



**CNC's Initial Comments on
CodeNEXT Draft 2 and Map**
September 28, 2017

CNC's expert reviewers have been pouring over the second draft of the CodeNEXT text and map, released September 15, 2017 ("CN Draft 2"). In short, CN Draft 2 is worse than CN Draft 1. Unfortunately, City staff is going backwards.

Summary:

- CN Draft 2 has not been responsive to public feedback, lacks transparency, and reflects an unprofessional work product that has cost the City millions of dollars;
- CN Draft 2 does nothing to resolve Austin's most challenging problems, such as affordable housing, income and racial inequality, and neighborhood stability, and it appears to make these problems worse; and
- CN Draft 2 creates economic incentives to redevelop and tear down Austin's neighborhoods, which will result in the displacement of thousands of Austin's families.

Here is a more detailed statement of our initial findings:

Draft 2 is incomplete, inadequate and poorly drafted. The text is filled with errors, gaps, and inconsistencies. Entire sections of the code are still missing (e.g., Chapter 23-8 (Signage), Chapter 23-11 (Technical Codes), and 23-4D-8090 (Former Title 25 (F25) Zone standards and regulations). Terminology is muddled (e.g., the zoning category RM4A allows the development of "Rowhouse: Large", but such building form is never defined). Standards are inconsistent from one section to the next (e.g., ADUs appear to be capped at 1100 sq. ft. in some sections, but at 1150 sq. ft. in others). Considering the City has already spent more than \$6 million of taxpayer money—a figure which continues to grow each day—the City Council should demand that the staff and consultants fully withdraw their second draft and completely overhaul it to meet, at a minimum, the standards of their profession.

Draft 2 lacks legislative transparency: there are no guides to help the public determine new text from old in the 1,387-page document. Because the CodeNEXT staff did not provide any comparisons to existing code or track their revisions, it is difficult, if not impossible, for the community to know the full extent of what has changed and what has been omitted. The City Council should require that the CodeNEXT staff prepare indexes and redlined comparisons showing how the code has changed between drafts and how CN Draft 2 compares to the existing code.

The CN Draft 2 zoning map violates the City's comprehensive plan and has been unlawfully prepared. State law and the Austin City Charter require that the City prepare a zoning map that

is consistent with and implements the City's adopted comprehensive plan, which includes Imagine Austin and the neighborhood plans. But CodeNEXT clearly ignores the directives of Imagine Austin and the neighborhood plans' text and future land use maps. (See <http://www.communitynotcommodity.com/wp-content/uploads/Why-the-CodeNext-Map-is-Unlawful-09-13-17.pdf>).

Instead, the CN Draft 2 map was generated using undisclosed mapping criteria. The designation of zoning districts is entirely inconsistent from lot-to-lot, block-to-block and neighborhood-to-neighborhood. The only consistent pattern that is evident from the CN Draft 2 map and the CodeNEXT consultants' statements is that the mapping is designed to maximize profits for the real estate industry by providing incentives to raze single-family homes and replace them with multi-family. We are deeply troubled that CodeNEXT has been turned into a tool for redevelopment and profiteering which will result in the displacement of thousands of Austin's existing residents, including families with children. (See <http://www.communitynotcommodity.com/wp-content/uploads/How-the-CodeNext-Map-Was-Drawn-09-15-17-.pdf>).

The CN Draft 2 map results in an unfair and inequitable distribution of redevelopment and growth. An analysis released by Portland-based Fregonese & Associates, consultants for the City, revealed that 20% of the new units generated under CN Draft 2 would be forced on District 1 (the East Austin council district represented by Council Member Ora Houston). We are still waiting on the remainder of the analysis that would forecast how many of these new residents are based upon the displacement of existing families and what percentage of these new units would be affordable to those displaced residents. As CM Houston recently wrote in an op-ed to the Austin American-Statesman, "[W]e must find a solution that does not shoehorn or continue to displace communities that have low to moderate resources."

