

# Density Bonuses: Boon or Boondoggle?

*James B. Duncan, FAICP, CNU*

First, it should be noted that a density bonus system is just the bartering of something a developer wants – more entitlements - for something the public wants – more community benefits.

In a sense, it can be considered legalized contract zoning!

# Density Bonuses: Legal Basis in Texas

*Texas Local Government Code, Section 214.905. PROHIBITION OF CERTAIN MUNICIPAL REQUIREMENTS REGARDING SALES OF HOUSING UNITS OR RESIDENTIAL LOTS.*

*(a) A municipality may not adopt a requirement in any form, including through an ordinance or regulation or as a condition for granting a building permit, that establishes a maximum sales price for a privately produced housing unit or residential building lot **(Note that this does not apply to rental housing).***

*(b) However, this section does not affect any authority of a municipality to:*

*1) create or implement an **incentive**, contract commitment, **density bonus**, or **other voluntary program** designed to increase the supply of moderate or lower-cost housing units; or*

*2) adopt a requirement applicable to an area served under the provisions of Chapter 373A which authorizes **homestead preservation districts**.*

Texas cities are very limited in what they can do when it comes to requiring developers to provide affordable housing.

State law clearly prohibits cities from “establishing a maximum sales price for private housing.” However, cities can enact “voluntary” incentivized programs, such as density bonuses.

In fact, it is one of the only tools still available to cities after the legislature outlawed housing linkage fees this past session.

## Density Bonuses in Austin: What Staff Considers a “Success,”

*“As of June 2016, the City’s density bonus programs have created 1,653 units, predominantly for households earning less than 80% of the median family income. For perspective, if the City of Austin had to subsidize these units, the cost would have been approximately \$62.8 million. This assumes a per unit subsidy of \$38,000, which is the average for the 2013 Affordable Housing Bond Program.*

*Ninety-six developments have participated in a density bonus program, with the University Neighborhood Overlay program producing most units. Currently, some programs allow developers to pay a fee in lieu of providing affordable housing on-site. Fees are utilized to help subsidize additional income-restricted units throughout the city and to date, over \$4 million in fees-in-lieu payments have been generated from the density bonus programs.”*

Since 2004, Austin has adopted eight density bonus programs.

And if you only listen to staff, you would think that those bonus programs were an award-winning national “best practice.”

For example, staff proudly points out that, over the past 13 years, density bonuses have produced over 1,600 affordable units and \$4 million in fees for a total value of over \$64 million.

What they fail to realize is that the City permitted almost 100,000 TOTAL dwellings worth over \$30 BILLION during that same period compounding our need for affordable housing.

It was a case of “the faster we grow the behinder we get.”

**In perspective, we “coulda and shoulda” have done better!**

## Density Bonuses in Austin: Others Have Serious Concerns,

*"Programs to incentivize below-market housing need to be clear, effective, easily implementable and uniform... Austin's current density bonus programs are **vague and hard to follow** as their **regulations vary widely**."*

*Wade Tisdale, RECA President*

*"Austin has 12 different density bonus programs. ... (but) **no cohesive strategy** to achieving community benefit. ... The problem is **too many programs, tremendous inconsistency** and **immense unpredictability**."*

*OTAK Consultants*

*"If we are serious about creating affordable housing in all parts of town, I believe we need to really look carefully at our density bonus programs and consider whether those wouldn't be **more appropriate for onsite units**."*

*Kathie Tovo, Mayor Pro Tem*

*"I do not favor giving tools being discussed by CodeNext across the board to developers. The only entity we should ... trust with the tools of radical density, new housing types and waivers ... is the neighborhood."*

*John Henneberger, Housing Advocate*

If you also listen to those outside city hall, you soon realize that Austin's use of density bonuses is not so universally applauded.

While the City has given away many millions of dollars worth of entitlements, its efforts have been criticized as lacking uniformity, predictability, consistency, clarity and a cohesive strategy; and underperforming in the actual production of affordable housing.

It has also been criticized as letting real estate representatives and developers have too big a role in designing the programs.

