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Greg Guernsey  
Director, Planning and Zoning Dept  
505 Barton Springs Rd  
Austin, TX 78704

October 30, 2017

RE: SRCC's Position Paper on CodeNEXT 2.0

Dear Mr. Guernsey:

Members of the South River City Citizens Neighborhood Association have reviewed the second draft of the CodeNEXT land development code rewrite and continue to have significant concerns about its potential effect on our neighborhood and central Austin. The attached position paper outlines our most pressing concerns, although it is by no means fully inclusive. This paper seeks to provide a broad overview of our concerns which we wanted to submit before the October 31 deadline so that city staff and others would have this information before the next revision of the draft. We may submit further comments after the draft is again revised.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gretchen Otto', with a long horizontal line extending to the right.

Gretchen Otto  
President  
[president@srccatx.org](mailto:president@srccatx.org)

cc: Austin City Council, Planning Commission, Zoning and Platting Commission, Austin Neighborhoods Council

## South River City Citizens Neighborhood Association Comments on CodeNEXT Draft 2.0

### Introduction and Summary

CodeNEXT Draft 1.0 allowed only limited input into a scheme which was incomplete, incomprehensible, and plagued by errors. Significant changes were made and we again have an incomplete and overwhelming document with even less (and distressingly insufficient) time in which to review and respond. A third version will not be available for public comment except in the course of adoption hearings and could include equally drastic changes. It is necessary to pause and reset.

It is also necessary to separate and postpone the application of new zoning categories from updating the code text and administrative procedures.

Housing density is promoted in CodeNEXT as an end in itself. Upzoning is being proposed in single-family residential areas with no corresponding benefit to the larger community and considerable harm to central neighborhoods. The density bonus program layered on multi-family and commercial properties has been proven not to work as advertised; it does not return adequate community benefit in exchange for increased total units, which units are rarely, if ever, affordable.

As it stands, CodeNEXT poses a threat to our South River City Citizens neighborhood and to other neighborhoods near the downtown area. Until CodeNEXT aligns with Neighborhood Plans, it is out of step with the comprehensive plan it is supposed to implement.

CodeNEXT should strengthen efforts to preserve historic homes, sites and neighborhoods. Austin should incentivize preservation of historic properties, and affordable rental apartments and homes which currently exist, rather than allowing or encouraging that these be demolished.

There remains in Draft 2.0 a significant net loss of compatibility standards, in terms of both the current “McMansion” residential standards and the current Article 10 standards for compatibility of non-residential properties adjacent to residential.

It appears Draft 2.0 may have positive environmental elements of regulations for new development. It is clear, however, that there has been completely inadequate attention to basic environmental and infrastructure data in the rezoning exercise.

We agree with the conclusion of the League of Women Voters that “...serious concerns about CodeNext remain regarding increased impediments to public participation, diminished transparency given the enhanced administrative authority, and questionable waivers that will be allowing adjustments to the development regulations.”

### 1. Dissatisfaction With Process and Work Product

#### Wait Just A Doggone Minute

The City must provide adequate time and tools for the public to understand, digest and provide feedback to the proposed Code.

CodeNEXT Draft 2.0 was released on September 15 for 6 weeks of public review: hundreds of pages longer than first draft; still incomplete; still unsupported by basic data; without answers from staff to important council, commission and public questions; and lacking basic tools for comparing existing regulations to the latest proposed draft. Given the extent of the changes in the second draft, the lack of a red-lined document, the obvious inconsistencies with our Neighborhood Plan and the mysterious disappearance of various compatibility protections, six weeks is an insufficient period for a public review. The proposed timetable for the third draft –

with no public comment, expedited commission consideration and a contested public hearing process at Council for adoption -- is inadequate and unacceptable. It is necessary to pause and reset.

We strongly recommend that such a reset be used to separate the recodification of the Land Development Code—to make it clearer, more accessible, and more easily navigable, and make permitting processes more certain while no less protective—from any rezoning. Rezoning which changes any entitlements from existing zoning should be postponed and only be undertaken to clearly implement the principles and growth management objectives of Imagine Austin and the Neighborhood Plans and FLUMs, including cooperation with Neighborhood Plan Contact Teams in consideration of any proposed changes to a Neighborhood Plan.

