

# 2016 White House Housing Development Toolkit

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*Review and assessment of the White House Housing Development Toolkit  
compared to City of Madison housing development policies*

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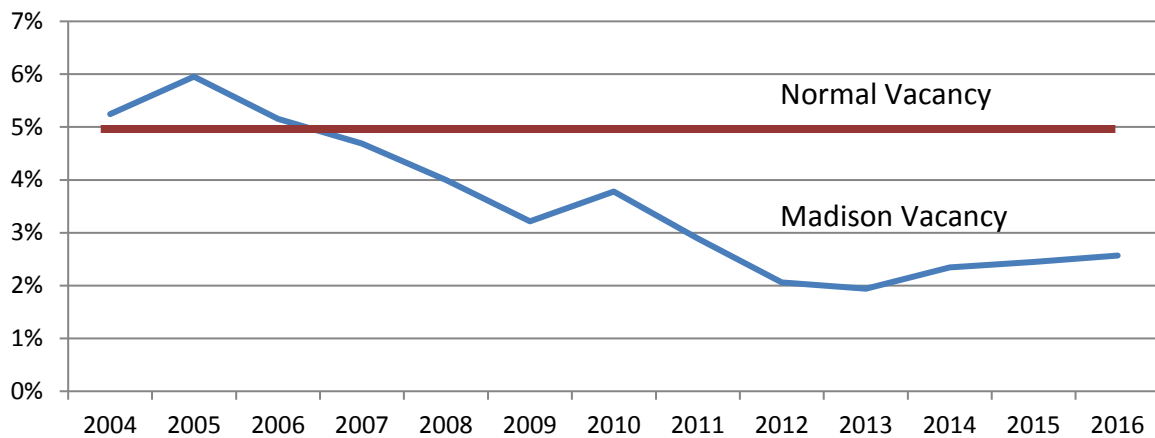
## Introduction

The primary thesis of the "[Housing Development Toolkit](#)" issued by the Obama Administration in September 2016 is that local barriers to real estate development restrict the total supply of new multi-family residential development, which has the effect of raising prices and reducing housing affordability. These effects are especially pronounced in markets such as Madison which are experiencing strong economic and population growth, where rental vacancies have been at historic lows for years (see

Figure 1), and where residential rent increases have outpaced median wage increases (see Figure 2).

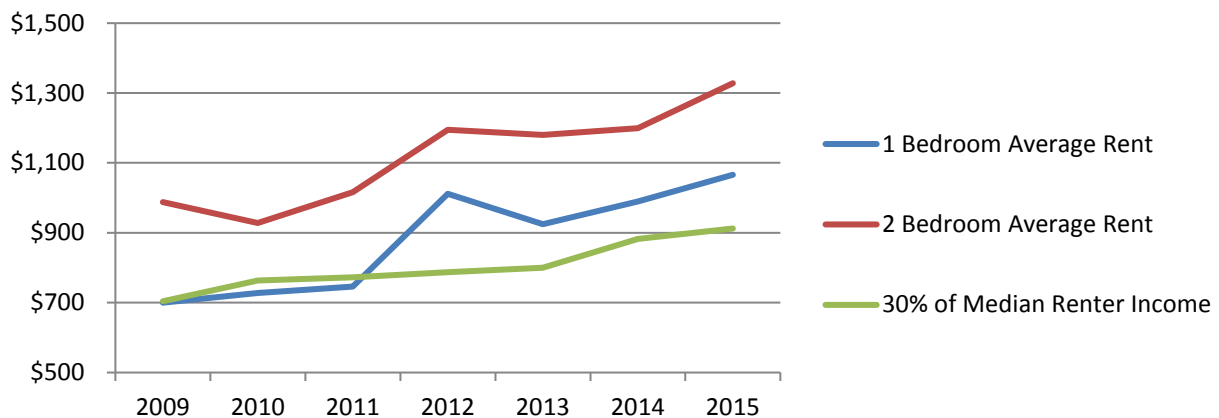
This memorandum provides a short analysis of the City of Madison's current approach to each of the report's ten recommended actions (labeled A through J in this report) and in many cases includes staff responses (numbered 1-19) that the Plan Commission and Council could consider regarding further and more specific work that would be needed to implement the strategies.

