

April 24, 2018



101 Reasons (and Counting) Why CodeNEXT Is Beyond Repair

"This is, without a doubt, the worst code I have ever seen in my life." – Jim Duncan, former President of the American Planning Association

Regarding the Comprehensive Plan and Version 3 of CodeNEXT:

1. CodeNEXT is a revision of Austin's Land Development Code that is supposed to implement *Imagine Austin*, the City's comprehensive plan. But, the City has seized this opportunity to use CodeNEXT not as an implementation tool but as a new planning exercise – one which inappropriately deviates from the comprehensive plan.
2. CodeNEXT is not supported by the communities it impacts. It promotes land use patterns inconsistent with *Imagine Austin* and actively seeks to override community-driven goals and decisions reflected in neighborhood plans.
3. *Imagine Austin* acknowledges that it does not supersede neighborhood plans but rather recognizes and embraces them (p. 220 IACP). CodeNEXT takes a different approach. It removed the Neighborhood Plan Overlay Zone, the implementation tool for neighborhood plans, and it ignores Neighborhood Plans in its mapping decisions.
4. *Imagine Austin* explicitly recognizes that neighborhood plans are integral components of the City's comprehensive plan and provide guidance on which "parcels are appropriate for redevelopment." (p. 219 IACP). CodeNEXT instead proposes actions in direct conflict with the adopted plans (e.g., facilitating the location of bars and cocktail lounges contrary to the Govalle /Johnston Terrace Neighborhood Plan).
5. *Imagine Austin* provides that the land development code should be measured by its ability to preserve neighborhood character, by its consistency with neighborhood plans and by its impact on neighborhood affordability and stability (p. 207 IACP). CodeNEXT would change neighborhoods in ways that violate their plans, make them less affordable and incentivize the displacement of their families.
6. *Imagine Austin* provides: "Where a small area plan exists, [zoning] recommendations should be consistent with the text of the plan and its Future Land Use Map or equivalent map (if one exists)." (p. 220 IACP). Zoning decisions within CodeNEXT bear no relationship to the neighborhood plans.

7. *Imagine Austin* provides: “The existing neighborhood and area plans were crafted within context of this code and decisions were reached based upon the assumptions of the continued utilization of its provisions. This includes elements of the Land Development Code that are not specifically addressed in neighborhood and area plans but on which decisions were based (e.g., compatibility standards). The vision of the comprehensive plan can be achieved by retaining these protections and the approaches taken in the neighborhood and area plans”. (p. 207 IACP). CodeNEXT blatantly ignores this mandate. Examples include radically different compatibility rules, the deletion of Subchapter E (Commercial Design Standards) and Subchapter F (the McMansion Ordinance), the insertion of retail uses into neighborhood office districts, and the elimination or reduction of parking requirements for commercial and high-density residential uses even in areas with single-family residences and schools.
8. *Imagine Austin* provides: “New and redevelopment along corridors and at the edges of centers should complement existing development such as adjacent neighborhoods (p. 109 IACP). CodeNEXT would decimate existing compatibility standards and increase the height of new structures by over 40% on many corridors. Any Council-created “transition zones” that serve to redevelop portions of existing neighborhoods to complement the corridors would stand this provision on its head and blatantly violate the comprehensive plan.
9. *Imagine Austin* provides that “sustainability means finding a balance among three sets of goals: 1) prosperity and jobs, 2) conservation and the environment, and 3) community health, equity, and cultural vitality.” (p. 7 IACP). CodeNEXT tips the scale against existing residents and conservation and in favor of wealthier new residents. The City’s consultants based the CodeNEXT map on a tool that prioritizes the profit that investors can make by demolishing and replacing homes with more expensive ones.

Regarding the Foundation of Version 3 of the Draft Code:

10. The demographic foundation of CodeNEXT is flawed. The City’s Strategic Housing Blueprint says that Austin needs 135,000 new housing units over the next 10 years. CodeNEXT consultants go even farther by claiming that Austin needs capacity for 280,000 new housing units in the next 10 years. Yet, as pointed out by the City’s demographer, the correct number is 80,000 units. Why the difference? The Housing Blueprint uses a regional number covering 5 counties. The City’s own experts admit that there is sufficient zoning capacity today to meet the City’s actual demand.
11. An assumption underlying CodeNEXT is that increasing density creates affordable housing, but research found that 85% of dense, mixed-use urbanist developments were unaffordable for those making the median income (*Affordability in New Urbanist Development: Principle, Practice, and Strategy* by Emily Talen, *Journal of Urban Affairs*, 2010, pages 489-510).
12. CodeNEXT is not empirically based. It makes assumptions about the cause and effect of zoning, land use and development, market activity, demographic conditions, and human conduct that have no empirical basis, are inconsistent with conditions on the ground and defy common sense and real-life experience.

