



LAND  
DEVELOPMENT CODE  
ADVISORY GROUP

FINAL REPORT

JULY 6, 2017



Approved July 5, 2017

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## MEMORANDUM

**TO:** Austin City Council, Planning Commission, and Zoning and Platting Commission

**FROM:** Gregory I. Guernsey, AICP, Director  
Planning and Zoning Department

**DATE:** August 14<sup>th</sup>, 2017

**SUBJECT:** CodeNEXT Advisory Group (CAG) Report

I am pleased to announce the release of the final report by the Land Development Code Advisory Group (CAG). This report represents the culmination of years of effort by many individuals, and we thank them for their service. Serving as the Executive Lead of the CAG, I have witnessed the many discussions that have occurred over the past four years. I commend the CAG for their hard work and their commitment to summarizing the views of 17 different representatives into one comprehensive report. The Mayor, Chair Jim Duncan, and I want to express our gratitude to all of the CAG members, current and former, for their time and dedication to this important project.

“I would like to thank the Land Development Code Advisory Group for the hard work and countless hours they have spent working to help the CodeNEXT team and the community create a new code that will work for all Austinites. I want to thank every CAG member, current and former, who has served on this board since its inception more than three years and 63 meetings ago. This group represents a broad cross-section of Austin, and I know the recommendations they have made in their final report will help in the creation of an improved land development code. I hope that despite the group’s official dissolution, CAG members will continue to stay involved in the CodeNEXT process as active and engaged citizens.”

- Mayor Steve Adler

“The report summarizes key issues raised by the public over the course of the CAG’s existence, and offers recommendations that attempt to bring the code closer into alignment with the priorities of Imagine Austin. Austin continues to experience severe growing pains and it is likely impossible to fully reconcile the many divergent community viewpoints related to land development. While CAG members have attempted to identify chief issues of concern and to provide constructive recommendations for improvement, we must

emphasize that the issues contained in this report are by no means exhaustive and that many others will require consideration as this process progresses.”

- CAG Chair Jim Duncan

The consultants and CodeNEXT Team have already begun reviewing these recommendations and will consider issues raised as we develop the next code draft which will be released mid-September. As the CAG's work as a board concludes, the CodeNEXT team sincerely hopes that CAG members remain ambassadors of the project and continue to foster outreach and feedback over the coming months.

CC:

Elaine Hart, Interim City Manager

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# EXECUTIVE SUMMARY

Austin City Council in December 2012 created the Land Development Code Advisory Group (CAG) to gather community outreach on the City's effort to rewrite its land development code (CodeNEXT). Council also charged CAG to evaluate CodeNEXT against the eight Priority Programs in the Imagine Austin Comprehensive Plan.

This report summarizes key issues raised by the public, and offers recommendations that attempt to bring the code closer into alignment with the priorities of Imagine Austin. It also includes results of a CAG member poll intended to fulfill portions of the charge related to Imagine Austin and code implementation, as well as a list of key elements and analyses that were unavailable for the CAG's consideration at the time of this report, but which we believe are crucial to an informed review of the draft code and maps. Additional information, including comments received from city boards and commissions, is included in the Appendix.

Recommendations and poll results are summarized below. Detailed recommendations are provided in the body of the report.

## A. CODE STRUCTURE AND ANALYSIS

1. Obtain additional data and modeling to optimize CodeNEXT trade-offs.
2. Revise mapping to better reflect Imagine Austin goals.
3. Reduce complexity of Transect, Non-transect and Title 25 zones by moving towards a unified code.

## B. ENVIRONMENT AND PARKLAND

4. Strengthen measures to mitigate urban heat island effect.
5. Clarify and update provisions for water stewardship.
6. Strengthen provisions to ensure nature, parkland.
7. Strengthen provisions for water quality protections.
8. Allow public gatherings on open space subject to public/private agreements.

## C. INFRASTRUCTURE

9. Strengthen drainage provisions to reduce risk of floods.
10. Require infrastructure improvements from major remodels.
11. Create a plan for infrastructure capacity to keep pace with development.
12. Tie reduced parking requirements to clear public benefits.
13. Revise CodeNEXT mapping to better reflect existing or planned transit.
14. Prioritize civic space at rapid transit stations, including along corridors.

## **D. BUILDING AND STANDARDS**

15. Recalibrate compatibility standards to better balance livability and growth.
16. Retain Floor to Area Ratio (FAR) to manage building scale and as a density bonus lever.
17. Model draft code to test McMansion requirements.
18. Model draft code to reduce demolition of existing affordable housing.
19. Provide an exception for alley access requirement for alleys serving both residential and commercial properties.
20. Support cooperative housing with new building type, clearer definitions.

## **E. COMMUNITIES FOR ALL AGES**

21. Require sufficient parking near schools to ensure safety and access.
22. Plan for family-friendly housing near urban schools.
23. Restore existing rules for nightclubs and liquor stores near residences, while working to better balance stakeholder interests.

## **F. PROCESS AND NONCONFORMING ISSUES**

24. Revise proposed public process changes to ensure adequate notice and participation.
25. Clarify nonconforming use/structure language to avoid unintended consequences.
26. Add provision to terminate nonconforming uses that threaten general health, safety and welfare.

## **G. PROPOSED FUTURE CODE ADDITION**

27. Add new section to Land Development Code to support art, music, and culture.

## **H. AFFORDABLE HOUSING INCENTIVES**

28. Expand areas for legally restricted affordable housing, use consistent requirements, consider monitoring fees, clarify terms, provide additional analyses.

## **CAG MEMBER POLL RESULTS.**

Results from the CAG member poll intended to gauge progress toward implementation showed a clear majority of CAG members believe the current text and maps require significant revisions or a complete overhaul. Results from the CAG member poll regarding the eight identified Imagine Austin Priority Programs were too varied to be easily summarized. Please see CAG poll section for full results of both polls.

# INTRODUCTION

The Austin City Council established the Land Development Code Advisory Group (CAG) by resolution in December 2012 with a charge to:

- “assist in public outreach and provide feedback on the development and implementation of the revised land development code” and
- “ensure the CodeNEXT process supports all of the Priority Programs outlined in the Imagine Austin Comprehensive Plan for the City of Austin.”

Pursuant to its charge, the CAG has conducted extensive outreach over a period of years and provided regular feedback to city staff and consultants during its public meetings, as documented on the City of Austin website. Throughout this process, CAG members have fielded a broad range of questions, concerns and suggestions from individuals, business interests, civic organizations, professional associations, neighborhood groups, community activists and many others.

Over the course of these discussions, a number of topics consistently emerged as areas of public interest, with opinion often divided on how best to address them. The release of the draft text in late January 2017, followed by the draft maps in April, showed several improvements over current code but also raised additional questions and concerns.

To aid the work of the Land Use Commissions and City Council, this report identifies over two dozen frequently cited topics and presents an issue brief for each, summarizing the draft code’s approach, highlighting pros and cons and providing recommended changes. To fulfill other portions of the CAG’s charge, this report includes results of a member poll designed to gauge how well the current draft supports Imagine Austin’s eight Priority Programs and to estimate progress toward implementation.

Additionally, the report provides a list of missing code elements and analyses, such as flood impact modeling and the Strategic Mobility Plan, which were not available in time for CAG consideration, but which we believe are crucial to an informed review of the draft text and maps. More information, including submissions by individual CAG members and city commissions, is provided in the report’s Appendix.

Our topic briefs include four types of recommendations:

1. Corrections or refinements to the code text intended to reflect current city policy more accurately, or to provide additional detail to ensure clarity;
2. Recommendations aimed at moving the code more strongly toward the goals of Imagine Austin, but which would require public discussion and adoption of new policy by City Council;
3. Recommendations for further data gathering and analysis that would support policy making and assessment of progress toward policy goals over time; and
4. Recommendations related to mapping.

In general, agreement was strongest on recommendations for corrections and clarity. While there was agreement on the utility of gathering additional information or conducting more detailed modeling, members were divided on whether the additional data was worth the additional expense in all cases. In terms of policy, while CAG members generally agreed that policy changes were needed in some areas, there was less agreement on which specific policy approaches, or mapping changes, would be most beneficial or on how to balance competing policy goals that would be affected by proposed changes.

Like the general public, CAG members did not reach consensus on all recommendations contained in this report, but the vote noted on each brief is intended to provide a general sense of the group's view. While CAG members may be divided on solutions, we agree that the issues highlighted here are essential for consideration by the Land Use Commissions and City Council. However, we must emphasize that this report is by no means exhaustive and that many other issues will require debate and deliberation as CodeNEXT progresses.

Given current market pressures, it will be no easy task to balance the multiple goals of the Imagine Austin Comprehensive Plan and to maintain a diverse inclusive community for all. In reviewing future drafts, we strongly encourage decision makers to consider the city's Affordable Housing Blueprint, as well as the final report of the Mayor's Task Force on Institutional Racism, and to act with a view toward slowing gentrification and displacement of longtime residents and communities.

It should also be noted that many CAG members repeatedly voiced concern and frustration over public access to information, the timing and schedule for public review, and public outreach efforts. Despite our numerous meetings and many requests to be part of the substantive process, the CAG was not included in discussions that produced the draft code structure or overall strategies for mapping. For example, many CAG members requested that the draft code be released in modules instead of all at once. Without draft text, the CAG spent much of its time discussing general issues, and many CAG members found it difficult to provide valuable detailed feedback.

The first draft text was released four months ago, with additional sections published less than a week before this report was due to be finalized; the first draft maps were released two months ago and have since been updated with corrections. Despite this compressed time frame, the CAG has attempted to analyze the first draft of the text and map, as well as to prepare and vote on recommendations to be included in this report, before dissolving as an official body. While we acknowledge that the text and map are first drafts and no final decisions will be made from the current versions, it is important to explain that our review of the first draft code and the first draft map has not been as thorough as we might wish due to time constraints. This is particularly true for the draft code sections on affordable housing incentives, which were not released until mid-June and are still incomplete in some regards.

Furthermore, many CAG members were surprised by the decision to map the entire city all at once, given that the previous City Council had recommended the mapping be done incrementally, and by the decision to use a three-pronged approach, which has resulted in three sets zoning terms and standards in the current draft. Both decisions were made without CAG involvement, nor was there an opportunity for our recommendation. Finally, CAG members have repeatedly expressed frustration over the lack of outreach in languages other than English, and to impacted communities, especially to our city's working poor and communities of color. The outreach that has been conducted to date has been deficient in that it was not designed to convey information in plain language or elicit useful feedback, especially from new voices, on CodeNEXT. We hope that outreach of this nature will improve.

It must be said that not all CAG members agree with all of the preceding criticisms. Some CAG members have recognized that the city has done much more to brief the public on the proposed code than was ever done for the existing Land Development Code. These members recognize that a major undertaking of this kind will inevitably attract critics regardless of the efforts of the consultants, the staff, and the CAG to conduct outreach. These CAG members also supported a more limited role for the CAG of providing feedback and conducting outreach activities, and feel that the feedback given throughout the process was valuable. Rather than criticize the public outreach efforts, these CAG members are grateful for the opportunity to critique the first draft and laud the city for the online tools and public forums that have been held, which exceed any efforts ever made to educate stakeholders about the current land development code.

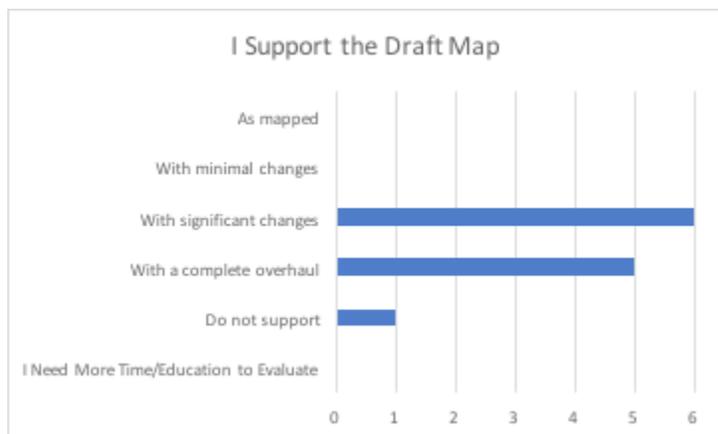
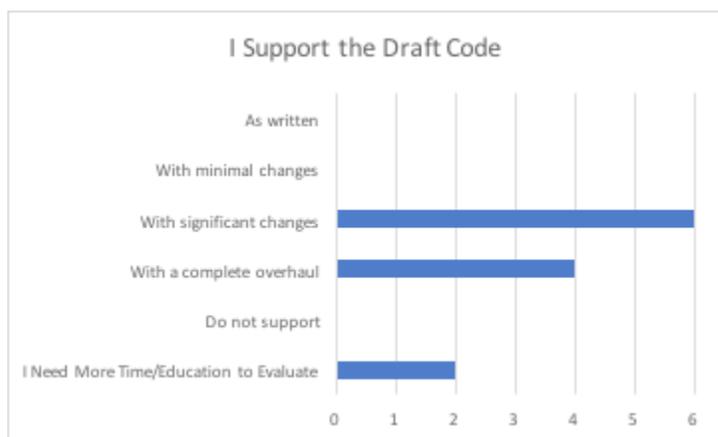
We all acknowledge that the CAG itself was not a representative body. Of the eighteen current CAG members, nine members reside in Districts 9 and 10. Following the election of the 10-1 Council, nineteen CAG members were appointed before the first African-American member was seated. Only two of the current eighteen CAG members are renters, though a third member was a renter at the time of appointment.

Despite these differences of opinions and acknowledged shortcomings, CAG members have greatly appreciated the opportunity to engage in this important effort. We look forward to continued participation as individuals and as a community resource as CodeNEXT moves forward through the public process.

# CAG MEMBER POLL RESULTS

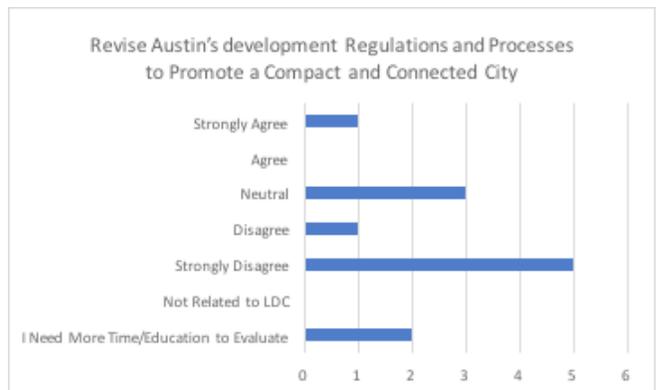
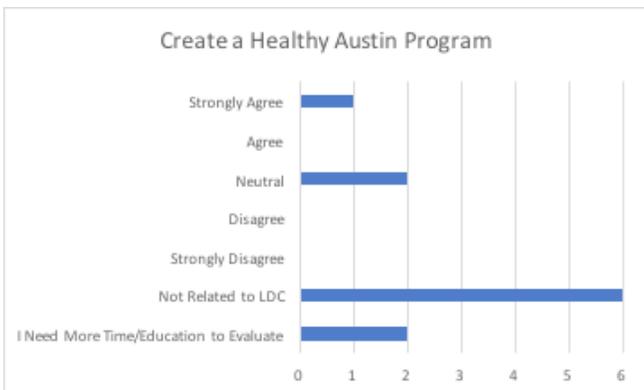
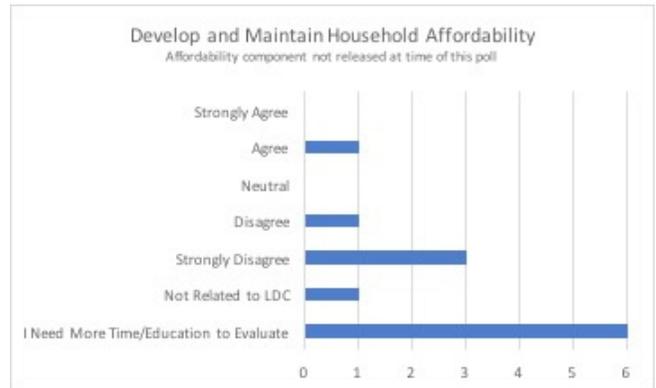
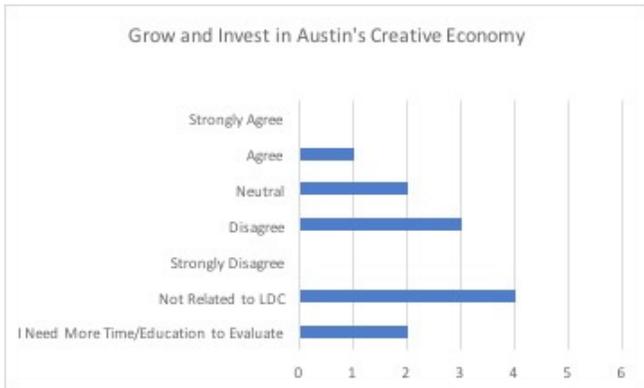
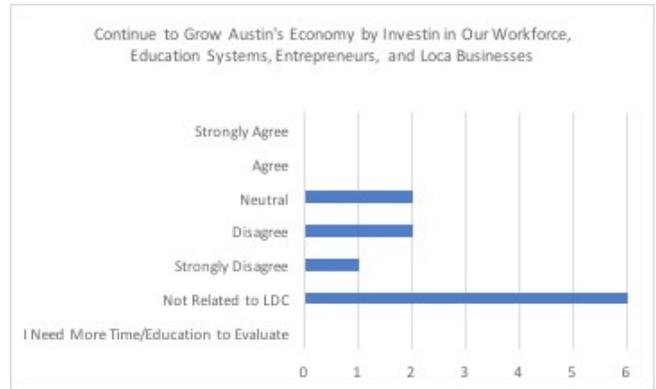
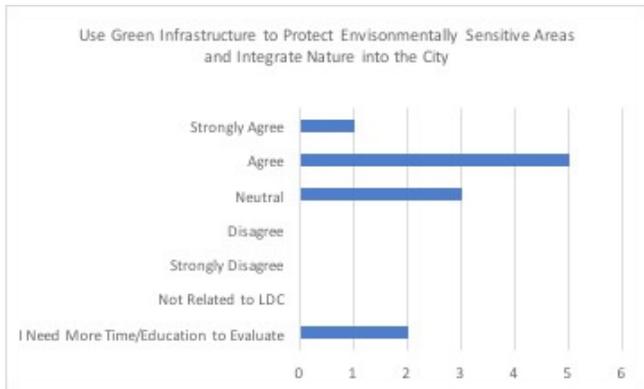
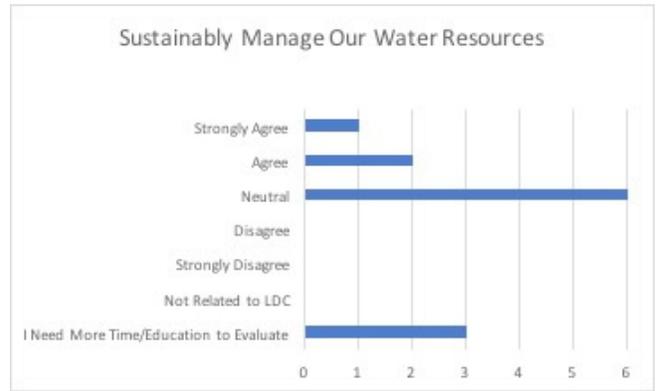
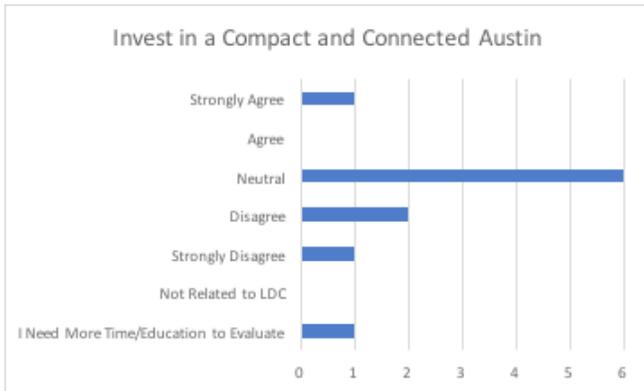
To fulfill the portions of its charge regarding Imagine Austin and implementation, the CAG created a poll for its members. Each member was asked to rank how well the current draft text and map support each of the eight Priority Programs identified in Imagine Austin (while CAG’s charge explicitly references IA’s Priority Programs, please note that many of these do not relate directly to the Land Development Code). CAG members were also asked to estimate the level of revisions still needed for the current draft text and map to gauge progress toward implementation and to assist the Land Use Commissions and City Council in setting realistic expectations for their respective workloads moving forward.

Poll results were as follows:



# IMAGINE AUSTIN PRIORITY PROGRAMS

The draft code and draft map support the following Imagine Austin Priority Programs:



In addition, two CAG members requested that their additional comments be included with the poll results.

CAG Member Eleanor McKinney:

“With so many items still missing from the draft code, it is premature to evaluate how well it follows the Imagine Austin priority programs.”

CAG Member Dave Sullivan:

“Reduce some T4 zoning within some largely detached single-family house neighborhoods to reduce opposition from angry detached single family homeowners.

“Reduce adjacency of T5 zoning to T3 zoning for compatibility.

“Add section to 23-3 for Arts/Music/Culture (recommendations from E.D.D., and arts & music commissions).

“Reduce zoning map complexity by, for example, converting Code 25 zoning labels with conditional overlays to Transect zoning with similar conditional overlay, with plans to sunset all conditional overlays by, say, 2020. So, for example, all of Downtown could be T5 and T6 with CO or NP attached to indicate FAR limits per the Downtown Plan.”

# ISSUE BRIEFS AND RECOMMENDATIONS

In this section, the CAG presents issue briefs for over two dozen topics that consistently emerged as areas of public interest, with opinion often divided on how the code might best address them. Each issue brief contains a summary of the draft's proposed actions on a given topic, followed by pros and cons and recommended changes. Where applicable, the relevant Imagine Austin goals are also noted.

CAG members prepared these issue briefs and recommendations working in small groups organized around general themes (please see Appendix A for working groups and membership). Drafts were first reviewed by the applicable working group before being submitted to the full CAG for additional review.

CAG members considered the recommendations presented here at public meetings on June 5, June 12, and July 5, 2017. Recommendations pulled for discussion and voting are listed with numeric results (Support-Oppose-Abstain). Recommendations not pulled for discussion are listed as Consent. Thirteen CAG members were present at the June 5th meeting, twelve members present on June 12th and fourteen members were present on July 5th.

Topic briefs include four types of recommendations, indicated as follows:

**(T)** indicates corrections or refinements to the code text to reflect current city policy more accurately, or to provide additional detail to ensure clarity.

**(P)** indicates recommendations aimed at moving the code more strongly toward the goals of Imagine Austin, but which would require public discussion and adoption of new policy by City Council.

**(A)** indicates recommendations for further data gathering and analysis that would support policy making and assessment of progress toward policy goals over time.

**(M)** indicates recommendations related to mapping.

Issue briefs are numbered for ease of reference and are grouped by general topics: Code Structure and Analysis; Environment and Parkland; Infrastructure; Building and Standards; Communities for All Ages; Process and Nonconforming Issues; Proposed Future Code Additions; and Affordable Housing Incentives. Numerical order is not intended to indicate priority.

## A. CODE STRUCTURE AND ANALYSIS

### 1. OBTAIN ADDITIONAL DATA AND MODELING TO OPTIMIZE CODENEXT TRADE-OFFS.

CodeNEXT Draft: Relies on Envision Tomorrow modeling tool to evaluate zoning rules and mapping of new zones. Primary focus is on market feasibility and resulting housing capacity. Less detailed modeling was done of other Imagine Austin goals.

#### Pros of CodeNEXT proposal:

- Market feasibility is an essential criterion for any zoning process. Mapping development where the market will never build may create economic drag.
- City Council has budgeted a limited amount for CodeNEXT modeling, which must be used prudently.

#### Cons of CodeNEXT proposal:

- CodeNEXT rules and mapping may not optimize all Imagine Austin goals absent additional modeling of other IA metrics.
- 3-D visualization modeling has not been provided to illustrate potential impacts of draft code and maps.
- Envision Tomorrow data and tools have been largely unavailable to general public, boards and commissions or City Council, limiting informed review
- City decision makers and the public need more extensive modeling tools to knowledgeably evaluate tradeoffs inherent planning, code and zoning changes, now and in the future.

#### Recommendations (13-0-0):

1. City Council should require additional scenario testing of trade-offs during the process of refining both CodeNEXT rules and the mapping, in particular of transportation, stormwater capacity, and housing mix by bedroom count. (P)(A)
2. City Council should make this decision as soon as possible. (P)
3. Fund access and full training on these tools for boards and commissions, and City Council staff. (P)
4. Provide access and online training to the public. (P)

#### Related Imagine Austin Goals:

NA

### 2. REVISE MAPPING TO BETTER REFLECT IMAGINE AUSTIN GOALS.

CodeNEXT Draft: Focuses most new entitlements and housing capacity, including missing middle, in urban core Transect zones where redevelopment is already booming and land is at a premium. Non-transect zones are mainly mapped in traditional suburban areas where less new growth has been seen to date. Draft maps ignore many Imagine Austin centers and do not provide complete communities or missing middle housing types citywide.

#### Pros of CodeNEXT proposal:

- Market-driven mapping strategy puts more housing where people want to live.
- Zoning that is more certain to result in new development or major redevelopment will increase the city's tax base.
- Concentrating new housing in centers and corridors increases active transportation and transit, potentially lowering carbon footprint.

#### Cons of CodeNEXT proposal:

- Limiting new development entitlements to fewer areas will increase land prices, make housing costlier, fuel gentrification and displace more long-term residents.

- Proposed mapping does not share development pressures or redevelopment potential equitably across the city, nor allow for diverse housing types in all areas.
- Draft provides relatively little zoning for family housing in urban core, narrowing housing mix, services and age demographics in these areas over time.
- Not all small businesses can function in mixed-use buildings, leaving fewer viable locations for such businesses in Transect areas.
- Draft is a missed opportunity to appropriately map all IA centers and corridors for complete communities.

#### **Recommendations (13-0-0):**

1. Map out all Imagine Austin centers and corridors with Transect zones over the coming five years. (P)
2. Consider some T6 zoning in regional centers, including the North Burnet Gateway, possibly Howard Lane TODs. (M)
3. Prioritize strategic Imagine Austin centers outside the urban core for additional infrastructure investment to incentivize new development. (M)(P)
4. Consider policy changes to achieve community goals for income and age diversity & livability, in all parts of town, not just areas already experiencing high development pressure. (M)(P)
5. Consider mapping and/or policy changes to support small and iconic business along corridors and retain the community character. (M)(P)

#### **Related Imagine Austin Goals:**

- Complete communities throughout Austin (IA p. 88)
- Implement IA Comprehensive Plan (IA p. 217, p. A-29)
- Preserve neighborhood character (IA p. 208)
- Promote affordability (IA p. 208)
- Support growth concept map (IA p. 103)
- Nurture and retain small, local, minority- and women-owned businesses (IA p. 144)

### **3. REDUCE COMPLEXITY OF TRANSECT, NON-TRANSECT AND TITLE 25 ZONES BY MOVING TOWARD UNIFIED CODE.**

CodeNEXT Draft: Introduces Transect zones (23-4D-2), a form-based approach organized by scale of development; and Non-transect zones (23-4D-3, 4, 5), a use-based approach retaining some but not all elements of current zoning. Retains intact Title 25 overlay zones (23-4D-6, 7) for roughly 24% of the city. Provides different definitions, standards, and protections under each approach.

#### **Pros of CodeNEXT proposal:**

- Three-pronged approach respects direction of City Council to implement “hybrid” system, placing Transects mainly in urban core while leaving in low-growth areas largely untouched and retaining complex negotiated agreements.
- Non-transect zones can simplify some aspects of current code, e.g by consolidating several overlapping commercial zones.
- In suburban areas, Non-transect zoning may deter owners from holding properties off market in expectation of higher returns in a distant, transit-oriented future.
- Transect zones can ensure more detailed building forms in keeping with area’s built character.

#### **Cons of CodeNEXT proposal:**

- Use of multiple approaches is confusing and may result in conflicting interpretations where zones meet.
- Non-transects reinforce less walkable suburban environments, rather than seeding infrastructure to make areas walkable over time.

- Some Transect and Non-transect zone categories are essentially duplicative.
- Non-transect zones are less detailed than Transect or Title 25 zones, potentially creating new loopholes.
- Three-pronged code will require more staff with specialized expertise to administer three major types of development zones.
- Implementing two completely different new zoning approaches on top of existing code raises risk of unintended consequences for residents and property owners.

**Recommendations (13-0-0):**

1. Move toward a simpler code with a unified set of standards. (P)(T)

**Related Imagine Austin Goals:**

Provide clear guidance in user friendly format (IA p. 208)

Ensure delivery of efficient services (IA p.208)

## B. ENVIRONMENT AND PARKLAND

### 4. STRENGTHEN MEASURES TO MITIGATE URBAN HEAT ISLAND EFFECT.

CodeNEXT Draft: Clarifies regulations for trees in ROW and public spaces, increase width of parking lot tree islands and increase soil volume for new trees (23-3C, 23-4E). Allows director to waive site plan submittal requirements for 3-9 units without clear tree or environmental requirements (23-6B). Reduces setbacks to as little as 0' in some Transects, leaving no room for planting or green infrastructure (23-4D). Continues site plan exemption for commercial remodels under 3000 SF (23-6B). Provides placeholder for Functional Green requirement without details (23-4E).

#### Pros of CodeNEXT proposal:

- Waiver of some site plan submittal requirements could make it easier to develop missing middle housing.
- Reduced setbacks could provide more units.
- Continued site plan exemption for commercial remodels allows small businesses to update without an undue cost burden.
- Increased width of parking lot tree islands and tree soil volume standards benefits tree health and longevity.

#### Cons of CodeNEXT proposal:

- Proposed building form setbacks are not sufficient for new tree planting, reducing ability to combat heat island effect.
- Reduced setbacks could result in removal of existing trees.
- Site plan submittal requirements for 3-9 units are not yet defined, leaving existing trees unprotected.
- 3000 SF limit for site plan exemptions on commercial remodels may preclude a small business from removing existing asphalt to plant trees or install rain gardens.
- Draft does not require green building standards nor incorporate Austin's nationally recognized green building program, despite buildings being top urban heat generators.
- Draft does not yet incorporate Green Streets standards, including increased soil volume for street trees nor Functional Green standards, for projects with greater than 80% impervious cover.

#### Recommendations (Consent):

1. Define the site plan submittal requirements for three to nine units. Incorporate all tree preservation requirements. (T)
2. Provide for combined side and rear setbacks in Transect zones for the purpose of tree preservation. Provide front setbacks with sufficient depth for new tree planting. (T)
3. Allow site disturbance beyond the limit of construction for site plan exemptions for the purpose of planting trees and installing rain gardens. (T)
4. Incorporate green building requirements into all Transect zones. Calibrate these requirements to the building form. Incentivize projects that go above and beyond the requirements. (T)
5. Incorporate Green Streets standards for street trees including soil volume requirements. (T)
6. Incorporate the Functional Green standards into the draft code update. (T)

#### Related Imagine Austin Goals:

- Use green infrastructure to protect environmentally sensitive areas and integrate nature into city (IA p. 186)
- Create a healthy Austin (IA p. 186)
- Strengthen tree protection (IA p. 247)

## 5. CLARIFY AND UPDATE WATER STEWARDSHIP PROVISIONS.

CodeNEXT Draft: Requires on site beneficial reuse to retain water from minor storm events on property, but does not provide details (23-3D). Requires parking area landscape medians to be graded to receive stormwater (23-4E).

