

## PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of August 7, 2019

**SUBJECT:** Amendments to Chapter 55 (Unified Development Code) to change the residential use and affordable housing premium options

### PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the August 2, 2019 drafted amendments to Chapter 55 Unified Development Code, Section 5.18.6 Premiums to incentivize affordable dwelling units in the downtown zoning districts, and related UDC references.

#### STAFF RECOMMENDATION:

Staff recommends that the amendments to the Unified Development Code be approved.

#### SUMMARY:

A recommendation to amend the premium options to further promote affordable dwelling units in downtown developments in the Unified Development Code is proposed as requested of the Planning Commission by the City Council. The proposed amendment combines the residential use premium and the affordable housing premium into a single, affordable residential units premium option.

#### BACKGROUND:

City Council [asked](#) the Planning Commission to recommend changes to Section 5.18.6 Premiums of the Unified Development Code to gain more affordable dwelling units downtown. Staff opened the conversation at the Planning Commission's April 16 working session ([memo](#)). A few different approaches were presented to the Ordinance Revisions Committee on May 28 ([memo](#)). A public hearing was held for proposed amendments on June 4 ([staff report](#)), after which the Planning Commission postponed action because of concerns that a relatively small number of affordable units could earn a potentially large floor area bonus. Another working session was held on June 11 ([memo](#)), with guest speakers from the local development community as well the Executive Director of the Housing Commission and the Director of the Washtenaw County Office of Community and Economic Development.

**Proposed Amendment:**

The Residential Use Premium and the Affordable Premium options are combined into a single, Affordable Residential Unit Premium. Increasing blocks of bonus floor area are offered for increasing percentages of affordable dwelling units. Each block of bonus floor area must be used for residential use, addressing the concern that providing just one affordable unit would earn the entire bonus. And, half of required affordable units may be offered at market rates when a payment in lieu is made to the Affordable Housing Fund, responding to the charge of increasing the number of affordable units or contributions that fund. A provision is included to allow limited increased height only with the highest amenity level so that the additional floor area can be realized.

The table below summarizes the proposed Affordable Residential Unit Premium Options:

<b>Table 5.18-1: Affordable Residential Unit Premium</b>		
<b>Amenity</b>	<b>Additional Floor Area</b>	<b>Specific Standards</b>
<b>15%</b> of all residential floor area are Affordable Housing Dwelling Units	D1 District: 150% of Lot Area D2 District: 100% of Lot Area	<ul style="list-style-type: none"> <li>Residential floor area of the building must equal at least 150% of the lot area in the D1 district or 100% of the lot area in the D2 district.</li> <li>Up to half of the Amenity area may be offered at market rates when a payment in lieu for each has been paid to the Affordable Housing Fund.</li> </ul>
<b>20%</b> of all residential floor area are Affordable Housing Dwelling Units	D1 District: 300% of Lot Area D2: 200% of Lot Area	<ul style="list-style-type: none"> <li>Residential floor area of the building must equal at least 300% of the lot area in the D1 district or 200% in the D2 district.</li> <li>Up to half of the Amenity area may be offered at market rates when a payment in lieu has been paid to the Affordable Housing Fund.</li> </ul>
<b>30%</b> of all residential floor area are Affordable Housing Dwelling Units	D1 District: 500% of Lot Area	<ul style="list-style-type: none"> <li>Residential floor area of the building must equal at least 250% of the lot area.</li> <li>The maximum height limit of the character overlay district may be increased by 15%</li> <li>Up to half of the Amenity Area may be offered at market rates when a payment in lieu for each has been paid to the Affordable Housing Fund.</li> </ul>

