

Proposed Land Development Code Rewrite Article 23-3F: Diversify, Sustain, and Cultivate Art, Music, and Culture

Arts and Music Commissions Workgroup on Code & Permitting, October 2019

The Imagine Austin Comprehensive Plan, the CodeNEXT Code Prescription on Household Affordability, the Mayor's Austin Music & Creative Ecosystem Omnibus Resolution, and the Economic Development Department's Music and Creative Ecosystem Stabilization Recommendations all reference the need for regulations to sustain, diversify, and strengthen the music and arts industries and communities. To this end, the CodeNEXT Advisory Group, the Arts Commission, and the Music Commission recommended developing a code section that would provide city-wide regulations to promote arts, music, and culture with the goals of: protecting existing assets and promoting new ones in areas inequitably deficient of art, music, and cultural assets, supporting housing and jobs for musicians and artists, and sustaining these important elements of Austin's economy. The ideas below are painted with a broad brush, and are provided to suggest possible starting points for a new code section. They are numbered relative to the staff-recommended October 4, 2019 draft code rewrite.

Proposed Code Additions/Changes:

1. We are grateful that City staff added a reference to arts, music, and culture to the Purpose Statement of General Planning Standards Sec. 23-4A-1010. The current draft of the October 2019 Land Development Code for Austin, contains the following purpose statement in *Chapter 23-4: General Planning Standards for All*. The underlined clause below was added to the text that originally appeared in CodeNEXT Draft 3 that had excluded specific reference to the need to support Austin's arts, music and culture. Below the underlined clause is a suggested rewording.

23-4A-1010 Purpose

(A) This chapter establishes standards and regulations that apply at multiple stages of the development process and address a wide range of impacts that development may have on the City's residents and environment.

(B) The purpose of this chapter is to:

- (1) Ensure that new development contributes to, and is served by, a strong municipal park system that provides passive and active recreational amenities and open space accessible to residents in all areas of the City;
- (2) Protect and replenish the City's urban forest resources;
- (3) Provide for the protection of water quality and protection against the impacts of flooding;
- (4) Encourage the creation and preservation of affordable housing; and
- (5) Sustain the City's culture, music, and arts communities and industries. (*Added to the Oct. 4 draft*)
(5) Diversify, sustain, and cultivate the City's culture, music, and arts communities and industries. (*Suggested by Art/Music Commission WG*)

(C) Achieving these objectives is essential to the development of a healthy, sustainable and desirable city environment. Implementation of this chapter protects public health, safety, and welfare and furthers the goals of the Comprehensive Plan and Zoning Code.

2. Working with appropriate city boards and stakeholders, develop a new code section to be numbered 23-3F. Provisions for consideration, several of which are already supported by City of Austin Economic Development Department and the City's Arts Commission and Music Commission, are outlined below.

Article 23-4F: Arts, Music, and Culture

Division 23-4F-1: General Provisions

23-4F-1010 Purpose and Intent

(A) The purpose of this division is to establish general requirements and procedures to diversify, sustain, and cultivate the local arts, music, and culture communities and industries and to guarantee that arts, music, and cultural land uses are distributed across the city in an equitable manner within neighborhoods, along activity corridors, and within neighborhood, town, and regional centers.

23-3F-1020 Diversification of Art and Music

(A) City staff will prepare an annual report on the distribution of permits, and other forms of governmental participation in sustaining and cultivating arts, music, and cultural venues or events as to the ownership, management, and officers race, ethnic, gender identification, sexual orientation, age, and ability/disability, with the intent that by making public the distribution of permitted activities and permitted land uses greater equity will result.

23-3F-1030 Artist Live/Work and Live/Work/Sell

(A) Allow artists to sell finished goods from their live/work home studios. Specify in which districts a live/work artist may "sell", including performance art. This is an important distinction as multidisciplinary spaces are becoming increasingly common – where both object-based art and experience-based art are being created (i.e. "work") and offered to the public within a single building envelope.

23-3F-1040 Density Bonus Provisions for Art and Music

(A) In designated town/regional centers and activity corridors allow density bonus rules to trade greater building entitlements for including art galleries, studio space, live theater, dance performance space, live music venues, or other forms of performance art on the first floor or for preserving an existing an iconic venue on the tract (e.g., Broken Spoke).

23-3F-1050 Art Districts

(A) Describe the basis for designating arts districts (similar to that provided for historic districts) in neighborhood plans, neighborhood centers, town centers, and regional centers, and target one or more arts districts per Council District.

