



June 7, 2017

CodeNEXT Team

Via: codenext@austintexas.gov

Re: Save Our Springs comments and Position Paper on Draft 1 of CodeNEXT Text

Dear CodeNEXT Team:

Save Our Springs Alliance offers the following comments on the first draft of the proposed rewrite of the Austin's land development code, the process known as CodeNEXT, ("Draft 1"). It is our understanding that these comments, along with comments that the CodeNEXT Team receives on the map, will be considered for Draft 2—a combined text and map that will be presented to our land use commissions. SOS reserves the right to make additional comments in the future.

Save Our Springs ("SOS") was founded in 1992, and our stated mission is to protect the Edwards Aquifer, its springs and contributing streams, and the natural and cultural heritage of the Hill Country region and its watersheds, with special emphasis on Barton Springs. Recognizing that it takes a community to save a community spring, SOS has actively promoted responsible land use practices and transparent decision-making in Austin.

CodeNEXT has the opportunity to support and improve our city's commitments to environmental protection and fair and meaningful public participation. SOS was a participating organization and signatory to the position paper "Community Priorities for CodeNEXT," which is attached and was published before the release of Draft 1. These priorities include goals "to conserve water and the natural environment, reduce climate change and become climate resilient, protect existing neighborhoods and trees, reduce development sprawl, support healthy communities, promote equitable development, prevent displacement, and lead to truly affordable housing." SOS has measured Draft 1 against these priorities and submits the following comments.

Draft 1 proposes both potential improvements and problems with the amendments to our land development code. Draft 1 is also incomplete in substance and analysis.

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A. SUPPORT—SOS supports several Draft 1 proposals:

1. Draft 1 proposed a new class of regulated trees, the Keystone Trees. (23-3C-1030)
2. Draft 1 carries forward the voter-approved Save Our Springs Initiative. (23-3D-9)
3. Draft 1 carries forward many of the water quality protections from the 2013 Watershed Protection Ordinance. (23-3D generally)
4. Draft 1 limits hard surface trails in Critical Water Quality Zones to 12-foot wide, except when a wider trail is called for in one of several master plans. (23-3D-4040)
5. Draft 1 requires a portion of the required captured volume for water quality be retained and beneficially used on-site through practices that infiltrate, evapotranspire, or harvest and use rainwater. (23-3D-6030)
6. Draft 1 requires that areas on the site that are to remain pervious post-development, the soils must be decompacted. (23-3D-7050)
7. Draft 1 emphasizes the need for drainage patterns to not only maintain but also restore infiltration and recharge of local seeps and springs, and to disconnect impervious cover. (23-3D-8010)
8. Draft 1 requires that all development reduce the post-development peak flow rate of discharge to match the peak flow rate of discharge for undeveloped conditions as prescribed in the Drainage Criteria Manual. (23-10E-3010(A))
9. Draft 1 also requires that the all development will not result in any erosion impacts on other property, not just “additional” erosion impacts. (23-10E-3010(A))

B. DO NOT SUPPORT—SOS is concerned with several Draft 1 proposals:

1. 23-2K-1040(B)—Contents of Vested Rights Petition

Draft 1 amends the code language to allow an applicant to omit information from a vested rights petition if an application is associated with a project for which vested rights have been conclusively established by a prior vested rights determination. The previous language did not allow a prior vested rights determination to be used in this situation, but required a court order or approval by Council through a settlement agreement or Project Consent Agreement. The way it is written, it also is not clear that the settlement agreement must be approved by Council. Please clarify that an applicant is only allowed to omit information with a court order or with some form of approval by Council. (See 25-1-534(B)).

2. 23-2K-2010(D)—Vested Rights Determination

The language stating that a decision on a reconsideration is final and not subject to further consideration was struck (see 25-1-541). This could be read to allow for multiple reconsiderations on a single project, which would be a burden and not provide any public benefit. The previous language should be reinstated.

Also under this section, Draft 1 would provide that a request for reconsideration toll the expiration date; however, Draft 1 does not propose any definitive deadlines by which the reconsideration decision must be made. Together, this provision and the allowance of multiple reconsiderations renders public notice and expiration timelines meaningless. The previous language should be reinstated.

