CodeNEXT Process and Culture
Position Paper
April 10, 2017

1. Objective

CodeNEXT is a once in a generation, comprehensive opportunity to address the existing code administration process within the City of Austin that is complex, lacks transparency, and is unnecessarily convoluted when compared to peer cities. The lack of a clearly navigable process and regulatory predictability is not beneficial for overworked city staff, applicants or interested community members. Furthermore, a broken administrative process has a direct effect on increasing the housing and development costs in the city - costs that are passed on to citizens and businesses buying or renting.

The Process and Culture subcommittee's objective is to review, analyze and report its findings on the CodeNEXT draft code. This paper focuses on the existing administrative process and culture, how some of those issues are addressed in the first CodeNEXT draft, and some ways to address the most pressing outstanding concerns.

2. Identification of the Problem

Austin has a long history of various levels of distrust between city staff, developers/builders and some community members. Deep seated wariness and cultural issues cannot be mended quickly or through a systematic recrafting of a regulatory document, however; these codified processes and structural systems can be the first step toward a functional system and should be addressed as part of CodeNEXT. The Zucker Report and CodeNEXT Code Diagnosis Report both highlight fundamental structural and cultural issues,

A. Zucker Report

The Zucker Report identified systemic problems in the 'culture' of the land development process, especially in customer service, staff ability to make judgment calls, and lack of strong project management and leadership in project review teams.

The Zucker Report, the colloquial name for the "Planning and Development Review Department Workflow Organizational Assessment," completed in 2015 by Zucker Systems, was initiated by the Austin City Manager to conduct an operations analysis of the Planning and Development Review Department (PDRD) "...in an effort to increase process efficiency, customer satisfaction, and delivery of accurate and timely services." [1] An oft cited quote in the media during the report's release was that the Zucker team found that Austin's customer survey had the "...most negative scores we have seen in our studies of 170 communities in 31 states."[2] The report exposed what many applicants and staff

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[1] Planning and Development Review Department Workflow Organizational Assessment, p. 1
[2] Planning and Development Review Department Workflow Organizational Assessment, p. 2

already knew: the development process in Austin is not just dealing with one complex bureaucracy but many separate complex bureaucracies that interact with each other at less than efficient levels.

The report brought to light not only the depth but also the duration of issues embedded in the PDRD (now called the 'Development Services Department'). The persistence of the toxic culture at PDRD in the 2015 report was also mentioned in a previous 1987 review – stating "…the so called 'Austin Way' contains an unhealthy dose of suspicion…the tendency to create new commission along with each new ordnance, unwillingness to delegate more decisions to staff and staff's feelings that if they make a mistake, they may be crucified. In the long run every detail cannot be documented. This kind of a system will break down and sink of its own weight."[3]

An admonition is given in the report that "Austin must decide if it is really serious this time. If so, some dramatic actions as outlined in this report will be necessary."[4] Since the report's release in 2015 there have been some steps taken to address workflow and backlog of cases in the PDRD; however, dramatic steps have yet to be taken and CodeNEXT should be the vehicle for embedded structural changes. Some of the recommendations from the Zucker report that are poignant for this paper's topic include:

- "Management and Communication" recommendation that the "PDRD culture should be changed to one focused on the customer and problem solving;"[5]
- "Performance Standards" recommendation that "…the first review should be comprehensive and new items should not be added in subsequent reviews;"[6]
- "Staffing" recommendation to "Increase staff judgement and approval of minor modifications in the field;"[7]
- "Project Mangers/Process" recommendation to implement a real Project Manager Program because "When there are numerous functions and departments involved in the development process it often leads to long timelines, lack of coordination between functions, and lack of clarity regarding requirements and conditions. The applicant is often left to fend for themselves and weave their way through the system."[8] Furthermore, the recommendation is given that "A Development Review Committee should be created for complex Zoning Projects."[9]

Individually these findings, requiring drastic recommendations, are significant and they add up during the life of a zoning, site planning, or platting case to substantial time and cost spent on the part of the City and the applicant. Cumulatively, over time and across all the development projects in the city they add countless hours of unproductive and expensive staff and consultant time that ends up costing homeowners, business owners and taxpayers' money.

