

## City Council Work Session Transcript – 11/10/2015

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>> Mayor Adler: Are we ready to get started? We have a quorum present. It is 9:20. I'm going to convene the Austin city council's work session. Today is Tuesday, November 10th, 2015. We are in the boards and commissions room at city hall. The first item of business we're going to take up this morning is going to be the annexation issues. Which I understand we have to act on today as opposed to culture, so we'll act on those. But before I do I want to talk scheduling. First of all, councilmember kitchen has texted me that she is not feeling well this morning and is watching us, but will not participate with us this morning. We have the annexation items, we have pulled items, and then as I understand it some of the councilmembers have made lunchtime commitments today to speak. And we have an executive session where we have an attorney that would be coming in to speak to us about the mercer matter. If we're going to be gone -- so we need to figure out what our schedule is. And then, Mr. Zimmerman, you're leaving at 11:00 this morning? And the rest of the group is leaving at noontime. And then I wonder if we should take the executive session items we have, mercer and appraisal district, and move those until Thursday rather than having them today. >> Tovo: Unless mercer needs to be today, but it would be great to move the

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challenge petition. >> Mayor Adler: What about moving mercer to Thursday. >> That's fine. I was talking to -- that's fine, we can move it to Thursday. [Laughter]. >> Mayor Adler: All right. So we'll move off the executive session today until Thursday, those items. Let's see then if -- let's just have a hard stop at noon. We'll work through this as much as we can, but we'll have a hard stop at noon so that people aren't going to lunch and then trying to come back. But we'll handle the annexation issues first. >> Houston: So mayor, I thought we were just moving the mercer to Thursday, but we're moving all the executive session to Thursday? >> Mayor Adler: Right. There's only really two. >> Houston: Yes. I was concerned about the second one. I don't mind moving the other one, but we're going to move both to Thursday? >> We'll move both to Thursday because we'll be gathered in that space and we can talk about it. And there's nothing that's time sensitive between today and Thursday with respect to that challenge. All right. So then that will bring up the annexation issues. Does staff want to come forward. With the exception of item a-8 that we will pull, can we vote on the other items one time by way of consent? On the annexation issues let's pull item 8 and talk about that separately. >> Mayor? >> Zimmerman: Mr. Mayor, as a point of order do we need to make the motion to pass the other annexation items that appear to have no objections? >> Mayor Adler: We do. Do you want to make that motion. >> Zimmerman: I will make that motion. >> Mayor Adler: Mr. Zimmerman moves approving on

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consent the -- >> Mature and council, Greg again si. Planning and zoning. Number 1 is for first riding only. I just wanted to make sure that was known to council. So the rest we would offer for three readings. >> Pool: Mayor, which item number are we on this one. >> Mayor Adler: We're on the consent agenda, which are the first 11 items, the annexation items. Have we passed any of these on readings? The action we've taken was just to open and close the public hearings as I recall. So the consent motion would be to approve on all three readings items a-1 through a-11, but first reading only a-4. Could we handle a-8 on first reading or does that need a definitive vote? >> It needs a first reading today for the public hearing and the process we've been through up to today to be valid. If there's not a first reading today then the satisfaction could not continue under the process we've already started. >> Mayor Adler: Do we have to go through all three readings today on any of these? >> No. Council could have first reading only and bring them back. >> Mayor Adler: There's a consent motion to approve on all three readings items a 1 through a 11 except for a-8, which is not part of the motion. And a-4 is to approve on first reading only. It's been moved by Mr. Zimmerman. Seconded by Ms. Houston. Is there any discussion? >> Troxclair: Mayor, I want to be shown as abstaining from item number 7. >> Mayor Adler: Ms. Troxclair being shown as abstaining on item number 7. Any further discussion? It's been moved and

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seconded. Those in favor of the consent motion raise your hand? Those opposed? It's everyone here with Ms. Kitchen gone. And with Ms. Troxclair noted as abstaining on item number 5-7. That gets us to item number a-8. Anyone want to discuss item number 5-8? Ms. Garza? >> Garza: I'm very torn about this one. And I also regret that commitment chose this to make a political statement at our Sunday special meeting when that was about a totally different issue that needed to be heard that day. My question is from what I can understand the wastewater and water is being provided by city, is that correct? >> That is correct. >> Garza: So if these homes need repair -- if something happens with that wastewater, with that drainage, who would repair it? Without it being annexed, who would be responsible for repairing that? >> I think it's two different things. The wastewater service is a service that the city provides and any repairs that would need to be done in the public right-of-way, like the main water line and sewer line going down the road would be the city's responsibility, but any kind of repairs on the private property would be up to the individual property owners to repair. >> Garza: So I'm trying to think of how a big pipe feeds into their homes. The big pipe is still the city's responsibility now? >> That's correct. >> Garza: And why is that the city's responsibility if that's not city annexed yet? >> Because the city is providing the service. The city owns that utility system so we're providing that service. And the city can extend water and sewer service

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outside the city limits and they regularly do so. Those are part of the factors that we look at when we look at areas to annex is where have we made investments and where are we providing services? But still the tap at the location of the property line is the boundary of the city's responsibility versus the homeowner's responsibility for maintenance. >> Garza: So tax dollars fund right before it gets to their homes, correct? >> You're talking about the utility services. I believe those are funded by the rates and fees that utility customers pay. >> Garza: So do the neighbors in this area pay those fees to the city. >> Yes, like a regular utility bill you would receive each month. >> Garza: Can you help me understand what the city is providing for this neighborhood right now? Without them having to pay for if the city is

providing something that they don't have to pay for. >> So I guess starting at the top of the list, the public safety services through automatic aid the city would respond to emergencies in the area that we have agreements with esd 4. It is the entity that -- whose boundary there are within, but Austin because has automatic aid with esd 4, if an emergency call were to come in and the city were the closest responder, the city would go to that call, respond to that call. And then there's also roads, property owners in this area, except for the half mile stretch of road in front of their house, drive either tallyran or out old lampasas trail to the east through spicewood springs through city roads to go anywhere outside their homes. The city has made significant investments in drainage with the upper bull creek watershed and the earthen dam that was referred to in public hearings and has purchased bcp land in the areas that

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would also further reduce impervious cover in the area. And then there's also the utility services, the water and sewer services that the city provides in this area. >> And councilmember, in addition, this general annexation for those property owners who are at the edge of the city they actually benefit from the city of Austin. The city of Austin provides a great number of services that would be provided to property owners both in and outside all those civic events that we might have downtown. Those things that talk about affordable housing that are not available that may not be always provided. The city of Austin goes out and we make sure those services are provided. Those that are maybe less fortunate that the city is not able to provide all those services, the city also provides those services within our area. The majority of jobs. There's not a job center based on these properties, so if someone were to go in to work most likely they would be working inside the city of Austin. The police and fire protection as you on come into the city to get to those jobs, those events, those are all provided by the city. Where they shop, grocery stores, those facilities are probably inside the city of Austin because they're not available on this property. So those are all things that people enjoy that live on the fringe of their city limits but don't necessarily contribute as a taxpayer. >> Thank you. >> Zimmerman: Mr. Mayor, if it pleases the council here, we have an engineer here, Mr. Tim Hess, who has knowledge of the history of who paid for what for these infrastructure improvements that we're discussing right now. They did come through a municipal court utility district and I believe the neighbors paid for these and helped pay for the infrastructures prior to the conveyance that would be a gift to the city. The city is maintaining

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them, but the city didn't originally pay for them. But if we could have him very briefly testify to what was paid and who paid for what originally that might help in the discussion. I think it's a fair question to ask, who paid for what and what benefits are being received and who paid for them. So would that be acceptable to our council to briefly hear from Mr. Hess? Because he can provide testimony on who paid for what. >> This is not in work session. This is in the nature of us on the dais asking for something and I think it's been our practice and pattern of those things for someone to be able to call up someone to speak so I'm going to say yes to that. >> Zimmerman: Thank you, Mr. Mayor. Mr. Hess, if you could briefly explain what the history of the connections were in the utility district. I think you paid to join, right? >> Right. We paid the mud -- we paid the mud when it was controlled by the mud. Each property owner paid to have those services extended to our properties. And I think -- I don't have those Numbers exactly, but it was in the range, I would guess, close to 20,000 per person for sewer and water. So it's probably \$100,000 we paid to have those services brought to us. >> Zimmerman: Okay. Thank you. If you could maybe just stay put for a second because there may be a follow-up question. Thank you for that. >> Mayor Adler: Okay. Further discussion, Ms. Pool? >> Pool: I was looking at the information that

the neighbors provided to us a couple of weeks ago and was particularly taken by the deed restrictions that are on these lots. These are acre lots

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generally? >> They're more like five acres. >> Pool: Thank you. If I'm remembering correctly, and I don't have the specific list in front of me -- do you have that? Where I'm going with this is there's a specific requirement in the deed restriction for is it 80% of the property is required to remain as a nature preserve? This street backs up to the edge, one of the edges of the balcones canyon land preserve. >> I can look through here. I see that these restrictions apply to almost 30 acres within the 83-acre annexation area so I don't know what the math would be, 80% of the 30 acres is what you're asking about. >> Pool: There was a list that was attached to some of the documents that the neighbors brought to us that Mr. Detman provided. And my concern is that we are looking at overlaying some new changes to our code on permitted uses of property that will obviate deed restrictions even when they are good, which I would hope those are the only ones that we would have. So that the conditions under which people purchase the five acre tracts would no longer exist and in essence the contract we had on that they thought they had with when making this purchase and moving in will be gone and they won't have any way to respond to that. They don't have any say. So have you found the list of the -- >> Councilmember, I don't have the specific list of properties. Certainly a legal description, but annexation would not undue a private deed restriction among those

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parties. They could still enforce those same restrictions. >> I think that it would come down to neighbors. If a neighbor next door chose to do something different with the land that was in violation of the deed restrictions, but was permitted under our code, whatever it is now or in the future, then that has a supremacy over the deed restrictions is my understanding. And they could certainly fight it, but it would have to be neighbors suing neighbors. I think that was established at a council meeting a couple of weeks ago. >> Mayor Adler: Is there anything about the annexation that would in any way prejudice the current enforcement rights of the neighbors that have the deed restrictions. >> It will stay in place. That's not my point. If it comes down to a neighbor making changes to their property that are in violation of the deed restrictions, do their surrounding neighbors if they oppose that, do they have any tool to enforce the deed restrictions. And what -- and the mayor is nodding. What is -- what's the tool? >> That's they're private right against each other. >> Pool: So I was using different words for it, but it's where the neighbors have to sue each other in order to enforce the deed restrictions over the city, is that correct? >> The deed restrictions are already in place so it's the same tool. >> It would not matter if the property is annexed or not to enforce the deed restrictions, when the city annexes or not. As I understand the deed restrictions apply to only 30 of the 83 acres so the majority of the annexation area is not covered by the deed restrictions. >> Pool: Let me think about this for a little bit because it's a definite

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concern that I have as far as what we may do here and how it may change future use of this land over which there may not be any -- prior tools may not have the efficacy that they have in the past. >> Mayor Adler: Ms. Tovo? >> Tovo: I'm glad you raised that point because I think we've had a lot of discussion in our previous hearings about flooding in the area and environmental regulations and the claim was made that the environmental protections within the restrictive covenant are stronger than those of the city. I

believe that we have some staff who maybe able to address that. That doesn't appear to me to be the case that their deed restrictions are stronger than our environmental protections. But I think the point that Mr. Guernsey just made is an important one. It applies to 36% of the land we're talking about, so the majority of the land is outside those deed restrictions anyway. As Ms. Morgan said, the mechanism for enforcing the private deed restrictions are going to be the same. It's going to be a neighbor having to take it to court. And frankly I think there's a real benefit on environmentally sensitive land on having regulations apply, which they currently don't. Our city regulations will apply to any land we annex and that's real important in an environmentally sensitive area. Right now that area is outside of our environmental protections and our environmental regulations. I'll just ask Mr. Lesniak or whoever is appropriate to confirm that that's in essence by bringing this land in to the city limits, our environmental protections would apply where they won't otherwise. And also restrictive covenants can change. Those are just up to the individual property owners. >> Councilmember, Chuck Lesniak, city environmental officer. Currently our regulations, most of our water quality and environmental regulations do apply in the