3. 23-2K-2040(B)—Project Consent Agreements, Application Requirements

Draft 1 deleted the requirement for the request for a project consent agreement to be submitted before the application expires. (See 25-1-544) Previous language should be reinstated and additional public notice be required when a request for a project consent agreement is received.

4. 23-2K-2040(D) & 23-2K-3030(C)—Project Consent Agreements & Managed Growth Agreements

The time required for public notice of hearing has decreased from 16 days to 11 days. Please reinstate the original 16 day requirement to ensure adequate time for community notice and response.

5. 23-2K-3020—Expiration of Projects Begun on or After June 23, 2014

Previous language established the expiration of a vested rights petition be based on initial application dates. Draft 1 deleted the language, “except that the project expiration period shall be deemed to run from the date of the fair notice application.” This section is now confusing. The previous language should be reinstated.

6. 23-2F-2030—Minor Adjustments

Draft 1 creates a new administrative approval of an adjustment of up to a 10 percent increase in certain entitlements, including height, building coverage, and setbacks, in order to avoid penalizing permittees for errors in construction. This provision is ripe for abuse and protections must be put in place to ensure it is not abused. Otherwise, it should be removed.

7. 23-3B-3010(A)(3)—Parkland Dedication

Draft 1 allows fee-in-lieu of parkland dedication if less than six acres were required to be dedicated. The City of Austin needs to provide parkland in park deficient areas and near transit corridors in the urban core. Fee-in-lieu should only be allowed if less than one acre is required.

8. 23-3D-4050—Critical Water Quality Zone Street, Driveway, And Trail Crossings

Draft 1 prohibits culverts in street, driveway, and trail crossings of Critical Water Quality Zones. While SOS generally supports this prohibition, the language is unclear as to whether culverts are allowed for trail crossings. Please clarify this language to make it clear that culverts are not allowed for trail crossings.

9. 23-3D-6010—Applicability of Water Quality Control Standards

Currently, in watersheds other than the Barton Springs Zone, water quality controls are required for development that exceeds 8,000 square feet of total impervious cover. With the emphasis CodeNEXT has places on infill development, the current 8,000 sq ft trigger is no longer adequate. The limit should be reduced to 5,000 square feet, in line with what Watershed Protection Staff originally recommended.

10. 23-4D generally—Impervious Cover in Transect Zones

Any impervious cover increase from the previous SF 45% impervious cover limits should be offset by on-site beneficial reuse, and accounting for the offset must be done with clear criteria and metrics.

11. 23-6B-2020—Residential Heavy Site Plans

Draft 1 proposes a new category intended to ease the burden on “missing middle” housing (3-9 units) by providing them with a light site plan; however, the way in which it is written, it could exempt all missing middle housing from all environmental regulations. This section should be clarified to require that tree protections and stormwater requirements, including beneficial use, drainage, and water quality apply.

12. 23-10E-3010—Criteria for Approval of Development Applications

Language should be amended to make it clear that fee-in-lieu is strictly prohibited when downstream drainage systems are at or exceeding capacity, rather than allowing any discretion by the Director in these cases. Furthermore, the City should retain its own map and modeled data to demonstrate where fee-in-lieu is prohibited, rather than relying solely in studies completed by the applicant.

13. Impervious Cover Restrictions for Education Facilities (see 25-8-366)

Recently codified language setting impervious cover limits for all educational facilities was inadvertently left out of Draft 1.

C. QUESTIONS—several Draft 1 proposals are unclear:

1. 23-2K-2010(A)—Vested Rights Determination

Draft 1 modifies the deadline for determination of vested rights from 14 days to 10 working days. What are the benefits of this change and will this conflict with any statutory deadlines?

2. 23-3D-6040—Optional Payment Instead Of Structural Controls In Urban Watersheds

Draft 1 eliminates annual review by the Environmental Commission. Why was this opportunity for citizen oversight deleted? Draft 1 also deleted language that makes it clear the formula for fee-in-lieu would be established by Council. Why was this language deleted and who will now set the fees?

3. 23-3D-6050—Option Payment Instead of Structural Controls in Suburban Watersheds

Draft 1 creates a new fee-in-lieu for water quality controls in Suburban Watersheds. Although this fee-in-lieu is only available to small residential subdivisions in limited circumstances, it is unclear what the impact of this new fee-in-lieu could be. Has there been any modeling or data analysis that quantifies this impact?

