

Hon. Steve Adler, Mayor
Hon. Natasha Harper-Madison, Mayor Pro Tem, &
Members of the Austin City Council
Austin, Texas

December 17, 2021

Via Email

Re: Request to vote “NO” on the proposed South Central Waterfront Tax Increment Reinvestment Zone

Dear Mayor Adler, Mayor Pro Tem Harper-Madison, and Members of the Austin City Council:

We respectfully request that you vote “NO” on creating any Tax Increment Reinvestment Zone (TIRZ) in the Lady Bird Lake South Central Waterfront area. Alternatively, we ask that this \$278 million, 20-to-30 year momentous decision be postponed until next year when it can be properly scrutinized rather than rushed through during the holidays.

This proposed \$278 million giveaway violates –and is a gross abuse of – the Texas Tax Code provisions for subsidizing development of blighted areas that would not otherwise develop on their own. The subject property is *the* most prime development land in the entire City of Austin. The bulk of it is owned by the self-professed “largest full service commercial real estate company in Central and South Texas,” [Endeavor Real Estate Group](#). **Unless the plain language of the statute is meaningless, this property is nowhere near lacking in development potential as required.** These tax dollars should be spent on public improvements that benefit average Austinites or in reducing their heavy property tax burden. This proposal is corporate crony capitalism at its worst and is the epitome of TIRZ abuse by wealthy developers.

There also is no reason for voting on this TIRZ this year during the holidays. First, this concocted emergency was self-created by the city staff and the developers. The proposed TIRZ analysis was intended to be contracted for by the City in July 2016 and should not have taken more than 6 months to complete. *Tax Increment Reinvestment Zone (TIRZ) Analysis for the South Central Waterfront PowerPoint* (South Central Waterfront Advisory Board, July 16, 2018), p. 2. Second, the City’s emergency argument that it will lose taxable property appreciation by waiting until next year doesn’t justify making such a momentous decision precipitously. The amount of development that will take place next year (and the loss of alleged increased tax revenue) is relatively small and is not large enough to justify such a momentous decision being made hastily. **It appears that the TIRZ decision is being rushed through during the holidays because it would not withstand public scrutiny. This is the antithesis of government accountability and transparency.**

As proposed, the TIRZ would hand back to the developers of the land 46% of all property taxes collected from the land over the next twenty (20) years that would be generated from the increased value resulting from new development of the land. Your experts have estimated this value at \$278 million. Thus, if the TIRZ were not created, this estimated \$278 million would flow into the general fund of the City of Austin, to be allocated in the normal budget process and through voter approved bonds for public projects that benefit the public.

[Texas Tax Code Section 311.003\(a\)](#) requires that the City Council must “determine that development or redevelopment [of the land within the zone] would not occur solely through private investment in the reasonably foreseeable future” without the creation of the TIRZ and the dedication of what would otherwise be general funds (in huge amounts) to the specific area. Indeed, your draft proposed ordinance makes this false determination in Part I, Subsection G [as set out here in your backup](#).

The City Council as a whole, or any of you as individuals, cannot make this finding in good faith. It is beyond obvious to even the most casual observer that this prime downtown lake front property will, in fact, develop solely with private investment and not just in the “reasonably foreseeable future” but quickly. Such a Council “but for” finding would be even more absurd than the infamous finding by the City twenty years ago that the Domain needed \$50 million in tax subsidies to be viable. It is not an accident that the same well-connected developer of the Domain is pushing for another massive corporate welfare handout.

In truth, the development of the land is already underway throughout the proposed TIRZ. The largest tract, the old Austin-American Statesman property now owned by [Endeavor Real Estate Group](#), has been in the development review process for a considerable amount of time and was specifically purchased for its redevelopment potential.

One need only open their eyes and look at what is happening downtown, on both sides of Lady Bird Lake, across our entire city, and across our region to recognize the simple fact that the property will develop rapidly without the TIRZ and its taxpayer giveaways.

Under the state Tax Code, this is not the only falsehood you are required to approve when voting on the TIRZ creation ordinance. You must also make the findings set out in Part I, Subsections E and F of your draft ordinances:

“E. Improvements within the TIRZ No. 19 will significantly enhance the value of all the taxable real property in the zone and will be of general benefit to the City of Austin.”

“F. The area within the TIRZ No. 19 meets the requirements of Texas Tax Code Section 311.005 because the area within the zone substantially arrests or impairs the sound growth of the City, retards the provision of housing accommodations, or constitutes an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of the predominance of defective or inadequate sidewalk and street layout and faulty lot layout in relation to size, adequacy, accessibility, or usefulness.”

The taxable value of the real estate proposed to be included in the TIRZ will skyrocket in value with or without the TIRZ giveaways back to the developers of the land. The TIRZ lock-up of city tax dollars will only lower the developers’ costs and increase their profits. Most, if not all, of the property appreciation results from the massive upzoning as part of the South-Central Waterfront Development. If the property will appreciate over \$6 billion in the next 20 years, as your analysis indicates, then the developers would be incredibly short-sighted not to invest themselves in the \$278 million in infrastructure.

