix and found approximate proportionality between the two options.

Staff were not able to calibrate the set-aside percentages in the new tier in the VMU program using a market-based analysis on the Council-requested timeline. The modeling tool developed by consultants for the purpose of supporting this type of calibration work is not yet ready for use. While the model is undergoing additional quality control measures, staff proceeded with creating the new tier in the existing VMU density bonus program with interim set-aside percentages with the acknowledgement that the program requirements should be reviewed on a regular basis and updated in the future.

Staff reviewed comparable, calibrated work from the LDC Revision while working to establish a recommendation for the affordability requirements under VMU2. While the majority of VMU-zoned sites have Commercial Services (CS) zoning, there are at least five other base zones paired with the “-V” combining district within the city, including Community Commercial (GR), Limited Office (LO), Neighborhood Commercial (LR), General Office (GO), and Neighborhood Office (NO). These base zones allow different heights and therefore result in different bonus heights with 30-foot height bonus. The most comparable zones from the LDC Revision were calibrated to a set-aside rate of 5% in most instances and up to 12% in some parts of West and South Austin. While this comparison may provide some frame of reference, there are inconsistencies between the proposed LDC zones and the current LDC zones beyond just their allowable heights. The housing market has also shifted substantially in some parts of town since this calibration work was conducted in 2019.

Fee In-Lieu for Condominium Developments

Staff recommend the addition of a fee in-lieu option for ownership developments only. Rental developments that participate in the VMU program would be required to provide the affordable units onsite. If approved, the Housing and Planning Department would bring forward a recommended fee in-lieu rate for the Vertical Mixed-Use program in the City budget process within the department’s fee schedule. Staff anticipate calibrating said fee on a per unit basis and varying by the number of bedrooms corresponding to the bedroom mix in the market-rate development. An example of this format for the fees is shown in the table below, which shows the proposed fee in-lieu rates from the LDC Revision for the citywide Affordable Housing Bonus Program.

Example of proposed fees in-lieu of onsite income-restricted affordable units from the draft LDC Revision citywide Affordable Housing Bonus Program

Unit Size	Studio	1-Bedroom	2-Bedroom	3-Bedroom
Fee-in-Lieu	$135,000	$180,000	$335,000	$440,000

The Housing and Planning Department is committed to bringing affordable homeownership options to our community; however, through implementation of past affordability agreements with income-restricted homeownership units in predominantly market-rate condominium developments, staff have encountered barriers to securing long-term affordability and stability for low-income homeowners in these types of developments that the City cannot control for. Both homeowners’ association fees and property tax assessments from the county appraisal district have created concerns for low and moderate-income homeowners in income-restricted units that may prevent them from maintaining housing affordability and may even put them at risk of displacement. For this reason, staff recommend collecting fees in-lieu of onsite income-restricted units within for-sale developments and directing these fees towards long-term affordable homeownership projects such as Community Land Trusts.

Additional General Requirements

Staff recommend the inclusion of a set of general provisions that apply to all developments that voluntarily participate in the VMU program. These provisions would affirmatively further Fair Housing choice by protecting low and moderate-income people and creating more inclusive, equitable outcomes for our community. Staff recommend that these requirements be included uniformly in all density bonus programs within the LDC; however, given the current opportunity, they have been drafted to apply to the VMU section specifically.

A brief description of the proposed additional general requirements for VMU developments is provided below:

- Source of income discrimination protection
  - Ensures that a prospective tenant in a VMU development would not be denied housing based solely on their source of income, including housing vouchers.
- Dispersion of and equal access to affordable units
  - Disperses income-restricted units through the development to avoid clustering
  - Ensure access to income-restricted units through the same routes as market-rate units
  - Guarantees access to all on-site amenities for income-restricted units that are available to market-rate units, including parking facilities
- Comparable design standards for affordable units
  - Requires functionally equivalent finishes, features, and appliances within income-restricted units and market-rate units
  - Requires that all interior components in income-restricted units are durable, good quality, and consistent with federal, state, and local standards
- Proportional bedroom count
  - Requires that the income-restricted units within a development are comparable to the mix of the number of bedrooms in the market-rate units in order to create more affordable multibedroom housing units
  - Allows for two one-bedroom or efficiency units to be exchanged for one two-bedroom units or three one-bedroom or efficiency units to be exchanged for one three-bedroom unit in an effort to create more affordable multibedroom housing units
- Floating rental units
  - Allows for the location of the income-restricted units in a rental development to change over time so long as the property maintains the required total number of affordable units for the duration of the affordability period
- Simultaneous availability
  - Ensures that income-restricted affordable units are made available concurrently with market-rate units, or requires plans for sequencing construction in multi-phase developments
- Affirmative marketing
  - Requires the development to prepare and utilize an affirmative marketing and outreach plan that affirmatively furthers Fair Housing
- Tenant's Right to Organize
  - Enhances provisions provided in Texas Property Code to further protect a tenant's right to conduct activities related to a tenant organization without retaliation
  - Requires the owner of a VMU building to meet with tenants and members of a tenant organization to discuss matters related to the property as requested

Non-Residential Bonus Area Fee

The LDC states that a bonus area fee will be set by Council for upper-level non-residential space within VMU buildings, but no such fee has ever been adopted by Council.

The current code provisions require that a minimum of one floor within a VMU Building be dedicated to residential uses. With the addition of a height bonus through VMU2, there will be potential for a greater amount of upper-level non-residential space to be created within VMU Buildings.

Given this information, Council may elect to provide direction to staff to bring forward a recommendation for this non-residential bonus area fee for the Vertical Mixed-Use program in the City budget process within the department's fee schedule.