



**ZONING AND PLATTING COMMISSION RECOMMENDATION 20180509-A1**

Date: May 9, 2018

Subject: CodeNEXT Recommendation

Motioned By: Commissioner King

Seconded By: Commissioner Greenberg

**Recommendation**

*See attachment*

**Vote**

For: Chair Kiolbassa, Vice-Chair Duncan and Commissioner Aguirre, Breithaupt, Greenberg, Denkler and King.

Against: Commissioners Flores, Lavani, Tatkow and Evans.

Abstain:

Absent:

Attest:

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Andrew D. Rivera  
Land Use Commissions Liaison

## ZAP RECOMMENDATION ON CODENEXT

Whereas after two days of public hearings it was clear that there is minimal community support for CodeNext; and

Whereas the Zoning and Platting Commission evaluated CodeNext and finds that:

- The benefit to Austin residents is not clear or compelling,
- Successful implementation is highly unlikely, and
- The resulting development approval processes will be more complex, more costly, and less predictable, and

Whereas there is widespread public concern that instead of helping, CodeNext will only exacerbate Austin's gentrification, affordability, and economic segregation problems; and

Whereas the writing and revision of CodeNext was managed by Austin's Planning Department even though problems highlighted by the Zucker report have never been addressed; and

Whereas Austin has a new City Manager who should not be saddled with implementing a flawed land development code in which he had no part in preparing and in which there is so much community opposition; and

Whereas previous CodeNext recommendations from the Zoning and Platting Commission (see attachment) along with the vast majority of the recommendations from the community were not implemented or even responded to; and

Whereas the cumulative effect of discarding so many community stakeholder agreements has undermined the public's confidence in CodeNext, the staff and consultants who have worked on the project, as well as Austin's land use commissions and City Council; and

Whereas further attempts to revise or amend CodeNext will only waste additional time and City resources and further degrade the public's trust; therefore

Be it resolved that the Zoning and Platting Commission urges the City Council to

1. Immediately terminate the CodeNext project, and
2. Digitize the current Land Development Code so that restrictions and entitlements are clear on each parcel, and administration of the code is streamlined, and
3. Determine the top 10 problems with the current code and its administration, and
4. Based on the agreed to list of problems, direct the City Manager to make changes to the current code as well as the way it is implemented and enforced, and
5. Immediately focus attention on ways to minimize displacement and provide affordable housing by implementing recommendations from the Mayor's Taskforce on Institutional Racism and the People's Plan, and
6. Preserve existing affordable housing by providing strong disincentives against the demolition of housing valued at \$300,000 or less per unit.
7. Create a code efficiency task force to provide input and recommendations to achieve items 1-6 by removing negative elements of our current code and integrating positive elements of CodeNext.



## ZONING AND PLATTING COMMISSION RECOMMENDATION 20171030-B

Date: October 30, 2017

Subject: CodeNEXT Draft #2

Motioned By: Commissioner Denkler

Seconded By: Commissioner King

### **Recommendation**

*See attachment.*

### **Vote: 8-0**

For: Chair Kiolbassa and Commissioners Aguirre, Breithaupt, Denkler, Evans, Flores, Greenberg and King

Against:

Abstain:

Absent: Vice-Chair Duncan left the dais; Commissioners Lavani and Trinh absent

Attest:

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Andrew D. Rivera  
Land Use Commissions Liaison

# **Zoning and Platting Commission CodeNEXT Recommendations**

## **Summary**

The Zoning and Platting Commission has evaluated the second CodeNEXT draft to the best of our ability given the very limited time we were given. Below is a summary of our recommendations with additional detail of each point attached.

### **Revisions to Adoption Process**

- Extend the timeline to give citizens, commissions, and council more time to review, revise, digest, and provide meaningful feedback on the full content of CodeNEXT
- CodeNEXT mapping should be completed only after the 5 year Imagine Austin plan has been updated with input from all stakeholders, including an intentional focus on seeking input from communities of color
- Do not release a city-wide map for Draft 3 of CodeNEXT. Instead, targeted areas of the city should be released to test desired vs. real-world impact

### **Revisions to Elements of the Code**

- Align CodeNEXT to Imagine Austin whenever possible, especially mapping and small area plans
- Insure that all affordable housing programs work consistently and are available in all zoning categories; PUDs should participate too; tie entitlements to inclusion of affordable housing; require more 2 and 3 bedroom units for families; lower MFI thresholds
- Increase pedestrian-friendly policies
- Incorporate recommendations regarding flooding
- ADUs - allow in all housing form zones; fast-track and eliminate fees for small (>500 sq. ft.) and income restricted units; Allow units up to 1,100 square feet based on lot size
- Address compatibility standards, setbacks and step-back provisions
- Scrutinize and revise elements related to appeals, notifications, increased administrative authority, and the broadening of special exemptions as a means of ensuring the public can provide input throughout the process
- Remove references to “high” and “low opportunity zones” in CodeNEXT -- every neighborhood in our city should be a high opportunity zone

