

John Henneberger  
603 Theresa Ave  
Austin, TX 78703

July 14, 2017

TO: CodeNEXT staff

CC: Mayor and city council members

RE: CodeNEXT Density Bonus Proposal Comments

The CodeNEXT Density Bonus proposal is a remarkable opportunity to achieve greater ethnic, racial and economic diversity and integration by establishing affordable housing in new developments throughout the city without city cash outlays. If implemented correctly, the program has the potential to put affordable units on the ground both in areas where lower income people are trying to stay in place **and** in racially and economically segregated high-opportunity areas where opportunities for low income people of color to live have never been afforded.

Since 1975 I have been concerned about our city's lack of opportunity for people of color with low incomes to live in high opportunity areas and with the involuntary displacement of such families from historic neighborhoods. I was the principal author of the City of Austin Human Relations Commission's Housing Patterns Study: Segregation and Discrimination in Austin, Texas (1979).<sup>1</sup> In the 1980's and 90's I worked for several African-American and Hispanic neighborhood associations to establish and oversee affordable housing development through nonprofit neighborhood-based community development corporations (Clarksville, Guadalupe, Blackshear, Blackland, Robertson Hill and Montopolis). Since 1990's I have worked on affordable housing policy across the state of Texas as co-director of the nonprofit Texas Low Income Housing Information Service. Over my 43 years work in affordable housing, fair housing and low income community development I have come to understand the critical importance of expanding housing opportunities for lower-income people of color in quality neighborhoods of their choice.

My experience has taught me that Austin has an affordability problem. Austin also has a problem of racial and economic segregation. While most of the attention has been directed at the former. Any equitable public program must address our city's historic challenge of racial discrimination and segregation, a problem greatly magnified in the lives of people of color living with lower incomes.

It is the poor, families earning less than 30 percent of area median family income who suffer the most from our city's affordability problem. Eighty-one percent of Austin area renter households earning less than 30 percent of area median family income pay one-half or more of their gross income for rent compared to just 2 percent of those earning 100 percent of the median. The National Low Income Housing Coalition reports<sup>2</sup> that, in the Austin MSA, the number of "affordable and available" rental housing units for families earning at or below 30 percent of area median family income is 20 per 100 households. For Austin area households at 50 percent of median, the number is 41 per 100, at 80

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<sup>1</sup><https://www.scribd.com/document/352470668/Housing-Patterns-Study-Segregation-and-Discrimination-in-Austin-Texas>

<sup>2</sup> National Low Income Housing Coalition | The Gap: The Affordable Housing Gap Analysis 2017, [http://nlihc.org/sites/default/files/Gap-Report\\_2017\\_interactive.pdf](http://nlihc.org/sites/default/files/Gap-Report_2017_interactive.pdf)

percent MFI it is 97 per 100 and at 100 percent of median income there is actually a small surplus of 105 rental units per 100 households. Given the targeting of CodeNEXT density bonus units at 60 percent of area median family income, CodeNext does nothing to help those lower income households with the greatest rent burden and the largest affordable housing deficit. I understand that market-based density bonus can only produce so much affordability. But these numbers teach us that we have to look to layering other forms of subsidy on top of density bonus. Above all, and I cannot overstate the importance of this, developers receiving density bonuses must not be permitted to discriminate in any way against Section 8 Housing Choice Voucher recipients in any of the units for the life of the development. This includes subterfuges like minimum income requirements and other exclusionary practices. These exclusions are prohibited under the rules of our state housing agency for recipients of Low income Housing Tax Credits and the city should apply the same to density bonuses.

Based on the current CodeNEXT proposal and a map analysis prepared by my colleagues of its likely impact (attached), I have six concerns and fourteen recommendations to share with you. Our objective should be to ensure Austin's density bonus program offers low income Austinites of color both a "Right to Stay" in their traditional neighborhoods by preventing involuntary economic displacement along with a "Right to Choose" to live in our city's neighborhoods that best meets their family's' needs. This latter includes neighborhoods that have traditionally been unavailable to lower-income people of color, people with disabilities and people generally in need of affordable housing.

**Concern #1:** Austin's density bonus program must apply throughout the city and especially in council districts with less than their fair share of government-subsidized affordable housing units. Western council districts 5, 6, 7, 8 and 10 especially need every tool at their disposal to increase opportunity for low income people of color to live in their districts. However:

- West, central and central north neighborhoods are largely exempt from density bonus and any missing middle opportunities in CodeNEXT.
- Residential/mixed use zones that offer a density bonus are largely missing in Imagine Austin centers (AKA High Opportunity Neighborhoods), especially west of Mopac. If these are the areas that the city is trying to concentrate amenities and jobs, we should provide the option of affordable housing and Centers west of Mopac.

**Recommendation #1:** If the density bonus will only be offered for the multiplex housing type in residential zoning categories, we need to ensure required lot widths and depths for this housing type in CodeNEXT match what has been mapped T4 in order to maximize opportunity to produce affordable units. Consider mapping more neighborhoods T4 or offering this housing type in more residential zoning categories.

