



# City of Austin

## Development Incentive Programs and Agreements

### Guide to Income Determination, Rents, Compliance, and Monitoring

Effective Date: October 1, 2015  
Revised: July 1, 2020

The City of Austin's Development Incentive Program allows developments to achieve greater height and density or a reduction in parking in exchange for providing affordable housing and other community benefits.

The purpose of this document is to provide an overview of requirements for Income Determination, Rents, Compliance, and Monitoring for projects that have opted to participate in a Development Incentive Program with an affordable housing requirement. Please note that income and rent limits guidelines for University Neighborhood Ordinance (UNO) developments may be found in a separate document entitled "University Neighborhood Overlay: Guide to Affordability, Income Determination, Rents, Compliance and Monitoring."

This guide may be found on the Neighborhood Housing and Community Development (NHCD) Department website under Monitoring and Compliance Guidelines and Documents: <http://austintexas.gov/page/development-incentives-and-agreements>

Development Incentive Programs include: S.M.A.R.T. Housing, Vertical Mixed Use (VMU) Density Bonus, Transit Oriented Development (TOD) Density Bonus, Downtown Density Bonus (DDB), Rainey District Density Bonus, North Burnet Gateway (NBG) Density Bonus, East Riverside Corridor (ERC) Density Bonus, Affordability Unlocked and negotiated Development Agreements.

The City of Austin's Neighborhood Housing and Community Development (NHCD) Department monitors all properties with an affordable housing requirement for the duration of the required affordability period.

The Income Determination, Rents, Compliance, and Monitoring Guidelines are not intended to address every circumstance that may be encountered, nor are they a verbatim restatement of all requirements. Omission of any requirements does not relieve the City or the Property Owner/Manager from their respective obligations that may be required under the approved Development Incentive Program, as amended.

The Owner is the responsible party for ensuring compliance with the applicable rules, regulations and policies that govern the development incentive and shall make certain that all requirements are met on an on-going basis. Fair Housing training and compliance training is highly recommended on a continuous basis because of the frequent staff changes.

Guideline changes as a result of local regulatory or legal requirements may be implemented immediately by NHCD. Revision of the guidelines usually occurs annually, however, additional revisions can be initiated by the NHCD Housing Director at any time.

For additional information or questions, please visit the Neighborhood Housing and Community Development website at <http://www.austintexas.gov/department/housing-developer-assistance>, call (512) 974-3100, or email [NHCD@austintexas.gov](mailto:NHCD@austintexas.gov)

## **PRE-DEVELOPMENT REQUIREMENTS**

### **Letters of Affordability & Restrictive Covenants**

Any housing development project that participates in a Development Incentive Program and is subject to an affordability requirement will be issued an Affordability Certification Letter, which summarizes the affordability requirements for the development. To receive an Affordability Certification Letter an applicant must submit a completed application, with all required attachments, to the Neighborhood Housing and Community Development Department. If the application is approved, NHCD will issue the letter declaring that the project, in its preliminary stage, meets the applicable Development Incentive Program's requirements. Additionally, if a project is requesting to participate in the S.M.A.R.T. Housing Program a separate application and Affordability Certification Letter will be required. If changes are made to the project through the review/development process, the applicant must notify NHCD and a revised Affordability Certification Letter will be issued.

Prior to issuance of any building's Certificate of Occupancy, NHCD will place an administrative hold on each building permit until the following items have been completed:

1. The project's architect submits a sealed calculation of the project's total and bonus square footage, if the applicant has opted to pay a fee-in-lieu to satisfy part or all of their project's affordability obligation.
2. NHCD has received payment of the total fee-in-lieu due.
3. The project's landowner has executed a Restrictive Covenant to be recorded by the City in the Official Records of Travis County. The Restrictive Covenant will include, at a minimum, the following information:
  - The project's applicable Development Incentive Program;
  - The Median Family Income (MFI) limits for eligible tenants;
  - The number of required affordable units;
  - Whether a fee-in-lieu is being paid to satisfy part or all of the project's affordability requirements;
  - The required rent limit; and
  - The required affordability period (based on number of compliant years).

