

## Late Backup

February 28, 2013

Hon. Lee Leffingwell, Mayor,  
Hon. Sheryl Cole, Mayor Pro Tem, and  
Members of the City Council  
City of Austin  
Austin, Texas

Via E-mail and Hand Delivery

RE: Request to postpone or vote "no" on Agenda Item No. 18, a proposed ordinance amending the City's project duration ordinance and "declaring an emergency"

Dear Mayor Leffingwell, Mayor Pro Tem Cole and Members of Council:

Please postpone any action on your Agenda Item 18, a proposed ordinance amending the city's project duration ordinance and "declaring an emergency."

In the alternative, we ask that you vote "no" on the proposed ordinance until there is sufficient time for the community and, at minimum, the City's Planning Commission, to review and comment on the proposal before a decision is made.

The proposed amendment, if approved, would have far reaching effects on the City's ability to manage growth and to protect water quality, public health, safety and the environment. Such a giant leap should not be made without careful deliberation and the consideration of both the consequences of such an action and potential alternatives to the proposed action.

We are aware that in a recent Opinion the Attorney General has stated, with regard to the City's current expirations, that "A court would likely conclude that the Ordinance provisions about which you ask are void because they conflict with chapter 245 of the Local Government Code." The opinion was based on a general hypothetical question without regard to such facts as whether a particular expiration was in effect prior to the first application pertaining to a particular project. The opinion is the sort of advisory opinion in the absence of any facts or dispute that our courts are forbidden to consider. No rash action based on the opinion is justified.

We are not aware of any emergency that would warrant bypassing the normal City ordinance adoption process and declaring an "emergency." Neither the ordinance nor the back-up have provided evidence of any such emergency. We see no significant harm that would flow from a postponement of a few weeks; conversely, the consequences of acting hastily could be severe and far reaching in both time and harm done to Austin's public health, safety and welfare.. The actual results of the proposed action have not, as far as we know, been evaluated by staff or interested stakeholders.

Finally, we note that as project sponsors claim "grandfathering" for decades on end, the legal arguments against what is, in effect, perpetual grandfathering, grow stronger. This is

