

City Council Meeting Transcripts - 3/21/2013

[10:14:34]

>> Good morning, I'm austin mayor lee leffingwell, we will begin today with the innovation from john atkinson lead pastor at the edge community church. Please rise.

>> Thank you, may, members of council. Would you join me in prayer? Our father in heaven, we thank you today for this beautiful day to serve you again in this great city of austin, texas. We thank you for life and for the opportunities that you give us each day. We thank you for this council, we thank you for your mayor, our city manager, we thank you for each one of their lives and the abilities that you give them to come and carry out the duties for which you have called them. We pray that you have blessed them with wisdom, that only comes from you. For you tell us in james 1-5 if any of us lack wisdom to ask from you god who gives generously to all without finding fault and that you would give it to us. So, lord, we ask you today for wisdom over this council. We ask you to prepare them for every decision that they need to make. We pray that you would lead them in wisdoms instruction for in proverbs you tell us that wisconsin's instruction is to fear the lord and humility comes before honor. We pray in great refuse ran to you in everyization that you made. We pray that leadership would be led in humility so that we can follow their leading. We pray that you bless each family member of our mayor, city manager, every member of council today. We pray that you would guide them and lead them. We thank you for your emergency services personnel over this great city, for the men and women of the austin police department, for the men and women of the austin fire department, for the men and women, lord, of our emergency medical services. We thank you for the services that they provide to protect each of our families, each and every day and we ask yr protection over them as they serve and protect this great city. We thank you for the school teachers as they lead our children into the next generation of leaders that would follow us. To lead this great city. We ask you once again, your blessings, over this council meeting today and we ask all of these things in jesus name, amen.

[10:16:57]

>> Amen.

>> Mayor Leffingwell: Thank you, pastor, please be seated. A quorum is present, so I'll call this meeting of the austin city council to order. At 10:08 a.M. On thursday, MARCH 21st, 2013, WE ARE Meeting in the council chambers, austin city hall, 301 west second street, austin, texas. We'll start with the changes and corrections to today's agenda. Item no.5 has been withdrawn. Item no.7 at the phrase recommended by the electric utility commission and the resource management commission. Item 13, will be heard together with item 14 and add the phrase "related to item 14." Likewise on item 14, add the phrase "related to item 13." Item 22 will be set for a time certain of 4:00 p.M. Or after. That is by request of councilmembers morrison and tovo. Two items, number 29 and 30

-- add the phrase "recommended by the electric utility commission." Item no.41 add as a second co-sponsor, mayor pro tem sheryl cole. Item no.44, will be postponed until ma 28th, 2013. By

the sponsors. Will item no.67 at its 4:00 p.M. Time certain this item will be withdrawn. Our time certain items for today at 10:30, we have two briefings. First on the parking reduction incentive pilot program and second on the air quality program recommendations. At 12 noon, we will have general citizens communication. At 2:00 p.M., Our zoning matters. At 4:00 p.M. Our public hearings. And at 5:30, we'll have live music and proclamations and the musician for today is susan arbuckle. The consent agenda for today is items 1 through 48 with several items pulled. And the clerk will show me voting

-- correction

-- that item has been pulled. So the consent agenda is items 1 through 48. I will read item 32, which will remain on consent. Those are our appointments to boards and commissions. It will remain on consent. To the commissioner on veterans affairs, bill McLELLAN IS MAYORAL'S Appointment. To the community development commission, brian walters is mayor leffingwell's appointment. And waivers we'll approve a waiver of the residency requirements in section 2121 of the city code for bill McLELLAN'S APPOINTMENT TO The commission on veterans affairs. Following items were pulled off consent. Item no.10 is pulled by mayor leffingwell and councilmember riley. Items 36 and 40 pulled off consent by councilmember riley. And item no.27, pulled by councilmember tovo. The following items were pulled off consent due to speakers. Items 21, 22 and 41. So that is our consent agenda. If there are no additional items. Mayor pro tem cole?

[10:20:41]

>> I would like to

-- the clerk to show me recused on item no.11. Mayor pro tem cole will be recused on item no.11.

>> Mayor?

>> Councilmember martinez.

>> Martinez: Sorry, mayor, I was trying to write down, did you say 21 is pulled?

>> Mayor Leffingwell: No, item 21 is on consent.

>> Morrison: Mayor? We have a yellow

-- version for item no.35 and I don't understand what's changed and so

-- so I

-- either if we could talk about what's changed it could stay on consent or if you would

--

>> Mayor Leffingwell: Let's pull it off consent. Item 35 is pulled by councilmember morrison. So far we have one speaker signed up to speak on the consent agenda, that is clay defoe. Clay defoe here? Not here. I will entertain a motion on the consent agenda. Councilmember morrison moves

-- councilmember martinez moves approval. Councilmember morrison seconds. Councilmember spelman.

>> I will vote on the rest of the consent agenda, please show me voting no on item 25.

>> Mayor Leffingwell: Clerk will show councilmember spelman voting no on item 25. All in favor of the motion say aye.

>> Aye.

>> Opposed say no. Passes on a vote of 7-0. So now we'll go to our two non-consent items.

Items number 49 and 50. Item no.49 is to approve on second and third readings of an ordinance amending city code chapter 25 pertaining to downtown off street parking and loading requirements. Public hearing has already been held and closed on FEBRUARY 28th. I will entertain a motion for approval. Councilmember spelman so moves. There is a second? Seconded by the mayor pro tem. All in favor

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[10:22:55]

>> mayor?

>> Mayor Leffingwell: Councilmember riley.

>> Riley: I would like to offer a couple of amendments, just a couple of cleanup amendments. I am very

-- very quick.

>> Mayor Leffingwell: Friendly amendments?

>> Riley: Yes.

>> Mayor Leffingwell: Okay. Go ahead.

>> Riley: The first would be in part 5, paragraph a 4, there's a reference to

-- to

-- it says except for parking [indiscernible] downtown zoning districts, this relates to the need to file an administrative site plan when a business wants to make parking off-site available to its customers. Right now, that

-- it is a cumbersome process and it would be clearer and simpler if we were just to change the word existing to off-site accessory parking. So that if someone wanting to do off-site accessory parking would not need to go get a [indiscernible] administrative site plan in order to make off-site accessory parking available to customers.

>> Mayor Leffingwell: Councilmember spelman, mayor pro tem?

>> Spelman: Excellent idea.

>> Cole: Agreed.

>> Mayor Leffingwell: That's accepted.

>> Riley: Next, there is language that we have worked out, as we discussed the last

-- at the last meeting, there was concern, continuing concern about the idea that we would be imposing a cap on the parking. I think especially a concern on the part of the mayor. We have met with the downtown austin alliance and had further discussion about how exactly we could approach that. And we have worked out something that I would be willing to agree to that i think addressed those concerns. We may offer this. We would offer language to say that the

-- that the maximum number of parking spaces allowed under subsection b 3, by the way this would appear in

-- in part

-- in 25-6-591 part 6. It would say the maximum number of parking spaces allowed under subsection b 3 of this section shall be increased by the director if all parking spaces are contained in a parking structure and the total number is less than 110% of the number of parking spaces that is established in appendix a to

-- that addresses the mayor's concern about imposing a cap. Two, that the maximum number of parking spaces may be increased if

-- if the number of parking spaces is greater than 110% we have the language here. Three may be increased by the land use ... Off-site parking are satisfied. So this is just simply a way of saying if you are providing something that's in the ballpark of what our code requirements are, then we will allow that. If you are going way beyond that, then we may or may not allow that and then in any case the land use commission has the authority to increase the limit if certain conditions are satisfied.

[10:25:57]

>> Spelman: But only in a garage, is that right?

>> Riley: That's right. This is agreeable to the downtown austin alliance and I believe it

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>> Mayor Leffingwell: That's an excellent amendment, council member thank you for that.

>> Spelman: Let's do it.

>> Mayor Leffingwell: Mayor pro tem? All in favor

-- you'll furnish that language to the clerk.

>> Riley: Yes.

>> Mayor?

>> Mayor Leffingwell: We're voting on this item, yes.

>> Morrison: I have other amendments to propose.

>> Mayor Leffingwell: Councilmember morrison.

>> Morrison: So I have three issues that I would like to bring up. One is do we have a motion on the table? That I could be [indiscernible] yes, okay. One is that we've got some feedback from the mayor's committee on people with disabilities and there was a, you know, we had raised the issue of what's going to be happening to the number of disabled parking spaces under this. They actually provided a recommendation to us. I hope all of you have seen it.

>> Spelman: I have not seen it.

>> Morrison: They were concerned about high pressure accessible parking spaces are required, it had originally come to us at 6,000 feet, minimum of 6,000 square feet. Under our discussions on the dais it got changed to 12,000 square feet as a minimum, so we're talking about the difference between whether disabled is

-- parking is required for buildings between six and 12,000 square feet. They preferred and recommended that we go back to the 6,000 square feet essentially and then also to allow onstreet accessible parking within 250 feet to count for the requirement as opposed to on street counting toward the requirement within 1,000 square feet. I mean 1,000 feet.

>> What was the first number.

[10:27:58]

>> They are proposing 250.

>> Morrison: If you are going to use on street parking for disabled parking, they prefer that it be within 250 feet as opposed within a thousand feet. So I would like to propose, I will propose them separately, we could take a vote on them, to adopt the recommendations from the mayor's committee on people with disabilities. So the first would be to change part 6 of subsection b 2,

change 12,000 square feet to 6,000 square feet. That's my motion.

>> Riley: Just a question. The idea is that anyone proposing a use for a building area than 6,000 feet would be subject to the same requirements that we have now for providing parking of all kinds?

>> No. I believe that this

-- let me double check. This change is really just to adjust for disabled parking. If mr. Zapalac, do we have hear him? Yes.

>> Yes, councilmember, that section only deals with the parking requirements for the disabled.

>> Morrison: So this would just change disabled requirements for buildings

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>> can you state the language of the amendment again. What section are we talking about?

>> Part 6, subsection b 2. There's a reference to 12,000 square feet in subsection b 2. That 12,000 would change to 6,000, so it would read and offstreet motor vehicle parking ...6,000 square feet or more regardless of whether any other parking is provided on the site.

>> I

-- and if I may, we have heard

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[10:29:58]

>> councilmember riley?

>> We have heard concerns from owners of smaller existing buildings downtown that

-- that they are simply unable to provide parking on site because the buildings were not originally built with parking and so they

-- if they are required to

-- to provide accessible parking with uses greater than 6,000 square feet, there will simply be no additional use at all? The building will continue to stay

-- will

-- just will not get that larger use and that is

-- that's the concern.

>> Yeah, I understand that concern. Also, there is an alternative available to those folks and that is to provide the disabled parking on street. And right now, it's crafted at on street within a thousand feet. And they are recommending actually changing that to 250 feet, but that's a different

-- different issue that I want to address separately. Mr. Zapalac, am I stating that properly? That for a

-- for say a 7,000 square foot building downtown, if they were required to have

-- my guess is they would be required to have one disabled parking space, would they be able to provide that on the street as opposed to on site?

>> Yes, that is correct.

>> Morrison: So that i think that's a nice way to be able to balance the priorities that we're trying to balance.

>> Councilmember riley?

>> I believe that

-- that sounds fine to me. I would

-- I would suggest that
-- that consider approving this language on second reading only so that we will have a little more time to see the final language before it's approved. We only recently got this language, now with these changes would be helpful to have a little more time before we give it approval on third reading.
>> That's a great idea.
>> Councilmember spelman is the maker of the motion.
>> I will happily accept the friendly amendment for second reading and the friendly amendment for 6,000 square feet on second reading. I would like some more information as to why 250 feet rather than a thousand.
[10:32:09]

>> Morrison: I'm actually just making one motion on the 6,000 versus 12,000, i will do a separate one on the 250 versus 100.
>> Spelman: Before i accept the first one, I have a question for mr. Zapalac. George, remind me of the procedure by which a private entity would purchase a publicly available space for disabled parking.
>> As the amendment is drafted, they would not have to purchase or reserve that space. If there were a space available within the specified distance that pace could be counted towards the requirement. It would not actually be reserved for that business or designated in any way. It could be used for any business. But it would count towards the requirement. Approximately how many disabled parking spaces do we have on the street downtown now.
>> I'm sorry, I don't have that information.
>> Okay. Seems to me if there is a way of just counting them up, it would be helpful information for us to know what areas of downtown are currently covered within 250, a thousand feet, something in between, by disabled spaces and how much practical effect this would have on -- on what a business would have to do or what the government would have to do in order to make this work out. Is that something that you can do in two weeks.
>> Yes, I believe so.
>> [Indiscernible] is saying no, george is saying yes, who do I believe here? I know rob has a lot of other things to do.
>> Common robert spiller, atd. We actually manage the on site spaces. Our on street provision of parking for persons with disability is in flux right now, as it is for the entire nation. The rules governing on street parking are in the process of changing, they are actually going to be changing under a body of language called pro ag, please don't ask me what the acronym means. It's immaterial.
>> Spelman: I don't care either.
>> The point being that regulation will actually require to us provide additional spaces on street for persons with disabilities. That legislation also contemplates, though, that there are streets where we cannot provide accessible parking. Where the slope of the street or the cross-section is too steep to provide safe parking for di persons. Or persons with disabilities rather. What is key is the calculation of the provision of those spaces is based on the number of public spaces being provided on street. So the calculation goes with the number of spaces on street, not with the adjacent land use. So if a space were provided and typically I would give you a rule of thumb

that in the future it will be about two per block face, about four per square block, if you will, to meet the public calculation standard, that's a very rough number. Certainly, we are responsive to the community that uses those spaces, if they indicate there's an area where there's a greater need for spaces for persons with disabilities, we certainly respond to that where we can.
[10:35:23]

>> Spelman: Would the effect of the proag regulations increase the number of spaces generally? Decrease them or keep them about the same?

>> I think it will increase them. Again, that federal language is just coming into existence. But we anticipate the state to follow suit as soon as that becomes the federal standard to move in that direction and in fact we think that's a good standard, we're moving in that direction as well. What typically today generates the need to build parking for persons with disabilities is when we make a change to the parking, whether we bring it into a metered environment or we make an improvement to the parking, increase the capacity, that's typically the trigger. Under the new regulations we'll have to be much more aggressive about going out and retrofitting existing blocks where there is inadequate. So I think it will increase the number of parking spaces. What it will do, however, again on some of those blocks, where we can't physically put a -- an accessible space, it will allow us to move those spaces perhaps around the corner or to other block faces on that same development block.

>> Spelman: If I had a 10,000 square foot building at 8th and trinity, this might have an effect on me. But if we're talking about two per block face throughout the vast majority of downtown, it sounds as though the vast majority of 6 to 12,000 square foot businesses would be covered. Already. That's not going to change under the new regulations.

>> I would assume so. Yeah, I can't tell you offhand. But I think your assumption is probably in the ballpark of being correct. Yes.

>> Spelman: [Laughter] I love it when staff says I'm probably in the ballpark. [Laughter]

>> i calculations.

>> Mayor Leffingwell: If i could make a suggestion, councilmember riley's suggestion was that we accept a friendly amendment to do it on second reading only. Then we can come back and discuss these amendments at a later date. The next opportunity obviously the 28th would be too soon. Then the 11th is the council meeting. That might provide us with more time to flesh this out more.

[10:37:42]

>> Spelman: I just want to get more information. Even if I the information is on the current number of spaces are avaable. That would be our best guess what future spaces are available with the obvious exception of places with substantial hills, which we all know where they are. If there's a way that you all could count what we have right now that would be helpful, I think.

>> With he will do our best. I do not have a comprehensive inventory because of the historic system that's grown over time, but we'll do our best to come back with a number by the next reading.

>> Is that an onerous task? I'm asking you to fulfill?

>> I

-- it may be a boots on the ground type of task where we actually have to send people out to observe, yes, right now, yes.

>> Spelman: Okay. I still think it would be helpful for us to make a decision on this.

>> Sure. I will do the best

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>> Spelman: You will need to do it at some point anyway.

>> Absolutely, we're in the process, just timing.

>> Mayor Leffingwell: Can we do that, accept a friendly amendment, second reading only, come back and address this on third reading? Satisfactory with councilmember morrison?

>> Morrison: Yes, are we talking about both

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>> Mayor Leffingwell: Yes.

>> Morrison: Both the 250 and the 6,000: I do have a couple of other things that I would like to discuss.

>> Mayor Leffingwell: Mayor pro tem do you accept that second reading only.

>> Yes.

>> Morrison: Mr. Zapalac, I'm going to need your help on this one, too, I was concerned about whether we're going to end up with essentially the same disabled parking as might be required today or whether we're going to see significant decreases, I've gone through and I think that I understand the situation now. I think it's almost all right. Let me explain what I understand right now and tell me if you think that it's correct. Right now, you're allowed to provide only 20% of the required parking.

>> Correct.

>> Morrison: So what this code amendment does is it says if you're not providing parking, then you need to calculate your disabled spaces based on 20%, as if you were doing 20%.

[10:39:46]

>> Correct.

>> Morrison: All right. So if you are not provided any parking

-- providing any parking at all, you're still doing the same as it is today. So we wouldn't see a decrease. If you are providing some parking, then like say 50% or something like that, you go and calculate just as you would before, so in that case it's the same. Where it's not the same is if you are providing between zero and 20% of the parking. Because if you are providing between zero and 20%, you calculate it based on the actual, so maybe based on you are providing 10%. So you would end up with less than you do now. So what we've got is a little hole in the system where we've got a

-- where we're running into fewer

-- where we would be providing fewer parking spaces for disabled people. In the extreme, let's say somebody is trying to jury-rig the system and they don't want to fall into that providing no parking because that makes me have to provide a certain number of spaces for disabled, I'll provide one space, which means that you get really, really minimal disabled parking. Now, probably people aren't going to do that, but what I would ask and maybe I could just ask you, we could discuss that issue right here, but ask you to come back on third reading or maybe provide

via memo to all of us, if that's possible or in backup, a potential amendment that could make sure that between

-- if you are providing between zero and 20% of the required parking, that you provide disabled parking as if you were providing 20%. And I did do some numbers

-- looked at a few numbers and if we look at

-- for instance, a 500,000 square foot office building, just rough calculations and as I understand it Frost Bank is a little bit bigger than that, 10% bigger than that, my calculations tell me that you would at minimum be required to provide 360 spaces which would lead to 8 disabled spaces. If I decide to do zero parking in that size office building, I would then have to do the same. I would have to provide 8 disabled spaces. If I decide to do only

-- only provide one space, then

-- of parking, then this code would say I only have to provide one disabled spot, which means that you really do see a decrease. So I guess that would be my motion and that is that we ask that

-- that we adopt the concept to be codified that we ensure that there's always disabled parking at the rate that there currently is, which is as if you have at least as if you have 20% parking on site. So I hope that's not too complicated.

[10:42:49]

>> Mayor Leffingwell: I would suggest that is a little complicated and all of these issues could be addressed at one time, if you could just provide directions to staff to come back with that discussion, also.

>> Morrison: Okay. So if you could provide some language that would implement that ahead of time to review that, that would be great.

>> Yes, we can do that.

>> All right. Thank you.

>> Morrison: Then the last point that I wanted to talk about was the fact that under section

-- part 7, 256592, section c, the famous c 2, which is striking the line the alley may not be used for loading or unloading and says use of the alley for loading and unloading is a permissible use. Mr. Zapalac, if you might

-- I have some questions about that. Because I understand that staff had seen some ambiguity in the code in the first place and I wondered about whether or not you were even allowed to maneuver in the alleys, I wonder if you could tell me about the sequence of events about where we got today with this line.

>> The existing code says that the alley may not be used for loading or unloading. That in combination with other sections of the code had sometimes been interpreted to mean that you couldn't even maneuver within the alley to

-- to back into or out of a loading space. And that clearly was not the intent. But there was some language that

-- that led some people to that conclusion. So we were trying to clean that up and just state that

-- that the alley could not be used or a vehicle could not park in the alley for loading and unloading. At the last meeting council adopted an amendment adopted that loading and unloading would be allowed so that's what the current language reflects.

[10:44:49]

>> So the concept of being able to park in the alley, was that even reviewed by any of the commissioners then? I guess not.

>> No, it was not.

>> It was just here. And how does this relate to the fact that buildings are required to have loading spaces on site?

>> Well, the requirement to have loading on site is still in the ordinance. So any new construction would be required to have its own loading space. This might relate to older buildings that were built before the current requirements and did not provide any on site loading.

>> So if you are parked

-- does your engine have to be off or

-- I guess I'm concerned about the fact that we might not have really vetted this whole process

-- this whole idea very much of being allowed to park in the alleys. And of course we had the other resolution that we're talking about in terms of use of alleys and so I think that this takes us down a whole new path that hasn't really been addressed and so I would like to propose that we strike the change that's in that section and go back to the language that staff had originally offered, which was a vehicle may not park in the alley for loading and unloading to clear up the problem that staff had originally identified and defer this other new concept to

-- to the resolution that we'll be considering later. So my motion is to go back to what staff had originally proposed on section 592 c 2 and state a vehicle may not park in the alley for loading and unloading. So it clears up that they can man mover in the alley

-- maneuver in the alley and then we can have the broader discussion under the resolution, so that's my motion.

[10:46:54]

>> Mayor Leffingwell: So you are making a motion to amend.

>> Morrison: Yes.

>> Mayor Leffingwell: As an amendment? Is there a second to that?

>> Yes.

>> Mayor Leffingwell: Councilmember tovo seconds. Further discussion? Councilmember riley?

>> Riley: I won't be able to support that particular amendment. We have heard from the downtown business community that this requirement has created difficulties. The language we're talking about is very simple. It just says use of the alley for loading and unloading is a permissible use. That is what the alleys were originally there that. That dates all the way back to 1839 when we provided alleys throughout the downtown grid that it serves a very valuable purpose. Of being able to ensure that we can have a convenient place for loading and unloading and

-- and the result is that we don't

-- we wind up with fewer places where we are required to do those sorts of things on the street. Where they can pose real problems for all kinds of traffic, vehicular, pedestrian and bicycles. I think that it's

-- it's simpler and more straightforward to simply say that use in the alley for loading and unloading is a permissible use.

>> Mayor Leffingwell: Well, I'll just say that i agree with councilmember riley. I'll also be voting no. Councilmember tovo.

>> Tovo: The language may be simple but its impact is really quite large and it has the impact of turning what is now a public space into, you know, a much more limited space by allowing those cars to park while they load and unload and it is

-- it really in my

-- i am quite concerned that it runs counter to the vision that our downtown commission and others have already started to discuss, which is to look at alleys as we talked about on tuesday for their possibility of offering places for more public, more pedestrian, more bicycle friendly activities. I think that I have a few examples on the computer that we might pull up now. You know, there was a discussion on tuesday about we're not precluding any opportunities, but in fact we are. One's use of the alley for

-- once use of the alley for loading and unloading becomes a permissible right we are closing off the possibilities. Like the ones that you see here which are from

-- this is I believe from

-- from the master's report that we discussed. This is the kind of thing that they've done in some places and again if there's loading by right and there's no opportunity for staff to negotiate ot alternatives that might be useful, this is not the kind of thing that we would have here. These were taken by a downtown commission as i think the council knows because we talked about it on tuesday, the downtown commission is working in partnership with several of our city departments and outside groups including some folks from u.T. To

-- on an alley activation project, these are some examples that one of the downtown commissioners showed f other cities from some alley restaurants. So I would ask that we support this motion and reconsider it at a point where we've been able to, if the resolution that I wish we had talked about first and it's sequentially before this one, number 27, if that one passes, I'm sorry, it's not 27. But in any case, if the alley resolution passes and we are embarking on an effort to look at our downtown alleys more creatively and to

-- to think about opportunities for them, that we come back and address this issue. Again that starts

-- for loading and unloading, how that could be balanced with

-- with the needs or the interests, the potential interests in reactivating some of those alleys for other kinds of uses. So I will certainly be supporting the motion and would like to

-- would like to defer the question of loading and unloading as a permissible right until the time where we've got

-- have done more creative thinking and honored the work that members of our community already have begun of looking at our alleys, i will just re-emphasize the point that councilmember morrison made, this is a change our downtown commission didn't even have an opportunity to review.

[10:51:18]

>> Spelman: I have a question for george or somebody else for staff who might be able to answer it.

-- [Indiscernible] alleys were originally intended to be used for when the city was originally laid out and that I need to have done in my building. I think it would be even cooler if I could put a

restaurant back there instead and fulfill some of these visions that people have been discussing here. It looks really cool, i really want to do that, what procedure is there for

-- for in our code or administrative processes for me to be able to close the alley for loading and unloading or other uses, close it as a public thoroughfare and open a restaurant on it.

>> That would go through the

-- through the

-- either the street closure process or the

-- or the right-of-way vacation process. I think probably it would remain a public right-of-way in that case so there is a street closure process, I'm not familiar with all of the details as to how works: I believe there is a public hearing involved before that could occur.

>> Spelman: There is a process. In fact it's happened before where we've had alleys, public thoroughfares closed to the public and used for other purposes. Private thoroughfare, i don't think we have any restaurants and alleys right now, but we could. We have a procedure for it.

>> Yes.

>> Spelman: I don't know very much about the procedure, I would like to know more about it. But in the meantime it seems to me what we're talking about here just using the run of the mill alley, the vast majority of cases for loading and unloading, which is going to open up a lot of space which currently is not available now since you can't get stuff into it is a good idea. Given that there is a means of closing these to the public and using this 'em for other purposes such as restaurants, bars, so on. It seems to me that they are not incompatible at all and as much as I like the idea of the restaurant, that's something that we can do already.

[10:53:29]

>> Mayor Leffingwell: Councilmember morrison are you reaching for something?

>> Tovo: I'm not councilmember morrison.

>> Mayor Leffingwell: Excuse me, sorry. >>e: I ALSO HAVE A Comment.

>> Mayor Leffingwell: Go ahead.

>> Tovo: I just wants to make one more point. In some cities they are also looking at ways to close down the alley and make it a green space. Again, that's

-- those are

-- we're closing off an opportunity to allow a kind of negotiation to take place between the adjacent property owners and the city when we're

-- if we're closing off this opportunity bypassing this today.

>> Mayor Leffingwell: Mayor pro tem?

>> Cole: George, I had a question for you. What if we had a conditional use on the alley, how would that work? Especially with loading, unloading and trash and

-- i guess I'm trying to get at the businesses need to be able to load and unload and yet we're talking about this being an active place and trying to find a balance between the two. Can you give us any guidance on that for future

--

>> mr. Man may want to address that. Basically it would be a license agreement process where a property owner would pay an annual fee to use the alley basically. And you know it would have to be analyzed to make sure that other uses could be accommodated at the same time. Before the license agreement can be approved.

>> Cole: So under this current language, we are not prohibiting other uses because we have a process for that through a license agreement; is that correct?

>> Yes, I believe that's correct.

>> Cole: Okay. I will not be supporting this amendment at this time.

>> Mayor Leffingwell: Councilmember martinez?

>> Martinez: Thank you, I'll be brief. Certainly I'm supportive of the issue about the activation of alleys whenever and wherever we can. In fact in san francisco i did eat in a restaurant at one of the alleyways, but i want to also talk about a balance of some of the issues that are competing against one another. We have something here called great streets. Take a away developable rights by setting back 25 feet to create great streets. If we start eliminating the ability to use the alleyway for intended purposes such as utility purposes, loading and unloading, we disincentivize them to buying into our great streets program and essentially paying for it themselves when redevelopment occurs. I'm not against activating alleyways whenever we have that opportunity. But for me the priority is great streets throughout all of downtown and not great alleys through downtown. So I won't be supporting it as well.

[10:56:20]

>> Mayor Leffingwell: All in favor? Councilmember tovo?

>> Tovo: I have a quick question, maybe for mr. Spiller. Or mr. Zapalac. It's my understanding that in cities that have transformed their alleys, they have figured out ways to balance some of the feeds perhaps by doing

-- some of the needs perhaps by doing trash collection in more consolidated or different areas. For some businesses there are opportunities to use not the front but other mechanisms for doing their loading and unloading that aren't going to block major thoroughfares, but also allow those alleys to be used. Are you familiar with any of those?

>> Robert spiller, transportation department. Yes, ma'am, as you know i worked in seattle for a number of years, there are some alleys that have been activated and the city there has worked on case-by-case basis to address some of those issues. I would suggest that even here through the license agreement that would allow us to work on a case-by-case basis to achieve whatever goal for that alley is envisioned.

>> But I assume the case-by-case basis

-- well, but they have managed to come up with ways to get the functional uses that a business needs done while also providing for those possibilities.

>> The examples that I know in seattle, again, there are alleys that are used as normal loading in alleys and then there are others that have been activated is not a, you know, one size fits all. For alleys in seattle they have found other ways to deal with the garbage and deliveries, but the next alley over is still used as a regular delivery and trash type of utility access.

>> Tovo: Right. But it was possible, they were able to activate it because they are not doing those kinds of services in that alley they are doing them elsewhere and have figured out ways to meet the needs of those businesses but not necessarily on the alley that is not activated.

[10:58:24]

>> Yes, ma'am, I assume that's correct.

>> Tovo: Thanks. I think that kind of makes my point that, yeah, we're not

-- I mean, we are again closing off opportunities here. I would prefer we come back and think about it after we have a little bit better understanding of what's possible.

>> Mayor Leffingwell: Well, I will just say quickly I don't think we're closing off any opportunities. There's always the opportunity in the future to go through the alley vacation process and weigh all of these factors in the balance. Did you want to speak, councilmember riley?

>> Riley: I was just curious, follow-up question for rob, that if we're not doing loading and unloading in the alley, and we're not doing it on the street, can you help me understand

-- i know seattle is big into aircraft, [laughter] is that the

--

>> councilmember, the question was were they able to achieve that on the alleys that I was familiar with. I assume they did achieve it. Either through the front door or through smaller

--

>> Riley: Front door, side door, no

-- not to the street.

>> They are still doing something there, that was my response, it was on a select basis, they were able to achieve it in those two alleys.

>> Mayor Leffingwell: All in favor of the amendment offered by councilmember morrison say aye.

>> Aye.

>> Opposed say no.

>> No.

>> That fails on a vote of two to five with councilmember riley, martinez, myself, councilmember spelman and mayor pro tem cole voting no. That uses us to the main motion.

>> Tovo: Not quite yet. I have an amendment.

>> Mayor Leffingwell: Councilmember tovo?

>> Tovo: I would like to make a friendly amendment in the form of direction to is it a of to help us craft language that would make the c 2 that we've just been discussing available on a trial period of six months or until completion of an alley study, if the later resolution passes, at which point we would re-evaluate this provision. I guess that I have

-- i guess mr. Lloyd maybe or one of the other legal staff could tell me if a provision of that sort could be worked out.

[11:00:42]

>> Brent Lloyd, assistant city attorney, as i understand it, I think that's perfectly doable, to paraphrase what I think that you are question is that provision c 2 be essentially given for lack of a better word a sunset period and then prior to that date passing staff would come back with this report, council would have an option to make it permanent or reconsider the issue; is that essentially

--

>> Tovo: That's exactly it. Thank you for articulating so nicely.

>> We can draft that.

>> Tovo: Great. That is my motion. That would allow this to go forward. But also offer us the opportunity to look at it again after we have done some more comprehensive thinking about our alleys and those opportunities and I think what I like about that option is that it does not -- it gives a very clear and predictable message to the development community that this is a -- this is a -- for now a permissible right but we're going to re-evaluate it.

>> Mayor Leffingwell: So it's just direction, it's not an amendments, it's just direction to staff to come back in a certain period of time and revisit the issue, is that what you are saying?

>> Tovo: The direction to staff is to draft language that would be incorporated into the ordinance. So I think it would be helpful to get a vote on it to see if it's supported by the council.

>> Mayor Leffingwell: I still think that we can always come back and revisit the issue at a later time. So you are offering that as a motion for an amendment?

>> Tovo: I am.

>> Mayor Leffingwell: Is there a second for that.

>> Spelman: Actually, this is direction to staff to prepare an amendment. We don't know what the amendment is exactly going to look like. But I would consider that to be a friendly amendment.

>> Mayor Leffingwell: I believe councilmember tovo said it would be incorporated in the ordinance.

>> Spelman: Let me ask then a question, mr. Lloyd, if I could. There's two ways to do the amendment that you outlined for us, brent. One of them is that the c 2 provision would continue but there would be some ceremony by which we would revisit it as a particular date, if we have an alley study. Another possibility is that this would cease to be in the code, it would just drop out of the code unless it were -- unless we took some positive action to keep it in the code at that date.

[11:03:10]

>> That's right. I think that it's the latter option is what I heard councilmember tovo express.

>> Mayor Leffingwell: Sunset.

>> Essentially where after the passage of that date, unless council adopted, revisited the issue and adopted the language as permanent, it would return to the base code language that is now in the code.

>> Spelman: I would like to see the language and the date, mayor. I would -- I would accept this as a friendly amendment if the motion, if the amendment were to direct staff to come up with language which we could then incorporate. I think that I would be happy to incorporate it, but I would like to see that language in advance.

>> Mayor Leffingwell: So it is not -- not an amendment. It is direction to staff -- not an amendment to the ordinance, direction to staff(to draft the language and consider it on third reading?

>> Spelman: Third reading. Would that be amenable?

>> Tovo: That's great. Unless we can come up with some language here on the fly, I think that's probably our best option. Although you did pretty well I think

--

>> Mayor Leffingwell: Okay.
>> Spelman: I think I know what it's going to try and do, but I would like to see it first.
>> Tovo: Okay.
>> Mayor Leffingwell: Mayor pro tem, do you accept that direction, not a part of the ordinance, not a sunset agreement, it's something we're going to evaluate on third reading.
>> Cole: Yes, I accept that.
>> Mayor Leffingwell: So back to the main motion, all in favor say aye.
>> Aye.
>> Opposed say no. Passes on a vote of 7-0 on second reading only. Now, councilmember martinez? You had just a couple of quick announcements, go ahead.
>> Martinez: I just wanted to ask for special consideration, I will leave it up to council and you, item 35 we pulled off consent because there were minor amendments. I actually think there were just a couple of words changed that improved it and there are folks waiting here for this item to pass. Would you mind taking that up.
>> Mayor Leffingwell: We're going to get to that posthaste. I've got that message. But first, we have one speaker who signed up late for citizens communications, however signed up before we actually passed the consent agenda so if there's no objection, I will let her speak for three minutes, katie narajano. She wanted to speak on the consent agenda, I believe specifically to item 25. You have three minutes. Keeping in mind this is already passed.
[11:05:37]

>> Yes. First, thank you very much to the council and to the sponsor of the resolution. Councilmember morrison and co-sponsors martinez and cole. Thank you. This is the first resolution from the austin commission for women that was a recommendation to the council with the new current commissioners on the commission. And in specifically we wanted to highlight the importance of funding the two health programs that were cut in the 2011 legislature, particularly the women's health program from the department of state health and services which was cut by 72 million and then the medicaid women's program which was cut by 30 million due to federal funding restrictions based on the lack of options for women to receive care from their choice provider. And so in particular, the commission for women felt it was important for the council to add this to our legislative aa for the city of austin and particularly to take a stance in support of funding women's health across the state, but in particular for the effects that it has locally. Some of the results that
-- that have been given to us are that in the biennium it's estimated that an additional 24,000 births are going to result from the almost
-- over 100 million in cuts to these two programs and that taxpayers are actually going to lose \$3.74 per every dollar that's given to women's health in the state. And so we appreciate that you are going to support fully restoring the funds that are cut. And also that you are asking that the department of health services provide a pamphlet for the women's right to know for whenever a woman is deciding to take an abortion and that you are asking that when that pamphlet is rewritten, which is currently in the process of, that it only uses scientifically accurate information and instead of the current fear tactics that they use such as when having an abortion can cause breast cancer or it can cause, you know, many different bouts of depression. The next was [indiscernible] to add to your legislative agenda. Thank you for passing the resolution and

support and bringing much needed attention to the issue. Especially to our state delegation, so thank you.

[11:08:01]

>> Mayor Leffingwell: Thank you, katie.

[Applause]

>> Morrison: I want to quickly thank katie and also flannery both as the chair of the women's commission for highlighting it and doing the research to really bring the facts to us so that we can highlight it with our

-- at the legislature, I want to especially highlight I think you mentioned it's the first recommendation from the open women's commission, so i appreciate the work that you all do and I look forward to a lot more policy recommendations coming out of the commission.

-- Coming out of the commission.

>> Cole: Mayor, I would

-- I would simply like to echo what councilmember morrison had said. I think the commission does great work and we are appreciative when you step into the legislative realm and also your recommendations that you make to us as

-- as the governing body.

>> Mayor Leffingwell: Okay. And we'll take up item 35 next. Which

-- which was pulled by councilmember morrison who now has her questions answered. So

-- councilmember martinez moves approval. Seconded by councilmember morrison.

>> Morrison: Mayor, if i could just remind

-- make a comment to [indiscernible] folks that

-- to remind folks that as much as possible when we are getting a yellow sheet on the dais, I thoughts that the standard was that we were going to have any changes marked directly so we wouldn't get into this situation. I'm excited about this resolution for the trail of lights.

>> Mayor Leffingwell: Duly noted.

>> Riley: We do now have a marked up version. Very briefly the changes are just intended to emphasize that we do want to be looking at improvements for the year 2013 and also as we do that, we want to be looking at impacts on other nearby venues and institutions. The trail of lights this past year was successful beyond all expectations and that did entail some unexpected traffic problems and so we're going to continue to work with stakeholders and especially long-time [indiscernible] and institutions and other events and venues to end should you are that we can minimize traffic problems in the future.

[11:10:12]

>> Mayor Leffingwell: Okay. I appreciate those amendments that you made, councilmember. I just feel like I have to say once more that

-- that trail of lights has been on our rada for about three or more years now. Last year was a huge success funded entirely by private dollars. Mainly due to the leadership of paul carozza I want to acknowledge his efforts and let him be able to continue that in the years ahead. This item does that. All in favor say aye.

>> Aye.

>> Opposed say no? Passes on a vote of 7-0. Bring forget I wanted to mention there will be a discussion, I think from councilmember morrison, that when we take up item 22 at its time certain of 4:00 p.M. Or after, to limit debate to 30 minutes, public input to 30 minutes per side. Right now we have 86 citizens signed up, I'm saying that now to give those on each side an opportunity to organize their 30 minutes. If that

-- if that turns out to be the case at 4:00 p.M. Hopefully we can take up the other non-consent item, which is item 50. Third reading of an ordinance renewing a non-emergency transfer franchise to american medical response of texas.

>> Councilmember spelman moves approval, seconded by councilmember martinez. All in favor aaye?

>> Aye.

>> Opposed no. Passes on a vote of 7-0. To the first briefing now parking reduction incentive pilot program.

[11:12:19]

>> Good morning, again, mayor and council, I'm george zapalac with the department of planning and development review here to present this item. This agenda item 51 originated with a council ordinance passed on december 6th of last year. Directing staff to establish a pilot program to authorize reductions in parking requirements for businesses that incorporate incentive strategies to use alternative means of transportation. Council directed staff to include key objectives and performance measures to evaluate the success of the program and to report back to you after a presentation to the planning commission. Since this is a pilot program, what we are developing is a standalone amendment, not a

-- not an amendment to the land development code and council therefore waive the normal review process. Today's agenda item is a briefing only. There will be a formal action item on next week's agenda in the form of an ordinance that would implement this pilot program. This initiative relates to several other programs that the city is involved in. One is the elimination of all motor vehicle parking requirements in the cbd and dmu which you just approved on second reading. Another is parking reductions due to biking incentives, which is currently being reviewed by the planning commission and will be on council's agenda in the near future. Thirdly, it relates to the ci's ongoing efforts to reduce air pollution in the austin area, of which transportation is a major contributor. And you will hear more about that in the next briefing. And then finally, a moveability austin is a program to reduce travel to downtown in single occupant vehicles and representatives from all of these programs participated in the development of the pilot program. And we attempted to take advantage of the existing resources and not duplicate the efforts. Some of the benefits of the parking reduction incentive program are to reduce the amount of space devoted to parking. To promote more compact development. Encourage alternative transportation modes. Promote the adaptive reuse of existing buildings. And environmental and health benefits such as reduced air pollution, walking, physical fitness. The existing businesses, each surface parking space is estimated to cost about \$3,500, so this could be a significant savings for every space that is eliminated. The staff proposal for the parking reduction program includes several components, which I'll discuss in more detail. These include establishing eligibility requirements, developing a menu of incentives to reduce parking,

requiring the applicant's commitment to implement and monitor the program, accepting five licks for a one-year program as specified in the previous council action, conducting quarterly evaluations to monitor the effectiveness of the program and then to make a follow-up recommendation to council on the continuation of the program. In terms of eligibility, staff feels that this program would be best targeted towards the reuse or expansion of existing buildings. Located outside of the downtown area since the ordinance you just acted on eliminates parking requirements downtown and this

-- this program would not be applicable in the downtown area anymore. So it would be targeted to businesses outside of the downtown area. We would focus on areas that have a good bicycle, pedestrian or transit access and have land use appropriate for non-vehicle access. We would also be looking at those with a minimal impact on residential neighborhoods and businesses that are willing to participate in a follow-up evaluation. I want to emphasize this is not a complete waiver of all parking requirements, but a reduction of a specific number of spaces from the normal parking requirement. We are trying to target businesses which we felt could be up and running within about three months, so that that would give us time to monitor the program over a year and report back to council. In looking at strategies that have been used in other cities, we came up with a menu of incentives that could be employed by different businesses. In the amount of reduction allowed, parking reduction allowed, would depend on which incentives were used. The most effective strategies seem to be those which encourage employees to use alternative transportation modes, but some strategies may also be aimed at customers of certain businesses. And some of the possible strategies are on site services, such as childcare centers. A guaranteed ride home for employees who use other transportation modes in the events of an emergency if they need to leave work early. Preferential parking for carpools or van pools, alternative travel modes, company vehicles for work-related trips, a ride matching service to facilitate carpooling, car share subsidies and shower and locker facilities to encourage bicycling. In addition, bike share, support for the bike share program such as providing a rental station, alternative work schedules such as telework or flex time, alternative commute incentive programs such as a customer discount for people who arrive in an alternative transportation mode, additional bike parking in excess of the code requirements, a parking cashout which would be a payment for employees to give up a parking space, transit, carpool or van pool subsidies and unbundled parking, which is a separate parking facilities separate

-- renting parking facilities separate from the building space. There may be other incentives as well, the proposal as drafted would enable an employer or business to take part in whatever incentives they felt they could promote and the amount of parking reduction would be based upon which incentives were selected. The application process would be for each applicant to develop a customized plan and submit a proposal. It would be reviewed by the staff of planning and development review and the austin transportation department. We would negotiate an appropriate parking reduction based upon the incentives proposed and develop a written agreement documenting the incentives and responsibilities of each participant. In some cases the owner may be able to implement the incentives by himself or herself. In other cases it may require a commitment to

-- of certain tenants that might have to be written into leases. And then finally a follow-up evaluation that would be a very important part of the

-- of the process to determine how effectively the program is working. The key objectives are to reduce the parking impact with no adverse effects on employees, patrons, residential neighborhoods or the general public. To reduce single occupant motor vehicle travel. To test and

evaluate some of these alternative incentive methods. Measures of success would include the numbers of participants, the rate of participation in each incentives, the number of motor vehicle trips eliminated, number of parking spaces eliminated, the minimal amount of customer complaints to the owner and to the city about possible overflow parking or lack of parking. And hopefully no increase in the residential permit parking as a result of pilot program. If council approves the ordinance next week, we would launch the program and solicit proposals in april of this year. Evaluate the proposals and select the participants in may. Implement the program between june and august. Start performing evaluations beginning in october and continuing until july of 2014. And then in august of 2014 conduct a final evaluation and present findings to council. This program was presented to the planning commission on february 26th and they made a number of comments. Much not in the form of a motion, per se, but just comments about some of their thoughts on the program. They were concerned the duration of the study may not be sufficient to develop a lot of data. Which may be true, but it probably would be an indication, if there were significant problems, that occurred within that one year period. They were unsure about the reproducibility of the pilot study with different adjacent land uses. They mentioned the proximity of residential neighborhoods and that in fact was mentioned in

- in two aspects. One that the proximity of residences might lend itself to parking reductions but on the other hand if
- if the program is successful, there could be a negative impact on neighborhoods. They asked if there was a
- if there would be a base-line study to compare the results against and basically we would be comparing the program with existing ordinance requirements. They asked about economic impacts on the staff time and on businesses. No additional staff is being proposed for the pilot program and will be implemented with the existing staff. The staff needs would be considered in the evaluation if
- if the other program appears to require significant staff needs that would be reported back to council at that time. And we would be looking at the benefits compared to the costs. The planning commission also mentioned the importance of geographic diversity, trying to find participants in different parts of town and felt that the program could provide some information to help informome of the bicycle parking code amendment provisions that are going in through the review process at the present time. They also expressed a need to monitor the parking over time to make sure that it is being utilized. They asked what happened if the program would be discontinued and
- and in that case, the
- the applicant would have to make some kind of provision to bring parking into compliance.

