

No. 14-20-00356-CV

---

IN THE FOURTEENTH COURT OF APPEALS  
AT HOUSTON, TEXAS

---

THE CITY OF AUSTIN, TEXAS, et al.

v.

FRANCISCA ACUÑA, et al.

---

---

**BRIEF OF APPELLEES**

---

---

Douglas M. Becker  
State Bar No. 02012900  
[doug.becker@graybecker.com](mailto:doug.becker@graybecker.com)  
Richard E. Gray, III  
State Bar No. 08328300  
[rick.gray@graybecker.com](mailto:rick.gray@graybecker.com)  
Monte L. Swearengen  
State Bar No. 18871700  
[monte.swearengen@graybecker.com](mailto:monte.swearengen@graybecker.com)  
Gray & Becker, P.C.  
900 West Avenue  
Austin, Texas 78701  
(512) 482-0061  
(512) 482-0924 Facsimile

COUNSEL FOR APPELLEES

ORAL ARGUMENT REQUESTED

**IDENTITY OF THE PARTIES AND**  
**COUNSEL**

Appellees:

Francisca Acuña  
Susana Almanza  
Jeffery L. Bowen  
William Burkhardt  
Alecia M. Cooper  
Roger Falk  
Seth O. Fowler  
Randy Howard  
Mary Ingle  
Patricia King  
Fred I. Lewis  
Barbara McArthur  
Allan E. McMurtry  
Laurence Miller  
Gilbert Rivera  
Jane Rivera  
John Umphress  
James Valadez  
Ed Wendler, Jr.

Counsel for Appellees:

Douglas M. Becker  
Richard E. Gray, III  
Monte L. Swearengen  
Gray & Becker, P.C.  
900 West Avenue  
Austin, Texas 78701  
Tel. (512) 482-0061  
Fax: (512) 482-0924

Appellants:

The City of Austin, Texas  
The City Council of Austin

Austin Mayor Steve Adler (in his official capacity)

City Council Members (in their official capacity):

Natasha Harper-Madison

Delia Garza

Sabino Renteria

Gregorio Casar

Ann Kitchen

Jimmy Flannigan

Leslie Pool

Paige Ellis

Kathie Tovo

Alison Alter

Austin City Manager Spencer Cronk (in his official capacity)

Counsel for Appellants:

Anne L. Morgan, City Attorney

Meghan L. Riley, Chief, Litigation

City of Austin - Law Department

P.O. Box 1546

Austin, Texas 78767-1546

Jane Webre

Mary Byars

303 Colorado Street, Suite 2400

Scott Douglass & McConnico LLP

Austin, Texas 78701

Tel. (512) 495-6300

Fax (512) 495-6399

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES .....	v
STATEMENT OF THE CASE.....	ix
STATEMENT OF JURISDICTION.....	ix
STATEMENT OF THE ISSUES.....	x
<u>STATEMENT OF FACTS</u> .....	1
<u>SUMMARY OF THE ARGUMENT</u> .....	7
A. <u>Failure to give statutory notice</u> .....	7
B. <u>Refusal to recognize statutory protest rights</u> .....	8
C. <u>Proper Scope of Injunctive and Declaratory Relief</u> .....	9
<u>ARGUMENT AND AUTHORITIES</u> .....	10
I. <u>STATUTORY NOTICE REQUIREMENTS</u> .....	10
A. <u>Austin is wrong that Texas statutes set out only “two distinct notice procedures” for zoning changes, failing even to acknowledge alternative notice authorized under § 211.007(d).</u> .....	10
B. <u>Austin’s failure to comply with the statutory notice requirements renders its actions void.</u> .....	19
C. <u>Strict compliance with the statutory notice and other procedures is required.</u> .....	21
D. <u>Case law relied upon by Austin fails to show that notice requirements do not apply to comprehensive zoning changes.</u> .....	25
II. <u>STATUTORY PROTEST RIGHTS</u> .....	31
A. <u>Austin is wrong that protest rights do not apply to the LDC Revision.</u> .....	31



B.	<u>Other Jurisdictions with Similar Laws Reject Austin’s Denial of Protest Rights.</u>	34
C.	<u>The LDC Revision does not adopt zoning changes that apply uniformly, city-wide, or that treat properties equally.</u>	43
1.	The Conversion Table and Rules prove that Austin is not changing regulations uniformly city-wide.....	44
2.	The Conversion Table and Rules prove that Austin is not changing regulations uniformly city-wide across districts, boundaries and classifications.....	48
3.	The Conversion Table and Rules are applied on the map selectively, resulting in even greater non-uniformity and unequal treatment. ....	49
4.	Nothing about the Conversion Table and Rules changes the unique impact of the LDC Revision Upon Individual Property Owners. ....	52
D.	<u>Austin’s rezoning was property-specific based on facts and not simply legislative broad policymaking.</u>	53
III.	<u>STATUTORY NOTICE AND RECOGNITION OF PROTEST RIGHTS ARE NOT OVERLY BURDENSOME.</u>	57
IV.	<u>THE TRIAL COURT’S DECLARATORY AND INJUNCTIVE RELIEF IS NEITHER VAGUE NOR OVERBROAD.</u>	58
	PRAYER.....	60
	CERTIFICATE OF SERVICE .....	61
	CERTIFICATE OF COMPLIANCE.....	61

## TABLE OF AUTHORITIES

### Cases

<i>208 E. 30<sup>th</sup> St. Corp. v. Town of New Salem</i> , 88 A.D.2d 281 (N.Y. App. Div. 1982) .....	40
<i>Appolo Development, Inc. v. City of Garland</i> , 476 S.W.2d 365 (Tex. Civ. App.—Dallas 1972, writ ref’d n.r.e.) .....	21, 22, 23
<i>Bolton v. Sparks</i> , 362 S.W.2d 946 (Tex. 1962) .....	21, 23, 24, 32
<i>Campbell v. Borough of North Plainfield</i> , 961 A. 2d 770 (N.J. App. 2008) .....	36, 37
<i>City of Pharr v. Tippitt</i> , 616 S.W.2d 173 (Tex. 1981) .....	16
<i>City of San Antonio v. Arden Encino Partners, Ltd.</i> , 103 S.W.3d 627 (Tex. App.—San Antonio 2003, no pet.) .....	17
<i>City of San Antonio v. Lanier</i> , 542 S.W.2d 232 (Tex. Civ. App.—San Antonio 1976, writ ref’d n.r.e.) .....	21, 32, 43
<i>City of San Antonio v. Pope</i> , 351 S.W.2d 269 (Tex. Civ. App.—Eastland 1961, no writ) .....	20
<i>Claremont Taxpayers Ass’n v. City of Claremont</i> , 223 Cal. App.2d 589 (Ct. App. 1963) .....	28
<i>FLCT, Ltd. v. City of Frisco</i> , 493 S.W.3d 238 (Tex. App.—Fort Worth 2016, pet. denied) .....	25, 26, 31
<i>Haynes v. City of Quanah</i> , 610 S.W.2d 842 (Tex. Civ. App.—Amarillo 1980, writ ref’d n.r.e.) .....	23
<i>Kroger Co. v. Keng</i> , 23 S.W.3d 347 (Tex. 2000). .....	39
<i>Levin v. Parsippany-Troy Hills Township</i> , 396 A. 2d 1144 (N.J. App. 1978) .....	35

<i>Levin v. Parsippany-Troy Hills Township</i> , 411 A. 2d 704 (N.J. 1980) .....	34, 36
<i>Mayhew v. Town of Sunnyvale</i> , 964 S.W. 922 (Tex. 1998) .....	17
<i>MCI Sales &amp; Service v. Hinton</i> , 329 S.W.3d 475 (Tex. 2010) .....	33
<i>Miles v. Board of County Commissioners of County of Sandoval</i> , 964 P.2d 169 (N.M. Ct. App. 1998) .....	26, 27
<i>National Liab. &amp; Fire Ins. Co. v. Allen</i> , 15 S.W.3d 525 (Tex. 2000) .....	34
<i>Quality Refrigerated Services, Inc. v. City of Spencer</i> , 586 N.W.2d 202 (Iowa 1998).....	28, 30
<i>Ramirez v. State of Texas</i> , 550 S.W.2d 121 (Tex.Civ.App.—Austin 1977, no writ) .....	39
<i>Shields LP v. Bradbury</i> , 526 S.W.3d 471 (Tex. 2017) .....	49
<i>Sixth RMA Partners v. Sibley</i> , 111 S.W.3d 46 (Tex. 2003) .....	49
<i>Smart v. Lloyd</i> , 370 S.W.2d 245 (Tex. Civ. App.—Texarkana 1963, no writ) .....	2, 21
<i>Standard v. Sadler</i> , 383 S.W.2d 391 (Tex. 1964) .....	39
<i>Sunset Islands No. 3 and 4 Properties Owners, Inc. v. Miami Beach Yacht Club</i> , 447 So.2d 380 (Fla. Dist. Ct. App. 1984).....	29, 30
<i>Thompson v. Palestine</i> , 510 S.W.2d 579 (Tex. 1974) .....	17
<i>Tillery v. Meadows Const. Co.</i> , 681 S.W.2d 330 (Ark. 1984) .....	30

<i>Truman v. Irwin</i> , 488 S.W.2d 907 (Tex. App.—Fort Worth, 1972, no writ) .....	19, 23, 24
<i>Wanamaker v. City Council of El Monte</i> , 200 Cal. App.2d 453 (Ct. App. 1962) .....	27, 28
<i>Williamson Pointe Venture v. City of Austin</i> , 912 S.W.2d 340 (Tex. App.—Austin 1995, no writ) .....	17

## **Statutes**

Ark. Code § 14-56-422(1)(B) .....	30
Ark. Stat. Ann. § 19-2830 .....	30
Cal. Govt. Code § 65091(a)(4) .....	27
California Govt. Code § 65803 .....	28
City Code of Iowa, § 362.3 .....	29, 31
Fla. Stat. § 166.041 (3)(c)(1)-(2) .....	30, 31
N. H. Rev. Stat. § 675:5 (2015) .....	42
Tex. Rev. Civ. Stat. 1011a-f (Vernon (1928) (Acts of 1927, 40 <sup>th</sup> Leg. p. 424, ch. 283) .....	38
Texas Government Code, § 22.220(a) .....	ix
Texas Local Government Code, § 211.001 .....	ix
Texas Local Government Code, § 211.002 .....	22, 24, 31
Texas Local Government Code, § 211.003(a) .....	21
Texas Local Government Code, § 211.005(a) .....	21
Texas Local Government Code, § 211.006 .....	38
Texas Local Government Code, § 211.006(a) .....	passim
Texas Local Government Code, § 211.006(d) .....	passim
Texas Local Government Code, § 211.007(a) .....	12

Texas Local Government Code, § 211.007(b).....	13, 20
Texas Local Government Code, § 211.007(c).....	passim
Texas Local Government Code, § 211.007(d).....	passim
Texas Local Government Code, Chapter 211.....	passim

### **Other Authorities**

John Mixon, James L. Dougherty, Jr., Brenda McDonald, <i>Texas Municipal Zoning Law</i> , § 7.002 (LexisNexis 3 <sup>rd</sup> ed. 2019).....	13
Robert Milford Anderson, <i>Anderson’s American Law of Zoning</i> , § 4.33 at 251 (2 <sup>nd</sup> ed. 1976) .....	11, 24

## **STATEMENT OF THE CASE**

**Nature of the Case:** Property owners in Austin sought declaratory and injunctive relief for Austin's failure to follow two statutory requirements to rezone their property. Austin failed to give the required individual written notice of changes to zoning classifications; Austin refused to recognize written protests filed objecting to changes in zoning regulations or boundaries.

**Trial Court:** Hon. Jan Soifer, 201<sup>st</sup> District Court, Travis County, Texas

## **STATEMENT OF JURISDICTION**

This Court has jurisdiction over this appeal from a final judgment. Tex. Gov't Code § 22.220(a).

## **RECORD ON APPEAL**

Citations to the Clerk's Record will be designated "CR" followed by page number(s). Reference to Joint Trial Exhibits, Plaintiffs' Exhibits and Defendants' Exhibits will include the exhibit number and a reference to the Clerk's Record.

The Reporter's Record is three volumes. Citations to the Reporter's Record will include the volume and page number: \_\_\_\_\_RR\_\_\_\_.

The following items are included in the Appendix to this Brief:

App. 1 Excerpts of maps

App. 2 Texas Local Gov't Code §§ 211.001-211.007

App. 3 Affidavit of David B. Brooks

App. 4 Joint Stipulations of Fact

App. 5 Stipulation Regarding Trial Exhibit

### **STATEMENT OF THE ISSUES**

1. Did Texas law require the City of Austin to give individual notice to property owners whose zoning classifications would be changed by the City's new comprehensive Land Development Code?
2. Did Texas law require the City of Austin to honor property owners' written protests of changes to zoning regulations or boundaries to their or nearby property?
3. Is the Final Judgment vague or overbroad?

## **STATEMENT OF FACTS**

This case was tried to the court on Joint Stipulations of Fact. CR 123-134.

On October 4, 2019, the City of Austin (“Austin”) released the first draft of its proposed LDC Revision, map, and staff report which changed the zoning regulations, zoning classifications, or zoning district boundaries for most of the property in Austin. Joint Stipulations of Fact 7, 31, CR 124, 129. Appellees (“Property Owners”) are Austin residential and commercial property owners who have protested the proposed zoning regulation changes to their property and property within 200 feet of their property. Joint Stipulations of Fact 33, CR 129. The LDC Revision changed the zoning classification for each protested parcel of land. Joint Stipulations of Fact 30, 31, 32, CR 128-29, 134. The LDC Revision changed zoning regulations for each protested parcel of land. Joint Trial Exhibit 7, CR 965-966, 971; Joint Trial Exhibit 4, CR 3970-71, 3972-73, 3980-82, 3994-97, 3998-4001.

For example, Property Owner Francisca Acuña’s homestead is currently zoned SF-3-NP. CR 134. The LDC Revision proposes to change her zoning classification to R2A. Under Acuña’s current zoning, the regulations allow 12.4-15.2 units to be built per acre. Joint Trial Exhibit 7, CR 966. The regulations for the proposed R2A classification allow 26.1 units to be built per acre. Joint Trial Exhibit 4, CR 3664, 3959, 3970.

Property Owner Randy Howard’s property is currently zoned SF-3-NP—the



same as Ms. Acuña's property. Joint Stipulations of Fact 30, CR 128, 134. But the LDC Revision proposes to change Mr. Howard's zoning classification to RM1. Joint Stipulations of Fact 30, CR 128, 134. The regulations for RM1 change the units per acre from 12.4-15.2 up to 95 units per acre. Joint Trial Exhibit 4, CR 3664, 3939, 3994. Other regulations, in addition to units per acre would change for both Acuña's and Howard's property under the LDC Revision. Joint Trial Exhibit 7, CR 966; Joint Trial Exhibit 4, CR 3970-71, 3994-97.

On December 11, 2019, Austin City Council passed the LDC Revision on first reading. Joint Stipulations of Fact 13, CR 125. On January 31, 2020, Austin prepared a second draft LDC Revision, map, and supplemental staff report. Joint Stipulations of Fact 14, CR 125. The January 31, 2020, draft was passed on second reading on February 13, 2020. Joint Stipulations of Fact 15, CR 125.

Austin stated repeatedly in public memoranda, orally at public hearings, to the media, and to the public that it refused to recognize any state statutory protest rights and will not require the statutory super-majority vote of the City Council to change protested property's zoning under the LDC Revision. Joint Stipulations of Fact 34-39, CR 129-30. Per then-Assistant City Attorney Brent Lloyd in a memorandum to the Mayor and City Council, "Zoning protests may not be used to protest broad legislative amendments. This includes comprehensive revisions, like CodeNEXT, and amendments to general development standards applicable citywide or

throughout one or more zoning districts.” Joint Stipulations of Fact 35, CR 129.

That same reasoning also has appeared in two memoranda written in 2019 by Mitzi Cotton of Austin’s Law Department. Cotton’s May 14, 2019, memorandum directed to the Mayor, City Council, and City Manager stated, “Zoning protests may not be used to protest broad legislative amendments, including comprehensive revisions such as the revision of the entire Land Development Code.” Joint Stipulations of Fact 37, CR 130.

Cotton’s October 24, 2019, City Legal Department memorandum was widely sent to the Mayor, City Manager, Council staff, and media, stating unequivocally:

“Therefore, zoning protests, such as those citing Texas Local Government Code Section 211.006, may not be used to trigger a super-majority vote on broad legislative amendments, including comprehensive revisions such as the revision of the Land Development Code.”

Joint Stipulations of Fact 38, CR 130.

Austin has determined that it will approve the protested zoning changes with only a simple majority of the City Council and will not recognize the super-majority vote requirement of § 211.006 for property or nearby property owners’ valid protest rights petitions. Joint Stipulations of Fact 38, CR 130. Austin’s LDC Revision website also states definitively in its “Frequently Asked Questions” section that property owners have no protest rights:

“Question: As a property owner, may I file a protest to the zoning changes being proposed under the Land

Development Code Revision, as I could with a standard zoning change in my area?

Answer: No, zoning protests may not be used to protest broad legislative amendments, including comprehensive revisions such as the revision of the entire Land Development Code.”

Joint Stipulations of Fact 39, CR 130.

Austin wrongly reassured the public that “[a]uthorities around the country, including Texas, have interpreted statutes authorizing zoning protests as limited to changes reclassifying individual properties or distinct limited areas. Courts distinguish those changes from zoning amendments that implement more comprehensive policy changes.” Joint Trial Exhibit 10, CR 1241.

To leave no doubt, the Austin City Council voted (7-4) on December 10, 2019, to reject an amendment to recognize protest rights by property owners as to the LDC Revision. Joint Stipulations of Fact 46, 47, CR 131-132. In addition, the City Council voted (7-4) that same day to reject an amendment that would delay finalizing the zoning changes of properties under the LDC Revision until: 1) a court has entered a final order on protest rights; and 2) if a court ruling were to recognize protest rights, to extend the deadline for filing protests (because of the City’s misleading, incorrect statements on protest rights). Joint Stipulations of Fact 48, CR 132. Despite Austin’s refusal to recognize protest rights and its public misinformation, more than 14,000 protests were filed by landowners unhappy with Austin’s rezoning of their

and nearby properties. *See* Appendix 5 hereto, Stipulation Regarding Trial Exhibit.

At trial, Austin stipulated that no individual written notice was given prior to its zoning commission's public hearing on the LDC Revision. Joint Stipulations of Fact 10, 40, CR 124, 130. Austin also stipulated that individual written notice is required if a municipality seeks to change a zoning classification of a specific property or parcel of land. Joint Stipulations of Fact 17, CR 125. The zoning classification of each of the protested properties owned by Property Owners was changed by the LDC Revision. Joint Stipulations of Fact 30, 31, 33, CR 128-129, 134. *See* the chart below:

	<b>ZONING</b>			
<b>Name</b>	<b>Filed &amp; Signed Protest Form</b>	<b>Own on TCAD</b>	<b>Current Zoning</b>	<b>Proposed Zoning</b>
Alecia Cooper	3900 Wrightwood Rd., 78722	Y	SF-3-NP	R2A
Allan McMurty	2003 Palo Duro, 78757	Y	SF-3-NP	R4
Allan McMurty	5901 Cary Dr., 78757	Y	SF-2	R2A
Allan McMurty	2605 Northland, 78756	Y	SF-2	R2A
Allan McMurty	1708 Madison, 78757	Y	SF-3-NP	R2A
Allan McMurty	2412 Greenlawn Parkway, 7875	Y	CS	MU5A-Q
Barbara McArthur	5700 Clay Ave., 78756	Y	SF-3-NP	R2B
Ed Wendler, Jr	4803 Balcones Dr., 78731	Y	SF-3	R2A
Frances Acuna	5009 Brassiewood Dr., 78744	Y	SF-3-NP	R2A
Fred Lewis	4509 Edgemont, 78731	Y	SF-3-NP	R2A
Gilbert and Jane Rivera	1000 Glen Oaks Ct., 78702	Y	SF-3-NP	R2A
James Valadez	54 Waller St., 78702	Y	SF-3-NP	R2B
Jeffrey Bowen	8404 Caspian Dr., 78749	Y	SF-2	R2A
Johnny Umphress	2604 Geraghty Ave, 78757	Y	SF-2	R2A
Laurence Miller	502 W. 33rd St., 78705	Y	SF-3-H-HD-NCCD-NP	RM1-HD-H
Mary Ingle	3406 Duval, 78705	Y	SF-3-NCCD-NP	RM1
Pat King	9122 Balcones Club Dr #8, 7875	Y	SF-6-CO	RM2
Pat King	13325 Thome Valley Dr., 78617	Y	I-SF-4A	R2A

Randy Howard	2626 Spring Lane, 78703	Y	SF-3-NP	RM1
Roger Falk	5904 Sierra Madre, 78759	Y	SF-2	R4
Roger Falk	1501 West Koenig, 78756	Y	LR-MU-CO-NP	MU2
Seth Fowler	6907 Drexel Dr., 78723	Y	SF-2-NP	R2A
Susana Almanza	6103 Larch Terrace, 78741	Y	SF-3-NP	R2A
William Burkhardt	802 Christopher St., 78704	Y	SF-3-NP	R2B

Current zoning [https://www.austintexas.gov/sites/default/files/files/Planning/zoning\\_guide.pdf](https://www.austintexas.gov/sites/default/files/files/Planning/zoning_guide.pdf)

Proposed zoning <http://www.austintexas.gov/department/land-development-draft-code-map#text>

CR 134.

Austin further stipulated at trial that:

- It did not provide individual, written notice of the public hearing from the zoning commission to the Property Owners or to any individual property owner of a proposed change in the zoning classification on their property or nearby property owners by the LDC Revision. Joint Stipulations of Fact 40, CR 130.

- Prior to its zoning commission's submittal of its final report to the City Council on November 22, 2019, there was not a joint public hearing held by the City Council and the zoning commission. Joint Stipulations of Fact 43, CR 131.

- Prior to its zoning commission's submission of its final report to the City Council on November 22, 2019, there was not a vote approved by a two-thirds majority of the City Council prescribing the notice to be given for a joint meeting between the City Council and its zoning commission. Joint

Stipulations of Fact 44, CR 131.

Prior to the LDC Revision, Austin did not limit the application of protest rights to changes to individual properties or limited areas. In fact, Austin rezoned several large areas while recognizing protest rights and requiring a three-fourths majority vote to approve the zoning changes. For example, in 2004, a 454 acre tract was rezoned changing the base zoning on 329 tracts; a 234 acre tract was rezoned changing the base zoning on 74 tracts; a 541 acre tract was rezoned changing the base zoning on 184 tracts; a 761 acre tract was rezoned changing base zoning on 101 tracts; and a 1,015 acre tract was rezoned changing the base zoning on 137 tracts. Joint Stipulations of Fact 51-55, CR 132-133.

### **SUMMARY OF THE ARGUMENT**

Austin has violated two statutory requirements in its effort to adopt changes in zoning regulations, boundaries, or zoning classifications that affect most of the property within Austin. These state-mandated procedures must be strictly complied with for Austin to exercise its zoning authority under Chapter 211 of the Texas Local Government Code. Therefore, Austin's actions as to the Land Development Code Revision ("LDC Revision") are void.

#### **A. Failure to give statutory notice**

The zoning commission (called the "planning commission" in Austin) held its statutorily required public hearings on the proposed LDC Revision, but Austin failed

to provide the mandatory statutory individual written notice of the public hearings required by Local Government Code § 211.007(c).

Austin stipulated at trial that it provided no individual written notice by mail for the public hearing on the LDC Revision before the 10<sup>th</sup> day prior to the zoning commission's public hearing. Joint Stipulations of Fact 40, CR 130. Pursuant to a long line of Texas precedent, that failure to give notice deprives the City Council of jurisdiction to subsequently hold a hearing on the LDC Revision.

Austin neither gave the individual written notice nor availed itself of an alternative notice procedure allowed when there is a joint zoning commission and City Council hearing pursuant to Texas Local Government Code § 211.007(d).

The lack of proper notice renders the Austin City Council's vote on first reading and vote on second reading void.

**B. Refusal to recognize statutory protest rights**

Texas Local Government Code § 211.006(d) plainly states that if property owners timely submit written protests to changes in zoning regulations or boundaries to their or nearby properties, then such changes cannot "take effect" without a three-fourths super-majority vote of the entire City Council.

For almost two years, Austin repeatedly stated publicly it would disregard any landowner protests of zoning changes under the comprehensive revision of its land development code. Further, Austin engaged in a misinformation campaign,

repeatedly telling Austin landowners that they have no right to protest the anticipated zoning changes. The statutory language for both the notice requirements and the right to protest is clear and unambiguous. This Court should reject Austin's effort to create judicial exceptions to the statute for comprehensive rezoning.

**C. Proper Scope of Injunctive and Declaratory Relief**

The Final Judgment says Austin was required to give individual written notice of the zoning commission's public hearing and that Austin must recognize protests in opposition to the proposed rezoning. The trial court properly required Austin to follow the Texas Local Government Code.



## ARGUMENT AND AUTHORITIES

### I.

#### STATUTORY NOTICE REQUIREMENTS

- A. Austin is wrong that Texas statutes set out only “two distinct notice procedures” for zoning changes, failing even to acknowledge alternative notice authorized under § 211.007(d).

Appellants’ Brief, at 9-12, misstates the notice procedures for zoning changes in the Texas Local Government Code, Chapter 211, then questions which of “two” provisions apply to Austin’s LDC Revision, without referencing the third applicable provision, § 211.007 (d).

Austin begins by examining § 211.006(a) of the Texas Local Government Code. This provision however, applies only to initial zoning adoption by the “governing body of a municipality” (*i.e.*, the City Council), not the zoning commission:

§ 211.006. Procedures Governing **Adoption** of Zoning Regulations and District Boundaries

(a) The **governing body** of a municipality wishing to exercise the authority relating to zoning regulations and zoning district boundaries shall establish procedures for **adopting** and enforcing the regulations and boundaries. A regulation or boundary is not effective until after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.

(Emphasis added).

Austin fails to recognize that Property Owners are challenging the failure to provide the state-required notice of the zoning commission’s public hearing—not of the City Council’s hearing. Notice of the City Council’s public hearing (§ 211.006(a)) is not the issue.<sup>1</sup>

Austin argues that § 211.006(a) should apply because the LDC Revision is “akin” to initial zoning case law construing Chapter 211 and the “principles underlying procedural due process rights all confirm that the LDC Revision is more analogous to initial zoning...” Appellants’ Brief, at 12. Initial zoning (“adoption”) by Austin is distinguishable from rezoning because property owners have an expectation of zoning continuity when their property has already been zoned as opposed to an initial adoption. *See* Robert Milford Anderson, *Anderson’s American Law of Zoning*, § 4.33 at 251 (2<sup>nd</sup> ed. 1976). Austin’s argument also fails because it relies on and cites case law where constitutional arguments were made rather than statutory arguments. Appellants’ Brief, at 36-38. No claim was made here that Austin violated any constitutional rights of Property Owners. Austin’s reference to procedural due process is a red herring.

---

<sup>1</sup> Similarly, Austin argues that the LDC Revision was an “open process with significant public input.” Appellants’ Brief, at 2-5. Regardless, that does not excuse failing to give the statutorily required notice of the zoning commission’s public hearing.

The “second” notice provision recognized by Austin is § 211.007(c), which does apply to Austin’s zoning commission. It provides for individual written notice regarding public hearings by the zoning commission<sup>2</sup>:

§ 211.007. Zoning Commission

(c) Before the 10th day before the hearing date, **written notice of each public hearing before the zoning commission on a proposed change in a zoning classification shall be sent to each owner**, as indicated by the most recently approved municipal tax roll, of real property within 200 feet of the property on which the change in classification is proposed. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail. If the property within 200 feet of the property on which the change is proposed is located in territory annexed to the municipality and is not included on the most recently approved municipal tax roll, the notice shall be given in the manner provided by Section 211.006(a).

(Emphasis added).

The “third” notice procedure is the result of a 1985 legislative amendment authorizing alternative notice if certain procedures are followed. Austin simply ignores this provision. It is not mentioned anywhere in Appellant’s Brief. In 1985, the Texas Legislature amended the notice provision to allow, in certain circumstances, an exception to the individual notice for zoning commission public hearings.

---

<sup>2</sup> Home-rule municipalities such as Austin are required to have a zoning commission. § 211.007(a).

The 1985 amendment provides that a city must give either the standard individual notice required by § 211.007 (c) *or* it may vote to receive the final zoning commission report<sup>3</sup> at a joint hearing between its city council and its zoning commission after giving alternative notice, including notice by publication:

(d) The governing body of a home-rule municipality may, by a two-thirds vote, prescribe the type of notice to be given of the time and place of a public hearing held jointly by the governing body and the zoning commission. If notice requirements are prescribed under this subsection, the notice requirements prescribed by Subsections (b) and (c) and by section 211.006(a) do not apply.

Austin did not invoke § 211.007 (d)’s statutory notice option of having a joint meeting of its zoning commission and the City Council. Had it done so, notice by publication would have met the statutory requirement. Having failed to choose that option, individual notice required by § 211.007(c) was required.

Austin relies on John Mixon’s treatise to support two of its arguments. Appellants’ Brief, at 18-19, 30. *See* John Mixon, James L. Dougherty, Jr., Brenda McDonald, *Texas Municipal Zoning Law*, § 7.002 (LexisNexis 3<sup>rd</sup> ed. 2019) (hereinafter “Mixon”). The first argument is that comprehensive rezoning is “akin” to or analogous to initial zoning, so § 211.006(a) (which applies to initial zoning rather than rezoning) allows for notice by publication.

---

<sup>3</sup> Section 211.007(b) requires the zoning commission to make a final report to the governing body; the governing body may not take action “on the matter” prior to receiving the final report.

Austin cites Mixon’s comment that comprehensive revisions should not be disabled by providing individual notice that “would be administratively difficult, expensive, and unnecessary.” Appellants’ Brief, at 19. But Austin fails to cite Mixon’s explanation of the 1985 alternative notice amendment that “was formulated to facilitate a...community’s comprehensive revision...” Appellants’ Appendix 8, at 6. That 1985 amendment is § 211.007(d) , allowing for a joint meeting between the zoning commission and the governing body to use alternative notice, such as newspaper publication. As previously mentioned, Austin ignores this option and never refers to it in its brief.<sup>4</sup> If that option is chosen, the alleged difficulty and expense of individual notice disappears.

The second argument for which Austin relies on Mixon, is that since the statute does not specify a notice procedure for “comprehensive revisions,” notice by publication rather than individual written notice is “more applicable.” Appellants’ Brief, at 19.

---

<sup>4</sup> At trial, the judge raised this option to use an alternative to individual notice almost immediately:

THE COURT: Let me ask you about the other thing that I focused on in reviewing all of the pleadings, and that is this issue of alternative notice.

If the City and the zoning commission had had a joint meeting, they could have done notice by publication. And I’m just wondering if you agree that that was an option and could be an option.

MR. BECKER [Plaintiffs’ Counsel]: Absolutely. (2 RR 20)

Once again, Austin fails to cite *Mixon*'s opinion in its entirety. *Mixon* does opine that courts "can" decide that individual notice is not required for comprehensive revisions: "Logically the enabling act could be interpreted to require only community-wide notice by publication..."

But *Mixon* goes to state:

"Comprehensive revisions can with equal logic be viewed as reclassifications in that they will reclassify some tracts. Landowners in reclassified areas and within 200 feet therefrom can reasonably claim that reclassifications resulting from comprehensive revisions are ineffective unless the zoning commission gives specific notice by mail and the governing body adopts by a three-fourths majority vote in the event of protest."

*Id.*

Rather than select one conclusion over the other, *Mixon* states either conclusion is supported by logic. *Mixon* fails to support either of Austin's arguments.

At trial (2 RR 58-59) and on appeal (Appellants' Brief, at 8, 48), Austin argued that many Texas cities have undertaken comprehensive revisions of their land development codes and, like Austin, have not required individual notice (or recognized protests) (*id.*), relying upon its expert witness's affidavit. Defendants' Exhibit 1, CR 5041. The trial court aptly observed, "So apparently there's nobody suing them like there is here." (2 RR 59).

Austin also argues that neither the notice provisions nor protest rights apply to the LDC Revision because the rezoning process is “legislative,” not adjudicative. First, it should be recognized that the statute makes no such distinction. Sections 211.006(d) and 211.007 (c) have no express exception to protest rights or individual notice when a city changes zoning for allegedly broad legislative policymaking reasons, rather than fact-based reasons. There is no exception to the protest rights procedure based on a city’s purported “reasons” for making zoning changes.

Second, in Texas all zoning, whether of one property or the entire city, is considered to be “legislative” action. Following the United States majority rule, Texas courts make no distinction between municipal lawmaking as to a comprehensive zoning ordinance that changes zoning for many properties or a zoning amendment that applies to only one property. In *City of Pharr v. Tippitt*, 616 S.W.2d 173, 175 (Tex. 1981), the Texas Supreme Court held that when a city rezones one property, that “zoning is an exercise of a municipality’s legislative powers.” The Supreme Court treated both zoning comprehensively or for one property legally the same, requiring deference to both as municipal lawmaking.

“The adoption of a comprehensive zoning ordinance does not, however, exhaust the city’s powers to amend the ordinance as long as the action is not arbitrary, capricious and unreasonable...Amendatory zoning ordinances should be judicially tested against the same criteria that govern the action of the municipal body.” *Id.* at 177, 178.

Similarly, the Texas Supreme Court held in *Thompson v. Palestine*, 510 S.W.2d 579, 581 (Tex. 1974), that all zoning changes are a legislative function.

“At the outset it should be noted that this Court has consistently recognized that the adoption of a zoning ordinance by a city’s governing body in accordance with [Chapter 211’s predecessor], is an exercise of its legislative discretion...” *Id.*

When cities rezone one or a few tracts based on specific facts, they are exercising a legislative function. *See, e.g., Mayhew v. Town of Sunnyvale*, 964 S.W. 922, 939 (Tex. 1998) (1196 acre tract) (“Zoning is a legislative act.”); *City of San Antonio v. Arden Encino Partners, Ltd.*, 103 S.W.3d 627, 630 (Tex. App.—San Antonio 2003, no pet.) (22.5 acre tract) (“Zoning is a legislative function of municipal government.”); *Williamson Pointe Venture v. City of Austin*, 912 S.W.2d 340, 343 (Tex. App.—Austin 1995, no writ) (per curiam) (“Zoning and rezoning are legislative acts.”).

In short, all zoning is a legislative function in Texas, whether the city rezones one or many properties, and whether it rezones based on specific facts, broad policy, or any other rationale. Austin’s argument seeking to draw a distinction between “broad legislative” zoning and fact specific zoning is not recognized in Texas law. Therefore, there is no basis to apply such a distinction to statutory protest rights or notice requirements.



Austin argues that the statutory language of both § 211.007(c) (individual notice) and § 211.006(d) (protest rights) support their reading of the statutes to apply only to rezoning of a single property. Austin notes that the protest rights provision applies to “a proposed change to a regulation or boundary” of an owner’s property or nearby property (Appellants’ emphasis; *see* Appellants’ Brief, at 18). Austin absurdly argues that this means protest rights apply to only one change of one zoning regulation or boundary to one property. The plain meaning, however, of the word “a” is that it applies to *one or more* changes. Webster’s Dictionary of the English Language (1987) defines “a”, among other meanings, as an indefinite article that means “any.” “A zoning change,” therefore, applies to any change, whether one or many. This interpretation also prevents cities from circumventing protest rights simply by making at one time, two or more changes to a property’s zoning regulations, or rezoning at one time, two or more properties. As noted above, Austin has recognized protest rights even when it was rezoning hundreds of properties at one time. Joint Stipulations of Fact 51-55, CR 132.

Austin argues that applying the plain language of the statute will lead to “absurd” results. Appellants’ Brief, at 13, 25-26, 30. To the contrary, failure to apply the plain language would lead to an absurd result. As noted by the trial court in response to Austin’s argument that no given property is uniquely affected by the LDC Revision:

The Court: So if you harm...everyone the same then nobody should get to protest?

...

The Court: Well—and so your argument, essentially, is if only a relatively small number of property owners are impacted, then they have the right to notice and to protest. But if a huge number of property owners are affected, then they don't have the same rights.

...

The Court: Let me just say, that's why I'm having a hard time understanding why something that affects hundreds of thousands of people instead of a small handful of people doesn't deserve the same level of notice and protest.

2 RR 45, 55, 63.

**B. Austin's failure to comply with the statutory notice requirements renders its actions void.**

Austin stipulated at trial that it did not send individual written notice of its zoning commission's public hearing where the final report was adopted. CR 130. Austin also stipulated that the Austin City Council did not hold a joint meeting with its zoning commission or vote to authorize alternative notice under §211.007(d). CR 131. Austin failed to follow either of the notice requirements under the statute.

The failure by Austin's zoning commission to follow the required procedure for either of the required notices of its public hearing on the LDC Revision renders any subsequent hearing or action taken by the Austin City Council void. *See Truman v. Irwin*, 488 S.W.2d 907, 909 (Tex. App.—Fort Worth, 1972, no writ).

Moreover, the failure to provide the required notice means that there was no valid final report delivered to the Austin City Council upon which it could take any action. *See, City of San Antonio v. Pope*, 351 S.W.2d 269 (Tex. Civ. App.—Eastland 1961, no writ). In that case, the required notice was given as to the first two hearings, but the subsequent hearings occurred without notice. *Id.* at 271. The court held that the final report provided by the planning commission was not valid in the absence of the required notice of all hearings on the amendment to the zoning. *Id.* at 272. Further, a valid final report was required before the city council could take action. *Id.*

Without proper notice there was no valid zoning commission final report, and under the statute the Austin City Council could not even hold a hearing on the LDC Revision, much less vote on any reading. Section 211.007 (b) provides:

“The zoning commission shall make a preliminary report and hold public hearings on that report before submitting a final report to the governing body. **The governing body may not hold a public hearing until it receives the final report of the zoning commission** unless the governing body by ordinance provides that a public hearing is to be held, after the notice required by Section 211.006(a), jointly with a public hearing required to be held by the zoning commission. In either case, the governing body may not take action on the matter until it receives the final report of the zoning commission.”

(Emphasis added).

Absent a valid final report, any hearing or vote on the LDC Revision was void.  
*See Smart v. Lloyd*, 370 S.W.2d 245 (Tex. Civ. App.—Texarkana 1963, no writ).

**C. Strict compliance with the statutory notice and other procedures is required.**

In exercising its zoning power, Austin must strictly comply with all state-mandated procedures. Authority to zone is contained in Texas Local Government Code, Chapter 211, titled Municipal Zoning Authority. “The statutes empowering cities to regulate the use of property within their boundaries, and setting out the procedure therefor and for the enforcement of the relevant ordinances are Articles 1011a to 1011j [predecessor to Chapter 211], inclusive.” *Appolo Development, Inc. v. City of Garland*, 476 S.W.2d 365, 366 (Tex. Civ. App.—Dallas 1972, writ ref’d n.r.e.). *See also Bolton v. Sparks*, 362 S.W.2d 946, 950 (Tex. 1962); *City of San Antonio v. Lanier*, 542 S.W.2d 232, 234 (Tex. Civ. App.—San Antonio 1976, writ ref’d n.r.e.).

Section 211.003(a) provides cities with their authority to promulgate zoning regulations: “The governing body of a municipality may regulate: (1) the height, number of stories, and size of buildings and other structures; (2) the percentage of a lot that may be occupied; (3) the size of yards, courts, and other open spaces; (4) population density; (5) the location and use of buildings, other structures, and land for business, industrial residential, or other purposes...” Section 211.005(a) provides the authority for cities to establish zoning districts and determine zoning

boundaries: “The governing body of a municipality may divide the municipality into districts of a number, shape, and size the governing body considers best for carrying out this subchapter...”

Chapter 211’s authority for cities to zone expressly applies to all acts of zoning, including amendments, repeals, or any other changes. “A reference in this subchapter to the adoption of a zoning regulation or a zoning district boundary includes the amendment, repeal, or other change of a regulation or boundary.” *See* § 211.002. “These requirements of the statute must be complied with in detail and each must be rigidly performed. They are necessary to the validity of all zoning ordinances, whether amendatory, temporary or emergency.” *Appolo Development, Inc. v. City of Garland*, 476 S.W.2d 365, 367 (Tex. Civ. App.—Dallas 1972, writ refused n.r.e.).

Sections 211.006 and 211.007 prescribe the procedures cities must follow to exercise their zoning authority, requiring cities to enact local zoning procedures as well as to adhere to the state-required procedures. Section 211.006(d) mandates that protest rights are a state-required procedure for any zoning change to take effect: “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.”

Texas courts have held repeatedly that for cities to zone they must follow strictly and completely each prescribed procedural step for zoning, including notice, public hearings, final reports, and protest rights, or their zoning is invalid. The Texas Supreme Court held in *Bolton v. Sparks* that, “Each act required [under Chapter 211] is essential to the exercise of jurisdiction by the City Council, and each must be rigidly performed.” *Bolton v. Sparks*, 362 S.W.2d 946, 950 (Tex. 1962). *See also Haynes v. City of Quanah*, 610 S.W.2d 842 (Tex. Civ. App.—Amarillo 1980, writ ref’d n.r.e.); *Truman v. Irwin*, 488 S.W.2d 907 (Tex. Civ. App.—Fort Worth 1972, no writ); *Appolo Development, Inc. v. City of Garland*, 476 S.W.2d 365 (Tex. Civ. App.—Dallas 1972, writ ref’d n.r.e.).

Relying on *Bolton v. Sparks*, the Court of Appeals in *Haynes v. City of Quanah* held that a city’s exercise of its zoning power is “invalid unless the city fully complies with the notice and hearing requirements of article 1011d and any other applicable zoning notice and hearing requirements prescribed by articles 1011e [protest rights in the predecessor statute] and 1011f.” 610 S.W.2d 842, 843-44 (Tex. Civ. App.—Amarillo 1980, writ ref’d n.r.e.). *See also Truman v. Irwin*, 488 S.W.2d 907, 908 (Tex. Civ. App.—Fort Worth 1972, no writ) (“Each act required by the [zoning] statute applicable to municipal action of this type is essential to the exercise of jurisdiction by its governing body.”).