### Pros of CodeNEXT proposal:

- Retaining stormwater on site increases creek health through migration of stormwater underground to creeks, filters pollutants with plants, and allows non-potable water to irrigate trees and landscape areas.
- Grading parking area landscape medians to receive stormwater prevents excess water from running off site, while benefiting planted areas.

### Cons of CodeNEXT proposal:

- Elements of onsite beneficial use program are not yet available for review; footprint and cost remains unclear.
- Current obstacles to rain water harvesting systems are not resolved.
- Porous pavement is not yet widely understood or utilized.
- Results of Austin Water Forward study will not be available until 2018 and it is not clear how or whether these will be calibrated to Transect and Non-transect zones or public parks and open spaces.
- Use of non-potable water options such as HVAC condensate, gray water, and reclaimed water is not clear.
- Practical water regulations to preserve ecosystem services provided by trees and green spaces have not been incorporated.
- Green Streets standards, which will define bioswale treatments in ROW, are not yet available.

### Recommendations (Consent):

1. Update the onsite beneficial use section of the draft code to indicate the type of green infrastructure elements to be employed. (T)
2. Remove obstacles to the use of rainwater harvesting systems. (T)
3. Clearly indicate porous pavement, rain garden, and bioswale options. (T)
4. Clearly indicate that non-potable water options will be available in the future code update. (T)

### Related Imagine Austin Goals:

- Sustainably manage water resources (IA p. 186)
- Use green infrastructure to protect environmentally sensitive areas and integrate nature (IA p. 186)
- Create healthy Austin (IA p. 186)

## 6. STRENGTHEN PROVISIONS TO ENSURE NATURE, PARKLAND.

CodeNEXT Draft: Protects wooded areas with contiguous canopy coverage and individual trees in greenfield development (23-4C). Requires planting of appropriate trees where no canopy exists. Requires site analysis of existing vegetation, habitats, soils, and geologic, historic, and archaeological features to be preserved (23-4E). Requires parkland dedication for all residential zones (23-3B). Requires private personal open space and common open space in Transect zones (23-4D). Requires open space in commercial Non-transect zones and in standards for courtyard buildings, cottage court buildings, and private forecourt frontages (23-4D). Provides new civic and open space typologies and standards (23-4C).

### Pros of CodeNEXT proposal:

- Stronger tree requirements for greenfield sites will ensure nature in suburban areas.
- Required site analysis will preserve natural and historic character.
- Requirements for parkland dedication, Transect, and commercial Non-transect zone open space ensure more green features.

- New civic space typologies address pocket parks and plazas needed in denser urban core.
- Required connections from proposed sites to adjacent urban trails improve access to nature.

#### **Cons of CodeNEXT proposal:**

- Site analysis may add an extra step to the site plan process.
- Parkland dedication fee-in-lieu option for smaller sites may not yield enough parkland in urban areas.
- Open space items not yet coordinated in draft include: Definitions and Measurements, Parkland Dedication, Civic and Open Space, Supplemental Standards for Transect Zones, Private Personal and Private Common Open Space, Open Space in Commercial Non-transect zones, and open space in private courtyard forms.
- Current Subchapter E requirements are not updated in draft. Open space at BRT stops needs definition and standards. Open space should be calibrated to lot size.
- Open space requirements are unclear in residential Non-transect zones and Transect zones.
- Standards for use of stormwater infrastructure as public open space are unclear.
- Draft does not address preserves, creeks, and urban trails, or standards for preserving and enhancing natural bio-diversity.

#### **Recommendations (Consent):**

1. Require parkland dedication on or off-site if requirements are .25 acres or more. (P)
2. Coordinate all aspects of open space standards and prioritize preservation of natural character and green stormwater infrastructure. Incorporate results into the updated draft. (T)
3. Update and calibrate the former Subchapter E open space requirements to lot size. (T)
4. Update open space at BRT stops. (T)
5. Provide missing items and standards including Definitions and Measurements, Parkland Dedication, Civic and Open Space, Supplemental Standards for Transect Zones, Private Personal and Private Common Open Space, Open Space in Commercial Non-transect zones, and open space in private courtyard forms. (T)

#### **Imagine Austin Goals Affected:**

- Integrate nature into the city. (IA p. 186)
- Sustainably manage our water resources (IA p. 186)
- Create a healthy Austin (IA p. 186)

## **7. STRENGTHEN PROVISIONS FOR WATER QUALITY PROTECTIONS.**

CodeNEXT Draft: Article 23-3D retains SOS in its entirety and retains major improvements from 2013 Watershed Protection Ordinance (WPO). Provides more protections for Critical Water Quality Zones. Extends vegetation surveys to residential areas. Codifies protections for critical environmental features. Requires de-compaction of future pervious soils after construction. Creates new water quality fee-in-lieu for suburban watersheds. Requires onsite beneficial use of stormwater. Deletes recent impervious cover restrictions for educational facilities. Maintains 8,000 square-foot of impervious cover as trigger for requiring water quality.

#### **Pros of CodeNEXT proposal:**

- Retains important protections for Barton Springs Edwards Aquifer from the Save Our Springs initiative.
- Retains benefits from WPO, such as creek buffers and floodplain protections.
- Provides more protections and improved design standards for crossings in Critical Water Quality Zones to protect water quality, support healthy aquatic habitats, increase stream bank stability, and conserve natural features.
- Extends requirement for vegetation survey to residential sites.
- Requires that critical environmental features and setbacks be shown on preliminary subdivision plans, site plans, and final plats.

- Decompaction requirement helps ensure pervious areas absorb stormwater and reduce long-term maintenance costs.
- New water quality fee-in-lieu for suburban watersheds will allow certain subdivisions of 2 acres or less the flexibility of paying fee instead of requiring water quality on site, reducing time and costs.
- New requirement for onsite beneficial use of some stormwater offers water quality benefits.

#### **Cons of CodeNEXT proposal:**

- New water quality fee-in-lieu for suburban watersheds could see reduction in water quality controls, with areas of infill disproportionately impacted. If fee is not high enough, could see water quality degradation. Still unclear how many properties and how much acreage this is likely to impact.
- Environmental Commission no longer has obligation or right to annual review of Urban Watersheds Structure Control Plan, where water quality controls are prioritized instead of fee-in-lieu, removing crucial public oversight.
- Requirement that stormwater fee-in-lieu be based on formula set by Council has been removed, leaving it unclear who approves this formula or can waive fees.
- Draft deletes Impervious Cover Restrictions for Education Facilities adopted in 2016.

#### **Recommendations (11-0-1):**

1. Reinstate the Environmental Commission’s right to an annual review of the Urban Watersheds Structure Control Plan as well as any new Suburban Watersheds Structure Control Plan. (T)
2. Decrease the threshold for requiring water quality controls from 8,000 square feet of impervious cover to 5,000 square feet, staff’s original recommendation. (P)
3. Bring forward the recently codified Impervious Cover Restrictions for Education Facilities found in § 25-8-366. (T)

#### **Related Imagine Austin Goals:**

Sustainably manage our water resources (IA p.186)

### **8. ALLOW PUBLIC GATHERINGS ON OPEN SPACE SUBJECT TO PUBLIC/PRIVATE PARTNERSHIP AGREEMENTS.**

CodeNEXT Draft: Provides for Parkland Dedication (23-3B) and Civic and Open Space (23-4C-1070), some of which is privately owned and publicly accessible.

#### **Pros of CodeNEXT proposal:**

- Provides open space, parkland, and civic spaces, much needed in Austin.

#### **Cons of CodeNEXT proposal:**

- Draft code provides no detail on the rights of the public in privately owned, publicly accessible parkland, civic and open spaces. This includes space that was subject to parkland dedication, but which the property owner retained and and obligated to maintain as private parkland.

#### **Recommendation (12-0-0):**

Add to sections 23-3B-2030, 23-4C-1070 and elsewhere in the code as appropriate, the following language: “All privately owned, publicly accessible civic, open space, or parkland subject to 23-3B-2030 or similar provisions in the code shall afford the same rights and protections for free speech and assembly to residents as comparable publicly owned civic, open space, and parkland.” (T)(P)

**Imagine Austin Goals Affected:**

- Grow as a compact, connected city (IA p. 186)
- Integrate nature into the city (IA p. 186)
- Develop as an affordable and healthy community (IA p. 186)
- Enhance the quality of life for families with children and promote family-friendly neighborhoods and services. (IA p. 173 S P20)

## C. INFRASTRUCTURE

### 9. STRENGTHEN DRAINAGE PROVISIONS TO REDUCE RISK OF FLOODS.

CodeNEXT Draft: Article 23-10E requires redevelopment to eliminate erosion impacts and reduce peak flow rate discharge. Emphasizes disconnecting impervious cover and having drainage patterns restore infiltration. Does not account for distinction between current actual impervious cover versus newly zoned impervious cover. Allows staff discretion to grant fee-in-lieu even where downstream flood systems are already at capacity.

#### Pros of CodeNEXT proposal:

- Adds positive intent statement to Drainage section.
- Requires redevelopment to eliminate erosion impacts, not just “additional” erosion impacts.
- Creates new criteria for approval of development applications that requires proposed development to reduce post-development peak flow rate discharge to match the peak flow rate of discharge for undeveloped conditions.
- Provides new emphasis on having drainage patterns restore infiltration while also emphasizing disconnecting impervious cover.

#### Cons of CodeNEXT proposal:

- Proposed code revisions are insufficient to reduce growing flooding impacts.
- Director is allowed discretion to grant fee-in-lieu rather than onsite improvements, but draft is unclear on whether director relies on City data or on applicant data to demonstrate adequate downstream flood conveyance capacity. This baseline data should be controlled by City to ensure accuracy.
- Drainage section was not amended to favor new presumption against culverts. Language in drainage section should be changed to reflect this.
- WPD Modeling/Watershed Capacity Analysis is not available yet, nor are assumptions modelers are using. Absent this, it is impossible to judge whether proposed code and map could lead to more flooding.
- City does not have data on current actual impervious cover so there is no way to know the impacts of proposed impervious cover changes under CodeNEXT. With added flexibility and decreased setbacks, it’s likely actual impervious cover throughout the City will increase, but there is no accounting this or potential impacts on localized flooding.

#### Recommendations (12-0-0):

1. Provide watershed capacity analysis for every watershed in the City to understand and account for the limitations of the modeling and to provide a baseline of actual current impervious cover that will inform our zoning map and maximum impervious cover requirements. (A)(T)(M)
2. Prohibit fees-in-lieu when downstream drainage systems are at or exceeding capacity, eliminating staff discretion in such cases. This could be accomplished by a map, regularly updated with modeled data, to show areas where fees-in-lieu are prohibited. (P)(T)(M)

#### Related Imagine Austin Goals:

- Sustainably manage water resources (IA p. 186)
- Use green infrastructure to protect environmentally sensitive areas and integrate nature into the city (IA p. 186)
- Create a healthy Austin (IA p. 186)
- Strengthen flood control, erosion, and water quality programs, incentives, regulations, and enforcement to incorporate best practices and meet or exceed national standards. (IA p. 255)

## **10. REQUIRE INFRASTRUCTURE IMPROVEMENTS FROM MAJOR REMODELS.**

CodeNEXT Draft: Article 23-10E provides flood mitigation and connectivity requirements for new development and redevelopment, but omits remodels.

### **Pros of CodeNEXT proposal:**

Many small businesses and homeowners carry out remodels on tight budgets. Adding new costs could deter rehab projects that may bring additional benefits.

### **Cons of CodeNEXT proposal:**

- Remodels are most common type of construction project (Mobility Prescription Paper, page 26). Exempting them from infrastructure requirements will undermine city transportation and stormwater safety goals.
- Requiring infrastructure for redevelopment, but not for remodels, may disincentivize beneficial redevelopment.
- Staff has recommended infrastructure requirements for remodels (Mobility Prescription Paper, page 20).

### **Recommendations (12-0-0):**

1. Clarify remodeling threshold for providing public benefit improvements, including flooding mitigation, streetscape improvements and connectivity improvements, e.g. sidewalks and safe crossings, per Mobility Code Prescription Paper, page 17. (T)
2. The scope of upgrade requirements or incentives should reflect the scope of the remodel project. (T)
3. Consider severity of need for the upgrades based on mobility, flooding and infrastructure issues in the surrounding area. (T)
4. Alternatively, incentivize removal of impervious cover and addition of trees and rain gardens, by allowing site disturbance for commercial remodels over the standard threshold without triggering a full-blown site plan. (T)

### **Related Imagine Austin Goals:**

- Compact and connected city (IA p. 186)
- Encourage practices that reduce environmental impact (IA p. 245)
- Ensure land development policies and standards consider public safety and connectivity (IA p. 251)

## **11. CREATE A PLAN FOR INFRASTRUCTURE CAPACITY TO KEEP PACE WITH DEVELOPMENT.**

CodeNEXT Draft: Increases allowed impervious and building cover in many areas. Increases allowed building height and density in many areas, particularly along corridors. Reduces on-site parking requirements. Allows greater infill development in some areas. Increases occupancy limits in some areas. (23-3, 23-4, 23-10).

### **Pros of CodeNEXT proposal:**

- Requires detention, conveyance, and contribution to the Regional Stormwater Management Program for redevelopment as well as greenfield sites.
- Allows more units on less land, potentially decreasing development costs.
- Could allow more people to live in Austin's urban core, especially on or near transit corridors.
- Focuses growth on people, not cars.
- Watershed staff has stated that overall allowed impervious cover (IC) would decrease due to reductions from 95% to 90% or 80% in some zones.

### **Cons of CodeNEXT proposal:**

- Does not model new zoning for flood risk, and does not consider conditions in individual watersheds.
- Does not model existing infrastructure capacity for water and wastewater utilities needed to serve greater numbers of

residents, nor evaluate sidewalk gaps in many growth areas.

- May increase overall actual impervious cover. Single family properties not currently built out to maximum impervious cover may do so as they redevelop. Existing commercial properties at 95% impervious cover may choose to remodel to avoid reducing IC.
- Proposed on-site parking reductions are based on unproven assumption that at least half of Austin residents will not just drive less, but give up cars entirely.
- Draft is unclear on whether environmental regulations will remain in site plans for 3-9 unit infill developments.
- Lack of specific drainage criteria and tree protection could impact downstream flooding and increase the urban heat island effect.

#### **Recommendations (7-1-5):**

1. Direct staff to produce a concurrent study to create budget projections for infrastructure improvements to correspond to CodeNEXT mapping. (P)(A)
2. Produce analyses of impact of proposed parking reductions for representative areas of the city, including Transect and Non-transect zones, and adjust as needed before implementing reductions citywide. (P)(A)
3. Provide greater detail on proposed parking management districts. Apply a context sensitive approach to residential parking permits. (T)(M)
4. Specify how or whether drainage and on-site beneficial reuse requirements and other environmental/infrastructure regulations will apply to 3-9 unit infill developments. (T)

#### **Related Imagine Austin Goals:**

- Sustainably manage water resources. (IA, p. 186)
- Integrate nature into city. (IA, p. 186)
- Compact and connected. (IA, p. 186)
- Strengthen flood control, erosion, water quality programs, incentives, regulations, enforcement to incorporate best practices and meet or exceed national standards (IA, CFS A43)

## **12. TIE REDUCED PARKING REQUIREMENTS TO CLEAR PUBLIC BENEFITS.**

CodeNEXT Draft: Reduces on-site parking requirement to one space per unit for residential, including multifamily, and reduces parking for commercial uses, with no parking required for many businesses under 2500 SF in Transect zones. Article 23-4E provides an additional automatic 20% parking reduction if within 1/4 mile from a transit corridor, with a cumulative 40% additional reduction possible under certain conditions.

#### **Pros of CodeNEXT proposal:**

- Developers are free to evaluate whether to build more parking, or use space for additional residential and commercial purposes.
- Reduced parking will reduce construction costs, which could potentially be passed on to consumer.
- Draft includes provisions for on-site sidewalk zones and open space.
- Reduced parking could potentially result in reduced impervious cover.
- Reduced parking could reduce car ownership rates.
- Reduced parking can improve walkability for residents near the development, as well as visitors to the development (no parking lots to walk through or curb cuts to cross; services and amenities can be located closer together thereby reducing walking distance).

### **Cons of CodeNEXT proposal:**

- Streets congested by on-street parking are perceived by some as unsafe, deterring potential pedestrians, cyclists and transit users.
- Perception of unsafe streets contributes to families with children leaving urban core.
- Site-level connectivity improvements alone are insufficient to achieve area-wide connectivity.
- Sidewalk and bike lane networks in Austin are incomplete, with estimated cost to build out sidewalks exceeding \$1 billion.
- With few bargaining tools for affordable housing, city should not provide give-away to developers without clear public benefit in return.

### **Recommendations (12-0-0):**

1. Develop a means of capturing specific public benefits related to proposed reduced parking requirements in the draft code. (P)(A)

### **Related Imagine Austin Goals:**

- Compact and connected city (IA p. 186)
- Develop and Maintain Household Affordability (IA p.186)
- Create a Healthy Austin Program (IA p. 186)

## **13. REVISE CODENEXT MAPPING TO BETTER REFLECT EXISTING OR PLANNED TRANSIT.**

CodeNEXT Draft: Maps put higher intensity zoning mainly in Imagine Austin growth areas within urban core, but often out of walking distance of best transit. Conversely, some areas close to quality transit are zoned with less density.

### **Pros of CodeNEXT proposal:**

- Housing in urban core is closer to more destinations than housing in suburbs, so vehicle-miles traveled per resident declines whether or not they use transit.
- Even occasional transit use by new residents increases ability of CapMetro to justify more frequent service, ultimately raising transit quality.

### **Cons of CodeNEXT proposal:**

- Mapping higher intensity zoning in growth areas out of walking distance from good transit options, or in areas with fewer walkable destinations, lowers probability that residents will forego car use, while increasing probability of additional congestion and on-street parking.
- Imagine Austin explicitly calls out principles for mapping along corridors: "To improve mobility along an activity corridor... intensity of land use should correspond to the availability of quality transit, public space, and walkable destinations." (IA, page 106)
- CodeNEXT Diagnosis Report specifically calls for organizing higher intensity development around transit-oriented nodes on corridors. (CodeNEXT Diagnosis Report, page 48)
- Zoning maps are not correlated with needed transit upgrades to east/west, circulator routes and/or frequency of service.

### **Recommendations (13-0-0):**

1. Recalibrate the mapping along corridors and centers to optimize existing or planned transit lines, and to shape transit-oriented village centers. (M)
2. City of Austin Transportation Department should request that Cap Metro commit to long-term sites for future rapid transit stations as part of its Connections 2025 plan, including identification of east-west rapid transit lines and stations. (P)

**Related Imagine Austin Goals:**

- Compact and connected city (IA p. 186)
- Develop and maintain household affordability (IA p. 186)
- Preserve neighborhood character (IA p. 208)
- Encourage local businesses (IA p. 194)

**ISSUE 14: PRIORITIZE CIVIC SPACE AT TRANSIT STATIONS, INCLUDING ALONG CORRIDORS.**

CodeNEXT Draft: Article 23-4C on Community Design requires 10% of development site be used for one of several standard categories of civic space. Exempts sites under 4 acres, and sites within 1000' of a park over 1 acre, except for playgrounds.

**Pros of CodeNEXT proposal:**

- Leaving open space requirements up to developer provides more opportunity for creative solutions, potentially lower development costs.
- Open space taken from smaller sites could hamper project viability.
- Lower open space requirements mean more space for housing, retail, parking, potentially more affordable pricing.

**Cons of CodeNEXT proposal:**

- To achieve mobility and community goals of Imagine Austin, activity nodes on corridors need higher level of quality.
- Many or most existing parks are off corridors and serve different functions than plaza spaces within transit nodes.
- Exemptions greatly reduce quality of pedestrian experience in many activity nodes along transit network.
- Higher quality public space and pedestrian experience promote child-friendly urban environments.
- More public space cannot be added after development.
- Lack of public space is particular risk for transitional areas designed after WWII, where walkability is poor.

**Recommendations (12-0-0):**

1. For sites of at least 2 acres adjacent to transit stations require plazas or pocket plazas connecting to the station and accessible to nearby residences without the use of a major roadway. (T)(P)

**Related Imagine Austin Goals:**

- Compact and connected city (IA p. 186)
- Create healthy Austin (IA p. 186)
- Support walking, biking, transit (IA p. 238)
- Integrate nature (IA p. 186)

## D. SITE AND BUILDING STANDARDS

### 15. RECALIBRATE COMPATIBILITY STANDARDS TO BETTER BALANCE LIVABILITY AND GROWTH.

CodeNEXT Draft: Article 23-4 greatly reduces distance in which any compatibility standards apply, while increasing heights and reducing setbacks. Removes consistent triggers, height and setback provisions for Transects, replacing with varied provisions that may or may not be triggered by proximity to a less dense zone. Reduces side and rear setbacks in Transects to 0' in some cases, and removes compatibility for properties on opposite side of street. Provides more consistent rules for Non-transects rules, but also reduces maximum height and setbacks. Removes standards regulating noise levels of mechanical equipment, dumpster and driveway placement, use of reflective materials. Removes Neighborhood Edge Area Development Standards (25-3-151 through 25-3-154). Omits compatibility triggers for the 24% of city to remain under current zoning.

#### Pros of CodeNEXT proposal:

- Compatibility triggers based on zone, not use, are more predictable.
- Provides landscape buffers in compatibility setbacks.
- Allows more units on less land, which could lower development costs.
- May result in better transitions on greenfield sites where an entire community is planned at once.
- Allows more flexibility for siting dumpsters, driveways, equipment.

#### Cons of CodeNEXT proposal:

- Negatively impacts daily quality of life for adjacent residents (noise, odors, traffic flow, daylight, privacy).
- Complex rules will add cost.
- Increases land entitlements without compensating community benefits.
- Provides few requirements for "green compatibility."
- Unclear how rules apply to estimated 24% of city remaining under existing code, as proposed triggers do not reference current zoning categories.
- Zero side setbacks in T4MS and zero side/rear setbacks in T5MS allow 45-85' tall structure at joint property line of single-family home.
- Weakened protections may spur greater resistance to diversity of housing types and uses.

#### Recommendations (8-0-5):

1. Replace confusing multi-tier compatibility system with uniform citywide standard. (T)(P)
2. Reinstate current code rules governing noise levels of mechanical equipment, dumpster placement and driveway placement, reflective materials, etc. (T)
3. Trigger compatibility rules from all T3 and T4 zones, except T4MS. (T)
4. Insert triggers for properties remaining under existing code. (T)
5. Calibrate by-right entitlements with new compatibility rules to support affordability bonus program. (T)(A)
6. Expand requirements for "green compatibility" to include green roofs/walls, bioswales, evergreen shade trees, hedges, sound walls. (T)

#### Related Imagine Austin Goals:

- Compact and connected (IA p. 207)
- Neighborhood character (IA p. 208)
- Affordability (IA p. 208)
- Clear guidance (IA p. 208)

## **16. RETAIN FLOOR TO AREA RATIO (FAR) TO MANAGE BUILDING SCALE AND PROVIDE DENSITY BONUS LEVER.**

CodeNEXT Draft: Removes FAR (ratio of gross floor area to gross site area) in Transect categories. Most Non-transect categories continue to use FAR tool, though it has been removed from LMDR-SL.

### **Pros of CodeNEXT proposal:**

- For Transects, one less regulation to adhere to and monitor.
- May provide greater development potential, which could lower development costs.
- Allows for context sensitivity while retaining neighborhood character through height limits and setbacks. Provides developers with opportunity to creatively navigate unique land characteristics.

### **Cons of CodeNEXT proposal:**

- Existing affordability programs offer a higher FAR in return for affordable units. Removing FAR from Transects may result in less affordable housing.
- Without FAR, structure size is determined by height, setbacks, and maximum building footprints, which are constant regardless of lot size. FAR ensures structures are context sensitive by making the size of structure proportional to size of site.
- Impervious cover is relative to size of site, but for multistory structures, reliance on impervious cover limits does not produce a reasonable scale. Example: A T3.NE 8400 square foot lot with a two-story main house and two-story ADU, without FAR limits, could potentially build a 4900 square foot house and a 1344 square foot ADU, for a total of 6244 square foot of gross floor area, nearly double that allowed today.

### **Recommendations (8-0-5):**

1. Reintroduce FAR in LMDR and in all Transect categories except T6. (T)
2. Require community benefits such as affordable housing in return for proposed increases from current FAR. (P)

### **Related Imagine Austin Goals:**

- Household affordability (IA p. 186)
- Preserve neighborhood character (IA p.208)

## **17. MODEL DRAFT CODE TO TEST MCMANSION REQUIREMENTS.**

CodeNEXT Draft: Article 23-4D proposes standards that integrate elements of existing McMansion ordinance (Subchapter F) along with new form-based code elements, with intent of carrying forward McMansion requirements. Removes current combination of compatibility “tent” and FAR (Floor Area Ratio) and replaces with setbacks and “building envelopes,” and new height restrictions and standards in Transect zones. In Non-transects, eliminates “tent” but carries over wall articulation requirements and FAR limits from existing code.

### **Pros of CodeNEXT proposal:**

Removes challenges created by Subchapter F “tent” for permit review and field inspection that translated to longer reviews and higher cost of building design and construction for two-story homes within the Subchapter F “McMansion” area.

### **Cons of CodeNEXT proposal:**

- Combination of regulations in draft do not fully carry over existing McMansion policy and do not adequately limit overall entitlement (measured in FAR) for Transect zone properties currently subject to Subchapter F.
- Preliminary modeling of real-world development scenarios shows as much as 75% increase in FAR under proposed changes from existing .4 FAR limit under Subchapter F.

- Properties on same block have been mapped with Transect and Non-transect zoning, creating confusion for building designers, plan reviewers and homeowners due to differing height standards and limits for Transect and Non-transect zones.
- Highly prescriptive “building envelopes” in Transect zones are too restrictive, increasing challenges and costs to design around trees, site constraints, solar orientation, topography or to add to existing structures.
- Restrictive “building envelopes” could inhibit design flexibility and severely limit ability of designers and homeowners to create unique homes that respond to site or homeowner’s needs.

#### **Recommendations (12-0-0):**

1. The CodeNEXT team should beta test the draft code via modeling of real-world development scenarios to ensure that the policies of Subchapter F are effectively carried over to the new code with the smallest possible adverse impact on design cost and design flexibility. (A)(T)(M)

#### **Related Imagine Austin Goals:**

- Revise Austin’s development regulations and processes to promote a compact and connected city. (IA p. 207)
- Ensure efficient delivery of services (IA p. 208)
- Preserve character of different neighborhoods and parts of the city (IA p. 208)
- Promote affordability for Austinites at every stage of life and income level (IA p. 208)
- Provide clear guidance in a user friendly format (IA p.208)

### **18. MODEL DRAFT CODE TO REDUCE DEMOLITION OF EXISTING MARKET AFFORDABLE HOUSING.**

CodeNEXT Draft: Proposes new standards for properties throughout city that, in conjunction with draft maps, alter entitlements for nearly all land in city’s zoning jurisdiction (Chapters 23-3, 23-4).

#### **Pros of CodeNEXT proposal:**

- Has potential to deliver more housing and development choices that could have positive impact on affordability in Austin.
- Offers new choices in denser housing types that aren’t permitted under code and can allow for more efficient development.

#### **Cons of CodeNEXT draft:**

- Has potential to create increased financial incentive to demolish existing market affordable or near-affordable housing, replacing with new market rate housing that is inevitably more expensive.
- Has not provided modeling to show impact of proposed entitlements on affordability. Preliminary modeling by residents indicates potential for unintended consequences where Transects increase current FAR, increasing likely demolitions of market affordable housing.
- Proposed increases in entitlements could spur more rapid loss of existing housing stock of all types (homes, duplexes, apartments), whether rental or for-purchase.
- Highly prescriptive “building envelopes” in Transect zones will make additions to existing structures more challenging, also creating incentive for demolition.
- Replacing existing Single Family zoning with T4 zones encourages aggregation of lots to achieve new entitlements, again promoting demolition of existing older, affordable housing.
- New market products are overwhelmingly targeted to wealthier single adults or couples, displacing Austin’s working families.

#### **Recommendations (13-0-0):**

1. The CodeNEXT process should prioritize beta testing/vetting via modeling of real-world development scenarios to avoid acceleration of demolitions. (P)(T)(M)

**Related Imagine Austin Goals:**

- Revise Austin’s development regulations and processes to promote a compact and connected city. (IA p. 207)
- Ensure efficient delivery of services (IA p. 208)
- Preserve character of different neighborhoods and parts of the city (IA p. 208)
- Provide clear guidance in a user friendly format (IA p.208)

**19. PROVIDE EXCEPTION FOR ALLEY ACCESS REQUIREMENT FOR ALLEYS SERVING BOTH RESIDENTIAL AND COMMERCIAL PROPERTIES.**

CodeNEXT Draft: Requires that interior lot served by an alley must have its driveway at the alley, not at the street (23-4C-1060(C)(2)).

**Pros of CodeNEXT proposal:**

- Reducing the number of driveways opening onto streets will promote walking and biking by increasing safety.
- Walkable urban neighborhoods often feature alleys, creating option to reduce on street motor vehicle presence.

**Cons of CodeNEXT proposal:**

- Does not recognize unique compatibility or access problems for residences that share alley with adjacent commercial property. Alleys behind commercial properties are likely to have noisy dumpsters, parked delivery trucks, or persons loitering which may hinder or prevent access to a home’s driveway (examples: East Cesar Chavez, East 11th, East 12th, South Congress, and Duval, all of which share alleys with adjacent homes).
- Forces owners who wish to redevelop their lots to put new driveway onto same alley that serves restaurants and bars.
- Narrow width of some older alleys may not provide sufficient turning radius especially when combined with traffic and equipment for commercial uses.

**Recommendations (9-0-3):**

1. Draft code provisions on alley access should provide an exception for cases in which an alley also serves commercial property, as well as residential. (T)

**Related Imagine Austin Goals:**

Compact and connected city (IA p. 186)

**20. SUPPORT COOPERATIVE HOUSING WITH NEW BUILDING TYPE, CLEARER DEFINITIONS.**

CodeNEXT Draft: Defines Cooperative Housing as: “A residential project of more than three units in which an undivided interest in land is coupled with the exclusive right of occupancy of any unit located on said land, whether such right is contained in the form of a written or oral agreement, when such right does not appear on the face of the deed.” (23-2M-2030). Does not offer specific provisions to acknowledge or support coops or co-housing.

**Pros of CodeNEXT proposal:**

- Coops are important addition to provide diverse housing types and boost affordability.

**Cons of CodeNEXT proposal:**

- Draft definition describes “limited equity coop” common in New York that operates like condominium, not cooperative community.