Also, Draft 1 did not contemplate annual review by Environmental Commission or fees established by Council. Depending on the answers to the previous question, these provisions should be considered here as well.

4. 23-10D-1120—Use of Reclaimed Water

Draft 1 adds that reclaimed water used for domestic, cooling, or other non-irrigation purposes will be treated the same as potable water as it relates to wastewater billing. Is there any analysis to show whether this could discourage the use of reclaimed water? Has an alternative approach been considered?

D. MORE ANALYSIS NEEDED—SOS recommends that more analysis be made available on the following topics, before Draft 2 of the text and map are presented to land use commissions and the public for another review:

1. **A watershed capacity analysis** for each of Austin’s watersheds should be completed. These analyses should illustrate existing entitlements and proposed entitlements, assuming existing and proposed flood mitigation requirements. The watershed capacity analyses should acknowledge and account for in some way, the difference between existing entitlements and what is actually built, as well as the likelihood that fee-in-lieu will be allowed. It is our understanding that watershed modeling will be completed later this summer. Adequate time for public review and vetting should be allowed.
2. **The section on affordable housing incentives** has still not been made public, but how it is calibrated could have a big impact on environmental protections. Adequate time for public review and vetting should be allowed.
3. **More modeling of the likely impacts CodeNEXT will have** on our overall impervious cover, open space, parks, and tree canopy, and what that will do to the urban heat island effect is crucial. We should compare the modeling to not only our current baseline, i.e. what would happen if we did nothing, but also to other scenarios besides the one currently proposed, so we can ensure our calibration is as accurate as possible.
4. **An equity analysis for all of CodeNEXT** that examines whether the CodeNEXT process and the resulting language and map were completed with racial and economic equity at the forefront of our decision-making. Austin has done a good job at protecting our environment and ensuring public participation to date, but we can do more to protect our City’s most vulnerable populations.

E. CodeNEXT PROCESS AND REVIEW IS LACKING:

SOS is concerned that the CodeNEXT process has not been as transparent or inclusive. CodeNEXT has held several public meetings and information sessions related to the text. Most of these meetings have been held downtown and information has been presented to

the public in a formal panel style that is neither engaging nor useful in eliciting public feedback. We recommend that community meetings on the text be designed to stimulate and collect meaningful public feedback. This can be done with questions or examples that focus discussion, by reducing and explaining jargon, and meeting people in the community where they are, rather than expecting them to come to you.

In addition, the time in which to provide feedback has been limited to such a degree, that even those who are the most knowledgeable and engaged have not been able to conduct a thorough review of Draft 1. Plus, there is still a significant amount of text and necessary analysis that is not complete and available for public review. In addition to adequate time for the additional analysis and modeling recommended above, SOS recommends that CodeNEXT allow adequate time for meaningful public review of all proposed amendments to our land development code—including those not yet released.

Finally, we recommend that Draft 2 be released in redline format for easier comparison.

Thank you for considering these comments. Please contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Lauren C. Ice".

Lauren Ice
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Community Priorities for CodeNEXT: Environment, Equity, & Neighborhoods

The purpose of Austin’s proposed rewrite of our Land Development Code, known as “CodeNEXT,” is to faithfully implement the eight priority programs of *Imagine Austin*. The undersigned community organizations and individuals join together in adopting the following key benchmarks for measuring the CodeNEXT draft’s consistency with *Imagine Austin*. We invite others to join with us in assuring that all of these benchmarks are met in any draft code that is advanced to the City Council for consideration.

Austin must manage its growth responsibly, intelligently, and in a way that is equitable for all of the city’s residents. Compact and infill development so far has not achieved the goals of housing affordability or preservation of natural areas. Any code changes to facilitate more intense development must include standards to conserve water and the natural environment, reduce climate change and become climate resilient, protect existing neighborhoods and trees, reduce development sprawl, support healthy communities, promote equitable development, prevent displacement, and lead to truly affordable housing.ⁱ Together, we call for CodeNEXT to meet the following standards:

1. CodeNEXT shall increase transparency, consistency, fairness and meaningful public participation.	
<input type="checkbox"/>	The CodeNEXT public engagement process shall include diverse strategies to ensure feedback reflects the true demographics of the City; give ample, advanced notice to all residents of all events; and include multiple meetings in each district. Meaningful participation includes both language access AND outreach and engagement of diverse communities in Austin.
<input type="checkbox"/>	The CodeNEXT public engagement process shall allot more time for an iterative, transparent public mapping process that respects neighborhood self determination. Neighborhoods should be involved in the mapping to ensure that the Growth Concept Map and Zoning Map reflect a plan for equitable growth and environmental justice ⁱⁱ throughout the city and the ETJ.
<input type="checkbox"/>	The Code Advisory Group (CAG) ⁱⁱⁱ should remain an official body until the new code is adopted to help ensure meaningful public participation throughout the CodeNEXT consideration process.
<input type="checkbox"/>	The CodeNEXT draft code shall be presented so that the public can easily track additions and deletions, and follow where new sections were derived from old code. ^{iv} Intent statements shall also be provided for each code section for clarity and consistent implementation.
<input type="checkbox"/>	CodeNEXT shall, consistent with stated goals, increase predictability and fairness by setting clear and consistent standards and reducing staff discretion. Well-defined standards should replace the current exceptions of Planned Unit Developments (PUDs) and special ordinances. Opportunities to pay a fee instead of complying with code provisions, known as “fee-in-lieu,” should be eliminated in instances where onsite benefits are critical, such as flood reduction and sidewalks.
<input type="checkbox"/>	CodeNEXT shall maintain existing public participation and rights of appeal by neighbors and interested parties and ensure that all development application information is filed online as required and subject to online public review and comment.

2. CodeNEXT shall reduce climate change, increase resilience, reduce the urban heat island effect, and preserve and restore our natural environment.

<input type="checkbox"/>	CodeNEXT shall, consistent with stated goals, require a safe, connected, and convenient pedestrian, bicycle, and transit transportation network in new development and redevelopment throughout the City and reduce our reliance on single-occupancy vehicles. ^v	
<input type="checkbox"/>	CodeNEXT shall require on-site green space and green elements in all new development and redevelopment, including in “missing middle housing,” ^{vi} for stormwater infiltration and protection of existing trees. The same tree protections that currently apply to commercial and multi-family zoned properties shall be extended to the “missing middle housing” to protect the existing tree canopy.	
<input type="checkbox"/>	CodeNEXT shall maximize protections for the environment and plan for healthy communities in redevelopment and greenfield developments, ^{vii} including preserving green space, ^{viii} planning for a network of parks and trails, and maintaining and improving the tree canopy. Achieving this goal will require cooperation with the surrounding jurisdictions.	
<input type="checkbox"/>	CodeNEXT shall, consistent with its stated goals, support and increase food producing spaces, like community gardens and farms that use sustainable methods, provided that these operations are consistent with local zoning and community agreements.	

3. CodeNEXT shall require that new and redevelopment mitigate and reduce flooding, runoff pollution, and downstream erosion. Flooding threatens lives, homes, and businesses. Developments that fail to capture their own stormwater impose real harm and costs on others by increasing the severity of floods, erosion, and pollution of creeks, rivers, lakes, and aquifers.

<input type="checkbox"/>	CodeNEXT shall, consistent with stated goals, require new and redevelopment to keep or return rainfall runoff to undeveloped ^{ix} levels of volume and intensity. “Fee-in-lieu” ^x for onsite flood mitigation should only be allowed in watersheds with excess flood mitigation capacity to fully accommodate increased flood flows from the proposed development.	
<input type="checkbox"/>	CodeNEXT shall, consistent with stated goals, require new and redevelopment to capture rainfall for beneficial reuse to the maximum extent practicable, using, among other strategies, green infrastructure that includes rain gardens, permeable pavement, green roofs, rain harvesting, bioswales, and disconnected downspouts.	
<input type="checkbox"/>	CodeNEXT shall, consistent with stated goals, maintain and strengthen the Watershed Protection Ordinance which, among other things, improves stream buffers, floodplain protections, and erosion hazard provisions for much of East Austin and Suburban watersheds. The voter-approved Save Our Springs Ordinance as well as the SOS redevelopment ordinance shall be maintained in all respects.	
<input type="checkbox"/>	CodeNEXT shall, consistent with stated goals, encourage compact and infill new and redevelopment in order to help reduce sprawl, protect our natural areas, and reduce overall impervious cover while respecting neighborhoods, floodplains, and stream buffers.	
<input type="checkbox"/>	CodeNEXT shall utilize a flood capacity analysis for each individual watershed to inform the CodeNEXT mapping process.	

