

## **RESTRICTIVE COVENANT TERMINATION REVIEW SHEET**

**CASE:** C14-85-002 (RCT)  
(Wesley Foundation of Austin)

**P.C. DATE:** November 8, 2016

**ADDRESS:** 2202 Nueces Street

**DISTRICT AREA:** 9

**OWNER/APPLICANT:** Wesley Foundation of Austin (Reverend Rusty Teeter)

**AGENT:** Mike McHone Real Estate (Michael R. McHone)

**EXISTING ZONING:** MF-4-NP

**AREA:** 0.3237 acres  
(14,100.372 sq. ft.)

### **SUMMARY STAFF RECOMMENDATION:**

Staff recommends the applicant's request to terminate the restrictive covenant to eliminate the restrictions placed upon the property in question.

### **PLANNING COMMISSION RECOMMENDATION:**

11/08/16: Approved staff's recommendation to terminate the restrictive covenant on consent (12-0, A. Pineyro DeHoyos- absent); P. Seeger-1<sup>st</sup>, F. Kazi-2<sup>nd</sup>.

### **DEPARTMENT COMMENTS:**

The property in question is developed with a two story structure that serves as an religious assembly/ office use (Wesley Foundation of Austin Methodist Student Ministry). The applicant is requesting to remove a public restrictive covenant that was placed on the property through a zoning case in 1985 (case C14-85-002: Anchor Investments). The original restrictive covenant was a condition of rezoning the property from MF-4 to NO zoning through Ordinance No. 850613-R (Please see Exhibit A). It appears that at the time the intent of the public RC was to make sure that the west campus area did not become overdeveloped with large office buildings.

The applicant would like to terminate the existing restrictive covenant because they are entering into a long term ground lease with a national student housing provider which will build a 175 foot multifamily residential tower on this and adjacent properties. The new development will also contain a larger and modern Wesley Student Center.

The subject tract is located in the West University Neighborhood Planning Area of the Central Austin Combined Neighborhood Plan. The Plan identifies West Campus as an area that is appropriate for increased density in order to accommodate housing for University of Texas students and faculty.

The City Council adopted the University Neighborhood Overlay (UNO) and the West Campus Design Guidelines to encourage new and dense development in the West Campus area. Redevelopment in this area has the option of abiding by established zoning entitlements and regulations or opting into the rules and standards of the UNO. UNO will allow for larger buildings and denser development in exchange for affordability and streetscape improvements that will enhance

the pedestrian environment. The property under consideration is located within the Inner West Campus Sub-district of the University Neighborhood Overlay (Exhibit B).

The staff recommends the applicant's request to terminate the restrictive covenant for this property because the RC is not in keeping with the premise of UNO and the West Campus Design Guidelines. The restrictive covenant requires that the existing structure remain on the property without expansion. Conditions in the area of West Campus have changed since the recordation of the RC in 1985 as the intent of UNO is to foster redevelopment in this area of the City.

The applicant agrees with the staff's recommendation.

**EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	MF-4-NP	Religious Assembly/Office use (Wesley Foundation of Austin)
<i>North</i>	MF-4-NP	Multifamily
<i>South</i>		Multifamily
<i>East</i>	GR-MU-H-CO-NP, MF-4-NP	Bed and Breakfast (Austin Folk House B & B, Multifamily (Villa Nueces)
<i>West</i>	LO-NP, LO-H-NP	Office (Quarters at Hardin House), Office (Barr Co.)

**AREA STUDY:** Central Austin Combined Neighborhood Planning Area  
(West University Neighborhood Planning Area)

**TIA:** N/A

University Neighborhood Overlay (UNO)

**WATERSHED:** Shoal Creek

**DESIRED DEVELOPMENT ZONE:** Yes

**CAPITOL VIEW CORRIDOR:** N/A

**HILL COUNTRY ROADWAY:** No

**NEIGHBORHOOD ORGANIZATIONS:**

Austin Heritage Tree Foundation  
 Austin Independent School District  
 Austin Neighborhoods Council  
 Austin Parks Foundation  
 Beyond2nd Nature  
 Bike Austin  
 CANPAC (Central Austin Neighborhood Plan Area Committee)  
 Central Austin Community Development Corporation  
 Friends of Austin Neighborhoods  
 Friends of Emma Barrientos MACC  
 Preservation Austin  
 SELTEXAS  
 Shoal Creek Conservancy  
 Sierra Club, Austin Regional Group  
 University Area Partners

**CASE HISTORIES:**

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-2016-0052	GO-H-CO-NP to GO-NP	Pending	Pending
C14-2012-0148	GR to CS-1	1/15/13: Approved CS-1-CO on consent, prohibiting Adult Oriented Businesses (6-0, P. Seeger-absent); G. Rojas-1 <sup>st</sup> , S. Compton-2 <sup>nd</sup> .	2/14/13: Approved CS-1-CO zoning on all 3 readings (6-0, M. Martinez-odd the dais); B. Spelman-1 <sup>st</sup> , C. Riley-2 <sup>nd</sup> .