[11:24:01]

[One moment please for change in captioners]

>> Mayor Leffingwell: Councilmember morrison?

>> Morrison: Thanks, george. I appreciate it. I think this looks like an exciting possibility and i know there's going to be some working out the kinks, and it's important to have pragmatic measures of success. And in terms of overflow parking and trying to gauge that in residential areas, i see you have no increase in resident permit parking. One of the concerns I have about that as a useful measure is that there's a whole lot that goes on in getting rid of it, only parking implemented. There may be lots of requests, some interest in it, there may be divisiveness in a certain area about whether to have resident only parking to deal with an overflow problem. So

I'm concerned that actually getting resident only parking is not going to be enough of a measure of whether or not we're sensing or seeing a lot of overflow parking from a particular situation. Did you give any thought to any other measures that might be able to capture that? That issue?

>> Well, certainly customer complaints or residential complaints about overflow parking is something that we can measure through the 311 system. And what we were looking at there was that we hoped that the program would not result in a lot of requests to establish more residential permit parking.

[11:26:21]

>> Morrison: So this is actual a request for a resident parking.

>> Yes.

>> Morrison: That's great. As long as it says request for it, I think we'll capture some useful information. Thank you.

>> Mayor Leffingwell: Other questions? Thank you.

>> Thank you.

>> Mayor Leffingwell: We'll go next to our air quality briefing.

>> Thank you, mayor, council. If we could get that slide show up, we'll be ready to go. My name is Robert Spillar and on behalf of the Austin Transportation Department I'm here to kick off a presentation on an effort that we've been working on for over a year now with regards to a comprehensive air quality program review and recommendations coming up. We've been working closely with a number of groups, not only our city's public information office, but also our office of sustainability and Lucia is here with me in terms of the recommendations that we're making here today. As I said, I'm going to

-- if I can figure this out. I'm going to make the introductions today and then my key staff person, Jeff and Dawn Andrews is going to be making the presentation. This presentation is in response that council

-- a response to a council action asking for a comprehensive review of the state of the practice of air quality programs across the country and then also an inward look at our own air quality program as we start to think about moving forward into the future. We worked with stakeholders from across the region in terms of responding to this request from council. We looked at the state of the practice across the country, really looked at other metropolitan areas that have similarly significant air quality challenges ahead of them as well as those communities that are already facing air quality challenges in terms of attainment or non-attainment in terms of federal air quality standards. We've specifically looked at do we need additional municipal enforcement capabilities here, do we need to expand our current system here, and how should we move forward as we start to think about that. I want to touch on a few of the key recommendations that you'll be hearing back up hopefully in today's presentation about one of the questions is do we need to supplement the state's effort to monitor and enforce air quality issues in this region? As you know, in this state the Texas Commission on Environmental Quality does the enforcement on air quality. We certainly heard from other parts of the state, mostly Houston, that the staffing at TCEQ has been unable to keep up with their demands for potential toxic emissions or air quality issues in the Houston area. What we found through our analysis is that's not the same here in Austin for two reasons. Number one, we have a different industry profile here in Austin and so we just frankly don't have all the oil and gas potential emitters as does the Houston area where it is reported that TCEQ staff is unable to keep up with the demands for that enforcement. What we found here is in the Austin area that the staffing through the state is able to respond to complaints

fairly adequately and that it would not improve the monitoring or the maintenance of air quality laws by the city has its own municipal enforcement code, if you would. We also know that through the process of our analysis or during the same time frame as our analysis, Houston's municipal air quality enforcement program has been challenged by the

-- in the state code. The other major thing we found is that the major pollution issue and air quality issue in this region remains ozone. The federal standards on ozone in the environment continue to tighten. We know since the current federal administration has been in place the discussion of strengthening or tightening the air quality requirements on ozone continues to put us in jeopardy following non-attainment. We've been fortunate to stay within attainment. So ozone and the primary creator of ozone in our atmosphere is of course automobiles remains the number one requirement, sort of a link between transportation and ozone. The third thing that we learned from our industry analysis is that the state as well as the nation, region's focus their attention on air quality programs through their local council of governments for several reasons. One, the council of governments in our case would be CAPCOG, have the ability to bring jurisdictions together through their subcommittees or policy committees made up of elected officials. That is where, should we fall out of attainment with air quality that material funds will be focused through. And so our recommendation is to look to the COG and specifically the Clean Air Coalition subcommittee of CAPCOG for the regional leadership on air quality programs moving forward. What that allows us to do is to coordinate our contributions to the regional air quality funding program into a single governing body where I believe our other jurisdictions in this area, whether it be Travis County or the other counties or municipalities, will also look to pool our communal resources and distribute them as a single program. Most critically what that means is there are a number of as you know, nonprofit organizations and for-profit organizations that are currently providing deliverables, if you would, whether it be advertising or coordination activities, to various jurisdictions. And it would allow us to have a single point of contact for all of those future regional deliverables if you will in terms of coordination and/or air quality programs, advertising, communications and so forth. One of the key things we heard from the stakeholders that participated and through surveys that we did with the general public is that there really is a lack of awareness within the public of all of the air quality programs that the city provides as well as the other ideas. So by pooling those through a semi-quasi governmental body, the Clean Air Coalition which is a subcommittee of the COG, will give us much greater visibility and greater transparency in the delivery of those programs and I think we'll provide greater coordination. Those are the key recommendations. I'd like to ask Farr to come forward and present the study. I know you will be intrigued by some of the things that she's able to point out here.

[11:34:01]

>> Good morning. I'm Farr Andrews and I coordinate the air quality program in the department of transportation. First I'd like to thank you for your interest and support in building more comprehensive air quality program, one that's more equipped to handle the challenges that our region is going to be facing really soon. This graph does a really good job of illustrating those challenges. It gives you an idea of how our design values have been trending over the last 15 years. And what's important to note here is the solid red line is where EPA has placed the current health-based standard. And the circle, the numbered circles are our design value. And as you may notice, we've been on the edge of noncompliance for the last four years. The red shaded area at the bottom illustrates where we're expecting EPA to come with a new standard by the

end of this year. And despite all of our region's voluntary efforts we've never been able to achieve an ozone design value between the 60 and 75 parts per billion that we're expecting the new standard to come in and central texas may find itself in non-attainment. The resolution actually asked us to complete five tasks. Analyze best practice examples. We looked at 12 nationwide examples. We looked at five in state programs and we also did a gap analysis of the many air quality initiatives going on in central texas. Consult with stakeholder groups. We worked with three different stakeholder groups. We provided a variety of opportunities for citizens to comment on this process and we received over 300 individual comments. Task 3 consisted of legal review to ensure that any recommendations that we presented were within the city's authority. Task 4 consists of prioritizing or embedding the recommendations for council's consideration and task 5 required a funding analysis to ensure that we consider the fiscal impact of any of the recommendations. So each of the recommended enhancements to the current air quality program or the result of the best practices, the gap analysis and the public comment. And we organized them in these five different categories that were specified in the resolution. Enforcement and administration, technical assistance, outreach, education, planning and analysis and data collection. So in the enforcement and administration category, we noted that on road traffic accounts for half the pollution in central texas and a two or three day special event could push our region's monitors into noncompliance. So we focused the recommendations in this category on reducing on road sources. Staff recommends bolstering the city's air quality efforts to curb air pollution by adding a recommendation for companies with 100 or more employees within the city limits to have trip reduction plans. And a requirement that large special events within austin have air quality mitigation plans. The benefits of this would address congestion and single occupancy vehicle emissions. Technical assistance category. The strategy of providing technical assistance at low or no cost to businesses is one that was repeated in the number of our best practice examples. And it was echoed in our stakeholder comments many times. So staff recommends incorporating a business technical assistance component into our current air quality program, one that would assist businesses with interpreting environmental regulations, help companies complete required paperwork, provide resources for technical assistance and share best practices. The benefit of this would require environmental regulations for small businesses. Marketing outreach and education. So the city's current air quality program outreach and education efforts include drive time radio campaign, monthly air quality outreach events and online air quality presence. Additionally the city supports outreach and education efforts of the clean air force, the commute solutions coalition and the transportation management association. Still finds from stakeholder group reveal that the public was largely unaware of these efforts. Roughly a third of the comments we received came in this category. So staff is recommending working cooperatively with regional partners to consolidate our message, coordinate our timing, pool our advertising dollars to commission a high impact marketing campaign that would include various strategies like incentives for trip reduction, tv, radio, social media, technology solutions like applications, interactive websites, partnering with schools using local artists, musicians and athletes to deliver our message, and focusing on the health benefits of cleaner air. The benefits of this recommendation would be a more impactful, coordinated campaign that would resonate with residents and encourage them to participate in ozone reducing activities. Planning and analysis category. In the planning and analysis category staff is recommending structural enhancements to the local and regional programs. These recommendations are aimed at better positioning our region to respond to a non-attainment designation. First as rob mentioned earlier, staff recommends supporting capcog and the clean air coalition in taking the lead role in coordinating

regional programs. This would help reduce duplication and focus our regional funding to a single effective governing body. Second, reemphasizing the environmental focus of the environmental body to provide oversight, advice and recommendations to the city council on air quality issues. And third, staff recommends lending the city's voice to a statewide effort to encourage the legislature to redistribute air quality funding designated for local programs back to local areas. And that was a resolution that just went through today, item number 45, I believe. In the reporting and data collection and monitoring category, having good data is really critical to ensuring that our region implements most effective strategies to reduce emissions. In recent years the budget for maintaining our regional monitors has been cut, which threatens the quality of our data. So staff is recommending establishing a more stable funding source for the air quality modeling either that currently take place at CAPCOG. And our final recommendation is that we provide more resources to assess the efforts and the effects of the construction equipment on our region's air quality. So we vetted these recommendations through the environmental board and the transportation commission and received full support for all nine recommendations. Now we're seeking feedback from council before we move into the next stage of this project. We'll be coming back to council with actionable items for each of the recommendations to start the implementation phase. I'm here with Rob Spillar and Lucia Athens and we stand ready to answer any questions you have on staff's recommendations thank you.

[11:42:02]

>> Mayor Leffingwell: Questions? Councilmember Spelman.

>> Spelman: Ms. Andrews, one of the regularities in issues like this is that a small proportion of people, firms, uses generates a large proportion of the difficulties. In this case, the air pollution. And the usual shorthand for this is the 20/80 rule. 20% of the cases amount for 80% of the problem. How does that fit in to what you're

-- first, is that something that is true for air quality? And second, how would one use that 20/80 rule to further our air quality?

>> Actually, the national motorist association likes to say that is 10% of the vehicles that create 90% of the air pollution. And it's on road sources that create over half the air pollution in central Texas. So we're really targeting our recommendations at reducing trips and reducing emissions from on-road sources.

>> Spelman: Okay. That sounds useful since half of our problem is on road sources. That's great, but it sounds like 45% of our problem is 10% of

-- is it 10% of the cars? 10% of the drivers?

>> It's 10% of the vehicles.

>> Spelman: So 10% of the vehicles are so badly tuned, pump so much junk in the air they account for 45% of the total air pollution in central Texas is what it sounds like.

>> Yes.

>> Spelman: Is there something we can do to focus our attention on that 10% of the cars?

>> Well, what our region's actually done that's really forward thinking and innovative is we're one of the only regions to voluntarily implement the Inm program and what it does is it tests all of the vehicles in Travis County and Williamson County and it

-- vehicles in Travis County and Williamson County and it helps us identify that 10%. And then we also have our LIRAP program, the Drive a Clean Machine program. So once we've identified those high emitting vehicles, we provide assistance to low income individuals to get those vehicles fixed or replaced. So that's one of our most effective strategies that we're using here in central

texas. And it's usually required in areas if they have sip or already in non-attainment. But we voluntarily committed to do this.

[11:44:40]

>> I wanted to invite andrew (indiscernible) with the cog is here in the audience and he had information that i thought useful to add information to the questions. I'd like to invite him to come up if that's all right.

>> Thank you. Councilmember spelman, so about half of that on road inventory is from cars and -- cars and personal trucks. Another half is from commercial trucks. So between the lirap program which focuses on helping turn over and reduce the emissions from that older fleet, you also have programs like the terp program which is administered by the state and capcog has recently received a grant from the e.P.A. In conjunction with city of austin and a number of other regional partners to help focus on turning over and replacing some of those older vehicles. So those are some strategies that can be used to target that 10% that's contributing much higher emissions.

>> Spelman: That sounds like it's exactly on target. That sounds like the sort of thing we ought to be doing. I hadn't realized that half of the on road

-- the air pollution was caused by commercial trucks. That's useful information.

>> Half of the

-- 25% about.

>> Spelman: 25% of total air pollution is commercial trucks.

>> Right.

>> Spelman: Of all of the

-- I'm familiar with

-- I've had to go through inspections the same as every else has. I'm familiar with what we're doing for private vehicle inspections. And I suspect that those are relatively effective at getting tuneups done when they need to be done, getting other repairs done when they're necessary, at least once a year. Everybody has to true up their vehicle to meet some standard. Is the same thing true of commeral trucks given that a lot of them are just passing through, they're not actually registered in texas.

>> It's actually less than you might think in terms of the overall air pollution, the pass-through trucks. They only account for maybe 10 to 15% of the truck vmt from what I understand in this area. So a lot of it is, for instance, you might have many trucks between a quarry and a construction site on a given day. So a much higher percent is on within the region than you might think from just driving up and down i-35. But there is no diesel emissions inspection program. Part of the reason for that is diesel equipment and engines just have a different profile. They don't really deteriorate in the same way that a gasoline powered vehicle would. So one of the things that this vehicle emissions inspection program does is helps reduce the emissions that come from deterioration. That just doesn't happen in the same way with diesel

[11:47:28]

-vehicles.

>> Spelman: Remind me about

-- our current air pollution problem is primarily ozone, is that right?

>> Yes.

>> Spelman: And the precursors to ozone are volatile organic compounds, voc's and is itnox?

>> Yes. And we at capcog have recently done some modeling where you can actually analyze what effect each of those constituents has on ozone. And what we found is there was about 100 to 1 difference. So reducing one pound or one ton of nox gets you 100 times the ozone reduction benefit than a reduction in voc.

>> Spelman: So if we had to pick either one. Put most of our marbles in nox, not voc reductions.

>> Right.

>> Spelman: It's my understanding that diesel engines primarily spew out particulate matter. Do they spew out a lot of nox.

>> Yes. It's based on combustion temperature, so diesel engines tend to put out more nox than a gasoline-powered engine might, but they also put out more particulate matter. So sometimes when you address a particular air quality program like nox you also get a code benefit like particulate matter reduction.

>> Spelman: What can you do in a large diesel engine to reduce the nox emissions?

>> Programs like tier. You can retrofit a vehicle, put some pollution control on a vehicle, that's the retrofit process. You can replace just the engine and the engines need to be certified to newer standards which tend to be 98% cleaner or you can replace the whole vehicle and provide incentives like the tier program or the dealer grant that we've been working on.

[11:49:28]

>> Spelman: How effective are those incentives?

>> They're very effective. The tier program right now in the austin area is achieving more emission reductions in terms of nox than what we estimate the vehicle inspection and maintenance program. So over the past decade this program

-- decade this program has been in place these projects have continued to be funded so it's having a very significant impact on our local air quality.

>> Spelman: Just looking at that graph that we put up in the first place it looks like there's something like a 17% reduction in total ozone over the last 15 years or so. To what extent can that 17 percent reduction be attributed to the on-road emission standards and programs that you're talking about here? Almost all of it, half of it? What's going on there?

>> It would be a complicated analysis, but you can kind of take a look at the nox reductions from one year to the next. So the vehicle standards have played probably at least half of that p. It's probably responsible for at least half of that reduction at least locally.

>> Spelman: Given it's half of the problem, being half of the solution at a minimum sounds like a reasonable expectation. Is there anything you think we need to do to improve our programs?

>> Is there anything that

-- I mean, we have the good fortune to be invited by the city's air quality program to participate in some of the initial phases. There was one of these three stakeholder groups that was basically air quality professionals. So we helped identify what some of the other cities are doing and I think between the resources and the authority that the city has to do things like ask for information, and actually get the information, all we can do is kind of nicely ask for it. So there are things where the city can do certain things that the cog can't do, and we can work together on those things to help improve overall program performance.

[11:51:40]

>> My apologies. I asked a loosely worded question. Let me ask a question somewhat more specifically. Is there anything a lot of this report, relatively little of this report talks about the quality and the effectiveness of the programs that we've just been talking about here. Is there anything that needs to be done outside of what it is y'all have been doing wonderful work on that can improve the effectiveness of the on-road emissions reductions programs?

>> I think right now you need more data. So for the non-road portion for instance, where the construction equipment would come from, that is based on a lot of assumptions about how often these pieces of equipment are used, what their age distribution is. So before you can say something needs to be done or some particular thing needs to be done, you need a certain amount of information and we're just lacking that right now.

>> If I could, councilmember, this graph is actually a good example, the air quality profile is unique. As you see here austin does not have a lot of point sources. It's less than 25%. We don't have a lot of smoke stacks. That's a very different profile than you might run into in houston. As we continue to grow, another thing we continue to think about is to invest for ways to people to travel than on-road vehicle internal combustion engines because again, as we've been able to continuously reduce our air quality load, if you will on the system, that's as we've been growing dramatically and that's a great statement, but at some point our growth is going to out strip our ability to keep reducing our ozone load. It's a major issue.

>> Spelman: At some point people will probably start getting back in their cars and driving and our vmt's will start going up again too.

[11:53:44]

>> It's going up even as new people move to this region to keep our economy moving. It's just the fact that there's more people. We've got to get them other ways to get to work and around town.

>> Spelman: Thank you, sir. I agree with that.

>> Mayor Leffingwell: A brief follow-up to that. I heard that statistic that 25% of the pollution is caused by trucks. And I think we have to compare that to what are the vehicle miles traveled by trucks, what is the number of trucks to put that in perspective? Are the trucks 10% of the vehicles on the road but they're doing 25%? Do you see what I'm driving at?

>> I do. And we actually have done some analysis of that type and the slide that I just put up illustrates our top 10 nox sources. You can see we've divide it had into passenger cars, passenger trucks. We've divided the trucks into a couple different categories and prioritized them there. So you can see how the single use short-haul trucks compare to passenger trucks and nox emissions. That is from 2008.

>> Mayor Leffingwell: I'm talking about number of vehicles and vehicle miles. I'm trying to relate it to

-- I'll give you an example. I heard a statistic years ago to the effect that

-- and I may not have the exact numbers right. That 75% of car accidents occurred within 25 miles of a home. But then when you analyze that further, you find that 90% of the travel is within 25 miles of home. So if you consider the one statistic in a silo, it's not

-- it doesn't have as much meaning. You have to consider the context of is as well.

>> Good point.

>> Mayor Leffingwell: How big is the problem is what we're trying to determine.

[11:55:45]

>> And again, mayor, that's part of the issue as we improve our data we need to continue to break down analysis walls like that. But you're absolutely right. We can't answer that.

>> Mayor Leffingwell: And one other quick question. 3.04% of the nox. What do you propose to do about that?

>> Standards are getting better and as fuels get better

--

>> Mayor Leffingwell: That's really a national standards and I know for a number of years airplanes have gotten more fuel efficient, less polluting, less noisy, etcetera, but it's really not a city or capcog issue.

>> [Inaudible - no mic]. The planes we obviously can't do much about, but what we can do something about is the ground support equipment. One of the projects that's including in the grant that we applied for, which by the way, we could only apply for because we had multiple partners. So none of the

-- between travis county, city of austin, williamson county, city of san marcos, none of them had enough projects to cross the threshold that you needed to submit for projects. But one of the largest projects is rectifying ground support equipment at the airport. So some portion of that

-- and the more recent studies that indicate that the

-- it might be a bit less than that, 3.04 tons per day for the whole airport, but what we can reduce emissions from are things like ground SUPPORT eQUIPMENT AND THIS Project that we have in the grant is going to

--

>> Mayor Leffingwell: I gotcha. That's a good answer. I was just hoping we weren't attempting to regulate chem trails. [Laughter]

>> Spelman: Mayor?

>> Mayor Leffingwell: Councilmember spelman.

>> Spelman: Just a quick question. I notice this and a couple other graphs you put up were not on the dais. Are these available online? Can we see them elsewhere.

>> We can definitely make them available online. I included them in case there were questions that they could illustrate. We'll make them available.

[11:57:48]

>> Spelman: Thank you.

>> Mayor Leffingwell: Councilmember riley.

>> Riley: One aspect of emissions that's common to virtually all of these different sources involving vehicles is idling. I know the city of austin has taken a leadership role in recent years in working with our partners to address the problem of idling. I wonder if you could provide a very quick update on where we stand on that and what next steps might be helpful to address that aspect of the problem? And in particular I notice on slide 10 there is a quote from one andrew h

that suggests that we use heavy duty (indiscernible) to collect data. Many already have traffic systems that report idling. Is there anything additional that we need to be doing to address that problem or are those efforts going well?

>> Yes. We actually had a very successful relaunch of our heavy duty diesel idling last year and we were able to not only encourage our police department, but our code compliance department, our parking attendants, our downtown rangers, to look out for heavy duty vehicles that are idling. We provided them with warning tickets. We worked with municipal court and now we have a citation number specifically for heavy duty vehicles that idle. And we have issued a couple of tickets to date too. So there's a hotline for residents to call in when they notice this activity and it's a regional hotline, so it helps funnel all that information into one area and give us kind of an idea where this activity takes place. So I think that effort is going pretty well. We have a lot of assistance from travis county and williamson county too.

>> Riley: Certainly appreciate all your efforts on that.

>> I wanted to add briefly a couple other things. One of the recommendations focuses on special events so there has been a lot of focus on not having necessary idling at special event because that's often where it occurs. And you will be hearing more about this later in relationship to the carbon neutral fleet, but we've been focusing on some of the vehicles within our fleet that have equipment needs that often cause its vehicles to be run when they're not actually being driven. And that would include ambulances and police vehicles. So both with ambulances and a lot of the vehicles in the police fleet, we've been working on installing additional equipment that provides backup power so that the vehicles can actually operate that equipment without the vehicle running and basically idling. In the case of ambulances it's with a solar panel system that provides the backup power.

[12:00:39]

>> Riley: Thank you. Appreciate all your work on that. And the last question relates to next steps. There's some great recommendations in here and I appreciate all the thought and effort that have gone into them, especially all the work with regional stakeholders. So I just wanted to see if any further action is needed from council at this time in order to move forward on those recommendations.

>> What we were hoping for today is feedback and buy-in and the next step is to return to council with actionable items targeting each of the nine recommendations. And it looks like one of the recommendations has already gone through the resolution process so there's eight left and you will be hearing from us again soon.

>> Riley: Well, for whatever it's worth I would like to express my own full support of moving forward with these recommendations. I look forward to seeing the action items that you develop.

>> Thank you.

>> Mayor Leffingwell: Okay. Thank you very much. Maybe we can get item 36 in. Item 36 is the campo jpa. Which we've already discussed quite a bit. We have one speaker, clay dafoe. Is not here. And that was pulled by councilmember riley. Did you pull that?

>> Riley: Yep. If I may?

>> Mayor Leffingwell: Go ahead.

>> Riley: I wanted to follow-up on the discussion we had on this subject at the work session on tuesday. I want to clarify one aspect of it in particular, and that is the whole issue of campo's

inclusion of burnet county within its boundaries. The campo transportation policy board did pass a resolution on monday of this week that calls on the texas transportation commission to expand the boundaries of campo to include burnet county. I voted for that resolution and I am in strong support of including burnet county within campo. And I look forward to welcoming them within campo. And I expect that that

-- I'm hopeful that that will happen. I think we need some further discussion about exactly how the transportation policy board composition will be changed as a result of burnet county's inclusion in campo. As I indicated at the work session on tuesday, I will be voting against adoption of the particular joint powers agreement amendment that is before us now, that is in no way an indication of any lack of support for including burnet county. I absolutely embrace the idea of including burnet county and I'm glad that campo will be moving forward in that regard to include burnet county within its boundaries. I just think we need some additional work to figure out exactly how we will adjust the makeup of the transportation policy board in order to address the new membership of campo.

[12:03:47]

>> Mayor Leffingwell: And I understand that. I understand burnet county is essentially if they want to be a part of campo, but without amendments to the joint powers agreement, which requires all six of the bodies to

-- requires unanimous approval, they can't have any representation. So they would be the only jurisdiction that's a member of campo that does not have any representation whatsoever. Similar populations, caldwell county has one representation, bastrop - one representative. Bastrop county has one representative. We're essentially in my view, if this is not approved, we're making burnet county a colony of campo. So for that reason I'm going to support the agreement. I think there is a possibility that

-- of course if we vote it down, this amendment, this jpa is dead. There could be the possibility of another proposal coming forward, but it would have to be reinitiated and make the rounds of all six and gain approval of all six and that could be of course a lengthy process and the outcome is problematic. So for that reason adding one member

-- that's what's in contention here. Adding one member to the campo policy board has a minimal effect and dilution of the influence of travis county, if that's what we're aiming at. Travis county's voting participation would be reduced from 53% to 50%. And one of the objectives as I mentioned in the work session, one of the objectives of the special committee that created the current joint powers agreement was to ensure that all members, this is a regional effort, that all members had some representation. Another goal was to minimize the number of members to the campo policy board. Prior to that campo policy board had grown to point where it was unwieldy strictly due to the numbers. So I understand the concern, but I would also offer that it seems to be somewhat predicated on an assumption that all the representatives from travis county vote as one voice. And I think that's far from true. I think there's

-- there's differences of opinion within the travis county delegation, which includes four of us here on the dais. Three commissioners and several others. One is appointed by the counties commissioners' court. There's

-- the county commissioners' court. There's a small city representative. And then we talked about the governmental representatives on the policy board. There are also two more members, voting

members. That's a txdot representative and the capital metro representative. So if you factor those in, right now we don't have the 53%. So I just think it's -- in the interest of fair play and democracy and being for representation of all the voices in the entire region, I think it would be good policy to support this amendment. I may be alone in that, but that's the way I'm going to vote. Councilmember spelman.
[12:07:22]

>> Spelman: Mayor, you're not alone in that. I will be voting for it as well. And in a moment I'll make a motion in favor of it. It seems to me -- i understand councilmember riley's concern about this is our voting strength has been diluted despite the fact that we're still more than 50% of the population in the region, each with the inclusion of burnet county and we are much, much more than 50% of the traffic congestion and the driving because a lot of people in williamson county, hays county, and the surrounding counties drive to austin to go to school and work and do everything else they're going to do. We have a lot more driving here and have a bigger transportation, traffic congestion problem here. I think that the long run solution to our problem is not to change the number of voting members on the campo board, but to help to instill in people in the surrounding counties the understanding that helping to solve travis county' traffic congestion and transportation problems will help their residents get to school, get to work and do all the other things that they need to do and recognize that just if you solve the problems of williamson county all by itself -- you can't do that because a lot of those williamson county people are going to cross the line and come into our county and they have to help us solve our own problems because that will help them solve their problems. I think that seems to be the more productive direction for us to be going in in part because this is going to continue to change. And we may acquire new members and if the population changes continue the way they have been we're probably going to have a smaller and smaller percentage of the total regional population anyway. At some point we're going to be less than 50% of the population and therefore as a matter of right even if we did it on a population basis we would be fewer than 50% of the campo members. We're still going to be a majority of the transportation problem in central texas, and that's i think the long run best way for us to go about getting the attention we need from campo membership.
[12:09:26]

>> Cole: Mayor? I certainly appreciate councilmember riley's concern and I share it, which is interesting because I'm going to support this motion but I believe that we do need to do something about travis county's representation, especially since our council will be moving from a seven member council to an 11 member council. And I think that given that addition we'll have four additional councilmembers to serve or we could have a system where we have an additional member. But I don't think taking up the issue of our voting strength has to be married with the burnet county addition at this time. And it's generally my understanding that under the joint powers agreement that is limited to how you can bring that up, but I don't have enough of an understanding of the jpa to want to make that change right now. But would like to work with you on that later.

>> Mayor Leffingwell: Councilmember morrison.

>> Morrison: I appreciate everyone bringing this forward and especially councilmember riley raising the issue. I am going to support the motion. I indicated I had some concerns on tuesday about where we were headed because the membership for any city that reaches 50,000 gets added so that we've got something in place that mayor main be sustainable, having more and more folks be added. And our staff managed to answer the question of how many cities within the campo area do we expect to have reaching that 50,000 mark, and I think it just got posted -- I think it was probably a lot of work, and you'll see if you look at that the question and answers, we're not going to see a huge number of them, but it will be adding to the dilution of the travis county vote, which is what is being raised. So I guess what I come to is that number one, I think the county needs a vote, but on the other hand I think some work needs to be done at looking at longer term how it really makes sense to balance the population and the dilution issue. So I am going to support this motion because I think in the end any county does need a vote and really we need to look at the tweaking of the membership issue with regard to cities being added and potentially other ways to manage the balance.

[12:11:57]

>> Mayor Leffingwell: And I requested that data a couple of weeks ago from ryan robinson, and it does show that two cities within the campo area, two additional cities in the near to medium term will be reaching that 50,000 population threshold. Both of those are out of travis county, kyle and leander.

>> Morrison: Mayor, if i could, I had brought that up, requesting the data on tuesday, and also I want to add that I asked for 2020, 2030 and 2040 and the projections show the two by 2020 that would be added. By 2030 there are no others that will leave that threshold and 2030 it will add more. It is a long-term issue and because of the great representation we have on campo by my colleagues, I'm sure it can be dealt with.

>> Mayor Leffingwell: I'm not surprised that you ask for more data than I did, councilmember. [Laughter] we don't have a motion on the table yet. Councilmember spelman moves approval. Second by the mayor pro tem. Councilmember riley.

>> Riley: Yeah. As I've indicated, I'm not going to be able to support this motion, but I want to emphasize that I fully support burnt county having representation on the transportation policy board and I would have been prepared to offer some way of going bah b that such as adding an additional travis county or city of austin representative, but the chair of campo has requested that we simply vote this up or down rather than suggesting some other form of representation because if we did vote it down then his suggestion was that they just go about

-- they convene the jpa members and go about, as we have done in the past, work through the process of trying to find a way to better address the representation issue. And so we have done that well in the past and i appreciate the contributions the mayor and others in that regard. I would just think that this would be a good time to go about that again rather than simply seeing a further dilution of the representation of travis county on the campo board.

[12:14:01]

>> Mayor Leffingwell: And I agree with that as a fought effort. Having gone through it once I can tell you it's a congress, time consuming and controversial process. We should go about that probably periodically take a look at the position of the policy board, but for now I'm going to support any motion that might be made to approve this jpa to ensure that burnet county has a representation on a timely basis. You made the motion and mayor pro tem seconded. All those in favor, signify by saying aye? Opposed say no. I believe that passes on a vote of six to one with councilmember riley voting no. All right. It's limb too our citizens

-- it's time for our citizens communication. First speaker is karen hadden. Typical

-- a number of folks on the same topic, but the topic is the unelected board for austin energy.

>> Hello, mayor and councilmembers. I'm karen hadden, I'm the director of the seeú coalition, solar austin board member and I'm also currently serving on the electric utility commission. I would urge that you take your time in looking at how austin energy is controlled. Right now today on the agenda you'll have an item number 41 that would allow for a study to see whether the impacts of such a change in governance creating an independent board should be. I think study should be thorough and not rushed. I would like to point out in many ways we're doing great with our utility. We have a nationally recognized utility, it wins awards. We're fondly strong with good credit ratings. We have high customer satisfaction. We have rates among those lowest in the state. Green programs. We have low income programs that many people are very proud of. I don't understand what it is here that needs to change. And I think we need to be very careful that changes we make don't break something that is working now. I'm very concerned that the setting up of an independent board, while it may sound good on paper, is not good in reality. And I think you should look carefully at what did happen and has happened in san antonio where a board of professionals, highly recognized business professionals, made some of the worst decisions ever seen. They ignored city council directives and there are no penalties. And I don't see where our proposals have any penalties either for a board taking off and doing something different than they were directed to do. The public utility commission was of no help. The scenario in san antonio involved the expansion of two nuclear collectors. They didn't listen to city council on the board, they didn't listen to the citizens. They put out participation. And while in austin that maybe could look different, I think what you see is a disregard for people in the position where they're not elected by the public, they're not accountable to the public. And while it might be technically more transparent to see them sit and discuss this, it's not more accountable. And we cannot lose accountability for our utility. This is our number one city asset. This generates

-- austin energy generates 1.3 billion a year and the money goes toward helping us fund our parks, our public safety, our libraries. This is a massive, huge decision. And to see this be rushed through is unconscionable. You as our civic leaders owe it to the public to slowdown and to take our time and i urge you to do so. Thank you.

[12:18:26]

>> Mayor Leffingwell: Thank you. Next speaker is john mayes. Issues related to development application, 3715 westlake drive.

>> Hello. I'm john mayes at 3715 westlake drive here in austin. I bought this property in 2006 with the intention of building a house on it. It had an existing structure that was on it, but that structure wasn't recognized by the city, wasn't built to any code and it was in terrible shape. And

frankly, not worth saving. However, I decided that i would fix it up enough to live in for the short-term, which I thought would be about a year, while i figured out the plans for the site. I had no idea that I was going to be living in it for seven years and it's been a lot of patchwork to keep it together. But that's what it's taken to go through this labyrinth of building process so far. I tried a number of years to determine what we could build on it with architects, builders, and eventually pulling in zoning consultants, attorneys, anybody that could lend some light on this. It's been a number of did he ends as we go through it. The effort is really becoming more urgent as the house that's on there continues to disintegrate and the property is eroding. There's a lot of soil and rocks eroding into the lake. The site is just semi-self-destructing you could say and it needs some building to come in there and put up some retaining walls and a proper structure. Recently as well I've discovered some wiring hazards that create fire hazards and issues like that. It's taking a lot of work to keep it a safe place. In addition to the house not being compliant with any zoning or permitting, it's also the site is not conforming with la zoning in itself. I'll let my agent speak more to that. But for the last six months I've had a group of consultants helping me to navigate through this to get to a point of building. As part of that we submitted a 1704 request, the city requested the application, cashed my check and then failed to give any formal response to it. And is really pretty much just been ignoring us and ignoring the due process on this. My request is that the city initiate downzoning from la to sf-2, and I'll dedicate the rest of my time to david cancialosi, my agent, who can further explain this.

[12:21:36]

>> Thank you. David cancialosi, you have three minutes. We don't donate time in citizens communication.

>> Good afternoon, councilmembers. David cancialosi for the applicant or for mr. John mayes. As he pointed out, this is a project wre it's a residential issue. We have tried to navigate the municipal developme process on varied levels. And this is not an issue we're here to disparage staff. I think there's some problem with the process related to this particular site and others in question. This site obviously cannot comply with la zoning. A number of lots along the lake can't. And this was annexed into the city. It was zoned by the city. It was sound la. It was made non-compliant. There are two lots. The house straddles the shared lot line. Each lot by it self is less than one acre. The minimum lot size for la zoning is one acre. The intent of the la zoning when it was brought into place years ago was to create sites much larger than one acre. It wasn't to say you needed just one acre or between one and two, it was to larger parcel. So the city created this problem years ago and as we have navigated the process with various staff members, and I would agree with mr. Mays assessment that i think we've been somewhat ignored. I think the process is broken to some degree. And the correct thing to do is to zone the site to sf-2 because it would become a compliant structure and a compliant site. As it sits right now, la zoning prohibits, without a number of substantial variances, the owners of a building to use the property. If he doesn't have a reasonable expectation to the use of the property, it doesn't exist. It's on such a steep slope that to comply with la zoning you have to have a be I have of variances and development issues and these encumbrances are stopping him with moving forward on basically fixing a broken house. And staff-- the process that's in place is such that he can't do that. And so we're not here again to disparage staff. There's some problems with the process I think that can be remedied. What we'd like to see happen is because he's spent so much time and

frankly so much money to get to this point, our ask today is for you to consider a downzone from la to sf-2 which would allow him to build a compliant structure on this site. Otherwise it's completely unusable. We think doing so would fix what the city should have done, which is zone it sf-2 when they graduate bureaucrat it into the city limits.

[12:24:42]

>> Mayor Leffingwell: Let me just ask you, have you

-- your time is up, by the way. Have you initiated a case yourself? Couldn't you do that, apply for a zoning change? Or apply for the variances that you need to do whatever construction? I guess I'm trying to figure out why you're asking the city to shift 80 it when it's your property and you should initiate the request for any variances or a zoning change, whatever is needed.

>> To answer your question, no

-- yes, we could. And no, we haven't. And we are at such a point where it's been such a seven month, six-month ordeal that we feel that the city should at least meet us halfway and start the process and not make a homeowner go through it and pay for it himself to do so. It's the city's error, they should not have zoned it la, they should have zoned it sf 2 and we think it's incumbent upon the city to fix that.

>> Mayor Leffingwell: I think that's an option that is available to you and I certainly think that if any

-- a couple of councilmembers wanted to take that route, I don't know if they would be or not, that would be another option, but I think

-- I think it's really your privilege to request a zoning change or variances. Thank you much.

>> Thank you very much.

>> Mayor Leffingwell: All of the rest of our speakers are speaking on Austin energy governance. So next is Kiaba White. You can correct me when you get up here.

>> You were pretty close. My name is Kiaba White. I want to talk for a few minutes about Austin energy governance and the proposed changes. While I don't disagree that an entity as large and important to the city as Austin Energy perhaps does need some sort of dedicated board to focus on those issues as opposed to having them fall largely to one individual, I do think that this process has been rushed and that the proper analysis hasn't been done to evaluate all of the options that are available to us. Likewise I feel that there hasn't been enough citizen participation in the discussion. And that there could be more done to engage more of the rate payers and the citizenry that will be affected by this decision in the years to come. If after proper analysis has been done, city council still believes that a separate governing board is the best option to move forward, I urge you to put in place a board that will be as accountable to the people as you are. And that could be a board that is city council, it could also be an appointed board as has been discussed and is in the resolution already passed. Or it could be an elected board. And I think the appointed board has this feeling if it's safe that you have control over who can be appointed on it, but that won't always be the case. The board will become self-perpetuating and even though city council may have the ability to approve or not approve nominations, if those nominations are coming from the board I think that does pose a problem. Ordinarily an elected board will be directly accountable to the people. We'll soon have 11 districts. We'll have 10 districts of Austin and I think that we could easily have an elected board where each district elects a single member and perhaps an 11th member comes from those areas that are in Austin Energy service area, but

not within the city. So everybody has representation. And I feel that that option would do more to keep the power in the hands of the people while also having a dedicated group to focus just on austin energy issues, which is something that has been brought up by this council as a potential problem. I know that this is

-- that that option may take a little more doing and wouldn't be immediately available because it may take a charter amendment to have a new elected body, but I don't think that there's a rush on this and I think that there's a perception that we need to act right now. Personally I think we need to take the time to really evaluate what our options are and I think that councilmember tovo's resolution that she has

-- and morrison's resolution that has been pulled down for input would allow just that, study the options, evaluate what other utilities have done and what has been successful and what hasn't. I urge you to accept that resolution.

[12:29:40]

>> Mayor Leffingwell: Thank you. Lauren ross.

>> (Indiscernible), sinclair black, roger duncan, judy disparage staff dis, t paul robins, david butts. In the landscape of austin's history, these names are legendary. And all of these people, including hundreds of men and women whose names i don't know, came together in the 1960's to oppose austin's participation in the south texas nuclear project. These women and men know and knew what you know because you're sitting in those seats. They understood the power of our democratic process. I'm an engineer and i understand the power of spreadsheets and analysis and experience, but I also know their limitations and a great city like austin is not led by expert spreadsheets. It's led by visionary democracy. Visionary democracy is part of your job just as much as balancing the budget and setting policy for the city of austin. Now, you could appoint an austin energy board that would reflect our wisdom and values. You could put on karen hadden, t paul, mike sloan, people who have years of experience and really understand and get austin and where we see ourselves going, but even if you appointed a board like that and even if you keep the major decisions in your own hands you're going to be like steering austin energy with a stick through the wheel

-- through the window on the steering wheel and you're going to be pushing those gas pedals as if you've got some kind of mushy cushion between you and the brake and the gas. So what I'm asking you to do is I'm asking you to stay in the driver's seat and I'm asking you to keep your hands on the steering wheel and your feet on the pedals. Those activists lost that battle against the south central texas nuclear project. Austin went in. Our utility customers paid for the cost overruns and our children's children's children carry the legacy of that environmental decision. But what those activists did not lose and what they did very successfully is they put a stake in the ground for participatory democracy in this city. It was an action, an activity that changed austin forever. It's a legacy that you hold and we owe them a great debt. I hope that you'll honor that legacy of democratic participation and keep your own hands and austin energy in your control.

Thank you.

[12:32:52]

>> Mayor Leffingwell: Thank you. Carol biedrzycki.

>> Thank you, mr. Mayor. My name is carol biedrzycki and I'm executive director of texas roads, which stands for race pairs organization to save energy. I was here in december at citizens to talk about the independent board for austin energy. And at that time I was very concerned about the fact that this proposal is disenfranchising voters and I'm still concerned about the changes in austin energy governance. Now, I will say that since december I've had some conversations with people like I've heard some stories about what's being considered and I wasn't quite as frantic as iwas in december because it does seem as though there is an attempt here to step back and make sure that we look at all the information that's available to us and move forward in a deliberate manner that produces a better result than what we have now. On the proposals when I hear incident board it conjures up images to me offer rot and I have spent many, many hours at ercot, and that is not the kind of

-- because if you go to ercot they don't know what an end use customer is. And I am very concerned when I hear proposals about doing searches by head hunting firms to bring in professionals to serve on this board. I feel like we are losing everything that we have now where we have community involvement. In the process. So I would like to recommend that even if this board is professional that it be limited to

-- membership be limited to residents and to customers of austin energy because we don't want people coming in from all over the country to govern this board. We want to make sure that they understand what the needs of the community are. I would also like to see city council retain most of its authority over austin energy and as a result of that I don't think it's a good idea for any city councilmembers or mayors to serve on a separate board to govern austin energy. And the reason for that is that the council should retain complete neutrality in reviewing decisions and making final approval and if members of the council are a part of this board I'm afraid that by the time they

-- be the time the proposal gets to the council that the councilmembers who were affiliated with the board will be advocating for that proposal. And I think that dilutes the review process. And that concludes my comments.

[12:36:10]

>> Mayor Leffingwell: Thank you. James casey. [One moment, please, for change in captioners] look at the examples that have been conducted previously. The city of seattle has conducted a careful inquiry for over two years into the same issue and ultimately determined that placing their utility into the hands of a non-accountable board was not the right thing to do. We're you're the people's representative in the management of this. You have a duty to protect the people's property. You have a duty to protect the interest of those who are not wealthy and powerful. It is possible to achieve fair, equitable and just outcomes for all of the people that depend on austin energy if that is your goal. Please keep austin energy accountable. Thank you.

[12:39:15]

>> Mayor Leffingwell: Amanda haas.

>> [Inaudible - no mic].

>> Mayor Leffingwell: Alice canestaro-garcia.

>> Good afternoon. I want to first praise the free air of austin, the democracy of austin. When I was a student here in the early '70's, we were the only city that had an opportunity to vote on the creation of the south texas nuclear project. We voted it down until it was pushed through. We name is alice. I live in san antonio. I'm here today because i know that you're considering a change in the way that austin energy is governed and that you're considering adopting a board structure like the one we have in san antonio with cps energy. I'm a number of [speaking spanish], we're trying to remind our energy company that it's our energy company. They seem to forget it regularly. I understand that former general manager of cps energy milton lee was interviewed by y'all, and in a report that looked at governance models he recommended a board such as this despite the fact that san antonio lost four million dollars in this process. What you haven't heard and should know is that the voices of many people who recently struggled intensely with cps energy board for three to four years, amanda haas being one of them, please talk to her. Please talk to many of us, including some former city councilmembers who would recommend against such a board. I urge you in your plans to conduct a study and to interview -- well, interview all of us. Mr. Milton lee was at the helm as general manager when san antonio pushed through another coal plant. He also pushed to build the two units three and four. There was huge opposition to more nuclear power in san antonio. There continues to be due to of course safety concerns and the radioactive waste. I was among the many people who put in endless hours battling the utility board, which was nonresponsive, even though these boards are made up of san antonians, business professionals who should have made better decisions. The board completely ignored city council's directives. In particular that cps spent money on more nuclear power each after they were told not to. They are not accountable. There were no penalties for this, no one could stop them, not even the city council. Since the board is not elected they couldn't be replaced by a public vote or if you've looked at our model, itself-perpetuating. Look at san antonio as a cautionary tale. We have an exceedingly closed system compared to y'all's.