- Draft definition does not allow for true cooperative living, an important affordable housing option for increasing numbers of residents.
- Draft does not provide co-housing forms.

**Recommendations (10-2-0):**

1. Revise draft definition of cooperative housing to: “A housing arrangement in which residents share expenses, and ownership, and in which all profits or surpluses are allocated to purposes that benefit current or future residents.” (T)
2. Raise occupancy limit for cooperative housing to 2 adults per bedroom. (P)(T)
3. Reconsider parking requirements to better support cooperative housing. (P)(T)
4. To facilitate co-housing add a new type to cottage court with a larger main house and separate duplex or cottage units on either side. (T)

**Related Imagine Austin Goals:**

- Increase variety of housing options for family and non-traditional households (IA p. 172)
- Increase dense, compact family-friendly housing. (IA p. 173)
- Promote affordability for Austinites at every stage of life and income level (IA p. 208)

## E. COMMUNITIES FOR ALL AGES

### 21. REQUIRE SUFFICIENT ON-SITE PARKING NEAR SCHOOLS TO ENSURE SAFETY AND ACCESS.

CodeNEXT Draft: Cuts on-site parking requirements by half or more for all housing types and commercial uses citywide, including areas immediately adjacent to public schools in the urban core (Article 23-4D, 23-4E).

#### Pros of CodeNEXT proposal:

- Reduced parking requirements may reduce development costs
- Limiting parking availability may encourage residents to give up cars, reducing carbon footprint
- Pedestrian advocates believe reduced parking can improve walkability for residents
- Some CAG members believe sidewalk construction, road design improvements, parking limitations on streets near schools and other measures could mitigate cons of the CodeNEXT proposal

#### Cons of CodeNEXT proposal (See Appendix B.4 for details):

- Will result in more vehicles parked on streets near schools, constricting visibility in high-risk environment that includes small distracted children, teen drivers, busy parents, school buses
- School pick-up areas must handle from 300 to 2900 students, plus faculty and staff, arriving and leaving daily. Congested street conditions increase stress and prolong the period of highest perceived risk
- Sidewalks in urban core areas are often missing or incomplete, forcing young pedestrians to walk in street
- Congested street conditions impair emergency vehicle access
- Urban schools rarely have sufficient on-site parking to meet needs of staff, students and parents. Nearby street parking is essential to satisfy Texas school accountability laws that rate schools on parent and community participation in school meetings, events and volunteer activities
- Typical parking remedies cannot address safety and access issues for urban core schools

#### Recommendations (8-0-5):

1. Develop a zone suffix similar to the proposed O-suffix (PSU – Public School, Urban) or other tool for properties within 600' of an urban core public school property line to retain current on-site parking requirements for all uses. For single-family homes or duplexes, this would require two on-site parking spaces per dwelling unit. For multifamily, commercial or other uses, on-site parking requirements would match those currently contained in the Austin Land Development Code, Section 25-6 Appendix A. [https://www.municode.com/library/tx/austin/codes/code\\_of\\_ordinances?nodeId=TIT25LADE\\_CH25-6TR\(P\)\(T\)\(M\)](https://www.municode.com/library/tx/austin/codes/code_of_ordinances?nodeId=TIT25LADE_CH25-6TR(P)(T)(M))
2. For deeply affordable family-friendly units to be rented or priced at 60% MFI (Median Family Income) or below, on-site parking exemptions within 600' of a public school property line should be determined by the applicable director. (P)(T)

#### Related Imagine Austin Goals:

- Enact land use and policies that promote family-friendly communities. (IA p. 173 S P20)
- Ensure children in every part of town have access to excellent education (IA p. 174, S P26)
- Partner with Austin area school districts to enhance policies and priorities that support neighborhood-based schools. (IA p. 174 S P27)

## **22. PLAN FOR FAMILY-FRIENDLY HOUSING NEAR URBAN SCHOOLS.**

CodeNEXT Draft: T5 and T4 zones mapped along corridors represent most of the potential new housing (Article 23-4D). The allowed building types in these zones will yield relatively few multi-bedroom units suitable for families.

### **Pros of CodeNEXT Draft:**

- Singles and couples represent dominant market demand in urban areas
- Zoning mostly large apartment complexes with a high proportion of efficiency and one-bedroom units may accelerate long-term affordability of housing for this segment
- Concentration of wealthier creatives in urban places will boost tax revenue and support a vibrant urban retail and services sector

### **Cons of CodeNEXT Draft:**

- Families are important to diversify a city's talent pool and economy. To be environmentally sustainable, Austin needs a strategy to retain families (38-40% of population) in urban areas.
- Families generally don't use efficiency and one bedroom units (See Appendix B.6).
- Per national data, once a community drops below 70% housing with at least two bedrooms, the housing mix prevents a natural age curve.
- Mapping does not reflect new Strategic Housing Blueprint passed by Council in April, which calls for prioritizing family housing near urban schools and defining housing mix benchmarks to retain inter-generational communities.
- Narrow housing focus will promote decline in school enrollment and businesses serving families.
- San Francisco and Vancouver now require at least 35% 2-BR and 3-BR units in mixed use zones. Emeryville CA requires 50% 2-BR and 3-BR units.

### **Recommendations (13-0-0):**

1. Develop zones with building types best suited for families and entry-level ownership (T)
2. Map more family-friendly zones in transit-oriented areas near schools (M)
3. Determine the legality of requiring a minimum housing mix by bedroom count. If legal, determine minimum mixes appropriate to the new zones. (P)(T)(M)

### **Imagine Austin Goals Affected:**

- Affordable communities for every stage of life (IA p. 208)
- Range of housing types for all ages and abilities (IA p.238)
- Encourage families with children with variety of housing types (IA p. 235)

## **23. RESTORE EXISTING RULES FOR NIGHTCLUBS AND LIQUOR STORES NEAR RESIDENCES, WHILE WORKING TO BETTER BALANCE STAKEHOLDER INTERESTS.**

CodeNEXT Draft: Allows alcohol-serving uses by right, or with just CUP or director approval, in T3, T4 and T5 Transect zones and many commercial Non-transect zones. An 'open' sub-zone extends these uses to additional zones that would not otherwise allow them. New zones and sub-zones are liberally mapped throughout urban core. Residents can no longer use right of petition to oppose these uses.

### **Pros of CodeNEXT proposal:**

- Simplification of process for opening a bar is market-friendly.
- Bars and alcohol-serving restaurants add additional uses near residents and may serve as live music outlets.

- Conditional Use Permit (CUP) process remains in place in many cases, providing mechanism to address neighborhood concerns in some areas.

#### **Cons of CodeNEXT proposal:**

- New rules over-simplify opening nightclubs, liquor stores near neighborhoods.
- Increasing bar density on corridors is not an Imagine Austin goal, and City Council has set no policy directive for this.
- Most urban corridors already have bar/liquor store density of 4-9 outlets per mile.
- Because new rules are simpler than rezoning and fail to consider existing bar density on as criterion, bar densities will very likely increase.
- Corridors with higher bar densities may morph into entertainment districts, with wider service area, higher traffic, more parking, and late night activity in conflict with needs of local residents.
- Numerous academic studies show strong correlation between bar density and violent crime (ex. Wechsler, 2002; Toomey, 2012; Wo, 2016).

#### **Recommendations (12-1-0):**

1. Restore existing rules on liquor-serving uses to the new code. (T)
2. Initiate a process to balance the needs of liquor-serving businesses and adjacent communities. (P)

#### **Related Imagine Austin Goals:**

- Encourage families with children in established neighborhoods (IA p. 235)
- Align future growth with small area plans (IA p. 237)
- Create healthy Austin (IA p. 186)

## F. PROCESS AND NONCONFORMING ISSUES

### 24. REVISE PROPOSED PUBLIC PROCESS CHANGES TO ENSURE ADEQUATE NOTICE AND PARTICIPATION.

CodeNEXT Draft: Article 23-2C reduces periods for mailed notice, posted notice, public response and administrative appeals. Allows public hearings to proceed despite notice errors. Allows one-year site plan extensions without public notice. Removes requirement for staff to host meeting to resolve issues and include all parties. Prohibits ex parte communications about an appeal by interested parties or members of public, but not by applicant or applicant's representatives. Removes appellant's right to rebuttal. Removes mailed notice requirement to organizations for Areawide Interlocal agreements. Omits information about valid petition rights. Expands administrative approval by Minor Use Permit (MUP) tool.

#### Pros of CodeNEXT proposal:

- May reduce time for project approvals, potentially lowering development costs.
- Makes site plan extensions easier to obtain.
- Eases scheduling by allowing staff to resolve issues with applicant without requiring presence of opposing side.
- Saves money by omitting mailed notice requirement to organizations for Areawide Interlocal agreements.
- Allows board/commission members to communicate directly with applicant regarding an appeal.
- Reduces code length by omitting valid petition information, which is available in state law.
- Posting errors will no longer delay hearings.

#### Cons of CodeNEXT proposal:

- Reduced notice, posting and appeal periods are insufficient to respond to proposals that may significantly impact residents' quality of life and property values.
- Removes public's ability to resolve issues, provide rebuttals or protest site plan extensions.
- Denies public equal access to board and commission members.
- Forces civic organizations to scan published notices for proposed changes to Areawide Interlocal agreements.
- Allows public hearings to proceed despite errors in posted notices, which may affect public's ability to participate.
- Disadvantages residents who are unfamiliar with state law valid petition rights.
- Transfers authority from elected/appointed officials to unaccountable city staff.
- Does not establish clear notice requirements for MUPs.
- May undermine public trust in city actions.

#### Recommendations (10-0-2):

1. Reinstate current code provisions governing mailed notice, posted notice, public response, administrative appeals, site plan extension notice, required meetings to resolve issues including both parties, appellant's right to rebuttal, and mailed notice to organizations for Areawide Interlocal agreements. (T)
2. Provide information about valid petition rights, similar to that provided for vested rights in 23-K-2. (T)
3. Clarify notice requirements for MUPs and consider placing this tool in hands of Land Use Commission, not city staff. (T)
4. Revise proposed language to explicitly prohibit ex parte communication regarding appeals by applicant and applicant's representatives, as well as public. (T)
5. Remove proposed language that allows hearings to proceed with notice errors. (T)

#### Related Imagine Austin Goals:

- Ensure efficient delivery of services (IA p. 208)
- Provide clear guidance in a user friendly format (IA p.208)

## **25. CLARIFY NONCONFORMING USE/STRUCTURE LANGUAGE TO AVOID UNINTENDED CONSEQUENCES.**

CodeNEXT Draft: Article 23-2G merges nonconforming uses and noncomplying lots or structures into a single term for all (nonconforming). Does not clarify that existing conforming uses, structures or lots will remain conforming with adoption of new code. Removes provision that discontinues nonconforming Type 2 STR by 4/1/22. Allows change from nonconforming use to less intense nonconforming use or to Conditional Use by administrative approval. Removes provision that limits modification of height and setback noncompliances. Removes regulations for rebuilding destroyed noncomplying structures (time limits, increases in square footage, location). Allows continued nonconformance for parking after noncomplying structure is terminated. Wording on small lot amnesty in Transects may be interpreted to allow any existing lot to be subdivided to 25'.

### **Pros of CodeNEXT proposal:**

- Simplifies terms for nonconforming structures/uses.
- Eases change of existing nonconforming use to less intense nonconforming use or to Conditional Use.
- Increases flexibility for owner to rebuild after destruction of nonconforming structure.

### **Cons of CodeNEXT proposal:**

- May create thousands of new nonconforming lots, uses or structures absent language to grandfather properties that were conforming at code adoption.
- Administrative approval of nonconforming use to less intense nonconforming use is subjective and effectively extends nonconformance.
- Administrative conversion of nonconforming use to Conditional Use removes public input; also fails to clarify whether conversion terminates nonconformance, potentially extending life of a problematic use.
- Increases nonconformance by allowing iterative additions to setbacks.
- Allows expansion of structure already deemed nonconforming over unlimited time period by removing rebuilding requirements for destroyed nonconforming structures.
- Extends problematic parking situations by allowing nonconforming parking to continue after noncompliance termination.
- Vague wording on small lot amnesty may be willfully misinterpreted.

### **Recommendations (10-0-2):**

1. Insert language to ensure that existing structures/lots/uses that were conforming/complying at time of code adoption are not rendered noncomplying by code changes (see 25-2-942, 25-2-962). (T)
2. Require public process for change from one nonconforming use to another, and for conversion to Conditional Use. (T)
3. Clarify whether conversion to Conditional Use terminates nonconforming use. (T)
4. Reinstate existing code section that allows only one modification to height and setbacks for nonconforming structures (25-2-963(H)). (T)
5. Reinstate current code provisions for rebuilding a destroyed noncomplying structure, including time limits, gross floor area and interior volume, and location and degree of noncompliance (25-2-964(B)). (T)
6. Require termination of nonconforming parking when nonconforming use/structure is terminated. Reinstate code provision stating the discontinuation of nonconforming STR Type 2 by April 1, 2022 (25-2-950). (T)
7. Revise language in Transects to clearly state that grandfathering of 25' lots applies only to specific lots already granted small lot amnesty prior to code adoption. (T)

### **Related Imagine Austin Goals:**

- Revise regulations, processes (IA, p. 207)
- Neighborhood character (IA, p. 208)
- Clear guidance in user-friendly format. (IA, p. 208)

## **26. ADD PROVISION TO TERMINATE NONCONFORMING USES THAT THREATEN GENERAL HEALTH, SAFETY AND WELFARE.**

CodeNEXT Draft: Generally allows nonconforming uses to continue (23-2G-1050(B)). Termination of nonconforming uses is limited to “a change or abandonment of the use or the destruction of, or damage to, the structure in which the use occurs” (23-2G-1060(A)).

### **Pros of CodeNEXT Draft:**

- Leaves in place current city approach to nonconforming uses.
- Protects property owners who operate nonconforming uses.

### **Cons of CodeNEXT Draft:**

- Exposes communities to potential threats to health, safety and welfare from nonconforming uses.
- Limits City’s ability to remove threatening nonconforming uses.
- Does not give the City the full authority that the State Supreme Court has recognized.
- Continues a history of environmental injustice.

### **Recommendations (Consent):**

1. Allow the city to require the termination of nonconforming uses that threaten health, safety and welfare, in accordance with the Texas Supreme Court’s recognition of “the principle that municipal zoning ordinances requiring the termination of nonconforming uses under reasonable conditions are within the scope of municipal police power” (City of University Park v. Benners). (T)
2. Create a process for the direct and systematic termination of nonconforming uses that protects communities and which ensures that adequate time is allowed to recoup an owner’s investment in the property. (P)(T)

### **Related Imagine Austin Goals:**

- Create healthy Austin (IA p. 186)
- Efficient delivery of services (IA p.186)

## G. PROPOSED FUTURE CODE ADDITION

### **27. ADD NEW SECTION TO LAND DEVELOPMENT CODE TO SUPPORT ART, MUSIC, AND CULTURE.**

CodeNEXT Draft: Omits provisions designed to sustain and strengthen Austin’s music and arts industries and communities.

#### **Pros of CodeNEXT draft:**

NA

#### **Cons of CodeNEXT draft:**

- Missed opportunity to support artists, musicians, businesses and creative industries that are vital to Austin’s cultural and economic life.
- Does not support Imagine Austin Comprehensive Plan and the Code Prescription on Household Affordability, both of which reference need for regulations to sustain and strengthen music and arts industries and communities.

#### **Recommendations (Consent):**

1. Add arts, music and culture provisions to the Purpose and Applicability sections of General Planning Standards (23-3A-1010 and 23-3A-1020). For proposed language, please see Appendix B. (P)
2. Working with appropriate city boards and stakeholders, develop a new code section to be numbered 23-3F to provide citywide regulations to promote arts, music and culture. For details and proposed elements, please see Appendix B. (P)

#### **Related Imagine Austin Goals:**

- Grow Austin’s creative economy (IA p. 186)
- Implement strategies to sustain live music industry (IA p. 199)
- Reimagine development tools to support creative industries (IA p. 199)

## H. AFFORDABLE HOUSING INCENTIVES

### **28. EXPAND AREAS FOR LEGALLY RESTRICTED AFFORDABLE HOUSING, USE CONSISTENT REQUIREMENTS, CONSIDER MONITORING FEES, CLARIFY TERMS, PROVIDE ADDITIONAL ANALYSES.**

*Note: Due to the delayed release of Article 23-E, CAG members had only a short time to analyze and discuss proposed changes to the city's affordability bonus programs. In addition, key elements of the proposed programs remained unavailable at the time this report was finalized, including the dollar amounts of proposed fee waivers, where proposed –A zoning would be mapped, the composition and duties of the proposed Designated Review Group, as well as modeling to compare impacts of existing affordability programs, particularly the current Vertical Mixed Use (VMU) program, with those proposed. For these reasons, CAG members wish to emphasize that this issue brief and its recommendations are performe incomplete and there is much we still do not understand about proposed changes to the city's affordability bonus programs.*

CodeNEXT Draft: Proposes a density bonus program in which developers could get increased entitlements in exchange for legally restricted affordable housing (23-3E). Proposes more diverse housing choices and, in some cases, more units by right (23-4D).

#### **Pros of CodeNEXT proposal:**

- More closely aligns affordability incentive requirements across the City of Austin.
- Targets 60% MFI (rental) and 80% MFI (owner), which is lower than some previous programs.
- Increases the reach of the density bonus area, from approximately 7,700 parcels to 16,900 parcels, and expands these programs to more areas of the city.
- Provides density bonus provisions for both commercial and residential development.
- Requires Source of Income Protection across all density bonus units.
- Requires that legally-restricted affordable units mirror the unit mix of the non-affordable units.
- Ensures housing in areas of market demand.
- Provides legally-restricted affordable housing without any city subsidies.
- Provides for accessory dwelling units in lower density residential zones, including T3 and LMDR, which could offer more affordable housing options, though not legally restricted.
- Provides a .6 parking reduction for affordable units.
- Consultants estimate anticipated yield for affordable units will be roughly double that of current density bonus program.

#### **Cons of CodeNEXT proposal:**

- Calculates number of affordable units based on bonus area (versus total area), with the exception of 23-3E-1040(B)(2), which requires affordability to be calculated based on the entire residential development.
- Does not provide opportunity for legally restricted affordable housing in T3 and LMDR zones.
- Offers little to no opportunity for legally restricted affordable housing in greenfield areas.
- Lack of opportunity for legally restricted affordable housing west of MoPac could raise fair housing issues.
- Differing affordability requirements (percentage of affordable units) based on "inner" and "outer" ring geographies, intended to match market conditions in these two areas.
- Allowing option of fee-in-lieu and off-site production reduces likelihood of on-site units.
- Incentivized units could result primarily in smaller units not suitable for families.
- Provisions for accessory dwelling units are overly prescriptive.
- Greater dispersion of legally-restricted affordable housing increases administrative burden and costs of monitoring for compliance.
- Unintended consequences, such as accelerated gentrification and displacement, as well as loss of market affordable housing, are unknown.

- Additional public benefits for Downtown area (day care services, live music venues, cultural uses, green building, publicly accessible plaza, off-site open space, green roof) are not available in other regional centers created in Imagine Austin.
- Increased entitlements awarded through the affordability plan could exacerbate existing market pressures to demolish market affordable housing so net gain of affordability is unknown.
- Draft code increases by-right entitlements in a number of zones without commensurate community benefits.

### **Recommendations (14-0-0):**

1. Minimize exceptions to on-site affordability while raising the bar for off-site or fee-in-lieu options, particularly in high opportunity areas.
2. Consider additional opportunities for legally-restricted affordable housing west of MoPac and in greenfield areas, such as the greenfield upzoning recommended by the Affordable Housing Incentives Task Force.
3. Reconsider references to “inner” and “outer” rings and embed affordability requirements that are reflective of market demand and cost.
4. Consider an additional zone in proximity to urban schools that would provide incentives for family-friendly housing.
5. Explore other tools to create density bonus family-friendly units citywide.
6. Administrative approvals of density bonuses (23-3E-2050 (B)) should be under the joint purview of the housing and planning departments.
7. Clarify the role and composition of the proposed Designated Review Group as part of the Density Bonus Affordable Housing Review (23-3E-1070 (B)).
8. Charge the proposed Designated Review Group with ongoing review and monitoring to ensure that proposed increased entitlements are matched to the resulting percentage of legally restricted affordable housing.
9. To offset the increased administrative burden of monitoring and compliance, consider an annual compliance and monitoring fee for affordable units.
10. Develop strategies to better publicize and track affordable units to ensure they reach desired population.
11. Clarify location of parcels on the draft map with “-A” affordability designation.
12. To ensure affordable units are responsive to local market conditions, develop a metric to ensure that density bonus units are actually lower in cost for rental or ownership than comparable market rate units within the same project.
13. Consider including the additional public benefits in the Downtown area (day care services, live music venues, cultural uses, green building, publicly accessible plaza, off-site open space, green roof) in all regional centers created in Imagine Austin, while maintaining provision of affordable housing as the “gatekeeper” requirement.
14. Clarify which parking reductions apply to affordable units (versus all residential units) and whether or not they are cumulative. (See 23-3E-1100 and 23-4E-3060)
15. Clarify role of compatibility standards in density bonuses that include an increase in height.
16. Work with the City of Austin Equity Office to consider policies to prevent the potential displacement of low-income residents and communities of color from market affordable housing as a result of CodeNEXT.
17. Consider additional strategies to avoid incentivizing demolitions of existing market affordable housing.
18. Amend draft to ensure that any fee-in-lieu units and/or land dedications are within one mile of the proposed project or in a high opportunity area.
19. Model impacts of proposed new affordability bonus programs vs. current affordability bonus programs, particularly the impact of altering the current VMU requirement that the number of affordable units be based on a percentage of the total units in the project, not just the bonus units.
20. Continue to explore proposed affordability calibrations to ensure the city is obtaining maximum community benefits for all new entitlements proposed in the draft code.
21. Model impacts of proposed affordability bonus programs on market rate units.
22. Revise current density bonus programs to be more effective and accountable.

**Related Imagine Austin Goals:**

- Increase non-vehicular trips (IA p. 231)
- Improve access to transit (IA p. 228)
- Maintain and increase household affordability in Austin (IA p. 186)
- Improve opportunities for healthy lifestyles (IA p. 186)
- Compact and connected (IA p. 186)
- Increase the percentage of mixed-use development (IA p. 208)
- Create an efficient development review process (IA p. 208)

# CODENEXT MISSING TOPICS AND ANALYSES

This section lists key topics currently missing from the draft code or analyses that are deemed critical to informed review of the text and maps, but were not available in time to be considered for this report. We encourage the Land Use Commissions and City Council to seek this information and to make appropriate additions or revisions as the draft code and maps continue to move through the adoption process.

## **A. Text and Mapping**

1. Interim planning step, as described by consultants, that bridges the gap between broad 500,000' view of Imagine Austin and current 100' view of text and mapping
2. Strategic Mobility Plan
3. Residential Heavy Site Plan Requirements
4. Water Forward Sustainable Water Management Recommendations
5. Functional Green Program in Transect Zones with 80% IC or greater
6. On-site Beneficial Use Standards
7. Urban Trails
8. Open Space Supplemental Standards for Transect Zones
9. Private Open Space Types and Standards, including transformation of Alleys into Public Space
10. Landscape Setbacks and Compatibility Buffers coordinated with Transects
11. Arts and Culture
12. Definition of "growth center"
13. Clear amendment process for Comprehensive Plan
14. Complete communities
15. Major portions of current Educational Facilities provisions

## **B. Analyses to Support Proposed Changes**

1. Flood capacity analysis for each watershed (expected late summer 2017)
2. Infrastructure analysis to support proposed increases in density
3. Analysis of impact on property tax appraisals, housing and rental costs
4. Planning for public facilities such as fire stations, water retention ponds, etc., to support proposed increases of density
5. Analysis of impact on public schools
6. Analysis of impact on displacement/gentrification
7. Analysis of impact of proposed parking reductions for representative areas
8. Analysis of whether proposed changes are likely to shorten or lengthen development process
9. 3-D modeling to demonstrate proposed changes
10. Equity analysis, similar to the city's new Equity Tool, to demonstrate the impact of CodeNEXT text and map on vulnerable populations including but not limited to racial and ethnic minorities, low-income individuals and families, limited English proficiency populations and immigrant populations
11. Modeling to determine impact on demolitions and net gains/losses of existing market affordable housing

## **C. Process**

1. Stakeholder process to resolve major areas of conflict
2. Lack of Spanish language materials
3. More concerted effort to reach working class communities, communities of color, and communities outside downtown area
4. Analysis of CodeNEXT process through city's new Equity Tool

# CONCLUSION

As the CAG submits its final report, CodeNEXT remains very much a work in progress. A number of critical code elements and analyses were not released in time to be considered for this document. Flood impact modeling, for example – essential to ensuring the safety of Austin residents - is not expected to be available until late summer.

As the draft text and maps evolve, they will require many more close readings by a wide range of residents, interested parties, city staff, consultants and decision makers. Both documents must embody and balance the multiple goals expressed in the Imagine Austin Comprehensive Plan, while being as usable, complete and error-free as possible. Corrections and improvements will be ongoing in the coming months.

Austin continues to experience severe growing pains and it is likely impossible to fully reconcile the many divergent community viewpoints related to land development. In this report, CAG members have attempted to identify chief issues of concern and to provide constructive recommendations for improvement based on the current draft documents and the broad range of feedback received to date. However, we must emphasize that the issues contained in this report are by no means exhaustive and that many others will require consideration as this process progresses.

The CAG concludes its work as an official body with the submission of this report. However, many individual CAG members have expressed willingness to serve in a resource capacity to the Land Use Commissions and the Austin City Council, and we encourage commissioners and Council members to contact us as this work continues.

The new code will have far-reaching impacts on the lives of Austin residents for a generation or more. It deserves our hardest work and deepest thought to get it right.

Approved July 5, 2017

Submitted by the Members of the City of Austin Land Development Code Advisory Group:

Jim Duncan, Chair

Dave Sullivan, Vice Chair

Cesar Acosta

Christopher Allen

Melissa Beeler

Mandy De Mayo

Richard Heyman

Lauren Ice

Patricia King

Eleanor McKinney

Terry Mitchell

Susan Moffat

Elizabeth Mueller

Eric Schultz

Jose Valera

Colby Wallis

Nuria Zaragoza

Steven Zettner

# APPENDICES

## **APPENDIX A:**

### **About the Land Development Code Advisory Group (CAG)**

The Austin City Council established the Land Development Code Advisory Group (CAG) by resolution in December 2012.<sup>1</sup> The original eleven-member body was charged with assisting in public outreach and providing feedback on the development and implementation of a revised land development code for the City of Austin.

In May 2015, the 10-1 Council approved second resolution<sup>2</sup>, which increased the CAG to 16 members to ensure representation for each Council district and a diversity of viewpoints. Nominees were to include renters and renters' advocates, green building and landscape architecture professionals, neighborhood advocates, neighborhood association leaders, and those with expertise related to economic impacts of the code rewrite. The term for these members was set to expire in September 2015.

The May 2015 resolution further provided that, effective September 30, 2015, the CAG would consist of 17 members: one appointed by each City Council member and two by the mayor, with five additional members appointed by Council Committees designated by the mayor. Members were to be selected for experience in household affordability, environment and conservation, green planning and design, urban planning and architecture, construction and permitting, historic and neighborhood preservation, health and human services and small local businesses, with representation of both homeowners and renters. This resolution further directed the CAG to ensure the CodeNEXT Process supported the Priority Programs outlined in Imagine Austin.

In August 2015, the City Council approved a third resolution<sup>3</sup> expanding the CAG to 18 members, and authorizing the Joint Committee of the City of Austin, Travis County and the Austin Independent School District to nominate an individual to serve as a representative of one or more independent school districts and as a resource on potential impacts of CodeNEXT on public schools.

During the past four years, CAG members have met regularly as a body<sup>4</sup>, provided robust public comment opportunities and participated in countless informal outreach activities. CAG members have met with scores of local organizations, as well as hundreds of individuals, to provide information about the code rewrite process and solicit feedback. Members have appeared on local radio shows, addressed city boards and commissions, posted information to community listservs, participated in panel discussions, attended community forums, provided updates to elected officials, responded to media inquiries and listened to a broad range of opinions from residents and businesses.

Throughout these activities, the CAG has consistently complied with all aspects of the state's Open Meetings and Open Records laws. A complete list of CAG agendas, approved minutes and other supporting documents may be found here: <https://www.austintexas.gov/content/land-development-code-advisory-group>

## **WORKING GROUPS**

In 2016, the CAG appointed an Executive Work Group composed of Chair Jim Duncan, Vice Chair Dave Sullivan, and CAG Members Melissa Beeler, Eleanor McKinney and Susan Moffat. In 2017, CAG members created four small working groups to research and prepare issue briefs and recommendations for the group's final report. Topics and members of these working groups are listed below:

### **Diverse Communities**

Cesar Acosta  
Chris Allen  
Mandy DeMayo  
Rich Heyman  
Eleanor McKinney  
Susan Moffat

### **Environment**

Lauren Ice  
Patricia King  
Eleanor McKinney  
Eric Schultz

### **Housing Types and Mobility**

Melissa Beeler  
Liz Mueller  
Dave Sullivan  
Nuria Zaragoza  
Steven Zettner

### **Permitting and Development Process**

Jim Duncan  
Terry Mitchell  
Colby Wallis

During the course of its existence, the CAG has experienced some degree of turnover, as members resigned and were replaced by new nominees. All CAG members, past and present, were approved by a vote of the full City Council. We are immensely grateful for their service in this important civic endeavor.

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[1] Austin City Council Resolution No. 20121206-074

[2] Austin City Council Resolution No. 20150521-026

[3] Austin City Council Resolution No. 20150806-048

[4] See agendas and minutes at [http://austintexas.gov/cityclerk/boards\\_commissions/meetings/2017\\_111\\_1.htm](http://austintexas.gov/cityclerk/boards_commissions/meetings/2017_111_1.htm)

## **APPENDIX B: SUBMISSIONS FROM CAG MEMBERS**

**B.1 Proposed Arts, Music and Culture Code Section, Dave Sullivan**

**B.2 Compatibility Proposed Green Infrastructure Buffer, Eleanor McKinney**

**B.3 Draft LDC Open Space and Environment Comments, Eleanor McKinney**

**B.4 Public School Impacts, Susan Moffat**

**B.4a Collected Comments, Susan Moffat**

**B.5 NBE Presentation Notes for Planning Commission, Eleanor McKinney and Lauren Ice**

**B.6 Number of AISD Students in Recent East Austin Multi-family Developments, Nuria Zaragosa**

## **APPENDIX C. SUBMISSIONS FROM CITY BOARDS AND COMMISSIONS**

**C.1 Community Development Commission CodeNEXT Letter**

**C.2 Design Commission CodeNEXT Working Group Suggested Schedule**

**C.3 Environmental Commission Motion on Review Process**

**C.4 Environmental Commission Motion, Recommendations**

**C.5 Parks Board Resolution**

**C.6 CAG Boards & Commissions Forum, Staff Responses**

## Proposed Future CodeNEXT Article 23-3F: Art, Music, and Culture

Both the Imagine Austin Comprehensive Plan and the Code Prescription on Household Affordability reference the need for regulations to sustain and strengthen the music and arts industries and communities. To this end, the CAG recommends developing a future code section that would provide city-wide regulations to promote arts, music, and culture with the goals of:

- protecting existing assets and promote new ones in areas deficient of art, music, and cultural assets, and
- supporting housing and jobs for musicians and artists, and
- sustaining these important elements of Austin's economy.

