#### ORDINANCE AMENDMENT REVIEW SHEET

**Amendment:** C20-2008-0010

#### **Description:**

Consider and take appropriate action on an ordinance amending Chapter 25-2, Article 2, Division 5 (*Planned Unit Developments*) to set out criteria for determining whether a PUD creates development superior what would occur under conventional zoning, to require a PUD Subcommittee of the Council to determine whether a proposed PUD meets those criteria, to require neighbors and neighborhood associations to be notified of PUD applications, and providing height and density bonuses and other incentives for PUDs to include affordable housing and other community benefits..

#### Background:

On April 5, 2007, City Council directed the City Manager to provide staff support to a Council-led stakeholder process to recommend revisions to the Planned Unit Development (PUD) and Planned Development Agreement (PDA) portions of the Land Development Code including recommendations concerning revisions to the provisions governing the process for considering PUD's and PDA's, Chapters 25-1 and 25-2 of the City Code. A series of six stakeholder meetings were held that were led by Councilmembers Martinez, Leffingwell and McCracken. City staff from a variety of departments were present as were representatives of neighborhood groups, affordable housing advocates, developer representatives and others. The draft ordinance is a product of those meetings.

#### **Departmental Comments:**

The purpose of a planned unit development (PUD) is to allow developer flexibility in that a PUD allows a modification of site development regulations in exchange a development that is superior to that which could be achieved under standard zoning. Typically PUDs have been used in situation where a modification of the environmental regulations was desired. In those cases the developer would, for example, be able to exceed the allowable impervious cover in exchange for greater setbacks to critical environmental features. Lately, however, PUDs have been used as a tool for achieving greater height and density in the urban core and near transit stops. In such cases what the staff should be negotiating for to achieve superior development has been less clear and this led to last minute negotiations occurring late in the process when a case was before the Council. The draft ordinance lays out minimum requirements that a project must comply with to be a PUD such as Green Building. It also defines the criteria which shall be used by the Council to determine if a project is superior. The ordinance establishes a development bonuses option wherein developers using the PUD to achieve greater density and height for residential projects are required to provide affordable housing or pay a fee in lieu of to the Housing Assistance Fund. Commercial projects seeking greater density and height will be required to provide lease space for local businesses at a subsidized rate. Finally the ordinance establishes a new process by which a sub-committee of the Council will review whether a development assessment for a PUD merits further consideration based upon the requirements of the ordinance. If the sub-committee makes such a finding a

PUD applicant may be submitted, will be reviewed by the staff, taken to the Land Use Commission and any other applicable boards and commissions and finally brought before the full City Council for consideration.

#### **Board and Commission Action:**

<u>Community Development Commission and Housing Committee of CDC.</u> May 13, 2008: See attached resolution.

<u>Codes and Ordinances Subcommittee of the Planning Commission</u> May 20, 2008: Forwarded on to full PC.

Environmental Board May 21, 2008 See attached draft minutes.

Design Commission June 2, 2008

Zoning and Platting Commission June 3, 2008

#### **Staff Recommendation:**

Staff recommends the proposed Code amendment.

#### Planning Commission Action:

May 27, 2008: See attached annotated agenda sheet.

#### City Council Date and Action:

June 5, 2008: The amendment is scheduled for action by City Council on June 5, 2008.

Ordinance Readings: 1<sup>st</sup>

2<sup>nd</sup>

3<sup>rd</sup>

#### Ordinance Number:

<u>City Staff:</u> Jerry Rusthoven <u>Phone:</u> 974-3207 <u>Email: jerry.rusthoven@ci.austin.tx.us</u>

updated: 05/29/2008

#### **RESOLUTION NO. 20070405-030**

WHEREAS, Austin is experiencing rapid population growth and significant redevelopment in the urban core and throughout the city; and

WHEREAS, Planned Unit Developments and Planned Development
Agreements are unique zoning categories that allow flexibility beyond
conventional zoning and subdivision regulations, and have become a preferred
tool for large mixed-use projects; and

