



## **CodeNEXT is Beyond Repair, and We Need Another Approach to Land Development**

After a year of advocating that we should “take our time and get CodeNEXT right”, Community Not Commodity (“CNC”) reluctantly concludes that the City of Austin cannot fix the fatal flaws that riddle the city’s proposed new land development rules called “CodeNEXT”. The proposed code embraces a top-down, pro-developer agenda that favors special-interest lobbyists over democratic input. After countless hours of analysis by our researchers, outreach to diverse city communities, and numerous warnings that CodeNEXT is fundamentally flawed, we conclude that the city cannot deliver a code worthy of community support. CNC therefore recommends that the Council table CodeNEXT in favor of a better approach.

In 2013, the previous City Council proposed a modest, \$1.5 million code rewrite that has been hijacked by special interests, “urbanist” ideologues, and city bureaucrats. They have burned through over \$8 million in taxpayer money thus far. CodeNEXT has morphed into an elaborate scheme to rezone the entire city and redevelop much of East and Central Austin. This bait and switch mostly occurred behind closed doors with scarce opportunity for input from the people who would be most affected by these changes.

Already redrafted twice, the third and supposedly final overhaul of the poorly written, 1,574-page code was [released](#) on February 12, 2018. The City says that a Council vote on first reading will occur in mid-June 2018 and that the final vote on third reading will occur prior to the end of July. Because CodeNEXT is chock full of stealth policy decisions that have not been vetted by the Council, city commissions, nor the public, much more time is required to digest the code’s sweeping impact on Austin’s varied populations. To compound the problem even more, after business hours on Friday, April 20, 2018, the planning department staff delivered to members of the land use commissions an Addendum of over 400 pages, a lengthy Errata sheet, plus a new Map – just 7 days before the first public hearing on CodeNext Version 3. Citizens occupied by jobs, schools and families need a realistic period of time to assess the impacts of a new land code that would dramatically reconfigure this city and its neighborhoods. By contrast, from the start, the real estate industry has paid staff, engineers, consultants and lobbyists to ensure that CodeNEXT serves their industry.

Our current land use code desperately demands simplification. When city bureaucrats rewrote the code behind closed doors with industry lobbyists, however, they created a Frankensteinian code that's worse than what we already have.

### **Austin built CodeNEXT on defective foundations.**

**CodeNEXT is not empirically based.** Its assumptions about the causes and effects of zoning, land use, development, market activity, housing demand, demography and human behavior have no empirical basis and defy common sense. One of the principal consultants to the city falsely claims that Austin needs 280,000 units of new housing capacity in the next 10 years instead of the actual figure of 80,000 units backed by the city's own demographer. CodeNEXT is based on [failed "urbanist" theories](#) and supply-side, trickle-down economics promoted by real estate interests who stand to profit from them.

[According to another 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." 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 the consultant's affordable housing plan.

The market never has – and never will – supply modest-income people with affordable housing, because the higher-end market is more lucrative. From 2011 through 2016, Austin added 25,000 households that make more than twice Austin's median income. These elite newcomers bid up Austin housing prices.

CodeNEXT proponents argue that increasing densities in existing neighborhoods would magically create affordable housing for low-income people. In fact, profit seeking determines housing prices in free markets. Loosening the land code to augment developer "entitlements" provides profit incentives to developers to demolish existing homes, increasing land values and inflating property-tax valuations. In this way, a deregulated CodeNEXT will accelerate the displacement of existing Austin families from our neighborhoods to areas beyond Austin city limits.

**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. It would displace lower-income people, including seniors, people of color and working families. Bulldozing the housing of these people to build new housing for wealthier people inevitably increases property values and rents. This gentrification has a contagious, rippling effect on property tax valuations throughout surrounding neighborhoods. CodeNEXT turns a blind eye to equity and economic justice. The City's Equity Office has not yet completed its evaluation of the plan's impacts on Austin's most vulnerable populations, yet the Planning Department is moving full-speed ahead!

**CodeNEXT would overtax our road and water systems.** By increasing densities while reducing parking requirements, CodeNEXT would boost traffic and clog already over-parked streets. The

code ignores the impact of increased development in flood prone areas. Because the CodeNEXT's architects have not evaluated its impacts on infrastructure or public safety, we have insufficient information on whether all of this new development would overwhelm our existing water, sewer, drainage, traffic and sidewalk infrastructure.

