

Jolene's comments

The Zoning and Platting Commission recommends that CodeNEXT be reinitiated unless the following problems are addressed:

CodeNEXT MAKES AUSTIN MORE AUTO-CENTRIC AND LESS PEDESTRIAN-FRIENDLY

A walkable streetscape will no longer be required. Setbacks along core transit corridors and urban roadways will be narrower and will be a patchwork of depths. Current code under Subchapter E requires a 15' setback consisting of street trees and/or benches on core transit corridors and a similar 12' wide streetscape for urban roadways. This pedestrian-friendly design is eliminated in CodeNEXT and replaced with inconsistent and smaller setbacks determined by zoning, not by street type. For example, Mixed-Use (MU) can have a 10 ft. setback and be adjacent to Main Street (MS) that requires a 5' setback. In addition, "private frontage" is allowed to substitute for the required setback in MU and MS.

The proposed code increases drive-thru use throughout Austin, including areas already enjoying high density and where Neighborhood Plans do not allow drive-thrus.

CodeNEXT proposes we retain rules that allow for only one point of connectivity for subdivisions. This means that streets will not be required to follow a traditional grid but will continue the cul-de-sac model, which is the antithesis of "location efficiency" required for compact and connected neighborhoods.

CodeNEXT keeps Austin's outer neighborhoods auto-centric instead of facilitating a transformation to pedestrian-friendly. The Zoning and Platting Commission is acutely aware of the exponential job and housing growth occurring in these exurbia regions yet CodeNEXT ignores this. (Of the four most recent 100+ employee expansions and relocations logged by the Chamber of Commerce, three were north of 183 and Hwy 360.) By eschewing these areas, the opportunity to create walkable urban centers in Austin's greenfield is lost.

CodeNEXT does not improve parking garage requirements and provides no opportunities to convert existing structures into pedestrian-friendly amenities. Best practices dictate that the first street level of parking garages contain retail except for the necessary access points. With hundreds of parking garages throughout Austin, more street level retail space could be utilized through more up-to-date parking structure guidelines.

INCREASED COMPLEXITY

CodeNEXT increases the number of zoning categories instead of decreasing them. The overall number increases from the current 39 categories to 58 categories. Residential categories increase from 16 to 25 with one zoning category, SF-3, placed into six categories. The number of commercial categories has increased from 23 to 34.

CodeNEXT's zones lack the progression in both sizes and uses that the Zoning and Platting Commission would expect to see in a well-organized code and are qualities that the current code contains. Currently General Office (GO) builds on Light Office (LO) zoning with an increase in uses and sizes, as do all commercial zones. By contrast, CodeNEXT introduces zoning categories that do not build on preceding categories but, instead, create a whole new set of allowed uses and dimensions.

Creating new categories of Main Street (MS) and Mixed Use (MU) categories complicate instead of streamline Austin's commercial code. These two zones are designed for similar mixed-uses.

CodeNEXT continues to rely on current Chapter 25 zoning for some types of uses so Austin will in the future have two, not one, set of land development regulations to deal with. Many warehouses were allowed in Commercial Services (CS) with Conditional Overlays (CO). A new zoning category should be proposed for warehouses. Other uses that are currently slated to retain their Chapter 25 zoning should be assessed for conversion to a new category in the proposed code.

CodeNEXT avoids the simple fixes that could rectify problems with our current code. For example, single-family use now triggers compatibility restrictions that occasionally

lead to unpredictable results. Instead of completely changing the compatibility requirements, it could be changed to where zoning only, and not use, triggers compatibility.

HOUSING NOT GUARANTEED IN RESIDENTIAL ZONES

CodeNEXT's residential zoning does not ensure that much-needed housing will be built because commercial is also allowed. Under current residential zoning, only housing is allowed. R3 and R4, in contrast, allow "Recreation," both indoor and outdoor, and "Special Uses" in historic structures and districts that allow entertainment and retail under certain conditions.

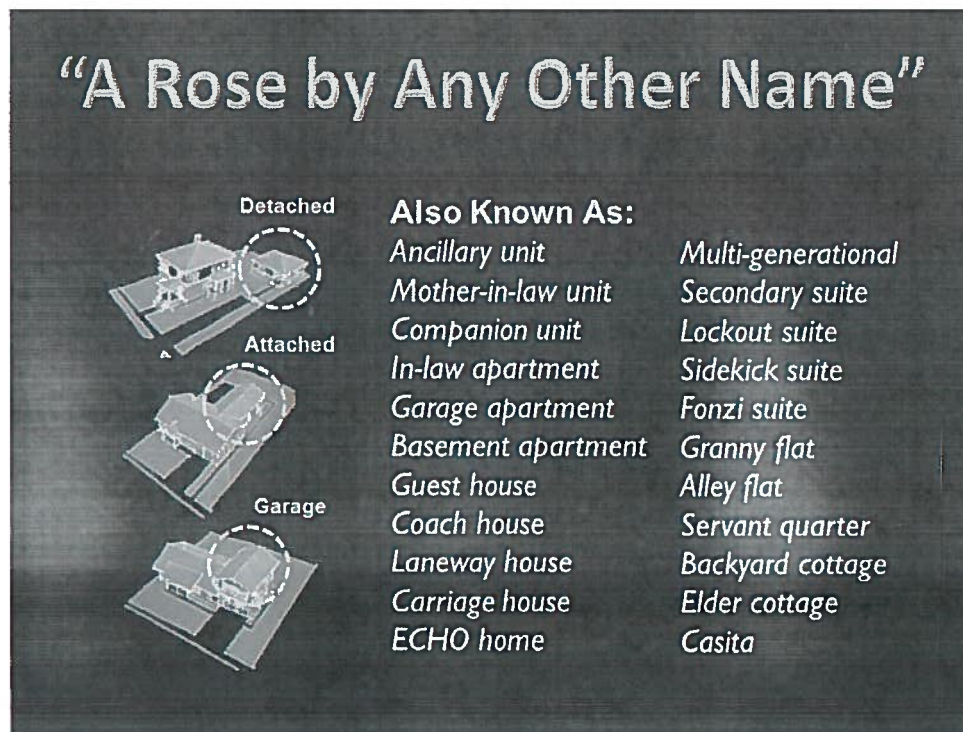
Main Street (MS) and Mixed Use (MU) do not require residential, although they both allow it. To encourage more housing, some subcategories should require it.

INCOMPLETE INFORMATION AND INCONSISTENCIES

Sections of the proposed code are still missing which means that the land use commissions have to make a recommendation without all necessary information. Missing segments include Compliance and Monitoring Criteria for the Affordable Housing Bonus Program, the Signage chapter, the Technical Codes chapter and the Transportation Criteria Manual.

CodeNEXT is full of inconsistencies. For example, in Mixed Use (MU), the front setback is shown as 10' according to Fig. 23-4D-4050 (1) yet tables indicate a 25' setback from the ROW. This figure is also used to show the required setback for Main Street (MS), which has tables depicting a 5' setback.

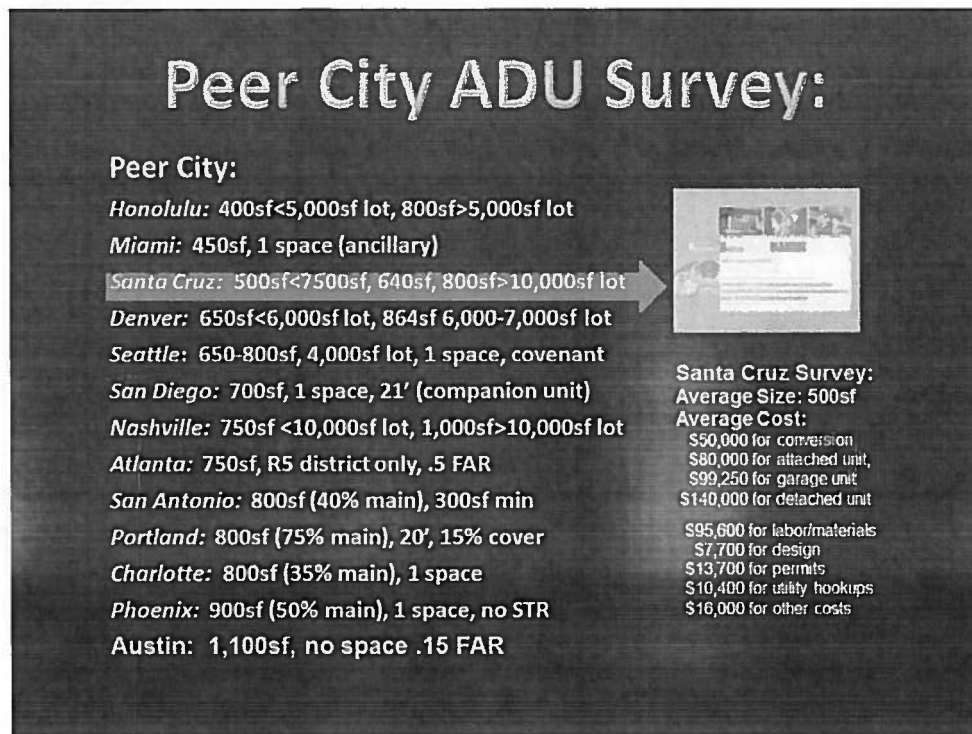
CodeNEXT lacks crucial definitions. "Special Use" and "Informal Outdoor" are nowhere defined in the text, for instance. Other definitions, like "Private Frontage," are not in the Terms section. It would be helpful if all terms and definitions were in one place with more complex terms having a citation directing to the section containing more information.



ADUs are known by many names. Here are their three basic structural types and 22 of their most common aliases.

Because of their smaller size and lower cost, done right, ADUs can contribute greatly to Austin's need for affordable housing.

In particular, ADUs can well serve the growing inner-city housing needs for singles, seniors and smaller families that are looking for affordable living quarters near transit and urban amenities.






A survey of major US cities shows that the average size of a maximum permitted ADU is about 700sf with the smallest being Honolulu at 400sf and the largest being Austin at 1,100sf.

Many more recent codes, such as those for Honolulu, Santa Cruz, Seattle, Denver and Nashville, have shifted to context-sensitive, variable rate formula based on lot size. Other factors in regulating ADUs include parking, building separation, utilities and occupancy.

The Santa Cruz approach is a national "best practice." ADU floor area varies by lot size (500sf to 800sf) and one parking space is required. Santa Cruz also requires compatible design and waives fees for ADUs restricted to low and very low-income residents.

In 2004, it won an EPA "Smart Growth Achievement Award."

"A Tale of Three Cities!"

						
	Units allowed	Parking required	Owner required	Unit size	Similar design	ADU score
Vancouver	two	no	no	500	no	96
Seattle	one	yes	yes	800	no	58
Portland	one	no	no	800	yes	72

The Cascadia cities of Vancouver, Seattle and Portland are among the more progressive cities in the regulation of ADUs.



Over one-third of all homes in Vancouver have ADUs. Why?


First, they allow two ADUs per home: detached and attached.

Second, they are small (500sf) and affordable.

And third there are few requirements on use – no parking, no occupancy limits and minimal fees.

Seattle and Portland both permit one 800sf ADU, but Seattle requires parking and owner-occupancy and Portland does not.

"A Tale of Three More Cities!"



	Units allowed	Maximum Unit Size			Parking required	Owner occupant
Denver	one	650sf <6,000sf	864sf 6,000-7,000	1,000sf 7,000 lot>	one	yes
Flagstaff	one	<acre 600sf	1,000sf	>acre	one	yes
Austin	two	1,150sf			no	no

Two cities that treat ADUs in a context-sensitive manner are Denver and Flagstaff. Both vary unit size by lot size, with 600sf and 650sf units on smaller lots and 1,000sf on larger.

It should also be noted that both codes were drafted by our CodeNEXT consultants: Peter Park, Opticos and Lisa Wise.

Why does Austin not offer similar variable rate options?


“Alley Flat Initiative”

The Alley Flat Initiative was created in 2005 and is a collaboration between:


- UT Center for Sustainable Development,
- Guadalupe Neighborhood Development Corp, and
- Austin Community Design and Development Center

The objective of the AFI is to create an adaptive delivery system for sustainable and affordable housing that includes:


- efficient housing designs,
- sustainable construction technologies,
- innovative financing and
- home ownership.



Willow: 845 sf – 2/1.5



Theresa: 825 sf – 2/1.5

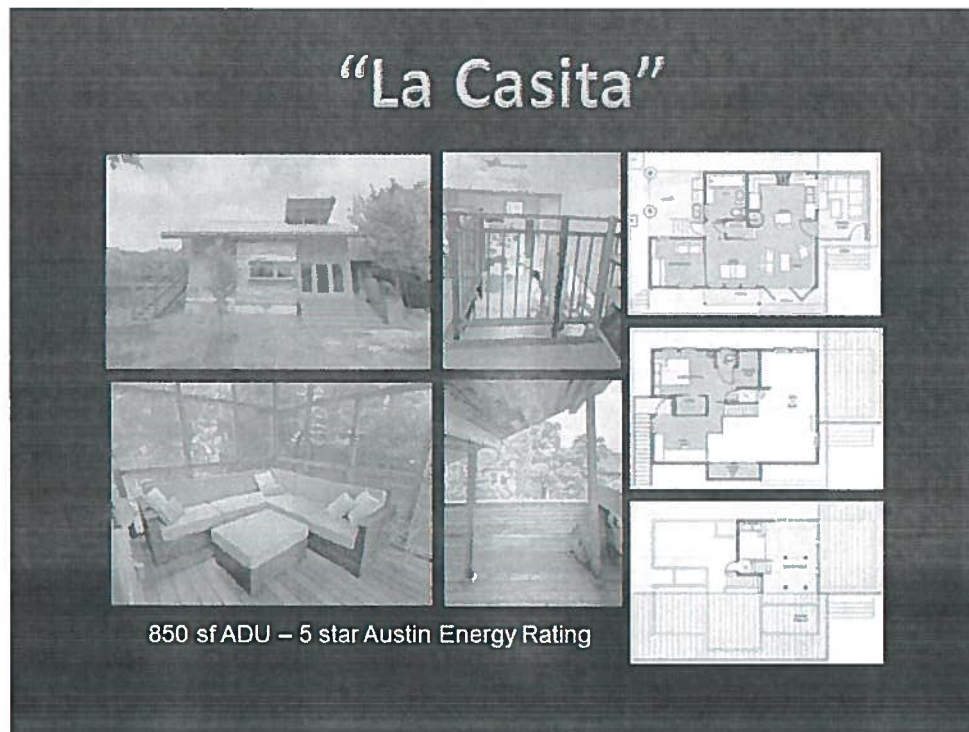


Canterbury: 830 sf – 2/2

In Austin, the use, benefit and design of ADUs are promoted by the Alley Flat Initiative, a collaboration between;

- UT Center for Sustainable Development,
- Guadalupe Neighborhood Development Corporation, and
- Austin Community Design and Development Center.

The AFI offers several two-bedroom floor plans that can be pre-approved by the city to save design and permitting fees.



This 850sf east Austin ADU, which was designed and built by an Austin planning commissioner, highlights sustainable design. It features solar energy, rainwater collection and a sleeping porch.

In addition, the original early 1940s primary home on the lot was retained and sensitively renovated rather than demolished.

La Casita achieved a 5-star Austin Energy Green Building rating.