[12:42:38]

[Buzzer sounds] ratepayers have no recourse. It's a self-nominating, self-perpetuating group.

>> Mayor Leffingwell: Thank you. Last speaker is ben ogbodiogwu. And your topic is samso funding cut by the city of austin.

>> Yes, sir. Good afternoon, mayor, good afternoon, mayor pro tem and councilmembers. I'm here to speak to you about samso, which is (indiscernible). The reason why I'm here is that we all have worked together and this program has proven to be effective because it is evidence-based practice. It is a performance program. And we all worked on it for more than 15 years. And recently the city of austin withdrew its funding, which is \$648.989 from this program. If you look at "austin american-statesman" newspaper of march 8, you see that the state invested \$200 million more on mental health and mental retardation. We are the champion, so why would we pull money out now that is needed? Austin-travis county (indiscernible) has done a very good job so that is why I'm here. And I'm appealing to the council, please reconsider your decision. Also push organization is here. My name is ben. I'm sorry I did not introduce myself. I'm the director of pushup foundation. We have participated in this program for many -- for a long time, even before it was created. And right now we have not been paid for the

services provided, even though the services are authorized. And it is very difficult thing to us so we want the council to consider that. And also we want the council to consider our electric bill. Does treatment work? Yes, treatment work. It reduces crime by 40 to 50% the it reduces drug use 40 to 50%. It creates job 40%. So this is a very, very good thing that we all have invested in. Please, let us not destroy what we have already created. Thank you very much.
[12:45:22]

>> Mayor Leffingwell: Thank you. Those are all of our speakers. So the council will now go into closed session and take up three items. Pursuant to section 551.071 of the government code the council will consult with legal counsel regarding the following items. Item 54, legal issues related to the november 6, 2012 election. Item 55, legal issues related to cause number d 1 gn 13-00688, texas retailers versus the city of austin. Item 56, legal issues related to ordinance number 20110629-003, white lodging services corporation's development of the jw marriott hotel. Noting that item 53 has been withdrawn. If there's no objection to going into executive session on these items, we'll now go into executive session.
[13:42:53]

>> Mayor Leffingwell: We're out of closed session. In closed session we discussed legal items related to 54, 55, 56. We'll go ahead with zoning items now. Mr. Guernsey.

>> Thank you, mayor and council. Our 2:00 zoning ordinances and restrictive covenant items. I would like to offer for consent item 57, this is to approve second and third readings of an ordinance for the property located at 7401 west highway290. This is to change official land use map to commercial use. I c14-2011-0146. Change to gr-co-np, combined districts zoning. Item 59

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>> Mayor Leffingwell: Both of these were second and third.

>> Both of those were second and third. Item 59, c14-2012-0146 sh, 1044 norwood park boulevard, staff is requesting postponement of this item to NEXT WEEK, MARCH 28th. We're waiting for the signed restrictive covenant to be received. Item 60, c14-2012-0028, to approve second and third readings of an ordinance at 301 and 311 colorado street and 114 west third street. The applicant has requested postponement to your april 11th meeting. That's item number 60. Under 2:00 zoning and neighborhood plan amendments, public hearings and possible action, item 61, c14-2008-0159 (rca), the applicant has requested postponement of this item to your april 11th agenda. Item number 62, c14-75-85 rct for property at 605 west 15th street, related to termination of restrictive covenant recommended by the planning commission. Item number 63, c14-84-056 rct for property located at 605 west 15th street, this is related to the termination of restrictive covenant that was recommended to you by the planning commission. Item number 64 is case c14-2012-0158 for the property located at 7311 decker lane. This is to zone the property to general commercial services or cs district zoning. The zoning and platting commission recommendation was grant general services or cs-co and this is ready for consent approval on all three readings.

[13:46:13]

>> Mayor Leffingwell: So the consent agenda for our zoning cases is to approve item number 57 and 58 on send and third readings. Postpone item 59 until march 28. Postpone item 60 and 61 to APRIL 11th. To approve

-- close the public hearing and approve item 62 and 63. Close the public hearing and approve on all three readings item 64. Entertainment a motion on the consent agenda. Councilmember spelman moves approval, councilmember martinez seconds. All those in favor please say aye. Opposed say no. Passes to a vote of 7-0.

>> Thank you, mayor, that concludes our zoning map changes for day.

>> Mayor Leffingwell: Councilmember morrison.

>> Morrison: I would like to make two comments. At 4:00 we have item 68 scheduled for a hearing on temporary use outdoor assembly permits and I will at that time make a motion that we postpone that until april 11. There was discussion about limiting testimony on item 22 which is the project duration and I want to withdraw any suggestion that I would consider limiting testimony at this time. I think that because there would be difficulty in actually coordinating all the different perspectives that I'm understanding I've been talking with folks that limiting testimony is going to be very difficult so i would withdraw any suggestion on my part in that regard. And I would like to note at this point I think we have 89 people signed up to speak so there could be up to four and a half hours of testimony and hopefully people would plan accordingly. Thank you, mayor.

[13:48:22]

>> Mayor Leffingwell: Let's item up item 40. One speaker, clay dafoe is not here. Michelle lynch. This item was pulled by councilmember tovo. Is that correct?

>> No, riley.

>> Mayor Leffingwell: Riley. Go ahead.

>> Good afternoon, councilmembers. Michelle lynch with mack, wolf, stewart and williams. I want to call your attention to one aspect problematic with the resolution related to refraining from alley vacation approvals while the study is commencing and being finalized. I don't think anybody disagrees a study is warranted, it might be useful, but I'm concerned it may negatively clients that have alley

-- another aspect would be just to identify that the rainey street subdistrict is different set of block standards smaller than the@ typical and the effect of alley locations are more problematic in general than the basic cbd. Just wanted to all that to your attention.

>> Mayor Leffingwell: Those are all the speakers we have. Councilmember riley.

>> Riley: I was concerned about the same language. This is a discussion we did discuss at the work session on tuesday. There has been new language circulated and so now that that final paragraph of the resolution reads as follows: When revealing proposed amendments to the city code, the council shall strive to preserve austin analysis and refrain from vacating alleys at least until the plan has been completed and reviewed. I take it that with respect to that last part about directing the council to refrain from vacating alleys that that would apply until the plan has been completed and reviewed whether we're reviewing proposed amendments to the code. If I could

ask the response of the resolution.
[13:50:33]

>> Mayor Leffingwell: Councilmember tovo.

>> Tovo: I'm going to have to ask you to clarify your question, the last part of it. Whether it would apply

-- let me

-- let me explain one other

-- there are a couple changes. The ones that you just noted there. I also changed one of the last be it therefore resolved to be more specific about what the downtown alley master plan would do and distinguish it a little bit from the masters report because I think there was some good questions at the work session tuesday about how it would differ and how it would build on. With regard to the be it further resolved, what I

-- what the resolution we've gotten in front of us does, it was an attempt to recognize that there was concern about the original language regarding

-- and i believe you had made the point, councilmember riley, that vacating alleys was of great concern generally. And in attempt to recognize the point you made, we adjusted that sentence a little bit to be shall refrain from vacating alleys. The original language was

-- the original language was shall refrain from altering city code as shall carefully consider alley vacations until the study has been completed and I think you made the point we should perhaps refrain from vacating alleys. Anyway, that was the intent behind the revision, so I'm not understanding your question about code amendments.

>> Riley: The idea is that we would refrain from vacating alleys until the plan has been completed and reviewed. The date I see in the resolution is

-- that is june 20th for the city manager to report back about

-- by june 20th about options and a proposed time frame for conducting a master plan. So at this point do we

-- we don't really have a clear sense of what time frame would be required to complete and review the master plan. But this resolution would direct the council to refrain from vacating alleys until that time. And I guess that

-- while i have great concerns about vacating alleys and i appreciate the councilmember's effort to address that in this resolution, I think as a procedural matter I have some hesitation about stating in a

-- stating that we shall refrain from vacating alleys until some indeterminate point in the future knowing that there are cases working their way up in the pipeline. In my judgment, it seems to me that we need to be careful about vacating alleys at all times whenever those come to us, whether before, during or after this study, but I

-- I have some anxiety about stating in a resolution that

-- that the outcome will be one way or another, that we

-- declaring the result before the case actually reaches us. So that's

-- and I know

-- i think I heard other councilmembers express concern about that at the work session so I wanted to make sure we're all on the same page in terms of what we're discussing today.

[13:54:06]

>> Mayor Leffingwell: Likewise, I couldn't support that language either. I couldn't support anything that would direct the council from refraining from

-- refrain from taking action on anything in the future. I would like to make a constructive suggestion that instead of language shall refrain from amending the city code regarding

-- i guess this language on the computer is a little out of date. Instead just say simply the council shall carefully consider future applications for alley vacations. And leave it at that.

>> Tovo: Well, okay. Can I read you the actual language right now? When reviewing proposed amendments to the city code that pertain to downtown alleys, the council shall strive to preserve possibilities for austin's urban alleys and also refrain from vacating alleys until the plan has been completed and reviewed. In fact, mayor, you expressed because carefully considering because you pointed out we should always carefully consider so i eliminated that and made the alley vacation stronger in response to feedback from councilmember riley. It sounds like some of the changes were not

-- in any case, I think the point is, yeah, we will have

-- i guess

-- I guess I would make the point the council very often adopts policies that we're going to be governed by going forward. I'm having a little trouble understanding the distinction and in part, again, is appointee made earlier, but we're trying to preserve

-- preserve

-- we're trying to preserve some possibilities. We always have a possibility to consider one on one cases, I would assume. This is not going to bind us but states a clear policy in attempt to provide predictability and consistent guidance to the development community that may, you know, which is a frequent refrain that we hear, that they would like to know what our

-- a consistent and regular practice. And this would give them the consistent message and a clear message that until the time where we've created a master plan for our

-- for our downtown about our alleys, we're going to use as a guiding principle that we're trying to preserve the possibilities rather than close them down or close down options and we're going the refrain from vacating alleys.

[13:56:38]

>> Mayor Leffingwell: Well, I guess I really don't know what strive means and how do we know if somebody hasn't striven enough to comply with this resolution. I think really it ought to just direct the city manager to provide options in a time frame for conducting a study and leave it at that. So I'll withdraw my previous suggestion. Councilmember spelman.

>> Spelman: Let me see if I can get your previous suggestion on a table because I think it's a good idea which we might all be able to agree to. Strive to agree to. Instead of shall also refrain

-- how did you put it? Do you remember?

>> Mayor Leffingwell: Well, what I wrote down, should carefully consider and as councilmember tovo pointed out, we always carefully consider, shall careful consider future applications for alley vacations.

>> Spelman: I'm comfortable with that an amendment.

>> Mayor Leffingwell: Well, we don't have a motion on the table yet.

>> Spelman: I'll back off until that time testify to have I move approval.
>> Mayor Leffingwell: Councilmember tovo moves a professional seconded by councilmember morrison. Councilmember spelman.
>> Spelman: I move to amend that second be it resolved clause so shall also refrain from vacating alleys shall change to shall carefully consider any future requests for alley vacations.
>> Mayor Leffingwell: Do you accept that, councilmember tovo?
>> Tovo: Let me take a look at it for a minute. And should carefully consider any requests or future requests?
>> Mayor Leffingwell: Applications for alley vacations.
>> Tovo: No, I think we should carefully consider any because even those in progress need to come to us for approval.
>> Mayor Leffingwell: So you don't accept that?
>> Tovo: I would accept it if there's removal of applications. Future applications. Because I think what we don't want to do
-- I mean any alley vacations currently in process need to come to us for final approval. There's not a guarantee they are going to be approved and I don't want to tie our hands this that approval process.
[13:58:52]

>> Spelman: Okay, so shall carefully consider any future alley vacations.
>> Tovo: Fine.
>> Spelman: Works for me.
>> Tovo: Thank you.
>> Mayor Leffingwell: Is that accepted by the second? I just want to clarify, shall carefully consider any future applications does not necessarily affect any applications that are in progress now. You're going to carefully consider those applications as well as any future requests.
>> Tovo: I believe the language
-- I believe the language is should carefully consider any future alley vacations.
>> Mayor Leffingwell: Same
--
>> Tovo: Shall.
>> Mayor Leffingwell: Same thing.
>> Tovo: Shall consider any future alley vacations.
>> Mayor Leffingwell: The only language in there is shall consider. Which to me is a little more easy to find than shall strive to.
>> Tovo: Well, I believe shall strive is still in the fit part of the sentence unless the amend was intended to edit that one as well.
>> Mayor Leffingwell: My suggestion was to remove that language. I don't know what councilmember spelman's is. Okay. All right. Any further discussion? All in favor of the motion say aye. Opposed say no. I'll say no. Passes to a vote of 6-1 with myself voting no. We'll take up item 27, which was councilmember tovo. There are no speakers.
>> Tovo: I have several questions for staff about this item. To switchgear from alleys. So this is an item to hire swca to perform survey services. I would ask the question whatever experience had they had and we received a little back about surveys they've done about the golden cheeked

warbler and the black capped virio. I'm more familiar with them from the media coverage of them and the work they performed for williamson county when williamson county was providing information to fish and wildlife about the potential listing of endangered species of salamanders. So I guess my first question is was there a distinction staff was drawing that that information was not provided as part of the q and a?

[14:01:49]

>> No. No. So didn't it say they had worked in williamson county? I think we didn't say a lot

--

>> Tovo: Refers to williamson county conservation foundation for the golden cheeked war burglar. But they did to work for the williamson county for the salamander.

>> On that I would have to defer to watershed on that and they could comment further on that.

>> Tovo: Mr. Slusher, i wonder

--

>> daryl slusher, assistant director of austin water.

>> Tovo: Would you mind telling us about how the history of how the contract was considered, why this firm was selected?

>> I would be happy to do that and if there is someone from purchasing, they might want to jump in. We went through the tex mass system which is a pre approved system with the state of texas. My understanding we could have picked somebody off that's already approved through that list, but instead we went an additional step of doing bids. We took three bids and this was the low bid and we picked this company. They had done work for us before. We had been satisfied with the work. We have very high standards so we would expect them to do a good job and tell us where there are birds, and that's both so that we keep in the good graces and the rules of the fish and wildlife service. Also with their own standards and goals for managing the land.

>> Tovo: And so was the last time they were employed by the city was 2003?

>>> I think that's correct. Kevin? We had them for some smaller jobs in 2012. That was the last thing near the scope of anything they are doing now.

[14:03:49]

>> Tovo: Were some of those smaller jobs also looking at birds or

--

>> yes, it was their bird group.

>> Tovo: Okay. And so what is the intent here. What kind of work are they going to be d@oing?

>> Well, in order to implement the land management plan which council approved in december, we need to do some clearing of certain properties, some prescribed burns are both used under those land management techniques and we wanted to make sure there are no endangered species, no endangered birds in those areas. We've done this a number of times, but you have to do this periodically to meet the standards of fish and wildlife.

>> Tovo: And so their role is going to be to survey and make sure there are no endangered species on the land before the work is done?

>> That's correct.

>> Tovo: I would like to talk about the work they did for williamson county.

>> Mr. Wozniak is here. Is he in the chamber? I'll turn it over to him.

>> Tovo: Thanks, mr. Slusher. I'm sorry it came up so late and you all have been here all day. I didn't mean to keep

-- mr. Wozniak, can you give us a little background about it's my understanding that the city

-- our city scientists provided some information to you at fish and wild liar, swca worked for williamson county and we're relying largely on a body of science that really differed in many respects from ours and I wanted to get some background about that, please.

>> Swca did an analysis for I believe the williamson county conservation foundation on the jollyville salamander and I believe the salado salamander, and much of their analysis was based on work that the city of austin had done, primarily watershed protection staff. And then they had done some small research projects on their own, original research projects on their own and offered an opinion on behalf of williamson county on the appropriateness of the proposed listing of

-- as endangered for the jollyville and salado salamanders. The city staff, the city scientists disagreed substantially with the swca analysis but I don't think that would necessarily question their qualifications to do the bird surveys that th water utility would be hiring them for. They do have a good reputation doing good bird work. The city has hired them for other work other than bird work in the past and I've been satisfied with that work that they've done in the past. But on the salamander analysis, we did differ significantly.

[14:06:57]

[One moment, please, for change in captioners]

>> Tovo: So swca was resting their analysis as far as I understand on the forcener report which several other scientists of good repute called statistically flawed. And I guess

-- I want to talk a little bit more about the city of austin's response to swca that

-- and this was in one of the city of austin reports. I'm going to get to it here in a minute. From the official city of austin comments to fish and wildlife, the response after I see swca argued against the city of austin findings. Is that what happened? The city of austin had submitted its findings, swca came in and said that the city's findings were flawed?

>> I think that their opinion was that the analysis we've done over the years and provided to the fish and wildlife service not just this past year, but previously was incorrect. We're pretty certain they're looking at a small subset of our data and even that data we think they were interpreting incorrectly.

[14:09:04]

>> Tovo: Is the substance of the disagreement with regard to the salamander that forcener and others have argued that they are indeed

-- they are the same salamander instead of different salamanders and so therefore there are many more than the city of austin? I'm oversimplifying.

>> That's certainly a part of their argument. And I think that's correct in part.

>> Tovo: It's been used as a basis to argue that the salamanders aren't appropriate for listing as endangered.

>> Yes, that's williamson county's position, yes.

>> Tovo: So I guess my concern

-- I have some concerns about how valid their analysis will be if there are any endangered birds

on the land. I don't know whether those concerns are valid, I'm just sharing them as concerns.

>> As I said, their reputation in bird work is good. I haven't worked with them directly on bird surveys and it's not my area of expertise, but one of the things that having had similar environmental consultants work for me over the years is that the project manager has a significant amount of influence on the quality of the work. And my experience with willie conrad, kevin theyson, darrell staff is that they have very high standards for scientific integrity and as the city's environmental offic I'm pretty comfortable with our staff's ability to supervise swca and I don't personally have any concerns with awarding the contract to swca.

>> Tovo: That's helpful and certainly I would say

-- I am

-- think the world of all of our staff, including the ones you've mentioned. I have no doubt about their capability and didn't mean to suggest otherwise. I just have concerns about the consultants we're hiring. But I take your point that strong supervision

--

[14:11:07]

>> I think generally within swca it will be different personnel. They'll be using experts in birds. The folks that they were using to do the salamander analysis I assume will be different people. You don't generally have people go that far afield from salamanders to birds, although they may. I'm not sure what personnel they're using. And having said all that i don't want to dismiss very strong disagreements with the swca analysis on the jollyville salamander.

>> Tovo: Yeah. I'm looking at the city of austin response to somewhat this that they used the incorrect use of city of austin data. Using in-- incorrectly using a human drinking water standard to assess nitrate concentrations from sampled springs and a variety of others. The swca asserts incorrectly that city of austin survey methods were not reliable for determining abundance and/or population trends, which at least is the substance of the question that they'll be asking about the birds. Is there any way to confirm whether or not we're working with the same body of scientists?

>> That's a question of the water utility staff.

>> Kevin theeson, environmental program manager for austin water utility. The people who we worked with on bird surveys before, they typically don't work with the salamanders. So I would associate the people we've worked with on birds before to be doing this work and I don't think they're the same people who worked on salamanders in williamson county.

>> Tovo: Mr. Theeson, do you think

-- so the scientists who would be working with you on this contract if it's approved, are they the same who you worked with on the smaller contracts in 2012?

>> In one case yes, it's the same lead person who leads the bird work and it's the same person we worked with in 2003 when we did these surveys as a big group with swca before.

[14:13:17]

>> Tovo: So when your team evaluated this were you aware of the work they had done on the salamanders in this area and the ways in which their scientific opinions differed from our city scientists?

>> I was not aware of the specifics you brought out with regard to williamson county. It is in terms of who has the fish and wildlife permit and who has the low bid on the contract.

>> Tovo: Do you all feel you have an opportunity to rethink it again and is it still your

recommendation? I guess that's two questions. Have you had an opportunity to evaluate it in light of the concerns I've raised or would

-- do you feel like another week would be useful?

>> I think that just the differentiation between the people doing salamander work versus bird work is useful. And I should mention too that because we've collected this data over similar lands over the past decade, maybe even 13 years, we do have a reference set of data that we can look at. And in many cases what we're looking at is things that have appeared to be potential habitat and trying to differentiate is is it actual has been at a time that is occupied, are there other birds there. And we do hope to run an analysis after this collection to say in the past 12, 13 years what does this data mean? Do we need to keep doing these surveys or limit the surveys? So there will be an overall analysis of the data by another consultant work at some point to say does this data make sense and what are our next steps in monitoring these I think danger species.

>> I just wanted to add to that. Also our staff haven't had these consultants and other folks go over the properties before, it's an ongoing process. I think they would be able to recognize or be likely to recognize anything that's garishly of what would 'on the ground.

[14:15:30]

>> Tovo: That's reassuring. Have you used other consultants in the previous years? And I guess if so

--

>> yes, we've used a variety of consultants. From 1999 we had the nature conservancy, we had swca in 2002 and 2003. We had bear engineering in i want to say 2005. In 2009 we had bear engineering and another group that was

-- I think their names have changed. I think it was hicks and company. And then in 2010 I believe we had bear engineering. Hicks and company, I think i just said that. We've used a variety of firms.

>> Tovo: Again, the reason this firm was picked this time is because they were part of the tex mas contracting system and they were also the low bid?

>> Correct. The purchasing group had the wisdom to go ahead and evaluate three separate bids and they were the low bid by far. The next closest bid was \$75,000 more.

>> Tovo: All right. I really appreciate all the information. Thanks.

>> Mayor Leffingwell: Is there a motion on item 27? Councilmember spelman moves approval. Seconded by mayor pro tem cole. Discussion? All those in favor, signify by saying aye?

Opposed say no. Passes on a vote of six to one with councilmember tovo voting no. So item number 10. 10 pulled off of consent by councilmember riley. There are no speakers.

>> Riley: I know 10 is the item related to selection of the consultant for the revision of our land development code. We had an extensive briefing on this at our last meeting, which included presentations by b of the teams and i believe all that's before us now is the final selection. Can you confirm that?

[14:17:40]

>> Good afternoon. Rosie truelove. That is what is up for you today is to make the final selection of the team.

>> Riley: At this point we have no speakers signed up. I'll take the opportunity then to just layout my thoughts on this and proceed with a motion. We have gotten some helpful input, especially from the members of the taskforce, the advisory group we assembled to work on this project

together with the consultant for the next couple of years or so. And I think that

- first let me say I'm very impressed with the advice that he got from our advisory group and I'm happy with that, but more importantly I have to say I'm very impressed with both of the teams before us. These are both two national caliber stellar teams. We will be in good hands, whichever team we wind up going with. With respect to the clarion team in particular it was exciting for me to have donald dare iat here to make the presentation. I've read his book and recommended it to everyone. I was interested in the input that we got, probably because this is a difficult decision probably because both teams are so good. And the scoring was so close between the two. In general clarion scored somewhat better on most categories, but opicos did better
- significantly better on the interview. So it came up
- as it turned out there is just about two points
- clarion came out with 1003.73 points. It is a razor thin margin between those two teams. So that being the case I was particularly interested in the input that we got from the advisory group that will be working with this consultant over the next couple of years. And as I mentioned it was very helpful. What was striking to me is there were several themes that emerged repeatedly in the input that we got from our advisory group. One is
- well, first both had good things to say about both teams. But in particular with
- there was one from people with particular strength to opicos. It was described once as more after designer approach as compared with a warrior approach. Meaning that they had
- in fact, one person
- one of the members actually said clarion would approach the project primarily from

[14:20:35]

(indiscernible) design and opicos from a design perspective. Another said that they liked

- the first thing they liked about opicos was their ability to display concepts and convey information visually. They had
- you see the word graphics. Generally there's more of a graphic and visual product that they did. And in fact, that was confirmed in my review of the work. I didn't go through all of the work that teams have done, but I did just for purposes of sampling their work, I did look at some of the codes. Liked at the flagstaff zoning code that opicos work on. I looked at the philadelphia code that clarion worked on and I will say that that tended to support the impression that opicos presents a very
- has
- tends to have a very graphic and visual approach. A second theme made it to affordable housing. Both teams did address affordable housing, but several of the advisory group members felt that the opicos team did a better job of addressing that issue. Opicos
- the input we got from one member of the advisory group is a particular strength in affordable housing. They wrote that opicos had more thoughtful approaches regarding affordability. And in particular opicos provided incentivizing of housing with its bungalow enrichment. Another member pointed out that
- felt that ownership has demonstrated a better sensitivity and awareness that austin is in the middle of the housing spectrum, many other types of housing lying in the spectrum between single-family and mid rising and that these affordable housing types simply aren't being built much in austin today. Point being that we heard that opicos
- there was more confidence in opicos' ability to address affordable housing. And then the last thing i saw from a couple of members was in regard to austin experience. Both teams actually

scored 10 out of 10 on city of austin experience with prime. But a couple of members pointed out that with respect to clarion that the experience with prime was largely in respect to two initiatives. The mansion ordinance and the commercial design standards ordinance. I strongly supported both the commercial
[14:23:16]

(indiscernible) standards AND the McMansion ordinance. But we did have people point out that there have been some issues especially with commercial design standards. It was a very well intentioned and a very strong effort, but there have been issues with its implementation. In fact, one member of the advisory committee pointed out that

-- suggested that there's some degree of non-user friendliness for that document and well over 50% of the

-- of all submittals seek alternative equivalent compliance. I don't mean to denigrate in any degree the work that was done on the commercial design standards for the McMANSION BECAUSE I'M Proud of that work. I think

-- I appreciate clarion's contribution to that work and I think it was a good effort. But I will say that I'm hearing a lot of interest in trying something that represents a break from what we have tried in the past. Something that involves a more graphic visual and user friendly approach. And as well as a team that has particular strengths on affordability. And one

-- I don't think i mentioned on affordability that somebody pointed out they actually have a whole subconsultant

-- the opticos team actually has a whole subconsultant just to address affordability. So to sum it up, there were basically three themes that I saw in all the input that we got and I can see why the opticos team made a stronger impression in their interview with staff. I could appreciate the points that are raised by the advisory committee. And they have expressed a preference that we go with opticos. And so while I

-- I will look forward to the opportunity to work with either team and all of the very competent members from top to bottom of both teams, that I will go ahead and make a motion that we go with the opticos team.

[14:25:26]

>> Second.

>> Mayor Leffingwell: Motion by councilmember riley to

-- I guess to change the awarding to opticos. Seconded by I think I heard almost everybody.

Councilmember martinez seconds? I'll just say that I'm going to support this motion also. For a lot of the reasons that were enumerated by councilmember riley. And to me the big issue was

-- and what we talked about during the briefing from my perspective was simplicity and simplifying the code. And I just believe from what I've heard and also based on the record that opticos has a better chance of achieving that goal. Councilmember morrison.

>> Morrison: Thank you. I appreciate your comments, councilmember riley, because I do think that they're two very strong teams here. And I do

-- I do have to say

-- frankly, I think we're going to be in good hands, as you say, with either one of them. I think there are some strengths on either side. I just can't help myself but to mention that therion code that was written for the McMansion and the commercial design standards, if there's any element of ledgeibility of the code that we created is because clarion put that graphical code together for

us. We're the ones with other councilmembers and other community members that dreamed up the concepts in those codes. And(with the commercial design standards, some of us on the dais and the McMANSION. So I just want to make that really clear because I think they did a fabulous job of taking some very complex code and making it understandable and discernible.

But that being said, I do want to

-- I have one question about the opticos. I've tried to look at the proposals in-depth and understand

-- because I fell so torn one way or the other. Elements of their proposals. There's one thing in terms of the opticos proposal that I didn't see, and I want to make sure that it really is there. One of the pieces of the rfq, and it was discussed in the outline

-- excuse me, the process that we were going to be using, is very, very important to me. And that is that in the step where we're doing the annotated outline, one of the steps is for the consultant to come up with alternative approaches to dealing with divisive issues disparage staff by issues back and taking them back as opposed to the alternatives are just looked at by the consultant, chosen and a path goes down. You know what I'm talking about, George, because I've been talking about this a lot. And I know it was in the rfq. I didn't see it listed as part of the opticos annotated outline. It seemed to be missing. Can you tell me if it's there or even if it's not there since it's in the rfq we can be sure it will be there?

[14:28:39]

>> Councilmember, George Adams, assistant director of planning and development review. I can't say definitively whether it is in the opticos proposal, but I can tell you that it will be part of the process regardless of which team is selected.

>> Morrison: So if we award the contract to opticos, the contract

-- you guys will negotiate the contract and it will say they are going to be doing that.

>> That's correct.

>> Morrison: Okay. That's good. That's such an important piece because I think that in terms of the eventual acceptance and embracing of this code by our community is really going to rely on making sure that all the issues have been vetted and it's

-- it's Austin's code, not just the consultant's code. So with that said I want to say that the Clarion team, I think that absolutely some wonderful perspectives that you've brought and I appreciate the effort to submit the proposal, but I will be supporting this motion.

>> Mayor Leffingwell: Okay. All those in favor of the motion by councilmember Riley say aye. Oppose said no. It passes on a vote of seven to zero. So the only item that we can address

-- not the only item, but at this point we can address item number 41. We have a number of folks signed up to speak. And I do want to say that before you come up to speak I want to make this point that this is about directing the city manager to prepare a comparative report evaluating performance. This is not about discussing the merits of the proposal to convey to an independent board of directors for Austin Energy. So when you come up to speak I want you to confine your remarks to that. And if you don't I'm going to remind you that you're not staying on topic. Before we start the speakers, the city manager wants to say a few words.

[14:30:49]

>> Thank you, Mayor. I just wanted to have an opportunity to speak to council regarding this matter. As you know, we have been working on a resolution you passed a few weeks ago asking us to create an ordinance in regard to the governance board as well as a number of other related

items in that same resolution that would be informative to council in that resolution. We have had since tuesday the opportunity to work with the sponsors of item 41 and I think we've been pretty successful in bringing some refinement to that in terms of the-- what was the original scope of the direction being given. I say all that to say that our level of confidence about being able to respond within a reasonable period of time as I outlined in my memo to you on monday is very high. I do have with us, mayor, our chief financial officer, elaine hart and our general manager from austin energy, larry weiss. If it's okay with you, i would like for them to come forward. Obviously the information that we're putting together requires a lot of work and input from our cfo and her staff and of course from austin energy as well and they have both been involved in responding to the first resolution and will be involved in putting together the information for the resolution that's before you today. So if you would, come up, elaine, and larry, and talk just a little bit about our conversations relative to being able to put these packages together.

>> Elaine hart, I'm glad to be here today as the chief financial officer. We did meet with the sponsors earlier in the week and trying to stay within the spirit of the kinds of data that they asked for in terms of performance measures. Talked to them about what we thought we could deliver within the manager's suggested timeline of the second week of april. And we gained agreement on those things. Larry and I have looked at that list and we believe it is a doable list. It is going to be some work for us, but we're going to rely on reports that we've already gathered and that the council has seen and some operational data that austin energy has access to in order to be able to respond.

[14:33:25]

>> Mayor Leffingwell: Mr. Weiss, did you have a comment?

>> I'm thinking of one.

>> Mayor Leffingwell: You don't have to.

>> That's all right. Real quickly, I think that what elaine is talking about is that we operate in a very close peer industry in the public power industry and municipally owned industry and we have a lot of resources available to us. We will call upon those to do the very best job we can to pull the data together and be responsive.

>> Mayor Leffingwell: Councilmember martinez. Are you finished, city manager?

>> I am. I just wanted the opportunity to talk about the work that we've been doing and that we're going to do given this next resolution that council is considering.

>> Mayor Leffingwell: And before you leave, I just want to make this comment. I don't necessarily expect you to answer the question, but in the work session we discussed the fact that these are two separate time lines and our timeline is apparently exactly the same for bringing forth this study and for considering the independent governance ordinance itself. We say mid april I think WE'RE TALKING APRIL 11th. That's about as middle as I can think. And I just want to confirm i don't have any objection to the study as long as that can be completed hopefully

-- why do the study if you're not going to wait until afterwards, but I'm assuming that the timeline will permit us to consider the ordinance on APRIL 11th.

>> Our intent is to respond to the content of both RESOLUTIONS BY THE 11th. The only qualifier I might add to that is the transition plan that may take a little more time.

>> Mayor Leffingwell: I understand and agree with that. Councilmember martinez.

>> Martinez: Thanks, mayor. I want to thank the three co-sponsors, the two original,

councilmember morrison and councilmember tovo. You did raise a lot of concerns on tuesday about the resolution. In its current form. I have no problems supporting it, but with the guidelines and other accusses council has taken,

-- other actions council has taken. I would suggest when we come back in april we'll be in a position to polly take action. What I hope that action looks like is that we move forward with an evolving process, if you will. So that we can take into consideration any information that comes from this study. What I would not like to see hard of hearing forward in april is that we come back and say now we need more time to study the study. And not take action. I hope we can get the information in a timely manner because we do have a response coming from the city manager and we will have to take action at some point. I want to pose the study today and I look forward to the information.

[14:36:13]

>> Mayor Leffingwell: I will say to comment on that, agreed, number one. But as the city manager just pointed out, what we would lick to see in the evolution of this process on april 11th is basically layout an approval of the model, the basic structure of independent governance and then following that will be another ordinance that will determine a transition method that will deal with the personnel matters and other administrative matters that have to do with actually completing it and targeting next fiscal year, beginning of next fiscal year. All of that to be done. But on april 11th I think we need to

-- my goal is to address the basic guts of the ordinance at that time. Creating the independent board. So again as we talked about in the work session, we don't create the perception that we're trying to run out the clock on this. Mayor pro tem cole.

>> Cole: I'd like to first of all thank the city manager and elaine and larry for all their work in helping us list the resolution and getting it to something that I could feel comfortable with. I was a late co-sponsor and I was concerned that we didn't have unnecessary delay by asking for too much information and putting an undue burden on staff, but at the same time I thought much of the information being requested was necessary for us to make a good decision. So we worked hard to limit the scope into what we believe is going to be doable by the staff and be usable by all of us in making a decision. And the purpose certainly is not unnecessary delay or further delay.

>> Mayor Leffingwell: Councilmember spelman.

>> Spelman: Thank you, mayor. I am happy that we're talking about unnecessary delay and we're trying to keep on schedule as the middle of april as a reasonable time for us to make a decision on the ordinance. However, it's typical for you, if an ordinance is dropped in our lap, on the day we're supposed to make a decision for us to want to talk about it for a couple of weeks afterwards. I wonder if there's an opportunity for us to have that ordinance even in draft form in our hands perhaps a WEEK BEFORE APRIL 11th.

[14:38:33]

>> APRIL 11th, WE'RE Targing our council date is the hope to have that information to you in advance of that date.

>> Spelman: Is there a version of the ordinance or draft of the ordinance that may be available before that point that we could take a look at, broad outlines.

>> We have a draft that's really

-- it's a draft. It's incomplete. I don't know necessarily how comfortable the attorneys would be

with releasing that at this point until they've refined it more. I think we'll be able to get if not the majority of the material to council in advance of the council date.

>> Spelman: In advance of the council date. Give me a parameter on advance of. We have a chance to talk about it on the work session two days before?

>> I think so, yes.

>> Spelman: That probably should be good enough, yes.

>> Mayor Leffingwell: Councilmember tovo.

>> Tovo: This isn't the appropriate time to have this conversation, but i wanted to point out that I've added an item to our work session for next tuesday to talk about the scheduling of this issue. As some of you know, I am scheduled to lead the sister city delegation to (indiscernible) which requires me to miss the april 11th council meeting and it's always

-- not always, but it's my understanding that it's been a practice of when there are items of great import and not a full council to delay consideration of those items until there is one. So that's the request I'll be addressing on tuesday of this week. Next week. You know, for example, we did that with east riverside plan and several other zoning cases when the mayor was out of town quite recently. So just as a head's up, i did schedule that for next tuesday's work session. So while we're talking about APRIL 11th, I WANTED TO Raise that as a grave concern for me because I did make a commitment quite awhile back and I believe that this is the kind of issue, the issue of austin energy governance, is really one where we need a full council to weigh in. But that being said, I do want to add my great thanks to the city manager and to our chief financial officer and to mr.

-- To our general manager of austin energy for working with really staying very well within the spirit of the resolution that we brought forward. And I'm happy to, I think, probably we don't need to do that, but I'm happy to talk about the changes. I was very pleased to see the extent of coordination between the items and correspondence between the items that we had asked for in terms of performance measures and the ones that the staff felt they could readily access based on available report. I think we'll get a great deal of the information we wanted to see and now can be assured that it is readily accessible and things that they can access easily. I want to highlight a few areas. Just one thing to be aware of as you look at the revised version, there are a few items that are in our estimation important. There are no readily accessible report. There may not be a readily accessible report, but they're still on there and they have an asterisk next to those and those are items that we hope the staff will be able to get information about, but they're not necessarily going to be data that's readily accessible. So the timing will determine whether or not we get information about those. Really this is a comment for the community. There are some areas that we did reluctantly have to cut, and those are information that

-- information that would help us to assess transparency and accountability of the utility. It's a message to the community that we need your help and in getting some of that information. It's not readily accessible in some of the rating reports and some of the others, but I think it is a very critical body of information in helping us assess the larger issue of governance. So to the extent that those of you out there who are very familiar with utility issues and particularly as they relate to transparency and accountability of boards, I hope you will provide us with the information that you have. The other item that has fallen off that is still a concern, and I think we need to be aware of, our programs and how the utilities compare with regard to customer assistance programs along the lines of what austin energy has. That is a real asset. I think that our utility provides to its customers, it's low income customers who need extra assistance with their utility bills. Again, to the extent that we have lots of members of our community who are real familiar

with what policies and programs at other utilities, I hope when you see the universe of utilities that are being surveyed for this study that you will provide us with whatever information you may have about those customer social security tense programs so we can fold that into our information as well. Thank you. I know you had a lot of work to do in a very short period of time and I'm very pleased with the result and look forward to our vote on it.
[14:43:26]

>> Mayor Leffingwell: I will just say with regard to TIMETABLE, THE APRIL 11th, I also had a trip planned, scheduled, and I've cancelled out my trip in order to make that april 11th timeline. Mayor pro tem cole.

>> Cole: I actually had a question of councilmember tovo. Will you be attendance at the april ninth meeting, the work session?

>> Tovo: No. Unfortunately not. And you know, I can do what I can to look into adjusting that, but again, now we've made

-- on the part of the city I've made commitments to government officials in another country, so it's

--

>> Mayor Leffingwell: Mine is a city trip also.

>> Tovo: It would be extremely awkward for me to make changes.

>> Mayor Leffingwell: Councilmember morrison.

>> Morrison: Just a couple of things to echo the thanks and all. But in terms of the list of utilities that we're actually going to be including in this study, as councilmember tovo mentioned, it will be helpful if some community members can help us fill in some of the details that aren't readily available and I'm wondering if when you do settle in on what that list of utilities you're going to work with in preparing the report, if you could make that available ahead of time so that we could get the word out and get some other

--

>> we could do that. I will remind you that we had a study that was done prior to this and it was pretty comprehensive. And there's a very

-- it's a fairly small group of larger municipally owned utilities. We'll be going back to the similar group of that. And looking at that. And more in focus on the governance aspect of it and the pros and cons. So elaine and I will get to work on it, but I want to be clear that some of this has been studied in terms of who

[14:45:28]

(indiscernible).

>> Morrison: I understand that.

>> We've talked with the sponsors a little bit about the method doll dog that we were going to use and i think elaine went through that. Because we do want to be deliberate in making sure that we're picking other utilities that are actually comparable to us. And that will allow us to carry out the kind of performance analysis that we know that is intended by this resolution. So they're working on that now and I suspect in the not too distant future they will have an understanding of the various utilities both in state and out of state that we're going to be using for this analysis.

>> Morrison: Okay. I appreciate that. And with the work that the staff did on this, I have to highlight your work, elaine, because it was so impressive, we had the discussion on tuesday at work session. By wednesday morning at 9:30 you had it all laid out. And I know you probably

had support in getting that done, but having all that information is something that is really under your control. It was very impressive and appreciate that.

>> Mayor Leffingwell: Finally, I would like to say I hope the list of utilities that you study includes adjacent utilities. Ones to the north, ones to the west, etcetera. All right. We will go ahead

-- go to our speakers now. First speaker is lynettea cooper. One more reminder, we are talking about approval of directing the city manager to make the report, not on the merits of the case.

>> I understand, mr. Mayor. My name is lynettea cooper. I'm here on behalf of the gray panthers of austin. We support this resolution. It is plain good public policy. Before we take such an important step as removing our direct ability to hold the board of directors accountability, we should see where austin energy currently stacks up with other utilities. Most of the reports are studies that as you pointed out are inconsistent because they've used different samples. The study that's called for on this does actually allow you all to have the same sample base and the same dated amount of information. The same time level. From a ratepayer perspective we look forward to reviewing a report to see how the value of our ratepayer dollar is compared to other utilities. With that in mind we are very concerned that things such as consumer protection and how the low income programs are treated and other things that really directly impact residential consumers are being left out of this. And we are further burdened by not being able to provide emissions inspection program put unless, as councilmember morrison pointed out, we get the names of the utility so we can go and see what kind of consumer pre-ks they have available. Do they have deferred payment plans to help people make it through those summer high bills? Those are very important issues and that adds incredible value to the rates that we pay for the city. So thank you. We look forward to seeing the report.

[14:48:57]

>> Mayor Leffingwell: Thank you. Carol (indiscernible). Is george (indiscernible) here? You have up to six minutes.

>> Six minutes. I don't need six minutes. My name is carol. I'm executive director of texas rose. First of all I would like to say that I agree w everything that lynettea said, I think she did a very good job of explaining very concisely why we need this report. We need it because we need data that is comparable between dif jurisdictions and the reports that they've experienced through that process. I would like to thank councilmember tovo for bringing this motion forward and councilmember morrison, and I would like to thank all of you. I did watch your discussion of this item on the internet at your work session and I'm glad that it was a productive discussion and you were able to come to a conclusion that will produce a usable work product. The only comment I have is i will be happy to help in any way I can with information about utilities and their low income programs and customer protection requirements. However, in order to do that effectively, if you want input from the community i would like for you to set a date when a draft report will be available. If we seriously are able to contribute information to this process, then it would be good for me from my perspective to have a week or two

-- a week or two to look for any information that I don't have that i might want to contribute to that process. So I encourage you to adopt this resolution and to have a date available where they will have at least the names of the utilities that will be included in the report so that those of us who want to collect specialized information, I will have some time to do it. That concludes my

testimony.
[14:51:08]

>> Mayor Leffingwell: Thank you. Robert corbyn. Roy whaley. You have three minutes.

>> Yes, sir. I hope not to use even a fraction of that. My name is roy whaley. I'm the chair of the austin sierra club conservation committee. Here today to echo the speakers that you've heard already. We ask that we're

-- what i would say is if I was going in for surgery this week, i would want to have that cat scan, I would want to have that information, all the information before the doctor cuts me open. Instead of going in having the surgery and we'll get the report later. Let's do this report, let's get this information and then let's have this vote. You should have all the information you can get in order to continue to make the best decisions you can for the citizens of austin. And that's all I have to say except for thank you very much.

>> Mayor Leffingwell: Bill bunch. Not here. Peter toregumson, not here. Claire deyoung.

>> [Inaudible - no mic].

>> Mayor Leffingwell: He's not here so you can take your three minutes. All right. Jeffrey gibson. Jeffrey's not here.

>> [Inaudible - no mic].

>> Mayor Leffingwell: I just called your name.

>> [Inaudible - no mic].

>> Mayor Leffingwell: Correct. Okay. Carol toregumson. Do you want to speak?

>> [Inaudible - no mic].

[14:53:08]

>> Mayor Leffingwell: David king? Is betsy greenburg here? Betsy greenburg? You have three minutes.

>> My name is david king from the zilker neighborhood. Thank you, mayor, mayor pro tem and councilmembers. I'm here to urge you to pass this resolution to require this report, performance report to compare austin energy with other municipal utilities that are also governed by independent boards. Doing so will demonstrate your commitment to your fiduciary responsibilities and promote public interest in austin energy. This report will create a baseline for comparing austin energy's performance before and after the implementation of the new independent board. It will provide each you and the city manager can key metrics to conter austin energy's performance and make appropriate adjustments. It will give the public more insight into the effectiveness and efficiency into austin energy's operations. Austin energy's 2013 revenue is estimated at \$1.3 billion. So if the report were to cost \$250,000 to generate, it would be well worth that cost. That would be .02% of their annual revenue. It's a prudent business management atrategy and a wise expenditure. But please make these draft governance board reports and performance reports available to the public before the public hearing. Just like you need to have this information in advance so when you get up here and consider this and discuss it, you have that information to already

-- to work with, the public needs it as well. So please provide that to the public before the

meeting so that we also have that opportunity. Thank you very much.

