

Public Utilities Committee Meeting Transcript – 6/17/2015

Title: ATXN 24/7 Recording

Channel: 6 - ATXN

Recorded On: 6/17/2015 6:00:00 AM

Original Air Date: 6/17/2015

Transcript Generated by SnapStream

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>> Zimmerman: Hello, everyone, my name is don Zimmerman, I'm the vice-chair of the public utilities committee. We have here councilmember kitchen and councilmember troxclair. I have the time at 3:08 P.M. A quorum is present so we're going to kick off the meeting. We're at Austin city hall on the dais. And our first item -- first thing to talk about here, we have a sign-in. If anybody still wishes to speak on the items, we have some pink sheets. Joe patronas. He is in the front and can get you signed in if you haven't signed in yet. Our first order of business here is the approval of the minutes. Has everyone had a chance to look at the minutes yet? I think they're pretty straightforward. >> Kitchen: I so move approval. >> Zimmerman: Councilmember kitchen moves approval. Councilmember troxclair seconds. If there's no objection, I have no objection, the minutes are approved. We're into citizen general communication. Agenda item number 2, we have one speaker signed up, Mr. Armbrust. And you will have three minutes to talk about anything. Doesn't have to be on the agenda. Anything you would like to talk about. You have three minutes. Thank you for coming. >> Thank you. My name is John Armbrust and I'm the executive director and founder of Austin achieve public schools. We are a charter public school serving students in northeast Austin. Our mission is to prepare our students to attend and compete in the nation's top colleges and universities. A colleague of mine will be asking that we receive the same exemption that aid and others receive regarding drainage fees, but I'm here to talk about street fees as well. Like drainage fees, public charter schools did not receive the same exemption as Austin ISD as well as universities. Public charters first came into existence in 1995. Thus I'm left to conclude that we weren't intentionally omitted,

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however that is righter schools did not exist yet. I would like for us to receive the same exemption as traditional public schools and universities receive as like traditional public schools we are authorized by the Texas education agency and are considered part of the public school system. Thank you for your time. >> Zimmerman: Could you stay? >> Sure. >> Troxclair: Thank you for bringing this issue to our attention. I did inquire with city staff whether or not we could include charter schools in the drainage fee exemption and they sent me the Texas statute. I guess it's in state law that specifically outlines

which entities can be exempt from local drainage fees and it specifically says independent school districts, which charters are not considered. So I think it may be something worth talking to the legislature about. I know that won't be for another year and a half, but it doesn't appear at least from the response that I've gotten from asking around that we have the legal authority to include charters in any exemption. >> I know we're clearly defined as public schools in the state legislature and I am also quite certain there was some clarifying language passed recently regarding that. We can look into that and maybe that can help. >> Troxclair: Yeah. And I absolutely know that charter schools are public schools, but in the statute it specifically says independent school districts. And so that's where I think the legal issue was. But councilmember kitchen, did you have something? >> Kitchen: I was just going to explain the rationale about how we can fit within the state law. >> Troxclair: Sure. I'd be happy -- if you have information that would allow to us do that, I would be happy to consider it. >> We will do that for you. >> Zimmerman: Thank you. We have one other person that's I believe signed in here S there a Gerard Kinney. Are you here? Thank you, sir. You're up next for three

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minutes. >> Thank you, chairman and members of the committee. I'm Gerard Kinney. I had met before y'all a couple of months ago at one of your earlier meetings about this topic. It has to do with water meters for secondary dwellings. And the fact that many of us, particularly representing smaller [indiscernible] Do secondary dwellings have run into a huge roadblock in that now separate meters are being required in the right-of-way for those secondary dwellings and the city no longer does that work. And now for the first time requires tap plans for that. And the cost for doing that is just -- I have two projects that are probably on hold forever because of it. The plans were finished, building permit approved, but can't pull the permit because we now have this blockade to being able to do secondary dwellings in the city. The cost is just enormous to do it now, whereas previously it was not that expensive. I just wanted to bring that to your attention again. When I came before you before, a small contractor joined me and she said the same thing was true of her projects. And it just continues to be a problem. There's a lot of conversation going on right now in the paper and about Adu's and -- but I've not heard of any resolution to this. I think the solution is for the city to start actually doing the work again and charging a fee that covers their cost to do it, but that's not what's happening. So just wanted to bring that to your attention. Thank you, sir. >> Zimmerman: Before you go, so what do you estimate -- what is that cost that's being charged

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now? >> It depends on whom you ask. If you call up most engineers who do work in the public right-of-way, they will tell you that the tap plan alone will cost you from five to six thousand dollars, for the tap plan. This is something you used to didn't have when the city did the work themselves they didn't need a tap plan because their crews knew how to do it is what I understand. And then the actual work will cost you anywhere from eight to \$15,000 now for actually digging the trench, meeting with the city, the various times that ones needs to meet with the various departments, getting all of the final approvals of everything. [Indiscernible]... I'm told that people are having to pay. I've been working really hard trying

to find people that will do it, people would jump in and do it on a turnkey basis, that kind of thing. We're working hard and we might be able to do it. Now we're hoping for maybe as little as \$15,000, but still it's a cost that for many, many years secondary dwellings were done off of the existing house, and that's no longer allowed. So it's a big problem. And I just wanted to remind you that it remains a big problem. >> Zimmerman: Okay. You would like to see that requirement eliminated. Right? Would that be it? >> Yes. It's a complicated issue. I've met with city staff about this and I understand that it is complex. It has to do with a law that's been on the books since apparently 2006. And the city only started enforcing it last October. As I understand it. So it's kind of a sudden thing. It's really a big problem for secondary dwellings in our city. >> Zimmerman: Thank you. Any other questions?

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Okay. Thank you very much. That brings us to item number 3, consider and develop recommendations on an ordinance amending city code chapter 15-2 and 15-9 relating to the drainage charge. How much time do you need? Looks like you're ready to go. >> We're going to ask you a question about what would you like us to cover in this particular event? I'm Craig bell from watershed protection, councilmembers. I have Ms. A telli here with me. >> Kitchen: What you might just start -- we had raised a number of issues which you all provided some response to. Thank you very much for that. And then I think there was some additional items that you were going to provide some information on. And, you know, we weren't able due to the weather that fortunately wasn't as bad as we had anticipated. So perhaps, you know, we had talked about perhaps you could speak to us about options related to a phase-in. And I don't know, there were some information that councilmember troxclair had asked for. I don't know if you got that, related to comparing with adjustment or without. So follow-up, basically some follow-up information from what we had before and then also anything else that you felt like you would like to address. >> Zimmerman: Sir, just to let you know, we have nine speakers signed in at three minutes each. So maybe we could hear a few comments from you and then have the speakers come. >> Did you want to get to your public speakers first before you deal with item number three? >> Zimmerman: Let's do that. Maybe then you can respond to some of the comments there. Let's start with Mr. David king. You've got three minutes. Thanks for coming, Mr. King.

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>> Thank you, chair Zimmerman and thank you, councilmembers, too. I am supporting this resolution on these drainage fees. I think they're fayer than what -- fairer than what we had before and more equitable. I think we need to move forward with that. One of the things I would be interested in the committee maybe looking at and experiencing is that we've had lots of flooding issues recently and that kind of just brings -- reminds us how impactful impervious cover is in our development here. So as we look at these, are they sufficient not only for the operations of our department but when we do have the major flooding events and have to help our folks out in getting through the flood events, then do we have any contingency funds for that or is it going to be on the backs of taxpayers again. And I know we're all in this together and I'm all for doing my part. I think we need to help our fellow citizens out when we have these kind of major catastrophe in our community. But I think we need to find a better

way to first mitigate those problems so that they don't occur as impactful as they do. And then try to avoid in the first place. I think our development policies, where we're allowing impervious cover is going to be very important. So -- then I would like to also point out that we do have -- I'm concerned about the exemptions for water catchment or rain gardens or all these facilities, strategies to mitigate the runoff. They're not always effective. When we have big rain events they're not effective and so I think we have to be careful about how we start allowing exemptions or reductions. Where does it end? And does the -- we have to pick up the balance. The other thing is we already have a lot of entities that are exempt. IST has had 39 million square feet of impervious cover is exempted for aid. 29 million is exempted for

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private higher education and public institutions. The state has over 26 million square feet of impervious cover exempted. And religious organizations, 20 million, over 20 million. When you add it all up that's under 118 million square feet of impervious cover that's exempted from this fee. That means the rest of us pay for that. So I think we do have to look carefully at how much we allow these exemptions for some of these entities. What are community values and how much can we afford? I really hope that the committee will take a look at these exemptions and really get public input on which of these should be allowed. [Indiscernible]. So I think if we're going to make it fair and equitable we need to look at the exemptions part of this policy as well. Thank you very much for letting me speak. >> Zimmerman: Thank you, Mr. King. Our next speaker we have is Theresa Elliott. On deck would be rob led better. Is Theresa here? Is rob Ledbetter? >> Good afternoon, I'm rob Ledbetter, austinite. I'm a past member of the citizens water conservation implementation taskforce. The methodology behind this new proposal on the commercial side appears sound but what I'm here to speak about is the discount for ponds. I understand that they've been eliminated. Ponds are expensive to maintain and they do require additional insurance, but we agree they are an important part of controlling runoff and water infiltration. But the question is does the city only want the minimum? Do you want a bunch of concrete boxes with fences over them or would you like to continue to have nice landscaped areas that are amenity to a property?

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By eliminating the pond credit you almost ensure that people aren't going to do anything extra other than the minimum. When you want someone to do more you offer an incentive. Austin energy offers incentives for energy efficiency and we think that the city should offer incentives for anybody who does water mitigation that's greater than what's required by code. That would also apply not just to commercial properties, but all property groups so that if an apartment complex wanted to add a pond right now they don't get any sort of credit, but if they do something greater than code then they should be eligible for a discount. There's no cost to the city for this and I think that the city wins because then you do greater controls of water and improve the water quality that is runoff from the properties. Thank you. >> Zimmerman: Thank you. Appreciate that. Our next speaker is tod Mckay. Is tod Mckay here? Followed by Stewart Hersh. >> Good afternoon. Thank you for the opportunity to give comments on this. I'm here on behalf of [indiscernible], 19 70's and we have our corporate headquarters here as well

as our two main manufacturing facilities in town and we support over four thousand employees and contractors at our facilities. Freescale has a long history of working with the city of Austin to ensure compliance, to develop and maintain our sites in an environmentally conscious manner and to support the city's various environmental initiatives over time. Generally we support the new drainage calculation methodology, however there are two particular points that we wanted to comment on. The first is the issue of con continuous parcels of land. As we understand it, the

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amendments do not take into consideration cases where entities own and operate contiguous par tells of land. The fee would be calculated separately for each individual parcel of land resulting in a higher fee that would exist than if the land were one parcel. This would be an undue burden on entities who have this situation and we feel that is not fair and representative for all the entities. In the case of our operations U our land exists as multiple parcels because we actually gave public right-of-way for William cannon to be extended through our property many years ago and that created two separate parcels for us. So we feel like this not being accounted for unfairly is a burden on us. What we specifically ask on this is that the amendments be modified to treat contiguous par tells of land owned by one entity as one parcel when calculating the drainage charge according to total land area and total impervious cover. Additionally we request contiguous parcels of land include land separated by public right-of-way. The second item that we wanted to give comments on is the pond discount. Currently the city offers a discount on the drainage charge for properly registered and well maintained ponds. The amendments proposed to eliminate the discount on the basis that it is a regulatory requirement to properly maintain ponds, while we agree it is a requirement to properly maintain registered ponds, the majority of all properties in Austin are not required to have ponds. Ponds present and extra and unique burden for businesses for cost of maintenance and repair as well as restricting the development of that land. The new drainage fee adjustment factor for impervious cover does not account for whether or not a property has ponds and the associates costs and restrictions. The ponds that some of these

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businesses have, such as [lapse in audio]. And also these -- [buzzer sounds] That's my three minutes. >> Zimmerman: Go ahead and finish your thought. >> The ponds improve the quality of water discharge to the city. On our property we have filtration, sedimentation ponds that improve the quality of water that goes to the city that the city has to deal with. We feel these ponds are beneficial. Thank you. >> Zimmerman: If I could ask you quickly, what is the dollar amount you are talking about that you would lose. The credit you're losing is how much money per month? >> On each of our facilities, it would be approximately \$25,000 a year roughly for each of our two facilities. And as an example, we looked at the maintenance costs Fors our facilities and it's about \$30,000 a year to maintain those ponds. >> Kitchen: My question is related to the issue you raised about the contiguous property. Have you calculated the difference, treating it not as contiguous versus treating it as one parcel, have you calculated the difference? >> In our situation it's about a 10% difference on the actual drainage charge. >> Troxclair: On the pond issue, I'm trying to understand the installation and creation of the pond is part of the

discussion or negotiations that happen when an entity comes to city council and initially proposes a development. A lot of times building a pond is necessary or is some kind of trade-off for

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increased impervious cover. It's a part of the package that allows development to be built in the first place because if the development is built, then we require a pond to make sure that the storm water is managed properly. So I guess I'm struggling to understand then going forward -- I guess I understand that there is an existing discount and of course getting rid of that discount does have financial implications. And other things associated with it. But it seems to me like the pond, regardless of that discount, and in regards to the previous speaker as well who said that the ponds wouldn't be built, I think that the ponds that we have are required to be built initially anyway regardless of any future discount. So why -- so I'm not understanding going forward why having a pond is a reason to be entitled to an initial benefit or discount. >> Sure. I think there are a couple of different circumstances. In regards to the comments from the previous speaker, as I understand that ponds conditions built in different ways. They can be built extremely minimum where they're not esthetically pleasing to the neighborhood or surrounding areas or built in a way that is more with the look of the city. But that is very often above and beyond. And then that can require additional maintenance and associated costs. In a case of a location such as ours, out in the oak hill area, we actually initially purchased and started developing that land in the '80's when the regulations were different. It's certainly changed over time with different ponds, but we have had ponds for a long period of time that were built before some of the requirements that mandate ponds now. And so in -- so we think there's that situation with our history. >> Troxclair: Thank you. >> Zimmerman: Thank you very much.

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Mr. Hersh, you will be next, followed by George Oswald, followed by mark Walters. >> Chair and members of the committee, my name is Stewart Hersh and like most in Austin I rent. I think like most renters who I've talked to we condition to be concerned that the draft drainage fee ordinance may have language that treats the renter uncarely. Bullet point number one, the drainage fee will on no longer be on a renter's bill, so they will no longer pay the drainage utility fees therefore it appears our fees are going down, but the truth is in bullet number two the renters generally experience 50 or 100-dollar increases in month rent when our owner's expenses increase as a result of increased property taxes, not just the city, utility bills, insurance and repairs unless our owner decides to absorb the increase. It will not feel like greater affordability in my drainage fee goes to zero, but my rent increases by 50 or \$100 a month if the council does not adopt some creative suggestions that we've been offering since the first stakeholder meeting and there doesn't appear to be a lot of hearing going on at the public hearings. Those of us who have provided on-site detention and I work with not for profits who do that sort of thing with rainwater harvesting are told that our harvesting tank is impervious cover. So when we're capturing the water for water conservation, flood volume and water quality purposes, that counts as impervious cover. So the calculation will count that tank against us for putting it there. If we had left that green space and let all the water runoff, we would be paying less -- the [lapse in

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audio]. If I live in a low rise or hi-rise in multi-family and the water comes on the roof and drains down to the storm sewer and I don't understand why my fees are twice what their fees are, just because I can't afford to live in a hi-rise downtown makes no sense to me and it doesn't seem to be in alignment with drainage. The drainage fee changes so far have not been linked to strategies to reduce expenses through vacancy savings. And other areas just like the general fund budget discussions have been. So what it looks like is fixing to happen tomorrow or next week is in the name of more affordability for renters we're about to get higher rents. You have an opportunity to slow this down, there's nothing causing you to do this immediately with the new budget or to approve it this month. Slow it down, make it fairer, explain to us the science and end up with something that accomplishes what I thought the lawsuit was supposed to, which is those of us who have been paying too much in drainage fees as renters would finally get relief that the state law gave us all along. Thank you for taking that into account. Nothing has seemed to change so far. I'm eternally optimistic that it will. [Buzzer sounds] >> Kitchen: Mr. Hersh, first off, I think I'm safe in saying that we will not be hearing this tomorrow. >> Thank you. >> Kitchen: Currently we're thinking that it will be on next Thursday's agenda with an opportunity at the work session to talk about. That's the current thinking. But it won't be on tomorrow. I wanted to let you know that and everyone else here. We are postponing that vote. I wanted to ask you with regard to item number 3 about rent increases, can you just -- I know you've been -- I know you've been letting us know, but could you tell us again what you consider to be -- what you

