



## ENVIRONMENTAL COMMISSION MOTION 20180606 007c

**Date:** June 6, 2018

**Subject:** CodeNEXT Planning Commission Recommendation Regarding Minimum Development Potential

**Motion by:** Hank Smith

**Seconded by:** Wendy Gordon

### **RATIONALE:**

**WHEREAS**, the Environmental Commission made recommendations regarding CodeNEXT prior to the issuance of the CodeNEXT Addenda and the recommendations from the Planning Commission; and

**WHEREAS**, upon reviewing the Addenda and the Planning Commission recommendations, the Environmental Commission has concerns with that document as it relates to the Minimum Development Potential contained in 23-1A-6010 and 23-1A-6020; and

**WHEREAS**, the Environmental Commission does not feel that these additional regulations were properly reviewed and vetted with the community; and

**WHEREAS**, the minimum development potential may adversely impact the environmental protections that we, as a city, developed and relied on to protect our natural resources, health and safety, and quality of life for our citizens;

**WHEREAS**, the minimum development potential may adversely impact the Save Our Springs Ordinance, Watershed Protection Ordinance, drainage regulations, flood plain protections, tree protections and other environmental protections, and may result in overriding these protections;

**WHEREAS**, we have an effective variance process that provides an adequate remedy to address development concerns and allows for community engagement.

**THEREFORE**, the Environmental Commission does not support these additions as currently drafted in the Planning Commission recommendations, and strongly feels that they should be removed, pending significant stakeholder outreach with the following:

### **Staff Conditions:**

See the attached memo from the City of Austin's Environmental Officer dated June 6, 2018 to Mayor and Council.

**VOTE 10-0**

For: B. Smith, Creel, Perales, Thompson, Neely, H. Smith, Guerrero, Gordon, Coyne, Maceo

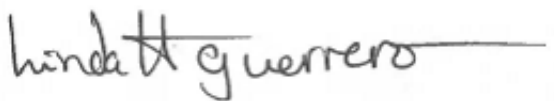
Against: None

Abstain: None

Recuse: None

Absent: None

Approved By:

A handwritten signature in black ink that reads "Linda H. Guerrero". The signature is written in a cursive style with a horizontal line extending to the right from the end of the name.

Linda Guerrero, Environmental Commission Chair



## MEMORANDUM

**TO:** Mayor and Council

**FROM:** Chuck Lesniak, Environmental Officer  
Watershed Protection Department

**DATE:** June 6, 2018

**SUBJECT:** Planning Commission's CodeNEXT Recommendation Regarding Minimum Development Potential

I am writing to offer my recommendation to the Council regarding the Planning Commission's CodeNEXT motion regarding Minimum Development Potential (see attached SO Exhibit 1) that would ensure up to 90% of a property's base impervious cover could be built regardless of other code requirements. This could require the waiving of many development regulations to ensure the maximum allowable impervious cover limits can be constructed. As Environmental Officer I recommend Council not support this motion.

For over 35 years, Austin has sought to protect our environmental resources through a variety of regulations that balance a property owner's rights and economic interests with the community's interests in environmental preservation, protection, and restoration. Past Councils have done this with a system of regulations that limited impervious cover, required stormwater treatment, set buffers for waterways, springs, and other sensitive environmental features, preserved trees, and encouraged development that is appropriate for the natural land surface. The code currently provides a maximum allowable percentage that is achievable only if site conditions allow. For example, a site may qualify for a maximum impervious cover of 65%, but due to the topography or nearby location of a creek, that maximum allowable impervious cover could not be achieved without granting a variance to the creek setbacks or slope limitations.

The land development code has a robust and effective variance process that provides a tool for an owner or developer to seek relief when they feel the limits placed on their site under code are unreasonable or otherwise meet the findings of fact for a variance. Out of the thousands of development permits sought each year, only a tiny fraction (34 permits from 2015 to 2017) have required the applicant to seek a Land Use Commission variance, demonstrating the functionality of Austin's drainage, watershed, and tree regulations.

If the Planning Commission motion is passed, staff could be required to choose among the following significant environmental and drainage regulations to waive or modify to meet the 90% minimum development potential:

- Key provisions of water quality regulations, including the Save Our Springs (SOS) regulations, if the 90% minimum development potential is enacted as an amendment to SOS.
- Stormwater management for water quality and flood risk reduction.
- Limitations on development in the floodplain.
- Waterway setbacks for creeks and lakes.
- Setbacks for critical environmental features such as caves, wetlands, and springs.
- Tree and urban forest protections (excluding heritage trees).
- Steep slope protections.
- Limitations on the depth of cut and fill.
- Preservation of open space and natural areas.
- Provision of landscape elements and vegetated setbacks.

