

Chapter 23-6: Site Plans

General comments:

Austin's LDC needs an outline or diagram showing the steps that one must follow to get a building permit, and it should be based on the premise that all construction requires a building permit. The diagram would sort projects into changes to existing structures (site plan usually not required) and new construction on existing sites (site plan usually required). It would also make clear the connection between the approved site plan, the site development permit, demolition permits, the construction plans, the building permits, changes made to plans before and after a building permit is issued, and the certificate of occupancy.

In current practice, Austin's development review is weighted toward site plan exemptions and waivers. If CodeNext is going to deliver on its promise to implement the Comprehensive Plan, this chapter (Site Plan) must codify the opposite perspective: Construction in an urbanized area with inadequate infrastructure and increasing density requires more review and more oversight, not less.

Specific comments:

The definition of "site plan" in 23-2M-1030 is inadequate. "Site Plan" should be defined here in 23-6, in the context of gathering all the elements required for a review of a redevelopment project, to resolve the confusion surrounding the plans that must be submitted even though a site plan exemption or waiver has been granted.

The definition of "conditional use" in 23-2M-1030 cross-references the "conditional use process established in Chapter 23-6." There is no mention of any conditional use process in 23-6. The old Code regarding "Land Use Commission Approved Site Plans" (25-5 Article 3) is entirely missing from Chapter 23-6.

23-6A-1: Purpose and Applicability

There is no comparable "Purpose" language in LDC 25-5.

As noted in my general comment above, neither this nor LDC 25-5 explain the basics, as in "All construction requires a building permit, all building permits require a site development permit, and all site development permits require some level of site plan review." Compare 23-6A-1010: Purpose (B) "Review of a Site Plan for new development" with 23-6A-1020: Applicability "A Site Development Permit must be approved and released . . . before a Building Permit is issued under Division 23-7B-3." This seems to be saying that new development requires a site development permit but not necessarily a site plan.

Is there anything that says a site plan must be submitted for review before a site development permit is approved?

How is a site development permit different from a building permit?

Does "new" mean that it doesn't apply to remodeling?

Are "new" and "remodel" defined anywhere? They're not in 23-2M-1030.

23-6A-1010: Purpose (B) lists 6 noble goals to be achieved by Site Plan review, beginning with "the orderly development of the City" as laid out in the Comprehensive Plan. The list may represent an improvement if it codifies a connection between the Comprehensive Plan and the approval of individual building permits. For instance, if approvals of Site Development Permits (including site plan exemptions) are required to be based on some measure of compatibility with the Comprehensive Plan (noble goal 1) and a determination of the "proper

placement, extension, and sizing of infrastructure” (noble goal 5), the City would have a much better shot at ensuring “orderly development.” As written in the proposed code, however, the application and review requirements are left entirely to administrative decisions of the “responsible director” (see 23-6B-1010(B) and Article 23-2B), and there do not appear to be any specific standards for measuring the application of the 6 noble goals.

It may be worthwhile to try to reword the 6 noble goals listed in 23-6A-1010(B), to make them less vague and more amenable to measurement. For instance, noble goal 2 is “Protects the environmental characteristics of the site.” It could list specific environmental goals, such as improved air and water quality, increased tree canopy, improved watershed and creek health, energy and water conservation, and so on. Otherwise, it could be interpreted as protection of the existing characteristics, which are likely to be 100% impervious cover, failed detention ponds, dead trees, hazardous waste associated with leaking underground storage tanks, and crumbling asbestos.

23-6A-2: Exemptions

Under 23-6A-2010, sloppy use of “shall” leaves the extent of the Director’s discretion unclear: “Director shall determine whether a development is exempt from Site Plan review . . . under Section 23-2G-1020 (Nonconforming Status)” should be “Director shall determine that”? Development Services Director determines the exemption, but who determines the nonconforming status?