4. CodeNEXT shall protect and respect neighborhoods.

<input type="checkbox"/>	CodeNEXT, consistent with stated goals, shall promote neighborhood self determination and respect neighborhood plans, future land use maps, and the wishes of neighborhoods seeking to update or modify or create their own neighborhood plan.	
<input type="checkbox"/>	CodeNEXT, consistent with stated goals, shall refrain from a blanket application of a ¼-mile, ½-mile, or any set distance “transition area” ^{xi} between activity corridors and neighborhoods.	
<input type="checkbox"/>	CodeNEXT shall respect and reinforce “compatibility standards” ^{xii} in the new code by maintaining the intent and effect of current ordinances protecting single-family zoned ^{xiii} properties from incompatible features and uses of commercial and multi-family development.	
<input type="checkbox"/>	CodeNEXT shall protect and preserve existing affordable multifamily housing.	
<input type="checkbox"/>	CodeNEXT shall maintain the existing proportion of family-suitable housing in the housing mix, in order to retain intergenerational communities, as well as facilities and services for seniors and young families. ^{xiv}	

5. CodeNEXT shall promote affordable housing for all Austin residents, especially for low income residents.

<input type="checkbox"/>	CodeNEXT shall require growth to pay for itself by requiring the consistent payment of utility and transportation impact fees, reasonable permitting fees, and other fees to prevent current residents and taxpayers from bearing the direct or indirect costs of new development.	
<input type="checkbox"/>	CodeNEXT, or parallel ordinance measures, shall ensure we meet the City’s affordable housing goal of 45,000 affordable dwellings ^{xv} in ten years for residents making less than 60% MFI ^{xvi} distributed throughout the city and on preferred transit lines, by assessing an affordable housing linkage fee on all new development.	
<input type="checkbox"/>	CodeNEXT shall establish broad-based, low-rate affordable housing linkage fees, because such fees have the capacity to provide substantially more revenue for affordable housing at less than 60% MFI, and diverse housing types, including for families and intergenerational families. Additionally, linkage fees do not pit affordable units against green space, trees, flood control, or other environmental and community benefits that all residents should be able to access and enjoy.	
<input type="checkbox"/>	CodeNEXT shall discourage development that displaces residents from changing neighborhoods and encourage development that mitigates displacement.	

6. CodeNEXT shall support healthy and complete communities with adequate access to healthy food, physically active lifestyles and jobs that pay a living wage.

<input type="checkbox"/>	CodeNEXT shall, consistent with stated goals, facilitate “complete communities” ^{xvii} in both established and new developments, that include everything a family needs, including healthy food, parks and green spaces, and other amenities.	
<input type="checkbox"/>	CodeNEXT shall, consistent with stated goals, facilitate development throughout the City and along corridors that allows for reliable, accessible public transportation, active transportation, and connected publicly-accessible green spaces, including within transit plazas.	

Participating Groups and Individuals:

Clean Water Action

Flood Mitigation Action Group

GO! Austin/VAMOS! Austin

People Organized in Defense of Earth and Her Resources (PODER)

Save Barton Creek Association

Save Our City Austin

Save Our Springs Alliance

Sierra Club, Austin Regional Group

Southeast Combined Neighborhood Plan Contact Team

Standing Up for Racial Justice-Austin

Sustainable Food Center

Texas Chapter, American Society of Landscape Architects, Central Texas Section

Zilker Neighborhood Association

David King

Fred I. Lewis

Dr. Lauren Ross

Marisa Perales

Mary Ingle

Roy Waley

Ruthie Redmond

ⁱ “Affordable housing” is used here to mean housing that is affordable to residents making 30, 50, and 60% median family income (MFI), proportional and in abundance to the demand for it, including housing types for couples, families, and multigenerational families, and for owners and renters. In reality, affordable housing will only be achieved through government intervention as well as programs outside of the code. Density in and of itself does not automatically equate to affordable housing. “Affordable housing” is distinguished from “housing affordability” which is the ability of any given household to afford its housing costs, including rent or mortgage, transportation, and utilities.