**Figure 1: City of Madison 1st Quarter Rental Vacancy**



Source: MGE Multifamily Vacancy Rate – Madison zip codes

**Figure 2: City of Madison Average Listed Rent vs "Affordable" Rent for a Median Income Renter**



Source: Rentjungle.com & 1 Year American Community Survey

## A) Establish By-Right Development

**Rationale:** The cost of the approval process on developments include direct costs (holding costs for land, costs for consultant time at meetings) and risks (uncertainty regarding timing impacts on interest rates and construction costs, uncertainty as to whether and under what conditions a proposal will be approved). Cost and risk associated with approval processes likely creates a barrier to entry for people unfamiliar with it or for smaller projects that cannot absorb them. In contrast, **by-right development refers to allowing developments that comply with underlying zoning and city plans to proceed without further public approvals as permitted use.** The establishment of more by-right residential development would reduce cost and risk.

**Analysis:** Changes to the zoning code to broaden opportunities for by-right development would involve a significant shift in policy and practice, and further analysis would be needed to communicate tradeoffs and to predict the effectiveness of this recommendation.

In Madison, most multi-family residential development involves significant input from nearby residents, staff, and alders as part of a discretionary review process, which often modifies the details of development for future residents and may reduce negative impacts on surrounding properties. Some aspects influenced by those involved in development review occur at a level of detail specific to the site or surroundings and are not easy to foresee or sufficiently address in the zoning code.

When the zoning code was completely rewritten in 2012, it allowed *much* more development to occur in conventional zoning districts, but not much more “by-right” development. Nearly every mixed-use building or significant multi-family residential development approved in years leading up to 2012 required a zoning change to Planned Development zoning, which was negotiated on a case-by-case basis and approved by the Urban Design Commission, Plan Commission, and Common Council. Today, a majority of such developments can be approved in conventional zoning districts. However, almost all require conditional use approval by the Plan Commission. Further, any redevelopment involving demolition of existing buildings still requires approval by the Plan Commission, which is atypical of most cities. Practically, “by-right” multi-family residential development rarely occurs in Madison, and is limited

by thresholds such as height, number of dwelling units, building size, etc.

**Notably, only two buildings with multi-family residential component have been approved as a permitted use since 2013. These included a sum total of 12 units at a time when over 8,000 new units have been approved.** Even these two small projects required demolition approval by the Plan Commission, so the costs and risks were similar to that of a conditional use. Effectively, all multifamily development receives a review by Planning Department staff and the Plan Commission, consuming significant time and resources that could otherwise be directed toward future oriented planning and larger, more complex developments.

The zoning code has many relatively low thresholds for conditional uses, meaning that most (re)development proposals involve discretionary review with opportunities for public input and for the Plan Commission to ensure that relevant standards are met with proposals and any appropriate conditions of approval placed on them. If the Council would opt to allow more “by-right” development, it is possible that more housing could be constructed after thorough administrative review for adherence to ordinance requirements, without the risks and additional costs inherent to the approval process. Importantly, the tradeoff would be that by-right development would occur absent input by residents, neighborhood associations, staff, and the Plan Commission if it complies with the underlying zoning requirements.

**Staff Response:** Guidance from the Plan Commission and Common Council is critical prior to further research and exploration of this issue. At this time, staff offers that the Council could consider three general ways that the zoning code could be changed (these could occur separately or simultaneously):

1. Adjust thresholds (# dwelling units, building size, height, etc.) between permitted and conditional uses to “relax” the zoning code and allow more “by-right” development.
2. Revisit and relax the requirement for Plan Commission approval of the demolition of existing buildings.
3. To establish a comfort level with “by-right” development, add maximum height maps to the zoning code to better manage expectations.

