

ETOD Overlay Phase 1 – Planning Commission Amendments and Staff Responses

	Planning Commission Amendment	Staff Recommendation	Staff Response	Text Changes
1	Minimize the redevelopment of existing naturally occurring affordable housing by adding an adapted multi-family redevelopment requirement. For redevelopment with an existing multi-family structure, an applicant must: (1) replace all existing units that were affordable to a household earning 60 percent MFI or below in the previous -24 months and have at least as many bedrooms as those units; (2) provide current tenants with notice and information about the proposed development with a timeframe of 180 days consistent with requirements adopted under Section 25-1-711 (Purpose, Applicability, Exceptions And Definitions), Section 25-1-712 (Tenant Notification Required), Section 25-1- 713 (Additional Notice Requirements), and Section 25-1-717 (Offenses) and allow tenants to terminate leases without penalty or prejudice during the period for which notification is provided; (3) pay a tenant relocation fee established by separate ordinance as a condition of approval. The Housing director shall deposit a fee imposed under this section into the Developer Fund for Tenant Relocation Assistance, which is established under this section. The director shall use the fund to provide tenant relocation assistance to eligible tenants at the development or site for which the payment was made, consistent with requirements adopted under Section 25-1 714 (Tenant Relocation Program); and (4) grant income-eligible current tenants the option to lease one of the affordable units a unit of comparable affordability and size following completion of redevelopment. Grant all other tenants the option to lease a unit of comparable affordability and size following completion of redevelopment.	Policy/Programmatic/ Future Action	Staff’s ETOD Overlay proposal requires compliance with Section 4-18-32. Planning Commission’s proposed amendments to the redevelopment requirements would result in less protection for existing multi-family development. Section 4-18-32 (A) (1) (a) requires that to be eligible to participate in the density bonus program, the existing multi-family structure must require extensive repairs for which costs will exceed 50 percent of the market value. The Planning Commission recommends amending the redevelopment requirements to remove this requirement, which would mean all multi-family could redevelop, even new construction. The intent of this regulation is to discourage the redevelopment of decently maintained multi-family buildings that are already serving existing tenants. Staff does not recommend the removal of this requirement, as it is not in alignment with the ETOD goals as expressed in the ETOD Policy Plan. Staff is comfortable with part (1) of the Planning Commission recommendation, but we recommend income restricting the replacement units for a period of 40 years, which is updated in staff’s proposal for updates to Chapter 4-18 (on the May 16, 2024, Council agenda). Related to part (2) of the Planning Commission recommendation, Section 25-1-711 (Purpose, Applicability, Exceptions and Definitions), Section 25-1-712 (Tenant Notification Required), Section 25-1- 713 (Additional Notice Requirements), and Section 25-1-717 (Offenses) are already required for multi-family redevelopment. The City is exploring the possibility of lease termination provisions as part of an incentive program. Related to part (3) of the Planning Commission recommendation, staff interprets this to be a replacement for Section 4-18-32(3)(b), which requires relocation benefits consistent with the Federal Uniform Relocation Act (URA). The City is exploring an alternative to URA but is concerned about the legal risks and staff capacity required for administering a relocation assistance fee. Staff is supportive of part (4) of the Planning Commission recommendation but has provided some clarification that the lease period would be 12 months, which is updated in staff’s proposal for updates to Chapter 4-18 (on the May 16, 2024, Council agenda).	General recommendation not in the scope of these code amendments.
2	Create a process by which some of the requirements in Subsection (J) can be waived or appealed in special circumstances, for example when the existing multi-family structure may pose a health hazard for existing tenants, requiring extensive repairs.	Policy/Programmatic/ Future Action	Staff does not recommend a waiver process because it would be counter to the goal of the redevelopment requirements and could incentivize building managers or developers to allow for disrepair to occur. Chapter 4-18 already includes an appeal process in Section 4-18-32 B, which allows developers to appeal the building official’s decision regarding the value of the repairs.	General recommendation not in the scope of these code amendments.
