

**WHITE\_EXHIBIT\_CORRECTIONS\_SCHOOLS**

**Amend Section 23-4E-6320 School to incorporate corrections submitted by Susan Moffat as vetted by the law department. Please see BELOW**

From: Susan Moffat, Former CodeNEXT Advisory Group Member  
Appointed to Represent Public Schools  
Submitted: March 8, 2018

### **CodeNEXT Draft 3: Corrections for Section 23-4E-6320 School**

Section 23-4E-6320 School (Article 23-4E, Supplemental to Zones) is intended to incorporate the provisions the Educational Facilities Ordinance (COA Ordinance 20160623-090), which provides land development regulations for public schools, including open enrollment public charters.

Because public schools may legally locate in any residential zoning category, basic development standards are essential to ensure a safe environment for students while maintaining a decent quality of life for nearby residents. Austin learned this the hard way a few years ago when a public charter school claimed complete exemption from city development standards under a double loophole in state and local law. The result was a towering structure on a tiny residential street with scant setbacks, industrial sized dumpsters next to residents' windows, excessive light and noise, dangerously snarled traffic and other problems, many of which are ongoing.

In response, the city engaged in a lengthy stakeholder process to craft the Educational Facilities Ordinance. Adopted in 2016, it provides fair, reasonable land development regulations for all public schools, including public charters.

To avoid future problems, it is imperative that all provisions of the Educational Facilities Ordinance be accurately transferred to the new code. While Draft 3 addresses some of the omissions in Draft 1 and 2, several significant corrections are still needed.

**1. CORRECTION. Section 23-4E-6320(B)(3)(a).** The current draft section incorrectly states:

*“A public school is not required to comply with: (a) The requirements of Chapter 23-4 (Zoning) related to floor to area ratio, building placement, building entrance, frontages, parking placement, common open space, visual screening, connectivity, and building design, and outdoor lighting.”*

In fact, public schools located within AISD's boundaries are fully exempt *only* from requirements for floor to area ratio, building entry, connectivity, common open space and connectivity between sites, and are subject to some or all code requirements related to the other terms highlighted above.

This broad but mistaken language regarding exemptions appears to be based on the section of the Educational Facilities Ordinance that exempts schools from Chapter 25-2, Subchapter E, Design Standards and Mixed Uses (see Educational Facilities Ordinance Part 5, page 3).

<http://www.ci.austin.tx.us/edims/document.cfm?id=257543>.

**However, the Educational Facilities ordinance also specifically requires all schools located within the AISD boundaries to comply with Chapter 25-2, Subchapter C, Article 10 (Compatibility), with only two exceptions:** no screening is needed around buildings and security lighting need not be shielded (see below provision from Educational Facilities Ordinance, page 3, (D)(2)).

### **§ 25-2-833 EDUCATIONAL FACILITY DEVELOPMENT STANDARDS**

**(D) A public primary or secondary educational facility:**

**(1) is exempt from requirements of this chapter limiting floor-to-area ratio;**

**(2) is subject to Chapter 25-2, Subchapter C, Article 10 (Compatibility)**

**within the boundaries of the Austin Independent School District, except that no opaque fencing or screening around any building or shielding for security lighting is required; and**

**Other than these extremely limited exceptions for some portions of screening and lighting requirements, no other elements of Article 10 (Compatibility) are waived or changed.** All schools within AISD boundaries are subject to screening requirements for off-street parking, mechanical equipment, storage and refuse; the Compatibility Design Regulations governing noise of mechanical equipment, placement of and access to refuse receptacles, parking and driveway locations; scale and clustering requirements, which impact building design; and additional specific provisions related to parking lot and driveway construction by a Civic Use.

Likewise, other than the limited exemption that allows schools not to shield security lights, schools are subject to other lighting requirements that appear elsewhere in the code, such as those in draft section 23-4E-2030. Draft 3 does state in Subsection (4)(e) that school's exterior lighting must be shielded, except for security lighting. However this section also states that it applies "except where modified by ...Subsection (B)(3)," which is the subsection that inaccurately grants a blanket exemption from *all* lighting requirements, thus creating a circular argument with no clear answer.

Again, the Educational Facilities Ordinance does not waive or alter these critical requirements - yet all are effectively eliminated by the broad declaration of exemptions that appears in the current draft Section 23-4E-6320(B)(3)(a). Not only does this pose a potential problem for residents, but eliminating these provisions would effectively deliver an unfair advantage to charter schools by exempting them from many requirements with which AISD must comply under its Land Development Standards Agreement with the city. (The ordinance was intended to codify the basic provisions contained the city's

interlocal agreements with area school districts, but in the event of conflict with the ordinance, the Agreement controls).

The Educational Facilities Ordinance incorporates Article 10 (Compatibility) by reference, but the new code eliminates Article 10 in favor of a “baked in” approach, which does not appear to carry over a number of standards critical to a reasonable quality of life for nearby residents. The provisions of Chapter 25-2, Subchapter C, Article 10, shown below, must be added to draft Section 23-4E-6320 to ensure retention of these crucial protections as mandated by the Educational Facilities Ordinance.

**Proposed Fix:**

**(A) Delete the following phrases from Section 23-4E-6320(B)(3)(a).**

*“A public school is not required to comply with: (a) The requirements of Chapter 23-4 (Zoning) related to floor to area ratio and, ~~building placement, building entrance, frontages, parking placement, common open space, visual screening, connectivity, and building design, and outdoor lighting.~~”*

**(B) Add the following provisions from the Educational Facilities Ordinance to Section 23-4E-6320, adjusting numbering/lettering/syntax as needed:**

*§ 25-2-1065 - SCALE AND CLUSTERING REQUIREMENTS.*

*(A) The massing of buildings and the appropriate scale relationship of a building to another building may be accomplished by: (1) avoiding the use of a continuous or unbroken wall plane; (2) using an architectural feature or element that: (a) creates a variety of scale relationships; (b) creates the appearance or feeling of a residential scale; or (c) is sympathetic to a structure on an adjoining property; or (3) using material consistently throughout a project and that is human in scale; or (4) using a design technique or element that: (a) creates a human scale appropriate for a residential use; or (b) prevents the construction of a structure in close proximity to a single-family residence zoning district that is: (i) significantly more massive than a structure in a single-family residence zoning district; or (ii) antithetical to an appropriate human scale; and (c) allows the construction of a structure, including a multi-family structure, that exhibits a human scale and massing that is appropriate for a residential use. (B) Except for good cause, the first tier of buildings in a multi-family or mixed use project must be clustered in a group that is not more than 50 feet wide, as measured along the side of the buildings that are most parallel to the property line of the site. (C) The depth of the first tier of buildings described under Subsection (B) may not exceed: (1) two units; or (2) 60 feet. (D) A building must be at least 10 feet apart from another building, as measured from wall face to wall face. (E) Subsections (B), (C), and (D) do not apply to a: (1) private or public primary educational facility; (2) private or public secondary educational facility; or (3) a college or university. (F) In Subsection (B), good cause may be shown by compliance with Subsection (A).*

Source: Section 13-2-735(c) and (d); Ord. 990225-70; Ord. 000309-39; Ord. 031211-11.

**§ 25-2-1066 - SCREENING REQUIREMENTS.**

- (A) A person constructing a building shall screen each area on a property that is used for a following activity from the view of adjacent property that is in an urban residence (SF-5) or more restrictive zoning district:
- (1) off-street parking;
  - (2) the placement of mechanical equipment
  - (3) storage; or
  - (4) refuse collection.

**§ 25-2-1067 – DESIGN REGULATIONS**

- (A) [This item is addressed in Draft 3].
- (B) The noise level of mechanical equipment may not exceed 70 db at the property line.
- (C) A permanently placed refuse receptacle, including a dumpster, may not be located 20 feet or less from the property: (1) in an SF-5 or more restrictive zoning district or (2) on which a use permitted in an SF-5 or more restrictive zoning district is located.
- (D) The location of an access to a permanently place refuse receptacle, including a dumpster, must comply with guidelines published by the City. The Watershed Protection and Development Review Department shall review and must approve the location of and access to each refuse receptacle on a property.
- (E) A highly reflective surface, including reflective glass and a reflective metal roof with a pitch that exceeds a run of seven to a rise of 12, may not be used, unless the reflective surface is a solar panel or copper or painted metal roof.
- (F) [This item is addressed in Draft 3]
- (G) Unless a parking area or driveway is on a site that is less than 125 feet wide, a parking area or driveway may not be constructed 25 feet or less from a lot that is: (1) in an SF-5 or more restrictive zoning district; or (2) on which a use permitted in an SF-5 or more restrictive zoning district is located.
- (H) If a site on which a parking area or driveway is constructed is less than 125 feet wide, the width and setback for the parking area or driveway must comply with the following schedule [see chart  
at [https://library.municode.com/tx/austin/codes/code\\_of\\_ordinances?nodeId=TI\\_T25LADE\\_CH25-2ZO\\_SUBCHAPTER\\_CUSDERE\\_ART10COST](https://library.municode.com/tx/austin/codes/code_of_ordinances?nodeId=TI_T25LADE_CH25-2ZO_SUBCHAPTER_CUSDERE_ART10COST)]

**§ 25-2-1068 - CONSTRUCTION OF PARKING LOTS AND DRIVEWAYS BY CIVIC USES PROHIBITED.**

- (A) Except as provided by Subsection (B), a parking lot or driveway may not be constructed to serve a civic use described in Section 25-2-6 (Civic Uses Described [which includes public schools]) if: (1) construction of the parking lot or driveway requires the removal of a single-family residential use; or (2) the civic use provides secondary access from the civic use through a lot.
- (B) Subsection (A) does not apply if at least 50 percent of the property adjoining the lot on which the parking lot or driveway is located is in a townhouse or condominium residence (SF-6) or more restrictive zoning district. Property that adjoins the rear of the lot, property owned by the owner of the civic use, and right-of-way are not considered in making a determination under this subsection.

**(C) Add the following provision to Section 23-4E-6320(B)(4) for clarity:**

*(g) Opaque Screening or Fencing. No opaque fencing or screening is required around any building. All other screening requirements apply.*

**2. CORRECTION. Section 23-4E-6320(B)(3)(b)**

Add highlighted language to supply correct citation:

*(b) The requirements of Chapter 23-9 (Transportation) related to block length and of 23-4C-1020 related to internal circulation routes.*

Why needed: Schools are indeed exempt from standards related to block length and internal circulation, but the citation is incorrect. In Draft 3, Internal Circulation standards appear in Division 23-4C-1020 (General to Large Sites), not 23-9 (Transportation) as the draft cites. Chapter 23-9 does not speak to internal circulation.

**3. CORRECTION. Section 23-4E-6320(B)(7)**

Add the following highlighted language to conform to Austin’s Educational Facilities Ordinance:

*“The Planning Director shall conduct a neighborhood traffic analysis on a site plan development permit application or a zoning or rezoning for a public primary or secondary school.”*

Why needed: Draft 3 omits an important trigger in Austin’s Educational Facilities ordinance that requires the Director to conduct an NTA for “a site development permit application or a zoning or rezoning.” Draft 3 carries forth the trigger for site development permit applications, but omits the current trigger for zonings or rezonings. See Educational Facilities Ordinance, page 7, Part 9(A). <http://www.ci.austin.tx.us/edims/document.cfm?id=257543>

**4. TYPO. 23-4E-6320(B)(4).**

Remove stray letter “y” highlighted below:

*(4) A public school must comply the requirements of the base zone except where modified by this subsection and Subsection (B)(3). (a) Outside the boundaries of the Austin Independent School District, a public y school must not be constructed closer than 25 feet from an adjoining residential use.*

**5. TYPO. 23-4E-6320-(B)(4)(f).**

Correct referenced section title per below:

*(f) A public school must comply with the impervious cover limits established in Section 23-3D-3110 (Impervious Cover Limits for ~~Schools~~ Educational Facilities).*

Why needed: Referenced title for Section 23-3D-3110 is incorrect; this section is actually titled “Impervious Cover Limits for Educational Facilities,” not “Impervious Cover Limits for Schools.”