## B) Tax Vacant Land or Donate it to Non-Profit Developers

**Rationale:** Vacant and abandoned residential properties represent both a missed opportunity to provide housing as well as create blight in surrounding neighborhoods. By making it expensive for owners to keep a property vacant, they are less likely to do so. A more aggressive option is to directly take abandoned properties through tax foreclosure and turn them into affordable housing.

**Analysis:** While many communities saw a large increase in vacant properties in the wake of the foreclosure crisis, the City of Madison did not. In 2014, Madison created a vacant property registry based on a similar program in Milwaukee. It is still the case that Madison has very few vacant properties and those that become vacant are quickly sold. More aggressive action would not likely result in the creation of more affordable housing. Further, State of Wisconsin statutes regarding equalized value appraisal limit the City of Madison’s ability to tax vacant properties at a different rate.

**Staff Response:** Staff does not recommend further pursuit of this strategy.

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## C) Streamline or Shorten Permitting Processes and Timelines

**Rationale:** By shortening permitting processes and timelines, the direct costs and risks of the approval process (discussed in #1 above) for development that requires discretionary review could be reduced, resulting in an easier pathway for multi-family residential development.

**Analysis:** Without accounting for initial due diligence and planning by developers prior to approaching the City or the time it takes to construct a building, there are essentially three stages to the land use approval process: pre-application, formal review, and post-approval/permitting, each described below. In Madison, these three stages usually last between 6 and 18 months for mixed-use and multi-family residential developments – a timeline heavily dependent on project complexity, the development team involved, and other factors.

This strategy is related to #1, since the first two stages of the land use approval process described below *only apply to proposals involving discretionary approvals.*

In other words, “by-right” development involves only the third stage, and an expansion of opportunities for “by-right” multi-family residential development would definitely shorten the approval process.

*Pre-Application* – The pre-application stage requires a 30-day notice to the alder and any registered neighborhood or business association (unless waived by the alder), and usually involves one or more meetings with staff and neighborhood groups for input as the proposal evolves from a concept to a detailed submittal to the City. Although meetings with neighborhood groups are not required, they are the norm for mixed-use and multifamily residential development. **The timeline for the “informal” pre-application stage varies widely based on project scale and complexity, level of interest or concern by neighbors, procedures and expectations of a particular alder or neighborhood association, the developer’s urgency and level of engagement with stakeholders, and the design stage at which stakeholders are approached.** This phase of the process adds uncertainty, risk, and cost to the development review process, but is expected by many Madison residents, businesses, and alders.

*Formal Review* –The length of the formal review process for land use approvals (rezoning, conditional uses, demolition, and land divisions) is already optimal, given the need to provide adequate public notice, review by multiple agencies, and preparation of staff reports to commissions. Depending on the type of approvals required (conditional use, rezoning, urban design, etc.) most proposals that are generally consistent with adopted plans are approved within 6-10 weeks of the formal submittal. Outliers include proposals inconsistent with adopted plans or those that change significantly after formal submittal. Understandably, proposals in these categories will likely involve longer formal review processes.

Note: Land Use Application materials have very recently been updated to include more specific instructions for applicants/developers regarding all expected components of a submittal to try to ensure that more design and engineering work is being done up front and to minimize changes during the formal review process.

*Post-Approval/ Permitting* – Following any discretionary land use approvals, the procedure to obtain building permits is essentially the same as that for “by-right” or permitted uses. The timeline for this third stage varies greatly based on the amount of

work still to be done and the level of diligence by the development team to address all ordinance requirements and conditions of approval. Often, with proposals involving discretionary approvals, developers tend to minimize risk up front by awaiting formal approval before purchasing property, securing financing, and/or investing in final design and engineering work. Thus, these items can take weeks or even several months to accomplish before final materials are submitted for administrative review. Staff continues to work to ensure that the post-approval process is clearer and more predictable to the development community as developers seek to demonstrate compliance with conditions of approval for new buildings. It is difficult to attribute the variation in this third stage to City efficacy when so often the timeline is dictated by development teams. Importantly, for “by-right” development, developers of multi-family residential buildings would be better able to compress costly and time-consuming work (securing financing, investing in detailed design and engineering work) up front without the risks involved in discretionary land use approvals.

