




MEMORANDUM

TO: Mayor and Council Members

FROM: Veronica Briseño
Chief Economic Recovery Officer 

DATE: January 20, 2021

SUBJECT: Update on Selection of Development Team for Former Health South Property

This memorandum summarizes the process and options available to City Council to select a real estate development team to redevelop City-owned parcels at 1215 Red River and 606 East 12th Streets (Request For Proposals (RFP) 5500 SWM3002). On December 10, 2020, City Council postponed action on this item to its January 27, 2021 meeting. As a friendly reminder, the City's Anti-Lobbying Ordinance continues to apply to this RFP until the City and selected proposer execute an Exclusive Negotiating Agreement (ENA) or 60 days after the ENA is authorized by Council. Please continue to refer all correspondence and questions regarding this item to Shawn Willett, Deputy Purchasing Officer (shawn.willett@austintexas.gov).

Background

City Council discussed the Health South RFP on December 1st, 3rd, 8th, and 10th. During the course of the discussions and meetings with staff, Council Members have posed a variety of questions. Because some time has transpired since the last public discussion, staff has consolidated a list of the questions and the status of responses as an attachment to this memo. Any outstanding questions, as well as any new questions, from Council will be answered through the formal City Council Questions and Answers (Q&A) process. Non-confidential responses will be posted within the Q&A Report for the January 27, 2021 meeting; confidential information will be shared during an Executive Session. For your reference, information pertaining to the Health South RFP is available as follows:

- **December 1, 2020 Council Work Session**
 - Item B2 provided a public briefing on the former HealthSouth RFP; the presentation is available [here](#). The presentation and discussion begin at approximately 3:26PM in the meeting's transcript or video available [here](#).
 - Item E3 was an Executive Session on this RFP.
- **December 3, 2020 Council Regular Meeting**
 - Action on Item 9 was postponed to the following week and discussed at approximately 10:06AM and 11:48AM in the transcript or video available [here](#). Item 9 requested Council Action and provided detailed information on Aspen Heights' proposal. Item 9 materials are found [here](#).
 - Item #55 was an Executive Session on this item.
- **December 8, 2020 Council Work Session**
 - My December 8th [memorandum](#) to Mayor and City Council provides detailed responses to Council's questions and areas of interest. The attachments include the December 1st

staff briefing, summaries of two other proposals, and stakeholder letters. The proposal submitted by M. Arthur Gensler Jr / 2033 Higher Education Development Foundation did not include a public information packet.

- Postponement of Item 30 to January 27, 2021 Council meeting is at approximately 12:30PM in the transcript and video posted [here](#).
- An Executive Session was conducted.
- **December 10, 2020 Council Regular Meeting**
 - The Questions and Answers [Report](#) includes staff responses to questions posed by Mayor Adler and Council Member Tovo on Item #30.
 - Postponement of Item #30 to January 27, 2021 Council meeting is at approximately 12:20PM in the transcript and video available [here](#).

In addition, the Economic Development Department (EDD) maintains a Health South project web page [here](#).

Staff Recommendation – Award the RFP to Aspen Heights

As described in the December 8, 2020 memorandum to Mayor and Council, staff recommends the Aspen Heights’ proposal based on many factors, including the following:

- Council’s desired goals as stated in [Resolution 20181004-042](#) .
- Of the proposals received, Aspen Heights’ offers the most total housing units; most total affordable units; most on-site units renting for less than 60% median family income (MFI); most on-site affordable units with two or more bedrooms; and the offer price exceeds the minimum threshold.
- Aspen Heights’ proposal offers additional community benefits and strengths, including but not limited to, affordable for-sale units, fully integrated affordable units among market-rate units, and discounted commercial space for music and arts organizations.
- Aspen Heights’ proposal does not request any City subsidies or financing which preserves precious City housing funds for other priority affordable housing projects. Additionally, the Aspen Heights’ proposal includes a development team comprised of local firms.

Staff Recommendation – Other Topics

Based on the discussion and questions from City Council, it appears there is interest regarding additional, new community benefits, developing a Public Input portal, and offering federal and/or local housing funds to expand affordability. To require these elements at this stage compromises the standard City procurement process as these elements were not included within the original RFP, which followed Council Resolution 20181004-042. As a note, public comments can be received, and are encouraged at the January 27th Council meeting for this agenda item. More information on this is provided below.

