

Judicial Committee Meeting Transcript – 10/11/2017

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>> Flannigan: I'm going to call to order the judicial committee. We have a quorum present, in fact we have the full committee present. It is 3:03 P.M. November 6, 2017. I do want to begin the meeting today with a moment of silence. There have been some very disturbing tragedies in our nation recently, even in our state, in our community, and in my office. My constituent services director passed away over the weekend. We're wearing purple ribbons on our badges all week. We'll be having a memorial for her on Sunday, more details coming, but I want to have a moment of silence for all the tragedies here and across the state. Thank you. We'll now take up the first agenda item. Do we have any speakers who would like to speak in citizens communication? Anybody want to speak? No? All right. We'll jump right to item number 2, we're already ten minutes ahead. I love it. We'll have a briefing on the municipal court and it will help preface our conversation about how we move forward. We have a speaker? Oh, someone changed their mind. I shouldn't have said we were ahead. That's my fault. >> Sorry about that. I couldn't find the committee on the screen. Yeah, thank you, chair, members, my name is Elly, I'm a staff attorney at the Texas [indiscernible] Project. I wanted to speak a little

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bit. We have been representing people caught up in the municipal court system for the past three years, and through that representation we've seen that there are a few judges that we think don't have the right demeanor and who have violated both the Texas state law and the U.S. Constitution when they're jailing people who can't afford to pay their tickets. And we are currently collecting data and client motions and information, we're happy to share that information once we're done compiling it and hope you would consider those factors once we have that compiled. But under article 45.046 of the Texas code of criminal procedure, municipal judges are required to inquire into ability to pay and community

service without undue hardship before allowed to jail somebody for unpaid traffic tickets. We've seen there are a few judges who not only will ask these questions but silence people who will try to tell their situation and we have examples of that and we have some data and, like I said, we just hope that you would consider that and we'd like to share it. Thank you. >> Casar: Thanks and coming for speaking today. I recognize some of the information you all might be putting together may just be things that occurred in the courtroom that are temperament wise and of course we're happy to take information from anybody on a case can -- important evidence can contain information but is some of the data you're putting together available in the public record? I reason I ask you that question is I imagine that our staff might be compiling information available in the public record as well, and would just be interested in figuring out how we best coordinate the work being done by people in the community and people on the city staff to make sure they

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aren't doubling up work or making sure we're not getting competing data sets. Are y'all putting together stuff that is already available in the public word? >> A lot of it is stuff we've got from public incentivizing, we'd love to coordinate with your staff. Some of it is public information in the sense it's motions, which are public, so there's declarations from our clients, but, yeah, some of it is just information we've gotten through open records requests about which judges are jailing people the most and things like that. >> Casar: If you wouldn't mind I think it might be helpful to the committee, we might discuss this more when we get into the process section, I think we're going to try to figure out the most standard way of evaluating folks, and if you could let us -- would be kind enough to let us know what your process is, then we can compare that to the process the staff might be undertaking and make a decision from there. >> We would like to do that, thank you. >> Casar: Thank you. >> Vice chair Casar. >> Flannigan: Thank you. Please make sure you give your name to the clerk so we have that for the record and my chief of staff, Marty, can be a point of contact for you to get that information for the committee. >> Thank you. >> Flannigan: Thank you. >> Appreciate that. >> Flannigan: Thank you. Any other speakers that didn't get to sign up? Okay. Now item number 2, we have a briefing on the court. If you would like to come up and give us that briefing. >> Good afternoon, my name is Mary Jane and I am the court clerk for the Austin municipal court. I'm here this afternoon to give you a brief overview of municipal court operations and a proposal for the reappointment process. I think that we're -- there we go. Both Austin municipal court and downtown Austin community court are judicial branch of the city of Austin government. We have jurisdiction over class C misdemeanor of state law and city ordinance and also certain civil

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violations. We have four locations, three of them are municipal court, one is our downtown location, we have a substation north and one in the south and then our downtown community court is also located downtown. We have about 175 and a half employees and we process approximately 330,000 new cases per year. To outline court operations with council's strategic outcomes there are four major areas that I think that we fit into. One is government that works, and that is we do that by ensuring that we have knowledgeable and qualified staff to make sure that we're providing the most positive experience to individuals who come into contact with our court. It is important that they're knowledgeable and highly qualified to ensure that defendants' due process rights aren't violated and outcomes are good even though results may be less than desirable. We also provide impartial and timely resolutions to matters before the court. We're incredibly fast in trials, we have full-time judges on the bench everyday, walk-in dockets so typically when individuals come in it's a 1-stop resolution where they can take care of everything on the same day unless they are contesting their violation. Safety and health. Court operations basically -- the overarching goal of court is to provide a fair and impartial format for individuals to answer charges that have been filed against them.

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We are tasked with enforcing court orders to ensure that individuals are held accountable for their actions. However, we also provide resources and tools to help them do that. Downtown community court engages in intensive case management practices which are geared towards providing resources to individuals to address substance abuse, mental and health -- mental and physical health disabilities, to ensure those people are becoming permanently stabilized and into permanent housing and becoming productive members of society. Mobility. Court over the last couple years has been engaging in community outreach, trying to tailor court services outside the court environment because we do realize that coming to court is not always easy. It's hard to get to downtown. In addition there's a large level of fear with that environment that many people are resistant to go into. So this past year we did one amnesty and we went into local libraries throughout the city. We are looking at -- already implemented several off-site youth services classes and are looking at expanding our services at the substations so that individuals can have trial services at those locations rather than only downtown. Economic opportunity and affordability. We support this initiative by offering statutorily required alternative sentencing. We of course want to make sure that we hold people accountable for their actions, but we are responsible for making sure that we have processes in place to ensure they can do that arbitration such as community service or deferred disposition to help keep convictions off records. Again, dacc does a good job with restorative justice to ensure people are getting the resources they need to get back on track in their lives.

