

CodeNEXT or CodeWRECK?

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ANC Presentation 9/27/2017*

Welcome to CodeNEXT!

Let me start by saying that almost everything imaginable has gone wrong with this project. It has become one of the longest running, highest priced, poorly managed code updates ever.

But that is a story for another day!



For those unaware, I have spent the last 55 years serving as a planning and zoning advisor to over 200 communities in 30 states.

CodeNEXT will be my “last code hurrah.” Unfortunately, it has also been the most dysfunctional and most frustrating.

For more than five years, I have felt like a “canary in a coal mine.” And lately I feel like I have been “tweeting more than Trump.”

Code Structure

Tonight, I want to touch on four key aspects of CodeNEXT – code structure, compatibility, accessory dwellings and density bonuses.

First, code structure.

What Were We Promised?

Approaches Comparison Table

Elements	Approach 1	Approach 2	Approach 2.5	Approach 3
Code Format and Organization				
Format	None	Minimal	Extensive	Complete
Reorganization of Content	Minimal	Extensive	Complete	Complete
Content Rewriting	Low/Moderate	Extensive	High	High
Use of the Code				
Use of the Code	Blended Use	Blended Use	Blended Use	Blended Use
Performance Based				
By Right Review	Low	Medium	High	High
Commented Drawing	High	Medium	Low	Low
Distinction in Code				
Performance Based	High	Medium	Low	Low
Form Based	Low	Medium	High	High
Hybrid Code	Very Limited	High	High	High
Other Code	Yes	Yes	Yes	Yes

Element
Format
Reorganize
Rewriting

Approach
Replace
Extensive
Mod-High

Two years ago, Opticos offered Council three code approaches – 1) brisk sweep, 2) deep clean or 3) complete makeover.

Council chose Approach 2.5 which would essentially entail a total replacement of the code format, extensive reorganization and moderate-to-high rewrite. It also called for a hybrid code with blended use and form districts and “lots of graphics.”

So did the customer get what it ordered?

How Does CodeNEXT Compare?

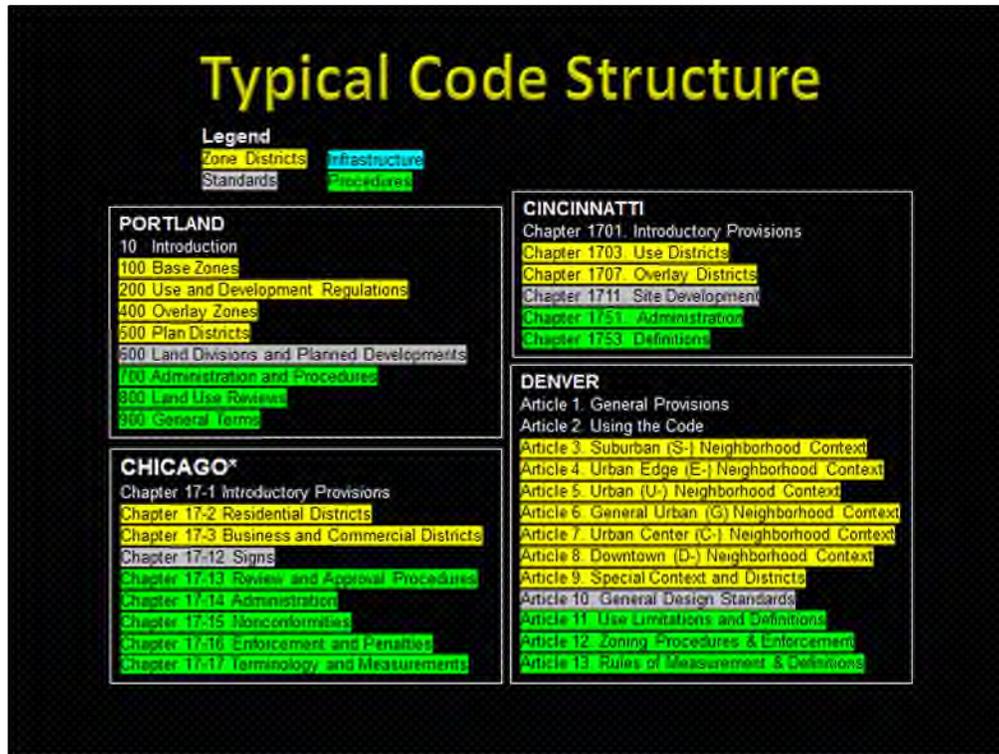


City	Pages	A&P
Tulsa OK*	315	42
Buffalo NY	334	53
Chicago IL*	339	53
Miami FL	342	45
Arlington VA*	407	32
Memphis TN*	478	59
Raleigh NC	464	78
Denver CO	1,204	76
CodeNEXT	1,388	222

CodeNEXT has to be the most verbally obese code ever.