### Proposed Code Additions:

1. Add arts, music culture to the Purpose Statement of General Planning Standards. The current draft of the new Land Development Code for Austin, dubbed CodeNEXT contains the following purpose statement in *Chapter 23-3: General Planning Standards for All* [1]. The red underlined clause below would add reference to a to-be-written section governing arts, music and culture.

#### **“23-3A-1010 Purpose**

This Chapter provides standards and regulations for the following purposes: to provide parkland; to provide for the protection and replenishment of urban forest resources; to provide for the protection of water quality and protection from flooding; to encourage the creation and preservation of affordable housing; **and to sustain the local arts, music, and culture communities and industries.** These aspects are all essential to the development of a healthy, sustainable and desirable city environment. The interests of the community and the goals of the Comprehensive Plan and Zoning Code are further ensured through the application of this Chapter.

#### **“23-3A-1020 Applicability**

This Chapter applies to all development within the City of Austin and the ETJ.”

2. Working with appropriate city boards and stakeholders, develop a new code section to be numbered 23-3F. Provisions for consideration, several of which are already supported by City of Austin Economic Development Department and the City's Arts Commission and Music Commission, are outlined below.

2.1. Allow artists to sell finished goods from their live/work home studios. Specify in which districts a live/work artist may "sell", including performance art. This is an important distinction as multidisciplinary spaces are becoming increasingly common – where both object-based art and experience-based art are being created (i.e. "work") and offered to the public within a single building envelope.

- 2.2. In designated town/regional centers and activity corridors allow density bonus rules to trade greater building entitlements for including live music venues or other forms of performance art on the first floor or for preserving an existing iconic venue on the tract.
- 2.3. Describe the basis for designating arts districts (similar to that provided for historic districts) in neighborhood plans, neighborhood centers, town centers, and regional centers, and target one or more arts districts per Council District.
- 2.4. In establishing capacity rating for theater or arts venue consider how the venue is used in addition to overall size.
- 2.5. Add explicit definitions that clearly distinguish types of arts/music spaces for flexible and hybrid uses in city ordinances and other regulation (i.e. distinguish terms "gallery", "theater", "studio", "live music venue," etc.).
- 2.6. Codify of Agent of Change principle.

### **Imagine Austin and Code Prescriptions Support New Code Section**

Justification for the proposed new code section comes from the Imagine Austin Comprehensive Plan and more recent work done in developing the CodeNEXT draft. Priority Program 5 (among 8 Priority Programs) in the 2012 Imagine Austin Comprehensive Plan is "Grow and invest in Austin's creative economy." A short term (1-3 years) work program item is: "Explore and re-imagine existing City development tools, such as incentives, regulations, and financing options, with a focus on creative industries' facility needs. Expand access to affordable and functional studio, exhibition, performance space, museums, libraries, music venues, and office space."

The proposed new section is also supported by the following policies and priority actions in the Imagine Austin Comprehensive Plan:

- Develop regulations to mitigate the sound from live music venues through a collaborative process that includes the City of Austin, musicians, venue operators, property owners, and residents.
- Create incentives and programs to preserve iconic and established music venues and performance spaces throughout Austin and its extraterritorial jurisdiction (ETJ).
- Expand access to affordable and functional studio, exhibition, performance, and office space for arts organizations, artists, and creative industry businesses.
- Explore existing City policies, processes, and regulations regarding the arts to determine what changes can be made to coordinate these with other goals, such as historic preservation, affordable housing, and high-density development.
- Incorporate the arts and cultural preservation themes and elements into small area plans, such as neighborhood and corridor plans.
- Create incentives, and programs to promote the inclusion of public art into new development.
- Encourage artists and other creative individuals by promoting the creation of live/work spaces and creative industry hubs, districts, and clusters as retail, community, or neighborhood anchors and activity generators to attract and support other economic and community enterprises.

- Establish incentives and regulations to promote the creation of artists' live/work space in residential areas that allow for limited gallery space.

Further, the Code Prescription on Household Affordability written in 2016 in response to the CodeNEXT consultant's Code Diagnosis, specifically addressed affordability impacts to small businesses and the cultural arts in the following three prescriptions:

1. Allow for compatible retail and commercial uses by right including arts, culture and creative uses such as rehearsal, gallery, studio, performance or exhibit spaces and offices in areas where form-based zones have been applied and a diversity of uses is desired. This includes adequate commercial space allowances in corridors, centers, and in between these areas and neighborhoods.
2. Revise the density bonus program in targeted areas such as cultural districts by adding the preservation or creation of an existing creative venue or business as a Community Benefit. Density bonus fee-in-lieu requirements will be evaluated for 501(c)(3)s to promote emerging small non-profits. The existing density bonus provisions will be evaluated to determine if they can incorporate preservation or development of a music or creative venue that will be used for rehearsal, gallery, studio, performance, or exhibit spaces and offices.
3. The opportunity to expand live/work units will be found in all form-based code districts in order to promote the opportunity for the small businesses, including artists to be able to work where they live. The allowance of live/work units will be both within the uses regulated by the different form-based code districts but also in the regulation of building types to ensure the proper form to allow for live-work units.

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[1] see <https://codenext.civicomment.org/chapter-23-3-general-planning-standards-all>

**Planning Commission NBE Presentation  
8.23.16**

**Water and Watersheds**

- **Different watersheds have different drainage capacities based on existing impervious cover. This will be important to review during the mapping process.**

**Landscape and Trees**

- **Functional Green is a menu based point system for urban core properties over 80% impervious cover. The system provides credit for rain gardens, pervious pavement, green roofs, green walls, rainwater harvesting, etc.**
- **Provide tree protection and mitigation in the transition zones for missing middle housing**

**Compatibility**

- **Green Compatibility with landscape and trees providing buffering in transition zones needs to be included in the code.**

**Mobility**

- **Green Streets as well as greenways are important for connectivity**

**Redevelopment**

- **Connect reductions in surface parking with added green space requirements**
- **Add landscape setback for buildings from the sidewalk to allow for green treatment on both sides of the sidewalk**

**Greenfield**

- **Conservation subdivisions cluster development so that more green space can be provided and environmental features protected**
- **Needs greater emphasis on transit and bicycle connections to urban core**

**Parks and Open Space**

- **Need for aggressive acquisition of parkland in centers and corridors concurrent with any added density**
- **Need to maintain the 5% Private Open Space ordinance in commercial**
- **Need to provide sufficient on-site open space in the missing middle transition zones for stormwater infiltration, i.e. pervious cover**

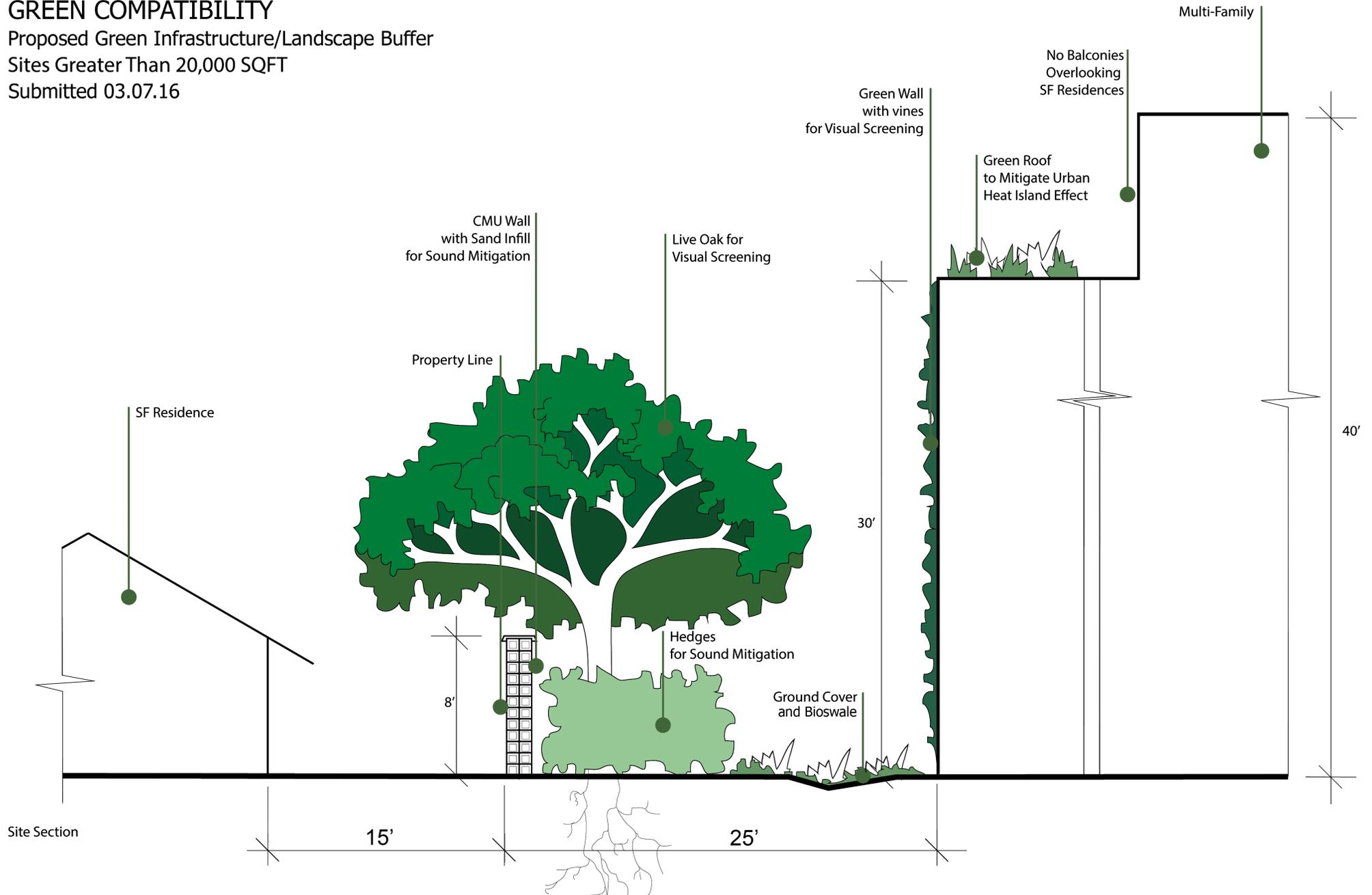
Eleanor McKinney, CAG Member, Environmental Working Group

## GREEN COMPATIBILITY

Proposed Green Infrastructure/Landscape Buffer

Sites Greater Than 20,000 SQFT

Submitted 03.07.16



Chapter	Sub-section	Line Item	Page	Item	Question or Comment
List Chapter	List Sub-section	Line item within draft	Page number item can be found on	Quote verbiage from CodeNEXT draft that you're referring to	This section will allow you to define terms, pose questions, list sections that you like and why you like them, and make general comments. Please be as descriptive and through as possible.
23-1A	1020	B3A	1A-1, p 1	The purpose of the code under B3A, to provide 'adequate' open space.	What is adequate? Green infrastructure needs to be woven into all zoning districts to provide light, air, access, and open space.
23-1A	1020	B5	1A-1, p 2	5) reduce floods, etc.	add to (5): and by mitigating the urban heat island Add: (a) Encourages storm water infiltration on all properties (b) Provides protection of existing tree canopies to absorb stormwater and provide shade
23-2F	2020	B	2F-2, p 1	B) Applicability of simplified site plan - on a site that contains no more than 9 units.	Relaxation of standards by the director in any zoning district needs to be clearly defined to avoid compromise of environmental protections.
23-2F	2040	A2	2F-2, p 3,4	Alternative Equivalent Compliance	Why is Alternative Equivalent Compliance not allowed for use in Transect Zones? This tool is used frequently by landscape architects on site plans to work within the existing site constraints. AEC needs to be allowed in all zones.
23-2F	2040	C	2F-2040.A, p 3,4	Alternative Equivalent Compliance	Question any of these proposed AEC Types that reduce planting zones, private common open space, especially decrease in minimum open space adjacent to BRT stations. We need to increase open space next to BRT stations to accommodate community gathering areas, plazas, and pocket parks. Suggest <u>striking</u> this AEC type. Needs key stakeholder review.
23-2F	3030	C	2F-3, p 1,2	Limited adjustments from water quality requirements	Need to define criteria for limited adjustments to water quality.
23-2H	3020	D	2H-3, p 1	Site construction inspection, drainage, water quality	Needs stakeholder review.
23-2M	1030		2M-1	Definitions: Terms and phrases that need updating. D) Defensible space E) Enclosed F) Furniture area L) Landscaping M) Major private open space improvements N) Natural context type O) Open space P) Park R) Removal	D) "Defensible space" does not only relate to wildfires, but also relates to civic open spaces and need for design criteria for protection from violent crime. L) "Landscaping", as defined elsewhere in the draft code, should be functional, not just decorative. Ex. Rain gardens, shade, etc. The term should be "Landscape", not landscaping. M) Should be 'Open Space, major private' and sorted by "O". (O) Should include Open Space owned by COA departments, but not yet designed for functional use. "Community" Should include the word "Civic" as used elsewhere in the draft code. (R) "Removal" should be 'Tree Removal' and sorted by "T".
23-3				General Planning Standards for All	Need to move 23-4E-4:Landscape to General Planning Standards for All
23-3B	3010	A2a	3B-3, p 1	Fee-in Lieu of Parkland Dedication	The ability to pay fee in lieu for less than six acres negates the urgent need for concurrent establishment of pocket parks in Park Deficient Areas and near Transit Corridors in the urban core. There should be no fee-in lieu unless under .25 acres.
23-3C	1020	D	32-1,p.1	Keystone tree regulations apply to all development.	Highly Support.
23-3C	1030	A	3C-1, p 1-2	Keystone trees 8-18.9" in diameter.	Highly Support.
23-3D	3060	B2	3D-3, p 4	Impervious Cover Limits for Urban Watersheds	How was this impervious cover percentage established? How are natural features protected?
23-3D	6030	C	3D-6, p 2	Water quality control and beneficial use standards	Need to Add: such as integrating green stormwater infrastructure practices such as rain gardens, vegetative filter strips, berms, swales, rainwater harvesting, and rainwater harvesting with irrigation of landscaped areas.
23-3E	1050		3E-1, p 2	Density bonus program	Need to maintain the Plazas and Green Roofs options in any updated Downtown Density Bonus Program. Needs stakeholder review.

Chapter	Sub-section	Line Item	Page	Item	Question or Comment
23-4B	1020	F1f	4B-1, p 3	Land Use Approvals; for CUP, land use can impose conditions, including landscape or erosion controls.	Need to establish criteria for adjusting landscape or erosion controls.
23-4C	1030	A4	4C-1, p 2	Community Design- Overview	Site plan shall allocate civic spaces and buildings... Needs increased standards for civic spaces.
23-4C	1030	A4	4C-1, p 2	Community Design- Overview	Mapping, up zoning of properties adjacent to corridor could price out land that could be acquired to provide for civic spaces. How does code achieve Imagine Austin intent in park deficit areas?
23-4C	1060	B,C,D, d	4C-1, p 5	Community Design- Lots	Need to provide reason for Civic Space and Pedestrian Way criteria.
23-4C	1070	B2a,b,c	4C-1, p 6-8	Civic and Open Space	(a) Need to provide reason no requirements for sites less than four acres. We need pocket parks as small as .25 acres. (b) Need to provide reason for no civic spaces for sites less than eight acres beyond Family Friendly Play area.(c) Need to provide reason for the 1000' criteria. Why not use the 1/4 mile radius in the council resolution? Why not use Pocket Park instead of Family Friendly Play Area? Pocket park provides more flexibility.
23-4C	1080		4C-1, p 8	Supplemental standards for transect zones	Need to track transect zones pending draft to be released Sept 2017.
23-4C			4C-1, p 8	Related to item above.	Will there also be supplemental standards for non-transect zones?
23-4C	2020	4C	4C-2, p 1-18	Applicability	Why do standards need Planning Director approval in non-transect zones? Why do we need two different sets of standards? Delete Transect Zone designations.
23-4C	2040	23-4C-2040.A	4C-2, p3	Civic Space Type Overview	Change Riparian Park to Greenbelt; Needs better graphic for Greenway; Need to delete ball field from graphic for Green; Need less structured graphic for Square; Plaza - PARD Designation not Neighborhood and School Park, Need less structured graphic for Plaza.
23-4C	2060	D	4C-2, p6	Typical Uses	Active as well as Passive.
23-4C	2080	C	4C-2, p 8	Size and Location	Needs minimum 30% pervious cover standard.
23-4C	2110	A	4C-2, p 11	Description	Needs better photo and graphic.
23-4C	2160	C	4C-2 p 16	Size and Location	Urban Pocket Park is minimum .25 acre. Correlate size to pocket park. Add 50% pervious cover.
23-4C	2170	B	4C-2 p.17	General Character	Add: Building for Equipment Storage; Double wide gate for truck access. Area for compost.
23-4D	2010		4D-2 p 1	Transect Zones	Any surface parking reductions (increased entitlement) need to be accompanied by the community benefit of increased in green infrastructure coverage rather than only an increase in building coverage.
23-4D	2050.A	T4MS	4D-2, p7	Small to No Front Setbacks; Small to No Side Setbacks	Needs Front Setback to accommodate Front Planting Zone. Needs a Compatibility Buffer. Increase Side Setback to accommodate.
23-4D	2050.A	T5N.SS; T5U.SS;T 5U;T5M S	4D-2 p 8	Shallow to No Front Setbacks. Small to No Side Setbacks.	Needs Front Setback to accommodate Front Planting Zone. Needs Compatibility Buffers. Increase Side Setbacks to accommodate.
23-4D	2070.A		4D-2, p 18	Shopfront	Needs adequate front setback to accommodate Front Planting Zone for planting of shade trees to create a walkable pedestrian amenity. Frequently, shade trees may not be able to be planted in the ROW due to underground or overhead utility conflicts or narrow ROW width
23-4D	2100	T3N.DS, 23-4D- 2120 T4N.IS, 23-4D- 2130 T4N.SS	Various	K. Required Open Space – Private	What is the basis for these criteria? Needs modeling on a typical lot size. Can the private open space be located in the 20' rear setback rather than adjacent to each independent unit? Need pervious cover and tree criteria in required private open space.
23-4D	2130	T4N.SS	4D-2, p 60	J. Impervious Cover-55%	Any impervious cover increase from previous SF at 45% impervious needs to be offset by On-site Beneficial Reuse. For example, 55% impervious cover is 10% over the original 45% impervious in an original SF zoning. The additional 10% would need to be offset by additional on-site beneficial re-use. Needs criteria and metrics.

Chapter	Sub-section	Line Item	Page	Item	Question or Comment
23-4D	2140	T4MS	4D-2, p 65	E. Building Placement - Setback Distance from Lot Line – Front 5', Side Street 5'; Setback Distance from Lot Line - Side 0	Need to increase set back to accommodate Front Setback Zone for planting of shade trees to create a walkable pedestrian amenity. Frequently, shade trees may not be able to be planted in the ROW due to underground or overhead utility conflicts or narrow ROW width. Adjacent to T3 or LAMER provides no Compatibility Setback at the side lot line. Current code provides 25' setback with ability to provide a Green Compatibility solution with shade trees, hedges, bio-swales, green walls, etc. This solution integrates Green Infrastructure into Compact and Connected.
23-4D	2140	T4MS	4D-2, p 68	J. Impervious Cover	Missing: See Section 23-4E-4080 (Functional Green) for additional standards with Impervious Cover exceeding 80%.
23-4D	2140	T4MS	4D-2, p 68	K. Required Open Space – Common	What is the basis for these criteria? Needs modeling on a typical lot size. Why is the Common Open Space in a Rowhouse or Live/Work reduced to 80 s.f.? This amount of square footage is not enough to plant one tree that could grow to maturity. Needs minimum 30% pervious cover and tree criteria in required common open space at ground floor. Why is 23-4D-4050(G) Private Common Open Space criteria not required in Transect Zones? Needs to apply to <u>all</u> zones 3-9 units and higher.
23-4D	2150	T5	4D-2, p 71		Are there any requirements to reinforce Civic Space at T5 zones adjoining rapid transit hubs?
23-4D	2150	T5N.SS	4D-2, p 81	E. Building Placement Setback Distance from Lot Line – Side 10'	Current code provides SF adjacencies of 25' Side Setbacks with a lower building height of 32' instead of 65' in this transect zone. This is a Compatibility concern. Side Setback not required between attached Rowhouse units. This criteria needs to be for a certain distance only. For example, "Provide a 15' side setback for green infrastructure for every 6 attached Rowhouse units."
23-4D	2150	T5N.SS	4D-2, p 84	J. Impervious Cover	Impervious Cover 60% Any impervious cover increase from previous SF at 45% impervious needs to be offset by additional On-Site Beneficial Reuse. For example, 60% impervious cover is 15% over the original 45% impervious in an original SF zoning. The additional 15% would need to be offset by additional On-Site Beneficial Reuse.
23-4D	2160-2170	T5U.SS, T5U		E. Building Placement Side Street Setback 5' Minimum; Setback Distance from Lot Line – Side 0', Rear 5'	Side Street Setback needs to be 10' minimum to have enough room to plant a tree. Adjacent to T3 or LMDR provides no Compatibility Setback at the side lot line. Current code provides 25' setback at side and rear lot lines with ability to provide a Green Compatibility solution with shade trees, hedges, bio-swales, green walls, etc. This solution integrates Green Infrastructure into Compact and Connected.
23-4D	2160-2170	T5U.SS, T5U		J. Impervious Cover	Will any parcels in T5 zones above be substantially increasing the impervious cover from existing? If so, then On-site Beneficial Reuse needs to be calibrated to offset the increase.
23-4D	2170-2180	T5U, T5MS		E. Building Placement Setback Distance from Lot Line – Front 5', Side Street 5'	Need to increase front and side street set back to accommodate sufficient space for planting of shade trees to create a walkable pedestrian amenity. Frequently, shade trees may not be able to be planted in the ROW due to underground or overhead utility conflicts or narrow ROW width.
23-4D	2180	T5MS	4D-2, p 97	E. Building Placement Setback Distance from Lot Line – Side 0', Rear 0'	Adjacent to T3 or LMDR provides no Compatibility Setback at the side or rear lot lines. Current code provides 25' setback at side and rear lot lines with ability to provide a Green Compatibility solution with shade trees, hedges, bio-swales, green walls, etc. This solution integrates Green Infrastructure into Compact and Connected.
23-4D	2180	T5MS	4D-2, p 100	J. Impervious Cover	Why is impervious cover maximum less than building cover maximum?
23-4D	2180	T5MS	4D-2, p 100	K. Required Open Space	T5MS What are the actual open space requirements? Conflicting provisions: 23-4C-1070 B - Civic Space 10% of site, but waived for properties under 4 acres, except Family Friendly Play Area vs. 23-4D-2180 (T5MS) - 100 s.f./unit, or 5% of site
23-4D	2180	T5MS			If a large block form is broken up into separate buildings of up to 100' width, are spaces between the buildings public access?
23-4D	2190-2200		4D-2, p 103-118	All T6 Transect zones	Will any of the T6U and T6UC parcels be substantially increasing the impervious cover from existing? If so, then the Onsite Beneficial Reuse needs to be calibrated to offset the increase.

Chapter	Sub-section	Line Item	Page	Item	Question or Comment
23-4D	2210		4D-2, p 119	Supplementary Courtyard Standards	In all zones that allow supplementary courtyard standards, but not yet tied to Open Space requirements. What is the basis for these criteria? Needs modeling on a typical lot size. Needs minimum 30% pervious cover and tree standards.
23-4D	3050	A	4D-3, p10	General to All Residential Non-Transect Zones - Parking Required	Any surface parking reductions need to be accompanied by an increase in green infrastructure coverage rather than simply an increase in building coverage.
23-4D	3050	0.1	4D-3, p 12	Urban Core Boundary Map	Unclear why the Urban Core Boundary Map is located here in the All Residential Non-transect Zones. Isn't this an overall map to be listed at the front of the draft code?
23-4D	3060	RR	4D-3, p 13	Building Placement	If Lot Size is 1 acre min. and Impervious Cover is 25% max., why is the Side Setback at only 10'? This criteria could create problems with adjacencies.
23-4D	3080	LDR	4D3-3, p 15-	(C) Exceptions for Affordable Units	Density bonus should not compromise current 45% impervious cover unless Onsite Beneficial Reuse provides a calibrated offset.
	3090	LMDR	16		
23-4D	3090	LMDR	4D-3, p 18	B. Imp cover approvable up to 55% if adjoin open space	Why increase to 55% prior to Watershed Protection modeling? Needs modeling data.
23-4D	3100	LMDR-SL	4D-3, p 19	Lot Requirements 65% Impervious Cover	Any impervious cover increase from previous SF at 45% impervious needs to be offset by Onsite Beneficial Reuse. For example, 65% impervious cover is 20% over the original 45% impervious in a current SF zoning. The additional 20% would need to be offset by Onsite Beneficial Reuse.
23-4D	3110	MDR	4D-3, p 20	Lot Requirements 55% Impervious Cover	Any impervious cover increase from previous SF at 45% impervious needs to be offset by Onsite Beneficial Reuse. For example, 55% impervious cover is 10% over the original 45% impervious in a current SF zoning. The additional 10% would need to be offset by Onsite Beneficial Reuse. Note: Typical to all Non-Transect Zones.
23-4D	3110	MDR	4D-3, p 20	Exceptions for Affordable Units	Density bonus should not compromise impervious cover unless Onsite Beneficial Reuse provides a calibrated offset. Note: Typical to all Non-Transect Zones.
23-4D	3110	MDR	4D-3, p 20	Building Placement	Adjacent to Low to Medium Density Residential 10', 20' (Residential Compatibility) Setback Distance from Lot Line – Rear 10'; Adjacent to Low to Medium Density Residential 30' (Residential Compatibility)
23-4D				Non-transect Zones	Note: In all Non-Transect zones, please replace the word "Intensity" with "Density" to match the zoning district nomenclature.
23-4D	3120	MHDR	4D-3, p 21	Building Placement	Setback Distance from Lot Line – Side 5'; Adjacent to Low to Medium Density Residential – Side 10', 20' (Residential Compatibility)
23-4D	3140	VHDR	4D-3, p 23	Building Placement	Setback Distance from Lot Line – Side 5'; Adjacent to Low to Medium Density Residential - Side 50' (Residential Compatibility)
23-4D	3140	VHDR	4D-3, p 23	Very High density residential. Functional green in non-transect zones is at 75% imp cover	Why not 80% like transect zones?
23-4D	3140	VHDR	4D-3, p 23	Landscaping	Why is this only being spelled out in VHDR when it applies to all zones? Perimeter Planting Area when adjacent to: Front or Side Street ....
23-4D	4050	1	4D-4, p 12	Alternate Active Public Frontage	10' Setback on diagram should read: Required Setback Distance as they vary.
23-4D	4050	D	4D-4, p 13	Location of Off-Street Parking	(c)(ii) What is the width of the landscape buffer? (2)(a) What is the width of the landscape buffer? (3)(a) What is the width of the landscape buffer?
23-4D	4050	F	4D-4, p 16	Table 23-4D-4050.A; Additional Measures to Improve Connectivity	Incorporate a transit stop into the project. This needs dimensions and/or square footage.
23-4D	4050	G	4D-4, p 17	Private Common Open Space	Current code is two acres or larger on commercial or multifamily. This metric needs to be maintained.

Chapter	Sub-section	Line Item	Page	Item	Question or Comment
23-4D	4050	Table 23-4D-4050.B	4D-4, p 18	Open Space and Amenities	3 Areas – 650 s.f. This section is originally from Subchapter E. The area needs to be calibrated to lot size and metrics applied in code rewrite.
23-4D	4050	G4,6,8	4D-4, p 18	Location Criteria, Design Criteria, Fee in Lieu	(4) (c) Location Criteria BRT station area needs to be increased. (6) Design Criteria
23-4D	4050	C	4D-4, p 21	Parking Standards for Commercial Zones	Any reduction in parking needs to be accompanied by a certain added percentage (%) of green space. Need metrics to include greater preservation of existing mature trees and/or planting of 3” trees.
23-4D	4060	A	4D-4, p23	Building Placement	Setback Distance from Lot Line – 10’-20’ adjacent to LMDR or T3 Adjacent to T3 or LMDR provides 10-20’ Compatibility Setback at the side lot line. Current code provides 25’ setback at side and rear lot lines with ability to provide a Green Compatibility solution with shade trees, hedges, bio-swales, green walls, etc. This solution integrates Green Infrastructure into Compact and Connected. Similar comments for all commercial zones.
23-4D	4060	A	4D-4, p 23	Landscaping	Perimeter Planting Area – Front or Side Street Why is none required on lots less than 75’ wide?
23-4D	4070	A	4D-4, p 25	Lot Requirements - Impervious Coverage	How does this percentage compare to existing zoning for a comparable use? Similar comments for all commercial zones.
23-4D	6010		4D-6, p 1	Other zones described: Open space zone	Coordinate with open space throughout document
23-4D	6110	A,B	4D-6 p 13	Open space zone	Allowed uses and Development Standards. Need to coordinate and reference open space throughout document.
23-4D	7050	A,B	4D-7, p 5	Overlay Zones: Downtown civic spaces	Coordinate with open space throughout document.
23-4D	7060		4D-7, p 6	Overlay Zones: Hill country roadway	(F)(1)Need greater definition/metrics on Native Tree Standards. (3)(a)Need greater definition/metrics on Restoring Roadway Vegetative Buffer Standards. (6)(b)Need greater definition/metrics on Visual Screening Standards.
23-4E	3060	A, B	4E-3, p 4	Off street motor vehicle parking adjustments, tree requirements	Preservation of on-site trees. Need definition of significant stands of trees. Need metrics on how many need to be preserved to get the 10% Parking Reduction. Any reduction in parking needs to be accompanied by a certain added percentage (%) of green space. Need metrics to include greater preservation of existing mature trees and/or planting of 3” trees.
23-4E	3090		4E-3, p 8	Medians and trees	10’ median width - Is this inclusive of curb?
23-4E	4000		4E-4, p1	Landscape	Recommend moving Landscape Division to 23-3 General Planning Standards for All
23-4E	4010	B	4E-4, p1	Purpose and Intent	Need to Add the word: "preserve" and replenish local stock of native trees and vegetation.
23-4E	4020	A1a	4E-4, p2	Applicability	Need to Add: Including 23-6B-2020 Residential Heavy Site Plan
23-4E	4030	A	4E-4, p 3	Overview of Landscape and Buffer Types	Diagram confusing since all elements not shown.
23-4E	4040	C,D	4E-4, p4	Front Planting Zone	C. Size and D. Planting Requirement Will the standards be released in time for public input into the PC/ZAP draft?
23-4E	4050	B	4E-4, p5	Foundation Buffer	Why is Foundation Buffer not included in Transect Zones?

