

# CodeNext



**RECA**  
REAL ESTATE COUNCIL  
OF AUSTIN

## RECA Recommendations and Comments on CodeNext Draft 2.0

October 31, 2017

## About RECA

Established in 1991, the Real Estate Council of Austin (RECA) is a dynamic 501(c)(6) non-profit organization of more than 1,900 commercial real estate professionals representing the top leaders in the Central Texas business community. RECA's mission is to be an effective resource and advocate for the interests of the real estate industry and to promote and sustain the Greater Austin region as an outstanding community in which to live.

### **Building a business community**

RECA members build and maintain professional relationships through networking opportunities such as monthly luncheons, happy hours, and volunteer activities. RECA's flagship networking event is our annual black-tie boxing fundraiser KnockOut Night, which is attended by more than 1,700. Whether in this grand forum or more casual settings, RECA members enjoy being together to share ideas, make deals happen, and work toward their professional goals.

### **Advocating for a sustainable community**

Through our advocacy, RECA contributes a moderate voice to dialogue about the future of Central Texas by working with public and civic leaders to meet the demands of our region's growth. RECA promotes Austin's competitiveness by mobilizing industry, business, communities, and government to plan for sustainable growth by advocating policy solutions that respect neighborhood and city needs as well as land-owners' rights. RECA promotes informed discussions among stakeholders and policymakers.

### **Aligning growth with stewardship**

RECA's members helped create the Central Texas that people love today and have won awards for projects that preserve the environment. RECA and its members believe healthy, responsible growth is a key to environmental stewardship and subscribe to the industry's best practices to meet those standards of excellence.

## Chapter 23-1 Introduction

### 23-1A-2030 Limitations on Authority

#### (A) Effect of Land Development Code

- (A) **Effect of Land Development Code.** The standards and procedures applicable to development of property within the City limits and within the City's extraterritorial jurisdiction are those established by the Land Development Code, which shall control in the event of a conflict with a representation made by a City official summarizing, paraphrasing, or otherwise interpreting the standards and procedures applicable to development.

**Recommended New Language:** The standards and procedures applicable to development of property within the City limits and within the City's extraterritorial jurisdiction are stated in the land Development Code (LDC) or technical criteria manuals as adopted per the provisions of the LDC, which shall control in the event of a conflict with a representation made by a City official, orally, in writing, or via a policy manual, that summarizes, paraphrases, or otherwise interprets the standards and procedures applicable to development.

**Reasoning:** Provides further clarifications regarding Technical Criteria Manuals and other applicable documents.

### 23-1A-3020 Classification of Application and Decisions

#### (B) Quasi-Judicial Decisions (1)(b)

##### (B) Quasi-Judicial Decisions

##### (1) General Characteristics

- (a) A quasi-judicial decision is a City decision that:
- (i) Applies discretionary approval criteria to a development application;
  - (ii) Adjudicates the rights of individual parties under this Title; or
  - (iii) Decides an appeal of an administrative decision.
- (b) A quasi-judicial decision involves the exercise of discretion on the part of the decision-maker and in most cases, may be subject to conditions. Quasi-judicial decisions require a public hearing and may require findings in support of the decision. They involve the exercise of considerable discretion on the part of the decision-maker and in most cases, may be subject to conditions.
- (c) A quasi-judicial decision is usually made by an appointed board or commission, but in some cases, may be subject to final approval by the Council or may be delegated to the city manager. Members of a decision-making body may be required to refrain from discussing matters subject to a quasi-judicial decision outside of a public meeting regarding the matter, if expressly provided by this Title.

**Delete Language:** From (B)(1)(b), delete the last sentence: “They involve the exercise of considerable discretion on the part of the decision-maker and in most cases, may be subject to conditions.”

**Reasoning:** This sentence is redundant to the first sentence.

### **23-1A-3020 Classification of Application and Decisions (C) Administrative Decisions (1)(b)**

#### **(C) Administrative Decisions**

##### **(1) General Characteristics**

- (a) An administrative decision is a decision by the City that applies specific standards or requirements of this Title or other applicable law to the review of a development application. Most administrative decisions require the exercise of limited discretion.
- (b) The authority to make administrative decisions is delegated to City departments and to boards and commissions, as provided in Article 23-1B (Responsibility for Administration). A public hearing is required for an administrative decision by a board or commission.

**Recommended New Language:** The authority to make administrative decisions is delegated to City departments.

**Reasoning:** Administrative decisions have specific parameters that the applicant either does or does not meet. As a result, these decisions require limited discretion and do not merit the need for a public hearing.

### **23-1A-5020 Rules of Interpretation (B) Internal Consistency (1)**

#### **(B) Internal Consistency**

- (1) Wherever possible, this Title shall be interpreted in a manner that gives effect to all provisions and avoids rendering any provision of this Title in conflict with one or more other provisions.

**Recommended New Language:** Wherever possible, the Director shall have the authority to interpret this title in a manner that gives effect to all provisions and, wherever possible, shall avoid interpretations that render a provision of this Title in conflict with one or more other provisions.

**Reasoning:** This clarifies that the director has the authority to interpret the code within the parameters set forth in this section.

## Chapter 23-2 Administration and Procedures

### 23-2A-2010 Order of Process (A)(2)(c)

- (A) If a development requires two or more approvals in compliance with this Title, an applicant must obtain approvals in the following order:
- (1) For legislative approvals:
    - (a) Comprehensive Plan amendments; and
    - (b) Zoning or rezoning.
  - (2) For quasi-judicial approvals:
    - (a) Zoning Variances and Special Exceptions;
    - (b) Environmental Variances; and
    - (c) Conditional Use Permits.

**Recommended New Language:** Remove “Conditional Use Permits”

**Reasoning:** A business requiring a Conditional use Permit (CUP) and a rezoning should be allowed to submit concurrently. Allowing for concurrent submittals would provide a more transparent process and more certainty to the applicant and interested parties. In addition, there is a concern that this section, along with 23-2A-2020, gives the Director discretionary authority over concurrent applications. We believe that the language in existing code (25-1-61) is preferable for this provision which would allow for applications to be submitted and reviewed concurrently.

### 23-2B-1010 Application Requirements and Deadlines (B)

- (B) The responsible director may adopt application requirements under this Section by administrative rule, or by policy memo, and shall post required application forms and all relevant rules or policy memos on the City's website.

**Recommended New Language:** The responsible director may adopt application requirements under this Section by administrative rule, and shall post required application forms and all relevant rules on the City's website.

**Reasoning:** Any application requirements should be laid out either within the code or through administrative rule through the administrative rule process (not policy memos) and should be posted publicly on the City's website.

## 23-2B-1030 Application Completeness (A)(4)[NEW]

- (A) The responsible director may not accept an application for review, unless the application is determined to be complete in compliance with this Subsection.
  - (1) The responsible director shall accept an application as complete if the applicant has paid the required fee and provided the information required to be included in the application no later than 45 days after the application is submitted.
  - (2) If an application is rejected as incomplete, the responsible director shall provide the applicant a written explanation identifying the deficiencies, and the information required to complete the application within 10 business days after receipt of the application.
  - (3) An application expires if it is not complete on or before the 45<sup>th</sup> day after the application is submitted. An applicant may submit an update with additional information required to complete an application at any time before the application expires.

**Recommended New Language:** Add (4): An application that has been submitted and not rejected as incomplete in 45 days shall be automatically approved under this section.

**Reasoning:** Applications should not be rejected for any other reason other than being incomplete.

## 23-2B-1050 Tolling of Expiration Period (B)(1)(d)[NEW]

- (B) This Subsection establishes a “stop the clock” requirement for applications requiring one or more public hearings under this Title.
  - (1) The one-year expiration period established by Section 23-2B-1040 (Update and Expiration) is tolled, and stops running, if the responsible director determines that the application:
    - (a) Requires a public hearing before a board or commission or the Council; and
    - (b) Before the one-year expiration date established by Section 23-2B-1040 (Update and Expiration), the application is deemed to comply with all applicable standards other than:
      - (i) The approval or recommendation for which a public hearing is required;
      - (ii) Payment of fees or fiscal surety; and
      - (iii) Other standards of this Title, as determined by the responsible director in compliance with Section 23-2B-1010 (Application Requirements and Deadlines).
    - (c) The applicant has provided a 120 or 270 day notification to a tenant of a multi-family building or manufactured home park, as required by Section 23-3E-3020 (Tenant Notification Required).

**Recommended New Language:** Add (d): The application is being delayed due to review by the legal department.

**Reasoning:** During this process the legal department is often one of the biggest delays. Allowing the "stop the clock" function" would ensure that the application will not expire due to legal department delay. In addition, this function would also allow associated applications (i.e. site plants to the plat that is in "stop the clock") to remain active

### **23-2B-1060 Effect of Expiration on Related Applications**

If an application expires, all other unapproved applications for that development, which are listed below the expired application under Section 23-2A-2010 (Order of Process), also expire.

**Delete Language:** Remove this entire section (23-2B-1060).

**Reasoning:** There are too many variables in larger projects where applications are often submitted concurrently or within the same time frame and are delayed by one department but approved by another.

### **23-2B-2010 Review and Processing**

**(B)**

(B) The responsible director may adopt review deadlines under this Section by administrative rule, or by policy memo, and shall post the deadlines on the City's website.

**Recommended New Language:** The responsible director may adopt application requirements under this Section by administrative rule and shall post required application forms and all relevant administrative rules on the City's website.

**Reasoning:** Any deadlines should be laid out either within the code or through administrative rule through the administrative rule process (not policy memos) and should be posted publicly on the City's website.

### **23-2B-2050 Development Assessment**

**(E)[NEW]**

**Recommended New Language: Add [NEW]** (E) All development assessments shall have an expiration dated 2 years after issuance of development assessment by City of Austin. [NEW](F) Determinations or Code interpretations made at the time of a Development Assessment shall be upheld through the application review processes for all project development applications so long as the initial application for development is submitted prior to expiration of the development assessment.

**Reasoning:** In order to ensure that the development assessment is successful, any interpretations made should be upheld throughout the review process.

