

## City Council Work Session Transcript –10/14/2014

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>>> >>> >> test test test this is a test,. >> >>> test test test this is a test of the austin city council captioning system. 1, 2, 3, 4, 5,. >>> >>

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>> good morning, I'm use mayor lee leffingwell, a quorum is presents. So I'll call this council work session to order on TUESDAY, OCTOBER 14th, AT 9:05 a.M. We are meeting in the board and commissions room, austin city hall, 301 west second street. First item is executive session. The council will go into closed session to take up two items pursuant to section 551.072 of the government code, the council will discuss the following real property item. Item a 1 real property acquisition of 75.1 acres located at the intersection of bull creek road and 45th street. Then pursuant to section 551.071 we will discuss a legal issue, legal issues related to the acquisition of approximately 75.1 acres at the intersection of bull creek road and 45th street. Without objection, the council will now go into executive session.

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>> Approximately 23 acres, in ...

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>> We now go to our preselected items, beginning with item 27 from council member spelman. >> Spelman: Thank you. Item 27 is more or less city code of federal requirements. I wonder what is going to be the value of codifying federal law to us. Go ahead. >> This is a recommendation from our human rights commission, and upon speaking with our legal department -- I think trish, is the attorney who has been working on this, it's my understanding it would make our code consistent with federal law and that's of value. But, I would invite our city attorney to come up and just confirm that. >> Spelman: Could you tell us what it does? >> Basically -- yeah. >> Spelman: Okay. >> Tricia, city attorney. Federal law includes retaliation, so, if you are companying someone, or you see discrimination happening, and you

challenge the person who is discriminating, and they retaliate against you, federal law makes that a violation of the law. Our code does not include parallel language. >> Spelman: It's still illegal under federal law, it's just not illegal under our own code. >> Our current -- it's similar to the differences between the federal fair housing act and the city's ordinance, we have an extended class of citizens protected by our public accommodations law. >> Let me back up. I wonder if you'd answer the mayor's question.

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What kind of fact pattern would the current federal law, and proposed municipal law fit? >> I'm going to ask John to answer that. >> Jonathan, administrator of the equal employment fair housing law office. Good morning. We received a complaint about a year ago, and the allegations in the complaint were that a nightclub had engaged in public accommodations discrimination. An employee of the nightclub objected to the manager. >> Okay. >> And was fired. And the discrimination was discrimination based on sexual orientation. >> Okay. >> The employee filed a complaint, upon reviewing that, we dismissed it because that harm, firing for opposing public accommodations discrimination, was not prohibited by the code. >> Spelman: So he or she would have to go to federal court to prosecute the case, there's nothing we could do about it because we don't have that provision in our code. >> That's correct, although in that specific fact setting, if that individual had gone to a federal court, the public accommodations federal law does not include sex or gender, or sexual orientation, or gender identity as a protected class. I think it is limited to four protected classes, race, color, national origin, and religion. >> Religion. >> Spelman: Okay, so, this actually, then, would be mirroring federal law to the extent that it was those four classes, but, it would also extend the prohibition against

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retaliation to other classes that federal law does not cover. What are those again, could you remind us? >> The federal law classifications, or city? >> Spelman: The four federal classifications. >> Well, the four federal classifications are race, color, national origin, and religion. >> Spelman: Right. >> I would like to say that protected class status is not -- not a factor in a retaliation case. Discrimination based on protected class status protects you because of who you are. Retaliation protections protect you not because of who you are, but because of what you are doing. You are opposing discrimination. And your race, color, national origin, are not part of that analysis. >> Spelman: So it doesn't matter whether it's appropriate discrimination, inappropriate, legal, illegal. The fact that you are fired because you are opposing discrimination in any form is itself illegal. >> Well, currently, not under the facts of the case a year ago under federal law, and not currently under city of Austin code, because the code does not prohibit retaliation for opposing public accommodations discrimination. >> Spelman: Okay. I personally don't need to get into the arcaneness of this, it seems like a sensible thing to do. What would be the penalty for, in this case, firing somebody for opposing discrimination? >> Well, if we took a complaint, we would attempt settlement. And if we found that the retaliation had occurred, and we could not achieve a satisfactory settlement, then the code requires us to refer that case to the law department to

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consider prosecution. >> Spelman: Okay, and that would be prosecution under the municipal code violation? >> Correct. >> Spelman: Would that be a criminal violation? >> I believe that that would be a general criminal misdemeanor. >> Spelman: So \$500. >> That's my understanding, yes. I'm sorry? >> Spelman: In municipal court. >> Correct. >> Spelman: Could it be up to \$2,000? >> The law only allows us to go up to \$2,000 for public health and safety and zoning violations. >> Spelman: I think you answered my question. Thank you very much. >> Thank you. >> Mayor Leffingwell: We go to item 28, also by council member Spelman. >> Spelman: I think my question has been answered in writing on this one. I hadn't received the rest of the response in advance, but, just to verify, the new version of the resolution is going to have a report back dated December 11th? >> We've gone back with staff on that, and I believe they are comfortable, and I'll ask them to confirm that with a date of November 15th. And I have a copy of the new resolution here if you'd like a copy of it. >> Spelman: I just wrote down November 15th. >> It's quite a bit. We made some considerable changes based on staff input. >> Spelman: If there's no legal prohibition, I'd love to see it. Okay. >> So, having discussed among my colleagues, I think the language as it reads, we would not have a problem reporting back on a timeline. So, we're comfortable in the housing department with the language as it stays, recognizing that it would be November 15th. I don't want to speak on behalf

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of public works, as well as, however, having spoken with the contacts in the department, I believe we all recognize that this is a report back on a timeline that would then implement the strategy. >> Spelman: And would the timeline -- what we're calling a timeline, would it have a list of all the strategies you're proposing to implement, or, would it be something we may update over time? >> I believe we would consult with the strategies that are already recommended, and anything in addition to that staff felt we would add or enhance the work group's recommendations would also be listed. >> Spelman: Sounds reasonable to me. Thank you. >> Thanks very much for your work on this, by the way. >> Mayor Leffingwell: So, when you come back in November with the report, with the timeline, is that also going to be for council to approve the timeline and the strategies, or just the timeline? >> So, the report back from staff, I'm envisioning would simply be the strategies noting the timeline for implementation. I'm not aware that we would be seeking council approval or action on that timeline, but, I will defer to the council. >> Mayor Leffingwell: So this item approves the particular strategies, presupposes, I guess. I don't know if they're lined out that much, I just took a quick look at it. >> Some of them would require further action. >> Mayor Leffingwell: Further action? >> And we would be -- >> Mayor Leffingwell: So -- >> once we have a sense -- >> Mayor Leffingwell: The reason I ask is, again, quick read-through, I may be incorrect, it looked like there's potential for fiscal impact with some of the suggestions. >> We were aware that some of the strategies could pose additional council action, which was one of the reasons I think

