



## Zoning and Platting Commission 20170530-B-01

Date: May 30, 2017

Subject: CodeNEXT

Motioned By: Commissioner Evans

Seconded By: Vice-Chair Duncan

### Request:

**The members of the Zoning and Platting Commission recommend that the process be slowed down to allow the staff and consultants adequate time to engage the public and to incorporate residents' feedback.** The timeline for the examination, modification, and adoption of CodeNEXT is unreasonably rapid, requiring comments and recommendations within a month of the release of modified mapping. It gives the staff and consultants only two months to revise the code text and only one month to revise the maps and test the code. The rewrite of the land development code is sufficiently important that we should take the time to do it right. The staff should continue to take comments on the first draft and provide responses to all questions and comments including those attached from the Zoning and Platting Commission.

### Description of Recommendation to Council

**The Zoning and Platting Commission finds that the CodeNext draft proposes a land development code that is less clear and harder to use than the current code and recommends that there be one code for the whole city.** The most important goal of CodeNext was to improve the Land Development Code's effectiveness, clarity, consistency, predictability, and ease of implementation and administration. Unfortunately, the first CodeNext draft is incomplete, hard to understand, and will be difficult to use. Instead of one set of simplified zoning standards, the draft has two different standards with far too many categories. In addition, the CodeNext draft maps show that roughly 25 percent of the City will retain Title 25 zoning.

**The Zoning and Platting Commission oversees 68.5 percent of Austin's geographic area, and at each meeting routinely approves plats and zonings allowing for the potential of hundreds of additional residential units.** Unfortunately, we believe that CodeNEXT does not adequately deal with these growth areas. In greenfield areas where the opportunity exists to create the complete communities envisioned by Imagine Austin, the proposed code forgoes this option and instead commits these neighborhoods to being automobile-centric and without amenities within walking distance.

**The Zoning and Platting Commission considers the mapping imprecise and uneven, with transect, non-transect and Chapter 25 zoning muddled together in several neighborhoods.** This lack of consistency replicates the city's previous practice of "spot zoning" which created irregularities across Austin. Inadequate mapping also adds to the growing evidence that CodeNEXT is not the simple and straightforward code once promised and therefore fails to properly facilitate the city's growth.

Vote: 10-0

For: Chair Kiolbassa, Vice-Chair Duncan and Commissioners Aguirre, Denkler, Evans, Flores, Greenberg, King, Lavani and Trinh,

Against:

Abstain:

Absent: Commissioner Breithaupt

Attest:



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Andrew D. Rivera  
Commission Liaison

**To:** Mayor Adler, Mayor Pro Tem Tovo, City Council, Planning Staff, and CodeNext Consultants  
**From:** Austin Zoning and Platting Commission  
**Date:** May 30, 2017

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Adopted by unanimous consent of May 30, 2017



Chair, Zoning and Platting Commission

## ZAP's CodeNEXT Comments and Questions as of May 31, 2017

### General Comments

Feedback on formatting: The new formatting in the sample provided looks better. However, rather than just a change in appearance, I'd like to see substantive changes. Discrepancies between the Transect Zones and the Non-Transect Zones, such as lot sizes, compatibility protections, floor to area limits, as well as rules for short term rentals should be eliminated.

Please give a list of approvals that will be "by right" that are not currently approved this way.

Will "track changes" be used on draft 2 of the land development code to show the changes from draft 1?

Many deadlines in the code were shortened. Is this to intentionally make public engagement more difficult?

All of the issues about number of days should specify "business days."

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.

Does the scope of CodeNEXT include analysis of the impact that the draft land development code may have on displacement of low- and middle-income residents, families of color, and small businesses?

Does the scope of CodeNEXT include analysis of the impact that the draft land development code may have on property taxes, infrastructure costs, housing prices, and rent?

What is the average amount of land on which the poorest families in Austin live versus the wealthiest families?

### Comments across sections:

1. Is the change from "less restrictive" to "more restrictive" of 2,300 sq ft and 0.4 FAR in VLDR, LDR, and LMDR intentional? If so, please explain the intent.
2. Since the transect zones have no FAR limits, please provide illustrations and FAR estimates for the largest possible buildings in the transect zones. Architects will do their best to maximize the entitlements in the new code, so it is important that we understand what can be built.

3. Some T4 and T5 require no parking for retail less than 2,500 sq. ft. Why not consistency across the Transect and Non-Transect zones.
4. Late-hours permit (for a bar or restaurant) requires that the parking must be 200 ft. from residential in the Non-Transect zones but this is missing from the Transect zones.

