

Planning and Neighborhoods Committee Meeting Transcript – 09/15/2015

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[1:10:11 PM]

>> Casar: Good afternoon, everyone. I'm Greg Casar, the chair of the planning and neighborhoods committee. With me here are mayor pro tem tovo, councilmember Gallo and councilmember Renteria. And I'm convening this meeting at 1:11 P.M. Today is September the 15th. Our first item of business is approval of the minutes.

>> So moved.

>> Casar: Moved by councilmember Gallo. Seconded by the mayor pro tem. All in favor say aye?

[1:12:13 PM]

It passes unanimously. Item number 2 is citizen communication general. This is to address concerns on items not posted on the agenda. While I know we have a very exciting item on the agenda that lots of folks are here to see about, we take a maximum of five speakers to speak on items not on the agenda. If you signed up for citizen communication and wish to speak to an item on the agenda, I would kindly ask that you give up your time or come up with something else to talk about, please. So our first speaker is Stuart Hersh.

>> Chair and members of the committee, my name is Stewart Harry Hersh and like most in Austin I rent. And I'm here to talk to you today about high occupancy nuisances and you're recently adopted budget. The best code work that I saw performed in my 30 years with the city required us to identify what was in the national code, what had we amended locally, what are the problems that the community had identified with either the national code or our local amendments and therefore what problems did we need to solve in latest round of code adoption. I humbly am here to suggest to you today that there are problems with the code on the issue of occupancy, on the definition of adult, on the definition of unrelated, and the requirements related to residential parking and a number of other nuisances that will be on topics that you will either discuss today or in future meetings. So I have done what I do for my clients, I am a consultant, for those of you who don't know, and I only work for not for profit clients.

[1:14:13 PM]

Generally I don't charge them because I live on a pension. And I deal with code compliance issues and how those can be accomplished within the limits of the city budget and within the limits of the budget of my clients. So I'm sharing those documents with you today. I attempted to share them with the building and standards commission by sending this information to the commission coordinator. I am not

sure that the commission's received it or when it will take you up as a topic, but I have approached them and they said they will discuss this in the future so it will hopefully come back to you at some point and I wanted to give this to you sooner rather than later so you could have the information in terms of what I believe the code says currently and where the problems lie and what possible -- may lie and what possible solutions may be there. Thank you for your consideration.

>> Casar: Thank you. I believe councilmember Gallo has a question for you.

>> Gallo: Since your our wealth of historical information, when did the city move from a bedroom being determined whether or not it had a closet? At one point bedrooms were required to have a closet. No?

>> The property maintenance code and the housing codes that preceded it never required a bedroom to have a closet. The property maintenance code as it exists today does not require that. There are some people on the zoning staff who think from a zoning perspective that's required, but that is neither a requirement of the adopted 2012 international residential code nor -- which governs single-family and duplexes, nor is it a requirement of the 2012 international building code, which governs multi-family and commercial and mixed use. So closets are not required by code on the construction side.

>> Gallo: Was it a component of parking requirements? Did it determine a number of parking spaces?

>> At some point when zoning limited how many people could be in a house the question came up from a zoning perspective of what a bedroom was.

[1:16:21 PM]

The building codes and the property maintenance codes have always been clear what a bedroom was, specified as size. It talked about egress, windows and that sort of thing. But there are also provisions relating to occupancy on the zoning side and so those things about whether it did or didn't have a closet and therefore whether it was or wasn't a bedroom never came up on the construction side. They always came up on a zoning interpretation side.

>> Gallo: Okay. Thank you.

>> You're welcome.

>> Casar: David king.

>> I'm going to pass, thank you.

>> Casar: Thank you. Sammy Easter day? Day? Day?

>> Thank you for this opportunity. All I wanted to say was whatever deliberations are taken by you and by the council should honor the citizens of Austin who are here now on the ground and not denigrate them for some future austinite that may or may not come to Austin. So when you do your deliberations, please be level handed in honoring those of us that live here now and have our residences here, whether they are apartments or family home, in your deliberations. Thank you.

>> Casar: Thank you. Ms. Easterday. Joyce vociano?

>> I'll pass.

>> Casar: Roger caven?

>> I'll pass.

>> Casar: And I see frank Herron here signed up to speak, but not on a particular item. Are you here for citizen communication? Thank you.

>> Mr. Chairman, members of the committee, I'm here to ask you to direct your staff and optics to -- as part of the codenext to include a number of more affordable housing options in the new residential zoning categories, whatever those turn out to be.

[1:18:41 PM]

As I said at the most recent caag meeting, the low density single-family home is no longer an affordable

housing option in central Austin and it's quickly becoming less affordable throughout the city. As of this morning the median asking price for the central five zip codes from 01 to 05 inclusive, was \$657,500. The median asking price in the city as a whole as of today is 489,900. We have got to have more affordable options, which means denser options. And as I've said bar, square footage and density are the only two significant tools that builders have to impact affordability. Some people dispute that, but we've got it on good authority from Terri Mitchell that that is in fact true. And until we begin to accept the reality that we must have different, denser housing options throughout this city, which is what the imagine Austin plan says we're going to have, then we're not going to get anywhere on affordability, we're not going to get anywhere on transit, and we've got to accept the reality that we face today. And as long as we continue to allow low density single-family homes to be the dominant housing choice in Austin, we're not going to be affordable. And we're going to be economically segregated and we're going to have a lot of economic unfairness. Because even at 489 it takes \$100,000 a year to qualify for a 90% mortgage. In central Austin now to buy the median priced home it takes about 150,000 a year. And the vast majority of Austin just doesn't make that kind of money.

[1:20:44 PM]

We need to return to a place where the typical neighborhood in Austin represents a cross-section of our community. It's ironic that those who have resisted change the most have actually created biggest change in our neighborhoods. They become an enclave for those who make a lot of money. And I think that's the worst possible change the type of house we live in is not as important as maintaining our social equity and our economic fairness, our affordability level. It used to be the best in the country as recently as 1990. So I would ask you to keep that in mind and ask your staff and your consultants to include affordable options that can be applied throughout the city. Thank you?

>> Casar: Any questions? I have one. Very brief if such a directive were to be given would you give a directive as more affordable options or were there particulars that were suggested that may not be included in codenext that you want to see included? Are there are -- are there particular options that you're talking about, but what you're testifying about would it be just to direct the consultant to come back with affordable options generally?

>> Yes, in fact, I've already suggested to them something similar to Chicago's at 4 zoning.

-- Rt 4 zoning, which is generally available throughout Chicago residential areas. And those areas were platted almost identically to a lot of the early Austin neighborhoods with 25-foot lots and so forth. Priority program 6 in the comp plan has a suggested partial list of more affordable options and it includes courtyard bungalows, row houses, smaller lot single-family, apartments. It's right there in the comprehensive plan and I would support any and all of those.

[1:22:45 PM]

>> Thank you. Welcome, councilmember pool.

>> Pool: Thank you. I thought I would join the fun on the short-term rentals topic. Thank you for being here today. Do you think that building more density is about the only tool in our toolbox to address the affordability issue in our city?

>> I would not put it that way, but I think within any given context, whether you're in the can be or in -- cbd or in a surgeon neighborhood or in below market housing that is in some way subsidized, in each of those contexts, additional density will provide additional affordability.

>> Pool: What's the time curve on that in your estimation? How long before the cost curve starts bending downwards? >>

>> It takes a long time. Frankly most of our neighborhoods today have allowed duplex for as far back as

any of our senior planning staff can remember, yet duplex has not become the dominant type over the course of decades. The comp plan was designed to come out with a certain level, not down to this very specific number, but to achieve a certain level of density between now and 2039, which will be our 200th birthday. And the goal was to start now to let housing stock evolve in that direction which we haven't allowed up until now.

>> Just one other question. One of the tools I think that we have is also to urge -- find ways out of what I see as a stagnated wages situation and it's not just in Austin, but nationally. Do you think your group would be willing to work with me and either of my colleagues to try to attack the affordability question by also looking at salaries and wages did, productivity has jumped up tremendously since the last recession, but wages have lagged behind very flat.

[1:24:51 PM]

And frankly, I think while we have a conversation about density and building, we're really talking about the incomes of the people who are currently in our city and whether they can afford to stay here and continue to pay the taxes or the rents that are driven by the market. And we have very little that we can do to affect the market. So I'd like to kind of engage a conversation widely with our community on wage stagnation and see if that is -- we don't have some really interesting ideas from all the good minds in our community on how to come at it from another angle as well. Is that something y'all would be willing to join with me in?

>> Absolutely. Despite certain allegations about relationships with the Coch, I'm a proud Obama democrat and I'd be happy to.

>> Pool: That's terrific. We'll talk. Thank you.

>> I think that's all the speakers we have for general citizen communication. Thanks for getting our mind on some other things besides short-term rentals, but -- I'm sorry. There are so many people lined up that I missed Cynthia Valdez -- I see you're signed up for three, but I know you meant to sign up for two, so come on up.

>> I think right now

[indiscernible]. They told me I could not speak on strs so I'm not going to speak on strs.

>> Cesar: I see you wrote your name in twice.

>> My name is Cynthia Valdez and I live on east Cesar Chavez. I live between Clara street and pedernales. And I want you to understand what my life and my two daughters' lives look like. I have a daughter who is special needs. She has a brain demile nateing disease so she's in a wheelchair. Cannot walk or speak. Blind in one eye, lost 50% of her hearing and has to be medicated in order to not feel the pain that her uncontrolled intracranial pressure is applying to her brain.

[1:27:00 PM]

So that's my special needs daughter. And then my older daughter who owns the house in which we both live. We live along Cesar Chavez, which is considered a major corridor between airport and the convention center and downtown. In addition to that we have a new street light that is being put in at pedernales and Cesar Chavez. Two properties -- one property down from where we live. Across the street from us we have the old Pepsi cola plant that is being developed into a Mercado looking type facility. You have to understand the narrowness of Cesar Chavez really does not allow you to park on the street and then expect for two-way traffic to go through safely. In addition to that, we've got a brewery that's going in across the street on the corner. We've got restaurants, we have one next to us. All of this because Cesar Chavez was changed to commercial from single-family residential zoning by the flick of a pen at one point in time a few years ago so that they could accommodate the corridor between the --

the traffic corridor between the convention center and airport. There was also a time when Cesar Chavez was one-way and streaked was one-way in the opposite direction. That no longer is the case. So as a result of all the development, the gentrification, the uses, the change in uses from single-family residential to commercial, we have experienced a huge impact, a negative impact on our quality of life. We have nonstop traffic. Even though we have signage on both sides of Cesar Chavez from 35 to 183 that say no truck thoroughfare, we've got major trucks going through all the time. We've got empty capital metro buses driving along Cesar Chavez all the time.

