

CodeNEXT Summary of Comments

Home Builders Association of Greater Austin

1. Codify an “Ombudsman” with the ability to intervene and make command decisions on building or development projects. The Ombudsman should be able to reach across departmental lines.
2. Within the code, simplify and empower staff by trying to diminish the use of specialists. Employees with a broad range of responsibility and authority should be more holistic in the review of plans. Provide recourse to the property owner for decisions conflicting with law, rules or failed deadlines. Have projects “deemed approved” when times lapse.
3. Redefine “small projects” so that a team leader is assigned to more projects, including single family detached development. Delegate to the team leader the ability to resolve interdepartmental conflicts.
4. Within the Austin/Travis County single office, create a single person with the authority to make command decisions that commit on behalf of the single office for any project. This requires codification to assure both governmental entities live to the intent and letter of state statute. We recommend that the office be independent employees without line responsibility to either governmental entity.
5. Recommend that the teams understand that the deadlines are firm and require staff to be accountable. The HBA tried to address the issue and created statutory deadlines.
6. Limit rule initiation to once per year or some standard of reasonableness with effective means of appeal. Provide for meaningful cost considerations.
7. Allow for interaction with the required oversight boards early in the process at the option of the owner.
8. Adopt into the land development code the design concepts being used in single family detached condominium projects as an allowable development standard for all single family projects, including traditional lots.
9. Amend the Comprehensive Watershed Ordinance to allow partial acre density exchanges. Amend the Water Supply Rural density to track impervious cover used in other zones.
10. Recognize consumer preference in residential design to allow for popular demand of cul de sac lots, winding streets, long blocks.
11. Give proper weight to professionally sealed documents.
12. Omit project duration ordinance limits and extend construction permit and building permit time frames to match state law.
13. Enact the International Codes as written without amendment.
14. Rewrite the RDCS to rely on simplified rules; e.g. clear, standard setbacks with impervious cover or building coverage limits.

CodeNEXT Comments

Home Builders Association of Greater Austin

These comments are provided on behalf of the Home Builders Association (HBA) of Greater Austin. The comments are a compilation of input received from HBA members and staff. They have been approved by the HBA Board of Directors.

The HBA has previewed the formal comments submitted by the Real Estate Council of Austin (“RECA”). We endorse RECA’s comments. The following comments should be considered as supplemental to RECA’s comments.

Preface

The HBA brings a comparatively unique perspective to CodeNEXT. Our membership represents a full breadth of the residential construction industry, from the developer of raw land into lots, to the home builder constructing the house, to remodeling contractor or infill builder trying to reconstruct infill product. Many of our members has a long history of working under the City’s development regulations and they have seen ordinances and new requirements adopted without consideration as to how the new regulation works with the existing code. Nowhere was this clearer than in the visitability ordinance where when asked how the builder could address steep slopes, trees, and impervious cover limits the Deputy Building Official said, “With proper planning, they’ll figure it out”.¹

Many in our membership also have a very long history of observing major code rewrite efforts – all for naught. The City of Austin purposefully set out to retain consulting help to make sense of the current regulatory mess. This is an incredibly unique opportunity to bring real, true reform to the City’s Land Development Code. The Council set out to hire the best consulting team in the country to gather input and bring knowledgeable perspectives on best practices. We would like to think that the regulatory staff and political voices will support the effort.

The remaining question will be “How do we fix it without ceding the character that makes the community such a great destination for business, students, government and the entertainment industry?”

Staff

As was stated over and over in the CodeNEXT public forums, much of the public and industry perceive many of the issues as problems with City of Austin staff. The perception is that a culture of “no” persists, rather than recognition that the users are

¹ Austin City Council, January 30, 2014 meeting

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customers that deserve respect, service and a modicum of courtesy. No doubt, staff see themselves as “caught in the middle” between advocates for no growth and the development industry.