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[3] Planning and Development Review Department Workflow Organizational Assessment, p. 3
[4] Planning and Development Review Department Workflow Organizational Assessment, p. 4
[5] Planning and Development Review Department Workflow Organizational Assessment, p. 6
[6] Planning and Development Review Department Workflow Organizational Assessment, p. 10
[7] Planning and Development Review Department Workflow Organizational Assessment, p. 11
[8] Planning and Development Review Department Workflow Organizational Assessment, p. 12
[9] Planning and Development Review Department Workflow Organizational Assessment, p. 12

B. CodeNEXT - Land Development Code Diagnosis

The Land Development Code (LDC) Diagnosis indicated that the following topics should be addressed during the code rewrite:

- *Remove protracted review and uncertainty due to staffing*
- *Remove inconsistency between departments and their interpretation of code*
- *Reduce complexity in the code*
- *Allow staff to engage in 'creative problem solving' to handle code and processing inconsistencies*

Early in the CodeNEXT process, May 2014, the consultant team released a "Land Development Code Diagnosis" that outlined myriad issues in the existing Land Development Code (LDC) that needed to be addressed in the code rewrite. Section 5.1 "Code Changes Adversely Affected Department Organization" and section 5.2 "Incomplete and Complicated Administration and Procedures" are particularly relevant to this paper's topic and reiterate many of the issues brought to light in the Zucker Report.

The Code Diagnosis points out that the protracted review process and complexity is inherent to the way the code is set up. "Customers at Austin's Development Assistance Center seek development permits rather than protracted review processes. However, the LDC's multilayered system simply lacks a "by-right" discipline and Austin's frequent, customized code amendments often contribute to and compound administrative complexity."[10] Additionally, the code leads to a complex organizational structure. The Code Diagnosis "…revealed a strong desire for staff to operate less as 'specialists' in a few things and more as skilled 'generalists' who function in a flatter, less compartmentalized organization so that reviews can be completed by fewer people. Because the decision process has been broken into many parts, applicants must navigate and reconcile differences between different "silos" (within and outside of PDRD) resulting in longer permit reviews and inconsistent interpretations where the customer experience, according to several interviewees, "…depends on who you get."[11]

The Code Diagnosis tasks the new code with improving the organizational structure within the PDRD and by extension "…how all city departments interact in the permitting process. Currently, all city departments are autonomous; there is no priority to the regulations they enforce. Consequently, there is no easy way to resolve conflicting requirements between departments, and no encouragement of creative problem-solving." [12] This "creative problem-solving" need not be outside the bounds of what is allowed in the code but the acknowledgement can be made that not every permutation of development can be anticipated and a certain flexibility buffer needs to be allocated to staff.

As evidenced in the Zucker Report and Code Diagnosis stakeholder comments some of the primary complaints by applicants is inconsistent and conflicting review. The Code Diagnosis explicitly says that "As the city begins to experience more urban and infill development in implementing the goals of

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[10] Land Development Code Diagnosis, p. 80
[11] Land Development Code Diagnosis, p. 81
[12] Land Development Code Diagnosis, p. 81

Imagine Austin, especially the goal to be compact and connected, a diligent effort should be made to coordinate review and requirements between city departments and agencies to ensure consistent application of LDC standards and intent."[13]

In addition to the department organization leading to poor application reviews the complicated administration and procedures also lead to inconsistent and lengthy reviews. For a code to be effective "...the review process must be transparent and efficient. To achieve this, the entitlement process should be easy to navigate, application requirements should be clear, permit cycle times should be consistent, and the process should be streamlined to the extent possible."[14] Not only should the process be clear but if the regulations themselves are overly complex it "...adds time and cost to construction projects affecting the affordability of the community. In addition, consultants and attorneys must often be hired to help an applicant navigate the system."[15] These are sunk costs that do not lead to a better outcome for any party involved as the process can be confusing and inefficient for city staff as well as the applicant, and unpredictable outcomes are not desirable for implementing the planning and vision crafted by the community.

3. First CodeNEXT Draft Evaluation

The first Draft of CodeNEXT, released January 2017, takes some modest steps towards addressing the issues highlighted by both the Zucker Report and Code Diagnosis. However, the bold steps to address some of the more fundamental issues are missing. The following section of this paper proposes further recommendations, but it is prudent to acknowledge and reinforce the small steps taken in the right direction.

The Code Diagnosis did lay out several key administrative items that needed to be added or clarified as part of the new Code[16] and in fact several of these look to have been included:

- How to use the FDC diagram and Development Process (23-4A-4 and 23-4D-2030)
- Purpose and applicability statements throughout the code (multiple sections)
- Identifying legal authority for the code (23-1A-2)
- Table for more clearly identifying responsible entities for portions of the code (23-1B-3020)
- Table for showing the procedures and bodies responsible for understanding and interpreting the LDC (23-2A-1030)

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[13] Land Development Code Diagnosis, p. 82
[14] Land Development Code Diagnosis, p. 84
[15] Land Development Code Diagnosis, p. 84
[16] Land Development Code Diagnosis, pp. 85-86

4.   Recommendations

To address the fundamental issues laid bare by the Zucker Report and the Code Diagnosis the next CodeNEXT draft needs to take a more proactive approach to simplifying the code process and administration. Additionally, a proactive approach by LDCD management can continue the push for a more efficient and outcome oriented culture.