[1:29:05 PM]

We now have party buss that have parked in homes that have been changed to use other than single-family residential, that now have 30 or 40 people that are staying within them and when I try to take pictures of the unacceptable, as far as I'm concerned, uses of which you are going to be talking about earlier later on, I'll have people walk out with beers in their hands and tell me here comes the Mexican taco lady. Come on taco lady. Come sell me some tacos. What are you doing taking pictures, taco lady? Yeah, get the Mexicans out of here. I'm having to deal with that on a regular basis by people in a drunken stupor from the night before residing temporarily in locations that have been changed from single-family to benefit some property owners' pockets. I ask that you please consider that the impact on our quality of life as a result of what you are going to discuss today is such that we cannot continue to live safely with any clear, improved, positive feel for our neighborhood if this is allowed to continue. It is out of control and we ask that you implement whatever protections you need to for us to be able to have a good quality of life, which is what we all expect to have in Austin. And understand that calling the police department is not going to get us anywhere because we have to call 311 and there's never anybody who is available to speak to us because it's a non--emergency phone call. Or we have to call and file complaints with code enforcement that does not have any enforcement powers to be able to put these people down because they don't operate after 5:00 in the afternoon and most of what occurs is after five and on the weekends.

[1:31:10 PM]

So please take all of this into consideration as you think about seriously what you are doing to change the look and feel of our Austin neighborhoods. Thank you.

[Applause].

>> Casar: Okay. So this is a continuation of our 2:45 A.M. Extravaganza from last month so we are going to pick up exactly where it is that we left off. For that reason redon't have public comment because it's not -- we don't have public comment because it's not the way we work in the committee when there are amendments or additions that we reopen public comment. Thank y'all for your understanding but this will give us the time to discuss the actual recommendations that we will pass up to council amongst us. We also still maintain the prerogative of asking city staff any questions, asking anybody in the community questions to inform the council, but once again, between [indiscernible] And councilmember Gallo's resolution that were passed along to today, along with additional recommendations from the mayor pro tem, we do have a lot of time to discuss. So the more briskly we get through it the higher chances we don't have to call a special called meeting. So without further adieu I think the best way to start is to have councilmember Gallo run very briefly through -- sorry? Sorry. Have councilmember Gallo mention briefly what, if any, from last month you want to take up first and mayor pro tem I know that yours got cut off at the end of last meeting, so I'm ultimately pretty agnostic about the ordering, but I think that we should take up the most important and time sensitive issues first so I will leave that up to committee members. But I would like to talk about what it is that was in front of us first before we bring

up anything new, if there is anything new.

[1:33:20 PM]

>> Gallo: So I will start. We have passed out to councilmembers the items that were continued from our last meeting last month. The top of it says revised draft as of 9-15-2015 for September 15 pnc meeting, so that's what I'll be reading off of. The ones that were passed -- does everyone have that? Do we have extra copies? So the resolutions that you see on this were a combination of -- first of all let me say that those of you who have been back and been before us and talked to us and called and e-mailed, we appreciate your input from all of the community stakeholders. This has been a process that our office started, my office started about six months ago as the result of a town hall meeting that we had in district 10 where one of our constituents came up to us and started telling the story of living next to a person that was operating a short-term rentals not in compliance and in violation of zoning. And we were obviously very concerned. I would not want to live next to a property that was operating like that. [Applause]. As we began to investigate we found there were multiple neighborhoods in district 10 and then as we took the communication and the conversation even more broadly we realized that we had lots of neighborhoods around Austin that were having to live next door to short-term rentals whose owners had decided not to operate in compliance with the existing laws and code. So that began the process. A lot of the faces we have become familiar with, as you have with us, but we took up some of the suggestions that were a combination of suggestions of what we heard from neighbors, what we heard from stakeholders, what we heard from short-term rentals that were actually operating properly, what we heard from city code department, what we heard from legal, what we heard from the water department and put those into a whole group of resolutions, half of which we talked about last month and the other half we're talking about today.

[1:35:43 PM]

As we go through this list the ones that actually came to us from the code department or came from another city department or legal I'm going to ask that those particular department members come forward. So the first one was adding the short-term rentals into the local code amendments to the international property maintenance code and that was one that was recommended to us from city legal and also from the code department. So if a representative --

>> Casar: Councilmember Gallo, before we get started on that, I wanted to hear what the priority was and which the committee wants to take up. It seems to me while that one was referred to us by city level and a couple of these others were, I know a lot of people wanted to hear -- my understanding of the temperature and from the committee members, the clustering issue, the occupancy limit issue, at least especially those two major issues in your resolution seem to rise to the top and considering that we have limited time today I wanted to see if we wanted to handle those and then I also know that mayor pro tem -- about the moratorium and a couple of others had a lot of interest. So if we may not have time to go through every single one today, I wanted to see if in your view the clustering and the occupancy limit were the two most important. Or if you -- I'm just trying to order the meeting in a certain way.

>> Gallo: No. I think as we talk about these they were bits and pieces about how to help enforcement. Everything we've been talking about is to help enforcement tools be strengthened so that code can on go in and actually do something to stop the operators that are not operating in compliance. I would say then probably from a priority standpoint I would talk about the occupancy number and jump to that, number 5. And then the other ones you were talking about --

>> Casar: It seems to me the clustering issue was seemed to be the second most impactful.

[1:37:46 PM]

>> Gallo: And the inspections. We'll jump over to number five, which is the occupancy limit. Legal has actually been working with us on this. Our main concern was we saw over and over again situations where -- and I have said to code over and over again, the code department is they are probably the only department in Austin that has such a huge number of volunteers and eyes and ears on the ground in this community to help them do their job. To all the neighbors and people out there I thank you because getting that information to the code department I think is very helpful when they have a limited path to do that. Our concern is as we saw neighbors being proactive about getting information to the code department and letting them know when occupancy was over the limits and all of Austin it's at least not more than six unrelated in many parts of Austin. It's not more than four unrelated. And so as we saw that there were neighbors talking about occupancies, there were 15 adults or 20 adults or 10 adults. Obviously there were situations where there was the potential to be in violation if those people were not related and that code would respond and come out to the property and actually see that happening. I think one of the incidents was filmed on TV where code walked up to the door, there were more than six adults in the property, outside, and they all then proceeded to tell code they were related. It said to me that we in this community need to have the strength of enforcement such that the code department and inspector can walk up to that front door and if he counts more than seven people, seven adults on that property, then that is a violation. So that -- one is we had to move from a municipal court type hearing and our director will come forward and I think legal will come forward too.

[1:40:09 PM]

It was a process that was very cumbersome. The burden of proof was on the city. So we have now moved to an administrative type hearing where actually the burden of proof can be on the owner or the occupant so that when code walks up to the door and counts people, adults that are over the limit, then they have the ability to cite a violation and then in turn the burden of the proof will be on the owner of that property to prove that they're related during that hearing process. So I'd like city legal and both code to come up because we've been working on that. Two issues, number one, they have to be able to site immediately and two, code at some point will have to figure out what would be an important determination of relationships, siblings, husband-wife, et cetera. Then the other issue is in legal and -- you have been wonderful. I'm going to applaud our legal staff person that has been working with us because she has been so incredible in trying to help us get this so fine tuned that the gray areas are being taken away because we need the gray areas taken away. And one of the other things that I think you will address too is residing. That we want to have the ability for code not to have to get into the discussion of whether somebody is sleeping there or not if they're in the property. I think if you would address what your recommendations are with being able to help us with really tight ining this up so that it gives director smart and his staff the ability to walk up, see a number of people that are over the limits and actually cite at that point.

>> Tricia Lancaster, city attorney. The enforcement method that can be used in this scenario, if you want to assume that individuals are not related, once they hit a certain number of individuals on the property, then we would need to go through the administrative hearing process. The administrative hearing process, the citation is issued just as a parking citation and they have the right to have a hearing with a hearing officer that will decide whether or not the ticket was properly issued.

[1:42:14 PM]

Then for a specific str occupancy limit we would make sure that -- I think we've talked about this before. The occupancy of the unit would be specific to strs because the 252511, which is our dwelling unit occupancy that applies to single-family residences does use the word reside. We would not use that in this context because reside doesn't really fit the description of what's happened. >>

>> Gallo: So director smart, my sense is what you're looking at in the revised draft is actually going to have some legal revisions done to it to address those specific suggestions that the legal department has made for us. And so director smart, hearing that, hearing what we're able to do, I'm going to go back to the underlying question that I keep going over, talking about over and over again, is when a neighborhood or a neighbor calls in and sees 20 adults at a property, and your code inspector is able to get there at the same time to be able to witness this, would this give you the ability to be able to walk up to the door and when you visually can count that number of people be able to issue the citation or the violation?

>> Councilmember, I think this will certainly help. As you know, with all the hearing [indiscernible] And meetings that proving overoccupancy has really been a difficult situation for us because presently the code says unrelated persons and so proving that they're related, unrelated, the burden has been on city staff when going through the municipal court process. We have recently learned through interpretation by legal that we can take str cases and other zoning cases to our administrative hearing officer where the burden of proof is lower than the burden of proof in a municipal court setting.

[1:44:18 PM]

So what you're suggesting -- what this amendment, proposed amendment would do, yes, would allow us to go up to the door and we've not been able entry in the -- not been allowed entry in the strs. Not allowed to go in and do an inspection and see how many -- try to get a better idea of how many people are in the property. So with this ordinance change it would help and maybe allow us to count the number of people there. We won't know if -- we won't know definitively if they're occupants or if they're party attendees or visitors but we'll be able to count the number of people there and use that as evidence in presenting a case to the administrative hearing officer and then the officer -- the hearing officer would actually make the decision on whether that case is -- would stand up or not. But the burden of proof would be on the property owner and the manager's to prove that -- who was there -- how many people are actually living there, occupying the property in that particular event. I think it would help. The bottom line is I think it would help.

>> The mayor pro tem has a question and then councilmember pool and then if you've got more, councilmember Gallo, you can be up next.

>> Tovo: I want to be clear. The draft that was brought forward in June said unrelated.

-- Did not have the word unrelated. The draft we're considering today inserts the word unrelated back in again. I'm not clear on director smart, I thought that our discussion last time talked about the -- a lot of the discussion has been around the facts that unrelated makes it difficult for you to enforce the occupancy limit and that removing the unrelated -- the term unrelated and just looking at the number of adults would enable you to enforce the occupancy limits more readily.

[1:46:23 PM]

I'm trying to follow the argument that we're now hearing and is it because it's the -- I think I understand the point, councilmember Gallo, that you may be making about the administrative hearing changes or lowers the burden of proof somewhat, but would it still be a -- would you have any easier time enforcing occupancy if we removed the word unrelated?

[Applause].

>> And that was staff's recommendation at the last meeting, that we remove the word unrelated and just set a set number of adults so that we're not in the position of having to prove whether they're related or unrelated. The difference -- I think I'm hearing the difference would be that the burden of proof would be placed on the owner rather than staff. But if the burden of proof is on staff to prove whether they're related or not we would be brought back in the same difficult position, yes.

>> Tovo: Do you agree that the burden of proof is shifting if you have an administrative hearing available or do you think you're still going to have the same difficulty?

>> That's a legal question, I guess. I'll let my attorney --

>> In this scenario if the code includes a presumption that once you hit seven adults or five adults, depending where you are, where your occupancy limit is, then staff would see seven, issue the citation, go through the administrative hearing process and the person could challenge it and at the hearing provide evidence that they were related.

>> Tovo: So I don't see that language included within here, but you're saying when you went back -- went back and drafted that provision you would talk about -- the inclusion of specific language talking about the presumption of it's going to be presumed if -- if there are seven adults on the premises it's going to be presumed that they are unrelated unless the property owner shows otherwise?

