

Presentations from Vice-Chair Duncan

Code Structure (Pages 1 -21)

Compatibility (Pages 22 -54)

Bonuses (Pages 55 - 66)

PUDs (Pages 67 - 83)

Accessory Dwellings (Pages 84 - 94)

Code Structure: What Happened to User-Friendly?

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Although not a major topic of discussion, the proper format and structure of CodeNEXT is extremely important in order to improve overall code functionality, usability and transparency.

Remember Approach 2.5!

A MUST READ SECTION
Approaches Comparison

Approach Comparison Table
Elements

Element	Approach 1	Approach 2.5	Approach 3
Code Format and Organization			
Format	Replace	Replace	Replace
Reorganization of Content	Limited	Extensive	Extensive
Content Rewriting	Low/Moderate	Moderate	High
Clean up for Consistency	Some	Across All	Across All
Development Review Models			
By Right Review	Low	Medium	High
Customized Zoning	High	Medium	Low
Discretionary Review			
Development Standards Models			
Euclidean Based	High	Medium	Low
Performance Based	Some	Across All	Across All
Form-Based	Very Limited*	Medium	High
Hybrid Code	No	No	No

*Applied only in New Small Area Plans

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 new format, 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 yet delivered on that promise!

Big is Not Necessarily Better!

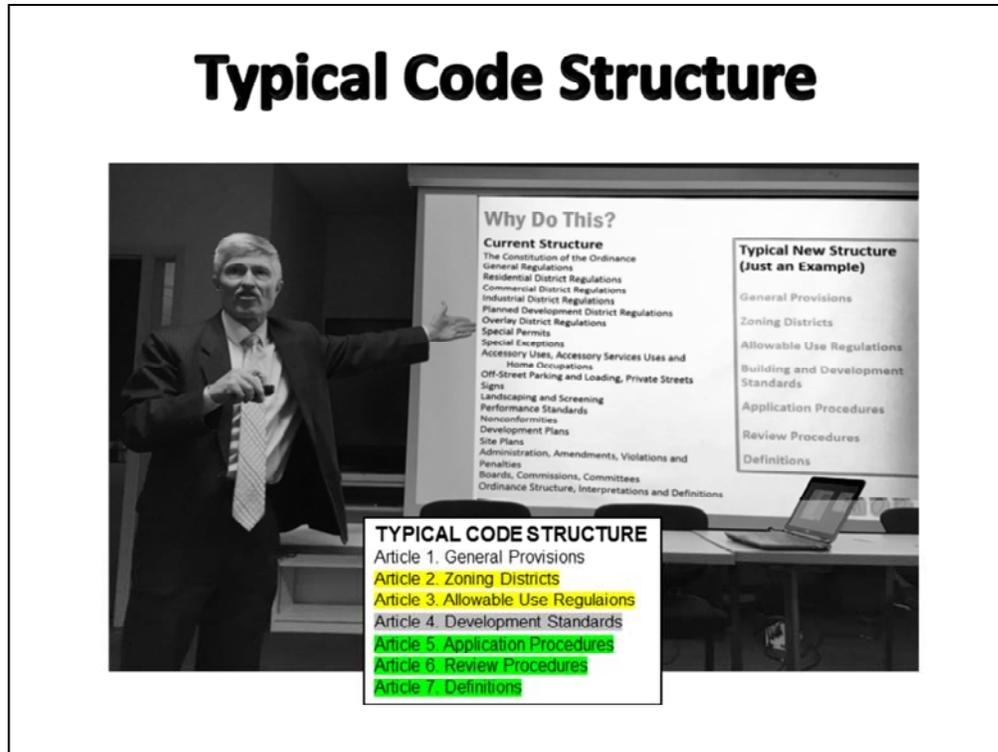


City	Pages	A&P
Tulsa OK*	315	42
Buffalo NY	334	53
Chicago IL*	339	53
Miami FL	342	45
Arlington VA*	407	32
Memphis TN*	478	59
Raleigh NC	464	78
Denver CO	1,204	76
CodeNEXT	1,388	222

First, at 1,388 pages, CodeNEXT totally ignores basic “KISS” drafting principles and is one of the nation’s wordiest codes.

It is neither short or simple! It is rather long and complicated!

Other important drafting principles are; “group related rules!,” “use plain English!,” “less is more!” and “avoid doubletalk!”



In order to maximize transparency and user-friendliness, most zoning and development codes are organized into four basic categories: districts, standards, infrastructure and procedures.

Here, a consultant (Don Elliott of Clarion Associates) compares a client code with the typical code structure.

Following is a structural comparison of the current Austin code and proposed CodeNEXT code with those of 14 other cities.

Austin Code Structure

Poor Clarity in Format and Structure (Code Diagnosis):

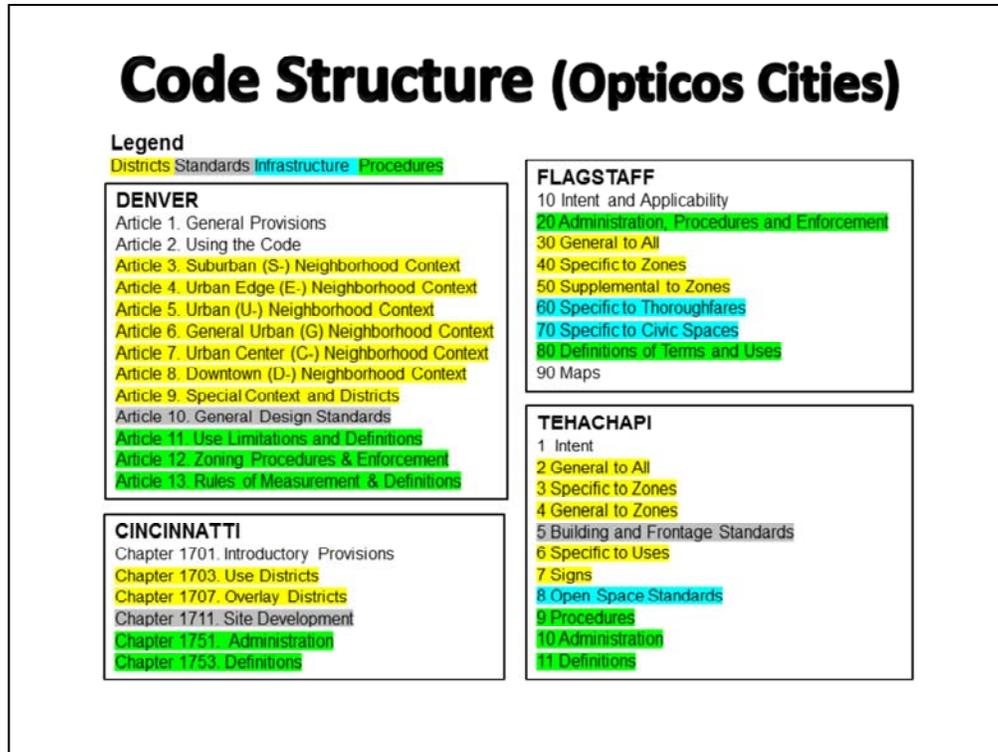
1. *Inconsistent hierarchy, structure and location of information,*
2. *Non-user-friendly and out-of-date layout,*
3. *Lack of illustrations, graphics and photographs, and*
4. *Inconsistent use of terminology and conflicting information.*

Land Development Code (Title 25)	Legend
<ul style="list-style-type: none"> Chapter 1 General Requirements and Procedures Chapter 2 Zoning <ul style="list-style-type: none"> Subchapter A Use Districts Subchapter B Procedures Subchapter D Combining Districts Subchapter E Design Standards Subchapter F Residential Design Chapter 3 Traditional Neighborhood District Chapter 4 Subdivision Chapter 5 Site Plans Chapter 6 Transportation Chapter 7 Drainage Chapter 8 Environment <ul style="list-style-type: none"> Subchapter A Water Quality Chapter 9 Water and Wastewater Chapter 10 Sign Regulations Chapter 11 Permits 	<ul style="list-style-type: none"> Districts Standards Infrastructure Procedures <p>CodeNEXT 3.0</p> <ul style="list-style-type: none"> 23.1: Introduction 23.2 Administration and Procedures 23.3 General Planning Standards for All 23.4 Zoning Code 23.5 Subdivision 23.6 Site Plan 23.7 Building, Demolition & Relocation Permits: <ul style="list-style-type: none"> Special Requirements for Historic Structures 23.8 Signage 23.9 Transportation 23.10 Infrastructure 23.11: Technical Codes (in progress) 23.12 Airport Hazard and Land Use 23.13 Definitions

In its diagnosis, Opticos noted several serious problems with Austin's code structure, including inconsistent hierarchy, out-of-date layout, lack of illustrations and conflicting terminology.

As indicated by these color-coded codes (districts=yellow, standards=gray, infrastructure=gray, and procedures and definitions=green), neither of Austin's codes (Title 25 or CodeNEXT) bear any similarity to the typical code structure.

Unfortunately, Austin has not followed the recommendations of its diagnosis and seriously reorganized its code structure.



The Denver, Cincinnati, Flagstaff and Tehachapi codes all follow the typical code structure and were all drafted by members of the Opticos consultant team.

The Denver code devotes seven of its 13 articles to its 143 context-sensitive districts. The district articles are then followed by standards, procedures and definitions.

The Flagstaff and Tehachapi codes use “General to” and “Specific to” categories favored by “new urbanists.”

Code Structure (Other Cities)

Legend

Districts Standards Infrastructure Procedures

TULSA*

Chapter 1 Introductory Provisions
 Chapter 5 Residential Districts
 Chapter 10 Mixed-use Districts
 Chapter 15 Office, Commercial, Industrial Districts
 Chapter 20 Overlay Districts
 Chapter 25 Special Districts
 Chapter 30 Legacy Districts
 Chapter 35 Building Types and Use Categories
 Chapter 40 Supplemental Use and Building Regs
 Chapter 45 Accessory Uses and Structures
 Chapter 50 Temporary Uses
 Chapter 55 Parking
 Chapter 60 Signs
 Chapter 65 Landscaping, Screening & Lighting
 Chapter 70 Review and Approval Procedures
 Chapter 75 Administration
 Chapter 80 Nonconformities
 Chapter 85 Violations, Penalties and Enforcement
 Chapter 90 Measurements
 Chapter 95 Definitions

CHICAGO*

Chapter 17-1 Introductory Provisions
 Chapter 17-2 Residential Districts
 Chapter 17-3 Business and Commercial Districts
 Chapter 17-12 Signs
 Chapter 17-13 Review and Approval Procedures
 Chapter 17-14 Administration
 Chapter 17-15 Nonconformities
 Chapter 17-16 Enforcement and Penalties
 Chapter 17-17 Terminology and Measurements

PITTSBURGH*

Article I. Introduction and Establishment.
 Article II. Base Zoning Districts
 Article III. Overlay Zoning Districts
 Article IV. Planning Districts
 Article V. Use Regulations
 Article VI. Development Standards
 Article VII. Nonconformities
 Article VIII. Review and Enforcement
 Article IX. Measurements and Definitions

The Tulsa, Chicago and Pittsburgh codes, which were drafted by my former firm, all follow the typical code structure, but Tulsa details districts and Chicago procedures.

Code Structure (Other Cities)

Legend
Districts Standards Infrastructure Procedures

ARLINGTON*

Article 1. Introductory Provisions
 Article 2. District Map
 Article 3. Density and Dimensional Standards
Article 4. Public (P) Districts
Article 5. Residential (R) Districts
Article 6. Multiple-Family (RA) Districts
Article 7. Commercial/ Mixed Use (C) Districts
 Article 8. Industrial (M) Districts
Article 9. Special Planning Area Regulations
Article 10. Unified Developments
Article 11. Overlay and Form-Based Code Districts
 Article 12. Use Standards
 Article 13. Signs
 Article 14. Site Development Standards
Article 15. Administration and Procedures
Article 16. Nonconformities
Article 17. Violations, Enforcement and Penalties
Article 18. Definitions

MEMPHIS*

Article 1. General Provisions.
Article 2. Districts and Uses
 Article 3. Building Envelope Standards
 Article 4. General Development Standards
Article 5. Infrastructure & Public Improvements
 Article 6. Open Space & Natural Resources
Article 7. Special Purpose Districts
Article 8. Overlay Districts
Article 9. Administration
Article 10. Nonconformities
Article 11. Enforcement
Article 12. Definitions

KANSAS CITY*

10 Introductory Provisions
100 Base Zoning Districts
200 Overlay and Special Purpose Districts
300 Use Regulations
 400 Development Standards
500 Review and Approval Procedures
600 Administration and Enforcement
800 Terminology and Measurements

Arlington, Memphis and Kansas City are three more codes drafted by Duncan Associates. Arlington focuses on districts in its contents, while Memphis highlights standards.

Code Structure (Other Cities)

Legend

Districts Standards Infrastructure Procedures

RALEIGH

Article 1. Introductory Provisions

Article 2. Residential Districts

Article 3. Mixed Use Districts

Article 4. Special Districts

Article 5. Overlay Districts

Article 6. Use Regulations

Article 7. General Development Standards

Article 8. Subdivision and Site Plan Standards

Article 9. Natural Resources Protection

Article 10. Administration

Article 11. Building and Housing Code

Article 12. Definitions

FAIRFAX*

1 Introduction

2 Zoning Map

3 Zoning Districts and Regulations

4 Site Development Standards

5 Decision-Making Bodies and Officials

6 Development Review

7 Nonconformities

8 Enforcement

9 Definitions

PORTLAND

10 Introduction

100 Base Zones

200 Additional Use and Development Regulations

400 Overlay Zones

500 Plan Districts

600 Land Divisions and Planned Developments

700 Administration and Procedures

800 Land Use Reviews

900 General Terms

FORT WORTH*

1 General Provisions

2 Review Bodies

3 Review Procedures

4 District Regulations

5 Supplemental Use Standards

6 Development Standards

7 Nonconformities

8 Enforcement

9 Definitions

Here are the Fairfax, Fort Worth, Raleigh and Portland codes.

Although drafted almost 20 years apart by my former firm, the formats of the Fort Worth and Fairfax codes are strikingly similar.

Raleigh and Portland also basically follow the typical structure.

“Built One Piece at a Time!”



Austin's current code reminds you of Johnny Cash's Cadillac.

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

CodeNOW (Title 25)

