

SECTION VI.

ZONING AND LAND USE ANALYSIS

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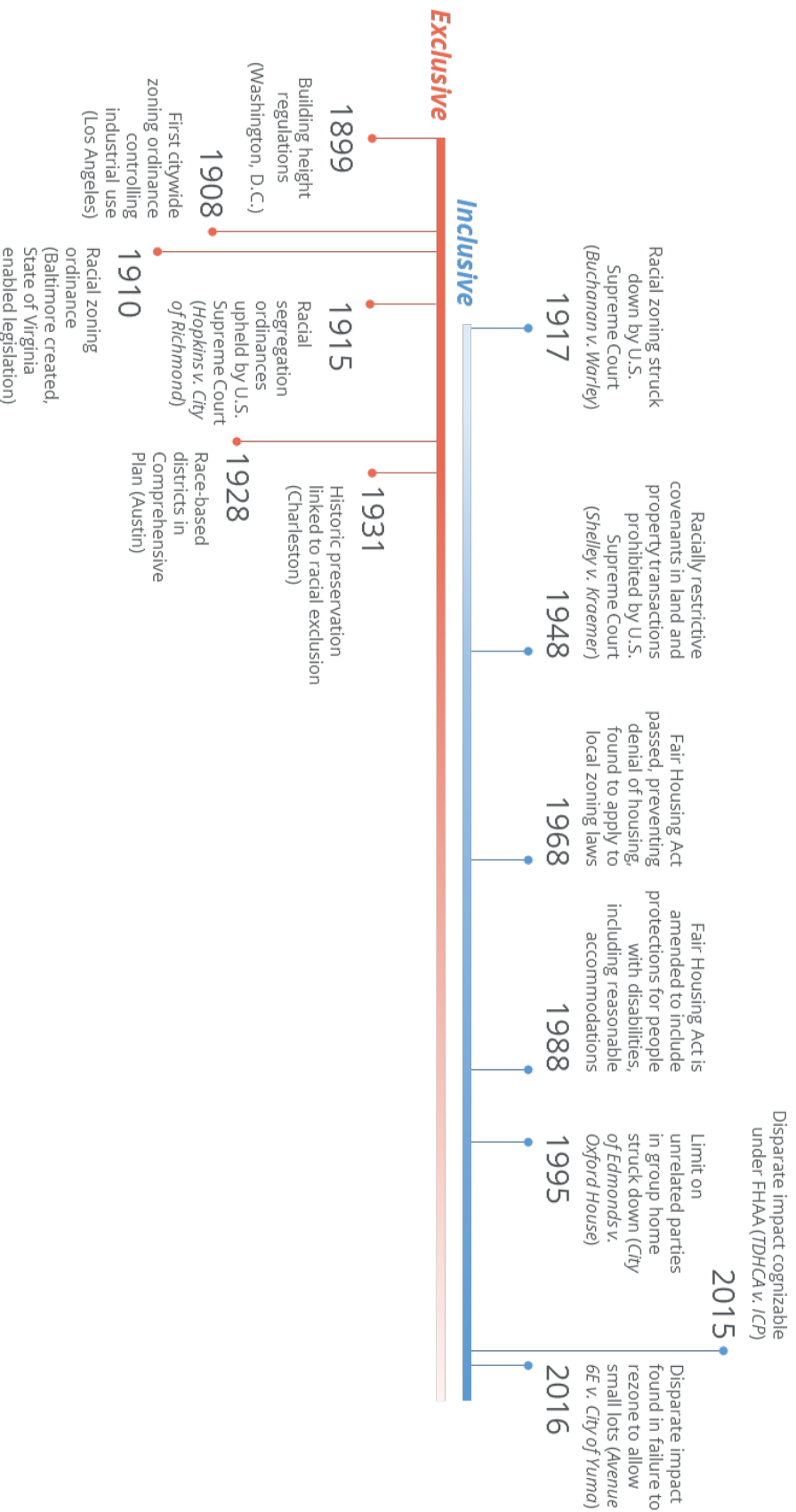
The zoning, building, and subdivision codes and regulations, of Williamson and Travis Counties and the cities of Austin, Georgetown, Pflugerville, Round Rock, and Taylor were reviewed to identify potential barriers to fair housing choice and reasonable accommodation under the federal Fair Housing Amendments Act (FHAA) and the Americans with Disabilities Act (ADA). This section discusses the findings from that review.

Zoning and Fair Housing

Zoning has existed in the U.S. for more than a century. Many early zoning codes were implemented to protect public health and improve living conditions in cities with growing industrial uses—and prevent these uses from spreading into residential areas. These practices, however, quickly evolved to exclude those working in the areas the codes were intended to contain, largely immigrants and African Americans. When direct exclusion (“racial zoning”) was found to be illegal in 1917, cities adopted other, equally exclusive and legal practices, which were enabled by the lack of civil rights and fair housing laws.

The figure below shows some of the most critical zoning and land use actions and court decisions and their intent to include or exclude certain types of uses and residents. The figure helps demonstrate that zoning as a tool for inclusion is a fairly recent phenomenon.

**Figure VI-1.
Zoning Timeline of Significant Inclusive and Exclusive Actions**



Source: "The Racial Origins of Zoning in American Cities," Silver, Christopher, from *Urban Planning and the African American Community: In the Shadows*, Manning Thomas, June and Marsha Ritzdorf.

Application of FHAA to zoning review. The Federal Fair Housing Act (referred to as the Fair Housing Amendments Act, or FHAA, in this section to acknowledge the full protections the act affords) creates the obligation that all levels of government not “make unavailable” housing to serve certain protected classes, as defined in the FHAA. Today, local governments typically “make housing unavailable” through errors of omission, either by not extending fair housing protections to the full range of citizens protected by federal law, or by failing to think through how facially neutral and well-intentioned laws and regulations could have unintentional discriminatory impacts. Many of these laws and regulations are found in zoning codes

Housing cannot be denied to residents because of their race, color, religion, sex, national origin, age, familial status (which includes pregnant women and families with children under 18), or disability (which includes the frail elderly, persons with AIDS, persons with physical, cognitive and behavioral disabilities, and recovering alcoholics and drug addicts, but not current users who are not “recovering”).

and land use regulations.

Unlike other types of violations of the FHAA (e.g., direct denial of a rental unit based on a tenant’s race), fair housing barriers in zoning and land use are often related to potential or assumed use. As such, this review focuses on how local codes could limit opportunity for protected classes to occupy housing.

Disparate impact. The FHAA does not protect low income individuals and does not regulate or guarantee the affordability of housing.¹ Yet local codes determine the types of housing that are allowed, which is often linked to affordability. To the extent that certain protected classes are disproportionately impacted by codes, regulations or decisions about housing, a violation of the FHAA could be found through disparate impact.

Disparate impact was tested by the Texas Department of Housing & Community Affairs (TDHCA) v. Inclusive Communities Project, Inc. (ICP) case, in which the U.S. Supreme Court found that disparate impact claims are cognizable under the FHAA. The Court found that disparate impact theory was an important part of continuing efforts to integrate communities—yet the Court established standards under which disparate impact claims could be brought. These include proof by the plaintiff that the challenged

¹ Resident “source of income” protections are growing in popularity at the local level to address the challenges that residents with Housing Choice Vouchers face in finding landlords who accept vouchers.

policy causes a disparate impact on a protected class and that there is not a less discriminatory option that would serve the public interest.²

Occupancy, definitions, and accessibility. Land development codes may also limit housing for protected classes through restrictions on household occupancy, which can limit housing for persons with disabilities living in shared arrangements, cultures who typically live with extended families, and residents in precarious housing situations who need temporary shelter (e.g., residents who have been evicted from housing situations, disproportionately people of color and LGBTQ residents).

Similarly, definitions of “household” and “family” can create barriers to housing choice. Narrow definitions are also problematic in that they fail to recognize changes in how residents choose to live, which is more commonly in communal and informal settings (e.g., cooperative housing environments).

The FHAA also contains a direct requirement for accessible design and construction (all “covered multifamily dwellings” designed and constructed for first occupancy after March 13, 1991 to be accessible to and usable by people with disabilities) and permits persons with disabilities to make reasonable modifications to a dwelling unit in order to live safely and achieve equal enjoyment of the premises.

Practical Application

Some of the key factors in zoning codes, land regulations, and practices that most commonly result in barriers to fair housing choice and reasonable accommodation include:

- Site standards. Large lots or excessive setbacks between structures or from streets that can increase development costs and require special infrastructure;
- Density limits. Restriction on or prohibition of multifamily housing, accessory dwelling units, low floor area ratios (FAR) for multifamily or mixed-use development, or low density requirements;
- Use-specific standards. Special site or operational requirements for group homes for protected classes—namely, persons with disabilities—that are not required for other residences or groups;
- Public services. Additional requirements for infrastructure or essential municipal services not required for other residences or dwelling units;

² Schwemm, Robert G. and Bradford, Calvin, *Proving Disparate Impact in Fair Housing Cases after Inclusive Communities*.

- Definitions and occupancy. Definitions of family or occupancy limits that prohibit or limit the number of unrelated persons in a household and prevent alternative occupancies such as cooperative living environments;
- Procedures: Review procedures, public hearings, or notice requirements for different housing types, housing for protected classes, or low-income housing;
- Spacing: Minimum distance between group homes for protected classes, e.g., persons with disabilities, that are not required for other residences or groups;
- Reasonable accommodation: Regulations inhibiting modifications to housing for persons with disabilities or their ability to locate in certain neighborhoods;
- Code language: Local land development codes and standards that are not aligned with federal and state regulations governing fair housing and reasonable accommodation; and
- Implementation: Inadequate enforcement of FHAA design and construction requirements through lack of or poor building inspections.

Code Review

HUD's Fair Housing Planning Guide, Chapter 5, guided the code review for this AI. The results of the review are found in the following matrix, which lists the types of regulations and policies in land development codes that are indicators of impediments to fair housing was developed to show where potential barriers to fair housing may exist. Building codes were reviewed to determine nationally recognized building codes are adopted and the relationship of those codes to HUD-accepted codes (called "safe harbor" codes).

Matrix of Indicators of Land Development Codes Impediments to Fair Housing

INDICATOR CODES	AUSTIN ¹	GEORGETOWN ³	PLUGGERVILLE	ROUND ROCK ²	TAYLOR ³	TRAVIS COUNTY	WILLIAMSON COUNTY	TABLE NOTES/ COMMENTS
<p>1. Zoning Code</p> <p><i>Do zone districts allow a range of density and dwelling unit types? (Supports the placement of new or rehabilitated housing for lower-income households in a wide spectrum of neighborhoods)</i></p>	<p>Yes</p> <p>Zone districts allow a variety of housing types and options for in-fill. Both incentive-based and non-incentive programs support affordable housing and diverse housing types, including secondary units, fee waivers, and density bonus.</p>	<p>Yes</p> <p>Zone districts allow a variety of housing types and greater variety can be achieved through the Mixed-Use zone district where a “regulating plan” establishes densities and dwelling unit mix within sub-districts.</p>	<p>Yes</p> <p>Zone districts allow a variety of housing types but multifamily is defined as “for rent” and not allowed in all of the same zone districts as other attached unit types (such as “condo”) (See item #9).</p>	<p>Yes</p> <p>Zone districts allow a variety of housing types and greater variety can be achieved through 3 new zone districts that allow for mixed-lot (SF-3) and mixed-use development (MU-R) and MU-G.</p>	<p>Yes</p> <p>Zone districts have densities that will allow a variety of housing types but limitations on number of dwelling units/building in some zone districts may make it difficult to achieve allowed densities (see item #9)</p>	<p>No</p> <p>No zoning adopted per state law, although the county can achieve this through property deed restrictions. Coordination with City of Austin in its ETJ is achieved through jointly adopted subdivision regulations, allowing density, intensity of use and type of use transfers in certain areas.</p>	<p>No</p> <p>No zoning adopted per state law. Without zoning there is no overall land use regulation to encourage and preserve land areas for a range of housing types and affordability levels.</p>	<p>4</p> <p>5, 6</p>
<p>2. Building Code</p> <p><i>Are nationally recognized building codes adopted? (Indicates that FHAA and ADA requirements for accessibility are followed)</i></p>	<p>Yes</p> <p>IBC, 2015 IEBC, 2015 IECC, 2015 IFC, 2015 IPMC, 2015</p>	<p>Yes</p> <p>IBC, 2012 IEBC, 2003 IFC, 2012 IPMC, 2003 IRC, 2012</p>	<p>Yes</p> <p>IBC, 2015 IEBC, 2015 IECC, 2015 IFC, 2015 IPMC, 2015</p>	<p>Yes</p> <p>IBC, 2015 IEBC, 2015 IECC, 2015 IFC, 2015 ICCPCBF, 2012</p>	<p>Yes</p> <p>IBC, 2009 IECC, 2009 IFC, 2009 IRC, 2009</p>	<p>Some</p> <p>IRC, 2008 outside ETJs or the version of IRC adopted by the city within ETJ.</p>	<p>Some</p> <p>IFC, 2015 This code was first adopted in June 2018 to standardize the use of one edition of the IFC in unincorporated</p>	<p>7</p> <p>8</p>