**Table 23-2C-1020(A) Summary of Notice Requirements  
Unrelated to Specific Site or Project: Non Project Code Interpretation**

Unrelated to Specific Site or Project			
Public Hearing Before a Board or Commission	Section 23-2C-4030 (Type 2)	16 Days before Hearing	11 Days before Hearing
Public Hearing Before the Council	Section 23-2C-4030 (Type 2)	16 Days before Hearing	16 Days before Hearing
Application for Non-Project Code Interpretation	Section 23-2C-5010 (Notice of Application)		14 Days after Formal Application
Non-Project Code Interpretation	Section 23-2C-5020 (Notice of Decision)		14 Days after Decision

**Question:** What is the notice area for a non-project related code interpretation?

## Chapter 23-3 General Planning Requirements

### 23-3C-1030 Terms in this Article (A)(4)

(4) Heritage trees - Public or private 24 dbh inches or greater of following species:

- (a) Ash, Texas
- (b) Cypress, Bald
- (c) Elm, American and Cedar
- (d) Madrone, Texas
- (e) Maple, Bigtooth
- (f) All Oaks
- (g) Pecan
- (h) Walnut, Arizona and Eastern Black

This list of eligible heritage tree species may be supplemented, but not reduced, as prescribed by rule.

**Recommended New Language:** This list of eligible heritage tree species may be supplemented, but not reduced as prescribed by rule, in accordance with the administrative rule process.

**Reasoning:** Clarifies that any rule adopted under this section must abide by the administrative rules process.



### 23-3C-1030 Terms in this Article

#### (B)

(B) Natural Character of the Landscape - Natural character varies across the city and could be influenced by prior land uses. In general, protecting natural character on redeveloped land is principally through protecting individual trees. Greenfield development shall protect intact wooded areas with contiguous canopy coverage and individual trees within the development project. Historic agricultural and degraded land shall focus on protecting existing tree canopy, but where no canopy exists the emphasis shall be on aggressively replanting site appropriate trees. Protection of individual trees is considered priority for urban infill development.

**Recommended New Language:** Natural character varies across geographic and physiographic landscapes in the city and could be influenced by prior land use practices. In general, protecting natural character on developed land is principally through protecting individual trees, greenfield development shall protect intact wooded areas with contiguous canopy coverage and individual trees within the development project, as achievable, while still allowing development of a property to the density permitted in the applicable section of chapter 23-4. Greenfield development may prioritize protection of canopy, in lieu of protecting individual trees...

**Reasoning:** This amendment ensures that a blanket protection of all canopy on a given site is permitted, without consideration of the density allowed. It also clarifies that preference will be given to preserved canopy over individual trees.

### 23-3C-1040 Administration

#### (B)

(B) The City Arborist shall adopt administrative rules for the implementation of this Article. The City Arborist will also adopt rules, in conjunction with the Public Works Department, for right of way tree regulations located in (TBD) and associated rules in the Environmental Criteria Manual.

**Recommended New Language:** The City Arborist shall adopt administrative rules, in accordance with the administrative rules process...

**Reasoning:** Clarifies that any rule adopted under this section has to abide by the administrative rules process.

**23-3C-3040 Land Use Commission Variance  
(B)[NEW and Renumber]**

- (A) The Land Use Commission may grant a variance from Section 23-3C-3010 (Removal Prohibited) to allow removal of a heritage tree that has at least one stem that is 30 inches or larger in dbh (measured per ECM) after determining, based on the City Arborist's recommendation, that the heritage tree meets the criteria in Section 23-3C-2020 (Review Criteria for Permitting Removal of Regulated Trees), and:
- (1) As determined by the City Arborist, the applicant has applied for and been denied reasonable variance, waiver, exemption, modification, or alternative compliance from another City Code provision which would eliminate the need to remove the heritage tree, as required in Section 23-3C-3060 (Variance Prerequisite); and
  - (2) Removal of the heritage tree is not based on a condition caused by the method chosen by the applicant to develop the property, unless removal of the heritage tree will result in a design that will allow for the maximum provision of ecological service, historic, and cultural value of the trees on the site, and
  - (3) Shall be the minimum change necessary; and
  - (4) Shall require mitigation as a condition of variance approval for variances requested; and
  - (5) May not be issued until the applicant has satisfied the mitigation conditions or posted fiscal surety adequate to ensure performance of the mitigation conditions not later than one year after issuance of the variance.
- (B) The Environmental Commission shall hear the variance request and may make a recommendation to the Land Use Commission.

**Recommended New Language [insert new B and renumber]:** If a property is unreasonably encumbered by the location and/or quantity of heritage trees, the Land Use Commission shall consider a variance under this section to allow appropriate development of the property in accordance with Chapter 23-4.

**Definition:** unreasonably encumbered-50% or more of the site is undevelopable or more than 10% of the potential unit yield is lost.

**Reasoning:** Due to many of the new requirements under Chapter 23-4 to push parking towards the back of the property, impervious cover limitations, new setbacks, landscape buffers, etc. It is now more likely that some sites will be undevelopable due to the prevalence of heritage trees. Adding (B) and renumbering this section would allow the land use commission to take into consideration whether or not the development of a site is being unreasonably encumbered by the heritage trees on the site.

**23-3D-2030 Redevelopment Exception in Urban and Suburban Watersheds  
(A)(2)**

- (A) This Section applies to property located in an urban or suburban watershed that has existing development if:
- (1) No unpermitted development occurred on the site after January 1, 1992; and
  - (2) The applicant files a site plan application and an election for the property to be governed by this Section.

**Recommended New Language:** The applicant files a site plan application for redevelopment of any property in an urban or suburban watershed in the City of Austin at the time of application.

**Reasoning:** Clarification

**23-3D-2040 Redevelopment Exception in the Barton Springs Zone  
(E)(1)**

- (E) The standards of this Article do not apply to the redevelopment of property if the redevelopment meets all of the following conditions:
- (1) The redevelopment may not increase the existing amount of impervious cover on the site.

**Recommended New Language:** The redevelopment may not increase the existing amount of impervious cover on the site over that existing currently or the maximum allowed by current regulations, whichever is greater.

**Reasoning:** Clarification

## **23-3D-2050 Redevelopment Exception in the Water Supply Rural and Water Supply Suburban Watersheds**

### **(D)(1)**

- (D) The standards of this Article do not apply to the redevelopment of property if the redevelopment meets all of the following conditions:
- (1) The redevelopment may not increase the existing amount of impervious cover on the site.
  - (2) The redevelopment may not increase non-compliance, if any, with Section 23-3D-4040 (Critical Water Quality Zone Development), Section 23-3D-4050 (Critical Water Quality Zone Street, Driveway, and Trail Crossings), Section 23-3D-4060 (Water Quality Transition Zone Development), Section 23-3D-5030 (Critical Environmental Features), or Section 23-3D-5040 (Wetland Protection).
  - (3) The redevelopment must comply with [Section 23-3D-5010 \(Environmental Resource Inventory\)](#) and all construction phase environmental standards in effect at the time of construction, including Division 23-3D-7 (Erosion and Sedimentation Control).
  - (4) The water quality controls for the redeveloped areas or an equivalent area on the site must provide a level of water quality treatment that is equal to or greater than that which was previously provided. At a minimum, the site must provide sedimentation/filtration ponds for the redeveloped area or an equivalent area on the site.

**Recommended New Language:** The redevelopment may not increase the existing amount of impervious cover on the site over that existing currently or the maximum allowed by current regulations, whichever is greater.

**Reasoning:** Clarification

## **23-3D-2050 Redevelopment Exception in the Water Supply Rural and Water Supply Suburban Watersheds**

### **(D)(4)**

**Recommended New Language:** ...At a minimum, the site must provide sedimentation/filtration ponds for the areas of increased impervious cover or an equivalent area on the site.

**Reasoning:** Clarifies the area on a site subject to this regulation.

**23-3D-2050 Redevelopment Exception in the Water Supply Rural and Water Supply Suburban Watersheds  
(E)&(F)**

- (E) Council approval of a redevelopment in compliance with Subsection (F) is required if the redevelopment:
  - (1) Includes more than 25 additional dwelling units;
  - (2) Is located outside the City’s zoning jurisdiction;
  - (3) Is proposed on property with an existing industrial use;
  - (4) Is inconsistent with a neighborhood plan; or
  - (5) Will generate more than 2,000 vehicle trips a day above the estimated traffic level based on the most recent authorized use on the property.
- (F) Council shall consider the following factors in determining whether to approve a proposed redevelopment:
  - (1) Benefits of the redevelopment to the community;
  - (2) Whether the proposed mitigation or manner of development offsets the potential environmental impact of the redevelopment;
  - (3) The effects of off-site infrastructure requirements of the redevelopment; and
  - (4) Compatibility with the City’s [comprehensive plan](#).

**Delete Language:** Remove E & F and renumber section.

**Reasoning:** In many cases there will be opportunities for council to approve other requirements for a site of this size. Requiring an additional decision by Council is redundant and would add additional costs to the overall development.

### **23-3D-2070 Administrative Variances**

#### **(B)(1)**

(B) The Watershed Protection Department may grant a variance from a standard of:

(1) Section 23-3D-4040 (Critical Water Quality Zone Development), only if:

- (a) Necessary to protect public health and safety, or if it would provide a significant, demonstrable environmental benefit, as determined by a functional assessment of floodplain health as prescribed in the Environmental Criteria Manual;
- (b) Necessary to allow an athletic field in existence on October 28, 2013, to be maintained, improved, or replaced;
- (c) Necessary to allow an athletic field to be located in an area not otherwise allowed in compliance with Section 23-3D-4040(B)(7); or
- (d) Necessary to allow a hard surfaced trail to be located in an area not otherwise allowed in compliance with Section 23-3D-4040(B)(5) (Critical Water Quality Zone Development);

**Recommended New Language:** Add (e)[NEW] necessary to allow reasonable development of the property according to the level of development allowed under 23-4

**Reasoning:** This amendment requires Watershed to consider the reasonable amount of development on the site when making this determination. Without this flexibility, there could potentially be many sites that are undevelopable. In addition, we'd recommend the similar review of other variances to allow for the development of a property.