**Staff Response:** Given the variety in complexity and level of controversy among (re)development proposals and differences among neighborhoods, it is difficult to pinpoint specific strategies to reduce the overall approval and permitting process. However, with direction from the Plan Commission and Council, staff could pursue one or more of the following for proposals that are generally consistent with adopted plans:

4. Expand “by-right” development, thereby eliminating the pre-application and formal review process for certain proposals (see also the response to #1).
  5. Standardize and streamline the pre-application process by establishing key milestones and a clear policy for neighborhood meetings.
  6. Encourage post-approval meetings with development teams – particularly those new to the Madison process – to clarify the steps between approval and the issuance of permits.
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## D) Eliminate Off-Street Parking Requirements

**Rationale:** Elimination of off-street parking requirements could significantly reduce the costs to construct multi-family residential development, since the provision of parking is a major cost of development.

**Analysis:** While structured parking is an extremely expensive aspect of mixed-use and multi-family (re)development, flexible mechanisms in the new zoning code have reduced the impacts of off-street parking requirements on redevelopment. In fact, staff believes that the market (the ability to obtain financing, etc.) likely has more influence on parking ratios than does the City of Madison zoning code. In some mixed-use zoning districts, parking requirements have been eliminated for developments under certain size thresholds, and the code is structured to allow for developers to seek reductions to parking requirements where they exist.

Practically speaking, however, parking is a hot-button and sometimes unpredictable issue covered in discretionary land use approvals. The adequacy of parking is considered by the Plan Commission for each and every conditional use request, and therefore nearly every multi-family development. For mixed-use and multi-family development, parking is commonly one of the main interests of neighbors, neighborhood groups, and some businesses due to real or perceived impacts that inadequate parking may have on the public streets in the immediate area. (It is not clear that increased demand for on-street parking negatively impacts quality of life, but this is often assumed during development review processes.)

With the exception of a few downtown/UW Campus-area developments and some affordable housing developments with low parking ratios, it is typical for developers to propose close to a 1:1 ratio of parking stalls to dwelling units. A recent study by the State Smart Transportation Initiative involving actual parking utilization counts has shown that 1:1 is likely unnecessarily high for most multi-family residential development citywide, and particularly in central areas well-served by transit.

Parking is a complex issue, and changes to the implementation of off-street parking (parking ratios, cost of parking borne by residential tenants, etc.) at least indirectly influences the convenience of car ownership, policies for managing on-street parking in the area, and more.

**Staff Response:** The Plan Commission and Common Council could consider one or more of the following strategies in order to minimize undue impacts of the cost of parking on housing supply:

7. Further reduce or eliminate parking requirements for multi-family residential development citywide, and allow the market more control over the off-street parking ratio provided in each development.
  8. Consider lowering the *maximum* parking ratio for multi-family residential development to less than 1 stall per unit, or prohibit the inclusion of parking in certain areas or for certain projects.
  9. Utilize the Transit-Oriented Development Overlay District, which is currently in the zoning code but has not yet been applied, as a way to eliminate off-street parking requirements altogether in areas well served by transit (future BRT stations, existing corridors with all-day frequent transit, etc.)
  10. Develop a protocol to analyze the actual impacts of a sample of developments where the inadequacy of off-street parking has been noted as a major concern. Share analysis with decision-makers, neighborhood groups, and businesses.
  11. In tandem with above strategies, pursue a more robust on-street parking management strategy involving more metered parking to support businesses, and residential parking permits for evening and overnight parking in certain areas.
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## **E) Enact High-Density and Multi-Family Zoning**

**Rationale:** For cities where this does not exist already, high-density zoning districts could help to allow more housing in appropriately zoned areas.