### **Revisions to Code Organization/Complexity**

- Ensure progression and cumulative nature of zoning categories
- Reduce number of zoning categories to reduce complexity (e.g. Cincinnati)
- Reduce overall text length to average of other similarly-sized city
- Re-organize structure to match that of other cities (e.g. Portland, Chicago, Cincinnati)
- Increase use of tables, illustrations and flowcharts whenever feasible to improve readability
- Chapters: Incorporate transportation, separate environmental, separate technical; administrative procedures and definitions at the back; group together all procedures for appeals
- Professional editing to address inconsistencies, missing/unclear definitions

## Zoning and Platting Commission CodeNEXT Recommendations

### Detailed Recommendations

#### **CodeNEXT MAKES AUSTIN MORE AUTO-CENTRIC AND LESS PEDESTRIAN-FRIENDLY**

A walkable streetscape may no longer be required. Setbacks along core transit corridors and urban roadways will be narrower and will be a patchwork of depths. Current code under Subchapter E requires a 15' setback consisting of street trees and/or benches on core transit corridors and a similar 12' wide streetscape for urban roadways. This pedestrian-friendly design is eliminated in CodeNEXT and replaced with inconsistent and smaller setbacks determined by zoning, not by street type. For example, Mixed-Use (MU) can have a 10 ft. setback and be adjacent to Main Street (MS) that requires a 5' setback. In addition, "private frontage" is allowed to substitute for the required setback in MU and MS.

The Zoning and Platting Commission recommends that the sidewalk requirements not be relegated to the Transportation Criteria Manual. Current sidewalk requirements included in Subchapter E of the current land development code should be retained and included in CodeNext.

The proposed code increases drive-thru use throughout Austin, including areas already enjoying high density and where Neighborhood Plans do not allow drive-thrus.

CodeNEXT keeps Austin's outer neighborhoods auto-centric instead of facilitating a transformation to pedestrian-friendly. The Zoning and Platting Commission is acutely aware of the exponential job and housing growth occurring in these exurbia regions yet CodeNEXT ignores this.

CodeNEXT guarantees that the outer core will continue to develop with a suburban model by zoning neighborhoods in these areas for only one unit per lot. The Zoning and Platting Commission recommends that CodeNEXT encourage housing density, diverse housing options, and more ambitious housing target for outer core neighborhoods particularly those near the Domain, Lakeline Station and job centers and ensure complete communities throughout Austin.

CodeNEXT does not improve parking garage requirements and provides no opportunities to convert existing structures into pedestrian-friendly amenities. Best practices dictate that the first street level of parking garages contain retail except for the necessary access points. With hundreds of parking garages throughout Austin, more street level retail space could be utilized through more up-to-date parking structure guidelines.

## **CodeNEXT MAKES THE CODE MORE COMPLEX**

CodeNEXT increases the number of zoning categories instead of decreasing them. The overall number increases from the current 39 categories to 58 categories. Residential categories increase from 16 to 25 with one zoning category, SF-3, placed into six categories. The number of commercial categories has increased from 23 to 34.

CodeNEXT's zones lack the progression in both sizes and uses that the Zoning and Platting Commission would expect to see in a well-organized code and are qualities that the current code contains. Currently General Office (GO) builds on Light Office (LO) zoning with an increase in uses and sizes, as do all commercial zones. By contrast, CodeNEXT introduces zoning categories that do not build on preceding categories but, instead, create a whole new set of allowed uses and dimensions. The Zoning and Platting Commission recommends that zoning categories be cumulative.

Creating new categories of Main Street (MS) and Mixed Use (MU) categories complicate instead of streamline Austin's commercial code. These two zones are designed for similar mixed-uses.

CodeNEXT continues to rely on current Chapter 25 zoning for some types of uses so Austin in the future will have two, not one, set of land development regulations to deal with. Many warehouses were allowed in Commercial Services (CS) with Conditional Overlays (CO). A new zoning category should be proposed for warehouses. Other uses that are currently slated to retain their Chapter 25 zoning should be assessed for conversion to a new category in the proposed code.

