

**DRAFT CODE AMENDMENTS AND SUPPLEMENTAL REVIEW SHEET:**

**PROPORTIONALITY DETERMINATIONS & TRANSPORTATION  
IMPROVEMENTS REQUIRED AS A CONDITION TO  
DEVELOPMENT APPROVAL**

***Prepared for:***

March 2, 2017 Council Meeting

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This Supplemental Review Sheet is intended as a companion to the traffic mitigation ordinance posted in backup for the March 2, 2016 Council meeting. In addition to setting for the text of the amendments, it explains their overall purpose and effect within the context of the City's regulations for mitigating traffic impacts.

**Summary of Proposed Amendments:**

The proposed amendments were developed by staff, with legal advice and drafting assistance from the Law Department. The amendments were initiated by Planning Commission on October 13, 2015, for the purpose of clarifying and improving provisions of the Land Development Code concerning transportation improvements that may be required as a condition to development approval.

Substantively, one of the most significant changes from current code is to clarify and refine the City's authority to require transportation improvements for projects that do not trigger a Traffic Impact Analysis ("TIA") or a Neighborhood Traffic Analysis ("NTA"). The amendments also include other changes and enhancements to existing Code, including new standards and procedures for determining traffic impacts attributable to a proposed development as required by state law.

Taken together, these amendments would: (1) authorize the City to obtain certain system improvements for smaller scale developments that do not require a TIA or NTA; (2) formalize the City’s process for making “proportionality determinations” whenever an applicant is required to construct, fund, or dedicate transportation system improvements; (3) clarify the process for reserving right-of-way; (4) better define the type of improvements that may be required, including the “border street” policy; and (5) authorize the Transportation Department to adopt administrative guidelines regarding the method for determining a development’s overall impacts on the transportation system.

If Council adopts the proposed amendments, they would become part of the current Land Development Code and would also be incorporated into subsequent drafts of CodeNext, along with any further refinements necessary to achieve consistency with CodeNext’s revised administrative procedures. Additionally, further code amendments will be necessary in the future if Council chooses to authorize a transportation impact fee.

### **Text of Proposed Amendments:**

#### **1. Definitions.**

Add the following definitions to Section 25-6-1 (*Definitions*):

- (10) TRANSPORTATION PLAN means the Austin Metropolitan Area Transportation Plan, or its successor plan, and other multi-modal transportation plans referenced in the Imagine Austin Comprehensive Plan, including the CAMPO Mobility Plan, Sidewalk Master Plan, Bicycle Plan, Urban Trails Plan, and adopted corridor plans.
- (11) TRANSPORTATION SYSTEM means an individual component of the overall transportation network designed for the movement of people and goods, including arterials and collector streets, sidewalks, trails, and other multi-modal transportation facilities identified in the Transportation Plan.
- (12) SITE IMPROVEMENT means an improvement or facility for the primary use, operation, safety, or other benefit of a development for which the developer or property owner is solely responsible under

applicable development regulations.

- (13) **SYSTEM IMPROVEMENT** means an improvement or facility that is not a site improvement.

These definitions help inform later sections of the Code describing the type of improvements that may be required and would include traditional as well as multi-modal components.

## **2. Clarification to Title.**

To better reflect the scope of Chapter 25-6, Article 2, its title should be changed to read:

### **ARTICLE 2. [~~RESERVATION AND DEDICATION OF~~ TRANSPORTATION IMPROVEMENTS AND RIGHT-OF-WAY DEDICATION.**

## **3. Requirement to Make a Proportionality Determination.**

This new Code section would require a proportionality determination whenever the dedication of right-of-way or transportation system improvements is required. This amendment, coupled with suggested changes to other sections of Chapter 25-6, would better reflect the City's existing practices as well the procedures required by Local Government Code § 212.904.