3	Provide a report on at least a bi-annual (every six months) basis, describing the usage/impact of the ETOD density bonus program, including yields of affordable housing (on-site and fee in lieu), usage of fee-in-lieu funds, number of total residential units created, commercial space developed or redeveloped, and other key metrics including equity impacts The report should include recommending making associated changes to the Land Development Code.	Policy/Programmatic/ Future Action	In general, staff supports providing information and data on Land Development Code changes to the public. ETOD implementation and related reporting is already planned as directed by Council via Resolution No. 20230309-016, and staff will consider which aspects of this recommendation from the Planning Commission can be incorporated into that broader effort. The particular scale of this request, including equity impacts and ongoing recommendations for land development code changes, would require reprioritization of staff time and additional resources.	General recommendation not in the scope of these code amendments.

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4	Once the final Austin Light Rail station selection has been made, review and revise this ordinance to ensure it is aligned fully with Project Connect	Policy/Programmatic/Future Action	Staff will consider this recommendation during future phases of the ETOD Overlay, anticipated for Council consideration in Spring 2025.	General recommendation not in the scope of these code amendments.
5	Update certain prohibited and commercial uses. Move the following uses from prohibited to conditional uses. <i>Automotive Sales</i> <i>Automotive Rentals</i> <i>Automotive Repair Services</i> <i>Limited Warehousing and Distribution</i> <i>Horticulture</i>	Recommended with changes	Staff recommends moving Limited Warehousing and Distribution and Horticulture from the prohibited list to the conditional list. This will be included in the updated staff version of the ordinances. Staff does not recommend moving Automotive Sales, Automotive Rentals, and Automotive Repair Services from the prohibited list to the conditional list. Automotive-oriented uses such as these do not support our mobility goals near the future light rail. Existing uses that fall under these three categories would continue to be able to operate as legal nonconforming uses.	Incorporated with changes into the staff version of the ordinance.
6	Remove ETOD redevelopment requirements (strike lines 157 – 165).	Not recommended	Redevelopment requirements that provide opportunities for existing creative spaces, childcare centers, and small, legacy businesses in incentivized redevelopment are consistent with the goals of the Equitable Transit-Oriented Development Policy Plan. The replacement offered by the Planning Commission (see recommendation 18 below) significantly weakens redevelopment requirements from the staff proposal. Preliminary consultant analysis suggests that over 2,000 small businesses may face displacement if there is not a requirement for provision of comparable, affordable leases in redeveloped properties, including approximately 70 creative spaces and venues and 70 childcare centers. Small business failure rates increase substantially after forced relocations, and preservation of creative spaces, childcare, and established small, public-facing businesses in these successful economic and cultural districts is a priority for maintaining a strong tax base, maintaining civic infrastructure, and preserving the City of Austin’s unique culture, character, and heritage.	No changes made to the staff version of the ordinance
7	Fully implement the ETOD Policy Plan, including programs requiring funding	Policy/Programmatic/Future Action	Staff is supportive of implementing the full ETOD Policy Plan, as was directed by Council via Resolution No. 20230309-016.	General recommendation not in the scope of these code amendments.
8	Consider holding fee-in-lieu to a higher bar. Staff to consider the following revision: At a minimum the fee-in-lieu shall be equivalent to 125% of the required percentage of the total residential units, including the mix of bedrooms required, at the rate set in the fee schedule at the time of final site plan submission.	Recommended	Staff recommends this change.	Incorporated into the staff version of the ordinance.
9	Staff to consider the following addition: Mechanical equipment may not produce sound in excess of 70 decibels measured at the site's property line that is shared with a triggering property. Between the hours of 10 pm and 10 am, mechanical equipment may not produce sound in excess of 45 decibels measured at the site's property line that is shared with a triggering property.	Recommended with changes	At this time, staff recommends maintaining the current 70dBA limit for mechanical equipment and proposes increased screening requirements for rooftop and ground-level mechanical equipment to reduce noise. After discussions with the Development Services Department, it was clear that increased screening requirements would be the most proactive measure to mitigate noise rather than a reduced decibel limit. Lowering the decibel limit without time for a full review by staff could lead to unintended consequences. As part of a future work program, staff recommends creating holistic noise limits that can be enforced regardless of the applicability of compatibility and that are in line with those in peer cities. Additionally, since noise is not a zoning regulation, noise limits should be housed outside of the zoning code going forward. Until there is a more comprehensive	Incorporated with changes into the staff version of the ordinance.