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etj and which these properties are in the etj so our permits on impervious cover are water quality, treatment requirements, those sorts of things, limits on cut and fill, construction on steep slopes. All of those things apply today. The most significant change that would occur through annexation is our tree protection regulations would apply. I've reviewed the deed restrictions and actually they're good deed restrictions. These are the kind of things that I think are environmentally beneficial. I certainly don't think that they're superior to our regulations. They don't limit cut and fill, they don't limit construction on steep slopes. They do limit the amount of development on the property. There are some requirements for tree protection and that sort of thing, but certainly not as specific or robust as the city's regulations. And so I would say on balance there would be an improvement, particularly in terms of tree protection, from annexation. >> Tovo: Is that figure the right figure that 36% of the land is covered by the private deed restriction, but not the rest of it? >> I don't know. I would have to defer to other staff. >> Tovo: Okay. Thank you. >> Mayor Adler: Ms. Troxclair? >> Troxclair: I think maybe a part of what councilmember pool was trying to state is yes, neighbors can sue right each other right on deed restrictions but right now they don't have the added evidence or layer of the city restrictions, which may be more lenient in some cases. So if one neighbor who wanted to do something that would not be permitted under the deed restrictions, they could then turn to the city of Austin's, I guess, restrictions and use that as part of their case. I don't know. I guess that's part of where she was going. I wanted to ask going back to the questions that councilmember Garza was asking is before how they're

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currently getting their public safety services. Do they pay for -- who pays for that? >> So the residents are in esd 4 service area and they pay property taxes to the esd, correct. >> Troxclair: Okay. Because I think her question was what services is what are they getting that they were not paying for. And I guess if the esd 4 was not able to respond for some reason or if the city of Austin services were closer that they would respond, but they are currently paying for their public safety services. >> The esd property taxes. The nearest station is the city fire station so the city would most likely be the nearest response. >> Troxclair: And there are some things that could be improved or might be improved or might be stricter under city of Austin. It seems like that -- I don't know what the process is for changing deed restrictions, but the neighbors are clearly people who are very dedicated to being good stewards of the land. So if our city of Austin staff feels like there's tweaks that could be made to bring more -- to improve their tree

ordinances or whatever it is, I think that would be a conversation that the neighbors would be willing to have if they don't become part of the city. And I guess my last question for our staff was -- I guess basically they are benefiting -- I guess the list of things that residents are benefiting from the city like roads, the bcp land, et cetera, and maybe -- those are the items that they're not directly paying for through property taxes, but when we have the discussion about the transfers from our water

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utility and our electric utility, that's the same argument that we use -- these people are paying they're water and wastewater bills to the city of Austin water utility and the city of Austin water utility is transferring \$40 million to the general fund, which is then used to pay for roads and things like that. So when we have the discussion about why we need the utility transfers, that's the argument that we use. The people who are outside the city, but still have city services benefit from city of Austin services. I'm struggling to understand how we can use that same argument to argue both sides of an evacuation, to argue yes that they're not paying for city services and that they are paying for city services. So can you help me understand that? >> Yes, councilmember. Any property, most of the properties are developed by private entities, whether it's a large builder like kb homes or smaller builders or individual property owners. A lot of their infrastructure is constructed -- a lot of properties that we bring into the city aren't necessarily on water and sewer and the city goes and provides infrastructure to go serve those areas and eventually they'll buy a meter and hook up B it goes beyond just water and wastewater infrastructure. It goes back to all the things that make up Austin, as I mentioned earlier, where they shop, where they work. Once you leave this little street, you pretty much are in the city of Austin. And so they do benefit greatly by all the different things that they enjoy either shopping or in their lure time that really -- leisure time that go beyond this one team. Eventually if the street came in it would be serviced by the city of Austin and there are a lot of streets in the city of Austin that don't necessarily have storm water, sewer and curbing that come in. And the city would be maintaining those rights of way through time and not the county. There's a public service aspect. The sheriff -- eventually

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the city would keep annexing and annexing. They said they have very good service by the county sheriff but it's also an undue burden to Travis county because to get to this you have to drive through the city of Austin pretty much to get to this property. So there is a public safety benefit of having this. Just like we have one of the service areas that you annexed just a little while ago there's an area that really wasn't covered by the city of Austin or cedar park and so we brought that into our jurisdiction because it was easier for both of those jurisdictions to provide the public safety service. So it's more than just wastewater, water infrastructure, you take in the housing, public housing, those things that austinites, those things are provided to community, the greater Austin area that staff feels should be shared by those that are next to the city or in this case are surrounded almost by the city of Austin. >> Mr. Mayor? >> Troxclair: Hold on. I want to finish my thought. So I understand the benefits of shopping I guess is the example that you use. Or the city services and city utilities, parks, et cetera. So I guess my question is why -- so why do we transfer -- I think it was \$40 million this year that we transferred from our water utility to our general fund that is then spent on those things. So why do we make that transfer? >> So councilmember, that decision is made by past councils. I think -- >> Troxclair: And this council. We did that in this budget. >> So it's difficult for me without having the water utility here to probably go through those intricacies. If you would approve this on first reading I can come back with the water utility and they can the city sit down and have this discussion and probably more thoroughly vet this than I can explain. >> Troxclair: We make those transfers because we

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use the argument that people who use Austin energy and Austin water, but who may not be in the city limits -- we use -- part of the reason that we make those transfers is because we use that money to -- that's the return on our investment, right, they're publicly owned utilities and return on our investment for people who pay for Austin water and Austin energy is that money that's transferred to the general revenue fund and then spent on city services. My point is they are paying that money to Austin water, and a portion of their utility bills is going to Austin's general fund. And then that money is going to pay for the parks or the affordable housing or whatever it is that we spend general revenue on. We can't have -- we can't have it both ways. We can't say that's the reason that we're justifying the transfer and then we can't turn around and tell these people that they have to be in the speed limits in order to benefit from city of Austin. Either we get rid of the transfer -- if we didn't have that transfer I would agree with your argument that yes, they are driving on city roads and they're going to city parks probably and that they're benefiting from city resources without paying for it. But when we have such significant transfers from our utilities that the people outside the city limits are paying for them then that's not a reason to annex them. >> Mayor Adler: Mr. Zimmerman. >> Zimmerman: I want to go back a second. Mr. Hess, I made a motion that we approve annexations for a number of properties where either there was agreement between the property owners and the city, that it would be in the best interest of both parties to join the city. I have no objection to that, but in the case of old lampasas are the property owners still -- is it 100% in opposition to the annexation? >> Yeah. And if I can elaborate? >> Zimmerman: Sure. >> I think this has to do with accountability and

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stewardship. The landowners have been good stewards of this property and it's great to have documentation in a written document and I applaud the city on having good documentation on environmental protection. But you have to hold yourself accountable for the necessary environmental protections, apply them and make sure that they are protecting the environment. We have proof that the cities that defaulted against state code, the state water code, especially in providing -- there's sufficient evidence that there's been excessive concentrated drainage from upstream development that the city has annexed and inherited those properties and has not taken due diligence to protect downstream property owners the way they're supposed to. >> If I could, I think you were talking about there's some land north, just on the north side of old lampasas and it was replated and there was a retention pond supposed to be built and there was \$12,000 put into escrow and that retention pond still hasn't been built. >> That's right. That's one example. But I would say the greater example is upstream in what we call the grand oaks. And the three different concentrated out flows that are all produced by the storm drainage from that area up there is gushing water and it's totally against the state water code. And the city has turned their face towards that and it's wrong.

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In my opinion the city needs to take responsibility and be accountable for what you have already annexed and take care of that so you're not affecting downstream properties before you go in and annex somebody else. >> Mayor Adler: Does anybody have any more questions of this property owner before I let him go back to his seat? Thank you very much, sir. I'm going to talk for a second. This is a hard one for me as I think it's a hard one for everyone. I'm trying to figure out what it is that makes this hard. And what makes this hard is that we have 100% of the property owners in this involved area that

are coming forward and saying don't do this to me. It's 100% of the people and that makes this different from the other ones that we have had. And obviously caused the issue. This is a group of highly committed people. I'm sure like myself they have visited with you. They spent a Sunday morning to come down and talk to -- to talk to me. So it's hard for that reason. I look at the policy that the city has with respect to the policy in our strategic plan where we annex and where we don't annex, and there are five issues and that's supposed to be our standard or our guide. It's so we could apply zoning and development standards so we could expand the tax base, maximize the return on city's investments. So we create efficiencies and service delivery and so that we could provide municipal services. That's our policy. If we want to adopt a different policy with respect to annexation, then we should do that. And if there was a will to do that I would refer it to a committee to take a look

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at whether we should be changing our policies with respect to annexation. But those are what our policies are. And with those being the policies that we have, those are the ones I'm going to try to enforce. It is compelling to have 100% of the property owners come in when there are about 20. It would be compelling if 90% of 75 property owners came in. It would be compelling if 70% of 1500 property owners came in, depending on the break on the annexation. But ultimately I'm not comfortable leaving the decision about whether or not we annex to a popular vote of the people that are being annexed. I don't think that's the right policy. That's not the way that the law has been set up. So I have to then look then at the standards that have been applied in the policy for us to take a look at. The first issue is with respect to zoning and development standards. This is something where our staff has come in and said not all this property is covered by our standards. It has bull creek, it's an environmentally sensitive area. It is the area that we would want our standards as a city to apply to and they don't. I think that the neighbors have done a really good job with the deed restrictions that they have in providing significant protections. But it doesn't apply to all. It's something that by instance vote the neighbors, if they wanted to, could change. And I'm not sure that in our city we would be going out to community -- if we wanted to, I guess, we're passing an environmental regulation to apply citywide, but it won't apply to those areas where they've adopted their own regulation. I just think that's not a place that we want to go to

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either. There are lots of places in our city where the local deed restrictions or neighborhood deed restrictions go beyond what it is that the city's rules have, which is fine. That gives the neighborhood a tool to enforce for themselves a community standard that they wanted to adopt. Our annexation doesn't impact that at all. The community still has the same tool in exactly the same way to enforce exactly the same restriction that they've put on to about half of the property that's in this annexed area. And I would hope they would keep those rules in place and would continue to enforce them as they would have otherwise enforce them. But I read that and I think that the city does have a standard which we get to apply if we annex, and that's part of our policy. So that can't be -- that would be a loan for me to vote in favor of the annexation and not against it. You know, protecting and expanding the tax base is something that we do. I recognize that when we annex somebody we're increasing the taxes that they have to pay. That's part of what annexing is. We should be doing everything we can to lower taxes not only for people we're annexing, but for people who are already in the city as we did as a city council this last time, where we lowered not only the tax rate, but also absolute taxes. But I do find compelling that this is a community like other communities in the Austin area that's taking advantage of lots of things that this city does. In terms of the structure, the economy that we have set up. The cultural things that



exist in this community. The fact that as a community we've gotten together and said as a community we're going to deal with the homeless in our community, where we're going to provide for affordable housing in our community or all of the things that we do as a community together that we join in that are not things

