**CodeNext Draft 2**

**Article 23-3E: Affordable Housing Incentive Program**

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This document is organized in the following order: Major Concerns and Recommendations; Questions About Affordability Calibrations; Missing Information; Additional Line-by-Line Recommendations and Questions; Typos and Formatting Corrections.

1. **Major Concerns and Recommendations**

**1. Draft 2 substantially increases development entitlements without commensurate affordability requirements, while weakening a current affordability program.** Because Texas law prohibits many traditional means of retaining or creating affordable housing (inclusionary zoning, rent control, linkage fees), Austin possesses very few tools to leverage affordable units through its Land Development Code. Yet Draft 2 inexplicably continues to propose significantly increased by-right development entitlements while imposing few, if any, affordability requirements in return. Given the rapidly dwindling affordable housing options across the city, this approach is both mystifying and troubling. CodeNext must maintain what little leverage Austin has to drive a harder bargain with the few tools at our disposal.

**Recommendations:**

1. **Maintain current on-site parking requirements citywide and tie any reductions to the production of affordable housing units.**

As noted above, Draft 2 continues to give away valuable entitlements for little to no public benefit. One of the most egregious examples is the proposed reduction in on-site parking, currently drafted to apply citywide, without any affordability component in return.While it’s true that proposed parking reductions could reduce construction costs, nothing in the draft ensures that these cost savings will actually be passed on to Austin residents. As most developers will tell you, construction costs simply set the floor for rent prices, but Austin’s white hot market will continue to set the ceiling. Absent a clear requirement tying parking reductions to the production of affordable units, there is no guarantee that merely cutting parking requirements will result in lower rents or purchase prices for housing.

**b. Maintain current VMU affordability requirements, which require the percentage of affordable units to be based on the total units in the project, and extend this requirement to any commercial properties that will gain new residential entitlements under CodeNext.**

Draft **Section 23-E-1040(B)(2)** states that the number of affordable units will be calculated based on a percentage of only the bonus units requested. This is a major step backwards from the city’s current Vertical Mixed Use (VMU) program, which requires the percentage of affordable units to be based on the total number of units in the project.

Further, CodeNext consultants have recommended adding new residential uses to many existing commercial properties, effectively making them VMU and providing vastly increased entitlements, but without holding them to the same affordability standards as existing VMU properties. While expanding residential uses is generally a good thing, not attaching current VMU requirements to these new entitlements is clearly a huge missed opportunity.

Austin’s current robust affordability requirement for VMU was based on the recognition that a rezoning from Commercial to VMU significantly increased entitlements by allowing residential uses where they had formerly been prohibited, and was arrived at after thorough financial study during the program’s development. Regarding the current VMU program:

• The Median Family Income requirement is 60%-80% MFI, depending on the corridor, with most targeted to 60% MFI (again, the number of affordable units is based on the total number of units in the project).

• The basis for the VMU requirement was a transparent analysis of potential pro formas that demonstrated that the added entitlements and affordability requirement created feasible development scenarios.

• VMU was implemented in the code just prior to the recession, which dampened overall development somewhat, but once the local market rebounded, by 2014 over 300 affordable units had been produced in VMU developments, with presumably more in the past three years.

Please note that Draft 1 contained a footnote in **Table 23-3E-1040(A)** for “Parcels Designated ‘-A’” that appeared to be intended to retain the current VMU requirement of 10% affordable units based on the total number of units.Draft 2 removes this footnote, effectively allowing all VMU properties to provide affordable units based only on a percentage of the bonus units requested – a huge drop in the potential number of affordable units. Reportedly, this decision was made because the draft has increased by-right entitlements so much that the current VMU program would no longer provide sufficient enticement for developers to use it.

To address Austin’s growing shortage of affordable housing, the current VMU requirements should be maintained for existing properties and applied to all commercial properties that are slated to receive new residential entitlements under CodeNext. **However, if the proposed changes remain in the draft, please provide the following information to determine their impact before Draft 3 is released (**for purposes of calculation, assume maximum buildout with a base unit size of 800 SF per unit).