These legislatively mandated zoning procedures “are intended for the protection of the property owner, and are his safeguards against the exercise of arbitrary power.” *Bolton v. Sparks*, 362 S.W.946, 950 (Tex. 1962). In all the cases above, the courts invalidated the cities’ attempts to zone because they failed to strictly follow each mandatory procedural protection for property owners. Failure to strictly follow these zoning procedures renders the zoning void. *Truman v. Irwin*, 488 S.W.2d 907 (Tex. Civ. App.—Fort Worth 1972, no writ).

The State’s grant of zoning authority to cities mandates that they provide notice and protest rights. These rights apply to all changes in zoning regulations or boundaries, whether an “amendment, repeal, or other change of a regulation or boundary.” Section 211.002. The plain meaning of section 211.006(d) is that whenever “a proposed change to a regulation or boundary is protested,” property owners have protest rights to protect their interests “in the stability and continuity of zoning regulations.” *See Anderson’s American Law of Zoning*, § 4.33 at 251 (2d ed. 1976). The statutory language requiring notice and protest rights is not limited by the number of zoning changes enacted at one time. “Comprehensive revisions” by definition are changes, requiring full and strict compliance with statutory notice and protest rights. Cities may not carve out exceptions not found in the statute, such as Austin has attempted to do here.

There is no statutory exception for “comprehensive revisions.” If the Texas Legislature desires such an exception, it can create one—which it has not done. The Legislature has not modified protest rights substantively since they were adopted in 1927. It is not possible to adopt a comprehensive revision without repealing or changing the zoning regulations or boundaries of individual property owners, which is what section 211.006 clearly covers in its plain language. Based on the plain language and strict construction of these state-mandated rights, protest rights apply to any zoning regulation or boundary change, whether comprehensive or not.

**D. Case law relied upon by Austin fails to show that notice requirements do not apply to comprehensive zoning changes.**

Austin cites one Texas case and several out-of-state cases in an effort to support its argument that individual notice is not required for “comprehensive zoning changes like the LDC Revision.” Appellants’ Brief, at 13.

The single Texas case, *FLCT, Ltd. v. City of Frisco*, 493 S.W.3d 238 (Tex. App.—Fort Worth 2016, pet. denied), is read too broadly by Austin and is easily distinguished.

*Frisco* does not involve comprehensive zoning. Rather, it involves the amendment of a city ordinance regarding alcohol sales within 300 feet of a church or school. 493 S.W.3d at 246. Owners of property near a school sued claiming, *inter alia*, that they were not given individual written notice prior to the amendment.



Contrary to Austin’s argument, *Frisco* does not hold that the individual notice requirement applies only to “discrete properties.” Rather, the *Frisco* court applied the plain language of § 211.007 (c) and held that since there was not a change in the zoning classification of the property, no individual notice was required. (“...the Property was still included in the C-1 district after the passage of the ordinance.”) *Id.* at 265.

Austin cites several out-of-state cases that it argues supports its position that individual notice requirements do not apply to “comprehensive zoning changes” like the LDC Revision. As discussed below, each of the cited cases either construes a local ordinance, the likes of which Austin does not have, or there is a current state statute that limits the individual notice requirement, the likes of which Texas does not have.

Austin cites a New Mexico case, *Miles v. Board of County Commissioners of County of Sandoval*, 964 P.2d 169 (N.M. Ct. App. 1998). Appellants’ Brief, at 15-16. The outcome of this case depended upon the initial adoption of zoning rather than a change of zoning. Sandoval County adopted zoning in 1988 limited to a single community. The plaintiffs bought property in an unincorporated and unzoned area of the county. In 1990, the remainder of the county was zoned as a single district. *Id.* at 170.

The New Mexico Court of Appeals held that notice by publication was sufficient under the applicable statute because the case “involved the adoption of a new zoning ordinance for all of Sandoval County, outside [the prior zoned community], rather than changes to already existing zoning requirements designed to affect particular properties in specific ways.” *Id.* at 174. The opinion went on to state, “We are persuaded that the appropriate notice for a new, comprehensive zoning ordinance that distributes its impact over an entire community is notice by publication...” *Id.* *Miles* is distinguishable in that the property in question was previously unzoned. That is not the case for the Austin property, all of which was previously zoned.

Austin next cites *Wanamaker v. City Council of El Monte*, 200 Cal. App.2d 453 (Ct. App. 1962). Appellants’ Brief, at 16. Austin argues that notice was required only by publication, not individual notice, because the new zoning ordinance repealed all of the existing ordinance and it affected every parcel. *Id.* at 457. However, the statute cited by Austin and relied upon by the California opinion was repealed in 1957. *Id.* at 456. Current California law provides that individual notice need not be given if the number of property owners affected is greater than 1,000. *See* Cal. Govt. Code § 65091(a)(4).

Texas has no comparable limit on individual notice. A 1962 California case based on a statute repealed more than 60 years ago is not persuasive authority, especially in light of the current California statutory restrictions on individual notice.

Austin cites *Claremont Taxpayers Ass’n v. City of Claremont*, 223 Cal. App.2d 589 (Ct. App. 1963) (Appellants’ Brief, at 16), representing its holding to be that the “individual notice statute ‘was applicable only to a situation where there was to be an amendment of a zoning ordinance affecting a limited area of property with the city.’” However, the court actually held that since the prior zoning ordinance had been properly repealed, the statutory notice requirement was by publication (citing California Govt. Code § 65803). *Id.* at 592-93.

The *Claremont* opinion, based on the same statute as *Wanamaker*, not only lacks persuasive authority, but also was based on a factual finding that the prior ordinance had been properly repealed—thus changing the required notice.

Appellants’ Brief, at 16, cites *Quality Refrigerated Services, Inc. v. City of Spencer*, 586 N.W.2d 202 (Iowa 1998), representing that it holds “personal notice provisions did not apply, in part because the rezoning at issue here was accomplished by city-wide rezoning and a complete recodification of the City’s zoning ordinance.” The issue in *Quality Refrigerated Services* was whether the personal notice provision of the city’s local ordinance was applicable. *Id.* at 206. Rather than holding personal notice was not required for city-wide zoning, the court based its opinion on the

language of the ordinance. The ordinance required personal notice for “special exceptions, variances, administrative appeals, and applications for rezoning.” *Id.* According to the court, “The adoption of comprehensive zoning amendments does not fall within the listed categories requiring personal notice.” *Id.*

More importantly, the Iowa statute pertaining to hearing notice only required notice by publication. *See City Code of Iowa*, § 362.3. The reason the court examined the city ordinance is that the city could require more notice than the state statute. Austin’s reliance on this Iowa case is misplaced.

Appellants’ Brief, at 17, cites *Sunset Islands No. 3 and 4 Properties Owners, Inc. v. Miami Beach Yacht Club*, 447 So.2d 380 (Fla. Dist. Ct. App. 1984), for the proposition that notice by publication is all that is required for a comprehensive zoning ordinance. That case turned on the language of a local zoning ordinance that allowed only publication notice to “amend, supplement, change, modify or repeal the regulations and boundaries herein established...” *Id.* at 380, n. 1. The ordinance provides for mailed notice to property owners for “a question of a change in the boundaries herein established...” *Id.* No such ordinance exists in this case.

Moreover, Austin’s reliance on this 1984 Florida case is further undercut by the current Florida statute that requires individual mailed notices for zoning changes to a parcel or parcels involving less than 10 contiguous acres; changes to more than 10 contiguous acres requires only notice by publication in a newspaper. *See Fla.*

Stat. § 166.041 (3)(c)(1)-(2). The Texas Local Government Code does not contain such acreage limits on individual written notice of zoning changes.

Appellants' Brief, at page 17, cites *Tillery v. Meadows Const. Co.*, 681 S.W.2d 330 (Ark. 1984), for the proposition that a city-wide mailing was not required for a comprehensive rezoning. The Arkansas statute applicable in *Tillery* only required notice by newspaper publication. *Id.* at 331 (citing Ark. Stat. Ann. § 19-2830). The Arkansas court construed the local municipal ordinance that required additional mailed notice for rezoning of a particular tract. *Id.* at 332. Austin has no such local ordinance. The Texas Local Government Code has no provision like the Arkansas statute that requires only notice by publication. Austin's reliance on *Tillery* is misplaced.

As with the *Quality Refrigerated Services* opinion and the *Sunset Islands* opinion discussed above, the *Tillery* case construes a local zoning ordinance. Austin has no similar local ordinance. Therefore, the State imposed requirements apply. In *Tillery*, as in *Quality Refrigerated Services* and *Sunset Islands*, their current state statutes differ significantly from the Texas Local Government Code. In Arkansas, notice is specifically limited to notice by publication. *See* Ark. Code § 14-56-422(1)(B) ("Notice of publication hearing shall be published in a newspaper of general circulation in the city at least one (1) time fifteen (15) days prior to the hearing."). In Iowa, notice is specifically limited to notice by publication. *See* City

Code Iowa, § 362.3. In Florida, individual notice is limited to less than 10 contiguous acres. *See* Fla. Stat. § 166.041(3)(c)(1)-(2) .

Austin’s effort to rely on out-of-state cases fails.

As discussed above, *FLCT, Ltd. v. City of Frisco*, 493 S.W.3d 238 (Tex. App.—Fort Worth 2016, pet. denied), does not support Austin’s position for several reasons, not the least of which is that court’s holding is expressly based on the fact that the property was zoned C-1—and remained C-1. There was no change in the zoning classification. *Id.* at 265. That simply is not the case here where all of the property protested by Property Owners had new zoning classifications under the LDC Revision. Joint Stipulations of Fact 31, 33, CR 129, 134.

## II.

### **STATUTORY PROTEST RIGHTS**

#### **A. Austin is wrong that protest rights do not apply to the LDC Revision.**

Austin cannot preclude Property Owners’ exercise of state-mandated property rights. Austin is wrong about Texas law. There is no protest rights exception for “broad legislative amendments.” Protest rights are controlled by Texas Local Government Code Chapter 211. The statutory authority for zoning makes it clear that Chapter 211 applies to all zoning regulation or boundary changes:

“Sec. 211.002 ADOPTION OF REGULATION OR BOUNDARY INCLUDES AMENDMENT OR OTHER CHANGE. A reference in this Subchapter [Subchapter A.

GENERAL ZONING REGULATIONS] to the adoption of a zoning regulation or a zoning district boundary **includes the amendment, repeal or other change of a regulation or boundary.**”

Acts 1987, 70<sup>th</sup> Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987 (emphasis added).

The statute makes no exception for zoning changes based on “broad legislative amendments.”

The statute provides for protest rights for changes to any zoning “regulation or boundary” that is applied to a parcel of property—with no exceptions. Texas Local Gov’t Code § 211.006(d). This is true whether the changes are a part of a comprehensive revision based on alleged legislative policymaking or fact-specific decisions.

Austin’s own ordinance belies its asserted exception to Property Owners’ protest rights. Austin ordinance 25-2-241(2) defines “rezoning” consistently with state law: “Rezoning amends the zoning map to change the base district classification of property that was previously zoned.”

It is settled Texas law that municipalities derive their power to adopt zoning regulations and districts exclusively from the enabling statute. It is axiomatic that in approving zoning ordinances, cities are confined to the express authority delegated to them by the legislature. *Bolton v. Sparks*, 362 S.W.2d 946 (Tex. 1962); *City of San Antonio v. Lanier*, 542 S.W.2d 232, 234 (Tex. Civ. App.—San Antonio 1976, writ ref’d n.r.e.). Austin’s zoning authority is limited by the procedural

protections of notice, hearing, and protest rights in Chapter 211.

Section 211.006(d) is the source of the Property Owners' protest rights:

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

Austin's ordinance, § 25-2-284, specifically adopts the protest rights language of 211.006(d). It does not include any exception for “comprehensive revisions.” *See* Joint Trial Exhibit 18, CR 1490.

Austin's effort to carve out an exception to statutory protest rights for “broad legislative changes” is precluded by the statutory language. In construing a statute, the court's objective is to determine and give effect to the Legislature's intent. *MCI Sales & Service v. Hinton*, 329 S.W.3d 475, 500 (Tex. 2010), says:

“We first look at ‘the statute's language to determine that intent, as we consider it's a fair assumption that the Legislature tries to say what it means, and therefore the words it chooses should be the surest guide to legislative intent.’ (Internal citations omitted). Thus we consider the statute's plain and common meaning, and do not ‘look to extraneous matters for an intent the statute does not state.’”



(citing *National Liab. & Fire Ins. Co. v. Allen*, 15 S.W.3d 525, 527 (Tex. 2000)).

Courts should not read a statutory exception into a provision that the Legislature did not provide.

**B. Other Jurisdictions with Similar Laws Reject Austin’s Denial of Protest Rights.**

The language of § 211.006(d) is clear and controls the outcome in this case. No Texas case addresses whether protest rights apply to a comprehensive revision of zoning. Other states have upheld protest rights where comprehensive revisions or broad zoning changes were made.

The New Jersey Supreme Court’s case of *Levin v. Parsippany-Troy Hills Township*, 411 A. 2d 704 (N.J. 1980), is directly on point, holding that municipal comprehensive zoning revisions do not override protest rights. New Jersey, like Texas, has had a protest rights provision modeled closely on the Standard State Zoning Enabling Act (“Standard Act”) since the late 1920s. *Id.*, at 708. In 1976, the New Jersey Legislature passed a “comprehensive municipal land use enabling act,” superseding the prior municipal zoning authorization statute. This act required that all cities apply new zoning criteria and adopt completely new zoning codes. *Id.*, at 707. The town then adopted a “new zoning ordinance,” changing property owners’ zoning classifications. *Id.*, at 706-707.

Levin protested his property’s rezoning, but the town refused to recognize his protest rights. The town argued that it had adopted a new, comprehensive zoning

code and protest rights were “inapplicable for the reason that the ordinance is neither a ‘revision’ nor an ‘amendment,’ but a new ordinance adopted for the purpose of complying with the recently enacted New Jersey Municipal Land Use Law.” *Levin v. Parsippany-Troy Hills Township*, 396 A. 2d 1144, 1145 (N.J. App. 1978).

The intermediate appellate court agreed with the town, holding that its adoption of a new zoning code precluded protest rights because they interfered with the Legislature’s intent that the town completely revise its zoning laws:

“The lawmakers’ overriding intent that the power of municipal land use regulation be exercised solely in accordance with all the strictures of the new law is unmistakable. Without doubt, this will demand a massive rewriting and republication of thousands of local land use ordinances. Having placed such a burden upon the municipal governments of this State, we cannot conceive that the Legislature would thereafter fetter their attempts to comply by subordinating proposed ordinances to the right of protest by dissatisfied property owners and the necessity for a two-thirds majority vote. We conclude that the protection accorded by N.J.S.A. 40:55D-63 is not applicable to zoning changes which result from ordinances adopted to conform with the Municipal Land Use Law.”

*Levin v. Parsippany-Troy Hills Township*, 396 A. 2d 1144, 1146 (N.J. App. 1978)(internal citations omitted).

The New Jersey Supreme Court reversed, holding unanimously that the legislative mandate that cities completely revise their zoning laws did not override property owners’ protest rights. *Levin v. Parsippany-Troy Hills Township*, 411 A.

2d 704, 708 (N.J. 1980). The New Jersey Court noted that the plain meaning of the protest rights provision applied to any change and there were no exceptions:

“The protest provision, which follows immediately after the zoning power provision in the new law, expressly applies to ‘any amendment or revision of a zoning ordinance.’ Absent a specific indication in the statute that it does not apply in certain circumstances, of which we find none, its plain meaning indicates that it does apply.”

*Id.* (citing N.J.S.A. 40:55D-63).

Considering New Jersey’s long history of providing protest rights, the New Jersey Supreme Court concluded that it was best to leave such a policy change to the Legislature: “To fashion an exception to the applicability of this provision when a municipality adopts a new or revised zoning ordinance pursuant to the Municipal Land Use Law would conflict with the Legislature’s 50-year history of allowing protests of zoning changes.” *Id.*

*Campbell v. Borough of North Plainfield*, 961 A. 2d 770 (N.J. App. 2008) is similarly on point, holding protest rights applied to comprehensive revisions. A New Jersey court upheld protest rights with a legislative history similar to that in Texas: both Legislatures amended their zoning statutes to allow an exception to individualized notice with comprehensive zoning revisions, but did not change their provision regarding protest rights. In the *Campbell* case, the city argued that the Legislature’s amendment, allowing an exception to individualized notice for comprehensive revisions, necessarily repealed protest rights for comprehensive

revisions. The New Jersey court rejected the city's argument and upheld protest rights, holding that a 1995 legislative amendment allowing notice by publication for comprehensive zoning revisions did not change the application of protest rights to comprehensive revisions. *Campbell v. Borough of North Plainfield*, 961 A. 2d 770, 783 (N.J. App. 2008) . The court first explained that notice and protest rights were separate and independent rights:

“We noted that in creating the exemption from the personal notice requirement, the Legislature was well aware of the ‘distinction between an isolated zoning change and a broad-based review of a municipality’s entire zoning scheme.’ (Internal citations omitted)...Our reference in the quoted passage to ‘the public’s right to notice and protest’ should not be read to require that these rights exist in tandem. On the contrary, as we will further explain, these rights are separate and independent of each other.”

*Id.*, at 780.

The New Jersey court went on to examine the applicable canons of statutory construction, stating: “It is an elementary rule of construction that effect must be given, if possible, to every word, clause, and sentence of a statute” and while the Legislature had amended the notice provision, it had not amended protest rights:

“The Legislature did not change the ‘protest’ language in 1995. It simply appended an additional notice requirement to the beginning of the statute. As such, the ‘the provisions introduced by the amendatory act should be read together with the provision of the original section that were reenacted or left unchanged, in the amendatory act, as if they had been originally enacted as one section...’...The

right to protest has enjoyed long-standing historical support in this state and other jurisdictions. It is unlikely that the Legislature intended to undercut that right. The notice exemption reflected the understanding that ‘the very nature of periodic review of a masterplan preclude[s] it from remaining a secretive process and outside of public oversight and scrutiny.’ The Legislature enacted the notice exemption to save local government the time and expense of providing personal notice to a group of individuals that should be aware, because of this lengthy period of oversight, of the possibility of future zoning changes.”

*Id.*, at 782 (internal citations omitted). The court explained that “[a]bsent clear and compelling evidence of the Legislature’s intent to remove these protests rights protections, we have no occasion to conclude that the 1995 amendment repealed them by implication.” *Id.* The court held that “the statute as amended [as to notice], reserves the right to protest ‘any proposed amendment or revision.’ (Internal citation omitted). This signifies that the right continues undiminished.” *Id.*

Texas’ legislative history is very similar to New Jersey’s history. Our state has a long-standing protest rights provision; many years after its adoption, the Legislature passed an amendment allowing an optional, alternative notice by publication for comprehensive revisions. Since 1927, when the Texas Legislature first authorized zoning and the protest rights of property owners, Texas has not restricted landowners’ protest rights. *See* Tex. Rev. Civ. Stat. 1011a-f (Vernon (1928) (Acts of 1927, 40<sup>th</sup> Leg. p. 424, ch. 283); Tex. Local Govt. Code, § 211.006 (re-codifying with non-substantive changes the 1927 law).

In 1985 the Texas Legislature amended the municipal zoning notice provision, authorizing less than individual notice for comprehensive revisions under certain circumstances. HB 1205 allowed cities to provide alternative notice (*e.g.*, notice by newspaper publication) rather than the standard individual notices to property owners if the Council voted by 2/3rds vote to hold a joint meeting of the city council and the zoning commission. *See* Acts 1985, 69th Legislature, p. 308, ch. 894.<sup>5</sup> The House Committee Bill Report states HB1205’s purpose was to provide “optional notice procedures if a public hearing is held jointly between the legislative body and the zoning commission...” House Comm. Urban Affairs, Bill Analysis HB 1205. The amendment did not the change the separate protest rights subsection.

Like New Jersey, the Legislature in Texas amended the notice provision related to comprehensive revisions, but did not modify protest rights. The City is asking this Court to infer the repeal of protest rights. Texas courts, however, do not favor repealing legislative enactments by implication: “If repeal was effected it was by implication only, and repeal by implication is not favored. *Standard v. Sadler*, 383 S.W.2d 391 (Tex. 1964). *See also*, *Kroger Co. v. Keng*, 23 S.W.3d 347 (Tex. 2000). As stated in *Ramirez v. State of Texas*, 550 S.W.2d 121, 124 (Tex.Civ.App.—Austin 1977, no writ), “Repeal by implication is indulged only if the inconsistency

---

<sup>5</sup> It is undisputed that the City did not exercise the option of holding a joint public hearing in order to authorize less than individual notice. *See* Joint Stipulations of Fact 43, 44, CR 131.

between the legislative acts is irreconcilable (internal citation omitted). For repeal by implication to occur, the implication must be ‘clear, necessary, irresistible and free from reasonable doubt.’”

That is not the case here. There is no evidence—much less clear and irresistible evidence—that the Texas Legislature intended to exempt comprehensive revisions from protest rights. The fact that the Legislature amended in 1985 only the notice provision related to comprehensive revisions strongly indicates that it did not intend to change protest rights for comprehensive revisions. *See* March 3, 2020, Affidavit of David B. Brooks, Plaintiffs’ Trial Exhibit 2, CR 140-42 (Appendix 3 hereto).

Also instructive is the case of *208 E. 30<sup>th</sup> St. Corp. v. Town of New Salem*, 88 A.D.2d 281 (N.Y. App. Div. 1982). A municipality passed a unified set of zoning amendments affecting eight discrete sites at one time, with no severability clause. Where protests were filed, city law required approval by three-fourths of the members of the city board. The requisite number of protests were filed for only one of the eight sites.

The New York trial court held that as to the one property for which a protest was filed, the zoning change was not properly enacted because there was not a three-fourths super-majority vote to approve it; but that for the other seven unprotested properties, the less than three-fourths vote was sufficient to make the zoning changes

effective. *Id.* at 283. On appeal, the one owner contended that the three-fourths vote requirement did not apply because the protests were not filed by owners of 20% of *all the land covered by the eight amendments*. The town, on the other hand, argued that since the set of eight amendments were “part of one comprehensive scheme and contained no severability clause, protests registered by the owners of 20% of the land in only one site were sufficient to require all eight amendments to be approved by a three-fourths vote.” *Id.* at 286.

The appellate court rejected both arguments and agreed with the trial court. The court considered the zoning ordinance affecting eight discrete sites as if they had been separately enacted. The property for which a protest was filed could not be deemed to have been validly enacted on less than a three-fourths vote. *Id.* at 287.

The appellate court rejected the very notion that the City of Austin is advancing—that if the change is big enough, the citizens may be deprived of their statutory right to protest:

“Where, as here, there are severable provisions of a single zoning change, it would not be proper to require the owners of 20% of all the land affected by the amendments to protest in order to trigger the operation of [the three-quarter vote provision]. Such a holding would enable a municipal agency to insure passage of a highly objectionable amendment by simply combining it with another large, unobjectionable amendment. A statute must not be construed in a manner that would permit its purpose to be defeated.”

*Id.* at 288.



It is not for the courts to carve out their own exceptions to statutory protest rights that have been state law for over 90 years. If the Texas Legislature wishes to create an exception for comprehensive revisions, it can do so.

Other states have created such exceptions, but Texas has not. For example, in 1989, New Hampshire amended its protest statute to exclude any zoning change rezoning one-third or more of the property within a city. *See* N. H. Rev. Stat. § 675:5 (2015).

The New Hampshire amendment indicates that the original Standard Act (as adopted by Texas in 1927), must have included protest rights within broad based or comprehensive changes—contrary to Austin’s position. If that were not the case, New Hampshire would not have needed to amend its statute to exclude situations where a large portion of the land within municipal boundaries was rezoned.

It is telling that the Texas Legislature, unlike New Hampshire’s, has never carved out an exception to protest rights. It has made only very minor amendments to its protest rights procedures since they were adopted in 1927; these amendments addressed only how to define the 200 feet area surrounding a property and authorizing cities to enact, if they wished, a super-majority council vote to overturn a zoning commission decision denying a zoning change.<sup>6</sup>

---

<sup>6</sup> S. B. No. 934, 62nd Leg., p. 2864, ch. 942, § 1, eff. June 15, 1971 (clarifying 200 feet applies to “immediately adjoining” protested property); S.B No 1209, 65th Leg., p. 1308, ch. 516, § 1, eff. Aug. 29, 1977 (this was in response to a court ruling preempting (under Section 211.006) such an

If Austin wants such an exception to protest rights, it must go to the Texas Legislature to seek a change in the current statutes. Austin has no authority to reject the state’s statutory protest rights as they currently exist in Chapter 211.

**C. The LDC Revision does not adopt zoning changes that apply uniformly, city-wide, or that treat properties equally.**

Austin argues that neither the individual notice requirements nor protest rights apply to the LDC Revision because the LDC amendments “apply uniformly city-wide, across existing districts and boundaries...” such that Property Owners are not “uniquely affected by a zoning change to their specific property.” Austin contends that notice and protest rights are inapplicable “when every property city-wide is affected equally.” Appellants’ Brief, at 1.

First, there is nothing in Chapter 211 that conditions or qualifies the right to notice and protest based on the considerations advanced by Austin. Whether zoning changes are uniform, equal, or unique is irrelevant to the availability of those rights. Austin has admitted to actions that meet the statutory standard: Austin is changing the classifications, regulations or boundaries of properties across the city, including

---

ordinance passed by San Antonio. *City of San Antonio v. Lanier*, 542 S.W.2d 232, 234 (Tex. Civ. App.—San Antonio 1976, writ ref’d n.r.e.)).

those owned by Property Owners. Joint Stipulations of Fact 31, CR 129. That is the only relevant fact.

Further, Austin’s claims are unsupported by the evidence. Austin relies upon the so-called Conversion Table and Rules to support its “uniformity” theory. Joint Trial Exhibit 57, CR 3098-3109. That reliance is sorely misplaced.

**1. The Conversion Table and Rules prove that Austin is not changing regulations uniformly city-wide.**

The Conversion Table, on its face, shows that Austin is changing the classification of properties in non-uniform ways. For example, a snapshot of a portion of the table, below, shows that the existing SF-1, SF-2, and SF-3 classifications are being converted into seven different classifications: R2A, RM1, R4, R3, R2B, R1 and R2C. CR 3098.

**§ 1. Zone Conversion Table**

Title 25 Zone	Conversion Rules	Title 23 Zone
— Residential		
RR	Comparable Equivalency →	RR
LA	Comparable Equivalency →	LA
SF-1 SF-2 SF-3	Comparable Equivalency →	R2A
	Rule B.1.a, 2.a, 3.a, and 4.a →	RM1
	Rule B.1.b, 2.b, 3.b, and 4.b →	R4
	Rule B.1.c →	R3
	If direct frontage is within ½ mile from a Corridor or TPN →	R2B
	Property area is 2500 - 3500 sq. ft. →	R1
	Property area is 3501 - 5000 sq. ft. →	R2C

Joint Trial Exhibit 57, CR 3098. Clearly, properties with current single-family SF-3 zoning are not being treated uniformly but are being rezoned with different

classifications. Similar non-uniformity in reclassification is found throughout the Conversion Table (*See*, SF-4A, SF-4B, MF-1, MF-2, MF-5, MF-6, NO, LO, LR, GO, GR, CS, CS-1, CH, CO, NCCD) CR 3098-3100. In this lawsuit fourteen Property Owners' properties are currently zoned Single-Family SF-3, yet seven properties are being rezoned R2A, three R2B, one R4, and three RM1. CR128, 134.

This lack of uniformity can be seen on the proposed zoning map.<sup>7</sup> An example from the Austin's map illustrates the point using properties zoned SF-3. On the two slides, below, the current zoning is depicted on the right and the proposed zoning on the left. The pop-up boxes, generated by the map when one clicks on a single property, show the original and the new zoning classifications. The red line was added to outline areas where properties were reclassified the same way—in other words, clicking on the map for any property in the area outlined in red on the first slide will result in pop-up boxes indicating a conversion from SF-3 to R2B. On the second slide the pop-up boxes indicate a conversion from SF-3 to R2A. The explanatory text on the left and the labels on the map (R2A and R2B) were added.

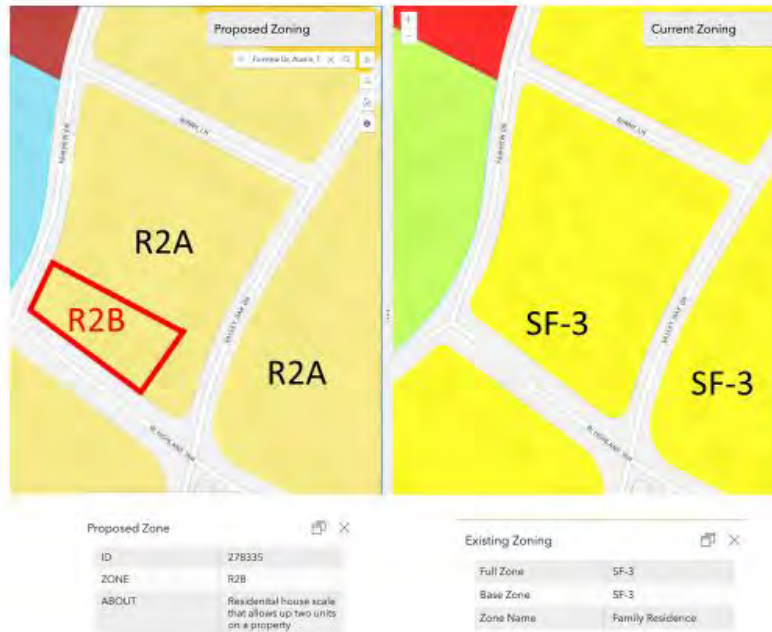
---

<sup>7</sup> Proposed Zoning Map ("Land Development Draft Code and Map") via the link in Joint Stipulation 6, CR124

## Map Example of Non-Uniform Conversion of SF-3 under Code Revision

3202, 3204, 3206 West Highland Terrace R2B

Outline and Labels added



Conversion  
SF-3 → R2B

## Map Example of Non-Uniform Conversion of SF-3 under Code Revision

Property surrounding 3202, 3204, 3206 West Highland Terrace (Search 4900 Valley Oak Dr.)

Outline and Labels added



Conversion  
SF-3 → R2A

As shown by a comparison of the right and left windows, all of the properties outlined in red are currently zoned SF-3. Yet, under the LDC Revision, as the map

plainly shows, adjoining SF-3 properties were rezoned differently – some receiving R2A and some R2B zoning. Austin’s assertion of uniform rezoning is simply not accurate.

The extent of non-uniform treatment varies, but is illustrated by comparing Property Owner Francisca Acuña’s homestead with Property Owner Randy Howard’s homestead. CR 134. Both properties are currently zoned SF-3-NP, which would allow up to 15.2 units per acre. Ms. Acuña’s property is rezoned to R2A while Mr. Howard’s property is being rezoned to RM1. Her property’s units per acre would increase to about 26 units per acre (using the preservation bonus.) His property’s units per acre, on the other hand, would increase much more substantially to about 61 units per acre without including bonuses and allowances for additional units; with those bonuses and allowances it would increase to about 95 units per acre. In contrast with Ms. Acuña’s impervious cover limit of 45%, the limit for Mr. Howard’s RM1 zoning is 60%. In short, the zoning regulations for properties with the same regulations today are dramatically changed under the LDC Revision.<sup>8</sup>

---

<sup>8</sup> Compare Joint Trial Exhibit 7, City of Austin Guide to Zoning, CR 964-966 (SF-1 to SF-3), CR 949 and Austin City Code, § 25-2-492 (Site Development Regulations) via the link at the top of Joint Trial Exhibit 3 CR847 with Joint Trial Exhibit 4 CR 3664, §23-3C-3050 (D) (Preservation Incentive) CR 3959; 23-3C-3090 (R2A) 3970; 23-3C-4060 (RM1) CR 3994.

Properties with the same zoning today are not being rezoned uniformly city-wide, but are being reclassified into a myriad of different districts. The Conversion Table and map refute Austin’s claim of uniform, equal changes.

**2. The Conversion Table and Rules prove that Austin is not changing regulations across districts, boundaries and classifications.**

Austin contends that the zoning changes were applied “across existing districts and boundaries.” Appellants’ Brief, at 1. In fact, the LDC Revision made fundamental changes *within* virtually every district classification, that is, changes that did not apply “*across*” multiple districts but only applied *to* that district. This is true even for the districts (called “zones” on the Table) that Austin claims are converted to a “comparably equivalent” zone.

For example, under the LDC Revision, property like Property Owner Francisca Acuña’s home is being rezoned from SF-3-NP to R2A, which the zone Conversion Table purports to be comparably equivalent zoning. Under her current SF-3 zoning, 7.5-15.2 units can be built per acre. But under the LDC Revision’s proposed R2A rezoning, 26.1 units per acre can be built with the “preservation incentive bonus.”<sup>9</sup> It is not “comparably equivalent” zoning to increase a single-family property’s density by more than 70%.

---

<sup>9</sup> Compare Joint Trial Exhibit 7, City of Austin Guide to Zoning CR 964-966 (SF-1 to SF-3) CR 949 and Austin City Code, § 25-2-492 (Site Development Regulations) via the link at the top of Joint Trial Exhibit 3 CR847 with Joint Trial Exhibit 4, CR 3664, §23-3C-3050 (D) (Preservation Incentive) CR 3959, §23-3C-3090 (R2A) CR 3970.

Austin made non-uniform changes across the city – changes within districts, not simply across districts. These changes were not simple changes in nomenclature, but rather significant regulatory changes with the potential to alter the character of the property—even for those conversions Austin falsely claims are “comparably equivalent.” Far more dramatic are the conversions that do not carry that label.

**3. The Conversion Table and Rules are applied on the map selectively, resulting in even greater non-uniformity and unequal treatment.**

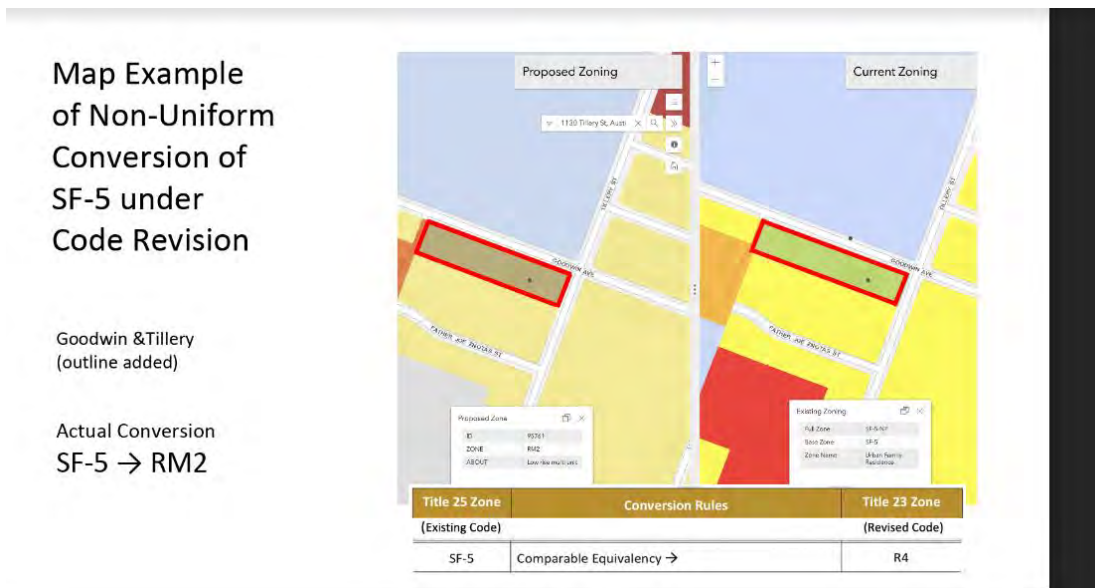
Austin claims that “the Conversion Table sets out the applicable rules to determine the new zoning classifications for properties under the revised zoning code” and that “zoning classifications are converted through rules that are applied uniformly across the City.” Appellants’ Brief, at 4. There is no evidence and no finding of fact to support this assertion and as shown below, there is substantial evidence to the contrary. Austin requested no Findings of Fact and Conclusions of Law from the trial court. When no findings of fact are requested, the trial court’s judgment implies all findings of fact necessary to support the judgment. *Shields LP v. Bradbury*, 526 S.W.3d 471, 480 (Tex. 2017); *Sixth RMA Partners v. Sibley*, 111 S.W.3d 46, 52 (Tex. 2003).

As shown above, non-uniform treatment of currently identically zoned properties is baked into the Conversion Table and Rules and those changes are not city-wide changes that apply across districts; they are changes within the districts



themselves. But the lack of uniform, equal treatment extends beyond the Conversion Table and Rules to the application of these tools.

For example, Austin states unequivocally that “all existing SF-5 zoned properties throughout the City—no matter where they are—convert to R4 zoning...” Appellants’ Brief, at 6. But the proposed map tells a different story. Currently zoned SF-5 properties were, in fact, reclassified to one of six different classifications (RM1, RM2, RR, MU4, R2A, R4), not uniformly to R4. *See* Map excerpts in Appendix 1. One example from Austin’s map illustrates the point. The red line on the map was added to outline areas where properties were reclassified in the same way from SF-5 to RM2 (not R4 as Austin asserts). The explanatory text on the left was added and the Conversion Table extract was superimposed at the bottom of the map:



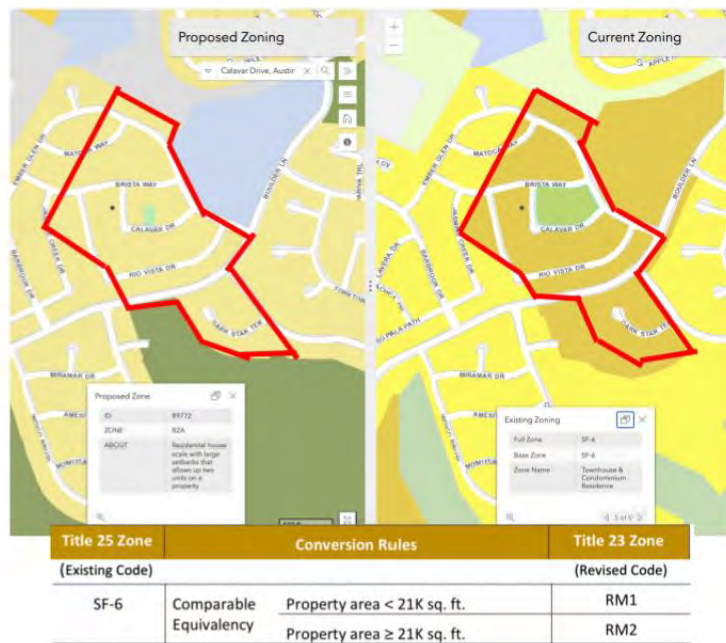
The map excerpt, above, demonstrates that for the outlined area, properties currently zoned SF-5 were not, as the Conversion Table represents, converted to R4, but were in fact converted to RM2, a completely different classification.

Austin also claims that “All SF-6 zoned properties—city-wide, no matter where they are—will convert to RM1 if the property area is less than 21K square feet, or RM2 if the property area is greater than 21K square feet.” Appellants’ Brief, at 6. Again, an examination of the map shows that this is not the case. SF-6 properties were, in fact, reclassified to 10 different categories (R4, R2A, P, CL, RR, F25, PR, R2C, RM1, RM2), not simply to RM1 or RM2. *See* Map excerpts in Appendix 1. To illustrate, the Calaver Drive area shown below was reclassified to R2A, not to RM1 or RM2 as Austin’s Conversion Table and Rules would indicate.

### Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Calaver Drive Area  
(outline added)

Actual Conversion  
SF-6 → R2A



Contrary to its claim, Austin did not reclassify properties uniformly or categorically. One could go down the Table, classification by classification, with example after example of the map not conforming to the rules, or perhaps more accurately, the rules not conforming to the map. Austin’s assertion of “uniform” conversion is refuted by the evidence.

**4. Nothing about the Conversion Table and Rules changes the unique impact of the LDC Revision Upon Individual Property Owners.**

One of the most perplexing arguments advanced by Austin is the notion that no property rezoned under the LDC revision is “uniquely affected by a zoning change to their specific property.” Appellants’ Brief, at 1. It is perplexing not simply because of the sweeping nature of the assertion, but because it is so clearly untrue – even putting aside the non-uniform, unequal treatment under the LDC Revision. First, all property is unique because no two properties occupy the same location and, therefore, all are impacted differently, in varying degrees, by their surroundings.

Some properties are 50ft or 500ft closer to a corridor or a drainage way or a commercial use than their neighbor or an identically zoned property on the next block or the next neighborhood. All corridors, drainage ways, and commercial rezoning are not the same. Even two properties, equidistant from different corridors, are going to be affected differently because the volume, configuration and zoning on the corridors is different.

Some neighborhoods are more sensitive (such as to traffic, due to street width or the presence of an elementary school) than others such that the rezoning and subsequent redevelopment of a lot three doors down threatens a property owner in ways it would not threaten a property owner in another neighborhood. But, whatever that impact, its uniqueness does not disappear because of the manner or method used to rezone the property.

Austin cannot be allowed to dismiss, or at least homogenize, the impact of their zoning changes on individual lives of property owners as a predicate to denying them notice and the right to protest. Austin is asserting as a matter of fact that the impact of their rezoning regime does not uniquely affect any property owner. Although groundless on its face, it has to be noted that they have no finding of fact or stipulation to support it.

**D. Austin's rezoning was property-specific based on facts and not simply legislative broad policymaking.**

Austin asserts without any evidence that the LDC Revision rezones hundreds of thousands of properties based only on broad legislative policies and not specific facts on the ground. Appellants' Brief, at 2-3, 5, 7-8, 10. It is clear, however, that Austin took into account specific facts when rezoning individual properties. Austin stated repeatedly that it is considering "context-sensitive criteria" (*i.e.*, property-

specific facts) when creating the rezoning maps.<sup>10</sup> Numerous references to context specific and fact-based criteria are found throughout Austin’s official reports and memos.<sup>11</sup>

Austin’s LDC Revision reports reference a number of specific facts considered in the proposed mapping of specific properties, such as existing uses, susceptibility to flooding, transportation networks and traffic, environmentally sensitive areas, topography, redevelopment potential, and high opportunity areas.<sup>12</sup>

---

<sup>10</sup> For example, Joint Trial Exhibit 54, CR 2966 stated: “The most significant text revisions in Council’s 1st Reading Amendments are grounded in the same principles as revisions to the map criteria: *equity and context*.” (Emphasis added.) The report further explains that Council is refining certain “mapping criteria to better reflect public input received regarding gentrification and displacement, corridor context, and flood risk.” *Id.* CR 2965. The report notes that the Council will be setting up a mapping review process to look at specific properties: “As stated during deliberations on 1st Reading, the LDC Team will establish a process by which council members may propose more detailed revisions to mapping criteria for particular zones... While remaining focused on broad criteria, the mapbook process will enable council members to provide examples that better illustrate specific concerns regarding proposed application of new zones in particular cases.” *Id.*, CR 2967.