**RELATED CASES:** C14-85-002, C14-04-0021 (Previous Zoning Cases)

**ABUTTING STREETS:**

Name	ROW	Pavement	Classification	Sidewalks	Bike Route	Capital Metro (within ¼ mile)
Nueces Street	60'	38'	Collector	Yes	Yes	Yes

**Comprehensive Planning**

Project: Wesley Foundation of Austin – Elimination of Restricted Covenant

The case involves the termination of a restricted covenant on a .32 acre property located on the west side of Nueces Street, which contains a two story worship center. This case is also located within the boundaries of the Central Austin Combined NP, in the West University Neighborhood Planning Area, and is also located in the University Neighborhood Overlay (UNO). Surrounding land uses includes multifamily housing to the north, south, and east, and a small office to the west. The request is to remove the restricted covenant, which specifies that the existing structure at 2202 Nueces should be restored and no new spaces will be added, and that the porch will not extend into the setback area.

**Central Austin Combined Neighborhood Planning Area (CACNP)**

The Central Austin Combined Neighborhood Plan Future Land Use Map identifies the subject area as being classified as 'Mixed Use,' which is meant to encourage more retail and commercial services within walking distance of residents. The following CACNP policies are applicable to this case:

**Goal Four:** West Campus should become a dense, vibrant, mixed-use and pedestrian oriented community (p. 83)

**Recommendation 3:** Establish the University Neighborhood Overlay (UNO) for the West Campus area that allows denser, pedestrian-oriented commercial and multi-family development (see "Proposed University Neighborhood Overlay [UNO] Boundaries and Districts" map on page 116). The overlay should function as providing a development bonus to projects that choose to follow the provisions of the overlay. The development bonuses should include, but not be limited to, providing for (p. 86)

- Increasing building heights above what is allowed by the base zoning district
- Reducing site area requirements for multi-family development
- Relaxing and/or eliminating other site development standards such as allowing higher amounts of impervious cover than the base zoning district, waiver of

compatibility standards, and reduction of required parking spaces for commercial uses. The provisions of the overlay should be designed to promote projects that are long lasting and of high quality.

Goal 4 of CACNP appears to support the relaxation or elimination of various site development standards in the UNO district to promote a '*dense, vibrant, mixed-use and pedestrian oriented community*' and because the restricted covenant provides an impediment to development in the UNO district, its termination appears to be supported by the CACNP.

### **Imagine Austin**

While this property is located within a **Regional Center**, based on the comparative scale of this site, which is small in scope, and the vision of Imagine Austin, which is broad in scope, the plan is neutral on the proposed removal of the restrictive covenant.

### **Transportation**

FYI, additional right-of-way maybe required at the time of subdivision and/or site plan.

FYI, Chad Crager, Urban Trails, Public Works Department and Nathan Wilkes, Bicycle Program, Austin Transportation Department may provide additional comments regarding bicycle and pedestrian connectivity per the Council Resolution No. 20130620-056.

FYI, according to the Austin 2014 Bicycle Plan approved by Austin City Council in November, 2014, a protected bike lane is recommended for Nueces Street.

Existing Street Characteristics:

Name	ROW	Pavement	Classification	Sidewalks	Bike Route	Capital Metro (within ¼ mile)
Nueces Street	60'	38'	Collector	Yes	Yes	Yes

### **Water and Wastewater**

No AWU comments regarding the restrictive covenant.

**CITY COUNCIL DATE:** December 8, 2016

**ACTION:**

**CASE MANAGER:** Sherri Sirwaitis

**PHONE:** 512-974-3057

[sherri.sirwaitis@austintexas.gov](mailto:sherri.sirwaitis@austintexas.gov)

$$1'' = 100'$$







RESTRICTIVE COVENANT

JUL 31-85 6094 \* 7.00 0 3 94 8225  
 THE STATE OF TEXAS \$  
 COUNTY OF TRAVIS \$ KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, BAR NONE PARTNERSHIP of Travis County, Texas, is the owner of the following described property (hereinafter referred to as "the property"), to-wit:

The north 42 feet of Lot 7, Horst's Addition, out of Outlot 34, Division D, an Addition in the City of Austin, Travis County, Texas, according to the Map or Plat thereof, recorded in Plat Book Z, Pages 594 and 613, Plat Records of Travis County, Texas, being the same property conveyed by a deed recorded in Volume 7253, Page 382 of the Deed Records of Travis County, Texas;

and,

WHEREAS, the City of Austin, Texas, a municipal corporation, and Bar None Partnership have agreed that the property should be impressed with certain covenants and restrictions running with the land, for the benefit of the owners, the benefit of the public, and the more appropriate development and benefit of the property, and desire to set forth such agreement in writing;

NOW, THEREFORE, Bar None Partnership for and in consideration of One and No/100 Dollars (\$1.00) and other good and valuable consideration in hand paid by the City of Austin, the receipt and sufficiency of which is hereby acknowledged and confessed, does hereby impress upon the property, the following covenants, conditions and restrictions, which shall be deemed and considered to be covenants running with the land, and which shall be binding on Bar None Partnership, its heirs, personal representatives, successors and assigns, as follows, to-wit:

1. a) The existing structure at 2202 Nueces will be restored and no new space will be added.
- b) The porch will not be extended into the setback area.

c) Two 3" oak trees will be planted in front of the building and maintained.

d) A new sidewalk will be installed in front of the property.

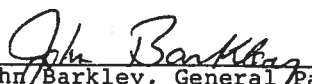
2. If any persons, corporation or entity of any other character shall violate or attempt to violate the foregoing agreement and covenant, it shall be lawful for the City of Austin, a municipal corporation, its successors and assigns, to prosecute proceedings at law, or in equity, against said person, or entity violating or attempting to violate such agreement or covenant and to prevent said person or entity from violating or attempting to violate such agreement or covenant; or to take any other action authorized by ordinance or utility service regulations of the City of Austin.

3. If any part or provision of this agreement or covenant herein contained shall be declared invalid, by judgement or court order, the same shall in nowise affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full force and effect.

4. The failure at any time to enforce this agreement by the City of Austin, its successors and assigns, whether any violations hereof are known or not, shall not constitute a waiver or estoppel of the right to do so.

5. This agreement may be modified, amended or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, or such other governing body as may succeed the City Council of the City of Austin, and (b) by the owner(s) of the above-described property at the time of such modification, amendment or termination.

EXECUTED this the 10<sup>th</sup> day of June, 1985.

  
John Barkley, General Partner  
By and For Bar None Partnership



THE STATE OF TEXAS §  
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared John Barkley, a member of the partnership firm of Bar None Partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act of Bar None, a partnership, for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 10<sup>th</sup> day of June, 1985.

Shirley Ford  
Notary Public, State of Texas

Shirley Ford  
Typed or Printed Name of  
Notary Public

My Commission Expires: 3/24/1989

NOTARY SEAL

FILED

1985 JUL 31 AM 8:31

Doris L. Angeline  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

STATE OF TEXAS COUNTY OF TRAVIS  
I hereby certify that this instrument was FILED on  
the date and at the time stamped hereon by me; and  
was duly RECORDED, in the Volume and Page of the  
named RECORDS of Travis County, Texas, on

JUL 31 1985



Doris L. Angeline  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

*Copy of Quota  
supplied to  
700000 1085  
78767*

ORDINANCE NO. 850613-R

AUG 29 REC'D

AN ORDINANCE ESTABLISHING INITIAL PERMANENT ZONING AND CHANGING THE ZONING MAP ACCOMPANYING CHAPTER 13-2A OF THE AUSTIN CITY CODE OF 1981 AS FOLLOWS:

THE NORTH 42 FEET OF LOT 7, HORST'S ADDITION, OUT OF OUTLOT 34, DIVISION D, LOCALLY KNOWN AS 2202 NUECES, FROM "MF-4" MULTI-FAMILY RESIDENCE (MOD. HIGH DENSITY) TO "NO" NEIGHBORHOOD OFFICE; SAID PROPERTY BEING LOCATED IN AUSTIN, TRAVIS COUNTY, TEXAS; SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. CHAPTER 13-2A of the Austin City Code of 1981 is hereby amended to change the base zoning district from "MF-4" Multi-Family Residence (Mod. High Density) to "NO" Neighborhood Office on the property described in File C14-85-002, to-wit:

The north 42 feet of Lot 7, Horst's Addition, out of Outlot 34, Division D, an Addition in the City of Austin, Travis County, Texas, according to the Map or Plat thereof recorded in Plat Book 2, Pages 594 and 613, Plat Records of Travis County, Texas, being the same property conveyed by a deed recorded in Volume 7253, Page 382 of the Deed Records of Travis County, Texas,

locally known as 2202 Nueces in the City of Austin, Travis County, Texas.

