

Procedures: Ensuring Effective Public Engagement

James B. Duncan, FAICP, CNU

Administration and Procedures



City	Pages	A&P
Tulsa OK*	315	42
Buffalo NY	334	53
Chicago IL*	339	53
Miami FL	342	45
Arlington VA*	407	32
Memphis TN*	478	59
Raleigh NC	464	78
Denver CO	1,204	76
CodeNEXT	1,164	222

CodeNEXT is not succinctly rewritten!

In fact, except for the Denver code, it is three times as wordy as any other recently drafted big city code, and its administrative chapter is fourfold fatter.

CodeNEXT (Chapter 23)

Chapter 23-1: Introduction

Article 23-1A: General Provisions
Article 23-1B: Responsibility for Administration

Chapter 23-2: Administration and Procedures

Article 23-2A: Purpose and Applicability
Article 23-2B: Application Review and Fees
Article 23-2C: Notice
Article 23-2D: Public Hearings
Article 23-2E: Legislative Amendments
Article 23-2F: Quasi-Judicial and Administrative Relief
Article 23-2G: Nonconformity
Article 23-2H: Construction Management and Certificates
Article 23-2I: Appeals
Article 23-2J: Enforcement
Article 23-2K: Vested Rights
Article 23-2L: Miscellaneous Provisions
Article 23-2M: Definitions and Measurements

Variance
Defined

Chapter 23-3: General Planning Standards for All

Article 23-3A: Purpose and Applicability
Article 23-3B: Parks and Dedication
Article 23-3C: Urban Forest Protection and Replenishment
Article 23-3D: Water Quality
Article 23-3E: Affordable Housing Incentive Program

Chapter 23-4: Zoning Code

Article 23-4A: Introduction
Article 23-4B: Zoning Administration and Procedures
Article 23-4C: General to All Development
Article 23-4D: Specific to Zones
Article 23-4E: Supplemental to Zones

Variance
Criteria

Chapter 23-5: Subdivision

Article 23-5A: Introduction
Article 23-5B: Subdivision Procedures
Article 23-5C: Platting Requirements

Chapter 23-6: Site Plan

Article 23-6A: Purpose and Applicability
Article 23-6B: Site Plan Review and Filing Requirements
Article 23-6C: Expiration

Chapter 23-7: Building, Demolition, and Relocation Permits; Special Requirement Permits for Historic Structures

Article 23-7A: General Provisions
Article 23-7B: Building and Demolition Permits
Article 23-7C: Relocation Permits
Article 23-7D: Special Requirement Permits For Historic Structures

Chapter 23-8: Signage (work-in-progress)

Article 23-9A: Purpose and Applicability
Article 23-9B: Sign Permits and Procedures
Article 23-9C: Regulations Applicable to All Zones
Article 23-9D: Regulations Applicable to Certain Sign Zones
Article 23-9E: Other Sign Types

Chapter 23-9: Transportation

Article 23-9A: General Provisions
Article 23-9B: Right-Of-Way and Transportation Improvements
Article 23-9C: Transportation Impact Analysis and Mitigation
Article 23-9D: Street Design
Article 23-9E: Driveway, Sidewalk, Urban Trail, and Right-Of-Way Construction
Article 23-9F: Access to Major Roadways
Article 23-9G: Transportation Demand Management
Article 23-9H: Connectivity
Article 23-9I: Road Utility Districts

Chapter 23-10: Infrastructure

Article 23-10A: Utility Service
Article 23-10B: Water Districts
Article 23-10C: Water and Wastewater Capital Recovery Fees
Article 23-10D: Reclaimed Water
Article 23-10E: Drainage

While Opticos has suggested several improvements, CodeNEXT needs an even “deeper cleansing” in order to truly improve its transparency and functionality.

For example, despite having been given separate chapters for processing and permitting, administrative and procedural provisions are still scattered throughout the document and need to be collected and aggregated.

Variations and Exceptions

The image shows two overlapping document pages from CodeNEXT. The top page is titled '2F-1: Variations and Special Exceptions' and includes a 'Contents' table of contents. A red arrow labeled 'Variance Defined' points to the title. The bottom page is titled '4B-1: Criteria for Variations and Special Exceptions' and includes a 'Contents' table of contents. A red arrow labeled 'Variance Criteria' points to the title. Both pages contain detailed text regarding the purpose and application of variances and special exceptions.

