

City Council Work Session Transcripts - 3/26/2013

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>> Mayor Leffingwell: Good morning, are we on here? A quorum is possible so I'll call this austincity council work session to order on tuesday, march 26, 2013 at 9:05 a.M. Meeting in the boards and commissions room, austin city hall, 301 west second street, austin, texas. Directly to the agenda, two preselected items. The first is item number 16, which was pulled for discussion by councilmember tovo. >> So, you know a little bit about the proposal here. But I wonder if we have staff who might provide us with some information beyond the backup information. I guess in particular, some of the questions raised for me by the backup, it talks about some conditions. Basically we're expressing our support for the legislative -- condition on the legislation with some provisions addressing the city's concerns. I wanted more information on what the city's concerns are. That wasn't articulated in the backup, as far as I could tell. >> Sharon smith. Law department. I worked on developing the language in the bill. The parks director needs to be here to answer your questions on how they're anticipating it to work from a programatic perspective. >> Thanks. Do you know what the special concerns are that will be address in the consent agreement? >> The consent agreement will be negotiated out over the next year. The legislation is going to set

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out broad boundaries for that. Some of the things may come up in the process of discussion. But I would say the most recent experience has been an entity where there was an issue about whether they were playing twice for the service. In this case, there are two things that would be different about that, primarily this is going to be an enhancent to an existing park amenity within and adjacent to the proposed district area. And so that is going to be something that is going to be added on to, it's not going to be where someone is playing once on the water rates and taxes on the infrastructure. In this case, the anticipation is that not only will it supplement the city's o&m, it may provide some additional improvements and it will provide additional o&m and the kind of things and mr. Mitchell, the developer, is here if you want to ask more about the vision on that. It should provide extra services such as park rangers, extra parking facilities. Things that would not otherwise be available. And in the parks department staff gets here that can talk to you about how they would envision maintaining the park at mid level o&m as opposed to a talk level o&m. As opposed to the district. The district went way, that will retreat back to what the mid level o&m is. >> Tovo: Thanks for being here. You and I had an opportunity to meet and talk about what you're proposing here. >> As a general statement, if you look at districts in general, mud is twice as high as

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the city. Why would anyone want to be in mud. The toilets are flushing, why is someone saying I'm paying double. Muds can take care of parks and open space. You have wells branch not wanting to go away or tangle wood forest when the city ANNEXED MUD IN THE LATE 1990s, They said can we keep our district to maintain our parks and willing to pay an additional tax. Our experience that homeowners will routinely pay a reasonable amount higher when they

had park facilities that can enhance their lives. The win-win here is because of the financial situation in the parks department and what it has to maintain, that park hadn't started in 15 years. And so maybe by providing an o&m tax, it will benefit our region and the homeowners can pay for that. We're putting it on the line saying we hope people will buy with the additional tax will do this. But it's been our experience that they do that all the time when they see the benefits there. >> I'll look forward to information from our parks staff; but I wondered what you had a sense of what the city's concerns have been as they've been expressed to you? >> I think the city wants to -- it's your parkland. So the city needs to maintain control over that. And from our purposes, we, as the developer, had no interest in the planning, the design, anything. It will be city parkland and i think -- correct me if I'm wrong, sharon, but the city wants to make sure what's built out there is in the best city's interest, if you will, and that will -- as I understand it, that will all be handled in the consent agreement going through and designing the master plan, implementing the master plan so,

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that the city built on the property is what they intended. >> Okay. And you're -- as you said, you're completely comfortable and onboard with the fact that the city will be leading the planning. >> From our understanding, it's a city-controlled board but residents will elect them so that there's a voice in what ice going on. For example, in the past life, i was on 26 hoa boards and we always had a local representation on that board because they knew what was going on. Something bad happening to a particular improvement, is there a certain concern, we could address that because we knew that was going on. Here, that's the structure. >> Tovo: That, too, will be worked out -- >> through the -- >> Tovo: The composition of the city board will be worked out in the consent agreement. Okay. Both parties have to agree to the consent agreement for this to remain -- >> that is correct. >> Going to be the same where we have until september before the following legislative session, before the next legislative session to reach a consent agreement and have it approved by the city council or the legislation expires and the district terminates. >> Thank you very much. >> Mayor Leffingwell: I have a quick one. Is this in the buyout area? Does anyone know? >> My understanding is it's around the corner to the east of this area. Adjacent to the east side of what is currently the undeveloped parkland. >> Mayor Leffingwell: I recall that a lot of the parkland was made up of land that was bought out. But I guess we're the only ones that really participated but we've been trying to get federal legislation to cost share in that for I don't know how

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long -- seven, eight years, at least. So I just wanted to -- I don't know it's a factor. I wanted to know. Mayor pro tem? >> Cole: I know historically muds have not been wanted by the city. So can you explain why we need special legislation in this case based on that history? >> Well, what is being envisioned here is to create an entity that would have revenue creating authority to either tax, impose assessments, operation on a maintenance task so that the financial mechanisms that are available to that individual, political subdivision which would be in the municipal management district can do that in a way that the city could not go out and impose it just on the residents that mr. Mitchell, as he explained before, imposing that additional revenue burden on the residents out there is going to be something that's going to be attractive to them

because it's next to the development. But that's the reason behind creating this kind of mechanism. It could be a mud but a mud doesn't generally have a same kind of flexibility. >> Cole: Is that why we're calling it a district as opposed to a mud? >> Municipal management district, which is another kind of concentration reclamation district just like a mud. >> We're not asking for water waste, water reimbursement, anything of the sort. This is focused on the district in terms of providing income for to improve and/or operate the park facilities. We looked at a p.I.D. A p.I.D. Doesn't need requirement authority. But it requires some idea what the needs are going to be. Because you put an assessment on the property.

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Once again, I'm not a parks expert. But I would assume that the operations and maintenance cost of managing 60 soccer fields will be different. It's a passive trail facility. We didn't feel like it was flexible enough to address what might come out in the master plan for the park facility. You need the ability to address your tax rate and address what was going to be built at the time. >> Cole: The district will have taxing authority. >> Yes. >> Cole: You mention the risk you take as a developer that people may not want to pay the increased tax because of the park but they believe they will because of other developments that have wanted to. >> Absolutely. >> Cole: Will there bill have potential? It can be used as a tool statewide? Is that right? >> Not sure what your question is. >> Cole: When we're speaking -- we see a lot of this special austin bill. I'm wondering if the sponsors are contemplating this to be a tool to be used by other entities? >> I'm not sure. I haven't met with the legislators. But from what I heard, people are sort of looking at this as a pileup project. If it's successful, it would be of interest to others. >> Cole: Okay. >> I want to address quickly -- when we're paying an additional tax, the way I look at it. I have three children. Let's just say your additional tax is \$20 a month. If -- if we were looking at a home to buy and my wife could see the park facilities and exercise and play areas and ball fields and it's \$20, she would say write the check, daddy. We're going to go live there. It's like would I pay an extra \$20 a month to live next to zilker park? Absolutely. It's life changing. I see it as benefit, not a burden. >> Thank you. >> Morrison: So I do have a copy of the bill. I don't know if it was put back up or not.

