CodeNEXT Draft Comments to Date
Submitted by Susan Moffat, CAG Appointee
May 2, 2017

Below please find my collected comments on the draft code submitted to date. Section A contains comments or questions about larger policy issues (Items 1-5), as well as those related to the draft structure or review process (Items 6-9). Section B contains line-by-line comments, questions and corrections organized in sequence of the draft text. Given the size and complexity of the draft, there are undoubtedly many things I have missed, but I appreciate your consideration of the issues identified below.

A. GENERAL COMMENTS & QUESTIONS

1. Public School Impacts. As the CodeNext Advisory Group (CAG) member appointed to provide a voice for public schools, I have two chief concerns about the draft:

(a) New zoning categories allowing multiple smaller units to be built on sites previously zoned for single-family homes and duplexes may provide an incentive for property owners to demolish existing family-friendly housing. The draft code does not contain any specific provisions to promote or require family housing and, if recent market activity is any guide, Austin is likely to see the continued proliferation of small, expensive units not suitable for families with children. This is a general concern citywide, but is particularly troubling for areas immediately surrounding public schools. High opportunity areas (generally, the wealthier suburbs) will see very little change and will receive few, if any, tools to increase affordability access, such as the addition of missing middle housing. Finally, code consultants have made clear that code changes alone cannot produce the deeply affordable housing needed by public school teachers, staff or many families in Austin's overheated real estate market.

(b) The draft's greatly reduced on-site parking requirements citywide are likely to increase the number vehicles parked permanently on streets near public schools. In central locations and/or rapidly gentrifying areas where more intensive zoning already exists or upzoning is proposed, on-site parking reductions are likely to pose serious concerns for student safety and parent access at some campuses. [1]

Parking more vehicles on the street may increase safety in some settings by narrowing travel lanes and thus reducing vehicle speeds. But the streets immediately adjacent to many of Austin's urban public schools are already fully parked during school hours, as well as many evenings, so no additional safety benefit can be

[1] *During my CAG service, I repeatedly requested that current on-site parking requirements be retained for sites adjacent to public schools for safety and access reasons, and was told this issue would be addressed in the mapping phase. Unfortunately, the draft maps do not reflect this request.*

realized by adding more on-street vehicles to the mix (sidewalks are often missing or incomplete in these areas, as well).

It is simply not possible for an urban public school to provide sufficient on-site parking for the hundreds of staff, parents, students and community members (thousands for high schools or middle schools) who need daily access to the campus. Additionally, Texas school accountability laws now require mandatory grading of districts and campuses based on the level of parent/community engagement they demonstrate, further heightening the need to retain available on-street parking near campuses.

To address these issues, at least in part, I strongly recommend the following changes:

(a) Promote family housing by mapping new family-friendly sub-zones near public schools, setting required percentages for 2-3 bedroom units in multifamily housing, requiring 75% of affordable units to be multi-bedroom near urban schools, and preserving existing family-friendly and affordable housing citywide.

(b) Develop a zone suffix modeled on the draft 'O' suffix (such as PSU: Public School, Urban) or other tool for properties within 600' of an urban public school property line that would retain current on-site parking requirements for all uses. For single family homes or duplexes, this would require two on-site parking spaces per dwelling unit. For multifamily, commercial or other uses, on-site parking requirements would match those currently contained in the Austin Land Development Code, Section 25-6 Appendix A.
https://www.municode.com/library/tx/austin/codes/code_of_ordinances?nodeId=TIT25LADE_CH25-6TR

This sub-zone would also acknowledge the reality that most families who can afford market-rate housing in the urban core are likely to have two vehicles. For deeply affordable family-friendly units to be rented or priced at 60% MFI (Median Family Income) or below, on-site parking exemptions should be determined by the applicable director in consultation with the affected school community.

Due to time constraints, I was unable to fully research the impacts of the proposed rezonings for each of AISD's 130 schools or the numerous campuses operated by other school districts within the Austin city limits. However, I have summarized the concerns the draft code raises for a number of representative campuses, which appear below.

a. McCallum High School
5600 Sunshine Drive
Traffic/Parking Safety Issues, Lack of Family Housing

McCallum High School has a current total student enrollment of approximately 1750 students, including 500 fine arts majors from all attendance zones who are enrolled in the

school's districtwide Fine Arts Academy, plus over 120 faculty and staff. In addition to the typical extracurricular clubs, sporting events and activities, the Academy hosts a high number of evening performances and rehearsals that draw traffic to the area after school hours. The school's main entrance, gymnasium and performing arts center all face Sunshine Drive, a narrow side street that is fully parked-up during school hours and often many evenings and weekends.

Located one block west of Lamar Boulevard, Sunshine Drive is already dangerously congested during pick-up and drop-off hours, with distracted pedestrians, newly-minted teen drivers, idling full-size school buses and parents rushing to get to or from work or appointments. Many students of driving age park on nearby side streets or in the small senior parking lot on the southeast corner of Sunshine and Houston (AISD allows seniors to leave campus during lunch so many student vehicles are moved and re-parked during the school day). Few of the nearby neighborhood streets where students also park have functional sidewalks. Because AISD does not provide transportation for Academy students, many also use Cap Metro buses to commute to McCallum and walk on narrow sidewalks or in the street from the bus stop on Lamar.

Allowing new businesses or multiplexes to operate in this area without adequate on-site parking will exacerbate safety concerns for students and make it more difficult for parents to access the school for required meetings, volunteer work or to pick up students for illnesses or appointments. Of the AISD schools I have examined, the draft code's impacts on McCallum are likely to be the most severe. These include:

• *A large tract on Sunshine directly facing the school's main entrance is currently zoned MF-3-NP, but is now proposed to be upzoned to T5N.SS*. This rezoning would increase the allowed building height from 40' to 65' and, in addition to residential uses, would allow medical services up to 5000 SF. The only exits from this tract are onto Sunshine Drive where buses and parents pick up or drop off students, or through a narrow driveway onto Stark, a small residential street to the north.

The draft code reduces on-site parking requirements for residential uses to one space per unit with an additional 40% reduction possible using the Off-Street Motor Vehicle Parking Adjustments found in 23-4E-3060; there are no on-site parking requirements at all for medical services allowed in the proposed zoning category. This means many of the vehicles associated with either use will be parked on Sunshine or other small neighborhood streets in the immediate vicinity, exacerbating safety concerns for students in an already congested area and making it more difficult for parents to access the school. If the current market is any guide, new housing allowed in the proposed zoning category is not likely to provide units of a size suitable for families.

• *A tract on Sunshine Drive directly across from the school currently zoned LO-MU-NP is proposed to be rezoned T4MS.* This rezoning would allow retail and other services to operate without providing any on-site parking for businesses under 2500 SF, meaning customers arriving by car would also have to park on Sunshine or in the

immediate vicinity. This zoning category does not allow residential use other than Live/Work space so is unlikely to produce family-friendly units.

In addition, the proposed T4MS zoning allows Bar/Nightclub and Microbrewery uses with only a Minor Use Permit (MUP), a new proposed tool that would allow administrative approval without a public hearing (notice requirements for this tool are still a bit vague in the current draft). Because state law prohibits alcohol sales within 300 feet of a school, it is fairly safe to assume that an MUP for such a use would not be granted here. But why rezone this site to category that may mislead a potential buyer? By contrast, the site's current LO zoning makes it clear that alcohol-related uses are not allowed here.

• *A tract facing the school on the northeast corner of Sunshine and Houston currently zoned Single Family-6 is proposed to be upzoned to T4N.SS, a multifamily category.* The corner portion of this tract is owned by AISD and is used as McCallum's senior parking lot; the remaining lots currently contain single family homes. The proposed rezoning would allow these homes to be replaced with multiplexes of up to 8 units each, as well as cottage courts of up to 8 units, again with only one on-site parking space for each unit. The proposed on-site parking reductions will clearly exacerbate student safety concerns in an already congested area. It is unclear whether any of the units produced would be large enough for family use.

• *Multiple tracts on Houston facing the south side of the school and its senior parking lot currently zoned Single Family-3 are proposed to be upzoned to T4N.SS, a multifamily zoning category.* The same safety concerns and likely lack of family-sized units apply here as well.

b. Fulmore Middle School
201 East Mary Street
Traffic/Parking Safety Issues, Lack of Family Housing

Multiple tracts immediately adjacent to Fulmore Middle School are currently zoned Single Family-3, allowing single-family homes, duplexes and Accessory Dwelling Units (ADUs). These tracts are now proposed to be upzoned to T4N.IS, a multifamily use that allows multiplexes (4 units plus an ADU per 6000 SF lot) and cottage courts (6 units per 12,500 SF lot), with only one on-site parking spot per unit. It is unclear whether any of these new units will be large enough to accommodate a family, but if the recent market is any indication, this area will likely be built out with as many small units as possible. Coupled with significant proposed on-site parking reductions, this will put many additional parked vehicles on the streets surrounding Fulmore, exacerbating student safety concerns and hindering parent access.

c. Becker Elementary
906 West Milton
Traffic/Parking Safety Issues, Lack of Family Housing, Hotel/Motel Use

A large tract immediately adjacent to Becker Elementary on the east, currently zoned Single Family-3, is proposed to be upzoned to T4N.IS, which would allow multiplexes (4 units plus an ADU per 6000 SF lot) and cottage courts (6 units per 12,500 SF lot), with only one on-site parking spot per unit. It is unclear whether any of these new units will be large enough to accommodate a family, but if the recent market is any indication, this area will likely be built out with as many small units as possible. Coupled with significant proposed on-site parking reductions, this will put many additional parked vehicles on the streets surrounding Becker, exacerbating student safety concerns and hindering parent access.

d. Campbell Elementary
2613 Rogers Avenue
Traffic/Parking Safety Issues, Lack of Family Housing, Hotel/Motel Use

Several lots immediately adjacent to Campbell Elementary are proposed to be upzoned from SF-3 to T4N.IS, T4N.IS-0, T4N.SS or T4MS. As previously discussed, these rezonings are not likely to encourage family-friendly housing and proposed citywide on-site parking reductions for these sites may hinder access and exacerbate safety concerns for students by increasing on-street parking. In addition, T4MS permits Hotel/Motel use, which may not be the ideal neighbor for an elementary school, given the inherent transience of its clientele.

e. Dawson Elementary
3001 South First
Traffic/Parking Safety Issues, Lack of Family Housing, Hotel/Motel Use

Tracts on the north and south sides of Dawson Elementary are proposed for upzoning from SF-3 to T4N.IS, a multifamily category. The tract to the west is proposed for upzoning from SF-3 to T4MS. As previously discussed, these rezonings are not likely to encourage family-friendly housing and parking reductions for these sites may hinder access and exacerbate safety concerns for students by increasing on-street parking. In addition, Hotel/Motel is a permitted use in T4MS, which again, may be a less than ideal neighboring use for an elementary school.

f. Mathews Elementary
906 West Lynn
Traffic/Parking Safety Issues

Mathews Elementary is located in an area of narrow neighborhood streets near a number of popular businesses that already draw traffic to the area. It is currently surrounded by multifamily zoning and will continue to be under the proposed rezoning to T4N.SS. If these properties are developed or redeveloped, the proposed on-site parking reductions would likely place significantly more vehicles on the already-congested streets, exacerbating student safety concerns and hindering parent access.

g. Pease Elementary

1106 Rio Grande
Traffic/Parking Safety Issues

Pease is currently surrounded on three sides by a mix of CS, LO, GO and MF-4 zoning, which the current draft replaces with a variety of Commercial Core zoning. If these properties are redeveloped under the proposed on-site parking reductions, more parked vehicles will be added to the area's narrow congested streets, exacerbating student safety concerns and hindering parent access. Because Pease is an all-transfer school, almost every child arrives by car so it is especially critical to ensure that increased street parking does not hinder parent access to this campus or exacerbate traffic dangers for young students.

h. Zavala Elementary
310 Robert Martinez Jr. Street
Traffic/Parking Safety Issues, Lack of Family Housing, Nightclub Use

Many Single Family-3 tracts immediately adjacent to Zavala Elementary are now proposed for upzoning to T4N.IS, a multifamily use. In addition, a large tract currently zoned CS-CO-MU directly across from the school is proposed for upzoning to T5MS, which allows heights up to 85' and permits Bar/Nightclub use. While some portion of this tract may be over 300' from Zavala, it again raises the question of why this entire tract would be rezoned for Bar/Nightclub use when alcohol-related uses will be prohibited on at least part of it due to proximity to an elementary school.

