

Audit and Finance Committee Meeting Transcript – 08/26/2015

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>> Good morning. I'm mayor pro tem Kathie Tovo, and this is the meeting of the audit and finance committee. We're meeting in the boards and commissions room. Today is August 26th. We're starting about 9:13. Apologies for the late start. We're having technical issues so this will not be broadcast live but it's my understanding the recording equipment is working so the beginning of the tape will be available for those who want to see it after the fact. We're going to start today's meeting. Vice chair Troxclair indicated she has another commitment this morning. She'll be here about 9:30. We're going to begin about discussion the minutes.

>> Pool: I'll be happy to move approval.

>> Tovo: The councilmember pool moves approval. Councilmember Renteria seconds. That passes unanimously with vice chair Troxclair of aye. As I indicated before we have quite a few people here to speak so if you haven't had an opportunity to sign up, please do so. I have just one person signed up for citizens communication and that's Mr. King. Is there anyone else who would like to speak at citizen communication today? Mr. King, you have three minutes.

>> Thank you, mayor pro tem and councilmembers. My name is David King. I live in the Zilker neighborhood and I'm here to just suggest that you consider an audit of our demolition permit process, and specifically looking at the impact that the demolition of a thousand houses this year and more -- or a thousand homes last year in 2014 and anticipated more than that number to be demolished this year, 2015, and see what effect that's having on gentrification of our neighborhoods and affordability. And then the impact that it might -- the risk that might be associated with demolishing older houses that have hazardous materials. In my neighborhood in Zilker, literally, you know, tens -- scores of homes are being demolished.

[4:58:58 PM]

Neighbors are not notified if a home that's being demolished has hazardous materials. They have to figure that out on their own. I think we need to look at that and see what risk our citizens are at from demolishing those homes. The second item I'd like to ask you to consider is an audit of our planned unit development, our PUD ordinance, to see if it's achieving the goals it's intended to achieve. Are we getting superior development and amenities that are commensurate with entitlements being provided to the developer. I think that's really important for citizens to be able to have that kind of information. We know that there's some problems with the current ordinance in terms of establishing the zoning for the -- for the site, and that really is an important factor because the entitlements and amenities are really tied to that zoning, so I think that would be important to look at that. And then to see if there's any -- if there actually -- if they're providing all of the amenities and the benefits that they're supposed to, and if they're not, then is there some kind of crawl back in the ordinance to help the public get back

some entitlements that were granted. I hope you'll look at that and consider that as an audit. Thank you very much.

>> Tovo: Thank you, Mr. King. Any other individuals who want to speak in okay. Item number 3, this is our Austin police department evidence section follow-up audit, which is follow-up -- following up on two previous audits. Welcome.

>> I'm city auditor, and the assistant city auditor will be making the presentation today. Robert Elizondo was auditor in charge of this project.

>> Good morning, mayor pro tem, councilmember. As Cory said, this is the audit in which we are following up on the recommendations that were made in prior audits from 2011 and 2014 regarding the evidence section of the police department. In the follow-up audit, we usually select recommendations and do testing to determine whether those recommendations have been implemented.

[5:01:03 PM]

This is on the chart on the next slide, we have a high level flow chart of how [inaudible] In the police department. So the evidence is collected from forensic experts, police officers, then it's tagged and it's packaged and moved to the evidence section in the facility, in the police department. From there, evidence can be checked out for testing, further testing, or for court proceedings, and then it's returned to the evidence facility. And when the evidence -- the case has been closed or when the [inaudible] Has expired, evidence can be legally disposed by the evidence section. So moving on to the first finding, this finding is about the implementation status of the four recommendations from audit, some issues with the security of the facility where evidence is stored. And those recommendations, when we started out, were -- had not been implemented. The police department had taken some actions, but not enough to implement the full recommendations. However, as we go to APD let management, they took action and provided an action plan that is addressing each of these four recommendations. This audit was confidential, so the details of this finding are confidential by law. Moving on to the second finding, this is regarding the status of the implementation of the recommendation from a more recent audit from 2014, regarding the manner in which APD disposed of evidence, specifically firearms and narcotics. That audit had the recommendation, one, regarding the disposition of narcotics, we found it to be mostly implemented. There are only some outstanding items regarding some gaps in the policies that need to be addressed in order to be fully in compliance with the requirements of the Texas court, and the second recommendation regarding the disposition of firearms, to be fully implemented.