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I don't think it was. Was it in backup? >> I don't think it was put in backup because the first draft came from texas council last weekend. It was not filed until right after that. We did not put an address in the backup. We can provide one, they're looking at developing a committee substitute at this very moment. So it's fluid with the legislation document like it always is. >> Morrison: Great. I did -- I'm not sure how I got a copy of the bill three or four weeks ago, then? >> Because they had an original standard municipal management district bill but some revisions have been made to to address the concerns of the city. So what you might have been provided with are the waivers. >> Morrison: All right. Just to be clear, the area we're talking about could be taxed is basically the good night ranch area. And then the area -- the land on which it -- the tax revenue could be spent, does it include good night ranch? Or is it specifically the park? >> It includes both. There's a green belt that runs through the development, the developer is planning on conveying to the city so it becomes public parkland as well as the 400 acres adjacent to the district. Then the legislation and the mmd mechanism both allowing expenditures to be made on

all of that property. >> One issue we need to get on the table, this is a park that you mentioned, Terry, that serves not just the people at Good Night Ranch, but it's a regional park. What's the district park? >> It's a city park? >> Morrison: It's a city park? We have a -- we have our parks department here. What's the classification of Onion Creek? >> Level three. Apologies for being late. Apologize for that, Mayor,

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Council. It means that in short, our level one would be the highest top priority park, Zilker Park. Level three park, it's an indication we would get around mowing a park on that level every 21 days or so. We don't necessarily do daily trash pickups, every other day or as needed. The benefit of having a dedicated maintenance ongoing fund for this park would be that it would elevate to a level one on par for Zilker Park? >> Morrison: The level of maintenance. Strict park, metro park? Or does it have a classification. >> District park. >> Morrison: So it serves a large portion, generally in that area. So in terms of the development of it, we have springs to the north and other neighborhoods that would be able to benefit from the development of it. So if we're looking at what the plan is for the development would be, one thing that caught my eye in the bill, I don't know if it's still in there, is administrative signoff for use of the funds on city land. I wanted to ask about what mechanism would we have in place to ensure that the city council is involved in approving a master plan, which then would make sense for staff to be able to be working with the district to get that master plan in it -- implemented. So is it envisioned that the city would be involved in the master plan. >> In this case now, we would involve city council and the park very much remains in our possession, in our control in the -- not sure this has been covered yet, Councilmember Morrison, but the board would, again, over that district would be appointed by the city council and approved by the city itself. So we should have 100% control. >> Morrison: That's great.

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We have the resolution that we've been working under to make sure that anything that's not in the master plan does get vetted by the council and then of course the staff goes off. So we wanted to make sure it's the same. >> The master plan is good for all parties. The city knows that the land it owns is being built out in a manner that it has approved. But from our standpoint, there have been -- a plan that's gone through a public process is now being implemented and they know what's going to be built. They know what they're paying for. It's Ben@ if I want our residents too to know what's going to be built. >> Morrison: Then, I wonder -- there were two things that jumped out at me in the bill if you can talk about it. One is that it allows the district to do economic development and in particular, 380 agreements. And I guess if you could explain why a 380 agreement might come into play, and just assure me you're not talking about city tax rebates, but district tax rebates, if you do do a 380 agreement. >> Speaking from the legal perspective, the intention from behind the way the bill is drafted is to provide the greatest amount of flexibility for the city to have financial mechanisms to work with the districts and to manage how the money is spent and where the money is spent. And so that allows for contracting with and providing funds to maybe an intermediary like we have with some of the other park designs as I understand it for the management. So that's why that's in there. And that's why those things can be narrowed down through the consent agreement process, even if we have second thoughts

about having had included some mechanism in there, if then we can write in the consent agreement those won't be provided for in terms of how the developer will envision those being used, I don't know. But to the extent that we felt council might want to have a tool, we kept that in the bill. >>> We have no intention or

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expectation of the 380 agreement. It's a standard language. The closer you stay at the standard language, the easier it is to go through the process and you get the control of the consent agreement. But we have no intention at this time of any of that sort of thing. >> Morrison: The 380 agreement could give the board, the power to rebate the district tax or the city tax? >> Only for the district. >> Morrison: There's a section in there allowing for the district to do annexation. Is that another consideration of just being standard language. >> That would be only with city council approval and really the only contingency where that might arrive would be if it were to determine that it would be better to have the district include -- have the boundaries include the parkland, rather than the parkland being outside of the district for whatever reason, because the statute does allow if the board makes a finding that it benefits if I want the district to spend those funds outside of the district. But if we encounter any legal impediments or challenges or we thought we needed to have the parkland in the district, then it could be annexed to the district. That's the only scenario that I could envision. >> Morrison: Okay. >> Can I add to that. The annexation of the neighboring development would require their consent as well in addition to the city council's consent. >> Mayor Leffingwell: Correct. >> If you were to annex other property? Yes, like normal property that has residents on it is what he's referring to. >> Morrison: Okay, thanks, Terry. Appreciate you bringing this idea forward. I think you mentioned that, you know, it's critical that we get a top-notch park east of I-35 in that area of town. And with our limited revenues as

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a idea of you being able to offer a mechanism through your development to be able to make that happen is creative. >> Mayor Leffingwell: Next item, 31. Move for discussion by councilmember Riley. >> Riley: Mayor, this is the -- this is the resolution we talked about last time. The -- and it's the -- the -- it would call for a -- it would initiate code amendments to codify the portion of the downtown density bonus program that would replace cure. And it would also provide that city council will use the adopted downtown Austin plan density bonus program as a guiding principle in reviewing future requests when exercising the discretionary zoning authority. We have heard some concerns from downtown stakeholders about where that effort stands now. Since there has been an ongoing effort to codify that the versions of the downtown plan, including the downtown density program could be concerned about the calibration and getting it right. I wanted to check with staff and see if we could learn anything about where that effort stands and what impact this resolution has on it. Do we have staff that could address that? >> Sue Edwards, assistant city manager. They are still in the process of doing that. So I am -- it will affect it. I mean, they're still checking on it for now. >> And -- I guess -- so the impact of this resolution on

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that effort would be, what? Like -- >> I'm not sure yet. >> Just don't know? I guess I have the same question this time that I had last week, which relates to the -- the timing on this issue, whether it when we say that the council will -- will use the adopted bonus program as a guiding principal in reviewing future requests, whether that would apply to every zoning case that comes to us from this point forward or rather to cases that are -- that are filed once the plan is codified? I think the answer I heard last time was that the intent was that it would apply immediately to even to cases this week, next council meeting, and so on, even before the convocation is in place. I'm not sure exactly the absence of that calibration effort. I'm not sure how we would do that without running the risk of applying some kind of arbitrary standard that's not been fully vetted. That's my concern about it. >> Mayor Leffingwell: I would echo that concern. I just have a -- if you come to the conclusion that there's a possible -- would say violation. But this is contrary to state law with regard to contract zoning. I just don't see how council resolution has anything to do with that law. I mean, either you think it does or you think it don't -- doesn't. But I don't see how the council passing a resolution saying thi is how we're going to interpret that -- it certainly wouldn't have any effect on me. I don't understand how it would have an effect on the core issue at all. I mean, certainly any