(a) For all existing VMU properties, the number of affordable units achievable under current VMU policy (10% of the total number of units) vs. the number of affordable units achievable under proposed policy change (10% of bonus units requested);

(b) The number properties and estimated total square footage of buildable space for all existing Commercial properties that are proposed for rezoning to add Residential use under the current draft;

(c) For the properties referenced in (b) above, the number of affordable units achievable under current VMU policy (10% of the total number of units) vs. the number of affordable units achievable under proposed policy change (10% of bonus units requested).

**2. To support housing for lower-income families with children and strengthen Austin’s public schools, please implement the following changes to Article 23-3E, Article 4-D, CodeNext maps and other relevant city policies. Please note that many of these recommendations have already submitted in more detail in a separate document addressing support for public schools under CodeNext.**

**Recommendations:**

(a) Target all density bonus fees-in-lieu, both commercial and residential, toward the production of family-friendly housing serving very low-income residents. In the current market, large multi-unit projects are virtually all efficiency and one-bedroom units so the draft proposal to ensure bedroom counts match the base product will produce few, if any, units suitable for families. Moreover, most parents would not willingly raise children in projects designed almost exclusively for singles (families need playgrounds, not poolside margarita parties). Because the density bonus units skew overwhelmingly toward singles and childless couples due to unit size, any fees-in-lieu resulting from these programs should directed to family housing to ensure a balance of housing types and to support the family housing goals of the Austin Strategic Housing Blueprint.

(b) Prioritize family-friendly units for all off-site production under city density bonus programs. Draft **Section** **23-3E-1050(D)(2)** specifies that offsite production “must include the same number of units and the same bedroom count mix as would be required in the bonus.” However, one of the chief benefits of offsite production is the ability to create family-sized units, as opposed to the current market rate mix, which is largely small efficiencies and one bed-room units. Again, this approach would support a balance of housing types and the family housing goals of the Austin Strategic Housing Blueprint.

(c) Encourage the preservation of older “market affordable” single-family detached homes, duplexes, and multi-family housing by not increasing entitlements on existing properties absent a substantial affordability requirement**.**

(d) Within 600’ of a public school property line, zone for R2C and limit any proposed upzoning to the production of family-friendly projects affordable at 60% Median Family Income (MFI) or lower. This is crucial for urban core areas, especially those facing displacement of longtime residents through gentrification.

(e) Within a half-mile radius of AISD campuses, create permanent affordable family-friendly housing through land acquisition to be funded by fees-in-lieu gained from the proposed expansion of the City’s density bonus program to commercial properties and other appropriate funding sources including use of public land. These properties should be placed in a Community Land Trust, or otherwise deed restricted for permanent family housing affordable for rent at 50% MFI or lower or for purchase at 60% MFI or lower, and should be prioritized for families with children as a legally protected class under the federal Fair Housing Act. Housing types should be those shown to attract families as supported by Austin Independent School District data: single-family homes, duplexes and townhomes with a minimum of 2-3 bedrooms, or supportive multi-family housing as exemplified by Foundation Communities’ projects. Housing funded in this manner may include placing several housing units on one single-family lot.

(f) Maintain current city occupancy limits for unrelated adults to improve opportunities for families with children to access family-sized housing. Again, families with children are a protected class under the federal Fair Housing Act. They should not have to compete with even larger groups of partying singles for Austin’s dwindling supply of multi-bedroom housing.

**3. Amend or Remove Misleading Affordability Definitions That Could Result in Unintended Applications of City Programs.** The following two terms appear in Article 23-2M-1030, General Terms and Phrases, but have direct bearing on Article 23-3E: Affordable Housing, and need substantial revision to avoid unintended consequences:

**23-2M-1030, p. 2 “Affordable Housing.”** This new addition defines the term affordable housing as: “Housing that costs no more than 30 percent of a household’s monthly income, as defined by the U.S. Department of Housing and Urban Development.” While technically correct, using this definition in the context of the Land Development Code would: (a) make virtually all wealthy areas of the city technically “affordable" overnight (even Michael Dell’s home is affordable to Michael Dell); and (b) make these wealthy areas, including individual properties, eligible for special rights for “affordable housing” conferred elsewhere in the draft (parking reductions, height increases, impervious cover increases, etc.).