<sup>11</sup> See, e.g., Joint Trial Exhibit 54, CR 2965-66, 2972-75, 2984, 2992, 3026, 3038; Joint Trial Exhibit 22, CR 3150-51, 3156, 3157-59 (“Employment and other uses to create ‘complete communities’ along transit and Imagine Austin corridors and centers should also be allowed in a way that is context-sensitive”) *Id.*, CR 3158; Joint Trial Exhibit 21, CR 3120-24, 3131, 3146; Joint Trial Exhibit 25, CR 3237-38) (“Based on that feedback, staff is considering greater context-sensitivity for the mapping of transition areas that are adjacent to residential corridors predominantly developed with single-family rather than commercial or multi-family use, as well as continued refinement to the approach in areas susceptible to gentrification and displacement.”)

<sup>12</sup> The City Council in May 2019 directed the City Manager what to consider in the zoning planning process: “[c]riteria should include, but not be limited to, the following information sources: i. Planned transportation investments, including corridors with transportation bonds and public transit investments; ii. Affordable housing investments; iii. Significant number or scale of private development; iv. Market force indicators expressing need and opportunity to leverage an area’s potential or significant public investment via facilities or other infrastructure; v. Areas of vulnerability identified using the mapping tool from the UT Gentrification & Displacement Study, ‘Uprooted’; and vi. Include consideration for inhibiting displacement, preserving cultural and

Numerous property-specific rezoning criteria appear repeatedly in Austin’s official reports on the LDC Revision. One example is the use of localized flooding data in city mapping. “This methodology...mitigat[es] potential flood risk by minimizing the number of units that could be constructed in low-lying areas. Staff removed the R3, R4, or RM1 zone from approximately 300 parcels within local flood problem areas...staff also recommend a new process to address potential lot-to-lot drainage concerns for larger... projects....” Joint Trial Exhibit 54, CR 2972.

Austin staff took into account the varied hilly topography, which obviously impacts rezoning: “Staff is reviewing the potential consequences of mapping transition zones on parcels with particularly steep slopes that may prohibit or severely restrict development.” Joint Trial Exhibit 25, CR 3237.

Austin’s proposed remapping reflects the nature and capacity of Austin’s particular road network. Staff “[r]educe[d] application of missing middle zones along non-commercial corridors developed primarily with residential uses.” Joint Trial Exhibit 54, CR 2965. Staff even discussed specific streets where zoning was changed based on the nature of the roads: “Residential corridors encompassed by these new criteria include Enfield, Duval, Oltorf, and 45th Street. In some cases,

---

historic assets, promoting multi-generational housing, and support neighborhood schools, particularly schools with under –enrollment or in areas of rapid displacement.” Joint Trial Exhibit 22, CR 3163.

application of R4 and RM1... was reduced further to reflect more careful application of other established zone criteria.” Joint Trial Exhibit 54, CR 2969.

Staff was ordered to consider specific facts regarding environmentally sensitive properties: “The Manager will report on how revisions to the land development code will likely affect existing environmental regulations, understanding that the goal of the council is to preserve, or increase, our current level of environmental protections and sustainability with respect to flooding, water quality and usage, air quality, and greenhouse gas emissions.” Joint Trial Exhibit 22, CR 3149. *See also* Joint Trial Exhibit 54, CR 3033.

The LDC Revision considered specific facts in “appl[ying] missing middle zones in a context sensitive [sic] to areas adjacent to Centers, Corridors, TPNs [transit priority networks], and high opportunity areas.” Joint Trial Exhibit 54, CR 2972. The high opportunity areas are based on many factors such as income, schools, health, jobs, and social capital. Joint Trial Exhibit 40, CR 2124-2150.

As indicated above, the evidence at trial refutes Austin’s claim that it did not consider “facts on the ground” or “context” in drafting the LDC Revision.

### III.

#### **STATUTORY NOTICE AND RECOGNITION OF PROTEST RIGHTS ARE NOT OVERLY BURDENSOME.**<sup>13</sup>

---

<sup>13</sup> Austin’s argument that it is just too hard to comply with Chapter 211 is 10 pages out of the 40 pages of its argument to the Court as to notice and protest rights. Appellants’ Brief, at 26-36. Yet Austin cites no legal authority to support this argument that consumes 25% of Appellants’ Brief.

Austin makes the argument that complying with the plain language of the statute by giving notice of its zoning commission’s public hearing and recognizing the protests of Property Owners and thousands of other Austin landowners is just too hard.

First, the difficulty of complying with the statute is not a defense. Austin cites no authority to the contrary. Second, Austin ignores the alternative notice provision (§ 211.007(d)) resulting from the 1985 amendment to Chapter 211 of the Texas Local Government Code. If Austin finds that giving individual written notice of its zoning commission’s public hearing as to the LDC Revision is too onerous, the City Council has the option to vote for a joint meeting with the zoning commission—clearing the way for alternative notice, including notice by newspaper publication. Utilizing that option defeats all of Austin’s claims that notice is too onerous, too time consuming or too expensive.<sup>14</sup>

Austin argues that complying with the protest rights provided in § 211.006(d) would make it impossible to adopt a comprehensive zoning revision.

---

<sup>14</sup> Moreover, Austin uses its own notice ordinances that impose “heightened” notice requirements clearly beyond the requirements of Chapter 211 to bolster its argument. Appellants’ Brief, at 27-31.

Austin ordinances § 25-1322(A) and § 25-2-261 increase the “buffer zone” from 200’ to 500’ and requires written notice not only to landowners, but also to utility account holders, and some registered environmental and neighborhood organizations. *Id.* at 27. While Austin is free to increase the notice requirements in Chapter 211, it should not be heard to say these self-imposed “heightened” notice standards justify Austin’s failure to follow the statute.



Appellants' Brief, at 36. This argument is based on its explanation of its current process for recognizing protests. Appellants' Brief, at 32-35. As with the notice requirements, Austin ignores the available statutory option that would do away with all of the steps used to evaluate protests. That option is to draft a comprehensive zoning revision that can garner the support of three-fourths of the Council Members—9 of 11. *See* § 211.006(d). Short of that, Austin must seek relief through the Texas Legislature to carve out the exception to the statute that it advocates.

#### IV.

#### **THE TRIAL COURT'S DECLARATORY AND INJUNCTIVE RELIEF IS NEITHER VAGUE NOR OVERBROAD.**

Property Owners disagree that the trial court's relief set forth in the Final Judgment is vague, overly broad, or departs from the applicable statutory standards. To the contrary, the injunctive and declaratory relief is specific and describes in clear language the acts to be restrained. Austin did not object to the form of the judgment while the trial court had jurisdiction.

Austin's position was that notice by publication was sufficient. The trial court disagreed and declared that written notice was statutorily required. Austin's position was that no protest rights had to be recognized. The trial court disagreed and declared that property owners had protest rights pursuant to § 211.006(d) of the

Texas Local Government Code as to “any change in the zoning regulation or zoning district boundaries...” Final Judgment, at 2.

The declaratory relief follows the statute and resolves the issues in controversy as raised by the pleadings and the evidence.

The trial court enjoined Austin from refusing to recognize and accept protest rights under § 211.006(d) as to any change in the zoning regulations or zoning district boundaries. Final Judgment, at 3.

The trial court enjoined Austin from refusing to apply the three-fourths majority vote in adopting any zoning change to protested property. *Id.*

The injunctive relief precludes Austin from its stated course of action to deny protests and to refuse to require a three-fourths majority vote to approve changes to the regulations or boundaries of protested properties.

Most importantly, in its complaints about the language of the Final Judgment, Austin ignores the trial court’s direction to act “pursuant to” the relevant statutory provisions. So, for example, it is clear from the trial courts directive in paragraph 2 on page 3 of the Final Judgment requiring a three-fourths majority vote when there is a protest of “at least 20% of the relevant property pursuant to Texas Local Government Code § 211.006(d)” that the statutory provision explaining the calculation is incorporated into the judgment. CR 5183, 5185. Austin should know exactly what the trial court ordered.

Austin's complaint that the Final Judgment does not resolve the actual controversy between the parties could not be further from the truth. Austin is seeking to rezone property without giving notice and respecting protest rights. They have acknowledged in their public pronouncements that they believe protest rights are limited to "several lots" in "limited areas" in clear violation of the statute which places no such limitation. Joint Trial Exhibit 10, CR 1241. The trial court properly ordered Austin to honor the statutory safeguards.

Even though Property Owners disagree with Austin, they do not oppose (1) substituting "classification changed" for "zoning changed" in paragraph 1 of the Court's declaratory relief on page 2 of the Final Judgment; and (2) substituting "classification" for "regulations or zoning district boundaries" in the paragraph following Injunctive Relief on page 3 of the Final Judgment. Such revisions would, however, neither clarify the Final Judgment nor lessen its impact upon Austin's zoning procedures.

### **PRAYER**

Appellees respectfully pray that the Final Judgment of the trial court be affirmed.

Respectfully submitted,  
GRAY BECKER, P.C.  
900 West Avenue  
Austin, Texas 78701  
Telephone: (512) 482-0061

Fax: (512) 482-0924

By: /s/ Douglas M. Becker  
Douglas M. Becker  
State Bar No. 02012900  
[doug.becker@graybecker.com](mailto:doug.becker@graybecker.com)  
Richard E. Gray, III  
State Bar No. 08328300  
[rick.gray@graybecker.com](mailto:rick.gray@graybecker.com)  
Monte Swearengen  
State Bar No. 18871700  
[monte.swearengen@graybecker.com](mailto:monte.swearengen@graybecker.com)  
*Attorneys for Appellees*

### **CERTIFICATE OF SERVICE**

I certify that on August 28, 2020, a true copy of the foregoing *Brief of Appellees* was served on counsel for Appellants via E-filing.

Anne L. Morgan, City Attorney  
City of Austin Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546

Jane Webre  
Mary Byars  
Scott Douglas & McConnico, LLP  
303 Colorado Street, Suite 2400  
Austin, TX 78701

/s/ Monte L. Swearengen  
Monte L. Swearengen

### **CERTIFICATE OF COMPLIANCE**

I certify that the foregoing Brief of Appellees was prepared using Microsoft Word for Office 365 ProPlus, and that, according to its word-count function, the sections of the foregoing brief covered by TRAP 9.4(i)(1) contain 13,784 words in a 14-point font size and footnotes in a 12-point font size.

/s/ Monte L. Swearengen  
Monte L. Swearengen

No. 14-20-00356-CV

---

IN THE FOURTEENTH COURT OF APPEALS  
AT HOUSTON, TEXAS

---

THE CITY OF AUSTIN, TEXAS, et al.

v.

FRANCISCA ACUÑA, et al.

---

APPENDIX

---

1. Excerpts of maps
2. Texas Local Gov't Code §§ 211.001-211.007
3. Affidavit of David B. Brooks
4. Joint Stipulations of Fact
5. Stipulation Regarding Trial Exhibit

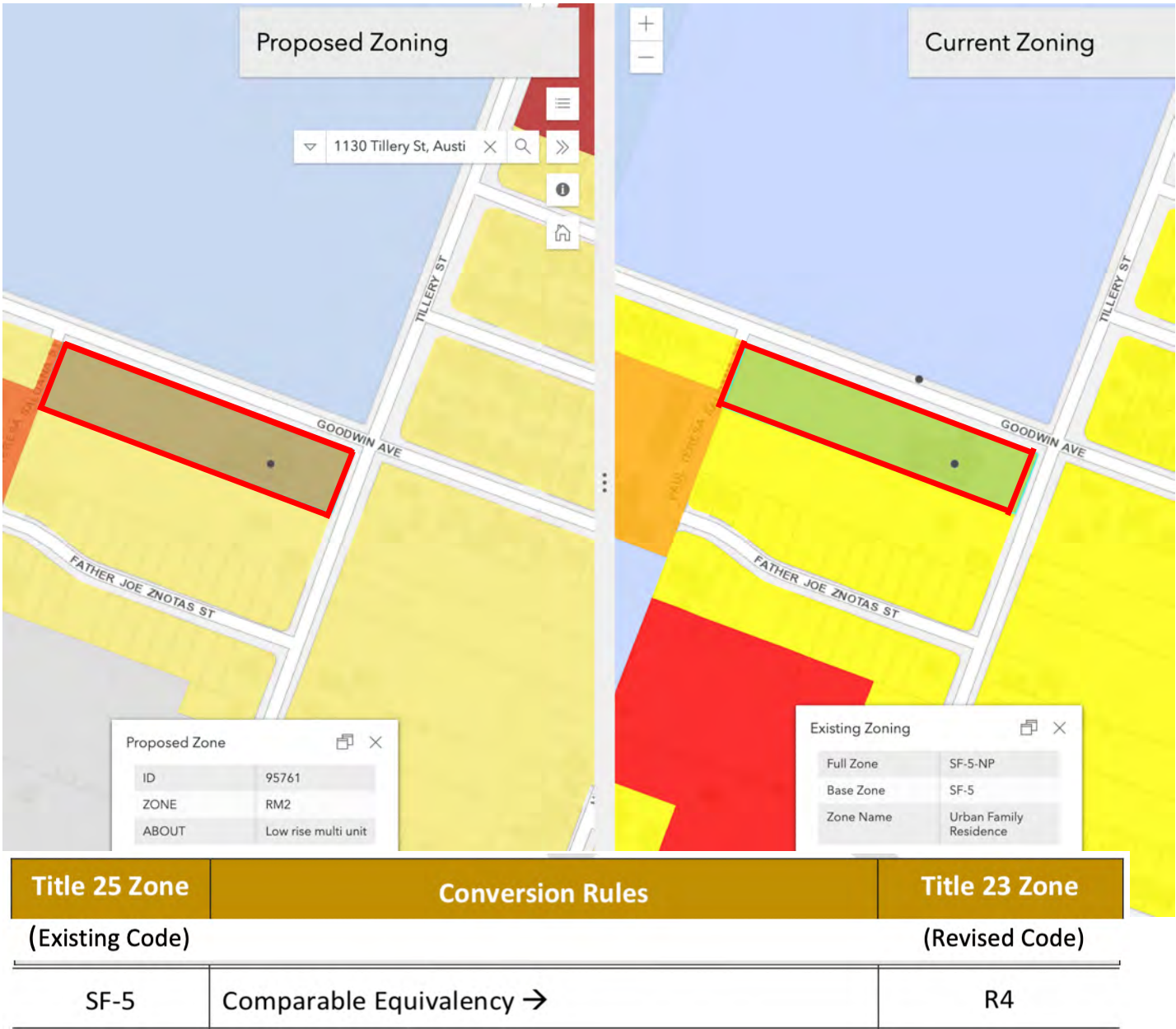
## **APPENDIX 1**

1. Excerpts of maps

# Map Example of Non-Uniform Conversion of SF-5 under Code Revision

Goodwin &Tillery  
(outline added)

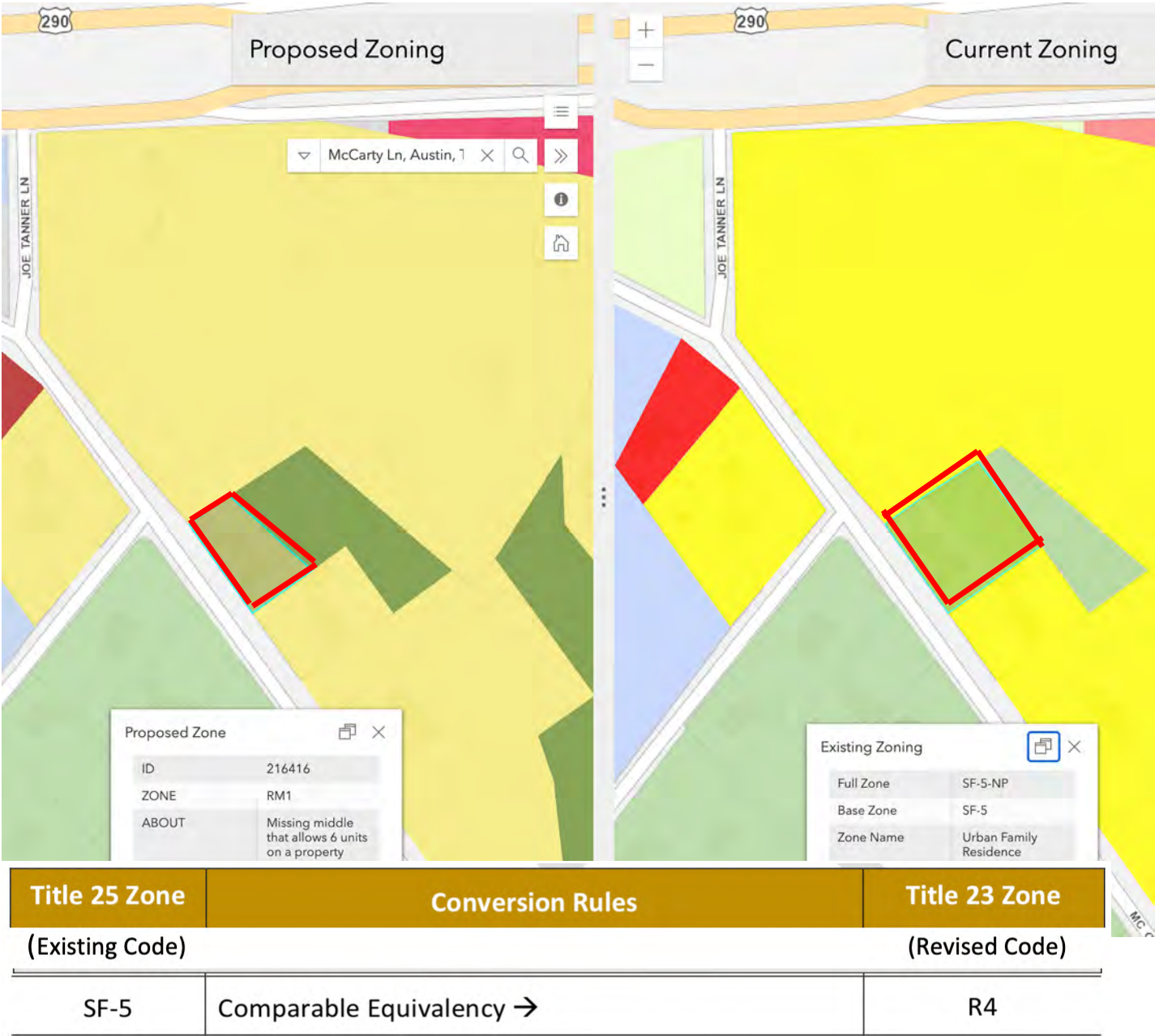
Actual Conversion  
SF-5 → RM2



# Map Example of Non-Uniform Conversion of SF-5 under Code Revision

McCarty near Joe Tanner  
(outline added)

Actual Conversion  
SF-5 → RM1

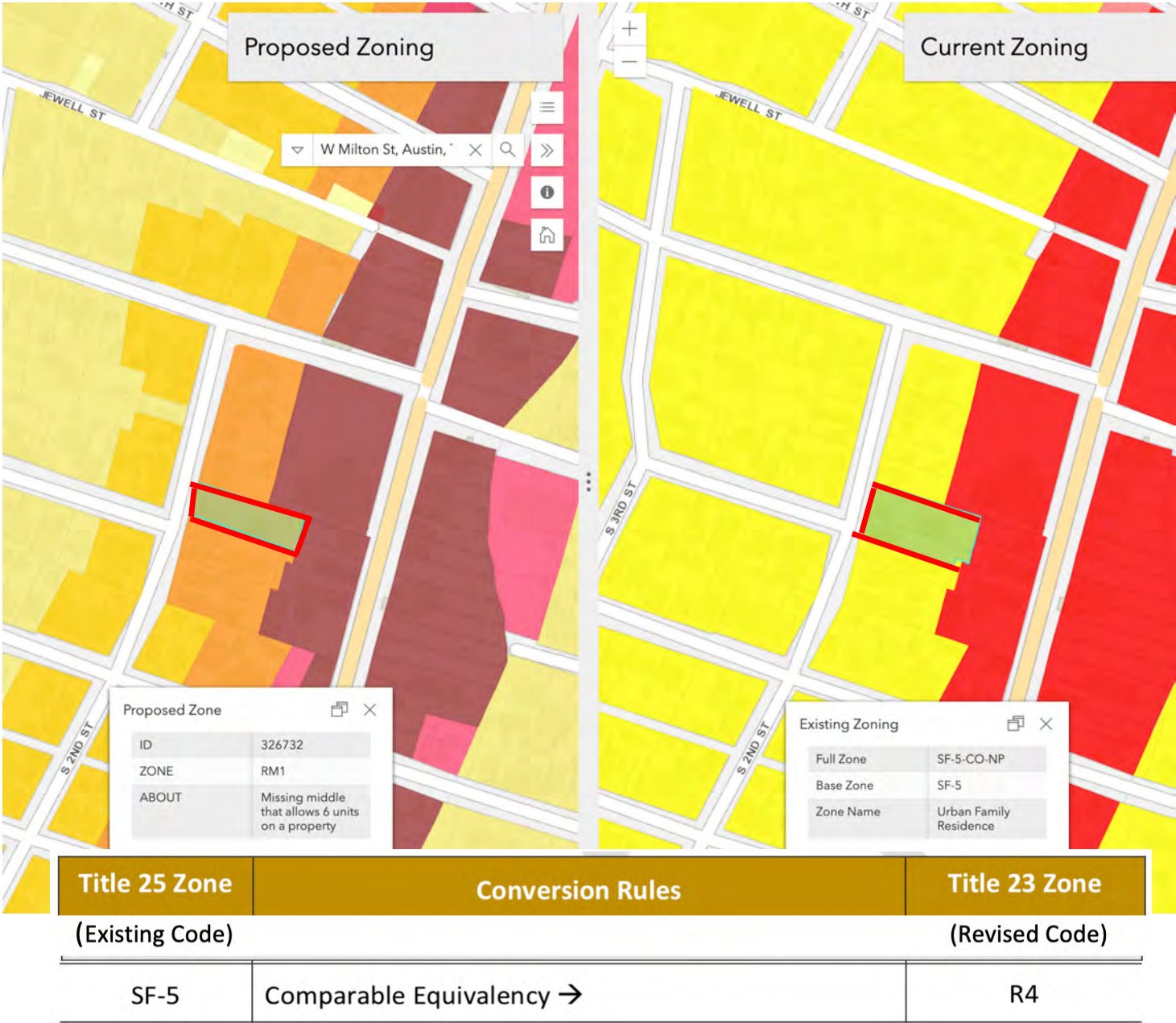




# Map Example of Non-Uniform Conversion of SF-5 under Code Revision

West Milton Near S 2<sup>nd</sup>  
(outline added)

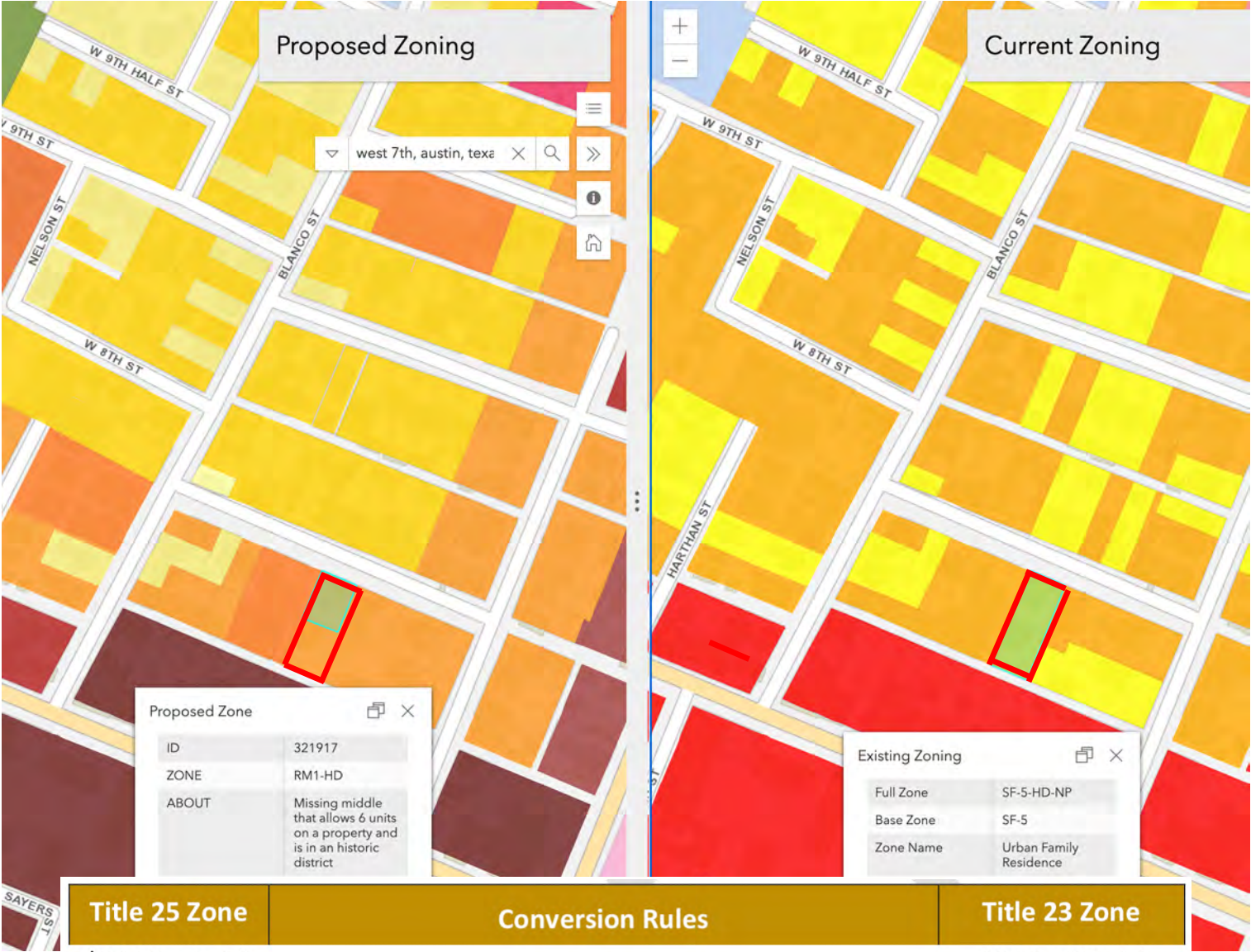
Actual Conversion  
SF-5 → RM1



# Map Example of Non-Uniform Conversion of SF-5 under Code Revision

West 7<sup>th</sup> near Blanco  
(outline added)

Actual Conversion  
SF-5 → RM1-HD



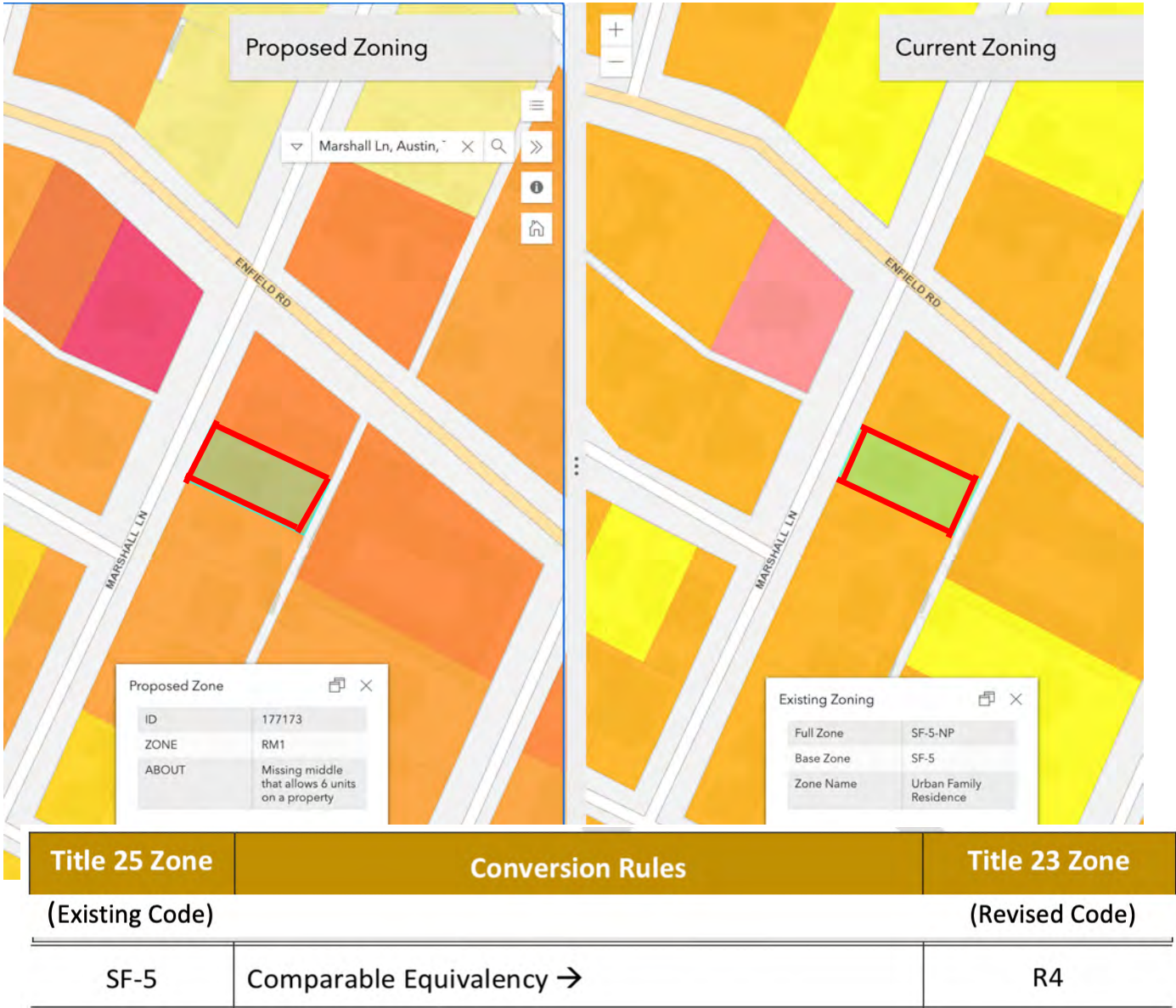
Title 25 Zone	Conversion Rules	Title 23 Zone
(Existing Code)		(Revised Code)
SF-5	Comparable Equivalency →	R4



# Map Example of Non-Uniform Conversion of SF-5 under Code Revision

Marshall near Enfield  
(outline added)

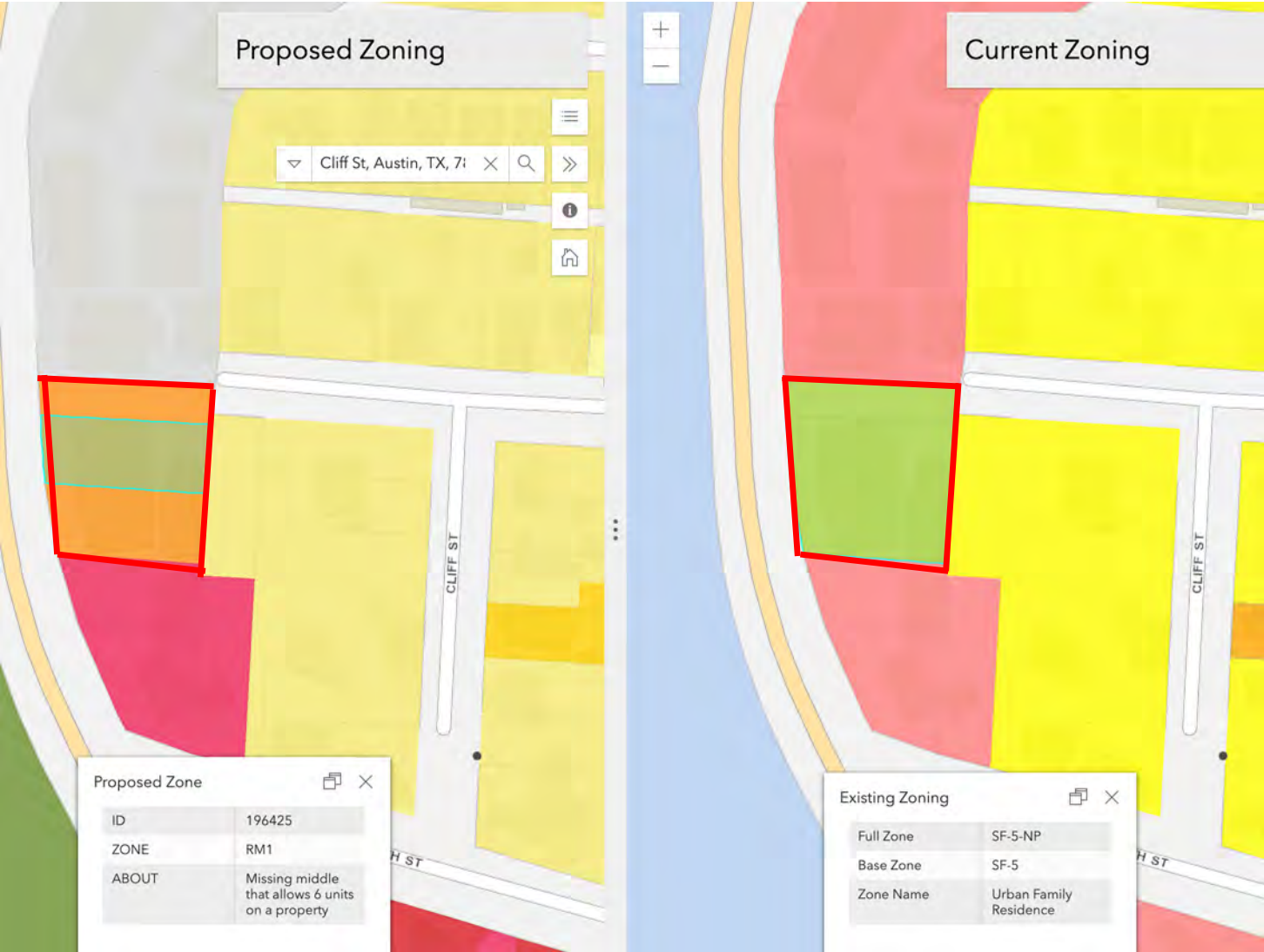
Actual Conversion  
SF-5 → RM1



# Map Example of Non-Uniform Conversion of SF-5 under Code Revision

West 22<sup>nd</sup> near Cliff  
(outline added)

Actual Conversion  
SF-5 → RM1

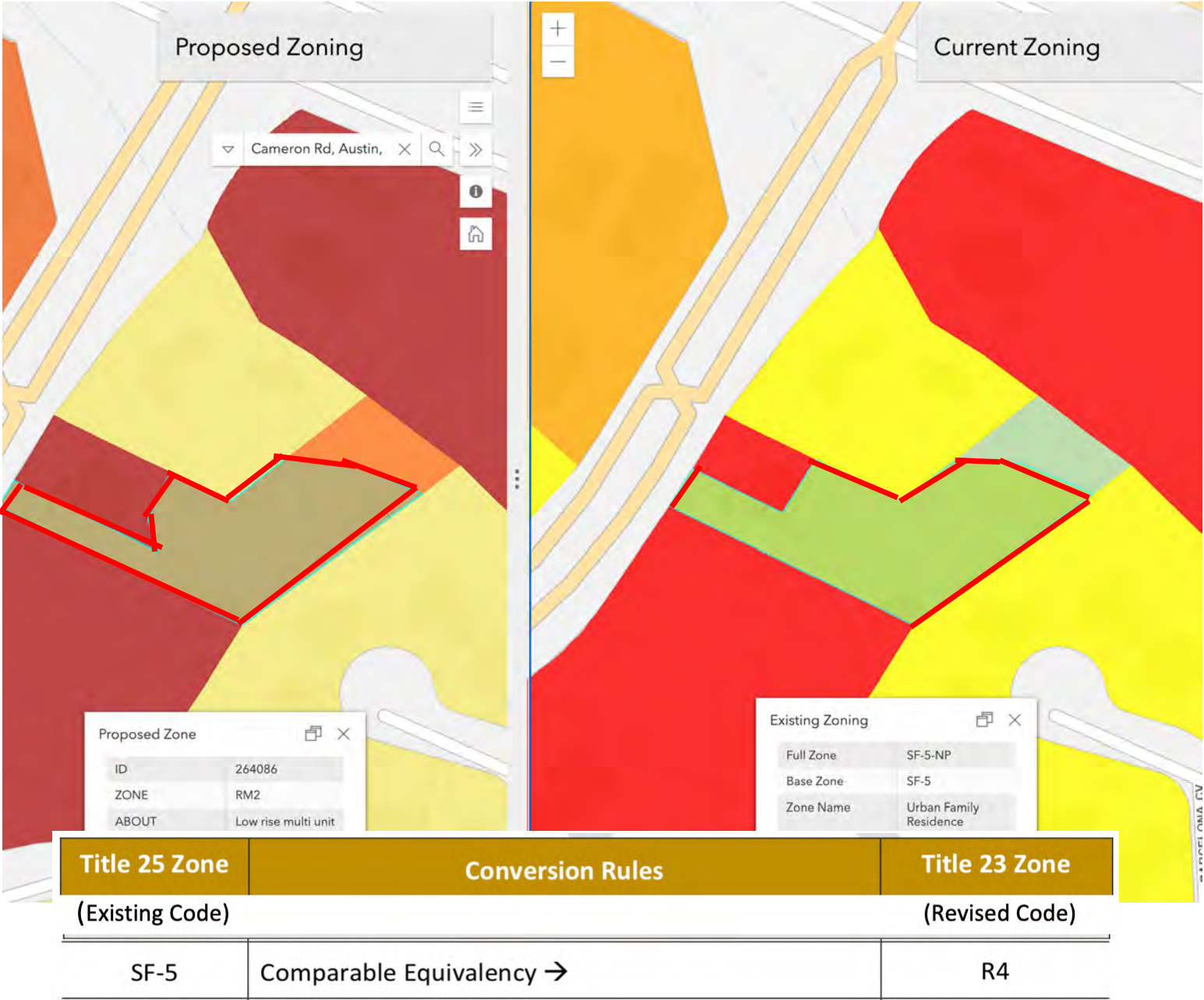


Title 25 Zone	Conversion Rules	Title 23 Zone
(Existing Code)		(Revised Code)
SF-5	Comparable Equivalency →	R4

# Map Example of Non-Uniform Conversion of SF-5 under Code Revision

Cameron near Barcelona  
(outline added)

Actual Conversion  
SF-5 → RM2

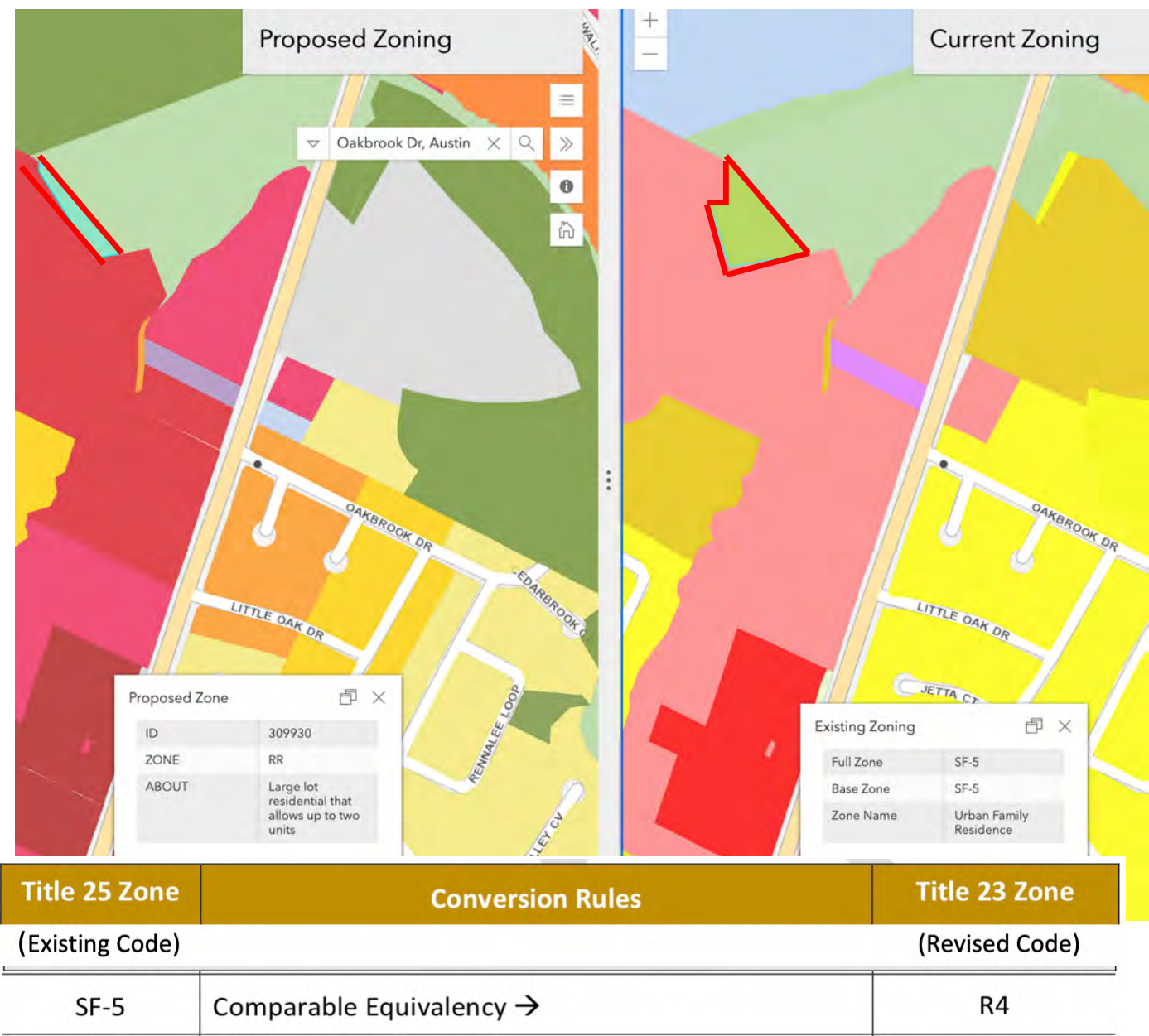




# Map Example of Non-Uniform Conversion of SF-5 under Code Revision

West of N. Lamar and Oakbrook  
(outline added)

