WHITE_EXHIBIT_ADMIN & PROCEDURES

CodeNEXT Draft 3
Administration and Procedures

Originally Submitted by Susan Moffat
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April 22, 2018

Issues described below are not addressed by the recently released Staff Addendum and Errata. Comments are grouped by subject in the following order: Notice and Appeals; Bar/Nightclub Uses; Nonconforming Uses and Structures; Neighborhood and Small Area Plans; Variances, Waivers and Exceptions; F25.

A. NOTICE AND APPEALS

1. Reinstate 20 day appeal window for board or commission decisions, as provided in current code (23-2I-1030). In Draft 1, deadlines for appeals of administrative decisions (25-1-182) were shortened from 20 days after decision to 14 or 7 days depending on whether notice of decision is required. Staff acknowledged this was a drafting error and reinstated the 20 day appeal window for administrative decisions, but did not fix the deadline to file an appeal to a board or commission. Draft 3 still reduces this deadline from 20 days to 14, a significant reduction.

2. Allow contested Minor Use Permits (MUPs) to be appealed to City Council. Draft 3 ends the appeal process for MUPs at Planning Commission. In contested cases, the final decision should not rest with an unelected body.

3. As an alternative, send MUP notices to all interested parties with a deadline to reply with objections; if no objections are received, the administrative approval could proceed. This possibility was discussed with Assistant Attorney Brent Lloyd, who appeared supportive of the concept, but this language has yet to appear in Draft 3.

B. BAR/NIGHTCLUB USES

2. For clarity and predictability, add a note to all Use Tables stating: "State and local laws do not allow alcohol uses within 300' of a public school, church or public hospital, regardless of base zoning, without a City Council waiver." As currently drafted, CodeNEXT would substantially expand by-right alcohol uses to more areas. Outside investors, unaware of local prohibitions, may naturally assume that if an alcohol use is listed as permitted in a given zone, it will be fine to open a bar or liquor store there regardless of its proximity to a school. Rather than attempting to revise zoning maps to

appropriately zone around hundreds of schools, churches or hospitals, please add this simple note to the Use Tables to ensure clarity and predictability for all concerned.

3. Require a CUP for all alcohol uses in or near residential zoning.
SEE WHITE_EXHIBIT_TABLES 4030 & 5030

C. NONCONFORMING USES AND STRUCTURES

1. Clarify that conversion of nonconforming use to conditional use terminates the nonconforming use (23-2G-2050(B)(2)). Section 23-2G-2050(B)(2) state that conversion of a nonconforming use to a conforming use terminates the nonconformity, but omits conversion to a CUP, which is specifically mentioned in (B)(5). Please revise this to clarify that conversion to a conforming use or CUP terminates the nonconforming use. Alternatively, state explicitly in (B)(5) that conversion to a conditional use terminates the nonconforming use.

2. Clarify that conversion of a nonconforming use to a conditional use requires the CUP process mandated elsewhere in the code (23-2G-2050(B)(5)). Draft Section 2G-1050(B)(5) states: "A nonconforming use may be converted to an allowed use or a conditional use for the zone in which the property is located," but provides no other details as to how that conversion may be achieved. Please add language clarifying that existing CUP process must be used. Also please clarify that this is considered an abandonment of a nonconforming use (see above).

3. Correct Section 23-2G-1050(C), which still omits current code language that allows only one modification to setback nonconformances. After this error was raised in Draft 2, Draft 3 Subsection (C)(2) added new language to restrict height to a single modification, but Subsection (C)(3) still does not limit the number of setback modifications. Absent this provision, one could continue adding iteratively to setback nonconformances virtually in perpetuity, defeating the purpose of limiting nonconformances. Assistant Attorney Brent Lloyd believes this error was intended to be corrected in Draft 3, but was inadvertently missed.

4. Correct Section 23-2G-1070(D) to limit window to 18 months for <u>rebuilding</u> a nonconforming use destroyed by causes beyond the owner's control, not for simply filing an application. Draft 3 omits current code language that requires a 12-month window for rebuilding a nonconforming use destroyed by fire or other cause beyond the owner's control and prohibits expansion of the gross floor area or interior volume. Consultants removed the 12-month deadline completely in earlier drafts because they thought it was too short a deadline for rebuilding. However, Draft 3 now provides that "**<u>an application</u> to replace or rebuilt [sic] the structure is submitted no later than 18 months from the date the original structure was damaged or destroyed**." <u>This change effectively extends the rebuilding window indefinitely as applications and permits can be renewed repeatedly over an extended period</u>. If the deadline is tied only to the filing of an application, 12 months is more than more than enough time. If the deadline is 18 months,

it should be limited to rebuilding, not simply filing an application. In a March meeting, Assistant Attorney Brent Lloyd stated he believed this was a drafting error that could be fixed.

5. Reinstate current public notice requirement for extensions of development applications (23-2B-1050). The draft section allows an automatic extension of 1-year expiration period in a case where staff review is not complete, but omits the notice requirement to the public in the current code (LDC 25-1-87) See also 23-2C-1010(B). In November, Assistant City Attorney Brent Lloyd floated the idea of a shorter time length for automatic extensions (3-6 months), after which notice would be required, but Draft 3 still grants a 1 year extension without notice to public.

D. NEIGHBORHOOD AND SMALL AREA PLANS

1. 23-1B-4010(E). Strengthen city-issued Contact Team bylaws template and remove provision allowing individual Contact Teams to amend bylaws. This section allows Neighborhood Plan Contact Teams to amend their own bylaws, but if bylaws "shall be consistent with the standardized bylaws template" as provided, why allow individual contact teams to change them? The original bylaws template the city provided was generally weak and omitted crucial sections regarding basic functions, such as the authority to place items on the agenda, voting process, quorum, etc., which led to a number of problems cited by the city auditor. In fact, many of the NP issues raised by the city auditor could have been avoided through the use of strong standard bylaws. The revised bylaws template is slightly improved, but could still benefit from additional work. In any case, it makes no sense to allow NPs to change their own bylaws at will.

2. Add definition of Neighborhood Plan, which is still missing from Draft 3 (23-12A-1030 pg. 21, formerly 23-2M-1030**).** Neighborhood Plans have been the chief planning tool used by the city for roughly two decades, and are referenced in the draft text in various places, yet are still not defined in Draft 3. It makes no sense to provide detailed provisions related to these bodies, without providing even a simple definition of them.

3. Reinstate section governing creation and responsibilities of Neighborhood Plans and Neighborhood Contact Teams, currently in LDC Section 25-1-805. Draft 3 Section 23-2E-2030 makes detailed provisions for Neighborhood Plan Amendments, repeatedly referencing neighborhood plans and neighborhood plan contact team. Yet Draft 3 completely omits current code language governing the creation and responsibilities of Neighborhood Plans or Neighborhood Plan Contact Teams (LDC Art. 16, Section 25-1-805). For clarity of use, please reinstate this language.

4. Add Small Area Plans to 23-2E-2 as explicitly referenced elsewhere in Draft 3. Section 23-1B-1010 states that City Council has authority over all legislative decisions authorized by this Title including amendments to "adopted small areas plans, under Division 23-2E-2" and similar references to small area plans appear in multiple places

throughout the draft, often with the cite to Division 23-2E-2. Yet as currently drafted, Section 23-2E-2 itself makes no mention small area plans, only Neighborhood Plans.

Small area plans are a major city planning tool and are obviously intended to be included in this section as evidenced by explicit references elsewhere in Draft 3. Small area plans should also be added to General Terms and Phrases, 23-13A-1.

E. VARIANCES, WAIVERS, EXCEPTIONS

1. Correct Special Exception, Level 1 (Section 23-4B-4030) to retain current code requirements as follows: applies only to structures 25 years old or older; does not provide exceptions for building height or build cover; applies only to structure or portion of structure for which exception was granted and does not run with land.

Special Exception Level 1 would authorize the Board of Adjustment to "approve a special exception to provide relief for residential properties with longstanding code violations that are minimal in degree and have little to no effect on surrounding areas."

This special exception appears intended to bring forward the existing special exception for longstanding (25 years) setback nonconformances under LDC Section 25-2-276, which the Council enacted in 2011. However, Draft 3 significantly expands this authority by: creating new exceptions for height and building cover as well as setbacks; creating new exceptions for much more recent structures (10-year-old structures, down from the current 25-year-old threshold); and removing the following limit in current code:

"25-2-476(C) A special exception granted under this section:
(1) applies only to the structure, or portion of a structure, for which the special exception was granted and does not run with the land."

Please revise to retain crucial provisions in current code.

2. Consider impact of expanded Board of Adjustment (BoA) waivers on average residents. While Draft 3 removes some of the most egregious BoA waivers proposed in earlier drafts, the remaining expansion of BoA waivers may create significant hurdles for those unfamiliar with the BoA process or unable to fund a court appeal. BoA does not allow ex parte communication and their hearings are limited and formal, which may not give inexperienced residents the opportunity to fully explain the potential impacts of a case in what will be their only chance to do so.

Further, there is no appeal for a BoA decision unless the aggrieved party can afford to go to court, effectively rendering appeal rights moot for many residents. Please consider these impacts before approving expanded BoA waivers as proposed in Draft 3.

3. For efficiency and transparency, remove variance/exception option from 23-2A-3050, Residential Development Regulations. New in Draft 3, Division 23-2A-3 is

intended to streamline review processes for smaller residential projects of 1-6 units in order to moderate costs. However, Section 23-2A-3050 would allow an applicant request a variance or special exception from "from any zoning regulation applicable to the proposed development. These would specifically include a variance from the Land Use Commission for a 1-2 unit project or an administrative modification for a 3-6 unit project. In the interests of efficiency and transparency, a streamlined review process should be limited to no variance/exception projects. As currently drafted, this is the equivalent of ordering the daily special and then asking to substitute all the side dishes.