[5:03:17 PM]

And so this -- we shared this finding and results with the APD management and they have taken actions on each of those items. So we have not done any additional recommendations. So this concludes my presentation. I'll be happy to take your questions.

>> Tovo: Thank you. Questions? Do we have anyone from the Austin police department who wishes to make a comment or ...

>> If you like, I can.

>> Tovo: It's entirely up to you.

>> She's coming. We've looked at all recommendations and are implementing [inaudible]

>> Tovo: Okay. Super. Okay. I'd entertain a motion to accept the audit.

>> I move to accept the audit.

>> Tovo: Councilmember Renteria moves to accept the audit. Councilmember pool seconds it. All in favor? That's approved unanimously on the dais, with vice chair troxclair off the dais. Now we'll move on

to our financial policies, the proposed amendments to the financial policies. We received these via e-mail yesterday, and so this period is designed really as a question and answer period for Mr. Van eenoo.

>> Thank you, mayor pro tem and councilmembers. I just would say I'm joined today by Carlos Gails, assistant director of finance for the convention center and Kim Springer, deputy budget officer. As mayor pro tem mentioned, we've briefed all the members on proposed changes to our financial policies, seeking your endorsement of them, seek being you to take action to recommend their approval to the full city council. And I should say to these -- and these policy changes are incorporated in our fiscal year 2015-16 proposed budget, so they would actually get approved as part of budget adoption on September 8th.

[5:05:18 PM]

>> Tovo: Thank you, Mr. Van eenoo. Questions?

>> I'd be happy to move approval and just thank Mr. Van eenoo and his staff for coming and briefing my staff. I was in budget meeting, so I wasn't able to be there, but I did review this before our meeting today, and I'd move approval. Move --

>> Tovo: Councilmember pool moves approval. I'll second that motion. I do have a question. Councilmember Renteria, do you have any questions on this item before we move -- move on?

>> Renteria: So we're moving -- what's the difference between -- I mean what's going to bring in that from additional one percent requirement to six from each department? Is that going to affect our budget at all?

>> In terms of the fiscal year '16 budget, our current policies, policies that are in place today calls for a one percent transfer to the contingency reserve. Right? And so we have budgeted that. One outcome of this is if council approves these new policies, that one and a half-million-dollar transfer to the contingency reserve, we would not need in our budget. And so if council approves these policies on September 8th, we would remove that million and a half dollar transfer to the contingency reserve this year. We would still be in compliance with all of these new policies. Our reserve levels would still be above 12%. We would still be in compliance with our policies related to the use of the budget stabilization reserves, but just in terms of a one-year basis on those general fund reserves, it would actually free up a million and a half dollars that's currently being allocated to those reserves. As you look beyond this fiscal year, the six -- the merging of the contingency reserve and the emergency reserve, the emergency reserve is a fixed \$40 million, then the contingency is one percent that floats.

[5:07:23 PM]

It grows every year. We would be merging those two policies and replacing it with a policy of just six percent of general fund operating budget going into this new combined emergency reserve. So in future years, if the general fund budget were to grow, for example, ten million dollars, then the transfer to that emergency reserve would immediately go up by \$600,000. And so in future years, there will be transfers to the emergency reserve to keep pace with the six percent growth. And that's really been one of the shortcomings of having a 40-million-dollar fixed amount, it hasn't changed in ten years and \$40 million doesn't go as far towards addressing an emergency today as it did a decade ago and it won't go as far a decade from today. The best practice is to have that be percentage based. You can't find many cities that do it in a fixed dollar amount. That's why we're making the recommendation.

