

City Council Special Called Meeting Transcript – 12/10/2019

Title: City of Austin

Channel: 6 - COAUS

Recorded On: 12/10/2019 6:00:00 AM

Original Air Date: 12/10/2019

Transcript Generated by SnapStream

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[9:08:28 AM]

All right, I think we can continue on. It is 9:08. This is a continuation of the council meeting that we recessed yesterday due to the late hour. Before we get started, so as to start us off well, I want to -- to ask councilmember alter if she'll start us off correctly this time.

>> Alter: Thank you, I appreciated the comments at the beginning of yesterday's session by harper-madison harper-madison that we do our best work to take a moment to set ourselves and I want to offered this reading by Heather

[indiscernible] From the power of our memory in history, with high hopes for the days that lie ahead, we gather to craft the destiny we share with one another. We gather with faith in the practice of democracy. We gather with hearts and minds open to the wisdom in

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every voice among us. In our gathering, may we dream and design a bold future. May we bring our best selves to this service and may we dream these dreams and do this work with love.

>> Mayor Adler: Thank you.

>> Mayor, if I may, thank you.

>> Mayor Adler: Colleagues, we're going to continue on where we left off. But just one quick thing before we do, the very last thing that we handled yesterday, was -- was a -- the compatibility it was my amendment, Adler 4, in working with councilmember kitchen trying to make sure that there would be some kind of look to -- to having some transition or compatibility elements, but still enabling us where there was no -- no r4 or rm1

[9:10:30 AM]

zone where we could still take a commercial corridor and allow for affordable housing to be built in those areas. I think the debate went really well, we added at the end of it no less than affordability unlocked. It was pointed out to me as soon as I walked off the dais because affordability unlocked is only for deeply subsidized properties. In this case what we're trying to do is keep open the opportunity for someone who is redoing an old commercial corridor to be able to do it in a way that actually has affordable housing there. So I'm going to ask if we can reconsider that direction. We didn't even put it to a vote, so we can take off the words no less than the affordability unlocked, I understand from councilmember kitchen she's okay with that given the broader conversation that we had. Does anybody --

>> Kitchen: I'm fine. The broader conversation that he's referring to what we understood from staff that you would look at capability from the standpoint of -- of things like green buffers and --

[9:11:32 AM]

and, you know, noise and trash and those kinds of things. As appropriate. For areas. So -- that waiving capability didn't mean waving all of that.

>> Mayor Adler: Okay. Any objection?

>> I just want to comment, it was my understanding, though, that capability is still -- is still waived in almost every one of these cases. So I'm not understanding what this amendment accomplishes. Do we know that there are cases that in the new map are not going to have capability? Is this just saying when you are mapping, I mean -- I would love to see us on the corridors require that you only get capability relaxed if you do affordability, but that doesn't seem to be the choice that we made throughout the city and I'm just trying to understand

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what we're accomplishing with this amendment if we've said we're giving it all away because of how we mapped everywhere, why is this any different in this situation or is this just like -- I don't understand that.

>> Mayor Adler: I think in some places there's no capability. If we haven't mapped behind the commercial track an rm 1 or an r4. So it goes halfway to what you are saying. I know the rule that you would like to have city wide, doesn't get to there. But what it does say is where we have a commercial

corridor that doesn't have the rm 1 or the r4, that you can -- that you can get the bonus for affordability and be able to utilize it.

>> What page is that on so I can see what the --

>> Mayor Adler: It was on page -- it was the very last page we worked with yesterday. So it was -- 18. Down at the bottom. Is there an objection to

[9:13:33 AM]

reconsidering? Hearing none, we reconsider. We're now back on this and I would propose the -- the amendment --

>> Alter: I'm sorry, I want to understand what kitchen said was that this is about the height not the other elements?

>> Kitchen: Right. What I'm saying is I think that the staff -- I'm thinking in terms of the fact that we -- our conversation yesterday was that the equity, the mayor pro tem's equity overlay would mean that in some of these areas you wouldn't have the transition zone behind these corridors and so -- so we're doing that because of the concern that we have for these neighborhoods. And the impact on these neighborhoods. And so I'm just thinking that that concern for the impact on the neighborhoods should extend to what can happen if you don't have any kind of capability buffer between a residential areas and taller buildings and those kind of capability things go all the way from -- from, you know,

[9:14:34 AM]

green buffer areas to -- to noise and dumpster and those kinds of things. All of which are part of capability. Usually when we talk about capability we're just talking about the height. All I'm saying is what we talked about yesterday with the staff. As they consider this, they wouldn't read capability to mean they had to waive everything that relates to capability and that they would think about what -- what would still be important from the perspective of that intersection between the houses in the neighborhood and the -- and the -- and the -- you know the larger buildings along the commercial. That's -- that's what we need to make sure that we continue to -- to think about. And I don't know what balance of that is appropriate. They'll have to think about what's appropriate. But if we don't think about what that balance is, we are creating an intersection between the homes in a neighborhood that we are concerned about because it's vulnerable and what's happening on the corridor, we're creating some -- we

[9:15:36 AM]

might be creating some unintended consequences in terms of the impact. That's all that I was trying to say.

>> Mayor? Councilmember Flannigan councilmember Flannigan.

>> I read this to be really helpful in activity centers. Where we have commercial properties that get the dash a that can have affordability that because of the street configuration there are two Zones behind it because they are not corridors and there isn't a street that connects them to it, but this would unlock some additional areas of affordable housing, mid space of affordable housing in active centers. I found it in my district, Anne's district it would be really good.

>> Mayor Adler: So be clear I joined with councilmember kitchen in making sure we have no build Zones, planting requirement, screening, all of those other kind of things that we will take a look at.

>> Alter: So I understand the general thing. But I thought we had it resolved. So I might reserve the right to bring this back up later

[9:16:37 AM]

or if we can just say sort of consider this, because I think there's some -- representatives of it -- for instance -- elements of it, for instance, are they going to get capability in options that you get capability if you do affordable housing or is it that you participate in the bonus program where you are also getting an extra floor and -- there's some ways about constructing it that seem to me that we could secure more affordability that way.

>> Mayor Adler: There's absolutely no problem with you bringing this back up again. All that we are doing right now is taking off the words no less than affordability unlocked. Affordability unlocked because it was tied to the really deep subsidies, creates -- those are really for subsidized users that are not the people developing or redeveloping the commercial corridors.

[9:17:39 AM]

There wasn't really the concern about the capability or buffering element that was really at issue on that.

>> Alter: I would just encourage as we create whatever this is, that we actually using it to take advantage of the opportunity to get as much affordability as possible. We did not exercise this right elsewhere.

In the city: To use our capability relaxation to get affordability. And I think that -- that we should be careful how we layer it on in these areas that if this is an additional change, that we should expect that affordability simply for that relaxation and without already giving them the additional bonus that's are

available. And that may be something that staff consider when they develop this, whether that's feasible or not and how much complexity that adds.

>> Mayor Adler: I concur with that. That is exactly what this is intended to do. Okay, we have reconsidered. Any objection to passing this amendment with those

[9:18:39 AM]

five words taken off? Hearing none, the five words are taken off, it is now added back. Okay. With respect to the day today, we have a hard stop at 11:30. At 10:00, I'm going to recess this meeting so that we can convene the special called meeting on real estate. Which we will then immediately recess. We are also going to in that period of time allow the housing and planning committee to -- to convene its meeting and then the housing and planning committee will immediately -- recess its meeting. So that -- so that at 11:30, we'll go into the council meeting on the special called meeting on real estate, and take care of that. And then it's my understanding that the housing and planning committee will meet solely for the purpose of adopting its calendar. So that it can get that administrative work done.

[9:19:40 AM]

Okay? So ... That's our kind of how we are setting up our day. The question about this evening and what we are doing on this evening with respect to when the -- when the retirement meeting is done, we will discuss that just before 11:30. And let's see how far we move. If we blow through this stuff today, maybe we don't need tonight. But let's -- let's see how that timing goes. Okay. With that said then --

>> If I may, I was hesitant to mention it yesterday, the truth of the matter is I made an obligation over a month ago to do co-op live audience that they've been broadcasting on the radio for weeks tonight. I have to be there at 5:30 until 7:30. So if we could take that into consideration, much like my colleague councilmember pool, I would like to be here for the discussions.

>> Mayor Adler: Okay. Let's start working our way

[9:20:41 AM]

through. I am now in the -- in the affordable housing section. Let's continue as we were before. The -- the first one is Garza number one. That was adopted on consent. The future revision of the overlay line is programmatic. I move that into that bucket. That gets us to Casar ah 1 on existing vmu. Is there a second to the Casar existing -- pulled by kitchen. Is there a second to this?

>> Kitchen: I will second it.

>> Mayor Adler: Councilmember kitchen seconds it. You pulled it. Do you want to go first?

>> Kitchen: Yeah, I just wanted to -- I have a similar one which councilmember Casar pulled so I thought we should talk about them together. Mine is the next page, kitchen number 9. The reading to me as they

[9:21:42 AM]

are worded differently, but trying to accomplish the same thing. So that's how I read them, but my question to councilmember Casar is if he sees a difference between them.

>> Mayor, I agree with councilmember kitchen and a lot of the dais on this issue. The only way -- I had written my similarly to councilmember kitchen's, but in conversation with

[indiscernible] I don't want to preserve the zoning per se or the V designation per se because -- I do want to update to the new environmental rules, I do want to update to the new code. What we're trying to preserve is the affordability -- everything as it impacts affordability. The base entitlements, base height, base residential densities, bonus height and that 10% set aside. And I want to update those set asides to the new codes more equal 60% mfi as well. So I think that's what we're

[9:22:43 AM]

trying to capture. I think that's how I read councilmember kitchen's. I think that the -- that the -- that the wording of the zoning or V designation might leave us F 25 because -- because V only exists in the form or title 25 and I -- and the other zoning components I want to make sure -- if that makes sense. So I think we are trying to get to the same -- that's why I tried to have the wording be this way.

>> Kitchen: What I would suggest then is we just pass both of these and let the staff understand what our concerns are. I wanted to actually -- to keep that V designation. So I was thinking in terms of, you know, whatever their current zoning category with a V, that indicates that they are keeping the V requirements. So --

>> Casar. I want the V requirements, I don't care which letter they put there. If it's a V that's fine --

[9:23:43 AM]

>> Kitchen: The other kinds of changes in the zoning that are not impacting the affordability of V is what your concern is, is that correct?

>> That's right.

>> Kitchen: Why don't we pass them with that understanding.

>> Tovo: I'm not really understanding the distinction here, either. I also have vmu amendments that probably make sense to take up after these. I think they are all -- councilmember Casar I think you pulled my vmu amendments as well. Can you help me understand what it is -- I understand -- I have heard your concern about having a V. What were you just saying about other changes? >>

>> Casar: I would like for them to not be F 25 but instead for them to convert to the new code but then for us to have all of the affordability stuff that we have baked into vmu.

>> Tovo: That's fine. I think we are all in agreement. Frankly, I mean, if it makes

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sense to continue and have that be designated a V, I think that's fine.

>> Casar: I'm agnostic on that point.

>> Kitchen: I need to say one thing. There are a few of them, at least one that I know of on south Lamar that may have to stay at 25 because there was a recent zoning case where we were able to establish a minimum number of housing units and things like that.

>> Casar: Sure.

>> Kitchen: You are not talking about that kind of situation.

>> Casar: I think when we get to the individual map amendments I think we have all expressed flexibility around people showing there are going to be some things that the exception proves the rule on.

>> Kitchen: Okay. All right. So -- so councilmember tovo, which one of ours is -- is the same thing. I'm not sure --

>> Tovo: So mine on the next page, which is pages -- on 23, I have several. I have properties with current vmu zoning should access the program with at least 10% or more --

>> Mayor Adler: Which number.

>> Tovo: This is tovo 7. I think that's exactly what

[9:25:46 AM]

councilmember Casar and kitchen are saying. I don't think we need to take that one up. Well, hang on a sec. I would ask that we just adopt that one as well?

>> Kitchen: All three of them.

>> Casar: That one was pulled by councilmember harper-madison.

>> I thought you pulled it. >>

>> Mayor Adler: Tovo 7. So while -- while councilmember harper-madison is finding this for staff, the goal here is to carry forward the affordability elements associated with the vmu. I think everything is agnostic on how you do that, but we definitely do not want it to be a continuation of F 25 because we want the new environmental and other provisions of the code to apply. Does that make sense?

>> Yes, we understand.

>> Mayor Adler: So if we were to adopt multiple additive provisions here, would you be able to

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reconcile them and read them with that kind of instruction?

>> Yes.

>> Mayor Adler: So the ones that we would then pass kind of additively with that construction would be Casar ah 1, Casar I guess ah 1 --

>> Yeah.

>> Mayor Adler: It's kitchen 9. And it is tovo potentially 7.

>> Harper-madison: I located what my concern was there. That is if I'm understanding correctly, currently as it stands, when we do redevelop it, it pays for infrastructural costs. This reads to me as though the bonus program would cover the cost of infrastructure. In which case I'm trying to -- trying to get your rationale behind switching from how we currently do it

[9:27:48 AM]

to making it so that the affordable housing bonus would -- would cover the cost of infrastructure.

>> Tovo: So number 7 is really trying to do exactly what councilmember Casar and councilmember kitchen is doing. Making sure on those properties currently zoned V we are not going to require less of them in terms of affordable housing contributions.

>> Harper-madison: That was one of the questions that I had. Properties with current --

>> Tovo: Saying they currently have -- they currently have a zoning that if they exercise those entitlements, they have to do 10% affordability -- affordable housing. So we are saying we don't want to -- we don't want to require less of them.

>> Harper-madison: So listen to my question, you can probably answer this pretty easily. In that case does

[9:28:48 AM]

affordability unlocked combine with vmu or is it in lieu of?

>> Tovo: I would assume those two exist independently because affordability unlocked is only available to non-profit developers who can make certain standards and intend to do 50% of their housing.

>> Can I get some clarity there --

>> Tovo: I think property owners have a choice. If they are a non-profit they could academic affordabilitiability unlocked with a much higher threshold for the housing. If they are for profit and want to access those entitlements that would be vmu.

>> Harper-madison: That was just why I pulled it. Staff if you want to speak to -- I can't hear you.

>> Erica leak, neighborhood housing. Yes, definitely different programs. Vmu and affordability unlocked. The one comment that I would like to make about the 10% requirement is that, you know, council has asked for calibration of density bonus

[9:29:48 AM]

programs, which we did do through this process. The 10% overall requirement may very well work in some places, but may not work in all places. So I just want to make sure that -- that -- that's out there.

>> Wait a minute.

>> Mayor Adler: For me the calibration is real important. I hope we calibrate these annually. I'm sure we may discuss this in a little bit. Whatever this is, it needs to be written and addressed in a way that enables us to a yearly basis to be able to recalibrate.

>> I think that was the answer to my question was whether or not we can continue to address whether or not it's working. Thank you.

>> Mayor Adler: Councilmember kitchen?

>> Kitchen: We

[indiscernible] Continue to see if it's working, but the V designation already has determined that it's working because the V is attached to certain properties, right now. What we are saying is that we're not going to back off of those properties that already have a V on them right now. We're not saying that the V is instead of the density bonus program or instead of the calibration that comes with the density bonus

[9:30:50 AM]

program. We are saying if you have a V now, you keep a V because that's your requirements. So I would not want to come back and revisit whether or not -- whether or not we're keeping that V. Because the V is a higher level of -- of requirement that's already been determined is appropriate for certain properties.

>> Mayor Adler: Let me ask this question, because I agree with you, too. We are actually achieving the affordability of 10%. I don't want to back off from that at all because there are a lot of properties where we're getting that.

>> Kitchen: Right.

>> Mayor Adler: There are also some properties that are eligible for the vmu that are not using it. And I want to also look at those properties without watering down where it is that we are able to get the 10% because I don't want to lose that opportunity. If there are other properties that are not participating in a bonus section, I want to figure out how to do something to incent those properties to also participate.

>> Kitchen: I think that undercuts what we are trying to do. If you are saying that determination has to occur, before we move forward with this.

>> Mayor Adler: No, no,

[9:31:50 AM]

I'm fine going forward, just as we said with the 10% exactly the way this is said. I want them as part of the calibration process. Maybe there's two tiers to develop. Maybe properties where we can get the 10%. I don't want to back off from any of the affordability that we are achieving in the marketplace and in some respects this vmu is one of the best things that we have happening because it's driving a lot of affordability and we have a lot of cases coming into council that we see we are getting affordability. I don't want to lose any of that. There are also properties that are eligible for the vmu that are not using them. So I want us perhaps as a different tier or a different class of properties to figure out as we go through a calibration discussion whether or not there's something we can do so that we end up with greater affordability and -- in our city.

>> Kitchen: I have a problem with that. But let councilmember tovo talk.

>> Tovo: So I don't mind continuing to keep an eye on it. I would just say we've had vmu in place for a while

[9:32:51 AM]

before it started to be utilized because of the market. The market needed to change. I think that we are getting those units now. I think it's been enormously successful. So I am certainly supportive of continuing to monitor it and keeping an eye on properties that are not utilizing it, but I'm not sure that I'm convinced at this point that it's a problem that needs fixing. With more analysis I could be. I think we are in agreement. If I could, I would like to move my next two --

>> Kitchen: I have a question first. The question is when are you talking about calibrating? I want to move forward with the vmu right now.

>> Mayor Adler: I agree.

>> Kitchen: I'm not talking about calibrating it right now.

>> Mayor Adler: I agree.

>> Kitchen: Maybe in a couple of years, is that what you meant, Erica?

>> Mayor Adler: The only thing that I would say different I would like us to be calibrating yearly just as a city on our affordability, which we can discuss later. We can discuss later what is the appropriate recalibration timeline. But I don't want to hold this up. I don't want to hold the code up. I am comfortable going exactly with the -- with

[9:33:53 AM]

those affordability things exactly as they are today, because I know that it's working in a lot of places. I'm fine with us moving forward. It is not to undercut or slow it down, just to make it part of the overall calibration issue.

>> Kitchen: The other thing, just to be clear, I think we're all on the same page. Just to be clear, calibration comes back to us before any kind of V comes off of a property.

>> Mayor Adler: Yes. Calibration always comes back to us. Councilmember Casar?

>> Casar: I expect actually if we bring on staff, more staff and support for calibration and do it more regularly and they are able to look at different parts of the city, I actually would expect that in some places we should be asking for 12 or for 15 and that maybe there is a certain type of tract where we could ask for 10 but we need to change the set back. I -- so I don't want the assumption to be it's going to go in one way. For today, I know properties will do 10% that haven't developed yet. I want to set them at 10% and then be able to have a

[9:34:54 AM]

calibration. We will bake into the code how we want to do calibration better.

>> Agreement.

>> Finally.

>> Mayor Adler: All on the same --

>> We are going to pass -- we are going to pass Cesar -- yes, councilmember?

>> Alter: I wanted to clarify that affordability unlocked does not say that you have to be a non-profit. It says you have to be willing to do a certain amount of affordability. So if you are a for profit developer and you have a way that you can do it with 15% plus affordability you are more than welcome to take advantage of that program.

>> Tovo: Thank you for that clarification.

>> Mayor Adler: Absolutely. So we are passing ah 1. We are passing kitchen 9. That's on 21 of 39. We are passing tovo 7. Okay?

>> May I?

>> Harper-madison: So I appreciate you bringing up, because that was one of my concerns, was the lack of utilization of vmu. As an option. And so I would like to -- you know, really keep an eye on that. The other question that I have, I think especially for staff, are there barriers in

[9:35:55 AM]

particular, you know, from my layman perception, I'm wondering if I'm correct in thinking that compatibility seems to be a barrier to the utilization of the vmu as a tool. So if you can just sort of walk me through whether or not that is in fact the case and if so what do we need to do on our end from a policy perspective.

>> Laura Keating planning and zoning. We were testing a site on Cesar Chavez and found that capability did reduce the incentive to -- to participate in the vmu program because you didn't get really anything more. So in fact [lapse in audio] May incentivize them to participate if they are no longer subject to capability.

>> [Indiscernible].

[9:36:55 AM]

>> Harper-madison: Continuation of that question is what can we do from a policy perspective to make it more accessible?

>> So actually the amendment prior to this where there was the discussion about whether capability would come -- would trigger capability along corridors would -- would take care of that issue.

>> Harper-madison: Thank you, I appreciate that.

>> Mayor Adler: Okay. Let's continue with the next one. Casar ah 2.

[Multiple voices]. I asked if there was any objection to those three things being passed. There were no objections, those three things were -- let me repeat it out loud. Is there any objection to those three things?

>> Kitchen: Which three?

>> Mayor Adler: Casar ah 1, kitchen 9, and tovo 7.

>> Tovo: Mayor, while we're talking about vmu, could we jump to my two other vmu provisions before we get to -- I mean

[9:37:56 AM]

councilmember kitchen's -- I am wondering if we might achieve some efficiency if we take up all of the vmu stuff and then move on to the next subject.

>> Kitchen: I am happy to go with councilmember tovo's first. I agree we should do all of the vmu at one time.

>> Mayor Adler: Okay. So let's -- so you are talking about yours 8 and 9?

>> Tovo: I believe councilmember Casar pulled them.

>> Mayor Adler: I'm sorry?

>> Tovo: I think councilmember Casar pulled them.

>> I pulled them.

>> Casar: I'm okay with them.

>> Mayor Adler: Any objection to adding tovo's 7 and tovo 8?

[Multiple voices]

>> Tovo: That would be 8 and 9.

>> Mayor Adler: Tovo 8 and 9 page 23 of 39. Pulled by councilmember harper-madison. Are you okay with them?

>> Harper-madison: For what it's worth, I think the conversation that just transpired addressed my concern.

>> Mayor Adler: Any objection to tovo 8 and 9.

[9:38:57 AM]

>> Casar: One question. Councilmember tovo when I see the three year look back period you mean the calibration work.

>> Tovo: Yes.

>> Casar: We will talk about later, if we end up passing something saying we want to try to do it every year --

>> Tovo: We wanted to make sure it was at least a three year.

>> Mayor Adler: So in that regard --

>> Tovo: If we want to do a deeper dive into this issue where vmu is developing or not, how closely it hits the percentages, one thing that I am pretty interested in doing, not talking about it today necessarily unless it comes up in the context of another conversation, but like councilmember kitchen you are getting a lot of vmu in your district and I think your percentage of affordable housing that we are setting in here is lower than 10. You know, how the affordable housing percentages

[multiple voices] Calibrated are different by district. I think -- I can't quite find that sheet. I may have to ask one of you all to point me to it. I'm looking for the first staff report. But I think that's a pretty interesting -- that might be a pretty interesting thing to compare. When we passed the land

[9:39:58 AM]

development code, if we are only requiring 7% affordability in your district or five but yet we are already getting 10, I think the market is telling us they can do more. Before we finalize this, I think we really should line out those two sets of numbers.

>> Kitchen: I would like to -- let's not say that yet. Let me look -- I'm not as familiar with those numbers, there may be other factors. So -- okay.

>> Mayor Adler: With respect to tovo number 9, let's take out the words three-year, so -- the vmu --

>> Tovo: Can we say minimum? Or at least -- at least every three years. A look back -- include vmu in the look back period and evaluation cycle at least every three years.

[Indiscernible]

>> Mayor Adler: No, no, no. In the -- at least every three year look back period, I'm fine with. Again, I hope it's much more than that. That we have somebody on staff with the capability to

[9:40:59 AM]

do it. So with that change, tovo 8 and tovo 9 are both added.

>> Kitchen: Wait, wait, wait. My number 10 is the same. As 8 and 9. So we should just do that at the same time.

>> Mayor Adler: Where is yours?

>> Kitchen: Page 21.

>> Mayor Adler: Page 21. All right. Kitchen 10.

>> Casar: Mayor.

>> Mayor Adler: Yes.

>> Casar: Is it -- when you say explore ways for properties to access the bonus program with 10%, you mean vmu properties?

>> Kitchen: Right.

>> Casar: Okay. Then, yeah, that was my pull because -- oh, because this was just all of the vmu stuff. No, no, that's okay. So both your nine and 10 are attempting to achieve the same thing as my 1 and the same thing as tovo 7?

>> Kitchen: Yes.

>> Casar: Okay, that's fine.

>> Mayor Adler: So change putting in the same words before three year cycle, at least every three year cycle

[9:41:01 AM]

gets added. And with that, any objection to approving kitchen 10?

>> Casar: Sorry, just to really make sure this is clear for staff. So kitchen 10 that says explore ways for those vmu properties to -- to do with 10%, we are not actually asking you to explore that, we are asking you to do that.

>> Kitchen: That's right, sorry.

>> Casar: We are not exploring ways for you to review it anymore, we are telling you we want to review it.

>> Kitchen: Right.

>> Casar: So really I'm happy to pass it because why not? But in the end we are not actually asking you to explore these things but we are saying this is how you should do things.

>> Kitchen: Right.

>> Mayor Adler: Take this into account in how you draft the code, recognizing this is going to be potentially a yearly process, but certainly not more than three years. I don't know how that appropriate -- I think this is important in case it impacts how the code itself is drafted.

>> Casar: Does this make sense to you that we are passing explore and do meaning just to do.

>> Mayor Adler: I'm --

[9:42:01 AM]

>> Kitchen: Do the more -- the one that gets us the most affordable housing.

>> Mayor Adler: Yep. We are all on the same page. All right. We have moved through those. All right, Casar ah 2 --

>> Kitchen: I have one more, sorry.

>> I have one more that's vmu. That is kitchen 11. On page 21. A little bit different than what we've been talking about so far. So if I could take that one up, would that work? It's vmu.

>> Mayor Adler: Okay.

>> Kitchen: Okay. So what this one does

>> Mayor Adler: Okay.

>> Kitchen: This one is about -- there's a requirement in vmu for initial ground floor commercial use, and there's some circumstances where the market is really not supporting that, so at least on south Lamar, we've got empty commercial space. This is an explore. I had a chance to talk with Erica

[9:43:03 AM]

leak about this one, and I mean it as an explore, but the suggestion is that where the market does not yet support ground floor commercial use, explore ways to reduce or eliminate those requirements, but only -- only if -- so that the ground floor space can be used as occupied residential space, but only provided that the floor -- the ground floor space is constructed in such a way that it's able to be converted.

>> Mayor Adler: Okay. So that we can have a full discussion on this, let's see what the -- why it was pulled so it can be part of the conversation that you have.

>> Kitchen: Oh, okay.

>> Mayor Adler: Is there a second to kitchen 11? Councilmember pool does that. Councilmember Casar, you pulled this. You want to explain why you pulled it?

>> Casar: And there's enough copies in what I'm handing out for the code -- I totally agree with the -- with the idea here. I just -- with just one caveat, I want the exploration to be more about the reduction as opposed to the all-out elimination.

[9:44:04 AM]

>> Kitchen: Yeah, yeah. No, I agree.

>> Casar: I think the residents appreciate having retail in the bottom. If you've lost retail to development, having some of it there. So my amendment is saying let's have there be some residences in some of the retail space, but not having zero retail on the bottom.

>> Mayor Adler: Got it.

>> Kitchen: It looks fine.

>> Mayor Adler: Any objection to adding this to the amendment? Hearing none, the amendment to the amendment is added and with that amendment, is everybody okay with kitchen 11 going in? Yes? Okay. Kitchen 11 then goes in as well. Okay. That gets us then back up to Casar ah2. It looked like a1 and a3 were programmatic so we're going to put that into that bucket. A2 was on consent. That gets us to ah3.

>> Casar: Mayor, I actually have a question there.

>> Mayor Adler: Okay.

>> Casar: If a3, certainly

[9:45:04 AM]

programmatic, should be in that bucket. A1 was recalibration, and so we have to decide, since we were - we've added some things earlier that were calibration, we have to decide whether the calibration stuff is going to be in the code, or whether the calibration stuff is going to be programmatic.

>> Mayor Adler: Okay. So without deciding that now, we've decided some of the calibration issues, let's go ahead and adopt the calibration issues because it may impact the drafting of the code. So let's do that so that you can draft the code, recognizing it's going to be a recalibration issue. So with that said, then, p1 should probably be adopted as well. Is that right?

>> Casar: And it's ah21.

>> Mayor Adler: Ah2-1.

>> Casar: That's asking for quarterly reports, looking at calibration during the budget every year.

>> Mayor Adler: Okay. Anybody have objection to a1 -- I mean, ah1-1? And that one is then -- yes.

>> So just a quick comment here.

[9:46:04 AM]

One of the things I think we need to be clear about is that in some cases, and economies, the required set-aside and required fee-in-lieus may actually go down. So I just --

>> Casar: And then we would be able to vote in the budget whether we want to hold out that year and hope for a stronger market the next year or whether we want to take it down in some places and up in other places, you know.

>> Okay. But in terms of setting goals, I think you need -- I think we would need a little bit more clarity. Are you talking about -- I mean, to try and set a numeric goal I think would not make much sense at all because if the economy is not producing any affordable -- any housing units that general, it won't produce affordable housing units. So if you're talking about participation, you'll have the same issue and if there's a down turn, it likely means that if you actually wanted housing production at all, you'd probably

[9:47:06 AM]

have to reduce the affordable housing requirements.

>> Mayor Adler: But isn't that the discussion we have every year then? At that yearly meeting, you would -- partly, we need to have goals so that we can determine whether or not -- if it's being used 100% of the time, real readily, and our goal won't say 75% participation, it's being overutilized, that's going to be an indication to us that we're not asking for enough, maybe wished ask for more. Similarly, if we set a goal of 75% and it's 0%, we would be able to look at that and think maybe we're asking for too much. That would be mitigated by understanding what the market is or is not, and the goals that you have in the down market may be different than the goals you have in an up market. But some basis to be able to analyze these calibrations on an ongoing basis. That work?

>> So the concept is, if the goal is 75% of the new developments

[9:48:06 AM]

that have -- I mean I'm -- I just want -- okay. So I just think what you're going to find is that setting goals may help with decision-making, but it's going to be really hard to try and meet goals in a situation that's totally dependent on what the market is or isn't building. And the market strength.

>> Mayor Adler: True. But in a down market, you may set a different goal for the next year than you had for last year when it was in an up market. We may -- the council at that point, whatever council that is, may calibrate differently. If we're in a sustained down market than in an up market. , To as to reach goals of utilization. Continuing goal here is to have a more dynamic process for calibration than has existed in the past so that we can be more strategic and more targeted and get --

>> And so the goal is a utilization goal.

[9:49:06 AM]

>> Mayor Adler: The council gets to decide that it may be that the council says in a down market, we're fine with no one taking this for the next year or two because we don't think anything is going to get built and we're going to -- we don't want at that low level. So I mean, the council could be -- you in conjunction with the councils in the future will decide what the appropriate goals are. All we're doing here is setting up the opportunity for a much more dynamic process than has existed in the past. Okay? So p1 will pass as well.

>> Casar: That's ah2-1.

>> Mayor Adler: Ah2-1. Ah2-3, we're going to hold for programmatic. Okay? Ah3 is on consent. PC 15 is on consent. We've already handled now kitchen 9 and 10 and 11, which pda with

[9:50:11 AM]

the amendment on number 10 to say, you know, make the determination and its an at least every three-year cycle. Kitchen 11 passed. Kitchen 12 and 13 passed on consent. That gets us to pool number 6. Pool number 6, is there a second to pool number 6? Councilmember kitchen seconds that. This was pulled by councilmember harper-madison.

[9:51:11 AM]

It's 22 of 39. It's pool number 6.

>> Harper-madison: Preserving existing mf. This was just -- again, this was just for clarity, I was asking -- I guess the question is for staff and not for councilmember pool. It feels Tom like we're removing existing

bonuses from current multifamily, and I just wonder if, in fact, that is what's happening here and if that's the best course of action.

[9:52:13 AM]

>> Mayor Adler: Councilmember pool, do you want to address this or --

>> Harper-madison: I exclusively think it's a question for staff.

>> Could you repeat the question? We're trying to figure out another -- something.

>> Harper-madison: Okay. So I was just trying to determine whether or not this is removing bonus entitlements from current multifamily and if that's the case, is that the best course of action. I'm just trying to make certain that I understand exactly what's being asked here.

>> Well, it looks like it's asking for analysis, I think --

>> Kitchen: That's correct. Yes.

--

>> Pool: That's correct. I'm asking for scenarios on the effect of zoning existing market-affordable multifamily, and what type of scenarios might trigger redevelopment. And so we're asking for mapping with current use with or without

[9:53:13 AM]

a bonus, and then mapping proposed zoning with or without a bonus so we can see the comparisons.

>> Harper-madison: In which case, I think the question is, does preserving existing multifamily-based entitlements impact affordability bonuses.

>> Yes. Yeah. Yes, it would.

>> Harper-madison: Can you speak to that a bit?

>> So, you know, how to try and best preserve market rate affordable units is a conundrum in Texas, just because we don't have great preservation tools other than actual subsidy purchasing the units. And so if a property does -- that has market rate housing on it that does have a bonus option, it could mean that it could just redevelop with that bonus option.

[9:54:13 AM]

If there isn't a bonus option, it may be that the entitlements on the site may still be greater than what's built there now, and so they could redevelop anyway, but if they wanted greater entitlements and there were not a bonus, then they would have to come through a rezoning process.

>> Harper-madison: Which I think answers my question because my concern there was what's the likelihood that people will access and utilize affordability bonuses, given a barrier, potential barrier. And that was my question. So thank you.