<p>CHAPTER 25-1 - GENERAL REQUIREMENTS AND PROCEDURES</p> <ul style="list-style-type: none"> ARTICLE 1 - GENERAL PROVISIONS ARTICLE 2 - DEFINITIONS, MEASUREMENTS ARTICLE 3 - APPLICABLE DISTRICTS ARTICLE 4 - APPLICATIONS AND APPROVALS ARTICLE 5 - FEES AND FINANCIAL SECURITY ARTICLE 6 - SPECIAL AND PUBLIC HEARING PROCEDURES ARTICLE 7 - APPEALS, VARIANCES, SPECIAL EXCEPTIONS ARTICLE 8 - CONSTRUCTION MANAGEMENT ARTICLE 9 - COMPLIANCE OF COMPLIANCE AND OCCUPANCY ARTICLE 10 - ENFORCEMENT PROCEDURES ARTICLE 11 - APPEALS PROCEDURE ARTICLE 12 - RETIRED RIGHTS ARTICLE 13 - LANDMARK DESIGNATION ARTICLE 14 - HISTORIC ARTICLE 15 - NEIGHBORHOOD PLAN AMENDMENTS ARTICLE 16 - HISTORICAL DEVELOPMENT AGREEMENTS <p>CHAPTER 25-2 - ZONING</p> <p>SUBCHAPTER A - ZONING USES, DISTRICTS, AND MAP; DISTRICT DE MIGRATIONS</p> <ul style="list-style-type: none"> ARTICLE 1 - ZONING DISTRICTS ARTICLE 2 - ZONING MAP <p>SUBCHAPTER B - ZONING PROCEDURES; SPECIAL REQUIREMENTS FOR CERTAIN DISTRICTS</p> <ul style="list-style-type: none"> ARTICLE 1 - ZONING PROCEDURES ARTICLE 2 - SPECIAL REQUIREMENTS FOR CERTAIN DISTRICTS ARTICLE 3 - PRELIMINARY USE AND DEVELOPMENT REGULATIONS ARTICLE 4 - ADDITIONAL REQUIREMENTS FOR CERTAIN DISTRICTS ARTICLE 5 - ADDITIONAL REQUIREMENTS FOR CERTAIN USES ARTICLE 6 - ACCESSORY USES ARTICLE 7 - NONCONFORMING USES ARTICLE 8 - NONCONFORMING STRUCTURES ARTICLE 9 - VARIANCES ARTICLE 10 - MULTI-UNITARY ALIENATION REQUIREMENTS ARTICLE 11 - DOUBLE ALIENATIONS AND DOUBLE ALIEN ACCESS ARTICLE 12 - MOBILE HOMES AND TOURIST OR TRAILER CAMPS <p>SUBCHAPTER D - NEIGHBORHOOD PLAN COMBINING DISTRICTS</p> <ul style="list-style-type: none"> ARTICLE 1 - GENERAL PROVISIONS ARTICLE 2 - OFFSHORE SPECIAL USE ARTICLE 3 - RECREATION DEVELOPMENT SPECIAL USE ARTICLE 4 - COMMERCE STORE SPECIAL USE ARTICLE 5 - RESIDENTIAL, SMALL, AND NEIGHBORHOOD COMMERCIAL CENTER SPECIAL USES ARTICLE 6 - ADDITIONAL REQUIREMENTS FOR CERTAIN DISTRICTS <p>SUBCHAPTER E - DESIGN STANDARDS AND MIXED USE</p> <ul style="list-style-type: none"> ARTICLE 1 - GENERAL PROVISIONS ARTICLE 2 - SITE DEVELOPMENT STANDARDS ARTICLE 3 - BUILDING DESIGN STANDARDS ARTICLE 4 - MIXED USE ARTICLE 5 - DEFERRING <p>SUBCHAPTER F - RESIDENTIAL DESIGN AND COMPATIBILITY STANDARDS</p> <ul style="list-style-type: none"> ARTICLE 1 - GENERAL PROVISIONS ARTICLE 2 - DEVELOPMENT STANDARDS ARTICLE 3 - DEFINITIONS AND MEASUREMENTS APPENDIX A - DEVELOPERS OF THE CAPITOL VIEW CORRIDOR APPENDIX B - BOUNDARIES OF THE WESTPOINT OVERLAY DISTRICT APPENDIX C - UNIVERSITY NEIGHBORHOOD OVERLAY DISTRICT BOUNDARIES, SUBDISTRICT BOUNDARIES APPENDIX D - WEST POINT NEIGHBORHOOD OVERLAY DISTRICT BOUNDARIES APPENDIX E - NORTH BURNETT/STANLEY OVERLAY DISTRICT BOUNDARIES <p>CHAPTER 25-3 - TRADITIONAL NEIGHBORHOOD DISTRICT</p> <ul style="list-style-type: none"> ARTICLE 1 - GENERAL PROVISIONS ARTICLE 2 - ZONING ARTICLE 3 - SUBDIVISION ARTICLE 4 - GENERAL DEVELOPMENT STANDARDS ARTICLE 5 - NEIGHBORHOOD CENTER AREA DEVELOPMENT STANDARDS ARTICLE 6 - MIXED RESIDENTIAL AREA DEVELOPMENT STANDARDS ARTICLE 7 - NEIGHBORHOOD EDGE AREA DEVELOPMENT STANDARDS ARTICLE 8 - NEIGHBORHOOD AREA DEVELOPMENT OVER AREA DEVELOPMENT STANDARDS ARTICLE 9 - BUILDING AND CONSTRUCTION PERMITS 	<p>CHAPTER 25-4 - SUBDIVISION</p> <ul style="list-style-type: none"> ARTICLE 1 - SUBDIVISION CERTIFICATE ARTICLE 2 - SUBDIVISION PROCEDURE ARTICLE 3 - PLATTING REQUIREMENTS <p>CHAPTER 25-5 - SITE PLANS</p> <ul style="list-style-type: none"> ARTICLE 1 - SITE PLAN GENERAL ARTICLE 2 - SUBDIVISION SITE PLANS ARTICLE 3 - LAND USE OR PLANNING APPROVED SITE PLANS <p>CHAPTER 25-6 - TRANSPORTATION</p> <ul style="list-style-type: none"> ARTICLE 1 - GENERAL PROVISIONS ARTICLE 2 - TRAFFIC IMPACT APPROVALS AND RIGHT-OF-WAY DESIGNATION ARTICLE 3 - TRAFFIC IMPACT ANALYSIS AND MITIGATION ARTICLE 4 - STREET DESIGN ARTICLE 5 - DRIVEWAY, SIDEWALK, AND RIGHT-OF-WAY CONSTRUCTION ARTICLE 6 - CONFLICTS WITH EXISTING AND NEW TRAFFIC REQUIREMENTS ARTICLE 7 - OFF-ROAD PARKING AND LOADING ARTICLE 8 - ROAD UTILITY DISTRICTS APPENDIX A - TABLES OF OFF-STREET PARKING AND LOADING REQUIREMENTS <p>CHAPTER 25-7 - DRAINAGE</p> <ul style="list-style-type: none"> ARTICLE 1 - GENERAL PROVISIONS ARTICLE 2 - DRAINAGE STUDIES, FLOODPLAIN ANALYSIS, FLOODPLAIN DELINEATION ARTICLE 3 - REQUIREMENTS FOR APPROVAL ARTICLE 4 - SPECIAL REQUIREMENTS IN ZONED JURISDICTION ARTICLE 5 - RESPONSIBILITIES OF OWNER OR DEVELOPER <p>CHAPTER 25-8 - ENVIRONMENT</p> <p>SUBCHAPTER A - WATER QUALITY</p> <ul style="list-style-type: none"> ARTICLE 1 - GENERAL PROVISIONS; ZONES ESTABLISHED ARTICLE 2 - ENVIRONMENTAL RESOURCE INVENTORY; POLLUTANT ATTENUATION PLAN ARTICLE 3 - ENVIRONMENTAL IMPACT STATEMENT; CERTIFICATION ARTICLE 4 - EROSION AND SEDIMENTATION CONTROL; OVERLAND FLOW ARTICLE 5 - WATER QUALITY CONTROL ARTICLE 6 - WETLANDS PROTECTION REQUIREMENTS ARTICLE 7 - WATER SUPPLY SUBSIDY; WATERFED REQUIREMENTS ARTICLE 8 - WATER SUPPLY PLAN; WATERFED REQUIREMENTS ARTICLE 9 - BANK OF STREAMS PROTECTION ARTICLE 10 - FISH AND WILDLIFE AREA PROTECTION ARTICLE 11 - ENDANGERED SPECIES <p>CHAPTER 25-9 - WATER AND WASTEWATER</p> <ul style="list-style-type: none"> ARTICLE 1 - WATER DISTRICTS ARTICLE 2 - DRAINAGE AND WASTEWATER CAPITAL RECOVERY FEES ARTICLE 3 - RECLAIMED WATER <p>CHAPTER 25-10 - SIGN REGULATIONS</p> <ul style="list-style-type: none"> ARTICLE 1 - GENERAL PROVISIONS ARTICLE 2 - SIGNIFICATION ARTICLE 3 - SIGNIFICATION ARTICLE 4 - REDUCTION OF CERTAIN SIGN COMPENSATION ARTICLE 5 - SIGN SURFACES ARTICLE 6 - SIGN SURFACES ARTICLE 7 - REGULATIONS APPLICABLE TO CERTAIN SIGN DISTRICTS ARTICLE 8 - SPECIAL SIGNS ARTICLE 9 - STREET SIGNAGE ARTICLE 10 - STRUCTURAL REQUIREMENTS ARTICLE 11 - SIGNAGE <p>CHAPTER 25-11 - BUILDING, DEMOLITION, AND RELOCATION PERMITS; SPECIAL REQUIREMENTS FOR HISTORIC STRUCTURES</p> <ul style="list-style-type: none"> ARTICLE 1 - GENERAL PROVISIONS ARTICLE 2 - BUILDING AND RELOCATION PERMITS ARTICLE 3 - RELOCATION PERMITS ARTICLE 4 - SPECIAL REQUIREMENTS FOR HISTORIC STRUCTURES
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After having been patched so often, the current Austin code has become a complicated and confusing collection of chapters, subchapters, articles, divisions, parts, subparts and appendices.

Or as one council member said, it is a “Frankenstein Monster.”

CodeNEXT

Chapter 23-1: Introduction

Article 23-1A: General Provisions
Article 23-1B: Responsibility for Administration

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 23-3: 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 23-4: 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 23-5: Subdivision

Article 23-5A: Introduction
Article 23-5B: Subdivision Procedures
Article 23-5C: Platting Requirements

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 23-7: 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 23-8: Signage (work-in-progress)

Article 23-9A: Purpose and Applicability
Article 23-9B: Sign Permits and Procedures
Article 23-9C: Regulations Applicable to All Zones
Article 23-9D: Regulations Applicable to Certain Sign Zones
Article 23-9E: Other Sign Types

Chapter 23-9: Transportation

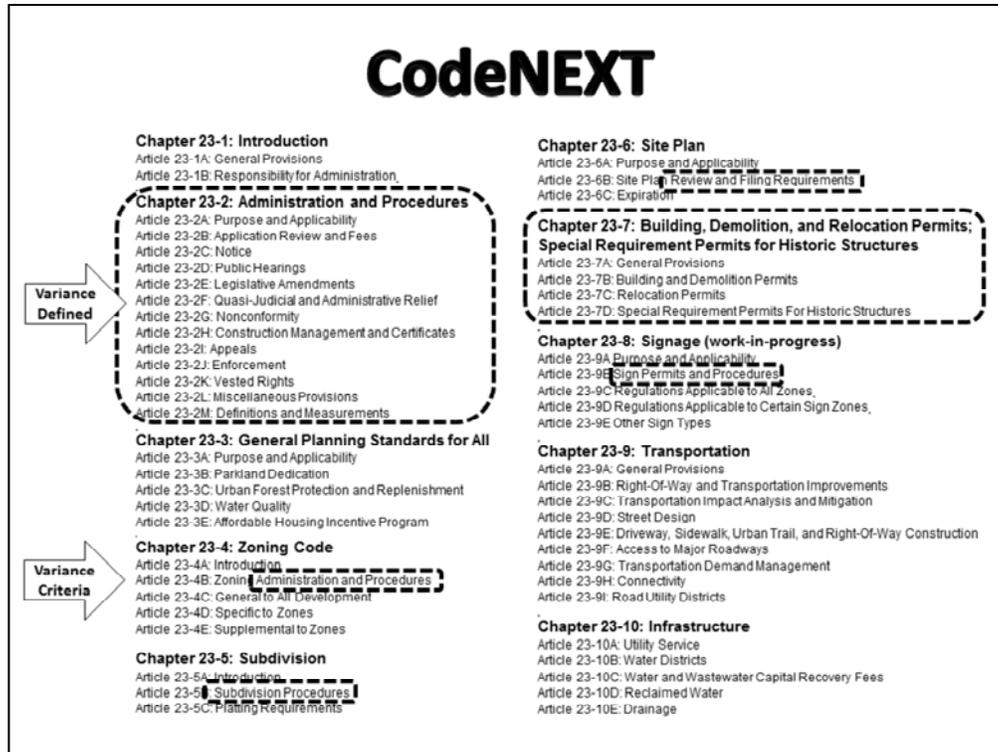
Article 23-9A: General Provisions
Article 23-9B: Right-Of-Way and Transportation Improvements
Article 23-9C: Transportation Impact Analysis and Mitigation
Article 23-9D: Street Design
Article 23-9E: Driveway, Sidewalk, Urban Trail, and Right-Of-Way Construction
Article 23-9F: Access to Major Roadways
Article 23-9G: Transportation Demand Management
Article 23-9H: Connectivity
Article 23-9I: Road Utility Districts

Chapter 23-10: Infrastructure

Article 23-10A: Utility Service
Article 23-10B: Water Districts
Article 23-10C: Water and Wastewater Capital Recovery Fees
Article 23-10D: Reclaimed Water
Article 23-10E: Drainage

The bottom line is that CodeNEXT is still not as well organized, written, formatted or illustrated as it should be.

CodeNEXT needs a much “deeper cleansing” in order to meet council expectations as expressed in Approach 2.5.



Here are four ways that administrative provisions can be restructured to be more user-friendly and transparent:

- First, the chapters on “procedures” and “permitting” are both administrative in nature and should be combined.
- Second, all “procedures” should be located in the same chapter rather than scattered throughout CodeNEXT.
- Third, provisions relating to hearings, notices, appeals and enforcement should follow the regulatory provisions.
- And last, all definitions should be collected and grouped in their own chapter, like a dictionary or glossary.

Variances and Exceptions

Variance Defined

22F-1: Variances and Special Exceptions

Contents

- 23-2F-1011 Purpose and Overview..... 1
- 23-2F-1020 Limitations and Legal Effect..... 2
- 23-2F-1030 Application Requirements..... 2
- 23-2F-1040 Public Hearing and Notification..... 2
- 23-2F-1050 Decision on Variance or Special Exception..... 3
- 23-2F-1060 Conditions and Modifications..... 3
- 23-2F-1070 Expiration..... 3

Variance Criteria

4B-4: Criteria for Variances and Special Exceptions

Contents

- 23-4B-4010 Purpose and Applicability..... 1
- 23-4B-4020 Variances..... 1
- 23-4B-4030 Special Exception-Type 1..... 2
- 23-4B-4040 Special Exception-Type 2..... 2
- 23-4B-4050 Special Exception-Type 3..... 3

23-4B-4010 Purpose and Applicability

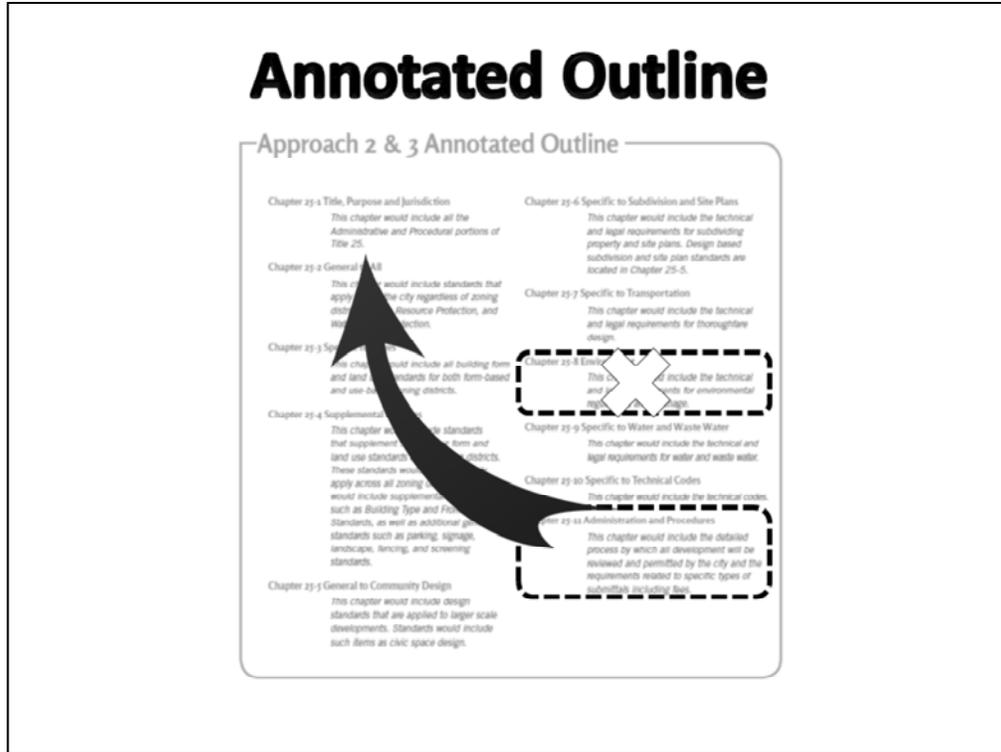
(A) This Division establishes review criteria for zoning Variances and Special Exceptions considered by the Board of Adjustment, consistent with the requirements of this Title and Chapter 211 of the Texas Local Government Code.

(B) An application for a Variance or Special Exception authorized under this Division is subject to the application, notification, and other requirements established under Division 23-2F.1 (Variances and Special Exceptions).

23-4B-4020 Variances

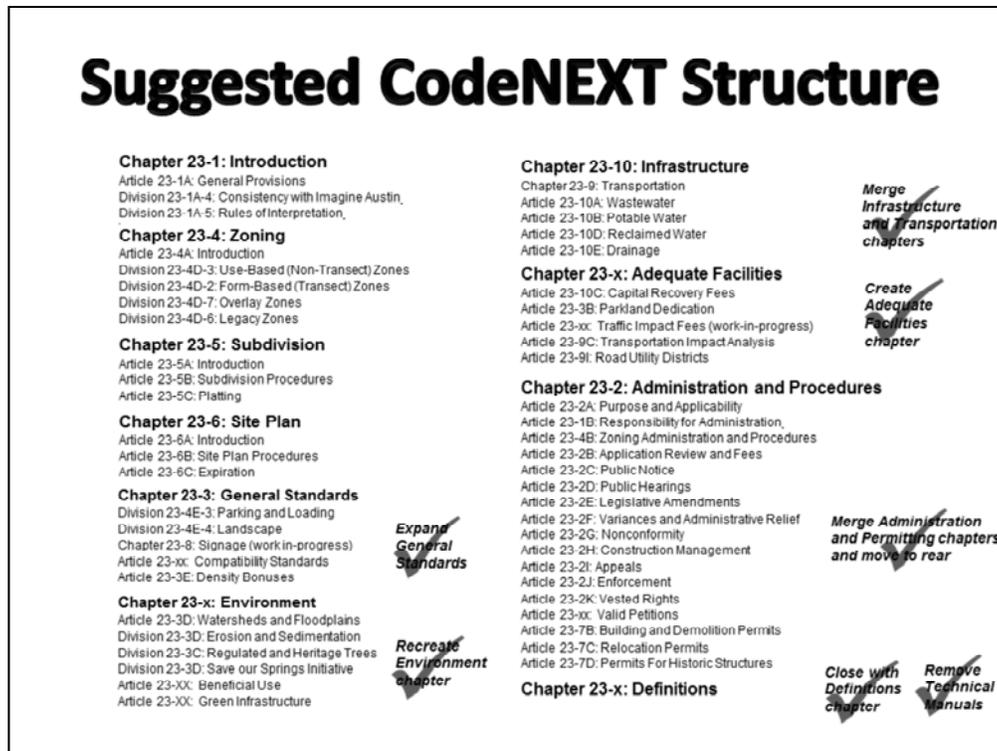
(A) **Purposes and Applicability**

CodeNEXT requires too much “page-flipping and relies on too many “footnotes”. For example, while variances are established in Article 2F-1, variance criteria are found in 4B-4.



The CodeNEXT chapter structure also does not follow the Opticos-recommended “Annotated Outline.” Why?

For example, the “Environmental” chapter has been deleted and the “Administration and Procedures” chapter has been moved from the rear to the front of the code.



Code users would be better served if these overall 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.

Need More Code Cleansing!