>> Renteria: Thank you. I'll move approval.

>> Tovo: Thank you, councilmember. I have just one quick question. I had asked during our discussion how the -- how the percentage compares to other cities, and I understand you have some information about that.

>> We do. So in terms of other cities, the city of Dallas has an eight percent reserve policy, not less than 30 days, which comes out to eight percent. City of Fort Worth has unreserved fund balance, 10 percent of general fund O and M. Houston does seven and a half percent. San Antonio says a minimum of ten percent but their target, true goal is 15%. The city of El Paso has 30 to 45 days which translates to eight to twelve percent. We have done some research, gfoa has a best practice notice out that they recommend 60 days, which would translate to 16% reserve levels, is what gfoa best practice recommends. We came across a recent news article about the city of new York and they've established a goal of trying to get to 12 to 18 -- reserve levels for the city of New York.

[5:09:23 PM]

The policies we're proposing were a six percent bare minimum, there's a goal of having it be as high as 12 per. The 12% really has been an internal practice for years, so going -- making eight formal policy isn't going to really change anything because we've been adhering to that 12% for years in any event. We just think it's good to have it formalized in our policies.

>> Tovo: Perform the thank you. What is gfoa?

>> That's government officers finance association. That is the professional organization in regards to municipal financing.

>> Tovo: All right. Thank you. Other questions? Hearing none, we will vote. All in favor? And that's unanimous on the dais with vice chair troxclair off the dais. Thank you very much, for your work on those items. Our next item -- and so I understand, there are individuals outside who cannot come in because it's so crowded, so if we could just kind of keep an eye on anyone who might come in to speak. I don't think we have anyone who has signed up to speak until item 7. So we'll turn to our auditor now for a discussion about the -- about both the special projects and the draft strategic plan.

>> Okay. I have to turn my mic on for that. All right. So we have a presentation on this one. So first, the draft audit plan from our office, as you know, we develop an audit plan each year that covers the fiscal year that includes proposed audits. This year, we added some new components to our approach to this, but what we try to do is, we implement what we call a risk-based approach to identify topics that are appropriate for audits, then come up with a list of those projects.

[5:11:24 PM]

To do that, we get input from council, from city management. We also this year added some public engagement efforts, including meet the auditor event that we hosted here at city hall and we had citizens come and provide thoughts on really learn what an audit is, and then provide thoughts on audits or audit topics that we should consider. And understand we also added a public input forum to our website this year. You see some audit ideas. That's what it looks like. It's a button on every page where you can submit an idea for an audit. Those are incorporated in this plan. In addition, we analyzed various source. We try to do continuous monitoring of local and national issues that might affect the city of Austin, and that might be appropriate for an audit. So the plan that you see -- then we also look into our prior -- our own prior work and work of other auditors throughout the city to try to identify those risks. So what you have this year, there's a project list. I don't expect you to read the project list on the slide, but you should also have a project list in front of you. And that project list includes 17 new audits, three ongoing activities, and those are really our unplanned activities, such as our investigations of fraud, waste, and abuse, which we know we can't plan for the calls that will come into the hotline and need investigating. And the same for our special projects, our council's special requests. We also have 12 carry-over audits, which we have started but don't anticipate fully completing until next fiscal year. And then we have a sheet that we call the priority replacement list and what this tends to be is kind of some

ideas of audits that we would include if we had the resources to include them in the current year, or that we expect to do in the next year. So at this point we are in a comment phase. We put the draft list out. We're receiving comments, and we'd like to receive comments from you as the audit and finance committee, as well as from other council offices.

[5:13:30 PM]

We'll update that plan as needed. We expect to bring a more final plan back to the audit and finance committee at the end of September, and then have an item at the full council as required by city code in early October.