>> Mayor Adler: Okay. Are we okay with number 6, pool 6 moving forward? Okay. That will move forward. Pool 7, again, councilmember harper-madison, you pulled this one?

>> Harper-madison: I think there was a Casar amendment that spoke to this one.

[9:55:13 AM]

I'm sorry, I thought -- it is on. I said I thought there was a Casar amendment that spoke to this one. One of my concerns was this was a programmatic direction and not necessarily land development code.

>> Mayor Adler: Would a thing like this go in the code or should we move this to programmatic?

>> Pool: Well, I would like to see it in the code because it would then be part of our scheduled fees because it is a fee, monitoring and compliance fee, so that it can complex based on the cost at the city in order to do the monitoring and the oversight. This is to ensure that where we have housing bonuses being given, that they are actually -- that where we grant them, that the people in the community are actually getting the benefit from them. This has been a longstanding issue for the city to make sure that we have sufficient compliance in the community, once we're not looking at a project really closely. And also, this aligns with what

[9:56:18 AM]

we've already passed that councilmember tovo did. I'll just say we're looking to add almost 9,000 more affordable housing units, which I hope we do. We need to build monitoring capacity and adequate funding to support nhcd in that effort. So this monitoring and compliance fee for participants, I would compare that to fees we collect for other administrative services, like permitting, inspections, rezoning, applications.

>> Mayor Adler: So does this kind of thing go in the code or is it programmatic?

>> So for the last motion that passed, that's actually programmatic, I just wanted to point that out, that would be added to the analysis of all the items that staff is being asked to analyze. And then on this one, Brett is going to address a few items.

>> Mayor Adler: Sorry? You see pool 6 and 7 as being programmatic?

>> Pool: No, 6 was -- we already passed 6 on consent.

[9:57:20 AM]

Annick was saying councilmember Casar's item was programmatic and Brent was going to speak to this one because they are somewhat different.

>> Mayor Adler: Okay. Now I'm confused. Which ones do you say were programmatic? And, again, it doesn't mean we're not going to pass them, but we're going to put them aside and the attorneys are going to tell us what we can do in terms of passing or not. It seems to me that I'm seeing two different things that are programmatic, but you guys can give advice later, the things that we need to be able to actually act on the code, which I'm sure were allowed to pass and allowed to see, and then there's the stuff that directs further future conduct of the staff, which I understand your concern, don't want to lose any of those things, but if we have to post more broadly in order to be able to give that direction, we could give that kind of direction before we go into second reading as well. I understand your concern from a posting standpoint. But, we're not going to have that conversation now, we're going to have that conversation later, and law can explain what the reservation is. I'm just trying to figure out now

[9:58:21 AM]

what things should go into that bucket to be considered later and what things should not. Okay? So, help me.

>> So just for clarity, Brent Lloyd with the Idc team. Pool number 6 was deliver scenarios of different ways of zoning existing market rate affordable multifamily to address the issues enumerated. And we were just -- we were discussing that, and please clarify if we misread it, but I think we read that as primarily providing some analysis, and potentially that would be accompanied by suggested map changes or code changes, but if it -- but potentially not, depending on the outcome of the analysis. So I guess what we would want to know is just is that definitely envisioning a code change?

>> Mayor Adler: If it's something that could be used as a map change or keyed change, that's

[9:59:23 AM]

its intent, it could be something that would be germane for us to do under the posting requirement. You speak to this. It seems to me if a councilmember is asking for something, information that would better - that they believe would help them be able to vote on map change or code changes, that would fall within -- under the posting requirement that we have, or else how do we ask staff to come back and

help us? As opposed to things which direct staff conduct in the future, post-code changes, that does not impact how the code is being written. Do you want to address the concern about --

>> Maybe I can ask you to explain it to me one more time.

>> Mayor Adler: Okay. What I'm trying to do really is move us forward without having this conversation now.

>> Pool: So mayor, I might be able to help. If Casar PC 15 where he asks us to consider requiring monitoring or compliance fee from all participants, if we pass that on consent, if that is -- unless I wrote it down wrong, unless that

[10:00:24 AM]

is considered programmatic, if that is considered programmatic, it's really not --

>> Mayor Adler: Which one are you looking at?

>> Pool: On the page before, page 21.

>> Mayor Adler: Okay.

>> Pool: It's consider PC 15, monitoring and compliance fee, and the intent is, consider requiring a monitoring and compliance fee, et cetera. And it's the affordable housing bonus programs. And mine says review the possibility of enacting a monitoring and compliance fee. So I'm fine putting that in programmatic, but I was -- I was raising the question about that because we had already --

>> Mayor Adler: Okay.

>> Pool: -- Agreed that Casar's item 15 was consent.

>> Mayor Adler: We're going to move --

>> Casar: Mayor, the he request is -- hold on.

>> Mayor Adler: Yes.

>> Casar: I think that if the fees are in the code, I haven't heard from the staff that the fees are a programmatic question. I think what we're saying is, should we push the -- I'm fine with staff coming back with the information in pool 6. That's just a request for

[10:01:25 AM]

information and we're going to push the conversation later, potentially to executive session, to request for information and programmatic changes.

>> Pool: I'm fine with 6 being programmatic as well, and I was talking to 7, which actually says to enact the fee, and yours was to consider the fee. Yours was listed as consent --

>> Casar: I support the fee.

>> Pool: So --

>> Mayor Adler: Wait a second. Does PC 15 -- is that programmatic or is that impact a code choice that we would be making?

>> So I think all these different amendments pointing to fees kind of interrelate, and if any or all of them pass, we would work with the law department to assess the viability of the fee. And just as sort of a procedural matter, these are always set in the fee schedule. Sometimes they're also

[10:02:26 AM]

acknowledged in code and sort of required in code. That's not necessary, but sometimes they are. And so, again, if any -- if one or all of these amendments pass related to fees, our path would be the same, which would be to work with the law department --

>> Mayor Adler: I understand your path would be the same. My question is, does it impact, potentially impact the drafting of the code that we would be adopting. And what I just heard you say was, it could.

>> Uh-huh.

>> Mayor Adler: That it's not an inappropriate thing for the council to put this into the code if that's something that they wanted to do.

>> If the fee is viable, then certainly there being be a requirement in the code specifying that there shall be a fee, but we have a lot of fees in the fee schedule that are not --

>> Mayor Adler: I understand that, but the question is an academic question here, whether we put it in the code or not is a decision we can make later on. It's a posting question that we have. If this is something that relates to language that could be in the code, how do I tell a councilmember that they're not allowed to ask questions about it if they're going to want to put it into the code?

[10:03:26 AM]

I'm not deciding whether it's good or bad, but my understanding is, it's not inappropriate that this could go into the code, whether we do it or not, and of course any fee has to be viable, then it would seem to me that this would make the posting requirement -- so 6, we're going to -- so back to where we were, on page 21, 15, PC 15 goes in. And then it seems to me that pool number 6 goes in. And --

>> For exactly the same reason.

>> Pool: Pool number 7, I'm sorry, pool number 7 is the monitoring and compliance fee --

>> Mayor Adler: And is that something also that would be -- that would not be inappropriate for a councilmember to move to put in the code if that's something that they wanted to do? I'm not asking whether we should or we shouldn't, whether it would be viable or not, just is this an appropriate -- is this a code thing?

>> I think a fee can be in a code.

>> Mayor Adler: Okay. So 7 --

>> I think there's analysis that

[10:04:27 AM]

goes in before we decide that a fee can be done, that's right.

>> Mayor Adler: No question. And there will be a vote on whether to do it and all that kind of stuff. All right. Any reasons that 7, then -- anybody have any objection to number 7? Yes. Councilmember Flannigan.

>> Flannigan: Just to be clear, I don't think we should be charging fees. We should not add any barriers to the construction of affordable housing. So I won't be supporting this now and I won't be supporting it later.

>> Mayor Adler: Okay. Any further discussion on number 7? Yes.

>> Harper-madison: Yes. And I think generally speaking, I understand the application of the fees, but I also very much understand what councilmember Flannigan's hesitation is with providing barriers, in which case I have a question about whether or not the application of the fee would disincentivize people from accessing the tool. And that's a staff question. Are.

>> Erica leak. Yeah, I mean, you know, any

[10:05:28 AM]

additional cost could be a barrier, you know, depending on the size of the fee, it could either be an itty-bitty barrier or a bigger barrier. So it could have some impact. Sure.

>> Harper-madison: Do you have any -- I don't need it when I'm talking to myself -- do you have any -- maybe this isn't from a dais question, but I just can't help but wonder whether or not you have any suggestions about how we can monitor efficacy and prevent barrier -- I just -- I guess my struggle is, you know, somewhere between the two, I can see the potential need for application of fees, but I also see

that providing an additional barrier to affordability could be problematic, in which case I just wonder how we find ourselves on neutral territory there.

>> I think there will be further conversation about this later. But we might not need to handle

[10:06:30 AM]

it quite now.

>> Harper-madison: Might not?

>> I think there will need to be ongoing discussion about this, but in terms of what the fees might be, but I think we might want to have that a little later. Just because I think there are actually a number of issues related to this that have come up recently, so it may be more of a deep dive.

>> Harper-madison: In which case there were a number of items, mayor, if I may, that we decided to postpone yesterday by way of the recognition that the conversation needed to be more robust. I would like to implore that we do that with this one, if there are continued questions and/or concerns that we could potentially massage out by way of more questions asked of staff and more time to ascertain what potential barriers could be and how do we prevent that.

>> Pool: Then we will also immediate to pull Casar PC 15 off

[10:07:31 AM]

of consent and include that in that same questioning protocol because it is essentially the first step to my number 2. They're both the same.

>> Harper-madison: About the exception of the fact that the language literally says consider. And so I think where I'm finding myself -- and this could just be a semantics thing. Review the possibility of enacting as a requirement to participate in, and then the difference between that and consider. Consider seems to me like a direction to analyze and assess, review the possibility of enacting. And maybe it's the word enacting that's triggering me to feel like it's a specific and guided direction. But I'm comfortable with doing what it is that you're suggesting.

>> Mayor Adler: Councilmember

[10:08:31 AM]

Ellis.

>> Ellis: I've thought about this in a way similar to councilmembers Flannigan and harper-madison. And I'm wondering if maybe adding language that says, after monitoring and compliance fee, and potential funding options, might be something that we could look at so that we're addressing the fact that we don't want to make affordable housing more difficult and less incentivized, but I'm not really well-versed on where else we might be able to apply that fee so that we can monitor it.

>> Pool: Well, mayor, I would be happy to include all of the various different words that talk about review or consider or look at, and look at the costs for this and the costs for not doing this. I do not see, and I'll just reiterate, I do not see how this one is different than councilmember Casar's, and consider requiring a monitoring and compliance fee from all

[10:09:32 AM]

participants of affordable housing and review the possibility of enact, monitoring --

>> Casar: I'd like to table all three of the ones to the end. I'm moving to table all three --

[overlapping speakers.]

>> Mayor Adler: PC 15?

>> Casar: My own PC 15, pool's 7, and tovo's 11.

>> Mayor Adler: Any objection to tabling those three things?

>> Harper-madison: Totally comfortable with that, and if now is an appropriate time to do so, I'd say this is a good time to encourage nacd to evaluate efficacy and impact of implementing fees.

>> Casar: Mayor, not to -- just so that we know for future ones that a motion to table, I don't know -- I don't think it's debatable.

>> Mayor Adler: It is not debatable. All right. So without objection, we are going to table PC -- Casar PC 15.

[10:10:35 AM]

We're also going to table pool 7. And we're going to table tovo 11. Let's continue on. By the way, it is now 10:12. I am going to recess this city council meeting momentarily and I am going to convene here --

>> Casar: I'm going to --

>> Mayor Adler: In a second, you can. I'm going to convene at 10:30 the special called meeting today to handle real estate matters, at 10:13, it is Tuesday, December 10th, it is 2019, we are in 301 west second street, Austin, Texas, a quorum is present. Having now convened this meeting, I'm going to recess this

meeting and we will pick this meeting back up at the conclusion of our work on the land development code, which will be about 11:30.

[10:11:35 AM]

That said, our special called meeting set for today is in recess. Before we go back into the city council meeting on the land development code, councilmember Casar, do you want to convene a meeting?

>> Casar: Mayor, I'm going to convene the meeting of the housing and planning committee, 10:13 A.M., we're in council chambers. I'm here with vice chair Ellis and members Renteria, kinks and harper-madison. That being said, I'm going to take us back into recess for us to pick this back up and adopt our calendar once the real estate matters are over, and so that being said, the housing and planning committee is convened but in recess.

>> Mayor Adler: Okay. Thank you. And also at 10:15 then, we're reconvening the council meeting that we had started yesterday, continuing to work on the land development code. Today is December 10th, and we're in city council chambers.

[10:12:35 AM]

Quorum still present. Okay. Continuing on I'm now to tovo number 2. It's at the top of page 23 of 39. This was pulled by councilmember Casar.

>> Casar: Yes, mayor. I handed out the amendments to this earlier today, or, sorry, late yesterday, and let me rehand it out for anyone who needs -- it has the amendment to tovo number 2. It also has an amendment -- potential amendment to tovo number 4, depending on what answers we get from staff. But it just reiterates -- my amendment reiterates this back to what it is that we passed in the council direction.

>> Mayor Adler: Okay. Is there a -- why don't you pass those down so that councilmember tovo can see it.

[10:13:36 AM]

>> Tovo: I have a copy.

>> Mayor Adler: Okay.

>> Tovo: I don't know if everybody else does, though.

>> Mayor Adler: Are you okay with the amendment.

>> Tovo: No, I'm not.

>> Mayor Adler: Okay. Councilmember Casar, you want to address your amendment?

>> Casar: The amendment just brings us back to where we were in the council direction saying that new entitlements are going to be in the bonus for affordable housing. They also are for the creation of missing middle housing and that when we actually can get the on-site, if staff modeling shows that we can get the on-site affordable units, then we can be asking for those, but where it is that we need fees, then we should ask for fees as well.

>> Mayor Adler: Okay. Is there a second to the Casar amendment?

>> Tovo: How about we have a motion first for the amendment that was on the table, which was mine?

>> Mayor Adler: I was just assuming -- is there a second to councilmember tovo's amendment 2? Councilmember kitchen makes that. Is there a second to councilmember Casar's amendment to tovo 2? Councilmember Renteria.

[10:14:37 AM]

Councilmember tovo, do you want to respond to the amendment?

>> Tovo: I do. Thanks. You know, we have heard from many speakers that they have concerns about -- about the increase in entitlements without any affordable housing component. And to be very clear, we are -- we are appropriation what is currently in -- well, let me back up and say councilmember alter referred to it earlier as well, and you have, councilmember Casar. There's no doubt that in the policy direction that we passed, that this council passed in the spring, that we included an increase in entitlements for missing middle housing with no affordable housing component. I think that was -- I think that was misguided, and I think we should revisit that. We are in many areas of my district and in other areas, we are quadrupling what can be built on those tracts. You can build -- quadruple it and have no affordable housing unit on that tract. I think that's not right. I think that it is -- I think that the zoning changes are going

[10:15:37 AM]

to be extremely disruptive, and the continued conversation about how this is creating more affordable communities is just not accurate. It's creating market rate housing that's going to be much more expensive than the housing that currently exists. I have one of the highest capacity -- unit capacities in any district, almost 70,000, and almost the very lowest affordable housing number of projected units. You know, yesterday we received an email from Tony house of the east Riverside -- the east Riverside coalition -- I'm sorry, I'm forgetting the name of their neighborhood planning team, and she talked about what had happened in east Riverside. And I feel some responsibility for that because I was on the

council when we passed that regulating plan. And one of the things that we did in that regulating plan is to substantially increase the entitlements along east

[10:16:38 AM]

Riverside. There was also a bonus program. But one of the things that's happened is that all of that existing, what was market rate affordable housing, much of it is being redone, it's much more expensive, and the developers aren't accessing the affordable housing density bonus program because the entitlements that were built into the regulating plan are so great. I think that this is a mistake, and I would ask that we have an up or down vote on my amendment because it is -- I think it is a matter of principle that we should tie those increases in zoning to the construction of affordable housing. So that's what my amendment is.

>> Mayor Adler: Got it. The amendment has been moved and seconded. Casar amendment to the amendment, that's what's before us now mayor pro tem.

>> Garza: The hard thing about this -- this decision is that we

[10:17:40 AM]

all, obviously, support affordable housing, especially those of us who represent districts where families are moving out to other cities and, you know, outside of our city. I guess -- councilmember, Casar, can you just help explain the change and -- my assumption is -- or the amendment, rather -- is that there's different ways -- we're trying to address this in different ways, and increasing our supply anythings to subsidized units, so we have to be able to balance both. And I feel like that's what William of us are struggling with

-- that's what many of us are struggling with and trying to balance the supply. We have to all agree on the fact that people will continue to move here. If we keep the same housing

[10:18:41 AM]

stock, we are pushing people out. We are pushing people out if we keep the same housing stock. So this is trying to balance that. It's incredibly difficult. So I guess it's kind of a question of staff and of councilmember Casar. Is it because -- do strong affordability requirements -- are they not -- are we not able to really incentivize those? Because is the reality that even if we -- we can say all day in the code, you have to put two units, but if at the end of the day, nobody can do that, then we just did it for the principle of saying we required affordable housing on this. So can staff and councilmember Casar speak to those concerns?

>> Casar: Mayor, I'll speak to it. Mayor, I can speak to it. Or staff.

>> So one of the things that our consultants are telling us about the affordable units is that it -- I think I've said this before -- is that it takes

[10:19:41 AM]

between three and twenty market rate units to cross-subsidize an affordable unit. So there may be some limited situations in areas in the city where you might possibly get an affordable -- an on-site affordable unit in missing middle housing, if the site is big enough, et cetera, but there would be lots of places where it is unlikely to be able to have -- to require an on-site affordable unit, especially in the missing middle Zones, and still have it be an incentive for people to participate in the bonus part of the missing middle.

>> Garza: And is that because of higher land cost? What is the "Because" part that of the?

>> The "Because" of the three-year 20? So it's a combination of land costs, and then the rent or sales price that can be achieved. So in places where there's a high

[10:20:41 AM]

sales price or high rent price, then it's easier to cross-subsidize an affordable unit, but if the rents or sales prices are lower, then it's much harder to cross-subsidize that affordable unit, because the subsidy required for the affordable unit is consistent, tied with the affordability requirements.

>> Mayor Adler: Councilmember Casar?

>> Casar: Yes, mayor. I think, you know, this is a hard conversation. I want us to make sure that the public understands what it is, specifically, we're grappling with. While, theoretically, if a lot were really big, somebody maybe could build four times as much on some of these tracts, it's not four times as much with no affordability tied to it. Any case where it's four times as much, we're talking about well over \$100,000, in many cases, hundreds of thousands of dollars in subsidy -- in fees being paid

[10:21:43 AM]

for the affordable housing department to build more affordable housing. Signed what my amendment says is, if we can get the on-site unit, let's get it, but if the best we can get is hundreds of thousands of dollars, which we being then pair with another project that gets us hundreds of thousands of dollars to buy down units, then we get affordable units, let's take that path that way. So that is the -- that's the gist of the amendment, is, let's get them on-site when we can get them on-site, but if the best we can

do is get hundreds of thousands of dollars for hundreds of projects, and then we start buying down units, let's do that. Because the fees as you've laid them out are really significant. I mean, we're saying if you're accessing the bonus entitlements, you are making a significant contribution, we're demanding a really high contribution into affordable housing. And for the smaller missing middle housing types, for you to go to a three or go to a fourplex, I think the council, our direction, that is a good thing, because in the vast majority of cases, we're seeing a

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single-family house gets torn down and just gets replaced with one big one, and we want to encourage people to go to that three- or fourplex because, while oftentimes that may be more expensive because it's new, it's almost always cheaper than the one big house. And generally over time, as we've seen, attached housing in those three or fourplex configurations add to our housing stock, that helps the affordability generally, it creates room for more people, so fewer people get pushed out, and it gives people family-friendly options, so I think this is all trying to balance that. We want missing middle housing, we want less mcmansion teardowns, and we want to a bunch of money to buy units or on-site unit when we can get it. That's the intent of my amendment. To balance goal, and people can disagree, but it's not -- I don't believe it's fair to characterize it as we're going to be giving four or five times more and not asking for anything in the way of

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affordability, because we are, this is just my best way of getting there and I respect other people's ways of getting there.

>> Mayor Adler: I'm going to support the Casar amendment on this. This is a tough issue and it's also that you have issue to explain, but I think we argued this at length when we did the direction back in the spring. We discussed it at length there. I think we made the right decision there. I think we need to find the right balance, and I think, quite frankly, this is the strategy to maximize our ability to put affordable units on the ground, and for me, that sort of focus has to be, I'm going to support the Casar amendment. Councilmember kitchen.

>> Kitchen: Well, you know, I'm trying to understand the Casar amendment. It appears to me to be backtracking on what we did in may because what we did in may -- and I don't have that language in front of me, but we said that --

[10:24:45 AM]

I thought, that we were tying increases in entitlements to affordability requirements, not to just the creation of missing middle. We said that we wanted affordability for missing middle, and I apologize, I can't remember the exact language, but if I'm reading this first sentence, it just says tie all increases entitlements to affordability or to missing middle, which I think is different than what we -- I thought that we said in may that wherever possible -- we did acknowledge that on some -- some areas where you had, like, two units or three units, it may not be possible to attach affordability to it, but we did not talk about just creating missing middle with only creating missing middle, if I'm remembering correctly.

>> Casar: Do we have the policy direction so you can read it for us? I don't have it in front of me.

>> Tovo: I have it in front of me.

>> Casar: Or if you can read the

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line --

>> Kitchen: I'm sorry, I don't have it in front of me either. As I was it.

>> Kitchen: So let me find that.

>> Mayor Adler: You found it?

>> Laura found it fast they are than me.

>> The direction says, in general, within activity centers, along activity corridors and along transit priority network and transition areas, additional entitlements beyond current zoning should only be provided to increase the supply of missing middle housing, which shall include affordable housing bonus program where economically viable --

>> Kitchen: That's what I said.

>> Or through the density bonus program that requires some measure of affordable housing.

>> Kitchen: So -- which is what I just said. And yours doesn't have -- it doesn't tie the creation of missing middle to affordable

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housing, which that does.

>> Casar: So mine intends to be the exact same thing. Currently, all of our missing middle Zones tie it to an affordable bonus program. That is what -- the direction says additional entitlements will increase the supply of missing middle housing, which shall include affordable bonus program or economically viable.

That's what's in the current staff draft. What councilmember tovo's amendment asks is that that bonus program require the unit on-site in all cases, I believe. It seems to be what it says, which is fine -- in all cases with five units or more, excuse me, all cases with five units or more, I apologize. What I add is that that is okay on where it is that that will actually produce the on-site unit, and otherwise, we'll take the really significant affordable housing fee, so I don't believe that this is -- I'm not asking for this to remove a bonus program anywhere.

[10:27:46 AM]

It is just saying that I want staff to make it an on-site requirement where we know we'll get the unit on-site, but where staff has analyzed that we're not going to get an on-site unit, but we can take several hundred thousand dollars, I'll take the several hundred thousand dollars.

>> Mayor?

>> Mayor Adler: I read the first sentence to be consistent with missing middle -- missing middle housing as our programs do because where they have an affordable housing bonus as viable, which I think was the language.

>> Kitchen: But it doesn't say that.

>> Tovo: Mayor, I need to be very clear.

>> Mayor Adler: Councilmember tovo. Then councilmember harper-madison.

>> Tovo: The proposal, I think there is -- I believe it is appropriate to reevaluate the decision we made. I'm looking at my district and I'm going to show you the rental rates here in a minute. We are largely getting at capacity. I've forgotten exactly what the

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figure is. I might need to ask annick Beaudet. I think somewhere between 93 or so percent of the capacity is from redevelopment. You'll see what we're redeveloping here in a minute. We're redeveloping over existing housing that is serving, in many cases, a majority of renters in our census tracts. And in doing so, we're -- the proposal before us rezones properties that concurrently have two units to five units, no affordable housing component contribution at all. If you're going to r4, you currently can have two units, you can have five units if this passes with no affordable housing contribution. In rm1, same thing, currently you can have two units, you can go to seven units with a preservation bonus, no affordable housing contribution. It makes absolutely no sense why we would rezone existing housing that is certainly going to be less expensive than what comes in its place and allow people to go

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from two units to five or two units to seven with no affordable housing contribution at all, no contribution to the density bonus program, no on-site. Until you get to ten units, you won't have a unit on-site. We're leaving a tremendous amount of affordable housing contributions on the table in doing so. And I absolutely believe it's appropriate to revisit that. Thank you for putting this up.

>> Mayor Adler: Councilmember harper-madison, did you --

>> Tovo: Can I just speak to my image?

>> Mayor Adler: Yeah. Go ahead. Sorry.

>> Tovo: Would you mind putting that up again, sir? These are a bit outdated. These are owner occupancy rates. I've written in -- I've converted it to what the rental rates are. You know, we've talked a lot about Hyde park and -- I mean, you see what the rental rates are in these neighborhoods for the units. These are -- these are the structures that we're redeveloping. They are largely serving in many of these areas, serving

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renters who will not be -- who will not benefit from a homestead exemption. That's the housing we're redeveloping in putting forward a proposal that's doing this. I think that, at a minimum, we should make sure that there's an affordable housing component, and I think that -- I do not -- I believe that we should do better and that we should tie those entitlements. Nothing as to say that -- you can take it down. Thank you. Nothing is to say that we can't come back and phase that approach, if in two years we're seeing that -- we're not getting the impact we need -- sorry, I need to turn that off -- but it would be very difficult to come back a couple years from now and say, boy, all this housing is redeveloping, and people are stopping at seven units with no affordable housing contribution. They're stopping at five, no affordable housing contribution. And what we've done, I mean, we're not done any, that I'm aware of, not done any analysis of what the impact

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is on redeveloping over existing market rate housing and what the -- what the cost is of that, because once that housing is gone, I don't believe the affordable housing, even if you do nine units, ten units, I'm not sure that the affordable housing gain we're getting is going to replace the housing we're losing.

>> Mayor Adler: Councilmember harper-madison.

>> Harper-madison: Thank you. I appreciate you recognizing me. There have been multiple things that have transpired during the course of the dialogue. I 100% wholeheartedly can hear what mayor pro tem Garza was trying to establish by saying without increasing our supply, we don't incentivize affordability and/or encourage building that is affordable. Also, councilmember kitchen, the way you pointed out, you know, us not providing any impediments to missing missing middle, I 100% thing that's exactly the right track. I think making building

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missing middle difficult just means that wealthier people get to outbid people with lesser means. So I really appreciate that everybody has acknowledged what a difficult conversation it is. I also want to make certain that we're all very clear with how we present the dialogue, if for no other reason, getting laymen to understand the level of conversation, the lack of feasibility with some of the commentary here, it just doesn't pencil out, and if numbers don't make sense, people don't do it. You think about any other business, at the bottom of that spreadsheet, your numbers have to pencil out to net gain. You have to earn a profit. Otherwise, you don't do it. Housing, the development of housing, developers, it's a business that we're talking about. And I think being very clear about saying we're talking about any other kind of business, if the numbers don't make sense, then people don't do it. They won't do it, regardless

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of what incentives we provide. I want to be clear, I don't think I can support either of these amendments, I don't think they speak to the nature of what it is we need to do. We need to build more housing, we need to build more housing in a way that incentivizes the people who build the housing to make some of it affordable. But the truth of the matter is, and this is the hard truth that I think a lot of us are having a hard time really fully acknowledging, affordability is a problem in a lot of ways, if for no other reason, people with means can outdo people without. And there's only so much from a policy perspective that we can do to address that. So I really do just appreciate everything that everybody has said so far, but I can't support either of these amendments.

>> Mayor Adler: Okay. I think we've said it all. Councilmember alter.

>> Alter: Thank you. I'd like to ask staff what our ceiling is for missing middle. Yesterday you said that missing middle started at five units. What is the ceiling?

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>> Rm1 goes up to 10 units, potentially 11 if the preservation bonus is utilized, in rm1.

>> Alter: I understand, but the proposed amendment is to the creation of missing middle housing so I'm just trying to understand D what that would imply here.

>> Casar: Mayor, could I speak to intent?

>> That would interpret this as the r4 and the rm1 Zones being the top of missing middle, as we have mapped them already.

>> Alter: Okay. Thank you. You know, I'm on record very clearly communicating that if we're going to be giving away our entitlements, we should be trying to maximize the contributions that we

[10:35:50 AM]

get to affordable housing, whether they are fees or on-site, and I feel very strongly that the way that we have proceeded, we have left opportunities on the table and that it is, for certain parts of town, we will not get any affordable housing. It will just not pencil out at all. And, you know, we -- I would love to see, you know, deeper dive into this capacity analysis, in the feasibility, and where in town you actually have us getting any of these bonuses coming out unless they are not calculated, either. You know, we just had a zoning case in river place where it was single-family, they were able to give \$8,000 per unit to habitat for humanity.

[10:36:50 AM]

We have goals of inclusionary zoning and other things in our blueprint, and we are just giving up on this, and I understand that in -- this will not work equally all over town, but in the absence of these requirements being there in certain parts of town, you will get no affordable housing. And, you know, no one is going to build a tenplex with an affordable housing bonus when they can build seven and not do it in a high opportunity area. It's just not going to happen, the differentials are never going to -- they're never going to be there. But if you told them you couldn't go from one or two to six or seven without that you could get it. At the very least, you could get maybe \$100,000 for your fee as part of that. So I think we really need to be thinking about that. Maybe that fee differs

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across the city. But I'm not sure any developer would go above seven if they could in a high opportunity area and take advantage of it. So, I mean, it's an empty opportunity.

>> Mayor Adler: Okay. We have Casar amendment on the floor. Councilmember harper-madison?

>> Harper-madison: If I may, you said something that appeals to me, that I'd like to sort of dig around in. So you said maybe the hundred-thousand-dollar fee is dependent on where, but I think more important it's dependent on who. So the small builders have considerably more barriers than a larger builder. So let's say I'm a regular neighborhood builder person and I want to, you know, build one or two or three in the neighborhood, the hundred-thousand-dollar fee being assessed to my business model makes it where it doesn't work for me at all, whereas for somebody else it could, so maybe that's the question? The size of the builder? I know with the minority

[10:38:52 AM]

business program, when we make an assessment around valuations of the business, we consider, you know, income, we consider personal assets, et cetera. So I think that might be the more appropriate way to make that assessment around assessing fees for building, because I don't want to do is assess fees to the degree that we disincentivize people to build affordability, I don't want to build barriers with a blanket application of fees, but it's got me thinking maybe there's another way for us to get creative and innovative there.

>> Mayor Adler: Councilmember Flannigan.

>> Flannigan: Councilmember alter, did you cite river place because you think it's a good example of what we should be doing?

>> Alter: I cited river place because it was an example of where it was clear we could be getting more money, and if they can do \$8,000 in that situation with respect to single-family per unit, that there's opportunity to be, as we are increasing entitlements, to be gaining

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some resources for our affordable housing of some kind.

>> Flannigan: But I don't recall that you voted for that case. Is that right?

>> Alter: Snow, I didn't no, I didn't vote for that case because it was in a high wildfire area, nothing to do with affordable housing.

>> Mayor Adler: Casar amendment is on the floor. We have 45 minutes before we break and we'll be discussing time for tonight.

>> Tovo: This is, I think, a pretty critical issue. In some of the conversations, mayor pro tem, about the equity overlay, I saw some language that you said about tying increases in entitlements to affordable housing. Councilmember harper-madison, it sounds like you're open to some kind of creative options here. I would suggest that we at least come up with language that asks our mistake of to -- asks our staff to take another look at increases in entitlements and determine whether we can

[10:40:53 AM]

scale at least a fee, once they get over the base entitlements that they currently have. I don't think that councilmember Casar's accomplishes that. It really ties it back again to just the creation of new housing. And I don't -- that understand doesn't -- that's not really the intent of my amendment. So if we got back to my original language, but made it a little less descriptive -- what I don't want to do is pass an amendment that basically comes back with the very same -- the very same information that we don't think the calibration is going to support it, but I would ask that we consider taking a vote on my original amendment, which I will quickly adapt to be, consider graduated ways to tie all increases in entitlements over current-based zoning to strong affordability requirements, either through

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fees or on-site units. I mean, I just want to underscore, it's the point I made but I want to underscore what councilmember alter said, if you can get from two units to seven with no affordable housing component, you're probably not going to go to ten. It just -- if you can get two to ten, on an rm1 lot, if you can get to ten with no affordability, if you preserve the front unit, they're just not going to add that additional one. Signed I would like to propose an amendment to my own.

>> Mayor Adler: Okay. We'll get there.

>> Tovo: Which would be -- well, let me read it again because it is a viable alternative, I think, to councilmember Casar's. Consider opportunities to tie all increases in entitlements over current based zoning to strong affordability requirements, either via fees in lieu or on-site requirements. And in doing that, we would really be asking staff to take a broader look at that.

[10:42:54 AM]

You know, we talked about linkage fees, we took steps towards that. I mean, that, in essence, is similar to what -- the conversation that just transpired between councilmember harper-madison, if we were willing to support linkage fees, it's unclear to me why we wouldn't ask our staff to take another look at ways to support affordable housing through these increases in entitlement, beyond just that absolute maximum.

