



Austin City Council MINUTES

SPECIAL CALLED MEETING - DECEMBER 5, 1994
COUNCIL CHAMBERS - 4:00 P.M.

Mayor Todd called to order the meeting of the Council, noting the presence of all of the Council.

RESOLUTIONS

1. Approve a resolution prohibiting any City official or employee from accepting for filing any original application for preliminary subdivision plan approval or for site plan approval for any property within the Barton Springs Zone, as defined in Sec. 13-7-3 of the Austin City Code of 1992.
No action

(PER TRANSCRIPT FILED IN CITY CLERK'S OFFICE)

MAYOR TODD: All right. We have a quorum of the Austin City Council present to continue our meeting. Um, someone took away my posting sheet. Here it is. I got it. Thank you. Um, the, uh, does anyone have a motion on item number 1? Hearing none, let's move to item number 2. Is there a motion on item number 2?

PUBLIC HEARINGS AND APPROVAL OF ORDINANCES

2. Public Hearing and adoption of an ordinance re-adopting and amending the Composite Ordinance (Ordinance No. 911017-B) on an emergency basis.

Close public hearing on Councilmember Garcia's motion, Councilmember Reynolds' second, 5-0 vote, Mayor Pro Tem Nofziger and Councilmember Mitchell temporarily absent.

(PER TRANSCRIPT FILED IN CITY CLERK'S OFFICE)

COUNCILMEMBER GARCIA: I have a motion, Mr. Mayor.

MAYOR TODD: Councilmember Garcia for a motion.

COUNCILMEMBER GARCIA: Following our public hearing, my motion is to, uh, adopt the ordinance, re-adopting and amending the composite ordinance, on an emergency basis, and, uh, I'm sure there'll be comments on that.

COUNCILMEMBER GOODMAN: Second.

MAYOR TODD: Motion by Councilmember Garcia, seconded by Councilmember Goodman. Uh, discussion? Councilmember Garcia.

COUNCILMEMBER GARCIA: I think the issue that we're dealing with is rather complex, and it's, uh, this probably can be explained by lawyers if, uh, that is requested of the Council, but given all of the facts that we have before us, it, uh, this is the best decision at this time. At another time, another decision maybe may have been better, but for this particular go-round, uh, given what we have in the way of Judge Forbis' decision and the other issues before us, this is the best, uh, best motion--I mean, best decision that we can make at this time. Thank you, Mayor.

MAYOR TODD: Councilmember Goodman.

COUNCILMEMBER GOODMAN: In seconding the motion, I also agree with Council Member Garcia's sentiments. I would like to say that although we have reversed the order in this, I would like these amendments to now go back to the Environmental Board and Planning Commission for their review and possible recommendations. I would hope they would be able to have a special meeting, uh, in order to do so, and send us back some comments.

COUNCILMEMBER GARCIA: Mayor? Mayor?

MAYOR TODD: Councilmember Garcia.

COUNCILMEMBER GARCIA: Our City Attorney is going to read an amendment to the, uh, adoption ordinance, uh,...the ordinance re-adopting because we--the--Part 1, uh, uh, needs to be re-worded, and, uh, if I may, the city ordin--City Attorney will read that into the record.

CITY ATTORNEY ANDY MARTIN: Councilman, this is, uh, I assume this a part of your motion and...received a second, but the additional language--we need to insert a "whereas" clause before the "be it ordained by the City Council"--"by the City Council of the City Aus--City of Austin," and the whereas part would read, "Whereas there is an uncertainty as whether the provisions of the S.O.S. ordinance may be applied to development within the Barton Springs zone." That's change 1. Change 2 would be to delete Part 1 in its entirety, and renumber all the succeeding paragraphs accordingly, and then in part--what is now Part 1 was Part 2 on the version that's written in front of you, it would read as follows: "The provisions of Ordinance 911017-B, with amendments indicated therein, attached hereto is Exhibit A and incorporated herein for all purposes shall apply to the development within the Barton Springs zone, pending a final decision or resolution of cause number 92-0637 styled Jerry J. Quick v. City of Austin." And I believe that is all of the--

COUNCILMEMBER GARCIA: All right. That's acceptable.

MAYOR TODD: All right. Any other comments on the ordinance?
Councilmember Shea.

COUNCILMEMBER SHEA: I have a question about, uh, if the--a technical question for our attorney--does the adopting language that you've just read--the amendment to, uh, negate, then, the language that's on the top of page 1, which refers to--it's got a different one--ordinance number 11017-B--does anybody know the answer to that? It's the--it appears to be--is that the, uh, composite ordinance?

STAFF MEMBER: You're reading from the exhibit that's attached to the ordinance--

COUNCILMEMBER SHEA: For Exhibit A. Okay. So that--and that is the composite ordinance?