>> Tovo: Thank you. So this is our first discussion of the audit plan. Does anyone have any comments? At this point, as our auditor explained, we'll be approving this next month. I guess I would just kick us off with one question. Have you received any feedback yet from our other colleagues on the council?

>> I believe that all of the feedback that we've received -- and we sent this out as a draft to the council last week, and I believe all the feedback we've received is incorporated into the version in front of you.

>> Tovo: Thank you. Any comments at this point? Councilmember pool?

>> Pool: Do we need any -- do we need an action motion on this? This? --

>> I think today it's really just a proposal and to get any comments. And obviously, between now and the next meeting, we'll also be hearing and I think before we bring it back, would want to share the comments or any proposed changes with the full committee, so you're aware of the request.

>> Tovo: Okay. It doesn't appear we have any for you today. Councilmember --

>> Pool: I was just going to say, I'll have my staff send a couple of ideas to add to the list. We have met previously and I think you've incorporated the information that we shared previously, so there were two additional items that have come up since then. So we'll send them your way.

>> That sounds great.

>> Pool: All right. Great.

>> Tovo: Thank you. I guess the other thing we should be looking at too over this next month is the priority, prioritization, if there are some audits on this list that are higher priority, you believe, than others, that's something we should probably take time to talk about next month.

>> I will say that, for example, David king mentioned an audit that is currently on our priority replacement, the demolition permit process.

[5:15:32 PM]

That's an audit that's not on the current plan, it's kind of on our -- you know, if time permits or something falls off or doesn't need to be done this years, then those are the projects that we look to first, are those on the priority replacement. So that one is currently there and not on our proposed plan at this point.

>> Tovo: Thank you very much. Okay. Why don't we move on to the process from council for special projects.

>> So as all of you know, we do special request projects from the city council -- there's a second presentation. Do you have this one? Okay. I don't think we actually have the slides for this one, but you all have a hard copy of the slides. I don't think they're loaded here on the machine. But I can walk through the process.

>> Tovo: I was going to again, maybe we should use a print copy and just put it on the overhead, if that's possible?

>> That works. Sorry about that. So as you know, we conduct special request projects, and he's going to put up the hard copy slides.

or something like that.

>> Tovo: I almost said ditto.

>> Excellent. But basically special requests come in two forms. So we get special requests from the council as a council resolution. A recent example, the council meeting management and council committee, kind of best practices or peer city practices work that we did last year was a special request from the full council that basically amended our audit plan. In that case it moved more things to carryover, but sometimes it means we have to take a project a I think we've done some prior work on Austin energy when the rate proposal a couple of years ago was being proposed we did some work related to ruling that that came in the middle of the year and resulted in us pushing something off our plan and proposing a whole new project. But we also do special requests from council offices and those are requests that generally are providing information for decision making that we believe can be done in 200 hours or less and we allocate time on the plan for that. Historically we've had about a thousand hours a year on the plan for those types of projects. And whether or not we've used those has varied. All right. So whether or not we have used all of those hours, in fact I think we've ever used all of the thousand hours although this year we are on track to. But if you will see here these are the last five fiscal year years of special requests. And they've ranged -- one year we had seven, although I will say that four of those were related to short-term rentals and to a specific audit we had done. They came from a special audit request that we did done. I believe there were four from four different offices.

[9:33:35 AM]

We've ranged from one in a year up to seven. And they're taking more time. In fact, we've started allocating a little bit more time and some of that is in really I think around 2012 we increased the kind of evidentiary standards that we use when providing this kind of work. So we added more quality control. Because what you don't want is to issue -- to provide information to the council that is used for decision making and then have to amend that information or find out it's in error. We have added quality control of that. As you see in 2014 or 2015, the hours per request have gone up a bit. So right now we have 1200 hours allocated on the audit plan that we just talked about for council special requests. And those 1200 hours will cover, you know, kind of at the current going rate. I think about six or seven requests. And the concern I have with that, if you look at the last slide here, is that we -- first we may exceed our allocated resources so the 1200 hours is at six requests. We've really only had two-thirds of a year with the current council and we've already had the five requests that we show. So I think six may be kind of an underestimate. And then also is it equitable, so that's another question is are those projects evenly distributed or can they be? Can every office have an equal chance of asking for that kind of work? And then really it's the volume, although the volume less so than the timeline. So a lot of those requests that come in are -- come in on a very short timeline. We would like this information in 30 days or by the end of August or something like that. And with those time lines it really affects our audit so we really have to put an audit on hold or part of an audit on hold in order to focus on those requests and get them out. So really I think it affects more our timeliness on our other projects than our actually ability to complete them, but it can delay some of those planned audit projects.