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So the affordability comes into it, that weekend that not everyone can afford to meet the requirements of the court orders, therefore, there's options for them to ensure that they can do that without being negatively impacted. All right. So the rest of this presentation will be on the proposed process for the evaluation of the Austin municipal court judges. And this does include judge Michael coffee, who is downtown community court judge. The responsibilities of the judges, they do a lot. It's not just traffic court. Duties at court include adjudicating all class C misdemeanors, handling all appearance dockets, which include bench trials and trials by jury. We have walk-in docket, as I mentioned earlier. Four days a week, where people will come in to see a judge without having to have an appointment. The judges perform indigence determinations, review pretrial motions, assist detectives, attorneys and ploughs curious as matters arise and are responsible for maintaining their electronic cues assigned to them to maintain cases and documents that have to be signed. Our judges serve as magistrates for Travis county. They work the central booking facility 24 hours a day, seven days a week, 365 days a year and most other jurisdictions these duties are performed by a district or county judges. Part of their duties there are to inform defendant that are in custody of their constitutional rights. They review probable cause affidavits and search warrants for all range of higher charges, everything from dwis to capital murder. They set bail amounts and bond conditions on all levels of criminal charges. Again, it doesn't matter if

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it's speeding or murder charge. They review requests for release on personal bond and they issue emergency protective orders in domestic violence cases. Our judges are some of the most qualified judges in the state. They have many years of experience, of being licensed as Texas attorneys, and most of the constituents run [indiscernible] To ask for advice. State and local requirements to be a municipal judge. Austin city charter requires all of our judges to be licensed attorney in good standing. They have to have two or more years experience in the practice of law, and they must reside within the Austin city limits for two years prior to their appointments. In addition, the local government code requires judges to be residents of Texas and U.S. Citizens. Our current bench. We have eight full-time judges, and these do include our overnight central booking magistrates. We have one presiding judge and one community court judge. We also have 14 substitute judges, which are part-time and work as needed to fill in for shifts when judges are on vacation or ill. And a while that might sound like a lot it still sometimes can be a challenge to fill in last-minute vacancies. So who hires the judge? According Austin city charter article 6-2 Austin city council has the sole authority to appoint the judges. Appointment terms are every four years, and the council cannot remove judges midterm. Judges may only be removed for cause or disability as defined in the state constitution.

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Evaluation, under the Austin city charter the presiding judge of the municipal court is tasked with evaluating the judiciary twice a year, each four-year term. Generally this is done after the first two years. Then more thoroughly at the end of term. These evaluations are presented to council to assist with the reappointment process, and it has to be an executive session to comport with code of judicial conduct. It's important to note that there is no statutory mandated method of performing alienses at the city or state level. We've done quite a bit of research on this, and every agency does it just a little bit differently. Which brings us to the past evaluation methods and talking with judges who have been here for many years. It doesn't appear that this has ever been done the same way twice. It has generally involved stakeholder surveys that are sent to certain groups who work closely with the judges. There's also a recruitment and interview process for potential judges when vacancies become available. Evaluations from the presiding judge and -- evaluations are from the presiding judge, an evaluation of the presiding judge must be held in executive session. And the judicial committee is the one who recommends a slate of judges to the full council. So we are proposing a two-step process. The first step in that would be determine the retention of the current judges. After doing that, if there are any vacancies or any vacancies come up, then the council should go through a process where an inclusive recruitment would be conducted, stakeholder panel and councilmembers would conduct interviews, and then the judicial committee would

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make recommendations for the appointments to the full council. Actions that we have completed to date. About two years ago midterm surveys were conducted by the presiding judge. This year I believe it was about maybe July we did end of term surveys. This was a recommendation from New Mexico judicial performance commission. We sent surveys to stakeholder includes including detectives, court clerks, jail officials, prosecutors, youth services, supervisors and managers that work closely with the judges. All of the judges had the opportunity to see both their midterm and their end of term surveys. And the presiding judge and downtown community court judge were also included in these surveys. Like all the other judges. This year, the judges also had the opportunity to participate in a self-survey, and as far as we can tell that's never been done before. The presiding judge also has a compilation of other related court documents to provide to the council to help inform their decisions. Statistics on jail remands, as requested by council ordinance relating to the fairness for indigent defendants can be provided as requested. So our suggested course of action is that I will provide the judicial committee packets including the surveys, self-evaluations, letters of intent and any other pertinent documentation for each municipal court judge. The judicial committee may receive evaluations and/or recommendations from the presiding judge in executive session.

