



## WHY THE CODENEXT MAP IS UNLAWFUL

September 13, 2017

**Q:** Is the City of Austin required to implement and follow the guidance of the adopted Comprehensive Plan (i.e., *Imagine Austin* and the neighborhood plans) in its drafting of the new Land Development Code (i.e., CodeNEXT)?

**A:** **YES.** When cities have adopted a comprehensive plan, the Texas Local Government Code § 211.004 requires that zoning regulations be adopted in accordance with such adopted comprehensive plan. This statutory mandate requires that the comprehensive plan serve as the basis for the adoption of zoning regulations and in the application of zoning districts to the parcels under its jurisdiction. Although some Texas court cases refer to comprehensive plans as advisory in nature, *advisory* is not synonymous with *irrelevant*, and no Texas court has ever considered such a blatant disregard for the text and maps of an adopted comprehensive plan, as we have seen in the development of CodeNEXT. When the City makes zoning decisions, it has a duty to follow the guidance and direction from the comprehensive planning documents that it has adopted by ordinance.

In addition to the state law, the City's charter also requires that land development regulations, including the zoning map, be consistent with the comprehensive plan:

### § 6. - LEGAL EFFECT OF COMPREHENSIVE PLAN.

**Upon adoption of a comprehensive plan or element or portion thereof by the city council, all land development regulations including zoning and map, subdivision regulations, roadway plan, all public improvements, public facilities, public utilities projects and all city regulatory actions relating to land use, subdivision and development approval shall be consistent with the comprehensive plan, element or portion thereof as adopted.** For purposes of clarity, consistency and facilitation of comprehensive planning and land development process, the various types of local regulations or laws concerning the development of land may be combined in their totality in a single ordinance known as the Land Development Code of the City of Austin. (*Emphasis added*)

The process envisioned by the City Charter could not be clearer. After the adoption of the updated comprehensive plan (i.e., *Imagine Austin*), the City is responsible for ensuring consistency between its development regulations and such comprehensive plan (including all components thereof). For decades, the City has, at least partially, fulfilled this mandate by requiring neighborhood plan amendments when rezoning decisions were proposed in conflict with the Future Land Use Map. CodeNEXT should be no different.

**Q:** Did the City of Austin follow the guidance and direction of the Comprehensive Plan (i.e., *Imagine Austin* and the neighborhood plans) for the first draft of CodeNEXT?

**A:** **NO.** After review of the draft code and the recommended zoning map, **it is unmistakable that the neighborhood plans were disregarded in their entirety.** From calls to reductions in impervious cover to mitigate existing flooding (e.g., Bouldin Creek Neighborhood Plan) to preventing the influx of additional bars and cocktail lounges (e.g., Govalle/Johnston Terrace Neighborhood Plan), the concerns raised throughout decades of neighborhood planning efforts, representing over 48 neighborhood planning areas, have been overlooked in favor of a three-word phrase interpreted from a monotone perspective on urban planning: "compact and connected".

As noted in the purpose statement of CodeNEXT, the primary purpose of the Land Development Code is to codify development regulations and procedures that are consistent with and are designed to implement the City's comprehensive plan, *Imagine Austin*. *Imagine Austin* explicitly recognizes that neighborhood plans are integral components of the City's comprehensive plan, which present "a detailed view based on local conditions" and provide guidance on which "parcels are appropriate for redevelopment".

With regard to zoning decisions, *Imagine Austin* is clear on how this directive should be implemented:

"Where a small area plan exists, recommendations should be consistent with the text of the plan and its Future Land Use Map or equivalent map (if one exists)."

Neighborhood plans represent thousands of hours of public input, dialogue, and debate. The decisions reached through such plans are the result of compromises within communities and our collective aspirations for the future. The plans' recommendations range from the broad to the specific and are more informative than any of the town-hall-style meetings that have occurred throughout the CodeNEXT process. The wholesale disregard to the adopted neighborhood plans is an insult to decades of public involvement and a waste of millions of taxpayer dollars.

Perhaps the most obvious example of how the adopted neighborhood plans have been ignored is CodeNEXT's proposed widespread rezoning of Austin's central and eastern neighborhoods from single-family to multi-family. The most consistent theme across all neighborhood plans has been the need to preserve existing single-family neighborhoods. The following is a quick sampling of the directives across the adopted neighborhood plans:

- **Central West Austin:** "Preserve the existing single-family uses within the neighborhood by not changing them to non-residential or multifamily uses."
- **Bouldin:** "Maintain the Single Family Residential Character of the Neighborhood Interior. Properties located within the interior of the neighborhood that are zoned single-family should remain as single-family land uses."
- **West University:** "Reduce the negative effects of multi-family housing on the West University Neighborhood."

- **Heritage Neighborhood:** “Preserve the current pattern of single-family and smaller-scale multi-family land use in the neighborhood.”
- **Shoal Crest Neighborhood:** “Reduce the negative impacts of the multi-family housing on the Shoal Crest Neighborhood and allow for modest increases in single-family density that is in character with surrounding development.”
- **North University:** “Prevent single-family houses from being constructed that result in dormitory-like structures with numerous cars.”
- **Eastwoods Neighborhood:** “Do not allow additional non-residential development on Hampton Road.”
- **Hancock Neighborhood:** “Remove multi-family and commercial zoning along Duval Street where the current and traditional use is single-family.”
- **OCEAN:** “Preserve the existing housing stock.”
- **Chestnut:** “[Adopted a conditional overlay] to promote a compatible mix of residential and commercial uses along the neighborhood’s commercial corridors, to protect the residential character of the neighborhood’s interior, and to encourage compatible uses along its corridors.”
- **East MLK:** “Preserve established residential areas and improve opportunities for home ownership by promoting the rehabilitation of existing housing and new, infill housing compatible with the existing style of this neighborhood.”
- **Govalle/Johnson Terrace:** “Preserve and protect current and future single-family neighborhoods.”