Conflicts also extend to interdepartmental conflicts or intradepartmental issues and seemingly no one having the authority or ability or accountability to resolve issues. Historically, this type of situation was addressed by the City Manager or the Assistant City Managers. The last few City Managers have essentially removed the City Manager’s office from this management function.

Conflicts continue to exist outside the corporate limits of Austin in its Extraterritorial Jurisdiction (ETJ) with Travis County. The problems were so bad in the past that the HBA sought legislative relief². However, intergovernmental problems in the single office for development continue. For example, in one case, the “one stop shop” required the construction and dedication of a storm water detention pond. Travis County required that the instrument be recorded prior to final subdivision approval. Between the time the project began and the time it finished, the City of Austin executed a limited purpose annexation of the subdivision. That act triggered a review by the legal department of the dedication instrument which was refused. Austin legal demanded that the dedication be vacated, an act that required affirmative release by a District Court Judge.

Proposed solutions for the staffing issues:

- Adopt service policy similar to City of Georgetown (copy attached) with the included training.³
- Create an “Ombudsman” with the ability to intervene and make command decisions on building or development projects. The Ombudsman should be able to reach across departmental lines.
- Within the code, simplify and empower staff by trying to diminish the use of specialists – as opposed to employees that are more generalists in their duties.⁴ Our anticipation is that generalists could be more holistic in the review of projects. At a time when the private sector is “flattening” Austin adds administrative layers.
- Consider recreating teams to include “small” projects. Empower the team leader to make interdepartmental commands.
- Recommend that the teams understand that the deadlines are firm and require staff to be accountable. The HBA tried to address the issue and created

² V.T.C.A., *Government Code, Chapter 242*

³ <https://planning.georgetown.org/files/2012/12/Bulletin-101-Customer-Service-Excellence.pdf>

⁴ HBA recognizes that they may not be able to be accomplished within the Land Development Code, but recommend that it be included in an implementation report.

statutory deadlines.⁵ The responding standard practice for staff that cannot make timely review is to simply reject the application⁶ or the applicant can “voluntarily” ask for a postponement. Other divisions simply ignore deadlines. As of this writing, it requires three weeks to get a single family detached home approved.

- Move the ETJ Single Office into a semi-autonomous organization that enforces the ordinances enacted by Travis County and City of Austin, but is not separately responsible to each for supervision and interpretation. The goal is to have a true single office administration.

Land Development

Ordinances and policy in Austin fail to prioritize conflicting objectives, leading to complicated requirements enacted through ordinance or regulatory mandate. Examples include visitability vs trees and impervious cover; landscaping standards vs water conservation; tree protection vs fire safety, sidewalks, ADA accessibility requirements, personal safety, or sound building practice; and finally, any of the previous items as they might relate to housing affordability.

Zoning

Austin zoning is too complicated and too inflexible. There are fifteen residential, seventy-one commercial, eight industrial, forty-six civic, and six agricultural districts. Austin has a maze of neighborhood plans, conditional overlays, and special districts. Austin has 103 Neighborhood Areas, 29 Neighborhood⁷ Plans and 3 more in process⁸.

Airport	Barton Springs	Capitol Dominance Capitol
View Corridor	Central Urban Renewal	Comprehensive Cultural
Congress Avenue	Convention Center	Criminal Justice Center
Downtown Creeks	Downtown Parks	East 6 th
Green Building Mandatory	Hazardous Pipelines	Hill Country Roadways
Neighborhood Conservation	Residential Design Stan	Scenic Roadway
Transit Oriented Development	Urban Renewal	Waterfront Overlay
West Campus	Urban Renewal	

⁵ Sec. 212.009. APPROVAL PROCEDURE., Texas Local Government Code

⁶ In the not too distant past, items were listed on the Planning Commission agenda as “Statutory Disapproval”. More recently, the language is changed to simple “Disapprove”.

⁷ <http://austintexas.gov/page/neighborhood-planning-areas>

⁸ <http://austintexas.gov/page/future-neighborhood-plans>

⁹ <http://www.austintexas.gov/GIS/DevelopmentWebMap/Viewer.aspx>

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below) and five regulating plans for specific areas (not shown)¹⁰.