Given current market forces, it's doubtful that the upzoning of these areas will produce family-friendly housing units. Coupled with proposed on-site parking reductions, this will almost certainly result in increased street parking and congestion, exacerbating student safety concerns and hindering parent access.

i. High Opportunity Areas
Barriers to Affordability Near Schools

Many residential sites located in "high opportunity" areas (generally wealthier neighborhoods on Austin's west side) are currently zoned SF-2 or SF-3. The draft code proposes to downzone a number of these to Very Low Density Residential, Low Density Residential or even Rural Residential, none of which will allow even the most rudimentary forms of missing middle housing such as duplexes, though the Low Density zoning does allow Accessory Dwelling Units.

Other tracts in these areas are proposed to be rezoned T3NE.WL or T3NE, which would raise the minimum required lot size from the current citywide standard of 5750 SF to 8400 SF or 8200 SF, again making it less likely for families of limited means to find housing in these areas.

On the plus side, some SF-2 areas proposed for rezoning to T3NE.WL, T3NE or Low Medium Density Residential would now be required to allow duplexes and ADUs for the

first time, which might possibly provide some slightly more affordable options for moderate-income families. It is unclear why some existing SF-2 areas were chosen for one type of rezoning over another.

The proposed citywide reductions for on-site parking are generally a far lesser concern in these areas, due to the very limited changes in allowed density, and the fact that most suburban builders will routinely provide at least two on-site parking spots per dwelling. In short, most schools located in high opportunity areas would likely see little change under the draft code, nor would housing in these areas be made more available to families of limited means.

2. Increased Entitlements and/or Upzoning Absent Clear Public Benefits. As currently proposed, the draft code would allow a number of significant increases in entitlements without requiring specific, commensurate public benefits in return. Depending on the area, proposed entitlements may include vastly reduced on-site parking requirements citywide, elimination of FAR, reduced compatibility standards, greater number of units, increased height, higher impervious and building cover, reduced setbacks, etc.

Increased entitlements are also likely to promote the demolition of existing market affordable housing and may raise appraised values for nearby properties, placing a greater burden on longtime residents, both owners and renters, already struggling to keep up with rising property taxes. In areas that currently provide a mix of housing types, a proposed upzoning from SF-3 to T4N.SS, for example, will create extreme pressure for teardowns, further fueling gentrification and displacement.

Some believe increased entitlements will reduce construction costs, hence aiding affordability. But as developers will tell you, construction costs simply set the floor for a building's ultimate rent or purchase price - the market sets the ceiling. With Austin's market pressures continuing unabated and Texas law prohibiting nearly every traditional tool to preserve or create affordable housing, the city should not give away the few bargaining chips it holds. Please revisit these proposals and firmly tie any increase in entitlements to clear required public benefits in return.

3. Inequitable Placement of Missing Middle Housing. The draft maps appear double down on 'missing middle' housing tools in areas where this type of housing already exists (predominantly central and east neighborhoods), while failing to provide such tools for west Austin's generally whiter, wealthier neighborhoods. Given Austin's skyrocketing land prices, new missing middle housing will never be affordable to low-income families without some form of subsidy, but it may provide a slightly less expensive market-rate option for some middle-class families and individuals in high opportunity areas. Why have these tools not been widely mapped throughout the city?

4. Compatibility Inequities and Missing Elements.

Unlike the current code, which provides equal treatment for all property owners under its compatibility provisions, the draft code establishes a two-tier system, providing substantially greater compatibility protections for residents of Non-Transect Zones while weakening them for residents of Transect zones. Generally speaking, Non-Transect Zones enjoy greater protections in both setbacks and stepbacks and, while compatibility is specifically cited in the Intent statement for Non-Transect zones, it is omitted from the Intent statement for Transect areas.

The draft also omits current compatibility standards governing noise levels of mechanical equipment, dumpster placement, driveway placement and other crucial features intended to ameliorate negative impacts for residents living near a high intensity development. Because the Transect zones will likely be applied along transit corridors where high intensity development is expected, compatibility protections are arguably most important in these areas. Please review and revise the draft to ensure equitable treatment for all residents.

I have summarized below specific compatibility questions and comments. For comparison, please see current compatibility standards in Article 10 at the below link.

https://www.municode.com/library/tx/austin/codes/land_development_code?nodeId=TIT25LADE_CH25-2ZO_SUBCHAPTER_CUSDERE_ART10COST

a. What has become of the following current code sections?

(1) § 25-2-1063 – Height Limitations and Setbacks for Large Sites.

(2) § 25-2-1065 – Scale and Clustering Requirements.

(3) § 25-2-1067 – Design Regulations, specifically the below provisions:

• *Lighting.* Draft code requires shielding of all exterior lighting, but the draft is missing this key phrase "so that the light source is not directly visible from adjacent property" in an urban family residence (SF5) or more restrictive zoning district. Can we please reinstate this for clarity?

• *Noise level.* Current compatibility standards require that the noise level of mechanical equipment may not exceed 70 db at the property line. There are random noise prohibitions that appear in various uses throughout the draft (Mobile food Sales, Mobile Retail, Late Night Restaurant), but no universal protection for noise as the current compatibility requires. Please let me know where this went and/or reinstate it. Thanks!

• *Refuse receptacles.* The draft requires dumpster screening, but appears to omit current code requirements for dumpster placement, including approval by

Watershed Protection: *"A permanently placed refuse receptacle, including a dumpster, may not be located 20 feet or less from property: (1) in an SF-5 or more restrictive zoning district; or (2) on which a use permitted in an SF-5 or more restrictive zoning district is located….The location of and access to a permanently placed refuse receptacle, including a dumpster, must comply with guidelines published by the City. The Watershed Protection and Development Review Department shall review and must approve the location of and access to each refuse receptacle on a property."* Please reinstate this language.

Reflective surfaces. Current compatibility states: **"***A highly reflective surface, including reflective glass and a reflective metal roof with a pitch that exceeds a run of seven to a rise of 12, may not be used, unless the reflective surface is a solar panel or copper or painted metal roof."* Please reinstate.

Recreational Uses. Current code: "*An intensive recreational use, excluding a multi-use trail and including a swimming pool, tennis court, ball court, or playground, may not be constructed 50 feet or less from adjoining property: (1) in an SF-5 or more restrictive zoning district; or (2) on which a use permitted in an SF-5 or more restrictive zoning district is located."* Please reinstate.

Driveway placement. Current code "Unless a parking area or driveway is on a site that is less than 125 feet wide, a parking area or driveway may not be constructed 25 feet or less from a lot that is: (1) in an SF-5 or more restrictive zoning district; or (2) on which a use permitted in an SF-5 or more restrictive zoning district is located." Current code also provides a detailed width and setback chart for parking/driveway construction for lots less than 125 wide. Please reinstate.

(4) § 25-2-1068 – Construction of Parking Lots and Driveways By Civic Uses Prohibited. Please reinstate.

b. Streets as a compatibility trigger?

At the ZAP/PC briefing on 2/22/17, consultants stated that compatibility would be triggered by alleys (though this is not yet reflected in the draft which cites only parcel lines as triggering the new stepbacks), but not by streets, in contrast to the current compatibility standards, which specifically include streets in compatibility triggers.

Central Austin has some streets less than 30' wide near corridors. As currently drafted, this would allow buildings up to 85' tall within 35 feet of a single-family home, as long as the home was on the other side of the street.

For example, T5MS and T5U.SS both allow building heights of 60'-85' with a minimum front stepback of 5', and T4MS allows a 55' height also with a 5' setback. If streets are removed as a trigger, this stepback plus a 30' street allow an 85' tower within 35 feet a single-family property. By contrast, the draft stepbacks triggered by a parcel line (and alleys if this omission is fixed in the commission draft) would require a 50' rear stepback for a building of 4-6 stories where it abutted a small residential use. Please reinstate

streets less than 50' in width as a compatibility trigger.

c. Stepbacks adjacent to alleys?

T5N.SS currently allows building heights of 65' with a 20' rear setback, but reduces this setback to 5' if adjacent to an alley. My own alley measures 10.5' meaning the total stepback would be just 15.5', less than the 20' required. I strongly encourage you to increase the alley stepback to be at least equivalent to 20'.

5. Blanket Reductions in On-Site Parking Requirements Without Regard for Existing Conditions. The proposed draft significantly reduces on-site parking requirements citywide without regard for existing conditions or potential impacts on surrounding areas. A number of small residential streets in the central city are already dangerously saturated with street parking due to the presence of 'stealth dorms' – houses purposely built with up to a dozen bedrooms, each rented to a college student with his or her own vehicle. With just two on-site parking spaces, the home's ten remaining vehicles are permanently parked on the street. If more than one of these homes exists in a single block, conditions quickly become untenable.

For residents of older homes that lack on-site parking or driveways, the over-saturation of street parking can result in conditions that are inconvenient at best (forced hikes with groceries) or dangerous at worst. One older resident in the North Loop area reports that emergency vehicles cannot reliably access her street due to the congested parking conditions related to the presence of several stealth dorms in a single block. Clearly, areas that are already so congested under current code can ill afford additional reductions in on-site parking, especially for properties that are likely to be redeveloped into multiple smaller units.

The impacts of parking reductions will be even greater for neighbors of large apartment or condo complexes. Current code requires *one on-site space per bedroom*, with that number diminishing for multi-bedroom units (additional reductions are also possible under current code). [2]The proposed draft would reduce multifamily parking requirements to *one on-site space per unit*, with potential additional reductions of up to 40%, meaning one could legally build a 100-unit complex with just 60 on-site parking spaces on a street also shared by single-family homes (if your home faces a large complex on the opposite side of the street, compatibility standards will not apply under the draft code).