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Judicial committee will evaluate the presiding judge and downtown community court judge in a manner similar to the council's evaluation for all other council appointees. The judicial committee would then determine who will be retained and presents this to the full council via an appointment ordinance, and if the council determines that it is appropriate to fill vacancies or add new judges that would be performed in a separate recruiting and hiring process. Time consideration. So the current term ends -- >> Flannigan: One question. >> Casar: I have one question on that last slide. So the presiding judge and the dat judge would we be -- are you suggesting here that you're suggesting a course of action is for their process to be on both a separate time line and using separate documents as the other judges? Could you just explain what's different and what's the same on how you propose -- and I understand it's just your suggested course of action, but can you help me understand the difference? >> I'm suggesting the same time line. I think it has to be the same time line, but a more formal process, such as what you do with other council appointees, where the individuals have an opportunity to outline their goals and objective and align the strategic outcomes and the council can set goals and objective if they choose to do that. And it's also an opportunity for those individuals to have a face-to-face communication with you to discuss what expectations are during the course of their next term. >> Casar: Okay. That's helpful. So we would have additional -- essentially additional work that we would do with these two appointees given that they're higher level set by -- instead of filling out the paperwork like we do with other appointees. >> Yes, that is the recommendation. >> Casar: Because they also operate as judges would we have the same information related to their work as

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judges as we do with the other candidates? >> We do have the same information, yes. Regular full-time judges, sometimes perform different duties than, say, the presiding judge because she is more in an administrative function so you're not going to see her overseeing as many trials or jail remands or anything like that because she's more on the administrative side. >> Casar: I don't think we'll ding her for that. I'm just interested to know how we manage their administrative duties and then also the fact that they both also hear cases. So it sounds like what you're suggesting is that we just go a little bit more in depth with each of them but that we would have information related to both? >> Yes, sir. >> Casar: Thank you. >> Flannigan: Councilmember pool. >> Pool: Then as far as the time line goes, according to this we would be evaluating the presiding judge and the dat judge and the presiding judge and I suppose the dat judge who does the evaluations for the judges under them. Is that right? We're not going to be evaluating them, although we do have some say on whether they get a reappointment? >> I don't believe that that is what has happened in the past, but that is the current recommendation. >> Pool: Gotcha. >> [Off mic] >> Flannigan: You want to get on the microphone, please? >> So I spoke with judge Mckee and I also talked with several of the judges who have been here for quite some time, and she said

that past judicial committees would ask her opinion or would ask for evaluations and then would do whatever they felt was appropriate. >> Flannigan: Thank you, judge. >> I guess the point that I was trying to distinguish, this panel and the council are not doing the evaluations necessarily of

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all the other judges, only of the presiding judge and the dat judge, the two presiding judges. >> Flannigan: I think actually we're going to have to debate whether or not -- I think it's an open question for us to decide. >> I agree. >> Flannigan: Please continue. >> Pool: Thanks. >> All right. Time lines, again, the current term ends on December 31 of this year. If no action is taken, all sitting judges automatically are renewed for 91 days, which will take us out to April 21 of 2018. If no action is taken by April 21 of 2018 all judges are reappointed until the end of their next four-year term. >> Casar: That final bullet point about April 1 is that also set by state law and local government code? >> Yes, local government code section 29.005. >> Casar: Applies to both, okay, thank you. >> Before I go on to the next slide, are there any other questions about the reappointment process recommendation? All right. So no municipal court presentation would be complete without a discussion on our building. And although I'm smiling, this is very, very serious. As you can see, our second floor, councilmember is the right picture, our second floor hallway serves as a waiting area for defendants, jurors, and witnesses, as well as prosecutor work space and attorney client consultation room. Which is -- that's two courtrooms there and the hallway is not a very big space and it's not uncommon to see 30-50 people crammed in there overhearing information that they are not privy to. Picture on the left is our nice safe stairwell leading to our conference and training room used almost all day, everyday. We're not joking about the handrail. It's steep and slippery and at a weird angle so those steps are pretty tricky and

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of course our basement room, no other city department has one quite like it, we're hanging pipes on to the ceiling because we can't drill into the asbestos-filled walls or floors. And we've got the physical plant with the screw-in fuses, not commonly used in construction after the early 1960s. And then over to the left, again, is our training room, and you can see the unusual declarations from years of waller creek overflowing and flooding our building and we have been told and promised that the broken tiles do not contain ambient asbestos and that the frequent headaches and science and cold issues are not caused by mold. One more thing to add to this. This is going to on as we speak. Every floor in our building right now, every bathroom is flooded, including our side and A.P.D. Side with what appears to be sewer water. It's coming up in the clerk's area, in the carpet. Running down the walls. That's what's going on today. We haven't had a high level of efficacy groups supporting our building, and our goal is to get into

a new building so my purpose here today in talking about this is to really ask you for help. We really need some people who are going to help us move this to the next level and get it off center. It's -- I can't stress you to enough the seriousness of it. It's not funny, and it's not cute, and it's not just that it's an ugly building. It's seriously an unsafe building for not only our staff but for the citizens who have no choice but to come into contact with it. Thank you. >> Pool: I think there's also some concerns about -- you mentioned a separation of the witnesses and the people who are in court -- >> Correct. >> Pool: They also may be at

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risk. >> Absolutely. >> Pool: Similar to what we understand is up at the Travis county courthouse, where there isn't sufficient separation from defendants and their accusers. I would like to ask the chair to put on an agenda item conversation with our real estate office and our facilities folks. I had -- after I did a tour of your building about a year ago and saw how bad it is, I had a conversation with the folks who were doing facilities, and this was supposed to be added on to the list of the larger overarching facilities work that the city is doing. I don't know if it's still connected up with the police department relocation, but the court itself -- and that's one reason why I wanted to be on this committee, was to advocate for and press this issue. It really has -- is at a critical point, and it's just not right and it's just not fair for everybody. Anybody who is in that building to have to come to work under those conditions. So we can take that issue up maybe at a future -- at our next meeting or get a briefing on that. >> Flannigan: Thank you, councilmember. It's definitely my intention this committee will not take a narrow view of our role and the expansive view on our role to provide justice and how we provide justice is also included in the building in which we provide it so we will definitely be addressing those issues. Councilmember Garza, do you have something? >> Garza: I just had a question about that. We were informed specifically under a certain resolution that initiated this process and did that include discussion of the building? >> Flannigan: So the way that the ordinance is written it's fairly broad and then it has -- so it's written to say we can review the court and then make recommendations to the full council on a number of things, but it's written to be broad. So we can make all manner of recommendations. Recommendations related to the court.

