

Public Safety Committee Meeting Transcript – 09/20/2021

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>> Harper-madison: So we're going to call this meeting to order. It's 2:12 on Monday, September the 20th. We're the public safety committee. We have a few things, including some briefings on our agenda for the day, and so it looks like the only action we have to take today is to approve meeting -- is to approve minutes, in which everything else, item number two, three, four are our briefings, in which case -- give me two seconds.

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Okay. So I'd like to entertain a motion for us to approve the meeting minutes for July neept, 2021. Looks like it's being moved by councilmember -- oh, with a new haircut, councilmember Kelly. I like it. Moved by councilmember Kelly. Can we get a second? Seconded by councilmember Casar, in which case all in favor of approving the minutes from July 19, 2021, for the public safety committee, it looks like we're unanimous on the dais with the mayor off. Second up, we have a briefing on our Austin police department postprotest complaints, and I'm not certain exactly who's presenting this information. It looks like we have acmariano here, and, ray, are you going to be presenting for us today? [(Inaudible) Speaker] >> Good afternoon, mayor pro tem and councilmembers. For this afternoon's briefing,

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for the first one we'll have Vero muscado to make that presentation.

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>> >> Good afternoon members of the committee, mayor pro tem, can you hear me? >> Harper-madison: We can, thank you. >> Okay. Perfect. Thank you. Good afternoon. My name is Vero muscado, I'm the director for the office of police oversight. Happy to be here to share our preliminary analysis from the summer protest from 2020. I do want to start off by particularly saying the information that I'll be sharing with you is primarily from when the protest began on may 29th through the end of November of 2020. And so as you know, many pro protests across the country began shortly after the

mudder of George Floyd on May 25th, 2020. Unique with Austin, it was just a month earlier from that date, there were protests

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involving, you know, community concerns around the death of Michael Ramos that occurred on April 24th of 2020. So in the protests that occurred, they were primarily about police reform and social justice and police brutality. Next slide. So we're going to go over the protest complaints. We haven't talked about the protests in a while, but just an overview. This was clearly unprecedented for our city, and definitely unprecedented for the office of police oversight, because shortly after May 29th, we received several contacts from community members, over 1,000 within that first month. Of those thousand -- and what I mean contacts, are individuals that contacted the

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office of police oversight via phone, e-mail or online complaint form. Through those contacts, we submitted 308 external complaints, and what that means is we create what's called a notice of formal complaint, and that is sent to APD's internal affairs division, which then, as we hope, would initiate an investigation. With working with the department of the 308, we identified 106 duplicates, so that left us with 202 external complaints that we requested be investigated. Of that 202 complaints, 27 were investigated -- external complaints were investigated by internal affairs. The department initiated on its own 21 internal complaints, and as you can see, externals -- external complaints are complaints that come from the community. Internal complaints are complaints that are generated by the police department. Of the 21 that they generated,

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they investigated all 21. Next slide, please. Just want to go over with you the common themes that we saw in the protest complaints. Many of them were involving the use of force. For example, the O.C. Spray, the use of the less lethals, allegations of protesters being pushed to the ground. We've talked about this before in the special sessions that council called last summer. The high profile cases, we've received complaints about lack of deescalation, the equipment and tactics that were used during the protest and complaints about interaction with media where officers allegedly pointed guns at members of the press. Next slide, please. So we -- we submitted several objections throughout this

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whole process. In August, on August 12th, we submitted a letter to Chief Brian Manley, given the enormity of the complaints that we received, we were starting to see some red flags. And we documented that and sent a letter, I believe it was August 12th, of 2020, in terms of what we were seeing. And the reason why we did that is because we wanted to flag them early on and address them because, of course, you know, we are limited by the 180-day rule, meaning that the investigation and any discipline or resolution has to occur by the 180th day. So we felt like it was our responsibility to flag our concerns that we saw pretty early on so that they could be addressed and would not be impacted by

waiting later on in the course of the investigation in the course of the process. And so some of the objections that we made to the department included the category of -- they categorized the complaints. And so what that means is that the police department has an

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internal process for this categorization. A is the most severe, potentially leading to discipline of termination and D is essentially saying there's no policy violation. The vast majority, I would probably say 80 to 90% of the complaints that came in from community were classified as D or as administrative closed. We had ongoing issues with cooperation between the department and our staff with review and access to information that OPO is required to see and have so that we can exercise our responsibility of providing oversight, particularly over the internal affairs investigation. We had difficulty with getting access to the investigatory materials we generally used as practice since probably 2007.

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Our internal case management system where all information regarding complaints are supposed to be entered into that system. Months later, we learned that the department had a separate system to use to track the protest cases and have information in there that we weren't really privy to. So that became an issue. And then we saw bias in the investigation and investigatory summaries, and this is key, because part of our -- because we cannot -- are prohibited from conducting the investigation, our main responsibility and our role in monitoring is to ensure that the investigations were fair and thorough. So when we were reviewing the numbers of the investigations at the end of November, at that time there were 20 external -- 21 external investigations pending and we objected to 20 of the 21. We also objected to the dispositions, and basically what that means is if the officer was exonerated or if

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it was unfounded, we objected to the majority of those, and we also objected to the discipline that was imposed. Next slide, please. I mentioned this already, but bringing it up that it was really important in our role of providing oversight, particularly of an unprecedented event, particularly of an event that caused a lot of community outrage and community questions, we really felt like it was important that we document our concerns early on about what we were seeing with the protest complaints, and this is an example -- this is posted on our website. It's been public since August 12th, about the concerns that we had with -- we identified about seven cases in this memo that we had some serious concerns with. Next slide, please. So just want to go over with you briefly some of the objections and concerns that we had. So, for example, it is not

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uncommon for a complainant not to be able to identify the officer that may have been involved in the conduct. And so when the complainant did not identify the subject officer, those complaints were closed. The -- if the complainant, for example, we found a recurring theme throughout the investigation of categorizing the protests as riotous, acts of riotous behavior, so let me just give you an example. And,

again, this is just an example. If, for example, the -- a protestor was seen throwing a water bottle, then it was determined by the department because that complainant engaged in some form of, quote, unquote, riotous act, that absolved them from investigating any sort of potential misconduct on the officer and those particular cases were closed. If during this time -- again,

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this was unprecedented for all of us, including the police department, they created a separate team that reviewed, I want to say, all of the body cam video from the protest that happened over the summer. If that team reviewed it and did not see any sort of policy violation, then that case was closed. And we disagreed with that, because that review does not replace a full investigation. It's a different type of review, and it is not equivalent to an internal affairs investigation. The same is true of if internal affairs conducted what they called an initial assessment, if they conduct their initial assessment and determined that there was no policy violation, then they closed the case and determined that there was no policy violation and we disagreed with that. And this is not unique to the protest cases. This is unique -- this occurs with any form of complaint that comes through the office of police oversight.

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We don't believe the initial assessment conducted by internal affairs is equivalent to or should replace an investigation. Next slide, please. So, again, this is our preliminary analysis and I want to explain why it's preliminary. Because we -- there were protests that started obviously at the end of may that went through the summer, through the fall. I personally spent, I think, almost all my evenings through that three- four-month period watching protests that were streamed online. I felt it was my responsibility to do so. And so we do have complaints that extended through March of this year. And so we still need to complete that analysis. And so this is why I'm focusing more so on the complaints -- and most of the bigger complaints, the

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high-profile cases, really stem from protests that occurred from may 29th through the first two weeks of June, and those are the ones definitely most council offices were contacted on, but we looked at obviously cities across the country had protests. A lot of similarities in terms of police response. And so I just want to highlight a few recommendations that we will be making to the police department. One, we feel very strongly that the department should investigate all complaints, despite where they originate. We've already pointed out in the second slide the disparity between the internal and external complaints that are investigated. And we think that's really important. We've taken big strides in oversight as a city, and part of that was to increase what was investigated in terms of complaints that come from the community, not to decrease that number. Next slide, please. And this is very important as well, and this is consistent

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with reports that have been issued from law enforcement organizations, I specifically want to point to the Illinois -- actually, the United Nations Human Rights Commission completed a report about guidance on less lethal weapons in law enforcement. And the Illinois chiefs of police issued a report in 2019 about crowd management and these recommendations are consistent with what they have put in their report. Specifically about ensuring that officers' names and badge numbers are visible, even when they're wearing the additional tactical equipment. So you will find that -- particularly with the head gear, at the very least, their badge number should be listed. And this is what we noticed in the protests here where that with the additional equipment officers wore, it covered their names and badge numbers and we think that the department can make some end roads with ensuring that at

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all times officers' names and badge numbers are visible. We also think that it is important, particularly where -- you know, in a state city that is the state capitol, there are protests that happen pretty frequently, that the department should engage in the very minimum semiannual comprehensive crowd control training for all and this is a recommendation, again, from the International Association of Chiefs of Police, not only do they recommend ongoing training, but they also recommend ongoing training in collaboration with other law enforcement agencies, so including our EMS, including our fire department, including, I believe, it's some of the protest DPS was also present, and I think that would help in terms of having more coordinated response. So we think that is very important moving forward to ensure that officers are -- and all officers, because in particular, in the protests that occurred here, we had officers from all divisions that were called.

