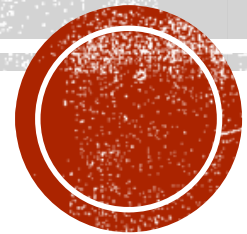


LEGAL CHALLENGES OF CODENEXT

Presentation at the Northeast Austin Forum

November 12, 2017



WHAT IS THE LAND DEVELOPMENT CODE?

- Provides the regulations for how Austin properties are developed
- Topics that it can address:
 - Zoning (what can be built)
 - Subdivisions (how many lots can be created)
 - Environmental Protections (how do we protect trees, water quality, creeks, etc.)
 - Parking Requirements (how many spaces each use must provide)
 - Parkland Dedication and Open Space (whether developers should contribute towards parkland resources and preserve open space opportunities)
 - Affordable Housing (what kind of housing is developed and whether units must be set aside for lower-income households)
 - Public Input Procedures (how can residents offer input into changes within their neighborhoods)
- Implements the City's Comprehensive Plan



WAIT, WHAT IS THE COMPREHENSIVE PLAN?

- In 2012, the City Council adopted our latest comprehensive plan known as “Imagine Austin”.
- Imagine Austin formally adopts the City’s overall policies and provides guidance to the City Council and City Manager on how they should act (ps., it’s about more than just land use!).
- It incorporates the city’s adopted master plans (e.g., Bike Master Plan) and neighborhood plans:
 - University Hills / Windsor Park Combined
 - St. John / Coronado Hills Combined
 - Heritage Hills / Windsor Hills
 - East MLK Combined (MLK, MLK-183, Pecan Springs, Springdale)
- Growth Concept Map as an overall guide



**IMAGINE
AUSTIN**
comprehensive plan

Plan Your Future!



Growth Concept Map




Legend

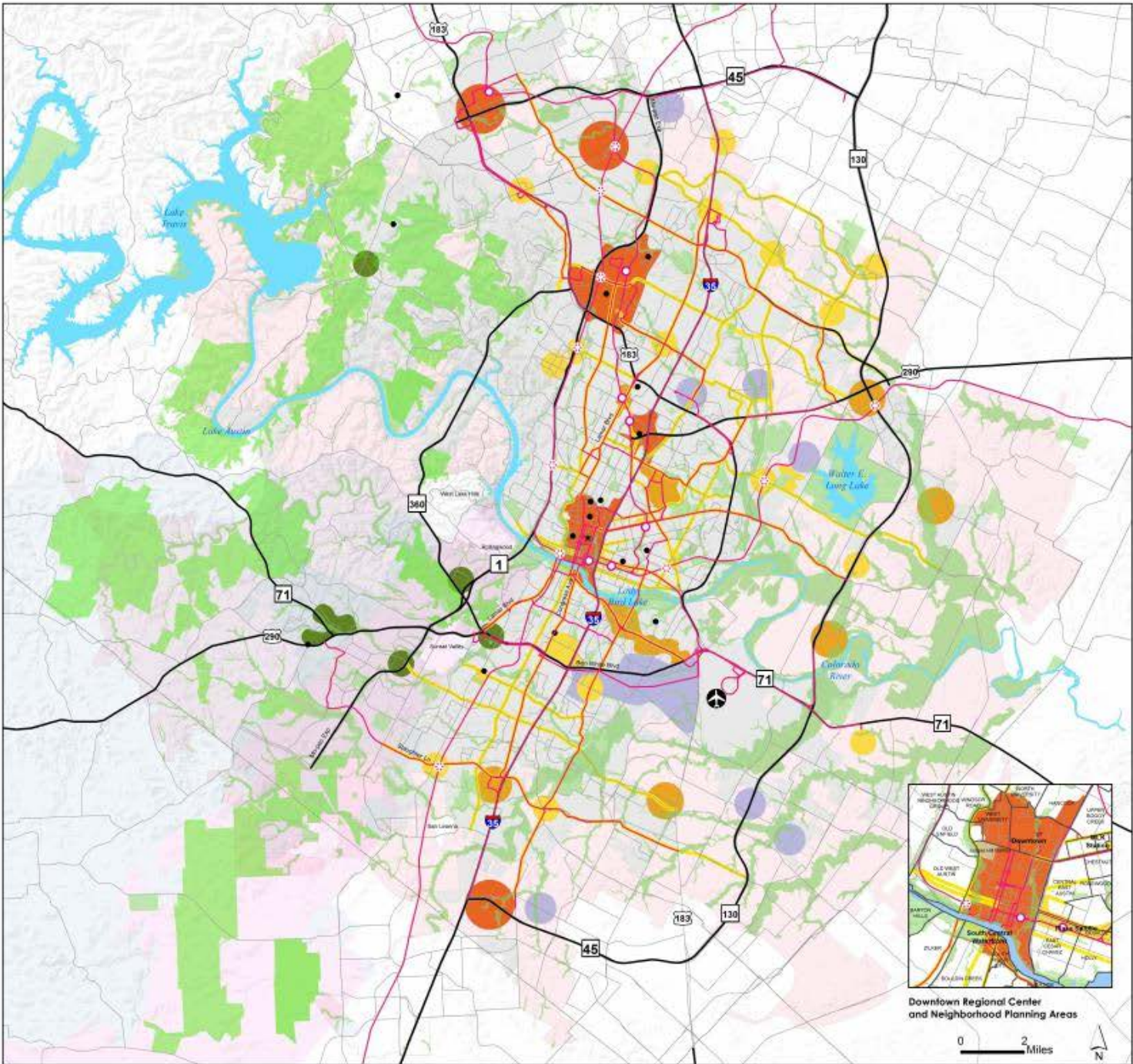
-  Regional Center
-  Town Center
-  Neighborhood Center
-  Activity Corridor
-  Activity Centers for Redevelopment in Sensitive Environmental Areas
-  Job Center
-  Current Open Space
-  Future Open Space
-  Barton Springs Contributing Zone
-  Barton Springs Recharge Zone
-  College/University

