

### THIRD READING SUMMARY SHEET

ZONING CASE NUMBER: C14-2021-0061 Fair Market Rezoning

DISTRICT: 3

REQUEST: Approve third reading of an ordinance amending City Code Title 25 by rezoning property locally known as 1100, 1108, & 1110 East 5th Street and 502 & 504 Waller Street (Waller Creek Watershed). Applicant's Request: To rezone from transit oriented development-neighborhood plan (TOD-NP) combining district zoning to transit oriented development-neighborhood plan (TOD-NP) combining district zoning, to change a condition of zoning. First reading approved transit oriented development-neighborhood plan (TOD-NP) combining district zoning, to change a condition of zoning on August 26, 2021. Vote: 9-0. Second reading approved transit oriented development-neighborhood plan (TOD-NP) combining district zoning, to change a condition of zoning on September 30, 2021. Vote: 10-0. Owner/Applicant: Montwalk Holdings, Ltd. (R. Cullen Powell). Agent: Armbrust & Brown, PLLC (Richard Suttle). City Staff: Heather Chaffin, 512-974-2122.

DEPARTMENT COMMENTS: No comments at this time.

OWNER/APPLICANT: Montwalk Holdings, Ltd. (R. Cullen Powell)

AGENT: Armbrust & Brown, PLLC (Richard Suttle)

DATE OF FIRST READING: First reading approved on August 26, 2021.

DATE OF SECOND READING: Second reading approved on September 30, 2021.

CITY COUNCIL HEARING DATES/ACTION:

November 4, 2021:

September 30, 2021: To grant TOD-NP zoning to change a condition of zoning on second reading only. (10-0) [L. Pool- 1<sup>st</sup>, V. Fuentes- 2<sup>nd</sup>; S. Adler- off the dais.

August 26, 2021: To grant TOD-NP zoning to change a condition of zoning on first reading only. (9-0) [S. Renteria- 1<sup>st</sup>, G. Casar- 2<sup>nd</sup>; N. Harper-Madison, M. Kelly- off the dais.

July 29, 2021: To grant postponement to August 26, 2021 as requested by Neighborhood, on consent.

ORDINANCE NUMBER:

ASSIGNED STAFF: Heather Chaffin

e-mail: [heather.chaffin@austintexas.gov](mailto:heather.chaffin@austintexas.gov)

## ZONING CHANGE REVIEW SHEET

CASE: C14-2021-0061  
Fair Market Rezoning

DISTRICT: 3

ZONING FROM: TOD-NP

TO: TOD-NP, to change a condition of zoning

ADDRESS: 1100, 1108, 1110 East 5<sup>th</sup> Street; 502, 504 Waller Street

SITE AREA: 0.872 acres

PROPERTY OWNER:  
Montwalk Holdings, Ltd.  
(R. Cullen Powell)

AGENT:  
Armburst & Brown, PLLC  
(Richard Suttle)

CASE MANAGER: Heather Chaffin (512-974-2122, [heather.chaffin@austintexas.gov](mailto:heather.chaffin@austintexas.gov))

### STAFF RECOMMENDATION:

**Staff supports the Applicant's request for rezoning to TOD-NP to amend the Saltillo Plaza Transit Oriented District (TOD) Station Area Plan and Regulating Plan to allow a building height up to 85 feet.**

*For a summary of the basis of staff's recommendation, see case manager comments on page 2.*

### PLANNING COMMISSION ACTION / RECOMMENDATION:

July 13, 2021: To forward to Council without a recommendation, due to lack of an affirmative vote. VOTE: (7-1) [Commissioner Thompson- 1st, Shieh-2nd ; Vice Chair Hempel- Nay; Commissioners Ahzar, Schneider, Praxis, Howard, and Llanes-Pulido- Absent]

June 22, 2021: To grant postponement to July 13, 2021 as requested by Staff, on consent.

June 8, 2021: To grant postponement to June 22, 2021 as requested by Staff, on consent.

### CITY COUNCIL ACTION:

August 26, 2021:

July 29, 2021: To grant postponement to August 26, 2021 as requested by Neighborhood, on consent.

