Explanation of resolution initiating compatibility reform
Item 45 on 6/8/2023 Austin City Council agenda
CM Vela's office, 6/5/2023

Introduction

This document provides a detailed explanation of Item 45 on the 6/8/2023 council agenda, initiating city-wide compatibility reform.

Compatibility standards/limits are rules that impose setbacks and limit the height of buildings based on their proximity to single family housing and/or single family zoning. These limits are in addition to the setbacks and height limits that apply to almost every type of zoning in Austin.

Austin's compatibility standards are very complicated and far stricter than other cities. Compatibility standards are consistently identified as one of the biggest barriers to building new housing in Austin.

In December of 2022, City Council passed an ordinance making modest relaxations to properties directly adjacent to some roadways. These reforms only covered around a 1/3rd of the city that is limited by compatibility, you can read the staff analysis of that here.

Key Points

Broadly speaking, this resolution initiates the process to change compatibility.

Establish one simple, city-wide compatibility standard that is easy to use, understand, and administer.

Our current compatibility rules establish at least 5 different compatibility standards and have dozens of pages of code. The current rules are very difficult for builders and city staff to use, much less the public to understand!

Bring our compatibility standards in line with other cities.

Many cities don't even have compatibility standards, and those that do almost always only apply 50 to 100 ft from single family properties, such as Dallas and San Antonio. Austin's compatibility standards apply up to 540 ft from a single family home!

Remove compatibility as a major barrier to badly needed housing.

Compatibility limits are consistently identified as one of the strictest parts of our code and one of the greatest barriers to building badly needed housing, especially in Central Austin.

Compatibility Resolution - 1 page summary

Item 45 on June 8th Council Agenda, CM Vela

- **1: Limit compatibility to 100 ft or less**
  - Leaves room for staff to bring back recommendations of 50 or 75 ft depending on results of upcoming study of compatibility
- **2: Redefines definition of triggering property**
  - Adopts definition of triggering property that is now used in Corridor Overlay that was adopted in the ordinance passed last year.
  - Eliminates "use-only triggers" that allow single family in non-single family zoning to trigger compatibility.
  - Prevents properties with SF zoning but non-residential uses from triggering compatibility.
    - Many schools, parks, even Camp Mabry zoned SF3
- **3: Adopts some changes made to compatibility in corridor overlay city-wide**
  - Exempts SF6 (townhomes) from being limited by compatibility restrictions
  - Exempts small missing middle projects that are under 16 units and 40 ft of height from compatibility
- **4: Sets limits in current 25-ft no build buffer to be no stricter than limits on single family property**
  - Current compatibility limits prevent anything within 25 ft of single family, even though a single family house next to another single family house can build closer than 25 ft from lot line
  - This is relatively open ended but general point is that we shouldn't have stricter limits on multifamily than single family
- **5: Allows for a larger variety of waivers**
  - A waiver process exists that allows the Planning Commission or Council to waive compatibility but it has very strict limits on when/how it can be used. This will reduce those limits.
  - Planning Commission already initiated this.
- **6: Remove the limit on the number of stories, increase height limits by at least 5 ft.**
  - Limit on number of stories in unnecessary when there is a height limit
  - Corridor overlay allows 5 more ft, should at least mirror that.
  - Within 25-50 ft, height limit of 30 ft is stricter than SF height limit of 35 ft.
  - Within 50-100 ft, height limit of 40 ft is very low, stricter than similar cities.
- **7: Allow more in "no-build setback"**
  - Mirrors what is allowed on corridors in compatibility on corridors ordinance.
  - Current standard doesn't allow any "structures" which can include things like sidewalks, water quality, even park amenities
- **2nd be it resolved, initiate staff recommendations**
  - Allows staff to make their own recommendations based on the result of the study to be released in July.

Resolution language, what it does in detail

"City Council initiates amendments to City Code Title 25 (Land Development) to modify height and setbacks triggered by proximity to single family zoning and uses (also known as "Compatibility Standards"). The amendments should, at a minimum, achieve the following goals:"

This language sets the scope of the ordinance: to address height compatibility limits that modify height and setbacks triggered by proximity to single family zoning and uses.

It also notifies the public that Council is initiating code amendments, which is required to begin the process of changing code; in other words, it is the start, not the end. Once a draft ordinance is ready, it will go to the Planning Commission and back to City Council, where the public can provide input and changes can be made or recommended.

