



The Next CodeNEXT Is Down, But Not Out. Here's an Update on the City's Plan and Our Legal Fight



Neighborhood advocates, small business owners, and other members of our community scored a huge victory on March 18, when Travis County District Judge Jan Soifer [issued a ruling](#) supporting Austinites' right to protest City Hall's controversial rezoning plan. Her decision meant city officials would need the backing of three-fourths of the Austin City Council (nine of 11 votes) before rezoning property belonging to anyone who has [filed an official protest](#). Only seven council members currently support the plan.

That doesn't mean the next CodeNEXT has gone away. Its supporters are still trying to come up with ways to "densify" Austin's existing neighborhoods without the consent of the people who live in them.

Soon after Judge Soifer's decision, a group that backs the rezoning plan [called upon the city council](#) to vote on a list of code amendments it claimed "could be passed in spite of the ruling," by simple majority vote. The proposals would require more units per lot, reduce setback distances, increase the amount of impervious cover, and more. Their authors hope these

piecemeal attempts to “work around” Judge Soifer’s order would have the same effect as the next CodeNEXT: a radical densification of residential neighborhoods.

Similar tactics [have been openly discussed online](#) by a member of Austin’s Planning Commission, one of Mayor Steve Adler’s top aides, and other high-profile CodeNEXT supporters. When it comes to Judge Soifer’s ruling, they all seem to be in agreement: It needs to be overturned or circumvented.

A majority of the city council gave into the pressure on April 9, [voting 7-4 to appeal the court order](#). Council members Alison Alter, Ann Kitchen, Leslie Pool, and Kathie Tovo dissented, calling the move “[an ill-timed expenditure of resources](#)” amid our community’s COVID-19 crisis. The city’s divisive and costly appeal could take as long as a year. Rather than appealing, the city would have been better served by accepting the judge’s order and working collaboratively with neighborhoods and other parties to develop a consensus code that can garner community-wide support.

When City Hall filed its notice of appeal in April, Judge Soifer’s injunction was automatically suspended, potentially leaving every resident of our community vulnerable, once again, to the rezoning plan.

Fortunately, the plaintiffs in *Acuña, et al. v. City of Austin, et al.* took action. They filed a motion to reimpose the judge’s order while the case is on appeal, and the court granted their request last week. The judge’s injunction is now back in effect and is fully enforceable.

Here’s what that means:

- While *Acuña* is on appeal, City Hall must recognize and respect every rezoning protest that has been filed to date, along with every rezoning protest that is filed while the appeal is ongoing
- During that time period, the city council may not make a zoning change to any property that is the subject of a protest without the support of three-fourths of all council members
- The ruling applies to comprehensive revisions of the land development code (like the next CodeNEXT), and it also applies to zoning changes made in piecemeal fashion

Supporters of the next CodeNEXT need to pay special attention to this last point. In court, the *Acuña* plaintiffs successfully argued that changing a property’s density, use, height, lot size, setbacks, and other attributes all constitute zoning changes under state law. The court rejected the city’s argument that a single property owner’s protest rights are not valid in a citywide rezoning.

If our city council attempts to make *any* zoning changes to property that is the subject of a protest without a supermajority vote, the *Acuña* plaintiffs will seek enforcement of Judge Soifer’s order. City officials could then face contempt of court, with fines and jail time.

Remember: Property owners are protected from the city’s rezoning plan only if they have [filed official rezoning protests](#). If you own residential or commercial property in Austin and haven’t yet filed a protest, visit [FileYourProtest.com](#) and submit one today.

In the meantime, we urge our mayor and his allies to stop their attempts to add to Austin's residential density and exacerbate its displacement crisis. Those energies should instead be focused on the social and economic devastation caused by the COVID-19 pandemic. This is a time for community collaboration, not community division.

Together we can build an Austin for everyone!