Chapter	Sub-section	Line Item	Page	Item	Question or Comment
23-4E	4070		4E-4, p7	Parking Area Landscape Medians	Alternative Configuration. What about end islands? How can trees be included with walkway? Will the trees need root barriers to prevent sidewalk cracking? D. Beneficial Use of Stormwater 23-3D-6030 needs to be coordinated with this section by stating the accepted green stormwater infrastructure practices. Also, this information needs its own section – not buried within parking area landscape medians.
23-4E	4090		4E-4, p9	Intermittent Visual Obstruction Buffer	Need to have the word "Compatibility" in the title for clarity. Why does this not apply in Transect Zones? It is needed in all zones. Need Green Compatibility with Green Walls facing the lower zoning district and sound barrier.
23-4E	4100		4E-4, p 10	Semi-Opaque Buffer	Need to have the word "Compatibility" in the title for clarity. Why does this not apply in Transect Zones? It is needed in all zones. Need Green Compatibility with Green Walls facing the lower zoning district and sound barrier. Needs to be 8' ht. Shrubs need to be large.
23-4E	4110		4E-4, p 11	Opaque Buffer	Need to have the word "Compatibility" in the title for clarity. Need Green Compatibility with Green Walls facing the lower zoning district and sound barrier. Needs to be 8' ht. Shrubs need to be large.
23-4E	4120		4E-4, p 12	Functional Green	Some components of Function Green such as Green Walls and Pervious Pavement need to be considered in Residential Heavy Site Plans of 3-9 units.
23-4E	4130	D4	4E-4,p13	Visual Screening	(D)(4) Typical screening shrubs need 4' o.c. spacing.
23-4E	4140		4E-4, p 14	Submittal Requirements	Support these requirements.
23-4E	4170		4E-4, p 16	Planting and Soil Standards	Table 23-4E-4170.A Diversity Standards Need to consider streetscapes.
23-4E	6240	A, C	4E-6, p 10	Screening and open space in MF	(2) Less than 10 units. Needs to be referenced to Private and Common Open Space. (3) Exceptions for Affordable Units. Needs metrics proposed
23-4E	7060		4E-7, p 6	Setback Exceptions	Needs to be referenced to setbacks in zones and in Landscape Ordinance.
23-6A	2010.A		6A-2, p 2	Site Plan Exemptions	Limited Construction less than 1,000 s.f. and the area of construction is less than 3,000 s.f., if no previous exemption has been granted. Allow a staff waiver for greater area of construction if the additional area is for the purpose of removing previously existing impervious cover and installing landscape areas for trees and stormwater infiltration.
23-6B	2010		6B-2, p 1	Submittal Waivers- Small Projects	Allow a staff waiver for greater area of construction if the additional area is for the purpose of removing previously existing impervious cover and installing landscape areas for trees and stormwater infiltration.
23-6B-2	2020			Residential Heavy Site Plan	nine units in a Transect Zone in an Urban Watershed. Need environmental regulations in the Missing Middle.
23-6B	1050	C	6B-1, p 4	Advanced Site Preparation Plan	Address preservation of trees prior to the authorization to begin site development.
23-7C	2020		7C-2, p 1	Relocation Permits- Cutting Trees	Needs review.
23-9E	2010	A2	9E-2, p 1	Right of Way Permit for a Project	Permit required to remove a tree from public right-of-way
23-9E	2030	B	9E-2, p 2	Permit for a Driveway Approach	Add: Applicable director shall consider existing trees
23-9E	3060	B	9E-3, p 2	Driveway, Sidewalk, Urban Trail, and ROW Construction- General Design and Maintenance Requirements	"If relocating or replacing a tree is required:" Review needed.
23-9E	5000	A3	9E-5, p 1-4	Sidewalks	Needs tracking with Strategic Mobility Plan.

Chapter	Sub-section	Line Item	Page	Item	Question or Comment
23-10A	2050	A, B	10A-2, p 3	Utility Service- Environmental Resource Inventory	Environmental Resource Inventory not defined in 2M. Needs review.
23-10C	4060		10C-4, p 2	Water and Wastewater Capital Recovery Fees- Exemptions for City-Supported Community Gardens	Support these requirements.
23-10D	1060		10D-1, p 2	Reclaimed Water	Needs tie in to future Water Forward CodeNEXT recommendations.
23-10E	3010		10E-3, -1	Drainage	Support these criteria.

## **Public School Impacts**

Submitted by Susan Moffat

As the CodeNEXT Advisory Group (CAG) member appointed to provide a voice for public schools, I have two chief concerns about the draft:

(a) New zoning categories allowing multiple smaller units to be built on sites previously zoned for single-family homes and duplexes may provide an incentive for property owners to demolish existing family-friendly housing. The draft code does not contain any specific provisions to promote or require family housing and, if recent market activity is any guide, Austin is likely to see the continued proliferation of small, expensive units not suitable for families with children. This is a general concern citywide, but is particularly troubling for areas immediately surrounding public schools. High opportunity areas (generally, the wealthier suburbs) will see very little change and will receive few, if any, tools to increase affordability access, such as the addition of missing middle housing. Finally, code consultants have made clear that code changes alone cannot produce the deeply affordable housing needed by public school teachers, staff or many families in Austin's overheated real estate market.

(b) The draft's greatly reduced on-site parking requirements citywide are likely to increase the number vehicles parked permanently on streets near public schools. In central locations and/or rapidly gentrifying areas where more intensive zoning already exists or upzoning is proposed, on-site parking reductions are likely to pose serious concerns for student safety and parent access at some campuses.<sup>1</sup>

Parking more vehicles on the street may increase safety in some settings by narrowing travel lanes and thus reducing vehicle speeds. But the streets immediately adjacent to many of Austin's urban public schools are already fully parked during school hours, as well as many evenings, so no additional safety benefit can be realized by adding more on-street vehicles to the mix (sidewalks are often missing or incomplete in these areas, as well).

It is simply not possible for an urban public school to provide sufficient on-site parking for the hundreds of staff, parents, students and community members (thousands for high schools or middle schools) who need daily access to the campus. Additionally, Texas school accountability laws now require mandatory grading of districts and campuses based on the level of parent/community engagement they demonstrate, further heightening the need to retain available on-street parking near campuses.

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<sup>1</sup> *During my CAG service, I repeatedly requested that current on-site parking requirements be retained for sites adjacent to public schools for safety and access reasons, and was told this issue would be addressed in the mapping phase. Unfortunately, the draft maps do not reflect this request.*

**To address these issues, at least in part, I strongly recommend the following changes:**

(a) Promote family housing by mapping new family-friendly sub-zones near public schools, setting required percentages for 2-3 bedroom units in multifamily housing, requiring 75% of affordable units to be multi-bedroom near urban schools, and preserving existing family-friendly and affordable housing citywide.

(b) Develop a zone suffix modeled on the draft 'O' suffix (such as PSU: Public School, Urban) or other tool for properties within 600' of an urban public school property line that would retain current on-site parking requirements for all uses. For single family homes or duplexes, this would require two on-site parking spaces per dwelling unit. For multifamily, commercial or other uses, on-site parking requirements would match those currently contained in the Austin Land Development Code, Section 25-6 Appendix A.

[https://www.municode.com/library/tx/austin/codes/code\\_of\\_ordinances?nodeId=TIT25LADE\\_CH25-6TR](https://www.municode.com/library/tx/austin/codes/code_of_ordinances?nodeId=TIT25LADE_CH25-6TR)

This sub-zone would also acknowledge the reality that most families who can afford market-rate housing in the urban core are likely to have two vehicles. For deeply affordable family-friendly units to be rented or priced at 60% MFI (Median Family Income) or below, on-site parking exemptions should be determined by the applicable director in consultation with the affected school community.

Due to time constraints, I was unable to fully research the impacts of the proposed rezonings for each of AISD's 130 schools or the numerous campuses operated by other school districts within the Austin city limits. However, I have summarized the concerns the draft code raises for a number of representative campuses, which appear below.

Finally, please note that many of the common tools for addressing street parking do not work in this context for the following reasons:

*1) Limiting the times of day during which on-street parking is allowed, or prohibiting on-street parking.* This would not allow access for parents/volunteers/students who need existing on-street parking during school hours or for evening meetings and events.

*2) Metering the parking, which has become easier now with kiosks, and which can raise funds for local improvements.* This places a burden on low-income parents/volunteers/students and is already an issue around Pease Elementary where the city installed meters without contacting the campus or AISD. We don't want to force people pay to be involved in their kids' education.

*3) Painting "hockey sticks" on the street to indicate where folks may park, helping to prevent blocking driveways or parking too close to the curb.* Again, this does not address the problem of maintaining access for the school community if all spots are already claimed by overflow from nearby apartments, as in the case now behind the Burnet Flats

complex on Burnet Road.

4) *Prioritizing sidewalk construction to reduce walking in the street.* Of course, school communities strongly support more sidewalks, but sidewalks alone do not address the full problem.

5) *Using halo cameras to identify problems.* Again, these would not address the issue of access. Once a large multiplex is built without sufficient parking, it's not really possible to address these problems in hindsight.

*a. McCallum High School*

*5600 Sunshine Drive*

*Traffic/Parking Safety Issues, Lack of Family Housing*

McCallum High School has a current total student enrollment of approximately 1750 students, including 500 fine arts majors from all attendance zones who are enrolled in the school's districtwide Fine Arts Academy, plus over 120 faculty and staff. In addition to the typical extracurricular clubs, sporting events and activities, the Academy hosts a high number of evening performances and rehearsals that draw traffic to the area after school hours. The school's main entrance, gymnasium and performing arts center all face Sunshine Drive, a narrow side street that is fully parked-up during school hours and often many evenings and weekends.

Located one block west of Lamar Boulevard, Sunshine Drive is already dangerously congested. Many students of driving age park on nearby side streets or in the small senior parking lot on the southeast corner of Sunshine and Houston (AISD allows seniors to leave campus during lunch so many student vehicles are moved and re-parked during the school day). Few of the nearby neighborhood streets where students also park have functional sidewalks. Because AISD does not provide transportation for Academy students, many also use Cap Metro buses to commute to McCallum and walk on narrow sidewalks or in the street from the bus stop on Lamar.

Allowing new businesses or multiplexes to operate in this area without adequate on-site parking will exacerbate safety concerns for students and make it more difficult for parents to access the school for required meetings, volunteer work or to pick up students for illnesses or appointments. Of the AISD schools I have examined, the draft code's impacts on McCallum are likely to be the most severe. These include:

- *A large tract on Sunshine directly facing the school's main entrance is currently zoned MF-3-NP, but is now proposed to be upzoned to T5N.SS. This rezoning would increase the allowed building height from 40' to 65' and, in addition to residential uses, would allow medical services up to 5000 SF. The only exits from this tract are onto Sunshine Drive where buses and parents pick up or drop off students, or through a narrow driveway onto Stark, a small residential street to the north.*

The draft code reduces on-site parking requirements for residential uses to one space per unit with an additional 40% reduction possible using the Off-Street Motor Vehicle Parking Adjustments found in 23-4E-3060; there are no on-site parking requirements at all for medical services allowed in the proposed zoning category. This means many of the vehicles associated with either use will be parked on Sunshine or other small neighborhood streets in the immediate vicinity, exacerbating safety concerns for students in an already congested area and making it more difficult for parents to access the school. If the current market is any guide, new housing allowed in the proposed zoning category is not likely to provide units of a size suitable for families.

- *A tract on Sunshine Drive directly across from the school currently zoned LO-MU-NP is proposed to be rezoned T4MS. This rezoning would allow retail and other services to operate without providing any on-site parking for businesses under 2500 SF, meaning customers arriving by car would also have to park on Sunshine or in the immediate vicinity. This zoning category does not allow residential use other than Live/Work space so is unlikely to produce family-friendly units.*

In addition, the proposed T4MS zoning allows Bar/Nightclub and Microbrewery uses with only a Minor Use Permit (MUP), a new proposed tool that would allow administrative approval without a public hearing (notice requirements for this tool are still a bit vague in the current draft). Because state law prohibits alcohol sales within 300 feet of a school, it is fairly safe to assume that an MUP for such a use would not be granted here. But why rezone this site to category that may mislead a potential buyer? By contrast, the site's current LO zoning makes it clear that alcohol-related uses are not allowed here.

- *A tract facing the school on the northeast corner of Sunshine and Houston currently zoned Single Family-6 is proposed to be upzoned to T4N.SS, a multifamily category. The corner portion of this tract is owned by AISD and is used as McCallum's senior parking lot; the remaining lots currently contain single family homes. The proposed rezoning would allow these homes to be replaced with multiplexes of up to 8 units each, as well as cottage courts of up to 8 units, again with only one on-site parking space for each unit. The proposed on-site parking reductions will clearly exacerbate student safety concerns in an already congested area. It is unclear whether any of the units produced would be large enough for family use.*

- *Multiple tracts on Houston facing the south side of the school and its senior parking lot currently zoned Single Family-3 are proposed to be upzoned to T4N.SS, a multifamily zoning category. The same safety concerns and likely lack of family-sized units apply here as well.*

*b. Fulmore Middle School*

*201 East Mary Street*

*Traffic/Parking Safety Issues, Lack of Family Housing*

Multiple tracts immediately adjacent to Fulmore Middle School are currently zoned Single Family-3, allowing single-family homes, duplexes and Accessory Dwelling Units (ADUs). These tracts are now proposed to be upzoned to T4N.IS, a multifamily use that allows multiplexes (4 units plus an ADU per 6000 SF lot) and cottage courts (6 units per 12,500 SF lot), with only one on-site parking spot per unit. It is unclear whether any of these new units will be large enough to accommodate a family, but if the recent market is any indication, this area will likely be built out with as many small units as possible. Coupled with significant proposed on-site parking reductions, this will put many additional parked vehicles on the streets surrounding Fulmore, exacerbating student safety concerns and hindering parent access.

c. Becker Elementary

906 West Milton

*Traffic/Parking Safety Issues, Lack of Family Housing, Hotel/Motel Use*

A large tract immediately adjacent to Becker Elementary on the east, currently zoned Single Family-3, is proposed to be upzoned to T4N.IS, which would allow multiplexes (4 units plus an ADU per 6000 SF lot) and cottage courts (6 units per 12,500 SF lot), with only one on-site parking spot per unit. It is unclear whether any of these new units will be large enough to accommodate a family, but if the recent market is any indication, this area will likely be built out with as many small units as possible. Coupled with significant proposed on-site parking reductions, this will put many additional parked vehicles on the streets surrounding Becker, exacerbating student safety concerns and hindering parent access.

d. Campbell Elementary

2613 Rogers Avenue

*Traffic/Parking Safety Issues, Lack of Family Housing, Hotel/Motel Use*

Several lots immediately adjacent to Campbell Elementary are proposed to be upzoned from SF-3 to T4N.IS, T4N.IS-0, T4N.SS or T4MS. As previously discussed, these rezonings are not likely to encourage family-friendly housing and proposed citywide on-site parking reductions for these sites may hinder access and exacerbate safety concerns for students by increasing on-street parking. In addition, T4MS permits Hotel/Motel use, which may not be the ideal neighbor for an elementary school, given the inherent transience of its clientele.

e. Dawson Elementary

3001 South First

*Traffic/Parking Safety Issues, Lack of Family Housing, Hotel/Motel Use*

Tracts on the north and south sides of Dawson Elementary are proposed for upzoning from SF-3 to T4N.IS, a multifamily category. The tract to the west is proposed for upzoning from SF-3 to T4MS. As previously discussed, these rezonings are not likely to encourage family-friendly housing and parking reductions for these sites may hinder access and exacerbate safety concerns for students by increasing on-street parking. In

addition, Hotel/Motel is a permitted use in T4MS, which again, may be a less than ideal neighboring use for an elementary school.

*f. Mathews Elementary*  
*906 West Lynn*  
*Traffic/Parking Safety Issues*

Mathews Elementary is located in an area of narrow neighborhood streets near a number of popular businesses that already draw traffic to the area. It is currently surrounded by multifamily zoning and will continue to be under the proposed rezoning to T4N.SS. If these properties are developed or redeveloped, the proposed on-site parking reductions would likely place significantly more vehicles on the already-congested streets, exacerbating student safety concerns and hindering parent access.

*g. Pease Elementary*  
*1106 Rio Grande*  
*Traffic/Parking Safety Issues*

Pease is currently surrounded on three sides by a mix of CS, LO, GO and MF-4 zoning, which the current draft replaces with a variety of Commercial Core zoning. If these properties are redeveloped under the proposed on-site parking reductions, more parked vehicles will be added to the area's narrow congested streets, exacerbating student safety concerns and hindering parent access. Because Pease is an all-transfer school, almost every child arrives by car so it is especially critical to ensure that increased street parking does not hinder parent access to this campus or exacerbate traffic dangers for young students.

*h. Zavala Elementary*  
*310 Robert Martinez Jr. Street*  
*Traffic/Parking Safety Issues, Lack of Family Housing, Nightclub Use*

Many Single Family-3 tracts immediately adjacent to Zavala Elementary are now proposed for upzoning to T4N.IS, a multifamily use. In addition, a large tract currently zoned CS-CO-MU directly across from the school is proposed for upzoning to T5MS, which allows heights up to 85' and permits Bar/Nightclub use. While some portion of this tract may be over 300' from Zavala, it again raises the question of why this entire tract would be rezoned for Bar/Nightclub use when alcohol-related uses will be prohibited on at least part of it due to proximity to an elementary school.

Given current market forces, it's doubtful that the upzoning of these areas will produce family-friendly housing units. Coupled with proposed on-site parking reductions, this will almost certainly result in increased street parking and congestion, exacerbating student safety concerns and hindering parent access.

*i. High Opportunity Areas*  
*Barriers to Affordability Near Schools*

Many residential sites located in “high opportunity” areas (generally wealthier neighborhoods on Austin’s west side) are currently zoned SF-2 or SF-3. The draft code proposes to downzone a number of these to Very Low Density Residential, Low Density Residential or even Rural Residential, none of which will allow even the most rudimentary forms of missing middle housing such as duplexes, though the Low Density zoning does allow Accessory Dwelling Units.

Other tracts in these areas are proposed to be rezoned T3NE.WL or T3NE, which would raise the minimum required lot size from the current citywide standard of 5750 SF to 8400 SF or 8200 SF, again making it less likely for families of limited means to find housing in these areas.

On the plus side, some SF-2 areas proposed for rezoning to T3NE.WL, T3NE or Low Medium Density Residential would now be required to allow duplexes and ADUs for the first time, which might possibly provide some slightly more affordable options for moderate-income families. It is unclear why some existing SF-2 areas were chosen for one type of rezoning over another.

The proposed citywide reductions for on-site parking are generally a far lesser concern in these areas, due to the very limited changes in allowed density, and the fact that most suburban builders will routinely provide at least two on-site parking spots per dwelling. In short, most schools located in high opportunity areas would likely see little change under the draft code, nor would housing in these areas be made more available to families of limited means.

**CodeNEXT Draft, Collected Comments  
Submitted by Susan Moffat, CAG Appointee**

Below please find my collected comments on the draft code submitted to date. Section A contains comments or questions about larger policy issues (Items 1-5), as well as those related to the draft structure or review process (Items 6-9). Section B contains line-by-line comments, questions and corrections organized in sequence of the draft text. Given the size and complexity of the draft, there are undoubtedly many things I have missed, but I appreciate your consideration of the issues identified below.

Please note that comments on the Affordability Incentives appear out of sequence at the end of this document due to their late release. Additionally, the comments I submitted on Public School Impacts appear in a separate section of this Appendix.

**A. GENERAL COMMENTS & QUESTIONS**

**1. Public School Impacts.** See Appendix B.4

**2. Increased Entitlements and/or Upzoning Absent Clear Public Benefits.** As currently proposed, the draft code would allow a number of significant increases in entitlements without requiring specific, commensurate public benefits in return. Depending on the area, proposed entitlements may include vastly reduced on-site parking requirements citywide, elimination of FAR, reduced compatibility standards, greater number of units, increased height, higher impervious and building cover, reduced setbacks, etc.

Increased entitlements are also likely to promote the demolition of existing market affordable housing and may raise appraised values for nearby properties, placing a greater burden on longtime residents, both owners and renters, already struggling to keep up with rising property taxes. In areas that currently provide a mix of housing types, a proposed upzoning from SF-3 to T4N.SS, for example, will create extreme pressure for teardowns, further fueling gentrification and displacement.

Some believe increased entitlements will reduce construction costs, hence aiding affordability. But as developers will tell you, construction costs simply set the floor for a building's ultimate rent or purchase price - the market sets the ceiling. With Austin's market pressures continuing unabated and Texas law prohibiting nearly every traditional tool to preserve or create affordable housing, the city should not give away the few bargaining chips it holds. Please revisit these proposals and firmly tie any increase in entitlements to clear required public benefits in return.

**3. Inequitable Placement of Missing Middle Housing.** The draft maps appear double down on 'missing middle' housing tools in areas where this type of housing already exists (predominantly central and east neighborhoods), while failing to provide

such tools for west Austin's generally whiter, wealthier neighborhoods. Given Austin's skyrocketing land prices, new missing middle housing will never be affordable to low-income families without some form of subsidy, but it may provide a slightly less expensive market-rate option for some middle-class families and individuals in high opportunity areas. Why have these tools not been widely mapped throughout the city?

#### **4. Compatibility Inequities and Missing Elements.**

Unlike the current code, which provides equal treatment for all property owners under its compatibility provisions, the draft code establishes a two-tier system, providing substantially greater compatibility protections for residents of Non-Transect Zones while weakening them for residents of Transect zones. Generally speaking, Non-Transect Zones enjoy greater protections in both setbacks and stepbacks and, while compatibility is specifically cited in the Intent statement for Non-Transect zones, it is omitted from the Intent statement for Transect areas.

The draft also omits current compatibility standards governing noise levels of mechanical equipment, dumpster placement, driveway placement and other crucial features intended to ameliorate negative impacts for residents living near a high intensity development. Because the Transect zones will likely be applied along transit corridors where high intensity development is expected, compatibility protections are arguably most important in these areas. Please review and revise the draft to ensure equitable treatment for all residents.

I have summarized below specific compatibility questions and comments. For comparison, please see current compatibility standards in Article 10 at the below link.

[https://www.municode.com/library/tx/austin/codes/land\\_development\\_code?nodeId=TIT25LADE\\_CH25-2ZO\\_SUBCHAPTER\\_CUSDERE\\_ART10COST](https://www.municode.com/library/tx/austin/codes/land_development_code?nodeId=TIT25LADE_CH25-2ZO_SUBCHAPTER_CUSDERE_ART10COST)

*a. What has become of the following current code sections?*

- (1) § 25-2-1063 – Height Limitations and Setbacks for Large Sites.
- (2) § 25-2-1065 – Scale and Clustering Requirements.
- (3) § 25-2-1067 – Design Regulations, specifically the below provisions:

- *Lighting.* Draft code requires shielding of all exterior lighting, but the draft is missing this key phrase “so that the light source is not directly visible from adjacent property” in an urban family residence (SF5) or more restrictive zoning district. Can we please reinstate this for clarity?

- *Noise level.* Current compatibility standards require that the noise level of mechanical equipment may not exceed 70 db at the property line. There are random

noise prohibitions that appear in various uses throughout the draft (Mobile food Sales, Mobile Retail, Late Night Restaurant), but no universal protection for noise as the current compatibility requires. Please let me know where this went and/or reinstate it. Thanks!

• Refuse receptacles. The draft requires dumpster screening, but appears to omit current code requirements for dumpster placement, including approval by Watershed Protection: “A permanently placed refuse receptacle, including a dumpster, may not be located 20 feet or less from property: (1) in an SF-5 or more restrictive zoning district; or (2) on which a use permitted in an SF-5 or more restrictive zoning district is located....The location of and access to a permanently placed refuse receptacle, including a dumpster, must comply with guidelines published by the City. The Watershed Protection and Development Review Department shall review and must approve the location of and access to each refuse receptacle on a property.” Please reinstate this language.

Reflective surfaces. Current compatibility states: “A highly reflective surface, including reflective glass and a reflective metal roof with a pitch that exceeds a run of seven to a rise of 12, may not be used, unless the reflective surface is a solar panel or copper or painted metal roof.” Please reinstate.

Recreational Uses. Current code: “An intensive recreational use, excluding a multi-use trail and including a swimming pool, tennis court, ball court, or playground, may not be constructed 50 feet or less from adjoining property: (1) in an SF-5 or more restrictive zoning district; or (2) on which a use permitted in an SF-5 or more restrictive zoning district is located.” Please reinstate.

Driveway placement. Current code “Unless a parking area or driveway is on a site that is less than 125 feet wide, a parking area or driveway may not be constructed 25 feet or less from a lot that is: (1) in an SF-5 or more restrictive zoning district; or (2) on which a use permitted in an SF-5 or more restrictive zoning district is located.” Current code also provides a detailed width and setback chart for parking/driveway construction for lots less than 125 wide. Please reinstate.

(4) § 25-2-1068 – Construction of Parking Lots and Driveways By Civic Uses Prohibited. Please reinstate.

*b. Streets as a compatibility trigger?*

At the ZAP/PC briefing on 2/22/17, consultants stated that compatibility would be triggered by alleys (though this is not yet reflected in the draft which cites only parcel lines as triggering the new stepbacks), but not by streets, in contrast to the current compatibility standards, which specifically include streets in compatibility triggers.

Central Austin has some streets less than 30’ wide near corridors. As currently drafted, this would allow buildings up to 85’ tall within 35 feet of a single-family home, as long as the home was on the other side of the street.

For example, T5MS and T5U.SS both allow building heights of 60'-85' with a minimum front setback of 5', and T4MS allows a 55' height also with a 5' setback. If streets are removed as a trigger, this setback plus a 30' street allow an 85' tower within 35 feet a single-family property. By contrast, the draft setbacks triggered by a parcel line (and alleys if this omission is fixed in the commission draft) would require a 50' rear setback for a building of 4-6 stories where it abutted a small residential use. Please reinstate streets less than 50' in width as a compatibility trigger.

*c. Setbacks adjacent to alleys?*

T5N.SS currently allows building heights of 65' with a 20' rear setback, but reduces this setback to 5' if adjacent to an alley. My own alley measures 10.5' meaning the total setback would be just 15.5', less than the 20' required. I strongly encourage you to increase the alley setback to be at least equivalent to 20'.

## **5. Blanket Reductions in On-Site Parking Requirements Without**

**Regard for Existing Conditions.** The proposed draft significantly reduces on-site parking requirements citywide without regard for existing conditions or potential impacts on surrounding areas. A number of small residential streets in the central city are already dangerously saturated with street parking due to the presence of 'stealth dorms' – houses purposely built with up to a dozen bedrooms, each rented to a college student with his or her own vehicle. With just two on-site parking spaces, the home's ten remaining vehicles are permanently parked on the street. If more than one of these homes exists in a single block, conditions quickly become untenable.

For residents of older homes that lack on-site parking or driveways, the over-saturation of street parking can result in conditions that are inconvenient at best (forced hikes with groceries) or dangerous at worst. One older resident in the North Loop area reports that emergency vehicles cannot reliably access her street due to the congested parking conditions related to the presence of several stealth dorms in a single block. Clearly, areas that are already so congested under current code can ill afford additional reductions in on-site parking, especially for properties that are likely to be redeveloped into multiple smaller units.

The impacts of parking reductions will be even greater for neighbors of large apartment or condo complexes. Current code requires *one on-site space per bedroom*, with that number diminishing for multi-bedroom units (additional reductions are also possible under current code).<sup>1</sup> The proposed draft would reduce multifamily parking requirements to *one on-site space per unit*, with potential additional reductions of up to 40%, meaning one could legally build a 100-unit complex with just 60 on-site parking spaces on a street also shared by single-family homes (if your home faces a large complex on the opposite

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<sup>1</sup> For all current on-site parking requirements, see Article 7, Appendix A, at the below link:  
[https://www.municode.com/library/tx/austin/codes/code\\_of\\_ordinances?nodeId=TIT25LADE\\_CH25-6TR](https://www.municode.com/library/tx/austin/codes/code_of_ordinances?nodeId=TIT25LADE_CH25-6TR)

side of the street, compatibility standards will not apply under the draft code).

Developers familiar with large multifamily projects recently built in Austin have observed a number of tenants parking a second vehicle more or less permanently on the surrounding streets. This is primarily due to couples with two cars renting a one-bedroom apartment, but if on-site parking requirements are reduced to one per unit (or less) as the current draft provides, this practice is certain to escalate.

If limited to a few small infill projects per block, such as a single duplex or townhome, this might not pose a problem. But the proposed parking reductions for large multiplexes near corridors are likely to quickly overwhelm surrounding streets with additional parked vehicles. A 2012 Portland study found "...the reality is that once parking use reaches approximately 85 percent of the available parking spaces, it becomes difficult to find an open parking space. As a result, drivers are often required to circle the block or blocks, which impacts traffic flow and creates delay for drivers looking for parking."

<https://www.portlandoregon.gov/bps/article/420059>

The proposed reductions in on-site parking would allow developers to externalize parking costs by shifting them to the streets, but the draft contains no mechanism to ensure that these construction savings will, in fact, be passed on to the consumer. In any case, construction costs simply set the floor of a rental or sales price; the ceiling will be set by the market.

While it appears there is no clear consensus in the multifamily development community about how many on-site parking spaces to build for future projects, the market will ultimately determine this number, though not without pain associated with wrong guesses. The market will also determine the ultimate rental or sales prices of the dwelling units, absent any mechanism to tie reduced on-site parking to affordability requirements.

**6. Set Future Goal to Unify Multiple Code Languages.** The decision to create Transect and Non-Transect zones, while simultaneously retaining a number of complex negotiated plans based in the current code, has essentially resulted in three distinct codes types, each with a different nomenclature and format, and, in many cases, different building standards for essentially the same uses. Because the three types are intermingled on the ground, those serving on ZAP, Planning Commission or City Council - as well as many professionals and community members - will have to remain fluent in all three code types as long as they exist. While there appears to be some support for better aligning the format of the transect and non-transect zones, the overall tripartite code structure is not likely to be resolved before adoption. But is it at least possible to set a goal of bringing the whole city under a single code language and structure at some future date?

**7. Clarify Valid Petition Rights for Proposed Rezonings.** While there has been much reference to 'right-size zoning,' the proposed draft will, in fact, constitute a rezoning, and in some cases, an upzoning, for many areas. Will residents adjacent to, or residing in, areas proposed for rezoning under the current draft be able to exercise their

valid petition rights in the code adoption process as granted by state law?  
<http://www.statutes.legis.state.tx.us/SOTWDocs/LG/htm/LG.211.htm>

### **8. Formatting and Design.**

- a. Darker ink for body text would improve readability in both print and online version.
- b. Narrower font could save paper on print copies.
- c. Tabs dividing sections would improve usability of print copies.
- d. The proposed mock-up submitted to ZAP/PC that more closely aligns formatting in the Transect and Non-transect sections of the draft code should be adopted.