Variance Defined

2F-1: Variations and Special Exceptions

Section	Page
23-2F-1011 Purpose and Overview	1
23-2F-1020 Limitations and Legal Effect	2
23-2F-1030 Application Requirements	2
23-2F-1040 Public Hearing and Notification	2
23-2F-1050 Decision on Variance or Special Exception	3
23-2F-1060 Conditions and Modifications	3
23-2F-1070 Expiration	3

Variance Criteria

4B-1: Criteria for Variations and Special Exceptions

Section	Page
23-4B-4010 Purpose and Applicability	1
23-4B-4020 Variances	1
23-4B-4030 Special Exception-Type 1	2
23-4B-4040 Special Exception-Type 2	2
23-4B-4050 Special Exception-Type 3	3

For example, while variances are established in Article 2F-1, variance criteria are in 4B-4.

CodeNEXT still has too many “footnotes” and requires way too much “page-flipping!”

Decreasing Public Engagement

- *Allows automatic one-year extensions without public notice (2B-1050)*
- *Allows hearings to proceed even if public notices are in error (2C-2010)*
- *Reduces period for posted notices from 11 to 7 days (2C-1020)*
- *Reduces period for mail notices from 16 to 11 days (2C-1020)*
- *Reduces period for notices of BC public hearings from 11 to 7 days (2C-4)*
- *Reduces period for notices of CC public hearings from 16 to 12 days (2C-4)*
- *Reduces period for public response from 14 to 10 days (2C-5010)*
- *Reduces period for administrative appeals from 20 to 7-14 days (2I-1030)*
- *Why are case files provided only to BC chairs and not members? (2I-3040)*
- *Why was appellant rebuttal changed to BC chair discretion? (2I-3050e)*
- *Why was hearing priority for "issues of standing" removed? (2I-3050)*
- *What is a "planned development center?" (2K-3030)*
- *Why eliminate notice of Interlocal Agreements to organizations (2L-1050)*

CodeNext appears to significantly diminish public input, involvement and influence by:

- allowing application extensions without public notice,
- allowing hearings to proceed with public notice errors,
- reducing required periods for posted and mail notices,
- reducing required notice periods for board and council hearings,
- reducing required periods for public responses, and
- reducing required periods for administrative appeals.

Increasing Staff Authority

CodeNEXT allows staff to:

- *create new standards when code is incomplete (IA-5020)*
- *change application requirements by memo and not rules (2B-1010)*
- *increase entitlements by 10% for “inadvertent errors” (2F-2030)*
- *expand “alternative equivalent compliance” to all zones (2F-2040)*
- *change one nonconforming use for another less intense (2G-1050)*
- *approve iterative nonconformance setback increases (2G-1050)*
- *continue nonconforming parking once use terminated (2G-2030)*
- *avoid mandatory public meetings in resolving appeals (2I-2030)*
- *approve settlement agreements without CC approval (2K-1040)*

CodeNEXT appears to significantly enhance staff authority by allowing them to:

- change standards and applications without public review,
- increase entitlements by 10 percent for “inadvertent” errors,
- resolve administrative appeals without holding public meetings,
- replace nonconformities with other lesser nonconformities, and
- approve settlement agreements without City Council approval.

League of Women Voter Concerns

Sec 23	Provision	Change	Action
Public Participation Impediments			
1B-2020	BOA composition	Sets membership	strike
2C-2010	Notice with errors	Allows case to proceed	strike
2C-3020	Notice date trigger	Uses mailed (USPO) date	strike
2D-1020	Tardy speaker permission	Gives chair discretion	strike
2D-2030	Changes in hearing location	Creates public difficulties	strike
2F-1(B2)	BOA special exceptions	Same as variance	strike
2I-1030	Appeal administrative decision	Shortens appeal time	strike
2I-2030	Staff resolve issues	Allows private meetings	strike
2I-3050	Conduct of appeal hearing	Reduces rebuttal rights	strike
2L-1050	ILA notification requirements	Removes mail notice	strike
various	Tolling ("stopping the clock")	Renotices not required	limit/renotify
Waivers and Adjustments			
2F-2020	Administrative waivers	Grants considerable authority	check legality
4B-4040	BOA Type 1: Conditional uses	Waives any zoning regulation	discuss further
4B-4040	BOA Type 2: Setbacks	Removes notice and hearing	strike
4B-4050	BOA Type 3: Use errors	Allows existing prohibited use	strike
Decreased Notice and Response Times			
1A-5020	Required public notice	Reduces by collective 27 days	strike

The League of Women Voters has also recommended that most CodeNEXT procedural changes be stricken because they would diminish public input opportunities.

