

ORDINANCE NO. 20190509-027

AN ORDINANCE AMENDING CITY CODE TITLE 25 (*LAND DEVELOPMENT CODE*) CREATING A RESIDENTIAL AFFORDABLE HOUSING DEVELOPMENT BONUS PROGRAM; WAIVING, MODIFYING, AND ESTABLISHING REQUIREMENTS; CREATING AN OFFENSE; AND ESTABLISHING A PENALTY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. FINDINGS.

The council finds the following:

- (1) The Strategic Housing Blueprint (Blueprint) establishes a City-wide goal to produce a total of 135,000 new units with a goal of at least 60,000 new income restricted units by 2027.
- (2) There is a need for affordable housing of all types throughout the City including, but not limited, to single family, duplex, townhome, condominium, and multi-family.
- (3) The City is dedicated to finding creative, innovative solutions to address the City's affordable housing crisis, to create more affordable housing, to increase the effectiveness of public dollars used for affordable housing, and to meet the goals of the Blueprint.
- (4) In November 2018, voters approved \$250 million for affordable housing. Additionally, 4% and 9% Low Income Housing Tax Credits (LIHTC) are popular financing tools to create affordable housing and require at least 50% of a development's dwelling units to serve households that average 60% median family income.
- (5) This city-wide program, which was initiated in Resolution No. 20190221-027, is necessary to encourage the development of affordable housing throughout the City.

PART 2. City Code Chapter 25-1, Article 15 (*Housing*) is amended to add a new Division 4 (*Affordability Unlocked Bonus Program*) to read as follows:

Division 4. Affordability Unlocked Bonus Program.

§ 25-1-720 PURPOSE, APPLICABILITY, SHORT TITLE, AUTHORITY, AND CONFLICT.

- (A) The purpose of this division is to establish a voluntary affordable housing bonus program that allows for increased density for residential dwelling units.
- (B) This division applies within the zoning jurisdiction.
- (C) This division may be cited as "Affordability Unlocked Bonus Program".
- (D) The director may adopt, implement, and enforce:
 - (1) program guidelines; and
 - (2) administrative rules in accordance with Chapter 1-2 (*Administrative Rules*).
- (E) A provision of this title that is specifically applicable to a qualifying development governs over a conflicting provision of this title.

§ 25-1-721 DEFINITIONS.

In this division,

- (1) **GOVERNMENT-OPERATED AFFORDABLE HOUSING PROGRAM** means a program operated by a federal, state, or local department that provides financial or other form of subsidy for the purpose of providing affordable housing.
- (2) **HOUSING FOR OLDER PERSONS** means housing for households with at least one individual who is at least 62 years of age at the time of initial occupancy.
- (3) **MFI** means median family income for the Austin metropolitan statistical area.
- (4) **QUALIFYING DEVELOPMENT** means a development certified under Section 25-1-724 (*Certification*) and participating in the Affordability Unlocked Bonus Program.
- (5) **SLEEPING UNIT** means a bedroom in a structure that serves as a dwelling unit for seven or more unrelated individuals who share amenities, such as a kitchen, bathrooms, or living areas.
- (6) **SUPPORTIVE HOUSING** means housing that includes non-time-limited affordable housing assistance with wrap-around supportive

services for individuals experiencing homelessness, as well as other individuals with disabilities.

§ 25-1-722 ELIGIBILITY.

- (A) A proposed development qualifies as a Type 1 development and is eligible for this program if:
- (1) it includes:
 - (a) a minimum of three dwelling units,
 - (b) only affordable dwelling units; or
 - (c) one or more structures that serve as a dwelling unit for seven or more unrelated individuals who share amenities, such as a kitchen, bathrooms, or living areas;
 - (2) at least 25 percent of the affordable dwelling units include two or more bedrooms, supportive housing, housing for older persons, or any combination of the three;
 - (3) not more than 25 percent of the proposed development's gross floor area is for commercial uses;
 - (4) it is new construction, it is redevelopment of a site without existing multi-family structures, or the existing development on the site complies with the requirements in Subsection (D); and
 - (5) it meets the requirements set forth in Section 25-1-723 (*Affordability Requirements*).
- (B) Except for a proposed development participating in a government-operated affordable housing program with stricter requirements, the applicant for a proposed rental development:
- (1) shall incorporate lease provisions that are consistent with:
 - (a) the U.S. Department of Housing and Urban Development (HUD) Section 8 Tenant-Based Assistance Housing Choice Voucher (HCV) Program related to the termination of tenancy by owner;
 - (b) any lease addendum required as a condition to receive city or Austin Housing Finance Corporation (AHFC) funds; and
 - (c) 24 C.F.R. § 245.100 related to a tenant's right to organize; and