[1:48:32 PM]

>> Yes, that's how it would be drafted because it would be enforced. And this would -- this provision, if we have that presumption in the code, could only be enforced through the administrative hearing process. So by enforcing it only through the administrative hearing process you can utilize the presumption.

>> Tovo: As opposed to enforcing it through which other mechanisms?

>> Municipal court. We would not be able to do that in municipal court.

>> Tovo: Okay. I guess I would say I support and will continue to support the measure as it was presented back in June. I think we've heard some discussion about --

[applause]. About large families, but again, we're not -- we are not looking at changing occupancy limits citywide. We're looking at occupancy limits with regard to short-term rentals. And it's not different from what hotels do. If you try to book a room at a hotel and you are trying to book -- I've had this situation myself and we just have two children. We've sometimes have had to pay for a more expensive room because even two children couldn't fit in particular rooms. So I regard commercial short-term rentals as hotels and I think it's -- we need some way of --

[applause]. We need some way of regulating and giving our staff the tools that they've told us they needed, and that was one they said would make their job easier? So I would support with all due respect to my colleagues who have been including councilmember Gallo has been working on that. I appreciate the consideration and the discussion about the administrative hearing, but I'd like our staff to have the option of going to municipal court or an administrative hearing process and I think we need to arm you with the right tools. So I'll support removing unrelated.

[Applause].

>> Casar: Councilmember councilmember pool, are you speaking on the same point or can I give councilmember Gallo a chance to respond? If it's the same point the mic is yours.

[1:50:36 PM]

>> Pool: I was going to ask about the reinsertion of the word unrelated and I would also like to see that removed. I'm looking at item C, no more than two adults per bedroom. Could you -- could there maybe some conversation about that. I don't know that -- as much as I want to regulate, I think we can regulate

without going into a bedroom to see how many people are actually in a bedroom. Is that more of a combination of number of rooms and how does that relate to the six. What if there's five bedrooms?

>> We've been breathing and thinking this for the last couple of months and in response to mayor pro tem tovo's comments, when we were addressing how to allow code the ability to determine occupancy and violation quickly and easily, that was when we took the unrelated out, but that was before legal had said that they could move to a process of an administrative hearing because the problem was prior to being able to move to an administrative hearing process, when code could only take it to municipal court, and they have been very unsuccessful in that process because there's such a substantial burden of proof. We do not want to have to take things to municipal court. We want to do them through the admin hearing. So as legal said, this is a possibility for code to take these zoning violations to an admin hearing process, then what it allowed is it allowed a shift in the burden of proof from the city to the owner of the property. So as a result of that it now becomes -- it's basically doing the same thing, which is they are assuming when code goes up that the number of people there are not related and they will cite based on that. It would be doing exactly the same thing as we were talking about with just having six adults when we could only go through the municipal. But it's actually a much simpler process and much easier to convict on.

[1:52:41 PM]

So social security the burden of proof shift to the -- so having the burden of proof shift to the admin hearing puts the burden of proof on the owner. So it is presumed you are unrelated when code walks up and counts more than six people and then the burden of proof at that hearing would be on the property owner to prove that those people were related. So it basically does the same thing, but it keeps it in line with the zoning occupancy. So that's the reason that you see the change is because legal has now found a way to move this process to administrative hearings.

>> Pool: I have a follow-up.

>> Gallo: You were asking about the bedrooms?

>> Pool: Let me follow up on the municipal --

>> Renteria: It hasn't been seconded yet so we're having discussion. I would like to submit that I second that, Ms. Tovo's amendment.

[Applause].

>> Casar: So Robert's rules of order does not always lead to the most efficient or entertaining meetings, but I would like councilmember Gallo to finish your response to councilmember pool's questions and councilmember pool, you may ask your question of city staff. Then once you've asked that question I'm going to give councilmember Renteria the floor because he raised his hand. So councilmember Gallo, you're up first. Councilmember pool is on second.

>> Gallo: So in addition to the movement away from municipal court to admin, which allows the burden of proof to be on the owner or requires the burden of proof. Doesn't allow it, requires it to be on the owner. It allows code to walk up and if they see seven adults it's a violation. The thing that came before us and -- in fact, you and I talked about this. As senior members of the community, our children are adult children and so if we were to travel somewhere with our adult children and we had seven of us traveling together and we wanted to rent a short-term rental, a vacation rental, which is what my husband and I rent when we travel because we like the benefits of a kitchen and a residential area and we behave, we could not do that with our family.

[1:54:48 PM]

So the thought was if we really had the ability now with moving this to administrative hearing where

code can walk up to the door and see 15 adults and say you're in violation until you prove that you're related or you're not related, then can't we still give the opportunity for families to travel with their adult children? And so that would be the reason for allowing it to still be unrelated is that if you don't then you've taken that ability away for families to travel with their adult children.

[Applause]. And I don't know that the families traveling with their adult children are the problems. It's the adults that are not related that are over occupancy that are the parties and the frat houses and the bachelor parties and everything else that we see that's such a detriment to the neighborhood. The question was about the bedrooms, not more than two adults. As part of the conversation of a family gathering, we also said there should be a limit at which the family gathering is too large. So that's why the not more than two adults per bedroom was inserted so that if you had a group that was related, they could still not exceed more than two per bedroom. So you had an overlying limit even if the family complied to the not more than six unrelated because they were all related. There still would be an occupancy limit that would be reasonable to the number of bedrooms. And I think particularly in your district, Pio, when you have smaller houses that are two bedrooms and you have eight people or 10 people residing and we have seen the pictures of the bedrooms with 58 bunk beds, it does limit that also. So that's where that limitation came in basically was to put a limit on the related families' occupancy of a property too.

>> Pool: A follow-up I had for our legal staff is what we're doing here changing the offense from criminal, which is municipal court, to civil, which is the state office -- the administrative hearing?

[1:56:57 PM]

Because I know that that lowers the burden of proof if you go from criminal to civil.

>> So we would be handling it in a civil manner as an administrative hearing.

>> Pool: Right. And it's easier to prosecute a civil offense than it is a criminal because the bar for guilt or innocence is higher, right?

>> The burden of proof in municipal court is beyond a reasonable doubt and the burden actually in the administrative hearing process under our code is actually on the owner of the property.

>> Pool: That's really good and I think that's a really Progressive change and I support that. I'm glad that is being recommended. I would ask too if we could policy up on that point to find out how the penalties that we may be interested in assessing, if they are already set by ordinance or state law or if we have the ability to set those at a level that appears to be appropriate.

>> The current provisions in the code actually have an enhanced penalty levels, but when the council took action last time they initiated a code amendment to change those for zoning violations so we would have one set of penalties for non-zoning offenses and then one for zoning offenses. And the maximum is a thousand dollars.

>> Pool: Okay. When you say took action last time, was that this council in June or in August or was this the previous council?

>> This council -- I think your August meeting. The August meeting where they did the resolution of all the other code amendments, this was in there as well.

>> Thanks.

>> Casar: Thank you for being at so many meetings as well. And councilmember pool, when I get to my chance to ask a couple of questions, I think that beyond the fine level, I'm interested in finding out how these administrative hearings could be part of revoking and suspending licenses. So we'll get to that, but first I want to give councilmember Renteria the chance to talk.

[1:58:59 PM]

>> Renteria: And this question is to legal also. My understanding is that right now code is not allowed to go in after they receive a complaint about a party going on, that they're not allowed to go inside to inspect to see if there's more than six people in there.

>> This would not change that.

>> This would not change that.

>> Renteria: I mean, we can't right now, presently, pass anything, any amendment to say that we give the authorization for any code inspector to go in and to physically go in after a complaint.

>> You can authorize them to do inspections, which is actually currently in the code for other offenses and actually the rest of the lodging establishment includes inspection language in there. However, that inspection language always has to be read in light of the constitutional protections under the fourth amendment. So staff would still have to ask for consent or get a search warrant.

>> Renteria: That's the only reason why I'm going to be supporting the six because our people cannot go in that house and they're not allowed to. You know, if for some reason there was a way that we could allow that to happen, then I would, you know, consider that. But, you know, there's no way that we can do that. So that's the big problem. I mean, we can -- you know, the administrative process, they're going to say, oh, yeah, they're going to find someone and those people are going to be gone anyway. How are we going to find out?

>> Casar: Councilmember Renteria, I think the intention is that the fine, if somebody was found at administrative hearing to have broken the rules would be to the property owner. It would not be to the occupants is my understanding. Is that correct?

>> Correct. It would be on the property owner.

>> Casar: Then one other clarification, councilmember. You moved to adopt an amendment from the mayor pro tem.

[2:01:02 PM]

She told me that she hadn't made that amendment.

>> Renteria: Oh, she hadn't? When she does --

>> Tovo: I sure would be happy to but we probably should allow councilmember Gallo to forward her recommendation, then we'll amend it.

>> Renteria: Okay.

>> Casar: Any other questions for staff or any members of the public? Councilmember Gallo.

>> Gallo: I think that you bring up a good question and I think as we've talked about the code department strengthening the application process so that you get additional information up front as part of the application process, you've also talked about asking for the information on bedrooms as part of that process, a part of the application, so that code would actually already know the number of bedrooms that are in the property so that that would be a new part of the application process which would be a lot stronger and more detailed. You're nodding your head, but if you could confirm that you've actually. . . And then that information, my understanding, would be available to the code officers as they go to the property, that if they looked at that license they would know the number of bedrooms that were associated with that property.

>> Yes, councilmember. The present ordinance allows the director to request additional information on the application and certainly we can ask for the number of bedrooms that are in the property. And I think one of your suggestions, one of the suggestions being considered by the committee today, is to allow inspections by the code staff. And so if we have that information on the application and we did an inspection, we could confirm the number of bedrooms on the property.

>> Casar: Are there more questions for our staff while they're stand I have a couple, and I'm not sure if it's -- for who it is, but I imagine I'll have some for each of you. My first question is -- and part of the way

I'm going to be thinking in talking about this is understanding that str type 2s, largely tend to be more professional operations, although there's some that are not, as in it's not an everyday homeowner that lives in the house, and is that str type ones a lot of times value your everyday person.

[2:03:20 PM]

I want to have both of those in mind when we are passing amendments that affect all short-term rentals. So my question is if we pass this occupancy limit and it eventually becomes a part of code with the administrative hearing process and someone with an str 1 license, they use it during spring break season and it's mid-december and they have eight people hanging out in their backyard because people do that, does this -- would this only be enforced when the str license is being used to rent to someone short-term or would it also be applicable if the owner is at the house with their eight family members, for example, and they just happened to have an str type 1 license because they use it as an str type 1 when they leave town during south by southwest.

>> The occupancy limit would only use during use for a short-term rental.

>> Casar: That was just a question.

>> Right. If it is a type one and they're owner occupied, so when they're using it as their home, they would default to the single family residency occupancy limit.

>> Casar: Second question, I know the bad actor clause has not been developed yet but help me understand if someone goes to administrative hearing and found to have broken the rules through administrative hearing could that be considered as, you know, a violation that would add up to the number of violations that we determined to suspend or revoke licenses? Would this help us identify bad actors and then shut them down?