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that are things that we receive ourselves, but we do because we're part of a larger community. That we all get benefits from even if they're not direct benefits, we get indirect benefits from living in a community that does this. And this neighborhood lives in that community the same way. On these issues as anybody does anywhere. I am cognizant of the argument that councilmember troxclair raises with respect to the transfers and quite frankly I hope you would join me as we enter into next year in working those transfers so that we move to something else, where we get a dividend from our ownership, but we end those kinds of transfers. And I think that that's the way that we deal with that. And my hope is that the council will in fact do that. But we do have folks here that are benefiting from living in Austin, benefiting from the investment that 900,000 other people are making in this community. They benefit from that. And I think should share along with that. We've heard the other testimony with maximizing the return on the -- they live next to bccp, there's drainage facilities that are built this that multi-million dollar investments that they benefit from. And I think it's great that they benefited from. But I also think that it's something that, again, should be shared. Efficiencies and service delivery, I think exists as we pull together as a larger community to be able to provide those. Some of the services they get while they're paying for them could be paying for them from within the system, including the fire station that's nearby that would be the one that responds. I recognize that there

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are -- that these folks have been good stewards of this property. I also recognize that this city does not always do all of the things that it should be do and may not be doing all of the things that it should be doing upstream from these folks. I think the answer to that is to be diligent about making the city do the things that the city should do, not only here but everywhere. If -- but everywhere. I'm going to vote in favor of annexing this property because I think that it is based on policy. We're going to get lots of annexation requests probably and I would imagine or more annexation requests in our term, trying to find for more what are the guiding principles that I can apply. I go back then to where the initial issue came from which makes it difficult to have a neighborhood that obviously cares very deeply, is very concerned and very committed and has spent a lot of time coming to petition us on this. But at the end of the day, I just don't think that from a policy standpoint this should be a popular vote nor that we should send the message to the -- to the central Texas that we're going to annex -- if it's -- if it's popular, we're not going to annex. If it's not popular or we're going to annex it if it's 100% of the vote versus 90% of the vote versus 51% of the vote. To me, I have a policy to apply until we change the policy I want to -- I'm going to follow that policy and in this case, the five items that we have in my mind for me would indicate a -- a favorable [indiscernible]. Ms. Gallo? >> Gallo: I'm going to vote against the annexation, thank you for bringing up the points that you did, because I want to address some of those. First of all, this property borders both district 10 and

[10:03:39 AM]

district 6. And so I'm very familiar with the area. One of the points that I want to make, it's not just a lampasas that's a county road. The entire length of spicewood springs from old lampasas all the way to 360

is actually a county road, too. So there are lots of property owners and lots of areas that are actually driving down county roads in this area. But I do have a question from staff because I think I remember as we were talking about this initially, and staff you have done a great job in your presentation and neighbors you've been very effective in communicating your concerns. But one of the things that I understood is that there are still a lot of privately owned lands along spicewood springs that have not been annexed. Is that correct. >> That is correct. >> Gallo: How many acres of privately owned land along spicewood springs have not been annexed at this point. >> I would have to do gis work to figure that out. I couldn't give you an estimate. >> Gallo: This to me looks very piecemealed, if city is coming in and arguing that we need to start annexing all of this area of land, we are only looking at a small portion of it, my understanding. I would love to get the acreage amount, knowing that area, knowing the properties along there, I do think that's a sizable acreage amount that the city is not looking at annexing at this point. To me this feels very targeted to a little pocket of 73 acres, whose owners have -- have been good stewards of the land, have also paid for the cost of services and providing those for their properties and it seems very strange to me that we're targeting as a city this small acreage of land when there's lots of other acreage in the same area that is not part of annex plan. So that is of concern to me, I think that we are -- we are pulling this little section out and saying, we're going to do it to you, but we're going to ignore the rest of the privately owned land in this area. The second is that we seem to feel like or the message

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seems to be that these properties, the is it he has no -- the city has no control over these properties. I appreciated the person that represents our environmental department basically saying that it appears to be that the tree is the only component -- I mean these properties are in the E.T.J. So from development I would love to know what is it that they could do that they wouldn't be able to do if they were annexed into the city. Because my understanding is that the properties in the E.T.J. Have to comply with a lot of our regulations, also, and environmental just said that the only thing that they wouldn't have to comply with is the tree. And then my next question of the trees would be it looks like in their deed restrictions they do address some tree. What difference are we talking about? What would they have to do relative to trees if they were annexed versus what they're doing now with their deed restrictions. I know those are a lot of questions. I have a whole list of things, I think, as we walk through all of them. To the E.T.J. Question with the cities ability to control what happens on properties, how would that be different? >> So in the E.T.J., we have the ability to control subdivision, jointly with the county. How land is divided into lots. We also have the ability as our environmental officer indicated the water quality standards that apply. In our county. There are sign regulations that apply in the county. Some things that don't apply are land use controls in the county don't regulate commercial businesses or multi-family or industrial development. So those land uses could still occur in the county, short-term rentals, outdoor music venues, none of that is regulated. Well, actually the county actually passed outdoor music regulations recently. Building codes, so those

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things where if a house were torn down and one is rebuilt, those things that deal with visitability or maybe certain standards that the city has that are unique to our building codes would not apply in the county. They would apply actually to the people across the street from these very same neighbors because they are all inside the city. So there's -- there are mainly those development controls that would not apply in the county for land use control. That's probably the biggest items that I can think of. >> Gallo: But I listened to you -- thank you for that explanation because I think that's one of the

important pieces here is, you know, what differences are we talking about, are they substantial enough to override 100% of the neighbor's concerns and opposition to this annexation. When you talk about land use controls, commercial, multi-family, industrial, what are these properties zoned currently? >> They're not. They're in the county. So I think there's one property that is limited purpose annexed, I'm sure for residential, but they could, you know, they could put in an auto salvage yard, for instance, with certain probably screen requirements. >> Gallo: Would the city require them because they're in the E.T.J. To have the appropriate zoning for that use? >> No, the city does not have zoning authority in the county. >> Gallo: Okay. But once again, looking at the neighbors deed restrictions, I think they've addressed that. Obviously it's predominantly residential and I think any of them, as I would, if I were living in that area would be very concerned in a non-appropriate use came next to us. Environmental, I think the tree was the thing that you mentioned, you know, my guess is that we have a group of people that have been very concerned about their stewardship of the land and the trees and the beauty over there. Could you speak specifically what the difference is between their deed restrictions and what the city -- being in the city limits and annexed would be?

[10:09:44 AM]

>> For trees, the -- the city has a tree preservation ordinance that would apply if these properties were annexed. What their deed restriction says, I don't want to necessarily try to interpret it since I didn't write it and it's not a city document. But what it says is that an owner will not cut down, clear or kill any trees on any lot, which is broader than the city's tree preservation regulations, more restrictive. Except that it also says other than those necessary to allow construction, maintenance, repair or use of access, use of or access to their primary residence, ancillary buildings, detached garage, barn or stable construction on such lots. So what -- how I read this is that they're not supposed to cut down any tree, but they -- except that they can cut down any tree they want without limitation if it's necessary for construction or maintenance or -- or for buildings that are specifically allowed on the lot. The city's tree preservation requirements, while it doesn't apply to any tree, it certainly only protected classes of trees, that -- that those are required to be preserved unless it prevents reasonable use of the property. And so it doesn't say you get to do it whenever you want to build a building. You have to show that you can't build that building reasonably and still preserve the tree, which -- so I -- so I think in some ways this is a broader restriction, but I would say on balance Austin's tree preservation requirements are probably more protective. >> Gallo: So that could be a discussion if the -- if the neighbors were interested in -- in adding to their deed restrictions, something that would more closely mirror what the city does, it would actually reduce some of the -- some of the oversight of their deed restrictions, it sounds like, but it would add another layer on to it that

[10:11:45 AM]

would conform to the city? >> Possibly, yeah. >> Gallo: Okay. Thank you, thank you for the answers to those. Tax base, I want to talk a little bit about the tax base. Those of us -- and I really just know district 10 and a little bit of district 8 and a little bit of district 6. But there is a lot of -- there are a lot of subdivisions in my district that are limited purpose annexation divisions and those subsubdivisions do not pay city tack. If we are looking at this particular pocket and these particular homeowners to increase our tax base, we have not done that in the purpose. The area along city park, glen lake, west minster glen, they do not pay city taxes. We have had a city in the past of doing a lot of annexations that are limited purpose that do not add to the tax base because those citizens in those areas do not pay city taxes. From the standpoint of communities enjoying the benefits of the city of Austin, I would say that there are a lot of people that live in lakeway and cedar park and manor and Hutto that come into the

city to enjoy our cultural events, come into the city to enjoy our restaurants and benefit substantially and use our roads to get back and forth and many of them actually work in Austin, benefit from the jobs that are here and use our roads going back and forth. So I think that as we not look at our community as an island, but look at it as a regional benefit for a lot of the other areas that are not part of the city limit, that there are lots of people that come back and forth to enjoy our benefits. Knowing this community, knowing some of these people for many, many generations that live over here, I know that they are all very active in community service and non-profits and volunteer organizations and so this is a -- this is a group of residents that are already participating and adding to the value of some of the services that we

[10:13:45 AM]

offer in Austin because of their volunteer efforts. And I just, you know, I just once again think that -- that number 1, we're taking this as an oasis within an area where we have not looked at annexation -- annexing other private properties along spicewood springs, which is a county road. And why we have taken this little pocket and pulled it out to do, I just don't think that it's -- I don't think it's right and I don't think it's right to have this conversation when we're not having the conversation of all of the other areas in that same -- in that same proximity that are not being asked to go through annexation. So ... As a result of -- that was long-winded, I apologize, but it's a complicated issue. But I do think there's some substantial issues. The flooding that the neighbors have brought up. I mean the city, as my neighbor next to me on the dais here knows, we're dealing with lots of flooding, flood mitigation. The neighbors have been very -- very convincing in saying that the city has obligations in the areas that they have already annexed with mitigating some flooding that's addressing them. I don't think we've done a good job of that. I think that we still need to work on that. And we shouldn't bring additional properties into the city until we make sure that the ones that we have brought in, the city is handling those issues appropriately. >> Mayor Adler: Ms. Pool. >> Gallo: Thank you. >> Pool: I was curious about the timeline and why old lampasas trail was being brought at this time for annexation. Why wasn't this done, say, two years ago or five years from now? >> That's a really great question. We are very careful each year when we recommend areas for annexation not to overload the city with too much at one time. The city is very responsible in the areas that it annexes.