ADUs and CodeNEXT

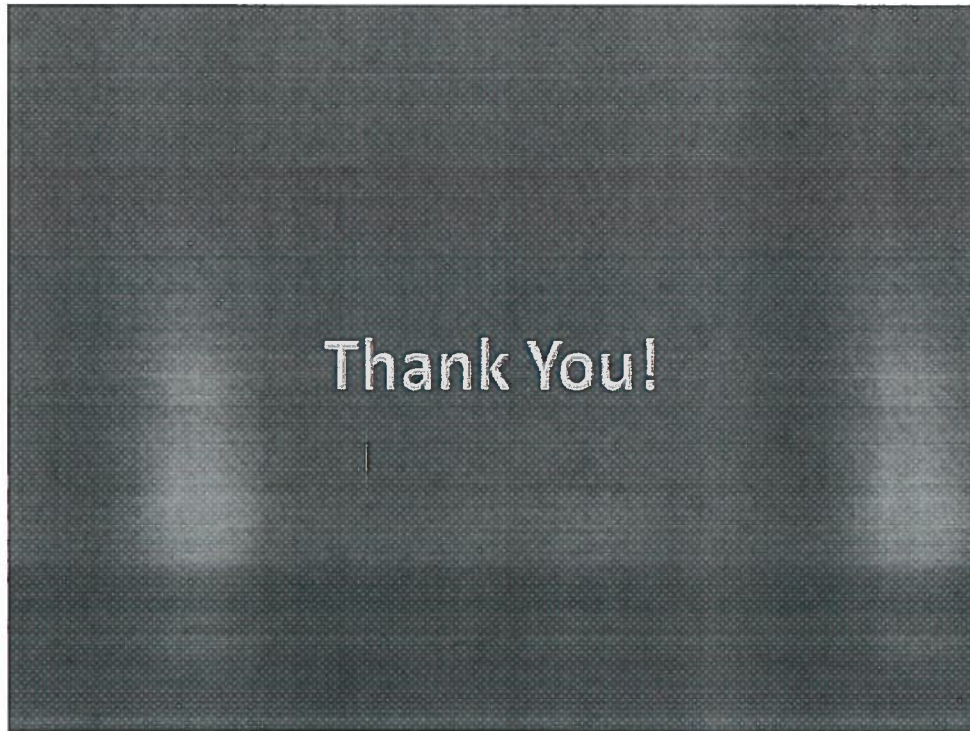
Recommendations

- Allow detached, attached and garage ADUs,
- Fast-track smaller “affordable” ADUs (<500sf)
(pre-approved plans, no parking and waived fees)
- Vary ADU floor area by lot size (600/850/1000),
- Simplify FAR, impervious, building cover limits,
- Eliminate owner-occupancy requirement,
- Eliminate prohibition of subleases, and
- Eliminate permit fees for income-restricted units.

In November 2015, the council made several ADU code changes, including district expansion, reduction in lot size and setbacks, elimination of parking and occupancy rules. It also increased permitted floor area by 30 percent from 850sf to 1,100sf.

In order to promote affordability, flexibility and compatibility, those rules need revisiting and the following need serious consideration:

- Allow detached, attached and garage ADUs,
- Fast-track smaller affordable ADUs (<500sf)
- Vary permitted floor area by lot size (600, 850, 1000),
- Simplify FAR, impervious and building cover limits,
- Eliminate owner-occupancy requirement,
- Eliminate prohibition of subleases, and
- Eliminate permit fees for income-restricted units.



In closing let me quote the former Vancouver planning director:

"If you haven't done secondary suites (ADUs) in single family houses, you're not really serious yet about affordability and sustainability. It's an urban no-brainer."

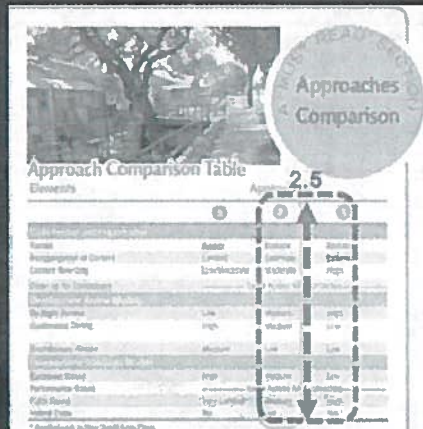
Thank You!

Code Organization: Facilitating transparency and user-friendliness

James B. Duncan, FAICP, CNU

Although usually not as controversial, the format and organization of a code is extremely important because it drives functionality, transparency and user-friendliness.

Remember Approach 2.5!



The image shows a document titled 'Approach Comparison Table 2.5'. It features a table with columns for 'Element', 'Approach 1', 'Approach 2', and 'Approach 3'. The table lists various elements of a code update, such as 'Format', 'Reorganize', and 'Rewriting', and compares them across the three approaches. Approach 2.5 is highlighted with a large '2.5' in the center of the table. To the right of the table, there is a list of elements and their corresponding approach descriptions: 'Element' (Format, Reorganize, Rewriting) and 'Approach' (Replace, Extensive, Mod-High).

Element
Format
Reorganize
Rewriting

Approach
Replace
Extensive
Mod-High

In 2014, Opticos offered three code update approaches: – 1) brisk sweep, 2) deep clean or 3) complete makeover.

Council chose Approach 2.5 which called for a replaced reformat, extensive reorganization and significant rewrite of the code.

Selection of this level of effort promised a more effective, clear, consistent, predictable, simple and implementable code.

CodeNEXT has not delivered on that promise!

CodeNEXT is a “KISS” Goodbye

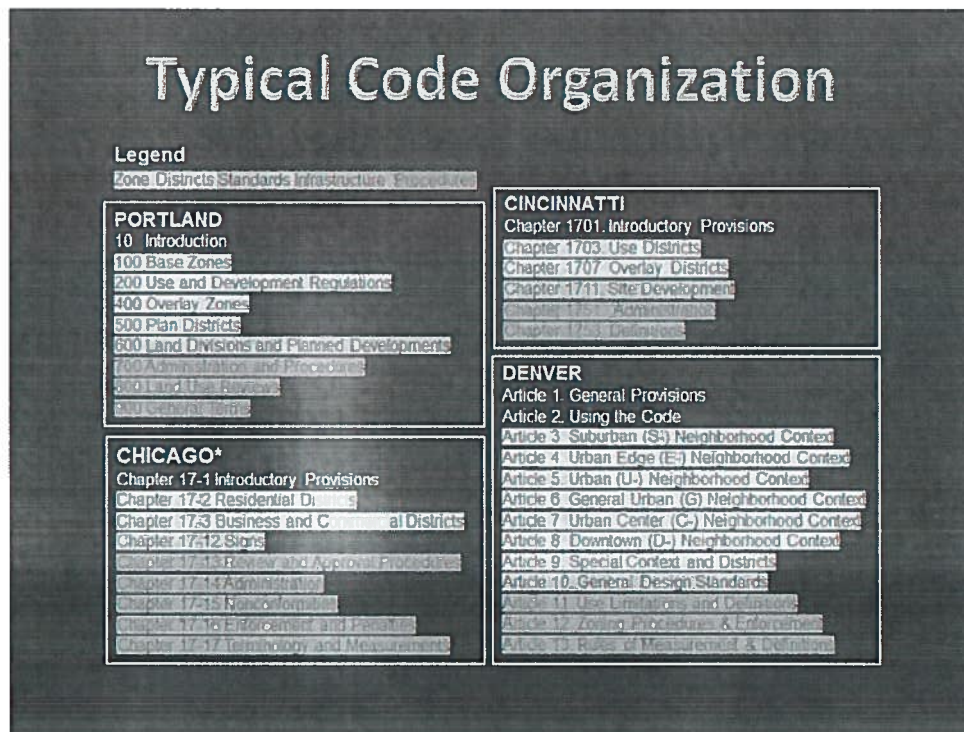


City	Pages	A&P
Tulsa OK*	315	42
Buffalo NY	334	53
Chicago IL*	339	53
Miami FL	342	45
Arlington VA*	407	32
Memphis TN*	478	59
Raleigh NC	464	78
Denver CO	1,204	76
CodeNEXT	1,388	222

First, CodeNEXT totally ignores basic “KISS” drafting principles:

It is neither short or simple!” In fact, it is very long and very complex!

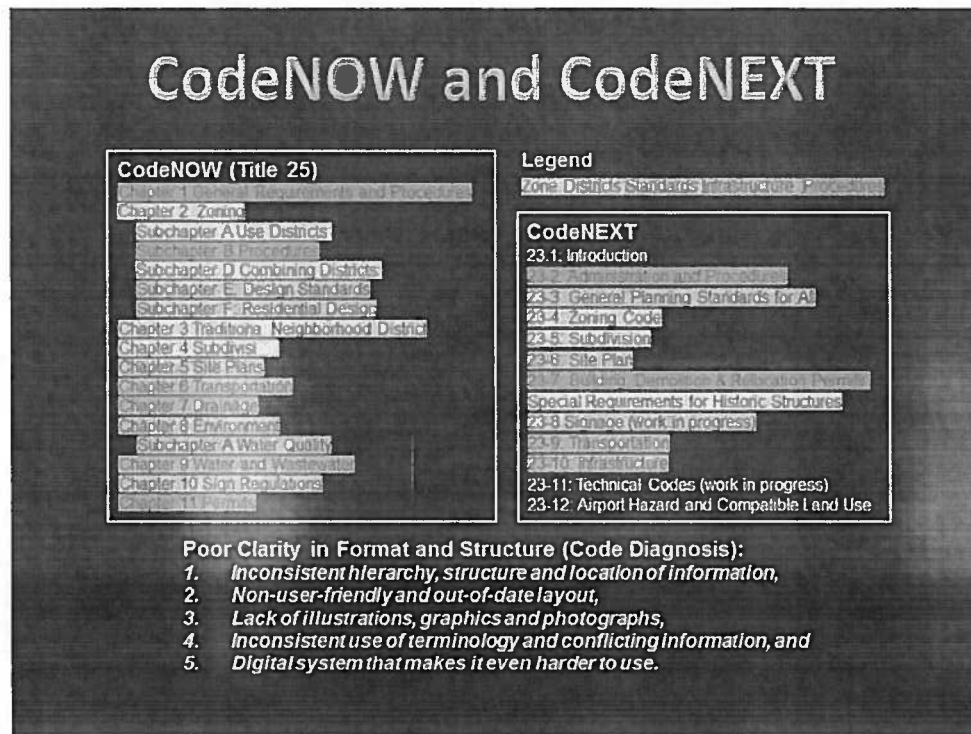
At 1,388 pages, CodeNEXT is one of the nation’s wordiest land development codes.



Depicted here are four major city ordinances color-coded to highlight basic organizational structure: districts (yellow), standards (gray), infrastructure (blue) and procedures (green).

They all generally follow the same orderly organizational pattern.

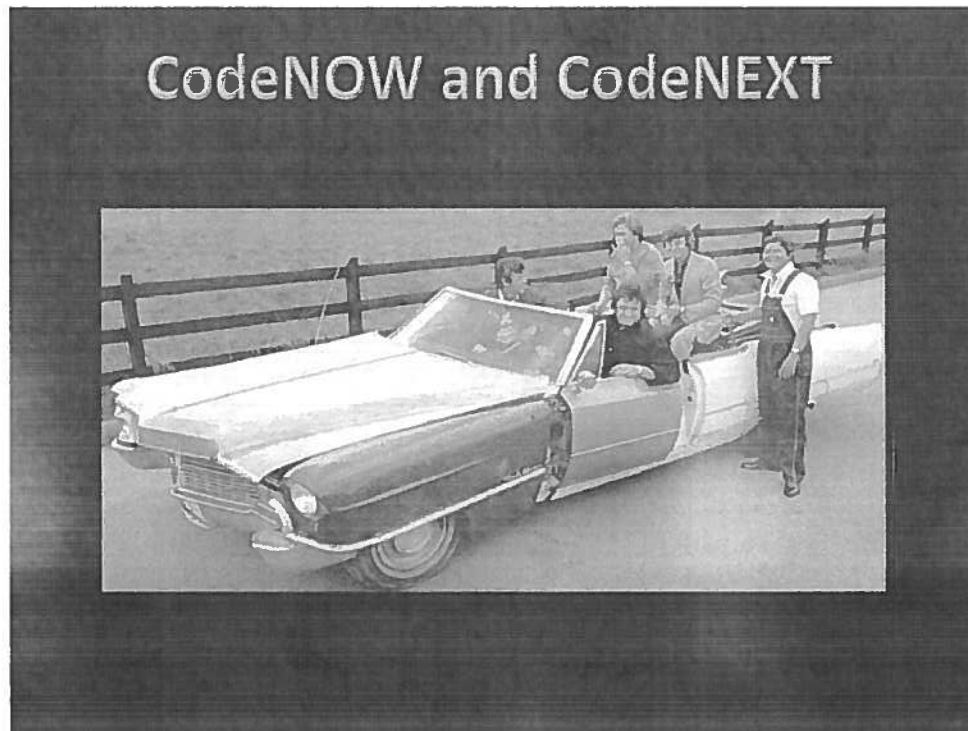
It should be noted that these codes were drafted by our consultant team: Portland by Fregonese, Cincinnati by Opticos and Denver by Park. Chicago was drafted by my former firm.



Here are our current code, Title 25, and CodeNEXT formats.

You will note little similarity with the four previously shown codes.

Many Title 25 structural problems diagnosed earlier by Opticos still exist and still need significant attention. These include poor layout, lack of illustrations and inconsistent terminology,.



Title 25 reminds you of Johnny Cash's Cadillac

It was also "built one piece at a time" and shows it.



CodeNEXT	
Chapter 23-1: Introduction Article 23-1A: General Provisions Article 23-1B: Responsibility for Administration	Chapter 23-6: Site Plan Article 23-6A: Purpose and Applicability Article 23-6B: Site Plan Review and Filing Requirements Article 23-6C: Expiration
Chapter 23-2: Administration and Procedures Article 23-2A: Purpose and Applicability Article 23-2B: Application Review and Fees Article 23-2C: Notice Article 23-2D: Public Hearings Article 23-2E: Legislative Amendments Article 23-2F: Quasi-Judicial and Administrative Relief Article 23-2G: Nonconformity Article 23-2H: Construction Management and Certificates Article 23-2I: Appeals Article 23-2J: Enforcement Article 23-2K: Vested Rights Article 23-2L: Miscellaneous Provisions Article 23-2M: Definitions and Measurements	Chapter 23-7: Building, Demolition, and Relocation Permits; Special Requirement Permits for Historic Structures Article 23-7A: General Provisions Article 23-7B: Building and Demolition Permits Article 23-7C: Relocation Permits Article 23-7D: Special Requirement Permits For Historic Structures
Chapter 23-3: General Planning Standards for All Article 23-3A: Purpose and Applicability Article 23-3B: Parkland Dedication Article 23-3C: Urban Forest Protection and Replenishment Article 23-3D: Water Quality Article 23-3E: Affordable Housing Incentive Program	Chapter 23-8: Signage (work-in-progress) Article 23-8A: Purpose and Applicability Article 23-8B: Sign Permits and Procedures Article 23-8C: Regulations Applicable to All Zones Article 23-8D: Regulations Applicable to Certain Sign Zones Article 23-8E: Other Sign Types
Chapter 23-4: Zoning Code Article 23-4A: Introduction Article 23-4B: Zoning Administration and Procedures Article 23-4C: General to All Development Article 23-4D: Specific to Zones Article 23-4E: Supplemental to Zones	Chapter 23-9: Transportation Article 23-9A: General Provisions Article 23-9B: Right-Of-Way and Transportation Improvements Article 23-9C: Transportation Impact Analysis and Mitigation Article 23-9D: Street Design Article 23-9E: Driveway, Sidewalk, Urban Trail, and Right-Of-Way Construction Article 23-9F: Access to Major Roadways Article 23-9G: Transportation Demand Management Article 23-9H: Connectivity Article 23-9I: Road Utility Districts
Chapter 23-5: Subdivision Article 23-5A: Introduction Article 23-5B: Subdivision Procedures Article 23-5C: Platting Requirements	Chapter 23-10: Infrastructure Article 23-10A: Utility Service Article 23-10B: Water Districts Article 23-10C: Water and Wastewater Capital Recovery Fees Article 23-10D: Redeemed Water Article 23-10E: Drainage

The bottom line is that CodeNEXT is not well organized, well written, well formatted or well illustrated.