>> Mayor Adler: Casar amendment is in front of us. Councilmember Renteria?

>> Renteria: I just want to ask the question, what do you mean when you say strong affordability?

>> Tovo: Councilmember Renteria, I guess what I mean -- what I mean is what I laid out. It doesn't sound as if there's support for that, so I'm backing off and saying, you know, even if all we got were \$100,000, that would be better than zero. And so to me, strong amping strong

[10:43:56 AM]

affordability at this point means more than zero, until you get to eight units, except for contribution, I'm calling about on-site.

>> Renteria: I'm willing to support something like that but I want to make sure we don't get to that point where people will not build them, build affordable housing, just build whatever they're entitled to. So I'm just trying to figure out what strong affordability would do to a person.

>> Tovo: Okay. If there's a willingness to consider this, then again, I would --

>> Mayor Adler: How about --

>> Tovo: I would request that you vote down councilmember Casar's, or he withdraw it, and allow me to make a change to mine, saying what I did, but didn't write down, so somebody might have to remind me, consider opportunities for tying all increases in entitlements over current-based zoning to -- if it makes you more comfortable, I'll say affordability requirements, either via fees in lieu or on-site requirements, and that we ask staff to take a look at that and come back

[10:44:56 AM]

to us. Thank you for helping me refine that.

>> Mayor Adler: If we table this one, don't adopt the amendment, let somebody draft language and then get it out to us, work with staff, and then come back?

>> Tovo: I mean, I'm pretty comfortable with this, if we're at a point --

>> Casar: I'll move to table it.

>> Mayor Adler: Okay. Let's get it back, I'm not following it. I need to see it. There's a motion to table it. Does anybody have an objection?

>> Tovo: Do I have.

[Overlapping speakers.]

>> Mayor Adler: I understand. Those in favor of tabling tovo number 2, please raise your hand. Those -- that's harper-madison, Flannigan, me, Casar, Garza, and Ellis. Those opposed to tabling? It's the balance of the dais. We're going to table this one and come back to it.

>> Harper-madison: Mayor Adler, if I may, this might be helpful, one of my

[10:45:57 AM]

concerns, maybe some of my colleagues share the concern, I feel like we're relying way too heavily to density bonuses to produce affordability. I think if we could address that concern during the course of the dialogue, that would be very helpful.

>> Mayor Adler: Okay had it's been tabled, tovo number 3, seems to me to be programmatic, so I'm going to move --

>> Tovo: I'm sorry, let me just get there. I was just trying to write down -- which one are you on?

>> Mayor Adler: Tovo number 3, on 23 of 39. It's partnering the local nonprofits.

>> Pool: Mayor, if I could just ask --

>> Tovo: Let me just say I do think we should provide direction on that programmatic so that we're not again revisiting issues that we could have just knocked out.

>> Mayor Adler: And again, the issue with respect to programmatic is a posting issue only, it's not intended for us not to cover, we'll discuss that issue later.

>> Tovo: I know.

[10:46:57 AM]

We are spending lots of time saying what's programmatic and what's not, I wish we could just knock out that question. I'm perfectly comfortable taking -- providing direction as we do almost every council meeting and sometimes we vote on it, and I don't understand --

>> Mayor Adler: I ask that we address this in executive session.

>> Tovo: Okay.

>> Mayor Adler: Okay? But for right now, tovo 3 is going into the programmatic bucket. That gets me into tovo --

>> Pool: Mayor, before you move on, if I could just check, the tabling motion where you counted, you only named five names and I wanted to make sure that there were six people who had voted to table, as opposed to --

>> Mayor Adler: There were six people, it was harper-madison, Flannigan, me, Casar, Garza, and Renteria.

>> Ellis.

>> Mayor Adler: And Ellis. That's right. Okay. Continuing on.

>> Kitchen: I have a question. I'm sorry.

>> Mayor Adler: Yes.

>> Kitchen: On number 3 that we just said was programmatic, it seems to me that this is something that could be in the code. It could be in the code to

[10:47:00 AM]

provide for ongoing monitoring. It's one of the issues that we've had for a while, you know, and it's -- you know, how to actually have ongoing monitoring, and I don't think that that's programmatic. I think I would like to see something in the code that provides for the opportunity to do that. It certainly doesn't have to map the organization --

>> Mayor Adler: Okay. I said to move this in the code. Councilmember kitchen wants to overall the chair's putting it into the programmatic bucket. Those in favor of considering it now rather than considering it in a little bit when we have programmatic, please raise your hand.

>> Kitchen: Wait, wait, I have a question for you.

>> Mayor Adler: Yes.

>> Kitchen: I thought we made the decision a minute ago with something else that was going oh, that if it was possible to put it in the code, then we would consider it as going into the code.

>> Mayor Adler: That's correct. I'm saying I don't think that it does. I can be overruled. I'm trying to get us to move as quickly as we can through this before 11:30. Those that agree with councilmember kitchen, please raise your hand. Coffee, kitchen, pool. The others, please raise

[10:48:01 AM]

your hand if you don't. It does not pass. We're going to put it in the programmatic section. That gets us to tovo number 4.

>> Tovo: I'm fine with that amendment -- I'm not fine with it, but if that's what it takes to get it through.

>> Mayor Adler: Okay. Tovo number 4 with duplexes being stricken, anybody have an objection to that?

>> Casar: My question is -- my sense is that if -- I have no problem with existing triplex in a transition zone getting zoned r3 as opposed to r4. Is there an easy way for us to figure that out or is that going to take a ton of staff work? I was going to offer having tovo's pass without the word duplex, which would essentially ask y'all to look for threeplexes and zone them to r3 instead of r1, I'm fine with that if that's not going to take a ton of staff work.

>> Tovo: Mayor?

>> Mayor Adler: Hang on, there's a staff question. Yes?

>> So staff would interpret

[10:49:02 AM]

this direction if a triplex or fourplex had subzoning, we would keep it r2 per this direction. We also don't have data on triplexes and fourplexes as well as whether they're market affordable so we'd have to look at some other data --

>> Casar: What about just triplexes and fourplexes generally? You don't have data on where those are?

>> We do have data on where they are. We don't have data --

>> Casar: I think the intention here is to leave triplexes r3 and leave fourplexes r4 that are on the ground.

>> Okay.

>> Tovo: So let me say a couple of things. One, I think that this is one of those areas where we can ask community members for their assistance. I know in my district, some of them have done this kind of mapping already and they know where some of the triplexes and others are. Sometimes they have appropriate zoning, sometimes they are in sf-3 zoning and we would be actually making compliant

[10:50:02 AM]

their existing use, and I think this is one of the wonderful things about asking the community to participate, is that often they have information that our staff may not have. I would ask, though, that we -- I would ask that you make your amendment as a separate amendment because, as I recall our description of missing middle, it's also duplexes. Is that correct? Does the missing middle also include duplexes?

>> Yes.

>> Tovo: So I'm going to ask that we vote on our original and if you want to make that as an amendment, I think if we're talking about missing middle, we should talk about missing middle and all its incarnations.

>> Mayor Adler: Okay. The motion -- the amendment in front of us is to strike duplexes from tovo number 4. Is there a second to that amendment? Councilmember Flannigan seconds that. So let's vote on the amendment to strike duplexes.

>> Casar: And, mayor, to make it easier on the staff, I'm fine with it being not -- not requiring them to be affordable -- that would actually -- this actually saying -- not requiring for

[10:51:03 AM]

us just to find affordable three- and fourplexes, but saying if you know where the three and fourplexes are, zone them for three and fourplex. I don't see there being much use in zoning for three or fourplex --

>> Mayor Adler: Maybe strike market affordable and to strike duplexes.

>> Casar: And when we say do not upzone, I think we mean --

>> [Off mic]

>> Mayor Adler: First let's take out market affordable. Those in favor of taking out market affordable out of this language, please raise your hand.

>> Casar: That's fine.

>> Mayor Adler: Those opposed?

>> Harper-madison: I just still am not clear, I'm sorry. Go ahead.

>> Casar: Sorry. So, the tovo amendment is asking -- I think intends to have duplexer threeplex, and fourplex not get zoned upward, so a duplex getting zoned up for a fourplex,

[10:52:06 AM]

she's asking for it to be -- threeplex, she's asking to stay at three presentation. There are three components to the changes that we're contemplating. I think there's two that councilmember tovo and I agree on, one where she says do not upzone, I think we boat actually mean right society. I think we actually mean that if something is an existing threeplex, we want it zoned threeplex. If something is zoned fourplex, we want it zoned fourplex. The second thing, we don't want staff going and checking what the rent is at every threeplex or fourplex, if it's threeplex, whether it's 50s 50% mfi or 90% mfi, zone it threeplex. I think she and I agree upzone is probably better recorded as right zone, and market affordable isn't necessary because I don't need them checking the rents in following this issue. Then the third issue is whether or not all complexes should be zoned r2 or if we are fine with the staff

[10:53:07 AM]

leaving some duplexes zoned r4 and rm1. I believe, I've seen and we've talked about some duplexes getting torn down for single-family construction, so I'm fine with some of those being zoned r4 and rm1 with a bonus. So I think we agree changing the word upzone to right zonings I think we agree to striking the word market affordable, and whether or not it's three plexus or fourplexes that stay right zoned, or whether I disagree with councilmember tovo's -- I think that's the scope.

>> Mayor Adler: Okay. We're going to take these pieces. First -- I'm sorry. Yes. Go ahead.

>> Alter: So I understand that this somehow got put in the housing affordability and transition area section. I think we had agreement yesterday when we did the equity overlay that we wanted to find a way to protect market-affordable housing elsewhere, and I'm concerned because I'm not sure if the intention was

[10:54:08 AM]

missing middle, that's not as a definition confined by the transition area ending at 11. There are a lot of complexes that have 20, 25 apartments that, if we allow the market to -- upzoning to happen, those will turnover and we will lose all of our affordable housing, which is what we were trying to address in the equity overlay. And so I just -- I'm just not sure how that got placed only in the transition area and whether that is the intention or not, and maybe we need to do this twice, I don't know, but I think --

>> Tovo: No, I think the amendment -- I don't -- yes, it doesn't -- it -- it's not specific to transition area.

>> Alter: So for me, if we have this question where missing middle ends, we're not confined to transition area, like how big is that?

>> Casar: Mayor, I -- I'm

[10:55:10 AM]

sorry.

>> Alter: I just don't want this only to apply to -- stop at 11, because I think there's a whole universe of complexes that we're trying to address, which was also what was trying to be addressed with councilmember pool's amendment, and, you know, I supported the equity overlay, but I also, as I have throughout this process, wanted to protect that market affordable, and in the high opportunities, that market affordable that does exist will flip like that if we don't find ways to protect it, and this is what I think this is trying to be designed to do. So can I make sure we have some clarity that this doesn't cut off --

>> Tovo: No -- well, I think that we've already captured the larger complexes, and so this was designed at those other missing middle products that I don't think it captures.

>> Alter: I know we did in the may 2nd direction but it wasn't mapped that way

[10:56:10 AM]

for things under a certain --

>> Tovo: Well, this was a point of confusion in yesterday's conversation, but I do think we asked staff about whether or not they were -- we're preserving existing zoning or right zoning, multifamily projects that were larger -- I mean smaller, and I don't know if -- I mean to back up, in the course of conversation yesterday, I think I realized that I had a misunderstanding with staff, and you may have actually been in some of to say conversations where I thought the data that they had only captured multifamily developments that were larger in scale, and they indicated that that wasn't the case, and that they have endeavored not to map over smaller apartment complexes of 11 or so, and that to the extent that we have developments that were mapped over, and were not right zoned, we should point them out.

[10:57:12 AM]

Am I characterizing that properly? That's kind of my takeaway of yesterday's conversation and we had that conversation in the discussion of councilmember pool's amendment and councilmember Garza's. So I feel pretty comfortable about those, that we have done what we needed to do in terms of policy direction, about those larger scale. This would -- this is acknowledging that we have existing missing middle housing throughout all of our older neighborhoods, probably, and some of our newer ones, too, and that we want -- we want to see that preserved. And so I think the market affordable -- taking the market affordable out, I think, makes it more meaningful, and then I think we just vote on whether the missing middle housing, in duplex form, is something we want to avoid seeing redevelop or not.

>> Alter: Okay. I'd like to get confirmation from staff that councilmember tovo's interpretation of what we're doing on those market affordable apartment complexes -- what you are doing, and that you have all that direction that you need.

[Overlapping speakers.]

>> In the October 4th map,

[10:58:13 AM]

we used data that's available for apartment complexes that are five units and up. And if they were market affordable, we did not upzone. So in some cases, if they were non-conforming, we left that non-conformity. And so this direction would be helpful to staff on what to do with triplexes and fourplexes

because they're not captured in that data so we can just look at all of them, or we can look at triplexes and fourplexes of a certain age, but that would be the data that would be available to us.

>> Alter: Okay. So similarly then with what was in the equity overlay, that's already done and this then applies -- this is adding that --

>> Mayor Adler: To the apartments.

>> Alter: To the whole city, including the equity overlay. Is that correct?

>> They can't.

>> Alter: Because it's not in the equity overlay at the moment, this level.

>> Mayor Adler: All right. It's 11 o'clock.

[10:59:15 AM]

>> Harper-madison: So I have a potential amendment. To ensure multifamily remains multiple family in the future, remap and right zone existing missing middle and multifamily nccds that have been down zoned. I think councilmember alter and I had similar concerns about diminished capacity, but in my mind's eye, that language addresses that concern and also addresses your concern and intent about preservation of existing affordable.

>> Tovo: I'm sorry, but I don't have that amendment in front of me. I think you limited it --

>> Mayor Adler: I'm going to move to table this one as well, if we're bringing out language --

>> Tovo: Can we just handle it in the way we've handled the other amendments, if you have one, you can do it and if there's a modification later, it comes back later?

>> Mayor Adler: It can come back on the second tranche.

>> Tovo: If we could please just vote on the conversation we've had --

>> Mayor Adler: Bring that language back --

>> Tovo: If we could please vote on the one --

>> Mayor Adler: That's how I've been calling it up.

>> Casar: And we've agreed to the right zone, I think,

[11:00:15 AM]

instead of upzone, I think we've agreed to strike the words market affordable, then we just have a vote -

-

>> Tovo: On duplexes.

>> Casar: On duplexes. My motion is to strike the word duplex and move forward generally.

>> Mayor Adler: Okay. So it's right zone Jeff upzone, market affordable language comes out, and we're going to vote on duplex?

>> Casar: That's right.

>> Mayor Adler: It is -- we're getting ready of do not upjoan and just changing it to the words right society. We've all agreed to that.

>> Mayor Adler: Right. Did you get that? Okay. Let's vote on duplexes. Those in favor of striking duplexes, please raise your hand. Harper-madison, Flannigan, Casar, Ellis, mayor pro tem, Renteria, me. Those opposed, raise your hand. Duplexes is stricken. Let's vote on tovo number 4. Those in favor of tovo number 4 as amended, please raise your hand. Those opposed? Tovo number 4 as amended, those opposed to tovo 4 as

[11:01:17 AM]

amended? Flannigan and harper-madison. The others voting yes, tovo number 4 passes. I think that tovo 5 and 6 are both problematic --

>> Casar: Programmatic. >> Mayor Adler: Programmatic they might very approximately incredibly good concepts. One is a loan program and one is -- stay in place and bond allocation, so we'll put them in that list. And then that gets us to tovo number 7, which has already been approved. Tovo 8 has been approved, tovo 9 has been approved. That gets us to tovo 10.

>> Tovo: And I'll simply make one comment as we're moving through that, there was a slight discrepancy in councilmember kitchen's language and mine with regard to vmu, and I want to point out that we're arguing -- we are -- our direction is about a minimum, in some areas of town, including yours, councilmember kitchen, it's actually set at 12% affordable, so I want to be sure -- I think it was consistent with our discussion that we want 10%

[11:02:18 AM]

to be the minimum the not the standard.

>> We want it to be whatever it is now.

>> Mayor Adler: Anybody have any objection to that? Hearing none, that instruction is contained as well. That gets us to tovo 10. Councilmember Casar, you pulled this. Is there a second to tovo 10? Councilmember kitchen seconds it. Councilmember Casar? Tovo 10.

>> Casar: I may not have to move this because yesterday we said that everything is subject to the consent that it is legally feasible to do so.

>> Mayor Adler: Yes.

>> Casar: I had an amendment to add that language to this but if that's the understanding --

>> Tovo: I'm absolutely suggesting we operate within the law.

>> Mayor Adler: Okay. So tovo 10, any objection to tovo 10?

>> Tovo: But I do like the language about property owners.

>> Casar: Yes, exclude property owners on the repeat offender list.

>> Mayor Adler: Any objection to adding to tovo 10, not only excluding

[11:03:18 AM]

property but exclude properties and property owners?

>> Tovo: I'm fine with the change --

>> Mayor Adler: Hearing no objection, that change is made.

>> Tovo: Councilmember Casar's number 11 edit is fine with me, or amendment --

>> Mayor Adler: Hang on a second. Is there any objection to tovo 10 going on as amended? Hearing none?

>> Harper-madison: I'm sorry --

>> Mayor Adler: Without objection, tovo 10 will go in as amended.

>> Harper-madison: But to be clear, the amendment was to make certain that the offense is with the property and not the new owner. Correct?

>> Mayor Adler: It's additive. It's to exclude properties and property owners.

>> Harper-madison: Okay. Thank you.

>> Mayor Adler: Okay. So with that, tovo 10 goes in. That gets us to tovo 11.

>> Casar: Which is tabled.

>> Mayor Adler: Are you okay with that?

>> Casar: It's tabled. That is a tabled item. We voted to table.

>> Mayor Adler: Yes. 11 has been tabled. That gets us then to tovo 12. Is there a second to tovo 12? Councilmember kitchen seconds tovo 12. Is there any -- councilmember Casar? You pulled this.

>> Casar: I have an

[11:04:18 AM]

amendment to tovo 12, oh, and it's on the bottom of the sheet that I did not just hand out.

>> Mayor Adler: Okay.

>> Casar: Let me hand it out.

>> Mayor Adler: Tovo number 4 is at the both of them motion sheet 12 that's been handed out to us a moment ago.

>> Casar: And my amendment is just that I want the satisfy to provide

-- I want the staff to provide recommendations on which tenant protections are feasible, legal, and recommended.

>> Mayor Adler: Actually, it's not true, we're handing it out now. It's motion sheet 1313.

>> Casar: Yeah.

>> Mayor Adler: Sorry.

>> Casar: It's the third one, you can see tovo 12 here.

>> Mayor Adler: Okay. Councilmember Casar moves his amendment to tovo 12, which is to strike language, add add recommendation in which tenant erections are feasible, legal, and recommended. Is there a second?

[11:05:19 AM]

Is there a second to this? Councilmember Flannigan seconds this. Councilmember tovo.

>> Tovo: Yeah, that doesn't really capture what I'm trying to do. I would like to initiate a stakeholder process which has been ongoing in any case, and make sure that we're requiring strong tenant protections along the lines of what we already require in the rental housing development assistance. Obviously, we would want them to be legal. They're not going to come back with anything that's not feasible. And so to me, this is -- this is not capturing the direction that I put forward. So if you'd like, maybe we could keep my original amendment and say staff should provide a recommendation, which they always do, anyway -- I just -- I'm not sure what the objection is to the language as it is.

>> Mayor Adler: Councilmember Casar, you want to answer that?

>> Casar: I think we could do provide a recommendation about whether or how to require, instead of just put requiring it because as you know, we're still in

[11:06:19 AM]

conversations with the new tenant protections about making sure nonprofits can comply with them adequately. This would now have folks that don't do affordable housing inside of that conversation. I'm very interested in figuring out how to do tenant protections right, but telling the staff that for a draft to be brought back very early next year, they already need to be requiring them, seems complicated, and I really just want staff to think about it and provide us recommendations but not bake anything in yet, bought it's a pretty -- there's so much happening in the bonus that I want us to be really thoughtful about adding new things in, and we're still figuring out the tenant protections as relates to when we're giving you money and it's your business.

>> Tovo: So perhaps it's a matter of timing. It sounds to me like the concern is about timing, and I share that, because we haven't, as you said, gotten very clear on what is feasible for nonprofit.

>> Casar: Yeah.

>> Mayor Adler: So do we agree to put this in programmatic and change it as kind of a perspective thing?

>> Tovo: That might be a way to handle it because I do want to make sure that we're

[11:07:20 AM]

requiring the same kind of tenant protections in our affordable housing density bonus program that we would in other settings. I think that's absolutely critical. But I agree with you that we may not figure it out right now. So we'll move it to programmatic and work on language. But I think it needs to stay closer to what I have and just that this there's a phasing issue and -- here.

>> Mayor Adler: Okay. So let's move on then. Tovo number 13 is already -- yes, councilmember harper-madison? Apologetically, I need to go back. When you said additive, when we were talking about the repeat offender program, I've had multiple of my constituents have issues with the repeat offender program as it stands because -- for lack of better expression, good actors coming in, sort of inherit the repeat offender programmatic punitive action, and so when we say it's additive, if both the

[11:08:21 AM]

ownership and the property are still under the scrutiny of the offense by way of the repeat offender program, then I'd like to go on the record saying I don't agree with that measure, that item.

>> Mayor Adler: Okay. Let the record reflect then that I miscounted and that --

>> Harper-madison: Thank you. I don't think you voted, I think you were looking for consent.

>> Mayor Adler: Let's take a vote. Those in favor of passing tovo 10 as amended, please raise your hand. Those opposed? Harper-madison votes no, the others voting aye. That passes. Moving on tovo 12, move to programmatic, tovo 10 is on consent. Tovo 14, are you okay with this amendment, councilmember tovo?

>> Tovo: I guess I need to understand what those other enforcement mechanisms are. I mean, I think the city has other options, probably none of which we would want to

[11:09:22 AM]

support, like utility cutoffs and things. So -- which, again, I don't think I was in would want to argue for. What other enforcement options would there be beyond fees and fines?

>> So neighborhood housing has been working with the law department to institute new compliance measures and making sure that those follow the best legal practices, is what we're working on right now. And I think we would want to continue to work with the law department to make sure that we all feel very comfortable with that.

>> Tovo: And would they be something other than fees or fines?

>> Potentially.

>> Tovo: Okay. That's fine then.

>> Mayor Adler: Okay. Any objection to tovo 14 going in with that amended change? Hearing none, tovo 14 goes into with that change. Tovo 15 and 16 are both in on consent. That gets us to tovo -- tovo

[11:10:22 AM]

17, which was pulled by councilmember Ellis. Is there a second to tovo 17? Councilmember pool seconds it. Councilmember Ellis, you pulled this?

>> Ellis: I did, and passed out an amendment yesterday, I guess it was. It says my amended language would propose saying prohibit non-ownership occupied strs within missing middle Zones, except for on lots where the affair, bonus program is used, and only for the duration of participation in the affordable housing bonus program. And this is along sentiments I've expressed earlier through this process that identify that there could be an option for strs helping the numbers pencil out to be able to make -- make all the financing work for providing those affordable units. So I wanted to offer this amendment, I think it's in concert as well with some of the other things about

[11:11:23 AM]

prohibiting within density bonus units and number 19, which I think is also pulled, prohibiting income restricted units from being permitted as short-term rentals. It still doesn't interfere with owner occupied str, just non-owner occupied, so that's my.

>> Mayor Adler: Do you have objection to this change?

>> Tovo: I do. And I have questions for the councilmember.

>> Mayor Adler: Is there a second to councilmember Ellis's amendment? Councilmember Renteria seconds it. Councilmember tovo, you want to --

>> Tovo: I do. I guess I want to ask the councilmember, so if we say we are in an rm1 zone, at most in an r4 or an rm1 zone, at the most they'll have to construct one unit. So are you suggesting if they are participating in the affordable housing and they -- that that one unit of affordable housing could be an str?

[11:12:24 AM]

>> Ellis: No, the affordable unit would not be able to be used as an str?

>> Tovo: Yeah, I can't support this for a variety of reasons. You know, we're making a lot of changes and doing a lot of hard policy work trying to encourage housing opportunities. And to allow those to become hotel opportunities just is not -- is not in my mind supportive of that housing goal. So I think that we've had a lot of discussion about those commercial short-term rentals which are mini hotels, and I think that we support -- the bonus is calibrated in such a way that the market rate of those nine other units help to support that one affordable unit. So I'm not sure that we need to add another financial incentive in there. And I guess I would ask why we were doing that. So I can't support that

[11:13:29 AM]

amendment.

>> Ellis: I can support that sentiment and we may differ in str and affordability, but I think that this is allowing people who do want to utilize dbs or affordable housing units to have all options available. So I think it's about not limiting the ways that we are allowing, you know, civic participants who do to do good things and have affordable units, but then we're going to tell them how to contactually pay for it or not pay for it. And that's not an area that I'm comfortable supporting.

>> Mayor Adler: Councilmember Casar.

>> Casar: Mayor, I'm happy to support this if councilmember Ellis would consider they're using the bonus program that there not be more [indiscernible]. That there not be more str units than affordable units.

>> Ellis: I would accept that change.

>> Mayor Adler: Any amendment to say --

[11:14:29 AM]

>> Casar: So councilmember Ellis's intent from looking at it, that if they aren't using the bonus program, then there's no non-owner occupied str. If we are using the bonus program and they have an affordable unit, then they are allowed a maximum of one str unit, two affordable units they have a maximum of two.

>> Mayor Adler: Did you get that change? Any objection to that being changed in the amendment? Hearing none that change is made. Further discussion on the Ellis amendment as amended? Mayor pro tem?

>> Garza: I'm trying to understand does the taking out of -- missing middle Zones, is that r4 and r1? So then does the -- does it

[11:15:29 AM]

make it more -- I'm trying to think, does it make it more proud? Because we're not just talking about transition Zones, we're talking about -- because r4 and r1 are not just in transition Zones, right?

>> Tovo: I think you mean rm1.

>> Ellis: That's true, they are mapped outside of transition areas as well.

>> Ellis: It's written to be more about use than proximity to corridor.

>> Garza: Okay, thanks.

>> Mayor Adler: Further discussion on the Ellis amendment as changed? Councilmember kitchen?

>> Kitchen: Well, my concern about this amendment is that it's talking about non-owner occupied str. I can see, you know, helping an owner occupied str with finances, but this is essentially a developer who

[11:16:32 AM]

doesn't occupy the str. And I would understand -- I think we need to use financing mechanisms that are not counter to the goals that we're trying to advance and to my mind the goal we're trying to advance was allowing these -- with allowing these additional using is housing. So an str is not housing. So I think - to me it feels like we're saying we want housing, but not really -- and I know this is not what you intend, but that's the way it comes across to me because we're taking a step towards more units with those missing middle, but then we're taking a step back. And I don't think that advances the ball at all. So I can't support this. I think that the non-owner occupied str's allow an additional non-owner occupied str's from what we had, you know, that we worked out in previous years

[11:17:34 AM]

is just not going to help us with the housing that we need in our additional housing that we need. So I can't support this.

>> Mayor Adler: Okay. Let's take a vote. Those in favor of the Ellis amendment as amended please raise your hand. Harper-madison, me, Casar, Ellis, Renteria? Those opposed please raise your hand? Those abstaining? Mayor pro tem abstains. The six I called off voted in favor. The other four voted no. That amendment passes. We're now to tovo 17. Those in favor of tovo 17 -- I'm sorry? As opposed. Please raise your hand. Those opposed? Kitchen voting no. Those abstaining? Councilmember tovo?

>> Tovo: Yeah. No, I'm -- no, I'm abstaining.

[11:18:34 AM]

>> Mayor Adler: To councilmember tovo an strains. Councilmember kitchen votes no. And councilmember pool votes no. The others voting aye, it passes.

>> Tovo: Can I ask staff to clarify something? Did you recommend anything with regard to commercial short-term rentals in transition Zones? I meant to ask this before we voted. I thought that staff were recommending that they not be within transition Zones.

>> Councilmember tovo, I need to double-check, but I believe in our first supplemental report we recommended not allowing type 3 str's in transition Zones.

>> Tovo: So the recommendation of staff was to exclude str's within our transition zone.

>> I think that would be correct and this recommendation was made awhile ago and definitely I think everything related to str's will have to work with law on, but that was -- that was our recommendation.

[11:19:36 AM]

And I think the only -- I think by definition the only type of strs you would have in those Zones are type 3. So I think you're correct.

>> Tovo: So the amendment that just passed would override our staff recommendation on that?

>> Just a correction. The staff report said to consider them, but to consider allowing them with projects with on-site affordability.

>> Mayor Adler: That was mm1 under resident first supplement, mm1, short-term rental.

>> Tovo: All right, thanks.

>> Mayor Adler: Let's move on.

>> Casar: Mayor, just to be really clear, in the case where it's four units, r4, unless it's you renting them out for south-by, which we let people do. But if it is six and you use the bonus and you provide one affordable unit, then you're allowing one of the six to potentially be an str, in which case you have a low income unit, four

[11:20:37 AM]

missing middle units and one str.

>> Mayor Adler: The language added by Casar is there should be no more owner occupied str units than --

>> Kitchen: I didn't catch why it was only one?

>> Casar: Because councilmember Ellis edited hers to say there shall never be more non-owner strs an affordable units.

>> Kitchen: But if you have six units you could have more than one of those.

>> Casar: Sure. At that point you're talking about a 50% affordable building because you're talking about three units for low income people and three of them being strs. I imagine that that's like some kind of nobody or somebody doing the 50% affordability.

>> Kitchen: Do you think you could have two affordable units in that circumstance?

>> Casar: If you had two affordable units you could

[11:21:39 AM]

have maximum of two strs and then missing middle units.

>> Kitchen: That's what I was concerned about. You could lose a lot of our housing.

>> Mayor Adler: Sounds good. Tovo 18 was on consent. That gets you us to tovo 19. Given what we just did, you pulled this councilmember harper-madison.

>> Garza: We need two more of the harper-madison that just got passed out. We'll consider what got passed out as a traunch too.

>> Alter: On the vote we just took on the tropical storm rentals, I would like to abstain. I was hoping we would address one particular thing with our non-profit providers and I think we got part way there, but I'm not sure I'm comfortable with where we landed.

>> Mayor Adler: Let the record show that I

[11:22:39 AM]

miscounted hands. Councilmember harper-madison, you pulled item number 19.

>> That would be just for the purposes of clarity. To my understanding we can't use income restricted units as str's anyway, so I'm not sure what the intent is here here.

>> I concur -- I support this recommendation. I don't think there's any concern here, but clarifying it I think is also helpful.

>> Harper-madison: I'm sorry?

>> Clarifying it is also helpful. Harper-madison okay. In which case we are not permitted as a municipality currently to use income restricted housing as an str. >>

>> Ellis: That is my understanding, yes.

>> Harper-madison: So councilmember tovo, do you think we still need the amendment to prohibit income restricted units?

>> Tovo: I think we need to and staff said it would be helpful.

>> Mayor Adler: Okay. Without objection that

[11:23:40 AM]

one -- tovo 19 is approved. Alter 3 was brought in on consent as was tovo 18 brought in on consent and tovo 16 brought in on consent. All right, colleagues, that gets us up to the non-zoning section. It is 11:27. Do we want to start with this and see how far we can get?

>> I thought we had an 11:30 hard stop.

>> Mayor Adler: Let's stop here and talk about what we do tonight. And tomorrow. What's people's pleasures? Councilmember Casar.

>> Casar: If -- considering that folks have

[11:24:42 AM]

evening event and things I'm happy to be flexible in the evening, but I also -- maybe we should make ourselves available starting at 4:00. And if the IRS meeting is over, we could go 4:00 to six or 6:15 and if it's just not over, then-- just raising that idea. I don't know how long the meeting will go, but raising the question if we want to plan to be back at that time in case it is.

>> Mayor Adler: So if I understood you earlier, councilmember harper-madison, your thing starts at 5:30. Do you have any flexibility with that?

>> Harper-madison: I would have to leave here at rush hour to go over, so I have to leave here at 5:00. In which case I would have an hour. I certainly don't want the body as a whole to make plans around the availability or lack thereof or one person, but considering the precedent we made around councilmember

[11:25:43 AM]

pool's schedule, I would appreciate the same consideration.

>> Mayor Adler: Okay. So maybe we stand by from 3:00 to 5:00 and then -- and see what happens with the retirement meeting. Councilmember kitchen.

>> Kitchen: Councilmember harper-madison, I'm trying to remember, did you say you were available after the event you had?

>> Harper-madison: I'm done at 8:00 P.M. If you think it's practical for us to resume at 8:00 P.M., then I will be right back here.

>> Kitchen: I understand people may have things they need to do. So we may not be able to do that. But I know we really have to get it done by the end of the day Wednesday. So if we have to go into an evening, I'd rather that be tonight than tomorrow. I'm available this evening if people are up for that.

>> Mayor Adler: Councilmember tovo.

>> Tovo: In fact, based on our conversation yesterday, probably some of us have made arrangements to be here this evening, which I've done. And so I would like to start

[11:26:43 AM]

back up again at 8:00. My concern is that, you know, there were several things that we started to discuss and then tabled. I'm super concerned at this point that we're going to run out of time to address them. Let me mention the planning commission recommendations, for starters. We talked about them yesterday. We got into some deliberation and then you asked that if we wanted to vote against them that we take them up as amendments in the second traunch. So that's just a body of amendments we haven't even begun to discuss. So again, I think it's critical that we have an opportunity to really discuss all this. So I'm not super thrilled about being kind of off and on all day, but it is what it is, but I'm happy to come back at 8:00 and do so. With the addition, as you said, from being ready at 3:00 on until about 5:00.