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And some may or may not have had the necessary training during that time to address the crowd control and the protests that occurred during that summer. Next slide, please. So, again, I do want to reference back to the 2019 report from the Illinois Association for Chiefs of Police that talk about really looking at crowd management policies and connecting them and making sure that the policies take into consideration, you know, first amendment constitutional rights when protesting. And that is also looked at very clearly through that lens. They also talk about -- and one thing that I do want to address that came from both reports was talking about the training that officers should have should include -- that officers should not fire less lethal weapons from the aerial vantage positions. There's a general inaccuracy

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that's innate in that, and that if they do fire from the air in elevated position, it increases their risk of striking someone in the head, and that obviously is problematic. The other thing that we think that is important, given the community outcry, given -- I think council must have heard hours, eight hours or more, of testimony from people who participated in the protests that summer, that we think it's really important that the police department report back to community in a very public way about, you know, what was learned, what will be done moving forward, and how crowd management and crowd control can be improved upon in terms of tactics and communication. We think that that is particularly

important in this situation as it was unprecedented and that there should be some sort of closure and reflection on how the department can improve in

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these situations. I think that's my last slide, and I'm happy to answer any questions from the committee. >> Harper-madison: Thank you very much for that presentation. Colleagues, do you have any questions? It looks like councilmember Kelly, then councilmember Casar? >> Kelly: Thank you for that presentation. You know, there's a lot of really good recommendations here. I'd like to ask a few questions based on those. Number one was investigate all complaints despite where they originate. I'm wondering if you could help explain to me if a complaint comes in that is somebody who heard from someone about what happened, how you might vet that so that you aren't duplicating? It sounds like you already are in the process of ensuring there is no duplication there, but if a complaint is based on hearsay, how do you find that out? >> We actually encourage bystander reports. We think it's very important

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that -- [lapse in audio] -- terms of the interaction with the community. >> Director, we are having some issues with your audio. I wonder if maybe you could mute your video for a moment and see if that works. You're sketching out on us. >> Okay. One second, please. Councilmember, is that better. >> Harper-madison: I believe so. >> Okay. Councilmember Kelly's question was about vetting complaints that may come from second-hand, and what I was mentioning is that we do encourage bystander complaints in terms of when a community member may see something that may not sit well with them, and at least contact our office. I think how we do that, councilmember Kelly, is that we conduct a preliminary review. And what we do in our communication with the public is really ask for time, date and location. And in our preliminary review,

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we're able to obtain what's called body cam video to ascertain -- I don't want to say the veracity, but to see if there are any potential policy violations. When we do this, if we see that there is a potential -- again, potential, because we do not conduct the investigation of violation, we create what's called a notice of formal complaint, and we send that to internal affairs for investigation. If we do not see a potential policy violation, we close it out and we take it a step further. We communicate with the complainant to the extent that we can, because sometimes they're anonymous, and we explain to them why it was not a potential policy violation. And we think that's important, because we think educating the public is a key part of what we do. And so I will tell you, just based on numbers, we may get about 50 complaints a month, and this is approximate, and we might submit maybe 10 to internal affairs for investigation and then maybe two or

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three are actually investigated. So numberwise, you know, we're not looking at many cases actually being investigated. But it shows you that our preliminary review is actually working because we're not

submitting all 50 to internal affairs for investigation. Does that make sense? >> Kelly: It sure does. So thank you for answering. On recommendation number two, you require all sworn personnel working in any capacity to have body camera powered on for the entirety of their shift. I'm curious if the expectation is that officers will have body cams on when taking calls from family, using the bathroom or eating. >> Councilmember, this is in the context of crowd control and protest because we want to capture the activity. And so this is not in the context of, like, regular patrol. This is really limited to protest activity that -- because there were a lot of interactions that occurred that weren't captured in the protest because, I believe, officers were directed to only turn it on when an incident

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was occurring. And by that point, you know, we lost the ability to capture a lot of what transpired during the protest. So that recommendation's specifically towards protest crowd management, crowd control in those instances. >> Kelly: Okay. I -- thank you so much for that clarification. I just have a couple more questions here. On recommendation number 4, I notice that you said use of force. And I know that APD has a policy for response to resistance. And I'm wondering why you utilized use of force and not response to resistance in that recommendation, like just the terminology? >> Yeah, so we don't agree with the term of response to resistance because it presupposes resistance from community members. We feel that use of force is a more appropriate term because it is literal, a use of force. And so it's also common language in terms of -- you know, a lot of our role is educating the public. And the public understands what use of force is. They don't tend to understand response to resistance, so we

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generally have a policy -- I don't want to say a difference of opinion as it relates to verbiage of response to resistance, how it's applied as opposed to use of force. >> Kelly: I understand. So I know that you are really big on education and so I'm wondering if you've had conversations with the community on why APD utilizes the terminology of response to resistance versus use of force and how those conversations might have gone? >> Yeah, I think that those conversations actually predate me. I think that happened when APD changes its policy from use of force to response to resistance, but it's -- I believe it's part of our -- we are releasing a report that talks about our community feedback that we received from our a can't wait analysis that we issued earlier this year, and I believe part of that is in there, but I'll just tell you, most community members really understand the terms of use of force and not response

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to resistance. I think it's more of police lingo that's used kind of more so internally, it's not really understandable to our greater community, but it's essentially we use that, I think, in our oversight world and in the policing world synonymously. But I tend to use them because I want the community to understand what I'm talking about. >> Kelly: That makes sense. I just think it's a good opportunity to really bridge those things in the education portion of the community. So another recommendation, you had seven, was about comprehensive crowd control training. I think that's great, but right now I see an issue with staffing related to patrol vacancies, and we have to have staffing in order to give the officers who are working time off. Have you considered any way to provide this training given our current

staffing situation at APD? >> Well, I think that there's -- given the increase in budget to 442 million that APD just received, I think there's room for that, and I think there's also room to add

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this training as part of kind of -- I'm calling it cle, but it's not cle, but the continuing education that the department provides through the academy of not only cadets but also current officers, I think adding crowd control as part of that is something that the department should implement, because I think that we potentially may see more protests in the future, and I'd like to see the department better prepared and officers better trained to the extent that they can. >> Kelly: I like how you mentioned the police budget because, you know, we did put police budget back in. We fixed it according to hp1900 but we didn't actually add any patrol officer roles to that budget, so I still see that as something that we're going to have to work on, especially with the attrition rate. So I'd like to have a follow-up conversation with you on how we might be able to provide that training to the officers and ensure that we still have roles backfilled so that we're not taking more officers on the street to do

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that training. My last question here is reporting back to the community, recommendation number 10. Reporting back to the community with an explanation of how -- or what it can expect from APD in crowd management scenarios going forward, I'd like to really see that as a two-way discussion. I think that we should protect people protesting peacefully, but also we should have conversations on how we can make that happen in a productive manner so that we don't see things get out of control like they did. All that said, thank you so much for answering my questions. I really appreciate the opportunity to talk to you about those recommendations. And I look forward to how they're going to be implemented in the future. >> Thank you. And I'm happy -- I'll share with your staff, I think you might enjoy the report from the iacp, the Illinois association of chief police on crowd control. I'll send you that later today. >> Kelly: Thank you so much. Thank you. >> Casar: I think your internet started doing better

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part way through there. Do you want to try to come back. First just getting back to the numbers, of your over 200 unduplicated community complaints, you're saying only 27 were ultimately investigated; is that right? >> Yes. And those are -- yes. And specifically, those cases who had a 180, which means that they had kind of like their time frame of ending was the end of November. So like their statute of limitations was end of November, yes. >> Casar: And what you're stating on your later slide is that you objected to the closure of those over 150 complaints with that investigation? >> Yes. >> Casar: And then of the 27 community complaints that were investigated, there was

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discipline -- do you have the number of how many times there was discipline or a decision associated with those 27? >> I have that number. I'm going to have to look at it pretty quickly, but I was -- I think -- I'm going to punch to Troy because pd, you know, they -- it's under their purview to issue discipline, so I

want to leave that to him. But I believe the numbers through the end of December were I believe 11 officers were disciplined in some form from education-based discipline to -- to oral reprimand. I believe the majority of the officers received education-based discipline. >> Casar: And I'll get to the chief here in a second, but in those cases, how many of those did you object to versus how many of those times that you agreed? >> I would say that we objected to the discipline of probably 90% of those cases.

