



October 27, 2021

City Council  
City of Austin

Via E-mail at <https://www.austintexas.gov/email/all-council-members>

CC: Maureen Meredith

RE: NPA-2020-0002.01- Fair Market  
C14-2021-0061 - Fair Market Rezoning  
LDC Section § 25-2-766.23 AMENDMENTS TO STATION AREA PLAN

Dear Mayor, Mayor Pro-Tem, and City Council,

My name is Kristen Heaney and I'm the Chair of the East Cesar Chavez Neighborhood Plan Contact Team (ECC-NPCT).

I'm writing today as a steward of our Neighborhood Plan and a supporter of the incredible work you did in 2017 to unanimously eliminate CURE east of IH-35. You'll recall that CURE was initially created in 1996 to incentivize Downtown and nearby redevelopment. By 2017 "the challenge in East Austin was no longer how to encourage business investment, but rather how to slow down the flood of investment dollars that are driving up the cost of housing and forcing many longtime east siders to relocate to the outskirts of the city."<sup>1</sup> In 2017, City Council eliminated CURE east of IH-35 "because (CURE) gives density and height without the benefit," and you said, "let's take a look at how we can actually use the market to actually drive what may be our only and last opportunity to really provide affordability in these areas."<sup>2</sup>

I'm writing today because those efforts remain vulnerable to crafty developers and attorneys who are finding new ways to make requests for development incentives with no commensurate community benefit. The rollback of CURE must be defended.

**On behalf of the ECC-NPCT, I am writing to strongly encourage you to oppose current and future ordinances amending the East Cesar Chavez Neighborhood Plan and the Plaza Saltillo (TOD) Station Area Plan (an element of the Imagine Austin Comprehensive Plan) to change the base maximum building height on an individual property, singling out a small tract of land, for rezoning which serves no substantial public purpose.**

**The ECC-NPCT formally requests that the City Council work with our Neighborhood Plan Amendment Committee to define and propose comprehensive plan amendments that recreate Density**

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<sup>1</sup> <https://www.austinmonitor.com/stories/2017/10/council-looks-roll-back-cure-zoning/>

<sup>2</sup> Mayor Adler, City Council Work Session Transcript – 10/17/2017

**and Height Bonuses as viable “tools for driving increased affordability, and permanent affordability.”<sup>3</sup> LDC Section § 25-2-766.23 suggests that we can’t do it without you.**

Specifically, the Fair Market property at E. 5th and Waller St (11/04/2021 Council Agenda Items 46 and 47) is precedent setting and must be opposed. Without CURE, this individual property (as well as two others within the past 18 months) has had to file multiple amendments in its attempt to find a work around to gain additional height including an amendment to the ECC Neighborhood Plan, an amendment to the Saltillo TOD Regulating Plan, and a separate zoning ordinance amending City Code Title 25 to change the base maximum building height from 60 feet to 85 feet. Why would we allow this?

The neighborhood opposes this request and those that mimic it for a number of reasons:

### **1. NO CURE EAST of IH-35**

When CURE was rolled back East of IH-35, the City Council unanimously agreed that we should not give away height and density without taking a look at whether or not we can use those as tools for driving increased affordability, and permanent affordability.

We still need comprehensive plan amendments to address community benefits in exchange for entitlements. Meanwhile, we cannot support individual property plan amendments to change the base height on a single property with no substantial public purpose or community benefit. Doing so completely undoes the intention set when the City City Council (including Mayor Adler and Councilmembers Alter, Casar, Kitchen, Pool, Renteria, and Tovo) unanimously rolled back CURE east of IH-35.

### **2. DENSITY BONUS**

The Saltillo TOD Density Bonus Section clearly states that, "In order for a property owner to pay a fee in-lieu of meeting affordability requirements, they must demonstrate a compelling reason to not provide housing on-site."

Is “because we’re building an office” really a compelling reason?

District 3 is currently 3,000 units short of its goal to build or preserve over 6,000 affordable units by 2027. We need to be producing 500 affordable units per year. That’s a compelling reason!