Planning Commissioner Karen McGraw told a recent SRCC meeting that such a separation of code rewrite and later implementation of rezoning was used successfully the last time the LDC was rewritten (1984), with sufficient time (10 months in that case) taken to accurately address rezoning and mapping. Enough time should be taken to bring the mapping in line with Imagine Austin, its proposed growth nodes, adequate environmental data, and existing Neighborhood Plans.

### Is This Even Legal?

There have been a number of legal questions raised by the League of Women Voters (LWV) and by our friends at Community Not Commodity concerning issues of the rezoning efforts and of democratic access to land development decision-making. Obviously, the Council will want to have clear answers on those issues before their final decisions. However, in the spirit of “beginning with the end in mind,” it seems wise to address these questions sooner than later, and provide a straightforward explanation of the rationale of changes to the public upon release of a review draft, especially when these seem to change existing policy or reduce protections.

In its review comments, LWV makes this observation about one possibly minor discrepancy between old current and proposed codes: *“This is likely just an editing error but it points to a valid concern with process, that inadvertent errors may have been made and **absent a comprehensive, diligent review, many unintended elements will be introduced into law.**”* That seems a valid concern.

It has been suggested by some that the City intends to rezone the entire City simultaneously for the purpose of denying property owners valid petition rights and circumventing Neighborhood Plans. That does not seem legal, appropriate, nor wise.

### Shades of Transects

We were pleased that the confusing names for “transect” and “non-transect” zoning categories in 1.0 have been simplified in 2.0. And we note that some of the upzoning proposed in mapping is less extreme than in first draft. We were not so pleased that the number of residential district designations has expanded again, making direct translation of existing entitlements either impossible or dauntingly confusing. In explanatory and marketing materials from CodeNEXT there continues to be a mindset that the transect model still applies: that lower density single-family residential is inherently a “suburban” use, assumed car-centric; while only higher density duplex and multi-family residential use is considered “urban” and, almost by definition, central.

Central Austin neighborhoods in fact were the original suburbs, are generally pre-war and certainly pre-car-centric, and formed relatively complete communities which give Austin its distinctive character(s). It is simply not useful, and it is at odds with the Imagine Austin comprehensive plan, to assume that they need wholesale urban renewal. It is also missing the point not to aim the denser models of new urbanism at the growth nodes imagined outside the central area.

Like other central neighborhoods, SRCC currently suffers from over-parking on residential streets making it difficult and dangerous for emergency responders, school buses, utility trucks, cars and pedestrians to navigate. We do not support the proposed reductions in required parking, and recommend:

1. Elimination of required parking for Accessory Dwelling Units should be allowed only as a preservation bonus.
2. Tandem parking should not be allowed to meet the requirement of multiple units.



## 2. Neighborhood Plans Are Part of Austin's Comprehensive Plan

The Imagine Austin Comprehensive Plan states that “*where a small area plan exists, recommendations shall be consistent with the text of the plan and its Future Land Use Map*”; and that “*Changes to the small area plans (e.g. neighborhood plans) will continue to include public input from affected parties and will follow the adopted neighborhood plan amendment process.*”

CodeNEXT Draft 2.0 deleted the neighborhood plan overlay and proposed a map that deviates significantly from the Greater South River City Combined Neighborhood Plan and E. Riverside/Oltorf Combined Neighborhood Plan. (ERO/ERC Master & Regulating Planning participants were assured that by accepting the increased density in and along the E. Riverside Corridor (ERC) and reduced compatibility standards affecting SF homes along the ERC boundaries, our remaining SF properties would be protected from up-zoning and additional commercial encroachment into the SF neighborhoods (SRCC Areas 6 and 7). CodeNEXT ignores this.)

*“The neighborhood plans ARE NOT inconsistent with Imagine Austin. The neighborhood plans ARE PART of Imagine Austin. In fact, ... the Growth Concept Map contained within Imagine Austin was intentionally aligned with Future Land Use Maps to avoid inconsistency. The Growth Concept Map offers a broad view to area-wide land use decisions, while it defers to the neighborhood plans for specific parcel-by-parcel land use decisions.”* (“Why The CodeNEXT Map is Unlawful”, Community Not Commodity, September 13, 2017)

The Neighborhood Plan Overlay, removed from text between Draft 1.0 and 2.0, is the clearest, simplest mechanism to alert users that a Neighborhood Plan exists and applies to a particular parcel. The Neighborhood Plan Overlay must be restored.