"1. Change the application of Compatibility Standards so that the standards are triggered when a proposed structure is within 100 feet of a triggering property or to a lesser distance (ex: 50 or 75 feet) if recommended by the City Manager. The City Manager's recommendation should be informed by the Study."

This language says to eliminate compatibility restrictions that apply more than 100 ft from a single family home, and consider reducing it further based on staff analysis.

Per Council direction from December, city staff is working on a study of the impact of compatibility on housing affordability. You can read the May 5th memo about that analysis here. This language allows city staff to recommend a lower maximum distance where compatibility applies based on that analysis.

Staff has recommended the 100 ft standard on several occasions. The bill that almost passed through the legislature would have limited it to 50 ft. Most cities end compatibility somewhere around 50 ft; 100 ft would still be on the upper end of what other cities do. Austin's current standards are extreme and extend up to 540 ft from a triggering property.

"2. Re-define "triggering property" so that the property contains only residential units and is zoned SF-1, SF-2, SF-3, SF-4A, SF-4B, or SF-5."

This would change the definition of "triggering property" to mirror the language for "triggering properties" that is applied to properties in the corridor overlay per the "compatibility on corridors" ordinance passed last year.

The main differences between this and the current non-corridor compatibility rules is that it:

1) Eliminates the "use-only" trigger that can make a single family home that's on a property that

is zoned for something other than single family (such as commercial) still trigger compatibility, even though they are zoned for other, higher uses.

2) Requires that a triggering property only contains residential uses. Properties with civic and public uses such as many parks, cemeteries, schools, and even Camp Mabry are often zoned SF-3 (single family) and trigger compatibility because of their zoning. That zoning is effectively a placeholder zoning in many cases, and it does not make sense to have them trigger compatibility.

"3. When triggered, mirror the Corridor Overlay and apply height and setback limits established in the Compatibility Standards to the following types of developments:

a. A development that includes a residential use that is developed under the site development regulations that apply to multi-family or commercial base zoning districts.
b. A development that includes at least 17 residential units and a structure (or a portion of a structure) will exceed 40 feet in height and will be constructed within 100 feet of a triggering property.
c. A development that includes non-residential uses."

This changes what properties are subject to compatibility to mirror the rules for properties in the corridor overlay per the "compatibility on corridors" ordinance passed last year.

The main differences between this and the current non-corridor compatibility rules is that it:

1) Exempts SF6 (townhouse & condominium residence) from compatibility.
2) Exempts properties with 16 or more residential units that don't exceed 40 ft.

"4. Set height limits in no-build setbacks (0 to 25 feet from the triggering property) to be equal to or less restrictive than height limitations applied to single-family structures."

The purpose of this language is to allow multifamily and other uses in the same footprint as a single family structure would be allowed.

Under the current rules, compatibility setbacks and height limits are actually stricter than the setback and height limits on single family structures.

The no-build compatibility setback is 25 ft from a single family structure. A single family home next to another single family home only has a 15 ft rear setback and a 5 ft side setback.

Compatibility limits height between 25 and 50 ft from a triggering property to 30 ft. The height limit for single family homes is 35 ft.

On some smaller lots surrounded by single family, a single family house could be bigger than a multifamily structure once compatibility limits are applied. This can be extremely detrimental to

'Missing Middle' housing types that can provide small-scale density and more affordable housing options than single-family structures that are similar in scale. It also incentivizes building expensive McMansions over more affordable multifamily units.

This resolution does not change the side and rear setbacks for multifamily and commercial properties that are separate from compatibility.

"5. Modify the existing waiver provisions for Compatibility to allow for (a) a larger variety of waivers, and (b) more opportunities for waivers."

There is an existing process for waiving compatibility, but it is extremely restrictive and rarely used. You can read the code for it here: 25-2-1081

This provision would broaden the waiver to allow its use more broadly. The waiver would still have to go to the Planning Commission, or council on appeal.

"6. Remove the maximum number of stories and increase height limitations by at least five feet for structures constructed within 100 feet of a triggering property."

This does two things:

1) Eliminate the cap on the number of stories. Under 100 ft from a triggering property, properties are subject to a 2 or 3 story cap in addition to the height cap. A story cap is unnecessary when you have a height cap. The compatibility standard on corridors eliminated story caps; this would do it city-wide.

2) It increases the current height cap within 100 ft of triggering property by at least 5 ft.