>> Mayor Leffingwell: Without objection, council, I would like to lay this item on the table just to take care of two quick ones. Item number 67 is withdrawn. And item number 68 I'll recognize councilmember morrison.

[14:55:17]

>> Morrison: I move that we postpone the item until APRIL 11th.

>> Mayor Leffingwell: Motion by councilmember morrison. Is there a second? Seconded by councilmember spelman.

>> Morrison: Although i have a question. Councilmember tovo, do you have a particular interest in this item? Because I know you won't be here. It's the temporary use permit.

>> Tovo: Well, I do, but

--

>> Morrison: I'm changing my motion then. I would like to make a motion that we postpone it until the 25th of april.

>> Mayor Leffingwell: April 25th. And councilmember spelman? Your second still holds? All those in favor, signify by saying aye? Opposed say no? It passes on a vote of seven to zero. So we'll go back to item 41 speakers. Susana almanza. Michael fosome. Zoila vega? Colin clarke? Craig nicer? Marian molatak. Karen crepes here? Karen is not here? You have three minutes.

>> Mayor and city council members, I would like you to pass this resolution of kathy tovo's and I not only like the resolution, but i will like the date pushed further back into the future. Since

-- I would like to see something really thorough and well thought out. Seattle took, for instance, two years to look at all the pros and cons of changing the governance. And we seem to be rushing this through. I don't know how much time has been spent by staff and city council on this before that, but the first I really heard of this was valentine's day. And a lot of us gave up our valentine's day to come here in a hurry, an emergency sort of way to speak to this. From my perspective we're potentially putting ourselves in a real mess with this. My probably biggest concern is that we don't have nuclear and coal sneaking in the back door.

[14:57:36]

>> Mayor Leffingwell: Merits of the resolution on the study, not on merits of the case.

>> Yes. So from my perspective, i would like to make sure that we study this well enough to know that we're not going to run into any difficulties with the way we

-- to just have this resolution about this is the way we're going to govern it, a board that's appointed. An appointed board has no accountability to the citizens of austin. The energy utility that we have is phenomenal.

>> Mayor Leffingwell: Once again I will ask you to stay on topic. Which is the study, knots the merits of the initiative to meet create

--

>> the study is to determine whether we would be better off or not better off by having

-- by having a change in governance. So I think I'm completely on topic, everything I've said so far. To rush through you one particular method of governance instead of studying what makes

sense if any kind of change makes sense, we have a fabulous utility from my perspective. We don't even need a change. If we do need a change, a study would bring that out. I understand that councilmember spelman is interested in adding some things to this resolution that would show what might be positive about it. I have trouble with that way of thinking. I would really not like to see an emphasis made on what might be positive about it or negative about it, but what in fact has happened in other locations positive and negative and what might our results be if we make this change or any other change. And what

-- I think the study should determine what form of governance we have, not just whether this one that's being proposed would be good. Thank you.

>> Spelman: You are misinformed. I don't know who you heard that from or what exactly you heard, but it's never been my intention to rig an analysis or rig a study only to suggest that something is positive or negative.

[14:59:45]

>> I wasn't implying that you were trying to rig it. I was really

-- what I had heard was that you wanted to make a sure that anything that was positive about the form of governance that's being suggested would be in there and would be studied as well.

>> Spelman: I only wanted to conduct a neutral study. That's all I want to do.

>> Mayor Leffingwell: As do all of us.

>> Thank you.

>> Mayor Leffingwell: Catta carbon. Karen hadden. Robert singleton. You have u six minutes, again on the topic of the resolution.

>> Thank you. I'm happy to see this resolution coming forward and it looks like there may be a fair amount of srt for it and I think it's a good thing. If you've been reading the "austin american-statesman" recently you've been seeing several editorials now suggesting that we need to do additional study. I believe that that's true. That's accurate. I'm a little bit alarmed that a decision as major as shifting governance of our utility to an appointed

-- an elected board would be considered without this study. I'm also wanting to get some clarification because i recall a commitment to have a public hearing before any vote was held on the ordinance and I would assume that those were separate. So I would certainly like some clarification and certainly want to request such a public hearing. This is a very rushed process. This study, as marion pointed out, three weeks. We've had numerous studies that have been conducted and they sometimes take some time. The scope that was originally proposed has been limited. And I want to talk about a couple of things that have been kind of left out here. I think it's important to note that there should be comparison of programs that assist customers. Deferred payment plans, are they offered elsewhere? Are the disconnects routine elsewhere? What are the kind of things we could expect if this change got made. While I appreciate that city community members can help fill in the gaps, I think this study should address those kinds of things. In the realm of financial issues, this is perhaps one of the most important matrices that this study would look at. I would like for it to include financial gains and losses, and in what time frame because the impact of an independent, unelected board, can be and has been in san antonio one that results in huge financial losses. For example, 400 million in san antonio. That is a factor that should come to light and be documented here. In the report that came previously that was mentioned by austin energy, it stopped sort of a lot of analysis and it listened to certain voices.

We've also been

-- for some time now

-- requesting that the voices of those in san antonio in particular be brought forward. We have not included here the realm of citizen participation. How often do citizens participate in decisions that get made? How often are those decisions listened to? This would not be too hard to compile. It could be done. Is the utility viewed in a favorable light in the community? Do we have protests in front of their offices on a routine basis? And if you looked at san antonio, you might find that that was in fact the case for several years running. Because of
-- largely because of an unelected board that could not be held accountable. So I think the study is an excellent thing. It's very much needed. I do not want to see it rushed. I do not want to see a vote before a public hearing that was promised. And again, I want to point out this is the city's largest asset. We depend on it for funding for our parks, libraries, public safety. I do not see an emergency that requires this to be rushed and I urge this to be a thorough report, that we get to see at least a week before its consideration. Thank you.

[15:04:17]

>> Mayor Leffingwell: Matt weldon. You have three minutes.

>> Thank you for my time to speak. My name is matthew weldon. My energy interest probably comes from my association with solar austin. I'm on the board of that organization. So I want to just say i support this resolution. I'm glad that it was put forward and appreciate it. My only objection

-- I don't object necessarily to the resolution that prompted it. I do object to the process, largely because it is an old issue probably from the perspective of city council and senior management within austin energy. But it's a very new issue from the perspective of the public. And so I really encourage you to take advantage of this resolution as a mechanism or an opportunity to engage the public. I think if the public is engaged, understands the motivation that we'll all be happier at the end of this process. I also somewhat object to the presumed form that the board is going to take in terms of being an appointed board.

>> Mayor Leffingwell: We're talking only about the resolution for the study, not about the form.

>> This is in part of the study. I actually took the time to pull up the 100 top public utilities by revenue and looked at the top 20 of them. Austin energy is ranked 13 in that list. I wanted to point out that of the top 20, fully half of those have elected boards. As a possible alternative

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>> Mayor Leffingwell: You're talking about the merits of the

--

>> right.

>> Mayor Leffingwell: We're talking about the study.

>> The study will bring this forth. I wanted to make you aware.

>> Mayor Leffingwell: You want that to be included in the study. That it?

>> I'm saying that that will be inherent in the study because it's the form of governance.

Presumably that will be an at-large speech that we study. I want to say that it didn't take me long to make this observation. We still may come to what was proposed in the ordinance, but we haven't discussed it had in the public. So I have two asks. One is establish

-- the process timeline that is established. Please use as an opportunity to engage the public so we

can support it. And on the day that any ordinance is adopted and passed, please attach a paragraph to it that explains what the drive of urgency is. Why is this change urgent? Why can't the opportunity have an opportunity to engage and support the progress of the city and the utility? Thank you for your time.

[15:06:59]

>> Mayor Leffingwell: Gary lock. You have three minute.

>> I will be fairly brief. We want to talk about two things. One is what matt talked about, which is the lack of process. And if the public is not being involved in this decision, I came to this in early march, this month, and I'm sure that's true of most people in this community. Yet from what I see your timeline, you will have the study come back the same day you vote on the ordinance. That's not

-- where is the public going to absorb the information and the study and come to their own decision about what should happen. Where is the democratic process when both things are going to be considered in the same day? And where is the democratic process when there's no public hearing, which is needed and was promised. The public needs to be involved in this decision.

Democracy meaning in something and it means something in this decision. As your resolution says, this is the most significant decision in the last 100 years. And yet there's hardly any public process in this decision. There needs to be public process. If it has to be slowed down, it should be slowed down. This is a very significant decision. The other thing

-- which is that there's been no definition of what the problem is. Why you all are talking about this change. And some place he need to define to the public what the problem is. Why you're asking this change. I went to meetings the last two days for people in the city council. I didn't hear anything about what the problem was. I've read a lot of the articles in the paper. I don't see any definition of what the problem is. Yet you're pushing this down the public's throat. It needs to be slowed down and proper process in this. Thank you.

>> Peter toregumson. No? Thank you. Tom smith? Pam thompson. Stephen ray? Daniel yanez. Claire deyoung? You have six minutes.

[15:09:31]

>> Good evening, for the record I'm paul robbins. I have mixed emotions about this resolution. This does not benchmark municipal utilities that do not have a board such as seattle. If you're going to conduct a benchmark study, you need to look at all large municipal utilities, not just ones with a board. Second is my concern that the information

-- excuse my. Me. I'm concerned that the information may have unwarranted bias and given e way that information was controlled during the rate case, I have every reason and right to be suspicious. I would trust the city auditor or a nonprofit group to be more objective if it were me.

Third, it would appear that the majority of council has to some extent already made up your mind. Now, let me take you back to the hearing of february 14th. Despite a meeting held on a cultural holiday, 25 people signed up to speak against the proposal for an independent board and 12 actually spoke. In contrast, o.J. Two people were

-- only two people were in favor of it

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[15:11:31]

>> Mayor Leffingwell: Paul, you've been doing so well sticking to the subject, but you're beginning to drift here. We're talking about the resolution for the study.

>> Mayor, respectfully, most of the people that are speaking
-- all of the people that I know here that are speaking are highly intelligent individuals, they're respectful of your process and we may have a different way of getting there, but we can't all submit our comments to you in advance.

>> Mayor Leffingwell: I'm listening and I'm giving you latitude and giving you the opportunity to come back. [Applause]

>> thank you. In contrast, only two people were in favor of it and only one actually spoke for all of one minute. That would be the lobbyist for this. Yet, council sided with the lobbyist. Again, my point here is you seem to have a predetermined conclusion. I realize that there was more than one motivation for your decision

--

>> Mayor Leffingwell: Take us back to the resolution, please.

>> Still, this has the appearance that all

-- that all that was needed was for a lobbyist for the large industrial customers to raise his little finger to bypass the city charter. Those are my comments. Have a good afternoon.

>> Mayor Leffingwell: Absolutely. Campo board magor.

>>

-- Cam magor.

>> [Inaudible - no mic].

>> Mayor Leffingwell: Kiebay white. Edward martin. Mary engle. Carol lee. All right. Those are all the speakers that we have. So I'll entertain a motion on this item. Councilmember morrison moves approval. Seconded by councilmember tovo. Discussion? Councilmember spelman.

[15:13:43]

>> Spelman: Mayor, I'm not clear as to what exactly this study is going to look like. I wonder if somebody could clarify for me. We've got a lot of metrics we're collecting information on. But I'm not sure which utilities we're collecting those

-- those pieces of information on. I wonder if somebody could help me with that.

>> Could we ask

-- I guess staff would be

-- what they understand about it I think is very important. I'll let them answer.

>> Elaine hardigan. Larry and I are still handlelizing the list. We're not clear yet on exactly which ones, but some of the selection criteria are listed in the resolution. And certainly we're looking at city owned utilities. Those that offer retail electric service, those that own generation assets. And also we're really depending in the timeline on whether the data is available. But as larry said, we've got lots of resources we can pull from. Right now we've looked at a list of about 10. They do include san antonio and other national electric utilities. But we have not finalized the

list yet.

>> Spelman: Judging from the resolution by itself, it looks

-- the primary point of the report or the reason for doing the report is to see whether or not a utility that has a board that has some final authority in it operates differently along many different dimensions than one which is controlled entirely by the city council. Is that

-- is that a reasonable understanding, councilmember tovo?

>> Mayor Leffingwell: Go ahead.

>> Tovo: I would certainly that's one aim. The other intent

-- one other intent is also to see how

-- where

-- how austin energy measures up in these utilities that are run by independent boards and where we go with that information is to use as a a council as we look at the options for what responsibilities might make good sense to delegate to a board. You know, there is some

-- the staff are preparing kind of lists of responsibilities so that there are some decision points for council and my hope is that that date will give us guidances on to what areas the council ought to retain authority over and what areas a board might better make decisions.

[15:16:27]

>> Spelman: If our primary interest is just knowing who did what we have something like 15 or so utilities from the con report, where the responsibilities of the board, the responsibilities of the city council are laid out. But this would be in addition to just that, measuring outcome characteristics of at least some of these utilities so we could see who is doing a good job, who is doing not so good a job.

>> Tovo: And where they're particularly strong. The con report in large matter, as you saw, talks about the different governance models. And compares austin energy to utilities like greenville, which is far, far smaller. So this really is an intent not to look at how the governance is structured at these utilities, but really how that universe of utilities performs in these different categories, sustainability, financial metrics, other areas of great interest as we make some decisions about what responsibilities could be delegated.

>> Spelman: It seems

--

>> Tovo: Could or should be delegated.

>> Spelman: What we're interested in mostly is how well are most utilities doing and how do we rate related to more or less peer utilities around consultant. That's a reasonable thing to expect that the study could do within a few weeks. If we wanted to ask the next question, what is likely to happen to those metrics if we shift from an entirely city council oriented governance structure to one where governance is shared among the board and council, which is I think all we're talking about, that will be a lot harder to do. Like an order of magnitude more difficult to do because you're interested in seeing the element of cause and effect. Any time you start talking about cause and effect, all sorts of other possible causes emerge and eliminating those causes is very difficult to do. To the extent of howie may rate I think we'll succeed. I think if it's what's going to happen if we move, i don't think we'll come up with results that all of us or very many of us will find persuasive. From your point of view, councilmember tovo, is it

-- is this sufficient value from your point of view just to know how we rate among peer utilities

around the country?

[15:18:47]

>> I think it's a value. I will point out one change

-- initially the resolution did a be it therefore resolved that talked about for utilities in texas and elsewhere that transition from city council governing structures to how utilities have changed as a result of transion in governance and that's one of the

-- that is one of the revisions we made. It does still talk about trying to provide

-- trying to provide data for several years before and several years after our governance transition is feasible within the time frame, but it's no longer

-- it's no longer as critical a focus. And I think it would be great information to have, but we're trying to work with the feedback we had that we needed to get it done more quickly. I would welcome an opportunity to look more in-depth at how a (mark) transition in governance impacted the peer utilities with a caveat that i understand there might be other causal factors out there that also were at play there, but I think it would still be good information to have. So to the extent that it's possible for staff, we wanted them to be able to provide some information before and after governance change and indicate when that governance change would happen, but it's

-- we may not get meaningful

-- a whole lot of meaningful data on that. And I should let councilmember morrison jump in here because I know you've asked a few questions that you may want to comment on as well. If it's the mayor's will.

>> Mayor Leffingwell: Councilmember morrison.

>> Morrison: I don't really have too much to add, but I certainly get your point. It can be dangerous if one starts to put cause and effect relationships between things that aren't really causes and effects. So we will need to be clear about that. On the other hand, I think it could be the information that we are going to get can really help inform the discussion. You know, we can start asking why do we think this is one way versus another way? And what would we want to do to make sure

-- put constraints in place or whatever. So I think it could really help inform any discussion we might have.

[15:20:56]

[One moment, please, for change in captioners] >>... Everything that we do for austin energy. At this point. And I think for me to be able to line that up with the kinds of things that we're going to get back, what I can envision is seeing that, wow, it really might make sense for this subset of things that we do to pass the authority on for them to another

-- to another body.

>> Spelman: Okay.

>> Morrison: So it's never going to be a black and white question.

>> Spelman: I agree.

>> Mayor Leffingwell: Do you want to answer, councilmember tovo?

>> Tovo: I would be happy to. My answer is not really very different. I think that my hope is that we will get some information that's useful in terms of the kind of discernment process that we need to do here about what responsibilities could be reasonably delegated to some form of a

sovereign board. You know, we may not ultimately agree on which responsibilities and what level of responsibilities, but I hold out the possibility that there are some responsibility that could be delegated to a sovereign board that would do them reasonably well and I'm hoping we'll see some data in this study that would show us which ones, which areas, which bodies of decision making might be

-- might lend themselves to that kind of delegation.

[15:23:16]

>> Spelman: After all we delegate decision making authority to the board of adjument, planning commission, the planning and zoning board and so on. So this is just an extension of that.

>> Tovo: Yeah.

>> Spelman: Thank you for indulging me. I needed to ask that question. I'm very happy with the answers. I have one last question. This is about the time table. If we can get results of a study on or about 11th, COUNCILMEMBER TOVO Of course won't be here. That means that if we're going to be voting on

-- going to be taking this into account on voting on some change, some possible delegation of our responsibility to a governing board, that would probably have to take place in a couple of weeks, say a couple of weeks after that ON THE 25th. Of. I think it would be best for all of us if we could get actually that study in the public realm on the

-- on or about the 11th so that we would have a couple of weeks to talk about it. I think it would be lovely if there was a way that ae staff could make a presentation to us on or about the 11th so that we could have

-- we could all get the benefit at the same time of the public presentation. Is that something which is doable?

>> Mayor Leffingwell: Councilmember, let me weigh in on this first. We are going to discuss this in the work session next week. Time table. And I would like to reserve that discussion for then.

>> Spelman: Okay.

>> Mayor Leffingwell: But I am just saying that I want to hold as close to an expeditious time line as we can. I also want to say that, you know, we heard a lot of comment today that this is a big rush and we need more information, more information. The city of austin has been studying this for a couple of decades now. Electric utility commission has stated extensively and recommended four times that we do it. So it's not anything, I'm going to support a motion to -- to go ahead and do the study, just because I want to keep an open mind about what I might hear. But I really don't think that we're going to hear much new out of it. I think we've basically studied this to death and i see no reason to continue to delay this again in an attempt to run out the clock.

[15:25:40]

>> Spelman: I certainly don't want to be accused of running out the clock and that being an accurate statement. In order to do a study we need the chance to talk about it. I think the public has said over and over a lot of talk about it before we make a decision on what we delegate to a governing board and what we don't and that means when we talk about this at the next work session, i think we're going to have to hold open the possibility that we may want to give ourselves a little bit of time after the 11th before we make a final decision on the governing board. From my point of view the biggest value of doing this is that

-- is that this is a way of engaging all members of the city council in this process and believing that this may or

-- may be something which we can do. It may be something which we cannot all unanimously agree is a good idea or we may not agree to the proper cut point what to delegate and not to gate. From my point of view if this is what it's going to take in order to bring everybody to the council to consider that, then I'm very happy with it and I think even if it takes us a couple weeks longer than we had in mind, that's worth the trouble.

>> Mayor Leffingwell: I will entertain a motion?

>> [Indiscernible]

>> Mayor Leffingwell: Okay. All in favor say aye.

>> Aye. 7 on possessed say no. Passes on a vote of 7-0. We go to item 65. Good afternoon, mayor, council, I'm phillip [indiscernible] with austin water here on an ordinance to amend chapter 25-9 relating to the water and wastewater service extension and cost reimbursement ordinance. We've got a short little presentation. Basically a service extension request is a request made by a developer to extend water and wastewater utility service to a tract of land. The developers use it to determine what kind of infrastructure and the costs of the infrastructure that would be proposed for their development. Some of our

-- some of the infrastructure is subject to cost participation. And cost reimbursement ordinances to repay the developer for that infrastructure that we over-- that they oversized at our request.

Sorry. Under the current ordinance we have cost participation and cost reimbursement. Cost participation is for water mains that are 8-inch and larger and smaller than 24. Wastewater that are 8-inch and less than 18. And then other things like lift stations and pump stations that are on a percentage as well. Under the current ordinance we have a cost reimbursement which is 100% of the construction costs and that is for water mains that are 24-inch and larger and wastewater 18 inches and larger. Any of the other facilities are not 100% cost reimbursement. So under the proposed ordinance, what we are

-- what we are proposing to do is eliminate 100% of the cost reimbursement for water and wastewater lines. So everything will now be cost participation for the water and the developers will pay their proportional share of the construction costs. The other thing we're doing is we're clarifying the existing terms to be consistent with our criteria manuals and st details. We are also changing the expiration time for service extensions from 120 days to 180 days. And that's kind of in a nutshell what we're doing. Any questions?

[15:30:07]

>> Mayor Leffingwell: I have got a question. Could you go back to the last slide?

>> Yeah.

>> Mayor Leffingwell: Explain to me again, i understand that you are eliminating the 100% cost reimbursement policy. The city would only participate for its proportionate share of the infrastructure. Tell me what that means.

>> In other words, if you under the current ordinance right now, if you built a 24-inch water main at our request, we would pay 100% of the construction costs. If the developer needed a 12-inch to serve that development, it now would be a 50/50 split on the cost. So it's based on a diameter pipe difference.

>> Mayor Leffingwell: But it always has been, hasn't it?

>> For the smaller stuff it has been, yes.

>> Mayor Leffingwell: Anything less than

--

>> less than an 18 for wastewater and less than a 24

--

>> Mayor Leffingwell: 24 for water has been 50%, right?

>> No, it's always been 100%.

>> Mayor Leffingwell: Less than 24.

>> Oh, less than, why he.

>> Mayor Leffingwell: Less than 24 has been 50%, 24 and more has been 100% in the desired development zone only, correct?

>> In the desired development zone, we would pay within 90 days and within the drinking water protection zone it was like a four-year payout. The percentages still were the same regardless of which zone you were in. There was the pay back time that was engaged?

>> Mayor Leffingwell: Is that right? My understanding was that we didn't do reimbursements in the drinking water protection zone.

>> For wastewater.

>> Mayor Leffingwell: Oh, kind of dragging it out here. [Laughter] okay. That whole purpose of the original policy, the one that we have had was to incentivize development in the desired development zone and discourage it in the drinking water protection zone.

>> And those are still within the current or new proposed ordinance. The only thing that it really is changing is now that we're not doing 100%

--

[15:32:10]

>> Mayor Leffingwell: Changing only in the desired development zone.

>> And drinking water protection zone.

>> Mayor Leffingwell: What are you changing in the drinking water protection zone?

>> Water.

>> Mayor Leffingwell: What?

>> For water cost reimbursement is still allowed in the drinking water protection zone. And right now if they were to build a 24-inch water line in the drinking water protection zone, we would still pay 100% of the cost. The developer would not get his money back, it would take a four-year time period to get his money back. Where in the drinking water protection zone if you built it 24 and repaid 100%, they would get it 90 days after, that's the incentive I think in the two different zones.

>> Mayor Leffingwell: Okay. Councilmember morrison moves approval. Seconded by councilmember martinez. Further discussion?

>> I just want to make one comment. This comes out of the recommendation, I believe, that came from

--

>> yes.

>> Morrison: Our joint subcommittee that did the water rates for us. I want to thank staff for their work with them. This is really a great step, you know, there's been a lot of concern about making sure our water utility is financially sound. And making sure that development pays its fair share as one way to really help that. So I'm glad to see this come to us.

>> Spelman: Mayor? To what extent, sir, does this represent a movement back to a policy that we had in the late '90s and early 2,000s.

>> In the early '80s or late '80s and '90s, with he had cost reimbursement and cost participation. They were based on cost pars pace back then was
-- participation was based on a dollar per inch oversized not what we are doing now versus diameter. Cost reimbursement was based on an lue amount. Maximum. So in other words a pipe that carries so much lues or service units, that's where your maximum was stopped at. Back in the late 2000s, when we still had that ordinance before we changed to '09, we would bring a lot of sers for waivers of those because the maximums were being exceeded.
[15:34:40]

>> Spelman: Right. It was my understanding that in the late 1990s what we were doing in ser's was making them pay for whatever pipes were necessary to serve a development. But we were reimbursing them. Their costs. Of any oversizes needed to serve subsequent developments through which, if we're going to go through their development. Which I see is pretty much what you are talking about here.

>> Yeah.

>> Spelman: That was my understanding on the water and wastewater commission in THE MID '90s AND WHEN I Was on the city council in THE LATE '90s THAT THAT Was what our policy was. In fact in the first couple of ser's since I came to the austin city council again in '09 I thought that was still our policy and didn't realize that we were paying 100% of the costs. So I'm very, very happy we have at least from my point of view conceptually gone back to the policy, which i think was accurate in the '90s. When developers would have to pay for their costs of water and wastewater infrastructure and any reimbursement was going to be done was on any oversize pipe for our benefit, not for their benefit. That seems to me that this is moving another very, very large step towards the general direction of growth paying for itself, which i think has to be our motto on this subject. Thank you.

>> Mayor Leffingwell: All in favor of the motion say aye.

>> Aye.

>> Opposed say no? Passes on a vote of 7-0. And that was also to close the public hearing and there was no citizens signed up.

>> [Indiscernible]

>> Mayor Leffingwell: Item 66. No speakers signed up for this item either.

>> Good evening, my name is george smith with the austin water utility. I'm here to give a short presentation about some proposed revisions to our private lateral ordinance. Our first slide here I want to just define what a private lateral is for you all that may not know. If you see the house there is a cleanout coming from the building. That is where the private lateral starts and it goes into where the line connects to the city cleanout where

-- which is located at the property line. The city is not responsible for any repairs to that area since we're not allowed to go on private property. Now, we do investigate these lines when we're called out for an overflow or a

-- or a backup of some sort. We'll run a camera on our side as well as the private side and try to identify all of the problems and as we go down the city side, if there's

-- if we have problems on the city side, of course, we correct them and on the private side they are brought to our department's attention and we send out letters asking for compliance and for them to repair the lines. Now, the changes that we're proposing to do is basically add another tool to our toolbox in our enforcement procedure. And what we're proposing to do is to place a lien on the property for either the non-owner occupied properties or the owner occupied properties.

So what we're doing in the first place is we're going to

-- going to go ahead and currently we're going to hire a contractor, do the work, and then send the customers a bill and put a lien on their property. And for the owner occupied properties, we are going to

-- well, the non-owner occupied properties, we're going to put the lien on the property and the lien will accrue at 10% annual interest. On the owner occupied properties, we're going to charge over a five-year period with a 10% annual interest and we'll add that to their utility bill. Now, we also have another situation, we have two situations here. Ones that are not in the immediate public health and one that is in the immediate public health. This slide shows the one that's not the immediate public health. Currently, when I have received a complaint, I've sent them 120 day notice to repair by ordinance. If that

-- and then 90 days later, I send them a 30 day reminder notice before we take any municipal court action. When we go to municipal court, you know, there's certain situations here, but if it does not result in the private lateral being repaired, that's when we would do the

-- hire the contractor and put a lien on the property. On the next one, which is the immediate public health issues, we issue a 24 hour notice to remediate the site and prevent further wastewater overflows. In this case we give them a 30 day notice to make permanent repairs. We don't

-- we propose not to take them into municipal court and just immediately hire a contractor and

-- and go ahead and

-- and get the repair done to prevent any further overflows. Any questions?

[15:39:55]

>> Mayor Leffingwell: Questions. No speakers. So I will entertain a motion.

>> Move approval.

>> Second.

>> Mayor Leffingwell: Councilmember spelman moves approval, mayor pro tem cole seconds, the motion was to approve the item and close the public hearing. Councilmember morrison?

>> Morrison: I think we might have one late interested speaker on this item. By the name of ms. Arnold.

>> I'm sorry, I didn't know this was on the agenda, but

-- but having had

-- personal experience

--

>> Mayor Leffingwell: Ms. Arnold. You are speaking on item 66, we have no one signed up. I will allow you to go ahead and speak for three minutes.

>> Thank you very much.

>> Mayor Leffingwell: But please sign up with the clerk afterwards.

>> I will. We had sewer lines on our street inspected by the smoke. A man from from the water utility told us that we had a hole in our sewer line and it needed to be replaced and that the city would be sending us a notice about that. So we hired a private contractor and replaced our sewer line. Our lateral. But we never received notice from the city. So

-- so I think the private property owner ought to be given an opportunity to repair it himself. I'm not understanding that entirely from what you are saying.

>> Currently, the enforcement is only for the ones that we are on a complaint investigations. Now, on the smoke testing ones, they should still be giving you a notice that they did find a

problem. That's the only notification that we give on the smoke test ones currently. Due to just the sheer amount of them. In our case, we give you 120 days to make the repair on your own.

>> Okay. That was not clear from your presentation, I don't think.

>> Okay. Well, I did say 120 days per ordinance we give you before we take any municipal court action and I also sent a 30 day reminder notice before the 120 days is up.

[15:42:02]

>> Okay. So before the city would go in and repair the property owner would have an opportunity to repair it themselves.

>> Correct.

>> Thank you. That's why I wanted

-- what I wanted to clarify.

>> Mayor Leffingwell: Motion on the table to close the public hearing. And approve the item, all in favor say aye.

>> Opposed say no. Passes on a vote of 7-0.

>> Thank you, go to item 69. Which is to conduct a public hearing and consider an appeal.

>> Good afternoon, councilmembers, I'm linda courtney with planning and development review department. The case manager for this project. This case is

-- was approved for the construction of two 12,000 square foot commercial buildings and associated

-- on march 25th 2009 AND ON DECEMBER 29th, 2011, PRIOR TOHE Expiration of that site plan, the applicant submitted a request for one-year extension, which would have sended the life of the site plan until march 25th, 2013. The site plan extension was not approved by staff due to insufficient engineering response to staff comments and the application expired, which constituted a denial of the application. As provided by land development code, the applicant appealed the staff denial to the zoning and platting commission who upmedal staff denial -- upheld staff denial by a vote of 4-1. The zoning and platting commission's decision is now biing appealed. Did I change that? The project has a lengthy history with issues related to the pond on the site and to the offsite drainage from this and other surrounding sites. The existing water quality and detention, located partially on this tract and to the east of this tract were constructed in 1987 as part of the subdivision construction plans, wells point commercial. The ponds serve a larger upstream portion of the subdivision and effectiveness of these ponds has been affected by the backwater condition created by a series of beaver dams, which were constructed downstream blocking the drainage. Engineering staff comments during the review of the extension request included a request for verification from the engineer of record that the original suppositions and calculations presented during the 2000 site plan review were still valid. The engineer did not respond. Staff comments were never addressed. And the application expired. This appeal may be upheld or denied. Denial of the appeal would mean that the zoning and platting decision is upheld. The site plan is expired. And that construction on this site would require submittal of a new site plan. If a new site plan is submitted, it would have to prove the validity of the engineering and drainage of the site and if approved would have a three-year life. If the appeal is upheld, the zoning and platting decision would be reversed, staff denial of the decision would be reversed and the site plan could be extended to MARCH 25th, 2013. What that means is that

-- is that if

-- if they have it extended until next monday, they have the opportunity to file another extension

of the site plan. Which would also come under same review and would be submitted to -- to zoning and platting commission for approval of that extension. So if you have any questions on the case or the site or the appeal, I am here.

[15:46:20]

>> Mayor Leffingwell: Granting the appeal would result in an extension until when?

>> Until march 25th of 2013.

>> Mayor Leffingwell: UNTIL MARCH 25th. Then they could resubmit a site plan and that would start the time clock all over?

>> If the

-- if the appeal is denied, the site plan expires and they have to file a brand new site plan. If the appeal is upheld, they have the site plan extended until march 25th and they would be able to file a

-- another site plan extension request. Which would again be reviewed by staff and

-- and would ultimately be approved by zoning and platting commission or denied.

>> Mayor Leffingwell: Okay. So this

-- granting this appeal would only extend it for a few days and then they could submit another appeal.

>> Yes. Another extension request.

>> Gotcha. Councilmember martinez?

>> Martinez: Just want to ask, can you briefly share with us the differences in a new site plan if this one

-- if the appeal is not upheld?

>> If the appeal is not upheld and they have to submit a new site plan

--

>> Martinez: Are you aware of any major differences.

>> What it means is that any of the brand new ordinances which had not been in place at the time the site plan was originally approved would be reviewed. And it would have to comply.

>> Are you aware of what those differences might be?

>> It is

-- um ... Let's see. Since it's an industrial use, it's not

-- it's not subject to commercial design standards, but there are some additional

-- additional drainage and water quality items that would be

-- that would be required. I don't know the absolute specifics. But there have been some updates.

In the water quality irrigation and things like that.

[15:48:35]

>> Martinez: Retention pond, water quality retention pond?

>> Right now, there's an existing water quality and detention pond that was built with the original subdivision construction plan. What the

-- what the site plan, the new site plan would be required to have

-- to have irrigation supplied as part of the landscape watering rather than collect all of the water into the

-- into the water quality and detention ponds and then get it off-site.

>> Martinez: Thank you.

>> Mayor Leffingwell: Councilmember morrison? We also have a 10-minute presentation by the

applicant, too.

>> Morrison: Okay. I just want to make one quick question. Really in reference to councilmember martinez's question. In the staff report

-- so the question it will they be able to build the same thing. The staff report saysp if the site plan spires it's likely that the applicant could refile the same basic site plan with the same use and density and be in compliance with most applicable codes arounds, however the applicant would be required to address the water quality, detention and flood conveyance issues. So is that correct then that basically they can build the same stuff, they will have to deal with the environmental issues that are there.

>> That's correct.

>> Morrison: Could you talk just briefly about the

-- about the beavers? [Laughter] so that's what's causing the problem? That's what basically changed the terrain

--

>> the beavers have built

-- there's a series of dams downstream from this site that have caused a back water change of the engineering conditions because basically now the water quality and detention ponds don't work the way that they were intended because there's a different water situation.

>> Morrison: Okay. So a different engineering approach might be needed.

[15:50:36]

>> Yes.

>> Morrison: Okay. Thank you, I appreci that.

>> Mayor Leffingwell: If we could hear from the person making the appeal. Our process is that you have up to 10 minutes. You are going to be the entire process, nobody else signed up.

>> Just me, proud to be here. I will keep this brief, I'm sarah crocker, here today on behalf of my client, pam handlenotes. This project is referred to as the beaver project. We have

-- I've been involved with it since 2006. My client didn't go out and purchase this property and decide gee that looks like a great tract and I want to build an industrial development on it. His partnership basically loaned money to a gentleman who wanted to develop it as an industrial warehouse a project and then defaulted on the note. So he basically got the property back through the default process. There have been six applications on this site since 1996 and when we were talking aut the pond, i really wants to be clear about this. The pond was built in 1986, it is not a water quality pond. It is a filtration pond and a detention pond and it does not service just this site. It services 59 acres. H.E.B. Is on the corner of 1825 and wells branch parkway and has no structural controls. None. Has no ponds. About 18 acres of impervious cover, untreated, go through a 60-inch rcp and dump into this pond. This pond was built to take all of the drainage for 59.9 ashes. Everybody drains into

-- acres. Everybody drains into it and every lot is fully developed except for my client's. He attempted to get the site plan back in process again, a number of expired permits, nobody could ever get a permit on this. There was a reason for it. As often happens when you have these older site plans and you are the last piece of property, last horse out of the barn so to speak and right next to theond all of a sudden everybody becomes, you know, concerned about the pond. I unfortunately have had to look at every single application filed on this thing in the last 27 years, it has a very lengthy torturous history. But the bottom line is only my client in his

-- and the people that owned the property before him, they were the only applicant to ever be

asked anything about the pond. Nobody else had to
-- had to qualify, you know, I mean they
-- they were allowed so much drainage and
-- and when their site plans were approved they weren't asked to
-- to
-- to prove that everybody else who was draining to the pond was meeting their allotted requirement. They were treated on individual cases. Every person who has owned this property or submitted a site plan on it has been asked to come in and recreate the wheel for the entire 59 acres. They said there wasn't a maintenance agreement on it. In 1996 that gentleman was in process for 20 months and eventually gave up because the property got annexed and when the zoning was approved he couldn't do his use. But he was told that he had to get a maintenance agreement for the entire pond. And the other property owners wouldn't participate so he ended up signing a document that was recorded without the site plan being approved that makes this property owner responsible to pay for 60% of the maintenance of the pond. And unfortunately, in 2003, by 2003, this pond quit working. It hasn't worked since 2003. It is full of water. All the time. The outfall structure stays submerged. And that's the result of two things. The beavers downstream, and also what everybody refers to as the sediment dam. Which is actually on the adjacent lot, which is a drainage easement and that is what has created the biggest obstruction in the wetlands that are on the exhibit and that has been there
-- actually, what created that wasn't the beavers, it was a
-- it was a severe service rock berm that was installed when wells branch parkway was initially extended in 1990. That was installed by the northeast travis county registry number 4. Those plans were approved by the city. And because they channelized the creek. This superintendent a creek here anymore. It's a channel, they straightened the entire thing out and then the creek took a sharp turn to the left, so they built a severe service rock berm right there at the corner to slow the water down. And that berm was maintained very well until 1996 when it was annexed by the city and by 2003 it was 100% silted in. It now has resulted in a very large sediment dam that completely object extracts the waterway at, you know, at our lot line and then further down are the beavers. So you've got several obstructions. When we turn the site plan in in 2007, they couldn't get it turned in, couldn't get it past the completeness check. I came in town, I wasn't living here at the time. I heard a whole lot of
-- a whole lot of finger pointing going on. A whole lot of downstream issues, so I went out there. I couldn't find the pond. I had a map and I had a plan, but I couldn't see that there was even a pond there. It was sort of a big marsh. I put my boots on, hiked out there, finally found the outfall structure and it was underwater. The pond wasn't draining. Our detention pond is a herbaceous very fully developed bull rush field. That's what it is. I thought well, it's backed up, I'm going to hike downstream and see what's down there and I found the beaver dam and I returned several days later with city staff and the beaver dam is on the cook walden property. The sediment dam is not. The sediment dam is in a drainage easement. We all went out there and I've got to tell you this much, the beavers are doing a much better job than we humans do. And in terms of water quality. It's just amazing. It's a remarkable feature. You walk down there like walden pond, I haven't seen anything like it. Absolutely stunning, really is. We have large discussions about the fact that this is now a large wetland. Our pond didn't work and with we were in process 27 months trying to get this site plan reviewed. We got comments and our engineer never turned in a comment report and he never sealed anything. Because he has to seal those. And he didn't
-- he couldn't. He couldn't

-- he couldn't
[15:58:07]

[indiscernible] to conditions about a pond functioning that no longer functions based on conditions created by a beaver dam. There just isn't that kind of engineering rationale out there. So what happened was a year and a half after we turned it in, he met with staff. They called him in for a meeting. He had a meeting with them and he wrote a letter on July 4th, I

-- or 14th of 19

-- of 2008 and he basically said, he had done some tail water calculations on some assumptions and they were outside the ranges of acceptance and but the last paragraph of his letter, which I have here, just basically says that we all know that the

-- that this

-- this waterway is obstructed and you have some choices. You can either release the site plan knowing that the pond sort of functions and isn't creating a problem. But at some point in time these obstructions have to be removed. Because they are impacting the entire drainage basin. All of our drainage comments were cleared. That was the thing he turned in. That was the only thing he turned in and they issued a site plan and, you know, the site plan got issued on March 25th of 2009, four months after the largest economic collapse we've had since the great depression. And

-- and

-- on top of everything else, when he called me to file this appeal, I just thought oh, here we go again. And sure enough, here we went again. But on top of that, we then got a notice of violation. From the pond maintenance department which basically said bring your pond into compliance and back to predeveloped conditions or we're going to file a case on you. You can't bring it back. You can't, it's a

-- no matter what you do, you are kind of hosed. So I met out there on site with the pond maintenance guys and said what do you want me to do? I mean, he called and told me hurry up and come out because it hasn't rained in six months, there's no water there, we can get down in the pond and that's not a joke. I mean it's the truth. We went out there and basically I was told to get a backhoe down there and clean out where you can see the trickle channels. There used to be trickle channels, now it looks like a beach. But dig all of the sediment out of that. Do it really quick. Haul it out of there but don't touch the bull rush, you are not allowed to touch the bull rush. I said how could I bring, why would I go do that

-- I'll wrap up.

[16:01:03]

>> Mayor Leffingwell: You have used the entire 10 minutes.

>> Sorry. Anyway, I

--

>> sorry.

>> I don't know what to tell you, we can live with whatever the council decides today, I can tell you that.

>> Mayor Leffingwell: So we have no one else signed up to speak either for or against this appeal. So I will entertain a motion from the council.

>> Tovo: Mayor, I don't have a motion, I have a couple of questions for staff, please, I think mr. Lesniak are you here to address this or ms. [Indiscernible] my question is she mentioned in her opinion it's not possible to actually correct the pond and I wondered if that was the perspective of the department? I noticed that the violation WAS ISSUED ON APRIL 24th, 2012, which is almost a year ago at this point.

>> I would like to have the engineer, the head engineer answer that.

>> Chuck lesniak, are you talking about the notice of violation to maintain the pond? I have talked with our staff field operation staff that have looked at this pond. It's their opinion that the pond can be cleared to a point good enough to satisfy

-- satisfy our requirements. It wouldn't be original condition, but good enough so that it's functional again so that they could remove the notice of violation and that that is doable and achievable fairly reasonably. The big issue here is

-- is really the site plan issue that

-- that it's our staf watershed department's, watershed protection department staff's opinion that addressing a notice of violation is a

-- is a relatively simple matter and that's

-- that's basically remove the vegetation that's existing in the pond. Ultimately, it will grow back because of the tail water conditions created by the beaver dam. But the conditions that are there that are

-- that caused us to issue a notice of violation can be corrected reasonably easily.

[16:03:15]

>> Okay. Is it typical that it would be

-- that there would be a notice of violation issued and no further action taken by the

-- on the part of the city? Or was it that there was no further action on the part of the city and enforcing that notice of violation because it was in this process?

>> We've been, our staff has been working with the applicant with

-- with ms. Crocker and we knew that there was a site plan in and so the

-- so the staff were kind of all working together to see if we could cooperatively address both the notice of violation issues and the site plan issues simultaneously. That as long as we were having productive discussions you know we weren't going to move forward with enforcement.

>> Tovo: Okay. So is it the opinion of your department that a new site plan makes the best sense in terms of addressing the water quality issues?

>> Pdr staff can speak to this, but they certainly need to address the water quality issues to have a site plan approved. They have to have a functional water quality pond. And there are issues related to the

-- to the beaver dam. The

-- you know, our field operations staff deal with beaver dams in creeks and drainage ways on a regular basis. This is not uncommon around austin. You don't hear about it very much, but it's not uncommon. And

-- and

-- but those are in areas where we have a drainage easement and that the city does the maintenance. And in this one we don't have a drainage easement. The city is not responsible for maintenance of flow in that

-- in that tributary. I know that the owners of this property have contacted the owners of the property where the beaver dam is and they've started that dialogue. Unfortunately, it's
-- it's complicated. We do have
-- ms. Crocker is correct. We do have a jurisdictional wetland now. There may be corps of engineers issues at this point. This is not a simple problem to fix. Part of the problem has been and pdr staff can speak to you about this, they really just stopped communicating with us about this quite a while ago.
[16:05:27]

>> In terms of addressing the water quality issues, it sounds like the best opportunity for the city to do that with the applicant is to allow them to let this site plan expire and require them to submit a new one. So I'm going to move the

-- move that we support the zoning and platting board's position, which was to deny the appeal. I hope that I have stated that correctly. I think that was

--

>> Mayor Leffingwell: Councilmember tovo moves to close the public hearing and to deny the appeal. Is there a second? Councilmember morrison? Any other discussion? All in favor say aye.

>> Aye.

>> Opposed say no? Passes on a vote of 7-0. Item 70. I don't think we're going to get

-- we can start on it at least.