While Opticos has offered improvements, CodeNEXT needs a “deeper cleansing” in order to be easily understood and utilized.

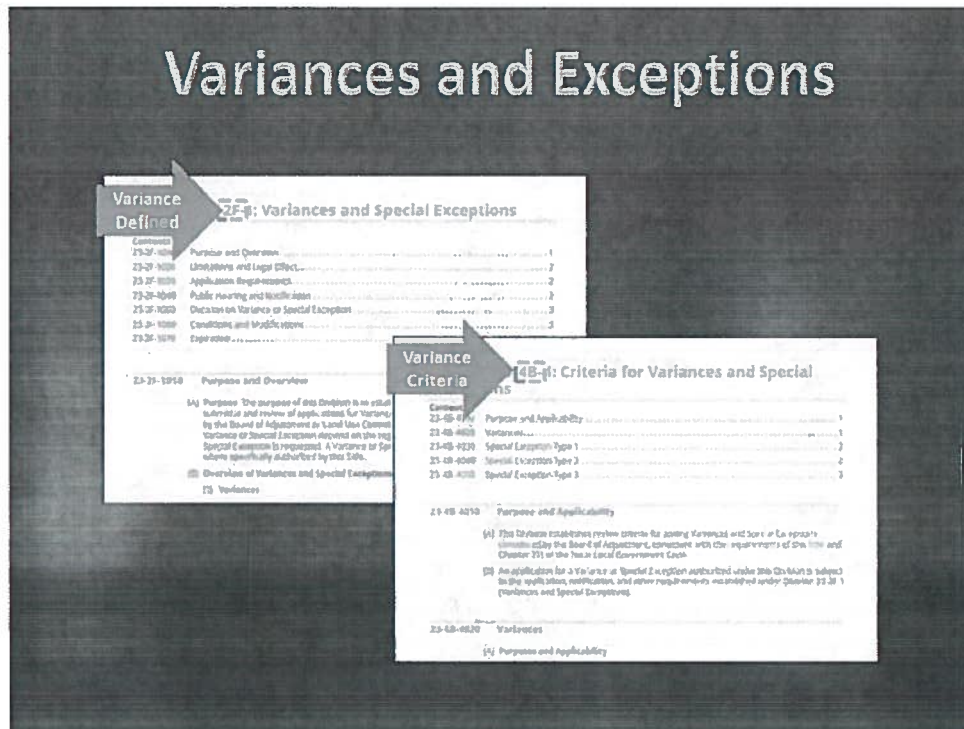
In the reformatting, reorganizing and rewriting of any code, the following drafting principles should be followed:

- Group related rules,
- Use plain English,
- Less is more, and
- Avoid doubletalk.

CodeNEXT	
	<p>Chapter 23-1: Introduction</p> <p>Article 23-1A: General Provisions</p> <p>Article 23-1B: Responsibility for Administration</p> <p>Chapter 23-2: Administration and Procedures</p> <p>Article 23-2A: Purpose and Applicability</p> <p>Article 23-2B: Application Review and Fees</p> <p>Article 23-2C: Notices</p> <p>Article 23-2D: Public Hearings</p> <p>Article 23-2E: Legislative Amendments</p> <p>Article 23-2F: Quasi-Judicial and Administrative Relief</p> <p>Article 23-2G: Nonconformity</p> <p>Article 23-2H: Construction Management and Certificates</p> <p>Article 23-2I: Appeals</p> <p>Article 23-2J: Enforcement</p> <p>Article 23-2K: Vested Rights</p> <p>Article 23-2L: Miscellaneous Provisions</p> <p>Article 23-2M: Definitions and Measurements</p> <p>Chapter 23-3: General Planning Standards for All</p> <p>Article 23-3A: Purpose and Applicability</p> <p>Article 23-3B: Parkland Dedication</p> <p>Article 23-3C: Urban Forest Protection and Replenishment</p> <p>Article 23-3D: Water Quality</p> <p>Article 23-3E: Affordable Housing Incentive Program</p> <p>Chapter 23-4: Zoning Code</p> <p>Article 23-4A: Introduction</p> <p>Article 23-4B: Zoning Administration and Procedures</p> <p>Article 23-4C: General to All Development</p> <p>Article 23-4D: Specific to Zones</p> <p>Article 23-4E: Supplemental to Zones</p> <p>Chapter 23-5: Subdivision</p> <p>Article 23-5A: Introduction</p> <p>Article 23-5B: Subdivision Procedures</p> <p>Article 23-5C: Planning Requirements</p>
Variance Defined	<p>Chapter 23-6: Site Plan</p> <p>Article 23-6A: Purpose and Applicability</p> <p>Article 23-6B: Site Plan Review and Filing Requirements</p> <p>Article 23-6C: Expiration</p> <p>Chapter 23-7: Building, Demolition, and Relocation Permits; Special Requirement Permits for Historic Structures</p> <p>Article 23-7A: General Provisions</p> <p>Article 23-7B: Building and Demolition Permits</p> <p>Article 23-7C: Relocation Permits</p> <p>Article 23-7D: Special Requirement Permits for Historic Structures</p> <p>Chapter 23-8: Signage (work-in-progress)</p> <p>Article 23-8A: Purpose and Applicability</p> <p>Article 23-8B: Sign Permits and Procedures</p> <p>Article 23-8C: Regulations Applicable to All Zones</p> <p>Article 23-8D: Regulations Applicable to Certain Sign Zones</p> <p>Article 23-8E: Other Sign Types</p> <p>Chapter 23-9: Transportation</p> <p>Article 23-9A: General Provisions</p> <p>Article 23-9B: Right-Of-Way and Transportation Improvements</p> <p>Article 23-9C: Transportation Impact Analysis and Mitigation</p> <p>Article 23-9D: Street Design</p> <p>Article 23-9E: Driveway, Sidewalk, Urban Trail, and Right-Of-Way Construction</p> <p>Article 23-9F: Access to Major Roadways</p> <p>Article 23-9G: Transportation Demand Management</p> <p>Article 23-9H: Connectivity</p> <p>Article 23-9I: Road Utility Districts</p> <p>Chapter 23-10: Infrastructure</p> <p>Article 23-10A: Utility Service</p> <p>Article 23-10B: Water Districts</p> <p>Article 23-10C: Water and Wastewater Capital Recovery Fees</p> <p>Article 23-10D: Reclaimed Water</p> <p>Article 23-10E: Damage</p>
Variance Criteria	

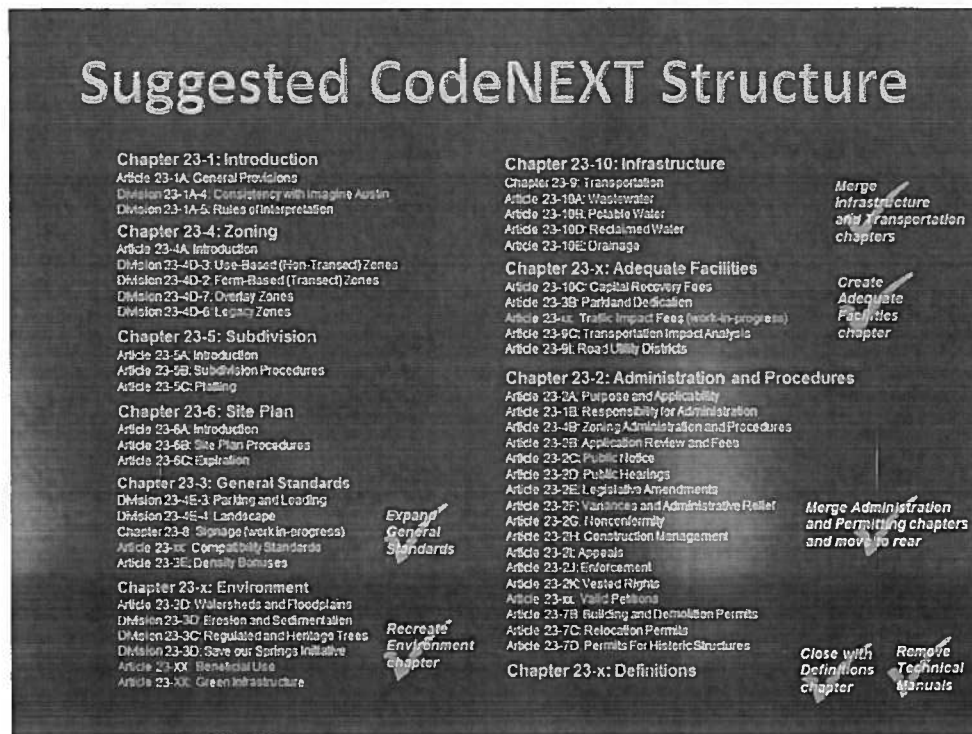
Here are ways to restructure CodeNEXT to be more user-friendly and transparent:

- First, chapters on “procedures” and “permitting” should be combined since they are both administrative in nature.
- Second, all procedures should all be collocated in the same chapter. They are currently scattered throughout CodeNEXT.
- Third, provisions relating to fees, hearings, notices, appeals and enforcement should be after regulatory provisions.
- And last, all definitions should be grouped in their own chapter at the end of a code, like a dictionary or glossary.



CodeNEXT creates document-dizziness because it requires too much “page-flipping and uses too many “footnotes.”

For example, while variances are established in Article 2F-1, variance criteria are found in 4B-4.



Code users would be much better served if the following structural changes were made to CodeNEXT:

- 1) Expand General Standards chapter to include parking, landscaping, signs, compatibility, lighting, density bonuses, etc.
- 2) Reinstate Environment chapter to include water quality, regulated and heritage trees, green infrastructure, reuse, SOS, etc.
- 3) Expand Infrastructure chapter to include transportation, wastewater, water, drainage, etc.
- 4) Create new Adequate Facilities chapter and include capital recovery fees, parkland dedication, traffic impact fees, road districts, etc.
- 5) Merge Administration and Procedures and Permitting chapters and move to rear of code (add supermajority and valid petitions).
- 6) Create new Definitions chapter and consolidate definitions.
- 7) Detach Technical Manuals.

Adoption Procedures

Texas Local Government Code, Section 211.006. Procedures Governing Adoption of Zoning Regulations and District Boundaries.

(d) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the governing body. The protest must be written and signed by the owners of at least 20 percent of either:

- (1) the area of lots or land covered by the proposed change; or
- (2) the area of lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

Valid
Petition

(e) In computing the percentage of land area under Subsection (d), the area of streets and alleys shall be included.

(f) The governing body by ordinance may provide that the affirmative vote of at least three-fourths of all its members is required to overrule a recommendation of the municipality's zoning commission that a proposed change to a regulation or boundary be denied.

Super
Majority
Vote

State statutes allow cities to use “valid petitions” and “supermajority votes” in the exercise of their zoning authority.

Such tools require three-quarter council votes to override the objections of neighboring property owners and citizen boards.

It should also be noted the neither phrase appears in CodeNEXT because staff opted to use legalese rather than “plain English.”

Adoption Procedures

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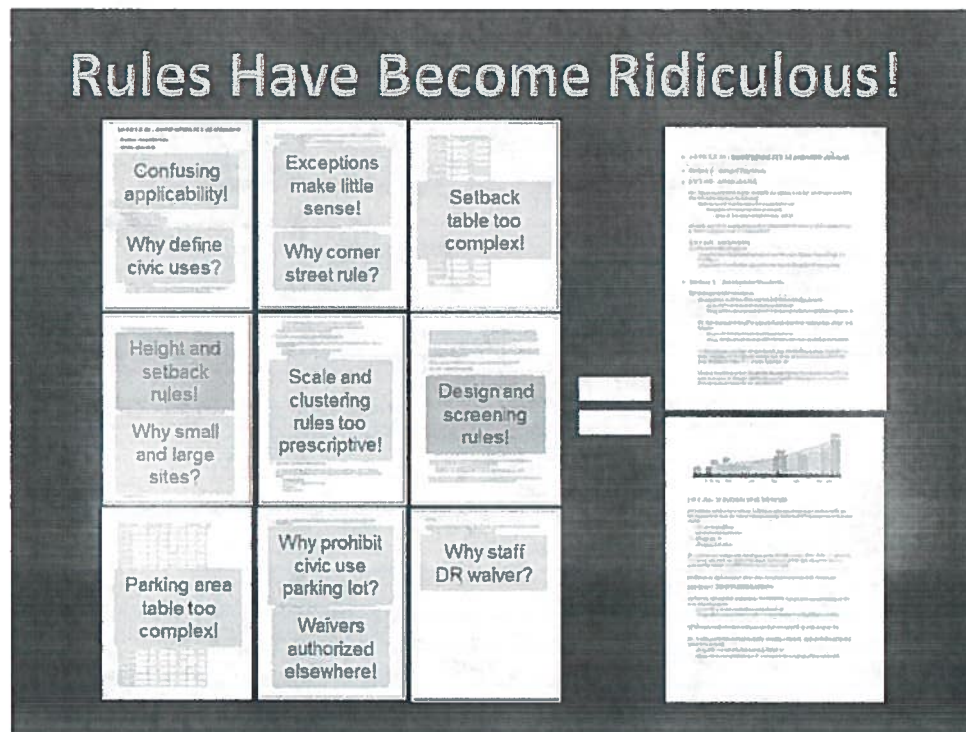
Valid
Petition

(e) In computing the percentage of land area under Subsection (d), the area of streets and alleys shall be included.

(f) The governing body by ordinance may provide that the affirmative vote of at least three-fourths of all its members is required to overrule a recommendation of the municipality's zoning commission that a proposed change to a planned unit development or boundary be denied.

Super
Majority
Vote

Staff needs to also clarify that the intent of a 2016 amendment replacing the word "regulation" with "planned unit development" was to add PUDs and not to eliminate zoning regulations.



Compatibility standards are a good example of regulations that need to be streamlined, but not emasculated. Over time, they have become cluttered with too many confusing amendments.


While the original height, setback and buffering formulas remain, they have become buried among many unnecessary provisions.

For example;


- why are civic uses and parking areas highlighted?
- why are sites divided into two sizes?
- why are scale and clustering rules so prescriptive?
- why are parking and setback tables so complex, and
- why are redundant waiver procedures included?