>> If I could respond, councilmember. Absolutely. If we take a case to the administrative hearing process and the hearing officer finds that person guilty, certainly that's -- that is a confirmed violation. That's, in our terms, a conviction, and it can be used in considering suspension of the license itself.

[2:05:22 PM]

If there's repeated violations as certainly that's grounds for suspending the license for a reasonable period of time.

>> Casar: And that's -- are you determining that's grounds currently, reasons for suspending the license, or it would be grounds if we established a new clause?

>> That's currently.

>> Casar: And how many licenses have you suspended or revoked, say, in the last year? Do you have some idea of it?

>> We have not suspended or revoked many. I don't have that number. I don't know if -- okay. Mr. Elliot is saying three.

>> Casar: Yeah, just because -- no.

>> I will confirm that number for you.

>> Casar: That is helpful because, you know, the thousand dollar fine some folks have brought up is low relative to some of these str operators, how much they charge per night.

[Applause] The only of -- but the potential of revoking or suspending their license and then ramping -- can you remind me what the fines, are for example, if someone had their license suspended and continued to operate as a short-term rental, what the remedies are that we currently have?

>> Again, we have to use -- yeah. Presently, we would go to municipal court and of course they have the thousand dollar fine. If operating without a license or operating with an expired license, you've already, I think, referred to legal to draft an ordinance, amendment to the ordinance, that would allow the fees to

be doubled for type 1. If someone is caught without a license and come in for that license, and it would be tripled for a type 2, if they were caught operating without a license or an expired license and come in for that license. So that's in addition to any fines that might be imposed by the court or administrative hearing officer.

>> Casar: Well I'm going to be supportive of moving some of these things to administrative hearings.

[2:07:26 PM]

I think it sounds like that is measures recommended by staff that's prudent but I want to make sure if we do start getting people in administrative hearings and finding them guilty and the fines aren't enough that we pull and suspend those licenses because I frankly fell out of my chair when I got the emails about Jason's license being renewed and I want to make sure we give the tools necessary to identify bad actors, to cite them, to give y'all the tools to be able to prove that and then if that is not enough for us to make sure that we're actually shutting those down. So I appreciate the process and want to give you this tool so I'll be supporting it, and it seems to me that the related versus unrelated adults question is a tricky one, but it seemed like the main problem was that people were making up that they were related to someone when they actually weren't.

>> Right.

>> Casar: And that this handles that issue was was drafted by councilmember Gallo. But I'll wait to hear more discussion on that.

>> If I can add one thing, chairman, I would be -- certainly, as it relates to proving overoccupancy, the administrative hearing process would be a better and more effective process than going through municipal court. However, for other violations of strs, having that option might be a good idea. I would be concerned if the option was removed.

>> Casar: Okay.

>> Thank you.

>> Gallo: Maybe we could have legal come up because we actually did have that conversation, where, you know, my impression was on a single violation it's very difficult to prosecute through municipal court, but I think what legal was suggesting is that if you have an owner of a property who continues to violate, isn't licensed or license is suspended, they continue to operate, you continue to cite them and site them and cite them, that that becomes a really strong case to go to municipal or civil court.

[2:09:27 PM]

So you might -- you might want to visit a little about that because for the repeat offenders as we've talked about in different areas, this would really be a good method that would probably be successful because it's a repetitive situation.

>> Under state law, the city can file in district court to request an injunction for someone who is violating our zoning ordinances. So if we have a pattern of misconduct related to -- particularly if they're operating without a license and nothing seems to be working, then that is certainly an option for the city to consider.

>> Casar: Councilmember pool.

>> Pool: So what happens if the repeat offender chooses not show up for the hearing?

>> For the administrative hearing?

>> Pool: Yeah.

>> It is just like your parking citation. You can choose to pay it and you're found libel and you just have that violation in city records. The second option is they could ask for a hearing. If they don't show, then they're found libel. And they're required to pay the fine as well. The third option is for them to actually

attend their hearing.

>> Pool: So it seems that it would be helpful to have some additional penalties attached to the real egregious repeat offender so that when say they don't even show up for a hearing or they don't pay the fine, which is also -- collection cans also be difficult, that there's something else. Maybe it is attached with pulling the permit and making sure they can't have that rental out there ever.

[Applause]

>> Casar: Anymore discussion?

[2:11:27 PM]

Well, I can't make any motions. I'm the chair so it's really --

>> Gallo: Since we started it, we'll forward the motion that was passed out, number 5, on the revised draft, understanding that there will be some additional legal language that is made. And, once again, the reason that we moved -- my goal is to make sure that a code enforcement officer can walk up to a front door, count the number of people that are loading on to a bus or hanging around in the driveway or whatever, and if they are more than six or more than four, depending on the area, can immediately cite a violation at that point in time and then the burden of proof is on the owner at the administrative hearing to provide. And I think that that is the reason that the six adult conversation came up months ago, but I think as legal has allowed and said, the code department and the zoning violations can move to the administrative hearing, I think we've addressed that, with also being able to leave in the ordinance the ability for families with adult children to be able to travel to our community or travel to other communities if -- if you do that as a family yourself. And I know I have lots of friends that do that, within the ordinance. So I think basically the choice in this is I think we've given code with this the ability to walk up to the front door, be able to cite for overoccupancy violations. I think the overoccupancy is the underlying issue in all of the problems we're having with noise and trash and lewd behavior and drinking and it's the number of residents. So I think we've addressed that with the administrative hearing. I think we've addressed that with the burden of proof being on the owner to prove that their occupants are related and I think if we remove the unrelated component to that, we are removing the ability for families to travel with their adult children and rent vacation rentals, short-term rentals in our community.

[2:13:35 PM]

>> Casar: So did you move approval of that.

>> Gallo: So I would move to approval both 5 and 6 because they are tied together. I want to make sure from a legal standpoint that we are not just saying that we can only use the administrative process, that we still leave our legal staff the ability on repeat offender the tablet take those multiple violations and go to a different court system.

>> Casar: So do you mean would you move number 5 and number 6, would it say something like allow for the enforcement of the occupancy limit? Is that what you're moving?

>> Gallo: Let me ask legal because number 6 is the one that pushes this. This was actually a staff recommendation from legal. Do we need to make any changes to give you the opportunity to still be able to take occupancy violations in multiple situations to municipal court or is this okay like it's written here?

>> I think we would not be able to take it to municipal court. We would be able to look at district court as an option. We would not be able to prosecute in criminal court if the presumption is that once you hit a certain threshold you're in violation.

>> Gallo: Does this give you as much flexibility as possible to enforce as broadly and strongly as possible?

I want to make sure that our language gives you as much ability to prosecute to the full extent of what you're able to do.

>> Casar: If it's, for example, said allow the enforcement of the occupancy limit for short-term rentals through the administrative hearing process?

>> The way it's written right now --

>> Casar: Covers it?

>> The way the code ordinance that we would bring you to would say that it would need to be three administrative -- through the administrative hearing process but wouldn't foreclose any ability in district court.

>> Gallo: Thank you. I don't want to cut off any options for you guys to go after these people.

>> Casar: I think councilmember Renteria has a follow-up for you.

[2:15:36 PM]

>> Renteria: I'm really interested in how you're going to run the administrative hearing process. Now, if - of course, you know, the party -- the people that was there renting it, they're not going to be there anymore. So if you bring in the owner and said, hey, you had more than six peoples and they said they were related and they give you a name and say these people people are reported -- two people are related or four people are related, how are you going to be able to prove that in the administrative process, that they were not related?

>> In the administrative hearing process the burden is actually on the property owner to show they did not violate the code.

>> Renteria: They can come in and show you so many names they put on their registry and say they're all related?

>> They would need to ask for a hearing in front of the hearing officer and the hearing officer would take evidence from them about whether or not they were related. So if their argument is these folks were all related they would have to prove to the hearing officer that they were related.

>> Chair?

>> How?

>> How?

>> Pool: I just want to say I think that's going to be really difficult for us to prove after the fact.

[Applause]

>> Pool:.

>> The burden is not on the city. It's on the property owner.

>> Pool: To prove that -- what the property owner is telling us is the truth.

>> And that would be for the hearing officer to decide.

>> Come on!

>> Pool: This is going to take more conversation. I mean, it's going in the right direction but there's a lot of layers in the prosecution that are left vague and hazy and I don't want -- hazy and I don't want to go that direction today. I want to raise that as a real concern and we have to dig deeper.

[Applause]

>> At this point the council would just -- so council would be able to consider the full language when the ordinance comes before the council if that's how the council wants to proceed.

>> Pool: That's going to be really important to do.

[2:17:39 PM]

[Applause]

>> Gallo: Just to remind everyone that this is a really lengthy process so what we do today and what we do on Thursday still means it goes back to staff, it goes back to legal. There's still conversation with the subcommittee of the planning commission, with the public hearing and open to communication from the community and also back to the council again. So there's the fine details and I think you bring up a good point, councilmember pool, is that there's lots of details to work out, but there's a multimonth process for the community and staff and legal to be able to work through those and the council.

>> Casar: Councilmembers, it seems to me that we have a very small difference on this item on the related and unrelated for now, for a recommendation from this committee to launch a code amendment and so since there's so much left on the table I would recommend that -- I'll second councilmember Gallo's motion if there's a motion to amend it, we can do that. I think that in the end there's going to be a lot more conversations with the community about where this one comes out. We're so close on it let's just keep it moving.

>> Thank you, chair, and I would like to make the amendment that we discussed earlier to remove the word "Unrelated" for the reasons we discussed earlier.

[Applause]

>> Casar:.

>> Renteria: I second that.

[Applause]

>> Casar: Mayor pro tem tovo moves to strike the word "Unrelated" from our -- from the motion. Councilmember Renteria seconds it. I'm generally inclined to help code figure out whether the six folks are related or unrelated so for now I'm going to trust that councilmember Gallo, who has worked so much on this, has thought this through so I will leave it as it is in my own vote but I know that we'll keep on thinking through this and working through it because also we still have the vote on large gatherings, which I think is a big part of what folks are concerned about, which may be an even better way to address this.

[2:19:45 PM]

So for now I'll just support the way that councilmember Gallo has it written since she's had a bunch of the meetings. Any further discussion? All in favor of the amendment, raise your hand. Her amendment. Those opposed? Okay. So now I'll take further discussion on the motion to recommend to the council number 5 and number 6 as put forward in councilmember Gallo's revised draft. Further discussion? Hearing none, all in favor of recommending number 5 and number 6 as written to the full council, raise your hand. Those opposed. Any votes for reconsideration? It seems like it's a minor difference. Just for the process, I'll reconsider my vote on the amendment that way we can just get this thing moving -- I guess I want the winning vote of this one. Okay, fine, can we -- let's just -- okay. Well, somebody should move it because I'm chair and I can't move. I keep getting reminded of this.

>> Tovo: Well, chair, that might be a good conversation to have, sort of what becomes of the resolutions that don't pass here, do they get forwarded on for council consideration when we have a fuller group and that's one since both -- since both measures failed, I would recommend that they move on to council for consideration.