**Recommendation**: Affordable housing has a more specialized meaning in context of the Land Development Code and is already more specifically defined within Article 23-3E: Affordable Housing, which stipulates required Median Family Income levels for various benefits. Please remove this definition and replace with: “See Article 23-3E: Affordable Housing.”

**23-2M-1030, p. 19** **“High Opportunity Area**.” The draft definition of “high opportunity area” allows an area to qualify by meeting just one of eight conditions, including the embarrassingly low bar of having “minimal environmental hazards.” This matters because high opportunity areas are specifically referenced as criteria for decisions involving off-site production and land dedications in lieu of building on-site affordable units in the Affordability Bonus section (see Draft sections 23-3E-1060(D)(3) and (D)(5)). Even if it were legal to put housing in an environmentally hazardous area, few would consider not being poisoned a high opportunity, nor should Austin.

**Recommendation:** Please strengthen the definition of ‘high opportunity areas’ to require an area to provide **at least three or more**of the listed conditions to be identified as ‘high opportunity’ or, alternatively, reference the Kirwan Opportunity Map directly.

**4. Ensure Equivalent Square Footage for Affordable On-site Units Under Density Bonus Program.** Section **23-3E-1030(D**) requires a proportional bedroom count for density bonus units and **23-3E-1040(G) r**equires design standards for the affordable units to be “functionally equivalent” to market-rate units, but nothing in this section requires that the size of units be the same. Absent a specific square footage requirement, a developer may legally create market rate efficiencies at 800 square feet, but limit those in the density bonus program to as little as 300 square feet or less.

**Recommendation:** To ensure true functional equivalence as clearly intended, please express the density bonus requirements as a percentage of square feet, including individual unit size, rather a number of units.

**5. Develop Plan to Match Affordable Density Bonus Units with Qualified Tenants. 23-3E-1030(C).** This section requires only that affordable units be “made available” concurrently with market rate units, but does not specify how or whether these will be advertised or whether the city will make any effort to match units with qualified residents who need them. Currently, there is no requirement addressing this and we’ve all heard too many stories about affordable units going to college grad friends of the developer.

**Recommendation:** Please add language to require the city housing department to keep a list of eligible applicants to be matched with affordable units as they become available, or devise an alternate plan to ensure that these units reach the residents in most need.

**B. Questions About Affordability Calibrations**

**1. How will proposed new entitlements be calibrated and mapped to ensure minimal loss of current market affordable housing**? Austin currently has an estimated 65,000 units of “low-rate market rent” housing, with over 48,000 deeply affordable rental units still needed (Affordable Central Texas, June 2017).

<http://housingconference.uli.org/wp-content/uploads/sites/101/2017/07/2.-Steinwedell-ULI-Housing-Presentation-9-17.pdf>

Obviously, we can ill afford to lose these existing “market affordable” units by inadvertently incentivizing their demolition through increased entitlements, particularly in areas already suffering from rapid gentrification and displacement. What is the plan for calibrating and mapping increased entitlements to ensure minimal loss of existing market affordable housing? Are there additional programs planned to preserve older housing stock?

**2. In areas likely to produce new market affordable units, is it possible to calibrate density bonus programs for deeper levels of affordability?** CodeNext consultant John Fregonese has publicly stated that, under Draft 2, the Austin market could naturally produce about 30,000 housing units affordable at 80% MFI in areas of Austin where land costs are lower, and has been asked to provide a map of these areas**.**

Is it possible to use this map of anticipated market affordable locations to calibrate the density bonus program by area, potentially providing the opportunity to require deeper affordability in these areas and/or reducing the need for the city to monitor units that are naturally produced at 80% MFI affordability?

**C. Missing Information**

**1. Fees-in-lieu schedule not available.** Article **23-3E-1** repeatedly references fees-in-lieu, but this schedule is not yet available. Obviously, the amounts of these fees will be important for decision makers to judge whether the city is obtaining an appropriate level of public benefit in exchange for valuable increases in entitlements.