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And this area it's kind of piecemeal was a good descriptive word of it -- of it. All of the properties on the north side of the road were annexed as part of a municipal utility district. This didn't fit in with that. This wasn't within the boundaries of the M.U.D. So the west it's a city owned property. They didn't fit in with that, either. To the east as a new condo development, as that was going through the development process the city brought that in. So it was kind of like a leftover in between specie all very similar to the properties that face the same road as properties immediately across the street. But very different from properties on the back side and down spicewood springs road that are in a different situation. So these properties in here are nice little area that are all similar to each other and kind of a gap in the city limits just based on other annexations that have occurred over the years at different times. >> As these other properties along spicewood springs road do get developed, they may come in for a preliminary plan or to be platted, the city would look at those for annexation, just like the condominium that Virginia just mentioned nearby. So it's not that we're -- not dismissing all of the properties along spicewood springs road, we're looking at those for annexation as we come in through time. There's an item on your agenda dealing with the -- Mr. Roy cavanaugh, that was in the county, glass business, salvage yard. That property was brought into the city just two years ago, but that was kind of a remnant that was next to already developed subdivisions already in the city of Austin not unlike these properties abutting across

the street. >> Pool: So there wasn't any specific reason that the city staff did not recommend this group -- that it wouldn't have been a separated piece, are they part of the M.U.D.? >> So these are not part of the M.U.D., but some of the lots within this area did extend as they were developed and did like any

[10:17:47 AM]

Normal development would do and pay for the extensions of service to connect up to the nearest utility service providers, which was the M.U.D. So if they had out of district service at one point in time and then when the city inherited that utility as part of the m.u.d.'s annexation years ago, then the city would have inherited these customers as well. >> Pool: I'm a little bit concerned over the fact that the deed restrictions information that the neighbors did provide have not been attached as backup. My staff is still trying to find the document that I know I saw and I believe it was sent by the neighbors. That -- that lists the deed restrictions and the specific agreements, the covenants that the neighbors have and there's a list in there of -- that included the -- the portions -- the item that I had talked about previously. So hopefully I'll be able to get my hands on that soon. Thank you. >> Mr. Mayor? >> Mayor? >> Casar: I just want to clarify because I hear it coming up as a point. >> I apologize. >> Casar: I usually get that for you, too. [Indiscernible]. >> Casar: It keeps on coming up as a point in some of our code amendment issues an zoning issues and then also in this annexation case and I just want to make it get a really clear answer from legal on does -- does annexing or any kind of zoning ever -- because I think the word has been used like obviate or override legally enforcing deed restrictions. >> No. >> Casar: I think -- this is partly I think to councilmember pool's point in question, I see her talking to Mr. Guernsey. So councilmember pool, sorry. >> Pool: Yes, Mr. Casar.

[10:19:48 AM]

>> Casar: Sorry, I don't mean to -- [laughter]. But, you know, I think that several folks in this case had -- I also had concerns if we were going to be having -- our rules making any environmental protections less or overriding or obviating any deed restrictions, but my understanding is that legal if you could clarify this we don't and can't ever do this. So us annexing this area does that obviate or overrule or override any deed restrictions or does any zoning that we ever [lapse in audio] Override deed restrictions on that property? >> The deed restrictions will stay in place on the property. The annexation won't affect that one way or the other. >> Casar: All right. >> Mayor Adler: Ms. Houston? >> Houston: Thank you, mayor. I've got several points to make about this particular annexation. First of all, city policy is not always fair or is it equitable. In the district where I live, we were unable to, by city policy, not to have deed restrictions, so that's not an option for many of the homeowners and neighborhoods in east Austin. I would be unable to get 100% of neighbors to come out against a property -- property owners to come out against annex because they all work, they have other jobs, they have multiple jobs, they have childcare issues, transportation issues. But I do not about the city being able to take land against the input or against the will of people and we're suffering from that now, that was a city policy enacted by multiple city council back into the '80s.

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So I'm not going to be support this because of those facts. There is a deed restriction on this land. We do have 100% of the people here to show up, I've already stated that city policy is not always the right thing to do and it's not always fair. And I've heard no compelling reason to annex the land. And so -- having land taken from our community, I can understand how they are feeling. Although you say that's not -- that's against policy. Sometimes if it's wrong, we have to say it's wrong. And I think this one is wrong, so

I will be voting against the annexation. >> Mayor Adler: Mr. Zimmerman? >> Zimmerman: Thank you, Mr. Mayor, final comments here. I appreciate the time we've spent on this because it is an important issue. I need to start with the idea of the consent of the governed. I'm really kind of concerned that the political ideology of the consent of the governed is something our very country and constitution was founded on, consent of the governed. We have 100 percent of the people in opposition. There's no consent and we're dismissing the fact that 100% of the people are opposed. Let me say briefly Austin, a lot has been said about how the old lampasas property owners are benefiting from Austin and not paying. But I see it differently. I see Austin benefiting from people who live in cedar park or Buda or Round Rock. Maybe I see it the other way around. I think we should be grateful for the people that live in our suburbs and come and contribute to our economy here, they work here and they spend money here. So I'm having trouble following that argument. The standards we talk about with the city, it's not a straw man argument to say that our standards are not being enforced. It's a fact. You know, the city demanded retention pond be built right in this area that

[10:23:50 AM]

we're talking about, the city accepted \$12,000 that still sits in escrow to this day and the retention pond was never built. So as Mr. Hess said, I think it does no good to have great intentions and ordinances in place if they're not enforced. Ordinances that would protect the environment that are not enforced are useless. They are null and void. We're not going to -- if we're not going to enforce them. The neighbors have taken care of the property, we know that, that's a fact. Let's talk about the deed restrictions. We have a very, very complex code. I think that we recognize that. And we routinely grant variances. Not because we're trying to circumvent our rules, but just because our code is so complicated. We have a lot of political disputes about the need to grant variances in some instances that leads to political divisiveness and division. So I can't accept that our ordinances are necessarily better because we do grant variances and when we do, it has to be a city-wide decision. So the people in the area, most directly affected, they have one vote compared to another 10 for the whole city. So it removes some local control that the neighbors have now and we know that they are doing a good job. But finally, finally, the most important reason that we should be voting against this is we do have a fiduciary responsibility. By bringing in people that are literally a stone's throw from bull creek that turns into the brazos river when we have a heavy rain, we saw video of this. This river, bull creek has been rising, with these heavy rains. We had more video from Friday the 30th, we didn't have time to show that. Use your imagination, it looks, bull creek starts to look like onion creek, so it's out of the floodplain today, but in 10, 15, 20 years, it's extremely likely that we'll be back in the case where now we have an obligation to buy out the property owners because that seems to be the de facto policy in place.

[10:25:51 AM]

For those reasons, I urge my colleagues to please vote against this annexation. >> Mayor Adler: Further discussion? Ms. Pool? >> Pool: With the good offices of our city clerk, the document has been found and it was offered by the citizens during citizens communication. And it's old lampasas trail deed restrictions. The following are excerpts from the deed re-- excerpts from this larger document here. Approximately 80% of each lot is designated nature preserve and unbuildable. Lot sizes are five acres and cannot be subdivided and so forth. So I would like to request that this document be made part of the official record that goes forward with old lampasas trail and I thank staff for being diligent in trying to locate this for me. I have not heard anything compelling from staff to argue that we should move on this case at this time. I don't know why we don't wait for another two years or five years and think about it then. I -- it just feels like if it's a piecemeal and it was a chunk that was left out of a previous annexation, then

maybe it should have been done at that time. But I have not heard any compelling reason to act to annex this particular neighborhood. I am especially moved by councilmember Houston's statements about applying policy across the city as a one size fits all. Austin has unique and diverse ecosystems in its topology and ecology from the west to the east, from the north to the south. And when we talk about -- about finding a policy that fits every single square inch and square mile in every second. Of our population, I think

[10:27:56 AM]

that's going the wrong way. I really do think in many instances our policies do need to be crafted to fit the individual specifics and the unique characteristics of the case at hand. At this point, with this case, immoved by the neighbors to support the request that we not annex them and it is along the lines of what of my colleagues have said here today and in particular the statements of councilmember Houston for some different reasons perhaps, hers are more historical and racial. But I think if we also apply them geographically and to the environmental concerns in the different parts of town, we would also make a much better decision if we look more specifically at unique characteristics. So I will be voting not to annex. >> Mayor Adler: Any further debate, discussion? Ms. Tovo. >> Tovo: I will say I'm going to support the decision to annex. I appreciate the neighbor's involvement in this and their ongoing interest in providing us with information and being stewards of the land, but for me as I mentioned in one of our hearings, it comes down to what is, you know, what I feel my charge is with relationship to this and that is what is in the best interests of the city. I think it is in the best interests of the city to make sure that there are development regulations on that tract, even, you know, as we've talked about -- we've talked about the restrictive covenant a lot, but there are still going to be 43 acres that are not subject to the restrictive covenant at all. And as we've discussed, the restrictive covenant can be changed by will of the existing property owners on those tracts where it even applies, what is not the majority of this land. For all of the reasons our staff have articulated and

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the mayor articulated, I'm going to support it. It is surrounded by land that is -- surrounded on three sides by land that is within the city of Austin. It is already receiving some city services in the form of water, wastewater and nearby roads. And it's -- it's -- I believe in the best interest of the city for it to become part of the city of Austin. That's why I'm going to support it. I don't disagree with my colleagues at all on councilmember Houston and councilmember pool that we should treat different situations -- we should have a consideration for the context in which we're making, especially land use division, but for me this is not -- this is just -- this is not a land use decision as much as it is a decision about -- about -- about how we are equitably spreading the cost of the city services that -- that those within the city of Austin and those on our edges are -- are -- are sharing. >> Mayor? >> Mayor Adler: Further discussion? Mr. Renteria? >> Renteria: I'm also not going to be able to support this annexation. I just don't feel like these are the kind of residents that are going to go rush out there and start building on their property any time soon. So I would like to also wait until we see the full area looked at so that if we are going to be annexing it, the rest of the property, we will also be looked at and maybe annex it as -- all of that area instead of just rushing out and annexing this small piece of land. >> I'm not sure we actually have a motion. >> Mayor Adler: We don't yet. >> Tovo: I would be glad to make a motion to annex this property. >> Mayor Adler: It's been moved to annex, is there a second in Mr. Casar?

[10:31:57 AM]

>> Mayor Adler: Any further discussion? >> Zimmerman: Point of order, would it be first reading? >> Mayor Adler: First reading. >> Casar: Mayor, I would just like to ask our staff. Considering that it sounds like there isn't support for the motion, but there might be some support for considering this annexation at a later time or at a time soon or pending, is -- is there some sort -- I know that annexation has a long legal process associated with it and so if there isn't will on this council to annex this now, but there might be some will for it to be considered in the near-term future as part of a larger plan, would it be best for us to -- to postpone or table indefinitely, if that's the will of the council or to -- or to -- you know, help me think through that. >> So if the first reading does not get approved today, then we would need to bring back a set of new public hearings and new notification process and start all over at the beginning. I guess that we would look for direction on that. Should we do that next year at this time or -- >> Casar: But if the vote either fails or there is -- indefinite postponement or it's denied, those votes don't have any legal -- >> I see what you are saying. >> Casar: Which one of those has no legal meaning for you, the only one that is different is approval on first reading. >> Right, right, there's not a penalty if it doesn't get approved that we wouldn't consider it for a certain amount of time or anything. >> Mayor Adler: There's not a limitation to how soon you could bring it back up again. >> That's right. >> Mayor Adler: There's no legal significance for you differently if that is not any vote versus a no vote versus a postponement, those are all the same. >> It would all equal the same, that's right. >> Mayor Adler: Okay. >> Zimmerman: Point of order, I just wanted to -- is it still okay to call the question and go ahead and have a vote. We have dedicated a lot of time to this question so -- >> Tovo: I guess that I would ask my -- the second