Public Advocacy Boards

The authority delegated to Boards and Committees in Austin is significant. There are a large number of entities with specialized interest that can affect a project¹¹

Balcones Canyonlands Conservation Planning Organization	Board of Adjustment
Capital Area Metropolitan Planning Organization	Building & Fire Code Board
Community Development Commission	Central Corridor Advisory
Downtown Commission	Design Commission
Electric Utility Commission	Electric Board
Historic Landmark Commission	Environmental Board
Parks & Recreation Board	Mechanical Plumbing Solar
Planning Commission	Pedestrian Advisory Council
	Residential Design and Compatibility Commission
Sign Review Board	Urban Forestry Board
Urban Transportation Commission	Water & Wastewater
Waterfront Planning Advisory Board	Zero Waste Advisory
Zoning & Platting Commission	

Given the existence of the “culture of no” one comment from those involved in the building and development process is: “We deal with staff at an extreme level of minutiae only to go before a board or committee that also believes their job is to change our product. It would be better if they could be involved earlier in the process – just to see the changes we made to accommodate staff that tried to anticipate those wishes.”

¹⁰ <http://www.austintexas.gov/department/specific-area-regulations>

¹¹ <http://www.austintexas.gov/edims/search/bncresults.cfm>

Density vs Community Preferences

CodeNext and planning goals all include densification objectives. Unfortunately, density goals directly conflict with neighborhood preferences. Particularly in neighborhoods near the University of Texas, there are development pressures to meet a need presented by as growing population. Rather than directly addressing housing needs, the City of Austin attempts to regulate through complex ordinances that do not address issues directly; e.g. Occupancy Limit (code enforcement challenges)¹², or Residential Design & Compatibility¹³.

The result of current codes fails to balance the natural conflicts between neighborhood resistance to any change and the city-wide goals of embracing growth that is denser – making more efficient use of infrastructure and minimizing roadway congestion issues.

Judgment Issues that Can be Alleviated through Code

From the perspective of the consumer, builder, or developer; City staff may act in ways that seem arbitrary, (e.g. denial of Service Extension Request in Drinking Water Protection Zone, even though included in the Impact Fee Boundary Area; mandatory compliance with the Heritage Tree Ordinance even though the property was not in the City at the Time of Annexation). Recourse for the owner is needed, short of litigation.

A frequent complaint from professional engineers and architects is that staff members not licensed to practice in Texas routinely direct changes or override calculations. The HBA recommends local codification of the license requirements.

Comprehensive Watersheds Ordinance

The City staff interpretation of current code is that development rights can only be transferred on a full acre basis – they only round down (a 3.9 of Net Site Area tract only counts for 1 unit of density). That becomes an issue when a partial acre can be used to complete a tract for development. However, when calculating the reverse and it is to the City's benefit, the staff uses partial acreage to assess the amount of impervious cover.

Similarly, when applying the Comprehensive Watersheds Ordinance in the Water Supply Rural district, density rules (1 unit per 2 acres of net site area), rather than the impervious cover restrictions used in every other watershed. Code needs to provide for partial density transfers.

¹²

<https://austin.siretechnologies.com/sirepub/cache/2/laabxowkullmvigo1io3a0wh/70216102172014104820939.PDF> (Final Ordinance with revisions from dais not published).

¹³ [http://www.amlegal.com/nxt/gateway.dll/Texas/austin/title25landdevelopment/chapter25-2zoning?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:austin_tx\\$anc=JD_Chapter25-2SubchapterF](http://www.amlegal.com/nxt/gateway.dll/Texas/austin/title25landdevelopment/chapter25-2zoning?f=templates$fn=default.htm$3.0$vid=amlegal:austin_tx$anc=JD_Chapter25-2SubchapterF)

Utility & Roadway Design/Construction

A common technique being applied in Austin is to develop residential subdivisions as single family detached condominium projects. The advantage to the developer is that it allows much more flexibility in roadway design and treatment of trees. As a result, the roads can be much more economical and more receptive to market demands.

