

Rainey Neighborhood Association

February 15, 2021

Dear Members of the City Council and Mayor Adler:

The residents of the Rainey District have been invited to give their opinion on the proposal that the City Council allow exceptions to the Downtown Density Bonus Program under City Code Section 25-2-586(B)(6). In the near future City Council will be asked to give exception to three new developments:

- **SP-2019-0465C, River Street to 22:1 FAR**
- **SP-2020-0069C, 82-84 North IH 35 (East Avenue) 21:1 FAR**
- **SPC – 2020-0121C, 90-92 Rainey St. 32:1 FAR**

We have consulted with the HOAs in the neighborhood and with neighborhood leaders, and are as a group AGAINST allowing any of these exceptions because:

- No need for an exception exists as shown in the City Council meeting conversations during 2014 that established the Downtown Density Bonus Program City Code Section 25-2-586(B)(6).
- These, individually and as a group of high-density developments, threaten to build out the Rainey District to an intensity that is unsupportable by its local infrastructure and adds significant safety concerns.

An appropriate response to the building boom within the Rainey District must consider the aggregate effects of that boom, to understand what is sustainable within the neighborhood on a holistic basis. We make the following recommendations for your consideration:

1. **Pause overdevelopment (FAR greater than 15:1), then establish a neighborhood-wide master plan anticipating conditions once the Rainey District is fully built out (the neighborhood organizations have requested this many times before: a Rainey master plan has never been done).**
2. Recognize that at 15:1 FAR, the new developments that are being approved by Planning without resort to a City Council exception, are already unusually dense (for example, the densest area in the US, Manhattan, has a maximum FAR of 12:1 as well as significant subway, bus, and other infrastructure to support the level of density).
3. Decisions to approve excess development densities must follow from a determination that the benefit to the public exceeds the costs to the public.
4. The City Council should hold the line at a FAR of NO greater than 15:1.
5. Approvals should consider the adequacy of the supporting infrastructure.
6. Require adequate retail and service use on the ground floor.

We have the following suggestions for a better zoning code for managing very tall buildings within a dense district like Rainey:

1. The establishment of FAR controls on an aggregate basis per block, supported by the right to transfer development rights among adjacent parcels within a common chain of ownership.
2. The establishment of “Tower on a Base” or “Sky Exposure Plane” rules for tall towers, to avoid a canyon effect that put the streetscape in near constant shade.



Analysis in support of our recommendations is provided in the Addendum.

Yours truly,

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ADDENDUM

The Rainey District is a small area with rapidly increasing density occurring with no master plan, subject only to an ad hoc property-by-property approval process. There is an acute need to establish controls on development before overdevelopment becomes an irreversible condition. This should be followed promptly by the development of a neighborhood-wide master plan which anticipates how the neighborhood will function once it is fully built out.

RECOMMENDATION: PAUSE OVERDEVELOPMENT, THEN ESTABLISH A NEIGHBORHOOD-WIDE MASTER PLAN ANTICIPATING CONDITIONS ONCE THE RAINEY DISTRICT IS FULLY BUILT OUT.

The Rainey District is zoned to allow eight square feet of building per square foot of land, which is a Floor Area Ratio (FAR) of 8:1. In exchange for providing certain defined public benefits such as funds for affordable housing, plazas or green building practices, the City's Density Bonus Program allows the Planning and Zoning Department to approve density up to 15:1 FAR. Beyond that, following Planning Commission approval the City Council may approve density up to any level, without limitation. There is no requirement that the developer demonstrate hardship or need for the excess density it seeks.

The 15:1 FAR limit itself is among the densest anywhere in the United States. Consider that in Manhattan, which has the densest built environment in the country, the highest density zone is R-10 which allows 10:1 FAR increasable to 12:1 FAR per a hard limit under State law. The 20% increase is allowed in exchange for public benefits similar to those that get awarded under the Density Bonus Program (the DBP) of Austin such as affordable housing, public plazas, community facilities, etc. That maximum NYC zone (Zone R-10) is only mapped along Avenues and wide streets (75 feet or wider) in the core areas of Manhattan, near subway lines and along streets that are served by many buses per hour.

For smart growth, mass transit must accompany mass density. Otherwise, an unworkable snarl of traffic results.

Aside from providing the mass transit means to limit car traffic, parking is discouraged in Manhattan by including above-grade parking in the FAR limits. Hence parking is built very expensively, underground, so it has become too expensive for most Manhattanites to own a car. In Austin, above grade parking does not count toward FAR utilization so bigger buildings are allowed in Austin for a given nominal FAR, verses NY. As parking is relatively cheap to produce and attain in Austin, car use is in favor as a sensible way to get around where there is little mass transit, such as Rainey. Rainey will have more traffic than NY at a similar FAR.