**CodeNEXT is not community-based.** The proposed code promotes land-use policies that conflict with the adopted plans of many local neighborhoods and it would run roughshod over the city's community-based comprehensive plan: *Imagine Austin*. That's why CodeNEXT is not supported by the communities it impacts. From the start, its designers have ignored 31 formal neighborhood plans created over 20 years at a taxpayer cost of \$13 million. CodeNEXT embodies the city staff's view that it knows your needs better than you do.

Now on its *fifth* project manager, CodeNEXT already has burned through more than \$8 million. After evaluating the management of Austin's Planning Department in 2014, national expert Paul Zucker gave the department the worst scores he had ever awarded in his evaluations of 300 cities. CodeNEXT is brought to you courtesy of these same managers with predictably disastrous results. From the start, they have issued misleading and sometimes false descriptions of the impact of their plan. New City Manager Spencer Cronk should replace the senior management of Austin's failed Planning Department.

**CodeNEXT is undemocratic.** From the start, this code has been written behind closed doors under the influence of real estate developers, their lobbyists and real-estate funded interest groups. After years of disclosure requests, Draft 1 was unveiled in January 2017; the accompanying map was released in April 2017. CodeNEXT up-zones properties citywide, depriving citizens of the notices and hearings that currently are required for individual zoning cases. Proponents paper over CodeNEXT's many, significant negative impacts on residents and neighborhoods with slick brochures and presentations that project an incomplete picture. For two years the city has resisted requests for detailed tables showing how CodeNEXT would change the rules of the development game on your block and the blocks of your friends all over town.

**Updating our research.** CNC's reviewers continue our in-depth analysis of the proposed code and the new zoning map. You can go to the Resources page on our website [communitynotcommodity.com](http://communitynotcommodity.com) to see our analysis of the proposed final version and of the previous drafts. We will be continually updating it as our researchers complete their work. Meanwhile, the City Council should not delay taking actions that address the real problems faced by our city.

### **We Need Another Path Forward.**

We respectfully ask Mayor Adler and each City Council member to immediately halt the existing CodeNEXT process. Instead, we need to involve citizens to draft a community-supported land development code. This new approach should include these components:

- Restore community trust through transparency and public decision-making. Thoughtfully explain all premises and major code provisions. Research and disclose the code's impacts on flooding, traffic, water-related infrastructure and the environment;

- Refocus on the most important aspects of the land code. This should prioritize the needs of current residents and discourage their displacement, especially in East Austin. Respect and adopt the East Austin People’s Plan;
- Impose interim regulations to slow redevelopment and prevent displacement in areas experiencing rapid levels of demolitions and displacement. Enact anti-displacement programs that have succeeded in other cities;
- Prioritize the preservation and construction of truly affordable housing for low-income Austinites;
- Streamline and update the technology of the city’s inefficient permitting process, which is inconsistent, slow, and bureaucratic;
- Utilize Austin’s historic community planning process to address community needs and build on the \$13 million already invested in community planning. Fix the problems with existing neighborhood and small area plans. Establish and respect new neighborhood plans, historic districts and neighborhood conservation combining districts. Work together to distribute reasonable densities fairly among growth corridors and activity centers, as envisioned by the Imagine Austin Growth Concept Map.

**Steps to Restore Good Governance and Community Trust**

1. Reconstitute the Planning Commission so that it complies with the City Charter’s mandate and awards no more than one-third of its seats to people tied to the real estate industry. Recognize that the Zoning and Platting Commission can—and should—help shape the next land-use code.
2. Release all staff emails, drafts, notes and other materials related to CodeNEXT (even those exempted from the Public Information Act). Disclose all criteria used for mapping.
3. Halt any new spending on CodeNEXT consultants and direct the City Auditor to conduct a performance review of the city staff and contracts since CodeNEXT’s inception. Direct the city manager to fix any identified mishandlings of the project.
4. Reallocate resources from the Neighborhood Assistance Center to create an independent Department of Neighborhoods (that is not part of Economic Development) to assist neighborhoods with neighborhood plans, historic districts, and neighborhood conservation combining districts. The department should focus on modest- and low-income neighborhoods that lack private resources. Provide adequate staffing and funding to effect real change.
5. Direct City Manager Spencer Cronk to assess recent efforts by the Development Services Department to streamline the permitting process. Assign Mr. Cronk the task to recommend additional improvements and technology upgrades to serve the entire public, not just special interests.
6. Implement a robust performance-measures program for budgeting and management at all levels of city government, starting with the offices of the City Manager and the Planning Department

**Priority Ways to Amend the Development Code**

1. Prioritize the preservation of lower- and modest-income housing to prevent displacement instead of CodeNEXT’s approach to incentivize redevelopment by maximizing profit potential.