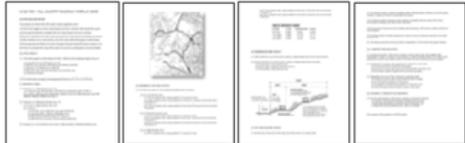
CodeNOW *7 pages, no graphics or tables, 2582 words*



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



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

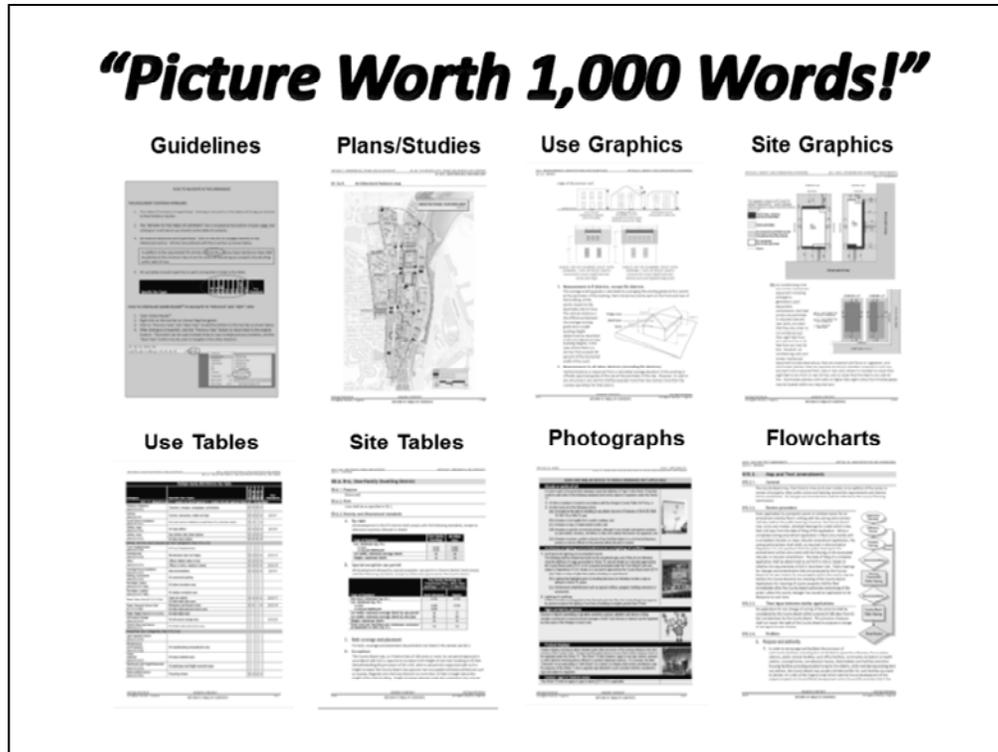


How? By removing outdated, redundant and unnecessary provisions, adding graphics and doing more wordsmithing.

Since first adopted, the effect of many Austin regulations has been seriously diluted because of amendments that permit easy-outs through the use of bonuses, waivers and exceptions.

Examples are the Hill Country and Planned Unit Development regulations. Both can be improved with wordsmithing and the stripping of provisions that are being misused and abused.

For example, the seven-page Hill Country Roadway Ordinance was incorporated into CodeNEXT with little change. By doing more wordsmithing, adding graphics and removing duplicative and unnecessary provisions, it can be reduced to four pages.

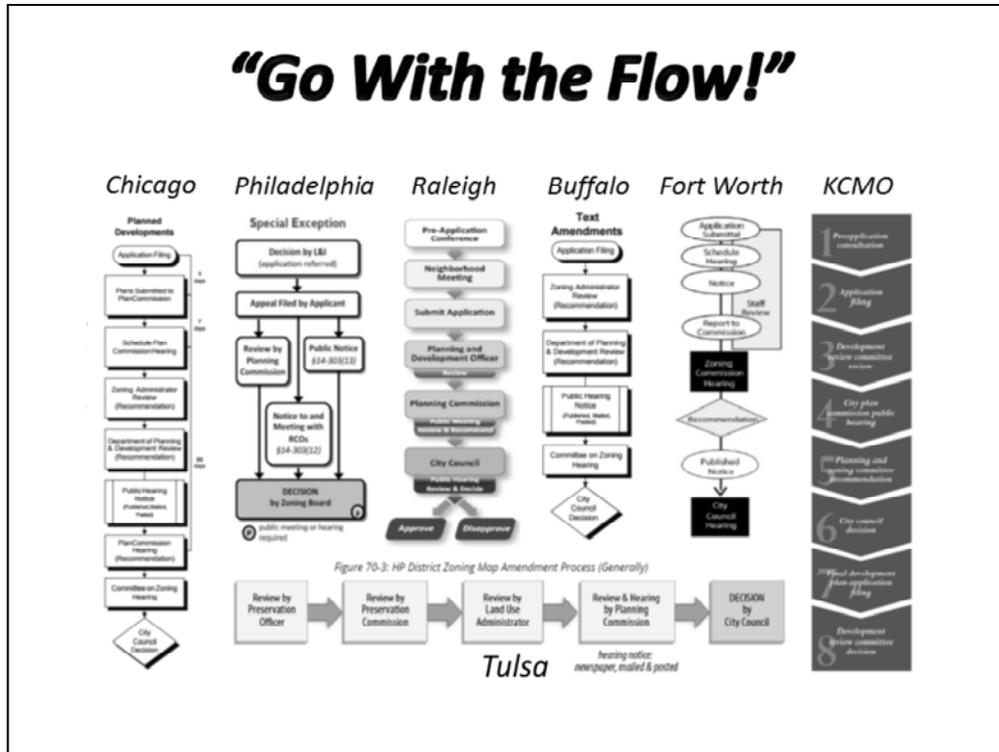


Except for a few sections relating to civic space, form districts and landscaping, CodeNEXT is essentially a visual desert.

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.

And even definitions, which are almost always well-illustrated in other codes, are picture-poor in CodeNEXT.

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



Flowcharts, one of the most effective tools to explain complex procedural provisions, are surprisingly missing in CodeNEXT.

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

Administrative Summary City of New Orleans, Louisiana

TABLE 4-2: ADMINISTRATIVE SUMMARY TABLE

	ZONING TEXT AND MAP AMENDMENT	CONDITIONAL USE	PLANNED DEVELOPMENT	SITE PLAN & DESIGN REVIEW	VARIANCE	MINOR MAP ADJUSTMENT - FUTURE LAND USE MAP	MINOR MAP ADJUSTMENT - ZONING MAP
APPLICATION INITIATION	Property owner, person authorized in writing by property owner, or City Council	Property owner, person authorized in writing by property owner, or the Council	Property owner, person authorized in writing by property owner, or City Council	Initiated when any development or use change meets the thresholds of Section 4.5	Property owner or person authorized in writing by property owner	Property owner, person authorized in writing by property owner, City Planning Commission or City Council	Property owner, person authorized in writing by property owner, City Planning Commission or City Council
APPLICATION FILING & COMPLETENESS 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 3.3	See Section 3.3	None	See Section 3.3	None	See Section 3.3
PUBLIC HEARING 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 application ¹	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.

Defining and Testing Compatibility

*James B. Duncan, FAICP, CNU
Chair, CodeNEXT Citizens Advisory Group
Vice-Chair, Austin Zoning and Platting Commission*

Maintaining compatible land use is one of the most difficult and important roles of a good planning and zoning program.

And one of the most difficult areas to maintain compatibility is within the arterial corridors that separate neighborhoods.

Now “Imagine Austin” has placed even more importance on compatibility by promoting even greater corridor intensities.

“The purpose of residential compatibility is to prevent new development from diminishing the established rights of nearby homes to their entitled privacy, equity and sunlight.”

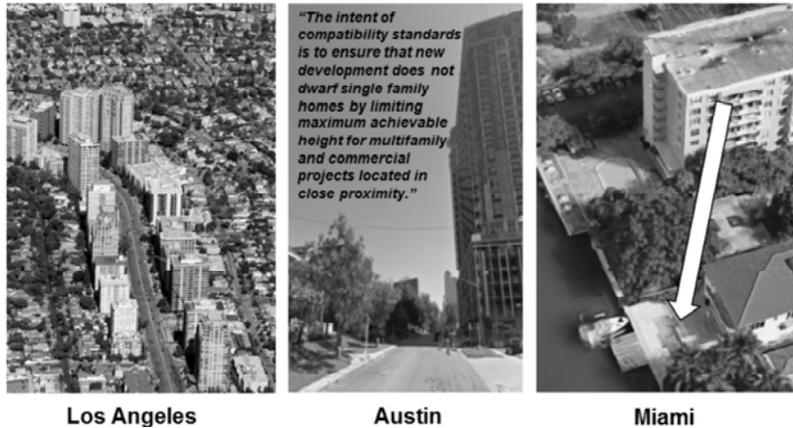
“Council members voiced concern about whether the new code would allow tall buildings to tower over single-family homes.”

Austin Monitor, June 8, 2017

Compatibility standards are a performance zoning tool used to prevent new development from diminishing the established rights of nearby homes to their privacy, equity and sunlight.

In Austin, compatibility rules are especially important to protect residents from frequent crony-influenced zoning practices.

Compatibility is a Coast to Coast Concern!



Los Angeles

Austin

Miami

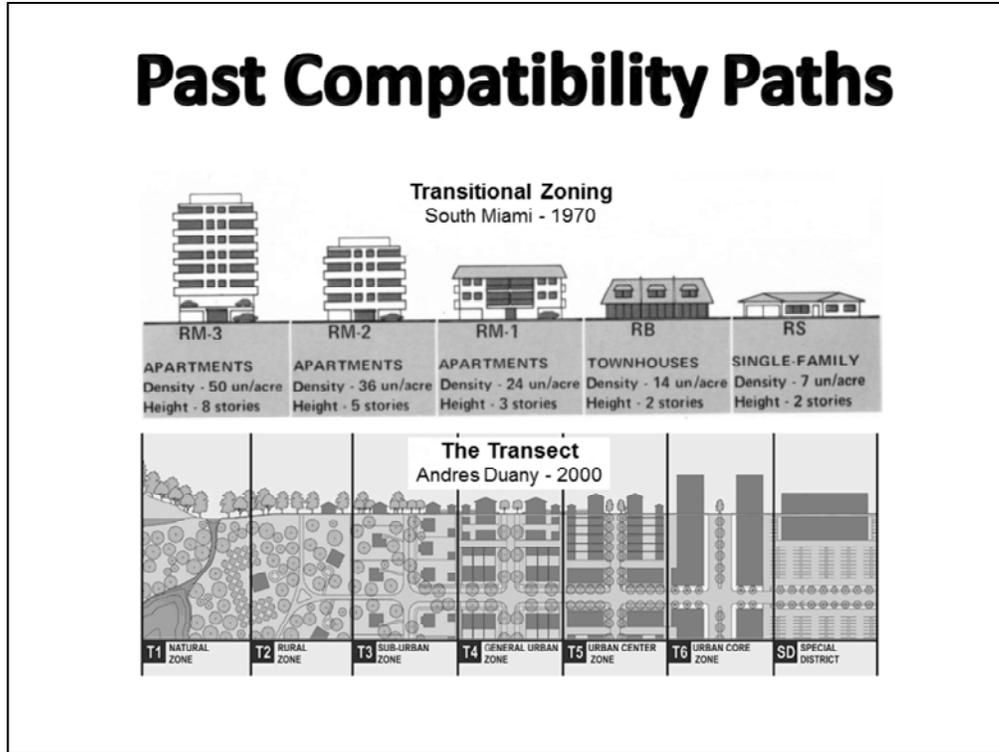
There are basically two ways land use incompatibilities occur.

One is by **type** of use, such as sounds from an adjacent music venue or smells from a nearby meat packing plant.

The other is by **form** of use, such as a high-rise blocking sunlight to a single family home.

Here are three “real world” examples of incompatible **forms**:

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)



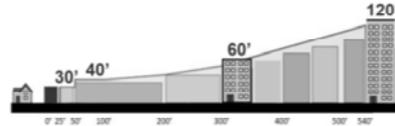
One of the first land use planning compatibility paths was this transitional residential zoning diagram designed in 1970 for a south Florida city. Note mansard roofs and wrap balconies.

The New Urbanist transect, designed by Andres Duany in 2000, is a universally recognizable land use compatibility path.

Compatibility in Austin

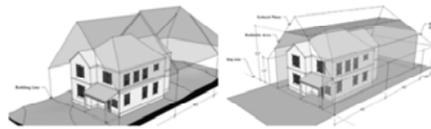
Commercial (Article 10)

- Limits heights within 540'(10° plane)
- Limits lighting (cut-off) and noise (70db)
- Requires screening (storage & waste)
- Prohibits reflective/intensive activities
- Requires massing and clustering



McMansion (Subchapter F)

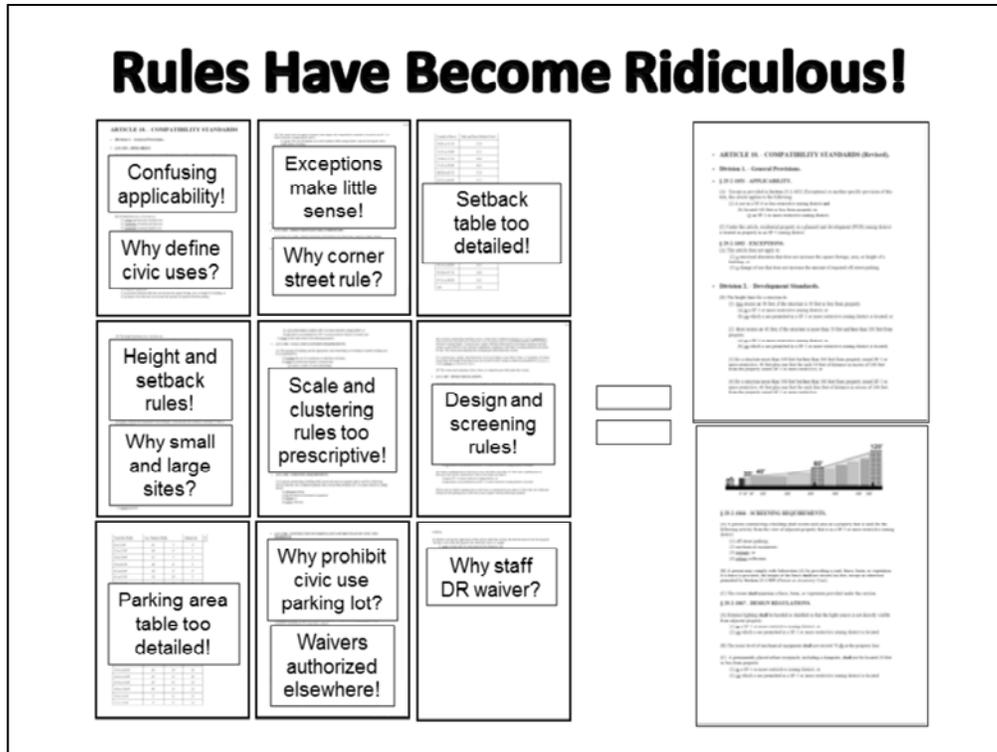
- Limits house size (2300sf/.4 FAR)
- Limits house height (32')
- Limits buildable area (45° plane)
- Decreases alley setbacks for ADUs
- Requires sidewall articulation



In Austin, compatibility is essentially regulated in two ways:

Article 10, commercial standards, was adopted in 1986 to ensure that new development did not dwarf nearby homes..

Subchapter F, McMansion standards, was adopted in 2006 to minimize the negative impact of over-sized residential infill.



Frustration with Article 10 has been caused as much by overly prescriptive design rules as by limited building heights.

While height, setback and buffer provisions are fundamental to compatibility, the presence of other provisions is questionable.

For example;

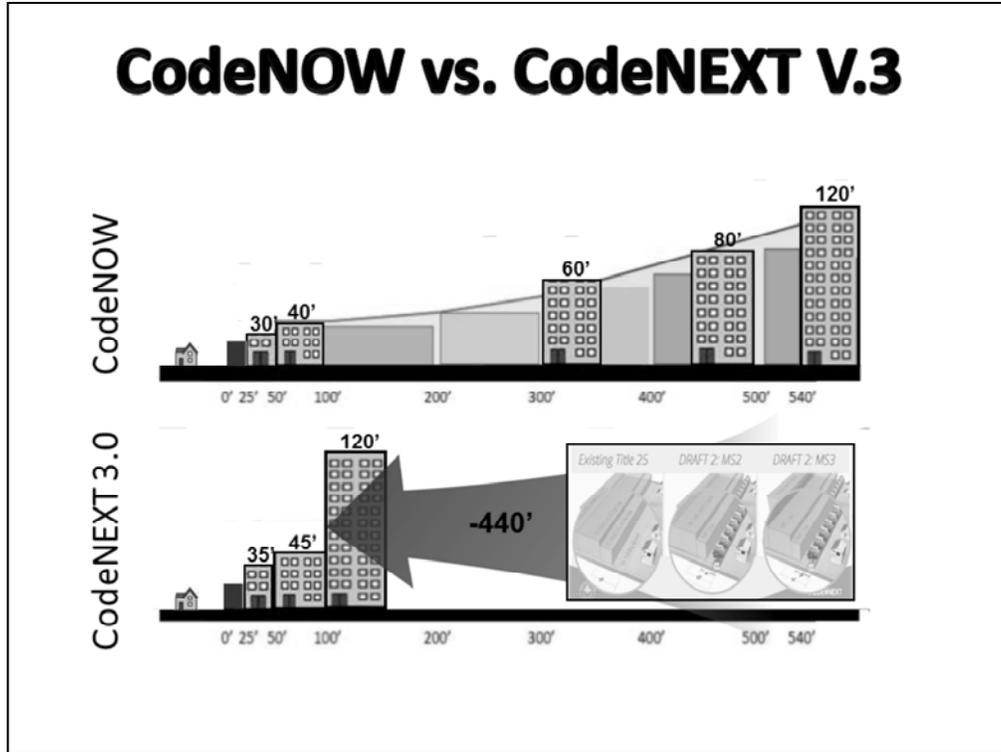
- why are civic uses and parking areas regulated?
- why are sites divided into two sizes?
- why are scale and clustering rules so prescriptive?
- why are parking and setback tables so complex, and
- why are redundant waiver procedures included?



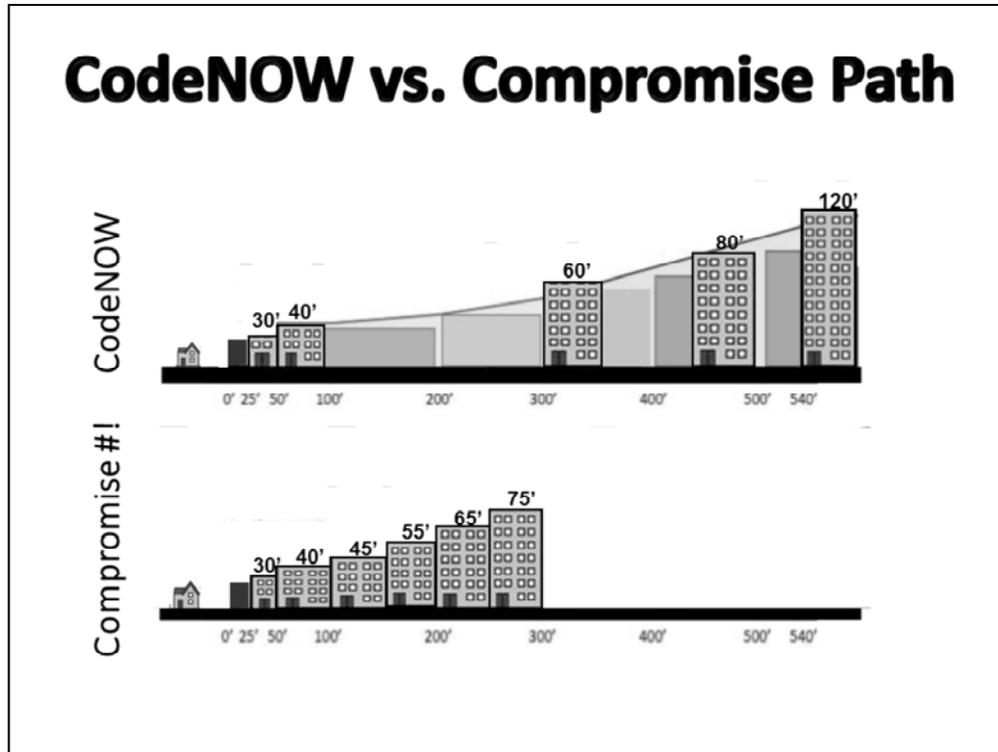
The American-Statesman recently informed its readers that the third draft of CodeNEXT was “neighborhood-friendly.”