In Manhattan, the narrower side streets all have a less dense zoning classification, and most block frontage predominantly faces the side streets rather than the wider Avenues, so no Manhattan block is zoned as high as 10:1 FAR. Density may be transferred among lots in a common chain of ownership on a given block, and more narrow towers may be built on a wider base to a building (tower coverage limited to 40% of the overall lot) which is why tall buildings are built in Manhattan even while maintaining a much more moderate density per block and within a given neighborhood than the Rainey District is now on track to have.

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To better understand what 15:1 FAR looks like in Austin, consider that the tallest building in Austin (the Independent/Jenga Tower) and the tallest building in the Rainey District (70 Rainey) each have an FAR below 15:1.

RECOMMENDATION: RECOGNIZE THAT AT 15:1 FAR, THE NEW DEVELOPMENTS BEING APPROVED BY PLANNING WITHOUT CITY COUNCIL EXCEPTIONS ARE ALREADY UNUSUALLY DENSE.

CONSIDER: THE ESTABLISHMENT OF FAR CONTROLS ON AN AGGREGATED BASIS PER BLOCK, SUPPORTED BY THE RIGHT TO TRANSFER DEVELOPMENT RIGHTS AMONG ADJACENT PARCELS IN A COMMON CHAIN OF OWNERSHIP. That allows for tall buildings while ensuring that the density on any given block does not overwhelm the local street and utility systems serving that block.

CONSIDER: THE ESTABLISHMENT OF "TOWER ON A BASE" OR "SKY EXPOSURE PLANE" RULES FOR TALL TOWERS. These ensure that very tall buildings cannot rise uninterrupted from the street plane but must instead set back as they get higher. That allows sunshine to reach the street when the sun is not directly overhead, to avoid creating a canyon effect from tall straight building walls built tight to the street line. Note that the proposed development of 90-92 Rainey Street achieves its extreme density by building the site out almost fully, straight up to its 602-foot roof. That will put everything around it into shade, which is an unfair externality of the density sought there.

Building approvals to the maximum allowable per the Density Bonus Program of Austin (the DBP) are easy to come by because the DBP awards for benefits provided per an administrative formula, without any counterbalancing consideration of the costs, particularly to direct neighbors and the surrounding neighborhood. Everyone agrees that benefits awarded under the DBP have merit, but the countervailing costs to the neighboring stakeholders must also be weighed in decision making. Under a formula where costs and externalities are invisible per the formula used to assess a development's merit, only benefits remain in consideration so every large building, no matter how massive, ends up being judged to be purely beneficial.

RECOMMENDATION: DECISIONS TO APPROVE EXCESS DEVELOPMENT DENSITIES (UP TO 15:1 FAR) MUST FOLLOW FROM A DETERMINATION THAT THE BENEFIT TO THE PUBLIC EXCEEDS THE COSTS TO THE PUBLIC.

Following the rapid property appreciation of recent years, the cost to acquire excess density through the DBP formula has fallen way below the market value of those excess development rights. For example, developers are being awarded the right to increase their density by dozens and sometimes hundreds of housing units, in exchange for financial contributions equal to the market value of but one or two condo units. Hence developers are strongly motivated to max out their density requests.

What it means to max out on density is poised to now shift, dramatically. Until quite recently, developers understood the limit to be 15:1 FAR. For example, the projects within Rainey that are now under construction have this density:

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Project	Approved	Units	Stories	Height (Feet)	Acres	Units/ Acre	FAR
The Quincey (91 Red River St.)	2018	347	30	326	0.74	469	14.1
Nativo Austin (48 East Ave.)	2016	249	33	369	0.41	607	15.0
44 East Avenue Condos	2019	322	49	570	0.67	481	15.0

Yet local developers have noticed that the City Planning and Zoning Department and the Planning Commission both are willing to recommend and approve whatever density developers put forth within Rainey, provided that the developers build green and contribute toward affordable housing. This stems from the practice of focusing solely on the benefits provided via the DBP, with no consideration of the costs considered. Noticing this, the developers have upped the ante in a big way on what density they request.