CodeNEXT avoids the simple fixes that could rectify problems with our current code. For example, single-family use now triggers compatibility restrictions that occasionally lead to unpredictable results. Instead of completely changing the compatibility requirements, it could be changed to where zoning only, and not use, triggers compatibility.

The Zoning and Platting Commission recommends that CodeNEXT be ordered for user convenience.

- Additional illustrations including flowcharts should be added to improve user understanding
- The zoning code should be first and the general requirements chapter which enumerates all fees should be next.
- Environmental regulations should continue to retain its own chapter.
- Transportation can be incorporated within the infrastructure chapter.
- Administration, procedures, and definitions should be at the back and
- The technical codes can be in a separate document.

## **CodeNEXT CONTAINS INCOMPLETE INFORMATION, INCONSISTENCIES AND ERRORS**

Sections of the proposed code are still missing which means that the land use commissions have to make a recommendation without all necessary information. Missing segments include Compliance and Monitoring Criteria for the Affordable Housing Bonus Program, the Signage chapter, the Technical Codes chapter and the Transportation Criteria Manual.

CodeNEXT is full of inconsistencies and errors. For example,

- Mixed Use (MU), the front setback is shown as 10' according to Fig. 23-4D-4050 (1) yet tables indicate a 25' setback from the ROW. This figure is also used to show the required setback for Main Street (MS), which has tables depicting a 5' setback.
- Text references to 23-9E-5050 regarding sidewalk requirements, but the correct section is 23-9E-2020 that has no requirements.
- Text references over and over to building standards in 23-4E-8030, a section that has no standards.
- Text reference to 23-4D-2220 on Cottage Courts, a section that doesn't exist. The correct reference is to 23-4E-8050.
- Error of 1150 sq. ft. for ADUs
- Zone R1B says 45' width on 4D-2 pg 23 and 50' width on 4D-2 pg 24.
- Zone R3C says 0.4 FAR on duplex but 23-4E-6160 allows duplexes up to 0.57 FAR in R3C.
- R1-R3 say AHBP is not applicable, but 23-3E-5010 gives affordable housing incentives in those zones.
- MS zones Table 23-4D-5030A seems to prohibit restaurants < 2500 sq. ft. as this is not listed as an allowed use.
- Telecommunication uses are permitted by right in all zones except Lake Austin (LA) in 23-4D-2030 but restricted by 23-4E-6370 from House Form Zones.

CodeNEXT lacks crucial definitions. For example, Watershed, Public, Urban Core, and Regional Center are nowhere defined in the text, for instance. Other definitions, like "Private Frontage," are not in the Terms section, Group Residential is not defined, Food sales "on and off site" is not defined, the Medical services definition is not specific enough to know whether hospital services limited uses are permitted, Outdoor Formal and Outdoor Informal uses are not defined. Planning jurisdiction should be deleted as a definition and add a definition for Extra Territorial Jurisdiction (ETJ). Whenever jargon is used, include a definition.

The Zoning and Platting Commission recommends that a professional editor be hired to correct all typos, incorrect references, inconsistencies, and missing or unclear definitions.



## **FLOOD MITIGATION TASK FORCE RECOMMENDATIONS NEED TO BE INCLUDED**

The Zoning and Platting Commission would like answers to the following questions:

In regards to the Flood Mitigation Task Force (FMTF) Report:

- Which regulatory recommendations identified in the report are addressed in CodeNEXT?
- What feedback did the consultants provide for each regulatory recommendation in the FMTF Report?
- How is each recommendation addressed in CodeNEXT?
- If any recommendation was not addressed in CodeNEXT, what is the rationale?

We also request answers to the following general questions:

- Numerous individuals and groups have raised flooding concerns. How have those individual concerns been addressed? How is the comment process demonstrating the community's concerns are being heard and addressed?
- Additionally, it must be noted that the Environmental Commission is not making a recommendation on the second draft due to not having enough information. What additional information is needed? How quickly can that information be provided?

The Zoning and Platting Commission has requested (and requests again) the following information specific to flooding: Data on all the locations of localized flooding throughout the city; a list of all buyout locations; and identified buyout locations including money secured for buyouts, buyout status pending and properties identified but no money available to proceed with the buyouts.

The Zoning and Planning Commission recommends that the City of Austin implement a regional storm water management system for the remaining watersheds that don't have a Regional Storm Management Program (RSMP). We would also like the RSMP to be the subject of a third party evaluation per the flood mitigation task force recommendation.

The Zoning and Platting Commission recommends that properly credentialed engineers review subjects that they are licensed in, including site plans for three to nine residential units.