>> I'll be very quick, I'm virginia collier with the development review department. It's the first of two public hearings for the annexation area now being considered for limited purpose annexation. Our second hearing will be next thursday, march 28 here at 4:00 p.M. Council will not be taking action at either of these hearings, ordinance readings are tentatively scheduled for APRIL 25th. As you may recall in 2012 the city ... And as an a little active the property owners requested a delay of full purpose annexation, planned unit development zoning and approval of a public improvement district for this project. Earlier this year the city and property owners entered into an interim ... In the pid. For this limited purpose annexation to be considered by council at the same time at the pid creation the preliminary annexation steps must take place in advance including conducting these public hearings, in other words with the terms of the pid policy, staff and [indiscernible] the proposed annexation area is currently undeveloped and includes approximately 594 acres in southern travis county west of i-35 south approximately 8/10thS OF A MILE SOUTH O The intersection of home invasion 35 and onion creek parkway and currently in the city's e.T.J. On the north side of the area. The proposed mixed use development with residential office, retail, data center and parks and open space uses. Given market forces it is reasonable to assume that the development of the approximately the same density and intensity of use as the development proposed provided to the city will be built on the tract irrespective of annexation. If annexed the property will be developed in accordance with the city's standards. The p.U.D. Has been submitted for the area. This will reflect land uses set out in the final development agreement. Following annexation the area will be developed in accordance with the p.U.D. As approved. In accordance with statutory requirements, a regulatory plan was planned for the limited annexation area before the 10th day. A copy can be found in the council agenda backup and i have additional copies outs by the agendas in the front day. In the areas annexed for the limited purposes the city does not ... Residents will be able to vote in city council

and charter elections. This conclusions the council presentation for item no. 70.
[16:08:49]

>> Okay. Any questions for staff.
>> Spelman: Yes, sir.
>> Mayor Leffingwell: Councilmember spelman.
>> Spelman: Two questions. First am I right in believing that there is no dispute between the applicant and the city staff with respect to the development plan. [Indiscernible] regulatory plan.
>> Correct, right.
>> Second question, do we have an all funds analysis on the
-- this this latest version yet?
>> Of the pid? This just writes the area into the limited purpose jurisdiction. There's a p.I.D. Proposal and a p.U.D. Zoning case that will come up separately to council when this comes back with an ordinance.
>> Spelman: Right. But this is
-- this is an scene of the accident case
-- this is annex case and this will have effects on government funds, right.
>> Well, limited purpose areas we don't pro municipal people services, the residents get to vote but like the county maintains the roads and the public safety is still provided by the county sheriffs and the esd. So it's a different
-- there's not I guess annex analysis that we do for limited purpose area.
>> Spelman: Okay. Will this have any effect on revenues to the city of austin?
>> No. Because there's no ad valorem property taxes and no sales taxes.
>> Spelman: So there's no retail in this section here that we're talking about annexing.
>> Well, we're talking about annexing the whole project just for limited purposes. Sales taxes aren't collected until you have annexed for full purpose.
>> Spelman: My apologies, thank you.
>> Mayor Leffingwell: This is a public hearing only. We have two public hearings and a separate hearing from the actual scene of the accident.
>> Morrison: So is it
-- for the annexation.
>> Is it correct that staff is no longer recommending full purpose.
>> Mayor Leffingwell: This is limited purpose.
>> Morrison: Right. I guess that I want to understand
-- it's hard to remember sometimes all the way back to december or whatever.
>> Jerry rusthoven.
>> This is the first step necessary towards the limited purpose annexation which presumes that we reach an agreement with them on the p.I.D. And the p.U.D. And the development agreement we approved with them in january
[16:10:56]

[indiscernible] before june. So this is a step in that direction presuming that we have a deal with them. We are still working o that deal right now. We're still in the negotiation phase with them on the p.I.D. And the p.U.D. We're doing this, however, with the presumption that if we do have

a deem, we will have that

-- deal, we will have that ready for the council review in all of its different forms, p.I.D. Be p.U.D., Annexation, in june. If we don't come to an agreement, per the previous agreement we approved in january we will be asking the council for full purpose annexation later this year.

That would be the

-- so this is the kind of just in case we reach a deal we're still negotiating right now.

>> Morrison: All right. As limited purpose annexation would the plan include eventually full purpose annexation at some point? In the future.

>> Yes. This is proposed deferral of annexation for the period of the p.I.D.

>> Morrison: What is that period that you guys are talking about right now?

>> Right now we're talking about 15 years.

>> Morrison: Thank you.

>> Mayor Leffingwell: Okay. No speakers so I will entertain a motion to close the public hearing. Councilmember riley so moves, seconded by councilmember spelman. Discussion? All in favor say aye? Aye.

>> Opposed? Passes on a vote of 6-0 with councilmember martinez off the dais. That leaves one item on our agenda, which we're certainly not going to have time to address. Let me just ask this. Ask does anyone on council desire a briefing update from staff before we go to our public hearing? On this item? If not, we will go ahead and start, we can get probably two speakers. And richard meyer. Is richard meyer here? Richard is evidently not here. Mikhail meade. I think I maybe have surprised a couple of folks.

[16:13:13]

>> Spelman: Surprise factor.

>> Mayor Leffingwell: Let's just go into recess right now. Without objection we are recessed until

-- until approximately 6:45.

>> Good evening, everyone. It's a little after 5:30, as many of you all know, it's time for live music and proclamations. So as we do every council meeting, we have live music. Joining us today is susan arbuckle, a classically trained and has lead and taught, performed written and recorded music, her roots are in blues and gospel, but today she uses her powerful voice to sing everything from jazz and rock to aria and lullybye, her veracity has earned her to share the stage with ruth these foster, bonnie raitt, chris chrissofersson, fans can join her any time via her cd any time she needs. Please join in welcoming susan arbuckle.

[🎵 Music playing 🎵🎵🎵]

[🎵 singing 🎵🎵🎵]

[16:16:02]

[🎵 singing 🎵🎵🎵]

[16:18:36]

[🎵 singing 🎵🎵🎵] you.

>> Don't know how appropriate that song is, because we have 105 speakers signed up on our next agenda item, there is so much more to come. In all seriousness that wa really beautiful, thank you so much. If you would take a minute

--

[applause]

-- you just take a minute and

-- and introduce yourself, tell us where we can go watch you live and where we can find your music either online or at the record stores.

>> First of all, I want to say thank you so much for having us. We are the arbuckle acoustic trio. Danny anderson on guitar. Joanie [indiscernible] on octipied and these guys are also in my susan arbuckle band, we do kick it up a lot more. March 23rd saturday we'll be playing at hanovers, happy 13 at senior buddies on the other side of town. May 3 a one to one bar in the central part of town, then may 11th out at hill country galleria.

>> Great. Where can we get your music online.

>> You can buy my cd on your website, [www.susanarbucklearegoto](http://www.susanarbucklearegoto.com) [indiscernible] and look up susan arbuckle there, also at Waterloo records and the Austin visitors center.

>> Great, thank you, suzanne, I do have a proclamation that I would like to read. Be it known whereas the local music community makes many contributions towards the development's of austin's social, economic and cultural diversity and whereas the dedicated efforts of artists further austin's status at the live music capital of the world, I therefore lee leffingwell mayor of the city of austin, texas do hereby proclaim MARCH 21st, 2013 AS SUSAN Arbuckle day in austin, texas, congratulations.

[16:20:55]

[Applause]

>> thank you.

>> Thank you to the venue owners in austin that have welcomed us to come and play and this is a really wonderful honor. There are lots of incredibly talented and creative musicians in this town that could receive something like this and I'm very honored to be one of them and thank you to all of my sweet friends for being here. Thanks.

[Applause]

>> thanks susan, now we will go into our proclamations and I have the honor of presenting the first proclamation to someone that's very special to austin and to many folks that are here, ron, if you would please join me up here.

[Applause]

[cheering] like some folks here in austin, I wasn't born here, but I got here as fast as i could. 25 years ago when I arrived ron had already been on the air for over five years, so for over 30 years he's been in your homes and in your ears and on your tv almost every night giving you the latest news and information. But beyond that, his commitment to the community and his volunteerism, ron has just become a local icon that we've all come to love and know very well. And so as he transitions into his next adventure in life, there are some folks that asked us to appropriately recognize the over three decades of service to austin and its citizens, it's my honor to present this proclamation to ron oliveira.

[16:22:56]

The proclamation reads: Be it known that whereas ron oliveira has been a familiar face in austin tv on austin tv screens since he came to our city in 1980,s serving as a news anchor on bottom

kvue and keye not only has he become a respected professional within the news communities, has been truly committed to our city through his volunteer activities and whereas ron serves on the board of the loyola wright foundation which awards grants to local non-profits and he also works with any baby can, the christie center, foundation for the homeless and saint jude's children's hospital, among many other service groups and whereas ron was appointed by the lieutenant governor to serve on the secretary of state's election advisory committee and has been involved with the greater austin chamber of commerce and the hispanic chamber and whereas it is appropriate to recognize ron's long and successful tv career and to thank him for his many contributions to our community, now there ever I lee leffingwell, mayor of the city of austin, do hereby proclaim ron's last day on the air, march 1st, 2003 AS RON OLIVEIRA Day in austin, texas. Congratulations and thank you, ron.

>> Thank you,

[applause]

[cheering]

>> first off, I would like to apologize to you, mike, to the city and my friends out here, too, for almost not making it in time. For years during this hour I've been doing the 5:00 and the 6:00 news, so I didn't know much about rush hour traffic for years. [Laughter] so I don't know if anybody has told you out there, but the traffic is terrible! Terrible! Anyway. There's so many rewarding things to do in life. But none more than serving the community. I learned that from my dad and his brothers, they grew up had humble beginnings in south texas and they were always helping, they were always doing something. To give back. They learned that from their father who was the first hispanic police officer down in brownsville. Every weekend, several nights of the week my dad and his brothers were out doing barbecued chicken dinners, at the lion's club selling brooms to the blind, helping immigrants learn english and government so they can become naturalized citizens. They did countless numbers of things just like that. They learned that from their father. Their father told them and it was instilled in me and all of my cousins, too, that no matter how successful you are in life, no matter how much money you make, no matter how much education that you have, you always give back to the community. And it's something that I've learned and spent doing for the past 36 years of my life. Not just delivering the news, but serving the public. Trying to make a difference in the life of others, trying to make a better place to live here in austin, texas. And I thank you, I thank you my friends and I thank the city and although I may not be on television right now, hopefully soon or somewhere else or on to the next great adventure as mike said, i will continue to make

-- do my part to make better

-- make austin a better place to live. Thank you so much. Thank you.

[16:26:32]

[Applause]

>> I know that many of you would like to hug and congratulate ron and take a photo with him, maybe. We will be upstairs on the mayor's balcony, we have a reception planned up there for him. You are welcome to come up and visit right after this proclamation.

[16:30:56]

>> Mayor Leffingwell: So for those of you who are here today who are not aware, of all of the infrastructure that's under the ground beneath you, wherever you go in the city of austin or any large city, we are about to

-- to proclaim april as safe digging month in austin. Now that

-- that

-- I think you really have to understand what this is about and it is true. Most people are not aware, for example, that there are about four tunnels underneath lady bird lake here going from no are the to

-- from north to south in tunnels literally all over this city. Then we get to talking about the smaller stuff, water lines, gas lines, all of the things that go to make

-- to make our life here in austin civilized. And so obviously it's a big problem when people don't adhere proper procedures and find out where these lines are before you start digging because then you have problems. We are here today to talk about that. If you guys could come up and stand behind me. You see this lady here has her shovel with her, but she would not dig anything without calling 811 and getting some information on that. So the proclamation is be it known that whereas thousands of times each year the underground infrastructure in texas is damaged by those who did not have underground lines located prior to digging, resulting in service interruption, environmental damage and threats to public safety and whereas in 2005 the fcc designated 811, which is a non-profit group by the way, to provide excavators and homeowners a simple number for contacting utility operators to request the location of underground lines at the intended dig site and whereas the central texas damage prevention council dedicated to the prevention of damage to underground utilities in the central texas

-- in 12 central texas counties, promotes the national 811 notification system and whereas we encourage excavators and homeowners throughout austin to call 811 before digging to save time and money and to help keep our infrastructure safe and connected, now therefore I lee leffingwell, mayor of the city of austin, do hereby proclaim april 2013 as safe digging month in austin, texas. So congratulations to you, and

-- and doug meeks and his daughter are going to come up here to the podium, say a couple more words about how to make sure you dig safely. And then we'll take some photographs over here.
[16:33:46]

>> Thanks, mayor.

>> Thank you all very much. A lot of people have known about us for a lot of years, call before you dig. But 811 is really what we're here to talk about. April is national safe digging month or in this particular case austin safe digging month. A little over five years ago, as the mayor said, 811 was originated to make it a single number to call. If you call 811 anywhere in the country, the

-- the system will pick up on the exchange that you are calling from and route you to the one-call notification center in that state to where that center can notify the utility operators that are in the area where you are going to be digging. That way they can come out and locate their line so that you don't hit it. We're real pleased with texas 811 being a non-profit corporation. We're member directed and when I say member directed the people, the utility operators that we serve are on our board of directors. Now austin energy, city water utility, time warner cable, at and t, all of the utility operators that serve the citizens of austin are members of texas 811 and also participate

in the central texas damage prevention council. That's a member
-- member driven group that is simply here for the prevention of damages. We had a meeting today here in austin at the agc offices on barton springs and we bring in contractors, utility operators, the general public, anybody that has a stake in damage prevention and we work together to solve issues relating to damages. Mark here is the vice chairman of the central texas damage prevention council and did you want to say a few words, mark?

>> I'm fine.

>> He's president and c.E.O. Of cox utility services, a contract locating firm and he does a great job here in supporting all of us. Ava, do you have anything to say?

>> No.

>> But you think 811 is a good idea. Does 811 pay the bills? Yeah.

[16:35:51]

>> [Laughter] anyway, we thank you all and remember to call 811 before you dig.

[Applause]

>> lots of birds and she has, as I said, been a driving force behind making a preserve a big success. I've known rose for several years, back the years when i was on the city's environmental board but I've also served as chair of the balcones canyonlands coordinating committee ever since I've been mayor

-- well, it was before I was mayor. I started that when I was still on the council, and so we meet on a regular basis to discuss issues related to the preserve, and rose has always been there to guide that process, and we've always appreciated her advice, her expertise and what she's added, again, to our community. And I bet she never thought she would get a distinguished service award from the city of austin, but we recognize excellence all over the place. So we're very proud to present you this for your leadership and commitment to the success of the balcones canyonlands preserve during your 17 year career as a adedicated conservationist with the county. You deserve public recognition. Rose played a vital role in the founding of the pcp and with the conservation of eight endangered species, 17. Her leadership assured strong public involvement for the bcp. Rose's knowledge and commitment helped countless elected officials, other public officials and everyday citizens understand austin's natural heritage so that they can become advocates for conservation in our community. This certificate is presented in recognition of rose farmer's untiring and distinguished service to our community this 21st day of march in the year 2013, by the city council of austin, signed by myself, mayor lee leffingwell. Congratulations to you, rose. And enjoy your retirement.

[16:39:53]

[Applause]

>> thank you.

>> Would you like to say a word?

>> I worked very, very closely with the city of austin, so I wanted to thank all of the folks from the city of austin's bcp program that I worked with, because this permit was shared by the city and the county, and so it was a cooperative effort. So applause to all of you in the audience that worked with us together as partners, the city of austin and travis county. It's been a real pleasure working with all of you all these years. One of my greatest pleasures is driving around the hill

country and seeing what we've done. I can see developments that are there because the balcones canyonlands conservation plan is in place. I know them by name. I can say that one and that one and that one paid this much and that one paid this much, and this one paid this much in mitigation. So it is an economic engine that has allow development to take place in the western part of the county. It also has set aside the very best habitat for these endangered species to make up for the loss of the habitat that development brought in. And so it really is a -- a thing that has been good for our community for the economics of our community and also for the species that it's protecting. And another my greatest pleasures is to see on the nightly news the local news, you can look at the weather report, and I can see the aerial map in the background, and I can pick out where all the preserve tracts are, because they're trees, they're habitat. You can look on google maps and you can find where the preserve land is, and i think this is a tremendous thing that we all as a community, city of austin, staff, elected officials, travis county elected officials and staff, are leaving. You know, it's for the benefit of the people here as well as the wildlife here and we're leaving this for future generations, and it's a pleasure to have had an opportunity to work on it for these many years. Thanks to -- we ought to have folks in the audience, stand up, those of you who worked on all of this because they deserve as much credit as I do and they're all here in the audience. Thank you very much.

[16:42:17]

[Applause]

>> mayor leffingwell: So here in the city of austin, like cities all around the country, we're so dependent on the service to our communities by nonprofit organizations who provide services to our community and benefit everyone in the city to a certain extent. There are several of these organizations. We all know who they are. Tonight we are here to honor the rotary club of austin. 100 years of success in the city of austin. We're very proud of them. We want to congratulate them on the occasion of their 100th anniversary and issue this proclamation in their honor. Be it known that whereas rotary is an organization of business, professional and community leaders united worldwide who provide humanitarian service, encourage high ethical standards in all vocations and help build goodwill and peace, and whereas the rotary club of austin, the oldest and largest club in

-- largest club in austin, the fourth to be chartered in the state of texas and the 63rd club of rotary international, is celebrating its centennial this spring, and whereas, helping hand home, camp enterprise, service austin, literally operation, vacation for fort hood, student scholarships, international student giving, service above self-are among the major projects rotary club supports, and whereas we're pleased to acknowledge the fine work of rotary club of austin they celebrate 100 years of helping and still going strong with 300 local members. Now, therefore, i, lee leffingwell, mayor of the city of austin, texas, do hereby proclaim april 6, 2013, as rotary club of austin's one-year

-- 100-year celebration in austin, texas. Congratulations, and james bagby behind me, and sherry workman also

-- did you want to come up

-- you got your name on the list. You might as well make the most of it.

[16:45:31]

[Laughter] james, would you like to say a couple words and I'll present this to you? Thank you.
[Applause]

>> well, thank you, mayor, and thank you to each and every person that's come and everybody that's watching. The rotary club is something that after a number of years of service in other organizations, I found was actually one of the most efficient forms of service that I really have ever found in the world, certainly in the austin community. There are a lot of things that we do. Service above self is the motto, and it was formed

-- rotary was formed in chicago in 1905, that's before anybody in here, or anybody on television watching, was born, I think. And it was formed by a bunch of businessmen, and it was businessmen. We have business women, we're over, I think it's 27 or 28% women and growing now. It's not just an all white men's organization. It's a very diverse organization that crosses political lines, crosses religious lines, very inclusionary around the world. We've done some amazing things, and that's why I'm proud and just pleased as punch to be up here in front of you telling you about this, our big project, our biggest international project is curing polio in the world. Now, a lot of people say, polio? Polio is gone, and a lot of us think it is, but it was in this country until 1996, in the upper reaches of appalachia. In 1985 rotary decided we're going to kill this disease. We're going to get rid of it from the face of the earth, all three types and forms. Since 1985 when there were 350,000 new cases of polio in the world, 350,000 new cases in 1985, two years ago there were over 1300 cases, a year ago 652 cases. Last year just over 200, and this year so far only 11 cases of polio, and that's thanks to the work of the rotary club and the other people that have gathered around, the other os that have gathered around to help and support us, and the support of rowtarians around the world, we've given over a billion dollars. Drop the drops. And bill gates foundation has given over 355 million, michael bloomberg, mayor of new york, just gave another 100 million. So it's caught fire and we're just about to kill this disease. So that's on a big level. Locally, at the mayor's, it was

-- I think it was junior high school there, it was middle

-- it's middle school now. When I went to web, when i went there, and almost wasn't there for a while. But anyway, yes, at fill more, that's

-- full more, that's one of our adopted schools and we do mentoring there with the kids directly every week, and we also give them a book signed by speakers that we have at our weekly meetings. Those meetings with speakers SUCH AS red McCombs, who was in recently, and leo manzano, who is our olympic medalist in the mile if you remember from last summer is one of our speakers as well and we have speakers every week. So we give books each week to the fillmore middle school. We have dixon foundation. Obviously it's something that I love, and it's something that I hope if you've never checked out rotary, please go on the web and google rotary club of austin, you can find out what we're doing locally and the other 35,000 rotary clubs around the world. Thank you very much.

[16:49:24]

[Applause] be.

>> Hello, I'm rachel mayor and I'm representing the austin youth council and I'm from st. Andrew's episcopal school. This is jazzy kennedy and she is from the texas school for the deaf.

[16:51:33]

>> And I am carno mac it ti from st. Dominick's high school. Be it known that whereas the city of austin, and mayor lee leffingwell, launched the austin youth council in 2012 as directed by the city resolution no.2(011)042-8050, the youth population of austin is pleased and appreciative for the creation of the austin youth council. We are grateful for an opportunity for the youth to be involved in government. Whereas, we are viable as an official youth body of austin with our general assembly, district and council meetings. The austin youth council is composed of leaders from high schools across the austin areas that assist the mayor, city council and city manager's office in responding to the needs of austin's youth.

>> Whereas we are viable

-- whereas we are currently planning our very first city-wide youth community event to take place in june, focusing as acting as a catalyst for change for two issues: The dangers of texting while driving and public transportation. Now therefore be it resolved, we, the austin youth council members of austin, texas, do hereby proclaim to keep our voice representative of all youth who reside in the city of austin. And we appreciate the efforts of the austin mayor and city council to provide us this voice. connor McCatty, sebastian lopez, rohan gannon, dakota dively, caitlyn brassengame, rachel mayor and loren alexander.

>> Thank you. [Applause]

>> mayor leffingwell: Here's the proclamation and I'm glad she read it because i don't think I could have. I'm so proud of this group. As you mention, it's kind of new, about a year old, a little less than a year old, and some of you may know that when I

-- right after i first became mayor back in 2009, we established an organization called austin corps, and its purpose was to

-- see

--

[16:54:08]

[laughter] austin corps started and still is operating in three high schools in austin. And all of those happen to be in south austin, akin, crockett, and what's the third one?

>> Travis.

>> Travis. How could I

-- I went to travis high school. That's the one I shouldn't have forgotten. [Laughter] but involves students who are engaged in civic work, civic learning, and the city actually sponsors that and provides an academic regimen and also enables these students to come and work in various different departments, around city hall and outside of city hall working for the city, and the last class at the end of the year came up with a bunch of recommendations, and one of those recommendations was to establish the youth council and to make sure that we have input

-- diverse input from all parts of our society. Oftentimes young folks such as these here, their opinions are kind of not heard, so we wanted to make sure that changed, and so I'm proud to have been a part of organizing this, and I hope

-- wish you great success and thank you for what you've done so far and keep up the good work. Thank you very much. [Applause]

[16:56:58]

>> riy: Okay, I am council member chris riley and it's my privilege to author the next proclamation and it's about world water day and efforts going on locally, to recognize that and to address the problem of water on a worldwide basis, and it relates to some very exciting efforts on

the part of a very innovative, creative local nonprofit that we're very proud of as a city. The proclamation reads as follows: Be it known that whereas world water day is a day when we consider the critical issue of water around the world, and when well aware and austin-based nonprofit begins to provide lifesaving water for those in east africa who have none. And whereas, well aware shower strikers are so committed to digging wells and digging pipelines in kenya they're willing to forgo shower until they raise \$1,000 toward projects which provides water to 10,000 people in africa. Whereas, we recognize the need for shower strikers to meet their fundraising goals quickly, to minimize potential stench caused by not bathing, and whereas, we urge austinites to support the well aware shower strikers or to join the strike by signing up at shower strike.Com. Now, thrm, i, lee leffingwell, mayor of the city of austin, texas, do hereby proclaim march 22, 2013 as world water day. [Applause] and here's

-- and it's also my pleasure to introduce the original stinker of them all, the one who got this whole thing going, it's sarah evans. Yes, sarah, can you say a word?

>> Yeah, I would like to. Thank you. Thank you so much for having us, and as chris explained, we're a nonprofit that's working on providing clean water systems to the people of east africa. We have a technical team and a group of volunteers who work with the communities there to decide what the best water solution is for each community, and so we install water wells, pipelines and rainwater collection systems and we work with other local partners. And so we decided that the best way for us to raise public awareness to support the cause as well as funds so we can fund our water systems is to stop showering, and ask people to pay us to start showering again. And this is our fifth annual shower strike, which we will launch tomorrow, and we've been doing it for five years now. And we have raised almost \$300,000 just by doing shower strike, and install 13 clean water systems since 2010. So you can go to shower strike.Com if you want to participate. It's surprisingly easy because people do want to fund your campaign. Or few don't feel like

-- few don't feel like participating this year you can check out the cause, check out our projects, contribute if you like or you can help us spread the word. Lots of people are participating in the city and actually nationwide. We have lots of local businesses, some rotary clubs. WE HAVE blake McCows ci, the founder of tom's shoes joined the shower strike this year and we'll have a big party tomorrow night at ctc garden. It's 1102 east cesar chavez and we'll have music and african food and dance and a big pep rally for all the shower strikers and celebrate our last clean night until shower strike week commences. Thank you so much for having us, shower strike.Com.

[17:00:20]

[Applause] oh, and I have this present for councilman riley. It is a shower strike t-shirt, and if you decide to join us on the back you can mark what day you're on so people

-- if people want to donate more and an i stink button.

>> Riley: How nice. Thanks so much. Thank you.

>> Mayor leffingwell: We're out of recess, and before we start our public hearing, i would like for staff, greg, to come up and give us a very brief overview into what this proposal, staff proposal, does and what it does not do, what it affects and what it does not affect. Doesn't have to be comprehensive. We want the thumbnail sketch.

>> Thank you, mayor and council, greg guernsey, planning development and review department. The ordinance that you have before you speaks to ordinances that were changed back in about 1997, when the state legislature did not renew the vesting rights, ordinances during that time

period the city of austin came in

--

>> mayor leffingwell: They just inadvertently repealed.

>> They inadvertently repealed, that's correct. They were not on the books. Austin created its own vesting type ordinance which took the form of the project duration which we're talking about this evening, as kind of the

-- a place holder, i believe in hopes that the legislature would look at our ordinance and maybe use it as a model. The legislature passed vesting statutes anyway and put them into place. The ordinance that we have before you would deal with what's called project duration. That applies to projects after that 1997 date, september 1997 to today. It would not apply to

-- if a project is already vested, we'll say, prior to '97, then that's prior to '97. So project duration mainly deals with those projects that are after ordinances

-- ordinances that were after 1997. But it doesn't apply to all things. There are certain provisions, certainly in the code, that deal with building codes or floodplains. I heard there was something saying it was going to change our neighborhood plans. This would not affect a neighborhood plan. Neighborhood plan is an advisory tool. It's not a regulatory tool.

[17:03:35]

>> Mayor leffingwell: Does it affect the sos ordinance?

>> Sos would predate '97. Compre compre hensive watershed ordinance?

>> Comprehensive watershed ordinance, it would predate the comprehensive watershed ordinance as well, so those would not be directly affected by project duration. Project duration isn't the only tool that's at my disposal to determine whether or not a project is vested or not. Many times projects are not vested because there's been a change in the project. Their project was residential and now it's commercial or a project is complete. Most of our central austin are already developed with houses on lots. Those houses are completed projects. If someone comes in we would look at new ordinances that would apply to that house if they were coming in trying to do an addition or something along that line. So

-- those are the major points that I can tell you.

>> Mayor leffingwell: So then chapter 245 was reinstated in '99, wasn't it?

>> That's correct.

>> Mayor leffingwell: So how did that affect

--

>> well, there were

-- after the state laws went back into effect, primarily the only portions of a project of duration ordinance that applied are those that apply to projects, again, after '97, and if you're in the desired development zone, they would have a five-year life running from the date of the first permit in that series. For instance, a site plan, the site plan would have a project life of five years. Whether or not the project is complete at the end of five years, you could have, you know, half the project built, all the infrastructure in, but if you have not pulled all your building permits, for instance, we would say the project has ended. In the drinking water protection zone, it's less time. It's only three years.

[17:05:39]

>> Mayor leffingwell: So ordinances are enacted by the city after 1997

-- that were enacted after

-- enacted were applied after the duration ordinance. Those would be ordinances like, for example, McMANSION, COMMERCIAL Design standards, heritage tree

--

>> actually not commercial design standards. We've interpreted commercial design standards that would deal with setbacks, heights, so not that, but

-- but the heritage tree but the city of Austin had protected tree regulations, trees that are 19 inches larger so those things wouldn't be affected by project duration.

>> Mayor leffingwell: So I think we

-- does anyone else have any questions? We can go directly to our public hearing and maybe other questions will come up as a result of that.

>> And after your five hours of testimony staff will be available for questions. [One moment, please, for change in captioners.] (cofa9-27-12.Ecl)

>> I want to thank your staff for bringing this forward. As an attorney, I think it is utmost important that all citizens and yes, even the city abide by the law. The action for you for consideration tonight serves one purpose brings Austin compliance in with state law. It is actually a little bit unbelievable we have five hours of testimony. It is really a black and white issue. Those in opposition have distributed dozens of documents and email blasts this week with lots of bad and some maybe blatantly false information about the effect of the proposed ordinance, but in reality, it only blows down to whether we, as a community, will follow the law or not. Will we be a law abiding city, or will we not be? Mayor and council members, I suspect that much of the testimony that you are going to hear tonight will be about people either liking or not liking grandfathering. While I respect everybody's right to have their personal opinion about any law and we all have personal opinions about lots of the laws, including grandfathering, whether anyone likes or dislikes it is truly besides the point. Just because I don't like the speed limit doesn't mean I don't have to follow the speed limit. Of course I have to follow it. It is the law and law abiding cities and citizens are told to follow it unless it has changed. Please do that tonight and approve the ordinance recommended to you by your staff and by the planning commission. Finally, council, there is so much talk to having an attorney general opinion and whether that's useless or important or not important, but to be perfectly honest, even without any attorney general opinion, each of you could look at a city's law and if state law for yourselves and you can pretty clearly see that the two are in conflict. So you really don't even need to rely upon an attorney general's opinion to make a decision tonight. We hope that

-- I know you've got a lot of testimony. We appreciate you hearing everybody. We hope that you all will follow the staff and for that matter planning recommendation and adopt the ordinance that is before you. I really appreciate your time. Thank you.

[17:09:43]

>> Mayor leffingwell: Thank you. Stewart schneider. Roy waley. Is Joyce Espinoza here? Karen Haden?

>> Tracy Whitley.

>> Tracy whitley? Are you tracy whether itly? Karen renik. What is your name?

>> Kim neighbors.

>> Mayor leffingwell: Are you signed up?

>> Yes, and I am donating my time.

>> With pam's donation, roy, you have 12 minutes.

>> And I promise I will try to be much shorter than that, and I kept that promise earlier today, so

--

>> mayor leffingwell: You did well.

>> Let's see if I can't do that ing. Again, my name is roy waley. I am the chair of the conversion committee for the austin sierra club. I am not an attorney, but i am going to speak a little bit to the law, and we have some grate attorneys here that

-- great attorneys here that have a different opinion than this. I agree with per on one thing about the speed limit but slow down. Let's slow down a little bit. Let's get outside representation to come in and take a look at this. [Applause] now, in regards to the speed limit, that is the law and no one argues that because that got decided to be the law in court a long time ago. This is not law. This is an opinion, and as the attorneys on the council know it's not law until the court says that it's law. So we have the attorney general's opinion. You are going to hear from attorneys what they think about that and how that has not mattered in the past. You have an attorney in the county who says that he thinks we are in compliance with 245 right now. Tom knuckles. That is in your backup now. It was not in your backup the first time you saw this. It was not in the backup when the planning commission saw this. You also have another letter from another attorney that you know well, a mr. Brent lloyd and last summer, brent opined, he said in his letter that, the city of austin is in compliance; so why are we now out of compliance. I am also not a city planner but greg guernsey is, and in an affidavit he said, yes, the city of austin is in compliance with state law. This was last summer. So you have two attorneys saying that, the city planner t is city is saying that. Why has that opinion changed? Has there been put pressure put from some other place to change their opinion? I hope not. As far as being crystal clear, that's the reason we have the courts, the civil courts, we can all agree to everything, we would never have to go to court. I think

-- I just think it is a shame that the attorney general has been wrong before. In fact, he voted at one point and brad rockwall, i think, will talk about that, to overturn the attorney general's opinion by taking it to court and he was on that court and said, no, your opinion was incorrect. So we are talking about an opinion no matter what ms. Meade has said. And I have had good conversations with ms. Meade. We just haven't been able to come to an agreement and eye to eye on this. Now, then, what I am, I am not an attorney. I am an environmentalist and I am an activist and I am a long time austinite, grew up in williamson county but consider austin my hometown, and got to be a political junkie at a very early age and have always been involved in politics, so I've watched the city of austin and I have been involved in the policies and politics of the city of austin and I see what an incredible city we have here of incredible people, incredible individuals that are here tonight and others that could not be here tonight, but it is not just tonight. It is the decades that have gone in before and it is the decades that gone into this into making austin the city that it is and I think this will have devastating consequences if we throw this away. Yesterday at the capital was act lobby day, where environmentalists from all over the state of texas got together and went office to office lobbying and I am happy to say that one of@the people up there fighting for the austin city ordinance was bob gutter. Bob was up thereefending our plastic bag ordinance. Now, I think all of y'all are going to want to defend that plastic bag

ordinance that we fought so hard for, and now we've got someone from somewhere else saying, huh-uh huh, austin, we don't like the way you are doing this. Just as in this case, we have someone from the valley that came in and said, huh-uh huh, we don't like the way austin is doing this, so we have bob gutter up there defending us. Why don't we have somebody from the city defending us, instead of we are going to roll-over on this. Would y'all be willing also tonight to look at the idea of giving up on our bag ordinance? Are you willing to give that up that easy. Please don't give up what so many citizens have worked on for so long, what so many elected officials have worked on for so long. We don't know what the consequences of in will be. We can say it's going to be this. We can say it's going to be that. We can say it's going to be much worse than what has been presented, and once it happens, you can't go back. Once you make this decision, we can't go back on this, and that's what is really frightening. I don't know. Are y'all concerned about a lawsuit? I remember mr. Meyer, you and which were having coffee one morning and you were telling me a story about a lawsuit that had just been filed and it was a funny story. I was surprised, I said, you mean we are being sued. You said, we get sued every day, and so you tell me the funny story and it was an amazing story and I enjoyed it but I walked away going, we get sued every day. So I am

--

[17:17:20]

>> mayor leffingwell: That was an exaggeration. [Laughter]

>> well, maybe it was irish coffee we were having, i don't know. [Laughter] but anyway, we get sued frequently. Let's have the trust in our city legal staff. Let's have the trust to stand up and say we will do that and let's say what the

-- let's do what the law really says and let's not do what

-- and and not what the attorney general thinks of the law. I w turn it over to the attorneys this evening. And then

-- I am going to stay away from that. I am not going to go there at all. What I do want to talk about, though, is the amount of time that we have spent making the city of austin what it is, and for those that have done all of that work, yourselves included, not just on the council but on the different boards and commissions that you have served on, I can tell you that there are people that are very upset about this, commissioners, board members, staff, because they don't know the far reaching implications. I think

-- I do not see

-- and you are going to hear this frequently, I believe tonight, that this is not an emergency. That if I went over and pulled the fire alarm, it would sound like an emergency but it would. Be an emergency. I would just be in trouble for sounding a false alarm. I think we have a false alarm tonight. I agree, we do need to slow down. Let's get the information. Let's get outside council. Let's find out what the real implications of this will be because there has been too much time that has gone into this that makes austin a special place. I did ask earlier in a conversation today, is the growth just so fast, are we gooing so fast that there is no way to slow it down that we can give up what has made austin special and still have this kind of growth for a couple of generations? I don't believe that we can. I believe that people are coming here because austin is a special place and that we did defend our ordinance to keep it a special place. We cannot hear at one time

-- mr. Meyer, I know you are a big fan of the philosopher, that once side no one goes there anywhere. It is too browedded.
[17:19:58]

>> Mayor leffingwell: Joe yubara.

>> Yes, sir. So if we are drawing too darn

-- if we are growing too darn fast that we can't keep up, where is the problem? Where is the problem? If we have a problem, if there is a backlog, as we asked during the budget hearings, give eg guernsey and his staff more people. Help the development people get their projects moved forward by increasing staff to help them do that and review. Is sierra club is all for that, austin sierra club. It is too honest to build on these conditions and we can't keep up. Ewe can have both. We always have been able to strike a balance. I can tell you board members were upset we didn't get consulted on this. We don't go through

-- i don't know how many of you have contacted you. I have asked them to. I know you've got a long evening ahead of you so i say thank you for your attention. I will say this. We are discussing how hard it is to make a decision when you are tired and hungry, so what I ask is that you hear from both side postpone this item and come back and make a decision when you have a full belly and a clear mind. Thank you for your time. [Applause]

>> michael possum, michael possum. Carol lee. Zoy la vega. You have three minutes.

>> I am with the austin heritage tree foundation. I am a tree person. My expertise is trees and engineering but I am a neighbor and I think what I

-- I can say the same thing that mrs. Meade says, what I find blatantly false is that austin does not fotlow the law. I think based on what I am reading from all of these papers or the legal opinions that were presented, I agree that it is meeting the law, so the way I see it, attorneys fight this issues in court and attorney can say, well, this is meeting the law. The other one can say, well, it is, so they have to fight it over. Just because an attorney says so it doesn't make it true. Now, going back to what i understand, please. The protected tree ordinance versus the protected heritage tree ordinance, well, to have the protected trees

-- have the protected tree ordinance, that's true but there is big reason why we went for the heritage tree ordinance because we already have 67% of the population of the trees

-- the distribution of trees that are young because they are being planted recently because they were mitigated. Those

-- there were trees that were removed and 67% trees were planted and that's typical. However, we only have 5% heritage trees. Why? Because we removed too many heritage trees. The typical number should be 10%. We only have half of the heritage trees that one should have. That's why we passed the heritage tree ordinance. What is the difference? The heritage tree ordinance requires that there be

-- that the applicant try to design around the tree. That alone enables and forces the city discussion with the developers at an earlier stage to try to proserve a tree. With a protected tree ordinance, you don't have that. If revealed this, the product duration, and the heritage tree ordinance that wouldn't be grandfathered, it wouldn't happen@ anymore. So far the heritage trees owners have been very successful, over 4,000 site plans reviewed and every single one of the applicant has been able to design around the trees and save them. There also has been 2,000 site plans, plan application from single family homes and the same thing happens and some were

removed and it was because the trees has disease or something like that. So the heritage trees does- not stop the element and so far there have been very few cases that go to the bonds and commissions. Every single time there was a solution that was worked, so the heritage trees ordinance is very successful and important to have to preserve our trees. I am seeing a push from the

[17:24:50]

[indiscernible] too change the regulations for their own benefit. [Buzzer alarming]

>> mayor leffingwell: Thank you. Next speaker is craig nazer. Jason shiltz? Is he here? You have 3 minutes.

>> My name is craig nazer and I am the park co-chair and I am on the conversion committee of the austin sierra club and also an austin musician and performed music in this town since 1987. If you have been to a concert in austin

-- if you go out to see music regularly, the chances are you have seen one of my students, because I see them out there all the time. I just taught a class today at austin community college. Musicians are poor. The first couple of years i lived in austin, I didn't have air conditioning in my house or my car because i was a graduate student and i was spending a lot of time trying to get my skills up and what I would do if I was hot, I would go down to barton springs, I would go down to a creek, go to bull creek, I would go to places where there was clean water, soak your feet in the water, have a nice time. Okay. Well, over the time I have been here, our creeks have deteriorated the water quality. They are working hard on it and I think slowing it down and turning it around and a lot of good things are happening in austin, but as this growth continues, what is happening, why is this happening? It is because of development. It is not one thing, it is one cut, time after time after time after time. Okay. I think this

-- the ability to put limits on projects is very important and I think it helps our environment. What it does is it helps a lot of people in this city who maybe don't make that much money but they are here

-- look how much money is brought in by the musicians at south by southwest. Now, a lot of those musicians now are from out of town, but the reason it happens here is because austin has a very good music culture, and what makes that happen is hundreds of musicians who are getting there and working hard on their skills, where do they go when

-- when they can't afford a vacation, they can't afford two weeks in the bahamas? They go to our local parks and creeks and enjoy the natural environment around here. Now, what I would like you to do is defend the people of austin who really count on a decent environment to stay here and have a good quality of life. Abbot does not represent austin. You do.

[17:27:36]

[Applause]. And so this represents this good work that has been done for this community that has made austin this great city. Please. Thank you. [Applause]

>> mayor leffingwell: Robert coreman. Robert coreman. Bill bunch. Are you bill bunch?

>> Robert corebin, running a few send late. I did research on the internet and notice ms. Meade was representing a nightclub owner up in round rock and the issue was a montessori school that was across the street from a nightclub that was going to go in and this was a large street like sort of bigger than lamar, 1431, actually. And she was of the opinion that there shouldn't be allowed this nightclub so close to a school. Now, unless I misunderstood it, it seems like under these changes we are looking at, what you could have is you could have a strip joint going in next to a

school if they had gotten exemption, zoning to that effect 30 years. Maybe I got it wrong, i don't know, but it seems like this ordinance we are discussing or repeal of an ordinance has got to be looked at much more closely than just

-- than the quick time that it's been given by the council so far so i would like to urge y'all to take more time to get to this, get extra legal advice about it before you make any go ahead on it.

Thank you.

[17:29:40]

>> Mayor leffingwell: Bill bunch. Is claire de young here? Pat broadnext. Okay. Sarah

-- just pass them down. Actually, you should give all of that stuff to the clerk

-- you should give that

-- in the future, if you have materials, give them to the clerk, is the proper way to do that. Sarah landfear is here. Mary engel.

>> I am taking [indiscernible]

>> [indiscernible]

>> mayor leffingwell: Betsy greenberg and will you show mary engel speaking on her own and check off betsy greenberg.

>> [Indiscernible]

>> mayor leffingwell: Well, you can donate it but he still only has 15 minutes.

>> I already have all i need.

>> Mayor leffingwell: You need to speak.

>> Ready.

>> Mayor leffingwell: Go ahead.

>> Thank you mayor leffingwell, mayor pro tem council, city council, I am executive director of the springs alliance and doing environmental land use law here in austin since 1987 in dealing with grandfathering issues, going back to the first one that was passed, house bill 4 in 1987. I want to dispute that this is anything but black and white on the legal side in terms of the state law nullifying what you are doing. What you are doing is absolutely legal. Your lawyer was absolutely correct in the letter that he wrote to the attorney general. Tom knuckles, assistant travis county attorney who has been in that position for years, was your assistant attorney here for years, has impeccable reputation. His letter is extremely powerful argument in favor of your ordinance. We are here to ask you to not take this action. This ordinance that you are set to repeal was adopted by consensus process under the mayorship of watson. Austin agreed to it. Chamber agreed to it. Save our springs and save barton creek association agreed to it. It is going to be thrown out or amended significantly, it should go through the same process. It should get every bit of deliberation, every bit of potential cooperation to try to come up with a solution that we can live with. There is not a shred of information out there suggesting it is an emergency for you to act tonight. You cannot support that. Even if the lawsuit got fired, that happens all the time, you know that. Nothing would happen. There is no emergency, nobody is in harm's way. You need to take your time here and if you even think about it for a minute on a risk benefit analysis f you throw this stuff out, it never comes back. You cannot put the jeannie in the bottle again. Every shred of risk before you tonight is on the side of taking unduly hasty action and not on the side

-- all the safety, all the benefit is on the side of taking time. I provided you a letter here and I

want to start with that. I will give you a few other things I want to touch on, but I want to start with the paragraph that I listed from Brent Lloyd, your assistant city attorney who made a very powerful argument and I listed the key paragraph and especially the last sentence I highlighted, I will read it, projects, if you take the argument that ended up being adopted by the ag, saying, if you take that argument, projects would remain vested forever, notwithstanding failure to take the basic steps necessary to keep development permits from expiring. That is an unbelievable consequence for this city, perpetual grandfathering. That's what you are being asked to endorse tonight. Now, Mr. Guernsey, in his opening statement to you attempted to paint this story as post '97 projects, but if you look at the sections that are being repealed and it is not just a few little subsections, it is the entire project duration ordinance, there are several provisions in there that are not limited to just post '97 projects, and the repealer is the one on that to adopt on an emergency basis and you have on the ordinance another one that is not limited to post '97 actions and it will strike out of your code a provision that says if all permits for project expire, the project expires. What we are talking about here literally is resurrecting projects that have been told they are expired and giving them new life and you don't have a clue how many of those are out there or what that really means for our city. The chamber and the Eureka folks are going to try to come up here and say, it is no big deal. It is just a little bit out there, but let's look at the memos you have from your own staff about what this means and you have one from Mr. Spelman's questions that is related to the Barton Springs watershed, just a paragraph there and this is 2006 data and the first bullet point says, well, there is 2700-acres that could be affected by this ordinance. Check project duration in the Barton Springs watershed. Now, if this was only stuff that was way after SOS, there wouldn't

-- that wouldn't be possible. It would have that effect. It could be another 10,000-acres affected with low probability and that is a huge range of difference. The third bullet point, well, if you have a development agreement, they are not affected by this change. Well, I am not sure that is true. Because a critical part of project duration

-- excuse me, in chapter 245 is that the ratchet only works one way. And our development agreements are ordinances and the statute says if there is a subsequent change that can lengthen your life or enhance your project, you get to take care of that and if you take this action, repealing these expirations, they will say we want to be under that, too. We get to be enhanced. Now you're going to have to dig into the details of those big agreements but I challenge you. I don't think that is a true statement. So we are talking about

-- that's just the Barton Springs watershed. Another memo you got late in the game from Fort Worth in your staff. This talks about city wide and it talks about hundreds of projects, literally hundreds. It doesn't give you a clue about how many acres, where they are, what kind of projects we are talking about, how much traffic they generate, or what out

-- or how this would affect it and the first sentence says they can't tell you that. They can probably, with some time, they can probably give you a whole lot better sense of it, but they are asking you to buy a pig in a poke that could fundamentally change the future in this city in ways we can hardly imagine right now. It is absurd to suggest this is no big deal. It is a huge deal. It is probably the most important vote you will take on your time on council. You should take your time to make that choice. The other item you have

-- you have a memorandum of law from Brad Rockwell, who you will hear from later, in addition to your own lawyer's opinion. You have heard from several other lawyers that have said we are legal. We are good. Agreeing with Mr. Lloyd, your own opinion

-- attorney's opinion and what the ag opinion doesn't say, what we haven't focused on enough is

the test is unmistakable clarity. If a state statute is going to trump a local ordinance, it has to do that with unmistakable clarity and that clarity is not here. Instead, what we have, we have what mr. Lloyd wrote and which I quoted in that letter you have in your hand and it is the sentence right were the underlying sentence. It's true you can only have dormant projects and the only way you expire things, where there is dormancy, where this is truth for the city and county to develop expiration dates which chapter 2 a expressly

-- chapter 245 expressly acknowledges would have no means or effect. That mr. Lloyd's legal opinion saying the statute expressly, not impliedly, not, we think it might, but expressly does this. And if you read the statute, the primary mandate of the statute, in 245 .002, it doesn't say it once, it doesn't say it twice. It says it three times that expiration dates are part of your legal basis for deciding as long as they were in place at the beginning, and you are not changing them.