Compare old code with 23-2G-1020. Change in language from “noncomplying” to “nonconforming.” In old Code, 25-5-2D(2), “The construction may not increase the extent to which the development is noncomplying.” The distinction between uses vs structures and noncomplying vs nonconforming seems to be gone. “Nonconforming” is the only term defined in 23-2M-1030. No substantive difference?

Table 23-6A-2010.A, list of site plan exemptions.

General comments on site plan exemptions:

In an area that is already developed and approaching the limits of its infrastructure capacity (like the South Lamar Corridor), any construction that might increase density in any way should be subject to more review, not less.

In a built-out urban area and watershed with excessive impervious cover (like the South Lamar Corridor), no construction area is insignificant.

Specific comments:

Exemptions for “**Change of Use**, unless Adult Entertainment.” New use must comply with the off-street parking and the travel demand management (TDM) requirements. I can’t find anything that says the new use must be a permitted use in the zoning district.

In old code 25-5-2G, exemption is not allowed for bed & breakfast residential use established after Oct. 1, 1994.

Typo: “Clearing and area max. 15 feet wide for surveying and testing.” “and” should be “an”?

“**Surveying and testing**” exemption: Old code prohibited removal of trees >8 inches in diameter. New code language is “protected under Article 23-3C.” In 23-3C, “Regulated” trees are divided into at least 4 categories, beginning at 2 inches diameter, with all of them “protected”

to some degree. Trees >8 inches in diameter are called “Keystone” and >19 inches are called “Protected.” The 8-inch standard needs to be added back to this site plan exemption language.

Commercial portable building, Docks, and Fence are all the same as old Code, except that “shoreline access” does not appear in (2) for Docks. I think it turns up elsewhere.

Interior alteration of an existing building is the same as old Code. (Exemption is allowed if it doesn’t “increase the floor area, lot coverage, or height of the building.”)

Limited Construction less than 1,000 sf: wording has changed. New wording: “Limited Construction less than 1,000 square feet and the area of construction is less than 3,000 square feet, if no previous exemption has been granted.”

In the old Code, “area of construction” was called “limits of construction,” a term that had a specific definition. I haven’t found a comparable definition for “area of construction” in the proposed Code. “Building area” is defined in 23-2M-1030, but I don’t think it’s the same as “limits of construction.”

The old Code does not include the phrase “if no previous exemption has been granted.” It may have been added to the proposed Code to prevent a large project from being approved piecemeal under multiple site plan exemptions, which has been a problem on South Lamar.

In some areas, the definition of “Limited Construction” requires no change to the building footprint, height, or impervious cover. That should be added to the standards for a site plan exemption in this table.

Under the standards for a “Limited Construction” exemption, condition (1), the wording on drive-in service is the same in the old and proposed codes. Exemptions aren’t allowed for drive-in services unless the director “determines that it will have an insignificant effect on traffic circulation and surrounding land uses.” There is no definition of “insignificant effect” and so the director always decides in favor of additional drive-in service (e.g., 1901 S. Lamar and the Eberly). On an urban corridor like South Lamar, the effect of increased drive-in service will always be significant. Add that to the requirement for compatibility with the Comprehensive Plan, and the new Code must eliminate site plan exemptions for drive-in services.

“Limited Construction” condition (2), the old Code prohibited removal of trees >8 inches in diameter. New code language is “protected under Article 23-3C,” same as the exemption for “surveying and testing” discussed above. The 8-inch standard needs to be added back to this site plan exemption language.

“Limited Construction” condition (3), 100-year floodplain language is the same as the old Code, so both allow an exemption if the director “determines that it will have an insignificant effect” on the waterway. Arguments against these exemptions are similar to the drive-in service arguments. The Code has to eliminate these site plan exemptions if it’s going to ensure compatibility with the Comprehensive Plan.

What’s missing? There is no list comparable to the “exceptions” in 25-5-2D(1), spelling out the dimensions of projects that could receive site plan exemptions and limiting the Director’s discretion. Some of you will remember this issue from the Kava Bar dispute, when George Adams said the Code was just a “suggestion.” Given that abuses of site plan exemptions have been an enormous problem for the last 10 years, the new Code should clarify and tighten their limits, not invite more abuse.