## **CodeNEXT SIGNIIFICANTLY REDUCES OPPORTUNITIES FOR INCOME RESTRICTED AFFORDABLE HOUSING**

It is clear from other growing cities and our own that a bigger, denser city increases the rate of innovation, start-ups, and productivity, but it is also accompanied by increased gentrification, income inequality and segregation, and housing costs. One remedy to the downside of growth is to require developers to provide affordable housing in exchange for the additional height and density that they want.

CodeNEXT hurts Austin's ability to provide affordable housing in two ways. The first is by reducing the percentage of affordable units that must be provided in the Affordable Housing Bonus Program (AHBP) and the second is by providing increased by-right entitlements without imposing affordability requirements in return.

CodeNEXT 23-E-1040(B)(2) states that the number of affordable units will be calculated based on *a percentage of only the bonus units* requested resulting in far fewer affordable units than those required by the city's Vertical Mixed Use (VMU) program. The VMU program requires the percentage of income restricted affordable units to be based on *the total number of units in the project* and that the Median Family Income (MFI) requirement is 60% to 80%. This VMU program was studied for feasibility and has provided income restricted units scattered around the city. The Zoning and Platting Commission recommends that current VMU affordability standards be used in CodeNEXT instead of the proposed AHBP standards.

CodeNEXT provides increased by-right entitlements with no public benefit. For example, the CodeNEXT draft 2 map typically zones CS-V properties MS3 with a height limit of 75'. This 15' height increase will likely reduce developers' incentive to participate in the AHBP. Given the limited options to create affordable housing, it makes no sense to give away development entitlements without affordability requirements. The Zoning and Platting Commission recommends that CodeNEXT ties any increases in entitlements (increased height, FAR, or density) to requirements to provide affordable housing. The Zoning and Platting Commission recommends that the city require a certain percent of all units to be multi-bedroom, to give low-income families with children housing priority, achieve deeper affordability by lowering MFI thresholds and adjust fees to be more in line with actual housing costs.

To provide the maximum benefits, AHBP should be made available in as many zones as possible. For example, the AHBP should be available in all Main Street zones. Commercial properties with no housing should be allowed to participate in the AHBP by paying fee-in-lieu. To ensure compatibility, height and FAR should not increase in or near residential house form zones. Bonuses in these locations should be limited to increases in units.

CodeNEXT eliminates requirements for affordable housing in the Planned Unit Development (PUD) Zone (23-4D-8120). The Zoning and Platting Commission recommends that all PUDs that receive increased entitlements or code modifications be required to provide on-site affordable housing (or fee-in-lieu to the AHBP for projects that don't provide housing).

## **ACCESSORY DWELLING UNITS**

The accessory dwelling units (ADUs) in CodeNEXT (and the current code since 2015) allow ADUs of 1,100 sq. ft. This size exceeds every major city in the US. In fact, 1,100 sq. ft. is the size of many houses in older neighborhoods. These houses permitted as large ADUs have recently been sold separately from the main house using a condo regime making clear that the large ADU is not an accessory to the main house. The Zoning and Platting Commission recommends that Austin reduce the allowed size of ADUs consistent with other cities and find other ways to encourage the use of this infill tool. ADUs should be allowed by right in all house form zones and CodeNEXT should allow detached, attached and garage ADUs, fast-track and eliminate permit fees for smaller ADUs (<500 sq. ft.) and income-restricted ADUs, and vary permitted floor area by lot size (600, 850, and 1,100 sq. ft.).

## **COMPATIBILITY**

CodeNEXT proposes to drastically limit compatibility protections in the house form zones allowing an eight-story building to be just 100' from a single-family home. This short compatibility buffer is unprecedented in major US cities. Adequate compatibility standards are necessary to compensate for Austin's failure to follow sound transitional planning principles. The Zoning and Platting Commission recommends that house form zones (and not use) trigger compatibility. We recommend that current compatibility rules be reduced by about one-third, allowing 40' buildings 100 feet away, 60' high-rises 200 feet away; and 80' story high-rises 300 feet away from house form zones. Step back provisions should be included for RM1B, and MU1 (A-D). Step-backs should be based on the distance from triggering property line and not on the widths of roadways and alleys. The Zoning and Platting Commission recommends that in addition to height, massing and uses be included. CUPs must be required for uses that are inappropriate in the vicinity of house form zones (including those involving alcohol and extended hours of operation). Compatibility requirements should also ensure that out of scale massing (such as MU1C and MU1D zones) be prohibited within 300' of residential house form zones. In addition, other compatibility provisions such as driveway and parking placement, dumpster placement, mechanical equipment placement, etc. should be retained from the current code. ZAP recommends that side yard setbacks be evaluated In an effort to provide uniformity.