### **23-3D-3040 Impervious Cover Calculations**

#### **(C)(3)&(4)**

(C) Impervious cover calculations exclude:

- (1) sidewalks in a public right-of-way or public easement;
- (2) multi-use trails open to the public and located on public land or in a public easement;
- (3) water quality controls, excluding subsurface water quality controls;
- (4) detention basins, excluding subsurface detention basins;

**Delete Language:** "excluding subsurface water quality controls" and "excluding subsurface detention basins"

**Reasoning:** This amendment will allow both of these items to be calculated as part of the overall impervious cover calculation and encourage their use. Technical standards existing and are currently in practice by City of Austin staff to ensure that subsurface structures do not generate surface runoff.

**23-3D-3070 Impervious Cover Limits for Suburban Watersheds  
(B)(2)(d)**

- (d) Impervious cover for a commercial, civic, or industrial use may not exceed:
- (i) 80 percent; or
  - (ii) if development intensity is transferred in compliance with Section 23-3D-3110 (Transfers of Development Intensity), 90 percent.

**Recommended New Language:** Impervious cover for a commercial, civic, mixed-use, multi-family/multi-unit, or industrial use may not exceed:

**Reasoning:** This amendment includes mixed-use in this limitation.

**23-3D-3070 Impervious Cover Limits for Suburban Watersheds  
(B)(2)(e)**

- (e) Impervious cover for mixed use may not exceed:
- (i) the limits in Subsection (B)(2)(c) for the portion of the ground floor that is multi-family residential;
  - (ii) the limits in Subsection (B)(2)(d) for the portion of the ground floor that is commercial, civic, or industrial; and
  - (iii) impervious cover for the entire site is based on the ratios determined on the ground floor.

**Delete Language: All of (e).**

**Reasoning:** By adding "mixed-use" to section (d) this section is now redundant and remove a provision that would've added unnecessary complexity.

### 23-3D-4020 Critical Water Quality Zones Established

#### (B)(5)

- (B) In the suburban watersheds, a critical water quality zone is established along each waterway classified by Section 23-3D-4010 (Waterway Classifications).
- (1) For a minor waterway, the boundaries of the critical water quality zone are located 100 feet from the centerline of the waterway;
  - (2) for an intermediate waterway, the boundaries of the critical water quality zone are located 200 feet from the centerline of the waterway; and
  - (3) for a major waterway, the boundaries of the critical water quality zone are located 300 feet from the centerline of the waterway.
  - (4) The critical water quality zone boundaries may be reduced to not less than 50 feet from the centerline of a minor waterway, 100 feet from the centerline of an intermediate waterway, and 150 feet from the centerline of a major waterway if the overall surface area of the critical water quality zone is the same or greater than the surface area that would be provided without the reduction, as prescribed in the Environmental Criteria Manual.
  - (5) Notwithstanding the provisions of Subsections (B)(1), (2), and (3), a critical water quality zone does not apply to a previously modified drainage feature serving a **railroad** or public roadway right-of-way that does not possess any natural and traditional character and cannot reasonably be restored to a natural condition.

**Recommended New Language:** Notwithstanding the provisions of Subsection (B)(1),(2), and (3), a critical water quality zone does not apply to a manmade drainage feature that does not possess any natural and traditional character and cannot reasonably be restored to a natural condition, as prescribed in the Environmental Criteria Manual.

**Reasoning:** This amendment clarifies that a critical water quality zone does not apply to a manmade drainage feature.

### 23-3D-4020 Critical Water Quality Zones Established

#### (B)(6)[NEW]

**Recommended New Language:** Add (6)[NEW] Zone boundaries may be reduced based on hydrology analysis or floodplain model as approved by the Director.

**Reasoning:** This amendment allows the option for an applicant to reduce their boundaries through a hydrology analysis or a floodplain model.



**23-3D-4040 Critical water Quality Zone Development  
(E)(4)(a)[NEW] and (E)(4)(b)[NEW]**

- (E) In the urban and suburban watersheds, a utility line may be located parallel to and within the critical water quality zone if:
- (1) in an urban watershed and located not less than 50 feet from the centerline of a waterway, or in a watershed other than urban and located not less than 50 feet from the centerline of a minor waterway, 100 feet from the centerline of an intermediate waterway, and 150 feet from the centerline of a major waterway;
  - (2) located not less than 50 feet from the shoreline of Lady Bird Lake and Lake Walter E. Long, as defined in Section 23-3D-4020 (Critical Water Quality Zones Established);
  - (3) located not less than 100 feet from the ordinary high water mark of the Colorado River downstream from Longhorn Dam;
  - (4) designed in compliance with the Environmental Criteria Manual;

**Recommended New Language:** (4)(a) If the alignment within the critical water quality zone is mandated by a city department or agency, all costs of riparian restoration required per this section shall be paid by the City department requiring the specific alignment, and payment into the Riparian Zone Mitigation Fund shall be waived. (4)(b) if the alignment within the critical water quality zone is selected at the desire of the property owner or applicant, the cost of the riparian restoration or Riparian Zone mitigation Fund fees required per this section shall be paid by the property owner or applicant.

**Reasoning:** The amendment clarifies that the department/person requiring the alignment of a utility parallel to and within a critical water quality zone is responsible for the payment.

**23-3D-4070 Floodplain Modification  
(A)&(B)**

- (A) Floodplain modification within a critical water quality zone is prohibited except as allowed in compliance with Section 23-3D-4040 (Critical Water Quality Zone Development).
- (B) Floodplain modification outside a critical water quality zone is allowed only if the modification proposed:

**Recommended New Language:** Replace “floodplain” with “All natural floodplain”

**Reasoning:** Clarifies that the floodplain in question must be naturally occurring.

### 23-3D-4070 Floodplain Modification

(C)

(C) All floodplain modifications must:

**Recommended New Language:** Replace “floodplain” with “All natural floodplain”

**Reasoning:** Clarifies that the floodplain in question must be naturally occurring.

### 23-3D-4070 Floodplain Modification

(E)(F)(G)[NEW]

**Recommended New Language:** (E)[NEW] If a City department requires a property owner to modify, improve, expand or otherwise develop within a natural floodplain controlled by this section for any of the following reasons, the property owner is exempt from riparian requirements of this section: (1) Update or expand City of Austin drainage infrastructure within an existing City easement. (2) Repair or replace poorly maintained or damaged City of Austin drainage infrastructure within an existing City Easement or; (3) Any other City mandated improvement within an existing or proposed City easement that is not caused by the proposed development of the property. (F) This section only applies to naturally occurring drainage basins 64 acres and greater (G) Modification of a manmade floodway is not required to comply with the requirements of this section (23-4D-4070)

**Reasoning:** Protection of manmade floodway adds undue and unnecessary burden to new development.

### 23-3D-5010 Environmental Resource Inventory

(A)

(A) An applicant shall file an environmental resource inventory with the director for proposed development within a site located on a tract:

- (1) Within the Edwards Aquifer recharge or contributing zone;
- (2) Within the Drinking Water Protection Zone;
- (3) Containing a water quality transition zone;
- (4) Containing a critical water quality zone;
- (5) Containing a floodplain; or
- (6) With a gradient of more than 15 percent.

**Recommended New Language:** (A) An applicant shall file an environmental resource inventory with the Director for proposed development that may cause disturbance to: and Remove (5) and Amend (6) With a gradient of more than 15 percent; the ERI shall be required for the portion of the site within 500 linear feet from the slope over 15 percent.

**Reasoning:** Clarifies that an environmental resource inventory only applies to developments where any of these features may be disturbed, as it would be a severe cost to the applicant to do this for every site. In addition, the clarification for (6) allows for flexibility when working with larger sites which may have varying types of typography.

### **23-3D-6030 Water Quality Control And Beneficial Use Standards (C)**

- (C) A portion of the required capture volume for water quality must be retained and beneficially used on-site through practices that infiltrate, evapotranspire, or harvest and use rainwater. Practices include, but are not limited to, rain gardens, rainwater harvesting, porous pavement, and green roofs, as described in the Environmental Criteria Manual.
- (1) The amount of rainfall that must be retained is based on the impervious cover and associated runoff coefficient for the 95th percentile rainfall event, as prescribed in the Environmental Criteria Manual.
  - (2) Residential subdivisions must demonstrate compliance through practices located on common lots or in right-of-way or other methods as approved by the Watershed Protection Department.

### **Delete Language: Remove (C)**

**Reasoning:** Requiring that a portion of water captured be retained for beneficial re-use on-site has the potential to add significant cost and will also severely limit the developable space on a given lot. This requirement is also very costly and challenging to meet on dense, urban sites with higher impervious cover, i.e. 80% or higher. Rather than requiring this, the City should create a program that encourages or incentivizes it.

### **23-3D-6050 Optional Payment Instead Of Structural Controls In Suburban Watersheds (B)**

- (B) Instead of providing the water quality controls required by Section 23-3D-6010 (Applicability of Water Quality Control Standards), in a suburban watershed an applicant may request approval to deposit with the City a nonrefundable cash payment. The director shall review the request and approve or disapprove the request based on the standards in the Environmental Criteria Manual. To be eligible to request the optional payment, the development must:
- (1) be located within the zoning jurisdiction;
  - (2) be a residential subdivision less than two acres in size; and
  - (3) demonstrate exemption from the preliminary plan standard as determined by Section 23-5B-2010 (Preliminary Plan Requirement).

**Recommended New Language:** ...the development must be one of the following: [New] (3) and renumber: a commercial property less than one acre in size; or [Add](4) a vertical commercial, residential, or mixed-use development with a structure parking below the primary building, up to three acres in size.

**Reasoning:** This clarifies that commercial property meeting the size requirement is also exempt which will save costs and encourage development on smaller sites.

## Chapter 23-4 Zoning

### General Comments:

#### Setbacks

For zones that are limited in height to 35 feet (2 stories) like Residential House Scale, and intended to look and feel like a house scale form, the setbacks should mirror RHS districts (5 ft side, 10 ft rear setback). For zones where the overall maximum height exceeds 35 ft, the setbacks for side and rear lot lines should be the width of the landscape buffer, which is 15 feet.