For “**Relocation or Demolition** of a Structure or Foundation,” the exemption conditions appear to be even more vague and confusing than the old Code.

(1) They are limited to “10,000 square feet of site area in compliance with a Demolition Permit,” but there is no cross-reference to the requirements for a demolition permit.

(2) Same problem with tree removal described above. The 8-inch standard needs to be added back to this site plan exemption language.

(3) “The site is not cleared.” !?! There’s no definition of “cleared.” This is supposed to apply to demolition of foundations; how can 10,000 sf of foundation be demolished without “clearing” the site?

“**Restoration of a Damaged Building**” is comparable to 25-5-2(6). The wording is different, but I don’t think the substance has changed. The new language is “(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 damage.” Condition (1) does not appear in 25-5-2(6) but I’m pretty sure it’s from some other part of the Code. Condition (2) has changed from “12 months” to “one year.” There is still no mention of demolition by neglect, which has long been a problem with the use of this exemption. [“Demolition by neglect” is mentioned elsewhere in the Code, but only in connection with historic structures.]

“**Single-family residential**” exemptions:

My general comment on commercial exemptions applies to these residential exemptions, too. In a built-out urban area and watershed with excessive impervious cover, localized flooding, no sidewalks, narrow streets, and other issues with inadequate infrastructure, no construction area is insignificant. Site plan exemptions in areas of increasing density will impair efforts to improve compatibility with the Comprehensive Plan.

Seems obvious that site plans in transects will be even more difficult to get right than McMansions. In core neighborhoods, most remodels will involve noncomplying structures, increasing the difficulty of reviewing site plans.

In the old Code, duplexes were specifically exempt; in the new language, duplexes have been deleted from the list of exempt structures.

Old Code requirement was not more than one principal residential structure on a legal lot. The new language is “(1) Not more than two residential structures” on a legal lot. Note that 23-6B-2020 Residential Heavy Site Plan allows the Director to “waive Site Plan submittal requirements for residential applications of three to nine units in a Transect Zone in an Urban Watershed.” I have not found a similar waiver or exemption in the old Code, and our experience in Zilker has been that full site plans are required for SF5&6 townhouse and condo developments.

The definitions of various types of lots have been reorganized in 23-2M-1030 (as in “lot, substandard” and “lot, flag”), but I’m not seeing any definition of “legal lot.”

Like “Limited Construction” condition (3), a residential project within the 100-year floodplain is exempt if the director “determines that it will have an insignificant effect” on the waterway. Arguments against these exemptions are similar to the drive-in service arguments. The Code has to eliminate these site plan exemptions if it’s going to ensure compatibility with the Comprehensive Plan.

“**Subdivision Infrastructure**” exemption wording is the same in the old and proposed codes, but the question remains, how do we know that the construction plans comply with the new code and are compatible with the Comprehensive Plan, if there is no site plan review?

Old Code language for “**Tree removal**” exemption was “removal of a tree not protected by this title.” New language requires tree removal to be “in compliance with Article 23-3C.” See earlier comments on vague language of 23-3C. Our experience has been that site plans are not currently required for tree removal. The new language does not appear to change anything. The question remains, how do we know that it complies with the Code if there is no site plan review? And shouldn’t we be keeping track of our urban tree cover (Zilker had 45% cover, last time we checked) and require more review, not less? Tree preservation is one of the measures that could be spelled out in the list of 6 noble goals.

Catch-all exemption based on Director’s discretion is the same as 25-5-2E. New language is “Minor site development or construction that the Development Services Director determines are similar to the other exemptions described in this Section.” There’s no definition of “minor” or of “similar,” and there is even less guidance here than there is in the old Code. (See Kava Bar appeal.)

Exemptions in the old Code not found in this section of proposed Code:

“(8) Development in the extraterritorial jurisdiction that is exempt from all water quality requirements of this title.”

(10) townhouse in Mueller PUD or Lamar/Justin TOD.