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>> Garza: Okay. I guess I just hope -- >> Flannigan: Yeah. And -- >> Garza: While I don't want to diminish the importance of this discussion, it's extremely important, what's very important to me and why I wanted to be on this is addressing our judicial appointments because while these are, you know, some serious issues with the building, for me what's really serious is people serving jail time because they

can't pay fines because they can't afford it and the conduct of our judges. So I really hope that that is the main focus of our -- of this committee. >> Flannigan: And I want to assure you that it is, that our -- because if -- if for no other reason, in addition to your reasons, we have a deadline. And a deadline after which we lose control over the appointment of judges. So clearly that is our number 1 job on this committee. And then as we feel that we've gotten a handle on that, we can start to add items to the list. >> Garza: Then I would ask if this is added as an agenda item that goes, like, one of our very last meetings. I don't know that we've discussed that but I don't want us to stray from the very important conversation of judicial appointments and then this is a very different topic. I can see where it's under the broad scope of what we've been charged with, but it is a very different topic. >> Flannigan: I will make sure that any straying from the appointment of -- and process and appointment of judges will be a thoughtful one that we all have an opportunity to deliberate. Any other questions for our court clerk? All right. Thank you. So our next agenda item, item 3, is discussing action on how we will move forward and item 4 is also the meeting schedule, they're fairly aligned. I've handed out kind of a straw person proposal, two actual options on how we want to move forward should all be in front of you. I -- forgive me, though,

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that the very first bullet point, our next judicial committee meeting is already scheduled for November 13, not November 10 as laid out here, and I left dates off of the following month specifically so that our staffs could figure out the actual day of that month we wanted to hold. The question for me is whether or not we want to handle the presiding judge separately and first or if we want to do all the judges at the same time. That's essentially the difference between options one and two. However, separate -- different from the clerk's proposal is I felt it better to evaluate the judges and opening up an application process so that all current and applying folks could be evaluated at the same time, so that we're not making a determination and locking in and saying, well, there's just one more spot left before we've seen who applies. So both of my proposals say that we will -- we'll take November and doing the work so that staff can come back to us in January with some actual documentation and a process for moving forward, but ultimately that we're developing a matrix for how we're scoring candidates and that we would apply that matrix both to our existing judges and to folks that are applying to be judges and to doing that all in one. That is just the straw proposal that I put out. Any thoughts? >> Casar: Sure. So thank you for bringing forward a strawman proposal. I know that's always a risky and I never want to be the first to put it out so I really appreciate it because I think it helps me gather my thoughts. Though my question -- my inclination is that we will have so much more of a track

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record on existing judges than on applicants and that there may have to be a different matrix of evaluation for people who have a long track record with the city that we can see what their -- you know, we can -- we're getting surveys back from stakeholders about how they've done, we could see what -- how they set bond amounts and -- for -- you know, across their years of service, whereas new people we wouldn't be able to evaluate them on those things if they haven't been a municipal court judge so I'd be interested in hearing your thoughts in response to that because while it is useful to be able to compare applicants with existing judges, I just don't know if we can use the same criteria. What are your thoughts? >> Flannigan: Where I struggled with that is we didn't give the current judges, when they began, what they were going to be evaluated on at the end. So if I create a different set of criteria for current judges, criteria they didn't know they were going to be evaluated on, I'm not sure that's a good way to measure their behaviors into the future. But I struggled with that. I struggle with that. And ultimately because of these two proposals, I fell down on the side of trying to find a way to score everyone at the same time so that it's clear moving forward how we're going to proceed, and not just in this tenure but four years from now, four years after that, that we're establishing some kind of consistent process the city can move forward. But it's definitely an open question, like, if -- >> Casar: Right. >> Flannigan: If that's too difficult to, do then maybe we can divide the question. I also didn't want to get into a place where we had a certain set of criteria, looked at all the judges, they met all the criteria, we appointed them, and then we didn't open up any call for applications. I also didn't want to do that. >> Casar: My struggle is since these are four-year terms, not one-year, it's

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hard to -- you know, if look at a certain set of criteria based on how someone has done and if we don't think that they are the best -- let's say we have -- >> Flannigan: Sure. >> Casar: Let's say that someone showed up to work two times in the last 365 days. This doesn't apply to anyone, right? If we can't evaluate them based on that criteria and then we say, hey, starting now we need you to show up to work, I just would rather be able to replace the person who didn't show up to work except for two days for >> Flannigan: 36 -- 365 days. >> Flannigan: Sure. >> Casar: I would be inclined to set up fair backwards looking alienses and then whether or not we -- and how we handle new applicants would be -- of course would have to be different in that case. Then the last thing I would say is that if we do move forward and March with recommendations idea we'd have to move forward pretty swiftly because the full council sometimes does ask for a postponement or two, as you've noticed, I know sometimes to your chagrin in particular it's true, and I would hate to be running hard against that April 1 deadline. Those are my two reactions. >> Flannigan: Sure. You'll see the two message board moments in this outline are intended to take the progress that we've made, put it up on the message board, have the clerk talk to the rest of the council and make sure that any concerns or issues they had so we can eliminate as much of that as possible, but, unfortunately, we do have a very fast time line. If you all feel like we can move faster, I am on board with that. I'm not sure we could move faster and I'd want to talk to staff about the work they think they have to do surrounding this decision. Councilmember pool. >> Pool: I was wondering if we

could talk a little about timing and everything and whether it would be useful to have the input from the presiding judge on the work that the judges have done and then look at the matrix and it may be that -- that