WHEREAS, recent zoning cases have demonstrated the desire of many residents for mixed-use redevelopment and greenfield projects to enhance existing neighborhoods by incorporating green building techniques, public open space, diverse housing opportunities, streetscapes that promote multimodal transportation, and other features that embody the values of sustainability, affordability, and environmental protection; and

WHEREAS, these values contribute to the city's vision of livability, and to ongoing community efforts such as the Austin Climate Protection Plan, Envision Central Texas, and the Water Conservation Task Force; and

WHEREAS, the existing regulations in the Land Development Code may not be sufficient to consistently promote these values in all PUDs and PDAs; NOW, THEREFORE,

#### BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City Council directs the City Manager to provide staff support to a Council-led stakeholder process to recommend revisions to the Planned Unit Development (PUD) and Planned Development Agreement (PDA) portions of the Land Development Code including recommendations concerning revisions to the provisions governing the process for considering PUD's and PDA's, Chapters 25-1 and 25-2 of the City Code.

ADOPTED: April 5 , 2007 ATTEST: Frome Special Shirley A. Gentry

City Clerk

#### **ENVIRONMENTAL BOARD MEETING MINUTES**

Wednesday, May 21, 2008



## ENVIRONMENTAL BOARD MINUTES

REGULAR MEETING WEDNESDAY, MAY 21, 2008

The Environmental Board convened in a regular meeting on Wednesday, May 21, 2008 301 West 2<sup>nd</sup> Street, Austin, Texas

Chair Dave Anderson called the Board Meeting to order at 6:07 p.m.

#### **Board Members in Attendance:**

Dave Anderson, Phil Moncada, Rodney Ahart, Jon Beath, John Dupnik, Mary G. Maxwell, and Mary Ann Neely

#### Staff in Attendance:

Pat Murphy, Marilla Shepherd, Jerry Rusthe

1. CITIZEN COMMUNIATION: GENERAL No speakers.

#### 2. APPROVAL OF MINUTES

Approval of minutes from May 7, 2008

The minutes for the regular meeting on May 7, 2008 were approved on Board Member Moncada's motion, Board Member Ahart second 5-0-1. Board Member Anderson abstained because he was not present at the May 7, 2008 meeting. Board Member Beall was off the dais.

#### 3. PUBLIC HEARINGS

#### **DISCUSSION AND ACTION**

a) Consider and take appropriate action on an ordinance amending Chapter 25-2, Article 2, Division 5 (Planned Unit Developments) to set out criteria for determining whether a PUD creates development superior what would occur under conventional zoning, to require a PUD Subcommittee of the Council to determine whether a proposed PUD meets those criteria, to require neighbors and neighborhood associations to be notified of PUD applications, and providing height and density bonuses and other incentives for PUDs to include affordable

housing and other community benefits.- Jerry Rusthoven, Neighborhood Planning and Zoning Department

The Environmental Board recommended conditional approval to amending Chapter 25-2, Article 2, Division 5 (Planned Unit Developments) to set out criteria for determining whether a PUD creates development superior what would occur under conventional zoning, to require a PUD Subcommittee of the Council to determine whether a proposed PUD meets those criteria, to require neighbors and neighborhood associations to be notified of PUD applications, and providing height and density bonuses and other incentives for PUDs to include affordable housing and other community benefits. Environmental Board Conditions: 1) Staff to add an Item G under 1.6.1. Land Use Plan 2) Staff to add wording that provides specific environmental components to the Land Use Plan Requirement and show superior proposed development. Suggested wording is: "Specific environmental components that demonstrate how the proposed development is superior to that which would be accomplished under current regulations." Environmental Board Rationale: PUD's have not had Land Development Code amendments to reflect changes that could create better projects. The Environmental is required to review Planned Unit Developments per the proposed ordinance [P. MONCADA, M. MAXWELL 2<sup>ND</sup>] (7-0 Vote)

#### 4. OLD BUSINESS

- a. Joint Environmental/Parks Board Subcommittee Dave Anderson, P.E. Board Member Neely and Board Member Beall reported on this item.
- b. SH45 John Dupnik, P.G.

