



City Hall's Shortsighted and Dangerous Attack on Due Process and Property Rights



Buried on the Austin City Council's [September 17th agenda](#) is a pair of easily overlooked items that will set a disastrous precedent if passed. They are Trojan horses, part of an insidious and reckless scheme by the council and their land-developer supporters to strip property owners of their right to due process—one of the most fundamental principles of our democracy.

In and of themselves, the two agenda items are innocuous: Item No. 69 proposes new land-use regulations through the creation of a Central Health “overlay district” around the old Brackenridge Hospital tracts (near the intersection of 15th Street and Red River), and Item No. 70 seeks to amend an overlay district close to Austin-Bergstrom International Airport, eliminating residential uses. An overlay district is a zoning tool that cities use to change the zoning regulations of multiple properties by placing an “overlay” over current zoning.

City officials could have easily rezoned the affected properties through the regular zoning process. Instead, they intentionally chose to use these proposed overlay districts to evade giving notice to the properties' owners.

Here's where the “Trojan horse” comes in: If these items pass on September 17, the council and its special-interest allies plan to use the same overlay tool to rezone

properties all across Austin, likely after the November election. They could attempt to eliminate the property rights of hundreds of thousands of residents, rezoning their homes and neighborhoods without providing them notice or honoring their protest rights. Many in City Hall unwisely believe the ends they seek (increased density and redevelopment) justify any and all means, however problematic.

Imagine a future “Transition Zone Overlay” that incentivizes heavy new density and the demolition of existing homes, or a “Project Connect Overlay” that does the same near the city’s proposed light-rail and bus lines. Overlay districts would be used whenever and wherever City Hall decides major rezoning is needed, but due process is inconvenient (as if the public and local property owners don’t know what’s best for them).

We got [a glimpse of the city’s plan](#) in July, when City Hall’s lawyers filed a “Request to Clarify” with the court that heard the protest-rights litigation. In it, they asked Judge Soifer if they could use overlay districts and similar shenanigans to evade her order requiring notice and protest rights: “This request for clarification was prompted initially by the City’s pending amendment [by overlay district] to its regulation of land near Austin-Bergstrom International Airport” The judge denied the city’s request on procedural grounds, but old habits evidently die hard.

Just to be clear, the mayor and city council’s Trojan horses are set-ups for major rezonings across the city, without providing notice and protest rights. These schemes will:

- Undermine notice and protest rights that protect all Austinites, from homeowners to business owners (and even land developers)
- Undermine the certainty of property rights and entitlements, because if written notice is required, the city’s failure to provide it makes a rezoning void
- Undermine our fundamental values of due process and fairness, because when the council majority changes, properties that are upzoned without regard to their owners’ rights could be downzoned just as easily

Please consider [donating to Community Not Commodity](#) so that we can make sure all Austinites are fully informed about this assault on their due process and property rights. By raising our voices now, we hope to avoid future litigation and community discord.

Together we can build an Austin for everyone!