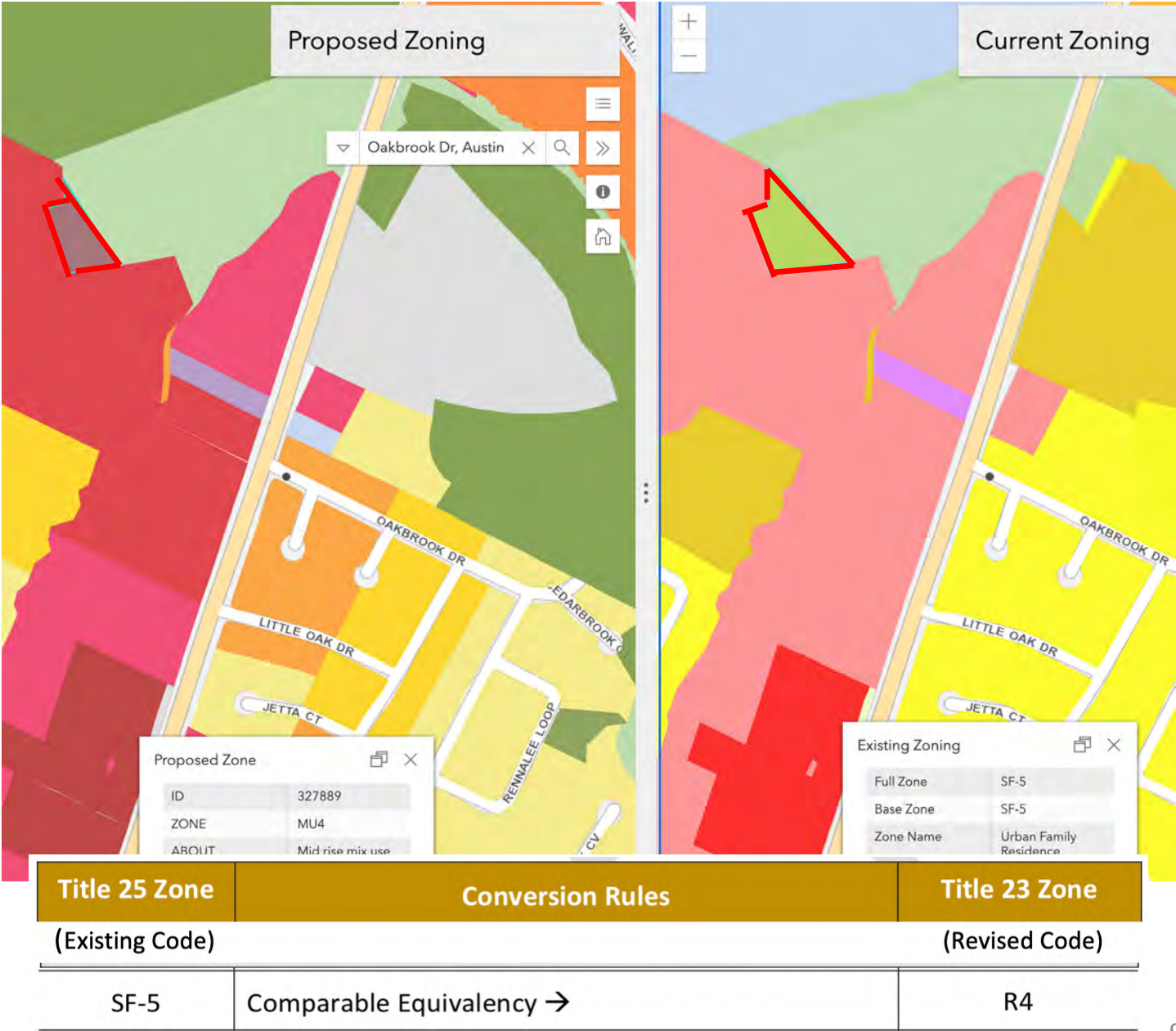
Actual Conversion  
SF-5 → RR



# Map Example of Non-Uniform Conversion of SF-5 under Code Revision

West of N. Lamar and Oakbrook  
(outline added)

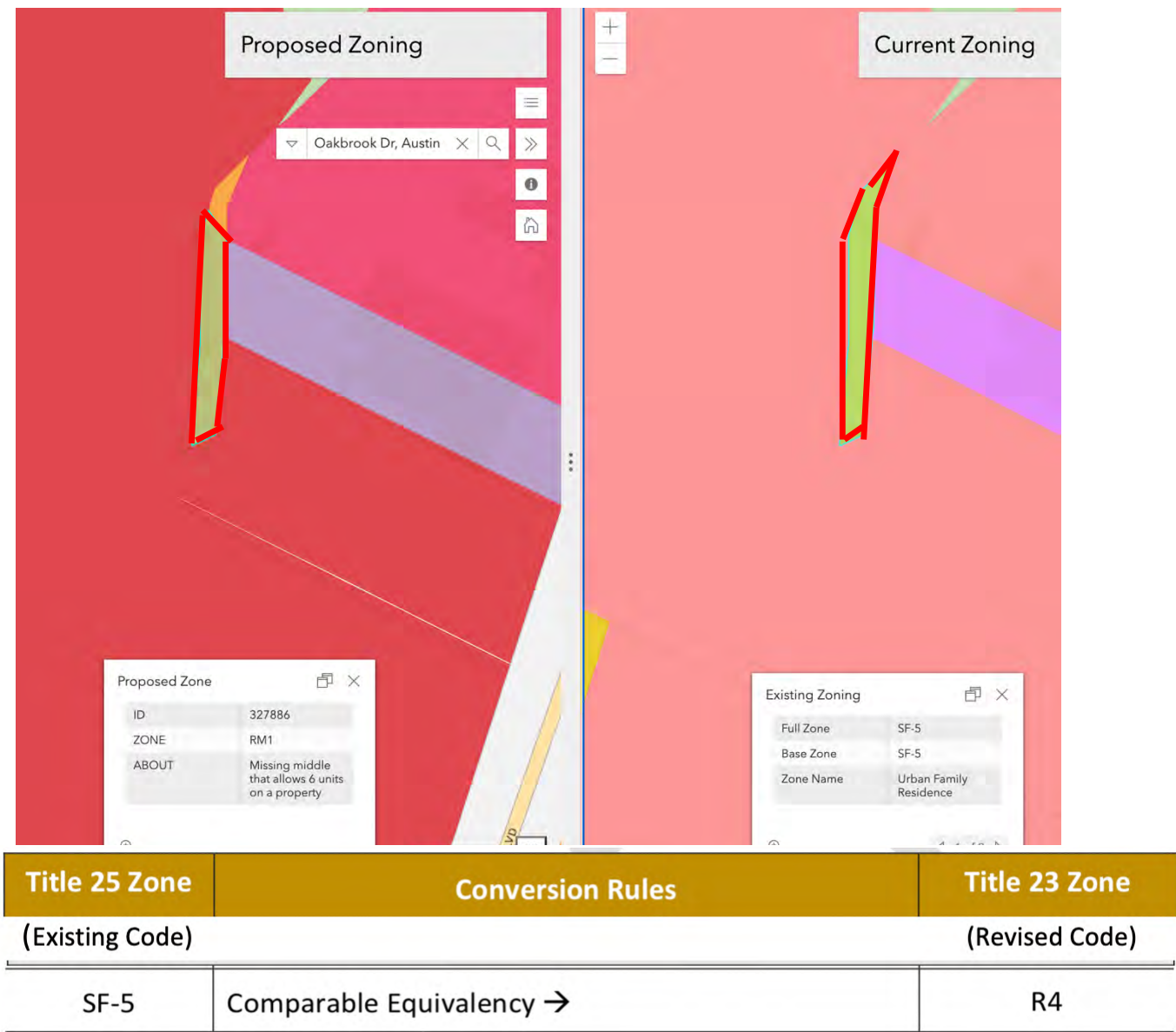
Actual Conversion  
SF-5 → MU4



# Map Example of Non-Uniform Conversion of SF-5 under Code Revision

West of N. Lamar and Oakbrook  
(outline added)

Actual Conversion  
SF-5 → RM1

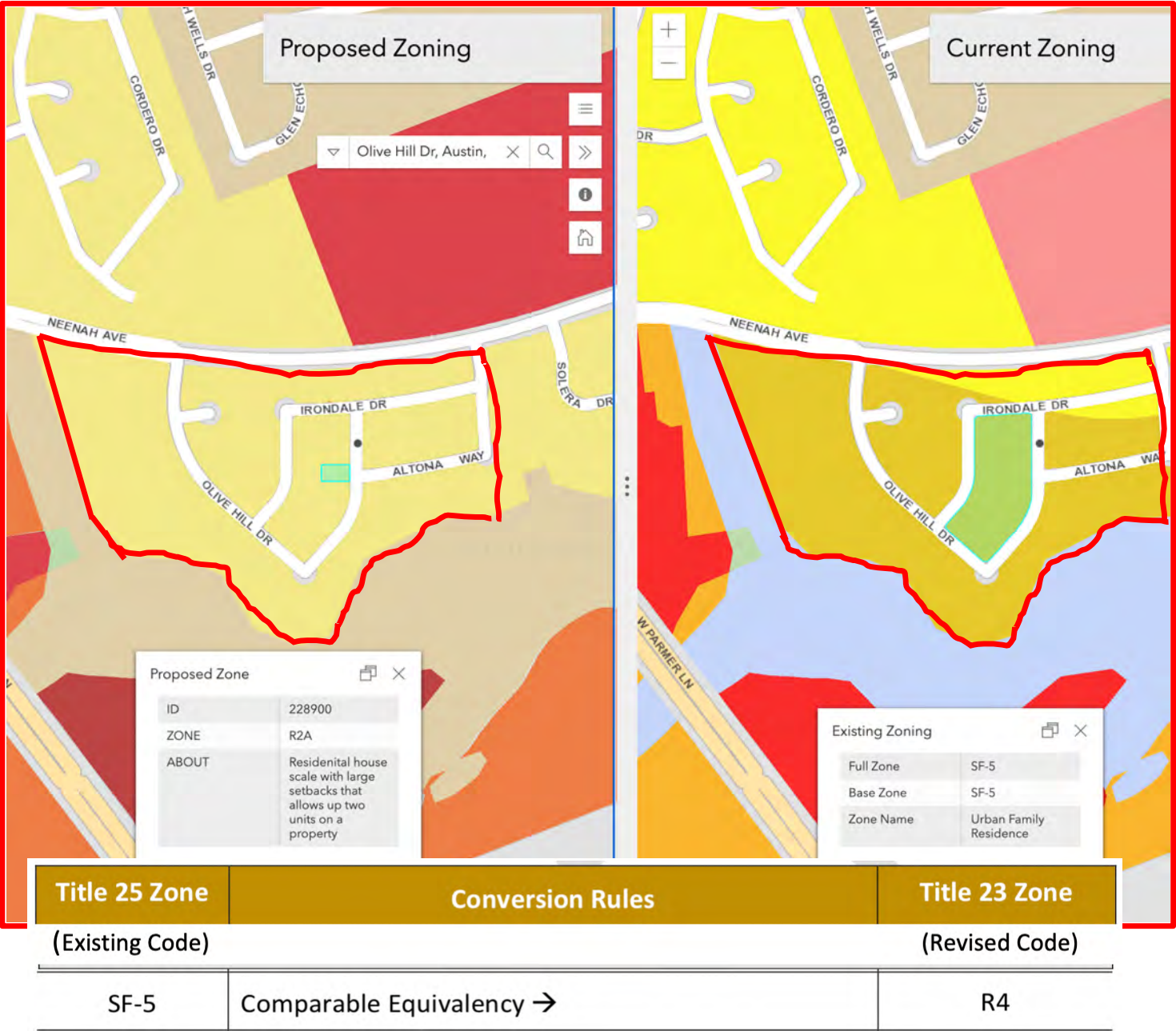




# Map Example of Non-Uniform Conversion of SF-5 under Code Revision

Olive Hil, Irondale and  
Altona Way  
(outline added)

Actual Conversion  
SF-5 → R2A



# Map Example of Non-Uniform Conversion of SF-5 under Code Revision

Bonaventure & River Place  
(outline added)

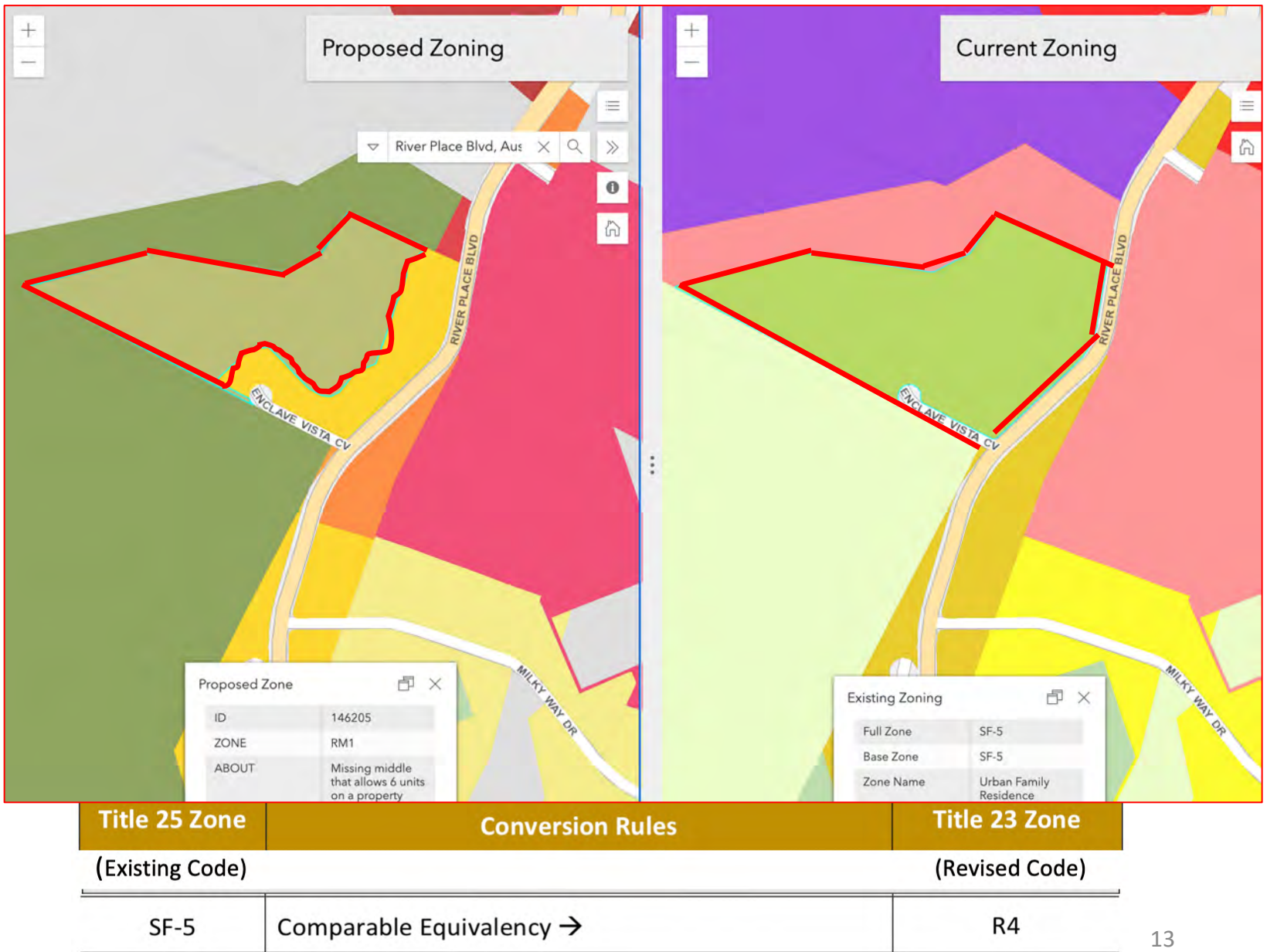
Actual Conversion  
SF-5 → RM2



# Map Example of Non-Uniform Conversion of SF-5 under Code Revision

Enclave Vista and River Place  
(outline added)

Actual Conversion  
SF-5 → RM1





# Map Example of Non-Uniform Conversion of SF-5 under Code Revision

Big View  
(outline added)

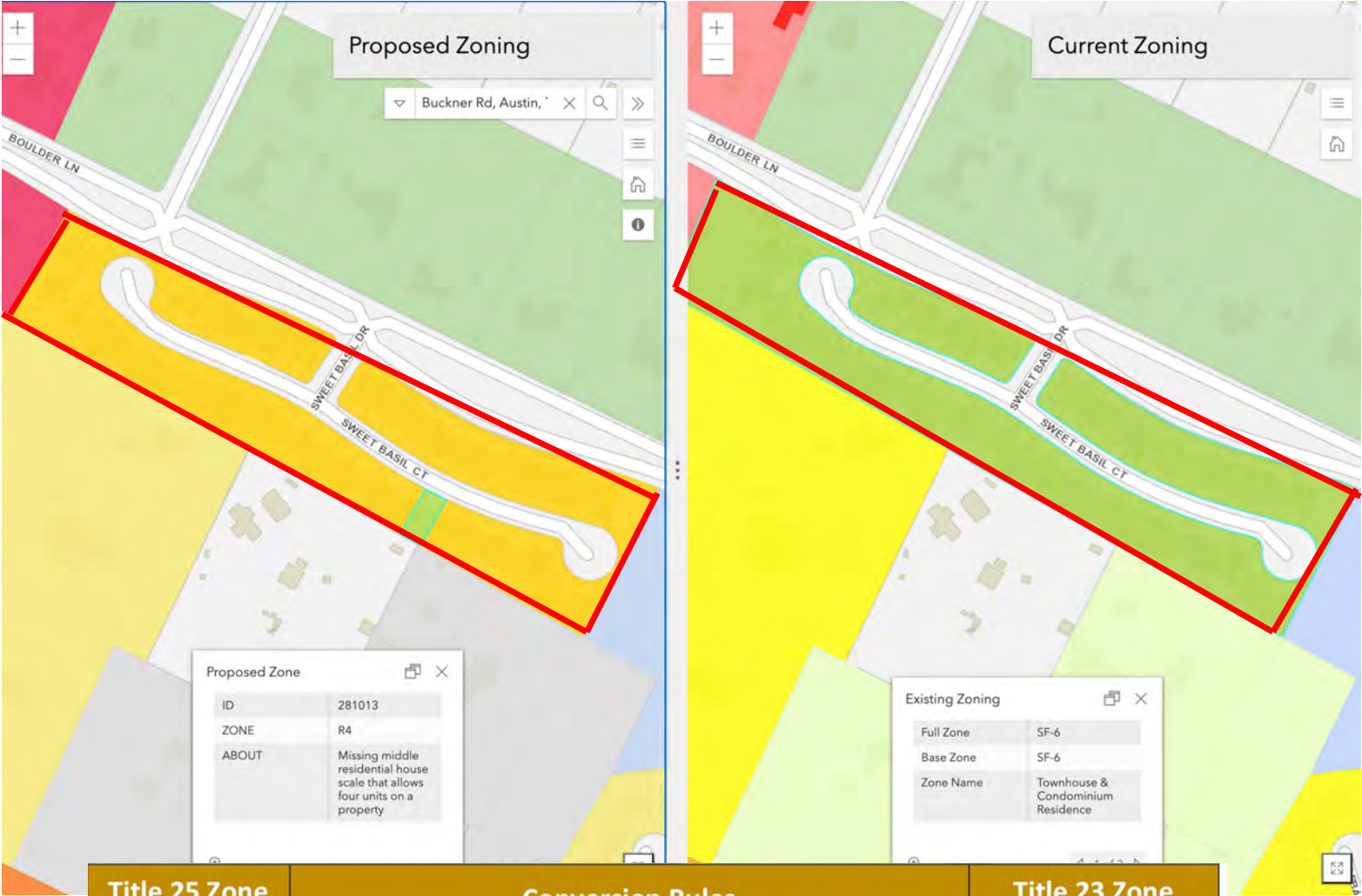
Actual Conversion  
SF-5 → RM1



# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Sweet Basil Court  
(outline added)

Actual Conversion  
SF-6 → R4



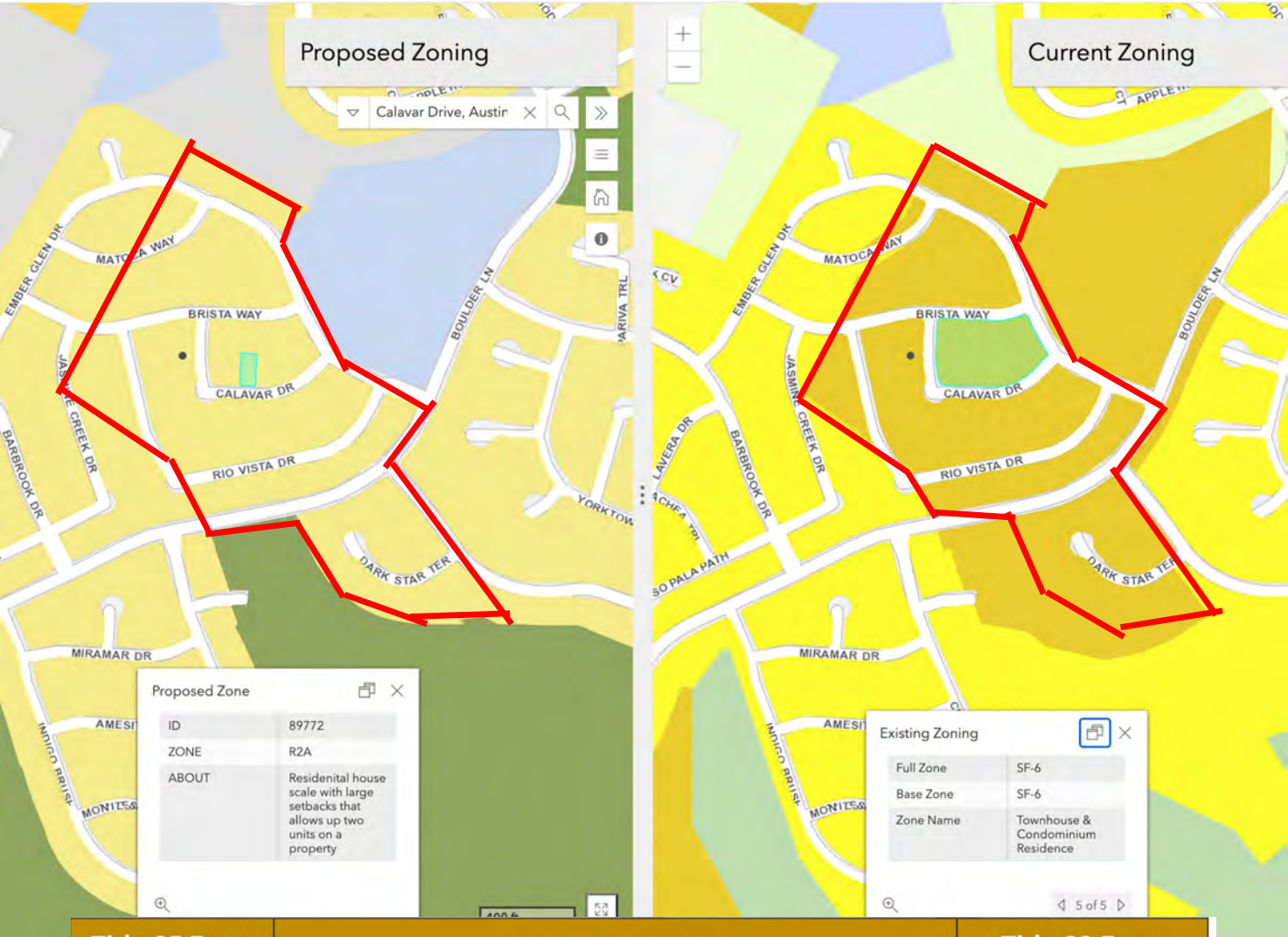
Title 25 Zone (Existing Code)		Conversion Rules	Title 23 Zone (Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2



# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Calaver Drive Area  
(outline added)

Actual Conversion  
SF-6 → R2A



Title 25 Zone	Conversion Rules		Title 23 Zone
(Existing Code)			(Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2

# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Boulder Lane Area  
(outline added)

Actual Conversion  
SF-6 → P



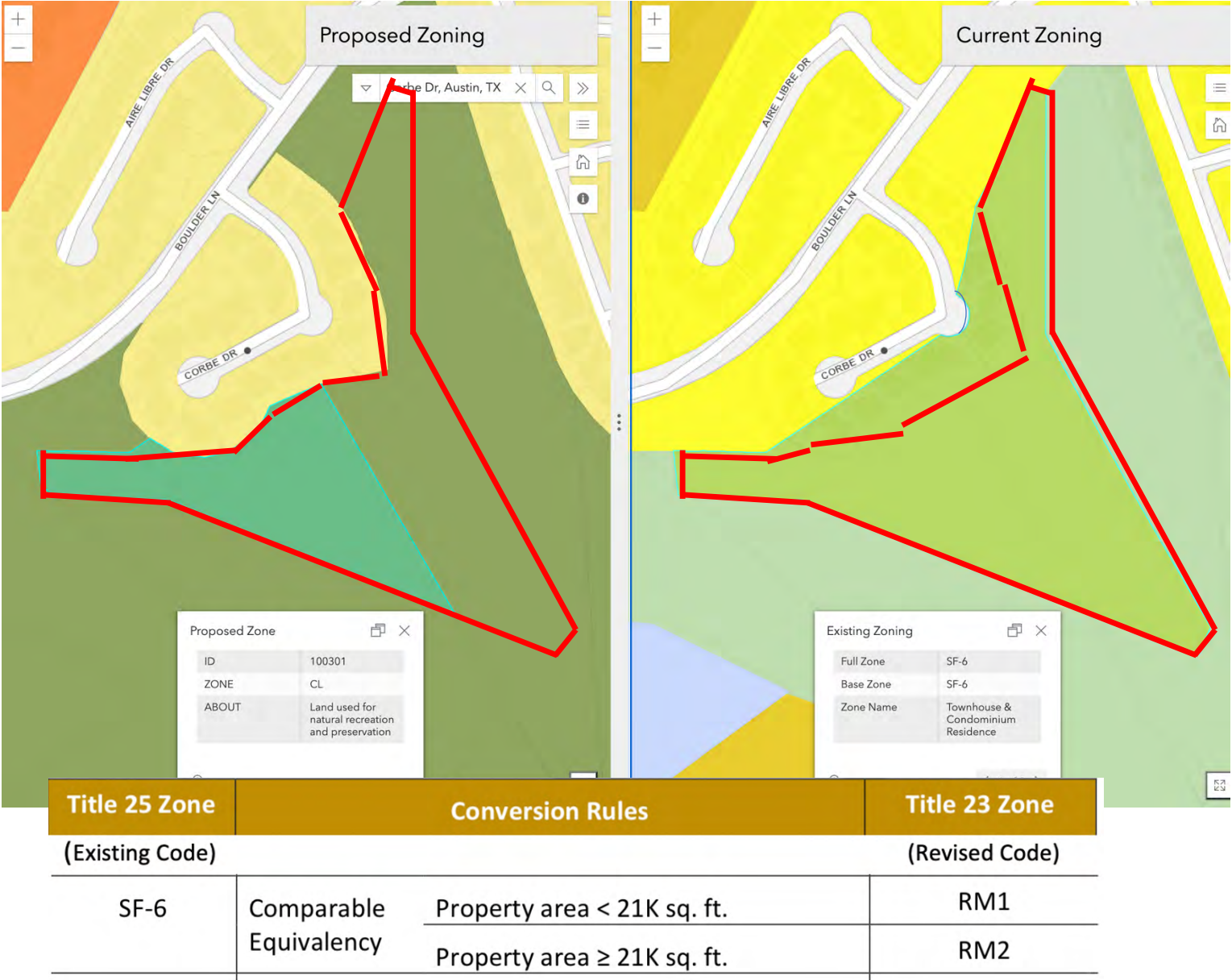
Title 25 Zone	Conversion Rules		Title 23 Zone
(Existing Code)			(Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2



# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Corbe Drive Area  
(outline added)

Actual Conversion  
SF-6 → CL

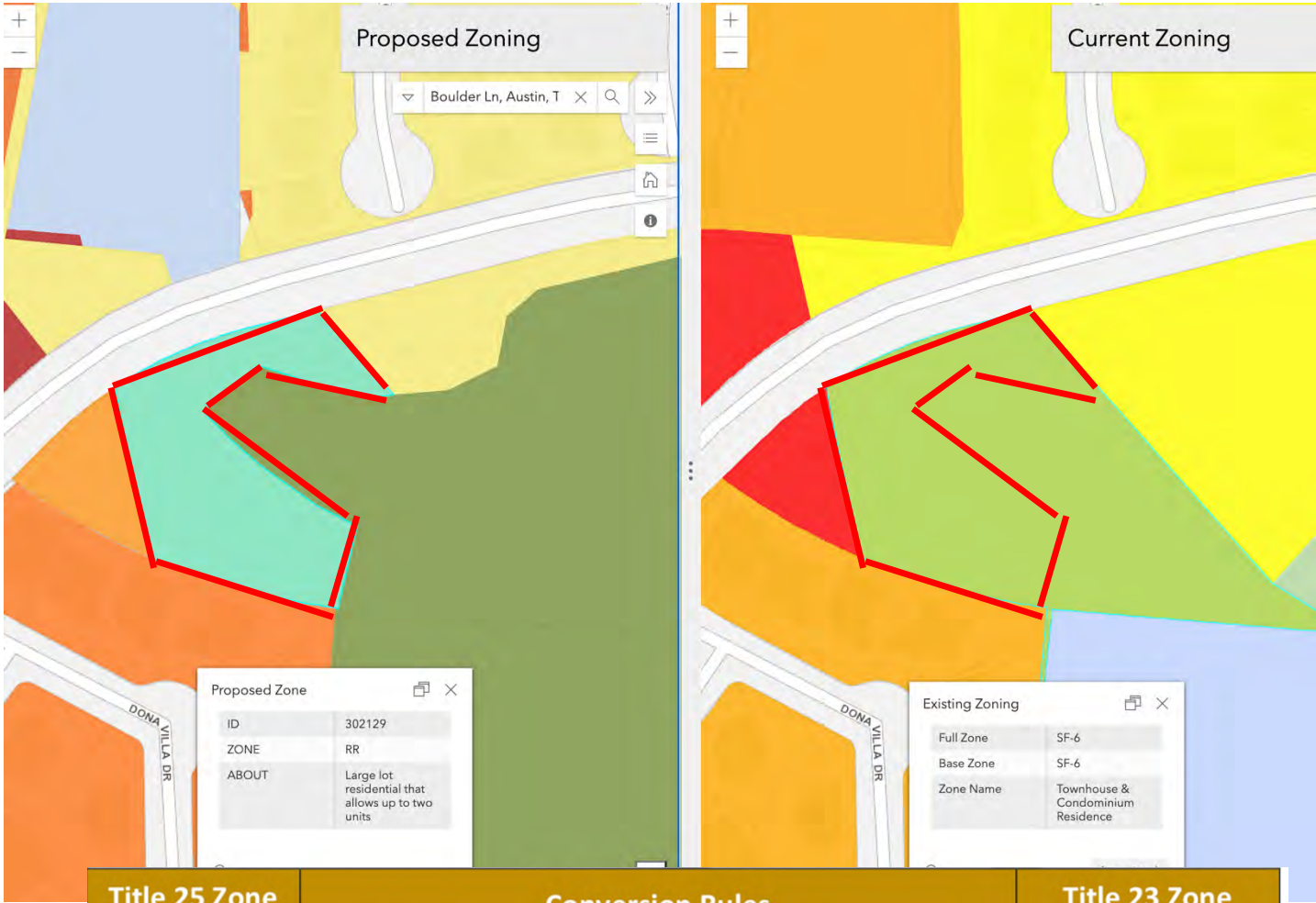




# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Boulder Lane Area  
(outline added)

Actual Conversion  
SF-6 → RR

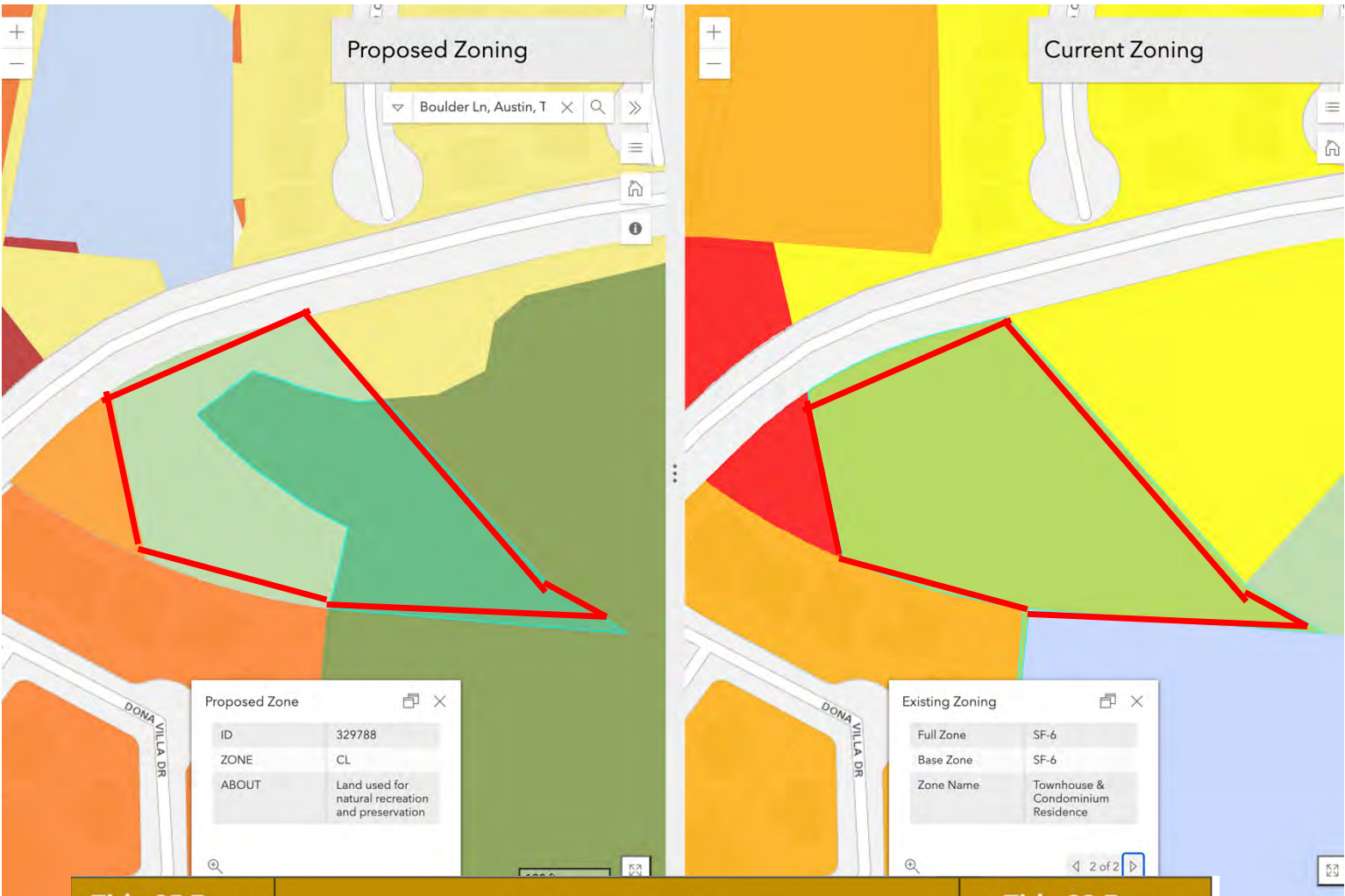


Title 25 Zone	Conversion Rules		Title 23 Zone
(Existing Code)			(Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2

# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Boulder Lane Area  
(outline added)

Actual Conversion  
SF-6 → CL

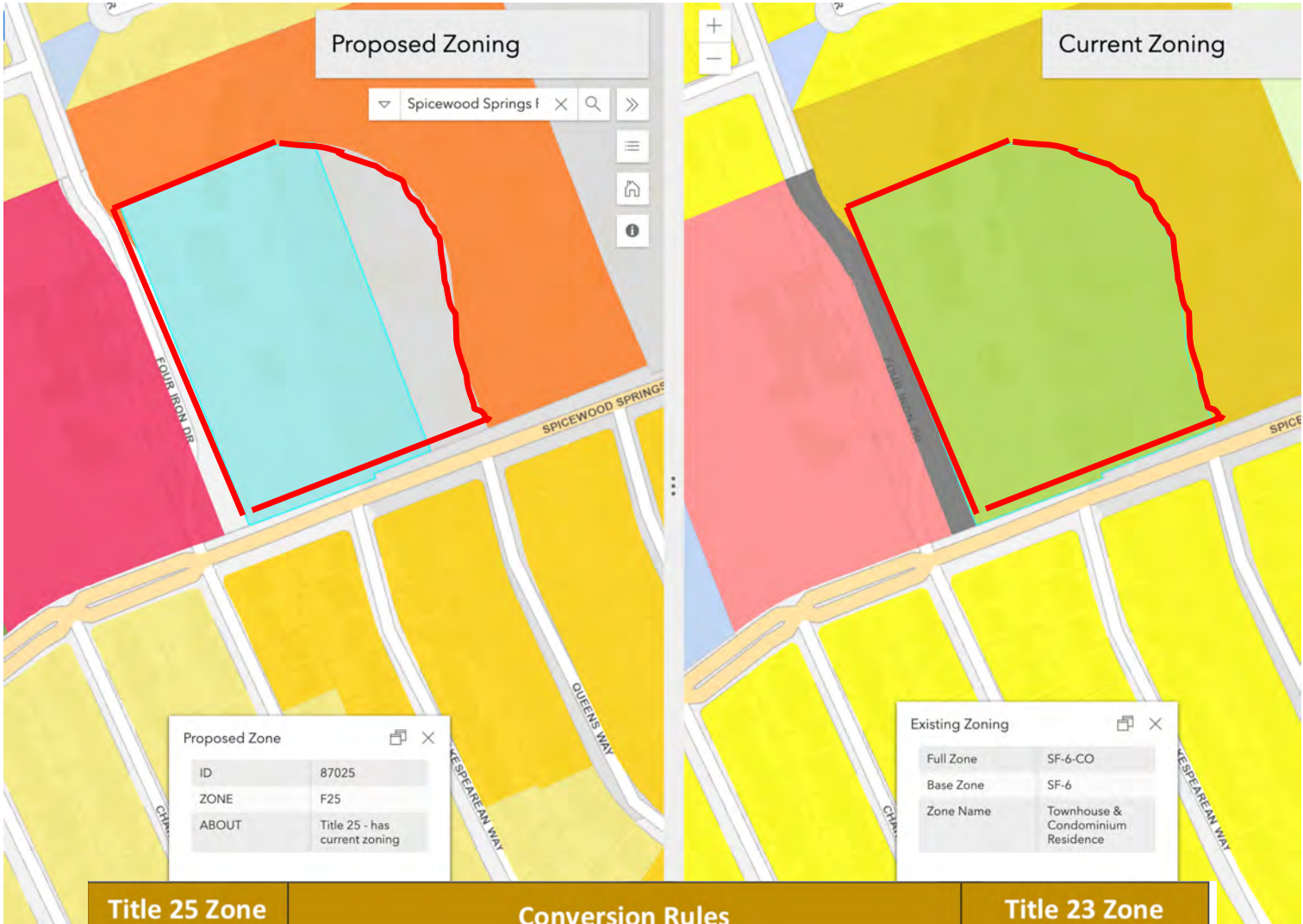


Title 25 Zone (Existing Code)		Conversion Rules	Title 23 Zone (Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2

# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Spicewood Spring  
(outline added)