Staff Recommendation – Do Not Conduct a Best and Final Offer Process

In consultation with Legal and Purchasing, EDD staff recommends against issuing a “Best and Final Offer (BAFO)” call to all proposers for the following reasons:

- Allowing the four proposers to modify their proposals – known as a “Best and Final Offer” – was not outlined in the RFP.
- The Health South RFP outlined an evaluation process that included multiple rounds of discussions with proposers with the option to revise the staff panel’s evaluations of proposals afterwards. Staff took these steps prior to making its selection.

- Scoring of proposals and other information have been publicized as part of the staff recommendation presented to City Council for consideration of award.
- While this step is allowed under Local Government Code 252.042(b), the City's business practice for using BAFO is to do so prior to staff selection and recommendation to City Council. It is not Purchasing's practice to issue a BAFO after the contents of one proposal has been made public.
- Conducting the BAFO step at this stage would set a new precedent for the City's procurement process.
- As required by state statute, the RFP clearly establishes a process for selection, and any changes to the process and/or mandatory new requirements would likely find the City out of compliance with State law and City procurement practices.
- Lastly, staff had requested, and Aspen Heights acquiesced to, the ability to release information at Council meetings that was originally marked confidential in Aspen Heights' proposal. That information is now known by the other proposers. In order to run a fair BAFO process, staff would have to require a reciprocal release of information from the other proposers or disqualify them from submitting a BAFO.
- Also, significant changes to the process and/or mandatory new requirements may undermine the City's credibility with its procurement practices. At this time, EDD has open solicitations for the redevelopment of City property at its St. John's and Ryan Drive sites. Significant deviation from current City practices may negatively impact the quality and competitiveness of responses received on future City solicitations.

Staff Recommendation – Stakeholder Engagement and Public Comment Process

The public is invited to speak and may sign up to speak on the matter at Council's January 27th meeting. The City Clerk has posted instructions on how to do so [here](#). Detailed information on the project is also available on EDD's [website](#). Based on the legal and business practices stated, a dedicated web portal or process to solicit public feedback or input on proposals cannot be introduced at this time because it was not included in the RFP. However, staff proposes the following:

- Both EDD and Housing and Planning Department are notifying stakeholders, boards, and commissions of the public information available on the project website and the opportunity to comment on this project at the January 27 City Council meeting.
- EDD staff recommends incorporating a robust public comment process on the terms and conditions of a Master Development Agreement (MDA) prior to returning to City Council for authority to execute.

Next Steps

At the January 27, 2021 City Council meeting, staff needs direction on the following:

- **Whether the tracts should be sold or leased.**
- **A rank order of additional community benefits desired.** City Council may direct staff to negotiate changes to the community benefits in Aspen Heights' proposal in exchange for adjustments to their financial offer and other terms. If so, staff will need specific direction on these additional community benefits as well as a rank order that establishes the City Council's consensus on priorities and at what cost. Since Aspen Heights' financial proposal exceeds the minimum threshold, the excess revenue may be negotiated for additional community benefits in the project and/or be collected in the General Fund for City Council to allocate during the annual City budget process. As a reminder, any new terms that are mandatory could put the City out of compliance with state purchasing laws and City business practices.

- **New Priorities.** If City Council decides its priorities for redevelopment of the former Health South site have changed significantly since Resolution 20181004-042, then staff advises making no award under RFP 5500 SMW3002, cancelling the RFP, and issuing a new solicitation based on City Council's new priorities established in a new Council resolution.