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the december 11th for potential future action was important. So, yes, sir, I do recognize there may be. Recognizing that december 11th would be highlighting for any council action to come back would be, I think, a viable approach. >> Mayor leffingwell: Approving item 28 on thursday would not have any fiscal impact directly. >> That is my understanding. >> Mayor leffingwell: Council member, is that your understanding? >> This would be my understanding. We're not authorizing funding. >> It sounds like there are potential subsidies for housing, that would have to be voted on at a later date. Okay. Item 33, council member morrison. >> Morrison: Thank you, this is an item about the ethics commission, and the auditor. And a couple of things. One, I think there is overlap between this and item number 24, which council member martinez sponsored, and I cosponsored, which is basically, in this regard, to kick off a process to figure out how we can put in some clear lines of responsibility and procedures so that if there are conflicts of interest, allegations against our volunteer board and commissioners that we'll know exactly -- we'll have a transparent process for dealing with that. So, that resolution kicks off a process to develop it. I looked at this resolution, and had no indication -- maybe I should know my code better -- but I had no indications that this is actually a modified -- that it's an editing in addition to existing code. And so, I thought we were just

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adding ten pages of code. So, I think, first off, it's going to be very important for me to have a red-lined version of the existing code to identify exactly what's being added and what's being changed, and secondly -- because you can see my confusion, I saw the first whereas and I was like, wow, this is a whole lot more than just working on that conflict of interest issue. So, that would be number one, helpful. But, number two, I gather that this would just preempt item number 24 if it's answering how exactly that process is going to work. And that would be my assumption here, but I don't really know since I don't have the red-lined version. Maybe you could let me know if you think that's the case. I'd prefer there be conversation about this so the ethics commission and auditor's office can work on this as opposed to just telling them how it needs to be done. >> We have it, and the lawyers in arrives -- our office have red-lined, we'll get it to the council today. >> Morrison: I'll just mention one more time that for the council to do its work and the public to understand, to be able to have red-lined versions is really important. But, I guess I'd like to ask my colleague how he thinks this would play with item number 24. >> Martinez: First, I've only been working with the red-line version, and I was surprised to find that it's not the version is that showed up in backup. I can get you an advanced copy if there's no legal problem with that, just in a few minutes if you'd like to see one. >> Morrison: That would be great. >> Spelman: As this is a resolution not an ordinance change, and it resolves the

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council initiates amendments to city code in a substantially similar form. The basic issue here is, we're initiating an amendment process, and this is where we want to start with that amendment process. It doesn't necessarily mean it's where we have to end up. This is a place which seems to us to be a reasonable place for us to end, but, we realize there are going to be ongoing conversations between, in this case, the ethics review commission and the auditor's staff as to who should do what with respect to

investigations. This is, in addition to that particular conversation, also, it codifies some other things which have not yet by codified. Right now, we have codification of the activities of the office of the city auditor with respect to the auditing functions, and we've more or less codified the yellow book, which is what the auditors work off of. However, they do two things, internal audits, and they also do investigations. The investigations are governed internally by the office of the inspector general -- of the inspectors general, which, in addition to the federal government, exists in most state government, and several local governments. There will a yellow book for inspectors general, as well as for the auditors. This is how they govern themselves, but there's no code to associate with that. This would add the code consistent with the auditors general around the country, in the same way we codified the auditing and investigation functions. >> Morrison: Thank you for that. I guess it's a lot, and I'll need to study it. And if you could tell me -- >> spelman: Sure. >> Morrison: And I'll just take a look at it. I doubt I'll have time too feel

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comfortable with it between now and thursday, but, I also wonder where it -- what does it do, what specifically does it do with regard to the conflict of interest issue. >> Spelman: It gets the auditor out of that business. If someone is -- has a complaint about a conflict of interest regarding a city employee, which is what the vast majority of investigations conducted by the auditing staff are about now, it's a conflict of interest and a whole bunch of other things, waste, fraud, abuse of various kinds, they do the investigation against the employees. Although in the famous case of ahoa, they did an invest on a ward for a commission member, they believe that because the final disposition of those cases is with directed to the ethics review commission, it would be more appropriate for the investigation not to be done by the auditor, but, to be done by the ethics review commission somehow. So, they want out of that business, they would no longer be doing investigations of board and commission members. It's a starting point for discussion. If we pass item 24, as I believe we will, I'll vote for it, that would initiate a conversation between the auditing staff and the ethics review commission as to exactly who does what. But, this is, in part, a signal. The ethics review commission says, we don't want to do this, we think you should do it, that's where we'll start the conversation. >> Morrison: The auditor is saying we don't want to do it? >> Spelman: I believe that is accurate. If they would like to com up and discussion that, they may correct me, but, that's my understanding. >> Morrison: My first question would be, what resources does the ethics review commission have for doing investigations? >> Spelman: That would be something we would have to discuss, but, I'll pass it to jason. >> Sure, chief of investigations

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in the auditor's office. Thisthis was a discussion that we had with the chair of the ethics review commission, casually about where a natural break in our responsibilities would be no an attempt to clarify this issue that we've been dealing with this year. And so, part of the concern -- I hate to speak for them, but, part of the concern on the ethics review commission is, the way it's written right now, technically, city code violations that involve conduct issues involving city employees could go to the ethics review commission. I think those would be voluminous, given that they meet quarterly. So, there

would be a resource issue there. And so, they say their view, or the chair did, as to focus on the board members, commissioners, in addition to campaign finance and other issues they handle, we felt this would be a natural break to start the discussion. >> Morrison: How do the civil service rules play into all of this? >> The employees that receive disciplinary action at a certain level -- I don't think it's every disciplinary action, but, at a certain level, as a result of our investigation, could appeal those actions, and then that would go before the municipal civil service commission. That's a very elementary description, I think our hr director is here -- he could speak better about it. >> Good morning, mark washington, human resources director. So, regardless of the nature of the discipline, whether it's a fraud, waste and abuse, or any other kind of conduct, employees would have the right to appeal the disciplinary action before the civil service commission if they were terminated, demoted, or suspended for said actions. >> Morrison: I think I'd like to defer to my -- the sponsor of number 24, council member martinez. I just have to say that, maybe