25-5-2H (telecommunications towers) and I (community garden). Telecommunication tower regulations are supposed to be in Section 23-4E-6340. Notification requirements are in 23-6B-1020, and they are the same as the old Code.

23-6B-1: Application Review and Approval

23-6B-1010(A) and (B) Application Requirements are a mishmash of old Code 25-5 Article 2 Administrative Site Plans and Organization and Article 3 Land Use Commission Approved Site Plans. It is not clear whether Commission-approved site plans even exist in the new code.

23-6B-1010(A) says the application requirements are “specified in the most current Department publication for the review of Site Plan applications.” This appears to give the Director unlimited discretion in determining what must be included in an application, the same as the old Code, so why is the new language so vague? There is no definition of “most current” or of “publication.” Does it mean the application form available to the public at the time of adoption of the new Code? Or the form available online at the time of the applicant’s first contact with the Department? Or is the Director free to change the requirements at any time and consider them published? Can the Director change the application requirements in midstream, after the application has been submitted but before a decision is made? See my first “general comment” on page 1.

23-6B-1010(B) cross-references Article 23-2B Application Requirements. Doesn’t seem to be different from old Code, but see my first “general comment” on page 1.

23-6B-1010(C), about site plan assessments, and (D), about planning and construction “elements,” appear to be new. I can’t tell whether they represent changes from the old Code or simply describe current policies.

23-6B-1020(A) cross-references Section 23-2C-5010 Notice of Application and 23-6A-2 Exemptions. These seem to be the same as the old Code. Notice is not required for site plan exemptions in the old Code, right? It appears that “replacement” site plans no longer exist (see old Code 25-5-64, site plans approved before Jan. 1, 1988).

23-6B-1020(B) cross-references Section 23-6B-2010 Small Projects and Section 23-6B-2020 Residential Heavy Site Plans. “No notice” for small projects is the same as the old Code, but Residential Heavy Site Plans appear to be an entirely new creature, allowing waivers of site plans for developments with 3-9 units where full site plans with notice are currently required.

23-6B-1030 Review and Appeals

Old Code 25-5-112 states simply that the director “shall approve a proposed site plan if” it complies. I can’t find a comparable passage in the new language, but 23-6B-1030(A) says the director “shall review and approve or reject the applicant’s filing of an update . . . or deny the Site Plan if the time period . . . has expired.”

The deadline for filing an update is still one year, but 23-6B-1030(B) does not include any language about extensions.

The language about the deadline for a decision in 23-6B-1030(C) is the same as the old Code, except that “within one business day” has been deleted from the requirement to send “written notification of the determination to each interested party.”

The language in 23-6B-1030(D) allowing the applicant to appeal the decision is the same as the old Code, except that “Land Use Commission” has been changed to “Board of Adjustment.”

23-6B-1040 Phasing Authorization

This is much the same as 25-5-21, but the old Code seems clearer.

Typo: 23-6B-1040(A), last line, “application of review” should be “application for review”

Old Code, 25-5-22B, says each phase of a deferred plan must comply with an administrative site plan. That language is missing from 23-6B-1040.

In the old Code, the phasing requires review by the Land Use Commission if the final phase begins more than 3 years after the application. In 23-6B-1040(C), it’s 4 years.

There are minor wording changes in 23-6B-1040(D):

“shall approve” is changed to “will approve”

“each phase must be a discrete and substantial part” is changed to “each phase is a discrete and substantial part”

“phase independently complies” is changed to “phase independently and cumulatively complies”; “applicable Codes” is changed to “applicable Technical Codes”

Missing:

25-5-21C(3), TIA implementation.

25-5-21D, Land Use Commission establishes dates and determines whether the project complies and whether there is a reasonable need for the phasing.

25-5-21E, interested party may appeal.

23-6B-1050 Advanced Site Preparation Plan (was “Fast Track” in old Code?)

Language is the same as 25-5-24A, B, and C, but 25-5-24D and E, which allow someone whose certification has been revoked to appeal to the Land Use Commission, are missing.