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consider to be appropriate when you reference creative suggestions to that concern. Is there anything in particular that you would like to highlight for us? >> I would like to revisit the issue of who receives the bill. I don't think any of us had an issue of paying something fair. So but what we've been unable to break through since the first stakeholder meeting is why can't we keep receiving the bill and then be able to compare the bill we receive to the one that we're getting new. There's no logic to me as to why that is changing other than what I've heard in work session, which I think is legitimate, that we're losing revenue because of certain vacancies that occur right now. I think there's a certain logic to looking at a mechanism where that doesn't happen anymore. But for those of us who are paying the bill, we're okay -- I think most of us are okay with still paying the bill, while we thought the bill was going to be lower, and so it wouldn't likely result in a change in our rent because now that bill is going to the owner instead of us directly. >> Zimmerman: That is logic, you touched on it. Right now we have very, very high occupancy rates, but if something were to go south and we had a 80% vacancy rate then you're getting half as much for the same impervious cover. It's the same with shopping malls or a strip centers. If people move out of the strip center it's still contributing to the impervious cover, but there aren't people there to pay the bill. >> And there's a solution to that, and that is that most of us multi-family and in commercial have house meters. It's the lighting and everything else. When certain units are not paying the fee because they're vacant, you could those months be sending those bills to that house meter owner and you would be made whole like you've been having in your conversations. That would

still allow us who are renting to receive the bills and not have the problem that I've described, but it would make the city whole in that it would be getting all the revenues either from the occupied units or from the house

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meter bill that goes to the owner nato pay for all the units that they have vacant. So there's a different solution that appears that the staff has been willing to consider up until now and I don't understand how it wouldn't work. >> Zimmerman: To go on and put yourself in the position of -- there are I guess tens of thousands of apartment units. Maybe hundreds of thousands. If you had the obligation to figure out all these complexities, what is the impervious cover in terms of the parking areas versus the building itself that has people in it and trying to work out those complexities, that could be done with time. And maybe that's a direction that they would need to know, but I think the reason they would not do it is with the complexity of trying to figure it out for so many properties that we have. But that would be a good direction to go. What you're saying makes sense. >> Thank you, sir. >> Kitchen:, Mr. Hersh, anything else you would like to bring to your attention about that concern? >> Number five I heard earlier that you're limited about total exemption but I don't think you're limited on discount. So for faith based organization there's stale law that [indiscernible] To the exemption. But I think you have sensibility when people are serving the chronically homeless [lapse in audio]. Their pro Forma will be very different than what they planned when they built that kind of housing and agreed to long-term affordability because now they will be paying a bill that formerly their tenants were paying. So how much revenue you need to generate out of rents to pay your monthly bills is now going to dramatically increase if you've got a new bill that you never received before. So it's going to harm those entities that are trying to serve the poorest among us. I'm not asking for a full exemption because I've understood earlier state law

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doesn't allow it, but I think discounts may be within your purview. >> Zimmerman: Thank you very much. Is there George Oswald here? Followed by mark Walters. Is mark Walters here? >> Chair, committee members, my name is George Oswald. I'm a resident of district 8. Over the last year I've been following the development of the new rate structure quite closely and would like to say that it's a very good and sound proposal and it will improve customer equity. But the outreach program with the customers has not been successful. There were four public meetings conducted. I think the total attendance at those four was less than 100 individuals. If you look at the rate structure and the number of customers that see fee increases are pretty astonishing Numbers. 90,000 single-family customers and industrial, commercial and you have to throw multi-family into that. They'll see an increase between 20 and 100%. Think about that. All of our other utilities when you put a new one step rate increase of 100% on your electric bill, water bill [lapse in audio]. What I would like to see to delay it probably into the fall and put the implementation date like into January. So that you can interact with this large number of customers so they understand what is coming and they have a chance to come into this forum and have their say. That just hasn't happened through this process. I'd like to make a comment on the pond

discount. When that was put in place, the reason it was justified

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was that the city, the drainage utility spends drainage utility revenue to maintain ponds serving single-family properties. Single-family homeowners don't go out there and do the pond maintenance themselves. So there was a differential cost analysis conducted. Single-family has put the ponds in, everybody else has to put the ponds in, but the city pays for the cost of maintenance on single-family ponds. So that was the justification for the 20%. So if that analysis was done today, the number would probably be much smaller, but there's still a justification based on avoided costs and there's a lot of reasons that have been put out there. But if you base it on a voided cost it may be something like five percent, but I don't think it should disappear. Thank you. >> Zimmerman: Thank you very much. So mark Walters was up next, followed by Deann dehardin. >> Good afternoon, councilmembers. My name is mark Walters. The issue -- of course, this ordinance change is long overdue and I'm glad to see the city council is taking appropriate action along with the watershed protection department. The issue that I have is under part 11, section 15-2-12, which has to do with billing adjustments, which effectively is a grievance procedure. After 25 years of being a homeowner, I am now renting, and under the proposed ordinance here it states that a utility customer may request an administrative review by the director of a customer's drainage charge. Well, as a renter, I would no longer be able to grieve my bill and what I am

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required to pay. The definition of a utility customer off page one is the entity receiving the benefit or responsible for payment. So meaning that the property management company is going to be billed and then they are going to break down the charge to the individual renters. So there is no means for me challenge what it is that I am being charged for drainage. And without some sort of means for me to grieve, if I disagree with the way that the break down has occurred is leaving me out of the loop as a renter. Now, without some sort of means for me to be able to grieve this here, this is only going to -- not just me, but obviously all renters and people in multidwelling units. Without us as citizens and residents having an ability to grieve the issue as taxpayers or as drainage fee payers that under article 1, section 19 of the Texas constitution it states that no citizen shall be deprived of property in any manner, just franchise by due course alone. Now, the fee that I pay, even whether it's going to the property management company or whether it's going to the city which effectively I pay the property management company, is going to the city. That property is -- it's mind to hold and I should be entitled to be able to grieve the issue with the watershed protection company or department in the same

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manner that the property management company would. [Buzzer sounds] For those of us to be able to grieve what it is we are paying. And it should be put off further down the road until we can address this manner. >> Zimmerman: Before you go, you've got me thinking about something interesting because I think the crux of what you're saying is that once the property owner, say for the apartment building,

now that person is getting the bill for impervious cover, but they would have less incentive to fight any billing errors because they're just going to pass the cost on to you so they would be not incentivized to fight it because you're going to pay it anyway? >> Well, perhaps less incentivized or perhaps they're just negligent. Of course I can file an open records request and find out how much the property management company has been charged for drainage. I can -- but that's for, say, 900 units or however many units we have in our complex. I cannot force the property management company to turn over how they break down the fee that they are charging the individual units. That is a completely separate issue and that isn't covered under open records law. >> Zimmerman: Fair enough, but let me ask you one quick thing. What do you think the size of that drainage fee is compared to the size of the property tax bill that's also passed on to you? >> That's a good question, and I would have no idea. >> Zimmerman: So if the building were overvalued on the tax rolls and the owner is paying more property tax than he should, the same argument would apply. He will just pass that cost on to you as a renter. And I guess you as a representative couldn't go to the appraisal district and say hey --

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[indiscernible]. >> That's true. >> Zimmerman: Same argument there. >> And this is very similar because if you look at the water bill, water bill and the water ordinance currently is kind of written in the same manner that it doesn't give those of it us that are billed through the property management company any means of appeal. But of course that's not the issue and topic today. But I would just like to see clarification just to prevent further issues down the road should this be passed the way that it is currently written. >> Kitchen: My question just relates to the -- you know, part of the thinking here is that it won't be passed along to renters. So I would like for you to comment on that. Do you feel like the cost will be passed along to renters by the property owner? >> You know, it's speculation at this point. And again, this kind of reverts back to the water fees that I have to take the property management company on their word that they are equally distribute being or breaking down what their cost is or bill is in an equally proportionate share to the occupied units in the complex. But whether or not this -- how it's going to lead to in the future, we don't know until the implication. That's just my concern is that we have an ability to refine this in the early stages. I just think that it's something that should be done and not rushed too long. >> Zimmerman: Thank you very much. Ms. Dehardin andmize and Mike Rodriguez is your last speaker. >> Thank you, councilmembers, for this opportunity to T speak. I'm Deann dehardin with catellus development, the

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master developer of the city's development project, Mueller. You may recall in the may 21st council meeting we identified the development like Mueller, compact, with shared acreage, watershed protections, regional detention ponds that capture storm water effectively like our recent rain events, but also creates a different complexity for the drainage fee calculation than the proposed drainage fee structure can accommodate. Intuitively planned developments like Mueller in the spirit of imagine Austin with more compact development style, also mean feature miles of drainage infrastructure long-term. Since that council meeting watershed department has been very cooperative, providing

information on their methodology as well as data modeling of Mueller with the new fee structure. We understand that they're working with many constraints, striving to take a consistent position and create a fair system. They acknowledge that development like Mueller's may merit a modified approach and have been looking at alternatives. We have a great respect for their team and the difficulty of the task. Unfortunately, with the proposed time frame, there isn't the opportunity to thoroughly analyze the data, the possible negatives and their impacts to homes and businesses to even know if they are consistent with impacts elsewhere. At Mueller it's missing a large amount of construction [indiscernible], complexes, single-family homes. Meaning at this point there are more questions than answers. That's not a bad place to be at when folks are working together to find solutions, if they have the time to do it well. We believe that before this ordinance is passed an appropriate methodology must be found to address developments like Mueller, with characteristics outside the norm to use with current development and development

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yet to come. We propose to take time now to find an overarching methodology for planned developments and to work with other models. If the ordinance defaults to rely on an appeals process, it could be overwhelming and staff could be confronted with volumes of individual appeals. At Mueller alone on just the 2012 data, they show 729 parcels and now that's well over a thousand. If the ordinance can't wait for the additional methodology, flexibility needs to be built into the ordinance to allow staff to apply different approaches to the fees and different time lines to implement these approaches. Thank you for your consideration. >> Zimmerman: Thank you very much. Our last speaker is Mike Rodriguez. >> [Inaudible]. >> Kitchen: That's all right. Thank you. >> Councilmembers, good afternoon. Mike Rodriguez. I live in the onion creek and I'm in the onion creek hoa. We are a neighborhood in far south Austin with probably around 1250 residences, most of them single-family homes. So in light of this proposal, which will largely shift the burden to single-family home dwellers, I came here today to oppose this proposal from the watershed department. I think that most of you have heard this briefing from watershed department more than once by now. I've heard it three times myself. The first time I heard it I responded that it's way too complex and going to unfairly shift the tax burden [lapse in audio]. To single-families and especially those that are in

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single story houses. A single story house naturally has more impervious cover than a two story house because the slab is bigger. Our dwellings in onion creek were built in mainly the 70's and 80's. We have a section that was built in the '90's. What that means is the lots in those days were probably a bit larger and somebody with a single-family dwelling could actually have a little set back of their house off the street like you see in some neighborhoods, but that also means a longer driveway. So those parameters on the household that contribute to impervious ground cover were factors that were determined many years ago and not under the control of the current residents of those houses when they bought them. You can do literally nothing to aipad this new fee calculation short of plowing up your driveway or patio. This is another thing. We don't get anything for that directly. It's a tax that pays for the operation of a

department that we don't hopefully see very often. Its watershed department proposal understates the impact on single-family home bills. As you can see in examples that I've given you that not only will half of all single-family -- you actually saw that in their briefing. Half of all single-family homes that are bills will go up by adding those categories. Particularly single-family and the single-family examples -- and the single story examples there. I gave you two, two-story examples. We gave them to you as they came in, but those 10 examples of the new fee -- [lapse in audio]. You talk about affordability. It adds \$150 a year to the lack of affordability for those residences. I know that you ran on the issue of affordability. We all recognize those problems. Many of the people that live in onion creek are seniors and some of the people that live in the single-family dwellings are doing so because they actually can't

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ascend stairs. They have mobility problems. It would be unfair to penalize them as well. And when I said a dramatic increase -- [buzzer sounds] >> Zimmerman: Go ahead. That's three minutes, but quickly if you could finish. >> I thought I had some moments contributed to me. Is that the case? >> Zimmerman: Who was that that was contributing to you? >> What's that? >> Zimmerman: Who was contributing to you. If there was somebody here contributing minutes. >> Maybe they didn't stay. Basically this goes against affordability and it goes against imagine Austin as you just heard from catellus also. So I'll wrap up then if that's the case. The fee tends to give carte Blanche to watershed department because in future years they can just say we have this written into code and establish what they need in their annual budget. A vote of no should be followed up by asking them to go back to a tiered method for the fee instead of something so duplex that it will be very same consuming not only to -- time consuming not only to calculate, but to all the grievances you will undoubtedly hear in October. >> Kitchen: I really appreciate the work that you all have done in onion creek to help us understand the impact. So is there anything in particular you wanted to say that you couldn't fit in? >> Well, no. I would have acknowledged the merit statement from last September and I think you all do that, which is that he's sensitive to affordability in our city. When you translate this to the homeowners that are already burdened by most of the large property taxes, it is significant to point out one last thing. And that is that this fee for us represents three times the benefit we'll get from the six percent homestead exemption. [Audio distortion] >> Zimmerman: I have a single story residence, but the truth is I am taking up

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more impervious cover for the square footage that I have. And I think -- I don't live in an apartment. I haven't lived in one since Houston in 1987, I guess it was, but I am taking up more impervious cover for the place that I live. And technically that was what this was supposed to be about. And while I hate the idea of these dramatically increased fees, what we were trying to do was put a charge this that correlated with how much impervious cover we were taking up. >> If you look at, councilmember, the watershed department slides, it suggests that, yes, they will see their fees go up by 12 to -- 20 to 100%. These are largely way outside of that. One of the examples I gave you is a 300% increase. >> Kitchen: So is your thinking, with the tiers, are you think that you would accomplish some kind of upper limit, is that what you're thinking, and that it would still relate -- >> It would. These homes are not wealthy

homeowners, it's the working middle class that live in the suburbs, or retired middle class which is even worse, they can't get \$180 more of income this year. >> Zimmerman: The point is the tiers would capture the outliers, some people will have astronomical increases. The tier would capture that and mitigate some of that. >> Watershed that the -- maybe you can ask them later on. Going to drive the -- multiplier they come up with. The point is that, we -- that this fee method will capture quite a bit more funds than they've had in the past, even with the reduction. Are they paying for these home

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buyouts with this? If so, once they've done that, that fee should drop back down. >> Kitchen: Okay. We can ask for an explanation. >> Zimmerman: Thank you. That's a perfect tie-in where we can hear from staff now to respond to some of the remarks. >> Councilmembers, I am Craig bell, from watershed protection. As I mentioned, he will be here with me. You mentioned you wanted to focus on what's new. I suggested perhaps we talk about three things, a comparison of methodologies that you asked for. >> Excuse me. Sorry. Can I interrupt you for a second? I just wanted -- I didn't know if the person who was representing the charter schools was still here. If he was, I was going to give him the government code. Okay. All right. I just saw that and wanted to give him that information if he was still here. >> Okay. A second one, cluster or innovating open spaces. And to the calculation of the fee, the flexibility that might not be in the ordinance, that would address both free-scale and Mueller, and dampening the rate increases, the phase-in options. Those are several that you had mentioned. Those are new issues. I say new, we're talking about things we understood that you were interested in since June the 8th. When we gave you some preliminary information, that information, plus some new, is in a -- what you have in your packets here. You've probably never seen it, it has today's date on it. On June 17th. For those members of the public, this will be post on the city site. >> Okay. >> And it will also be posted -- we'll try to get it on our web page. And that's the Austin web page. We'll try to get that information out to people to

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take a look at. >> Kitchen: Let me just -- I would just like to thank you very much. You all have been very responsive. And I know you've been working very hard on this, and it's very much appreciated. >> I might also want to mention, we've noticed in your packet, you have several versions of the ordinance. If we happen to refer to that, please look at the one that says passed first and second readings on may the 21st. >> Kitchen: Okay. >> Okay. If we could go ahead. What we have is a version of the addendum to today's memo. I can do that, I guess. >> Before you start, can you -- we had several speakers who spoke to the timeline and asked us to postpone this issue. Can you kind of just go over why we are considering this issue today, and why we're looking to pass it by next Thursday? >> Why you're considering the ordinance that would change the structure of how we calculate the drainage fee? >> Troxclair: Yeah, we had several speakers saying you should postpone until fall, or maybe not implement until next year. We are under some legal deadlines, and some other things that are causing us to make this decision now. I was hoping you could explain that. >> I might also ask our representatives from law, Nancy Cotten, the department on that. But, there are several things. The most important is the technical issues. We are

working closely with, of course, the customer service people in Austin energy to get this done with our own gis capabilities, and our gi staff. We are on a tight timeline. We have been told we have 90 to 100 days, they need that much time before they can make this go live. So, we need to nail down how we're going to do this.