[9:35:39 AM]

And obviously the audits are really on there from a risk-based perspective. So we go through this process to try to identify the riskiest areas and so pushing an audit off can mean we delay addressing or bringing you information about an audit risk that needs to be looked at. So I think what the last slide shows is some possible approaches. And these are just ideas that have come up. Certainly we're open to

more ideas from the committee about how to handle this, but I think first we probably should, regardless of what we do with the rest of them, we should adopt some more formal guidelines for requesting the individual special projects. Right now we really just say you request it, we look at it and determine whether or not we could really answer the question. And sometimes we recommend an alternate approach like we think this request is better handled by department management or we really see this as an audit, you're not going to get what you're looking for out of a special request. So we do have those conversations, but then if we decide to proceed with it, we notify the full council and move forward with the request. So I think regardless the guidelines have been kind of word of mouth or in presentations like this. I think those need to be formalized a little bit. But then also some other ideas are requiring a co-sponsor or requiring that this committee review the request. So other thoughts from you are certainly welcome.

>> Tovo: Thank you very much. I think this is a really important issue for us to address. So colleagues, I'll welcome your thoughts on this.

>> Pool: What would be the best way for us to work through this, talk with you and like in a meeting, offline, just try to figure out -- asker and you do -- auditor and you do the best practices, you might have the recommendations on how to approach. I like the two why did you put out here, having at least two councilmembers sign on, possibly having some committee vet the requests.

[9:37:46 AM]

That could tend to slow things down so that might not be the best, but if 1200 hours and 200 per audit is the general benchmark, that's six a year and there's 10 councilmembers and a mayor. I think raising the issue would help educate the rest of our colleagues on the fact that it's gotten jammed up, and maybe we'll find other ways to request information.

>> Tovo: Councilmember Renteria, do you have any thoughts on this?

>> Renteria: I don't have a problem if we require a co-sponsor. That might be a solution. Because I know I requested an audit, but it was just basically because I know we're going to work on the future with codenext and the contact team and planning. I wanted to find out if we really was prepared for what's coming up next. I know that we could use that information in our committee and our planning committee. But I -- you know, I kind of feel like if you can't get a second one on this, unless you can really prove that there's something -- something illegal or something that was, you know, exposed the city to liability, you know, I would support a co-sponsor.

>> Tovo: Thank you. I think that's a good suggestion. I also -- if time permits I think having the audit and finance committee review the request might make sense, but so many of these might be time sensitive. So having a sponsor might make sense. I'm going to propose that we do a little thinking about it between here and next month. And that we come prepared to take action on some kind of policy recommendations to forward to the full council.

[9:39:49 AM]

I think the first suggestion of adopting some guidelines makes good sense. If you look over the previous kinds of special request projects, they were designed to be short-term, very focused, information-gathering attempts to help influence a policy that was before the council. For example, if you look back to 2012 you see several on short-term rentals looking at the current situation with regard to short-term rentals and in a hope of influencing what was coming on the council agenda. It seems like the more recent ones are really getting to more basic research, which I don't know is really the best use of our auditor's time as I understand. That is certainly part of what our audit staff do, they do basic research, but I think corrie, as you define your role when we had an opportunity to talk, it's research done in the

