

**ORDINANCE NO. 20220609-080**

**AN ORDINANCE AMENDING CITY CODE CHAPTER 25-2, SUBCHAPTER E  
RELATING TO VERTICAL MIXED USE BUILDINGS.**

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

**PART 1.** Section 4.3.2 of City Code Chapter 25-2, Subchapter E is amended to add a new Subsection 4.3.2.D. and a new Subsection 4.3.2.E. to read as follows:

**4.3.2. Where Allowed.**

- D.    In this article, VMU building includes VMU1 building and VMU2 building except as otherwise defined.
- E.    In this article, light rail line means the light rail depicted on Exhibit A attached to Resolution No. 20200807-003 (*Project Connect Contract with the Voters*). A site is located along a light rail line when the site is located on one of the following streets:

  - 1.    Center Ridge Drive between North I.H.-35 Frontage Road and Center Line Pass;
  - 2.    North Lamar Boulevard between West Guadalupe Street and the south curb of West Howard Lane;
  - 3.    West Guadalupe Street between Guadalupe Street and North Lamar Boulevard;
  - 4.    Guadalupe Street between 45<sup>th</sup> Street and West Cesar Chavez Street;
  - 5.    West Riverside Drive between South 1<sup>st</sup> Street and South Congress Avenue;
  - 6.    South Congress Avenue between Riverside Drive and Ralph Ablanedo Drive;
  - 7.    East State Highway 71 Frontage Roads between Spirit of Texas Drive and South U.S. Highway 183;
  - 8.    Riverside Drive between South U.S. Highway 183 and South Congress Avenue;

9. Trinity Street between its terminus south of Cesar Chavez and East 4<sup>th</sup> Street; and
10. 4<sup>th</sup> Street between Trinity Street and Guadalupe Street.

**PART 2.** Section 4.3.3.D. of City Code Chapter 25-2, Subchapter E is amended to read as follows:

- D. **Compatibility and Neighborhood Standards.** Except as provided in this section, all [AH] VMU buildings are subject to the compatibility standards of Chapter 25-2, Article 10 if applicable.

~~[In case of conflict between the compatibility standards and this Subchapter, the compatibility standards shall control.]~~

1. The height limitations imposed by Sections 25-2-1062 (*Height Limitations And Setbacks For Small Sites*) and 25-2-1063 (*Height Limitations And Setbacks For Large Sites*) apply only to a VMU building or portion of a VMU building that is located:
  - a. within 100 feet from a property zoned urban family residence (SF-5) or more restrictive; or
  - b. within 100 feet from a property that contains a use permitted in a SF-5 or more restrictive zoning district is located; and
  - c. on a site that is located along a light rail line.
- 2[+]. A VMU building that is located on a site that is adjacent to an urban family residence (SF-5) or more restrictive zoning district, or is adjacent to a property which contains a use permitted in an SF-5 or more restrictive zoning district, other than a dwelling permitted by Section 25-2-894 (*Accessory Uses for a Principal Commercial Use*) must comply with the following Table D (*Neighborhood Design Standards*).

**PART 3.** Section 4.3.3.E. of City Code Chapter 25-2, Subchapter E is amended to read as follows:

- E. **Height, Dimensional and Parking Requirements.**

1. VMU building[s] height[are subject to the height restrictions as provided in other sections of this Code].

- a. A VMU1 building is subject to the height restrictions as provided in other sections of this Code.
  - b. A VMU2 building may exceed the maximum building height in the base zoning district by a maximum of 30 feet, subject to the compatibility standards of Section 4.3.3.D.
- 2. Except as provided in Section 4.3.5., a VMU building that meets the affordability requirements in subsection F below is not subject to certain dimensional standards applicable in the base zoning district. These standards include the following:
  - a. Minimum site area requirements (if applicable);
  - b. Maximum floor area ratio;
  - c. Maximum building coverage;
  - d. Minimum street side yard setback and interior yard setback; and
  - e. Minimum front yard setback; provided, however, that if the right-of-way is less than 60 feet in width, the minimum front yard setback for buildings three or more stories in height shall be 30 feet from the centerline of the street to ensure adequate Fire Department access.
- 3. Parking.
  - a. Except as provided in Section 4.3.3.E.3.b., for ~~For~~ all uses in a VMU building, the minimum off-street parking requirement shall be 60 percent of that prescribed by Appendix A (*Tables of Off-Street Parking and Loading Requirements*). This reduction may not be used in combination with any other parking reduction. Only the parking requirements for commercial uses are subject to modification through the opt-in/opt-out process in Section 4.3.5.



