

## **WE SUPPORT AN ORDINANCE TO REASONABLY LIMIT INFILL CONSTRUCTION**

**WE DISSENT FROM THE TASK FORCE RECOMMENDED ORDINANCE ONLY AS TO THE SUBSTANCE OF THE RESIDENTIAL DESIGN COMMISSION AND WE RECOMMEND MINOR ADJUSTMENT OF TWO NEW DEVELOPMENT REGULATIONS. FINALLY, WE SUGGEST A SINGLE CHANGE TO THE INTERIM ORDINANCE TO ALLOW IT TO CONTINUE RATHER THAN RUSH APPROVAL OF THE ORDINANCE BEFORE COMPLETION OF THE TASK FORCE WORK AND ITS IMPORTANT REVIEW BY CITY STAFF AND THE PUBLIC**

### **A Minority Report from the McMansion Task Force**

Submitted by Michael N. Casias, Task Force Member  
Joined by David Arscott, Task Force Co-Chair  
Joined by Clint Small, Task Force Member  
Joined by Silver Garza, Task Force Member

**Council has granted the Task Force an extreme amount of deference despite specific concerns from other public bodies and private citizens to the published Task Force recommendations. The members joining this report have attended most if not all briefings to the body, participated tirelessly at Task Force meetings usually twice a week, sometimes thrice, and have raised all the issues presented in this report in multiple public forums. The members joining this Minority Report include one former Neighborhood Association/Planning Team president, two former Board Commissioners, including the Zoning and Platting Commission, Planning Commission, and Gentrification Task Force, one legislative aide, one president of a Community Housing Development Organization (CHDO), four builders/developers, including at least one certified affordable housing builder, and all citizens of this great City. We hope you listen.**

**The McMansion Task Force Ordinance recommendations contain important initiatives and code changes aimed at solving the problem of bulk and scale incompatibility of new construction with existing structures; all of the Task Force members joining in this report have worked in concert with all Task Force members to reach a solution that balances our collective desire to preserve the character of older neighborhoods while balancing the needs and reasonable expectations of residents, property owners, and the general public welfare, but without exacerbating pressure on our stormwater system.**

**We join in support of all but one of the major concepts in the Majority recommendations (14 pages as of this writing) and we recommend a more measured introduction of two of the major new concepts to the residential Code. We suggest a slightly less restrictive approach in light of the multiple changes introduced within an extremely tight study and analysis period; review from other commissions and departments, though incomplete; our ability to adjust in six months, and the ease of tightening our measured recommendation in six months versus the difficulty of trying to determine the specific cause if this ordinance has multiple unintended consequences.**

**This report contains three suggested changes to the new ordinance which easily can be incorporated in the current draft (also a suggested change to the Interim ordinance); an explanation of how this recommendation evolved and how it varies from the ordinance before the Council; and finally reasons why this recommendation works and is the best course for the City at this stage.**

### **Proposed Changes to the Ordinance Draft 6/8/2006 12:09 PM**

1. Do not create a Residential Design Commission as proposed (Sections 2-1-531, 532, 533, 534. Subsection 25-2-566 (L), and Part 7).
2. Modify the maximum floor-to-area ratio from .4 to .5 (Subsection 25-2-566(J)).
3. Modify the building envelope height from 15 feet to 17 feet directly above the side and rear property lines (Subsection 25-2-566 (K)(1) and (3)).

### **Proposed Change to the Interim Ordinance**

1. Replace Part 5. Setbacks with Subsection 25-2-566(H) of the proposed ordinance draft 6/8/2006 12:09 PM.

### **How this Report evolved from the Majority policy recommendations (Adopted on May 12, 2006, Motion made by Michael Casias, 2<sup>nd</sup> by Chris Allen, passed on a vote of 13-1, 2 absent).**

**1. LOSS OF EFFICIENT DESIGN REVIEW PROCESS IS LOSS OF MAJOR ELEMENT OF THE MAJORITY RECOMMENDATION OF MAY 12, 2006. On May 12, 2006, the Task Force passed a comprehensive policy recommendation that included new building envelope, FAR, and height restrictions but called for a streamlined, non-political design commission solely made up of design professionals to approve variances of up to 25% from those restrictions. Almost every member of the Task Force compromised to achieve this balance. However, the final ordinance language, adopted by the Task Force on June 5, 2005, relating to the Design Review Commission (one of the few actual ordinance provisions the Task Force had a chance to review and vote on before**

today), falls far short of the intent of the comprehensive recommendation. The effect of the approved ordinance is a Council-appointed commission, similar to the Board of Adjustment or Planning Commission, whose members may include any citizen and who MUST consider criteria such as impact on neighbors' privacy, recommendations of the neighborhood plan team, and compliance with neighborhood design guidelines—concepts subject to many different interpretations even within like-minded groups. Even with revision, this commission most likely result in another costly and time-consuming obstacle for applicants, not a predictable and administrative 25% increase for those projects that meet the intent of the ordinance. This change to the recommendation, which everyone has indicated was tenuous at best, significantly altered our comfort with the more restrictive concessions made, including .4 FAR, a more restrictive definition of FAR, and 15' building envelope.