**Recommendation #2:** Consider permitting additional housing types to apply the density bonus in more neighborhoods.

**Concern #2:** The density bonus program should leverage the skill and momentum of private developers to see that affordable units are built at the same time as market rate units. According to Austin's Strategic Housing Blueprint, about 25,000 homes are needed for households making 30-60% of median family income in the next ten years. Developers participating in alternatives to building onsite and offsite units should be minimized. There are a higher present value and cost efficiencies when the affordable development happens immediately rather than after funds or land are transferred to a city

program that will utilize these resources later. Private developer decisions as to where market rate housing will be constructed are driven by demand and market analysis. We should recognize this and seek to secure affordable housing integrated into market rate developments in high demand locations.

**Recommendation #3:** Discourage developers from participating in the program in ways other than providing on-site affordable housing units. Especially discourage land dedication and Fee In Lieu.

**Recommendation #4:** While I believe CodeNEXT requires this, I want to emphasize that the City should prohibit developers from securing density bonuses for dedicating land in the ETJ for affordable housing. The challenge before us is to make existing Austin neighborhoods affordable and more integrated.

**Recommendation #5:** Require land dedication to be within one mile of the development seeking the density bonus or in an area of “high opportunity” as determined by the City Housing department based on the City’s Fair Housing analysis and plan.

**Concern #3:** Those administering affordable units must not only target tenants based on economic status alone, but also monitor and affirmatively market to people of color and other protected classes to achieve racial, ethnic and disability inclusion. Monitoring of affordable units should report race, ethnicity, and disability status as well as income and family status as the State of Texas requires its fund recipients.

**Recommendation #6:** A robust and specific affirmative marketing and outreach plan for all density bonus units based on HUD best practices should be required of all developments participating in the program. The City should establish baseline marketing criteria and adjust this criteria at least every five years through a public process.

**Recommendation #7:** Vacancies in affordable units should be affirmatively marketed to people of color with low incomes and other protected classes in a manner that produces results. The City should establish the equivalent of the State of Texas Housing Sponsor Report to collect and report demographic and economic data from participating properties.

**Recommendation #8:** The city should contract with a certified fair housing testing organization (like the Austin Tenants Council) to monitor and strategically test housing sponsors for compliance with the program rules and to ensure compliance with nondiscrimination laws.

**Recommendation #9:** A fair and public process for announcing and marketing vacancies, consistent with the development’s affirmative marketing plan, should be set up and adhered to.

**Concern #4:** Participation in the density bonus program must be designed to produce affordable units in high opportunity areas with the objective of increasing racial, ethnic and income diversity across all Austin neighborhoods. The City must publicly report where units are being built and their affordability levels. Special attention should be paid to affordable housing deficits in high opportunity areas and

additional public subsidies, zoning and land use considerations directed at addressing deficits of such housing in specific city council districts.

**Recommendation #10:** NHCD should prepare an annual report of affordable housing production, pegged to fair share housing affordability goals across each city council district including but not limited to:

- Number of units built;
- Number of units built on site vs land being proposed by developer and its geographic location;
- Number of units built in each income affordability category;
- Density bonus participation (and method of participation) in high opportunity areas.

**Recommendation #11:** Establish a program to encourage and reward neighborhood associations that embrace the task of increasing racial, ethnic and economic diversity in housing. I have proposed the outlines of such an initiative in an article titled, *A plan for increasing Austin's affordable housing, racial and economic diversity*  
<https://texashousers.net/2017/02/05/a-plan-for-increasing-austins-affordable-housing-racial-and-economic-diversity/>

**Concern #5:** CodeNEXT consultants have calculated estimates for unit yield by zoning category, but we must track how many units actually produced are affordable to families at various income levels (MFI) by the density bonus and where those units will likely be built. We must not merely reproduce racially, ethnically and economically segregated housing patterns through CodeNEXT.

**Recommendation #12:** Perform an equity analysis by city council district based on existing neighborhood racial and ethnic composition, government-subsidized subsidized and market affordable housing inventories and calculate the need by MFI level as outlined in Austin's Strategic Housing Blueprint and the City's Analysis of Impediments to Fair Housing.

**Recommendation #13:** Model affordable units produced and where staff and consultants believe developers will use different methods of participating in the program (i.e. where will developers be more likely to choose building offsite, dedicating land, or paying a fee in lieu instead of building onsite affordable units?).

**Recommendation #14:** Modify CodeNEXT as needed to achieve the appropriate outcomes.

**Concern #6:** Ensure adoption of other affordable housing policies, particularly recommendations of the City's Analysis of Impediments to fair Housing are aligned with the CodeNEXT timeline. The density bonus program is not a silver bullet, will not prevent displacement and create opportunity alone. Affordable housing funding and policies such as the preservation (Strike) fund, affordable housing bonds, Low Income Housing Tax Credit program, etc. must be implemented concurrently with the density bonus program.