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>> Casar: You objected -- >> We may not have objected to, there was one officer that received a 10-day suspension. And I believe that may be the only one we didn't object to. >> Casar: So of the 27, you're saying you objected to 26? >> I don't want to use the exact -- >> Casar: Or of the 11, you objected to 10. >> Yeah, the 27 is of external complaints, complaints from the community that were investigated. Just because they were investigated does not necessarily mean they led to discipline. So of those that were investigated, we objected for various reasons on the vast majority of them. >> Casar: And then of the 11 where there was a disciplinary decision, you objected to 10? >> At least 10, yes. Yeah. Yeah. It was a very high number. I mean, we had a lot of issues throughout -- at every stage of the protest review and

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process. >> Casar: And just for folks watching or for the media reporting, the reason I ask these questions is because this is the system that we have set up where ultimately the police department and internal affairs chooses whether to investigate a complaint, does the investigations, and then the office of police oversight submits their recommendations. And I think it's important for the community and for us to know when there is a disagreement here or there, but seeing this presentation, seeing disagreements in 10 of the 11 discipline cases and as director muskadin said, the vast majority of the investigated cases is an issue of concern. And the only way we address those issues is if we talk about it here publicly. So I appreciate -- I appreciate you raising that. When you talk about -- I think here you put that you all

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adamantly abouted in one section, I thought those were strong words here. You said you adamant I objected to the practice of disqualifying complaints by administratively closing them. That is into the 27 cases that, is going from the 200 down to 27, is that right? >> That's correct. That's correct. >> Casar: And so in those instances, do you know how many of those instances you had that strong objection of the 170 or so that just weren't investigated? >> I don't know the exact number, but I will tell you that it's probably at least 150. I mean, because there are so many cases that were administratively closed or what we call class D that, I mean, -- and I talked about a couple examples. If a complainant can't identify the officer, we disagree that that case should be closed. If a complainant engaging with

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the department categorized riotous behavior that would be categorized throwing a water bottle, that does not in our opinion absolve internal affairs looking into police misconduct. So we disagreed with

some of the rationale that they used to close cases. And so, you know, that's a lot of what we saw in the admin closed or the class D cases. And that's the majority of the complaints. I mean, it's the majority of them. It's well more than 60% of them. >> Casar: So what you're saying is that in a case where someone felt disrespected or was injured or saw an injury, but they weren't able to identify the officer and they submitted that complaint to your office, the police department could either, in your view could either choose to try to figure out who it was or could just close the complaint?

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And your objection, director muskadin, is you're saying that the police department chose just to close out the complaint and not try to figure it out ourselves? >> Right. If the complainant didn't identify who the specific officer was, the department closed the case. >> Casar: And then what you're saying is that -- so there's those issues, and that's why you have a recommendation about the badge number or the name -- >> Right. >> Casar: -- But also, I'll ask this question of the chief here in a second to give him a chance, but also we -- another recommendation could be for us to try to sort it out ourselves using our own video or information. And then the other question is, okay, if you're saying if a protestor allegedly threw a water bottle, for example, that we didn't investigate whether our response was proportionate and appropriate? >> Right. So if that -- so a lot of -- there's general sentiment that the whole protest, all of it,

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was riotous behavior. So we disagreed with that, because it should be taken as a case-by-case basis. Again, I talk about how I watched the protests almost every single evening. And a lot of it, particularly some in front of the main were chanting, stuff like that, and that generally was considered -- just the overall protest that happens over that summer generally was considered riotous behavior. So if a protestor was doing something that would be considered or the department categorized as riotous behavior just using, like throwing the water bottle, I mean, it could be something else, then the complaint wasn't investigated because of the action of the complainant. And we disagreed with that, because though the action of the complainant may be an issue, it does not necessarily mean that there may not be a potential policy violation on the officer that ia should not

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at the very least investigate. And so that is, you know, a difference of perspective in terms of how we look at the protests. >> Casar: Well, thank you for raising this up. So I'd like to ask the follow-up to chief gay from that so that the committee can get a sense of what the disagreement is. Chief gay, are you here with us? >> Yes, sir, I am. >> Casar: Well, thank you for joining and participating, because this is -- as I said, this is the way our system is supposed to work as we've set it up. So can you address that issue? It seems like the first and biggest issue that was described as adamant objections from opo was the closing of over 170 of those community -- unduplicated community complaints. Can you talk us through the police department's rationale for, first of all, if you agree, that this is why they

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were closed. And second, the rationale for not investigating a complaint because the complainant couldn't identify the officer. And then if you could also talk about not investigating a complaint if the protestor, for example, allegedly threw a water bottle? >> Okay. I'll try -- you may have to remind me on a couple of the follow-ups there, but one is that in just to make sure that on the thousand or so complaints that were made through opo, the normal process that opo follows of reviewing and providing a preliminary review was not done just to the sheer volume. So we did our best to work with opo. We did create a specific task force, because we did not feel that internal affairs could handle their normal workload as well as the sheer volume

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that was generated through the protest. So these were lieutenants and sergeants that had worked in internal affairs in the past and understood the process. So just wanted to go through that piece. All the cases that -- any time we get a notice of formal investigation from the opo is our department looks at that. We look at all the material, we pull reports, we pull videos, we do everything we can to be able to properly classify that particular complaint. The particular complaints that she is talking about are complaints that we reviewed, and after reviewing those, we were able to classify those as, I believe, director muskoudin mentioned a class D, we reviewed the incident and

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did not see any policy violation, so that particular complaint was not formally investigated. Also there is a classification that sometimes she does not that if we do see a particular policy violation and it's a minor policy violation that fits under what we call an officer final classification agreement, which means is you see the action on video, it's pretty clear the officer violated that policy, and we're able to expedite that discipline of that particular officer. So there were cases that involved the officer final classification agreement as well. In reference to the concern about whether or not a person was identified or not, I believe that our department did everything we could to identify officers involved with any complaint that was generated by the opo.

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Just to give you something that was unprecedented is, one, just the sheer volume of body worn cameras that had to be reviewed, so, therefore, we did not want to leave it to chance that every second of every video for the protest from when the protest started through June the 11th, which was the -- which was about the core time of the protests, is every second of every body worn camera of every officer was reviewed during that time frame. That is why you -- we generated 21 formal investigations and although there were other informal related complaints, conduct counseling, field notes of that nature that were also identified during those, but just to give you an idea that there were 5,648 body worn

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camera incidents that were reviewed by this task force over about a four- to five-month period. They were pulled off their regular duty assignment, and that was their primary assignment to do that. As with any use of force incident or any type of incident, those do not go to opo, those are reviewed by the chain of command, so in this particular incident, if a force incident was identified, not only the force review team, but also the chain of command would review that incident and follow the normal procedures. If they found that there was a potential policy violation, whether it be language, neglect of duty, a force incident, those were referred to internal affairs for investigation. And that is where you saw the 21 particular incidents. So I can name probably right here from everything from the

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Howell investigation to several other investigations to where people did not know the officers that actually fired weapons or fired the less lethals, and we were able to in some of those incidents identify the specific officer or several officers that actually utilized less lethal. We did that with every incident where we were notified that there were a concern, whether it be a complaint or not, that we went in and reviewed those incidents to do our best to try to identify the officer. >> Casar: Thank you for that. So I do recognize that we have limited time here in committee, but I do want to -- but it sounds like we're hearing different things. So I really want to just clear it up. So director muskuudin or chief gay if we can keep it short, director, it sounded like you were saying there wasn't an investigation if the officer

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couldn't be identified. Chief gay, it sounds like y'all did try to investigate and identify the officers. Was it a mixed bag? Is there a disagreement? Which one is it and could y'all give us just the very brief summary, because I thought that was one of my three questions and I feel like it's taking about as long as I thought all three might. >> So if the department is saying that complaints were not -- we call them disqualified because the complainant did not identify the officer. I would disagree with that statement. I would -- if the department is saying when they were able to identify the officers, were some of those cases investigated? Some, right, were, right, but, I mean, when we received a finding from a determinate from the department, we responded in writing what our objections were. And so we have several objections of closures for