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councilmember can decide to exercise discretion whether it's warranted or not. That's a personal decision. But I don't see that -- i couldn't support this because i think it -- frankly, it doesn't make sense to me that we would try to do it this way. >> Riley: Mayor, we do have ms. Robertson here now. I wonder if we could get an update on where we stand with that canning brags effort? >> Okay. >> Jim robertson, city staff. I do apologize for the delay. >> Riley: It's on. >> Oh, there we are. >> Jim robertson, planning department. Apologize for not being here at the starting time. In terms of the calibration effort, our current thinking had been that -- that when I use the word "calibration," I'm referring to the process of doing the economic analysis that would determine the appropriateness and magnitude of fee in lius that we charge instead of a density program -- pay a certain amount of square footage of a bonus space in a project. Our current plan had been that as we move forward which we're working on on developing the full-blown downtown plan density program, we would run -- we would work simultaneously on the calibration effort. The commitment to council when council said to us that when we come to council with the density, the codify occasion of the downtown plan's density program, the council wanted to take a look at the appropriateness of the magnitude and any of the calibration of the fee in lius that were proposed as part of the downtown plan. The calibration effort involves consultant services we have the consultants under contract. And they're pretty much ready to

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go. We didn't want to get them doing their work too early because we want their work to be as fresh as possible when we arrived at council. So that we take out of the equation any concerns about well, that's old data. That may not reflect today's market conditions. Under the current -- if we were to codify the entire downtown plan's density bonus program, our current thinking is we hope to be in a position where in the next several months we could kick off the process of going to a planning commission codes and ordinances, planning commission, and ultimately to bring both the codify occasion and the calibration to the city council. >> And, so, jim, you've seen the

resolution that we're contemplating. And I guess the idea would be to separate out this -- this complication of the cure program from the rest of the codify occasion effort and move that forward. And do you see any issues with that? Moving that aspect of the effort forward independently of the rest? >> Well, I think the resolution -- the draft resolution as is currently articulated, I think allows some room for interpretation in terms of exactly what we would be doing and I would hope that we could get a little clearer direction on exactly what we -- what we would be doing. The if it's just codify the full downtown density program or don't do the calibration, i don't see any particular time savings in that. We were planning to do the two simultaneous -- our current track is to do the two simultaneously and removing the calibration won't necessarily speed up the process of doing the codify occasion of the

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density bonus program. Now, if you tried to shrink -- you know, if we did something density bonus program light, then that would speed up the process, probably. I mean you could just try to make it as streamlined and as simple as possible without all of the bells and whistles that the full blown program is. You can codify that faster. Another major variable is the degree to which we conduct sort of public engagement through stake holder meetings and public meetings and so forth. Our current thinking had been that even though we have engaged in a lot of public engagement in the downtown plan process, our current thinking is that we would not just show up as the planning commission's codes and ordinances committee and have that be the first time that the public gets a chance to weigh in on it. So but if we use the codes and ordinances committee and the council to engage with the public, that would speed out the process as well because we would take out several weeks or months or more of individual stake holder meetings, large public meetings, so forth. >> Mayor, my concern remains that without going through the full process that staff had contemplated that we are running the risk of invoking some kind of arbitrary, some standard that would result in arbitrary requirements on an ad hoc basis. As we address zoning cases going forward. >> Mayor? >> Councilmember spelman, mayor pro tem, then councilmember tovo? >> Spelman: Let me just -- let me nail down some not dates so much as time frames. Two pieces, one is the density program, one is the calibration effort. You see you're going to get to

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the end of the structural side, it makes sense to do quality consultants and do the calibration so they come at the same moment, is that accurate? >> That's accurate. We're trying to bring those two efforts to you in a timely manner. >> Spelman: I have a great ben if of doing second. You had to go first. How long will it take from beginning to end? The key if I can issue one qualifier. Once we arrive at the codes and ordinances committee, which on the code amendment is the required step in the process, we kind of lose the ability to control the timing. So at most -- I can give you more certainty at the time I can tell you to arrive at the doorstep of the codes and ordinances committee and then some other time period will apply from there. >> Spelman: Let me interrupt for a moment. If the ordinances were ready to go right now and the ordy napses were meeting this week, it would be a minimum of seven weeks before he could come to the council. Does that sound about right? Are just from the timing of when the planning commission meets and having to get things posted. Probably about right, yes. Given the posting requirements.

I'm not sure -- this is a matey topic. I'm not sure if the codes and ordinances committee or the planning commission would choose to both hear and take action on the same evening. >> Spelman: Of course. So I'm talking about the minimum is about a couple of months here. Going to add a couple of months to what it is you're saying for the shortest expected time of arrival for it to come here. >> Mm-hmm. >> Spelman: Okay, go ahead. >> Your question was if we brought to you the full-blown downtown density bonus program with the calibration?

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>> If you and the legal staff were working flat out on getting the structure, the calibration at the proper time, and bringing that to codes and ordinances as quickly as possible, how long would it take between now and the point you lay it on codes and ordinances' doorstep? >> Two, three months, probably. >> Spelman: Two, three months, plus a couple of months. Coming down four or five months. Might be longer if you want to take a little bit more time. We could take some time with it too? >> Correct. >> Spelman: Is there anything we can do to help you get on that track where you're doing it to c & o before the next few months. How can we make it for you to do that? We want cases where they want to abide by the density bonus program? >> I understand. I witnessed the last few months, I understand that. What could you do? I'm reluctant to say what came in my head. I think the key staff person i have, none of us get to have the luxury of working only on this. >> I understand. >> Spelman: The key staff person I have working on this is the chief staff person on the corridor and has been devoting a lot of time to that in the last few months. >> So we can take him back. >> I hate to say that. I don't want to hold one thing against the other. That's the key variable on us being able to really focus in on this. I -- you know, we all work under -- we all work under constrained time frames and multitask as best we can. The key thing is can we focus

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substantial staff resources on this one thing? >> Spelman: That person is focusing on drivethroughs and things like that, lately? >> Lately. I'm hopeful we can change that. I'll do the best I can. You have my commitment. I will martial the resources i can given the other projects that are within our group. I absolutely will do that. I've seen the discussion and I've been party to it all too. I would love to have this resolved and make it more routine and that's our goal from day one is to make it routine and administrative and predictable. Spoip my goal is to say, I'm sorry, it's a dirty rotten law. You haven't got a choice, it's codified now, you have to abide by it. Three of us voted against a secure zoning case a few weeks ago in part because it divided the community and was consistent with our state policy. Did we err in voting against that? >> Did you err? >> Spelman: Did we make a mistake? Did we violate the law when we voted against that zoning case? >> I don't know if I can make a determination sitting here now, bill, whether or not you violated the law. I generally you've given a lot of discretion in how you vote. >> Spelman: Okay. >> A violation of the law would only come up if maybe a court ruled against us? Take action that depending on how you look at the cases or how you look at the statute. But there is a presumption that the actions that you take are legal and it takes -- it's a

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high bar to overturn a council action. I don't think we could answer yes you did or no you didn't. We could go back and look at that again. I don't remember the particular case. We have to rely on the zoning lawyers to bring you up to speed on that one a little bit more. But as general rule, your actions are given lots of deference. It takes a really high bar to overturn any actions you may have taken. So that is kind of the general rule I feel comfortable discussing today. >> Spelman: That sounds specific that I have enough direction and if a similar case came up again and I were to vote the same way as I did the last time, the next time, I feel like I was on pretty firm ground given the defense to the court given to the city council's. >> Yeah. >> Spelman: Okay, thank you. >> Cole: I have a couple of questions? >> Mayor Leffingwell: Mayor pro tem? >> Cole: Jim, when he talk about calibration or recalibration or economic analysis, are you anticipating that the results of that are going to be markedly different from what we already have? So that -- >> councilmember, I don't know the answer. Those numbers, as you may recall, the downtown plan, recommended a two-tiered loop in the density program. 10 for bonus square foot for this sort of decor areas of downtown and \$5 per square foot in the more peripheral portions of downtown. That was based on pro forma economic analyses that were done in the roughly 2007, 2008 time