**Question:** When will the proposed affordable housing fee-in-lieu schedule be available and what analysis will be provided to demonstrate that these are reasonable fees and what criteria were used to set them?

**2. Designated review group not defined.** Sections **23-3E-1050(B), 23-3E-1070; 23-3E-1080(B); 23-3E-1070; 23-3E-1080(B); 23-3E-2020(D)(1)** all reference a “designated review group” for affordability incentives, but provide no information about how review group will be selected, qualifications for members, terms of service, whether the group is subject to the Open Meetings Act, etc. Draft 2 now references 23-3E-1080, but that section merely provides information for the applicant, nothing about the makeup of the review group, which appears to wield considerable influence on affordable housing decisions under the current draft.

**Question:** When will draft code language be available that establishes the “designated review group,” including its powers, responsibilities, qualifications for appointment, who appoints, term of service, compliance with open meetings/open records laws, etc.?

**3. Off-site production criteria not specified.** Section **23-3E-1050(D)** authorizes the Housing Director to determine whether off-site production of units will produce more affordable units (which can be demonstrated fairly easily) or whether off-site units will produce “a greater community benefit,” which is more difficult to demonstrate and, absent specific criteria, risks being a subjective decision that may be unevenly applied.

**Recommendation:** Given that this section grants a high degree of individual discretion to the Director, please provide further draft language specifying at least some basic criteria for such determinations.

**4. Geographic areas not defined.** Section **23-3E-1040(B)(1)** states that the “required set aside of affordable units is determined based upon a development’s location within a geographic area determined by the Housing Director [italicized language is new in Draft 2].” This phrase appears to replace Draft 1’s controversial “inner Austin’/‘outer Austin” terminology, but, as currently drafted, provides no criteria whatsoever, leaving these decisions discretionary, highly subjective and unlikely to be equitably applied. Sections **23-3E-4030(A)(1) and (2)** also reference these undefined geographies.

**Question:** Is there a plan to provide clear criteria for Geographies 1 and 2 and, if so, will that appear in Draft 3? If not, when and where will such criteria be available for public review and comment?

**D. Additional Line-by-Line Recommendations and Questions, Article 23-3E**

**For Review Purposes**. For housing units subject to this Article, please provide a chart showing in dollar amounts the following: the monthly rent for rental units at each referenced MFI (60% = $X/month, 120% = $X/month, etc.); the purchase price for ownership units at each referenced MFI; and the annual income required to qualify at each referenced MFI. This Article does not appear to reference any units affordable below 60% MFI, but if it does, please provide dollar amounts for those as well.

**Table 23-3E-1040(A) Bonus Calculation.** This table still seems unnecessarily complex. Please simplify and/or explain in plain language text as is done in Section 23-E-1040(B).

**23-3E-1050(D)(2)** specifies that offsite production “must include the same number of units and the same bedroom count mix as would be required in the bonus.” However, one of the big benefits to offsite production is the ability to create family-sized units, as opposed to the current market rate mix, which is largely small efficiencies and one bed-room units. Prioritizing off-site units for families will support the Strategic Housing Blueprint goal of ensuring that “25% of affordable housing units that are created or preserved should have two or more bed- rooms and system to provide opportunities for families with children.” Please add the following phrase: “…unless the Housing Director determines that a greater community benefit will be realized by requiring a higher number of multi-bedroom units capable of housing families with children.”

**23-3E-1050(E).** Re phrase “equivalent or greater value,” please indicate how this will be determined. If determination will be based on TCAD appraisals, then clearly state that. If it will rely on a different data source, please indicate that source.

**23-3E-1060(B).** Please provide live link or other citation here to city’s fee schedule.

**23-3E-1070.** Here, as in all references to the “designated review group” please provide the citation that establishes this group, including its powers, responsibilities, qualifications for appointment, who appoints, term of service, etc.