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			approach to controlling excessive noise, staff recommends maintaining the existing protection from noise above 70dBA. Further, “mechanical equipment” may be inclusive of equipment necessary to operate light rail transit in the ETOD Overlay area. Additional review from staff would be necessary before including this provision as written to ensure amending noise regulations would not impact light rail operations throughout the corridor.	
10	In future ETOD efforts, staff shall evaluate the benefits and feasibility of zoning State property to bring these properties in line with desired development standards and regulations if the property were sold as surplus.	Policy/Programmatic/ Future Action	Staff is supportive of considering application of the ETOD Overlay to additional properties, including unzoned State property, when planning future phases of the ETOD Overlay (anticipated for Council consideration in Spring 2025). However, Council would need to provide staff direction on what base zone(s) should be proposed for currently unzoned property, as it is not possible to apply the ETOD Overlay (which consists of two combining districts) without applying a base zone too.	General recommendation not in the scope of these code amendments.
11	Recommend that Commercial Off-Street Parking be recategorized as Prohibited Use	Policy/Programmatic/ Future Action	Staff will consider this recommendation during future phases of the ETOD Overlay, anticipated for Council consideration in Spring 2025.	General recommendation not in the scope of these code amendments.
12	Assess risks for existing affordable housing in the ETOD area and include protections for those at-risk of demolition. Also, assess the enforcement of similar provisions previously used in Affordability Unlocked and close loopholes.	Policy/Programmatic/ Future Action	The staff proposal is designed to minimize the impact on populations at risk of displacement by including multi-family redevelopment requirements in Section 4-18-32.	General recommendation not in the scope of these code amendments.
13	Use Project Connect Anti-Displacement funds for acquisition of existing affordable housing and properties with the potential for developing affordable housing at or below 50% MFI.	Policy/Programmatic/ Future Action	To date, the Rental Housing Development Assistance program has invested approximately \$32.3 million of Project Connect Anti-displacement funds across six separate developments for the construction of 534 housing units affordable to households earning less than 50% MFI. Of that, 112 units have been targeted for households earning less than 30% MFI. Additionally, Project Connect anti-displacement funds were deployed through the Ownership Housing Development Assistance program for the development of 53 ownership units affordable to households below 80% MFI. Through the Anti-Displacement Community Acquisition Program (ADCAP), four loans have been issued for the acquisition of four separate quadplexes. These 16 units are secured for long-term affordability through ownership and operation by Austin Revitalization Authority. Finally, the Austin Housing Finance Corporation (AHFC) Acquisition and Development program has acquired three developments for the preservation of 33 units affordable to households earning below 50% MFI and 36 units affordable to households earning below 30% MFI. Additionally, AHFC recently spent \$27 million in Project Connect funds to acquire the Tokyo Electron site located at Riverside Drive and Grove Boulevard. This property will be combined with the adjacent 18 acres owned by AHFC for a mixed-use, mixed-income transit-oriented development. The property and amenities will be designed and determined in concert with the community. For fiscal years 2020 – 2022, a total of \$21 million was allocated for the development of affordable housing, in addition to \$23 million for land acquisition, and other anti-displacement strategies through the Community-Initiated Solutions programs (\$20 million). Following Council Resolution 20200807-003, the Housing Department’s Displacement Prevention Division tracks the Project Connect anti-displacement funds through the Project Connect Anti-Displacement Spending Dashboard to show the spending of the \$300 million Project Connect anti-displacement funds that were approved by voters in 2020.	General recommendation not in the scope of these code amendments.

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14	Recalibrate to ensure it reflects increased market rate values and returns for developers. If units are below 60% MFI, fee-in-lieu should not be an option.	Policy/Programmatic/ Future Action	Recalibration will be considered during future phases of the ETOD Overlay, anticipated for Council consideration in Spring 2025. However, it is important to note that in the current ETOD Overlay proposal to be considered by Council on May 16, 2024, there are no fee-in-lieu options available for units at 60% MFI or below. Staff’s proposal only allows fee-in-lieu as an option for DBETOD developments offering units for sale, with the other option being to provide 12% of total units on-site as income-restricted to households earning 80% MFI or below.	General recommendation not in the scope of these code amendments.