ORDINANCE NUMBER:

ISSUES:

The Applicant proposes utilizing the Plaza Saltillo TOD Density Bonus tool which allows increased floor-to-area ratio (FAR) for developments that include affordable residential units or pays a fee-in-lieu to Housing and Planning Department (HPD). The Applicant has stated their intent to develop an office building with ground floor retail and pay a fee-in-lieu for the increased FAR per the TOD Density Bonus program. To achieve the increased FAR, the Applicant requests increasing the building height from 60 feet to 85 feet. This includes updating the Station Area Plan (SAP) and Regulating Plan. The request also requires a Neighborhood Plan Amendment (NPA), which is being processed concurrent with the rezoning request (City File # NPA-2020-0002.01).

The Applicant has stated their intent to construct and maintain Roy and Matias Velasquez Plaza, an undeveloped area adjacent to the rezoning tract, if the additional height and density bonus are approved by City Council. The land was identified in the TOD SAP as parkland/open space, but the City-owned property remains undeveloped. The City cannot require these improvements via a conditional overlay or public restrictive covenant at time of zoning.

CASE MANAGER COMMENTS:

The subject property is located on the north side of East 5<sup>th</sup> Street between Medina Street and Waller Street. The property is comprised of 11 small lots that extend from East 5<sup>th</sup> Street to an alley on the north. The subject property is currently developed with Fair Market, an indoor/outdoor entertainment venue and associated offices. Immediately west of the subject property is City-owned land that was originally intended as right-of-way (ROW) connecting Medina Street from East 5<sup>th</sup> Street to East 6<sup>th</sup> Street. The northern portion of the ROW does not extend through to East 6<sup>th</sup> Street and is now developed with a parking lot that serves businesses along East 6<sup>th</sup> Street. The remaining area is undeveloped land that has been identified in the TOD SAP as parkland/open space, as mentioned in the Issues Section above. These properties are all zoned TOD-NP, as are the other surrounding properties to the west, north and east. Across Medina Street to the west is a mixed use development comprised of multifamily, retail, restaurant and other ground floor commercial land uses. Across the alley to the north is a mix of personal services, cocktail lounge and other commercial land uses. To the east, across Waller Street, is a mixed use commercial and office property. ***Please see Exhibits A and B- Zoning Map and Aerial Exhibit.***

South of the subject property, extending west from Onion Street to IH 35, are properties zoned TOD-CURE-NP. These properties, designated Tracts 1-6 on the Area Case Histories chart, were zoned together in 2016-2017 and utilized the CURE overlay to increase permitted building heights and modify other site development standards. The closest tract was granted a height increase to 68 feet; other tracts in the related cases were granted a mix of 68, 70, 80, and 125 feet of building height. The closest tract is developed with multifamily residential land use, retail, restaurant and other ground floor commercial land uses and includes onsite affordable housing units.

In August 2017, City Council approved a resolution to initiate code amendments to modify CURE, including removing the CURE overlay from east of IH 35. Consequently, the TOD

Density Bonus is the only available tool to increase FAR or height. The maximum building height achievable using this tool is 85 feet, as requested by the Applicant. As stated in the Issues section, the Applicant will pay a fee-in-lieu per the TOD Bonus program.

Staff supports the rezoning request. Increased density, a mix of land uses, and transit access are fundamental elements of Plaza Saltillo TOD. The regulating plan states that its purpose is, “to promote TOD principles intended to successfully integrate land use and transit by providing greater density than the community average, a mix of uses, and a quality pedestrian environment around a defined center; . . . to provide appropriate standards to ensure a high quality appearance for development and redevelopment within the Plaza Saltillo TOD District and promote pedestrian-friendly design while also allowing for individuality, creativity, and artistic expression; . . .” The proposed rezoning will allow greater density in an area with enhanced TOD bus and rail transit options and where density is encouraged. The fee-in-lieu will add funds that will help provide affordable housing.

Staff has received correspondence in opposition to the request. ***Please see Exhibit C-Correspondence.***

#### BASIS FOR RECOMMENDATION

1. *The proposed zoning should be consistent with the purpose statement of the district sought.*
2. *The proposed zoning should be consistent with the goals and objectives of the City Council.*
3. *The rezoning should be consistent with the policies and principles adopted by the City Council or Planning Commission.*
4. *Zoning should promote clearly-identified community goals, such as creating employment opportunities or providing for affordable housing.*

TOD-NP zoning encourages increased density and including creative and artistic spaces. The Plaza Saltillo TOD, as adopted by Council, reflects their goals and objectives. The addition of affordable housing in the TOD also reflects Council goals, as well as Planning Commission policies. The mix of land uses and financial contribution towards affordable housing promotes clearly identified community goals.