INDICATOR	AUSTIN ¹	GEORGETOWN ³	Pflugerville	Round Rock ²	Taylor ³	Travis County	Williamson County	Table Notes/ Comments
	<p>IRC, 2015</p> <p>Although the IBC, 2015 is adopted, not all the accessibility standards and requirements in Chapter 11, Accessibility, are adopted, including the section referencing ICC/ANSI A117.1, Accessible and Usable Buildings and Facilities, which is a HUD-recognized standard.</p>	<p>Chapter 11 of the IBC, 2012 edition includes accessibility standards that comply with ICC/ANSI A117.1, Accessible and Usable Buildings and Facilities, a HUD-recognized standard. Because the IBC, 2012 is adopted, it is likely that accessibility standards and requirements that comply with ADA and FHAA are followed in building construction.</p>	<p>IRC, 2015</p> <p>Since the IBC, 2015 is adopted it is likely that accessibility standards and requirements that comply with ADA and FHAA are followed in building construction.</p>	<p>Standard Housing Code, 1994 (SBCCI) IGCC, 2015</p>	<p>The 2009 IBC does not comply with the accessibility requirements of ICC/ANSI A117.1, Accessible and Usable Buildings and Facilities, a HUD-recognized standard. Because the 2012 version of the IBC is not adopted, accessibility standards and requirements that comply with the ADA and FHAA may not be followed in building construction.</p>	<p>IFC, 2015, as amended by the county</p> <p>Because the IBC is not adopted it is unclear whether buildings constructed in unincorporated areas follow the accessibility standards and requirements of the ADA and FHAA. It is unclear how complaints about accessibility infractions are investigated and how compliance is obtained in the absence of an adopted building code.</p>	<p>areas. This both improves public safety and ensures uniform interpretation and application of the fire code for facilities serving FHAA protected classes, such as group homes.</p> <p>Because the IBC is adopted it is unclear whether buildings constructed in unincorporated areas follow the accessibility standards of the ADA and the FHAA. It is unclear how complaints about accessibility infractions are investigated and how compliance is obtained in the absence of an adopted building code.</p>	

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<p>3. Equal Levels of Infrastructure and Municipal Services</p> <p><i>Are essential municipal services treated equally by development type and occupancy class? (Indicates equal treatment of facilities for FHAA-protected groups)</i></p>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	9 No special requirements were identified in the land development codes reviewed, however there may be different requirements for infrastructure or services based on a local determination of the use category for an FHAA-protected use (e.g., group home) not included as a use in the local code's permitted use table.
<p>4. Large Lot Sizes, Dimensions, or Dwelling Unit Size</p> <p><i>Are there large lot size, setbacks, or lot widths or minimum standards for size of dwelling units? (Contributes to increased development costs and</i></p>	No	No	No	No	No	No	<p>SITE STANDARDS</p> <p>No</p>	10 11

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<i>discourages attached or multifamily housing)</i>	sq. ft. for townhomes. Note: In MF districts required site area is based on the number of bedrooms in each dwelling unit. This may limit the production of family-friendly dwelling units with 2 or more bedrooms. Dwelling Size: No requirement excepted in limited areas for second units.	lot sizes ranging from 5,500 sq. ft. to ½ acre for SF-Detached and 2,000 sq. ft. for townhome. Lot sizes may be reduced with a conservation subdivision or by including housing diversity (See Item #5). Dwelling Size: No requirement excepted for Housing Diversity Development: SF-Attached min. 3,500sq. ft. 2-Family min. 3,000 sq. ft.	(SF-E zone). The SF-R zone district requires variety in SF-Detached lot sizes within the zone district (see Item 5). Dwelling Size: All zone districts have minimum sizes for dwelling units, ranging from 600 sq. ft. for multifamily, 900 sq. ft. for SF-Attached, and 1,400 sq. ft. for SF-Detached. While these minimums may reflect typical house size for this area, having minimums may limit variety in bedrooms/du within each zone district. This may limit production of affordable housing and result in product mismatched to demand.	Lot sizes for attached units range from 2,500 sq. ft. (TH zone) to 3,500 sq. ft. (TF zone). The SF-3 district allows varied lot sizes within the zone district (see Item #5). A "Senior Housing" (SR) zone district restricts 80% of residential to housing for persons aged 55 or older. Dwelling Size: SF-3: 2,000 sq. ft. minimum on largest lots. No other zone district with minimum dwelling unit size	the smallest lot for SF-Detached. Lot size may be reduced to 6,000 sq. ft. through a Residential Planned Development Overlay (RPD). Dwelling Size: SF-Detached zone districts have minimum sizes (1,400 to 2,000 sq. ft.). Size may be reduced through RPD process. The minimum lot and DU size and a review process to reduce the minimum size may inhibit production of different types of SF-Detached units, which can limit affordable housing for families.	used. Multiple units may be on a single lot but must have 1 acre of land for each unit. Dwelling Size: No requirement		

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5. Requirements Favoring Low Density <i>Are the maximum densities, Floor Area Ratios (FAR) or building heights low? (Indicator that certain housing types and densities cannot be achieved in a wide spectrum of neighborhoods)</i>	No SF zone districts have lot sizes ranging from 3,600 – 10,000 sq. ft., allowing for a range of both urban and more suburban SF detached and SF attached housing (up to 12 du/ac).	No Densities between 6 – 24 DU/acre are allowed in the MF-1, MF-2 and Mixed Use (MU) zone districts. Height limits range from 40 – 45 feet in these districts, which adequately	No SF-Detached lots range from ½ acre to 5,000 sq. ft. SF-Attached lot sizes are a minimum of 2,500 sq. ft. The SF-R zone district requires a mix of lot sizes based on the total area of the	No New zone districts allow greater variety in lot sizes for SF and small and large scale mixed-use. New SF-3 zone district allows lot sizing from 10,000 - 5,000 sq. ft. and requires	No There are 3 SF zone districts, lot sizes ranging from 7,000 – 10,000 sq. ft., and a duplex zone district (D) with min. lot size of 7,000 sq. ft. These lot sizes are typical for semi-rural	N/A No regulations. The number of dwelling units on a site is regulated by the IFC and by OSSF requirements based on site characteristics except in Austin [ET] where Austin/Travis	Lot size is determined by the area required for on-site sewage facility (OSSF), established by the Wilco Health District. OSSF/no well: 1 acre minimum OSSF + Well: 2 acre minimum Duplex, triplex, and multifamily have special requirements that are not specified. Dwelling Size: No requirement	12

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	<p>MF zone districts have densities ranging from 17 - 54 du/acre, allowing moderate to high density units.</p> <p>Incentives for affordable housing (e.g., density bonuses for set percentage and mix of affordable units) allow construction of different housing types with a mix of bedrooms.</p> <p>Compliance with city's S.M.A.R.T. housing policies allows a variety of housing types and lot sizes to be dispersed in certain zone districts and neighborhoods.</p>	<p>accommodate the allowed densities.</p> <p>Diversity in housing type is allowed in certain zones by setting development standards by housing type (rather than one standard for all types). At least 3 different housing types are required.</p> <p>This encourages more variety in price points and can increase affordably priced housing.</p> <p>A workforce housing incentive allows flexibility in certain development standards, including lot size, with the provision of specified percentage of</p>	<p>site (allowing lots as small as 6,250 sq. ft. with a set percentage of lots a minimum of 7,500 sq. ft. and 9,000 sq. ft.)</p> <p>MF densities range from 10 - 20 DU/acre. These are typical densities for multifamily development in suburban areas.</p> <p>The maximum building height of 38' may not allow the highest density to be achieved and may constrain variety in building design.</p>	<p>certain percentage of each size range, but with increased design standards over standard SF districts.</p> <p>SF-2 allows 3 housing types with lot sizing from 6,500 - 5,000 sq. ft.</p> <p>New MU-R and MU-G (mixed-use zones) allow small or large scale mixed-use development with more flexibility than provided in standard commercial zones. (See Item #9)</p> <p>Density for multifamily ranges from 12 - 20 du/acre. Higher density may be allowed through PUD. Density in PUD must be similar to that in the general plan for</p>	<p>suburban areas. Lot sizes in all SF and the D zone districts can be reduced to 6,000 sq. ft. through a residential planned development overlay (RPD). The MF-1 and MF-2 zone districts allow densities of up to 14 and 29 du/ac respectively. With RPD minimum site area is waived and more than one principal building allowed.</p> <p>Multifamily is allowed in B-1 and B-2 but is not permitted with commercial planned development overlay (CPD).</p> <p>The maximum building height of 35 feet in all residential zone districts may limit</p>	<p>joint subdivision regulations are adopted. The Development Concept section of the Land Water and Transportation Plan supports development adjacent to utilities, along the periphery of incorporated areas and in activity centers along designated transportation corridors.</p> <p>Public Improvement District (PID) policies favor creation of PIDs that increase opportunities for low to moderate affordable housing.</p>		

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6. Site Improvements for New Construction	Yes	Yes	Yes	Yes	Yes	Unclear	No regulations. Building size, height, and number of dwelling units on a site is regulated by the IFC and by OSSF requirements based on site characteristics.	
<i>Are there special design requirements for buildings</i>	Subchapter F, Residential Design	Multifamily, townhouse.	Specific building materials and	Specific building materials and	Performance standards require	Because OSSF requirements are	Unclear	In general, specific architectural
		affordable housing units.		the location. The review process and unknown maximum density may be a disincentive for creating higher density nodes through a PUD process.	variety in building form and dwelling unit type. This height limit may reduce the actual density that can be achieved particularly in the MF-2 zone. Building height may be increased to 80 feet in some zones with additional setbacks (no special review required) but the resulting smaller building footprint may impact the total number of units that can be achieved.			