Thank you for ensuring CodeNext is effective in making Austin an integrated, diverse and inclusive city.

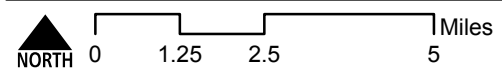
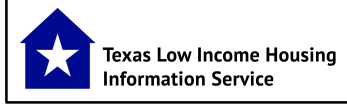
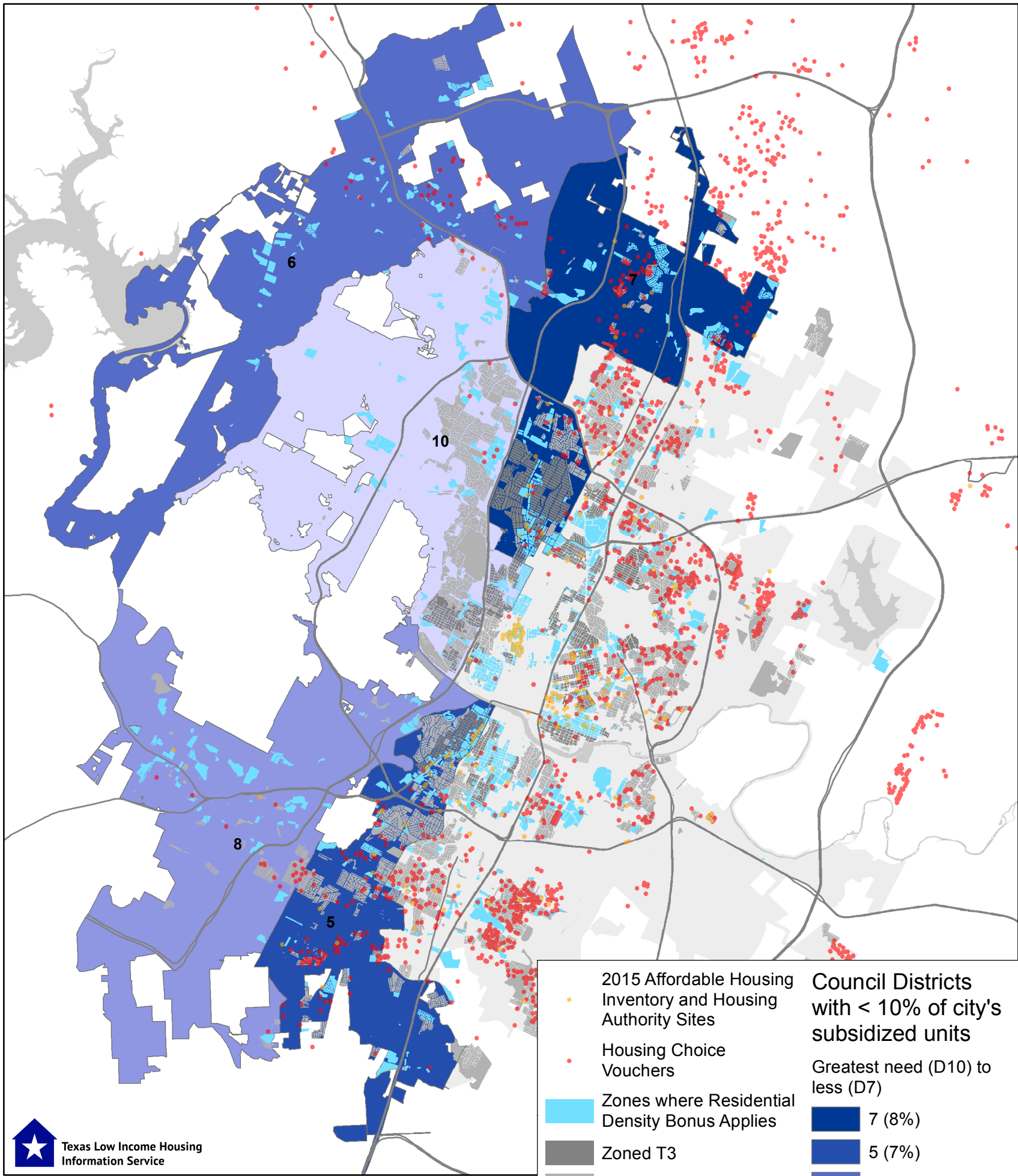
Sincerely,

A handwritten signature in black ink, appearing to read "John Henneberger". The signature is fluid and cursive, with the first name "John" being more prominent and the last name "Henneberger" following in a similar style.

John Henneberger

# Proposed Density Bonus Areas- DRAFT

Proximity to Existing Subsidized Housing and Council Districts with Low Concentrations of Subsidized Housing



Source: Austin Affordable Housing Inventory, HACA 2015, City of Austin 2017, Housing Works Austin 2017, CAPMETRO 2017