[10:33:57 AM]

on this whether -- we're going to end up in the same place, should we just withdraw our motion? >> Casar: Yes, I'm fine with that. Short of anybody having a change of heart because I think that environmentally it makes a lot of sense to protect the other acreage in this area considering that we're not downgrading any of our existing environmental protections in the restrictive covenant. We're just upgrading them in those -- in that -- in those acres. >> Tovo: I'm open to a discussion about it either way. >> Casar: I will withdraw it unless anybody has a change of heart in this last moment here for those 43 acres. >> Tovo: Councilmember Garza -- >> Garza: I'm just confused. If you are withdrawing the motion, we are going to indefinitely -- >> Mayor Adler: I would ask for a motion, if no one made a motion we would move to the next item on the agenda. >> Zimmerman: Mr. Mayor, did I move to call the question. I would like to go to the vote. There's a second to call the question. >> Mayor Adler: I'm trying to figure out if we have a motion actually to vote on. >> Zimmerman: We do, it was made and seconded under Robert's rules, so now it belongs to the group. >> Mayor Adler: That's true. >> Zimmerman: So we can, I think it's in order, right, to call the question. >> Houston: But -- councilmember, the group is -- if it belongs to the group, the group is still having a conversation about where the group wants to go with it. Okay? >> Mayor Adler: Okay. >> Mayor Adler: Does anybody have any objection to the mayor pro tem withdrawing the motion? Seeing none the motion -- >> Zimmerman: I think that I do, Mr. Mayor. We have dedicated a lot of time. >> Mayor Adler: I understand. >> Zimmerman: It's up to the group. Councilmember Houston is absolutely correct. If the group does not want to call the question, then we don't vote. >> I have a question. Would it be appropriate, since the original motion was withdrawn, to make a motion to deny the annexation? As the motion? >> Mayor Adler: Someone could make that motion or -- >> Gallo: Then we could

[10:35:58 AM]



vote on that. >> Mayor Adler: We could or just move on to the next item of business. >> Houston: I think, mayor, that to help the neighbors settle about where we are, we just need to go ahead and make a motion and so I move that we deny the motion to annex old lampasas -- >> Mayor Adler: Ms. Houston moves to deny the annexation, seconded by Mr. Zimmerman. Any further discussion on that motion? Those in favor of the motion please raise your hand. Those opposed to the motion. Garza, Adler, mayor pro tem, and Casar voting no. The rest voting aye with Ms. Kitchen off the dais, the motion carries. The next item of business we have, we have been told that the attorney that wants to give us the briefing on the mercer case is not available on Thursday. So we're going to break at 11:30 to go into executive session. To get that -- to get that briefing. So we have now between 10:30 and 11:30 to work our way through pulled items. Mr. Zimmerman? >> Zimmerman: Thank you, Mr. Mayor. The items that I have pulled here are I think going to be brief. I'm going to ask my colleague on Thursday to take a look at some of these on committee, I'm also going to make a motion on 11, 12, 17, 21 to just strike the words and execution. I just want a chance to review the agreements before we vote on them. So that's why I pulled the items. I just wanted to -- >> Mayor Adler: 11, 12, 17, 21, you are letting us know that you're going to ask to strike the word execution so that you have a chance to see the documents and there was something that you said at the beginning -- >> Zimmerman: Right. Item no. 10, I would like to refer that one to a committee out of inquiry of why we're dealing with an embassy in Pakistan. I have questions about that. >> Mayor Adler: Okay. >> Zimmerman: But we can go over that briefly on

[10:37:59 AM]

Thursday. >> Tovo: Actually, mayor, may I ask a quick question about that, about councilmember Zimmerman's points, they are all linked. So you would have -- you're going to move to postpone item 10 and refer it to a committee, but allow -- but suggest that 11 and 12 move forward with the wording change? >> Zimmerman: The idea being that I would like to see the issue go to committee. But if it does not, I would like to strike the and execution -- >> Tovo: Either/or. >> Zimmerman: Either on, depends on what happens. >> Tovo: 10, 11, 12, that's that plan and then 17 and 21, okay, I'll just say on 17, this is a contract foundation communities has had in the past. I think it's important for it to move forward. So I -- it's just an amendment. Is 17 one that you are suggesting come back for -- it's not -- it just an execution of the amendment, the amendment is minor to extend it to this year. On that point if you don't want to talk about it until Thursday, that's fine, that one as a contract I think needs to move forward so those folks can do that work. >> That's a good point. It does say negotiation. If it had said extension. But when you put the word negotiation sounds like we're opening it up to do something different. >> Mayor Adler: With respect to those, Mr. Zimmerman, I know that you have taken the position in the past with respect to contracts that you would like to see the contract before it actually gets -- are there anything in particular with this contract or with the issues associated with this contract that are giving you concern? Or is it consistent with the more general policy of just wanting to see the contracts as negotiated and drafted before they are executed?

[10:39:59 AM]

>> Zimmerman: It's the policy of I don't like to have to approve something to know what's in it. That's all. >> Mayor Adler: Thank you. >> Casar: Mr. Mayor, I believe by accident I'm listed as pulling 17, but in fact I'm not. >> Mayor Adler: Okay. Any other comments on items 10, 11, 12, 17 or 21? >> Houston: Just from, this is councilmember Houston, mayor. >> Mayor Adler: Yes. >> Houston: I started talking before you recognized me. I apologize for that. >> Mayor Adler: That's okay. >> Houston: None of the -- these didn't come before the health and human services committee, so I would like to see on the affordable health care act, maybe other members of the council would as well, how many people did we enroll

based upon the amount of dollars that we would be giving. >> Mayor Adler: If staff could answer that question and provide that either in a memo or backup, I think that would be helpful if that's okay. Ms. Garza? >> I also added 37, 60 and 14, I didn't know if you announced for staff to be able to be available. >> Mayor Adler: I did not. Ms. Garza, wants to address Numbers 37, 60 and 74 if staff is available and if we get there. >> Houston: Say those again? 37 what? >> Mayor Adler: That would be 37, 60 and 74. Ms. Gallo? >> Gallo: Item no. 7, I'm sorry, we -- this should have just been pulled so I can make the comment that the neighbors have requested a postponement to our next meeting and the applicant does agree to that. So this particular item would be postponed until next week. >> Mayor Adler: Say that again. >> Gallo: The -- the neighbors have requested a postponement for item no. 7, to go to a council agenda item on November the 19th and the applicant has indicated to us by email

[10:41:59 AM]

that they would agree to that. >> Mayor Adler: Okay. Looks like both the applicant and the neighbors are agreed to postpone item no. 7 until -- until the 19th. >> Gallo: And the request was from the applicants. Not from the applicants, from the neighbors excuse me. >> Mayor Adler: It was the neighbors' request. Okay. Okay. The next item that's pulled is item no. 27. I think Mr. Rentaria this was yours about development rights. I understand it was the -- it was your intent to raise this issue and that it would then be referred to committee to take a look at? >> Rentaria: Yes. I wanted to bring it up to the attention of the whole council before -- what happened was that unfortunately the -- we weren't able to have a quorum at our last housing committee meeting and I believe there was some people that were -- thought they were going to be able to make it into town and got delayed by flights. So I -- so I wanted to bring it up so that -- so that, you know, we have been dealing in the past, I believe, my colleagues, mayor pro tem tovo had been working on this policy here about the displacement. And we're starting to deal with it again. And I think that it's time that we actually -- since we're -- we're basically a new council, a city council and I know a lot of this discussion happened here in the prior last two years or three years, since 2012 when the shoreline development at Riverside was going on and there was a huge displacement of residents at that time. So there was a lot of outcry about it. And so I just basically wanted to get this back on

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the agenda so that we can have a discussion to see where we're at, at this time. And what happened to that policy and how are we going to be able to address the issue since in the future we are going to be addressing it and I hope that we don't have to continue addressing it as an emergency and have the policy in place so that we can deal with these kind of -- these kind of unfortunate displacements that are -- probably are going to happen in the future because of housing, tight housing situation that we're in. >> Mayor Adler: Mr. Casar? >> Casar: And I would like to point out that again this is one of those resolutions that we'll be asking for staff to bring back information to the committee. So I think a lot of the particulars can and must be sort of worked out after staff has done that work. But I think that there is, you know, consensus and five co-sponsors and I imagine a large majority of this council that's interested in being able to do that. So I want to assure everyone this is an important first step for this kind of policy. There's already been extensive stakeholder work done very recently. So I think that the staff will be able to bring back what's legal and feasible and recommended and then there's going to be some of that nitty-grittier work at about what mfi level would a developer be responsible for providing some level of compensation how many months notice, those sorts of policy decisions I think are things that this council still has to work out. That's sort of beyond the scope of this resolution, this resolution I think just indicates that we are interested in it enough, it's an urgent enough issue that we want to

empower the staff to put something together for the committee to discuss because if I remember correctly, the -- be it resolved says that will be brought back to the housing committee. >> Mayor Adler: My question, I join in this, I

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think it's something that we need to take a look at and move forward on. My question I guess is more of a procedural issue. At this point -- I appreciate you bringing it here to the work session to be heard publicly here and we could kind of plant the flag in the ground as something that we intend to address. Should this be something that -- that either the committee takes on or I refer to the committee, I'm -- I'm interested in knowing if we want to have -- this will be on the agenda, if we leave it that way, it would then be public debate on it then. There would be public debate on it down at the committee legal, potentially we would be deciding. I'm wondering if the next real big debate on this, rather than being Thursday at the council meeting, should be when the staff brings back ideas and concepts and people can meaningfully participate in -- in the specific questions that are -- and issues that have been raised. >> I would prefer it done that way. If my colleagues would -- would be willing to support me on that. >> Mayor Adler: Okay. If that would be the case, then -- then not only could you bring this up in your committee with these votes, you could do it on your own, but I would also refer to the committee so as to make that record as well. Ms. Tovo? >> Tovo: I guess that I would like to clarify that process a little. As I'm not clear on what we're talking about referring to the committee. Right now we've got a resolution before us with five co-sponsors that would direct the city manager to go forward, craft an ordinance and bring that back to the committee for a full discussion at which point I think people could weigh in on the policy. So I -- it was my expectation, but of course I look to you, councilmember Renteria that we would vote on this on Thursday. I don't tell if the mayor is asking whether we're going to postpone action on the

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resolution and send that to the committee is that -- was that your question? In any case that's my question. I'm not clear about whether we're talking about postponing action on the resolution or taking action on the resolution which as councilmember Casar says really starts the process of crafting an ordinance. >> Mayor Adler: What I'm trying to figure out, maybe a question that ultimately goes back to the transition committee to figure out. But I think that given the will that could be seen in this work session, the manager could do everything that's requested in that he is are solution and bring the issue to the committee. In that resolution and bring the issue to the committee and everything that we are doing here, when the manager then brought that information back, then we could have the robust public hearing at this point focused on the issue. It seems to me that as we're trying to figure out how to do things and the time that we're spending, having a conversation about whether or not to send it to committee and whether or not the -- the staff should -- should -- the manager should bring back a report to the -- to the council, may not be the best use of the council's time or the public's time and having them come down multiple times to address that issue. So one question would be for the manager would be -- in something like this, where there's a will expressed from the council, for staff to bring to the -- to the housing committee, that kind of issue, whether or not that's something that could be done without - without an hour of time at the council meeting. >> Casar: Mr. Mayor, if I may, I think the one difference, just before he answers so that we're all on the same page, I believe the resolution is asking for the ordinance to be drafted, so I think the question in particular would be could the manager through this work session do exactly what this resolution says without

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us even voting on it. Which if so then I have no problem not voting on it if we're going to get what we want done without having to do so. >> Pool: If I could make sure that I was understanding what you are saying. Because there seems to be such a large number of us without voting on it indicating support for this, that we would simply take it off of the agenda for Thursday, but hand it over to the city manager so he basically gets two days jump on starting on it. >> Mayor Adler: It avoids the community having to come down, feeling like they have to come down on Thursday and then come down yet again in response to the ordinance as drafted. >> I'm sorry, I'll really worried about setting precedent on not voting on policy and directing the city manager to do something. If we want to refer it to a committee we do it that way. But I don't think we should be directing the city manager to do anything without a vote, without any public comment, period. >> Zimmerman: I concur, Mr. Mayor, with councilmember Garza. >> Mayor Adler: If I'm the only one that's looking at that, it's set for the agenda on Thursday, we can have the public hearing and the discussion on Thursday to send to the city manager. I would just proposing that there might be an alternative. >> Casar: You were just being creative. >> Tovo: I think that it's fair to make sure that the public understands if we are planning and it sounds those councilmember Renteria I keep looking at you to see do you spend that we vote on this on Thursday? >> Renteria: I would prefer that it get voted on Thursday and then sent to the manager through the city manager or -- or if there's a shorter process, I would like to know how that would work. I would like to, there's so much citizen input, stakeholders' end put that has been put in in the last two years, I thought maybe by bringing it it wouldn't be such a long process, since we already have gone through the process.