#### EXISTING ZONING AND LAND USES:

|       | ZONING      | LAND USES                                                   |
|-------|-------------|-------------------------------------------------------------|
| Site  | TOD-NP      | Indoor entertainment, Administrative office, Undeveloped    |
| North | TOD-NP      | Cocktail lounge, Personal services                          |
| South | TOD-CURE-NP | Plaza Saltillo Station / Civic                              |
| East  | TOD-NP      | Multifamily, restaurant-limited and general, limited retail |
| West  | TOD-NP      | Office, commercial, restaurant (under construction)         |

NEIGHBORHOOD PLANNING AREA: East Cesar Chavez NP

CAPITOL VIEW CORRIDOR: No

TIA: Deferred to time of site plan

WATERSHED: Waller Creek

SCHOOLS:

Zavala Elementary School      Martin Middle School      Eastside Memorial High School

NEIGHBORHOOD ORGANIZATIONS:

|                                                                     |                               |
|---------------------------------------------------------------------|-------------------------------|
| East Austin Conservancy                                             | Blackshear Prospect Hill      |
| East Cesar Chavez Neighborhood Association                          | Austin Neighborhood Council   |
| Friends of Austin Neighborhoods                                     | Tejano Town                   |
| Greater East Austin Neighborhood Association                        | Neighbors United for Progress |
| Austin Lost and Found Pets                                          | SELTexas                      |
| Del Valle Community Coalition                                       | AISD                          |
| Capital Metro                                                       | Sierra Club                   |
| Bike Austin                                                         | Red Line Parkway Initiative   |
| Homeless Neighborhood Association                                   | Neighbors United for Progress |
| Preservation Austin                                                 |                               |
| Guadalupe Neighborhood Development Corporation                      |                               |
| East Cesar Chavez Neighborhood Planning Team                        |                               |
| Organization of Central East Austin Neighborhoods (OCEAN)           |                               |
| Guadalupe Association for an Improved Neighborhood (GAIN)           |                               |
| El Concilio Coalition of Mexican American Neighborhood Associations |                               |

AREA CASE HISTORIES:

| NUMBER /<br>NAME                                | REQUEST                                       | COMMISSION                                                                                                                                                                                           | CITY COUNCIL                                                                     |
|-------------------------------------------------|-----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| C14-2021-0058<br>Centro East                    | TOD-NP to TOD-NP (increase height 60' to 85') | June 22, 2021: TBD                                                                                                                                                                                   | TBD                                                                              |
| C14-2017-0105<br>4 East                         | TOD-NP to TOD-CURE-NP                         | 11/14/2017: No recommendation                                                                                                                                                                        | 6/14/2018: To grant TOD-CURE-NP, increasing height from 40' to 74'               |
| C14-2016-0049<br>Plaza Saltillo<br>Tracts 4/5   | TOD-NP to TOD-CURE-NP                         | 1/10/2017: Grant as rec: The TOD density program establishes a maximum MFI level of 50%. Increase height from 60' (after density bonus) to 68' for a portion of Tract 1/2/3, Tract 4/5, and Tract 6. | 3/2/2017: To grant as recommended by PC                                          |
| C14-2016-0050<br>Plaza Saltillo<br>Tracts 1/2/3 | TOD-NP to TOD-CURE-NP                         | 1/10/2017: Increase height from 60' (after density bonus) to 68 feet for a portion of Tract 1/2/3, Tract 4/5, and Tract 6. Increase height from 60' (after density bonus) to 70' for a portion of    | 3/2/2017: To grant as recommended by PC with condition Tract 1 is limited to 70' |