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If there are big changes, then that will stretch out our timeline. That's the technical aspect. >> Troxclair: And it needs to go live by a certain time because of the legal ramifications? >> We had intended for the beginning of the fiscal year. Also, the -- on appeal. Appeal is -- remember what date it is? Okay. >> Cotton, the law department. October 22nd is the date which, if we want to -- the -- we would need to have taken some action. >> Troxclair: So you're counting -- to 120 days from there in order for us to implement any changes by that date? >> I think, actually, the October 22 date is just the date of the case. I think what staff was hoping was by October 1 of the fiscal year to be able to implement the bill. >> Yes. With the budget. So that the budget will reflect the revenues brought in by this new system, rather than having two different systems in the same fiscal year. So, October 1st is when we are intending to have this ready to go live. >> Troxclair: There's no council meetings in July, next week would be our last opportunity to enact any changes before the deadlines that you just mentioned. So, thank you for that explanation. >> Kitchen: Let me ask a followup question. So then, I think I'm understanding what's driving the timeline. So, if we were to wait and consider methodology as part of our consideration of the actual rate as part of the budget process -- because what we're considering right now is methodology, not rate. Correct? I mean, that's -- considering the actual rate comes as part of the budget process. So, if we were to consider all of that as a package, I think one of the speakers suggested something like that.

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Obviously, that would mean we could not implement this new methodology by October 1st because of the time constraints that you had. So, what would be the implications of that? In other words, if we weren't able to implement it until January 1st or whatever, maybe you can just talk us through what the implications of that would be. >> First, you brought up an excellent point, councilmember, in that there are some things that can be done that would have a big impact, particularly pertaining to dampening the rate increases to phase in. >> Kitchen: Okay. >> They would be addressed not in this, but that would be addressed in the fee ordinance much later in the summer. So, there are some things that can be handled there. When it comes to basic methodology, and including how we deal with properties and combine properties, then that is something that we would need to know -- go into this ordinance. Unless you include a lot of flexibility that will allow us to continue to work. >> Kitchen: What I'm saying is, if we were to pass a methodology in August, for example, or September, for example, and just the effective date would not be -- >> As I understand it -- >> Kitchen: That would create complications for our budget process, because we'd have to consider -- we'd be getting funding under two different, you know, two different methodologies. So, that would create complications there. But what kind of complications would it create for you all? I'm just trying to understand that. >> Well, the budget would have to be

determined according to two different ways. >> Hi. Solomon with the watershed protection. Another consideration is that folks that get their bills would see two different types of

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charges for this next fiscal year, so that would be one consideration. And then also, like Craig was mentioning, how we would structure the budget. We'd have to talk about a rate with the current system, and then a rate with the proposed system. And that would complicate the fee discussion, as well. >> Kitchen: Okay. My other question would be, what kind of -- I don't know if you can speak to this. [Chuckling] I don't know if it's appropriate to ask about any impact on the lawsuit that you mentioned. >> It's hard to know exactly. If we didn't take action and pass anything on October 22, the appeal would continue. I don't know whether or not if we took action in -- before October 22. But it wouldn't go into effect until January. That's something we'd have to talk to opposing counsel and see how that would affect the appeal. >> Kitchen: Okay. You all had ideas related to phase-in. You don't have to answer that now. When you get to it in your presentation will be fine. >> Thanks. How many slides have you got here, if I can get an idea on time? >> About six. >> Zimmerman: Okay. >> Would you like us to run through them pretty quick? >> Zimmerman: Could we put in ten minutes? >> Okay. This is information that's all about -- and it -- if you would look at the blue row there, you can see how there are examples of the single-family, which is about 80% of all of the customer base. But you can see that currently, at \$9.80, the fee burden is 22% of revenue. Single-family brings in 22% of total revenues. If you use the proposed fee

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structure, in the ordinance, which uses the impervious area amount, plus the percentage, the fee goes up. It's up to 28%. You can see the fees there would go up to about, oh, \$11.90 average. There's a wide variety here. And then the other method that you asked us to take a look at was dropping out the adjustment factor and just looking at the amount of impervious area. And without that adjustment factor for single-family, the -- their portion of the fee increases from 22% up to 37%. You can see, the difference that the adjustment factor makes in that particular category. Both the families are going to be going down. Not as influential. The low density, things like that, are going to be going down on either one. Nonresidential, commercial, will be going up on either one. Their portion of the fee increase. And basically, this chart right here gives you the same information. If you look at the blue, on that, on these three charts. And you can see the impact to a single-family residential. How it's going to increase their share of the total revenue will increase with the proposed charge. But if you drop back down that adjustment factor, it becomes considerably larger. And this is basically a list of what the charges would be under the three of them. For different sizes of -- well properties with different amounts of impervious area. You can see the small amounts of impervious area are much larger.

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And across the board, the proposal with the adjustment factor does have -- well, it actually has a

decrease in certain smaller houses. But it does increase as you get above that mean, or in that mean. You can see that the -- there's about 70% of all of the properties that are single-family are right in those two middle categories, between 2,004,000. They will go up. But if you take away the adjustment factor, then you begin to see that particularly on the larger houses, the higher amount of impervious cover, that their fees would be higher. So, we just wanted to point that out. >> Zimmerman: Quickly, before you go on. The tool that you have online where people can calculate their fees, did that tool have this ia percent, or not? Did you have an online calculation tool? >> Kitchen: It calculates it. >> I'm sorry. I'm afraid I didn't understand that question. Did it have -- >> Kitchen: It calculates the percentage. You have to put in, the online -- >> Zimmerman: We're talking about the online estimate that you provided for the public. >> It should be very similar to that, but it was calculated by a different program. So, we did not run these through that estimator individually. The estimators were individual lots. It'll look at your lot, and then estimate each one. This was looking at a database of 200,000 properties, and calculating these -- this particular -- or these fees here. >> Kitchen: I can tell you -- >> Explain. >> Kitchen: I can tell you, councilmember Zimmerman, that the examples that Mr. Rodriguez provided to us, they obtained from the estimator, which we appreciate the watershed

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department did also check those. And they were online. >> The short answer, yes. The value on the estimator includes amount and percent. The estimator is assuming a rate for fiscal year 2016, versus these here are based solely on methodology change without an assumption of a future budgeting change. >> Kitchen: I think you mentioned before, was it a 60-cent increase? >> Yeah, I think that's currently the projection, from 9.80 to 10.40 for single-family. >> Kitchen: Okay. The estimator online includes that. These do not, right? >> Correct. >> Kitchen: Okay. Yeah. One thing -- we can talk about this later, but I think it's very helpful for the public to have the estimator online. I'm not sure that's clear to people. I don't think there's language on there that talks about . . . Or maybe I just read it too fast. >> I think we recent leaded it. Maybe we haven't made it as clear, but, there's a sentence that says about fiscal year '16. >> Kitchen: Okay. Okay. >> What we might do is, I think you've already seen this information about -- this is a comparison just of single-family and -- how that changes, between the current fee structure and the proposed fee structure. So I don't really have to present this to you. It's in your packet. >> Kitchen: I appreciate that. I would just like to ask for something that I think may -- outliers, or could we get some more information about those type of properties? For example, this one has the over ten. But what about the over 20? You know, so maybe y'all could

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just give us some more information. >> Yes. You're going to see that in the residential category. The commercial category, is already being charged according to the amount of impervious area. What is changing is the use of the factor. There's going to be a limit. 76% is going to be an increase is going to be it. >> Kitchen: For single-family. >> For that you will see increases. Some of them very high. As you saw in the onion creek data, there were single -- properties with well over 8,000 square feet of impervious area. >> Kitchen: What I'm asking for, is I'd just like to see, what's the scope of the outliers, to the extent

that you can tell us. 300% in fee, 200% increase in fee. >> We can get that information. >> Kitchen: Thank you. >> I've seen it in preliminary form. >> Kitchen: Thank you. >> Zimmerman: Before you go on from this, somebody had mentioned about using a tiered approach. >> Kitchen: Yeah. >> Zimmerman: The question I asked, how many tiers would there be? This slide says there would be eight tiers, divided into eight pieces. So, there you go. There could be eight tiers if you decide to go that way and not do each individual property. But categorize them into tiers. There might be eight groups. >> Yes, sir. There could be. So, if you've already -- you've seen this data. I won't spend your time. >> Kitchen: You can go on. >> Looking at that. So, we can go on to the next issue. That is how to handle clustering. Especially how to provide credit to the -- for open space that is created in clustering. It's a very complex issue. We've been talking to other --

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the various groups, including Mueller developers. We think we can come up with some solutions, but this is something that we'll need to know how much flexibility you think should be in the ordinance. There are structures, campuses, consolidated developments that span more than one block. And free scale brought that to your attention just today. We see that in other places, including shopping malls. And so, the ability to combine those lots and treat them as one benefitted property is one of the things you may consider. It's in the ordinance. Condominiums. We have always wanted -- thought about treating them as one property, and billing the hoa or the poa for a condominium regime. And then we have other clusters of developments, far more complicated. So, the amount of flexibility in the ordinance is going to be a question. How much flexibility you want us to have to take open space and reassign it to the individual property owners who will be paying the bill. As opposed to keeping it clustered and billing the hoa for that. So, there are some options there. But, the language of the ordinance will need to provide flexibility to do that. [Beeping] >> Kitchen: Okay. >> Zimmerman: That's our ten minutes. Are we about done with it? >> Okay. There's only one other thing. And that's the phase-in. How do you dampen rate increases. There is a couple of concepts that we thought. One is mentioned in your letter, the memo. And that has to do with saying,

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a dollar amount cap. That works relatively easily for residential customers, if you want to do that. There is a cost to that. There's a fiscal impact to that. It will be shared by all the other property owners, basically. So every time you provide a phase-in that benefits one category, other categories will have to pay. That is one idea. There's various ways to do that cap. You can just do a straight dollar amount. You can do a percentage increase. There's several different ways to handle that. The other concept has to do with the adjustment factor. And that would be modifying the adjustment factor for those properties that have adjustment factors above 1.0. So, those are the two that we can think of that might work. The first one, the cap, we can impose -- or we can do that with residential properties. We've talked to people in customer service. Our ability to do that, and for commercial properties, is going to be extremely limited. I would say, we would not be able -- we would have a very difficult time doing that. For commercial properties. Not so difficult for residential. >> Kitchen: Okay. Okay. >> Those are the basic

concepts. >> Kitchen: Is there time for me to ask a question? >> Zimmerman: Sure, sure. >> Kitchen: All right. So let me ask a question, in terms of these types of phase-in ideas that you were talking about would be something . . . Would those be handled as part of the budget process, or would those be things that you would have to put into the system as you're trying to implement it? >> The options that we're

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looking at right now, I believe, can be handled in the fee ordinance. That's what -- so -- and it's not such a strange animal that you haven't seen things like that before with other utilities. >> Kitchen: In other words my basic question it is, I'm asking deadlines, basically. So that's not something that you would have to have decided in order to put this implementation? >> Correct. Those things we can work on in the future weeks. >> Kitchen: What about the tiered system? Does that -- if you were going to put in any tiering, say if you were going to put in tiering just as an interim for a year or three, or something like that. I'm brainstorming, please don't think I'm suggesting. But, is the tiering built into the methodology that you're having to put in place, or not? >> Well, the issue about tiering, we're treating all properties the same and looking at the impervious area. When we think of a tier system, one way -- the way we can think of doing it is, a particular rate for the first several hundred feet. >> Kitchen: Yeah. >> Several hundred square feet, another rate for others. Another rate for those above. >> Kitchen: So you could do that in the budget ordinance, could you not, as opposed to in, you know, in the system? >> Yes, that's another one that could be done in the fee ordinance. Yeah. >> Kitchen: Okay. So you wouldn't -- okay, that sounds -- okay, that answers that question. Okay. I had one other question? The -- I think one of the speakers asked -- I think the specific question was the extent to which one-time cost, you know, for -- flood buyouts, for example, are included.

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In other words, can you just provide some information for us and the public on how these are used? >> Well, I think I may have to ask somebody who's more knowledgeable about how the buyouts and other programs -- okay. >> Kitchen: I guess what I'm asking -- >> Victoria LI is probably best situated for that. >> Kitchen: Basically, we understand, I think we understand the drainage fee goes for the cost of the watershed department. So -- and I think if I'm understanding correctly, some percentage of that is capital improvement costs, maybe 30% or so. >> Correct. >> Kitchen: So, I'm assume that those kind of capital costs are essentially one-time costs. There's a long list of things that need -- maybe you can describe what goes into that 30% capital improvement cost, and does it include flood buyouts or not? >> Okay. For the flood plain buyouts, right now, we are buying the onion creek area. >> Kitchen: Yeah. >> Okay. So, for the onion creek buyout area, there's only one area that's outside of the core project area. >> Kitchen: Okay. >> Within the 25-year flood plain. That one area is purchased using the drainage utility fee funded certificate of obligation bond. >> Kitchen: Okay. >> So that's total about 35.5 million. >> Kitchen: Okay. >> So that's funded by the duf, but it's spread through the next ten, 20 years to pay back. >> Kitchen: Okay. Is there anything else about -- well. That answers my question, thank you. >> Okay. >> Zimmerman: Thank you all very much. That was very, very helpful. If there's nothing -- I guess that

moves -- sorry, you have another comment or question? >> Troxclair: I do, I do have

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a question. I -- and I don't know if the legal staff is going to want to answer this question, and so if you don't, you can just tell me that and we can talk another time. But, I mean, just thinking of the -- obviously, we're making these changes in part because of a response to a lawsuit that this city was not successful in. So, part of the, you know, I think the department has done a really good job of coming up with a system and really staying true to the mission of making sure that the drainage fee is directly related to the amount of storm water that is caused by the property. You know, making that direct correlation. But when we get into conversations about treating subdivisions like Mueller differently than we're treating other developments around the city, I mean, is there a legal issue that we need to consider with that? I just have a little bit of concerns -- a little bit of concern about treating certain developments or certain neighborhoods specially when we've really gone above and beyond, I think, so far, to try to make a uniform system. >> I can answer that to some extent, mitzy again. I'm concerned, as well. But I think that the way we would do this is, if we were to adopt some different methodology, it would not be specific to a neighborhood or a place, but a category of type of development. So, it wouldn't just be Mueller, it would be planned developments. And it would need to be based on their impact to drainage. And if we come up with some system that we can articulate that categorizes them as having a different impact, then that makes sense to treat them differently, averaging the

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impervious cover or whatever other method they come up with. It's definitely something we're considering as we go along. >> Troxclair: Okay, thank you. >> Zimmerman: All right, thanks to everyone. That brings us to item number 4, staff briefing, invited testimony, and policy discussion to consider a resolution on stopping the addition of fluoridation to treated water. >> Kitchen: Could -- >> Zimmerman: Go ahead. >> Kitchen: I want to make one other statement. I really appreciate everyone who is helping us think through the drainage fee. And I appreciate the work of the staff. So, we'll try to keep you apprized of our progress. As we said before, at this point, our expectation is to have it on next Thursday's, not tomorrow's agenda, and to have further discussion in front of work session next Tuesday, which is public. So. Thank you. >> Zimmerman: Thank you, councilmember kitchen. So, on item four, let's please proceed. If it's okay with the committee, I'd like to see if we could divide some time between -- if we have a number of speakers, the city will present for, and we'll have some speakers in favor of the resolution. So, if we could break it up into 30 minutes, would that make sense, if we set a 30-minute timer, start going and see how we do? >> Yeah. >> Zimmerman: Terrific. Thank you. Thank you for coming. Let's go ahead and get started. >> Thank you, I'm Jane, the assistant director of the water and wastewater treatment program with Austin water utility. >> I'm Janet, the chief epidemiologist with the austin/travis county health and human services department. Item here on behalf of Dr. Philip Wong, who couldn't be here today. >> What I'm going to do today is provide a little bit of background. Then we'll probably step aside and be prepared to respond to questions or issues that are brought up later. Austin began fluoridating the

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water in 1973, following two referendums. Following that, council passed the resolution 720911-1, which was based on the returns of the elections. And they directed the utility to begin water fluoridation. Since then, the issue came up again in the late 2009, 10, 11. And in December of 2011, council passed another resolution. I believe it's in the packet, which required us to continue fluoridation. It also required notification of fluoridation issues be mailed out to citizens, as well as language on our internet for infants and children in the issue of fluoridation. We have met and continued to comply with all the requirements of this resolution. The background, we feed hydrofluoric acid as the chemical. We have been feeding that as long as I know, as long as I'm aware of. We spend -- last year, fiscal year 2014, we spent \$332,000 on the fluoride, and 7,000 on labor and materials for the maintenance of the system. This gives a total of \$339,000, which is about 38 cents a person for the fluoridation. We dose the fluoride -- it's naturally-occurring in the water at .2 parts per million. We raise it to the CDC-recommended optimal level of 0.7 parts per million. In the finished water. Prior to 2011, CDC had a recommended range of 0.7 to 1.2 parts per million. It was based on the assumption that the mean temperature of where you lived would dictate how much water you drank, so the more water you drank, the lower