- (2) may not discriminate on the basis of an individual's source of income as defined in Section 5-1-13 (*Definitions*).
- (C) A proposed development qualifies as a Type 2 development and is eligible for additional bonuses if it meets the standards imposed in Subsections (A) and (B) plus one or more of the following:
- (1) at least 50 percent of the affordable dwelling units include two or more bedrooms;
 - (2) for a rental development:
 - (a) at least 75 percent of the total units or sleeping units serve households whose incomes average 60 percent MFI or below, rounded up to the nearest unit or sleeping unit; or
 - (b) at least 10 percent of the affordable units or sleeping units serve households with incomes of 30 percent MFI or below, rounded up to the nearest unit or sleeping unit; or
 - (3) for an owner-occupied development, at least 75 percent of the owner-occupied dwelling units or sleeping units serve households whose incomes average 80 percent MFI or below; or
 - (4) is located within $\frac{1}{4}$ mile of an activity corridor designated in the Imagine Austin Comprehensive Plan and is served by a bus or transit line.
- (D) A proposed development that will require the applicant to redevelop or rebuild an existing multi-family structure is eligible for this program if:
- (1) the proposed development meets the standards imposed in Subsections (A) and (B);
 - (2) the existing multi-family structure requires extensive repairs and for which rehabilitation costs will exceed 50 percent of the market value, as determined by the building official;
 - (3) the proposed development will replace all existing units that were affordable to a household earning 80 percent MFI or below in the previous year and have at least as many bedrooms;
 - (4) the applicant provides current tenants with:
 - (a) notice and information about the proposed development on a form approved by the director; and

- (b) relocation benefits that are consistent with Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, *et seq.*; and
- (5) the applicant grants current tenants the option to lease a unit of comparable affordability and size following completion of redevelopment.

§ 25-1-723 AFFORDABILITY REQUIREMENTS.

- (A) An applicant complies with the requirements in this section if the applicant participates in a government-operated affordable housing program that imposes, at a minimum, the same affordability requirements.
- (B) A rental development must comply with at least the following:
 - (1) at least 50 percent of the total units or sleeping units serve households whose incomes average 60 percent MFI or below; and
 - (2) at least 20 percent of the total units or sleeping units serve households with incomes of 50 percent MFI or below.
- (C) Except for a Type 2 owner-occupied development that complies with the requirements in Section 25-1-722(C)(3), at least 50 percent of the owner-occupied dwelling units or sleeping units must serve households whose incomes average 80 percent MFI or below.
- (D) If the number of units required in this section include less than a whole unit, the unit number is rounded up to the nearest whole unit.
- (E) The minimum affordability period for a rental development is the greater of the affordability period required for development receiving city or Austin Housing Finance Corporation (AHFC) funds or 40 years following the issuance of the last certificate of occupancy required for the qualifying development.
- (F) The minimum affordability period for an owner-occupied dwelling unit is 99 years following the issuance of a certificate of occupancy for the owner-occupied dwelling unit.
- (G) In a multi-phased qualifying development, the director may begin the minimum affordability period upon the issuance of the last certificate of occupancy for each phase.

§ 25-1-724 CERTIFICATION.

