Code Diagnosis Document Comments/Review

The following analysis is a good faith effort to offer improvements to the *Code Diagnosis* document and thereby improvements to the future of Austin and its citizens' quality of life from the 2014 Austin Neighborhoods Council Executive Committee.

This analysis details how these categories from Opticos (ineffective base zoning districts, competing layers of regulation, complicated opt-in/opt-out process, lack of household affordability and choice, auto-centric code, LDC is not always inline with *Imagine Austin*, ineffectual digital code, code changes adversely affected department organization, and incomplete and complicated administrative procedures) need to be improved with citizen stakeholders as part of this process to shape the future for a **quality code and process** that Austin's citizens deserve.

1. Ineffective Base Zoning Districts
We can all agree that the current code is poorly organized, poorly drafted in places, and poorly administered. The code needs to be more accessible and clearer. Our current code lacks the original intent clauses (that were removed in the 1984 revision) that could provide more clarity and guidance regarding interpretations of the code. One of the unique problems with the code is that many its amendments reflect developmental struggles for some wishing to subvert the "system"/code. We need a code that reflects our past, "our stories" which helped to define the character of Austin's neighborhoods. Finding the balance with a code that reflects our neighborhood character in the future but does not abandon the "past" and "present" will depend on promoting compatible redevelopment.

For those of us who live in core neighborhoods, the residential zoning districts, combined with our Neighborhood Plans, have already given us compact, walkable, and livable neighborhoods. Some of the code's complexity was created by the City Council granting frequent amendments to special interests rather than upholding the existing regulations; other complexities stem from the infrequent codification and updating of the code.

- We need a code that preserves good neighborhoods that support high-quality schools that will keep families in the City's core.

- We need a code that supports transportation.

- We need a code that reliably promotes affordability and compatible development.

- We need a code that supports the implied vision of the *Imagine Austin* with the necessary protections for our environment and for the protection of our neighborhoods that add that extra *je ne sais quoi* to Austin's character; otherwise, we will be just another city risking the loss of our core definition regarding our natural and man-made heritage.

For those of us who own property, we have invested our wealth and emotions in our homes and in reliance with the City about not changing the very "fabric" of our daily lives. **The *Code Diagnosis* places undue emphasis on density in core neighborhoods while ignoring that extra density could be distributed throughout the rest of the City and its subdivisions.** This oversight is due to poor and inconsistent City planning before writing a comprehensive plan in 2012. The City completed many neighborhood plans prior to the *Imagine Austin Comprehensive Plan*; however, those Neighborhood Plans have been helpful in constructing a future path for good planning that shaped *Imagine Austin*. Regardless of this process, which came first - the Neighborhood Plan or *Imagine Austin*, – the "chicken" has been hatched!

2. Competing Layers of Regulation

Any revision of the Land Code must start with our Neighborhood Plans and Neighborhood Conservation Combining Districts (NCCDs), and Overlays as a foundation. For areas without Neighborhood Plans, there needs to be some documentation for recording Home Owner Associations (HOAs) restrictions, Planned Unit Developments (PUDs), master plans and small area plans, or transit corridor plans – potential or realized. Improved technology could play a major role here to relieve the confusion of all these competing layers of regulation spelled out in the *Code Diagnosis*. From that report (p. 50), "each of these layers has good intent and generally good content" exemplifies the need for improved computer technology to reduce inconsistencies and confusion.

Reorganizing the content of our current code should provide the starting point for the revision process rather than focusing on simultaneously revising large sections of code. In fact, the Diagnosis states this approach (p. 92) as a starting point. If this path were followed, it would help to foster transparency and public trust in the process. When the public is able to see exactly where the discrepancies and inconsistencies lie, then they can start to understand the need for this revision process and can accept more readily new ideas. The **public buy-in is paramount for success,** but it is the most overlooked element in this code revision process.

One puzzling aspect of this section of the Diagnosis (available May 5, 2014) was the after-the fact **inclusion of definitions** of the "Themes" (pp. 28-9) for the Summary of Neighborhood Plans which had a submission deadline of April 3, 2014. These definitions were requested before the deadline of the Summary of Neighborhood Plans input, but they were never drafted or made available to the public. **To include them as a "matter of fact," (not to mention after-the-fact) in this report does not promote trust in the participatory process.** The Austin Neighborhoods Council requested that an iterative process be initiated earlier this spring; that is, whenever input is given on a product, then consultant feedback should presented back to the public for viewing whether these submissions/interpretations were correct. This request was not honored at the time the Summary of Neighborhood Plans input was due (4/3/14).