| Table 23-4D-4030(A) Allowed Uses in Mixed-Use Zones MU1A–MU2B |                              |                |                |                |                |      |      |
|---|------------------------------|----------------|----------------|----------------|----------------|------|------|
| Use Type  | Specific to Use Requirements | MU1A           | MU1B           | MU1C           | MU1D           | MU2A | MU2B |
| <b>(1) Residential</b>  |                              |                |                |                |                |      |      |
| Accessory Dwelling Unit - Residential                         | 23-4E-6030                   | P              | P              | P              | P              | —    | —    |
| Accessory Dwelling Unit - Commercial                          | 23-4E-6040                   | P              | P              | P              | P              | P    | P    |
| Bed and Breakfast   | 23-4E-6090                   | P              | P              | P              | P              | P    | P    |
| Cooperative Housing   |                              | P              | P              | P              | P              | P    | P    |
| Duplex  | 23-4E-6170                   | P              | P              | P              | P              | P    | P    |
| Home Occupations  | 23-4E-6200                   | P              | P              | P              | P              | P    | P    |
| Multi-Family  | 23-4E-6250                   | P              | P              | P              | P              | P    | P    |
| Senior/Retirement Housing                                     |                              | P              | P              | P              | P              |      |      |
| ≤12   | 23-4E-6330                   | <del>MUP</del> | <del>MUP</del> | <del>MUP</del> | <del>MUP</del> | P    | P    |
| >12   | 23-4E-6330                   | <del>MUP</del> | <del>MUP</del> | <del>MUP</del> | <del>MUP</del> | P    | P    |
| Single-Family   |                              | P              | P              | P              | P              | —    | —    |
| Single-Family Attached  |                              | P              | P              | P              | P              | P    | P    |
| <b>Short-term Rental</b>                                      |                              |                |                |                |                |      |      |
| Types 1   | 23-4E-6340                   | P              | P              | P              | P              | MUP  | MUP  |
| Types 2   | 23-4E-6340                   | P              | P              | P              | P              | —    | —    |
| Types 3   | 23-4E-6340                   | P              | P              | P              | P              | MUP  | MUP  |
| Townhouse   |                              | P              | P              | P              | P              | P    | P    |
| Work/Live   | 23-4E-6380                   | —              | —              | —              | —              | P    | P    |
| <b>(2) Residential Support</b>                                |                              |                |                |                |                |      |      |
| Emergency Shelter   |                              | —              | —              | —              | —              | P    | P    |
| Residential Care Facility                                     |                              | —              | —              | —              | —              | CUP  | P    |

Key for Table 23-4D-4030(A)

|     |                                 |       |   |
|-----|---------------------------------|-------|---|
| P   | Permitted Use                   | TUP   | Temporary Use Permit Required   |
| MUP | Minor Use Permit Required       | —     | Not Allowed   |
| CUP | Conditional Use Permit Required | P/CUP | Permitted Use or Conditional Use Permit Required. See Division 23-4E-6 (Specific to Use). |

| Table 23-4D-4030(A) Allowed Uses in Mixed-Use Zones MU1A–MU2B (continued) |                              |         |                       |       |                       |       |                     |
|---|------------------------------|---------|-----------------------|-------|-----------------------|-------|---------------------|
| Use Type  | Specific to Use Requirements | MU1A    | MU1B                  | MU1C  | MU1D                  | MU2A  | MU2B                |
| <b>(5) Civic and Public Assembly</b>                                      |                              |         |                       |       |                       |       |                     |
| Government  |                              | —       | —                     | —     | —                     | MUP   | MUP                 |
| Library, Museum, or Public Art Gallery                                    |                              | CUP     | CUP                   | CUP   | CUP                   | P     | P                   |
| Meeting Facility (public or private)                                      |                              | CUP     | CUP                   | CUP   | CUP                   | P     | P                   |
| Public Safety Facility  |                              | CUP     | CUP                   | CUP   | CUP                   | P     | P                   |
| Religious Assembly Facility   |                              | P       | P                     | P     | P                     | P     | P                   |
| <b>School</b>   |                              |         |                       |       |                       |       |                     |
| Business, or Trade  | 23-4E-6320                   | —       | —                     | —     | —                     | —     | P                   |
| College or University   | 23-4E-6320                   | CUP     | CUP                   | CUP   | CUP                   | MUP   | P                   |
| Private Primary   | 23-4E-6320                   | CUP     | CUP                   | CUP   | CUP                   | MUP   | P                   |
| Private Secondary   | 23-4E-6320                   | CUP     | CUP                   | CUP   | CUP                   | MUP   | P                   |
| Public Primary  | 23-4E-6320                   | P       | P                     | P     | P                     | P     | P                   |
| Public Secondary  | 23-4E-6320                   | P       | P                     | P     | P                     | P     | P                   |
| <b>(6) Restaurant and Bars</b>  |                              |         |                       |       |                       |       |                     |
| <b>Bar/Nightclub</b>  |                              |         |                       |       |                       |       |                     |
| Level 1   |                              | —       | CUP                   | —     | CUP                   | —     | CUP                 |
| Level 2   |                              | —       | —                     | —     | —                     | —     | —                   |
| Micro-Brewery/Micro-Distillery/Winery                                     |                              | —       | <del>MUP</del><br>CUP | —     | <del>MUP</del><br>CUP | —     | <del>P</del><br>MUP |
| Mobile Food Sales   | 23-4E-6230                   | —       | —                     | —     | —                     | —     | P                   |
| <b>Restaurant</b>   |                              |         |                       |       |                       |       |                     |
| w/o Alcohol Sales   |                              | MUP (5) | MUP (5)               | P (5) | P (5)                 | P (5) | P                   |
| w/ Alcohol Sales  | 23-4E-6310                   | —       | CUP                   | —     | CUP                   | —     | P                   |
| Drive Through   | 23-4E-6160                   | —       | CUP                   | —     | CUP                   | CUP   | CUP                 |
| Late Night Operation  | 23-4E-6310                   | —       | CUP                   | —     | CUP                   | —     | —                   |

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|     |                                 |       |   |
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| CUP | Conditional Use Permit Required | P/CUP | Permitted Use or Conditional Use Permit Required. See Division 23-4E-6 (Specific to Use). |

Table 23-4D-5030(A) Allowed Uses in Main Street Zones MS1A–MS3B (continued)

| Use Type                               | Specific to Use Requirements | MS1A | MS1B                  | MS2A | MS2B                  | MS2C                  | MS3A | MS3B |
|--|------------------------------|------|-----------------------|------|-----------------------|-----------------------|------|------|
| <b>(3) Services (continued)</b>        |                              |      |                       |      |                       |                       |      |      |
| Personal Services                      |                              |      |                       |      |                       |                       |      |      |
| Non-restricted                         |                              | P    | P                     | P    | P                     | P                     | P    | P    |
| Restricted                             |                              | —    | —                     | —    | P                     | P                     | P    | P    |
| <b>(4) Office</b>                      |                              |      |                       |      |                       |                       |      |      |
| Office, General (non-medical)          |                              | P    | P                     | P    | P                     | P                     | P    | P    |
| <b>(5) Civic and Public Assembly</b>   |                              |      |                       |      |                       |                       |      |      |
| Government                             |                              | MUP  | MUP                   | MUP  | MUP                   | MUP                   | MUP  | MUP  |
| Library, Museum, or Public Art Gallery |                              | P    | P                     | P    | P                     | P                     | P    | P    |
| Meeting Facility (public or private)   |                              | P    | P                     | P    | P                     | P                     | P    | P    |
| Public Safety Facility                 |                              | P    | P                     | P    | P                     | P                     | P    | P    |
| Religious Assembly Facility            |                              | P    | P                     | P    | P                     | P                     | P    | P    |
| School                                 |                              |      |                       |      |                       |                       |      |      |
| Business, or Trade                     | 23-4E-6320                   | P    | P                     | P    | P                     | P                     | P    | P    |
| College or University                  | 23-4E-6320                   | P    | P                     | P    | P                     | P                     | P    | P    |
| Private Primary                        | 23-4E-6320                   | P    | P                     | P    | P                     | P                     | P    | P    |
| Private Secondary                      | 23-4E-6320                   | P    | P                     | P    | P                     | P                     | P    | P    |
| Public Primary                         | 23-4E-6320                   | P    | P                     | P    | P                     | P                     | P    | P    |
| Public Secondary                       | 23-4E-6320                   | P    | P                     | P    | P                     | P                     | P    | P    |
| <b>(6) Restaurant and Bars</b>         |                              |      |                       |      |                       |                       |      |      |
| Bar/Nightclub                          |                              |      |                       |      |                       |                       |      |      |
| Level 1                                |                              | —    | <del>CUP</del><br>MUP | —    | <del>CUP</del><br>MUP | <del>CUP</del><br>MUP | P    | P    |
| Level 2                                |                              | —    | —                     | —    | —                     | —                     | MUP  | MUP  |
| Micro-Brewery/Micro-Distillery/Winery  |                              | —    | <del>MUP</del><br>CUP | —    | <del>P</del><br>MUP   | <del>P</del><br>MUP   | P    | P    |
| Mobile Food Sales                      | 23-4E-6230                   | P    | P                     | P    | P                     | P                     | P    | P    |
| Restaurant                             |                              |      |                       |      |                       |                       |      |      |
| w/o Alcohol Sales                      |                              | P    | P                     | P    | P                     | P                     | P    | P    |
| w/ Alcohol Sales                       | 23-4E-6310                   | —    | <del>MUP</del><br>CUP | —    | <del>MUP</del><br>CUP | <del>MUP</del><br>CUP | P    | P    |
| Drive Through                          | 23-4E-6160                   | —    | —                     | —    | CUP                   | CUP                   | MUP  | MUP  |
| Late Night Operation                   | 23-4E-6310                   | CUP  | CUP                   | CUP  | CUP                   | CUP                   | CUP  | CUP  |

Key for Table 23-4D-5030(A)

|     |                                 |       |   |
|-----|---------------------------------|-------|---|
| P   | Permitted Use                   | TUP   | Temporary Use Permit Required   |
| MUP | Minor Use Permit Required       | —     | Not Allowed   |
| CUP | Conditional Use Permit Required | P/CUP | Permitted Use or Conditional Use Permit Required. See Division 23-4E-6 (Specific to Use). |

Table 23-4D-5030(A) Allowed Uses in Main Street Zones MS1A–MS3B (continued)

| Use Type                                | Specific to Use Requirements | MS1A                  | MS1B                  | MS2A                  | MS2B                  | MS2C                  | MS3A | MS3B |
|---|------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|------|------|
| <b>(7) Retail</b>                       |                              |                       |                       |                       |                       |                       |      |      |
| Alcohol Sales                           | 23-4E-6070                   | —                     | CUP                   | —                     | CUP                   | CUP                   | CUP  | CUP  |
| Food Sales                              |                              | P                     | P                     | P                     | P                     | P                     | P    | P    |
| General Retail                          |                              |                       |                       |                       |                       |                       |      |      |
| ≤ 5,000 sq ft                           |                              | P                     | <del>P</del><br>MUP   | P                     | <del>P</del><br>MUP   | <del>P</del><br>MUP   | P    | P    |
| >5,000 and ≤10,000 sf                   |                              | —                     | <del>MUP</del><br>MUP | —                     | <del>MUP</del><br>MUP | <del>MUP</del><br>MUP | P    | P    |
| w/ Onsite Production                    |                              | —                     | <del>P</del><br>P     | —                     | <del>P</del><br>P     | <del>P</del><br>P     | P    | P    |
| w/ Outside Storage                      | 23-4E-6190                   | —                     | —                     | —                     | —                     | —                     | CUP  | CUP  |
| <b>(8) Entertainment and Recreation</b> |                              |                       |                       |                       |                       |                       |      |      |
| Performance Venue/Theater               |                              |                       |                       |                       |                       |                       |      |      |
| Indoor                                  | 23-4E-6260                   |                       |                       |                       |                       |                       |      |      |
| ≤2,500 sf                               | 23-4E-6260                   | MUP                   | MUP                   | P                     | P                     | P                     | P    | P    |
| 2,500-10,000 sf                         | 23-4E-6260                   | CUP                   | CUP                   | MUP                   | MUP                   | MUP                   | P    | P    |
| > 10,000 sf                             | 23-4E-6260                   | —                     | —                     | —                     | CUP                   | CUP                   | CUP  | CUP  |
| Outdoor                                 | 23-4E-6260                   |                       |                       |                       |                       |                       |      |      |
| ≤ 2,500 sf                              | 23-4E-6260                   | —                     | —                     | MUP                   | MUP                   | MUP                   | P    | P    |
| 2,500-10,000 sf                         | 23-4E-6260                   | —                     | —                     | —                     | CUP                   | CUP                   | CUP  | CUP  |
| Recreation                              |                              |                       |                       |                       |                       |                       |      |      |
| Indoor ≤ 5,000 sf                       | 23-4E-6290                   | P                     | P                     | P                     | P                     | P                     | P    | P    |
| Indoor > 5,000 sf                       | 23-4E-6290                   | CUP                   | CUP                   | CUP                   | CUP                   | CUP                   | CUP  | CUP  |
| Outdoor, Formal                         | 23-4E-6290                   | <del>MUP</del><br>CUP | <del>MUP</del><br>CUP | <del>MUP</del><br>CUP | <del>MUP</del><br>CUP | <del>MUP</del><br>CUP | MUP  | MUP  |
| Outdoor, Informal                       | 23-4E-6290                   | P                     | P                     | P                     | P                     | P                     | —    | —    |
| Outdoor, Natural                        | 23-4E-6290                   | P                     | P                     | P                     | P                     | P                     | P    | P    |
| Studio: art, dance, martial arts, music | 23-4E-6370                   | P                     | P                     | P                     | P                     | P                     | P    | P    |
| <b>(9) Industrial</b>                   |                              |                       |                       |                       |                       |                       |      |      |
| No Industrial uses allowed              |                              |                       |                       |                       |                       |                       |      |      |
| <b>(10) Agriculture</b>                 |                              |                       |                       |                       |                       |                       |      |      |
| Community Agriculture                   | 23-4E-6120                   | <del>P</del><br>MUP   | <del>P</del><br>MUP   | <del>P</del><br>MUP   | <del>P</del><br>MUP   | <del>P</del><br>MUP   | MUP  | MUP  |
| <b>(11) Automobile Related</b>          |                              |                       |                       |                       |                       |                       |      |      |
| Gas Station                             | 23-4E-6180                   | —                     | —                     | —                     | CUP                   | CUP                   | CUP  | CUP  |
| Parking Facility                        |                              | —                     | —                     | —                     | —                     | —                     | CUP  | CUP  |