There are now three proposed projects that are so dense that the City Council is being asked to approve them this quarter. These are:

Project	City Council Approval Sought During:	Units	Stories	Height (Feet)	Acres	Units/ Acre	FAR
East Tower – 82-84 East Avenue	Q1 '21	284	41	450	0.41	701	21.0
River St. Residences (60 East Ave.)	Q1 '21	409	48	569	0.50	818	21.4
90-92 Rainey Street	Q1 '21	446	51	602	0.37	1,214	32.0

If the City Council approves these projects, which have two to three times the allowable density of the densest areas of Manhattan, it should be expected that most other Rainey District developers will seek to maximize their own profits with similar density. This will become the new normal. The fact that the mapped density baseline in Rainey is 8:1 FAR will become a distant, irrelevant memory. Once built out, Rainey will become so snarled traffic that there will be no way to engineer around it.

RECOMMENDATION: CITY COUNCIL SHOULD HOLD THE LINE AT 15:1 FAR.

The Rainey District is a boxed-in peninsula with neither through streets nor a rectangular street grid. Its mobility is penned in by IH 35, Lady Bird Lake and the Waller Creek. There are but a few ways in or out, on short streets that terminate in a block or two.

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Neighborhood infrastructure remains more reflective of Rainey's recent single-family roots, and it was never upgraded to be appropriate for high density development. The neighborhood infrastructure was originally composed of single-family homes built mostly in the 1920's, and it retained that dominant density until several years after being rezoned CBD in 2004. In 2000 its census population was only 702, and by 2010 it had become only 1,357. Predominant density during its single-family phase was approximately 5-7 units per acre. Note that the proposed 446-unit development at 90-92 Rainey was, in recently memory, the site of two houses. That is a 22,300% increase in housing units-yet the street that serves this remains narrow and but three blocks long, even though it is the longest continuous street within Rainey.

The streets within Rainey are narrow. Driskill Street and Davis Street which are each 30 feet wide, Red River Street and River Street which are 40 feet wide, and Rainey Street which is 38 feet wide. In comparison, urban streets that accommodate high rise development in other U.S. cities are usually 75 feet wide or more. The narrowness of Rainey's streets will be problematic for the staging of construction equipment and materials during the upcoming skyscraper construction boom and may eventually not be up to task for accommodating all of the Amazon and other service delivery load of such a heavy population. Fire trucks and ambulances may fail to get past the snarl of traffic that can be expected fast enough to save people in need.

The Cities in the U.S. with a high rise downtown (NY, Chicago, Boston, San Francisco, Denver, etc.) restrict their highest density zoning to those areas well served by mass transit. Yet the Rainey District has no mass transit at all, with no trains or buses entering its peninsula.

The Rainey District is on a path to be built out so densely, on few but narrow streets, that the introduction of buses has already been deemed by Cap Metro to be impractical due to the narrow streets, a lack of places to run them, stops for pickups. No rail is projected to enter the Rainey District either, per Project Connect.

The City has been rapidly approving new developments within Rainey with a huge number of parking spaces per acre, apparently without any consideration of whether the local road system can accommodate the resulting traffic flow when the area gets built out to the density level that the City has been green lighting. Likewise, there is no examination in this neighborhood as to whether the other infrastructure systems of this previously low-density neighborhood can handle the radically increased usage load. This includes the sewerage, stormwater, drinking water, telecom, and local school systems.

The traffic recommendations of the Rainey Neighborhood Mobility Study and Plan published in May 2017 and sponsored by CM Tovo with its accurate traffic counts has been ignored. The traffic study completed by ATD, published in Dec. 2020, did not consider any of the Rainey District south of River Street. *Both studies assumed FAR no greater than 15:1.*

Ad hoc site-specific approvals that do not consider the adequacy of neighborhood infrastructure and the cumulative effect of a series of such approvals throughout a small neighborhood may end up very badly.

RECOMMENDATION: APPROVALS SHOULD CONSIDER THE ADEQUACY OF THE SUPORTING INFRASTRUCTURE.

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The area has many bars, a few restaurants but virtually no retail or service business space. There is but one small convenience-type grocery store in the area. Little retail is programmed within the proposed new developments either. The City does not require it or actively encourage it. This contrasts with Manhattan, Chicago, San Francisco, Boston and other successfully high-rise cities where the street level is lined with retail, allowing people to meet their needs on foot. Rainey residents must drive to shop, but the area is on track for such traffic density that this will be difficult to do.

RECOMMENDATION: REQUIRE ADEQUATE RETAIL AND SERVICE USE ON THE GROUND FLOOR

The population on this mobility-constrained peninsula will soon be so high that many services will be needed locally. If high rise towers are built on small sites without retail stores in their original design it may be impossible to add them afterward, as the small ground floor footprints have been devoted to the lobbies and garage entrances needed to service the high population of these very dense buildings.