Transportation

-  High Capacity Transit Stop
-  Proposed High Capacity Transit Stop
-  High Capacity Transit
-  Highway
-  Other Streets

Boundaries

-  City Limits
-  ETJ
-  County Boundaries



Downtown Regional Center and Neighborhood Planning Areas



The Growth Concept Map applies the Imagine Austin vision statement to the city's physical development. Generated through a public scenario-building process, it defines how we plan to accommodate new residents, jobs, mixed use areas, open space, and transportation infrastructure over the next 30 years.

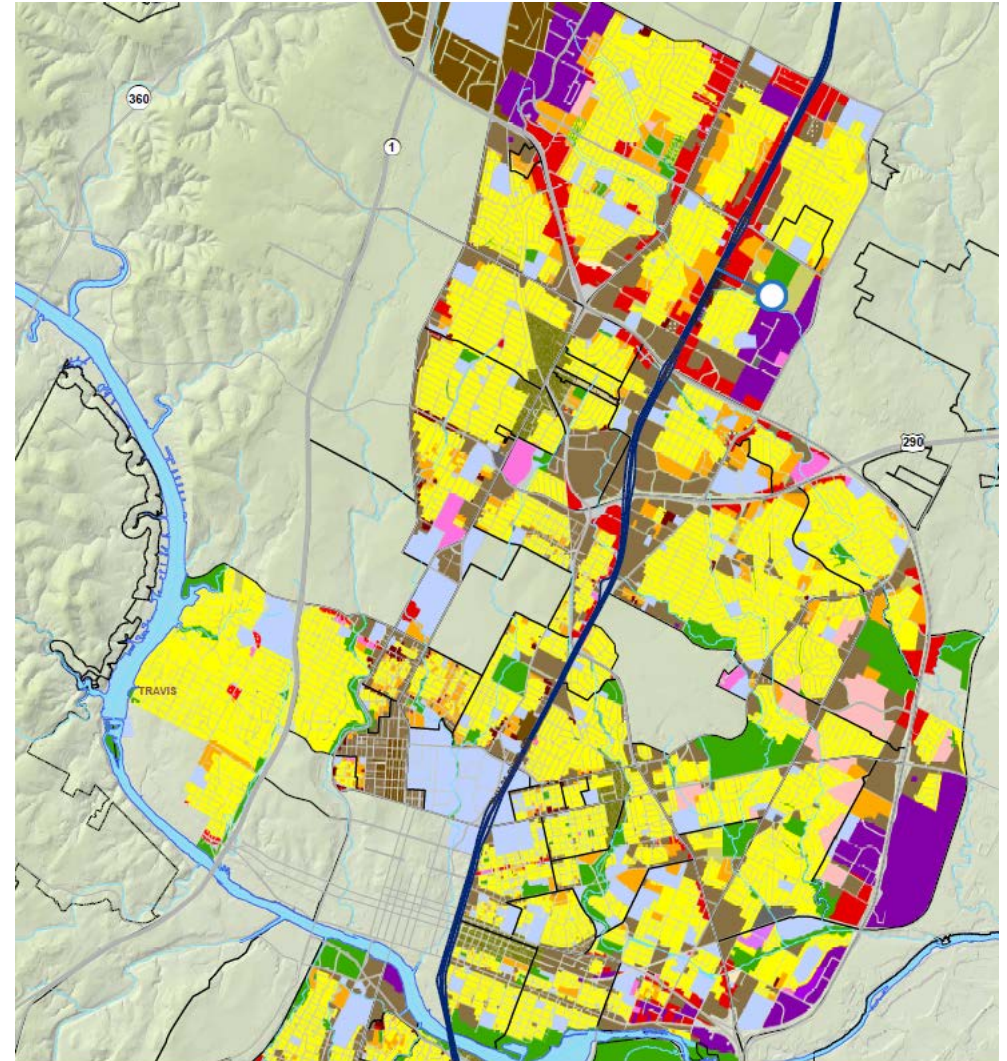
Map Disclaimers: A comprehensive plan shall not constitute zoning regulations or establish zoning district boundaries. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. This product has been produced by the Planning and Zoning Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

Adopted June 15, 2012



FUTURE LAND USE MAP

- Imagine Austin explicitly recognizes that neighborhood plans are integral components of the City's comprehensive plan, which present "a detailed view based on local conditions" and provide guidance on which "parcels are appropriate for redevelopment." Page 219.
- "Where a small area plan exists, recommendations should be consistent with the text of the plan and its Future Land Use Map or equivalent map (if one exists)." Page 220.



STATE LAW REQUIREMENTS