While Draft 1 was three times wordier than most city code, Draft 2 has actually added 20 percent more pages.

“Keep It Short and Simple!” was the furthest thing from CodeNEXT drafters mind.



The first test of a user-friendly code is how well it is organized.

Codes need to be intuitively structured with use districts and standards up front followed by infrastructure and procedures.

To better understand structure, the Portland, Chicago, Cincinnati and Denver codes have been segmented into color-coded parts.

The Portland code was drafted by Fregonese, Cincinnati by Opticos, Denver by Peter Park and Chicago by my former firm.

CodeNOW and CodeNEXT

CodeNOW (Chapter 25)

- Chapter 1 General Requirements and Procedures
- Chapter 2 Zoning
 - Subchapter A Use Districts
 - Subchapter B Procedures
 - Subchapter D Combining Districts
 - Subchapter E Design Standards
 - Subchapter F Residential Design
- Chapter 3 Traditional Neighborhood District
- Chapter 4 Subdivision
- Chapter 5 Site Plans
- Chapter 6 Transportation
- Chapter 7 Drainage
- Chapter 8 Environment
 - Subchapter A Water Quality
- Chapter 9 Water and Wastewater
- Chapter 10 Sign Regulations
- Chapter 11 Permits

CodeNEXT (Chapter 23)

- 23-1 Introduction
- 23-2 Administration and Procedures
- 23-3 General Planning Standards for All
- 23-4 Zoning Code
- 23-5 Subdivision
- 23-6 Site Plan
- 23-7 Building, Demolition & Relocation Permits
- Special Requirements for Historic Structures
- 23-8 Signage (work in progress)
- 23-9 Transportation
- 23-10 Infrastructure
- 23-11 Technical Codes (work in progress)
- 23-12 Airport Hazard and Compatible Land Use

When examining our current Austin code and CodeNEXT, the previously described structure is not readily apparent.

While getting rid of the confusing hierarchical mumble jumble (chapters, subchapters, parts, subparts, etc.), the overall structure of CodeNEXT has not been significantly improved.

Too many related provisions are still scattered throughout the code creating the frustrating need for extensive “page flipping.”

CodeNEXT: Better Structure

Chapter 23-1: Introduction

Article 23-1A: General Provisions
 Division 23-1A-4: Consistency with *Imagine Austin*
 Division 23-1A-5: Rules of Interpretation

Chapter 23-4: Zoning

Article 23-4A: Introduction
 Division 23-4D-3: Use-Based (Non-Transferrable) Zones
 Division 23-4D-2: Form-Based (Transferrable) Zones
 Division 23-4D-7: Overlay Zones
 Division 23-4D-6: Legacy Zones

Chapter 23-5: Subdivision

Article 23-5A: Introduction
 Article 23-5B: Subdivision Procedures
 Article 23-5C: Platting

Chapter 23-6: Site Plan

Article 23-6A: Introduction
 Article 23-6B: Site Plan Procedures
 Article 23-6C: Expiration

Chapter 23-3: General Standards

Division 23-4E-3: Parking and Loading
 Division 23-4E-4: Landscape
 Chapter 23-3: Signage (work in progress)
 Article 23-3C: Compatibility Standards
 Article 23-3E: Density Bonuses

Chapter 23-x: Environment

Article 23-3D: Watersheds and Floodplains
 Division 23-3D: Erosion and Sedimentation
 Division 23-3C: Regulated and Heritage Trees
 Division 23-3D: Save our Springs Initiative
 Article 23-3X: Beneficial Use
 Article 23-3X: Green Infrastructure

*Expand
General
Standards*

*Recreate
Environment
chapter*

Chapter 23-10: Infrastructure

Chapter 23-9: Transportation
 Article 23-10A: Wastewater
 Article 23-10B: Potable Water
 Article 23-10C: Reclaimed Water
 Article 23-10E: Drainage

Chapter 23-x: Adequate Facilities

Article 23-10C: Capital Recovery Fees
 Article 23-3B: Parkland Dedication
 Article 23-3C: Traffic Impact Fees (work-in-progress)
 Article 23-5C: Transportation Impact Analysis
 Article 23-9I: Road Utility Districts