Unfortunately, that was not a fair or accurate representation of the facts.

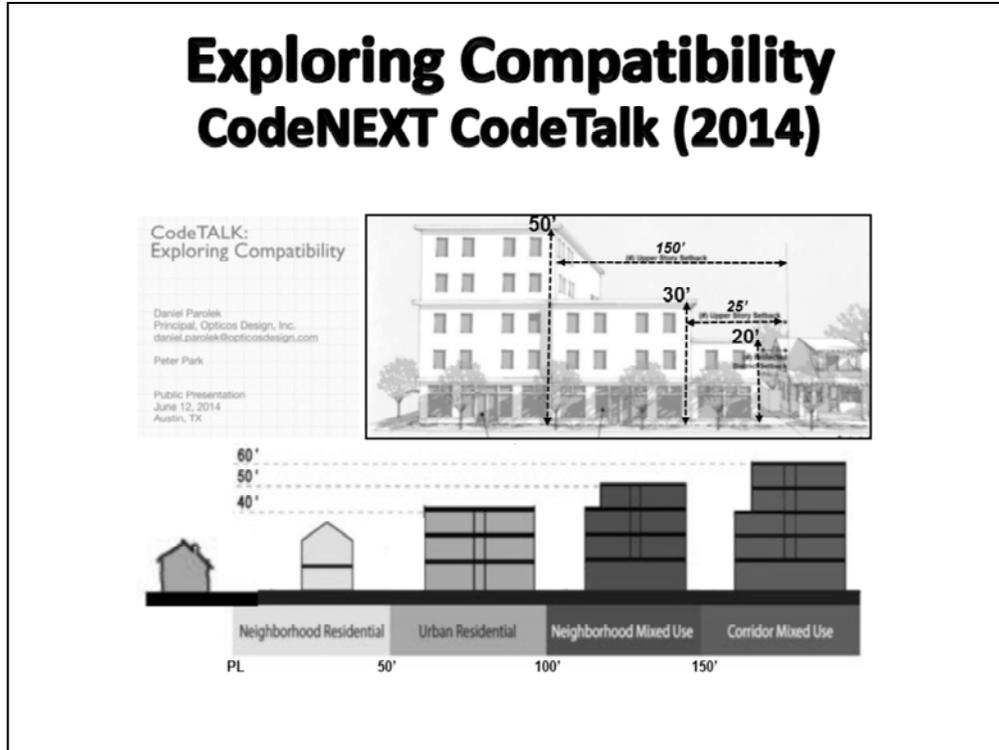
CodeNEXT eliminates compatibility protection and sanctions perimeter encroachments! It is not yet neighborhood-friendly!



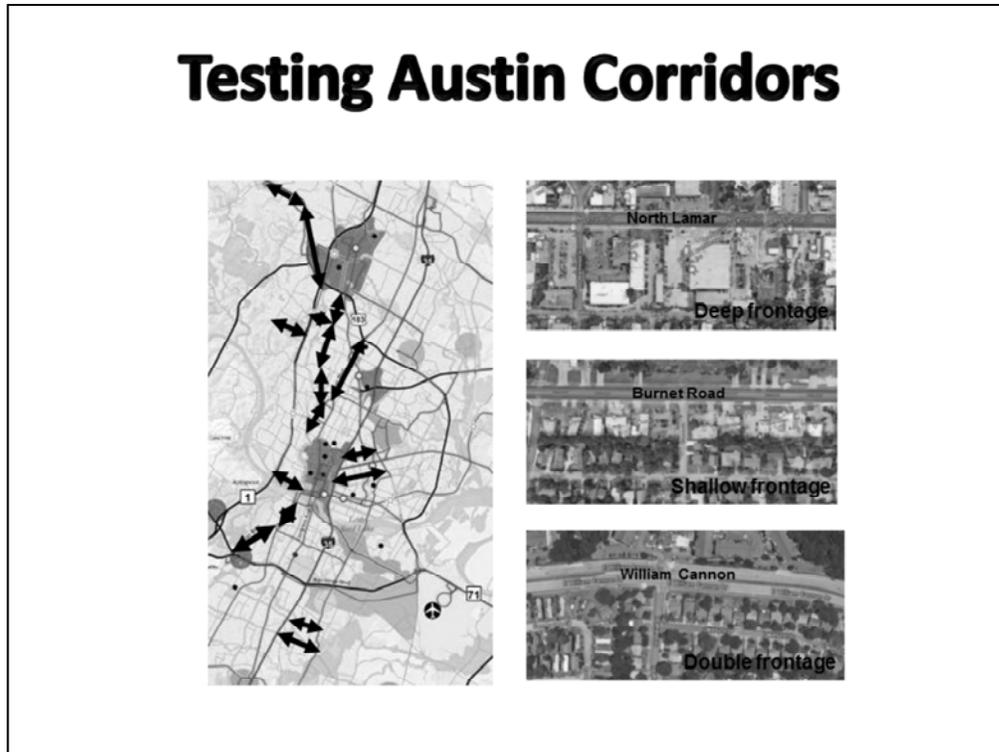
To compensate for their elimination of compatibility standards, staff has naively suggested that buffer trees be planted to hide and mitigate any negative effects of adjacent high-rises.



Realizing that current compatibility standards do need updating and that staff's recommendation to eliminate them totally goes too far, ZAP has recommended a compromise path that reduces protected distances from 540 to 300 feet and stair-steps height limits from 40 to 75 feet. This path is hereafter referred to as "Compromise #1" and used to compare with the current CodeNEXT proposal.



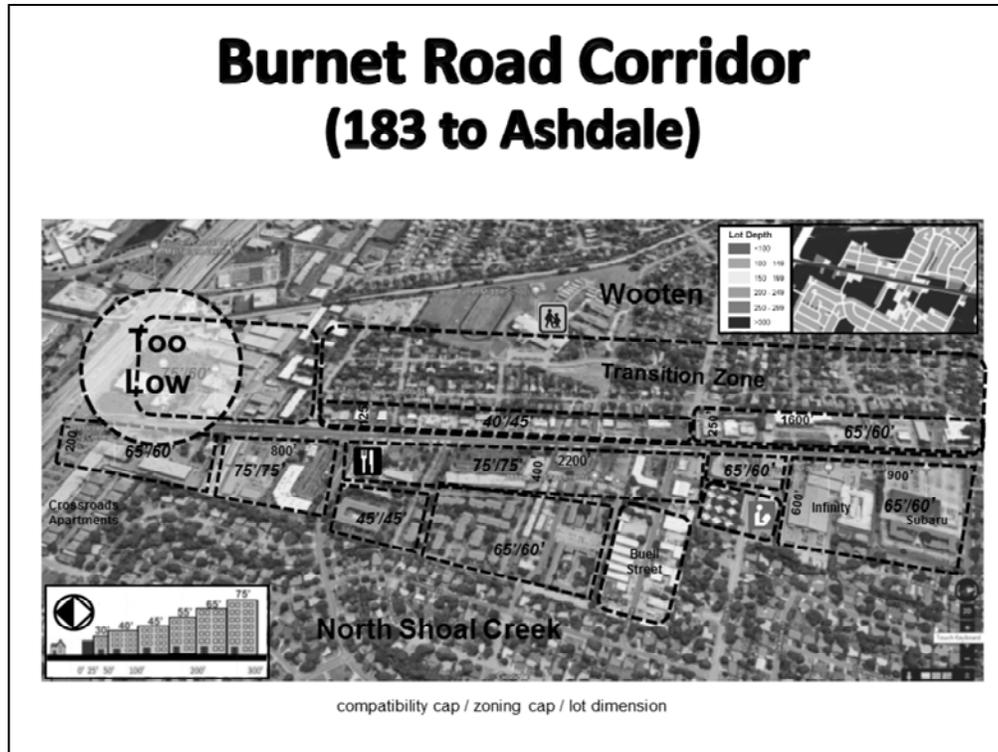
It should be noted the same consultants that are now suggesting elimination of compatibility standards described several “best practices” very similar to the two compromises four years ago in a presentation entitled “Exploring Compatibility.”



Many context-sensitive factors affect the redevelopment “ripeness” of corridor properties, including type, condition, age and value of use, and size, shape and location of land.

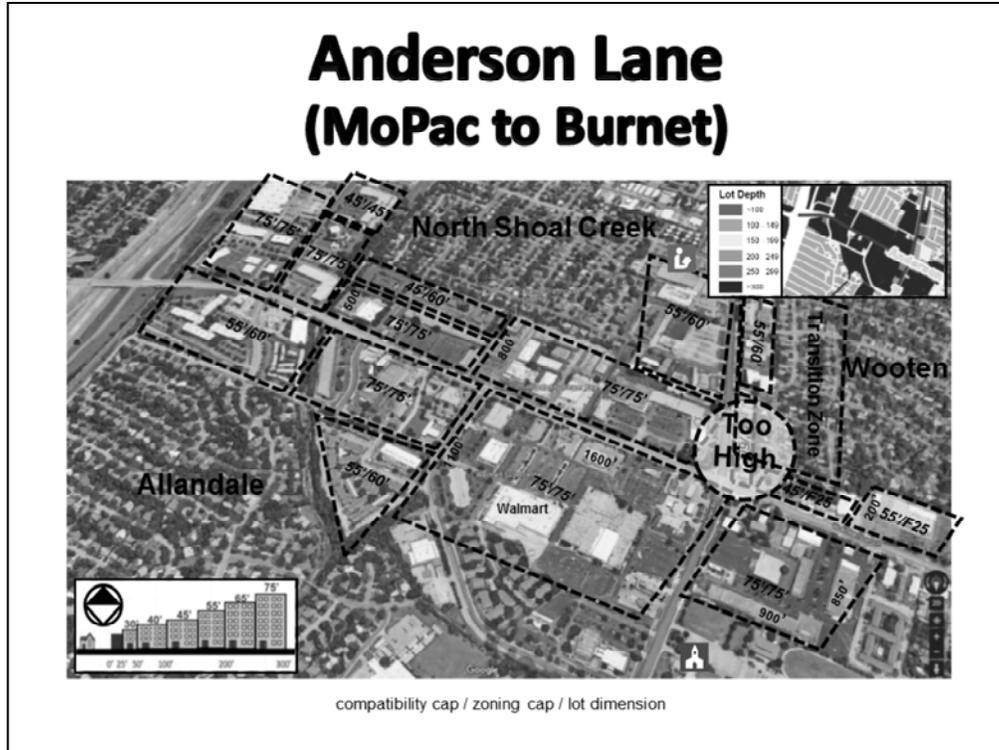
In order to identify redevelopment potentials, the following slides compromise #1 height caps (yellow) and CodeNEXT height caps (ochre) to frontage properties (yellow dash).

Also included are the city's lot depth maps and transition zones.



Along this upper Burnet corridor, proposed compatibility and zoning caps are generally in sync, except at the Burnet/183 intersection where compatibility would allow taller buildings.

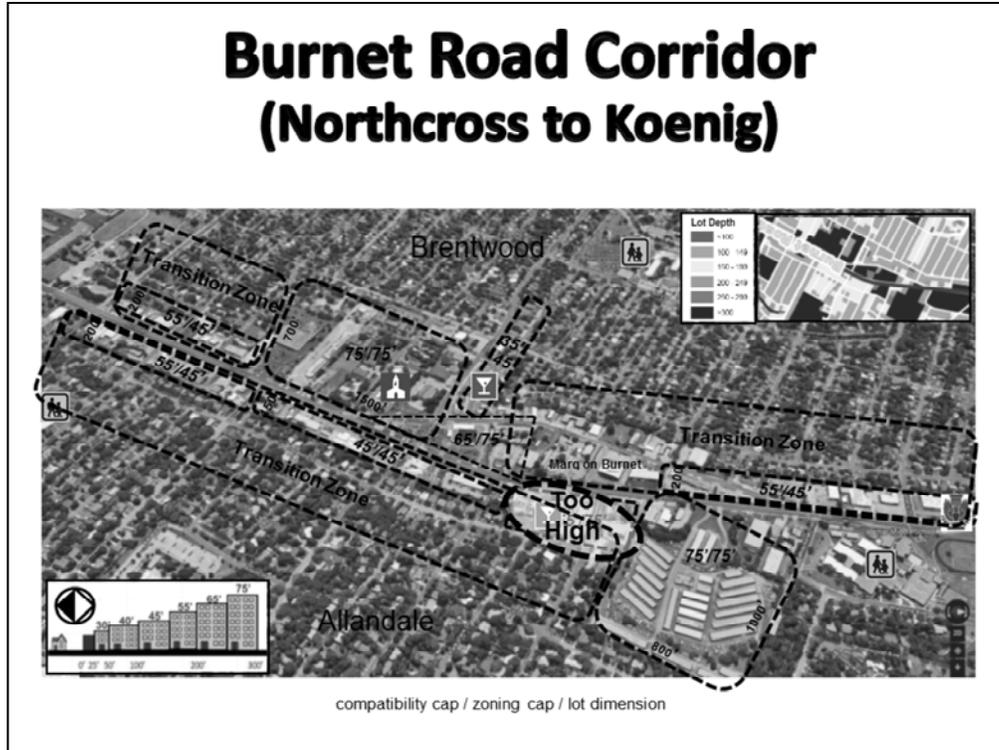
Also shown on the following maps are the least intrusive transition zones (700 feet deep or 1/8 of a mile) being promoted by local real estate and “urbanist” interests. Within these generally two-block deep zones, existing single family homes could be indiscriminately replaced by townhomes, triplexes and multiplexes without prior planning or rezoning.



Along Anderson Lane, the retail hub for north central Austin, there are few conflicts between ZAP and CodeNEXT caps.

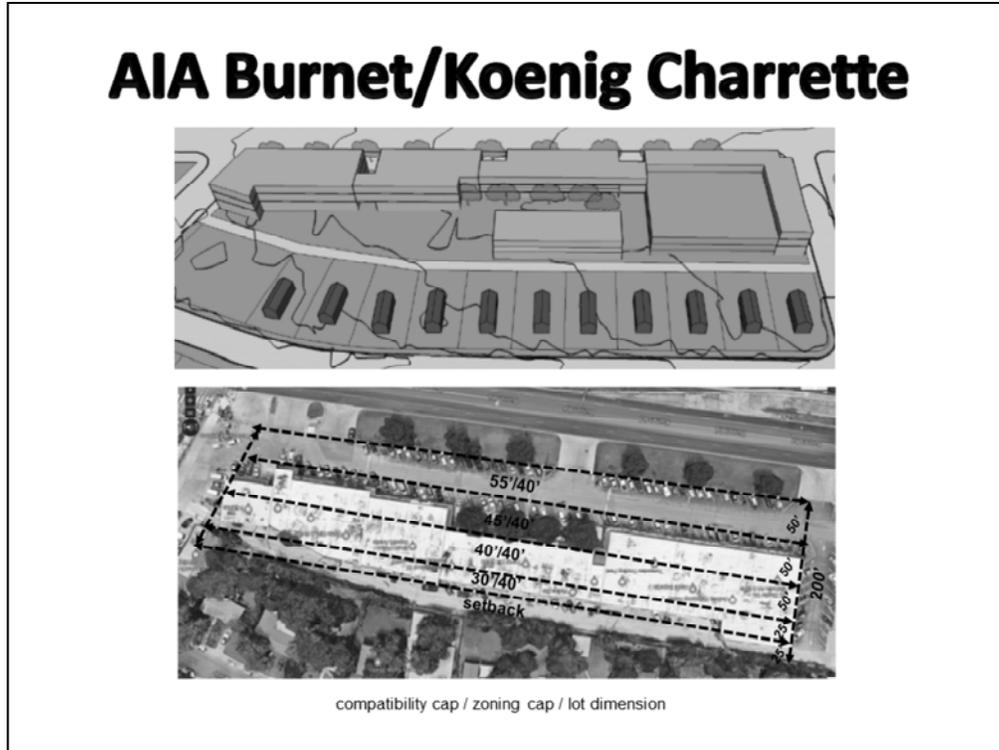
Most of the corridor is designated for 75 foot height limits with areas next to neighborhoods ratcheted down to 45 or 55 feet.

The only major conflict are the CodeNEXT proposed 60 foot heights adjacent single family homes along east of Burnet.