furtherance of understanding whether our departments are complying with those kinds of best practices, not just general research. So I do have concerns with this shift that it looks like is going on to more basic research that might be better executed by some of our city departments who have expertise in this area, and then knowing that while you're very capable and your staff do an excellent job with whatever task you undertake, anything we're asking them to do takes, as you hear, might divert them from some of the audits that are planned, some of which are really necessary. So I think we do need to do a little thinking about how to talk with our colleagues about when it's appropriate to request a special project and what is the -- what are the potential consequences of that in terms of our audit plan. What issues won't be handled. So again, let's come prepared next time to take action on some guidelines and a policy. I heard some support for requiring a co-sponsor. I think that makes sense and I agree. And if there are other items we want to add to that list, we certainly can consider it, but do T about the guidelines.

[9:41:52 AM]

I think having some guidelines would make sense. Not as hard and fast rules, just guidelines. Okay. Thank you. Okay. Next we have the issue regarding highstar. The potential execution of a lease agreement with highstar capital lp for up to 30 acres of land at the austin-bergstrom international airport. We do have some speakers signed up to testify on this item. I think we'll hear from the staff first if that's all right. The citizens I have signed up to speak are David king, Keith Hanson, Frances Mcentire -- no, excuse me, you signed up for 10, but identified yourself as district 7. And that's it. So we have two speakers signed up on this item. Mr. Smith, would you like to give us a sense of where we are in the discussions? I think we left this item at council with the understanding that you were going to meet with or have continued discussions with some of the airlines that expressed some concerns or questions about the arrangement and maybe you could just start with a little update and then we can have some discussion.

>> At the end of last meeting you had a number of the airlines were complaining that they did not have sufficient information on this yet so they had some additional questions. So we sent out a communication immediately after the meeting and asked the airlines to submit all of their remaining questions that they had so that we could develop responses to those. So we set a date to get the questions in and then we set a follow-up meeting where we would discuss the answers to those questions.

[9:43:54 AM]

When we sent that out the airlines then asked for an extension for the time to get -- submit their questions and they asked us to change the date of the meeting so that they had more time. And we accommodated that. We gave them the extension. When it came time to get the questions in we only get responses from a couple of airlines,, several of the major players, united, American, southwest and jetblue. While they had time to submit the questions, in the end decided not to submit any questions. And then they also decided that they wouldn't participate in the meeting to hear our responses to the questions. So when we set that meeting we had allegiant, frontier, air Canada and Texas sky were the four airlines who participated in the meeting. The other airlines chose not to participate in the meeting. And as I said, also didn't submit questions. So we held the meeting. We went through all the questions that we had received. And that's pretty much where we are as a result of that. So we feel that we made every effort numerous times since the discussions on this subject really started in may, and we have gone through a series of postponements that were requested and we've accommodated. We were originally going to come to council on June 12th and postponed to the 18th. On the 18th to

accommodate their request we only submitted our rca for a recommendation to negotiate, not execute. And then we put it up to August 13th for council action. Then there was the referral to committee here today and we hope to get it back on the council agenda when y'all feel it's appropriate.

>> Tovo: Thank you, Mr. Smith.

[9:45:57 AM]

Questions, colleagues?

>> Renteria: Was there any reason why they didn't want to attend? Did they say anything about that or they didn't respond?

>> No, they ended up submitting something else, which really had nothing to do with the questions and nothing to do with the south terminal. They sent us a communication requesting an extension on their lease in the main terminal. Which at least from our perspective, the two have no relationship.

>> Renteria: Okay, thank you.

>> Tovo: Mr. Smith, I believe I'm referring to the same issue that councilmember Renteria just raised. We did receive a communication yesterday from southwest airline with some term sheets and I assume that's why -- I assume that gets back to the reason you just stated that you feel those are separate issues. I believe their request was that you amend their agreement to include the same financial or similar financial provisions. I wonder if you could just address that request.