It simply cannot be said (with a straight face) that the property proposed to be included in either of the two TIRZ configurations “substantially arrests or impairs the sound growth of the City” or “retards the provision of housing accommodations” or “constitutes an economic or social liability [and is] a menace to the public health, safety, morals, or welfare in its present condition.” The evidence to the contrary is everywhere and beyond dispute.

If this TIRZ really is needed, and the statutory “but for the TIRZ, development would not occur in the reasonably foreseeable future” test is met, how did most of downtown develop and continues to develop without such tax giveaways? Why are there cranes across the downtown and central Austin skyline right now?

The proposed TIRZ upends the standard practice that developers must provide their own streets, sidewalks, parks, and utility infrastructure and instead makes the taxpayers pay for them. While some cost sharing normally takes place when private development facilities connect to the City’s streets, water and sewer lines, the normal process is that the private developer is required to pay impact fees to cover their share of providing these community services. Any larger projects that benefit larger areas may also be paid for with bonds, put up for public vote or approved during the normal budgeting process of prioritizing spending year-to-year. Under no circumstances should the City be paying for streets, utilities, parks and other facilities that primarily or entirely benefit only one or two properties. These developers should not be given sweetheart deals that circumvent the normal development process that applies to everyone else and that pay for infrastructure and amenity costs that other developers routinely pay for.

In addition, the City could push the developers to use a PID (Public Improvement District) and have the landowners in the PID pay an incremental fee for the improvements. There is no reason for taxpayers to cover the costs as with a TIRZ.

The controversy over whether the so-called “Snoopy PUD” land can meet these three statutory tests for inclusion in the proposed TIRZ because it is already under construction is simply a red herring and distraction from the simple fact that the entirety of both TIRZ configurations fails all three of these state law standards. Neither of the two versions complies with the state TIRZ law and both are simply a monumental, unnecessary transfer of wealth from Austin taxpayers to Endeavor Real Estate Group and, secondarily, to the few other landowners.

No amount of talk about affordable housing can hide the fact that this is really a welfare-for-the-rich proposal, one that increases inequality while pretending to reduce it.

In fact, the **project plan provides zero dollars for affordable housing**. If you look at the projects list in the Preliminary Project and Financing Plan, December 2021, Exhibit D, page 128 of the PDF, affordable housing is completely absent from the list. What is on the list are costs that developers normally incur and pay for out of their own pockets. The projects listed consume all of the projected revenues.

Even if affordable housing were included, this housing would be bought at a premium from Endeavor or one of the other property owners in the district. (If creation of the TIRZ really does increase the value of the land, this is an admission that we would be driving up the costs of

providing affordable housing in advance of actually acquiring it – an admitted waste of taxpayer funds.) The bulk of the funds would be used to pay for amenities that would primarily benefit the 99% of wealthy residents and businesses located within the proposed TIRZ properties and capable of paying what will certainly be among the highest prices in the City.

If the council really cares about affordable housing, it makes far more sense to collect the \$278 million in taxes that would otherwise flow to the general fund and build or subsidize affordable housing on property that is not the most expensive property in the entire city.

The Texas Tax Code is crystal clear that the purpose of creating a TIRZ is to help revitalize areas that are suffering from a lack of investment. Given what is obvious to everyone, this prime property on Lady Bird Lake does not fit this category. **By subsidizing development that has zero need of taxpayer handouts, the proposal is a clear abuse of the Texas Tax Code TIRZ provisions and of Austin taxpayers.**

The proposals should be denied as a matter of law, facts-on-the-ground, good conscience, and in fairness to all taxpayers and other developers in the central city. Every member of the Austin City Council professes to recognize that with state-imposed limits on local tax increases, it is especially important to keep our funds flowing into the general fund and prioritized to meet the most urgent needs as they arise. This proposed lake front TIRZ, by tying up hundreds of millions of dollars over a 20 year or longer period, conflicts directly with your own budgeting goals and the very real hardships we face as a city under state law.

It will be much harder for the City to argue that the state should not interfere in our local taxing and spending when the City Council is poised to violate the Texas Tax Code so flagrantly.

In closing, we note that the abuse of tax increment financing is not new. This *Houston Press* article, “How Houston Uses the TIRZ System to Benefit High-Dollar Areas and Ignore Poorer Areas” lays out the abuses. And this excerpt from [Progressive Policies for Raising Municipal Revenue](#), April 2015, a report by the Center for Popular Democracy and the National Municipal Policy Network pretty much says it all, both generally and about the specific proposal before you:

TIFs were initially intended to jumpstart development in blighted areas, but in practice TIFs have become a way for residents to subsidize the profits of big developers in areas that would have been developed anyway. . . . Furthermore, when TIF districts are put in place where development would have happened anyway, the city simply loses out on needed revenues. This can be devastating for cities since TIFs often divert revenues away from the general fund for decades. P. 37-38 (emphasis added)

Please do the right thing and just vote “NO thank you!”

Sincerely,

Bill Bunch

Fred Lewis

Bill Atleshire