- Portions of building adjacent to a RHS Zone:

Lots < 75' Wide	Front: 25'	Side St: 15'	Side: 15'	Rear: 15'
Lots > 75' Wide	Front: 25'	Side St: 15'	Side:15'	Rear: 15'

#### Triggering Zones

Residential Multi-Unit (multi-family zoning) should never trigger compatibility with more intense, multi-family or commercial zone. By definition, RMU zones are commercial. This new compatibility standard reduces the number of units through additional setbacks and impacts affordability through increased landscaping costs.

#### Hight Stepbacks

Height Stepbacks should be reduced to allow for the same height (35 feet) as RHS after the enhanced rear setback of 15 feet. After 30', the height should be set by the base zone up to 85 feet. For any base zone with height over 35 feet, there will be landscaping buffers as well to screen the additional height.

MAX 60 Feet:

Stepbacks required for portions of building adjacent to a RHS zone.

Triggering Property	Height (max)
0' – 15'	0' landscape buffer zone
15' – 30'	35' same height as adjacent property
>30'	set by zone standard

65 Feet Plus: (RM4A, RM5A, MU4A, MU5A, MS3A, MS3B)

Stepbacks required for portions of building adjacent to a RHS zone.

Triggering Property	Height (max)
< 25'	18'
25' – 50'	35'
>50'	set by zone standard

Additionally, height stepbacks beyond 80 feet of the property should be eliminated in all commercial zones since landscape buffer and enhanced setbacks exist for all commercial zones.

Landscape Buffers

Landscape buffers should be graduated relative to the height differential between the RHS zone and the RMU, MU and MS zones.

We propose a new landscape buffer zone of 10 feet height for transitions of 35 feet in RHS to 45 feet in RMU, MU or MS. For transitions of 35 feet on RHS to 60 feet or greater in RMU, MU or MS, a 20 foot landscape buffer zone is appropriate. There is no change in height between the commercial zone and the RHS zone, no landscape buffer should be required.

Articulation

Articulation along the rear wall when a 20 foot landscape buffer and step backs occur seems onerous. We propose limiting the articulation to a minimum of 10 length by 4 feet depth, since this balcony space can be incorporated into the layout of a living room within a studio, 1 or 2 bedroom unit. Additional space for articulation would reduce the number of units and impact affordability.

**23-4D-4030 Allowed Uses and Permit Requirements**

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**23-4D-4030 Allowed Uses and Permit Requirements**

- (A) **Allowed Land Uses.** The land uses allowed in the Commercial Zones are provided in Table 23-4D-4040(A) (Commercial Zones Allowed Uses). Each land use listed in Table 23-4D-4040(A) is defined in Article 23-2M (Definitions and Measurements).
- (B) **Permit Required.** Land Uses identified in Table 23-4D-4040(A) are subject to the permit standard listed in the Table.
- (C) **Additional Standards.** Table 23-4D-4040(A) provides references, where applicable, to additional standards for specific uses in Division 23-4E-6 (Specific to Use).

**Comment:** (A), (B), and (C) are located in the incorrect section and should be moved to the proper section of the code. This should be updated to reflect the mixed-use zones.

**Table 23-4D-4030 (A)**

Table 23-4D-4030(A) Allowed Uses in Mixed-Use Zones MU1A–MU2B							
Use Type	Specific to Use Standards	MU1A	MU1B	MU1C	MU1D	MU2A	MU2B
<b>Residential</b>							
Accessory Dwelling Unit – Residential	23-4E-6030	P	P	P	P	N/A	N/A
Accessory Dwelling Unit – Commercial	23-4E-6040	P	P	P	P	P	P
Bed and Breakfast	23-4E-6090	P	P	P	P	P	P
Cooperative Housing		P	P	P	P	N/A	N/A
Duplex	23-4E-6160	P	P	P	P	P	P
Home Occupations	23-4E-6210	P	P	P	P	N/A	N/A
Multi-Family	23-4E-6260	P	P	P	P	P	P
Senior/Retirement Housing:	23-4E-6320						
≤12 Residents		MUP	MUP	MUP	MUP	P	P
>12 Residents		N/A	N/A	N/A	N/A	P	P
Single-Family		P	P	P	P	N/A	N/A
Short-term Rental:	23-4E-6330						
Type 1		P	P	P	P	MUP	MUP
Type 3		P	P	P	P	MUP	MUP
Work/Live	23-4E-6380	N/A	N/A	N/A	N/A	P	P

**Comment:** All Residential use types should be permitted in all Mixed-Use Zones. Short-term Rentals should be permitted in all zones. Hospitals and Hotel/Motel should be permitted in all zones (4D-4 pg. 7).

**23-4D-4040 pg. 12 (Notes)**

**Notes**

See Section 23-4E-3 (Parking and Loading) for loading requirements, allowed parking reductions, and additional standards.

<sup>1</sup> In making a determination, the Planning Director shall consider the requirements applicable to similar uses, and the location and characteristics of the use.

**Recommended New Language:** Add footnote (2): Applicant may submit a parking study to be considered for parking requirements.

**23-4D-4050 General to Mixed-Use Zones (3)(a)(ii)**

- (ii) Balconies, pedestrian walkways, porches, accessible ramps, and stoops; provided that no such feature shall extend into the public right-of-way without a license agreement;

**Recommended New Language:** Balconies, pedestrian walkways, porches, accessible ramps, and stoops that provided that no such feature shall extend into the public right-of-way without a license agreement, encroachment agreement, or other appropriate legal document.

**23-4D-4060 Mixed-Use 1A pg. 16 D. Building Placement and Form (Setback, Rear)**

D. Building Placement and Form				
Setback (Distance from ROW / Lot Line)	Front	Side St.	Side	Rear
	A	B	C	D
Minimum	25'	15'	5'	30' <sup>1</sup>

**Recommended New Language:** The rear setback should be 10' in all mixed-use zones unless the lot line is shared with a residential zone.

**23-4D-4060 Mixed-Use 1A pg. 18 F. Encroachments**

Encroachments are not allowed within a ROW or public easement.

**Recommended New Language:** Encroachments are not allowed within a ROW or public easement unless a license agreement, encroachment agreement, or other appropriate legal document is in place. Apply this amendment to all zones where this language appears.

**23-4D-4060 Mixed-Use 1A pg. 18 H. Parking**

H. Parking				
Setback	Front	Side St.	Side	Rear
	R	S	T	U
Minimum	30' <sup>1</sup>	20'	2'	5'
Parking Driveway				
Width	10' max.			V

Driveways may be shared between adjacent parcels.

When lot has adjacent alley with a ROW width of 20' or greater, parking shall be accessed only from the alley.

**Recommended New Language:** When lot has an adjacent alley with a ROW width of 20' or greater, parking may be accessed from the alley.

**Comment:** Apply this amendment to all MU zones where this language occurs.

**23-4D-4060 Mixed-Use 1A pg. 18 H. Parking (Parking Requirements)**

**Notes**

Garages along the front facade of the primary building shall occupy no more than one-third the width of the front facade.

<sup>1</sup> Required parking space(s) shall not be located in front of the front facade of the building.

Delete Language: Strike "Garages along the front façade of the primary building shall occupy no more than one-third the width of the front façade".

**23-4D-4060 Mixed-Use 1A pg. 19 I. Impervious Cover**

I. Impervious Cover		
Impervious Cover	% (max.)	Standards
Impervious Cover	60% <sup>1</sup>	23-3D-3
Building Cover	40%	

**Recommended New Language:** Building Cover should be increased from 40% for MU1A.



**23-4D-4150 Mixed-Use 5A pg. 60 E. Height (Primary Building)**

E. Height		
Primary Building		
Overall (max.)	80'	E

**Recommended New Language:** Overall height should go from 80' to 85' to allow for a two-story podium with a five-story wooden structure above.

**23-4D-4150 Mixed-Use 5A pg. 62 I. Impervious Cover**

I. Impervious Cover		
Impervious Cover	% (max.)	Standards
Impervious Cover	75% <sup>1</sup>	23-3D-3
Building Cover	70%	

**Recommended New Language:** Increase to: 95% IC and 95% BC. Coverage allowance in this zone should be more than MU4.

**Main Street Zones**

**Table 23-4D-5030(A)**

Table 23-4D-5030(A) Allowed Uses in Main Street Zones								
Use Type	Specific to Use Standards	MS1A	MS1B	MS2A	MS2B	MS2C	MS3A	MS3B
<b>Residential</b>								
Accessory Dwelling Unit – Residential	23-4E-6030	P	P	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P
Accessory Dwelling Unit – Commercial	23-4E-6040	P	P	P	P	P	P	P
Bed and Breakfast	23-4E-6090	P	P	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P
Cooperative Housing		N/A	P	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P
Duplex	23-4E-6160	N/A	P	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P
Home Occupations	23-4E-6210	P	P	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P
Live/Work	23-4E-6220	P	P	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P
Multi-Family	23-4E-6260	N/A	P	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P
Senior/Retirement Housing:	23-4E-6320							
≤12 Residents		P	P	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P
>12 Residents		P	P	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P
Single-Family		N/A	P	P <sup>1</sup>	P <sup>1</sup>	P	P <sup>1</sup>	P

**Comment:** The references to the specific standards are off by “10”.

**Comment:** Multi-Family, Duplex, and Cooperative Housing should be permitted in all zones.

**Notes**

<sup>1</sup> Not allowed on ground floor within 30' of a primary street or side street ROW.

**Delete Language:** Remove footnote regarding “Not allowed on ground floor within 30’...”

General Retail:

≤ 5,000 sq ft		P	P	P	P	P	P	P
>5,000 and ≤10,000 sq ft		N/A	P	N/A	P	P	P	P
w/ Onsite Production		N/A	P	N/A	P	P	P	P
w/ Outside Storage	23-4E-6190	N/A	N/A	N/A	N/A	N/A	CUP	CUP

**Question:** What is the reasoning for the unequal allowance for General Retail between these zones?

**23-4D-5050 General to Main Street Zones (3)(a)(ii)**

- (ii) Balconies, pedestrian walkways, porches, accessible ramps, and stoops; provided that no such feature shall extend into the public right-of-way without a license agreement;

**Recommended New Language:** Balconies, pedestrian walkways, porches, accessible ramps, and stoops that provided that no such feature shall extend into the public right-of-way without a license agreement, encroachment agreement, or other appropriate legal document.