## **COMPLIANCE**

**A determination of compliance is subject to:**

- 1) Verification of Eligible Households**
- 2) Implementation of Required Rent Limits**

1. **Project Occupancy Restrictions:** Property Owners/Managers must ensure the minimum set-aside requirement for affordable units or square footage is maintained throughout the affordability period.
2. **Lease Agreement Requirements:** Each lease or rental agreement that the property uses must contain provisions(s) that inform the resident that the Property Owners/Managers have relied on the Income Certification and supporting documents provided by the applicant/resident that establish their eligibility for residency in one of the affordable units. A statement must also be present that informs the applicant/resident that any material misstatement in such certification (whether intentional or not) may be cause for immediate termination of the lease. The lease must also inform the resident that their residency is also subject to annual recertification. Lease agreements must be a minimum of 12 months to meet the compliance provisions of the City of Austin's affordability requirements.
3. **Fees:** Non-Optional fees are fees for services, amenities, views, or any charges that are considered to be mandatory. These fees **must** be included in the maximum rent published by Neighborhood Housing and Community Development Department with the exception of the following:

Utilities:

- Gas Service
- Electric Service
- Water Service
- Wastewater Service
- Clean Community Service
- Solid Waste Services
- Drainage Service
- Street Service

4. **Tenant File:** The property owner or manager shall maintain a tenant file for each required affordable unit. The file, at a minimum, must contain the following and be retained on-site for a period of no less than 4 years after the date the lease has expired.
  - A. Rental Application
  - B. Current Lease and Subsequent Lease Renewals
  - C. Income Eligibility/Verification Forms, including source documentation and household income calculation
  - D. Annual, lease renewal income recertification, including Income Eligibility/Verification Forms, income source documentation and household income calculation
  - E. NHCD-approved Household Income Documentation Forms
  - F. HUD Median Family Income (MFI) Chart for original determination and subsequent renewals
  - G. NHCD published Rent Rate Chart used for establishing original base rent and subsequent renewals
    - i. Approved affordable base rents must include any "non-optional" fees.
    - ii. Any "optional" fees must be itemized separately and added to the approved affordable base rent.

5. **Determining Household Eligibility:** A household is defined as the total number of residents who occupy a unit or bedroom on an ongoing basis, this includes people under the age of 18. Household gross annual income may not exceed the percent of the Median Family Income (MFI) established by the applicable Development Incentive Program or Agreement. The Restrictive Covenant summarizes the affordability requirements for the property, including the

number of required affordable units, income limits, rent limits and length of time the units must remain affordable.

- A. Additional Household Members – If a tenant residing in an affordable unit wants to add an additional person to the household, the property owner/manager must collect the required income documentation to determine if the household continues to qualify under the income requirements.
  - i. All occupants of an affordable unit, must be income eligible.

The income limit is based on a percentage of the Austin-Round Rock Metropolitan Statistical Area Median Family Income (MFI). The MFI limits are determined and published annually by the United States Department of Housing and Urban Development Department (HUD). The current HUD chart may be obtained at: [www.austintexas.gov/housing](http://www.austintexas.gov/housing). It is the responsibility of the property owner and manager to be aware of the MFI limits in effect at the time a lease is signed. Eligibility must be determined prior to signing each new lease, lease renewal and/or annually.

It is important that management give clear consideration and have sound practices in place when applicants are rejected. The policy should state the reason for the denial. The rejection letter stating the reason for denial must be a part of the applicant’s file as proof that the household was notified of the decision.