- Cities are not required to adopt a comprehensive, but where one exists, the Texas Local Government § 211.004 ***requires*** that any proposed zoning regulations be adopted in accordance with the comprehensive plan.
“Section 211.004. COMPLIANCE WITH COMPREHENSIVE PLAN. (a) Zoning regulations must be adopted in accordance with a comprehensive plan . . .”
- Texas Local Government Code § 211.004 is a ***statutory mandate*** that requires that the comprehensive plan serve as the basis for zoning decisions.
 - *Mayhew v. Town of Sunnyvale*, 774 S.W.2d 284, 294-95 (Tex. App.—Dallas 1989, writ. denied)
- The City, in adopting zoning regulations, has a duty to follow the long-range master plans and maps that have been adopted by ordinance.
 - *City of Pharr v. Tippitt*, 616 S.W.2d 173, 176-77 (Tex. 1981)
- Although some Texas court cases refer to comprehensive plans as advisory in nature, ***advisory*** is not synonymous with ***irrelevant***.



CITY CHARTER REQUIREMENTS

- The City's charter ***requires*** that land development regulations, including the zoning map, be consistent with the comprehensive plan.
- After the adoption of the updated comprehensive plan, the City was responsible for ensuring consistency between its development regulations and such comprehensive plan (including all components thereof).
- Consistency typically ensured through FLUM amendments, alongside rezoning cases, but this isn't being done with CodeNEXT.
- Note: CodeNEXT is meant to be an ***implementation*** process; not a new planning exercise.

§ 6. - LEGAL EFFECT OF COMPREHENSIVE PLAN.