**23-4D-5060 Main Street 1A pg. 12 D. Building Placement and Form**

D. Building Placement and Form				
Setback (Distance from ROW / Lot Line)	Front (A)	Side St. (B)	Side (C)	Rear (D)
Minimum	5'	5'	0'	30' <sup>1</sup>
Maximum	10'	10'	—	—
Portions of building adjacent to, across an alley less than 20 feet in width from Residential House-Scale or Residential Multi-Unit Zone				
Lots ≤ 75' wide	10'	10'	15' <sup>2,3</sup>	30' <sup>2,3</sup>
Lots > 75' wide	10'	10'	20' <sup>2,3</sup>	30' <sup>2,3</sup>

**Comment:** Setbacks should not apply when portions of the building are adjacent to, or across an alley less than 20 feet from a Mixed-Use zone.

**Question:** Why does the Side setback change with the width of the lot?

**23-4D-5060 pg. 12 D. Building Placement and Form (Notes)**

**Notes**

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Additional setback and/or easement may be required where street ROW or utilities easement is required.

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Buildings on a lot shall have a minimum 10' separation.

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<sup>1</sup> 5' for accessory building when adjacent to alley.

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<sup>2</sup> Landscape buffer required where additional setback are required when adjacent to Residential House-Scale zones. See Section 23-4E-4090 (Intermittent Visual Obstruction Buffer) for specific landscape requirements.

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<sup>3</sup> Landscape buffer required where additional setback are required when adjacent to Residential Multi-Unit zones. See Section 23-4E-4100 (Semi-Opaque Buffer) for specific landscape requirements.

**Delete Language:** Strike footnote (3): The landscape buffer should not be required for parcels adjacent to MU zones.

**23-4D-5060 Main Street 1A pg. 12 D. Building Placement and Form (Building Articulation)**

D. Building Placement and Form (continued)		
<b>Overall Building Envelope</b>		
Width (max.)	125'	<b>E</b>
<b>Building Articulation</b>		
<b>Side and Rear Facades, All Stories</b>		
Articulation is required on additions or new construction for side and rear walls along a parcel line shared with a Residential House-Scale Zone or Residential Multi-Unit Zone.		
Facade length without articulation (max.)	60'	<b>F</b>
Articulation length (min.)	24'	<b>G</b>
Articulation depth (min.)	24'	<b>H</b>
<b>Primary Building Facade located between Minimum and Maximum Setback</b>		
Front	75% min.	
Side St.	75% min.	

**Delete Language:** Additional setbacks should not apply when portions of the buildings are adjacent to, or across an alley less than 20 feet from a Residential Mixed-Use zone. Strike “Residential Mixed-Use Zone”.

**23-4D-5060 Main Street 1A pg. 14 G. Frontages (Pedestrian Access)**

Pedestrian Access	
Pedestrian entrances must be provided at least every 50' along ground floor street facade and side street facade.	

**Recommended New Language:** Pedestrian access requirements should be switched from 50' back to 75' as it is in existing code.

**23-4D-5 060 Main Street 1A pg. 14 H. Parking- (Parking Driveway)**

H. Parking				
Setback	Front P	Side St. Q	Side R	Rear S
Minimum	20'	5'	2'	5'
<b>Parking Driveway</b>	≤ 40 spaces		> 40 spaces	
Width	14' max.		18' max.	T

Driveways may be shared between adjacent parcels.

When lot has adjacent alley with a ROW width of 20' or greater, parking shall be accessed only from the alley.

**Comment:** These driveway maximums are too small and would only allow for a one-way lane. In addition, this is in conflict with minimum driveway widths for fire lane and fire truck access.

**Recommended New Language:** In reference to the alley loaded parking requirement, switch “shall” to “may”.

**23-4D-5060 Main Street 1A pg. 14 H. Parking (Parking Requirements)**

**Notes**

Parking is not allowed above the ground floor level.

**Delete Language:** Remove note that forbids parking above the ground floor level.

**23-4D-5060 Main Street 1A pg. 15 J. Required Open Space**

J. Required Open Space			
Open Space Type	Width (min.)	Depth (min.)	Percentage (min.)
Common	15'	15'	5% gross site area

**Recommended New Language:** Add a provision that Common Open Space is not required within ¼ mile of any public park.

**23-4D-5070 Main Street 1B pg. 19 E. Height (Primary and Accessory Building)**

E. Height		
<b>Primary and Accessory Building</b>		
Overall (max.)	35'	I
<b>Accessory Structure</b>		
Overall (max.)	12'	
<b>Primary Building, Ground Floor</b>		
Floor-to-Ceiling Height <sup>1</sup>	14' min.	J
Finish Floor Height Above Curb	18"	K
for ground floor residential use within 10' of a street ROW <sup>1, 2, 3</sup>		

**Delete Language:** Delete requirement for a minimum ground floor height.

**Reasoning:** While the heights of 35 ft. could allow for 3 stories, the requirement for a 14ft. first floor would in practice limit the structure to 2 stories.

**23-4D-5080 Main Street 2A pg. 25 E. Height (Building Height Stepback)**

Building Height Stepback	
Stepbacks required for portions of building adjacent to, across an alley from, or across a ROW less than 60' wide from a Residential House-Scale Zone.	
Distance from Lot Line of Triggering Property	Height (max.)
≤ 25'	18'
25'–50'	35'
> 50'	Set by zone standards

**Delete Language:** Strike Stepback section.

**Reasoning:** Stepbacks should not be required due to the other restrictions already in place (landscape buffer, height restriction, etc.)

**23-4D-5090 pg. 30 D. Building Placement and Form (Notes)**

**Notes**

Additional setback and/or easement may be required where street ROW or utilities easement is required.

**Recommended New Language:** Additional setback and/or easement may be required where street ROW, sidewalks, or utilities easement is required.

**23-4D-5090 Main Street 2B pg. 30 Building Placement and Form (Building Articulation on Additions and New Construction; Side and Rear Facades, All Stories)**

<b>Side and Rear Facades, All Stories</b>		
Articulation is required for side and rear walls along a parcel line shared with a Residential House-Scale Zone or Residential Multi-Unit Zone.		
Facade length without articulation (max.)	60'	<b>K</b>
Articulation length (min.)	24'	<b>L</b>
Articulation depth (min.)	24'	<b>M</b>

**Recommended New Language:** Change articulation length and depth from 24' to 8'.

**23-4D-5090 Main Street 2B pg. 32 H. Parking (Parking Driveway)**

<b>H. Parking</b>				
<b>Setback</b>	<b>Front</b>	<b>Side St.</b>	<b>Side</b>	<b>Rear</b>
	<b>U</b>	<b>V</b>	<b>W</b>	<b>X</b>
Minimum	35'	5'	2'	5'
<b>Parking Driveway</b>	≤ 40 spaces		> 40 spaces	
Width	14' max.		18' max.	<b>Y</b>

Driveways may be shared between adjacent parcels.

When lot has adjacent alley with a ROW width of 20' or greater, parking shall be accessed only from the alley.

**Comment:** 14' width is essentially a one-way driveway. You need a minimum of 10' per directional lane.

**Question:** Will the fire department approve of this?

**23-4E-3090, Table 23-4E-3090.A**

Table 23-4E-3090.A Parking Lot Landscaping	
Parking Lot Medians	
Width (min.)	
Width	10'
Width: Existing Tree	10' or 1/2 critical root zone, whichever is greater
Parking Lot Tree Island	
End of Parking Run	1 at end of parking run
Middle of Parking Run, When Not Adjacent to Median	1 every 8 parking spaces
Width	10'
Depth	match parking depth
Parking Lot Medians	
Width	
Width	10'
Width: Existing Tree	10' or 1/2 critical root zone, whichever is greater
Parking Lot Perimeter	
Parking Lots adjacent to a public thoroughfare other than an alley	10'

**Comment:** Increased parking lot tree island and median requirement will increase the area of parking lots by 15%-25%.

**23-4E-4050 Foundation Buffer**

**Description**

Foundation Buffer is required between any structure exterior wall and any portion of a parking lot or drive aisle. A Foundation Buffer is not required around service/loading areas or drive-through facilities.

**Comment:** Since these requirements also apply for drive aisles, what happens in a place like the Domain? Landscaping should not be required everywhere; in many instances it can detract from the use and enjoyment of a place.

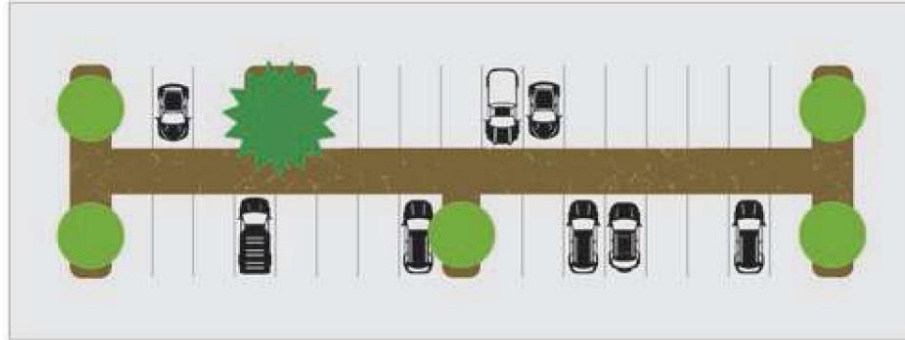
Minimum length of Foundation Buffer shall be equal to 75 percent of length of each exterior wall facing a parking lot or drive aisle.