Chapter 23-2: Administration and Procedures

Article 23-2A: Purpose and Applicability
 Article 23-1B: Responsibility for Administration
 Article 23-4B: Zoning Administration and Procedures
 Article 23-2B: Application Review and Fees
 Article 23-2C: Public Notice
 Article 23-2D: Public Hearings
 Article 23-2E: Legislative Amendments
 Article 23-2F: *Variances* and Administrative Relief
 Article 23-2G: Nonconformity
 Article 23-2H: Construction Management
 Article 23-3C: Valid Petitions
 Article 23-2I: Appeals
 Article 23-2J: Enforcement
 Article 23-2K: Vested Rights
 Article 23-7B: Building and Demolition Permits
 Article 23-7C: Relocation Permits
 Article 23-7D: Permits For Historic Structures

Chapter 23-x: Definitions

*Merge
Infrastructure
and Transportation
chapters*

*Create
Adequate
Facilities
chapter*

*Merge Administration
and Permitting chapters
and move to rear*

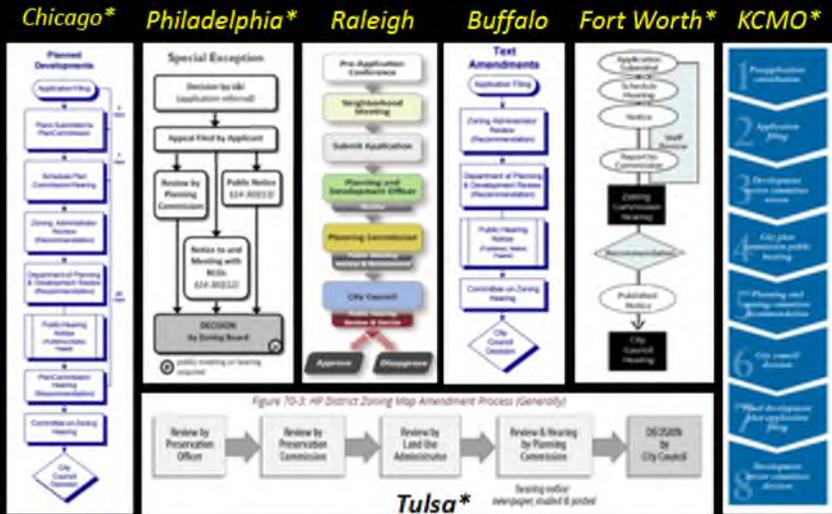
*Close with
Definitions
chapter*

*Remove
Technical
Manuals*

I have offered staff several suggestions on how to improve the overall structure of CodeNEXT. They include:

- 1) Expand General Standards chapter to include parking, landscaping, signs, compatibility, lighting, density bonuses, etc.
- 2) Reinstate Environment chapter to include water quality, regulated and heritage trees, green infrastructure, reuse, SOS, etc.
- 3) Expand Infrastructure chapter to include transportation, wastewater, water, drainage, etc.
- 4) Create new Adequate Facilities chapter and include capital recovery fees, parkland dedication, traffic impact fees, road districts, etc.
- 5) Merge Administration and Procedures and Permitting chapters and move to rear of code (add valid petitions).
- 6) Create new Definitions chapter and consolidate definitions.
- 7) Detach Technical Manuals.

Go With the Flow!



CodeNEXT needs to better illustrate its procedures and definitions. Flowcharts, for example, are an effective tool in explaining confusing and circuitous administrative procedures.

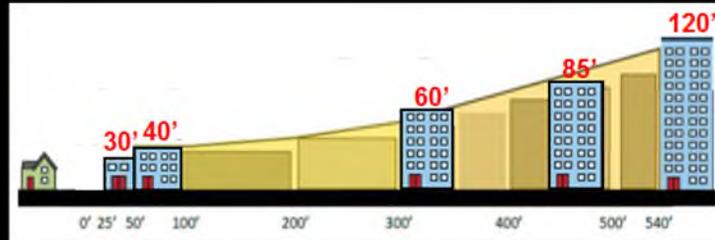
Compatibility Standards

Compatibility standards are performance zoning tools designed to preserve privacy, equity, sunshine and neighborhood character.