>> Mayor Adler: So I think we should stand by -- I would be willing to come back at 8:00. And it's my intent tomorrow at like 5:00 to call for a vote on first reading. And if there are things that

[11:27:44 AM]

haven't been decided yet, I would recommend we carry them over to second reading so that we make sure we have a vote tomorrow.

>> Tovo: Mayor, I would say that's just not fair. There are certain things that if we knew we had an absolute deadline would be priorities, but had you set the agenda and I would say we have a responsibility to serve our constituents and that means being able to get a vote on all of the amendments that we've brought forward. So I would ask that -- I would ask that we absolutely make sure that everybody has an opportunity to bring forward the amendments.

>> Mayor Adler: I really want to do that. I want to make sure absolutely that we have this thing decided tomorrow, we don't carry it over until January. So -- so that would be my intent. But I think we can do this. I think that having the time available this afternoon and having time available this evening. And if we can work tomorrow, I think it's important for us to be able to state our positions. I think sometimes we state our positions multiple times and I'm not sure we need to do that. In order to have an airing of different positions. I think it's important that

[11:28:44 AM]

we move this forward.

>> Tovo: Mayor, I also want to clarify we had talked about being here tomorrow night. So I'm not -- I mean, I have a sobering center meeting, child's concert. I have other conflicts tomorrow evening as well that I would have to work into our dinner break, but we had talked about going tomorrow night until we were finished. So I would ask that we not call for a vote at 5:00. That we stay until we're done.

>> Mayor Adler: It's my intent to call for a vote tomorrow and Wednesday probably a better way for me to say that. And how far we go on Wednesday depends on that event. I don't know how that impacts it,

but my hope is -- my expectation would be that we're going to take a vote tomorrow whenever it is we decide to stop. Councilmember alter.

>> Alter: I don't think it's really realistic for us to come back this afternoon if councilmember pool has to go all the way up to the asian-american resource center for her meeting and get back here also in rush

[11:29:46 AM]

hour and councilmember harper-madison has to leave by 5:00 and we're always late. I would much rather we got back here at 8:00, we can go until 11 if we need to or whatever, but then we have some space. I just think that is more considerate of everyone involved otherwise. And I can say that I will check for this evening. We may be able to start if people are available at 9:30 tomorrow. We'll just wait and just convene the audit and finance and postpone the items, but I need to check with my staff and I've gotten some texts to that effect, but I need to make sure I understand what that would --

>> Mayor Adler: We can't start the land development code meeting tomorrow until 10. That's our posted beginning time.

>> Alter: Okay.

>> Mayor Adler: Mayor pro tem.

>> Garza: I thought we could recess -- I thought today was supposed to pretend to --

[11:30:46 AM]

>> Mayor Adler: This meeting is a continuation of our meeting from yesterday. And we're allowed to continue into the next day. We're not allowed to continue it for two multiple days.

>> Pool: Just to be -- we don't meet at the asian-american resource center, it's west of mopac, but equally difficult for traffic. So, you know, I really appreciate y'all's optimism and everything. And I will stay in touch and let you know. In fact, I can let you know item by item how well we're doing on -- at our meeting there. And I appreciate the acknowledgment of the importance of the meeting that I'm heading for, and it is a city of Austin employee retirement system meeting. It isn't a -- it's not an entertainment activity that I'm going to.

[11:31:48 AM]

So it's also important to all of the employees at the city of Austin that we have council representation on that body. I am certain that there was no intended diminish. Of the importance and the responsibility of my attending the year-end meeting of the board of trustees. Thank you.

>> Renteria: Mayor?

>> Mayor Adler: Yes, councilmember Renteria.

>> Renteria: I agree that we should take a vote tomorrow and Wednesday. We need to get this job done and, you know, I know how important it was. I had a couple of meetings that I had to postpone that I was willing even to postpone, very important meetings, but it's just that this is something that's very dear to me and I'm willing to make that sacrifice. But you know, we are working

[11:32:50 AM]

on a deadline and we need to get this done. And you know, that's why I agree with you that we definitely need to take a vote on the first reading tomorrow.

>> Mayor Adler: Okay. So I think the question before us, we'll come back here at 8:00. Do we want to come back -- do we want to be on call in the 3:00 to 5:00 period of time? Okay. So people pay attention to the message board or the clerk can let us know. Councilmember pool will let us know about her timing and other people in the retirement system. Yes, councilmember kitchen.

>> Kitchen: Just a question, on the executive session on the programmatic aspect, is that something that we could -- when are we going to take that up? We could do that today. I think that councilmember pool might be -- I don't know. We might need to check with her. We could check with her, but we could go ahead and get that done and have that conversation.

>> Mayor Adler we could check with her. She's not available from 3:00 to 5:00, maybe we could

[11:33:51 AM]

have that executive session.

>> Kitchen: Yeah. And were we going to take -- whatever happened with the action on the real estate item?

>> Mayor Adler: We're going to do that next P.

>> Kitchen: Oh, right now.

>> Mayor Adler: We're going to do that now. Okay. With that said, everybody pay attention. We may come back at least for executive session so we can talk about the programmatic stuff from 3:00 to 5:00ish range. Otherwise we'll also plan on working tonight from like 8:00 to 11:00. And then -- so that's

how we'll proceed. At 11:37 I am recessing this city council meeting and -- we can't do that because we have to check and see if councilmember pool is comfortable with us having that executive session without her so I'm not going to call that meeting now. If it's okay with her for that we'll come back and do

[11:34:53 AM]

that at like 3:00, somewhere in the 3:00 to 5:00 range. I'm sorry, what? I am just recessing. The question that council is asking is recess to go into executive session. And I'm not going to recess to go into executive session because I don't know queer going to do -- that we're going to do that.

>> You're going to recess this meeting and go into the special called meeting you set for today for real estate matters.

>> Mayor Adler: Got it. Okay. All right. After the presentation. Thank you very much. We're recessing the land development code meeting. I am now going to convene or come out of recess rather the special called meeting that was set for today that we convened at a little after 10:00 and then recessed to discuss real estate items. I don't know if we have a staff presentation first and then we'll take a recess to go into executive session to discuss real estate matters.

[11:35:53 AM]

Today is still December 10th. It is 11:38. And if staff would come up and give us the presentation on the real estate matters, and then we'll recess, go into executive session and come back out and take action.

>> Garza: I'm sorry, we're going to go into executive session and come back and take action?

>> Mayor Adler: Yes.

>> [Inaudible - no mic].

>> Garza: Okay. When I heard the 11:30 hard stop I thought we were hard stopping. I have to be somewhere at noon. How long is the staff presentation?

>> Mayor Adler: 10 minutes.

>> Garza: Can you make it five?

>> Mayor Adler: Anything that you don't get a chance to present you can present to us after we come back out of executive session. Okay. Please go. All right.

>> Sounds good. If you would tee up the presentation. Mayor and council, Rodney Gonzalez, assistant city manager. With me is Matt

[indiscernible], the executive director for the ending community

[11:36:54 AM]

homelessness coalition, otherwise known as echo. We're here today to talk to you about, let's see, the motel conversion strategy. We'll review echo's proposal as was our process for selecting hotels. At that point I'll turn the presentation over to Matt. He's going to talk about the echo business plan, the financial plan and the proposed outcomes and metrics associated with the motel conversion strategy. Then we're going to talk about the city staff review of the partnership proposal and then go into a discussion of the motel properties and one that was recently approved for acquisition for council, the rodeway in and the one that is proffered for acquisition, which is microtel. And I think the presentation is still coming up. So moving forward, as you may recall, at the last council work session, I had reviewed the proposal which

[11:37:54 AM]

includes echo's commitment to secure private investments to fund, operate and maintain the motel conversions for a total of 200, 300 motel units to lead the management of the hotel conversions, including the provision of on-site services. City's role would be to use capital to invest in the motels to engage in the long-term below market rate less with echo. And to fund and collaborate with echo on significant capital improvements as part of the purchase. I did provide to council a memo and in work session our process for selecting motels we used various screening factors, including the building configuration, building condition, the number of rooms, plumbing and utilities, which is really important because it's the intention of the echo to convert these motel units to permanent supportive housing. Other environmental factors as well as like relocation and support that's needed. At this point I'll turn it over to Matt who will talk about the business plan related to this strategy.

[11:38:55 AM]

>> Yeah, thanks, Rodney. So the echo business plan, so a snapshot up here from the action plan to end homelessness shows a need, a really high need for sro or one bedroom units in our community for people experiencing homelessness. The motel units and hotel conversions that we're bringing online are one bedroom and studio units. This just shows the need in the community here taken from the action plan. Also from the action plan is this need and this -- you can see the pathway to people experiencing homelessness that are moved through the continuum of resources we have. There's this identified need of temporary and emergency placement shelter, and bridge housing. Again, you know, the motel conversion, hotel conversion addressed this need. Iffrom some benefits to converting the hotels and a plan to do so, so bringing

[11:39:57 AM]

the motels online is not a can balanceization of other existing housing in the community that's being used for people experiencing homelessness. There aren't costs associated with site plans and building plans, costs associated with utility connections, and there's no uncertainty around construction costs. As you can see listed out in essence of time I won't hit on all these bullet points, but they have space provided for on-site services, on-site laundry facilities and everything we need to convert down the line to permanent supportive housing in all the services and operational needs associated with being able to run a successful bridge housing program there. As far as the plan, we're looking on a short-term plan. The motels are in good condition will require no repairs and renovation to be moved into immediately, but we will do renovations to convert some of the units

[11:40:58 AM]

for long-term goals of being able to provide permanent supportive housing. We will need to add kitchenettes to rooms that don't have kitchenettes. Some of the rooms have them. In order to be able to use federal dollars down the line, they need to pass what are called hqs inspections. And then we can use housing vouchers there, federal housing vouchers there. Property management and on-site services, so echo will be responsible for facility management overall, the hiring of staff for property management, the solicitation and coordination of the on-site supportive services. So echo will do the fund-raising and rfp out supportive services to other providers in our community that have experienced providing those services. Some of those services include substance treatment counseling, mental and physical health. So health care, access to primary care, education and job training, housing assistance and intensive case management. There's a list of staff

[11:41:00 AM]

positions for your reference. Our referral sources for the project will be identified more sort of -- we'll be working on referral pathways with our service providers so these are just some examples of referral sources down at the bottom, coordinated entry system, we'll be helping identify folks in the encampments, hospital discharges and the criminal justice system. So this is a financial plan, just a really quick snapshot of the property management and on-site service costs. I just want to really mention here that with economies of scale we'll see a lot of the costs drop associated with the operations. And I address that on the next -- partially on the next slide, but you can see in total an annualized operating and supportive service budget of about \$1.2 million, which is a 14,000-dollar per unit cost approximately. Also want to mention in the

[11:42:01 AM]

next slide, you can see it here, we have a really robust service provision put in place so we're operating on a staff to tenant ratio of 14 to one. So what that means is even without the operating staff, the supportive service staff only, around a 14 to one staff to tenant ratio, and I think that's really important that that fits well within a model for permanent supportive housing down the line. A couple of other things to support the operations and the supportive services is moving forward, we're applying -- echo is applying for a samhsa grant, which is a grant with the substance abuse and mental health services administration to provide substance use treatment and mental health services on-site. It's a two-million-dollar grant over five years, \$400,000 a year. That application is due on the 16th of December and the award is for April 2020.

[11:43:02 AM]

With me today are two echo board members, mark Littlefield and Ed mccourse, who are here in support of the fund-raising plan. And so I just want to mention we do have a fund-raising plan and are executing on that plan as we speak. So some performance metrics, we will be obviously measuring and ensuring through data that these programs are effective. We will be using some performance metrics that are used on a national level that are listed above. As far as data quality and program performance, they are metrics that we used use for our continuing care programs that are federally funded through H.U.D. All of the data will be captured in our homeless management information system. We'll be able to run reports and, you know, provide status updates to council and the city manager's office as needed.

>> All right, thank you,

[11:44:03 AM]

Matt. So the various city departments have reviewed this proposal, including Austin public health, the homeless strategy office, neighborhood housing and community development department, as well as the office of real estate services. Our consensus is that we support the partnership proposal. There is a concern of course is you understand that echo does achieve its fund-raising targets, which is six million dollars over the next two years. Our recommendation is that for motel purchases after microtel that we hold off bringing forward future motel purchases until echo has received a 25% fund-raising goal. There's no time associated with that, rather it's a dollar amount. Matt as he mentioned is steadfast in his fund-raising, and so that could be by February of next year, it could be by March of next year, but what we want to do is have them reach their 25% goal before bringing a third motel for consideration, if you will. With regard to contingency plan, one thank that we're certain of is that we could

[11:45:05 AM]

take these motel properties if this partnership proposal with echo does not get secured, we could take these motels and purchase them through the affordable housing bonds. And convert them into permanent supportive housing or affordable housing projects that is. We would have to use a solicitation process to do that. We've done it before, but that would be a contingency plan for these projects. Just to recap, on November 14th, the city council approved the acquisition of roadway inn. We're in the due diligence for that property. It's 87 interior facing rooms. The price is approximately 6.4 million and we also allocated 1.6 million for renovation. The microtel is allocated for purchase. It has 71 interior facing rooms. The cost is 6.8 million with one million set aside for renovation. And that concludes the presentation.

>> Mayor Adler: Thank you.

[11:46:06 AM]

Councilmember tovo.

>> Tovo: I had a couple of quick questions. Thank you for this additional information. I think this is very helpful and I have some drill down information about kind of where our estimates came from with regard to repairs and things like that . In particular utilities. I know I think utilities is one of the things that threw off our estimates at the sobering center. So I wanted to know outside of this session kind of whether you're actually looked at utility bills for some of these properties and if they are in line with this? Do we anticipate making any kind of enhancements with regard to efficiency, energy efficiency and other things that might help us save money on utilities. But the only thing I really want to ask right now, and thank you, I intend to bring forward some direction related to the purchase that would ensure that we've got sort of some additional information as well, but I think you've hit on many of the areas so I appreciate that. Mr. Gonzalez, you described the contingency plan and I didn't understand the funding model. I think you were saying if the funding -- would you

[11:47:06 AM]

just explain what that was?

>> Absolutely. So you know, if we procure these motels and echo is not ready to start for whatever reason with operating these motels, and we decide that this proposal does not work, what we would do because we have purchased those properties at that time, is -- right now what have you is you have a refunding resolution in front of you that would authorize the purchase, with certificates of obligation to back that up. Rather than using the certificates of obligation, we would use the 2018 affordable housing bonds to make the transaction. And then we would convert these over to affordable housing projects where we would solicit a vendor to do the conversion for us.

>> Tovo: But it's my understanding based on what -- what's been described -- it seems to me that the capital expenditures we have more funding options for, between the waller creek tif money and our affordable housing bond money and the certificates of obligation

[11:48:07 AM]

where we -- where I want to make sure that we've got a clear plan B funding stream is within the operations because some of those funding streams aren't going to be appropriate for the operations and that's where those operational costs are going to be competing with other general fund needs at a time where we have limitations on that because of the tax cap. So can you help me understand what is outside of -- again, I think outside of this session, but manager, I would like to know what our plan B is since echo's portion of this is not the capital costs, but really the operational costs, could you help me understand what the plan B would be for those and if we could have it really spelled out exactly what funding sources are going to be utilized from the city for those operational costs so we can make sure we can fulfill that commitment to supplying the services that we need to -- in operating those hotels as we've contemplated. Of course we all want echo to be successful and we anticipate you will be, but again, I think it's necessary to have that plan

[11:49:10 AM]

B funding stream in place.

>> Mayor Adler: I would just speak because I concur and support with what councilmember tovo said, I think these questions go to the diligence and I know that as part of this there's lots of diligence matters for us to take a look at with respect to the property. You know, this particular in particular has some diligence issues that may be different than other properties, but there's always the diligence of the property condition and title and those kinds of things. I would like us to consider as part of the diligence this property being able to work through the outstanding questions with respect to funding and operation and the plan bs on that side of it as well so that before we make the does donation actually close on a property, including the other property, make a decision to actually close, we've been able to satisfy those diligence items as well.

[11:50:15 AM]

With that understanding that we'll be dealing with all those diligence items on this property, the councilmember tovo questioned whether we should be able to go into executive session and be able to vote, expecting that we expect you to go through the diligence process, the issues that have been raised and could be raised, unless there's someone who wants to go into executive session.

>> Tovo: It doesn't need to be lengthy, but I do want to ask a particular question in executive session.

>> Mayor Adler: Okay. Councilmember alter.

>> Alter: I have some additional questions. For staff, if I might. So I appreciate the discussion of the contingency plans and I had been asking for that. And one of the things that I'm trying to understand is the plan B, if this doesn't work out for the capital purchase. So we're -- we're making a considerable capital purchase and trying to understand that risk. And I want to make sure that I'm understanding what you're saying is that we would be able to convert

[11:51:18 AM]

this into permanent supportive housing. We have a clear plan of how you would do you that and we have a funding source to do that should we need to do that sooner than planned if we're not able to run -- raise the money that would allow us to use this as bridge housing, is that correct?

>> Yes. We would convert it to an affordable housing project.

>> Alter: And why couldn't we if we had purchased this with our co's, why couldn't we keep -- this may be an executive session question so just tell me if you want to answer it there. But why do we have to switch it over to bond dollars if that were the eventuality?

>> So it's mainly because it's already an identified funding source. I believe there's an issue with regard to the certificates of obligation not being used for affordable housing. So that's why we would do that.

>> Alter: Okay. And then I too am interested in greater clarity on the plan B for the operational

[11:52:20 AM]

cost. When we put aside the funding for the south Austin shelter, I believe that we had some funding in our budget for ongoing costs, is that correct?

>> That is correct.

>> Alter: And how much was that?

>> That's 1.3 million annual listened that's baked into the budget so that's an ongoing amount that we certainly could use.

>> Alter: So that's an ongoing amount. And across the roadway inn and across this one, how much are we projecting that we need on an annual basis?

>> So annually, let's see if we -- I believe that was on slide --

>> Alter: Because these numbers in here are for multiple hotels, not just one hotel. It's not 750 a quarter per one hotel.

>> On slide 10 that will come back up again, the expected amounts right there are for both motels for roadway and microtel. And so that's approximately

[11:53:20 AM]

\$2.2 million a year.

>> Alter: Okay. So if we needed three million a year to run both of them, we have 1.3 already as a backup should we not be able to -- this is -- echo is taking on this responsibility. I want to be very clear on that. I want to be sure that we have some opportunity to fill the gap should things fall through.

>> Absolutely, yes. And the amount is 2.2 per year to operate both hotels.

>> Alter: Okay. So then we have -- okay. So we have over half of that.

>> Yes.

>> Alter: That obviously that would be better spent on other homeless services than this and echo is taking on the responsibility to raise the money, but I think we do have to think through all of these contingencies. As we go. Can you speak to the particular property and its condition? And what we think needs to

[11:54:20 AM]

be done for the renovations? I know you tried to, but you kind of went through it very quickly and I want to --

>> Absolutely. I probably will need

>> Absolutely. And I probably will need Alex's help. It's 71 interior facing rooms, that's good, what echo prefers. 31,000 square feet, I understand the motel itself is in pretty good condition.

>> Alex, interim officer for office of real estate. Rodney is correct. The property was built in 2010-2011, so it is a newer property with 71 rooms, does have approximately 17 of the rooms that already have a second kitchen or kitchenette as part of the build-out of that room, but upon our original inspection, there doesn't seem to be a whole lot of renovations or remodeling needed to be done to the hotel.

[11:55:23 AM]

>> Alter: Okay. Thank you. And then for the numbers that we're getting here on slide 10, those are just for these two hotels? It's not for a broader plan?

>> It's only for the two hotels.

>> Alter: Okay. I may have some more questions. I'll see if somebody else wants to go first.

>> Mayor Adler: Okay. Furs discussion before we go into executive session? Before we pass by, while we have some of the board members here, I would like to -- Matt and mark, to go back to say we really appreciate the echo board. This is a big fundraising lift. It would be great if members of the community would help echo with this fundraising lift, but to assume that responsibility and make the commitment to raise that money is a real gift to the city, so thank you to echo and to your

[11:57:27 PM]

board. Yes.

>> Tovo: I realized I had one last question. I also want to acknowledge Ed mccourse from the board. Thank you for being here. And I add my thanks to the mayor's for the commitment echo is making. With regard to page 8 under the business plan, it talks about property management. The on-site -- to be clear, which partner is responsible -- would be responsible for paying for the supportive services?

>> So echo will be paying for both the supportive services and the operations to the costs of those.

>> Tovo: Great. Thank you.

>> Mayor Adler: Okay. That said, we're going to now go into closed session. We're going to take a recess in this meeting, pursuant to 551.072, and 551071 of government code, we're going to discuss real estate matters related to item 4, purchase, exchange, lease, value of an interest in real property with a shelter. Without objection we're going to into executive session. It's anticipated this isn't going to take very long, we'll come right back out and take action so that the housing committee can convene its meeting so here at

[11:58:55 PM]

12:00 noon, we're are in recess.

[12:50:15 PM]

>> Mayor Adler: I think Council would be fine to start a Special Called Meeting in January after the holidays. There's a sense of urgency and think everybody is aligned on this and we need to get it, but at

this point, being as prudent as we can be, probably it's best for us not to move forward right now on this all right.

That being said. I am going to recess...I am going to adjourn the Special Called meeting, dealing with real estate matters here at 12:52 p.m. I'm now going to reconvene the City Council meeting that began yesterday on December 9th that's carried to

over to work on the Land Development Code here at 12:52 p.m. Were stil here in City council Chambers it is December 10th we are going into recess this meeting in order to go into closed session to discuss legal matters related to Item 2 on the agenda

pursuant to 551.071 of the government code. So at this time we are in recess. Before we go back Council Member Casar you want to call the meeting to order?

>> Council Member Casar: Don't have them yet.

>> Mayor Adler: Don't have them yet? Will do that on the way back. So let's move back to the executive session. Were in recess.

[12:52:05 PM]

[1:27:55 PM]

>> Mayor Adler: It is. It is 1:27. I am back -- it is okay to do even though the screen is that way. It's 1:28. I am -- we're out of closed session. In closed session we discussed legal matters related to item number 2. And we're now going to further recess this meeting. We're either coming back in the 3:00 to 4:00 time frame, going until 5:00, or we may not really start deliberating until 8:00, but I'll come back out here

[1:28:29 PM]

between 3:00 and 5:00 and make some kind of public statement. So we are in recess right now until I come back some time after 3:00.

[3:34:35 PM]

>> Mayor Adler: Ready? We're going to reconvene the city council meeting at 8:00 tonight. It's not possible to reconvene any earlier. So here at 3:35, I'm letting

everybody know that we will be reconvening the council meeting at 8:00 this evening.

[8:16:08 PM]

>> Mayor Adler: All right. Let's pick this back up again. We are reconvening the city council meeting here. It's 8:16. This is the meeting that's extended over from yesterday, December 9th, 2019. This is the 10th. It's 8:16 P.M. At night. We're in city hall, 301 west second street. We have a quorum. We're going to continue on. We're working our way through the base motion and the amendments that were filed last Thursday. We have two sections left to do. I think the goal tonight is to get these two sections done, and then tomorrow we would pick up all of the second tranche and all of the stuff that's filed today and post -- post-thursday. Let's see if we can work our way through this and --

>> Garza: Mayor, I'm sorry if I missed this. I heard we're going to work through these two sections, but I

[8:17:09 PM]

would like to offer an end time, even if we don't get to those, and I was hoping we weren't going past, like, 11:00. I don't know if you already talked about that.

>> Mayor Adler: I didn't put a time on it, but that's fine by me, not going past 11.

>> Garza: Okay.

>> Mayor Adler: My hope is that maybe we can work through these two sections and end before 11:00. But let's go through the last two sections, the second tranche, the programmatic stuff, and whatever else people wanted to raise at that point.

>> Alter: And, paper, if I could just clarify that our plan is to do audit and finance for just a half hour tomorrow, 9:30 to 10:00, to take care of one item that the auditor as asked us to address.

>> Mayor Adler: So at 9:30 tomorrow, we do the audit and finance competing, it's going to go 9:30 to 10:00, and 10:00 will start will meeting as we're noticed to do in special called. Then we'll run, recognizing that tomorrow this room is taken over by a large community group at

[8:18:11 PM]

6:00. Hopefully we can be done before that group comes in. They're hoping that we actually participate with them in that project. We can figure out tomorrow what we do about that. If there's a way to get

the board and commission room available between 6:00 to 8:00 period of time so that's an option available to us, that would be great. Hopefully we'll be done before that.

>> Harper-madison: Just to point out, the ethics commission meets in the boards and commissions room tomorrow.

>> Mayor Adler: That may not work. Yes. Councilmember tovo.

>> Tovo: Two things, just in terms of scheduling, tomorrow I am available in the evening if we need it but I do need to leave for a sobering center meeting that starts at 5:30, then I have a middle school concert during that period, too, so I'll be sort of out of commission from 5:30 to 7:30.

>> Mayor Adler: So it sounds like we might be taking a break from 6:00 to 8:00 anyhow.

>> Tovo: I can't stay for the whole sobering center, I really need to be there at 5:30.

[8:19:14 PM]

I wanted to explain that I handed out my amendments. I have made some amendments to my amendments, so this is now sort of the definitive document. I'm proposing withdrawing several, and you'll see that noted, and then also, as I said, I've added a couple but I've also amended some of the ones that are going to come back up, so I just wanted to have that all in one place.

>> Mayor Adler: Okay. I'm also handing out a motion sheet number one that would need to be -- and posting it. It's not for tonight, it would be for tomorrow. All right. So, we're in the non-zoning section. Non-zoning section, harper-madison number 9 is on consent. Casar nz1 has been pulled by

[8:20:14 PM]

councilmember harper-madison. While she's pulling that together, we have posted on the board, as best we could, the -- our running list of the programmatic stuff and the tranche 2 stuff that was posted. I'm handing out a hard copy of it too. If we've missed things on that, people might point them out on the message board so people can have those.

>> Tovo: Mayor, I think I did notice that it missed one of mine. I'm just I can't remember now which one it is, but I'll pick it up from the sheet that I just handed out.

>> Mayor Adler: That sounds good. If you just point it out, we'll make sure we add it to the master

[8:21:15 PM]

list. Yes, councilmember kitchen.

>> Kitchen: It missed three of mine. On the programmatic, it missed all of mine, actually.

>> Mayor Adler: Sorry about that.

>> Kitchen: It's okay.

>> Mayor Adler: If you just note those on there, that had be great. We took the list and gave it to staff. They did a really quick check on it as well. If anything was left off, I promise it was inadvertent 2.

>> Kitchen: That's fine.

>> Mayor Adler: Okay.

>> Harper-madison: Mayor Adler, for this item, I've offered an amendment and shared it with councilmember Casar and I'd like for him to at least have an opportunity to take a look at it. Have you had an opportunity --

>> Casar: I haven't had a chance to look at it.

>> Mayor Adler: Are you handing it out?

>> Harper-madison: No, I'm -- I was under the impression that my staff brought you a copy of it.

>> Casar: I don't have a copy of it here in front of me.

>> Harper-madison: So let me work on that. Do you mind if we push to the next thing?

>> Mayor Adler: No.

>> Harper-madison: Thank you.

>> Mayor Adler: Okay. So let's table nz1.

[8:22:18 PM]

Okay? Which has a one and a two. That gets us to Casar nz2. Councilmember Casar, the first part of that number 1, has that been withdrawn, I think?

>> Casar: Nz2-1 was withdrawn. Nz 2-2 passed on consent.

>> Mayor Adler: That's correct. Nz3 passed on consent. That gets us to nz4 parking. This was pulled by councilmember pool. This is on page 28 of 39.

>> Renteria: , Mayor, is that nz4?

>> Mayor Adler: Nz4, yes.

>> Kitchen: Mayor, I have

[8:23:18 PM]

questions.

>> Mayor Adler: Okay. Councilmember kitchen.

>> Kitchen: I'm wanting to understand what this does in relation to some parking that we already addressed. So you're talking about changing the senior retirement housing parking requirements to .5 per unit from .8? Right? So I think --

>> Casar: We already passed one in yours to reduce it some, so I'm fine if this goes on consent for staff to consider with the best number generally is, and if they think it should be deeper, given kitchen's amendment, or if this is right, I think they're headed in the same direction.

>> Kitchen: I just don't want to prescribe the number.

>> Casar: I'm fine with not prescribing the number. I think you and I are both saying .8 seems high.

>> Kitchen: Yeah.

>> Casar: The other thing I wanted to say was I'm happy to withdraw 1b, I know we have a whole thing going on about co-housing, we're trying to sort it out and I'd rather that be

[8:24:19 PM]

part of that broader conversation.

>> Mayor Adler: Okay. B is withdrawn. C, we're taking tout the numbers, just says change the senior retirement parking requirement --

>> Casar: No, it would be reduced --

>> Kitchen: Yes, it would be reduced.

>> Mayor Adler: So not prescribing the number, I agree with councilmember kitchen.

>> Casar: I'm frankly also fine with dropping C because we already passed kitchen.

>> Mayor Adler: Okay. Let's drop C.

>> Casar: That's fine.

>> Kitchen: Okay.

>> Mayor Adler: Okay. B and C are dropped, that leaves a and D. Anybody have a problem with a and D?

>> Kitchen: I have a question. So is this intended to be anywhere, I guess, for home occupations and live work, eliminate the parking requirement for employees in any location?

>> Casar: Yeah, so currently, if you start using your live-work to have an employee, bring into an employee into your home, you have to pave a parking spot at your house. Given small number of employees allowed at these locations, I want people to be able to work at home, bring an employee without

[8:25:21 PM]

having to pay for a paving a spot at their house.

>> Kitchen: It might help to specify, it's so broad, I know you're intending it to only apply to living in a home, as opposed to an office building, but it looks -- it's not pegged to that.

>> Casar: My -- if the staff have other wording, but my understanding is this is what it says in the home occupation and live-work, are specific things in the code that are only where you reside, but if you want to -- if there's a way to make it more specific that the staff recommends or you recommend, I'm open to that.

>> Kitchen: Okay. Well, it's a question for staff then. By using the terms home occupations and live-work, what kind of zoning categories are those pegged to?

>> Greg Dutton, planning and song. Councilmember, home occupations are allowed, really, everywhere,

[8:26:22 PM]

starting in the R Zones, all the way up. So it's everywhere. And then live-work is allowed starting in the rm Zones on up.

>> Kitchen: Okay. So live-work is rm?

>> Casar: Right, but the idea being, you have your normal parking requirements for the building, but then if you have a home occupation or live-work, you might have an additional parking requirement for bringing on employees, and I want folks to just have the cost of bringing on their otherwise, not an additional new parking requirement. So if we wanted to make it clear, potentially we could say limb mate the additional parking -- eliminate the additional parking requirement for employees, which goes above and beyond the original parking employment for your zone.

>> Kitchen: Just a question for staff, there's something in the code that says for home occupations and live-work, you're required to have a parking lot -- a parking space for employees, and that's over and above any

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other parking requirements?

>> That's correct. So for the home occupation, you would have the parking requirement for the residential use, and then you are required to pave an extra spot.

>> Kitchen: Right.

>> For that employment for live-work, it doesn't specify extra parking for employees, it just has the parking requirement for the live-work use.

>> Kitchen: So it's only home occupations that's an issue?

>> Well, home occupation is what specifies in the text, that you have to have that extra parking spot for the employee.

>> Kitchen: So councilmember Casar, I would want to keep it to just say for home occupations, eliminate the parking requirement. What I'm trying not to do is, for live-work that's in larger buildings that already has a -- you know, already has a parking requirement specified, I don't want to put another parking -- I don't want to -- I don't think in those kind of circumstances you need to do anything different because, as they said, there's not any special parking

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requirement tied to live-work. It's just tied to home occupation.

>> Casar: Could we just write the word, eliminate any additional parking requirement for employees, just in case it is somewhere until the code? Because my staff noted they found it in the code, but I think rather than having them sprint down here, it's no harm, no foul, if there isn't an additional one?

>> Kitchen: Okay.

>> Mayor Adler: So this would read then for home occupations a in live-work, eliminate any additional parking requirement for employees. Councilmember tovo.

>> Tovo: Yeah, I think I need a little bit more information about -- if you could remind me how many employees you can have for home occupation. I know it's not many, but I can't remember what the number is and whether it's changing in the code.

>> Just one.

>> Tovo: So you can have one employee. And I know you've covered this but I'm still unclear. How does this interface -- how does it interface with some of the parking reductions that are in the current code? What are the new -- what are the new requirements going forward in

[8:29:25 PM]

a transition zone and outside -- or near a corridor and not -- how is home occupation being impacted by the other?

>> So the requirement is in the new code, that you have one parking spot per dwelling unit, and then for home occupation, if you had an employee, you would still need that additional parking spot.

>> Tovo: So you would need two and the current requirement Pío Rentería unit is two.

>> Under the current code it's two and it also requires the additional spot for employee.

>> Tovo: So right now if you are in a residential area, you have a requirement to have two parking spots, plus if you have home occupation, that's an additional one, going to three. Under the new code, you have a responsibility for one parking spot for housing unit, plus an additional one for home occupation, so you'd be at two. Okay. Live-work is less clear to me. What is the -- what are the -- what are the requirements

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currently in the code for live-work?