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<p><i>or site improvements that increase development costs?</i></p> <p><i>(Contributing factor in increased construction costs and increased housing costs which disproportionately affect lower-income households)</i></p>	<p>and Compatibility Standards, applies to residential development in older neighborhoods, and Article 10, Compatibility</p> <p>Standards, applies to development in all other areas. These standards set building envelope parameters that may limit infill through secondary apartments and increase design and building costs for new dwellings thus impacting affordability.</p>	<p>manufactured housing parks, and 3+ units on one parcel must provide a specified number of common amenity features based on the total number of dwelling units in addition to required park or open space and must be maintained by the development. Multifamily must meet the landscaping requirements for non-residential.</p> <p>These additional development and long-term maintenance costs decrease affordability.</p>	<p>architectural details are required for all residential construction. More costly materials, such as stone, and architectural details, such as multiple roof planes and minimum transparency requirements, increase housing costs. These requirements are applied to all residential construction and do not single-out any protected class under FHAA.</p> <p>Multifamily is required to provide some garage or structured parking. This is an additional development cost that will decrease affordability.</p>	<p>architectural details are required for townhome and multifamily construction. These standards provide a range of alternatives that may lower the cost impact associated with such design requirements. The SF-ML zone also has enhanced design standards for water detention facilities. These requirements are applied to all residential construction and do not single-out any protected class under FHAA.</p>	<p>use of indigenous architecture materials and City approval of secondary materials. Masonry veneers are required on all residential buildings (façade only in some districts, all sides in multifamily). These treatments increase construction cost and housing prices and decrease affordability.</p>	<p>determined on a case-by-case basis for multifamily and commercial buildings; the same building on a different site could require a different type of on-site sewage facility at a different cost point. Underground utilities required in Austin [EJ] subject to Austin/Travis subdivision regulations.</p>		<p>standards for design and materials are not in conflict with FHAA as long as they are applied equally to all similar buildings (regardless of the building's use) and do not limit reasonable accommodation (e.g., wheelchair access). However, such standards add development cost and decrease affordability.</p>

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7. Spacing or Dispersal Requirements <i>Are there minimum distances required between group homes or other housing for FHAA protected individuals or groups? (Indicates exclusion or limits to housing choice for FHAA protected groups)</i>	Yes Family Homes and Group Homes, excluding those for persons 60 and over, may not be located within a one-half mile radius of one another.	No	No	No	No	No	No	Because the OSSF requirements are determined on a case-by-case basis for multifamily and commercial buildings, the same building on a different site could require a different type of on-site sewage facility at a different cost point No
8. Single Family Development Pattern <i>Do development codes favor single-family lot development over cluster development?</i>	No While there are no specific regulations for cluster development, a wide range of densities and housing types are	No While there are no specific regulations for cluster development, there appear to be a range of development	No There are no specific regulations for cluster development. However, the zone districts base the required minimum	No While there are no specific regulations for cluster development, there appear to be a range of development	Yes There are no specific regulations for cluster development. The lot sizes for the single-family residential, while	No Austin/Travis Subdivision Regulations include standards for small lot, townhouse, and attached single-	Yes Yes	

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<i>(Indicates lack of housing options for a wide spectrum of residents)</i>	permitted by the land development code, including SF small lot. A cluster development may be considered through the Planned Unit Development process, which allows city council to approve modifications to requirements of the code and also permits development bonuses when AH is provided in the PUD.	options and incentives to encourage a wide range of housing choices (see Items 4 and 5 above). A cluster development may be considered through the Planned Development Overlay process. Deviations from the standards of the base zone district may be approved to achieve specific objectives, including variety in housing, creative arrangement of land uses, and arranging building envelopes to take maximum advantage of the natural and manmade environment (see UDC section 3.06.040).	lot size on structure type, rather than setting one district-wide minimum lot size. In some cases, there is no minimum lot area, which may allow for clustering of units (the SF-R district has no minimum lot area for SF condo structures). A cluster development may be considered through the Planned Unit Development Overlay process but there are no specific standards for a cluster design.	options and incentives to encourage a wide range of housing choices (see Items 4 and 5 above).	not unusual for rural-suburban communities, are not conducive to cluster design. The Residential Planned Development (RPD) zone district allows multiple buildings on one lot. This is conducive to cluster development, but minimum lot sizes are required, which may conflict with a cluster design.	family development. Travis County Chapter 482 sets affordable housing as a primary goal in the establishment of public improvement districts (See Item #17) and does not restrict the type of units or site design (clustering). There are no specific subdivision standards for cluster development except as related to preservation and protection of water quality in certain areas.		

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9. Multifamily Units	Yes	Yes	Yes	Yes	Yes	Yes	Subdivision regulations do not reference any residential building types (e.g., single-family, multifamily, townhome, etc.) or cluster development. Unless connected to an approved sanitary system, the minimum lot size is 1 acre for single family detached. Lot size for duplex, multifamily, and commercial buildings are determined based on OSF requirements for the type of use or number of dwelling units. Without distinct subdivision standards for cluster development and different residential	

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<p>Are multifamily units allowed? <i>(Exclusion or prohibition of multifamily residences indicates limited housing options)</i></p>	<p>Multifamily is defined as 3 or more dwelling units on a site (in one or more buildings) and includes condominium residential. Other specified MF-styles of housing are townhouses and retirement housing.</p> <p>Note: Condo residential is allowed in SF-5 and SF-6 but multifamily is not, prohibiting 3 and 4-unit buildings from these 2 zones. This building typology often addresses the</p>	<p>Multifamily attached dwelling units are allowed in the two multifamily zone districts and are allowed through a special use permit review and approval by City Council in the MUDT zone district and three commercial zone districts. The special review for multifamily dwelling units in some zone districts may inhibit production of multifamily.</p>	<p>Multifamily is defined as for rent housing product and condominium as an ownership housing product. Condominium is permitted in more residential zone districts than multifamily.</p> <p>Multifamily has a minimum dwelling unit size, required unit mix, and requires a specific use permit in some zone districts where condominium is permitted.</p>	<p>A diversity of multifamily housing types is allowed in many zone districts. The MF-1 and MF-2 zones allow "apartment" and "townhome". MF-1 also allows "multifamily house" (no more than 6 du/building). The MF-3 zone allows higher density multifamily through the PUD process.</p> <p>All the MU zones and commercial zones allow "upper story residential" and the MU-2 zone</p>	<p>There are two multifamily zone districts. Multifamily dwellings are also allowed in 3 non-residential zone districts and the Mixed-Use Downtown (DN) zone district. However, it is limited to "4-family". This limits denser multifamily production often necessary to support mixed use projects and limits the location of housing near key community services and shopping.</p>	<p>While there are no separate subdivision regulations for different types of residential uses, the county encourages denser development, including multifamily, in key locations. Multifamily is referenced in Chapter 82, Development Regulations, and is specifically called out as appropriate in "preferred commercial development areas".</p>	<p>building types and with the limitations of OSSF permitting it may be difficult to develop any residential other than standard single-family detached.</p> <p>USES AND DEFINITIONS</p>	

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10. Accessory Dwelling Units (ADUs) <i>Are ADUs allowed? (Indicates flexibility in code for a wide array of housing options)</i>	Yes Various types allowed: • Accessory apartments occupied by at least one person 60 or over.	Yes Housing Diversity regulations allow ADU as a unit-type. Allowed by Special Use Permit (approval by City Council) in the AG, RE, RL, RS, and MU-	Yes Allowed in all SF zone districts. Must meet certain design standards and no greater in size than the ground floor area of primary dwelling unit.	Yes Only allowed in MU-R	No Allowed densities in the two MF zones may inhibit housing product in the 7 - 12 du/ac range. A unit type called "public housing" is listed in the permitted use table. The use of this term is confusing and may result in conflicts in the development of affordable housing (public housing is not permitted in the commercial districts where multifamily housing is permitted).	Yes The Growth Guidance encourages denser development along SH 130 in the eastern part of the county, which may include small lot and multifamily development.	Unclear Codes neither expressly allow nor prohibit. Including language in the subdivision regulations and other relevant codes will clarify	13

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11. Manufactured/ Mobile Homes (MH) <i>Are mobile or manufactured homes allowed? (Indicates flexibility in code for a wide array of housing options)</i>	<p>• Guest house for non-paying guests for SF residence on a lot ≥ 10,000 sq. ft.</p> <p>• Accessory dwelling for SF residence on a lot ≥ 15,000 sq. ft. for a person (and family) employed on-site.</p> <p>• Secondary apartments are a special use in certain zone districts if separate from principal dwelling</p>	DT zone districts. Not allowed in any other zone districts.		MH zone district allows mobile home park or subdivision of at least 20 DUs. Mobile and manufactured homes are allowed only in this district. Minimum lot size of 4,500 sq. ft. and maximum density	MH zone district allows manufactured and industrialized housing with min. lot size of 6,500 sq. ft.	The zoning code distinguishes between MH and “industrialized homes”. MH is allowed only in the MH zone district, which requires a minimum lot size of 7,000 sq. ft. This is a large lot size requirement for	Travis County Chapter 482 exempts manufactured home rental communities from platting requirements but does require an infrastructure development plan	that a diversity of unit types is allowed and there is no prohibition or exclusion of any dwelling unit type. This is particularly important in the absence of a zoning code.
	Yes	Yes	Yes	Yes	Yes	Yes	Not specified	14

INDICATOR	AUSTIN ¹	GEORGETOWN ³	PLUGERVILLE	ROUND ROCK ²	TAYLOR ³	TRAVIS COUNTY	WILLIAMSON COUNTY	TABLE NOTES/ COMMENTS
12. Facilities for Persons with Disabilities and Other FHAA Groups Allowed in a Wide Array of Locations <i>If facilities for FHAA protected individuals or groups are excluded from residential zone districts either by use or occupancy</i>	Yes 3 types of facilities are allowed: "Group Home" Class I General: more than 6 and up to 15 residents plus	Yes Group Home is defined and 3 types are listed in the land use table: ≤6 residents;	No "Group Home" is defined, with a reference to Texas Health and Safety Code Section 591.003 but is not	Yes "Group Home" for ≤ 6 residents; is allowed in all residential zone	Yes "Community home" (≤6 residents) is permitted per Texas Human Resources Code Section 123, in all	No regulations It is unclear how State statutes governing various assisted living and group living facilities are	Yes There are no restrictions on location or number of MH in a subdivision.	15 Several state laws govern various types of group care facilities and their location (see narrative). None of

INDICATOR	AUSTIN ¹	GEORGETOWN ³	PFLUGERVILLE	ROUND ROCK ²	TAYLOR ³	TRAVIS COUNTY	WILLIAMSON COUNTY	TABLE NOTES/ COMMENTS
<i>there may be disparate treatment.</i>	3 supervisory personnel; "Group Home" Class I Limited: 6 or fewer residents and 2 supervisory personnel. "Family Home": 6 or fewer residents plus 2 supervisory personnel. Group Homes are allowed in all but 5 zone districts, with Class I General a conditional use in all SF zone districts. Family Homes are allowed in all but 7 zone districts.	7 – 15 residents; and ≥ 6 residents. The 3 different types are allowed in a variety of zone districts, with the smallest group home type allowed in all SF, the TF and the TH zone districts. "Assisted Living", defined to generally be for persons 55+, is allowed only in multifamily, commercial, and mixed-use zone districts.	listed as a use in the permitted use tables. "Assisted Living" is the only type of group living included in the permitted use tables and is permitted in the 2 multifamily zone districts, 2 of the non-residential districts, and all 3 of the corridor districts.	districts except MF-3. "Group Living" (no occupancy standards) is allowed only in PF-3, MU-1a, and SR. The C-1, C-2, AG, MU-2, and MU-L zone districts allow residential but do not allow either Group Home or Group Living. A "Senior Housing" (SR) zone district restricts 80% of residential to housing for persons aged 55 or older. (See narrative)	residential zone districts (except R-A) and in the DN zone district. A special use permit is required in the I (Institutional) zone district. There is no use category for facilities with more than 6 residents. An "Assisted Living Facility" (10 or more elderly persons) is permitted or allowed by a special use permit in 12 of the 18 zone districts.	followed and whether the requirements of State regulations are monitored and enforced.	Specific reference to subdivision requirements for MH clarify that MH is allowed. Ownership MH must comply with subdivision regulations. Rental MH must prepare an infrastructure plan for County Engineer approval. Infrastructure requirements are not specified for rental MH development. MH can be located anywhere in the county but OSSF regulations may make it difficult to create MH communities outside an ETJ because water and sewer services are less available outside ETJs.	the local codes reviewed include all of the facilities regulated by state law. It is unclear how local land development codes treat these facilities because local codes may use different terms for the use, have different definitions for the same use, or not include the use.