Attachment - List of Council questions on RFP 5500 SMW3002

XC:

Spencer Cronk, City Manager
Nuria Rivera-Vandermyde, Deputy City Manager
J. Rodney Gonzales, Assistant City Manager
Sylvia Holt Rabb, Acting Director, Economic Development Department
James Scarboro, Purchasing Officer
Shawn Willett, Deputy Purchasing Officer
Edward Campos, Interim Director, Small & Minority Resources Department
Rolando Fernandez, Capital Contracting Officer
Susana Carbajal, Assistant Director, Economic Development Department
Christine Maguire, Redevelopment Division Manager
Alex Gale, Real Estate Officer
Rosie Truelove, Director, Housing and Planning

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Item #	TOPIC	COUNCIL REQUEST	AUTHOR	SOURCE	STAFF RESPONSE
1	AE DISTRICT CHILLER PLANT	Provide a detailed analysis of economic and use impacts of including AE's district cooling plant facility in this project.	Tovo	Council message board 12/10/20	12/8/20 Ex Session
2	AE DISTRICT CHILLER PLANT	Provide information about the funding available for land costs associated with the AE district cooling plant facility and the Downtown Austin Community Court.	Tovo	Council message board 12/10/20	PENDING
3	AE DISTRICT CHILLER PLANT	20. Please provide additional information and context, including the timeframe, for Austin Energy's need of a district cooling facility in the area. Please indicate which proposals accommodate this need. What financial value would the City ascribe to the provision of that facility?	Tovo	12/10 Council Q&A Report	12/8/20 Ex Session
4	AFFORDABLE HOUSING	1 & 5. How can the city maximize income restricted housing in Austin, including in the downtown area, and especially using city-owned land to do this?	Mayor	12/10 Council Q&A Report	12/10 Council Q&A Report

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5	AFFORDABLE HOUSING	2 & 6. Please provide a means to evaluate whether the city should invest in additional units on this site, or if there is a cash value to the City that can be better invested at another location, potentially nearby, to get more total units or deeper affordability?	Mayor	12/10 Council Q&A Report	12/10 Council Q&A Report
6	AFFORDABLE HOUSING	3 & 7. From a housing policy perspective, is it better for residents and children of all financial strata to be in a development with a mix of various income levels? And what's the optimum mix?	Mayor	12/10 Council Q&A Report	12/10 Council Q&A Report
7	AFFORDABLE HOUSING	4 & 8. What is the optimum percentage of income restricted and market units that is best and we should be trying to achieve in any given project?	Mayor	12/10 Council Q&A Report	12/10 Council Q&A Report
8	AFFORDABLE HOUSING	More affordable housing to such an extent that affordable housing is the site's primary use, be it through a 9% Low Income Housing Tax Credit application or a General Obligation bond subsidy if necessary.	Tovo	Council message board 12/10/20	See 12/8/20 Briseño memo to Mayor/Council; additional information pending

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9	AFFORDABLE HOUSING	3. To the greatest extent legally feasible, please provide a detailed breakdown of each proposal as it relates to housing. Please provide a breakdown of each proposal as it relates to market housing units vs. affordable housing units. Then, within each proposal please provide the total number of proposed units (market and affordable combined), the total number market rate units and total number of proposed affordable units for each proposal. Then, please provide how many affordable units are rental vs. ownership and please provide the unit mix (bedroom count) for each category of rental and ownership affordable units.	Tovo	12/10 Council Q&A Report;	12/1/20 & 12/8/20 Ex Sessions and Council's confidential Sharepoint site
10	AFFORDABLE HOUSING	4. Please provide information about how the amenities contemplated by each proposal are intended to be utilized by households residing in the income-restricted homes.	Tovo	12/10 Council Q&A Report; 12/8/20 Ex Session	12/1/20 & 12/8/20 Ex Sessions and Council's confidential Sharepoint site

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Item #	TOPIC	COUNCIL REQUEST	AUTHOR	SOURCE	STAFF RESPONSE
11	AFFORDABLE HOUSING	13. Please describe in detail what affordable housing each developer has constructed in the Austin area.	Tovo	12/10 Council Q&A Report	12/10 Council Q&A Report
12	AFFORDABLE HOUSING	15. What are the affordability terms for each of the proposals?	Tovo	12/10 Council Q&A Report	12/10 Council Q&A Report; 12/8/20 Ex Session
13	AFFORDABLE HOUSING	16. Will the selected developer be required to accept housing voucher holders?	Tovo	12/10 Council Q&A Report	12/10 Council Q&A Report