## 3. Preservation/Demolition

The Imagine Austin Plan -- ostensibly the driver for updating Austin's Land Development Code -- advises that comprehensive urban planning and design should protect historic areas and help maintain neighborhood character. This is explicitly stated on page 233, LUT A41-A46 and page 237, HN A17 and HN A21. Unfortunately, the City of Austin did not, as suggested, update its city-wide historic resources survey prior to attempting the Land Development Code re-write, nor has the City revised its demolition and historic preservation ordinances to disincentivize demolitions and give greater protections to historic properties (more than 50 years old, as defined by the Secretary of Interior). Neighborhoods have therefore borne an unfair and increasingly expensive and defensive burden in documenting and protecting the historic fabric of the city's distinctive and character-defining neighborhoods.

While zoning for the Fairview Park NCCD appears to remain intact in Draft 2.0, the zoning codes recommended by Draft 2 for other parts of the SRCC neighborhood do not follow Imagine Austin's recommendations that would protect this premiere, character-defining neighborhood of South Austin. In the proposed code, our existing neighborhood boundaries are not respected and proposed zoning is denser than existing single-family zoning. Under the proposed R3C zoning, most lots west of Stacy Park in Travis Heights would allow three units: a duplex plus ADU.

Currently, duplexes are allowed only on SF-3 zoned lots greater than 7,000 square feet -- a small minority of lots in our neighborhood. (We believe maintaining a zoning code equivalent, or as close as possible to existing single-family or, in some cases, duplex housing, is necessary to maintain our neighborhood character. Proposed R3C zoning changes the duplex threshold to 5,000 square feet, encompassing most lots in our neighborhood. This wholesale upzoning and dramatic increase in development rights will only serve to incentivize property owners and developers to demolish existing structures and replace them with maximum unit potential, ultimately destroying the fabric of our historic neighborhood.

Residential zoned parcels in the FLUM currently zoned SF-3 should be zoned R2C.

McMansion FAR limits are necessary, though not sufficient, to discouraging the extensive demolition of residences within the central neighborhoods. The FAR limits added to Draft 2.0 of CodeNEXT are an

improvement from Draft 1.0, but it is not clear whether the criteria “baked in” new zoning districts like R2C or R3C are, in fact, equivalent to the limited protections of the McMansion ordinance.

Preservation incentives added to Draft 2.0, such as less restrictive heights of ADUs in preservation situations than for new developments, are a positive step and another tool to avoid extensive demolitions. We need to put in additional protection for current houses or significant incentives for developers to preserve houses 50 years or older, and avoid upzoning that would make land prices skyrocket leading to massive demolitions. Some incentives may include:

- Give incentives to developers to renovate an existing house by allowing for more buildable area for additions or ADUs in the back, when consistent with other neighborhood and environmental limits.
- Add similar tax incentives on renovations of these structures to LHDs, where the increased cost of the renovation is not included in tax appraisal for 7 years.
- Simplify requirements for formation and approval of LHDs.
- Revised the demolition ordinance (increased length of time, etc.) and compatibility with neighborhood design standards for new development.
- Require (1) parking space for new ADUs unless existing home is preserved.
- Consider changing the penalty for demolition from a height to an FAR restriction so that new construction doesn't result in more impervious cover.
- Provide clear requirements for the preservation bonus including the minimum age of the existing house, how much must be preserved, and for how long.

Clarify the zoning table footnote on “existing” 25' frontage, 2500 s.f. lots being allowed to ensure that no future subdivisions are encouraged or allowed to create such lots, and to deem such lots noncompliant if created after 1986.

#### 4. Flooding and Environmental

In adding density, careful attention should be paid to urban core neighborhoods' infrastructure. They often include transit corridors and most already have an abundance of apartments, duplexes, tri- and four-plexes. What these neighborhoods lack is adequate infrastructure to handle increased density (and in many cases, existing development) proposed by CodeNEXT 2.0.