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period. We have been through so much in both local and national and international economy since then that somebody of my -- I was going to say limited -- lack of expertise in this area I'm not going be in the business of where we need to be given the roller coaster that has happened since then. We feel like it's prudent. In fact, we recommend it that it will be calibrated and recalibrated in five years. It's prudent to go through the process that when you get -- you get the dakota amendments in front of you, you know you're looking at fresh data. If I could, we take about nine or ten hypothetical projects of different sizes and locations downtown. For each one, we model out all of the costs associated with it as well as the revenues associated with that type of project and do a 15 or 20 page pro forma for each one of those so that we're looking at it the same way anybody who's engaging in that project would look at it in order to determine the return that one might expect for that project at that location. >> You said that we have consultants onboard that are going to do this work and i thought you said -- I wrote down you said and they're ready to go. >> Correct. >> I thought you were clear but I thought I heard you say two different things. I thought I heard you -- this resolution contemplates that we would bring forward the density bonus portion of this and with immediately based on what we

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have now and we would go forward with the -- the councilmembers structure aspects and recalibration and come up with that later. And so come up with what problems that would cause. I understand we wouldn't have fresh numbers, right? >> Brought forward only the structural -- using your words, the structural piece of the downtown plan's density bonus program. What you would have in front of you would be the full blown codify occasion of all of the -- all of the community benefits that are articulated. Open space, green building, so forth. You would have all of that. What you wouldn't have is fresh economic data to back up what we would be proposing to you for the fee in lius that people would play, let's say, for affordable housing and so forth >> Cole: So we pass this resolution and you actually have to slit out that analysis, how

would you bring forward the new numbers? Would you just make a code amendment to do that?
>> Yes, that's what we will be doing. And the density numbers program would be to refresh the numbers periodically. >> Cole: You admit they haven't been done in about five years. >> That's correct. Those numbers were in modelling five years ago. >> Cole: So if -- I feel like councilmember spelman, I don't want to have to vote on the number of cases that we don't have the numbers in front of us in the dense tip bonus analysis

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either, is this possible that we actually know that we have cure cases in the pipeline that we could or could not bring forward until this work is done? >> The one case that I'm aware of that is in the pipeline, although I'm not one of the zoning planners, is the case -- the case that was on your agenda, the case that was on the agenda last week. Postponed, the cure case in Colorado, the cousin's property's projects. That's the one I'm aware of. That's right. I don't have the precise date. >> Cole: I'm wondering -- you think it could take as long as four to five months to bring this forward as you originally contemplated? Less than that to get to the codes and ordinances but adding to that once you get to codes and ordinances, probably so. >> The applicant is in control of when they get the case. I'm wondering what we would have in terms of the option of not necessarily attaching the resolution, but making the council postpone the pure zoning cases until after you bring this forward and if you could bring it forward any earlier than the four to five months you anticipated. >> I'm not sure I'm the right person to talk to in terms of the council's ability to -- >> Cole: Okay, I'll ask legal

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that. Cole: WE HAVE THE DENSITY OF The density bonus not being codified and having pure cases coming to us and not wanting to make a decision about them and the portion has not been codified and the staff wants to bring it all together understandably. Is it possible to make a decision. Maybe this has to be by resolution rather than passing this that we're not going to hear a zoning case until after this codify occasion is done? >> Mayor Leffingwell: Let me answer first. Let me say that of course the council can postpone any item for as long as it wants to. It doesn't require a resolution to do that. >> Cole: Okay. >> That's correct. The council can do that. >> Mayor Leffingwell: That doesn't speak at all to the fairness or the equity of somebody to say we're not going to hear your case for six months. That's another question. I can do that. Councilmember Tovo is next. In the interest of full disclosure, it has to be said here, I don't think anybody on this body is opposed to finding funds for affordable housing. I know I'm certainly in favor of doing that. I just -- it doesn't relate specifically to the resolution, but I just want to say I just don't think that the bonus is a good plan any way, because, you know, I just want to be honest about it. Because frankly, it's a disincentive for density in central business district and that's something we say that we want. That as always been kind of puzzling to me saying on the one hand we want density in the CBD but if you don't do it, we'll penalize you for that.

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>> Cole: The council can also postpone cases. The second part of your question, councilmember -- Mayor Pro Tem Cole, there's some state law provisions that if we were to say we're not going to

hear any cure cases until this particular policy is brought forward, there's a state law of moratoriums. So there's a specific mechanism we would have to go through in order to be able to do that because that's what that sounds like that we won't hear anything until a certain point until something happens so we need to evaluate that and determine whether or not the moratoriums forte law applies and some specific laws we have to go to to impose a moratorium and a cutoff period to how long that can be. We need to look at that closer. >> Cole: That's what I'm concerned about. I agree there's a fairness question of whether we would do that. But it adds certainty to the process for people who want to bring the cases. Let me ask another question, jim, along the same line. Is there a way to know -- could you even issue a -- could you tell a consultant, council is struggling with this issue. They want this done. Been waiting for the austin plan. We need it in five years. Can you just give us the recalibration numbers? >> The answer is yes. But the the situation we're trying to deal with with staff. If I can use my clumsy band aided fingers, it will take this long to do the structure of the program and this long to do the recalibration.

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So we can get the recalibration to you relatively quickly. But it would not be accompanied by the full blown density program because that's going to take longer to complete. If you won't both together, then the critical path is how long it takes for the structural piece for the density program. >> We could do them separately. You can do the recalibration, get us both numbers, change it if we needed to. If the my understanding of that correct now? You could do the recalibration, but you wouldn't have given the consultant's accurate information. Yorobably would have to recalibrate again based on updated numbers once you did the full blown downtown plan. >> The refinement -- I hate to make this more complicated than it already is. But in order for the recalibration -- in order for the enlieu numbers to make sense, the -- the consultants need to know like what are -- what are the costs, if you will, both in time and money in going through the density bonus program and then the key thing they're looking at is once a project has participated in this program, does that project still return greater value by being bigger, higher, more dense than it otherwise would? . The risk of doing the recalibration independent of the guts of the program, the structure of the program is that the consultants would lack what are the what is it they have to immaterial plement this. Is there value left to the project. You would do the recalibration in essence to the abstract as opposed to the construct of the program as it will be put in

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place. >> Cole: Thank you, mayor. >> Mayor Leffingwell: Councilmember tovo? >> Tovo: Thank mayor pro tem cole for thinking of other options, other ways of addressing this issue. I'm not sure now is the time to say this. But I want to say that if you're interested in pursuing a moratorium, I would be willing to sponsor that and help you bring that forward because -- >> Cole: I haven't landed on what I want to do. I'm trying to look at the options. >> Tovo: We need to consider what options we have available to us. That's one we might consider. I think mr. Robertson has presented -- has laid out four options that I'm going to ask him to explain, one of which is not that, but offers us a way of addressing that. But this issue has been -- this issue has been present in the public discussion now for years. And I'll just refer again to the chart that mr.