|                                                                                            |                             |                                                                                                                                                                                                                         |                                                                                             |
|--------------------------------------------------------------------------------------------|-----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
|                                                                                            |                             | Tract 1/2/3. Increase height from 60' (after density bonus) to 125' for office building on a portion of Tract 1/2/3.                                                                                                    |                                                                                             |
| C14-2016-0051<br>Plaza Saltillo<br>Tract 6                                                 | TOD-NP<br>to<br>TOD-CURE-NP | 1/10/2017: Increase height from 60' (after density bonus) to 68 feet for a portion of Tract 1/2/3, Tract 4/5, and Tract 6. MFI levels up to 60%, including 30%, 50% and 60% MFI for Tract 6.                            | 3/2/2017: To grant as recommended by PC                                                     |
| C14-2015-0054<br>901 East<br>901 and 917 E.<br>6 <sup>th</sup> Street                      | TOD-NP<br>to<br>TOD-CURE-NP | June 23, 2015: PC approved Staff rec. on consent (8-0) TOD-CURE-CO-NP. 1. max 2,000 v.p.d. 2. Veh access to 6 <sup>th</sup> prohibited 3. Storage rooms and restrooms inc 25-2-531                                      | September 10, 2015: CC approved TOD-CURE-CO-NP as rec. on consent (11-0)                    |
| C14-2011-0091<br>Jaylee Limited<br>(Arnold Oil)<br>1601& 1645 E.<br>6 <sup>th</sup> Street | TOD-NP<br>to<br>TOD-CURE-NP | August 27, 2013: PC approved Staff rec. on consent (8-0-1) TOD-CURE-NP: 1. Office Tract and MF Tract. 2. Tracts joined by a UDA and/or Shared Pkg Agreement. 3. Parking for both Tracts may be located on the MF Tract. | September 26, 2013: ORD NO. 20130926-100-CC approved TOD-CURE- NP as rec. on consent (11-0) |

#### EXISTING STREET CHARACTERISTICS:

| Name                     | ROW | Pavement | Classification | Sidewalks | Bicycle Route | Capital Metro (within ¼ mile) |
|--------------------------|-----|----------|----------------|-----------|---------------|-------------------------------|
| E 5 <sup>th</sup> Street | 86' | 30'      | Level 2        | Yes       | None          | Yes                           |
| Waller Street            | 60' | 40'      | Level 2        | Yes       | Wide Curb     | Yes                           |

#### ADDITIONAL STAFF COMMENTS:

##### Environmental

1. The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the Waller Creek Watershed of the Colorado River Basin, which is classified as an Urban Watershed by Chapter 25-8 of the City's Land Development Code.
2. Zoning district impervious cover limits apply in the Urban Watershed classification.
3. According to floodplain maps there is no floodplain within or adjacent to the project location.
4. Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.
5. At this time, site specific information is unavailable regarding vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves,

sinkholes, and wetlands.

6. This site is required to provide on-site water quality controls (or payment in lieu of) for all development and/or redevelopment when 8,000 s.f. cumulative is exceeded, and on site control for the two-year storm.

#### Site Plan

SP1. Any new development is subject to the Plaza Saltillo Transit-Oriented Development ordinance. Design Standards and Mixed Use. Additional comments will be made when the site plan is submitted.

#### Parks & Recreation

PR1: Parkland dedication will be required for the new residential units proposed by this development, multifamily with Plaza Saltillo TOD-NP zoning plus additional height, at the time of subdivision or site plan, per City Code § 25-1-601. Whether the requirement shall be met with fees in-lieu or dedicated land will be determined using the criteria in City Code Title 25, Article 14, as amended, as well as the Plaza Saltillo TOD Regulating Plan's Public Parks and Trails standards and requirements. Should fees in-lieu be required, those fees shall be used toward park investments in the form of land acquisition and/or park amenities within the surrounding area, per the Parkland Dedication Operating Procedures § 14.3.11 and City Code § 25-1-607 (B)(1) & (2). If the applicant wishes to discuss parkland dedication requirements in advance of site plan or subdivision applications, please contact this reviewer: [thomas.rowlinson@austintexas.gov](mailto:thomas.rowlinson@austintexas.gov). At the applicant's request, PARD can provide an early determination of whether fees in-lieu of land will be allowed.

#### Transportation

##### ASMP Assessment

The Austin Strategic Mobility Plan (ASMP) adopted 04/11/2019, calls for 70 feet of right-of-way for Waller Street. It is recommended that 35 feet of right-of-way from the existing centerline should be dedicated for Waller Street according to the Transportation with the first subdivision or site plan application. [LDC 25-6- 51 and 25-6-55].

##### Transportation Assessment

Assessment of required transportation mitigation, including the potential dedication of right of way and easements and participation in roadway and other multi-modal improvements, will occur at the time of site plan application. A Traffic Impact Analysis shall be required at the time of site plan if triggered per LDC 25-6-113.