**Analysis:** Madison has a variety of zoning districts that allow for high-density residential development. Currently, a majority of new multi-family residential development citywide is being proposed, approved, and constructed Downtown or in mixed-use zoning districts, where there are no formal maximum densities in the zoning code. Downtown, maximum height limits serve to indirectly limit density.

**In some mixed-use zoning districts, there are indirect density limitations in the form of a minimum lot area per dwelling unit and usable open space requirements that make high density development mathematically impossible unless commercial space is included in the building.** Additionally, recommendations in adopted plans and the conditional use process indirectly limit density, and there is generally a very strong incentive or requirement for a commercial first floor. A 2014 code change allowed for purely residential buildings as a conditional use in the TSS District at densities similar to the development typically being approved in mixed-use buildings, and a few residential projects have since moved forward in this district. Other mixed-use districts still allow purely residential buildings on only a very limited basis and at relatively low densities, which has resulted in mixed-use buildings with very small, sometimes unviable commercial spaces as a way to achieve greater densities in these areas.

Outside of Downtown, all purely residential zoning districts and mixed-use districts allowing purely residential buildings include direct density limitations in the form of a minimum lot area per dwelling unit. **Usable open space requirements also indirectly impact the allowable density** (see summary in Table 1 on the following page.)

**Table 1: Districts Outside of Downtown Allowing Multi-Family Residential Buildings (add TE, SE)**

Zoning District	Minimum Lot Area per DU	Maximum Density (DU/ac)	Usable Open Space per DU	Maximum # Units
TR-C4	2000	21	750	3
TR-V1, SR-V1	2000	21	500	4
TR-V2, SR-V2,	2000	21	500	No upper limit
TR-U1	1000	43	320	
TR-U2	500	86	140	
NMX (for purely residential buildings)	1000	43	160/320, based on # bedrooms	
TSS (for purely residential buildings)	500	86	40	
CC-T, CC (for purely residential buildings)	750	58	160/320, based on # bedrooms	
TE	2000	21	20sf/bedroom	
SE	2000	21	400	

**Staff Response:** With support from the Plan Commission and Common Council, staff could explore or continue to explore the following ways to *expand* opportunities for high-density and multi-family zoning:

12. Within the Comprehensive Plan Update, consider increases to residential density ranges on the Future Land Use Map based on a comparison with recently approved development (Note: Currently in progress.)
13. Increase the allowable density for purely residential buildings in mixed-use zoning districts, particularly the Commercial Corridor Transitional (CC-T) district (Note: Approved 6/6/17.)
14. Increase the allowable residential density for small multi-family buildings in the TR-V1, TR-V2, and other districts.
15. Create a new high-intensity district that would allow for high-density residential or mixed use buildings (similar to the UMX District) for application outside of the Downtown area (Note: Generally supported by Plan Commission.)
16. Explore a reduction of usable open space requirements, or provide case-by-case

consideration of usable open space when projects require discretionary review. Usable open space could be reviewed relative to factors such as proximity to quality public open spaces, unit mix and design, etc.

17. Explore the more widespread replacement of density maximums with building height maximums, similar to the way the zoning code works in the Downtown area. (Note: See also Response #3. This would take significant staff time, and may be best pursued in certain priority growth areas.)

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## F) Allow Accessory Dwelling Units

**Rationale:** Accessory dwelling units (ADUs) in relatively low-density residential areas will provide an affordable housing opportunity for small households.

**Analysis:** Since 2013, ADUs have been allowable as a conditional use on all properties in Madison with a single-family home, with the stipulation that the property owner must live on-site in either the main home or the ADU. **To date, 13 have been proposed and approved citywide, and 8 have been constructed.** Their inclusion in the code as a conditional use was controversial in just a few

neighborhoods, and allowance of ADUs “by-right” is a possibility that could be explored further if supported by the Plan Commission and Council.