Robertson put together looking at the community benefit if I want that would have accrued if all of the projects that fought cur zoning would use the interim downtown density program. And those figures are, by my account, \$26 million before you factor out the waivers that would have reduced that amount pretty significantly. But nonetheless, it's there. We had a policy on the books for a year and a half saying this is a mechanism of the development community to seek increased entitlements and you know I understand that there is not full agreement in our community about whether density bonuses are appropriate or attractive or appealing. However, it's the policy we adopted in the council, I believe, unanimously. That's the policy we have right

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now. I would like to see it get to a place where we don't have members of the development community coming forward and saying I see the policy but don't know what the structure is to comply with it. It's my understanding that one of the contributions. One made a contribution in spirit. I don't remember if it's exactly in line with the downtown plan as we adopted it or in the spirit of it. They made a contribution. We have one that councilmember Spelman referred to that did not. And then we have the third in the pipeline made a statement to the downtown commission that they intend to provide community amendments down the line of the downtown density bonus program adopted by the downtown plan. The one that's in the pipeline based on their comments plans to comply with the downtown plan. So in terms of what's in the pipeline, that's the -- that's my understanding of that situation. So, we can talk about guiding principles and the extent to which -- what we're trying to do here is say we've adopted this plan. And we're going to -- we're going to use it and we are trying to provide -- in my mind, this provides some certainty and expectation about what the expectations are going to be. This is something we hear a lot as a -- an appealing good -- we're going to talk about the calibration. There was one done during the time period when the density program was being outlined in the downtown plan. It's been suggested to me that if anything, the recalibration may thin out the numbers because

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the downtown real estate is more valuable than in the time when the calibration is done. We have a good sense of which direction that calibration is going to go. And I would say it is, you know, this has been a council priority for a long time. It's been an adopted policy now for a long time. And we should not let the perfect be the enemy of the good. We should get some structure in place, which, again, is responsive to the development community representatives who have come to us and said, I don't understand what the structure is. If I wanted to, I couldn't. Figure it out. Go on, get the structure in place. Then come back and readjust the numbers up and down as the economy shows. So I wonder, Mr. Robertson, you do lay out four different options for addressing this issue. The first -- the quickest way would be to modify cur. So would you take us to the four options that were outlined and the options we have for us if we want to address this issue other than what we have in the resolution. >> What I referred to is the document that I prepared and shared with the two sponsors. The first one, I do believe it will be the quickest way to put in place the program that could be used in evaluating places that come before you is simply -- it would -- fundamentally be a modification of cur. You can modify the cur ordinance so it no longer is

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available as a mechanism to obtain additional height or density/far. In the downtown area. Cure would exist because it has other purposes, you can modify sign ordinances and things like that. But you would modify it to make it not available for height or density. The net effect of doing that in simple modification is the project seeking the higher density would have, my understanding is that they would have no choice but to then participate in the already existing interim downtown density bonus program, which is what council adopted in 2008. That is probably the fastest way. >> Can I ask the question here? >> Yes. >> Do you believe that approach is doable under the existing resolution? Or would we need a separate resolution to initiate a code change to cure? That might be a legal question, rather than for me looking at the language of the resolution and what I just -- I would be happy to work with law to understand. >> Morrison: That's an option to give council separate option as opposed to direction with this resolution. I would be interested in co-sponsoring that with councilmembers. >> . >> Mayor Leffingwell: That would be permissive language. >> Morrison: Should law come back to us on that question? >> I did not hear your question. >> Morrison: Whether or not the option he just offered, option one, number sent down to is permissible under the language of our posting and resolution.

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>> Debra thompson will look at that and we'll tell you the day? >> Morrison: That would be terrific. >> Thanks, jim, sorry to interrupt. >> So that option two that i sort of outlined was what i characterized as sort of a streamlined density bonus program. It would not be all of the bells and whistles of all of the program outlined in the austin program. What it would be doing is codifying one of the amendments that council made upon adoption -- I think councilmember spelman was the sponsor of that amendment. And essentially what you would do there is codify the gatekeeper requirements for the downtown plan -- the downtown plan's program, grade streets, improvements, compliance with urban design, guidelines, green building, so forth. You would codify the fee in liu amounts. If you were interested in doing this as quickly as possible, the ones in 2008, \$5 and \$10. Take the number of bonus square footage and codify it, that would be the so-called floor. You codify the 50% of that floor amount would have to go to affordable housing benefits and codify the process whereby the applicant could codify the consideration. We would not be doing the full blown codify occasion, what does green building mean, what is green roofs, open space, historic conservation, cultural venues and so forth. Set that aside and that would come later. That's a -- quite a bit simpler set of codify occasions. That would be option two. So you would have a density bonus program light in place.

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I would presume subject to your directive, you would make that same codify occasion to cure so it would be the height and density downtown as opposed to what we have right now which is cure or something else? Option number three I outlined was to do the full blown the structural density component not do the economic recalibration. We talked about that a little. I don't think that would save time. The critical path is the path that is developed to maintain the structural program. I don't know from a time savings point of view it would save you time, maybe a little

bit. And then option four would be the whole nine yards, the full blown program accompanied by the recalibration. >> Mayor Leffingwell: Councilmember morrison, are you finished? >> Morrison: I will just say -- >> Tovo: I think those options -- I appreciate you're working on articulating the options ahead of us. The first one is the easiest and it's something that we're able to do under the existing zoning language, that may adjust some of the concerns I've heard about the developed community and the guiding principle being somewhat vague. That puts some parameters around what we're expecting and it gives some measure of being able to move forward on a policy that's been in place for a good long time and allows us to cease having this argument to the extent to which we're going to honor a council-adopted policy that's been with us for a long time. I want to turn it over -- there are other questions. But I want to get back to the

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point that whether or not this resolution -- there's an assertion that it violated state law. It's my firm understanding based on discussions that we are well within a safe harbor on that. The resolution does not outline a zoning situation. I feel as confident about the vote in the last meeting which is to say the case before us did not comply with the code, did not meet the standards we outlined in the land development code for code. That, I feel, we're completely within -- completely within the bounds of our zoning authority. I wanted to get that on the record for the listening office in case they're listening avidly and have concerns about us being in compliance with the law. >> Mayor Leffingwell: I think I disagree with all of that and passing the resolution is not going to end the discussion. Councilmember morrison. >> Morrison: Thank you. Just to start -- to follow up on what councilmember tovo was saying, not only did I feel like it was within the law, I wanted to make it clear that we had -- I had extensive discussions with our city legal and have been advised that it's completely within the law. So, with that, I do want to say that I appreciate this conversation and everybody's consideration. I think there's a lot of frustration that we have -- are in this situation and I know staff is in that position also expressing some frustration. I think that the -- the issue is that -- if we had known when we were postponing the east riverside corridor that it was going to effectively postpone the codify occasion by months of the downtown austin plan, that would have been important

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information in terms of trying to come up with the date for when we would have reheard it. Because as you know, it was already a question. I just sort of lay that out for the next time we're talking about postponement and make sure we understand what the impact of them are. One question I have in terms of the different components of the timeline are, we talk about wanting to have the calibration follow the full structural development so that it could use the structural development -- the structural body that we create to come up with the numbers and the calibration. We did the calibration before purely based on the structure as it's laid out in the downtown plan. There was no code. Why couldn't we do the calibration the same way? There are a few items that still needed to be calibrated. I know for sure the whole issue of the number of stars for green building and things like that. But it seems to me inconsistent that we're saying that we can't do it without the code but we already did it without the code one time. >> My speaking to that point was an overabundance -- I don't know if it's overabundance but an abundance of caution. People more sophisticated on real estate developments might be the one to have to

decide. I was more excited about doing a recalibration independent -- independent of a structural context into which that would fit. I think in general you could. Fundamentally, they're looking at downtown real estate economic -- downtown real estate