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that shows us who we might like to retain and who we might not like to retain and that means we wouldn't have to -- take considerable amount of time, and I don't know what my calendar looks like and the three of yours and everybody else to get this done. I guess before the end of January, even. >> Flannigan: Yeah. >> Pool: I would like to try to limit the number of people we would be interviewing and evaluating if that's at all possible. >> Flannigan: I agree with that. When we contemplated the idea of interviewing and doing an open application, it seemed a little overwhelming. And really to your point, why I've got the two options here is I could make an argument both for doing the presiding and downtown judge separate, up front, because they could help inform the rest of the process, and then separately I want to -- I want it to be an open process done all at once from a community values perspective and so I don't know that I can do those effectively quickly. And that was where I was just back and forth. So that's why I put out both as an idea. >> Pool: So where in here would -- I think under executive session roles, if it's personnel issue, are we able to have those conversations with the presiding judge on the evaluations of the sitting existing judges first? And kind of get a handle on what that looks like? >> Flannigan: Yeah. So we've got -- we're even posted today to do executive, but I don't think we'll do it. But we can do executive session when we're talking about the evaluation of individual judges. >> Pool: Right. >> Flannigan: But not on the process or the group. And that's the line that we have to walk. >> Pool: Right. And then we could also take the evaluation of the presiding judge and the dat judge. >> Flannigan: Yes. >> Pool: Kind of simultaneously or shortly thereafter? >> Flannigan: Yeah. We can -- any personnel evaluations can be done in executive session, either the presidings or the

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associates. Councilmember Garza. >> Garza: I have a question, if one were to summarize the two options, is the first one more of a go off of the evaluations available to us now? More of a status quo kind of option? Versus option two is a more in the weeds, creating our own evaluation of all of the judges? Is that a fair -- >> Flannigan: No. I would say the only difference between option one and two is how we treat the presiding judge. And we might consider the downtown judge as a presiding judge if we wanted to. So the only difference is if we feel that we would benefit from the presiding judge being a partner in the conclusion of the process, that we might want to lock that down. You can see December council meeting bring appointment of presiding judge to council, we might want to lock that down early.

That way that person knows they're the presiding judge and will be a partner in the process moving forward. That's the difference between option one and two, everything else is the same in terms of us constructing a holistic process for the evaluation or appointment of judges, both now and hopefully into the future. >> Garza: Okay. I guess I just -- initially I liked option two better, but I don't want that to send the message that I don't want the presiding judge to be a partner, but I'm trying to find. . . >> Flannigan: That's why I put out both because I was also equally torn. It ultimately just comes down to if we think as a committee and to the extent that we're representing the council, if we think we can make a decision on the presiding judge without going through all of the other steps outlined or if we want to go through all of those steps outlined before and concurrently with the rest of the judge decisions -- recommendations, we should say. That's the crux of the question, and like I said, I can argue either way.

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>> Casar: I'm sorry. Help me understand this. If -- even if we have not brought forward the appointment of the presiding judge to the council, what is it that prevents us from having the presiding judge give us her opinions that she stated, although we haven't appointed her? Or the presiding judge, maybe you can help me best understand -- or chair can -- I'm not inclined to one or the other. I personally, you know, trust the presiding judge will give us her honest opinion regardless, and so I just want to understand what choices we're making. >> Flannigan: So I'm not thinking about this, about the people who currently hold those positions, but broadly as a process that we may be setting up for future 10-1 councils to reproduce whether or not it makes sense for the existing presiding judge to be commenting on evaluations for a court she may not be leading. >> Casar: Okay. >> Flannigan: Or doesn't know whether or not she'll be leading. >> Pool: Right. >> Flannigan: Again, that's why I put out the two proposals because I am also torn because I can see the pros and cons both ways. Ms. Garza. >> Garza: Thank you for putting this together but I feel like I'm leaning towards two but I see components of one that I'd like -- that I think can be part of two. >> Flannigan: Lay it out. >> Garza: So I think we can -- I think that we can use whatever is available to us, the more information the better, but that doesn't -- but I still like that we're making all appointments towards the end. >> Flannigan: So you'd be comfortable with working with the existing judge, existing presiding judge to go through this process, and then including her own evaluation, and then making all the decisions at the same time at the end? >> Garza: Yes. >> Flannigan: How does everybody else -- I'm fine with that, too. Actually, this is the crux of the -- where I wanted to

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find census for everybody. >> Garza: I guess I see it less as working with the existing presiding judge and using the information that available. And it sounds like that's the information that she's providing, but, yeah, I think -- >> Flannigan: But withhold -- >> Garza: The more information the better, but it doesn't mean that, you know -- yeah the more information the better. I'd like to see whatever evaluations are available, I'm confused on what's required by the charter and what is currently available to us. And then I want us it also have the ability to create some metrics of our own. >> Flannigan: Yeah. >> Garza: To look at everybody. >> Flannigan: So I think that's fine. So we can -- that's ultimately option two, ultimately option two is what we're describing, because there's nothing in what I've laid out that preprecludes us from getting all of the information from the current judge as we go through the process. And that way we can, be in this intervening week, be prepared to lock down enough information so that staff can put together whatever information and matrixes and proposals get the book of information from the clerk on existing reviews and surveys and all of that data so that by the time we get to January we are making those final decisions that open up applications, et cetera. So it's really option two, I think. I'm sorry. >> Casar: I would say that I'm comfortable with going with two for now, and maybe in the future, when a future council has more time, they may want to stagger those. I think we're pressed on is, I think option two makes sense to me. The only two changes that I would consider would be, one, setting a deadline for ourselves of setting -- of us actually making recommendations to council in February so that council has it posted in March so