Key for Table 23-4D-5030(A)

|     |                                 |       |   |
|-----|---------------------------------|-------|---|
| P   | Permitted Use                   | TUP   | Temporary Use Permit Required   |
| MUP | Minor Use Permit Required       | —     | Not Allowed   |
| CUP | Conditional Use Permit Required | P/CUP | Permitted Use or Conditional Use Permit Required. See Division 23-4E-6 (Specific to Use). |

## WHITE\_EXHIBIT\_ADMIN & PROCEDURES

### CodeNEXT Draft 3 Administration and Procedures

Originally Submitted by Susan Moffat  
Former CodeNEXT Advisory Group Member  
April 22, 2018

Issues described below are not addressed by the recently released Staff Addendum and Errata. Comments are grouped by subject in the following order: Notice and Appeals; Bar/Nightclub Uses; Nonconforming Uses and Structures; Neighborhood and Small Area Plans; Variances, Waivers and Exceptions; F25.

#### A. NOTICE AND APPEALS

- 1. Reinstate 20 day appeal window for board or commission decisions, as provided in current code (23-2I-1030).** In Draft 1, deadlines for appeals of administrative decisions (25-1-182) were shortened from 20 days after decision to 14 or 7 days depending on whether notice of decision is required. Staff acknowledged this was a drafting error and reinstated the 20 day appeal window for administrative decisions, but did not fix the deadline to file an appeal to a board or commission. Draft 3 still reduces this deadline from 20 days to 14, a significant reduction.
- 2. Allow contested Minor Use Permits (MUPs) to be appealed to City Council.** Draft 3 ends the appeal process for MUPs at Planning Commission. In contested cases, the final decision should not rest with an unelected body.
- 3. As an alternative, send MUP notices to all interested parties with a deadline to reply with objections; if no objections are received, the administrative approval could proceed.** This possibility was discussed with Assistant Attorney Brent Lloyd, who appeared supportive of the concept, but this language has yet to appear in Draft 3.

#### B. BAR/NIGHTCLUB USES

- 2. For clarity and predictability, add a note to all Use Tables stating: “State and local laws do not allow alcohol uses within 300’ of a public school, church or public hospital, regardless of base zoning, without a City Council waiver.”** As currently drafted, CodeNEXT would substantially expand by-right alcohol uses to more areas. Outside investors, unaware of local prohibitions, may naturally assume that if an alcohol use is listed as permitted in a given zone, it will be fine to open a bar or liquor store there regardless of its proximity to a school. Rather than attempting to revise zoning maps to

appropriately zone around hundreds of schools, churches or hospitals, please add this simple note to the Use Tables to ensure clarity and predictability for all concerned.

**3. Require a CUP for all alcohol uses in or near residential zoning.**

**SEE WHITE\_EXHIBIT\_TABLES 4030 & 5030**

**C. NONCONFORMING USES AND STRUCTURES**

**1. Clarify that conversion of nonconforming use to conditional use terminates the nonconforming use (23-2G-2050(B)(2)).** Section 23-2G-2050(B)(2) state that conversion of a nonconforming use to a conforming use terminates the nonconformity, but omits conversion to a CUP, which is specifically mentioned in (B)(5). Please revise this to clarify that conversion to a conforming use or CUP terminates the nonconforming use. Alternatively, state explicitly in (B)(5) that conversion to a conditional use terminates the nonconforming use.

**2. Clarify that conversion of a nonconforming use to a conditional use requires the CUP process mandated elsewhere in the code (23-2G-2050(B)(5)).** Draft Section 2G-1050(B)(5) states: “A nonconforming use may be converted to an allowed use or a conditional use for the zone in which the property is located,” but provides no other details as to how that conversion may be achieved. Please add language clarifying that existing CUP process must be used. Also please clarify that this is considered an abandonment of a nonconforming use (see above).

**3. Correct Section 23-2G-1050(C), which still omits current code language that allows only one modification to setback nonconformances.** After this error was raised in Draft 2, Draft 3 Subsection (C)(2) added new language to restrict height to a single modification, but Subsection (C)(3) still does not limit the number of setback modifications. Absent this provision, one could continue adding iteratively to setback nonconformances virtually in perpetuity, defeating the purpose of limiting nonconformances. Assistant Attorney Brent Lloyd believes this error was intended to be corrected in Draft 3, but was inadvertently missed.

**4. Correct Section 23-2G-1070(D) to limit window to 18 months for rebuilding a nonconforming use destroyed by causes beyond the owner’s control, not for simply filing an application.** Draft 3 omits current code language that requires a 12-month window for rebuilding a nonconforming use destroyed by fire or other cause beyond the owner’s control and prohibits expansion of the gross floor area or interior volume. Consultants removed the 12-month deadline completely in earlier drafts because they thought it was too short a deadline for rebuilding. However, Draft 3 now provides that “**an application to replace or rebuilt [sic] the structure is submitted no later than 18 months from the date the original structure was damaged or destroyed.**” This change effectively extends the rebuilding window indefinitely as applications and permits can be renewed repeatedly over an extended period. If the deadline is tied only to the filing of an application, 12 months is more than more than enough time. If the deadline is 18 months,

it should be limited to rebuilding, not simply filing an application. In a March meeting, Assistant Attorney Brent Lloyd stated he believed this was a drafting error that could be fixed.

**5. Reinstate current public notice requirement for extensions of development applications (23-2B-1050).** The draft section allows an automatic extension of 1-year expiration period in a case where staff review is not complete, but omits the notice requirement to the public in the current code (LDC 25-1-87) See also 23-2C-1010(B). In November, Assistant City Attorney Brent Lloyd floated the idea of a shorter time length for automatic extensions (3-6 months), after which notice would be required, but Draft 3 still grants a 1 year extension without notice to public.

## **D. NEIGHBORHOOD AND SMALL AREA PLANS**

**1. 23-1B-4010(E). Strengthen city-issued Contact Team bylaws template and remove provision allowing individual Contact Teams to amend bylaws.** This section allows Neighborhood Plan Contact Teams to amend their own bylaws, but if bylaws “shall be consistent with the standardized bylaws template” as provided, why allow individual contact teams to change them? The original bylaws template the city provided was generally weak and omitted crucial sections regarding basic functions, such as the authority to place items on the agenda, voting process, quorum, etc., which led to a number of problems cited by the city auditor. In fact, many of the NP issues raised by the city auditor could have been avoided through the use of strong standard bylaws. The revised bylaws template is slightly improved, but could still benefit from additional work. In any case, it makes no sense to allow NPs to change their own bylaws at will.

**2. Add definition of Neighborhood Plan, which is still missing from Draft 3 (23-12A-1030 pg. 21, formerly 23-2M-1030).** Neighborhood Plans have been the chief planning tool used by the city for roughly two decades, and are referenced in the draft text in various places, yet are still not defined in Draft 3. It makes no sense to provide detailed provisions related to these bodies, without providing even a simple definition of them.

**3. Reinstate section governing creation and responsibilities of Neighborhood Plans and Neighborhood Contact Teams, currently in LDC Section 25-1-805.** Draft 3 Section 23-2E-2030 makes detailed provisions for Neighborhood Plan Amendments, repeatedly referencing neighborhood plans and neighborhood plan contact team. Yet Draft 3 completely omits current code language governing the creation and responsibilities of Neighborhood Plans or Neighborhood Plan Contact Teams (LDC Art. 16, Section 25-1-805). For clarity of use, please reinstate this language.

**4. Add Small Area Plans to 23-2E-2 as explicitly referenced elsewhere in Draft 3.** Section 23-1B-1010 states that City Council has authority over all legislative decisions authorized by this Title including amendments to “adopted small areas plans, under Division 23-2E-2” and similar references to small area plans appear in multiple places

throughout the draft, often with the cite to Division 23-2E-2. Yet as currently drafted, Section 23-2E-2 itself makes no mention small area plans, only Neighborhood Plans.

Small area plans are a major city planning tool and are obviously intended to be included in this section as evidenced by explicit references elsewhere in Draft 3. Small area plans should also be added to General Terms and Phrases, 23-13A-1.

## **E. VARIANCES, WAIVERS, EXCEPTIONS**

**1. Correct Special Exception, Level 1 (Section 23-4B-4030) to retain current code requirements as follows: applies only to structures 25 years old or older; does not provide exceptions for building height or build cover; applies only to structure or portion of structure for which exception was granted and does not run with land.**

Special Exception Level 1 would authorize the Board of Adjustment to “approve a special exception to provide relief for residential properties with longstanding code violations that are minimal in degree and have little to no effect on surrounding areas.”

This special exception appears intended to bring forward the existing special exception for longstanding (25 years) setback nonconformances under LDC Section 25-2-276, which the Council enacted in 2011. However, Draft 3 significantly expands this authority by: creating new exceptions for height and building cover as well as setbacks; creating new exceptions for much more recent structures (10-year-old structures, down from the current 25-year-old threshold); and removing the following limit in current code:

“25-2-476(C) A special exception granted under this section:

- (1) applies only to the structure, or portion of a structure, for which the special exception was granted and does not run with the land.”

Please revise to retain crucial provisions in current code.

**2. Consider impact of expanded Board of Adjustment (BoA) waivers on average residents.** While Draft 3 removes some of the most egregious BoA waivers proposed in earlier drafts, the remaining expansion of BoA waivers may create significant hurdles for those unfamiliar with the BoA process or unable to fund a court appeal. BoA does not allow ex parte communication and their hearings are limited and formal, which may not give inexperienced residents the opportunity to fully explain the potential impacts of a case in what will be their only chance to do so.

Further, there is no appeal for a BoA decision unless the aggrieved party can afford to go to court, effectively rendering appeal rights moot for many residents. Please consider these impacts before approving expanded BoA waivers as proposed in Draft 3.

**3. For efficiency and transparency, remove variance/exception option from 23-2A-3050, Residential Development Regulations.** New in Draft 3, Division 23-2A-3 is

intended to streamline review processes for smaller residential projects of 1-6 units in order to moderate costs. However, Section 23-2A-3050 would allow an applicant request a variance or special exception from “from any zoning regulation applicable to the proposed development. These would specifically include a variance from the Land Use Commission for a 1-2 unit project or an administrative modification for a 3-6 unit project. In the interests of efficiency and transparency, a streamlined review process should be limited to no variance/exception projects. As currently drafted, this is the equivalent of ordering the daily special and then asking to substitute all the side dishes.

The recently released staff addendum actually doubles down on these exceptions, adding a new Section 23-2A-3060, which would allow an applicant to request a variance or special exception from the Board of Adjustment from any zoning regulation for a project of 1-2 units, and to request a variance from land use commission for projects of 3-6 units.

**4. Cap all administrative modifications for “inadvertent errors” at no more than 2% (Administrative Modifications, 23-2F-2040).** This section, which has been moved and retitled from previous drafts, originally allowed administrative approval of a 10% increase in certain entitlements (height, building coverage and setback) if errors were made ‘inadvertently’ in construction, sparking concerns of abuse and raising questions about illegal delegation of authority under state law. Staff response in October 2017 did not address legality under state law, or the size of the proposed percentage. The Board of Adjustments itself has stated that any proposed adjustment should be limited to 2%, not 10%.