That's what the statute gives you the power to do. Do not throw this away on a terrible, terrible weak ag opinion that cannot stand the light of day in the courthouse in front of a judge who actually makes the law. This is worth fighting for because it is fundamental to your local control powers, to the local control powers of our counties and our cities. We need to study what other studies are doing. You need toileet with them. You need

-- you need to unite with them and you need to work with travis county where you permanently do development with in the tga and figure this out. And I think when you take that time, when you realize there is no emergency, when you get the outside counsel that you need, because the only way to explain this very plainly and pervasively written opinion from mr. Lloyd versus what we hear from him today is, well, okay, there is the ag opinion, but how does that defeat what he argued? He hasn't written that up. The other way to describe it is pressure from staff and y'all know this. In our city charter, the city attorney works for the city manager. He is not your lawyer. He is working for the city manager. You need your own council on this and you've had some excellent outside council over the years to help you with these issues, and they can help you without being under the thumb of the city manager. Please do that before you take this irreversible step tonight.

[17:42:34]

[Applause]

>> I want to conclude by evoking back to another council meeting, june 7 of 1990. You had a big crowd at council chambers, asking, begging the council not to approve a 4,000-acre development on the banks of barton creek

-- on the banes barton creek. Well, we aren't talking about 4,000-acres of barton creek. We are talking about 300 square miles of the city of austin. And we are not talking about a 20-year pud agreement. We are talking forever, and we are not just talking about water quality. We are talking about heritage trees, traffic, park land dedication, mcmansion, compatibility standards. We are talking about what our city becomes, and that night, there were a lot of probusiness folks on that council, including mayor lee cook, george humphrey, robert barnstone who was a developer

-- a professional developer, and they were inclined to support it, but what came out in the course of that hearing was that the butted agreement was 100 some odd pages long and hadn't been printed out until after the meeting started, and they hadn't read it. They didn't have a clue of what they were being asked to vote on. They didn't have a clue of what it meant for the 4,000-acres or what it meant for barton springs. Y'all don't have that clue for what this means for our entire city. You have to think about this and george humphrey said it best that night, he said, we, the

council, have got to look inside ourselves and do the right thing. You've got to do the right thing. A friend of mine went to see the ann richards' play and he said
-- there was a line there, I don't know if she really said this, but this was in the play. I think she probably did. The line was that, life isn't fair, but government should be. Y'all need to do the right thing. You need to do the fair thing and not ruin your ability and every future council's ability to manage this city. Please don't do it. Thank you. Pplause]
[17:45:27]

>> mayor leffingwell: Carol ferguson, carol ferguson and peter ferguson. David king
-- oh, you are here, okay. So you have 6 minutes.
>> Good evening, mayor and council, my name is carol ferguson. I have a couple of points i would like to make. I had
-- it was interesting when michelle meade spoke at the beginning of this meeting and she said it is very black and white that we are out of compliance. Well, my understanding is that chapter 245 hasn't changed in the last few years and my understanding is that the project duration ordinance hasn't changed in the last two years and we must have one development lawyer for every 100 people who live here, or so it seems. Why did it take 16 years for them to figure out we are out of compliance? If we are not in compliance with 245 because the project duration ordinance, you better believe there would have been a line-up of development attorneys to sue you over this before. So one can only assume that something new has happened or occurred or else that simply isn't true, that they have taken hope in the attorney general's position, not the fact and they are trying to look like we are not compliant where they have known for 16 years that we were. The other point is that there was an accusation that there has been a lot of exaggeration about, and scare tactics mentioned by email about what the effects of this repeal would be. If so, it is not our fault. It is unfortunately, yours. Because this hasn't been handled in an open fashion, we have been given no information about the nature of the emergency that brought us here tonight. We don't know anything about what is going on. We are here because we don't understand what is driving you. We don't understand what staff has whether I say perked in your ears during closed sessions. We don't get it. All we know is that the facts don't add up from our perspective. But what we have come to you tonight to ask of you is that you simply provide a process where we can understand what you need us to agree to or understand. We are asking you to bring in the other land use collisions who have not been included, not even briefed on this. We are asking you to allow public process so that we understand why this is so critical. Unless you are under pressure from some god awful lawsuits, and maybe you are, short of that
-- and even then
-- I don't understand why this has to be handled the way it is being handled tonight. This has been pushed through without any public input or any public knowledge. Most people only heard about this the last 48 hours. That's not a very good way to do something this major and, yes, we are all very concerned about what it means. No, we don't have any data. We have been given no data, about which projects will be resurrected, which projects will be continued. We probably don't have the information because you don't have the information. That information should be part of the decision-making process here, so what we are asking you to do tonight is to make this a public process to take some time to do it and if you get sued in the process of taking that time, we will back you on that, because I would have therhave this city sued six ways from sunday than to make a mistake of the magnitude this may be and maybe it won't be but we don't know

that. I don't see how you could know it, either. Thank you.
[17:49:28]

[Applause]

>> mayor leffingwell: For your information, this was on the council two weeks ago, postponed and sent the planning commission and the planning commission submitted approval for it, sost just for your information because you said there hadn't been land use commissions. David king.

>> [Indiscernible]

>> susan amanza. Jeffrey gibson. Collin clark, raymond good there is ridge. You are shown donating time to collin clark, who is not here.

>> [Indiscernible]

>> mayor leffingwell: Stan ostrem. Not here. Stewart werbner not here. You need to go to tell the clerk you are donating time to him. Mary engel.

>> Good evening, my name is mary engel. Sorry I changed my mind tonight but I was given orders to do so. I am the first vice president of the austin neighborhoods council and i am here to speak on behalf of the executive committee. I have couple of questions to ask and one of them is, what is the emergency. I hope this isn't true as the austin american statesman article indicated this morning, that perhaps the emergency is the fear of litigation and I want to say that fear of litigation is really not a good way to create and promote public policy. I want to encourage you positively, the council to be bold and to do the right thing and don't vote on this project duration thing tonight. Take your time to join forces with your constituents, your allies. You have allies in this community. You have us, the austin neighborhoods council. You have neighborhoods. You have county commissioners, and you have people in the legislature who, in time, will join hands with you but you need to take your time and do it

-- do it when the time is right. Build on this process. We are all worried about the ordinances that will be affected like mcmansion, heritage trees, remodel ordinance which I worked on and the super duplex ordinance which got me into this mess in the first place of public service. These are our stories and these stories mean a lot to us and they were our battles, so please, take your time. This is not an emergency.

[17:52:43]

>> Mayor leffingwell: Maryian [indiscernible]

>> I am donating my time to [indiscernible]

>> mayor leffingwell: Sherri lock. Sherri lock, not here. Phillip thomas, not here. Tom

-- phillip thomas. Okay. You have 3 minutes.

>> For the record, I am phillip thomas, east austin. Honorable mayor, honorable esteemed council members and staff, I propose we break through the fear and get to the heart of the matter. Our project duration ordinance is a reasonable ordinance. Its repeal will remove check and balance to uncontrolled, unregulated activities of a certain sector of our local employ, which by their own admission is already doing very, very well. Lessons can be drawn by wall street's uncontrolled activities leading to 2009. The lack of balance and oversight has resulted in a national economy still stuttering after nearly four years. This ordinance does not stifle growth, as the ever changing look of our city proves. It does, however, encourage responsible development, development that is stretched out over sustained period to provide maximum long-term benefit

for all sectors, development that is responsive to changing conditions, such as availability of water, air quality and transportation patterns. Repeal of this ordinance would not only gut these commonsense benefits, the citizens of Austin would lose the ability to help shape the future of the city they love. In essence, lose the right to self-determination. This is not just a battle over land, water, or views. This is a battle to preserve the rights of the many to help determine the future of their home city in cooperation with the officials elected by the many. I realize the threat of division is possibly on the

-- the threat of litigation is possibly on the minds of this council, push could come to shove, but if it does, council has support to use whatever property tax, sales tax, hotel tax, alcoholic beverage tax I currently generate in defense of my right.

[17:55:08]

[Laughter] to help shape my home city's future. I thank you for your time and attention.

>> Mayor Leffingwell: Do you want to put that in writing? Do you want to put that in writing.

[Applause]

>> Mayor Leffingwell: Your donation of taxes for this cause? Do you want to

-- you said you would be willing to donate your share of all of those taxes?

>> What I am currently generating

--

>> Mayor Leffingwell: We have a form over here, we have a form over here.

>> I will be fighting to be the first one to sign. [Laughter]

>> Mayor Leffingwell: Okay. Let's cut down on the oral demonstrations. I don't want to have to recess and clear the chamber. Tom Collinger. Pierre Sazaro. Army Arrangerust.

>> [Indiscernible]

>> Mayor Leffingwell: Would you tell the clerk that?

>> I did.

>> Mayor Leffingwell: G. [Indiscernible]

>> Rob Chanz. Keith Jackson. Scott Flak. Steven Levee. Steven Levee has 3 minutes.

>> My name is Steven Levee, an Austin architect. I am in front of you tonight requesting that you repeal project duration ordinance. I have been involved with many projects where this has had an adverse effect because of unforeseen conditions and delays. Recently we were working on a phase project and we were working on the second phase of that project. The project took longer because of the economy. It slowed everything. The owner received a site plan extension while continuing to post fiscal, pay professional fees and move the project forward. However, as with any project, the planning and approval process took longer than expected. As a result, this project was in jeopardy of losing its approved site plan. In this example, it came down to the last day. This ordinance puts too much at risk for these people. With variables such as the economy, it's wrong to enforce the ordinance on individuals who continue to push their project forwards whether are proactive and play by the rules. Please do the right thing. Repeal project duration. Thank you.

[17:57:57]

>> Mayor Leffingwell: Thank you. Pam Ladeer. Paul Linnihan. Becky Bray.

>> Here.

>> Mayor Leffingwell: You have 3 minutes.

>> Good evening, Mayor and City Council members. My name is Rebecca Bray. I am an engineer

and a land planner but I come to you tonight not as either of those. I come to you as a native Austinite whose family has been here over 100 years and who cares very deeply about this city. Thank you for the opportunity to address you this evening and more importantly, thank you for your service to our community. The subject matter before you tonight now is really pretty simple. Some people appear to be making the issue more complicated, by implying that its zombie projects will be resurrected like creatures from our nightmares. This rhetoric is big and large not true. Our city's homes, families and businesses are not going to be threatened by the repeal of this ordinance. By voting in favor of repealing project duration, you are simply bringing Austin's code into compliance with state law. That is pretty simple and straightforward. I urge you to support this as well as the staff recommendation, which is further recommendations by planning commission. The real estate community here lies on predictability and rules and regulations in order to put the highest quality products on the ground for you. Please vote to repeal project duration and follow state law. Your actions today will not go unnoticed. Thank you and I am happy to answer any questions you may have.

>> Mayor Leffingwell: Are you

-- are you from the Bray family in South Austin, the drugstore owners?

[17:59:57]

>> Yes, I am. That's my father. Thank you.

>> Mayor Leffingwell: Okay. Troy Marcus. Troy Marcus. Tom Terkel.

>> Mayor Leffingwell, Mayor Pro Tem Cole and members of the council, I am Tom and I appreciate the opportunity to engage in this conversation tonight. I have seen a lot of people here tonight that I haven't seen for many years and it is a bit of a reunion for some of us, people who have engaged in conversation and debates about the policies and values and standards that our community feels are appropriate for how we grow and how we evolved. I have great respect from the passion and commitment I have heard tonight from some of the testimony. It reminds me why I love being a part of Austin. We are a community of diverse viewpoints and we have a huge amount of respecting those viewpoints in giving a fair audience and hearing all of them. There is confusion, however, in much of this. Because we aren't here tonight to talk about policy and values and standards. This is a legal issue that you are confronting. And we have a hierarchy of laws in our country, under our system of governance, state law controls over city law. It's fairly cut and dry. And Mr. Bunch is here tonight telling you that the city attorney advocated brilliantly and made an excellent case for why the

-- compelling case for why it did make state law. He confuses law of advocate and for that of advocate as to advising his client what the legal position is privately. He did the best job he could last summer to make a strong argument on your behalf. But notwithstanding that, the attorney general disagreed with him. Now, the attorney general's opinion is not binding, either. But it carries a great weight in courts of law and they are accorded great respect. That's why your city staff, your city attorney and now your planning commission have advised to bring your statute within compliance with the state law. The state law is fairly cut and dry. It lays out a time period, five years, under which property owners may take certain actions in which to obtain vesting rights. Those rights are enumerated. Your ordinance says in certain situations people only have three years, and the actions they can take are sometimes more exacting and requiring than that allowed under the state law. Therefore, it's in conflict and it's been ruled

-- it's been judged by the attorney general's opinion to be out of compliance. I urge you to take this opportunity tonight to show deference and respect for the hierarchy of the state's laws and

the supremacy of state law and bring our laws into compliance, because one of the fundamental threshold values of our community is that we are a law abiding community, and you have an example to fit

-- an opportunity to assess that example to all of our citizens to make an example that you respect the supremacy of state law and you will act tonight to do so. Thank you.

[18:03:29]

>> Mayor leffingwell: Michael welt. Michael welt. Jeremy smithhill. Smithhill. Keith nanaho. Laura houston. You have three minutes.

>> Members of the council, city manager, and people working at their home, in the comfort of their homes, I am lara houston and I am representing, without their permission, 98% of the people in austin who are policefully unaware that item 22 is an emergency. When this item was classified as an emergency, surely, sure approximately there was a lot of loud, irritating noise to notify the community, like the siren u.T. Uses to notify the surrounding community of an emergency. I was most offended under the guides of the declaration of emergency, this item was placed on the consent agenda. Issues which are classified as emergencies have long-term implications and unknown, unintended consequences to all people in austin, not just a few. The 98% who stand blind me and with me don't have a clue how this issue will impact their lives because there has been no time for public comment prior to today. They really don't have time to follow the council agenda because they are busy working a couple of jobs and raising a family. There is no commission like the downtown commission nor people at large to watch dog issues of importance and we are thankful for the people and the groups that do, but the saddest thing is that the people at large hope and trust that the members of this council will consider the many, not just the few, when decisions are being made. Now, I was a state bureaucrat and I understand the concerns and the issues that the suppers are

-- the supporters have expressed tonight. In my humble opinion, they are primarily administrative in nature. Not an emergency. So I ask you, don't throw the baby out. Please postpone or vote no on item 22. And I thank you for your service.

[18:06:09]

[Applause].

>> Mayor Wynn: Just

-- just

--

>> mayor leffingwell: Just for your information everyone, the word "emergency" only mean that is the law goes into effect immediately as

-- after passage, instead of the customary 9 days. That's the only difference. Brad rockwell. Is eda durant here? Not here. Sharon brown. No sharon brown. Marisa peralis is here and cynthia wilcox. It looks like you have 6 minutes.

>> He can have mine. [Multiple voices]

>> mayor leffingwell: Wait a wane. This person is donating time to you and brings you up to 9 minutes and paul robins. Robins and bring

-- paul robins, 12, and mr. Goodridge, 15 and you want to increase his time but you can still donate.

-- You won't increase his time but you can still donate. [Laughter] you have up to 15 minutes.

[One moment, please, for change in captioners] statements made. One of the things that was said

today is michal meade, who was representing rica saying it was black and white, the city's project duration ordinance is illegal and violates chapter 245. Well, again, this ordinance has been in effect for 16 years, if it's so black and white, why was rica and everybody else sitting on their hands and not challenging it earlier. There has been references to the ag opinion, which came out of the in december, being something that's an adjudication or a judgment, something that's given great weight. One of my work in the past has been working as a briefing attorney and staff attorney for two supreme court justices, including judge doggett and judge hecht, republican and democrat. And I can assure you that the rule for the weight given attorney general opinions is that they're persuasive. They're only as good as the argument contained in them. It's like getting another brief from someone. And courts routinely reject ag opinions or ignore them or issue rulings that are contrary to them. The other thing that's important to know is that the ag -- his position is so different than a judge. The judge is the one who ultimately decides what the law is. The ag is partisan. In fact, the city of austin finds itself adverse to parties represented by the attorney general on a regular basis. There's a couple of recent

-- fairly recent cases, c.W. Garland versus

-- the city of garland versus

-- the city of garland and austin, versus public utility commission of texas in 2005, and the adverse party was represented by the attorney general. Another case, 2009, city of austin versus texas commission on environmental equality, adverse party represented by the attorney general. Just because the attorney general says something isn't normally something that causes cities to throw up their hands and say, oh, well, that's it. The attorney general has said something, that means what we're doing is wrong. That's just not how the law works, not how the legal system works. If you

-- if you have an ultimate question in law, what you do is you challenge it in court, and this is something rica, for 16 years, has decided not to do, even though it's asking you to just voluntarily give it all up. Now, if a court were to look at this issue, and I want to walk everybody through the ordinance, because this

-- the attorney general didn't even carefully analyze the language, and read it in a way that made any sense or followed what

-- give effect to all the language in the

-- in the statute. Now, the rule, what a court would do if faced with the question, is the project duration ordinance illegal and inconsistent with chapter 245, they'd follow this rule cited in resanchez over there which says, a court would not invalidate an ordinance as inconsistent with the statute unless the court can reach no reasonable construction, at least both the ordinance and a statute in effect. Now I would represent to you, you can reetd the ag opinion.

[18:12:09]

-- Read the ag opinion. He never tried to construe it in a way that would uphold both. I'm going to walk you through the language, just read it and look at the specific language, that it's perfectly content with the project duration ordinance. And a corollary to the rule of construction is

-- and the supreme court has said this too, that if the legislature wants to overrule the city on an ordinance, it has to draft a statute that does that with unmistakable clarity. There's nothing unmistakably clear about chapter 245 on this. , In fact, the clear reading, and especially if you look at the legislative history, which the attorney general didn't, makes it clear that it upholds

chapter 245

-- I mean, the project duration ordinance. The important thing to note here is the timing. The project duration ordinance came into effect in 1997 when there was no state law, no grandfathering law governing this. There was a gap. Chapter 245 was enacted in 1999, and the governing provision that affects this was not enacted until the year 2005. So let's look at the governing provision

-- this is the main sort of rule of chapter 245, and it basically says for the city, you have
-- if somebody submits a permit, the law you look at is the law in effect at the time the permit was submitted, including the law, and I've underlined it here, concerning expiration dates. So the main rule in chapter 245 acknowledges that there's preexisting expiration dates that exist prior to chapter 245 being existent and at the time an application is filed that govern expiration, and the expiration of what? It doesn't limit what's expired. Expiration dates involve expiration of permits, expiration dates involve expiration of permits. So those are the rules that govern whether
-- a prom. That's the rules that a developer live with when they file a permit, is existing rules.

Now, let's look at

-- in chapter 245

-- section 245.005. This is a

-- the section, like I said, was added in 2005, and it

-- it's the only section that expressly deals with expiration of a project. It's a special rule governing expiration of a project, and if you look at section b in the first sentence, it's all

-- the language is all prospective. It basically says, if a city wants to, in fact, a certain ordinance, and it's talking prospectively, if a city hasn't enacted an ordinance but wants to in the future, these are the limits, and there is specifically a limit on an expiration date in the project. And this is

-- this is with Rica and the attorney general has relied on this sentence that refers to expiration dates on projects. But if you look at that sentence and you read it, it says notwithstanding any provisions, any ordinance, it says, enacted pursuant to this section shall place expiration date on this project no earlier than the fifth anniversary. This is the complaint, that the project duration ordinance does not comply with this sentence, that, in fact, this sentence is limited in its language only to ordinances enacted pursuant to this section, which is prospective. So clearly even the language of 245 says doesn't have any adverse effect on preexisting project expiration

-- provisions, it's prospective. Now, if you look at the bill analysis that was prepared in 2005 for
-- and with the approval of the author, senator armbrust, I believe, there's an express statement in the legislative history that says section 245.005 b is prospective only. And again, this legislative history was never even looked at by the attorney general opinion. So the language and the legislative history is actually very clear. Chapter 245 does not touch the preexisting project duration ordinance of the city of Austin. In fact, in that subsection .002, it makes create existing termination date

-- it makes developers subject to those preexisting expiration dates and says your projects have to comply with the expiration dates that were in effect at the time your application was filed. So in conclusion, going back to

-- whoops, I guess I turned this off. Going back to the general rule, this

-- the language, legislative intent, is way more than

-- way more than satisfies this requirement that all you have to do to survive a state statute is find some reasonable construction that leaves both the ordinance and statute in effect. What your ordinance does goes way beyond that test and is clearly legal, no matter what a bad attorney

general opinion may say. Now, let me talk a little bit about some of my own history in dealing with some of these matters so that

-- to encourage you not to repeat some of the mistakes of the past, and as everybody has talked, this is a matter of a huge scale, the consequences are not known and the example I'm to give are relatively small compared to this, but nevertheless the same kind of problems that resulted. A few years back, I think it was 2008, the lowe

-- lowe's decided to build a big project in the e.T.J. Of sunset valley. Sunset valley released its e.T.J. Putting lows in the e.T.J. Of the city of austin, making it subject to the sos ordinance.

Lowe's went to the legislator, got a

-- legislature, got a piece of legislation passed and everybody thought that was the purpose, was expressly exempting the lowes project from any of the city of austin's development regulations.

City of austin legal attorneys told the city, just like you're being told today, that's it, the legislature acted. We can't do anything. We can't apply the sos ordinance to lowe's. Well, sunset valley sued, save our springs alliance sued, and lo and behold we read what the legislature had passed and looked at the actual language, and as a matter of fact, it didn't apply to this situation with lowe's, even though it was a bill specifically pushed by lowe's to exempt themselves from the city of austin ordinances. So we got repeated rulings from the district court. We had interlock the other appeals from the austin court of appeals, and so

-- interlocutory appeals. Even though the city legal department may be willing to give up based on presumed intention of the legislature, what's important is the language of the bill and giving everything a very close reading and being willing to fight these things in court to protect the ordinances that have been hard fought and making sure that the

-- you're not giving up anything unnecessarily, and it would be a horrible tragedy for you to vote today to just unilaterally surrender and give up this really important provision just because a bad attorney general opinion was given that nobody has even bothered to file suit over this for 16 years. There's no reason to raise the white flag and surrender. Thank you very much.

[18:20:55]

[Applause]

>> cole: Mayor? [Applause]

>> cole: Mayor, I have a question for mr. Rockwell.

>> Mayor leffingwell: Thank you.

>> Cole: Mayor? Mayor, I have a question for mr. Rockwell. Mr. Rockwell, I have a question for you. I'm sorry you got all the way back there, but

-- you talked about the legislative history.

>> Right.

>> Cole: And the impact of prospective.

>> Correct.

>> Cole: Can you go over that again? That was new.

>> Sure. If I can

-- is it possible to get that back?

>> Cole: You can just tell me. You can just tell me.

>> Well, basically the language in chapter 245.005 b, it says what cities

-- it gives

-- it gives prospective authority to cities. It says, cities, you can do this with regard to, in fact,ing project duration ordinances

-- in fact,ing project dur enacting project duration ordinances and this is what you can do but it's all prospective. What it meant is if you were a city in 2005, and unlike austin you didn't have a project duration ordinance, you can still enact one. You can impose a project duration on projects even though they may not be grandfathers of that, but your project grant duration ordinance is limited in a very specific way. It has to be no less than five years and there has to be all these other sort of loopholes in there that allow the developers ways to extend the duration deadline.

But there's no language

-- the language is prospective. It's what cities can do in the future after 2005 or really after 1999, but this provision wasn't enacted until 2005, but it doesn't say anything about

-- if the statute were using unmistakable language to negate austin's power, it would have said "all prior project duration ordinances, you know, that are inconsistent with this are nullified."

What you have to do because all statutes are presumed prospective, not retro

--

[18:23:18]

>> cole: I get your argument. And you're saying they had the opportunity to clarify and they didn't.

>> The legislature, yes. And, in fact, in the legislative history the legislature specifically said this is prospective. I'll tell you, I was at the legislature in 2005 working on this, and the city had their lobbyists working on this, and the city staff was down there, and these kinds of things were very hard fought. And it's not like rica got their way on everything. These were

-- these were compromises and very hard fought provisionness here.

>> Cole:

-- Provisions in here.

>> Cole: Thank you. Mayor. [Applause]

>> mayor leffingwell: Helen fleming? Sharon creps. Sharon creps. Tim taylor? Kathie smith? I better read those names over again. Peggy maseo, she is here. Helen fleming. All right. You have three minutes. >Council, this is not going to be nearly as complicated as what you just heard. My name is peggy maseo and I've been here before to speak to you about neighborhood issues and tree issues. I've lived in allandale since 1975. One of the reasons i selected allandale was because it was an older neighborhood and it had a lot of trees, and now 38 years later my home in alan -- and allandale's trees are even more beautiful, and many streets are canopy streets with trees touching in the middle and giving us shade all day on the hot months. People frequently say they moved to austin because it's green and inviting, and we have so many trees, they say, and this is true, and we can

-- and we can say austin has trees because we have taken our urban forest seriously and protected our trees, and that quality of life of austin has been preserved. American forests, the oldest national nonprofit conservation organization in the country, listed austin as one of the top ten cities for urban forests, and one of the reasons was that austin has tree ordinances that covers trees on both public and private land. So it's working. For 30 years we've protected trees in austin and we did because it was important to all of us. The heritage tree ordinance was passed 70 and 2010. Today to change all of that, it could change many protections and ordinances that preserve our quality of life, and we have worked hard for those. So why risk what we have. I urge you to wait and consider the unknown far-reaching effects of a decision today on the quality of life in austin. Thank you.

[18:26:41]

[Applause]

>> sharon creps? Tim taylor? Kathy smith. Tom smith. Are you kathy smith? Okay. You have three minutes.

>> Mayor and members of city council, my name is kathy smith. I am here simply to respectfully request that you support the staff recommendation and repeal the project occurrence ordinance because it is in

-- duration ordinance because it's in conflict with state law. This is the right thing to do.

Thoughtful planning for quality multi-phase projects requires stable municipal rules that do not change midstream, and this is actually a wonderful opportunity to lend predictability to the development process. I appreciate the opportunity to speak. Thank you.

>> Mayor leffingwell: Thank you. Tom smith. Andrew webber. Donating time is patrick rose. Is patrick here? No. Loren bamo? Not here. Jerod ashberg? Ken blakeer? Ken is here. That's the only one of your daughters that's still here, and you are annie armbrust. So you have nine minutes.

>> Thank you, mayor. Mayor and council members, my name is andrew web esher, I'm an attorney at kelly hart homan in town. I represent rica. I'd like to speak two to two issues. I'd like to speak to what brad rockwell presenting to the zoning commission and if I have time more what he had to say tonight. Secondly and relatedly I'd like to address mr. Rockwell's criticism of the ag process and the opinion. The attorney general's opinion as you know concluded that portions of your project duration ordinance are void because they, quote, conflict with chapter 245 of local government code, the state's vest the right statute for real estate project. That conflict arrives when your ordinance expires, particularly by narrowly defining progress sooner than allowed under state law. Mr. Rockwell insists that the ag opinion is wrong because chapter 45 he argued, at least before the planning and zoning commission, doesn't even apply to the ordinance. He makes this argument in the face of broad and plain statutory language and the attorney general's opinion to the contrary. Despite knowing that courts review statutes in their entirety, mr. Rockwell rests his entire argument on two words plucked from one sentence in one subsection of the statute, and even then the statutory language he relies on does not support his position. His bottom line is I'm here to tell you another reasonable construction of the statute. His argument is not a reasonable construction. Mr. Rockwell's position as he noted rests on two words "pursuant to." He focuses on the phrase he put on the screen notwithstanding any other ordinance enacted to this shall not be more restrictive than the state statute allows. His argument is because the city's ordinance was enacted in 1997 before chapter 245, that it was not enacted pursuant to chapter 245. But the fact that the city's ordinance was enacted in the gap when the statute was inadvertently repealed doesn't alter

-- did not alter the attorney general's conclusion, nor does it alter state law, which declares these portions that conflict void. Before addressing section 245.005 b, which mr. Rockwell put on the screen, the attorney general cited a 2011 austin court of appeals opinion. There's been a lot of talk tonight about needing a court. The austin court of appeals explained the overall point of chapter 245, quote, is to prohibit land use regulators from changing the rules governing development projects in the middle of the game, it will be insulating undergoing development from the vicissitudes and uncertainties of regulation making and all that may influence it. The attorney general went on to quote the austin court of appeals and the statute that under section 245.02 b the regulate requirements cannot be revised and applied to a project once the first permit for a project has been filed. The statute effectively freezes the then current rules and regulations applicable to a project. In other words, chapter 245 prohibits regulators from

changing the rules of development after a project is commenced, just as its predecessor did, period. Applying subsection 245.05, the dormant project provision, to the city's ordinances -- or to the ordinance, the attorney general then explained that the ordinance clearly expires projects sooner than the five years allowed under 245.05 b. Mr. Rockwell said the attorney general didn't bother to address the ordinance. There's a paragraph in the opinion where the attorney general does, in fact, address the ordinance

-- or the portions of the ordinance at issue here. In doing so the attorney general cited the very language that Mr. Rockwell relies on, including the words "pursuant to." Mr. Rockwell argues that the attorney general should have paused there and determined that chapter 245 does not apply to the ordinance because the ordinance was enacted in the gap, in '97 and '99, but that's where Mr. Rockwell's construction is flawed. The words pursuant to simply and expressly provides unlimited regulations enacted after chapter 245 took effect or under its authority, and I believe other testimony will address that potential idea which would not stand. The statutes allow prospective allowance in no way limits. Application 245 to ordinances like the city's that were enacted during the gap. It expressly allowing and providing direction on limits in regulating that may be enacted following the statute's effective date, subsection 245.05 b cannot be read to vitiate the statute's application to the ordinance. It is not reasonable to suggest that language allowing and circumstance you mean subscribing post-statutory ordinances simultaneously eviscerates the rest of the statute's clear and unequivocal provisions. In fact, the attorney general noted that we provided additional arguments, and I briefed this opinion for the AG, that we provided additional arguments that he should look to statutory language expressly addressing gap regulations, but he explained in a footnote he did not need to address those arguments, quote, because we have concluded that the ordinance conflicts with chapter 245. Bottom line, the fact that the ordinance was enacted before chapter 245 and was

-- before 245 was retroactively effective, in no way diminishes 245's effect on the ordinance. It is void to the extent it expires a project in conflict with chapter 245. Mr. Rockwell's narrow simplistic foundation does not support his argument and is not a reasonable construction of the statute as a whole. The attorney general opinion merely confirms the statute's plain language with which the ordinance conflicts as currently in place. If I could take just a moment to address the attorney general's opinion, which has been criticized. Mr. Rockwell says the attorney general's opinion is perfunctory and he implied that because he's drafted opinions for two supreme court justices, that experience provides him an ability to trump the attorney general's opinion or to seriously call it into question. While I think Mr. Rockwell

-- while I thank him for his public service as a law clerk and attorney to the court, I would suggest that membership in that fraternity is not so empowering [inaudible] all of us who have done those jobs understand our roles as law clerk or staff attorney and nothing more. The AG opinion process, especially under attorney general's Cornyn and now Abbott is rigorous, thorough and to Mr. Rockwell's point run by former justices, not law clerks or staff attorneys. The division chief, however, is a former law clerk to the court of criminal appeals and seasoned attorneys including Texas supreme court staff attorneys and law clerks are in that division. Opinions are peer reviewed within the division. They are circulated and critiqued by other divisions in the agency that might have any subject matter expertise. They are reviewed by the attorney general's office, which is the appellate group at the attorney general's office and they are reviewed by the deputy for the

-- who is the deputy attorney's general counsel and then they go to the AG for review and sometimes come back with comments and questions and edits from the attorney general. So to

suggest that this is some perfunctory cursory process or that a handful of other lawyers may get in line to criticize it, well, you put more than one lawyer in a room you get more than one opinion. But to suggest that the attorney general's opinion is somehow lightweight, i would beg to differ. Occasionally the attorney general is, in fact, criticized for not making policy calls and for not doing what you know we must have meant. But policy calls, policy arguments and those kinds of criticisms don't play into the opinion process. Now, it was also mentioned the ag is a partisan and he lines up on one side or the other of a lawsuit. That's absolutely true. The attorney general wears multiple hats, but when writing opinions, the attorney general calls balls and strikes. If you don't like the way he calls it, then you go change the legislation or the ordinance or whatever it is, but he's not wearing an advocate's hat when he's doing that. Finally someone suggested that because an ag opinion is persuasive but not binding authority you should ignore it, get sued and let a court tell you the answer. Even if mr. Rockwell were correct that the ag's analysis is flawed because of this gap pursuant to idea, the ordinance is still void because it conflicts with chapter 245. I respectfully suggest that you cannot expire projects in conflict with law and litigation law

[18:37:31]

[inaudible] inevitable answer. Thank you, mayor.

>> Thank you.

>> Mayor leffingwell: Council member spelman?

>> Mr. Webber?

>> Yes.

>> I do not listen quite as quickly as you talk, at least this time of the evening. Are your remarks -- could you make your remarks available in some form for us to take a look at?

>> I can.

>> Spelman: I'd like that very much. Thank you.

>> I'd be happy to.

>> Spelman: Thank you, sir.

>> Thank you.

>> Mayor leffingwell: Thank you. Carlton smith? Jeff howard? Jeff has a lot of donors. Gretta goldsby? Gretta is not here. K.C. Willis?

>> I'm here.

>> Mayor leffingwell: All right. Garrett hill? Garrett hill. Donnie shan. Donnie shanks. So jeff, you have up to six minutes.

>> Okay.

>> Mayor leffingwell: Pardon? Okay.

>> [Inaudible]

>> mayor leffingwell: Andy pastor is donating so you have nine minutes.

>> Thank you, mayor.

>> Mr. Mayor, I'd also like to donate my time.

>> Mayor leffingwell: What's your name?

>> Ryan burger.

>> Mayor leffingwell: Ryan burger? So now you have 12 minutes.

>> Thank you, mayor, good evening, council members, my name is jeff howard, and like some of the other speakers I'm very grateful for you for taking up this issue and really appreciate the consideration you're giving this important issue. Mayor, to quote the philosopher yogi berra,

feels like deja vu all over again. I'm an attorney here in austin, land use lawyer. I've been practicing since 1993, and I've been through those same wars. I was active in 1997 when the project duration ordinance was passed and i remember the discussion that happened at that time. I'm especially familiar with chapter 245, the local government code. What a great deal of my practice is that and has been the last 20 years and I'll tell you that chapter 245 is essential. It's foundational. It's fundamental to an orderly, well-financed and well-planned real estate development. It's important to our industry. It's vital, and I think it's vital to the notion of city building as well. Now, this is not a political issue, as much as some would like to make it that. It's really

-- it's really a legal issue. But I understand that grandfathering because it's important to our industry and because it frustrates certain activists and creates a lot of passionate debate and that's okay. Passionate debate is all right. Unfortunately, however, in this case there's been some outright misinformation, and that's unfortunate, I think, and disappointing. And so I want to go over three important issues, and I also want to respond to some of the things mr. Bunch and mr. Rockwell had to say. First of all, mr. Bunch talked about the project duration ordinance, and it's important to understand that that's not what it was called when it was passed in 1997. It wasn't called the project duration ordinance. It was called the interim development ordinance. And I don't know what ordinance mr. Bunch is reading, but ordinance

-- i have it here, it's 97.0905 a, was an ordinance establishing, quote, interim regulations for land development, and incidentally, declaring an emergency. So the

-- the ordinance mr. Bunch wants to keep, he doesn't want you to repeal, was apparently passed as an emergency. It was a temporary measure. It speaks to the fact that it was passed without the process of seeking public comment and review by city boards. It was passed with the thought that it would be in effect until, quote, final adoption by council of any amendments. It was never intended to be final. It was intended to be temporary, and it was certainly

-- it was intended as a stopgap because it was passed in 1997, during that period in which 1704 had been inadvertently repealed before it had come back. It was intended to avoid the reenactment of 1704, what we now call chapter 245. It had never been accepted by the real estate community. It was not part of any agreement. The 1997 ordinance was not part of any agreement. There was a hope there might be a grand bargain, on a whole host of issues. That grand bargain never resulted in any agreements other than adoption of the hill country conservancy. So that's number one. This wasn't some two-year process of stakeholders reaching a grand agreement. This was a hastily passed temporary ordinance that was not intended to be final and was in place to prevent the return of 1704, which returned. The second important fact about the

-- about the interim development ordinance is that it only affects post-1997 projects, and so the repeal, because ordinances like save our springs was passed in 1992.

[18:43:06]

[Inaudible] watershed ordinance passed in 1986. Lake austin watershed ordinance, parkland dedication, hill country roadway, scenic roadway. The repeal of this ordinance will not affect any of those ordinances and how they apply, because any project filed after 1997 to which this might apply has to comply with those ordinances. It has to. And so that's important misinformation that's out there. The third area that I want to talk about is the fact that this is a very narrow issue in the grandfathering discussion. This deals solely wh project expiration. The fact of the matter is grandfathering and state vested rights encompasses so many otr issues. For

example, when does a project end in terms of being

-- when construction is done? Every home in tarrytown that's built is an ended project. If you want to tear it down you have to comply with McMANSION ORDINANCE. This is not going to affect that. It's not going to affect commercial design standards because the other limitation under chapter 245, there are exceptions to grandfathering. Zoning regulations, drainage regulations, building regulations, utility regulations, health and safety regulations. The repeal of project duration ordinance will not affect any of those nor will it affect the city's ability to go out and zealously oppose projects that don't fall into those categories. Finally, this project -- repeal of project duration ordinance is not going to eliminate the requirement that progress must be made for projects. Projects still hav to make progress within their five-year window. That's the state law. We just want you to comply with state law. You'll still require that progress be made. Now, mr. Bunch cites mr. Lloyd's brief, and he knows better. He knows the difference between a brief and an opinion. Mr. Lloyd wrote a brief as your advocate. That's different. That's mr. Turcel mentioned the opinion when he's advising you. Mr. Rockwell also knows the difference of when the attorney general is acting as an advocate and when he is rendering opinions. It's disappointing that those two issues are being confused here tonight. In summary, the project duration ordinance or the interim development ordinance was hastily contrived, temporary relic, frankly, from the wars of 1997 to 1999. It was never meant to be effective today and it clearly violates state law. Let's put the dispute from 1997 to 1999 behind us, and incidentally, mayor pro tem, when 1704 was reenacted in 1999 it specifically provided in section 3 of the enabling statute that actions by the city of austin that expire projects in that gap were void. So again, contrary to what mr. Rockwell said, the statute did void those gap projects. I think it's time, no

-- no other city has a project duration ordinance like this. None. We don't need to go and study that. We know that. The city of austin is the only one with a project duration ordinance of this type that conflicts with state law. It's time for austin to accept the law that every other local jurisdiction accepts. It's time for austin to no longer think it's above the law. That doesn't mean that austin condition zealously oppose projects that are not grandfathered under the law but it does mean that austin can join all the other cities and faithfully honor its obligations to uphold state law. I'll conclude with just one other comment about the 16 years. Why hasn't anything happened in 16 years? Remember that 1704 came back in 1999, all of us who were around at that time believed and understood that project duration ordinance was not going to be effective, and it had gone away. None of us had an issue with project duration ordinance. It didn't come up because 1704 had come back. It wasn't until around 2008 that the city started cutting off-site plans early and citing the project duration ordinance, and if you recall the real estate council of austin did come to city council and say, let's do something about that. And so for five years we've been bringing this issue to you. In fact,ing several years
[18:47:50]

-- in fact, several years greg guernsey brought the codes and subcommittee planning commission a than asked that body to do something about it. Nothing was done. The time has come, the attorney general has given us an opportunity. He's given us an opportunity to come in compliance with state law and to turn the page and move forward on the things that we can do all together. Thank you very much.

>> Cole: Mayor, I have a question for mr.--

>> mayor leffingwell: I do too. Much go ahead.

>> Cole: I want to be very clear about why exactly sos does not apply in this situation.

>> Sure. So the project duration ordinance only applies to projects that were filed, their first application was filed after september 5, 1997, okay? So if I have a project that I filed after september 5, 1997 and I'm subject prot project eproject duration ordinance and that's the first time I filed an application and that project is in the barton springs zone I am subject to sos. So if I'm already subject to sos repealing the project duration ordinance isn't going to make sos stop applying.

>> Cole: Does that same logic apply to commercial design standards and McMANSIONS OR IS THAT A Different

--

>> it's a different rationale for commercial design standards. Under 245, chapter 245, there are exemptions to grandfathering, and there is a whole list of regulations that are exempt from grandfathering. One of those is zoning regulations, certain zoning regulations, not all zoning regulations, and I believe that staff has interpreted, because, you know, staff is tough on us in the development community, frankly

-- has interpreted that the commercial design standards is one of those zoning regulations, or at least the bulk of the commercial design standards is one of those zoni regulations that is exempt from grandfathering. Repealing the project duration ordinance doesn't affect the ability of the cities to continue to enforce current zoning regulations, as an exempt to 245.

[18:50:09]

>> Cole: Thank you, jeff.

>> Mayor leffingwell: Okay. So obviously

-- I appreciate the discussion about the difference between advocates and opinions, people giving -- giving their clients an opinion. So we've had advocates on both sides of this issue here tonight. But one thing that's been brought up, I think more than once, is that in order for state law to override a local ordinance, a city ordinance, it would have to very specifically

-- the language in the state law would have to specifically address the language in the ordinance that was to be overridden. I believe you said that in this case it does, that the state law directly and specifically has language that overrides the project duration ordinance; is that correct? Did I understand you right?

>> The answer is

-- well, yes. The answer your

-- the latter part of your question is yes. The answer to the first part of the question about whether it has to specifically

-- the statute

-- 245 does not need to say, oh, and by the way, we

-- I'm passing the provision, we here by repeal the city's project duration ordinance. It does not have to do that. The idea of preemption is that the state law is inconsistent with the local law, and the local law cannot be read in such a way to be made consistent. So in order to be illegal it does not have to epressly state that we're repealing prior law. It just has to

-- it has to be inconsistent and they cannot be read to stand together. Now, having said that, in

1999 when the

-- chapter 245 was reenacted, section 3 of the enabling act did provide that actions of the city that expire projects during that gap are void.

[18:52:16]

>> Mayor leffingwell: And that's obviously retroactive.

>> Yes, it was made retroactive. It was specifically made to address that issue. The attorney general didn't have to answer that question because the attorney general decided it's obvious that 245 conflicts with project duration ordinance, and i don't even have to get to that issue because their in touch conflict that it's illegal.

>> Mayor leffingwell: Well, obviously every local lawyer, real estate lawyer like yourself, has known that since 1999 that these laws were in conflict. So it's been stated here that for 16 yearsobody has attempted to challenge the city's project duration ordinance, and I believe i heard a little bit

-- i believe I understood a little bit of your explanation. There was

-- obviously it took time for these site plans to expire, either three years or five years, depending on their

-- where they're located, but how did we get to 2008? That's eight or nine years without some kind of challenge? I'm asking for speculation.