COUNCILMEMBER GARCIA: That the composite--

STAFF MEMBER: Yes. In legis--with legislative mark-up...the changes that are directed in your adopting the ordinance--

CITY ATTORNEY ANDY MARTIN: And there's one other--there's one other change also that we should note for the record on the final page. Uh, there was a Part 4 on page 27 that says the ordinance shall be effective 10 days to the date of passage. That is not the operative of, uh, language of this ordinance. This ordinance will be effective immediately if--by--if it passes by a vote of 5, uh, according to what is now Part 1, 2, 3, 4--Part 4 of the covenant ordinance, just so the general...

COUNCILMEMBER SHEA: Okay. Um, this may be a technical point, but, um, I do not take the position that is stated in the introduction to Exhibit A, uh, that the composite ordinance says it, uh, says it stands with the levels of impervious cover in it, uh, tonight, constitutes non-degradation regulations, and are we able to strike that, uh, as a portion of this document? We are amending the composite ordinance. It's included as an exhibit, uh, and I would, uh, ask the maker of the motion and the seconder to accept as friendly, uh, an amendment to strike the phrase "non-degradation" and simply say, as part of that exhibit, "an ordinance adopting regulations." I think it's important for us to, uh, particularly since we're repealing S.O.S., to not continue to restate, as part of the documents that we adopt, our position that the composite ordinance, with the levels of impervious cover currently contained in it, constitute non-degradation regulations. So, I'd ask that the maker and the seconder accept it as--

COUNCILMEMBER GARCIA: Well, I think what we can do so that we can be consistent with the...is this is "ordinance adopting, uh, provisions that prevent degradation to the water quality." That's what we said in the.... That would be a friendly amendment for me.

COUNCILMEMBER SHEA: So, change that language to preventing, uh--

COUNCILMEMBER GARCIA: Degradation.

COUNCILMEMBER SHEA: Adopting regulations to prevent degradation?

COUNCILMEMBER GARCIA: Yeah.

COUNCILMEMBER SHEA: Okay. Is that clear to the Clerk and anybody else that it needs to be clear to?

COUNCILMEMBER GARCIA: It would be an ordinance adopting, uh, regulations to prevent degradation, like we have on the..., and that would be a friendly amendment for me.

MAYOR TODD: Is that acceptable to the second?

COUNCILMEMBER GOODMAN: I'm not sure that it made a big difference, but if you're comfortable with it, okay.

COUNCILMEMBER GARCIA: Just to be consistent.

COUNCILMEMBER GOODMAN: ...is more water quality...It doesn't matter.

COUNCILMEMBER SHEA: So, it's acceptable?

COUNCILMEMBER GOODMAN: (unintelligible)

MAYOR TODD: (unintelligible)

COUNCILMEMBER REYNOLDS: Can I ask a question a minute, please?

MAYOR TODD: Councilmember Reynolds.

COUNCILMEMBER REYNOLDS: Uh, give me the--the specific part on that.

COUNCILMEMBER SHEA: It's, uh, it shows up as Page 1, uh, on the, uh, legislative draft that we got, and the very top of the page says "Exhibit A" in quotation marks, Exhibit A to ordinance number 941205-A.

COUNCILMEMBER REYNOLDS: Okay. Just a second. I--

COUNCILMEMBER SHEA: As I understand it, it's the, um, introductory language for the composite ordinance.

STAFF MEMBER: It's the old caption--

COUNCILMEMBER SHEA: The old caption to the composite--

STAFF MEMBER: --that was adopted in '91. Council Member Shea is asking the--the...of, uh, this--this ordinance.

COUNCILMEMBER REYNOLDS: I--I still need some--

COUNCILMEMBER SHEA: Mayor, I have some comments, in the meantime.

COUNCILMEMBER REYNOLDS: Go ahead.

COUNCILMEMBER SHEA: Okay. Thank you. Um, I want to say a couple of things. One is, uh, because this whole process has been so terribly confusing to everybody, including, uh, several of us on the Council, um, we attempted to try and clarify what we believed was going on, and this statement is signed by 4 members of the Council: Max Nofziger, Jackie Goodman, myself, and Gus Garcia, and I'd like to just read it into the record: "Because of the land speculators' lawsuit, the Council is facing a prospect of having virtually no water quality protection in the Barton Springs zone; and because only 4 members of Coun--because only 4 Council Members support immediate water quality protection, uh, that would provide an emergency moratorium, we're in the unfortunate position of having amendments before us which have had little public hearing in the p--have no public hearing in the Planning Commission, no review by the Environmental Board, no time for scrutiny and genuine debate. We are doing the most responsible thing we can do under the circumstances, which is plugging the loopholes in the composite ordinance and trying to make it effective immediately. We are supporting these stop-gap measures because the alternative is having no protection for our creeks, water supply, and for Barton Springs. Our support of these measures in no way lessens the need for a moratorium to provide stability, as the citizens and the Council react to the legal ruling in the S.O.S. lawsuit." And I would also like to say because our staff has repeatedly said that they could not, uh, address questions, uh, pertaining to impervious cover, in particular, by today's meeting, uh, I am asking that we direct staff to come back to us by the December 15th council meeting with any other amendments that would be necessary to strengthen the impervious cover provisions of the composite ordinance; and because we may not have more than 4 votes to adopt those necessary amendments, I believe we need to keep the moratorium in place. The moratorium itself will not begin until that December 15th council meeting. If we have the 5 votes necessary to adopt the, uh, further strengthening amendments, then the question is moot. If we don't have the necessary 5 votes to make that effective immediately, the moratorium will give us the protection that we need.