Draft 3 now caps height adjustments at 5%, but building and setback adjustments remain at 10%, which is still too high and opens the door to abuse. Please cap all administrative adjustments for inadvertent errors at no more than 2%.

## **H. VALID PETITIONS**

**1. Add Valid Petition definition and process for rezonings (Article 23-2).** Valid petition rights in rezoning cases are established by state law, as are vested rights petitions. Draft 3 provides extensive information about vested rights petitions in 23-K-2, but not one word about Valid Petitions – not even a definition (note that vested rights petitions are generally used by developers, while valid petitions are generally used by area residents seeking to oppose or alter a proposed development). In the interest of fairness, please add subsection for Valid Petitions, including definitions, applicability, procedures, etc., similar to what the draft provides for Vested Rights Petitions in 23-K-2.

## **I. F25 (Formerly Title 25)**

**1. Require the final draft specify which of the current Conditional Overlays will be carried over to the F25 Zone (former Title 25).** Subsection 23-4D-8080(B)(1)(e) states it applies to “specifically identified Conditional Overlays” and Subsection (B)(2) states

that the director will publish a guide listing all designations in Subsection (C)(1), but neither is available at this time. According to staff, an interactive map containing this information will link to ordinance in final draft. Please ensure this happens.

**2. Clarify how compatibility will be handled between F25 and non-F25 properties, specifically, how does subsection (c) below square with (a) and (b)?**

Draft 3 Subsection 23-4D-8080(C)(2) states that:

(a) properties in F25 Zones are subject to compatibility regulations under former Chapter 25-2, Subchapter C, Article 10(Compatibility);

(b) Residential House Scale Zones shall also trigger old compatibility regulations for properties within an F25 zone; and

(c) properties within an F25 zone that would have triggered compatibility under Article 10 “shall be treated as Residential House-Scale Zones and trigger compatibility regulations established in this Title for properties within Zone established in this Title.”

**3. For F25 properties, clarify whether they are subject to noncompliance/nonconformance provisions in contained in former Title 25 or CodeNEXT.** I am unable to find Draft 3 language specific to noncompliance, but Subsection (C)(1)(a) states that F25 properties are subject to zoning regulations of the “City’s predecessor Land Development Code, Chapter 25-2 Zoning. Chapter 25-2 contains regulations for Nonconforming Uses (Article 7) and Noncomplying Structures (Article 8). This would appear that F25 properties will remain subject to former code regulations, but please confirm.

## WHITE\_EXHIBIT\_ Conditional Use Permits

### CodeNEXT Draft 3 Conditional Use Permits

**Please amend Draft 3 to reinstate the clear Conditional Use Permit standards and other key provisions in LDC 25-5-142 through 25-5-150.**

Draft 3 Section 23-4B-1020 substantially loosens and weakens criteria for Conditional Use Permits (CUPs), deleting many specific mandatory standards in current code and replacing them with relatively broad concepts that must only be considered, not required as conditions for approval. Paradoxically, the draft also removes the current CUP requirement for at least two uses whose potential impacts do warrant the extra scrutiny a CUP provides, notably late-hours bars in many zones and big box retail over 100,000 square feet.

The proposed changes are concerning for several reasons.

First, a stated goal of CodeNEXT is to provide greater predictability in zoning matters, thereby reducing the number of negotiated or contested cases that currently consume time and energy of city staff, residents, commissioners and council members. Draft 3 inexplicably broadens CUP criteria, inviting applicants to bring a wider range of applications and greatly increasing the time already spent on such cases. If we truly want a predictable code and a more efficient process, taking the lid off CUPs works against that goal.

Second, CUP zoning stays with the land, not just the proposed project, which may close in the first week of operation. This means the delightful corner pub that comes to the commission with neighborhood support can easily become a Hooters next month, a legal impact sometimes lost in discussions of a particularly appealing proposal. The Land Use Commissions are established to guide and shape our city. Is good planning really served by making CUPs more widely available?

CodeNEXT already proposes plentiful by-right zoning for many additional uses in far more areas. CUPs should remain a limited mechanism for situations where a change of use or added scrutiny is truly warranted, not a one-size-fits-all tool to undermine well-considered zoning.

Please amend the draft to reinstate current CUP provisions as detailed below.

**1. Reinstate LDC 25-5-148 to ensure compliance with conditions imposed by Council or Commissions.** Draft 3 deletes in its entirety LDC 25-5-148, Conditional Use Site Plan and Update. This section states that if the Land Use Commission or City Council imposes a condition of an approval on a CUP, the applicant must file an update that satisfies the condition within 20 business days, and that a site plan expires if the applicant does not comply with the deadline. If the director returns review comments on

the update, the applicant may file subsequent updates up to 135 days after the date of the CUP approval. Absent this provision, there will be no way to ensure that an applicant has actually complied with the conditions specified by the commissions or Council.

**2. Reinstate existing CUP requirement for late-hours bars and restaurants, including current code's 200' parking buffer in proximity to House-Scale Residential Zones.**

**23-4D-5040 Parking Requirements**

**(D) Parking Buffer.** A 200' parking buffer is required when adjacent to R & RM zones.

Current code requires that parking for a late-night bar or restaurant be separated from residential uses of SF-6 or lower by at least 200'. Draft 3 effectively repeals this parking buffer for late-hours bars in MU3B, MU4B, MU5A, MS3A and MS3B, and repeals the parking buffer for late-hours restaurants with or without alcohol sales in MU4B and MU5A. (The effect is unclear on the Micro-Brewery/Micro-Distillery/Winery use, which is proposed as a permitted in many MU and MS zones; if they are, in fact, allowed late-hours permits, they would also be exempt from the parking buffer.)

As anyone who's spent time in a bar parking lot knows, they can be the scene of activities most would rather not have occurring directly under their bedroom windows, including laughter, yelling, outdoor bodily functions, last-call romances and fights. As CodeNEXT significantly increases alcohol-related zoning in many areas, this is hardly the time to repeal the 200' parking buffer.

The simplest fix would be to reinstate a CUP requirement for any late-hours use in proximity to House-Scale Residential zones or, alternatively, add a provision to the Use Tables and/or Parking Tables that mandates the 200' parking buffer for late-hours uses in proximity to House-Scale Residential zones.

Details: LDC Section 25-2-808(C) states that any cocktail lounge - now renamed Bar/Nightclub in the draft - or restaurant that requires a late-hours permit from the TABC is a conditional use if Article 10 (Compatibility Standards) apply. This means a CUP is required for these late-night uses if they are proposed in proximity to residential uses (please note that the draft deletes Article 10 so this first trigger is now missing). LDC Section 25-2-808(D) further states that any cocktail lounge or restaurant with a late-hours permit must be in "compliance with the parking area setback described in Section 25-5-146 (Conditions of Approval)," which requires that parking for these late-hours uses "must be separated from a property used or zoned townhouse and condominium residence (SF-6) district or more restrictive by not less than 200 feet" unless the use is located in an enclosed shopping center or the Land Use Commission approves a waiver.

To be clear, Draft 3 retains the parking buffer as a CUP requirement for late-hours bars and restaurants - the problem is that it drops the CUP requirement itself for these uses in many districts.

**3. Reinstate LDC 25-5-150 to prevent revolving door for same CUP requests.** Draft 3 deletes in its entirety LDC 25-5-150, which states “if a conditional use site plan is denied or revoked, a person may not file an application for the same or substantially the same conditional use on the same or substantially the same site for a period of one year from the date of denial or revocation.” Without this provision, the new code would potentially allow a non-stop revolving door for the same CUP requests – an unnecessary drain of time and energy for both city staff and affected residents.

**4. Reinstate LDC 25-5-145(C)(4) to ensure Large Retail Uses do not adversely affect future redevelopment.** This provision, which Draft 3 deletes, requires that a CUP “for a large retail use described in Section 25-2-815 (Large Retail Uses)” may not “adversely affect the future redevelopment of the site.” This provision is a key component of Austin’s “Big Box” ordinance and is intended to prohibit the practice, often employed by large corporate retailers, of holding an abandoned big box store off the market to keep competitors from acquiring it. The Big Box ordinance was the product of a lengthy public battle and stakeholder process, and its provisions should be retained.

**5. Reinstate all current requirements in LDC 25-5-145, Evaluation of Conditional Use Site Plan.** While current code requires a CUP to comply with specified measures, Draft 3 simply directs the Land Use Commission to consider a list of relatively vague criteria, many of which appear focused on *mitigating* adverse impacts, rather than providing solid grounds for denying the proposal that would create them. Please consider the following points:

**(a) Draft 3 deletes the current mandate to determine compliance with specific requirements.** LDC 25-5-145, Evaluation of Conditional Use Site Plan states: “(A) *The Land Use Commission shall determine whether the proposed development or use of a conditional use site plan complies with the requirements of this section.*” By contrast, Draft 3 Section 23-4B-1020(E)(1) deletes this language, saying only that the Commission “*shall approve, conditionally approve, or deny a conditional permit in accordance with this subsection.*” Unfortunately, the subsection referenced establishes on actual requirements, only items for consideration.

**(b) Draft 3 deletes at least seven specific standards that CUPs must meet under current code.** LDC 25-5-145(B) states “*a conditional use site plan must:*

*“...have building, height, bulk, scale, setback, open space, landscaping, drainage, access, traffic circulation, and use that is compatible with the use of an abutting site;  
“...provide adequate and convenient off-street parking and loading facilities;  
“...for a conditional use located within the East Austin Overlay district, comply with the goals and objectives of a neighborhood plan adopted by the city council for the area in which the use is proposed.”*

In addition, LDC 25-5-145(C) states “*a conditional site plan may not:*  
*(1) more adversely affect an adjoining site than would a permitted use; (2) adversely affect the safety or convenience of vehicular or pedestrian circulation, including*

*reasonably anticipated traffic and uses in the area; (3) adversely affect an adjacent property or traffic control through the location, lighting, or type of sign; or (4) for a large retail use described in Section 25-2815 (Large Retail Uses), adversely affect the future development of the site.”*

Draft 3 deletes all seven of the above specific requirements contained in current code.

**(c) Draft 3 replaces specific requirements with three broad concepts and provides criteria only for consideration, not as required conditions of approval.**

Draft 3 Section 23-4B-1020(E)(3), now titled “Findings for Approval,” simply lists three broad criteria, stating the Commission “*must find that the proposed use is:*  
*(a) Consistent with the applicable goals and policies of the Comprehensive Plan and the purpose of the zone in which the site is located;*  
*(b) Not detrimental to the public health, safety, and welfare; and*  
*(c) Reasonably compatible with existing or approved uses in the surrounding area.”*

Obviously, these are much looser concepts than the specific standards required by current code, making it more difficult for a commission to find solid grounds for denial. Even the title - “Findings for Approval” - seems skewed toward assent, as opposed to the current code’s more objective section title, “Evaluation of a Conditional Use Site Plan.”

In place of specific requirements in current code, Draft 3 Section **23-4B-1020(E)(4)**, Review Criteria, offers the following items for consideration only. My comments are underlined in brackets.

*“In determining whether an application meets the findings required for approval under Subsection (E)(1) [subsection referenced provides no actual requirements, see above], the Land Use Commission shall consider the extent to which the proposed use:*

- (a) Is generally compatible in scale, intensity, and character with adjacent developments and neighborhoods [No mention of abutting site per current code];*
- (b) Includes improvements, either onsite or within the public right-of-way, to mitigate adverse effects related to traffic, noise, odors, visual nuisances, adverse flooding [As opposed to beneficial flooding?], and similar adverse effects to adjacent developments and neighborhoods [Note that there is no requirement to actually mitigate these effects, only that the Commission must consider the extent to which they may be mitigated; the use of the public right-of-way to do so is also potentially problematic];*
- (c) Can safely accommodate anticipated vehicular and pedestrian traffic consistent with existing and anticipated traffic in surrounding area [This is similar, though not identical, to current code language, but it is not a requirement as it is under current code, merely a suggested consideration];*

- (d) *Incorporates thoroughfare adjustments, traffic control devices, and access restrictions to control or divert vehicular traffic flow as may be needed to mitigate vehicle traffic on adjacent thoroughfares; [Again, the focus is on mitigation, rather than ensuring the proposed project does not actually result in adverse effects per current code; and again, it is not a requirement, just a consideration.]*
- (e) *Incorporates screening, buffers, and other features to minimize adverse visual or noise effects of the proposed use on adjacent properties [Again, the focus is on mitigation, and it is not a requirement, just a consideration.]; and*
- (f) *Meets the site development standards of the zone in which the proposed use is located, or if a special exception from one or more standards is requested in Compliance with Section 23-4B-4030 (Special Exception-Level 1), the exception will enhance the quality of the use and increase its compatibility with adjoining developments and neighborhoods [The citation here appears refers to an earlier draft. Draft 3 Special Exception-Level 1 simply authorizes the Board of Adjustment to “approve a special exception to provide relief for residential properties with longstanding code violations that are minimal in degree and have little to no effect on surrounding areas,” which does not seem germane to this provision.]*

**6. Reinstate LDC 25-5-143(C) to ensure advisory board input on CUPs in Waterfront Overlay.** Draft 3 deletes LDC Section 25-5-143(C), which requires the director to request a recommendation from the Waterfront Advisory Board for a CUP located within the Waterfront Overlay combining district. It appears the original Waterfront Advisory Board had been replaced by the South Central Waterfront Advisory Board. However, the Waterfront Overlay (WO) Zone still exists in Draft 3 so it seems wise to retain the requirement for input from the current advisory board if a CUP is requested in the WO Zone.