### **Questions on Mapping**

5. One zoning category, SF-3 on our current zoning maps went to SF-3, T3N-SS, T3N-IS, T3N-DS, T4N-SS, T4N-IS, T4N-DS, LMDR, and maybe others on the proposed map. For each and every existing and new category pair, please provide the number of units changed and the criteria used to go from one category to another when there are multiple options.
6. Can you explain in detail the criteria where Transects are applied and where Non-Transects are applied? For example, can you begin by defining “walkable”? Why in Tarrytown is LMDR adjacent to T4? Why is there no transect zoning in Imagine Austin’s Regional Centers?
7. Why are there so many properties with old zoning (CS, GR, etc. even SF-3) still remaining on the proposed maps? How much of the land area in Austin will retain the old Title 25 zones?
8. If transects are used in walkable areas and non-transects are used in drivable areas, why do the proposed maps show neighborhoods with a mix?
9. How was the mapping done? How were the neighborhood plans incorporated? How was the community character information used? Was topography considered?
10. Wouldn’t it make sense to use transect zones in the growth areas of Austin to ensure the right kind of development? Are the transect zones only a tool for redevelopment rather than initial development?

### **Comments on Specific Sections**

23-1A-3020 Inconsistent language. (A)(2)(b) 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, it would make sense to be consistent and intentional with the 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, to get Council guidance for how it should be completed in the instance at hand.

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?

23-2B-1010(B) (and 23-2B-2010) Adds option for director to establish application requirements by a “policy memo” rather than only by establishing rules as only option in current code. Using a policy memo does not allow for public feedback.

23-2B-1050 This allows an automatic extension of 1-year expiration period with no notice in case the staff review not complete. 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 extraordinarily short for the review of a 200+ acre residential project. The current code allows the turnaround time to be set by administrative rule (25-1-62(D)).

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 in fact do not, including it in a Fair Notice application could cause significant problems in grandfathering discussions. Remove this subsection completely, or at a minimum, add a requirement to explicitly include strong caveats on the DA that it is not evidence of approval or compliance but only a preliminary courtesy review.

23-2C-1020. The draft reduces 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 many cases of errors in the past and it would be a big problem for the public if the process had been allowed to proceed. Suggest striking this section.

23-2C-2020

Add to (B)(3)

(e) Require public notice for Council floodplain variances. Notices should be given to Neighborhood Groups as well as potentially-affected property owners.

Justification: City Code and FEMA regulations require a public hearing to decide the floodplain variance request. However, there is no public notification required for the hearing other than the agenda posting itself. (NOTE: From FMTF Report Pg. 7 and Pg. 85)

23-2C-3020 There is reference to “neighborhood association” but not to “Neighborhood Contact Team.” Need to ensure Contact Teams are included.

#### 23-2C-4 Notice of Public Hearings

The required amount of advance time for notice has been decreased. (See 25-1-132) Reinstating the current amount of time, or increase it.

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 are used in the current code, these suggested numbers would in certain situations be a decrease.

No signs need to be posted (except for variance and special exceptions) what about demolition?

#### 23-2C-5010 Notice of Applications –

Required amount of time for public to respond has been decreased.

Reinstating the current amount of time, or increase it.

Currently – within 14 days with no decision on application within 14 days. See 25-1-133

Proposed – within 10 days with no decision on application within 10 days

23-2D-2030 – allows the location of a hearing to be changed by posting a sign. Should require at least 48 hour notice online.

23-2F-1030 Why don't special exceptions require notification like variances?

23-2F-1040 Do special exceptions require a hearing? Can decisions be appealed?

23-2F-2 Administrative Relief - Can the director's decisions be appealed?

23-2F-2020 Exempt Residential Uses and Structures. This exemption is new, and appears to be a significant expansion and loosening of a concept Council enacted in 2011 to address a problematic situation in a neighborhood where carports long ago had been erected in an area prone to floods. The process was narrowly crafted (see <http://www.austintexas.gov/edims/document.cfm?id=153423> and 25-2-476), limited to SF3 or more restrictive zoning, on properties where the noncompliance existed for more than 25 years and required a review by the BoA. This section opens the exemption to significantly more situations and without any BoA review, could be extremely subjective and problematic.

In fact the ordinance linked above mentions that state law gives the BoA the authority to grant exemptions to the code without the hardship criteria and so the question should be asked as to whether 23-2F-2020 (granting the authority to the Building Official) is valid under state law.

This additional capability should be carefully scrutinized.

23-2F-2020 How long is "longstanding"? There should be a specific amount of time.