**Sort of like letting the "fox design the henhouse!"**

## Density Bonuses in Austin: Including the American-Statesman

### ***“Are Developer Incentives for Affordable Housing Working?”***

*“As the city rewrites its land-use rules, one gadget in Austin’s toolbox to expand affordable housing – the density bonus program — is raising questions about whether it addresses the needs of low-income families with children, among those most in need of housing help.*

*At this point, city officials told us they don’t know whether housing generated by density bonus programs is mostly serving college graduates working in coffee shops, seniors on fixed incomes or low-income working mothers... Smaller units that accommodate single people are in high demand. Moreover, they cost less to build. Hence, the trade-off between the city and developers typically boils down to getting more, smaller affordable units that aren’t family-friendly and fewer multiple-bedroom units that accommodate families with children. ...*

*Given the stakes, the city should slow its march in expanding density bonus programs until it can answer the question.”*

*Editorial Board, Friday, August 25, 2017*

Just this past weekend, the Statesman editorially expressed its concern about density bonuses, asking if they truly addressed ***“the needs of those most in need of housing help.”***

***“At this point, city officials told us they don’t know whether housing generated by density bonus programs is mostly serving college graduates working in coffee shops, seniors on fixed incomes or low-income working mothers.”***

***“Given the stakes, the city should slow its march in expanding density bonuses until it can answer the question.”***

# City Audit Rips Bonus Program

## Summary Findings:

- **No effective strategy** to create housing with deeper affordability, longer affordability and geographic dispersion.
- **Incomplete and inaccurate data** limits ability to evaluate program success and provide accurate information to public and decision makers.
- **Gaps in monitoring process** limits ability to enforce affordability restrictions and do not ensure the achievement of adopted core values.



Flaws in FY 2012-2014 Production Data Resulted in Overstated Outcomes

NHCD Reported Affordable Housing Units			OCA Calculation of Affordable Housing Units				
	Directly Funded Programs	Developer Incentive Programs	TOTALS		Directly Funded Programs	Developer Incentive Programs	TOTALS
FY 2012	551	953	1504	FY 2012	551	298	849
FY 2013	183	1465	1648	FY 2013	183	358	541
FY 2014	113	1749	1862	FY 2014	113	529	642
TOTALS	847	4167	5014	TOTALS	847	1185	2032

NHCD overstated production by approximately 3,000 units

A 2015 City audit indicated that Austin's density bonus efforts were a management mess and ineffective deliverer of affordable housing. It exposed them as rudderless and resource-deprived.

The audit pointed out, for example, that only one employee had been assigned to coordinate, monitor and maintain the program. And that staff claims of accomplishment were greatly inflated.

# Bonus Program Diagnosis

		Inconsistent MFIs ▼			Period too short ▼		Questionable conditions ▼
Density Bonus Program	Year Adopt	Percent MFI Own	Percent MFI Rent	Percent Affordable	Period (years)	FIL (psf)	Special Conditions
West Campus	2004	65	65	10% uts	15	\$1	Limited to net rentable area
Rainey Street	2005	80	80	5%	none	none	
Planned Unit Development	2008	80	60	5%/10% uts	99/40	\$6	FIL requires Council approval
Downtown	2009	120	80	10% uts	99/40	\$3-\$10	Affordable housing = min 60%
Transit oriented Development	2009	varies	varies	10% BA	99/40	\$10	
Burnet Gateway	2009	80	60	10% BA	99/40	\$6	FIL requires NHCD approval
Vertical Mixed Use	2010	100-80	80-60	5%/10% uts	99/40	none	
East Riverside	2013	80	60	4:1	99/40	\$.50	FIL limited to 90'+ buildings
				Percent inconsistent ▲		FIL ▲ too low	

A quick objective look at Austin's eight existing bonus programs:

Over the past 13 years, the City has adopted eight programs, all of which have been a functional disappointment and are way overdue for a thorough and comprehensive review and revision.

Many formula components, such as tenure periods (guaranteed years), eligibility thresholds (MFI levels), affordability thresholds (restricted units) and fee-in-lieu levels (buy-out options) need a relook based on changing times, new data and updated policies.

For example, fee-in-lieu options for West Campus and East Riverside are set so low (\$1 and 50 cents) that it makes no sense for a developer to provide on-site affordable housing.

For some reason, however, NHCD staff has specifically recommended that these programs not be revisited or revised.