ⁱⁱ “Environmental justice” is used here to mean the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Specific concerns here include industrial facilities that are harming parts of East Austin.

ⁱⁱⁱ Unlike other land use commissions, the CAG is an 18-member, especially diverse commission, appointed specifically to help facilitate community involvement throughout the CodeNEXT process.

^{iv} Specifically, upon release, one CodeNEXT draft shall be in “clean” form and one in traditional legislative format, showing additions and deletions, and shall further be accompanied with comprehensive derivation and disposition tables so that the new draft code shows where new sections were derived from the old code; and the old code is marked to show where sections were disposed to in the new draft code (or eliminated). This is essential for comparing the old code to the new code, and for interpreting the new code in future years. If comprehensive disposition and derivation tables are not provided at the release date, then all review timelines must be extended by the number of additional days it takes to provide the derivation and disposition tables.

^v Incentivizing pedestrian and bicycle trips also necessitates connectivity, moderate block sizes, and a mix of uses. Gated communities work against these goals and should not be permitted. Concentrating development within ½ mile of high frequency transit stops must also be a priority.

^{vi} “Missing middle housing” is used by the City of Austin to describe a range of housing types occupying the spectrum between detached single-family housing and large multi-family housing products, providing a range of housing types with incremental increases in density ranging from accessory dwelling units, duplexes, triplexes, fourplexes, courtyard housing, bungalow courts, townhomes, multiplexes, live/work units, studios or “micro units” as well as those offering larger units, with multiple bedrooms for family households.

^{vii} “Greenfield development” is used by the City of Austin to mean development that occurs in previously undeveloped areas. We want to avoid sprawling growth, but we recognize that before more greenfield areas are developed, it is important that our code ensures this development is controlled and responsible.

^{viii} Green space is one type of open space. The City of Austin defines open space as public open space and private open space with “public” referring to parks and “private” referring to the required amount of open space on private property. The amount of private open space required will vary by transect zone. Private open space will be a critical element to track in the new code for tree protection and stormwater infiltration.

^{ix} “Undeveloped levels” is used here to mean rainfall runoff levels equivalent in volume and intensity to those on an undeveloped grassland site. “Undeveloped” is used instead of “pre-developed” to clearly distinguish the difference between completely undeveloped land and the property prior to the proposed new or redevelopment, which could already contain some level of development.

^x “Fee-in-lieu” is a system, when instead of providing certain infrastructure directly on the site being developed, the City allows the developer to pay a fee as a substitution. The City would collect that fee, and in the case of flood mitigation infrastructure, would put it toward a different or a regional project.

^{xi} “Transition area” or “transition zone” is used by the City of Austin to mean the area between existing single-family zones and activity corridors as identified in *Imagine Austin*, where much of the “missing middle housing” will, by its size and form, provide compatibility between commercial and large multi-family uses on activity corridors and the small-scale residential you find in existing single-family zoning.

^{xii} “Compatibility standards” is used here to mean those restrictions that help protect older neighborhoods by ensuring new construction and redevelopment is compatible in scale, design, and use with existing neighborhoods, such as minimum setbacks and maximum height limits.

^{xiii} “Single-family zoned” is used here to mean the types of housing available in our current single-family zoned properties, which can include detached single-family homes, duplexes, townhouses, condominiums, and accessory dwelling units (ADUs).

^{xiv} In harmony with CodeNEXT, the City shall adopt policies that raise the living standards for low- and middle-income families and protect established neighborhoods, homeowners, and renters from gentrification and excessive cost increases. .

^{xv} “Dwellings” is used to here to demonstrate that we believe our city’s affordable housing goals should include housing of all types, from multifamily to detached single-family homes, for both renters and owners.

^{xvi} City of Austin, Draft Strategic Housing Plan (Dec. 5, 2016) (passed Housing Committee of Council on Dec. 9, 2016).

^{xvii} “Complete community” is used by *Imagine Austin* to mean a community that “provides access by foot, bike, transit and car to jobs, shopping, learning, open space, recreation, and other amenities and services.” We include safety as part of access, and healthy food as an amenity.