The CN Draft 2 map upzones nearly every lot in the City. We applaud the addition of multi-family uses within formerly commercial zones along the corridors, as a reasonable way to accommodate growth. However, CN Draft 2 still inappropriately focuses new growth within the interior of neighborhoods. From Allandale to Dove Springs, from Pecan Springs to Circle C, neighborhoods all across the City are proposed to be upzoned in one quick sweep. Seventeen new "R" residential categories are being applied throughout the interior of Austin's neighborhoods, increasing the number of units that can be built on most single-family lots. A significant number of lots formerly zoned SF-3 (single-family residential) are now proposed to allow up to 3 units per lot (and some are proposed to allow as many as 6-8 units). And, some neighborhoods that were formerly restricted to single structures only are now proposed to allow secondary units on each lot, up to 1150 sq. ft. in size.

CN Draft 2 creates an economic incentive for the demolition of single-family homes throughout the interior of Austin's neighborhoods. In neighborhoods like Holly, Chestnut, Zilker, and North Loop, where lots currently zoned for two units, are being proposed to be upzoned (from single-family (SF-3) to multi-family (R3)) to allow three or more units, the City is creating opportunities for higher profit margins and increasing the incentive to raze existing, more-affordable housing. These neighborhoods have already experienced rapid rates of demolitions, and CodeNEXT only pours more fuel on the fire. CodeNEXT should stop the demolitions, not cater to the profit-seeking market forces driving them.

CN Draft 2 weakens the only tool proven to be effective at reducing demolitions—occupancy limits. In 2014, the City Council reduced the occupancy limits for new residential construction from 6 unrelated adults to 4 per site, to reduce the economic incentive to demolish single-family homes and replace them with “stealth dorms”. It has worked so well that the City Council extended this change in 2016. However, the future of these occupancy limits is at risk. We are encouraged that the occupancy limit in the cases of a single house or a single duplex on a lot remains at 4, but in R3 zones, occupancy limits would be increased on a per lot basis to: 6 unrelated adults in the case of a duplex plus an ADU; to 24 in the case of a cottage corner; and to 36 in the case of a cottage court. This highlights the absurdity of effectively upzoning single-family neighborhoods as multi-family!

The code drafters can’t decide whether the maximum size of an ADU (accessory dwelling unit) is 1,100 sq. ft. or 1,150 sq. ft. CN Draft 2 says both, but either number is too large. Best practices in well-managed cities set the limit at 500 to 800 sq. ft., depending on lot size. The smaller ADUs make sense, as they provide homeowners the flexibility to add a unit for an extended family member or to supplement their income, and we support the notion that a homeowner may add more space appropriately, with the rule being applied citywide. However, larger ADUs create an inherent incentive to demolish the existing house to readjust and redistribute the square footage built on the lot to build the larger ADU. The ADU provisions need to be revised to incentivize the preservation of the existing primary structure and to ensure that the ADU built is affordable to families and individuals for whom we are trying to build housing. Investor-owned ADUs, on the other hand, should be discouraged.

Minimum lot widths in residential areas are as little as 25’, or for perspective, less than the yards needed for a first down. The CodeNEXT staff appears to have taken the concepts of small lot amnesty (a tool already applied within the existing code) and created a loophole that could allow developers to subdivide existing lots into 2500 sq. ft. lots, 25’ in width. A footnote incorporated into most residential zoning district states that a “25’ lot width (min.) and 2500 sf area (min.) [applies] for lots existing at time of adoption of this Land Development Code.” This is either sloppy language or a backdoor attempt to drastically cut up Austin’s neighborhoods into substandard lots. Either way, it needs to be fixed.

CN Draft 2 reduces on-site parking requirements for residential construction to one space per dwelling unit. On-site parking requirements are also proposed to be reduced dramatically for bars, restaurants and other commercial uses. These parking reductions come with no significant analysis on current parking demands on already clogged streets, no evaluation of the impacts on public safety, no suggestions for increases in resident-focused parking programs, and no investments in mass transit. While reducing car dependency is a goal we can all share, aspirations are different from reality. When 6 adults live on one lot, it is reasonable to assume that more than 3 cars will need to be parked. We would prefer a more prudent, transitional approach that would help provide relief to the parking nightmares already being experienced by neighbors close to busy commercial districts.

Austin is one of the most flood-prone areas of the country, but you wouldn’t know that by reading CN Draft 2. Despite repeated requests for months to provide data forecasting the impact that proposed increases in density and entitlements would have on storm-water runoff and flooding, the CodeNEXT staff refused to provide any modeling or information. According to the City’s analysis of impervious cover by watershed, CodeNEXT would permit as much as 12%

of the lands within the Shoal Creek and Williamson Creek watersheds to be developed with impervious cover. These are areas that already experience flooding problems, but CN Draft 2 offers no solutions for a very real problem.