Regarding the Process of Creating Version 3 of the Draft Code:

13. CodeNEXT has been assembled out of public view by various committees of City staff and outside consultants.
14. CodeNEXT staff has issued three different versions of CodeNEXT without accurately detailing the differences between the three drafts, forcing residents to start over each time.
15. On April 20th, 2018, City staff dumped on the Land Use Commissions over 400 pages of addenda and errata (plus a new map!) within days of the scheduled public hearings for the Land Use Commissions – making those trying to understand and comment on it feel like they are riding a runaway train without brakes.
16. CodeNEXT staff has refused to detail the differences between the current code and the third version of its proposed, sweeping rewrite, making it impossible for residents to understand its full impact and what may have been omitted.
17. CodeNEXT is still riddled with errors and inconsistencies. For example, Building Articulation for New Construction is in conflict (direct opposite) with illustration in Zone R3C (Table 23-4D-2120(C)). Zone R4A allows 8 units with AHBP, but footnote limits units to 4. (Table 23-4D-2190(A)).
18. The City has rejected numerous requests to slow the process down and provide an adequate period of time to for average citizens to understand the proposed code and its implications for the City as a whole and their neighborhoods in particular.
19. The City's public information communications regarding CodeNEXT are one-sided sales presentations composed of slick brochures and power points that paint a rosy picture while utilizing euphemisms like "right-sizing" instead of "up-zoning" and "incentivizing" instead of "coercing."
20. Literature produced by the City to explain CodeNEXT Version 3 provides information that is frequently incomplete, wrong, or misleading. For example, City literature describes R2C as having 45' wide lots of 5,000 sq. ft., when, in fact, the minimum lot size for R2C is 25' wide of 2,500 sq. ft. Throughout the process the City refused to answer residents' questions posted online.
21. CodeNEXT is set to rezone residents' property without their consent and over their protest, without the opportunity to trigger a requirement for a supermajority approval of Council as envisioned by state law.
22. By rezoning property en masse, the City has deprived residents of notice and hearings otherwise extended to individual zoning cases.
23. The public hearing process will provide residents with three minutes to speak on 1500+ pages of code (and 400+ pages of addenda and errata and a brand-new map) involving new proposed zoning districts for every single parcel of land in their neighborhoods and throughout the City. This process has the effect of minimizing, if not eliminating, the ability of residents to affect change if they disagree with the staff recommendation.

Regarding Citizen Input into Version 3 of the Draft Code:

24. CodeNEXT has been written in a non-transparent process without meaningful input from the people most affected by it.
25. CodeNEXT staff orchestrated the early dismissal of the Code Advisory Group before the draft code could be vetted by its citizen panel, leaving the task to the illegally constituted Planning Commission which has more members directly or indirectly connected with real estate and land development than allowed by the City Charter.
26. Resident-initiated text and map comments were not acknowledged, and no feedback was given as to whether they were accepted or not. Residents found that their text and map comments were ignored without explanation in subsequent versions of CodeNEXT.

Regarding Citizen Participation under Version 3 of the Draft Code:

27. CodeNEXT creates new Minor Use Permits (utilizing the innocent-sounding word “minor”) which radically restricts rights of public participation in land use decisions by giving administrative discretion to the planning director to allow an otherwise prohibited land use. The neighbors have the burden to appeal the decision within a matter of days, do not get a hearing before the City Council (their elected representatives), and have no petition rights. Examples of what can qualify as a “minor” use in some zones are: medical offices, restaurants, and retail stores.
28. CodeNEXT has lowered the standard in many zoning districts and eliminated neighbors’ petition rights by requiring only a conditional use permit (CUP) or an administrative minor use permit (MUP) for an array of land uses that today need a zoning change. There are no petition rights available in connection with CUPs and MUPs. Examples of uses that require only a conditional use permit in some zones are: bars, banks, restaurants microbreweries, medical offices, liquor stores, retail, and commercial services.
29. CodeNEXT grants the planning director authority to “relax” development regulations such as building coverage or setback by up to 10 percent and height up to 5 percent in the case of construction errors (23-2F-2040).

Regarding the Equity of Version 3 of the Draft Code

30. CodeNEXT does not address future displacement of low- and modest-income residents that it causes.
31. CodeNEXT has not taken into consideration the analysis by the City’s Equity Office on its impact on diverse populations.
32. CodeNEXT does not forecast the accelerated exodus of children from Austin’s public schools as the result of new high-density housing that caters to singles and couples, not families.
33. According to a CodeNEXT consultant, “The goal in our market-based system . . . [is to] deliver as many market-rate units to the top income strata as we possibly can at any time, and over time, as those become older, become more obsolete over time, they become the affordable housing of tomorrow.” (*See Public Notice: People’s Housing Justice,*

<https://www.austinchronicle.com/news/2018-04-13/public-notice-peoples-housing-justice/>). In other words, CodeNEXT is designed for the highly profitable housing market catering to the top income strata with the promise that, if in a generation or two that housing becomes obsolete, it can be handed down to any working families remaining in the City. This is CodeNEXT's affordable housing plan.

34. CodeNEXT does not incorporate the recommendations of the People's Plan, which has been recommended for immediate action by the Anti-Displacement Taskforce.