>> So currently --

>> Tovo: Is it still one?

>> It is one.

>> Tovo: And so this would just simply say that if you're living and working in the same place, you are being treated differently than any other residential property and you have a zero? A zero requirement for parking?

>> Casar: No, it would be additional spots, if there are additional spots required for bringing on additional employees.

>> Tovo: So with live had of work, you can actually have -- you can have additional employees?

>> In live-work, you can have two employees.

>> Tovo: But those are not allowed -- live-work is not allowed in R2.

>> That's correct.

>> Tovo: What are the Zones it's allowed?

>> Rm1 and more intense Zones than that.

>> Tovo: You know, what might be useful, we have that great land use code thing that kind of tracks by use that chart. I haven't encountered a chart that does exactly the same thing for the new -- for the proposed

[8:31:26 PM]

code. So I wonder if, in addition to the amendment that you brought forward, mayor, if it would be possible to have that kind of chart done for the proposed code. You probably all know what it looks like. I just -- I can't quite come up with it, where it checks off the boxes in the different uses, and especially as some of these are changing under the proposal, I think it might be really useful. Anyway, thank you.

>> Uh-huh.

>> Tovo: I did have another question. I apologize. I wanted to ask the staff to respond to the commercial uses in Ms and mu and above, and help us understand what the current parking requirements as proposed are, and why you've set them where you are -- where you have. So that's a question for staff. So this amendment would propose reducing the minimum parking requirements by a portion such as a third -- well, let me just say,

[8:32:29 PM]

councilmember, have you -- is this intended to be relatively -- I would like to say -- I would like to add in, consider reducing by a portion. I mean, the staff have given a lot of thought, they made a lot of proposals for reduction, to ask them to reduce further, I think we can ask them to consider it, but I'm not on board with mandating at this point that they reduce them without further consideration. Are you open to that amendment?

>> Casar: I think I've already left it open-ended. Looking at the reductions, it seems like they were reduced just a little smidge, and considering that we are really trying to get to that 50/50 mode split, I would like a little bit more than a smidge. And I'm not prescribing the amount, I'm just saying reduce it by some amount and maybe it's a third, maybe it's less than a third, but do a little bit more. That's what my amendment is, and if it winds up being "Consider," that's fine but I wrote it this way to try to give the staff some

[8:33:29 PM]

certainty that maybe there's a majority of the dais that wants it to be a little bit more.

>> Tovo: Yeah, I would suggest we do consider reducing and ask the staff to come back. They certainly took the policy direction to reduce and in some cases eliminate the requirements for parking in lots of situations, and so, you know, it means that the recommendses, I assume -- the recommendations are well-considered and based on that recommendation. We've had conversations about being too prescriptive nor not too prescriptive, and I would ask you to use the language consider reducing in the same way that many of you have asked me multiple times in the course of the last two days to make mine most prescriptive. I think we're all trying to work toward a resolution here and that's my amendment, to change it to consider reducing. I don't think it's an unreasonable request.

>> Casar: I'm not saying any of them are unreasonable. In this case, I'll take that. That's fine.

>> Renteria: Mayor?

>> Mayor Adler: Okay. Yes. Councilmember Renteria.

[8:34:30 PM]

>> Renteria: What was the intention on -- you know, looking to reducing the senior retirement home parking requirement?

>> Mayor Adler: It's withdrawn.

>> Renteria: I would -- I mean, being as someone that has worked with senior housing and seeing what - the large parking requirement, I would like to know what kind of requirement do we require for senior parking in some of these centers.

>> Mayor Adler: So while he's answering that question, councilmember Renteria, this one has been Braun because senior parking is being addressed somewhere else.

>> Renteria: Okay.

>> Mayor Adler: But do you want to answer the question with respect to senior parking, please?

>> So the parking requirement for senior centers, senior retirement housing is .8.

>> Renteria: .8.

>> Parking spots per unit.

>> Renteria: Okay. You know, having gone and had meetings for the last five years

[8:35:32 PM]

at Rebekah baines and saying their parking, they use it to park all broken vehicles there, not many people do drive, so I would -- I mean, since it's been addressed somewhere else, I just wanted to mention that there is -- there's not a big need at these retirement centers for parking.

>> Mayor Adler: Okay. Thank you. So, right now a has been changed to say to eliminate any additional, and D has been -- the word "Consider" before reduce. Yes, councilmember pool.

>> Pool: I wanted to ensure that we're not doing anything to lose whatever parking for people with disabilities may have, so could staff advise that -- or maybe we can -- and include some language in here that would say, like in D, that parking for the disabilities -- Americans with disabilities type parking is not reduced by these reductions.

[8:36:34 PM]

>> Casar: I'd say of course we want to comply with the Ada.

>> Mayor Adler: Okay. So we would add, without losing any Ada parking.

>> Pool: That's the point because it's a percentage of what you're permitting and if you're not permitting any, then there won't be any. And if you're only permitting one, then they might get one, but it's a really small percentage, overall. And so, yes, without losing any Ada parking spaces.

>> Casar: I don't think any of these things contemplate doing that. Is that right?

>> Mayor Adler: Okay.

>> Pool: We don't know, and I want to make sure that we don't.

>> Casar: I just wanted to understand the issue.

>> Mayor Adler: Okay. Nz4, those changes, add K, and at the end of D, without losing any Ada parking. Okay? Any other changes? Is this one okay to move forward? Hearing no objection, nz4 now moves forward with those changes. Nz5 is consent, nz 6 is consent --

>> Kitchen: I'm sorry, I need to ask a question about nz 6.

[8:37:36 PM]

I just realized I had a question about it.

>> Mayor Adler: That's fine.

>> Kitchen: Councilmember Casar, I think it is in conflict with another one that we passed on consent, which is on the next page, which is Flannigan's non-zoning number 1.

>> Casar: Mine is about on premise. Flannigan's is about off premise.

>> Kitchen: Oh. Okay. Thank you.

>> Mayor Adler: Okay.

>> Kitchen: Never mind.

>> Mayor Adler: Nza moves forward, nz 6 moves forward.

>> Tovo: I do have a question. Somebody else said they did too.

>> Mayor Adler: Did someone's say they had a question? Yes.

>> Just to get a little clarity on this one, councilmember Casar, I apologize, I meant to follow up with your staff offline, but I just have to ask, is this intended to be sort of visually orienting the signs more to the pedestrians --

>> Casar: Rather than to airplanes in the sky or people

[8:38:37 PM]

taking pictures.

>> So it would be on premise signage --

>> Casar: Instead of having big signs in these areas, have them so pedestrians are seeing them rather than somebody really far away seeing them.

>> Okay.

>> Mayor Adler: Councilmember tovo.

>> Tovo: Yeah, this is kind of a curious and interesting one. Can you give us an example?

>> Casar: I'll use an example of something not currently happening but Wells Fargo building, having the words Wells Fargo so big you can see them from miles away, instead of people downtown knowing it's the Wells Fargo building.

>> Tovo: So councilmember Flannigan said something about logos at the top of buildings and stuff, is that the kind of thing you're hoping to prevent? I have to really think about that because that's kind of neat. I sort of like driving into the city and seeing colorful lights and things on it.

>> Casar: I like colorful lights,

[8:39:37 PM]

I just think, in the downtown area, the pedestrian area, you should have pedestrian -- I'm sorry, I'm eating food while talking.

>> Tovo: Well, let me ask you, has anybody -- I'm okay with passing it right now but I haven't heard any feedback about this. Is this a recommendation that came forward from the downtown Austin alliance or any of the groups that are -- I mean, I certainly --

>> Casar: This has been something I've generally heard in the community and gotten questions about, and.

>> Tovo: I've never heard one comment about the -- I mean, I'm all for having our signage be more functional and useful and would love to see place making kind of signage, but just -- I'm -- I don't know. I don't know on this one.

>> Kitchen: I have a suggestion.

>> Casar: Think about it.

>> Mayor Adler: Councilmember kitchen.

>> Kitchen: It says require. Do you want to say consider? I mean, I'm really -- I'm thinking of, you know, there is signage on the top of some of our, you know, really tall buildings, and I'm --

[8:40:39 PM]

>> Casar: I haven't thought about changing anybody's current signs, it's about when new buildings are built.

>> Kitchen: It doesn't say that.

>> Casar: That's generally how our code works.

>> Kitchen: Well, not always so I would say why don't we just say consider --

>> Tovo: Or propose options for.

>> Mayor Adler: It sounds like there's an agreement on propose options for. Propose options for on premise signs. With that, any objection to that going in? Hearing none, that goes no. That gets us to kitchen 14. This was pulled by both Greg Casar and also by councilmember harper-madison. Both Casar and harper-madison pulled kitchen 14.

>> Casar: I'm happy to ask questions, but also councilmember harper-madison wants to.

>> Kitchen: Do you want me to speak to it?

>> Mayor Adler: No, no. The person that pulled it, let's

[8:41:40 PM]

see what they say.

>> Kitchen: Okay.

>> Mayor Adler: Do you want to go first or second?

>> Harper-madison: I'm happy to go first but just for clarity, should I address this one? I'm sorry, I'll take that back, I will address this one but can I get some guidance on when I should go back and address the one that I wasn't --

>> Mayor Adler: We'll do that --

>> Harper-madison: And I distributed the amendment that I'm proposing for that one.

>> Mayor Adler: We'll do that in a second.

>> Harper-madison: For this one, much like the other, I feel like it's a very small adjustment, in which case I'm asking if we can add, to before to promote beneficial use of stormwater, if we can add, in aquifer recharge areas, then it goes on to read, capture water to be beneficially used on site, and this is the last of my potential proposed amendment, unless it can be demonstrated to have a negative impact on affordability.

[8:42:44 PM]

>> Kitchen: Okay. So --

>> Mayor Adler: Hang on a second. Hang on a second. I also want to hear from councilmember Casar.

>> Alter: Can we -- I didn't understand what the statement was, what her amendment was. Can we --

>> Harper-madison: Would you like for me to read it in its entirety? All I did was I added the words that I would mind a it with, but I could read the item in its entirety. It reads, to promote beneficial reuse of stormwater, conserve potable water, improve soil, moisture, and enhance creek base flows, include a beneficial use of stormwater revision that keeps rain water from smaller storms on site, require a portion of the captured water to be beneficially used on site. So I took that, and I added to the very, very beginning, in aquifer recharge areas, and then on the tail end, after on site, I

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added, unless it can be demonstrated to have a negative impact on affordability.

>> Mayor Adler: Okay. Thank you. Councilmember Casar, what was your issue on this?

>> Casar: I just had a broader set of questions about water Fords, that I would know how we move on this amendment.

>> Mayor Adler: I think I had some of those questions too, because I thought we had talked -- at one point there was conversation about how much we would put on this on water forward and how much we would hold to put on water forward, I don't know if this is implicated in that, so that's my question.

>> Kitchen: Could I speak to that?

>> Mayor Adler: Uh-huh. I just want to get stuff out. Go ahead.

>> Kitchen: Then staff can, if I get it wrong.

>> Mayor Adler: Okay.

>> Kitchen: So my understanding is this retention -- this particular, specific provision, which was recommended to be included in water forward, like you're asking about, it was taken out of codenext when it was expected that the water forward plan would be the place to make that recommendation on retention

[8:44:45 PM]

volumes, but it wasn't -- it was not included in water forward ordinance language, and so I think it's appropriate now to consider it here.

>> Mayor Adler: Okay. Does staff want to address the questions?

>> Sure.

>> Casar: Could I ask --

>> Mayor Adler: Yes. Councilmember Casar.

>> Casar: First, can we address some of the components of water forward that are incorporated into this before we talk about beneficial use in particular? But just water forward, more generally?

>> Sure. There is a provision -- sorry, Matt Holland, watershed protection. There is a provision in the ldc revision that we're providing that begins this process of integrating on-site water reuse into projects over time. So it adopts a schedule and starts with very large projects of 250,000 square feet or larger, asks that those projects begin using on-site water capture revisions. It also talks about reclaim water

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connections and a host of other things. It's beginning the important process of integrating on-site water and reclaimed water in the new projects. I would actually add that I think -- I think that the evolution of this item is that it -- because we've gotten some really good feedback from the environmental committee on this, is more that at the beginning of codenext, this sort of lived -- it was in the stormwater section, and it continues to live on in the stormwater section, kind of in the morphed form

of green stormwater infrastructure. So we actually did some testing of these -- we did a host of actual case studies, and we looked at those and found that our initial proposal, which was a little more aggressive on water -- on-site water reuse, was probably going to lead to some outcomes that we were a little uncomfortable with, so we shifted to a new strategy of looking at -- asking that all projects use green stormwater infrastructure to comply with stormwater management for water quality.

>> Casar: Right.

[8:46:46 PM]

So this amendment asks for you to have beneficial reuse provisions in the code, which is saying you do have some beneficial reuse provisions in the code.

>> That's correct.

>> Casar: So the question is not whether to have those beneficial reuse provisions, the question is how much to have.

>> Right.

>> Casar: So if we passed this, you could come back and say we already have beneficial reuse provisions, but it sounds like the -- the intent from some of the emails and conversations I've had is to ask for more than you've already included, but what you're saying, some of the outcomes when you ask for more, you're uncomfortable with. Can you talk to -- why are you uncomfortable? Why did you all pick the level of beneficial reuse you picked?

>> Sure. A classic case, in today's world we just take water, we put it into a sand filter, it is cleaned and slowed down and released into the environment, into a nearby creek. That's good for water quality but not good for a bunch of other things like beneficial use. And so the first proposal was going to say prescribe that you

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needed to capture the 95th percentile rainfall event, which is quite a bit of water. And the larger the site you would have, the more impervious the site you would have, the larger capture would have to be required. So you'd either have to bring that into your building to use the water, and/or you'd have to, in some way, irrigate it on your landscape and so forth. We're kind of uncomfortable with both of those on this up-front side of this because those are very mechanical systems that require use of a lot of pumping and sort of more active systems. And so the green stormwater infrastructure suite has that, you can use that as an option, but you can also use a rain guard and you can use porous pavement, some other options that are more passive, probably less expensive better to operate over time. We found better ways to soak that water in. That was our, after that testing period where we looked at multifamily sites and commercial

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sites and industrial sites, we felt more comfortable requiring green stormwater infrastructure, broadly, as opposed to a specific performance standard of beneficial reuse.

>> Casar: Because in those cases you were seeing that people just weren't building it, or building less?

>> Yeah, this is all looking at what types of systems would have to be built, and we've had a lot of experience in our city with systems that use irrigation pumps, and frankly, they have some issues and there's a lot of maintenance concerns with those. We really didn't want to push the development community into a position where they were having to use those. If they want to elect to use those, they can, with our proposal, but they also have some more passive, lower key ways to get that done. But those all involve soil and plants and natural systems per green stormwater infrastructure. So we're pretty -- and there's also provisions to talk about decompaction soils, and direction of rain water runoff into landscaped islands and parking lots, in our landscape ordinance,

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so we think there's two or three or four ways, basically four different paths to get between stormwater infrastructure and beneficial use.

>> Kitchen: Can I speak to this, please? So the language that is being proposed here doesn't require a particular approach? I mean, it doesn't say that you couldn't use gsi kinds of approaches with it. So it's not prescriptive in that way. What it is focused on is beneficial reuse, which I understand that if I heard you right, that you're starting down that road, but with large projects. Right? Did I hear you say that? You're starting down the road for beneficial reuse.

>> The water forward projects are for large projects.

>> Kitchen: Right.

>> It's kind of a subset for some key, important projects, but the green stormwater infrastructure proposal is for all projects that have more than 5,000 square feet

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of impervious cover.

>> Kitchen: Right. So I'm not understanding why we wouldn't go forward with -- tell me why we wouldn't go forward with something like this because it's not prescriptive. In other words, it's not saying

that you have to use -- that you have to use the -- you know, the kinds of -- the kinds of methodologies that you mentioned might be -- might be a problem. What it's trying to do is move towards a requirement that you have -- you keep rainfall on site, whether you use that with some kind of green stormwater infrastructure or you use it with something else. So are you saying it's already done, that you don't need this? Or --

>> I think that is staff's position, is we believe that our proposal to the council meets your council direction to provide this -- this natural function. But council can, if you wish, we could try to press forward with -- and you're absolutely correct, this doesn't have 95th

[8:51:49 PM]

percentile.

>> Kitchen: Doesn't require any of that.

>> Absolutely. So it would probably be helpful for us to understand this better, what -- you know, get a little more direction about is this for us to explore this or explain it or to --

>> Kitchen: Well, I can certainly -- it doesn't say explore right now, but I can certainly do that. I mean, it is intended to be -- go ahead, Kathie, I'm sorry.

>> Tovo: [Off mic]

>> Kitchen: Okay. You can speak.

>> Mayor Adler: So I'm concerned -- I'm trying to get a feel, kind of the threshold question, there was a certain amount -- I mean, we're all wanting to move in the direction of water forward, we're all wanting to move in that direction. There were some things we were asked to do. Several weeks ago staff came back to us and said there's a limit to what we should be doing now as part of the land development code. I'm trying to figure if this touches on that, if this is that, how does this relate to that.

>> That's a really great question. Basically, these things operate

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together, or they have some overlap. What we were basically trying to do is craft a proposal with green stormwater infrastructure that didn't sort of collide with the water forward plan. The water forward plan is, you know, the water utility has done a really good job setting that up, showing their -- how they can proceed forward with their -- with a pretty aggressive on-site reuse proposal, and this stormwater proposal is kind of like running in parallel with it. And we basically wanted to make sure we weren't kind of, you know, getting ahead of that process, which was pretty mature and had its own --

>> Mayor Adler: And do you think this is? What is your advice on this kitchen 14?

>> I would say that we are -- that our current proposal is, in a really positive way, is doing these things, and, therefore,

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this would not -- an unnecessary exercise to try to add onto it, but we agree with all these goals, and that was what we were trying to do with our proposal.

>> Mayor Adler: But apparently he wants something other than what they're already doing.

>> Kitchen: Let me let Kathie speak, then I'll speak to that.

>> Mayor Adler: Okay. Councilmember tovo.

>> Tovo: Yeah. I really have appreciated the staff's approach to water forward, I think we've got a terrific plan and I appreciate what you've embedded within it. I agree with the environmental advocates who urged us to go a bit further, and I think that the way councilmember kitchen has approached it is very -- it very reasonable and rational and non-prescriptive, and, you know, this is obviously just at critical issue for our -- for our city, and we want our land use code to be as forward-looking on this as possible. So, you know, I see it in the same way I do some of our earlier amendments. We've passed policy direction just to go back to the last

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issue, about parking, some of our colleagues would like them to go a bit further than their recommendation. We've asked them to consider that. So I think this is important. I think beneficial reuse -- I would just say I have concerns about the amendments because it's my understanding -- maybe I misunderstood you, but I think your initial language was in areas in recharge areas?

>> Correct 3:

>> Tovo: So it would restrict the beneficial reuse provisions just to areas in the recharge zone?

>> I guess ultimately the determination I made was that staff's current movement is generally sufficient and addresses my concerns around beneficial reuse, so I said in aquifer recharge areas where we're talking about the most sensitive, and then specifically unless it can be demonstrated to have a negative impact on affordability because I definitely don't want to do that either.

>> Tovo: So I think as I see it, and I would ask our city staff to weigh in on this, it seems to be if this is a strategy that we believe is appropriate, that we should -- we should extend it to

[8:55:54 PM]

areas outside of the recharge zone as well, and it was also my understanding that there was some differences in the recharge zone that we would want to be mindful of, including rain gardens and other things.

>> Chris Harrington, environmental office. Yes, we would only be including this restriction to recharge zone, it would not require an sos amendment but it would alter our policy for achieving the non-degradation goals. It could impact some tcq regulations of infiltration --

>> That prohibit -- I'm sorry --

>> The layers of regulations within the Barton springs zone, the city of Austin has regulations but also the state, the Texas commission on environmental quality, I apologize for the acronym. And so there would be restrictions within the Barton springs zone that could complicate the application of this. So one, we have a limited set of water quality controls that can achieve the antidegradation -- or

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non-degradation requirements of the sos ordinance. As I understood from your amendment, we would only be looking at the beneficial reuse of a portion of the stormwater capture following within the Barton springs zone, that would be a challenging change in policy, I think, to implement and ensure that we are still in keeping with the antidegradation requirements and still complying with state law requirements, within the Barton springs zone between first and second reading.

>> I would actually argue that the sos ordinance now is achieving this. In the recharge Zones, we capture all the water and irrigate on site. This is what we're doing now in the Barton springs zone.

>> Kitchen: Could I speak to this? I mean --

>> Mayor Adler: Yes.

>> Kitchen: Okay. So, I brought this forward, it is -- it is a recommendation from the -- the environmental groups that sent the letter to us. So this was one of their recommendations, and there's,

[8:57:57 PM]

like, I don't know, three or four environmental groups that signed onto a list of recommendations. So that's where this is coming from. And their thought is that what we have in place right now with regard to water forward is not going far enough. And it is, you know, as you said, it's limited to these larger projects. And so the goal of this is to consider how we can get to a place where we're requiring this retention requirement on all site plans. And without a prescription that it has to be done in such a way that it impacts the concerns that you're raising, Matt, in terms of those higher costs kinds of approaches

and things like that. So that's the goal here, and so councilmember harper-madison, I wouldn't want to limit it the way that you did.

>> Harper-madison: I understand that.

>> Kitchen: So -- so I would like to move forward without limited

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in the aquifer recharge areas. I would be open Toi would be open to information if there was some impact on affordability because we're trying not to impact affordability. So for informational purposes, andky certainly do this as an explore and bring back to us, but I don't want to limit it to just over the recharge areas.

>> Harper-madison: So when you say you're social open to information, does it say it's part of the amendment to have a negative impact on affordability or are you saying you would like to ask staff --

>> Kitchen: I would want them to tell us.

>> Harper-madison: Or do some additional measure?

>> Kitchen: I would want them to tell there is some additional concern and then tell us options to make sure it doesn't happen. I wouldn't want to presume ahead of time.

>> Mayor Adler: I'm fine with the council doing its will on this, but from where I sit this is something that we talked about when water

[8:59:01 PM]

forward came out and we said we would do it later. When we were doing the initial discussion of this in the land development code code enforcement we said we were going to put it forward. This is now coming back again. This code has so many things that are so good environmentally, and then especially with water, my sense is that the staff has already pushed this as far as they think is prudent in the code. And I'm comfortable where the staff has it now and rather than spend the time that we have right now in making sure that what we have works. I understand what you're doing. I want us to move in that direction too. It's real important for me that we move in that direction, but -- I think that the staff has moved facility that direction. I'm uncomfortable saying I want you to move further in that direction because I think you have been trying to move it as much as you can. So I'm probably just going to vote no on the amendment.

>> Kitchen: Okay. So that's fine. I'm bringing this forward

[9:00:03 PM]

because the folks -- the advocates in our community that work on these issues are feeling like we are not going far enough. They were told that they would be done in water forward. It was not. So now they're coming -- it was taken out of codenext, put in water forward. It was not put in water forward so they're coming back here. So that's what's going on here. We have a significant portion of our community who thinks that this is important and it's not being addressed. That's why I'm bringing it forward.

>> Mayor Adler: Councilmember Renteria.

>> Renteria: We should either table it or bring it up to a vote. I don't see us getting anywhere on this.

>> Mayor Adler: Okay. Councilmember harper-madison, do you want to make the amendments or do you want to just vote no? Do you want to make your amendment? Do you want to urge your amendments?

>> Harper-madison:

[Indiscernible] In the first part that feels limiting in aquifer recharge areas, but I would like very much for the latter part, unless it can be demonstrated to have

[9:01:03 PM]

negative impact on affordability, that's of extreme importance. Yes, I'd like --

>> Mayor Adler: Councilmember harper-madison moves the amendment unless it can be demonstrated to have a negative impact on affordability to add at the end. Is there any discussion on the harper-madison amendment? Councilmember tovo.

>> Tovo: Yeah. I do have concerns about that because I -- some of these measures are going to involve costs. And at the end of the day we hear a concern about -- from everything from parkland dedication when we were trying to adopt the no staff entrance for universal accessibility we had members of the development community coming down and talking about cost. I think at the end of the day there is an enormous cost about where we need to be in terms of water conservation. There is a huge cost if we are running low on water supply and have to have outside contracts for that water through lcra and others. And that was the drink our community was going forward

[9:02:03 PM]

before water forward. I'm not going to recount the history, but we were exploring what other kind of partnerships we might need going into the future to secure a water secure future. So at the end of the

day I think it's critical. I'm not interested in opening up opportunities for people to come and say there's a cost.

>> Harper-madison: I didn't say cost. I said negative I am pocket on affordability. That's not the same in my mind's eye.

>> Kitchen: I would like to do this -- wait, Kathie.

[Overlapping speakers]. Could I do this? I'm hearing what councilmember Renteria is saying. Let me pull it down for right now and rethink the wording of it and then we'll come back to it.

>> Mayor Adler: Let's table number 14. That gets us to kitchen number 15. Councilmember Casar, you pulled this one.

>> Casar: Yes, mayor. I would prefer supporting the conservation subdivision

[9:03:04 PM]

method of addressing this, which I understand is in a later part of the document. So rather than support this one, I want to support the idea of creating the conservation idea.

>> Kitchen: Mayor, I would like to take it up at the same time then.

>> Mayor Adler: Let's table this one --

>> Kitchen: Wait, wait. No, let's pull up the other one right now and just deal with it right now because I don't know which one you're talking about, councilmember Casar.

>> Casar: I'm not aware of another one doing the same thing here. So that's why I wanted to have that conversation.

>> Casar: I'm hearing from legal that it's on page 37.

[9:04:07 PM]

Yeah, conservation subdivision code. So it's in the process section as opposed to the --

>> Kitchen: Well, that's different then because --

>> Casar: I'm not saying that they're the same idea. I'm saying if I was to address this issue one particular way I would rather deal with clustering in these areas as opposed to through this zoning method. That's all I'm saying. We can either pass one or not the other. We can pass on this one when we get to it.

>> Kitchen: Help me understand what this one does.

>> Casar: I'm saying to address the issues raised I think figuring out how on these larger developments to have a conservation conservation option is my preference of addressing it.

>> Kitchen: Let's talk about that for a minute. For yours you say exploring required Greenfield developments. I'm not talking about Greenfield developments. I'm talking about areas right now over the aquifer where we have large lots

[9:05:07 PM]

that with the way the zoning is handled right now, there's the potential for subdividing them and causing -- they're an environmental sensitive areas and because of the lot sizes there's the potential to subdivide and cause problems with the -- with flooding. So what I'm asking with this is simply to look at the zoning categories, to explore the zoning categories and consider something that's a new rm1 B. Right now we have r1-as for the small lots and I'm thinking of perhaps a new r1 B for the large lots. It's sat the same thing. What you're proposing will not address this kind of situation, I don't think if I'm understanding it.

[9:06:07 PM]

What you're proposing. Right? Are you thinking that what you're proposing would address this situation?

>> Flannigan: Mayor? I'm comfortable with all the other extensive explain regulations in order to protect our floodplains and our aquifer recharge areas. I don't think this is necessary so I won't be supporting it.

>> Kitchen: But it doesn't protect it. That's what I'm saying.

>> Mayor Adler: Staff, how do you see this, kitchen 15?

>> I think the areas that this is targeting the aquifer recharge areas in the floodplain areas. We believe we actually have very robust protections for those areas. They have very low impervious cover restrictions on the aquifer recharge zone areas across town, the Barton springs zone and water supply rural and suburban. And we also have extremely protected floodplain

[9:07:08 PM]

regulations. So I don't see -- at this time -- and I may be missing something. I'm not seeing a gap in our code on this.

>> Kitchen: Can I speak to this?

>> I think actually it is -- I like your idea of combining this with the conservation subdivision because there is some overlap in this. We totally agree on these principles and I think the conservation subdivision proposal actually has a lot of those same things in mind because they're trying to figure out ways to avoid impacts on sensitive areas. I think those are very complimentary.

>> Kitchen: But it's limited to Greenfield, which was not address -- it's limited to new subdivisions if I'm understanding correctly, and I'm not talking about new subdivisions.

>> Mayor Adler: Hang on a second. Do we want to respond to that?

>> Kitchen: If I'm understanding councilmember Casar's amendment, were you talking about something different?

>> If you have a 10,000-foot

[9:08:11 PM]

large tract are you talking about like redevelopment of an existing gray field?

>> Kitchen: What I'm talking about is -- let me go back to the basic concern. So we had talked in terms of not upzoning tracts in floodplain areas, okay? But what we've got the potential -- what we've got right now is large residential lots in floodplains and in recharge Zones that can be subdivided. And the subdivision can lead to more development in areas that are very sensitive. So what I'm trying to do is explore ways to address that. As much as we've done with the r1-a potential. So do you need more time to think about it? Do you want us to pull it tuned think about it?

>> These larger tracts if they did subdivide, they would have to comply with our code. And in these areas with the

[9:09:13 PM]

recharge Zones, the impervious cover levels and the density levels are extremely low. So you're not going to find a lot of -- it won't be a very intensive development. Those are the protections we think we have in place now that are really helping.

>> Kitchen: You don't see a need for further protections in these areas, is that what you're saying.

>> That's correct.

>> Well, I remain having this concern. We can pull it down and discuss it more with you?

>> And we can come back at a later time with some examples.

>> Kitchen: I think it's a concern, but in order to not take up more time, Matt, if we could talk to you about it tomorrow so we can bring it back, if we can get to a place where we can understand --

>> Mayor Adler: Kitchen 15 is withdrawn. Councilmember tovo.

>> Tovo: I'm not sure what I'm understanding the downside is for the staff to explore the expansion of that category. All we're asking them to do is take a look and see whether there's a utility to

[9:10:13 PM]

it, providing that direction let's jalapeño it sounds like is going to happen anyway, which is for councilmember kitchen to work with our staff and see if that's an option. I see that as a net good.

>> Mayor Adler: Councilmember Flannigan.

>> Flannigan: I don't see it as net good so I won't be supporting it.

>> Kitchen: Why don't you see if as a net good.

>> Mayor Adler: So you are using it at this point.

>> Kitchen: I'll pull it down and bring it back tomorrow.

>> Mayor Adler: 15 is withdrawn. The next one, non-zoning 1 is consent, non-zoning 2 is consent. That gets us to pool number 1 trees. This was pulled by councilmember Casar.

>> Casar: Mayor, I'm fine to remove my pull on this.

>> Mayor Adler: Okay.

>> Casar: I'm fine removing my pull on this since it's explore and and the staff will come and tell us whether it's a good idea.

>> Mayor Adler: Does anyone have objection on pool number 1 going on in? Hearing none, pool number 1 goes in.

[9:11:13 PM]

And that was the first -- the explorer goes in, the consider goes in, councilmember Ellis, you pulled the one that begins -- to prevent broader loss, reserve an administrative removal process.

>> Ellis: I did. Is it appropriate to speak my thoughts on that one?

>> Mayor Adler: It is. So going in by consent on pool number 1 is explore the possibility -- at the bottom of page 29 of 39, the paragraph that begins explore the possibility of has gone in. Consider and -- the second paragraph, consider and include tree feces has gone in. The next one that says to begin a broader loss of our heritage tree canopy over time has been pulled by councilmember Ellis. I'm now asking councilmember Ellis to address her pull.

>> Ellis: All right.

[9:12:15 PM]

I pulled this partially because I've already been working on a heritage tree preservation bonus that we've talked to staff about coming back to us with some options there. So I was hoping that would cover some of the concern of heritage tree loss along corridors. But I also did some research and it seems like it was already extremely narrow context where there was administrative approval and tried to do some research on what major transit corridors would be, and noticed -- it was a pretty small southbound set of imagine Austin corridors. And so I was feeling a bit like maybe with the heritage tree preservation bonus that we can reach that goal of preserving trees without trying to overly describe exactly which streets and avenues where there would be administrative approval because it's happening pretty minorly, it seems, as I've read through the code. It seems like it's not something that happens all the time and we have a lot

[9:13:15 PM]

of checks and balances in place to make sure that we are protecting as many trees as possible. I was hoping to kind of reach the same goal in a different method and hoped that council kind of agreed with my premise.

>> Pool: And what I'm attempting to assure here is that we don't lose the trees. So when it's under administrative removal process that council doesn't have any input and we don't know what the decisions are. We find out about it after the trees have been taken down and our history is littered with instances of that happening. If you have some language that would make it less likely that trees would be removed, I'd love to see it. That's where I'm going on here. It's possible that what you're working on can build out and improve on this, which would be great, and we could include this into the -- into the code and then amend it with the

[9:14:15 PM]

additional language that you may come back with. I'm happy to work with you on that?

>> I think we're trying to reach the same goal and figuring out the same process. Does staff have any input on how many times this administrative approval is happening versus the ones that are actually following the process we want, which is preserving the tree or being able to transport it if possible.

>> Mayor Adler: Do you want to respond to this, staff?

>> [Off mic].

>> [Indiscernible], services department. Administrative variances are rarely issued. We have about a 95% preservation rate for heritage trees in the city,

[indiscernible] In 2010. As you know, we have some of the oldest tree ordinances in the country and we have very robust due diligence mechanisms in code that require a prevention of reasonable use, reasonable access. Part of the proposed language of corridors also

[9:15:17 PM]

includes that the applicant must attempt to demonstrate that the tree cannot be transplanted before staff would consider permit willing removal. That said, heritage trees are the cornerstone of this community and all the protective safeguards staff would support.

