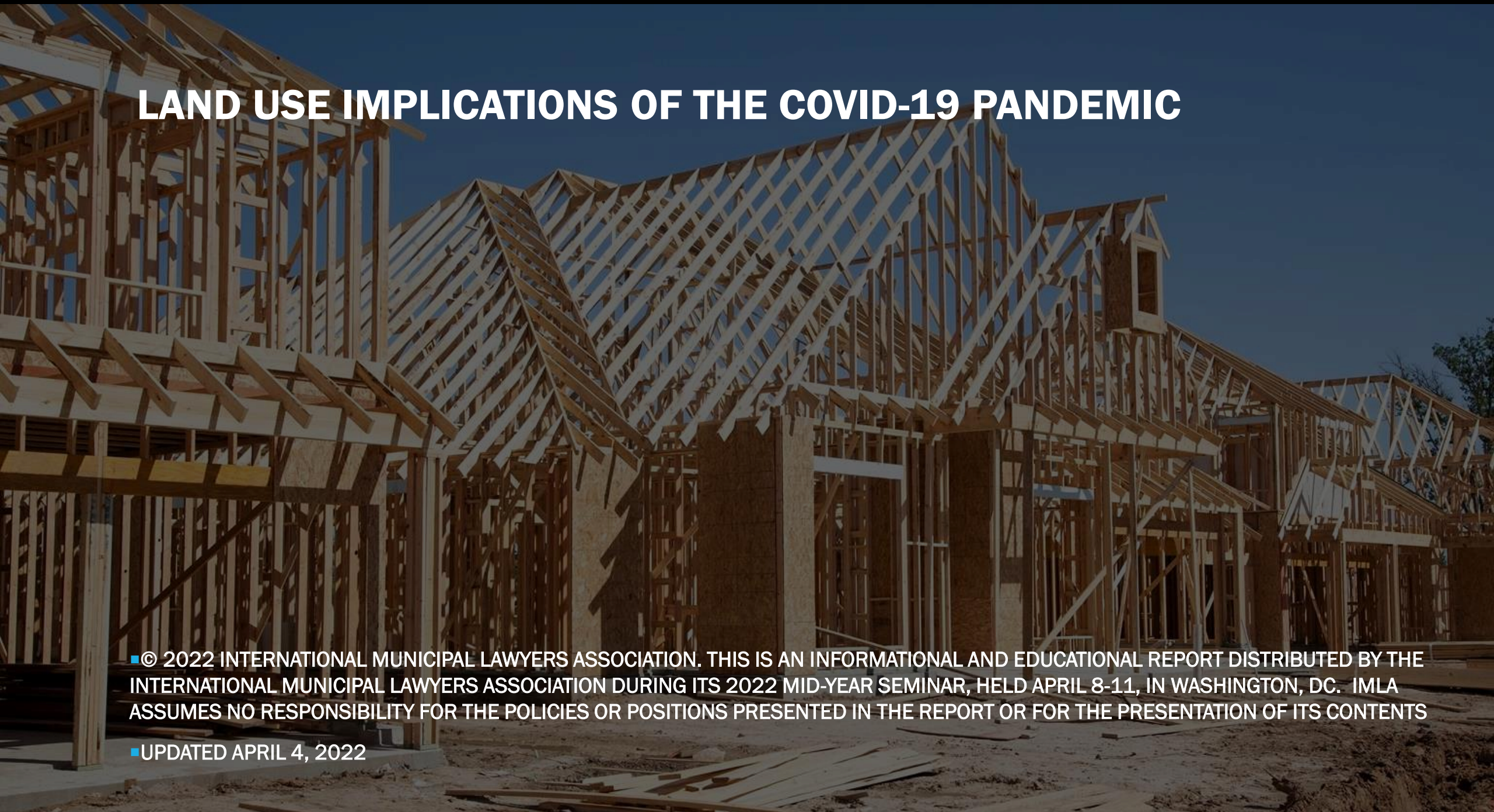
LAND USE IMPLICATIONS OF THE COVID-19 PANDEMIC