# Strategic Housing Blueprint

## Implement Consistent Density Bonus Programs for Centers and Corridors:

- The revised Code should implement a consistent density bonus program for Imagine Austin Activity Centers and Corridors where larger buildings are deemed acceptable.
- The City should incentivize and provide additional opportunities for housing units with two bedrooms or more, particularly in high opportunity areas.

TOOL	BLUEPRINT STARTS 10-YEAR ESTIMATE - AFFORDABLE UNITS	METHODOLOGY
Density Bonus Programs (Affordability Period: 15-60 Years)	1,450	1) Includes the following density bonus programs: University Neighborhood Overlay, Transit Oriented Development, Vertical Mixed Use. Rainey excluded due to no minimum affordability period requirement. 2) Assumes average annual production of 145 units based on production between 2005 and 2015. Breakdown: 1,165 (program production) / 8 Years (time period from sample) = 145 units per year. 3) Affordability Periods vary, e.g. TOD = 40, UNO = 15-40, VMU = 40-60.
Other Tools (Affordability Period: 10-40 Years)	47,716	Reflects 60,000 (affordable unit goal) - 21,027 (sum of other estimates featured). Other Tools may include, but are not limited to: Tax Increment Financing, Homestead Preservation Districts, Planned Unit Developments (PUDs), Expanded Density Bonus Programs, and a restructured S.M.A.R.T. Housing Program with extended affordability periods maintaining use of impact fees in accordance with state statutes. The existing S.M.A.R.T. Housing Program was created in 2007, and calls for a 1-5 year affordability period.

Austin's adopted ***Strategic Housing Blueprint*** recommends the expansion of density bonuses to "corridors and centers" and the initiation of a new focus on "missing middle" housing, but not a review and revision of its many problematic current programs.

NHCD has also predicted existing bonus programs will produce only 145 affordable units annually over the next decade, which is essentially the same production rate as the last decade.

**Such a prediction is sort of like running in place, isn't it?**

## Staff Recommendation

In addition to territorially expanding Austin's density bonus program, NHCD recommends:

- Explore possibility of extending affordability periods.
- Add Housing Choice Voucher to density bonus programs.
- Amend TOD to minimize requests for fee-in-lieu option.
- Define how to determine if fees-in-lieu are "compelling."
- Identify factors that lead developers to request fees-in-lieu.
- Include affordable housing benefits in PUD Tier 1 review.

*(NHCD does not recommend interim changes to ERC or UNO)*

For a program with so many problems and much potential, NHCD recommendations are surprisingly tepid and timid. In addition to expanding the program territorially, they recommend that the city:

- Explore the possibility of extending affordability periods.
- Add Housing Choice Voucher to density bonus programs.
- Amend TOD to minimize requests for fee-in-lieu option.
- Define how to determine if fees-in-lieu are "compelling."
- Identify factors that lead developers to request fees-in-lieu.
- Include affordable housing benefits in PUD Tier 1 provisions.

Staff also specifically states that it does not recommend making any changes to the West Campus and East Riverside programs, which is very curious since they are two of the most out-of-sync.

## Better Recommendation

**Before expanding the density bonus program, Austin should first improve existing programs:**

- Extend affordability periods for West campus and Rainey.
- Allow fee-in-lieu options for Rainey Street and VMU.
- Base West Campus on gross floor area, rather than net.
- Allow bonuses for non-residential, as well as residential.
- Require certain percent of all units to be multi-bedroom.
- Give low-income families with children housing priority.
- Achieve deeper affordability by lowering MFI thresholds.
- Adjust fees-in-lieu to be in sync with actual housing cost.

. As stated, it is believed that staff recommendations for density bonuses are too limited and that the City should also entertain the following recommendations relating to existing programs:

- Extend affordability periods for West campus and Rainey.
- Base West Campus on gross floor area, rather than net.
- Allow fee-in-lieu options for Rainey Street and VMU.
- Allow bonuses for non-residential, as well as residential.
- Require certain percent of all units to be multi-bedroom.
- Give low-income families with children housing priority.
- Achieve deeper affordability by lowering MFI thresholds.
- Adjust fees-in-lieu to be in sync with actual housing cost.



Thank You!

While density bonuses in Austin have not yet produced as much affordable housing as they should have, it is certainly not because the concept is bad or that there has been no growth.

It is solely because they have been poorly designed, staffed, managed, monitored, maintained, executed and enforced.

**We can do much better! And the sooner the better!**

**Thank You!**