Board Member Moncada and Board Member Dupnik reported on this item.

- c. Waterfront Overlay Task Force Dr. Mary Gay Maxwell Board Member Maxwell reported on this item.
- d. Erosion and Sedimentation Controls Dave Anderson, P.E.
   Board Member Moncada and Board Member Dupnik reported on this item.
- e. Balcones Canyonlands Conservation Plan Citizens Advisory Group Mary Ann Neely Board Member Neely reported on this item.

#### 5. NEW BUSINESS

a. Request for future agenda items

#### 6. ADJOURNMENT



## City of Austin

### **MEMO**

P.O. Box 1088, Austin, TX 78767-1088 www.cityofaustin.org/housing

#### **Neighborhood Housing and Community Development**

Margaret Shaw, Director (512) 974-3108, Fax: (512) 974-1063, margaret.shaw@ci.austin.tx.us

Date:

May 20, 2008

To:

Mayor and Council Members

From:

Margaret Shaw, Director NHCD

Subject:

PUD Resolution from Community Development Commission (CDC)

On May 13, 2008, the CDC heard a presentation on the draft PUD ordinance from Jerry Rusthoven, Manager Development Services, Neighborhood Planning and Zoning Department. Following that presentation, the CDC passed the attached resolution outlining their recommendations to you. The CDC is one of several Boards and Commissions asked to review and forward recommendations on this issue to Council.

Please let me know if I can answer any questions or provide additional information.

Attachment

#### **RESOLUTION NO. 080513-01**

WHEREAS, incentive overlays support the creation of affordable housing; and

WHEREAS, a forty year affordability period conforms to AHITF recommendations and current housing programs; and

- WHEREAS, a) it creates greater certainty for developers who are evaluating development potential,
- b) The Community Development Commission (CDC) supports mixed income housing in all parts of town,
- c) City demographic data (attached) show that lower MFI areas are concentrated in relatively limited areas of town, which generally have higher concentrations and affordable housing program units,
- d) Providing for lower income housing units in traditionally lower income areas and higher income housing in traditionally higher income areas reinforces segregated housing patterns and may violate federal fair housing law; and
- WHEREAS, in lieu monetary fees may not be sufficient to develop in lieu units; and
- WHEREAS, Provisions for FAR to comply with in lieu fee payments are unclear; and
- WHEREAS, The CDC passed a resolution on April 10, 2007 in which this resolution reaffirms its support for that resolution; NOW THEREFORE,

# BE IT RESOLVED BY THE COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF AUSTIN:

That the CDC supports the concept of density in a PUD and supports the affordability periods described in the draft ordinance. The CDC recommends affordability levels in the draft ordinance to be at 60% MFI for rental units and 80% MFI for ownership city-wide, without respect to urban roadway boundaries and without respect to limiting lower income units to traditionally lower income areas. The CDC does not recommend providing for a monetary in lieu fee, but, if there are in lieu fees then that fee should be set at a level sufficient to develop actual units. The timing of the actual payment of the lieu fee should be clarified, and it should include provisions to designate units within the non-paying developments as affordable units.

ST:



## PLANNING COMMISSION MINUTES

REGULAR MEETING MAY 27, 2008

The Planning Commission convened in a regular meeting on May 27, 2008 @ 301 W. 6<sup>th</sup> Street in Austin, Texas.

Chair Dave Sullivan called the Board Meeting to order at 6:08 p.m.

Board Members in Attendance:
Dave Sullivan – Chair
Jay Reddy – Vice-Chair
Tracy Atkins
Perla Cavazos
Mandy Dealey
Chris Ewen
Paula Hui
Clint Small

#### 1. CITIZEN COMMUNICATION: GENERAL

There were no speakers signed up to speak under Citizens Communication.

#### 2. APPROVAL OF MINUTES

1. Approval of minutes from May 13, 2008.

The minutes of the regular meeting of May 13, 2008, were postponed on the Consent Agenda by Commissioner Jay Reddy's motion, Commissioner Mandy Dealey second the motion on an 8-0 vote with Commissioner Saundra Kirk absent.