[Applause]

>> Casar: Sure. So mayor pro tem moves that we forward onto council on a 2-2 -- describing both 2-2 votes but for council consideration occupancy limit provisions 5 and 6, denoting our vote so that the council can move forward and split the difference on this one. I think it's a -- I think it may wind up being a very small difference but if it's not y'all will be on the right side of history on that one.

[2:21:51 PM]

All in favor of the mayor pro tem's motion seconded by councilmember Gallo, raise your hand. And we pass that one along unanimously.

[Applause] Councilmember Gallo, I'm going to let you choose one more of the ones from your resolution before I let the mayor pro tem do two of hers. So pick between the clustering and inspections which one you definitely want to see heard today.

>> Gallo: You know, we've had a lot of dialogue so let me ask a point of clarification. We will -- I would like to make a motion that we move all of these forward, even if we haven't gotten to the discussion on them, rather than wait and have another committee meeting --

>> Casar: Maybe you can make that motion at the very end, to see what it is that we haven't had discussed yet.

>> Gallo: That sounds great.

>> Tovo: Well, chair, if councilmember Gallo does make that motion I would be delighted to support it because I'm a little concerned that we've discussed one of about 15 measures and, as I indicated to the chair as soon as we scheduled this meeting and perhaps to some of my colleagues and now to the community, I have an unvaluable conflict at 3:00 so I'll be in a position again of not being able to discuss probably most, if not all of the amendments that I brought forward in June. So I would respectfully request that as it looks like we're not going to be able to -- at least I won't be able to participate in this discussion I would ask that you at least forward them on to the council so we have an opportunity to address them there.

[Applause]

>> Casar:.

>> Renteria: I think that's an excellent idea because --

[applause] I'm going to second that.

>> Casar: So was that a motion or suggestion for a motion?

>> Tovo: Well, I think councilmember Gallo more or less made that as a motion and I'd be happy to let councilmember Renteria second it and you can take my words as just voice of support in doing so.

[2:23:53 PM]

>> Casar: Okay.

>> Tovo: I should just point out one -- if I have an opportunity before I leave just to lay out what is in the copy I gave, I think that would be helpful because I have added one additional one since June and I don't -- I want to be clear that it's not exactly what I presented in June.

>> Casar: Okay. So, councilmember Gallo, since you've been invited to by everybody on the dais, I'm fine with letting you make a broader motion that encompasses as much of these as you want.

>> Gallo: So I would say that any of the recommendations that have been placed on our agenda I think we've got a group that has come from our office and city staff and legal and the department and also some from mayor pro tem's office that any that we actually do not talk about and make specific recommendations for, that we pass all of those to council with no recommendation for the meeting. Does that encompass the conversation.

>> Casar: I'm so sorry, I was reading your recommendations that I sort of -- can you say that one more time for me, please?

>> Gallo: So given that we have a concern that we will not get to all of the recommendations that have been presented to us both from the ones that were remaining from our August meeting and the ones that mayor pro tem tovo has brought forward, that I would make the motion that any of the recommendations that are not discussed that we do not have time to discuss today, get passed forward to council with no recommendation for the Thursday's meeting. That would be the motion, so that we

don't wait to have discussions on what we don't talk about today at another committee meeting.

>> Casar: You mean this Thursday's meeting in two days?

>> Gallo: This Thursday's meeting.

>> Casar: And my understanding, to be clear on this, is that I believe that people on Thursday have a chance to amend and add any recommendations that they see fit on Thursday.

>> Gallo: That's correct.

>> Casar: So this motion I do not think would substantively change anything so hybrid fine with supporting it but I think the point of the committee meetings is for the council to be able to hear and know what it is that we discussed and what we recommended, so I'm not sure what the -- what the net effect is.

[2:26:08 PM]

I'm happy to support it if you think there is one. But my understanding is there's a resolution posted on Thursday for recommendations related to short-term rentals in the land development code. Anything that doesn't fit within that posting language that we recommend today could not be passed on Thursday because there isn't posting language for that. So what I'm trying to make clear here is if we don't discuss it and we just vote to pass it along, I don't think that it actually does anything. So if somebody wants to - can law maybe -- I'm not sure if you recall because I have not looked at Thursday's posting language, what Thursday's posting language is.

>> Thursday's posting language would be approve a recommendation related to short-term rentals.

>> Casar: So it could be -- it could involve things as far reaching as initiating code amendments or changing the way that we do licensing, which seemed to be the two buckets that these amendments and recommendations fall into?

>> They -- all of that would be considered.

>> Casar: As germane?

>> Gallo: So I think the concern being if we don't actually get to talk about particular ideas that have been brought forward today, are we still allowed to be able to bring up those on Thursday?

>> So if this committee takes action to pass these along to council for its consideration with recommendation or without a recommendation, I believe that you can. I will confirm that. But just to be on the safe side.

>> Casar: So my understanding is if we pass something saying we didn't have time to discuss it it's the same thing as us saying on Thursday, here's my amendment or idea, we didn't have time to discuss it. So we can make the motion. I just don't want to give anybody the wrong idea that somehow this is moving the process along. Mayor pro tem.

>> Tovo: Yeah, I think that's a very good point and I would say, you know, there may be items that as it's currently phrased the motion would have us just moving forward anything that doesn't get discussed and there certainly may be amendments of mine that you discuss and I won't have an opportunity to lay them out to present my argument and to vote.

[2:28:21 PM]

So I'm going to reserve the right to bring up things that may be discussed here today that --

>> Casar: I'm a tranche defender.

>> Tovo: Are on my list and will be bringing them up again on Thursday. Sorry, I know it's not ideal, and I introduced manufacture them -- well all of them came from the community. We just haven't had an opportunity to talk about it. My guess is some of the items on councilmember Gallo's list and on mine are pretty controversial and our colleagues may have -- will want the opportunity to talk about them as

well. So. . .

>> Casar: So do you still want to make that motion or do we want to move along to talking about one more of your particulars?

>> Gallo: Well, I think since councilmember tovo will be leaving, I want to -- and staff was going to ask the question did we need to actually make a motion to pass forward with no recommendations the one we didn't talk -- the ones we won't get to -- and I certainly would respect your ask of being present to discuss yours. I think that's totally appropriate so I think once you left we would not want to do that.

>> If the committee wants to move these recommendations or these items to council without a recommendation, you will be able to consider them on Thursday.

>> Gallo: Okay so I would say in that case we would want to do that, just to make sure that any that we haven't discussed get moved forward to Thursday for potential discussion.

>> Casar: So councilmember Gallo moves that of the items listed on councilmember Gallo's revised draft which has been handed out to the staff, I believe, and then the mayor pro tem tovo's resolution which I trust you've also handed out to staff, that any of these that we don't vote to recommend by the end of the meeting it may be posted on the council agenda for potential discussion on Thursday. And then it's of course the prerogative of council whether or not they want to boot them back to talk to us because they're not ready or postpone them and vote on them then.

[2:30:28 PM]

>> Gallo: With no recommendation.

>> Casar: And of course there would not be a recommendation.

>> Renteria: I'll second.

>> Casar: Seconded by councilmember Renteria. Any discussion? All those in favor say aye. Passes unanimously. You get the pick of the one you want to talk about.

>> Gallo: I would say, particularly since we're going to talk about all these on Thursday or the ones that we don't get to today and we have staff here, one of the ones that has had a lot of conversation on is the inspection. So I think if code wants to come up and talk about why requiring an inspection is important, I think legal has been involved in this also, and then I think the septic provision of this was actually a recommendation from water and I believe somebody is here from the water department. Yeah. And director smart, you might visit also what currently happens with a new application, what's required, and why your department is recommending that we go just strictly to an inspection versus also the Co, but just give everyone a little bit of history on it.

>> Yeah. Thank you, councilmember. Carl smart, director of Austin code. Presently when application for a short-term rental is made, the applicant must show either they have a valid certificate of occupancy or an inspection that is completed and the inspection may be done by a third-party inspector as approved by the building official, and that information is turned over to code. Our main concern with inspections is being able to be more responsive to complaints. Presently, usually we go to the property, we knock on the door, but we're not allowed entry into the property.

[2:32:30 PM]

It was a conscious decision in passing this ordinance by the previous council to not -- to not indicate that inspections were allowed by Austin code. And so we really think that that ought to be included so that there is a -- there is an understanding by the property owner that it is -- that the str is subject to inspections. Only if there are -- only in response to complaints. We can also, in looking at inspections, we can also consider initial inspections. And that initial inspection would be an inspection at the time that -- during the application process to confirm that the property meets standard code, that it is -- meets

minimum health safety -- health and safety standards, the international property maintenance code primarily. So we would have that opportunity to do that. But the big concern has been in response to complaints, we have not been able to be as responsive as we would like to because we have not been allowed entry into the property to do an inspection and confirm violations.

>> Gallo: And then I think from the water department came the septic inspection component. That appeared from somewhere, so if you could address that or if the code department could address that.

>> Well, my name is Reyna homes, supervisor engineer for Austin water and my group supervises the on-site sewage facilities. That component came perfect my department because the way septic systems are designed, they're designed for a specific flow, not a municipal type treatment facility where you could have millions of gallons per day. These are custom made for a specific sized home and a specific flow.

[2:34:32 PM]

Because these short-term rentals are used more like a hotel than a residential type --

[applause] Setting, when they're designed and first approved they're approved to serve number of bedrooms rather than number of beds. So when we issue a license to operate a septic system they're designed for a specific flow. For example, if you have a 4-bedroom home we design a system to have about 240 gallons per day. But if you put about seven beds in that home, you bump up that to be over 400 gallons per day. So what can happen is you end up overwhelming the system and pushing more wastewater through it than it's designed for, which can be a negative impact on the environment. So what Austin water recommended is that if we are notified when a residence is applying for a -- a customer is applying for a short-term rental, that way we can check the design for that septic system and make sure it has the capacity to serve the number of beds they're proposing.

>> Gallo: Would thereby a cost to the owner of the property for that inspection from your department?

>> It will be an application for a license amendment. And there will be a cost. It's about a couple hundred dollars to submit that application. And the reason it will be a license amendment is because right now a homeowner, owner-occupied residence, doesn't require to monitor the flow but a short-term rental will be required to monitor the flow because as it was mentioned earlier, sometimes you can have gathering at that facility, which will spike the discharge for that -- for one day versus what it will be on a regular daily basis for that property so we want to make sure that we measure the flow. And that will be the only way we can make sure the system is not overwhelmed throughout because we do not have the ability to and every site.

[2:36:39 PM]

We will require the homeowner as part of the license to operate that septic system as a short rental, we will require them to submit monitoring reports for the flow data.

>> Gallo: So it seems like what I'm hearing is that the concern that your department had was for situations where the occupancy was larger than Normal because of gatherings and situations like that and it just seems like we've got -- organics she's gone. I looked over and she's gone. It seems like we've got some ability with current code that's not being enforced on commercial gatherings in short-term rentals and we also, it looks like we're going to have a discussion about the number of people in gatherings still being within the occupancy limits so that will be substantially limited compared to perhaps what has been happening in the past, that those may -- that those may already address the issue.

>> It may address the issue, but we would like the opportunity to review because it might be that it's an older home that only was designed for a two bedroom and had a T has a very small system, that even

having six people will overwhelm the system. So we just want the opportunity to look at it.