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Then having the manager come back with recommendations to our housing committee so we could make that recommendation to the full -- >> Mayor Adler: So I'm going to withdraw my suggestion otherwise given the sentiment, but it is something that I would like to have the transition committee take a look at in terms of efficiency or time recognizing all of the issues that have been raised. >> Tovo: Could I just finish the point that I wanted to make -- thank you councilmember Renteria for that clarification. I think that's certainly my interest in seeing this move forward, the ordinance get drafted, having the discussion then and I think one of the issues that the transition committee really needs to look carefully at is public hearings. We've tried to do them differently and that tips to trip us up about the process. So I would say I think it's perfectly fair if part of what we're trying to do is move this on and not have lengthy public discussions about this particular issue at every stage until we really have an ordinance I think it's take into Thursday to say folks who are gathered here, if you could remember that we're going to have a discussion at the committee and then a discussion at council about the ordinance itself, you know, kind of frame your comments appropriately, I think that's a fair bit of advice to give them. Not thrilled at all about limiting public testimony, I think if we have a ton of people show up to talk about the resolution, we may -- that may be an instance where even I can support limiting public testimony about it. Knowing that we're going to have two subsequent discussions about a real ordinance itself. So but anyway I think that it's a really critical issue. I appreciate councilmember Renteria for taking the lead on it as he mentioned. It's been a long time interest and we continue to have these cases coming up. As Austin grows and continues redeveloping the properties, we need to make sure that people in those properties being redeveloped have an opportunity to relocate in a way that's fair, that allows their children to continue attending school, if they

[10:54:06 AM]

have school-aged children within that -- allows them to continue attending school within that district, within that attendance zone. I think there are a whole lot of reasons why we need to do this and we really needed to do it several years ago, so thank you for moving it forward. >> Mayor Adler: Okay. >> Renteria: Another reason, too, is that, you know, I try to bring it up to my housing committee, we couldn't get a quorum. Then even today with the transition committee, there was I guess we couldn't get a quorum neither for some reason it was also postponed. So -- so I was just trying to get this back to the attention of the whole council so that we could move and move forward on it. >> Mayor Adler: I think that's what that was just made by the mayor pro tem, I think was a constructive one and does address the issue that I was raising. I'm going to pull this. I'm going to pull my pull and go on to the next one. This is the Austin convention center long-range master plan. There are, I pulled this, there are some issues that have been raised by folks relative to what the opportunity cost is. Some questions that have been raised by people as to the opportunity of cost associated with this proposal by deciding this what are we deciding that is not on the table? We're not going to be doing anything by this vote that removes from us the opportunity to be able to hear that and understand that and direct that. And then I understand that there's some other -- other councilmembers that also have -- have issues or concerns or questions about -- about other alternatives or ideas or concepts that -- that they want to make -- make sure gets considered as part of this process. So it is my intent at this

[10:56:07 AM]

point to -- to append to that resolution, if it works, a statement of -- of the questions that are outstanding before this council would feel comfortable saying that this is the way that we want to go. And I'm going to post -- later this morning or early afternoon -- a draft version of that that -- on the bulletin board. For people to be able to look at and read or -- or raise other issues. That they would like to see made part of the process of the study going forward and I just wanted to let everybody know that I would be doing that. Ms. Tovo? >> Tovo: Thanks for that, mayor, that may save me a little bit of work because I have certainly heard from residents that they have -- heard from residents that they have concerns about, I think that we have all heard them, that the expansion of the convention center if not done in a way that's really sensitive would create a dead zone in that spot and that it's really critical to make sure that we have services, if it is to be expanded, services that draw Austin visitors as well as residents down there and that there are -- that it has an active street level presence. And so I was -- I was intending to craft some language to that effect, but if it's included in your list of -- of pending concerns -- >> Mayor Adler: I'm handing out a hard copy now of the very first stab at that list. But does not yet reflect input. So -- so please give me further input. >> Tovo: Great. It may well be covered in there. >> Mayor Adler: This is what I will be posting here momentarily on to the bulletin board. Yes, Ms. Pool. >> Pool: Mayor, I also heard from some residents about a location of the hotel that was proposed for the convention center okay Cesar Chavez and the -- being on Cesar Chavez and the impact of traffic along that road and in particular when you look at comprehensively from mopac

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and the changes that are currently underway, that it may in fact direct an additional X number of thousands of cars along that way, all the -- along that road, all the way over to I-35 back and forth. That's a concern for me for the placement of the hotel. Further, this is something that I didn't have a chance to raise with Mr. Tester when he came to meet with me. A couple of years ago I remember hearing very clearly from city staff that we needed to build more hotels because we didn't have enough rooms in order to house all of the people clamoring to come to the city at the convention center. And so the

council approved building the JW and probably the Fairmont and some other hotels and we lost Los Manitos in the process. Now the argument shifted the other way, we have a super abundance of rooms so we need a larger convention center to fill up those rooms. I didn't notice this all by myself, people in the community are noticing this and raising this question. So I would like staff to address that. And have us think globally about, you know, if we have to have a bigger convention center because we have too many beds filled, but then we don't have enough hotels because now we have a bigger convention center, I just would kind of like to know when does that -- what is the natural end point for that? So that we can answer some very clear questions that our community -- is raising.. >> Garza: Since we're going to have executive session on Thursday if we could have a short presentation. I know we just discussed a case that had to do with eminent domain on a garage that was built because of the convention center or am I wrong about that? So I was wondering if we just had a brief review of that case and as we consider

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possible more eminent domain with the convention center. >> [Inaudible]. >> Garza: We can't just have an executive session on a legal question in general? >> Not in general, but if we have a legal question about this particular item we can certainly have the executive session so we'll look through it [indiscernible]. >> Mayor Adler: We may well have to be able to do that because we're including something that requires the executive session of perhaps, eminent domain. So I think if there's a question about how they can be used to apply I think that would be valid to have. So we'll pursue that. >> Any further conversation on this issue? Ms. Houston? You turn that on and off. You trick me. It's red and then it goes dark and then becomes red. >> Houston: When somebody else is talking I don't want to be breathing in it. So I try to turn it off. I have talked with the folks at the convention center about the traffic impact study and the fact that it needs to go past I-35 because that's a major east-west corridor for people who are coming off of 71 and Montopolis, and that's the way they get into town and out of town. And if you've ever tried to go down Cesar Chavez in the evening or in the morning, you cannot just stop at I-35 because it becomes -- well, it's one way once you get past I-35 and it's very congested. And I've also suggested that they reach out to the neighbors over on that side of the interstate so that they understand what's going on. >> Mayor Adler: Okay. Thank you, Mr. Zimmerman? >> Zimmerman: Thank you, Mr. Mayor. My concerns will be around traffic congestion. That's everyone's concern all the time. But I can remember off the top of my head one event that Austin lost. I think that was the UIL basketball tournament, stated publicly that they

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were withdrawing from Austin. Part of it was congestion and traffic, but also the high cost of everything. High cost of hotel rooms, high cost of restaurants. So they pulled out of the city of Austin in kind of a public fashion. >> Mayor Adler: Who did? >> Zimmerman: The UIL basketball tournament. -- Basketball tournament. We can talk about it more if you want to talk about it now but I'd like to address movability and congestion. >> The biggest challenge with the UIL state basketball was because of south by southwest. It no ability to move because of the season and that was our biggest event. That was the biggest challenge and affordability. I know they tried hard to get them the rooms at good rates, but it was tough just due to the high demand. >> Mayor Adler: Ms. Houston? >> Houston: And I had asked for the average rate for hotel in the city and I got 133. And I asked the last time we met if that included all the taxes, and we didn't know. So I'm still waiting to see if the 133 included all of the taxes. >> We'll check into that, thank you. >> Mayor Adler: Anything else on this? Thank you very much. Thank you. Next item that we have is item number 36. I'm going to pass on that right now. Let's get the other ones that -- I'm going to pass on 36 and 43 and 44. Number 78 you pulled, Ms. Troxclair, on short-term rental.

>> Troxclair: We're going to it now, number 78? >> Mayor Adler: Uh-huh. >> Troxclair: Well, my main question was just a

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clarification of what I understood that we passed the last time we talked about this issue, and what is in the ordinance because I understood that we passed -- that the council passed a one-year moratorium on issuing new type 2 str licenses with clear direction from -- specifically from councilmember kitchen and councilmember Garza that they would like to see other -- a whole range of options come back to council. But it seems like the -- and chronic, but it seems like from reading the ordinance it is actually just a permanent ban on all type 2 str that are not in a commercial zone. >> Patricia Lancaster, assistant city attorney. Council's action was to suspend the str type 2 licenses with direction to come back in a year, but required affirmative action of the council to stop the suspension, which is why it's drafted the way it is. It puts in place the suspension and then requires the manager to put an item on a future council agenda for this council to consider revisions or leaving the ordinance as is at that time. And it's limited to -- the suspension applies to the residentially zoned area because of your action in November that was to initial -- in October, that was to initiate a limit on type 2's in commercially zoned areas. >> Troxclair: I went back and looked at the conversation and we did not vote to limit -- we did not vote to permanently limit any str type 2 to commercial areas. Councilmember kitchen said, quote, I am understanding that a whole range of options will come back to council. I am wanting to see the options come back. I will support it with that understanding that options

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will come back for us to consider. And councilmember Garza said, councilmember kitchen, that is basically exactly what I wanted to say. >> Mayor Adler: My understanding is that there was a vote to have it come back in a year, but the default was it expired. So it would take six votes to extend as opposed to six votes to cut it off. >> Based on my review of the audio, the channel 6 transcript and the minutes from the meeting, it required council to take affirmative action to stop the suspension. However, the way this is posted, if it's the will of the body to change that, you can do that. >> Mayor Adler: Would you please post wording the other way and then provide that in the backup as well? And I will go back and take a look at that too. I have a real strong memory of it being the other way, but obviously I could be wrong. >> Troxclair: Is it two separate issues? One issue is a moratorium for a year on issuing new type 2 str licenses and the other issue is limiting all str type 2 licenses to commercial Zones, correct? >> It is to it -- so what happened when you initiated the code amendment to suspend all new type 2 licenses, then you took a subsequent action that said that you wanted a code amendment to limit type 2's to commercially zoned areas. Those conflict and so in order to address -- to reconcile those two actions, you would be limiting -- you would be suspending new type 2 licenses in residential areas and not in commercially zoned areas. The issue of phasing out of residential is not before you, it is not ready. This ordinance does not address that. It specifically says it does not apply to renewals. >> Mayor Adler: I didn't understand what you just said. Would you say that again, please? What is the conflict that needed to be addressed? >> So the initial action was