**9. Track Changes for Future Drafts.** Finally, please ensure that all changes are tracked in a way that is easily viewable on subsequent drafts. Absent tracked changes, decision-makers and the public will have to start from scratch to review another 1100+ pages when the Commission draft is released, and again for the Council draft.

## **B. LINE-BY-LINE QUESTIONS, COMMENTS AND CORRECTIONS BY DRAFT CODE SECTION**

### ***23-1A: General Provisions***

**23-1A-1010(B)(1)(b).** Typo: Remove initial “(“

**23-1A-2030(B).** Limits on Authority section needs to explicitly apply to all city employees whether a “city official” or not. Not all city employees are city officials. See definition in 2-7-71.

**23-1A-3020 (A)(2)(a).** Amendment to “text” of the code is a legislative action, mentioned here and elsewhere. Amendments to other items in the code (e.g., heading, caption, figure, illustration, table) should also be addressed legislatively, especially tables which may include regulations that don’t exist elsewhere.

**23-1A-3020.** Inconsistent language. In (A)(2)(b), the initial zoning under the new code is referred to here as “adopting the City’s official zoning map.” Elsewhere, it’s referred to as the “original” zoning (e.g., 23-1B-3020(A) and 23-2A-1030(A)). Given that there have been recent questions about the allowable procedures for initial zonings, please be consistent and intentional with this language.

**23-1A-5020(C).** Incomplete Provisions. This appears to be a new concept, giving authority to the director to create new standards if the code is incomplete. At a minimum, the director should be required to raise the issue to the Council to initiate a process to amend the code to complete it, and ideally, secure Council guidance for how it should be completed in the instance at hand.

### ***23-1B: Responsibility for Administration***

**23-1B-1010(A)(2).** This section mentions amendments to adopted Small Area Plans as provided in Division 23-2E-2 but that section only mentions Neighborhood Plans. Amendments to other Small Area Plans, of which there are many, should also be addressed, at least generally, for completeness.

**23-1B-2010(A).** “This Division establishes the sovereign boards and commissions...” but in fact the City Code section 2-1-3 does this: “Each board described in Article 2 (Boards) is established or continued in existence...”.

Need to align which part of the code “establishes” the boards and commissions. See also 23-1B-2010(B) which references “establishing” the boards.

**23-1B-2020 (D)(2)(b).** This section creates an Appeals Panel, as a subset of the Board of Adjustments. While this may be meant to ease the work load of the Board, it is problematic in that not all Council Members/Council Districts would have a

representative in the appeals process. In addition, will the Panel have a Chair? How would the members of the Panel be selected?

**23-1B-2-2020(E)(1).** The authority to call a meeting ‘requested by the Board’ needs to be defined or, if it’s to be defined in the Rules, clearly state that.

**23-1B-2030(B)(1)(d).** Typo “old” should be “Old”

**23-1B-2030((C)(1)(d).** Typo strike “Hearing”

**23-1B-4010(E).** If bylaws “shall be consistent with the standardized bylaws template” why allow contact teams to change them? In my own experience as a contact team member, the city provided template was very weak and omitted crucial sections regarding basic functions, such as the authority to place items on the agenda, voting process, quorum, etc. I strongly suggest the bylaws template be strengthened and the provision allowing changes be removed from this section.

## ***23-2: Administration and Procedures***

**Please add valid petition process for rezonings.** While valid petition rights in rezonings are established by state law, it would be helpful to include a provision in this section setting out definitions, applicability, procedures, etc., similar to what the draft provides for Vested Rights Petitions in 23-K-2.

**23-2A-1010 (B).** Typo. “Table 23-1-B010.A” referenced here does not seem to exist. There is a Table 23-2A-1030.A that appears a page later, but it has a different heading and number than the one referenced here.

**23-2A-1030 (A).** Here and elsewhere explicit department names are referenced yet at least one is already out of date (23-2M-1030 mentions “Watershed Protection and Development Review Department”). Can these departments be referenced more generically or at least brought up to date with current names before adoption?

**23-2B-1010 (B).** Adds option for director to establish application requirements by a “policy memo” rather requiring this to be established by rule as in current code. Using a policy memo does not allow for public feedback. Suggest revert to current code language.

**23-2B-1040.** Current code (25-1-88) requires notice when an applicant requests an extension to the completion of his/her application. It appears this section of the draft code does not incorporate the extension request, which is an improvement, but if extensions are provided elsewhere in the draft, please ensure that notice is required.

**23-2B-1050.** This allows an automatic extension of 1-year expiration period with no notice in a case where staff review is not complete, but omits the notice requirement. Need to include the current code (25-1-87) requirement for notice in this or any other case of extension.

**23-2B-2050(C).** This provides a 15-day turnaround required for staff to prepare Development Assessment, which seems an unrealistically short time for review of a 200+ acre residential project. The current code allows the turnaround time to be set by administrative rule (25-1-62(D)). Suggest revert to current code language

**23-2B-2050(D).** This is an addition to the Vested Rights code, stating that a Development Assessment (DA) can be submitted as part of a Fair Notice Application under Vested Rights. Given that a DA is preliminary and might suggest rights exist for a piece of property that do not, in fact, exist, including it in a Fair Notice application could cause significant problems and confusion in any subsequent grandfathering discussions. Suggest you remove this subsection completely, or at a minimum, add a provision clearly stating that a DA is not evidence of approval or compliance, but only a preliminary courtesy review.

### ***23-2C: General Notice***

**23-2C-1010(B).** Typo "...apply to all notice..."

**23-2C-1020.** The draft reduces the mailed notice requirement for public hearings from the current 11 days to just 7 days, and reduces posted notice from 16 days to 11 days. Given the vagaries of the postal system and residents' busy lives, this doesn't give much time to plan a response, register as an interested party or hire a babysitter to attend a hearing for a project that may substantially impact one's daily life. Strongly recommend retaining existing notice times.

**23-2C-2010(B).** This section allows for the public process (e.g., hearings) to proceed even if errors in notice are made. There have been cases of notice errors in the past that would have significantly hindered the public's right to participate had the process had been allowed to proceed. Suggest striking this provision.

**23-2C-2020(B).** This section could use some clean up. It defines several criteria that make one an "interested party" but then in 23-2C-3020, identifies how to mail to some in that explicit list (which is, per 2020(B), interested parties) as well as '(6) an interested party.' Is there another way to be an interested party to qualify under (6) but not be listed in 2020(B)?

**23-2C-3020.** Re: mailed notice "deposited in a depository of the US Post Office." Need to clarify that this does not include just getting it to the City's mailroom where delays may eat into the notice time.

#### **23-2C-4. Notice of Public Hearings**

The required amount of advance time for notice has been generally decreased from that required under current code (25-1-132). Please reinstate current code requirements.

Boards and Commissions – currently 11 days; proposed 7 days

Council – currently 16 days for mail and publication; proposed 12 days

Note: See 23-1A-5020(G) for computation and meaning of time. Calendar days are used. Even if business days were used in the current code, these suggested numbers would in certain situations result in a decrease in notice time.

### **23-2C-5010. Notice of Applications**

Required amount of time for public to respond has been decreased (25-1-133)

Please reinstate the current amount of time, or increase it.

Currently – within 14 days with no decision on application within 14 days.

Proposed – within 10 days with no decision on application within 10 days

## **23-2D Public Hearings**

**23-2D-1020(C).** This provision changes current code to require permission to speak if a person signs up after a hearing has begun. This issue is currently under discussion by Council and should be left to that body to decide.

**23-2D-2030.** This section allows a change in the location of a public hearing (for ‘good cause’ as deemed by presiding officer) if the hearing is delayed a sufficient amount of time for people to get to the new venue. This assumes that getting from the original locale to the new one on the spot is always possible for a member of the public. While this language also appears in the current code, it presents an onerous burden especially for those dependent on public transportation. Suggest removal.

## **23-2E Legislative Amendments**

**23-2E-2.** This section specifically provides for Neighborhood Plan amendments but not amendments for other small area plans, which can also have legislative amendments. Suggest adding language to include small area plans.

**23-2E-2030.** Numbering error. It appears the section titled Review and Recommendation uses the same number as the subsequent section, Adoption by Council.

**23-2E-2030.** Where is the new section governing the creation and responsibilities of Neighborhood Plans and Neighborhood Plan Contact Teams (current code, Art. 16, Sections 25-1-805)?

## **23-2F: Quasi-Judicial and Administrative Relief**

**23-2F-2020 Exempt Residential Uses and Structures.** This exemption is new, and appears to significantly expand and loosen a concept Council enacted in 2011 to address a problematic situation in a neighborhood where carports had been erected long ago in an area now prone to floods. The process was narrowly crafted (see <http://www.austintexas.gov/edims/document.cfm?id=153423> and 25-2-476), limited to properties with SF3 or more restrictive zoning where the noncompliance existed for more than 25 years and required a review by the Board of Adjustment (BoA). The proposed

section opens the exemption to significantly more situations without BoA review, and could prove extremely subjective and problematic. This additional capability should be carefully scrutinized.

In addition, the ordinance linked above mentions that state law gives the BoA the authority to grant exemptions to the code without the hardship criteria. The city law department should determine whether the proposed 23-2F-2020, which grants this authority to the Building Official, is valid under state law.

**23-2F-2030.** Minor Adjustments. This section allows an administrative approval of a 10% increase in certain entitlements (height, building coverage and setback) if errors are made ‘inadvertently’ in construction. There is a major concern of abuse of this section, allowing construction “errors” to increase entitlements across the city. As with 23-2F-2020, it should be explored whether this is even allowed under state law.

The code tracking matrix states that 23-2F-2030 Minor Adjustments is ‘carrying forward’ 25-2 Subchapter E (Commercial Design Standards (CDS)) Section 1-4. This is a gross misstatement. That section allowed for adjustments to the CDS-specific design requirements such as minimum glazing area. It did not allow for increases to density, intensity or impervious cover, and had nothing to do with construction errors. Its purpose was to protect historic or natural features or unusual site conditions, without adverse effects on nearby properties. It was not designed to provide after-the-fact absolution.

**23-2F-2040.** Alternative Equivalent Compliance in the current code was part of the Commercial Design Standards. Here, its applicability is broadened to General to Commercial Non-Transect zones, but the new language is significantly more expansive than current provisions in the CDS and many modifications would decrease landscape and open space. Please ensure the Environmental Commission reviews this section.

**23-2F-3010.** Limited Adjustments is a new capability that allows adjustment of water quality requirements if there has been a court decision on them that is in conflict with federal/state Constitution or a federal/state law that preempts city code or charter. Note that the SOS regulations include a similar capability (25-8-512 and 30-5-23, which are carried over in 23-3D-9080). The first question is why this addition is necessary. There is nothing that precludes Council from waiving water quality standards for a non-SOS property under the procedures that already exist.

If this more general application remains, it should be made clear that this provision applies *only* if 23-3D-9080 is not applicable to the property. Because this provision differs in some ways from 23-3D-9080, applying it to properties controlled by SOS would effectively amend the SOS ordinance, which requires a supermajority vote of Council.

**23-2F-3010(B).** Typo. Reference to 23-2L-1 (Vested Rights) should be 23-2K.

## **23-2G: Nonconformity**

**23-2G page i:** Typo. Reference to 23-2G-3010 should be 23-2G-1010.

**23-G Organization:** The organization of this section is confusing and appears to have errors. Why are nonconforming uses, structures and lots considered as the 3 types of nonconformances under Section 1020, but Section 1030 only discusses determination of nonconformance of uses and structures? It appears the section on nonconforming lots got erroneously put in 23-2G-2020 under “Order of Process.”

**23-G Kudos.** The draft code merges the concepts of conforming (for use) and complying (for development standards for structures and lots) under one term of ‘conformance.’ This is a positive move.

**23-2G Missing Elements.** Important sections of the current code (25-2-942 and 25-2-962) were not carried forward. These state that uses or structures that were conforming/complying as of 3/1/84 is still ‘conforming’/‘complying’ after adoption of the 1984 code rewrite. These sections ensured that any nonconformance/noncompliance created by the adoption of the 1984 code would be deemed as conforming/complying under the 1984 code. This is a crucial clause, especially because transect zoning will make many existing uses (funeral homes, gas stations, etc.) nonconforming.

CodeNext needs to add similar language stating that conforming or complying uses or structures as of the adoption date of CodeNext are still conforming/complying. Additionally, properties under development with permits that would no longer be valid with new development regulations under CodeNext should be deemed conforming. Otherwise, overnight, a huge number of properties in the city will become nonconforming.

In addition, the provision stating the discontinuation of nonconforming STR Type 2 by April 1, 2022 is missing (25-2-950). It is critical that this be added back into CodeNext.

The draft also removes the Nonconforming Use Table and Types that currently appears in 25-2-946, as well as TODs and references to tables that currently appear in 25-2-949. Do these appear elsewhere in the draft code? If not, are there scenarios under which these may still be needed?

**23-2G-1020.** How do you plan to map existing multifamily structures that are scattered around the interiors of central neighborhoods, not on corridors. These individual properties are currently zoned MF in areas that are otherwise largely single-family residential. When the transects are applied, will these individual properties be mapped as mini-transects or will they be considered non-conforming uses?

**23-2G-1050(B)(4).** Conversion of Nonconforming Uses in Residential Buildings. This permits the Director to allow a change from one nonconforming use to another nonconforming if the new nonconforming use is less intense than the existing nonconforming use. While this could provide a benefit to nearby properties of a

problematic nonconforming use, it effectively extends the time a use can remain nonconforming after the original use is no longer beneficial to the owner. In addition, the decision of what is a 'less intense' nonconforming use may be a fairly subjective decision. For these reasons, this process should require approval by the Land Use Commission.

**23-2G-1050(B)(5).** Conversion to Conditional Use. This process gives rights to a conditional use in a zone without the usual, public process for conditional use. The public process should be required. In addition, as written, it is not clear whether the result would be considered conforming use or a nonconforming use. If it is considered conforming, then this should be an abandonment of a nonconforming use; if it's nonconforming, then potentially under 23-2F-1060(B) the termination hasn't occurred, allowing a longer lifespan for the nonconforming use. This section also states a nonconforming use can be converted to an allowed use. Wouldn't that generally be the case and is this clause needed, or are there other unforeseen consequences?

**23-2G-1050(C).** This section is carried over from the current code but omits an important clause, 25-2-963(H), which allows only one modification to height and setback noncompliances. This is important because without it, for example, one could iteratively add to setback noncompliance with additional length. This current clause should be reinstated.

**23-2G-1070(B).** Rebuilding a noncomplying structure that has been destroyed by fire, etc. This section omits the following current protections and constraints that should be reinstated:

- It omits any time limit to rebuild; current code requires a 12-month limit.
- It allows for significant increase in square footage over current code, because it only requires the same footprint, height and number units of the original structure vs. the current limits to footprint, *gross floor area and interior volume*.
- It omits 25-2-964(B)(2) which states: "noncomplying portion of the structure may be restored only in the same location and to the same degree of noncompliance as the damaged or destroyed structure." Without it, it appears that the proposed code would allow expansion of a height noncompliance that existed on just one part of the structure to cover the whole footprint, unless 23-2F-1050(B)(2) is meant to preclude that (if so, that should be clarified).

**23-2G-2020.** Is mistitled as "Order of Process" but is about noncomplying lots (Repeats 25-2-943)

**23-2G-2030.** This provides an allowance for continued nonconformance with parking requirements after the noncompliance is terminated. This is problematic, as it allows a difficult parking situation to continue rather than be phased out like other noncompliances.

**23-2G-2040.** Is mistitled as "Termination of Nonconforming Use" but it is about bulkheads and repeats 25-2-963(D)). 23-2G-1060 is actually "Termination of Nonconforming Use" and was correctly titled as such.

## **23-2I: Appeals**

**23-2I-1030.** Deadlines for appeals of administrative decisions (25-1-182) have been shortened from 20 days after decision to 14 or 7 days depending on whether notice of decision is required. This greatly reduces the window for affected residents to appeal decisions that may significantly affect them – this time should not be shortened.

**23-2I-2010(A)(7).** States that an appeal must be accompanied by “an Appeal fee established by separate ordinance.” Is this current practice? Where is the ordinance that establishes this fee?

**23-2I-2030.** This changes the meeting to resolve issues from a requirement for staff to host one if requested, and include all parties, to ‘may’ host one if requested and can meet separately. The current requirements should be reinstated to ensure a fair process.

**23-2I-2040.** Expiration period “tolled” while under appeal. Please ensure Environmental Commission and SOS review this provision.

**23-2I-2050.** Ex Parte Contacts Prohibited. I am unable to find the source for this provision other than for appeals to the Ethics Commission (2-7-43) and Board of Adjustment rules. It is not a current requirement for City Council; is it currently a requirement for other commissions? If this is prohibition is adopted for all appeals, as this provision seems to intend, it must also apply to the applicant, applicant’s agent or others representing the applicant, not just to members of the public or interested parties as the currently language provides.

**23-2I-3020(B) & (C).** This provision decreases notice for a public hearing to 7 days for a board (down from the current 11 days) and 12 days for council hearing (down from the 16 days). Please reinstate current timelines found in 25-1-132(A) & (B).

**23-2I-3020.** Does not address special section on appeal concerning Technical Codes as does 25-1-189(C). Why was this dropped?

**23-2I-3040(A).** This states that the case file for an appeal is only provided to the chair of the board that will hear the appeal, but all board members will need this information. Please revise to provide case file for all board members.

**23-2I-3050(A).** Why has the requirement to consider any issues of standing prior to conducting the hearing on an appeal been removed? (See 25-1-181(B).)

**23-2I-3050(E).** Why has a rebuttal by the appellant changed from a right (25-1-191(B)) to only at the discretion of chair?

**23-2I-4010(A).** Typo. Remove “The”.

**23-2I-4020.** This provision increases the burden of proof on appellant/city for enforcement. Current code section 25-1-190 reads: “The appellant must establish that the decision being appealed is contrary to applicable law or regulations.” This provision adds the phrase “by clear and convincing evidence” in subsections (A) and (B), thus creating a new higher burden of proof. Please ensure this provision is reviewed by the Building and Standards Commission.

### **23-2J: Enforcement**

**23-2J-1030.** Are these fines really high enough to deter anyone? Are the levels set by state law or does the city have the authority to raise them?

### **23-2K: Vested Rights**

**23-2K-1040(B).** This section been revised from:

*“...with a project for which vested rights have been conclusively established by a court order, or by a settlement agreement or project consent agreement approved by the city council“ (25-1-534(B))*

to:

*“...with a project for which vested rights have been conclusively established by a court order, settlement agreement, or Project Consent Agreement approved by the Council.”*

The revised language may be read as allowing for settlement agreements not approved by the Council. Please reinstate original language.

**23-2K-2010(A).** This gives the director 14 instead of current 10 days to make determination.

**23-2K-2010(C)(2).** Changes “decision” to “determination.” Is there a technical, legal or other difference between these two terms and, if not, why the change?

**23-2K-2010(D).** This provides that a request for reconsideration of a vested rights determination tolls the expiration date, but I cannot find a similar provision in the current code. Does this provision already exist? If not, why the change?

**23-2K-2010(E).** Omits original language: “...but requesting a variance is not required to exhaust administrative remedies for purposes of challenging a determination by the director that a project is not entitled to vested rights.” Why?

**23-2K-2020(A)(2)(a).** This section slightly rewords the existing criteria for approval. Please have the Environmental Commission review this new language to ensure it doesn't result in any substantive changes.

**23-2K-2030.** Typo: 23-2L-3 should be 23-2K-3

**23-2K-2040(B).** This drops language from current code: "...and before the application expires under Section 25-1-82 (Application Requirements and Expiration)...". Please have Environmental Commission review additional rewording to ensure there are no substantive changes.

**23-2K-2040(C)(2)(c).** Error in reference to environmental regulations as "Chapter 23-8 (Environment)." This should be Articles (not Chapter) 23-3C and 23-3D as per 23-2K-3030 assuming that reference is correct. Please check whether any other chapter reference needs to be included with these two.

**23-2K-2040(D).** Hearing notice is decreased from 16 to 11 days. Why?

**23-2K-2040(G)(2)(a).** This section references 23-6C-1 (Expiration for Site Plans), which in turn references 23-6B-3030 (Extension of Released Site Plan), which appears to drop the public hearing requirement contained in the current code. Why?

**23-2K-2050(B).** For consistency, the subsections listed here should be *numbered*, (rather than lettered) in parentheses.

**23-K-3010, 3020.** The current code provides different expiration standards for a site plan approved before 1/1/88 and/or 9/1/87, but draft code omits these dates and appears to use 6/23/14 as the distinguishing date for expiration standards; it also uses 5/11/2000 for Dormancy Time Frames. Why?

**23-2K-3020(C).** This section keeps the parenthetical "(new project)" phrase, whereas that phrase has been dropped elsewhere; please make consistent. Also (C)(2) omits the current language: "except that the project expiration period shall be deemed to run from the date of the fair notice application." Why has this been dropped?

**23-2K-3030(A).** What is a 'planned development center'? It may be that this was carried over from existing code, but it does not appear in the General Terms and Phrases section, which only defines Planned Unit Development and Planned Development Area. Please revise phrase or add definition.

**23-2K-3030(B)(1)(b).** This section has dropped reference to Section 25-5-2 for exemption from Site Plans. See 3030(B)(2)(b), which does have that reference included as 23-6A-2010.

**23-2K-3030(B)(2)(b).** This section references 23-6A-2010 (Exemptions from Site Plan Review), which in turn drops many of the current requirements in 25-5-2. Please see 23-6A-2010 entry further on for details.

**23-2K-3030(C).** Public hearing notice time is decreased as elsewhere. Why?

**23-2K-3030(C).** Subsection (C)(2)(b) refers to “Austin Comprehensive Plan” but General Terms and Phrases uses the term “Comprehensive Plan” as does the existing code. Suggest using Comprehensive Plan throughout for consistency. Also, subsection (C)(2)(c) translates the 25-8 reference in the existing code to Articles 23-3C and 23-3D. Do these two articles actually cover everything in 25-8 in terms of environmental standards?

### ***23-2L: Miscellaneous Provisions***

**23-2L-1050(A)(2.)** Notice of proposed Interlocal Agreements.

This section removes the currently required mailed notice to organizations for Areawide Interlocal agreements, instead requiring only published notice. Current code (25-1-903(B)(2)) requires mailed notice to registered organizations as well as published notice (25-1-132(C)) on 11/16 day timeline. Council added this provision in 2008-2009 because interlocal agreements had been processed behind the scenes with no input (20081208-070) and it was very problematic. Please reinstate mailed notice provisions.

**23-2L-2.** General Development Agreements. This creates a new mechanism for Council to modify regulations and create agreements (including for a land use plan) on a piece of property in the ETJ. Clear criteria for approval of this mechanism should be specified rather the general “whether the terms further the goals of the Comp Plan, including those related to ...” as has been done for PIDs and PUDs. Also please include a statement that that any Development Agreement that conflicts with SOS regulations for the property requires a ¾ majority vote of the Council for approval.

### ***23-2M: Definitions and Measurements***

**23-2M generally.** It appears that many terms with definitions related to very specific code sections have been moved here under General Terms and Phrases (an example is “Industrial Use” that is only defined as it relates to reclaimed water). Unless these terms really are general, you may want to move such definitions back to the section(s) where they make sense.

**23-2M-1030.** “Adjacent.” Transects use the term ‘abut,’ not ‘adjacent,’ when describing shared ‘parcel line,’ not ‘lot line.’ Lot line is defined in this section, but parcel line is not. Suggest using the same terms throughout for consistency.

**23-2M-1030.** “Carport.” Current code specifies a carport must be open on two or more sides. Please add this language to definition.

**23-2M-2030.** Where did the Congregate Living use go? In the current code, it’s classified as a Civic Use, but I don’t see it listed in the draft Land Uses. Current code section 25-3-83(A)(6)(e) requires only one on-site parking space for each four beds in Congregate Living, a provision Foundation Communities successfully used for its Bluebonnet Studios project on South Lamar. It will be important to preserve this use and its attendant parking reductions for future affordable housing projects.

**23-2M-1030.** “Domestic Partnership.” Do two people in a domestic partnership qualify as related adults for occupancy limits? If so, the definition should specify this.

**23-2M-2030.** Definition here is for “Group Home” but Occupancy Limits section refers to “Group Residential.” Please pick one term and use consistently.

**23-2M-2030.** Efficiency Unit. Missing a phrase or word after “containing.”

**23-2M-2030.** This says for Transect zones, height is measured two ways: number of stories and overall height, but then lists “a. overall height” and b.” to eave/parapet.” This implies there are actually three ways to measure height in a transect if you include number of stories. Why are there so many variables for measuring height in Transect zones, when non-Transect zones simply use the highest point on the roof?

**23-2M-2030.** Re Mobile Home, Mobile Home Space, Mobile Home Stand and Mobile Home Park: the use charts in the zoning sections refer to Manufactured Home Parks. However in the land use definitions there is no definition of Manufactured Home Parks. Suggest picking one term and using consistently.

**23-2M-2030.** No definition of Valid Petition? It does not appear under Petition and there’s nothing in the Vs.

**23-2M-2030.** The Senior/Retirement Housing definition (p.14) currently says  $\leq$  means “13 or less dwelling units” when it should say “12 or less.” Similarly  $>12$  currently says “more than 13 dwelling units” and should say “13 or more units.”

**23-2M-2030.** Need to add a definition of ‘stepback.’

**23-2M-2030.** Need definition of ‘urban core’ with a link to map.

**23-2M-2030.** Typo in Y-definitions. Change X to Y.

**23-2M-2030.** “Group Home.” Occupancy limits refer to Group Residential, not Group Home. Suggest changing for consistency.

### ***23-3: General Planning Standards for All***

**23-3A-1020.** As previously noted, none of the Transect draft code sections contain a note directing the user to General Planning Standards, as is included in all Non-Transect sections. Please make this note in all Transect sections to ensure users realize they must also check the General Standards section.

**23-3B:** Parkland Dedication. Please ensure the Parks & Recreation Board reviews this section.

**23-3B-1010(B)(2)(c).** The section on affordable housing incentives that this references is not yet available, but please ensure that parkland exemption applies only to a significant number of units that are affordable at 60% MFI or below. In other words, the parkland exemption should not apply to a project that has a majority of market rate units, with just a sprinkling of tiny 80% MFI efficiencies, as a result of a density bonus; if any exemption is to be granted to such a project, it should be limited to the square footage of those units.

**23-3C: Urban Forest.** Please ensure the Environmental Commission reviews this section.

**23-C-1010 through 1060.** Will this division include a live link to the Environmental Criteria Manual where it is referenced?

**23-3D: Water Quality.** Please ensure the Environmental Commission and the Water and Wastewater Commission review this section.

**23-3E: Affordable Housing Incentive Program.** When this section becomes available, please ensure the Community Development Commission reviews it.

### ***23-4B-1 Land Use Approvals***

**23-4B-1029.** FAR is still referenced in on page 3 - CUP section (F)(1)(a) - but appears to be omitted from subsequent transect standards. Is FAR being removed completely, and if so, for what reason? And why does it still appear in the CUP section?

**23-4B-1030.** Regarding MUP (F) Appeal, how will an interested party know there has been administrative approval by a director?? Will nearby residents receive written notice of an approved MUP in time to appeal?

**23-4B-1030.** On 4B-1 page 4, (2) Late Hours Permit (a) requires that the parking area associated with a bar, nightclub or restaurant with a late hours permit must be “200 feet from a Low to Medium Intensity Residential Zone,” but this term applies only to residential areas the non-transect zones. Please add the same protections for transect zone residential areas.

**23-4B-1030 Minor Use Permit.** Please add language requiring that, if a director approves an MUP administratively, all those who received notice of the application under Section 23-2C-5010 also be notified of the decision and of their appeal rights and related deadlines.

**23-4B-1050 Temporary Use Permit.** Sections (H) and (I) appear to be word-for-word duplicates of sections (D) and (E) above. Remove duplicates.

**23-4B-2020.** This section requires posting of interpretations “likely to be of general interest.” I like the concept, but obviously identifying ‘general interest’ interpretations is highly subjective. Wouldn’t it be more efficient and effective to simply post all interpretations grouped by subject so the public can find them as needed? Please revise.

### **23-4D-1: Purpose**

**23-4D-1010.** Why is this section called “Purpose” here, but “Intent” elsewhere? Please use consistent terms.

### **23-4D 2: Transect Zones**

**All transects.** Draft expresses new lot size minimums in length/width measurement (50’x100’) rather than a total square footage. How will this affect oddly shaped lots (triangular, flagpole, one or more irregular sides, etc.)?

**All transects.** Why are missing middle options not allowed in all transects?

**All transects.** For Building Type charts, please add “OR” after each building type so it is clear you may build one cottage house OR one small house OR one duplex, etc. Current charts may be misread as allowing one of each building type per lot.

**All transects.** Please add cite for specific use standards for *all* allowed uses. Currently, the cite is included for 6 uses, but omitted for others.

**All transects.** Draft code allows private meeting facilities as permitted use in all residential transects. Please revise to ensure private meeting facilities can’t morph into ‘private clubs’ that serve alcohol to ‘members’ who can join on the spot.

**All transects.** Proposed draft reduces residential parking requirements in transect zone to one per unit (excluding T6). Will there be an appeal process or other consideration for areas where street parking is already dangerously congested due to stealth dorms, some with up to 12 cars per house already on the street?

**All residential transects.** On the building types chart in each residential transect zone, there is a footnote stating that a 25’ minimum lot width is allowed for “lots existing at the time of the adoption of this Land Development Code.” Please clarify that this applies

only to specific lots granted small lot amnesty so that it is not read as retroactive license to break any lot that existed prior to adoption into 25' wide lots.

**All transects.** The draft code reduces on-site parking requirements to one per dwelling unit in all transects, except for T6U and T6UC where no on-site parking is required. For multifamily structures especially, these reductions should mean substantial savings in construction costs, but there is no mechanism to require these savings to be passed on the form of lower rent or sales prices. Construction costs set the floor for rent or sale prices, but the ceiling is set by the market. Why are we giving away one of our few bargaining chips without firmly tying it to a tangible community benefit, e. g. affordable housing?

**All transects, flood modeling.** Please note that all transect zones must still be modeled for flooding impacts. If a model reveals that flooding is likely to increase, please adjust any proposed increases in impervious cover downward.

**O suffix in transects.** Has the “O” suffix, which allows restaurant use, been mapped anywhere restaurants are not already on the ground? Restaurant use - even at less than 2500 SF with the same residential design standards - involves activities that are not generally compatible with residential use and are not limited to the restaurant’s hours of operation. These include exterior grease traps that must be emptied by trucks, large delivery trucks running their engines while unloading, noisy dumping of bottles and trash in industrial size dumpsters after closing, etc. It shouldn’t be a problem if the “O” suffix will only be used where restaurants are already operating, but if you’re planning to allow this as a new by-right use in other residential areas, I strongly urge you to make restaurant use a CUP. People have already expressed concern that the “O” suffix removes the chance for public input on what is effectively use a change so we want to be very careful about mapping for this category.

**On-site parking reductions near urban public schools.** To offset the impact of on-site parking reductions near public schools, please retain current on-site parking requirements within 600’ of a public school property line, as discussed in General Comments above. See also Table at 23-4E-3-60.