## **CodeNEXT CURTAILS PUBLIC INVOLVEMENT AND PUBLIC TRANSPARENCY**

CodeNEXT has increased impediments to public participation, diminished transparency given enhanced administrative authority, and suggested the creation of bodies with no clear policy reason for doing so. The Zoning and Platting Commission is concerned about the following issues:

- Less notification;
- Shorter time periods and impediments to appeals;

- Changes to determination of standing to appeal;
- Minor Use Adjustments;
- Minor Use Permits (MUP); and the
- Broadening of special exemptions.

### **CodeNEXT DISREGARDS THE TEXT AND THE MAPS OF IMAGINE AUSTIN, THE CITY'S ADOPTED COMPREHENSIVE PLAN**

Texas Local Government Code § 211.004 *requires* that zoning regulations be adopted in accordance with the adopted comprehensive plan. Austin City Charter Article X, § 6 also *requires* that all land development regulations, including zoning and map, shall be consistent with the comprehensive plan, element or portion thereof as adopted.

The CodeNEXT draft 2 map does not follow the Growth Concept Map's directive to focus development along the corridors and activity centers. Imagine Austin directs that where a small area plan exists, recommendations should be consistent with text of the plan and its Future Land Use Map. The CodeNEXT draft 2 map disregards both the text and the map of Austin's comprehensive plan.

CodeNEXT is meant to be an implementation process, not a new planning exercise. The Zoning and Platting Commission recommends that future mapping be consistent with directives and maps in Imagine Austin, including the small area plans.

### **CodeNEXT CONTINUES AUSTIN'S HISTORY OF INSTITUTIONAL RACISM AND INCOME SEGREGATION**

Austin has a pattern of permitting more intense zoning categories in east Austin than elsewhere. Austin is one of the most economically segregated metro area in the country, with rich and poor residents increasingly separating out into low- and high-income neighborhoods, and a smaller and smaller share of residents living in mixed-income communities. CodeNEXT proposes 17 different house form zones allowing for different entitlements. This provides a clear path to worsen income segregation. The CodeNEXT draft 2 map is almost entirely R1 on the west side of Austin while only the central and east Austin neighborhoods are zoned R3. This inequitable treatment will further exacerbate income segregation. The Zoning and Platting Commission recommends that the number of house form zones be drastically reduced, that all areas of the city be mapped equitably, and that CodeNEXT encourage mixed-income communities by using one set of zoning standards in the entire city. We also recommend that subdivision rules be changed to promote a mix of lot sizes.

Neighborhoods identified in the report from the Mayor's Task Force on Institutional Racism should not be upzoned and compatibility protections should be restored for properties with

current single-family zoning. The Save Our Springs (SOS) ordinance passed in 1992 in the city to protect environmentally sensitive parts of Austin from overdevelopment. An unintended consequence is that the ordinance encouraged overdevelopment into east Austin. The Zoning and Platting Commission recommends that CodeNext provide enhanced environmental protections in central and east Austin to treat different areas of the city equitably and to avoid the negative consequences of impervious cover and overdevelopment in all areas of the city.

The primary purpose of CodeNEXT is to implement the Imagine Austin Comprehensive Plan (IACP). Given that the IACP is currently undergoing a five-year major update, we recommend mapping after Imagine Austin completes this update.

Communities of color have been largely left out of the IACP and CodeNEXT processes and as a result, neither the IACP nor CodeNEXT equitably represent their voices, values, interests and needs.

The City's Equity Office should review the IACP and CodeNEXT and provide feedback and recommendations to the Planning Commission, the Zoning and Platting Commission, staff and Council.

The Zoning and Platting Commission recommends that references to "high-" and "low-opportunity" areas be removed from CodeNEXT because every area should be a high opportunity area.

## **MAPPING RECOMMENDATION**

The Zoning and Platting Commission recommends that the third CodeNext draft be released without a city-wide map. Consistent with the Opticos contract, only a sample of areas (including an activity corridor, a commercial area, an older neighborhood, a newer neighborhood, and area around a school, and the University Neighborhood Overlay) should be tested, so that we can ensure that the zones work as expected.

The Zoning and Platting Commission recommends that when the entire city is mapped, upfront increases in entitlements (FAR, height, or number of units) should be avoided. Upfront upzoning gives away the only leverage we have for creating income restricted affordable housing, can jeopardize the fabric of Austin's neighborhoods, and is near impossible to remedy when mistakes are made.