The difficulty is that because of the project duration ordinance (now pending), it was difficult to bring any sizeable multi-phase condominium from start to finish within the three year limits of the ordinance. This is made all the more challenging given that it takes an average of two years for even modest projects to go through the City of Austin development process. Austin itself reports over 200 business days of “cycle time”.¹⁴

Also pending are connectivity standards that represent planner determination to impose their concepts of desirable community design on home buyers – irrespective of the desires of the citizenry. Limits on block length, methods of calculating block length, bias against cul de sac use, inhibiting gated communities are all examples of where the regulatory community works to impose their person preferences on more popular concepts. Particularly irritating is when projects are designed on direction from staff to provide connections to neighbors and the oversight board directs the removal based on objections from those same neighbors.

Roadway design is also an area that demonstrates the need for the use of new products. For example, the use of geogrids (plastic grid/mesh product) can reduce the cost (assuming the staff doesn't “double up” on design criteria) of constructing streets in the highly expansive eastern soils. Some time ago, pervious concrete was introduced; but has never achieved the impervious cover credits the manufacturers claim are due.

Commitments by Departments

A common theme is that there is no consistency or cooperation between departments. When working in the surrounding communities, representatives from the various regulatory authorities will meet in a predevelopment meeting. Those cities will honor the commitments they make. Those commitments are of critical importance to the building and development community. Determining the size and location of utilities, streets, parks or other infrastructure is of critical importance. Yet, commitments by the City of Austin are rarely offered or confirmed in written form. Worse, commitments made are frequently changed. A common example is with Service Extension Requests (SER) where it is common to have Austin Water Utility request a change in oversize (contrary to statutory intent, rarely fully reimbursed) after commitments to a project have

¹⁴ City of Austin Development Process Tracking, January 2014 – 203 days, 208 days “Last Year”

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been made. A range of examples were cited that generated costs often running to hundreds of thousands of dollars.

There is no effective contract, certainly not a moral one, by City staff. An ombudsman should be charged with oversight to assure commitments are met.

Interdepartmental Conflicts

Because there is no ombudsman or person of authority to cross departmental lines with decisions; Austin is rife with interdepartmental conflicts. It is common for American with Disabilities (ADA) Ramps mandated by Public Works to come in conflict with any of the utilities. AWU will determine that landscaping required by Planning Development Review is in conflict with water lines. Austin Energy (AE) will determine that a transformer is to go in the middle of a driveway. Parks and Recreation (PARC) may determine that an easement for access is inadequate. Each utility has legal review teams for easements or license agreements and there is no standardization for what becomes a trying and time consuming process.

The Licensing Division was cited as a particularly slow and seeming antiquated activity that “appears to reinvent the wheel with each new agreement.”

The City is totally intransigent in cooperating with Municipal Utility Districts, themselves a governmental entity recognized by the state.

AE refuses to begin their design on projects until final approved (red stamped) plans are available. At that point, the project goes into a queue where it will take another four to six weeks for the plans to be provided to the general contractor. Currently, developers are bidding their construction jobs without electrical, cable, phone or gas – each of which can add their own delays.

Predictability

A common problem is that site plans expire in three years.¹⁵ However, it often requires two years for even the most routine of projects to go through the City’s processes. When there are delays, whether by action of staff or not, extensions are discretionary. Extensions required a new process with all new fees.

One of the more frustrating things for a project manager is when under construction a field inspector determines that a correction needs to be made. That the plans have already been through intensive review by City staff or that the change triggers further delays seems to be irrelevant.¹⁶ Inspectors can (and do) refuse to allow seemingly

¹⁵ Chapter 25-5-81, Division 5, Article 1, Austin City Code

¹⁶ One example was a field inspector who “didn’t like” a manhole design and directed that the installed one be removed.