It was reported at an October 16, 2017 Environmental Commission subcommittee meeting on drainage infrastructure and flooding:

- Watershed Protection is using rainfall data from the 1990's to do the modeling for Impervious Cover
- Draft 1.0 modeling used 2012 known build out conditions and this was deemed unacceptable by commissioners since so much building has occurred since 2012
- New model uses 2015 known build out, but there is still some data missing
  - e.g., Onion Creek watershed is not shown on the modeling presented at this meeting. This is the watershed where over 500 homes are being bought by the city to be demolished due to flooding.

Further, a variety of questions asked of staff for months remain unanswered:

1. What will happen to private development agreements that tie tracts or subdivisions in different watersheds together for the purpose of detention? These private agreements with the COA allow one tract to build a regional storm water detention pond and receive a waiver from building required detention in the linked tract or subdivision EVEN WHEN that development occurs in a different watershed?



2. Localized Flooding Impact – data promised available after the October 31 comment deadline; unable to comment.
3. Infrastructure Drainage Capacity Impact – What storm drains need to be upgraded to serve the proposed increased entitlements? Who will pay for these upgrades, especially in the missing middle areas?
4. Watershed Drainage Treatments Options – Detention, Conveyance, RSMP – Is there a map that can show your parcel and what it will have to provide?
5. The requirements for “Site Plan Lite” for the 3-9 units of Missing Middle Housing were only first seen 10/25: there is insufficient time to review and analyze the new Drainage and Environmental Review recommendations for the new review process for “Residential Heavy” 3-9 units presented October 25 to the Environmental Commission. Planning Commission and ZAP have yet to have a briefing on this proposed review process for 3-9 units.
6. Impervious Cover Impact – shows a big picture impact and basically says that even though there will be more density, the impervious cover won’t change—although it will, if less dense properties are redeveloped into denser ones.
7. Staff needs to show a sample site plan to show how flood mitigation for redevelopment could benefit community
8. Also need sample site plan to show benefit of on-site reuse of water.
9. Functional Green – Information on the program was supposed to be available in April 2017. Now we hear that it will be by Draft 3.0. What level of information will the public actually receive in Draft 3.0? Will it be sufficient for a site planner to understand what they will have to provide?

In Draft 2.0, 23-6B-2020, Residential Heavy Site Plan states:

*“(A) Development Services director may waive Site Plan submittal requirements for residential applications of three to nine units within an Urban Watershed that meet the following:*

*Dwelling units must be contained within a maximum of two buildings on a single lot, or up to six buildings in a cottage court lot.”*

Current code calls for Site Plan submittal for more than 2 structures (more than 2 structures is considered multi-family). Site plan submittal is where the majority of environmental regulations apply. By waiving Site Plan requirements for cottage court lots, environmental regulations may be reduced. Staff is still not giving the community details on this particular item.

As reported to the Flood Mitigation Task Force and the City of Austin via 311 calls, single family structures in many neighborhoods are causing flooding on to neighboring properties because they do not have to comply with environmental regulations beyond impervious cover and protected trees.

Zoning and Platting Commission have requested since March a list of all flooded properties in the COA.

At meetings about CodeNEXT, city staff and supporters of the current draft continue to say “The City will require new development to prove no adverse downstream impact” and “runoff from new impervious cover will be managed by on site green storm water infrastructure.”

In order to prove no adverse downstream impact, you must have baseline data of creek and local drainage capacity to know if you are not adversely impacting the downstream creek or storm drain infrastructure. The COA does not have the complete data on this. About one third of the COA storm drain infrastructure has yet to be measured, most of it in the older urban core areas where new density is proposed.

In the COA Watershed Dept. Brentwood study, Green Storm water infrastructure was deemed not feasible or able to solve flooding problems. We believe that CodeNEXT should improve flooding protections by increasing flood protections through new infrastructure in areas that are already experiencing flooding from small storms. It is not enough to say that CodeNext won’t make flooding worse. There is a community expectation that it will also improve conditions in watersheds with flooding after even small storms.

As a matter of public health and safety, the infrastructure necessary to eliminate both current and increased flooding that would occur if development authorized by CodeNext re-zoning were allowed should be installed

*before* any CodeNext re-zoning is adopted, not theoretically in some post-development time period. The same requirement should apply to parking and sidewalks necessary to protect pedestrians should the dense development of 18 dwelling units/acre under LC-O rezoning be allowed.