Actual Conversion  
SF-6 → F25



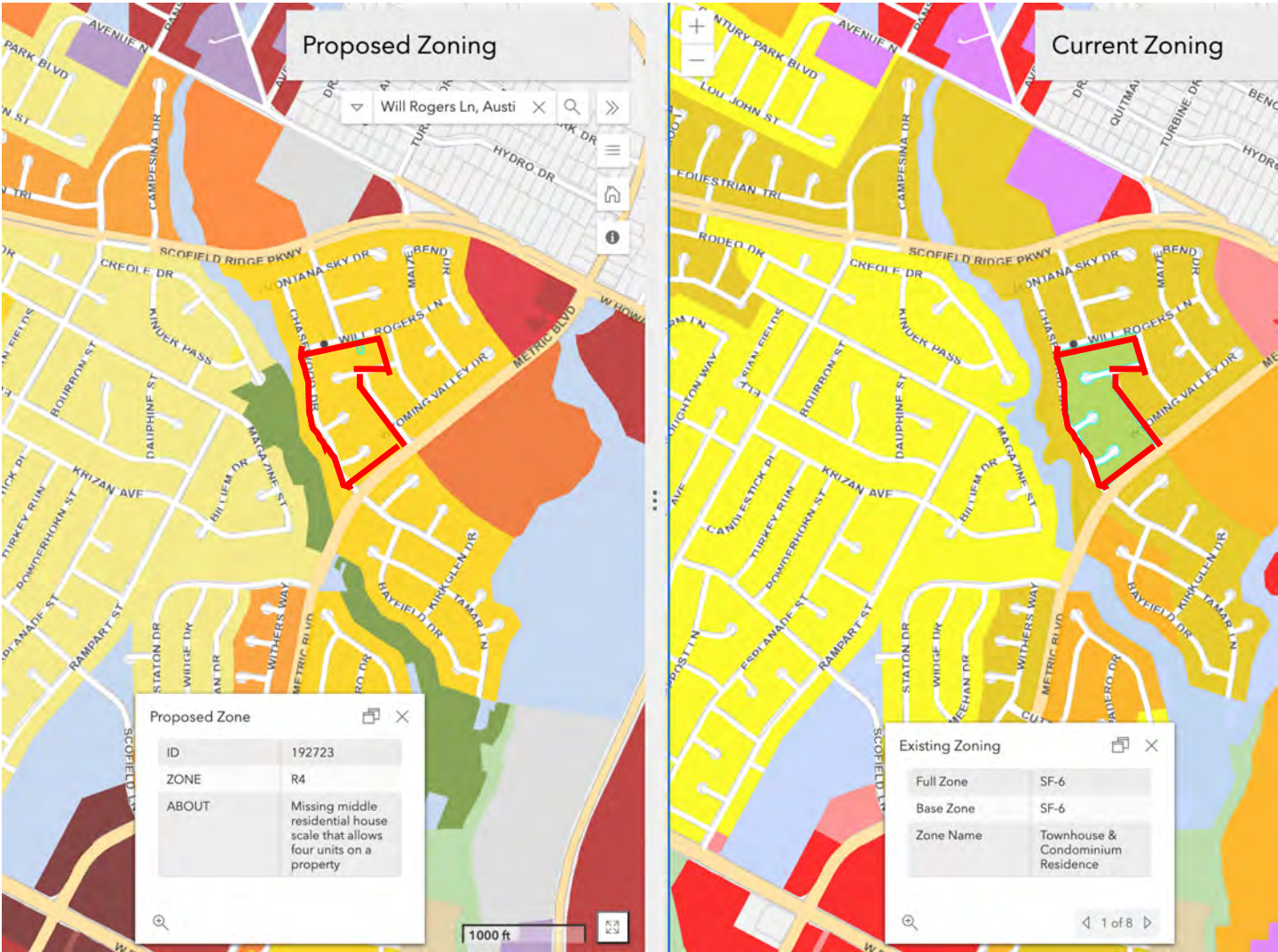
Title 25 Zone	Conversion Rules		Title 23 Zone
(Existing Code)			(Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2



# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Will Rogers Drive area (outline added)

Actual Conversion  
SF-6 → R4

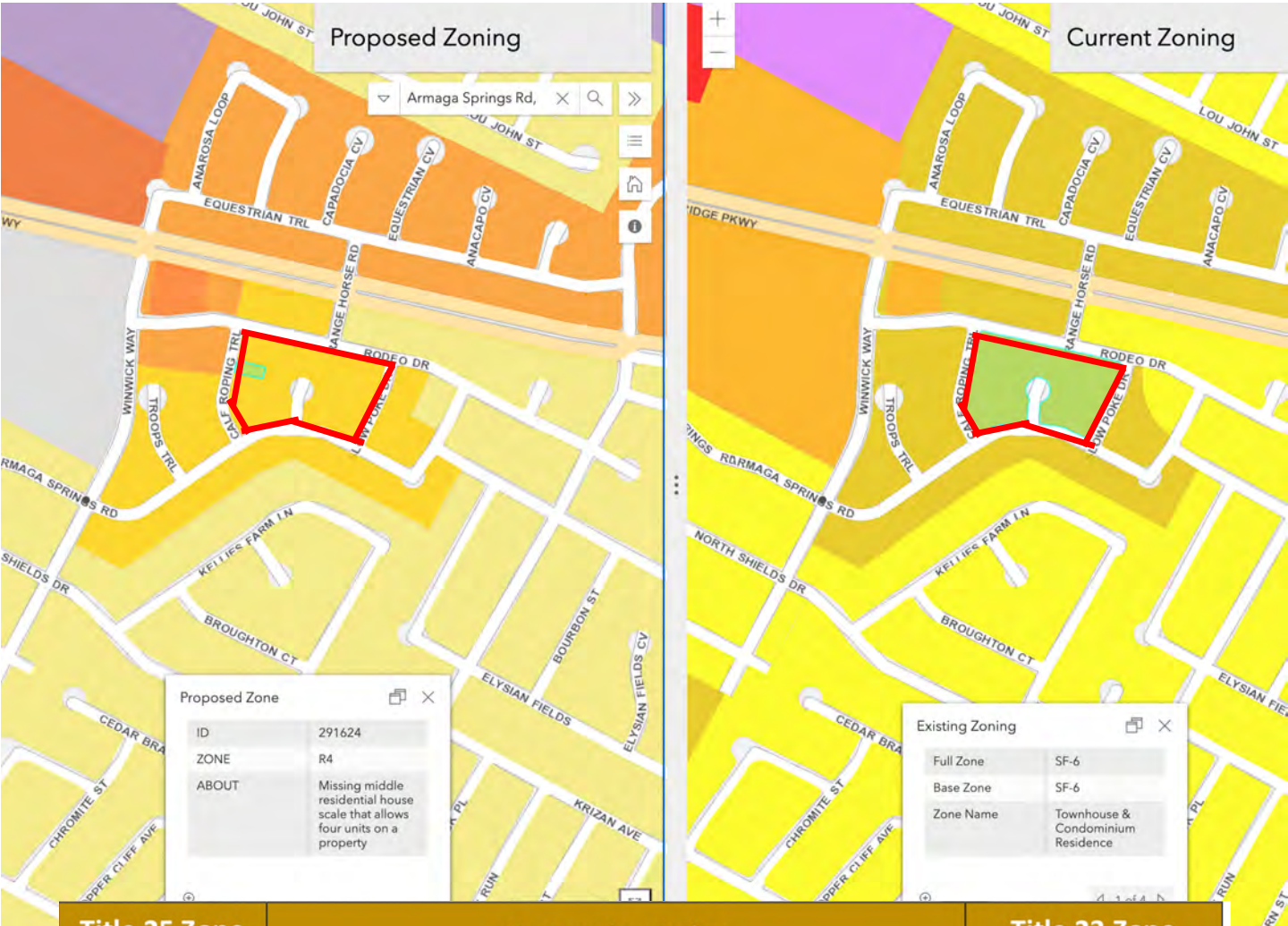


Title 25 Zone (Existing Code)	Conversion Rules		Title 23 Zone (Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft. Property area ≥ 21K sq. ft.	RM1 RM2

# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Armaga Springs area  
(outline added)

Actual Conversion  
SF-6 → R4



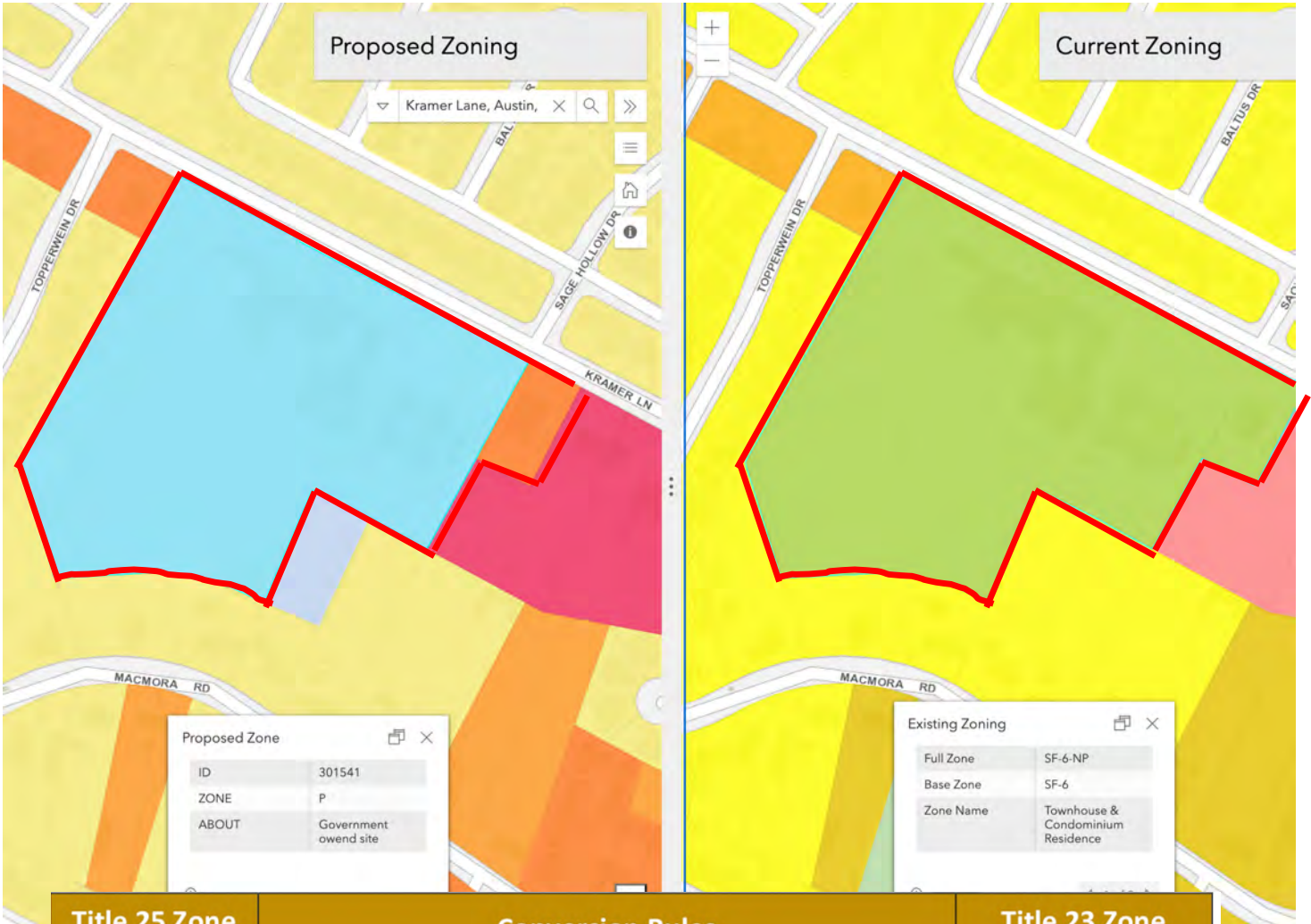
Title 25 Zone		Conversion Rules		Title 23 Zone
(Existing Code)				(Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.		RM1
		Property area ≥ 21K sq. ft.		RM2



# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Kramer Lane area  
(outline added)

Actual Conversion  
SF-6 → P



Title 25 Zone	Conversion Rules		Title 23 Zone
(Existing Code)			(Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2

# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Carshalton Drive area  
(outline added)

Actual Conversion  
SF-6 → PR

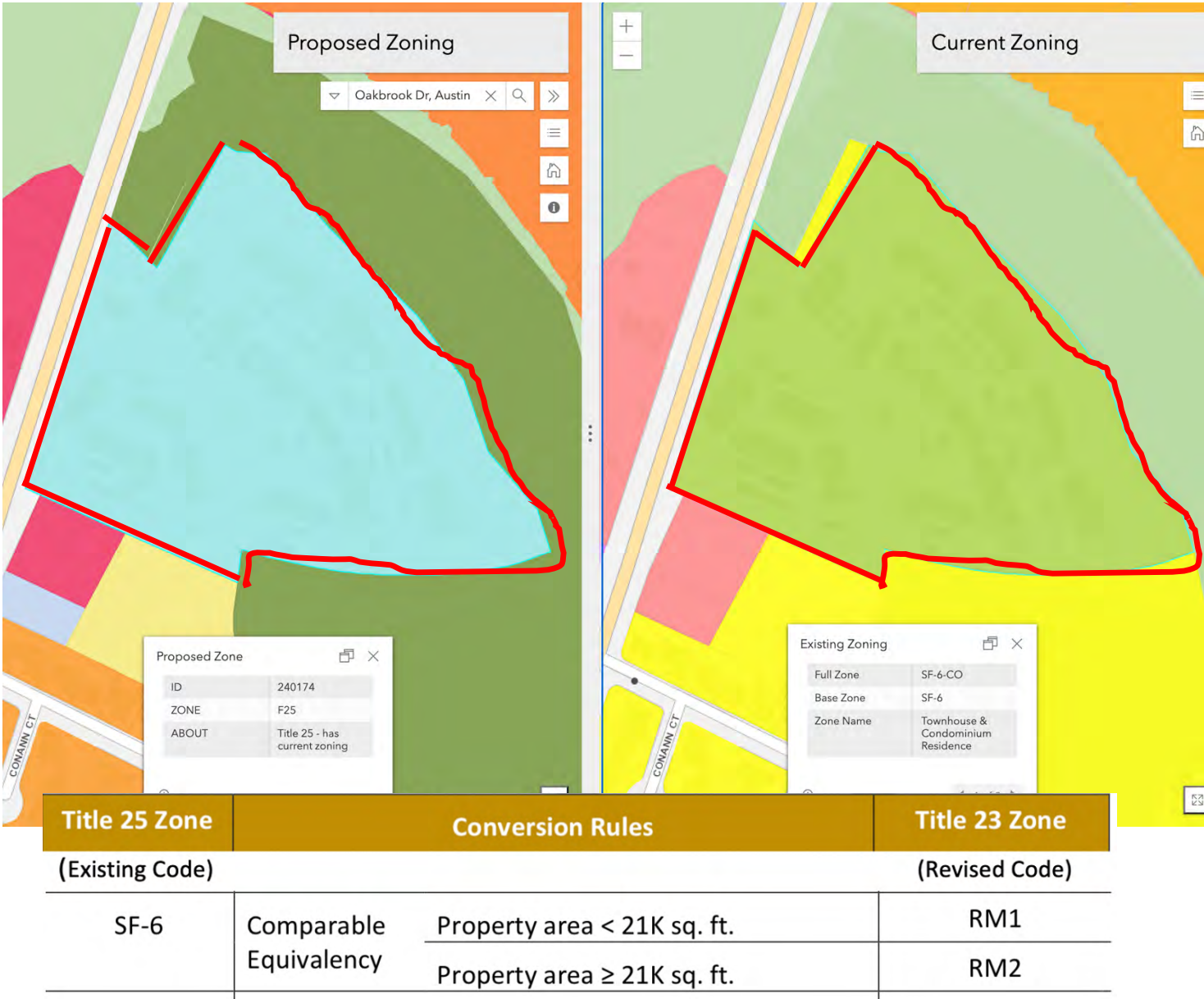


Title 25 Zone	Conversion Rules		Title 23 Zone
(Existing Code)			(Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2

# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

North of Oakbrook Drive area  
(outline added)

Actual Conversion  
SF-6 → F25

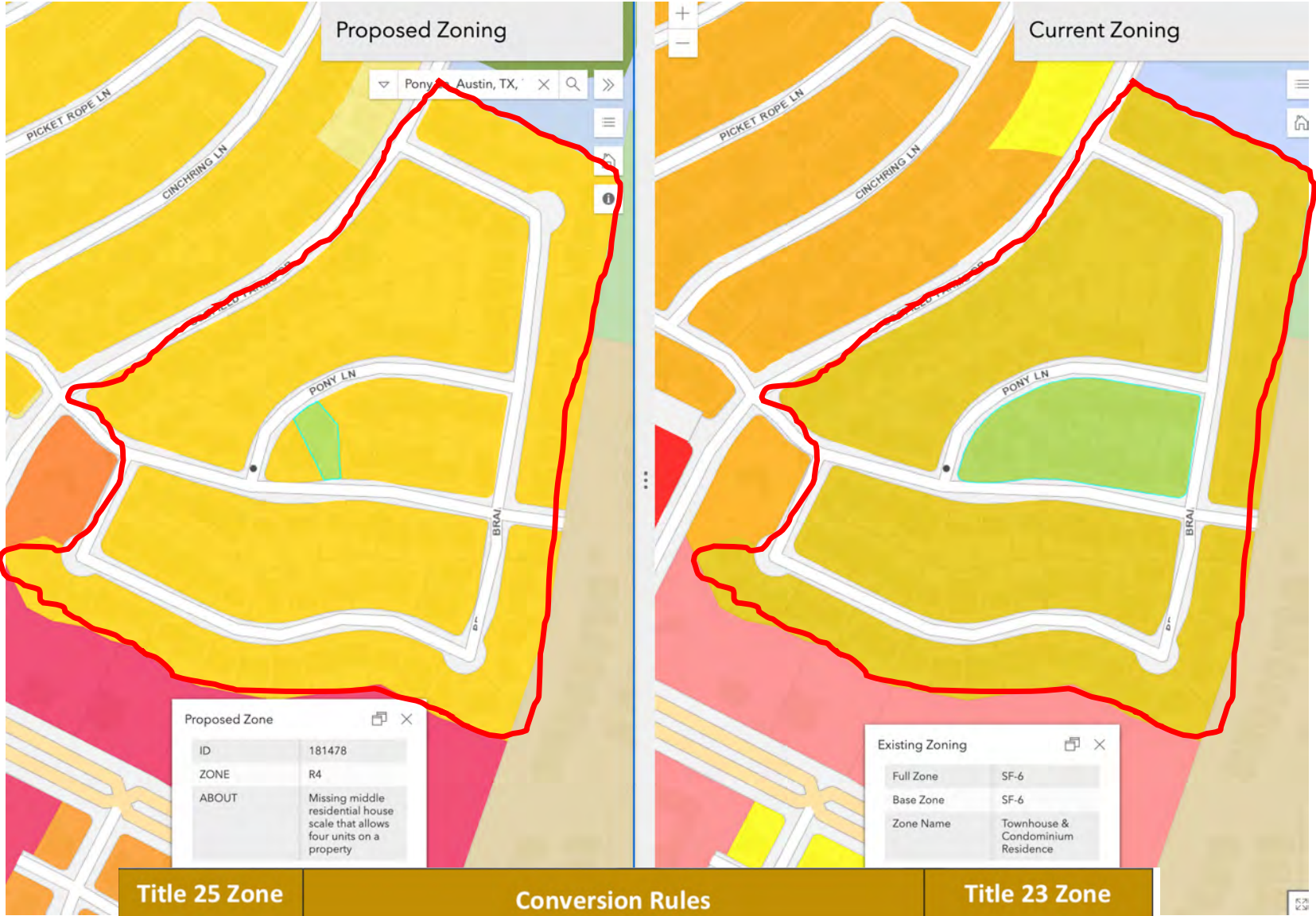




# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Pony Lane Area  
(outline added)

Actual Conversion  
SF-6 → R4

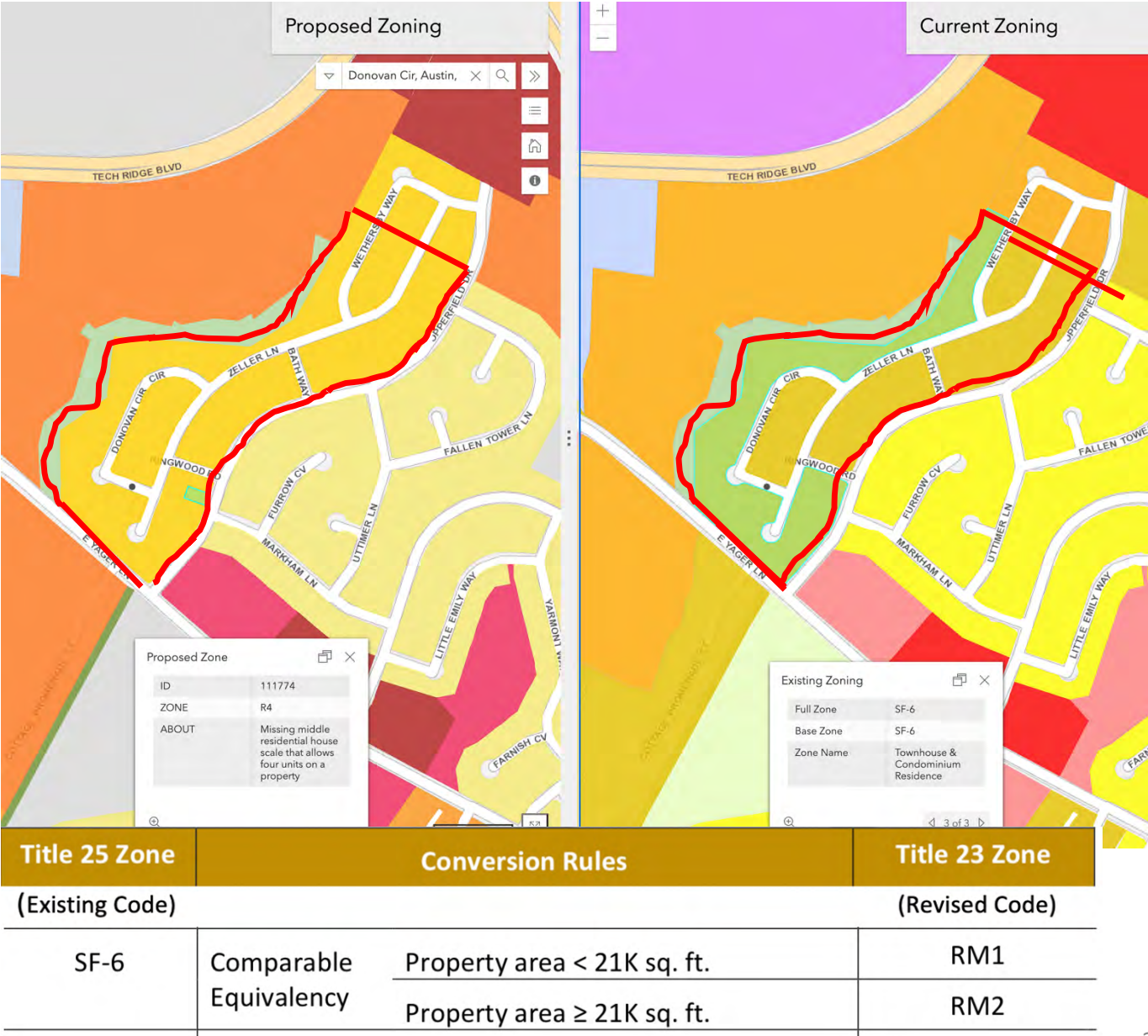


Title 25 Zone (Existing Code)	Conversion Rules		Title 23 Zone (Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2

# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Zeller Lane area  
(outline added)

Actual Conversion  
SF-6 → R4

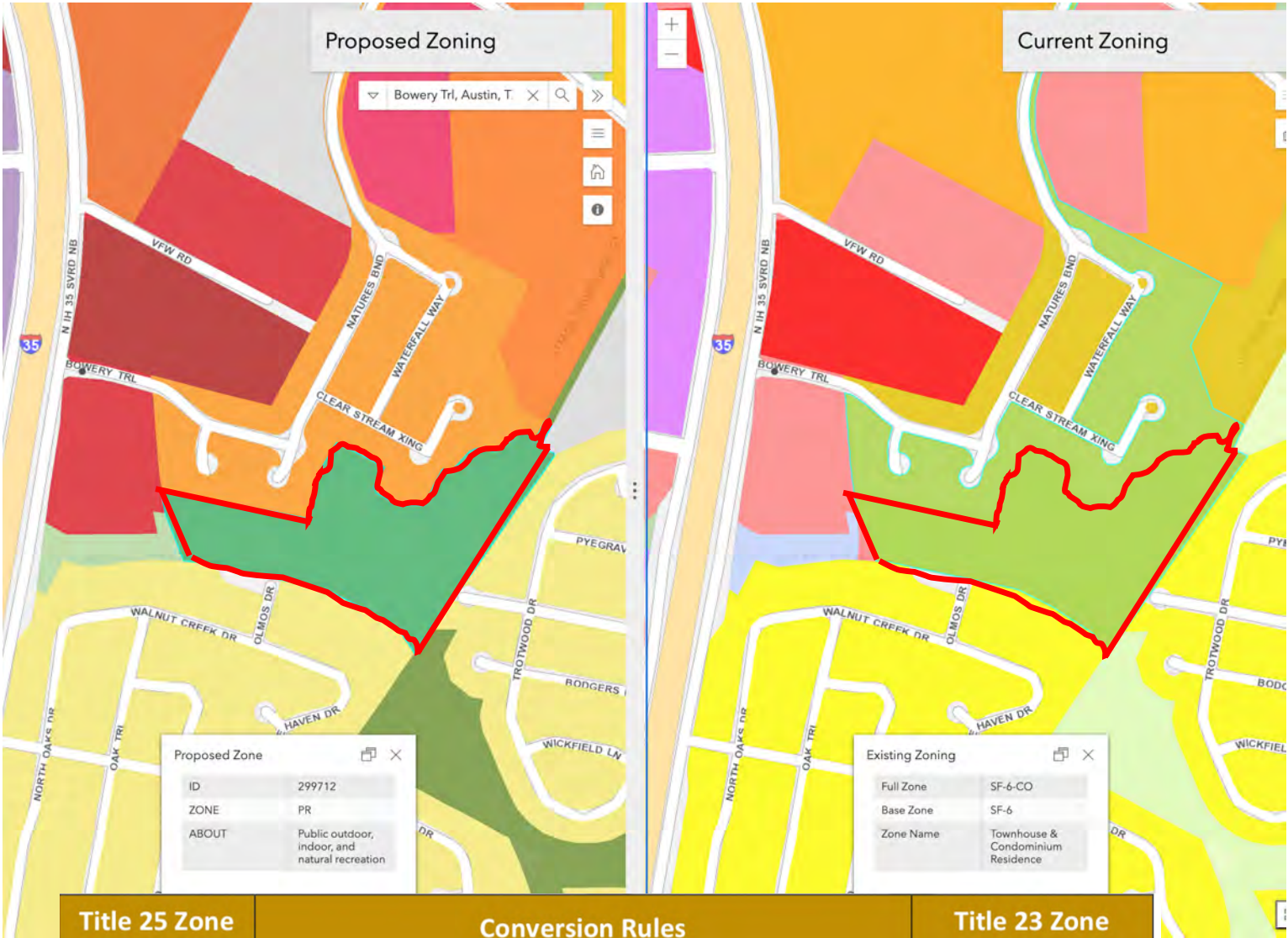




# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Bowery Trail area  
(outline added)

Actual Conversion  
SF-6 → PR

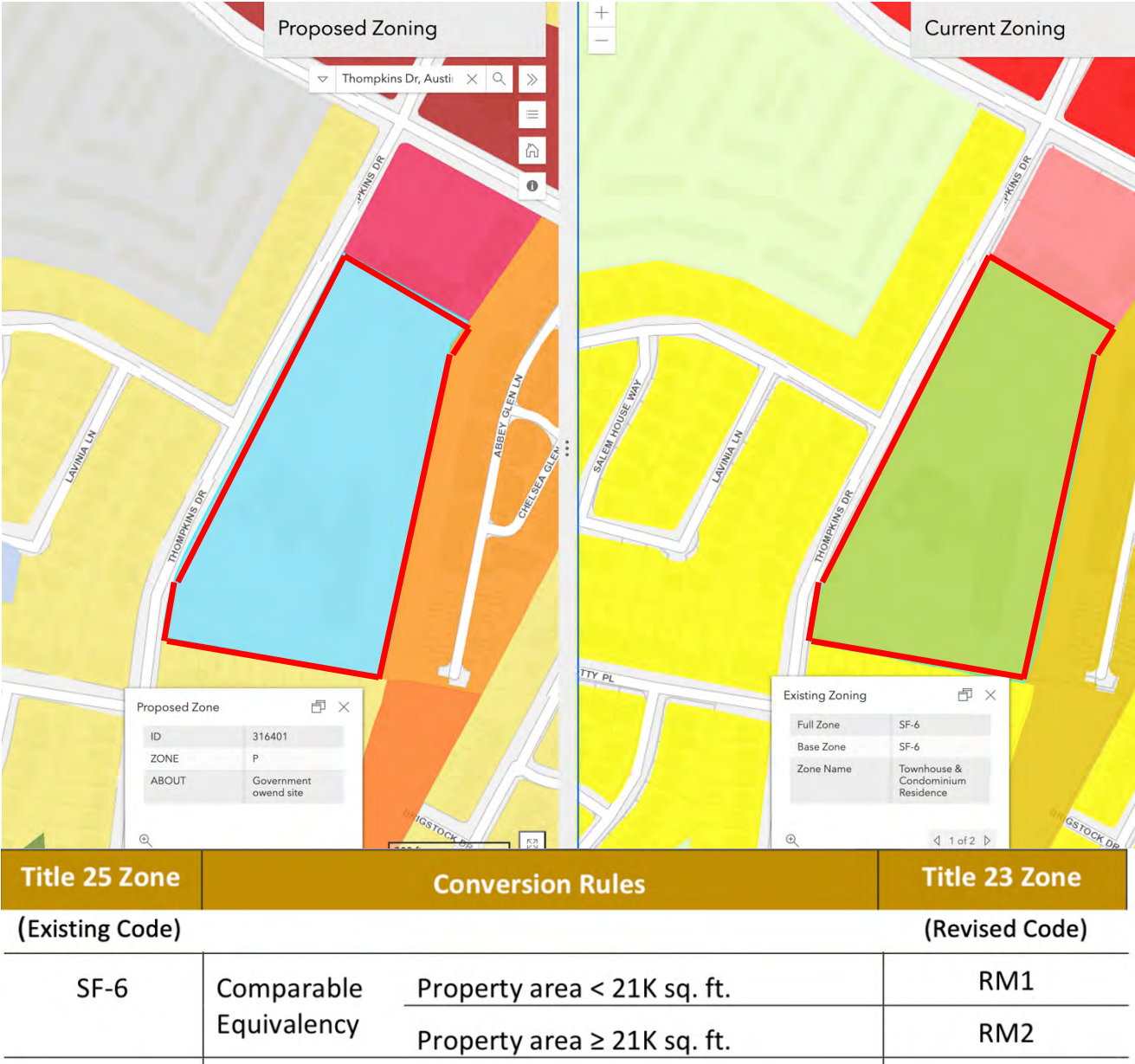


Title 25 Zone (Existing Code)		Conversion Rules		Title 23 Zone (Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.		RM1
		Property area ≥ 21K sq. ft.		RM2

# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Thompkins Drive area  
(outline added)

Actual Conversion  
SF-6 → P

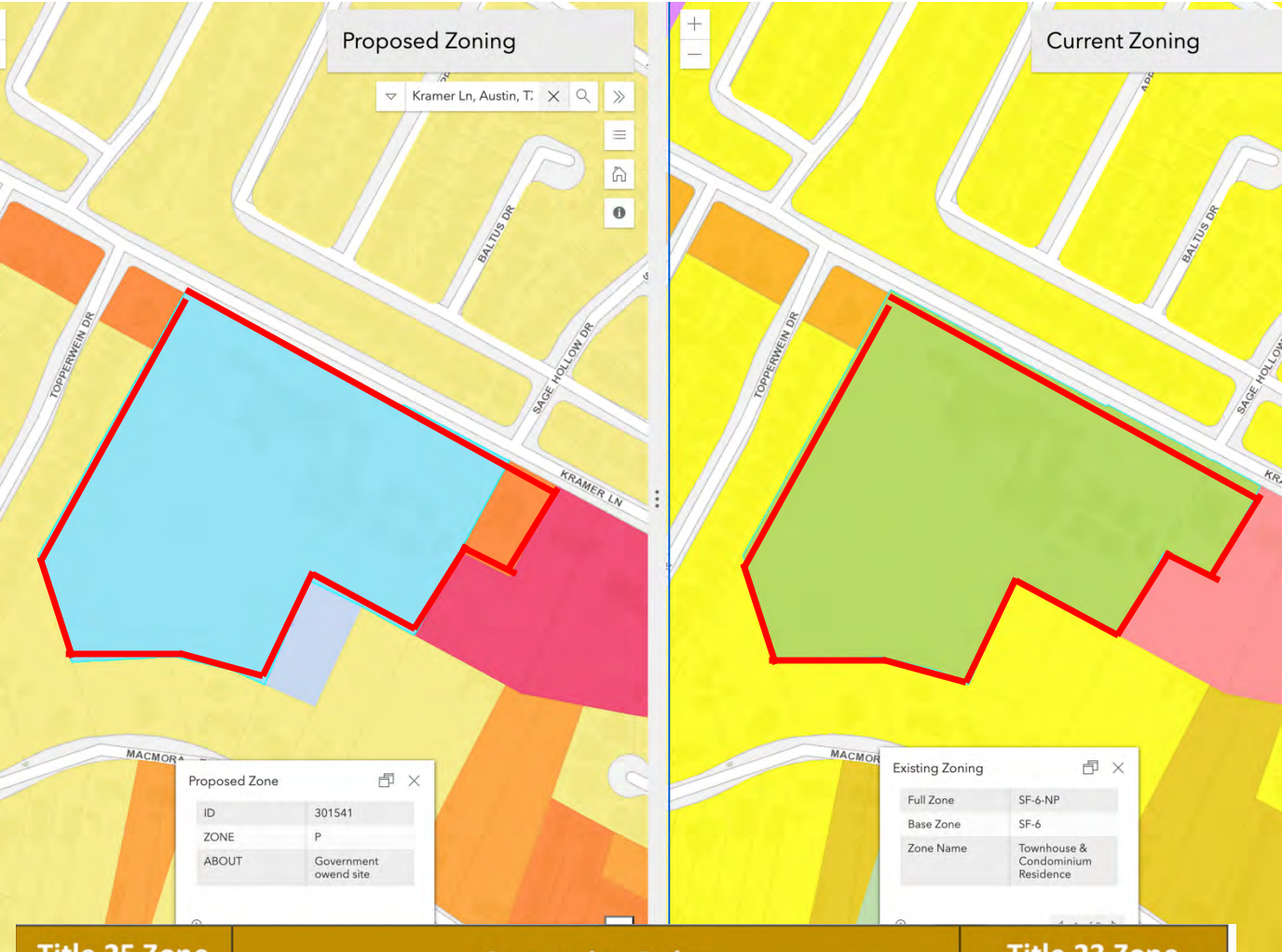




# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Kramer Lane area  
(outline added)

Actual Conversion  
SF-6 → P

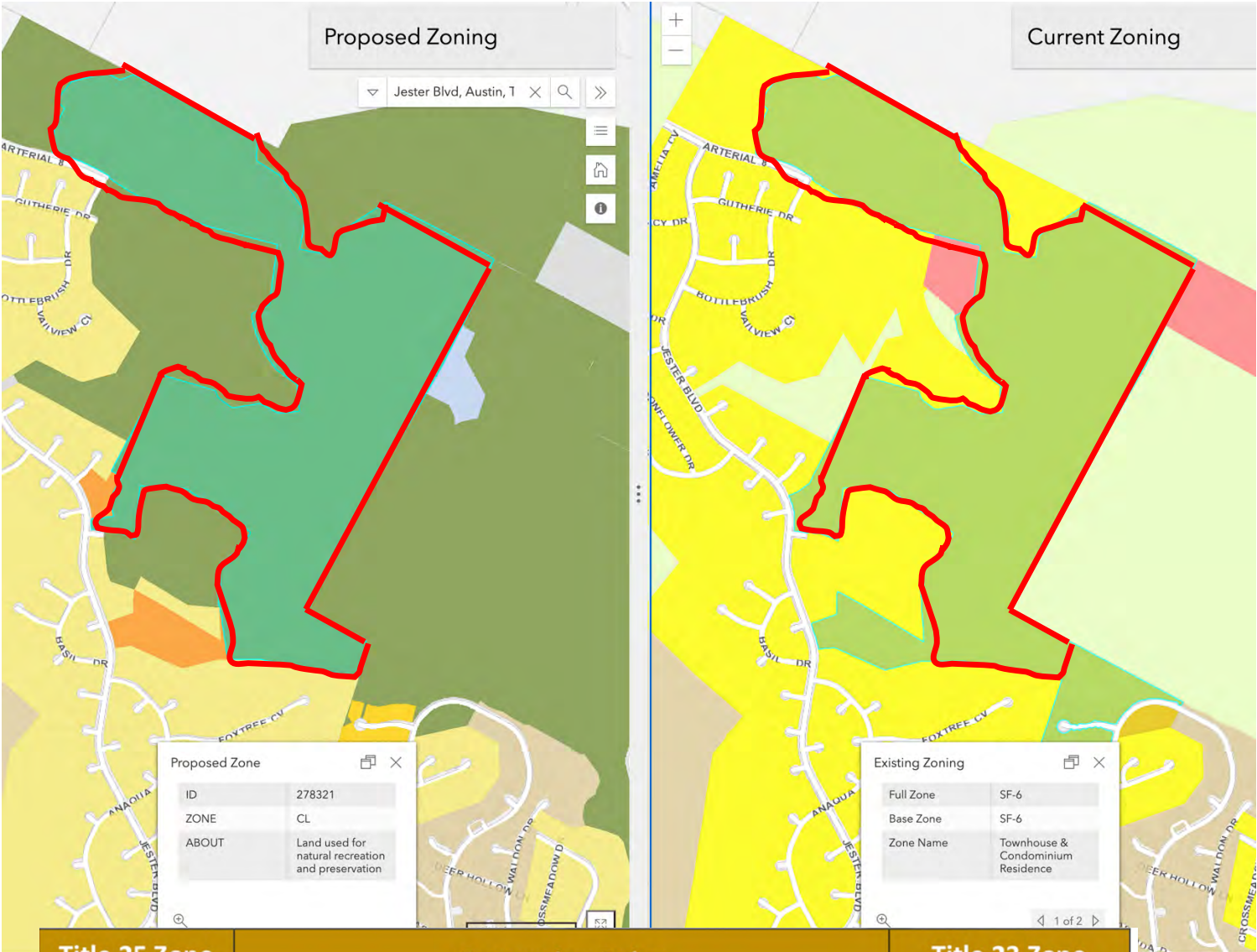


Title 25 Zone	Conversion Rules		Title 23 Zone
(Existing Code)			(Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2

# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Jester Blvd area  
(outline added)

Actual Conversion  
SF-6 → CL



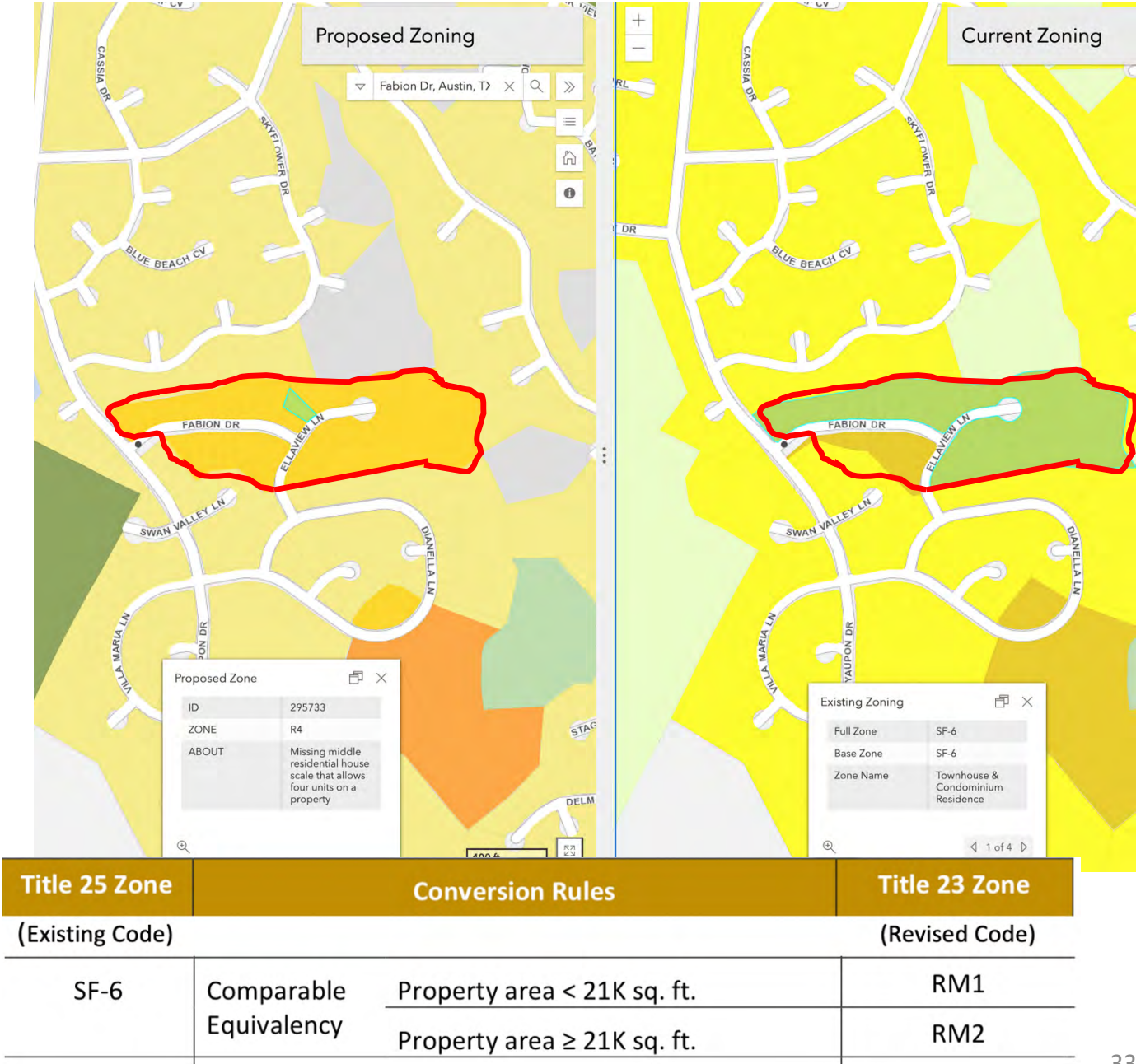
Title 25 Zone (Existing Code)	Conversion Rules		Title 23 Zone (Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2



# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Fabion Drive area  
(outline added)