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fluoride needed to be. We are in a warmer climate. We were at the 0.7 prior to the change that CDC made to the .7 in 2011. That recommendation was finalized this year, last month, I believe. We have -- clarification. CDC does not regulate the drinking water industry, the EPA does. CDC makes this what they believe is the optimum level. We are regulated by the EPA. For fluoride levels by the EPA, the maximum contaminant level is 4.0 parts per million, which means we can never let the fluoride go above that level. They also have a secondary level of 2.0 parts per million. The difference is, they believe -- the maximum contaminant level and the maximum contaminant level goal, in both cases it's the 4, is designed to prevent diseases and health effects from the constituent from the fluoride in this case. The 2.0 is to minimize the dental fluorosis, which could cause aesthetic problems for people. Again, we are way below both of those. In 2006, the national -- the NRC, national research council studied fluoridation. EPA asked them to look at the maximum contaminant and secondary contaminant levels. They're very clear, they were only evaluating at four parts and two parts per million. They did not look at the optimal level recommended by CDC. Recommendations that came out of that was that the EPA take a look, again, at the prevalence of fluoride in our environment now that we take in that we hadn't prior to that. And that there was some other studies that needed more research. To date, EPA has not changed the

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maximum or secondary recommended level for fluoride. So, we are -- right now, in full compliance. Do you have any questions on that? >> Zimmerman: Sorry. Before you go on. You were talking about the difference between different climates, the warmer climates, people drink more water. Does Austin vary

the level during wintertime and the summer months? >> No, we do not. >> Zimmerman: That kind of would seem like we would drink a lot less in the winter than in the summer. I wonder why it wouldn't be changed. >> When they had the range that was quite a few utilities would do that, go higher in the winter and lower in the summer. We did lower ours to the .7 prior to 2011. And partly because we are in an inherently warmer area. And partly cost. To be honest. >> Zimmerman: You're saying the complexity of the control system to change the concentration from the winter months to the summer months? Because you do have to have a pretty sophisticated control system to make sure you don't add too much into the water, so. >> Right. >> Zimmerman: The work in these industrial controls is pretty serious. You're already doing that, right? It would seem like you could dial in a different concentration for winter compared to summer. >> We could. >> Zimmerman: But you don't. >> No, we follow the CDC recommendations. >> Zimmerman: Okay. >> And I can add that the recommendations used to be a range in values. And the most recent studies that have been conducted by CDC, they actually looked at the impact of air conditioning systems in the advent of air conditioning and what kind of impact that had on water consumption. They went ahead and did away with the range, and stuck with the lower end of the number. And I don't specifically have a presentation, but I'm here to

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answer any specific questions you may have related to any of the information. >> Kitchen: So you're the health departments epidemiologist, right? >> Yes, ma'am. >> Kitchen: Can you speak for a minute about, to some extent, the historical reason for fluoride in the water? And then speak to us from a health perspective. >> Sure. >> Kitchen: The pros and cons from your perspective. >> You know, fluoridation has been going on for roughly, I'm going to say 70 years in the public health, as far as public health practice goes. Back when fluoridation was started, back then, one of the most common -- it's still one of the most common childhood chronic illnesses is dental carries, you know, a lot of times back then, people -- a lot of the children had major extractions of their permanent teeth. By the time they graduated from high school, they basically were in need of dentures and things like that. So, one of the reasons for adding that optimization to the water was to kind of prevent on a community-wide scale protection to the population for dental carries. >> Kitchen: And so, what is the current -- public health standpoint? >> The current thinking from a public health standpoint is that a lot of the data that's been researched, you know, our position is in support of what the CDC recommends as far as .7 parts per million in the drinking water as an optimum level to prevent dental carries, while also preventing any kind of fluorosis in the population. >> Troxclair: The resolution speaks to the change in thinking between, I guess, about the 1940s and the 1980s in regards to whether fluoride

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needs to be ingested, or applied through toothpaste or something else. Can you speak to that? >> I can sort of address it. The American dental association would say overall, if you ingest it on a daily basis throughout the day, you still get protection or added protection for all -- by using a topical, you know, application of the product, as well. >> Troxclair: So I guess, councilmember kitchen asked about the pros and cons from a health perspective. But I didn't -- you don't think that there's any cons from having

fluoridated water? >> Not from the current optimal level. As long as we're working within the optimal level recommended by CDC, I don't see any cons in that. In fact, there are some cost-saving measures, as far as protecting those members of the population who may not have dental care, or that type of thing. There are some added benefits for taxpayers in general. >> Troxclair: So, above the recommended level, or above the level that we have here in our water, you would have concerns about -- >> If we had levels above the maximum contaminant level, I would have concerns, yes, 4 parts per million. But a lot of the studies that you will hear cited, the citations that are listed in this resolution, are looking at levels that are above that 4-part-per-million level. Which is -- >> Troxclair: Okay. I have one more question. Can you speak to the part of the resolution that says that other developed nations that did have fluoride in their water have ceased, like Finland, Sweden,

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Germany? >> A lot of the European countries, they don't have the infrastructure as far as the water system goes to add fluoride into the water. So, what they're doing is they're adding the supplement through other things like in a lot of the European countries, it's being added into the salt, kind of like we add iodine. So people are getting their fluoride from that intake. >> Troxclair: You're saying it wasn't removed because of health concerns, but rather -- >> I think in some countries, it was based on cost, you know. Maybe cost of the infrastructure and the water system itself may not be conducive to adding it in. But a lot of them are adding it through other means in the diet. >> Troxclair: Okay. Thank you. >> Mmmhmm. >> Kitchen: So if I'm understanding correctly, from a public health perspective, this is a tool that public health as a discipline, so to speak, uses to try to help address the incidence of dental diseases and carries, or whatever, amongst kids, right? >> I would say all members of the population. >> Kitchen: Okay. >> But, you know, kids especially. >> Kitchen: Okay. So, is there data that you would point to that's generally-accepted data that public health uses? >> I do have a report CDC has just issued. It's actually got a July/August 2015 date on it that I'd be happy to share with you. And it's basically, CDC -- they convened a group of scientists, you know, that came from FDA, USDA, EPA, and a whole host of

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other agencies to review the data. Once again, just to make sure they're addressing all the new studies that are coming out. In light of what's happened based on the past recommendation. And it was based on this review that they actually changed the recommendation. And so, I do have that study available if you need it. >> Kitchen: Okay. Does it also speak to the effectiveness as a public health strategy? >> Yes, it does. >> Kitchen: Okay, thank you. >> Zimmerman: Well thank you very much. Would you be able to stay? >> Yes. >> Zimmerman: I appreciate that very much. Okay. So, I guess at this time, we have some other invited testimony. Could they please come, is and -- and we'll reset the clock here. Thank you. I think we were in receipt -- we have a book here, I guess you gave us, some documentation? The water fluoridation resolution compendium. I think we all have copies. >> Yes. My name is Justin, I'm the executive director of Texans for Accountable Government. I just wanted to say how grateful, Mr. Chairman, and members of this committee that we are as residents of Austin that we are taking up this issue again. There are literally thousands of peer-reviewed scientific research out there since the 1930s

that basically have been sort of filtered out of the narrative of the great health authorities here in this country. Actually, one second. We invited a couple of expert witnesses here. Locally. They're going to give detailed presentations. In creating this compendium, if

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we filled this or gave you resources of all the primary sources, it wouldn't fit in your office. We wanted to get your hands on some of the primary sources cited in the resolution so you could see them for yourself. And in terms of the cons for local austinites, one thing I'd like to mention is that it's ostensibly for children. However, at the .7 parts per million level that we have here in Austin, our children -- babies through breast milk get 175 times the fluoride levels through breast milk that they would. So, in breast milk, it's .004 parts per million naturally. So many people reconstitute formula with tap water, when they do that, these babies are getting 175 times the recommended EPA dosage. That's one major con. And then, also, there is this paradigm shift that has been mentioned here and cited. And the scientific shift was in the '80s when you construction a posed the fluoride. In the 1950s, Ms. Troxclair asked about the historical context. It was believed universally that because of the way the data was being looked at, that the benefits of fluoride were through ingestion, that children -- the pre-eruptive stage, or the stage when the teeth were still -- the early stages, it would change the bio-chemistry of the teeth before the teeth had erupted. And most -- it was believed back then, it was systemic. Now, since the 1980s, it's believed it's topical. If you look at the research, when you look at it here, many of the European countries don't fluoridate their salts even. If you look at the research over

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five decades, the trend was already going down. Published statements across an array of scientists. It's absolutely conclusive. Even by the proponents of fluoride, that the primary benefit and primary mechanism of action of fluoride is topical. And fluoride is universally available now through toothpaste, right? It's not even conclusive that that is lessening tooth decay. However, to say that it's a public health concern, the science has shown that it isn't. And in a recent publication by the department of health and human services on the prevalence and severity of dental fluorosis, even within the range, they have concluded in the United States, adolescents now have 41% of adolescents have now dental fluorosis. And if you look at the moderate to severe fluorosis cases, it's now up to 4%. It's increased 18% since the last survey in the '80s. In terms of moderate to severe, it's more than doubled, right. So the doctor dean, dds, the guy, he was primarily responsible for the clinical trials in the '50s and '40s which led the public health service to endorse fluoride even stated that if there were a water fluoridation program, even causing mild fluorosis would be absolutely unacceptable. So, I'd like to now introduce one of our panelists, Dr. Cole. He's a graduate of the university of Texas health science service in San Antonio, and has been practicing biological dentist Mercury safe and fluoride free since 1993. He achieved fellowship status in the international academy in 2008, authored a fluoridation brochure and scientific review,

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and currently serves as the academy president. He's been published in numerous national publications, including contemporary aesthetics and dentistry today, for cosmetic work and commentary on dental issues. His most recent publication, treatment of necrosis of the jaw with oxygen ozone therapy, published in may 2003 in the journal, is the first documented case showing complete resolution resolution. I'm sure all of us know exactly what we're talking about right here. So, Dr. Cole has been featured on numerous television and radio news spots, including world news tonight with Diane sawyer for his expertise on water fluoridation and dental issues. And did we want to give the panelists -- let's start with Dr. Coles presentation. Thank you very much. >> Thank you, councilmembers. I appreciate the time here to come and speak about something that I'm very passionate about and have been talking about for about two decades now. The title of my slide, I don't feel is exaggerated at all. The science will back me up on this. My partner will touch on a lot of the science very soon. For those of you who don't know, it's not a nutrient. It's not essential for health. No study has shown a disease state where they lacked fluoride. What's added is acid, a waste product from the fertilizer industry. It's not calcium, it's not the same animal. If you look at all the science -- it's been looked at for 50 plus years now -- is damning on how it gets through the body. It's not handled the same at

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all. This is one way that you can get fluoride over the counter, toothpaste. And even that has a warning saying don't swallow it. So, you know, we're taught in dental school that it's the panacea, and I believed that when I graduated. But after looking into the science, I realized this was not the case at all. And just right here the actual toothpaste you would use, they warn you, if you swallow more than a pea-size amount, go see a poison control center. The one type of fluoride you can get over the counter, you're not allowed to -- handouts of what's happening to our Austin kids. I have a slide, I hope that shows up, that shows actual Austin kids with fluorosis. When you asked earlier about as low as .7 levels, which they -- we've had for many years. Austin kids that are born and raised on Austin water have fluorosis, 41% of them do. And the reason why they lowered the level was not because they thought it was optimal, it's because of this issue. There were too many kids that their teeth are ruined from drinking fluoride. It's not beneficial. It has no effect on your teeth in a beneficial way. Topical is the only means of actually being effective. There's some Austin kids here, a couple from my practice, one from another practice in town. Kids that were born and raised. We verified it from the parents here in Austin. This is the comment that we hear all the time. It sounds really impressive. And we hear it all the time from the surgeon generals.

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All you have to do is go through the freedom of information act to find out who said it. An economist and a dentist that are in the oral health division of the CDC, which is a very small amount of the 14,000 members of the CDC. That's their names, Scott who had never published anything on fluoridation, and Susan. They're not toxicologists. Two of 30 people in the oral health division. When you hear that statement, realize where it came from. It's not that damning after all. This is their position, these are quotes from the CDC. Fluoride's predominant effective is post eruptive and topical. This is so important

because fluoridation is all about pre-eruption and systemic, the exact opposite of what it's supposed to do. Here's another comment as recent as 2012. We are unaware of data about the additional protection from tooth decay that could result from consumption of fluoridated drinking water. You can find these quotes, everything is documented, we have all the citations for the you, so you can find all these comments here. What does the fda say? The fda classifies it as an unapproved drug. They've never approved fluoride-containing over the counter drugs, as recent as 2005 commentary. What does the who say? I had to circle where our country is, here's the deal. If you look on the graph, the top 14 countries there do not fluoridate, they're un-fluoridated. The bottom four are fluoridated. Look at the difference. Who has gone down in decay rates? Everybody. It has nothing to do with fluoridated water. It's across the board. As you guys mentioned earlier, 98% of western Europe doesn't fluoridate. Sweden has no fluoride in their entire country, as far as any kind of additional fluoride. Their decay rates are the same. There's no difference.

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So this new safe level, which has already been touched on several times, I won't waste any more time, was done because of the adolescents getting all the fluorosis. Bottle-fed babies. This is why we're here. It's way more than what human breast milk has. There's a protective America inism in breast milk to keep fluorideas a certain level. How do you control the dosage? As adults, we drink way more water and we get less expose -- exposeyou're than a baby. In east Austin, where they can't buy spring water, or whatever areas, that's not fair. They have to use tap water. This was the warning that was sent out to us members of the Ada in 2006, shortly after the nrc came out with a really great report which Dr. Carmen will touch on. It says, if liquid concentrate or powdered formula is the primary source of nutrition, it should be mixed with fluoride-free water to reduce the risk of fluorosis. This is from the people who think fluoridation is wonderful. They're actually telling us as dentists what to tell our patients. This is huge. This is mosaic. This is the company that sells the acid to Austin. I made it larger. It's so hard to read. This was their sheet changed in may 2011, right after the lowering warning came out. The warning is geared toward children. This is an information sheet about their product. Workers, staff employees, you know, adults who look at this. It has nothing to do with children, yet they're doing this warning, the reason why it takes all liability off of them. As soon as it's in Austin, the city of Austin is responsible. If any litigation goes on down the road, my child was ruined by

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this water, mosaic is out of it. It was very clever to include that on their sheet. One final comment here on this. This was a statement from 1979. I show this because, when you read this, I think we all get the same feeling here. Individual dentists must be convinced that they not be familiar with scientific reports and field investigations to be effective participants. That nonparticipation is overt neglect of person responsibility. I am insulted by this. I want to look at the science and field reports. I want to know what's really out there instead of just what I'm being spoon-fed. This is the problem, I think, a lot of my colleagues, with all due respect do what they're told. Oftentimes, we practice in blinders. I like to look out. The science is convincing and getting more and more with all the new iq reports out. There's 41

animal studies showing lowered iq in humans when they're exposed to water fluoridation. It goes on and on. Dr. Carmen will touch on that. One final comment I wanted to say is, Austin has the St. David's foundation with a wonderful dental van that has treated thousands of kids oh, the past decade and a half with sealant, exams, cleanings, education. This is the way we lower decay rates. It's not adding an artificial fluoride to our water system. And I'd be willing to volunteer time on my own to give out toothbrushes for education. I'm sure I have plenty of colleagues who would, as well. We can't -- our children have no choice, but we do. It's time to make the right one. Thank you. [Applause]

[4:57:31 PM]

Dated. >> So I'd like to introduce Dr. Car me. I found the best way to include Neil Carmen ph.d. Was by reading the words from Texas senate from the legislature where he was officially honored for his many years on his outstanding work on environmental air quality issues in Texas. He worked for the Texas air control board and now part of the Texas commission on environmental quality from 1980 to 1992. He performed numerous samplings of pollutants throughout the Texas air control board air quality control region six, his expert testimony in cases filed by the Texas attorney general led to permanent injunctive relief for many texans affected by air pollution. Since coming to the Sierra club in 1992, Dr. Carmen has worked with citizens throughout the state state to hold corporations accountable for violations of the clean air act. He's also worked to train Texas communities in performing their own ambient air monitoring. Thank you, Neil Carmen. >> I think the most important thing here is that we're talking about an extremely hazardous chemical -- >> Zimmerman: Sorry, you're Dr. Carmen, right? >> Yes. >> Zimmerman: Thank you. >> And, you know, the most sensitive population that we have are the babies and the infants because their system is not as developed and, therefore, when they ingest fluoride they retain a much greater percentage, 90 to 95% compared to adults about this fluoride the city is being put into the water is being taken up into the tissues, cells, organs and having effects. I would just emphasize to you

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that first do no harm. Add no fluoride to protect the most sensitive members of the population. Now, the environmental protection agency actually quite a few years ago declared fluoride has an endocrine disrupter and those are contaminants. They're organic chemicals, heavy metals, and inquired fluoride and one of them and that means in the case of the thyroid that fluoride can cause dysfunction and today we know that thyroid dysfunction is a very common endocrine disorder. The national institutes of health has stated research shows that endocrine disrupters may pose the greatest risk during prenatal and early post natal development when organ and neurosystems are following. This is a difficult issue because you can't really do research on, you know, how much fluoride damage is being done to infants and young children. So the fluoride risk here is that reduced thyroid function in pregnant women is linked to lower iq in their concern. This is well-known. How much does that contribute to the problem in pregnant women and then their children. This is the chemical people have notified. It's hydrofluorosilicic, got a lot of fluorine in it, that's the F. But it is not completely the same as the natural calcium fluoride. And I would just emphasize [lapse in audio] Fluoride because actually there's ion

complexes that form within the hydrofluorosilicic acid itself so this is far more complex