**23-3E-1080(B).** Again, provide citation for “designated review group.”

**23-3E-1080(C).** This section states: “Following the submittal of an application in compliance with this Division, the Housing Director shall issue an Affordability Certification Letter to the applicant.” This should be rephrased to clearly state that the Director’s approval is required and that merely submitting an application doesn’t automatically confer certification (this is especially important given the broad discretion granted to the Director by other sections of this Article). Please amend to read: Following the submittal of an application in compliance with this Division and the Housing Director’s approval, the Housing Director shall issue an Affordability Certification Letter to the applicant.

**23-3E-1090(C).** This provision appears to completely undercut the preceding provisions (A) and (B), which state that rental units must be affordable at 60% MFI and ownership units at 80% MFI. However subsection (C) provides a vague all-purpose loophole to these requirements by simply stating: “Other agreements may be entered into as needed to secure the affordability restrictions of the project.” No other details, restrictions or requirements are provided. If this provision is to remain, it needs much more specificity including the types of acceptable agreements and a statement that the minimum affordability requirements will match those in the preceding provisions.

**23-3E-1100(A).** When will these “processes, compliance and monitoring criteria” be available for review? Will these become part of the code or live elsewhere? It is an improvement that Draft 2 now mentions training for property owners or managers, but this should be mandatory, not optional. Please replace “may be” with “is” in second sentence.

**23-3E-1100(B).** How often and by what means will the Housing Director perform monitoring of affordability requirements for rental units after the initial lease up? Please add “annual” to last sentence so it reads: The Housing Director shall perform annual monitoring…etc.

**23-3E-1100(C).** Please add language to ensure that monitoring of ownership units will continue for the duration of the affordability period, not just the time of the initial sale.

**23-3E-2020(D)(1).**  Again, any reference to the ‘designated review group’ should include a citation to the section establishing it.

**23-3E-2020(D)(2).** This section states: “Following the submittal of an application in compliance with this Division, the Housing Director shall issue an Affordability Certification Letter to the applicant.” Please rephrase this to clearly state that the Director’s approval is required and that merely submitting an application doesn’t automatically confer certification (this is especially important given the broad discretion granted to the Director by other sections of this Article). Suggest: “Following the submittal of an application in compliance with this Division and the Housing Director’s approval, the Housing Director shall issue an Affordability Certification Letter to the applicant.” [Note: This is the same issue that appears in 23-3E-1080(C), but applies to a different program.]

**23-3E-2050(C)(1)(a).** This is a new section that appears to replace a previous table and simply states “a maximum of 10 square feet bonus areas shall be granted for each one square foot of dwelling unit devoted to on-site affordable housing.” Please verify that this does not grant additional bonus area per square foot over what is allowed under current code.

**23-3E-2050(C)(2).** This states that the “amount of density bonus that may be achieved for each family-friendly eligible bedroom is established by ordinance.” Please provide the citation for that ordinance in this section.

**23-3E-2050(C)(3).** This states that the fee in lieu for affordable units is “established by ordinance.” Please provide the citation for that ordinance in this section.

**23-3E-2050(E)(5)(a).** This section states that the “Planning Director will administer Historic Preservation Fund.” **Question:** Does the Planning Director have the time and specialized knowledge to administer the Historic Preservation Fund effectively? Why is this responsibility not the city’s Historic Preservation officer?

**23-3E-2050(E)(6) and (9).** Please ensure the Environmental Commission and appropriate stakeholders review these sections.

**23-3E-2050(F)(1)(b) and (2)(b).** Draft 1 had lowered the MFI threshold for the Downtown Density Bonus program to 80% MFI for ownership units and 60% MFI for rental units. Now Draft 2 has reinstated current thresholds of 120% MFI for ownership units and 80% MFI for rentals, a significant jump from first draft. For a one-person household, 120% MFI is $68,400 per year – far more than the average AISD teacher makes, let alone a custodian, musician or barista. Similarly, 80%MFI for a one-person household is $45,600, vs. Draft 1’s 60% MFI, which would be $34,500 for a single person (MFIs for 2-person households would result in even higher dollar amounts). Please explain why MFI thresholds for the Downtown Density Bonus program were decreased in Draft 1 only to be raised again in Draft 2.