- (A) If the director certifies that a proposed development meets the requirements of this division, the accountable official is authorized to process a development application as a qualifying development.
- (B) Before the director may certify that a proposed development meets the requirements of this division, the applicant shall execute:
 - (1) an agreement to preserve the minimum affordability period and related requirements imposed by this division; and
 - (2) a document for recording in the real property records that provides notice of or preserves the minimum affordability requirements imposed by this division.
- (C) The form of the documents described in Subsection (B) must be approved by the city attorney.
- (D) The director may certify an applicant who complies with the requirements in Subsection (B) because the applicant participates in a government-operated affordable housing program that imposes, at a minimum, the same affordability requirements.

§ 25-1-725 POST-CONSTRUCTION REQUIREMENTS AND PENALTY.

- (A) For a rental development, the property owner or the property owner's agent shall provide the director with information that allows the director to verify compliance with the affordability requirements. The information shall be provided on an annual basis and on a form approved by the director.
- (B) If, for any reason, the director is unable to confirm that the affordability requirements were met during any 12-month period, the preceding 12 months may not be used to satisfy the minimum affordability requirements in Section 25-1-723 (*Affordability Requirements*).
- (C) An applicant complies with the requirements in this section if the applicant complies with monitoring and income verification requirements that are imposed and enforced as part of a government-operated affordable housing program.
- (D) A person commits an offense if the person fails to comply with the requirement in Subsection (A). A culpable mental state is not required, and need not be proved. A person commits a separate offense for each day the

person fails to provide the documentation. Each offense is punishable by a fine not to exceed \$500.

PART 3. City Code Chapter 25-2, Subchapter C, Article 2, Division 2 (*Requirements for All Districts*) is amended to add a new Section 25-2-518 (*Qualifying Development*) to read as follows:

§ 25-2-518 QUALIFYING DEVELOPMENT.

- (A) In this section, a qualifying development is a development certified under Section 25-1-724 (*Certification*) and participating in the Affordability Unlocked Bonus Program.
- (B) Notwithstanding any ordinance or City Code provision to contrary, a qualifying development is a permitted use under Section 25-2-491 (*Permitted, Conditional, and Prohibited Uses*) in:
 - (1) a residential base zoning district;
 - (2) a commercial base zoning district;
 - (3) a special purpose base zoning district, except on a site designated:
 - (a) agricultural (AG),
 - (b) aviation (AV); or
 - (4) a combining and overlay district.
- (C) No more than 25 percent of the gross floor area of the qualifying development may be comprised of commercial uses. The permitted commercial uses are determined using the base zoning district.
- (D) A qualifying development is not required to comply with:
 - (1) the height and setback requirements of Article 10 (*Compatibility Standards*) except to maintain side setbacks as required by the base zoning district;
 - (2) the maximum floor-to-area ratio for the applicable base zoning district under Section 25-2-492 (*Site Development Regulations*);
 - (3) Subchapter F (*Residential Design and Compatibility Standards*) except to maintain side setbacks as required by the base zoning district;
 - (4) Section 25-2-773 (*Duplex Residential Use*); or
 - (5) minimum site area requirements.

(E) This subsection applies to a qualifying development located in urban residence (SF-5) or more restrictive zoning district and the height of the development exceeds 35 or three stories.

(1) A qualifying development must comply with:

- (a) Section 25-2-1066 (*Screening Requirements*); and
- (b) Subsections (A) and (B) in Section 25-2-1067 (*Design Regulations*).

(2) A person must enclose a refuse receptacle, including a dumpster.

(3) The location of and access to a refuse receptacle is subject to review and approval by the accountable official.

(4) A person may not collect or allow another to collect refuse receptacles between 10:00 p.m. and 7:00 a.m.

PART 4. City Code Chapter 25-2, Subchapter C, Article 2, Division 3 (*Exceptions*) is amended to add a new Section 25-2-534 (*Qualifying Development Exceptions*) to read as follows:

§ 25-2-534 QUALIFYING DEVELOPMENT EXCEPTIONS.

(A) In this section, a qualifying development is a development certified under Section 25-1-724 (*Certification*) and participating in the Affordability Unlocked Bonus Program.

(B) A qualifying development is not subject to Section 25-2-511 (*Dwelling Unit Occupancy Limit*).

(C) Minimum lot size for a qualifying development is 2,500 square feet.

(D) Minimum lot width for a qualifying development is 25 feet.