3. Complicated "Opt-in, Opt-out" System

Opticos is critical of "one size fits all" approaches, and it states that making regulations relevant for specific neighborhoods is a fundamental planning tool. **With the rich diversity of Austin Neighborhoods, there is nothing broken about the opt-in, opt-out system that cannot be fixed by the use of computers and technology coupled with a reorganization of the content of the current code. Since our Neighborhood Plans are the foundation of our residential land use**

plans, taking away flexible tools such as opt-in, opt-out, would undermine years of thoughtful, creative, hard work and planning. Not being able to document these processes properly today with technology is inexplicable and inexcusable.

 Compatibility standards must remain. They are critical for insuring compatibility between new development and residential neighborhoods, which, in turn, are critical for successful implementation of *Imagine Austin*, especially in the older core neighborhoods. Compatibility Standards should be used and improved upon when it comes to questions of neighborhood character, design, and building height.

4. Lack of Household Affordability and Choice
The CodeNEXT process is at risk of being in a rush to accommodate growth rather than attempting to address the impacts on quality of life in Austin, both present and future. While looking at other cities, Portland is questioning some of its "smart growth" policies, and there, unlike Austin, 60% of the single-family homes are owner-occupied. The reverse is true for Austin-approximately 60% of the single-family homes in the Austin's core neighborhoods are renter-occupied. Viewing both new density nodes, downtown and UNO in West Campus, and the residential areas comprised of single-family homes throughout our core neighborhoods, we see that **there are similar impediments to affordability, which must be evaluated in context.**

For example, the University Neighborhood Overlay (UNO) in West Campus was created as a special density node created to help with the shortage of student housing that links directly to the failure of The University of Texas to provide housing for its 50,000+-student population. **UNO did not solve the UT problem by encroaching into well-established surrounding residential neighborhoods (p. 83-4, *Central Austin Combined Neighborhood Plan,* 2004), but it has negatively impacted affordability in that area for a couple of "market" reasons:** (1) a downturn in the economy during the last ten years with its creation and (2) the unavailability of commercial funding. Since only approximately 3,000 "beds" become available each year, the redevelopment of West Campus has progressed too slowly to provide the needed units for this "urban village." Until the number of **available units falls below the 90% occupancy levels, the rents will remain artificially inflated.** Affordable rents will remain affected by this market condition.

Most of the impacted redevelopment in UNO and downtown includes the higher priced steel beam construction due to increased height entitlements over 75 feet for greater density. **Greater density does not necessarily lead to greater affordability. In fact, creating density will create affordability is a false argument.** Until the simple equation for the identity of a city metropolis is solved (tax base goals + social equity: money + a fair shake for all citizens), "density" will remain a useless stumbling block that will continue to suck the real creative energy from enlightened city planning. The "specter" of density is no more than a perceptual illusion.

If we think of it this way:

Example 1: Roscoe Village is an urban neighborhood in Chicago known for its creative use of planning over many generations within a large city. Its success as one of the most livable

neighborhoods in America is well known. Here is a quote from the current generation of neighborhood stakeholders:

"The Roscoe Village Neighbors Zoning and Land Use Committee works in a spirit of good faith with elected officials, property owners, developers, and City Departments to assure that land use and development within Rosco Village meets the needs and standards of our community. The low-density and pedestrian-scale of the Village contribute to the charm, character, and unique quality of life found within our borders. It is part of a legacy we have inherited from our predecessors that will, in turn, be handed down to our successors."