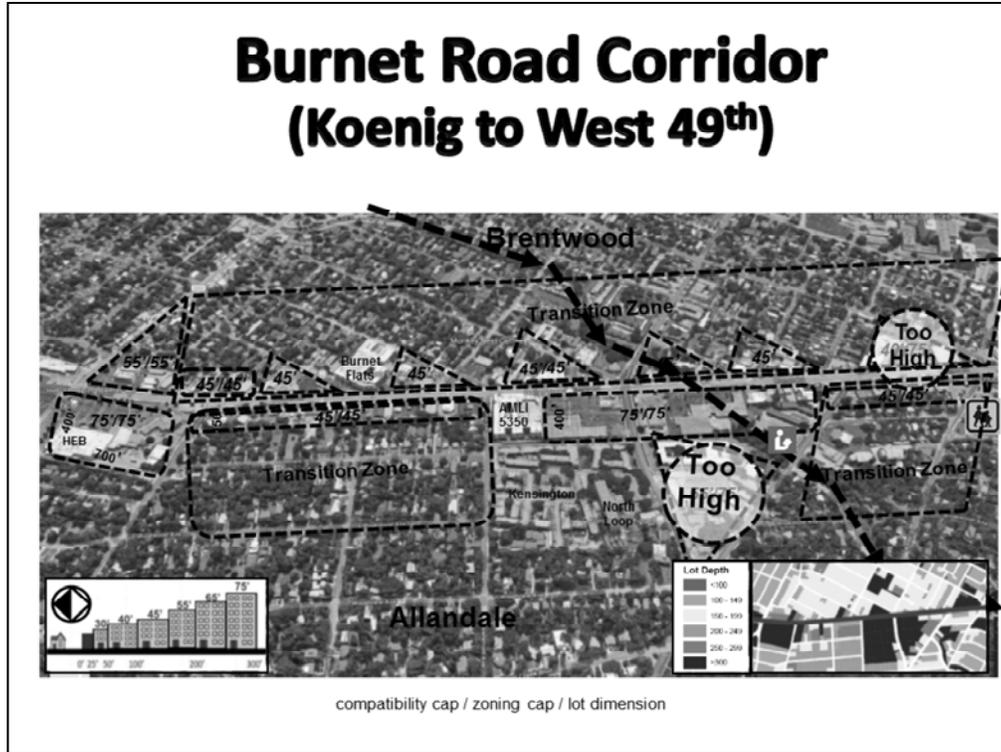
Moving down Burnet, CodeNEXT zoned heights are generally in sync with compatibility, except for parcels around the Yard Bar.

The large 20-acre tract that was once the Burnet drive in theater and is now mini-warehouses has major redevelopment potential.



The northeast corner of Burnet and Koenig was chosen by AIA for its CodeNEXT corridor charrette site and is a good example of where zoning is the limiting factor and not compatibility.

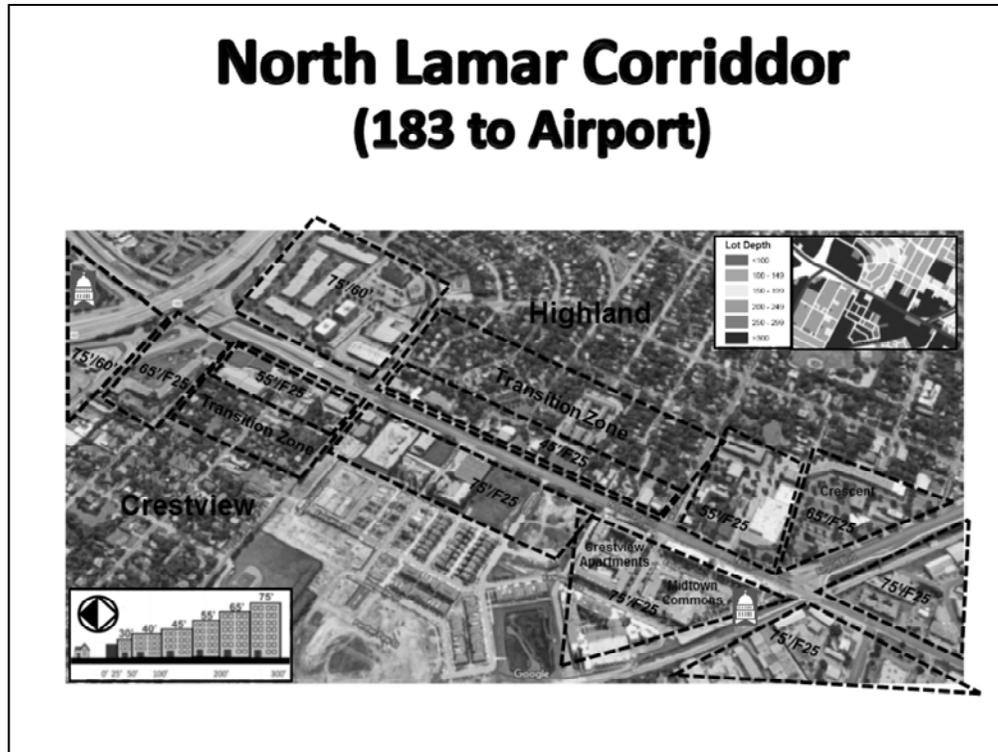
AIA pointed out that proposed CodeNEXT zoning precluded a fourth floor. ZAP compromise caps allow AIA desired heights.



While more residential redevelopment will occur along Burnet from Koenig to 49th, shallow and irregular lots limit intensities.

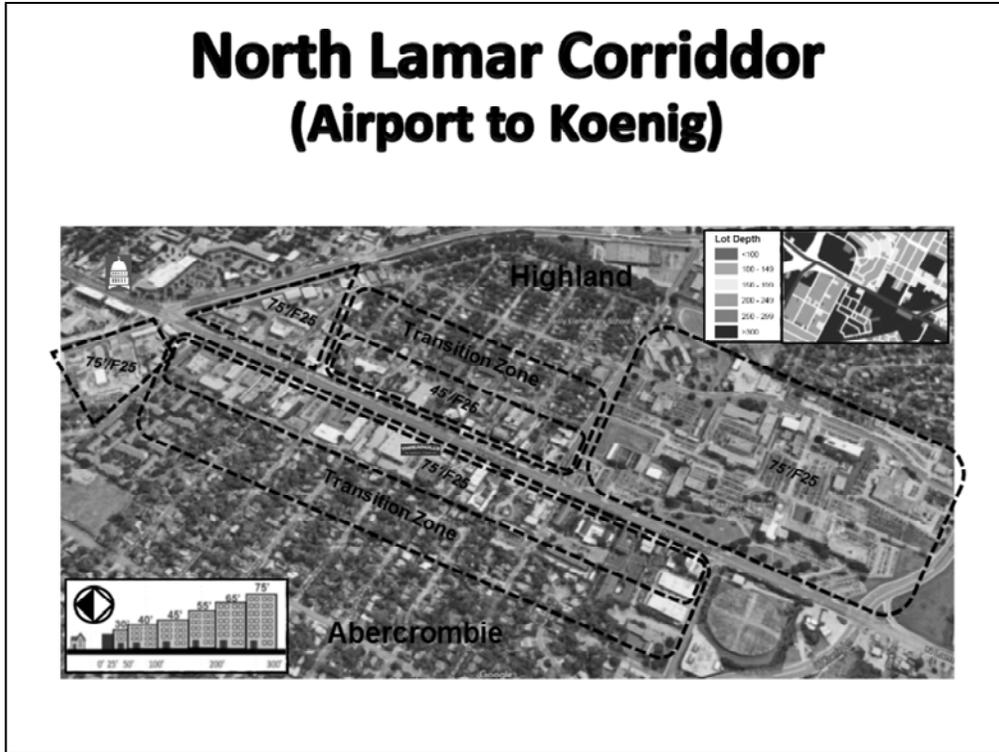
Only within the North Loop and Hancock triangle and at the intersection at 49th do CodeNEXT heights exceed compatibility.

“Missing middle” transition areas encroach up to two blocks into both the Allandale and Brentwood neighborhoods.



With the North Lamar Transit Center and Crestview Metrorail Stations anchoring the corridor, properties along North Lamar between 183 and Airport have extraordinary access to transit.

Significant redevelopment opportunities include the Big Star Bingo/Hobby Lobby center, an ugly sea of asphalt on 183, and the half-empty Crescent adjacent to Crestview Station. Both are strategically-located under-producing real estate properties.



Between Airport and Koenig along North Lamar, there are three areas with significant redevelopment opportunities.

They are the properties adjacent to Crestview Station, the deep properties along the west side of Lamar and the 50+ acre tract occupied by the State Department of Public Safety.

North Lamar Case Study



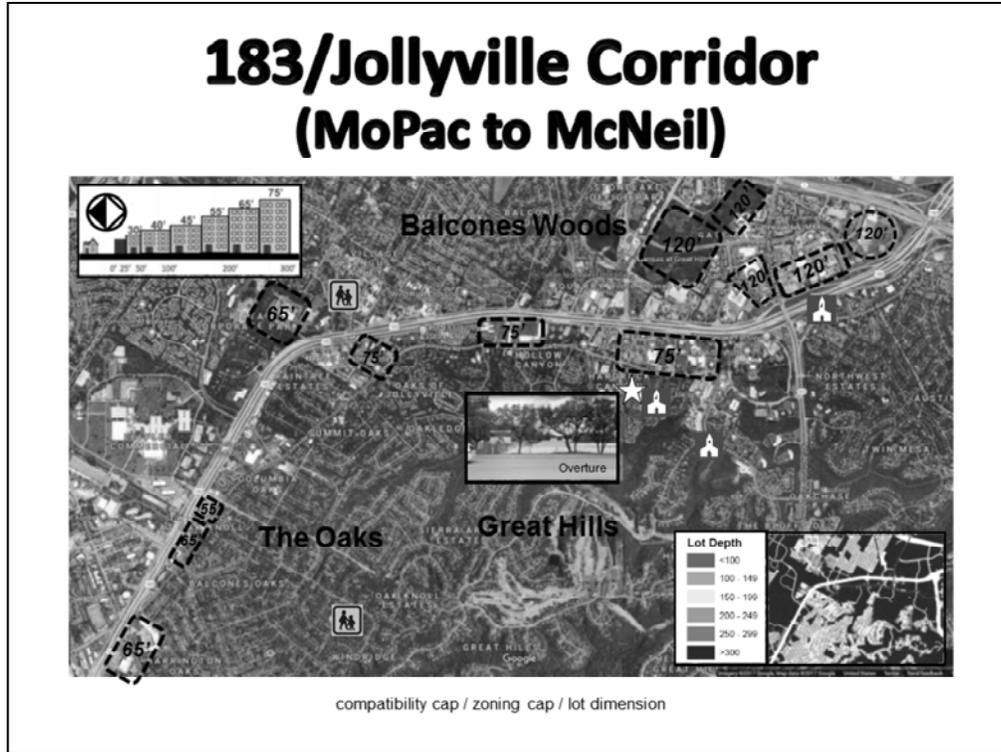
... the ZAP path would gradually increase heights from 45 to 75 feet as it moves away from abutting single family homes.



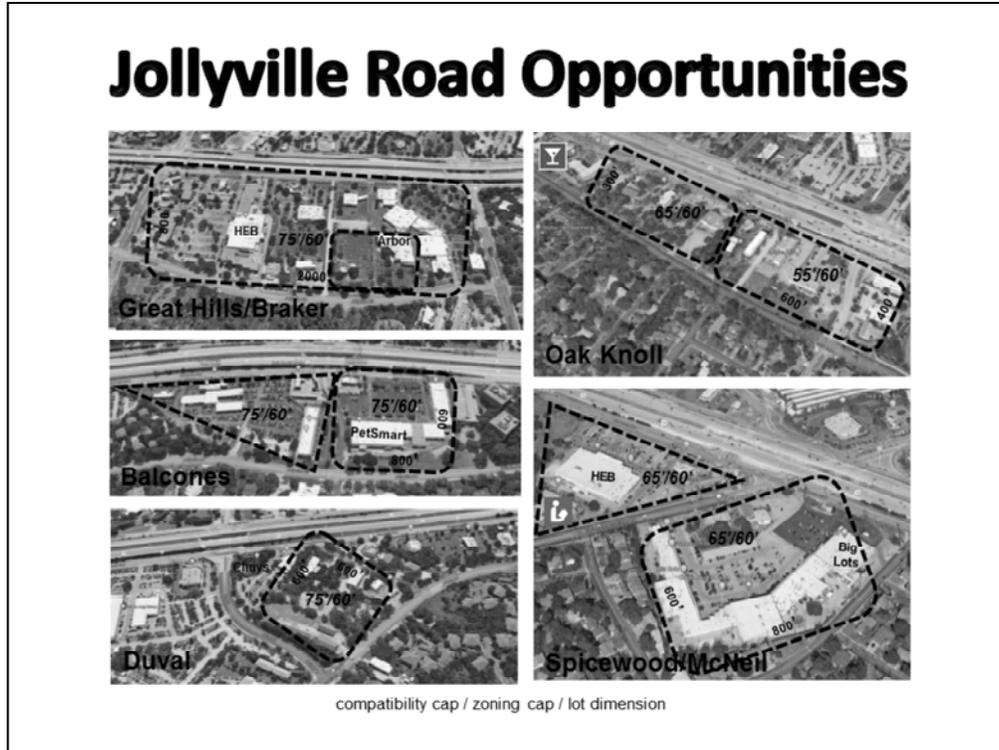
On North Lamar between 45th and 38th several redevelopment opportunities exist because of the possible future availability of State Hospital and Health and Human Services properties.

Shallow lots reduce opportunities on the west side of Lamar.

The only place the two caps conflict is at Medical Parkway and Marathon. CodeNEXT allows 75-foot height and ZAP 45 feet.



Because of platting and development patterns, redevelopment along Jollyville Road will probably be more nodal than lineal.



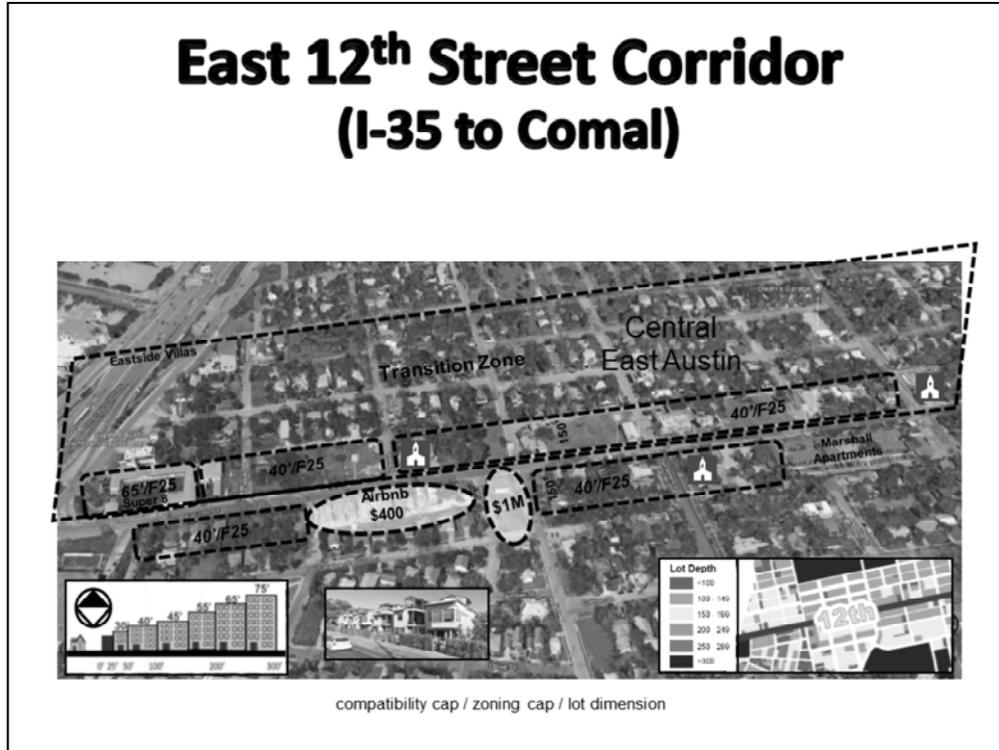
Because of age and type of current land use, redevelopment along Jollyville Road will probably be more nodal than lineal.

Golden Triangle Opportunities

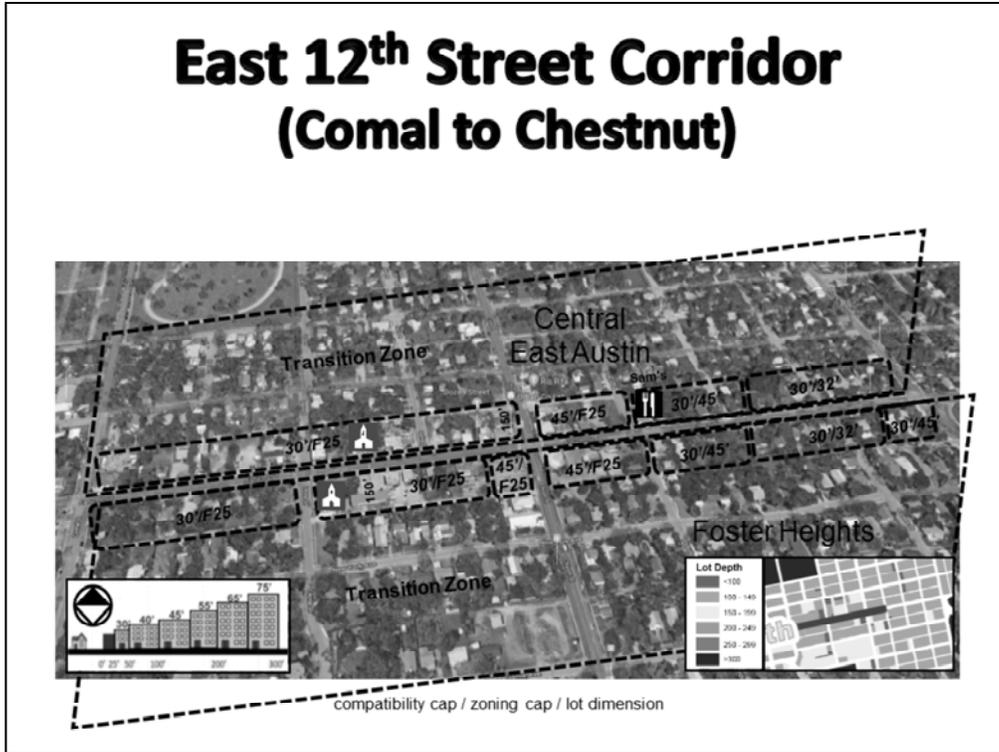


compatibility cap / zoning cap / lot dimension

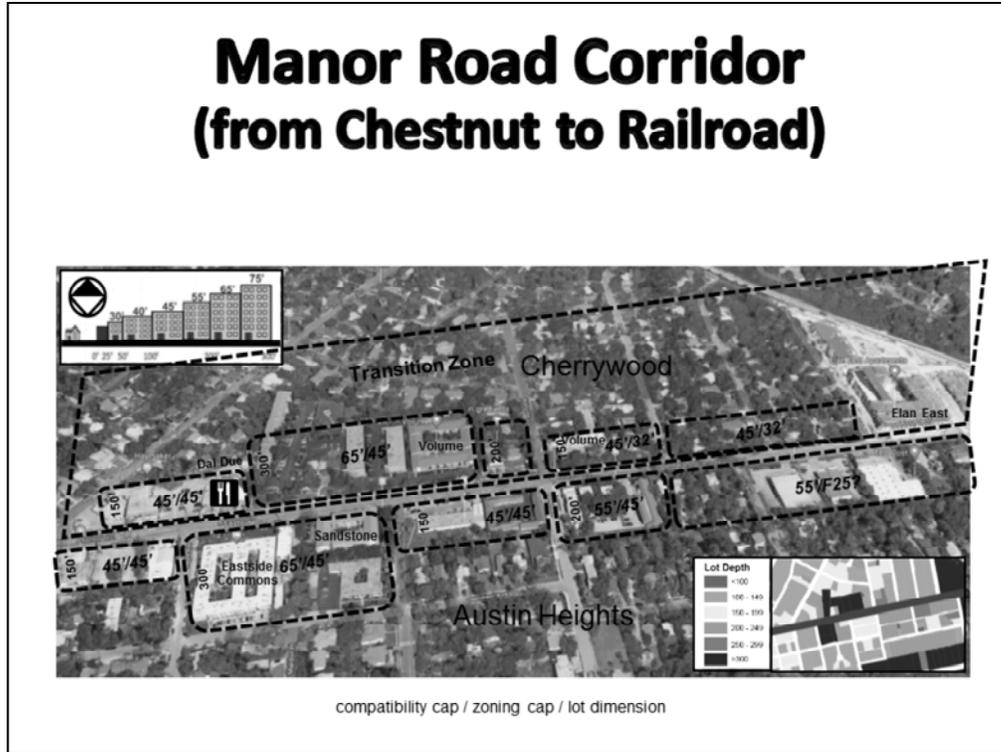
The Golden Triangle, that area between 183, MoPac and Braker, is a prime area for new mixed-use development. Several aging and cannibalized commercial centers are ripe for redevelopment and UT still owns several large undeveloped tracts.