INDICATOR	AUSTIN ¹	GEORGETOWN ³	PLUGERVILLE	ROUND ROCK ²	TAYLOR ³	TRAVIS COUNTY	WILLIAMSON COUNTY	TABLE NOTES/ COMMENTS
<p>13. Definition of Family/Limit on Unrelated Persons</p> <p><i>Is there a definition of family and does it allow unrelated individuals, including persons with disabilities to share the same residence?</i></p>	No/Yes No definition of "family." Dwelling unit occupancy limits range from 3 to 6 unrelated adults based on housing type, zone district, and date use established or building permit issued. Ten (10) unrelated adults are allowed if the majority is 60 or older, self-sufficient, and live as a single, non-profit house-keeping unit.	No/Yes No definition of "family." "Household" limits unrelated persons to 4 or fewer.	Yes/Yes "Family" cannot exceed 4 unrelated persons occupying a dwelling unit and living as a single housekeeping unit.	No/No No definition of "family." Term "household" used but is not defined. No occupancy limits found except as noted for "Group Home" use. (see Item #12.)	Yes/Yes "Family" cannot exceed 4 unrelated persons occupying a dwelling unit.	No/No No regulations	No regulations It is unclear how State statutes governing various assisted living and group living facilities are followed and whether the requirements of State regulations are monitored and enforced.	16
<p>14. Occupancy Limits or Requirements</p> <p><i>Are there occupancy limits on the number of persons residing in a dwelling unit? (Indicates exclusion of group or congregate living</i></p>	No No dwelling unit occupancy limits found in zoning code.	No No dwelling unit occupancy limits found in zoning code.	No No dwelling unit occupancy limits found in zoning code.	No No dwelling unit occupancy limits found in zoning code.	No No dwelling unit occupancy limits found in zoning code.	No regulations In the absence of a zoning code occupancy limits would defer to any adopted building	No/No	17 See also Item #13, Definition of Family, and Table Note 16. Note: FHAA does not set an

INDICATOR	AUSTIN ¹	GEORGETOWN ³	PFLUGERVILLE	ROUND ROCK ²	TAYLOR ³	TRAVIS COUNTY	WILLIAMSON COUNTY	TABLE NOTES/ COMMENTS
<p><i>facilities for persons protected under FHAA)</i></p>	<p>General" and "Group Home Limited" set occupancy limits that parallel state law. See Item #12. These limits do not conflict with FHAA.</p>	<p>for Group Homes (see Item #12). These limits do not conflict with FHAA.</p>	<p>occupancy limits that parallel state law. Assisted Living definition references state law governing this use but appears to only reference the "personal care services" section and not the use and occupancy section.</p>	<p>occupancy limits that parallel state law.</p>	<p>parallel state law. These limits do not conflict with FHAA.</p>	<p>and life/safety codes</p>		<p>occupancy standard, but a group home in a SF district must be reasonably accommodated.</p>
<p>15. Special review, public hearing, or notice? <i>Is public input required for exceptions to zoning and land-use rules?</i> <i>(Indicates different treatment of an FHAA protected class if the process is not the same for all applicants)</i></p>	<p>Yes</p> <p>A conditional use review is required for "Group Home, General" in all SF districts. This type of Group Home accommodates 7 - 15 residents plus supervisory personnel. Group Homes with 6 or fewer residents plus supervisory personnel are</p>	<p>Yes</p> <p>Special Use Permit required for Group Home (7 - 15 persons) in MUDT zone district and for Group Home (16 or more) in MF-1, MF-2 and PF zone districts. Assisted Living requires Special Use Permit in MF-1 and MUDT zone districts.</p>	<p>Unclear</p> <p>Although "Group Home" is defined, it is not a listed use in the permitted use tables, making it unclear where this use is permitted and what, if any, review process is required. Any other group living that is not in the permitted use tables would be</p>	<p>No</p> <p>"Group Home" and "Group Living" must comply with state licensing (except in SR zone). No special review required. (See Item #12.)</p>	<p>Yes</p> <p>No special review required for "Community Home" (see Item #12). "Assisted Living Facility" (10 or more elderly persons) is allowed in a wide array of zone district but requires a special use permit in all single-family (except R-A), duplex, and</p>	<p>No regulations</p> <p>Since there is no zoning, there are no special review procedures for different types of land uses. Other applicable regulations do not specifically identify buildings or facilities for groups protected by FHAA for special reviews.</p>	<p>No regulations</p> <p>In the absence of a zoning code occupancy limits would defer to any adopted building and life/safety codes</p>	<p>18</p> <p>Any group living not included in a local codes' permitted use tables would be subject to a determination on how the use fits with listed uses and may be subject to a special review or text amendment requiring a public hearing process. FHAA does not set an occupancy</p>

INDICATOR	AUSTIN ¹	GEORGETOWN ³	PLUGERVILLE	ROUND ROCK ²	TAYLOR ³	TRAVIS COUNTY	WILLIAMSON COUNTY	TABLE NOTES/ COMMENTS
<p>16. References to Fair Housing Act and Americans with Disabilities Act</p> <p><i>Do local codes include language that indicates they are instituting regulations that adhere to the provisions of these acts?</i></p> <p><i>(Indicates that federal and state provisions are being followed)</i></p>	<p>ADA – Yes FHAA - Yes</p> <p>permitted in all SF districts.</p>	<p>ADA – Yes FHAA - No</p> <p>Sidewalks must meet ADA requirements and be clear of obstructions and units in certain zone districts must be accessible to persons with disabilities.</p>	<p>ADA - No FHAA - No</p> <p>While ADA is not specifically referenced, compliance with Texas and ANSI accessibility standards for the design, location, but not number, of accessible parking spaces is required. No reference to FHAA.</p>	<p>ADA - No FHAA - No</p> <p>No references to ADA or FHAA found in land development codes.</p>	<p>ADA – Yes FHAA - No</p> <p>Sidewalks must comply with ADA and the number and design of parking spaces for persons with disabilities are required to comply with ADA and Texas Architectural Barriers Act. No reference to FHAA.</p>	<p>ADA - Yes FHAA - Yes</p> <p>Austin/Travis Joint Subdivision Regulations require sidewalks meeting state and federal accessibility standards to be installed in subdivisions. Travis County Land Development Code Chapter 482 requires design of any public accommodations meet ADA requirements.</p>	<p>POLICIES AND PROCEDURES</p> <p>No regulations</p>	<p>19</p> <p>A best practice for land development codes is to include as a purpose to provide housing choice for residents and to comply with applicable federal and state law regarding housing choice and accessibility.</p>

INDICATOR	AUSTIN ¹	GEORGETOWN ³	Pflugerville	ROUND ROCK ²	TAYLOR ³	TRAVIS COUNTY	WILLIAMSON COUNTY	TABLE NOTES/ COMMENTS
<p>17. Able to modify or vary zoning and building standards for reasonable accommodation in residences</p>	<p>recreational facilities. Accessible parking spaces are required per "UBC" 25-6-474 Compliance with FHAA is required by Title 5, Civil Rights. This section prohibits housing discrimination in accordance with FHAA and establishes a process to review complaints of discriminatory practices including any that may involve state or local zoning or other land use regulations.</p>			<p>No reference to FHAA.</p>		<p>to comply with Titles VIII (fair housing) and VI (anti-discrimination) of the Civil Rights Act and sets affordable and fair housing requirements for the establishment of PIDs.</p>	<p>Since there is no zoning, there are no special review procedures for different types of land uses. Other applicable regulations do not</p>	

INDICATOR	AUSTIN ¹	GEORGETOWN ³	PFLUGERVILLE	ROUND ROCK ²	TAYLOR ³	TRAVIS COUNTY	WILLIAMSON COUNTY	TABLE NOTES/ COMMENTS
<p><i>Do regulations allow persons with disabilities to make modifications to residences for reasonable accommodation? (Indicates flexibility to make housing accessible to disabled persons)</i></p>	<p>Austin Code of Ordinances Title 2, Administration, Chapter 2-14, Reasonable Accommodation, implements a process to allow modifications to requirements of the city code based on reasonable accommodation under FHAA. Such decisions are made by the director of the department responsible for implementing the requirement and are not subject to a public hearing process.</p>	<p>The zoning code provides a process for requesting a variance, however the criteria for granting a variance do not align with a modification solely for reasonable accommodation. The adopted IBC allows appeal of decisions of the building official and decisions can be made based on "alternate equivalency" to meeting the IBC requirement.</p>	<p>The zoning code provides a process for requesting a variance, however the criteria for granting a variance do not align with a modification solely for reasonable accommodation. Any variance that is requested for a reasonable accommodation that affects the exterior of the structure may require review by Board of Appeals and the Planning Commission, adding public review and potential conflicts between the two review procedures and approvals.</p>	<p>The zoning code provides a process for requesting a variance, however the criteria for granting a variance do not align with a modification solely for reasonable accommodation. The adopted IBC allows appeal of decisions of the building official and decisions can be made based on "alternate equivalency" to meeting the IBC requirement.</p>	<p>The zoning code variance process includes language that allows a variance based on a "demonstrable and unusual hardship or difficulty." There is no language that ties the unusual hardship to the physical features of the land. This appears to allow consideration of variances for reasonable accommodation. However, Texas state law may only authorize variances to be based on the physical features of the site.</p>	<p>Travis County Home Repair and Rehabilitation Services program (Chapter 79) provides assistance to low-income households for modifications to make a residence accessible. Types of modifications covered by the program are specified, and includes both internal and external modifications, such as wheelchair ramps or lowering sinks. However, there is no clear process for a reasonable accommodation request. Such a</p>	<p>specifically identify buildings or facilities for groups protected by FHAA for special reviews.</p> <p>ADA - No FHAA - No</p>	<p>A best practice is to establish procedures to process a reasonable accommodation request. Such procedures should be included in the local land development code.</p>

INDICATOR	AUSTIN ¹	GEORGETOWN ³	PFLUGERVILLE	ROUND ROCK ²	TAYLOR ³	TRAVIS COUNTY	WILLIAMSON COUNTY	TABLE NOTES/ COMMENTS
						request would be processed under the procedures and criteria as for any modification to the IFC adopted by Travis County.	No references to ADA or FHAA found in land development codes.	
							Unclear	
							There is no clear process for a reasonable accommodation request (see item #2). Such a request would be processed under the procedures and criteria as for any modification to the various versions of the IFCs adopted by the ESDs.	

Themes and Potential Issues

The review of local codes, summarized in the matrix in prior pages, revealed several areas that could directly or indirectly limit housing choice:

- State regulations that prohibit or limit certain land use powers of local government;
- Vagueness in how group homes are treated in local codes;
- Mismatched density relative to housing types in a zone district that would be needed to facilitate affordable housing to meet housing needs; and
- Absence of references to state and federal laws in local codes.

These are discussed in detail below with, where identifiable, the potential impact on protected classes.

State Barriers to Land Use Regulation and Inclusive Zoning

There are a variety of state laws that affect what a local jurisdiction can and cannot with its land use regulatory powers. Texas state laws that may regulate land use authority are found throughout the state statutes. Some are specific to the type of jurisdiction (e.g., only regulate county authority), while others are use-specific (e.g., authorization for and regulations of “community home”). The following state regulations either directly impact the scope of what a local jurisdiction can do, or may create confusion in how a particular use is to be treated at the local level.

No Zoning in Counties

The State of Texas grants authority to municipalities to create zone districts and regulate land development in those zone districts. This includes setbacks, lot coverage, building height, and density. However zoning powers are not granted to counties, with a few exceptions for specific listed areas of counties in specific areas of the state. The majority of Texas counties have limited power to guide development and, in the absence of zoning, private deed restrictions and covenants usually govern land use and development.

Counties are authorized to enforce private restrictions for a subdivision or development that are recorded in real property records. This authorization includes enforcement of private restrictions on uses, setbacks, lot size, type and number of buildings or other structures that may be built within a particular subdivision or development. Counties are specifically prohibited from enforcing restrictions relating to race or any other restriction that violates the state or federal constitution (Texas Property Code, Sec. 203.003(b)). However, in the absence of zoning with its over-arching application of zone districts with accompanying use and density standards, it is difficult to identify discrepancies in how the language of private deed restrictions and covenants may be interpreted and enforced by the county. Furthermore, zoning allows for the equal application of rules and standards in

all areas with the same zone district designation, regardless of location, and a more intentional way of planning that facilitates access to jobs and needed services.