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development economics. The key point is how much value is for projects to get bigger or taller or so forth. Use the value and could they sustain a fee in lieu? >> I think you could do that based on the way we did it before, based on the framework of the program. My point was ideally you would do it in context. Ideally you would do it in the context of a set structure. So I think you could do it like we did it before, which is basically a framework. >> I think we didn't put a lot of thought that each time there's an element added to the development that of course it would affect the outcome. When we were looking at it before, one of the things we did look at that jim talks about is height. And the taller you go, sometimes, the more expensive is it. There are other things, if you have a green roof or you do other things, it affects what the bottom line is for the developer. So we didn't think about all of the elements we did it before. You can do anything you want to do. We can set that price. That cost at any point. It's just that trying to look at it from both sides of it to make sure that we have incorporated all of those things, that's what makes it successful. What we fully understood is that the developers were not taking advantage of that, it didn't help them. It didn't give them the benefit. What we wanted to do is make the programs successful for affordable housing. In order do that, we needed to make sure that the developer gets some benefit out of it. That's why we wanted to incorporate both of them together.

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>> I fully understand we want it to be a successful program. I don't understand why it needs to be written in code before we can do the economic work to come up with the appropriate fee because before -- we already know what the elements are. We did it before. Why does it have to be written in code before they can look at it and figure that out. And because making that a two step process as opposed to -- in theory as opposed to having both of them being done at the same time is going to add time. Clearly we're looking for finding the most expeditious way to get to the end of this saga. >> Fundamentally, I agree with you. I was only going to be cautious. You wouldn't want to wait until it was literally in code language. You want to kick off, get the consultants working when we had all of the framework in place. It doesn't need to be in code language to get them involved. >> Because, in fact, we could get them started right today and have them just do the exercise that they did in the downtown plan again with numbers, with values from today. >> Mm-hmm, that's correct. >> Morrison: Can you tell me the effort from telling the consultant we're ready to start to when the numbers would be available for council review? >> Just for the calibration effort? >> Morrison: Just for the calibration effort. >> I would say -- 5 to 8 weeks. I haven't spoken with the consultants in the last couple of weeks so I know they're not sitting at an empty desk waiting on us to do this. They said it's not such a big piece of work to just take it

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on. >> That would be good information to have. When I wasn't clear, we're talking about three pieces of work, the gatekeeper requirement, everything else, all of the other bonus issues. And then the calibration. I believe you said that to put the whole structure in place is two to three months. Can you break it down to between gatekeeper and the other? Because what -- what this resolution -- what option two contemplates is just doing the gatekeeper with the -- >> gatekeeper requirements are far simpler than the whole list. >> Morrison: Exactly. It's about care and preservation. >> That is where the vast majority of time has been spent working through all of the different things. The gatekeeper requirements are straightforward enough that it wouldn't take long at all to put together code amendments that would codify the level of green building substantial compliance with urban design guidelines, great streets compliance, so forth. That's quite straightforward. >> Morrison: So, I guess -- in my mind, it's important that we keep in mind that if we were to do say the gatekeeper requirements with the structure for the modified cure, for affordable housing, leave out the complicated density bonus stuff, then at the same time do the canning brags, we can do all of that to council in a couple of months. >> That, I think, is the second fastest methodology, just modify cure. >> Morrison: So option two, even with the calibration, the clearly, it's envisioned.

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That's sort of what I was thinking when we wrote this resolution, that that's exactly -- and it would be significantly faster than the path that we're on now in terms of being able to get this. And I just wanted to make one more comment and that is that none of the work in option two is wasted. It all goes in to the final product. So it's not wasting staff's time, it's rearranging the effort and when it comes to council. >> I think that's correct. Assuming that we continue to work under the council direction to develop the full blown program, what you where do you lived do is -- probably you wouldn't do them one-by-one. But once you had the other community benefits sort of codified the metrics to support them, any rules required to support them, you would in essence be plugging those in to the basic structure which would be put in place via the mechanism you use. >> Morrison: The mechanisms are in place. I'm interested in whether or not we'll be able to get an answer from the legal staff today but all to say that there is perhaps discussion and controversy over the last be it resolved which is using the adopted downtown plan as a guiding principle. But it appears that the first be it resolved about let's get this part done, I think is extremely valid and not as fast as the other way, option one, which is just striking the ability to use cure for height and far. But -- but the -- what's the option two which is contemplated here would move us on a path much more quickly of having that section codified. And could I ask our city attorney, are we going to be able to get an answer today on whether or not option one -- I'd love to hear it.

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Hello, ms. Thomas? >> Good morning. >> Can you lay out that option again? Is option one allowable under our language. We adopt option one, option one being merely striking from our existing cure code, or it would be initiating a code amendment to strike from our existing cure code the ability to use cure for increased height. >> I'd like to have a little conversation with mr. Robertson. Can we table that question for a minute? >> Morrison: Sure. Those are all of my questions right now. Thank you. >> For future reference, this is a very important situation on an

item that's critical to us. But I haven't had a benefit of meeting with jim or seeing the memo that's discussed with all of the multiple options. For future references, do we want to have an open and transparent debate, we all need to have the benefit of the same information that everyone else has. I haven't seen it. Councilmember riley has not seen it. I don't know who else has or who has not. We're laying out option, getting legal advice from this law department. This item, this memo is not posted for today's work session. So the specific memo, not the item itself. So it's just concerning and troubling to me that now we're going to go through potential options to take action on thursday and many of us have not seen any of it. >> Mayor Leffingwell: I totally share that concern. Apparently some folks are getting private legal advice

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from our attorneys and the others of us are not privy to that. And we're not privy to the documents that come out of that. And even now, we're out, apparently having some kind of legal discussion. That would be more properly done with all of the councilmembers present in a posted executive session. I'm very disturbed by this whole process, frankly. City manager? >> It's my understanding that the document you're referring to was provided by staff to the sponsors in working with the sponsors on their ifc. I have not seen it myself, but your point is well taken. We will make sure that the rest of council gets it. >> Mayor Leffingwell: All right, something else to add? >> Tovo: I wanted to echo that. But that was -- when we were drafting the resolution, we went back and forth with mr. Robertson and I think there is some lack of clarity in -- in the resolution about how exactly we would be asking them to proceed in terms of codifying the density bonus program. So mr. Robertson was doing was trying to ask us to articulate a clearer vision for how that process would work and he was laying out the options, I think, asking us to say which is it that your resolution is really contemplating. But I take responsibility. What I should have done is ask a question through the process and ask that to be posted so that everybody had it for today and I apologize. I think I got it friday and it slipped my mind. Thank you. I'll make sure if I'm involved it doesn't happen again. It wasn't a staff issue. It really was -- it really -- I feel responsible for not making that available. But it was an attempt, again, just to clarify the process by which we would be proceeding. >> Mayor Leffingwell: Councilmember riley. >> Riley: This item was on last week's agenda in the same form that it was on this week's agenda. We still have a lack of clarity