The recently released staff addendum actually doubles down on these exceptions, adding a new Section 23-2A-3060, which would allow an applicant to request a variance or special exception from the Board of Adjustment from any zoning regulation for a project of 1-2 units, and to request a variance from land use commission for projects of 3-6 units.

4. Cap all administrative modifications for "inadvertent errors" at no more than 2% (Administrative Modifications, 23-2F-2040). This section, which has been moved and retitled from previous drafts, originally allowed administrative approval of a 10% increase in certain entitlements (height, building coverage and setback) if errors were made 'inadvertently' in construction, sparking concerns of abuse and raising questions about illegal delegation of authority under state law. Staff response in October 2017 did not address legality under state law, or the size of the proposed percentage. The Board of Adjustments itself has stated that any proposed adjustment should be limited to 2%, not 10%.

Draft 3 now caps height adjustments at 5%, but building and setback adjustments remain at 10%, which is still too high and opens the door to abuse. Please cap all administrative adjustments for inadvertent errors at no more than 2%.

H. VALID PETITIONS

1. Add Valid Petition definition and process for rezonings (Article 23-2). Valid petition rights in rezoning cases are established by state law, as are vested rights petitions. Draft 3 provides extensive information about vested rights petitions in 23-K-2, but not one word about Valid Petitions – not even a definition (note that vested rights petitions are generally used by developers, while valid petitions are generally used by area residents seeking to oppose or alter a proposed development). In the interest of fairness, please add subsection for Valid Petitions, including definitions, applicability, procedures, etc., similar to what the draft provides for Vested Rights Petitions in 23-K-2.

I. F25 (Formerly Title 25)

1. Require the final draft specify which of the current Conditional Overlays will be carried over to the F25 Zone (former Title 25). Subsection 23-4D-8080(B)(1)(e) states it applies to "specifically identified Conditional Overlays" and Subsection (B)(2) states

that the director will publish a guide listing all designations in Subsection (C)(1), but neither is available at this time. According to staff, an interactive map containing this information will link to ordinance in final draft. Please ensure this happens.

2. Clarify how compatibility will be handled between F25 and non-F25 properties, specifically, how does subsection (c) below square with (a) and (b)?

> Draft 3 Subsection 23-4D-8080(C)(2) states that:
> (a) properties in F25 Zones are subject to compatibility regulations under former Chapter 25-2, Subchapter C, Article 10(Compatibility);
> (b) Residential House Scale Zones shall also trigger old compatibility regulations for properties within an F25 zone; and
> (c) properties within an F25 zone that would have triggered compatibility under Article 10 "shall be treated as Residential House-Scale Zones and trigger compatibility regulations established in this Title for properties within Zone established in this Title."

3. For F25 properties, clarify whether they are subject to noncompliance/nonconformance provisions in contained in former Title 25 or CodeNEXT. I am unable to find Draft 3 language specific to noncompliance, but Subsection (C)(1)(a) states that F25 properties are subject to zoning regulations of the "City's predecessor Land Development Code, Chapter 25-2 Zoning. Chapter 25-2 contains regulations for Nonconforming Uses (Article 7) and Noncomplying Structures (Article 8). This would appear that F25 properties will remain subject to former code regulations, but please confirm.

Additional Exhibit Document with more details Trinity White

23-2A-3030 & 3040 (B)

Replace *23-2A-3030 & 3040 (B): No Adverse Impact* with the following language

1) Install acceptable drainage improvements on site to preserve existing drainage patterns if the construction, remodel or expansion:
   a) Is more than 750 square feet; and
   b) Located on an unplatted tract or within a residential subdivision approved more than five years before the building permit application was submitted: and
   c) in an area subject to localized flooding, as determined by the Watershed Protection Department on an annual basis.
2) Acceptable drainage improvements include,
   a) An engineer's certification that any changes to existing drainage patterns will not adversely impact adjacent properties
   b) swales, grading, gutters, rain gardens, rainwater harvesting systems or other methods on site to preserve existing drainage patterns as calculated by:
      i) a grading plan
      ii) per Table X-X-XX (gallons per sf of impervious cover and grade changes+12")
3) a fee in lieu is available at the director's discretion if a water mitigation project has been identified within ¼ mile of the site to be implemented within 12 months.

Division 23-3E-4: S.M.A.R.T. Housing

Contents

23-3E-4010 Administration

(A) The Housing Director shall administer the S.M.A.R.T. Housing program and may adopt and implement program guidelines or rules and establish the requirements for an application under the program.

(B) The Housing Director shall notify the Public Works Director and Transportation Director of proposed S.M.A.R.T. Housing developments within a half mile of an existing or planned transit route or stop.

23-3E-4020 Program Requirements

(A) S.M.A.R.T. Housing is housing that is safe, mixed-income, accessible, reasonably priced, transit-oriented, and compliant with the City's green building standards.

(B) S.M.A.R.T. Housing must:

(1) Be safe by providing housing that complies with this Title;

(2) Provide mixed-income housing by including dwelling units that are reasonably-priced, as described in Subsection

(3) Provide for accessibility for a development of more than three dwelling units by providing at least 10 percent of the dwelling units that comply with the accessibility requirements of the building code;

(4) Provide for visitability for a development with three or fewer dwelling units by either:

(a) Complying with the design and construction requirements of City Code Chapter 5-1, Article 3, Division 2 (Design and Construction Requirements); or

(b) Complying with the local visitability amendment of the international residential code.

(5) Be located within one-half mile walking distance of a local public transit route at the time of application, except as provided in Subsection (D); and

(6) Achieve at least a one star rating under the Austin Green Building Program.

(C) A reasonably-priced dwelling unit is one that is affordable for purchase or rental according to the following:

(1) If the dwelling unit is offered for purchase, the maximum sales price must not exceed three times the annual income for a household at the MFI level required by Section 23-3E-4030 (Affordability Requirements), adjusted for unit size where one bedroom equals one person. The maximum sales price can be up to 3.5 times the annual income for a household at the required MFI level if a household member has finished a City-approved homebuyer counseling or education class.

(2) If the dwelling unit is offered as a rental, the maximum monthly rental rate must not exceed 30 percent of the average gross monthly income for a household at the MFI level required by Section 23-3E-4030 (Affordability Requirements), adjusted for unit size where one bedroom equals one person.

(D) The Housing Director may waive the transit-oriented requirement in Subsection (B)(5) if the development meets one of the following criteria:

(1) The development will be located in a high opportunity area as identified by the Housing Director or established in the program guidelines;

(2) The applicant applies for State or Federal Government funds, including the Low Income Housing Tax Credit Program, related to the development;

(3) The development affirmatively furthers fair housing as determined by the Housing Director and in consideration of the City's analysis of impediments or assessment of fair housing; or

(4) The development is within one half-mile of a planned local public transit route documented in a plan approved by the Capital Metropolitan Transportation Authority.

(E) An applicant may not deny a prospective tenant affordable rental housing based solely on the prospective tenant's participation in the Housing Choice Voucher Program or in any other housing voucher program that provides rental assistance.

23-3E-4030 Affordability Minimum Requirements

(A) To be eligible for the S.M.A.R.T. Housing Program, a housing development must comply with the requirements of this section.

(1) For ownership dwelling units within the Area A and B (see Subsection 23-3E-1040(B)(1) (Application):

(a) A minimum of five percent of dwelling units must be available to households at or below 80 percent of the MFI; and

(b) A minimum of an additional five percent of dwelling units must be available to households at or below 100 percent of the MFI.

(2) For ownership dwelling units within Area C, D, and E (see Subsection 23-3E-1040(B)(1) (Application)), a minimum of 10 percent of dwelling units must be available to households at or below 80 percent of the MFI.

(3) For rental dwelling units, a minimum of 10 percent of dwelling units must be available to households at or below 60 percent of the MFI.

(B) For a household to be eligible to purchase or rent a reasonably-priced dwelling unit, the household's gross annual income may not exceed the MFI required by Subsection (A).

23-3E-4040 Percentage-based Affordable Projects Beyond Minimum. This section applies to residential and multi-family S.M.A.R.T. Housing projects where a percent of the units are affordable. The percentage of fee waiver shall be calculated on a square footage basis and only the percentage of affordably restricted square footage will be used to determine the percent of fees waived.

The partial fee waivers shall apply to residential and multi-family S.M.A.R.T. Housing projects serving households with incomes at 80% or less MFI for sale and 60% MFI for rent with affordability terms of 99 years and 40 years respectively. For sale projects that include 25% of the units affordable to households at 60% or less MFI may include 20% of the units for sale to households with incomes up to 120% MFI.[1]

When the project includes a non-residential component that is unrelated to the residential component of the project, the percentage of fee waiver shall be calculated on a square footage basis and only the affordably restricted square footage will be used to determine the percent of fees waived.

[1] This conforms with Section 373B, Texas Local Government Code for Community Land Trusts.

23-3E-4050 Fully Affordable Projects. This section applies to residential and multi-family project where 100% of the units are affordable to households with incomes at 80% or less MFI for sale and 60% MFI for rent with affordability terms of 99 years and 40 years respectively. For sale projects that include 25% of the units affordable to households at 60% or less MFI, may include 20% of the units for sale to households with incomes up to 120% MFI.[2] If any portion of the project is non-residential and not directly related to the residential component, this fee waiver shall be calculated according to section 23-3E-4040 of this code.

(A) 100% Fee Waivers & Prioritized Fast-Track Review. All development related fees listed in 23-3E-4070 including those listed in 4070 (B) shall be waived and 4070 (C) shall be applied.