Under the "compatibility on corridors" ordinance passed last year, the height cap was increased from 30 ft to 35 ft at distances that are 25-50 ft from a triggering property and from 40 ft to 45 ft at distances that are 50-100 ft from a triggering property.

This provision says to make at least that same 5 ft increase city-wide.

"7. Modify the limitations on what can be constructed within the "no-build" setback to mirror the uses allowed in the Corridor Overlay and found in City Code Section 25-2-769.04 (Compatibility and Setback Requirements)."

The current 25 ft no-build setback does not allow any "structures," which has been strictly interpreted to prohibit simple items like walkways, water quality and detention ponds, and even small park amenities.

The compatibility on corridors ordinance changed the 25 ft no-build setback for corridor properties to allow structures with the following limits:

(1) The structure cannot exceed 35 feet in height;
(2) The structure cannot be used as a dwelling, multi-level parking facility,or for refuse collection;
(3) The structure cannot include enclosed walls or a roof except for screening and walls that are part of stormwater or other critical infrastructure; and
(4) The structure cannot include industrial or larger commercial HVAC systems.

This provision says to apply that change city-wide.

"BE IT FURTHER RESOLVED:

In addition to the amendments described above, City Council initiates amendments to Compatibility Standards that are recommended by the City Manager. City Council encourages the City Manager to consider recommending regulations that are similar to those adopted by other Texas cities."

This language allows staff to come back with additional recommendations. Staff is working on an analysis of compatibility that is scheduled to be released in July. That report may generate ideas from staff for additional changes to compatibility beyond those in this resolution.

Additional Question and Answer

Would this override the "compatibility on corridors" ordinance passed last year?

Yes. It takes all of the changes to compatibility in that ordinance and it either applies them city-wide, or goes further than the compatibility on corridors ordinance. Combined with the city-wide elimination of parking requirements, this should allow us to eliminate the corridor overlay and erase dozens of pages of complicated city code.

Why do you not include special rules for corridors?

Focusing rules on certain corridors makes sense in theory, but in practice, it can get very messy and complicated.

1) How do we pick the corridors? The process for picking corridors was messy and excluded a lot of significant roads in high opportunity areas.

2) The adopted corridor overlay was defined very narrowly along the corridors that were chosen, only to properties "front or side-facing" the corridor itself. The corridor overlay missed many properties that are less than a block away from the corridor but don't directly touch it. Some corridors have lots of shallow, fragmented property lines and others have a few large parcels.

One city-wide standard is much easier for the city to administer, for developers to use, and for the public to understand.

Why doesn't this include a density bonus?

The short version is that a density bonus simply for compatibility relaxation is very unlikely to work, and tying a density bonus is more likely to kill units than generate affordable units.

The impact of compatibility varies significantly site to site. In some cases, compatibility only impacts a small portion of a property and has only a marginal impact. In other cases, it covers all of the site and kills most of the potential building.

When designing density bonus programs, it is critical to properly calibrate the program so that the benefits to the developer outweigh the cost of providing affordable units and they have an incentive to opt into the bonus. When the degree of incentive is so variable and arbitrary, it is impossible to properly calibrate.

In addition, if left as is, compatibility would severely limit the effectiveness of the new city-wide density bonuses proposed in other resolutions on the June 8th agenda. Many of the sites that might use our other density bonus programs, such as VMU, are severely restricted by compatibility. City-wide compatibility reform would allow many more properties to fully take advantage of those programs and generate more units, including affordable units.

Useful Links

- This resolution, Item 45, June 8th agenda:
  https://www.austintexas.gov/department/city-council/2023/20230608-reg.htm#045
- Compatibility on Corridors Ordinance (Passed Dec 1st, 2022)
  - Explanation of item when it was initiated:, 5/17/22
    http://assets.austintexas.gov/austincouncilforum/47-20220517162237.pdf
  - Executed ordinance, 12/1/22:
    https://library.municode.com/tx/austin/ordinances/land_development_code?nodeId=1201336
  - Staff analysis of 12/1/22 ordinance:
    https://services.austintexas.gov/edims/document.cfm?id=397653
  - 12/1/22 posting with backup:
    https://www.austintexas.gov/department/city-council/2022/20221201-reg.htm#056
- Planning Department memo outlining upcoming July study, 5/5/22:
  https://austintexas.gov/edims/pio/document.cfm?id=408115
- Planning Commission waiver initiation:
  https://services.austintexas.gov/edims/document.cfm?id=406141