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I'm just particularly at sea because I don't have a red-lined version. You can see my dismay when I thought you were presented ten pages of code. But, also, it seems like to be able to get it really clearly delineated, what this does overall would be helpful to me. >> There is one other aspect that may be a little conflicting within the civil service revisions. Within the rules, it requires investigation for due process to occur for anything that's not fraud, waste, and abuse related to occur by the human resources department or the management of the department that they're in. And so, that is in the approved rules. So the ethics commission, or the auditor's office, would be somewhat conflicting with what's in the approved civil service rules if they were investigating actions on employees without going through the process and the rules. >> It's my understanding there's not a conflict so much as the code before us stops at that point. So, this code would cover the investigations that jason and his people would be doing. What happens subsequent to that investigation being completed is not covered in this particular bit of code. There's other stuff to cover that. So, it's my understanding that there's nothing here which supersedes our current due process requirements at all, it just says, here's how he's going to do the investigation, now it's up to you to implement a different part of the code with respect to the due process issue. If that's not true, we have an opportunity to fix it, because all we're doing is saying, we want something substantially similar to this. If there's a due process issue here, please fix it and come back to us. >> I would have to defer to the

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law department. As long as the investigatory parts are related only to fraud, waste, and abuse, and not other aspects of employees misconduct, harassment, etc. So, I would -- >> yes, it is. >> Push the button, please. >> I'm beverly west with the law department. The amendment is unclear whether or not it would include personnel investigations, and personnel investigations would require and and it was something discussed a lot in front of a commission -- that a representative be a part of investigation or the interview. And my understanding is from the discussions and the municipal civil service communication that the auditor's investigations would not include representatives to sit in with the

complain thannant, or the witnesses. >> A couple of things. Number one, we would not get involved in the other personnel violations, harassment, discrimination, retaliation, those are not issues we've investigating or intend to, we're focused on fraud, waste, and abuse. The misuse of city resources, conflict of interest, waste of city resources, items of that nature. As far as represents, we have a policy. Our practice is to allow employees that are the subject of the investigation to bring a representative to an interview and represent them. And that representative can be someone from the union, a colleague, an attorney. We've had family members, we're open to that. We don't have represents -- representatives at the complainant or witness stage, there's nothing to prevent them from sharing information. We're trying to keep the confidentiality sound and secure. >> That's where it conflicts with the municipal civil service rules. >> Spelman: Because they require that if somebody's bringing a

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complaint, you have to be able to see them and hear the complaint from their mouth -- complaining about before you can take disciplinary action, is that accurate? >> That's accurate, but the concern of the conflict comes up when not just the complainant and witnesses, and respondent aren't titled to having a representative during the investigatory interview. That was something there was a lot of discussion about. >> The witness believes that by testifying, that they would become the subject of an investigation, they can stop the interview and ask for a representative. >> Spelman: Okay. >> That is something different than just the regular witness interview. If we have a witness providing information suggesting they committed integrity violation, we stop the interview and say, listen, the nature of this interview, the discussion has changed. And we let them know about our practices, and their ability to have a representative, we can stop the discussion, and reschedule it. >> Spelman: Does that answer your question? >> Actually, that argument was made in front of the commission, and it passed that every witness would be entitled to have a representative regardless of whether they welcome a respondent or not. >> Spelman: Sounds like we're getting into the arcane. >> Details. >> Spelman: Details of the code. But, it sounds like the conversation that we would end up having with Jason and his people is, can they live with that. And I manage you may not have a lot of choice if the matter. >> Right. >> Spelman: But, you ought to give it some thought. >> Okay. >> Spelman: All right? >> Mayor Leffingwell: I would say, it seems to me, you know, just in the interest of fair dealings, that if you're calling someone in as a witness and they want a representative there, they should be able to have it. Evidently, that's enshrined in the civil service code, also. >> That's correct, Mayor.

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>> That's something we're ready and willing to discuss. Part of what's in the current revisions is a commitment from our office to be more consistent with other authorities throughout the city. We're changing our terminology, that's what we're trying to achieve, consistency and equity for our employees. >> Mayor. >> Mayor Leffingwell: Who? She said Mayor first. Okay. I was going to go on to another subject within the same subject, but, I mean, if you have, go ahead. >> I guess mine's more of a wrap-up, I think I've come to a conclusion of what I'd like to see. >> Mayor Leffingwell: Well, I have a couple of other issues I wanted to try to raise. And, again, I don't think read a red-line version. But, I

understand there are potential conflicts in their giving the auditor authority to, for example, hire an attorney. And there may be a legal question about that. There was also the question of, does it conflict with the charter to have the auditor place certain requirements to take actions and report back on the city manager. I would like to find out if those are -- those questions are in conflict with the charter, also. And they may have been taken out, I don't know. >> Mayor, we've been having conversations with council member spelman's office about some of the charter conflicts, debra thomas can -- we were working on a memo to council about that. And we'll get that to you here really quickly. But, debra can point out some of the charter concerns that we have just identified with the council member. >> Mayor leffingwell: Before we get to that, I'll just take a second here. It seems to me there are a lot of issues here that, perhaps, we don't need to be in a rush to push this through. I think we should take time and

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make sure we analyze this and have compliance with the civil service code and the charter completely. Go ahead. >> Yes, mayor, you mentioned that the draft does authorize the auditor's office to hire an attorney. I believe we talked about this in various other meetings with the council. The charter does specifically state the city attorney is the legal adviser and the legal improvised legal representation for the offices, and departments of the city. The city attorney -- we do hire -- the city attorney does hire outside counsel, but, is that outside counsel is responsible for the representation provided by that outside counsel, and monitors and assures the representation provided addresses and protects -- outside of the city attorney's providing that legal service for the city -- actually, the charter doesn't provide for that. It doesn't provide for that. And the city attorney is the legal counsel for the city. If, as this indicates, that the auditor did hire an attorney, you know, it just raises a multitude of questions. The city -- what if that attorney provides advice contrary to the advice the legal counsel for the city, the city attorney would provide? Now we have divergent positions. And I'm not sure, you know, how we reconcile that. I think the charter -- the