>> Ellis: It seems like the way I was reading this code it either has to pose an extreme risk to life or property. Is the tree could be dead or affected by irreversible condition for them to be able to remove it. I wanted to understand it better but was hoping we could achieve this through the heritage tree preservation bonus program that would allow us to preserve the heritage tree while not losing the amount of units by adding some sort of height bonus to make sure that we're actually achieving our capacity goals and our affordable housing goals in these areas.

>> Mayor Adler: Would you

[9:16:17 PM]

tell me what the impact of passing this paragraph would mean?

>> Specific to these streets?

>> Mayor Adler: Tell me how that operationally or institutional Ali or policywise? Why did you not draft it this way and do you support this?

>> We did not draft it this way because the broader narrative, policy guidance from pro council was activity centers and corridors at large. So we did not specify individual corridors within the city or within the council districts. This narrowing of scope would undoubtedly remove the number of trees that would be eligible for the administrative review process. It may result in additional trees to be preserved. Most of our data about where heritage trees are are from permitting data so it's very hard for us to give you firm numbers on where these trees are and where they are not.

[9:17:20 PM]

>> Pool: One of the intentions of being more specific about major transit corridors rather than corridors are some of the corridors are fairly narrow streets. So rather than having the net thrown really wide, we were trying to narrow that scope. So I'd like to go ahead and proceed with this unless you want -- and hope that you would support that. And I would also like to continue to work with you to build on this further.

>> Ellis: I at this time won't be able to support it. I think we're trying to achieve the same goals through the preservation program. I think I'm really worried because our direction talks about ensuring density along corridors. I think we've done a good job with that. And I see staff's concern. So we may agree to disagree on this particular language, but I'm really happy to work with you on preserving heritage trees through that bonus program.

>> Mayor Adler: Councilmember alter, let's give somebody else a talk to.

[9:18:20 PM]

Councilmember alter.

>> Alter: So Mr. Mars, you described the current process and we're talk about the prospective process which we don't know how it will impact and I think we're trying to get a handle on that. So can you describe what is proposed to change with this? There's been some lack of clarity in the community and I think it would be helpful for you to describe that and what kind of impact that would have on trees or how you would get your head around that?

>> So current code since 2010 is that heritage trees that are not dead, larger than 30 inches in diameter the largest in the city, that request has to go to the environmental commission and the land use commission. It terminates with the land use commission and is based on a number of criteria, but the most notable ones are prevention of reasonable use of the property and prevention of reasonable

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access of the property. As proposed to again meet the may minimum intent from council was for alternative compliance along corridors. What staff proposed is that for these trees that are 30 inches and greater that the decision making can be an administrative one as opposed to the current process of the land use commission decision. With the added safeguard that the applicant must demonstrate that the tree cannot be transplanted. When that happens it's generally because of tree condition. That's the notable changes -- between current process and what is proposed.

>> Mayor Adler: I'm going to support --

>> Alter: Can I finish my questioning? Thank you. So in that circumstances, if -- okay.

[9:20:24 PM]

So let's put the transplanting aside. Do they have to prove they have no way around this?

>> Currently yes, but that is how we have administered regulations for going on 40 years now with the understanding that yes, it is --

>> Alter: I'm not asking about currently. I'm trying to understand in the new code are they still required to demonstrate that they've tried everything under the sun to preserve that tree without having to transplant it before they come to you for administrative variance.

>> They do have to demonstrate that the tree prevents a use of the property and we have taken approaches to define what is a reasonable use. I do need to clarify that we also proposed that to qualify for the administrative process that the project needs to be at least 75% residential and of that 10% needs to be affordable. If my recollection serves me, planning commission's recommendation was 50 or 51%. I'm not sure what is before you. But yes, understood it is a discretionary decision and

[9:21:24 PM]

that is subject to change over time.

>> Alter: So while we're on the subject, there's one version that says a reasonable use and one that said reasonable use. Which one is moving forward and what is the difference between those two? Interpretations?

>> Did need to prevent a reasonable use of the property. Currently there's no definition in code of what -- how staff assesses reasonable use. In proposed code there is a definition, a working definition of it. It's not deterministic. It states that a reasonable use needs to be similar to the surrounding uses, but need not be the economically and most advantageous use. Where there are reasonable alternatives, those need to be pursued and be at least impactful.

>> Alter: Okay. While we're on this, my concern here is that the language is a little bit unclear whether like AAS a

[9:22:25 PM]

developer could come in and say I want to be able to do this reasonable use and since I can't do it then I get to remove the tree. Or do I as the developer get to specify that or is it something that gets -- something somebody would call a reasonable use of any kind you can't do as opposed to just the one that I would like to do?

>> It is a determination made by the city arborist, which is a position appointed by the city manager. And the way that we have applied this is that the applicant needs to be able to demonstrate through due diligence that they have explored options to preserve the tree and that is -- there's not a reasonable option. It is a subjective decision, but it is the city arborist decision, not the developer's decision.

>> Alter: Maybe I'm not communicating, and I'm sorry.

>> My apologies for not being clear.

>> Alter: If you say you can't do a reasonable use or

[9:23:28 PM]

reasonable use, they have different connotations so that do I get to decide that I have to build, I don't know, an auto dealership on this, and if I can't build my auto dealership without building the tree, and I go through this process, you give me the variance? Or is it that if I can't build an auto dealership, I can't build my multi-family, I can't build my restaurant, then I can come and say to you that without moving this tree that's a -- there's no reasonable use, but -- there are different interpretations and there's a change in the code that's causing consternation and I don't understand it and it is relevant for these two.

>> I think the challenge that I'm facing here is that for the past 40 years reasonable use has kind of been the eye of the beholder. It's the eye of the city arborist. What we're attempting to do

[9:24:28 PM]

in new code is put in a definition that helps the person reading the code or submitting for a project to understand what goes into the decision making of the city arborist. And --

>> Alter: Is the answer that we're not putting in a definition so you had to change the wording to accommodate the fact that you now have a definition for it or is there not a change?

>> There's not a change in the -- there's not a change in the term. It's preventing a reasonable use of the property.

>> Alter: Okay. I'll take this offline, but it's something I'm going to want to have clarified before we pass it. I think there's a broad distinction.

>> Mayor Adler: For me I'm going to support councilmember Ellis in voting no on this amendment because I think that rather than -- because I think trees are incredibly important to us and I think that we're going to save a lot more trees and allow for a lot more opportunities by giving the staff greater tools to be able to use, by

[9:25:28 PM]

being able to waive other requirements on property in order to be able to save trees, I think that that's the better way for us to go. And I think that you have, staff, already dealt with competing policy goals. We want to be able to develop along corridors and that's the policy decision we made. We asked you to try to figure out what the right balance was. You can do with what's going to be coming up with the tree incentives. We're going to have you go even farther and give you even more tools beyond that, but I'm comfortable with a balance that the staff has raised, especially with giving the staff additional tools. I'm going to vote no on the amendment. Councilmember Tovo.

>> Tovo: So I had the answer. I think councilmember Ellis, you asked the question ages ago now about how many trees had been administratively approved and I'm happy to share that with you, this information that I got from the city arborist last year was 17 heritage trees removed and approved

[9:26:30 PM]

administratively within residential development and 20 in commercial development that were removed. And then there are more for health. But the way I see it, we have heard some concerns about it. We've also heard concerns that along our corridors are sometimes where you have Roth of heritage trees and an interest in seeing those continue on into the next generation. We had a pretty interesting report done here at the city of Austin looking at quantifying the value, the financial value and other -- as well as the environmental value of our urban tree canopy. And so I'm not sure -- both of these amendments are relatively prescriptive and I'm not sure I see a need to choose between them. They're both very interesting ideas. I think for the staff to consider. They both have similar aims. And so I want to make an amendment that we ask our -- that merges them and that asks our staff to consider -- to consider both

[9:27:30 PM]

options and come back with some recommendations for how we might achieve the aim of preserving our heritage trees along corridors while also balancing that against the interest in seeing more residential development and more density on the corridor. So that's my amendment. I don't have -- I could come up with language, but I think that's the direction that I would give. Of that both of them kind of come back a little bit from their prescriptive nature, but that we say -- we provide the direction to staff to evaluate both options and come back with recommendations that achieve those two means.

>> Mayor Adler: Can you help me idea -- that was the transaction we gave them back in May. The staff went back and did that, they've reported now back to us the balance. So you're saying then is that what you really meant by the balance, the report back to us isn't the balance that we meant?

>> Tovo: It seems to me both amendments are asking our staff to take a look at

[9:28:30 PM]

these two different ways of considering it. And I think that's appropriate. And on the last one we -- we've -- in many ways we are adding to -- we're looking at the recommendations from staff and saying, hey, consider this or tweak this or go a little further on this. That's what we've been doing for the last two days. I think in this area there's a lot of interest in it, there's a lot of support for it. I see the value of both ideas and presenting them to the staff and asking them to consider both. And come back with recommendations is useful. In many ways we often hear some concerns about asking staff to develop a new incentive program that works like this and operates like this, and that's in essence what both amendments have. I'm asking that we step back a bit from the prescriptive nature, but you understand from both of the amendments what some of the goals are.

[9:29:31 PM]

>> Mayor Adler: So councilmember tovo moves to amend this to add consider before reserve.

>> Tovo: Not exactly. It was ask the staff to consider options such as the following, and then councilmember pool's, and creating and for smell's I would have another bullet point -- for councilmember Ellis's, I would say create a heritage tree program, et cetera, et cetera, that would offer a well calibrated incentive in exchange. So asking staff to consider options such as -- to consider the following options, reserving an administrative approval process, et cetera, et cetera. And to councilmember Ellis's ebb, creating a heritage -- again, the subject heading would be -- not the subject heading, but the earlier part of the sentence would be consider the following options, creating a heritage

[9:30:32 PM]

tree bonus program, et cetera, et cetera. The bonus program would offer a high calibrated incentive. So it asks staff to take a look on both of those options and come back to us with incorporated changes or the recommendations.

>> Pool: I'm fine with that.

>> Mayor Adler: We have a second from councilmember pool. A couple of questions. One, as part of this process I'm hoping that we're getting closer to getting this done and I'm concerned -- my hope is that you're going to be able to come back with the map of the code in January. And I'm concerned about having so many really considers and explores of ideas after you've already done the work, and I don't want that to hold up, you coming back with a redone code for us and a map with the instructions that we're giving you as part of this

[9:31:32 PM]

process. And I think that there's an interest in being able to move forward with this. And I guess I just don't know how to judge the work capacity that you have to the degree that we're lining up a lot of explores and studying because I don't want any of that to hold up our process as we move forward with the code. And that's the part that I'm trying to figure out how to balance.

>> Tovo: I understand, however, the substance of -- one of the amendments asked for the creation of the program, so this is actually asking for them to evaluate it as a first step. They're developing an incentive's program, so I would -- you know, I think asking them to take a look at those two options and either -- and make a determination about it and come back with a recommendation or with a program or with what -- with

[9:32:32 PM]

a recommendation that we create one, but maybe we have to do it with a little bit more time. This actually allows them a little more flexibility within the time frame.

>> Let's vote on this. We're starting to repeat ourselves over and over again.

>> Alter: Mayor, I have a question that I'm wondering. Does the administrative variance that you have in there apply to transit priority networks or just to Austin -- imagine Austin centers and corridors or just the corridors?

>> Initially we -- I pulled the language from the main memo, which mentioned specifically stated activity --

>> It's all corridors. It's imagine Austin and transit corridors.

>> Alter: I wonder if we could address all of this and allow for councilmember Ellis's to go through if we said the new code should create a heritage tree

[9:33:33 PM]

preservation bonus program for developments in imagine Austin centers and along imagine Austin corridors. And either leave off the transit priority network piece of that and then if we add it in there the second -- a second to last sentence that said the program should include it to a defined set of criteria including provision that the project requires this flexibility to otherwise achieve a meaningful reduction in building fingerprint. So that's kind of a but for clause when we're saying we already have, but there's a lack of clarity out there so that's creating some confusion, but you don't get to this this unless there's a

but for like we have on the 380 like there's no other way to do this. Not to apply it to the transit priority networks, but if in order to move forward with this, we need to explore those.

[Indiscernible].

>> Mayor Adler: The pool

[9:34:33 PM]

amendment is very explicit and says you were offering increased administrative capacity where there was not administrative capacity before. Right? I mean, that's kind of a yes-no kind of thing. Either we're supportive of that or we're not supportive of that. I'm supportive of that because I think that reaches the balance that we have. I'm also supportive of coming up with a -- with a heritage tree incentive program because I think that gives you administratively more tools to work with where you can save more trees from that. So I'm not sure that for me I need to study or explore whether or not to increase the administrative capacity because that seems to be kind of a yes-no, we sent you off, you came back with a recommendation, I'm ready to support that.

>> Alter: Mayor, my amendment was to Ellis' heritage bonus program, which is a new -- you're saying yours is for the administrative approval.

>> Mayor Adler: Yeah, a I'm saying that councilmember pool's is for

[9:35:35 PM]

the limit the administrative approval, which I'm comfortable saying no to that for me. Yes, annick?

>> I would say in the direction given on may 2nd may 2nd, there was extensive collaboration between transportation and dsd and the city arborist with regards to the thought put into the administrative waiver U and I don't think we would come back with a different recommendation on that. It was pretty thought through with regards to how it would be done. With regards to the bonus I think that is something that we could consider and come back to y'all with that. I don't think much more time on the administrative waiver would produce a different outcome at this time.

>> Mayor Adler: Okay. So let's vote on those two things separately. The the first would be pool's amendment --

>> Tovo: To be clear, I had an amendment. I'll yaw with it. I'm sorry, did you want to say something, councilmember?

>> Flannigan: The mayor was talking --

>> Tovo: But I was trying to point out that he was about to -- he was --

[9:36:36 PM]

>> Flannigan: He's the mayor.

>> Tovo: He was about to cull up a motion when we had one on the table.

>> Mayor Adler: Okay. Withdrawn. So the first thing is pool's item here, which would be to undo some of the administrative reviews that were in the code draft that was --

>> Pool: To limit the number that would be -- that would be necessary.

>> Mayor Adler: Those in favor of the pool amendment please raise your hand. Tovo, kitchen, pool. Alter. Those opposed, please raise your hand? Okay. It's the balance of the dais. So it's no to this one. Do you have an amendment on here, councilmember Ellis, that would have us considering the tree bonus? Were you going to be bringing that tomorrow? Isn't that councilmember Ellis? Next page. There it is, that close. All right. So on the top of the page,

[9:37:38 PM]

the next one is consider the benefits of restoring the public process. I'm sorry? Right above Ellis 1 is consider the benefits of restoring the public process for heritage -- that was on consent.

>> Ellis: Yeah, that was pool'd 1-d --

>> Mayor Adler: That gets us to Ellis number 1. This was pulled by councilmember alter.

>> Alter: To I wanted to laugh that there is a but for clause and it would be adding a sentence that says the program included the defined set of criteria, including a providing that the project requires the flexibility to otherwise achieve a meaningful reduction in building footprint.

>> Ellis: Did you pass it out?

>> Alter: I didn't, but I have --

>> Ellis: It's a lot to take in.

[9:38:44 PM]

>> Casar: As that's considered, I support this amendment. Thank you, councilmember Ellis. I support also this idea that we don't want it to negatively impact the housing bonus program. For affordable housing. I think that additional height may sometimes compete with that, but the housing bonus program doesn't have setback, does not have a setback bonus for you to move the building more to a side or different

area. So I think -- I recognize you're not actually describing what the bonus should be, you just say example height. But since the housing affordability program uses height, you may find some conflicts as you work on this. So for me you're just using height as an example, but something like setback or where it's placed on the site may get you further away from the tree. So I wanted to say that, I think it would interact with somewhat councilmember Ellis said. For me it's less about that you need it -- it would need

[9:39:44 PM]

to improve this bonus program you need it to reduce your building footprint, I would say you need to show you need this bonus program to show -- to better not impact the tree and still get your building. It's what I think you mean is that you want a but for for people that don't just get it any time they have a heritage tree on the site. You want focus folks to get it it who have a heritage tree and really need it to build their building.

>> Alter: Yes. That's the language we came up. I'm happy to put in that the criteria should have a but for clause, but I didn't know that that would be legally appropriate. That was the intention.

>> Mayor Adler: Councilmember Ellis, are you okay with that amendment?

>> Ellis: Yes. I'm trying to process and as I'm listening to y'all's back add forth, trying to understand requires this flexibility to otherwise achieve a meaningful reduction in building footprint because the goal is more about preserving the tree --

>> Casar: I think to achieve the goal of tree

[9:40:46 PM]

preservation. Right? Is what you mean?

>> Alter: So the program should include a defined set of criteria, including a provision requiring that the project demonstrate they need the bonus to achieve the goal. We want them to achieve. Does that work? Demonstrating they need the bonus to achieve what they want. So preserving the tree.

>> Mayor Adler: Any objection to making that change to Ellis' amendment? Councilmember Flannigan.

>> Flannigan: So this is very similar to my amendment process 1 which talks about alternative equivalent compliance related to achieving our city's goals. Which I believe the aec process does talk about these type of but for scenarios where you can't get all the stuff you need. So we're -- where it gives staff some flexibility, but the way that aec is drawn up in the draft is fairly restrictive on staff's

[9:41:46 PM]

ability. My thought is we could extend that process as a way to modify -- I had thought setbacks articulations and other types of site development guidelines if it allows us to preserve a heritage tree or maintain a suitable drainage pond. Some of those other goals that would help us achieve those goals, not just limited to heritage trees, but in that way. And I think that process has the but-for piece, the aec prosifies.

>> Mayor Adler: To that end I think it's additive of that. Doesn't conflict with that. Councilmember Ellis, are you okay with the alter amendment?

>> Ellis: Yes.

>> Mayor Adler: That goes on then to the Ellis amendment.

>> Alter: And I wonder if you would consider since this is telling them to create it for the imagine centers and along imagine Austin corridors, if we could say and explore its application for the transit priority network? I just don't know that those are equivalent. That's not where they came out for the other process.

[9:42:46 PM]

So I just don't want to require them to do it on tpn if that's not appropriate.

>> It could be potentially. I'm not saying to take it out as an option. I didn't want to require it if it was not to do it in those places.

>> Mayor Adler: Staff, do you have thoughts on that?

>> Repeat the question?

>> Alter: So I just wanted -- I wanted to say something like code should create a tree preservation

[reading rapidly] And explore the transit priority network so you're not required to do it for the transit priority expert if from among your expertise you don't think it is valuable there. And you may come back and say it is valuable there, but I didn't -- like if we write it that you have to do it for all three, then you have to do it for all three.

[9:43:49 PM]

>> Mayor Adler: So you're agreeable?

>> Ellis: I would be okay with exploring that. I know that the current administrative waiver would apply in this area office. I'll defer to staff if you think that exploring it will help you give us the answers.

>> Mayor Adler: On the other network. Okay. Is there any objection to -- with those changes, any objection to Ellis number 1. Hearing none, Ellis number 1 is in with those changes? Councilmember harper-madison, do you want to go back to nz 1?

>> Harper-madison: Yes.

>> Mayor Adler: This is at the beginning of the section on page 27 of 39.

>> Casar: And I've seen the amendment now and I'm fine with it.

>> Mayor Adler: Okay. Does anybody have any objection to adding harper-madison amendment to nz 1? No? Then that goes in.

>> Tovo: Let me just ask staff if I may, a question? Staff, how would you interpret this? How would this change the way that you're --

[9:44:50 PM]

>> Mayor Adler: Did you all get a copy of this?

>> Tovo: -- I would assume that your requirements would have been relatively prescriptive, but -- is this going to change your methods in any way?

>> Yes, hi. Matt Holland, watershed protection --

>> Tovo: I did get a request that you speak from a constituent who is listening saying they're having a little trouble hearing you on the TV.

>> Thank you. Good feedback. So is this more intended -- it looks like the preference is aiming this they limited site plan review. So kind of the expedited -- what are we calling this? Site plan light? Scaled site plan process. For missing middle or for -- is this for all projects?

>> Harper-madison: Do you want to go ahead and --

>> Casar: Mayor, I think -- I'm just actually just reading the red text. I think the black text --

[9:45:51 PM]

the plumbing code currently says no lot to lot flooding.

>> Right.

>> Casar: However, if you want to ask that maybe there could be clarification additions because we hear a lot of discussion about lot to lot flooding in the plumbing code to make it really clear. And when I read just the red, which is the actual amendment language, it's asking that anything you do in the plumbing code be really prescriptive so there's no uncertainty. That's all we're asking. Limited site plan, which is in

the black above, actually wouldn't apply to these projects that are so small. But frankly, what she's asking for is to pass the red language, which I think is clear.

>> Okay, yes.

>> Tovo: That's helpful.

>> Mayor Adler: Any objection to this being included? Hearing none, that's included. I'm sorry, yes?

>> Alter: Is that a part -- so in nz 1 drainage there are two parts listed. This is a third part. It's not replacing anything that's there because I think it's very important that we --

>> Harper-madison: It's not replacing anything.

[9:46:51 PM]

>> Alter: This is the third part. Let's rely on the plumbing code lot to lot makes me extremely nervous and I think we have some work to do.

>> Harper-madison: It's not replacing anything.

>> Alter: Okay, thank you.

>> Mayor Adler: Okay.

>> And I think this amendment helps with that, councilmember alter, that would be the idea that we would take a fresh look at the ordinance and it's a separate process and not the same as this code. But this would definitely --

>> Alter: I appreciate that. I think this is a very important direction that we go in. We've only had something like two cases actually adjudicated. And I'm very concerned about the equity implication of the lot to lot flooding requirements being in the plumbing code and then you have to be able to have a lawyer to enforce it and you have much less -- it just makes me very uncomfortable because it's just very problematic to me.

>> Mayor adler:ing on all

[9:47:52 PM]

right. So this gets added. Yes.

>> Tovo: Mayor, I have within amendment to one that --

>> Mayor Adler: Wait a second. On nz 1?

>> Tovo: No, I'm sorry. I thought we dealt with that.

>> Mayor Adler: I haven't been able to say it. So without objection then, harper-madison amendment to nz 1 gets added. Any objection to nz 1 moving forward? Hearing none, nz 1 as amended moves forward. Councilmember tovo.

>> Tovo: And I have an amendment to.

>> Flannigan: Non-zoning number 1 signage. And I distributed this on the yellow sheet that I passed out at the beginning of this session. It is noted as amendment 43. So just as a little bit of background, when code 3 -- I might need the staff to fill in the context here. As I recall when staff brought forward codenext 3, it was -- it did not have a provision in there that

[9:48:52 PM]

allowed for the relocation of non-conforming billboards. And so as I understand councilmember Flannigan, your amendment, it would retain the provisions related to off site premise signage as codified in the current ldc, but it doesn't add any -- it makes no changes to it. And I would like to go with what I assume is the staff recommendation or was the staff recommendation on codenext 3, which is to remove the ability to relocate non-conforming billboards. And I would invite Mr. Lloyd to talk us through, just to confirm my understanding of that, that the last draft of codenext did allow that provision to allow the relocation of non-conforming billboards.

>> Brent Lloyd, ldc team. So yes, just briefly by way of context, the sign chapter that's before you in the October 4th draft is largely

[9:49:52 PM]

similar to what was in draft 3. There are a few I think fairly minor cleanups and slight administrative changes, but it's substantively the change. Draft 3 did have the same sort of off sign regulations as our current code, but it did delete the provisions that authorize off premise signs to be relocated. By way of little additional context, off premises signs are non-conforming uses, which means they're essentially greater and the ones that are there are the ones that have been around since 1993 when it was adopted. Our current code has a provision that allows them to be relocated and that was proposed for removal in draft 3. Councilmember Flannigan's amendment as I read it just so we're all clear on its effect, it would have the effect of returning the relocation provisions and it

[9:50:54 PM]

would also we would mean it to read not pursuing the additional signage changes that were brought forward as appendix B to the staff report that was issued on October 25th. And appendix B to the staff

report brought forward some previously initiated amendments that council initiated with respect to allowing some limited forms of off premise advertising that would cover right-of-way installation, bus stops, things like that. So we would read councilmember Flannigan's amendment to, one, return the current relocation provisions and two, direct us not to move forward with those additional new provisions that were in the supplemental staff report.

>> Mayor Adler: Okay, councilmember tovo moves amendment 43. Is there a second to that? Is there a second to that? Councilmember kitchen seconds that. Councilmember Flannigan?

[9:51:55 PM]

>> Flannigan: I don't support this amendment. Our direction from the council in may did not include changes to the signage regulations. And I maintain that if we're going to make changes to this section that we should have a separate public process specifically about signage, something we have not yet done.

>> Mayor Adler: I'm also going to oppose this amendment for the same reasons. We talked about doing something overall with respect to signs, we talked about doing something outside of this process. This is the only part of the sign ordinance that actually pulls down signs affirmatively, so I'm willing to consider, but I want to consider it in the context of the overall sign ordinance. We had talked about doing stuff in right-of-ways the question was shouldn't we do that as part of an overall sign approach rather than kind of more piecemeal sign approach. I think that's what we decided to do. And I don't want it to hold down this process or slow this process. I think it's going to be resolved and I think it needs a pretty significant public process associated with it. So I'm goal going -- also going to

[9:52:56 PM]

vote against this amendment 43. Let's take a vote. Those in favor of 43 please raise your hand? It is tovo, pool, those opposed please raise your hand? Alter also votes no. I'm sorry? We're voting on tovo's amendment 43. Those in favor of the amendment please raise your hand? Tovo, pool, alter. Those opposed to it please raise your hand. Those abstaining please raise your hand. Kitchen abstains, the others voting no. 43 does not come in. All right, continuing on, I think that gets us back to to -- where were we? Tovo 30 and 31 were withdrawn. That gets to us parkland dedication. That was by consent. Tovo 32. Tovo 32 was pulled by

[9:53:57 PM]

councilmember Flannigan.

>> Casar: It's the same as Casar 34.

>> Tovo: I'm happy to -- in fact, I think I'm happy to just withdraw that one and consider councilmember Casar's, but why don't --

>> Casar: We can take them up now. I'm saying they're the exact same words.

>> Tovo: That's why I said I withdraw it, but I'm not sure where yours is in relation to this, but we can knock it out.

>> Mayor Adler: So this is scar p4 and tovo 32 that both say enact a conservation subdivision code for Greenfield sites. Okay. Mr. Flannigan, you pulled this.

>> Flannigan: I handed out this amendment, what feels like a thousand years ago, but it was just yesterday. I included all of my amendments in a southbound document. So if you look for my one sheet handout that's on the back, it's just alternative language for how to proceed

[9:54:59 PM]

with this process.

>> Mayor Adler: So I have two Flannigan pages. I'm not sure I -- flannigan amendments? It's on the back of that? There it is, okay. Mr. Flannigan has an amendment. I don't know if you guys have had a chance to see this. Councilmember tovo and councilmember Casar. Councilmember Casar is good with this amendment. Councilmember tovo, are you?

[9:55:59 PM]

What? Yes. Any objection to changing out? This? Okay, none. The Flannigan language gets substituted out for tovo 32, and Casar 4. And without objection, that amendment from Flannigan now is put in. Adler, po4 was by consent. Adler pl5 was withdrawn. That gets us out of that section. It gets us to the last section, which is the process section. I'm on page 37 of 39. This begins with tovo non-zoning, 32. That's one we just did, right? So we just handled that one with the Flannigan amendment.

>> Flannigan: Mayor, I think you may have missed page 36.

>> Mayor Adler: Yeah, I did.

>> Flannigan: Sorry. Sorry.

>> Mayor Adler: Darn.

[Laughter]. All right. Harper-madison 2 is in by

[9:56:02 PM]

consent. That gets us to harper-madison 4 been pulled by Anne Clark.

-- Ann councilmember kitchen, do you want to tell us what you pulled here?

>> Kitchen: I'm trying to remember. It's been a while.

>> Mayor Adler: It's been a week.

>> Kitchen: Oh, okay. This -- I remember. We had some conversation about it, but we ended up -- I think we didn't finish. This is the question about the impact on the Texas local government code and the residential improvement areas under state law. So this -- if I'm understanding correctly, this would allow replatting up to six new lots and it just was unclear to me about what this would -- the impact of this so I'm going to ask our staff to talk with us again about it.

[9:57:04 PM]

It's number 4.

>> So an amended plat process is one that's much -- it's a simpler process than a full subdivision. It's basically you're kind of amending the existing plat. Amended plats are used to correct scribes' errors and do minor things like that. State law allows cities to -- doesn't require but authorizes cities to designate residential improvement districts, and when they do that the amended plat process can be used to create up to six new lots. There are some limitations on that. Principally that it has to comply with applicable zoning regulations. We would need to, if council passes this, we definitely are in favor of the word "Consider" being at the very front because it's something that we would need to work through with the law department. So if this passes we certainly would look at it. We think it potentially has some merit in terms of furthering the council's

[9:58:05 PM]

goals but there are some challenges it would present and it also relates to minimum lot size, and I think that's a critical input into this as well. So we would be happy to consider it, but we would -- it would require a little bit more review.

>> Kitchen: Would you read it as -- or would you see a circumstance under it that -- it says replat up to six new lots, so would you read it such that if -- if the lot was too small to have up to six new lots and still meet the minimum lot requirements? Or would you read it as substituting for the current minimum lot requirements?

>> Anything would need to meet the minimum lot requirements, so this process alone would not be a way to reduce the minimum lot size requirements.

>> Kitchen: Okay.

>> If this passes, if council passes this, particularly if the other suggested amendment, which I

[9:59:05 PM]

actually think did pass. I can't keep -- I'm -- okay. Thank you, councilmember harper-madison. We would look at it in conjunction with the harper-madison amendment that suggested looking at minimum lot sizes to facilitate fee simple ownership so we would look at it with regard to that. But it would not reduce -- independently reduce minimum lot sizes, which are established through the zoning regulations.

>> Kitchen: Okay if it says administratively amend the plats. That's a different process than we use now? Or is that just the same process?

>> So amended plats are administrative. When you amend a plat, it's a process that doesn't require -- that is done administratively.

>> Kitchen: Okay. So that part is not new. So what is new about this?

>> We have not used that process that's established under state law, where you can designate what are called residential improvement areas, and that then allows you to use the

[10:00:05 PM]

amended plat process to actually create lots. We've never utilized this provision of state law before. I would just point out that if council does pass this, and if we do, in conjunction with law, determine that there's a way to move it forward, we may come back with something that's less than six lots. I mean, we would look at it in conjunction with the goal of facilitating fee simple ownership, and that may be something that's more appropriate for less than six lots. So we would look at it holistically in tandem with all the other direction that council has provided that I think get to these same basic issues.

>> Kitchen: And would you also look at it geographically? This says everywhere, if I'm reading correctly. I'm not sure that it would further the goals in all places.

>> I think we read it principally -- we would definitely have to get together and look at that, but I think in the balance of council's other direction we read it as being designed

[10:01:06 PM]

to facilitate fee simple ownership of ads.

>> Kitchen: Right.

>> And sort of small house scale multi-unit residential. So we would look at it primarily within the Zones that are intended to further those objectives.

>> Kitchen: Okay.

>> Mayor Adler: Councilmember Casar.

>> Casar: But it does not say in missing-middle Zones, which, again, we have defined as r4 and rm1.

>> That's correct.

>> Kitchen: I'm saying in all missing middle across the cities it might not further the goals of fee simple ownership.

>> Casar: All I'm saying is that -- I just want to clarify that since it says in missing-middle Zones we mean in r4 and rm1 zoning categories.

>> Tovo: That's not what it says, though, at least on the mayor's sheet.

>> Casar: Yeah, councilmember harper-madison handed out amendments when she first sat down.

>> Kitchen: Oh, I'm sorry. I don't have it.

>> Casar: It's different.

>> Mayor Adler: Harper-madison took out the R Zones and rm. Remember, this is one of those things where it came over out her changes. Thank you for reminding me. Rather than R Zones and rm

[10:02:06 PM]

it should say missing-middle Zones. And did we add language -- and then the -- I think that was the only change.

>> Casar: I have the notes on my -- written down on my paper, but I would probably feel more comfortable if councilmember harper-madison or her staff could make sure that we have the version she handed out.

>> Mayor Adler: I have it in my hand.

>> Casar: Oh, you have it in your request hand.

>> Mayor Adler: The only change was R Zones and rm being changed to missing middle.

>> Casar: Missing-middle Zones. Again, the idea would be small minimum lot sizes for things like townhomes or whatever else in r4 and rm1 and making it easier to subdivide that for fee simple

ownership in those missing-middle Zones. That's why I feel comfortable voting for it, because it is not -- it is a pretty narrowly tailored change so I'm ready to vote yes now.

>> Kitchen: I have another question about it.

>> Mayor Adler: Let's give someone else a chance. Councilmember tovo.

[10:03:07 PM]

>> Tovo: Yeah, this seems -- seems like there's a lot to figure out here, and it's I don't mind -- I think it's one thing if we're asking them to consider it, but I would say we've really had just about no discussion about this concept or how it compares to the other tools or -- one of the questions I guess I would ask staff is why this -- why this particular tool has never been used in Austin, in the city of Austin, and what you see as -- what you see as drawbacks to using it. Or what -- what are some of the reasons it hasn't been implemented in code before this consideration or significantly considered that I'm aware of. I'm not sure that I've ever heard a conversation about this tool until yesterday.