2. Once the Planning Commission is legally reconstituted, direct the Land Use Commission to identify its top three priorities to amend the code to improve its coherence, functionality, and accessibility.
3. Direct the city manager to work with the city demographer and area school districts to identify the neighborhoods with the highest rates of demolitions and displacement.
4. Act on existing community-sponsored recommendations that identify code provisions that contribute to demolitions and displacements and reform the code to address this priority problem.
5. Implement and fund the recommendations in the January 2018 East Austin People's Plan that has been approved overwhelmingly (12 to 1) by the Anti-Displacement Task Force. It proposes six resolutions or draft ordinances that the City Council can adopt and start implementing immediately:
  - a) Establish Interim Land Restrictions in East Austin to limit redevelopment, prevent flooding, and reduce degradation of that fragile natural and cultural environment.
  - b) Establish a Low-Income Housing Trust Fund overseen by a community body like the one in Denver. This fund would invest *exclusively* in low-income housing.
  - c) Quickly fund and build 2,000 low-income housing units on eight city properties. Develop a robust, long-term program to build low-income housing on city lands.
  - d) Emulate successful programs in other cities to implement an East Austin Neighborhood Conservation Program that uses conservation and historic preservation districts to restrict land-uses there.
  - e) Enact and fund Right-to-Return and Right-to Stay programs like those in Portland and Houston. These programs keep seniors and low-income residents in their communities and bring some displaced people home.
  - f) Enact a local Environmental Quality Review Program to ensure environmental justice in Austin.
6. Direct the city manager to apply an equity and racial lens to all amendments to the land development code BEFORE they're voted on.
7. Amend accessory dwelling rules to include best practices, including ways to (i) reduce incentives for investors to demolish single-family homes; and (ii) facilitate construction of smaller, more affordable units that augment existing single-family homes.
8. Direct the city manager to hire experts to forecast the impacts of increased in-fill and densities, including all associated infrastructure costs, impacts on affordable housing, flooding, and public safety.
9. As required by *Imagine Austin* (page 207), direct the city manager to assess the adequacy of the land development code to preserve neighborhood character, consistency with neighborhood and area plans, their impact on affordability, and their ability to keep existing families in their homes.
10. Support public schools by acting on the recommendations in the Austin School Board's November 2017 resolution on CodeNEXT.
11. Encourage the planning and zoning commissions to submit amendments to the existing code to promote more compact development in Activity Centers and on Greenfield sites. Develop new standards along corridors that would provide greater compatibility with adjoining homes and neighborhoods than proposed by CodeNEXT.
12. Recognize that there are differences among corridors and the areas that they adjoin and support the Small Area Planning process whereby neighborhoods have input into the appropriate levels of density along corridors.

13. Request that the land-use commissions and the Community Development Commission identify publicly owned lands to prioritize for income-restricted housing, especially housing affordable to lower-income families.
14. Adopt the Austin Fire Department's "wildland urban interface" map, which identifies city areas that pose medium, high and extreme fire risks. Require wildfire safety reviews as part of subdivision permits and for the zoning and rezoning of properties.
15. Strive to have growth pay for itself, through such tools as road and other infrastructure impact fees.

**Ways to advance community-planning efforts**

1. Ask the city demographer to forecast housing needs by income cohorts within the city limits for the next 10 and 20 years, along with a regional forecast of greenfield development. Throw out the misleading forecast in the *Strategic Housing Blueprint* (which is based on forecasts for the wider Austin metroplex).
2. Fund and support areas that have not yet adopted neighborhood or small-area plans, historic district plans, or neighborhood conservation combining districts, particularly in East Austin.
3. For the five-year update to *Imagine Austin*, invite neighborhoods that have adopted neighborhood plans to address community needs through neighborhood plan amendments. Any proposed rezoning as part of this process should comply with applicable neighborhood or small-area plans.

**Conclusion: the City Council should table CodeNEXT**

We repeat what we said at the beginning of this paper: the City cannot deliver a code worthy of community support. CNC recommends that the Council table CodeNEXT in favor of our better approach supported by the people most affected.