>> I can't answer for the other lawyers but I can answer for myself. In 1999 I did not think the project duration ordinance was any longer effective. And I have never thought that. At some point, and I can't tell you exactly when, I got a call from an assistant city attorney and we were talking about something else, and this was I want to be 2007-ish time frame and she said, you know project duration is still on the books. I said, no, it's not, it went away in 1999. And if you -- if paul less hen lan hadbeen here to testify oh less than has not

-- he would have given you examples of projects prior to 2008 where site plans had been extended and granted extensions that put them beyond project duration ordinance. And I think the staff

-- i think at some point in the latter part of the last decade staff started interpreting project duration

--

[18:54:24]

>> mayor leffingwell: That's anecdotal. Staff just did

-- project duration

--

>> that was my experience.

>> Mayor leffingwell:

-- for a long period of time and about 2008 or so they started to enforce

-- to expire and they started to enforce.

>> Yes, sir, that's my experience at least.

>> Mayor leffingwell: Okay. Council member riley.

>> Riley: I want to come back to an argument that mr. Rockwell made with respect to one of the key provisions, which is section 245.005 b, and as you know, that paragraph includes less
-- has headline

-- notwithstanding any other provision of this ordinance, any ordinance enacted pursuant to this section shall place an expiration date on the project. And at the time that language was put in, less we've been provided the bill analysis from that bill, 524 in 2005, which indicates that the idea was that that provision would be prospective be. And the argument, of course, is that of course project duration predates that, and so if this legislation from 2005 was intended to be prospective, then it would leave project duration intact. Can you help me understand why that argument is incorrect?

>> Sure. There's a

-- and I will also commend you to the hba brief that was written by robert cleeman and the attorney general briefing process, and this issue was specifically raised. Robert specifically asked the question, does enacted pursuant to somehow mean that project duration ordinance can still be? And obviously of course the attorney general was persuaded that it didn't. But there is
-- there is

-- I think there's two reasons. The first is a simple reason, and the simple reason is the attorney general's explanation. The attorney general's explanation is they're in conflict. The two
-- that's the whole nature of preemption. If the two are in conflict, the local ordinance cannot stand. All right. If you look at the

-- as everyone who construes - engages in statutory construction, we look at the statute as a whole, and the statute as a whole clearly indicates that you could not expire projects. So what 245.005 did for the first time in 2005 is it gave the cities the right to expire projects, the right to do so did not exist prior to that. And if you read robert's brief you'll see kind of why that is. You'll see the history of it in terms of how the statute had gotten written, and so

-- and then when you also consider the fact that the gap

-- that the section 3 of chapter 245, when it was reenacted, voided those gap actions, 245.0035 b would have been the first time the city was authorized to expire projects. So if you are granting the ability to expire projects for the first time, you're naturally going to say, ordinances enacted pursuant to this section have to follow these rules.

[18:57:44]

>> Riley: But then in that case why would they say this is prospective only?

>> I don't know why they said it was prospective only, but I think the reason they said it was prospective only is because this is the first time you have the right to do this, and so going forward from 2005 forward, you now have the right to expire projects, whereas you didn't before, and if you do expire projects, then you've got to follow these rules. That's the long explanation. I think the attorney general's explanation is the two

-- if you hold them up next to each other, they both cannot

-- both cannot stand.

>> Riley: Okay, thanks.

>> Mayor leffingwell: Council member tovo?

>> Tovo: I have a quick question for staff before we move too far along beyond this point. And that question is, we've heard just now from mr. Howard and also earlier I had a conversation with

mr. Lenihan that talked about this issue of when staff started applying project duration. I wanted you to just address it straight on.

>> Project duration as long as I've been the director of planning and development review, we've enforced it, but that's only been since the period of 2009. I would probably have to go back to my staff and have conversations with them about how it was treated before that date. When I became director i did, as mr. Howard mentioned, try to reconcile the difference in dates that we have under site plan review, the date of the life of a site plan versus the project duration date, and that is something I did try to reconcile because it's problematic for staff, for people who are working on our development process, property owners, developers, and even for neighborhood people to kind of figure out is the project still alive or not. So that

-- that nuance, i know, was there right when i arrived on the scene, and so I know that at that time we certainly discussed it. But I can come back and see if I can find some staff here that work with it and

[19:00:05]

[inaudible] eight period trying to get some clarification on that.

>> Tovo: I guess I'd also like you to address now or later the assertion that prects would not be

-- there would not be

-- projects would not come back into existence that would then not be subject. That's too many double negatives

-- subject to sos. And you supplied us with numbers of projects that in the last several years have been expired, some due to project duration. I wonder if you can provide us again, I think maybe at the end of the testimony would be most useful

-- if you could provide us with some information about what kinds of

-- what some examples of those projects are that have been

-- have been

-- have expired and have applied for grandfathering, haven't received it. We didn't get any examples or any real data in our q and a about what some of those projects are and what kinds of ordinances have

-- what kind of regulations they will no longer be subject to if this passes here tonight.

>> I'll try to

-- I know that you've

-- I know you've recently had some managed growth agreements that were probably on point where the applicants chose to get through the [inaudible] agreements that specifically dealt with this particular issue.

>> Tovo: Right, and as i recall, at least one of them was in effect, grandfathered back, what, 20 years? Before

-- it was no long

-- the project was not subject to sos. The water quality and the other provisions on that project were very, very different from the sos requirements, if I'm remembering correctly.

>> Well, were there

-- i remember one at the time

-- well, and it will be a slightly different discussion because I think that had to do with references to plat note, so that's an entirely different issue.

>> Mayor leffingwell: Right, but I guess it's not

-- it doesn't sound to me like an accurate assertion that we might have projects

-- that projects will be subject to all of the current regulations if they happened after '97. That just
--
[19:02:13]

>> the project duration specifically addresses projects after that early date in september of 1997, moving forward. It would not apply to a project prior to that date, set of ordinances prior to that date. That project duration, it would not affect that, because it is

-- it is prospective from that date.

>> Tovo: Okay, thanks. You know, I have a question for a member of the audience who spoke a little earlier.

>> Mayor leffingwell: It's a little bit out of order. Could you hold that off a little bit?

>> Tovo: Until our discussion? Sure. I'd be glad to. The point that mr. Howard made and I just want to get a sense from someone who spoke earlier, but we can

--

>> mayor leffingwell: But i had a question for mr. Guernsey, quick one. I was trying to signal to you to stay up here, but i just want

-- if we can get a concise answer that would be nice. If you can't, I understand. My understanding that repealing project duration ordinance would not affect the compliance with sos, yes or no?

>> It would not affect sos.

>> Mayor leffingwell: Because sos went into effect in 1992 prior

-- which is obviously prior to 1997, at least in most universes.

>> Correct.

>> Mayor leffingwell: That would

-- it would not affect the sos ordinance, if a property was subject to sos, it would not be

-- not

-- it would not automatically not be subject to sos if project duration was appealed? It would not affect that status.

>> It should not affect that status, correct.

>> Mayor leffingwell: Okay.

>> I have a question for guernsey real fast. We're talking about managed growth agreements. We did one recently and extended

-- the council voted, not unanimously, to extend the site plan for an extra eight years beyond its site plan expiration date. So was that an extension because of project duration or was that extending a site plan expiration or both?

[19:04:28]

>> There was a situation where their project duration had come to its end. They had asked for the mga basically, managed growth agreement, to keep the project alive, and therefore they could continue with that project. If

-- under the managed growth agreement they could keep it alive for those additional years, that would allow them time to take out all of the blooming permits they need to finish their project, because the project iteration time ended, i stopped the issuance of the building permits, which then, even though they had infrastructure in and things like that, they could not finish it.

>> Morrison: So without

-- if there's no project duration, there's no need for managed growth agreements because managed growth agreements only deal with project duration limits? That was the tool that was

put in place pro project duration that would allow for a property owner to ask for that additional time [inaudible] three years or beyond the five years. There's an administrative ability for me to extend within the desired development zone in an additional year but not to go beyond the project duration date limit. And the drinking water protection zone, I don't have the ability under current statutes because of project duration to extend that an additional year because the duration would end before the site plan would end.

>> Morrison: Right, and i just want to get clear that managed growth agreements are part of project duration, article 12, so the

--

>> article 12.

>>

-- If article 12 were to go away, managed growth agreement would go away, so I want to get clear managed growth agreements are never used for anything except for

--

>> [inaudible] in relation

-- with the project duration, yes.

>> Morrison: Thank you.

>> Mayor leffingwell: One more, greg. So we heard some concerns that trees would not be protected, especially older trees, and it's my understanding that repeal of project duration with the appeal of project duration, although it would not mean necessarily required compliance with the heritage tree ordinance. It would require compliance with the protected tree ordinance.

[19:06:54]

>> Yes.

>> Mayor leffingwell: So all those trees in allandale that I love in the street like that too, form a canopy, those trees would still be there. They would not be subject to

--

>> they would be subject to the protected tree ordinance, which is different than certainly the heritage tree ordinance, but there will be tree ordinances that would pertain to them.

>> Mayor leffingwell: Yeah.

>> Mayor?

>> Mayor leffingwell: Council member tovo.

>> Tovo: Before mr. Guernsey leaves, since we're talking about managed growth agreements, one of them we talked about recently, shady hollow, can you please remind me, I think I asked you this question a few minutes ago but I'm not sure we got really the answer, so it was up against project duration. The city, the council as council member morrison pointed out, not unanimously, managed interest an a managed growth agreement, and it had the effect of allowing a project to go forward under, as i recall, decades old regulations. Is that accurate?

>> Yes, it was

-- it was under regulations because you had a plat that actually referenced that it was not in the barton springs zone. At some point in time that particular project, watershed protection department determined that the boundary line of the barton springs zone has actually changed because of the project duration ordinance was in place, the project would end.

>> Tovo: Okay. So I think, you know, we have heard concerns that if project duration is repealed, well, we will see projects going forward under decades old regulations and that's

-- it seems to me that's a very good example of exactly

-- exactly the sort of thing we might see. I mean, that project entered into
-- or pursued a management growth agreement because it was up against project duration.
>> However, 245 already recognized the right of a property owner to take advantage of
covenants or we've actually litigated a case over a plat note that the property owner has a right to
utilize a plat note on the face of a plat if it's to their advantage. So I believe even without that
they could have asserted that right and i would have been faced with a different type of dilemma
of having a plat note versus a 245 claim. Under the existing 245 regulations that would
-- i would have to deal with the issue of facing that plat note as a restriction that was put on by
the city that they could take advantage of. So it would maybe not exactly the same, but
regardless of project duration or not in that case, it probably could have been asserted to that, that
they could take advantage of that plat note.

[19:09:44]

>> Tovo: So again, I guess when we have
-- when we have a council discussion in a little bit, I hope
-- I hope that we can get some information about the projects that have applied for
-- under 245, about some of the projects that have applied and have been denied continuance
and really how old they are so that we can get some sense of what we might be looking at.
>> Mayor leffingwell: And drai?
>> Mayor?
>> Mayor leffingwell: Council member spelman.
>> Spelman: Before we break his chain of thought, my apologies. This will just take a minute.
Mr. Howard suggested something which was a surprise to me, that there are no other
constituents, counties, other government agencies in texas that use project duration, just us. As
my understanding when we first adopted expiration dates for site plans and other development
permits, that we were were winning expiration dates specifically from plano texas and other
cities around texas. What am I missing here?
>> Well, I'm not aware of a project duration type ordinance. Even before 1997 we had expiration
dates on-site plans, but project duration added a
-- I guess you could say a second level of expiration on a project, so not only did you have an
expiration on the life of the site plan, which may have been three years, for instance. Project
duration would actually start with the first submittal of the application and start the three-year
clock from the day you submit as opposed to on the site plan expiration, which would have been
three years from the date of approval.
>> Spelman: Okay.
>> And so that's a different nuance. I'm not aware of another community, and I can certainly talk
with legal legalcounsel as well. I don't believe we're aware of another community that has a
double set of expiration dates.
>> Spelman: Do other cities use expiration dates of the kind we were apparently using before
1997 on-site plans, for example, as a tool in assessing grandfathering rights?

[19:11:55]

>> I cn't say off the top of my head. I haven't really studied that issue as much. I'm aware that
certainly there are cities that have site plans, I believe they have expiration dates, but i could not
say definitively which cities those are. I have a general knowledge that there are cities that have
site plan requirements. Austin certainly has a more extensive use of a site plan requirement than

other municipalities because we [inaudible] require site plan for everything, unless you are a small project, like a single-family home or a duplex or smaller than a thousand square feet or less that would be exempt.

>> Spelman: The reason i bring it up is if we are the only city that is affected by the attorney general's opinion, then obviously we've got to do what we think is the right thing to do, but if there are other cities or other governmental units that are affected as well, it only makes sense for us to see what it is they're doing in response to the ag's opinion. Have we contacted anybody else to see whether they're taking any action?

>> I have not. We have contacted the city of san antonio. I don't know if we had the actual meeting date set out but I know that we're actually going to meet with their staff and talk with them about enhancements to our ordinances that could possibly clarify or enhance our ability to apply state laws as it would affect our municipality.

>> Spelman: So staying inside of state law but doing better than just repealing what it is we've got right now?

>> We're making some changes of some kind.

>> Spelman: Okay. Anybody else that you think would be productive to talk to?

>> I don't know if we've contacted other cities in that regard. I know san antonio was our first city that we've approached, and we're trying to line up dates actually to go down there and meet with them.

>> Spelman: Thank you.

>> Mayor leffingwell: Sarah andre?

>> Good evening. My name is sarah andre. I am a development consultant and I specialize in affordable housing. It's officially after my bedtime, so if I start to wander off, just prop me up. I think this is a really complex issue. It's actually been fascinating sitting here listening tonight to all of the different opinions. I think there are a lot of valid concerns that we've heard tonight. In particular, the concerns about the environment, protecting trees, protecting our water quality, and also I think a call for balance between growth and what we love about austin, which is primarily the environment. I want to ask you tonight as you're deliberating to look at the issue through the lens of housing affordability. Conflicting regulations and endless delays drive up costs. Everyone tonight has been very focused on the legal aspects of this. No one has gotten up here and talked about whether three years or five years is more realistic or whether an expiration date from when you submit versus when you get approval is more realistic. I had one project that i worked on. It was a single-family house. The adjacent property owner had built over the property line. We were willing to deed that infraction to them. We were not even in conflict with the neighbor. Fine, you built over our property line. Let's just give you that 12 inches. It took 17 staff and two years to get that through. If I had been on a clock, that project would probably have failed. Fortunately for that homeowner I was working for free, so, you know, it didn't impact the cost, but that's not really the bulk of our projects. So I think that those types of issues, you know, are the bottom line. No matter what you're building, we need more reasonably priced housing. We need it built by the private sector. We need it built by the public sector, by for profits and nonprofits, and I think that repealing this ordinance will be a step towards making it easier to get that housing on the ground. It

-- you know, repealing it won't mean that development goes unregulated. I believe we can and we should balance environmental preservation and development, but I don't think that this one ordinance is the proverbial finger in the dike keeping that from happening. Thank you.

[19:16:31]

>> Mayor leffingwell: Thank you. Mark kirkpatrick. Mark? All right. Janice cartright?

>> Mayor, mayor pro tem, city manager. Thank you for allowing me to speak to you today. I wanted to clarify something you may have heard from others about a statement about an agreement in 1997, or in 1999. I'm with the executive director of the real estate council of austin since may 2000. Like mr. Bunch I wasn't a party to the peace talks that occurred and that was the basis for an agreement to form the hill country conservancy. However, I believe from the review of the documents maintained by rica and based on my conversations with rica members involved at the time, there was never an agreement regarding grandfathering projects that could be supported by all. Necessary for an agreement with rica was cobb senses that

-- consensus that a developer could count on the development rules staying the same throughout the life of a development, among many other items that were never formally agreed to. What is clear is that rica did not support the interim project duration ordinance that was adopted in 1997 and that is being considered for repeal. Instead rica, the chamber and the environmental community recognizing the need for balanced growth with the protection of the central texas hill country natural resources that are in part why so many people locate here we agreed to work collaboratively with other partners to effect a multi-year program to set aside dedicated open space. Representatives of the three groups agreed to form a steering committee and out of that was created the hill country conservancy. Each group pledged \$20,000 as seed money to be spent on staffing, and rica and the chamber funded their pledges. As a founding member of rica, rica's initial contribution was \$100,000. In 2006 we made a second pledge for \$400,000. In fact, rica was the first organization or company to pledge a half million dollars to the hcc for open space preservation in central texas. Since its inception hcc has been working diligently to achieve the goal of preserving a network of open space for water quality purposes and to protect the region's wildlife, rural character and scenic vistas. While it is my belief that the facts about agreement on project duration have been misrepresented at planning commission and before the travis county commissioners court on tuesday, that really isn't the point. The point is that section 245 of the local government code has clearly prescribed time limits in which projects must be advanced or lose their rights to claim grandfathering. The city's project duration ordinance should be repealed because it's in conflict with that state law. In addition to it being a state law, it's really only fair that anyone from a home remodeler to a small business owner to a mom and pop, or to a developer that's building the places where we live, work and play, they should all be able to count on the rules not changing from start to finish. I ask for your vote to repeal the ordinance. Thank you.

[19:19:57]

>> Mayor leffingwell: Thank you. Pam thompson? Greg enuk? Greg, you have minutes.

>> Good evening, mr. Mayor, mayor pro tem, thank you for the opportunity to visit with you very briefly. My name is craig enak. I'm a resident of the city of austin and have been since 1993 when I moved here and I've had the opportunity to work with city staff. I've had the opportunity to work with a particulity councilman, and I've enjoyed it all. I think they're great folks, one and all. So it kind of dismays me that we get into this debate and some people want to say, well, there must be something nefarious going on. I think there's a legitimate debate going on out here. I am not representing anyone in particular on it, although I was asked to come and talk a little bitbout the meaning of an attorney general's opinion. It is not exactly accurate to say an attorney general's opinion doesn't mean anything. An attorney general's opinion is binding on state agencies. Unless the agency challenges the attorney general opinion or some other party

challenges that opinion in court, the agency is bound to follow that opinion. This is a municipality, it's not a state agency, and so the ag's opinion is not binding on it, but I wanted to let you know the grata toss that the attorney general takes when they write an opinion. Now, whether it's persuasive, council member riley understands that the courts are not bound. The courts as a third branch of government or department as our constitution calls it, is not bound by the attorney general's opinion on it, but it is persuasive. It is worth listening to. And the issue really is

-- i don't think it's a simple issue to come up here and say, well, just let somebody sue you to find out what you're supposed to do. A democracy fails. It's the vast majority, the overwhelming majority of the citizens

-- if they don't comply with the law. And so what you've been asked by staff is to voluntarily comply with the law. It is not hundreds of pages. It's a few pages of a statute, and a few paragraphs of an ordinance for the council to compare and determine, is there really a conflict? And it doesn't have to be so long a conflict that no reasonable interpretation could be given. It could be as simple as the attorney general said. The statute, the state statute sets up the particular indicia of progress. It is not amore fuss. We can go

-- on more fuss. We can go on the plot and determine whether progress has occurred, under the statute. As the ag says, attorney general says, the city ordinance however adds, well, if you don't get all of your permits, then your project is dormant. And the state statute says just really the opposite. The first permit is the time you determine and then progress is what happens on the property. It has nothing to do with whether you get additional permits. The attorney general says, requiring additional permits is inconsistent with the statute. I think the city has a duty to comply with what it understands the law to be. And it can read.

[19:23:29]

>> Mayor leffingwell: Could I ask you

-- I think you have some credentials to speak to this issue, as to the

-- >>f course nobody gave me

-- [laughter]

>> mayor leffingwell: I would like you to comment a little bit on the role of the attorney general when he acts as an advocate versus when he renders an opinion.

>> Well, the attorney general, of course, is the lawyer for the state. So many times he's in the role of advocating on behalf of the agency, whatever the agency's position is, and so he will be an advocate. But when he takes on the role of the opinion

-- actually, they're separate groups. I mean, strategize with clients. Well, which group in the ag's office do we want to work on this project? Well, don't send it the opinion group. We want somebody to advocate for us. And so there is a very strong distinction in the attorney general's office. If they're asked for an opinion, the opinion is their best understanding of what the law is, and, in fact, it's binding on agencies. It's a very serious process they go through. It's not binding here because as a municipality governed by the attorney general's opinion but it is persuasive.

>> Mayor leffingwell: So to put it in the terms simple enough for me, when he's acting as an advocate he can argue it round or flat, but when he's giving an opinion he's giving you his honest, best intellectual, legal opinion?

>> Well, depending on the agency, he's actually arguing [inaudible] they say round and flat but he's had different agencies taking different positions.

>> Mayor leffingwell: Council member riley has a question for you.

>> Riley: I wanted to make clear in case anyone doesn't know that judge enuk served on the texas supreme court for ten years, from 1993 to 2003. So I want to thank you for coming to offer your comments.

[19:25:30]

>> Mayor leffingwell: Me too. Mayor pro tem?

>> Cole: I would like to thank you for coming. Judge, I have an opinion. I want your opinion, just like we've been asking about the ag's opinion. We've been discussing this concept of unmistakable clarity and speaking with unmistakable clarity and trying to find out do we really have a true conflict here, can you talk about that concept, that doctrine?

>> I think there's always a principle by the court that you don't just decide that, you know, this ordinance

-- we don't like it and we just go find some sort of statute that it might conflict with and say that's it. What we're talking

-- what the court does as a principle is to tell the trial court, the courts of appeals, that you're not to substitute your judgment, unless the statute addresses a subject matter that cannot stand side by side with the ordinance, then you say the ordinance stands. It can stand up, because otherwise it has to fail, because the statute controls. And so it is not a matter of this statute says that, say, ordinance 25.533 b 4

-- setting that aside, that's not what it means. What it means is as the attorney general identified. If in the ordinance you say that the dormancy period starts running when you don't get all your permission, that you're supposed to get, and you look at the statute and it says, progress is occurring if any of these are done, and it doesn't include the permits

-- the all permits, then you have the statute saying, this is what progress means and you put up against an ordinance, it says, well, you're not making progress unless you get one other element, and then you can say that you have a conflict as you

-- as you read the two, they can't both stand at the same time.

[19:27:39]

>> Cole: Thank you.

>> Mayor leffingwell: Thank you. Stefan ray? Daniel yanez? Christina campbell? Corby jastro? Christina? Don't be shy, come on up.

>> You'll have to please excuse my presence as I just walked off a construction site. Well, I shouldn't say just. It's been a couple hours. But I too am from an old family like jordan there. Stephen f. Austin, to be exact, my great, great, great, great-grandfather, and he too was in favor of growth. And it was his insightful, clever city plan, he didn't just kind of drop down anywhere. You know, he cared about who and where and how we're going to do this thing and picking our quite verdant home. And I was going to come up and articulate a legal argument about how 245 conflicts or detailed explanation details, and then it kind of became quite obvious as my 12-year-old son, who's been sitting there quite patiently for hours and hours getting a great lesson, his comment kind of hit the bull's eye, which is

-- he said, so forever means that when i get up there someday, when stuff is different, then i can't change it. And that kind of blew all of my legal arguments, although biased, out of the water.

And then he said, and why are all the lawyers telling their sides in this room? And then he asked if it was a court. So the legal arguments from, you know, invested parties investigating this detailed labyrinth, kind of the wheat from the chaff, is not i feel for tonight, and is not what my

great, great, great, great-grandfather would have wanted for him or for austin in its current verdant form. So thank you for being patient tonight and it's been a trying evening. So thank you very much.

[19:30:12]

>> Mayor leffingwell: Corby jastro. [Applause] jennifer walker. Jerry gibbs. Jerry. You have three minutes.

>> Good evening, my name is gary gibbs, and I'm here this evening representing scott felder homes, an austin-based home building company. I'm here to speak to the issues we have faced, along with the city of austin and their staff, in dealing with the current project duration ordinance. Scott felder homes was affected by this ordinance as a builder in a 233 unit detached single condominium project called independence park. This project is located in south austin on manchaca road. The project was originally forecasted to be a three to five-year build-out but that was before we were caught in a downturn in the real estate economy three years ago. Sales slowed and as our site plan expiration date approached our company was forced to essentially go back through the whole site plan approval process, even though all the streets, curbs, sidewalks and drainage systems were complete. The only portion of the project not complete and in place was the actual home construction on approximately 50 sites. We actually began the process of seeking extension of our site plan permit at least six months before the expiration date and hired engineers to assist us. During the same time leading up to the expiration date as a backup plan we began submitting the building permits and purchasing water taps for the remaining 50 unconstructed units. That was far in advance of our expected start of construction, and this was done in an attempt to preserve our right to build the remaining units and complete the project. These costs were significant, and an inefficient use of resources. The actual project permit extension was finally granted four months after the actual expiration. This process cost us ten months of time and thousands of dollars in costs, and all for a seemingly simple request for a reasonable extension of the expiration date on an already active project. Needless to say these unanticipated costs end up costing

-- adding costs to the remaining homes in this project and that cost was ultimately passed on to our home buyers. Thank you for allowing me time to speak.

[19:32:36]

>> Mayor leffingwell: Thank you. Doug young? Harry sabio?

>> My name is harry sabio and I work for the home builders association greater austin. I'm speaking in favor of the staff recommendation, the planning commission's recommendations to come into compliance with the statutory requirements of chapter 245 of the texas local government code. To us chapter 245 simply says once you start a project you're allowed to complete it under the rules that were in place at the time the owner

-- that they began. It's a concept that was written into texas statute twice. Application of the statute now has been reconfirmed by an attorney general's opinion, and it's something that we encourage you to

-- to act on. In a past life I was a budget officer for the city of austin, I was a city manager in harlingen texas and our city attorney wanted us to be certain the processes we used were not subject to legal challenge, we had an obligation to the law and to the taxpayer. Second there was more to do in applying existing laws that existed. That same thing encouraged my perspective from the regulating community. Staff is bringing forward a proposal to comply with the recent

attorney general's opinion and their own conclusions drawn from years of day-to-day work in applying austin ordinances. Now, austin was generally known as one of the most contentious or building environments in the country, jurisdiction is so demanding, there's also work hard to comport to statutes. Should austin work to comply not just with the letter of the law but with the legislative intent as well and we think the legislative intent is important, having worked on this bill twice. According to the city of austin web site there have been 181 proposed -- approved code amendments since 2005. That sole fact alone proves up the need for compliance with chapter 245. To the extent that the city's project duration limits affect land development, it affects costs and the abilities of our members to deliver product. We nuchialg you to take the affirmative step of voting for the staff recommendation. It's extremely important to us. This bridges the austin integrity. Just one last comment before I leave on why not handle this through litigation. I can tell you that our association has been involved in litigation, not against the city of austin. It was a case that we took to an appellate court in new orleans. It was a federal lawsuit and it cost us between -- well over 300,000, less than a half million dollars, and on the housing side of those being affected by project duration it's just not something that we're capable of doing. Thank you. [19:35:40]

>> Thank you. Mary? It is lisetsmidley? So you have six minutes.

>> Mayor, I'd like to [inaudible]

>> mayor leffingwell: Jean mather donating her three minutes, so you have nine minutes. [One moment, please, for change in captioners.] (cofa9-27-12.Ecl)

>> it is, for this city, abuse by the developers and% real estate interests, the male military establishment that inhibits the rules of enforcement and regulations. This morn's public announcement involved a case in the military that was judged guilty by a jury in a military court, guilty of rape of a female in the military, yet, the male went free because the military allows the presiding judge to overrule his presiding jury and there is no appeal to his decision. I think that in austin, the developer and real estate interests are trying to persuade you, our elected city council, that the attorney general of the state of texas can issue an opinion that has the force of law and is not subject to appeal, just as in the case of a presiding military judge on the case of npr this morning. Thankfully that is not true. The attorney general opinion is not an automatic, get out of jail free card for austin real estate and developer interests seeking to abuse the city of austin. The courts again and again have upheld sos regulations and the development regulations and texas courts have ruled again and again that the texas general's opinion is just that, an opinion, and does not have the force of law. I urge the city council to stand up for austin and reject her continual abuse. Please do not adopt the proposed repeal of the project duration ordinance and the other changes in the draft ordinance. And if I have a few minutes, I would just like to point out that one of the problems austin had in the 1980s and on and on, a problem which probably started in the 1940s, is that for subdivisions and I don't know if it is still this way or not, if you file a preliminary plat, it can cover 400-acres, 600-acres, 1,000-acres. But if you final platted one small lot, your subdivision guaranteed forever and ever, and I think that's one reason we try to do in the interim a project duration ordinance, because we had not had much luck trying to get preliminary plats to the point where they would have to comply with new ordinances. So, anyway, please do not think that this is a simple black and white thing. It is complicated, and we would like an opportunity for more discussion about things that can be done. I have a tendency to agree with the development community when they talk about how long it takes to get through the

city development process, and maybe there are some things that we could agree on together. But right now, this is not the right move. Thank you.

[19:41:10]

[Applause]

>> mayor leffingwell: And mary, I have to say, with all candor, that I am disappointed and offended by your use of the metaphor about women being raped as a comparison

-- as a metaphor for rescinding this

-- rescinding this ordinance and I am sure others are, too.

>> [Indiscernible]

>> mayor leffingwell: I understand. Richard vitrin. Laura pressly. Mike mcomcomb. You have 3 minutes.

>> Mayor, members of council, my name is mike mcomcomb. I am a real estate broker. I have been around this town a long time. I have been worked on

-- i worked on many ordinances, austin tomorrow plan. I have worked with

-- I was a real estate agent that broke with the real estate council and groups that i belong to and supported sos when it was passed but i work now as helping people go through the complex development process that we have. Today I want to tell you about a real life situation so that you can understand some of the issues that surround the project duration ordinance and the requirements that it brings on projects and why it needs to be changed and where it violates state law. South urban loss is a project at the southeast corner of congress avenue and saint elmo, approved in 2007, with zoning, zoning went into effect with project duration of june 13, 2013. In three years, august 20, 11 for the site plan. It consists 217 units. A two-star rated project, and was -- had an approved site plan. That site plan required \$44,000 of park land dedication, \$73,000 plus of fees, \$30,000 of ens controls, costing the developer \$250,000 worth of architectural plans in getting through this process, \$222,000 of civil gineering plans. Prior to the expiration of the site plan, we applied for the one-year extension. Because the planning and development review development cannot

-- does not have jurisdiction over the transportation department or austin water utility, the 180 day review period for the site plan extension was terminated. We fought that from january to june of 2012, and finally got the staff, who was working with us and we got them to agree that we could extend our site plan. We had one week before our project duration was coming up. We had submitted our building permits, but the building permit department said your site plans have expired. We will not review your plans. Therefore, we've got a demolition permit in five days and started the project.

[19:44:52]

[Buzzer alarming] the city's legal department determined there was no appeal of the project duration

-- I will leave you with this. Pass it out and [indiscernible].

>> Mayor leffingwell: Steve brenner. Council member riley.

>> Riley: I feel like you almost got us to the end of the story. Finish the story so we are not wondering.

>> The problem is, by having a situation where you have to have project duration fined as having every permit, every building permit in place, even though you are making progress on the project the whole time, if you don't have that final building permit, you can't go anywhere, and

so your project expires. So rather than spend the \$300,000 suing the city, the developer and owner decided we will re-submit. Staff has worked diligently with us to say how can we find a way around this ordinance and there is no way around it. It is hard and fast.

>> Riley: So where does that project stand now?

>> We are in our

-- we are in review for a new site plan, costing all of these requirements again, because we are running up bills with engineers, architects, myself, and so two-star, neighborhood approved, neighborhood plan compliant project, dead.

>> Riley: Thanks.

>> Morrison: Mayor.

>> Mayor leffingwell: Council member morrison.

>> Morrison: Just a quick question, mr. Mccomb. So we do have managed growth agreements that allow for special circumstances, and so did you

-- was that not applicable for you?

>> The problem with the managed growth agreement is you have to apply 60 days before the project duration expires, and my understanding at the time was you have to have a site plan approved, which, because of this glitch, we couldn't get there.

>> Morrison: Got it. I understand.

[19:46:52]

>> And both your staff attorney and mr. Guernsey and his staff worked diligently to try to find wiggle room to work and because of the way the ordinance is structured, there is just no wiggle room.

>> Mayor leffingwell: Lauren ross

-- excuse me, steve dur there wasser, i almost slipped.

>> Thank you, mayor, mayor pro tem and council members, I am steve druner with winstead, pc. I am not going to belabor thlegal arguments tonight. As hard as it is to pass on that, I don't think I could add much to what mr. Weber and judge e. Knock and judge howard said so I will leave that with them. I will add something to, mayor, your question about why hasn't it come up, and, really, what jeff said was absolutely my experience. We never thought that project duration survived, and it was not enforced until about '08. And if you think about what happened during that period of time, with the market falling apart and so forth, there weren't a lot of people who wanted to spend a tremendous amount of money during that period of time trying to finance a lawsuit, and so a lot of those things have come full circle. I think the market certainly recovered and you certainly have a lot of people who are watching this to try to figure out what their next move is. As you will understand from what I would say later, i hope we don't go down that road again. I

-- I participated, oddly enough, with lauren ross in those 1999 peace talks. Probably no one spent more time in them than lauren and I did. But what I would take you back to is what was happening before that, and it was sort of this endless do loop between city

-- due loop between the city hall, courthouse, and the legislature and it would whip around in about a two-year period, and no one knew what the rules were at that point, and it literally sucked the life out of city hall, certainly my industry. So a lot of people got to those peace talks because they were take of that

-- because they were sick of that due loop. For people who maybe don't remember them as vividly as I do, to invite litigation in the face of what I think is a pretty black and white issue, I

think doesn't serve the city well. I will tell you that I think during that period of time, there were a lot of issues that the city should have been focused on but we were all focused on just one thing, and that was to fight over development rules. So rather than talk to you about the legal niceties, i would just ask you to think about that. We are a great city. We have a tremendous opportunity to focus on the issues we think we should be focused on. I hope you won't send us back in that due loop. Thank you.

[19:50:21]

>> Mayor leffingwell: Council member riley may have a question for you.

>> Riley: Mr. Druner. You mentioned that you were directly involved in the talks back in '97-'98. So at the time

-- the project duration ordinance has been described as an agreed ordinance that was a culmination

-- that came out of those talks. Is that your understanding?

>> No, not at all. If you think about it, the reason that a lot of people got to the peace talks was because we were in that period of time where the project duration ordinance had been passed and it was clearly at odds with what house bill 4 had been before that time. There was the legislature getting ready to act again, since they had, quote, inadvertently repealed it, and there were a few of us who thought, gee, would it make any sense to try to get together and come up with something where maybe we both would agree on it. And we had a tentative agreement with just the folks who had participated in those talks, but about that time, the legislature acted and really the only thing that came out of that was the creation of hcc, which I am very proud of and I am sure others are, too, but if anything, the project duration ordinance pushed people to it because there was

-- there was no consensus about it. The consensus on the development side was that doesn't work, and that's

-- that's how we ended up trying to draft our own.

>> And then after that, the reason there was no challenge to it was because, in your experience, it just wasn't enforced for tend years or so?

>> Yes, and I remember the first case that it was mentioned to me and I think it was '07-'08. I said, you know, it can't be. It was

-- and it was an interim ordinance but, gee, you can't even look at it and look 245 and say those are compatible. 245 addresses dormancy very specifically and I was incredulous that somebody was still enforcing it, so i would

-- I would concur with jeff on that one. It kind of came out of left field.

[19:52:49]

>> Riley: Thanks.

>> Mayor leffingwell: So the general assumption was everybody assume that the project duration ordinance had been overcome by the action in 1999?

>> Right. And

--

>> mayor leffingwell: As apparently it should have been?

>> I don't recall certainly on any of the projects that we worked on during that period of time where it was ever uttered until '07-'08.

>> Mayor leffingwell: Okay. Lauren ross.

>> Good evening, mayor and council members. This is my second time in front of you today. The first time I was advocating vigorously for participatory democracy and here I am back again. Exhibiting what I advocated for about ten hours ago now. And I

-- I am not going to speak from the remarks that I prepared because I think, given what I have heard, i want to share with you where we were in 1997, when we passed what's been called the interim ordinance, and i was really glad for you to remember that we based it on plano, texas. One of the things that actually hasn't been said tonight that when chapter 245 passed, it applied to the whole state of texas, but what I was told was that the impact wasn't on the whole state of texas because every other city had project expirations, and we had a really fancy step that we called the austin two step. Maryian alluded to in her remarks when she referred to the preliminary plot and if site plan process and what happened was the preliminary plots were filed. There were cheap

-- i literally poured over them in some of those peace talks, you know, sort of faded bad talkers with gary bradley's handwritten notes on the side of it, trying to figure out what is the perpetual development right associated with this piece

-- single piece of paper? And that was really the problem, that people could get development entitlements for no investment that never expired. In all of the time, in all of the many, many meetings

-- and and I just wasn't part of the peace talk. I was also part of mayor watson's specially appointed team and I remember richard and robert kleeman who met together over and over again to draft the basis for the interim ordinance and i never, I never heard anybody in the environmental activist community come forward and say, we need to stop an active ongoing informed fully project. We understand the need for certainty and the fairness associated with the idea that once you've paid for your engineer and you've got, you know

-- you've got investment in the project, that you have the right to go forward without the rules changing, but we also believed was that, at some point, if you had a piece of paper and some fantasy idea for a million dollar something or other

-- and gary bradley had most of southwest austin covered

--

[19:56:32]

[buzzer alarming]

-- that the environmental community had the right

-- seemingly had the right to eventually implement their ordinances, and my concerns fort worth is that you

--

>> mayor leffingwell: Okay. Your time has passed.

>> Mayor leffingwell: Gain 1999 ordinance and go back to that.

>> Mayor leffingwell: You are passed your time.

>> [Indiscernible]

>> mayor leffingwell: Who are you?

>> [Indiscernible]

>> you have three more minutes. Adam abprograms.

>> Thank you, adam. I don't need 3 more minutes because I am right at my point which is that if we pull

-- if we take away what we call the interim ordinance, then we are

-- the thing about chapter 245, and I remember the moment when I got this fact, is that this ordinance is self-referential. It applies to the expiration dates so if we for one moment open up the situation where there isn't an expiration date, every single project that submitted -- that is submitted during this period, under chapter 245, you never get to come back and change that expiration date. That is the real terrifying danger of us setting ourselves back into a situation, and when we were in some of those peace talks -- I have excel spreadsheets, literally, because we were looking for the peace talk agreements, i was in dipping into the back resource of file. We have spreadsheets that detail in the barton springs zone the thousands and thousands of acres that were covered by these preliminary plans and had chapter 245 grandfathering, so certainly I would hope that before you repeal expirations on anything or change any ordinance, that you at least go back and as was said many times here before, and find out really what are we talking about, what are the consequences here, because that's -- that's the potential for eroding every single ordinance that this city has passed in a couple of decades, and people can stand up here and say, you know, well, we had water quality ordinances there and we had tree ordinances then, and we had, you know, things to keep the sediment from running off the site during construction, but we have -- off the site during construction but we've come a long way the last 20 years and we have worked really hard. We don't want to see that all gone. Thank you.
[19:59:03]

[Applause]

>> mayor leffingwell: Thank you. John barkley. John barkley. Robin rather. Donating time, marianne moatok. Is marianne here? Susan litman. Charlene walker. She is not here, so you have 9 minutes.

>> Thank you, mayor. I would like to thank you all for not minimizing the time tonight. We have heard a lot of really valid concerns. Council member spelman, i would really like to especially appreciate you. I understand your father is very ill and this must be excruciating so thank you in particular for still being here. Mayor, earlier you said that this is not an emergency, and I just want to underscore that. I have family that were in grinnage ville listening when 9/11 happened and when katrina happened, this isn't an emergency of any kind and if we have language like that at this time in our history when we have real emergencies all the time, maybe we should change that language just a little bit, especially if we are only talking about 9 day difference. This may not be an emergency, but it is a jamdown and by a jamdown, mary arnold used different language and I feel like mary has earned the right to say whatever she wants to say at this point.
[Applause] and then some. But I won't

-- I won't use her language if it offends you but I will call this a jamdown, because there is nothing new about this. This has been happening for 30 years. Every april or march, sometimes earlier, every time the leg is in legislation, you can count

-- leg is in session, you can count on it like taxes, it happens every time. All of a sudden, there is an emergency threat, oh my god, and rica is all over it, i have a lot of friends in rica I am not speaking to tonight because I think this is so far beneath them and, also, there is no creativity to it. We have a creative class city and innovative city. This is the same thing we have been going through for 30 years. The only thing that is different about it is it's your turn to hold the line. It is your turn to hold the line and I want to say something to the city manager because I a lot of respect for you. You said when you got here that you want austin to be a well managed city, a

best managed city, and I

-- i think that's an incredible thing to aspire to. But tonight we are not only the best managed, we are totally chaotically unmanaged. We don't have unmistakable clarity. We have no clarity. We have no clarity at all. We don't understand what the law is exactly. We have 10 or 15 different lawyers spinning around. None of them in agreement. We don't really have outside council for you all. I am going to say something I thought I would never say, which is I really miss kirk watson.

[20:02:21]

[Laughter] I really miss him, but this is why: There is only two reasons, and I know that I

-- I am trying to cheer you up a little bit, bill, i know you are dead, bill, i am going to say that because he was mayor for a long time but a lot of us loved him but also were infuriated by him. A lot of reason this happened is because he made it happen and he made it happen by doing two things

-- actually three things. Number one, he got almost every lawyer in this town at the time was involved in looking at the language. Number 2, he made sure that everybody did their homework. I can't see any homework that's been done. And no offense to greg, but the memo that you all have in your backup, not only doesn't have a list of projects that this would apply to, which I would consider to be the minimum thing that you would want, there is no list of projects. There is no list of ordinances. There is no sense of scope. I don't actually know and i have been here since 4:00 o'clock, what are we actually talking about? How far does it extend? I don't know how you guys could make a decision tonight. There is no prep. The memo actually starts off, and it says, I don't know how many projects. There is a lot of backup in your two pages, there is a lot of reference to projects that existed a long time ago but there is no understanding of, are we talking about five projects? Are we talking about 50 projects? Are we talking about 150 projects? Are we talking about 50-acres? 5,000-acres? 10,000-acres? Nobody in this room has any idea what we are doing so i think what that implies, and the reason I miss watson so much is that whether you like him as a politician or you don't, whether you agree with him or you don't -- with him or you don't, he is a lawyer's lawyer, meaning he would have had this stuff tied down or he would have thrown a huge fit about it. And by tied down, I just mean, lauren referenced the work that was done. I was a 3 time chair of sos during the time that all of this happened. At the moment I don't think that very much of that is relevant. Like I said, it's your turn. But one of the things that we learned is that if you actually have the spreadsheets

-- and we had hundreds of spreadsheets. We spent, I forgotten the gentleman's name, I think it is mr. Howard, jeff howard, he said this thing was hastily put together. No, it wasn't. It was five months of people around the clock looking at every single detail. We had spreadsheets on spreadsheets, how many projects, where were they, how many acres, what exactly was it going to do to our water quality? Because at the end of the day, this isn't about growth or development and it is about clean water. That's what all of these ordinances, all of these

-- all of this work over the past 30 years has been because, as a community, we are really lucky. We have a clean water source and we have tried our darnedest to keep it clean. Every time the leg is in session, every time, they do whatever they can possibly do to take away our ability to hang on to some of our clean water. I will go ahead and say that's their job. That's their job now. They do it every session. You can set your clock on it. You can bank on it. Our job and in particular your josh tonight the to balance everything that

-- your job tonight is to balance everything that has been done the last 30 years to keep some

of the water kind of clean, your job to hold the line on that with a sense of fairness. I have only learn one thing in the last, however many years I have been an environmentalist, and that is to deal to the facts and not to the emotion. I have a lot of emotion here tonight because we are a great city and we are better than this. We are way better than this. We don't have the facts. We don't have a sense of scale. We don't have outside, objective legal opinion. You here saying tonight the attorney general's opinion is binding and you have other people saying it is far from binding. You have some people saying he is running for governor next year, and reca asked him to do

-- take a look at 245. You have other

-- this is just

-- I don't

-- I don't understand and I will speak to you because you aren't here

-- you weren't here at the time a lot of this started, I think you might be the most objective person in the room, but I think that you would insist, like kirk watson, on a well managed, well researched, excellent piece of work. I will beg you for that. I hope you don't do anything on this tonight because you don't have the factual basis to do it.