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to suspend all new type 2 licenses? >> Mayor Adler: For a year. >> For a he year, but you wanted to take affirmative action for suspension, which is why it's drafted the way it is now. Your subsequent action in October was to initiate code amendments to have type 2's in commercially zoned areas and phase them

out of residential. This ordinance -- >> Mayor Adler: What was that? >> To phase out type 2's from residentially zoned areas. This ordinance doesn't address that. That's not ready. >> Mayor Adler: The only thing this ordinance does is affect the moratorium for a year. >> For commercially zoned -- I'm sorry, for residentially zoned properties. >> Tovo: Mayor, can I speak to that for a minute? I understand the conflict you're talking about, but this was meant to -- this was meant to extend to commercial and residential all type 2's. The second, the code amendment that we've initiated is an endeavor to phase them out in residential areas and permit them in commercial. But the one-year moratorium was intended to be a one-year moratorium on all type two short-term rentals while we look at the changes that have been made and see if they're working. >> And you can make that motion, but the way that -- with the two items that I had, I had conflicting items. The options that would be to the council would be to come with the one-year suspension and then come back with the subsequent ordinance that said they're okay in commercial now, but not -- and we'll phase them out of residential. >> Mayor Adler: So why are we handling -- >> Tovo: But why are we handling the conflict -- since that other piece is not ready and will come back, why are we handling the conflict with changes that we voted on in this one rather than deal with it when the other piece comes

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back? >> Mayor Adler: I concur with the mayor pro tem as well. We took an action -- there's only one thing this council did that we asked to come back to us quickly. And apart from all the other things. And that was a more foreium for a -- moratorium for a year on now str type 2's. What I would like to see is an ordinance that just does that. The question of whether or not it takes an affirmative vote to extend or not to extend I would ask that you draft it both ways for us and we'll go back and take a look at the record too. I trust you. I just remember it differently. But obviously the tape speaks. But if you could not incorporate into this draft any of the other things that we did and just do this one item that we said we wanted to come back to us most quickly we would like to see that language and if you could post those two things in backup that would be helpful. >> We can do that. >> Tovo: I would say I remember the course of that conversation and it was confusing. I believe the motion to have an indefinite moratorium failed or was headed that direction, and I at least spoke to, didn't make the motion about it, coming back for an affirmative vote within a year. So there may have been different opinions about what that meant and so we can have that discussion on Thursday. But what was clear is that there was to be some affirmative action one way or the other in a year. >> Casar: I actually do recall it happening as you described it, but everybody can look at the tape. The other thing I also recall was a discussion that you and I had about what a year meant, a year review of the new requirements meant because if some of them take six months to get off the ground and implemented, then it may not be as many months. So I thought we -- I thought

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that we tried to sort out, let's make it a year from when those regulations go into place. Because otherwise we may wind up with some of the regulations only going in place several months period the period of violation. >> Mayor Adler: That's my recollection as well. >> Casar: But mayor pro tem since you did think through a good handful of the code amendments that we initiated, unless you would like me to spend some time thinking about it, if you could think through how that could work so that that is year point people would have the information they need. >> Tovo: Thank you. I had forgotten that piece of it and I remember you raising that and making that point. I'll think that through by Thursday. >> Right now, the draft language says on or about December 31st, 2016. You have on your agenda later another item that would set the public hearing for December 10th. So that December 31st date aligns with that



December 10th. There would be a year to year time frame. So if you wanted to move past that the way to address that would be to say to a later date in 201517. -- In 2017. >> Mayor Adler: Or it could key off whatever the triggered event was. >> The concern I would have with doing that right now would be it would be on -- it would be vague and I don't know what this council will pass at a subsequent date. So if we don't have a solid enough date in the ordinance, then one if the council goes with language that essentially, for look of a better word, subsets the suspension, then there would be -- there would not be a definite end date to that suspension and that would be a very big challenge for staff to implement. >> Mayor Adler: I understand. Thank you. Yes, Ms. Gallo would be next. >> Gallo: So I just want to make sure that I understand that this

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moratorium, the suspension does not effect currently operating short-term rental type two licenses in any zoning category. >> Correct. >> Mayor Adler: Ms. Troxclair? >> Troxclair: I know that this is a complicated issue and I know we've talked ourselves in circles a lot, so -- so I don't know if I'm confused or not. But I heard you tell the mayor that it's two separate issues and that this ordinance doesn't apply to limiting all str type 2 licenses to commercially zoned areas, but looking at part 2 subsection H, it says after November 23rd, 2015 the director may not issue a license to operate a short-term rental. And then as described to us in section et cetera, et cetera. And the only areas that are -- the areas that are listed are all the residential areas. So the that to me says that we are making a decision to limit all str type 2's to commercial areas. >> The way the ordinance is drafted, it says that the director after a certain date will not be able to issue a new type 2 license in those residentially zoned areas. There's a provision below it that says it does not apply to a renewal. So they would still be able to renew their licenses. The only difference in this ordinance from the first action to the subsequent action is the commercially zoned areas. And if the ordinance doesn't distinguish between the commercial and the residential and essentially says no new type 2s, then

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what we would have is one action that would say no type 2's, new type 2's, and then your subsequent action at a later date would be to change that to say that it could be in the commercially zoned areas. And so the way it's drafted now is an attempt to reconcile those two conflict. >> Tovo: Mayor, but there are other ways to reconcile these conflicts. One might be that we stick with what we passed, which is to issue no new type 2 short-term rentals for the next year. And in a year when you come back and we have that affirmative consideration one way or the other to extend it or to end it, and we're considering the effectiveness of the ordinance and considering revisions, one revision could be at that point to allow them to be issued in commercial zoning only. So that would be another -- that's another option we have for reconciling these two different provisions. >> That would be an option for the council, but the concern from the staff perspective as a drafter when I have two code amendments that are initiated that are essentially headed in the same direction, my attempt to try to reconcile this at this point, you have initiated, and if council doesn't take action on the commercial piece we still have a code amendment that's initiated that's sitting out there, so that would be my only concern if council waits a year to do that. It's fine to do that, but at this point when I was drafting it based on amendments that were initiated, that was the best way to reconcile these two absent your further direction to not bring the commercial piece back until a later date because at this point just so everyone's clear, we're still working off the 150 daytime line set in August, which actually

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expires the middle of January. So to keep all of these on track that's why it was reconciled the way it was. >> Tovo: I appreciate that and I wish -- I apologize for creating that conflict for you and not recognizing it would be one. Between now and Thursday we can think about it. I think the option I just mentioned would probably be the way I would suggest we go, which is to have it be a moratorium on type two as I think we intended and as the community I believe intended. And then to deal with the conflict with the code amendment that's working its way through and perhaps we can even provide direction to you that with that code amendment that is currently working its way through the planning commission process that would be one way to handle it. Because the other was really intended to deal with the longer term issue of phasing out those that currently in residential areas. >> Mayor Adler: Anything else on this issue? Thank you very much. The next item is the parkland dedication issue pulled by two folks, item 81. Troxclair or Gallo? So we posted on the message board yesterday evening some information that came to light as we were researching this discussion. And it appears that there was an audit which was done in winner. So as we pulled the audit we found that there were different findings. And I guess what this process -- it turned out that this particular ordinance was one, it kind of triggered this process of looking how as policymakers for the city and also as the entity that I think citizens look to to make sure that when we are expending funds

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that we have collected from the citizens of Austin that those funds are spent appropriately and efficiently and comply with the ordinances that allow us to capture those funds into the city's spending ability. So we do have -- this fund was audited and there were findings and the parks department addressed those and also within the audit there were recommendations. The park department addressed those recommendations and indicated that they would be implementing different administrative policies and procedures that would address the recommendations and address the issues that the audit found. And I guess my concern with this is -- and please know that this is not a statement at all needing that the park department did not and has not addressed all of those because I know that y'all are a great department and I'm sure you have, but my concern is I don't think we've completed the circle. I think as the pollentate for the city -- policy entity for the city, we've instructed an audit, the audit was done, there were findings, there were recommendations, there were conversations with the department. The department has indicated that they would put into place what would correct those findings, but there's not that closing step. So it's our understanding that the audit department now does a three year follow-up audit that basically looks at that initial audit to make sure that the recommendations and what the department said they would do to address those findings and implement those recommendations have actually been done. So we've asked the audit department to actually place the parkland dedication 2013 audit in their cycle for doing the three year follow-up audit and it's been indicated to us that that has been done and that that will take place.

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And that completion of that, I think it would begin in December and end in March, and that if the council wanted to ask that that be pushed up a little bit in the time frame that we could give instructions to the audit department to speed that process up a little bit. I think as we're talking about changes to the ordinance and increasing the funding to the ordinance that I think that we as responsible to the citizens of Austin need to make sure that when there have been factors that have been indicated in a previous audit that need to be addressed that I think we need to make sure that once again the whole circle has been completed and the department has actually addressed those and our audit department has

confirmed that all of that's been done and the findings that were the result of the initial audit have actually been addressed and rectified. So that was just part of the process in our research that we found. So I think that before we talk about making changes to increase funding that we need to complete that circle and just make sure that that follow-up audit is done and complete. And that the department, which I've sure they have done, has addressed that and put it into place. We've basically heard they've done it, but we don't have any confirmation from the audit department that that actually has been done. That was just part of what we posted last night as we have been working through the process of looking at this audit. >> Mayor Adler: Yes, Ms. Troxclair? >> Troxclair: I appreciate councilmember Gallo for bringing that up. I too would like to see the results of that audit before we make a big policy change, not to say that there shouldn't be changes made or that I won't support this, but I had a lot of questions. I posted a lot of questions to Q and a so I don't need to ask them all here, but I did have a lot of questions about the changes.

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>> Mayor Adler: Ms. Pool? >> Pool: I appreciate the extensive effort that my colleagues put into this and I too look forward to getting answers where they may be necessary and I think it's good to see the auditor here and can answer some specific questions I have. But I'm not convinced that closing the loop on the audit has any relevance to our increasing parkland dedication fees. The parkland dedication fees issue has been pending for some time and they should have been raised a number of years ago and the new fee structure allows for a natural increase in those fees because they were capped previously. This. >> What I would say is if there are issues in how the money is being spent or how it is tracked if there is a moratorium on spending any until we have some clarity on those issues, but I don't see that as a basis for delaying the approval of the fee -- the new fee structure, which frankly has been needed for some time and we are only just now being able to get to it. So I will have some questions for staff more specific to the things that councilmember Gallo brought up. And I thank her for doing that research. And maybe we can sift through the issues that are in front of us so we can continue moving forward on a very necessary funding stream for a number of projects, including the waller creek tunnel, while we also ensure that we are good stewards of our money. I'm not convinced because I haven't actually engaged the conversation, that that has not happened. >> Mayor Adler: Further comment? Ms. Tovo? >> Tovo: I'll say that I think these are important considerations and I know that our parks department has been working to address the issues and the findings. And if now is the appropriate time for them to

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speak to that, that would be great. If they would like to do that. Or we could ask the question through the Q and a. But I see this as two separate issues. One being the policy that we're adopting and the other being kind of the implementation and the management of those funds. And so I'm extremely comfortable, really anxious actually to move forward with the revised fee structure as module said it's been a long time in process and has been a need for a long time. But I agree with my colleagues that we need to continue looking at how these funds are expended and whether we need to make policy changes to make sure those are as flexible and useful as possible. So I am going to be very supportive of moving forward on Thursday with the parkland dedication fee structure, but I would ask our park staff if they want to provide us with a little bit of information about how you've addressed the audit in the two years since? >> Sarah Hensley, director of parks and recreation. I can certainly ask ricardo and randy to chime in. We did address the audit, took it very seriously and agreed with the findings of the audit. In the case of spending the funds we have 79% of those funds that we were asked to expend. And certainly we welcome the audit department to verify all of this. In looking at the reviewing, revising and

implementing the process for calculating and reviewing the fees we worked with the planning, development and review department, fiscal staff are providing electronic contracts in the Amanda database that includes the information on how much is paid, date paid and the number of dwelling units they paid for. Then we're verified three times by our staff. We have what we believe to be a fail safe process now where not just one person does it, but three people do to make sure the Numbers are matching. In regards to an actual database because that was another problem, the transparency part, which was how do citizens -- how do developers know when they've paid their money, when it's spent, where did it go? We created a website, a web