23-3F-1060 Theater and Art Venue Scale and Accessory Use

- (A) In establishing capacity rating for theater or arts venue consider how the venue is used in addition to overall size.
- (B) Accessory Use as a Theater, Art Gallery, or Art Workshop is permitted in all commercial and industrial/warehouse zoning districts

23-3F-1070 Art, Music, and Culture Nomenclature and Definitions

(A) Add explicit definitions that clearly distinguish types of arts/music spaces for flexible and hybrid uses in city ordinances and other regulation (i.e. distinguish terms "gallery", "theater", "studio", "live music venue," etc.).

(B) Live Music Venue Use

An establishment where live music programming is the principal function of the business and/or the business is a live music destination, and where the venue clearly establishes the ability of an artist to receive payment for work by percentage of sales, guarantee or other mutually beneficial formal agreement.

A live music venue is a destination for live music consumers, and its music programming is the primary driver of its business as indicated by the presence of at least five (5) of the following:

- defined performance and audience space;
- mixing desk, PA system, and lighting rig;
- back line (e.g., sound amplification or video equipment for performers on or behind the stage);
- at least two of: sound engineer, booker, promoter, stage manager, security personnel;
- applies cover charge to some music performance through ticketing or front door entrance fee;
- marketing of specific acts through show listings in printed and electronic publications;
- hours of operation coincide with performance times.

23-3F-1080 Agent of Change Principle.

(A) The intent of this section is to improve compatibility between residents, lodging establishments, and music-related businesses so that they may co-exist peacefully and amicably share in Austin's world-renowned night-time economy and to help live music venues and other cultural performance spaces and their communities to grow and prosper together.

(B): City staff will draft Agent of Change policy language in coordination with interdepartmental community stakeholders by spring 2020 as part of the City's 2021 International Building Code update.

Imagine Austin and Code Prescriptions Support New Code Section

Justification for the proposed new code section comes from the *Imagine Austin Comprehensive Plan* and more recent work done in developing the CodeNEXT draft and expressed in the *Music & Creative Ecosystem Omnibus*. For example, Priority Program 5 (among 8 Priority Programs) in the 2012 *Imagine Austin Comprehensive Plan* is "Grow and invest in Austin's creative economy." A short term (1-3 years) work program item is: "Explore and reimagine existing City development tools, such as incentives, regulations, and financing options, with a focus on creative industries' facility needs. Expand access to affordable and functional studio, exhibition, performance space, museums, libraries, music venues, and office space."

The proposed new section is also supported by the following policies and priority actions in the Imagine Austin Comprehensive Plan:

- Develop regulations to mitigate the sound from live music venues through a collaborative process that includes the City of Austin, musicians, venue operators, property owners, and residents.
- Create incentives and programs to preserve iconic and established music venues and performance spaces throughout Austin and its extraterritorial jurisdiction (ETJ).
- Expand access to affordable and functional studio, exhibition, performance, and office space for arts organizations, artists, and creative industry businesses.
- Explore existing City policies, processes, and regulations regarding the arts to determine what changes can be made to coordinate these with other goals, such as historic preservation, affordable housing, and high-density development.
- Incorporate the arts and cultural preservation themes and elements into small area plans, such as neighborhood and corridor plans.
- Create incentives, and programs to promote the inclusion of public art into new development.
- Encourage artists and other creative individuals by promoting the creation of live/work spaces and creative industry hubs, districts, and clusters as retail, community, or neighborhood anchors and activity generators to attract and support other economic and community enterprises.
- Establish incentives and regulations to promote the creation of artists' live/work space in residential areas that allow for limited gallery space.

Further, the *Code Prescription on Household Affordability* written in 2016 in response to the CodeNEXT consultant's *Code Diagnosis*, specifically addressed affordability impacts to small businesses and the cultural arts in the following three prescriptions:

- Allow for compatible retail and commercial uses by right including arts, culture and creative uses such as rehearsal, gallery, studio, performance or exhibit spaces and offices in areas where form-based zones have been applied and a diversity of uses is desired. This includes adequate commercial space allowances in corridors, centers, and in between these areas and neighborhoods.
- Revise the density bonus program in targeted areas such as cultural districts by adding the preservation or creation of an existing creative venue or business as a Community Benefit. Density bonus fee-in-lieu requirements will be evaluated for 501(c)(3)s to promote emerging small non-profits. The existing density bonus provisions will be evaluated to determine if they can incorporate preservation or development of a music or creative venue that will be used for rehearsal, gallery, studio, performance, or exhibit spaces and offices.
- The opportunity to expand live/work units will be found in all form-based code districts in order to promote the opportunity for the small businesses, including artists to be able to work where they live. The allowance of live/work units will be both within the uses regulated by the different form-based code districts but also in the regulation of building types to ensure the proper form to allow for live-work units.