Be Less Verbal! (HCRO Example)


CodeNOW 7 pages, no graphics or tables, 2582 words



CodeNEXT 6 ½ pages, no graphics, 3 tables, 2350 words



CodeNEW 4 pages, 2 graphics, 1 table, 893 words

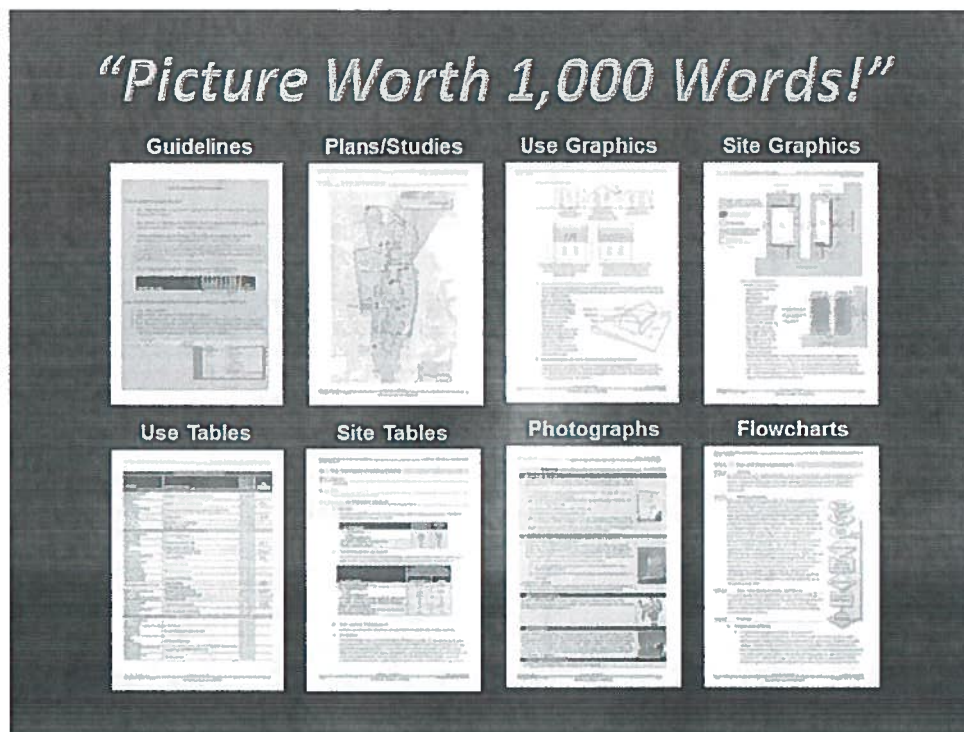


How? By removing outdated, redundant and unnecessary provisions, adding graphics and doing more wordsmithing.

I repeat! CodeNEXT is entirely too wordy!

For example, the seven-page Hill Country Roadway Ordinance was incorporated into CodeNEXT 1.0 with minimal change.

By removing duplicative provisions, adding graphics and doing some wordsmithing, the HCRO can be reduced to only four pages.

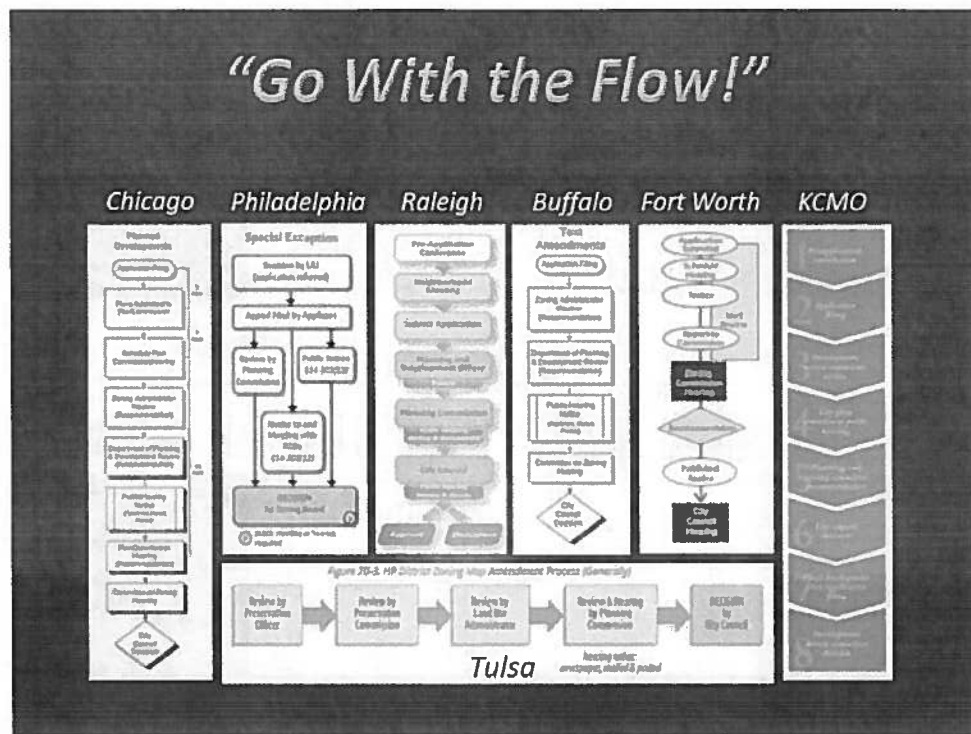


Except for a few sections relating to civic space, form districts and landscaping, CodeNEXT is essentially a visual desert.

The absence of illustrations is especially apparent in the 222 page procedures chapter where the only graphics are bicyclists on the cover and a "façade" diagram on the last page.

Even definitions, which are always well-illustrated in other land development codes, are generally picture-less in CodeNEXT.

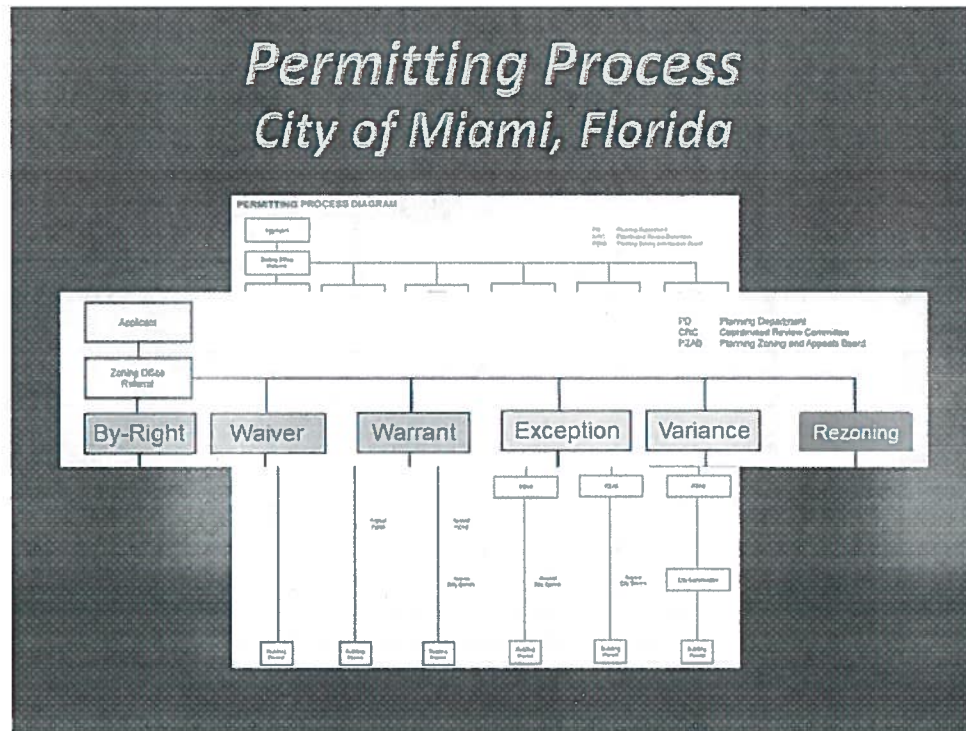
Here are examples of the many maps, plans, graphics, tables, photos and flowcharts in the Arlington VA code.



Flowcharts are one of the most effective tools to explain complex, circuitous and confusing code procedural provisions.

All new codes now include them. Here are flowcharts from seven other recently revised major city codes.

CodeNEXT should include flowcharts!



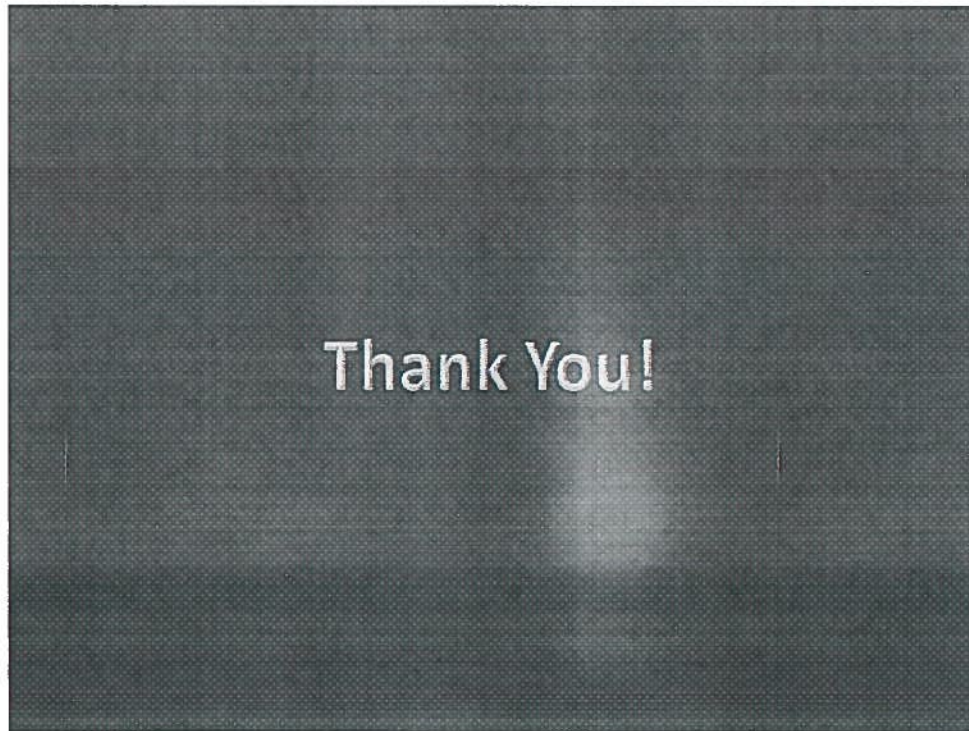
Procedural transparency starts with understanding how an application goes through the bureaucratic gauntlet of reviews and approvals. This flowchart facilitates an understanding of permitting responsibilities for Miami.

Administrative Summary City of New Orleans, Louisiana

TABLE 4.2: ADMINISTRATIVE SUMMARY TABLE

	ZONING TEXT AND MAP ADJUSTMENT	CONCEPTUAL USE	PLANNED DEVELOPMENT	SITE PLANS & DESIGN REVIEW	VARIANCE	MINOR MAP ADJUSTMENT - FUTURE LAND-USE MAP	MINOR MAP ADJUSTMENT - EXISTING MAP
APPLICATION INITIATION	Property owner, person authorized to act by property owner, or City Council	Property owner, person authorized to act by property owner, or the Council	Property owner, person authorized to act by property owner, or City Council	Initiated when any development or map change meets the requirements of Section 4.3	Property owner or person authorized to act by property owner	Property owner, person authorized to act by property owner, City Planning Commission or City Council	Property owner person authorized to act by property owner, City Planning Commission or City Council
APPLICATION PLANS & COMPLETION DETERMINATION	Executive Director of the City Planning Commission	Executive Director of the City Planning Commission	Executive Director of the City Planning Commission	Executive Director of the City Planning Commission	Executive Director of the City Planning Commission	Executive Director of the City Planning Commission	Executive Director of the City Planning Commission
NOTICE	See Section 3.3	See Section 4.3	See Section 3.3	None	See Section 3.3	None	See Section 3.3
PUBLIC HEARINGS AND/OR RECOMMENDATION	City Planning Commission	City Planning Commission	City Planning Commission	Executive Director of the City Planning Commission or Design Advisory Committee	Board of Zoning Adjustments	None	Board of Zoning Adjustments
FINAL DECISION	City Council	City Council	City Council	Executive Director of the City Planning Commission	Board of Zoning Adjustments	Executive Director of the City Planning Commission	Board of Zoning Adjustments
NUMBER OF DAYS TO FILE APPEAL FROM DATE OF FINAL DECISION	30	30	30	45	30	45	30
APPEAL BODY	Orleans Parish Civil District Court	Orleans Parish Civil District Court	Orleans Parish Civil District Court	Board of Zoning Adjustments or as determined by other applicable law	Orleans Parish Civil District Court	City Planning Commission	Orleans Parish Civil District Court

This table from the New Orleans code depicts relationships between various types of applications and their procedural steps for filing, noticing, hearing, decisions and appeals.



CodeNEXT administrative provisions are a disappointment. They need to be better formatted, consolidated, illustrated and translated.

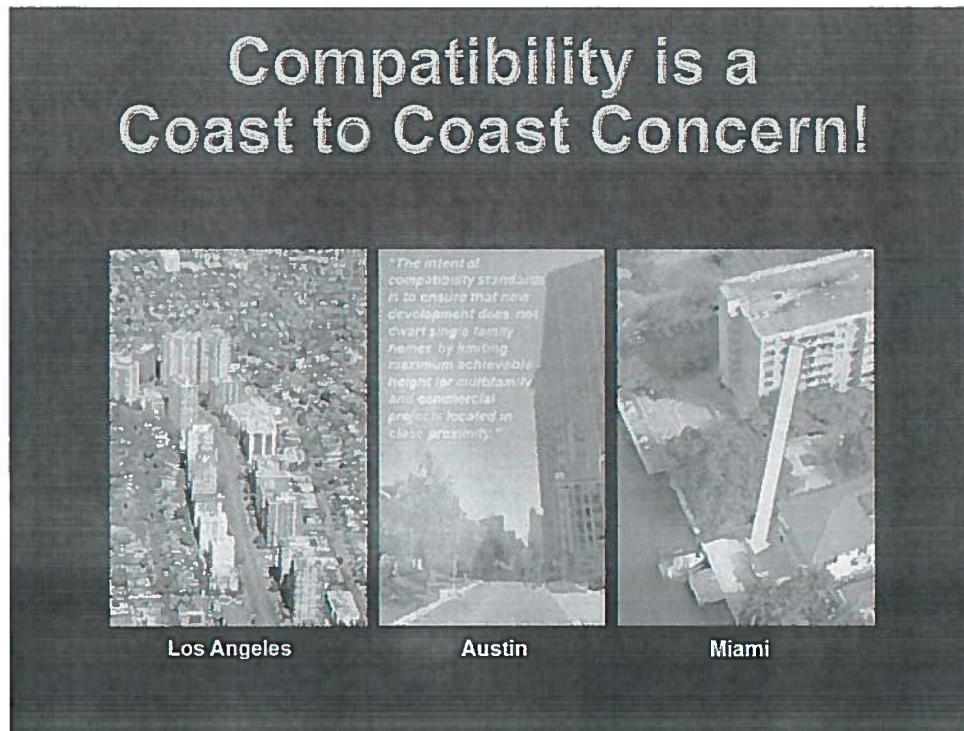
Thank You!

Compatibility Standards: Preserving Privacy, Equity Sunshine and Character

James B. Duncan, FAICP, CNU

Compatibility standards are a performance zoning tool used to preserve and protect established urban character.

Compatibility standards are most appropriate in cities, such as Austin, that do not have a stellar track record of basing zoning decisions on consistent sound transitional planning principles.