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page on our parks department web page that contains information on parkland dedication ordinance, how it works, the images of the projects that are funded and where the funds went. There are some, I must say, that we were not able to capture because we were not -- I always like to say it was bs before Sarah and br before ricardo and we don't have the knowledge and know where those funds were, but we did the best we could to capture those funds. Again, though, we have absolutely no problem. I have talked to our city auditor and I would welcome that, even an ongoing review. We want to make sure that we are doing our due diligence and spending those dollars in the most expedient way, but also the most fair way in looking at needs across the city. One of the main reasons this occurred is because the parkland dedication fee was so small. And when you only have \$650 per door and a building process that has 100 units, you're only talking about a very small amount of money that you can buy. So it doesn't buy land, doesn't even buy a playground for us. So what created our problem was the fact that we had little pots of money all over the place and we were trying to put that money together. It got us in a situation we should not have been in and now we have created a mechanism to not allow that to happen again. But that's where we are on that. We certainly appreciate and welcome -- don't takeoffs at all because we believe that we should be reviewed on a regular basis to make sure we're doing the right thing, but I would say for us this is a long time coming. It's desperately needed. We've relied on bond funding to buy land forkers 82. This will allow us to have a bigger pot of money to buy land, but also put amindies where they're needed in parts of the city when development occurs. So we welcome the audit and certainly we'll do whatever the pleasure of the council is. Did I miss anything? >> Mayor Adler: Okay.

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Ms. Gallo? >> And I just want to be very clear that this is not directed specifically to your department because I know that our office has talked about making sure that audits have been done on different funds, whether it's traffic fit mitigation, but I think that is the responsibility of this council as a pollen -- policy entity and in cooperation with the audit department to make sure that we can be responsible to the citizens as we collect money to spend. Don't take it as a direction. It's just the research on this educated us to the process and what we saw was that there was a component that was not complete. So I just want to make sure that we as policymakers and the city make sure that we complete that process that the audit department starts. >> Councilmembers, the only thing I would add is on our website we do have a quarterly report that we update with balances of our parkland dedication. The other thing that I want to say is really this October we got four million dollars that was appropriated from parkland dedication. Prior to that we only had a-million-dollar balance. So right now we're sitting at five million dollars, but that's after October 1st. So our pld funds are being spent and -- yeah. >> Mayor Adler: I had communication from some in community who wanted to know if the fee-in-lieu was an option that was discretionary on the part of the director. That's how I read this. Is that correct? >> It

is. Sarah Hensley, parks and recreation. Yes, I believe as it's currently written the fee-in-lieu is -- I don't like when it says just the director because I usually certainly involve our staff to give me a good understanding of the development. And we take a lot of factors into play, whether or not there's an opportunity -- it's in an area of need,

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high need. For instance, if it's an area of gap where we need parkland, we prefer having the dedication of land. If it's in an area where we have a large amount of parks, then we are more likely to approve the fee-in-lieu of and which would then go to the expenditure of amenities in a park that's within the radius of where the money was generated. So yes, ultimately I guess I have the authority to say we'll take the fee-in-lieu of with certainly consultation from the true experts. >> Mayor Adler: So I think the question presented was whether it was something that was happening as a matter of right so it was predictive or whether it was something which was discretionary by its very nature, and then therefore not as predictive. And so the answer to the question is that the policy is that you make the parkland dedication. The out to that would be a fee-in-lieu, but that's something that's only granted at the discretion of the director. >> That's correct. >> Mayor Adler: Further -- >> Could I add one more. I don't know if I was clear. That does not -- that remains unchanged in the existing ordinance and the new ordinance. That's not a proposed change. >> Mayor Adler: Further comment on this? Ms. Houston is your light on to talk? >> Houston: It's on to talk. Thank you, sir. I have concerns that the fee has been too low for a long time, but in the originating ordinance you can only -- you can't use it for park maintenance and operations. So what happens is that even though we acquire land, it sits vacant because we can't do anything. We don't have the money in the general fund to do

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anything with it. So maybe when we get to a point where we have a policy change that maybe some of that could be about how we could also use to build up and maintain it after it's built. Because you can acquire all the land you want, but then who is going to maintain it after it's been acquired and who is going to keep it up. So that seems to be a deficit in the model that we're using. >> One of the great thing about parkland dedication ordinances is the land that is required through parkland dedication is derived from the new residents that move here. New residents, of course, where those homes have a tax base, they're taxed at a certain level. The parks department gets a certain percent of that tax base. If you back into the formula what is required through parkland dedication is more than covered through the maintenance from those new homes that are being built. Rather than going through a bond package or something. >> Houston: You can use it to acquire the property, but you also can use the same money to maintain it and keep it up. Over the long-term. >> Over the property taxes, through the property tax generation of the homes. Does that make sense to you? Okay. So there's 9.4 acres. 9.4 acres per thousand residents to be acquired through parkland dedication. Those thousand residents would then live in 500 homes. Those 500 homes have a value of 200, \$300,000. If you use the city of Austin's tax rate on the

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property value of this and then what the parks department would get from that, which is usually parks department averages around 8.4% of that tax base, and then our operations and maintenance is about 20% of our budget, that's how much money would be generated through the homes that require that land dedication and development of the park. >> Mayor Adler: So the money that's generated from this

program does not pay for the maintenance of parks. You're just saying that maintenance is paid for out of the budget and development in the Austin generally helps contribute to our general fund which pays rent, but in answer to the question there's nothing about this that generates money for maintenance. >> Once you acquire it there's nothing out of this parkland dedication fee that will keep it maintained for those 58900 residents there are that. All that money goes back to the general revenue and portioned out. And I think that's a policy issue. >> And councilmember, sometimes in some developments we enter into a maintenance agreement. So that would be on a case-by-case basis where they're interested in keeping it up to a certain level because of expectations from their buyers. So in those cases we would enter into a maintenance agreement for that type of thing. >> Mayor Adler: But that happens outside of this. >> That's correct. I wanted to add to the predictability from the development community, they're encouraged to look at our website to see our deficiency map. If they're building in an area where it is deficient then we would meet with them ahead of time to tell them, look, more than likely we're going to be talking about land because you're in this area, you're in this zone. So there are no surprises. And that's one of the process changes that we were

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pursuing with the development community that they would not be surprised when they're ready to pay their fees that now the parks department is saying we're really wanting -- >> Mayor Adler: Before I recognize Ms. Pool, let me ask the other question I got from the community. Is it possible with an urban park based on the calculations presented that the parkland dedication could exceed the site area of the property? Could the density be such in an urban development when you multiply the number of doors through the land area that the actual dedication could be larger than the entire site area. If you could take a look at it. >> It could be, but the fee-in-lieu would be an option there. >> Mayor Adler: Could it be a rule that's adopted so that someone doesn't enter into the process, not knowing -- it's one thing to go into a process where I know what my dedication is going to be unless someone exercises discretion and we do something else, but I would hate to walk into a process where what I know to be is that I'm going to have to dedicate more of my land than I have. I don't know whether it would be a cap or a percentage or something that would address the urban area so that the rules themselves make sense in a default sense. If you could look at that and come back with a proposal for that, that would be helpful. >> Pool: Could you all explain why the fees collected cannot go toward maintenance of parks in the area where the land might be

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acquired? It could be that the council goes to then automatically directed to maintaining the parks so that the money stays within parks and open space, that category spending, but to my question. >> Absolutely, councilmember. We do have some case law on this where really is the protection of those funds to be used directly for improvements. So -- >> And improvements are not defined as maintenance. >> Correct. It's really addressing the density that's coming to that neighborhood. So you're adding an extra toilet or you're adding an extra swing for the population that's coming. If we were to use it for maintenance, then the -- the monies are really not made for that. It's really a responsibility of the general fund to take care of the maintenance, but the parkland dedication money is collected because we're -- because density is coming to that particular neighborhood so therefore improvements need to be on the ground for that new population that's moving in. >> Pool: Did you say this was in state law? >> This was case law. >> Pool: So case law is a series of levels for different things happening to use the money for. First it would be for acquisition, and if you can't acquire then it would be to make improvements to existing parks within a certain radius. And then maintaining those amenities and

improvements isn't part of that list. So my question then would be is that a legitimate addition to the list that it could be used? And if it's out of case law then that means that maybe Brent or somebody could respond to that. Just because it hasn't been litigated doesn't mean the language isn't in there. >> Mayor Adler: I'm wondering if -- it is now 11:20 if that's something you could it send to us on a

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case law because so we can end this conversation. We're going to lose people at noon and we have to have the quorum to get the executive session summary. And we pick up the parkland at the meeting on Thursday. Ms. Garza? >> Garza: If I could have two minutes I will just talk about one of the items that I pulled. It's 37, which is the pilot knob. Just a brief reminder, which was a discussion, it passed on first reading. I had concerns about the affordability factor and there was discussion that we would hopefully get on to a higher number. I just wanted as a brief update that the Numbers have not changed at all on the affordability. The developer has participated in several meetings with my office, but that number has not changed. So this was exactly one of my concerns was if it goes on first, then it will go on second, then it will go on third and then it will pass. So I just wanted an update that those Numbers have not changed at all and I would prefer that they did change. So I think that there could be more conversation between now and Thursday, but I don't know what that is. I think there's possibilities -- with discussion with the buyouts, if it's possible to buy some of those homes at a wholesale price and get some of our families moved out of that flood zone, I think that those are all ideas that I can discuss, but as of right now the affordability number hasn't changed on that mud and I could not support it on second reading. >> Mayor Adler: I'm going to go ahead and recess our meeting. We're going to go to the executive session room for the briefing. >> Gallo: Mayor, can I mention one thing? There was a question that was a policy question if we could get legal or staff or somebody to come back. There have been two requests on the parkland dedication ordinance for a postponement, one was from the builders, one was from reca. And we grant requests for postponement on zoning cases, but I think we're a

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little unclear in the process on ordinances. How would we go about understanding what the current policy is on that so that we can make sure that we have a predictable way of understanding how the requests for postponements operate in ordinances and ordinance discussions? >> Mayor Adler: Have we historically had a policy on that. >> Gallo: We don't need to have a discussion, but I needance answer from somebody that said this is what our policy has been in the past because I think it's very vague in the past and we have had a request for postponement. I think it's been emailed to all the council offices. >> I'll see if there is a policy that you've established. >> Gallo: If not I would like us to address that in the near future. >> Pool: And mayor -- >> Mayor Adler: The city council -- >> Pool: One more thing. >> Mayor Adler: Nobody let's to leave for lunch to their speaking engagement. Everybody has to go over there because we can't lose a quorum. Everybody has to go there first. Ms. Pool? >> Pool: Really quick, I wanted to advise on zoning item 57, I will be requesting first reading only. That's item 57. On Thursday. Thank you. >> Mayor Adler: The city council will go into closed session to take up an item pursuant to 551.071 of the government code. We'll discuss it item 23-2,. F 1 has been withdrawn. F 3 is not going to be addressed today. Hearing no objection, we're going to go into executive session. This meeting is recessed.

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(Mayor)

We are out of closed session. In closed session we took up and discussed legal matters related to item F2.

We adjourned that executive session. We are now back out the regular Work Session and we adjourn this meeting.

(12:53 p.m.)