(B) SPECIAL REQUIREMENTS FOR AFFORDABLE HOUSING IN RESIDENTIAL DISTRICTS.

(1) Minimum lot size is 2500 square feet.

(2) Lots with greater than 7,000 square feet may have four units of housing provided the total FAR does not exceed .5:1 of the lot area.

(3) Lots with greater than 5000 square feet may have three units of housing provided the total FAR does not exceed .5:1 of the lot area.

(4) Lots with less than 5000 square feet may include a second home provided the total FAR does not exceed .5:1 of the lot area.

(5) The maximum impervious cover is 55 percent if the director of the Watershed Protection and Development Review Department determines that the development will not result in additional identifiable adverse flooding on other property.

(6) A non-complying structure may be replaced with a new structure if the new structure does not increase the existing degree of noncompliance with yard setbacks.

(7) A lot that is aggregated with other property to form a site may be disaggregated to satisfy this subsection.

(C) This section applies in a multifamily residence low density (RM2A) district, multifamily residence medium density (RM3A and RM4A) district, multifamily residence moderate-high density (RM3A and RM4A) district, or multifamily residence high density (RM5A) district on property that either has not been developed or that has been developed only with an agricultural use.

(D) Except as provided in Subsection (C), a development may comply with multifamily residence highest density (RM5A) district site development regulations if the director of the Neighborhood Housing and Community Development Department certifies that the development complies with the City's S.M.A.R.T. Housing Program, and:

(1) for a rental development, 60 percent of the residential units in the development are reserved as affordable for a minimum of 40 years following the issuance of a certificate of occupancy for rental by a household earning not more that 60 percent of the median family income for the Austin metropolitan statistical area; or

(2) for an owner-occupied development:

(a) Eighty percent of the residential units in the development are reserved as affordable for a minimum of 99 years following the issuance of a certificate of occupancy for ownership and occupancy by a household earning not more than 80 percent of the median family income for the Austin metropolitan statistical area; and

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[2] This conforms with Section 373B, Texas Local Government Code for Community Land Trusts.

(b) Twenty percent of the residential units in the development are reserved as affordable for a minimum of 99 years following the issuance of a certificate of occupancy for ownership and occupancy by a household earning not more than 100 percent of the median family income for the Austin metropolitan statistical area.

(E) Developments under this section are eligible for administrative waiver of height limits and compatibility requirement for height and stories of up to 25% of the permitted height.

23-3E-4060 Required Affordability Period

(A) To be eligible for the S.M.A.R.T. Housing Program, unless a longer term is required by law, private agreement, or another provision of this code, all reasonably-priced dwelling units in a S.M.A.R.T. Housing development must remain reasonably-priced for the following affordability periods commencing on the date the final certificate of occupancy is issued:

(1) For ownership dwelling units, a period of at least 99 years; and

(2) For rental dwelling units, a period of at least 40 years.

(B) If a reasonably-priced dwelling unit within a S.M.A.R.T. Housing development is converted from a rental unit to an owner-occupied dwelling unit during the applicable affordability period, the dwelling unit is subject to the affordability period and affordability requirements applicable to an owner-occupied dwelling unit. The new affordability period begins on the date that the converted dwelling unit is available for owner occupancy.

(C) If the development does not comply with the requirements to maintain the applicable percentage of dwelling units as reasonably-priced for the duration of the applicable affordability period, the developer shall reimburse the City for all fees waived plus a penalty charge equal to the total amount of fees waived.

(D) The applicant is required to execute an agreement, restrictive covenant, or other binding restriction on land use that preserves affordability in compliance with the S.M.A.R.T. Housing Program.

23-3E-4070 Fee Waivers and Exemptions

(A) A developer is eligible for a 100 percent waiver of the fees if the Housing Director determines that the housing development meets the requirements of Section 23-3E-4030 ; 23-3E-4040 or 23-3E-4050 (Affordability Requirements) and Section 23-3E-4060 (Required Affordability Period). The fees that can be waived include, but are not limited to:

(B)

(1) Construction inspection fee;

(2) Development assessment fee;

(3) Traffic impact analysis fee;

(4) Traffic impact analysis revisions fee;

(5) Regular zoning fee;

(6) Interim to permanent zoning fee;

(7) Miscellaneous zoning fee;

(8) Zoning verification letter fee;

(9) Board of Adjustment fee;

(10) Managed growth agreement fee;

(11) Preliminary subdivision fee;

(12) Final subdivision fee;

(13) Final without preliminary subdivision fee;

(14) Miscellaneous subdivision fee;

(15) Consolidated site plan fee;

(16) Miscellaneous site plan fee;

(17) Site plan revision fee;

(18) Site plan - construction element fee;

(19) Building review plan fee;

(20) Building permit fee;

(21) Electric permit fee;

(22) Mechanical permit fee;

(23) Plumbing permit fee;

(24) Concrete permit fee;

(25) Demolition permit fee;

(26) Electric service inspection fee;

(27) Move house onto lot fee;

(28) Move house onto city right-of-way fee; and

(29) Neighborhood plan amendment fee.

(B) Additional fees that may be waived by separate ordinance or agreement include:

(1) Austin water utility capital recovery fees;

(2) Parkland dedication fees;

(3) Austin energy line extensions;

(4) Transportation mitigation fees; and

(5) Service connections to certain lots.

(C) Development costs for which the City may provide funding, waiver or reimbursement to the developer may include:

(1) Public streets and sidewalks;

(2) Other utility services located within the right of way to the units.

(3) Relocation of utility poles deemed necessary for the project shall be paid for by the City.

(4) Tree mitigation fees

23-3E-4080 Prioritized Expedited Review. See the attached Chart.

Prioritized Fast-Track review means a S.M.A.R.T. Housing project under this section is reviewed before all other applications including those where an expedited review fee has been paid. Prioritized fast-track review shall include all City of Austin departments including, but not limited to Watershed Protection, Development Services, Austin Energy, Water Utilities, and the Austin Fire Department. The City shall provide or reimburse the developer for utility services located within the right of way to the units. Relocation of utility poles deemed necessary for the project shall be paid for by the City.

23-3E-4090 Reporting, Compliance, and Enforcement

(A) The Housing Director shall establish reporting, compliance, monitoring, and enforcement mechanisms and procedures for implementing the S.M.A.R.T. Housing Policy and Program.

WHITE_EXHIBIT_ Conditional Use Permits

CodeNEXT Draft 3
Conditional Use Permits

Please amend Draft 3 to reinstate the clear Conditional Use Permit standards and other key provisions in LDC 25-5-142 through 25-5-150.

Draft 3 Section 23-4B-1020 substantially loosens and weakens criteria for Conditional Use Permits (CUPs), deleting many specific mandatory standards in current code and replacing them with relatively broad concepts that must only be considered, not required as conditions for approval. Paradoxically, the draft also removes the current CUP requirement for at least two uses whose potential impacts do warrant the extra scrutiny a CUP provides, notably late-hours bars in many zones and big box retail over 100,000 square feet.

The proposed changes are concerning for several reasons.

First, a stated goal of CodeNEXT is to provide greater predictability in zoning matters, thereby reducing the number of negotiated or contested cases that currently consume time and energy of city staff, residents, commissioners and council members. Draft 3 inexplicably broadens CUP criteria, inviting applicants to bring a wider range of applications and greatly increasing the time already spent on such cases. If we truly want a predictable code and a more efficient process, taking the lid off CUPs works against that goal.

Second, CUP zoning stays with the land, not just the proposed project, which may close in the first week of operation. This means the delightful corner pub that comes to the commission with neighborhood support can easily become a Hooters next month, a legal impact sometimes lost in discussions of a particularly appealing proposal. The Land Use Commissions are established to guide and shape our city. Is good planning really served by making CUPs more widely available?

CodeNEXT already proposes plentiful by-right zoning for many additional uses in far more areas. CUPs should remain a limited mechanism for situations where a change of use or added scrutiny is truly warranted, not a one-size-fits-all tool to undermine well-considered zoning.

Please amend the draft to reinstate current CUP provisions as detailed below.

1. Reinstate LDC 25-5-148 to ensure compliance with conditions imposed by Council or Commissions. Draft 3 deletes in its entirety LDC 25-5-148, Conditional Use Site Plan and Update. This section states that if the Land Use Commission or City Council imposes a condition of an approval on a CUP, the applicant must file an update that satisfies the condition within 20 business days, and that a site plan expires if the applicant does not comply with the deadline. If the director returns review comments on

the update, the applicant may file subsequent updates up to 135 days after the date of the CUP approval. Absent this provision, there will be no way to ensure that an applicant has actually complied with the conditions specified by the commissions or Council.

2. Reinstate existing CUP requirement for late-hours bars and restaurants, including current code's 200' parking buffer in proximity to House-Scale Residential Zones.

> **23-4D-5040 Parking Requirements**
> **(D) Parking Buffer.** A 200' parking buffer is required when adjacent to R & RM zones.

Current code requires that parking for a late-night bar or restaurant be separated from residential uses of SF-6 or lower by at least 200'. Draft 3 effectively repeals this parking buffer for late-hours bars in MU3B, MU4B, MU5A, MS3A and MS3B, and repeals the parking buffer for late-hours restaurants with or without alcohol sales in MU4B and MU5A. (The effect is unclear on the Micro-Brewery/Micro-Distillery/Winery use, which is proposed as a permitted in many MU and MS zones; if they are, in fact, allowed late-hours permits, they would also be exempt from the parking buffer.)

As anyone who's spent time in a bar parking lot knows, they can be the scene of activities most would rather not have occurring directly under their bedroom windows, including laughter, yelling, outdoor bodily functions, last-call romances and fights. As CodeNEXT significantly increases alcohol-related zoning in many areas, this is hardly the time to repeal the 200' parking buffer.