Regarding Displacement Under Version 3 of the Draft Code

35. CodeNEXT would exacerbate Austin's historic displacement of people of color, seniors and lower-income families. Far from redressing gentrification and displacement, CodeNEXT would fuel these runaway fires.
36. Bulldozing existing, more affordable housing to make way for new housing targeting wealthier people inevitably increases property values and rents. This gentrification has a contagious, rippling effect on property tax valuations throughout surrounding neighborhoods.
37. CodeNEXT authorizes 2,500 square foot lots in many zoning districts. In 1999, the Chestnut Neighborhood Plan was adopted which allowed for 2,500 square foot lots for single-family homes, and 3,500 square foot lots for urban homes with ADUs, based upon a promise of affordability for the Chestnut Neighborhood residents if they adopted these rules. These are the same lot sizes now proposed for much of the single-family residential zones in the whole city of Austin. Between 2000 and 2010, Chestnut's **Black population decreased by 66%, Latino population decreased by 33 %, and White population increased by 442%**.
38. CodeNEXT calls for relocation assistance for a multi-family redevelopment only when there is a rezoning that has to go before the City Council (23-3E-3050). However, CodeNEXT maps most existing older apartments in the city to much higher unit limits as an automatic right so no rezoning will be required. This shortens the lifespan of existing, more affordable housing and increases the likelihood that less-wealthy families will be forced to move out of our city, without relocation assistance.

Regarding the Affordability of Housing Under Version 3 of the Draft Code

39. The primary assumption underlying CodeNEXT is that increasing density creates affordable housing. Extensive research has found that the opposite is true. (See, *Affordability in New Urbanist Development: Principle, Practice, and Strategy* by Emily Talen, *Journal of Urban Affairs*, 2010, Pages 489-510; Leo Goldberg, MIT thesis, 2015, *Games of Zone:; Neighborhoods, Rezoning and Uneven Urban Growth; see also, every dense city in America*).
40. "Missing middle" is a marketing term that emphasizes building townhomes and multiplexes – not providing truly affordable housing. "Missing middle" is a housing type, not a price point. Builders and investors supply and build for those buyers who can pay the highest prices. That's true now and it would still be true after CodeNEXT.

41. Adding “Missing Middle” housing to existing neighborhoods presupposes that the people who already live there would have to move somewhere else. Many families who live in the targeted neighborhoods bought their homes decades ago and are already struggling to keep up with rising property values (i.e., taxes). Providing more investor-incentive to buy up these homes will ensure that these families have no future in Austin.
42. Citywide, CodeNEXT would make it easier to subdivide existing lots on the assumption that smaller, cheaper units will be built. Austin’s real-world experience indicates that developers are more likely to build expensive housing on the small lots.
43. CodeNEXT zoning increases population density on most residential property in Austin. *“A defining feature of gentrification is that it maximizes profits by constraining the housing choices and social possibilities of its target consumers and silencing the people being displaced. The municipal government has acted as a dishonest broker in these transactions, displaying contempt for families living in gentrifying areas **while encouraging zoning changes that have increased population density and quickened demographic shift.**”* (See *The Pros and Cons of Gentrification* by Craig Wilder, MIT, <https://www.nytimes.com/roomfordebate/2014/04/13/the-pros-and-cons-of-gentrification/tone-down-corporate-friendly-policies>).

Regarding the Density Bonus Program Under Version 3 of the Draft Code

44. CodeNEXT’s new density bonus program will not work because it is Rube Goldberg-like in its complexity. Since density bonus programs in Texas must be voluntary, developers are not likely to participate in a convoluted, cumbersome program and seek zoning changes to their property.
45. The City’s new density bonus program was supposed to be simplified because the City has serious problems administering the current program. CodeNEXT’s proposed density bonus program has at least 6 separate programs (i.e., the general program, Downtown, University Neighborhood Overlay, PUD, SMART Housing and Former 25 Zone), multiple development bonus options (e.g., units in a main building, units per acre, floor-to-area ratio and height), and dozens of area zones with different density bonus numbers (23-3E-1020—23-3E-1040). On top of all of this, there are also additional adjustments, variances and waivers that may be obtained through various processes. We know of no city that has such a complex program, and it will never work in the real world.
46. The CodeNEXT density bonus program allows too much administrative discretion, which creates uncertainty of outcomes and applicability (see, e.g., 23-3E-1020, 23-3E-1030, 23-3E-1050, 23-3E-1070, 23-3E-2060, 23-3D-4050).
47. The proposed density bonus program will not benefit those most at risk for displacement, such as low-income families, people of color, and families with children. Given the history of the current program failing to serve their needs, there is no reason to believe the proposed program, which is voluntary and attached to market-driven forces, would do any better. A recent survey of 6,500 “affordable” Austin units created under established density-bonus programs found that they provide housing for only 46 Austin ISD students, including just 16 Hispanic students and a lone African-American.

48. The density bonus program would provide income-restricted housing for a fraction of the residents forecasted to be displaced. According to the CodeNEXT consultants, CodeNEXT would only produce approximately 6,600 income-restricted housing, which is 0.05% of the bonus units generated. This pales in comparison to the potential of tens of thousands of residents being displaced from rising property values (i.e., taxes) and rents.
49. CodeNEXT lacks strategic guidance to improve enforcement of the density bonus program. Because the proposed program is incredibly complex and expanded in application, it is likely that enforcement may even be less effective than the poorly enforced program now.
50. The Downtown density bonus program has the wrong goals. It allows more than 10 different types of community benefits other than affordable housing, including green building, cultural space, music venues, historic preservation and on-site day care. While these uses are needed, they do not meet the urgency and necessity of providing immediate affordable housing. The owner-occupied affordable housing is for 120% MFI, which is not appropriate for a low-income affordable housing program and is a misdirected use of limited resources. The City's limited resources should be focused on those most in need.
51. CodeNEXT's affordable housing goals are too broad; it seeks to provide both moderate and low-income affordable housing, which is unattainable (23-3E-1010(A)). The City's density bonus program should focus exclusively on affordable housing to support low-income households earning at or below 60% Medium Family Income (MFI). Under current conditions, Austin is short over 40,000 low-income units, and the impacts of CodeNEXT's prioritization of un-affordable housing are greatest on low-income residents.