Developers familiar with large multifamily projects recently built in Austin have observed a number of tenants parking a second vehicle more or less permanently on the surrounding streets. This is primarily due to couples with two cars renting a one-bedroom apartment, but if on-site parking requirements are reduced to one per unit (or less) as the current draft provides, this practice is certain to escalate.

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[2] For all current on-site parking requirements, see Article 7, Appendix A, at the below link:
https://www.municode.com/library/tx/austin/codes/code_of_ordinances?nodeId=TIT25LADE_CH25-6TR

If limited to a few small infill projects per block, such as a single duplex or townhome, this might not pose a problem. But the proposed parking reductions for large multiplexes near corridors are likely to quickly overwhelm surrounding streets with additional parked vehicles. A 2012 Portland study found "...the reality is that once parking use reaches approximately 85 percent of the available parking spaces, it becomes difficult to find an open parking space. As a result, drivers are often required to circle the block or blocks, which impacts traffic flow and creates delay for drivers looking for parking." https://www.portlandoregon.gov/bps/article/420059

The proposed reductions in on-site parking would allow developers to externalize parking costs by shifting them to the streets, but the draft contains no mechanism to ensure that these construction savings will, in fact, be passed on to the consumer. In any case, construction costs simply set the floor of a rental or sales price; the ceiling will be set by the market.

While it appears there is no clear consensus in the multifamily development community about how many on-site parking spaces to build for future projects, the market will ultimately determine this number, though not without pain associated with wrong guesses. The market will also determine the ultimate rental or sales prices of the dwelling units, absent any mechanism to tie reduced on-site parking to affordability requirements.

6. Set Future Goal to Unify Multiple Code Languages. The decision to create Transect and Non-Transect zones, while simultaneously retaining a number of complex negotiated plans based in the current code, has essentially resulted in three distinct codes types, each with a different nomenclature and format, and, in many cases, different building standards for essentially the same uses. Because the three types are intermingled on the ground, those serving on ZAP, Planning Commission or City Council - as well as many professionals and community members - will have to remain fluent in all three code types as long as they exist. While there appears to be some support for better aligning the format of the transect and non-transect zones, the overall tripartite code structure is not likely to be resolved before adoption. But is it at least possible to set a goal of bringing the whole city under a single code language and structure at some future date?

7. Clarify Valid Petition Rights for Proposed Rezonings. While there has been much reference to 'right-size zoning,' the proposed draft will, in fact, constitute a rezoning, and in some cases, an upzoning, for many areas. Will residents adjacent to, or residing in, areas proposed for rezoning under the current draft be able to exercise their valid petition rights in the code adoption process as granted by state law? http://www.statutes.legis.state.tx.us/SOTWDocs/LG/htm/LG.211.htm

8. Formatting and Design.

a. Darker ink for body text would improve readability in both print and online version.
b. Narrower font could save paper on print copies.
c. Tabs dividing sections would improve usability of print copies.

d. The proposed mock-up submitted to ZAP/PC that more closely aligns formatting in the Transect and Non-transect sections of the draft code should be adopted.

9. Track Changes for Future Drafts. Finally, please ensure that all changes are tracked in a way that is easily viewable on subsequent drafts. Absent tracked changes, decision-makers and the public will have to start from scratch to review another 1100+ pages when the Commission draft is released, and again for the Council draft.

B. LINE-BY-LINE QUESTIONS, COMMENTS AND CORRECTIONS BY DRAFT CODE SECTION

23-1A: General Provisions

23-1A-1010(B)(1)(b). Typo: Remove initial "("

23-1A-2030(B). Limits on Authority section needs to explicitly apply to all city employees whether a "city official" or not. Not all city employees are city officials. See definition in 2-7-71.

23-1A-3020 (A)(2)(a). Amendment to "text" of the code is a legislative action, mentioned here and elsewhere. Amendments to other items in the code (e.g., heading, caption, figure, illustration, table) should also be addressed legislatively, especially tables which may include regulations that don't exist elsewhere.

23-1A-3020. Inconsistent language. In (A)(2)(b), the initial zoning under the new code is referred to here as "adopting the City's official zoning map." Elsewhere, it's referred to as the "original" zoning (e.g., 23-1B-3020(A) and 23-2A-1030(A)). Given that there have been recent questions about the allowable procedures for initial zonings, please be consistent and intentional with this language.

23-1A-5020(C). Incomplete Provisions. This appears to be a new concept, giving authority to the director to create new standards if the code is incomplete. At a minimum, the director should be required to raise the issue to the Council to initiate a process to amend the code to complete it, and ideally, secure Council guidance for how it should be completed in the instance at hand.

23-1B: Responsibility for Administration

23-1B-1010(A)(2). This section mentions amendments to adopted Small Area Plans as provided in Division 23-2E-2 but that section only mentions Neighborhood Plans. Amendments to other Small Area Plans, of which there are many, should also be addressed, at least generally, for completeness.

23-1B-2010(A). "This Division establishes the sovereign boards and commissions…" but in fact the City Code section 2-1-3 does this: "Each board described in Article 2 (Boards) is established or continued in existence…".
Need to align which part of the code "establishes" the boards and commissions. See also 23-1B-2010(B) which references "establishing" the boards.

23-1B-2020 (D)(2)(b). This section creates an Appeals Panel, as a subset of the Board of Adjustments. While this may be meant to ease the work load of the Board, it is problematic in that not all Council Members/Council Districts would have a

representative in the appeals process. In addition, will the Panel have a Chair? How would the members of the Panel be selected?

23-1B-2-2020(E)(1). The authority to call a meeting 'requested by the Board' needs to be defined or, if it's to be defined in the Rules, clearly state that.

23-1B-2030(B)(1)(d). Typo "old" should be "Old"

23-1B-2030((C)(1)(d). Typo strike "Hearing"

23-1B-4010(E). If bylaws "shall be consistent with the standardized bylaws template" why allow contact teams to change them? In my own experience as a contact team member, the city provided template was very weak and omitted crucial sections regarding basic functions, such as the authority to place items on the agenda, voting process, quorum, etc. I strongly suggest the bylaws template be strengthened and the provision allowing changes be removed from this section.

23-2: Administration and Procedures

Please add valid petition process for rezonings. While valid petition rights in rezonings are established by state law, it would be helpful to include a provision in this section setting out definitions, applicability, procedures, etc., similar to what the draft provides for Vested Rights Petitions in 23-K-2.

23-2A-1010 (B). Typo. "Table 23-1-B010.A" referenced here does not seem to exist. There is a Table 23-2A-1030.A that appears a page later, but it has a different heading and number than the one referenced here.

23-2A-1030 (A). Here and elsewhere explicit department names are referenced yet at least one is already out of date (23-2M-1030 mentions "Watershed Protection and Development Review Department"). Can these departments be referenced more generically or at least brought up to date with current names before adoption?

23-2B-1010 (B). Adds option for director to establish application requirements by a "policy memo" rather requiring this to be established by rule as in current code. Using a policy memo does not allow for public feedback. Suggest revert to current code language.

23-2B-1040. Current code (25-1-88) requires notice when an applicant requests an extension to the completion of his/her application. It appears this section of the draft code does not incorporate the extension request, which is an improvement, but if extensions are provided elsewhere in the draft, please ensure that notice is required.

23-2B-1050. This allows an automatic extension of 1-year expiration period with no notice in a case where staff review is not complete, but omits the notice requirement. Need to include the current code (25-1-87) requirement for notice in this or any other case of extension.

23-2B-2050(C). This provides a 15-day turnaround required for staff to prepare Development Assessment, which seems an unrealistically short time for review of a 200+ acre residential project. The current code allows the turnaround time to be set by administrative rule (25-1-62(D)). Suggest revert to current code language

23-2B-2050(D). This is an addition to the Vested Rights code, stating that a Development Assessment (DA) can be submitted as part of a Fair Notice Application under Vested Rights. Given that a DA is preliminary and might suggest rights exist for a piece of property that do not, in fact, exist, including it in a Fair Notice application could cause significant problems and confusion in any subsequent grandfathering discussions. Suggest you remove this subsection completely, or at a minimum, add a provision clearly stating that a DA is not evidence of approval or compliance, but only a preliminary courtesy review.

23-2C: General Notice

23-2C-1010(B). Typo "…apply **to** all notice…"

23-2C-1020. The draft reduces the mailed notice requirement for public hearings from the current 11 days to just 7 days, and reduces posted notice from 16 days to 11 days. Given the vagaries of the postal system and residents' busy lives, this doesn't give much time to plan a response, register as an interested party or hire a babysitter to attend a hearing for a project that may substantially impact one's daily life. Strongly recommend retaining existing notice times.

23-2C-2010(B). This section allows for the public process (e.g., hearings) to proceed even if errors in notice are made. There have been cases of notice errors in the past that would have significantly hindered the public's right to participate had the process had been allowed to proceed. Suggest striking this provision.

23-2C-2020(B). This section could use some clean up. It defines several criteria that make one an "interested party" but then in 23-2C-3020, identifies how to mail to some in that explicit list (which is, per 2020(B), interested parties) as well as '(6) an interested party.' Is there another way to be an interested party to qualify under (6) but not be listed in 2020(B)?

23-2C-3020. Re: mailed notice "deposited in a depository of the US Post Office." Need to clarify that this does not include just getting it to the City's mailroom where delays may eat into the notice time.

23-2C-4. Notice of Public Hearings
The required amount of advance time for notice has been generally decreased from that required under current code (25-1-132). Please reinstate current code requirements.
Boards and Commissions – currently 11 days; proposed 7 days
Council – currently 16 days for mail and publication; proposed 12 days

Note: See 23-1A-5020(G) for computation and meaning of time. Calendar days are used. Even if business days were used in the current code, these suggested numbers would in certain situations result in a decrease in notice time.

23-2C-5010. Notice of Applications
Required amount of time for public to respond has been decreased (25-1-133)
Please reinstate the current amount of time, or increase it.
Currently – within 14 days with no decision on application within 14 days.
Proposed – within 10 days with no decision on application within 10 days

23-2D Public Hearings

23-2D-1020(C). This provision changes current code to require permission to speak if a person signs up after a hearing has begun. This issue is currently under discussion by Council and should be left to that body to decide.

23-2D-2030. This section allows a change in the location of a public hearing (for 'good cause' as deemed by presiding officer) if the hearing is delayed a sufficient amount of time for people to get to the new venue. This assumes that getting from the original locale to the new one on the spot is always possible for a member of the public. While this language also appears in the current code, it presents an onerous burden especially for those dependent on public transportation. Suggest removal.

23-2E Legislative Amendments

23-2E-2. This section specifically provides for Neighborhood Plan amendments but not amendments for other small area plans, which can also have legislative amendments. Suggest adding language to include small area plans.