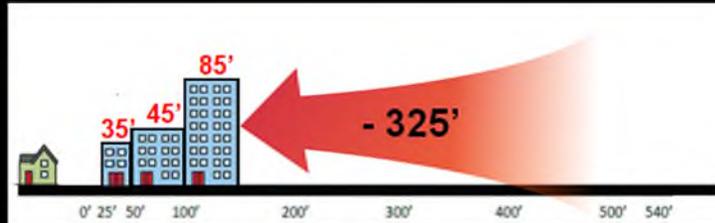
They are especially important in communities that do not have the most stellar track record of basing their zoning decisions on sound planning principles, such as Austin.

Redefining Compatibility

CodeNOW



CodeNEXT

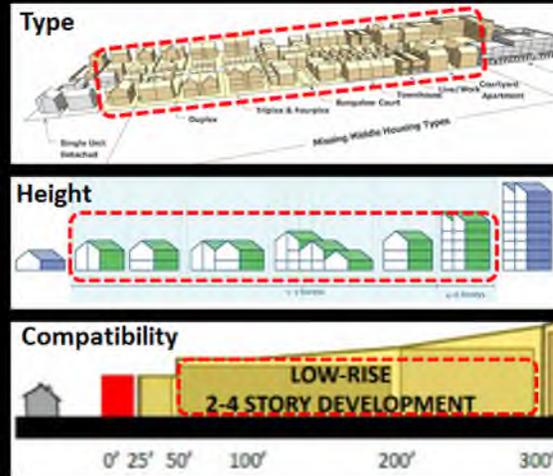


One of the most far-reaching and significant coding changes offered by staff and consultants is the replacement of compatibility standards with a “baked-in” system that would allow eight-story high-rises 100 feet from single family homes.

Missing Middle Myth

“Most missing middle housing types are required to comply with much more burdensome commercial compatibility requirements.”

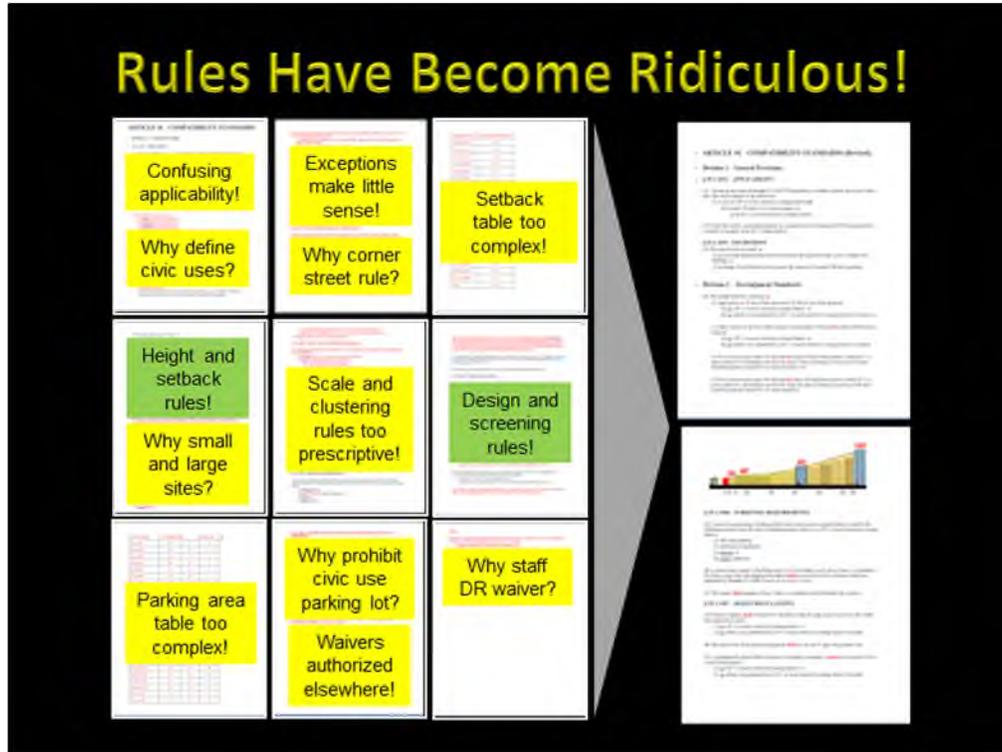
**ACDDC and UTCSD
May 2016**



In order to justify their elimination of compatibility standards, staff has falsely stated that they deter “missing middle housing.”

This is obviously untrue because missing middle housing does not even trigger compatibility because of its lower heights.