Regarding the Environmental Impacts of Version 3 of the Draft Code:

52. CodeNEXT would make it easier for developers to get "vested rights" (i.e., applications by developers under older, less restrictive code provisions) by putting no limit on the ability developers to request a "reconsideration" each time their application is denied. During the reconsideration process, developers' attorneys are given unfettered access to City staff and the legal department, often resulting in special accommodations and deals being worked out behind closed doors.
53. CodeNEXT removes the conservation single-family use, which was developed to provide a way to cluster lower-density single-family development in environmentally sensitive areas and maximize the amount of undisturbed land.
54. Even though the CodeNEXT's consultants forecast that a majority of the new growth in Austin will occur on "greenfield sites", CodeNEXT fails to develop new standards that would discourage standard, low-density suburban-style subdivisions on greenfield sites. Relying on the redevelopment of existing properties will only force existing residents to move farther out--exacerbating sprawl.
55. CodeNEXT expands the ability of developers to get variances and waivers to the City Code, including some environmental regulations, making it more difficult to ensure that new and re-development reflects our City's environmental standards (23-3D-2).

56. CodeNEXT removes the site plan review process for new developments between 3 and 6 units, lowering the standard of review for environmental regulations in areas outside the Barton Springs zone (23-2A-3040).
57. CodeNEXT would dramatically impair the City's tree canopy by providing sufficient profit incentive for developers to subdivide and scrape established lots in existing neighborhoods and, for lots less than 30-feet in width, allowing developers to install up to 100% impervious cover in front yards.

Regarding the Water Quality / Quantity Impacts of Version 3 of the Draft Code:

58. CodeNEXT does not incorporate the code amendments recommended by the Water Forward task force, which would ensure that new development and redevelopment incorporate water-efficient landscaping, plumbing and other on-site uses of stormwater and greywater.
59. Instead of requiring rainwater harvesting for new development, CodeNEXT relies primarily on incentives by excluding ground level rainwater cisterns from impervious cover calculations (23-3D-3040).
60. CodeNEXT would permit streets, driveways, and trails to cross Critical Water Quality Zones as determined necessary to support a particular street design (23-3D-4050).
61. Despite near unanimous consensus from environmental stakeholders, the threshold for requiring water quality improvements for new developments was not reduced in CodeNEXT from 8,000 SF to 5,000 SF (23-3D-6010).
62. While some progress would be made by requiring the use of green stormwater control measures for some developments, fee-in-lieu options and threshold-based exemptions may negate significant beneficial impacts (23-3D-6030).

Regarding the Parkland Dedication Impacts of Version 3 of the Draft Code:

63. CodeNEXT authorizes a Fee in Lieu of Parkland Dedication for developments on less than six acres, which is counterproductive to our goal to provide pocket parks of 0.25 acres within the urban core (23-3B-3010).

Regarding the Open Space Impacts of Version 3 of the Draft Code:

64. CodeNEXT allows for decreases in "Common Open Space" requirements through an alternative compliance process, making it less likely such open space will be provided. (23-2F-2050).
65. Despite a requirement that every site larger than one acre provide "Common Open Space" in an amount of at least 5% of the gross site area of the site (23-4C-1010), CodeNEXT makes this provision only applicable to sites larger than two acres throughout the zoning chapter (*See, e.g.,* Table 23-4D-2100(G)).
66. Under CodeNEXT, no Civic Open Space is required for a site that is smaller than 8 acres and less than a quarter mile of a one-acre park (23-4C-1040).

Regarding the Public Safety (Flooding) Impacts of Version 3 of the Draft Code:

67. Residential House Scale Zone lots that are less than 30 feet wide can have 100% impervious cover in the front yard (*See, e.g.,* Table 23-4D-2100(G)). This will exacerbate flooding and drainage issues along residential streets by removing water-buffering vegetation and trees.
68. The new requirement for redevelopments to improve stormwater flows to not exceed undeveloped peak runoff only applies to commercial and multi-family sites and fails to address runoff volume – which has a major impact on our drainage infrastructure needs (23-10E-3010).
69. The CodeNEXT map increases density and provides additional economic incentive for developers to maximize the impervious cover entitlements in areas with localized and federal flood problems. The failure to prohibit “residential heavy” (3 to 6 units) in Localized Flood Identified Problem Areas will result in an increase in the actual built impervious cover and exacerbate local flooding.
70. The City’s studies on flooding and drainage concerns that result from greater entitlements and densities neglect to consider the impacts of the incentives to maximize impervious cover entitlements on each lot. A City analysis of impervious cover shows that CodeNEXT would allow as much as 36 percent more land within the Shoal Creek and Williamson Creek watersheds (areas of known concern) to be developed with impervious cover – potentially diverting more water into those flood-prone creeks.
71. The CodeNEXT proposal to rely on an engineer’s certificate does not require meaningful engineering analysis, including a site drainage survey. This approach would be difficult to monitor and enforce and is not a reliable substitute for limiting built impervious cover (and the resulting runoff) especially in Localized and Federal Flood Problem areas.
72. For the construction, remodel, or expansion of a one-to-six-unit property, an engineer’s certification that any changes to existing drainage patterns will not negatively impact adjacent property ignores the impact on other properties downstream or not immediately adjacent, and the impact on the City’s drainage infrastructure (23-2A-3030 (B)(2), 23-2A-3040 (B)(2)).