As we can see all around Austin, the City's regulations have not unreasonably limited development or economic growth. The City has successfully balanced development and these environmental protections citywide since 1986 and even earlier in some areas. Very few of these are proposed to be modified by CodeNEXT. This Planning Commission motion would reverse and undo the efforts by past Councils and the community to preserve and protect Austin's unique environment. As Environmental Officer, my charge is to "ensure that environmental protection is the highest priority in public and private development" (LDC 25-1-45(A)) and, as such, my recommendation is that Council not include the Commission's motion regarding minimum development potential in CodeNEXT.

Please contact me if you have any questions at [chuck.lesniak@austintexas.gov](mailto:chuck.lesniak@austintexas.gov) or 512.974.2699.

cc: Spencer Cronk, City Manager  
Joe Pantalione, P.E., Interim City Manager  
Mike Personett, Acting Director, Watershed Protection Department  
Rodney Gonzales, Director, Development Services Department  
Greg Guernsey, Director, Planning and Zoning Department

# SO EXHIBIT 1

## PROPOSED AMENDMENT RELATED TO MINIMUM DEVELOPMENT POTENTIAL

### CHAPTER 23-1, ARTICLE 23-1A, DIVISION 23-1A-6: Minimum

#### Development Potential 23-1A-6010 Limitations on Application of Title

- (A) **Minimum Development Allowed.** Notwithstanding anything in this Title, or in any City criteria manual, rule, regulation, determination, decision or interpretation authorized by this Title to the contrary, an applicant seeking to develop or re-develop property within the zoning jurisdiction of the City shall be entitled, without the necessity of any variance, adjustment, waiver, exception or alternate compliance decision, to develop or re-develop the property to at least the following minimum development standards:
- (1) 90% of the lesser of (a) impervious cover allowed by the zoning district (without the application of any density bonuses) for the property, or (b) impervious cover allowed by the applicable watershed regulations;
  - (2) 90% of the building coverage allowed by the zoning district (without the application of density bonuses) for the property after application of any impervious cover limits established by watershed regulations, if any; and
  - (3) 90% of the floor-to-area ratio allowed by the zoning district (without application of density bonuses).
- (B) **Additional Development Potential.** Subsection A above shall not be deemed to be a limit on the amount of development or re-development that may occur on a property in the zoning jurisdiction of the City if the proposed development or re-development otherwise meets the requirements of this Title or obtains any authorized variance, waiver, adjustment, exception or alternate compliance to allow such development or re-development.

#### 23-1 A-6020 Prioritization of Regulations Affecting Minimum Development Potential

- (A) **City Manager Determination.** In the event the cumulative application of all requirements of this Title and any requirements in any City criteria manual, rule, regulation, determination, decision and interpretation authorized by this Title would result in development or re-development of property within the zoning jurisdiction that is less than the minimum amount entitled under Section 23-1A-6010, then the applicant for such development or re-development shall not be required to obtain a variance, waiver, adjustment, exception or alternate compliance. In that event, the City Manager shall determine and establish which requirements shall not apply so that the minimum development allowed by Section 23-1A- 6010 can be achieved.

(B) **Process for Making Determination.** The applicant for the development or re-development of any property in the zoning jurisdiction of the City shall, at the time it submits an application for development or re-development shall identify whether the requirements of this this Title

Original Exhibit from Commissioners. No alterations made.  
See the Planning Commission Recommendation Report for  
final action.

## SO EXHIBIT 1

and any requirements in any City criteria manual, rule, regulation, determination, decision and interpretation authorized by this Title would result in development or re-development of property within the zoning jurisdiction that is less than the minimum amount entitled under Section 23-1A-6010, and, if so, shall propose which requirements will be met or how some requirements may be partially met based on a review of the circumstances of the property, its location in the City and a method of compliance that is appropriate in order to achieve the minimum development allowed by Section 23-1A-6010. The City Manager shall convene a meeting of reviewing departments to discuss the proposal before the due date of the initial comments to the application. The City Manager shall either accept the applicant's proposal or propose a different prioritization of requirements; provided that however, such alternate prioritization shall not reduce development below the minimum development allowed by Section 23-1A-6010 and shall not substantially increase the costs of the proposed development or re-development.