The simplest fix would be to reinstate a CUP requirement for any late-hours use in proximity to House-Scale Residential zones or, alternatively, add a provision to the Use Tables and/or Parking Tables that mandates the 200' parking buffer for late-hours uses in proximity to House-Scale Residential zones.

Details: LDC Section 25-2-808(C) states that any cocktail lounge - now renamed Bar/Nightclub in the draft - or restaurant that requires a late-hours permit from the TABC is a conditional use if Article 10 (Compatibility Standards) apply. This means a CUP is required for these late-night uses if they are proposed in proximity to residential uses (please note that the draft deletes Article 10 so this first trigger is now missing). LDC Section 25-2-808(D) further states that any cocktail lounge or restaurant with a late-hours permit must be in "compliance with the parking area setback described in Section 25-5-146 (Conditions of Approval)," which requires that parking for these late-hours uses "must be separated from a property used or zoned townhouse and condominium residence (SF-6) district or more restrictive by not less than 200 feet" unless the use is located in an enclosed shopping center or the Land Use Commission approves a waiver.

To be clear, Draft 3 retains the parking buffer as a CUP requirement for late-hours bars and restaurants - the problem is that it drops the CUP requirement itself for these uses in many districts.

3. Reinstate LDC 25-5-150 to prevent revolving door for same CUP requests. Draft 3 deletes in its entirety LDC 25-5-150, which states "if a conditional use site plan is denied or revoked, a person may not file an application for the same or substantially the same conditional sue on the same or substantially the same site for a period of one year from the date of denial or revocation." Without this provision, the new code would potentially allow a non-stop revolving door for the same CUP requests – an unnecessary drain of time and energy for both city staff and affected residents.

4. Reinstate LDC 25-5-145(C)(4) to ensure Large Retail Uses do not adversely affect future redevelopment. This provision, which Draft 3 deletes, requires that a CUP "for a large retail use described in Section 25-2-815 (Large Retail Uses)" may not "adversely affect the future redevelopment of the site." This provision is a key component of Austin's "Big Box" ordinance and is intended to prohibit the practice, often employed by large corporate retailers, of holding an abandoned big box store off the market to keep competitors from acquiring it. The Big Box ordinance was the product of a lengthy public battle and stakeholder process, and its provisions should be retained.

5. Reinstate all current requirements in LDC 25-5-145, Evaluation of Conditional Use Site Plan. While current code requires a CUP to comply with specified measures, Draft 3 simply directs the Land Use Commission to consider a list of relatively vague criteria, many of which appear focused on *mitigating* adverse impacts, rather than providing solid grounds for denying the proposal that would create them. Please consider the following points:

(a) Draft 3 deletes the current mandate to determine compliance with specific requirements. LDC 25-5-145, Evaluation of Conditional Use Site Plan states: *"(A) The Land Use Commission shall determine whether the proposed development or use of a conditional use site plan complies with the requirements of this section."* By contrast, Draft 3 Section 23-4B-1020(E)(1) deletes this language, saying only that the Commission *"shall approve, conditionally approve, or deny a conditional permit in accordance with this subsection."* Unfortunately, the subsection referenced establishes on actual requirements, only items for consideration.

(b) Draft 3 deletes at least seven specific standards that CUPs must meet under current code. LDC 25-5-145(B) states "*a conditional use site plan must:*

"…have building, height, bulk, scale, setback, open space, landscaping, drainage, access, traffic circulation, and use that is compatible with the use of an abutting site;
"…provide adequate and convenient off-street parking and loading facilities;
"…for a conditional use located within the East Austin Overlay district, comply with the goals and objectives of a neighborhood plan adopted by the city council for the area in which the use is proposed."

In addition, LDC 25-5-145(C) states *"a conditional site plan may not:*
(1) more adversely affect an adjoining site than would a permitted use; (2) adversely affect the safety or convenience of vehicular or pedestrian circulation, including

reasonably anticipated traffic and uses in the area; (3) adversely affect an adjacent property or traffic control through the location, lighting, or type of sign; or (4) for a large retail use described in Section 25-2815 (Large Retail Uses), adversely affect the future development of the site."

Draft 3 deletes all seven of the above specific requirements contained in current code.

(c) Draft 3 replaces specific requirements with three broad concepts and provides criteria only for consideration, not as required conditions of approval.

Draft 3 Section 23-4B-1020(E)(3), now titled **"**Findings for Approval," simply lists three broad criteria, stating the Commission *"must find that the proposed use is:*
(a) Consistent with the applicable goals and policies of the Comprehensive Plan and the purpose of the zone in which the site is located;
(b) Not detrimental to the public health, safety, and welfare; and
(c) Reasonably compatible with existing or approved uses in the surrounding area."

Obviously, these are much looser concepts than the specific standards required by current code, making it more difficult for a commission to find solid grounds for denial. Even the title - "Findings for Approval" - seems skewed toward assent, as opposed to the current code's more objective section title, "Evaluation of a Conditional Use Site Plan."

In place of specific requirements in current code, Draft 3 Section **23-4B-1020(E)(4)**, Review Criteria, offers the following items for consideration only. My comments are underlined in brackets.

"In determining whether an application meets the findings required for approval under Subsection (E)(1) [subsection referenced provides no actual requirements, see above], the Land Use Commission shall consider the extent to which the proposed use:

(a) Is generally compatible in scale, intensity, and character with adjacent developments and neighborhoods [No mention of abutting site per current code];

(b) Includes improvements, either onsite or within the public right-of-way, to mitigate adverse effects related to traffic, noise, odors, visual nuisances, adverse flooding [As opposed to beneficial flooding?], and similar adverse effects to adjacent developments and neighborhoods [Note that there is no requirement to actually mitigate these effects, only that the Commission must consider the extent to which they may be mitigated; the use of the public right-of-way to do so is also potentially problematic];

(c) Can safely accommodate anticipated vehicular and pedestrian traffic consistent with existing and anticipated traffic in surrounding area [This is similar, though not identical, to current code language, but it is not a requirement as it is under current code, merely a suggested consideration];

(d) Incorporates thoroughfare adjustments, traffic control devices, and access restrictions to control or divert vehicular traffic flow as may be needed to mitigate vehicle traffic on adjacent thoroughfares; [Again, the focus is on mitigation, rather than ensuring the proposed project does not actually result in adverse effects per current code; and again, it is not a requirement, just a consideration.]

(e) Incorporates screening, buffers, and other features to minimize adverse visual or noise effects of the proposed use on adjacent properties [Again, the focus is on mitigation, and it is not a requirement, just a consideration.]; and

(f) Meets the site development standards of the zone in which the proposed use is located, or if a special exception from one or more standards is requested in Compliance with Section 23-4B-4030 (Special Exception-Level 1), the exception will enhance the quality of the use and increase its compatibility with adjoining developments and neighborhoods [The citation here appears refers to an earlier draft. Draft 3 Special Exception-Level 1 simply authorizes the Board of Adjustment to "approve a special exception to provide relief for residential properties with longstanding code violations that are minimal in degree and have little to no effect on surrounding areas," which does not seem germane to this provision.]

6. Reinstate LDC 25-5-143(C) to ensure advisory board input on CUPs in Waterfront Overlay. Draft 3 deletes LDC Section 25-5-143(C), which requires the director to request a recommendation from the Waterfront Advisory Board for a CUP located within the Waterfront Overlay combining district. It appears the original Waterfront Advisory Board had been replaced by the South Central Waterfront Advisory Board. However, the Waterfront Overlay (WO) Zone still exists in Draft 3 so it seems wise to retain the requirement for input from the current advisory board if a CUP is requested in the WO Zone.

For all of the above reasons, please amend Draft 3 to reinstate the clear CUP requirements and conditions contained in current code (LDC 25-5-141 through 25-5-150).

WHITE_EXHIBIT SMART

Division 23-3E-4: S.M.A.R.T. Housing

Contents

23-3E-4010 Administration

(A) The Housing Director shall administer the S.M.A.R.T. Housing program and may adopt and implement program guidelines or rules and establish the requirements for an application under the program.

(B) The Housing Director shall notify the Public Works Director and Transportation Director of proposed S.M.A.R.T. Housing developments within a half mile of an existing or planned transit route or stop.

23-3E-4020 Program Requirements

(A) S.M.A.R.T. Housing is housing that is safe, mixed-income, accessible, reasonably priced, transit-oriented, and compliant with the City's green building standards.

(B) S.M.A.R.T. Housing must:

(1) Be safe by providing housing that complies with this Title;

(2) Provide mixed-income housing by including dwelling units that are reasonably-priced, as described in Subsection

(3) Provide for accessibility for a development of more than three dwelling units by providing at least 10 percent of the dwelling units that comply with the accessibility requirements of the building code;

(4) Provide for visitability for a development with three or fewer dwelling units by either:

(a) Complying with the design and construction requirements of City Code Chapter 5-1, Article 3, Division 2 (Design and Construction Requirements); or

(b) Complying with the local visitability amendment of the international residential code.

(5) Be located within one-half mile walking distance of a local public transit route at the time of application, except as provided in Subsection (D); and

(6) Achieve at least a one star rating under the Austin Green Building Program.

(C) A reasonably-priced dwelling unit is one that is affordable for purchase or rental according to the following:

(1) If the dwelling unit is offered for purchase, the maximum sales price must not exceed three times the annual income for a household at the MFI level required by Section 23-3E-4030 (Affordability Requirements), adjusted for unit size where one bedroom equals one person. The maximum sales price can be up to 3.5 times the annual income for a household at the required MFI level if a household member has finished a City-approved homebuyer counseling or education class.