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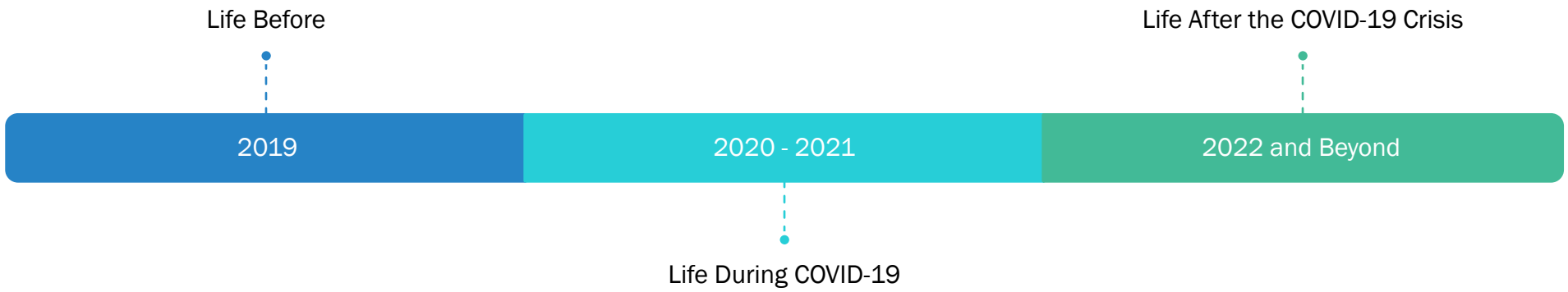
UPDATED APRIL 4, 2022

BEFORE, DURING, AND AFTER THE PANDEMIC



OUTLINE

- Pandemic-Era Regulations
- Pandemic-Era Government Decision-Making
- Pandemic-Era Development and Migration Trends

PANDEMIC-ERA REGULATIONS

USE OF OUTDOOR SPACES FOR BUSINESS

AUSTIN, TEXAS

USE OF OUTDOOR SPACES FOR BUSINESS

Pre-pandemic

- Sidewalk Cafes
  - Austin City Code Chapters 14-11
  - Texas Transportation Code Chapter 316
- Temporary Uses
  - Austin City Code Chapter 25-2
  - Austin City Code Chapter 25-12

AUSTIN, TEXAS

USE OF OUTDOOR SPACES FOR BUSINESS

During the pandemic

2022 and Beyond

- COVID-19 Orders
  - Economic challenges
  - Occupancy limitations
- Shop the Block Pilot Program
  - Austin City Code Chapter 4-21
  - Austin City Code Chapter 14-11

CHARLOTTE, NC

USE OF OUTDOOR SPACES FOR BUSINESS

Pre-pandemic

- NC Session Law 2013-266 (H 192)
  - permits local governments to enact sidewalk dining ordinances affecting sidewalks located within the right-of-way of North Carolina Department of Transportation (NCDOT) streets and highways.
- City of Charlotte Placemaking Program
  - Mission of using urban design and placemaking to transform underutilized public spaces into vibrant places for the community

CHARLOTTE, NC

USE OF OUTDOOR SPACES FOR BUSINESS

During the pandemic



- In May 2020, the City of Charlotte issued Temporary Outdoor Dining Guidelines during Phase 2 of North Carolina's Re-Opening Approach which allowed restaurants to operate at 50% occupancy.
- The guidelines allowed for restaurants to utilize parking spaces and extra sidewalk/street space for temporary outdoor dining conversion

USE OF OUTDOOR SPACES FOR BUSINESS

2022 and Beyond

PARKLETS AND STREETERIES

Small public spaces serving as an extension of the sidewalk over an adjacent on-street parking space or any other use of the street for green space, recreation, or dining



NYC: The Full Shilling, Pearl Street.
Photos by Nancy Groce



ATL: Prevail Union | Home Park *(Image: Upper Westside CID)*

CITIES WITH TEMPORARY OUTSIDE DINING PROGRAMS

- Atlanta – extended through Dec 2022
- Chicago – extended through Dec 2022
- Dallas – extended through July 2022
- Los Angeles – extended through June 2022
- New York City – extended through Dec 2022
- Philadelphia -- permanent
- San Francisco – permanent
- Seattle – extended through Jan 2023

STREET DINING CONCERNS



PANDEMIC-ERA REGULATIONS

RENTER PROTECTIONS AND ASSISTANCE

CHARLOTTE, NC

RENTER PROTECTIONS

During the pandemic

- On March 13, 2020, North Carolina Supreme Court Chief Justice Cheri Beasley ordered that local courts postpone all nonemergency court proceedings, including evictions, for 30 days
- The Court also ordered that eviction orders entered prior to March 15 did not need to be enforced until April 17, 2020.
- On April 13, 2020, Chief Justice Beasley extended the date for postponing all non-emergency court proceedings, including evictions, until June 1, 2020 and ordered that any pre-COVID-19 eviction orders need not be enforced until June 1, 2020.
- The postponement of all eviction proceedings was not limited to those based on non-payment of rent.