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various reasons, including the fact that we objected to cases that did not move forward because the officer wasn't identified. >> Casar: Okay. Chief gay, to your -- to the second question about not investigating a case if a protestor allegedly threw a water bottle, and I understand that we've heard in some cases maybe it's a water bottle, in some cases the officer may not know if it's frozen or a water bottle or not, I don't want to get into that. My question is, an objection from the opo is that we should still investigate whether or not we were proportionately responding in those cases and her contention here is that there was just no investigation period because of that. Can you respond to that? >> If we had video evidence to be able to demonstrate what the protestor was doing, as well as what the officer responded, and it was clear that it was within policy, that we did not -- we did not

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do a formal investigation for those. But there were many incidents to where an officer, such as -- said that it was riotous behavior that we did not agree with, and several of those officers were actually part of the officers that were sustained on for violations. So I believe that that's a yes and a no, depending on the situation. >> Casar: What you're saying is in the case where a community member allegedly -- you have video showing a community member throwing a water bottle, you all did not investigate those cases just based on that piece, is that right? >> We did conduct a preliminary investigation into that particular incident and we -- if we were able to -- whether it be through the drone footage, the halo footage, the camera footage from the department, body worn

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camera, if we were able to put that incident together in its entirety and be able to show that the officer's force was reasonable, no, we did not investigate that particular complaint. >> Casar: Director muskoudin, do you concur with that? >> I concur with that, but therein lies the issue, right, which is the review of the policy. And so -- and, you know, as -- I'll just use the term that councilmember Kelly talked about, the response to resistance, so, you know, I think that our fundamental disagreement was that we don't -- we don't agree that the force used was reasonable. And we also don't agree that the act of the community member negates the review of the response by the officer. And so I think that's just a

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fundamental disagreement, and I think that's why we're looking forward to updating pd's policies on use of force/response to resistance. >> Casar: Chair, I'll yield for a second. I had one or two last follow-up questions but I see others have their hands up. >> Harper-madison: Thank you. I appreciate that. I actually -- I'm going to decline to ask any questions. The one that I did have, and I was actually just going to look for some clarification, I did, in fact, hear director muskoudin say out of 202, that 27 were investigated, and I think you got the clarity that I needed there, so I'll decline to ask any other questions. It looks like councilmember altar has a question. >> Thank you. I wanted to first ask chief gay if you could elaborate a little bit more on these officer classification agreements and provide some information on the number of officers that were put in this

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expedited discipline path, that was new information for me and I want to understand that better. >> It would probably take a long time. I can provide you our policy to outline when officers qualify. It's an expedited way. Sometimes the internal affairs process is very lengthy, and so if it fits in a category in the matrix that is between a written reprimand and up to three days potentially off, and we have clear evidence to show, like a body worn camera that the officer did the action and we don't really need to ask the officer if he did it, because it's pretty clear, if the officer agrees to it, meaning that they agree that they violated policy, then they are -- it's expedited and they are disciplined according to our

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matrix policy. >> Altar: And so in the case of the protest, how many of those happened and can you give me a sense of what kind of infractions led to what kind of discipline? >> I'd have to get that for you, ma'am. I don't mind getting that for you, but I don't have that today for you. >> Altar: Okay. I think it would be helpful, and then we would need to understand how that relates to what director muskoudin has laid out to those complaints, because it sounds like maybe a separate path. I'm a little confused about how these work together. Secondly, I wanted to look forward instead of backward, so we have a set of 10 recommendations from our opo on steps that ought to be taken in conditions of crowd control. Of those 10, you know, tell us what APD's response is, these sound like no-brainers, for the most part, for the nonsworn people that we are, I

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think, so what is APD's plan vis a vis each of these 10 to move forward with them and what is the process for them to become policy for APD? >> I don't have them up right now. Today was the first day I looked at most of those recommendations, but I will say I agree with you, that most of those are things that we already have identified as areas that need to be improved upon but we can provide a written response to those recommendations. In reference to training, we agree, although I agree that training does take our time as well as additional funding, but I do know that the mobile field force training is something that we want all our officers to be trained upon and have refreshers upon on an annual basis. So that is something that we've already completed and we will continue to do that.

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But like you said, there are multiple recommendations of equipment and training, which we concur with. But we will provide written responses to all 10 of those, but I think most of those are ones that we concur with. >> Altar: Okay. I would appreciate that. I share the audit and finance committee, and when we get something like this, department -- you know, in this case, it's not the auditor, but the opo, but essentially it's an audit of what -- audit recommendations, given experiences, we do get written responses as to how things are going to be implemented and the timetable detailing that, so if you can provide that as follow-up for each of these recommendations, I would appreciate that. Thank you. >> Absolutely. Thank you. >> Harper-madison: Thank you, chief. Are there any other questions? Looks like councilmember Kelly? >> Kelly: Yes. Thank you. I just wanted to close with -- I'm really glad that we are at

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the table discussing this right now. It's an important, but it feels like an incomplete conversation to me because I, like you, expect APD to protect people who engage in peaceful protest, but at the same time, we have to acknowledge that some people were not peaceful, and it's just as important in the community that they conduct themselves that facilitates nonviolent and meaningful conversation so I'm really looking forward to hearing about the education that the opo's going to do and other ways we can make those conversations happen in the community. Thank you, chair. >> Harper-madison: Chew, councilmen Kelly. The time is well past due to engage in thoughtful genuine conversation about all of

our actions and all of our responsibilities and accountability, frankly, moving forward. So thank you, chief gay, thank you, direct muskoudin for joining us. We really appreciate your time. >> Casar: Chair, I had my hand up for --

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>> Harper-madison: I'm looking in the wrong direction. My apologies. Councilman Casar. >> Casar: That's okay. I just wanted to hold my last couple of questions until the other councilmembers were done. Chief gay, the other issues that were done were raised about the shooting of the lead pellet guns both from a longer distance and from a greater height than is advisable. So can you talk briefly about that? And then also talk about after we saw some of the impacts on the first day, why that continued on the second day. >> First, I would say is that we did learn a lot in regards to our response to the protest. I don't think -- I think as chief manly and chief dracon and others said it was an unprecedented event and there were a lot of lessons learned. I do and can say that we do not believe that less lethals are the appropriate tool to be used in a crowd situation, so

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we have already made the necessary pivots to that. In regards to elevation-type issues that were brought up by director muskoudin, we concur that although we do not train or teach in reference to the elevated aspects, is that is something that we have put into our less lethal training for the future. >> Casar: Just to reference some of the commentary earlier, I agree that we want everybody in the community to be safe and to act as respectfully as possible. Also at the city, we really have the maximum control over what it is that we do and what we choose to do. And I understand that being told basically that your job is to be the equivalent of a human shield around a building is a very challenging situation, and I myself question whether or not that's really the appropriate tactic

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to keeping both our officers and the public safe. But obviously I know that after action report is being compiled by the police department, and I really think that that after action report would only really be complete if you're addressing these sorts of issues that are raised today here, chief, around why the decisions were made around those less lethals, how it was that those were used at those elevations and distances, and to take a real reflective look, self-reflective look about why we wound up with so many complaints. In my view, this conversation is really important for us to have, but just the numbers of the opo disagreeing with over 150 in her words of the about 170 cases that weren't fully investigated and disagreeing with 10 of the 11 discipline decisions, that's just too many. That means that we're off.

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That means that either oversight isn't being -- is being ignored or that those expectations and protocol and -- are -- we have too wide of a gap. And that gap needs to be closed, because what we would anticipate is one or two or three objections, but over 150 of the 170 or over 10 of the 11, in my view, is too many. So coming out of this, I do think coming up with a strong after action report is important. I

think letting the council of the 10 recommendations brought forward would be important, the voters to give additional authority and Independence to opo so there may be fewer instances of some of those recommendations or like that letter not being implemented. We also have had conversations as a council about having our

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police officers and internal affairs do police work, given some of the conversations about needing more police officers, supervising police work or doing police work, we could put them to that work and have civilians do this investigative work, and I think also we could look at our police union contract to see which changes might be appropriate so that we aren't, for example, rushing to complete these investigations in 180 days if the department doesn't have the resources or time to address each of those issues. So I think that there is important work to come out of this. So I appreciate the committee taking this item up. Thank you to everybody, this was a really traumatic event for many people, both working at the city and in the community, and it's important for us to learn from it and do right by people and not just move past it. Thanks. >> Harper-madison: Thank you, councilmember.