For all of the above reasons, please amend Draft 3 to reinstate the clear CUP requirements and conditions contained in current code (LDC 25-5-141 through 25-5-150).

WHITE\_EXHIBIT SMART

Division 23-3E-4: S.M.A.R.T. Housing

Contents

23-3E-4010 Administration. . . . .1

23-3E-4020 Program Requirements. . . . .1

23-3E-4030 Affordability **Minimum** Requirements. . . . . 2

**23-3E-4040 Percentage-based Affordable Projects Beyond Minimum** . . . . .

**23-3E-4050 Fully Affordable Projects.** . . . .

23-3E-4060 Required Affordability Period. . . . .3

23-3E-4070 Fee Waivers and Exemptions. . . . .4

23-3E-4080 **Prioritized Expedited Review** . . . . .

**23-3E-4090** Reporting, Compliance, and Enforcement. . . . .5

23-3E-4010 Administration

- (A) The Housing Director shall administer the S.M.A.R.T. Housing program and may adopt and implement program guidelines or rules and establish the requirements for an application under the program.
- (B) The Housing Director shall notify the Public Works Director and Transportation Director of proposed S.M.A.R.T. Housing developments within a half mile of an existing or planned transit route or stop.

23-3E-4020 Program Requirements

- (A) S.M.A.R.T. Housing is housing that is safe, mixed-income, accessible, reasonably priced, transit-oriented, and compliant with the City’s green building standards.
- (B) S.M.A.R.T. Housing must:
  - (1) Be safe by providing housing that complies with this Title;
  - (2) Provide mixed-income housing by including dwelling units that are reasonably-priced, as described in Subsection
  - (3) Provide for accessibility for a development of more than three dwelling units by providing at least 10 percent of the dwelling units that comply with the accessibility requirements of the building code;
  - (4) Provide for visitability for a development with three or fewer dwelling units by either:
    - (a) Complying with the design and construction requirements of City Code Chapter 5-1, Article 3, Division 2 (Design and Construction Requirements); or
    - (b) Complying with the local visitability amendment of the international residential code.
  - (5) Be located within one-half mile walking distance of a local public transit route at the time of application, except as provided in Subsection (D); and
  - (6) Achieve at least a one star rating under the Austin Green Building Program.
- (C) A reasonably-priced dwelling unit is one that is affordable for purchase or rental according to the following:
  - (1) If the dwelling unit is offered for purchase, the maximum sales price must not exceed three times the annual income for a household at the MFI level required by Section 23-3E-4030 (Affordability Requirements), adjusted for unit size where one bedroom equals one person. The maximum sales price can be up to 3.5 times the annual income for a household at the required MFI level if a household member has finished a City-approved homebuyer counseling or education class.

(2) If the dwelling unit is offered as a rental, the maximum monthly rental rate must not exceed 30 percent of the average gross monthly income for a household at the MFI level required by [Section 23-3E-4030 \(Affordability Requirements\)](#), adjusted for unit size where one bedroom equals one person.

(D) The Housing Director may waive the transit-oriented requirement in Subsection (B)(5) if the development meets one of the following criteria:

- (1) The development will be located in a high opportunity area as identified by the Housing Director or established in the program guidelines;
- (2) The applicant ~~applies for~~ **receives (TW)** State or Federal Government funds, including the Low Income Housing Tax Credit Program, related to the development;
- (3) The development affirmatively furthers fair housing as determined by the Housing Director and in consideration of the City's analysis of impediments or assessment of fair housing; or
- (4) The development is within one half-mile of a planned local public transit route documented in a plan approved by the Capital Metropolitan Transportation Authority.

(E) An applicant may not deny a prospective tenant affordable rental housing based solely on the prospective tenant's participation in the Housing Choice Voucher Program or in any other housing voucher program that provides rental assistance.

### **23-3E-4030 Affordability Minimum Requirements**

(A) To be eligible for the S.M.A.R.T. Housing Program, a housing development must comply with the requirements of this section.

- (1) For ownership dwelling units within the [Area A and B \(see Subsection 23-3E-1040\(B\)\(1\) \(Application\)\)](#):
  - (a) **A minimum** of five percent of dwelling units must be available to households at or below 80 percent of the MFI; and
  - (b) **A minimum** of an additional five percent of dwelling units must be available to households at or below 100 percent of the MFI.
- (2) For ownership dwelling units within [Area C, D, and E \(see Subsection 23-3E-1040\(B\)\(1\) \(Application\)\)](#), **a minimum of 10 percent** of dwelling units must be available to households at or below 80 percent of the MFI.
- (3) For rental dwelling units, **a minimum of 10 percent** of dwelling units must be available to households at or below 60 percent of the MFI.

(B) For a household to be eligible to purchase or rent a reasonably-priced dwelling unit, the household's gross annual income may not exceed the MFI required by Subsection (A).

**23-3E-4040 Percentage-based Affordable Projects Beyond Minimum.** This section applies to residential and multi-family S.M.A.R.T. Housing projects where a percent of the units are affordable. The percentage of fee waiver shall be calculated on a square footage basis and only the percentage of affordably restricted square footage will be used to determine the percent of fees waived.

The partial fee waivers shall apply to residential and multi-family S.M.A.R.T. Housing projects serving households with incomes at 80% or less MFI for sale and 60% MFI for rent with affordability terms of 99 years and 40 years respectively. For sale projects that include 25% of the units affordable to households at 60% or less MFI may include 20% of the units for sale to households with incomes up to 120% MFI.<sup>1</sup>

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<sup>1</sup> This conforms with Section 373B, Texas Local Government Code for Community Land Trusts.

When the project includes a non-residential component that is unrelated to the residential component of the project, the percentage of fee waiver shall be calculated on a square footage basis and only the affordably restricted square footage will be used to determine the percent of fees waived.

**23-3E-4050 Fully Affordable Projects.** This section applies to residential and multi-family project where 100% of the units are affordable to households with incomes at 80% or less MFI for sale and 60% MFI for rent with affordability terms of 99 years and 40 years respectively. For sale projects that include 25% of the units affordable to households at 60% or less MFI, may include 20% of the units for sale to households with incomes up to 120% MFI.<sup>2</sup> If any portion of the project is non-residential and not directly related to the residential component, this fee waiver shall be calculated according to section 23-3E-4040 of this code.

(A) 100% Fee Waivers & Prioritized Fast-Track Review. All development related fees listed in 23-3E-4070 including those listed in 4070 (B) shall be waived and 4070 (C) shall be applied.

(B) SPECIAL REQUIREMENTS FOR AFFORDABLE HOUSING IN RESIDENTIAL DISTRICTS.

(1) Minimum lot size is 2500 square feet.

(2) Lots with greater than 7,000 square feet may have four units of housing provided the total FAR does not exceed .5:1 of the lot area.

(3) Lots with greater than 5000 square feet may have three units of housing provided the total FAR does not exceed .5:1 of the lot area.

(4) Lots with less than 5000 square feet may include a second home provided the total FAR does not exceed .5:1 of the lot area.

(5) The maximum impervious cover is 55 percent if the director of the Watershed Protection and Development Review Department determines that the development will not result in additional identifiable adverse flooding on other property.

(6) A non-complying structure may be replaced with a new structure if the new structure does not increase the existing degree of noncompliance with yard setbacks.

(7) A lot that is aggregated with other property to form a site may be disaggregated to satisfy this subsection.

(C) This section applies in a multifamily residence low density (RM2A) district, multifamily residence medium density (RM3A and RM4A) district, multifamily residence moderate-high density (RM3A and RM4A) district, or multifamily residence high density (RM5A) district on property that either has not been developed or that has been developed only with an agricultural use.

(D) Except as provided in Subsection (C), a development may comply with multifamily residence highest density (RM5A) district site development regulations if the director of the Neighborhood Housing and Community Development Department certifies that the development complies with the City's S.M.A.R.T. Housing Program, and:

(1) for a rental development, 60 percent of the residential units in the development are reserved as affordable for a minimum of 40 years following the issuance of a certificate of occupancy for rental by a household earning not more than 60 percent of the median family income for the Austin metropolitan statistical area; or

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<sup>2</sup> This conforms with Section 373B, Texas Local Government Code for Community Land Trusts.

(2) for an owner-occupied development:

(a) Eighty percent of the residential units in the development are reserved as affordable for a minimum of 99 years following the issuance of a certificate of occupancy for ownership and occupancy by a household earning not more than 80 percent of the median family income for the Austin metropolitan statistical area; and

(b) Twenty percent of the residential units in the development are reserved as affordable for a minimum of 99 years following the issuance of a certificate of occupancy for ownership and occupancy by a household earning not more than 100 percent of the median family income for the Austin metropolitan statistical area.

(E) Developments under this section are eligible for administrative waiver of height limits and compatibility requirement for height and stories of up to 25% of the permitted height.

### 23-3E-4060 Required Affordability Period

(A) To be eligible for the S.M.A.R.T. Housing Program, unless a longer term is required by law, private agreement, or another provision of this code, all reasonably-priced dwelling units in a S.M.A.R.T. Housing development must remain reasonably-priced for the following affordability periods commencing on the date the final certificate of occupancy is issued:

- (1) For ownership dwelling units, a period of at least 99 years; and
- (2) For rental dwelling units, a period of at least 40 years.

(B) If a reasonably-priced dwelling unit within a S.M.A.R.T. Housing development is converted from a rental unit to an owner-occupied dwelling unit during the applicable affordability period, the dwelling unit is subject to the affordability period and affordability requirements applicable to an owner-occupied dwelling unit. The new affordability period begins on the date that the converted dwelling unit is available for owner occupancy.

(C) If the development does not comply with the requirements to maintain the applicable percentage of dwelling units as reasonably-priced for the duration of the applicable affordability period, the developer shall reimburse the City for all fees waived plus a penalty charge equal to the total amount of fees waived.

(D) The applicant is required to execute an agreement, restrictive covenant, or other binding restriction on land use that preserves affordability in compliance with the S.M.A.R.T. Housing Program.

### 23-3E-4070 Fee Waivers and Exemptions

(A) A developer is eligible for a 100 percent waiver of the fees if the Housing Director determines that the housing development meets the requirements of Section 23-3E-4030 ; 23-3E-4040 or 23-3E-4050 (Affordability Requirements) and Section 23-3E-4060 (Required Affordability Period). The fees that can be waived include, **but are not limited to:**

(B)

- (1) Construction inspection fee;
- (2) Development assessment fee;
- (3) Traffic impact analysis fee;
- (4) Traffic impact analysis revisions fee;
- (5) Regular zoning fee;
- (6) Interim to permanent zoning fee;
- (7) Miscellaneous zoning fee;
- (8) Zoning verification letter fee;
- (9) Board of Adjustment fee;
- (10) Managed growth agreement fee;

- (11) Preliminary subdivision fee;
- (12) Final subdivision fee;
- (13) Final without preliminary subdivision fee;
- (14) Miscellaneous subdivision fee;
- (15) Consolidated site plan fee;
- (16) Miscellaneous site plan fee;
- (17) Site plan revision fee;
- (18) Site plan - construction element fee;
- (19) Building review plan fee;
- (20) Building permit fee;
- (21) Electric permit fee;
- (22) Mechanical permit fee;
- (23) Plumbing permit fee;
- (24) Concrete permit fee;
- (25) Demolition permit fee;
- (26) Electric service inspection fee;
- (27) Move house onto lot fee;
- (28) Move house onto city right-of-way fee; and
- (29) Neighborhood plan amendment fee.