This is particularly crucial when, as on St. Edwards Drive, the entity responsible for the greatest amount of dense redevelopment, St. Edwards University, has been exempted by the city of responsibility for drainage infrastructure to manage the runoff and parking problems its development will and has already caused. These city exemptions, Unified Development Agreements and Alternative Equivalent Compliance to the Land Development Code will remain, while entitlements will be given to the land under these agreements.

SRCC has formally asked the COA to include a requirement that any private institution that pays no property taxes and is large enough to have a master plan must ensure that the master plan is compatible with the surrounding neighborhoods and that the neighborhood has input into the plan. The City of Austin Planning Department should vet master plans from private institutions for their impact on surrounding infrastructure and compatibility with neighborhoods.

This type of oversight should be included in the next CodeNext revision. A master plan is akin to a Planned Unit Development and citizens are allowed input into and the city has oversight on PUDs. The City should require the same oversight for any private entity that has a master plan on large amounts of land surrounded by existing neighborhoods and city funded infrastructure, particularly if the private entity is tax exempt.

## 5. Affordability

Austin cannot rezone its way out of the lack of affordable housing. As proven by the E. Riverside Corridor Plan, increasing entitlements by right actually reduces not only affordable housing, but incites demolition of “missing middle” housing as well. The replacement housing has not been, and will not be affordable. The Code consultants and a recent Urban Institute study have verified that the new housing will be up-scale and more expensive, accelerating displacement and demolitions, particularly of older apartments and rental housing that offer affordable housing options and of historic buildings which, once lost, cannot be replaced. The City’s density bonus programs have failed.

Developers are already pushing back against proposals to address drainage and flooding issues through CodeNEXT. They will do the same regarding affordability. By granting wholesale up-zonings throughout the urban core, the City would lose the leverage it must have in order to ensure the provision of affordable and “missing middle” housing within new developments throughout the City—not just the urban core.

Rezoning should not be market-driven. That is precisely what has reduced affordable and “missing middle” housing. Eldon Rude’s quote in the October 19<sup>th</sup> issue of the *Austin American-Statesman* says it all: “[home builders’] biggest challenges continue to be finding enough lots in desirable locations to build on...” The urban core should not be the sacrificial lamb just because that makes more money for the development community.

ADUs are meant to provide affordable and compatible housing for renters, caretaker and family housing, and rental income for families. Neither Austin’s current Code nor the ADU ordinance in Draft 2.0 facilitate affordable or compatible housing.

It would also be prudent to determine where new and large employers will be locating in the future and provide dense housing opportunities through affordability bonuses in those areas.

If the City follows the Imagine Austin Plan, has the gumption to refuse to upzone properties unless it contains an affordable component -- no fees-in-lieu allowed, and adds circulator buses throughout neighborhoods that can connect commuters to bus rapid transit stops; then all areas of Austin will be considered “desirable locations.”

## 6. Compatibility

Overall, notwithstanding that Draft 2.0 has improved some landscape standards re: buffering, and “baked in” some elements from 25-2 Subchapter C, Article 10 to some extent, there appears to be a net loss of compatibility standards. The final draft should maintain or increase current compatibility standards between multi-family, or non-residential and single-family properties.

Draft 2.0 would allow eight-story high-rises 100 feet from single family homes instead of approximately 540 feet currently. Step backs and total height limits should protect privacy and available sunlight for residential properties. The AHBP height bonus should not be available in R4 and MU zones that are adjacent to residential house scale zones. Existing compatibility standards that should be maintained and enhanced in CodeNEXT include:

- Limit heights within 540 feet
- Limit lighting (cut-off) and noise (70 dB)
- Require screening for storage and waste
- Prohibit reflective/intensive activities
- Require massing and clustering

Bars – Proposed zoning restriction of alcohol sales is too permissive. South Congress is proposed as Main Street (MS2B, 3A, or 3B) or Mixed Use in the new draft. This seems to mean that by right or with administrative approval, any S. Congress property could become a bar. CodeNEXT final standards for zoning alcohol sales must ensure S. Congress does not become another all-bars drinking destination like Rainey Street. Around an AISD school is definitely not acceptable. Outdoor seating with unlimited alcohol service is not acceptable next to single family residential areas. Property along St. Edwards Dr., across the street/within 60 ft. from SF-2 homes, is proposed to be zoned LC allowing alcohol sales with an administrative approval.