Adoption Procedures

Texas Local Government Code, Section 211.006. Procedures Governing Adoption of Zoning Regulations and District Boundaries.

(d) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the governing body. The protest must be written and signed by the owners of at least 20 percent of either:

- (1) the area of lots or land covered by the proposed change; or
- (2) the area of lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

**Valid
Petition**

(e) In computing the percentage of land area under Subsection (d), the area of streets and alleys shall be included.

(f) The governing body by ordinance may provide that the affirmative vote of at least three-fourths of all its members is required to overrule a recommendation of the municipality's zoning commission that a proposed change to a regulation or boundary be denied.

**Super
Majority
Vote**

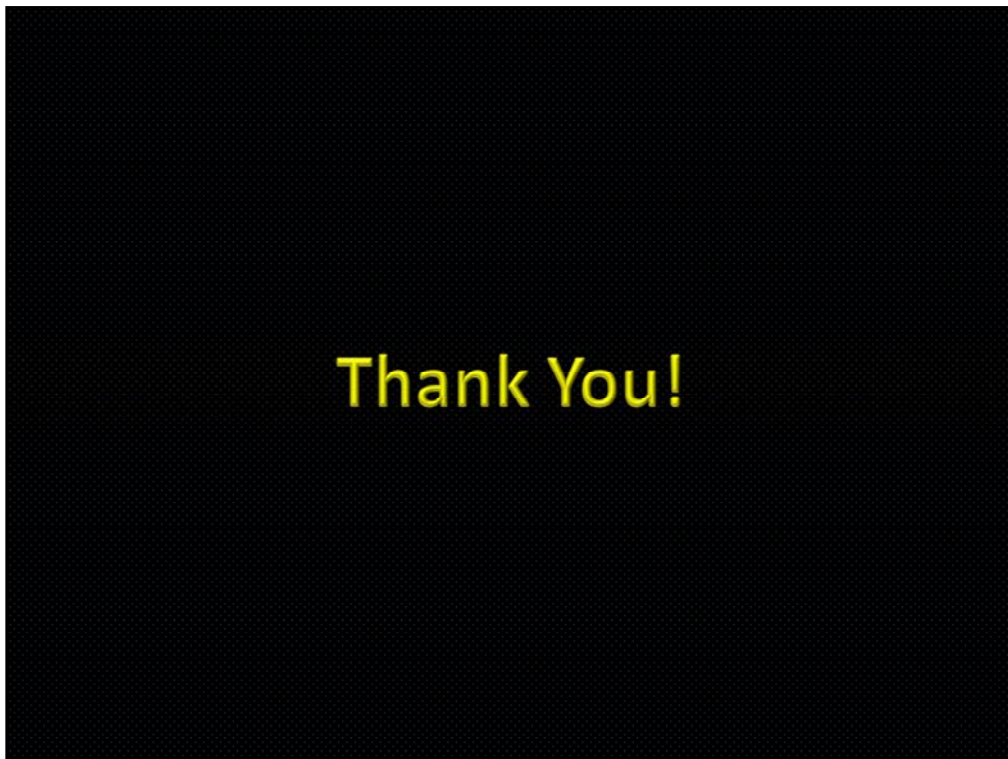
Recent "Valid Petitions" invalidated:

- *The Grove*: Invalidated because of not being zoned.
- *Austin Oaks*: Invalidated because of public easement.
- *Champion #3*: Invalidated because of boundary change.

In order to enhance public involvement, State Statutes allow cities to utilize “valid petitions” and “supermajority votes” in the exercise of their zoning authority.

Valid petitions increase the role of those most directly affected by a zoning decision and supermajority votes give citizen boards extra influence in the process.

The applicability and procedures of these provisions need to be clearly and fully set forth in CodeNEXT.



Thank You!