That said, even if they were allowed “by-right”, staff doubts that there would be a significant increase in these units in the foreseeable future due to the very high cost of construction compared to existing property values, and the difficulty of securing financing for them. While recognizing ADUs as an important way to support “gentle infill” in single-family areas, additional rental opportunities for small households, and long-term income-generation for property owners who can afford to build them, staff believes that the sheer cost of these units is prohibitive to their becoming a significant part of the solution to the affordable housing issues Madison faces at this time.

**Staff Response:**

18. Allow ADUs “by-right”

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### G) Establish Density Bonuses

**Rationale:** Ordinances created to allow for greater densities when affordable housing is included in a proposal could generate additional affordable housing opportunities.

**Analysis:** This notion is often embraced by some neighborhood associations and others interested in supporting greater heights and densities if affordable housing is meaningfully incorporated in developments. However, **Wisconsin statutes prohibit the use of density bonuses for affordable housing** or for zoning decisions made based on the condition that residential units remain affordable, as it is seen as a form of rent control.

**Staff Response:** Given the statute limitations, staff cannot recommend further pursuit of this strategy.

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### H) Employ Inclusionary Zoning

**Rationale:** Requiring a percentage of housing units in a development be reserved as “affordable” units would ensure a supply of affordable housing opportunities spread throughout the community.

**Analysis:** Inclusionary Zoning has been implemented in over 200 cities in the United States as a strategy to increase the number of affordable housing units. The

City of Madison’s Inclusionary Zoning Ordinance was in effect from 2006 to 2009 for owner-occupied housing. **Inclusionary Zoning for renter-occupied housing units was never implemented, as the courts deemed it a form of rent control, which is prohibited by Wisconsin statute.** The City of Madison is currently limited to incentivizing affordable rental housing rather than requiring it.

**Staff Response:** Staff does not recommend further pursuit of this strategy.

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### I) Establish Development Tax or Value Capture Incentives

**Rationale:** Tax incentives, often a credit towards property taxes owed, for housing units that are income and rent restricted can spur additional affordable housing development by reducing ongoing costs.

**Analysis:** Rather than providing an ongoing tax credit to offset property tax obligations, the City of Madison may use Tax Incremental Financing (TIF) as a tool to actively encourage affordable housing development by providing a capital subsidy. The current City of Madison TIF policy takes housing affordability into account when calculating the level of potential financial assistance. Specifically, TIF assistance may be provided to a residential real estate project in which no less than 40% of the units are affordable to households making less than or equal to 40% of Area Median Income (AMI), said units made affordable for a period of not less than 30 years. More directly, the City of Madison Affordable Housing Fund was established to direct funds from closing TIF districts and general obligation debt towards affordable housing developments.

**Staff Response:**

19. Further refine TIF guidelines (income limits, underwriting criteria) to provide better financial support to affordable housing developments.

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### J) Use Property Tax Abatements

**Rationale:** Like tax incentives, property tax reductions or exemptions for housing units that are income and rent restricted can spur additional affordable housing development.



**Analysis:** Property taxes are the most direct cost that local governments impose on the operation of buildings including low-income housing. While some communities adjust assessments or reduce/eliminate property taxes for housing contingent on the affordability of rents charged, **Wisconsin's rules on equalized values limit the amount that assessments can be adjusted.** The City of Madison Assessor currently adjusts property assessments down for properties that have long-term rent restrictions (e.g. Section 42 tax credit properties).