Rules Have Become Ridiculous!



Over time, Austin's compatibility standards have become saturated with overly complex amendments.

While basic height, setback and buffering provisions remain, they are buried among many questionable provisions.

For example;

- why are civic uses and parking areas highlighted?
- why are sites divided into two sizes?
- why are scale and clustering rules so prescriptive?
- why are parking and setback tables so complex, and
- why are redundant waiver procedures included?

Accessory Dwellings

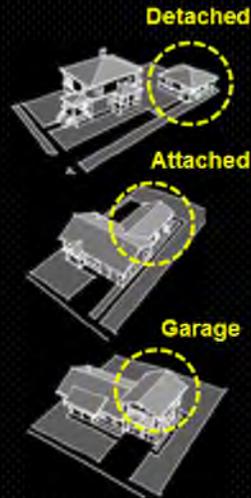
ADUs are small dwellings that can blend seamlessly into the neighborhood. They are often referred to as “hidden” density.

And they can play a major role in balancing a city's housing inventory when provided in an affordable and compatible manner.

"A Rose by Any Other Name"

Also Known As:

<i>Ancillary unit</i>	<i>Multi-generational</i>
<i>Mother-in-law unit</i>	<i>Secondary suite</i>
<i>Companion unit</i>	<i>Lockout suite</i>
<i>In-law apartment</i>	<i>Sidekick suite</i>
<i>Garage apartment</i>	<i>Fonzi suite</i>
<i>Basement apartment</i>	<i>Granny flat</i>
<i>Guest house</i>	<i>Alley flat</i>
<i>Coach house</i>	<i>Servant quarter</i>
<i>Laneway house</i>	<i>Backyard cottage</i>
<i>Carriage house</i>	<i>Elder cottage</i>
<i>ECHO home</i>	<i>Casita</i>



ADUs have many aliases. Here are 22 of the most common.

While they will not solve all housing affordability needs because of their size and scale, ADUs can be a key part of the solution.

In particular, they can well serve the growing market for singles, seniors and small families looking for affordable urban quarters.

ADU Survey

Peer City:

Honolulu: 400sf<5,000sf lot, 800sf>5,000sf lot

Miami: 450sf, 1 space (ancillary)

***Santa Cruz:* 500sf<7500sf, 640sf, 800sf>10,000sf lot**

Denver: 650sf<6,000sf lot, 864sf 6,000-7,000sf lot

Seattle: 650-800sf, 4,000sf lot, 1 space, covenant

San Diego: 700sf, 1 space, 21' (companion unit)

Nashville: 750sf <10,000sf lot, 1,000sf>10,000sf lot

Atlanta: 750sf, R5 district only, .5 FAR

San Antonio: 800sf (40% main), 300sf min

Portland: 800sf (75% main), 20', 15% cover

Charlotte: 800sf (35% main), 1 space

Phoenix: 900sf (50% main), 1 space, no STR



Santa Cruz Survey:

Average Size: 500sf

Average Cost:

\$50,000 for conversion
\$80,000 for attached unit,
\$99,250 for garage unit
\$140,000 for detached unit

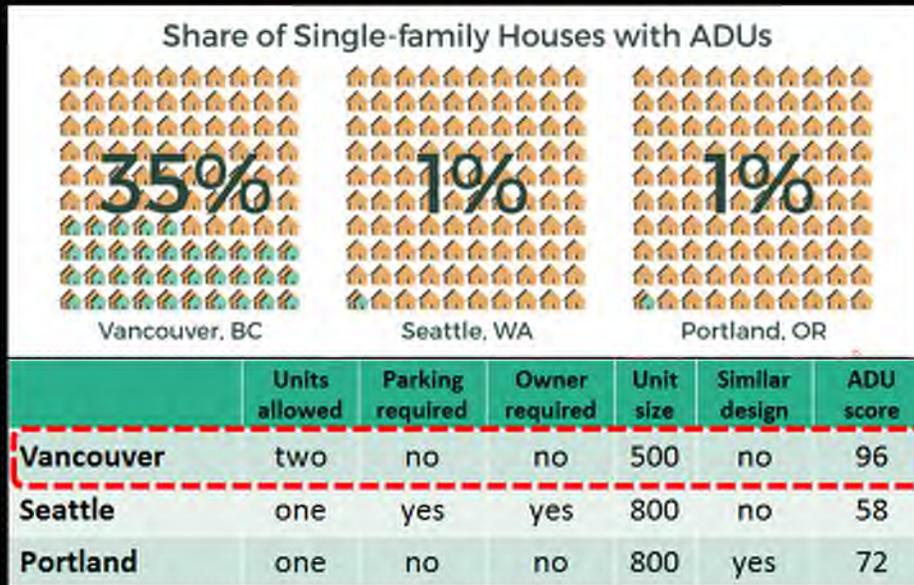
\$95,600 for labor/materials
\$7,700 for design
\$13,700 for permits
\$10,400 for utility hookups
\$16,000 for other costs