(2) If the dwelling unit is offered as a rental, the maximum monthly rental rate must not exceed 30 percent of the average gross monthly income for a household at the MFI level required by Section 23-3E-4030 (Affordability Requirements), adjusted for unit size where one bedroom equals one person.

(D) The Housing Director may waive the transit-oriented requirement in Subsection (B)(5) if the development meets one of the following criteria:

(1) The development will be located in a high opportunity area as identified by the Housing Director or established in the program guidelines;

(2) The applicant ~~applies for~~ **receives (TW)** State or Federal Government funds, including the Low Income Housing Tax Credit Program, related to the development;

(3) The development affirmatively furthers fair housing as determined by the Housing Director and in consideration of the City's analysis of impediments or assessment of fair housing; or

(4) The development is within one half-mile of a planned local public transit route documented in a plan approved by the Capital Metropolitan Transportation Authority.

(E) An applicant may not deny a prospective tenant affordable rental housing based solely on the prospective tenant's participation in the Housing Choice Voucher Program or in any other housing voucher program that provides rental assistance.

23-3E-4030 Affordability Minimum Requirements

(A) To be eligible for the S.M.A.R.T. Housing Program, a housing development must comply with the requirements of this section.

(1) For ownership dwelling units within the Area A and B (see Subsection 23-3E-1040(B)(1) (Application):

(a) A minimum of five percent of dwelling units must be available to households at or below 80 percent of the MFI; and

(b) A minimum of an additional five percent of dwelling units must be available to households at or below 100 percent of the MFI.

(2) For ownership dwelling units within Area C, D, and E (see Subsection 23-3E-1040(B)(1) (Application)), a minimum of 10 percent of dwelling units must be available to households at or below 80 percent of the MFI.

(3) For rental dwelling units, a minimum of 10 percent of dwelling units must be available to households at or below 60 percent of the MFI.

(B) For a household to be eligible to purchase or rent a reasonably-priced dwelling unit, the household's gross annual income may not exceed the MFI required by Subsection (A).

23-3E-4040 Percentage-based Affordable Projects Beyond Minimum. This section applies to residential and multi-family S.M.A.R.T. Housing projects where a percent of the units are affordable. The percentage of fee waiver shall be calculated on a square footage basis and only the percentage of affordably restricted square footage will be used to determine the percent of fees waived.

The partial fee waivers shall apply to residential and multi-family S.M.A.R.T. Housing projects serving households with incomes at 80% or less MFI for sale and 60% MFI for rent with affordability terms of 99 years and 40 years respectively. For sale projects that include 25% of the units affordable to households at 60% or less MFI may include 20% of the units for sale to households with incomes up to 120% MFI.[1]

[1] This conforms with Section 373B, Texas Local Government Code for Community Land Trusts.

When the project includes a non-residential component that is unrelated to the residential component of the project, the percentage of fee waiver shall be calculated on a square footage basis and only the affordably restricted square footage will be used to determine the percent of fees waived.

23-3E-4050 Fully Affordable Projects. This section applies to residential and multi-family project where 100% of the units are affordable to households with incomes at 80% or less MFI for sale and 60% MFI for rent with affordability terms of 99 years and 40 years respectively. For sale projects that include 25% of the units affordable to households at 60% or less MFI, may include 20% of the units for sale to households with incomes up to 120% MFI.[2] If any portion of the project is non-residential and not directly related to the residential component, this fee waiver shall be calculated according to section 23-3E-4040 of this code.

(A) 100% Fee Waivers & Prioritized Fast-Track Review. All development related fees listed in 23-3E-4070 including those listed in 4070 (B) shall be waived and 4070 (C) shall be applied.

(B) SPECIAL REQUIREMENTS FOR AFFORDABLE HOUSING IN RESIDENTIAL DISTRICTS.

(1) Minimum lot size is 2500 square feet.

(2) Lots with greater than 7,000 square feet may have four units of housing provided the total FAR does not exceed .5:1 of the lot area.

(3) Lots with greater than 5000 square feet may have three units of housing provided the total FAR does not exceed .5:1 of the lot area.

(4) Lots with less than 5000 square feet may include a second home provided the total FAR does not exceed .5:1 of the lot area.

(5) The maximum impervious cover is 55 percent if the director of the Watershed Protection and Development Review Department determines that the development will not result in additional identifiable adverse flooding on other property.

(6) A non-complying structure may be replaced with a new structure if the new structure does not increase the existing degree of noncompliance with yard setbacks.

(7) A lot that is aggregated with other property to form a site may be disaggregated to satisfy this subsection.

(C) This section applies in a multifamily residence low density (RM2A) district, multifamily residence medium density (RM3A and RM4A) district, multifamily residence moderate-high density (RM3A and RM4A) district, or multifamily residence high density (RM5A) district on property that either has not been developed or that has been developed only with an agricultural use.

(D) Except as provided in Subsection (C), a development may comply with multifamily residence highest density (RM5A) district site development regulations if the director of the Neighborhood Housing and Community Development Department certifies that the development complies with the City's S.M.A.R.T. Housing Program, and:

(1) for a rental development, 60 percent of the residential units in the development are reserved as affordable for a minimum of 40 years following the issuance of a certificate of occupancy for rental by a household earning not more that 60 percent of the median family income for the Austin metropolitan statistical area; or

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[2] This conforms with Section 373B, Texas Local Government Code for Community Land Trusts.

(2) for an owner-occupied development:

(a) Eighty percent of the residential units in the development are reserved as affordable for a minimum of 99 years following the issuance of a certificate of occupancy for ownership and occupancy by a household earning not more than 80 percent of the median family income for the Austin metropolitan statistical area; and

(b) Twenty percent of the residential units in the development are reserved as affordable for a minimum of 99 years following the issuance of a certificate of occupancy for ownership and occupancy by a household earning not more than 100 percent of the median family income for the Austin metropolitan statistical area.

(E) Developments under this section are eligible for administrative waiver of height limits and compatibility requirement for height and stories of up to 25% of the permitted height.

23-3E-4060 Required Affordability Period

(A) To be eligible for the S.M.A.R.T. Housing Program, unless a longer term is required by law, private agreement, or another provision of this code, all reasonably-priced dwelling units in a S.M.A.R.T. Housing development must remain reasonably-priced for the following affordability periods commencing on the date the final certificate of occupancy is issued:

(1) For ownership dwelling units, a period of at least 99 years; and

(2) For rental dwelling units, a period of at least 40 years.

(B) If a reasonably-priced dwelling unit within a S.M.A.R.T. Housing development is converted from a rental unit to an owner-occupied dwelling unit during the applicable affordability period, the dwelling unit is subject to the affordability period and affordability requirements applicable to an owner-occupied dwelling unit. The new affordability period begins on the date that the converted dwelling unit is available for owner occupancy.

(C) If the development does not comply with the requirements to maintain the applicable percentage of dwelling units as reasonably-priced for the duration of the applicable affordability period, the developer shall reimburse the City for all fees waived plus a penalty charge equal to the total amount of fees waived.

(D) The applicant is required to execute an agreement, restrictive covenant, or other binding restriction on land use that preserves affordability in compliance with the S.M.A.R.T. Housing Program.

23-3E-4070 Fee Waivers and Exemptions

(A) A developer is eligible for a 100 percent waiver of the fees if the Housing Director determines that the housing development meets the requirements of Section 23-3E-4030 ; 23-3E-4040 or 23-3E-4050 (Affordability Requirements) and Section 23-3E-4060 (Required Affordability Period). The fees that can be waived include, but are not limited to:

(B)

(1) Construction inspection fee;

(2) Development assessment fee;

(3) Traffic impact analysis fee;

(4) Traffic impact analysis revisions fee;

(5) Regular zoning fee;

(6) Interim to permanent zoning fee;

(7) Miscellaneous zoning fee;

(8) Zoning verification letter fee;

(9) Board of Adjustment fee;

(10) Managed growth agreement fee;

(11) Preliminary subdivision fee;

(12) Final subdivision fee;

(13) Final without preliminary subdivision fee;

(14) Miscellaneous subdivision fee;

(15) Consolidated site plan fee;

(16) Miscellaneous site plan fee;

(17) Site plan revision fee;

(18) Site plan - construction element fee;

(19) Building review plan fee;

(20) Building permit fee;

(21) Electric permit fee;

(22) Mechanical permit fee;

(23) Plumbing permit fee;

(24) Concrete permit fee;

(25) Demolition permit fee;

(26) Electric service inspection fee;

(27) Move house onto lot fee;

(28) Move house onto city right-of-way fee; and

(29) Neighborhood plan amendment fee.

(B) Additional fees that may be waived by separate ordinance or agreement include:

(1) Austin water utility capital recovery fees;

(2) Parkland dedication fees;

(3) Austin energy line extensions;

(4) Transportation mitigation fees; and

(5) Service connections to certain lots.

(C) Development costs for which the City may provide funding, waiver or reimbursement to the developer may include:

(1) Public streets and sidewalks;

(2) Other utility services located within the right of way to the units.

(3) Relocation of utility poles deemed necessary for the project shall be paid for by the City.

(4) Tree mitigation fees

23-3E-4080 Prioritized Expedited Review. See the attached Chart.

Prioritized Fast-Track review means a S.M.A.R.T. Housing project under this section is reviewed before all other applications including those where an expedited review fee has been paid. Prioritized fast-track review shall include all City of Austin departments including, but not limited to Watershed Protection, Development Services, Austin Energy, Water Utilities, and the Austin Fire Department. The City shall provide or reimburse the developer for utility services located within the right of way to the units. Relocation of utility poles deemed necessary for the project shall be paid for by the City.