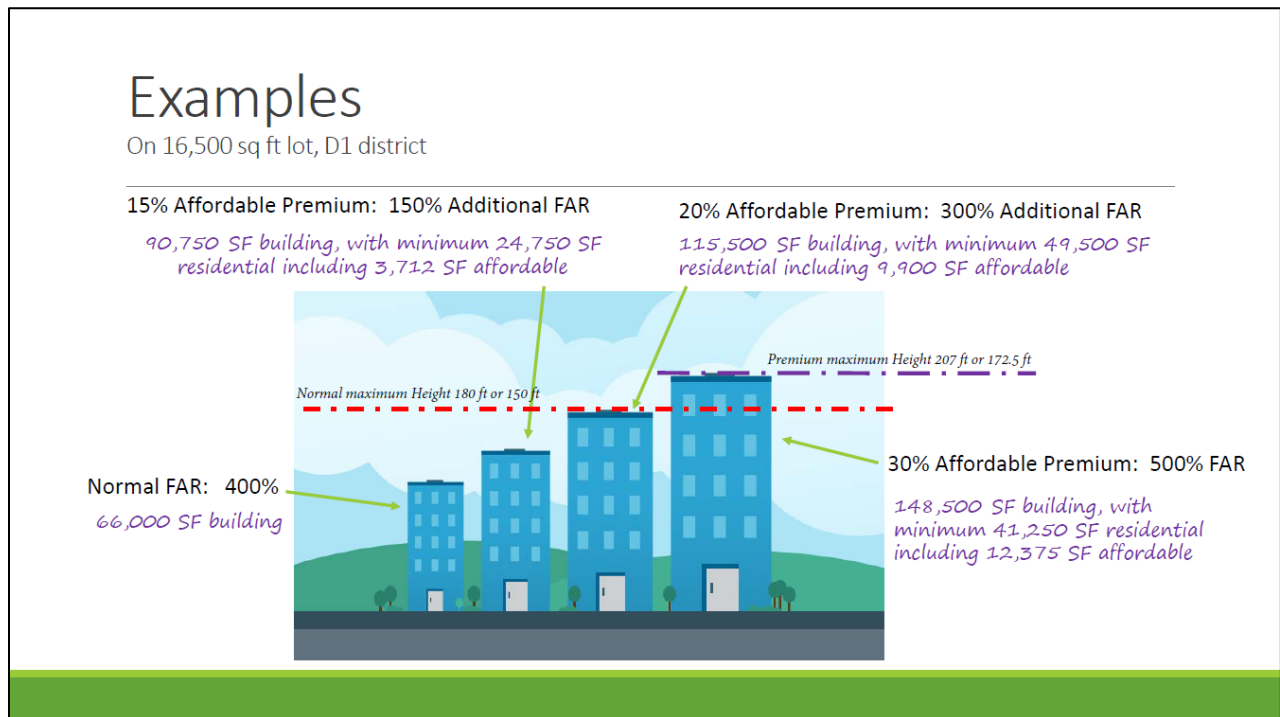
The proposed amendment also subtracts all affordable dwelling units from the off-street parking requirement for premium floor area. A provision requiring an affordability agreement that addresses operating and maintaining the affordable units has been included, as well as a penalty for violations.

Finally, an amendment to the definition to create “Affordable Housing Dwelling Unit” and define it as benefitting households at or below 60% of Area Median Income is proposed, along with corresponding references to the previous definition elsewhere in the UDC.

**STAFF COMMENTS:**

With the proposed amendment, every development that uses this premium option must include affordable dwelling units as part of its development program. This does not prevent developers from constructing products with only market-rate residential dwellings, but those products must either conform to the normal maximum FAR for the zoning district or use one of the nonresidential premium options such as the Green Building, Historic Preservation, Pedestrian Amenity or Public Parking Premium options. However, for the most part, no single other premium option achieves as much premium floor area as the proposed Affordable Residential Unit Premium option. The Affordable Residential Unit Premium option should, therefore, continue to be a popular choice and will result in more affordable dwelling units downtown. It also responds well to City Council’s request while balancing Planning Commission’s concerns and incorporating feedback from key stakeholders.

On a 16,500-square foot lot (about the same size lot as the recent Vic Village North at 1107 South University Avenue), a development with the normal maximum FAR and using the proposed affordable residential unit premium option might look like this:



Amendments to Unified Development Code (Premium Options)  
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Reviewed by Brett Lenart  
8-2-19

Attachment: Ordinance to Amend Chapter 55 Unified Development Code (Premium  
Options) – August 2, 2019  
HHSAB Memo of Support

c: City Attorney's Office

UNIFIED DEVELOPMENT CODE  
(DIMENSIONAL STANDARDS TABLE, PREMIUM OPTIONS)

AN ORDINANCE TO AMEND SECTION 5.18.6 OF CHAPTER 55 (UNIFIED DEVELOPMENT CODE) OF TITLE V OF THE CODE OF THE CITY OF ANN ARBOR

The City of Ann Arbor ordains:

Section 1. That Section 5.18.6 of Chapter 55 (Unified Development Code) of Title V of the Code of the City of Ann Arbor be amended to read as follows:

**5.18.6 Premiums**

A premium is an increase in allowable Floor Area to exceed the normal maximum Floor Area Ratio established by this chapter for Structures in the C1A, C1A/R, D1 and D2 Zoning Districts.