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writers of the charter understood that could happen, and indicated the city needs to have one legal representative, and that is the city attorney. >> Mayor leffingwell: Although I understand your point, we had this conversation in my office a couple days ago. It seems to me two things. The first thing is, that this is an issue about which, I think, reasonable people can disagree. And to signal my potential disagreement, I have a couple questions. Suppose jason or his successors in the investigations department need -- are doing an investigation of a city employee, and they need legal advice. Does this put you and your staff in a difficult position of having to provide legal advice to the person being investigated, as well as the person doing the investigation? >> No. >> Spelman: Is there a difficulty in sorting? >> We do that frequently. >> Spelman: I'm sorry. [ Laughing ] >> hr conducts investigations, and so, when there is a legal conflict, and those are set out by the texas rules of disciplinary procedure, we follow those very closely. We have it frequently with the police department and officers and issues. We are very comfortable hiring outside counsel when there is a legal conflict where we are disqualified from providing advice to two parties where the outcomes may not be in concert with each other. So, we do

that very frequently. >> Spelman: You very frequently have to represent both sides, or engage outside counsel? >> Both, it depends. First of all, we have to determine, is there a legal conflict. Or, is there a high probability that there will be a conflict. >> Spelman: Okay. >> So, we make that baseline determination up front, and then we hire legal counsel. Generally, when we're working with hrd, there's not going to be much of a legal conflict with us giving the legal advice in

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those matters. But sometimes, there might be. But, we make that determination all the time. We have hired outside counsel for the auditor's office before. We had advised the department, they questioned the legal advice. We said, okay, we don't want to be in this issue, we hired independent, outside counsel to only advise them about that particular issue on which we had been advising the department on that same issue. >> Spelman: I understand your opponent. It seems to me you're doing this in a very sensible way. And it seems to me that the investigations need, for legal advice is not inconsistent with your current procedures. If Jason needs a lawyer, he comes to you and says, I need a lawyer, an outside attorney, here are the reasons why. I think you guys may have a conflict. And there's a procedure that you have, which has been implemented, for hiring outside counsel. >> That's the way we work, but, the way the resolution is drafted, that doesn't seem to be what it says. But, currently, yes, we provide the auditor with legal assistance. And if they would request outside counsel, we would evaluate that and make a determination. But, we make the baseline, is there a conflict. You have to make that baseline determination, is there a conflict. >> Spelman: Let me mention one other thing, then I'll be quiet. It seems that although the members of the city council could stick our thumb on the scale, or get involved, this is a controversy best mediated between staff, and counsel that

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is not going to have a conflict and the city attorney staff that needs to obey the city charter and provide good advice for all of its clients. I think the proper way to solve this problem, if there is a problem, there may not be, is that you guys talk to each other and work it out, rather than if we tell you, here's how we're going to do it. I'm not confident to make this decision, you guys are. >> We would recommend that that be stricken from the resolution, we don't think there's an issue. >> Spelman: I would ask that you have a conversation -- >> okay. >> Spelman: Between you, say Jon, the other auditor staff, to be sure that's the right way to handle it, and that's going to meet his needs for outside counsel. If that will meet his needs for outside counsel, you will not hear another word about it from me, but, I would prefer you have that conversation in advance, rather than just strike it right away. It can be stricken, rewritten, made to be consistent with current procedures, there's a bunch of ways to do it that might get you both what you need. I mention this because I think there are a couple of other issues in here. That's one of them, it's certainly the one we've been talking with the legal staff about a lot. There is also the issue of what does the officer of the city auditor do, and what does the ethics review commission do with respect to boards and commission members, which is in a way what started all of this stuff. That is another conversation which needs to take place. But, those conversations can take place while we're working on an ordinance that is substantially similar to this, which does not appear to me to be

controversial in most other respects. >> One other thing, there are provisions that would now transfer the no contact provisions to the auditor's office, and their ability to do those investigations. We would need input from counsel on how they would divide the responsibility. Auditor currently doesn't do

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that. Specifically from a due prospector, now with those hearings and things like that. That's not very clear in the resolution how you would like that responsibility divided up in the code. So, there are some other things that we would definitely need council input on as far as dividing the responsibility, what type of due process, what purchasing we'll continue to do, what the auditor will do, and some of the personal issues that were brought up before. So, we are open to lots of council input on how you would like that to come back. >> Spelman: Let me ask you, this is where I was going to start before we went down this particular issue of legal counsel. The way the resolution is currently written, it says council initiates amendments in forms of the following. In your point of view, is this inconsistent with having conversations with the auditor about legal counsel, about the auditor having conversations with the ethics review commission about where they start and where the other guys stop? Is there any inconsistency in having further discussions before it comes back to the city council, before we have an ordinance we can pass? >> I guess, to the extent that the auditor and the ethics review commission would then be -- the law department draft is telling us what the draft to bring back to you, I guess. I think we said to you, we're not going to bring back anything that conflicts with the charter, we'll have that discussion. But, we also, because you're the final decision-makers, want to make sure we understand where you are. But, no, I don't think it's inconsistent. The issue about purchasing hasn't been fleshed out at all, we haven't heard you say anything about it. That's a pretty significant change we would like to get council direction on. The personnel issues we were discussing earlier, you know,

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making sure that we hear from the council. But, we can have all the council discussions with the auditor. I mean, we didn't know this was coming. We're happy to talk with them and bring back something that we think you guys will like. [ Chuckling ] based upon those conversations. >> Spelman: The purchasing issue is relatively new to me. I don't think we've discussed this as a council very much. The due process issue, we can discuss until the cows come home, but, I know how we're going to end up. We're going to provide due process to everybody involved. We may not need to have the conversation to get to that point. The legal counsel issue, we need to stay with the city charter and be sure the investigators have access to legal advice, and that legal advice cannot be compromised. And we've got a procedure for doing that, so it may be applying the same procedure, maybe slight tweaking, I'm not sure what's involved. It seems these are all things it's better for you guys to do, rather than for us to say, here's how we think you ought to do it. >> Yeah, I just mentioned anti-lobbying, because the council spent a lot of time on that ordinance. We can try to divvy up those provisions we think you may be intending to give to the auditor, it was an initiative the council spent a lot of time on. We're happy to do that, talk to the auditor, the erc. The erc had that group, and get that input, bring you back something we think you want to look at and consider, and we will do that. >> Spelman: The erc has seen this ordinance for a

month now. >> I'm not sure. >> Spelman: Well, I sent it to them a month ago. I haven't heard anything back, I think they're waiting to have a meeting to discuss it at the meeting. But, as far as I'm concerned, this is all in process. If we pass this resolution, the process will continue, and come back at some point when you've