Section 23-2F-2030 – This allows the director to approve errors in construction of up to 10% on height, building coverage, and setbacks. This means for example that a 35' height limit is REALLY 38.5'. Why would we encourage developers to push the envelope rather than comply with the law.

23-2F-2030 Minor Adjustments. This section allows an administrative approval of up to a 10% increase in certain entitlements (height, building coverage and setback)...if errors 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 needs to be explored whether this is even allowed under state law.

The 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. It 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 an after-the-fact absolution.

#### 23-2G: 25-2 Articles 7 & 8 (Current code) Elements not carried over

Two important sections of the current code, 25-2-942 and 25-2-962, are not carried forward. They state that conforming/complying as of 3/1/84 is still 'conforming'/'complying' after adoption of the 1984 code rewrite. These sections ensured that any nonconformance/noncompliance created by the adoption of the 1984 code would be deemed as conforming/complying under the 1984 code. This is an important clause.

CodeNext needs to add an analogous 'conforming as of <adoption date of CodeNext> is still conforming' (ditto 'complying'). Additionally, properties under development with permits that would no longer be valid with new development regs under CodeNext should be deemed conforming. Otherwise, overnight, a huge number of properties in the city will become nonconforming.

#### 23-2G: Concerns with & Comments on new Nonconformity clauses

- 23-2G-1050(B)(4) Conversion of Nonconforming Uses in Residential Buildings – Director can allow change from one nonconforming use to another if it is less intense than the existing nonconforming use. While this could be a benefit to nearby properties of a problematic nonconforming use, it also sets the stage for a longer time that the use remains nonconforming if the original is no longer beneficial to the owner. In addition, the decision of what is a less intense nonconforming use is a subjective decision. This process should require approval of 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:



Would this then technically be a conforming use or a nonconforming use? If it's conforming, then it's 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 it omitted an important clause, 25-2-963(H), that allows only 1 modification to height and setback noncompliances. This is important e.g., for setbacks, because without it, one could iteratively add to setback noncompliance with additional length. This clause should be added back in.

- 23-2G-1070(B) Rebuilding a noncomplying structure that has been destroyed by fire etc. This section needs to add the current protections and constraints:

It omits any time limit to rebuild as current code does (12 months).

It allows for significant increase in square footage over current code, because it only limits it to the same footprint, height and # units of the original structure vs. the current limits to footprint, gross floor area and interior volume.

It needs to add the omitted 25-2-964(B)(2) "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 not limit the expansion of a height noncompliance to cover the whole footprint, unless 23-2F-1050(B)(2) is meant to preclude that.

- 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-1030 Deadlines for appeals of administrative decisions have been shortened (see 25-1-182) from 20 days after decision to 14 or 7 depending on whether notice of decision is required. This greatly reduces the window for affected residents to appeal decisions that may significantly affect them - the 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' do one if requested and can meet separately. The current requirements should be reinstated to ensure a fair process.

23-2I-2050 Ex Parte Contacts Prohibited. Is this currently a requirement for appeals to boards other than the Board of Adjustment? It is not a requirement for the Council. If this is a requirement, shouldn't the ex parte prohibition also apply to the applicant, applicant's agent or others representing the applicant?

23-2I-3020(B) & (C)) Notice time decreased to 7 days for a board, 12 days for council hearing, from to 11 days for board, or 16 days for council hearing (25-1-132(A) & (B)). Currently timelines should be reinstated.

23-3D-2 Why do we continue to allow redevelopment exceptions? Redvelopments should be held to the same environmental standards as new development.

23-3D-2060 The environmental commission should give a recommendation on these cases.

23-3D-2070 Do administrative variances have to satisfy the same requirements given in 23-3D-2060(A) for land use commission variances? Is there an appeal procedure for the administrative variances?

23-3E-1 Affordable Housing Incentives Program -- When will we receive the proposed draft code for the density bonus program?

23-4B-1020 Conditional Use Permit

Retaining Conditional Use Permits means that individual properties will have COs. Since this section "...allows for site-specific conditions..." and CUPs property by property then should also be able to retain existing COs on individual parcels.

23-4B-1020 (C) Administrative Review Process -- Appears that Development Services Director can approve CUP administratively. Is this correct?

Add to (E)(2)

(b) add: flooding and adverse impact to downstream development and neighborhoods.

(f) add: mitigation to flooding

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 Minor Use Permit -- What is a "minor use"? 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?

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.

Mentioned here but under 23-1B-2020: Why is an Appeals Panel of the BOA being proposed? Is this truly necessary?