**A. Purpose**

The intent of incorporating premiums into this chapter is:

1. To provide an incentive for affordable residential housing opportunities development in and in close proximity to the City's downtown ~~and to encourage affordable housing opportunities in situations~~ where such opportunities might not otherwise be provided.
2. To encourage Development which reinforces pedestrian activity along streets within the central Business core and to achieve a greater mixture of land uses and intensities than might occur in the absence of such premiums in order to strengthen the economic vitality and diversity which is essential to a healthy and vibrant street life.
3. To provide an incentive for the Development of public spaces and pedestrian amenities and to encourage excellence in urban design through the provision of Open Space and landscaped approaches to Buildings at appropriate corners.
4. To provide incentives for the Development of energy-efficient and environmentally sustainable Buildings.
5. To encourage the inclusion of public parking in the Development of new private Parking Structures.
6. To encourage the preservation of historic Buildings not currently located in an historic district.

**B. Premiums Not Intended for Historic Buildings**

Premiums shall not be used as a justification for the demolition of Buildings in historic districts in order to increase density.

**C. Availability**

A premium is not available unless a Building and its surrounding Site incorporates and maintains certain architectural features or land uses, or both, as designated by this chapter.

**D. Floor Area Premium Options**

In the C1A, C1A/R, D1 and D2 zoning districts, the normal maximum Floor Area Ratio set forth in Table 5:17-2 may be exceeded on Lots located entirely outside of an historic district and floodplain when amenities as described in this section are provided, subject to the premium limits designated in Table 5:17-4.

**1. General Regulations**

- a. Premium options may be applied only to Lots that are located entirely outside of an historic district, as designated by Chapter 103 and that contain no part of a 100-Year Floodplain, according to City's adopted floodplain map as designated by Chapter 100.
- b. Premium options apply only to any Structure located on the same Lot as the amenities or land uses, or both, which give rise to the premium.
- c. The use of multiple options to acquire premiums is permitted.
- d. All amenities or land uses used to acquire a Floor Area premium shall remain for the life of the Structure. The feature(s) shall only be diminished or discontinued if the additional Floor Area is permanently removed or if another premium option(s) of at least equivalent Floor Area value, as described in this section, is approved as part of a site plan.
- e. Any property that received additional Floor Area through a premium option(s) which was lawfully established prior to, and lawfully continuing in existence on the effective date of this section, shall be deemed a conforming use and/or Structure. When modifications to any such property are requested, compliance with the current premium options is required.
- f. As a condition of receiving the additional Floor Area through a premium option, the Building must comply with the following energy efficiency standards for the construction of all new Floor Area:
  - i) A minimum of two points must be achieved under the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) Energy & Atmosphere Credit No. 1. The most recent version in effect at the time of site plan approval shall be applied.
  - ii) Compliance with this requirement shall be verified and documented by the property owner using an industry standard software energy modeling tool (EQUEST or equivalent) prior to the issuance of building permits.
- g. Provisions implementing the premium options, and ensuring future compliance with the premium options, where applicable, shall be included as

a condition to the approval of a site plan, and in a Development Agreement, or both, as determined by the City Attorney.

2. **Affordable Residential Use-Unit Premium Option**

a. In D1 and D2 districts, additional Floor Area may be earned to exceed the normal maximum FAR when Affordable Housing Dwelling Units are included in a Development as provided below.