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gotten to resolution, or at least a grudging agreement as to what you think we ought to do. >> Mayor leffingwell: One issue you haven't touched on yet, that's the direction the city auditor giving direction requiring actions of the city manager. I think that only the counsel can do that. So, if that were to be done, the auditor would have to get the council to direct the city manager to do something, and that's not what the current language says. >> Maybe the language needs to be revised. What we were trying to capture -- >> mayor leffingwell: The council can do that now, city manager do anything that's not illegal. >> All we were doing was capturing our current referral process. We receive a lot of allegations that are operational in nature that we refer to management to deal with, this was codifying the dispositions so we can insure there's a central repository, we weren't trying to direct the manager. >> Mayor leffingwell: That's what the language said. >> If I may, I think the deputy here is correct in terms of how it works. But, I find the language objectionable, because, it does say, shall be required. And I don't recognize any obligation to take direction from the city auditor. >> Okay. >> Mayor. Mayor. >> I think that would be a conflict with the charter, also, for the ordinance to say that the auditor can order the manager to do anything would be a conflict. Sound like you see the problem, and you can come up to a change to the wording that's consistent with the charter, and isn't asking a manager to do something -- is that going to be done before the meeting on thursday? >> We can do that. >> Mayor leffingwell: Okay. Council member morrison.

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>> Morrison: So, I'm getting a lot more context now. [ Chuckling ] so, apparently, this has been under discussion for a month at the erc, correct? >> I sent a copy to the erc members a month ago. >> Morrison: Okay, so, here's the issue that I have. And that is, it looks like this is an attempt to deal with a whole lot of issues that are just sort of integrated into some very specific language here, and so -- and the specific language is actually suggesting a direction of how to determine these issues one way or another. And I don't know what those issues are, much less what this direction they're headed in based on this resolution. So, personally, I think it needs some more explanation. And potentially, if we're making decisions with this resolution, a suggestion of we're going to two down this path versus that path, I think it needs a lot more discussion which path we're going to go down. So, I want to throw out a few ideas. One is, you know, potentially the simplest thing would be to put context in the whereases, because, they don't talk about any of this. To list out, what are the issues that need to be dealt with. And in the language, and the -- not only are the issues to be dealt with, but, sort of, how they're going to be dealt with, so we know explicitly what we're doing. The other idea would be just to, you know, maybe have this as the language of the ordinance as an attachment and put those whereases, what we're looking for, how we're going to actually address those issues, put those as the be it resolved.

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Because it sounds like that's what we're really deciding here, and then you could reference the language that you have here as, you know, sort of, some work that might be helpful in getting that conversation started. The other thing is, if there are really issues that need some, you know, real substantial discussion, and before the council can sort of decide which way to go, we could take it to the audit and finance committee to have a substantial discussion about those issues. I'm very concerned about jumping into something, headed in one direction. I mean, it sound like there's a lot of really good stuff here, a lot of things that need to be sorted out, and that are perhaps open questions in our code. So, I applaud the effort, I'm just concerned about the mechanism for making it happen. I'm particularly concerned about putting some language in here that we may or may not really think this is the way we want it to go, when, in fact -- and then, in fact, and and then this passes on to another council for finalization, and, you know, they won't know what the intent was, well, we didn't really mean this, we really meant just as a conversation-starter. So, I have a lot of concerns about how we actually go down this road. >> Take this doesn't -- opportunity to expand on that, just a little bit, since you've opened the door for me. I've been thinking this for some time. I REALLY THINK ALL IFCs SHOULD Go through an appropriate council committee for more thorough vetting. We're in a situation where we don't require - - we have posting language that's required by certain times, but, the accompanying resolution or background data doesn't have to be there by any time certain.

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So, we're constantly finding ourselves in the position of having to try to find out what these resolutions are about, often with no time to do it. And so, just as a general comment, I would like to see a change made that we require all IFCs TO BE SENT TO A COMMITTEE For recommendation so they can be out there in the public a little bit longer. >> Morrison: If you don't mind, if I could respond to that. I certainly appreciate the challenges that we have. I didn't mean to -- I don't agree that all of them need to, I think that this is an example of something that's really nitty-gritty, and could use initial discussion. >> Mayor leffingwell: There could be exceptions for things. We're not posting for this discussion, I don't want to get too deeply into it, there could be exceptions for minor things like approving a fee waiver from march or something like that, but, as a general rule, I think that would be a good council policy. This is kind of closing the barn door after the horses are out, but, it's something that need to be done. I believe by a future council. >> Mayor. >> Mayor leffingwell: Martinez. >> MARTINEZ: MOST IFCs DO Trigger a process. There are rare cases where a code amendment is the ifc, that may be the exception to the rule where, you know, other than rare instances, that becomes the normal operating procedure. MOST IFCs, AT LEAST THAT WE'VE Put forward say, let's initiate a process and asking the city manager to begin the conversation and potential code amendments or recommendations for code amendments. >> Mayor leffingwell: You know it's just a personal disagreement. I believe resolutions often set a process in motion in the wrong direction, and that the specifics of a resolution which initiate a process should be analyzed a little more

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thoroughly, also. But, we're not posting for that today. Council member spelman. >> Spelman: I don't know whether my comment will be more germane to what's posted, but, let me follow along the same vein. One of the reasons why we haven't done that, I think all of us agree it would be a sensible thing to do, our committee structure does not align nicely with the classes of things that we want to consider in our resolutions and ordinance changes. And, as a request by some of us on the audit and finance committee, we've asked the auditor to do a performance audit, not an investigation, but, a performance audit of basically, providing information about how committee structures are identified in other cities similar to the city of austin. So, we have a sense for what kind of committees other cities have got. Maybe that would be good advice for the next council, if you want to do something like this, HAVE ALL YOUR IFCs BE VETTED, Here is a committee structure which would allow you to cover the entire breadth of what they're looking at. >> Mayor leffingwell: Agree with your comments, thank you, we can have that conversation. So, that brings us to the last item, 35, council member spelman. >> Spelman: Real briefly, mayor, I just wanted to remind myself. This establishes an index. This index is our living wage, so that from \$11 an hour, it has a potential to go up as people's needs go up, as the cost of living goes up. What I was mostly wanted to remind myself is, what are the consequences of this? Who gets paid a living wage, what do we use that policy number for? >> So, this council adopted a resolution on june the 12th of