[Applause] It might be that it won't trigger the license amendment but we'd like the opportunity to look at it, make sure it's not going to create a problem.

>> Gallo: So what -- obviously, trying to make it as efficient as possible, so you could -- what I'm hearing you say is that we could also set up a system where the department would and but it wouldn't trigger all this licensing amendments but you would and just to make sure that it was in compliance? And even if there were a problem perhaps the next step could be taken instead of assuming that there's a problem to begin with?

>> It wouldn't be an inspection it. Be more like an evaluation. We currently have, as part of the permit willing process, we have -- permitting process, we will a gis database that shows all of the septic systems in the city. So it's something that is already in place.

[2:38:41 PM]

>> Gallo: That you're already doing.

>> They're already doing for building permits and things like that. So it will trigger a review from us and the review can be as simple as saying, okay, this is what we're proposing and we can check and see what capacity enough place and we can say, okay, this is large enough, we just need to modify your license to reflect what you're doing so we can have flow reads and readings and other things in place so we don't end up overwhelming the system. What is happening right now, we're not in -- we're in a reactive position, we only find out when the example is already failing so we want to be proactive.

>> Gallo: Okay. Thank you.

>> Casar: Councilmember councilmember troxclair -- councilmember troxclair, welcome, you've got the mic.

>> Troxclair: Thanks for letting me participate. I want to clarify, the example you used you said there may be a two-bedroom home where having six people there would overwhelm the system. But if we adopt the new regulations that councilmember Gallo is proposing, there -- which limits the occupancy to two people per bedroom, there would not -- there would not be six people in a two-bedroom home.

>> That is possible. Some of the things that have been talked about I think will help. I don't know when it comes to the gatherings, like, you mentioned, I think there will be other things in place. For our department, since we do not have inspectors that -- you know, we don't have inspectors to just go around through the city to check, make sure they only have six or two people per bedroom, the only tool we will have available to us is require those flow readings and that will be an easy monthly report that's just sent to us and we will check it to make sure the system is not overwhelmed. Something to keep in mind is that, like I say, these are septic systems and they're designed for a specific footprint and volume of wastewater. And if they're abused you can have, you know, sewage, raw sewage or partially treated sewage in somebody's yard.

[2:40:48 PM]

That's why I know we're being a little paranoid, you may say but it's because it's a health and safety issue.

>> Troxclair: So I understand you don't have inspectors going around to check occupancy but that's what we have our code department for. And that's why we're going through this whole thing that we're going through, is to make sure that they have the tools that they need to properly enforce not only existing regulations but the new regulations that we are looking to put into place. So I guess I just -- and, I mean, I understand that septic systems are designed for a certain number of people, but when you -- it seems like when -- you're putting a new septic system in it's based on either the square footage or number of

bedrooms, whichever is less, I guess.

>> More stringent, yeah.

>> Troxclair: Right. So based on, again, the regulations that we are looking -- the occupancy regulations we're looking to put in place I don't think that there would ever be a situation where you would exceed -
- I mean, because even a -- where you would exceed the regulations that the septic system is designed to handle.

>> And that's why we would like to have the opportunity, just to look and check. We already have in place, like I say a G.I.S. Heavier that notifies -- let's say you're trying to build or expand a notifying home -- an existing home, it's a quick review, we look and see what you're proposing. We do have some enforcement cases pending right now where the home is being used as a short-term rental and it's more than the system is designed and it's been very difficult for us so that's why we wanted to have something in place because it's been difficult in the past. Not to say once everything is, you know, revised it will -- it will make it easier but right now it's very difficult for us.

>> Troxclair: Right. I guess, I mean, if this system works as it's intended to work, I don't think that you will have -- I mean, then we shouldn't have the problems that you're seeing right now.

[2:42:57 PM]

And I hate to put -- I mean, a couple hundred -- you said it would be a few hundred dollars for the septic inspection?

>> If you do a license amendment it will be, but, I mean, we haven't worked out the details at this point. We just want to be notified because once the license is issued, the license to operate the septic system is issued, then somebody can apply for a short-term rental and use it as such. Right now we have no idea. So at least we're trying to have some type of trigger that will let us look at it.

>> Okay. So that's different than what I'm seeing in the proposed resolution. So she's saying -- I said how much, you know, the inspection costs a few hundred dollars and she said well we're not going to do an inspection, we just want a flag to know somebody has applied. But the language says require an inspection, including septic systems. So is that something we need to maybe --

>> Gallo: It sounds like.

>> Troxclair: Revise.

>> Gallo: This is the language from the code department with the water department's input. So it just -- you know, and I think that some of the concern has been the concern because of how the properties have been occupied in the past.

>> Troxclair: Right.

>> Gallo: I think we are all working very hard to make sure that that doesn't happen.

>> Troxclair: Right.

>> Gallo: I think your point of the number of bedrooms, limit persons per bedroom, certain number of people, two per bedroom, will help with your concern of the smaller properties being overoccupied. So I think we're really putting into place the controls that will help keep the abuse of the septic systems from happening so it may be just an opportunity for them to be aware of the fact when there are septemics septic and to be more complaint driven from the standpoint that if there's a neighbor that notices there's a problem. I don't know.

[2:44:58 PM]

>> Troxclair: So maybe just --

>> Gallo: I didn't really answer your question.

>> Troxclair: Yeah.

>> Gallo: The language came from code and water department. What I'm hearing in her presentation, the concerns with overoccupancy I think are going to be addressed with what we are all trying to put in place to limit the occupancy to appropriate Numbers in these properties.

>> Troxclair: So it sounds like from a language perspective, instead of saying require a septic system, it sounds like we're trying to get at to have the code department notify the water department -- your department when there is a new application.

>> And it might be just an evaluation rather than inspection, it's an evaluation of the system, just to make sure it's -- it meets -- you know, it's designed properly and operated properly.

>> Troxclair: I mean, it's a really important distinction because we're talking about an inspection that's going to cost -- if we use the word "Inspection" we're saying we're going to require people to pay several hundred dollars for you to come do that so I want to make sure we get the language right before we vote on it on Thursday.

>> Casar: It seems to me, if passed this way, of course the land development code will have to get a formal amendment but we will be requiring the septic system inspection under this language. Again it still goes through its entire process but it seems to me that there is a difference in -- between what is being suggested by the councilmember and what's written here.

>> Gallo: I would -- given the concern that was initially the concern and was based primarily on overoccupancy of these properties and given what we are trying to do with -- making sure that correct occupancy is in these properties, I don't have a proper -- problem if somebody would want to make the amendment to this, talking about evaluation of septic systems instead of inspection and then the department basically has the ability to step in, if they feel like the existing system is a problem.

[2:47:02 PM]

>> Casar: Well, only yourself or councilmember Renteria can make such an amendment on this committee.

>> Renteria: You know, we already agreed on that, any resolutions could come up there in a council meeting so, I mean, there's no need to actually vote on this one.

>> Casar: But I think that it would be -- I think that our colleagues would appreciate seeing 2-1 vote or 1-2 vote or unanimous recommendation on each of those these so that they know when they're looking at their backup what we thought, if we have the time to talk it through. Otherwise we can just recess the meeting but since we have the time I think it's helpful for the public and for our colleagues to see us discuss these and to take votes if we would like to.

>> Gallo: Okay. So to move the process along what I would do is I would offer a change to number 2 which would say require an inspection -- an evaluation -- or a septic system evaluation and so instead of including -- put septic system evaluation because I think that addresses a potential problem that then the department could step in, once they evaluated whether a potential problem existed or not, but then for the properties that perhaps are new enough, that they're current enough and their septic system is adequate it doesn't add an additional layer of cost to the owner. But it seems like it would address the evaluation -- the evaluation would address the department's concern and allow y'all to be an oversight of the septic systems.

[Applause]

>> Renteria: Let me ask you also on thissish, so -- on this issue, do y'all go back and and a septic system or once it gets put in y'all go out there and say, okay, it's installed correctly and then that's it? And that's only -- y'all have it written down to capacity of what that system is capable?

>> Yes.

>> Renteria: Okay.

>> We have written down what the system is capable of handling.

[2:49:05 PM]

In addition to that we have -- depending on the type of system, the owner is required to maintain it and submit reports to us. And when -- regarding just routine inspections just to see how things are going, we do not conduct those. We are just at the site if there is a complaint related to the site.

>> Renteria: Thank you. I have no problem with that.

>> If I might just add, Mr. Chairman, that we are in support of that change also, in light of the information that's been provided today from the water department. If we can get -- if we can require -- number 2 would require an inspection and a septic tank evaluation that we can make sure that we get confirmation of that evaluation from the water department before processing, before finally approving a str license, then that would work for us. So we're in -- I'm saying that we're in support of that language as long as we're keeping in there that it still requires the inspection and a septic tank evaluation such that we could get confirmation of that evaluation from the water department before final approval of the str license.

>> Casar: Councilmembers, any further discussion on this? Councilmember Gallo, will you clarify for us then what your final language is that you're moving?

>> Gallo: So, once again, what we're moving forward, even for Thursday, are concepts that can be fine-tuned and staff can come forward and help us with actually what they would do and what the process would be. We don't need to figure out the process right now, but we need to give them kind of the basic guidelines for it. So what I would recommend is that this say require an inspection and septic system evaluation during the initial application process.

[2:51:09 PM]

>> Casar: Okay. I am supportive of requiring that kind of inspection and evaluation for type 2 short-term rentals. I think that for many type 1 sort of everyday people that are, like I said, just renting out their place for a week, this may make it so that they end up not registering, not obtaining the license and us not knowing who they are. So I would prefer that on Numbers 1, 2, 3 here that we limit that to type 2 since those are much more of a commercial type enterprise that folks should be doing this because it's a much admonish -- although not in all cases, a much more year-round operation than type 1 people. So I --

>> Renteria: It's 1 and 2 or just --

>> Casar: So what I would say is my preference would be that on number 2 and number 3, that those be required for -- they just be amended to say type 2 short-term rentals where it says short-term rentals.

>> Gallo: Are you talking number 2?

>> Casar: Number 2. Once we get to number 3 I would mention --

>> Gallo: [Off mic]

>> Casar: Let's just talk about number 2 and you can bring it up for number 3. Number 2, would anybody agree to that amendment?

>> Gallo: Just a point of clarification. So are you recommending that for an initial application for a short-term rental type 1 that there would not be any inspection requirement at the beginning or --

>> Casar: That's right. That -- what my amendment would -- if somebody were to move it, I think councilmember Renteria did, it would say require inspection including an evaluation of septic systems during the initial application process for all type 2 short-term rentals.

>> Gallo: So there is currently a requirement for either inspection or a copy of the certificate of occupancy for all short-term rentals.

>> Casar: That's right.

>> Gallo: So what your suggestion would actually be reducing --
>> Casar: It wouldn't be reducing it.

[2:53:10 PM]

It would just be the additional regulation we're adding be added to short-term type 2p I'm saying leave the type 1 inspection requirements the same but any additional inspections that we're authorizing through this move.

>> Gallo: On short-term --

>> Casar: -- Be added to short-term 2 that we not add on additional layers for short-term one.