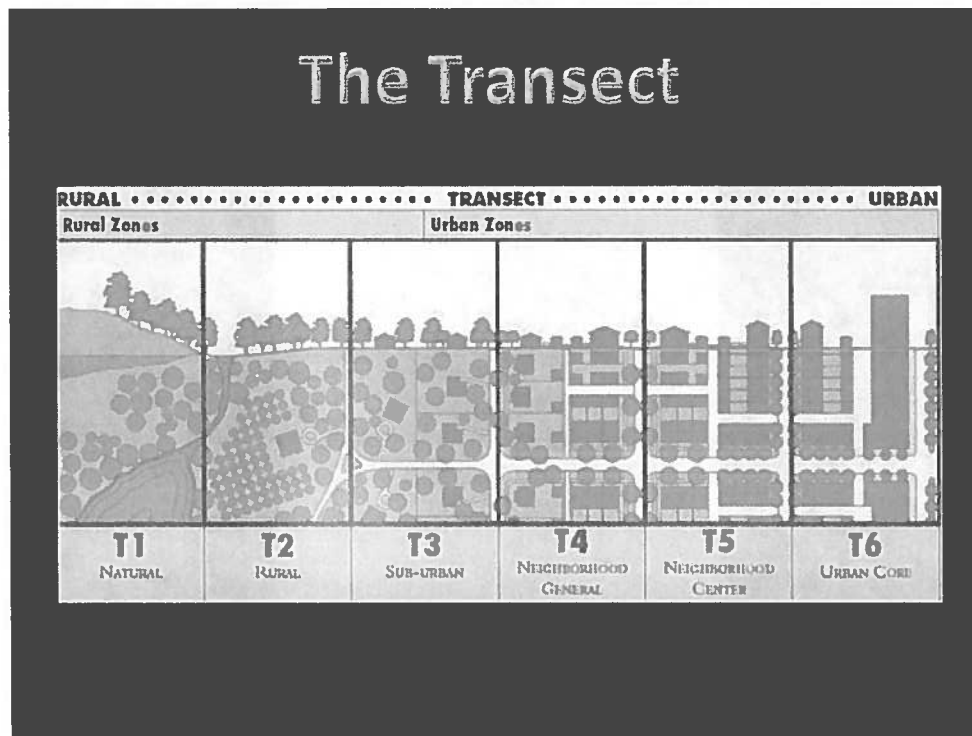
There are two ways land use incompatibilities usually occur.

One is by TYPE of use, such as loud music venues adjacent to senior citizen homes.

The other is by FORM, or height, scale and bulk, of use, such as a high-rise overshadowing a single family home

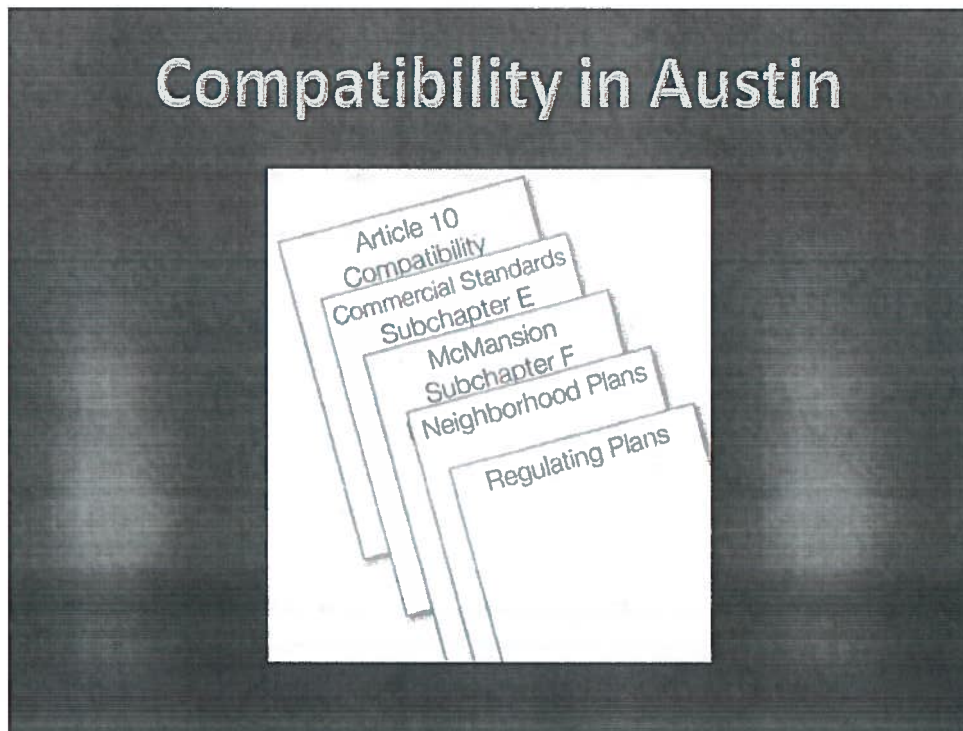
Here are three graphic examples of FORM incompatibilities:

1. **Wilshire Boulevard** (future Burnet Road and Lamar Boulevard?)
2. **Downtown Austin** (loss of sunshine - 7th Street in Old West Austin)
3. **Miami** (loss of privacy - Condo offended by backyard pool activity)



Austin's compatibility standards are one of its only regulatory tools implementing the New Urbanist Transect.

The Transect works by allocating elements that make up the human habitat to appropriate geographic locations, or cross-sections, in order to ensure compatible form, bulk and intensity relationships. In other words, the separation of low densities and structures from high densities and structures.



In Austin, compatibility is a major zoning issue and regulated in five separate places in the land development code.

However, Article 10 and Subchapter F are generally considered the two primary regulatory references to compatibility.

Compatibility in Austin

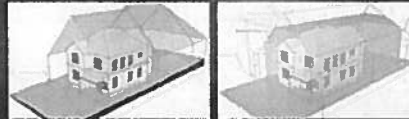
Commercial (Article 10)

- Limits heights within 540°(45° plane)
- Limits lighting (cut-off) and noise (70db)
- Requires screening (storage & waste)
- Prohibits reflective/intensive activities
- Requires massing and clustering



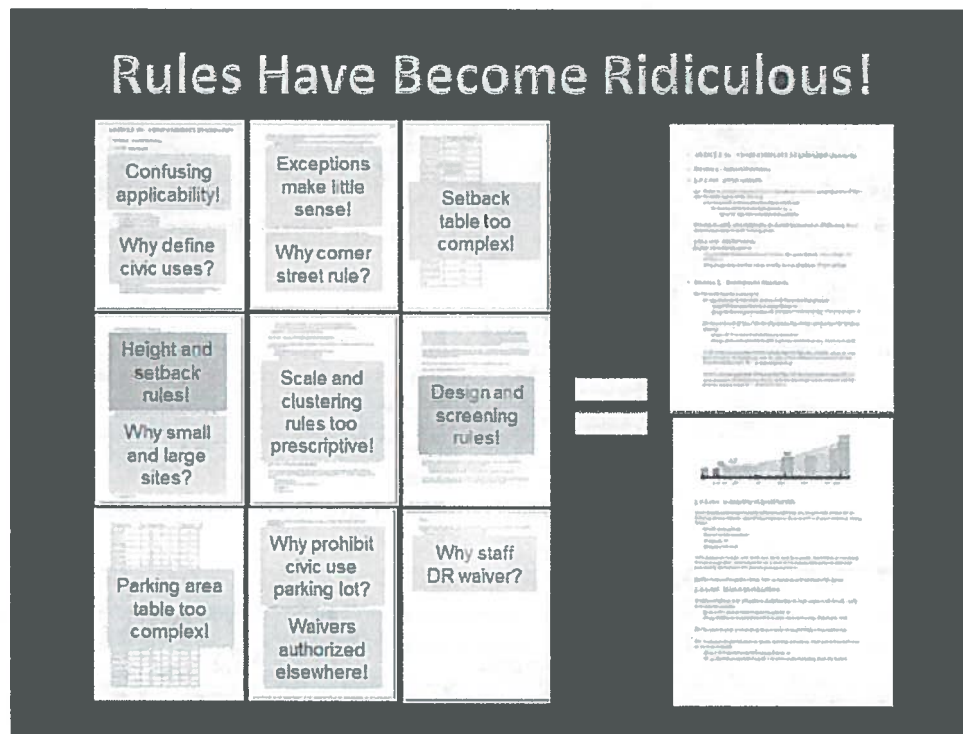
McMansion (Subchapter F)

- Limits house size (2300sf/.4 FAR)
- Limits house height (32')
- Limits buildable area (45° plane)
- Decreases alley setbacks for ADUs
- Requires sidewall articulation



Article 10, the commercial compatibility standards, were adopted in 1986 to provide buffers and ensure that new multi-family and commercial development did not dwarf nearby single family homes by limiting their maximum achievable height.

Subchapter F, the McMansion compatibility standards, were adopted in 2006 to minimize the potential impact of outsized residential infill and remodels on surrounding properties by defining acceptable building areas for each residential lot.



Frustration with Article 10 has been caused as much by having to wade through overly complex and confusing regulations as the limitation of heights beyond what the use district may allow.

These rules should be removed before addressing the core height, setback and buffering formulas.

For example;

- why are civic uses and parking areas highlighted?
- why are sites divided into two sizes?
- why are scale and clustering rules so prescriptive?
- why are parking and setback tables so complex, and
- why are redundant waiver procedures included?

Council Members Voice Confusion and Concern

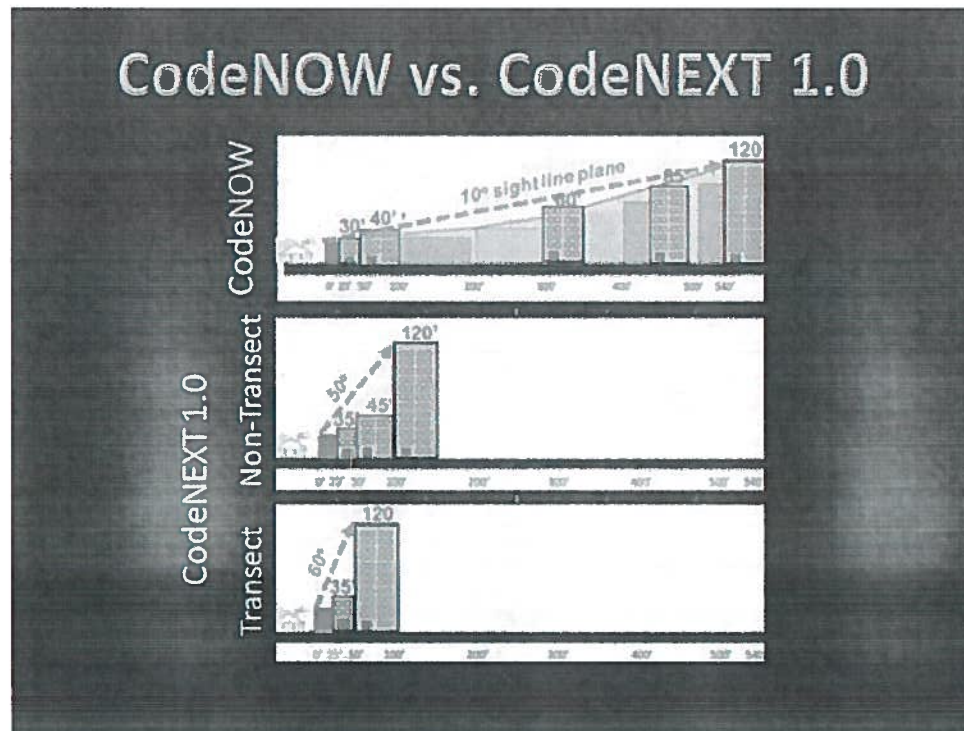
"Council members voiced confusion and concern about whether the new code would allow tall buildings to tower over single-family homes and whether it would incentivize construction of larger, more expensive homes in a neighborhood otherwise traditionally composed of small houses....

... The size of nearby homes was not top concern voiced by residents he talked to, said (John) Miki. Instead, he said, they were concerned about "how does that building look from the street," a claim CM Alison Alter pushed back on. "That's not the concern I'm hearing," said Alter. "The concern I'm hearing is whether they can afford to live in Austin."

... Miki and Peter Park conceded that the new approach could lead to demolitions of small homes in neighborhoods that currently have small lots and strict size restrictions in favor of larger, more expensive homes..."

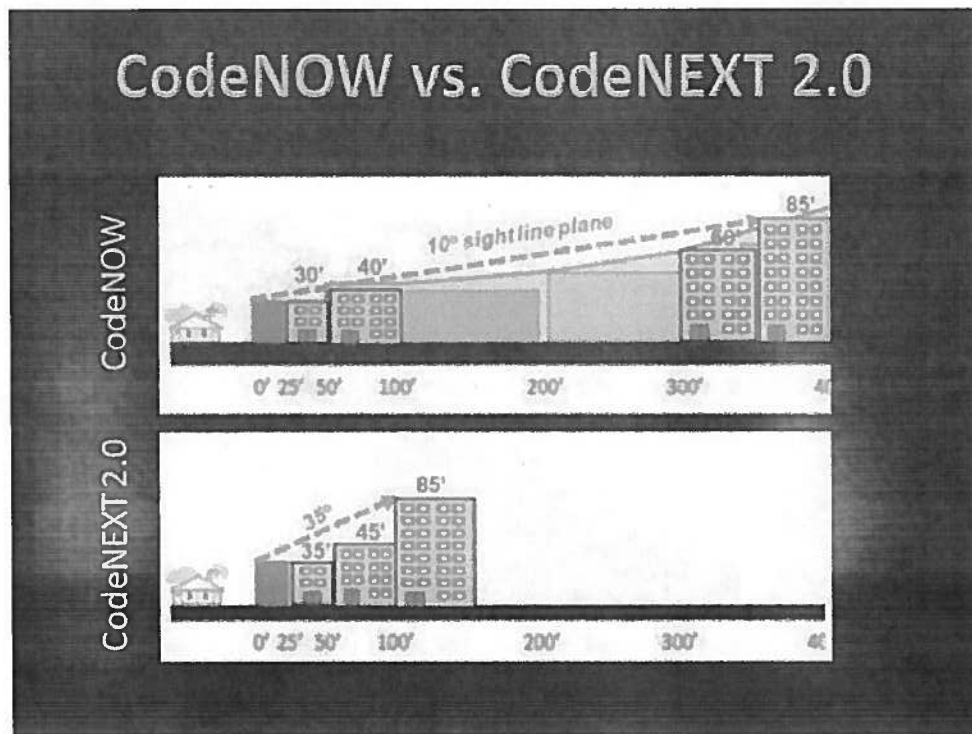
by Jack Craver, Austin Monitor, June 8, 2017

When initially presented to city council, the proposed new "baked-in" CodeNEXT compatibility concept was met with "confusion and concern." It was also disconcerting when the consultants conceded that the new approach could accelerate demolition of homes.

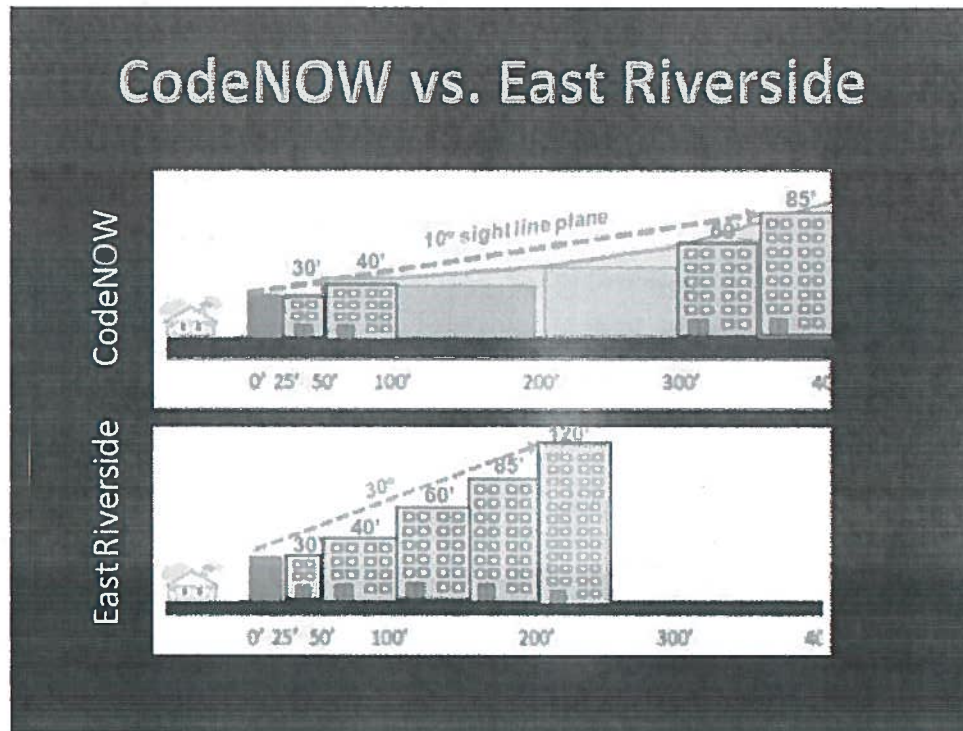


In CodeNEXT 1.0, Opticos initially proposed a confusing so-called “baked-in” compatibility formula that would allow, depending upon the adjacent zoning district, 12-story high-rises 50 feet from single family homes in the urban core and 100 feet in the suburbs. That idea was not warmly-embraced!