23-3E-4090 Reporting, Compliance, and Enforcement

(A) The Housing Director shall establish reporting, compliance, monitoring, and enforcement mechanisms and procedures for implementing the S.M.A.R.T. Housing Policy and Program.

RWG MOTIONS CHAPTER 23-4

A) Reduce the number of uses to single family; two family; and multi-family.

Affect on all R & RM zones, definitions and all sections related to residential design standards

- We believe this would greatly simplify the code and reduce the cost of navigating the code. It would also eliminate the need for defining attached and detached.
- This will reduce the volume of the code and its complexity as intended by CodeNext.

B) Create comparable R zones that maintain the 5750 minimum lot size and a minimum 50' lot width.

Affect on R zones

- This would help to craft specific areas for smaller lots while preserving the lot size of the existing neighborhoods.
- It would allow crafting through SAP as well as greenfield development
- The reduction captures approximately 3,500 lots that are currently non-conforming due to lot size, and 7000 do to lot width while opening the opportunity for subdivision on approximately 14,000 lots

  These zones should be

C) We recommend a taskforce of stakeholders be created to review the current Residential Design Standards against the regulations as outlined in D3 to better balance the need for regulation against real world implementation, specifically looking at ease of use, effect of regulations on affordability and predictability. This taskforce would look at all the residential design standards including but not limited to height, FAR, articulation, and parking location. We suggest they have 90 days to complete this task in order to have a recommendation for Council prior to adoption of CodeNext.

Affect on all R & RM zones, definitions and all sections related to residential design standards

- While this code is producing more compatible homes, stakeholders continue to want easier regulations. This requires input from Residential Review to determine what is working well.

- Input from many stakeholder groups have indicated that the regulations under D3 are too restrictive and difficult to implement, including AIA, HBA <I believe we need to mention the residents concerns also PS>
- We have attempted to put together language that incorporates input, however, due to D3 spread of the residential design standards throughout the code, issues still remained that need to be coordinated

1) ***NOT USED***

2) **Reduce the number of exemptions provided for in the gross floor (GFA) definition. In exchange allow for an increase in FAR by .05% across all residential zones. RESIDENTIAL GROSS (GFA) The total enclosed area of all floors in a building with a clear height of more than five feet, measured to the outside surface of the exterior walls. The term excludes ~~loading docks~~, 1st floor porches, stoops, ~~basements, attics, stories below grade plane, parking facilities, driveways, and enclosed loading berths and off-street maneuvering areas~~**

Affect on all R & RM zones, definitions

- The exemptions as outlined in D3 increase the cost of calculations, lead to unintended complications for homeowners, decrease predictability & homogeneity of forms and values, and further complicate home improvements.

3) **Eliminate building articulation for all residential and multifamily buildings or make it an option to improve building design and as to be part of McMansion task force work and considerations**

Affect on all R & RM zones

- This requirement is a shift in policy from what exists under today's code. The sizes and frequencies are onerous, add cost to the project due to additional exterior facade construction, and serve no guarantee the resulting voids will improve the public realm.
- With smaller lot widths and sizes, side articulation will severely limit flexibility in more liveable designs

- With emphasis on more conservation and restrictions in water regulation, trees, etc. prescribing articulation further onerous

4a) **Street Scale *"Preservation"* Incentive:** Accessory Dwelling Unit does not count toward FAR limit when existing house (at least 25 years old) is conserved.
Conserve: to maintain the height, footprint and roof line of an existing building for the first 25' as measured from the building line toward the rear lot line
Affect on all R & RM zones

- This incentive is a good incentive and could help to prevent demolitions while encouraging infill
- The intention was to preserve the street scale. The word preservation is not defined in D3. The HLC has recommended against this incentive because the word preserve conjurs up the National Register's Standards. I don't think the intention was to subject homewoners to these standards and additional expenses, I think it was to preserve the street scale and to reduce the # of demolitions. These changes eliminate the word confusion and go hand in hand with a definition of conserve that promotes the conservation of the existing homes street presence. This also further clarifies where you can use the additional FAR that you're granted.

4b) **Extend Preservation Incentive to all R zones.**
Affect on all R zones

- This incentive is a good incentive and could help to prevent demolitions while encouraging infill

4b) **Limit incentives to the addition of .1 FAR.**
Affect on all R zones

- This incentive needs to be calibrated for the smaller lots. Currently it is calculated to be an approximate .2 FAR bump max. By exempting the FAR of the ADU, we increase the

overall FAR of the lot exponentially. This increase entitlement for them considerably and will increase the lot values exponentially and hence less affordability

4c) Require 1 parking space for ADU's with more than 1 bedroom

Affect on all R zones

- If the average household has 1.8 cars, the chances of a 2 bedroom ADU to have a car is pretty high. It would balance the no parking required in the single bedroom ADUs

5) Eliminate the opportunity to obtain a Minor Use Permit (MUP) in residential house scale zones R1A through R3D for the Home Occupation use. Additional employees and retail sales are more appropriate uses in Live/Work zones (23-4E-6210).

23-4E-6200

(D) If the owner obtains a minor use permit up to three employees who are not occupants of the dwelling unit are allowed except in R1A through R3D zones.

(F) If the owner obtains a minor use permit, the limited sale of merchandise directly to customers on premises is allowed between the hours of 9:00 a.m. and 5 p.m except in R1A through R3D zones.

Affect on all R1A - R3D

- The additional traffic and noise created from the expanded traditional home office use is disruptive to neighborhood function

6) 6a) "ELIMINATE ALL ENTITLEMENTS TO CREATE FLAG LOTS IN THE CITY OR ETJ."

6b) The Variance requirements for Flag Lots should be restored. The variance provides adjoining property owners notification of the proposed Flag Lot configuration and the ability to discuss concerns at a public hearing.

Affect on all R zones

- In consideration of the new lot widths and sizes, the opportunities for more flag lots increases exponentially. The new lots should be helping to decrease the amount of flag lots, however, until we adjust the requirements, it will just increase it.
- Some flag lots developments can be well done, so there should be oversight
- Possibility to let Small Area Planning determine appropriateness

7) **Create a mechanism to tune the proposed parking minimums thru parking reductions based on a table of factors or TDM type analysis. (Start with realistic current on the ground patterns and adjust from there.) These factors are as follows but not limited to:**

   a. **Street parking availability (there are no parking zones)**
   b. **Street width**
   c. **Presence of sidewalks**
   d. **Distance to public transportation (¼ mile)**
   e. **Distance to schools**
   f. **Residence Parking Only Permits**
   g. **Fire safety compromises**
   h. **Lot widths and driveway placement**
   i. **Trash pickup and utility placement**
   j. **Safe Streets analysis**
      i. **Transportation Safety Improvements Program**
      ii. **Vision Zero**

Affect on all R zones

- Current D3 has no consideration of context sensitivity. If businesses and dwelling units are exempted from additional parking without consideration of surroundings, there is a not only a convenience risk but life safety risk as well. Beginning of last school year 3 Austin kids were hit by cars while going to school.

8) **We recommend allowing pools and fountains in required yards without new setback or restrictions. Pools and fountains are currently allowed in required yards. Draft 3 further regulates their location on a site and eliminating it completely some parts. This is solution looking for a problem, however creating more problems. This will create nonconformities.**

Affect on all R zones

- ***In 2015 Codes and Ordinances - PC modified section for porches which already included pools fountains in SF-6 and more restrictive to be allowed in required yard 25-2-513.***

9) **The proposed new fence regulations are much more onerous than current regulations and will cause an immense amount of nonconformities. This is solution looking for a problem, however creating more problems. We recommend**

1. **4' to 5' max height for sloped lots in front setback or street to building line distance, whichever is less**
    a. **Administrative variances allowed for up to 6' for special considerations**
2. **6' at rear and side property lines (7' max on sloped lots), 8' with administrative variance**
3. **delete section restricting fences at intersections**

Affect on all R zones

RWG MOTIONS IN OTHER CHAPTERS

1) **Add to the definition section to read.**

ATTACHED:

When used with reference to two or more ~~buildings~~ units, means having one or more common walls or being joined by a roof; ~~covered porch or covered passageway~~ measured 20' in depth, perpendicular to the front property line.

DETACHED:

FULLY SEPARATED FROM ANY OTHER BUILDING, OR JOINED TO ANOTHER BUILDING BY STRUCTURAL MEMBERS NOT CONSTITUTING AN ENCLOSED OR COVERED SPACE.

- These are from Austin's 1987 code which led creative interpretations that lacked original intent

ATTACHED - HAVING ONE OR MORE WALLS COMMON WITH A PRINCIPAL BUILDING OR DWELLING UNIT, OR JOINED TO A PRINCIPAL BUILDING OR DWELLING UNIT BY A COVERED PORCH, LOGIA OR PASSAGEWAY, THE ROOF OF WHICH IS PART OR EXTENSION OF A PRINCIPAL BUILDING OR DWELLING UNIT.

DETACHED - FULLY SEPARATED FROM ANY OTHER BUILDING, OR JOINED TO ANOTHER BUILDING BY STRUCTURAL MEMBERS NOT CONSTITUTING AN ENCLOSED OR COVERED SPACE.