See 2017 MFI chart:

<http://www.austintexas.gov/sites/default/files/files/2017_HUD_CDBG_MFI_Limits_ONLY_Eff_4-14-17.pdf>

**23-3E-3020(B).** Needs clarification. Draft language requires an applicant to submit a “certified statement.” Does this mean notarized? If so, please state that clearly. If there are other acceptable ways to provide a “certified statement” please list them in this section to avoid confusion.

**23-3E-3020(D)(3)(h).** As noted in Draft 1 comments, the tenant relocation notice language should be required to provide contact information for tenant relocation assistance, including a phone number, as not all tenants may have internet access. Draft 2 adds a new phrase to subsection (h) stating the Housing Director “may” require other information on the notice “including contact information for tenant relocation assistance and services” but does not require this. While this at least shows someone considered the original comment, this is not sufficient (the section on signage has been amended to add the contact number requirement so why not here as well?). Please require contact information for tenant relocation assistance, including a phone number, on the written relocation notice to tenants.

**23-3E-3040(A).** This section states that the Housing Director will adopt a tenant relocation program by administrative rule. If this is available, please provide link or cite where it may be found. If not yet drafted, when is it expected to be available for review?

**23-3E-3040(B)(1).** Again, please provide link/cite and/or indicate when methodology and fee schedule be available for review.

**23-3E-3050(A).** This section states that a relocation fee is established by separate ordinance. Please provide link/cite and/or indicate when this will be available.

**23-3E-3070(C).** This new language states that the “Housing Director shall enforce the requirements of this Division as provided under Article 23-2 (Enforcement).” **Question:** Does this mean the Housing Director will be personally responsible for collecting fines under this Article, or should this be the Code Enforcement department, which typically handles collections and to which the Housing Director would logically delegate this responsibility? Please review and clarify if needed.

**23-3E-4020(D)(2).** This states that the Housing Director may waive the transit-oriented requirement if “the applicant applies for State or Federal Government funds, including the Low Income Housing Tax Credit Program, related to the development…[emphasis added]”. Why would the city waive this requirement for an application that may ultimately be rejected? Please change “applies for” to “receives or demonstrates that it has been approved to receive”.

**23-3E-4050(A).** This section waives one hundred percent of 29 city fees for projects in Geography 1 (an area still unspecified) where ownership options are just 5% of ownership units are affordable at 100% MFI and just 5% of rental units are affordable at 80% MFI. Geography 2 (also unspecified) requires slightly higher thresholds: 10 percent of ownership units at 80% MFI or ten percent rental units at 60% MFI.

Draft 2 removed the Planned Development Area fee from the original list in Draft 1 as well as two duplicate entries. However, Draft 2 adds five other fees that may be waived by separate ordinance or agreement so potential amount of waived fees may be even higher than Draft 1. Please model the fiscal impact of these waivers to the city and consider adjusting for a higher percentage of units or a lower MFI. Also please note that the Parkland Dedication section appears to grant the Parkland Dedication fees as an automatic waiver, which does not appear to be the intent of this section, which shows it as optional. See **23-3B-1010(B)(2)(c)** for details.

**23-3E-4060.** This section states that “the Housing Director shall establish reporting, monitoring, and enforcement mechanisms and procedures for implementing the S.M.A.R.T. Housing Policy and Program.” If such procedures already exist, please provide a link or citation to those procedures. If they do not, please specify how the procedures will be established (by administrative rule or another mechanism), when/whether they will be available for public comment and how/where they will be posted.

**Division 23-3E-5. Additional Affordability Incentives**

**23-3E-5010(A). Two issues:** (1)This section states that an “applicant who provides income-restricted affordable units as verified by the Housing Director may request a parking adjustment…”. Does this allow an applicant providing as little as one 80% MFI efficiency to apply for a parking adjustment or will a higher trigger be required? Also**, Table 23-4E-3060.A**, which provides parking adjustments, makes no mention of adjustments for affordable housing. Please define “income-restricted affordable units” in this context, including percentage of units and MFI requirements and the percentages of allow parking adjustments, and please add this information to the Off-street Motor Vehicle Parking Adjustments Table at 23-4E-3060.A.