**Comment:** A 10' planting strip for 75% of structure is harmful to retail uses. Perennial shrubs are required to be overplanted, and ornamental trees hurt retail because of height. Per a landscape architect's calculations, these landscaping requirements would generate a cost of \$77/linear foot. (\$60 cost/linear foot to install (soil, irrigation, labor). Product cost is \$17.5/linear foot for 5 trees = total \$77 cost/linear foot.)



## 23-4E-4060 Surface Parking Tree Islands

### 23-4E-4060 Surface Parking Tree Islands



**Comment:** The proposed inclusion of surface parking tree islands such as the ones in this diagram will encourage people to walk on the tree island which will likely result in harm to the island

### 23-4E-4060 Surface Parking Tree Islands; Requirements

#### Requirements

#### Location and Quantity

One shade tree (existing or proposed) is required at the end of every parking run to separate the last space from the adjacent travel lanes.

No more than eight consecutive parking spaces can occur without an intervening tree island.

**Proposed New Language:** Revert to current code requirements.

**Comment:** Increased medians and increased island size (from 8' in current code to 10' in the proposed draft) will increase the overall area of parking lots across Austin and decrease affordability.

### 23-4E-4060 Surface Parking Tree Islands; Tree Island that Preserves Existing Tree

#### Tree Island that Preserves Existing Tree

Width	10' measured from edge of pavement and no less ½ critical root zone
Length	Entire length of parking space and no less ½ critical root zone

**Recommended New Language:** Allow reduction of medians to occur every 15’.

### 23-4E-4060 Surface Parking Tree Islands; Notes

#### Notes

<sup>1</sup> Or comply with soil volume standards in Environmental Criteria Manual

**Recommended New Language:** Eliminate soil volume standards.

### 23-4E-4070 Landscape Median Minimums; Requirements

#### Requirements

#### Landscape Median Minimums

Width	10’ measured from edge of pavement <sup>1</sup>
Width to Preserve Existing Tree	18’ or ½ critical root zone, whichever is wider

**Recommended New Language:** Under “Width to Preserve Existing Tree”, eliminate 18’ and change requirement to ½ critical root zone.

**Reasoning:** The median minimum width to preserve an existing tree is too wide- for 6’ caliper trees, it should be no more than 12’.

### 4E-4080 Surface Parking Lot Perimeter Landscape

#### Description

The Parking Lot Perimeter Landscape serve the purpose of screening surface parking lots from internal circulation routes (private or public) and maintaining pedestrian vitality along commercial centers and mixed use corridors serving pedestrian traffic.

#### Applicability

Parking Lot Perimeter Landscape apply to all off-street parking areas and public or private thoroughfares where landscaping is not otherwise required. Parking Lot Perimeter Landscape also apply to buffers adjoining parking lots where no cross-access is provided.

**Recommended New Language:** Remove internal circulation routes from this landscaping requirement.

**Reasoning:** This will substantially reduce buildable area and increase the end cost of any building to which it applies.

**23-4E-4090 Intermittent Visual Obstruction Buffer**

Min. planting per 100 linear feet	Aggregate Caliper
Evergreen Shade Trees	9"
Evergreen Ornamental Trees	12"
Shrubs per 100 linear feet	Quantity
Evergreen Shrubs	15

**Recommended New Language:** Measure trees only by type (“at time of planting minimum 10’ tall”) OR species (“will reach 20’ height within 5 years”) and quantity of tree, not aggregate caliper. Do not allow evergreen species only. Do not require shrubs.

**Reasoning:** This minimum planting and caliper will not provide enough transparency, leading to safety concerns. In addition, there are currently only 2 tree types to choose from, and for the sake of plant health and diversity, we should allow further options.

**23-4E-4100 Semi-Opaque Buffer**

Min. planting per 100 linear feet	Aggregate Caliper
Evergreen Shade Trees	12"
Evergreen Ornamental Trees	14"
Shrubs per 100 linear feet	Quantity
Evergreen Shrubs	33

**Recommended New Language:** Measure trees only by type (“at time of planting minimum 10’ tall”) OR species (“will reach 20’ height within 5 years”) and quantity of tree, not aggregate caliper. Do not allow evergreen species only.

**Reasoning:** See previous comment.

**23-4E-4110 Opaque Buffer**

Min. planting per 100 linear feet	Aggregate Caliper
Evergreen Shade Trees	18"
Evergreen Ornamental Trees	20"
Shrubs per 100 linear feet	Quantity
Evergreen Shrubs <sup>1</sup>	55

**Recommended New Language:** Measure trees only by type (“at time of planting minimum 10’ tall”) OR species (“will reach 20’ height within 5 years”) and quantity of tree, not aggregate caliper. Do not allow evergreen species only.

**Reasoning:** See previous comment.

### **23-4E-4120 Functional Green**

#### **Applicability**

Functional Green applicability is currently under discussion. At a minimum, Functional Green will apply in Zones with zero building setback. Functional Green will not apply in the Barton Springs Zone, Water Supply Rural watersheds, or Water Supply Suburban watersheds. It will not apply to a site with a surface parking lot.

**Comment:** Because the Functional Green section has the potential to impact development substantially, it must be provided for review in Draft 3 or omitted from CodeNext and published through a separate process.

### **23-4E-4130 Visual Screening**

**Comment:** This section does not include instructions for screening.

### **23-4E-4140 Submittal Requirements (5)**

(5) Identify all existing vegetation, soils, landscape features and rock materials;

**Delete Language:** Strike “all”. This is unreasonable to expect.

### **23-4E-4140 Submittal Requirements (10)**

(10) Include planting notes, details, and specifications;

**Delete Language:** Remove “specifications”. It is unnecessary if plans are required to be sealed.

### **23-4E-4170 Planting & Soil Standards**

**Comment:** Landscape architects need a section on gravels.

## Chapter 23-5 Subdivision

### 23-5C-1020 Easements and Alleys

Easements for public utilities and drainage ways shall be retained in all subdivisions in the widths and locations determined necessary by the Director. All easements shall be dedicated to public use for the named purpose and shall be aligned to minimize construction and future maintenance costs.

**Recommended New Language:** ...All easements as defined by the criteria manual shall be dedicated to public use for the named purpose and shall be aligned to minimize construction and future maintenance costs.

**Reasoning:** Clarifies where easements shall be defined.

### 23-5C-1040 Hazardous Pipelines

**Recommended New Language:** Reinsert definitions for hazardous pipeline and restricted pipeline area as found in current code Section 24-4-134.

### 23-5C-2020 Lot Size

**Recommended New Language:** Add "Standard" in section title

**Reasoning:** Clarifies that this is the requirement for a "Standard Lot Size"

### 23-5C-2020 Lot Size

#### (B)(1)

(B) In the extraterritorial jurisdiction, residential lot requirements are as follows:

- (1) In a subdivision served by a public wastewater system or central wastewater disposal unit, a residential lot must be at least:
  - (a) 5,750 square feet; or
  - (b) 6,900 square feet for a corner lot; or

**Recommended New Language:** RECA supports lowering the minimum lot size.

**Reasoning:** The current lot size minimum is a barrier to using a site to its full potential. In addition, much of Austin was platted using smaller lots, which makes developing them with this requirement much more difficult.

## 23-5C-3070 Subdivisions Without Access to Water and Wastewater Services

- (B) If a subdivision is not to be served by a water utility, the subdivider shall provide the Director with evidence that water suitable for human consumption may be obtained from surface or subsurface sources on the land. The evidence may include the results of tests and borings, and statements from local and state health authorities, water engineers, and other competent authorities. If the subdivider proposes a private water supply for the subdivision, the plans and specification shall be prepared by a registered professional engineer and approved by the Director and the Texas Natural Resource Conservation Commission.
- (C) If a subdivision is not to be served by a sanitary sewer utility and the use of private on-site sewage facilities has not been approved by the local health authority, the subdivider shall construct a community sewage collection and treatment system that serves each lot. The system shall be designed and located in accordance with the regulations of the Texas Natural Resource Conservation Commission and the local health authority. Approval by the Director of the plans for the system is required.

**Recommended New Language:** Replace "Texas Natural Resource Conservation Commission" with "Texas Commission on Environmental Quality".

**Reasoning:** The Texas Natural Resource Conservation Commission was made inactive during the 77th Legislative session and it became the Texas Commission on Environmental Quality (TCEQ).

## Chapter 23-6 Site Plan

**Table 23-6A-2010 (A) Site Plan Exemptions**

Table 23-6A-2010 (A) Site Plan Exemptions	
Allowed Site Plan Exemptions	Standards for Grant of Exemption
Construction and change less than 1,000 square feet and the limits of construction is less than 3,000 square feet, if no previous exemption has been granted	<p>Provided the following conditions apply:</p> <p>(1) Construction is not for a new drive-in service or additional lanes for an existing drive-in service, unless the Development Services Director determines that it will have an insignificant effect on traffic circulation and surrounding land uses;</p> <p>(2) Construction does not result in the removal of a tree regulated under Article 23-3C (Tree and Natural Area Protection); and</p> <p>(3) Construction is not located in the 100-year floodplain, unless the Watershed Director determines that it would have an insignificant effect on the waterway.</p>

**Recommended New Language:** Construction and change less than 1,000 square feet and the limits of construction less than 3,000 square feet. ~~if no previous exemption has been granted.~~

**Reasoning:** Current code allows exceptions to this heading for items like the enclosure of an existing staircase or porch, a sidewalk constructed on existing impervious cover, and more. These sections should be carried forward into the new code. Reference: 25-5-2 Site Plan Exemptions (D)(1)(a-i)

Table 23-6A-2010 (A) Site Plan Exemptions	
Allowed Site Plan Exemptions	Standards for Grant of Exemption
Restoration of a damaged building	Provided:  (1) The damage is caused by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind; and  (2) Restoration commences within one year of the date of the

**Recommended New Language:** Restoration of a damaged building Provided: (1) The damage is caused by fire, explosion, flood, tornado, riot, act of the public enemy, a natural weather event, or accident of any kind; and

**Reasoning:** This amendment allows flexibility for situations where the damage may be caused by a weather event not currently listed.