23-2E-2030. Numbering error. It appears the section titled Review and Recommendation uses the same number as the subsequent section, Adoption by Council.

23-2E-2030. Where is the new section governing the creation and responsibilities of Neighborhood Plans and Neighborhood Plan Contact Teams (current code, Art. 16, Sections 25-1-805)?

23-2F: Quasi-Judicial and Administrative Relief

23-2F-2020 Exempt Residential Uses and Structures. This exemption is new, and appears to significantly expand and loosen a concept Council enacted in 2011 to address a problematic situation in a neighborhood where carports had been erected long ago in an area now prone to floods. The process was narrowly crafted (see http://www.austintexas.gov/edims/document.cfm?id=153423 and 25-2-476), limited to properties with SF3 or more restrictive zoning where the noncompliance existed for more than 25 years and required a review by the Board of Adjustment (BoA). The proposed

section opens the exemption to significantly more situations without BoA review, and could prove extremely subjective and problematic. This additional capability should be carefully scrutinized.

In addition, the ordinance linked above mentions that state law gives the BoA the authority to grant exemptions to the code without the hardship criteria. The city law department should determine whether the proposed 23-2F-2020, which grants this authority to the Building Official, is valid under state law.

23-2F-2030. Minor Adjustments. This section allows an administrative approval of a 10% increase in certain entitlements (height, building coverage and setback) if errors are made 'inadvertently' in construction. There is a major concern of abuse of this section, allowing construction "errors" to increase entitlements across the city. As with 23-2F-2020, it should be explored whether this is even allowed under state law.

The code tracking matrix states that 23-2F-2030 Minor Adjustments is 'carrying forward' 25-2 Subchapter E (Commercial Design Standards (CDS)) Section 1-4. This is a gross misstatement. That section allowed for adjustments to the CDS-specific design requirements such as minimum glazing area. It did not allow for increases to density, intensity or impervious cover, and had nothing to do with construction errors. Its purpose was to protect historic or natural features or unusual site conditions, without adverse effects on nearby properties. It was not designed to provide after-the-fact absolution.

23-2F-2040. Alternative Equivalent Compliance in the current code was part of the Commercial Design Standards. Here, its applicability is broadened to General to Commercial Non-Transect zones, but the new language is significantly more expansive than current provisions in the CDS and many modifications would decrease landscape and open space. Please ensure the Environmental Commission reviews this section.

23-2F-3010. Limited Adjustments is a new capability that allows adjustment of water quality requirements if there has been a court decision on them that is in conflict with federal/state Constitution or a federal/state law that preempts city code or charter. Note that the SOS regulations include a similar capability (25-8-512 and 30-5-23, which are carried over in 23-3D-9080). The first question is why this addition is necessary. There is nothing that precludes Council from waiving water quality standards for a non-SOS property under the procedures that already exist.

If this more general application remains, it should be made clear that this provision applies *only* if 23-3D-9080 is not applicable to the property. Because this provision differs in some ways from 23-3D-9080, applying it to properties controlled by SOS would effectively amend the SOS ordinance, which requires a supermajority vote of Council.

23-2F-3010(B). Typo. Reference to 23-2L-1 (Vested Rights) should be 23-2K.

23-2G: Nonconformity

23-2G page i: Typo. Reference to 23-2G-3010 should be 23-2G-1010.

23-G Organization: The organization is of this section is confusing and appears to have errors. Why are nonconforming uses, structures and lots considered as the 3 types of nonconformances under Section 1020, but Section 1030 only discusses determination of nonconformance of uses and structures? It appears the section on nonconforming lots got erroneously put in 23-2G-2020 under "Order of Process."

23-G Kudos. The draft code merges the concepts of conforming (for use) and complying (for development standards for structures and lots) under one term of 'conformance.' This is a positive move.

23-2G Missing Elements. Important sections of the current code (25-2-942 and 25-2-962) were not carried forward. These state that uses or structures that were conforming/complying as of 3/1/84 is still 'conforming'/'complying' after adoption of the 1984 code rewrite. These sections ensured that any noncomformance/noncompliance created by the adoption of the 1984 code would be deemed as conforming/complying under the 1984 code. This is a crucial clause, especially because transect zoning will make many existing uses (funeral homes, gas stations, etc.) nonconforming.

CodeNext needs to add similar language stating that conforming or complying uses or structures as of the adoption date of CodeNext are is still conforming/complying. Additionally, properties under development with permits that would no longer be valid with new development regulations under CodeNext should be deemed conforming. Otherwise, overnight, a huge number of properties in the city will become nonconforming.

In addition, the provision stating the discontinuation of nonconforming STR Type 2 by April 1, 2022 is missing (25-2-950). It is critical that this be added back into CodeNext.

The draft also removes the Nonconforming Use Table and Types that currently appears in 25-2-946, as well as TODs and references to tables that currently appear in 25-2-949. Do these appear elsewhere in the draft code? If not, are there scenarios under which these may still be needed?

23-2G-2020. Is mistitled as "Order of Process" but is about noncomplying lots (Repeats 25-2-943)

23-2G-2040. Is mistitled as "Termination of Nonconforming Use" but it is about bulkheads and repeats 25-2-963(D)). 23-2G-1060 is actually "Termination of Nonconforming Use" and was correctly titled as such.

23-2G-1020. How do you plan to map existing multifamily structures that are scattered around the interiors of central neighborhoods, not on corridors. These individual properties are currently zoned MF in areas that are otherwise largely single-family

residential. When the transects are applied, will these individual properties be mapped as mini-transects or will they be considered non-conforming uses?

23-2G-1050(B)(4). Conversion of Nonconforming Uses in Residential Buildings. This permits the Director to allow a change from one nonconforming use to another nonconforming if the new nonconforming use is less intense than the existing nonconforming use. While this could provide a benefit to nearby properties of a problematic nonconforming use, it effectively extends the time a use can remain nonconforming after the original use is no longer beneficial to the owner. In addition, the decision of what is a 'less intense' nonconforming use may be a fairly subjective decision. For these reasons, this process should require approval by the Land Use Commission.

23-2G-1050(B)(5). Conversion to Conditional Use. This process gives rights to a conditional use in a zone without the usual, public process for conditional use. The public process should be required. In addition, as written, it is not clear whether the result would be considered conforming use or a nonconforming use. If it is considered conforming, then this should be an abandonment of a nonconforming use; if it's nonconforming, then potentially under 23-2F-1060(B) the termination hasn't occurred, allowing a longer lifespan for the nonconforming use. This section also states a nonconforming use can be converted to an allowed use. Wouldn't that generally be the case and is this clause needed, or are there other unforeseen consequences?

23-2G-1050(C). This section is carried over from the current code but omits an important clause, 25-2-963(H), which allows only one modification to height and setback noncompliances. This is important because without it, for example, one could iteratively add to setback noncompliance with additional length. This clause should be reinstated.

23-2G-1070(B). Rebuilding a noncomplying structure that has been destroyed by fire, etc. This section omits the following current protections and constraints that should be reinstated:

- It omits any time limit to rebuild; current code requires a 12-month limit.
- It allows for significant increase in square footage over current code, because it only requires the same footprint, height and number units of the original structure vs. the current limits to footprint, *gross floor area and interior volume*.
- It omits 25-2-964(B)(2) which states: "noncomplying portion of the structure may be restored only in the same location and to the same degree of noncompliance as the damaged or destroyed structure." Without it, it appears that the proposed code would allow expansion of a height noncompliance that existed on just one part of the structure to cover the whole footprint, unless 23-2F-1050(B)(2) is meant to preclude that (if so, that should be clarified).

23-2G-2030. This provides an allowance for continued nonconformance with parking requirements after the noncompliance is terminated. This is problematic, as it allows a difficult parking situation to continue rather than be phased out like other noncompliances.

23-2I: Appeals

23-2I-2010(A)(7). States that an appeal must be accompanied by "an Appeal fee established by separate ordinance." Is this current practice? Where is the ordinance that establishes this fee?

23-2I-1030. Deadlines for appeals of administrative decisions (25-1-182) have been shortened from 20 days after decision to 14 or 7 days depending on whether notice of decision is required. This greatly reduces the window for affected residents to appeal decisions that may significantly affect them – this time should not be shortened.

23-2I-2030. The meeting to resolve issues has changed from a requirement for staff to host one if requested, and include all parties, to 'may' host one if requested and can meet separately. The current requirements should be reinstated to ensure a fair process.

23-2I-2040. Expiration period "tolled" while under appeal. Please ensure Environmental Commission and SOS review this provision.

23-2I-2050. Ex Parte Contacts Prohibited. I am unable to find the source for this provision other than for appeals to the Ethics Commission (2-7-43) and Board of Adjustment rules. It is not a current requirement for City Council; is it currently a requirement for other commissions? If this is prohibition is adopted for all appeals, as this provision seems to intend, it must also apply to the applicant, applicant's agent or others representing the applicant, not just to members of the public or interested parties as the currently language provides.

23-2I-3020(B) & (C)). This provision decreases notice for a public hearing to 7 days for a board (down from the current 11 days) and 12 days for council hearing (down from the 16 days). Please reinstate current timelines found in 25-1-132(A) & (B).

23-2I-3020. Does not address special section on appeal concerning Technical Codes as does 25-1-189(C). Why was this dropped?

23-2I-3040(A). This states that the case file for an appeal is only provided to the chair of the board that will hear the appeal, but all board members will need this information. Please revise to provide case file for all board members.

23-2I-3050(A). Why has the requirement to consider any issues of standing prior to conducting the hearing on an appeal been removed? (See 25-1-181(B).)

23-2I-3050(E). Why has a rebuttal by the appellant changed from a right (25-1-191(B)) to only at the discretion of chair?

23-2I-4010(A). Typo. Remove "The".

23-2I-4020. This provision increases the burden of proof on appellant/city for enforcement. Current code section 25-1-190 reads: "The appellant must establish that the decision being appealed is contrary to applicable law or regulations." This provision adds the phrase "by clear and convincing evidence" in subsections (A) and (B), thus creating a new higher burden of proof. Please ensure this provision is reviewed by the Building and Standards Commission.

23-2J: Enforcement

23-2J-1030. Are these fines really high enough to deter anyone? Are the levels set by state law or does the city have the authority to raise them?

23-2K: Vested Rights

23-2K-1040(B). This section been revised from:
"…with a project for which vested rights have been conclusively established by a court order, or by a settlement agreement or project consent agreement approved by the city council" (25-1-534(B))
to:
"…with a project for which vested rights have been conclusively established by a court order, settlement agreement, or Project Consent Agreement approved by the Council."
The revised language may be read as allowing for settlement agreements not approved by the Council. Please reinstate original language.

23-2K-2010(A). This gives the director 14 instead of current 10 days to make determination.

23-2K-2010(C)(2). Changes "decision" to "determination." Is there a technical, legal or other difference between these two terms and, if not, why the change?