**23-4D-2021 through 23-4D-2180.** (T4N.SS, T4MS, T5U.SS, T5MS) The draft does not require any parking for retail or studio uses that are 2500 SF or less. In practice, this means customers for these businesses will be taking up the parking that larger uses are required to provide, or that the entire area will be filled with 2500 SF uses with absolutely no parking. Suggest you change this to mirror the “O” parking requirements in T3N.IS-O, which require 1 parking space for retail after the first 500 SF.

**23-4D-2040 through 23-4D-2180.** (T4MS page 69; T5U.SS page 85; T5U page 93; T5MS, page 102) Please stipulate no outside seating, no late hours for micro-brewery/micro-distillery/winery, as is already prohibited for bars in these transects.

**23-4D-2050.** (T5N.SS) Draft allows height of 55’-65’, but I don’t see any setback where this backs up to single-family homes, as is the case on many transit corridors. Why are compatibility standards not baked in to this transect, as they are in T5U.SS page 81?

**23-4D-2050.** (T5N.SS) I don't see retail, restaurants or bars as permitted uses or "O" uses in this section. Just curious why these would be allowed in less intensive transects but not here?

**23-4D-2080, 23-4D-2090.** The draft code would establish much higher minimum lot sizes for two residential transect zones (9400 SF in T3NE.WL, 8200 SF in T3NE) than current code, which sets the minimum lot size at 5750 SF for all single-family residential zones SF-2 through SF-6 citywide. At the same time, the draft code also dramatically lowers the minimum lot size for other residential transects. If the goal is to provide more housing options and increase affordability, why would we enshrine minimum lot sizes that are substantially larger than the current minimums for some areas? And how do we justify telling some neighborhoods they must absorb an increased burden of Austin's growing population while sparing other areas? I suspect this was an oversight because no one multiplied out the width and length totals, but I don't believe we intended to raise the barriers for land acquisition in what are likely to be Austin's highest opportunity areas. To my mind, no minimum lot size should be higher than the current minimum.

**23-4D-2130.** Will occupancy limits be enforced for Cooperative Housing in T4N.SS? If not, I believe it would be more appropriate to require a CUP for Coop Housing, as is the case in Low- to Medium-Density Residential in the Non-Transect Zones.

Coops are a permitted use in Medium High Density Residential, High Density Residential and Very High Density Residential zoning, which already allow townhouses, courtyard apartments and quad-plexus on the low end, as well as large multi-family structures on the high end. Similarly, Cooperative Housing is permitted use in T5N.SS, T5U.SS and T5MS, all of which already allow fairly intensive multifamily uses. In these intensive residential areas, occupancy limits are not likely to be an issue.

But Cooperative Housing is an allowed only with a Conditional Use Permit in in Low- to Medium-Density Residential zones and with Minor Use Permit in Medium Density Residential. I believe these same protections should apply in T4N.SS.

In the only CAG discussion of coops that I recall, we ran aground on issues of parking, parties and overall occupancy in small residential areas. An unresolved question was whether it was possible for the code to differentiate between frat houses and coops, and how to provide sufficient parking for large numbers of adults concentrated in a single house, as opposed to a family group where typically only the parents and possibly an older teen would have vehicles.

For these reasons, a CUP is a more appropriate tool for coops wishing to locate in a small residential transect such as T4N.SS. This will provide the opportunity to address functional issues related to large group living situations before they become an enforcement problem.

**23-4D-2140.** Page 39 in the slide presentation dated 23-Feb-17 appears to show that in T4 Main Street, T5 Main Street and T5 Urban, you can build up to 3 stories with no setback at all from T3 or Low to Medium Intensity Residential Zones. However, in the code text, T4MS provides a minimum rear setback of 30' (but no side setback and no stepbacks), T5MS provides side and rear stepbacks of 25' or 50' abutting T3, as does T5U.SS. Which is correct the slide or the text?

**23-4D-2140.** T4MS has a side setback of 0' with no stepback provisions if the transect abuts a small residential use. Austin has neighborhood main street areas, such as Duval & 43<sup>rd</sup>, where main street businesses are right next to small single-family homes. Please provide a stepback where T4MS abuts T3, T4 or small residential use along a shared parcel line or alley.

**23-4D-2150.** T5N.SS allows buildings up to 65' tall with a side setback of just 10' and a rear setback of 20', but again no stepback provisions if it abuts a small residential use. Please provide stepbacks in this Transect where it abuts T3, T4 or small residential use along a shared parcel line or alley.

**23-4D-2160, 23-4D-2180.** (T5U.SS, page 81; T5U, page 89; T5MS page 97). These transects allow building heights of up to 85' – yet compatibility stepback distances apply only where site shares a parcel line with a low- to medium-density residential use. However, many sites on corridors abut low residential use separated only by a narrow alley (8'); in these cases, I don't believe a rear setback of 5' is sufficient to blunt the impacts of an 85' tower looming over your back yard and home. Please consider adding a stepback for these situations.

**23-4D- 2160.** (T5U.SS, page 83; T5U, page 91). Again concerned about lack of parking requirement for retail uses up to 2500 SF. Suggest you mirror parking requirements for bars/restaurants in the transect, which is 1 per 100 SF for first 2500 SF.

**23-4D-2160.** T5U.SS. The side and rear setbacks in this Transect are 0' and 5' respectively. However, the Height chart requires side and rear stepbacks of 25' for buildings 2-3 stories tall, and 50' side and rear stepbacks for buildings 4 stories or taller. Does this mean you can build a one-story structure with no side setback even where it shares parcel line with T3, T4 or small residential use? Current code would require at least a 5' side setback.

**23-4D-2170.** Clarify that stepback chart applies along a shared parcel line or alley.

**23-4D-2180.** On F. Height chart, clarify that stepbacks are triggered by T3 and T4 as with the other stepback charts – not just T3.

### ***4-D-3: Residential Non-Transect Zones***

**23-4D-3, Residential Non-Transect Zones.** Why not provide missing middle tools to entire city? Not to mince words, but this entire section appears designed to preserve the wealthier suburban enclaves intact (generally west of Lamar and/or Mopac) while increasing density on already burdened central and central east neighborhoods.

**23-4D-3030.** Why are the low- to medium-density residential zones in this section (Non-transect zones) not simply Transects? If we're going to the trouble of changing all the nomenclature for these areas, why not make it match the transect language where possible? At one point, we were told that the different code structures were supposed to correspond to walkable v. non-walkable areas, but don't we want all areas to ultimately become walkable? Also I'm hardpressed to understand any real difference between the development patterns of T3NE.WL and T3NE, as opposed to Low- to Medium Density Residential categories in the Non-transect zones. This is especially puzzling because the first two commercial zones in the Non-Transect section (Neighborhood Commercial (NC) and Local Commercial (LC)) specifically state that they are to be within convenient walking or biking distance of residences.

**23-4D-3040.** Missing heading on Table 23-D-3040.

**Table 23-D-3040, p. 6.** Why do libraries, museums, public art galleries, and public or private meeting facilities require a CUP in low- to medium density residential areas in the Non-transect zones when they are an allowed use in the low- to medium-residential Transect zones? Similarly, why are microbreweries, etc. not allowed in Non-transect zones at all when they're okay in the Transect zones?

**23-4D-3080 LMDR.** The minimum lot size here is 5750, which mirrors current minimum lot size for residential citywide. However, two Transect zones provide higher minimum lot sizes – T3NE.WL is 8400' and T3NE is 8000'. Why would these transect zones not match the 5750' minimum lot size required in LMDR?

**23-4D-3090 LMDR.** The front setback of 15' is less than current front setback in SF-3. Why was this reduced?

**23-4D-3100.** On Building Form chart, why is the allowed height lower beyond 80' of front property line than within 80' of front property line?

**23-4D-3110, 23-4D-3120.** All Non-transect zones that increase impervious cover requirements must still be modeled for flooding impacts. If a model reveals that flooding is likely to increase, please adjust these proposed numbers downward.

### ***23-4D-5: Industrial Non-Transect Zones***

**23-4D-5090. R&D.** The side setback adjacent to Low to Medium Intensity Residential Zone is only 5', but it's 25' if adjacent to a High to Medium Intensity Residential Zone. Why is the side setback for this Commercial zoning smaller when adjacent to a lower

intensity residential use? This is also out of line with all the other setbacks in non-Transect Commercial zones. Was the 5' side setback in this district a typo?

### ***23-4E Supplemental to Zones***

**23-4E page iii.** the STR section is misnumbered as 23-4E-4310. Please correct to 23-4E-6310.

**23-4E-3050.** Parking for persons with disabilities. Is a phrase or sentence missing at the start of (A)? The first subsection (1) is a complete sentence, but (2) through (5) that are incomplete phrases that don't seem to tie into anything.

**23-4E-3060(A).** Off-Street Motor Vehicle Parking Adjustments. The draft code already substantially reduces on-site parking requirements citywide by mandating only one space per dwelling unit. This section further allows an additional reduction of on-site parking up to 40%, with an automatic 20% reduction within a quarter mile of a transit corridor. This means buildings as high as 85' that back up to residential neighborhoods could potentially not provide any on-site parking at all for 40 percent of their units, despite the fact that the car ownership rate for Austin is reported as 1.6 per household according to governing.com. These cars will have to park somewhere and the logical place will be on the nearest side streets. Given that the transition between high-density corridors and single-family homes is already a fraught topic, I strongly encourage you to rethink these adjustments with a view to reality. This will be especially important in areas near urban public schools, day care centers or other areas with vulnerable populations. Again, please retain current on-site parking requirements within 600' of an urban public school property line, as outlined in General Comments above.

**23-4E-3060(B).** Why does a shared on-site parking agreement in Subsection (1) require a "recorded covenant running with the land" when an off-site shared parking agreement in Subsection (2) requires only a "recorded parking agreement"? What happens if the off-site parking agreement is not renewed?

**23-4E-6, p. 1.** Table of Contents, Short-term Rentals. Typo - STR section is misnumbered as 23-4E-4310. Please correct to 23-4E-6310.

**23-4E-6020.** Why is there no entry here for Bar/Nightclub, Level One or Level Two, as appears in land use definitions section? The stated intent of this section is to provide "site planning, development and operating standards for certain land uses...to ensure their compatibility with site features and existing uses." Bars and nightclubs arguably have a far greater impact on nearby uses than some of the other uses listed here and should certainly be included in this section.

**23-4E-6030.** ADUs. Table 23-4E-6030.A states it "does not apply to Transect Zones." Why not?

**23-4E-6040.** Accessory Uses to a Residential Use. What is an example of a “Residential Convenience Service”? I cannot find it defined in either General Terms and Phrases or Land Use definitions.

**23-4E-6040.** Accessory Uses to a Commercial Use. Can you please explain this sentence: “Retail, restaurant and bar, or entertainment and recreation use or industrial use that is otherwise prohibited in the base zone subject to the requirements of Subsection (H)(2).” As I read this, it would allow a bar within 101’ of any residential zone as long as it didn’t take up more than 10% of the commercial use and the operators claimed it was primarily for employees, clients or customers of the principal use. Is this a correct interpretation?

**23-4E-6060.** For Alcohol Sales, please include reference to Code Section 4-9-4 which prohibits alcohol sales within 300’ of certain uses.  
[https://www.austintexas.gov/sites/default/files/files/Planning/Applications\\_Forms/alcohol\\_bev\\_waiver.pdf](https://www.austintexas.gov/sites/default/files/files/Planning/Applications_Forms/alcohol_bev_waiver.pdf)

**23-4E-6110.** Communications use. What is an example of a Communications use, as opposed to a Telecommunications Use? Communications use is permitted by right in all residential categories and is exempt from many development standards, including lot size, lot width, FAR and building coverage. Apparently, these Communications uses are not utilities or telecommunications because those are described separately in their own sections - so what are they? This phrase is not defined in either General Terms and Phrases section or Land Uses definitions section.

**23-4E-6210.** For Micro-Brewery/Micro-Distillery/Winery, please include reference to Code Section 4-9-4 which prohibits alcohol sales within 300’ of certain uses.

**23-4E-6220.** Mobile Food Sales (K)(2) and (3). Do the additional minimum distance requirements and additional operational requirements apply in both Transect and non-Transect zones? Please clarify.

**23-4E-6290 (B).** This section appears to omit critical components of the Educational Facilities ordinance, including those addressing school recreational uses, impervious cover, and the Neighborhood Traffic Analysis requirement. Please see Part 4, Sec. 25-2-833(D)(3); Part 8, Sec. 25-8-66; and Part 9, Sec. 25-6-114 at this link:  
<http://www.austintexas.gov/edims/document.cfm?id=257543>

**23-4E-6290 (B)(1.)** Revise applicability section to add the following bold text: “This Section applies to the development of a public primary or secondary school, **including an open enrollment public charter school as defined under the Texas Education Code.**”

**23-4E-6290 (B)(3).** Revise Development Standards section to add the following bold text: “Except as provided below or **where governed by a current interlocal School District Land Development Standards Agreement,** the standards of the base zone apply.”

**23-4E-6290 (B)(4).** Revise Additional Standards section to add the following bold text: “Within the General Industrial (GI) Zone, **public elementary schools are prohibited and** public secondary schools are limited to the senior high school level.”

**23-4E-[6]310.** Typo – this is currently number 23-4E-4310, but should be numbered **23-4E-6310.**

**23-4E-6310(B).** (Currently misnumbered, see above). Subsection (B) should include a note in all caps clearly stating: LICENSES ARE NO LONGER BEING ISSUED FOR TYPE 2 SHORT-TERM RENTALS, AND EXISTING ONES WILL BE PHASED OUT COMPLETELY BY 2022 PER CITY ORDINANCE. Absent this note, you run the risk of investors constructing a unit for this purpose only to discover when the project is finished that it cannot be licensed. To further avoid confusion, please also remove the section on Type 2 licenses that appears on 4E-6 p. 37.

**23-4E-6350.** Two Family Residential. Do these development standards apply in both Transect zones and non-Transect zones? Please clarify.

**23-4E-7040(D).** Maximum Occupancy Senior/Retirement Housing or Group Residential. The Land Use definitions section (23-2M-2030) uses the term Group Home, not Group Residential as it appears in this heading. Please pick one term for consistency.

## **23-5. Subdivision**

**23-5A-1010 Intent.** Use lower case after semi-colons. Also please note the potential conflict inherent in the phrase “predictable and flexible.” A high degree of flexibility defeats predictability, especially for nearby residents and businesses that may be affected by it. Suggest this be amended to read: “...and predictable, with a reasonable degree of flexibility;”.

**23-5B-1070.** Requires that subdivider shall “construct the streets...in compliance with the requirements of this title.”

Suggest you add a reference directing the user 23-9H-1: *Connectivity*, which contains additional requirements for block length, street alignment, connectivity, etc.

**23-5B-1080.** This highlighted section of this provision is puzzling: “Except as provided in a fiscal surety agreement, an officer or employee of the City **may not use or improve a street** unless the street has been accepted by the City.” I get the improvement part, but if someone builds a street that isn’t accepted by the city, this appears to prohibit a city employee from ever driving/walking/biking on it even in his/her off hours? This seems extreme so am wondering if perhaps some words were left out or if there’s a better way to phrase this.

**25-5B-2010.** Preliminary Plan Requirement. I realize this language mirrors existing requirements, but given mounting increases in traffic and flooding, is it really a good idea

to give the Director this latitude without specifying the method(s) by which he/she will determine that traffic circulation will be adequate and that drainage facilities are not needed to prevent flooding? Please add description and/or link to methodology.

**25-5B-2040 (D).** How will an interested party know that administrative approval has occurred and what is the appeal timeline, process, etc.? Please include a reference to the applicable process section.

**23-5B-2090.** Current code requires denial within 180 days, but this appears to extend denial period to one year. What is the rationale for this?

**25-5B-3020.** This language appears to extend expiration period for plat approval to one year from the current 90 days. What is the rationale for this? It also appears to conflict with 25-5B-3030, as well as the current code provision, both of which read: “An application for plat approval expires on the 90th day after the Director's determination under Subsection (A)(1) unless Subsections (A)(2) through (4) are satisfied.”

**25-5B-3090(B).** To avoid confusion, suggest replace “may” with “shall” in the phrase “Director may require a plat notation stating that any subsequent residential development...is required to dedicate parkland...” etc.

**25-5C-1020.** Easements and Alleys. What has happened to the below provisions in the current code under Easements and Alleys?

*“(B) Off-street loading and unloading facilities shall be provided on all commercial and industrial lots, except in the area described in Subsection (C). The subdivider shall note this requirement on a preliminary plan and a plat.*

*“(C) An alley at least 20 feet wide is required to serve a commercial or industrial lot in the area bounded by Town Lake, IH-35, Martin Luther King, Jr. Boulevard, and Lamar Boulevard. The Land Use Commission may waive this requirement.”*

## **23-6. Site Plan**

**Table 23-6A-2010.A.** Site Plan Exemptions. This table states that a site plan exemption is allowed for a change of use, except for Adult Entertainment. However it drops all conditions the current code requires to qualify for this exemption, many of which provide vital protections for nearby residents and businesses. While some of these conditions appear elsewhere in the new table, they are not tied to the change of use provision. Please reinstate the below conditions for change of use site plan exemption in the new draft.

*Current Code. § 25-5-2 - SITE PLAN EXEMPTIONS.*

*(D) Except for an adult oriented business, a site plan is not required for construction that complies with the requirements of this subsection.*

*(1) The construction may not exceed 1,000 square feet, and the limits of construction may not exceed 3,000 square feet, except for the following:*

- (a) enclosure of an existing staircase or porch;
  - (b) a carport for fewer than ten cars placed over existing parking spaces;
  - (c) a wooden ground level deck up to 5,000 square feet in size that is for open space use;
  - (d) replacement of a roof that does not increase the building height by more than six feet;
  - (e) remodeling of an exterior facade if construction is limited to the addition of columns or awnings for windows or entrance ways;
  - (f) a canopy over an existing gas pump or paved driveway;
  - (g) a sidewalk constructed on existing impervious cover;
  - (h) replacement of up to 3,000 square feet of building or parking area lost through condemnation, if the director determines that there is an insignificant effect on drainage or a waterway; or
  - (i) modification of up to 3,000 square feet of a building or impervious cover on a developed site if the modification provides accessible facilities for persons with disabilities.
- (2) The construction may not increase the extent to which the development is noncomplying.
- (3) The construction may not be for a new drive-in service or additional lanes for an existing drive-in service, unless the director determines that it will have an insignificant effect on traffic circulation and surrounding land uses.
- (4) A tree larger than eight inches in diameter may not be removed.
- (5) The construction may not be located in the 100 year flood plain, unless the director determines that it would have an insignificant effect on the waterway.

**23-6B, Missing Elements.** Where are current code sections for fast track permits, approval authority, and approval date (currently 23-5-23; 25-5-41; 24-5-42)? Can't find them here. Also I can't find the following current code section, which seems important to retain for obvious reasons:

§ 25-11-92 - APPROVED PLANS.

(A) The building official shall endorse or stamp "APPROVED" on plans and specifications approved in conjunction with permit issuance.

(B) A person may not alter approved plans or specifications without authorization from the building official.

(C) Activity conducted under a permit issued under this article must be done in accordance with the approved plans and specifications.

**23-6B-1020.** Subsection B states that no notice is required for Residential Heavy Site Plans. What is an example of this type of site plan (I cannot find this phrase in either definition section) and what is the rationale for not requiring notice?

**23-6B-3030.** Extension of Released Site Plan. Subsection (D) allows the Land Use Commission to grant subsequent site plan extensions, but appears to drop the public hearing requirement contained in current code (see below). Please reinstate public hearing requirement from 25-5-63, as follows: (B) *The Land Use Commission shall hold a public hearing on a request to extend the expiration date of a released site plan under this section before it may act on the request. The director shall give notice under [Section 25-1-132](#)(A) (Notice Of Public Hearing) of the public hearing.*

## **Chapter 23-7: Building, Demolition, and Relocation Permits; Special Requirement Permits for Historic Structures**

**23-7A-1020.** It would be helpful to provide a link to the definitions, which appear under General Terms & Phrases, not Land Use definitions. Also please note that key provisions in the definition for contributing structures have been dropped from the draft. Please reinstate the full definition from 25-2-360 as follows:

*In this division, CONTRIBUTING STRUCTURE means a structure that contributes to the historic character of a historic area (HD) combining district, was built during the period of significance for the district, and which retains its appearance from that time. An altered structure may be considered a contributing structure if the alterations are minor and the structure retains its historic appearance and contributes to the overall visual and historic integrity of the district. A structure is designated as a contributing structure by the ordinance establishing the historic area (HD) combining district.*

**23-7B-1010.** Building permit requirement. Subsection (C) confusingly states: “Except as provided in Article 23-7D-1020 (Special Permit Requirements for Historic Structures), a permit may be issued for the demolition or removal of any part of a structure.” But because this appears under the heading of “Building Permit Requirement,” it may be easily misread as meaning that a building permit functions as a de facto demolition permit. By contrast, current code clearly states in 25-11-32: “(B) A building permit does not authorize the demolition or removal of any part of a structure.” Please reinstate current code language for clarity. Also, if the intent is to consolidate building and demo permits under one section, then the heading should be changed to read ‘Building and Demolition Permit Requirements’ and the requirements for a demolition permit should be included here. See 25-11-37: *Demolition Permit Required. (A) Except as provided in Subsection (B), a person may not demolish all or part of a structure unless the person first obtains a demolition permit from the building official. (B) A demolition permit is not required to demolish all or part of an interior wall, floor, or ceiling. (C) Except as provided in Article 4 (Special Requirements For Historic Landmarks), the building official may issue a permit to demolish all or part of a structure.*

**23-7B-1020 and 1030.** Existing Buildings/Limited Permits. Many of the safety provisions contained in current code section on Existing Buildings (§ 25-11-33) appear to have been dropped in the draft. Is it anticipated that these will appear in the referenced Division 23-11B-1 (Building Code)?

**23-7B-1040.** Asbestos Survey Required. This section simply states that development must comply with state asbestos program, but provides no link or details. By contrast current code provides nearly a page of detailed information including penalties. See § 25-11-38 - ASBESTOS SURVEY REQUIRED FOR CERTAIN PERMITS. Absent this information, it may be tempting for people to skip this important requirement. Please reinstate current code language.

**23-7B-2030.** I've been told the new code will consolidate 'nonconforming' and 'noncomplying' under one term, and indeed, I can only find 'nonconforming structure' defined in the General Terms and Phrases section, not 'non-complying structure' as is used here. If that is, in fact, the only term we're using moving forward, please replace non-complying with nonconforming in (4) and (5) for consistency.

**23-7B-3010.** Where is section on demolition permits?? See current code § 25-11-37 - DEMOLITION PERMIT REQUIREMENT. Draft code only seems to contain this section about expiration and extension of demo permits, but no section that sets out demo permit requirements. Again, if the plan is to roll them into the section on building permits, then that heading should be changed and demo permit requirements clearly outlined there.

**23-7B-4.** Where have the following sections gone?

§ 25-11-65 - TESTING OF MATERIALS AND CONSTRUCTION METHODS.

§ 25-11-66 - ERRORS IN PERMIT SUPPORT DOCUMENTS.

§ 25-11-93 - APPEAL. An interested party may appeal a decision of the building official to grant or deny a permit under this division to the Building and Fire Code Board of Appeal.

**23-7C-1040.** Will the detailed inspection language contained in current code, but omitted from the draft, be provided in the referenced technical code?

**Division-23-7C-2:** Relocation Requirements. Typo in heading – please correct spelling of Requirements.

**23-7C-2010.** The below provision from current code appears to have been dropped. Why? Given that we recently had a stuck house close down a street for multiple days in South Austin, please reinstate current language below:

*§ 25-11-145 - DENIAL FOR REPEATED VIOLATIONS.*

*The building official may deny a permit application submitted by a mover who knowingly and repeatedly violates the provisions of this title.*

**23-7D-2030.** What happened to provision (D) in current appeals section? Please reinstate per below:

*25-11-247 (D) This subsection applies only to an appeal of the issuance of a certificate of demolition or a certificate of removal.*

*(1) An interested party may file an appeal not later than the 60th day after the date of the decision.*

*(2) While an appeal is pending under this subsection, the building official may not issue a permit for the demolition or removal of the landmark.*

## **Chapter 23-9: Transportation**

**23-9A-1010.** Intent. Again, some sections of the draft use “Intent” while others use “Purpose.” Please pick one term for consistency. Also, in (A) the V in vision should be lower case; in (B) the G in goals should be lower case.

**23-9A-1030.** In addition to provisions for variances, the current code contains lengthy provisions for waivers beginning at § 25-6-81. Yet the only reference I can find to waivers in the draft is for TIAs. Have the other waiver sections been dropped and, if so, why?

**23-9A-1030 (C).** The new draft appears to expand the criteria by which the Board of Adjustment or Land Use Commission may grant a variance. Was this done to comply with a court ruling or, if not, what is the rationale for expanding these criteria?

**23-9B-1040(A).** What triggers the city requirement “to dedicate right-of-way, construct or fund system transportation improvements or dedicate right-of-way beyond the boundaries of a development,” which in turn triggers the application of rough proportionality? Can you please include a reference to the code sections for these requirements? The subsequent section on right-of-ways just says that the city “may” require ROW dedication for a site plan or subdivision. Absent a clear and mandatory trigger for rough proportionality, it seems likely to be applied unevenly if at all.

**23-9C-1020.** Fee In-Lieu of System Mitigation. I’m concerned about relying on fees in lieu of actual mitigation for transportation impacts, especially given the lack of detail in this section. Historically, the city’s sidewalk fee-in-lieu program has not charged an amount sufficient to actually cover the costs of sidewalk construction, leaving us approximately 140 years away from completing a functional sidewalk grid under current funding levels. Please revise this section to provide greater detail and assurances that fees will be sufficient to fully fund the proportional share of whatever transportation mitigation may be required.

**23-9C-1030.** Obviously, no one can knowledgeably comment on this section until the Affordable Housing Incentive Program section is released, but I’m concerned about the use of the term “reasonably-priced” as a trigger, absent any definition (reasonable to whom? Someone making over a million a year likely has a very different concept of a reasonable price than does a person on food stamps). Suggest that the beginning level of mitigation reduction in this section require a minimum of *20% of units 60% MFI or below*. In other words, projects that provide only a handful of 80% MFI efficiencies - which would likely be priced at 80% MFI anyway due to their tiny size - should not receive exemptions from transportation mitigation requirements. Given the growing demands on Austin’s transportation system, we should set a very high bar for exemptions moving forward.

**23-9C-2020.** Typo. The sentence in subsection (C) is missing its subject. Suggest: “A

*transportation impact analysis is...etc.”*

**23-9C-2020.** Current code contains a deadline for applicant to supply supplemental information for a TIA as follows: “*An applicant required to supplement an analysis under Subsection (B) must submit the required supplemental material before the 27th day before the date on which the application is scheduled for action.*” I strongly suggest you reinstate this language to provide adequate time for staff and public to review new information. You really don’t want the applicant waiting until the middle of a public hearing to pop out with supplemental info on something as important as a TIA.

**23-9C-2070(A).** Subsection (A) states that “the applicant shall propose the geographic area and scope to be included” in the TIA for the applicable director’s review and approval. This is a departure from current code, which states “the director shall determine the geographic area to be included in a traffic impact analysis.” (25-6-115). Because an applicant has a clear vested interest in the scope of the TIA, I strongly recommend that the determination of the scope remain solely with the director per current code.

**23-9C-2070(B).** Subsection (B) contains grammatical errors in first two sentences; please clean up. Also, how can we know that the applicant is qualified to complete the distribution of trips process that is intended to form the basis of the applicant’s proposed scope for the TIA? The TIA itself is required to be performed under the supervision of a professional registered engineer, but it appears that the information underpinning the scope can be gathered by someone with no qualifications at all. Can this please be thought through and tightened up a bit?

**23-9C-2070.** Missing element. What has become of chart in current code showing desirable operating levels for certain street widths (25-6-116)?

**23-9C-2080.** What has become of the following provision of the current code (25-6-117)? *The traffic generated from a proposed development for which the requirement to submit a traffic impact was waived may not: (1) in combination with existing traffic, exceed the desirable operating level established in [Section 25-6-116](#) (Desirable Operating Levels For Certain Streets)...*

The current language (above) provides a much more objective measure than the draft’s vague replacement phrase (“create unsafe operation conditions”). I strongly suggest you revert to current code language and chart, or use the language in the subsequent section 23-9-C-3010(B)(1), which refers to desirable operating levels in the Transportation Criteria Manual.

**23-9C-3010.** Typo: duplicate letter (B) in subsection (B). Please remove second one.

**23-9C-3010(C).** This subsection transfers authority to approve an application that would otherwise be denied for safety reasons from the elected City Council per current code to an unelected “applicable director.” Such a critical decision should not be made administratively without public input from those affected. I strongly recommend you

revert to the current code language (25-6-141(C)).

**23-9C-3020.** This section states, “An applicant may modify an application to minimize the transportation-related effects identified in a transportation impact analysis or neighborhood transportation analysis. Modifications may include: (1) Reduction in the projected vehicle trips per day;”. I realize this language mirrors that of the current code, but it may be read as authorizing applicants to simply change findings that are detrimental to their case without any basis for doing so. Suggest instead: “Reduction in the projected vehicle trips per day based on demonstrable changes to the project that would reasonably result in such a reduction.”

**23-9D-1010(C).** This says the city manager may approve a street that is “less than standard width” while current code says “less than 50 feet in width.” Why the change? Unless there is great variation among standard widths, wouldn’t it be simpler to specify the width here rather than make the user track down this information elsewhere? Please note that many existing streets in the central city are far less than 50’ in width so if you are sticking with “standard width,” you may want to say “standard width for the area.”

**23-9E-5050.** Sidewalk Requirements. The organization of this section is confusing. Section (A) appears to apply to sidewalks on Core Transit Corridors, but it’s not clear if (B) applies to all sidewalks or just those described in (A). Section (C) appears to apply to Urban Roadways, but it’s not clear what (D) applies to (can’t be transit corridors because the minimum width in (D) is only 12’). But does this mean all sidewalks must have a 12’ minimum? And does (E) only apply to the sidewalks described in (D)? I think this section would benefit from the addition of subheads that clearly indicate the type of sidewalk and its applicable standards. Also please note that the 12’ minimum sidewalk may be a stretch for some infill areas.

**23-9F-1010.** This section increases minimum frontage for access to 330’ up from 200’ in the current code (see § 25-6-381). What is the rationale for this change?

**23-9G-1010.** Purpose should spell out entire name of program the first time it’s mentioned with the acronym following in parentheses, e.g. “The Transportation Demand Management Program (TDM) set forth in this division...etc.”

**23-9G-1020(A).** Sentence seems to be missing a phrase. Perhaps should be “Except as provided in Subsection (B), *this division* shall etc.” Also, how will it be determined that a project results in at least 300 daily trips if the project is not large enough to trigger a TIA?

**23-9G-1040 through -1060.** When will the TDM process, standards, fees, etc. be available in the Transportation Criteria Manual?

## **Chapter 23-10: Infrastructure**

Please ensure this entire chapter is reviewed by the Water and Wastewater Commission.