FEDERAL COVID-RELATED RENTER PROTECTIONS AND ASSISTANCE



- The Coronavirus Aid, Relief, and Economic Security (CARES) Act of March 2020 provided protections for most tenants in federally subsidized or federally backed housing, including limits on evictions and fees for unpaid rent expired in July 2020.
- The CDC then enacted a more comprehensive eviction ban in September 2020 that was extended five times before the US Supreme Court ruled it unconstitutional on August 26, 2021.
- The CDC moratorium did not supersede more protective state and local government eviction protections

CHARLOTTE, NC

RENTER ASSISTANCE

During the pandemic

- The City of Charlotte partnered with Mecklenburg County and DreamKey Partners to provide emergency relief to those impacted by COVID-19 through the Rental and Mortgage Assistance Program (RAMP CTL).
- Charlotte utilized CARES funding to expand the RAMP Program to continue funding qualified mortgage and rental payments.
- The NC Housing Opportunities and Prevention of Evictions (HOPE) Program served low-income renters (earning less than or equal to 80% of the area median income) in 88 North Carolina counties to provide rent and utility bill assistance to renters who have been financially impacted by the pandemic.

AUSTIN, TEXAS

RENTER PROTECTIONS

During the pandemic

- Judicial COVID-19 Orders:
  - Texas Supreme Court required certain actions/language before an eviction could proceed.
  - Justice of the Peace Courts managed dockets to address City and County orders and legislative actions.
- Local Government COVID-19 Orders: Prohibited the issuance of notices to vacate.
- Ordinance Nos. 20200326-090; 20200507-006.
  - Required Notices of Proposed Eviction due to non-payment of rent because of COVID-19.
    - Gives a tenant the opportunity to respond and cure delinquent rent.
    - 60 days between notice of proposed eviction and notice to vacate.
  - Texas Property Code Section 24.005 requires the applicable timeframe in a notice of proposed eviction to lapse before a notice to vacate could be issued.

AUSTIN, TEXAS

RENTAL ASSISTANCE

During the pandemic

- City, County, and State Rental Assistance programs were incorporated into judicial COVID-19 orders.

- City of Austin's Relief of Emergency Needs for Tenants (RENT) Assistance Program
  - Used funds from the federal government.
  - Evolved based on federal requirements.
    - Reduced barriers to participation.
    - One variation: Eligible renters are those financially impacted by the pandemic who need to pay rent as far back as April 2020 until December 2021.
    - In March 2021, tenants and landlords could apply.

AUSTIN, TEXAS

RENTER PROTECTIONS AND ASSISTANCE

2022 and beyond

- Draft City Code provisions that will address tenant rights related to organizing. (See City Council Resolution No. 20220203-039.)
- Draft City Code provisions that create a notice of proposed eviction. (See City Council Resolution No. 20220203-040.)
- Provide funding to legal providers to assist tenants related to eviction.

PANDEMIC-ERA GOVERNMENT DECISION-MAKING

HOTELS/MOTELS AS A HOUSING STRATEGY

HOTELS AND MOTELS AS A HOUSING STRATEGY

Pre-pandemic

- Many families rely on motels as the housing of last resort to avoid homelessness, especially in cities where there is a shortage of affordable housing.
- The pandemic forced more families into this situation as people lost their jobs and could no longer afford traditional housing.

AUSTIN, TX

HOTELS AND MOTELS AS A HOUSING STRATEGY

During the pandemic

- Isolation Facilities = For individuals who are a person under monitoring, person under investigation, or are COVID-19 Positive *AND* cannot safely self isolate.

- Protective Lodges = Temporary shelter options for individuals:
  - experiencing homelessness who are at high risk of severe complications if diagnosed with COVID-19;
  - who may have been exposed, but exposure has not been confirmed; and
  - experiencing homelessness who have recovered and are being discharged from ISOFAC

AUSTIN, TX

HOTELS AND MOTELS AS A HOUSING STRATEGY

During the pandemic

- Hotel/motel owners were unwilling to rent single rooms or blocks of rooms but some were willing to rent the entire hotel/motel.
- Texas Hotel and Lodging Association recommended a standard "Emergency Temporary Occupancy Agreement" (ETOA).

ISSUES	
Taxes	Use
Indemnity	FEMA Reimbursement
Maintenance	Restoration
Hazardous materials	Timing
Release	Staff
Insurance – City and Owner	

AUSTIN, TX

HOTELS AND MOTELS AS A HOUSING STRATEGY

During the pandemic

- City and hotel negotiated a set price for occupancy.
- Hotel occupancy tax is not applicable when a hotel room is occupied for 30 or more consecutive days.
  - City would not provide a certification that the City was tax exempt because owner could make that argument to the taxing authority.
  - In one case, we negotiated a reduced rate with a tax contingency.
    - If the owner incurred any occupancy tax, the city would reimburse the owner up to the reduction amount.
    - We did not end up occupying that hotel.