23-2K-2010(D). This provides that a request for reconsideration of a vested rights determination tolls the expiration date, but I cannot find a similar provision in the current code. Does this provision already exist? If not, why the change?

23-2K-2010(E). Omits original language: "…but requesting a variance is not required to exhaust administrative remedies for purposes of challenging a determination by the director that a project is not entitled to vested rights." Why?

23-2K-2020(A)(2)(a). This section slightly rewords the existing criteria for approval. Please have the Environmental Commission review this new language to ensure it doesn't result in any substantive changes.

23-2K-2030. Typo: 23-2L-3 should be 23-2K-3

23-2K-2040(B). This drops language from current code: "…and before the application expires under Section 25-1-82 (Application Requirements and Expiration)…". Please have Environmental Commission review additional rewording to ensure there are no substantive changes.

23-2K-2040(C)(2)(c). Error in reference to environmental regulations as "Chapter 23-8 (Environment)." This should be Articles (not Chapter) 23-3C and 23-3D as per 23-2K-3030 assuming that reference is correct. Please check whether any other chapter reference needs to be included with these two.

23-2K-2040(D). Hearing notice is decreased from 16 to 11 days. Why?

23-2K-2040(G)(2)(a). This section references 23-6C-1 (Expiration for Site Plans), which in turn references 23-6B-3030 (Extension of Released Site Plan), which appears to drop the public hearing requirement contained in the current code. Why?

23-2K-2050(B). For consistency, the subsections listed here should be *numbered,* (rather than lettered) in parentheses.

23-K-3010, 3020. The current code provides different expiration standards for a site plan approved before 1/1/88 and/or 9/1/87, but draft code omits these dates and appears to use 6/23/14 as the distinguishing date for expiration standards; it also uses 5/11/2000 for Dormancy Time Frames. Why?

23-2K-3020(C). This section keeps the parenthetical "(new project)" phrase, whereas that phrase has been dropped elsewhere; please make consistent. Also (C)(2) omits the current language: "except that the project expiration period shall be deemed to run from the date of the fair notice application." Why has this been dropped?

23-2K-3030(A). What is a 'planned development center'? It may be that this was carried over from existing code, but it does not appear in the General Terms and Phrases section, which only defines Planned Unit Development and Planned Development Area. Please revise phrase or add definition.

23-2K-3030(B)(1)(b). This section has dropped reference to Section 25-5-2 for exemption from Site Plans. Seee 3030(B)(2)(b), which does have that reference included as 23-6A-2010.

23-2K-3030(B)(2)(b). This section references 23-6A-2010 (Exemptions from Site Plan Review), which in turn drops many of the current requirements in 25-5-2. Please see 23-6A-2010 entry further on for details.

23-2K-3030(C). Public hearing notice time is decreased as elsewhere. Why?

23-2K-3030(C). Subsection (C)(2)(b) refers to "Austin Comprehensive Plan" but General Terms and Phrases uses the term "Comprehensive Plan" as does the existing code. Suggest using Comprehensive Plan throughout for consistency. Also, subsection (C)(2)(c) translates the 25-8 reference in the existing code to Articles 23-3C and 23-3D. Do these two articles actually cover everything in 25-8 in terms of environmental standards?

23-2L: Miscellaneous Provisions

23-2L-1050(A)(2.) Notice of proposed Interlocal Agreements.
This section removes the currently required mailed notice to organizations for Areawide Interlocal agreements, instead requiring only published notice. Current code (25-1-903(B)(2)) requires mailed notice to registered organizations as well as published notice (25-1-132(C)) on 11/16 day timeline. Council added this provision in 2008-2009 because interlocal agreements had been processed behind the scenes with no input (20081208-070) and it was very problematic. Please reinstate mailed notice provisions.

23-2L-2. General Development Agreements. This creates a new mechanism for Council to modify regulations and create agreements (including for a land use plan) on a piece of property in the ETJ. Clear criteria for approval of this mechanism should be specified rather the general "whether the terms further the goals of the Comp Plan, including those related to …" as has been done for PIDs and PUDs. Also please include a statement that that any Development Agreement that conflicts with SOS regulations for the property requires a ¾ majority vote of the Council for approval.

23-2M: Definitions and Measurements

23-2M generally. It appears that many terms with definitions related to very specific code sections have been moved here under General Terms and Phrases (an example is "Industrial Use" that is only defined as it relates to reclaimed water). Unless these terms really are general, you may want to move such definitions back to the section(s) where they make sense.

23-2M-1030. "Adjacent." Transects use the term 'abut,' not 'adjacent,' when describing shared 'parcel line,' not 'lot line.' Lot line is defined in this section, but parcel line is not. Suggest using the same terms throughout for consistency.

23-2M-1030. "Carport." Current code specifies a carport must be open on two or more sides. Please add this language to definition.

23-2M-2030. Where did the Congregate Living use go? In the current code, it's classified as a Civic Use, but I don't see it listed in the draft Land Uses. Current code section 25-3-83(A)(6)(e) requires only one on-site parking space for each four beds in Congregate Living, a provision Foundation Communities successfully used for its Bluebonnet Studios project on South Lamar. It will be important to preserve this use and its attendant parking reductions for future affordable housing projects.

23-2M-1030. "Domestic Partnership." Do two people in a domestic partnership qualify as related adults for occupancy limits? If so, the definition should specify this.

23-2M-2030. Definition here is for "Group Home" but Occupancy Limits section refers to "Group Residential." Please pick one term and use consistently.

23-2M-2030. Efficiency Unit. Missing a phrase or word after "containing."

23-2M-2030. This says for Transect zones, height is measured two ways: number of stories and overall height, but then lists "a. overall height" and b." to eave/parapet." This implies there are actually three ways to measure height in a transect if you include number of stories. Why are there so many variables for measuring height in Transect zones, when non-Transect zones simply use the highest point on the roof?

23-2M-2030. Re Mobile Home, Mobile Home Space, Mobile Home Stand and Mobile Home Park: the use charts in the zoning sections refer to Manufactured Home Parks. However in the land use definitions there is no definition of Manufactured Home Parks. Suggest picking one term and using consistently.

23-2M-2030. No definition of Valid Petition? It does not appear under Petition and there's nothing in the Vs.

23-2M-2030. The Senior/Retirement Housing definition (p.14) currently says $\leq$ means "13 or less dwelling units" when it should say "12 or less." Similarly >12 currently says "more than 13 dwelling units" and should say "13 or more units."

23-2M-2030. Need to add a definition of 'stepback.'

23-2M-2030. Need definition of 'urban core' with a link to map.

23-2M-2030. Typo in Y-definitions. Change X to Y.

23-2M-2030. "Group Home." Occupancy limits refer to Group Residential, not Group Home. Suggest changing for consistency.

23-3: General Planning Standards for All

23-3A-1020. As previously noted, none of the Transect draft code sections contain a note directing the user to General Planning Standards, as is included in all Non-Transect sections. Please make this note in all Transect sections to ensure users realize they must also check the General Standards section.

23-3B: Parkland Dedication. Please ensure the Parks & Recreation Board reviews this section.

23-3B-1010(B)(2)(c). The section on affordable housing incentives that this references is not yet available, but please ensure that parkland exemption applies only to a significant number of units that are affordable at 60% MFI or below. In other words, the parkland exemption should not apply to a project that has a majority of market rate units, with just a sprinkling of tiny 80% MFI efficiencies, as a result of a density bonus; if any exemption is to be granted to such a project, it should be limited to the square footage of those units.

23-3C: Urban Forest. Please ensure the Environmental Commission reviews this section.

23-C-1010 through 1060. Will this division include a live link to the Environmental Criteria Manual where it is referenced?

23-3D: Water Quality. Please ensure the Environmental Commission and the Water and Wastewater Commission review this section.

23-3E: Affordable Housing Incentive Program. When this section becomes available, please ensure the Community Development Commission reviews it.

23-4B-1 Land Use Approvals

23-4B-1029. FAR is still referenced in on page 3 - CUP section (F)(1)(a) - but appears to be omitted from subsequent transect standards. Is FAR being removed completely, and if so, for what reason? And why does it still appear in the CUP section?

23-4B-1030. Regarding MUP (F) Appeal, how will an interested party know there has been administrative approval by a director?? Will nearby residents receive written notice of an approved MUP in time to appeal?

23-4B-1030. On 4B-1 page 4, (2) Late Hours Permit (a) requires that the parking area associated with a bar, nightclub or restaurant with a late hours permit must be "200 feet from a Low to Medium Intensity Residential Zone," but this term applies only to residential areas the non-transect zones. Please add the same protections for transect zone residential areas.

23-4B-1030 Minor Use Permit. Please add language requiring that, if a director approves an MUP administratively, all those who received notice of the application under

Section 23-2C-5010 also be notified of the decision and of their appeal rights and related deadlines.

23-4B-1050 Temporary Use Permit. Sections (H) and (I) appear to be word-for-word duplicates of sections (D) and (E) above. Remove duplicates.

23-4B-2020. This section requires posting of interpretations "likely to be of general interest." I like the concept, but obviously identifying 'general interest' interpretations is highly subjective. Wouldn't it be more efficient and effective to simply post all interpretations grouped by subject so the public can find them as needed? Please revise.

23-4D-1: Purpose

23-4D-1010. Why is this section called "Purpose" here, but "Intent" elsewhere? Please use consistent terms.

23-4D 2: Transect Zones

All transects. Draft expresses new lot size minimums in length/width measurement (50'x100') rather than a total square footage. How will this affect oddly shaped lots (triangular, flagpole, one or more irregular sides, etc.)?

All transects. Why are missing middle options not allowed in all transects?

All transects. For Building Type charts, please add "OR" after each building type so it is clear you may build one cottage house OR one small house OR one duplex, etc. Current charts may be misread as allowing one of each building type per lot.

All transects. Please add cite for specific use standards for *all* allowed uses. Currently, the cite is included for 6 uses, but omitted for others.

All transects. Draft code allows private meeting facilities as permitted use in all residential transects. Please revise to ensure private meeting facilities can't morph into 'private clubs' that serve alcohol to 'members' who can join on the spot.

All transects. Proposed draft reduces residential parking requirements in transect zone to one per unit (excluding T6). Will there be an appeal process or other consideration for areas where street parking is already dangerously congested due to stealth dorms, some with up to 12 cars per house already on the street?

All residential transects. On the building types chart in each residential transect zone, there is a footnote stating that a 25' minimum lot width is allowed for "lots existing at the time of the adoption of this Land Development Code." Please clarify that this applies only to specific lots granted small lot amnesty so that it is not read as retroactive license to break any lot that existed prior to adoption into 25' wide lots.

All transects. The draft code reduces on-site parking requirements to one per dwelling unit in all transects, except for T6U and T6UC where no on-site parking is required. For multifamily structures especially, these reductions should mean substantial savings in construction costs, but there is no mechanism to require these savings to be passed on the form of lower rent or sales prices. Construction costs set the floor for rent or sale prices, but the ceiling is set by the market. Why are we giving away one of our few bargaining chips without firmly tying it to a tangible community benefit, e. g. affordable housing?
All transects, flood modeling. Please note that all transect zones must still be modeled for flooding impacts. If a model reveals that flooding is likely to increase, please adjust any proposed increases in impervious cover downward.