Table 23-6A-2010 (A) Site Plan Exemptions	
Allowed Site Plan Exemptions	Standards for Grant of Exemption
Construction or alteration of a single-family residential structure, duplex residential structure, or an accessory structure	Provided the following conditions apply:  (1) Not more than two residential structures are constructed on a legal lot or tract; and  (2) A proposed improvement is not located in the 100-year flood plain, or the Director determines that the proposed improvement will have an insignificant effect on the waterway.

**Recommended New Language:** Construction or alteration of a single family residential structure, duplex residential structure, or an accessory structure (1) Structure quantity does not exceed the quantity allowed in the applicable zoning category; and"

**Reasoning:** Requiring a site plan for the construction of more than two residential structures is far too restrictive and discourages missing middle housing.

## 23-6B-1010 Application Requirements

(D) An application for Site Plan review has the following two parts:

- (1) A Planning Element that includes information necessary to ensure that the Site Plan application complies with goals and policies of the Comprehensive Plan and that the proposed use and general site layout complies with this Title and the applicable development standards for the Zone.

**Recommended New Language:** Add (D)(1)(a)[NEW] For a site plan required due to a use change triggering a conditional use site plan that otherwise meets the criteria under 23-6A-2; Exemptions for Site Plan Review, compliance with requirements of a development or construction site does not apply.

**Reasoning:** This allows the exemption of a site plan being triggered solely by a CUP when the site otherwise would meet certain criteria.

## 23-6B-1030 Review and Appeals

(B)

- (B) An applicant may file an update to a Site Plan not later than one year after the date the application is filed.

**Recommended New Language:** An applicant may file an update to a Site Plan not later than one year after the date the application is filed, unless a phasing plan is previously approved by the City in accordance with 23-6B-1040: Phasing Authorization.

**Reasoning:** Clarifies that an update to a Site Plan is permitted if an applicant has a previously approved phasing plan.

## 23-6B-1050 Advanced Site Preparation Plan

(B)

- (B) Prior to applying for Advanced Site Preparation Plan authorization, an applicant must receive Advanced Site Preparation Plan certification from the Development Services Director. The Development Services Director will adopt rules for a Advanced Site Preparation Plan certification that include standards for certification, the amount and type of training required, and rules for the suspension and revocation of certification, including the provision of graduated sanctions.

**Recommended New Language:** Prior to applying for Advanced Site Preparation Plan authorization, an applicant must receive Advanced Site Preparation Plan certification from the Development Services Director. The Development Services Director will adopt rules, in



accordance with the administrative rules process, for an advanced Site Plan Preparation certification that...

**Reasoning:** Clarifies that the administrative rules must abide by the administrative rules process.

**23-6B-1050 Advanced Site Preparation Plan  
(C)(8)**

(8) If required, other government entities have approved the Advanced Site Preparation Plan authorization; and

**Recommended New Language:** If required signatures have been obtained by the applicant from other government entities approving the Advanced Site Preparation Plan authorization; and

**Reasoning:** Clarification

**23-6B-2020 Residential Heavy Site Plan  
(A)**

(A) The Development Services Director may waive Site Plan submittal requirements for residential applications of three to nine units located within an Urban Watershed, that meet the following:

- (1) Dwelling units must be contained within a maximum of two buildings on a single lot, or up to six building on a cottage court lot.

**Recommended New Language:** The Development Services Director may waive Site Plan submittal requirements for a residential application of three to nine units located within a Residential Zoning District.

**Reasoning:** Removing the limitation on only being able to waive the requirement in an urban watershed and when the units are contained in two buildings on a single lot. This amendment will encourage more missing middle type housing and create a more predictable environment for development.

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

*No recommendations or comments at this time. Will require additional review and information in CodeNext Draft 3.0*

## Chapter 23-8 Signage

*No recommendations or comments at this time. Will require additional review and information in CodeNext Draft 3.0*

## Chapter 23-9 Transportation

### **23-9A-1010 Intent (A) and (A)(2)**

- (A) The Vision of the Transportation Chapter is to provide guidance for transportation that helps the City of Austin:
- (1) Grow as a compact, connected city;
  - (2) Use green infrastructure to protect environmentally sensitive areas and integrate nature into the city;
  - (3) Provide paths to prosperity for all;
  - (4) Develop as an affordable and healthy community;
  - (5) Sustainably manage water resources, and other environmental resources and
  - (6) Think creatively and work together.

**Recommended New Language:** The Vision of Imagine Austin is to achieve the following core principles:

(2) integrate nature into the city;

### **23-9B-1010 Applicability (3)**

Except as provided in Subsection (B), this article applies to land for which an owner files an application for:

- (1) Zoning or rezoning;
- (2) Preliminary plan or final plat approval;
- (3) Site plan approval;
- (4) A revision of an approved site plan.

**Recommended New Language:** (3) Site plan approval; or

**Reasoning:** Clarification

## 23-9B-1040 Proportionality of Required Infrastructure

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### 23-9B-1040 Proportionality of Required Infrastructure

- (A) If the City requires an applicant to dedicate right-of-way, construct or fund system transportation improvements, or dedicate right-of-way beyond the boundaries of a development, the applicant's costs may not exceed the amount required for infrastructure improvements that is roughly proportionate to the proposed development as determined by a professional engineer licensed under Chapter 1001, Occupations Code, and retained by the City.
- (B) The applicable Director shall issue a written determination of an applicant's roughly proportionate share of infrastructure costs attributable to a proposed development prior to approval of an application for which dedication or reservation of right-of-way or the construction or funding of system transportation improvements is required. A determination issued under this section:
  - (1) Need not be made to a mathematical certainty, but is intended to be used as a tool to fairly assess the roughly proportionate impacts of a development based on the level of transportation demand created by a proposed development relative to the capacity of existing public infrastructure;
  - (2) Shall be completed in accordance with generally recognized and approved measurements, assumptions, procedures, formulas, and development principles; and Lake Austin below an elevation of 504.9 feet above mean sea level;
  - (3) Shall state the roughly proportionate share to the property owner for the dedication and construction of transportation-related improvements necessary to ensure an effective and safe transportation system that is sufficient to accommodate the traffic generated by a proposed development.

**Recommended New Language:** [NEW] (B) The director shall issue a written preliminary determination of an applicant's rough proportionality elements and estimated value at the time of Traffic Impact Analysis (TIA) scoping. [Re-number B to C]

**Recommended New Language:** (C) The applicable Director shall issue a final written determination of an applicant's rough proportionate share of infrastructure costs...

**Recommended New Language:** (C)(2)-[Amendment] Shall be completed in accordance with generally recognized and approved measurements, assumptions, and procedures.

### 23-9B-1050 Dedication and Reservation of Right of Way (B)

- (B) Any right-of-way dedications or reservations, other than dedications or reservations internal to the development shall not exceed the roughly proportionate share of the proposed development.

**Recommended New Language:** Any right-of-way dedication, including dedications or reservations internal to the development shall not exceed the rough proportionate share of the proposed development.

### **23-9B-1050 Dedication and Reservation of Right of Way (C)**

(C) The applicable Director may defer the dedication of right-of-way required at one stage of the development process to a later stage. A person must comply with all dedication requirements before the release of the subsequent application.

**Recommended New Language:** The applicant may defer the dedication of right-of way required...

### **23-9C-1010 Mitigation of Transportation Impacts (B)**

(B) If a proposed development does not require transportation analysis under Section 23-9C-2020 (Transportation Impact Analysis Required) or Section 23-9C-2040 (Neighborhood Transportation Analysis Required), the applicable Director may condition approval of the application on construction or funding system improvements as described in this section.

**Recommended New Language:** If a proposed development does not require transportation analysis under Section 23-9C-2020 (Transportation Impact Analysis Required) or Section 23-9C-2040 (Neighborhood Transportation Analysis Required), the applicable Director may condition approval of the application on ~~construction or~~ funding system improvements or construction of some or all proposed improvements at applicant's discretion, not to exceed the value of the project street impact fee, as describe in this section.

**Reasoning: Clarification and addition of Street Impact Fees**

## 23-9C-1010 Mitigation of Transportation Impacts

- (C) If a proposed development requires a transportation impact analysis under Section 23-9C-2020 (Transportation Impact Analysis Required) or a neighborhood transportation analysis under Section 23-9C-2040 (Neighborhood Transportation Analysis Required), the applicable Director may require an applicant to construct or fund system improvements identified by the analysis.
- (1) If a system improvement is identified in the Transportation Impact Analysis or Neighborhood Transportation Analysis on the bordering street of the proposed development site, or within one-quarter mile of the proposed development site, or within three-fourths of a mile to provide access between the proposed development and a school, transit stop, public space, or major roadway as determined in the transportation plan, the applicable Director shall require an applicant to construct the system improvement.
  - (2) If a system improvement is identified in the Transportation Impact Analysis or Neighborhood Transportation Impact Analysis is outside the area defined under Subsection 23-9C-1010 (C)(1), the applicable Director may require an applicant to fund the system improvement.
- (D) The total cost of system improvements required under this section may not exceed the applicant's roughly proportionate share of infrastructure costs as established by the proportionality determination required under Section 23-9B-1040 (Proportionality of Required Infrastructure), less the cost of any right-of-way dedication or reservation required under Section 23-9B-1050 (Dedication and Reservation of Right-of-Way).

**Recommended New Language:** (C) If a proposed development requires a transportation impact analysis under Section 23-9C-2020 (Transportation Impact Analysis Required) or a neighborhood transportation analysis under Section 23-9C-2040 (Neighborhood Transportation Analysis Required), the applicable Director may require an applicant to construct or fund system improvements identified by the analysis, not to exceed the value of the project street impact fee.

**Delete Language:** (C)(1) Strike “or within one-quarter mile of the proposed development site, or within three-fourths of a mile to provide access between the proposed development and a school, transit stop, public space, or major roadway as determined in the transportation plan,”

**Recommended New Language:** (D) The total cost of system improvements required under this section may not exceed the applicant's roughly proportionate share of infrastructure costs as established by the proportionality determination required under Section 23-9B-1040 (Proportionality of Required Infrastructure), less the costs of any right of way dedication or reservation required under Section 23-9B-1050 (dedication and Reservation of Right of way). street impact fee.