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14	AFFORDABLE HOUSING	11. Does staff have a recommendation on whether we should use this asset to generate revenue or resources that we could apply to permanent supportive housing so that the use of this public asset could help us house some of the people downtown that are otherwise living on our streets and in tents?	Mayor	12/10 Council Q&A Report	12/10 Council Q&A Report
15	AFFORDABLE HOUSING	Require an affordable housing term length of 99 years for rental and ownership.	Tovo	Council message board 12/10/20	PENDING
16	AFFORDABLE HOUSING	Alter the unit makeup of the affordable units to reflect a significant shift from one-bedroom and studio homes to two- and three-bedroom homes to align with recommendations from the 2008 Families with Children Task Force.	Tovo	Council message board 12/10/20	PENDING
17	AFFORDABLE HOUSING	Include a "Right of First Refusal" provision for the City of Austin that would be enacted upon expiration of the affordability terms or if the affordable rental homes covert to a condominium use.	Tovo	Council message board 12/10/20	PENDING
18	AFFORDABLE HOUSING	Require source of income non-discrimination and the acceptance of Housing Choice Vouchers, the City of Austin's local housing vouchers, or other rental subsidies for the affordable rental homes.	Tovo	Council message board 12/10/20	PENDING

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19	AFFORDABLE HOUSING	Designate a certain percentage of the income-restricted affordable rental homes to be reserved for voucher holders and Continuum of Care units.	Tovo, Kitchen	Council message board 12/10/20; Meeting with Briseno, Trulove & Carbajal 12/17/20	PENDING
20	AFFORDABLE HOUSING	For the reasons outlined in University of Texas School of Law Clinic Entrepreneurship and Community Development Clinic November 2020 report, "Public Facility Corporations and the Section 303.042(f) Tax Break for Apartment Developments," the rent charged (including a utility allowance) in the affordable rental units shall not exceed 30% of a household's income at 60% MFI or 50% MFI income levels and the income restrictions (and rent restrictions) shall be adjusted for household size under HUD guidelines. https://law.utexas.edu/wp-content/uploa ... Report.pdf	Tovo	Council message board 12/10/20	PENDING
21	AFFORDABLE HOUSING	Ensure the inclusion of our current policy, in which the sale price of the affordable homes must be no more than 3 times the household's annual income (or 3.5 times the household's income if someone in the household has completed approved homebuyer counseling or education). Ownership units must also subject to an equity cap, where the homeowner's equity can increase up to 2 percent per year for 30 years (at which point no additional equity can be earned). This allows the homeowner to gain some appreciation at resale, while also preserving the affordability of the home for future income-eligible homebuyers.	Tovo	Council message board 12/10/20	PENDING

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Item #	TOPIC	COUNCIL REQUEST	AUTHOR	SOURCE	STAFF RESPONSE
22	BUILDING DESIGN / CONSTRUCTION	Achieve LEED Gold rating or 4-star Green Building standards.	Tovo	Council message board 12/10/20	12/1/20 Public Briefing & Aspen Heights' posted public info packet 12/3/20 Item#9
23	BUILDING DESIGN / CONSTRUCTION	List any waivers or approvals required to execute development as proposed.	Tovo	Council message board 12/10/20	PENDING
24	BUILDING DESIGN / CONSTRUCTION	Include a study by a qualified acoustical consultant documenting current sound conditions in the area and prescribing a plan for construction and design solutions to minimize sound impact to residential portions of the redevelopment not only for any contemplated venue uses within the project, but also for amplified sound from the adjacent Waterloo Park.	Tovo	Council message board 12/10/20	PENDING
25	BUILDING DESIGN /CONSTRUCTION	2. To the greatest extent legally feasible, please provide a detailed breakdown of each applicant's proposal. Please provide the details surrounding each proposal's ratio of uses by square footage – for instance, Proposal #1 - % office use, % residential use, % entertainment use, etc.	Tovo	12/10 Council Q&A Report	12/10 Council Q&A Report; 12/1/20 & 12/8/20 Ex Sessions