**MEDIAN FAMILY INCOME LIMIT TABLE**

2020 HUD-issued Income Limits for the Austin-Round Rock Metropolitan Statistical Area (Effective 07/01/2020):

Median Family Income	1-Person Household	2-Person Household	3-Person Household	4-Person Household	5-Person Household
50%	\$34,200	\$39,050	\$43,950	\$48,800	\$52,750
60%	\$41,040	\$46,860	\$52,740	\$58,560	\$63,300
80%	\$54,700	\$62,500	\$70,300	\$78,100	\$84,350
120%	\$81,950	\$93,700	\$105,400	\$117,100	\$126,450

- A. **Calculating Income:** Income refers to the household’s gross annual income and is calculated using the gross amount of income from all sources before any payroll deductions. Tuition-related payments must be reported, but will not be counted as student income.
- B. **Documentation and Verification of Income for Rental Housing:** It is the responsibility of the property owner or manager to collect and maintain the documentation necessary to determine income eligibility of the applicant(s). All income determinations must not be more than six months older than the date of initial occupancy. The documentation must

be kept in the tenant file and the file must be kept on-site for a minimum of 4 years from the expiration date of lease. Use of NHCD-approved Income Determination Forms is required. All sources of regular continuing income for all adult household members must be declared by the applicant. All income determinations used to determine initial household income eligibility must not be more than six months older than the date the initial lease takes effect or any subsequent lease is renewed.

Income Verification Process

This process involves collecting documentation from an applicant(s) to determine the household's gross annual income. To determine eligibility, the following documents must be obtained for verification.

Employment	<ul style="list-style-type: none"> <li>• At minimum, 2 months' worth of consecutive paystubs. Pay dates must have occurred within the last 90 days.</li> <li>• Letter from Employer may be used if an applicant will be a new employee. The tenant will be required to follow up with the next two months' worth of pay stubs. If pay stubs reflect tenant is over income, then that unit is no longer considered an affordable unit.</li> <li>• Previous year's W-2 if less than 6 months old, a signed copy of the IRS return for each member along with the Affidavit of Unemployment if applicable. <b><u>This documentation is only to be used if the 2 months' worth of consecutive paystubs are not available.</u></b></li> </ul>
Social Security or Supplemental Social Security (SSI)	<ul style="list-style-type: none"> <li>• Current award letter(s) for benefits and/or dual entitlement benefits for deceased spouses, etc.), if applicable.</li> <li>• The income is not attributed to payee. It is attributed to the individual eligible for the benefit.</li> </ul>
Regular Pension/Retirement Benefits	<ul style="list-style-type: none"> <li>• Bring the latest check stub from the issuing institution or most recent account statement displaying gross benefit.</li> </ul>
Spousal or Child Support	<ul style="list-style-type: none"> <li>• Copy of court order.</li> <li>• Printouts are acceptable from the court or agency responsible for enforcing support payments or other evidence indicating the frequency and amount of support payments actually received.</li> <li>• If paid child support is not court-ordered, bring name, address, and phone number of individual providing the support, along with a signed certification from that individual indicating the amount of monthly support being paid.</li> </ul>
Unemployment	<ul style="list-style-type: none"> <li>• Copy of the unemployment letter or online benefits printout. <ul style="list-style-type: none"> <li>• This includes monthly benefits paid on debit cards</li> </ul> </li> </ul>
Regular Cash Contributions and Gifts, from persons not living in the unit	<ul style="list-style-type: none"> <li>• Statement or affidavit signed and dated by the person providing the assistance; giving the purpose, date(s), and value of each gift.</li> </ul>

	<ul style="list-style-type: none"> <li>• Full copies of the last 6 months of consecutive bank statements should be requested for review of cash deposits.</li> <li>• This source of income <b>must not exceed 30%</b> of the household's total gross annual income</li> </ul>
Student Financial Aid, from The University of Texas at Austin approved list	<ul style="list-style-type: none"> <li>• Financial Aid Award Letters indicating those loans/grant accepted</li> <li>• Documentation must identify the student name, the total amount awarded and accepted, as well as the portion of monies spent on tuition.</li> </ul>
Self-Employment	<ul style="list-style-type: none"> <li>• Six (6) consecutive months' worth of personal and/or business bank statements. <ul style="list-style-type: none"> <li>○ This information is used to determine the net income from operation of a business.</li> </ul> </li> <li>• Each bank statement must include the name of the applicant/resident, name of the banking establishment, the reporting period and all pages.</li> <li>• These statements will be used to document income in combination with other documentation, as needed.</li> </ul>

6. **Calculating Gross Annual Income:** The following equations must be used when calculating annual income. The equation used is dependent on the frequency that income is received.