15	Explore tax abatement or other programs for small businesses facing displacement due to property tax increases within the ETOD Overlay area.	Policy/Programmatic/ Future Action	The City of Austin does not currently have a Chapter 312 tax abatement policy for commercial tax abatement for small businesses and creatives, and it is unclear that areas in the ETOD Overlay area meet state requirements for commercial abatement districts. The Economic Development Department is developing a tax <i>reimbursement</i> program under Chapter 380 that will support new development that provides a community benefit of affordable commercial space. However, without additional redevelopment requirements to address commercial anti-displacement needs, and, given the scale of geographic impact of the ETOD Overlay, staff anticipate that relying on tax reimbursements alone will cause major budget impacts to the City that would leave the City outside a revenue-neutral position.	General recommendation not in the scope of these code amendments.
16	Create a Fee-in-Lieu Oversight Committee that would review the use of Fee-in-Lieu and make recommendations regarding the use of Fee-in-Lieu funds for the development of affordable housing, vouchers, etc. This committee should be made up in part by community members directly-impacted by the displacement crisis (low-income homeowners who are property-tax burdened, renters who are rent-burdened, and community members with lived experience of homelessness), as well as frontline community organizations that work with these communities.	Policy/Programmatic/ Future Action	It is important to note that in the current ETOD Overlay proposal to be considered by Council on May 16, 2024, there are no fee-in-lieu options available for units at 60% MFI or below. Staff’s proposal only allows fee-in-lieu as an option for DBETOD developments offering units for sale, with the other option being to provide 12% of total units on-site as income-restricted to households earning 80% MFI or below. The fee-in-lieu would go into the Housing Trust Fund for the Austin Housing Finance Corporation (AHFC) to offer gap financing for rental and ownership income-restricted developments under the Housing Development Assistance (HDA) program. The Housing Investment Review Committee (HIRC) is a group appointed by the Housing Director to review HDA funding applications, ensuring they comply with HDA Program Guidelines. In addition to the HIRC, staff would be supportive of providing updates on fees-in-lieu collected in the ETOD Overlay as part of ETOD updates to the Project Connect Community Advisory Committee.	General recommendation not in the scope of these code amendments.
17	Fee in-lieu. If affordable units are at or below 50% MFI, units should be built onsite in the ETOD/DBETOD and not subject to fee-in-lieu except where alternative areas for expanded affordable housing are identified so the fee in-lieu is actually going to expanding affordable housing and not steered to housing vouchers that can’t be used readily or timely because of large waiting lists. The exception would be for the downtown corridor provisions that provide fee in-lieu to permanent affordable housing or housing vouchers to house unsheltered Austin residents.	Policy/Programmatic/ Future Action	It is important to note that in the current ETOD Overlay proposal to be considered by Council on May 16, 2024, there are no fee-in-lieu options available for units at 50% MFI or below; all units at these income levels are required on-site. Staff’s proposal only allows fee-in-lieu as an option for DBETOD developments offering units for sale, with the other option being to provide 12% of total units on-site as income-restricted to households earning 80% MFI or below. All units offered for lease in DBETOD projects would be income-restricted and affordable to households earning either 60% MFI and below or 50% MFI and below.	General recommendation not in the scope of these code amendments.
18	Line 157 (2) If a site includes an existing non- residential use, the proposed development must:	Not recommended	Staff does not recommend this amendment, as it significantly weakens protections and support for certain qualifying non-residential spaces as compared to the staff proposal.	No changes made to the staff version of the ordinance

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	(a) provide current non-residential space operators with notice and information about the proposed development on a form approved by the director; and (b) grant a non-residential space operator the option to lease a non-residential space following the completion of redevelopment.		Planning Commission’s amendment (a) is consistent with staff’s proposal; therefore, staff is supportive of this portion of the recommendation. Planning Commission’s amendment (b) significantly weakens the option for priority businesses to lease a space post-redevelopment, as compared to the staff proposal. Staff’s recommendation would require that businesses be offered spaces of comparable size and that are affordable, while Planning Commission’s version would only require that existing businesses be offered a newly redeveloped non-residential space of any type, size, or cost. Additionally, Planning Commission’s recommendation entirely removes relocation assistance for priority businesses facing redevelopment. Small business failure rates increase substantially after forced relocations, so relocation support that helps a business re-establish itself elsewhere during construction of a DBETOD project is an important aspect of preserving businesses within the ETOD Overlay.	