Roscoe Village is slightly larger than Hyde Park but has approximately 17,872 people per square mile whereas Hyde Park has approximately 6,763+ people per square mile. This is a telling comparison that does not diminish the importance of density metrics (FAR- urban planners; dwelling units per acre- real estate people; population per acre- governmental agencies), but with the neighborhood manifesto quoted above, it clearly puts the idea of design within a living concept of **perception**- driven by clear principles of urban design. **We are not suggesting that Hyde Park should accommodate this much density now or ever, but we are pointing out that the success of a solid-principled and well-designed process that includes the public in a meaningful way works!**

Regarding residential districts (neighborhoods) comprised of single-family homes, we found that demolishing older homes does not lead to affordability either. There is no more affordable housing than existing housing. Current policies have resulted in the demolition of too many older, affordable homes and their replacement by less affordable housing. This disregard for conservation and preservation practices **conflicts with some goals included in** *Imagine Austin* regarding historic neighborhood character and preservation of historic resources, (pp.117, 125, *IACP*). **Most all of the existing Neighborhood Plans call for "preservation of single family character" within the neighborhood** with historical preservation and conservation principles in mind as a goal, (pp. 4-23, *Appendix to LDC Diagnosis*).

The resulting new, less affordable structures lead to increased valuation for ad valorem taxes on nearby properties, making those properties less affordable. Simply comparing the density of a hypothetical new project to another hypothetical new project completely overlooks the economic impact on current residents. New residents will have fewer affordable choices**. The City must examine "affordability" in a context outside of the Land Development Code.**

To date, according to the report, "[The City] does not appear to have a significant number of private housing developers producing affordable units." Changing density rules will only make **some new** housing less costly to build, but it will not necessarily result in the creation of more affordable units. We would agree that there are opportunities that could create a more focused and effective affordable housing (p.55, *Code Diagnosis*) by looking at governmental structure and private sector policies in other cities. It would be particularly beneficial to create an agency in Austin that coordinates interdepartmentally and effectively with "affordability" in clear focus.

Multi-family

Regarding secondary apartments and the so-called "missing middle," there is a place for them in our neighborhoods by adding them in a consistent way with the Neighborhood Plans and with the consent of each of the affected neighborhoods. **One size does not fit all.** Opticos aptly observes, "Austin's pre-World War II neighborhoods have a great history of these "Missing Middle" building types." Neighborhoods such as Hyde Park, North University, Hancock, and Heritage, to name a few core neighborhoods, **have a rich history of incorporating multi-family housing already**. Wouldn't this mix be considered the "Missing Middle" housing?

The core neighborhoods may have the "Missing Middle" (multi-family) housing already incorporated within their contextual fabric; therefore, we would ask for clarity about how the "Missing Middle" application will be used throughout Austin's neighborhoods. Would the "Missing Middle" be a blanket application to all the existing Neighborhood Plans? **The diagram (p. 59) in the Diagnosis does little to explain citywide application for existing neighborhoods with multi-family structures incorporated within their boundaries.**

We applaud Opticos for focusing on multi-family districts. To increase density, new multi-family districts would be a good place to start **outside of the core neighborhoods** that already have density. For example, Hancock Neighborhood 's population density per square mile is 6,343, over double the city average. **The *Code Diagnosis* places undue emphasis on density in older core neighborhoods while ignoring that extra density is not required in the newer "master planned" subdivisions.**

It would also be important to note that incorporating multi-family along designated transit corridors with different combinations of contextual types and height would add to diversity of building. As the Diagnosis Report states, it would be important that this type of multi-family be compatible with the surrounding neighborhoods that backup to these transit corridors with building standards and compatibility to any of those existing neighborhoods. **Without neighborhood "buy-in," affordability and new housing types will not be successful.** It goes without saying that improved technology could aid in calculating and keeping track of any compatibility issues with this "Missing Middle" housing application. **Also, prior to any changes, *modeling* would be helpful as public visuals of any impending changes by the City and the consultants.**

5. Auto-Centric Code
Yes, we agree with Opticos about Austin having an **automobile**-centric code, since we have an auto-centric society. Nowhere in the *Code Diagnosis* is **climate** discussed as a contributing factor to some of our auto-centricity. Texas has mild winters followed by excruciating summers that make transportation options awkward and uncomfortable for those who choose alternative modes of transportation such as walking and biking. Additionally, transportation options may gain greater importance in the urban core as the "silver-tsunami"/baby-boomer generation starts to lose mobility.