>> The structure between airports as landlord and tenants, airlines, generally most airports have some type of a lease arrangement for that. The lease that we have had traditionally at Austin Bergstrom is a five-year lease and at the end of those five years or at least before the end of the term you generally start negotiating any amendments to the lease that you want for the next five-year term. When the most recent five-year lease expired the airlines were not pressing to do renegotiation at that time and the airport was not pressing to do a renegotiation. And the reason that we were not necessarily interested in it is at the time we already saw that the airport was starting to have capacity problems and we knew we were going to have capacity problems.

[9:48:03 AM]

So we wanted the flacket of not having a lease with the airlines in case some of the solutions required to either take space from an existing airline or modify a variety of things. And not having a lease is to our advantage in those type of situations when we're trying to move people around. It was not brought up by a significant issue by the airlines. There was never a request by them as a consortium to engage in the negotiations until just recently. And also historically once the airlines and the airport enter negotiations, it has traditionally taken us about a year and a half in those negotiations to come to an agreement on what a lease should look like. So this isn't something generally that you submit one day and sign off on the next day, which is basically what they're proposing to do in their memo. So even if we did start today engaging with the airlines in a lease agreement, I think it would be highly unusual for us to come back to you with that lease document at any time less than a year to a year and a half.

>> Tovo: Thank you. Colleagues, I will share with you that I received an email from councilmember Zimmerman who had hoped to join us. I'm not sure whether he will be able to do that or not. He did express some concerns with the potential risk to the city of the provision that provides for the city to reimburse highstar for that -- I believe it's \$11 million of capital expenditures. Mr. Smith, I want to ask you to respond to that, but also to -- we had some discussion leading up to the council meeting, our last council meeting, about whether that would be capped, whether there would be a very definitive maximum that the city would be responsible for reimbursing.

[9:50:05 AM]

And I just want to hear from you whether that is the case in the agreement that's going before council.

>> Yes. The second question first. There is a cap. We did that as a result of the first time the question was asked by the council. We went back to highstar and said this isn't going to proceed unless we put a cap, and they've agreed. So there is a cap at the \$11 million for the reimbursement. Now, the reimbursement, why it's there, as I've said previously, the original motivation for bringing the south terminal project forward is because we were trying to modify our infrastructure, meaning the terminal facility, to be attractive to the ultra low cost business model, and in particular Allegiant and Frontier, who are our particular candidates for the facility. One way of doing that was to modify the rent structure in there and you do it by making it a limited services terminal. So that's what we've proposed. No loading bridges, no fancy baggage handling system, which allows the rent to be reduced for that facility lower than it would be in the Barbara Jordan terminal. That makes us more attractive to the business model of the ultra low cost carriers. And that was confirmed when Allegiant was very excited about trying to get in to the terminal. And they were looking to add additional routes to the community. So we weren't doing this on a speculative basis. We have a real candidate who wants to come in and use this terminal if we can get it up and running. But given that, even though we had a real candidate, this is a risky venture. I've been at the airport for 15 years and the airlines' business models have changed significantly from when I started to today, and that's just a 15-year period. Just six or seven years ago most of these airlines were bankrupt, trying to seek a different business model.

[9:52:08 AM]

I bring that up meaning these business models are all going to change over time. What we see today is not what we see 10 years from now or 15 years from now. So we're just kind of guessing what that's going to be. So on a financial basis this is a high risk venture that the model would change and leave Highstar holding 11 million investment. So as part of the negotiation they were looking for the early years to potentially be reimbursed for their initial capital costs, but after a certain period of time at the end of six years they're not entitled to any portion of the reimbursement and the risk is theirs. We consider that to be a reasonable term in the lease because at least for the short foreseeable future, and we considered six years being reasonable, we know we have Allegiant in hand who wants to be in our market and wants to use the south terminal. And Frontier is indicating that if the conditions are right they would be willing to use it as well. So we feel as confident as you can be in this business, in this environment, that our investment for those first six years stands a very good chance of us never having to be in a position to reimburse Highstar. 30 years down the road, you know, it's anybody's guess what's going to happen. And that far down the road if Highstar is on the look for that investment. So yes, there is a potential risk that we would have to reimburse. We think it is a reasonable risk for the community benefit that we generate of allowing Allegiant to grow and adding more routes into the community.