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26	BUILDING DESIGN /CONSTRUCTION	17. Please provide additional details about the parking specifications in each proposal. If parking is provided in the proposal(s), how many above-ground floors will be devoted to that purpose and in which building(s)?	Tovo	12/10 Council Q&A Report	12/10 Council Q&A Report; 12/8/20 Ex Session
27	COMMERCIAL USE	Explore the inclusion of on-site high-quality affordable childcare as a use within the proposal and return to Council detailing its feasibility and options for inclusion in the negotiation for the master development contract.	Tovo	Council message board 12/10/20	PENDING
28	COMMERCIAL USE	Negotiate inclusion of city uses within this office space, including the Downtown Austin Community Court.	Tovo	Council message board 12/10/20	PENDING
29	COMMERCIAL USE	Provide information about what ways the commercial space at the HealthSouth redevelopment could help further the City's goal to implement a portfolio approach to city real estate.	Tovo	Council message board 12/10/20	PENDING
30	COMMERCIAL USE	Provide an analysis of how creating office space for the City at HealthSouth could open up possibilities for more affordable housing at One Texas Center.	Tovo	Council message board 12/10/20	PENDING

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31	COMMERCIAL USES	9. Has the tract been assessed for the relocation of the Downtown Austin Community Court? Please describe this assessment and detail how this could be utilized within the office / commercial uses within each of the four proposals.	Tovo	12/10 Council Q&A Report	12/10 Council Q&A Report
32	COMMERCIAL USES	11. Should the Council select a proposal that includes a music / entertainment venue on-site, please detail how noise mitigation would be addressed for the residents, as well as what resources the City intends to allocate toward enforcing sound violations.	Tovo	12/10 Council Q&A Report	12/10 Council Q&A Report
33	COMMERCIAL USES	19. Do any of the proposals include pools / aquatic facilities?	Tovo	12/10 Council Q&A Report	12/10 Council Q&A Report; 12/8/20 Ex Session
34	COMMERCIAL USES	9. How can uses such as childcare, live music venues for nearby legacy venue operators, and the Downtown Community Court be explored for consideration at this site?	Mayor	12/10 Council Q&A Report	12/10 Council Q&A Report
35	COMMERCIAL USE	Require the local retail / commercial / office components of the proposal to include the City of Austin's living wage standard, including a mechanism to ensure that these wages mirror the City of Austin's living wage as it increases in future years.	Tovo, Casar	Council message board 12/10/20 & public meeting	PENDING
36	COMMERCIAL USE	Craft agreement to ensure commercial tenants will be independent, local merchants.	Tovo	Council message board 12/10/20	PENDING

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37	FINANCIAL	5. Please provide responses from each of the applicants as to how their pro forma and financing strategies may change now that the Red River realignment revenue requirement in the RFP is no longer required.	Tovo	12/10 Council Q&A Report	12/8/20 Ex Session; Briseño memo to Mayor/Council on 12/8/20.
39	FINANCIAL	7. Please describe the contemplated lease arrangement in terms of phasing of payments and plans for the City having an equity-stake in the revenues generated from any commercial activity on the site.	Tovo	12/10 Council Q&A Report; 12/8/20 Ex Session	PENDING
40	FINANCIAL	14. The Request for Proposals included a revenue requirement of \$8.7 million for acquisition costs. The purchase price for this tract was \$6.5 million. Has the city issued debt for this project and begun accruing interest? Please detail what expenses account for the difference between the \$6.5 million and the \$8.7 million.	Tovo	12/10 Council Q&A Report	12/10 Council Q&A Report; 12/8/20 Ex Session
41	FINANCIAL	Estimate the amount of property tax revenue that could flow to the Affordable Housing Trust Fund as a result of taxable uses on this site.	Tovo	Council message board 12/10/20	12/8/20 Ex Session
42	FINANCIAL	Provide independent analysis of financial qualifications of developer in writing	Kitchen	12/17/20 meeting with Brisenno, Trulove, Carbajal	See Confidential Sharepoint for City Council