2. Approval of minutes from the Special Called meeting on April 29, 2008.

The minutes of the Special Called meeting on April 29, 2008 were approved on the Consent Agenda by Commissioner Jay Reddy's motion, Commissioner Mandy Dealey second the motion on an 8-0 vote with Commissioner Saundra Kirk absent.

3. Approval of minutes from the 5th Tuesday meeting on April 29, 2008.

The minutes of the 5<sup>th</sup> Tuesday meeting on April 29, 2008 were approved on the Consent Agenda by Commissioner Jay Reddy's motion, Commissioner Mandy Dealey second the motion on an 8-0 vote with Commissioner Saundra Kirk absent.

# 3. PUBLIC HEARINGS DISCUSSION AND ACTION ITEMS

1. Discussion and

Interim Update of the Austin Tomorrow Comprehensive Plan

Action:

Owner/Applicant:

City of Austin

Request:

Public hearing and action on the Interim Update of the Austin Tomorrow Comprehensive Plan. This update was authorized by the City Council on December 13,2007. The interim update removes obsolete policies and replaces them with existing adopted policies, revises the various maps with the best data currently available, and integrates and summarizes city plans and initiatives undertaken from 1979 until the end of 2007. the proposed update is the result of the work of an interdepartmental team that met from January - March 2008 and Department of Neighborhood Planning and Zoning staff. The draft changes were reviewed by the Planning Comprehensive Planning Committee of the Planning Commission on April 1 and May 6, 2008.

Staff:

Garner Stoll, 974-2397, garner.stoll@ci.austin.tx.us

Neighborhood Planning & Zoning Department

2. Code Amendment PUD:

C20-2008-0010 -

Request:

Consider and take appropriate action on an ordinance amending Chapter 25-2, Article 2, Division 5 (Planned Unit Development) to set out criteria for determining whether a PUD creates development superior what would occur under conventional zoning, to require a PUD Subcommittee of the Council to determine whether a proposed PUD meets those criteria, to require neighbors and neighborhood associations to be notified of PUD applications, and providing height and density bonuses and other incentives for PUDs to include affordable housing and other community benefits.

Staff Rec.:

Recommended

Staff:

Jerry Rusthoven, 974-3207, jerry.rusthoven@ci.austin.tx.us

Neighborhood Planning & Zoning Department

Motion made by Commissioner Jay Reddy and seconded by Commissioner Mandy Dealey to approved staff's recommendation with amendments that include base line determination be reviewed by a land use commission. Under the commercial bonuses provision require 10% of total square footage be provided for local retail or restaurant businesses and add non-profits and daycare (including adult) as additional uses. Adjust the affordability level to remove the provision allowing for adjustments in the MFI based upon the neighboring area of the PUD and to require 10% at 80% of citywide MFI for owner occupied housing and 10% at 60% of citywide MFI for rental housing under the residential bonuses section. Motion passed on a vote of 8-0 with Commissioner Saundra Kirk absent.



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Janice Cortwright

May 29, 2008

The Honorable Will Wynn City Council Members City of Austin

RE:

Proposed Amendments to the PUD Ordinance

Dear Mayor and Council Members:

I am writing to you on behalf of the Real Estate Council of Austin (RECA) about the amendments to the Austin City Code (Code) being considered by the City Council on June 5, 2008 regarding the Planned Unit Development (PUD) zoning district. RECA is opposed to the proposed amendments as currently drafted.

As you know RECA has over 2000 members employed in all facets of the real estate industry. RECA's members live and work in Austin and care deeply about both the quality of life in Austin and the economic health of our great City. RECA takes great pride in how it has carried out its civic participation as a constructive partner with the City and other stakeholders on the important issues related to development in Austin. RECA and the real estate community have done their part to make Austin the "best city in the world."