PART 2. It is hereby ordered that the Zoning Map accompanying Chapter 13-2A of the Austin City Code of 1981 and made a part thereof shall be changed so as to record the change ordered in this ordinance.

PART 3. WHEREAS, an emergency is apparent for the immediate preservation of order, health, safety and general welfare of the public, which emergency requires the suspension of the rule providing for the reading of an ordinance on three separate days, and requires that this ordinance become effective immediately upon its passage; therefore, the rule requiring the reading on three separate days is hereby suspended and this ordinance shall become effective immediately upon its passage as provided by the Charter of the City of Austin.

PASSED AND APPROVED

June 13

, 1985

§  
§  
§  
§

Frank C. Cooksey  
Mayor

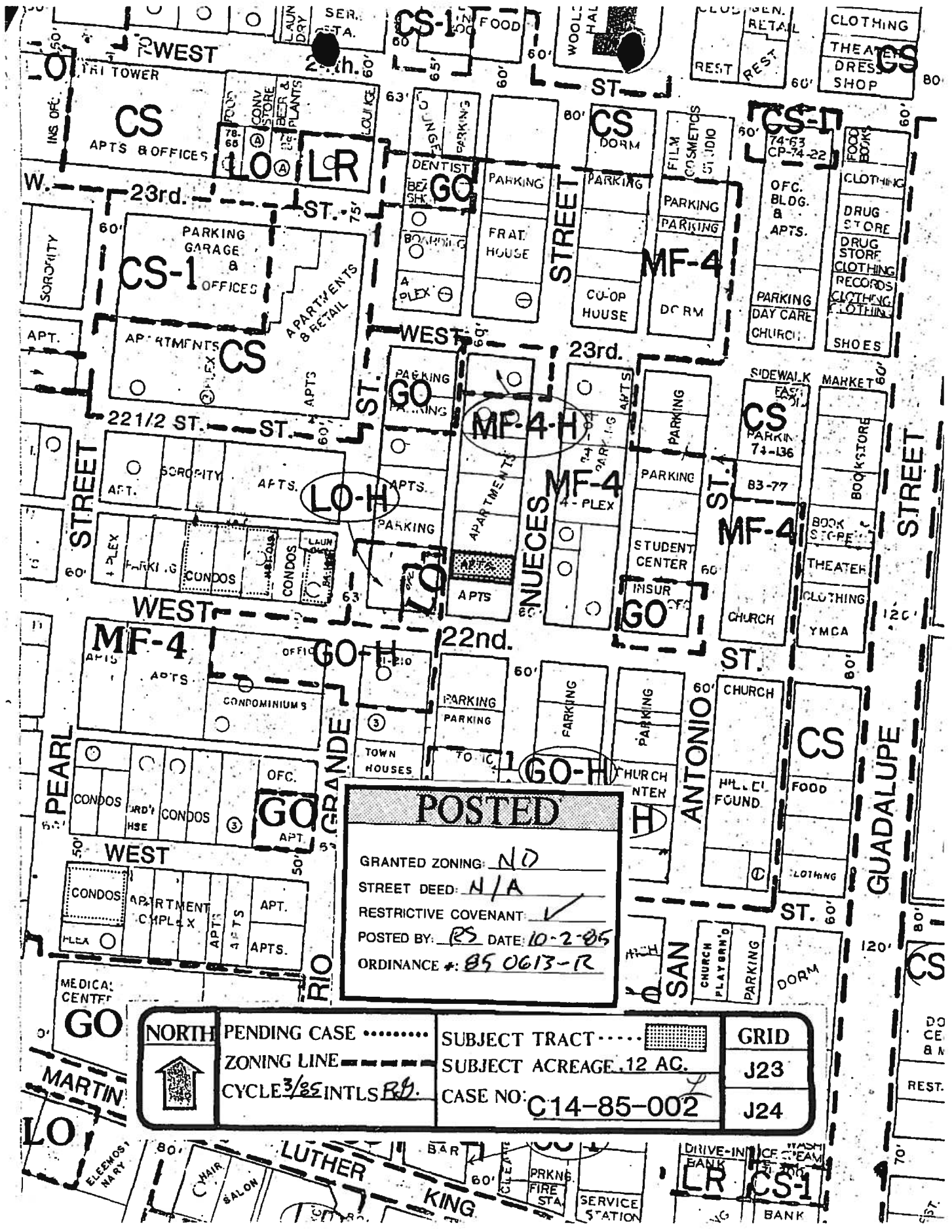
APPROVED:

Paul C. Isham  
City Attorney

ATTEST:


James E. Aldridge  
City Clerk

AFM:saf

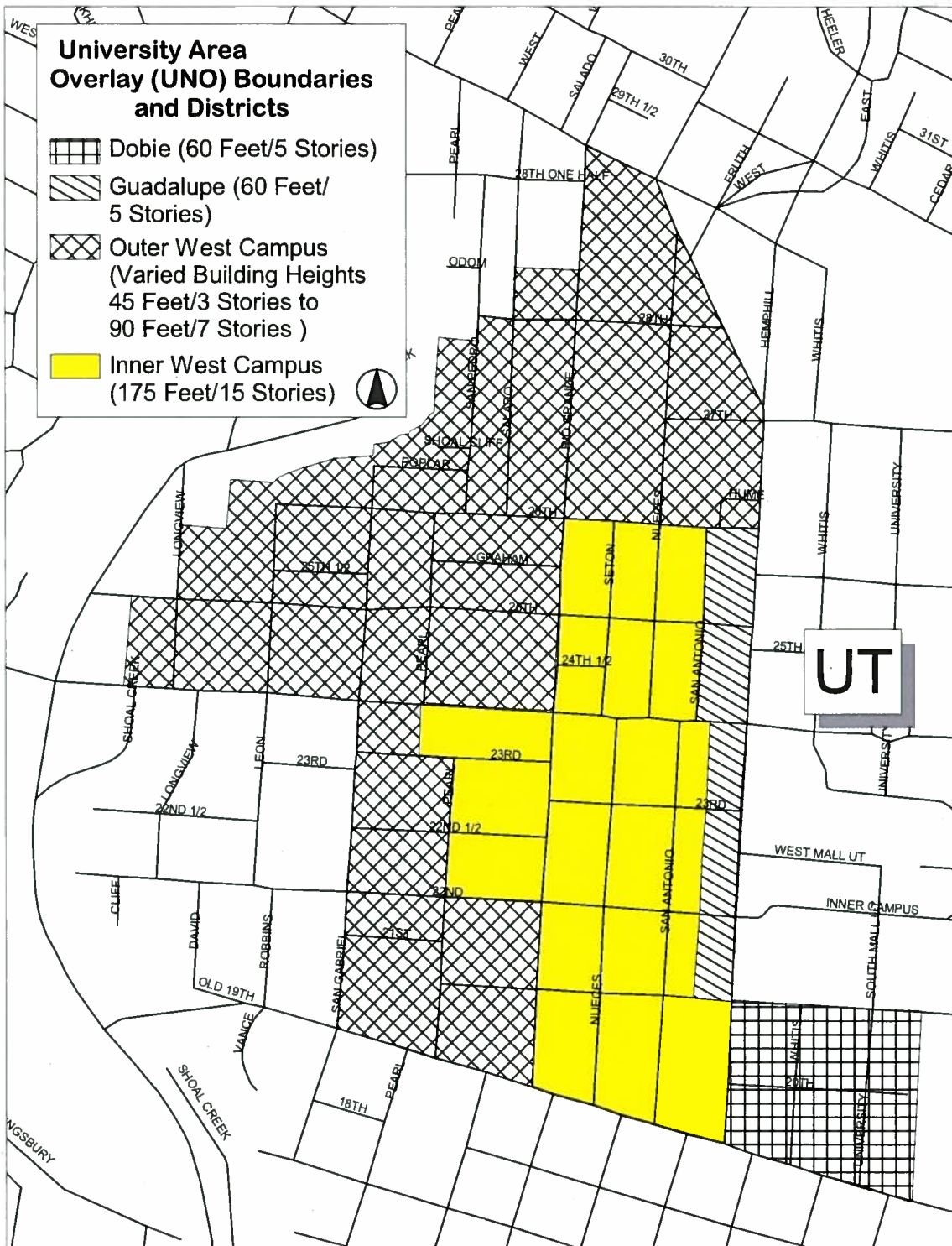


**POSTED**

GRANTED ZONING: ND  
STREET DEED: N/A  
RESTRICTIVE COVENANT: ☒  
POSTED BY: RS DATE: 10-2-85  
ORDINANCE #: 85 0613-12

	NORTH	PENDING CASE .....	SUBJECT TRACT.....	GRID
		ZONING LINE .....	SUBJECT ACREAGE: 12 AC.	J23
		CYCLE <u>3/85</u> INTLS <u>RS</u>	CASE NO: <u>C14-85-002</u>	J24

## Central Austin Combined Neighborhood Plan



**Figure 14**  
**University Neighborhood Overlay (UNO) Boundaries and Districts**