(B) Additional fees that may be waived by separate ordinance or agreement include:

- (1) Austin water utility capital recovery fees;
- (2) Parkland dedication fees;
- (3) Austin energy line extensions;
- (4) Transportation mitigation fees; and
- (5) Service connections to certain lots.

(C) Development costs for which the City may provide funding, waiver or reimbursement to the developer may include:

- (1) Public streets and sidewalks;
- (2) Other utility services located within the right of way to the units.
- (3) Relocation of utility poles deemed necessary for the project shall be paid for by the City.
- (4) Tree mitigation fees

**23-3E-4080 Prioritized Expedited Review. See the attached Chart.**

Prioritized Fast-Track review means a S.M.A.R.T. Housing project under this section is reviewed before all other applications including those where an expedited review fee has been paid. Prioritized fast-track review shall include all City of Austin departments including, but not limited to Watershed Protection, Development Services, Austin Energy, Water Utilities, and the Austin Fire Department. The City shall provide or reimburse the developer for utility services located within the right of way to the units. Relocation of utility poles deemed necessary for the project shall be paid for by the City.

**23-3E-4090 Reporting, Compliance, and Enforcement**

(A) The Housing Director shall establish reporting, compliance, monitoring, and enforcement mechanisms and procedures for implementing the S.M.A.R.T. Housing Policy and Program.

**WHITE\_EXHIBIT\_SUPPORT SCHOOLS****CodeNEXT Draft 3  
Recommendations to Support Public Schools**

Originally Submitted by Susan Moffat  
Former CAG Member,  
Appointed to represent public schools  
April 10, 2018

Austin public schools depend on safe access to school campuses and the continued availability of affordable family-friendly housing for students, families and staff throughout the city. Please support our public schools by ensuring that CodeNEXT incorporates the six recommendations below before final adoption. Recommendations regarding parking and housing are expressed in greater detail in the attached AISD Board of Trustees resolution, which was subsequently adopted in its entirety by the Joint Subcommittees of the City of Austin, Travis County and AISD in December 2017.

**1. For safety and accessibility, retain current on-site parking requirements near schools per AISD's request.****Add a subsection to all MU & higher zones****(X) ADDITIONAL PARKING REQUIREMENTS WHEN IN PROXIMITY TO A PUBLIC SCHOOL PER TABLE X-XX-X****Table to include an increase of 5% above required parking for all higher zones within 1/8 mile of schools. Maintain exemption for affordable housing.**

Pursuant to the AISD Board resolution, please retain current on-site parking requirements for residential properties within 750' and for commercial properties within 1500' of an urban core public school to maintain needed parking for parents, visitors, teachers and staff at school campuses. The parking issue is a chief concern for AISD and has been a topic of discussion at Joint Subcommittee meetings.

Background: Areas adjacent to urban public schools present unique safety and traffic challenges with anywhere from 300 to 3000 students - plus faculty, staff and parents - arriving and leaving throughout the day. These may include distracted pre-K kids as young as three, fourth graders on bikes, middle schoolers glued to cell phones, newly-minted teen drivers, idling full-size school buses, parents rushing to get to or from work, plus the occasional emergency vehicle. Public schools simply cannot provide sufficient on-site parking for all those who must arrive or leave the campus daily, or to accommodate large buses and emergency vehicles. To meet these needs, most campuses rely on on-street parking in the immediate vicinity.

Draft 3 cuts baseline parking requirements in half and then allows up to 60% additional cumulative parking reductions by right, without any administrative oversight or notice to affected businesses, residents or school campuses. Draft 3 also provides a possible 100% parking reduction with a Transportation Demand

Management (TDM) plan, again without public notice, though TDMs do require administrative approval, presumably entailing at least some staff oversight.

In practice, this means a developer could build a 100-unit complex, while providing only 40 on-site parking spaces, or in the case of a TDM project, zero parking. This is an extreme departure from current code and from Drafts 1 and 2, and would have significant impacts on any nearby school campuses.

As previously noted in my Parking Reduction comments submitted on April 5th, I can find no research to demonstrate that the parking reduction measures cited in Draft 3 have actually resulted in anything close to a 60% decrease in vehicle ownership, as opposed to trip reductions. This means most of the cars from a large project near a school will end up parked on nearby streets, creating serious safety and access problems for students, parents and school staff.

In 2016, 94% of Austin households owned cars, according to the *Census American Community Survey*. Further, a 2012 Portland study of Transit Oriented Developments<sup>1</sup> (TODs) found:

- 72 percent of households surveyed in TOD area owned or leased at least one car and 67 percent parked on street.
- Many survey respondents stated there were no amenities that would reduce their need for a vehicle, even though they used other transportation modes.
- Residents at buildings with or without on-site parking had similar trends in vehicle ownership.

Though parked vehicles may increase safety in some settings by narrowing travel lanes and thus reducing vehicle speeds, researchers have specifically cited as tradeoffs (1) reduced visibility especially in high parking densities where children may dash out between vehicles and (2) the lack of accommodations for emergency or other large vehicles.<sup>2</sup> The streets immediately adjacent to many of Austin's urban public schools are already fully parked during school hours, as well as many evenings, so no additional safety benefit can be realized by adding more on-street vehicles - and the worst-case tradeoffs are potentially life threatening.

For these reasons, please support AISD's request to retain current parking requirements in the vicinity of school campuses.

**2. Confirm that the final version of CodeNEXT incorporates all attached corrections to Section 23-4E-6320, School.** Section 23-4E-6320 was intended to fully incorporate the city's Educational Facilities Ordinance (COA Ordinance 20160623-090), which was the product of a lengthy stakeholder process and provides fair, reasonable land development regulations for all public schools, including public charters. While Draft 3 addresses some of the omissions in Draft 1 and 2, several major corrections are still

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<sup>1</sup> <https://www.portlandoregon.gov/bps/article/420059>

<sup>2</sup> *Narrow Residential Streets: Do They Really Slow Down Speeds?* James M. Daisa, P.E. and John B. Peers, P.E., 1997

needed to ensure that crucial provisions are accurately transferred to the new code. For details, please see the Corrections document (attached separately), which has already been submitted to city legal staff.

**3. For clarity and predictability, add a note to all Use Tables stating: “Regardless of base zoning, state and local laws do not allow alcohol sales within 300’ of a public school, church or public hospital without a City Council waiver.”** As currently drafted, CodeNEXT would substantially expand by-right alcohol uses to more areas. Outside investors, unaware of local prohibitions, may naturally assume that if an alcohol use is listed as permitted in a given zone, it will be fine to open a bar or liquor store there regardless of its proximity to a school. Rather than attempting to revise zoning maps to appropriately zone around hundreds of schools, churches or hospitals, please add this simple note to the Use Tables to ensure clarity and predictability for all concerned.

**4. Confirm that the Educational Impact Statement (EIS) will remain a required part of city review process under the new code.** The city’s Educational Impact Statement, attached separately, provides vital notice to AISD regarding large projects or demolitions that may impact school enrollment (like the Educational Facilities ordinance, the EIS was also the product of a lengthy public process). It does not currently appear in Draft 3, though it may live elsewhere outside the code. In any case, please confirm that the review and permitting process under the new code will continue to require the EIS.

**5. Support Draft 3’s proposed “P” zoning for AISD properties.** AISD Trustees had originally requested that district properties be zoned compatibly with adjacent properties “to ensure continuity and predictability should a property be sold or leased in the future.” Draft 3 maps zone all AISD properties as “P” (Public), which achieves essentially the same goals and should be supported.

**6. Support AISD’s requests to create and maintain affordable family-friendly housing, while specifying 60% MFI or less for rental units and 80% MFI or less for ownership units.** The attached resolution, approved by AISD Trustees and the Joint Subcommittees, contains a number of recommendations related to affordable family-friendly housing, which are summarized below. I urge you to support these, with one caveat noted.

- Increase opportunities for “house-scaled” residential zones that provide for building types that have a demonstrated higher yield of students, being single-family detached, duplexes and townhomes. Limit residential “up-zoning” to the creation of family-friendly developments affordable at 60% Median Family Income (MFI) or lower for rental units especially in areas recently affected by gentrification and loss of families or in high opportunity areas.
- Increase opportunities for affordable workforce housing up to 120% MFI for ownership units to enable teachers to reside within the communities they serve. *[Note: The 120% MFI level for ownership units was included at the request of a trustee. I personally believe it should be no higher than 80% MFI, in keeping*

with the city's push to standardize its affordable housing density bonus programs. However, please note that Draft 3 does retain MFI levels of 120% for ownership units and 80% for rental units in the city's own Downtown Density Bonus program; I strongly encourage you to reduce these levels as well.]

- Develop strategies to incentivize a range of unit sizes, and family-friendly amenities in areas zoned for multi-unit residential uses.
- Increase opportunities for smaller accessory dwelling units in a variety of residential zones, including high opportunity areas, at a price range affordable for teachers and district staff.
- Encourage the preservation of older “market affordable” single-family detached homes, duplexes, and multi-unit housing by not increasing entitlements on existing properties without a clear affordability requirement.
- Expand the City’s density bonus program to include non-residential properties and use the proceeds, as well as other appropriate funding sources or donations, to create permanently affordable family-friendly housing.
- Lower barriers for greenfield developments to increase the citywide availability of detached single-family housing, one of the most prevalent housing type for AISD families, with particular emphasis on high opportunity areas.

Again, I hope you will support Austin’s public schools by ensuring that the recommendations outlined above are incorporated into CodeNEXT before its final adoption.

## Proposed Future CodeNEXT Article 23-3F: Art, Music, and Culture

Both the Imagine Austin Comprehensive Plan and the Code Prescription on Household Affordability reference the need for regulations to sustain and strengthen the music and arts industries and communities. To this end, the CAG recommends developing a future code section that would provide city-wide regulations to promote arts, music, and culture with the goals of: protecting existing assets and promote new ones in areas deficient of art, music, and cultural assets, and supporting housing and jobs for musicians and artists, and sustaining these important elements of Austin's economy.

### Proposed Code Additions:

1. Add arts, music culture to the Purpose Statement of General Planning Standards. The current draft of the new Land Development Code for Austin, dubbed CodeNEXT contains the following purpose statement in *Chapter 23-3: General Planning Standards for All* [1]. The red underlined clause below would add reference to a to-be-written section governing arts, music and culture.

#### **23-3A-1010 Purpose**

This Chapter provides standards and regulations for the following purposes: to provide parkland; to provide for the protection and replenishment of urban forest resources; to provide for the protection of water quality and protection from flooding; to encourage the creation and preservation of affordable housing; and to sustain the local arts, music, and culture communities and industries. These aspects are all essential to the development of a healthy, sustainable and desirable city environment. The interests of the community and the goals of the Comprehensive Plan and Zoning Code are further ensured through the application of this Chapter.

#### **23-3A-1020 Applicability**

This Chapter applies to all development within the City of Austin and the ETJ.

2. Working with appropriate city boards and stakeholders, develop a new code section to be numbered 23-3F. Provisions for consideration, several of which are already supported by City of Austin Economic Development Department and the City's Arts Commission and Music Commission, are outlined below.

#### **23-3F-1010 Purpose and Intent**

(A) The purpose of this division is establish general requirements and procedures to sustain the local arts, music, and culture communities and industries and to guarantee that arts, music, and cultural land uses are distributed across the city in an appropriate manner within neighborhoods, along activity corridors, and within neighborhood, town, and regional centers.

#### **23-3F-1020 Artist Live/Work and Live/Work/Sell**

(A) Allow artists to sell finished goods from their live/work home studios. Specify in which districts a live/work artist may "sell", including performance art. This is an important distinction as multidisciplinary spaces are becoming increasingly common – where both object-based art and experience-based art are being created (i.e. "work") and offered to the public within a single building envelope.

**23-3F-1030 Density Bonus Provisions for Art and Music**

(A) In designated town/regional centers and activity corridors allow density bonus rules to trade greater building entitlements for including art galleries, studio space, live theater, dance performance space, live music venues, or other forms of performance art on the first floor or for preserving an existing an iconic venue on the tract (e.g., Broken Spoke).

**23-3F-1040 Art Districts**

(A) Describe the basis for designating arts districts (similar to that provided for historic districts) in neighborhood plans, neighborhood centers, town centers, and regional centers, and target one or more arts districts per Council District.

**23-3F-1050 Theater and Art Venue Scale**

(A) In establishing capacity rating for theater or arts venue consider how the venue is used in addition to overall size.