The lack of zoning in counties also may lead to unequal housing choices for individuals and groups protected under FHAA. Zoning is an important land use tool that indicates where and how a community provides for a range of zone districts for various housing types at different densities. Without zoning, a county has limited tools to respond to the fair housing and accessibility needs of its residents.

The extra-territorial jurisdiction authority of cities, authorized by Texas Local Government Code, Sec. 212.003, allows a municipality to extend some land use authority outside its corporate boundaries and within the extraterritorial jurisdiction of the municipality. This includes subdivision and platting regulations but does not allow cities to impose zoning on areas within their extraterritorial jurisdiction that are not in their corporate limits. However, counties can enter into intergovernmental agreements with municipalities to clarify procedures for land development in an extraterritorial (ETJ) and identify priorities for service extension. Travis County and the city of Austin have joint subdivision regulations.

The state has authorized certain specific counties or unique areas to implement zoning. These areas are specified in Texas Local Government Code, Chapter 231. None of the jurisdictions in the study review area are subject to the provisions of this Chapter.

Inclusionary Zoning Limitations and Related Housing Incentives

Inclusionary zoning is a tool for local governments to encourage the production of affordable housing units in conjunction with new development. Development incentives and/or density bonuses are established in the zoning code and are available to a developer in exchange for the developer providing affordable units. Incentives can include smaller lot sizes for single-family detached dwellings, parking reductions, fee waivers, or impact fee discounts. Density bonuses generally allow a greater number of dwelling units or floor area ratio. Usually the developer is required to build affordable units as part of the proposed development, at another location, or pay into a fund that is earmarked for affordable housing (payment-in-lieu). Inclusionary programs can be mandatory or voluntary. The most common inclusionary tool is to allow a density bonus (more units or more floor area than allowed in the zone district without the affordable component) in exchange for a certain number of affordable housing units, and the municipality also sets its own definition of "affordable." A municipality can set its own ratios for how much to increase density in exchange for a certain number of affordable units. These ratios are unique to each community since development costs, market demand for affordable housing units, and affordability levels (income to housing cost) are different in each community.

State statutes limit the inclusionary zoning authority of Texas municipalities. Texas Local Government Code Section 214.905 prohibits a municipality from adopting any regulations that would set a maximum sale price (except in limited circumstances) for ownership units. In addition, rent control is not available as a general tool for Texas cities or counties to

promote housing affordability. Local Government Code Section 214.902 prohibits municipalities from establishing rent control except in the event of a disaster and then only with approval of the governor.

However, Texas Local Government Code Section 214.905 authorizes municipalities to “create incentives, contract commitments, density bonuses, or other voluntary programs designed to increase the supply of moderate or lower-cost housing units.” Mandatory requirements for affordable housing are not allowed under the state statute, but voluntary programs that allow a developer to choose whether or not to take advantage of the offered incentives in exchange for affordable housing units are allowed.

Of the municipalities in this assessment, only the Austin and Georgetown zoning codes incorporate voluntary inclusionary housing incentives for affordable housing.

Austin incentives. Austin has a variety of incentive programs, some of which are tailored to specific neighborhoods of the city, such as the university area and others that encourage certain types of housing, such as “micro-units.” However, the number of incentives, differing terms of affordability, variety of conditions, and layering of review-types may be confusing to both the community and the developer. Some examples of the incentives offered for the inclusion of affordable units include:

- Citywide S.M.A.R.T. housing program offers fee waivers for development meeting location, accessibility, energy, and mixed-income standards. The level of fee waiver is pegged to the percentage of affordable units available to households with incomes between 80 and 120 percent of median family income (MFI) depending on the location of the development.
- Density bonuses in select locations of the city created by neighborhood-specific regulating plans. For example, Rainey Street and North Burnet-Gateway both have regulating plans with affordable housing incentives that are codified in the zoning code. As mentioned above, parts of the University Neighborhood have a density bonus incentive for affordable housing specific to that neighborhood.
- Density bonuses along transit corridors and in transit-oriented development.
- Relaxed development standards in two single-family residential zone districts for developments complying with the S.M.A.R.T. housing standards.
- Relaxed development specific to “vertical-mixed use” buildings along certain corridors with the inclusion of affordable housing in the building.

Figure VI-2 shows the incentives offered by housing type, location, and building type.

Figure VI-2. Austin Affordability Levels and Terms by AH Incentive

Key: Shaded Cell = No Requirement BD = Bedroom CPR = Community Preservation and Revitalization Area DU = Dwelling Unit MF = Multi-Family GR = Group Residential

AFFORDABLE HOUSING TERMS	Location Specific				Overlay Zoning			Building Type		City-wide	Base Districts			
	Downtown	Rainey Street	East Riverside Corridor	Festival Beach ⁱ	North Burnet/Gateway	Transit Oriented Development	University Neighborhood Overlay ⁱⁱ	University Neighborhood Housing Fund ⁱⁱⁱ	Planned Unit Development			Vertical Mixed-Use	Multifamily ^{iv}	S.M.A.R.T. Housing
AH Requirement														
AH Dwelling Units Required Percent of total DUs				Total DUs: 450		25 ^{vii}	20 (DUs or BRs)	30 (DUs or BRs)	10 ^{viii}	10	10	10	10	10
AH Floor Area Required Percent of bonus floor area	50	5 ^k	50		10 ^k				5					
Owner Occupied														
Affordability Level Percent of Area Median Income	120	80	80		80	In CPR: 60 Out of CPR: 60 - 80			80	5 @ 80 and 5 @ 100	80	80	80	5 @ 80 and 5 @ 100
Affordability Term Years	99	99	99		99				Perpetuity	99	99	1	1	99
Rental														
Affordability Level Percent of Area Median Income	80	80	60	310 DUs @ 60 40 DUs @ 30	60	30 - 50	10 @ 60 and 10 @ 50	50	60	80	40	60	60	60
Affordability Term Years	40	40	40		40		40	40	40	40	40	5	5	40
Housing Choice Voucher Required to Take	Yes	Yes		100 AH @ 30 or 50 ^{xi}					Yes					
Other Requirements														
Dwelling Unit Size/Type Square feet (\$f) or number of bedrooms	xii	AH bdrn mix equal to overall bdrn mix									Micro Unit (≤ 500 sf) and 3 bdr DUs			
Fee In-Lieu ^{xiii} (\$/bonus floor area)	3 - 10		0.50 ^{xiv}		6 ^{xv}		1/net rentable MF or GR		6 ^{xvi}					
Optional Land In-Lieu Percent of habitable floor area									20					

- ⁱ AH applies only to a site < 15 acres with congregate care and retail uses.
- ⁱⁱ Requirements listed are for multifamily or group residential use established after 2/24/2014.
- ⁱⁱⁱ Requirement if city funds allocated to the project in the University Neighborhood Overlay.
- ^{iv} Applies to any multi-family use located in a TOD or on a Core Transit Corridor or Future Core Transit Corridor. At least one unit must be AH.
- ^v Must comply with S.M.A.R.T. Housing Program.
- ^{vi} Applies to property that has not been developed or is developed as agriculture. Must comply with S.M.A.R.T. Housing Program.
- ^{vii} Stated as a goal, not a requirement, for a housing feasibility analysis required for a TOD station area plan; specific affordable housing requirements set by individual station area plans.
- ^{viii} If ownership housing is in the PUD the ownership AH requirement must be met. If rental housing is in the PUD the rental AH requirement must be met.
- ^{ix} Percent of square footage of dwelling units developed within the 8-1 floor area ratio.
- ^x Applies to residential and residential mixed-use projects.
- ^{xi} For households at 30% MFI and receiving rent subsidy or at 50% MFI with or without rent subsidy
- ^{xii} Additional floor area bonus for "family-friendly" units.
- ^{xiii} Amount as shown in Land Development Code (Municode version 8/9/2018) and may not reflect periodic fee adjustments as authorized by the code.
- ^{xiv} Optional for residential project; required for non-residential with building height over 90 feet.
- ^{xv} Residential pays 100%/commercial pays 50% of total fee in-lieu.
- ^{xvi} Required to be paid by projects with no residential units

Clearly, Austin is providing many options for developers to choose to include affordable housing in developments. The incentives address a range of affordability levels, with most in the 60 to 80 percent MFI range. Ideally, the incentives could produce lower MFIs, perhaps with additional public sector support, to better address the needs of very low income individuals who would need to stretch financially to afford these rents, namely, persons with disabilities living on public assistance. Furthermore, it is important that a mix of dwelling unit types are made available through zoning incentive practices. For inclusionary programs to be effective, the units produced need to equally benefit different FHAA protected classes and developments that favor studio and 1-bedroom apartments do not supply housing for and benefit families.

The degree to which these requirements work in concert to close the affordability gap—and accommodate a wide variety of protected classes with housing needs—should be monitored. Similarly, studies that are completed to evaluate the feasibility of future density bonuses should examine a variety of unit sizes and on-site amenities that are important to accommodate the needs of families, persons with disabilities, residents of national origins living in extended family environments, and very low income residents (less than 50 percent of MFI).

Georgetown incentives. Georgetown encourages diversity in housing by allowing alternate lot sizing and dimensional standards when a developer includes at least three different housing types, from a specified list of house-typologies, in developments in certain zone districts. However, there is no requirement for affordable units in the housing diversity regulations since the goal is to encourage different housing types, with different price points, as a way of increasing and dispersing the amount of affordably priced houses in the city. In sum, this incentive may not be producing units that are linked to need due to the lack of affordability requirements.

Georgetown also has a voluntary workforce housing incentive applicable in certain zone districts. This allows relaxed development standards, including smaller lot sizes, in the RS (single-family residential), TF (two-family residential), and TH (townhome) zone districts when 20 percent of the housing units are deed restricted for 10 years at 80 percent of the area median family income. Multifamily developments in the two MF zone districts can also take advantage of relaxed development standards and can only achieve the maximum number of dwelling units per building when five percent of the dwelling units are provided as workforce housing (per the same affordability restrictions).

Round Rock's recent update to the zoning code did not add any inclusionary housing provisions. However, it did include a new single-family zone district that allows mixed lot sizes within a development. This zone—Single-Family Mixed Lot (SF-3)—requires a development to have a certain percentage of lots in specific size ranges, from 5,000 sq. ft. to 10,000 sq. ft. This brings some diversity in single-family detached housing product within new development. This incentive should be monitored for its ability to produce affordably priced units.

Pflugerville's zoning code does not contain any inclusionary housing incentives. Production of affordable housing units could be augmented with incentives that target missing middle housing, usually aimed to households at 80 to 120 percent of MFI. Densities in the mid-range of between 8 to 12 dwelling units per acre often can produce housing affordable to these income levels. Relaxing minimum lot size requirements from 5,000 sq. ft. to 4,000 sq. ft. could encourage both new development with an affordable component and in-fill housing that would provide affordable housing opportunities dispersed throughout the community.

Voluntary inclusionary zoning incentives are not available in Williamson and Travis counties since counties in Texas are not authorized to implement zoning. However, the counties have taken steps to pursue fair housing and affordable housing options.

Travis County adopted a series of related policies and programs that target fair housing practices and affordable housing:

- The legislation for the establishment of a Public Improvement District (PID) states Travis County's commitment to affirmatively furthering fair housing per the Fair Housing Act in the creation of PIDs.
- The PID policy includes an affordable and fair housing policy section that establishes the county's commitment to mechanisms to create affordable housing, diversity in housing types, and mixed-income neighborhoods dispersed throughout the county.
- The PID policy supports the creation of PIDs that increase affordable housing for households with incomes 80 percent or below the MFI.
- Affordable and Fair Housing Policies and Procedures that set forth 11 value statements that support affordable and fair housing and includes a process for the review of properties seeking low income housing tax credits or Travis County/Travis County Corporations' investment.

These policies create a foundation that both supports and directs the inclusion of affordable housing in the unincorporated areas of the county, and in the case of the Travis County Corporations, across all of Travis County including incorporated areas. They also establish clear review procedures for affordable housing financed with tax credits that reduces risk and delay (and therefore costs) for developers.