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this year asking for a review of our living wage, which has been \$11 an hour since 2008. The memo came back, did a review of other governmental entities, and what their policies and practices were. And during the budget process, we moved our living wage up to what was recommended in that memo, and that was \$11.39 an hour. Because there wasn't a study conducted of what a living wage in austin actually is, we are initiating this resolution to actually put a stakeholder group together to have a more in-depth conversation about what that index looks like. Tying it to things like the actual cost of living, cost of goods and services, in our geographic region. It doesn't mean we're moving the number now. It's still \$11.39 an hour, but, we believe we need to have a more robust conversation about what truly is the living wage, and then, obviously, the financial way the consequences of any impact it might have on the budget. When we applied it this year, it only affected a handful of city employees, and had minimal to no impact on the budget. >> Spelman: That was where I was going with this, how many people were affected by this that were city employees, and what are the implications for contract employees, employees of companies we have chapter agreements with, how far does this extend beyond our own employees? >> It extends to every contract we put out, construction, public works, 380 agreement. It would apply to the city of austin's living wage policy whenever and wherever possible. >> Spelman: So nobody in the city would be paid less than \$11.39, ratcheted up wards by 3.5% this year, for example.

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And as we ratchet it upward, the general wage increase for non-sworn city officials would go upwards from there, change the contract employees, change the chapter 380 agreements. Do we have a list of all those folks with those classes of people that the living wage policy applies to? >> I would have to defer to the purchasing department on the contract, but, in terms of the workforce, what the council passed this budget cycle was to approve the adjustment for the living wage for all regular employees. Temporary employees, part-time and seasonal employees were not increased to the \$11.39, that would've had an additional fiscal impact of approximately \$2 million to have done that. And so, that's the only class of employees in the workforce that's not subject to the living wage at this time. And we recognize there were some summer-use workers that worked part-time in the summer, and other employees. So, that would be the additional workforce impact. I'd defer to the purchasing department about other contracts. >> Spelman: So this wouldn't change that. >> Hi, acting purchasing officers. We have a living wage provision in our city contracts applies to contractor or prime contractor employees who are directly assigned to the city's contracts. There are four factors in determining when we put living wage in a contract. The work has to require services of of a similar job classification for a city of austin employee. It has to be performed either on city property, or on city vehicles. And, again, I mentioned it was a prime contractor versus sub. And it's for services that are

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competitively solicited. It's not all contractor employees, or all contracts, but, it's contracts for services that include labor and classifications similar to city employees, and only for those employees directly assigned to the city's contract. >> Spelman: Okay, primes not subs. >> Correct. >> Spelman: Only people directly assigned to the city's contract. >> Yes, sir. >> Spelman: If we have a three-year contract, and we ratchet up the living waken, would they then have to ratchet up the living wage to maintain consistency? >> Our current practices, we have not increased the living waken on -- wage on a yearly basis, but, we would increase the living wage base rate in the contract. It does not necessarily mean that the contractor's costs would increase, or that the contractor would have to pay that. In many instances, the contractors pay more than the living wage. We have an economic price adjustment provision in our contracts, and that provision lines out when price adjustments can be made, and oftentimes, labor is tied to an index through the bureau of labor statistics. So, that provision requires the contractor to provide justification to show that their direct costs have been increased as a result of the change, in this case, in the living wage. >> Spelman: So it would trigger it, but, there would be a process for them to tell us, this is why you have to pay more, we had to pay our employees more. >> That's correct. >> Spelman: Okay. Approximately, how many employees are we talking about? >> I didn't calculate that number, but, most of our contracts, it's one or two employees, maybe the sales manager, or maybe one other person, not generally the whole workforce. But I could get a number for you. >> Spelman: It sounds to me like it would be more trouble than it would be worth for an exact number, but, if there's a way of

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relatively quickly coming up with a rough number, dozens, hundreds, or thousands of people who would be affected, that would be helpful. >> We can get that for you. >> Spelman: Thank you. >> Yeah, so this

resolution, is that what it does? Does it require implementation of the living wage policy for contractors now, or is that something that comes with the stakeholder process afterwards? >> We have the living wage in the contracts now, and the process, but it's not adjusted annually. So, what this will do is require that annual -- >> mayor leffingwell: Does it require any change in the contracts? >> It would require us to do a modification every year. >> Mayor leffingwell: But it doesn't also include now subcontractors, just prime contractors? >> No, just prime. >> Mayor leffingwell: I'm concerned because I just found out that it has a substantial impact on the city itself if you include all city employees, right? What was the number, \$2 million? >> Yes, sir. >> Mayor leffingwell: So I'm concerned about, you know, extending this provision to people that we hire, and we hire a lot of them for various services, about how much that is going to cost the city. What is the budgetary impact of this. I think before we do something like this, we ought to know what those numbers are. Anything else? That conclude our business. >> Mayor? >> If we could move on to other items that were not pulled, could we just -- >> mayor leffingwell: We have about 20 minutes left. Go ahead. >> I would like to raise one or two items. I would like to talk about item 38. >> Mayor leffingwell: What is it? >> ITEM 38, RELATING TO TNCs.