- Paid Weekly
  - Hourly wage x average # hours per week x 52 weeks a year = Annual income
  - Weekly gross salary x 52 weeks a year = Annual income
- Paid Bi-Weekly (every other week)
  - Hourly wage x average # hours per bi-weekly period x 26 pay periods = Annual income
  - Bi-weekly gross salary x 26 pay periods a year = Annual income
- Paid Semi-monthly (twice a month)
  - Hourly wage x average # hours per semi-monthly period x 24 pay periods = Annual income
  - Semi-monthly gross salary x 24 pay periods = Annual income
- Paid Monthly
  - Monthly gross salary x 12 months = Annual income

7. **Rent Limits:** Rent Limits are the maximum rents that may be charged for a unit based on the MFI limit stipulated in the applicable Development Incentive Program's ordinance for the development. **Local, State or Federal funding maximum rent requirements will supersede these published rates.**

NHCD will set and publish the rental rates by bedroom count in these guidelines annually based on HUD's current income limits, unless project funding requires different rent rates.

## MAXIMUM RENT LIMITS TABLES (Effective July 1, 2020)

### S.M.A.R.T. Housing and Vertical Mixed Use (VMU) Density Bonus Programs

Median Family Income	Efficiency/ One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom	Five Bedroom
<b>60%</b>	\$957	\$1,093	\$1,230	\$1,366	\$1,477
<b>80%</b>	\$1,276	\$1,458	\$1,640	\$1,822	\$1,968

**Transit Oriented Development (TOD) Density Bonus, Downtown Density Bonus (DDB), Rainey District Density Bonus, North Burnet Gateway (NBG) Density Bonus, Affordability Unlocked (AU) and East Riverside Corridor (ERC) Density Bonus Programs**

Median Family Income	Efficiency/ One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom	Five Bedroom
<b>50%</b>	\$855	\$976	\$1,098	\$1,220	\$1,318
<b>60%</b>	\$1,026	\$1,171	\$1,318	\$1,464	\$1,582
<b>80%</b>	\$1,367	\$1,562	\$1,757	\$1,952	\$2,108

**Development Agreements**

Development Agreement	Median Family Income	Efficiency	One Bedroom	Two Bedroom	Three Bedroom	Four Bedroom	Five Bedroom
<b>Mueller</b>	<b>60%</b>	\$1,026	\$1,098	\$1,318	\$1,523	\$1,699	\$1,875
<b>Robertson Hill</b>	<b>80%</b>	\$1,273	\$1,273	\$1,640	\$1,967	N/A	N/A
<b>Domain</b>	<b>65%</b>	\$1,036	\$1,036	\$1,184	\$1,332	\$1,480	\$1,599
<b>AML I on 2<sup>nd</sup></b>	<b>80%</b>	\$1,276	\$1,276	\$1,458	\$1,640	\$1,822	\$1,968
<b>Southshore and Estancia</b>	<b>60%</b>	\$957	\$957	\$1,093	\$1,230	\$1,366	\$1,477
<b>Northshore (GWTP)</b>	<b>80%</b>	\$1,367	\$1,367	\$1,640	\$1,895	N/A	N/A

Rental rates may vary from rates published here in accordance with other requirements specified by a specific development's Development Agreement.

**Optional and Non-optional Fees:**

- Approved affordable base rents must include any "non-optional" fees. See above list of approved non-optional fees. The approved non-optional fees must be itemized separately.

- Any “optional” fees must be itemized separately and added to the approved affordable base rent.

## MONITORING

Monitoring of the Development Incentive Program is a requirement. Monitoring will be carried out in a variety of formal or informal ways and methods. These include on-site reviews; desk reviews or other verbal and written exchanges with the property owner/manager or with tenants.

1. **Monitoring:** The project may be monitored initially within twelve (12) months from the date of issuance of the Certificate of Occupancy. After the initial lease-up period, the project may be monitored annually or as needed to ensure continuing compliance with project’s affordability requirements. Monitoring may take the form of a desk review or on-site review.