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



PAGE 207 OF IMAGINE AUSTIN

- “Any suggested rewrite of the City Code, while striving to achieve the broad goals of the comprehensive plan, must recognize, respect, and reflect these carefully crafted compromises, balances, and the assumptions upon which the existing neighborhood and area plans were based and depend.”
- “Impacts on sustainability and livability by increased infill and density of units, including associated infrastructure costs and impacts on affordability, should be identified prior to adoption of a new city code.”
- “Modifications to the City code and building code should be measured with regard to their ability to preserve neighborhood character, consistency with adopted neighborhood and area plans, impact on affordability, and the ability of existing families to continue to reside in their homes.”



DOES THE CODENEXT 2.0 DRAFT FOLLOW THE DIRECTION OF THE COMPREHENSIVE PLAN?

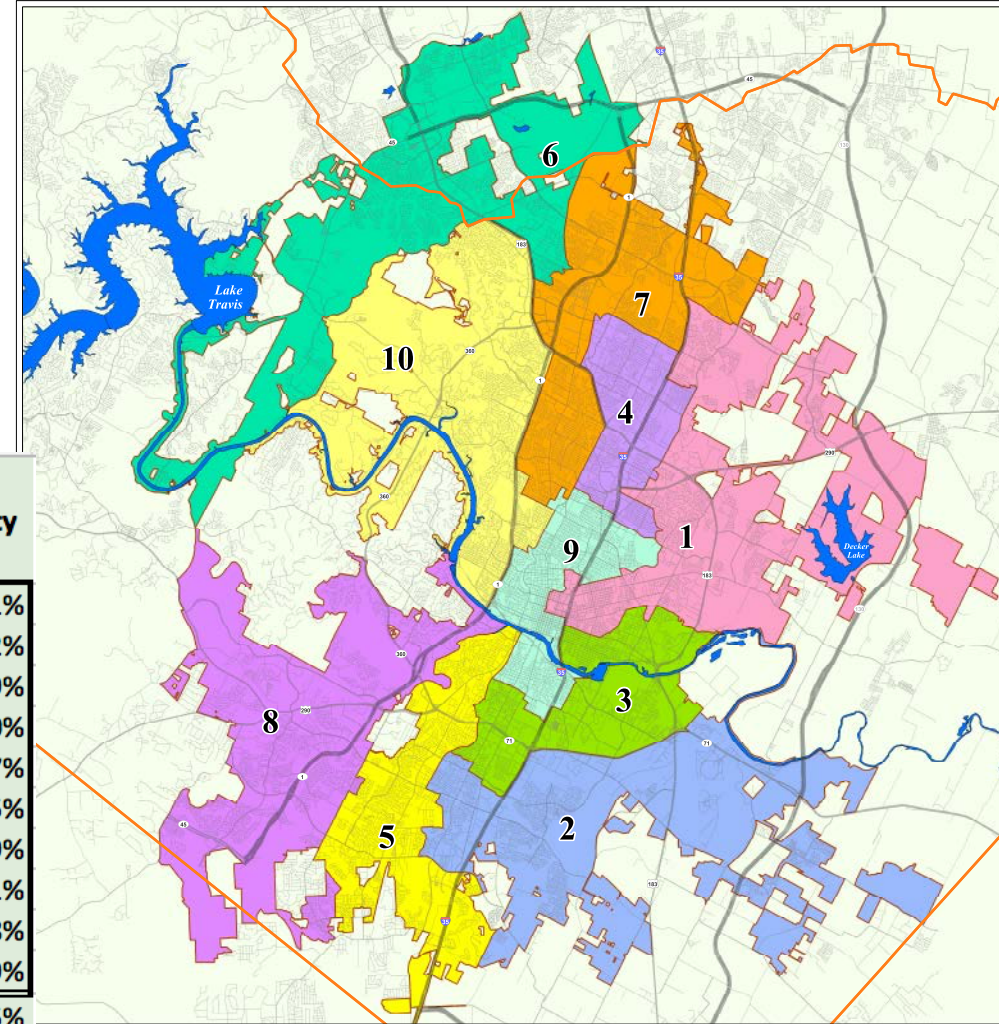
- **NO**. It is unmistakable that the neighborhood plans' text and guidance were disregarded in their entirety.
- Proposed rezonings do not match the Future Land Use Map or the Growth Concept Map.
 - Areas designated for “single-family” are proposed to be upzoned for 3-6 units (e.g. Windsor Park & along Manor Rd.)
 - “Commercial” and “office” designations have been broadly given mixed-use zoning, even adjacent to industrial zoning.
 - There is little relationship between where entitlements were increased and the location of the Growth Concept Map activity centers.
 - “Market desirability” and “development trends” were used to determine zoning districts—not adopted plans.
 - In many areas, properties along corridors are being downzoned, but the interior of the neighborhood are being upzoned.