Each of these plans makes the preservation and protection of the existing single-family housing stock a **priority**. Not one of these plans suggests that we should rezone single-family houses to encourage their redevelopment or that we should promote the displacement of the families living in them. Yet, entire blocks of single-family homes within neighborhoods like Heritage, Blackshear, Bouldin, and Old West Austin have been rezoned to the equivalent of multi-family zoning. The City’s own consultant estimates that this upzoning will result in the demolition and redevelopment of thousands of single-family homes throughout Austin’s central and eastern neighborhoods.

Such consequences were intentionally avoided in the adoption of the Growth Concept Map included within *Imagine Austin*, as during the development of *Imagine Austin*, the Growth Concept Map was amended and adjusted to ensure consistency with adopted Future Land Use Maps.

While single-family housing is noted as the most obvious and widespread example of the inconsistency between CodeNEXT and the neighborhood plans, there are dozens (if not hundreds) of recommendations included within the neighborhood plans that have been ignored.

**Q:** If the Comprehensive Plan (i.e., *Imagine Austin* and its neighborhood plans) was ignored during the first draft of CodeNEXT, what did City staff use to guide its decision-making?

**A:** **Development Patterns and Market Forces.** A recent public information request (PIR) obtained by Community Not Commodity provided us some insight into the behind-the-scenes dialogue between City staff and the CodeNEXT consultants. From this PIR, we learned a lot about how

the initial CodeNEXT map was generated. We learned that proposed zoning decisions relied heavily on a fragmented review of parcels by overworked and insufficiently resourced staff members. We learned that the CodeNEXT consultants were uninterested in council and commission feedback in establishing mapping criteria to use in the development of the zoning map. And, most importantly, **we learned that Comprehensive Plan (i.e., *Imagine Austin* and the neighborhood plans) was an afterthought to a process driven almost entirely by development patterns and market forces.**

Before getting into the details of the PIR, we first must recognize that, included within the PIR material, there was indeed an official document outlining the mapping criteria that was used by City staff in its development of the zoning map. Within this document, there are references to *Imagine Austin* and the neighborhood plans along with language suggesting that the text of such plans and their associated maps be used as guide for mapping decisions. But, what is written on paper is often different than what occurs in practice.

The PIR revealed that neighborhood plans were considered only to the extent that their recommendations “align with the *Imagine Austin* vision of a **compact and connected Austin**” and, even then, only to gain an understanding of “how **development patterns** were considered during the creation of the neighborhood plans.” [Source, Statement for CodeNEXT Mapping Approach, dated 10/03/2016]

The land use guidance of the adopted Future Land Use Maps was also disregarded, except that the “CodeNEXT team [evaluated] all existing FLUMs to closely **examine development patterns** as they were envisioned during their creation and how closely they **align or deviate from *Imagine Austin***.” [Source: CodeNEXT Mapping Approach]. That last underlined point is critically important. The neighborhood plans **ARE NOT** inconsistent with *Imagine Austin*. The neighborhood plans **ARE PART** of *Imagine Austin*. In fact, as previously noted above, the Growth Concept Map contained within *Imagine Austin* was intentionally aligned with Future Land Use Maps to avoid inconsistency. The Growth Concept Map offers a broad view to area-wide land use decisions, while it defers to the neighborhood plans for specific parcel-by-parcel land use decisions.

However, the conversations disclosed by the PIR appear to illustrate that the consultants either lacked knowledge of these prior planning processes or were uninterested in their guidance. For example, in deciding where to put nodes (or areas of planned growth) on the CodeNEXT map, one of the consultants said, “Ideally these would be nodes that have already been established in a planning process, but **in Austin, we will need to look at how zoning has been applied and how build-out has happened to identify a node.**” [Source: Notes taken during CodeNEXT Mapping Strategy Meeting, 02/01/2017].

The consultant’s comment demonstrates that the Growth Concept Map within *Imagine Austin* and the adopted Future Land Use Maps within the neighborhood plans were ignored. Both the Growth Concept Map and the Future Land Use Map already identify areas with significant capacity to increase in population and density, where such growth nodes are desired. CodeNEXT is not meant to be a new planning process; it’s an implementation process of the existing plans.

Instead, the CodeNEXT team used loose mapping criteria such as identifying “areas with high connectivity within 1/4-1/2 mile of a corridor or center” as good candidates for the most intensive of the proposed zoning categories. [Source: Email from consultant, dated 02/09/2017]. And, City staff was directed to keep applying such intensive zoning within the interior of the neighborhoods “until there is a material physical change.” [Source: CodeNEXT Mapping Strategy Meeting, 02/01/2017].

City staff was directed to “remove all SF-2 from the maps, as a quick way to focus efforts”. [Source: CodeNEXT Mapping Strategy Meeting, 02/01/2017]. And, if non-conforming triplex happened to be on a particular block, the CodeNEXT mapping team “carried that intensity to those parcels’ immediate neighbors.” [Source: Email from staff, dated 05/09/2017].

### **Summary**

The mapping actions by the CodeNEXT mapping team are not supported by any text within *Imagine Austin*, nor the neighborhood plans. They are plainly inconsistent with and in direct conflict of the adopted plans’ guidance to preserve and protect Austin’s single-family neighborhoods. They are unlawful.