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chemistry than what we've been led to believe. This is from a report. I've given you the citation there. It's from a European scientist. He spent over a year doing a 373. Three page review on the toxicity, environmental impacts. What you see in the middle is really the only thing that most people think about because all the areas above that death Mr. Fluorosis and skeletal fluorosis row cyst in the areas below it shows 11 different types of health impacts at a cellular level on the upper 11 items and on the lower you see neurological disorders, cardiovascular disease, osteoporosis, cancer, renal kidney affects, genetic damage, diabetes. So and on the left part of the slide it shows the same chemical that the city uses and that the theory is that it just is ingested, that is fluoride ion. The thing is our symptom has a very assistic ph. This is common knowledge. When you ingest fluoride there's the potential for it to reassociate as hydrofluorosilicic acid, a very deadly chemical, rather than just saying it says disassociated and goes into the blood, has inquired ion. Again, we're talking about a very complex chemistry, toxicity once this goes into the digestive system and goes into the blood. In 2006, this report on fluoride in drinking water looked at 1100 studies

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worldwide and this should have really been the end of fluoridation except the panel of 12 experts was not asked to look at water fluoridation itself, but what they showed is that there's tremendous effects in terms of fluoride in our biochem city, bones, teeth, reproductive and developmental system and especially in the brain and neurotoxicity. So these are some of the nrc's findings, that fluoride is neurotoxic, damages the brain, the bone, it lowers thyroid function and that in the first part of the report, I think one of the most shocking items is it says that infants are getting too much fluoride. They're being overdosed. Now a study that I've handed you a copy of that just came out in February by a group of people in England, it was published in the journal of epidemiology and community health. This was a thyroid study, the title of it are fluoride levels in drinking water associated associated with hypothyroidism prevalent in England. The people that were -- they looked at the reports in medical doctors' offices, okay? So these are medically diagnosed cases of hypothyroidism, and it's the first study ever to look at this, even though you think we would have done this in the United States. What they found is higher levels of fluoride in drinking water provide a useful contribution for predicting prevalence of hypothyroidism. They found it was found to be at least 30% more likely in practices located in areas with fluoride levels above the

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excess of .3 parts per million, that's much lower than what [lapse in audio], that fluoride is associated with hypothyroidism. We haven't done any kind arrive study in Austin, but -- a study in Austin. The point is this study in the UK is people are suffering hypothyroidism at much lower levels than .7 parts per million. Another study that just came out, I think in February, by two Canadian researchers,

environmental health, the title "Exposure to fluoridated water and attention deficit hyper activity disorder among children and adolescents in the United States, an ecological association." So this basically looked state by state data on both attention deficit, ADHD, and also looked at fluoridation. The abstract is epidemiological and animal based studies have suggested that prenatal and post natal fluoride exposure has adverse effects on neurodevelopment. A greater proportion of people receive fluoridated water from public water supplies. What they concluded is that in 2003, the data they looked at for that year, there were 60,000 extra ADHD cases in the year 2007, 97,000 extra ADHD cases. This is across the United States. And in 2011, 134,000 extra ADHD cases. So this is the graph they put in there, the top one is 2011. The middle one is 2007, and the lower line is 2003. And the point is that on the

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far right you see where there's the most fluoridation. For example, Austin and much of Texas would be in those right-hand areas. Whereas on the left hand you see ADHD prevalence and you see how it drops down in states and areas where there is no fluoridation or less fluoridation. So this is a very large study. So has Griffin -- as Griffin pointed out that mother's milk has been designed to protect the baby against fluoride because it only has four parts per billion that has been determined to be in mother's milk. So -- but Austin is putting it in at 175 times that level of mother's milk. The weight of evidence free many animal and human studies. There's dozens and dozens, is that fluoride is a powerful neurotoxicant, interfering with brain chemistry. 44 out of 50 studies have found an association between fairly modest exposure to fluoride and lower IQ. Most studies down in Mexico, Iran, but not in the United States. You might wonder why don't we see these studies in the U.S.? Because they don't want them done. 19 of the studies, the fluoride concentration was less than four parts per million, the current EPA safe drinking water standard. Of over 100 animal studies, they've found there was damage to the hippocampus in the brain, there's neuron degeneration in the nervous system, anywhere throughout the brain and down into the nervous system. The inhibition of cholinesterase, a critical -- it's a well-known enzyme

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inhibitor and it plays a very important role in the nervous system. Also, damage to nicotinic receptors in the muscle and decreased glucose brain utilization. So fluoride is a very powerful chemical. It also increases oxidative stress. This is an IQ study by doctors, and these people looked at quite a few of the studies and what they've found, they looked at 27 studies, comparing the IQ flash floods high versus low fluoride villages and what they found is that the results were remarkably consistent in that 27 of the 26 - 26 of the 27 studies showed lower average IQ in the high fluoride villages versus the low fluoride villages and the IQ lowering was about seven points. They've now done a preliminary study with 51 children. The children were asked to remember a sequence of numbers and report forwards and backwards. What they found is that the children with dental fluorosis performed less well than those without. The significance here is that the dental fluorosis is an indicator of systemic effects in the brain and the body to those children. So that's why dental fluorosis is a very important issue when we see so much of it. A toxicologist at the Harvard school of public health says that fluoride seems to fit in with lead, Mercury, and he released a book in the last year called "Only one chance"

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because once something like lead or fluoride impacts the brain of a child, you cannot reverse it. I'll make a few more slides here. Economic implications. In 2005 a group of people looked at what is the lifetime income loss associated with one iq point loss? Okay, there's a difference between boys and girls, but, anyway, so the point is here that if you just look at one iq loss from fluoride, the cost in the U.S. Population with 4 billion -- 4 million births a year is 51 to 88 billion lifetime income for a loss of one iq point. And I don't know about you, but I don't need any iq losses. I believe that we are at a tipping point on fluoride in terms of the harm it causes. In the 1970s and by 1980 we reached a victim tipping point on lead, we leaded gasoline for 50 years. We thought it was wonderful in the gasoline except for the fact that it caused brain damage and iq impacts to children in cities. So in 1980, the EPA banned lead. We are very close within the next few years of a tipping point on fluoride where it will be stopped. In fact it could be in ten years the city of Austin will be asked to lower even the natural calcium fluoride down some. It could be that that's a risk. So in conclusion, the risks of children's iq loss at current exposure levels in the U.S. is high. Fluoride exposures must be reduced. Addition of fluoride to drinking water and use of

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fluoride supplementation -- so the point is first do no harm. Add no fluoride. Thank you. [Applause] >> Zimmerman: Thank you, Dr. Carson, you finished with three seconds on the 30 minute clock, so congratulations on your timing. Any other questions? We've got some speakers to get through here. Do you want to go ahead and get into our -- let's do that. So first we have Ray, is it Nadler -- is there Steve Hannah here? There's Steve. Christine Shaw. And also Walter [indiscernible] Here? There he is. That gives you 12 minutes. >> There's a David King, if I need three more, I think David King will donate, yes, there he is. >> Zimmerman: Okay. >> Troxclair: Just a quick question for the timing. Our committee meeting is supposed to go until 6:00 but it looks like we have a lot of speakers signed up. Do we have any kind of time estimate? I may need to leave at some point if we're not finished by 6:00. >> Zimmerman: That's a good way for councilmember Kitchen here -- we were talking about timing and how we wanted to proceed. What is your scheduling like for being able to -- we have one more item, right? We have a -- item number five regarding a variance on a service extension request. So we do have another agenda item. >> Kitchen: Okay. >> Zimmerman: We would like to finish as quickly as we could, so -- >> I'll try. >> Zimmerman: I was going to say we've had a lot of very, very -- >> Kitchen: All the materials

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you've provided and everything. >> You can turn the fluoride off and we're done. [Applause] [Laughter] >> Zimmerman: Let me say something to that. What we had in front of us was a resolution that -- what this committee would do, if it chose and if we get to it and have a vote, we could either table it or we could vote to refer it to the full city council committee. So that's kind of the decision we would have at

the end of our testimony. So -- >> Troxclair: And your hope is that we would take a vote on the resolution tonight? >> Zimmerman: I would like to, sure. I would like to. When do you have to go? Did you have a hard scheduled break? >> Troxclair: By, like, 6:30. >> Zimmerman: Okay. >> Mr. Chairman, maybe Ms. Troxclair you could give us an amount. A lot of people have full passion but we want a vote to happen, so if you could give us an amount we can work cooperatively to respect your time. >> Kitchen: How much time do we need for the last item? >> Zimmerman: That's a good question. I think we have some people here for the last item. Would that take 15 minutes or so, 20 minutes? Yeah, 15 to 20 minutes on the all right. Last item. We work back from that we're going to need to finish this by six, no later than 6:00. Could we do it in 30 minutes. >> Iq cut most of my own time. I thank you for this opportunity. As I was going out the door today, I discovered on the news stands something very exciting. A nationally distributed women's health magazine has an article about it on the front page, about the devastation that fluoride is causing to American women now. To their thyroids specifically. Featured in this article is Dr. Presley of Austin, but that's just the icing on the cake. It's a good article and I would like, with your

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permission, to bring it up now. >> Zimmerman: Sure. >> Okay. I think I'm just going to go straight to a presentation that one of you has seen before. Several people here, some real experts, have commented on the -- in a technical way on the fluorosilicic acid Austin uses for water fluoridation. I'm going to explain in a simpler way. The Austin water utility on its website claims that it's only merely adjusting upward a, quote, naturally occurring chemical compound found in many ground waters, unquote. Upward to some arbitrary so-called optimal level that is not correct. And I will illustrate it as follows. We've all seen [lapse in audio] Stored in the one that -- and the one that concerns us here in particular is the blue diamond which represents threat to health, or toxicity. Now, there is a natural form of fluoride called calcium fluoride. That is true. But it is not used for water fluoridation because it's so much more valuable as a raw material in industrial processes like making phosphate fertilizer and the fluorosilicic acid that comes back to us is the waste product of those same

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fertilizer operations, unpurified, straight from the smokestacks. So I've found the -- a company called science lab, which deals in both kinds of fluoride, the natural calcium fluoride and the fluorosilicic acid, same as we use. They have what is has discuss -- hazardous materials have what is called the miracles safety data sheet and one of our previous speakers commented on it. This is calcium fluoride right here, the natural kind, you notice it's been assigned a health threat level of 2. Now here's the fluorosilicic acid. Assigned a health threat of 3. You can see 3, 2, 3, 2, 3. These are not the same product at all. And, finally, here is a tank, an acid tank from Austin's plant, and you'll notice that the personnel there apparently don't think three is even a high enough rating of danger from this product. They've assigned it a 4. The highest. The worst. Okay? So, okay. I was -- I think I'll leave it at that because that is the point I wanted to make. These are not the same product. And the one we use is bad. >> Zimmerman: Okay. Thank you very much. [Applause] >> Zimmerman: So next we have Julie menace. Julie here? Yeah. Is

Julie here?

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Can we -- okay. Can we go to Linda Greene? Linda Greene? And after Linda Greene -- okay. I show our clock here, 25 minutes. >> I won't take that long as well. >> Zimmerman: Because that's for our total. >> Oh, well, some people donated my time also. >> Zimmerman: They did, that's correct. >> Yes. So I want to focus on children. & Infants. And there are -- there is a myth that the city water utility and the CDC and EPA propose that's that fluoride is especially important for children and infants. This is a myth, false. In reality fluoride does the most harm to children and infants because of their small size infants can receive up to 400% more fluoride per pound of body weight than adults, damaging developing bodies, organs and brains. In 2006, the national research council stated it is apparent that fluoride has the ability to interfere with the function of the brain. And I would like people to consider, too, that pets are impacted by this fluoridated water. Pets just like small children get an overdose of fluoride, and pets are actually being treated now for thyroid disease and as a national -- 2006 national research council reported about a rare form of bone cancer in young men, it's occurring also in dogs in particular. These are issues to be concerned about. And I do take issue with the fact that the presentation by

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the profluoridation side said that 70 years ago we had horrible death carries and -- in our children and even false teeth having to replace their teeth with false teeth. Well, 70 years ago death hygiene wasn't considered that important. There aren't that many people that were so aware of the influence of -- beneficial effects of flossing and brushing. Again, people have the choice to use fluoridated toothpaste, whereas we don't have the choice in the matter of drinking this hydrofluorosilicic waste in our water. And, also, we have to keep in mind that there are many other sources of fluoride that we ingest, including pesticides, nonstick cookware, tea, the actual tea plant draws out a great deal of fluoride from the -- natural calcium fluoride and children swallowing fluoridated toothpaste as well as the natural occurring fluoride in the water. And the last, say, 15 years, they've noticed that 41%, maybe approaching more to 45% in teens of children have death fluorosis. It is not just a common occurrence of some kind of cosmetic blotches on their teeth. It's the outward sign of overdose of fluoride. So when you see 41% of our children and teens with death fluorosis, you can probably assume that they have other negative impacts on their thyroid and their bones. In January 7, 2011, the health and human services and the CDC

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or EPA reported that ingesting too much fluoride results in brittle bones and risk of bone fracture as well as this death fluorosis in children. I'd like to play a small -- short video by pediatrician in Atlanta, Georgia. [Video playing] >> Hi, I'm a primary care pediatrician who no longer supports water fluoridation. Pediatricians like myself are taught to pay very close attention to the proper weight-based dosage for each drug. And to make sure that our patients do not receive more of a drug than is necessary or safe,

but, unfortunately, when it comes to fluoride, this basic precaution is not being followed. In fact, the dose of fluoride that's supposedly effective in preventing death cavities is very close to the dose that, according to the environmental protection agency, can cause harm for some children. So it has a very narrow therapeutic window. Since children now receive fluoride from so many different sources, it's virtually impossible for a doctor to determine exactly how much fluoride each child is actually getting. And if you can't determine the amount of fluoride, then you can't determine the dose. And if you can't determine the dose of fluoride, then you can't determine safety. As a pediatrician, I am deeply concerned that fluoride is not good for babies and that they are at risk for harmful side effects. The most clearly visible side effect is death fluorosis, a permanent staining of the teeth caused by fluoride's interference with Normal tooth development. There's a significant number of children in the united States who now have some form

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of death fluorosis. Accounting to the center for disease control, death fluorosis affects 41% of teenagers. That's millions of children who now have a visible form of chronic fluoride toxicity. As a pediatrician, I'm concerned that fluoride could also affect tissues and organs that are not visible, like the bones, the thyroid, and the brain. My concern is based in part on a large body of research, finding that modestly elevated levels of fluoride can reduce a child's intelligence, especially if there's a deficient intake of iodine. Children are disproportionately affected by fluoride for several key reasons. They receive a greater fluoride dose per body weight compared to adults, they have far more fluoride incorporated into their skeleton than adults, they have a lower kidney excretion of fluoride into their urine, meaning more gets reabsorbed in their bloodstream, and their developing brains are more susceptible to fluoride's toxicity. It can affect their educational achievement and these unique characteristics of children can no longer be ignored. I'm also concerned by research findings showing that death fluorosis is higher in the black community. Even the more severe forms, where the teeth can start to erode and develop black and brown stains. This health disparity and environmental injustice will need to be addressed. Even both federal agencies recommended lowering fluoride concentration in water down to 0.7 parts per million. That reduction is slow to implement in each jurisdiction and frankly it's not enough. Over the counter water filters can't remove the fluoride. So my heart goes out to pregnant women, seniors, those with kidney, thyroid and other health conditions who can't afford a water purification process to remove the fluoride. They shouldn't even be put in

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this position. Because water is for everyone but fluoride is not. Therefore, it's my professional recommendation that we discontinue water fluoridation in the united States. I know I don't want to drink fluoridated water and I commend residents of Portland, or Oregon for fighting hard. Also states like new Hampshire, cities like Milwaukee for including infant advisories on their water bills. In may New York held their first children's antifuoride rally. Sooner or later you too will have to make important decisions about fluoride so it's better to be safe and responsible now so we won't have to pay for it later. It's all about prevention. Thank you. So I just want to finish up by saying that this morning I went

on to the fluoridefreeawnings website, the people who have spoken so far are some of the cofounders and I did an experiment where you can go to the sequence click take action and it sends a letter to mayor and city council. So I'm hoping that you got a YouTube video that was made on January 7, heaven, -- I hope y'all take the two minutes 42 seconds to watch that video and I appreciate so much your concern over this issue. Thank you so much. >> Zimmerman: Okay. Thank you very, very much. [Applause] I think what I'd like to do, we're going to run out of time here, but I'm going to read the names, there's quite a few people that have signed up and practically we can't get to them all. Is Dr. Laura Presley here? >> Yes. >> Zimmerman: If you could speak for a few minutes. While you come up I'm going to read the names on the record that have signed up.