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in what is -- un contemplated by the resolution. Given the significant issues at stake here and many people have serious interest in this, I think there's some -- another postponement would be helpful to make sure that everybody would see the options and they have ample time to think about them and discuss them. >> Mayor Leffingwell: I would certainly support that. Okay, so moving on, are there any other -- >> I did just want to answer that we looked at the two postings, what it would take to do the second -- what it would take to do the option one. It's just not within this posting. But we could certainly look at it for the next council meeting. >> Morrison: Great, I appreciate that clarification. >> Mayor Leffingwell: Okay, before you leave, assistant city manager, I wanted to bring up one quick one here. Noting that items 40 through 44 will be postponed because 45 was left off. And they all have to be considered together. They'll be postponed until a later date. I'm a little bit concerned about the april 11 date. I think that's

something we ought to think about. Because that right now looks like it could be shaping up to be kind of a heavy meeting with potentially large master plan and potentially austin energy, two very time consuming -- we can have that discussion at some point. But the -- the riverside regulating plan items will be postponed. >> Martinez: What? >> Morrison: Mayor? >> Mayor Leffingwell: Councilmember morrison. I'm sorry if I didn't hear the first part of the -- >> Mayor Leffingwell: One of the items in -- items -- it should have been items 44 through 45, six items, it was only 45 was omitted. >> Morrison: Okay. >> Mayor Leffingwell: Inadvertently. >> Morrison: Is that going to

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postpone the work on the downtown austin plan codify occasion? >> Mayor Leffingwell: I imagine so? >> Morrison: Yeah. I would imagine not because the work's all -- isn't the work already done on the east riverside corridor plan? >> I think that at this point, the answer is largely yes. If it's a postponement without direction and so forth, yes, some posting changes and so forth. Time devoted to that. The answer is yes. >> Morrison: Thank you, so glad to hear that. >> Mayor Leffingwell: Councilmember martinez? >> Martinez: We're not posted for executive session officially on the project duration issue, we'll get outside legal advice for executive session. >> Mayor Leffingwell: With can always go into executive session for any item on the agenda? >> Martinez: Thank you. >> Mayor Leffingwell: Do we have anything else? I have to leave here in about 30 minutes myself and I think others may also. >> Morrison: Mayor? >> Mayor Leffingwell: Councilmember morrison. >> Morrison: I want to briefly mention some other things. Item 17, that's the codify occasion of the parking pilot program that we had a briefing on last week. I just wanted to mention there were a couple of elements in the evaluation that had been spoken about during the briefing, namely I asked about what was stated was there was going to be the number of residents -- number of new resident only parking programs that occurred around the pilot business. And mr. Dableack clarified that he had been tracking the number of requests for the programs because that's going to be a better measure and I believe

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that the code that is offered to us didn't make the clarification. And then the other is what had been left out is the parking was eliminated. I asked him to help me provide -- help me develop some language that would actually make modification to amend the draft ordinance there. One other thing I want to tee up for discussion -- I don't think we have time today. One of two issues came up when we were last hearing item number 54 which is the p.U.D. At 211 south lamar. I wanted to tee these up for discussion because they are complicated. The two issues that came up were number one, the question about the language in the code for the affordable housing requirement for p.U.D. >> We're not posted for that. >> Morrison: Posted for item 54 and I'm reviewing the point that came up in discussion the last time we discussed item number 54. >> Mayor Leffingwell: Okay. >> Morrison: We have the development assessment. There was a question about whether the affordability requirement was for 10% of the total project or 10% of the bonus density. The language actually says 10% of the total project and staff said they thought that was a mistake. And I do believe we're going to need future discussions about this. I've had the opportunity to discuss this with councilmembers martinez and tovo and there are

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certainly strong memories that it was absolutely -- that it was correct. Although I think there was disagreement by other folks so i wanted to put that on the table that it was fully intended by a lot of folks that were at the table. And the other question was the waterfront overlay requirements as they apply to this project. Staff stated it did comply with the waterfront overlay. It was going to be 90, 96 feet or something. I had asked how that could be because the current zhenning is 60 feet. Going up to 90 feet. And the maximum height in the code says it's the er of 96 feet or the maximum allowed in the base zoning district. So the lower of 96 or 60 would be 60. So the waterfront overlay the way I read it sh the maximum is 60 for this project. Staff said they thought that language meant, no, it was 96. I don't understand how that's possible. I did follow up with staff to ask to please look into that. Because I think that it comes down to a statement of whether or not this complies with the waterfront overlay and I hadn't received the response from staff on that question. So I throw that out there. I think that's an open question for the project and maybe ask staff to look at that. Thank you. >> Mayor Leffingwell: Any other items? Councilmember tovo? >> Tovo: I wanted to let staff know I'm going to be submitting a question that I hope we can get a reasonably fast response to because I would like the information in advance of thursday. That is asking for the case numbers and if possible if it's quick to return applicant names of projects that have bn denied grandfathering.

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This is in relationship to the project duration. I know that staff have selected or are selecting the cases to look at. I'd like the opportunity to the extent possible to look into some the cases myself and to have my staff look into them. And so if we could just get back a list of the case numbers by area. And I know that this must exist in some format because we did get numbers of cases within the drinking water protection zones, the barton springs zone and the development zones. Again, the case numbers would allow us to dive in and do a little bit more research on our own. If time permits. I'll be submitting that through the q & a. I would like to discuss item e if there are no other discussions on the agenda. I know if everyone wants to leave. >> Mayor Leffingwell: Let me find out if there are any more questions on the agenda and we'll work our way through it. Anymore agenda items for discussion? Okay. And that brings us -- that does bring us to item e. Considering there are no more items to be discussed by council. That is the consideration for the ordinance and plan to transition the governance of austin energy to an independent board. So do we have any questions from councilmembers or discussion of this item? I'll just say, we'll have someone up here to represent staff, of course. But in the past, I wanted to bring this forward as soon as possible and had been suggesting the date of april 11. And I just want to know if it's reasonable to anticipate that this item will be ready for action at least on the first reading on april 11?

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>> Riley: Mayor? >> Mayor Leffingwell: Yes. >> Riley: If I can repeat what I said in the last council meeting, the commitment we made to council to have the information for your april 11 meeting. We obviously, since we're talking about that meeting. I want to provide the material in advance like we would on the previous friday. With any other agenda item we bring to the

council. We still express last week's confidence to do that. >> Mayor Leffingwell: Councilmember spelman. I wanted to talk about the reading that we'll be a councilmember short. >> Potentially, april 11 would be right and I would be amenable to that. Any other discussion, councilmember tovo? >> Tovo: I appreciate that. I think it provide some level of responsiveness to our community and to the concern I raised. We did hear cons from community members that they would like sufficient time to review a proposed ordinance. Didn't digest that information and have an opportunity to provide the council with feedback about that. -- About the proposed ordinance. So hearing I on first reading, I think, does that. I also mentioned in the council meeting that I had made a commitment to attend a sister city trip and would not be AVAILABLE ON THE 11th. And I have looked at the travel schedule to see if there's any opportunity for adjusting it. It takes three days to get there. In the events that are -- for which I'm participating and have been invited are -- do not allow it to work out. So -- and I hope -- I hope my colleagues understand that, you know, at this point two weeks before a trip, there's been