- b. For all uses in a VMU building, the minimum off-street parking requirement shall be 25 percent of that prescribed by Appendix A (Tables of Off-Street Parking and Loading Requirements) and may be used in combination with other parking reductions if the VMU building is located on a site that is located along a light rail line.

**PART 4.** Section 4.3.3.F. of City Code Chapter 25-2, Subchapter E is amended to read as follows:

- F. **[Affordability Requirements] Exemption and Bonus Requirements.** To be eligible for the dimensional or parking standards exemptions, or building height bonus if applicable, in Subsection E of this section, the residential units in a VMU building shall meet the following [affordability] requirements, which shall run with the land. This ordinance does not amend or repeal graphics or pictures that are used to illustrate various code requirements in the published version of Chapter 25-2, Subchapter E (Design Standards and Mixed Use).

- 1. Affordability Requirements for Owner-Occupied Units.

- a. A building qualifies as a VMU1 building when a minimum of 10 percent of the residential units within the building are reserved as affordable, for at least 99 years from the date of initial sale, for ownership and occupancy by households earning 80 percent or less of the current Austin-Round Rock Metropolitan Statistical Area Medium Family Income as determined by the Director of the Housing and Planning Department. ~~[Five percent of the residential units in the VMU building shall be reserved as affordable, for not less than 99 years from the date a certificate of occupancy is issued, for ownership and occupancy by households earning no more than 80 percent of the current Annual Median Family Income for the City of Austin Metropolitan Statistical Area as determined by the Director of Neighborhood Housing and Community Development Department.]~~
- b. A building qualifies as a VMU2 building when a minimum of 12 percent of the residential units within the building are reserved as affordable, for at least 99 years from the date of initial sale, for ownership and occupancy by households earning 80 percent or less of the current Austin-Round Rock Metropolitan Statistical Area Medium Family Income as

determined by the Director of the Housing and Planning Department. ~~[In addition, five percent of the residential units in the VMU building shall be reserved, for not less than 99 years from the date a certificate of occupancy is issued, for ownership and occupancy by households earning no more than 100 percent of the Annual Median Family Income.]~~

- c. The city in its sole discretion may elect to subsidize ~~[an]~~ additional ~~[ten percent of the]~~ for-sale residential units in the building, at an affordability level consistent with criteria and procedures established by the Director of the Housing and Planning Department.

2. Affordability Requirements for Rental Units.

- a. A building qualifies as a VMU1 building when a minimum of 10 percent of the residential units within the building are reserved as affordable, for at least 40 years from the date of issuance of the certificate of occupancy, for lease and occupancy by households earning 60 percent or less of the current Austin-Round Rock Metropolitan Statistical Area Medium Family Income as determined by the Director of the Housing and Planning Department. ~~[Ten percent of the residential units in the VMU building shall be reserved as affordable, for a minimum of 40 years following the issuance of the certificate of occupancy, for rental by households earning no more than 80 percent of the Annual Median Family Income.]~~
- b. For a site located along a light rail line, a building qualifies as a VMU2 building:
  - (i) When a minimum of 15 percent of the residential units within the building are reserved as affordable, for at least 40 years from the date of issuance of the certificate of occupancy, for lease and occupancy by households earning 60 percent or less of the current Austin-Round Rock Metropolitan Statistical Area Medium Family Income as determined by the Director of the Housing and Planning Department; or

(ii) When a minimum of 12 percent of the residential units within a VMU building are reserved as affordable, for at least 40 years from the date of issuance of the certificate of occupancy, for lease and occupancy by households earning 50 percent or less of the current Austin-Round Rock Metropolitan Statistical Area Medium Family Income as determined by the Director of the Housing and Planning Department.

c[b]. For a site that is not located along a light rail line, a building qualifies as a VMU2 building:

(i) When a minimum of 12 percent of the residential units within the building are reserved as affordable, for at least 40 years from the date of issuance of the certificate of occupancy, for lease and occupancy by households earning 60 percent or less of the current Austin-Round Rock Metropolitan Statistical Area Medium Family Income as determined by the Director of the Housing and Planning Department; or

(ii) When a minimum of 10 percent of the residential units within a VMU building are reserved as affordable, for at least 40 years from the date of issuance of the certificate of occupancy, for lease and occupancy by households earning 50 percent or less of the current Austin-Round Rock Metropolitan Statistical Area Medium Family Income as determined by the Director of the Housing and Planning Department.

d. As part of the one-time opt-in/opt-out process described in Section 4.3.5., an applicable neighborhood association or neighborhood planning team may request that the affordable rental units be available for renters earning a lower percentage of the annual median family income, to as low as 60 percent of the median family income. VMU projects that file zoning or site plan applications after the effective date of the first interim VMU ordinance and prior to September 1, 2006, will not be subject to this neighborhood affordability customization; and instead shall set aside affordable rental units as required by subsection 2.a. above or provide for affordable units as otherwise agreed to by an applicable neighborhood prior to



September 1, 2006, provided that VMU projects are allowed on the applicable site following the completion of the opt-in/opt-out process.

e[e]. The city may elect to subsidize ~~an~~ additional ~~[ten percent of the]~~ residential units in the building for rental purposes for residents at any level of affordability pursuant to criteria and procedures established by the Director of the Housing and Planning Department.

3. Affordability Definition. ~~[For purposes of this subsection, a unit is affordable for purchase or rental if the household is required to spend no more than 30 percent of its gross monthly income on utilities and mortgage or rental payments for the unit as determined by the City's Neighborhood Housing and Community Development Department, based on the current Annual Median Family Income for the Austin Metropolitan Statistical Area.]~~

a. For purposes of this subsection, a unit is affordable for purchase when the unit is sold to an income-eligible household for an amount not to exceed the corresponding sales prices published annually by the Director of the Housing and Planning Department; and

b. When determining the maximum affordable sales price, the Director of Housing and Planning Department may include an assumption that a homeowner will be required to pay an ownership association fee.

c. For purposes of this subsection, a unit is affordable when the unit is leased to an income-eligible household for an amount not to exceed the corresponding rental prices published annually by the Director of the Housing and Planning Department.

4. Certification

a. In this section, director means the director of the Housing and Planning Department.

b. The director is responsible for certifying whether a proposed development meets the exemption and bonus requirements.

- c. The applicant shall submit an application to the director demonstrating the proposed development meets the exemption and bonus requirements.
- d. Before the director may certify the proposed development, the applicant shall execute:
  - (i) an agreement to preserve the minimum exemption and bonus requirements for the VMU building; and
  - (ii) a document for recording in the real property records providing notice of or preserves the exemption and bonus requirements for the VMU building.
- e. The form of the document described in Section 4.3.3.F.4.d. must be approved by the city attorney.
- f. If the director certifies a proposed development under this section, the accountable official is authorized to process a development application for a VMU building.
- g. The applicant for a housing development shall pay all fees, provide documentation, and fulfill any pre-occupancy requirements prior to the issuance of a certificate of occupancy for the VMU building.

5. General Provisions.

- a. In this section, the director means the Director of the Housing and Planning Department.
- b. The agreement required in Section 4.3.3.F.4.d. must, at a minimum:
  - (i) Prohibit discrimination on the basis of an individual's source of income as defined in Section 5-1-13 (Definitions);
  - (ii) Require dispersion of affordable units throughout the residential units;
  - (iii) Require equal access and use of on-site amenities, common areas, and parking facilities;