Williamson County also created the position of Fire Marshal in early 2018 to better coordinate fire and emergency services in the county. This resulted in the adoption of the International Fire Code, 2015 edition, for the unincorporated area of the county, giving the county its first countywide fire code. This is the only building-related code adopted by the county. Since the code is nationally recognized, its use will help ensure that building

standards related to accessibility and group living situations will be uniformly applied in the unincorporated areas of the county.

In addition to the measures described above, counties can consider other developer incentives, such as reduced fees or streamlined permit review, to reduce development costs and increase housing affordability.

Inconsistencies in Treatment of Group Homes

The term “group home” broadly refers to a congregate housing arrangement for a group of unrelated people. Residents of group homes typically share a characteristic or situation, often a disability, that makes community-based living a preferred alternative. Group homes take many forms—some offer temporary housing and others are permanent; some offer on-site medical services and 24 hour staff, others offer minimal or no on-site services.

What these homes do have in common is their protections under the FHAA. Since group homes most often serve a specific protected class, barriers to siting or development have more of a direct impact than developments that serve lower income households in general.

The most common regulations that create barriers to group homes—and, as such, could be found to violate the FHAA—involve definitions and size, occupancy, special review, and siting. These are reviewed in turn below.

Regulation of Specific Group Home Types, Group Living and Housing by Texas Statutes

Texas state statutes regulate specific types of housing that are relevant to FHAA. This includes:

- Manufactured Homes - Texas Occupations Code Chapter 1201
- Assisted Living Facilities - Texas Health and Safety Code Chapter 247
- Boarding Home - Texas Health and Safety Code Chapter 260
- Convalescent and Nursing Homes - Texas Health and Safety Code Chapter 242
- Group Homes – Texas Health and Safety Code Chapter 591
- Homeless Shelters – Texas Local Government Code Section 244 (applicable only to cities with a population over 1.6 million)
- Community Homes – Texas Human Resources Code Chapter 123

None of the codes reviewed referenced all of these regulated facilities, all of which may serve one or more of the FHAA protected classes of people.

It is important to be aware of these state-regulated facilities and ensure they are allowed in local codes, whether by name or by inclusion in a broader land use category. For example, the state regulations for Community Homes state that the use and operation of a community home that meets the qualifications of Chapter 123 is a use by right and is authorized in any district zoned as residential. Only the Taylor zoning code actually includes the term “community home”. This zoning code follows state statute and allows a “community home” for six or fewer persons as a use by right in all residential zone districts.

Confusion can arise at the local level if a facility is not listed as an allowed use or included in the definition of an allowed use. Similar facilities may be labeled as different uses, and be subject to different development requirements and review procedures.

While local jurisdictions may be deferring to state statutes in lieu of identifying these uses in their own regulations, by not including them leaves their status unclear and subject to interpretation. Sometimes these facilities are regulated or referenced in other sections of the local code of ordinances but are not listed in the zoning code. Although this was not found in the codes reviewed, this assessment only covered a review of the land development codes.

Aligning terminology and including all regulated uses in the zoning code streamlines review and approval processes and ensures consistent processing for similar facilities. Local zoning codes should minimize confusion with state statutes by specifically referencing all applicable state statutes, using the same or substantially similar terms for group and congregate living facilities, including definitions of these facilities, listing these facilities as uses, and identifying the zone districts where they are allowed.

Local regulations for manufactured and mobile homes are better aligned with state statutes, likely due to Section 1201.004 stating that the definitions used in Chapter 1201, Manufactured Housing, are binding on all political subdivisions of the state, including home rule municipalities. Local zoning, building and subdivision ordinances should be reviewed to ensure they are congruent with the provisions and definitions of Chapter 1201.

Challenges with Treatment of Group Homes. The local codes reviewed are inconsistent in the treatment of group homes and could be improved. For example, Pflugerville defines “group home” and references the state statute governing such facilities, but only lists “assisted living facility” as a use in the permitted uses tables in the zoning code. Pflugerville is also silent as to where and how “group homes” are allowed.

Austin allows both “group homes” and “family homes” of six or fewer residents, and appears to distinguish between the two by type of disability and FHAA protected class. The definition of “group home” specifically references the Americans with Disabilities Act (ADA) and lists some protected classes, while “family home” lists a range of illnesses and disorders. There are only three zone districts where group homes are permitted, and family homes are not. This distinction may make sense from a land use perspective, but it

may not from a fair housing perspective. Austin also includes both “family home” and “group home” in the “civic use” category of the permitted uses table rather than in “residential use.” This may conflict with FHAA if non-residential site development standards are required for these uses in zone districts that establish land use by the broader land use categories of the permitted use table (specifically in the TNC zone district where land use categories, not uses, are allocated as a not to exceed percentage of the total land).

It should be noted that “group homes” are regulated by Texas Health and Safety Code Chapter 591, and are defined as “a residential arrangement, other than a residential care facility, operated by the department or a community center in which not more than 15 persons with mental retardation voluntarily live and under appropriate supervision may share responsibilities for operation of the living unit.” Chapter 591 establishes a licensing system for group homes but does not regulate how local jurisdictions treat group homes in terms of zoning or land use decisions. Note also that “group home” under this state statute is specific to “persons with mental retardation” and does not include all other protected classes under FHAA. Since the State narrowly defines “group home” for only one protected class, local zoning codes using the term “group home” must define it and the definition should clearly include all FHAA-protected classes. Referencing the state statute does not provide cover for fair housing violations.

The **Taylor** zoning code uses a different term, “community home” and does not use “group home.” “Community home” has a definition that broadly encompasses a range of facilities that may serve FHAA-protected persons. The only use standard for “community home” is to be licensed by the State of Texas. Although the licensing provision may prohibit some forms of group living for FHAA-protected classes (since it is likely that all such facilities do not have State licensing requirements), the intent here seems to be consistent with state law.

Local zoning codes should clearly include group homes as a use and generally should allow group homes in a broad range of zone districts, including at least one (and preferably all) residential zone districts. Group homes can be allowed by right provided that they comply with the zone district’s standards regulating scale, character, and parking. Ignoring group homes in local codes could result in a request for “reasonable accommodation” under FHAA. Failure to provide “reasonable accommodation” could be a violation of federal law. (See also Lack of Clear Procedures for Reasonable Accommodation, below.)

A best practice is to specifically include a definition of “disabled” or potential residents of group homes that captures the most recent case law:

“Residents may include the homeless, those with social, behavioral or disciplinary problems, the elderly, those in hospice care, those avoiding domestic abuse, and/or disabled (which includes the frail, physically disabled, mentally ill, mentally retarded, persons with HIV/AIDS, and recovering from alcohol or drug addiction), but shall not include (1) current alcohol or drug addicts that are not in a treatment program for

recovery, (2) a facility for adults in or diverted from the correctional system, (3) fraternities or sororities, or (4) health care facilities.”

Both counties in the study area could adopt an ordinance or resolution stating that group homes are allowed in residential areas. This clarifies that group home facilities for FHAA-protected persons are treated as residential uses for both developers and for county staff.

Procedural Barriers to Group Homes or Reasonable Accommodation

Zoning codes sometimes require a special review or conditional use review for group homes serving FHAA protected persons. When these reviews require public hearing process decisions may be made based not on the merits of the application and how it meets the criteria of the zoning code, but instead on factors that are outside the established review criteria. This can result in disparate treatment for protected persons under FHAA.

The codes reviewed for this assessment in general do not require special reviews for small group homes (usually categorized as having six or fewer persons). However, larger group homes of between 7 and 15 persons usually do require a review process. This distinction in size is fairly common and does not in itself constitute disparate treatment. A best practice is for larger homes to truly be on the “larger” size (10 or more individuals) to avoid a practice where a group home functions as a larger single family home that accommodates a large family and is not subject to review.

Since there is no zoning in Williamson and Travis counties, there are no regulations pertaining to group homes.

In **all the municipalities except Austin**, a reasonable accommodation request for an exception to or modification of a development standard in the land development code would defer to the variance procedure. The criteria for granting a variance request are based on a hardship related to the land or site that is pre-existing, not caused by the applicant, and is unique to the property. However, a reasonable accommodation request usually is based on the unique circumstances of the individual and the need for modifications in order to allow the individuals with disabilities to reasonably use a dwelling unit. Such accommodation requests are often made to accommodate wheelchair ramps but may also involve changes in certain design standards in order to provide the reasonable accommodation. Criteria for approval based on the unique circumstances of a building or site, as used for most variance hearings, usually are not adequate to address reasonable accommodation requests.

Even if a reasonable accommodation request is taken through the variance process another complication with using the variance process of the zoning code is that a public hearing is required before an appointed board. Although all variances are processed in the same manner, the unique nature of a reasonable accommodation request could raise

concerns about unequal treatment. Whenever a public hearing is required there is potential for discriminatory treatment resulting from public input that may include speculation about the disabilities and the impact on neighborhoods and safety. As well, it is unlikely, based on the criteria generally used to decide variance cases, that the reviewing board will be able to approve the request.

In addition, layers of regulations and standards that require a separate review process based on a request for reasonable accommodation. In the jurisdictions with historic preservation regulations, **Austin, Georgetown, and Round Rock**, exterior alterations to a landmark or other protected structure must be reviewed for compliance with specific design standards intended to preserve and protect the exterior features of the structure. There is no provision clarifying how this review is coordinated with a request for a variance to a setback for a wheelchair ramp which is often considered an exterior alteration that must be designed to comply with historic design standards.

Some minor modifications to historic building that do not impact the overall character or design features of the building can be reviewed and approved administratively. Some codes have general guidelines while others are more explicit about what type of modification qualifies for administrative review (and no public hearing). Both Round Rock's and Georgetown's historic review standards for administrative approval specifically list wheelchair ramps as an alteration eligible for administrative only review. In the case of Georgetown an initial installation may require review by the approving authority and a public hearing. Austin's code allows administrative review of features that do not "visually affect the historic character of the structure or site from an adjacent public street", however it is unclear if a wheelchair ramp would qualify for administrative review.

Unique to Austin's code is a specific process for the review of reasonable accommodation requests (see Chapter 2-14 Austin Code of Ordinances). While it is unclear how this process may be coordinated with design review requirements of the historic preservation code and other district-specific design standards, this process eliminates the variance process for a reasonable accommodation request. This process clarifies how a reasonable accommodation is considered and removes such requests from consideration under procedures and criteria that do not fit the circumstances of the request.

If the reasonable accommodation request does not qualify for administrative review, a public hearing before an appointed board is required. This subjects the applicant who is requesting reasonable accommodation to two public hearings, open to the same potential for speculative public input described above. Each process, a variance and the historic review, on its own may not be overly lengthy or complex it may be both discouraging and costly to negotiate both processes. As well, designing an exterior feature to meet historic design standards and, in some cases, neighborhood-specific design standards could be disproportionately costly to an applicant requesting a modification for reasonable accommodation.

In Williamson and Travis counties, review and approval of a reasonable accommodation devolves to the adopted building and life/safety codes (in the form of the fire code). However, it is unclear how review among these codes and any other codes that may affect development, such as the subdivision regulations, are coordinated for a reasonable accommodation request. The new fire marshal position in Williamson County is a positive step that may centralize these types of reviews. This will help establish a track record for consistency in decision-making for reasonable accommodation requests.

Interestingly, Travis County has a program that provides assistance to low-income households targeting accessibility. The program covers internal and external modifications, including wheelchair ramps. The program does not identify how such improvements are processed for permit approvals (either building or zoning) making unclear how to resolve a reasonable accommodation request should the modification be in conflict with any applicable standards. Adding provisions that explain the full approval process for modifications, including requests for reasonable accommodation, would better integrate this program with building and zoning review.

Conflicts between Occupancy, Definition of Family, and Group Homes

Occupancy limits in zoning codes can raise conflicts with FHAA. Such limitations can be in the form of restricting the number of persons that can reside in a dwelling unit type or in dwelling units in a specific zone districts. Conflicts can also occur when “family” is defined to restrict the number of unrelated persons that can reside together in a dwelling unit.