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minor corrections to be shown on the “as built” plans and will bring a project to a halt waiting for formal construction plan amendments, a process that can take weeks. Austin is the only community in south central Texas that shuts down the entire project – even for isolated changes.

General contractors complain that it can take months to close out a project to final acceptance. When that is done, the City refuses to accept projects that have damage or theft that is not the responsibility of the contractor, developer or builder. Projects with vandalism (e.g. theft of signs), damage caused by a home buyer (moving truck damaging asphalt), third party contractors (chipped curb or hydraulic fluid on the pavement), or simply unknown become the responsibility of the developer or general contractor. Even though Austin collects tax revenues from the properties, it refuses traditional maintenance responsibilities.

Similar issues exist with storm water detention ponds and assessing responsibility for cleaning out the ponds. Staff has also been accused of refusing to remove silt protectors from inlets – even though homes may become threatened with flooding.

Site Plan Permit Expiration on Major Projects

“The clock starts ticking” on site plan permit applications when the first submission is made for completeness check. It is rare for projects to complete in less than a year. That expiration makes planning and development of any sizeable or phased project extremely difficult, costly and risky. For single family condominium projects, it is virtually impossible to complete the home construction of any sizeable project before the expiration of the site plan.

Rules and Regulations

Almost thirty years ago, the HBA filed suit against the City of Austin to challenge what was seen at the time as staff changing rules and regulations – seemingly on a whim. The changes had extreme impact on the cost and planning of projects. In some cases, the changes had the impact of ordinances. An out of court settlement resulted in the adoption of the current City rules process.¹⁷

The good news is that the City of Austin now routinely goes through a formal rules process for all regulatory amendments and the construction industry gets a bit of a “heads up” on what is about to hit them. The bad news is that the level of change is beyond what most individuals (not working for the City) would consider reasonable or rational. Printing and stacking the Fourth Quarter rule amendments alone requires two reams of paper.

¹⁷ Chapter 1-2 Adoption of Rules, Austin City Code

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Quarterly rule postings create a regulatory scheme that is constantly changing. The processing of proposed rules often overlap. Proposed rule changes should not occur more often than once a year.

Constantly changing rules and regulations creates a regulatory atmosphere and staff atmosphere of faux urgency. Additionally, once a new rule is adopted, then all existing development and pending applications become tainted by the label of “not being compliant with current code.” This then leads to an institutional hostility toward the state’s vesting statute (Chapter 245) and anyone asserting their right to be grandfathered from new regulations.

Many of the proposed changes have trivial or minor “benefit” but often have disproportionately large costs. As result, the City’s push to have all projects meet “current code” leads to conflict and inefficient processing of permit applications.

More difficult is that the appeal process is virtually ignored. The HBA is unaware of one appeal having been approved in the last decade, though we take extreme care in ensuring that each is well documented and professionally presented.

One recent example of appeal was undertaken jointly by the HBA and Austin Contractors and Engineers Association. The particular rule being appealed would require that “All installed storm drain shall be video inspected”¹⁸. At the time of the appeal, only one other jurisdiction was found in the country requiring that type of inspection (on concrete pipes never designed not to leak) and ignored that the City is paid to supervise installations as they occur.

In other instances, the staff may ignore the ordinance mandated rule process. An example of staff initiating regulations independent of authority to do so is a new demand for “multi-modal” roads. Requests (demands) are being made for streets to be enlarged to add a ten foot bike lane on each side of the street (removing parking) and sidewalks without ordinance or posted rules.

Home Building and Remodel

Technical Codes

International Residential Code – Visitability

A number of years ago, the American Institute of Architects undertook an initiative to encourage all municipalities to come under a single code. The end result of that effort was a series of code adoptions, including the International Residential Code (IRC) and International Building Code. The HBA urged all of the south central Texas communities to adopt the IRC as drafted.