AUSTIN, TX

HOTELS AND MOTELS AS A HOUSING STRATEGY

During the pandemic

- The City wanted to prevent unanticipated effects on hotel staff.
- To address this concern, the City included the following language in all agreements:

  Owner warrants that this Agreement will not impact the employment status of any hotel staff for the duration of this Agreement. Owner and/or its agents shall ensure that all hotel staff will receive the same compensation as they would otherwise have received absent any City occupancy, whether they are reassigned to another hotel or relieved of duty for the duration of the Agreement.

AUSTIN, TX

HOTELS AND MOTELS AS A HOUSING STRATEGY

During the pandemic

- Timing: Most agreements included a small down payment to secure City's ability to, at some point during an agreed upon time frame, provide 14-day notice of intent to occupy
- Maintenance:
  - City was responsible for cleaning and maintaining guestrooms.
  - Owner was responsible for cleaning and maintaining common areas, major mechanical, and structural elements.
- Restoration: City was responsible for restoring guestrooms to condition prior to city occupancy (minus normal wear and tear).
- Hotel owners were concerned about how the City would use the hotel, so agreements included "permitted use" language.

AUSTIN, TX

HOTELS AND MOTELS AS A HOUSING STRATEGY

During the pandemic

- Example Of Permitted Use Language: The City may use the Occupied Premises solely for COVID-19 related Emergency Housing and support services, and for no other purpose.

- Example Of Permitted Use Language: The City may use the Occupied Premises for COVID-19 related Emergency Housing, supportive housing and support services.

- Example Of Permitted Use Language: The City may use the Occupied Premises solely for COVID-19 related Emergency Housing and support services, and for no other purpose. The City may only use the Occupied Premises for purposes of housing City employees. City shall not use or permit the use of the Hotel for any purpose which is illegal, creates obnoxious odors (including tobacco smoke), noises or vibrations, is dangerous to persons or property, or could increase Owner's insurance costs. (Note: Executed ETOA but never occupied this hotel.)

AUSTIN, TX

HOTELS AND MOTELS AS A HOUSING STRATEGY

During the pandemic

- City made decision not to require occupants of hotel rooms to sign releases.

- All hotel owners demanded indemnity language.
  - Texas Constitution does not allow the City to indemnify.
  - Most owners got comfortable with this, but it was a deal breaker for at least one hotel.
  - Hazardous Materials: City agreed to be responsible for breaches caused by the City

AUSTIN, TX

HOTELS AND MOTELS AS A HOUSING STRATEGY

During the pandemic

- Example of Hazardous Materials Language: City agrees that it will comply with all applicable laws existing during the term of this Agreement pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law. To the extent allowed by Texas law, the City agrees that it is responsible to the exclusion of any such responsibility of the Owner for its own proportionate share of liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury and death, arising out of or connected to the City's illegal storage, transportation, or disposal of any hazardous substance as determined by a court of competent jurisdiction.

- Example of Hazard Materials Language: Where the City is found to be in breach of this provision due to the issuance of a government order directing the City to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the City or any person acting under City's direct control and authority, City shall be responsible for all costs and expenses of complying with such order. In the event a government order is issued naming the City of the City incurs any liability during or after the term of this Agreement in connection with contamination which pre-existed the City's obligations and occupancy under this Agreement or which were not caused by the City, the Owner shall hold harmless, indemnify, and defend the City in connection therewith and shall be solely responsible as between the City and the Owner for all efforts and expenses thereto.

AUSTIN, TX

HOTELS AND MOTELS AS A HOUSING STRATEGY

During the pandemic

- City risk department developed standardized insurance requirements for hotel owners and owner contractors.
- Many owners requested that third party city contractors to name hotel/owner as additional insured to insurance the City requires contractor to hold.

AUSTIN, TX

HOTELS AND MOTELS AS A HOUSING STRATEGY

During the pandemic

- Federal Reimbursement Issue: Necessity
  - FEMA reimbursement required an order from the local health authority related to the necessity of non-congregate shelter related to COVID.
  - FEMA consultants recommended a monthly updated report.
- Federal Reimbursement Issue: Contract Language
  - Federal reimbursement requires several specific contract clauses be included in all rental agreements.
  - Owners tried to negotiate language, but we told them that we had no flexibility to negotiate.
  - All owners eventually agreed.