>> Gallo: Director smart, let me make sure I'm understanding correctly. Currently with an application, a short-term rental owner, type 1, 2 or 3 is required to either bring in a a certificate of occupancy or have an inspection done? Is that correct?

>> That's correct, councilmember.

>> Gallo: So what we would be doing at this point is the one would still remain the same. They would have the option of the certificate of occupancy in lieu of the inspection but we would make this additional one specifically for type 2s.

>> Casar: If my amendment were to pass.

>> Gallo: I want to make sure I'm understanding that, okay.

>> Casar: My suggested amendment. That was moved by councilmember Renteria. Do you think it's friendly enough for you to support it.

>> Gallo: That's fine.

>> Casar: Okay, great. Okay. Any further discussion? All in favor say --

>> Troxclair: Sorry.

>> Casar: Councilmember troxclair.

>> Gallo: You can move closer.

>> Troxclair: I was close when mayor pro tem tovo and councilmember pool were here. It was -- really wasn't on your amendment, just on the evaluation thing. So I guess I'll just say I think that it would be good, and I understand councilmember Gallo's point that we're not -- this is just recommendations for now. But I think that we would need more clarification on what an evaluation means, and I would also just want to say one more time that if this is enacted and somebody applies to have a short-term rental license and septic systems all over Austin are not -- are never permitted for more than two people per bedroom, that you would never -- we should never have an application or we should never have a license given out that would allow more than two people per bedroom.

[2:55:12 PM]

So I -- so I just. . .

>> Well, I guess, just to answer your concern, the septic tanks, in addition to the flow is actually the type of wastewater being discharged and I failed to mention that earlier. So there is other things involved with the actual treatment of wastewater on-site versus a big municipality. The evaluation, it will take into consideration, you know, what's in the ground right now. Sometimes these sites -- these systems were installed in the '70s and '60s, where they're really, really old. So it might be these -- you know, having used the site as a short-term rental it may trigger the system to be upgraded, which happens right now with the remodels and things like that. But it's having the ability just to look at those flows and see what's in the ground, it will just -- it will be a health and safety, it will protect the public's health and safety to have it.

[Applause]

>> Casar: Councilmember troxclair, between now and Thursday we can find out more about how the staff would interpret the word "Evaluation" there. So I think my amendment was just to -- approved by the maker of the motion so we'll just take a vote on the motion as a whole, which I know we've discussed quite a bit about the Asian of septic systems, those four words there, but essentially what this item is that I -- I think know we're going to recommend pretty much is that you cannot -- no longer present a certificate of occupancy for your short-term rental type 2, that you would actually -- this would trigger a requirement of an inspection period with the evaluation of a septic system and we'll figure out what -- exactly how that works. Is that everybody's understanding?

>> Gallo: Can I -- I just want to make a comment. So that's part of the initial application process that we've been talking about? And then also in this is a component for renewal inspections as recommended by the Austin code department, this would be a potential to have inspections upon renewals?

[2:57:18 PM]

I don't think it would be -- I think code's intention is not for it to be an annual event, but for -- during this two or three or four-month process of talking about all of this, that there would be stakeholder input to determine what an appropriate amount of time would be between inspections. And I do want to say, again, to people that are concerned about inspections, is that the inspections have to be by the permission of the owner. And it is -- let me let legal come up. You do the attorney description, which is much, much more thorough but I think there's a concern of inspection just appearing and being able to force themselves into someone's home, and I think you have very clearly said that that is not allowed and particularly with zoning violations, which occupancy would be. So would you address that.

>> Casar: If you can give us a two-minute lecture on the bill of rights.

[Laughter]

>> Well, what would happen is they have to give consent for code to go in or code has to get a search warrant. They traditionally do not go to a property unless they receive a complaint. If they go to the door and they are refused entry, then they leave.

>> Gallo: Could you also address the issue of -- you had mentioned that the city would be -- the department would not be able to get a search warrant on code violations, if you could speak a little bit to that also.

>> So state law authorizes the code official to seek warrants for structural issues, fire hazards, nuisance abatement in the sense of trash debris, those kind of violations but state delay not authorize search warrants for zoning violations.

>> Casar: Councilmember Renteria.

>> Renteria: I'm -- I mean, I support number 2, but I really am kind of confused about number 1, about what is -- if we can let the public know what section 1301 of the city code inspection is.

[2:59:29 PM]

>> Casar: Can we pass number 2 and then if you want to ask your question of number 1.

>> Renteria: Sure.

>> Casar: All in favor of number 2 as amended say aye? It passes unanimously. So we can move on to talk about number 1. Thank you for joining us, councilmember, but I think considering that there is some pretty far reaching amendments proposed by the mayor pro tem I would leave it up to y'all if we want to talk about number 1 or if we want to talk about any of those in our remaining 15 to 20 minutes here just so that we have a chance to hear each other's opinions prior to Thursday.

>> Renteria: I would like to brief definition of what number 1 says so that the public knows exactly what

we're talking about. If someone is out there reading this section right here on 1, they don't even know what the heck is in there. What does that mean?

>> Gallo: I agree. And I would also say on mayor pro tem tovo's amendments, that I would really like to hear her presentation first before we talk about them just because I think that's appropriate. You know, they're ones that she's brought forward. So my recommendation would be that we move those forward to council and let her present those to us before we start assuming what she means.

>> Casar: I'll operate at y'all's will. I may make a couple of framing comments around some of them so that folks get some idea of my thought process going into Thursday, but talk to us about section 1301.

>> The section is 1212-2013, the city's local amendments to the international property code. The city of Austin has adopted the international maintenance code but we have made some changes to that code that are specific to our jurisdiction. The section 1301 is for our regulated lodging establishments, which include boarding houses, hotels, rooming houses and bed and breakfasts.

[3:01:38 PM]

Short-term rentals in that chapter is the only one that is not included in that inspection section. So this language would insert short-term rentals into that section.

[Applause].

>> Casar: Councilmember Renteria, I'm still not sure I totally get it, what the -- I understand what that means, but I don't understand what is in that section that doesn't apply to short-term rentals right now and what problem it's fixing. So if councilmember Gallo or if law could help me with that.

>> [Inaudible].

>> Casar: I understand that they aren't listed, but help me understand what it is that you can't enforce and that adding this would help you.

>> Gallo: And this component will come from staff.

>> Casar: I'm sure it would help you, but I just want to understand real briefly.

>> I'll try to help, councilmember. Section 1301, actually the ordinance authorizes the code inspector to perform inspections for very specific purposes, very specific types of properties as the attorney already outlined those properties. And it's done under constraints of law. She's already told you that we can't violate the bill of rights. If we go to a property and they refuse then we cannot do that inspection unless of course a search warrant is granted. This section of the code has been amended to include the boarding houses, rooming houses, hotels, motels, bed and breakfast, all of those license type regulated type properties, but it specifically excluded short-term rentals. So we're asking that short-term rentals be added and be included so that the ordinance authorizes Austin code to go in and do the inspections.

[Applause]. For the purpose of responding to complaints and for the purpose of enforcing this ordinance. Clearly we'll have to do it with constraints of law. We're not going to violate the fourth amendment rights.

[3:03:40 PM]

>> Casar: Help me understand this. Currently if someone calls in a complaint on a short-term rental and you show up, you can currently, right, knock on the door and ask if you can come in? Or is this fixing that?

>> We can currently knock on the door and ask. And they have a right to either allow us in or not allow us in. >>

>> Casar: [Indiscernible].

>> The key thing here is that the ordinance doesn't speak to short-term rentals. It was specifically left out. What it does is sends the message, if you will, the message that we're not necessarily allowed to do

the inspections. And we want to send a different message that if you're going to get a short-term rental license and you're going to operate according to regulations, the rules of the short-term rental license then we should be authorized to come in and do the inspections.

>> Casar: So right now you knock on the door and you ask if you can come in and they say yes you can or no you can't. If we could somehow make this allow today and tonight you got a complaint and you showed up and you knocked on the door, what would be different? What would change?

>> The difference is you would have sent the message that we're authorizing our code enforcement officers to go out and enforce this ordinance and are have the right to enter the property to do the inspection.

>> Casar: This sends a message that we are serious about what it is we're already doing, but that we're sending -- now we're sending the message about what it is we're doing much more clearly.

>> That's pretty much it, councilmember.

>> Casar: Thank you. I'm supportive of that. I didn't want my questions to make it sound like it wasn't. Just locomen's everyday person out there I -- just like councilmember Renteria's everyday person out there, I want to do that. I'll move passage if we can do it speedily. Moved by councilmember Renteria, seconded by councilmember Gallo. All in favor say aye? It passes unanimously.

[3:05:40 PM]

Anything else we want to talk about before going into recess here? Did we get to all of councilmember Gallo's? Oh, yeah, insurance.

>> Gallo: So the insurance was brought to us by a neighbor who had a situation that there was a wild and crazy party next to her house and she was really concerned about some of the behaviors that included propane lighters, butane torches, I don't know. Potentials to set the neighborhood on fire. And so it brought forth the process and I think she was concerned with whether or not that particular owner had liability insurance that would protect her and any damage that was caused that began from the property next door and so that started a process. We met with that neighbor and the state board of insurance and then also met with an insurance association representatives that are the five main carriers, five largest carriers of insurance. And what we found was we currently have a component, the ordinance currently requires that property insurance be supplied as part of the application process and also that property insurance is required to be maintained with the renewals, but it did not speak specifically to the liability component. And I think it's really important in any situation in property whether it short-term rental or long-term rental that the owner carry liability so protect their residence and homeless the surrounding neighbors of the property. So what we found is the short-term rental 2 properties, the liability component was easy because that's a landlord policy, it's the same as a policy for long-term rental property owners.

[3:07:42 PM]

And there's no difference and it does contain a liability component. Amazingly the bigger issue was with the owner-occupied, the type 1's, because a lot of the owner-occupied homeowner's policy have what's called an occasional clause and so the occasional clause there's really no determination, no court cases that we could find at this point that supported the definition of occasional. So is an occasional rental where an owner that goes on vacation and rents their house once a year or is it an owner that rents it every weekend. So because of that we were just concerned that the liability component of those policies were really subject to interpretation. It's our understanding that there are riders and other products out there that will make sure the owner is insured and the occasional is removed to not be subjective. And so that really was the reason for putting this clause in there was it's already required but I think the

important component was the liability component and this would be one that I don't think you want to exempt one from it. Part of this has been an education process for short-term rental type 1 owners because the owners don't realize that there is that clause that could be an exception to their policy. And if there was problem and if they happened to be renting it for more than what their insurance company considered occasional, they could actually be without coverage. And I think there's a lot of people that don't realize that. So this would actually be a provision that I think would help make sure that people that are doing this really have that conversation with their insurance companies to make sure they're fully covered and protect the neighbors.

>> Any further discussion, councilmembers? My question, did you get any more information about how much -- what the sort of impact is to get that rider and get the occasional?