19	Remove language related to location of commercial space: Strike lines 190 - 192 (d) i-ii and replace with (i) may not have more than two stories of non-residential uses, with commercial uses required on at least 75% of the ground floor, and with the requirement that there be no performance venue or cocktail lounge use above the second floor.	Recommended with changes	Staff recommends this amendment if it is changed from “75% of the ground floor” to “75% of <u>the frontage of</u> the ground floor.”	Incorporated with changes into the staff version of the ordinance.
20	(a) Add more internal uses including establishing commercial uses on an internal street potential bonuses for creative spaces, civic uses, cultural uses open to the public, non profit community spaces, public bathrooms and specific commercial spaces (b) Expand to include outdoor uses such as sidewalks, internal walkways, bike lanes open to the public, parks, plazas and environmental features & recreational features that are open to the public (in conjunction with Parkland Dedication) (c) Incentivize Transit infrastructure & features including but not limited to bus stops, bus charging facilities, electrical equipment needed by transit in coordination with Cap Metro / ATP (d) create incentive program for legacy businesses, and commercial uses as outlined in Section F, Subsection 1	Policy/Programmatic/ Future Action	Staff will consider this recommendation during future phases of the ETOD Overlay, anticipated for Council consideration in Spring 2025.	General recommendation not in the scope of these code amendments.
21	Incorporate specific street standards as outlined in the Great Streets Program, University Neighborhood Overlay, and South Central Waterfront and apply as appropriate to the DBETOD overlay	Policy/Programmatic/ Future Action	Staff will consider this recommendation during future phases of the ETOD Overlay, anticipated for Council consideration in Spring 2025.	General recommendation not in the scope of these code amendments.
22	Staff shall consider updated and revised standards for Section 4.3.3.C in Subchapter E, ensuring best practices for Transit Oriented Development for VMU buildings.	Policy/Programmatic/ Future Action	A focused revision of pedestrian-oriented commercial spaces related to the ETOD Overlay will be considered as part of future phases of the ETOD Overlay, anticipated for Council consideration in Spring 2025. However, Subchapter E applies to all commercial properties in the city, and thus would need a separate, comprehensive update that focused on all commercial properties, including Vertical Mixed Use (VMU) and ETOD Overlay.	General recommendation not in the scope of these code amendments.
23	Consider allowing a development to meet its bonus requirements through the provision of Project Connect infrastructure, beyond what would be	Policy/Programmatic/ Future Action	Including transit-supportive features as a possible community benefit provided by DBETOD projects will be considered as part of future phases of the ETOD Overlay, anticipated for Council consideration in Spring 2025.	General recommendation not in the scope of these code amendments.

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	otherwise required as a base requirement, as determined by the Project Connect Office.		However, the intent of this Planning Commission recommendation (as clarified on the dais) would mean that a DBETOD project may be allowed to provide transit-supportive features as the <u>only</u> community benefit, rather than providing transit-supportive features additively as one of several types of community benefits, including affordable housing. Staff recommends that future phases of the ETOD Overlay always include affordable housing among the community benefits required of participating projects.	
24	Create a buy-down provision so that the City reserves the right to subsidize on-site affordable residential units in a development participating in the bonus to further reduce the rent and meet community needs around deeper affordability.	Policy/Programmatic/ Future Action	The City currently has several programs to increase affordable housing, including the ability to subsidize on-site affordable residential units through the Rental Housing Development Assistance Program to reduce the rent and meet community needs around deeper affordability. Staff’s current practice of leveraging funds to provide gap financing to affordable housing developments through the existing Housing Development Assistance (HDA) programs allows for City dollars to go further towards income-restricting more total units than a buy-down program may be able to achieve.	General recommendation not in the scope of these code amendments.
25	Align parking standards in the ETOD/DBETOD area to the proposed downtown parking changes, including a 40% "soft cap," 80% hard cap, and requirements to uncouple parking from building rent or sale.	Policy/Programmatic/ Future Action	This will be considered as part of future phases of the ETOD Overlay, anticipated for Council consideration in Spring 2025.	General recommendation not in the scope of these code amendments.
26	All fees-in-lieu should be utilized within the ET OD/DBETOD defined boundaries.	Recommended	Staff is supportive of defining where fees-in-lieu collected for ownership DBETOD projects can be spent and supports spending those dollars in areas with access to high-quality transit choices such as within the ETOD Overlay area.	This will be incorporated into the staff version of the ordinance.