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Let me do that quickly. Are they already in the record? >> Kitchen: I would read them. >> Zimmerman: Let's read female the record then. Dr. Laura Presley, Kathy -- all of these, unless I state otherwise, all of these are in favor of the resolution against the fluoride, unless I note otherwise. Kathy Lehman, Jeffrey Solomon, Julie menace, Linda Greene, heather Fazio, Hester poller, Mary crinic, Gail Dorst, William Doyle, Krista Clark, Joseph gicon, sorry if I messed that up, chuck Thomas, John Daisley, David king, Marian multock, Nancy reed, L.E. Philips, Madeleine vilatoro, Mitchell stein, Julie Williams, Jonathan Caldwell -- I hope I got everybody there. Thank you. So we have about -- I think we want to get this done if we could by -- well, can do you about five minutes, laura? >> It will be short, thank you. >> Zimmerman: Go ahead. >> Thank you. Hello, councilmembers I'm Dr. Laura Presley, author of multiple peer -reviewed scientific papers. I have for you -- four U.S. Expense I worked 17 years as semiconductor manager, I have experience with -- I have used fluoridated compounds in the fabrication of computer chips. I'd like to refer to the

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material safety data sheet provided to you. I want you to take a look at this if you can. On page 1, this -- actually, this msds sheet is provided to the city of Austin by the chemical supplier mosaic. On page 1 it's very interesting under 1 it says primary use and it says that it is an industrial chemical. And that term industrial chemical refers to the intended use and grade of the chemical that you're purchasing. >> Excuse me. >> Yes. >> Troxclair: Can you tell us what you're referring to? >> You bet, in your book it says -- look at the tab mosaic. Close to the back. >> Troxclair: Okay. >> Maybe next to the last. >> Troxclair: Okay, yep. Thank you. >> You got it? All right. So on page 1 there it says primary use, and it says industrial chemical. I want you to note that it doesn't say pharmaceutical. Okay? Which is approved for injection. So we are using this industrial chemical for injection of our babies and our children and us here in Austin. Okay. Also on page 1 at the far bottom on the left, you see potential health effects. That section. Okay? I want you to go to page 2 in that health section, and it continues in the section signs and symptoms I want to read they, "The effects of overexposure of this chemical may include severe irritation and burns of the mouth, nose, and throat. That's referring to a chemical handler who handles this chemical. And I've been in this -- you know, I was in the semiconductor industry 17 years, seen many msds sheets, and they're used as warnings to people who manage and deal with these compounds. But

go a little further down, and it has a section called "Other comments" and Dr. Cole talked a little about this but

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I want to expound on this. It says prolonged or repeated overexposure to fluoride compounds may cause fluorosis. He showed us that our children in Austin have fluorosis. His patients, he and another dentist in Austin, have multiple patients with fluorosis. Okay? The warning is right here. Fluorosis is characterized by skeletal changes, consisting of osteosclerosis, abnormal hardening of bone, and softening of bones. And the modeled discoloration of the enamel of teeth. This parentheses is very important it, says if exposure occurs during enamel formation. When does enamel formation occur? And you're an infant child. This warning is for children. This warning is not for chemical handlers. This warning is to your end user. Children of Austin. I want that to be very, very clear. This company, as Dr. Cole said, is giving themselves a liability pass. Okay? Now, the last thing I want to bring up is really the question for you as councilmembers is, are we as a public being overexposed? The two dentists in town who have been supporting us for years say yes. They have patients, they have children who are overexposed with dental fluorosis. So my question is what data do you need, what more data do you need to discern whether we're being overexposed as

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being warned by your supplier? Okay? I want to thank you for listening and for bringing this resolution forward. It takes a lot of courage to hear the truth. The truth has a lot of power, and just -- I just want -- I'm so grateful for you guys listening and giving us time to talk about this. We need your father courage to do the right thing and move this resolution to the full council. Our children in Austin are being damaged. We need your help. Thank you. [Applause] >> Zimmerman: Thank you, Dr. Presley. If there's -- if there's no objection, could we have a five -- five minutes if the city staff would like to add anything, if you'd like to for another five minutes before we try to wrap it up? >> Can you hear me? Okay. Again, a lot of these things that are -- that you're hearing today we still support the position that CDC's recommendation that optimal fluoride levels in the drinking water at .7 is of -- not health consequence. What's interesting about this whole debate is that a lot of the groups are speaking from the same data sets that -- we're looking at the national research council data. We're citing some of the same information, some of the information that you heard here today is new information. EPA actually does do a systematic review of this information every time they review the standard. When they do that review, they try to take the compendium of

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the scientific data that is -- that has changed since the last review and make sure they're taking it into consideration so that's why you're getting that, all this information. As far as, like, what CDC and the health and human services areas, looking -- again, when national research council is looking at this information, they're looking at concentrations between 2 and four parts per million, what they're basing

the maximum contaminant level on. What you're also hearing too is about dosing and whether or not dosing is taking into consideration when we're looking at the optimal level. And it is in fact taken into consideration. Part of the review includes the relative source contribution by EPA that actually looks at fluoride intake by all parties, you know, so that they're addressing all the additional sources of fluoride that you're taking in through your food, through the air, through the water and just considering that and that's how they actually establish that lower end level that's considered optimal. So it does consider dosing in it. Again, you know, the review will continue on. There will be additional studies that continue to occur over time. And when EPA -- take the data and they try to look at it from a perspective of what that means in the United States. So they do a systematic review by evaluating studies that are relevant to what the exposures are here. When you're talking about these studies in China, you're talking about studies that show exposures that are much higher, five times higher than what we're talking about as our optimal level. So, I mean, pretty much what

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it is. >> Zimmerman: Okay. >> We can again debate it point by point. The staff here at the city would be more than willing to set aside time to make a more thorough presentation for you. Again, when we were provided short notice we didn't really know what we were required to present. But we'd be very willing to do that. >> Kitchen: I would appreciate that. >> Sure. >> Kitchen: Frankly, I think that would be very helpful. I don't know if you're ready for discussion, but I personally am very interested in the data, and I really appreciate the data that y'all have made available. This is excellent. I need some time to digest it. And my thought would be that I think we've made a significant step today by having this hearing and having this information presented to us, and I very much appreciate it. I'm not ready to vote. And so I would prefer to have the time -- you know, I'd be happy to -- I'd be interested in time set aside in our August agenda -- >> I would like to make one other comment. We did reach out to the Larry death society and Texas death association and due to the short time frame they were not able to be here to discuss and give their point of view. So, you know, they're very interested in being represented as well and giving their viewpoint. >> Kitchen: That would be helpful to me. >> Zimmerman: Quick technical note. Do you happen to remember or know what is the background fluoride level in the water? We're take our water out of the lake system. Would you know what he it is? In other words if there were toxicity, if the EPA or CDC changed its position, says, oh, you got to take fluoride out of the water, what are we at right now roughly? >> Our naturally occurring fluoride in the raw water is between .2 and .25 parts per million. >> Zimmerman: We heard one

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number at .3, someone was saying at .3 parts per million there might be adverse health effects according to some of the things we've heard so we're close to that background level where it's conceivable we could be ordered in years ahead to start removing fluoride. So I don't -- >> You see -- you've seen that phenomenon are arsenic, you know, naturally occurring arsenic. >> Zimmerman: So science evolves, right? >> Right. I think, that's, again, the reason why EPA does do their -- they asked the national research council actually pull the data together so there is a review of the new data comes out.

Just like a -- lot of the studies being discussed tonight. And, you know, at that point it's evolutionary. >> Troxclair: Do you know if there are any other cities in the United States that have taken specific steps to remove fluoride? >> I mean, I know there's some cities of that it. I think there's 44 -- the top 50 United States -- or top populated cities actually have water fluoridation, 44 of the top 50. >> Kitchen: Of the cities that have removed -- >> That I'm not sure which cities. That I'd have to go back and research. I'm not sure which specific cities have eliminated it from their water supply. >> Kitchen: That would be helpful information. >> Sure, we'd be happy to look into that. >> Kitchen: Particularly if they've done studies about the impact, you know, I don't know, would depend on how long they've removed it and that sort of thing but if they have any kind of studies, the impact from a public health perspective that would be helpful. >> We can certainly look into that. >> Zimmerman: Okay. So let's -- sorry, do you have a quick comment to make? >> [Off mic] That report they have referenced many times and we did as well, their final statement in that report by the 12 scientists was the

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m-c-l G in drinking water was zero, the whole point was that four was way too high. We can talk all the data we want but all the scientists are agreeing right now. >> I don't think they all agree. I think it's debatable. >> Zimmerman: Glasses we're having a debate. >> You know what? Of the 359 references in the Ada's fluoridation facts less than 20 come from any kind of journal that's not a death one. Less than 20. They're all death journals or death meetings. >> I think, again, it's a topic -- you know, people are very passionate about it. It's one that, you know, people have strong feelings about, and, again, I think it is kind of different viewpoints on the situation. So -- >> Zimmerman: Okay. >> The staff would be very willing to provide you a more in-depth discussion about the situation if you need. >> Zimmerman: Okay. Thank you very much. That brings Ta back to the dais here. So what would you like to do? >> Troxclair: Well, I mean, I think that this was certainly an interesting discussion. I appreciate you, councilmember Zimmerman, for bringing this forward because as she just said it clearly -- people are interpreting information in different ways and it is something that warrants us taking a look at. I mean, I for one feel like I've heard information tonight that has caused me to ask more questions and to try to understand the issue better. So I appreciate all of you who came here and provided us with that information. As far as the resolution goes, I don't know that I'm ready to necessarily support the specific language that's in the resolution. I would certainly support language that would direct the city manager to come to us with options regarding

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fluoride or come to us with a report or something, something that would allow us to have a little bit more time for discussion, but I don't know, you know, if that's something that would be amenable to you. >> Mr. Chairman can I add one thing? I know I'm speaking out of order. [Off mic] >> Zimmerman: Sure, sure. Let me -- let me -- just point out to remind us all, we have the option of tabling it. We can take a motion and vote on sending it to the full city council with no recommendation or recommendation that they take more testimony and possibly approve it. So we do have all our options on the table. I am look forge a motion to do something -- for a motion to do something. >> Kitchen:

Here's my perspective. I think that our role as the committee and our job as a committee is to really think through and take the time it takes to think through all the options and hear all the information. So this is the first step. And this is a important first step. So I would just say that to the folks that are here, whatever we do here, we're listening to you. And we're going to take -- I want to take a next step. But I also want it to be a next step that doesn't move it too fast because that wouldn't be appropriate. [Lapse in audio] I would suggest that -- I would support either way. I would suggest we take it up in August and think through a resolution along the lines of what you're suggesting, councilmember troxclair, that

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we could bring back in written form, perhaps, if -- >> Zimmerman: If you want to hear more about the scientific data and the arguments for either side, but I think the issue is either the community expects us either to fluoridate the water or to not fluoridate the water. There's also some background, you know, fluoride. So I think that's a decision we need to make. What I'm hearing from my other colleagues here is you probably want to bring this back for another hearing. >> Kitchen: Well, or -- >> Zimmerman: Have a chance to review the information we've already received. And then maybe have one more hearing on the matter before we make a decision. >> Kitchen: Well, I'd also like to bring back some options for language. >> Zimmerman: Okay. >> Casar: You know, what you have is one option, one way that we might proceed. But there's some other ways we might proceed too. >> Zimmerman: Okay. So is there a motion here that we reconsider this item in the August -- >> Kitchen: Sure, I'll make that. >> Zimmerman: Agenda? Is that a motion? Will you second that. >> Troxclair: Yes. >> Zimmerman: I'm in favor too. I guess what we'll do is ask for this agenda item to come back. I guess I want to ask if the city - if the city staff has some more -- has some experts that can testify as to why we should do this, I heard quite a bit of I think what's pretty good evidence -- testimony that we should not be doing at all that, we should not be adding fluoride. [Applause] >> Zimmerman: But I'd like to hear the other side and have another session similar to what we had today. >> I mean, I would like to say, you know, given the appropriate amount of time and being able to gather those advocates for fluoridation to be present -- >> Zimmerman: Would August be enough time? >> I think it would be plenty of time. >> Zimmerman: Terrific, thank you. >> Kitchen: The other thing that's of interest to me is that -- well, you know, this is a public health issue, you know, and so what are other

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communities -- it's a public health issue that data is what we're looking for. I mean, what we're looking for is the results. You know? And we're doing it -- we started fluoridation for a specific and that was to help with, you know, death decay. So if it's not getting us there and if there are the kinds of concerns that people are raising, then we need to rethink it. And so part of the information I'd like to know is, you know, what is it that -- what is the state of the art so to speak from a public health perspective on the thinking about how to prevent death decay in children. >> We can look into that for you as well. >> Kitchen: Because, you know, fluoridation is a pretty blunt instrument, you know, in terms of public health and a lot of that we do. You know, obviously we do that because public health is a communitywide kind of approach rather than an individual specific approach to health. So I'm not saying

that would you never want to do that. It's just that, you know, everybody is drinking the water. >> Right. >> Kitchen: Not just the quids, you know? And there are other ways that kids, you know -- some people have testified there are other ways that -- >> Understanding the difference between public health and primary care. >> Kitchen: Yeah, I do, I understand that. Yeah, I understand. And it's important. I just think that we should -- you know, I think it's appropriate for us to have this discussion, as you mentioned before, you know, previous years people had discussions about lead and other things. >> Excuse me. [Off mic] I signed up to speak here at 2:00 P.M. Today and it's taken ten seconds to say -- it will take ten seconds to say what I want to say. >> Zimmerman: Why don't you come forward and give us your

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names -- >> John Daisley, a former councilmember told me four yearsing that the Austin city council paid no mind whatsoever to the fluoride free Austin movement and I would like to have some assurance from you that that is no longer the case because I think that is the ultimate disrespect. Thank you. [Applause] >> Troxclair: I guess would I just say in response I think the in fact we're considering this resolution and have had this conversation tonight is, you know, proof that it's definitely being considered by the new council. >> [Off mic] >> Zimmerman: Okay. If that concludes, I think our conclusion here was we're going to bring this back in August. >> Troxclair: Sorry, one more clarification. >> Zimmerman: Go ahead Jamie. >> Troxclair: Typically when we do have public comment we have people taking time out of their schedules to be here -- [lapse in audio] I don't want the people who have come tonight and put together really good presentations to feel like they have to come back and give their presentations because we're going to have new speakers. One option would also be if there were people who -- if there's new information or if there's additional information from city staff or others out there who weren't able to make the committee meeting tonight they could also set up individual appointments with our offices so that, you know, we don't make everybody come back again in August. >> Zimmerman: I think the short answer to that, we had a discussion on this just recently about public comment -- commentary versus public hearing and we Aring into a public hearing thing because we've got something on paper that we're considering. I think what's going to happen in August is there will be an edited version perhaps of that resolution. So it will be a public hearing. >> Kitchen: That's okay with me. >> Zimmerman: We'll probably have another proposal on the table by the time August comes.