Pflugerville and Taylor both have a definition of “family” in their zoning codes. In both cases the definition restricts the number unrelated persons living in a dwelling unit to a maximum of four. This could be in conflict with the commonly accepted eight or fewer unrelated persons constituting a “household” or “family”. When crafting occupancy for group homes, many codes allow up to six residents plus two supervisory personnel.

Uniquely, Austin sets occupancy limits between three and six unrelated adults based on housing type, zone district, and the date the use was established—which could lead to disparate opportunities depending on the zone. Austin also has a different occupancy limit for unrelated adults where a majority of the adults are aged 60 or over. In this case as many as 10 older adults may live together as a “single, non-profit housekeeping unit,” allowing older adults wishing to live in semi-congregate settings to live together and support their needs.

Often family or household size is regulated in communities where there is concern about household size because of pressures in the housing market that may lead to overcrowding. Examples include university towns or seasonal resort communities. In these cases, the definition of family, household, or occupancy limitations should include “any group whose right to live together is protected under the Fair Housing Act.”

All of the codes reviewed have occupancy limits for group homes. Small facilities are for six or fewer persons and large facilities are for up to 15 persons, with differing provisions for supervisory staff. The occupancy limitations are intended, in part, to address concerns about size and compatibility with residential neighborhoods. That said, six persons is on the lower end of a reasonable number of persons per facility for smaller facilities; many communities use eight.

Past litigation regarding whether group homes are classified as a residential use or a commercial use is important to note. Generally, courts have required that group homes with the characteristics of single-family homes (size and number of people) must be treated as a residential use. This means group homes should be allowed by right or as special use permit in at least one residential zone district.

To avoid potential issues with FHAA local codes should allow as a use by right small group homes and other residential facilities (ideally, eight or fewer persons) serving an FHAA protected class in all residential zone districts. Larger group homes (8 – 15 persons) should be allowed in multifamily zone districts and considered in mixed-use zone districts and business or industrial districts where residential uses are allowed.

Density and Use Gaps in Zoning Regulations

Mix of Density. Density can be an issue if zoning favors only large lot, low-density development or if other standards and allowed building types do not allow the mid- or high-density ranges set in specific zone districts. In the first case, housing choice is limited to higher-priced lots with single-family homes and in the second case the range of housing cannot be achieved resulting in fewer and higher cost housing than intended. Both of these situations directly affect persons with lower incomes and may disproportionately affect persons with disabilities and minorities since they usually make up a greater percentage of lower-income households.

In general, **Austin** has a good mix of density choices for both single- family and multi-unit development. Density ranges seem to accommodate the “missing-middle” to large extent, but some housing types may be underrepresented. However, there is a gap in lot sizing that would prohibit small-lot townhouse residential from being developed. The minimum lot size for both attached in detached single-family development is 3,600 sq. ft. This is suitable for detached housing, but townhouse development is appropriate on smaller lots which would add a low to moderate affordability level in the single-family housing market. Tiny homes, a new trend in the housing market, also could be accommodated on much smaller lots, adding a new single-family detached option to the affordable housing segment of the market.

All other municipalities in the study area set 5,000 sq. ft. – 7,000 sq. ft. as the minimum lot size in the highest density single-family detached zone district. These are typical lot sizes for suburban development and semi-rural/suburban development. However, it is

important to allow flexibility in the zoning code so that these minimums can be adjusted for smaller lot developments. This can allow for small in-fill projects or add variety in a larger scale development.

Pflugerville has relatively low densities and building height requirements for multifamily development. The maximum density allowed for multifamily is 20 dwelling units per acre. The density ranges for multifamily accommodate in-fill development with small-scale multifamily product (e.g., 4 to 8-unit buildings). However, there are limited options for increases in density that can assist in the production of other types of affordable housing options.

The Downtown District Overlay (DD) waives the base zone district development standards for properties within the overlay. This may allow for infill opportunities that would not otherwise be viable under the base zone district requirements. But it is unclear whether the allowed densities in the base zone districts can be increased. The parking standards for this overlay district likely control density and this relationship needs further study to determine that relationship. Reducing parking standards in walkable neighborhoods with a variety of services available decrease development costs and can increase affordability. The only other means to relax development standards is through the Planned Unit Development District (PUD). This process allows City Council to approve “minor deviations from conventional zoning or subdivision regulations.” Without criteria establishing the standards for a PUD approval it is ambiguous as to this tool’s effectiveness in creating housing opportunities at higher densities.

Round Rock’s zone districts have a range of densities that accommodate a variety of housing types. However single-family detached dwelling units on lots smaller than 5,000 sq. ft. can only be achieved through a Planned Unit Development (PUD). Rezoning to PUD is linked to the general plan and must reflect the density shown in the general plan for the location. The City Council can require lower densities to achieve this but can also approve higher densities. It is good zoning practice to link zoning decisions with a community’s adopted general or comprehensive plan. For the PUD process to be effective in creating innovative land use solutions, as stated in the intent statement for the PUD district, the general plan needs to be regularly reviewed and updated to be congruent with current housing needs and community goals.

Georgetown sets 5,500 sq. ft. as the smallest lot size for single-family detached dwelling units. Yet this can be decreased through the Housing Diversity provisions. These require three different housing types to be included in the development plan.

The PUD process is available for development anywhere in the city and creating variety in housing types is one of six criteria used for approval. Still, because the PUD process often requires a lengthy review process with several public hearings, it adds cost to the development of any housing product.

Taylor's minimum lot size for single-family detached dwelling units is 7,000 sq. ft., which can be reduced to 6,000 sq. ft. through a Residential Planned Development Overlay. As noted above, extra layers of review add cost to development. This can be especially problematic for affordable housing development targeting low and moderate-income households. In these types of development, finance margins can be very tight, and any additional cost can impact the number of units built in a development as well as the price points for the dwelling units.

Taylor also has minimum dwelling unit sizes for single-family detached units of 1,400 to 2,000 sq. ft. Minimum size requirements also can increase housing development costs and it limits the ability of the community to respond to changes in housing trends.

Pflugerville also requires minimum dwelling unit sizes and, in multifamily zone districts, a specific mix of dwelling unit type (either by number of bedrooms in multifamily buildings or by attached/detached in single-family developments). In both cities these size requirements are not overly large, but any size requirement can increase development costs and create dwelling units that do not respond to the real housing need in the community. If only certain sized units are built, certain types of households (e.g., families or single-parent households) may become excluded from the community. If dwelling unit size is important in to the community it should be linked to a housing needs study demonstrating the housing gaps for different household sizes. This is relevant to the production of "family-friendly" dwelling units, which may be lacking in the rental market.

Use

The **Taylor** zoning code includes a type of residential use called "public housing." It is unclear how "public housing" is different from the other residential uses listed in the permitted uses table. These other residential uses are defined based on dwelling unit type and form (e.g., --family or multifamily). Public housing is defined based on funding source the income level of residents. However, public housing is built in all dwelling unit forms listed in the permitted uses tables.

By having a specific land use called out as "public housing" creates stigma for the housing product, even if it looks like any other housing product in a neighborhood. The "public housing" use is permitted in almost all the same zone districts as other forms of residential development, it is not permitted in any of the business zone districts where almost all other forms of residential development are permitted. The only residential use not permitted in business zone districts is manufactured home parks and subdivisions and industrialized homes. With the "public housing" use not permitted in business zone districts, where mixed-use usually occurs, it is unclear whether affordable housing would be allowed in the residential component. It should be noted that Taylor staff is aware of the conflict the "public housing" use category can cause and will be looking at this issue when updates to the zoning code are discussed.

The **Round Rock** zoning code includes a zoning district specific for senior housing. The SR, Senior Housing zone district allows apartments, townhomes, and group living but all are restricted to senior residents. Senior housing must house at least one person aged 55 or older in at least 80 percent of the dwelling units and have a “demonstrable” intent to house persons age 55 or over. The district is also used as a transitional buffer between lower intensity residential areas and commercial uses. Care needs to be taken with any zoning district that restricts occupancy to a single group: Should the senior housing development become 100 percent for persons 55 and over, there may be a claim of disparate treatment by not providing access to the development for families.

Pflugerville code lists both “multifamily” and “condominium” as uses. The definition of “multifamily” specifies this housing type as “for rent.” A zone district that allows “condominium” and not “multifamily” could be prohibiting rental housing product. This type of prohibition inhibits the dispersion of housing product, and therefore housing choice, throughout the community.

County Policies

Since both Williamson and Travis Counties are limited in their authority to regulate development, density is not addressed in local ordinances. Lot size, building height, and lot coverage, all determine density, but are not regulated in by either county. Density in the counties is regulated where on-site sewage is required. State regulations for on-site sewage require minimum lot sizes of one acre per dwelling unit development. Site size requirements for multi-unit development vary based on soils, topography, and other site-specific factors. This means that single-family development in the counties can only occur on large lots unless served by an approved sanitary sewer system. This does not mean that smaller lot development is prohibited but it does mean that smaller lot single-family development and multifamily development in the counties will more likely occur in a city’s ETJ where sanitary service is being extended or in other targeted areas in the counties where PIDs are allowed.

Travis County has policies in place to support PIDs that target lower income households and that provide affordable housing. Williamson County has the opportunity to identify key areas for infrastructure improvements and improvement districts to support affordable housing programs. This may be especially effective given its new intergovernmental agreement with the Texas Housing Foundation. Working with this organization Williamson County can set priorities to align county resources with affordable housing efforts.

Absence of References to Federal and State Laws

Only Travis County and Austin have explicit policy statements and technical standards that specifically reference federal and state laws governing fair housing and accessibility. The policy statements establish each jurisdiction’s commitment to pursuing fair housing, accessibility, and affordable housing.

None of the other jurisdictions zoning codes recognize the Fair Housing Amendments Act (FHAA) or have a statement indicating a commitment to the provision of fair housing. This does not mean the jurisdiction lacks a housing policy or plan. Rather it means that any such policies may not be integrated into the zoning code or other adopted development regulations. Incorporating fair housing goals and policies into the zoning code creates the framework for land use decision-making that is congruent with FHAA.

References to the American with Disabilities Act (ADA) or the accessibility provisions of FHAA are found in sections of most of the land development codes reviewed. However, none of the codes reference all of the applicable standards for a given requirement. For instance, Georgetown requires compliance with ADA in the construction of sidewalks but does not reference ADA standards for parking. Pflugerville does not reference ADA at all but does require compliance with State and ANSI accessible parking standards, but not the number of accessible spaces required. Round Rock also does not reference ADA, nor is there a requirement to provide accessible parking spaces. Rather, the code states that private owners may provide accessible parking spaces that conform to State regulations for the marking of disabled parking spaces and provides for enforcement against illegal parking in marked spaces.

This inconsistent treatment of ADA requirements in local zoning codes leads to unpredictable enforcement of standards that must be followed to avoid claims of discrimination or disparate treatment under FHAA and ADA. In some cases, the jurisdiction may simply be assuming that compliance with the International Building Code (IBC) suffices for compliance with FHAA and ADA. To some extent this may be true, but having FHAA, ADA, and appropriate state regulations cross-referenced in the zoning code avoids confusion and assures that important requirements are not over-looked in the preparation of site development plans and zoning approvals. A site development plan that receives a zoning approval because the zoning code does not include a disabled parking space requirement may run into trouble during the building permit process if the building code has the requirement. It is also unclear to have some but not all of the FHAA or ADA requirements cited in the zoning code. This implies that provisions that are not cited in the local code can be ignored. To avoid confusion a best practice is to simply require compliance with FHAA and ADA as amended from time to time.

The Parking Conundrum

Excessive parking requirements are typically thought to raise the costs of development; they also fail to recognize how residents' living and transportation preferences are changing. However, reductions in parking minimums can lead to increased neighbor opposition to developments due to concerns about on-street parking and can be used to defeat approval of affordable housing developments.

Adequate parking is also important for people with disabilities, who often rely on vehicles to reach needed services, and low income residents, who are increasingly finding affordable housing in suburban and rural areas.

In sum, despite what codes may imply, there is no ideal formula for accommodating parking demand. As such, parking standards should be reviewed regularly and must be flexible enough to meet residents' changing preferences and varied needs.