O suffix in transects. Has the "O" suffix, which allows restaurant use, been mapped anywhere restaurants are not already on the ground? Restaurant use - even at less than 2500 SF with the same residential design standards - involves activities that are not generally compatible with residential use and are not limited to the restaurant's hours of operation. These include exterior grease traps that must be emptied by trucks, large delivery trucks running their engines while unloading, noisy dumping of bottles and trash in industrial size dumpsters after closing, etc. It shouldn't be a problem if the "O" suffix will only be used where restaurants are already operating, but if you're planning to allow this as a new by-right use in other residential areas, I strongly urge you to make restaurant use a CUP. People have already expressed concern that the "O" suffix removes the chance for public input on what is effectively use a change so we want to be very careful about mapping for this category.

On-site parking reductions near urban public schools. To offset the impact of on-site parking reductions near public schools, please retain current on-site parking requirements within 600' of a public school property line, as discussed in General Comments above. See also Table at 23-4E-3-60.

23-4D-2021 through 23-4D-2180. (T4N.SS, T4MS, T5U.SS, T5MS) The draft does not require any parking for retail or studio uses that are 2500 SF or less. In practice, this means customers for these businesses will be taking up the parking that larger uses are required to provide, or that the entire area will be filled with 2500 SF uses with absolutely no parking. Suggest you change this to mirror the "O" parking requirements in T3N.IS-O, which require 1 parking space for retail after the first 500 SF.

23-4D-2040 through 23-4D-2180. (T4MS page 69; T5U.SS page 85; T5U page 93; T5MS, page 102) Please stipulate no outside seating, no late hours for micro-brewery/micro-distillery/winery, as is already prohibited for bars in these transects.

23-4D-2050. (T5N.SS) Draft allows height of 55'-65', but I don't see any stepback where this backs up to single-family homes, as is the case on many transit corridors. Why are compatibility standards not baked in to this transect, as they are in T5U.SS page 81?

23-4D-2050. (T5N.SS*)* I don't see retail, restaurants or bars as permitted uses or "O" uses in this section. Just curious why these would be allowed in less intensive transects but not here?

23-4D-2080, 23-4D-2090. The draft code would establish much higher minimum lot sizes for two residential transect zones (9400 SF in T3NE.WL, 8200 SF in T3NE) than current code, which sets the minimum lot size at 5750 SF for all single-family residential zones SF-2 through SF-6 citywide. At the same time, the draft code also dramatically lowers the minimum lot size for other residential transects. If the goal is to provide more housing options and increase affordability, why would we enshrine minimum lot sizes that are substantially larger than the current minimums for some areas? And how do we justify telling some neighborhoods they must absorb an increased burden of Austin's growing population while sparing other areas? I suspect this was an oversight because no one multiplied out the width and length totals, but I don't believe we intended to raise the barriers for land acquisition in what are likely to be Austin's highest opportunity areas. To my mind, no minimum lot size should be higher than the current minimum.

23-4D-2130. Will occupancy limits be enforced for Cooperative Housing in T4N.SS? If not, I believe it would be more appropriate to require a CUP for Coop Housing, as is the case in Low- to Medium-Density Residential in the Non-Transect Zones.

Coops are a permitted use in Medium High Density Residential, High Density Residential and Very High Density Residential zoning, which already allow townhouses, courtyard apartments and quad-plexus on the low end, as well as large multi-family structures on the high end. Similarly, Cooperative Housing is permitted use in T5N.SS, T5U.SS and T5MS, all of which already allow fairly intensive multifamily uses. In these intensive residential areas, occupancy limits are not likely to be an issue.

But Cooperative Housing is an allowed only with a Conditional Use Permit in in Low- to Medium-Density Residential zones and with Minor Use Permit in Medium Density Residential. I believe these same protections should apply in T4N.SS.

In the only CAG discussion of coops that I recall, we ran aground on issues of parking, parties and overall occupancy in small residential areas. An unresolved question was whether it was possible for the code to differentiate between frat houses and coops, and how to provide sufficient parking for large numbers of adults concentrated in a single house, as opposed to a family group where typically only the parents and possibly an older teen would have vehicles.

For these reasons, a CUP is a more appropriate tool for coops wishing to locate in a small residential transect such as T4N.SS. This will provide the opportunity to address functional issues related to large group living situations before they become an enforcement problem.

23-4D-2140. Page 39 in the slide presentation dated 23-Feb-17 appears to show that in T4 Main Street, T5 Main Street and T5 Urban, you can build up to 3 stories with no

setback at all from T3 or Low to Medium Intensity Residential Zones. However, in the code text, T4MS provides a minimum rear setback of 30' (but no side setback and no stepbacks), T5MS provides side and rear stepbacks of 25' or 50' abutting T3, as does T5U.SS. Which is correct the slide or the text?

23-4D-2140. T4MS has a side setback of 0' with no stepback provisions if the transect abuts a small residential use. Austin has neighborhood main street areas, such as Duval & 43rd, where main street businesses are right next to small single-family homes. Please provide a stepback where T4MS abuts T3, T4 or small residential use along a shared parcel line or alley.

23-4D-2150. T5N.SS allows buildings up to 65' tall with a side setback of just 10' and a rear setback of 20', but again no stepback provisions if it abuts a small residential use. Please provide stepbacks in this Transect where it abuts T3, T4 or small residential use along a shared parcel line or alley.

23-4D-2160, 23-4D-2180. (T5U.SS, page 81; T5U, page 89; T5MS page 97). These transects allow building heights of up to 85' – yet compatibility stepback distances apply only where site shares a parcel line with a low- to medium-density residential use. However, many sites on corridors abut low residential use separated only by a narrow alley (8'); in these cases, I don't believe a rear setback of 5' is sufficient to blunt the impacts of an 85' tower looming over your back yard and home. Please consider adding a stepback for these situations.

23-4D- 2160. (T5U.SS, page 83; T5U, page 91). Again concerned about lack of parking requirement for retail uses up to 2500 SF. Suggest you mirror parking requirements for bars/restaurants in the transect, which is 1 per 100 SF for first 2500 SF.

23-4D-2160. T5U.SS. The side and rear setbacks in this Transect are 0' and 5' respectively. However, the Height chart requires side and rear stepbacks of 25' for buildings 2-3 stories tall, and 50' side and rear stepbacks for buildings 4 stories or taller. Does this mean you can build a one-story structure with no side setback even where it shares parcel line with T3, T4 or small residential use? Current code would require at least a 5' side setback.

23-4D-2170. Clarify that stepback chart applies along a shared parcel line or alley.

23-4D-2180. On F. Height chart, clarify that stepbacks are triggered by T3 and T4 as with the other stepback charts – not just T3.

4-D-3: Residential Non-Transect Zones

23-4D-3, Residential Non-Transect Zones. Why not provide missing middle tools to entire city? Not to mince words, but this entire section appears designed to preserve the

wealthier suburban enclaves intact (generally west of Lamar and/or Mopac) while increasing density on already burdened central and central east neighborhoods.

23-4D-3030. Why are the low- to medium-density residential zones in this section (Non-transect zones) not simply Transects? If we're going to the trouble of changing all the nomenclature for these areas, why not make it match the transect language where possible? At one point, we were told that the different code structures were supposed to correspond to walkable v. non-walkable areas, but don't we want all areas to ultimately become walkable? Also I'm hardpressed to understand any real difference between the development patterns of T3NE.WL and T3NE, as opposed to Low- to Medium Density Residential categories in the Non-transect zones. This is especially puzzling because the first two commercial zones in the Non-Transect section (Neighborhood Commercial (NC) and Local Commercial (LC)) specifically state that they are to be within convenient walking or biking distance of residences.

23-4D-3040. Missing heading on Table 23-D-3040.

Table 23-D-3040, p. 6. Why do libraries, museums, public art galleries, and public or private meeting facilities require a CUP in low- to medium density residential areas in the Non-transect zones when they are an allowed use in the low- to medium-residential Transect zones? Similarly, why are microbreweries, etc. not allowed in Non-transect zones at all when they're okay in the Transect zones?

23-4D-3080 LMDR. The minimum lot size here is 5750, which mirrors current minimum lot size for residential citywide. However, two Transect zones provide higher minimum lot sizes – T3NE.WL is 8400' and T3NE is 8000'. Why would these transect zones not match the 5750' minimum lot size required in LMDR?

23-4D-3090 LMDR. The front setback of 15' is less than current front setback in SF-3. Why was this reduced?

23-4D-3100. On Building Form chart, why is the allowed height lower beyond 80' of front property line than within 80' of front property line?

23-4D-3110, 23-4D-3120. All Non-transect zones that increase impervious cover requirements must still be modeled for flooding impacts. If a model reveals that flooding is likely to increase, please adjust these proposed numbers downward.

23-4D-5: Industrial Non-Transect Zones

23-4D-5090. R&D. The side setback adjacent to Low to Medium Intensity Residential Zone is only 5', but it's 25' if adjacent to a High to Medium Intensity Residential Zone. Why is the side setback for this Commercial zoning smaller when adjacent to a lower intensity residential use? This is also out of line with all the other setbacks in non-Transect Commercial zones. Was the 5' side setback in this district a typo?

23-4E Supplemental to Zones

23-4E page iii. the STR section is misnumbered as 23-4E-**4**310. Please correct to 23-4E-**6**310.

23-4E-3050. Parking for persons with disabilities. Is a phrase or sentence missing at the start of (A)? The first subsection (1) is a complete sentence, but (2) through (5) that are incomplete phrases that don't seem to tie into anything.

23-4E-3060(A). Off-Street Motor Vehicle Parking Adjustments. The draft code already substantially reduces on-site parking requirements citywide by mandating only one space per dwelling unit. This section further allows an additional reduction of on-site parking up to 40%, with an automatic 20% reduction within a quarter mile of a transit corridor. This means buildings as high as 85' that back up to residential neighborhoods could potentially not provide any on-site parking at all for 40 percent of their units, despite the fact that the car ownership rate for Austin is reported as 1.6 per household according to governing.com. These cars will have to park somewhere and the logical place will be on the nearest side streets. Given that the transition between high-density corridors and single-family homes is already a fraught topic, I strongly encourage you to rethink these adjustments with a view to reality. This will be especially important in areas near urban public schools, day care centers or other areas with vulnerable populations. Again, please retain current on-site parking requirements within 600' of an urban public school property line, as outlined in General Comments above.

23-4E-3060(B). Why does a shared on-site parking agreement in Subsection (1) require a "recorded covenant running with the land" when an off-site shared parking agreement in Subsection (2) requires only a "recorded parking agreement"? What happens if the off-site parking agreement is not renewed?

23-4E-6, p. 1. Table of Contents, Short-term Rentals. Typo - STR section is misnumbered as 23-4E-**4**310. Please correct to 23-4E-**6**310.