People need and want choices about modes of transportation including the use of cars. **The City should be able to provide multi-modal forms of transportation**, but **the City should not dictate which transportation form an individual must use. The "car" may actually be able to play a greater role in the future, as an effective mode of transport, because it can go from**

point A to precise point B. Buses and trains cannot accomplish the same precision of transport. Some in the disabled community may need to use cars as their transportation choice to access amenities such as parks, shopping and restaurants, so that they can have the same opportunity as the temporarily-able-bodied (TAB) person.

With improved technology for cars and the diminishing dependency upon fossil fuels, the "car" is not going away any time soon in Austin. It is folly to believe that, in the near future, Austinites will give up their cars. A survey conducted in Portland recently found that for its eastside apartment buildings (ones that have no parking) 72 percent of the occupants still owned vehicles.

The *Code Diagnosis* states that "high parking requirements are prohibiting compatible, small scale infill development in appropriate places" and that "the regulations are encouraging the creation of auto-dependent density," (p.61). Just taking away parking requirements will not rectify the need for enough parking. However, we do agree with the Diagnosis Report about large (antiquated) parking lots that are underutilized when land within Austin is at such a premium. There is a better use/design for that land than massive surface parking.

Waiving parking requirements will push cars on to residential streets. **Creating convenient and expedient housing for new residents by deleting parking requirements should not become the burden of existing residents.** Parking is a huge problem, especially when it is pushed onto the streets of core neighborhoods. The most compatible (historical) parking near or within core neighborhoods is off-street parking provided by small-scale multi-family apartments. Increased on-street parking results in less safe streets (especially for children) and less space for garbage pick up of solid waste containers on our inner city streets. **Solutions to our parking problems should be based on data**, not on romantic, wishful thinking.

In August 2013, Austin Neighborhoods Council, partnering with the City, conducted their own Land Development Code Workshop with neighborhood leaders to discuss the code. The Urban Core Parking Reduction Ordinance was cited on the top of the list as one of the most problematic ordinances. Removing 20% of the prescribed code parking requirements has negatively impacted neighborhoods throughout the city.

6. LDC Not Always in Line with Imagine Austin
As previously stated in Ineffective Base Zoning Districts section of this report, we can agree that the current Land Development Code (LDC) is not all that it could be. The new code must embrace the future but not forget the past and present. It is an admirable goal for Austin to be compact and connected, **but a compact city does not necessarily mean further compacting core neighborhoods. In order for neighborhood advocates to support this LDC revision, there must be a strong reaffirmation of the commitment to respect our existing our Neighborhood Plans and to support compatible development for the future that promote consistency.** Improved computer technology and software could aid in these applications for compatibility and consistency.

7. Lack of Usability and Clarity
The current code is an organizational mess. The fault is not so much with the frequent amendments made by Council, but instead, by poor execution. The problem is two fold: 1.) lack of

digital technology to aide with organization, and 2.) the absence of the legal department's role in keeping the code updated regularly.

A city code is a code of laws. Opticos makes no mention of the failure of the Law Department to effectively codify our rules and to provide that update in a timely way- more than once per year. In fact, there is no mention of the Law Department in the entire report. The City's legal department should have been reorganizing the code while incorporating new codifications on a regular basis. This is obviously one of the contributing factors to the code confusion and disorganization. Again, this is another example where improved technology needs to be used for effective and timely organization of our laws.

8. Ineffective Digital Code
We absolutely agree that the City does not even use effectively the outdated tools that it has today. As an example, a developer might try to read the occupancy limits for residential housing in the Code that has not had its annual update. **This could be disastrous for a developer who purchased a lot based on the false assumptions, since current amendments for the code are not available until the annual update. A complete overhaul of the digital code is in order.** This is another instance where improved technology could make all the difference for City administration. Improved technology would provide consistent and current information necessary for the public to make determinations from the current law, the code.

9. Code Changes Adversely Affected Department Organization
This section of the Code Diagnosis is another section that we can agree with the Consultant's analysis. **The Planning and Development Review (PDR) Department needs to be reorganized!** We would suggest that this department be the subject of a **thorough independent review** to **evaluate its organizational structure**, as well as, **the available training and subject comprehensiveness for its staff. Only a well-trained, competent workforce can administer a good code.** If there is one subject that both the real estate industry and neighborhood advocates agree upon is the lack of confidence with the Planning and Development Review (PDR) Department in its current state.