In fact, in an unprecedented move, CN Draft 2 proposes to allow a density bonus for impervious cover! Section 23-2E-5010 of CN Draft 2 would allow all residential-zoned properties participating in the City’s SMART Housing Program to have up to 50% impervious cover. Such a reckless move has been intentionally avoided in years past, as the cumulative effects of impervious cover on area-wide flooding is well understood in this community.

Compatibility Standards have been gutted, and the effects will be felt citywide. Under CN Draft 2, all compatibility standards beyond 100 feet from a single-family residence have been completely eliminated. Under current compatibility standards, a building of 120 feet would have to be 540 feet from a residence. The change in compatibility standards offers developers across the city significant increases in entitlements, with no exchange of affordable housing or community benefits.

The density bonus program is incomplete and unsupported by economic and policy analysis. There is no analysis in the City’s density bonus report to support the CN Draft 2 affordable housing bonus requirements. CN Draft 2 relies heavily on providing developers the option to pay fees in lieu of providing on-site affordable housing units, but there has been no analysis on the fees needed for the City to build off-site units. Nor is there an adequately defined process for approving fees in lieu or alternative sites.

The density bonus program will not produce affordable housing for modest- and low-income families. Texas law, unlike in any other state, constrains the City’s ability to require developers to build affordable housing; however, density bonuses are well within the City’s authority. The problem is that when the City sets the bar too low, developers are able to build to the densities they want without producing on-site, affordable units. Developers pay fees-in-lieu that are too low for the City to build alternative off-site units or they build bonus units that are primarily one-room efficiencies that would already be at or close-to market-rate. Moreover, these “affordable” on-site units are attached to a market-driven, for-profit development trend to design for relatively young, affluent, upwardly mobile singles. They do not serve the needs of families, low-income residents, or people and the communities of color who have been displaced by gentrification. This is why a survey of 6,500 recently built “affordable” units revealed only 46 AISD students residing there, with only one African-American and 16 Hispanic students. The proposal also provides no bonus units for the 48,000 households at 50% MFI or below—those with the greatest need.

We question eliminating the VMU (vertical mixed use) density program, which is the only current density bonus program that has generated a significant number of on-site units. Confusingly, in many areas where VMU previously applied (along the corridors), CN Draft 2 has downzoned those properties to “Main Street” zoning and has removed the ability for developers to get such density bonuses. Density bonuses should be focused on the corridors, where density was envisioned by Imagine Austin and the adopted neighborhood plans, and on-site units should be required to ensure geographic dispersion of affordable housing in high-opportunity areas.

CN Draft 2 increases staff discretion and significantly limits public input. Throughout CN Draft 2, the City staff is trying to create ways to administratively dilute the standards of our City Code.

For example, Section 23-2F-2030 provides the Development Director the ability to increase a developer's entitlements by up to 10%. And, the creation of the Minor Use Permit under Section 23-4B-1030 provides staff a way to grant a developer a right to particular uses that cuts out significant public feedback and cuts out the City Council from the decision-making process. These are but two examples of a code that has gone too far in one direction—entitlements matter more than the people who are affected.

It's not all bad news... we support the reintroduction of the 0.4 floor-to-area ratio (FAR) into McMansion-area neighborhoods. These rules have worked. CN Draft 2 incorporates the massing limit of a 0.4 FAR into the new R3C zoning category, which will preserve some of the protections set forth in the McMansion Ordinance, an ordinance that was the result of months of community analysis and consensus building. However, there are elements, such as the "McMansion tent" which are still missing, and we encourage the City Council to preserve those elements. Furthermore, we are concerned that the other R3 zoning categories do not incorporate the FAR limit, which opens the door to rezoning being used to avoid compliance with the FAR limit.

The bottom line is that CN Draft 2 is still very much a work in progress, and a sloppy, poor product at that. As written, it will accelerate the displacement of seniors, minorities, and middle-income residents – all of whom would be replaced by wealthier newcomers. It does nothing to address the most challenging problems: affordable housing, income and racial inequality, displacement, and neighborhood stability. And it likely makes these problems worse, because it creates economic incentives to redevelop and tear down Austin's neighborhoods.

Is this the Austin that we want? Can ordinary existing residents survive here under CodeNEXT as proposed?

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