Regarding the Parking Impact of Version 3 of the Draft Code

73. CodeNEXT radically reduces or eliminates on-site parking requirements even near residential neighborhoods. The neighborhood streets become an extension of the parking lot – in effect subsidizing development.
74. CodeNEXT cuts residential parking requirements in half, even as it increases the number of dwellings and residents per lot. Today an accessory dwelling unit (ADU) needs one parking space in most locations and no parking spaces in some areas. CodeNEXT eliminates the parking requirement for ADUs in all locations.
75. Even as CodeNEXT up-zones commercial property near neighborhoods – and therefore the potential number of vehicles and vehicle trips – it decreases the required parking for most uses, sometimes to the point of eliminating it altogether. Neighborhood streets become constricted, congested and less safe for residents.

76. The proposed parking reductions for commercial uses including, for example, bars, are very substantial (up to 100%). These reductions will constrict and congest residential roads designed for lower traffic volumes and parking loads, with parked cars, higher traffic volumes, and vehicles circulating, looking for parking.
77. CodeNEXT allows *additional* cumulative reductions (on top of the base reductions) up to 60%. Because these reductions are automatic, no consideration is given to the traffic and parking conditions in the immediate area.
78. The Director of Planning, whose decision is unreviewable, may eliminate the on-site parking requirement altogether by authorizing off-site parking 1,000 feet away without considering either the impact of the off-site parking facility or the absence of onsite parking on traffic patterns and nearby residents.
79. Without notice to the public, the opportunity for public input or the availability of an appeal, the Director can reduce the parking requirements (with no stated limitation) for an applicant who submits a Transportation Management Plan. And, CodeNEXT does not afford the public the opportunity to offer information as to the accuracy or efficacy of the Plan.
80. The proposed parking standards are not intended to meet the parking needs of residential and commercial uses. In fact, they are specifically designed to fall short of those needs in order to congest the streets, frustrate drivers and coerce people not to drive.
81. CodeNEXT's proposed densities are not synced with a regional traffic plan, making commuter traffic only worse.
82. There has been no analysis of the impact of reductions of the parking requirements on pedestrians along streets without sidewalks. When such streets are over-parked, pedestrians will be forced further into the center of the roadway.

Regarding the Impact of Version 3 of the Draft Code on Public Safety

83. CodeNEXT has not analyzed the impact of density on response times and accessibility of fire and emergency vehicles.
84. CodeNEXT does not incorporate all of the recommendations of the "Firewise" initiative and would allow for significant increases in density in areas that are at medium, high and extreme fire risk.

Regarding the Impact on Schools of Version 3 of the Draft Code:

85. Citywide, CodeNEXT would intensify commercial uses around schools. The new code would eliminate existing commercial zoning categories (such as NO, LO, LR, GR and CS) and replace them with Mixed Use (MU) and Main Street (MS) zones. By eliminating NO and LO zones, the new zones would permit high-traffic retail uses in neighborhoods and near schools, where they now are prohibited.
86. CodeNEXT ignores the resolution of a unanimous Austin ISD School Board to implement policies such as (i) full on-site parking around neighborhood schools to lessen street congestion, promote student-pedestrian safety and allow parking for parents, and (ii) preserving the existing stock of housing types, such as single-family homes and duplexes, which have a higher yield of

students.

Regarding the Impact on Neighborhoods of Version 3 of the Draft Code:

87. Citywide, CodeNEXT would transform the character of neighborhoods from what they are today.
88. CodeNEXT eliminates the Conditional Use Combining District which promotes land use compatibility and facilitates compromise in zoning cases. CodeNEXT seeks to phase out those compromises that endure today, leaving the zoning but removing the compatibility.
89. Citywide, CodeNEXT reduces lot size in residential house scale zones: R1 allows lots as small as 5,000 sq. ft., R2 and R3 allow lots as small as 2,500 sq. ft., and R4 allows lots as small as 1,800 sq. ft. For R3C, R3D and R3E, 4 units could be built on a 7,000 square foot lot (a Single-Family Attached and 2 ADUs) after resubdivision.
90. Under CodeNEXT, thousands of unsuspecting residents living in nonconforming structures would be at risk of having to spend time and money to bring their properties into compliance, and in some cases this might not be physically or financially possible.
91. CodeNEXT R zoning has been expanded to 17 different classes, for a total of 64 subclasses, with distinct rules. Current code has 8 single-family/duplex/townhomes zoning classes.
92. Existing affordable apartment housing in neighborhoods are up-zoned in CodeNEXT two-to-three times the existing unit limit, with minimal affordable housing (2%) required in some cases.
93. Citywide, CodeNEXT would intensify commercial uses around neighborhoods and schools. By eliminating NO and LO zones, the new zones would permit high-traffic retail uses in neighborhoods and near schools, where they now are prohibited. To compound the problem, these commercial uses would not be required to provide adequate on-site parking.
94. CodeNEXT eliminates the current six commercial zoning categories closest to neighborhoods, NO, LO, GO, LR, GR, and CS, and replaces them with eleven Mixed Use and seven Main Street zones. These new zones allow incompatible higher traffic-generating uses (e.g., banks, restaurants, commercial services, doctor's offices) – even near residences and schools – where they do not exist today.
95. CodeNEXT broadly authorizes or facilitates the location of bars, bar districts, and micro-breweries on commercial properties near – even adjoining – residences without a zoning change, petition rights and public hearing process that would be required today.
96. Cooperative Housing would be allowed in current single-family neighborhoods. While the definition of Cooperative Housing in CodeNEXT is incomprehensible, it is at least this: a residential project of three or more units, in conflict with the R2C zoning category of a maximum of 2 units per lot.