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>> Kitchen: That's okay with me. >> Zimmerman: If that's okay, we'll move on on to item survive, policy discussion to consider resolution to accept the approved connection tap plant at 10103 north fm620 at a permanent service installation. And let's see, what is our time near we are at 5:55 and you've got 20 or 30 minutes? Could we maybe split this in 15-minute pieces so. >> I'm not sure that 15 minutes will be sufficient for the city's discussion of the matter? >> Zimmerman: Let me try to ask you to fit it in 15 minutes because I'm going to ask the other side to fit it in 15 minutes and we'll go from there. How is that. >> We'll do our best. >> Zimmerman: Thank you. >> We're here to talk about water service issues at the address on fm620. First to give you a little illustration of the location that we're talking about , you'll see the road labeled fm620 and over on your left-hand side there's a tract that is currently

occupied by a lutheran education building for the church. You'll see a 24-inch water line that's crossing along the bottom side of 620. And a 16-inch water line that was extended by the church through the frontage of its property. Over on your far right-hand side you'll see a service extension request that was done for a retail development and a 12-inch line was connected and reached across the frontage of its property. The property in question today is the property that's in the middle, lot 12, as well as lots 14-15, so we have two

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tracts. Those are known as the 620 oaks office park. And it consists of those two parcels. Lot 12 has a parking lot that serves a car sales lot, and lot 12 does not have any existing water or wastewater service. Lot 14-15 has developed with multiple buildings and was previously served by a water well and is currently served by on-site wastewater system. In July, we received -- the Austin water utility received an ser service extension request for water service to serve the existing office complex on lot 14-15 and a proposed office building to be constructed in the future for lot 12. And an ser is required as by city code 25-9-33 in this particular >> The ser technical information that was provided was incomplete. It wasn't until October that the applicant's engineer responded to the deficiencies in the application. A draft service extension request was provided in December of 2012 and there was a requirement in that service extension of extending a 12-inch water main next to lot 12 to a metered location on lot 14-15, and an easement through the lot 14-15 frontage. So if we go back here to the diagram you will see the 16-inch line that the church built as part of its site plan so that was a requirement that the utility had for that will particular development. And so what the ser would do is extend from the 16 a 12-inch going through the frontage of 12 and then taking into lot 15-16 to a

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meter and then there would be an easement that would continue on. The reason why the easement is being requested is so that at some point in time you want the 12-inch and the 16-inch to be connected so that you have a griding of a distribution system. So going back, after this information was provided, we scheduled two meetings in December and in January and Mr. Payne canceled those particular meetings. In February of 2013 we learned that the oaks office park was receiving water from a construction hydrant left by the contractor, Texas road and utility, for the 24-inch water transmission main construction that was along fm 620. Texas road and utility admitted to having an agreement with the oaks park that they would leave the meter as long as the office park would continue to pay the bill. This is in violation of multiple provisions of the Austin city code and it's considered a class C misdemeanor and Austin city code 15-9-202. The office park was also using this water to fill their water tank, which was previously used with groundwater from a well. Tceq also became concerned about the situation because it violates code. In February 27th, 2013, we indicated to the office park that we were going to

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terminate service. Then Mr. Payne required and his agents requested a meter with tceq, Austin water and senator Kirk Watson's staff. At that meeting Austin water agreed to provide only temporary water service under the condition that an acceptable permit water solution would be determined in a timely manner. That temporary situation is documented in the signed plans approved by the city of Austin. And the title, it says temporary connection. On other pages of the plans that were approved it indicates that it's a temporary domestic meter and that the final meter would take into consideration the number of fixture units within the development. Additionally the letter from tceq to office parks indicated that they understood that the oaks office park was going to pursue a permit connection with the city of Austin and that they were only giving authorization for the construction of a temporary connection to the city of Austin. We consider a connection to a fire hydrant lead to be not a Normal engineering practice, and that was what the temporary connection did. You have the main, you have a line that's coming off the main to a fire hydrant and in between there is a service connection that provided the temporary water. The reason why we believe this is not a Normal practice of engineering is for several reasons. If that fire hydrant has to be operated on, maintained, that office park is out of water because you have to shut off the valve that goes to the fire hydrant. Additionally a 24-inch line is generally not considered a distribution line in accordance with our design

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criteria, and because if that 24-inch line goes down, you -- individuals connected to that line will lose water service, not for hours, but for days. Possibly. Depending upon the type of damage that is done. The city -- I do have to say in the past we have had situations where we do allow a connection, a temporary connection to a fire hydrant lead, but those have been only cases where the water is being used for [indiscernible]. If you turn the fire hydrant on you have the possibility of the infiltration of groundwater or the water surrounding that hydrant to go back in and in that case it would go back into the service. So for those particular reasons we do not see this as something that is a long-term solution. After that connection was made, immediately after, Mr. Payne provided a copy of an agreement, a document by a project manager, a project manager for the 24-inch water transmission project that agreed to install the meter on his property in exchange for the city cutting through his driveway. However there was a specific provision in that agreement and it was determined that the agreement was null and void because the city did not cut across his driveway in an open cut. It burrod underneath it and there's a specific language that states that. Mr. Payne's engineering representative then met with Austin water utility representatives to research waiving the ser requirements that were initiated from the very beginning. The city provided an

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alternative through the replatting of lots. So to go back to the diagram, if lots 12 and 14 and 15 were replated into one, then what Mr. Payne and the office park would need to do is just extend that 16-inch line a little bit into his property, put a meter and then there would be private plumbing throughout that replated lot that could provide service to the existing office complex or any other development that would happen within that lot. Mr. Payne's representative also requested that Austin water utility would

delay bringing the ser to city council. Since it was in the drinking water protection zone we are required by code to come bring it back for your consideration. Additionally the city of Austin wanted to up size the eight-inch main that the office park needed for meeting its demands with a 12-inch line to be able to have sufficient flow through the 16 and the 12-inch line. The city indicated back in June that it would temporarily shut off the water service unless Mr. Payne started moving towards a permanent solution and be diligently pursuing that. Mr. Payne's engineering representative then came back to the utility and requested that the temporary connection could become a permanent connection. We responded to his issues and denied the request. We asked for multiple meetings with Mr. Payne to discuss this and those scheduled meetings were schedule. Mr. Payne then claimed that there was a unified development agreement that existed, but after multiple requests to provide a copy of that we did not receive

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any kind of documentation. The utility -- the unified development agreement essentially would allow the same type of situation that would happen in a replatting of the lot. Essentially what it would do is marry lots 12 and 14 and 15 so that the office ma park would not have to extend the main all the way across, but extend the 16-inch a little bit into the property, put a water meter and then have private plumbing continued from that point forward. So that's the advantage of a utility development agreement. Mr. Payne and his agents then met with the director of planning, development and review department on multiple occasions. The director determined that there was no history of an existing utility development agreement. And since 1997 the building criteria manual indicates that a new uda would not exempt the office park from its current rules and regulations related to plumbing rules that prohibit private plumbing from crossing lot lines. So you could not take private infrastructure from lot 12 and take it all the way into lot 14-15 or vice versa. Additionally the director indicated to Mr. Payne's representative that a copy of a sealed survey for the properties with the same seal date were provided to him on two occasions by that representative and one of which the copies appear to be different or altered. In January 21st, 2014 after those situations and events had occurred, Austin water utility issued a water disconnection notice. Mr. Payne then hired legal

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counsel. Austin water met with the legal counsel and Austin water granted an extension of the disconnection notice to allow that legal counsel to research the situation. After their research Mr. Payne's legal counsel came to us and indicated that no legal action would be initiated against the city. In March, essentially a year, multiple drafts after that point were conveyed to each of the groups, the parties over that period of time. Our basic proposal that we had offered towards the end was that Austin water proposed the extension of a 12-inch line to the property boundary of lot 12, which normally that would be at the landowner's cost, and we would set the meter at the city's cost. Austin water also proposed to move the temporary meter that is located on lot 14-15. We would remove that and cap the existing tap, again at the city's cost. Normally that is the landowner's responsibility. As consideration the owners would grant us an appropriately sized easement across the frontage of lots 12 and 14 and 15 for our future installment or a developer's installment of a 12-inch water line, not water

meter. 12-inch water line. Being unsuccessful that long period of time, we terminated negotiations March 9th, 2015. So what Austin water has indicated to Mr. Payne is the following -- [buzzer sounds] >> Zimmerman: If you could just finish the thought. Looks like you're almost done if you could finish up. >> That the existing

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temporary connection would remain unless the utility bill was not being paid or there was some new violation of the Austin city code related to water service. The existing easement on lot 14-15 for the meter must remain so that public infrastructure, a service line and the meter, can be located within private property. We also indicated that upon redevelopment of lot 12 or 14-15 that the applicable metering and service requirements would be invoked depending upon what is being proposed to be developed. Austin water will not relinquish the existing water easement upon the relocation of the water meter for lots 14-15 so that a future 12-inch water main can be extended without further consideration. The existing easement for that temporary connection and fire meter, that is not a temporary easement. It is a permanent easement. The process however that if the city decides that is no longer of use or useful that that that that eyes. Can be abandoned. Overall we feel that the utility has addressed the situation in a patient manner. We've been diligent in trying to resolve the issue and we've been more than fair. >> Zimmerman: Thank you. The first question I have is when was the property developed? Was it in the 1980's or 70 or 80's? >> I can't tell you, sir. I don't have that information. >> Zimmerman: So it was not in the city limits, was it, when it was developed? >> I don't have that information, sir. I don't know. >> Zimmerman: Is that not important to the case, though, when the property was built and under what circumstances it was built? It seems like it would be very important to the resolution of the problem. >> Not that I can think of

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at this point, sir. >> Zimmerman: So you don't think whether it was built in the 1980's or whether it was built a few years ago? That doesn't matter to you? >> I didn't say that, sir. I said I don't have the information to evaluate that. >> Zimmerman: Appreciate it. >> Yes, sir. >> Zimmerman: Go ahead. >> Troxclair: Councilmember Zimmerman, can you ask what in your mind would be the distinction or the defining issue regarding when it was built? >> There's something called vested rights, great question. Properties that are built -- there's something called expose factos law, a certain law that's in effect when that building is built, that law governs what goes on with the property. Building codes evolve over the decades. If you built something in the 1940's or the 1960's or 1980's, the building codes are different. So you can't come in the year 2015 and go back to a 1940's house and say you have to comply with codes of 2015 even though you were built in the year 1940. So it makes a big difference when it was built. >> If I may add -- >> [Indiscernible]. The property was developed under a well and a septic tank. It was not connected to a public water supply. I don't know how previous building codes would matter. This connection, this initial illegal connection occurred in 2012. But there was no public water supplied to this prior to that occurring. >> Zimmerman: I wanted to make that point clear. You're correct, it was outside of Austin and there was no public water supply connection when the property was built. That's

an important point to make. >> They're asking to modernize a connection that existed, they illegally connected to the water supply through this temporary construction meter. That's how this whole situation started. >> Zimmerman: I appreciate that. We're going to give 15 minutes to the other side and then we'll continue discussion. Thank you. >> Kitchen: I have a

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question. I may be a little slow but I'm trying to make sure I'm understanding here. What we're trying to get to is a solution so that there's water provided to this property, right? >> Water is currently being provided to the property, has been since the agreement for that to be a temporary connection and then move to a permanent connection. >> Kitchen: Okay. The scenario might be -- is it the scenario that the city thinks is the appropriate scenario, is that right? The one that says existing temporary connection would remain unless -- >> We do not believe that's an optimal solution. We do not believe that's the appropriate solution, but given the amount of time that we have worked on this issue we believe that's the only solution we have right now. >> Kitchen: Okay. I'm just trying to make sure I understand the points of that solution. And that's that existing temporary connection remains unless the bill's not paid obviously or there's some new violation. And that upon redevelopment of 12 and 14-15 -- okay. At that point you would go to the applicable metering and service requirements. Is that what you're saying? >> Yes, ma'am. >> Kitchen: Was there another point to it in addition to this to that I'm not sure I caught, about the easement? >> The easement. The existing meter is in an easement because it's on private property. And we're saying that that easement will remain. It was not a temporary easement. That it would remain. And councilmember, related to your vested rights question, as I understand it is that public health and safety issues related to water and a water and wastewater service that's the code that would apply. You would not apply an older set of regulations. >> Zimmerman: Thanks for your time. Let's -- one more point?

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Go ahead. >> Kitchen: Those were the three points. The third point being the easement would remain. >> Yes. Our preference is that either there's a replatting of the lot or that the service extension request requirements are met. Which would be to extend the 12-inch line across lot 12, into 14 and then at the meter. >> Kitchen: You're saying these three points you could live with right now. >> That's what we can live with right now, but we don't believe it's to the benefit of the property or piment that are there. >> What you believe is optimal is the extension of what you just said. >> Yes. >> Kitchen: Okay. >> Zimmerman: Okay. Thank you. >> Thank you, sir. >> Zimmerman: Mr. Payne, we're going to start the clock. There's 15 minutes here. If you would like, Mr. Elizondo -- have you got something for me? >> Thank the committee and councilmembers for seeing me. My name is John Payne. Obviously I think you've heard a lot of the details. And we did purchase the property in 1993, and from 1990 to 1997 we were under a unified development rule, ordinance that was created by this gentleman right here. And he worked in the Austin water utility department for I believe close to -- nearly 30 years. I believe it was 27 years. He wrote the ordinance. It was signed, sealed, put into effect. When we bought it we had our wells on lot 12 and it was supplying water to lots 14 and 15. We had utilities crossing lot lines. We had

water crossing lot lines, et cetera. All three of those lots are what's known as the unified

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development. Basically what we're trying to do is have a win-win situation here. Apparently we have gotten to this point from a culmination of mistakes that have happened on the city's part when I came in and asked for help. We had a time where we had run out of water and we had a temporary interconnection, which looks like this. It's a -- if you can see this picture, I know it's kind of hard to see. It's a fire hydrant with a meter and a hose attached to it. And we -- we're a certified water purveyor and we have water that goes into our tanks, it's cleaned and then it's provided to the tenants. The city came along and in the grand scheme of things after much to-do was finished about with all this, we ended up reaching an agreement to where we did -- it cost \$20,000, it was in the ground, we had to dig up our parking lot, give the city an easement for free. They had to take our land so we had to compensate for them taking our land and then we had every city inspection and every hoop to jump through. They came out, did every inspection. We put back flow preventers, everything to make sure that there is no possibility for cross-contamination. And Mr. Lowell is the one who drew up the plans. We had Hugo alek San death row, our engineer, put his stamp on it. And basically it came into effect -- the tap plan was approved by the city of Austin and accepted on March 12th, 2013. And it was prepared by Hugo elisando. And at this point we're just trying to make our situation

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that you can obviously see from the photos and what we described to you already, just trying to make it permanent. It actually should be located within -- we were within nine feet on lot 12 of where that lot is extended. Tceq says if you're within 100 feet the city has to bring the water to you. They did not recognize that. They did not recognize the law. Apparently a gentleman had taken the law and threw it out and they just started over. So laws are created from wars won and lost and there's a reason that they're there, and they are not recognizing this reason and they just kind of started over. Exactly the same point that you said, what happened back then and why it was made then and why it was agreed upon back when it was bought and not yesterday or something, this is an ACC campus that we bought in 1993 and it falls between this rule of the 1990 to 1997. The new rule says the same thing, at the date of when this was -- this happened we fall under those rules. And they continue to stay there. And I'd like to actually call up my consultant for this whole situation M Monty Lowell, who would have more expertise on this topic than anyone in the city of Austin. >> Thank you, councilmember Zimmerman and other councilmembers. As some things were stated -- >> Zimmerman: I'm sorry, you are Monty Lowell? >> Monty Lowell. I was an employee with the city of Austin for 27 years. There's a couple of things that was stated incorrectly. I spent the last six years with the Austin water utility and prior to that I did all of the commercial plumbing plan review for stint. And the thing that has been

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overlooked, for lack of a better expression, the elephant in the room here, is that this site has not been

reviewed accurately by the Austin water utility department. This case has been going on, this property has had a history since 2009 where they had actually requested water, just a simple meter for lot 12, where a car lot was currently at. James grebbs, with a tap plan that was provided, denied them and said that they had been reviewing this case and decided that they needed to extend a 12-inch water main for 250 feet. And that is not according to the code. The code, the city of Austin's local plumbing amendment where we worked hand in hand with hand in hand with Austin water department says, says today if you have a legal lot within 100 feet and in parentheses it says in the closest practical access route, that you can have service. It was even stated out loud in a meeting by Lonnie Robinson. He goes, well, that only means if we have the money. Well, the transverse to that is if you don't have the money, then the customer has to pay for it. The customer is willing to pay for the service, but he's not asking to be involved with the extension process. As a matter of fact, the

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service extension division has nothing [lapse in audio]. The rule in 1990, that was existing from 1990 to 1997 said that water lines and sewer lines could cross lot lines in a unified development. This is actually a violation of the national fire code, which we use, that says you have to get your fire protection from a reliable public source. That doesn't mean from your next-door neighbor. Also, the plumbing code says you can't cross lot lines, but there's an exemption to the plumbing code. In this particular case the water lines and the sewer lines has actually crossed all three lot lines since 1994. The well house itself sets on legal lot 12. Now, I worked in the customer development assistance center and it's unfortunate that these people never made it to my office. If they would have come to my office and displayed the whole case and had displayed the fact that the well was on lot 12 that served all three lots and sewer lines crossed all Lee lots and we have buildings that crosses lot lines and many other amenities that for the purposes all three lots like public electric lines crossing lot lines. Private electric lines crossing lot lines, the water lines crossing lot lines. Sewer lines crossing lot lines. Sidewalks crossing lot lines, then this fills the description of a unified development. All right. There was three departments that was opposed to the original 1990 to 1997 ion

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rule. The plumbing department didn't like it because it defeated the purpose for capital recovery fees. And their intended purpose it to serve legal lots with a separate sewer tap and water meter. The fire department didn't like the unified development rule from 1990 to 1997. And to shorten that, I had brought this to the extension of many directors and was asked in 1997 to rewrite that rule along with Katherine lowasa, and we did write it to say that [lapse in audio]. Cannot cross lot lines. But we also know that we allowed a lot of developments to come through the city of Austin prior to that. And we built some caveats in there that you will notice that it says that if you -- in the event of a subdivision you have one of four options. You could offer the utilities that crosses lot lines back to one of the options is that the city would accept the utility lines if it met their utility criteria manual. Two, it says that there would be maybe a one-time assessment fee for utilities that does not meet the utility criteria manual, which that has never been exercised. And then one of the options says you can have a private easement

and the other option is one that nobody wants to do and that is to redo all the utilities. So there's been many cases throughout my 27 years where people come to me with utilities that was preexisting and nonconforming to the plumbing code. And they want a water meter. Well, we can't take the audacity as a city and, like, Greg ma sparrow says,

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we don't have to make our decisions on whether it's existing or preexisting, that's not true. You do have to take into account that these utilities are preexisting and crossing lot lines. So by fact that these lots are all married, that makes lot 12 immediately, immediately a jay sent to the water main that's a 16-inch water main that is in an easement that is literally adjacent to that lot. This case should have been as simple as I run out of water, I want a water meter, and there's the water main. But no, this got held -- taken way out of context and it got into the hands of the service extension group and they have no place in this decision according to the city code. Because they do in fact have a lot that is a legal lot that is in fact within 100 feet, like the city ordinance says. But no, they keep trying to strong arm my customer and wanting us to pay for their infrastructure. This has nothing to do with the service extension division. So since 1997 to this date, let me say this, the unified development rule was deleted from the building code -- >> Kitchen: On could I ask a question? Sir, I just want to make sure that I'm understanding. So I think I was pretty clear -- I got a pretty clear statement from the

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city [lapse in audio]. So could you tell me or perhaps you could tell me what is it that you want to see happen? >> Well, what we would like to have at this point is to have this service accepted as a permanent service. >> Kitchen: Which service? >> The service as it exists today that was made to the fire hydrant lead. >> Kitchen: What's termed -- >> What they call temporary. Ma'am, what they're calling temporary is the most permanent installation I've ever inspected. >> Kitchen: Sir, just focus for me. That will help me a whole lot. >> Zimmerman: Hang on, councilmember kitchen, the resolution, take a look at your -- >> Kitchen: I knee, I read the resolution, but you have to bear with me. >> Zimmerman: The resolution wasn't clear? >> It's because I don't have a background here. I know you guys do and I appreciate you bearing with me on it. >> That's okay. I've got 45 years' experience here. >> Kitchen: Okay. So you're wanting -- you're wanting the temporary connection to become permanent. Right? >> That is our main reason for this meeting, yes. >> Kitchen: Okay. >> And the ser is basically unnecessary. >> Zimmerman: If I could, I did look at the professional engineer's plan that -- Hugo Elizondo, we did meet for about an hour and I reviewed his engineering work, and it made a whole lot of sense what he put down there on paper. And that according to all the reading that you had made and he had made, the installation as it -- it's technically solid, it complies with code, and there's no reason why it shouldn't just be made a permanent connection. Bottom line. >> That's correct. >> Zimmerman: It's solid engineering work. It's well installed. It's been inspected by the city and there's no reason why it creative suggestions can't just be called permanent. That's your position. >> Yes.