### **§ 25-6-23 PROPORTIONALITY OF REQUIRED INFRASTRUCTURE.**

- (A) If the City requires an applicant to dedicate right-of-way, construct or fund system transportation improvements, or dedicate right-of-way beyond the boundaries of a development, the applicant's costs may not exceed the amount required for infrastructure improvements that is roughly proportionate to the proposed development as determined by a professional engineer licensed under Chapter 1001, Occupations Code, and retained by the City.
- (B) The director shall issue a written determination of an applicant's roughly proportionate share of infrastructure costs attributable to a proposed development prior to approval of an application for which dedication or

reservation of right-of-way or the construction or funding of system transportation improvements is required. A determination issued under this section:

- (1) need not be made to a mathematical certainty, but is intended to be used as a tool to fairly assess the roughly proportionate impacts of a development based on the level of transportation demand created by a proposed development relative to the capacity of existing public infrastructure;
  - (2) shall be completed in accordance with generally recognized and approved measurements, assumptions, procedures, formulas, and development principles; and
  - (3) shall state the roughly proportionate share to the property owner for the dedication and construction of transportation-related improvements necessary to ensure an effective and safe transportation system that is sufficient to accommodate the traffic generated by a proposed development.
- (C) If a proposed development is subject to a proportionality determination under this section, the director shall identify in writing all infrastructure improvements required in conjunction with approval of the development application. The infrastructure improvements may include right-of-way dedication or reservation, the construction or funding of system improvements, or any combination thereof, in an amount not to exceed the total infrastructure costs attributable to the proposed development as established by the proportionality determination.
- (D) To aid in making a proportionality determination and identifying required infrastructure improvements, the director may:
- (1) adopt administrative guidelines establishing requirements for:
    - (a) conducting a traffic impact analysis and neighborhood traffic analysis under Article 3 (*Traffic Impact Analysis and Mitigation*); and
    - (b) funding or constructing system transportation

improvements required under Section 25-6-101 (*Mitigation of Transportation Impacts*); and

- (2) require an applicant to provide:
  - (a) a transportation impact analysis, regardless of whether one is required under Section 25-6-113 (*Traffic Impact Analysis Required*);
  - (b) a neighborhood traffic analysis, regardless of whether one is required under Section 25-6-114 (*Neighborhood Traffic Analysis Required*); or
  - (c) other information related to the traffic and safety impacts of a proposed development.

#### 4. Clarifications re: Reservation of Right-of-Way<sup>1</sup>

As currently written, Section 26-6-51 (*Dedication of Right-of-Way*) implies that certain right-of-way is automatically “reserved,” with no action required on staff’s part. That doesn’t reflect actual practice, however, and may be in conflict with other parts of the Code which seem to characterize reservation of right-of-way as a requirement that’s applied on a case-by-case basis. This amendment to Section 25-6-51 eliminates the assumption that right-of-way reservation is automatic and instead authorizes it as a condition in certain circumstances.

#### § 25-6-51 RESERVATION OF RIGHT-OF-WAY.

- (A) The City may, as a condition to approval of a site plan or subdivision, require the reservation of [reserves] right-of-way that is reasonably likely to be acquired for public use consistent with this article. To be subject to reservation, land must be located along a roadway designated in:

- (1) the Transportation Plan;

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<sup>1</sup> Reservation of right-of-way is used when dedication is not required as a condition to development approval, but the City anticipates acquiring land for planned improvements in the future. Development within reserved right-of-way is limited, although a landowner may request waivers.

- (2) an approved collector plan; or
  - (3) an established capital improvement project located in the planning jurisdiction of the City.
- (B) The extent and location of right-of-way reserved under Subsection (A) must conform to the Transportation Plan, approved collector plan, or capital improvement project.

## 5. Clarifications re: Requirements for ROW Dedications & Border Street Policy

These amendments would specify that a Proportionality Determination is required (per new Section 25-6-23, above) for all right-of-way dedications, other than dedications internal to a development.<sup>2</sup> Additionally, the amendment removes provisions related to traffic mitigation and system improvements, which are consolidated into new provisions in Article 3 (*see pp. 6-8*).

### § 25-6-55 DEDICATION OF RIGHT-OF-WAY.

- (A) If the director ~~[city manager]~~ determines that dedication of ~~[all or a portion of a]~~ right-of-way is needed to accommodate the transportation system, the applicant may be required to dedicate the amount of land determined to be roughly proportionate to the development under Section 25-6-5 (*Proportionality of Required Infrastructure*) or a lesser amount, as determined by the director based on the adequacy of the transportation system.~~]:~~

~~(1) an amount of land not to exceed 150 feet for a roadway that is subject to reservation of right of way under Section 25-6-51 (*Reservation Of Right Of Way*) and that is internal to a proposed subdivision or development project; or~~

~~(2) an amount of land not to exceed 50 percent of the total right of way requirement for an existing or proposed roadway that: (a)~~

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<sup>2</sup> The prevailing practice among municipalities is to treat local and collector internal streets dedicated at subdivision or site plan as general design standards or regulatory requirements rather than as development exactions.