Summary of Limitations in Zoning and Land Use and Effect on Protected Classes

The following figure summarizes the potential effects of the zoning and land use regulations discussed above on protected classes.

**Figure VI-3.
Areas Where Zoning Codes May Not Accommodate Actual and Potential Living Arrangements of Protected Classes**

Protected Class	Aspect of Codes that Presents Challenge
Persons with physical disabilities	1) Development incentives may not produce affordable, accessible units. 2) Limits on where group homes are allowed. 3) Variances required for reasonable accommodations.
Persons with cognitive or behavioral challenges	1) Small facilities defined as < 6 persons which is not always economically feasible. 2) Limits on where group homes are allowed. 3) Variances required for reasonable accommodations.
Persons in recovery	Above, in addition to: 4) Boarding homes and group homes are not allowed in some residential settings, in which recovery/ is most successful. 6) PUD-oriented planning can lead to resistance by Homeowners Associations (HOAs) for diversity in dwelling units and types of living arrangements. Limiting options can force residents into settings that are in poor condition, unsafe, and lacking supportive services.
Households providing temporary housing to friends facing homelessness, who have been evicted (disproportionately likely to be households of color, families escaping domestic violence)	Limits on unrelated persons. Persons who have been evicted and people with criminal backgrounds who cannot find housing may need to live in temporary or permanent unrelated parties in semi-group settings. Limiting options can force residents into settings that are in poor condition, unsafe, and lacking supportive services.
Extremely low income residents (overlap with many protected class categories listed above)	Development incentives may not produce units that are affordable at needed levels. Not all cities include incentives in their codes.
Families with children and larger families	Development incentives may not produce units that are large enough to house families, especially larger families. Not all cities include incentives in their codes.
LGBTQ without marriage certificate	Limits on unrelated persons present a challenge for LGBTQ communities, including those who have been ostracized by their families and/or communities and need to live with unrelated parties in temporary or permanent semi-group settings.
All protected classes needing a range of affordable housing	1) Minimum lot sizes that do not accommodate missing middle housing (townhomes, rowhomes); lack of diversity in zoning for alternative housing types growing in demand. 2) Minimum home sizes can raise costs, do not promote affordability, and do not acknowledge current trends in small dwelling units.

Source: Root Policy Research.

The remainder of this section discusses positive aspects of land use regulations in two parts:

- 1) Local advances in the study area that constructively address accessibility and affordable housing; and
- 2) Best practices that may assist local communities in addressing fair housing, accessibility, affordability.

Local Advances in Affordable Housing and Accessibility

The section above provided some examples of the positive efforts to incorporate fair housing, accessibility, and affordable housing policies and practices in local codes and policies reviewed for this assessment. This section also examined how the communities are proactively addressing affordable housing needs that could affect housing availability of protected classes, including:

- Williamson County's intergovernmental agreement with the Texas Housing Foundation to support and increase affordable efforts countywide.
- Travis County's policies to target affordable housing in the formation of public improvement districts and opportunity areas.
- On-going voluntary inclusionary housing incentives in two of the communities in the study (Austin and Georgetown).
- Zoning provisions that allow mixed-lot size development in Round Rock and Pflugerville.

Non-inclusionary zoning techniques, such as the mixed-lot development districts, in Round Rock and Pflugerville, are important steps in broadening housing choice. These efforts are not targeted to particular income groups, like the voluntary inclusionary housing regulations in Austin and Georgetown. But they do allow flexibility in zoning requirements without a mandatory special review process with public hearings, lowering development costs. This opens up options in housing product and price points. Saving time in the review process, as compared to undergoing a public review process, adds to cost reductions. While flexibility in development regulations are not enough to tackle housing gaps for the very low and low-income household, it can provide housing in the much-needed "missing middle" range (households with 80 -120 percent MFI).

As well, several jurisdictions are taking some unique steps that address fair housing and accessibility. This includes:

- Williamson County's creation of a new Fire Marshal position and adoption of the International Fire Code. This will help ensure that group homes are treated equally in

meeting construction standards and in code interpretations for reasonable accommodation issues related to fire code requirements.

- Travis County's policies to support fair housing.
- Travis County's program to fund home modifications to improve accessibility.
- Austin's codified procedure for reasonable accommodation requests.

A noteworthy emerging trend in the study area are "tiny home" developments. Several of these small home (around 500 sq. ft.) developments are being built in the study area. They deliver innovative housing solutions to a surprising range of households:

- Community First! Village provides affordable permanent housing options for the disabled and chronically homeless persons. The master planned community with tiny homes, spaces for RVs, and a variety of community facilities and resources for residents.
- Constellation ATX, is a new tiny home development with 85 lots located south of Austin in Travis County. It is planned to have a variety of community amenities including a clubhouse, outdoor common areas, and recreational features. The lots will be 99-year leasehold arrangements with developer-arranged financing. This will ease financing for prospective buyers since some banks may not be willing to lend on such a new development concept.
- Village Farm is a 152-lot tiny home master planned development east of Austin in Travis County. It is planned with a variety of amenities including community gardens, retail, small parks, and neighborhood school.

Further examination of the challenges encountered by these projects as they went through the development review process may identify specific regulations or review procedures that need to be modified to foster similar projects. New zoning or subdivision provisions may be needed to encourage this type of development as an affordable housing option.

Best Practices in Fair Housing and Affordable Housing

Many practices that support fair housing and affordable housing can be found in the land development codes of communities included in this assessment. These include:

- Variety in lot sizes for single-family detached homes (ranging from 10,000 sq. ft. to as low as 4,350 sq. ft.)
- Zone districts for duplex and two-family housing types
- Zone districts for multifamily housing.

- Mixed-use zone districts
- Mixed-lot zone districts
- Transit-oriented development zone districts
- Mechanisms, such as planned unit development (PUD) that allow flexibility in zone district development standards (setbacks, lot size, density, height, parking) and clustering of dwelling units
- Voluntary inclusionary incentives for affordable housing (density bonuses or relaxed development standards)
- Overlay zone districts that target incentives for affordable housing
- Specific plans or regulating plans that set neighborhood-specific development goals and standards that make it easier to rezone properties for mixed-use and affordable housing
- Accessory dwelling units
- Small unit incentives
- Permit fee waivers for developments with affordable housing or that are high priority unit types, e.g., accessory dwelling units, small unit, or infill development
- Reduced parking standards for locations near transit or for certain housing types (e.g., senior housing)

Some jurisdictions have included a robust assortment of these land use techniques to encourage both the production of affordable housing and the promotion of fair housing and accessibility for all residents. Not all the municipalities in the study have all these tools in place. Having working examples of these tools in nearby communities creates an opportunity to learn first-hand about the tool and how it works in the Williamson-Travis County region—and the communities without the tools above should consider their application after examining their success in peer communities in the region.

Some best practices to consider incorporating into local land development codes include:

- **Adaptive re-use of existing non-residential buildings.** Some communities are creating zoning standards to accommodate the repurposing of former commercial or industrial buildings and vacant lots to a residential use. Often the building to be repurposed does not “fit” into any of the existing residential zone districts or the planned unit development standards do not have enough flexibility to permit the

repurposing. Special zone district or exceptions may need to be added to existing zoning codes to pave the way for adaptive re-use projects.

- **Manufactured homes in more zone districts.** Many zoning codes only allow manufactured homes in one specific zone district. Manufactured homes are designed and built to minimum standards. Manufactured homes have lower construction costs making them an important option for meeting the demands in the “missing-middle” housing category. Clarifying the minimum requirements for manufactured homes and including them in standard residential zone districts expands the housing choice options in the community and helps to disperse household income levels. The Round Rock code allows “industrialized Housing” in four of its lower density (single-family and two-family) zone districts.
- **Floating affordable housing overlay zone.** A floating zone establishes development standards for a particular use or type of development articulated as a goal of the community. The zone is not assigned to particular parcels or areas of a city until an application is made. A floating affordable housing zone would include specific requirements related to the affordable housing goals of the community. This usually is a set of voluntary inclusionary requirements. For instance, increased density or height in exchange for a certain percentage of housing for certain household income levels. Or a floating district could allow greater flexibility in development standards for small lot development or higher densities for multifamily development. The zone district also sets out conditions for approval of the zone district for a particular piece of property. These can include special requirements for neighborhood compatibility, minimum site area, or proximity to certain services (e.g., transit).

The advantage of the floating affordable housing overlay zone is that it can stimulate affordable housing solutions in a dispersed manner across many different zoning districts and neighborhoods. It can be used to implement neighborhood or special area plans without creating individualized zone districts specific to each plan. The floating zone district should be written to ensure that local concerns about compatibility of uses (transportation; water and sewer service; design continuity; visual and noise impact; open space and public amenities; effect on nearby property values) are addressed when the application is made for the zone district designation, and that the zone(s) offer access to opportunity (quality schools, employment, transportation).

- **Dynamic Zoning.** This term refers to flexibility in zoning requirements to allow small differences in density within existing zone districts by-right. This approach encourages infill in a way that creates some housing diversity in a neighborhood without overwhelming the development features of the neighborhood. A three-story building at a corner has a different impact on the structural character of a block than that same building at the center of the block. This requires the zoning district standards to be written to reflect the contextual environment of the area being zoned and permit some of that context to change over time. These contextual changes may

allow certain percentage of buildings on the block may include an additional story (an inclusionary policy would require that extra story to be affordable). Or they may allow higher buildings on corner lots. Another feature could be that these contextual changes could be allowed to automatically reset to the new context as incremental changes occur. This type of zoning may not be suitable for all zone districts, but this may be a good tool where mixed-use is desired, near transit hubs, and in redevelopment areas.

Since zoning is not a land use tool available to Williamson and Travis counties, their efforts in supporting fair housing, accessibility, affordable housing must take a different form than the tools available to municipalities. Subdivision regulations often contain provisions that contribute to the cost of development. Common practices in counties include:

- Specific subdivision standards for small lot, duplex, triplex, and townhome development where allowed by adequate infrastructure;
- Cluster subdivisions: Travis County allows cluster subdivisions in certain areas to preserve sensitive environmental areas;
- Reduction in roadway setback standards in subdivision regulations;
- Reduction in required roadway widths in subdivision regulations; and
- Permit fee waivers for developments in identified target areas or including small lots or priority housing types.

Some best practices that are currently being implemented by the counties include:

- Policies that link public infrastructure to affordable housing goals. Travis County has adopted a series of policies that state its commitment to affordable housing and linking the establishment of public improvement districts (PID) with targeted opportunity areas that improve low-income areas and support affordable housing.
- Targeted funding to improve dwelling units in compliance with accessibility standards. Travis County a housing rehabilitation program to fund accessibility improvements in residential units.
- Partnering with local affordable housing agencies and non-profit developers. Williamson County entered into an agreement with the Texas Housing Foundation to support and develop affordable housing development in that county.

Other best practices the counties can consider incorporating into their polices and regulations are:

- Expedite development review and permitting for preferred development types that meet affordable housing goals, serve an FHAA protected class, or are located in specific planning areas.
- Identify county-owned land and real estate assets that could be developed as affordable housing or as a facility for an FHAA protected class.
- Establish areas eligible for small lot and cluster subdivisions.
- Manufactured home and tiny home subdivision regulations. As noted above, manufactured homes have lower construction costs making them an important option for meeting the demands in the “missing-middle” housing category. Updating the subdivision standards for manufactured homes and including provisions for tiny homes housing choice options is encouraged. Subdivision regulations that allow or encourage a mix of manufactured and stick-built homes can add better dispersion of affordable housing in the counties. This could also be achieved by simply clarifying that manufactured homes are allowed in any approved subdivision.

The use of these land use tools discussed in this section all can expand affordable housing opportunities. The set of tools used in any given community needs to be based on local housing needs, economic conditions, and comprehensive planning goals. What works in one community may not in another. All communities will need to monitor the effectiveness of its land use regulations in eliminating barriers to fair housing and in providing diverse housing choice that meets the income levels of all residents.