MAYOR TODD: Other councilmembers want to speak on the issue?

COUNCILMEMBER MITCHELL: I have a few comments after the vote.

MAYOR TODD: Any other comments on the, um, uh, ordinance before we take the vote? The, um, the issue that has been in front of us tonight is...one that has been in front of us for a long, long time. Uh, I think that, uh, uh, clearly, uh, it's an issue that has dominated the political landscape and, in fact, uh, many other, uh, discussion forums throughout, uh, for quite a long time. Uh, I would take great exception to the fact that we're in this difficulty because of the failure to adopt what I consider to be a moratorium that would not be in public interest and not serve us long-term. Uh, I think that we're in this because we had an ordinance, uh, that was offered up to the public, uh, and having, uh, to stand the test of a--a court, it failed. Now, I think those--that has very serious consequences for us. Con--it ha--had consequences that we have to be cognizant of. I am very uncomfortable passing an ordinance tonight that has such little time for review, uh, because I believe that the public process that we would normally go through is not one that, uh, would...an ordinance of any making, much less one of this, uh, this import. Uh, I think it's important that we understand that there is a much larger game than just a single ordinance. It is the issue of being able to retain control of water quality issues in the area immediately out--immediately outside of Austin, and we are going to need the support, not only of the courts, in seeing our way, and not feeling that we're above the court process, but we're going to need to have the support of the legislature. Whatever the outcome of the vote is tonight, it is extremely important for us to understand that we have to have friends and allies in this discussion. We have to have people from the legitimate business community and developer community who understand the importance in maintaining a quality environment in which to, uh, uh, raise families. We also have to have the support of our cities, who will be joined with us if we are a city that shows reasonable, uh, stances on issues, uh, to be able to go forward. We know--we know that the legal certainties we--uncertainties that we face in the next few months are great. We know that the political uncertainties we face in legislature are even greater. It is my hope that this vote, uh, does not divide this Council. It is my hope that we're able to go forward in a positive way, whether it's tonight or whether it's in 2 weeks, after the public process has taken place, to get the strongest supportable--the strongest supportable amendments in place, that it had the test of a public hearing, an adequate public hearing, not one that was pulled out and distributed when the hearing started, but one that's had the ability to go through the processes, go through the public process, as well as the boards and commissions; and I think to do less than that, uh, is shirking from our duty, uh, as elected officials, and I hope that the Council would join with me after this vote is taken to make sure that is done. Other comments? Call roll.

DEPUTY CITY CLERK BETTY BROWN: Mayor Pro Tem Nofziger.

MAYOR PRO-TEM NOFZIGER: Yes.

DEPUTY CITY CLERK BETTY BROWN: Councilmember Garcia.

COUNCILMEMBER GARCIA: Yes.

DEPUTY CITY CLERK BETTY BROWN: Councilmember Goodman.

COUNCILMEMBER GOODMAN: Yes.

DEPUTY CITY CLERK BETTY BROWN: Councilmember Mitchell.

COUNCILMEMBER MITCHELL: No.

DEPUTY CITY CLERK BETTY BROWN: Councilmember Reynolds.

COUNCILMEMBER REYNOLDS: Pass.

DEPUTY CITY CLERK BETTY BROWN: Councilmember Shea.

COUNCILMEMBER SHEA: Yes.

DEPUTY CITY CLERK BETTY BROWN: Mayor Todd.

MAYOR TODD: Yes.

DEPUTY CITY CLERK BETTY BROWN: Councilmember Reynolds.

COUNCILMEMBER REYNOLDS: I'll abstain.

MAYOR TODD: The, uh, vote passes on a 5-1-1 vote. We'll be back here, uh--

Ordinance 941205-A approved, 5-1-1 vote, Councilmember Mitchell voting No, Councilmember Reynolds abstaining.

RECESSED from 6:30 P.M. until 7:50 P.M. for Executive Session.

ADJOURNED at 8:15 P.M. on Councilmember Garcia's motion, Councilmember Goodman's second, 7-0 vote.

APPROVED this 15th day of December, 1994, on Councilmember Garcia's motion, Mayor Pro Tem Nofziger's second, 6-0 vote, Councilmember Goodman temporarily absent.

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