Stealth dorms -- It must be made clear that occupancy limits are tied to the zoning and not the use. In addition, all house-scale zones should be included in the list of applicable zones for occupancy limits.

Drive Through Uses -- Main Street and Mixed Use zones allow drive-through restaurants by right. Some also allow drive through services. In order to maintain a safe environment for pedestrians and cyclists, SRCC opposes any new drive-through uses and recommends that these uses be prohibited in all Main Street zones.

Compatibility with existing residential: Keep the McMansion Residential Design and Compatibility Standards intact (25-2, Subchapter F, adopted in 2006):

- Limits house size and FAR
- Limits house height
- Limits buildable area
- Decreases alley setbacks for ADUs
- Requires sidewall articulation

Short Term Rentals – We support the phase-out of Type II STRs by 2022, and prohibition of this type of commercial business in residential house scale zones.

## 7. Public Access to Decision Making

We agree with the conclusion of the League of Women Voters (LWV) that “...serious concerns about CodeNext remain regarding increased impediments to public participation, diminished transparency given the enhanced administrative authority, and questionable waivers that will be allowing adjustments to the development regulations.”



### Notices and Deadlines Reduced

We agree with the LWV assessments and recommendations that *“elements [of CodeNEXT Draft 2.0] must be adjusted to ensure that the public has adequate opportunity to weigh in on decisions and that decision makers have adequate public input to carefully weigh the issues before them.”*

23-2C-2010(B) Notice Required ... allows for the public process (e.g., hearings) to proceed even if errors in notice are made. ... Strike this section.

23-2D-1020(C) Speaker Requirements at Public Hearings ... requires permission of the presiding officer to speak at a public hearing if the person has signed up after the hearing begins. ... Strike this section.

23-2I-1030 Deadlines for Appeals of Administrative Decisions... time to appeal an administrative decision has been decreased from 20 days after decision to 14 or 7 depending on whether notice of decision is required ... Reinstate current timing.

23-2L-1050(A)(2) Interlocal Development Agreement (ILA) Notification Requirements ... removes the currently required mailed notice to registered organizations in the case of hearing on an area wide ILA. ... Recommendation: Reinstate notice to registered organizations.

Various Sections Tolling [delay of legal period]

Several places in CodeNext call for tolling of deadlines under certain circumstances.

1. Limit the period for which an application can be tolled; and
2. Provide for notifications to interested parties at the beginning and end of each tolling period

### Admin Approvals Go Too Far

We share the concern of LWV that *“Several procedures have been added to CodeNext that will move actions with significant implications for the public to processes that do not include any public notice or participation at all, giving additional authority for administrative waivers.”*

23-2F-2020 Exempt Residential Uses and Structures. ... allows for exemptions to be granted on many more uses (including multi-family and others), with no limitations on the type of nonconformances that have existed since before 2008...  
Strike this section.

23-2F-2030 Minor Adjustments ... allows an administrative approval of up to a 10% increase in certain entitlements (height, building coverage and setback) if errors are made ‘inadvertently’ in construction. ... Strike this section.

23-2G-2030 Nonconforming Parking ... allows the Director to allow for continued nonconformance with parking requirements after the nonconforming use is terminated. Strike this section.

23-2G-1050(B)(4) Continuation of Nonconformity, Conversion of Nonconforming Uses in Residential Buildings ... allows the Director to approve the change from one nonconforming use to another if it is less intense...  
Require a public hearing and approval by the Land Use Commission.

23-4B-1030 Minor Use Permits ... allows the Director to approve certain uses according to the same criteria that the Land Use Commission approves Conditional Use Permits. Strike this section.

23-4B-4030 Special Exception Type 1 (by the Board of Adjustment) ... provides the Board authority to grant exceptions to any zoning regulation when a conditional use permit has been granted. Strike or strictly limit this section.

23-4B-4040 Special Exception Type 3 (by the Board of Adjustment) ... provides the Board authority to grant exceptions to permit an existing use that is permitted by the city in error. Strike this section.