Regarding Accessory Dwelling Units (ADUs) and Accessory Uses in Version 3 of the Draft Code:

97. Accessory Dwelling Units (ADUs) would be allowed in most residential zoning categories without meaningful input from residents whose neighborhoods would experience them for the first time.

98. The allowable square footages for ADUs are based on the size of a lot with a sliding scale up to 1,100 square feet. The City has not used best practices for determining the size of ADUs.
99. ADUs should be an element of the neighborhood planning process where residents decide what is best for their area and whether they are consistent with the fabric of that area.
100. The City has disregarded deed restrictions with its citywide zoning for ADUs. ADU placement and its impact on the surrounding properties must be scrutinized more carefully.
101. In CodeNEXT, an Accessory Use (not accessory dwelling) in a residential district allows for a Guest House as an Accessory Use. The guest house must be located on a lot of 10,000 sq. ft. and occupied by non-paying guests or family. It is not clear if this allows the construction of a unit on the property in addition to an ADU.

Regarding the Impact on Compatibility Standards in Version 3 of the Draft Code:

102. CodeNEXT reduces compatibility standards citywide. It would allow a 12-story high-rise to be built 100 feet away from a single-family home. All compatibility standards beyond 100 feet from a single-family residence have been gutted. Under current compatibility standards, a building of 120 feet would have to be 540 feet from a single-family home.
103. In CodeNEXT, compatibility only applies to homes on land in Residential House Scale Zones. No homes on land zoned for RM (apartments) or commercial zoning are protected. This reduces the protection provided today.
104. The removal of compatibility standards provides significant development entitlements without any exchange for community benefits. It's a "free" gift to developers, but the homeowners along corridors would pay the price.

Regarding the Impact of Expansion of Home Occupations in Residences in Version 3 of the Draft Code:

105. CodeNEXT's "Home Occupation" use category would allow homes to be used as a business if one employee, *not necessarily the homeowner*, lives on site; an administratively given Minor Use Permit (MUP) would allow retail sales of merchandise between 9 a.m. and 5 p.m. and up to 3 additional workers in the house; signs (3' x 12') would be allowed on the property; and there would be no limitation on vehicular traffic or advertising the business across Internet platforms. There is no on-site parking requirement. This would radically change neighborhood character.
104. The Home Occupation category contains a list of only 17 disallowed uses. Rules of interpretation would lead to the legal conclusion that all uses not on the list would be allowed.

Regarding the Case of Deed Restrictions Enforcement Burden and Version 3 of the Draft Code:

105. Many proposed CodeNEXT regulations and zoning designations directly conflict with enforceable deed restrictions, such as permitting secondary units in neighborhoods like Allandale, where deed restrictions permit only one single-family house per lot. Establishing conflicting regulations forces neighbors to rely on privately financed lawsuits and puts unwitting investors at risk of

significant liability. Maintaining development standards consistent with valid deed restrictions is within the City's discretion (if not obligation, at times) and would avoid unnecessary costs, confusion and conflict within the community.

Regarding Occupancy Limits and Version 3 of the Draft Code:

107. CodeNEXT would ignore policy of the City Council regarding occupancy limits in residential zones set in 2014 and reaffirmed by the Council in 2016 to limit occupancy in units built after March 31, 2014 to 4 unrelated adults per site.
108. CodeNEXT will be construed by stealth dorm builders to roll back the current rules covering duplexes built after March 31, 2014.
109. CodeNEXT would authorize the Land Use Commission to increase occupancy limits under a Conditional Use Permit (CUP), giving the opportunity to waive rules knowingly or negligently violated by builders or investors.
110. CodeNEXT's R2A, R2C, R2E, R3A, R3C, and R4C zones would allow 4 unrelated adults in a new structure. In these zones, in the case of Single-Family Attached with an ADU (the ADU has an additional occupancy of 2 above the allowed 4), CodeNEXT can be construed to allow 12 unrelated adults on a two-lot site created by dividing a single lot that under current code would be limited to 4 unrelated adults.
111. CodeNEXT's R2B, R2D, R3B, R3D, R4A, and R4B zones would allow 6 unrelated adults in a structure. In these zones, in the case of Single-Family Attached with an ADU (the ADU has an additional occupancy of 2 above the allowed 4), CodeNEXT can be construed to allow 16 unrelated adults on a two-lot site created by dividing a single lot that under current code would be limited to 4 unrelated adults.
112. R3C zones would allow up to 24 unrelated adults on some "cottage court" sites. R3D zones would allow up to 36 unrelated adults on some cottage court sites.