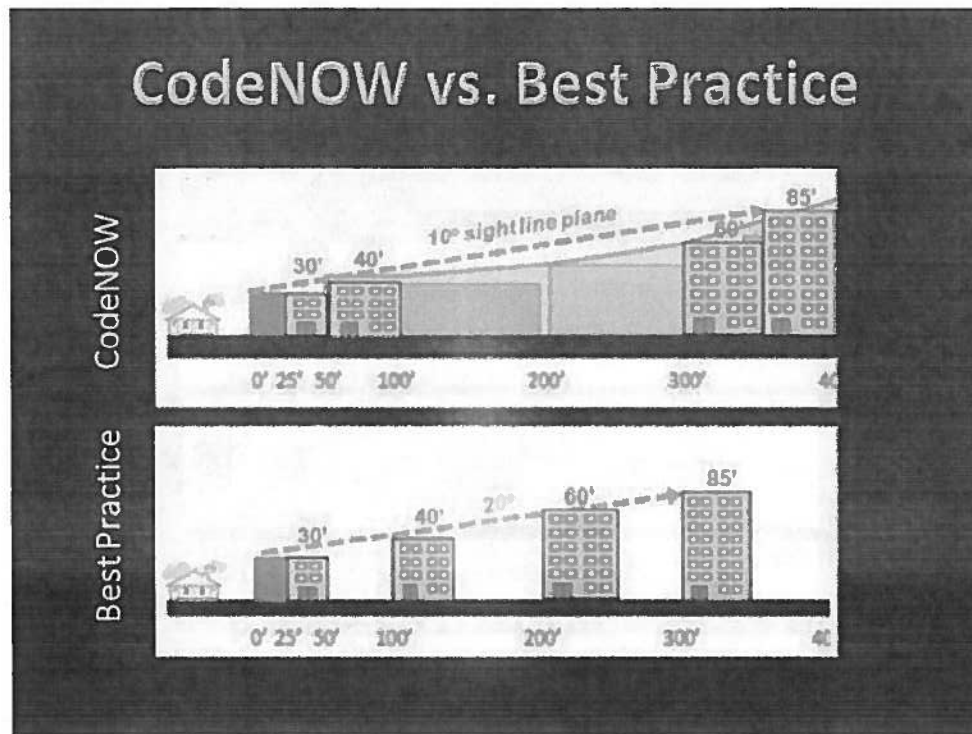
The dashed green lines reflect the site line plane for eight and 12-story high-rises within each formula alternative.



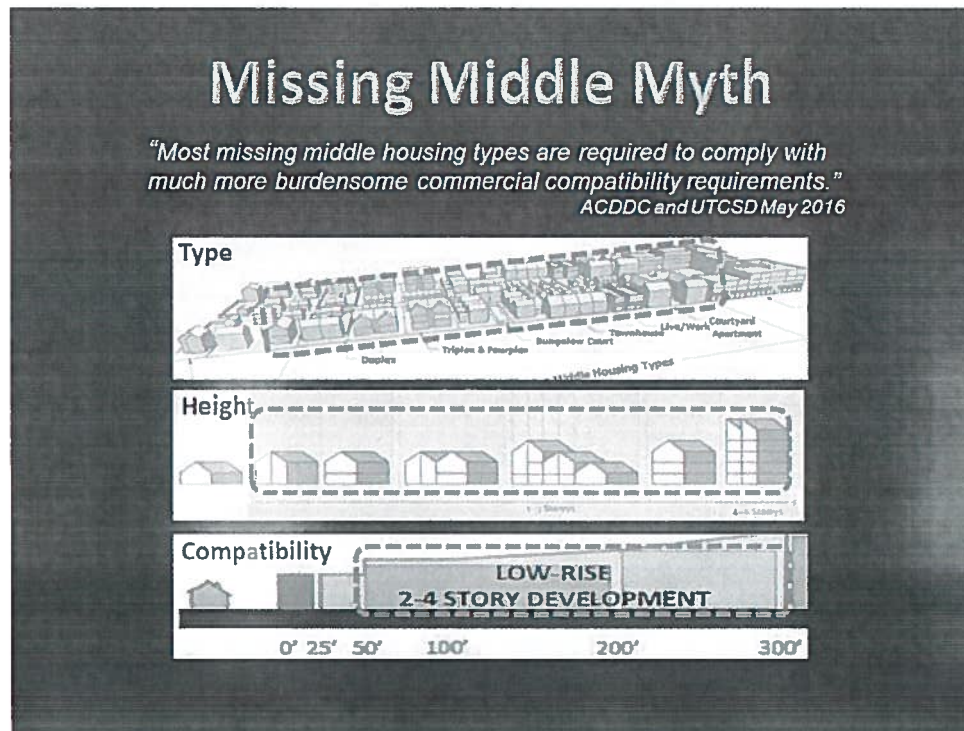
With the merger of transect and non-transect districts in CodeNEXT 2.0, Opticos proposed a more simplified “step-back” height formula that still allowed eight-story high-rises 100 feet from single family homes. That idea was also not warmly-received!



As an alternative, staff is recommending the compatibility formula it used in East Riverside that allows six-story high-rises 100 feet away from single-family homes, eight-story high-rises 150 feet away and 12-story high-rises 200 feet away.



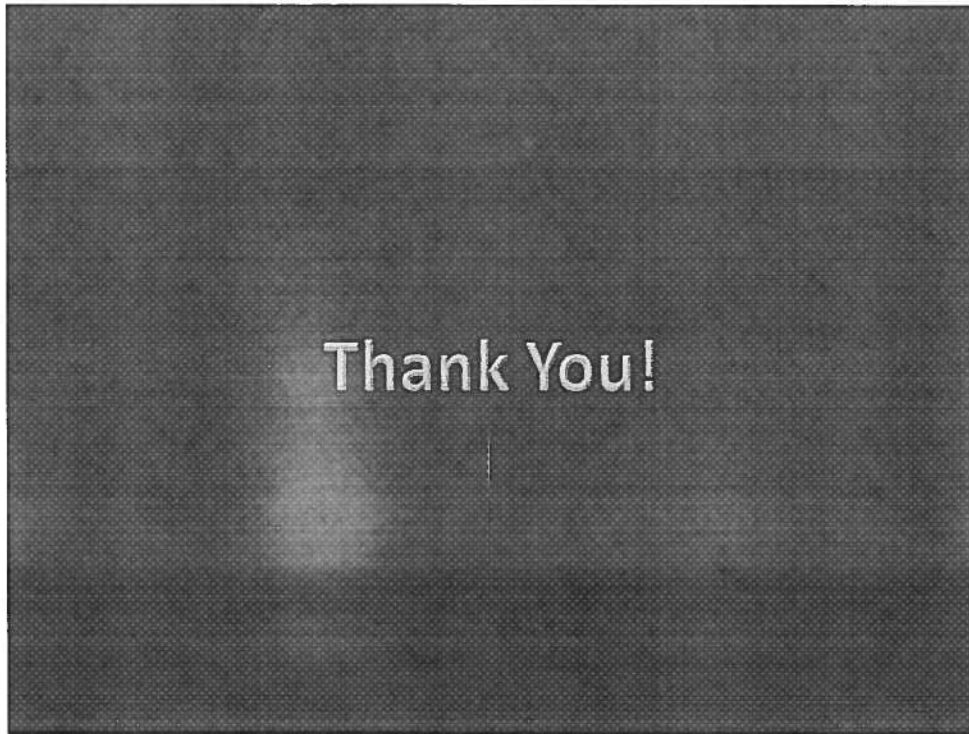
A more appropriate solution would be to reduce current compatibility rules by one-third, allowing four-story mid-rises 100 feet away from a single family home, six-story high-rises 200 feet away, and eight-story high-rises 300 feet away.



There is a misunderstanding that current compatibility rules inhibit provision of "missing middle housing."

Since most missing middle housing is three stories or less, they do not even trigger Article 10 thresholds.

The only compatibility rules that would affect missing middle housing are buffering, such as fencing and landscaping, which are generally also required by other code provisions.



Thank You!

Density Bonuses: Boon or Boondoggle?

James B. Duncan, FAICP, CNU

First, it should be noted that a density bonus system is just the bartering of something a developer wants – more entitlements – for something the public wants – more community benefits.

In a sense, it can be considered legalized contract zoning!

Density Bonuses: Legal Basis in Texas

Texas Local Government Code, Section 214.905. PROHIBITION OF CERTAIN MUNICIPAL REQUIREMENTS REGARDING SALES OF HOUSING UNITS OR RESIDENTIAL LOTS.

(a) A municipality may not adopt a requirement in any form, including through an ordinance or regulation or as a condition for granting a building permit, that establishes a maximum sales price for a privately produced housing unit or residential building lot (Note that this does not apply to rental housing).

(b) However, this section does not affect any authority of a municipality to:

- 1) create or implement an incentive, contract commitment, density bonus, or other voluntary program designed to increase the supply of moderate or lower-cost housing units; or*
- 2) adopt a requirement applicable to an area served under the provisions of Chapter 373A which authorizes homestead preservation districts.*

Texas cities are limited when it comes to requiring developers to provide affordable housing. State law prohibits cities from “*establishing a maximum sales price for private housing.*”

However, cities can enact “voluntary” incentivized programs, such as density bonuses. In fact, it is one of the only tools still available after the legislature recently outlawed linkage fees.

Density Bonuses in Austin: What Staff Considers a "Success,"

"As of June 2016, the City's density bonus programs have created 1,653 units, predominantly for households earning less than 80% of the median family income. For perspective, if the City of Austin had to subsidize these units, the cost would have been approximately \$62.8 million. This assumes a per unit subsidy of \$38,000, which is the average for the 2013 Affordable Housing Bond Program.

Ninety-six developments have participated in a density bonus program, with the University Neighborhood Overlay program producing most units. Currently, some programs allow developers to pay a fee in lieu of providing affordable housing on-site. Fees are utilized to help subsidize additional income-restricted units throughout the city and to date, over \$4 million in fees-in-lieu payments have been generated from the density bonus programs."

Austin now allows density bonuses within 12 square miles of the city and is currently considering adding another 36 square miles.

If you listen to staff, you would think that current programs have been an overwhelming success in producing affordable housing.

Unfortunately, nothing could not be further from the truth!.

Over the past 13 years, density bonuses have produced a pitiful 1,600 affordable units out of 100,000 permitted market-rate units.

We could have and should have done a lot better!

Density Bonuses in Austin: Others have Serious Concerns

"Programs to incentivize below-market housing need to be clear, effective, easily implementable and uniform... Austin's current density bonus programs are vague and hard to follow as their regulations vary widely."

Wade Tisdale, RECA President

"Austin has 12 different density bonus programs. ... (but) no cohesive strategy to achieving community benefit. ... The problem is too many programs, tremendous inconsistency and immense unpredictability."

OTAK Consultants

"I do not favor giving tools being discussed by CodeNext across the board to developers. The only entity we should ... trust with the tools of radical density, new housing types and waivers ... is the neighborhood."

John Henneberger, Housing Advocate

"City officials don't know whether housing generated by density bonuses is mostly serving college graduates working in coffee shops, seniors on fixed incomes or low-income working mothers... Given the stakes, the city should slow its march in expanding density bonus programs."

Statesman Editorial Board 8/25/2017

While density bonuses in Austin may have greatly enhanced entitlements, they have produced little affordable housing.

According to several respected critics, the primary reasons for this inept performance, has been the lack of program uniformity, predictability, clarity, consistency and a cohesive strategy. The Statesman has also recommended that the program not be expanded until current problems are addressed.

It has also not helped that staff has let real estate speculators and developers have considerable say in shaping the programs.

Henhouses designed by foxes never work too well!

Audit Rips Bonus Program

Summary Findings:

- No effective strategy to create housing with deeper affordability, longer affordability and geographic dispersion.
- Incomplete and inaccurate data limits ability to evaluate program success and provide accurate information to public and decision makers.
- Gaps in monitoring process limits ability to enforce affordability restrictions and do not ensure the achievement of adopted core values.



Flaws in FY 2012-2014 Production Data Resulted in Overstated Outcomes

NHCO Reported Affordable Housing Units				DCA Calculation of Affordable Housing Units			
	Directly Funded Programs	Developer Incentive Programs	TOTALS		Directly Funded Programs	Developer Incentive Programs	TOTALS
FY 2012	551	553	1504	FY 2012	551	258	848
FY 2013	163	1465	1648	FY 2013	182	258	841
FY 2014	113	1749	1862	FY 2014	113	529	842
TOTALS	847	4167	5014	TOTALS	847	1185	2032

NHCO overstated production by approximately 3,000 units

Probably the strongest and harshest criticisms of Austin's density bonus programs were issued two years ago by the City Auditor.

In a scathing report, the Auditor indicated that Austin's programs were a management mess and ineffective deliverer of affordable housing. It exposed them as rudderless and resource-deprived.

It also exposed staff claims of success as very exaggerated!

Some Unanswered Questions

1. *How many agreements has the City made with developers to allow density bonuses or other waivers in exchange for promises of "affordable housing"?*
2. *Does the City maintain a database of agreements, with property addresses, number of "affordable units" promised and criteria defining "affordability"?*
3. *Were procedures put in place to monitor those agreements to ensure that the units actually got built, and were actually marketed at the agreed upon prices?*
4. *Did each of the agreements include fines or other penalties for noncompliance?*
5. *Were follow up actions taken in every case, to ensure the agreements were fully enforced, and all applicable fines or penalties assessed and collected?*
6. *Did these agreements contain language that required units to remain affordable into the future, after the sales to subsequent owners or the turnover of tenants?*
7. *How many units in each of these approved development projects or subdivisions exist today within each project covered by these agreements?*
8. *Is there a public webpage or City office where citizens can go to find a list of these affordable units currently on the market for lease or for sale?*

Questions asked by local blogger Bill Oakey on October 28, 2017

Unfortunately, the density bonus program is not only structured poorly, it is even more poorly monitored and managed. Here are unanswered questions asked by Bill Oakey, a local blogger.