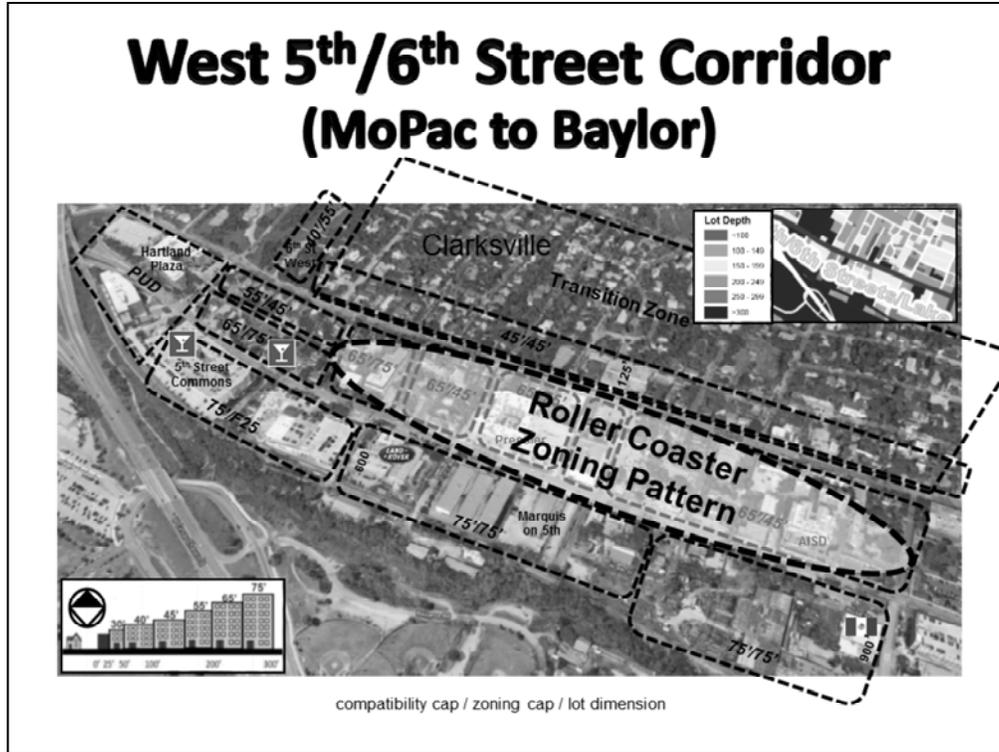
East Austin should be a well spring for “missing middle housing” because of shallow lots and adjacency of existing detached single family homes. However, because of “out of sight” property values, most of the redevelopment is very expensive housing or short term rentals that is rapidly displacing established residents and businesses. A good example is between Curve and Waller on east 12th street where five single family homes were displaced by ten “horizontal hotel” units that charged up to \$600 per night.



From Comal to Chestnut is much the same.

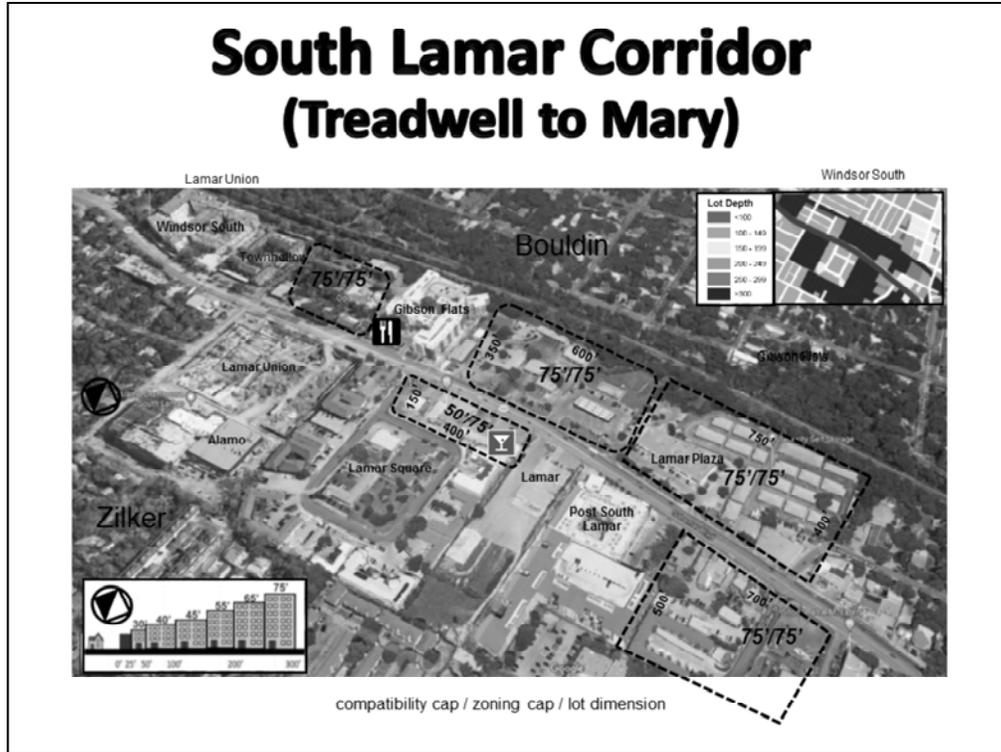


Uses along Manor Road between Chestnut and the railroad are already very mixed with commercial, followed by older low-rise apartments, followed by a few homes and then new apartments near the MetroRail station.

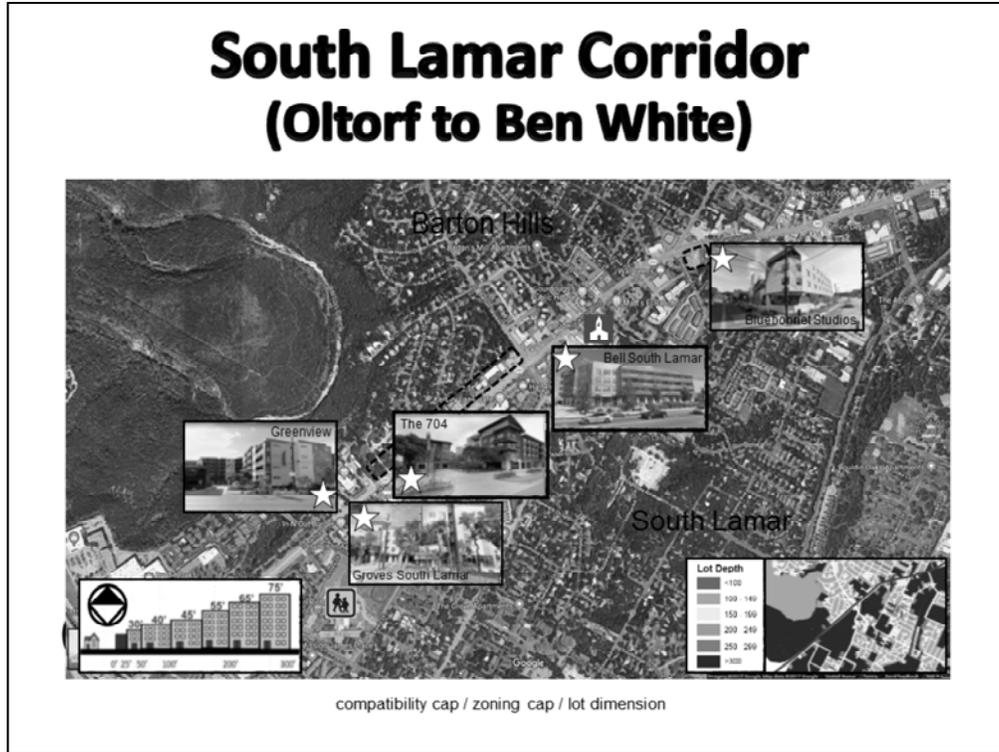


Properties within the West 5th/6th Street corridor south of Clarksville are currently undergoing significant redevelopment. Zoned heights appropriately taper down from 45 feet on the north side of 6th to 75 feet between 5th and the railroad.

While compatibility is not an apparent issue, zoned heights between 5th and 6th do follow a somewhat unplanned “roller coaster” pattern.



Because of its deeper tracts and proximity to downtown, SoCo and Zilker Park, South Lamar has for some time been a “hot spot” for residential development.



Several new residential projects have recently been built south of Oltorf along South Lamar, including Bluebonnet Studios, an affordable housing project, and several near the Broken Spoke.

Stassney Corridor (Williamson Creek to Pleasant Valley)



Arterial corridors in Southeast Austin are different than those in central Austin. They are newer, wider and generally lined with double-frontage and/or alley-access residential lots.

Stassney, for example, from Williamson Creek to Pleasant Valley, starts with double frontage and ends with frontage lots.

William Cannon Corridor (Bluff Springs to Pleasant Valley)



William Cannon has a greenbelt and apartments along its north side and double frontage homes on its south side.

It is unlikely that either Stassney or William Cannon will witness significant redevelopment pressures anytime soon.

Bonuses: Boon or Boondoggie?

*James B. Duncan, FAICP, CNU
Chair, CodeNEXT Citizens Advisory Group
Vice-Chair, Austin Zoning and Platting Commission*

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!

The goal is that both public and private parties benefit equally.

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. It is one of the only tools still available after the legislature outlawed linkage fees in 2017.

Density Bonuses in Austin: City Staff Opinion

“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 looking at adding 36 more square miles with CodeNEXT.

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!.

Although Austin has been one of the nation’s fastest growing cities, density bonuses have produced a pitiful 1,600 affordable units out of 100,000 permitted market-rate units since 2005.

We could have and should have done a lot better!

Density Bonuses in Austin: Community Opinion

*"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

*"If we are serious about creating affordable housing in all parts of town, I believe we need to really look carefully at our density bonus programs and consider whether those wouldn't be **more appropriate for onsite units.**"*

Kathie Tovo, Mayor Pro Tem

"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

While density bonuses may have successfully enhanced real estate entitlements and padded developer profits, they have been an total disappointment in producing 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 cohesive strategy.

It has also not helped that staff has let real estate speculators and land developers essentially design the density bonus programs.

Henhouses designed by foxes never work too well!

Density Bonuses in Austin: American-Statesman Opinion

“Are Developer Incentives for Affordable Housing Working?”

“As the city rewrites its land-use rules, one gadget in Austin’s toolbox to expand affordable housing – the density bonus program — is raising questions about whether it addresses the needs of low-income families with children, among those most in need of housing help.

At this point, city officials told us they don’t know whether housing generated by density bonus programs is mostly serving college graduates working in coffee shops, seniors on fixed incomes or low-income working mothers... Smaller units that accommodate single people are in high demand. Moreover, they cost less to build. Hence, the trade-off between the city and developers typically boils down to getting more, smaller affordable units that aren’t family-friendly and fewer multiple-bedroom units that accommodate families with children. ...

Given the stakes, the city should slow its march in expanding density bonus programs until it can answer the question.”

Editorial Board, Friday, August 25, 2017

Recently, the American-Statesman editorially expressed its concern about density bonuses, asking if they truly addressed *“the needs of those most in need of housing help.”*

“At this point, city officials told us they don’t know whether housing generated by density bonus programs 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 bonuses until it can answer the question.”

City 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.



Audit: City not checking rental goals

Officials unsure whether affordable housing followed developer perks.

Developer Incentive Affordable Unit Summary

Program	Year Created	Total Affordable Units	Completed Units	Pending Units	Fee-in-lieu
SMART	2000	20,345	12,028	8,317	N/A
SMART Greenfield	2008	10	0	10	N/A
UNO	2008	626	490	136	\$1,628,867
VMU	2010	366	148	218	N/A
Rainey	2005	51	9	42	N/A
TOD	2009	304	146	158	N/A
PUD	2008	2,606	0	2,606	in review
DDB	2013	0	0	0	\$1,316,260

Probably the strongest and harshest criticism of Austin's density bonus programs was 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 refuted staff exaggerated claims of great success!

Still 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 agreements to ensure that units actually got built, and were actually marketed at agreed upon prices?*
4. *Did each agreement 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 agreements contain language that required units to remain affordable into the future, after sales to subsequent owners or turnover of tenants?*
7. *How many units in each of the approved development projects or subdivisions exist today within each project covered by the agreements?*
8. *Is there a public webpage or City office where citizens can go to find a list of affordable units currently on the market for lease or 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.

Current Density Bonus Program

Density Bonus Program	Year Adopt	Percent MFI		Percent Affordable	Period (years)	FIL (psf)
		Own	Rent			
		Inconsistent & High MFIs ▽				
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

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 fees-in-lieu (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 (\$1 and 50 cents) that it makes no financial sense for a developer to provide on-site affordable housing.

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 recommended improvements are surprisingly timid and tepid. In addition to territorially 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 provisions.

Considering such timid recommendations, it is easy to see why Austin’s bonus program has been and will continue to be a failure.

Strategic Housing Blueprint

The Blueprint recommends the following base changes:

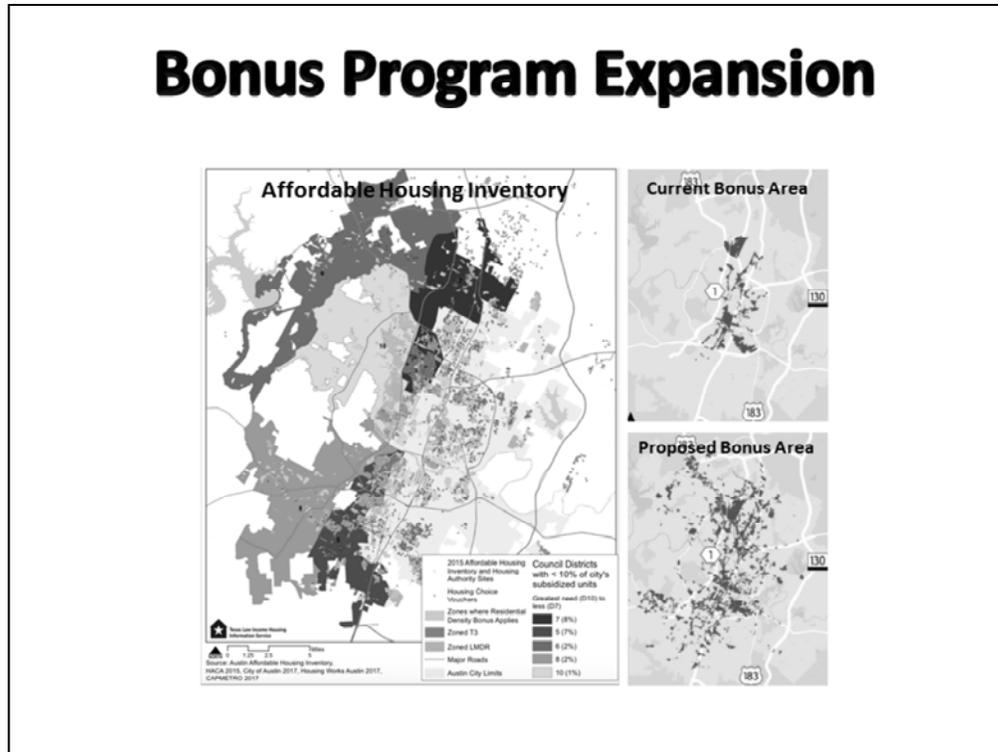
- implement density bonuses for IA activity centers and corridors,
- provide more opportunities for housing with two or more bedrooms, and
- implement bonuses at edges of centers and corridors or on collector streets.

TOOL	BLUEPRINT STARTS 10-YEAR ESTIMATE - AFFORDABLE UNITS	METHODOLOGY
Density Bonus Programs (Affordability Period: 15-60 Years)	1,450	1) Includes the following density bonus programs: University Neighborhood Overlay, Transit Oriented Development, Vertical Mixed Use. Rainey excluded due to no minimum affordability period requirement. 2) Assumes average annual production of 145 units based on production between 2005 and 2015. Breakdown: 1,165 (program production) / 8 Years (time period from sample) = 145 units per year. 3) Affordability Periods vary, e.g. TOD = 40, UNO = 15-40, VMU = 40-60.
Other Tools (Affordability Period: 10-40 Years)	47,716	Reflects 60,000 (affordable unit goal) - 21,027 (sum of other estimates featured). Other Tools may include, but are not limited to: Tax Increment Financing, Homestead Preservation Districts, Planned Unit Developments (PUDs), Expanded Density Bonus Programs, and a restructured S.M.A.R.T. Housing Program with extended affordability periods maintaining use of impact fees in accordance with state statutes. The existing S.M.A.R.T. Housing Program was created in 2007, and calls for a 1-5 year affordability period.