[3:11:51 PM]

Okay. So item number two on our agenda, you'd think I'd be ready, we're going to get -- I'm sorry. That was item number two. Item number three on our agenda, briefing on dispatch equity and optimization efficiency study final report and recommendations. I'm sorry? >> Chair, Dr. Escott will be providing the presentation for this particular item. >> Harper-madison: Thank you. Dr. Escott, it's good to see you. It's been a while. >> Mayor pro tem, it's a pleasure to be back to provide you and councilmembers an update on the study that we discussed last time at budget year. >> Harper-madison: We look forward to it. The one thing I will as a time keeper in me is taking note,

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it's 3:12 and we have at least one other item and then a brief discussion on future items, so if we can just make sure to keep it as compact as possible. >> I will be zippy. >> Harper-madison: Thank you. I appreciate you. >> Again, thank you, mayor pro tem and committee members the opportunity to update. If we can go to the next slide, please. Again, this is an update regarding the study that was commissioned by council presented in July 2021 to the city. Again, looking at the equity and efficiency of the dispatch systems and the response to medical related services for AFD and ems, next slide, please. Again, as a reminder, the study included 41 recommendations. Those were assigned a

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priority level, an implementation timeline and then they were grouped by guidelines. What we also did beyond that is to identify those as priority items, which involved equity and efficiency, as well as ones related to revenue generation that had a variety level of medium or higher. Next slide, please. So, again, this is a slide that you all have seen before. Not many updates here, but I do want to focus on a couple things. Number one, we are meeting for the first time with the public safety chiefs regarding this study

later this week. And there's two recommendations that we are going to focus heavily on in this first meeting. One of those is recommendation 9. One of the themes that we saw throughout the study from the consultants, which included experts from EMS, fire, experts in public health,

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finance, et cetera, was that there was a lack of coordination and collaboration amongst the public safety departments, particularly EMS fire as well as my office. So really the early focus is going to be how do we get these teams to work together to collaborate, to develop strategy together, and identify opportunities for consolidation in some circumstances. But also keeping an eye on the equity, efficiency and effectiveness of the services that are provided. We see many of the other recommendations following that initial discussion on how to build that collaboration across the departments. Next slide, please. Similarly, recommendation 34 is the same concept but related to prevention efforts. Again, this one was assigned to medium high priority with a

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timeline of 0 to 6 months and, again, this is one of the early focus from the meeting this week will be how to build that collaborative groups. The first one was related to operations, this one is really community risk reduction initiatives and how we better align those departments with each other to ensure that we're meeting the goals of the community. Next slide, please. Again, this one, recommendation 36, is regarding community education. Again, this is a follow-up to recommendation 34 as I mentioned before. The bill's a collaboration to identify opportunities to implement strategy to achieve some of the equity issues that we know that we need particularly in the eastern crescent of Austin as well as some of the outlying portions of Travis county. Next slide, please. So on the next slides, I have some updates because there's been movement on some of these

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already. Recommendation 39 was consider initiating 9-1-1 telehealth services for lower acuity 9-1-1 calls with a medium level priority of limitation of one to three years. This particular one was fast-forwarded given the surges that we face as well as the winter storm, in that we've already begun implementing this program. This was enhanced by the budget amendment that was passed by council, which added an additional position and three additional paramedic practitioners to further enhance the ability to provide telehealth and in-person services. To date, we've been averaging around 200 to 250 individuals disposition per week through this telehealth effort. Our hope is that we can continue that. We are now - now the hospitalizations and ERs are less crowded than they have been, we're taking a look back, reviewing the current guidelines to ensure that we are doing things safely and to

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ensure that we can scale the current efforts going forward. So this one is well under way. Next slide, please. Recommendation 14 was to revise EMS charity [indiscernible] Policy. This was completed and approved by council on September the second, and we can certainly discuss this later in questions if

there are further questions. I believe chief brown is on the line also if there are questions on this particular item, as well as the other ems related revenue items. Next slide. This slide, again, was to review ems billing practice for commercial payers. This recommendation 15, medium to high with an implementation time frame of six to 12 months. Again, this had to do with some of the issues associated with the comparisons with other major cities. When we look at Dallas, Houston and Fort Worth, which

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are the comparison cities, they averaged about \$802 per private payor in terms of collections whereas city of so we do the calculation based upon the number of transports in 2020. This is somewhere around \$8.3 million if the city of Austin is able to achieve equity with those other cities providing billing for insurance, providers at the \$802. Next slide, please. Recommendation 16 was considered implementing a significant increase for endless transport. This was a medium to high priority with an implementation time frame of zero to six months. Again, this had to do with the amount billed by austin-travis county ems as compared by the peer cities identified in the

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study group. In speaking be chief brown there's a plan for initiating cost of service review for 2021. As you recall, part of the passing of the budget was an increase in the fees for ambulance service. This was an increase which is allowable within the current services that the ems department had, so, again, they plan on a new cost of service analysis for fy '22. Next slide, please. Recommendation 11, consider the addition of healthcare clients expertise to atcms, again, that medium priority level implementation time frame of one to three years. And jasper brown is here for questions related to this one as well. Next slide, please. Recommendation 13 was review atc ems billing practice compared to the others, medium

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priority level, implementation time level, zero to six months, this is part of the process, the initial step being the cost of services analysis and addressing the billing practice as a whole as it relates to that. We've heard before about some of the challenges that are faced in the billing office and jasper brown is here to provide comments on that if there are further questions on those items. Next slide, please. Recommendation 35 was completion of the Austin chief medical officer registration at the centers for medicare/medicaid services. Medium priority level at the time frame of one to three years. The CMS registration process is a medical practice has been completed. There are next steps involved in fully addressing this particular recommendation. The first -- or the next step is to identify an electronic health record. Currently our ems physicians

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and paramedic practitioners utilize the electronic medical platform of ems to document interactions, but that document is not designed to do physician and advanced classified or billing. So we're working in collaboration with a ph as well as public safety wellness to determine if we can utilize a common platform across the clinical services for city of Austin which will then allow us to contract with the billing

service to provide bills, cost recovery for other services that we provide. Next slide, please .
Recommendation number four, this was funded by council for fy '22.

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My understanding is that this position is funded to begin in January of '22, so this one is partially complete. Recommendation six, considers health equity staff member, the office of the chief medical officer, again, this was funded by council through the budget amendment and, again, a January time frame for hiring [indiscernible] There. Recommendation eight was austin-travis county ems and the office of chief medical officer should consider further collaboration to develop ad hoc and static reports for clinical services. Again, the data management position was funded by council in fy '21. An individual has been identified and hired, and will start next week. So that one is in the process of completion already. Next slide, please. There are some additional items that have been

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identified by the public safety chiefs and they're likely to be others that are really high impact items that are going to require significant review, collaboration, debate and consideration before reporting back to this group. One of those is recommendation 1, the city should consider establishing a position of public safety director. This concept was to bring together AFD and ems under this public safety director who would then report to the acm for safety as a means to try to encourage and increase collaboration between the departments. Recommendation 17, AFD should consider implementation of cost recovery program to offset operational costs. Recommendations 20 and 22 were to have AFD and ems consider alternate staffing in particular utilizing civilians as call-takers with supervision of fire and ems

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sworn personnel rather than the current model that utilizes all sworn personnel for these functions. Recommendation 21 is consideration of cross-training AFD dispatchers and medical priority dispatch to allow a buffer when ems is needing backup. Currently there are nine ftes, first shift on the ems side, nine ftes on the fire side per shift, and obviously many, many more ems calls than fire calls. So there is -- in the opinion of the consult Tant groups a need to look into cross-training to alleviate for some backup jobs of AFD the ems side of dispatch center become overwhelm med and calls holding. Dispatch operations into a single emergency communications department. In all of these items on this

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list are long-term planning recommendations and really require a thorough review, input from each of the departments and perhaps consult -- external consultants prior to reporting back to the committee on these particular recommendation S. >> Harper-madison: Anybody have questions? Councilmember altar and then councilmember kitchen. >> Altar: Thank you so much. So this is a study that we first saw in, I think, July or early August around the budget time. And I'm really pleased to see progress. You know, it's very rare that we get a study back and that we're already beginning to see, you know, that pieces are

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funded. My first question is for assistant city manager Ariano who I think is in the chambers. Dealing with ems filling process and also with implementation of the optimization study, I appreciate that this overview is really helping us to see these are the higher or medium high priorities and these are the prioritization what I'd like to know is from acm Ariano, what is feasible. Obviously there's different prioritization on the timing, but I want to make sure that I'm understanding that we gave some direction in my budget rider, but that was a little bit more focused on the