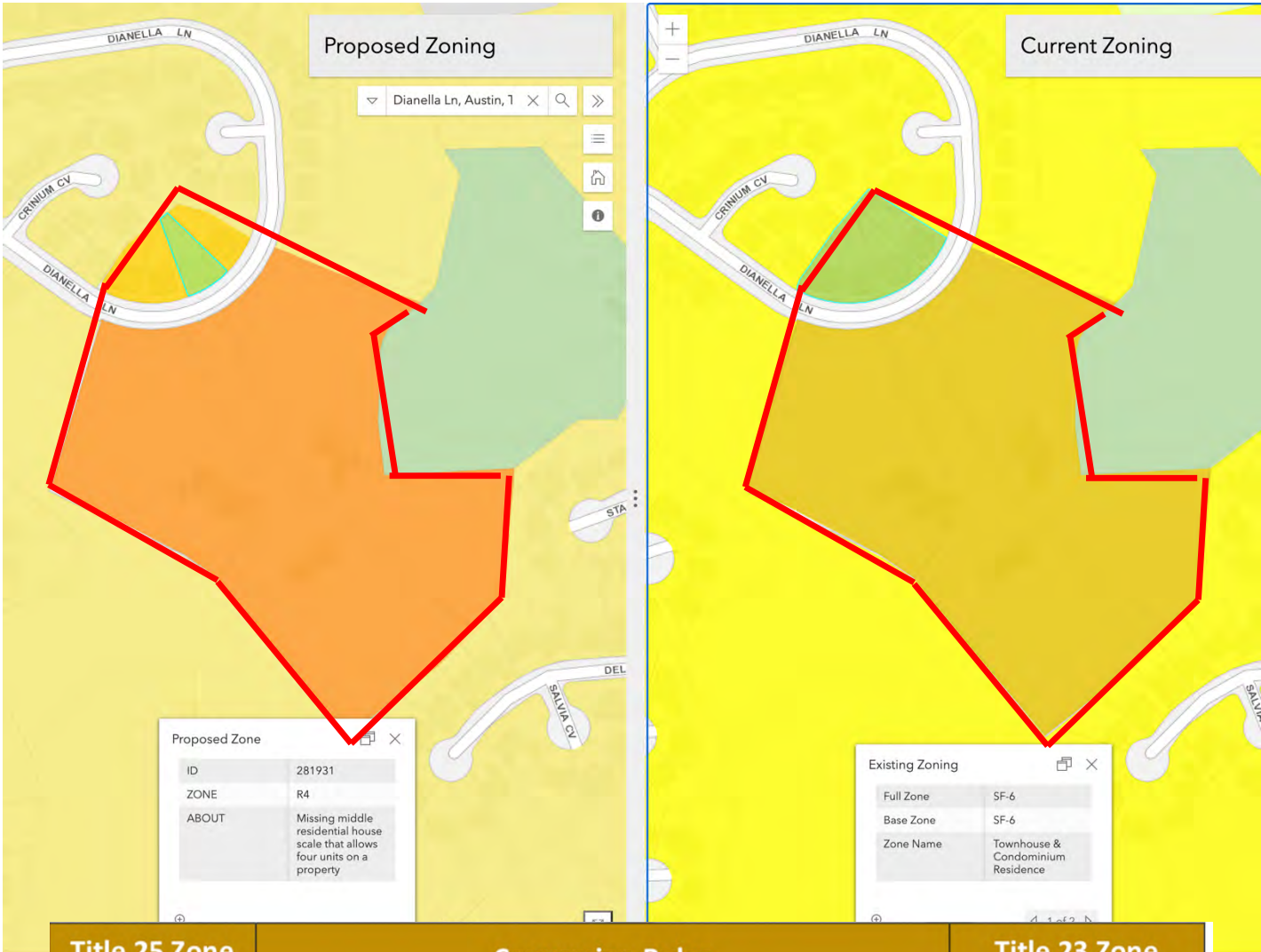
Actual Conversion  
SF-6 → R4



# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Dianella Lane area  
(outline added)

Actual Conversion  
SF-6 → R4



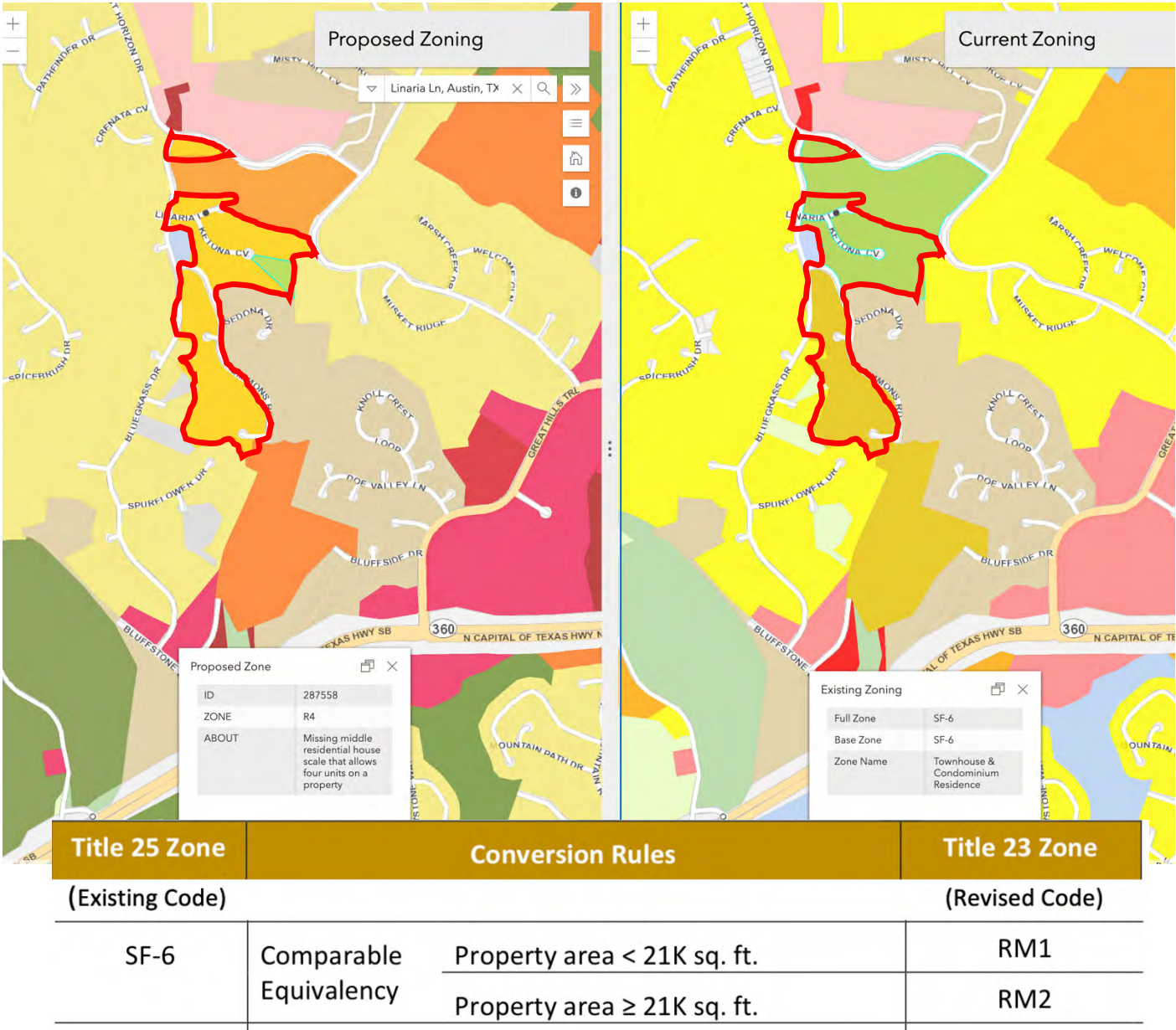
Title 25 Zone		Conversion Rules		Title 23 Zone
(Existing Code)				(Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.		RM1
		Property area ≥ 21K sq. ft.		RM2



# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Linaria Lane area  
(outline added)

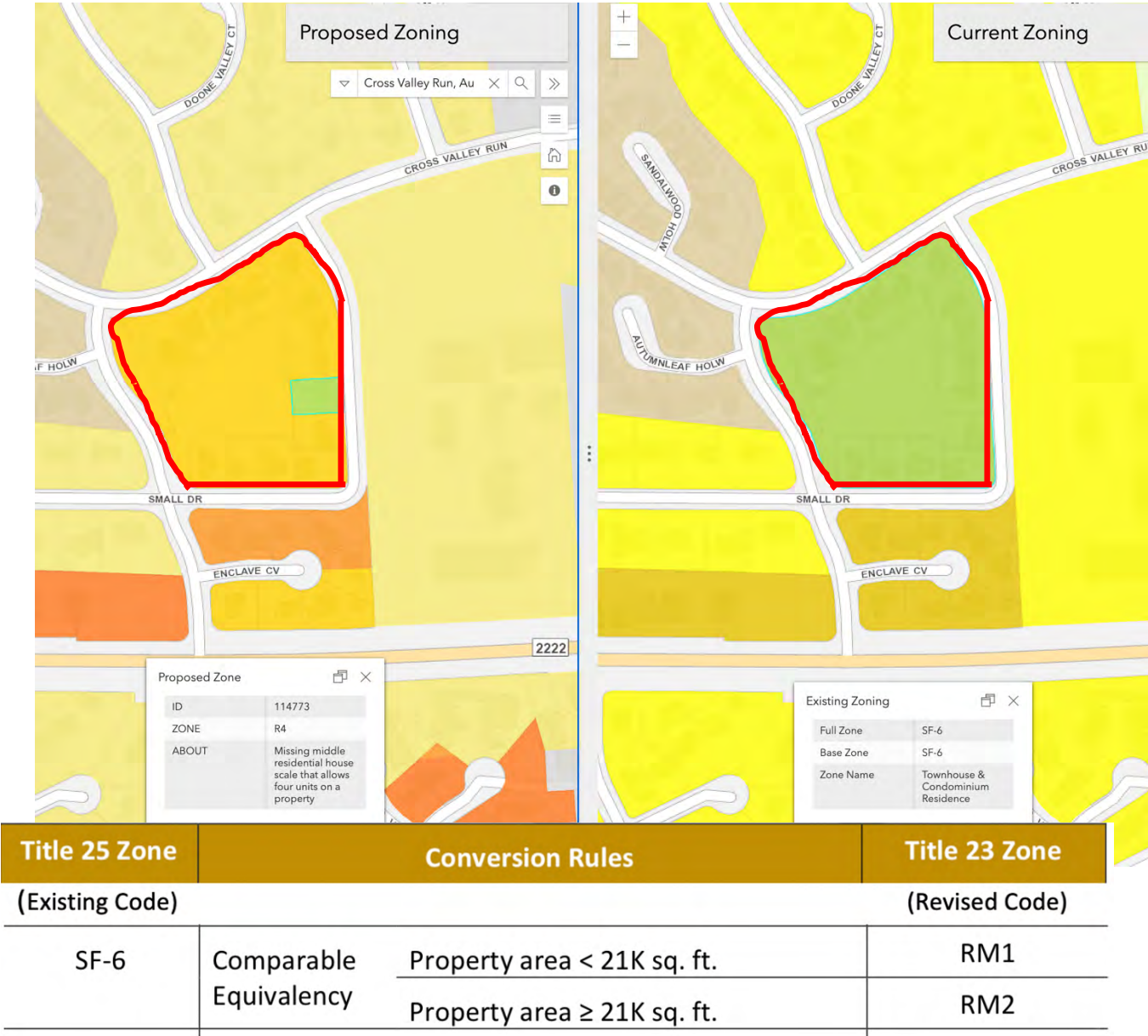
Actual Conversion  
SF-6 → R4



# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Cross Valley Run area  
(outline added)

Actual Conversion  
SF-6 → R4

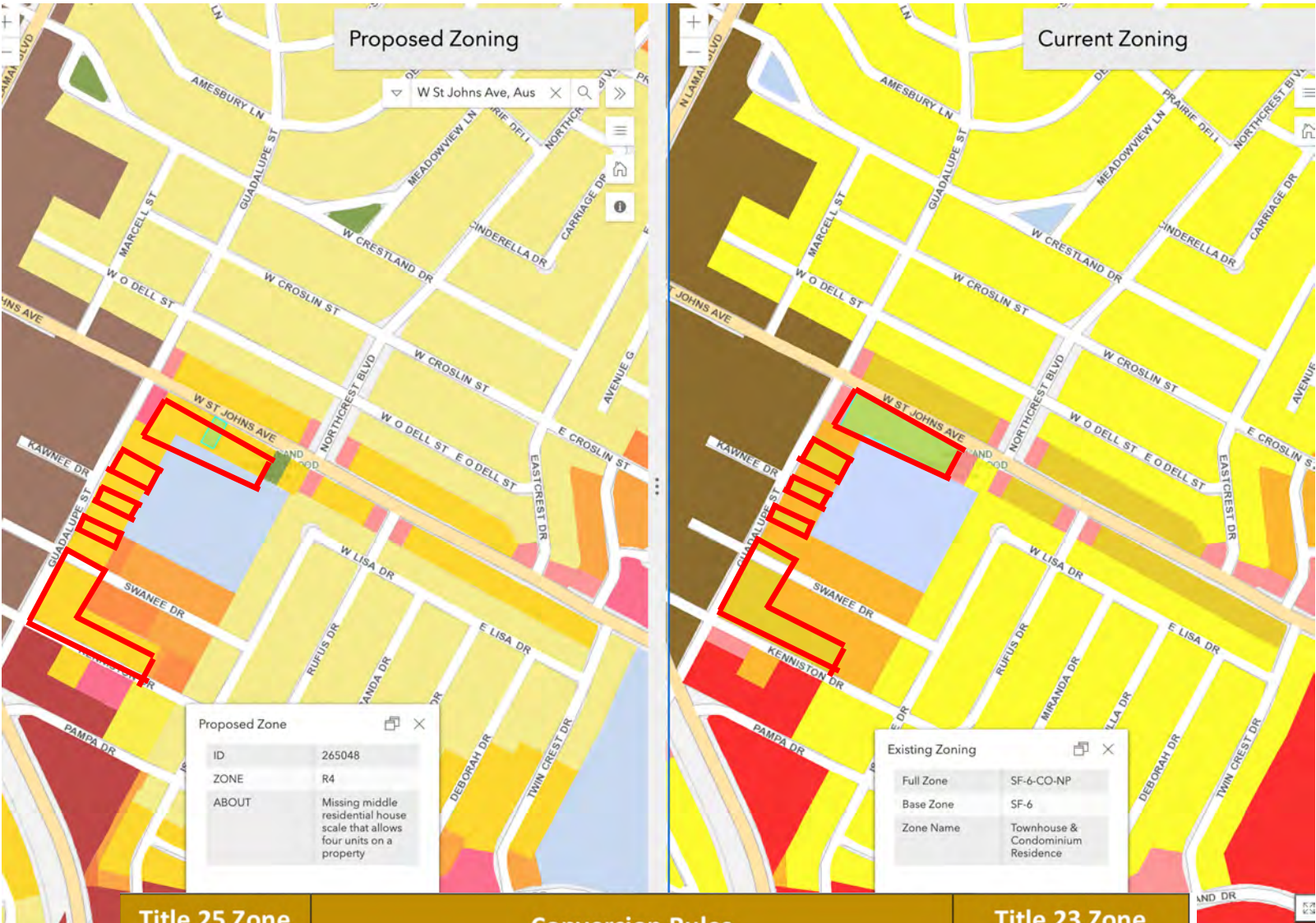




# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

West St. Johns area  
(outline added)

Actual Conversion  
SF-6 → R4



Title 25 Zone (Existing Code)		Conversion Rules	Title 23 Zone (Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2

# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Gaylor Street area  
(outline added)

Actual Conversion  
SF-6 → R4



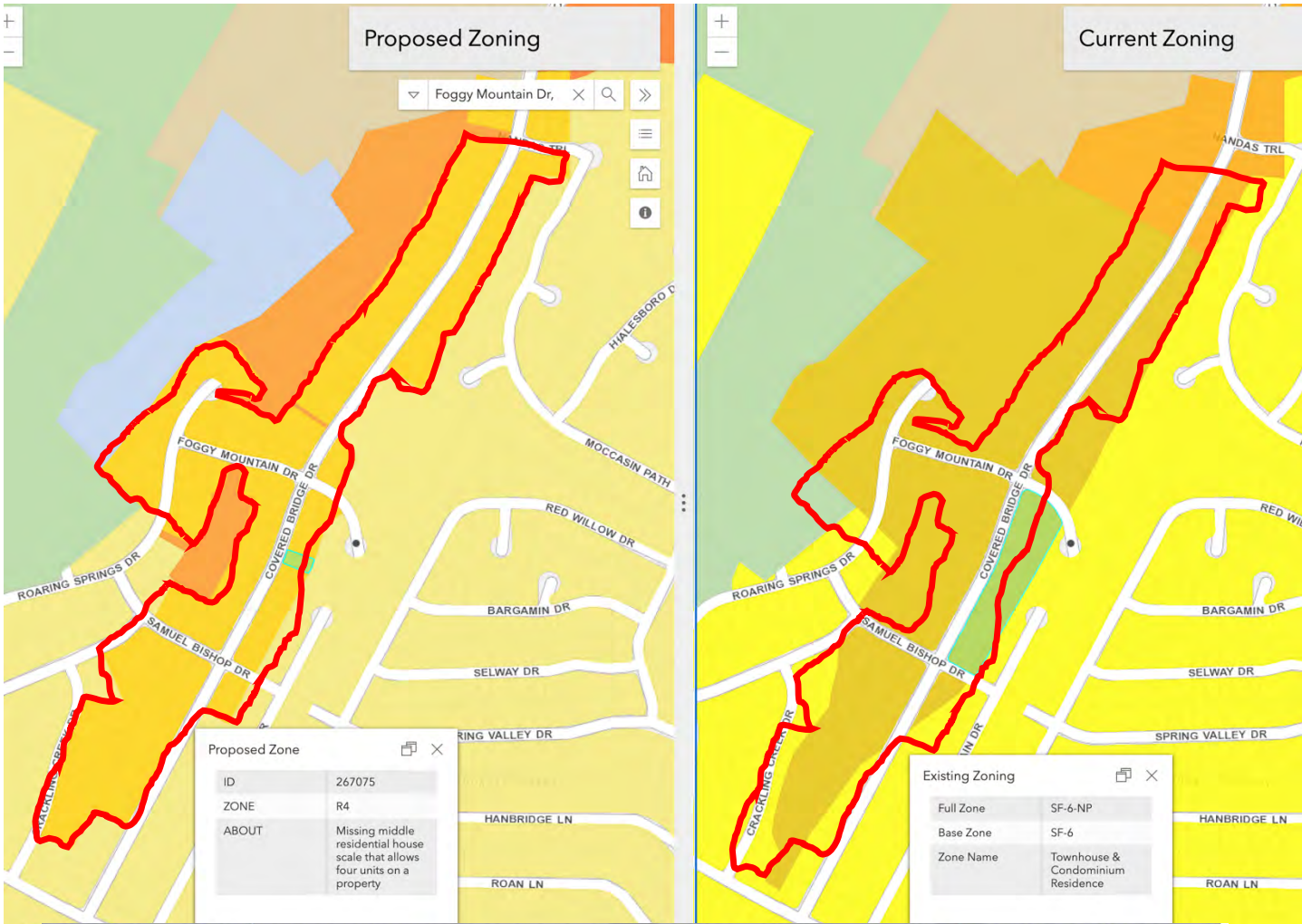
Title 25 Zone	Conversion Rules		Title 23 Zone
(Existing Code)			(Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2



# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Foggy Mountain area  
(outline added)

Actual Conversion  
SF-6 → R4

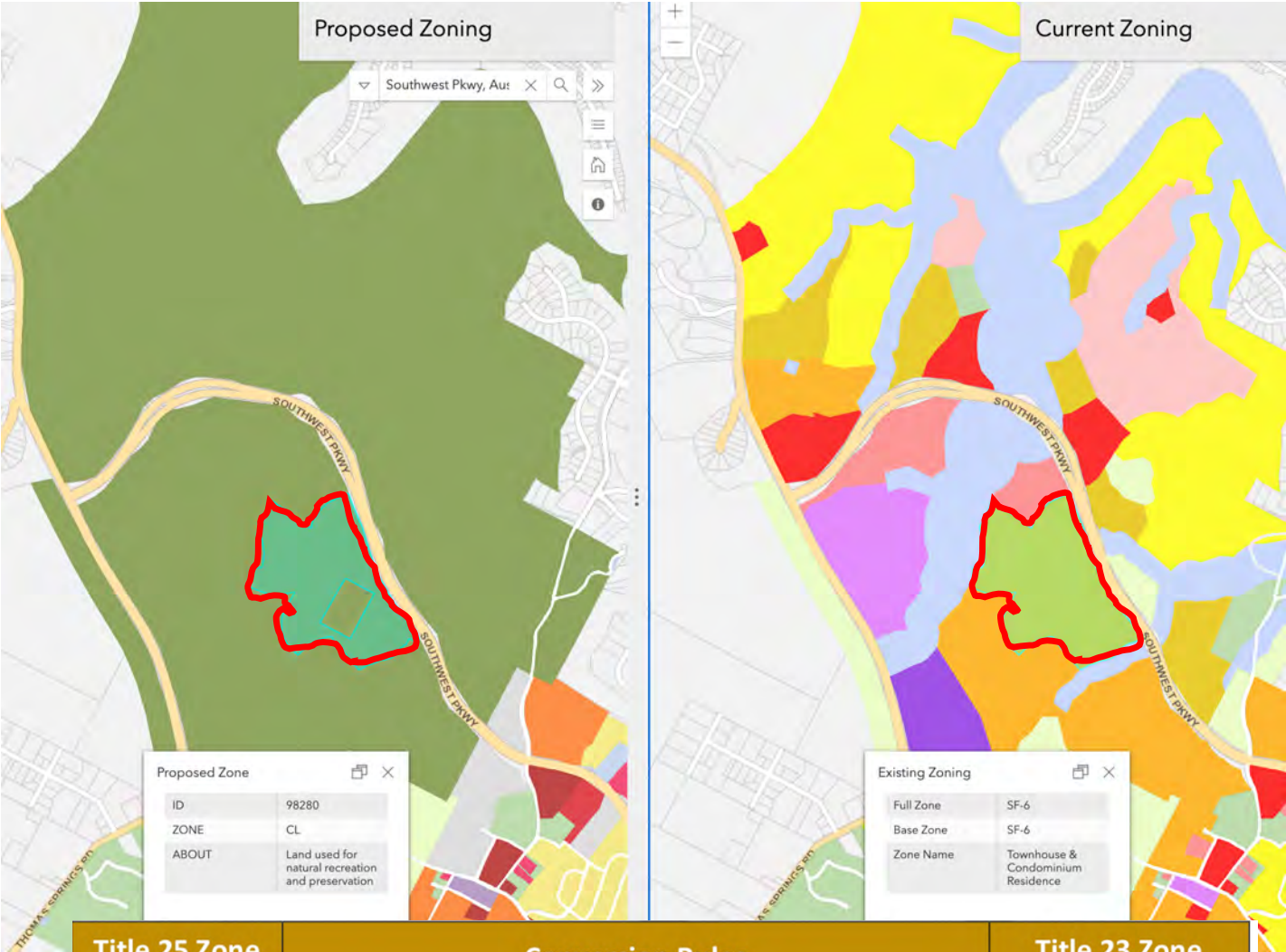


Title 25 Zone		Conversion Rules		Title 23 Zone
(Existing Code)				(Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.		RM1
		Property area ≥ 21K sq. ft.		RM2

# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Southwest Parkway area  
(outline added)

Actual Conversion  
SF-6 → CL



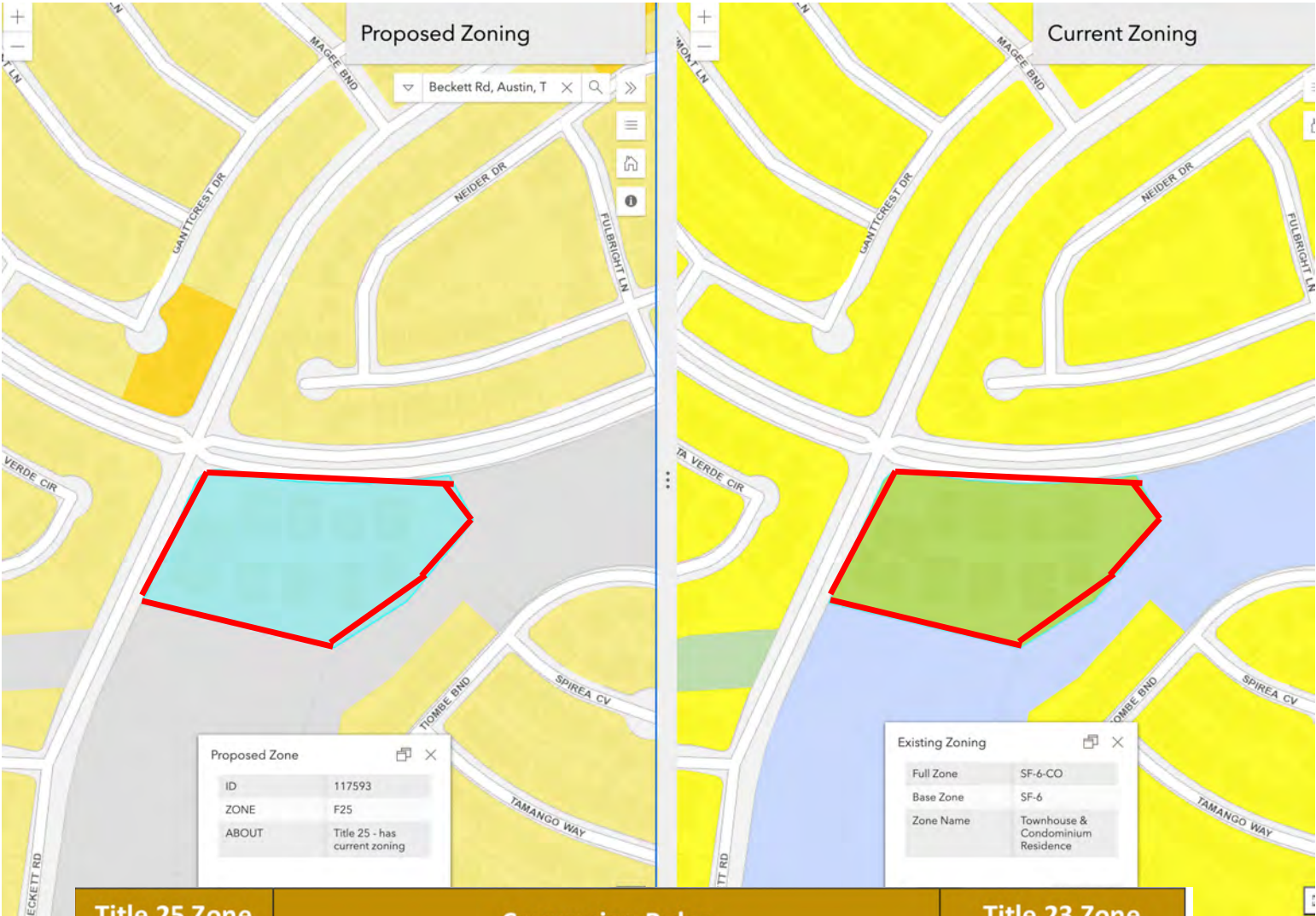
Title 25 Zone	Conversion Rules		Title 23 Zone
(Existing Code)			(Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2



# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Becket Road near Davis  
(outline added)

Actual Conversion  
SF-6 → F25

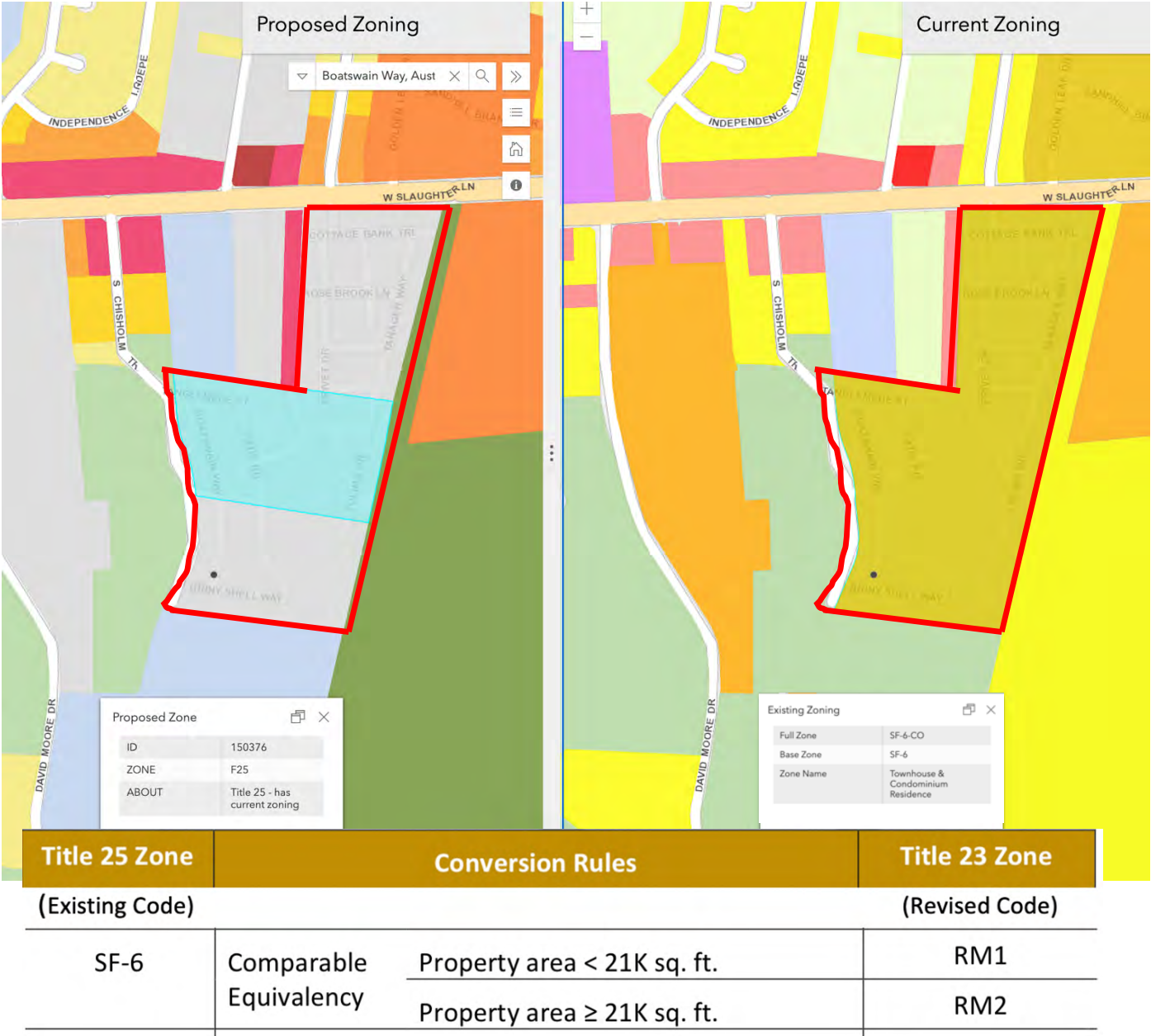


Title 25 Zone		Conversion Rules		Title 23 Zone
(Existing Code)				(Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.		RM1
		Property area ≥ 21K sq. ft.		RM2

# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Boatswain Way area  
(outline added)

Actual Conversion  
SF-6 → F25

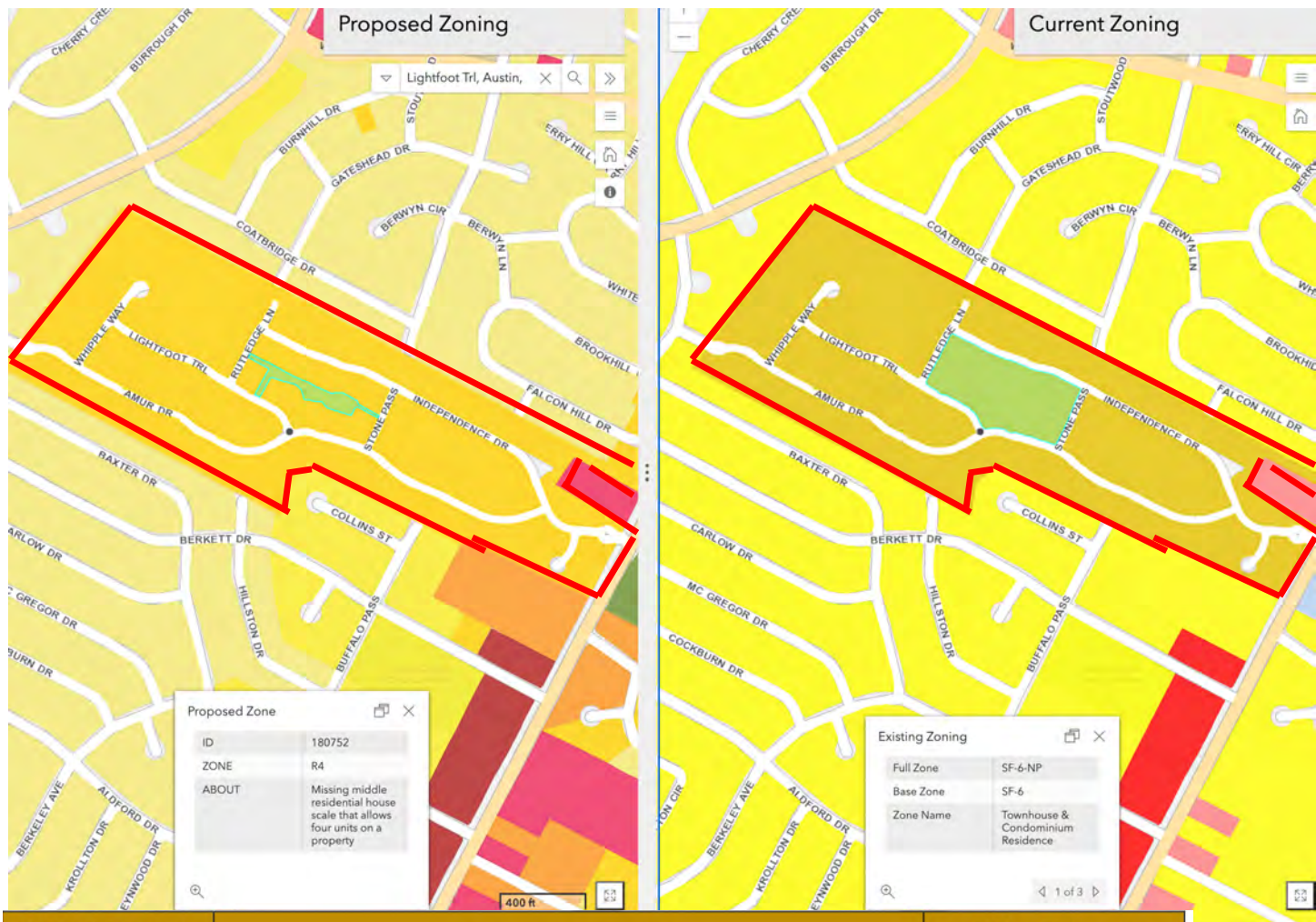




# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Lightfoot Trail area  
(outline added)

Actual Conversion  
SF-6 → R4



Title 25 Zone (Existing Code)	Conversion Rules		Title 23 Zone (Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2

# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Windrift Way area  
(outline added)

Actual Conversion  
SF-6 → R4  
SF-6 → R2C

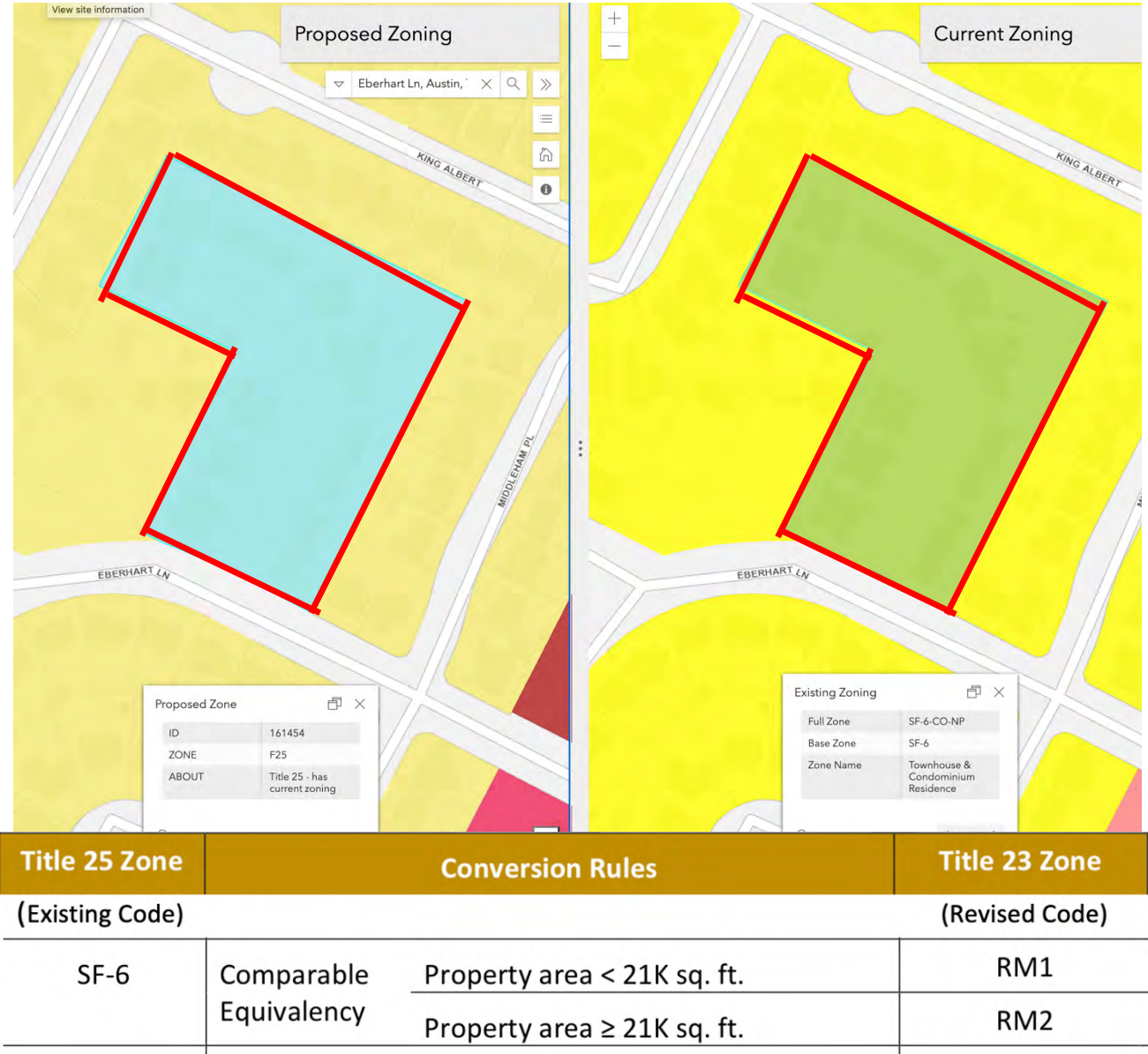




# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Eberhart Lane area  
(outline added)

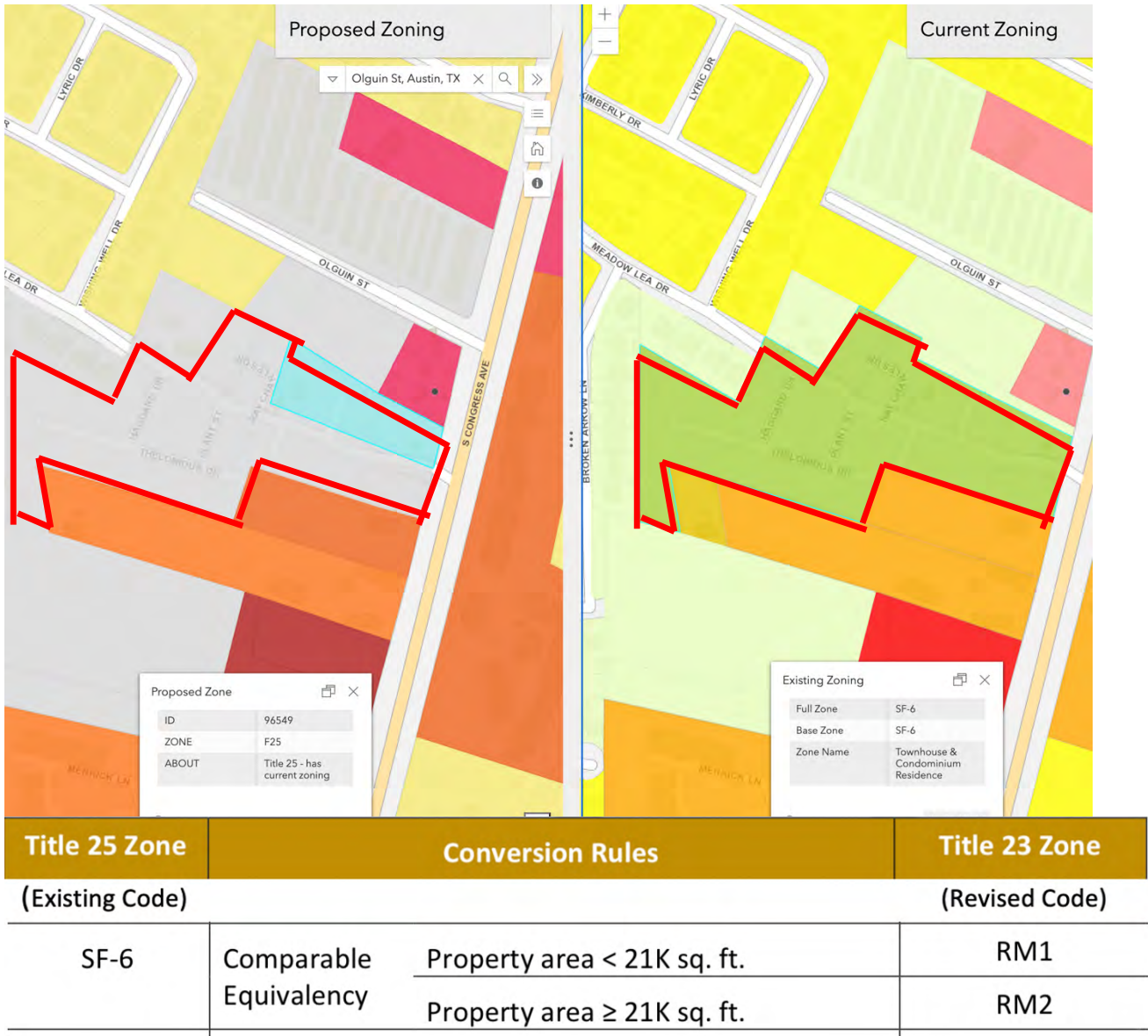
Actual Conversion  
SF-6 → F25



# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Olguin Street area  
(outline added)