(E) A Type 1 development may:

- (1) construct to a height that is the applicable base zoning district height limit multiplied by 1.25;
- (2) reduce front yard setbacks by 50 percent;
- (3) reduce rear setbacks by 50 percent; and
- (4) include six dwelling units if the existing zoning on the site is Single Family Residential Small (SF-4A), Single Family Residence Condominium Site (SF-4B), or more restrictive.

- (F) In addition to Subsection (E), a Type 2 development may:
- (1) construct to a height that is the applicable base zoning district height limit multiplied by 1.5; and
 - (2) include eight dwelling units if the existing zoning on the site is Single Family Residential Small (SF-4A), Single Family Residence Condominium Site (SF-4B), or more restrictive.
- (G) If a qualifying development is also eligible to utilize a separate density bonus program that grants density bonuses for the provision of affordable dwelling units or for the payment of a fee-in-lieu for affordable housing, then the qualifying development may comply with the least restrictive site development requirements if all affordable dwelling units are provided on-site.
- (H) A qualifying development will comply with impervious cover as allowed by zoning.

PART 5. City Code Section 25-6-471 (*Off-Street Parking Facility Required*) is amended to add new Subsections (I) and (J) to read as follows:

§ 25-6-471 OFF-STREET PARKING FACILITY REQUIRED.

(I) In this section,

- (1) ACCESSIBLE SPACE means 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; and
- (2) QUALIFYING DEVELOPMENT means a development certified under Section 25-1-724 (Certification) and participating in the Affordability Unlocked Bonus Program.

(J) A qualifying development is not required to comply with Appendix A of Chapter 25-6 (Transportation) but must comply with this section.

- (1) If the parking provided by a qualifying development with more than two units is fewer parking spaces than required in Appendix A (Tables of Off-Street Parking and Loading Requirements), the minimum number of required off-street accessible spaces is the greater of:
 - (a) one accessible parking space;

- (b) the number of accessible spaces required under the Building Code based on 100 percent of the parking required for the use under Appendix A (*Tables of Off-Street Parking and Loading Requirements*); or
 - (c) the number of accessible spaces required under the ADA or the FHAA, as appropriate.
- (2) An accessible space must be adjacent to the site and on an accessible route.
 - (3) An accessible parking space must comply with design, accessibility, and location requirements imposed by the ADA and the FFHA, as appropriate.
 - (4) Accessible parking detailed in Subsection (J)(1) must be provided off-street except insofar as on-street or off-site parking is allowed elsewhere in this title.

PART 6. The city shall enter into an agreement with each qualifying development, whether or not supported with city investments, that will include at least the following provisions to ensure compliance with affordability requirements established in this program, as well as ongoing affordability:

- (1) for owner-occupied housing, granting the City a right of first refusal for purchase of the property upon sale;
- (2) provisions related to penalties for repeated violations; and
- (3) other options the city deems appropriate.

PART 7. The administrative rules implementing the Affordability Unlocked Bonus Program shall at a minimum establish:

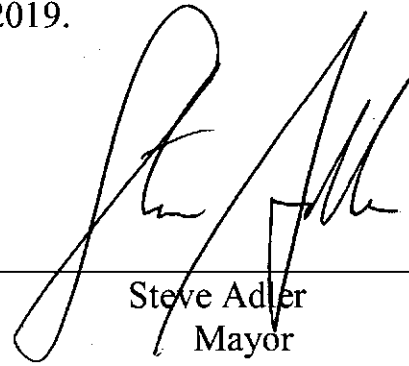
- (1) rent level standards based on the different median family income (MFI) level targets and varying to reflect different unit types; and
- (2) determine income eligibility standards for renters and owners.

PART 8. This ordinance takes effect on May 20, 2019.

PASSED AND APPROVED

May 9, 2019

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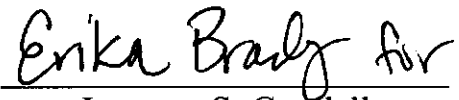
Steve Adler
Mayor

APPROVED:



Anne L. Morgan
City Attorney

ATTEST:



Jannette S. Goodall
City Clerk