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that council knows that they have the month of March to get it done. So that if there's a postponement or somebody is sick that cares about this, that we don't accidentally run over our April 1 deadline. So I want want us in -- I would want us in our February meeting to make our recommendation so council has a month and has no excuse to not get it done. >> Flannigan: I like that. >> Casar: Then my second one would be I really think us trying to interview a whole host of new people, also not knowing how many new positions are open, could just be really challenging. >> Pool: Yes. >> Casar: So I would be okay with having people start send in applications or start getting whatever process we need to get going, but I'm just not sure whether I'd be ready to interviewing people for job positions where the council has not yet confirmed how many job openings there are, what the gaps are. >> Flannigan: And my intent is that January be the time where we figure out how many openings there are, how many do we need, how many -- is the number full-time, part-time, the right number of full-time and part-time? And I think what I'm hearing is that there is a desire to take the existing judges and evaluate them to get assessments of how many new judges we want to consider. >> Casar: But I think the question is let's say that this committee recommends not reappointing one judge. We would not know until March if council chose to not reappoint that one judge or the council could very well decide, no, we are going to reappoint that one judge. At which point we don't know whether there's an opening there or not. Does that make incidence. >> Flannigan: Councilmember pool. >> Pool: Yeah. I think we need to know as early as possible if there are any openings, and then give our part-time judges the opportunity to interview if it's

a full-time slot also, because there's that kind of flow. But the one thing that I wanted just to confirm, if we're looking at option two, going back to the first

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red-lined out using evaluation materials provided, conduct evaluation of presiding judge, sounds like we wanted to do that, and that is part of the information that we need. And that's included in one, but I'd like to see that piece -- that's included in two, and then the evaluations of all -- are you saying it's not in there because it's down here? >> Flannigan: The difference between one and two is the evaluation -- the formal evaluation moment of the presiding judge happens when we do the rest of them as opposed to earlier. >> Pool: That's fine. Except that we do still need to have using all the evaluations,/material provided, which are information from her on the other -- on the judges that she oversees. >> Flannigan: Yeah. I think that's absolutely part of this process. >> Pool: Okay. >> Flannigan: The red-line should be considered the whole clause, not just two separate clauses, just to be technical about it. >> Pool: What I might suggest is we be a little bit -- kind of go with the flow and see how quickly we can do this, and we might -- I like having a deadline that councilmember Casar is saying, but it might actually be earlier if we can get good work done in December and January. >> Flannigan: So how about we -- on this Thursday, in theory, the full council is approving the council meeting schedule for 2018. Once that's approved then we can lay that out and plug specifically which council meetings we want to do the things we want to do, take into account some risk of postponement, but then at least we'll know the actual number of meetings and what the likelihood of that is, given this hard deadline. And then next week when we meet again as a judicial committee we'll have that data to maybe narrow this down to some specific dates. Does that sound good? >> Pool: And then this also gives some predictability and certainty for our judges who are out there looking at us and wondering what kind of a time line are we on? And I want to make sure that they are not -- that they're able to follow what we're trying to do as well. >> Flannigan: Yeah.

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Any other comments? Councilmember Garza. >> Garza: I just did want to make that point clear for -- I'm sure there's judges watching right now. >> Flannigan: They're out there. >> Garza: So we are -- one outcome of today is they will be -- they will get the -- through April appointment, right? >> Flannigan: Yeah. >> Garza: Okay. >> Flannigan: I think that's pretty clear. >> Pool: April 1. Not through app. >> Flannigan: So by the end of March we'll have the full council will have made its decision and we want to make sure we've prefilled our process to get there. >> Casar: Can I get clarity from what folks think about the difference between what is laid out here and what I suggested, which is whether or not we would be interviewing new applicants during this time period coming up? >> Pool: That's fluid. >>

Flannigan: So I think it's a good discussion for next week, once we've got a meeting calendar. And the difference is, I think, ultimately those -- the last three bullet points before April, February, conduct evaluations of the current, and it says March, conduct interviews of applicants. So we could have a more specific debate on do we want to have the opportunity to make a recommendation to council at that point, should we then -- I think there's an open question about if we get through this conduct evaluations process and, as a committee, we think there's a couple of vacancies now, because we're going to make a recommendation in a certain way, we should figure out does that require a check-in with the full council? Should -- and how do we do that? How do we do that in a way that's appropriate to the public process? And then if there are vacancies, how do we handle an application process that doesn't create 40 interviews? So thankfully those decisions we can make I think -- you know, there's definitely a go with the flow here okay, but next week we'll have more dates, I think we can narrow our

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focus down. Councilmember pool. >> Pool: I wanted to ask our staff, this spreadsheets that put together that shows the varies ways the hiring and selection process was conducted the last four years, '15, '13, '12 and '09. Was there a point you knew you had openings? I don't want to have a call for applications if there aren't any openings. At what point did you have an idea or know that you had vacancies? Are you able to -- okay. Maybe it's our human resources staff. Thank you. >> I believe in answer to your question is going to require additional research, but I can tell you just looking at the -- and I'm son Sonya from human resources. But I can tell you that in the first process, in 2009, it looks like they did a survey and then they went -- they had letters of interest, and -- let's see. The first bullet under nuances, hrd requested letters of interest from each judge regarding their desire to be reappointed, and then there was a -- not on this one. Let me just see. Okay. Second bullet there, hr administrated a performance survey tool approved by the council judicial committee to evaluate the judge -- current judges and the entities that are identified below. And after that, the council judicial committee met to determine which judges would be recommended for appointment. So I believe after the survey tool was administered there was probably a point at which you could identify whether or not you were going to reappoint because afterwards it looks like they recommended to full council the reappointment and only one judge at that point was not reappointed. >> Pool: So that gave the sitting judges the opportunity to indicate an interest in continuing or