~~is subject to reservation of right-of-way under Section 25-6-51 (Reservation Of Right Of Way); and (b) adjoins a proposed subdivision or development project].~~

(B) ~~[An applicant may not be required to dedicate more than 75 feet of land under Subsection (A)(2)].~~

~~[(C) The director may require the dedication of right-of-way in an amount greater than established in Subsection (A):~~

~~(1)for a street that is not subject to reserved right-of-way and that does not comply with the standards in the Transportation Criteria Manual; or~~

~~(2)if the additional right-of-way is necessary to accommodate traffic generated by the proposed development.]~~

~~[(D)]~~ The director may defer the dedication of right-of-way required at one stage of the development process to a later stage. A person must comply with all dedication requirements before the release of the subsequent application.

~~[(E) In addition to the dedication of right-of-way, the City may require the applicant to construct a roadway improvement or may assess a fee instead of requiring construction of a roadway improvement to offset the traffic effects generated by the proposed development.]~~

## **6. Transportation System Improvements**

These amendments would clarify staff's authority to require system improvements for projects not triggering a Traffic Impact Analysis or Neighborhood Traffic Analysis. The amendments also authorize staff to either require construction or allow payment of a fee in-lieu, subject to listed criteria. Finally, the amendments make a few organizational changes to better accommodate the addition of future code sections related to system mitigation.

- The first change is to retitle Article 3 as follows:

### **ARTICLE 3. *TRAFFIC IMPACT ANALYSIS AND MITIGATION***

- The second change is to add a new Division 1, to read as follows, and to

renumber the remaining divisions accordingly:

***Division 1. – Transportation System Improvements***

**§ 25-6-101 MITIGATION OF TRANSPORTATION IMPACTS.**

- (A) In addition to requiring dedication of right-of-way under Section 25-6-55 (*Dedication of Right-of-Way*), the director may require an applicant to construct or fund all or a portion of system improvements required to mitigate traffic impacts of a proposed development.
- (B) If a proposed development does not require an impact analysis under Section 25-6-113 (*Traffic Impact Analysis Described*) or Section 25-6-114 (*Neighborhood Traffic Impact Analysis Described*), the director may condition approval of the application on construction or funding of system improvements as described in this subsection.
  - (1) System improvements are limited to:
    - (a) sidewalks and curb ramps;
    - (b) traffic signs, markings, and upgrades to signal infrastructure;
    - (c) traffic calming devices;
    - (d) bike lanes or upgrades to bike facilities;
    - (e) rectangular rapid flashing beacons;
    - (f) pedestrian refuge islands;
    - (g) pedestrian hybrid beacons;
    - (h) urban trail improvements;
    - (i) right-of-way dedications; and
    - (j) measures to limit transportation demand.
  - (2) System improvements required under this section must be located:
    - (a) within the boundaries of the development for which they are required; or



- (b) no farther from the proposed development than:
    - (i) one-quarter mile; or
    - (ii) three-fourths of a mile, for an improvement required to provide access between the proposed development and a school, bus stop, public space, or major roadway as designated under the transportation plan.
- (C) If a proposed development requires a traffic impact analysis under Section 25- 6-113 (*Traffic Impact Analysis*) or Section 25-6-114 (*Neighborhood Traffic Impact Analysis*), the director may require an applicant to construct or fund system improvements identified by the traffic impact analysis.
- (D) The total cost of system improvements required under this section may not exceed the applicant's roughly proportionate share of infrastructure costs as established by the proportionality determination required under Section 25-6-23 (*Proportionality of Required Infrastructure*), less the cost of any right-of-way dedication required under Section 25-6-55 (*Dedication of Right-of-Way*).