23-4E-6020. Why is there no entry here for Bar/Nightclub, Level One or Level Two, as appears in land use definitions section? The stated intent of this section is to provide "site planning, development and operating standards for certain land uses…to ensure their compatibility with site features and existing uses." Bars and nightclubs arguably have a far greater impact on nearby uses than some of the other uses listed here and should certainly be included in this section.

23-4E-6030. ADUs. Table 23-4E-6030.A states it "does not apply to Transect Zones." Why not?

23-4E-6040. Accessory Uses to a Residential Use. What is an example of a "Residential Convenience Service"? I cannot find it defined in either General Terms and Phrases or Land Use definitions.

23-4E-6040. Accessory Uses to a Commercial Use. Can you please explain this sentence: "Retail, restaurant and bar, or entertainment and recreation use or industrial use that is otherwise prohibited in the base zone subject to the requirements of Subsection (H)(2)." As I read this, it would allow a bar within 101' of any residential zone as long as it didn't take up more than 10% of the commercial use and the operators claimed it was primarily for employees, clients or customers of the principal use. Is this a correct interpretation?

23-4E-6060. For Alcohol Sales, please include reference to Code Section 4-9-4 which prohibits alcohol sales within 300' of certain uses.
https://www.austintexas.gov/sites/default/files/files/Planning/Applications_Forms/alcohol_bev_waiver.pdf

23-4E-6110. Communications use. What is an example of a Communications use, as opposed to a Telecommunications Use? Communications use is permitted by right in all residential categories and is exempt from many development standards, including lot size, lot width, FAR and building coverage. Apparently, these Communications uses are not utilities or telecommunications because those are described separately in their own sections - so what are they? This phrase is not defined in either General Terms and Phrases section or Land Uses definitions section.

23-4E-6210. For Micro-Brewery/Micro-Distillery/Winery, please include reference to Code Section 4-9-4 which prohibits alcohol sales within 300' of certain uses.

23-4E-6220. Mobile Food Sales (K)(2) and (3). Do the additional minimum distance requirements and additional operational requirements apply in both Transect and non-Transect zones? Please clarify.

23-4E-6290 (B). This section appears to omit critical components of the Educational Facilities ordinance, including those addressing school recreational uses, impervious cover, and the Neighborhood Traffic Analysis requirement. Please see Part 4, Sec. 25-2-833(D)(3); Part 8, Sec. 25-8-66; and Part 9, Sec. 25-6-114 at this link:
http://www.austintexas.gov/edims/document.cfm?id=257543

23-4E-6290 (B)(1.) Revise applicability section to add the following bold text: "This Section applies to the development of a public primary or secondary school, **including an open enrollment public charter school as defined under the Texas Education Code**."

23-4E-6290 (B)(3). Revise Development Standards section to add the following bold text: "Except as provided below or **where governed by a current interlocal School District Land Development Standards Agreement,** the standards of the base zone apply."

23-4E-6290 (B)(4). Revise Additional Standards section to add the following bold text: "Within the General Industrial (GI) Zone, **public elementary schools are prohibited and** public secondary schools are limited to the senior high school level."

23-4E-[6]310. Typo – this is currently number 23-4E-4310, but should be numbered **23-4E-6310.**

23-4E-6310(B). (Currently misnumbered, see above). Subsection (B) should include a note in all caps clearly stating: LICENSES ARE NO LONGER BEING ISSUED FOR TYPE 2 SHORT-TERM RENTALS, AND EXISTING ONES WILL BE PHASED OUT COMPLETELY BY 2022 PER CITY ORDINANCE. Absent this note, you run the risk of investors constructing a unit for this purpose only to discover when the project is finished that it cannot be licensed. To further avoid confusion, please also remove the section on Type 2 licenses that appears on 4E-6 p. 37.

23-4E-6350. Two Family Residential. Do these development standards apply in both Transect zones and non-Transect zones? Please clarify.

23-4E-7040(D). Maximum Occupancy Senior/Retirement Housing or Group Residential. The Land Use definitions section (23-2M-2030) uses the term Group Home, not Group Residential as it appears in this heading. Please pick one term for consistency.

23-5. Subdivision

23-5A-1010 Intent. Use lower case after semi-colons. Also please note the potential conflict inherent in the phrase "predictable and flexible." A high degree of flexibility defeats predictability, especially for nearby residents and businesses that may be affected by it. Suggest this be amended to read: "…and predictable, with a reasonable degree of flexibility;".

23-5B-1070. Requires that subdivider shall "construct the streets…in compliance with the requirements of this title."
Suggest you add a reference directing the user *23-9H-1: Connectivity*, which contains additional requirements for block length, street alignment, connectivity, etc.

23-5B-1080. This highlighted section of this provision is puzzling: "Except as provided in a fiscal surety agreement, an officer or employee of the City **may not use or improve a street** unless the street has been accepted by the City." I get the improvement part, but if someone builds a street that isn't accepted by the city, this appears to prohibit a city employee from ever driving/walking/biking on it even in his/her off hours? This seems extreme so am wondering if perhaps some words were left out or if there's a better way to phrase this.

25-5B-2010. Preliminary Plan Requirement. I realize this language mirrors existing requirements, but given mounting increases in traffic and flooding, is it really a good idea to give the Director this latitude without specifying the method(s) by which he/she will determine that traffic circulation will be adequate and that drainage facilities are not needed to prevent flooding? Please add description and/or link to methodology.

25-5B-2040 (D). How will an interested party know that administrative approval has occurred and what is the appeal timeline, process, etc.? Please include a reference to the applicable process section.

23-5B-2090. Current code requires denial within 180 days, but this appears to extends denial period to one year. What is the rationale for this?

25-5B-3020. This language appears to extend expiration period for plat approval to one year from the current 90 days. What is the rationale for this? It also appears to conflict with 25-5B-3030, as well as the current code provision, both of which read: "An application for plat approval expires on the 90th day after the Director's determination under Subsection (A)(1) unless Subsections (A)(2) through (4) are satisfied."

25-5B-3090(B). To avoid confusion, suggest replace "may" with "shall" in the phrase "Director may require a plat notation stating that any subsequent residential development…is required to dedicate parkland…" etc.

25-5C-1020. Easements and Alleys. What has happened to the below provisions in the current code under Easements and Alleys?
"(B) Off-street loading and unloading facilities shall be provided on all commercial and industrial lots, except in the area described in Subsection (C). The subdivider shall note this requirement on a preliminary plan and a plat.
"(C) An alley at least 20 feet wide is required to serve a commercial or industrial lot in the area bounded by Town Lake, IH-35, Martin Luther King, Jr. Boulevard, and Lamar Boulevard. The Land Use Commission may waive this requirement."

23-6. Site Plan

Table 23-6A-2010.**A**. Site Plan Exemptions. This table states that a site plan exemption is allowed for a change of use, except for Adult Entertainment. However it drops all conditions the current code requires to qualify for this exemption, many of which provide vital protections for nearby residents and businesses. While some of these conditions appear elsewhere in the new table, they are not tied to the change of use provision. Please reinstate the below conditions for change of use site plan exemption in the new draft.

Current Code. § 25-5-2 - SITE PLAN EXEMPTIONS.

(D) Except for an adult oriented business, a site plan is not required for construction that complies with the requirements of this subsection.
(1)The construction may not exceed 1,000 square feet, and the limits of construction may not exceed 3,000 square feet, except for the following:
(a)enclosure of an existing staircase or porch;
(b)a carport for fewer than ten cars placed over existing parking spaces;
(c)a wooden ground level deck up to 5,000 square feet in size that is for open space use;
(d)replacement of a roof that does not increase the building height by more than six feet;

(e)remodeling of an exterior facade if construction is limited to the addition of columns or awnings for windows or entrance ways;
(f)a canopy over an existing gas pump or paved driveway;
(g)a sidewalk constructed on existing impervious cover;
(h)replacement of up to 3,000 square feet of building or parking area lost through condemnation, if the director determines that there is an insignificant effect on drainage or a waterway; or
(i)modification of up to 3,000 square feet of a building or impervious cover on a developed site if the modification provides accessible facilities for persons with disabilities.
(2)The construction may not increase the extent to which the development is noncomplying.
(3)The construction may not be for a new drive-in service or additional lanes for an existing drive-in service, unless the director determines that it will have an insignificant effect on traffic circulation and surrounding land uses.
(4)A tree larger than eight inches in diameter may not be removed.
(5)The construction may not be located in the 100 year flood plain, unless the director determines that it would have an insignificant effect on the waterway.

23-6B, Missing Elements. Where are current code sections for fast track permits, approval authority, and approval date (cuurently 23-5-23; 25-5-41; 24-5-42)? Can't find them here. Also I can't find the following current code section, which seems important to retain for obvious reasons:
§ 25-11-92 - APPROVED PLANS.
(A) The building official shall endorse or stamp "APPROVED" on plans and specifications approved in conjunction with permit issuance.
(B) A person may not alter approved plans or specifications without authorization from the building official.
(C) Activity conducted under a permit issued under this article must be done in accordance with the approved plans and specifications.

23-6B-1020. Subsection B states that no notice is required for Residential Heavy Site Plans. What is an example of this type of site plan (I cannot find this phrase in either definition section) and what is the rationale for not requiring notice?

23-6B-3030. Extension of Released Site Plan. Subsection (D) allows the Land Use Commission to grant subsequent site plan extensions, but appears to drop the public hearing requirement contained in current code (see below). Please reinstate public hearing requirement from *25-5-63*, as follows: *(B) The Land Use Commission shall hold a public hearing on a request to extend the expiration date of a released site plan under this section before it may act on the request. The director shall give notice under Section 25-1-132(A) (Notice Of Public Hearing) of the public hearing.*

Chapter 23-7: Building, Demolition, and Relocation Permits; Special Requirement Permits for Historic Structures

23-7A-1020. It would be helpful to provide a link to the definitions, which appear under General Terms & Phrases, not Land Use definitions. Also please note that key provisions in the definition for contributing structures have been dropped from the draft. Please reinstate the full definition from 25-2-360 as follows:
In this division, CONTRIBUTING STRUCTURE means a structure that contributes to the historic character of a historic area (HD) combining district, was built during the period of significance for the district, and which retains its appearance from that time. An altered structure may be considered a contributing structure if the alterations are minor and the structure retains its historic appearance and contributes to the overall visual and historic integrity of the district. A structure is designated as a contributing structure by the ordinance establishing the historic area (HD) combining district.