AUSTIN, TX

HOTELS AND MOTELS AS A HOUSING STRATEGY

2022 and beyond

- Converting existing hotel/motel structures into market-rate and Affordable housing.
- Creating opportunities for income-restricted housing with supportive services.

CHARLOTTE, NC

HOTELS AND MOTELS AS A HOUSING STRATEGY

During the pandemic

- Homeless encampment formed in uptown Charlotte during the pandemic in 2020
- In Feb 2021, 214 Tent City residents were relocated to two hotels in paid for by Mecklenburg County (FEMA and COVID funding), where they received meals, laundry, and access to mental health and substance abuse resources.

CHARLOTTE, NC

HOTELS AND MOTELS AS A HOUSING STRATEGY

During the pandemic

- Since the County's contract with the hotels ended in September 2021, the residents have been dispersed as follows:
  - 37 moved into permanent homes (32 are renting units with housing vouchers, three have moved in with family or friends and two others are renting apartments at market rate)
  - 6 moved into short-term housing through the County's criminal justice transitional housing program,
  - 20 moved to other homeless shelters
  - 51 either left the hotels or were asked to leave due to unsafe activity
  - 13 others were arrested and taken to the county jail.
  - 4 have died
  - 8 are unaccounted for

PANDEMIC-ERA DEVELOPMENT AND MIGRATION TRENDS

TECHNOLOGY IMPROVEMENTS IN LAND DEVELOPMENT REGULATING AND ADMINISTRATION

SHIFTS IN DEVELOPMENT TYPES AND CHOICES

TECHNOLOGY IMPROVEMENTS IN LAND DEVELOPMENT REGULATING AND ADMINISTRATION

Changes triggered by wide-spread remote working

Electronic plan submission

Virtual public meetings

CHARLOTTE, NC

ELECTRONIC PLAN SUBMISSION

During the pandemic

Electronic Plan Review

- The CLT Development Center partnered with a new electronic document review solution that is seamlessly integrated into the Accela Citizen Access Portal. This solution introduced many new features to optimize the plan review process including:
- Simple file uploads and automated versioning at the sheet level
- Collaborative issue/condition communication for plan review comments
- Seamless user experience within Accela Citizen Access

CHARLOTTE, NC

ELECTRONIC SUBMISSIONS

During the pandemic

- Customers now receive instant feedback when uploading their documentation whether their documents and plans are accepted for review. Any issues will be communicated to the customer in real time.
- Required document notifications displayed during project upload – based on the application type selected and fields completed, the Digital Plan Room can detect which documents are required for each submittal, letting customers know that their submittal is complete and streamlining the time between customer submittal and staff review.
- Interactive access to color coded mark-ups (by discipline), issues, and conditions from within Citizen Access for reviewing disapproved comments.
- Submission of any corrections only requires revised sheets to be submitted, rather than complete plan sets.
- Residential inspections temporarily moved to a remote format—via smart phone and video chat between contractor and remote inspector