Regarding the Impact of Relaxed Special Zoning for Bars in Version 3 of the Draft Code:

113. CodeNEXT would facilitate locating bars, bar districts and microbreweries near residential neighborhoods without the zoning changes required today. Required parking is cut for these uses thereby exacerbating the impact.

Regarding the Expansion of Adult Entertainment Zones in Version 3 of the Draft Code:

114. The CodeNEXT Map permits "adult entertainment" establishments (adult movie theaters, book stores, novelty shops, etc.) near single-family residential areas where they are not currently allowed (for example in office-warehouse districts).
115. Adult entertainment is allowed in MU4B, MU5B, CC, DC, IF, IG, IH, and there is no longer a distinction between those establishments with and without alcohol.

Regarding the F25 Designation in Version 3 of the Draft Code

116. The F25 Zone is governed by a totally distinct set of zoning rules independent of CodeNEXT. This is poor planning policy which largely results from CodeNEXT's improvident elimination of conditional overlays. The City has stated its intention to maintain F25 zoning only as a transition tool. It is clear that it intends to phase out conditional overlays in F25 zones, but how and when has not been announced, leaving residents in these areas in legal limbo.

Regarding the Infrastructure Necessary to Support Version 3 of the Draft Code

117. The CodeNEXT process has not addressed the infrastructure needs caused by the redevelopment it intends to encourage, such as water, wastewater, drainage, sidewalks, streets, and roads.

Regarding the Waterfront Overlay in Version 3 of the Draft Code

118. Despite the City convening a special task force of diverse stakeholders in 2008 to build consensus on protections of Lady Bird Lake through the "waterfront overlay", CodeNEXT makes several amendments that would erode and override the delicate compromises reached by task force members (23-4D-9140).

Regarding the Tax Impacts of Version 3 of the Draft Code:

119. CodeNEXT will inflate property taxes. The CodeNEXT "Report Card" shows that Version 3 will increase property tax revenue per acre (which is a function of assessed property values) by 213% through up-zoning. By increasing real estate property right "entitlements," it simultaneously would increase citywide densities and tax assessments. More units per lot boost valuations. It has been proven time and again.

Regarding the Completely new Sections in Version 3 of the Draft Code:

120. The third draft of CodeNEXT "swapped out" the entire Transportation Chapter, and even the Chair of the Planning Commission, as late as this month, admitted that he had trouble understanding the latest rewrite. (<https://www.austinchronicle.com/news/2018-04-06/commissioners-hash-out-codenexts-mobility-details/>).

Regarding the Mapping of Version 3 of the Draft Code:

NOTE: The following comments are on the new map released to the land use commissions after business hours on Friday, April 20, 2018. It is grossly unreasonable to expect the public (or even the land use commissions, for that matter) to digest and comment on a brand-new zoning map of the entire City in

the 7-day period ending between the release date and the first public hearing on Version 3. On extremely short notice, here are some comments and highlights:

121. CodeNEXT's designation of zoning districts is entirely inconsistent from lot-to-lot, block-to-block and neighborhood-to-neighborhood. The only consistent pattern is that the map is designed to maximize developer profits by increasing incentives to raze single-family homes and replace them with more units that increase profits, densities, and taxes.
122. CodeNEXT up-zones most lots citywide. Much of the current SF-3 zoning has been converted to R2C, permitting the resubdivision of lots to as low as 2,500 square feet, which is less than half of the current 5,750 sq. ft. minimum lot size.
123. CodeNEXT up-zones commercial property on most arterial corridors by increasing height limits from 25'-60' to as much as 85', and by removing any FAR (Floor-Area Ratio Constraints) in the MS categories.
124. CodeNEXT removes office zonings at all levels, so NO, GO and LO (the current office zoning districts) have all been converted to categories that include additional uses that have different operating characteristics, including more traffic trips than offices, such as restaurants, retail and bar/micro-brewery. This is important because office zoning has often been used as a buffer between residential uses and more intense commercial uses.
125. The CodeNEXT map is replete with instances of individual properties currently zoned single-family being **up-zoned** or **spot-zoned** to more intense zones. In some cases, properties have on them longstanding nonconforming uses. For example, these spot-zoned lots can be found in the middle of neighborhoods currently zoned as SF-3. Rather than uniformly map a street or neighborhood as R2C while maintaining these nonconforming uses, CodeNEXT rezones these lots to zones that are often more intense than the existing use, thereby destabilizing the block and incentivizing demolition and redevelopment with new higher intensity that is incompatible with the neighborhood. Here are some examples:
 - **East Austin** 2nd and San Saba R4A in R2C zone on current Sf-3 zoned lot. (~ 2704 San Saba).
 - **East Austin** Springdale and Munson R4C in R2C zone on current SF-3 zoned lots.
 - **East Austin** Oak Springs and Gunter R4C in R2C zone on current SF-3 zoned lots.
 - **East Austin** East 12 and Ridge R4C in R2C zone on current SF-3 zoned lots.
 - **East Austin** East 12 and Greenwood R4C in R2C zone on current SF-3 zoned lots.
 - **East Austin** East 12 and Grant R4C in R2C zone on current SF-3 zoned lots.
 - **East Austin** East 12 and EM Franklin R4C in R2C zone on current SF-3 zoned lots.
 - **East Austin** East 12 and Deloney R4C in R2C zone on current SF-3 zoned lots.
 - **East Austin** Sol Wilson and Oak Grove R2E in R2C zone on current SF-3 zoned lots.
 - **East Austin** Harvey and 13th R2E in R2C zone on current SF-3 zoned lots.
 - **East Austin** Harvey and 14th R2E in R2C zone on current SF-3 zoned lots.
 - **East Austin** Harvey and 14 ½ St R2E in R2C zone on current SF-3 zoned lots.
 - **East Austin** Harvey and 16th R2E in R2C zone on current SF-3 zoned lots.
 - **East Austin** Harvey and 17th R2E in R2C zone on current SF-3 zoned lots.
 - **East Austin** Harvey and 18th R2E in R2C zone on current SF-3 zoned lots.