¹⁸ R161-13.17 Revisions to the Standards Manual

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The reasons were to encourage uniform building standards and requirements throughout the region. The metro area and most corporate building divisions consider Austin as a single market. It was difficult to have separate building plans and construction standards for each of the 30 city and county jurisdictions in the market. Fractured rules also made it more difficult for Austin based companies to use professional design firms located in other parts of the country.

Austin is the only city in this region that does not adopt the codes as written (minor exceptions are for those communities with long standing problems associated with extremely expansive soils that drive the need for “stiffer” foundations). Generally, it is an industry standard to use the (now expired) Texas Residential Construction Commission performance standards, including mandatory engineered foundations.

Through the building code process, the City of Austin loads up criteria that have no relationship to safety and have not stood the test of national laboratory testing or broad based professional building official assessment. One result is the “visitability” standard that mandates ramps without regard to technical capability; as well as switches, receptacles, and door handles without regard to consumer preference.¹⁹

Visitability may also be the clearest example of Austin enacting regulation without prioritization. No relief is provided when in conflict with environmental limitations on “cut and fill”, storm water regulations on impervious cover, tree regulations that prevent construction of any kind over the “root zone”, encroachment on zoning side yard setbacks, or ramp slope and landing standards in the code itself. The response of the Deputy Building Official when asked about potential slope issues was roughly stated - they'll figure it out.

International Residential Code – Special Interest

The building code is also used by specialized committees to advance a competitive advantage. The clearest example was the prohibition on an electrical master electrician from using journeymen subcontractors. As a result, many electrical contractors are now refusing Austin work and the typical bid for those that do is raised thirty percent.

Tree Regulation

The Austin City Council and the oversight boards fail to recognize that much of the “urban forest” that exists today is the result of urbanization and trees planted by builders and homeowners. The mitigation regulations do not account for the life cycle of trees and we believe the mitigation ratios actually represent a regulatory taking when requiring replacement ratios greater than one to one. Even with a one to one ratio,

¹⁹ Ordinance Amending City Code Section 25-12-243

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within a very few years; the trees at maturation far exceed the tree canopy they replaced. Staff fails to recognize that minimal disturbance of roots near the surface can be done without damaging the long term life of the tree. The HBA recently had a member forced to put up an exorbitant bond for a tree damaged (in theory) which thrives to this day. Also, builders have been forced to leave trees near homes that have grown and ultimately damaged the foundations and flatwork.

Trees are also a good example of conflicting regulations. The City is operating in a drought mode; yet reasonable irrigation to assure the growth of landscaping is stingy, at best.

Finally, other municipalities have enacted ordinances which recognize the life cycle of trees and few exceed one for one replacement. For example, the City of Fort Worth measures the canopy cover of a replacement tree when the tree is full grown. Additionally, the City of Fort Worth's tree ordinance reflects the regulatory value that all property should share in the responsibility to provide canopy cover. If a parcel of land has more trees than needed to meet its "fair share" of the tree canopy burden, then the excess trees can be removed with little or no mitigation.

On the other hand, the Austin tree regulations are punitive to the point of being a taking. To require the expenditures of hundreds of thousands of dollars for a single tree that blocks construction of dense commercial or residential development is contrary to any objective environmental gains.

Home Plan Review

Ostensibly because of the insurance industry review of the Austin building plan review, a new division in Planning Development Review was created for the sole purpose of reviewing residential plans. According to the Annual Operating Budget, Residential Review has 18.25 Full Time Equivalent employees to review plans²⁰ (estimated 2400). As of this writing, the division is taking three weeks to review a custom home or remodel, though down from the peak of three months. We suggest that be compared with south central Texas cities with comparable volumes. For example, Leander processes one quarter (600) of the volume with one FTE²¹. Pflugerville processes comparable numbers (680), also with one FTE²².

The end result of those eighteen Austin employees has been imposition of a new \$342 fee previously contained in the building permit²³. Ostensibly done to assure general review for code compliance the division has taken on extreme review for items that must

²⁰ 2013-14 Annual Operating Budget, Volume I, page 420.