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not continuing? >> Yes. >> Pool: So that was kind of a starting point. If that works, which sounds like that's a professional approach, that would be something I'd like to suggest that we also -- that would be

a good option to use to survey interest in continuing. >> Flannigan: I think that will be a critical part of the process. Once we get into this January meeting where we're figuring out how we're going to measure judges, there may be judges that say, I don't want to be measured in that way and decide not to continue their service. Or they may be up for retirement or this may be the moment they say, 10-1, I'm out of here. [Laughter] Anybody else? Casar. >> Casar: So you're saying at the January meeting is when we would finalize the matrix that we are using? >> Flannigan: Yeah. >> Casar: Okay. That would be helpful. I just think it would be helpful for -- >> Pool: As soon as possible. >> Casar: It would be helpful for me to -- if we're having the conversation, I know we're trying to go with the flow a little bit, but I would just want to know more or less when it is that we're going to start deciding. >> Flannigan: Next week we will stop flowing and we will be specific. [Laughter] >> Casar: That's what -- >> Flannigan: Once we get our meeting calendar approved for full council I think it will be appropriate to fill in dates for this list because then we'll know how things will fit. We opted not to expect a December judicial committee meeting in part because of December but also in part we wanted to give staff an opportunity to take what we do next week and not have to do it through a holiday, you know, and go too quickly. But then January we lock it down. That's why you see January message board, share it, so whatever the result of that is we take that on to the message board and make sure there aren't any councilmembers that are having a specific issue. >> Casar: Because I think it would be helpful for us to -- for community members, stakeholders, to know when we're going to be finalizing that matrix so that if they have any bright ideas they can send them to us and so that they can see a draft of

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what we're considering so that if some of our own ideas aren't so bright people can also tell us whether or not something that we're using to evaluate folks is appropriate or inappropriate for X or Y reason. >> Flannigan: Excellent idea. I think we should make sure we discuss that next week in how we want to engage community stakeholders, not just port stakeholders that they laid out, but there may be community stakeholders who want to be involved in providing feedback on that process. And then taking that feedback in before January, finalizing our committee's process in January, taking that to the message board, another round of input and by the time we get to February we're good to go. Does that make sense for everybody? Of course we're going to have this conversation again next week. >> Casar: I have one very last question for staff. Could I ask briefly how -- how complicated is it for us to -- I see that you have some information that you've compiled, that you'll be compiling for us on each judge, but can you help me understand, since we set bail and bond amounts at the central booking facility, how much information we have about how equally those are being set for various things? Is that something that we -- >> That goes into -- >> Flannigan: Come up to the microphone, judge, please. >> Casar: If it gets Greg I need to talk to you on the let me issues, you can just say I'll tell but it later. >> The answer to that is it's complicated because each case, you know, the different factors that go into determining bond can vary greatly, so a dwi for one person may have a bond amount reflective of their criminal history, flight risk, past things that have occurred, and that might be higher or have more conditions than someone

that has a different criminal history. So that would be very, very difficult to analyze. The other issue is judicial

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Independence, which, you know, the doctrine of judicial Independence. Judges are supposed to be able to make decisions separate and apart from influence by executive government or special interest groups or any other partisan groups. So it would be getting off into the weeds of possibly -- if judges know they're going to be evaluated on that, they might not take into consideration, did all the things that they should be doing when coming up with bond amounts and bond conditions. >> Casar: So help me understand this. Maybe you can just help -- and the reason I ask you here is because this is always helpful for everybody to sort of know what the rules are. And so when we are considering people for a new appointment or reappointment, what are the things that we generally can consider and cannot consider? Because I think it would be helpful for people to understand where the line is between us selecting appointments that the council wants to select but then what things we can't or shouldn't consider because it would interfere with doctrines like judicial Independence? >> The biggest can't or shouldn't consider is how judges rule on cases. And that -- you know, do they find people guilty? Do they find people not guilty? What are their specific reasons for ruling on cases and also setting bonds and likely approving pr bonds. Those are just -- they're very broad and complicated areas. I have a lot of research, if y'all would like it, on how other jurisdictions, the factors that they look at. I've been -- this is -- since it has never been done the same way that we could tell, I've been looking at this for some months, the aba has a paper that lists the factors that they suggest you look at. Not all of them are applicable because some apply to civil judges and some apply to higher level judges.