Density Bonus Programs

Density Bonus Program	Year Adopt	Percent MFI		Percent Affordable	Period (years)	FIL (psf)
		Own	Rent			
West Campus	2004	65	65	10% uts	15	\$1
Rainey Street	2005	80	80	5%	none	none
PUD	2008	80	60	5%/10% uts	99/40	\$6
Downtown	2009	120	80	10% uts	99/40	\$3-\$10
TOD	2009	varies	varies	10% BA	99/40	\$10
Burnet Gateway	2009	80	60	10% BA	99/40	\$6
VMU	2010	100-80	80-60	5%/10% uts	99/40	none
East Riverside	2013	80	60	4:1	99/40	\$50

Inconsistent & High MFIs ▼ Period too short ▼
 Percent inconsistent ▲ FIL too low ▲

A quick critique of Austin's eight existing density bonus programs:

All formula components, such as tenure periods (guaranteed years), eligibility thresholds (MFI levels), affordability thresholds (restricted units) and fee-in-lieu levels (buy-out options) are way overdue for a thorough and comprehensive review and revision based on changing times, new data and updated policies.

For example, fee-in-lieu options for West Campus and East Riverside are so low that it makes no financial sense for a developer to provide on-site affordable housing. It is also strange that staff has asked that those programs not be touched.

Strategic Housing Blueprint

The Blueprint recommends the following base changes:

- implement density bonuses for IA activity centers and corridors,
- provide more opportunities for housing with two or more bedrooms, and
- implement bonuses at edges of centers and corridors or on collector streets.

And the following additional changes to existing programs:

- explore possibility of extending affordability periods,
- add Housing Choice Voucher to density bonus programs,
- define how to determine if fees-in-lieu are “compelling,”
- identify factors that lead developers to request fees-in-lieu,
- amend TOD to minimize requests for fee-in-lieu option, and
- include affordable housing benefits in PUD Tier 1 review.

(Staff does not recommend interim changes to ERC or UNO)



For a program with so many problems and so much potential, staff-identified improvements are surprisingly timid and tepid. In addition to expanding the program, they recommend:

- Exploring the possibility of extending affordability periods.
- Adding Housing Choice vouchers to density bonus programs.
- Amending TOD to minimize requests for fee-in-lieu option.
- Defining how to determine if fees-in-lieu are “compelling.”
- Identifying factors that lead developers to request fees-in-lieu.
- Including affordable housing benefits in PUD Tier 1.

Considering such short-sighted solutions, it is easy to see why Austin’s bonus program has been such a failure.

A Better Way Forward!

For density bonuses to be more effective in delivering affordable housing for Austin, the program must:

- be better balanced between public and private benefits,
- have a higher priority among City programs, and
- be better funded, staffed, managed and supervised.

And these structural changes should be implemented:

- Allow bonuses for non-residential, as well as residential.
- Require certain percent of all units to be multi-bedroom.
- Give low-income families with children housing priority.
- Achieve deeper affordability by lowering MFI thresholds.
- Adjust fees-in-lieu to be in sync with actual housing cost.
- Extend affordability periods for West campus and Rainey.
- Base West Campus on gross floor area, rather than net.
- Allow fee-in-lieu options for Rainey Street and VMU.

- If density bonuses are ever to become a significant provider of affordable housing in Austin, however, the city must repair its existing broken program before territorially expanding it.

For starters, here are a few recommendations:

- Allow bonuses for non-residential, as well as residential.
- Require a certain percent of all units to be multi-bedroom.
- Give low-income families with children housing priority.
- Achieve deeper affordability by lowering MFI thresholds.
- Adjust fees to be more in line with actual housing cost.
- Extend affordability periods for West campus and Rainey.
- Base West Campus on gross floor area, rather than net.
- Allow fee-in-lieu options for Rainey Street and VMU.



Thank You!

CodeNEXT Comments

Flood Mitigation Task Force Report:

The Flood Mitigation Task Force (FMTF) recommended “Regulatory recommendations that are identified in the report should be implemented as soon as administratively possible (i.e. do not wait for CodeNEXT.” (FMTF Report – Item No. 15, Pg. 3)

The Executive Summary of the FMTF report, lists the following recommendations:

7. All redevelopment should have to meet drainage criteria assuming an undeveloped condition, reducing runoff leaving the site to “greenfield” conditions.
10. Work with city, state, and county authorities to continue to restrain development in 100-year floodplains.
11. The City should not grant variances for development or redevelopment that may lead to future flooding or annex property that may already be a flood concert, and;
13. Ensure accountability and effectiveness of Regional Stormwater Management Program.
14. Integrate green stormwater infrastructure with standard CIP solutions (gray infrastructure), where appropriate.
15. (Previously referenced.)

Additional recommendations are included in the body of the report. The report can be viewed here:

<http://www.austintexas.gov/edims/document.cfm?id=254319>

In regards to the FMTF Report:

Which regulatory recommendations identified in the report are addressed in CodeNEXT?

What feedback did the consultants provide for each regulatory recommendation in the FMTF Report?

How is each recommendation addressed in CodeNEXT?

If any recommendation was not addressed in CodeNEXT, what is the rationale?

Previously requested information:

As part of the CodeNEXT review process, information specific to flooding has been requested but not yet provided. The information previously requested includes, but is not limited to the following:

- Data on all the locations of localized flooding throughout the City
- List of all buyout locations;
- Identified buyout locations to include:
 - Money secured for buyouts, but status pending
 - Properties identified, but no money available to proceed with the buyouts

General Questions:

Numerous individuals and groups have raised flooding concerns. How have those individual concerns been addressed? How is the comment process demonstrating the community’s concerns are being heard and addressed?

Additionally, it must be noted that the Environmental Commission is not making a recommendation on the second draft due to not having enough information. What additional information is needed? How quickly can that information be provided?

The Task Force on Institutional Racism and Systemic Inequities made recommendations on the systemic racial inequities in Austin. Did the Task Force create an “Equity Tool”? If so, how has the tool been

applied in assessing CodeNEXT? In what ways does CodeNEXT address this issue (system racial inequities)?

Re: 23-2C-2

Add to the Notice Requirements Section:

A requirement for a public notice for Council floodplain variances. Notices should be given to Neighborhood Groups as well as potentially-affected property owners.

CodeNEXT should expand the requirements of the City Code Chapter 25-12-3 Appendix G, Sections G105 to include additional information commonly discussed at past floodplain variance hearings. 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)

Public Notices:

In regards to information contained in the public notices, the notices do not include the following information: floodplain locations and critical environmental features that are inside or adjacent to the proposed development. Public safety considerations should include the public. Preserving the environment should be afforded to all communities.

Notices should address translation services in multiple languages. Current notices allow for translation only to Spanish. There must be a protocol that determines at what level the City must provide information in other languages. Equal access to all is critical.

23-2C-3020

Comment: There is reference to “neighborhood association” but not to “Neighborhood Contact Team.” Need to ensure Contact Teams are included.

23-4B-1020

Add to (E)(2)

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

(f) Add: mitigation to flooding

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.

My concerns regarding public safety, flooding, drainage, impervious cover and water quality remain. Information requested needs to be provided to afford policymakers the opportunity to make informed decisions. The current CodeNEXT timeframe does not allow for careful and deliberate consideration on these concerns. I request that the October 24th meeting not be the last time the Land Use Commissions have the opportunity to offer recommendations. I will continue to review and provide input regardless.

Ana Aguirre

CodeNext disregards the text and maps of Imagine Austin, the city's adopted comprehensive plan.

Texas Local Government Code § 211.004 *requires* that zoning regulations be adopted in accordance with the adopted comprehensive plan. Austin City Charter Article X, § 6 also *requires* that all land development regulations, including zoning and map, shall be consistent with the comprehensive plan, element or portion thereof as adopted.

The CodeNext draft 2 map does not follow the Growth Concept Map's directive to focus development along the corridors and activity centers. Imagine Austin directs that where a small area plan exists, recommendations should be consistent with text of the plan and its Future Land Use Map. The CodeNext draft 2 map disregards both the text and the map of Austin's comprehensive plan.

CodeNext is meant to be an implementation process; not a new planning exercise. The Zoning and Platting commission recommends that future mapping be consistent with directives and maps in Imagine Austin, including the small area plans.

CodeNext significantly reduces opportunities for income restricted affordable housing.

It is clear from other growing cities and our own that a bigger, denser city increases the rate of innovation, start-ups, and productivity, but it is also accompanied by increased gentrification, income inequality and segregation, and housing costs. The only remedy to the downside of growth is to require developers to provide affordable housing in exchange for the additional height and density that they want.

CodeNext hurts Austin's ability to provide affordable housing in two ways. The first is by reducing the percentage of affordable units that must be provided in the Affordable Housing Bonus Program (AHBP) and the second is by providing increased by-right entitlements without imposing affordability requirements in return.

CodeNext 23-E-1040(B)(2) states that the number of affordable units will be calculated based on *a percentage of only the bonus units* requested resulting in far fewer affordable units than those required by the city's Vertical Mixed Use (VMU) program. The VMU program requires the percentage of income restricted affordable units to be based on *the total number of units in the project* and that the Median Family Income (MFI) requirement is 60% to 80%. This VMU program was studied for feasibility and has provided income restricted units scattered around the city. The Zoning and Platting commission recommends that current VMU affordability standards be used in CodeNext instead of the proposed AHBP standards.

CodeNext provides increased by-right entitlements with no public benefit. For example, the CodeNext draft 2 map typically zones CS-V properties MS3 with a height limit of 75'. This 15' height increase will likely reduce developers' incentive to participate in the AHBP. Given the limited options to create affordable housing, it makes no sense to give away development entitlements without affordability requirements. The Zoning and Platting Commission recommends that CodeNext ties any increases in entitlements (increased height, FAR, or density) to requirements to provide affordable housing. To provide the maximum benefits, AHBP should be made available in as many zones as possible. For example, the AHBP should be available in all Main Street zones. Commercial properties with no housing should be allowed to participate in the AHBP by paying fee-in-lieu. To ensure compatibility, height and FAR should not increase in or near residential house form zones. Bonuses in these locations should be limited to increases in units.

CodeNext eliminates requirements for affordable housing in the Planned Unit Development (PUD) Zone (23-4D-8120). The Zoning and Platting Commission recommends that all PUDs that receive increased entitlements or code modifications be required to provide on-site affordable housing (or fee-in-lieu to the AHBP for projects that don't provide housing).

Additional comments for auto-centric/walkable section presented last week.

CodeNext proposes a significant reduction in parking requirements. Reducing parking will not necessarily mean that fewer people own cars or drive less. The Zoning and Platting Commission recommends that current on-site parking requirements be maintained and that parking reductions be associated with a parking fee-in-lieu program to improve Austin's mobility or off-site parking options.

The Zoning and Platting Commission recommends that the sidewalk requirements not be relegated to the Transportation Criteria Manual. Current sidewalk requirements included in Subchapter E of the current land development code should be retained and included in CodeNext.

CodeNext does not follow best practices.

The accessory dwelling units (ADUs) in CodeNext (and the current code since 2015) allow ADUs of 1,100 sq ft. This size exceeds every major city in the US. In fact, 1,100 sq ft is the size of many houses in older neighborhoods. These houses permitted as large ADUs have recently been sold separately from the main house using a condo regime making clear that the large ADU is not accessory to the main house. The Zoning and Platting Commission recommends that Austin reduce the allowed size of ADUs consistent with other cities and find other ways to encourage the use of this infill tool. ADUs should be allowed by right in all house form zones and CodeNext should allow detached, attached and garage ADUs, fast-track smaller affordable ADUs (<500sf), vary permitted floor area by lot size (600, 850, and 1000 sq ft) (or reduce FAR limit to 0.10 instead of the current 0.15) and eliminate permit fees for income-restricted units.

CodeNext proposes to drastically limit compatibility protections in the house form zones allowing an eight story building to be just 100' from a single family home. This short compatibility buffer is unprecedented in major US cities. Adequate compatibility standards are necessary to compensate for Austin's failure to follow sound transitional planning principles. The Zoning and Platting Commission recommends that house form zones (and not use) trigger compatibility. We recommend that current compatibility rules be reduced by about one-third, allowing four-story buildings 100 feet away, six-story high-rises 200 feet away; and eight story high-rises 300 feet away from house form zones. Step back provisions should be included for RM1B, and MU1 (A-D). Step-backs should be based on the distance from triggering property line and not on the widths of roadways and alleys. The Zoning and Platting Commission recommends that in addition to height, massing and uses be included. CUPs must be required for uses that are inappropriate in the vicinity of house form zones (including those involving alcohol and extended hours of operation). Compatibility requirements should also ensure that out of scale massing (such as MU1C and MU1D zones) be prohibited within 300' of residential house form zones. In addition, other compatibility provisions such as driveway and parking placement, dumpster placement, mechanical equipment placement, etc. should be retained from the current code.

CodeNext does nothing to discourage sprawl.

Sprawl is an unstoppable side effect of property rights and free market economics. The notion that we can stop sprawl ignores the reality that State Law guarantees that there will be more sprawl. The Zoning and Platting Commission is regularly obliged to approve subdivisions that are the very essence of sprawl.

CodeNext guarantees that the outer core will continue to develop with a suburban model by zoning neighborhoods in these areas for only one unit per lot. The Zoning and Platting Commission recommends that CodeNext encourage housing density, diverse housing options, and more ambitious housing target for outer core neighborhoods particularly those near the Domain, Lakeline Station and job centers.

CodeNext continues Austin's history of institutional racism and income segregation.

Austin is one of the most economically segregated metro area in the country, with rich and poor residents increasingly separating out into low- and high-income neighborhoods, and a smaller and smaller share of residents living in mixed-income communities. CodeNext proposes 17 different house form zones allowing for different entitlements. This provides a clear path to worsen income segregation. The CodeNext draft 2 map is almost entirely R1 on the west side of Austin while only the central and east Austin neighborhoods are zoned R3. This inequitable treatment will further exacerbate income segregation. The Zoning and Platting commissions recommends that the number of house form zones be drastically reduced, that all areas of the city be mapped equitably, and that CodeNext encourage mixed-income communities by using one set of zoning standards in the entire city. We also recommend that subdivision rules be changed to promote a mix of lot sizes.

Austin has a pattern of permitting more intense zoning categories in east Austin than elsewhere in the city. Neighborhoods identified in the report from the Mayor's Taskforce on Institutional Racism should not be upzoned and compatibility protections should be restored for properties with current single-family zoning. The Save Our Springs (SOS) ordinance passed in 1992 served to protect environmentally sensitive parts of Austin from overdevelopment. An unintended consequence is that the ordinance encouraged overdevelopment into east Austin. The Zoning and Platting commission recommends that CodeNext provide enhanced environmental protections in central and east Austin to treat different areas of the city equitably and to avoid the negative consequences of impervious cover and overdevelopment in all areas of the city.

CodeNext allows the wrong uses and/or the zones are mapped in the wrong places.

The allowed uses and mapping for each zone were not selected with adequate care. For example, drive through restaurants are allowed without any use permit in all Main Street zones. This is completely counter to the walkable urban corridors that the code is supposed to promote. The mixed use and main street zones are used in seemingly interchangeable ways. For example, “The Drag” adjacent to the University of Texas seems like it would be a main street. Instead it was zoned MU4B, a zone with almost every use permitted by-right including Level 2 Bar/Nightclub. Many properties within the University Neighborhood Overlay (UNO) received the same zoning. In an area predominately occupied by underage undergraduates, this type of zoning should not be applied without careful consideration of the consequences. In contrast, other properties within UNO were zoned MU2A or MU2B, a classification that doesn’t allow Cooperative Housing. There are also a significant number of properties in UNO with F25 zoning. Looking at this small area allows us to see that the CodeNext zoning and/or mapping is not working. More attention needs to be paid to the allowed uses and where zones are applied.