**2. BROAD REVIEW OF THE MAY 12 TASK FORCE RECOMMENDATIONS CONSISTENTLY POINTED OUT CONCERNS ABOUT THE DESIGN REVIEW PROCESS, FAR, SETBACK PLANE, AND AFFORDABILITY.** The May 12 policy recommendations were the result of hard negotiation and compromise between a group of builders and neighborhood preservation advocates. Although the Task Force at that time had received little input from urban planners, City departments, economists, or other experts, approving a comprehensive framework was the opportunity to finally start obtaining feedback from departments, commissions, and other stakeholders to our untested proposal. Although most departments have not submitted written feedback to date, we have been fortunate enough to have heard from the Design Commission, Planning Commission, Neighborhood Housing, City permit reviewers, and Legal. This written feedback significantly altered our view of the May 12 recommendation. Consistent with the recommendations from this broader expertise, we still agree with the majority to revise the Code, but we choose a slightly less restrictive starting point than before as the reasonable way to adopt a cluster of new regulations.

**3. SHORT STUDY PERIOD RESULTING IN MAJOR LONG-TERM CHANGES IS A DANGEROUS COMBINATION.** Finally, because the Task Force itself, let alone all other stakeholders, has had only two weeks to review constantly changing ordinance, our fears of a repeat of the interim ordinance adoption are inescapable without more Council review. For instance, at the time of the Interim ordinance adoption, the Task Force had two weeks to make major policy recommendations, but with little or no review of the final ordinance itself. In one instance, the Task Force did not have the opportunity to review the two-page "front setback" language before Council adoption. That alone has ended up, by anyone's account, a nightmare for all parties and clearly not the intent of the Task Force. Today, the Task Force has yet to vote on most of the actual ordinance language; most City departments have not provided written reports concerning implementation; and none of the public has seen the 6/8/06 language until today. Under these circumstances, shouldn't we be a bit more cautious?

Among those joining this Minority Report are the makers and supporters of the May 12<sup>th</sup> majority recommendation. As Task Force members, we have worked to bring the larger development and building community to the table in support of most of the Task Force recommendations. We hope we have explained why we now favor a slightly more gradual transition to a completely new manner of regulating single-family lots in Austin aimed at curtailing extremely bulky and truly out-of-scale structures, with plenty of opportunity for adjusting in six months.

### **Why the Minority Recommendation Works**

- 1. THIS RECOMMENDATION SUPPORTS THE INTRODUCTION OF BUILDING ENVELOPE AND FAR CONCEPTS TO THE RESIDENTIAL CODE, SIGNIFICANT CHANGES THAT WILL ADDRESS BULK AND SCALE EVEN AT THE MORE RELAXED STARTING POINT. IT SIGNIFICANTLY HINDERS THE CONSTRUCTION OF MCMANSIONS AND MCDORMITORIES!**
- 2. WE HAVE SIX MONTHS TO OBTAIN DATA CONFIRMING THAT THESE RECOMMENDATIONS STOP THE MOST EGREGIOUS EXAMPLES AND CAN ADJUST IF NECESSARY**
- 3. A PREDICTABLE VARIANCE PROCESS IS ALREADY IN PLACE. IT AVOIDS CREATION OF ANOTHER COMMISSION THAT CAN SERVE AS AN OBSTACLE TO APPLICANTS TRYING TO FOLLOW THE NEW REGULATIONS.**
- 4. THE RISK OF SIGNIFICANT ECONOMIC LOSS AND DISRUPTION TO OUR URBAN CORE, RELOCATION OF SOUND DEVELOPMENT TO LESSER REGULATED OUTER RINGS, AND LONG-TERM IMPACT ON AFFORDABILITY OF OUR URBAN NEIGHBORHOODS IS FAR GREATER THAN THE RISK OF MISSING A SMALL PERCENTAGE OF HOMES THAT FALL BETWEEN THE MAJORITY AND MINORITY RECOMMENDATIONS.**
- 5. THE MAJORITY RECOMMENDATION GOES FURTHER THAN THE MORATORIUM, THE INTERIM REGULATIONS, THE DUPLEX ORDINANCE, AND ANY OTHER PRIOR REGULATION OF SINGLE-FAMILY ZONING. THE MINORITY RECOMMENDATION ALSO GOES FAR, BUT ATTEMPTS TO MODERATE THE INTRODUCTION OF BUILDING ENVELOPE, LOWER HEIGHT, AND FAR TO ALLOW TIME FOR STUDY OF THEIR INTERACTION AND EFFECTS.**
- 6. IT WILL BE MUCH EASIER TO TIGHTEN THE REGULATIONS IF THEY ARE FOUND TO BE LACKING THAN IT WILL BE TO RELAX THE RIGHT ELEMENT OR ELEMENTS IF THE ORDINANCE TURNS OUT TO GO TOO FAR.**