[3:09:47 PM]

>> So our thought was to make this broad enough that there's a requirement for liability insurance and then to let staff and legal and stakeholders work together over the next three or four months during this process to really determine. And the insurance industry to really determine -- short-term rentals and vacation rental Ares becoming an insurance product that as the neighbor that worked with us on this, it's an area for -- an opportunity for insurance companies because there is this coverage that hasn't really been needed in the past that is now being needed. So I think to answer your question, I think that's a discussion on process and working with the stakeholders to understand what it is that staff should make sure they're requiring, but I don't think we want it to be so specific in what we're moving forward. I think the important thing to us is we just want to make sure that short-term rental homeowners have liability coverage as part of their insurance requirement and that that has to be provided.

>> Casar: My difficulty with this just like the last ones has been that before we had the broader conversation about type 1's and type 2's and how all that would work, there is a sort of traditional thing that people do, which is rent out their house for a short period of time when they get out of town once a year and how many of those folks will just, you know, because they've got a thousand other things to do, this is going to be very far down their list of things to do. And do we drive those people into not being licensed and then in our strict enforcement measures that we create does just that everyday person that lives down your street start being subject to thousands of dollars of fines? Which I think are merited when it's a party house or when it's a big commercial enterprise or what have you. So I'm reluctant to start creating the opportunity for people to be unlicensed, bad actors, folks that we're hitting with thousands of dollars in fines when they're just -- when they're just a person who doesn't like being in town during south by southwest and then figures they can pay a month worth of taxes, which is like so many people that I know.

[3:12:01 PM]

So that's my difficulty is that I don't know how difficult or serious this is, but when I talk to constituents who go pick up diapers at midnight because that's the thing they do when they're done with their two jobs it's hard to think of them calling an insurance company and getting it figured out if they're just a type 1 owner.

>> Gallo: So I think that all of the type 1 owners on the regular homeowner's policy would have liability coverage and the liability coverage does include occasional rentals. I think it would be -- I think it would be really a sad situation if an homeowner, a short-term rental owner that went out of town and rented their house to some grandparents that were visiting their grandkids in town and something tragic happened that affected both the residents -- the occupant of the property and perhaps even the next-

door neighbor and then they found out they were not covered. So I think it's really more of a protection for the short-term rental owner, the type 1s, because I think most people assume that their policy does cover them for that. What we found out surprisingly was that there was a potential that because of that clause they might not be covered. And I -- I think that would just be a really tragic situation for a type 1 owner who just very seldom does it to be put in that situation. So I think it's simple. I think it's a conversation that as people think about things, you know, it's just like if you -- you go on a trip and you're taking something that's not covered under regular insurance policy and you call your insurance company and say, you know, am I covered if I rent this rental car and I don't -- and I don't get their insurance, are my bags covered for more than what the airlines covers me for? I think it's just really encouraging that conversation with their insurance agent to make sure that they are protected as they think they are protected.

[3:14:07 PM]

So it may be a little bit more effort, but I think the consequences that if something were to happen and they weren't actually covered because of that occasional clause, I think that would be really tragic.

>> Casar: Okay. Well, for today, because it's something new for me, I'll abstain from the vote just because I don't know how difficult it is. It sounds like it's not that difficult, in which case I would be supportive of it even though -- even checking one more additional box or sending in one more piece of paper I think can result in unintended consequences. I'll abstain from it. I imagine it will pass and maybe I'll learn more about this between now and Thursday and it will be easy. I don't want to hold people up anymore. All right? I think you moved it and councilmember Renteria seconded it. So if there's no further discussion, all in favor say aye? Okay. And that will pass along to council with councilmember Renteria and Gallo voting aye and myself abstaining pending learning a little bit more about it. Anything else?

>> [Inaudible].

>> Casar: I think that is all of councilmember Gallo's suggestions. No. Clustering is still left. Is clustering on your list?

>> Gallo: Clustering was on there. Clustering is number 4. So the way number 4 reads is prohibit clustering of 22 rentals and grandfather existing type 2 rentals that exist in current codes. As we've seen in several neighborhoods arrest issues with short-term rentals that are very close together and really providing problems for the neighborhood.

[3:16:07 PM]

And so I do think we need to have a discussion of limiting cluttering. I think that is -- clustering. I think that is a broader discussion on how to implement that and what the appropriate spatial relationship should be. My suggestion would be that we ask code -- that we push this on as something to consider and implement, but not be so specific as to the determination of instances and let the code department look at mapping and as they now are going to aggressively bring into the fold the non-licensed short-term rentals and get them licensed so we can add them to the maps them to the maps, really see where we have the problems and the distance and what type of spatial limitations would be appropriate. So this is just saying we have issues with clustering, we need to figure out how we can handle those issues. I think the first step is to let the code department, as they're working to bring all of these non-licensed on board as licensed and putting them on maps, really see where the clustering occurs, how it occurs and what would be advantageous to implement to keep that from happening.

>> Casar: Great. Any further discussion? Do you want to move that? And I'm very supportive of this and I want to be clear this means in my view to consider code amendments that would prohibit clustering

beyond the three percent cap that right now is supposed to be on clustering that we were looking for more tools on that because you could line up three short-term rentals all next door to each other. All in favor? Aye passed unanimously.

[Applause]. Anything else? I see councilmember Renteria folding up his stuff already. I do want to just make two sets of comments -- one that the mayor pro tem asked me to mention is that on her list of amendments that she handed out, she did have one new amendment or new recommendation beyond what was presented at our three A.M. Or two A.M. Meeting, which is F on her sheet, which is to require short-term rental advertising and listing services to collect and remit hotel-motel taxes to the city.

[3:18:47 PM]

There have been other changes, but the substance of this that she communicated to me is the same as they brought forward at our last committee meeting, but that is the one that is new. My last set of editorial comments before we close, and if anybody wants to make any others, is that first it seems to me that our base responsibility is to figure out how to deal with the loud party house issues that are tearing folks up that we've consistently heard about. And that is a baseline that we need to work on. And I think that while there's consensus is on that there's differences in exactly how we get there. Does the related or unrelated word stay? Does unrelated open up loopholes? Does it used to? Does it now? I think we're committed to thinking through as these code amendments go through exactly how we tackle the party issue. And I think there's unanimous consensus on the committee to deal with that. There's our baseline responsibility because of the terrible things that we see happening out there. Then there is the second question about short-term rentals and their existence in our economy and they're growing existence in our economy. And while I personally, because of our housing stock issues, would like to see as few str 2's exist, and that's a personal sort of preference that housing be a long-term renters or to be for home ownership, I'm going to be looking carefully and trying to hear from the community between now and Thursday as much as I can about what regulations, having worked in other communities to control or to contain that because my understanding is that attempts to just ban it out right, if that's all that happens, you can still have cities where there are thousand of short-term rentals operating. So I'm going to be thinking about how is it that we understand that -- and maybe we can try out different ways of containing that, but in lots of cities people continue to want to -- there are lots of things that we've tried to ban that are obviously not banned.

[3:20:59 PM]

And I don't have to start listing those. So my question is going to be how do we preserve -- how do we create as much of an incentive to invest in long-term rentals and longer term housing or even in rentals 15 days or 20 days or 25 days as opposed to these over weekend rentals that seem to be the real heart of the problem that is not only diminishing people's quality of life, but destroying it for some people in the audience. I know that's happened to you and I'm sorry about that. So my baseline commitment, and I think everybody agrees, is on the party house issue. And that second level is really difficult. And experimental I think to figure out if there's some consensus on the dais that we want to try to contain that activity and not drive lots of investment to purchasing homes that nobody's ever going to live in for more than two or three days, how we do that, how we do that I think is challenging and I don't think that you can just say we want it to stop happening and then it just stops happening. As we know with so many other things. I'll do my best to be as thoughtful as possible about how it is that we obtain results because it's not my -- I don't want to feel -- raise my hand and say that I end it and feel really good about myself and a year later find out that the problems are twice as bad as they were because I -- I think I'll still be here at least next year. So that's -- so just to preface how I'll be thinking about this through

Thursday. We haven't had time to talk about the specific issue about, you know, the limiting licenses or prohibiting particular uses or reducing the amount allowed in certain areas.

>> Renteria: You're right. There's another reason too because what we're seeing especially in my community is that we're having single-family homes that are being destroyed and the tax appraisal system --

[applause].

-- They look at that and say wow, they're paying 400, \$300,000 for the land.

[3:22:59 PM]

So here we're getting our land value appraised at three hundred, four hundred thousand dollars and that's increasing our taxes because the land value is not homestead. They just shoot right up to -- my land value right now, my home value right now is over \$339,000. I paid 21,000 for that 36 years ago. 21,000. These are the kind of things that are happening to our neighborhood. It's not that just -- it's not all because they're party. It's also they're coming in and increasing the value. They're building these big homes in our single-family houses and we no longer can afford to stay there. Our taxes have gone up so high that we're actually looking at selling out. And that's destroying our neighborhood.

[Applause].

>> Casar: And councilmember Renteria, you're always so much better at being brief and not long-winded than I am, but what I was trying to say is that I agree with that, that that's an issue entirely and I want to make sure that what we vote on helps with that problem and I don't want to just vote on something that sounds like it helps. I want to check -- look at other cities and make sure what we're doing prudently has some chance of helping with that problem. I'm going to be working and thinking about that for the next couple of days.

>> Gallo: And I want to say thank you to everyone that's here and has been here and has been here before. Thank you for taking the time. I want to say thank you to the short-term rental owners who run their properties correctly, that are good neighbors. Thank you for being that way.

-- For being that way. And I want to say thank you to the neighbors for being involved. And I want to apologize to neighbors at this point. I was really distressed to learn that there was a license that was renewed that shouldn't have been renewed that happened this week.

[3:25:01 PM]

[Applause]. That was a property, the license expired on July 7th. The application for renewal was on July 2nd. The license was renewed on September the 8th. At that point code had received two complaints and one of the code cases was still active. So there was still a complaint that was still active at the point the license was renewed. I'm looking at the list of violations that code addresses. There was a violation for the occupancy limit, this was a notice of violation regarding occupancy. There was another Asian where an inspector -- another occasion where an inspector actually found 15 white males on the property in a property occupying a property where the license had expired. And the list goes on and on and on. And I just -- I want to say to you my commitment is to try to keep this from happening. I think we as a council are working very hard to increase the enforcement. I know there are situations where the code department hands have been tied, but when we all know that someone is out there and operating incorrectly and the license is expired and there's an outstanding violation that hasn't been cleared and the license is renewed, something is wrong.

[Applause]. I know we'll have the cooperation of the code department. I know we're giving them the administrative process to give them likes thick this -- for things like this situation to happen. We'll give them the ability to open the front door and count the number of people and know when somebody is in

violation and then the burden of proof will be on the owner at that point. So I think we're going to see a real change. We're looking forward to the code department working with us on that and I know you've been working hard, but it is really disappointing to both the neighbors and to us when we've been working so diligently trying to move us forward to see a situation like this happen.

[3:27:13 PM]

So my pledge, -- and I'm sure the code's department's pledge will be that this is the last time that this happens and that now you have the tools that will allow us to be able to continue forward in a way that makes our neighborhoods better and helps promote the good short-term rental operators and how they operate. Once again thank you for everyone participating in this process.

[Applause].

>> Casar: So now I'll adjourn the -- this meeting of the planning and neighborhoods committee at 3:27. Three minutes ahead of schedule. Thank y'all.