2) **Maintain current regulation regarding home occupation signage**

23-8B-2020) (c) Signs for Residential Use - this section is too permissive

Affect on all R & RM zones

- Ability to build a storefront and have large signs and sales should not be allowed in residential zones *This will turn the neighborhoods into bunch of advertising. With all the online opportunities for home business this can get ridiculous.*

3) Replace 23-2A-3030 & 3040 (B): No Adverse Impact with the following language

1. Install acceptable drainage improvements on site to improve or preserve existing drainage patterns if the construction, remodel or expansion:
    a. Is more than 750 square feet; and
    b. Located on an unplatted tract or within a residential subdivision approved more than five years before the building permit application was submitted: and
    c. in an area subject to localized flooding, as determined by the Watershed Protection Department on an annual basis.
2. Acceptable drainage improvements include,
    a. An engineer's certification that any changes to existing drainage patterns will not adversely impact adjacent properties
    b. swales, grading, gutters, rain gardens, rainwater harvesting systems or other methods on site to preserve existing drainage patterns as calculated by:
        i. a grading plan
        ii. per Table X-X-XX (*gallons per sf of impervious cover and grade changes+12")*
    c. a fee in lieu is available at the director's discretion if a water mitigation project has been identified within ¼ mile of the site to be implemented within 12 months.

- Engineering letter is expensive and does not help with flooding whether local or further downstream. Due to high costs, options should be given to actually improve or at least maintain drainage patterns. The thousands of dollars spent for a letter can easily be used to make actual improvements that a builder can easily implement on site

4) ***REINSTATE accessory apartment "USE" ALLOWED IN ALL R ZONES and develop the program further.***

The measures that we proposing for stay in place, affordability, and curbing gentrification and demolitions, are not attainable for the average homeowner and the only option would be to sell to developers or wealthier individuals. make a profit, but then move from their neighborhood. . ADU's can be difficult for many homeowners to even get a loan for. By reinstating the Accessory Apartment Use and actually developing the program to keep it within reach of average homeowners, we can bring even another dwelling form to the mix that is actually attainable. Cost is for a remodel of a small part of a home vs new construction of an ADU. The apartment can also be one which can still be used as part of the main house… adaptable. Research has shown that other cities have adopted similar policies to allow these internal dwelling units. There are different levels of regulations and permitting, however, they all have in common that they are not separate dwellings that require the same fire separations and other specifics as a two unit dwelling. I believe we should allow this type of unit to help curb demolitions and gentrification and affordability. If other cities are able to do this, I don't see why Austin can not.

23-4D-2030 LAND USE TABLE - ADD USE
23-4D-6050 ACCESSORY USES - ADD SECTION
23-13A-2030 LAND USES - ADD DEFINITION

CURRENT CODE:
25-2-901 - ACCESSORY APARTMENTS.
A An accessory apartment is a separate dwelling unit that is contained within the principal structure of a single-family residence, and that is occupied by at least one person who is 60 years of age or older or physically disabled. (WE RECOMMEND REMOVING AGE RESTRICTION)

B. If space within a principal structure is converted to an accessory apartment, the accessory apartment may not include:

1. *converted garage space; or*
2. *a new entrance visible from a street.*

REMOVE SECTION C BELOW
C. The building official may not issue a building permit for construction or remodeling of an accessory apartment unless the applicant delivers to the building official an affidavit verifying that one of the proposed occupants of the accessory apartment is 60 years of age or older or physically disabled.

- Support Comments

- *Accessory Apartment Allowed Use - Reincorporated and allowed use. Internal to an existing home - adaptive reuse*
  http://www.plgrove.org/documents/faq-accessory-apartments.pdf
- *Should firewall separation be required between the AA and the main dwelling?*
  No. This is required for a duplex, but not normally required for Accessory apartments. It is a substantial
  cost that would need to be required for most existing situations that might cause difficulties for compliance. An accessory apartment Is considered a part of the same home and structure, and normally
  the main dwelling unit is required to have access to it

  https://extension2.missouri.edu/gg14
  Mention costs to do an accessory apartment - very VERY affordable vs adu.

Item D-01 (White)

Table 23-4D-4030(A) Allowed Uses in Mixed-Use Zones MU1A–MU2B

Use Type	Specifc to Use Requirements	MU1A	MU1B	MU1C	MU1D	MU2A	MU2B
(1) Residential							
Accessory Dwelling Unit - Residential	23-4E-6030	P	P	P	P	—	—
Accessory Dwelling Unit - Commercial	23-4E-6040	P	P	P	P	P	P
Bed and Breakfast	23-4E-6090	P	P	P	P	P	P
Cooperative Housing		P	P	P	P	P	P
Duplex	23-4E-6170	P	P	P	P	P	P
Home Occupations	23-4E-6200	P	P	P	P	P	P
Multi-Family	23-4E-6250	P	P	P	P	P	P
Senior/Retirement Housing		P	P	P	P		
≤12	23-4E-6330	~~MUP~~	~~MUP~~	~~MUP~~	~~MUP~~	P	P
>12	23-4E-6330	MUP	MUP	MUP	MUP	P	P
Single-Family		P	P	P	P	—	—
Single-Family Attached		P	P	P	P	P	P
Short-term Rental							
Types 1	23-4E-6340	P	P	P	P	MUP	MUP
Types 2	23-4E-6340	P	P	P	P	—	—
Types 3	23-4E-6340	P	P	P	P	MUP	MUP
Townhouse		P	P	P	P	P	P
Work/Live	23-4E-6380	—	—	—	—	P	P
(2) Residential Support							
Emergency Shelter		—	—	—	—	P	P
Residential Care Facility		—	—	—	—	CUP	P

Key for Table 23-4D-4030(A)

P	Permitted Use	TUP	Temporary Use Permit Required
MUP	Minor Use Permit Required	—	Not Allowed
CUP	Conditional Use Permit Required	P/CUP	Permitted Use or Conditional Use Permit Required. See Division 23-4E-6 (Specific to Use).

Table 23-4D-4030(A) Allowed Uses in Mixed-Use Zones MU1A–MU2B (continued)

Use Type	Specifc to Use Requirements	MU1A	MU1B	MU1C	MU1D	MU2A	MU2B
(5) Civic and Public Assembly							
Government		—	—	—	—	MUP	MUP
Library, Museum, or Public Art Gallery		CUP	CUP	CUP	CUP	P	P
Meeting Facility (public or private)		CUP	CUP	CUP	CUP	P	P
Public Safety Facility		CUP	CUP	CUP	CUP	P	P
Religious Assembly Facility		P	P	P	P	P	P
School							
Business, or Trade	23-4E-6320	—	—	—	—	—	P
College or University	23-4E-6320	CUP	CUP	CUP	CUP	MUP	P
Private Primary	23-4E-6320	CUP	CUP	CUP	CUP	MUP	P
Private Secondary	23-4E-6320	CUP	CUP	CUP	CUP	MUP	P
Public Primary	23-4E-6320	P	P	P	P	P	P
Public Secondary	23-4E-6320	P	P	P	P	P	P
(6) Restaurant and Bars							
Bar/Nightclub							
Level 1		—	CUP	—	CUP	—	CUP
Level 2		—	—	—	—	—	—
Micro-Brewery/Micro-Distillery/ Winery		—	~~MUP~~ CUP	—	~~MUP~~ CUP	—	~~P~~ MUP
Mobile Food Sales	23-4E-6230	—	—	—	—	—	P
Restaurant							
w/o Alcohol Sales		MUP (5)	MUP (5)	P (5)	P (5)	P (5)	P
w/ Alcohol Sales	23-4E-6310	—	CUP	—	CUP	—	P
Drive Through	23-4E-6160	—	CUP	—	CUP	CUP	CUP
Late Night Operation	23-4E-6310	—	CUP	—	CUP	—	—

Key for Table 23-4D-4030(A)

P	Permitted Use	TUP	Temporary Use Permit Required
MUP	Minor Use Permit Required	—	Not Allowed
CUP	Conditional Use Permit Required	P/CUP	Permitted Use or Conditional Use Permit Required. See Division 23-4E-6 (Specific to Use).

WHITE_EXHIBIT_CORRECTIONS SCHOOLS
Amend Section 23-4E-6320 School to incorporate corrections submitted by Susan Moffat as vetted by the law department. Please see BELOW

From: Susan Moffat, Former CodeNEXT Advisory Group Member
Appointed to Represent Public Schools
Submitted: March 8, 2018

CodeNEXT Draft 3:
Corrections for Section 23-4E-6320 School

Section 23-4E-6320 School (Article 23-4E, Supplemental to Zones) is intended to incorporate the provisions the Educational Facilities Ordinance (COA Ordinance 20160623-090), which provides land development regulations for public schools, including open enrollment public charters.

Because public schools may legally locate in any residential zoning category, basic development standards are essential to ensure a safe environment for students while maintaining a decent quality of life for nearby residents. Austin learned this the hard way a few years ago when a public charter school claimed complete exemption from city development standards under a double loophole in state and local law. The result was a towering structure on a tiny residential street with scant setbacks, industrial sized dumpsters next to residents' windows, excessive light and noise, dangerously snarled traffic and other problems, many of which are ongoing.

In response, the city engaged in a lengthy stakeholder process to craft the Educational Facilities Ordinance. Adopted in 2016, it provides fair, reasonable land development regulations for all public schools, including public charters.

To avoid future problems, it is imperative that all provisions of the Educational Facilities Ordinance be accurately transferred to the new code. While Draft 3 addresses some of the omissions in Draft 1 and 2, several significant corrections are still needed.

1. CORRECTION. Section 23-4E-6320(B)(3)(a). The current draft section incorrectly states:

> *"A public school is not required to comply with: (a) The requirements of Chapter 23-4 (Zoning) related to floor to area ratio, building placement, building entrance, frontages, parking placement, common open space, visual screening, connectivity, and building design, and outdoor lighting."*

In fact, public schools located within AISD's boundaries are fully exempt *only* from requirements for floor to area ratio, building entry, connectivity, common open space and connectivity between sites, and are subject to some or all code requirements related to the other terms highlighted above.