**NHCD or its designee, reserves the right to examine all income eligibility records and reserves the right to request additional, supplemental documentation to determine eligibility.**

2. **Records Retention:** All tenant files, pertaining to the affordable units, must be retained for a period of no less than four (4) years after the date the lease or lease renewal has expired.
3. **Monitoring Notice:** A notice will be provided at least 14 days in advance of the scheduled monitoring visit.
4. **Follow-up Monitoring Letter:** A follow-up monitoring letter will be completed and mailed no later than 30 days from the date of the monitoring visit. The monitoring letter is utilized to document any findings, deficiencies, or concerns identified by the reviewer. It is important to explain if some items are more important than others.
  - A. A "finding" is issued if it is discovered that the property owner/manager has materially been out of compliance with any major requirements. Each finding will be adequately described and documented and accompanied by date specific remedies.
  - B. A “deficiency” is somewhat less serious than a finding. Like a finding, it will be clearly described, and the property owner/manager will be given a specified amount of time to correct the deficiency.
  - C. A "concern" is the least serious of the three categories. It is often used to "head off trouble," alerting the property owner/manager that this is an area that should be given some attention.
5. **Program Noncompliance:**
  - A. Performance review: If the determination is that the Property Owner/Manager has not met the program requirements, the Property Owner/Manager will be given notice of this determination and an opportunity to demonstrate, within the time prescribed by NHCD (not to exceed 30 days) and on the basis of substantial facts and data, that it has done so.
  - B. Corrective and Remedial Actions: Corrective or remedial actions for a performance deficiency (failure to meet program requirements) will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence. NHCD may instruct the Property Owner/Manager, depending upon the severity of non-compliance, to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, including but not limited to:
    - a. Request the Property Owner/Manager to submit additional information;
    - b. Issue a letter of warning that advises the Property Owner/Manager of the deficiency and puts them on notice that more serious actions will be taken if the deficiency is not corrected or if it is repeated;
    - c. Prepare and follow a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;



- d. Establish and follow a corrective action plan that assigns responsibilities for carrying out the remedial actions; and
  - e. Take other remedies that may be legally available.
- C. Correction Periods: After a notice of noncompliance is received, a Property Owner/Manager shall have up to 30 days to correct the finding. All noncompliance violations must be cleared within the timeframe allowed.

### **GENERAL REQUIREMENTS**

1. **Compliance with Fair Housing and Equal Opportunity Laws:** All properties must comply with applicable federal, state and local fair housing and anti-discrimination laws in the marketing and provision of housing. Applicants cannot be discriminated against based on race, color, national origin, sex, age, disability, religion, or familial status.
  - A. Occupants of affordable housing units shall have access to all on-site amenities available to market-rate units, including the same access to common areas and facilities afforded to occupants of market-rate units.
2. **Verification Forms:** Use of the City of Austin Income Verification Forms is required. All income documentation to support household income eligibility must be kept in each tenant file.
3. **Renewals:** Verification of household income eligibility is required upon execution of each lease renewal and/or annually. Tenant's must complete a new Income Verification Form upon lease renewal and/or annually.
4. **On-going Qualified Unit and Tenant:** A unit occupied by an eligible household will continue to be counted as an affordable unit until it is determined that the household's gross annual income exceeds the 120% MFI. If, upon lease renewal, the household's income is determined to exceed 120% MFI, the unit is no longer considered an affordable unit and the property owner/manager must ensure the next unit available is leased to an income-eligible household.

Rental amounts may be adjusted not more than once in any 12-month period for residents who renew and whose income exceeds the required income limit. The renewal rental rate may not exceed 28% for S.M.A.R.T. Housing and VMU projects, and 30% for all other Density Bonuses of the household's average gross monthly income.

5. **Affordability Period:** The affordability period is determined by the applicable Development Incentive Program

The project will be released from the affordability obligation after compliance has been achieved for the required number of years in the affordability period.

**These guidelines will remain in effect until further notice.**