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43	FINANCIAL	Similar to other City of Austin master development agreements, a provision that allows for profit-sharing for the City beyond a certain internal rate of return once costs are covered.	Tovo	Council message board 12/10/20	PENDING
44	FINANCIAL	Provide information about what real estate costs the City would expect to incur if the DACC and the AE district cooling plant facility are located elsewhere in the Downtown area.	Tovo	Council message board 12/10/20	PENDING
45	PROCESS	Ensure that, at a minimum, the Finance Department, Office of Real Estate, Parks and Recreation Department, and Housing and Planning are deeply involved and engaged in the negotiation of the terms of the Master Development Agreement.	Tovo	Council message board 12/10/20	PENDING
46	PROCESS	Provide information regarding how this project might be managed by the Austin Economic Development Corporation to ensure maximum community benefits.	Tovo	Council message board 12/10/20	See 12/10/20 Council Q&A Report #12
47	PROCESS	City Manager is directed to return to Council at least eight weeks prior to the Recommendation for Council Action as it relates to the execution of the agreement to detail their findings	Tovo	Council message board 12/10/20	PENDING
48	PROCESS	8. Which staff and which departments will be involved in the negotiation of the Master Development Agreement? Which staff/departments have been involved in negotiation of other public/private redevelopments on city-owned land, such as McKalla Place, Seaholm, Green Treatment Plant, and the new COA Planning and Development Center?	Tovo	12/10 Council Q&A Report	12/10 Council Q&A Report

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49	PROCESS	Staff to return for Council approval of ENA (Jan 27 to grant authority only to to negotiate, not execute)	Kitchen	12/17/20 meeting with Briseno, Trulove, Carbajal	PENDING
50	PROCESS	1. Please provide the rationale for why the City's real estate portfolio consultant, CBRE, recommended that the City switch from an RFI to an RFP for the HealthSouth tract.	Tovo	12/10 Council Q&A Report	12/10 Council Q&A Report
51	PROCESS	10. Please detail procedurally how Council can provide direction in the negotiations of the contract to realize different community uses on the tract, such as an on-site childcare facility that could be open to both residents and the public.	Tovo	12/10 Council Q&A Report	12/10 Council Q&A Report
52	PROCESS	12. Given that Council has now created an Economic Development Corporation with a scope that allows the redevelopment of city-owned parcels to achieve maximum community benefits, have staff considered what role the EDC might play with regard to the redevelopment of Health South and how that would impact affordable housing and community benefits?	Tovo	12/10 Council Q&A Report	12/10 Council Q&A Report

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53	PROCESS	18. Who from the City of Austin served on the interview team, and what questions were asked of the applicants?	Tovo	12/10 Council Q&A Report	12/10 Council Q&A Report; 12/8/20 Ex Session
54	PUBLIC COMMENT	Host at least one public session prior to returning to Council to provide information and receive feedback on the proposal and project terms, in a manner similar to public discussion and engagement opportunities at the Seaholm Intake Building and other public projects of this nature.	Tovo	Council message board 12/10/20	PENDING
55	PUBLIC COMMENT	Conduct briefings at the Community Development Commission and Design Commission and provide these Commissions the opportunity to give feedback on the proposed terms of the Master Development Agreement prior to its return to Council.	Tovo	Council message board 12/10/20	PENDING
56	PUBLIC COMMENT	Allow public to provide input on proposal(s) prior to Council action on January 27	Kitchen	12/17/20 meeting with Briseno, Trulove, Carbajal	PENDING
57	PUBLIC COMMENT	10. What does the consortium and planning group for the Innovation Zone think about the use of this tract and how it fits into the dynamics of the larger area?	Mayor	12/10 Council Q&A Report	12/10 Council Q&A Report

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58	RECREATION / PARKS	Require that members of the public be able to access the viewing deck through a means other than the proposed restaurant.	Tovo	Council message board 12/10/20	PENDING
59	RECREATION / PARKS	Codify the commitment that park / green space be fully accessible to the public and ensure that the developer provides and maintains obvious, discernible street-level signage in English and Spanish to that effect.	Tovo	Council message board 12/10/20	PENDING
60	RECREATION / PARKS	Require that any pool or aquatic amenity be fully accessible to the public at no charge. Any such facility should be included on the aforementioned signage.	Tovo	Council message board 12/10/20	PENDING
61	RECREATION / PARKS	Specify that costs for maintaining the park and any aquatic facility will not be the responsibility of the city.	Tovo	Council message board 12/10/20	PENDING