CHARLOTTE, NC

LAND DEVELOPMENT PERMIT APPLICATIONS

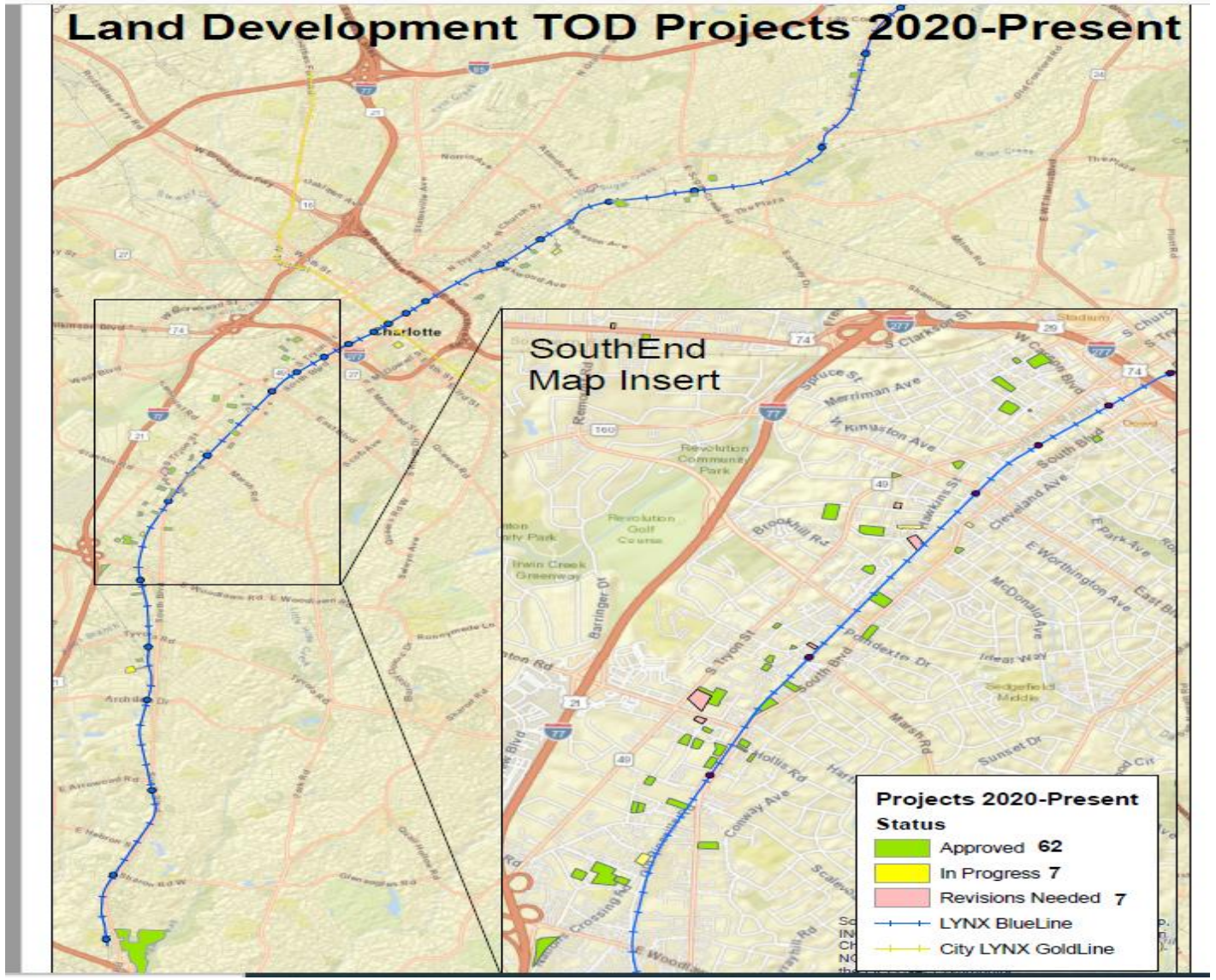
During the pandemic

	3/17/2019 to 3/16/2020	3/17/2020 to 3/16/2021	3/17/2021 to 2/18/2022
Commercial	181	208	194
Commercial Subdivision	6	9	4
Expedited Commercial	42	47	38
Final Plat Review	530	480	524
Mixed Use	5	5	6
Multi-family	32	45	64
Single Family	26	33	19
Urban Review	56	62	88
	878	889	937

