



**COMMUNITY DEVELOPMENT COMMISSION  
RECOMMENDATION 20171212-05**

Date: December 12, 2017

Subject: Affordable and Fair Housing Concerns in CodeNEXT

Motioned By: Commissioner Tolliver

Seconded By: Commissioner Paup

**MEMORANDUM**

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To: Mayor and Council  
From: Community Development Commission (CDC)  
Date: December 12, 2017  
Subject: Affordable and Fair Housing Concerns in CodeNEXT

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For the past year, the Community Development Commission has studied CodeNEXT. We expressed concerns in memoranda to Greg Guernsey and the Code Advisory Group on April 24 and August 8, 2017 (attached) and we studied the consultants’ responses to our affordability questions.

We find that CodeNEXT repeats the mistakes of Austin’s past in which the people and communities we represent —low-income people, people of color, and people who are members of protected classes under the Fair Housing Act— are being left behind in favor of other city goals. While policies such as the city’s Vertical Mixed Use overlay (VMU) prove that it is possible for the market to both provide affordable housing and achieve other goals such as becoming a more compact and connected city, the CodeNEXT draft fails to plan future housing for lower income people and promotes the displacement of lower income people from their current housing.

We call upon the city council to direct CodeNEXT to:

1. Retain VMU’s structure so that it remains viable.
2. Use the VMU model to capture density bonus benefits for affordable housing in other zoning.
  - a. Apply affordability bonuses wherever residential use is appropriate.
  - b. Incorporate affordability requirements into single-family bonus with protections.
  - c. Do not increase ownership eligibility to 100% MFI, but look at setting rental at 50% MFI.
3. Make density bonus calculations and any proposed fee-in-lieu schedule available

immediately.

#### SUMMARY of PROBLEMS with CodeNEXT DRAFT

1. Weakens the City's most successful affordability bonus program, Vertical Mixed Use.
2. Gives away density without receiving commensurate affordability benefits.
3. Hides critical program details.

#### DETAIL ON PROBLEMS AND RECOMMENDATIONS

1. Draft 2 destroys the City's most successful affordability bonus program, Vertical Mixed Use.

Background: In 2007, the City adopted the Vertical Mixed Use overlay, which increases density on the city's corridors by offering density bonuses to developers who make ten percent of rental units affordable for forty years. VMU grew out of a model process involving real estate, City, and neighborhood leaders working with actual local development pro formas. For developers, VMU expedited the land development process with clear expectations. For neighborhoods, VMU concentrated density on corridors accommodating the city's growing population while protecting residential areas from commercial encroachment. Neighborhood leaders carefully chose areas to include in VMU, opting in a considerable portion of the city's transit corridors.

Result: Since emerging from the real estate recession, demand for redevelopment along the corridors has been high. VMU has produced more than 350 affordable units, with over 200 more on the way, all affordable for forty years. This has been accomplished at no cost to the taxpayers because the public is granting increased development entitlements rather than spending tax dollars.

However, Draft 2 waters down VMU in two ways. First it scraps VMU's successful formula that 10% of units be affordable and instead asks for only 10% of bonus units to be affordable. Second, Draft 2 opens the door to paying fees-in-lieu of providing any affordable units. In explaining why they want to switch formulas, the consultants state, "the bonus must improve the financial picture for developers, which only happens when the bonus market rate units more than offset the cost of providing any bonus affordable units." This is a succinct, rational explanation about a mathematical equation. The consultants go on to say that they believe the calculation of the bonus should be made "within the bonus." In math, there are variety of ways to arrive at the same answer. The consultants can calculate the offset "within the bonus," but that requires changing the percentage of affordable units from ten percent to something higher. A philosophical argument about whether to multiply from the base or the bonus does not change the bottom line that the current formula is a viable one.

The consultants' explanation for allowing a fee-in-lieu is that bonus units might not be feasible in some cases. Yet the consultants have not produced any examples. We are not aware of any city in America where in-lieu fees result in more units getting built than would get built under an on-site requirement. Instead opening the door to in-lieu fees shatters the certainty that VMU now provides. Currently, the number of affordable units to be provided is clearly set out. The in-lieu option introduces uncertainty because developers are likely to assume that they will get the in-lieu approval.

2. The draft gives away density without receiving commensurate affordability benefits. The consultants recommend:
  - a. Zoning more areas with VMU-like entitlements, but do not recommend including VMU-like affordability requirements. For example, the consultants recommend allowing residential uses along major highways. CDC recommendation: We question the wisdom of putting residential units near highways, but we support affordability bonuses where residential use is appropriate.
  - b. Zoning numerous areas currently zoned SF-3 to accommodate up to three units instead of the single unit and duplex uses allowed now. This moves away from the direction recommended by Imagine Austin and VMU, which was to accommodate

population growth along our corridors while protecting residential neighborhoods from commercial encroachment. Residential uses along corridors would build up Capital Metro patronage and create demand for small business retail on ground floors of corridor buildings. However, allowing three units on standard size lots would scatter population away from corridors, while promoting gentrification of lower cost areas. At the same time, larger, relatively central lots with more room to accommodate three units are not recommended to allow three units CDC recommendation: Incorporate affordability requirements into bonus single-family entitlements with protections against displacement and make them available throughout the city.

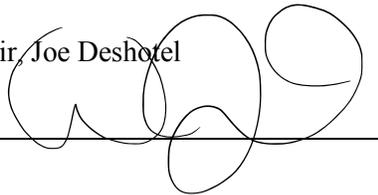
- c. Halving homeownership affordability percentage from 10% affordable at 80% of Median Family Income (MFI) to 5% affordable at 80% and 5% at 100% in the central city. To meet the city's duty to affirmatively further fair housing, we cannot relegate lower income people to lower income parts areas. CDC recommendation: Do not increase the hurdles for low-income people to participate in City affordability programs. Instead look at adding rental goals for households earning 50% of MFI.
3. The draft hides critical program details.
- a. At the root of VMU's success were developers, neighborhood leaders, and housing advocates working together with actual local development figures. However, with entire development code at stake, the figures behind the consultants' recommendations are not available to the public.
  - b. While the consultants recommend allowing developers to pay fees-in-lieu of providing affordable housing, the consultants do not want to tell Austinites what they propose those fees would be because they want to wait until adoption of the code so that the fees reflect current market conditions. While we understand that markets change, whether fees-in-lieu are structured to encourage provision of actual units is critical if the affordability component of the code is to be successful.
  - c. The consultants provided figures last year that included excessively high vacancy rates. High vacancy rates would reduce the value of density bonuses resulting in smaller affordability benefits. No one knows if the vacancy figures were revised to be more accurate.
  - d. We note that the delay in releasing the affordability section in draft 1 is part of the pattern described above in not providing affordability program information upfront. CDC recommendation: Provide density bonus modeling and, if the consultants continue to recommend fees-in-lieu, the fee-in-lieu structure immediately.

**Date of Approval:** December 12, 2017

**Vote:** A motion to approve the recommendation was approved on Commissioner Tolliver's motion, Commissioner Paup's second, by unanimous vote.

Absent: Commissioners Fadelu and A. Villalobos

Attest: CDC Chair, Joe Deshotel



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