Specifically, RECA and its volunteers have spent countless hours working for mutually acceptable solutions on numerous development issues. In fact, there have been 23 major land use policy initiatives over the last 16 months which have either been adopted or are currently under consideration at the City of Austin. When RECA has been invited to participate in collaborative groups to assist in drafting ordinances or policies, our members have devoted hundreds of hours attempting to implement widely recognized community values through sustainable and practical solutions. I hope you will agree that RECA has time and again been a constructive and supportive partner. The examples are numerous – Commercial Design Standards, Residential Design Standards (McMansion), Water Conservation, Barton Springs Re-Development, and the Affordable Housing Task Force to name only a few, recent major examples. In addition, RECA has participated in other important community initiatives like Envision Central Texas, Take on Traffic, Opportunity Austin and most recently our Downtown Austin Park & Ride initiative. RECA has been happy to work with you and others on these initiatives, and we look forward to working with all of you in the future on other City proposals.

While RECA has consistently maintained that the PUD zoning district rules did not need to be amended, RECA has been willing to participate and consider changes that would meet the stated community goals of (i) providing earlier City Council involvement in the PUD process, (ii) acknowledging additional community values to be considered in determining superiority, and (iii) providing a means of requiring affordable housing for PUDs seeking density bonuses. RECA was hopeful a consensus proposal could be achieved based on these goals.

Regrettably, we are not at a point where RECA can support the proposal approved by the Planning Commission this week. We do not relish opposition to Council sponsored initiatives; rather we seek to find proposals for which we can offer enthusiastic support, and to that end we have offered numerous suggestions for how to improve this draft. Unfortunately, none of the input we have offered has been included in the draft ordinance before you now. We believe the proposal will seriously damage PUDs as a planning tool and will impede and constrain creative, innovative solutions for new developments and redevelopments in Austin. This is a big step backward, not forward and we urge you not to take it.

Throughout the process, we have urged that the most flexible planning tool in the Code remain just that – flexible. While we support the goals of clearly articulating goals and standards expected for new projects through the PUD process, we know from decades of experience that no two sites are alike and that numerical standards, inherent to every other zoning category in the Code, are entirely inappropriate for the most important planning tool available that is designed to be flexible.

Moreover, we believe there may be serious legal, procedural and practical problems associated with a delegation of duties to a three member "gate-keeping" subcommittee at which only two Council Members could effectively "kill" a project, as well with the de facto inclusionary zoning aspects of this proposal. We believe there are far better ways to achieve the goals motivating these provisions without the legal exposure and without making an already cumbersome and costly City process worse.

For these reasons, RECA urges you not to approve the PUD amendments at this time and instead provide additional time for a continuation of the stakeholder process. Under the current proposal, the hard PUD zoning cases will still be hard, but the easy cases will become more difficult. RECA is, therefore, very concerned that the PUD amendments will discourage PUDs and the creative and innovative planning that the current Code allows (as evidenced by the numerous high-quality, beneficial developments that have resulted under the current Code), and that the very community benefits the City seeks would not be achieved.

With additional time and effort RECA hopes that the proposal will be revised and improved (1) to eliminate the PUD subcommittee and instead consider a City Council review and comment process as part of the Development Assessment that currently exists for PUDs; (2) to make clarifications to Code language with respect to Baseline determinations, Council modifications of PUD requirements, and the application of some of the Tier 1 Requirements, (3) to eliminate specific numerical requirements in the Tier 2 requirements and to make other clarifications thereto; (4) modify or eliminate the "local business" Tier 3 requirement as being unworkable and impossible to implement; (5) reject the Planning Commission additions to the proposed amendments as being inconsistent with other affordable housing initiatives and otherwise unworkable; and (6) limit any changes to the PUD zoning ordinance to apply only within the urban core. We stand ready to return to the stakeholder process and roll up our sleeves as we have so often before. I am certain that with the benefit of ample time and with a mutually shared desire for a win-win result, we can reach a solution that will strengthen the current process rather than weaken it into obsolescence.

Thank you for your thoughtful consideration of this matter. If you should have any questions or comments, please do not hesitate to contact me.

Sincerely,

Tom Terkel

President