23-4B-3080 (B) (1) Council Hearing -- Definitions of "Interested Party" needed. Currently they include officially recognized neighborhood associations.

23-4D-3060, Are the lot width ("with" is a typo) max, min or exact requirements on a cul-de-sac? Why do we continue to allow cul-de-sac? What about connectivity? And what about lot widths when you're not on a cul-de-sac?

23-4D-3070, 23-4D-3080, 23-4D-3090, 23-4D-3100, 23-4D-3110, 23-4D-3120, 23-4D-3130, 23-4D-3140

Why are there no lot size minimum widths, depths, or required frontage in the Non-Transect zones? Why are front setbacks changing?

23-4D-3110 in Medium Density Residential (MDR) Zone -- Impervious cover increased to 55%. Why? Austin is constantly hit these days with flash flooding so increasing impervious cover is a step in the wrong direction.

23-4D-3150

Why is the minimum lot size for a manufactured home larger than the minimum lot size for transect zones that allow stacked duplexes and an ADU? Why does this section give building placement for manufactured homes in the T3 transect zone? Shouldn't this be listed as a building type within the appropriate T3 sections of the code?

Table 23-4D-4040

Please state more clearly which of the Non-transect commercial zones have an open sub-zone. Also, why is Adult Entertainment allowed in the Open sub-zone for Mixed Use Commercial? Why is Adult Entertainment allowed in the Open sub-zone for Mixed Use Commercial and Service and Highway Commercial?

23-4D-6130 -- Why keep PUDs? PUDs should be removed from code since application of the new code will eliminate the need for this kind of zoning. Also, PUDs are not good planning since they are a product of negotiation. If PUDs remain in the code, developers may opt to go for a PUD instead of adhere to the transect zones.

Section 23-4D-6130 (D)(2)(a)and(b) – notice is required 11 days prior to hearing on PUD development assessment. Why the inconsistency?

23-4D-7090 Neighborhood Plan Overlay -- Why is this suddenly being deleted from the code? Staff says it was included "in error" yet it was included in the first draft as well as in the tracking matrix. What is wrong with "For property within an NP Overlay Zone, all permitted use restrictions, development standards, and other applicable standards or regulations governing development as provided within the Neighborhood Plan or accompanying ordinance shall apply."

23-4E-4310 Short Term Rental – housing director shall mail contact information – no specified deadline

23-4E-4310(D) continues to allow licensing of Type 2 and 3 STRs. This should be corrected to reflect current Council policy.

23-10E-3020

General Comment: There is a reference to Certificate of Engineer and this needs to be considered in all related development and redevelopment. Need to ensure properly credentialed engineers are proposing alterations and improvements and that properly credentialed City of Austin engineers are reviewing, making recommended changes and approving the proposed alterations and improvements.

Justification: There are numerous types of licenses for engineers based on their area of expertise and these specialties have a direct impact on public safety and health.

**Missing:**

Dark Skies is not overtly mentioned in the code. Some neighborhoods in Austin are Dark Skies communities and want the code to reflect those principles and specifications in the new land development code.

**Questions for Staff:**

1. A map, at the neighborhood level, showing the locations of the 70,500 units in the urban core and the 73,400 units outside the urban core that will be added to the housing stock based on the proposed draft zoning map.
2. The estimated price points for the 143,900 units. The estimated median family income levels for these units.
3. Data, at the neighborhood level, on the number and income levels of new residents that are anticipated to occupy the additional units?
4. Data, at the neighborhood level, on the infrastructure capacity necessary to support the increased density from the proposed draft zoning map.
5. Data, at the neighborhood level, on the impact that increased density and zoning entitlements from the proposed draft zoning map may have on property taxes and rent.
6. Data, at the neighborhood level, on the number and income levels of existing residents that are likely to be displaced from neighborhoods that are targeted for increased density based on the proposed draft zoning map.
7. Are the contracts with the consultants on CodeNEXT funded through the adoption of the draft code and maps scheduled for April 2018?
8. To date, how much money has been approved by Council for CodeNEXT and how much has been spent to date for CodeNEXT?
9. How much money has been spent to date on each contractor on CodeNEXT? Please show the amount spent for each contractor.
10. How much additional funding will be needed to fund CodeNEXT through April 2018?
11. When will we receive the proposed draft code for the density bonus program?
12. Has the City's Chief Equity Officer been asked to review the draft land development code and provide feedback on how it could impact equity policies, strategies, and issues?
13. Has the legal department thoroughly reviewed the draft code?
14. Will "track changes" be used on draft 2 of the land development code to show the changes from draft 1?