**23-10A-2050.** This section requires an “environment resource inventory” vs. current code, which requires an “environmental assessment” (25-9-26). I can’t find either term in the definition section. What is the difference and why the change?

**23-10D: Reclaimed Water.** I see that the list of definitions that appear in the Reclaimed Water section of the current code (25-9-382) have been moved to the new Article 23-2M: Definitions and Measurements. I understand the desire to group all definitions together, but in this case, the definitions pertaining to reclaimed water are so particular that they seem nonsensical when they appear in the General Terms and Phrases section. For example, “industrial use” is defined as “An approved use of reclaimed water for industrial or commercial processes as defined by 30 Texas Administrative Code, Chapter 210.” This definition makes sense within the context of the Reclaimed Water section of the code, but as the only definition of “industrial use” in General Terms and Phrases, it verges on ridiculous. Unless these terms really are general, you may want to move such definitions back to the section(s) where they make sense.

### ***Chapter 23-3E: Affordability***

Note: I was still reviewing this section at the time the CAG report was being finalized so may have additional comments.

**23-3E-1020.** States that applicability “is determined based on the Zone in which the development is proposed (see Article 23-4D) Specific to Zones for applicability per Zone).” Slide 12 in the presentation provided to City Council clearly shows affordability incentives in T4 zones. However, the current draft text of 23-4D does not include language in the T4 zones to allow affordability incentives to apply (compare to language in T5U.SS, T5MS, T6, MHDR, HDR, VHDR, NC and LC).

**23-3E-1040(A)(2)(c).** This states that density bonuses may include additional FAR, but FAR is not currently proposed for Transects. Given the Transect zones account for three of the six zoning categories in which affordability incentives are allowed, I strongly urge that FAR be reinstated in all Transects. Also in the non-Transects, NC and LC zones contain this note: “Residential uses are not included in the calculation of a building FAR. Residential units are allowed in addition to maximum FAR.” (23-4D-4060, 23-4D-4070). How will this provision affect the calculation of affordability bonuses involving FAR?

**Table 23-3E-1040(A).** Table is generally confusing. Please insert example calculation, which is currently missing. Also please provide footnote explaining “Parcels Designated –A”

**23-3E-1040(B)(1).** This refers to set asides based on “inner or outer Austin based on proximity to urban core.” Please provide definitions for “inner” and “outer” in this context and/or include link to a map showing same.

**Table 23-3E-1040(B).** This table shows two identical headings for “Multiplex Building Type (% of Bonus Units)” but lists one at 10% for Inner Austin and the other at 5% for Inner Austin for ownership units. Similarly for rental units, it lists one at 20% for Inner Austin, the other for 10% for Inner Austin. I suspect one of the headings was supposed to say something different, but in any case this needs some kind of fix. Again, this needs definitions for “inner” and “outer.”

**23-3E-1050(B).** This section references “designated review group” for affordability incentives. Please define this term including how review group is selected, who may serve on it, qualifications, etc.

**23-3E-1050(D)(1).** Please clarify this sentence to ensure that affordable units must be deed restricted regardless of the mix; as currently phrased, it does not clearly provide this. Suggest: “Must be deed-restricted and may include any combination of new units or units in an existing structure.”

**23-3E-1050(D)(2).** Add “Must” to this phrase to mirror other restrictions. As currently phrased, it’s not clear that this is mandatory.

**23-3E-1050(E).** Re phrase “equivalent or greater value” please indicate how this will be determined. If determination will rely on TCAD appraisal, then say that. If it relies on a different data source, then say that. In addition to data source, please state who is authorized to make the final determination on value. Director? Review group?

**23-3D-1060(B).** Please provide link to City’s fee schedule here or state where it can be found. Again, need a definition for “designated review group.”

**23-3E-1080(A)(2).** Is the referenced “Housing Director approved language” available for review?

**23-3E-1080(C).** This provision appears to completely undercut the preceding provision, which states that the landowner “must enter into a Restrictive Covenant” for affordable rental units and that the covenant “must include but is not limited to” the affordability period, a requirement to be rented at 60% MFI or below, and compliance with the housing director’s published rates. However subsection (C) provides a vague all purpose loophole to these requirements by simply stating “Other agreements may be entered into as needed to secure the affordability restrictions of the project.” No other details, restrictions or requirements are provided. If this provision is to remain, it needs much more specificity including the types of acceptable agreements and minimum requirements matching those in the preceding provision.

**23-3E-1090(A).** When will these “processes, compliance and monitoring criteria” be available for review? Will these become part of the code or live elsewhere?

**23-3E-1090(B).** How often and by what means will the Housing Director perform monitoring of affordability requirements for rental units after the initial lease up?

**23-3E-1100(A).** This states that the applicant may request a parking adjustment “in compliance with Article 23-4D (Specific to Zones).” While the draft already reduces on-site parking requirements extensively throughout all new proposed zones in 23-4D, the language varies from Transects to Non-Transects and requires clarification in both. In the Transect zones, all parking tables include a generic “Other, As determined by the Planning Director.” If this is intended to provide flexibility for affordable housing, it should be clearly identified as such; otherwise, it appears to be all purpose loophole. Similarly, the Non-Transect parking table (23-4D-4050.C) also includes a generic entry for “All Other Uses, As Determined by the Planning Director.” However, affordable housing is a use that clearly falls under the “All Residential” heading on this table, which requires 1 parking space per unit; it is not an “other” use. If administrative discretion for parking is intended to apply to affordable housing in the Non-Transects, it should be listed separately on the parking table. Otherwise, the plain language meaning would place it under “All Residential” and thus require 1 space per unit.

**23-3E-2050(C)(1).** Figure missing.

**23-3E-2050(E).** For each community benefit, this section states that amount of density bonus “is established by ordinance.” Does that mean this ordinance? If so please indicate section where this information may be found. If it’s a separate ordinance, please provide link or other indication of where it may be found. If it’s a separate ordinance not yet drafted, please indicate when it will be available for review.

**23-3E-2050(E)(5)(a).** States that Planning Director will administer Historic Preservation Fund. Is this a new fund (couldn’t find it in the existing code, but only did a quick search)? If new, does the Planning Director have the bandwidth and knowledge to administer it effectively?

**23-3E-2050(E)(6) and (9).** Has Environmental Commission reviewed these?

**23-3E-3020(B).** Needs clarification. Current language requires applicant to submit a “certified statement.” Does this mean notarized? If so, state that clearly. If there are other acceptable ways to provide a “certified statement” please state those specifically.

**23-3E-3020(C)(3)(d).** Tenant relocation language required on notice should also include contact information for tenant relocation assistance, including a phone number, not all tenants may have internet access.

**23-3E-3030.** Required notice sign should be in English and Spanish, with other language(s) as needed, and include tenant relocation assistance information and contact number. The posted notice on the property may be the primary way many tenants learn that they must relocate so it is essential to provide this information and to provide it in both Spanish and English, with other languages as necessary.

**23-3E-3040(A).** States that Housing Director will adopt tenant relocation program by administrative rule. If this is available, please provide link or cite where it may be found. If not yet drafted, when is it expected to be available for review?

**23-3E-3040(B)(1).** Again, please provide link/cite and/or indicate when methodology and fee schedule be available for review.

**23-3E-3050(A).** States that relocation fee is established by separate ordinance. Please provide link/cite and/or indicate when this will be available.

**23-3E-4050(A).** This section waives a total of 32 city fees for ownership options that are just 5% of a project at 100%MFI and 5% of a project at 80% MFI. Has the fiscal impact of this been modeled? Seems like the city might drive a harder bargain here for a higher percentage of units and/or lower MFI.

**23-3E-5.** Affordability Impact Statements. This section is still blank. When will it be available for review and how does the city anticipate using these statements?

**23-3E-6030.** Definitions section does not define “Inner Austin” and “Outer Austin” despite using these terms in several places to establish affordability incentives. Please provide definitions.

**Request for Information: Number of AISD Students in Recently Built East Austin Multi-family Developments**

From: Nuria Zaragosa via AISD Trustee Ann Teich

**RESPONSE June 20, 2017:**

As of October 7, 2016:

7 East: 2025 E. 7th St. Austin 78702 - 1 Elementary student

Corazón: 1000 E. 5th St 78702 - 0 students

AMLI East Side : 1000 San Marcos St. 78702 - 5 students: 1 High School and 4 Elementary

East Side Station: 1700 E. 4th St. 78702 - 0 students

Eleven: 811 E. 11th St. 78702 - 0 students

Platform: 2823 E. Martin Luther King Jr. Blvd 78702 - 0 students

The Arnold: 1621 E. 6th St. 78702 - 0 students

Sincerely,

Paul Cruz

Paul Cruz, Ph.D.  
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Austin Independent School District  
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Austin, TX 78703-5338  
[512-414-2482](tel:512-414-2482)  
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# City of Austin Community Development Commission

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To: Planning and Zoning Department (PAZ) Director Greg Guernsey  
and CodeNEXT Code Advisory Group (CAG)

From: Gilbert Rivera, Community Development Commission (CDC) Chair

Date: April 24, 2017

Subject: Housing Concerns in CodeNEXT

Dear Mr. Guernsey and CAG members,

I am writing on behalf of the CDC to express the Commission's concerns over sections of CodeNEXT related to affordable housing. Our concerns involve the draft code and hopes for remaining sections yet to be released. We request answers in writing, and a presentation to discuss the answers.

As the city commission charged with advising the City Council on housing and community development matters related to low-income Austinites, our members are very concerned with affordability. At a workshop for boards and commissions graciously hosted by the CodeNEXT Advisory Group and from knowledge of the communities we represent, we hear critical aspects of the draft code, which seem to give away affordability. In our effort to work *with* the City, we want to review these issues before preparing our formal response to portions of the code.

We list the specific issues that we are aware of below.

1. FAR: It is our understanding that the draft code does not recognize Floor-to-Area Ratio or FAR. Eliminating FAR would give away one of the city's most successful incentives for creating housing affordable for low-income Austinites, the Vertical Mixed Use (VMU) overlay. FAR is key to the incentives used in VMU. We count 28 developments, which used VMU incentives to provide 549 units below market rents in rapidly growing parts of town where it would otherwise be difficult to create affordable housing. Nearly all VMU units are within a quarter mile of transit, the majority are in high opportunity areas, and many are affordable to people at 60% of Median Family Income (MFI), making this a strong tool for serving individuals in low-wage jobs such as office support staff or fixed income seniors. With the elimination of FAR, where would the incentive of VMU be recaptured in CodeNEXT?
2. Compatibility: We have heard that the new code would retain current compatibility standards unless and until a property is re-zoned. At that time, a different compatibility standard would apply. Compatibility has been very important to neighborhood integrity. If compatibility standards change, what benefits to neighborhood integrity, including affordability, would offset the change in the compatibility standard? What role would different neighborhoods have in making these determinations?

3. Parking: We have heard that parking requirements would be reduced. Again, we would like to consider how to incentivize affordability under a new standard. What do neighborhoods gain from reducing parking? What incentives could be crafted from reduced parking to create affordability at specific low-income levels?
4. “Middle Housing” or “Corner quads”: We have heard that the draft code proposes allowing single family corner lots to be redeveloped with up to four units. While theoretically the additional units could be offered at lower prices, the experience of our commissioners is that where usage increased from a single unit to duplex or more units, the new homes were way beyond what long-time residents could afford. Only by attaching specific affordability benefits can we assure the result of allowing additional units to be designated as affordable for low-income people. What specific affordability standards are proposed to guarantee that these increases in units are affordable to low-income people?
5. Affordability level: CodeNEXT promises to “streamline” differing programs with uniform standards. While not discussed in the draft information available to the public, we have heard that the affordability levels in differing bonus incentives will be adjusted to have uniform standards. We are crystal clear that uniform standards should be set at 60% or 50% MFI for rental and 70% for homeownership.
6. CodeNEXT is supposed to update city development standards to be more consistent with contemporary standards. We are concerned that in administering the current code, the City has been more likely to grant variances in many of the high poverty areas represented by the Community Development Commission rather than in other areas. How can variances be handled more equitably?
7. We have heard that the minimum lot size for a duplex would be reduced, perhaps to 6,000 square feet, in East Austin. However, the minimum lot size for duplexes would be higher or non-existent in other areas within the Drinking Water Protection zone. Similarly front yard setbacks would increase in some areas but decrease in others. What is the rationale for these differences?
8. Our commissioners have expressed concerns that SMART Housing is not geared to current needs. For example, we are concerned with a one-year affordability period on homeownership units in the SMART program. How is the Planning Department working with Neighborhood Housing to improve the benefits of SMART Housing such as the affordability level and the affordability period?
9. We have heard that the Strategic Housing Plan will be tied to Imagine Austin. What does tying Imagine Austin and the strategic plan together accomplish?
10. Considering that roughly one-third of Austinites are not proficient in English, what can the City of Austin do to increase the availability of information, presentations for, and participation of those of Limited English Proficiency in CodeNEXT?

11. We have not found consideration of mobile home/manufactured home park residents in CodeNEXT. How will CodeNEXT address their unique needs and concerns?
12. Several efforts involve attempts to increase equity and overcome impediments to fair housing in Austin. How will CodeNEXT align with the equity tool currently being developed? How will recommendations from the Mayor's Task Force on Undoing Institutional Racism be reflected in CodeNEXT? How does CodeNEXT reflect the Fair Housing Action Plan in the City's Analysis of Impediments to Fair Housing?
13. Current housing production seems to favor units for households of one and two members. However, we know from the communities we represent on the CDC that we are losing lower income families to suburban areas outside of Austin. A tremendous need for affordable units of a size appropriate for families remains. Many families are lower income. What will CodeNEXT realistically provide to meet the needs of low-income families?
14. It is anticipated that CodeNEXT will change the land use development process substantially; we are concerned that the city should track indicators of involuntary residential displacement such as evictions and act accordingly to mitigate its negative consequences.

Given the length of the draft code, there are probably similar issues of which we are not yet aware. We would appreciate your reviewing similar issues with us as well.

We look forward to reading your responses and discussing the answers with you at a future commission meeting.

Thank you,



Gilbert Rivera  
Community Development Commission Chair

## Design Commission

## CodeNEXT Working Group

Commissioner Carroll  
Commissioner Gonzalez

April 19, 2017

City of Austin Design Commission

Re: Proposed next steps for Design Commission's CodeNEXT review

Planning Commission and Zoning & Platting Commission are the only two commissions tasked with reviewing and commenting on CodeNEXT. However, they are looking for input from other commissions.

1. Working Group suggested topics for future talks (deadline to PC & ZAP - April 30<sup>th</sup>)
  - a. Neighborhood Plans
  - b. Transportation Demand Management
  - c. Infrastructure

\*Current scheduled talks

April 19 – Character/ Map Rollout

May 08 – Affordability

May 31 – Mobility

June 07 – Permitting

2. Options for Opticos / Staff presentation to Design Commission
  - a. May 22 – Regular DC Meeting
  - b. June 21 – Joint Meeting with Downtown & Environmental Commissions
  - c. July 19 – Joint Meeting with Downtown & Environmental Commissions

\*Working Group suggests waiting until June or July meeting when sections listed below are released
3. Working Group suggested topics for Design Commission presentation
  - a. Traffic Impact Analysis – Out now
  - b. Transportation Demand Management – Due in ~~summer~~
  - c. Downtown Density Bonus Program – Due in April
  - d. Infrastructure- some sections out, some in summer (street design)
  - e. Alternative Equivalent Compliance – Out now
  - f. Non-Transect Design Standards – Out now
4. Design Commission Comments to PC & ZAP (2<sup>nd</sup> draft)
  - a. Deadline is June ~~6<sup>th</sup>~~
5. Design Commission Comment to Council
  - a. Deadline 1<sup>st</sup> week of December



## **ENVIRONMENTAL COMMISSION MOTION 20170517 007c**

**Date:** May 17, 2017

**Subject:** CodeNEXT initial Environmental Commission Recommendations as of May 17, 2017

**Motion by:** Hank Smith

**Seconded by:** Mary Ann Neely

### **RATIONALE:**

**Whereas,** there is a deadline of June 7, 2017 for submitting comments on the first draft of the code text; and

**Whereas,** the Environmental Commission has been directed to provide comments periodically during the review and implementation of CodeNEXT.

**Therefore,** the Environmental Commission recommends the following:

- More time is needed to fully review, comprehend and evaluate the environmental aspects of the CodeNEXT document particularly since: Watershed Capacity Modeling will not be completed until sometime between June 30, 2017 and the end of the Summer; the density bonus program cannot be fully evaluated at this time, the envision tomorrow model has not been fully completed and an equity analysis has not been completed. However, the following comments are provided based on the limited review time and incomplete status of the code;
- The Environmental Commission recommends that fully developed comments from this Commission should be completed and made available to the Land Use Commissions prior to their formal review and final recommendation;
- We formally request that draft 2 of the proposed code be released in a “redline or legislative” format in order to better track changes;
- More robust efforts for community engagement including multi-language to overcome language barriers to Austin citizens;
- Special efforts in those areas that have been affected by historic flooding and buyouts to educate those residents on the CodeNEXT initiatives;

**With Regard to Draft 1 we offer the Following:**

- Section 23-10E-3010(A)(5)(f) The requirement that redevelopment, like new development, mitigate for its contribution to downstream flood impacts should be included and how this is accomplished to achieve successful redevelopment should be further evaluated;
- Section 23-3D-6030(C) the requirement that subdivision and site plans retain a portion of the storm water onsite for beneficial use is supported and strongly encouraged;
- Section 23-3C-1030 We support the new class of regulated trees;
- 23-3D-2060 Land Use variance – The LUC may grant a variance from a standard of section 23-3D-4040 – the Environmental Commission needs to review and comment on these variances;
- 23-3C-2010 Development Application Requirements – If a regulated tree is permitted for removal, the City shall require mitigation. Mitigation is a requirement unless certain conditions are met;
- 23-3C-3030 Heritage Trees – Restore 3. May not be issued until the applicant has satisfied the mitigation conditions required under the subsection B (2) or posted fiscal security adequate to ensure performance of the mitigation conditions not later than one year after issuance of the variance;
- 23-3C-3070 Action on Application – 1) not later than the 15<sup>th</sup> working day after the complete application is filed. List special circumstances for more time, such as lack of staff or challenging decisions. 2) If associated with development activities that have prescribed timelines then deference is given to those timelines—this item is unclear on meaning;
- 23-4D-4060 and 4150 – landscaping is not required in parking lots and between buildings and street and lots less than 75'. This needs to be evaluated and could lead to heat island problems. The Environmental Commission suggests consideration of moving landscape requirements to 23-3;
- 23-4D-6131 PUDs – the new code should eliminate the need for this kind of zoning;
- Sections 23-3D-4040(A), 23-3D-4050(C), 23-3D-2070(D)(3) – the improvements for critical water quality zones with a presumption that design requirements for crossings have better development standards are supported;
- Sections 23-3D-5010(C)(2), 23-3D-5030(C)(6-7) includes better protections for special features and critical environmental features are supported;
- The Environmental Commission supports decompaction requirements for disturbed areas with particular regard to beneficial reuse areas and believe these requirements need further evaluation in these rules;
- In general, the Environmental Commission supports further evaluation of front setbacks, rear setbacks, compatibility setbacks, street yard trees with regard to green infrastructure, landscape and open space goals;

- At a minimum, the Environmental Commission supports environmental and drainage review of standards for the 3-9 unit (residential heavy) areas be evaluated;
- Section 25-3B-3010(A)(2) in certain areas the Environmental Commission believes the fee-in-lieu for parkland dedication should be minimized in favor of the establishment of pocket parks in park deficient areas and near Transit Corridors; and
- With the anticipated reduction in parking requirements, the Environmental Commission supports more discussion and evaluation of increasing green space in parking areas.

**VOTE 10-0**

For: B. Smith, Thompson, Neely, H. Smith, Perales, Maceo, Kitchin, Creel, Guerrero, Gordon

Against: None

Abstain: None

Recuse: None

Absent: None

Approved By:

A handwritten signature in black ink, reading "Marisa Perales", is written over a light blue rectangular background.

Marisa Perales, Environmental Commission Chair



## ENVIRONMENTAL COMMISSION MOTION 20170517 007c

**Date:** May 17, 2017

**Subject:** Resolution regarding Review Commission for CodeNEXT

**Motion by:** Mary Ann Neely

**Seconded by:** Linda Guerrero

### **RATIONALE:**

**Whereas,** the Environmental Commission purview is to assist the City Council, the City Manager, and the Watershed Protection Department in studying, promoting and enforcing environmental protection policies to assure the health, safety, welfare and quality of life of all citizens; and

**Whereas,** the Environmental Commission purview is to advise the City Council, the City Manager, and the Watershed Protection Department concerning policies, projects, and programs that affect the quality of life or have the potential to affect the environment; and

**Whereas,** the Environmental Commission is relevant to the CodeNEXT process and should be listed as a review commission to provide feedback on all environmental changes and additions within the new CodeNEXT document such as urban runoff and flooding, wastewater treatment, heritage trees and tree mitigation, critical environmental features (CEFs), critical water quality zones (CWZs), and the improvement of the Colorado River, Edward's Aquifer and other bodies of water, in addition to wetland protection and endangered species protection.

**Be it resolved,** the Environmental Commission requests the City Council to direct CodeNEXT Consultants, City staff, and the City Manager to include the Environmental Commission as a review commission for CodeNEXT, in the article 25-1B: Responsibility for Administration.

### **VOTE 10-0**

For: B. Smith, Thompson, Neely, H. Smith, Perales, Maceo, Kitchin, Creel, Guerrero, Gordon

Against: None

Abstain: None

Recuse: None

Absent: None

Approved By:

A handwritten signature in black ink that reads "Marisa Perales". The signature is written in a cursive style with a large, looping initial 'M' and a long, sweeping tail on the 'l'.

Marisa Perales, Environmental Commission Chair

Appendix A

(Parks and Recreation Board CodeNEXT resolution)

Topic	Issue	Proposed Change
1. Parkland Dedication 2016 Ordinance remains	Title 25 - 25-1-601 through 609	No changes (See current 23-3B)
2. Compatibility standards for Parks	Downtown Parks standards for Glazing and Parking (23-4D-7050 (B))	Apply 23-4D-7050 (B) to all Parks city wide.
3. Permit passive parks and preserves without a Conditional Use Permit in all Zones	Title 25 allows Park/Playground by right if they are less than 1 acre in size. If they are more than one acre in size, a Conditional Use Permit is required regardless of facilities being constructed.	<p>Ensure that passive parks (currently termed Park/Playground) are a Permitted Use in every Zone. (Permitted) (See various use types in Zones in 23-4D)</p> <p>Zone passive Parks into the newly created Open Space Zone and do not require a Conditional Use Permit, regardless of size.</p> <p>Continue to classify intense park uses (swimming pools, multiple courts and fields, recreation centers, etc) as Public (P) uses, regardless of size, however and continue to require a Conditional Use Permit.</p>
4. Clarify standards and terms for Open Spaces in the Code	<p>Re-organize Open Space and Recreation Land Uses so that they are not duplicative throughout the Code.</p> <p>Re-examine the standards set forth in 23-4C-2 Civic and Open Spaces. (Applies to Transect Zoning) The term “civic” and “open space” are used interchangeably. Change the term.</p> <p>Determine the purpose Sections 23-4C-2050 through 23-4C-2170.</p> <p>Remove PARD Designations so that changes to the Parks Long Range Plan do not require code changes.</p>	<p>In 23-2M-1030 define Open Space. In 23-2M-2030 create Recreation Land Uses. Define standards for passive recreation in the Open Space Zone of 23-4D-6110.</p> <p>In 23-4C-2 Civic and Open Spaces, delete the transect bar from all photograph pages so that all park types are allowed in all Transects.</p> <p>Delete Sections 23-4C-2050 through 23-4C-2170; or revise the Size and Location portions to clarify open space standards for street frontage; minimum widths; minimum pervious cover; and parking.</p>



# City of Austin

Founded by Congress, Republic of Texas, 1839  
Watershed Protection Department  
P.O. Box 1088, Austin, Texas 78767

**TO:** Eleanor McKinney, CodeNEXT Advisory Group

**FROM:** Erin Wood, Principal Planner  
Watershed Protection Department

**DATE:** March 30, 2017

**SUBJECT:** **CAG Board and Commission Forum – Environmental Questions**

Below are the responses (shown in italics) from our department to the questions raised by members of the Environmental Commission and Water Forward Task Force at the CAG Board and Commissions Forum on March 4.

1. Environmental commission has questions about green infrastructure. Will it go up proportionally as density increases? Will green roofs be mandatory or just another tool?

*Austin's green infrastructure network includes our parks, the urban forest, urban trails, greenways, rivers, creeks, lakes, gardens, urban agriculture, open spaces, wildlife habitat, and stormwater features that mimic natural hydrology. In addition to protecting this existing network, the new code will work to promote additional green infrastructure and further integrate nature into the city. The new code will distribute landscape elements throughout a site, enhance ecosystem service benefits, foster the beneficial use of stormwater, and capitalize on existing vegetation, trees, soils, and other natural features. In addition, the new Functional Green tool will offer highly urbanized sites a weighted menu of landscape elements that address issues such as urban heat island, stormwater management, habitat loss, and potable water use. The details of Functional Green system (e.g., how many points are required; where the system is applied) are still being developed by staff and the consultants.*

*From a stormwater perspective, development projects will need to keep stormwater on-site and either soak it into the ground or use it to offset potable water use (e.g., irrigate landscaping, flush toilets). The amount of stormwater required to be retained on site will increase with the site's impervious cover (similar to current requirements for water quality). On-site beneficial use of stormwater can be accomplished through the use of multiple green stormwater infrastructure practices—both passive technologies, such as rain gardens and porous pavement, as well as more active technologies like rainwater harvesting systems and green roofs. Green roofs will not be mandatory under the new code – they are a tool to demonstrate compliance with the requirements for beneficial use of stormwater and/or the landscape code.*

2. What is the process for flood mitigation related to smaller infill density?

*Current code requires projects to demonstrate they will not result in additional adverse flooding on other properties. Since the focus is on additional flooding impacts, redevelopment projects that are not increasing impervious cover or changing drainage patterns are generally not required to provide flood mitigation—even if significant downstream flooding exists. The new code will ask*



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*redevelopment projects to contribute their fair share to solutions that address threats to public safety and property. This could be achieved through a variety of options including on-site detention, off-site conveyance improvements, and payment-in lieu of drainage improvements. While this will not solve all of Austin's flooding problems, requiring existing development to provide flood mitigation for redevelopment will reduce flood hazards associated with large storm events and address longstanding problems due to development built without sufficient flood controls and/or drainage conveyance. For small, residential infill projects, drainage is not currently reviewed for building permits—the code instead relies on impervious cover limits to reduce impacts. City staff are in discussion about potential process improvements related to drainage review for building permits.*

3. Concerns expressed about increasing overall impervious cover, more concrete, less green on the ground.

*Impervious cover limits (both for watershed classifications and zoning) are still applicable in the new code. In addition, each zoning district includes a note that the maximum percentage of impervious cover allowed might not be attainable by a project due to unique site characteristics, such as trees, waterways, and steep slopes. Staff from Watershed Protection will examine the impacts of the proposed zoning map and associated impervious cover limits on the floodplain as well as existing drainage infrastructure. Staff is currently choosing representative drainage areas in the urban core where adequate modeling data is available and developing methodologies for evaluating the new zoning categories. However, the formal modeling effort will not begin until after the draft zoning map is released on April 18.*

4. When you lose a large amount of green infrastructure due to a big project on previously vacant land, how will the code ensure a commensurate amount will be replaced?

*For over 30 years, Austin has protected its natural resources through a number of regulatory measures including stream setbacks, sensitive feature protection, tree protection, stormwater controls, and impervious cover limits. The new code will maintain Austin's historic environmental regulations as well as the recent improvements of the Watershed Protection Ordinance. The new code will build upon this solid foundation with measures to enhance the environmental function and resiliency of sites, such as the new requirement for beneficial use of stormwater and key revisions to the landscape code. In addition, new standards for large developments, and a new method for calculating open space, provide greater diversity and prominence of open space and parks, and promote expansion of trail networks and protected waterways.*

5. Increased heat island effect from increased density/built environment may ultimately hurt walkability.

*The new code will require additional soil volume for new trees in parking lots and along streets to ensure that shade trees can thrive. Adequate soil space provides the nutrients, water, air, and root space that trees need to have a long, successful life. The soil volume required depends on the full-grown tree size. In addition, the new code provides design flexibility to preserve additional existing trees.*



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## 6. Green infrastructure requirements - Green retrofits? Required in what circumstances?

*For site plans and subdivisions, water quality controls will continue to be required for projects with greater than 8,000 square feet of impervious cover. However, current code does not require landscape or water quality for building remodels. City staff are in discussion with the consultant about what trigger is most appropriate for distinguishing between a remodel and a redevelopment.*

## 7. Flood mitigation where? Infill tracts?

*See answer to #2.*

## 8. Issues:

- Drinking water protection zone -> disproportionate impact

*CodeNEXT is not proposing any changes to the watershed regulations for the Drinking Water Protection Zone.*

- Addressing drainage -> floodplain protection

*See answer to #2 for drainage concerns. In addition, CodeNEXT will roll forward the protections for floodplain health that were adopted in 2013 as part of the Watershed Protection Ordinance.*

- Green infrastructure- environmental into missing middle!

*The new code establishes a simplified site plan review process for projects with 3 to 9 units. The details of this process are still under discussion by staff and the consultant, but the intent is for drainage and environmental review components to be included.*

- Ability for PARD to build parks in the future that meets the community's needs

*As the urban core densifies, fewer residents have their own back yards. Existing parks and open spaces face additional pressure from a growing population. New standards for large developments, and a new method for calculating open space, provide greater diversity and prominence of open space and parks, and promote expansion of trail networks and protected waterways.*

## 9. Environmental Commission Process Concerns:

- Currently final approval of code is only going to PC and ZAP instead of all B&C -> lack of official involvement from environmental commission

*Although the formal adoption process only involves PC and ZAP, the EC is encouraged to submit their recommendations in an official resolution. In addition, staff can brief the Environmental Commission (and other key boards and commissions) on the environmental elements of CodeNEXT.*

- EC Resolution- submit vote/concerns to PC/ZAP

*Commissions are encouraged to submit official resolutions to the PC/ZAP/Council expressing their support and concerns re: CodeNEXT. In addition, commission members can use their BC email address to provide comments at [codenext.civcomment.org](mailto:codenext.civcomment.org).*



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## 10. Integrated Water Task Force Process Concerns

- Water Forward 100 Year Water Plan - looking at better incentives/requirements for water conservation
- Timing of Water Forward (WF) doesn't line up with CodeNEXT timeline
- WF Recommendations will likely come after code comes out
- WF changes will be needed post code adoption. CodeNEXT and AW need to determine how and where best to reserve Sustainable Water slot in the code.

*Recommendations from the Water Forward planning process could require changes to the Land Development Code. Since these recommendations would not be finalized until after the planned adoption of the new code, staff will need to coordinate with Planning and Zoning and Council to determine how the code amendment process will work after CodeNEXT is adopted.*