<b>TABLE 5.18-1: AFFORDABLE RESIDENTIAL UNIT PREMIUM</b>		
<b>AMENITY</b>	<b>ADDITIONAL FLOOR AREA</b>	<b>SPECIFIC STANDARDS</b>
<u>15% of all residential floor area are Affordable Housing Dwelling Units</u>	<u>D1 District: 150% of Lot Area</u> <u>D2 District: 100% of Lot Area</u>	<ul style="list-style-type: none"> <li>Residential floor area of the building must equal at least 150% of the lot area in the D1 district or 100% of the lot area in the D2 district.</li> <li>Up to half of the Amenity square footage for dwelling units affordable to lower income households may be offered at market rates when a payment in lieu for each has been paid to the Affordable Housing Fund.</li> </ul>
<u>20% of all residential floor area are Affordable Housing Dwelling Units</u>	<u>D1 District: 300% of Lot Area</u> <u>D2: 200% of Lot Area</u>	<ul style="list-style-type: none"> <li>Residential floor area of the building must equal at least 300% of the lot area in the D1 district or 200% in the D2 district.</li> <li>Up to half of the Amenity square footage for dwelling units affordable to lower income households may be offered at market rates when a payment in lieu has been paid to the Affordable Housing Fund.</li> </ul>
<u>30% of all residential floor area are Affordable Housing Dwelling Units</u>	<u>D1 District: 500% of Lot Area</u>	<ul style="list-style-type: none"> <li>Residential floor area of the building must equal at least 250% of the lot area.</li> <li>The maximum height limit of the character overlay district may be increased by 15%</li> <li>Up to half of the Amenity square footage for dwelling units affordable to lower income households may be offered at market rates when a payment in lieu for each has been paid to the Affordable Housing Fund.</li> </ul>

a.b. 0.75 square foot of Floor Area in excess of the normal maximum Floor Area Ratio shall be allowed for each square foot of Floor Area, regardless of

~~location within the Building, used for Multiple-Family Dwellings.~~ Every sleeping room in the Building shall have at least 1 window, sliding glass door, skylight, or other acceptable light transmitting media facing directly to the outdoors. The minimum total glazed area for every sleeping room shall be not less than 8% of the Floor Area of such room.

- c. If Dwelling Units constitute a portion of a mixed use Building, Dwelling Units must be completed and receive a certificate of occupancy in advance or at the same time as the certificate of occupancy for nonresidential use, or the property owner shall provide a performance bond for the residential use at the time the certificate of occupancy is requested, subject to the provisions of Section \_\_\_.
- d. The conditions to the approval of a site plan, or Development Agreement, or both, as required in Section 5.18.6.D.1.g, shall include provisions to implement and maintain the affordable housing premium option dwelling units -shall meeting the requirements for Affordable Housing for Lower Income Households Dwelling Units, as determined by the Office of Community Development, for 99 years from the date of the issuance of the Final eCertificate of eOccupancy. Income qualification shall follow the standards established by the Michigan State Housing Development Authority.
- e. The total floor area of Affordable Housing eDwelling uUnits affordable to lower income households shall be subtracted from the floor area in excess of the normal maximum permitted when calculating off-street motor vehicle parking in Section 5.19.3 Special Parking Districts.
- f. Failure to maintain the required floor area of Affordable Housing DeDwelling uUnits in compliance with this Section affordable to lower income households shall be a violation of this ordinance. The penalty for such violation shall be three times the payment in lieu established by resolution of City Council at the time of the violation for the applicable area of dwelling units.

### 3. Green Building Premium Option

- a. In D1 and D2 districts, Floor Area in excess of the normal maximum Floor Area Ratio shall be allowed in the following increments for Site and/or Buildings achieving the following levels of the U.S. Green Building Council Leadership in Energy and Environmental Development (LEED) Certification for new construction (NC) or existing Buildings. The most recent version in effect at the time of site plan approval shall be applied.
  - i) LEED Silver Certification, with a minimum of four points in Energy & Atmosphere Credits No. 1 and 2: 50% of Lot Area.
  - ii) LEED Gold Certification, with a minimum of 6 points in Energy & Atmosphere Credits No. 1 and 2: 150% of Lot Area.



- iii) LEED Platinum Certification, with a minimum of 8 points in Energy & Atmosphere Credits No. 1 and 2: 250% of Lot Area.
- b. Prior to issuance of any building permits, the Applicant shall submit proof of LEED registration and a letter in a form satisfactory to the City Attorney stating his/her commitment to achieving the requested LEED Certification and to demonstrating compliance with that commitment.
- c. Within six months of receiving the final certificate of occupancy, the Applicant shall submit to the Planning Manager documentation of the credits earned from the U.S. Green Building Council and achievement of the requested Certification This time period may be extended by the Planning Manager at his or her discretion for a period not to exceed three months if additional time is needed to complete the LEED Certification process, and the Applicant has been diligently working towards completion.
- d. Failure to submit documentation from the U.S. Green Building Council within the required time period demonstrating the Applicant's achievement of the requested LEED Certification premium shall be a violation of this ordinance. The penalty for such violation shall be \$500 per day from the date when the report was due to the date it is submitted.
- e. Failure to demonstrate full compliance with the Applicant's commitment to achieve the requested LEED Certification premium shall be a violation of this ordinance. The penalty for each violation is an amount determined by the following formula:

$$P = [(LC-CE) / LC] \times CV \times GPUP$$

Where:

P is the penalty;

LC is the minimum number of credits to earn the requested LEED Certification;

CE is the number of credits earned as documented by the U.S. Green Building Council report;

CV is the construction value, as set forth on the Building permit for the new Structure;

GPUP, the Green Premium Utilization percentage, is the greater of (i) 0.075; or (ii) a fraction, the numerator of which is LEED FAR, the denominator of which is TFAR.

LEED FAR is the minimum amount of Floor Area proposed that is attributable to the Green Building Premium;

TFAR is the total Floor Area proposed.

- f. Failure of the Applicant to comply with the Applicant's commitment to achieve the requested LEED Certification premium shall not affect the right to occupy any of the premium Floor Area if a penalty is paid to the City in the amount determined in this section. No additional penalty shall be imposed for failure to comply with the commitment.

- g. If, within 90 days, or such longer period as the Planning Manager may allow for good cause, the application shall demonstrate, through a supplemental report from the U.S. Green Building Council that it has made sufficient alternations to improvements to earn the requested LEED Certification, or to earn more credits toward such a Certification, then the penalty owing shall be eliminated or recalculated accordingly. The amount of the penalty as so re-determined shall be final.

4. **Historic Preservation Premium Option**

In D1 and D2 districts, additional Floor Area of up to 50% of the Lot Area shall be allowed in excess of the normal maximum Floor Area Ratio for a development that preserves a historic resource, as defined in Chapter 103, that is currently listed on or eligible for the National Register of Historic Places and/or the State Register of Historic Sites. For purposes of calculating the maximum Floor Area Ratio for the Lot, the Floor Area of the historic resource shall not be counted in the total.

5. **Pedestrian Amenity Premium Option**

a. General

In C1A, C1A/R and D1 districts, ten square feet of Floor Area in excess of the normal maximum Floor Area Ratio shall be allowed for each square foot of pedestrian amenity improvements, up to a maximum of 8,000 square feet of additional Floor Area. Any space in which a pedestrian amenity is used to acquire a premium shall not be used for the off-street parking of any vehicle, including but not limited to automobiles, bicycles, motor bikes, and scooters; nor shall such area be used for access drives, loading, or trash collection stations, except as noted in Section 5.1.1D.5.c.iv) Interconnections of pedestrian amenities between two or more Lots are required to the extent feasible. A public Open Space used to acquire a premium shall be designed to avoid creation of isolated areas, to maintain lines of sight into the space from streets and major pedestrian walkways, and to provide a secure environment. Lighting shall be provided for public Open Space premiums which are open at night. Pedestrian amenities may include the options listed below.

b. Inner Arcade

i) General

A non-publicly owned, continuous, covered space that runs through or along a non-Street side of a Building and connects public Streets, arcades, Open Space, or Sidewalks and is readily accessible and identifiable from the public Street, arcade, or Sidewalk. An arcade shall meet the following requirements:

- (a) Connect and be accessible from at least two public Streets, or a public Street and a public or non-public arcade fronting on another public Street, or a public Street and a public or non-public plaza fronting on another public street, or a public or non-public arcade and another public or non-public arcade fronting on

another public Street; or a public parking garage and a public Street; and

- (b) Measure not less than 12 feet wide; and
- (c) Have an open and unobstructed headroom of at least 12 feet in height; and
- (d) Remain open for use by the general public during all business hours common in the area.

ii) Art Work

Art works may occupy up to five percent of the total arcade area if a minimum clearance of 6 feet for circulation is provided.