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substantial communications back and forth with governmental officials in china, they're anticipating -- I've got a seating assignment at one of the official events. So it would be -- it would have impacts on, you know, well beyond my schedule for me to change the plans at this point. Just in the light of -- and, you know, as I mentioned on wednesday, last thursday, rather, there's been a practice as far as I can tell in my limited time on council, of deferring major decisions until there is a full council, in fact, in looking through very quickly at some previous council meetings, there was a discussion initially we had our rate case hearing scheduled for a day when mayor, you were scheduled to be off of the dias and you asked -- let me get your words, you asked -- you said you would be out of the country on that date and it would be advisable -- it would be advisable to have a full council for something as important as this. Mayor pro tem, you voiced from the dias, I would agree with this. There has been a practice with the major changes in governance structure to wait until there's a full council. So I would just propose since we are posted for action that we actually -- I would like to make a motion that we hear -- hear the issue on first reading only on april 8 and make no final action until -- take no final action until april 28. I'm sorry, 25. >> Mayor Leffingwell: Is there a second to that. >> Spelman: Oh, yes. >> Mayor Leffingwell: Second by councilmember spelman. Any objection? Councilmember martinez? >> Martinez: I was going to wait until we decided what we going to do. I WON'T BE HERE ON THE 25th. I'll be representing your office in new york city with meetings with mayor bloomberg. So if we're going to take this

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action, you know, that's in consideration should follow through the 25th because I won't be here. >> Mayor Leffingwell: Well -- at some point, we have to follow through on this. And I'm feeling like you would have ample opportunity to PARTICIPATE ON THE 11th. >> Martinez: Not if it's going BE ON FINAL READING ON THE 25th. >> Mayor Leffingwell: I have a question for councilmember martinez? >> Mayor Leffingwell: Let's see if there's some opportunity that you could change that april 25? >> Martinez: If we can agree SECOND READING ON THE 25th. Third meeting on the next council meeting. >> Mayor Leffingwell: Let's address that. ON THE 11th. See if there's some opportunity to change that trip schedule on THE 25th. >> Martinez:

Okay, definitely look into it. But I know the meetings are on that thursday -- friday and wednesday. >> Mayor Leffingwell: Yeah, i mean, there's always the option that we can opt out of that trip. >> Martinez: I understand. >> Mayor Leffingwell: Mayor pro tem. >> Cole: I was going to ask martinez if he would be here for the work session and we could possibly post for action at the work session on that tuesday, THE 23rd. >> Martinez: I will be here TUESDAY THE 23rd. >> Cole: I think it's critical we have a full council. >> Mayor Leffingwell: Certainly. So either way -- >> Mayor Leffingwell: If that WORKS THAT WAY FOR THE 23rd, We'll plan for that. We'll go indefinitely, one councilmember missing. I think this is something that all of us are going to have to make a sacrifice, if need be, to go ahead and get this thing done. I realize it's desirable to have every councilmember here. But it works two ways. You can -- you can postpone or cancel the item at the council meeting, or you can postpone the other action.

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>> Martinez: Mayor, I support the action of that council. If action is taken in my absence, that's my choice to not be here. I can reschedule myself to be here. I'm just throwing out the information so everyone can think about it before taking action on the proposal that's before us. >> Mayor Leffingwell: Appreciate the heads up on that. Councilmember morrison? >> Morrison: I just wanted to voice my support for the statement for folks that are saying that the concern to ensure that we do have a full council. Because I think this is one of the most important decisions we'll be making this year, if not the most important decision. I'd certainly be willing to entertain -- I appreciate anybody who can look at the possibility of shifting their schedule and I'm certainly willing to entertain a special called meeting to deal with it if that's what's needed to ensure that we have a full council. I would like to -- you know, we do have this posted for action today and it's about planning for the schedule. And so I would like to be able to rather than just say let's see how it works out, I'd like to say that make a motion that we actually adopt that we will ensure that there is going to be -- there is going to be a full council for the final reading. That would be my -- is that a -- if we're posting for action, so I would like to ask the attorney if that's appropriate. >> Mayor Leffingwell: Well -- >> I think there's a motion on the floor from -- >> Mayor Leffingwell: That was adopted by unanimous consent. >> Morrison: Okay. So this is just a -- an decision to that. And that is that we will ensure that we have a full council for the full reading -- for the final reading? With the understanding that our colleagues are going to work in good faith to minimize any disruption. >> Mayor Leffingwell: Well, let me just say, I don't see how we can possibly adopt that. Because what if somebody gets hit by a bus on the way. >> Morrison: Okay, our full intent -- >> Mayor Leffingwell: Something

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like that. >> Morrison: Reword it. >> Mayor Leffingwell: It's a little -- endeavor to be -- >> Morrison: Our full intent is that there be a full council for final reading. >> Mayor Leffingwell: We will endeavor -- we will endeavor to have a full council for the readings. >> Let me make sure i understand. >> Morrison: My language is different. It's our intent that there will be -- we will schedule it so there's a full council for the final reading of this ordinance. >> Mayor, I wanted to try to make sure that the first motion, I think that was adopted was to have first reading on april 11. >> Mayor Leffingwell: First reading only. >> Only on april 11 and the subsequent reading on april 25. That was the first decision adopted? >> Mayor Leffingwell: No, no. I don't

think we -- I don't think we formally took that action. >> Okay. >> Mayor Leffingwell: We discussed potential action next ACTION ON THE 25th. That's where we are. >> Okay. Just trying to clarify what the first motion was that was adopted. >> Morrison: My understanding that the -- >> Mayor Leffingwell: The first motion that was adopted said that we would do first reading only on april 11. We will not consider more than first reading only on april 11. I personally -- we have a motion on the table. I guess I would be acted on, if there's a second. >> Tovo: I would like to second that. >> Mayor Leffingwell: I don't know what "fully intend" means. So maybe we -- maybe we should have an executive session on that discussion, "fully intend." >> Tovo: Mayor? >> Mayor Leffingwell: It's not mandatory, I would assume, that allows for some unforeseen circumstances. >> Morrison: Absolutely. And, of course, anything that council does can be undone by four votes. >> Tovo: I wanted to add that, again, I did a cursory review that it is a very exceptional

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circumstance when a councilmember misses a meeting. It's rare. I wouldn't expect there will be other meetings other than the 11th and the 25th that in the near future we have the councilmembers missing. >> Mayor Leffingwell: There's always that opportunity. I have to say that I have deliberately not gone on a lot of trips in the last four years because I didn't want to miss council meeting. And so I think we have to take that into consideration when we have to take on these obligations that the council meeting action may need to take place. I don't think it's really appropriate to expect to -- the entire council to be delayed in action to be delayed just because someone has to go on a trip. I -- personally, I was scheduled to go on a trip next monday but because of a number of council events, not a meeting, I had to cancel out on that one. That was also a sister city trip, by the way. >> Martinez: Mayor? >> Mayor Leffingwell: We all face that same consideration. In fact, there was a story written about it. Of all of the councilmembers had the least amount of travel in the last four years. If anybody missed any trips to attend council meetings at least on the expenditure rash you, it would be me and my office. I understand the intent. The intent is only for us to consider that all councilmembers try to be here when we take final action on an important issue. I don't think that's vague. I think it's fairly clear. And I realize that that ultimately is my individual rep responsibility to be here. Not anyone else's. I will take that into consideration whether or not i make travel plans. >> Morrison: If I may, just to be clear, my motion wasn't meant to suggest that you change your

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schedule. Understand if you can, well, if you can't, we'll work around it. >> Mayor Leffingwell: All in favor, say aye. That passes on a vote of 7-0. Is there anything else? If not, we're adjourned at 10:47, without objection.