>> I don't know. It's an infill tool that available, and it's just one that we've never utilized. I've heard it brought up before, but I don't know there's a particular reason

[10:04:08 PM]

why it's never been utilized. It's something, and we just -- because it's new and because subdivision is -- you know, there's recent legislation passed around subdivision, we just want to be cautious and emphasize the need to explore it but we think it's potentially an idea that has merit and potentially an idea that could help further council's policy goals, especially in conjunction with harper-madison -- councilmember harper-madison's amendment that would have us look at potentially reducing lot sizes in those Zones to facilitate fee simple ownership. I would just point out that -- give me just one second here.

>> Harper-madison: While you continue to review, for clarity it does already say consider.

>> Tovo: I understand that. I emphasized that. Mr. Lloyd, I guess I want to make sure the second part of the sentence is also something that you would read as considering. So it's considering a

[10:05:09 PM]

process by acknowledging missing-middle Zones as residential improvement areas, but so you would see the whole thing as under consideration, not that we're considering a process to administratively approve them, but the next draft is gonna come forward having declared residential improvement

areas? I mean, both of those -- maybe this is really a question for the councilmember. Are you intending for the entire bit to be under exploration?

>> Harper-madison: I'm intending for us to take advantage of a tool that's already there, it's already a law. I want us to analyze what it is we can do as a municipality to apply it as liberally as we possibly can.

>> Tovo: Okay. I think then that the answer is the entire thing is under consideration. You're not suggesting that we make a decision tonight about whether or not those should be residential improvement areas? You're asking them to consider a process that

[10:06:09 PM]

would include regarding those as a residential improvement area and considering a process?

>> Harper-madison: I don't know that I would agree with your statement. Let me make certain I understand correctly what it is that you're saying. You said you don't -- you're not asking us to make a decision tonight, but I am in fact asking us to make a decision tonight. So let me just be clear about what it is that you're trying to delineate here. I'm not.

>> Tovo: Okay.

>> Mayor Adler: My sense is that -- I don't think you guys are far apart. I agree -- I heard councilmember harper-madison say considering using the tool that we have not used before that's available in order to be able to achieve our goals, be able to subdivide six lots. We haven't considered that before. Consider using it now. If it enables us to do it then come back with us being able to do it that way.

>> Harper-madison: Do you understand my colleague's confusion? Because I don't.

[10:07:10 PM]

That's what I'm trying to understand.

>> Tovo: I'm happy to try again. It's the part about the residential improvement areas. It wasn't clear whether that is also something under consideration or whether you're asking for us to declare it such today. I think the answer is it's all -- if this passes it's all being considered. It's not a --

>> Harper-madison: Correct.

>> Tovo: It's just being reviewed. Okay. I'm comfortable with that.

>> Mayor Adler: It's consider using this tool. We're trying to figure out a way. Here's another tool. Without understanding it. Any further discussion on this one? Councilmember alter.

>> Alter: So we're using missing middle in lots of different ways in this document. I understand that your original had R Zones and rm Zones, so I don't -- I'm just -- we seem to have lots of definitions, so are we talking here about r4 and rm1? Or more than that?

>> Mayor Adler: Councilmember Casar.

>> Casar: Mayor, I think we -- when we discussed this one earlier yesterday, missing-middle Zones is

[10:08:11 PM]

being defined by the staff as r4 and rm1. So that's the definition everywhere it says missing-middle Zones.

>> Alter: And those can also be in transition Zones but since they're mapped in non-transition areas we are calling them now missing-middle Zones.

>> Casar: That's how it's been called in every work session, either transition areas have been -- is the area near those, and then transition zoning are really more carefully -- zoning for r4 and rm1.

>> Mayor Adler: Your understanding, Brent?

>> Yes.

>> Mayor Adler: Okay, thank you.

>> I will also just add we had sort of preliminary discussions around this and we wouldn't necessarily assume that the proposal we bring back would apply throughout the entire Zones. We WOU look at sort of context and determine where we think this is most appropriate, and that may or may not be an entire zone, but I think we would look holistically at all the issuances.

>> Mayor Adler: Thank you. Councilmember kitchen.

>> Kitchen: All right. I'm sorry.

[10:09:11 PM]

I need some clarification. Are you talking about transition Zones? Because there isn't -- I appreciate what you're saying, councilmember Casar, but we do not have a definition of missing-middle Zones in writing. So are you talking about transition Zones? Are you talking about in places where we have R Zones and rm?

>> Casar: So we've been told multiple times to not use the word transition zone because it's very confusing. It's a transition area is near the street and then a transition zoning category or in this case a missing middle zoning category is r4 or rm1, and I think we were told in a couple work sessions and, again, this time when we read the words missing-middle zone that it's r4 and rm1.

>> Kitchen: So is this happening in -- is this to be --

>> Casar: R4 and rm1 it says.

>> Kitchen: Okay. So this is happening not in transition areas but in places where we are -- we have R or rm zoning?

[10:10:11 PM]

>> Mayor Adler: Rm1.

>> Alter: It's been edited from what's on the page to be missing middle.

>> Kitchen: I know. But we just --

>> Alter: It's not all R Zones because there are R Zones that are not missing middle.

>> Kitchen: Okay.

>> Mayor Adler: R4 and rm1.

>> Kitchen: All right. I just wanted to be clear.

>> Mayor Adler: No problem.

>> Kitchen: Because we really don't have a written definition of missing-middle Zones.

>> Mayor Adler: That's the definition the staff has been using.

>> Kitchen: Which is fine?

>> Mayor Adler: That's good. Harper-madison four passes now. That gets us to Casar p1. Before we do we're passed ten. Is there any objection to us going back 10:00. Councilmember alter objects. Anybody else object? Then we're gonna go past 10:00. No one else objected. We have 13 of these left. If we can work at five minutes a clip here on these we can finish this section tonight. All right. Casar p1. This was pulled by councilmemb

[10:11:11 PM]

>> Mayor Adler: Do you want to address it, councilmember pool.

>> Pool: I had to read it to remind myself. I want to be reminded what the limited site plan would entail and what the impacts would be.

>> Mayor Adler: Staff, can you speak to what the impact to this would be?

>> I'm gonna speak to what I think the purpose of this amendment is, and it -- maybe not gonna use the word limited site plan but just kind of go to the heart of what I think this is getting at. Right now the way the residential regulations are set up is there's a set of sort of streamlined regulations that are defined for one and two-unit residential and if certain conditions are met those streamlined conditions apply to the 3-2-8 projects, which could be more with affordability bonus and preservation bonus. It could go all the way up to 11. What I believe the intent of this is to move that

[10:12:14 PM]

threshold so that more units -- so up to three units could satisfy -- could take advantage of the relaxed standards that apply to the one and two-unit residential. Without having to meet those fully heightened standards. So it would sort of adjust that boundary between the two by one unit.

>> Pool: That's fine. I get it.

>> Mayor Adler: Okay.

>> Pool: And so the one thing that I would say about this, just generally, to the extent that we continue to loosen regulations and remove oversight, I just think we need to be cognitive of the fact that the day may come where we will have some negative consequences of all of this. So to the extent that we are streamlining site planning and eliminating barriers or whatever, I want to make sure that those that we are eliminating or loosening are not the ones that go to structural integrity.

[10:13:15 PM]

Thank you.

>> Mayor Adler: Any objection to p1 moving forward? P1 moves forward. P2, criteria --

>> Tovo: Mayor, I'm voting against that one.

>> Mayor Adler: Let's take a vote on p1. Those in favor of p1 please raise your hands. Those opposed to p1? Those opposed are tovo, kitchen, pool, and alter. Others voting in favor. P1 passes. That gets us to p2. Criteria manual. This was -- councilmember pool, you pulled this one.

>> Pool: I think it was along the same lines. I want to indicate that I have concerns about limiting and streamlining in any of the manuals that we have, and I don't -- and I think that's this one.

>> Mayor Adler: Okay.

>> Pool: Let me read this a little bit more and refresh

[10:14:15 PM]

myself. Others may have --

>> Mayor Adler: Councilmember kitchen.

>> Kitchen: So, councilmember Casar -- actually let me ask the staff a question first. What's your usual process for adopting criteria manuals?

>> We go through the administrative rules process that's established in title -- chapter 1-2 of the general city code. And that includes some notification and a stakeholder review process and public comment with an appeal right to the city manager. The staff's position on this amendment -- on this proposed amendment is that we would recommend against requiring commission approval of criteria manuals, and we would recommend against having an appeal process to the commission for criteria manuals. But we are supportive for the initial adoption of new criteria manuals of having there be a public hearing process. So that would mean adding a

[10:15:17 PM]

process that would involve a public hearing before the planning commission, which is beyond what just the standard stakeholder process that is provided for administrative rules. But I think the concern that staff has is that criteria manuals are very technical and having an approval process -- approval authority for a commission would, in our view, not be best practice. But we certainly are open to having a public hearing for the initial adoption.

>> Kitchen: Okay. So what -- how would you all, from a staff perspective, handle it if there was an area in which -- an area in which some thought was actually policy? I mean, sometimes there's gray areas where people might consider something as policy or they might consider the criteria manual actually carrying something out beyond just technical. You know, so what is the process?

[10:16:17 PM]

Is that what the rule making process is supposed to be set out in case that's an issue? In other words, what would happen if -- what this one suggests is that if there was a policy issue, then PC can initiate code amendment. So I guess that that would -- I mean, that's the case right now, I would assume, right? As well as council can initiate. Right?

>> Yes. And we've heard, as part of the planning commission review process, that there are concerns, that there are requirements and criteria manuals that should have more a stronger nexus to the city code, and so kind of as part of our review in preparing for second reading, you know, I think we're gonna work with the departments to identify if there are some requirements that might be appropriate to at least acknowledge or enable in city code. I don't think we --

[spooky music]

>> Pool: That's

[10:17:18 PM]

appropriate.

>> I don't think we will come back with a draft that sort of takes whole sections of criteria manuals and puts them in the city code. I think that would transform or city code into something that people are not expecting to see, but we are going to identify -- try to identify some issues that might be appropriate to daylight in the city code itself to address this issue. And, yes, the planning commission always has authority, as does council, to initiate amendments to the land development code.

>> Kitchen: Okay. Last question. And that just is, what is the current thinking about the timing? Because one of the concerns that I have heard raised is that -- with the criteria manuals coming after council approves the code, there's concern about the ability to understand really the impact of the code without seeing the criteria manuals. So what is y'all's thought really on these criteria manuals in terms of timing?

>> We're gonna do our very best to have the criteria manuals as complete as possible at the time council considers the code for third

[10:18:19 PM]

reading.

>> Kitchen: Okay.

>> And I think council's action on first reading will help to speed up that process.

>> Kitchen: Okay.

>> But we do think that the parts of the code that affect the criteria manuals the most -- or that affect, I'm sorry, city operations the most are zoning. And those are not dependent on criteria manuals. And so we feel like if there is a lag time, a little bit of a lag time before the criteria manuals are updated that we can find a way to work with that and we're talking about law -- we're talking with law about including a provision in the ordinance that gives staff the authority to continue to apply current criteria manuals to the extent there's no conflict with the new code. So we're planning ahead for a little bit of a lag time, but we are doing our very best to get the criteria manuals updated as soon as possible.

>> Kitchen: Okay. That's all my questions. So...

>> Mayor Adler: So at this point I'm comfortable supporting Casar p2 to the degree that you have

[10:19:19 PM]

criteria manuals that are available at the time that we're in third reading and I will be fine with changing at that point if this passes those provisions where we have criteria manuals that we see. Councilmember Casar?

>> Casar: Mayor, I agree. I think -- I don't -- the reason that we pass is that one, I don't mind if the criteria manuals are coming out right when we are passing the code. I think having y'all go to planning commission makes sense if it takes more time. Second, and I understand why staff -- if staff not recommending this, but to me I do think it's fair on something like this if it's an appeal for it to go to a third party and that's the reason to have the planning commission appeal, so that they're not appealing to the same folks that made them -- that made the manual if there's an appeal process. To me that just seems more

[10:20:20 PM]

fair. And I -- it's clear -- I've tried to write down here that we're not having planning commission actually edit technical issues. It's just approving or denying appeals. And I understand that authority is currently with the manager but I think the third party makes it more fair. So that's why I'm comfortable moving forward with this now.

>> Mayor Adler: Councilmember alter.

>> Alter: So I just want to make sure I understood what you said, Brent, Mr. Lloyd. You said that you had a different proposal than this one that would be preferred, correct? And can you repeat what that is? It's late.

>> Staff does not recommend that planning commission have approval authority over technical criteria manuals, but we're cognitive of the importance of the new criteria manuals that will be -- would be implementing a brand-new code and so what we have proposed is that there be a public hearing before the planning commission, a chance to ask questions, a chance for debate, and to really delve

[10:21:22 PM]

more deeply into the criteria manuals than is possible just through a stakeholder process so I think staff are open to that. But we would recommend against commission approval authority over criteria manuals.

>> Alter: Thank you. So is that already in the base or do we need to make a motion if we want to substitute your recommendation for this one?

>> The amendment that councilmember Casar has offered would have --

>> Alter: I understand his is different. My question is if I wanted to move forward with yours, which I'm not gonna be able to put in words, is that already the base, or do I have to say I want to move what you just said as my substitute?

>> I think that would take action on council's part to change --

>> Alter: But it's not already in the base, to have the public hearing?

>> Mayor Adler: No, it's not in the base motion.

>> Casar: Mayor, question there.

>> Mayor Adler: Councilmember Casar.

>> Casar: That was a planning commission recommendation, what you just outlined. Is that right?

>> It's listed as -- let me hold on --

>> Casar: What I would suggest is if mine fails I'm

[10:22:22 PM]

happy to support that planning commission recommendation if that's the way we want to than.

>> I will double-check on that. I'll see what the planning commission recommendation was and how it's different than yours.

>> Mayor Adler: But regardless it's not part of the base though, right? Whatever one of those two things we do, we have to do affirmatively. Neither is a part of the base. Councilmember tovo.

>> Tovo: Mayor, I'd like to move the recommendation from staff, which would require an amendment to councilmember Casar's and it would read require planning commission -- require a planning commission hearing for the initial adoption of criteria manuals. And leave it at that. Which I think reflects the staff's recommendation that we not have our -- our appointed land use body making decisions about our criteria manual.

>> Mayor Adler: Councilmember tovo moves the recommendation that we just have a public hearing process in front of the planning commission. In lieu of this. Is there a second to the amendment? Councilmember pool seconds that.

[10:23:24 PM]

Yes? Is.

>> So we have the planning commission recommendation which does say consider requiring that all technical criteria manuals receive a public hearing at planning commission which can vote to make recommendation to city manager. It was listed as do not oppose by staff, so it's not in our base recommendation.

>> Mayor Adler: Thank you. Okay. Councilmember tovo moves that.

>> Tovo: Yeah.

>> Mayor Adler: It's been seconded by councilmember pool. Any discussion on the amendment to councilmember Casar's? Take a vote. Those in favor of councilmember tovo's amendment please raise your hand. Tovo, kitchen, pool, alter. Those opposed. It's the balance of the dais. Amendment does not pass. Back to Casar's amendment. Councilmember tovo.

>> Tovo: I'd just like to ask staff to provide us with some context before second reading about whether there are any others that have their technical criteria manuals voted on by and needing to be approved by their land use bodies rather than their administrative

[10:24:24 PM]

process.

>> Mayor Adler: Okay. Let's take a vote on councilmember Casar's p2. Those in favor please raise your hand. Those opposed. Tovo, kitchen, pool, alter voting no. Others voting aye. Casar p2 passes. That gets us to Casar p3.

>> Casar: This is the same as councilmember harper-madison's, except including preservation bonus along with r4 and rm1. It doesn't have the consider language, and I'm happy for it to have the "Consider" language.

>> Mayor Adler: Let's put "Consider" language in it without objection in front of that. This is Casar p3. And --

>> Casar: I should have thought to amend this preservation bonus into her motion, but I forgot.

>> Mayor Adler: But it's additive to the harper-madison deal. Any objection to Casar p3?

[10:25:25 PM]

Councilmember pool, you pulled this. She's okay with the "Consider"? Yes.

>> Alter: I don't understand this. So this is now adding any lot that uses a preservation bonus whether it's below r4, is able to do this?

>> Casar: That's right. For them to consider a process for making it easier to do that. That's right.

>> Mayor Adler: Okay. Is there any objection to this passing?

>> Tovo: I'm gonna vote against it but I would like to ask our staff, especially our watershed staff, to please help us understand the impervious cover implications of especially these sorts of changes. I know we had a conversation about it yesterday. I've -- I think it's more complicated than the conversation we had on the dais would suggest, especially in sos areas and in other areas. So if -- I would just ask they provide us with some information about that.

>> Mayor Adler: Okay.

>> Alter: I'm gonna abstain on that one. I would like us to find a way to address the fee simple, but I'm not understanding the implications of this. I'm not comfortable voting for it.

[10:26:25 PM]

>> Mayor Adler: Let's take a vote on it real fast. Those in favor Casar p3 please raise your hand. Those opposed. Pool and tovo vote no. Those abstain, kitchen and alter abstain. Others voting aye. Casar p3 passes. That gets us then to 32, Casar p4. That's already been happened with the Flannigan amendment. It passed with the Flannigan amendment. Casar p5 is already on consent. Gets us to Casar p6 Adu fees.

>> Alter: Isn't that not in the code? That's in our fee structure?

>> Mayor Adler: So let's make this programmatic.

>> Casar: That makes sense, unless are there -- does the code have certain things where a certain fee is required that could potentially be waived for folks that are just adding an Adu?

>> Mayor Adler: Is this a code issue or is this

[10:27:26 PM]

outside of the code?

>> We view this as appropriately regarded as programmatic.

>> Casar: That's fine.

>> Mayor Adler: All right. Let's make this programmatic. We'll put it on to that list. That gets us to -- do you want to do kitchen 16, 17, 18, or go to the next ones? Okay. Kitchen 16 was pulled by councilmember Casar.

>> Casar: I understand the staff have worked really hard on cos to try to not f25 too many properties, so I'm comfortable voting no on this amendment. But if there are particular properties that people bring up where there's specific issues that we have to f25 I'm gonna be very open to that on second reading, but I'm comfortable -- I sop

-- saw the map and am comfortable with where you landed on f25.

>> Mayor Adler: Councilmember kitchen.

>> Kitchen: I'm not asking for a change on f25.

[10:28:27 PM]

I'm saying review and explore ways to recapture conditions of zoning that relate to additional housing and to mitigating transportation. I have examples in my district where we have gotten additional housing on-site with a co and those cos have not been carried forward. The same thing with transportation impacts. So I think citywide it is useful to review and explore this, particular with regard to the housing. I don't want to lose what we may have gained, and so I'm not asking them to do anything different with f25 or to broaden f25. I'm asking them to be sure that the places where we're just taking off cos that we're not impacting housing or transportation. I think that's really, really important for us to do. Otherwise, what's gonna happen is gonna depend on each of us, maybe we notice something, maybe we do not.

[10:29:28 PM]

So housing is really important to us. It's one of our top priorities. And so I would really hope that y'all would pass this one.

>> Mayor Adler: Okay. Councilmember Flannigan.

>> Flannigan: Councilmember kitchen, did you say that there are cos that increased height?

>> Kitchen: No. I said that there are cos that did not -- that we were able to abstain additional housing. I'm sorry. Like, additional --

>> Mayor Adler: You said housing.

>> Kitchen: Housing, yes. I'm sorry.

>> Flannigan: I'm not gonna support this today but I would definitely support going to examples of that so that we could look at this for second reading. My experience with cos that they can only restrict, that they don't allow for more, and if you have examples that allow for month, I just want to see those, and then we can figure out solutions for it.

>> Mayor Adler: Okay. Any further discussion on kitchen 16? Ready to take a vote?

>> Kitchen: Oh -- yes. I mean, why not -- I understand what you're saying, and I appreciate that. But it is -
- you know, it's December. Why are we waiting until

[10:30:29 PM]

February to consider whether or not we want to find out whether we've got cos that we need to keep so that we -- because they impact housing or transportation mitigation? I don't understand why we would not want to do that.

>> Mayor Adler: How did you handle cos in coming up with the --

>> I'll have lacy give some more detail but in general with the new mobility plan and also with update to the transportation manual, we feel like we can address the transportation aspects that may not be -- that are in cos at site plan and I'll let lacy describe what the process was.

>> Good evening, lacy Patterson, planning and zoning department. Conditional overlay elements were reviewed for -- when we talked about unique in looking at what consider was unique, there were examples of conditional overlays that tied specific site area requirements to specific uses.

[10:31:30 PM]

And those were oftentimes our most unique conditional overlays that we see maintained as f25 on the October 4 map. Elements that are such as height or use restrictions have been, to the best of our abilities, integrated into this must modernized code in our zoning districts.

>> Mayor Adler: Thank you. Further discussion on number 16.

>> Kitchen: I'm not asking you to keep f25. That's not what this says. It says review and explore ways to recapture conditions of zoning. So there are properties where it was not f25 and the co was lost, where there was a condition related to a transportation impact. So if I hear you guys right, you're saying that you can see us handling that in our individual mapping process. I can do that. I just thought it was important for all of us on the dais to know that. If we don't want to do that as a group, that's fine.

[10:32:30 PM]

It's just gonna be up to each individual councilmember to find that in your district.

>> Mayor Adler: Okay. Those in favor of this item number 16 please raise your hand. Tovo, kitchen, pool, alter. Those opposed. Rest of the dais. 16 does not pass. Gets us up to number 17. Councilmember Casar, you pulled this.

>> Casar: Yes, mayor. I'm happy to hear more about what this -- what the intent is, but ultimately I believe that the city should generally stay out of dealing with deed restrictions as it relates to our R zoning and code. And so since this -- as we pass on first reading, I want to veer away from zoning via deed restriction or looking at deed restrictions. I understand that we want to be equitable across the

city and -- but -- and I generally am comfortable following the policy that we're not zoning by the deed restriction.

>> Mayor Adler: Councilmember kitchen, do you want to respond?

[10:33:32 PM]

>> Kitchen: Could -- I will, but I need to go back to the previous one for just a second. Because we had said that we could than -- handle it with mapping, but actually we can't. For example, my example on south Lamar is that we had a case where we were able, through the zoning, to handle situations with regard to the affordable housing. That was stripped out. So I can't go back and rezone something to handle that. So I'm not -- all I was asking to do was for staff to figure out a way to address these. So I just want to make sure that since it was voted down, that -- that staff feels like there's a way that we can work together to address those kind of circumstances? So I just want to get that on the record.

>> Mayor Adler: Okay.

>> Yes, councilmember.

[10:34:32 PM]

So items -- especially fairly, fairly new adopted conditional overlays are gonna be under review, and if the element is a -- adding more units and not a restrictive, per se, that is absolutely something that we'd like to look at continuing.

>> Kitchen: So you are gonna go back and look at ones that are more recent?

>> It is on our list to review, as it is a fairly new adoption.

>> Kitchen: Yeah.

>> Come just hasn't been captured yet in the map.

>> Kitchen: All right. Got that on the record. I'm fine. So --

>> Casar: Mayor, to that point to further support councilmember kitchen on this, and if there was a really complicated negotiation and it's a zoning case that we all -- we supported it, we passed it by majority, I am not opposed to saying this property is really special in my district and it should be f25. I don't want to see a lot of that, but I think that woulding the clearest way of dealing with it. I know we don't want to see a lot more f25 but I just want to say that exists as an option.

>> Mayor Adler: Okay.

>> Kitchen: Okay.

[10:35:32 PM]

>> Mayor Adler: Kitchen 17.

>> Kitchen: Sorry. You wanted know explain it?

>> Casar: I mean --

>> Mayor Adler: You don't have to.

>> Casar: I'm happy to hear it but I generally don't want to be zoning by deed restriction or trying to tell people what is or isn't applicable in their deed restrictions because we've had a long standing policy that's generally not our approach.

>> Mayor Adler: Councilmember kitchen.

>> Kitchen: And I agree with that. It's not our role as a city to weigh in on deed restrictions. Those are private matters, and I don't even know if we could if we wanted to. So I agree. All I'm suggesting, this was brought to me but someone in one of my neighborhoods that was concerned about -- the zoning in her neighborhood is now being zoned in a way that conflicts with their deed restrictions, and she is in an area where she doesn't feel like she or her neighbors have the resources

[10:36:35 PM]

to defend against the deed restriction in her area and she just felt like it was really inequitable the way -- what the city was doing inadvertently, not intentionally, but creating a setup where the parts of town where individuals have the resources to enforce their deed restrictions have an advantage, and other parts of town that don't have either the financial or other kinds of resources are stuck. And she really felt like it was inequitable so I told her I'd bring that to everyone's attention. I'm just asking the staff if there's some way to reduce the confusion about where deed restrictions apply. I don't know what the answer to that is because we obviously -- we can't -- it's not our business to enforce. So I'm not asking that. I'm just saying what we're doing, is when we zone an area -- if we zone an area in conflict with what the

[10:37:35 PM]

deed restriction is, then that sets up a situation for those neighborhoods that could be difficult. So I'm just wanting our staff to -- explore if there's some kind of notice, some kind of administrative thing. I don't know what it is, but at this point I just think that it would be important to explore.

>> Mayor Adler: Okay. Councilmember Flannigan.

>> Flannigan: So my understanding, it's a very difficult lift for staff because the deed restrictions are not in a database where the staff can access them. My other understanding, confirming with title companies, if a developer changes the use it would cloud the title so we're trying to get that confirmation from title companies, which would effectively address that situation. We're still working with someone to -- we're working with a couple title companies to figure out if that's a process they go through because that would basically prevent any developer from doing it because they wouldn't be able to sell the property.

>> Kitchen: Okay. Maybe that would be -- that might answer this question, but could we just ask the

[10:38:36 PM]

staff to continue to check --

>> Mayor Adler: My only concern with doing it here, because it's a recurring issue and we hear that a lot. So I think you've identified a challenge here that we hear. We hear, you know, over the -- my five years up here is a recurrent issue and I don't know what to do about that either. I think we have to zone property for uses. We can't source code properties for deed restrictions. We can't enforce deed restrictions, nor should we be the arbiter of what a deed restriction would say, the legal liability that would have. I don't have a problem for all of us trying to figure out how to do it but I don't want to pull the staff off task. It seems to me that's something that's outside of this. You know, if we want to set that as a priority after this, you know, by resolution or otherwise to say, hey, this is a big issue, let's deal with that issue. I just don't want to pull them off task here and make this part of the land development code code process so I'm gonna vote no on this, but it's not

[10:39:37 PM]

because I don't understand the concern or the issue.

>> Kitchen: So you're saying if I brought this as a separate resolution that you would support it?

>> Mayor Adler: Mm-hmm. To staff resources.

>> Kitchen: Sure. Then I can do that. My main concern is I really do think it's inequitable across our city. And equity is important to us. And I think we need to do something about it. So I'm happy to consider bringing it in another process.

>> Mayor Adler: Do you want to withdraw this?

>> Kitchen: Yes.

>> Mayor Adler: Withdrawn. Let's get to kitchen number 18.

>> Tovo: Mayor, may I make one quick comment? I did ask multiple work sessions ago if the staff could provide us with the deed restrictions that they know of that would prevent some of what we have anticipated as increased density from being fully realized. So to the extent that you have information about different parts of town, I mean, I'm receiving emails from your district, councilmember, and from other districts, saying, you know, our deed restrictions, and it's just helpful as we

[10:40:38 PM]

evaluate the changes that we're contemplating, it's helpful to know where they may be able to build three units on a tract and where their deed restrictions are gonna keep them to one, which as I understand is the case in some of our areas, especially north and southwest, from what I'm gathering in my email, which I have not verified.

>> Mayor Adler: This one has been withdrawn. We have nine left. Should we move on to the next one? Councilmember Flannigan.

>> Flannigan: One thing, if we're gonna be doing any analysis on deed restrictions I would want to see it from an equity lens because I think generally accepted deed restrictions is there is a racist history to them, especially in our city, so any analysis that we're contemplating I would want to include that type of analysis in it.

>> Mayor Adler: Okay. Let's do kitchen 18. Pulled by councilmember Casar.

>> Casar: Mayor, I had an amendment but I'm actually gonna make it hopefully friendly and easy, which is instead of striking the words "Outlined in" leaving those words in and adding "And beyond,." The reason being our

[10:41:39 PM]

planning process may go beyond the IdC revision because it might be years from now.

>> Kitchen: Okay.

>> Mayor Adler: She's in agreement with that. Outlined in and beyond. Councilmember Kitchen is okay with that. Any objection to that? Kitchen 18 passes with that amendment. That gets us on the penultimate page here. Councilmember Flannigan, Flannigan process one was pulled by councilmember

>> Alter:.

>> Mayor Adler: This was the alternative equivalent compliance, top of page 38.

>> Alter: I think councilmember Tovo might have the questions for that one.

>> Mayor Adler: Does anybody have any questions about process -- Flannigan process one.

>> Tovo: I do. I need to get to it.

>> Mayor Adler: We'll table this one and come back to it. All right. Flannigan process two is on by consent. Pool number 2, councilmember Casar, you pulled this.

>> Casar: Yes, mayor.

[10:42:42 PM]

I pool 2 and tovo one have to do with petition rights issue and I think staff have addressed that pretty clearly so I'd vote no on these and stick with the way that we read state law.

>> Mayor Adler: Okay. Does anyone want to -- can we just vote on pool 2 and tovo one? I think we've already discussed these.

>> Pool: I had a couple of questions for staff.

>> Mayor Adler: Okay.

>> Pool: And I'm thinking it's probably legal staff. So --

>> Mayor Adler: You got her.

>> Pool: Got her right here. Okay. So I'm looking at the state pro test rights provision, local government code 2011.6d, it says if a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive in order to take effect the affirmative vote at least three-fourths of members of the governing body.

[10:43:43 PM]

Protests might be written and signed by 20% and so forth. So there is no express exception to protest rights for comprehensive revisions in this language. Is that correct?

>> I'm sorry. Can you say that again?

>> Pool: I just quoted from section 211.6d, and I said -- I asked you -- I said there is no express exception to protest rights for comprehensive revisions in this language interact.

>> In that language, that's correct.

>> Pool: There is no case in that directly holds protest rights do not apply to comprehensive revisions, is that also correct?

>> Councilmember pool, I feel like we're going to an area where it's inappropriate for me to discuss this in open session. I can repeat for you the advice that we've given to council since we began this process years ago. And there's nothing that the law department has found

[10:44:43 PM]

that changes our advice in that regard.

>> Pool: In that review, did you find any cases in Texas that directly hold protest rights do not apply to comprehensive --

>> We've reviewed cases in Texas and elsewhere and stick with our position, which is that the bulk of that evidence, of everything we've reviewed, leads us to take the position we have taken, which is that protest rights do not lie with the comprehensive revision.

>> Pool: Okay. And is it -- would you agree that if you had found cases in Texas that directly have supported protest rights that don't apply to comprehensive revisions that you would have listed them?

>> No. I would not have listed them in any public document.

>> Pool: I just have one other question. In the law department's memo that we heard that -- you kindly read to us last Wednesday in the work session, it said the council could recognize protest

[10:45:43 PM]

rights if we wished. Especially since there is no case on point. Is that right? I think it was -- that is not in the memo. That may have been in a statement made. The state law dictates where protest rights exist. I do not believe that the custom has the authority to declare that there are protest rights where none exist in state law.

>> Pool: What was the third point that you made about 20%?

>> The state law about protests deals with 20% of the either ownership or area of the land --

>> Mayor Adler: Again, I'm getting really uncomfortable cross-examining our lawyers about legal opinions. I'm happy to go into executive session for this, but I think it's --

>> Pool: That was my last question. And I really wasn't cross-examining here.

>> Mayor Adler: Just -- okay.

>> Pool: Just asking

[10:46:43 PM]

some --

>> Mayor Adler: I'd rather our council not address that question.

>> Pool: That's fine. I appreciate -- I appreciate the answers that I got. Thank you.

>> Mm-hmm.

>> Mayor Adler: Let's take a vote on pool 2 and tovo 1. Those in favor of pool 2, tovo 1, please raise your hand. Tovo, kitchen, pool, alter. Those opposed please raise your hand. Those voting no, pool 2 and tovo one do not pass. That gets us to pool 5.

>> Pool: I had a second amendment on my number 8, on that yellow sheet.

>> Mayor Adler: On what? I'm sorry.

>> Pool: I had amendment two under number 8, ensuring protest rights on this sheet, amendment to protect Austin property owners valid petition rights should the court hold that the legal position is drawn.

>> Mayor Adler: Let's vote on the secretary half of that. Amendment 2. Those in favor please raise your hand. Tovo, kitchen, pool, alter.

[10:47:45 PM]

Those opposed please raise your hand. Balance of the dais. 88 amendment 2 pool does not pass.

>> Pool: Thank you.

>> Mayor Adler: Okay.

>> Tovo: Mayor, may we go back to that one. I'm relatively more prepared at this point.

>> Mayor Adler: Yes.

>> Tovo: Really what I'd like to do --

>> Mayor Adler: This is Flannigan process one?