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billing side, but there's some things in here that will help us to transform that go beyond the financial are really key if we're going to achieve our goal of having that additional staffing, et cetera. So -- but I don't know who's in charge because the central problem is the lack of collaboration across -- you know, there are specific things for ems for billing, but there's also this overarching thing. So I think acm Ariano I'd like to understand from you what that report back process is and what your plans are for implementing and going forward. >> One of the things that we'll be doing is certainly to track the recommendations that are coming from this particular study as Dr. Escott mentioned, we have our preliminary meeting with the public safety chiefs, and then as we move through the process, there may be additional departments that may become involved. It's our intent -- it's my

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intent certainly that as we get this off the ground and moving to provide periodic updates to the members of council. I think separately there's a separate process in following up on budget direction and so forth, amendments. However, given the close overlap, if you will, of the information that's within the budget Ryder that you put forward with this information, we will try to make sure that those are covered in both reports, reports related to the dispatch equity and optimization project, as well as that may be required when we do our normal budget tracking for the budget. >> Alter: Okay. It would be helpful if there are even just some regular reports that we can see how this is moving as well, you know, and our budget rider does call for a report to budget and finance which we'll

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get to work with you on scheduling as well. Just really want to underscore that if the fundamental problem was this collaboration, unless there's leadership at the acm level on this moving this forward, it will not happen to the degree to which the potential is, and I really want to underscore that, the potential is great just from the financial improvements alone, let alone all of the health improvements for our community. And then my second question, and then I'll pass it on, to chief brown, you know, there are pieces in here on the ems billing, can you provide an update on where we are at with addressing those revenue fixes for the existing practices, and then maybe say something about the commercial payors?

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I know that we've done the communitycare, I think it was called, piece of it, but there were some just basic things that were going on with the ems billing system as well, and then the commercial payor part, which has a seven to \$10 million list as potential. >> Again, chief brown, austin-travis county ems. First of all, thank you council. The charity care, which passed on September 2nd expanded the charity care program. We immediately put together a team to go back and review this past fiscal year, because we made a modification to the fees for this fiscal year, and that submission to the state is September 30th, and so our team is putting together and will be submitting to the state a final number come September 30th. We anticipate somewhere as the consultant said between four and \$12 million could go into that program.

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There is a portion that we will not receive. They take about 25% off of what you turn in. We will not receive that until October of 2022, which will be for the fiscal year '23 budget. We will know that amount about in August, but the check for that does not come until October. Sew we're already in progress for that and going into next fiscal year, we won't have to do the catchup work, we'll already be ahead of the game, and as the bills -- as the calls are entered into the billing system, if they meet the charity care guidelines, they'll be placed in that program. As far as the commercial payor, we're bringing in the outside consultant, a company called pww, to review our entire billing practices. The consultant group didn't really dive into the billing practices very much, didn't come on site, didn't review all of our billing processes. They will come in and do a top to bottom review of all our billing processes and give us any recommendations, and as soon as they do that, we'll report back to council

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immediately with what we're doing to enhance those billing features to take full account of the commercial pay ability. As Dr. Escott mentioned, we did already increase the fees up to the allowable limit that was our cost of service currently stated and for the -- any persons that are transports from outside of Austin or Travis county to the full building amount allowable, and we'll be doing a cost of service here at the beginning of the first quarter of this fiscal year. So that's kind of an years so that's kind of an update on the billing processes, where we're at, I intend to give an update on cowboy in some of the items that will do through acm arreono's office once we get our final numbers. >> I appreciate that. Our budget rider did call for an update within 30 days, I think we are just past that, hopefully we will

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see that memo soon, also related to the backlog as well, thank you. >> Okay. >> Thank you, councilmember kitchen? >> Kitchen: Thank you and thank you for that update. Thank you, councilmember alter, for following up with that. I think it will be important for audit and finance as you mentioned to really stay on top of that, appreciate the efforts that -- that -- that -- that E.M.S. Is pursuing. It's really going to be a -- a -- I really appreciated the budget rider because -- because I think

it's going to -- be a potential game changer from a revenue perspective. For our city. So thank you all for that. My get, I'm going to turn my question to the telehealth recommendation, that may be for you Dr. Escott. I am also cut excited to hear that we have already put in place telehealth services in the 911 center.

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I'm wanting to understand a lot more details related to that. We probably don't have time for all of my questions now. But can you generally speak? Did I hear you that this is -- already implemented, that it is a pilot at the moment or would you say that you have fully implemented, that's my first question. And then I would like to understand how it is used, in terms of for which calls, for all calls, only in certain times, things like that. So that's a fair amount of questions and I know that our chair has other things that we need to get to, so can you just give me a high level response now, then I would like to talk with you further and get into details on how we are using telehealth in this setting. >> Thank you, councilmember. So it's -- I refer to it as a partial implementation. We have limited staff to support it. So, you know, we can't offer it 24/7 at this stage.

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Primarily, what happens now is that -- is that these telehealth cases are referred to the ambulances who may be on the scene, community health paramedics, in some circumstances referred directly from the call taker. >> Kitchen: Uh-huh. >> So right now they try to identify cases that may be able to be dispositioned without transport to the hospital. You know, some of the frequent calls may be, you know, somebody who needs a transcription or a medication refill, sometimes they have low acuity complaints, so throat. This type of thing. It happens relatively frequently. There are many cases we can actually disposition either with no further healthcare needed or refer them to an urgent care, primary care office for that care which obviously saves a great deal of money to people utilizing that service.

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Our goal is really to have the telehealth resource available 24 hours a day, seven days a week. We anticipate that, once we are able to hire the paramedic practitioners with [indiscernible] As well as potentially working with a telehealth provider to provide some additional coverage that we will offer more broadly. So that's -- that's the goal now. And I'm certainly happy to meet with you in your office to talk about details. >> Thank you very much. I assume that it's physical health services at the moment, right? Not behavioral health? >> That's correct. We're covering physical health, obviously we have -- some other components that are available to provide mental health services, but not part of the program that we're dealing with. >> Okay. That's great. I really applaud you for getting that up and running and will look forward to talking with you further about the details around the

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program. >> Any other questions, colleagues? All right. Well, thank you, Dr. Escott, thank you, chief brown. We didn't get to see your face, but thank you, also, for joining us, chief baker. Acn arreano. >> If

I can go ahead and bring up the first of the presentations. Councilmembers, the fourth item that you have on your agenda relates to H.B. 1535 which records the medical use of low level thc cannabis for certain patients. This afternoon what staff will do is provide an update or briefing on what hb 1535 is and some of the context behind it. And then I've asked staff, starting with the hr department to provide a presentation in terms of the city's drug testing policies, first with hrd to

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cover mostly well, all city-wide employees that might be affected by this. Then to have the public safety department speak specifically to their departmental policies. So with that, I would ask -- intergovernmental relations officer Franco to explain what hb 1535 is. >> Good afternoon, everyone. Mayor pro tem, councilmembers. [Indiscernible] Governmental relations officer for the city of Austin. I'm going to really quickly go through this because I know you guys are pretty familiar with H.B. 1535. Next slide, please. Hb 1535 builds upon the compassionate use act which passed the Texas legislature in 2015 that allowed for the administration of thc to certain patients and also started the -- manage being the licensing of organizations that could

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dispense and -- to those pharmacists that were organized thc, [indiscernible] Prescribed low level thc about 8200 patients listed by their physicians in the compassion gnat use registry. Next slide, please. Next slide, please, thank you. Whether -- we went one too fast. Thank you. Hb 1535 was passed this session to expand upon that law by representative and isn't it true swartner, it expands physical conditions to include those with pros traumatic stress disorder, the bill originally started out to be only post-traumatic stress disorder for veterans, then that language was dropped on the house floor, the language just said for

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veterans. So anybody experiencing post traumatic stress disorder can now benefit from this program as well as all forms of cancer. Prior legislation only allowed for terminal cancer and there will also be medical conditions approved as part of a research program developed in the bill. It increased the level of thc from .5 to 1% by weight. And then it establishes the compassionate use institutional review board to evaluate proposed research programs to study the medical use and see if there's other recommended medical uses of low level thc that should be allowed. Next slide, please. So while this dill was effective September 1, 2021, there's still some rules that need to be on developed by and that's run by the department of state health services to establish that review board and then dps will also have to amend its

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rule regarding the cultivation, processing, dispensing of the low level thc. Those haven't come out yet, they are in process for this bill to really have the full effect of the law. And I think that's the last slide and I will now turn it back to -- to acm rey Arellano. >> While we're bringing up the second slide that will

have all of the slide for the departments that I have mentioned, I will introduce director Joya Heys from the hrd department. >> Good afternoon, Joya Hays from human resources, I wanted to provide some information relative to how this impacts our alcohol and drug programs, give you a little bit of details about the hrd process for non-sworn employees for alcohol and drug testing. If we could move to the next