**23-3F-1060 Art, Music, and Culture Nomenclature and Definitions**

(A) Add explicit definitions that clearly distinguish types of arts/music spaces for flexible and hybrid uses in city ordinances and other regulation (i.e. distinguish terms "gallery", "theater", "studio", "live music venue," etc.).

**(B) Live Music Venue Use**

An establishment where live music programming is the principal function of the business and/or the business is a live music destination, and where the venue clearly establishes the ability of an artist to receive payment for work by percentage of sales, guarantee or other mutually beneficial formal agreement.

A live music venue is a destination for live music consumers, and its music programming is the primary driver of its business as indicated by the presence of at least five (5) of the following:

- defined performance and audience space;
- mixing desk, PA system, and lighting rig;
- back line (e.g., sound amplification or video equipment for performers on or behind the stage);
- at least two of: sound engineer, booker, promoter, stage manager, security personnel;
- applies cover charge to some music performance through ticketing or front door entrance fee;
- marketing of specific acts through show listings in printed and electronic publications;
- hours of operation coincide with performance times.

**23-3F-1070 Codify of Agent of Change Principle.**

### **Imagine Austin and Code Prescriptions Support New Code Section**

Justification for the proposed new code section comes from the *Imagine Austin Comprehensive Plan* and more recent work done in developing the CodeNEXT draft. Priority Program 5 (among 8 Priority Programs) in the 2012 *Imagine Austin Comprehensive Plan* is “Grow and invest in Austin’s creative economy.” A short term (1-3 years) work program item is: “Explore and reimagine existing City development tools, such as incentives, regulations, and financing options, with a focus on creative industries’ facility needs. Expand access to affordable and functional studio, exhibition, performance space, museums, libraries, music venues, and office space.”

The proposed new section is also supported by the following policies and priority actions in the *Imagine Austin Comprehensive Plan*:

- Develop regulations to mitigate the sound from live music venues through a collaborative process that includes the City of Austin, musicians, venue operators, property owners, and residents.
- Create incentives and programs to preserve iconic and established music venues and performance spaces throughout Austin and its extraterritorial jurisdiction (ETJ).
- Expand access to affordable and functional studio, exhibition, performance, and office space for arts organizations, artists, and creative industry businesses.
- Explore existing City policies, processes, and regulations regarding the arts to determine what changes can be made to coordinate these with other goals, such as historic preservation, affordable housing, and high-density development.
- Incorporate the arts and cultural preservation themes and elements into small area plans, such as neighborhood and corridor plans.
- Create incentives, and programs to promote the inclusion of public art into new development.
- Encourage artists and other creative individuals by promoting the creation of live/work spaces and creative industry hubs, districts, and clusters as retail, community, or neighborhood anchors and activity generators to attract and support other economic and community enterprises.
- Establish incentives and regulations to promote the creation of artists’ live/work space in residential areas that allow for limited gallery space.

Further, the *Code Prescription on Household Affordability* written in 2016 in response to the CodeNEXT consultant’s *Code Diagnosis*, specifically addressed affordability impacts to small businesses and the cultural arts in the following three prescriptions:

- Allow for compatible retail and commercial uses by right including arts, culture and creative uses such as rehearsal, gallery, studio, performance or exhibit spaces and offices in areas where form-based zones have been applied and a diversity of uses is desired. This includes adequate commercial space allowances in corridors, centers, and in between these areas and neighborhoods.
- Revise the density bonus program in targeted areas such as cultural districts by adding the preservation or creation of an existing creative venue or business as a Community Benefit. Density bonus fee-in-lieu requirements will be evaluated for 501(c)(3)s to promote emerging small non-profits. The existing density bonus provisions will be evaluated to determine if they can incorporate preservation or development of a music or

creative venue that will be used for rehearsal, gallery, studio, performance, or exhibit spaces and offices.

- The opportunity to expand live/work units will be found in all form-based code districts in order to promote the opportunity for the small businesses, including artists to be able to work where they live. The allowance of live/work units will be both within the uses regulated by the different form-based code districts but also in the regulation of building types to ensure the proper form to allow for live-work units.
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[1] see <https://codenext.civicomment.org/chapter-23-3-general-planning-standards-all>

### **The New Flex Industrial zoning may cover this....**

#### **In 23-3F and in 23-2M**

#### **In Division 23-4D-7: Commercial and Industrial Zones**

#### **Accessory Use as a Theater or Art Gallery (as would be in 25-2-865, for example**

A) This section applies to the following uses and zoning districts:

- 1) LIGHT MANUFACTURING use with IP, MI, LI, CS, MU zoning district
- 2) LIMITED WAREHOUSE AND DISTRIBUTION use with IP, MI, LI, CS, MU zoning district
- 3) GENERAL WAREHOUSE AND DISTRIBUTION use with IP, MI, LI, CS, MU zoning district
- 4) ART WORKSHOP use with IP, MI, LI, CS, MU zoning district

B) The use of the space as ART GALLERY and THEATER:

1. is a permitted accessory use
2. shall not exceed 33 percent or 5,000 square feet of the total floor area of the principal developed use, whichever is less

C) During the Permitting Process the Council on appeal or Planning Commission may increase the square footage allowed under subsection B.

D) On-site parking is required according to Schedule A of Appendix A (TABLES OF OFF-STREET PARKING AND LOADING REQUIREMENTS).

PART 2. City Code Chapter 25-6, Appendix A (TABLES OF OFF-STREET PARKING AND LOADING REQUIREMENTS) is amended to amend Schedule A to read:

#### **SCHEDULE A**

The minimum off-street parking requirement for a use is the sum of the parking requirements for the activities on the site, in accordance with the following table:

#### **Activity Requirement**

#### **Accessory Use as a Theater or Art Gallery**

<2,500 sq. ft. - 1 space for each 275 sq. ft.

2,500-10,000 so. ft. - 1 space for each 100 sq. ft.

> 10,000 sq. ft. - 1 space for each 50 sq. ft.

Office or administrative activity 1 space for each 275 sq. ft.

Indoor sales, service, or display 1 space for each 500 sq. ft.

Outdoor sales, services, or display 1 space for each 750 sq. ft.

Indoor storage, warehousing, equipment servicing, or

Manufacturing 1 space for each 1,000 sq. ft.

Outdoor storage, equipment servicing, or manufacturing 1 space for each 2,000 sq. ft.

Commercial off-street parking requires one bike parking space for every 10 motor vehicle parking spaces.

**RWG MOTIONS CHAPTER 23-4****A) Reduce the number of uses to single family; two family; and multi-family.**

*Affect on all R & RM zones, definitions and all sections related to residential design standards*

- We believe this would greatly simplify the code and reduce the cost of navigating the code. It would also eliminate the need for defining attached and detached.
- This will reduce the volume of the code and its complexity as intended by CodeNext.

**B) Create comparable R zones that maintain the 5750 minimum lot size and a minimum 50' lot width.**

*Affect on R zones*

- This would help to craft specific areas for smaller lots while preserving the lot size of the existing neighborhoods.
- It would allow crafting through SAP as well as greenfield development
- The reduction captures approximately 3,500 lots that are currently non-conforming due to lot size, and 7000 do to lot width while opening the opportunity for subdivision on approximately 14,000 lots

These zones should be

**C) We recommend a taskforce of stakeholders be created to review the current Residential Design Standards against the regulations as outlined in D3 to better balance the need for regulation against real world implementation, specifically looking at ease of use, effect of regulations on affordability and predictability. This taskforce would look at all the residential design standards including but not limited to height, FAR, articulation, and parking location. We suggest they have 90 days to complete this task in order to have a recommendation for Council prior to adoption of CodeNext.**

*Affect on all R & RM zones, definitions and all sections related to residential design standards*

- While this code is producing more compatible homes, stakeholders continue to want easier regulations. This requires input from Residential Review to determine what is working well.

- Input from many stakeholder groups have indicated that the regulations under D3 are too restrictive and difficult to implement, including AIA, HBA <I believe we need to mention the residents concerns also PS>
- We have attempted to put together language that incorporates input, however, due to D3 spread of the residential design standards throughout the code, issues still remained that need to be coordinated

1) **NOT USED**

2) **Reduce the number of exemptions provided for in the gross floor (GFA) definition.**

**In exchange allow for an increase in FAR by .05% across all residential zones.**

**RESIDENTIAL GROSS (GFA) The total enclosed area of all floors in a building with a clear height of more than five feet, measured to the outside surface of the exterior walls. The term excludes ~~loading docks, 1st floor porches, stoops, basements, attics, stories below grade plane, parking facilities, driveways, and enclosed loading berths and off-street maneuvering areas~~**

*Affect on all R & RM zones, definitions*

- The exemptions as outlined in D3 increase the cost of calculations, lead to unintended complications for homeowners, decrease predictability & homogeneity of forms and values, and further complicate home improvements.

3) **Eliminate building articulation for all residential and multifamily buildings or make it an option to improve building design and as to be part of McMansion task force work and considerations**

*Affect on all R & RM zones*

- This requirement is a shift in policy from what exists under today's code. The sizes and frequencies are onerous, add cost to the project due to additional exterior facade construction, and serve no guarantee the resulting voids will improve the public realm.
- With smaller lot widths and sizes, side articulation will severely limit flexibility in more liveable designs

- With emphasis on more conservation and restrictions in water regulation, trees, etc. prescribing articulation further onerous

**4a) Street Scale “Preservation” Incentive:** Accessory Dwelling Unit does not count toward FAR limit when existing house (at least 25 years old) is conserved.

**Conserve:** to maintain the height, footprint and roof line of an existing building for the first 25' as measured from the building line toward the rear lot line

*Affect on all R & RM zones*

- This incentive is a good incentive and could help to prevent demolitions while encouraging infill
- The intention was to preserve the street scale. The word preservation is not defined in D3. The HLC has recommended against this incentive because the word preserve conjures up the National Register's Standards. I don't think the intention was to subject homeowners to these standards and additional expenses, I think it was to preserve the street scale and to reduce the # of demolitions. These changes eliminate the word confusion and go hand in hand with a definition of conserve that promotes the conservation of the existing homes street presence. This also further clarifies where you can use the additional FAR that you're granted.

**4b) Extend Preservation Incentive to all R zones.**

*Affect on all R zones*

- This incentive is a good incentive and could help to prevent demolitions while encouraging infill

**4b) Limit incentives to the addition of .1 FAR.**

*Affect on all R zones*

- This incentive needs to be calibrated for the smaller lots. Currently it is calculated to be an approximate .2 FAR bump max. By exempting the FAR of the ADU, we increase the

overall FAR of the lot exponentially. This increase entitlement for them considerably and will increase the lot values exponentially and hence less affordability

**4c) Require 1 parking space for ADU's with more than 1 bedroom**

*Affect on all R zones*

- If the average household has 1.8 cars, the chances of a 2 bedroom ADU to have a car is pretty high. It would balance the no parking required in the single bedroom ADUs

**5) Eliminate the opportunity to obtain a Minor Use Permit (MUP) in residential house scale zones R1A through R3D for the Home Occupation use. Additional employees and retail sales are more appropriate uses in Live/Work zones (23-4E-6210).**

**23-4E-6200**

***(D) If the owner obtains a minor use permit up to three employees who are not occupants of the dwelling unit are allowed except in R1A through R3D zones.***

***(F) If the owner obtains a minor use permit, the limited sale of merchandise directly to customers on premises is allowed between the hours of 9:00 a.m. and 5 p.m except in R1A through R3D zones.***

*Affect on all R1A - R3D*

- The additional traffic and noise created from the expanded traditional home office use is disruptive to neighborhood function

**6) 6a) "ELIMINATE ALL ENTITLEMENTS TO CREATE FLAG LOTS IN THE CITY OR ETJ."**

**6b) The Variance requirements for Flag Lots should be restored. The variance provides adjoining property owners notification of the proposed Flag Lot configuration and the ability to discuss concerns at a public hearing.**

*Affect on all R zones*

- In consideration of the new lot widths and sizes, the opportunities for more flag lots increases exponentially. The new lots should be helping to decrease the amount of flag lots, however, until we adjust the requirements, it will just increase it.
- Some flag lots developments can be well done, so there should be oversight
- Possibility to let Small Area Planning determine appropriateness

**7) Create a mechanism to tune the proposed parking minimums thru parking reductions based on a table of factors or TDM type analysis. (Start with realistic current on the ground patterns and adjust from there.) These factors are as follows but not limited to:**

- a. Street parking availability (there are no parking zones)**
- b. Street width**
- c. Presence of sidewalks**
- d. Distance to public transportation (1/4 mile)**
- e. Distance to schools**
- f. Residence Parking Only Permits**
- g. Fire safety compromises**
- h. Lot widths and driveway placement**
- i. Trash pickup and utility placement**
- j. Safe Streets analysis**
  - i. Transportation Safety Improvements Program**
  - ii. Vision Zero**

*Affect on all R zones*

- Current D3 has no consideration of context sensitivity. If businesses and dwelling units are exempted from additional parking without consideration of surroundings, there is a not only a convenience risk but life safety risk as well. Beginning of last school year 3 Austin kids were hit by cars while going to school.