REDEVELOPMENT/ DEVELOPMENT CAPACITY

- Under CodeNEXT 2.0, District 1 is targeted to handle 20% of the City's growth over the next decade.

	Total Housing Capacity	Housing Capacity on Vacant Land	Housing Capacity through Redevelopment	Housing Unit Capacity <100% MFI
District 1	31,282	23,364 75%	7,918 25%	6,640 21%
District 2	18,087	17,827 99%	260 1%	2,085 12%
District 3	17,027	6,698 39%	10,329 61%	4,920 29%
District 4	7,552	2,048 27%	5,504 73%	5,257 70%
District 5	15,170	6,080 40%	9,090 60%	8,595 57%
District 6	6,445	6,445 100%	- 0%	1,614 25%
District 7	13,576	9,644 71%	3,932 29%	3,907 29%
District 8	18,536	14,128 76%	4,408 24%	5,739 31%
District 9	18,672	903 5%	17,769 95%	10,873 58%
District 10	7,742	4,086 53%	3,656 47%	3,768 49%
TOTAL	154,088	91,222 59%	62,866 41%	53,398 35%



RESIDENTIAL ZONING

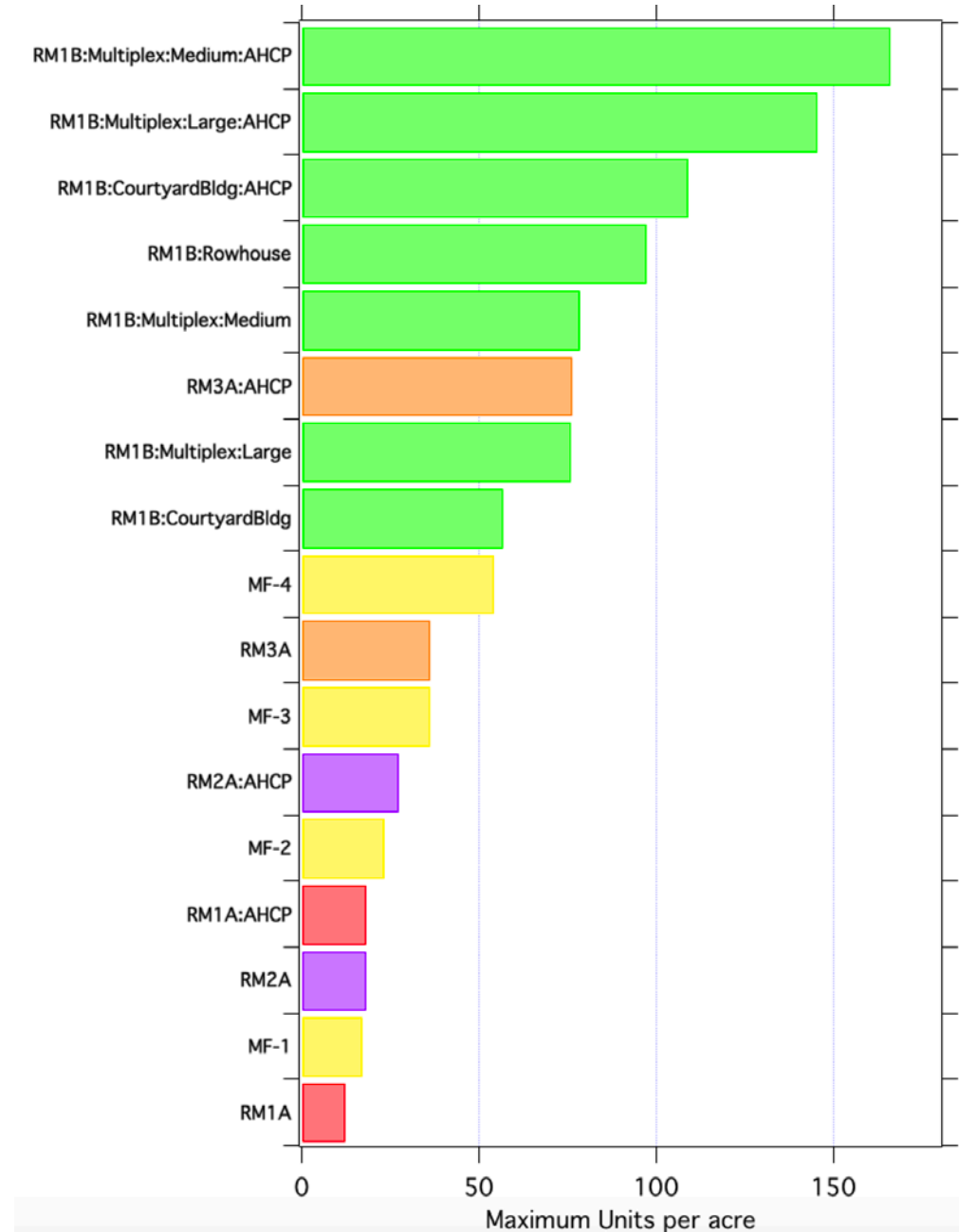
- Most formerly zoned “SF-2” and “SF-3” lots in Central and East Austin have been zoned either R2 or R3
 - R2C would allow up to 2 units
 - R3C would allow 3-6 units, depending on lot specifics
- “Transect Zoning” has been relabeled, but the increase in entitlements still exists
- There are now 17 different R zoning categories
- Lot sizes have been dramatically reduced, encouraging resubdivision
- Generally, more units per lot and more lots