#### **§ 25-6-102 FEE IN-LIEU OF SYSTEM IMPROVEMENTS.**

- (A) The director may allow an applicant to pay a fee in-lieu of constructing one or more transportation system improvements required under Section 25-6-101 (*Mitigation of Transportation Impacts*). In determining whether to allow payment of a fee in-lieu or to require construction of system improvements, the director shall consider:
  - (1) the applicant's roughly proportionate share of infrastructure costs, as determined under Section 25-6-23 (*Proportionality of Required Infrastructure*), relative to the cost of constructing one or more identified system improvements;
  - (2) future transportation improvements anticipated for the area through capital improvement projects or as a condition to the approval of other proposed developments; and

- (3) the feasibility of constructing one or more identified system improvements by supplementing the amount collected through payment of a fee in-lieu with city funds.
- (B) A fee in-lieu collected under Subsection (A) of this section shall be placed in a dedicated fund and used solely for the purpose of constructing one or more system improvements identified under Section 25-6-23 (*Proportionality of Required Infrastructure*).
- (C) A fee in-lieu collected under this section shall be spent, consistent with the requirements of Subsection (B), within ten-years from the date fee is paid to the City. The owner of a property for which a fee in-lieu was paid under this section may request a refund of any funds that remain unspent after the end of the ten-year period. A refund request under this section must be submitted in writing, on a form provided by the director.

**§ 25-6-103      TRANSPORTATION    MITIGATION    FOR    S.M.A.R.T. HOUSING PROJECTS.**

- (A) This section reduces traffic mitigation required for certain projects participating in the City's S.M.A.R.T. Housing program established under City Code Chapter 25-1, Article 15, Division 2 (*S.M.A.R.T. Housing*).
- (B) If a S.M.A.R.T. housing development does not require an impact analysis under Section 25-6-113 (*Traffic Impact Analysis Described*) or Section 25-6-114 (*Neighborhood Traffic Impact Analysis Described*), the maximum cost of system improvements that may be required under Section 25-6-101(B) (*Mitigation of Transportation Impacts*) is reduced according to the following requirements:
  - (1) If at least ten percent, but less than twenty percent, of the dwelling units are reasonably-priced, the maximum cost is reduced by the percentage of affordable units;
  - (2) If at least twenty percent, but less than fifty percent, of the dwelling units are reasonably-priced, the maximum cost is reduced by fifty percent; and

- (3) If at least fifty percent of the dwelling units are reasonably-priced, no mitigation may be required.

## **7. Standards for Approval.**

The following amendment responds to recommendations from the Urban Transportation Commission on January 10, 2017, (See attached Recommendation No 2017010-03B) to adopt a more uniform standard of review for different kinds of development approvals.

### **§ 25-6-141 ACTION ON APPLICATION.**

(A) The council or director may deny an application if:

(1) \_\_\_\_\_ the results of a traffic impact analysis demonstrate that a proposed development may overburden the City's street system[.]; or

(2) \_\_\_\_\_

~~[(B) Except as provided in Subsection (C), the council or director shall deny an application if the traffic impact analysis or neighborhood traffic analysis demonstrates that:~~

~~[(1)] the projected traffic generated by the project, combined with existing traffic, exceeds the desirable operating level established in Section 25-6-116 (*Desirable Operating Levels For Certain Streets*) on a residential local or collector street in the traffic impact analysis study area or the neighborhood traffic analysis study area[; or].~~

~~(2) the project endangers the public safety.]~~

~~(B)~~~~(C)~~ The council or director may approve an [a zoning] application [that would otherwise be denied under Subsection (B) of this section] if [the council determines that]:

~~[(1)] the applicant has satisfactorily mitigated adverse traffic effects as required by this Title[; or~~

~~(2) the projected additional traffic from a project has an insignificant~~

~~effect on a residential street].~~



BOARD/COMMISSION RECOMMENDATION

URBAN TRANSPORTATION COMMISSION


Recommendation Number 20170110-03B: Transportation Mitigation Practices & Policies

NOW, THEREFORE, BE IT RESOLVED that the Urban Transportation Commission recommends that City staff investigate the amendment of City Code 25-6-141 to remove the "shall" language that mandates the Director deny all applications that meet certain criteria as a part of the general consideration to the transportation mitigation code amendments.

Date of Approval: January 10, 2017

Record of the vote: 6-1-1, with Commissioner Davis opposed, Commissioner Calistrat abstaining, and Commissioners Rangel, Hoesk, and Weatherby absent

Attest:



Jim Dale, executive staff liaison