[20:07:33]

[Applause] I think we can

-- I think we can get there. I really think we can get there. I had a conversation

-- paul linihan is not here at this moment, but he was earlier, and the conversation that we had was whether or not we were killing a mosquito with an ak47. I think this is incredible overreach. Do we really need to undo this? Do we need to undo this when we don't know what it means? Or do we need to have a group of people who are relatively balanced, sit down and say let's look at the actual projects. What is the problem? Is it a problem that 2008 happened and we've got economic crisis issues? Is the problem that we've got

-- what is the problem even? And then let's figure out how to tweak all of this so we solve this problem. The last thing I will say

-- the other reason I miss kirk watson is he wasn't afraid of a lawsuit. He would do everything he possibly could to head it off at the pass. Buzz buzz. But. [Buzzer alarming] but at the end of the day, if he had to sue it, he would sue it. During these three years we did everything we possibly could to negotiate things out and we got pretty far. That's what we learned. Work on it. Figure it out. Don't let other people define austin. We should be defining austin and we should do it with facts. Thank you. [Applause].

>> Cole: Okay. Robin

-- next we have chris campbell. Chris, are you here? Robert singleton. There you are, robert.

>> Well, I had an opening line I wanted to use but with the mayor off the dais, I am going to do click clint eastwood in the empty chair. Mayor, in accordance with your wishes on a

-- wishes on a previous item, I won't talk about anything of substance in this speech. However, I will do everything to make my three minutes seem like 5 hours of public testimony.

[20:09:51]

[Laughter] this evening one of the speakers talked about austin being law abiding city. Great, I wish those speakers were around when the council violated city charter by refusing to schedule sos initiative for a timely vote instead during the election and spurring a flood of applications that were then grandfathered from the sos ordinance. So. [Laughter] we

-- we haven't always been a law abiding city. Let me put this as politely as I possibly can. Greg abbot has some unusual opinions. And they tend to be a wee bit, oh, partisan. You may remember that

-- didn't he say that voter id laws didn't hit the minorities, the poor, and all of our grandfathers. There is that word again. It has been like old times down here today. A lot of my dear friends in the development community, i have run out into the lobby and they keep telling me the same thing. Why are you guys so upset about this? It is no big thing. I just say, great, if it is no big thing, let's call it off and all go home. We can get home in time for the daily show

-- no, it is too late for that. I have been at this long enough to know a talking point when I hear one several times, but in closing I want to talk about a moment of profiles and courage that occurred at council once. Once of the most amazing things I ever saw in a council meeting was in the '90s when the sos had setback in court, council was debating whether or not to spend more money to defend the sos in court. After the proverbial five hours of public system, gus garcia made a speech when he said, I had no intention of voting for this item, but i have listened to you guys and I have heard you, and i am going to vote for this money to defend the ordinance, and it was one of the most yous things

-- courageous things I ever seen tonight. I want you to honor the spirit of gus garcia and do the sensible thing. You know what the citizens of austin want. You know what they want by a 2/34 majority. They want to maintain the sos ordince and all the water quality ordinances that have come since then. So I think it's pretty clear what the citizens want you to do and since I have a couple of seconds left, i will join in the

-- in the bandwagon and quote yogi bear to, in theory there is no difference between theory and practice. In practice, there is.

[20:12:25]

[Laughter]

>> Cole: Thank you, robert. [Applause]. Next is jeans mather but you doe flatted your time didn't you? Jeremy martin? Not here. Jason meeker? Not here. There you are. I thought you were over there. Okay.

>> How much time do I have, mayor pro tem?

>> Three minutes.

>> I thought I had donated time.

>> It is not showing up on my screen.

>> Carol lee.

>> Carol, you donated. Then y have 6 minutes.

>> Thank you.

>> Mr. Mayor, even though he is not here, mayor pro tem, council members, let me try a different tactic. I have great sympathy and empathy for you. I take my responsibilities as a commissioner on the zoning and planning commission very seriously. I know you take your positions very seriously. I know your jobs are very hard and I have sat up there very tired and very hungry. I am tired and hungry right now, so when I have a zap meeting I have the background the city staff gives me, the research and what little commonsense i have to make fair decisions that come before me. This topic didn't come before zap. It should have and my fellow commissioners, most of them, if not all agree we deserve explanation on that, a hearing, briefing, chance to weigh in and maybe we can still have a chance on that. But my point is you should be greatly concern that the planning commission made their decision last week without all of the

available background in front of them. I have been told by dennett scmmitty that they did no tom nuckols opinion in 2012 and didn't have gowrnsees guernsey from 2012. You have seen these things now. They didn't have those things and all of those opinions declared we have been operating perfectly in compliance with the law and in their opinions

-- and we know those people. Those people have the exact weight as the attorney general's opinion and with respect, haste makes waste and the planning commission disserved better packet of background facts and robin's point, you deserve facts, too, so all sides are fairly represented. Austin, if it had not been in compliance with state law, if there had been any wiggle room, I would like to think and I think my good friend richard subtle would have found it a long time ago and I say that with tremendous respect because he takes it seriously, too, and so the planning commission took this up and gave you a vote without the important evidence tonight. Earlier today you upheld a decision, item 69, you took it up and voted unanimously because you had everything we had, you had the evidence, background from city staff. We had pictures of the beaver dam? Did you have those pictures? Well, the planning commission may have made the decision on the case tonight but it is hard to see how when they didn't have it all before them so we have a rough road here. Let's straighten it out and do this and get back on track. I am a positive person so let's do this. Not be intimidated tonight by bullies and threats. Let's not hear from people on different side and developers who are angry and environmentalists who are deservedly angry, state representatives who seem to not have any good ideas about their own cities but only bad ideas for our city, let's not listen to these lawyers debating the law which is always to me surprisingly elastic in its servitude, and it's not even listen to zombie rhetoric. Let's give this a close look and do a task force and do it with a time certainty how it will affect our parks, neighborhood, springs, developments, homes and affordable and barely affordable homes today and tomorrow. I am sure my things at reca think I am a creative writer with things I have been writing lately. The ag's opinion seems flawed. Why should it guide us? Here we are, we are having a nice flight, mr. Mayor and then suddenly bad weather, instrumental failure, no working lavatories and we have different opinions of traffic controllers, who do we trust, the fog thickening, where do we go, is the landing gear properly ensured, is the engine on fire, that is an emergency. But we don't have to do anything risky tonight, do we? Let's use our time that we can give ourselves to do the serious, responsible thing. Let's get through this turbulence tonight and fly in a good direction with good tail winds and land this safely. Let's make that decision and we will all be on board with you.

[20:17:29]

[Applause].

>> Mayor leffingwell: I don't think even hollywood could cook up an aviation story like that.

[Laughter] steven beers. You have 3 minutes.

>> Thank you.

>> A newspaper, quote from [indiscernible] the real estate industry really ot function with the city moving under our feet at all times. We really have to have some certainty, and we have heard a lot about projects being filed under the rules in effect at the time, but the rules since 1997 involve a time limit onh the applications, so what

-- and even chapter 245 references the ability of cities to enforce a limit, and the reason we adopted a limit way back when is because other cities and the state had a time limit. But even so, the idea of rules in effect at the time you started, it sounds fair. Who cares. When I started driving, you could drink a beer behind the wheel, you didn't have to wear a seat belt. I am really

dating myself here. We were pretty lenient on a couple of things. We were stricter on other things. You couldn't turn right turn on red and limited to 55 miles an hour. But I think with that everyday example we can see that it is reasonable to make changes in law and put everyone under the new same rules at the same time. Without any grace periods or hardship exceptions. Now, the way 245 works is it says here, notwithstanding any provision in this chapter to the contrary, a permit holder may take advantage of changes to rules and regulations that enhance or protect the project. In other words, you can cherry pick it. If I want to drink a beer behind the wheel and not have a seat belt, I can stick to it. But if they change the limit to 75 and do a right turn

-- allow a right turn on red, i can take advantage of that, too. So obviously this position is not fair or even hinted

-- not even workable. Imagine trying to pull everyone over, oh, when did you start dring, when did you is that right driving? It is a nightmare. I think if we truly have been out of compliance for 14 years and you agree with that, you may inadvertently cause classes of action, like, this which was file bid bill workman who I think is from austin and revises 245, saying a subdivision is waived with regard to an action under this chapter.

[20:20:58]

[Buzzer alarming] basically it says if you are caught with this change, like you went ahead and built a home, a mcmansion

--

>> mayor leffingwell: And that was your time.

>> Okay. Be clear what you are passing before y pass it.

>> Mayor leffingwell: Those are all of the speakers that I have signed up that want to speak.

[Applause].

>> Mayor leffingwell: So i will entertain a motion on this item.

>> Cole: Mayor.

>> Mayor leffingwell: Mayor pro tem.

>> Cole: I don't think we had a motion to go past 10:00 o'clock.

>> Mayor leffingwell: Are you making that motion?

>> Cole: I am making that motion now.

>> Mayor leffingwell: I will second. All those in favor, say "aye." Aye. Opposed say no. We are extended past 10:00 o'clock. Council member riley.

>> Riley: Just have a few questions for staff. First I guess I would like to ask brent lloyd about a couple of things and you have done some expert work on this issue that has been cited by both sides tonight and a few speakers have referred to something that you wrote in a brief earlier, and I just want to ask you to speak to it, because it seems like it's important that we have a grasp of it. When you were filed

-- in letter brief

-- before the attorney general issued his opinion, there is a paragraph where you argued that the opinion request appeared to presume that the project remained forever grandfathered unless it qualifies as a dormant project. Were this true then the authority of city and counties without experts would not have lining in effect and the next one says projects will remain vested forever, without the proper steps necessary to keep permits from expiring. Can you help us understand how

--

-- what we should be

-- what we should think of that language now, and what do we do about that argument now? Do you still stand by that argument?

[20:23:19]

>> Certainly I will, with the assistance from the attorney. The letter being quoted was definitely written in our capacity as advocates and we consistently in a variety of forms and proceeds will defend the city's actions and put the best possible case forward that we can and that letter is definitely an example of that. However, lawyers wear different hats, at least that's a charitable way to put it and I am sticking to that story, and we have to be advisors, too, and as advisors, we have to step back and take a practical strew and look at

-- view and look at the totality of things. The attorney general's opinion perhaps didn't go as far as it could have in terms of declaring, identifying and opining on issues on our ordinances so perhaps the cautionary language in that letter was, to some degree, instructive, but if I can I want to talk briefly with regard to the issues that have been raised with regard to project duration and with regard to what it is and what it is not and I think it is in regard to your questions regarding that passage. There are a few concepts that any system of grandfathering sort of presents. One of them is the project complete? Did the developer go out and build some stuff, essentially do the deed, finish the job? If you have a building permit or a site plan, it is very clear what that project is, subdivision gets a little more amorphous. That's one concept. The other concept, how does the project change? Is the developer doing something different than what the developer said they were going to do? Again with a building permit or site plan, it's clear. It shows buildings and structures. Subdivision, it is a little more amorphous. The other issue, though, is how long does the developer have to finish the project. And project duration is the city of Austin's means of addressing that core issue, that grandfathering cases present. Project dormancy is the state law tool for addressing that issue. The crux of this matter, which has been well summarized is whether or not the city project duration ordinance is out of step with state law, and our advice has been that the ordinance before you would bring the city system more in line with state law and it certainly represents the safest course. We are prepared to do whatever the city council does and to back you up and support you as we have throughout this process. I want to say a few words about what kind of project duration wouldn't affect and what it would. It affects you know, how long a developer has to build a project, and under project duration, it's

-- you look at the calendar. It is 3 or 5 years to pull all of the permits that are shown in a site plan. If you don't do that, if you don't keep those permits active, then your project is no longer grandfathered. The state law takes more of what I would characterize as a performance-based standard. It looks on whether or not there actually has been progress made towards completion. Repealing project duration wouldn't repeal any of the ordinances that have been cited. It wouldn't repeal heritage trees. It wouldn't repeal McMansion. There are cases where, if a developer is subject to project duration, if they got there

-- if they got their projects first permit in the series permitted after '97, where there could be cases where they get more time to complete their projects but it wouldn't repeal any of the cherished ordinances that have been mentioned. I think it's also been alluded to that if a project was permitted prior to the save our springs ordinance or prior to some of those critical ordinances that were adopted in the '90s, it wouldn't be subject to project duration, anyway, because it would be grandfathered out of duration, which out of '97. A couple of other points and I am available to answer any questions as well. There has been a lot covered here and we are prepared to cover

pretty much every nuance that has been addressed today but one other issue is that project duration doesn't apply to projects that only require a building permit, so when we are talking about preens projects in mcmansion, projects that are

-- single family residential that doesn't require a site plan and not part of series of permits, not seeking to grandfather back to a plat. A lot of lots in urban area have lost that, they have lost their ability to come back and grandfather to a plot. They are coming back for a building permit. Project duration doesn't apply to that context anyway. So the project duration ordinance, I think, would have minimal, if any, impact with regard to some of the construction standard design standard mcmansion type issues that are so important in the context of single family development.

[20:28:44]

>> Riley: If I can follow up on one point. I think that is significant. You are saying for someone who is undertaking a building project in brentwood or any other central city neighborhood, when they go to

-- when they get started on that project, they are still going to have to comply

-- even if the project duration is repealed, a they still have to comply with the mcmansion ordinance and the heritage trees ordinance, because of the location of the central city and the area that was planted long ago? That's correct.

>> Riley: So all of those are still in plan?

>> And I

-- I have made a few points that I think we are kind of responsible to the concerns

-- responsive to the concerns that I heard and in the testimony but i am definitely able to answer any legal questions that the council has regarding any of the various issues that have been put forward.

>> Riley: I do ask one follow-up question about the idea that we would have these zombie projects living forever, and ms. Ross raised with respect to the projects that, that once we open the window, we will have projects come in with no expiration date and they can live forever. When I look at the language that's in proposed

-- in the proposed ordce before us, I see the key line that is intended to track section 245.005b, it says project come plains when progress of completion has been done five years of thi date and first application of the date of the project was submitted. Does that create an expiration date that would be

-- well, it seems like the problems with an expiration date that is based on that is that if someone goes and makes some progress within the first five years, then it is unclear what the expiration date would be, and I think that's

-- that's part of the concern, that a project could, then, just live forever. Is that

-- do you foresee any weird spread problem of

-- widespread problem of projects literally living forever, as ms. Ross described?

[20:31:02]

>> Well, if the developer makes progress towards completion under

-- if this ordinance were to pass, they would have the ability to move forward and to finish their project. Once a project is completed, if rules have changed, it's a legal noncomplying or nonconforming use but any further redevelopment of the property would be subject to current code. I think it is fair to say and needs to be said that

-- I mentioned

-- dormancy is the state law tool for dealing with sort of the time axiom of how long you have to build your project in grandfathering, and project duration is the city's way of addressing the time issue. I think it's fair to say that project duration is a stronger tool than what the state law provides. That's a fair statement, but the state law does provide a way of addressing that.

Dormancy isn't just an entirely toothless mechanism that's available. And, again, these seem like simple concepts you deal day in, day without with applications and it can be tricky and it takes a lot of creative by the core concept is this really the project the developer grandfathered for and is this project done, is it complete? Those are concept that is the 245 too many and the planning director under the city has used successfully to curb grandfathering and that's terms state law, the city ordinance before you none of that effects and will remain available.

>> And the wording does seem awkward and to be clear, if someone goes and makes progress, said, let's say suppose someone makes progress for two years after the first permit application is filed, so they have made that progress then after that, the economy crashes and say six years pass without anything happening. Does that project expire?

[20:33:07]

>> We have to look at those situations on a case by case basis and when we have

-- when we have

-- the tools we have available to us, we have things as creatively as we can. If the focus shifts from project duration to project dormancy, as this ordinance would

-- would do, will be creative in applying the requirements, as creative as we can be. something that I think has come out in some discussions is the question of timing and sort of retroactivity of various provisions or not and i think there has been some questions raised, which I am fully prepared to answer here or

-- or whatever the council

-- if the council chooses to go into closed session with regard to sort of the retroactive issue. The language that the attorney general says our ordinance conflicts with is in 245.005b, and that provision was added to the state legislation in 2005. It wasn't there in '99 when 245 was readopted after the two-year hiccup period that people have spoken about tonight. And certainly if council wants to make it clear, this language in the ordinance that we are preparing that says your project expires if you don't make progress within five years of the date of the first permit, if you want to make clear that you are simply

-- you are not applying that in any manner greater than state law requires you to, you can reference state law there. You can say a project that is subject to section 245.005b of the local government code expires if no progress has been made within five years of the first permit, what that would do is allow the city to look a little bit more flexibly at cases that predate 2005. It is, again, that language that was added in 2005 that is what the attorney general focused on.

[20:35:21]

>> Riley: I appreciate that suggestion and I just have one more question, and that is

-- that relates to part 3 of the proposed ordinance before us, and that

-- that part says that the city council initiates amendments to title 25 of the city code to clarify and improve the review procedures and criteria for application of certain vested rights in chapter 245 of the local government code. In preparing proposed ordinance for the city council, the city manager should consider the ordinances and procedures used by other cities. Can you

-- can you
-- can either you or greg give us a sense what you anticipate that process looking like and when you might see some
-- some further recommendations for further code provisions? It would be our top priority and if council puts a date in there, we would need it. I have looked and I know some staff have as well, it codes from several other cities
-- at codes from several other cities and the city code, except in a hidden passage of the building criteria manual which is a technical code doesn't really set forth anything about a 245 process, and so what this would do, and we have been recommended before, to look at
-- sort of a little more formalized, codified, grandfathering review process and this would give staff the direction to go forth and bring back something to council that would include clear requirements and I think some of it would potentially be a tool to sort of strengthen some of the way that we apply dormancy, the tool under state law that this dormant would shift us towards, fill in some of the gaps of that and allow us to look closely at one of these are doing. I want to show you this in some of the cities, in the galleria ordinance, we have not found any city that has anything like project duration. I think related to that, there is a point to be made. I think prior to 2005, the legislature amended the law to sort of distinguish permits and projects and to say, notwithstanding anything else, a project does not expire, unless you don't make progress within five years of the first permit. I think prior to that language, it was just intuitive, commonsense, that your expiration dates were your permit expiration dates and the 2 were one in the same and so I think a lot of cities prior to the adoption, sort of bolstering of the dormant's project law in 2005 were treating permit expirations dates and project expiration dates as essentially coextensive. 2005, that changed when the legislature added the language that I just mentioned.
[20:38:06]

>> Riley: Okay. Just one last follow-up. And that is
-- you mentioned the gaps we would seek to fill through further revisions of chapter 245. Is there a risk that by repealing project duration now, before the gaps are filled, that we would open a window that would
-- that would lead to problems that might be irreversible? That things could happen between
-- before the time that we get those
-- those permits in place, that we would regret later?
>> I am not in agreement with some of the statements that have been made with regard to sort of the sense that we risk
-- there is a risk of completely undoing everything is project duration is taken off the books and somehow that ordinance locks in something. I think that certainly care needs to be taken in addressing these issues, and if council were to pass this ordinance and then follow up with a later ordinance, projects that were permitted within a time frame between a few months, whatever it was, would not be subject to those ordinances. There is a lot of I think staff would look at the ordinance is ways for the developer to present evidence of what progress has been made, you know, sort of dealing with sector of cover are copy of home depot receipts and require some amount of evidence and potentially filling in the gaps as to what in terms of progress is but even before that kind of ordinance would come back to council, i think staff is prepared to be creative on a case by case basis in how they would apply the criteria even without an ordinance. 245 leads a lot of questions unanswered, a lot of them and the planning director under the city manager have, if you look at the rates of approval or denial of grandfathering which is some of

the numbers submitted are pretty aggressive in doing what we can in terms of compliance with current code and I think that philosophy and that current approach and that commitment to creative application to the rules available to us would continue.

[20:40:35]

>> Riley: Thanks, brent.

>> Mayor leffingwell: Council member spelman .

>> Spelman: I REALLY Appreciate it, brent. If you don't mind, I have a couple of questions to ask you. I appreciate

-- I always appreciate our legal's staff willingness to talk to us in an open place where everybody else can eavesdrop on the conversation. I am very happy you are willing to tell us all of this stuff in an open record. I think one of the primary concerns that

-- that some of the people in this room have is that you are not saying definitively and I understand why you are not saying this definitively, that project duration is wrong, project dormancy is right and we have to absolutely get rid of project duration. You are saying, I think quite appropriately, that the safest course is to eliminate duration and rely on dormancy, but, of course, we don't have to take the safest course. Is that a fair statement of what you said?

>> Absolutely.

>> Spelman: Okay. Given

-- I think everybody understands that it is certainly safer to go with state law than it is to go off on our own and do something a little bit different. A lot of people do not understand

-- I am one of them

-- I would say I do not understand all of the nuances between the differences of duration and dormancy, other than dormancy is an easier standard for me, a longer standard and a 3 year standard or five year standard, you have to make proforward progress and exactly what that means to me seem amorphous, is there something more with project dormancy that we can really talk about here? Is this something that we can put on the back of a napkin.

[20:42:35]

>> Project dormancy, assuming you come in with application, and it is important to note that projects don't exist without an application and when we talk about we don't know, and we look at these suggestions, we have to look at applications but assuming a developer comes with an application and it meets the other critical tests that i have mentioned, it is the same grant for which grandfathering rights were established, the developer hasn't completed it, assuming they meet those tests, the dormancy would mean that within five years, if they make progress towards completion, they have locked in their rights to complete that project. And so with a site plan project that shows actual buildings, there is not really a lot of ambiguity of what the project is in those cases. You have a physical drawing of buildings and vertical construction. The developer would have the ability if they made progress towards completion to complete that project so there definitely would be a potential for some of those projects to remain unfinished longer. A developer, as I said would have

-- there is no doubt about it, would have more time to complete some of those projects.

>> Spelman: Here is exactly the concern

-- there is several napkins, by the way, but they were small napkins. I think the concern a lot of people have is there are projects which we believe are extinct, for which do fit the characteristics of project dormancy within five years of their proposal or the first application coming in, forward

progress was made, but not sufficient for progress being made for our considering those projects to continue to be live projects after the five year period. They didn't get all of the permits in the site plan, for example. From my point, they are extinct and now somebody who owns the land could say wait a minute, under dormancy, i am still alive and those projects come back. Is it accurate to say that some projects are going to

-- somebody might come out and do that?

[20:44:40]

>> I think for projects that were subject to project duration that were permitted after 1997, which is when duration was adopted, the loss of the duration tool would potentially give developer more time. But in cases where we are talking about projects that were begun prior to sos or in some of the decades ago, well, they are not subject to project duration, anyway, so when the city is trying to grapple with those projects, we have to rely on other tools to begin with and so the loss of 3r07b8g9 project duration is not going to affect the city's position one way or the other with some of the old projects, that when I hear zombie, i think that's what you are referring to.

>> Well, there is old zombies and the new old zombies, the george romero zombies are dead and not coming back because those are cases from pre1997. Those are cases from

-- I am tying myself in knots by trying to be too damn cute, my apologies. The old projects pre'97 duration never applied to them, so it is still alive but not depending on other characteristics. Post '97, we have been applying duration to them and all of those, of course, have going got to be

-- have got to be in come plain with sos by definition if they are coming in by 1997. What you are saying this duration-dormancy choice has nothing to do whatsoever with sos. Sos applies or doesn't apply, whatever we choose to do here?

>> I think that's a fair atement.

>> Spelman: Okay. So we don't have to worry about that but we may have to worry about some other classes of development restrictions because there are some projects which we consider dead on duration ounds which could be brought back to life on dormancy grounds, some action, not all permits but something happened in the first five years after the first permit was obtained. Is that accurate?

[20:46:51]

>> It's a fair statement.

>> Spelman: So the safest thing to do is accept dormancy and not duration, but if we do that, there will be some number of cases which are currently dormant, static, not coming back, which would be brought back to life. There are some zombies out there?

>> I think that's fair. I think the developers

-- there are some projects which grandfathering has already been established. This an wouldn't create new grandfathering rights but it would give developers in certain cases additional time. The projects that have been denied project duration

-- on project duration grounds in the past, in the many, not all cases, the developer has come in and begun to do something else and so they sort of switched tracks and so there is a lot of factors that go into this scenario of zombie projects that i think would mitigate some of the worst case scenarios that have been sketched.

>> Spelman: Visa very rough proposal for you and I want to know what you think about it.

There is a lot of concern here as to what those zombie projects look like, what ordinances might

not apply to them, how many there are, how big they are and so on. Obviously

-- it is obvious to me that it would be very difficult for you or for greg's staff or for anybody in city government to do anything comprehensive, but is there a way of taking a sample of projectings that we consider

-- of projects that we consider to be dead on duration grounds, identify what percentage of them might be considered to be live on dormancy grounds, so identify a class of zombies, and then identify what restrictions these projects would

-- could not be bound to as a result of their zombie status? Is that something with which we could do? I am not talking about a large sample necessarily, but just enough to get a sense for what is going on?

[20:48:56]

>> We will do our best to do whatever the council asks of us for sure. I think that getting your minds around whether project is changed, project is complete, going back and looking at all of the files, it

-- I think it's going to be really difficult to get the precise level of certainty that council wants. I would offer, just as someone that works with the planning department on a lot of cases involving grandfathering that

-- well, project duration

-- while project duration is a significant tool, it is not insignificant tool. It is not the only tool and dormancy is not a toothless tool and so when that all comes out in the mix, should council choose to follow staff's recommendation, we still have a lot of tools available to us.

>> Spelman: I understand that. And it's my suspicion that if you did the hypothetical study that I am trying to outline on the fly, that we'd find that whatever development restrictions were avoided by passing dormancy, even if you failed duration, are much more minor than what people are envisioning. On the other hand, I don't know that that's true and i won't know if that's true or not until we put it to the test. And I guess the question i am asking you is: Is there anything that we can do

-- i am going to gulp and you are going to look at me like i am out of my mind

-- but within a 7-day period, just to get a feel for this? I am not talking about 500 cases. I am not even sure I am talking about 20 cases. But is there any way we can get a feel of what is going on inside a week? Mr. Guernsey?

>> Let me tell you why it's a week. If we can't do this next week, then the next logical time to put this off is april 11th, because i suspect council member tovo will not allow me to go with her to china, which at this point I desperately would like to do. That won't happen. We won't be able to consider this issue until the 11th.

[20:51:12]

>> Mayor leffingwell: You are being cute again. Just kidding. I said you are being cute again.

>> Spelman: I appreciate that. [Laughter]

>> Spelman: That means we are talking about april 25th, and the next time we can reasonably make a decision on this, if it's not next week, is going to be a month from now and it seems to me we aren't going to get so much information that a delay of a month is going to be necessary. Can we get anything inside a month?

>> Guernsey: Certainly 20 is doable. I think 500 is difficult.

>> Spelman: I am not asking 500.

>> Guernsey: I think we can do 20, 40 cases. We can go back and if you are looking for perhaps ordinances that will probably be from '97 to date, we could probably manage to get you something between 20 and 40.

>> Spelman: Okay, so this is 20 and 40 cases which we are
-- which we currently consider to be dormant. Dormant.

>> Project duration.

>> Spelman: And follow the project duration so they are no longer live projects but they aren't dormant projects because some action was taken within five years of the first permit, so they could come back to belief?

>> Guernsey: Right. We would have to find those projects and actually go back and research each one individually, basically do a redetermination of them in order to create that.

>> You can do 20 or 40 projects within

--

>> Guernsey: Somewhere between 20 and 40, I am pretty confident we could do.

>> Spelman: I would very much like to see that and I think that would give everybody a sense for what really is at risk here and what really is not at risk here. I have heard a lot of people in the development community nearly in a panic that this won't pass. I have heard a lot of people in the environmental community in a panic that this will pass. It seems to me there is a real

-- seems to me when we look at 20 or 40 cases we scratch our heads and say is that really what we are talking about? Maybe this isn't such a big deal after all. But I very much would like to see this happen.

[20:53:18]

>> Mayor Leffingwell: Okay. Just a couple of quick things to say and I think others have something to say, too, but first of all I want to bring up a point that the city always

-- correct me if I am wrong

-- the city always has the right to enforce the laws that relate to the health and safety, whether or not they are grandfathering.

>> Guernsey: That's correct. Mayor, and 244

--

>> Mayor Leffingwell: There is some festering zombie out there that is a hazard

-- agree it is a health hazard or physical hazard of some kind, we have the right to fix that. The city has the right to fix that. So given that, I don't

-- I don't think there is really going to be a serious problem with this, but I want to go to a higher level and recall what Craig Unex said when he was up there and I remember what it was because he impressed me. He said democracy works when we voluntarily comply with the law. So what is the law? That's what we have been talking about both sides here, for 104 folks actually spoke here tonight for several hours. There are lawyers on the side of those who say that we shouldn't pass this, and there are lawyers who have a lot of experience in land development code issues but they are advocates. There are our lawyers who are actually

-- and we talked a lot about the difference between advice, opinions, attorney-client basis and advocacy, so our lawyers with attorney-client relationship have advised us that this, to the best of their knowledge, is

-- our ordinance is not in compliance with the state law. It is against the law. Other side we had advocates on the other side who said it is against the law and those advocates included attorney general, state of Texas, most of his office, solicitor general who he also cited, and a former

supreme court justice of the state of texas, those are the lawyers who said these two laws can't stand side by side. A texas supreme court justice said that. So for me, I think the case is pretty clear, that our law, our project duration ordinance, it does not stand with state law and we should do something about it. The recommendation before us today is to repeal project duration and do a couple of things and come back with another ordinance that is similar as we can possibly make it but it does comply with state law. Council member morrison.

[20:56:30]

>> Morrison: I guess first to the point of getting some samples. Recently we were working on a case with a managed growth agreement recently that was a project that actually came into this city under annexation, and had 65% or 70% impervious cover when it was under sos and so can you talk a little bit about that? Because it wasn't a new project. It was an '87 project. It was a new project

-- i guess it was annexed into the city in '97. Is that why it was subject to the project duration?

>> Guernsey: I think the issue

-- yes, it was a side point that was underway, project duration, and in its life, there was a subdivision plot that basically stated that this was not

--

>> Morrison: Okay.

>> Guernsey: And so that's why it is a little different.

>> Morrison: I guess my point is that there are se projects that are significantly out of compliance with our current code, including significantly out of compliance with sos that could live on, were it not for project duration. And so I want to make that clear, even though it is clear that this wouldn't repeal sos, there are projects that are not subject

-- that are not compliant with sos that could live on in the

-- for eternity, if we repeal project duration.

>> I would just like to briefly address the issue since it does relate to an issue of law that I think has come up a couple o times this evening.

>> Morrison: Great.

>> There is language in chapter 245 that focuses on plot notes that are required by a city, and in the past, the city of austin have had a practice of notating a of code requirements on its plot. In response to lessons learned and language added to 245 that sort of gives those

-- the developer the right to rely on those plot notes

-- and I think some of that language was read today by one of our citizen testifiers.

[20:58:38]

>> Morrison: Right.

>> The city has steered away from that but we have cases where the city, with the intention of providing information to people, put those code requirements on a plat and that's the basis for not traditional grandfathering but a basis fors asserting rights which is completely independent of the mga issue or project duration and so the project that now has been mentioned a couple of times, its entitlements to go back that far were not in any way related to project duration or anything like that. It was related to concerns about that plot.

>> Morrison: I understand, but the fact of the matter is, project duration would have ended the life that

--

>> wouldn't have taken the plat note off.

>> Morrison: So it could always have applied for another site plan?

>> Plot notes are tricky and I can't speak exhaustively for the issues that they exist for staff but when we have plot notes that appear

-- and appear in all different forms and wording

-- that lock in code requirements, it is something we are going to have to deal with, as long as that plot is there.

>> Morrison: Okay. In any case, greg, I guess what I understand, if you are going to do a 7-day sampling or maybe only a 5-day, because you expect you to be working saturday and sunday to collect these samples

-- I hope you are not. It is important to get the ones that are significant

-- that might have significantly out of compliant

-- be out of compliance with current code. And so I don't know how you can do that. I don't know if some people might know some off the top of their heads but I think that's important. And I believe I just heard one of my colleagues say that we were advised that by our attorneys that our ordinance is against the law and I just want to say that's not what I heard. I heard something significantly different and that was, that the safe path is to adopt the proposed ordinance and that it is essentially defensible to

-- and they would represent us if we were to defend our ordinance, and for me, there are so many questions. The only thing that is black and white here for me is that this is not a black and white legal issue. I certainly don't feel prepared to make decisions, you know, now, at 11:00 o'clock at night. In particular because, first of all, I want to make sure we stand up for our code if we have a chance for

-- it does offer some protection that speaks to the values of this community. I want to stand up for that code and I want to make sure we maintain that code if it's at all possible.

[21:01:21]

[Applause]. The second thing that's really interesting in this case is that, let's say that it is determined that this code that we have is entirely appropriate. If we

-- if we repeal it now and try to reinstate it, because of the language of the standards of 245, we couldn't reinstate it because it would now be illegal. It was only legal to do it earlier. So it would be a grave misstep if we have a chance of maintaining it to repeal it right now. And I just feel that there are so many

-- I have a lot of respect for all of the attorneys that we have heard from here, but i, for one, am not willing to make a judgment and i, for one, would really like to be able to hear

-- to be able to sit down and hear from, you know

-- get the attorneys to talk directly to each other that have differing opinions or get attorneys that have a lot of experience and background that maybe come to this with freshness and get them to talk to each other and come to us with a range of opinions of where things are, but the back and forth, where we are in the middle of having to do the legal questioning on such a delicate and such an important issue is

-- is just really difficult, i think, for us to actually be in a position to be able to take

-- take a step. One of the things that i heard was that

-- learned in all of this

-- maybe I was wrong but I understand this happened, but that is in addition to the famous peace talks that were going on, that there were also a group of attorneys, that back in the '90s came

together with the city attorney and really hashed through the really delicate -- the really delicate 245 issues that were in front of them and i understand and have talked to a couple of them, understand that some of those folks might be willing to participate in a working group to sort of hash through some of these things again and I am not sure exactly what would look like, but, i, for one, would feel a lot more comfortable if we could get settled on -- on these legal issues.

[21:04:06]

[Applause].

>> Mayor leffingwell: So is it appropriate to ask our city staff, city attorney what their actual position is on this issue? Your advice is to pass, rescind the project duration ordinance and to proceed with the process that would result in something else as a subsidy that is more compliant with state law?

>> That's correct.

>> Mayor leffingwell: All right.

>> Cole: Mayor.

>> Mayor leffingwell: Mayor pro tem.

>> Cole: The most significant war that has stuck with me tonight is the word "war." I remember the war, i remember the wars. And I really hate to be in a position of continuing the wars or thinking if we don't move in one way or the other in that we really are not making any progress on the environmental development wars, as they have been put, at some time, I appreciate council member spelman's account of limited amount of information so both sides of the war will know the breadth of what we are actually dealing with and hopefully that information will show that it is not the end of our values and that we can come to a decision that will respect both of our values in both communities. So I want to say that me, personally, it's a very difficult decision because i am a lawyer and I can appreciate both skids of the

-- both sides of the argument and I don't fear the legislature. I don't fear a lawsuit. But at the same time, i don't want to invite wrath of the legislature or invite a lawsuit because we are here to represent the entire city, not

-- and to do that in a prudent fashion. So I will be supporting a motion to postpone for one week to get that additional information that council member spelman has requested.

[21:06:12]

>> Mayor leffingwell: Is that a motion?

>> Cole: That is a motion.

>> Mayor leffingwell: Motion by mayor pro tem to postpone this item for one week. Is there a second to that? Council member spelman seconds. I would

-- obviously I am not going to support this motion but I would suggest that if we do, and we have heard extensive public comment tonight, that we consider the public comment period closed

-- period closed and we give that direction to our staff to post it so that we can have this extensive discussion among ourselves and not take public comment when it comes back.

>> Cole: I agree to take that as a friendly amendment, mayor.

>> Mayor leffingwell: Okay. Council member, spelman, do you likewise take that? [One moment, please, for change in captioners] >>... While you're coming up, I want to thank in i colleague, councilmember spelman, for your consideration of the commitment that I made on THE 11th. That's very collegial of you and I really appreciate it. Mr. Lloyd, a couple of questions

about the ordinance, duration ordinance, can you explain why there's a proposed deletion of part c if all portions of the project expired.

[21:08:14]

>> That is the crux of project duration. That is a provision

-- so what this ordinance does, the part that you are reading about, is that it sort of brings, we self
--project dormancy, which is a tool that's authorized in state law is not self executing. Cities have to adopt it in their own codes. The provision that you are quoting from is our project dormancy provision. What this ordinance would do is strengthen it to give us a little bit more leverage for those projects that have come in after 2004. The original version of it only addressed old projects for which there is no expiration date, it was the original version of the law. But then the other thing it would do is strike that language that you are referring to that says, you quoted it correctly, that if all

-- if all permits for a project expire, the project expires and what that really is, is that is something that is sort of reflective of

-- of other language that is in project duration. And it gets back to that core issue of the state law dormancy doesn't say that if you let a permit expire you lose all of your vested rights. It focuses the inquiry not on simply a matter of permit expiration but rather on whether you have made progress towards completion. So it would bring our project dormancy provision into alignment with state law.

>> Tovo: Well, if I'm riding the project dormancy provisions properly, c 2 merely asks or suggests that you can make progress, you can demonstrate progress toward completion of a project by including a good-faith attempt to file with a regulatory agency and an application for a permit necessary to begin. Or continue towards completion of the project. But just making good faith efforts to file a permit to begin a project will be enough to

-- will be enough to indicate progress, which is very, very minimal amount of activity.

[21:10:21]

>> If

--

>> not even actually saying that you have to have a permit. You just have to make a good faith effort to file one.

>> One thing that needs to be said is progress that occurs after you submit your first permit. So the permit that the projects is 245 talks about the me

-- often one that require a series of permits. You lock in your grandfathering rights towards that project. Project completion can be taken in many forms. Following up with a subsequent permit to move the project forward would be an example of that. Again, I want to emphasize that we have to be creative in how we apply the state law. The state law even apart from these dormancy issues is not always a model of clarity for some of these questions. In the event that we shift, if council passes this ordinance and we shift the emphasis on terms of timing of grandfathering, we shift it from duration to dormancy, we will work to be as creative as we can. The egregious examples of, you know, a developer really not doing much at all to move a project forward and relying upon some evidence that they submitted an electrical permit application or something like that, you know, the language about good faith attempt that gives us some room to really look at was this a permit that was really moving that thing forward or not. And those are
-- as we talked about dormancy and looked at it and sort of as a group with

-- with greg's leadership kind of looked at the type(of projects that it would apply to and how we would look at it, you know, that's one of the issues. It has to be a good faith attempt to really move the project forward.

>> Tovo: So I think if i understand what you are saying here tonight and have said at other points, there are ways to strengthen our project dormancy provisions.

[21:12:24]

>> Administratively and through our ordinance, potentially if this ordinance passes we would return

-- if this ordinance passes we would return with an ordinance that would include recommendations in terms of how to formalize that a little bit more.

>> Tovo: I guess i stand

-- I guess that I just want to say that I really believe that we ought to be doing that first before we repeal

-- before we even consider repealing the project duration. It's entirely unclear to me why we wouldn't do our best to make this as strong as we could before contemplation, if that is going to be our only line of defense before repealing the other. So I have a

-- another question about some of the projects that were listed in the response that we got to the q and a process. So if I'm understanding these numbers correctly, this may be a question for either mr. Guernsey or mr. Lloyd. In the last four and a half years, there have been 802 projects that have applied for grandfathering, 535 of them were denied and 411 of those were subject to project duration. There may have been other reasons why they were denied but there were at least 411 of those, more than half were subject to project duration. Is that correct.

>> That's correct. That would be 411 projects may have been initiated after 1997. But they may have been denied on the basis that the project has already been completed. So they may have built something, they want to tear it down, build something new. It may have been a situation where someone had proposed a project, which was not the same project that was initiated. So it would have been a change of project. They wanted to build something residential in their beginning and the application they submitted to me was one that was commercial. Or may actually have been a dormant project. That time had passed that

-- that we had said that the project was actually dormant. That the project duration is probably the easiest tool at my disposal to deny vesting, simply because it's very clear that

-- that if you haven't completed and received all of your permits within that time period dividend nice vesting

-- deny vesting purely on the basis of that. Of all of those tools it's the easiest one to apply but may not have always been the only one that could be for the reason of denial of a project.

[21:15:08]

>> So there may be some of those 411 that wouldn't qualify for grandfathering based on other factors but of those 411, it's possible a good number of them if they were denied on the basis of project duration a good number might be eligible to come back and apply.

>> I guess so.

>> To echo the call that so many people have made, it is very, very difficult to get a sense of the scope and breadth of what we are looking at here. When I look at these numbers 323 projects within the drinking water protection zone requested grandfathering, 106 were denied, excuse me 106 of those were subject to project duration and thus were a lot of them were probably denied

on the basis of

-- let's see, let me get my numbers right. 312 projects requested grandfathering, 209 of them were within the barton springs zone. And about 106 of them were subject to project duration and 56 of them in the barton springs zone were subject to prt duration. So 209 were denied grandfathering in the barton springs zone, 56 of those were denied on the basis of project duration. Potentially there are other factors as you've said that might be a reason, but we might be looking at 56 projects just in the barton springs zone alone who if we repeal project duration can come back and be viable projects again within the drinking water protection zone we might see as many as 106 come back to

-- so i think it is a very real concern what the data that i asked for that I don't think we received in the answer that we got midday is how old

-- you know what are we looking at in terms of acreage, kinds of prongs, when they started, what kind of regulations they would be operating under if project duration is no longer an issue, what kind of ordinance is it going to be operating under? What kind of regulations? So

--

[21:17:19]

>> I think that's what councilmember spelman is actually asking in his request to go look. We would literally have to go back and re-review each individual case that's in the project duration area to see if it was purely project duration only if there were other reasons to deny vesting if that project were denied. So as I said before, the project duration, the easiest tool for me to use, is it within the five year or three year period and if they have not obtained all of tir building permit, i would simply deny vesting. But there may be other reasons that a project may not vest because of a change of project, because it might be dormant, because it may be one that's already built out. And so we would have to look at each one to make sure even if project duration wasn't one in order to determine whether to be grandfathered or not. I would have to do that given only a couple of days my staff wouldn't be able to do that.

>> But we could assume if they were denied on the basis of project duration, a good number of them might come forward and apply for grandfathering again if we repeal this, if we repeal project duration that was the basis on which they were denied, they might come forward and seek grandfathering again at which point the 245 committee would have to evaluate them and see if there are other reasons, right?

>> We would certainly have to re-evaluate. I can't simply say. Some of them may have gone forward and just adapted to current code or asked for variances and just moved on with their project or they may have just sold their project and just moved away and have not done anything. Then we would come back and have to look at those same items again

-- I almost would have to have a live application in front of me to make that determination because as time passes conditions change and those things that may have been asked for the applicant may have just come in and asked for a compliant project and not have tried to come in and grandfathered because they were denied.

[21:19:35]

>> Yeah. It's late and I'm having trouble following your comment about the live application. I had trouble following it in the question and answer. I don't understand what you mean by needing a live application in front of you. I completely understand about the need to go baseball and re-evaluate. I'm with you there. I don't understand what you mean by live application.

>> What I mean is that conditions may have changed since the last determination. That may cause me to say that the project is complete now, either because they built it under the current ordinances, they abandon grandfathered, so they wouldn't have an opportunity to go back because the project may be complete or partially completed under current code or it may be a condition where they may have selected the first permit in the process, they might select another permit in the process or they may actually choose a different project, if it was coming in live today.

>> Tovo: I think

-- if i understand what you are saying you are basically saying the conditions are going to be different for each applicationp may prove a different set of sixes.

>> If I were to

-- set of circumstances.

>> The conditions may have changed from three or four years ago.

>> Tovo: So I guess if you need to make decisions about how to narrow down, I mean, the projects I'm really concerned about are those within the drinking water protection zone. Those within the barton springs zone especially. But not exclusively. I would be very interested in seeing what some of the oldest projects are in terms of what they are claiming their start date was. So if we've got projects that are claiming their start date is, you know, several decades ago, then i think that would

-- those would be the projects that i would really like to know about. But I just

-- [multiple voices]

>> I'll try to get an assortment.

>> I can't underscore enough that we really do need to understand better what the projects that we might see resurfacing. I would certainly support a move to get folks together and really sort through these issues, whether it's a revival of the peace talks that so many have mentioned or a group of some of the attorneys that we see, but i think there are many issues to sort out here and we're a long way from doing so in my opinion. I'm certainly going to support the postponement. [21:21:50]

>> Mayor Leffingwell: Motion on the table to POSTPONE UNTIL MARCH 28th. With

-- with additional direction regarding public comment and additional direction regarding data to come back. All in favor of that motion say aye.

>> Aye.

>> All opposed say no.

>> No.

>> That passes on a vote of 6 to 1 with myself dissenting. So that completes our agenda for tonight. So without objection, we stand adjourned at 11:15 p.M. .