c. Plaza

A non-publicly owned continuous space, open to the sky for its entire width and length which fronts on a public Street or public Sidewalk, which is directly and conveniently accessible to the public at all times for passive recreational activities. Up to 2/3 of the surface area of the plaza may be occupied by features such as seating, permanent planting areas, water features or works of art. When landscaping is provided for a plaza amenity premium, a variety of living trees, shrubs, ground covers, and seasonal plantings shall be used and shall be located in permanently installed beds or planters serviced by automatic irrigation systems or in large containers, provided they cannot be readily removed. A plaza shall meet the following requirements:

- i) Have a minimum dimension of ten feet; and occupy not less than 500 square feet; and
- ii) Be at the same Grade as the adjacent public Sidewalk or not more than 24 inches above or below the Grade of adjoining public Sidewalk for no more than 50% of either length of the sides adjoining and measured at the Lot Line; and
- iii) Be readily identifiable from the public Sidewalk; and
- iv) A portion of a plaza may be used for the parking of bicycles, provided the square footage of the plaza is increased beyond the minimum requirement at the rate of 96 square feet for each two bicycles parked, and permanently-installed bicycle facilities are provided; and
- v) When seating and/or tables are provided, they shall be available for use by the general public at all times the space is open.

**6. Public Parking Premium Option**

In the D1 district, the Floor Area of above-Grade Parking Structures reserved for vehicular Parking Spaces in excess of the minimum requirement shall not be counted toward the maximum Floor Area Ratio, up to a maximum of 200% of the Lot Area, if the following conditions are met:

- i) The Parking Spaces are made available to the general public;

- ii) The number, location, size, access, layout and design of the Parking Spaces meet standards for public parking, as determined by the Downtown Development Authority;
- iii) The property owner signs and records a Development Agreement or other document approved by the City Attorney outlining the operating conditions for this parking.

Section 2. That Section 5.37.2.A of Chapter 55 (Unified Development Code) of Title V of the Code of the City of Ann Arbor be amended to read as follows:

**Affordable Housing ~~for Lower Income Households~~ Dwelling Units**

Housing Units reserved for households ~~or individual~~ with income levels ~~(including low and very low income levels)~~ that are less than ~~80%~~60% of ~~City Area median~~ Median income ~~Income~~ as defined by the United States Department of Housing and Urban Development where the occupant is paying no more than ~~30% of gross income for housing costs~~ the annually published Fair Market Rents for Ann Arbor, including taxes and utilities.

Section 3. [Insert PUD Amendments to reflect Definition Change]

Section 4. [Insert Planned Project Modifications to reflect Definition Change]

Section 2. Section 5. This ordinance shall take effect and be in force on and after ten days from legal publication.



**TO:** City of Ann Arbor Planning Commission

**Through:** Brett Lenart, Planning Manager and Alexis Dileo, City Planner

**FROM:** Office of Community and Economic Development  
Teresa Gillotti, Director; Mirada Jenkins, Housing & Infrastructure Manager

**DATE:** August 2, 2019

**RE:** Recent Housing and Human Services Advisory Board (HHSAB) recommendations around zoning ordinance considerations

At their July 11, 2019 meeting, the HHSAB received a presentation on the latest proposed changes to the **downtown premium zoning** from Brett Lenart, Planning Manager. Based on the presentation by City staff (dated July 10, 2019) they passed a resolution as follows:

*The HHSAB endorses and accepts the concept and framework of the proposed updated zoning premiums in the presentation and document dated July 10, 2019.*

*HHSAB would further encourage the Planning Commission to consider two additions:*

- 1- That any developers using the premiums are required to accept Housing Choice Vouchers*
- 2- That the penalty for non-compliance be doubled.*

This resolution was approved unanimously by the HHSAB.

Also at their July 11, 2019 meeting, staff introduced a proposed change to the definition of **Affordable housing for Lower Income Households** to put it more in line with other City housing policy and practices (see attached memo for background information and proposed language).

That resolutions was also passed unanimously and is as follows:

*The HHSAB requests that the Planning Commission review the HHSAB recommended changes to the zoning ordinance definition around Affordable Housing for Lower Income Populations. The changes would put the definition more in line with other City policy around Affordable housing income thresholds and also provide clarity on corresponding rents.*

The recommended text change would be:

Housing units for households or individuals with income levels (including low and very low income levels) that are less than ~~80%~~ 60% of City-Area median income as defined by the United States Department of Housing and Urban Development where the occupant is paying no more than ~~30% of gross income~~ the annually published Fair Market Rents based on unit size -for housing costs, including taxes and utilities