>> Tovo: If I could ask our staff to explain really what the impact is of this -- what the impact would be of this amendment to allow minor modifications through the aec. And have there been -- I mean, these are kinds of -- to go back to the policy direction that was adopted by council in the spring, I mean, we did ask you to streamline things and make certain things administrative and so to what extent has this evaluation already happened? And what would be the impact of this particular amendment?

>> So if -- if this

[10:48:45 PM]

amendment passes, we would work with the law department to identify potential ways in which we could expand alternative -- equivalent compliance to include some new -- some types of zoning regulations for which it currently doesn't apply by way of just brief background, we currently use alternative equivalent compliance for design standards, but not for things that go to setbacks, height, impervious cover, those sorts of very basic zoning site development standards. I think that this amendment does present challenges, but if it passed we would work with the law department and identify if there's some ways in which greater flexibility could be built into the regulations themselves. Anything that sort of becomes tantamount to a variance would have to go to the board of adjustments that's one of the factors that would have to be balanced but we're certainly happy to look at this, look at what other cities have done should council decide

[10:49:46 PM]

to approve this amendment.

>> Mayor Adler: Okay. Is there any objection to Flannigan process 1? Councilmember Tovo objects. Councilmember Flannigan, do you want to --

>> Flannigan: I just abilitied to remind folks that the amendment I handed out on the yellow sheet adds a clause at the end relating to the boa. It's -- yeah, process 1. So from that -- that's a change from what was posted on the message board but I did hand this out yesterday.

>> Alter: Give us a second to find it.

>> Mayor Adler: It adds including -- it adds and include housing capacity goals in the boa variance approval criteria.

>> Tovo: Mayor.

>> Mayor Adler: Councilmember Tovo.

>> Tovo: Can the staff speak to that? So currently the boa has to reach a threshold, has to reach a hardship threshold, not financial, not otherwise. It has to be a threshold -- a hardship intrinsic to the tract. And so is the intent of this, councilmember Flannigan, that they would

[10:50:46 PM]

now have as part of their hardship that it prevents them from reaching housing capacity goals?

>> Flannigan: I would -- with this amendment want the boa to be able to consider units that are getting built when they are contemplating requests from property owners for, you know, during the variance process. They're not allowed to consider that under the way it's defined now.

>> Tovo: It was my understanding that part of the way they are required to consider it is subject to state law, they're a quasi-judicial body. Can our staff -- maybe our legal staff speak to whether it's legal? I mean, certainly people come before the board all the time -- not all the time but from time to time saying it would be a financial hardship, et cetera, et cetera. It's just not part of the capacity, it's not part of the threshold.

>> Councilmember Tovo, just from a planning standpoint, not getting into the law, but generally a variance is

[10:51:46 PM]

rooted in hardship that is intrinsic to the property. It's not about highest and best use or anything like that. But cities do vary, the criteria for their own local variance procedures. So cities will adopt different criteria, and that's been recognized. But if this were to pass we would work very closely with the law department to evaluate its feasibility, potentially look at a special exception instead of a variance. So we would look at really all the options for giving the board this -- the type -- some ability to consider flexibility in zoning based on housing capacity. But it is definitely something that would require careful review, and we would give it that.

>> Tovo: Well, it does seem to be pretty directive. It's not consider and review with legal. It says include housing capacity goals in the criteria. Would that be a recommendation to provide for mover a review?

[10:52:46 PM]

>> Whatever our legal -- whenever there are legal issues associated with any of council's amendments, we will -- we will go ahead and review those, whether or not we're explicitly directed to. So if this passes we would attempt to find a way to further what appears to be its basic objective, but we would do so in close cooperation with the law department, and that may potentially mean coming back with something that's a little bit less ambitious than a council amendment.

>> Tovo: Okay. Thank you.

>> Mayor Adler: Okay. Any objection to --

>> Alter: I had a question. I haven't been able to find the updated version, Mr. Flannigan. Can you read the updated version? You have it? Okay.

>> [Off mic]

>> Mayor Adler: Okay. Any objection?

[10:53:46 PM]

Councilmember alter.

>> Alter: Yes. So I'm wondering if you would be willing to change it to "Consider" rather than "Expand" because I'm not hearing full confidence and part of what we want to avoid is a whole tizzy of figuring out how to make something work if it's not possible. And I just -- I'm uncomfortable when we tell them they have to do it. If you're willing to say "Consider expanding."

>> Mayor Adler: Or do you want to add at the end of it if legally possible?

>> Flannigan: I mean what I'm hearing from staff is that is the direction they're taking on every amendment. They're gonna come back with only the things that are possible, the things that make sense to the staff. I don't know -- I mean we've done that a lot but I don't think it actually is a substantive difference so I don't think it's necessary.

>> Alter: I'm not sure I heard them say that they were only bringing things back that made sense to them. If they really believed possible as their response.

[10:54:49 PM]

>> Flannigan: The legally possible thing I think was fairly clear.

>> Alter: Right. And I guess what I'm trying to understand is to be able to know whether --

[overlapping speakers]

>> Mayor Adler: Do you accept "Consider" at the beginning of the sentence?

>> Flannigan: No.

>> Mayor Adler: Okay.

>> Alter: I'd like to move that we say "Consider."

>> Mayor Adler: Councilmember alter moves to add consider. Can second to that? Councilmember tovo seconds to say "Consider expanding." Let's take a vote. Those in favor of adding the word "Consider" please raise your hand. Tovo, kitchen, alter and pool. Those opposed. It's the balance of the dais. Any -- let's vote

>> Mayor Adler: Let's vote now on Flannigan process 1, vote now, tovo, kitchen, pool, those voting eye -
- Flannigan 1. Sorry. Flannigan 1 passes. That gets us to pool 5.

[10:55:49 PM]

I think the second of this, which talks about homeowners basketball I guess programmatic, we're going to put the second set of this into the programmability bucket, did you tell with the first sentence, exploring streamlined permitting process, councilmember Casar, you pulled this.

>> Casar: Sorry, I think I pulled them both for that programmatic purpose. But I'm fine with it being --

>> Mayor Adler: Is the first one --

>> Casar: If the first line is code, I'm fine --

>> Mayor Adler: Is the first one code or is that happening outside of code?

>> We would view that as programmatic.

>> Mayor Adler: Okay. So let's put that in the programmatic bucket. That gets us then to tovo 33, comprehensive plan. Councilmember Casar, you pulled this?

>> Casar: Yes, I pulled this because in my reading of it, it

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strikes language saying that a decision by council shall constitute a finding that the decision is consistent with the comp plan. I think that that's good language to have in. I think that's all that this -- that tovo 33 changes, I want that language in, I would just vote no.

>> Mayor Adler: Okay. Councilmember tovo, do you want to speak to this?

>> Tovo: I do. I just need to make sure -- I think in the compiled version, I think initially -- well, in the initial posting of it, it didn't underline the part that I'm striking so I just want to be sure that everybody looks back at my amendment sheet from the other day. As I understand this measure of staff, we are -- we're required -- we're required now to make amendments to our comprehensive plan to support legislative decisions based on it, and this seems to me to

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retrofit it in a way that I'm concerned about, that it would -- it would -- if we make a legislative decision that is out of alignment with our comprehensive plan, the way I read this sentence -- and maybe I'm wrong -- is that we're generating a finding automatically that it's consistent with the comprehensive plan, rather than having that conversation in a transparent way about how a policy decision might or might not be in sync with the comprehensive plan. And so I don't -- I can't support taking out that measure of -- as I see it, it's a transparency issue.

>> Mayor Adler: Okay. So there's language right now at the end of the comprehensive plan that's there on the bottom of the page, 38 of 39, the sentence says a decision by the council to approve a legislative

decision shall constitute a finding that the decision is consistent with the comprehensive plan. Tovo 33 is to strike that language.

>> Tovo: Yeah. If I could just add to that, to me, you know, there will be a lot

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of councils in years to come that are making decisions that are legislative in nature, and I think having that -- having that moment to reflect and to see whether it's consistent and to take that step first of amending the comprehensive plan or taking that step first of seeing how it syncs I think is better than just having it become automatic. But I guess I would ask the staff to just weigh in on whether I'm interpreting this correctly. Is that, in essence, what it's doing? It's saying if we make -- if the council makes a decision, that, in and of itself, says it's consistent with the comprehensive plan.

>> This provision was brought forward from draft 3, and it's a provision, I think, that we cannot remember the exactly genesis of it, but I think it's something similar to what we found in certain other city codes and it's simply emphasizing the importance that council keep consistency with the comprehensive plan at the forefront of your minds when you

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approve code amendment zoning cases. And, you know, we recommended it in draft 3 and continue to think it has merit and brought it forward from draft 3.

>> Tovo: Mr. Lloyd, is it doing what I'm saying it's doing, though? In essence, if the council makes a decision, they no longer have to -- I mean, that, in and of itself, is evidence that it's in sync with the comprehensive plan? I mean, it seems to foreclose a piece of the deliberative process where you're weighing whether it's in sync or not.

>> Council should have those deliberations when you deliberate on proposed amendments. I think the provision speaks for itself and again, it was just consistent with language that was developed with our consultants in connection with draft 3.

>> Mayor Adler: Okay. For me, I'm going to vote against tovo 33. I think that it's real important that the council, in deciding whether or not to make zoning

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changes, do its job, which is to approve zoning changes that are in accord with the comprehensive plan. Once the council has made that, a future council, I think that their decision should be given that

measure of deference. I think that when they act properly, as they're expected to do, that's what this is. So I'm going to vote against tovo 33. Councilmember pool.

>> Pool: So in the state local government code, Mr. Lloyd, the language talks about how the -- a city's zoning code is required to be -- my phone is talking back at me. Siri was going to define zoning for us all.

[Laughter] So in local government code, it says that our zoning ordinances are to align with and comply with

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our comprehensive plan. Is that right? That's just a basic tenet in --

>> Yes.

>> Pool: So your -- oh.

>> Yes.

>> Pool: Okay. So is the plain reading of that -- which one is the controlling entity? Is the -- the zoning ordinance that is being changed or is the comprehensive plan the controller?

>> That depends on the circumstances. As we talked about before, there are times when you pass the plan before you've made any zoning decisions, and so you can have a plan out there, and as zoning decisions come to you, you're supposed to do those consistently. And if -- consistent with the plan. And if they're not, then that's why many times, with zoning cases, we see an amendment to the plan at the same time to make them consistent.

>> Pool: Have we ever done that in such a large endeavor as this?

>> I don't see this as changing

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that. I think, as the mayor said, this has to do with giving deference. If the city council is the arbiter of the consistency with the plan, that doesn't mean a court doesn't review that act, but it means as far as we're concerned, the council is that arbiter, so this is just a restatement that as the arbiter, that decision reflects the finding by the council, whether we have something in the ordinance that says findings or not, that the act of that zoning is a finding that it's consistent.

>> Pool: Okay. I just say that it feels a little backwards to me because if, in fact, the comprehensive plan, as my understanding is in the local government code, is not the controller, then why would an entity go to the trouble, or why would the state legislature even tell us that we need to have -- we need to have a

comprehensive plan, and then within the comprehensive plan going forward, once you've established that, because those are your planning

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principles, and that's the general -- those are the guardrails and the guidelines that the community and the city and the professional planners have all decided is the direction development in a city should go, and then it seems like all of the various changes that would flow from that would have to align with the larger parameters, principles, and tenets of the comprehensive plan. But you're actually telling me that that's very malleable and it can work both ways, and we simply resolve that matter by fiat, saying we are now in compliance with the comprehensive plan because we say it is because we are going to change the comprehensive plan in order to accommodate whatever adjustments that we are making as we rewrite our zoning code.

>> I think that the state law that requires -- that talks about comprehensive planning allows cities to determine what level of consistency and how they will --

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how they will implement that, how they will -- what level of consistency is going to be required. Part of this is a definition of that, which the council is free to adopt or not, as your -- as the council's determination of the level of consistency in how we determine that consistency with the plan.

>> Pool: Okay. Thanks. I won't ask for the information on the dais, but it would be great to get a briefing on which -- what cases are out there and what support we have for -- you know, what other cities have done it this way, so that I can assuage my concerns about us feeling we've kind of flipped the primary with the secondary, like the prime mover was the comprehensive plan, and the zoning ordinances should be following along with those larger principles, and instead, we're using the changes in the zoning to amend and adjust a comprehensive plan outside of the comprehensive plan --

[11:05:57 PM]

>> Mayor Adler: Okay.

>> Pool: -- Amendment process. Thank you.

>> Mayor Adler: Councilmember Flannigan.

>> Flannigan: For what it's worth, I've spoken to some of my friends and colleagues on some of the city councils north of the city, that's precisely what they've done recently, amend their comp plan as they've amended some of their zoning regulations, it's pretty common, at least from the jurisdictions nearby.

>> Mayor Adler: Let's take a vote. Those in favor of tovo 33, please raise your hand. Tovo, kitchen, pool, alter. Those opposed? Balance of the dais. Gets us to the last three, also page. Tovo 36. Councilmember Casar, you pulled this.

>> Casar: I think we had already moved that into a programmatic section earlier.

>> Mayor Adler: Yes. It's in programmatic. That gets us to tovo 37. Pulled by councilmember Casar.

>> Casar: Mayor, I think public notification for things like zoning changes makes good sense because people can come and chime

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in, but when a demolition permit has already been approved and it's an administrative thing, I don't -- I don't want to have folks go through the type of resources of letting people know a variety of administrative things that have already gone through the process, so that's why I'm comfortable voting no on this one.

>> Mayor Adler: Councilmember tovo?

>> Tovo: So this was -- this was, I believe, a recommendation from our audit and finance -- I mean, our auditors office that looked at the state regulations with regard to demolition, and we all passed a resolution, I believe it was soundly supported, to require -- to require notification for demolition so property owners within close proximity would have notice of it and would have an opportunity to not be present during that demolition. And so it doesn't prevent a demolition but it does require notification to property owners. I believe that our staff, because the hour is late and it's been a couple weeks since I thought about it, I can't quite remember the details, but I think our staff were prepared to bring

[11:07:57 PM]

forward these recommendations for adoption, and we're enmeshing them into the code --

>> Mayor Adler: Is this something recommended by staff?

>> Tovo: -- Speed this up. It is -- we've been talking -- I'm not sure it's the codenext staff, but the staff that were monitoring and providing recommendations back based on our resolution, which again was based on the audit, I mean we've had a series of steps of people who have -- of work that's been done on this, including stake holder meetings, so the second piece --

>> Mayor Adler: I think I remember this.

>> Tovo: Yeah. If it's helpful --

>> Mayor Adler: Anybody have any objection to item 37 going forward?

>> Casar: Yeah, I read this as a much broader level of notification. If it's for folks that would be directly impacted around there would be noise or dirt and they wanted to know about it, if staff is comfortable with that tighter level of notification, I could potentially withdraw here.

>> Tovo: And I would say that the staff -- I mean, I'm not sure if our codenext staff have been the ones that are working on the demolition piece, so I just -- if

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it's helpful, we might need to take this up during the daytime when we have those other staff available.

>> Mayor Adler: Okay. Let's pick this back up --

>> Tovo: Maybe, Mr. Lloyd, do you have any information to bring to bear on this?

>> I do. I wanted -- I'm trying to search the code as we're talking because I believe we included -- I could be wrong and I will confirm this, but I believe we did include something related to notification for demo permits. But staff does not support requiring zoning level notice for demolition permits. The notice that I believe that we have proposed, either administratively or again I want to double-check what is included in the demolition permit sections of the draft code, but would be a smaller level of notice, but providing the full level of notice that would be required for a zoning case, we would not recommend for a demo --

>> Mayor Adler: Are you comfortable just keeping require notification of all properties for demolition --

>> Tovo: Thanks for that reminder. That's actually the substance of

[11:09:59 PM]

my change, would be to change it to the same so there's consistency in our notification processes.

>> Mayor Adler: Got it.

>> Tovo: So while it is -- and just to get back to what the concern are -- concerns are, it's not really -- I mean, the concerns that were cited in the audit and in the public comment about it were less about noise than they were about asbestos and lead removal, and the way in which those get disbursed with demolitions. And so I think that there's a merit in having the notification process be the same, in large part, because there's a consistency to that that's -- makes it more consistent and easier for those doing the work understand a our staff.

>> Mayor Adler: I'm comfortable if you do the notification that covered noise understand as bests on. I'm not good with this change because I think it's unrelated, perhaps, it's not tied to noise or asbestos.

>> Tovo: Mayor, this amendment simply changes from what the staff have recommended in terms of a smaller notification to the

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standard notification.

>> Mayor Adler: He can't C. And I just don't know that standard is the appropriate thing to be associated with noise understand as best to say. If it was, then I would want them to do that. If noise and asbestos was not associated with the larger zoning or land use change, then I wouldn't want them to use it. But to say require public notification for all properties of demolition, provide appropriate notice of noise and asbestos, I'm comfortable with I don't know what that distance is, I don't know if it's notice similar to zoning or land use change, I don't know if that's associated with that.

>> Tovo: I want to be sure we're understanding. I think maybe my language in this isn't as clear. The only -- the difference here, in a manner -- in a manner usually is just about how many houses you notify.

>> Mayor Adler: Correct.

>> Tovo: Okay. I didn't know if you were understanding that.

>> Mayor Adler: No, no, I understood that.

>> Tovo: I'm not suggesting public hearings or anything like

[11:11:00 PM]

that --

>> Mayor Adler: I'm saying even with that.

>> Tovo: I got you.

>> Mayor Adler: I want them to look at noise and -- yes.

>> So we previously -- the development service department, and I think this was in response -- this was in response to prior council initiation, has administratively developed a process to provide notification to nearby homes through door hangers that are placed on the doors of homes that are nearby demolition sites, and so that has been the department's approach to sort of implementing council's desire for greater notification. Our concerns about mail notice that you would get for a zoning case are just the additional costs that it would provide, and additionally, demolition permit is not a discretionary process so there's not, like, an opportunity for citizens to, like, comment and stop a demolition from occurring, so we're concerned that it would create a misimpression and we feel that the approach that we proposed, I

[11:12:03 PM]

think, speaks to the concerns about disruption that can occur as a result of a demolition near homes.

>> Mayor Adler: Okay. Any further discussion on tovo 37? Councilmember kitchen.

>> Kitchen: Okay. So I'm not entirely clear what you're proposing in terms of the process and how that's different from what councilmember tovo is proposing. It's a process difference. Right?

>> Yes.

>> Kitchen: Okay. What is the difference?

>> As we understand councilmember tovo's amendment, it would require the same kind of notice for a demolition permit that goes out for an application to rezone a property or to apply for a conditional use permit, and what we proposed administratively, and I think maybe Donna can read the language --

>> Donna galate, development services. This is from a memo from the development services department director, Denise Lucas, sent

[11:13:11 PM]

November 19th, part of a larger scope, to notify adjacent properties of demolition activity, require posted notice, the door hangers and yard sign between five and ten business days before demolition activity starts. And this memo includes a number of recommendations on changes to the demolition process from the report.

>> Tovo: And if I could, the -- that recommendation, which is going to go into effect -- and I'm glad about it, and excited to have it in place -- however, it leaves the process in the lands of the company that's actually doing the demolition. So as opposed to our regular city processes where the city is sending out the notification, they know it goes out and it gets to their -- the affected parties. In this case, we're relying on the person who's -- the person who's doing the demolition, and I'm not sure that we have a mechanism for going out and making sure that that has happened. And so to put it -- so that's really the substance of the change I'm recommending, is that

[11:14:12 PM]

we do it in the way we do those other notifications, we can make it extremely clear in the literature, they don't have -- there's not an appeal right, it's simply -- I mean, it's like -- I mean, we all get stuff like

that mailed from our municipality all the time, letting us know something is happening. That's all it's going to do, let us know -- let people in the immediate area know what's happening, and then --

>> Mayor Adler: Councilmember Ellis.

>> Tovo: Have that level of accountability.

>> Ellis: Do we have any idea of the financial burden on the city to send notifications out for each of these instances?

>> Notification costs around \$500 or more per application.

>> Ellis: Per application.

>> And that application cost is part of the permitting cost to the applicant.

>> Ellis: Okay. So that is rolled back down to them? I think I'm struggling with what current practice is, feeling that's sufficient, and creating a standard practice that we use for other types of cases when there's no petition rights is concerning

[11:15:13 PM]

to me. So I won't be supporting it, but I'm happy to have the conversation in the future.

>> Mayor Adler: Councilmember alter?

>> Alter: So it's late, but if I'm remembering correctly, when they demolished the grove, they provided no notification, and there was asbestos and there was stuff in the air, and forgive me if I'm getting this wrong, but we had a whole lot of issues that they were not even notified and we had people with air quality issues, asthma, and et cetera, who were greatly impacted by this, but had they been made aware of it, they would have been able to take precautions. And, again, I may have misspoken about exactly the details of whether -- because they did have to do asbestos abatement. Ultimately we had some issues with that. It's late, but the fact remains that there was particles in the air of some kind, there was a lot of noise, there was a lot of dust, and it was very disruptive

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for people. And it would have been very helpful if we had had some kind of notification. We do notification all the time for non-discretionary things. I'm really having trouble why we're even debating this as an issue.

>> Mayor Adler: Let me see if I can try to answer that. The door hanger issue, is that a policy that's been in effect for a long time?

>> Tovo: No, it's new.

>> No, this memo came out November 19th, and the door hanger is to start January 2020. There's also provide notification tools, enhance exist public access to gis data for demolition permits and mechanisms for the public to subscribe --

>> Mayor Adler: I think the answer to your question, councilmember alter, this wasn't in place back when they did the grove. Perhaps if this was in place, I would hope that it would have taken care of that issue, and if we find that that this doesn't take care of that, I think it would be important for us to

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consider something else. But I'm going to support the staff's response to this challenge, and if it doesn't work, then let's visit again, and it may very well be that this works without the city having to do that effort. Councilmember kitchen.

>> Kitchen: So what we're saying is that we're not requiring any -- we're -- okay. I D't see any reason not to go forward with the -- with the proposed amendment. It's not going to cost the city anything. It provides an additional level of assurance because, as councilmember tovo said, it's not something that we're relying on the company to do. So this is an important health and safety issue for our community, and I just can't understand why we wouldn't offer that level of protection. It's not costing us a dime. And it's a way for us to make sure it actually happens. So why would we not do that? I don't understand why we wouldn't do it.

[11:18:16 PM]

>> Mayor Adler: There's been no demonstrated need to do it.

>> Kitchen: Okay. So we're just going to -- there's no demonstrated need for an oversight process to make sure --

>> Mayor Adler: Absolutely, we should require of all people who do demolitions that before they can do demolitions, they have to give five to ten days' notice, and they have to provide something that we should say gets hung on their doors so that anytime that they go inside -- in our out of the house, they find that notice. I think we should require that.

>> Kitchen: So why wouldn't with we just do that ourselves?

[11:19:17 PM]

>> Mayor Adler: I think we are requiring that now and I'm comfortable having that and requiring that person to do that unless -- until we see that that's a challenge or a problem.

>> Kitchen: Okay. So we just have to later on enforcement instead of doing it ourselves, in which case we don't have to layer on enforcement --

>> Mayor Adler: Or if we find there's a problem, then we can have our staff have to intervene and make it a governmental function. I just don't know that there's a demonstrated need yet to make it

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so it's something the government has to do. I think that we -- as a council, we step forward, we identify -
- perhaps it began with an audit, and I think it became a resolution.

>> Tovo: A resolution. We did not have a process --

>> Mayor Adler: We told staff to develop something, as a process, the staff has done that, they've announced the plan in November, it goes into effect in January, and I'm comfortable letting them do that as we instructed them to do that without us coming in just as they're starting that program, to declare it doesn't work and we need to do more. I think we should let the staff's answer go, and if there's a problem with it, then let's deal with it. Councilmember pool.

>> Pool: Then I'd like to have some assurances that whatever staff tells the parties, that this is a standard process and there are expectations of how the notification will be handled, at the very least, if we're not going to do it ourselves, in which case it would be

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standardized, then a standard process should be developed.

>> Mayor Adler: I think they have -- and if there's any issues with the process that you told us about in November and that's effective in January, let's revisit. That's what I would do. So let's take a vote. Tovo -
-

>> Pool: Could I just can, though --

>> Mayor Adler: Yes.

>> Pool: Is there a standard process that is communicated in these instances?

[11:22:17 PM]

>> It's part of a larger effort and so all of those details are -- each of these items are part of a -- are a separate project, so each of those project teams are working on all of the details, and so yes, that would be --

>> Pool: Is that then communicated?

>> Yes. Yes.

>> Pool: Do we have -- okay. That's great. So if I could then have a look-see at what that form looks like or how maybe we could -- you could talk to me about how that is communicated so that we can ensure that it's -- the house next-door to me, which was built

[11:23:18 PM]

in 1954, was pulled down, it was -- it had asbestos in the siding. The folks who were doing the demolition on that house were not taking the standard precautions to ensure that the asbestos that was released in the air was not breathed in by me or the little toddlers across the street or the elderly woman who lives behind this house. I had to go over there and ask them to turn on their hose to water the roof and the -- to keep the dust down, to take the precautions that they should have been taking, had the city been overseeing it properly and making sure that it was being done right. I had to do that. That shouldn't have to happen. A citizen -- because in this instance, I was not a city councilmember, I was just a neighbor. But I was really concerned about the health risks for the people and my neighbors because the house next-door to me was being pulled down without any concern or precautions with regard to

[11:24:20 PM]

asbestos. It's a huge concern. And I know nobody is taking this lightly, so I would like to see what our procedures are to communicate what the standard expectations are and precautions so that everybody out there that happens to be pulling down a house, it'll be next-door to you next -- not you, mayor, but somebody else here, so --

>> Mayor Adler: Can you get that information to councilmember pool?

>> Pool: The health and safety of our citizenry is our top concern.

>> Mayor Adler: Okay.

>> Pool: Thank you.

>> Mayor Adler: Take a vote on tovo 37. Those in favor of tovo 37, please raise your hand. Councilmember tovo, pool, kitchen, and alter. Those opposed, please raise your hand. The balance of the dais. 37 does not pass. That gets us to tovo 38.

>> Tovo: And I hope this will be an easy one. This is actually, I believe, part of the proposal that staff or the practice that staff intend to roll out, if I'm not mistaken, so this simply embeds that within our code.

[11:25:20 PM]

This is another one of those situations where we've had multiple things going on at once, and it was -- we initiated some things and there were questions about whether to wait for codenext, and so I believe there's already an affidavit that's going to be required of contractors to -- they will have to sign an affidavit indicating that they've complied with all of the regulations. One of the changes that we've suggested to the staff that I would like to see embedded within the draft code, if it's not already, is that it actually lists the regulations, not just have people affirm that they have complied with the regulations, but actually indicate what those regulations are as they're signing the affidavit. And so I guess I would just ask staff to confirm that the after is underway.

>> Yes, councilmember tovo, the affidavit is part of the administrative memo that director Lucas rolled out in November. And to your point, I think if you would like, we can certainly look at including a provision in the code that actually directly requires that affidavit, sort of

[11:26:22 PM]

an enabling provision that directs this be done dismissal done administratively. We have no problem with that. As far as as bosses, staff takes this issue very seriously and has heard council's numerous directives on this. As part of the code rewrite, we've included a provision that eliminates the current exemption in code for permits for interior demolitions, and that will have a significant impact in terms of requiring a permitting process for demolitions that have -- or interior that have the potential to expose people to asbestos and will provide heightened protections that are missing from current code.

>> Tovo: Great. I appreciate the changes staff have made. I would say there are some things highlighted in the audit that I think we haven't -- that weren't necessarily steps forward that the memo is recommending we take, and so this is what I'm bringing forward for today, but just know this is an area, I'm going to

[11:27:22 PM]

look back to that audit and see if there are other provisions we should meld into reading --

>> Mayor Adler: Since we're looking for the developers to do this work, I'm supportive of having the affidavit embedded into the code. I think that's the right compromise in this. Anybody have any objection to tovo 38? Hearing none, tovo 38 is put in. I think that gets us to all the things we have here.

>> Mayor?

>> Mayor Adler: Yes?

>> Tovo: May I ask you a question? I think -- so the affidavit is, at this point, just signing, saying that they've met the state regulations for demolishing something -- that they're complying with the asbestos and lead regulations and maybe one other. But what you just said I think also -- could be embedded within that affidavit, that they've also implied with the notification requirements.

>> Mayor Adler: That would be fine by me.

>> Tovo: So that wasn't the intent, but I think it's a great suggestion.

>> Mayor Adler: Okay. Any suggestion to that being included? Hearing none, that's included. Councilmember kitchen.

>> Kitchen: I have a suggestion

[11:28:24 PM]

for the second round. Since we didn't do -- why don't we just quickly do the consent process with these, so we'll know what we have to cover tomorrow.

>> Mayor Adler: I really haven't had a chance to take a look at those. I'm looking at other people on the dais --

>> Kitchen: Okay, never mind.

>> Mayor Adler: So this is what I'm going to do tomorrow. We're going to try and update that form as best we can that has all the outstanding items. We'll run through it on consent fast, see what gets pulled. And then what I'm going to do is just start with district 1 and we're going to call district folks, 1, 23, 4, 5, 6, 7, 8, and you can bring up anything you want to bring up, either on programmatic or on tranche 2, either one of those two, so that I'm not making one more important than the other, you can pick the priority that you have, that you can pick up, and we'll just keep circulating and people can raise things that they want to pick up.

>> Kitchen: I don't understand.

>> Mayor Adler: Off that list. There's an order to that --

[11:29:26 PM]

>> Kitchen: Oh, I see.

>> Mayor Adler: Yeah, I mean, you can pull anything -- first go through all the things on that list, we can just pro of by consent.

>> Kitchen: Okay.

>> Mayor Adler: Those things will be checked off. Then I'm just going to start recognizing people to bring forward whatever they met to bring forward that's on that list that's been noticed. If someone wants to bring something new that we haven't seen yes, I'm probably going to ask for time to take a look at it and not to consider it right away. But certainly I will make sure that I've looked at everything that's on those pages that we have that's been posted. Yes.

>> Casar: Mayor, to be clear, what you're saying, when you say dissect 1, 2 -- you mean not going through all of one district, then all of the other, but councilmember by councilmember, each of us bringing one amendment, each in attorney ever turn so that way --

>> Mayor Adler: I'm just going to give everybody a turn. Everybody gets to bring --

>> Casar: But not like we did on consent where one councilmember goes through all of theirs.

>> Mayor Adler: Correct.

>> Casar: That way we can bring up our most important ones first.

>> Mayor Adler: And we'll just keep going through.

[11:30:27 PM]

We'll run through the list, then we'll go again, we'll go again. Certainly you don't have to participate in any round if you don't want to, you can pass. Yes. Councilmember alter.

>> Alter: I just want to ask if we could do the amendments that are not the programmatic first, just because some of the them I think are going to be fine, and I think we've all had more of a chance to --

>> Mayor Adler: Okay.

>> Alter: -- Get our heads around those and it would give us a little more time on the programmatic to think about things,.

>> Mayor Adler: I'm fine doing that.

>> Alter: I just want to remind things in audit and finance that we're meeting at 9:30 to hear the one audit and finish at 10:00.

>> Mayor Adler: My preference would be to do the other ones first time but I was sensitive to people thinking I was trying to stop the programmatic ones, which was never my intent, so I wanted to make sure -- but let's do that. Let's figure the amendments first, tranche 2 stuff first, and then we'll do the amendments, and the order for that, I'm just going to let people bring them -- I'm just going to call people and

[11:31:28 PM]

you can bring one. Councilmember kitchen.

>> Kitchen: Just quickly, I'm sorry, so if we need to add something to this -- I just realized, who should we tell.

>> Mayor Adler: I'd put it on the message board.

>> Kitchen: It's already been handed out, it's already on the message board, it just didn't make it on this piece of paper.

>> Mayor Adler: If you hand it to me, I'll put it on.

[11:32:28 PM]

>> Kitchen: Okays and you can get

>> Mayor Adler: You can get it to me by handing it to me. Hand it to me and I will put it on the list and bring the list. But if you put it on the message board everybody will see that I failed to put it on the list.

>> Kitchen: I'll just bring it. We're starting early and it's already on the message board. You're just going to have to wade through it. It wasn't reflected in here -- I can tell Ashley.

>> Mayor Adler: Do you want to tell us which numbers they were that we missed?

>> Kitchen: Sure. We moved to programmatic. The item, my number -- let me

[11:33:29 PM]

find it.

>> Mayor Adler: Do you see a page number?

>> Kitchen: Let's see, it was my -- I'm sorry, let me find it real quick.

>> Mayor Adler: Kathie, do you remember the one we left off for you?

>> Tovo: I just haven't had a time to line it all up. There's one missing but I'm just going to work from my own list and make sure I get through them. Mayor, while councilmember kitchen is looking, can I just suggest, with the programmatics, we didn't do the same thing we did with the others. I think it might be -- I'm not sure that we're going to be in disagreement much on the programmatic stuff, so I think if we could spend a few minutes before we go district by district, which is a newly -- it's a different

organizational scheme and I'm afraid we're going to waste a lot of time trying to rush through, if we could just kind of knock it out in 15 minutes like which ones we want to pull, maybe the same way we do the consent agenda, dive into the ones we want to discuss, I think that would be efficient.

[11:34:29 PM]

>> Mayor Adler: Let's go through the list like we do consent and assess where we are then. With that said, audit and finance is going to meet here at 9:30. This meeting is adjourned at 11:35. Again, staff, you guys are doing a great job. Thank you.

[11:35:30 PM]