



RECA
REAL ESTATE COUNCIL
OF AUSTIN



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Formal
Comments

June 6, 2017

Chapter 23-1: Introduction

23-1A-5020: Rules of Interpretation

(B) Internal Consistency

(1) Wherever possible, the Director shall interpret this Title in a manner that gives effect to all provisions and shall avoid interpretations that render a provision of this Title in conflict with one or more provisions.

- Comment: “Wherever possible” and “shall” in the same sentence will likely cause conflicts when it comes to interpretations of the Code.

23-1B-4010: Neighborhood Plan Contact Team

- Comment: The process for creating neighborhood plans which includes the contact teams is inconsistent, inequitable, and unpredictable. In addition, the complicated opt-in/opt-out system creates additional layers of complexity and delays within the process.

Chapter 23-2: Administration and Procedures

23-2A-2010: Order of Process

(A) If a development requires two or more approvals in compliance with this Title, an applicant must obtain approvals in the following order:

(1) For legislative approvals:

- (a) Comprehensive Plan amendments; and*
- (b) Zoning rezoning.*

(2) For quasi-judicial approvals:

- (a) Zoning Variances and Special Exceptions;*
- (b) Environmental Variances; and*
- (c) Conditional Use Permits.*

(3) For administrative approvals:

- (a) Subdivision;*
- (b) Site plan;*
- (c) Building Permits; and*
- (d) Certificates of Occupancy.*

(B) The responsible director shall assign priority to different types of applications within the same category and require an applicant to obtain higher level approvals before subordinate approvals. If an application is not listed in Subsection (A), the director shall prioritize it one level below the application type to which it is most similar.

- Comment: A business requiring a Conditional Use Permit (CUP) and a rezoning should be allowed to submit concurrently. Allowing for concurrent submittals would provide a more transparent process and more certainty to the applicant and interested parties. In

addition, there is also concern that this section, along with 23-2A-2020, gives the Director discretionary authority over concurrent applications. We believe that the language in existing code (25-1-61) is preferable for this provision.

Article 23-2G: Nonconformity

- Comment: RECA has concerns with the modifications to the nonconforming and noncomplying sections of the code. Specifically, the adjusted thresholds will require further review.

Chapter 23-3: General Planning Standards for All

Division 23-3C-2: General Administration for Regulated Trees

- Comment: This section of the proposed Code will likely generate similar undesirable outcomes as the existing code. In addition, the existing ordinance creates conflicts and limits development in many scenarios within the transect zones.

Article 23-3D: Water Quality

- Comment: If redevelopment sites are required to provide detention on-site at undeveloped conditions this will detrimentally impact infill redevelopment and redevelopment within the urban watershed. We support a regional approach to water quality and detention facilities and innovative water quality controls off-site, i.e. water quality capture within the right-of-way. RECA will be examining these sections further and presenting our feedback at a later time upon the release of the Environmental Criteria Manual.

23-3D-3040: Impervious Cover Calculations

- Comment: The proposed regulations do not allow for innovative solutions. In addition, there is very little consideration of public infrastructure to house regional storm water.

23-3D-3050 Impervious Cover Assumptions

- Comment: RECA is interested in how these assumptions were developed and how they interact with other sections of the code.

23-3D-6: Water Quality Controls

- Comment: RECA will be examining these sections further and presenting our feedback at a later time upon the release of the Environmental Criteria Manual.

Article 23-3E: Affordable Housing Incentive Program

- Comment: RECA will be examining this section and presenting our feedback at a later time, upon the release of the Affordable Housing Incentive Program.

Chapter 23-4- Zoning Code

23-4B-3040: Zoning Map Amendment Application

(E) New Application Restrictions

(1) An applicant may not file a Zoning Map Amendment request for the same property for 18 months from the date a Zoning Map Amendment application is withdrawn or the Council denies a Zoning Map Amendment application, if the application that is withdrawn or denied:

(b) Does not receive a recommendation from the Land Use Commission and is denied by the Council;

- Comment: As drafted, this provision prohibits an applicant from seeking a zoning classification to a more restrictive zoning district within 18 months of a withdrawn or denied application. This should be amended to prohibit the submittal of a rezoning to the same or less restrictive zoning category for 18 months after the specified triggers. Additionally, the recommendation provisions are not clear. They should be redrafted to clarify the distinction between no recommendation, a negative recommendation, and a positive recommendation at the Land Use Commission.

Article 23-4C: General to All Development

- Comment: We are continuing to test and review the community design and civic and open space requirements in consort with the new zoning and subdivision requirements. The intent of the code rewrite is to minimize conflicts and thus far, the results have shown an increase in conflicts among various sections of the Code. The Code needs to continue to be tested on real sites with real constraints to determine the outputs, and we are continuing with those efforts.

23-4D: Specific to Zones

- Comment: We do not think a hybrid zoning code, along with other new development regulations, works to simplify as was the goal. The Transects are overly prescriptive and do not appear to be responsive to Austin's general lot and street layouts/dimensions. The Transects also don't provide any administrative allowances to deviate from the rigid standards; there should be discretionary authority in place to work around unique site characteristics, trees, topography, drainage, etc. The low-density transect zones removed the opportunity for a 3-story residential use and limited development to 2 stories. Generally speaking, we believe the Transects need significant re-working in order for development to achieve the intent associated with each district. We continue

to work through testing the Code and will provide additional comments as the process continues. Non-transect zones and overlays need to be considered in context with the other Code sections. We continue to analyze how the regulations work together on real sites throughout Austin. The intent of the code rewrite is to minimize conflicts and thus far, the results have shown an increase in conflicts among various sections of the Code. The code needs to continue to be tested on real sites, with real constraints to determine the outputs and we are continuing with those efforts.

