



## LDC Revision Update and Court Win

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### Background

The City of Austin has been pursuing a revision of our Land Development Code (LDC), originally called CodeNEXT, that would substantially change Austin. In doing so, the city has treated the existing community as a blank slate where demolition and displacement are encouraged by large increases in development rights and the reduction or elimination of compatibility standards and parking. There has been little or no discussion of the infrastructure needed, public safety implications, or environmental impacts. At the same time, the city has ignored the input of its own demographer, who has pushed back against assertions that our existing land development code has constrained the construction of housing. See below for an excerpt from the city demographer's [4th quarterly report from 2019](#):

<b>Analysis</b>
<b>Austin's multifamily market just keeps building momentum as yet another extremely large raft of incoming product was submitted for site plan review with the City of Austin during the fourth quarter of 2019, roughly 5,700 new units proposed within 28 different projects.</b>
<b>But the true pig in the python this quarter is the number of units to initiate construction, 14 individual developments containing over 3,800 new units--with another 3,400 units clearing the site plan hurdle and now eligible to begin construction. The amount of multifamily housing under construction right now within the City of Austin is simply phenomenal--a phenomenon running orthogonal to the false narrative that housing production within the City is somehow severely constrained by the City's land development code.</b>
<b>And even if the code were to be dramatically opened up with vast increases in entitlements, I'm just not sure we would see levels of production much above what we're currently seeing--the pipeline of production must be nearing a maximum threshold of sorts.</b>

State law gives homeowners petition rights when their property or property within 200 feet is being rezoned. When community members became interested in exercising those rights with the far-reaching zoning changes proposed, city staff asserted that there were no rights in this LDC (CodeNEXT) process, and posted that information on the city website. In December, Council Member Leslie Pool proposed an amendment to recognize petition rights, and after that motion failed, she presented a second amendment to protect Austin property owners' rights should the court hold the city's position is wrong. That motion also failed.

## Second Reading

When the CodeNEXT process was stopped last year before elections, the community was told that the City of Austin would only proceed at the “speed of trust.” The speed of trust is apparently very fast, because the city council and public were given only six business days to review substantial changes to a 1,350-page document and more than 30,000 zoning map changes before the council’s second reading in February. (Listen to Council Member Alison Alter’s concerns [here](#).) For the second reading, there were three days of public hearings—on the first day people were only given two minutes to testify; on the second day, apparently [one minute](#) was enough for the majority of the council. Concerns about localized flooding and increased density were [dismissed](#) as anti-science and compared to the denial of climate change. An amendment for [sidewalks](#) to be a consideration in areas proposed for increased density and reduced parking was defeated. An amendment to apply [tenant protections](#) to other affordable housing programs was rejected. In closing comments, council members addressed concerns about the public [losing trust](#) in the process, the [community concerns and inequities](#), and the [lack of vetting of amendments passed](#). The second reading passed on a 7-4 vote.

## The Community Fights Back—and Wins

A group of property owners from across the community had enough and filed suit against the City of Austin to enforce their statutory rights to notice and to file protest petitions. They were represented by the law firm of Gray & Becker. On March 18, the plaintiffs won their case, prevailing on all grounds. The judge concluded that the City of Austin violated [state law](#). The court [ruled](#) that the city failed to give the required notice to property owners and, as a result, the city council’s votes on first and second reading on the city’s code revision ([CodeNEXT or LDC Revision 1 and 2](#)) were void. Additionally, and more significantly, the court ruled that the city’s refusal to recognize legitimate statutory zoning protest rights is illegal. You can read the declaratory judgement [here](#). You can watch the complete hearing [here](#), or you can watch a 20-minute excerpt of the court case [here](#).

Council Member Pool said in her newsletter:

*“Certainly, to move forward with the LDC revision, city administrators must revise their process, and that process should reflect the court decision and acknowledge the public’s rights. Our future actions must be grounded in community inclusion and agreement, given the high stakes.”*

## Going Forward

The legal victory means that we now have an opportunity for a code revision that is community-supported, and fair and equitable to all segments of the population and all parts of town. Protest rights—by requiring a three-fourths majority vote—serve as an incentive to create a better code that earns broader community support as reflected in the supermajority vote of the city council. Working together, we can make a difference.

If you want to exercise your legal right to file a protest, you may do so online at [FileYourProtest.com](http://FileYourProtest.com).