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New Mexico appoints almost all of their judges, and they have a panel on judicial evaluations, and it had some information, again, on factors to consider. The survey, the end of term survey, was pretty much taken from those factors. I have some information from another Texas city, although I must say other cities have contacted me because to ask how Austin does this because there's no -- there's nothing, you know, across the board. And I have a couple other -- you know, things from jurisdictions where they have, although no Texas cities. I have a Kansas City where they have specifically outlined what they look at. So if that would be helpful, I can get that to all of you. >> Casar: I think all of that would be helpful but I really want to hone in on this question even if it is uncomfortable around -- so I understand that we shouldn't be telling folks we only have -- you know, we only are appointing people who are ruling not guilty and guilty close to 50% of the time each. I mean, that's just not -- that would obviously be skewing

the way that people rule based on their job, right? Because they'd be, oh, I did three guilty this week so next week I better try to find three not guilty. I think that part is obvious. How is it we can take into account people's -- I guess maybe I can think about this and you can help me better understand at next meeting how it is that we can understand -- still take into account how people are acting in the courtroom outside of something so subjective. Right? Because I don't want to rule on somebody's crankiness versus not crankiness but also don't want to rule on somebody's guilty versus not guilty ruling, right? It's obviously somewhere in between. >> One of the elements-both the midterm and end of term survey, which are anonymous, so people get to write down,

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you know, with a veil what they want to say, there are comments on who is diligent, who is respectful and who is not. And the kind of odd thing, you know, in those two years there's been a lot of turnover in court, they're pretty consistent. And people have been able to rate them on their temperament and on their fairness and how they treat people. And these are -- these stakeholders include people that see them in the courtroom day in and day out. And I think that that would probably give you the best picture of judicial temperament, which is I think what you're getting at, is how they treat -- how judges treat people. >> Casar: But isn't there somewhere in between? What if somebody did no pr bonds ever and somebody was only giving pr bonds? Our judges were doing some pr bonds and there was a judge doing -- let's say -- I doubt this is the case but somebody was doing none? >> Some of those things have come out in surveys. There's also complaints. We receive complaints. As presiding judge I do not have the authority to hire, fire, or discipline the judges, but as complaints about things like that come in, I do let them know as an FYI. If there's a concern that somebody is not following the law, I can give them that information. Now, if they choose to correct their course or not, that's up to them. But we have saved four years worth of feedback from the community in the form of complaints. And I think there are some groups, some advocates who are interested in giving you information, which that, again, is community feedback and could be very valuable in making assessment. >> Flannigan: Councilmember

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Garza. >> Garza: Maybe we're going to get into the weeds -- is this on? Hello? Hello? Therefore, we go. Maybe we're going to get into the weeds of the evaluations, but I'm confused on -- it sounds like you were asking for what criteria do we use and what we can and can't use. And then the term "Surveys survey" has been used before and I'm trying to understand the difference between survey and evaluation. As what's required to -- I guess of the presiding judge and that it was the evaluation -- evaluate the performance of each judge on criteria other than a decision made in a judicial proceeding

so that gets to what you were asking for and for -- forward the evaluation to the council. So you've done evaluations of the judges twice per year. Is that right? >> The first -- the midterm I just did as a survey. Never done a midterm survey before. And I thought that that would be the best way for the judges to kind of get community feedback, and if there's issues they could discuss it with me. That was something that we've never had before. I did not do formal evaluations because there wasn't really -- again, there wasn't criteria set out. This time around, we've had the surveys. The judges have done a self-evaluation, and I have evaluations that followed up. It's the same criteria that they're self-evaluating on that I've done that based upon what I have been told, what I have learned from surveys, what I have received from complaints, and the -- kind of the broader information. And the issue with that is that judges cannot publicly publicly -- endorse or criticize anyone, especially another member of the bar. So I can't discuss that openly. I can do it in executive session if that's something you're interested in. And that's up to you. If you're interested in my

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opinion, great. If you're not, that's up to you. >> Garza: I'm just most interested in what's required from the charter. And so I guess I hope -- and if that information that is given to us in executive session includes a performance evaluation that includes criteria twice a year for each judge. >> Flannigan: So I think my hope is that by the time we get to January that we'll be able to set out that criteria for the presiding judge to use in their two-year evaluations as well. And then reappointment and then two years so that we're setting out at least the first draft for the future of how this process should go. And then when people call you from other cities you can have something to give them, say this is how you do it the right way. Hopefully that's where we end up. Yeah. I think, councilmember Casar, I have similar questions to yours, and I think there are some ways to get there that -- that are good ways to get there. I'm working on it. >> Casar: Okay. >> Flannigan: And I'll let you know. I have some ideas. Something I do. Any other further discussion on this? All right. So the last -- >> I do have one question. >> Flannigan: Come on up. >> The answer may be that you'll tell me next week, but I just want to make sure I'm on the same page. When would you like the packets with the surveys and all the other documents regarding the judges delivered to you guys? >> Flannigan: I think as soon as you have them, yeah, if you can deliver them to our offices as soon as you have them ready to go. Councilmember Casar. >> Casar: I might have a bunch of my questions answered as soon as I get them. >> Flannigan: Yeah. It would be good for us to have them to review before -- >> Before Monday. >> Flannigan: Before next Monday, before our next Monday, if you can pull that together. So take as an asap.

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>> Casar: So next meeting we are going to try to answer the scheduling questions. >> Flannigan: Yes. >> Casar: We've laid out. >> Flannigan: With specificity. >> Casar: I will try to finish reflecting on the presiding judge earlier or later question, but I really appreciate you laying this out this way. >> Flannigan: Great. So the last item on the agenda is just discussion of future items. We did that a little bit earlier. I don't know that we need to go into much more detail on this. The only other thing that I would add is I think there's also a role for us to just put in the back of our minds as we have already formed a charter review commission to see if there's something around that definition that this committee should consider making a recommendation to council that then effectively becomes a recommendation of the task force. So it's not something to discuss or to distract from our evaluations process, but I think that's something for us to consider. You know, I think we could all come up with a couple of ideas that might be a good idea. Any further discussion? Do I have a motion to adjourn? All right. Well, I'm taking one. [Laughter] All right. With no further discussion, we are adjourned. Thank you.