PDR's physical workspace design is important for staff to work efficiently and comfortably and to create an environment and culture where pride, honesty, and a good work ethic for the employees are fostered. This type of positive environment will trickle over into a creating trust with the community about the City's processes and products. The report's description of "silos" is applicable to the entirety of City government and the lack of comprehensive and consistent technology needed for departmental success in communications. Once again, improved technology and complimenting technology systems/programs that are interdepartmentally accessible are critical for dismantling the non-coordination between City departments and divisions.

10. Incomplete and Complicated Administration and Procedures
This is an important goal that should be pursued. Cleaning up the administrative process will go a long way to removing much of the criticism from people seeking permits. **Cleaning up the**

administrative process will go a long way in restoring public trust. Doing this and completing a management overhaul of PDR, as well as re-codifying current law, and implementing a new digital portal will take us a long way towards solving problems with the Land Development Code. Once again, improved technology's role will help make this process smoother and more reliable. It is unwise and too complicated to overhaul substantive rules before completing this first task, the reorganization of PDR. Without this, there will be too much confusion and ample opportunities for mischief (by insiders who are currently gaming the system) for there to be a real public buy-in of CodeNEXT.

After this structural reorganization, the City should pursue the alternative described in the *Code Diagnosis* (p.92), "just reorganizing the current content of the existing code" next. Substantive code changes to planning provisions and tools and any remapping should be postponed until this task of reorganizing the content of current code has been completed.

Summary

In summary, out of the 10 items (#2,3,7,8,9,10) discussed in the *Code Diagnosis*, 60% could be improved greatly and remedied by improved technology and the right, computer-software programs. It is also clear that the Planning Review Department's administration and processes must be "reorganized." As well, the current code must be edited and reorganized, in order for public to see what needs to be consolidated, revised or rewritten to solve our code problems with content inconsistencies. It is imperative to provide this transparency of process for restoring public trust in City processes. Additionally, there must be **a realistic commitment of resources** to make the **administrative process better** and the **improved technology work successfully**. Remember, we could have the best code in the country, but **if our technology and process do not change**, it will be nothing short of a disaster- **the new code will not work to solve Austin's problems**. The residents and the neighborhoods of Austin deserve the best product with the best technology, best process for restoring their trust in government, and an improved commitment for a good quality of life with the new code.

Other Comments

Thus far, **the data-gathering process of CodeNext has been invalid.** Using the data collected in the *Listening to the Community* process will produce substantive recommendations **not representative of citizen desires.** Specifically, the data gathering process has no mechanism for review of the compiled information by the people who supplied the information. **Without such a feedback process, an "iterative process," City creates a situation that looks as if they are manipulating the information to pursue its own agenda,** as it has done in the past. In the *Listening to the Community* Report, Opticos says, "possible strategies could include gathering data in a statistically valid process, such as a random sample survey of city residents using a consistent set of questions." **By its own admission, the current process is not statistically valid.** Couple this with the **near total exclusion of neighborhood advocates from the Code Advisory Group, the result will be a recommendation that does not reflect the will of the citizens of Austin** but instead the agenda of City Staff and a handful of insiders who stand to gain financially. No one can claim full ownership of the code, because the code is for all of us, not just the developers and the bureaucrats.

The Land Development Code should provide predictability for residents and builders, renters and landlords. **The current code has been abused in the past by "special interests"/lobbyists who have courted the City Council for special favors on a regular basis.** This practice must stop for Austin to have a code that can be effective and affective, because this type of implementation depends on a flawed process that cannot defend and apply standing regulations and laws of a good and working land use code.

Mr. Dex Ott, an Austin resident with deep family ties in Austin, is an expert registered architect who spent most of his 20-year career in New York City has written a critique of the data gathering process of CodeNext, which all decision makers should read. Among other opinions, he says, "CodeNEXT has not provided the code revision and planning Consultants credible, defensible, and validated information to proceed."

Mr. Ott also makes this observation, "this project – with its citywide scope – is basically too big, too complicated, with too many unknowns, and simply not understood by the current leadership as a central urban design problem requiring a comprehensive and inclusive vision of city life as citizens want to live it, validated by the data that established the boundaries of their vision."

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