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>> Mayor leffingwell: Okay. >> So, if I could, we talked about it a lot. We are now getting close, I hope, to the final action on this. And I think, we've all put a lot of work into this, and the ordinance is -- we are very close to a workable ordinance. There is one issue owed standing, that I mentioned at the end of the last meeting, I asked that it be passed, because, I think it presents a real issue of concern. And it relates to insurance. And just to refresh everybody's recollection of this, we're not talking about the time when there's a passenger in a car, nor or we talking about the time when a tnc vehicle is on the way to pick up a passenger. In either of those cases, there are greater insurance requirements on tnc than we would apply to tack taxis. We're talking about a time when the driver has the app on but has not accepted a ride. That's a gray area, the driver could be on the sofa, their car could get hit on the seat. The tnc driver could be making a personal run to the grocery store, doing something purely personal, in which case you wouldn't expect the commercial insurance to apply. It's consleevable they would be doing something commercial, suppose they're starting to drive around in an area where they're expecting to pick somebody up, and they just -- but, they haven't accepted a ride yet, an accident occurs, somebody could say that's more commercial. The way this has been handled in other cities is, in those cases where it is a personal errand, typically, you would expect the personal auto carriers to cover that. Where there has been an issue, they said, we won't cover it,

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you were performing business. In that says, the tncs provided contingent coverage, saying, okay, we'll provide coverage on a contingent basis since the personal coverage isn't covering that. What that does is creates a market for that particular type of insurance, and there are ongoing discussions about how you can work with personal carriers to provide a product to cover that. What we have passed, on second reading, was different from what has been done anywhere else in the country. It said, no, in all of those cases, the tncs must provide primary commercial coverage, even if it was a completely personal thing,

they were sitting at home, or running to the grocery store, you must provide primary commercial coverage. What I am hearing from the companies is that they just don't think they can do that. And so, we are on the brink of passing something that simply would not be workable for them. I fully expect that -- I have no reason to expect that they would participate with that ordinance, they would probably operate illegally, we'd be right where we are now. I wanted to raise this as a question so we could have further conversation about it. I thought we were headed towards something that would be workable, and I'm not sure why we would choose to depart from other jurisdictions. Council member spelman, I'm eager to hear from you on this. I know you have been interested in tncs. You were actually a cosponsor way back in march of last year when we first were tasked to look at what was going on in other cities to see how they were handling ride-sharing regulations. I know you had an interest in identifying best practices, and seeing how we could apply them here. I wanted to ask you if you might be open to considering how other cities have approached this, so we might get something workable in place. >> It was a 4-3 vote, you think I'm going to be the easiest

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person to pick off. I get you. [ Laughing ] >> spelman: My primary concern is that anybody, if they have the app on, if they get into an accident will be certain to have their costs covered by insurance somehow. And the primary attraction for ensuring that app-on insurance be available been -- by the tnc is that, if my primary insurer said, "no, I think you're engaging in commercial activity, therefore, I'm not going to pay out after you hit somebody," I would be certain to have somebody who would be willing to handle it, picking up the insurance. >> Riley: That is what we had in our prior ordinance, they would be required to provide contingent insurance to make sure they were covered. >> Spelman: I will not say yes or no today, but, what would help me a lot over the next couple days is if you could track down what happened in the state of california in the statute recently signed by the governor a few weeks ago, and identify what the state of california chose to do. And as you've been saying, if you could remind us of what other cities have done with respect to the primary versus contingent issue, that would be helpful for me. >> Riley: Okay, I'll make sure we can present information. Thank you. >> So, if a driver is in his car, with the app on, the way it sits now, he would be -- who would cover that? He has not accepted a ride, he's just in the car. >> Riley: Under what we passed, the company would be required to provide primary commercial coverage for anything that happened, even if the driver was on their way to pick up a quart of milk at the grocery store. >> Mayor leffingwell: As long as he hasn't accepted a contract.

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>> Riley: Yes, even if it was a purely personal errand, the company would have to provide primary commercial coverage for that. >> Mayor leffingwell: That makes sense to me that there should be a transaction there, that he not only has the app on, but has used that app to contract a ride with the company. And then you have somebody else that knows that he's in business. But if he's just riding around with his app on, and gets into -- by the way, illegally, here in austin, after the first of the year, I don't know how you're going to deal with that one -- but if he's just riding around with his app on and gets into a wreck, with his dying breath he turns the app off, you know? >> Riley: If it was on at the time

of the wreck, the company would have to provide primary commercial coverage. >> Mayor leffingwell: Not if he hadn't accepted a contract, right? >> Riley: No, what we passed on second reading, the company would be required to provide the cover passage. >> Mayor leffingwell: If he's in his car, and it's moving? I'm saying, I think it should be when a contract is made. He accepts -- >> Riley: Exactly. That's what I was suggesting, and what other cities have required, is that as soon as the driver accepts a ride, then the company is required to provide primary commercial coverage, if there is a transaction going on where if the driver is on the way to pick up a passenger, then, absolutely, the primary commercial coverage should apply. >> Mayor leffingwell: I don't think it makes any sense to go outside of that envelope and provide coverage at other times, because you don't know when they're just looking at their phone, or sitting at home, or in the car with their phone on, you just don't know.

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>> Riley: I agree, that's the way other cities have seen it. >> Martinez: Mayor. I have a different logic. Why would you have the app on if you're not at work? The point is to receive calls so you can pick up a fare, and earn money through your job. That's why the provision asks for primary coverage as long as the operator is at work. >> Mayor leffingwell: Well, people play with their phones all the time and have various apps on. I could see, for example, where somebody would just say, well, I'm going to the grocery store for a quart of milk, but, real quick, while I'm stopped at the red light, I'll check and see if there's a lot going on. Maybe I want to get involved today, maybe I don't. >> Mayor. >> Mayor leffingwell: Yeah. >> Riley: I can relay an anecdote, somebody sitting in their living room at home, watching the cowboys game. They're sitting, they have the app on, because they know it's ecl day. It's just -- there's no surge pricing in effect, the driver would rather watch the cowboys. People start wanting to leave acl, he sees the pricing now goes up. He has the app on, he sees it go to 1.5, people want to leave the acl. Oh, okay, maybe it's worth it now. He gets up. And he goes and takes the ride. So, he has his app on just to see what's happening. If his car is parked on the street, he's at a friend's house, and gets hit by somebody, looking for a parking space, or whatever, gets hit by a car, under what we passed, the tnc would have to provide primary commercial coverage for that, even though he was watching a football game and the car was on the street. I don't think that makes sense. >> Mayor. Although I understand how it doesn't make sense, I also -- I mean, I understand how it might make sense. We don't have to get into that discussion today, we can do it on thursday.