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slide. So for the city of Austin's program we follow the federal department of transportation regulations for drug testing. So certainly this process is for transportation-related type jobs, which include several different types of work and this is for our commercial motor vehicles. So those who are driving on the road but also who -- who are responsible for the management of heavy equipment or -- are under this federal guideline. These regulations do apply to our regular employees. Any temporary employees in these key positions, contract employees, are also included. But sworn personnel are typically exempted and they have their own separate processes. So today as I go through this portion of the presentation, this only relates to non-sworn staff members. As we look at this, we tend to owe the 10 departments that currently fall under our system based on their jobs and responsibilities include Austin energy, aviation, library, other departments that you see

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listed before you. I will note that the types of jobs that are included in this range of job titles includes arr operators, pipeline distribution, electricians, those type of positions, those are the kinds of jobs in those departments that are covered. The types of tests that we do at human resources include preemployment, post accident. So every time the employees that are covered under this regulation get into any type of accident, there is an immediate test done post-accident. We do have a random process set up, we do random testing on a monthly basis. Reasonable suspicion, while not done often, the regional suspicion is based on key characteristics that trained staff would then identify to see if that person's behavior and disposition suggest that a test needs to be given. Of course, those who are coming back from -- to

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return to duty. Those are the types of tests that we do on non-sworn staff. Based on the federal department of transportation ruling. The test that's we complete and -- the tests that we complete, then again let me note that because this is a federal regulation, the -- the -- no state or municipal law or governance would -- would pre-empt us from continuing this level of test on those employees who qualify in these levels. So we do test for marijuana, we do test for cocaine, amphetamines, pcpc and -- there have been some potential questions as to whether or not we have the capacity to really understand the difference between the hemp based levels and those of marijuana based and unfortunately, as our -- as we do our testing we don't

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really have the capacity to tell the difference. It's difference in both quality and composition, really no laboratory means to segregate marijuana positive from hemp positive. There is only thc positive from the federal testing problem. I did want to bring clarity to that piece in case there were questions approximate in our capacity to distinguish between the two in our current testing. That kind of covers the information from the hrd cited. >> Thank you, director says. [Indiscernible]. >> Good afternoon, councilmembers. Committee members, mayor pro tem, this is chief Joel baker for Austin fire department. One thing about the thc and drug testing, we have a collective bargaining agreement, article 24, that spelled out drug testing and what it means and the submission of using the

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urine byproducts of chemical analysis to test any type of prohibited substance abuses and this is regulated by the code of federal regulation [indiscernible] 87, but each drug that the hrd discussed, they have a specific level that we test for. It is in line with the zero tolerance policy that each member is aware of to spell out the results or consequences for using illegal drugs, unprescriptionalized drugs. It was important to me back in March 15th, 2019, I was made aware that some members made me aware there's a possibility that some of the vendors out there, or stores out there, [indiscernible] May have CBD oil in it. I wasn't sure on how to measure the difference between CBD oil or thc. So we met a memo out warning our members again about the policies that we have in place to make sure that everyone understand the

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importance to make sure that they are not using any forms of drugs and what the consequences are. That's the only slide that I have. >> Thank you. >> Councilmembers, mayor pro tem, this is chief of staff Troy gain. Like the fire department, we also have this particular aspect in our police contract. It is under article 15, which also defines the definition, also at the beginning of section 1 of article 15 its officers may be called upon in hazardous situations without warning and that that it's imperative to the interests of the officers and the public to ensure that the officers are not substance impaired. Because of that, with he do have both random as well as drug screening for certain assignments, such as organized crime or special

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divisions unit or operations unit, swat, as well as our professional affairs division. We also do testing for all of our critical incidents. Those are officer involved shootings. Did want to -- I listed down here the types of tests that are done and when those are done. There's the full test as well as the random drug tests, the five panel, then the full five panel which has some additional. But that is all that we have regarding this particular testing. As the fire department we also put out a memo because of the concerns with CBD oil. Some of that which is -- unregulated and does have thc so in reference to letting our employees understand our zero tolerance to the drug testing. I did want to point out is

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that in our drug testing, when it talks about the tests have to be confirmed, there are employees that -- that have types medicine, so that is where we get on the -- once that's confirmed, that is not sent to our department as a positive drug test result. But it's the ones to where they do not have any prescriptions for that particular education in their system. Thank you very much, I appreciate it. I will pass it on to -- to E.M.S. >> Good afternoon, mayor pro tem, councilmembers. Jasper [indiscernible], Austin Travis county E.M.S. Chief. Like the other departments, article 14 in meet and confer agreement talks about the random and post-accident drug testing that will occur. Also reasonable suspicion and we follow department of transportation 49 cfr [indiscernible] Which calls out the laboratory levels on

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the five substances that are being tested for, which I list at the bottom, marijuana, cocaine, am feet amphetamines and pcp. It talks about zero tolerance and what calls out a positive test. As chief gaze mentioned, if a medic has a prescription for a -- for something that shows up in the laboratory tests and it's all done by a medical review officer, over at St. David's [indiscernible] Health who is a vendor, we never know or see any of that. If they have a prescription, then it is shown as a negative test and we would never know about any of that. To try to keep the patient confidentiality between what they are -- what they have between their Dr. And items. We also sent out a memo about the same time as the fire department, I think the

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Austin fire department did, relating to the CBD oil and buyer beware. As others have noted CBD can be sold in all kinds of places, at the time it was unregulated and there's no -- no guarantee of how much TRC could be in those products so we made our members aware. That's all that I have. >> Councilmembers, that concludes the staff briefings. So certainly welcome to hear the conversation that you would like to have and if -- if you would like, we can also take down the presentation. >> That would be great, thank you. I will entertain questions from my colleagues. Actually, I have four questions. And so I will defer to my colleagues for the moment. But I just want to make sure that everybody is aware of the time. It's 3:53 P.M. Colleagues, do you have any questions? Looks like it's me. All right. So -- much um -- first

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question is -- will first responders have access to this medicine without risk of punishment? Acme, I wonder if you might be the most appropriate as opposed to having each chief respond. >> I think this is something to be explored. What the chiefs have described there are certain circumstances with -- when providers have a prescription. That when they are positive for a certain drug that is a prescribable drug, that it may then be classified as not a violation so to speak. I think there's some implications that need to be further explored with regards to credentialing as an example for our medical providers. And I would think depending on the ill answer that's going to be treated, I don't have all of the details that low level thc for certain

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patients, could be that there's a patient undergoing a significant medical issue that would then place them out of service to to speak where perhaps other treatments can be explored, one of which could be low level thc, but again I think from an operational perspective we would have concerns that would need further exploration. >> I appreciate that. My hope is that the I have the opportunity to participate in this national league of large cities, convening, we meet a couple of times a month. It's very helpful to hear from other comparably sized cities with similar challenges. Something that I find interesting is a lot of those cities are in states where medical marijuana -- where marijuana use, recreational or medical are legal, in which case I hope that we will take the opportunity as we are doing this exploration to talk to some of our peer cities where -- where it's legal and how do they go about and do they, rather, test first

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responders. My second question is E.M.S. Participates in the Texas compassionate use program also known as cup, after ... Can be prescribed medical TRC with no ramifications, is that correct? I believe that's probably for chief brown. >> Chief brown, if you would perhaps address that first, go ahead. >> So -- so I -- to be prescribed under the new law as -- that's just laid out, I don't know that they can be fully done yet because of the -- of the rules that haven't been created yet. But that would be the process for somebody to go through is to go to a Texas compassionate use physician, be diagnosed winter one of

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the ailments and then a prescribing physician who would actually do the prescription. I believe that's the process for it. I don't believe as Ms. Franco laid out earlier that it's fully enacted yet because of the rules that have to be developed. I think that hopefully answers your question. >> It does, but then also -- it also gives me more questions, you know. Recognizing that we often participate, especially because we do have the privilege of having a liaison like Ms. Franco working with and/or for our interest as a municipality, we saw this coming and I'm just curious why we didn't -- why we didn't pre-empt the preparation process, but that's not a question so much as an observation. So -- so -- I think that you actually answered my second -- not quite. E.M.S. Must follow up with the doctor after the first two months and then afterwards every four months. I think what you are saying is none of this is currently in place? But I did have a question

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about the frequency, that every four months frequency. Can you answer that question now or should I follow up with you later? >> I believe what you are describing is the exact process when somebody -- even under the previous regulations, that they are -- they have a follow-up period of two months, then four months where they have to go back every time. Approach to continue that. >> Yes. So the question is can you explain the rational behind the frequency, the every fewer months frequency? I believe that's the rules that are set up by the health and human services. That's not something that I set up or the department or the city. >> Harper-madison: In which case who would you recommend we talk to, to get

clarity there? >> You mean to the purpose? Of the -- of the frequency or -- >> The rationale behind the every four months frequency? >> We could probably go back

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to health and human services if that's the appropriate body that created the rule and asked that question or we can see which body would be the appropriate one? >> That would be helpful, thank you. My next question is currently E.M.S. Uses your analysis test whereas a positive result shows up after six hours of use, rather than an oral screen which can screen for results after 30 minutes of use. Why is Austin still using methods that can be altered is the question. I guess the -- the additional question there is do other comparably sized cities use the same method? Or are we behind the mark? >> So I can answer that question in 2018, we -- the association did bring forward the swab testing of the mouth, oral swab testing. There wasn't any other major city or municipality that was utilizing oral swabs at the time.