A survey of peer cities shows the permitted maximum size of ADUs ranges from 400 to 900 square feet, with some context-sensitive variables based on:

- Lot size: often varies by distance from urban core.
- Parking: often varies by availability of public transit.
- Building separation: usually determined by fire code.
- Other requirements: covenants and separate utilities.

The overarching objective in the provision of ADUs is to keep them as affordable and compatible as possible.

“A Tale of Three Cities!”



Vancouver, Seattle and Portland are generally considered among the more progressive cities in the regulation of ADUs.

Vancouver is the most permissive allowing two 500sf ADUs on each lot, usually one attached and one detached. As a result, one-third of all Vancouver single family homes have ADUs.

ADUs in Denver and Flagstaff

Denver		Flagstaff
Maximum Unit Size		
650sf	6,000sf lot or less	-
864sf	6,001-7,000sf lot	-
1,000sf	More than 7,000sf	-
-	Less than one acre	600sf
-	One acre or more	1,000sf
Minimum Lot Size		
8,500sf	Single Family	Zone
6,000sf	Townhouse/Mixed Use	Zone
1.5/24'	Maximum Height	Zone
Yes	Compatible Design	Yes
District	Minimum Parking	Zone
Yes	Owner Occupancy	Yes

Relating lot size to ADU size is considered a current “best practice” in regulating ADUs. It was used in Flagstaff and Denver by our CodeNEXT consultants, Peter Park and Opticos.

Why they have not offered it as an option for Austin is unknown.

ADUs and CodeNEXT

CodeWAS: 850sf CodeNOW: 1,100sf CodeNEXT:1,150sf

23-4E-6030 Accessory Dwellings

The image shows a screenshot of a table from the CodeNEXT document. The table is titled '23-4E-6030 Accessory Dwellings' and contains several rows of text. The first row is a heading: 'Development Standards. An Accessory Dwelling Unit (ADU) in residential zones must comply with the standards of the base code, except as provided in Table 23-4E-6030A (Standards for Accessory Dwelling Units)'. The second row is a heading: 'Table 23-4E-6030A Standards for Accessory Dwelling Units'. The table has two columns: 'Standard' and 'CodeNEXT'. The 'Standard' column lists various requirements, and the 'CodeNEXT' column lists the corresponding CodeNEXT standards. The requirements listed include: 'Minimum lot size is 10,000 square feet', 'The ADU must be occupied by a family that has at least one member employed in the city for security, maintenance, management, supervision, or personal services', 'Additional Standards for Accessory Apartments', 'An accessory apartment in an ADU must be contained within the primary structure of a single-family residence, and then is occupied by at least one person who is 18 years of age or older or physically disabled', 'An accessory apartment is allowed in addition to a detached ADU', 'If space within a primary structure is converted to an accessory apartment, the accessory apartment must not include a new entrance other than a shared-garage', and 'A Building Permit may not be issued for construction or remodeling of an accessory apartment unless the applicant submits an affidavit certifying that one of the present occupants of the accessory apartment is 60 years of age or older or physically disabled'.

Recommendations

Staff

- Allow 1,100 sf ADU (if income-restricted).
- Allow interior ADUs.
- Allow more flexible placement on parcel.
- Delete owner-occupancy requirement.
- Delete subleasing prohibition.
- Create pre-approved design standards.
- Double permitting fees

JBD

- Base ADU size on lot size (600, 800, 1000).
- Allow detached, attached or garage ADUs.
- Delete max impervious and building cover.
- Delete maximum .15 floor area ratio.
- Delete owner-occupancy requirement.
- Delete subleasing prohibition.
- Reduce permitting fees

Two years ago, the city council made several ADU changes, including district expansion; reductions in lot size, setbacks and parking; and an increase in floor area from 850 to 1,100sf. CodeNEXT is recommending an even further size increase.