CHARLOTTE, NC

TRANSIT-ORIENTED DEVELOPMENT PROJECTS – BY RIGHT

During the pandemic

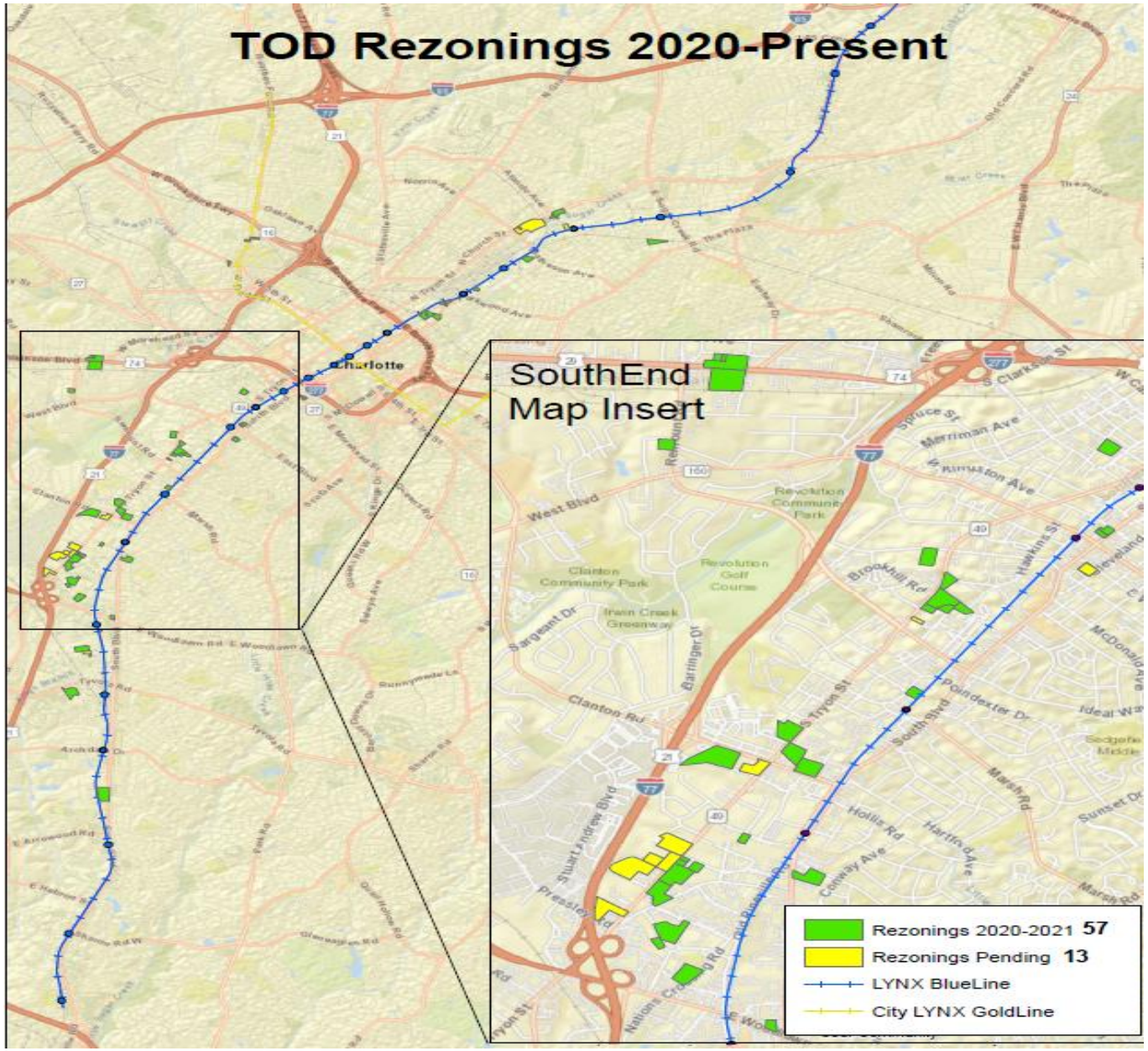


CHARLOTTE, NC

TRANSIT-ORIENTED DEVELOPMENT PROJECTS –

REZONINGS

During the pandemic



AUSTIN, TEXAS

LAND DEVELOPMENT APPLICATIONS

During the pandemic

BUILDING PLAN REVIEW INTAKE (# OF CASES)		
Fiscal Year	Commercial	Residential
FY 2019	3,472	10,873
FY 2020	2,792	10,191
FY 2021	2,730	12,116
FY 2022 (YTD FEB)	1,044	4,647

CHARLOTTE, NC

VIRTUAL PUBLIC MEETINGS

During the pandemic

- March 26, 2020, the NC Attorney General's Office issued an Advisory Opinion that because electronic meetings were allowed per N.C.G.S. §143.318.13, and the requirements of notice, access and minutes could be met through electronic means, local governments could carry out their necessary meetings electronically in compliance with Open Meetings Laws.
- April 7, 2020, Charlotte City Council held it's first virtual meetings via WebEx.
- May 4, 2020, NC General Assembly passed An Act to Provide Aid to North Carolinians in Response to the Coronavirus Disease 2019 (COVID-19) Crisis

CHARLOTTE, NC

VIRTUAL PUBLIC MEETINGS

During the pandemic

Section 166A-19.24 Remote Meetings During Certain Declarations of Emergency

- Meeting is Remote when ONE member of the public body is participating by simultaneous communication
- Roll Call Vote
- All chats, instant messages, texts, or other written communications between members of the public body regarding the transaction of the public business during the remote meeting are deemed public record
- Must be simultaneously streamed live online or if by conference call with public body provided ability to dial in or stream audio live

CHARLOTTE, NC

CHALLENGE TO REMOTE MEETINGS

During the pandemic

Mozeley v. City of Charlotte

- Plaintiff alleged Open Meetings Laws violations, Illegal Spot Zoning, Arbitrary and Capricious, violation of constitutional right to due process, violation of statutory due process requirements.
- Trial Court granted City and Property Owner's motions to dismiss and for judgment on pleadings.
- Court of Appeals to hear case this month.

CHARLOTTE, NC

VIRTUAL QUASI-JUDICIAL HEARINGS

During the pandemic

§ 166A-19.24(f) Quasi-Judicial Hearings

A public body may conduct a quasi-judicial proceeding as a remote meeting only when all of the following apply:

(1) The right of an individual to a hearing and decision occur during the emergency.