The adjacent street characteristics table is provided below:

| Name                     | ROW | Pavement | Classification | Sidewalks | Bicycle Route | Capital Metro (within ¼ mile) |
|--------------------------|-----|----------|----------------|-----------|---------------|-------------------------------|
| E 5 <sup>th</sup> Street | 86' | 30'      | Level 2        | Yes       | None          | Yes                           |
| Waller Street            | 60' | 40'      | Level 2        | Yes       | Wide Curb     | Yes                           |

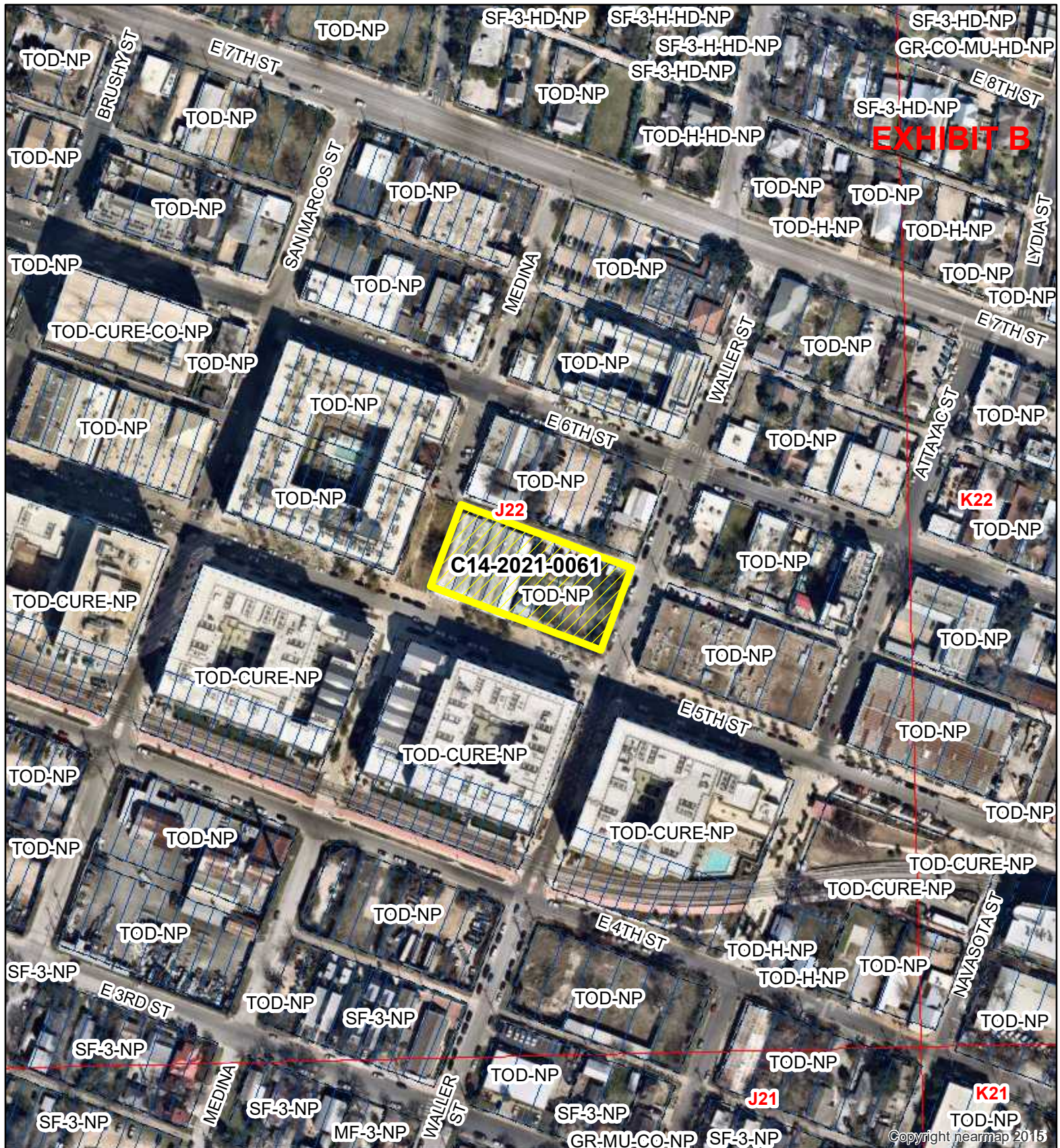
#### Water Utility

AW1. The landowner intends to serve the site with City of Austin water and wastewater utilities. The landowner, at own expense, will be responsible for providing any water and wastewater utility improvements, offsite main extensions, utility relocations and or abandonments required by the land use. The water and wastewater utility plan must be reviewed and approved by Austin Water for compliance with City criteria and suitability for operation and maintenance. Based on current public infrastructure configurations, it appears that service extension requests (SER) will be required to provide service to this lot. For more information pertaining to the Service Extension Request process and submittal requirements contact Alberto Ramirez with Austin Water, Utility Development Services at 625 E. 10th St., 7th floor. Ph: 512-972-0211. The landowner must pay the City inspection fee with the utility construction. The landowner must pay the tap and impact fee once the landowner makes an application for a City of Austin water and wastewater utility tap permit.

INDEX OF EXHIBITS TO FOLLOW

- A: Zoning Map
- B. Aerial Exhibit
- C. Correspondence





### Fair Market Zoning

ZONING CASE#: C14-2021-0061  
 LOCATION: 1100, 1108, 1110 E 5th St;  
 502, 504 Waller St  
 SUBJECT AREA: .87 Acres  
 GRID: J22  
 MANAGER: Heather Chaffin



C14-2021-0061

Creek Buffers

ZONING BOUNDARY

FULLY DEVELOPED FLOODPLAIN

1" = 200'

This map has been produced by the Communications Technology Management Dept. on behalf of the Planning Development Review Dept. for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



EXHIBIT C

June 01, 2021

Planning Commission, City of Austin

Via E-mail: [maureen.meredith@austintexas.gov](mailto:maureen.meredith@austintexas.gov), [Heather.Chaffin@austintexas.gov](mailto:Heather.Chaffin@austintexas.gov)

**RE: Plan Amendment Case: NPA-2020-0002.01  
Zoning Case #: C14-2021-0061  
Property Address: 1100, 1108, 1110 E 5th Street & 502, 504 Waller Street**

Dear Planning Commissioners,