**Staff Response:** Staff does not recommend further pursuit of this strategy.

## Conclusion

As in many growing cities, the regulatory process regarding development and land use change adds cost and risk to the development of new housing supply in Madison. Historically, Madison has provided generous opportunity for resident involvement in the development review process. While change has been occurring swiftly in some neighborhoods over the past few years, it has been shaped in part by input from nearby residents, particularly those that have direct interest or life circumstances to allow them the opportunity to volunteer time and effort in these processes. In contrast, potential residents who may like to own or rent in proposed developments are not as likely to provide input.

At this time, nearly every mixed-use or multi-family development in the City involves discretionary review at one or more public hearings following a less formal process shaped by neighborhood

associations and individual alders. The involvement of residents in shaping change in Madison is clearly critical to our local democracy. That said, the existing plan recommendations and related zoning regulations, together with the degree to which we rely on local input to shape the details of development is likely contributing to a bottleneck in our supply of multi-family housing options.

We must acknowledge that given Statutory limitations on *requiring* affordable housing or providing zoning-related *incentives* for affordable housing (density bonuses, etc.), the City of Madison's ability to influence housing affordability is limited. As a City, we should continue to *directly support* affordable housing through subsidization. That effort is critical, yet can only impact a fraction of households.

**In order to increase housing choice and availability and reduce housing costs citywide, policy-makers may wish to consider ways to strike a different balance to *remove obstacles and encourage more housing supply to move forward with less discretionary review and/or more predictability.*** In this memorandum, staff has provided several interrelated ideas toward this end that the Plan Commission and Council could consider regarding this shift. We do not recommend a single solution at this time, and acknowledge that tradeoffs are important to explore further.

Staff looks forward to further direction from the Plan Commission and Council regarding a potential shift toward a more predictable or more relaxed regulatory framework for expansion of our housing supply.

## Summary of Staff Responses to Actions Recommended in the [Housing Toolkit](#)

- A. Establish By-Right Development (allow zoning compliant development to proceed without further public approvals)**
  - 1. Adjust thresholds (# dwelling units, building size, height, etc.) between permitted and conditional uses to allow more development without need for conditional use approval
  - 2. Relax the requirement for Plan Commission approval for demolition
  - 3. In addition to adjusting thresholds, add maximum height maps to the zoning code to better manage expectations
- B. Tax Vacant Land or Donate it to Non-Profit Developers – Not Possible / Not Recommended**
- C. Streamline or Shorten Permitting Processes and Timelines**
  - 4. Expand “by-right” development
  - 5. Standardize and streamline the pre-application process (e.g. neighborhood meetings)
  - 6. Encourage post-approval meetings with development teams
- D. Eliminate Off-Street Parking Requirements**
  - 7. Further reduce or eliminate parking requirements for multi-family residential development citywide
  - 8. Lower the maximum parking ratio for multi-family residential development
  - 9. Utilize the Transit-Oriented Development Overlay District to eliminate off-street parking requirements altogether in areas well served by transit
  - 10. Develop a protocol to analyze the actual parking and traffic impacts of a sample of developments
  - 11. In tandem with above strategies, pursue a more robust on-street parking management strategy
- E. Enact High-Density and Multi-Family Zoning**
  - 12. Within the Comprehensive Plan Update, consider increases to residential density ranges
  - 13. Increase the allowable density for purely residential buildings in mixed-use zoning districts
  - 14. Increase the allowable residential density for small multi-family buildings in select districts
  - 15. Create a new high-intensity district that would allow for high-density residential or mixed use buildings for application outside of the Downtown area
  - 16. Explore a reduction of usable open space requirements
  - 17. Explore the more widespread replacement of density maximums with building height maximums
- F. Allow Accessory Dwelling Units**
  - 18. Allow ADUs “by-right” without need for conditional use
- G. Establish Density Bonuses – Not Possible / Not Recommended**
- H. Employ Inclusionary Zoning – Not Possible / Not Recommended**
- I. Establish Development Tax or Value Capture Incentives**
  - 19. Further refine TIF guidelines to provide better financial support to affordable housing
- J. Use Property Tax Abatements – Not Possible / Not Recommended**