For a program with so many problems and so much potential, staff recommended improvements are surprisingly timid and tepid. In addition to territorially 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 provisions.

Considering such timid recommendations, it is easy to see why Austin’s bonus program has been and will continue to be a failure.



Austin is one of the nation's most segregated cities and this is reflected in the location of its affordable housing. It is all East!

To correct this imbalance, staff has recommended greatly increasing central neighborhood densities. This is not the answer!

While this may increase the **amount of housing**, it will not necessarily increase the **amount of affordable housing**. All the new units will be more expensive than those they replace.

The answer, however, is to incentivize affordable housing along arterial corridors, within activity centers and on public lands converted to private use through the use of density bonuses.

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 broken existing program before expands it throughout the city.

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 in-lieu fees to be 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.

**Our PUDs
are DUDs**

*James B. Duncan, FAICP, CNU
Chair, CodeNEXT Citizens Advisory Group
Vice-Chair, Austin Zoning and Platting Commission*

Perhaps no aspect of Austin's land development regulatory system has been more abused, misused and controversial recently than has the PUD or Planned Unit Development.

What is a PUD?

Wikipedia: *“A planned unit development (PUD), is a type of building development and also a regulatory process. As a building development, it is a designed grouping of both varied and compatible land uses, such as housing, recreation, commercial and industrial, all within one contained development.”*

City of Austin: *“The Planned Unit Development District (PUD) is intended for large or complex developments under unified control planned as a single contiguous project. The PUD is intended to allow single or multi-use projects within its boundaries and provide greater flexibility for development proposed with the PUD. Use of a PUD district should result in development superior to that which would occur using conventional zoning and subdivision regulations. PUD zoning is appropriate if the PUD enhances preservation of the natural environment; encourages high quality development and innovative design; and ensures adequate public facilities and service for development within the PUD.”*

A PUD is simply an alternative regulatory tool that allows the setting aside of rigid zoning rules in order to negotiate a better solution that equally benefits public and private parties.

Stated objectives of the Austin PUD ordinance are environmental preservation, quality project design and adequate public facilities.

PUDs are also supposed to create exemplary large-scale mixed-use projects, but that is not often attained in Austin.

PUDs: The Good, Bad (and Ugly)

The Good

- Greater flexibility,
- Ability to negotiate,
- Ability to assess and mitigate negative impacts,
- Ability to compensate for zoning inadequacies,
- Ability to create large-scale mixed-use projects,
- Ability to require public or community facilities,
- Ability to better address public concerns, and
- Ability to address site-specific conditions.

The Bad

- Contract zoning (inappropriate bargaining),
- Time consuming to establish and administer,
- More vulnerable to politics (crony capitalism),
- Manipulation of regulations to gain approval,
- Imbalanced negotiating talents and abilities,
- Erosion of standard zoning requirements, and
- Lack of automatic revocation if not built.

Although PUDs are controversial in Austin, they are not a bad regulatory tool. It is only when misused that they can be bad.

On the “good” side, PUDs can be a flexible and creative tool for those trying to legitimately create a better urban environment.

On the “bad” side, they can be a corrupted zoning tool for those trying only to enhance real estate entitlements and values while offering little in return to the community.



In many parts of Austin, the term PUD has unfortunately gained a bad name because of the manner in which it has been used.

When the neighborhood is full of “No PUD” signs and neighbors are jogging in “Stop the PUD” tees, you have a PUD problem!

2012 Plan Identified PUD Problem



*“Planned Unit Developments are intended to provide flexibility to large projects that can provide superior results over what would be developed under the conventional regulations. PUD zoning is often necessary to build a more walkable, mixed use project. **However, the current code does not adequately guarantee superior results, and the public is often skeptical of these projects.**”*

Six years ago, Imagine Austin acknowledged the PUD problem by pointing out that local PUDs were not producing superior results and that the public had lost confidence in PUDs.

2015 ANC PUD Resolution

WHEREAS, the Planned Unit Development (PUD) Ordinance has been **misinterpreted by City staff, misapplied to single family development, and inconsistently implemented by City Councils**; and

WHEREAS, **neighborhoods have expressed opposition to PUDs** that have requested or received variances to setback requirements for critical environmental features and scenic roadways, waivers to residential compatibility standards, automatic approval for off-site affordable housing, and

WHEREAS, some **PUDs have resulted in development that is not superior**; and

WHEREAS, the **value of public amenities received and entitlements granted is not transparent**.

NOW, THEREFORE,

BE IT RESOLVED THAT the Council impose an **indefinite suspension** of new PUD applications; and

BE IT FURTHER RESOLVED THAT the Council **create a task force** to recommend PUD changes; and

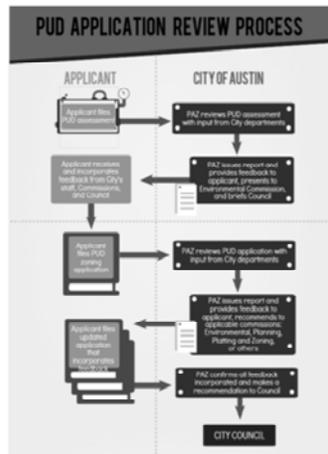
BE IT FURTHER RESOLVED THAT the Council include the following in the work for the task force:

- The PUD ordinance should provide **clear specifications for type of open space** required.
- The affordable housing amenity should be **based on total project area**, not just bonus area.
- The affordable housing **fee-in-lieu option should require a supermajority** Council vote.
- **Upzoning of existing base zoning should be explicitly prohibited**.
- An **amenity should be used to meet only one criterion** in one Tier.
- The PUD Ordinance **should not override the Waterfront Overlay ordinance**.
- **Tier requirements should be recalibrated annually** to encourage better environmental protection.

Two years ago, the Austin Neighborhoods Council passed a resolution criticizing the City's chronic misuse of PUDs.

It specifically pointed out that the PUD process was not "transparent" and that PUD products were not "superior."

2016 Audit Identified PUD Problem



- No detailed procedures or measures to evaluate proposed PUDs.
- Reduced importance of being in compliance with neighborhood plans.
- PUD applications can be controversial.

Two years ago, the City Auditor criticized the PUD process as lacking adequate project evaluation measures, diminishing the importance of neighborhood plans and being too controversial.

PUD Criticisms

"That's the disease of the PUD ordinance: ... it empowers the lawyers. You need to write another ordinance that requires design standards."

Andres Duany, Austin Chronicle, 13 Apr 2007

"Because there are no hard-and-fast rules in the PUD, it becomes a way to circumvent our standards if the City Council allows that to happen."

Brewster McCracken, City Council member, 23 Sep 2007

"I'm tired of these PUDs that want a whole lot of space, but do little to give our city something special. (They) don't make us a better place."

Mary Ann Neely, Environmental Commissioner, 8 Dec 2016

"The PUD was intended as a way to provide for additional community benefits and it's just not fulfilling what the original ideal was."

Ann Kitchen, City Council member, 13 Apr 2017

Here are a few criticisms of the way Austin uses PUDs.

In summary, it is clear that Austin PUDs are primarily used to circumvent regulations and there are minimal public benefits.

“Austin should start using planned unit developments correctly, or not at all!”

OTHERS SAY JIM DUNCAN
Special Contributor

Austin must improve use of planned unit developments

For years, Austin developers have been significantly increasing their real estate entitlements by circumventing established land use regulations through the use of a flexible form of zoning called planned unit development, or PUD.

A planned unit development allows a city to set aside rigid zoning rules in order to mix and cluster land uses and dwelling types and provide more usable open space. Good PUDs can create large-scale, better-designed, better-served projects where people can live, work, learn, shop and play in one place (Think Seaholm). Good PUDs can create a more livable, affordable and sustainable community.



James Duncan is a former Austin planning director.

rounding neighborhoods. Several currently proposed Austin PUDs fail both of these criteria. A developed low-rise office park on North Mo-Tac Boulevard designated as a low-intensity neighborhood center in Imagine Austin seeks to quadruple its height and density. And a vacant tract on Loop 360 zoned residential and restricted by Hill Country regulations wants to switch to offices and move a lot of dirt. Many Austin PUDs should not go beyond Tier One.

ture roadways for parks, other cities require actual dedication and improvement of usable and accessible sites. While Austin accepts monetary contributions for off-site affordable housing, other cities require provision of on-site affordable units. And Austin accepts “two stars” out of a “five-star” energy rating system. To most individuals, achieving only two out of a possible five of anything is not a superior accomplishment. In Austin, the playing field on which PUDs are negotiated is heavily tilted in favor of the developer. This is because, in its effort to be “big business friendly,” the city has become overly deferential toward developers. City staff also wrongly

In Austin, these developments are processed in two phases, or tiers. Tier One is a basic review to determine if a project qualifies. Tier Two is where the project is enhanced through the use of negotiated bonuses and benefits. During Tier One, a development is reviewed for its size, use, consistency and compatibility. Large sites (10 or more acres) are required to accommodate multiple uses and provide space for effective buffering. In Austin, three recent South Shore PUDs are neither on large sites nor mixed-use (high-rise residential or office buildings with a ground floor coffee shop are not mixed-use). However, by calling them PUDs, all three developers were able to significantly increase project densities and heights. In Tier One, a PUD is also reviewed for its “consistency” with adopted plans and its “compatibility” with sur-

Tier Two is the negotiation or bargaining phase. Starting from a baseline, which is current zoning, developers may be given bonuses, such as added uses, density and height, in return for providing benefits that make the project “superior” and the community better. This phase should always result in a “win-win” situation for both parties. The value of bonuses should closely equal the value of benefits. The purpose of a planned unit development is to create a better project. Increased real estate value and profit is a byproduct. Other cities do a much better job than Austin in negotiating PUD benefits. While Austin accepts the “reservation” of public facility sites for future purchase, other cities require actual dedication of sites and construction of facilities. While Austin accepts land in flood plains or in the path of fu-

and regularly encourage neighbors to negotiate directly with developer attorneys and engineers. This is like sending David to meet Goliath without a slingshot. The city has long known of its PUD problem but has done little to correct it. Andres Duany, the highly-respected New Urbanist, once noted that Austin’s use of planned unit developments had been taken over by lawyers and become a “disease.” The city itself admits that its PUDs do not adequately guarantee superior results, and the public is often skeptical of these projects. Austin should start using planned unit developments correctly, or not at all. Duncan is a former Austin planning director and current member of the CodeNext committee that is preparing a new land development code for the city.

Austin American-Statesman February 3, 2015

Three years ago, I stated in the Statesman that our PUD process was broken and should not be used again until fixed.

Recent Austin PUDs

Planned Unit Development	Year	Acres	Residential	
			Total	Afford
Mueller	2004	711	4,600	1,150
Sunfield	2006	575	2,624	292
Goodnight Ranch	2006	703	3,533	?
East Avenue (Concordia)	2009	23	1,250	?
The Park (Barton Springs)	2011	.79	0	0
Broadstone on Lake (RunTex)	2012	1.5	352	\$35k
Estancia in Hill Country	2013	593	2,287	10%
South Lamar (Taco)	2013	.95	175	\$430k
Pilot Knob	2015	2,224	13,809	1,480
The Grove at Shoal Creek	2016	75	1,515	118
Austin Oaks	2016	31	375	40
Holdsmith	2017	44	0	0
Westlake Residential	2018	16	67	
Hooters	2018	1.4	10	1

Over the past 14 years, the City has processed 14 PUDs.

The first three, Mueller, Sunfield and Goodnight Ranch, were “large-scale and mixed-use” PUDs that met “superior” criteria.

Since 2011, however, the City has tended more to use PUDs to skirt zoning rules in order to enhance real estate entitlements.

Of the last ten PUDs, four located on South Shore were neither large-scale or mixed-use and did not meet minimum criteria.

And the public received no real benefits!

For Estancia, Pilot Knob and Grove, the City actually gave developers millions to extend sewers and provide affordable housing, raising the question of who was the bigger beneficiary?

South Shore PUDs Strike Out

PUDs with a Density Bonus since 2008

- Broadstone (RunTex): ordinance allows for onsite units or fee-in-lieu to be determined at issuance of certificate of occupancy
- Taco PUD: was approved by Council to provide a fee-in-lieu of onsite affordable units. A fee was received prior to site plan approval. The developer pulled the site plan and the fee was refunded.
- The Falls PUD: development contains no residential uses and therefore is not subject to the affordability requirements.

No Affordable Housing

In that their entitlements were significantly enhanced by the PUD process, it was very disappointing that none of the three South Shore PUDs actually provided ANY real public benefits.

Superior Affordability?

Austin Oaks

Planned unit developments, or PUDs, are set up to be a negotiation process between the developer and council since the requested zoning requires entitlements beyond what the existing zoning allows. PUDs are then required to offer elements of the project that are superior to what existing zoning allows. According to Michael Whelan, a representative for developer Spire Realty, here is what was superior for Austin Oaks.

Environmental
Reduction of impervious cover by more than 2 acres
Addition of approximately 20,000 cubic feet of stormwater detention
Revegetation of west bank of on-site creek with native plants

Parkland
2.5 acres of new parkland (on the 31.4-acre site)
Investment of \$1.5 million to create a neighborhood park and large park
Creation of two parks along Hart Lane and Executive Center Drive in the middle of the property at Wood Drive and Executive Center Drive

Traffic mitigation
Contribution of \$1.6 million in traffic-mitigation measures, which is 2.5 times the required mitigation through city staff estimates

Affordable housing
10.8 percent of the approximately 375 residential units on-site will be affordable; 50 percent of the affordable units will be two-bedroom
Whelan said this equates to approximately \$10 million in value to the city

40 units x \$250,000 = \$10 million

Estancia Hill Country

Category	Developer Offer	Value Claim	Comment
Affordable Housing	MF Rental: 10% @ 80% MF1 MF Owner: 10% @ 80% MF1 (1510 MF units/750 SF units)	\$1,500,000	Revenues essentially getting market rate housing. Area market is 20-40% below citywide market
Green Buildings	All development = 2-Star	\$1,000,000	Benefit to owners, not taxpayers Are 2 out of 5 sites "Superior"?
Open Space/parks	Add 40 acres @ \$87,000/acre to 89 acres for 129 total acres	\$3,484,800	Northern park in OC floodplain Southern park in SH4 ROW Does PARB even need or want?
Wastewater service	Reimbursement	\$2,000,000	Bad policy: Most cities don't pay for extensions
Interracial Transit	No description	\$1,500,000	Bad policy: Most cities don't pay for extensions
School Site	11 acres @ \$120,000/acre	\$1,320,000	Not on plan. Why reserve, not dedicate? Does ADD want site?
Water Quality	Wet pond + Sed/Fil pond	\$2,000,000	Benefit to owners, not taxpayers
Connectivity	Dispute extra 10' along sidewalk Wider interior sidewalk	\$174,500 \$32,000	Is extra ROW worth high cost? Benefit to owners, not taxpayers
Street Standards (Drugs upgrades)	Subways & trees Benches & bike racks	\$350,000	Benefit to owners, not taxpayers
Fire Station	2 acres @ \$150,000/acre	\$300,000	Not on plan. Why reserve, not dedicate? Staff says none needed
Heritage Trees	10 trees @ \$133,000/tree	\$1,330,000	Site already largely cleared
Techonates	Along Old San Antonio Road	Intense	???
Volunteer Control	Exceed minimum requirements	Intense	Benefit to owners, not taxpayers
Green Green	Exceed minimum requirements	Intense	Benefit to owners, not taxpayers
Trails	Add access trails	Intense	Benefit to owners, not taxpayers
Bike Lanes	Along Old San Antonio Road	TBD	No connectivity
Historic Cultural	Install Historic OSR plaque	Intense	Historic OSR much further east
Neighborhood Compatibility	100 foot buffer adjacent lotuses	Intense	Buffer not on plan. Does MF even existing SF neighborhood
Imagine Austin Community	Near Regional Center	Intense	Actual Regional Center further east along SH41 lanes 1-31 and 183
Summary		\$21,834,052	Speculative, not "Superior"

\$10 Million?

\$21 Million?

Superior?

Not wanted

Bad Policy

Not wanted

Not wanted

Not wanted

Measuring "superiority" and benefit value is difficult for Austin.

Here are two misleading examples of PUD public benefits.

For providing 40 "affordable" units, Austin Oaks claimed it was a "\$10 million value for the city" (40 X \$250,000).

That would be true only if they were actually giving them to the city, but they are going to sell them at 80 percent market-rate.

As for the Estancia "superiority" claim, sites for a fire station and school were offered, but not wanted by service providers. And the parkland was in a flood plain and road right-of-way.

But there was at least one definite beneficiary. The city gave the developer \$2 million to extend sewers to his property.

“Fox in the Henhouse” Problem

**City, developers work to alter
long-standing PUD ordinance**

Sep 23, 2007, 11:00pm

The reason Austin has a problem improving its PUD process is the same that it has with improving any development process.

It relies too heavily on real estate speculators and developers for guidance. That is like letting the “fox design the henhouse!”