- 8) **We recommend allowing pools and fountains in required yards without new setback or restrictions. Pools and fountains are currently allowed in required yards. Draft 3 further regulates their location on a site and eliminating it completely some parts. This is solution looking for a problem, however creating more problems. This will create nonconformities.**

*Affect on all R zones*

- ***In 2015 Codes and Ordinances - PC modified section for porches which already included pools fountains in SF-6 and more restrictive to be allowed in required yard 25-2-513.***

- 9) **The proposed new fence regulations are much more onerous than current regulations and will cause an immense amount of nonconformities. This is solution looking for a problem, however creating more problems. We recommend**

1. **4' to 5' max height for sloped lots in front setback or street to building line distance, whichever is less**
  - a. **Administrative variances allowed for up to 6' for special considerations**
2. **6' at rear and side property lines (7' max on sloped lots), 8' with administrative variance**
3. **delete section restricting fences at intersections**

*Affect on all R zones*

**RWG MOTIONS IN OTHER CHAPTERS****1) Add to the definition section to read.****ATTACHED:**

When used with reference to two or more ~~buildings~~ units, means having one or more common walls or being joined by a roof; ~~covered porch~~ or ~~covered passageway~~ measured 20' in depth, perpendicular to the front property line.

**DETACHED:**

FULLY SEPARATED FROM ANY OTHER BUILDING, OR JOINED TO ANOTHER BUILDING BY STRUCTURAL MEMBERS NOT CONSTITUTING AN ENCLOSED OR COVERED SPACE.

- These are from Austin's 1987 code which led creative interpretations that lacked original intent

ATTACHED - HAVING ONE OR MORE WALLS COMMON WITH A PRINCIPAL BUILDING OR DWELLING UNIT, OR JOINED TO A PRINCIPAL BUILDING OR DWELLING UNIT BY A COVERED PORCH, LOGIA OR PASSAGEWAY, THE ROOF OF WHICH IS PART OR EXTENSION OF A PRINCIPAL BUILDING OR DWELLING UNIT.

DETACHED - FULLY SEPARATED FROM ANY OTHER BUILDING, OR JOINED TO ANOTHER BUILDING BY STRUCTURAL MEMBERS NOT CONSTITUTING AN ENCLOSED OR COVERED SPACE.

**2) Maintain current regulation regarding home occupation signage**

*23-8B-2020) (c) Signs for Residential Use - this section is too permissive*

*Affect on all R & RM zones*

- Ability to build a storefront and have large signs and sales should not be allowed in residential zones *This will turn the neighborhoods into bunch of advertising. With all the online opportunities for home business this can get ridiculous.*

3) **Replace 23-2A-3030 & 3040 (B): No Adverse Impact with the following language**

1. Install acceptable drainage improvements on site to improve or preserve existing drainage patterns if the construction, remodel or expansion:
    - a. Is more than 750 square feet; and
    - b. Located on an unplatted tract or within a residential subdivision approved more than five years before the building permit application was submitted: and
    - c. in an area subject to localized flooding, as determined by the Watershed Protection Department on an annual basis.
  2. Acceptable drainage improvements include,
    - a. An engineer's certification that any changes to existing drainage patterns will not adversely impact adjacent properties
    - b. swales, grading, gutters, rain gardens, rainwater harvesting systems or other methods on site to preserve existing drainage patterns as calculated by:
      - i. a grading plan
      - ii. per Table X-X-XX (*gallons per sf of impervious cover and grade changes+12"*)
    - c. a fee in lieu is available at the director's discretion if a water mitigation project has been identified within ¼ mile of the site to be implemented within 12 months.
- Engineering letter is expensive and does not help with flooding whether local or further downstream. Due to high costs, options should be given to actually improve or at least maintain drainage patterns. The thousands of dollars spent for a letter can easily be used to make actual improvements that a builder can easily implement on site

4) ***REINSTATE accessory apartment "USE" ALLOWED IN ALL R ZONES and develop the program further.***

The measures that we proposing for stay in place, affordability, and curbing gentrification and demolitions, are not attainable for the average homeowner and the only option would be to sell to developers or wealthier individuals. make a profit, but then move from their neighborhood. . ADU's can be difficult for many homeowners to even get a loan for. By reinstating the Accessory Apartment Use and actually developing the program to keep it within reach of average homeowners, we can bring even another dwelling form to the mix that is actually attainable. Cost is for a remodel of a small part of a home vs new construction of an ADU. The apartment can also be one which can still be used as part of the main house... adaptable. Research has shown that other cities have adopted similar policies to allow these internal dwelling units. There are different levels of regulations and permitting, however, they all have in common that they are not separate dwellings that require the same fire separations and other specifics as a two unit dwelling. I believe we should allow this type of unit to help curb demolitions and gentrification and affordability. If other cities are able to do this, I don't see why Austin can not.

*23-4D-2030 LAND USE TABLE - ADD USE*

*23-4D-6050 ACCESSORY USES - ADD SECTION*

*23-13A-2030 LAND USES - ADD DEFINITION*

*CURRENT CODE:*

*25-2-901 - ACCESSORY APARTMENTS.*

*A An accessory apartment is a separate dwelling unit that is contained within the principal structure of a single-family residence, and that is occupied by at least one person who is 60 years of age or older or physically disabled. (WE RECOMMEND REMOVING AGE RESTRICTION)*

*B. If space within a principal structure is converted to an accessory apartment, the accessory apartment may not include:*

- 1. converted garage space; or*
- 2. a new entrance visible from a street.*

*REMOVE SECTION C BELOW*

*C. The building official may not issue a building permit for construction or remodeling of an accessory apartment unless the applicant delivers to the building official an affidavit verifying that one of the proposed occupants of the accessory apartment is 60 years of age or older or physically disabled.*

- Support Comments

- *Accessory Apartment Allowed Use - Reincorporated and allowed use. Internal to an existing home - adaptive reuse*  
<http://www.plgrove.org/documents/faq-accessory-apartments.pdf>
- *Should firewall separation be required between the AA and the main dwelling?*  
*No. This is required for a duplex, but not normally required for Accessory apartments. It is a substantial cost that would need to be required for most existing situations that might cause difficulties for compliance. An accessory apartment is considered a part of the same home and structure, and normally the main dwelling unit is required to have access to it*  
  
<https://extension2.missouri.edu/gg14>  
*Mention costs to do an accessory apartment - very VERY affordable vs adu.*

**WHITE\_EXHIBIT\_SIMPLICITY & HOUSING BLUEPRINT GOALS****CODE NEXT 3 AMENDMENTS TO PROMOTE SIMPLICITY AND ACHIEVE IMAGINE AUSTIN AND HOUSING BLUEPRINT GOALS**

23-2G-2 Increase simplicity by allowing buildings and development built prior to 1931 when zoning and building codes became effective; built outside the City limits and subsequently annexed; built on federal or state property and subsequently deeded to an entity other than state or federal government to be deemed “lawful” rather than “non-conforming”.

Change 23-13 definitions to reflect this definition of “lawful” and “non-conforming”.

23-2H-4 Change Amnesty Certificate of Occupancy provisions to reflect when “lawful” buildings and land uses can obtain an Amnesty Certificate of occupancy if the buildings and site comply with the adopted Property Maintenance Code (23-11-B9) and the use has been continuous and lawful for at least two years.

23-2L-3 Prohibit single-family, multi-family, and other residential uses in on Closed Municipal Landfills. Confirm that mapping identifies the closed municipal land fill sites.

23-12 Prohibit new single-family, multi-family, and other residential uses in Airport Hazard and Compatible Use areas. Confirm that mapping identifies the Airport Hazard and Compatible Use zones.

23-2J-5 Prohibit new single-family, multi-family, and other residential uses in flood plains without variance granted by the City Council. Confirm that mapping identifies 100 year and 25 year flood plains.

23-3B-2 Parkland Dedication Fee waivers match criteria for other S.M.A.R.T. Housing fee waivers. 10% reasonably-priced results in 25% fee waivers; 20% = 25% fee waivers; 30%=75% fee waivers; and 40% and above=100% parkland dedication fee waivers.

**23-3E S.M.A.R.T HOUSING**

Highlighted in Yellow shows where the housing coalition was in agreement

All participants in density bonus programs must comply with S.M.A.R.T. Housing.

All density bonus programs and S.M.A.R.T. Housing must not exclude vouchers in calculating maximum sales price or rent for income restricted housing.

“Reasonably-priced” definition in S.M.A.R.T. Housing in 23-13 must reflect this.

Density bonus program participants and S.M.A.R.T. Housing participants must comply with Source of Income Protection. Should be added to the S.M.A.R.T. Housing section for clarity.

All “income-restricted” has 40 year affordability period unless funding sources require longer affordability periods, and restrictive covenants must be filed prior to issuance of certificate of occupancy.

S.M.A.R.T. Housing participants may build more than 2 dwelling units in all single-family, multi-family, mixed use, commercial, and public zones if the lot size is at least 2,500 square feet;

S.M.A.R.T. Housing participants are allowed to have no more than 6 unrelated adults in a 3 bedroom home provided the home complies with the adopted Property Maintenance Code.

S.M.A.R.T. Housing and density bonus participants may receive 50% fee waivers for 50% for parkland dedication fees, water meters, sewer taps, electric meters, and all other current S.M.A.R.T. Housing development fees if all at least 10% of the housing units serve rental households at or below 50% Median Family Income and homeowners at or below 80% Median Family Income.

Comment [1]: Why 50% MFI when everything else is 60% and 80%? I think the more consistent we can be the better.

Minimum lot size for S.M.A.R.T. Housing participants in multi-family (3 homes per building or per site) and mixed-use development is 1,000 square feet per dwelling unit if impervious cover is reduced by 5% of what current impervious cover standards allow.

Comment [2]: I'd like to see some allowance here for properties that preserve existing structures on a site. If you are scraping a site clean this is probably easier to accomplish, but from our experience it gets a lot harder when you are trying to keep an existing house that may have a long driveway that eat up your impervious cover quickly. I'm afraid this might incentivize redevelopment more when preserving the existing house and adding more units on site might be more cost effective.

S.M.A.R.T. Housing participants may have childhood development centers as a permitted use with all S.M.A.R.T. Housing fee waivers.

AGREE THAT A CLEAR TABLE NEEDS TO BE CREATED FOR EXPEDITED REVIEW TIMES

S.M.A.R.T. Housing participants receive 14 calendar day subdivision and site plan initial reviews and 7 calendar day review of revisions and corrections with no fees if the applicant's design team submits corrections and revisions within 7 calendar days.

S.M.A.R.T. Housing participants receive fast track building plan review with no fees.

S.M.A.R.T. Housing participants receive 2 working day review of all single-family and two family permit applications with no fees

S.M.A.R.T. Housing participants receive inspections within 1 working day with no fee

#### **23-4B Cross reference S.M.A.R.T. Housing zoning standards**

Allow 2 detached homes on all single family zoned lots as long as no variances are required and each home complies with adopted Residential Code and create definition of "single-family detached"

Allow 2 dwelling units in 1 building on all single family zoned lots as long as no variances are required and each building complies with adopted Residential Code and create definition of "duplex"

Allow 2 or more attached homes on all single family zoned lots as long as no variances are required and each home complies with the townhouse provisions of the adopted Residential Code and create definition of "single-family attached"

Limit short term rental on single-family zoned lots to 1 dwelling unit other than the dwelling unit that is owner-occupied

**23-5** Cross reference all S.M.A.R.T. Housing subdivision standards and fast track subdivision review requirements

**23-6** Cross reference all S.M.A.R.T. Housing site plan standards and fast track site plan review requirements

**23-7** Cross reference all S.M.A.R.T. Housing building permit requirements and fast track building permit review and inspection requirements

Cross reference federal and state standards for testing, abatement, and worker protection requirements for lead-based paint and asbestos for buildings constructed prior to 1980 for demolition permits and relocation permits

**23-9** Cross reference S.M.A.R.T. Housing transportation standards

**23-10** Cross reference S.M.A.R.T. Housing infrastructure cost-participation standards

**23-10C** Cross reference S.M.A.R.T. Housing fee waiver standards for water and wastewater