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The insurance company is not really risking very much if you're watching the cowboys. If your insurance happens to be applicable, it's unlikely they're going to be out of money, it's probably not going to be real expensive coverage. It might be much more expensive if I were in my car, but, conceivably, I'm looking for a ride, too. >> Riley: If I may, if the company is committing to provide coverage for that window, it's not just situations where it's on the street, it's situations where the driver is going to the grocery store, taking the kids to school, doing any kind of personal errand but has the app on to keep an eye on things. >> Spelman: That's where the insurance company is liable to cover the cost of an accident. But, we don't hear about that as much as watching the cowboys on tv. They're still liable to cover the cost of an

accident in those circumstances, but, it's not likely to happen. >> Riley: The principle of the thing, you're doing something personal, not incurring greater risk as a result of being a tnc driver, and yet, the tnc company is being asked to cover that risk window. It's an assignment of risk in an inappropriate place, because there's no heightened risk as a result of being associated with that commercial endeavor, as long as you're engaged in personal business, you would the personal carrier to cover it. >> Spelman: I see your point, but, I'd like to see what other cities and states have done. >> Martinez: Also, again, it's what ironic we're talking about new technology, yet, that technology can't fix this scenario? Why wouldn't the push notification, that you went to surging be sent to a potential driver so they could see what's happening out there, and not have to be logged on as a driver? I just, it blows me away that we

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push this in the name of technology, that this is where we're headed. And I agree, this is where we're headed. But yet, when we come up with what are logical and reasonable requests, then somehow the technology can't handle it. The only way is for this guy watching the cowboys to have his app on. It just makes no sense. There are ways. And I promise you, if those tnc companies are required to provide primary coverage, they're going to kick that driver off who's watching the cowboys game, they're not going to pay for his insurance while he's watching football. >> Well, that still doesn't cover the situation - there might be times when a driver would want to see what kind of activity was going on, and there wasn't any kind of surge pricing in effect, he'd just like to see how many cabs were in the immediate area, for example, to see if he wanted to get involved. I just don't see how it becomes a commercial operation until he contracts -- makes that transaction with the company to go to work for them. >> Mayor. >> Spelman: Tovo. >> Tovo: I think what's relevant is how the insurance company is going to view it. Our staff at our last meeting from legal and risk assessment, whatever that department is, indicated it was a risk, that it was a risk that once the insurance company found out the app was on, they would deny the claim, and those individuals might lose their car insurance. So, I think it's a significant point, and I don't know if the staff want to provide any more information for us. At this point, I assume they were speaking from some position of knowledge about what has happened in other states, but, I would ask, too, that that information be made available to us for thursday, how they arrived at the recommendations they did, or the information they presented last week, that,

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you know, certainly I found to be useful information on this topic. And I guess I would say, since my colleague is about to grab the mic, you know, I hear your point about, this is not what's done in other cities. But, with all due respect, we've veered from what's done in other cities on several points, including criminal background checks. Houston, I believe dallas, others, perform their own criminal background checks, don't rely on the tncs to do it. There are places we're modeling the ordinance after other cities, place where we aren't, we have options, we don't need to follow someone's else's lead if it's not the right path. >> Of course there's a risk the insurance companies are going to try to deny the claim, they're almost always going to do that, right? They could do that to anybody at any time, there's always that risk. >> Tovo: That wasn't the risk that concerned me, because then the contingent

insurance would take effect. What our risk assessment people said was, then there would be a risk the individuals would lose their insurance because they would have potentially answered on their insurance application that they were not engaging in commercial activity with their vehicle, and then they would fall into the category -- >> mayor leffingwell: You're not talking about the insurance company denying the claim, you're talking about canceling the insurance. >> Tovo: Two steps were identified, the claim would be denied, and then also those individuals could stand in jeopardy of losing their insurance, because they were using their personal cars for commercial activities, which, as I understand it -- again, I mean, I'm not a risk assessor, nor am I an attorney, I'm going off what our staff said. But, it was two steps, the claim would be denied, but, the really concerned point, the drivers might then lose their insurance because they were using their personal vehicles for commercial activities. >> Riley: Mayor. >> Mayor leffingwell: Yeah, it just seems like it's a -- what

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council member riley is proposing is reasonable, and the other option is basically poison pill, from what I've heard. Council member riley. >> Riley: If we're basic our policy decision on a risk that the driver's personal coverage would be terminated, I would be interested in knowing if we can identify a single instance where that has ever happened anywhere in the country, where a driver who files a claim under the personal coverage for an accident occurring while they were engaged in a personal errand, but their app was on, and their insurance was terminated. I have not heard of any single case anywhere where insurance has been terminated for filing a claim under those circumstances, but, I would be very interested to know if that has happened. And if staff is bringing that as a risk, I'd be interested to know from staff on what basis they are basing that, if they know of any case in the country where that has ever happened. With regard to the point about criminal background checks, most of the cities we looked at rely on the companies to perform their own third-party checks, I recognize houston did that differently. We are not going out on our own by relying on the company's provision of background checks subject to an audit. We can provide a whole list of cities that have done exactly that. >> Mayor leffingwell: So much for getting through by 5:00 on thursday. I anticipate more discussion. Anything else? >> Riley: I know we don't have time to discuss it, but, I wanted to put it on people's radar screens. In terms of micro-units, I'm going to suggest we pass something on first reading only. I've looked at what staff has come up with, and what we see is that under that provision, there are very limited geographic areas where we would be able to get value out of this amendment.

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And, in fact, it would be rather complicated, and I'm not sure it would achieve very much. And I can understand why people would rather wait. I think there may be an opportunity to do something that is cleaner, simpler, and more effective. And I have -- I'm passing out something along those lines. And that would simply be to say -- this is based on conversations with my appointed planning commission, and others that are interested in this, including friends in the affordable housing community. The idea would simply be to say that on a corridor, a future court transit corridor, or in a transit-oriented district, micro-units don't count toward parking minimum requirement, if 10% of them are provided at 50% of median

family income or below. This is trying to acknowledge the concern about undermining dmu, this would strengthen it, and give us an opportunity to provide deeper affordability than we get with either vmu or tod, it's totally scalable, it would encourage as few units as someone wanted to provide, work on the pipes implemented, address the geographic issue by implementing it in places where people might be interested in a micro-unit that would tend to be more affordable, and people might not need a car. It simplifies the code, it's consistent with what we're hearing from consultants, we want something simple, clean. It ebb -- encourages those units. I think it's worth getting an idea like this out there on first reading to see if it's something that we could live with. >> Mayor Ieffingwell: Anything

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else? Without objection, we're adjourned at 12:00 p.M.