	Single Family										
	RR	SF-1	SF-2	SF-3	SF-3 duplex	SF-4A	SF-4B	SF-5	SF-6		
Minimum Lot Size	43560	10000	5750	5750	7000	3600	43560(A)	5750	5750		
Minimum Lot Width	100	60	50	50	50	40	40	50	50		
	RR	LA	R1A	R1B-R1C		R2A-R2B-R2C			R2D-R2E		
	?	?	?	House	House (H)	House	House (H)	Duplex	House	House (H)	Duplex
Minimum Lot Size	43560	43560	10000	5750	2500	5750	2500	7000	3500	2500	5750
Minimum Lot Width	100	100	60	45	25	45	25	50	35	25	45
	R3A	R3B		R3C				R3D			
	House Duplex	House Duplex	House (H)	Cottage	Cottage (H)	House Duplex Cottage Corner	Cottage court	Cottage	Cottage (H)	House Duplex Cottage Corner	Cottage court
Minimum Lot Size	6500	5000	2500	5000	2500	5000	10000	5000	2500	5000	5000
Minimum Lot Width	60	45	25	40	25	50	100	40	25	50	100
	R4A-R4B					R4C					
	Cottage	Cottage (H)	House Duplex	Multipl ex	Cottage Court	Cottage	Cottage (H)	House Duplex	Row-house	Multiplex	Cottage Court
Minimum Lot Size	3500	2500	4000	6000	10000	3500	2500	4000	1800	6000	10000
Minimum Lot Width	35	25	40	60	100	35	25	40	18	60	100



APARTMENTS ARE ALSO BEING UPZONED

- Yellow = current multi-family categories' density per acre
- Green = proposed multi-family categories' density per acre
- Incentive to redevelop older, more affordable units



WHY? FALSE ASSUMPTIONS

- 135,000. The City's Strategic Housing Blueprint is based upon a five-county regional projection that 135,000 housing units will need to be built within the next 10 years to meet the metropolitan's demands. However, the City's share of such projection is actually only 80,000.
- 300,000. The City's Strategic Housing Blueprint projects that the City of Austin will increase in population by 300,000 people over this same time. However, the City's own demographer stated that the City's population growth will likely be closer to 180,000.
- **AISD and our City's demographer have warned about unintended consequences.**



ADDITIONAL RESOURCES

- Additional resources at: <http://www.communitynotcommodity.com/>
- Please feel free to contact me:
 - Bobby Levinski, 512-636-7649 or levinski@utexas.edu