23-7B-1010. Building permit requirement. Subsection (C) confusingly states: "Except as provided in Article 23-7D-1020 (Special Permit Requirements for Historic Structures), a permit may be issued for the demolition or removal of any part of a structure." But because this appears under the heading of "Building Permit Requirement," it may be easily misread as meaning that a building permit functions as a de facto demolition permit. By contrast, current code clearly states in 25-11-32: *"(B) A building permit does not authorize the demolition or removal of any part of a structure."* Please reinstate current code language for clarity. Also, if the intent is to consolidate building and demo permits under one section, then the heading should be changed to read 'Building and Demolition Permit Requirements' and the requirements for a demolition permit should be included here. See 25-11-37: *Demolition Permit Required. (A) Except as provided in Subsection (B), a person may not demolish all or part of a structure unless the person first obtains a demolition permit from the building official. (B) A demolition permit is not required to demolish all or part of an interior wall, floor, or ceiling. (C) Except as provided in Article 4 (Special Requirements For Historic Landmarks), the building official may issue a permit to demolish all or part of a structure.*

23-7B-1020 and 1030. Existing Buildings/Limited Permits. Many of the safety provisions contained in current code section on Existing Buildings (**§** 25-11-33) appear to have been dropped in the draft. Is it anticipated that these will appear in the referenced Division 23-11B-1 (Building Code)?

23-7B-1040. Asbestos Survey Required. This section simply states that development must comply with state asbestos program, but provides no link or details. By contrast current code provides nearly a page of detailed information including penalties. See § 25-11-38 - ASBESTOS SURVEY REQUIRED FOR CERTAIN PERMITS. Absent this information, it may be tempting for people to skip this important requirement. Please reinstate current code language.

23-7B-2030. I've heard that the new code will consolidate 'nonconforming' and 'noncomplying' under one term, and indeed, I can only find 'nonconforming structure' defined in the General Terms and Phrases section, not 'non-complying structure' as is used here. If that is, in fact, the only term we're using moving forward, please replace

non-complying with nonconforming in (4) and (5) for consistency.

23-7B-3010. Where is section on demolition permits?? See current code § 25-11-37 - DEMOLITION PERMIT REQUIREMENT. Draft code only seems to contain this section about expiration and extension of demo permits, but no section that sets out demo permit requirements. Again, if the plan is to roll them into the section on building permits, then that heading should be changed and demo permit requirements clearly outlined there.

23-7B-4. Where have the following sections gone?

§ 25-11-65 - TESTING OF MATERIALS AND CONSTRUCTION METHODS.
§ 25-11-66 - ERRORS IN PERMIT SUPPORT DOCUMENTS.
§ 25-11-93 - APPEAL. An interested party may appeal a decision of the building official to grant or deny a permit under this division to the Building and Fire Code Board of Appeal.

23-7C-1040. Will the detailed inspection language contained in current code, but omitted from the draft, be provided in the referenced technical code?

Division-23-7C-2: Relocation Requirements. Typo in heading – please correct spelling of Requirements.

23-7C-2010. The below provision from current code appears to have been dropped. Why? Given that we recently had a stuck house close down a street for multiple days in South Austin, please reinstate current language below:

§ 25-11-145 - DENIAL FOR REPEATED VIOLATIONS.
The building official may deny a permit application submitted by a mover who knowingly and repeatedly violates the provisions of this title.

23-7D-2030. What happened to provision (D) in current appeals section? Please reinstate per below:

25-11-247 (D) This subsection applies only to an appeal of the issuance of a certificate of demolition or a certificate of removal.
(1) An interested party may file an appeal not later than the 60th day after the date of the decision.
(2) While an appeal is pending under this subsection, the building official may not issue a *permit for the demolition or removal of the landmark.*

Chapter 23-9: Transportation

23-9A-1010. Intent. Again, some sections of the draft use "Intent" while others use "Purpose." Please pick one term for consistency. Also, in (A) the V in vision should be

lower case; in (B) the G in goals should be lower case.

23-9A-1030. In addition to provisions for variances, the current code contains lengthy provisions for waivers beginning at § 25-6-81. Yet the only reference I can find to waivers in the draft is for TIAs. Have the other waiver sections been dropped and, if so, why?

23-9A-1030 (C). The new draft appears to expand the criteria by which the Board of Adjustment or Land Use Commission may grant a variance. Was this done to comply with a court ruling or, if not, what is the rationale for expanding these criteria?

23-9B-1040(A). What triggers the city requirement "to dedicate right-of-way, construct or fund system transportation improvements or dedicate right-of-way beyond the boundaries of a development," which in turn triggers the application of rough proportionality? Can you please include a reference to the code sections for these requirements? The subsequent section on right-of-ways just says that the city "may" require ROW dedication for a site plan or subdivision. Absent a clear and mandatory trigger for rough proportionality, it seems likely to be applied unevenly if at all.

23-9C-1020. Fee In-Lieu of System Mitigation. I'm concerned about relying on fees in lieu of actual mitigation for transportation impacts, especially given the lack of detail in this section. Historically, the city's sidewalk fee-in-lieu program has not charged an amount sufficient to actually cover the costs of sidewalk construction, leaving us approximately 140 years away from completing a functional sidewalk grid under current funding levels. Please revise this section to provide greater detail and assurances that fees will be sufficient to fully fund the proportional share of whatever transportation mitigation may be required.

23-9C-1030. Obviously, no one can knowledgeably comment on this section until the Affordable Housing Incentive Program section is released, but I'm concerned about the use of the term "reasonably-priced" as a trigger, absent any definition (reasonable to whom? Someone making over a million a year likely has a very different concept of a reasonable price than does a person on food stamps). Suggest that the beginning level of mitigation reduction in this section require a minimum of *20% of units 60% MFI or below.* In other words, projects that provide only a handful of 80% MFI efficiencies - which would likely be priced at 80% MFI anyway due to their tiny size - should not receive exemptions from transportation mitigation requirements. Given the growing demands on Austin's transportation system, we should set a very high bar for exemptions moving forward.

23-9C-2020. Typo. The sentence in subsection (C) is missing its subject. Suggest: "*A transportation impact analysis* is…etc."

23-9C-2020. Current code contains a deadline for applicant to supply supplemental information for a TIA as follows: "*An applicant required to supplement an analysis under Subsection (B) must submit the required supplemental material before the 27th day*

before the date on which the application is scheduled for action." I strongly suggest you reinstate this language to provide adequate time for staff and public to review new information. You really don't want the applicant waiting until the middle of a public hearing to pop out with supplemental info on something as important as a TIA.

23-9C-2070(A). Subsection (A) states that "the applicant shall propose the geographic area and scope to be included" in the TIA for the applicable director's review and approval. This is a departure from current code, which states "the director shall determine the geographic area to be included in a traffic impact analysis." (25-6-115). Because an applicant has a clear vested interest in the scope of the TIA, I strongly recommend that the determination of the scope remain solely with the director per current code.

23-9C-2070(B). Subsection (B) contains grammatical errors in first two sentences; please clean up. Also, how can we know that the applicant is qualified to complete the distribution of trips process that is intended to form the basis of the applicant's proposed scope for the TIA? The TIA itself is required to be performed under the supervision of a professional registered engineer, but it appears that the information underpinning the scope can be gathered by someone with no qualifications at all. Can this please be thought through and tightened up a bit?

23-9C-2070. Missing element. What has become of chart in current code showing desirable operating levels for certain street widths (25-6-116)?

23-9C-2080. What has become of the following provision of the current code (25-6-117)?
The traffic generated from a proposed development for which the requirement to submit a traffic impact was waived may not: (1) in combination with existing traffic, exceed the desirable operating level established in Section 25-6-116 (Desirable Operating Levels For Certain Streets)…

The current language (above) provides a much more objective measure than the draft's vague replacement phase ("create unsafe operation conditions"). I strongly suggest you revert to current code language and chart, or use the language in the subsequent section 23-9-C-3010(B)(1), which refers to desirable operating levels in the Transportation Criteria Manual.

23-9C-3010. Typo: duplicate letter (B) in subsection (B). Please remove second one.

23-9C-3010(C). This subsection transfers authority to approve an application that would otherwise be denied for safety reasons from the elected City Council per current code to an unelected "applicable director." Such a critical decision should not be made administratively without public input from those affected. I strongly recommend you revert to the current code language (25-6-141(C)).

23-9C-3020. This section states, "An applicant may modify an application to minimize the transportation-related effects identified in a transportation impact analysis or

neighborhood transportation analysis. Modifications may include: (1) Reduction in the projected vehicle trips per day;". I realize this language mirrors that of the current code, but it may be read as authorizing applicants to simply change findings that are detrimental to their case without any basis for doing so. Suggest instead: "Reduction in the projected vehicle trips per day based on demonstrable changes to the project that would reasonably result in such a reduction."

23-9D-1010(C). This says the city manager may approve a street that is "less than standard width" while current code says "less than 50 feet in width." Why the change? Unless there is great variation among standard widths, wouldn't it be simpler to specify the width here rather than make the user track down this information elsewhere? Please note that many existing streets in the central city are far less than 50' in width so if you are sticking with "standard width," you may want to say "standard width for the area."

23-9E-5050. Sidewalk Requirements. The organization of this section is confusing. Section (A) appears to apply to sidewalks on Core Transit Corridors, but it's not clear if (B) applies to all sidewalks or just those described in (A). Section (C) appears to apply to Urban Roadways, but it's not clear what (D) applies to (can't be transit corridors because the minimum width in (D) is only 12'). But does this mean all sidewalks must have a 12' minimum? And does (E) only apply to the sidewalks described in (D)? I think this section would benefit from the addition of subheads that clearly indicate the type of sidewalk and its applicable standards. Also please note that the 12' minimum sidewalk may be a stretch for some infill areas.

23-9F-1010. This section increases minimum frontage for access to 330' up from 200' in the current code (see § 25-6-381**).** What is the rationale for this change?

23-9G-1010. Purpose should spell out entire name of program the first time it's mentioned with the acronym following in parentheses, e.g. "The Transportation Demand Management Program (TDM) set forth in this division...etc."

23-9G-1020(A). Sentence seems to be missing a phrase. Perhaps should be "Except as provided in Subsection (B), *this division* shall etc." Also, how will it be determined that a project results in at least 300 daily trips if the project is not large enough to trigger a TIA?

23-9G-1040 through -1060. When will the TDM process, standards, fees, etc. be available in the Transportation Criteria Manual?

Chapter 23-10: Infrastructure

Please ensure this entire chapter is reviewed by the Water and Wastewater Commission.

23-10A-2050. This section requires an "environment resource inventory" vs. current code, which requires an "environmental assessment" (25-9-26). I can't find either term in the definition section. What is the difference and why the change?

23-10D: Reclaimed Water. I see that the list of definitions that appear in the Reclaimed Water section of the current code (25-9-382) have been moved to the new Article 23-2M: Definitions and Measurements. I understand the desire to group all definitions together, but in this case, the definitions pertaining to reclaimed water are so particular that they seem nonsensical when they appear in the General Terms and Phrases section. For example, "industrial use" is defined as "An approved use of reclaimed water for industrial or commercial processes as defined by 30 Texas Administrative Code, Chapter 210." This definition makes sense within the context of the Reclaimed Water section of the code, but as the only definition of "industrial use" in General Terms and Phrases, it verges on ridiculous. Unless these terms really are general, you may want to move such definitions back to the section(s) where they make sense.