23-4D-2040: Transect Nomenclature

(B) Form Descriptor.

(2) Neighborhood: Contains detached house-form building types. This form descriptor is often adjacent to other Neighborhoods and/or a Main Street.

- Comment: The definition for “neighborhood” is insufficient and fails to accurately describe neighborhoods. Neighborhoods should consist of a wide variety of housing, retail, and office types, not just detached houses.

23-4D-2050: Transect Zones Overview

- Comment: While the goal of the transect zones is to increase density and the variety of housing throughout the City, in practice the proposed districts are severely limiting when you model the various transects and include the additional layers of regulations from the code including: trees, impervious cover, drainage, etc. The Transect zones should be re-written to remove conflicts and allow the Transect zones to perform to their potential.

23-4E: Supplemental to Zones

- Comment: RECA is continuing to model this section of the code. We are concerned that there are subsections within 23-4E that will conflict with other sections of the code and create an undesirable outcome. We continue to stress the need for administrative relief to conflicting sections of the code.

23-4E-6030: Accessory Dwelling Unit

(B) Restrictive Covenant

(1) The property owner shall sign a restrictive covenant before a notary public that runs with the land on a form prepared by the City affirming that the property owner shall:

(a) Occupy either the primary residence or the ADU; or

(b) If the property owner rents or leases a property with both a primary residence and an ADU to a third party, then neither the primary residence nor the ADU shall be sub-leased.

(2) The restrictive covenant shall be submitted to the City prior to the issuance of a Building Permit for the ADU. The City shall record the restrictive covenant after the Building Permit has been issued.

- Comment: RECA strongly disagrees with the placement of the restrictive covenant and feels that it would remove a vital potential solution to the affordability crisis. This section should be removed in its entirety.

Chapter 23-5- Subdivision

- Comment: It is unclear how this chapter will interact with Title 30 (Travis County) and whether there will be unanticipated consequences and unresolved conflicts in the code as a result. RECA will be modeling this section and examining it further to provide more detailed feedback.

25-5A-1020: Compliance

- Comment: There is a general conflict as to whether Title 30 applies and remains unchanged to the ETJ in Travis County. If this is true, then the conflicts provision in Title 30 would become applicable and make the land subject to additional conflicting requirements.

23-5A-1030: Exception from Platting Requirements

(F) If the Director excepts a parcel from the requirement to plat, the Director shall certify the parcel's exception. The exception shall become void with the recordation of a legal plat.

- Comment: Delete "The exception shall become void with the recordation of a legal plat."

23-5B-1050: Variance Filing and Consideration

(D) An applicant may not file an application for a variance less than seven days before a deadline for placing the application for preliminary plan or plat approval on the agenda of a Board or Commission.

- Comment: RECA will require clarification regarding the location of the deadline provision for placing the application for preliminary plan or plat approval.

23-5B-1060: Variance Determination

(A) The Land Use Commission shall grant a variance from a requirement of Article 23-4C (Platting Requirements) if the Land Use Commission determines that:

(1) enforcement of the requirement would deny the owner all reasonable use of the land; and

(4) The variance is not materially detrimental to the purposes of this Ordinance, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any City plan or policy; and

(5) The variance requested is the minimum variance which would alleviate the hardship.

- Comment: Could the City provide more clarification for how the following terms will be defined?
 - “all reasonable use”
 - “materially detrimental”
 - “the hardship”

23-5B-2010: Preliminary Plan Requirement

(B) A plat may be approved without a preliminary plan if each lot abuts an existing dedicated public street and the Director determines that:

(3) drainage facilities are not necessary to prevent flooding, or if necessary, the applicant has arranged for the construction of drainage facilities.

- Comment: What is the process by which an applicant may arrange for the construction of drainage facilities?

23-5B-3070: Expiration of Plat Vacations

An application to vacate a plat expires one year after approval.

- Comment: Replace “after approval” with “after submittal”.

25-5C-2060: Townhouse Lots

(B) Common areas shall be identified on the plat. An applicant shall provide for maintenance of and payment of taxes on common areas.

- Comment: Common areas may not be known at the time of platting.

23-5C-3060 Independent Utility Districts and Private Water and Sewer Corporations

(B) A plat may not be approved unless the subdivider has complied with the requirements of this subsection.

(3) Approval of water or wastewater system plans by the Director of the Water and Wastewater Utility and the Texas Natural Resource Commission is required.

- Comment: Replace “Texas Natural Resource Commission” with “Texas Commission on Environmental Quality”.

23-5C-3070: Subdivisions Where Water or Wastewater Services are not Available

- Comment: Replace “Texas Natural Resource Commission” with “Texas Commission on Environmental Quality”.

Chapter 23-9- Transportation

- Comment: RECA will be examining this section in further detail and presenting our feedback at a later time, upon the release of the Strategic Mobility Plan and Transportation Criteria Manual.

23-9E-5: Sidewalks & Urban Trails

- It is unclear how these requirements will work with the Sidewalk Master Plan and the proposed Sidewalk Ordinance currently being developed. RECA will require clarification if the Sidewalk Master Plan and Ordinance will be integrated with the code or seen as entirely separate.