The Zoning and Platting Commission recommends that the third CodeNext draft be released without a city-wide map. Consistent with the Opticos contract, only a sample of areas (including an activity corridor, a commercial area, an older neighborhood, a newer neighborhood, and UNO) should be mapped, so that we can ensure that the zones work as expected.

The Zoning and Platting Commission recommends that when the entire city is mapped, upfront increases in entitlements (FAR, height, or number of units) should be avoided. Upfront upzoning gives away the only leverage we have for creating income restricted affordable housing, can jeopardize the fabric of Austin's neighborhoods, and is near impossible to remedy when mistakes are made.

Code Next Curtails Public Involvement and Decreases Transparency

As the League of Women Voters has suggested, Code Next has increased impediments to public participation, diminished transparency given enhanced administrative authority, and suggested the creation of bodies with no clear policy reasons for doing so.

- 1) The Code Diagnosis indicated that repeated Code amendments created confusion for review staff, the applicant and the public because standards were incomplete or not in the Code. Version Two does not address these criticisms by putting application requirements, who is responsible for review, review cycles, all notice requirements, etc. in the Code. Many of these decisions have been deferred to after code adoption or are being set by policy memo (23-2B-101, 23-2B-2010, etc.) or administrative rule which allows for stakeholder input, but as a process, is largely unknown outside of the development community. Further, language (23-1A-5020) was added to allow the director to create new standards if the code was incomplete rather than narrowly tailor the language to suggest the director may require additional submittals or calculation via a different method to ensure code requirements are being met.

Recommendation: Do not allow public processes to be set by policy memo or administrative rule. Modify the Incomplete Provision language to make it clearer as to the intent of staff.

- 2) Appeals have been made more difficult. **23-2I-1030 allows the responsible director to determine if an application has failed to meet the requirements of the section (which includes approval of the submission of comments by email) that the appeal may not be considered. Given that state law requires the BOA to determine standing, this section appears in violation of this provision.** Twenty days has been reinstated for an appealable decision for which no notice is required. However, the shortened period of fourteen days remains for board and commission decisions and administrative decisions for which notice is required (23-2I-1030). Appellants do not have the right per existing code (25-1-191) to rebut comments made by the applicant, which is inconsistent with the way Land Use cases are handled at other Boards and Commissions. Provisions have been added that indicate if notice is not received, decisions are still valid (23-2C-2010 (B)). Minor Adjustments which allow field staff to adjust height, setback, or building coverage requirements up to 10% are not appealable by an adjacent neighbor and will be abused by some builders (23-2F-2030). The Board of Adjustment recommended no more than 2% variation be allowed.
- 3) Language has been added that staff shall adopt requirements to address registered parties (23-2C-2030), which received notice of development applications but not text amendments. There should be no attempt to limit their ability to appeal in Version 3, because they're not an "interested party". This would prevent a party from appealing to the Board of Adjustment on behalf of an ailing parent, hospitalized adult child or on a project close to their employment. State Law and the Existing Code define an interested party as someone who has commented in writing or testimony on the matter. This provision has been stricken from the section on interested parties (23-2C-2020) as well as governmental entities, which have the right to valid petition a project per a state legal opinion. Current Code and State Law allow the Board of Adjustment to determine whether a party has standing to appeal or not.

- 4) Settlement agreements, which are the basis of lawsuits, can now be modified administratively. The language in the existing code should be reinstated, which makes modification of a settlement agreement go through the current process.
- 5) Minor Use Permits allow a director to approve certain uses according to the same criteria that the Land Use Commission approves CUP's. This is problematic because it allows the Director to expand entitlements on properties across the city to allow bars and nightclubs with outdoor seating and late hours. Version Two, removed the fourteen day requirement for comment and replaces it with a time period set by the Director. Given that notice is not required to be put in a Post Office depository other than the City's depository, notice is frequently delayed (23-2C-3020), the timeframe for notice should be put in the Code and for a longer period than fourteen days. All Minor Use Permit Appeals will also be sent to the Planning Commission (23-4B-1030) which with their workload is likely to limit the ability of this Commission to fully scrutinize the matter. Minor Use Permits should be stricken from the proposed code or at a minimum bars and bars with late night hours should not be established by right but made a conditional use, so that action is appealable to Council rather than a land use commission.
- 6) The language for Special Exceptions Type 1 should revert to the existing language in Code. To allow an applicant to go to the Board of Adjustment to modify or exempt a zoning standard after the Land Use Commission has granted a Conditional Use Permit lengthens the time frame for both the applicant and the public.
- 7) An appeals panel should not be established. It blurs the lines between the Board of Adjustment's role to determine hardship and puts it in the position of acting like a land use commission. Establishment of a Panel would also keep each district from having representation on the panel that is familiar with the area. The Board of Adjustment has indicated they can call special called meetings, if necessary.

Zoning and Platting Commission
Commissioner David King, District 5
CodeNEXT Draft 2 Recommendations (version 5)

The primary purpose of CodeNEXT is to implement the Imagine Austin Comprehensive Plan (IACP). Given that the IACP is currently undergoing five-year major amendments, the timeline for CodeNEXT should be adjusted so that the amendments can be adopted before draft three of CodeNEXT is produced.

Communities of color have been largely left out of the IACP and CodeNEXT processes and as a result, neither the IACP nor CodeNEXT equitably represent their voices, values, interests, and needs.

The timeline and resources for the IACP and CodeNEXT processes should be adjusted to facilitate input and representation from communities of color. The timelines should allow more time for public outreach and input from all areas of the City including East Austin. Public outreach to East Austin neighborhoods must be expanded and provided in multiple languages with interpreters for all public meetings.

More time and information are needed for the public, boards, commissions, staff, and Council to understand, consider, and provide informed feedback on the IACP and CodeNEXT.

The City's Equity Office should review the IACP and CodeNEXT and provide feedback and recommendations to the Planning Commission, Zoning and Platting Commission, staff, and Council.

Stay-in-place, right-to-return, stabilization, and anti-displacement policies and programs should be implemented in neighborhoods that are experiencing displacement and rapid gentrification before the new code and zoning districts are implemented.

The new code and zoning districts should be tested, validated, and implemented on a corridor-by-corridor, center-by-center and neighborhood-by-neighborhood basis - not a citywide basis.

Draft 2 of CodeNEXT will increase demolition of existing affordable older housing by 42% compared to the current code, which will likely facilitate displacement of more low- and middle-income families and families with children from urban neighborhoods.

Draft 2 concentrates a majority of the increased density and housing capacity in urban neighborhoods without consideration for the costs to upgrade aging and insufficient infrastructure.

Distributing density to suburban neighborhoods, greenfield development sites within the city limits, and regional, town, job, and activity centers would be more effective and help the environment without exacerbating displacement of low- and middle-income families, families of color, and small local businesses from urban neighborhoods.

Draft 2 effectively codifies a policy that multifamily apartment complexes will be the primary source of housing for low- and middle-income families who want to live in Austin's urban neighborhoods.

Zoning and Platting Commission
Commissioner David King, District 5
CodeNEXT Draft 2 Recommendations (version 5)

Under Draft 2 about 52% of the new housing capacity will be multifamily apartment complexes despite that fact that most families prefer to live in single-family detached housing.

Surveys by the real estate industry consistently show that most people want to live in single-family detached homes with yards. The National Association of Realtors [March 2016 HOME Survey](#) shows that between 75% and 89% of respondents of all ages prefer to live in single-family detached homes with yards.

The Community Impact Newspaper recently reported that Austin Independent School District demographers indicated that: *“new apartment complexes do not generate Austin ISD students”*.

The demographers stated that: *“the shift from single-family detached to multifamily attached housing will adversely affect future student growth. ...this is based on data that indicates these types of builds are not family-friendly.”*

As the economy continues to improve and incomes begin to rise, the City will need more detached single-family homes for families. If Austin enacts policies that favor large multifamily apartment complexes just when more families are able to purchase detached single-family homes, we will have another housing shortage.

Zoning and Platting Commission
Commissioner David King, District 5
CodeNEXT Draft 2 Recommendations (version 5)

CodeNEXT Draft 2 Issues:

1. Lacks representation from people of color in East Austin neighborhoods. A recent report by the Austin Monitor indicated that online input on CodeNEXT has come primarily from neighborhoods west of I-35. Most of the CodeNEXT materials have been provided only in English and interpreters have not been provided at most CodeNEXT public meetings.
2. Increases demolitions by 42% - from 7,000 under current code to 10,000. More existing affordable older homes will be demolished and replaced with market rate housing for higher income future residents.
3. Significantly increases density in East and Central Austin neighborhoods without regard for impacts on aging and insufficient infrastructure. The costs to upgrade water, wastewater, stormwater, gas, and electric infrastructure to accommodate this density have not been determined or included in the affordability analysis. The cost for these upgrades will be born by taxpayers (renters, homeowners, and businesses) through higher property taxes. Earlier this month, the Austin American-Statesman reported that: *"This year, the owner of an average value Austin home will pay a tax bill of \$7,607, up \$517 over the previous year, and an increase of 21 percent during the past five years."*
4. Ignores the activity, job, town, and neighborhood centers in the Imagine Austin Comprehensive Plan. These centers could be a source for new higher-density mixed-use development to accommodate growth and support robust mass transit systems.
5. Weakens neighborhood self-determination by reducing public notice and opportunities for public input on land use and zoning cases and by increasing zoning entitlements, administrative discretion, and administrative approvals.
6. Broadly reduces residential and commercial parking requirements in urban core neighborhoods with little regard for safety, walkability and traffic congestion.
7. Weakens compatibility protections for residential properties immediately adjacent to commercial districts.
8. Allows bars in Mixed Use and Main Street zoning districts without public hearings.
9. Greatly expands the ineffective and inequitable density bonus programs.
10. Does not consider localized flooding data.
11. Doesn't include an analysis of the impact on equity and diversity.

Zoning and Platting Commission
Commissioner David King, District 5
CodeNEXT Draft 2 Recommendations (version 5)

CodeNEXT Draft Recommendations:

1. Existing neighborhood plans, Neighborhood Conservation Combining Districts, conditional overlays, and public covenants should be incorporated.
2. Existing public notice and hearings requirements and right to petition and appeal should be maintained and expanded.
3. Administrative discretion and approvals should be reduced.
4. Conditional use permits should be required for alcohol sales.
5. Existing parking requirements and compatibility standards for commercial and residential zoning districts should be maintained.
6. New zoning districts and tools should be created and implemented to help mitigate displacement by reducing development and redevelopment pressures.
7. The desired development zone should be eliminated because it focuses growth and redevelopment on East and Central Austin neighborhoods.
8. The density bonus programs should be suspended until they are recalibrated to ensure that they provide an equitable quantity of subsidized family-friendly housing for families earning from 0% to 60% median family income.
9. Workforce housing for working poor families should be preserved and constructed in Central and West Austin neighborhoods.
10. Right-to-stay and anti-displacement policies should be implemented in East Austin neighborhoods to help reduce displacement as recommended by the Mayors Task Force on Institutional Racism and Systemic Inequities.
11. The recommendations from the Flood Mitigation Task Force should be utilized to reduce impervious cover limits in areas prone to localized flooding.
12. Infrastructure capacity data for water, wastewater, stormwater, electricity, gas, and transportation should be provided to help determine the impacts and costs for increased density in East and Central Austin neighborhoods.
13. The proposed new zoning districts should be judiciously tested along corridors and in activity, town, and job centers in Imagine Austin.
14. Small area planning teams should be established to test and implement the new zoning districts on transit corridors and in activity, town, and job centers in Imagine Austin.
15. Small area planning teams should be established to update existing and create new neighborhood plans. These teams should test and validate the draft code and new zoning districts in discrete areas of neighborhoods.
16. Recommendations by the Austin Independent School District to encourage family-friendly single-family housing in Central Austin neighborhoods should be implemented.

While the Charter, state law and Imagine Austin specifically state that public safety is a priority, Code Next trades public safety in many cases for density and attempts to bring noncompliant structures into compliance.

Nowhere in the Purpose Statement for the Code (23-1A-1020) is there mention of the need to address thoroughfare safety, even though Vision Zero, was amended to Imagine Austin.

Please amend this section to address this issue.

Exempt Residential Uses and Structures 23-2F-2020

This section states that a Building Official shall issue a Certificate of Occupancy (CO) if the Building Official determines that the the single-family, duplex, multi-family, manufactured home and accessory dwelling use or occupancy has no more than nine dwelling units and was built before January 1, 2008.

While the requirements state the use or occupancy should not pose a hazard to public health, safety, or welfare, it states that compliance with applicable site development regulations or technical codes is not required to obtain a CO under this section, except to the extent deemed necessary by the Building Official to protect public health, safety, and welfare. This section needs further review.

Alternative Compliance 23-2F-2040(C)

This section allows the responsible director to modify design standards up to 10%. This includes a provision to decrease the minimum width of a drive-through circulation lane even though the criteria states that the provision must meet technical codes, which include the fire code. Since this would reduce the width of drive-through circulation lanes from 20' to 18', which is less than the Fire Code requires, this provision should be stricken, as it would not meet fire code, or modified to indicate that the Fire Department should be allowed to make this decision at time of Site Plan.

Flag Lots 23-5C-2040

Existing Code currently requires Flag Lots to comply with Fire Code. This provision has been removed in version 2. The width of the driveway should comply at a minimum with the width of a ladder truck, given we may be accessing buildings over 85' on our corridors on Flag lots.

Hazardous Pipelines 23-5C-1040

Chapter 4B does not address that fact that a change in zoning for residential uses might put the homes close to a hazardous pipeline 23-5C-1040. . This provision is solely in the subdivision chapter, and should be addressed in the Zoning Chapter, as well.

Greenberg:

Organization

- ZAP recommends that CodeNext be ordered for user convenience.
- Additional illustrations, including flowcharts, should be added to improve user understanding.

The zoning code should be first and the general requirements chapter which enumerates all fees should be next.

- Environmental regulations should continue to retain its own chapter.
 - Transportation can be incorporated within the infrastructure chapter.
 - Administration, procedures, and definitions should be at the back and
 - The technical codes can be in a separate document.
-
- ZAP recommends that flood mitigation be given priority in planning with the goal of reducing flash flooding in Austin.
 - CodeNext should incorporate the suggestions from the Watershed Capacity Analysis, Flood Mitigation TaskForce, and the Environmental Commission.

Errors and Inconsistencies:

- Text references to 23-9E-5050 regarding sidewalk requirements, but the correct section is 23-9E-2020 which has no requirements.
- Text references over and over to building standards in 23-4E-8030 a section that has no standards.
- Text reference to 23-4D-2220 on Cottage Courts a section that doesn't exist. The correct reference is to 23-4E-8050.
- Error on 1150 sq ft for ADUs
- Zone R1B says 45' width on 4D-2 pg 23 and 50' width on 4D-2 pg 24 0.
- Zone R3C says 0.4 FAR on duplex but 23-4E-6160 allows duplex up to 0.57 FAR in R3C.
- R1-R3 say AHBP is not applicable but 23-3E-5010 gives affordable housing incentives in those zones.
- MS zones Table 23-4D-5030A seems to prohibit restaurants < 2500 sq ft as this is not listed as an allowed use.
- Telecommunication uses are permitted by right in all zones except LA in 23-4D-2030 but restricted by 23-4E-6370 from House Form Zones.

Poorly defined or missing uses:

- Group Residential (not defined)
- Food sales “on and off site” (not defined)
- Medical services not specific enough – does it include hospital services limited type uses.
- Outdoor Formal and Outdoor Informal uses (not defined)

The Zoning and Platting Commission recommends that a professional editor be hired to correct all typos, incorrect references, inconsistencies, and missing or unclear definitions.