- (iv) Require shared access routes for affordable units and market-rate units;
          - (v) Require that affordable units include interior components that are functionally equivalent to market-rate units; and
          - (vi) Require the applicant to incorporate lease provisions related to a tenant's right to organize that are consistent with 24 C.F.R. 245.100, the lease addendum required as a condition to receive city of Austin Housing Finance Corporation funds, or City Code requirement.
  - c. Unless otherwise approved by the director, the bedroom count for affordable units shall be comparable to the bedroom count for market rate units. At the discretion of the director, two-bedroom or three-bedroom affordable units may count as two or three, one-bedroom (efficiency) affordable units. 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.
  - d. Affordable rental units locations may be rotated within the building, provided that the total number of required affordable units remains in compliance with the affordability requirements for the affordability period.
  - e. Simultaneous Availability of Affordable Units.
    - (i) In a single-phase housing development, affordable units must be available for occupancy concurrently with the market-rate units.
    - (ii) For a multi-phase housing development, an applicant must submit a development phasing plan that demonstrates how the market rate units and the affordable units will be made available concurrently. This plan must be included as an attachment to the agreement described in Section 4.3.3.F.4.d.
  - f. An applicant for a VMU building shall prepare and follow an affirmative marketing and outreach plan for the duration the affordable period, in a form consistent with the U.S. Department of Housing and Urban Development regulations and approved by the Director of the Housing and Planning Department.

- g. An affordable unit may not be used as a Type 2 or Type 3 short-term rental (STR).

6. Affordability Post-Construction Compliance and Penalty.

- a. In this section, director means the Director of the Housing and Planning Department.
- b. For a rental development, the owner of a VMU building with affordable for lease units 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.
- c. If, for any reason, the director is unable to confirm the VMU building affordability requirements were met during any 12-month period, the preceding 12 months may not be used to satisfy the VMU building affordability period.
- d. For an ownership affordable unit, each homebuyer at the time of purchase shall execute a resale restriction agreement in a form approved by the city attorney for recording in the real property records.
- e. A person commits an offense if the person fails to comply with the requirement in subsection (b). 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.

7 [4]. Fee for Upper-Level Nonresidential Space. The developers of VMU buildings that contain nonresidential uses above the ground-floor shall pay a fee as set by the City Council for all climate-controlled nonresidential space above the ground floor. At the same time that it sets the amount of the fee, the City Council shall also identify a means by which fees paid pursuant to this section shall be reserved only for expenditure within the area of the City from which they were collected.

8 [5]. Monitoring and Enforcement. The City shall develop procedures to monitor and enforce this Section.

**PART 5.** The City Manager is directed to analyze the following direction and report to Council on the feasibility of the following approach by November 3, 2022.

The affordability level of affordable units required by VMU2 should be tied to 60% of the Travis County MFI OR 80% of the MFI for the census block group (or census tract if block group data is not available) that the parcel in question is on, whichever is lower. This defines affordability based on what is affordable to the neighborhood and takes into account equity issues. This will achieve the following:

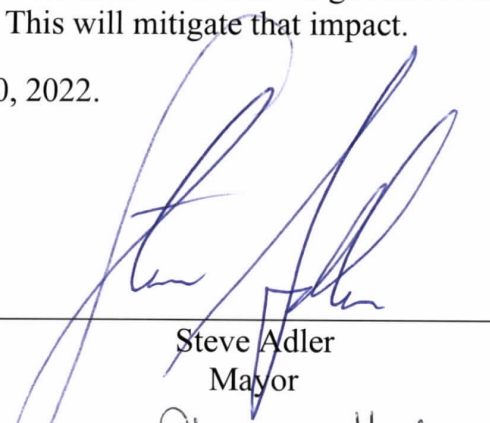
- a) When VMU2 is used in an area in which the MFI is lower than the Travis County-wide MFI, any affordable housing included will be affordable to the existing residents in the neighborhood. This will mitigate impacts of displacement and ensure some existing, long-time residents can continue to afford their neighborhood.
- b) Affordable housing will be included in higher-income neighborhoods at a rate that is more affordable than current units available in that neighborhood.
- c) When units are built in a neighborhood that are “affordable” based on Travis County but not local affordability, these units contribute to gentrification and displacement in the neighborhood. This will mitigate that impact.

**PART 6.** This ordinance takes effect on June 20, 2022.


**PASSED AND APPROVED**

\_\_\_\_\_, June 9, 2022

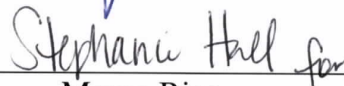
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Steve Adler  
Mayor

**APPROVED:**

  
\_\_\_\_\_  
Anne L. Morgan  
City Attorney

**ATTEST:**

  
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Myrna Rios  
City Clerk