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We only found a very small market of personnel that were using oral swabs and it was basically in -- probation type where they were testing people that were out on probation and for -- for drugs. There was also some -- some -- not the ability to test for everything because not only the five panel test, but we also test for everything that we carry that's prescribed by the doctor. Dr. Escott. So that wasn't fully available at the time we did the contract so we stuck with urine testing instead of oral swab testing. >> Harper-madison: Would anybody else like to elaborate on that? Okay. Well, with that, that was -- that was the last -- >> Casar: Sorry mayor pro tem. I thought you were asking to elaborate on that question or further points? >> Harper-madison: That question. >> Casar: The whole item? >> Harper-madison: What about on the whole item itself? >> Harper-madison: Feel

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free. >> Casar: I just want to make sure because it sounds like we have talked through about multiple programs. I want to make sure that I have this sort of summary right. So -- so whether it is under current programs or the new rules that are in development, if you have a prescription, we are saying here clearly that -- that that -- there's no discipline associated with that. But then the -- but then if -- if someone unintentionally because of an energy drink or anything else, lines up with -- winds up with CBD in their system, you are saying you have put something out to your departments that is on the employee to -- to guard against? Is that right? >> I think -- >> Casar: [Indiscernible] CBD, that could potentially still be an issue? >> If I could just say back to you differently. In the -- in the case of a prescribed -- if someone has

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a prescription for low level thc, I don't know necessarily that we have done the exploration or evaluation as to whether or not that's consistent with what we do for a -- for some of the other controlled drugs, whether that would be okay. I mean, again, this is something new. I would want to go back and make

sure with -- with our medical experts that there's no issues with that. But that -- it would seem to me that probably after some exploration, perhaps, we would treat it just like any other drug that's prescription. >> Casar: The answer is that's not done yet. Okay. The point being my sense of what you are trying to evaluate is if you legally take painkillers, we say that is okay because you have that prescribed. But there might be some limit or some way to evaluate to make sure it doesn't cause impairment on the job with our legal use of those painkillers, for example. Similar issue that you are looking into it. Okay. And then -- then on the

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issue of -- of winding up with -- with sufficient CBD use that is legal, currently that is something that our employees should -- could potentially have a concern about or need to watch out for. >> Right. Again, I think in terms of -- again, I don't know that CBD oil is something that is prescribed or something that you can just get -- >> Over the counter. >> So if somebody pops positive for thc without a prescription essential that would be cause for a concern and appropriate processing as discussed or described by staff here. >> Casar: My general take on this is just that -- that -- is that I think it's something for each of our departments to be looking at. One. Just somebody being worried as chief baker mentioned to be like looking through products that they could just pick up at the store at this point, I just would want us to be really careful about not potentially losing talent we have nurtured for a long period of time over

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something potentially unintentional like that. I think that's really something for us to look at. I think that's also the sentiment that I was getting from the mayor pro tem and others. Then, also, you know, just making sure that -- this aligns the best we can with our values, you know, we want folks to make sure that they are -- fit for the job. And ready to do their work and certainly if somebody is inhibited in any way at work, that we have testing probabilities for that, but -- protocols for that, but as a community for us, employee, civilian side as described by director hays and our public safety employees, we are testing to see if somebody had three beers at a cookout on Saturday and we are aren't dinging them for something on Wednesday or Thursday if it has no impact on their job. So I think that's just really something for us to look at. But I feel like that's a third tier. Tear 1 I would like to hear

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if there's any medical reason if somebody has a prescription why we wouldn't treat it like any other prescription. That seems really clear to me. It would surprise me if we heard from our medical personnel -- to me the second bucket of unintentionally consuming a perfectly legal substance that you can pick up at the convenience store, I would really hate for somebody to be -- wind up getting in trouble for something they may not have known anything about. Then in this third tier as it relates to non-legal use, or potentially legal use in a state where it is legal and -- and somebody getting dinged for that, I think it's just something for us to be looking at because we are not like looking over, you know, to see whether somebody went too Colorado and had a few beers or went to Colorado and smoked marijuana. I just think that might be something that we should continue to consider as we have this conversation.

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>> Harper-madison: I appreciate that line of questioning. And it brings me back to -- to my sentiment that I was going to express which is I certainly hope that we are taking the opportunity, certainly not -- I appreciate that director Hays was here with us. Not just sworn, but I certainly hope that we take the opportunity throughout the course of this evolution, especially with this new legislation 234 place, we are going to take the opportunity to very quickly figure out what next steps look like. It feels like we are reacting as opposed to having been proactive. That always worries me. I think reactionary behavior almost always leaves something out, that's a certain for me. My hope is that we can have some pretty clearly defined timeline as to, you know, as this new legislative session is taking effect and going into place, that we know exactly what it is that we intend to do with our city of Austin employees as it pertains to how this

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legislation might affect their employment. >> Casar: Mayor pro tem, do -- I agree we should have a timeline, but do we have one at this point yet? >> One yet to be established. >> Casar: That would be great to know. I just got a note from my staff that there are folks that they know of that already have prescriptions in hand, sounds like we are already behind. So it would be really -- if that turns out to be the case that some folks have prescriptions in hand today, it would be great if within the month we could ask our medical folks if this is any different than painkillers that we allow folks to take or whatever they are prescribed when they are on the job. >> I think a month is generous, obviously. So yeah. Any other questions, colleagues? Or any other folks on the -- on the big screen? Director Hays, I do have a question for you about how this potentially affects your position. Again, I'm going back to --

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to cities and states why -- why cannabis consumption is totally legal. Do you have any idea what comparatively it looks like in those states? Given our prohibition. What's the difference, you know, from an hr perspective? Especially with something -- I guess that I will be really clear. Especially with something that is -- councilmember Casar made reference to a beer. But like a beer is in your system for 24 hours, you know. But cannabis consumption, you know, even if you are not technically impaired, with a urinalysis especially you would test positive for cannabis as opposed to the oral swab that sounds to me more accurate. So I am a little confused as to why we defer to the urinalysis. Just curious, have you heard anything from other cities from an hr perspective? >> Yes, I will do some additional research just to make sure. Can you all hear me? >> Yes, ma'am. >> I will do some additional

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research to make sure. But because we are under title 49 of the code of federal regulations, even if a state makes it legal from a state perspective, this federal law still trumps that as it relates -- no pun intended as it relates to the work of regular, temporary and contract employees in areas that are working in the commercial motor vehicles. So this law does not change those federal regulations, even in those places where states have legalized it. We still are required, so I can check with Denver and other

places, but it's my understanding if you are a commercial driver or a commercial motor vehicle and you are in positions that require you to do that work, you are still subject to these regulations and a prescription for those would not allow the opportunity to continue to work in those spaces without continuing the random testing. So those employees, if they are having to do that, would have to go through the Ada process to move out of those -- those positions

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temporarily in order to complete those -- those terms of treatment. >> Harper-madison: Thank you, that's very helpful. Colleagues, any other questions? Councilmember Casar? >> Casar: I just appreciate the conversation, everybody looking into it. Just for the press and other folks watching, I think it is just important for us to emphasize this is also just about the health of our employees. You know, people that have PTSD and, you know, it has been proven this is a method which we can help address people's PTSD without relying on as damaging or as so at the end of the day, this isn't just -- just about recreation. I mean, in part we really in some ways are talking about the health and wellness of? Of our -- some of our own staff. Many of us know people who have suffered from addiction for other drugs. I think this is an important

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step that the legislature has taken and I think we should be thinking about how to do the right thing about our staff on this. >> Harper-madison: I think the only other thing we were going to cover is potential future other items. But now it's 4:11, so without objection I will call this meeting adjourned at 4:11 P.M., thank you, everybody.