(2)This section further states that the applicant may request a parking adjustment “in compliance with **Article 23-4D** (Specific to Zones).” However, in **Table 23-4D-2040(A**), which provides on-site parking requirements for that Article, affordable housing would clearly fall under the “All Residential” use, which requires one parking space per unit. The table does allows the Planning Director to determine parking requirements for “all other uses,” but unless affordable housing is specifically called out as an “other” use, the plain language meaning of this section would place it under “All Residential,” thus requiring one space per unit. To avoid confusion, please add a footnote in **Table 23-4D-2040(A**) specifically denoting affordable housing as an “other use.”

**23-3E-5010(B).** Please specify that these incentives apply only to individual sites containing income-restricted units, not the entire development as is currently drafted. The proposed incentives represent significant increases in entitlements so should limited to those units that actually provide affordable housing at 80% MFI or lower, not market rate units that may comprise up to 95% of a development under S.M.A.R.T. Housing.

**Section 23-3E-5010(B).** This section allows for increases in impervious cover for S.M.A.R.T. Housing developments in a number of Residential zoning categories. Such increases were provided as a potential tool for Neighborhood Plan areas, but no Plan area ever adopted this tool so there is no information about how or whether it has actually functioned.

Further, this subsection states that it applies in R1B, R1C, R2A, R2B, R2C, R2D, R2E, R3B, R3C, and R3D zones. However, those zones state that the Affordable Housing Bonus Program (AHBP) does not apply, which may lead the reader to believe affordable housing incentives that increase impervious cover bonuses would not apply either (while this Division is not technically part of the AHBP Division, they are both in the same Article and an impervious cover increase is, in fact, a bonus in the plain language sense of the word).

Further, these zones do not provide a footnote indicating that impervious cover may increase under affordable housing incentives; in fact, the only footnote on impervious cover in these zones states that it may actually be reduced to due to various factors, not increased. For clarity, please add a footnote to impervious cover section of affected zones stating that impervious cover may increase pursuant to this section, if that is the intended effect.

**23-3E-5010(B)(2).** Three questions/comments:

(a) Is this intended to allow duplex use in R1B and R1C where it is currently prohibited? If so, please add a footnote to those zones clearly stating this. If not, please rephrase as follows: “Where duplexes are allowed, on lots of at least 5000 square feet, a maximum of eight bedrooms for the entire duplex is permitted.”

(b) Does “eight bedroom maximum” mean per side or for the entire duplex? Please clarify the eight bedroom maximum; suggested language above should be sufficient.

(c) Please clearly state that this subsection does not waive occupancy limits for unrelated adults. This is especially important to ensure families with children – a protected class under the Fair Housing Act - have access to multi-bedroom units in S.M.A.R.T Housing.

**Division 23-3E-6: Affordability Impact Statements**

**23-3E-6010(A).** Please specify the process by which the Housing Direct may adopt guidelines or rules to implement this Division.

**23-3E-6010(B)(4).** This states that “if an AIS [Affordability Impact Statement] shows a potentially negative overall impact on housing affordability, the proposed change may only go forward after approval from the City Manager.” Please specify that this restriction applies only to administrative rules or guidelines, not city ordinances. Unlike rules and guidelines, proposed city ordinances follow an extensive and well-defined public process, and there may be cases in which a proposed ordinance could be deemed to have a negative impact on household affordability, but have a positive impact on other important city goals. Where interests and priorities must be balanced, that decision should rest with City Council, not an unelected official.

**E. Typos and Formatting Corrections**

**Table 23-3E-1040(A) Bonus Calculation, Footnote 4.** Missing word - should be ‘or that serves residents’.

**23-3E-1 p. 5.** These charts appear to be the example calculations that were missing from Draft 1, but are not indicated as such. Please label them “Example Calculations” for clarity.