Actual Conversion  
SF-6 → F25



# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Windoak Drive area  
(outline added)

Actual Conversion  
SF-6 → PR

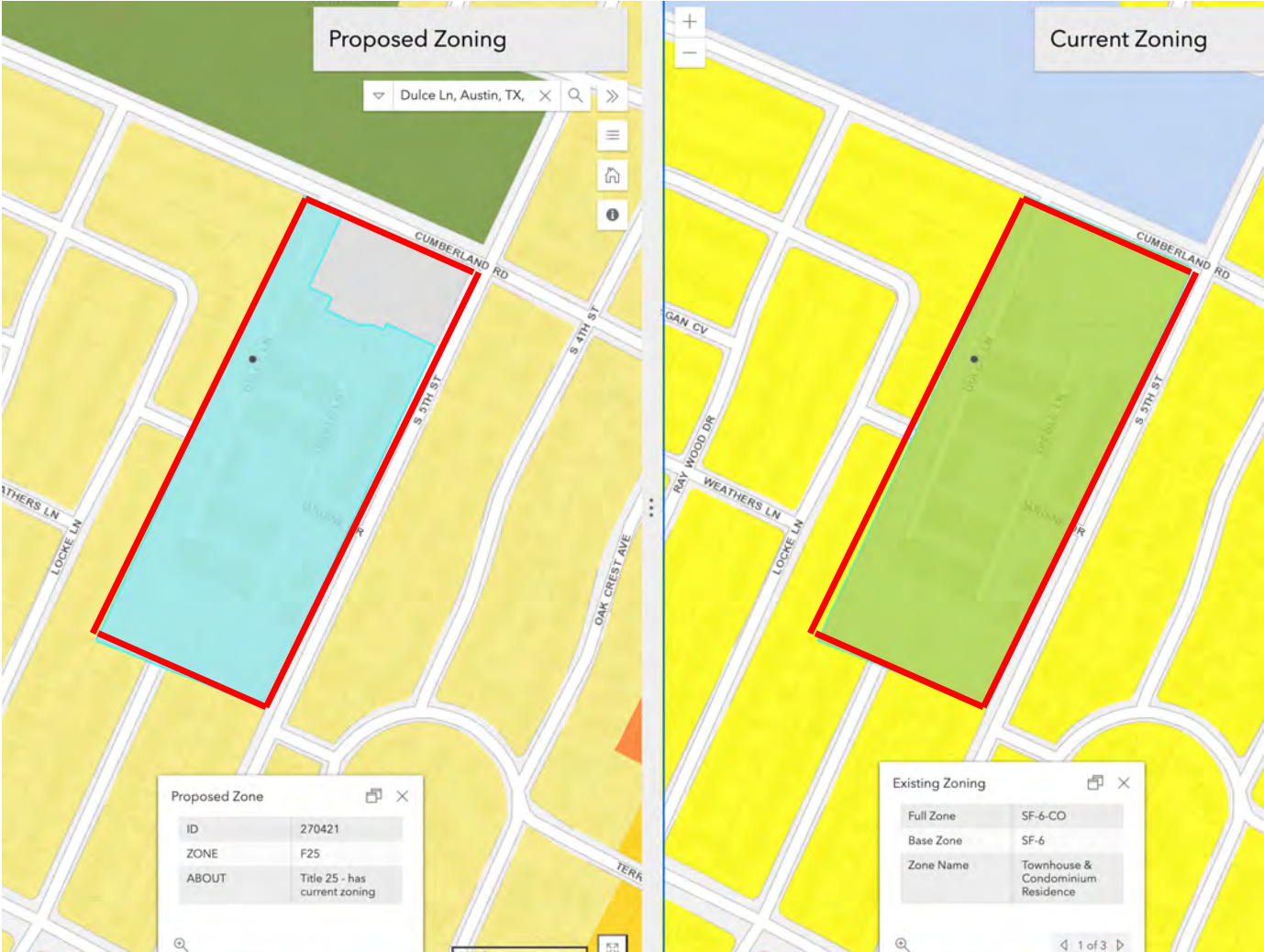




# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Dulce Lane area  
(outline added)

Actual Conversion  
SF-6 → F25

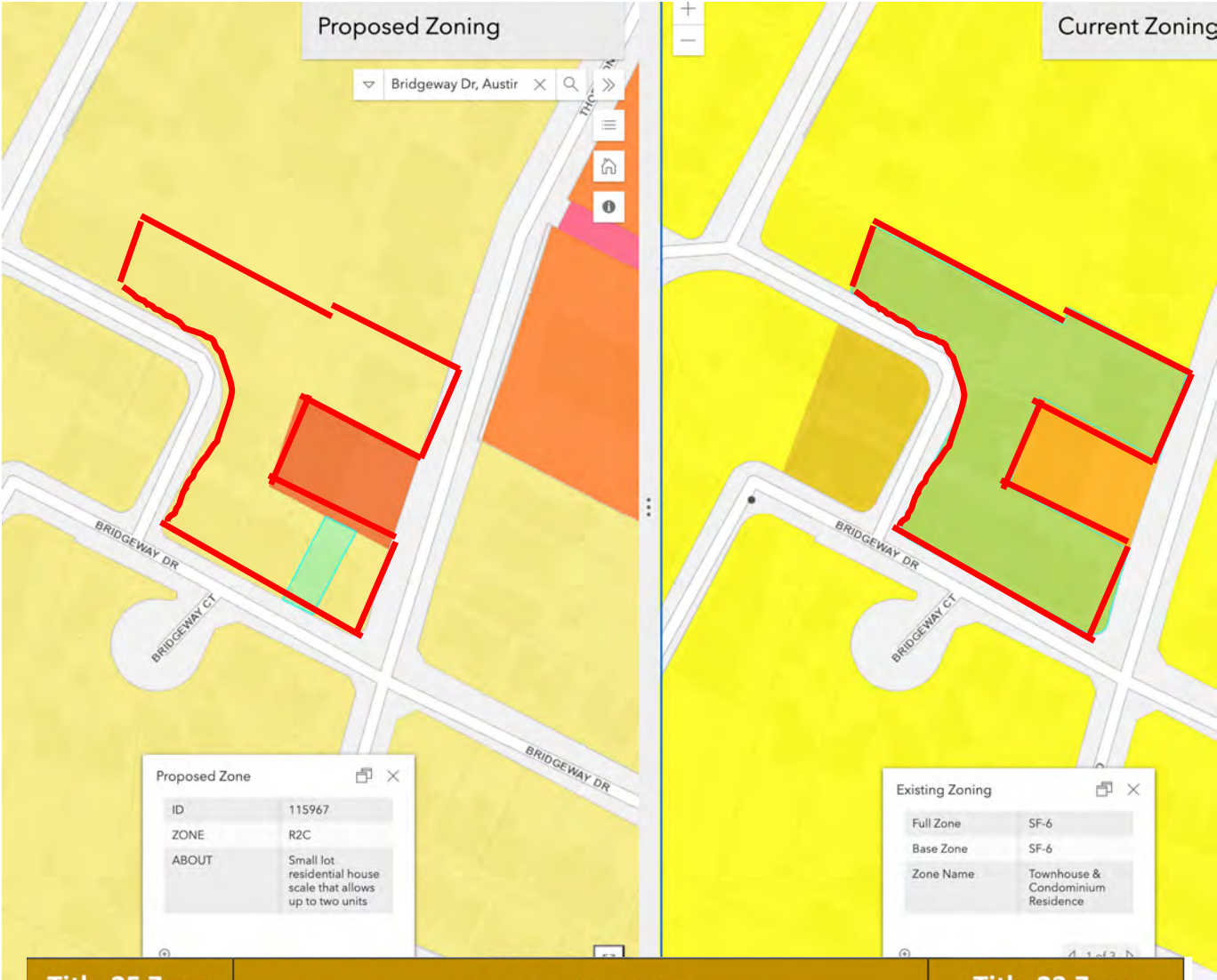


Title 25 Zone (Existing Code)		Conversion Rules	Title 23 Zone (Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2

# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Bridgeway Drive area  
(outline added)

Actual Conversion  
SF-6 → R2C



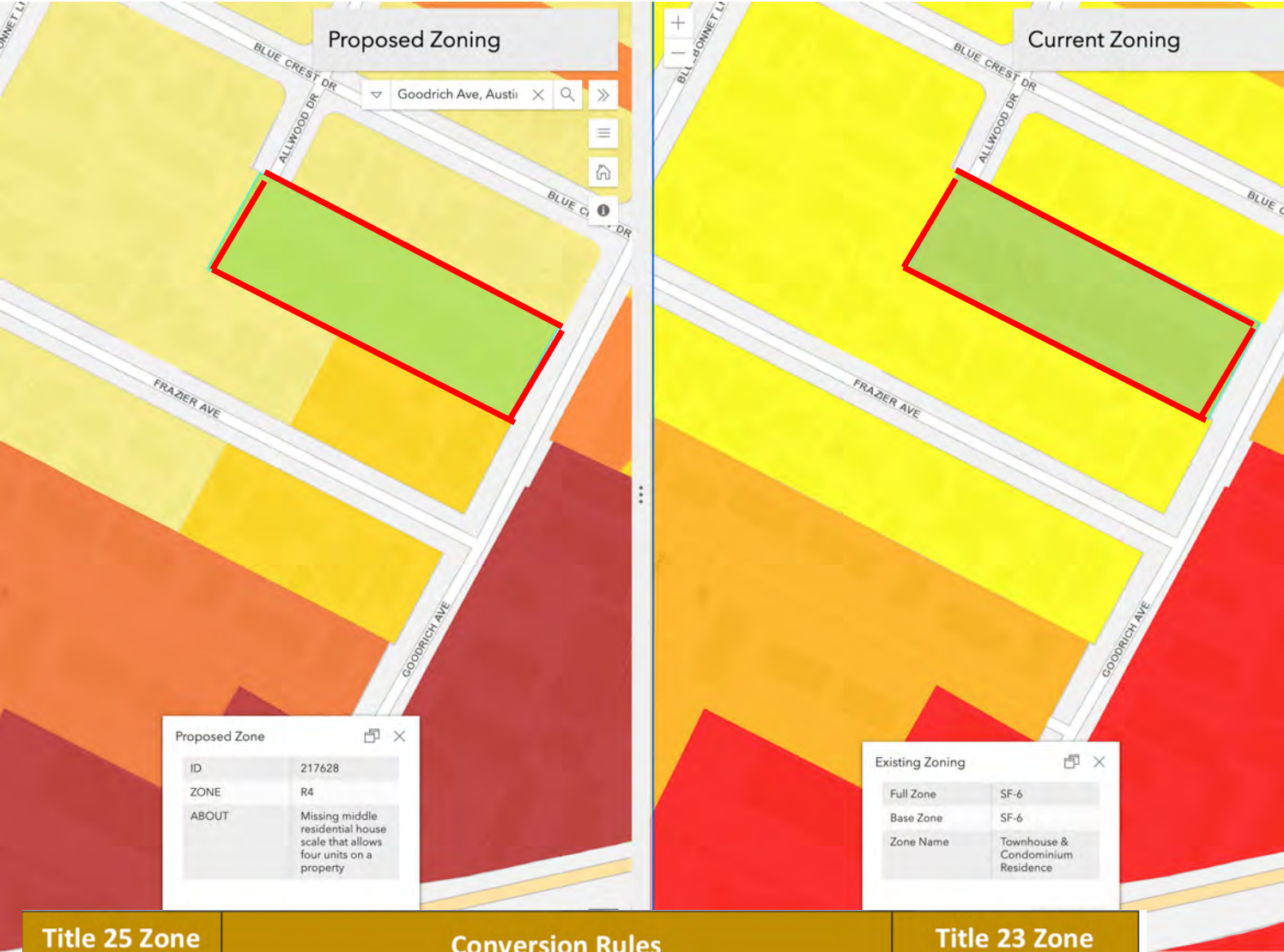
Title 25 Zone		Conversion Rules		Title 23 Zone
(Existing Code)				(Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.		RM1
		Property area ≥ 21K sq. ft.		RM2



# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Goodrich Ave. area  
(outline added)

Actual Conversion  
SF-6 → R4

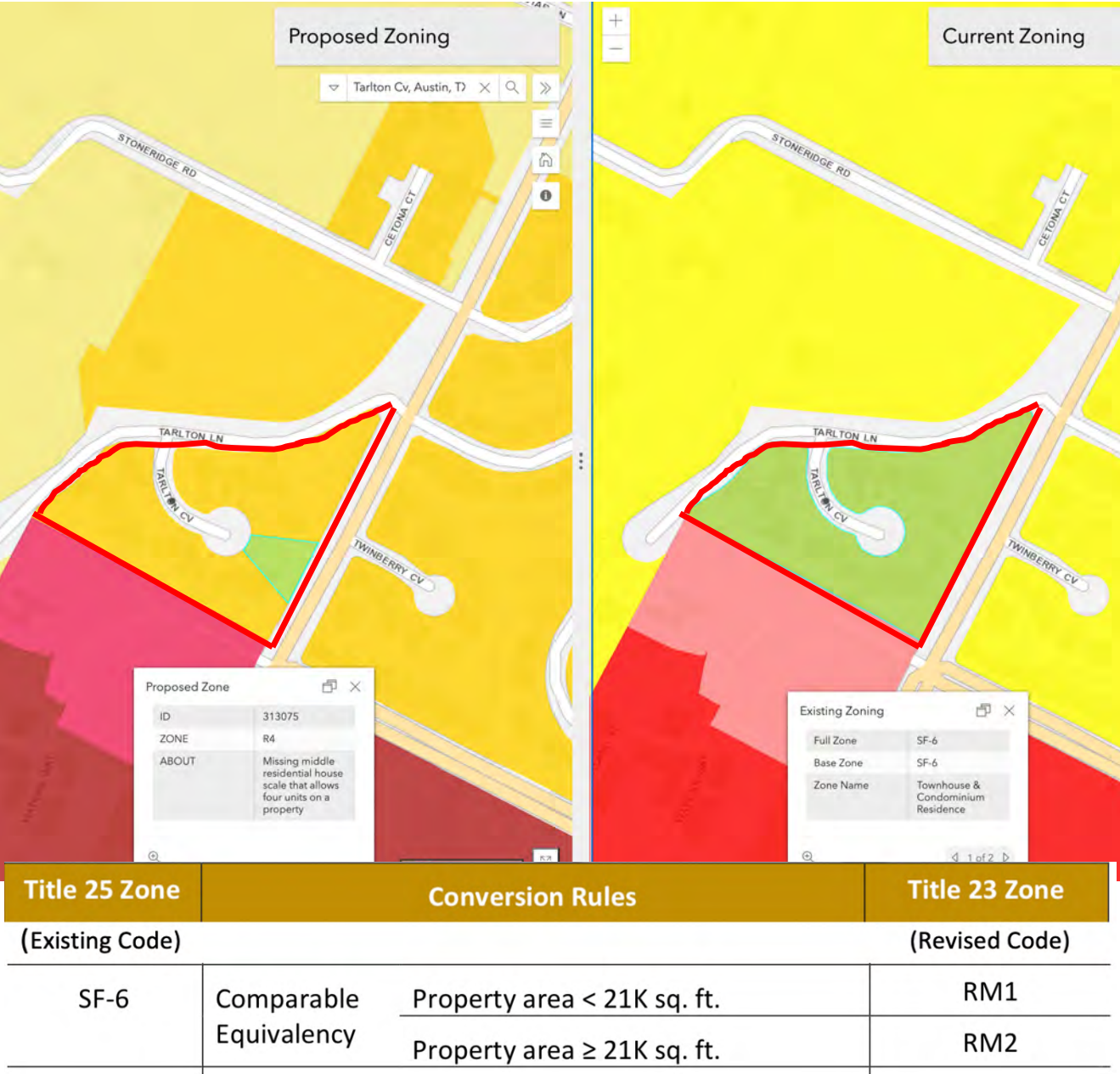


Title 25 Zone (Existing Code)	Conversion Rules		Title 23 Zone (Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2

# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Tarltan Cove area  
(outline added)

Actual Conversion  
SF-6 → R4

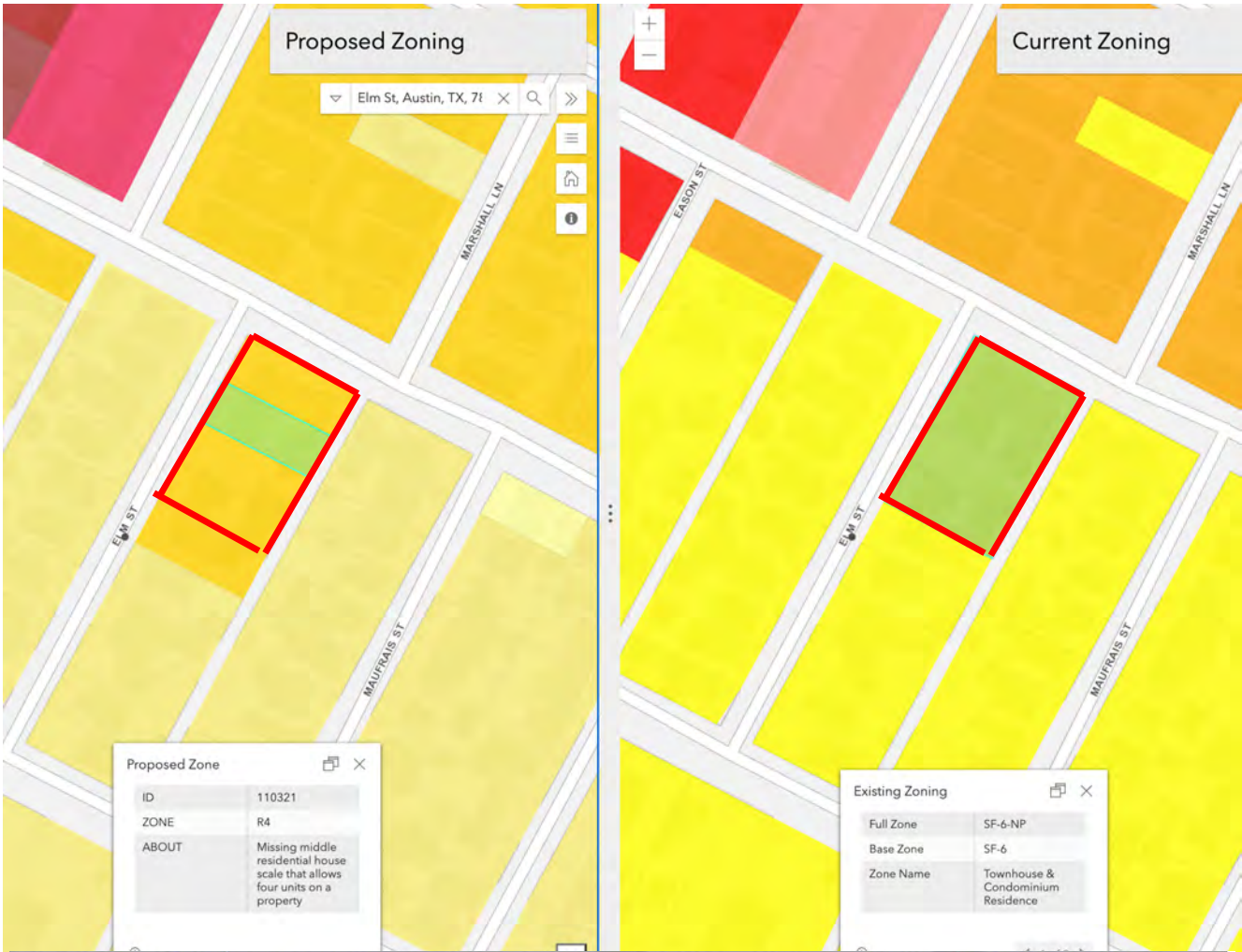




# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Elm Street area  
(outline added)

Actual Conversion  
SF-6 → R4

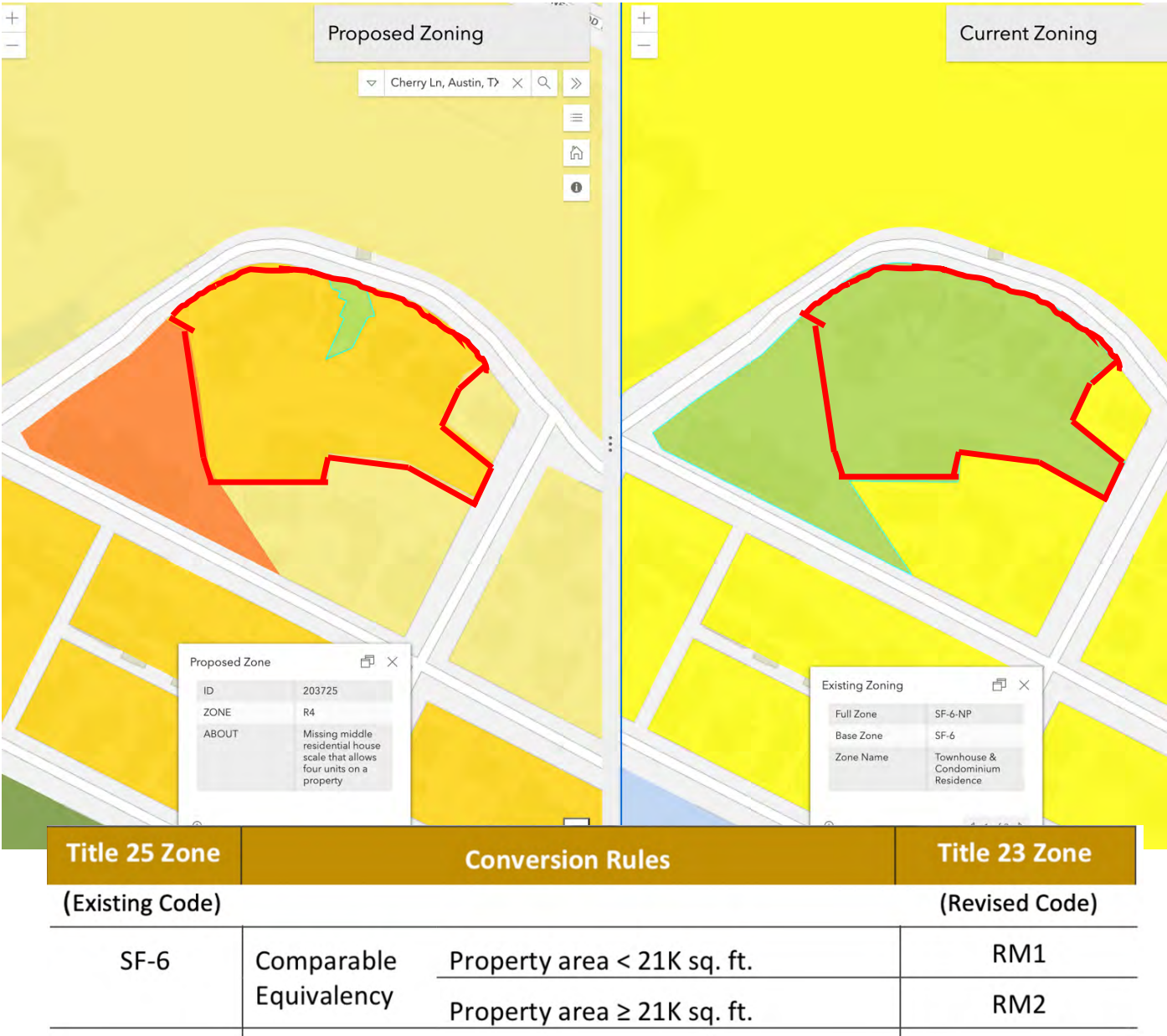


Title 25 Zone	Conversion Rules		Title 23 Zone
(Existing Code)			(Revised Code)
SF-6	Comparable Equivalency	Property area < 21K sq. ft.	RM1
		Property area ≥ 21K sq. ft.	RM2

# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Cherry Lane area (outline added)

Actual Conversion  
SF-6 → R4

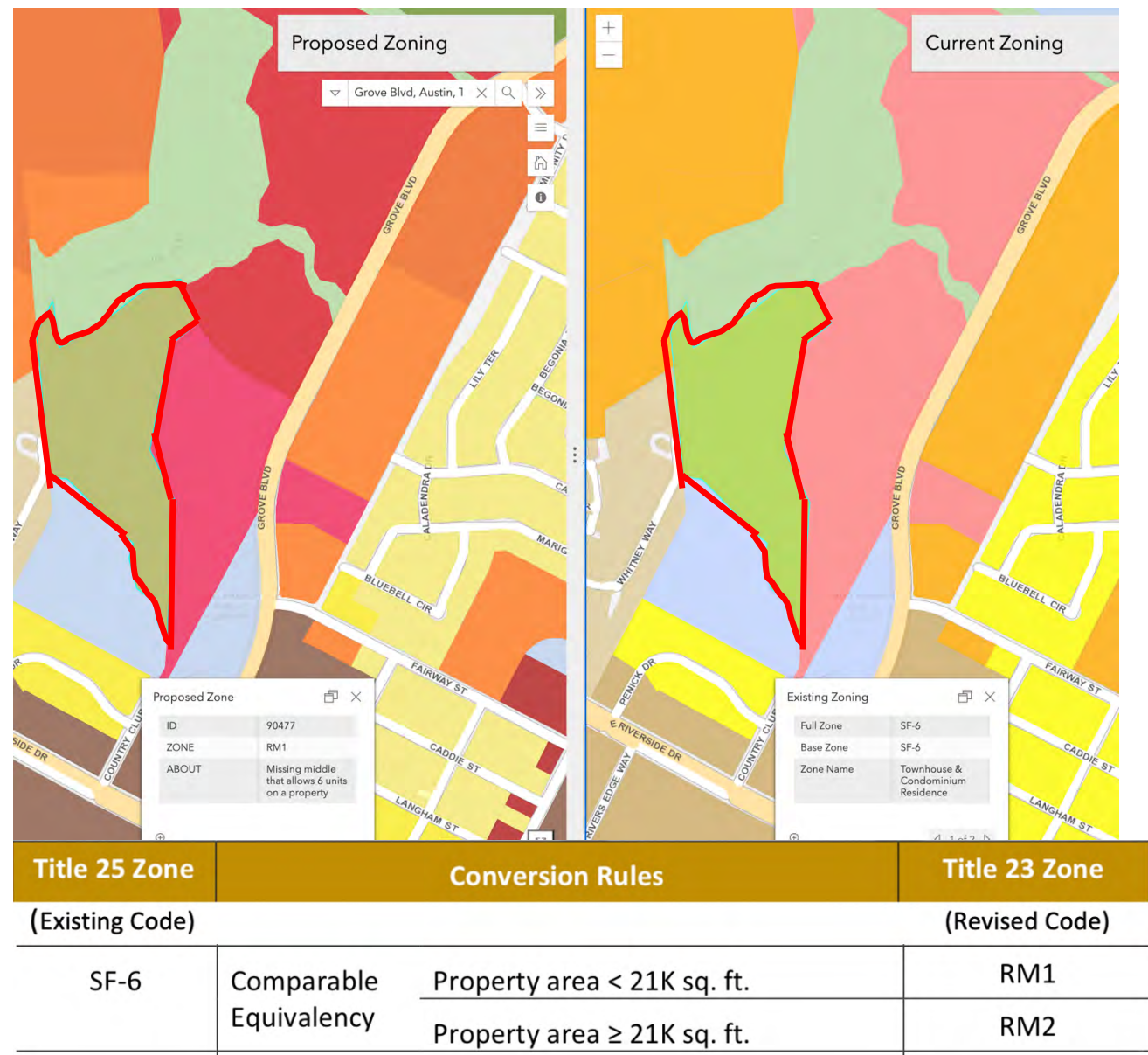




# Map Example of Non-Uniform Conversion of SF-6 under Code Revision

Grove Blvd area  
(outline added)

Actual Conversion  
SF-6 → RM1  
Lot Size 700,061 sq ft.



Many properties do not follow the property area conversion rule. This is an example of one.

## **APPENDIX 2**

2. Texas Local Gov't Code §§ 211.001-211.007

## **Tex. Local Gov't Code Title 7, Subtit. A, Ch. 211, Subch. A Note**

This document is current through the 2019 Regular Session, 86th Legislature, and 2019 election results.

*Texas Statutes & Codes Annotated by LexisNexis® > Local Government Code > Title 7 Regulation of Land Use, Structures, Businesses, and Related Activities (Subts. A — C) > Subtitle A Municipal Regulatory Authority (Chs. 211 — 230) > Chapter 211 Municipal Zoning Authority (Subchs. A — C) > Subchapter A General Zoning Regulations (§§ 211.001 — 211.020)*

### **Subchapter A General Zoning Regulations**

---

Texas Statutes & Codes Annotated by LexisNexis®  
Copyright © 2020 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group. All rights reserved.

---

End of Document



## **Tex. Local Gov't Code § 211.001**

This document is current through the 2019 Regular Session, 86th Legislature, and 2019 election results.

*Texas Statutes & Codes Annotated by LexisNexis® > Local Government Code > Title 7 Regulation of Land Use, Structures, Businesses, and Related Activities (Subts. A — C) > Subtitle A Municipal Regulatory Authority (Chs. 211 — 230) > Chapter 211 Municipal Zoning Authority (Subchs. A — C) > Subchapter A General Zoning Regulations (§§ 211.001 — 211.020)*

### **Sec. 211.001. Purpose.**

---

The powers granted under this subchapter are for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.

### **History**

---

Enacted by Acts 1987, 70th Leg., ch. 149 (S.B. 896), § 1, effective September 1, 1987.

Texas Statutes & Codes Annotated by LexisNexis®  
Copyright © 2020 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group. All rights reserved.

## **Tex. Local Gov't Code § 211.002**

This document is current through the 2019 Regular Session, 86th Legislature, and 2019 election results.

*Texas Statutes & Codes Annotated by LexisNexis® > Local Government Code > Title 7 Regulation of Land Use, Structures, Businesses, and Related Activities (Subts. A — C) > Subtitle A Municipal Regulatory Authority (Chs. 211 — 230) > Chapter 211 Municipal Zoning Authority (Subchs. A — C) > Subchapter A General Zoning Regulations (§§ 211.001 — 211.020)*

### **Sec. 211.002. Adoption of Regulation or Boundary Includes Amendment or Other Change.**

---

A reference in this subchapter to the adoption of a zoning regulation or a zoning district boundary includes the amendment, repeal, or other change of a regulation or boundary.

### **History**

---

Enacted by Acts 1987, 70th Leg., ch. 149 (S.B. 896), § 1, effective September 1, 1987.

Texas Statutes & Codes Annotated by LexisNexis®  
Copyright © 2020 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group. All rights reserved.

## Tex. Local Gov't Code § 211.003

This document is current through the 2019 Regular Session, 86th Legislature, and 2019 election results.

*Texas Statutes & Codes Annotated by LexisNexis® > Local Government Code > Title 7 Regulation of Land Use, Structures, Businesses, and Related Activities (Subts. A — C) > Subtitle A Municipal Regulatory Authority (Chs. 211 — 230) > Chapter 211 Municipal Zoning Authority (Subchs. A — C) > Subchapter A General Zoning Regulations (§§ 211.001 — 211.020)*

### Sec. 211.003. Zoning Regulations Generally.

---

(a)The governing body of a municipality may regulate:

- (1)the height, number of stories, and size of buildings and other structures;
- (2)the percentage of a lot that may be occupied;
- (3)the size of yards, courts, and other open spaces;
- (4)population density;
- (5)the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes; and
- (6)the pumping, extraction, and use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, for the purpose of preventing the use or contact with groundwater that presents an actual or potential threat to human health.

(b)In the case of designated places and areas of historical, cultural, or architectural importance and significance, the governing body of a municipality may regulate the construction, reconstruction, alteration, or razing of buildings and other structures.

(c)The governing body of a home-rule municipality may also regulate the bulk of buildings.

### History

---

Enacted by Acts 1987, 70th Leg., ch. 149 (S.B. 896), § 1, effective September 1, 1987; am. Acts 2003, 78th Leg., ch. 731 (H.B. 3152), § 2, effective September 1, 2003.

Texas Statutes & Codes Annotated by LexisNexis®  
Copyright © 2020 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group. All rights reserved.

## **Tex. Local Gov't Code § 211.0035**

This document is current through the 2019 Regular Session, 86th Legislature, and 2019 election results.

*Texas Statutes & Codes Annotated by LexisNexis® > Local Government Code > Title 7 Regulation of Land Use, Structures, Businesses, and Related Activities (Subts. A — C) > Subtitle A Municipal Regulatory Authority (Chs. 211 — 230) > Chapter 211 Municipal Zoning Authority (Subchs. A — C) > Subchapter A General Zoning Regulations (§§ 211.001 — 211.020)*

### **Sec. 211.0035. Zoning Regulations and District Boundaries Applicable to Pawnshops.**

(a) In this section, “pawnshop” has the meaning assigned by Section 371.003, Finance Code.

(b) For the purposes of zoning regulation and determination of zoning district boundaries, the governing body of a municipality shall designate pawnshops that have been licensed to transact business by the Consumer Credit Commissioner under Chapter 371, Finance Code, as a permitted use in one or more zoning classifications.

(c) The governing body of a municipality may not impose a specific use permit requirement or any requirement similar in effect to a specific use permit requirement on a pawnshop that has been licensed to transact business by the Consumer Credit Commissioner under Chapter 371, Finance Code.

### **History**

Enacted by Acts 1991, 72nd Leg., ch. 687 (H.B. 1258), § 18, effective September 1, 1991; am. Acts 1999, 76th Leg., ch. 62 (S.B. 1368), § 7.81, effective September 1, 1999.

Texas Statutes & Codes Annotated by LexisNexis®  
Copyright © 2020 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group. All rights reserved.

## Tex. Local Gov't Code § 211.004

This document is current through the 2019 Regular Session, 86th Legislature, and 2019 election results.

*Texas Statutes & Codes Annotated by LexisNexis® > Local Government Code > Title 7 Regulation of Land Use, Structures, Businesses, and Related Activities (Subts. A — C) > Subtitle A Municipal Regulatory Authority (Chs. 211 — 230) > Chapter 211 Municipal Zoning Authority (Subchs. A — C) > Subchapter A General Zoning Regulations (§§ 211.001 — 211.020)*

### Sec. 211.004. Compliance with Comprehensive Plan.

---

(a) Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to:

- (1) lessen congestion in the streets;
- (2) secure safety from fire, panic, and other dangers;
- (3) promote health and the general welfare;
- (4) provide adequate light and air;
- (5) prevent the overcrowding of land;
- (6) avoid undue concentration of population; or
- (7) facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public requirements.

(b) [Repealed by Acts 1997, 75th Leg., ch. 459 (S.B. 1227), § 2, effective September 1, 1997.]

### History

---

Enacted by Acts 1987, 70th Leg., ch. 149 (S.B. 896), § 1, effective September 1, 1987; am. Acts 1989, 71st Leg., ch. 458 (H.B. 1870), § 1, effective August 28, 1989; am. Acts 1997, 75th Leg., ch. 459 (S.B. 1227), § 2, effective September 1, 1997.

Texas Statutes & Codes Annotated by LexisNexis®  
Copyright © 2020 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group. All rights reserved.



## Tex. Local Gov't Code § 211.005

This document is current through the 2019 Regular Session, 86th Legislature, and 2019 election results.

*Texas Statutes & Codes Annotated by LexisNexis® > Local Government Code > Title 7 Regulation of Land Use, Structures, Businesses, and Related Activities (Subts. A — C) > Subtitle A Municipal Regulatory Authority (Chs. 211 — 230) > Chapter 211 Municipal Zoning Authority (Subchs. A — C) > Subchapter A General Zoning Regulations (§§ 211.001 — 211.020)*

### Sec. 211.005. Districts.

---

(a)The governing body of a municipality may divide the municipality into districts of a number, shape, and size the governing body considers best for carrying out this subchapter. Within each district, the governing body may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land.

(b)Zoning regulations must be uniform for each class or kind of building in a district, but the regulations may vary from district to district. The regulations shall be adopted with reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings and encouraging the most appropriate use of land in the municipality.

### History

---

Enacted by Acts 1987, 70th Leg., ch. 149 (S.B. 896), § 1, effective September 1, 1987.

Texas Statutes & Codes Annotated by LexisNexis®  
Copyright © 2020 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group. All rights reserved.

## **Tex. Local Gov't Code § 211.006**

This document is current through the 2019 Regular Session, 86th Legislature, and 2019 election results.

*Texas Statutes & Codes Annotated by LexisNexis® > Local Government Code > Title 7 Regulation of Land Use, Structures, Businesses, and Related Activities (Subts. A — C) > Subtitle A Municipal Regulatory Authority (Chs. 211 — 230) > Chapter 211 Municipal Zoning Authority (Subchs. A — C) > Subchapter A General Zoning Regulations (§§ 211.001 — 211.020)*

### **Sec. 211.006. Procedures Governing Adoption of Zoning Regulations and District Boundaries.**

---

(a)The governing body of a municipality wishing to exercise the authority relating to zoning regulations and zoning district boundaries shall establish procedures for adopting and enforcing the regulations and boundaries. A regulation or boundary is not effective until after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.

(b)In addition to the notice required by Subsection (a), a general-law municipality that does not have a zoning commission shall give notice of a proposed change in a zoning classification to each property owner who would be entitled to notice under Section 211.007(c) if the municipality had a zoning commission. That notice must be given in the same manner as required for notice to property owners under Section 211.007(c). The governing body may not adopt the proposed change until after the 30th day after the date the notice required by this subsection is given.

(c)If the governing body of a home-rule municipality conducts a hearing under Subsection (a), the governing body may, by a two-thirds vote, prescribe the type of notice to be given of the time and place of the public hearing. Notice requirements prescribed under this subsection are in addition to the publication of notice required by Subsection (a).

(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 the lots or land covered by the proposed change; or

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

(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.

## History

---

Enacted by Acts 1987, 70th Leg., ch. 149 (S.B. 896), § 1, effective September 1, 1987.

Texas Statutes & Codes Annotated by LexisNexis®  
Copyright © 2020 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group. All rights reserved.

---

End of Document

## **Tex. Local Gov't Code § 211.007**

This document is current through the 2019 Regular Session, 86th Legislature, and 2019 election results.

*Texas Statutes & Codes Annotated by LexisNexis® > Local Government Code > Title 7 Regulation of Land Use, Structures, Businesses, and Related Activities (Subts. A — C) > Subtitle A Municipal Regulatory Authority (Chs. 211 — 230) > Chapter 211 Municipal Zoning Authority (Subchs. A — C) > Subchapter A General Zoning Regulations (§§ 211.001 — 211.020)*

### **Sec. 211.007. Zoning Commission.**

---

(a) To exercise the powers authorized by this subchapter, the governing body of a home-rule municipality shall, and the governing body of a general-law municipality may, appoint a zoning commission. The commission shall recommend boundaries for the original zoning districts and appropriate zoning regulations for each district. If the municipality has a municipal planning commission at the time of implementation of this subchapter, the governing body may appoint that commission to serve as the zoning commission.

(b) The zoning commission shall make a preliminary report and hold public hearings on that report before submitting a final report to the governing body. The governing body may not hold a public hearing until it receives the final report of the zoning commission unless the governing body by ordinance provides that a public hearing is to be held, after the notice required by Section 211.006(a), jointly with a public hearing required to be held by the zoning commission. In either case, the governing body may not take action on the matter until it receives the final report of the zoning commission.

(c) Before the 10th day before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property within 200 feet of the property on which the change in classification is proposed. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail. If the property within 200 feet of the property on which the change is proposed is located in territory annexed to the municipality and is not included on the most recently approved municipal tax roll, the notice shall be given in the manner provided by Section 211.006(a).

(c-1) Before the 10th day before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification affecting residential or multifamily zoning shall be sent to each school district in which the property for which the change in classification is proposed is located. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail.

(c-2) Subsection (c-1) does not apply to a municipality the majority of which is located in a county with a population of 100,000 or less, except that such a municipality must give notice under Subsection (c-1) to a school district that has territory in the municipality and requests the notice. For purposes of this subsection, if a school district makes a request for notice under Subsection (c-1), the

municipality must give notice of each public hearing held following the request unless the school district requests that no further notices under Subsection (c-1) be given to the school district.

(d)The governing body of a home-rule municipality may, by a two-thirds vote, prescribe the type of notice to be given of the time and place of a public hearing held jointly by the governing body and the zoning commission. If notice requirements are prescribed under this subsection, the notice requirements prescribed by Subsections (b) and (c) and by Section 211.006(a) do not apply.

(e)If a general-law municipality exercises zoning authority without the appointment of a zoning commission, any reference in a law to a municipal zoning commission or planning commission means the governing body of the municipality.

## History

---

Enacted by Acts 1987, 70th Leg., ch. 149 (S.B. 896), § 1, effective September 1, 1987; am. Acts 2013, 83rd Leg., ch. 640 (H.B. 674), § 1, effective September 1, 2013.

Texas Statutes & Codes Annotated by LexisNexis®  
Copyright © 2020 Matthew Bender & Company, Inc.  
a member of the LexisNexis Group. All rights reserved.

---

End of Document



## **APPENDIX 3**

3. Affidavit of David B. Brooks

**AFFIDAVIT OF DAVID B. BROOKS**

STATE OF TEXAS           §

COUNTY OF TRAVIS       §

Before me, the undersigned authority personally appeared David B. Brooks, who being by me first duly sworn on his oath, deposed as follows:

“My name is David B. Brooks. I am an adult resident of Travis County and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge are true and correct.

“I am a recognized legal expert on Texas local government laws, including municipal zoning laws. I received my law degree from the UT School of Law in 1978. I have served in various legal capacities for Texas state agencies, the Legislature, Texas counties, and other local governments. I am the author of the following Texas law treatises: *County and Special District Law, 2d* (Vols. 35, 36 and 36A, Texas Practice Series); *Municipal Law and Practice, 2d* (Vols. 22, 23, and 23A, Texas Practice Series); *Property Taxes, 4th* (Vols. 21 & 21A, Texas Practice Series) (contributor). I have spent many years researching Texas laws and am an expert on analyzing Texas legislative history. I am under contract to prepare a treatise on the Texas Constitution. I have served as legal counsel to the House Committee on Urban Affairs under multiple chairmen during several legislative sessions. I have served on the City of Austin Board of Adjustment. In addition, I have been accepted as an expert at trial on four prior occasions. I have looked carefully at the legislative history of Texas’ municipal zoning enabling laws and their amendments.