(2) All persons subject to the quasi-judicial proceeding who have standing to participate in the quasi-judicial hearing have been given notice of the quasi-judicial hearing and consent to the remote meeting.

(3) All due process rights of the parties affected are protected.

CHARLOTTE, NC

ELECTRONIC SUBMISSIONS AND VIRTUAL PUBLIC MEETINGS

2022 and Beyond

PROS:

- Increased Citizen Engagement due to Accessibility
- Convenience/Efficiency
- Cost Savings
- Environmentally friendly

CONS:

- Decreased Citizen Engagement due to Inaccessibility
- Personal Interaction Can be Challenging
- Tech Fails!

"You're on mute" "I'm getting really bad feedback" "Your screen froze"

"Can everyone mute themselves please" "I've been having connection issues all day"

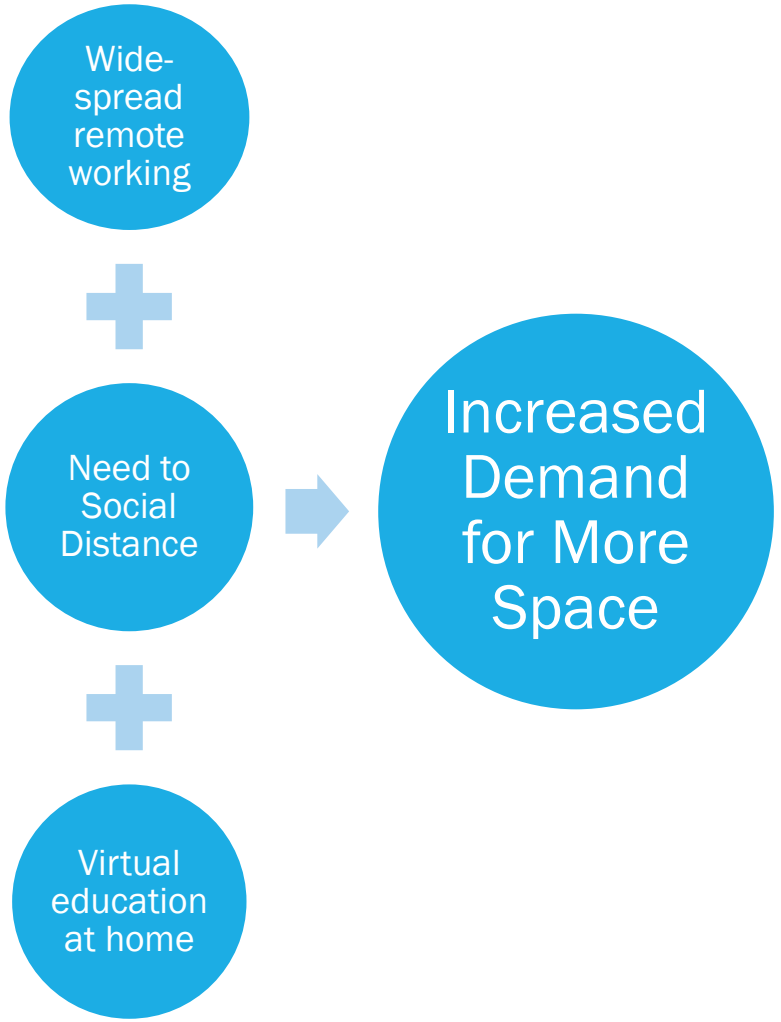
LAND USE GOALS

Pre-pandemic

- Accommodate Population
- Affordable Housing Growth/Density
- Increase Walkability/Cohesive Neighborhoods
- Tree Preservation/Green Space
- Transit Oriented Development

IMPACT OF PANDEMIC ON HOUSING CHOICES

During the pandemic



MIGRATION TRENDS

During the pandemic

- Middle and Higher Income Residents Moved Away from Urban Areas to Suburbs
- Young Millenials and Older Americans Choosing Suburbs
- Uncertainty as to the Permanence of this Trend
- Impacts for Urban Areas:
  - More Socioeconomic and Racial Segregation
  - Loss of Tax Revenue

LESSONS LEARNED

WHAT CAN CITIES DO TO PREPARE FOR FUTURE PANDEMICS?

- Housing-related Investments
  - Rental Assistance
  - Protective/Isolation Facilities.
- Public Infrastructure Investment
  - Open Space/Parks
  - Establish low-traffic areas on streets for activities other than driving. (Example: Austin City Council Resolution No. 20200507-062.)
- Building Code Revisions
  - More smart or healthy building requirements (automated and touchless)
  - HVAC technology to monitor air quality
- Update Comprehensive Plans and Regulations

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