²¹ 2013-14 Leander Annual Operating Budget, page 95

²² 2013-14 Pflugerville Annual Operating Budget, page 55

²³ City of Austin Residential Review and Permit Fees, revised 9-26-13

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re-verified in the field. More to the point, much of the work is duplicative of documents required by the field inspector before the permit can be approved. It may also be worthy of note that Austin is one of the few municipalities in south central Texas with significant building and development activity that does have electronic plan submittal and processing (to allow subsequent updates with uploads).

In plan review as is the case with land development, the staff ignores mandated processing deadlines²⁴.

Building Permit Intake - Legal Process

Even though there is a well-established process for bringing rules into effect²⁵, a meeting with Planning Development and Review staff most clearly demonstrates an ignorance or disregard for the current ordinance in place. The HBA met to raise the issue of City staff implementing without notice a requirement that home builders provide fire flows from the nearest fire hydrant. When the Planning and Development Review Director asked, "Why did we do this?" the response was "Because Carl asked us. We do it for a number of departments."

The point from the HBA was (a) the International Residential²⁶ code is the governing ordinance for residential construction, (b) the fire department is not authorized to establish new standards, (c) even if the city determines they are authorized to create new plan review criteria – the staff needs to comply with the City of Austin rules procedures, including a mandatory housing affordability impact assessment²⁷ and the International Fire Code itself states²⁸:

102.5 Application of residential code. Where structures are designed and constructed in accordance with the *International Residential Code*, the provisions of this code shall apply as follows:

1. Construction and design provisions: Provisions of this code pertaining to the exterior of the structure shall apply including, but not limited to, premises identification, fire apparatus access and water supplies. Where interior or exterior systems or devices are installed, construction permits required by Section 105.7 of this code shall also apply.
2. Administrative, operational and maintenance provisions: All such provisions of this code shall apply.

²⁴ City of Austin Development Process Tracking, January 2014 – 32% "On Time"

²⁵ Chapter 1-2 Adoption of Rules, Austin City Code

²⁶ Title 25. Land Development Code, 25-12-11, Austin City Code

²⁷ Ordinance 20071129-100 Part 4

²⁸ 2012 International Fire Code

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Issues extend to the application of fees (in a manner the HBA asserts is contrary to Texas Case Law), review standards, the lack of timely review.

Residential Design & Compatibility Standards²⁹

The so called “McMansion Ordinance” or Residential Design & Compatibility Standards (RDCS) Ordinance was created over HBA opposition. All alternatives were ignored. The only “no” vote to the committee recommendations was from the sole HBA representative to a clearly stacked committee. From the builder perspective, the committee took every concept anywhere in the United States and layered it on top of what was already a burdensome set of rules that regulated building coverage, setbacks, impervious cover, trees, access and density. The concept behind a vertical, hypothetical tent that could not be penetrated is difficult enough on a flat piece of paper; it is virtually impossible to anticipate in the field with irregularly shaped lots, trees and irregular slopes. Soon the field inspection staff resorted to calling for “tent surveys”³⁰ to assure compliance. Needless to say, such surveys were a new state of art for the surveying community and are exceedingly expensive. That the Planning Development Review Department reached the point of taking over three months to approve a simple building permit was generally blamed on the difficulty of assuring compliances with the RDCS.

The RDCS was conceived as a means to protect existing homes from encroachment of larger houses into subdivisions where the existing homes were modest in size by comparison. However, HBA members have been trapped when developing or building an entire project – only to find that the RDCS also applies to new greenfield projects.

Project Duration on Building Permits & Permit Expiration

Building permits in Austin are only valid for six months. The HBA proposes that it is not a proper legislative act to purposefully establish limits that cannot practically be achieved and that ordinance by exception is poor practice. While it is easily achievable to build a production home in six months, it is virtually impossible with current labor shortages for the large, custom homes.

²⁹ Chapter 25-2, Subchapter F of the Austin City Code

³⁰ Building Criteria Manual 7-30-12, 2.4.2, pg. 36