Additionally, the Saltillo TOD Regulating Plan already includes a TOD Urban Mixed Use sub-district and a Super Density Bonus that addresses building heights up to 85 feet in exchange for much higher affordability standards and NO fee-in-lieu option. This is the current standard that 85 feet height amendments should be measured against.

Changes to the Saltillo TOD Regulating Plan including revisions to Base Height Maps and Density Bonuses should be considered comprehensively, not lot by lot.

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<sup>3</sup> Mayor Adler, City Council Regular Meeting Transcript – 10/19/2017

**According to LDC Section § 25-2-766.23 AMENDMENTS TO STATION AREA PLAN can only be initiated by (A) City Council or (B) Land Owners. The ECC-NPCT requires and requests City Council's help and sponsorship to make comprehensive plan amendments to the Saltillo TOD Regulating Plan.**

### **3. CONTRACT ZONING**

Recent zoning cases, including Fair Market, indirectly put the neighborhood in the position of negotiating with individual landowners to provide some other consideration (in addition to an inadequate Fee-In-Lieu) in exchange for the zoning. NPCT's are not qualified to facilitate these negotiations nor should we be participating in any way that directly or indirectly supports any zoning that could be considered "Contract Zoning".

**"Zoning is the legislative function of municipalities that they cannot contract away"<sup>4</sup> and we need your help.**

### **4. SPOT ZONING**

We're concerned that these requests could be considered "spot zoning" as defined by the Texas Supreme Court in *The City of Pharr v. Tippitt*<sup>5</sup> and they should be challenged.

Requests that single out a small tract of land for rezoning which serves no substantial public purpose should be denied. We think you'll agree that no zoning plan should not be altered for the special benefit of the landowner.

For these reasons, we have asked the City Council to oppose and/or put a pause on zoning and plan amendment cases in the Saltillo TOD and work with us to revise and improve the Saltillo TOD Regulating Plan in favor of a comprehensive solution that meets the current needs of our city and our neighborhood.

**Specifically, we are asking the City Council to oppose the Fair Market Zoning and Neighborhood Plan Amendments.**

Additionally, we have voted to create a Neighborhood Plan Amendment Committee which I will chair and we are initiating conversations with City Staff to initiate our own NPA Application to help solve for this onslaught of individual requests. We cannot implement our amendments without City Council.<sup>6</sup> We know you agree that comprehensive plan amendments are overdue and we need your help to get it done.

**"We shouldn't have downtown levels of zoning without community benefits east of I-35" - Greg Cesar, City Council Work Session Transcript – 10/17/2017**

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<sup>4</sup> Super Wash, Inc. v City of White Settlement, 131 S.W.3d 249,257 (Tex. App.-Fort Worth, 2004)

<sup>5</sup> City of Pharr v. Tippitt, 616 S.W.2d 173, 177 (Tex.1981)

<sup>6</sup> LDC Section § 25-2-766.23 AMENDMENTS TO STATION AREA PLAN

**“The Saltillo TOD is an opportunity to create affordability where the market is not going to create it by itself.”** - Mayor Adler, City Council Work Session Transcript – 10/17/2017

**“I don't think we should have a zoning category like (CURE)...without community benefits.” “I think we should probably have a discussion outside of this one about other kind of code amendments that make sense to do.”** - Kathie Tovo, City Council Work Session Transcript – 10/17/2017

The Saltillo TOD Regulating Plan can be a reliable tool for building affordable housing and it has room for improvement. We are committed to maintaining and rebuilding affordable housing units in our neighborhood.

We are committed to protecting the intention of the CURE roll back east of IH-35.

We'd love to have your support.

If you are interested in working with the ECC-NPCT to “take a look at how we can actually use the market to actually drive what may be our only and last opportunity to really provide affordability in these areas”<sup>7</sup> please contact me directly and let's get to work!

Thank you for your consideration.

Sincerely,

***Kristen E. Heaney***

Kristen Heaney

Chair, East Cesar Chavez Neighborhood Plan Contact Team

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CC: Hon. Mayor and Council of the City of Austin *via e-mail*  
ECCNPT *via e-mail*

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<sup>7</sup> Mayor Adler, City Council Work Session Transcript – 10/17/2017