“Based on my research and analysis, Texas’ legislative history on zoning statutes establishes that the Texas Legislature has not excepted property owners’ long-standing zoning

protest rights from comprehensive rezonings. Texas in 1927 adopted verbatim the Standard State Zoning Enabling Law, including its protest rights provision. Tex. Rev. Civ. Stat 1011a-f (Vernon 1928) (Acts 1927, 40th Leg., p. 424, ch. 283); *A Standard State Zoning Enabling Act: Under Which Municipalities May Enact Zoning Regulations* (The National Advisory Committee on Zoning, US. Government Printing Office 1926). Since the Texas Legislature first specifically authorized zoning, it has required cities, in order to exercise their authority to rezone properties, to provide protest rights, notice, hearings and other statutory procedural protections to property owners. Tex. Rev. Civ. Stat 1011a-f (Vernon 1928) (Acts 1927, 40th Leg., p. 424, ch. 283). And for 92 years, property owners' protest rights have never been restricted in Texas. Tex. Local Government Code, Section 211.006(d) (the zoning law was recodified in 1987 with non-substantive changes).

"Texas' original zoning law, and the non-substantive recodification in 1987, both make clear that property owners' protest rights apply to any zoning regulation or boundary change. Texas' 1927 law provides: '*Changes.*—Such regulations, restrictions, and boundaries may from time to time *be amended, supplemented, changed, modified, or repealed*; In case, however, of a protest against such change..." Tex. Rev. Civ. Stat 1011e (Vernon 1928)(emphasis added). Similarly, the 1987 recodification defines a zoning regulation or district boundary change, triggering protest rights, as 'the amendment, repeal, or *other change of a regulation or boundary*.' Tex. Local Gov. Code, § 211.002 (emphasis added). Protest rights in Texas have applied to all zoning regulation and boundary changes, with no exceptions, since 1927. Some states have modified or eliminated their original protest rights protections under the Standard State Zoning Enabling Act, but not Texas.

"In 1985, the Texas Legislature did amend explicitly the state's mandatory zoning notice provisions. It authorized cities when enacting zoning amendments, including comprehensive

rezonings, to provide alternative notice (such as notice by publication rather than individualized, mail notice) by 2/3rds vote of the City Council if it held a joint council and zoning commission hearing. Tex. Local Gov. Code, § 211.007(d) Acts 1985, 69th Legislature, p. 3018, ch. 894. The fact the Texas Legislature explicitly amended the state's zoning laws to provide an alternative to individualized, mailed notice for comprehensive rezonings, but has made no such exception for protest rights, indicates the Legislature did not intend to exempt protest rights from comprehensive rezonings.

“Municipal zoning commissions have been required since 1949 in Texas to provide written notice of a zoning classification change to owners of the subject property and owners within 200 feet of the property: ‘Written notice of all public hearings before the Zoning Commission on proposed changes in classification shall be sent to owners of real property lying within two hundred (200) feet of the property on which the change in classification is proposed, such notice to be given, not less than ten (10) days before the date set for hearing.’ Tex. Local Gov. Code, § 211.007(c). *See* Acts 1949, 51<sup>st</sup> Leg., p. 205, ch. 111, sec. 1. Texas Courts have strictly construed this notice provision, repeatedly voiding zoning changes that failed to strictly comply with it. *See, e.g., Bolton v. Sparks*, 362 S.W.2d 946 (Tex. 1962).

“The Texas Legislature added an alternative zoning notice provision in 1985. HB1205 authorized cities to provide for the zoning commission alternative notice other than mailed notice to property owners under Tex. Local Gov. Code, § 211.007(c). The new subsection, Tex. Local Gov. Code, § 211.007(d), authorized notice by newspaper publication (or other means of notice) when a city council voted by 2/3rds majority for alternative notice and held a joint council-zoning commission hearing: ‘The legislative body may also by a two-thirds vote prescribe the type of notice to be given of the time and place of a public hearing held jointly between the legislative

body and the zoning commission under Section 6(b) of this Act. Any notice prescribed by the legislative body is in lieu of the notice required by Section 6(b) of this Act [individual mailed notice].’ Acts 1985, 69th Legislature, p. 3018, ch. 894. The House Committee Bill Report for HB1205 states its purpose as providing ‘optional notice if a public hearing is jointly held between the legislative body and zoning commission under Section 6 (a).’

“Mixon, *Texas Municipal Law*, Section 7.02, notes that the 1985 amendment’s purpose was to allow cities an alternative notice procedure to avoid providing written notice to property owners when there was a comprehensive rezoning: ‘A 1985 amendment to the enabling act allows home-rule cities to reclassify tracts (and adopt comprehensive revisions) without mailing notice to owners whose land will be affected by the change. The amendment, which specifically applies to home-rule cities that hold joint zoning commission and governing body public hearings, provides that, by a two-thirds vote, the governing body can substitute a locally formulated notice procedure for the specific notice by mail required by the enabling act.’

“It is important to note that the Legislature did not amend in 1985 the state’s protest rights provision to provide a comprehensive rezoning exception or alternative. Legislators, however, were clearly aware of comprehensive rezonings when they adopted the alternative notice provision in HB1205.

“Since there is no express exception to protest rights for comprehensive rezonings in the Texas statute, any such exception or repeal must exist by necessary implication, which Texas Courts strongly disfavor. *Gordon v. Lake*, 356 S.W.2d 138 (Tex. 1962). Last year, the Texas Court of Criminal Appeals in *Diruzzo v. State*, 581 S.W.3d 788 (Tex. Crim. App. 2019) reiterated that Texas law disfavors repeal by implication. It held that in deference to the Legislature laws should be harmonized if possible and that repeal by implication must be based on some specific language:



‘Even so, the presumption against implied repeals recognizes that, ‘if statutes are to be repealed, they should be repealed with some specificity.’ So long as the original provision is susceptible to a construction that is in harmony with the amendment, so as to avoid implied repeal of some part of the original, salvage rather than subtraction should be the preferred judicial response...’ *Id.*, at 799-800. (internal citations omitted).

“Turning to the 1985 zoning amendment, it addressed only notice. The 1985 amendment made no reference to protest rights. The 1985 notice amendment can be harmonized with protest rights. The Legislature considered notice and protest rights to be independent procedural protections in separate sections of the law. It allowed with a 2/3rds vote alternative notice for comprehensive revisions, because of the cost to cities of mailed, individual notice when lots of properties were rezoned. The Legislature, on the other hand, did not address and did not want to take away property owner’s long-standing, statutory protests rights for comprehensive rezonings. There is not a ‘clear, necessary, irresistible, free from reasonable doubt’ implication that the 1985 notice amendments excepted protest rights from comprehensive rezonings. *Ramirez v. State of Texas*, 550 S.W.2d 121, 124 (Tex. Civ. App.—Austin 1977, no writ). If the Texas Legislature intended protest rights to be excluded from comprehensive revisions, it would have included statutory language with such an exception. But the Legislature did not.

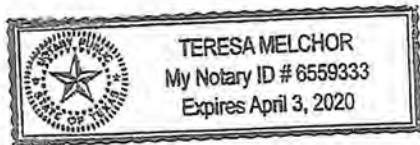
“Texas law also doesn’t create statutory exceptions, however allegedly meritorious, where the Legislature has not. It is “the settled law that exceptions will not be ingrafted on statutes by implication or merely because good reasons might be found for adding them.” *Spears v. City of San Antonio*, 223 S.W. 166, 169 (Tex. 1920). In deference to the Legislature, the Courts should not graft on protests rights an exception that the Legislature did not.

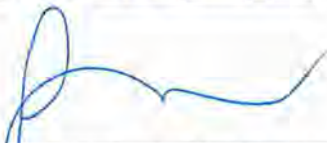
“Lastly, even when cities decide to provide mailed notice under Section 211.007(c), rather than alternative notice under Section 211.007(d), the statutory provision is not particularly prescriptive. Section 211.007(c) states only that ‘written notice’ be provided to property owners within 200 feet of the proposed rezoning. Tex. Local Gov Code, § 211.007(c). Texas Courts have interpreted the ‘written notice’ as ‘sufficient if it reasonably apprises those for whom it was intended of the nature of the pending proposal to the extent that they can determine whether they should be present at the hearing.’ *City of Dallas v East Village Association*, 480 S.W.3d 37, 41 (Tex. App- Dallas 2015, writ denied). Any more burdensome notice requirements are not mandated by state law.

“Further affiants sayeth not.”

  
\_\_\_\_\_  
**DAVID B. BROOKS**

SWORN TO AND SUBSCRIBED before me on the 3 day of March, 2020,  
to certify which witness my hand and official seal of office.



  
\_\_\_\_\_  
Notary Public in and for the State of Texas

## **APPENDIX 4**

### **4. Joint Stipulations of Fact**

CAUSE No. D-1-GN-19-008617

FRANCISCA ACUNA, *et al.*,  
*Plaintiffs*

v.

THE CITY OF AUSTIN, TEXAS, *et al.*  
*Defendants*

§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

201st JUDICIAL DISTRICT

**NOTICE OF FILING OF JOINT STIPULATIONS OF FACT**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Plaintiffs and Defendants and submit this their Notice of Filing of Joint Stipulations of Fact.

Respectfully submitted,


GRAY BECKER, P.C.  
900 West Avenue  
Austin, Texas 78701  
Telephone: (512) 482-0061  
Fax: (512) 482-0924

By:

  
Douglas M. Becker  
State Bar No. 02012900  
[doug.becker@graybecker.com](mailto:doug.becker@graybecker.com)  
Richard E. Gray, III  
State Bar No. 08328300  
[rick.gray@graybecker.com](mailto:rick.gray@graybecker.com)  
Monte Swearengen  
State Bar No. 18871700  
[monte.swearengen@graybecker.com](mailto:monte.swearengen@graybecker.com)  
*Attorneys for Plaintiffs*

SCOTT DOUGLASS & McCONNICO LLP  
303 Colorado Street, Suite 2400  
Austin, Texas 78701  
(512) 495-6300 Telephone  
(512) 495-6399 Facsimile

By:

  
Jane M.N. Webre  
State Bar No. 21050060  
[jwebre@scottdoug.com](mailto:jwebre@scottdoug.com)  
Sara W. Clark  
State Bar No. 00794847  
[sclark@scottdoug.com](mailto:sclark@scottdoug.com)  
Mary W. Byars  
State Bar No. 24097443  
[mbyars@scottdoug.com](mailto:mbyars@scottdoug.com)

**CERTIFICATE OF SERVICE**

I certify that on March 4~~th~~, 2020, a true copy of the foregoing *Notice of Filing of Joint Stipulations of Fact* was served on counsel for Defendants in accordance with Texas Rule of Civil Procedure 21a via e-service through the Texas E-file system.

Via email: [jwebre@scottdoug.com](mailto:jwebre@scottdoug.com),  
Jane Webre,  
Scott Douglas & McConnico, LLP  
303 Colorado Street, Suite 2400  
Austin, TX 78701

  
Douglas M. Becker



FRANCISCA ACUNA, *et al.*,  
*Plaintiffs*

v.

THE CITY OF AUSTIN, TEXAS, *et al.*  
*Defendants*

§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

201st JUDICIAL DISTRICT

JOINT STIPULATIONS OF FACT

Plaintiffs Francisca Acuna, *et al.* (together, “Plaintiffs”) and Defendants the City of Austin, Texas (the “City”), *et al.* (the “City Defendants”) file these joint stipulations of fact for purposes of trial on the merits in this action.

Definition: “LDC Revision” means the City’s proposed Revised Land Development Code, including the text and map.

A. Revision of the City’s Land Development Code

1. The City is currently in the process of revising its Land Development Code (“LDC Revision”).

2. Resolution No. 20180809-111, adopted August 9, 2018, states, “The Council finds that due to a combination of significant disruptions to the process, found that CodeNEXT is no longer a suitable mechanism to achieve its the City’s stated goals or to address the critical challenges facing our City.”

3. The City Manager sought guidance from the City Council regarding certain policy questions relating to the LDC Revision.

4. On May 2, 2019, the City Council adopted Policy Guidance in response to the City Manager’s questions and request for guidance.

5. The City held public work sessions and staff briefings relating to the LDC Revision, including meetings in 2019 on August 6, August 13, August 20, August 21, August 28, September 11, September 18, September 26, and October 1.

6. The City has made materials relating to the LDC Revision available to the public online through a “Land Development Code Revision” website that is available at: <http://www.austintexas.gov/department/resources>.

7. The City released a first draft of the LDC Revision, Map, and Staff report on October 4, 2019.

8. After the Oct. 4 draft LDC Revision was released, the City held a Public Testing event on October 19, 2019. The event was an interactive exercise designed to allow the public to explore how well the LDC Revision Draft performs compared to the City’s current code based on Council direction.

9. In response to input including the Public Testing, City staff issued Supplemental Staff Reports regarding the first LDC Revision on October 25 and November 25, 2019.

10. The City’s Planning Commission published newspaper notice of its October 26, 2019, Public Hearing. It did not send individual written notice of that hearing.

11. The City’s Planning Commission held Special and Regular Called Meetings relating to the LDC Revision on October 29, November 5, 6, 11, and 12, 2019. At its November 12, 2019, Regular Called Meeting, the Planning Commission voted on its recommendations regarding the October 4 draft LDC Revision, as amended by Supplemental Staff Report #1 and its own amendments. The Planning Commission recommendations were compiled into a report that was transmitted to the City Council on November 22, 2019.

12. On November 18, 2019, the City published newspaper notice of the City Council public hearing set for December 7, 2019.

13. The LDC Revision was passed on first reading by the City Council on December 11, 2019, and the City Council instructed staff regarding certain amendments.

14. City staff prepared a second draft LDC Revision, map, and second supplemental staff report on January 31, 2020.

15. The City Council passed the Jan. 31 LDC Revision on second reading on Feb. 13, 2020. In response to the City Council's instructions on second reading, City staff will prepare a third draft LDC Revision, map, and staff report that will be before the City Council on third reading.

16. The LDC Revision adopts a new Title 23 to the City Code, which will be a comprehensive revision of the City's Land Development Code, including its zoning regulations and map.

B. Sending written notice regarding changes in zoning classifications

17. If a municipality seeks to change a zoning classification as to a specific property or parcel of land, it must send individual written notice.

18. The statutory standard for individual notice, if applicable, requires that written notice be mailed to "each owner . . . of real property within 200 feet of the property on which the change in classification is proposed."

19. City Code § 25-1-132(A) provides: "For a notice required to be given under this subsection, the responsible director shall give notice of a public hearing before a board or commission by mailing notice not later than the 11th day before the date of the hearing to the: (1) applicant; (2) notice owner of property located within 500 feet of the subject property; (3) registered environmental or neighborhood organization whose declared boundaries are within 500 feet of the site of the proposed development; (4) parties to an appeal; and (5) utility account

addresses located within 500 feet of the site of the proposed development, as shown in the City utility records on the date of the filing of the application.”

20. A single-family house within the 200 feet may require only one notice while a condominium complex within the 200 feet may require many notices if there are different owners of the different condominium units.

21. For a proposed change in zoning classification of multiple properties, the City’s policy as to each owner of property within the buffer zone of any other property being rezoned is to send written notice as to the proposed zoning changes for each other property being rezoned.

22. If written notice is required for the city-wide, comprehensive LDC Revision, the City believes that under the statutory standard for notice, the entire City would be subject to overlapping 200-foot buffer zones for written notice, with each property within the City at the center of its own notification area. The City further believes that the statutes require that the City send multiple written notices to account for all of the properties within 200 feet in each direction.

23. The graphic below illustrates the overlapping circles of notice that the City believes are created if the statutory notice provisions apply to the LDC Revision.



24. There are approximately 251,694 property owners in the City. There are approximately 497,044 utility customers in the City and 590 community registry entities.

C. Evaluating protests to changes in zoning classification

25. About 150 zoning cases are filed with the City each year, and of those, approximately 15 cases receive protests.

26. The City has a detailed process for evaluating protests to a change in zoning classification proposed for a specific property. The process takes about an hour for each subject property because it involves using a geodatabase in order to calculate the area within the 200-foot buffer zone and the percentage of land for all the property owners who have filed protests within that buffer area.



27. The steps required to evaluate the protest include: (1) creating a file geodatabase for the specific zoning case; (2) setting up feature classes within the file geodatabase for all of the property owners who have filed protests including name, address, parcel ID number, and whether or not each property owner has filed a valid protest; (3) identifying the subject tract being rezoned on the Travis County Appraisal District (TCAD) records as a feature class; (4) creating a 200-foot buffer around the subject tract; (5) remove the subject tract and other ineligible lands from the total area of the 200-foot buffer; (6) selecting all of the TCAD properties that the 200-foot buffer intersects and insert them into the property owners feature class; (7) creating a feature class to allocate one-half of each right-of-way to the adjacent property; (8) merging the allocated right-of-way with its adjacent property to form one feature; (9) deleting the feature that is in the right-of-way adjacent to the subject tract and any other ineligible lands; (10) clipping the property owners feature class so that no part of the property extends beyond the 200-foot buffer zone; and (11) running the table-to-table conversion to calculate the percentage of the area owned by the protesting property owners.

28. The City comprises 326.33 square miles. 20% of that area is 65.2 square miles.

29. Four of the Plaintiffs were involved in a prior lawsuit in this court involving CodeNEXT (the predecessor to the LDC Revision). The prior lawsuit is styled No. D-1-GN-18-002688; *Nelson Linder v. City of Austin*; in the 201st District Court of Travis County, Texas (the “CodeNEXT Suit”). Plaintiffs Susana Almanza, Jane Rivera, and Gilbert Rivera were Relators in the CodeNEXT Suit. Plaintiff Fred Lewis was counsel of record for Relators in the CodeNEXT Suit.

30. Each plaintiff owns property within the City as described more particularly in paragraph 8 of Plaintiffs’ Original Petition in this action and on the attached chart (Attachment A).

31. The zoning code revision included in the LDC Revision would change the zoning regulations, zoning classifications, or zoning district boundaries of the majority of the property in the City of Austin, including the property Plaintiffs own.

32. Each Plaintiff owns 20% or more of their respective properties on Attachment A for which the LDC Revision proposes to change the zoning regulations, zoning classifications, or zoning district boundaries.

33. Each Plaintiff submitted protest forms to the City, protesting any change to the zoning regulations, zoning classifications, or zoning district boundaries of their properties or to properties within 200 feet of their properties by the LDC Revision. See, Attachment A, which compares current and proposed zoning as reflected in the January 31, 2020, draft of the LDC Revision.

34. City personnel have stated in public memoranda, orally at public hearings, and on its website to the media and to the public that “Zoning protests may not be used to protest broad legislative amendments, including comprehensive revisions such as the revision of the entire Land Development Code.”

35. On June 15, 2018, then-Assistant City Attorney Brent Lloyd wrote in a memorandum to the Mayor and Council members that, “Zoning protests may not be used to protest broad legislative amendments. This includes comprehensive revisions like CodeNEXT, and amendments to general development standards applicable citywide or through one or more zoning districts.”

36. At the May 2, 2019, Special Called Meeting of the Austin City Council, Mitzi Cotton, Division Chief, in answer to a question posed by Council Member Tovo regarding whether property owners would be able to protest, stated: “Council, they would not. The zoning protest

petition rights are limited to individual properties or small areas, but a comprehensive revision and a complete rewrite of our zoning code does not afford that opportunity.”

37. Mitzi Cotton, Division Chief in the City’s Law Department, wrote a memorandum dated May 14, 2019, directed to the Mayor, City Council and City Manager through the City Attorney, stating, “Zoning protests may not be used to protest broad legislative amendments, including comprehensive revisions such as the revision of the entire Land Development Code.”

38. In an October 24, 2019, email to the Mayor, Mayor Pro Tem, Council Members, and Council staff, Mitzi Cotton, Division Chief in the City’s Law Department forwarded the May 14, 2019, Memo and stated: “Therefore, zoning protests, such as those citing Texas Local Government Code Section 211.006, may not be used to trigger a super majority vote on broad legislative amendments, including comprehensive revision such as the revision of the Land Development Code.”

39. On the City’s Land Development Code Revision website, the question is posed: “As a property owner, may I file a protest to the zoning changes being proposed under the Land Development Code Revision, as I could with a standard zoning change in my area?” The City answered: “No, zoning protests may not be used to protest broad legislative amendments, including comprehensive revisions such as the revision of the entire Land Development Code. The zoning protest rights established in state law provide a mechanism for protesting zoning cases involving individual properties or a limited area...”

40. The City of Austin did not provide individual, written notice from the Planning Commission to the Plaintiffs or any individual property owners of a proposed change in the zoning classification on their property or nearby property by the LDC Revision.

41. Austin Land Development Code Section 25-2-284 provides “The affirmative vote of three-fourths of the members of the City Council is required to approve a proposed rezoning that is protested in writing by the owners of not less than 20 percent of the area of land included in the proposed change, or immediately adjoining the area included in the proposed rezoning and extending 200 feet from the area.”

42. Austin Land Development Section 25-2-284 was last amended on February 11, 2016.

43. Prior to the City of Austin Planning Commission’s submittal of its final report to the City Council on November 22, 2019, there was not a joint public hearing held by the City Council and the City of Austin Planning Commission.

44. Prior to the City of Austin Planning Commission’s submission of its final report to the City Council on November 22, 2019, there was not a vote approved by a two-thirds majority of the City Council prescribing the type of notice to be given for a joint meeting between the Planning Committee and the City Council.

45. Resolution No. 20180809-111 was adopted on August 9, 2018. It states, “The Council finds that due to a combination of significant disruptions to the process, CodeNEXT is no longer a suitable mechanism to achieve its stated goals or to address the critical challenges facing our City.”

46. On December 10, 2019, the City Council voted (7-4) to reject an amendment proposed by Council Member Tovo to the LDC Revision that stated, “Council affirms that property owners have petition rights regarding the proposed rezoning of their properties and properties within a radius of 200 feet as these zoning proposals are depicted on the Land Development Code map.”

47. On December 10, 2019, the City Council voted (7-4) to reject an amendment proposed by Council Member Pool that stated, “The City of Austin shall recognize and give full legal effect

to property owner's valid petition rights to protest the rezoning of their or nearby properties made pursuant to Texas Local Government Code, Section 211.006(d) whether those rights are asserted in connection with the rezoning of one or more of the properties, or through comprehensive revisions of the zoning map, and the City shall require a supermajority vote of 3/4<sup>th</sup> vote of the entire Council for the protested rezoned properties to become effective."

48. On December 10, 2019, the City Council also voted (7-4) to reject another amendment by Council Member Pool that stated, "The City Council shall not finalize the rezoning of properties under the proposed LDC map until a Court has entered into a final order on whether protest rights exist for a comprehensive LDC revision. If a Court rules that property owners have protest rights under a comprehensive revision, the City shall post conspicuously and clearly the finding on its website, do extensive outreach, and allow Austin property owners at least 60 additional days from order's date to file their valid petition forms pursuant to Texas Government Local Government Code, Section 211.006. Valid petitions filed during this period shall be considered timely filed."

49. The City Council voted (7-4) on the first reading of the LDC Revision on December 11, 2019. It passed.

50. The City Council voted (7-4) on the second reading of the LDC Revision on February 13, 2020. It passed.

51. On August 26, 2004, Ordinance No. 040826-57 rezoned a 454.13 acre area, adding a Neighborhood Plan Combining District to more than 1,069 tracts in the West University Neighborhood planning area and changing the base zoning on 329 of those tracts of land. The City validated and recognized property owner protest petitions requiring a three-fourths majority vote.

52. On August 26, 2004, Ordinance No. 040826-58 rezoned approximately a 234.87 acre area into a North University Neighborhood Conservation Combining District and changed the base



zoning on 74 of those tracts of land. The City validated and recognized property owner protest petitions requiring a three-fourths majority vote.

53. On August 26, 2004, Ordinance No. 040826-59 rezoned the tracts of land in an approximately 541 acre Hancock Neighborhood Plan area to add a Neighborhood Plan Combining District to each tract and change the base zoning of 184 of those tracts of land. The City validated and recognized property owner protest petitions requiring a three-fourths majority vote.

54. Ordinance No. 020523-33, dated May 23, 2002, rezoned the tracts of land on approximately 761.7 acres known as the Bouldin Creek Neighborhood Plan area to add a Neighborhood Plan Combining District to each tract of land and to change the base zoning on 101 of those tracts. The City validated and recognized property owner protest petitions requiring a three-fourths majority vote.

55. Ordinance No. 040513-33A, dated May 13, 2004, rezoned the tracts of land on approximately 1,015 acres known as the Brentwood Neighborhood Plan area to add a Neighborhood Plan Combining District to each tract and to change the base zoning on 137 of those tracts of land. The City validated and recognized property owner protest petitions requiring a three-fourths majority vote.

	<b>ZONING</b>			
<b>Name</b>	<b>Filed &amp; Signed Protest Form</b>	<b>Own on TCAD</b>	<b>Current Zoning</b>	<b>Proposed Zoning</b>
Alecia Cooper	3900 Wrightwood Rd., 78722	Y	SF-3-NP	R2A
Allan McMurty	2003 Palo Duro, 78757	Y	SF-3-NP	R4
Allan McMurty	5901 Cary Dr., 78757	Y	SF-2	R2A
Allan McMurty	2605 Northland, 78756	Y	SF-2	R2A
Allan McMurty	1708 Madison, 78757	Y	SF-3-NP	R2A
Allan McMurty	2412 Greenlawn Parkway, 78757	Y	CS	MU5A-Q
Barbara McArthur	5700 Clay Ave., 78756	Y	SF-3-NP	R2B
Ed Wendler, Jr	4803 Balcones Dr., 78731	Y	SF-3	R2A
Frances Acuna	5009 Brassiewood Dr., 78744	Y	SF-3-NP	R2A
Fred Lewis	4509 Edgemont, 78731	Y	SF-3-NP	R2A
Gilbert and Jane Rivera	1000 Glen Oaks Ct., 78702	Y	SF-3-NP	R2A
James Valadez	54 Waller St., 78702	Y	SF-3-NP	R2B
Jeffrey Bowen	8404 Caspian Dr., 78749	Y	SF-2	R2A
Johnny Umphress	2604 Geraghty Ave, 78757	Y	SF-2	R2A
Laurence Miller	502 W. 33rd St., 78705	Y	SF-3-H-HD-NCCD-NP	RM1-HD-H
Mary Ingle	3406 Duval, 78705	Y	SF-3-NCCD-NP	RM1
Pat King	9122 Balcones Club Dr #8, 78750	Y	SF-6-CO	RM2
Pat King	13325 Thome Valley Dr., 78617	Y	I-SF-4A	R2A
Randy Howard	2626 Spring Lane, 78703	Y	SF-3-NP	RM1
Roger Falk	5904 Sierra Madre, 78759	Y	SF-2	R4
Roger Falk	1501 West Koenig, 78756	Y	LR-MU-CO-NP	MU2
Seth Fowler	6907 Drexel Dr., 78723	Y	SF-2-NP	R2A
Susana Almanza	6103 Larch Terrace, 78741	Y	SF-3-NP	R2A
William Burkhardt	802 Christopher St., 78704	Y	SF-3-NP	R2B

Current zoning

[https://www.austintexas.gov/sites/default/files/files/Planning/zoning\\_guide.pdf](https://www.austintexas.gov/sites/default/files/files/Planning/zoning_guide.pdf)

Proposed zoning

<http://www.austintexas.gov/department/land-development-draft-code-map#text>

## ATTACHMENT A

## **APPENDIX 5**

### **5. Stipulation Regarding Trial Exhibit**

No. 14-20-00356-CV

---

IN THE FOURTEENTH COURT OF APPEALS  
AT HOUSTON, TEXAS

---

FILED IN  
14<sup>th</sup> COURT OF APPEALS  
HOUSTON, TEXAS  
7/2/2020 10:15:15 AM  
CHRISTOPHER A. PRINE  
Clerk

THE CITY OF AUSTIN, TEXAS, *et al.*

v.

FRANCISCA ACUÑA, *et al.*

---

STIPULATION REGARDING TRIAL EXHIBIT

---

TO THE HONORABLE COURT OF APPEALS:

Appellants the City of Austin, Texas *et al.* and Appellees Francisca Acuña, *et al.* file this stipulation regarding the sole trial exhibit in this case.

This is an appeal from a final judgment after a bench trial on stipulated facts. The Reporter's Record reflects that the trial consisted of argument to the court, and there was no testimony taken. The bulk of the factual record includes stipulated facts and documentary exhibits filed by the parties before trial and included in the Clerk's Record. At the trial, there was one exhibit: a "Box containing 14,000-plus protest forms." 3RR4. The box itself is not included in the appellate record.

The parties make the following stipulations regarding the box of protest forms in order to obviate the need to make the box part of the record:

1. There were 14,528 protest forms in the box;

2. The protest forms are substantively identical except for the names and addresses of the persons submitting them; and
3. Attached as Appendix 1 to this stipulation are exemplars of the protest forms that were included in the box and are representative of the forms as a whole.

Respectfully submitted,

ANNE L. MORGAN, CITY ATTORNEY  
MEGHAN L. RILEY, CHIEF,  
LITIGATION

City of Austin-Law Department  
P. O. Box 1546  
Austin, Texas 78767-1546  
Telephone: (512) 974-1342  
Facsimile: (512) 974-1311

SCOTT DOUGLASS & McCONNICO LLP  
303 Colorado Street, Suite 2400  
Austin, Texas 78701  
(512) 495-6300 Telephone  
(512) 495-6399 Facsimile

By: /s/ Jane Webre  
Jane M.N. Webre  
State Bar No. 21050060  
[jwebre@scottdoug.com](mailto:jwebre@scottdoug.com)  
Mary W. Byars  
State Bar No. 24097443  
[mbyars@scottdoug.com](mailto:mbyars@scottdoug.com)

ATTORNEYS FOR APPELLANTS

GRAY BECKER, P.C.  
900 West Avenue  
Austin, Texas 78701  
Telephone: (512) 482-0061  
Fax: (512) 482-0924

By: /s/ Doug Becker  
Douglas M. Becker  
State Bar No. 02012900  
[doug.becker@graybecker.com](mailto:doug.becker@graybecker.com)  
Richard E. Gray, III  
State Bar No. 08328300  
[rick.gray@graybecker.com](mailto:rick.gray@graybecker.com)  
Monte Swearengen  
State Bar No. 18871700  
[monte.swearengen@graybecker.com](mailto:monte.swearengen@graybecker.com)

ATTORNEYS FOR APPELLEES



# **APPENDIX 1**



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

**Matt Durham** <matt\_durham@me.com>  
To: spencer.cronk@austintexas.gov

Fri, Oct 18 2019 at 10:37 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

9305 Meadow Vale  
Austin, Texas 78758

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Matt Durham  
10/18/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

**Jack Davern** <jack.davern@gmail.com>  
To: spencer.cronk@austintexas.gov

Fri, Oct 18 2019 at 09:07 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

108 Laurel Street  
Austin, Texas 78705

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Jack Davern  
10/18/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

**Eileen Davern** <eileendavern@yahoo.com>  
To: spencer.cronk@austintexas.gov

Fri, Oct 18 2019 at 09:06 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

811 East 38th Street  
Austin, Texas 78705

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Eileen Davern  
10/18/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

**Alex Davern** <alex.davern@yahoo.com>  
To: spencer.cronk@austintexas.gov

Fri, Oct 18 2019 at 09:05 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

818 East 37th Street  
Austin, Texas 78705

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Alex Davern  
10/18/2019



File Protest <austinites@fileyourprotest.com>

## Official Rezoning Protest

Michael Fossum <treebrune@gmail.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 06:12 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

5100 suburban dr  
Austin, Texas 78745

1. To: Austin City Council

I, and my wife Zoila Vega-Marchena, are owners of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. We protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Michael Fossum  
10/19/2019



File Protest <austinites@fileyourprotest.com>

## Official Rezoning Protest

Dorinda Scott <dorinda04@yahoo.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 06:08 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

1809 Treadwell St  
Austin, Texas 78704

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Dorinda Scott  
10/19/2019



File Protest <austinites@fileyourprotest.com>

## Official Rezoning Protest

Patrick Fleming <pf512@yahoo.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 05:46 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

2332 Rodeo Dr  
Austin, Texas 78727

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Patrick Fleming  
10/19/2019



File Protest <austinites@fileyourprotest.com>

## Official Rezoning Protest

Lorraine Atherton <latherton04@gmail.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 05:27 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

2009 Arpdale St  
austin, Texas 78704

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Lorraine Atherton  
10/19/2019





File Protest <austinites@fileyourprotest.com>

## Official Rezoning Protest

Jo Sue Howard <mikimoto.too@gmail.com>

Sat, Oct 19 2019 at 07:52 PM

To: spencer.cronk@austintexas.gov

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

1801 West Av  
Austin, Texas 78701

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Jo Sue Howard  
10/19/2019



File Protest <austinites@fileyourprotest.com>

## Official Rezoning Protest

Summer Youngblood <sumryo@gmail.com>

Sat, Oct 19 2019 at 07:47 PM

To: spencer.cronk@austintexas.gov

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

2505 Westover Road  
Austin, Texas 78703

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Summer Youngblood  
10/19/2019



File Protest <austinites@fileyourprotest.com>

## Official Rezoning Protest

Justin Youngblood <justin.youngblood@gmail.com>

Sat, Oct 19 2019 at 07:45 PM

To: spencer.cronk@austintexas.gov

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

2505 Westover Rd  
Austin, Texas 78703

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Justin Youngblood  
10/19/2019



File Protest <austinites@fileyourprotest.com>

## Official Rezoning Protest

Jane Fountain <janewfountain@gmail.com>

Sat, Oct 19 2019 at 07:33 PM

To: spencer.cronk@austintexas.gov

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

600 Carolyn Avenue  
Austin, Texas 78705

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Jane Fountain  
10/19/2019



File Protest <austinities@fileyourprotest.com>

## Official Rezoning Protest

Anastasia Easterday <newsvejk@grandecom.net>

Sat, Oct 19 2019 at 09:57 PM

To: spencer.cronk@austintexas.gov

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

7006 Burnell Dr  
Austin, Texas 78723

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Anastasia Easterday  
10/19/2019



File Protest <austinities@fileyourprotest.com>

## Official Rezoning Protest

Amy Newman <amy\_n@msn.com>

Sat, Oct 19 2019 at 09:47 PM

To: spencer.cronk@austintexas.gov

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

3302 Bryker DR  
Austin, Texas 78703

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Amy Newman  
10/19/2019



File Protest <austinities@fileyourprotest.com>

## Official Rezoning Protest

Yuri Prentice <yuri.prentice@gmail.com>

Sat, Oct 19 2019 at 09:43 PM

To: spencer.cronk@austintexas.gov

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

1713 Pebble Brook Drive  
Austin, Texas 78752

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Yuri Prentice  
10/19/2019



File Protest <austinities@fileyourprotest.com>

## Official Rezoning Protest

Pamela Harper <Pharper500@yahoo.com>

Sat, Oct 19 2019 at 09:11 PM

To: spencer.cronk@austintexas.gov

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

4610 Ramsey Avenue  
Austin, Texas 78756

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Pamela Harper  
10/19/2019





File Protest <austinities@fileyourprotest.com>

## Official Rezoning Protest

**Cord Schuck** <cordsig79@gmail.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 07:06 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

4015 Clawson red  
Austin, Texas 78704

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Cord Schuck  
10/19/2019



File Protest <austinities@fileyourprotest.com>

## Official Rezoning Protest

**David Guarino** <Dsguarino@gmail.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 07:01 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

605 East 38th street  
Austin, Texas 78705

• To: Austin City Council

I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

David Guarino  
10/19/2019



File Protest <austinities@fileyourprotest.com>

## Official Rezoning Protest

**Laurence Miller** <lmiller@fluentcollab.org>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 06:15 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

502 West 33rd Street  
Austin, Texas 78705

To: Austin City Council

I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Laurence Miller  
10/19/2019



File Protest <austinities@fileyourprotest.com>

## Official Rezoning Protest

**MK Shaw** <shaw1127@hotmail.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 06:14 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

2601 Del Curto Road #102  
Austin, Texas 78704

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

MK Shaw  
10/19/2019





File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

Erik Wilson <erikmwilson@gmail.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 04:18 AM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

809 East 30th  
Austin, Texas 78705

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Erik Wilson  
10/19/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

Michael St.Denis <michaelstdenis20@gmail.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 03:37 AM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

1103 W Rundberg Ln  
Austin, Texas 78758

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Michael St Denis  
10/19/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

Martha Ernst <marthaernst@sbcglobal.net>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 02:02 AM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

817 E 37th St  
Austin, Texas 78705

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Martha Ernst  
10/19/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

Priscilla Williams <wildaboutwings@yahoo.com>  
To: spencer.cronk@austintexas.gov

Fri, Oct 18 2019 at 11:34 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

208 w Lisa dr  
Austin, Texas 78752

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Priscilla Williams  
10/18/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

Colleen Wiggins <ccmwigg@grandecom.net>

Sat, Oct 19 2019 at 08:57 PM

To: spencer.cronk@austintexas.gov

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

1206 Ridgemont Dr  
Austin, Texas Texas

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Colleen Wiggins  
10/19/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

James Greenway <jgreenway@austin.rr.com>

Sat, Oct 19 2019 at 08:50 PM

To: spencer.cronk@austintexas.gov

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

2618 Spring Lane  
Austin, Texas 78703

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

James Greenway  
10/19/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

Vera Williams <veraeileen@yahoo.com>

Sat, Oct 19 2019 at 08:28 PM

To: spencer.cronk@austintexas.gov

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

11307 Hilltop  
Austin, Texas 78753

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Vera Williams  
10/19/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

Teresa Myers <terrimyers@preservationcentral.com>

Sat, Oct 19 2019 at 07:53 PM

To: spencer.cronk@austintexas.gov

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

823 Harris Avenue  
Austin, Texas 78705

To: Austin City Council I am the owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I hereby protest any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Teresa Myers  
10/19/2019





File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

James Reed <reed.jim09@gmail.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 10:29 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

3303 Hampton Rd  
Texas, Texas 78705

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

James Reed  
10/19/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

Monica Cooke <Monicajenkinscooke@gmail.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 10:22 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

4310 Eskew Dr  
Austin, Texas 78749

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Monica Cooke  
10/19/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

Randall Howard <randyhtx@outlook.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 10:16 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

2626 Spring Lane  
Austin, Texas 78703

To: Austin City Council

I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Randall Howard  
10/19/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

Beverly Spicer <Zpycer33@gmail.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 10:14 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

4705 Eilers Avenue  
Austin, Texas 78751

To: Austin City Council

I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Beverly Spicer  
10/19/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

Anne Miller <aesmiller@sbcglobal.net>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 10:58 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

4404 Bellvue  
Austin, Texas 79756

1. To: Austin City Council

I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Anne Miller  
10/19/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

Sheila Roan <Sheila.r.roan@gmail.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 10:55 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

1501 Morrow Street  
Austin, Texas 78757

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Sheila Roan  
10/19/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

John Strange <strange20@msn.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 10:55 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

717, Post Oak  
Austin, Texas 78704

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

John Strange  
10/19/2019



File Protest <austinites@fileyourprotest.com>

### Official Rezoning Protest

Randi Marks <us@marks1.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 10:48 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

2407 Westover Road  
Austin, Texas 78703

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Randi Marks  
10/19/2019





File Protest <austinites@fileyourprotest.com>

## Official Rezoning Protest

Kate Greene <Greenekate@me.com>  
To: spencer.cronk@austintexas.gov

Sun, Oct 20 2019 at 12:05 AM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

2613 spring lane  
Austin, Texas 78703

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Kate Greene  
10/20/2019



File Protest <austinites@fileyourprotest.com>

## Official Rezoning Protest

Jennifer Shirk <Shirkyfamily@yahoo.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 11:37 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

2501 McCullough St  
Austin, Texas 78703

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Jennifer Shirk  
10/19/2019



File Protest <austinites@fileyourprotest.com>

## Official Rezoning Protest

Patricia Wyman <pcwymanhaj@gmail.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 11:14 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

506 Carolyn Ave  
Austin, Texas 78705

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Patricia Wyman  
10/19/2019



File Protest <austinites@fileyourprotest.com>

## Official Rezoning Protest

Ben Greene <Greeneben@icloud.com>  
To: spencer.cronk@austintexas.gov

Sat, Oct 19 2019 at 11:12 PM

Official Protest Under Tex. Local Gov Code Section 211. 006

Address of My Property:

2613 Spring Ln  
Austin, Texas 78703

To: Austin City Council I am an owner of the above-described property affected by the zoning changes described in the City's proposed Revision to the Land Development Code and Map. I protest against any change to zoning regulations and districts which would change my property or any property located within 200 feet of my property to any zoning classification, regulation, or district other than those in effect on the date of my signature.

Ben Greene  
10/19/2019



### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Michaëlle Peters on behalf of Jane Webre  
Bar No. 21050060  
mpeters@scottdoug.com  
Envelope ID: 44212487  
Status as of 07/02/2020 10:31:24 AM -05:00

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Melissa Patterson		mpatterson@scottdoug.com	7/2/2020 10:15:15 AM	SENT
Michaëlle Peters		mpeters@scottdoug.com	7/2/2020 10:15:15 AM	SENT
Phuc Phan		pphan@scottdoug.com	7/2/2020 10:15:15 AM	SENT
Jane Webre		jwebre@scottdoug.com	7/2/2020 10:15:15 AM	SENT
Mary Byars		mbyars@scottdoug.com	7/2/2020 10:15:15 AM	SENT
Anne L. Morgan	14432400	anne.morgan@austintexas.gov	7/2/2020 10:15:15 AM	SENT
Douglas M. Becker	2012900	doug.becker@graybecker.com	7/2/2020 10:15:15 AM	SENT
Monte L. Swearengen	18871700	monte.swearengen@graybecker.com	7/2/2020 10:15:15 AM	SENT
Meghan Riley	24049373	meghan.riley@austintexas.gov	7/2/2020 10:15:15 AM	SENT
Richard Edwin Gray	8328300	rick.gray@graybecker.com	7/2/2020 10:15:15 AM	SENT