This broad but mistaken language regarding exemptions appears to be based on the section of the Educational Facilities Ordinance that exempts schools from Chapter 25-2, Subchapter E, Design Standards and Mixed Uses (see Educational Facilities Ordinance Part 5, page 3).
http://www.ci.austin.tx.us/edims/document.cfm?id=257543.

However, the Educational Facilities ordinance also specifically requires all schools located within the AISD boundaries to comply with Chapter 25-2, Subchapter C, Article 10 (Compatibility), with only two exceptions: no screening is needed around buildings and security lighting need not be shielded (see below provision from Educational Facilities Ordinance, page 3, (D)(2)).

> ***§ 25-2-833 EDUCATIONAL FACILITY DEVELOPMENT STANDARDS***
>
> *(D) A public primary or secondary educational facility:*
> *(1) is exempt from requirements of this chapter limiting floor-to-area ratio;*
> *(2) is subject to Chapter 25-2, Subchapter C, Article 10 (Compatibility) within the boundaries of the Austin Independent School District, except that no opaque fencing or screening around any building or shielding for security lighting is required; and*

Other than these extremely limited exceptions for some portions of screening and lighting requirements, no other elements of Article 10 (Compatibility) are waived or changed. All schools within AISD boundaries are subject to screening requirements for off-street parking, mechanical equipment, storage and refuse; the Compatibility Design Regulations governing noise of mechanical equipment, placement of and access to refuse receptacles, parking and driveway locations; scale and clustering requirements, which impact building design; and additional specific provisions related to parking lot and driveway construction by a Civic Use.

Likewise, other than the limited exemption that allows schools not to shield security lights, schools are subject to other lighting requirements that appear elsewhere in the code, such as those in draft section 23-4E-2030. Draft 3 does state in Subsection (4)(e) that school's exterior lighting must be shielded, except for security lighting. However this section also states that it applies "except where modified by …Subsection (B)(3)," which is the subsection that inaccurately grants a blanket exemption from *all* lighting requirements, thus creating a circular argument with no clear answer.

Again, the Educational Facilities Ordinance does not waive or alter these critical requirements - yet all are effectively eliminated by the broad declaration of exemptions that appears in the current draft Section 23-4E-6320(B)(3)(a). Not only does this pose a potential problem for residents, but eliminating these provisions would effectively deliver an unfair advantage to charter schools by exempting them from many requirements with which AISD must comply under its Land Development Standards Agreement with the city. (The ordinance was intended to codify the basic provisions contained the city's

interlocal agreements with area school districts, but in the event of conflict with the ordinance, the Agreement controls).

The Educational Facilities Ordinance incorporates Article 10 (Compatibility) by reference, but the new code eliminates Article 10 in favor of a "baked in" approach, which does not appear to carry over a number of standards critical to a reasonable quality of life for nearby residents. The provisions of Chapter 25-2, Subchapter C, Article 10, shown below, must be added to draft Section 23-4E-6320 to ensure retention of these crucial protections as mandated by the Educational Facilities Ordinance.

Proposed Fix:

(A) Delete the following phrases from Section 23-4E-6320(B)(3)(a).

> *"A public school is not required to comply with: (a) The requirements of Chapter 23-4 (Zoning) related to floor to area ratio and~~, building placement, building entrance,~~ frontages,~~ parking placement,~~ common open space,~~ visual screening,~~ connectivity.~~ and building design, and outdoor lighting."~~*

(B) Add the following provisions from the Educational Facilities Ordinance to Section 23-4E-6320, adjusting numbering/lettering/syntax as needed:

§ 25-2-1065 - SCALE AND CLUSTERING REQUIREMENTS.

(A) The massing of buildings and the appropriate scale relationship of a building to another building may be accomplished by: (1) avoiding the use of a continuous or unbroken wall plane; (2) using an architectural feature or element that: (a) creates a variety of scale relationships; (b) creates the appearance or feeling of a residential scale; or (c) is sympathetic to a structure on an adjoining property; or (3) using material consistently throughout a project and that is human in scale; or (4) using a design technique or element that: (a) creates a human scale appropriate for a residential use; or (b) prevents the construction of a structure in close proximity to a single-family residence zoning district that is: (i) significantly more massive than a structure in a single-family residence zoning district; or (ii) antithetical to an appropriate human scale; and (c) allows the construction of a structure, including a multi-family structure, that exhibits a human scale and massing that is appropriate for a residential use. (B) Except for good cause, the first tier of buildings in a multi-family or mixed use project must be clustered in a group that is not more than 50 feet wide, as measured along the side of the buildings that are most parallel to the property line of the site. (C) The depth of the first tier of buildings described under Subsection (B) may not exceed: (1) two units; or (2) 60 feet. (D) A building must be at least 10 feet apart from another building, as measured from wall face to wall face. (E) Subsections (B), (C), and (D) do not apply to a: (1) private or public primary educational facility; (2) private or public secondary educational facility; or (3) a college or university. (F) In Subsection (B), good cause may be shown by compliance with Subsection (A).

Source: Section 13-2-735(c) and (d); Ord. 990225-70; Ord. 000309-39; Ord. 031211-11.

§ 25-2-1066 - SCREENING REQUIREMENTS.

(A) A person constructing a building shall screen each area on a property that is used for a following activity from the view of adjacent property that is in an urban residence (SF-5) or more restrictive zoning district:

(1) off-street parking;

(2) the placement of mechanical equipment

(3) storage; or

(4) refuse collection.

§ 25-2-1067 – DESIGN REGULATIONS

(A) [This item is addressed in Draft 3].

(B) The noise level of mechanical equipment may not exceed 70 db at the property line.

(C) A permanently placed refuse receptacle, including a dumpster, may not be located 20 feet or less from the property: (1) in an SF-5 or more restrictive zoning district or (2) on which a use permitted in an SF-5 or more restrictive zoning district is located.

(D) The location of an access to a permanently place refuse receptacle, including a dumpster, must comply with guidelines published by the City. The Watershed Protection and Development Review Department shall review and must approve the location of and access to each refuse receptacle on a property.

(E) A highly reflective surface, including reflective glass and a reflective metal roof with a pitch that exceeds a run of seven to a rise of 12, may not be used, unless the reflective surface is a solar panel or copper or painted metal roof.

(F) [This item is addressed in Draft 3]

(G) Unless a parking area or driveway is on a site that is less than 125 feet wide, a parking area or driveway may not be constructed 25 feet or less from a lot that is: (1) in an SF-5 or more restrictive zoning district; or (2) on which a use permitted in an SF-5 or more restrictive zoning district is located.

(H) If a site on which a parking area or driveway is constructed is less than 125 feet wide, the width and setback for the parking area or driveway must comply with the following schedule [see chart at https://library.municode.com/tx/austin/codes/code_of_ordinances?nodeId=TIT25LADE_CH25-2ZO_SUBCHAPTER_CUSDERE_ART10COST

§ 25-2-1068 - CONSTRUCTION OF PARKING LOTS AND DRIVEWAYS BY CIVIC USES PROHIBITED.

(A) Except as provided by Subsection (B), a parking lot or driveway may not be constructed to serve a civic use described in Section 25-2-6 (Civic Uses Described [which includes public schools]) if: (1) construction of the parking lot or driveway requires the removal of a single-family residential use; or (2) the civic use provides secondary access from the civic use through a lot.

(B) Subsection (A) does not apply if at least 50 percent of the property adjoining the lot on which the parking lot or driveway is located is in a townhouse or condominium residence (SF-6) or more restrictive zoning district. Property that adjoins the rear of the lot, property owned by the owner of the civic use, and right-of-way are not considered in making a determination under this subsection.

(C) Add the following provision to Section 23-4E-6320(B)(4) for clarity:

(g) Opaque Screening or Fencing. No opaque fencing or screening is required around any building. All other screening requirements apply.

2. CORRECTION. Section 23-4E-6320(B)(3)(b)

Add highlighted language to supply correct citation:

(b) The requirements of Chapter 23-9 (Transportation) related to block length and of 23-4C-1020 related to internal circulation routes.

Why needed: Schools are indeed exempt from standards related to block length and internal circulation, but the citation is incorrect. In Draft 3, Internal Circulation standards appear in Division 23-4C-1020 (General to Large Sites), not 23-9 (Transportation) as the draft cites. Chapter 23-9 does not speak to internal circulation.

3. CORRECTION. Section 23-4E-6320(B)(7)

Add the following highlighted language to conform to Austin's Educational Facilities Ordinance:

"The Planning Director shall conduct a neighborhood traffic analysis on a site plan development permit application or a zoning or rezoning for a public primary or secondary school."

Why needed: Draft 3 omits an important trigger in Austin's Educational Facilities ordinance that requires the Director to conduct an NTA for "a site development permit application *or a zoning or rezoning."* Draft 3 carries forth the trigger for site development permit applications, but omits the current trigger for zonings or rezonings. See Educational Facilities Ordinance, page 7, Part 9(A). *http://www.ci.austin.tx.us/edims/document.cfm?id=257543*

4. TYPO. 23-4E-6320(B)(4).

Remove stray letter “y” highlighted below:

> *(4) A public school must comply the requirements of the base zone except where modified by this subsection and Subsection (B)(3). (a) Outside the boundaries of the Austin Independent School District, a public y school must not be constructed closer than 25 feet from an adjoining residential use.*

5. TYPO. 23-4E-6320-(B)(4)(f).

Correct referenced section title per below:

> *(f) A public school must comply with the impervious cover limits established in Section 23-3D-3110 (Impervious Cover Limits for ~~Schools~~ Educational Facilities).*

Why needed: Referenced title for Section 23-3D-3110 is incorrect; this section is actually titled “Impervious Cover Limits for Educational Facilities,” not “Impervious Cover Limits for Schools.”