Current PUD Ordinance

<p>Division 5. Planned Unit Developments.</p> <p style="text-align: center;">Subpart A. General Provisions</p> <p>1.1. General Intent.</p> <p>1.2. Council Authority.</p> <p>1.3. Pre-Application Filing Requirements and Review Criteria.</p> <p>1.3.1. Project Assessment Report and Finding Required.</p> <p>1.3.2. Council Response.</p> <p>1.3.3. Baseline for Determining Development Bonuses.</p> <p>1.3.5. Fee Credit.</p> <p>1.4 Land Use Plan</p> <p>1.4.1. Application Requirements.</p> <p>A. general land use map.</p> <p>B. proposed site development regulations.</p> <p>C. baseline for determining development bonuses.</p> <p>D. description of any bonuses requested and manner satisfied.</p> <p>E. requested waivers from or modifications of the requirements, and</p> <p>F. any other information required by the director.</p> <p>1.4.2. Ordinance Requirements.</p> <p>1.4.3. Effect of Land Use Plan.</p> <p>1.5. PUDs Approved Before December 15, 1988.</p> <p>1.6. Planned Unit Developments in Extrajurisdictional Jurisdiction.</p> <p style="text-align: center;">Subpart B. Planned Unit Development Standards.</p> <p>2.1. Compliance Required.</p> <p>2.2. Modification by Council.</p> <p>2.3. Tier One Requirements.</p> <p>2.3.1. Minimum Requirements.</p> <p>A. meet objectives of City Code.</p> <p>B. achieve equal or greater consistency with City Code.</p> <p>C. provide total amount of open space that equals or exceeds</p> <p>D. comply with Green Building Program.</p> <p>E. be consistent with neighborhood plans and compatible with adjacent uses.</p> <p>F. provide for environmental preservation and protection.</p> <p>G. provide for public facilities and services that are adequate.</p> <p>H. exceed minimum landscaping requirements.</p> <p>I. provide appropriate transportation and mass transit connections</p> <p>J. prohibit gated roadways.</p> <p>K. preserve architectural, historical, archaeological or cultural resources; and</p> <p>L. include at least 10 acres of land.</p> <p>2.3.2. Additional Requirements.</p>	<p>2.4. Tier Two Requirements.</p> <p>Open Space:</p> <p>Environment:</p> <p>Austin Green Builder Program:</p> <p>Art:</p> <p>Great Streets:</p> <p>Community Amenities:</p> <p>Transportation:</p> <p>Building Design:</p> <p>Parking structure coverage:</p> <p>Affordable Housing:</p> <p>Historic Preservation:</p> <p>Accessibility:</p> <p>Local Small Business:</p> <p>2.5. Development Bonuses.</p> <p>2.5.1. Limitation on Development.</p> <p>2.5.2. Requirements for Exceeding Baseline.</p> <p>2.5.3. Requirements for Rental Housing.</p> <p>2.5.4. Requirements for Ownership Housing.</p> <p>2.5.5. Affordability Levels.</p> <p>2.5.6. Alternative Affordable Housing Options.</p> <p>2.5.7. In Lieu Donation.</p> <p style="text-align: center;">Subpart C. Land Use Plan; Regulations; Variances.</p> <p>3.1. Land Use Plan Expiration and Amendment.</p> <p>3.1.1. Expiration.</p> <p>3.1.2. Substantial Amendment.</p> <p>3.1.3. Approval by Director.</p> <p>3.1.4. Increased Intensity.</p> <p>3.2. Planned Unit Development Regulations.</p> <p>3.2.1. Uses and Regulations.</p> <p>3.2.2. Residential Uses.</p> <p>3.2.3. Nonresidential Uses.</p> <p>3.2.4. Industrial Uses.</p> <p style="text-align: center;">Subpart D. Development Applications.</p> <p>4.1. Concurrent Consideration of Development Applications.</p> <p>4.2. Development Applications Must Comply with Land Use Plan.</p> <p>4.2.1. Approval.</p> <p>4.2.2. Director's Report.</p> <p>4.3. Rezoning if Development Applications Expire or Not Approved.</p>
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Austin's current PUD regulations are found in Division 5 of the land development code and spread out over 16 pages in four disjointed subparts. They are difficult to use and understand.

Tier Two (Superior Criteria)

Open Space: Provides open space at least 10% above minimum requirements.

Environment:

- Does not request exceptions to or modifications of environmental regulations.
- Provides water quality controls superior to those otherwise required by code.
- Uses innovative water quality controls that treat at least 25% more water quality volume.
- Provides water quality treatment for currently untreated, undeveloped off-site areas.
- Reduces impervious cover or single-family density by five percent below maximum allowed.
- Provides minimum 50-foot setback for unclassified waterways with drainage area of five acres+.
- Provides at least 50% increase in required waterway and critical environmental setbacks.
- Clusters impervious cover and disturbed areas that preserves environmentally sensitive areas.
- Provides pervious paving for at least 50% of all paved areas in non-aquifer recharge areas.
- Prohibits uses that may contribute to air or water quality pollutants.
- Employs other creative or innovative measures.

Austin Green Builder Program: Provides a rating of three stars or above.

Art: Provides public art or makes contribution to City's Art in Public Places Program.

Great Streets: Applicable only to commercial retail or mixed-use development.

Community Amenities: Provides community or public amenities, and/or bicycle facilities.

Building Design. Exceeds minimum points required by the Building Design Options.

Parking structure frontage. Applicable only to commercial or mixed-use development.

Affordable Housing. Provides for participation in programs to achieve affordable housing.

Historic Preservation. Preserves historic structures, landmarks, or other features.

Accessibility. Provides for disability accessibility to a degree exceeding legal requirement.

Local Small Business. Provides space at affordable rates to independent small businesses.

One of the biggest deficiencies with Austin's PUD regulations is the subjectivity of its "superiority" criteria. There is also an imbalance among categorical criteria. For example, while environmental criteria is very specific, others are very general.

Proposed CodeNEXT PUD

23-4D-0120 Planned Unit Development (PUD) Zone

(A) General Intent.

(B) Subzones.

(C) Applicability.

(1) Planned Unit Developments Approved Before the Effective Date of this Title

(2) Planned Unit Developments in the Extrajurisdictional Jurisdiction.

(D) Allowed Land Uses and Development Standards.

(1) Allowed Uses.

(2) Other Regulations.

(3) Criteria for Approval of a PUD Zone.

(a) Consistent with Comprehensive Plan.

(b) Establish development standards that achieve equal or greater consistency.

(c) Provide a total amount of open space that equals or exceeds.

(d) Provide a two star Austin Energy Green Building Rating.

(e) Be consistent with neighborhood plans and compatible with adjacent properties.

(f) Provide for environmental preservation and protection.

(g) Provide for public facilities and services that are adequate.

(h) Provide for appropriate transportation and mass transit connections.

(i) Prohibit gated roadways.

(j) Preserve areas of architectural, historical, archaeological or cultural significance.

(k) Include at least 10 acres of land.

(l) In addition, an applicant may propose additional benefits in support of the PUD, and

(m) Commercial or mixed use PUDs must contain pedestrian-oriented uses.

(4) Additional Standards.

(a) Include off-street parking, comply with sidewalk standards.

(b) Pay transit education fee, and

(c) Contain pedestrian-oriented uses on first floor of commercial or mixed use building.

(E) General Procedures.

(1) Compliance Required.

(2) Pre-Application Filing Procedures.

(a) Development Assessment Report.

(b) Council Hearing.

(c) Council Response.

(d) Fee Costs.

(e) File application.

(3) Application and Approval Procedures.

(a) Reviewed in compliance with 23-20.

(b) Reviewed in compliance with Division 23-4B-3.

(c) Review Authority.

(d) Application Review and Approval.

(4) Land Use Plan Expiration and Amendment.

(a) Expiration.

(b) Substantial Amendment.

(c) Approval by Director.

(d) Reopening if Development Applications Expire or are Not Approved.

(e) Exceptions for Affordable Units.

Why no assessment report?

Why no baseline report?

Why no 2-tier superiority format?

Why no “consistency and compatibility” gatekeepers?

Why no compliance reference to neighborhood plans (*Audit*)?

Why no affordability criteria?

Why no objective criteria (*Audit*)?

Why reduce green star rating?

So what PUD improvements does CodeNEXT 2.0 offer us?

First, the good news! The regulations are now only six pages.

And now the bad news! The drafters obviously used a butcher knife rather than a scalpel for they emasculated the regulations.

The assessment report is gone. The baseline report is gone. The “Two-Tier” format is gone. The consistency/compatibility nexus is gone. Even the green star rating has been reduced.

And, surprisingly, there are still no meaningful criteria with which to objectively measure “superiority,” which was a critical need the consultants were expected to provide. But didn’t!

ZAP PUD Suggestions

1. PUDs should not be allowed on less than ten acres.
2. PUDs should not be used simply to increase building heights.
3. Superior affordability should depend on number of affordable units provided.
4. Green star rating of 2 should not be considered superior for a PUD.
5. Staff should verify measurements and estimates provided by applicants.
6. PUD developments should pay for themselves (no infrastructure tax credits).
7. Affordability requirements should be determined at approval, not occupancy.
8. Nonresidential PUDs should also contribute to affordable housing.
9. Fees-in-lieu, mitigation funds and parkland donations should not be refundable.
10. Superiority criteria should be based on measurable, objective criteria.
11. Overriding basic PUD requirements should require a Council supermajority vote.
12. All PUDs should require a Council supermajority vote.
13. PUDs should be reviewed to ensure community benefits are met.
14. Superiority components should be recalibrated every five years.
15. Adjacent neighbors should have valid petition rights.
16. Open space should not include non-buildable residual land.
17. Citizen input should be allowed when staff gives PUD briefings.
18. Community benefits should be balanced with increased entitlements.

In addition, the Zoning and Platting Commission has identified the following specific suggestions for improving Austin PUDs.

Accessory Dwellings: An Affordable Answer

*James B. Duncan, FAICP, CNU
Chair, CodeNEXT Citizens Advisory Group
Vice-Chair, Austin Zoning and Platting Commission*

Planners often refer to ADUs as “hidden” or “gentle” density.

An ADU is a small living quarter secondary to and on the same lot as an existing single family home. ADUs meet both affordable and compatible urban objectives by providing lower-cost housing and blending seamlessly into the surrounding neighborhood.

They are also one of the best and often only forms of affordable housing that can be encouraged and/or provided through zoning.

ADUs and Neighborhoods: An Affordable Compatible Partner

Imagine Austin:

“Maintaining unique and diverse character of Austin's neighborhoods, while meeting market demands for close-in housing.”

*“Balancing new development and redevelopment in lower-income neighborhood's while **maintaining essential neighborhood character.**”*

*“Encouraging **preservation of affordable housing in neighborhoods** across the city and in activity centers and corridors.”*

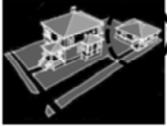
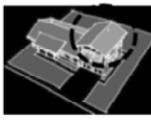
Code Diagnosis:

*“Secondary apartments can provide increased density in existing neighborhoods **without sacrificing neighborhood character.**”*

When it comes to the provision and regulation of accessory dwellings, affordability and compatibility must go together.

Imagine Austin and the Opticos Code Diagnosis both stress the importance of “preserving neighborhood character” while absorbing new growth and providing new housing.

“A Rose by Any Other Name”

<p>Detached</p> 	<p>Also Known As:</p> <p><i>Ancillary unit</i> <i>Mother-in-law unit</i> <i>Companion unit</i> <i>In-law apartment</i> <i>Garage apartment</i> <i>Basement apartment</i> <i>Guest house</i> <i>Coach house</i> <i>Laneway house</i> <i>Carriage house</i> <i>ECHO home</i></p>	<p><i>Multi-generational</i> <i>Secondary suite</i> <i>Lockout suite</i> <i>Sidekick suite</i> <i>Fonzi suite</i> <i>Granny flat</i> <i>Alley flat</i> <i>Servant quarter</i> <i>Backyard cottage</i> <i>Elder cottage</i> <i>Casita</i></p>	
<p>Attached</p> 			
<p>Garage</p> 			

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.

Peer City ADU Survey:

Peer City:

Honolulu: 400sf<5,000sf lot, 800sf>5,000sf lot

Miami: 450sf, 1 space (ancillary)

Santa Cruz: 500sf<7500sf, 640sf, 800sf>10,000sf lot

Denver: 650sf<6,000sf lot, 864sf, 1,000sf>7,000sf lot

Seattle: 650-800sf, 4,000sf lot, 1 space, covenant

San Diego: 700sf, 1 space, 21' (companion unit)

Nashville: 750sf <10,000sf lot, 1,000sf>10,000sf lot

Atlanta: 750sf, R5 district only, .5 FAR

San Antonio: 800sf (40% main), 300sf min

Portland: 800sf (75% main), 20', 15% cover

Charlotte: 800sf (35% main), 1 space

Phoenix: 900sf (50% main), 1 space, no STR

Austin: 1,100sf, no space, .15 FAR

CN #3: 750sf<5,000sf lot, 975sf, 1,100>7,000sf lot



Santa Cruz Survey:

Average Size: 500sf

Average Cost:

\$50,000 for conversion
 \$80,000 for attached unit,
 \$99,250 for garage unit
 \$140,000 for detached unit

\$95,600 for labor/materials
 \$7,700 for design
 \$13,700 for permits
 \$10,400 for utility hookups
 \$16,000 for other costs

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.

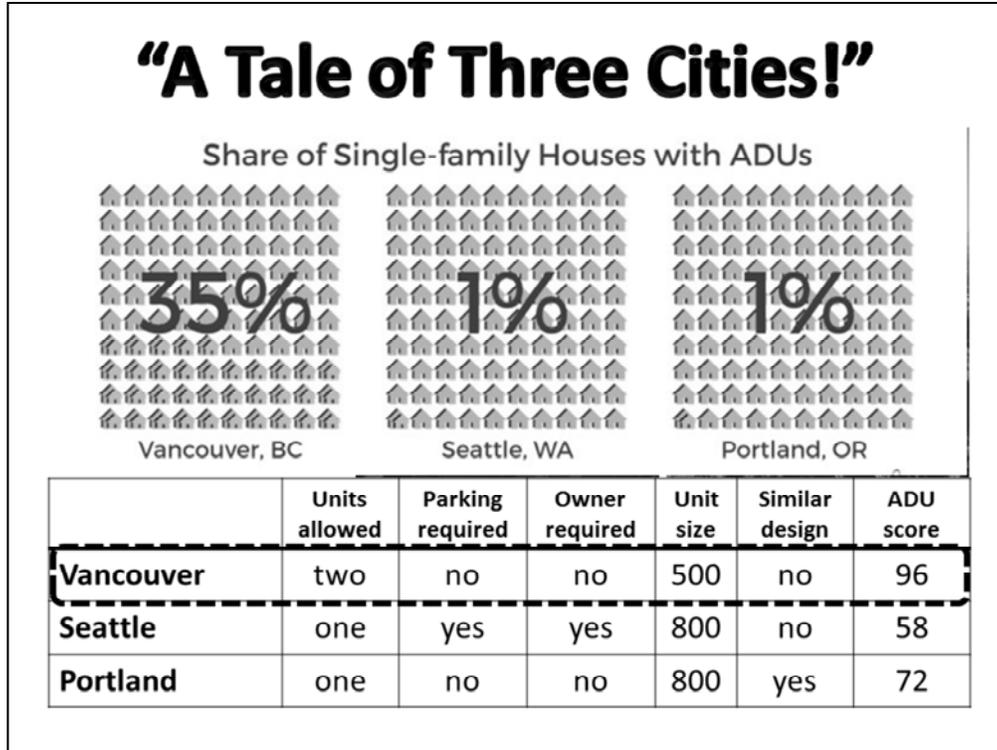
In 2004, it won an EPA “Smart Growth Achievement Award.”

“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!”



	ADUs allowed	Maximum ADU Size			Parking required	Owner occupant
Denver	one	650sf <6,000sf	864sf 6,000-7,000sf	1,000sf 7,000sf	one	yes
Flagstaff	one	<acre 600sf		1,000sf>acre	one	yes
CodeNEXT	one	750sf <5,000sf	975sf 5,000-7,000sf	1,100sf 7,000sf	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.

“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.



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.

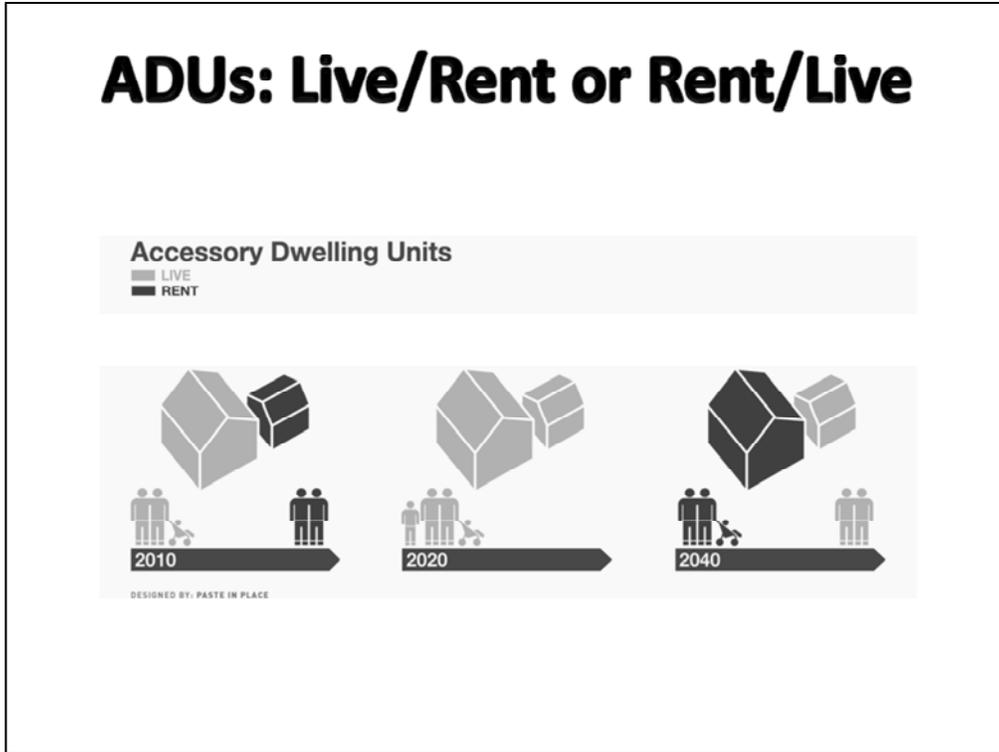
The AFI offers several two-bedroom floor plans that can be City pre-approved to save design and permitting costs.



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 front was retained and sensitively renovated rather than demolished.

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



This graphic shows a potential lifecycle “stay in neighborhood” occupancy use of a principal and accessory unit.

Newly formed family uses only principal dwelling; growing family using both units, and aging smaller family uses accessory unit.

ADUs and CodeNEXT

ZAP Recommendations

- Allow all ADU types 'by right' in all house zones,
- Fast-track "even more affordable" ADUs (<500sf) (*pre-approved plans, no parking and waived fees*),
- Vary ADU floor area by lot size (600/800/1000),
- Simplify FAR, impervious, building cover limits,
- Eliminate prohibition of subleases, and
- Eliminate permit fees for income-restricted units.

In order to promote greater affordability, flexibility and compatibility, now is the time to revisit those rules and consider the following:

- Allow all ADU types 'by right' in all zones,
- Fast-track "even more affordable" ADUs (<500sf)
- Vary permitted floor area by lot size (600sf, 800sf, 1000sf),
- Simplify FAR, impervious and building cover limits,
- Eliminate prohibition of subleases, and
- Eliminate fees for small and income-restricted units.