The following changes should also now be considered:

- Base ADU size on lot size (600,800,1000),
- Allow detached, attached and garage ADUs,
- Eliminate impervious coverage limits,
- Eliminate owner-occupancy requirement,
- Eliminate subleasing prohibitions, and
- Reduce permitting fees.

Density Bonuses

It should be noted that a density bonus system is just the bartering of something a developer wants – more entitlements - for something the public wants – more community benefits.

In a sense, it is nothing more than legalized contract zoning!

Density Bonus Concerns

*"Programs to incentivize below-market housing need to be clear, effective, easily implementable and uniform... Austin's current density bonus programs are **vague and hard to follow** as their **regulations vary widely**"*

Wade Tisdale, RECA President

*"Austin has 12 different density bonus programs. ... (but) **no cohesive strategy** to achieving community benefit. ... The problem is **too many programs, tremendous inconsistency and immense unpredictability.**"*

OTAK Consultants

*"I do not favor giving tools being discussed by CodeNext across the board to **developers**. The only entity we should ... trust with the tools of radical density, new housing types and waivers ... is the neighborhood."*

John Henneberger, Housing Advocate

"City officials don't know whether housing generated by density bonus programs is mostly serving college graduates working in coffee shops, seniors on fixed incomes or low-income working mothers. ... Given the stakes, the city should slow its march in expanding density bonus programs until it can answer the question."

Statesman Editorial, August 25, 2017

While density bonuses may have been a success in enhancing real estate values and entitlements in Austin, they have not been that successful in producing much affordable housing.

According to several knowledgeable critics, the primary reasons for this poor performance, has been lack of program uniformity, predictability, clarity, consistency and cohesive strategy.

It has also not helped that staff has allowed real estate representatives to have a major role in designing the programs.

Henhouses designed by foxes have never worked well!

Audit Rips Bonus Program

Summary Findings:

- **No effective strategy** to create housing with deeper affordability, longer affordability and geographic dispersion.
- **Incomplete and inaccurate data** limits ability to evaluate program success and provide accurate information to public and decision makers.
- **Gaps in monitoring process** limits ability to enforce affordability restrictions and do not ensure the achievement of adopted core values.



Flaws in FY 2012-2014 Production Data Resulted in Overstated Outcomes

NHCO Reported Affordable Housing Units			OCA Calculation of Affordable Housing Units				
	Directly Funded Programs	Developer Incentive Programs	TOTALS		Directly Funded Programs	Developer Incentive Programs	TOTALS
FY 2012	551	853	1404	FY 2012	551	298	849
FY 2013	183	1465	1648	FY 2013	183	358	541
FY 2014	113	1749	1862	FY 2014	113	529	642
TOTALS	847	4167	5014	TOTALS	847	1185	2032

↓

NHCO overstated production by approximately 3,000 units

The strongest and harshest criticisms of Austin's density bonus programs were issued two years ago by the City Auditor.

In a scathing report, he indicated that the programs were a management disaster and ineffective deliverer of affordable housing. It exposed them as rudderless and resource-less.

Density Bonus Diagnosis

Bonus Program	Year Adopt	Percent MFIs		Percent Affordable	Period (years)	Fees (psf)	Special Conditions
		Own	Rent				
West Campus	2004	65	65	10% uts	15	\$1	Limited to net rentable area
Rainey Street	2005	80	80	5%	none	none	
PUD	2008	80	60	5%/10% uts	99/40	\$6	FIL requires Council approval
Downtown	2009	120	80	10% uts	99/40	\$3-\$10	housing = min 50%
TOD	2009	varies	varies	10% BA	99/40	\$10	
Burnet Gateway	2009	80	60	10% BA	99/40	\$6	FIL requires NHCD approval
VMU	2010	100-80	80-60	5%/10% uts	99/40	none	
East Riverside	2013	80	60	4:1	99/40	\$.50	FIL limited to 90'+ buildings