**On behalf of the East Cesar Chavez Neighborhood Plan Contact Team (ECC-NPCT), I am writing to OPPOSE Plan Amendment Case NPA-2020-0002.01 and Zoning Case C14-2021-0061, proposals to change the base maximum building height from 60 feet to 85 feet on the property.**

Members of the ECC-NPCT attended the Virtual City Led Community Meeting regarding this project on the evening of September 24th and hosted a Special Meeting to further discuss this case following that event. In additional general meetings, the ECC-NPCT has requested that the applicant seek solutions that cap the building height at 75 feet (a height bonus precedent already set in the area) or that add real value to our neighborhood as defined by our neighborhood plan.

While the applicant has proposed a park improvement between this building and the adjacent structure (Corazon) as an added neighborhood value, the reality is that the proposed park site will be torn up during construction regardless. It will need to be redeveloped anyway and the resultant park will inevitably be of greatest benefit to the building tenants and not valued as a true asset to the neighborhood at large.

The applicant has offered to pay a fee-in lieu of affordable housing to achieve the additional height. Unfortunately, while fee-in lieu payments benefit our city at large, we have never been able to effectively steer that funding into affordable housing right here in our neighborhood where the demand for building height variance is great and the supply of affordable housing is dwindling, fast. Additionally, the 2013-era fees don't come close to meeting current market value for replacing housing in our city and City Council is currently vetting new fee structure proposals. We believe that \$12 per SF is not a fair value for the height bonus requested and the value gained in perpetuity for the developer.

Our role is to preserve the integrity of our neighborhood plan and that of the Saltillo TOD. The Saltillo TOD was heavily researched, vetted, and considered by knowledgeable, capable folks. It's our plan. It's a smart plan, a good plan, one that feels good to the neighborhood, and one that says 60 feet is the appropriate height for buildings at this location.

Every 36 inches the ECC-NPCT gives away only adds 36 inches more to the next project's height increase request and our neighborhood suffers a slow "death by a thousand inches" if you will. For projects that add real value back to our neighbors, we're willing to budge. Unfortunately, this is not that project.

**We strongly request that the Planning Commission OPPOSE this applicant's proposal to change the base maximum building height from 60 feet to 85 feet on the property.**

Sincerely,

*K Heaney*

**Kristen Heaney**

Chair

East Cesar Chavez Neighborhood Planning Team

CC:

ECCNPT *via e-mail*

Planning Commision *via e-mail*

Council Member Pio Renteria, *via e-mail*