A.   Project Manager System

Development Services should assign a Project Manager, with decision making authority to lead a multi-departmental design review team, for a project from beginning to end, including pre-design meetings. The cities of Cedar Park and Georgetown are examples of jurisdictions where pre-design meetings, and coherent review teams, encourage a more collaborative and open discussion between developer design teams and review staff.

Based on the previously discussed reports, the single most impactful action that could be taken to improve the process would be the assignment to cases of a real Project Manager who can make decisions and be the single point of contact and can review and reconcile conflicting comments. Current review procedures are based on "standard practice" rather than "codified procedures". Initial city contact and comment is provided by the Development Assistance Center with subsequent review by DSD which creates disconnects and leads to inconsistent interpretations and multiple rounds of review. It is this group's recommendation that a single review team be assigned from the very beginning of a project, prior to submittal of a formal application. Additionally, a real pre-application, inter-disciplinary conference lead by the actual reviewers can help to make the overall process more efficient. Finally, review should result in a single consolidated/reconciled set of comments to the applicant to simplify the process for the applicant and city staff.

B.   Expand Administrative Approval

Grant staff the authority to make more decisions on variances and waivers, instead of requiring Board/Commission approval. The current 'Commercial Design Standards' (LDC 25-2 Subchapter E) review process includes an 'Alternate Equivalent Compliance' process which grants staff flexibility on entertaining and approving creative solutions; this could be applied to the review and approval of environmental regulations. Similarly, a 'point system' for environmental compliance issues would provide more flexibility and site-appropriate environmental protections, instead of the 'one size fits all' code. The iSWM process from the North Central Texas Council of Governments is a good example of this.

A good LDC should make it clear and easy to 'do the right thing' – to meet the purpose, intent and requirements in the code. Not every development case is without wrinkles and requires staff and the applicant latitude to work collaboratively. The Zucker report reinforced that staff often is constrained by the system and they are not empowered and are afraid to act. A Project Manager for cases will help but the code also needs to establish a threshold under which staff has the authority to make decisions.

Most code requirements for environmental protections are 'set' standards, with limited ability of review staff to make professional judgments on non-standard design. The new code specifically requires all water quality exceptions to go before city council (Division 23-2F-3). Similarly, Division 23-2F-1 requires variances go to the Board of Adjustment or Planning Commission for most variances to the 'standard' code requirements. Furthermore, city staff will not schedule the hearings until the project is essentially done with review. These procedures create immense difficulty in the design and permitting process.

Primarily, most sites have unique characteristics which make it difficult or impossible to follow the standard code. Often, a better solution is apparent to both the designers and city staff, but staff is hamstrung by their inability to make judgments calls, and must refer the applicant to a review board.

A system should be set up to defer more authority to staff on minor modifications where what may be a very minor variance case could be handled on an administrative level vs going to Board of Adjustment level. For example, allow a lower threshold of parking variance to be administrative or be met through alternative compliance through a shared parking agreement, etc. and only more stringent cases go before the BOA. A threshold percentage can be established whereby these cases can be administrative with the intent to streamline noncontroversial cases and improve affordability by creating a more efficient process that empowers the staff to act creativity and collaboratively.

There is existing precedence in the current Subchapter E, 'Alternate Equivalent Compliance' procedures that allow the applicant and staff a great deal of flexibility in applying the code requirements. A similar process to this should be explored for the entire code. For example, a 'points' system, has been used in peer cities. Such a system would grant points for various aspects of water quality, tree preservation, and similar aspects of design. This type of system acknowledges that not every constraint can be anticipated and will foster a creative and collaborative process leading to staff ensuring the implementation of the highest standards rather than a "one size fits all" approach. This process can also help to insulate even minor variations succumbing to a politically-motivated and non-professional decision making environment at the boards and commissions.

C. Implement Management Strategy to Address Cultural Issues

Address land development 'culture' issues as outlined in the Zucker Report.

The above code recommendations will help to partially address the issues included in the Zucker Report but the underlying culture is also a factor. (Certainly the toxic culture is also perpetuated by jaded applicants.) The following table from the Zucker Report, which cannot be incorporated in the CodeNEXT text, should nonetheless be implemented alongside the restructuring that should be the outcome of CodeNEXT.

Table 3 PDRD Culture[17]

Existing Culture	Suggested New Culture
Interpret Codes with no deviation	Recognized that real projects may need creative interpretations. Use whatever discretion the Code suggests or allows
Nit-pick submissions. Cross every "t" and dot ever "i".	Recognize that nit picking seldom builds a better Austin, so stop doing it
Do a first review that is incomplete just to meet the timeline performance goal	Conduct a comprehensive first review. If this impacts the performance standard, work with managers to obtain more staff or whatever is needed to meet the performance standards along with complete first review.
Answer phone calls and emails whenever	Return all phone calls and emails before going home at night.
Add new conditions or requirements each review	Do a comprehensive review the first time and only add new items if project changes.

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[17] Planning and Development Review Department Workflow Organizational Assessment, p. 48