Inconsistent MFIs ▼

Period too short ▼

Questionable conditions ▼

Percent inconsistent ▲

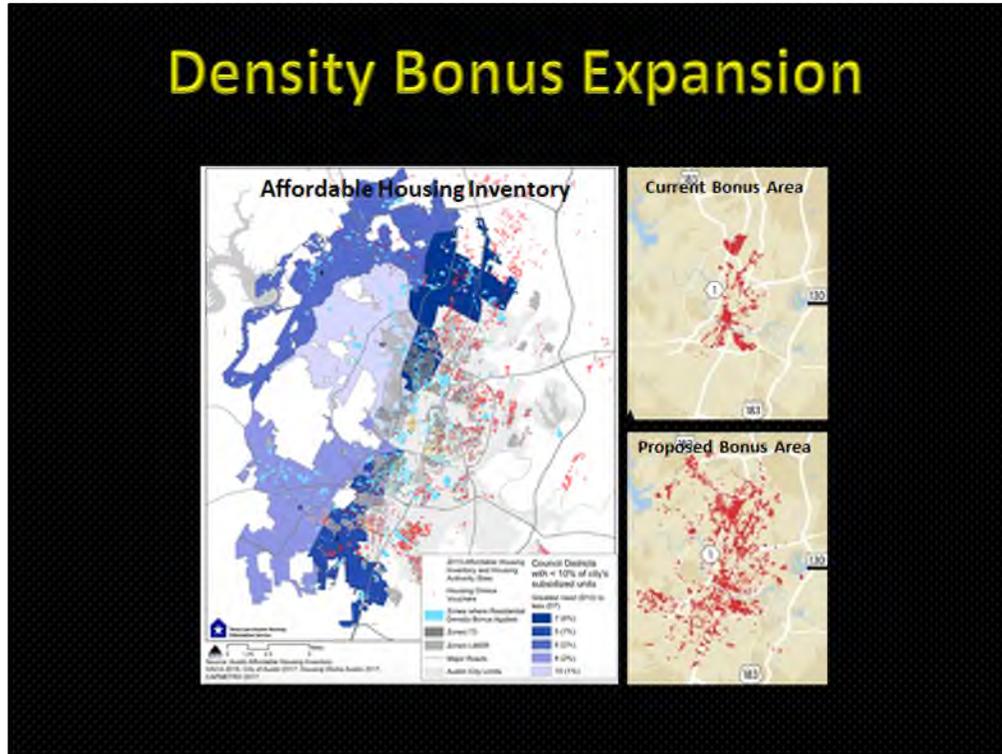
Fees too low ▲

A critique of Austin's eight existing density bonus programs:

All formula components, such as tenure periods (guaranteed years), eligibility thresholds (MFI levels), affordability thresholds (restricted units) and fee-in-lieu levels (buy-out options) are in great need of a thorough review and revision based on changing times, data and policies.

For example, the fee-in-lieu options for West Campus and East Riverside are so low (\$1 and 50 cents) that it makes no fiscal sense for a developer to provide on-site affordable housing.

Density Bonus Expansion



For a program with so much potential and so many problems, staff recommendations are surprisingly tepid and timid. In addition to territorially expanding the program, they recommend:

- Exploring the possibility of extending affordability periods.
- Adding Housing Choice vouchers to density bonus programs.
- Amending TOD to minimize requests for fee-in-lieu option.
- Defining how to determine if fees-in-lieu are “compelling.”
- Identifying factors that lead developers to request fees-in-lieu.
- Including affordable housing benefits in PUD Tier 1 provisions.

Considering such recommendations, it is easy to see why Austin’s bonus program is and has been such a failure.

A Better Way Forward!

For density bonuses to be effective, the program must:

- be better balanced between public and private benefits,
- have a higher priority among City programs, and
- be better funded, staffed, managed and supervised.

And these changes should be implemented:

- Allow bonuses for non-residential, as well as residential.
- Require certain percent of all units to be multi-bedroom.
- Give low-income families with children housing priority.
- Achieve deeper affordability by lowering MFI thresholds.
- Adjust fees-in-lieu to be in sync with actual housing cost.
- Extend affordability periods for West campus and Rainey.
- Base West Campus on gross floor area, rather than net.
- Allow fee-in-lieu options for Rainey Street and VMU.

If density bonuses are to ever become a significant local provider of affordable housing, the city must repair its existing broken program before expanding it. For starters:

- Allow bonuses for non-residential, as well as residential.
- Require a certain percent of all units to be multi-bedroom.
- Give low-income families with children housing priority.
- Achieve deeper affordability by lowering MFI thresholds.
- Adjust fees to be more in line with actual housing cost.
- Extend affordability periods for West campus and Rainey.
- Base West Campus on gross floor area, rather than net.
- Allow fee-in-lieu options for Rainey Street and VMU.

Thank You!



DON RATHER
Tackle
All American—All Conference



In closing, I thought it would be interesting to see if our following speaker recognized this former college classmate of mine.

Thank You!