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>> Kitchen: Thanks for clarifying. >> Zimmerman: Okay. I appreciate that. Are there any questions here? Just give us a couple of minutes here, if you could. [Buzzer sounds] >> Troxclair: So if they're wanting this temporary connection to become permanent, this is -- I'm trying to envision it in any head. It's something attached to a fire hydrant. >> That's right. Right before it there's a service line lead that comes from the main out the fire hydrant and comes out. David Juarez, our assistant director, who is an engineer, can further describe it. >> Yes, councilmembers. We're not arguing what engineer Elizondo prepared did not meet engineering practices. What we're saying is the connection, the interconnection itself is not in compliance with our design criteria. We do not allow metered services to be connected to a transmission main. It's clear in the design criteria. In addition, we don't allow services to be tied on to a fire lead. There are a number of reasons for that. Again, if for whatever reason we have to perform some maintenance on that hydrant, that service will be shut down. >> Zimmerman: Okay. I'm sorry, my water gets cut off on occasion when the city needs to do work. I don't understand that remark, right? If there's a problem with my water main in my neighborhood, they shut my water off. No big deal. Sometimes we have main breaks and we have to do maintenance. I'm not understanding that remark. >> Yes. When we allow shutouts to occur it's typically on smaller diameter lines which pipe is readily available, material is readily

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available, so we can isolate the main. This is a transmission main. It moves water for a distance, again, and with the way we get water to the customers is through a parallel distribution line, and that is where service lines are connected. Again, if we have to for whatever reason, the material of the line itself, could cause us to have to order additional pipe and be manufactured. We don't have that for the smaller diameter lines. We have the material readily available, we stock that material, we do not stock typically a 24-inch diameter water line. >> Troxclair: My follow-up question is is there anything, another setup anywhere like this in the city where you have this kind of connection on a permanent basis? >> Not on a permanent basis. We do allow it, again, for temporary construction uses, for water uses during construction. There may be an occasion where we would allow a service connection to a transmission main if there is no distribution main available. However, we would configure it in such a way that we could still shut the main down, but we would still have water delivery from one direction or the other. So essentially they're tying into two different places on the line with a valve in the middle [lapse in audio]. And many occasions where again there is no distribution line readily available. >> Troxclair: Okay. And then I guess this might be a question for the constituent, but -- you said that one solution would be to combine the lots, right? Lot number 12 with lot number 14-15 and that would solve the issue. What is preventing -- why would you not do that? >> They're already connected. That's the whole point. 1993 -- 191990 and 1997 if you purchased and you had those lots and they were

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sharing the utilities across the lot lines, we could grant ourselves a private easement and it would make it one rectangle. >> And back to city staff. You said earlier that you're not sure -- you're doubtful --

there's some questioning regarding what he just said. >> There's no documentation of a unified development agreement and I think Mr. Guernsey can address the issue specifically. >> And Monty is the man who did all the unified development agreements for the city for many years. We do not have -- they've not been able to produce a unified development agreement showing the lots tied together. I thought we might have something because there was a document that was given to me that showed a building crossing a property line, but when the property survey was given to me earlier, I matched the two documents and I could not confirm that, that there was a building crossing a property line. >> Troxclair: Okay. >> So at least back in '93, which would have been a time when they could have a unified development agreement. >> Troxclair: Okay. And my last question is because there is a connection to a fire hydrant, is there any risk if a fire -- does it prohibit water from being used if there was a fire? >> No, it would not prohibit the use of that hydrant during a fire, however, probably would stop the service because they would be pulling out of that hydrant. >> Troxclair: Okay. Thank you. >> Kitchen: So -- I have a question. So it sounds to me like the one, I guess, disagreement, is the existence or nonexistence of a uda. So Mr. Guernsey could I ask you a question? If there was a uda in place, then am I understanding

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correctly that they could access the extension of the 12-inch line? >> If we had a uda that predated before the date of '97 that Monty was talking about, there probably would not have been an issue. There's nothing -- I think to stop the property owner today coming in and removing those lot lines, you know, through a platting process. That might remedy some of the things that we're talking about. This isn't really so much of a vesting issue, I believe dealing with 245 because we're talking about newer service, and as mentioned it was a health-safety issue. >> Kitchen: Wait, let me ask questions. So in the uda -- so they could get a uda now then. >> Except we've got the problem that -- because of the plumbing issue of the codes today. We were looking for one in the past. And I know John and Sam were looking for one from the past. >> Kitchen: I understand. >> I was not able to find one, but there really is to have a new site plan or new development on the property, there hasn't been one since the '80's. >> Kitchen: So my next question is what the staff is talking about is making the existing temporary connection, having that remain until redevelopment. So help me idea what is objectionable about that approach? Because basically what they're talking about doing is making the temporary connection permanent until such time as there's redevelopment. Is that not what you were looking for? >> Yes, ma'am. >> Yes, it is. >> Yes, ma'am. To address the safety issue, we've addressed all the safety possible issues, any possible safety concerns have been addressed. We have -- even if the fire hydrant for some reason has to be shut off, we've got

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backup tanks that could supply water to our property as well because we are a water purveyor, if need be. So we will not be -- we have two day cares in there. >> Zimmerman: Yeah. So back up, because you just lost me on all that. I thought the issue here was there was a threat that the temporary connection would be, you know, terminated yet again. >> That's what they asked us to terminate our well. And cut and cap our well, to not use our well again if we got this connection. So we followed every rule that -- >>

Zimmerman: Wait, wait. So now something else has been thrown in the MIX because we haven't -- we haven't mentioned the well at all until now. I guess other than the history was you're pumping well water for decades and we had a big drought, the well water kind of runs out and that precipitated the urgency to connect to the water main. >> Yes, sir. >> Zimmerman: Okay. So now the water well is back in play? And I didn't hear. So is the city asking for the water -- existing water well to be shut down as a condition for keeping the connection? >> That's correct. >> Zimmerman: Is that true? I didn't hear staff say that -- >> Unfortunately they have not mentioned a lot of things. >> Zimmerman: Well, can I get confirmation. Is that true, you're asking for the water well to be cut off? >> Again, when we were approached that well was dry. So they were looking for another source of water and they came to the city for potable water which we agreed to provide, again on a temporary basis, which we did. Again, we had them disconnect the well because at that time it was of no use. That was in compliance. They had to have the -- you either cap -- the current rules with wells on property that receive potable services. >> Zimmerman: Back flow preventers, that's one of the requirements. And they have that. >> But we've never been approached to say that they wanted to reuse the well for any purpose. >> Or for non-potable

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purposes. Tceq has regulations. That's why tceq got involved because they were afraid of the cross contamination of groundwater and potable water because the way the infrastructure was built is you had the tank and then you had the groundwater coming in and you had a pipe of the potable water coming in. So there was not an appropriate air gap since the Paynes wanted to use the city of Austin for potable water, then it was appropriate that the well be capped. That system be decommissioned so that there was not a potential health hazard of cross-contamination. There is nothing that prevents the Paynes from drilling a well and using it for irrigation purposes, if they want to use it for potable purposes, then there has to be on their private property appropriate back flows, no different than anyone else in the city who has a city connection and wants to irrigate with well water. >> Zimmerman: And by the way, we do have hundreds, don't we have hundreds of water wells out there in the city area? >> There's lots of water wells. I don't know -- >> Zimmerman: Probably hundreds. Yes, and they all have these back flow preventers for the reason that you just said. So this one already has a back flow preventer, right? >> Multiple. >> Zimmerman: Has multiple back flow preventers. That's already been done. You're right that they complied with the law, the back flow preventers. >> Kitchen: I don't see what's the disagreement? Because what I'm hearing is that -- maybe I'm hearing it wrong. What I'm hearing is that the three points that you laid out for us I thought you just told us was okay. >> Yes, ma'am. >> Kitchen: Okay. So we're done. Kim unless there's some stuff that we're not being told. We're not hearing the whole story. >> I would like to point out something.

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>> Kitchen: Wait. >> We have a lot of preexisting nonconforming conditions out here in the county. I'll give you a classic example. >> Kitchen: Sir, not to interrupt you, but we're trying to focus on getting to a result here. So unless you want to speak to what we just said, I think we have agreement. >> If I could --

councilmember, could we restate those points, if you wouldn't mind, just to make sure we're all on the same page? >> Sure. >> The first point is that the city of Austin, Austin water utility, will allow that temporary connection to continue to exist unless there is nonpayment with the bill or there's some other type of violation with city code related to with water service. >> Kitchen: Okay. >> Second is that upon any kind of redevelopment of lot 12 or lot 14-15, whatever the appropriate requirements are for that proposed development, that the metering requirements, the standard metering requirements and the standard ser requirements will all be invoked. >> Kitchen: Okay. >> That means that the temporary connection will go bye-bye. >> Kitchen: Okay. >> The third thing is that there's an existing easement where the existing temporary meter is from the fire hydrant, and that that easement will remain a permanent easement to the city of Austin in perpetuity. >> Kitchen: Okay. And that's what I think we understand that you said was acceptable. >> Zimmerman: So are those terms acceptable? I have a question about the violation section, but other than the so-called violation

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section, are the other terms okay with you guys? >> We'd like that to be made permanent. The permanent easement he's referring to, that connection, they're calling it temporary. I see down the line that there's going to be some problem that's going to come back and they're going to use the temporary easement against us where we have a viable, permanent connection with all the safety concerns addressed. >> Zimmerman: I think what this is is there's no problem with any of this except that one provision that said vital of rules. That's the crux of the matter because I just heard we had a long conversation and suddenly I heard water well. The city was demanding that your water well be capped our shut off, claiming that's a violation. >> Yes, sir. >> Zimmerman: So if I understand correctly you're concerned about this violation thing meaning, say, a phone book full of rules that the city can interpret and say you're in violation. We're cutting off can, you're in violation. >> Kitchen: So maybe that is a matter of specificity on what new violation of Austin code related to water service might mean in order to provide some certainty. I understand what you're saying, but maybe there's -- maybe that language could be worked on. >> Zimmerman: Something. >> Kitchen: Because it sounds to me that we may be working towards some sort of agreement. So we don't have to do an ordinance or anything like that. We're just working to some kind of agreement. >> Yes, ma'am. >> Kitchen: Am I correct with that? Let me ask the staff if that would be -- how would -- assuming that you all agreed to this, how would that be memorialized? It would be in some type of written agreement or something? >> We're more than welcome to the points that I reiterated for you to put those in writing to Mr. Payne.

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>> Kitchen: Okay. >> Troxclair: Okay. It seems like that would be the best way forward. I hate to prolong the discussion any longer. >> I heard they want to make this permanent and they don't want to agree to the requirements that when they redevelop -- >> Kitchen: No. He said he would agree to that. >> Is that what he agreed to? We can work on the rule issue. I mean, we can -- if that's a concern, but what I think our requirement is that if this property redevelops -- >> Zimmerman: No, we're not talking about redevelopment. >> Kitchen: He said he agreed to all three points. >> Can you verify that? >> I have no

intentions of developing. We've never had any intention -- >> >> Zimmerman: They want to keep what they've got. >> As long as those conditions don't change, that they don't want to build a building. >> Kitchen: Just put it in writing and you guys can sign it. >> Zimmerman: And remember, the water well, the water well is part of the very original development of the site. Now, I'm trying to think of anything else. Maybe if they erected a windmill up there you could say it's a change, but the water well that's been there for decades is not a change and we can't have all of a sudden, no, you're violating the rules because of your water well, but they're not because the water well complies because it has back flow preventers. Right? I thought these issues were settled. >> The water well complies in terms of the cross-connection potential. The violation we were talking about before is the tceq violation that they were mixing potable water from the city of Austin with groundwater. That was the violation of chapter -- >> Kitchen: Yeah. That's not applicable anymore, right? It's not applicable anymore. >> [Inaudible - no mic]. >> Troxclair: One more question. How much would it cost for the property owner to comply with what you -- not with what the city is willing to do, but what your preference is, for them to just fix it

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and come into compliance with what you're saying is city code? How much would that cost? >> [Inaudible]. >> Zimmerman: No. They wanted the 12-inch main to be extended our secondary -- >> Hundreds of thousands. >> Zimmerman: It's over a hundred thousand dollars. Two hundred thousand. Because you're drilling through rock. It's very expensive. >> Only what we see for that line is about \$200 per linear foot. 200 feet, 250 feet. >> Kitchen: Okay. So -- >> If I could make one final point just for the record. So if we are all in agreement of the direction we're headed, there's still a risk associated with that property being without water. And I just want to make sure that it's on the record -- >> Kitchen: Put that in the agreement. >> Zimmerman: What does that mean, being without water? I'm sorry. >> Again, that transmission main has to be -- >> Zimmerman: Of course, of course. >> There's no guarantee how long this would take to be repaired. Distribution mains we have a performance measure that we put that water back in service immediately. Transmission mains, it's a different situation for us. >> And it's a sensitive land use. The last I heard it was a day care and as long as everyone understands a day care may be out of water for extended periods of time, then to come back to the council and ask why they're out of water, everyone understands that risk. >> Zimmerman: And they're okay with that risk. All right. So if I could maybe -- I guess I would move that our committee agrees that we're going to get a written agreement. Sounds like we'll get a written agreement out of this, right? >> Troxclair: I want to be clear that I don't think that I would support permanent -- making that change permanent. I'm supportive of what the city staff has said that they are willing to do and that seems like a workable compromise for everybody, but I don't want to end the discussions to somehow come around into a permanent thing because I'm not

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supportive of making this temporary connection permanent nor setting a precedent. Seems like it's an unusual circumstance that we're trying to figure out. >> Zimmerman: One more comment? >> Kitchen: I would like to say this, I don't know that it's necessary for this agreement to come back to this

committee. I trust that you guys can put it in writing and if you need additional help from us [lapse in audio]. >> Zimmerman: Do you have one final comment? >> These type of cases need to be evaluated properly. This case was not evaluated properly. Like I said, the well house was on lot 12 and we're just merely asking for a water meter. >> Zimmerman: Okay. >> Kitchen: We appreciate that. Thank you, sir. >> And to say that that was temporary -- here's the sad part about it. If they're so uptight about it being temporary, why did they force us to tap there? >> Zimmerman: Okay. >> [Inaudible]. >> Hugo Elizondo requested to put yellow mine pipe off the ground and was denied by Kathie [indiscernible]. We got that in writing. They forced us to put it underground and then had the audacity to say that it's temporary after we spent \$20,000. >> Zimmerman: Okay. I think we're going to get a written resolution on this, right? >> We've been working on that written resolution for quite sometime. >> Zimmerman: I think it's going to happen now. Appreciate you coming. Our final future items, discussion of future items maybe will wait until councilmember Garza. Is she coming back for August? >> August I think. >> Zimmerman: Okay. All right. If there are no objection, we are adjourned. And the time is -- what is the time here? All the things went -- >> 6:55. >> Zimmerman: It's 6:55. Thank you, have a great day. Thank you for coming.