- **East Austin** Harvey and 18 ½ St R2E in R2C zone on current SF-3 zoned lots.
- **East Austin** FM916 From Tillery to EM Franklin R4C in R2C zone on current SF-3 zoned lots.
- **East Austin** East 14th and Angelina R4C in R2C zone on current SF-3 zoned lots.
- **East Austin** Clifford (south of 969) R2E in R2C zone on current SF-3 zoned lots.
- **East Austin** Sanchez (south of 969) R2E in R2C zone on current SF-3 zoned lots.
- **East Austin** ~ 4800 Pecan Springs R3C in R2C zone on current SF-3 zoned lots.
- **East Austin** ~5800 Nassau Drive R4B in R2C zone on current SF-3 zoned lots.
- **East Austin** Bradbury and Dessau R2B in R1B zone on current SF-2 zoned lots.
- **South Austin** Slaughter Lane & Piping Rock R2B in R1A zone on current SF-1 and SF-2 lots.
- **South Austin** Cherry Park & Emerald Forest R3C in R2A zone on current SF-3 lots.
- **West Austin** West 35th & Park R4C in R2C zone on current SF-3 lots.
- **West Austin** Polo and Hartford R4C in R2C zone on current SF-3 lots.
- **West Austin** Greenlee and Spring R4A in R2C zone on current SF-3 lots.
- **West Austin** ~2500 Block Exposition R4A in R2C zone on current SF-3 lots.
- **Central Austin** 5603, 5605, 5607, 5611, 5615, 5617 Clay Ave. R4C in R2C zone on current SF-3 lots.
- **Central Austin** 5611 Jeff Davis R4C in R2C zone on current SF-3 lots.
- **Central Austin** 1700 Houston R4C in R2C zone on current SF-3 lots.
- **Central Austin** 5300 McCandless R4A in R2C zone on current SF-3 lots.
- **Central Austin** All of Allandale (Shoal Creek) R2A zone on current SF-3 lots.
- **Central Austin** 1500 Block of West 34th MU1A on SF-3 and MF lots.
- **Central Austin:** East 51st between Airport and IH-35 MS & MU1C in R2C zones on SF-3 property.
- **North Austin** Gracywoods along W Braker R2B in R1B zone on SF-2 lots.
- **North Austin** Metric and Gracy Farms R2B in R1B zone on SF-2 lots.
- **North Austin** Parmer and Cindy Lane R2B in R1B zone on SF-1 lots.
- **North Austin** RM732 and Silvercreek R2B in R1B zone on SF-2 lots.
- **North Austin** Spicewood Springs and Queen's Way R2B in R1B zone on SF-2 lots.
- **North Austin** Rustic Rock and Fathom Circle R2B in R1B zone on SF-2 lots.
- **North Austin** Steck and Greenslope R4C in R2C zone on SF-3 lots.
- **North Austin** Highland Oaks and Sierra Glen R2B in R1B zone on SF-2 lots.
- **Southwest Austin:** Apricot Glen, Wychwood, Holly Hill R2B in R1B zone on SF-2 lots.

126. CodeNEXT maps bars, microbreweries and nightclubs in areas immediately adjacent to single-family neighborhoods, with no parking required along these corridors and nodes:

- | | |
|---|-------------------|
| ▪ Burnet Road | ▪ Manor Road |
| ▪ North and South Lamar Blvd | ▪ Medical Parkway |
| ▪ 35 th /38 th | ▪ Rosewood |
| ▪ East 6 th /7 th | ▪ South Congress |
| ▪ East 12 th | ▪ South 1st |

- Guadalupe
- Koenig
- West Anderson
- West 5th/6th
- East MLK & Poquito
- Berkman/Wheelless/Clayton
- Manor/Anchor/Airport
- 51st & Manor
- Airport/290/135

127. CodeNEXT would allow manufactured homes to be located outside of manufactured home parks in the following R1B-zoned neighborhoods:

- Balcones Park
- Cherry Creek
- Circle C
- Great Hills
- Jester
- Legend Oaks
- Lost Creek
- Mesa Woods
- Oak Forest
- Quarry
- Sendera
- Travis Country
- WestCreek

128. CodeNEXT maps much higher densities onto current, more affordable apartment buildings in the following areas:

- *ACROSS THE ENTIRE CITY.*