### **23-9C-1020 Fee in Lieu of System Mitigation**

**Recommended New Language:** [NEW] (A) Prior to adoption of a street impact fee ordinance this section applies. [renumber remaining section]

### **23-9C-1020 Fee in Lieu of System Mitigation (B)**

(B) A fee in-lieu collected under Subsection (A) of this section shall be placed in a dedicated fund and used for the purpose of constructing one or more system improvements identified in a transportation impact analysis under Section 23-9C-2020 (Transportation Impact Analysis Required) or in a neighborhood transportation analysis under Section 23-9C-2040 (Neighborhood Transportation Analysis Required) or in City's Transportation Plan(s).

**Recommended New Language:** A fee in-lieu collected under Subsection (A) of this section shall be placed in a dedicated fund and used for the purpose of constructing one or more system improvements discussed within the scope of a transportation impact analysis...

### **23-9C-1030 Transportation Mitigation for Affordable Housing Projects (A)**

(A) This section reduces traffic mitigation required for certain projects participating in the City's Affordable Housing Incentive Program established under Code Division 23-3E-1 (Affordable Housing Incentive Program). Affordable Housing Incentive Program was previously known as S.M.A.R.T. Housing Program.

**Recommended New Language:** This section reduces traffic mitigation required for affordable housing projects as defined by section 23-4.

### **23-9C-1030 Transportation Mitigation for Affordable Housing Projects (B)**

(B) If a development under Affordable Housing Incentive Program does not require an analysis under Section 23-9C-2020 (Traffic Impact Analysis Required) or Section 23-9C-2040 (Neighborhood Traffic Impact Analysis Required) or Section 23-9C-2060 (Active Mode Analysis Required), the maximum cost of system improvements that may be required under 23-9C-1010 (Mitigation of Transportation Impacts) is reduced according to the following requirements:

- (1) If at least ten percent, but less than twenty percent, of the dwelling units are reasonably-priced, the maximum cost is reduced by the percentage of affordable units;
- (2) If at least twenty percent, but less than fifty percent, of the dwelling units are reasonably-priced, the maximum cost is reduced by fifty percent; and
- (3) If at least fifty percent of the dwelling units are reasonably-priced, no mitigation may be required.

**Recommended New Language:** If a development under Affordable Housing Incentive Program an affordable development does not require an analysis...

**Delete Language:** Under(B) (1)-(3), strike “reasonably priced” because it is too vague and undefined.

### **23-9C-1030 Transportation Mitigation for Affordable Housing Projects (C)**

(C) If a development under Affordable Housing Incentive Program requires an analysis under Code Division 23-9C-2 (Transportation Impact Analysis), the maximum cost of system improvements that may be required under Section 23-9C-1010 (Mitigation of Transportation Impacts) may be reduced according to Section 23-3E-1060 (Additional Developer Incentives).

**Recommended New Language:** If an affordable housing development under Affordable Housing Incentive Program...

## Chapter 23-10 Infrastructure

### **23-10A-1060 Location and Use of Water and Wastewater Infrastructure**

Water and wastewater easements, public utility easements, and utility corridors that have been dedicated prior to the donation or dedication of land encumbered by those easements shall not be subject to public hearings with regard to Chapter 26 of the Parks and Wildlife Code. If the use of such easements and corridors vary from the terms and conditions of the easement or corridor, then a public hearing with regard to Chapter 26 of the Parks and Wildlife Code shall be required.

The location and protection of water and wastewater infrastructure shall be given consideration when determining the placement of trees; however, there shall be no less than five feet of separation between trees and the outer diameter of water and wastewater infrastructure unless approved by the Watershed Director. Additional mitigation efforts for the protection of water and wastewater infrastructure may be required in cases where there is no other reasonable alternative.

The location of water and wastewater infrastructure shall be given consideration when determining the placement of that infrastructure in the City’s right-of-way. Water and wastewater infrastructure may be placed under the pavement if there is no reasonable alternative.

**Delete Language:** Remove this entire section.

**Reasoning:** This section presents an impediment to multi-modal transportation.

### **23-10A-2030 Review and Approval Process**

(D)

(D) An approved service extension request is not a reservation of capacity in the system but an acknowledgment of the intent to serve.

**Recommended New Language:** An approved service extension request is a reservation of capacity in the system and an acknowledgement of the intent to serve.

**Reasoning:** Service extension requests are based on Living Unit Equivalents (LUEs) and should be considered a reservation of capacity.

**23-10A-3040 Approval Process for Cost Participation  
(D)**

(D) The Water and Wastewater Commission shall make a recommendation on the request for cost participation.

**Recommended New Language [Insert NEW (D) and renumber]:** If the Water Utility denies an application for cost participation due to funding per section 23-10A-3040 (B), an applicant shall only be required to construct a utility line up to the required pipe size to serve the property or the minimum diameter as prescribed by the utility criteria manual, but shall not be required to provide line size increases to serve adjacent properties.

**Reasoning:** In many cases the City may deny cost participation due to lack of funding and will still require the developer to build out the new infrastructure or increase the pipe size to serve adjacent properties at the applicant’s cost. By limiting it only to servicing the proposed property and proposed development on that site it will limit potential abuse of overreach by AWU.

**23-10A-4030 Application for Tap Permit; Fees; Capacity  
(C)(1)**

(C) An application for a tap permit must be accompanied by the payment of:

- (1) The tap permit fee, connection fee, and capital recovery fee set by the Council under separate ordinance; and
- (2) Other fees required to be paid at the time the Watershed Director issues the permit.

**Recommended New Language:** Remove “capital recovery fee” so that (1) reads-The tap permit fee and the connection fee set by the Council under separate ordinance; and

**Reasoning:** The capital recovery fee should be collected at the time a meter is purchased, not at the time of application.



### **23-10A-4080 Refund of Tap Permit Fee**

#### **(B)**

- (B) To obtain a refund of a tap permit fee, a permit holder, before the expiration date of the permit, must:
- (1) Submit an application for the refund to the Watershed Director stating the grounds for the refund;
  - (2) Tender the tap permit at the time the refund application is submitted;
  - (3) Submit documentation of the amount of the tap permit fee and the payment of the fee;
  - (4) Submit other information the Watershed Director considers necessary to process the application; and
  - (5) Tender a canceled building permit if a building permit was issued.

**Delete Language:** Strike “before the expiration date of the permit”

**Reasoning:** Would allow for an applicant to request a refund at any time.

### **23-10C-1030 Accounts**

#### **(C)**

- (C) Funds may be disbursed as reasonably necessary to carry out the purposes of this Article; provided that a fee shall be expended within a reasonable period of time, not to exceed 10 years, from the date the fee is deposited into the account.

**Recommended New Language:** Funds may be disbursed as reasonably necessary to carry out the purposes of this Article; provided that a fee shall be expended within a reasonable period of time, not to exceed 10 years, from the date the fee is deposited into the account. In the event that a fee is not expended within 10 years of a deposit, it may be reimbursed to the payee.

**Reasoning:** This clarifies that a fee not used in 10 years may be refunded to the original payee. This should encourage the city to be diligent about expending the funds and performing the capital improvements.

### **23-10C-2050 Collection of Fee**

#### **(A)(1)**

- (A) Except as provided by [Section 23-10C-2060 \(Installment Payment Of Impact Fee\)](#), or by a contract with a wholesale customer or with another political subdivision, the impact fee due for new development shall be collected:

- (1) At the time the City approves a site plan or building plan review; or

**Recommended New Language:** Remove “site plan” so (1) reads-At the time the City approves a building permit; or

**Reasoning:** This ensures that the impact fee being paid is directly related to the unit that is performing the impact.

### **23-10E-1030 Obstruction of Waterways and Drainage Easements Prohibited**

Unless authorized by a development application approved in compliance with Title 23, a person may not place, or cause to be placed, an obstruction in a waterway or drainage easement.

**Recommended New Language:** Unless authorized by a development application approved in compliance with Title 23, a person may not place, or cause to be placed, an obstruction in a waterway or drainage easement used for overland conveyance if the obstruction would cause impact to the conveyance of the waterway or drainage easement.

**Reasoning:** Clarifies that an easement may be obstructed, provided that the obstruction does not cause impact to the conveyance.

### **23-10E-1040 Duty to Maintain Unobstructed Waterways and Drainage Easements**

The person in control of real property traversed by a waterway or drainage easement shall keep the waterway or drainage easement free from an obstruction that is not authorized by a development application approved in compliance with Title 23. The City may access the drainage easement to perform necessary maintenance, but is not obligated to maintain the drainage easement.

**Recommended New Language:** A waterway or other drainage infrastructure located within a City drainage easement of any type shall be maintained by the City of Austin. The person in control of real property traversed by a waterway or drainage easement is prohibited from obstructing the waterway or drainage easement in accordance with 23-10E-1030 and shall be responsible for alerting appropriate City officials of any obstructions within the waterway or drainage easement promptly upon discovery. Removal of naturally occurring obstructions within the waterway or drainage easement is the responsibility of the City of Austin. Removal of unauthorized, manmade obstructions within the waterway is the responsibility of the party responsible for placing the obstructions.

**Reasoning:** This clarification eliminates the instances where a property owner would be required to remove the obstruction in a City owned easement as a result of an obstruction (tree or tree branch, etc) ending up there due to conveyance.

**23-10E-5020 Dedication of Easements and Rights-of-Way  
(B) And (C)**

- (B) An easement or right-of-way required by Subsection (A) must be of sufficient width to provide continuous access for the operation, maintenance, or repair of a drainage facility, as prescribed in the Drainage Criteria Manual.
- (C) The applicant shall dedicate any additional easement or right-of-way that is necessary to allow continuous access for the operation, maintenance, or rehabilitation of a drainage facility.

**Recommended New Language:** Delete (B) and renumber. Add: (B)[NEW] The applicant shall allow access through the project site as necessary to allow City operation, maintenance, or rehabilitation of a drainage facility; such access shall be described in the easement terms for the facility, but shall not be required to be dedicated as an easement.

**Reasoning:** Former (B) is unnecessary with the clarifications in new (C).



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