>> Tovo: Thank you. Councilmember Pool.

>> Pool: I have two questions for you. How long do you think it will take Highstar to do the renovations?

>> Well, we have them here today if you would like to ask them directly. They've been telling us they hope to get it up in about four months.

>> Pool: Okay. And then in the end if we did have to pay them, we still would have position of the renovations.

[9:54:13 AM]

>> Yes. We've actually been down this road before. Obviously in 2008 when we did the facilities with General Electric as the partner that highstar is now trying to become, at the end of a year and a half that deal didn't work out. GE walked away. We've always been the owner of the facility, we're just leasing it from us. So when they leave we just inherit the facility back.

>> Pool: So this is like taking an apartment and renting it and telling your landlord that you want to paint the walls and -- let me see if I can make the analogy work. And if he -- he gets the value of the updated interior as long as you can stay there for five years, but if you leave he has to pay for the work that you did to improve his property. Would that be an okay analogy?

>> Yeah, as landlord we get the benefit of the upgrades that the tenant put in.

>> Pool: Thanks.

>> Tovo: We do have some speakers. We've been joined by councilmember Zimmerman.

Councilmember Zimmerman, you're right on time. We are just about to go to our speakers on this item. So here are the speakers I have signed up. I know we have a little bit of a challenge because some of our attendees are out in the hallway. Those I have signed up on item 7 are David King, you're first, Keith Hanson, you will be next. Chuck Allen, and Michelle Badon. If there's anyone else who wishes to sign occupy this item, please -- sign up on this item, please get Ms. Hardin's attention. Mr. King, you have three minutes.

>> Thank you, mayor pro tem, councilmembers. I appreciate the information on the risk that is involved in this project, in this proposal. And I do appreciate that this is going to bring some competition in. I think that's really good that we keep that competition up and keep those places as well -- prices as low as possible for consumers.

[9:56:18 AM]

I'm still not clear on the risk that taxpayers are at here. And in the initial phase of the contract and then going forward on the -- up to 40 years basis. So I think it would be good to have a little bit more information about what those risks are and worst case scenarios. And I just heard that a previous deal fell through, General Electric walked away. It seems like this is kind of a risky thing here. So it's just important that we get a real clear picture on that risk and what is the maximum exposure that taxpayers have if this deal doesn't work out. Thank you very much.

>> Tovo: I'm interesting in having a response about the revenues for the airport and how the expenses and risks get managed.

>> Sure. I wanted to clarify that the taxpayers are not at risk because there is no tax support for any of the airport functions. The airport functions are fully paid for by customers who use the airport or the airlines through their lease payments to the airport. And Jim, you may want to add to that, but there is no tax support for the airport operations.

>> Basically in the U.S. It's a user fee model which finances airports. So we charge the users of the facility, whether they be people for parking or whether it's people who want to land private jets or people who want to run a fueling operation, we attach fees to those things. That is our revenue source we use. But as Elaine said, there's no risk to the taxpayer in terms of affecting tax rates or anything like that.

>> Tovo: Thank you for that explanation. The airport does run -- is managed differently in terms of its finances than some of our other departments. Councilmember Zimmerman.

>> Zimmerman: Thank you, mayor pro tem. I appreciate you allowing me to come. I need to tie a couple of things together. I was happy to see councilmember Pool post something on lobbying reforms I think yesterday morning.

[9:58:19 AM]

That's a very interesting conversation. I think it's a valid point. How I want to tie this in here is typically when these kind of deals come forward we'll have a lobbyist come in and explain to us the benefits of a particular contract such as what we're considering with highstar. And the lobbyist would explain the benefits and the lobbyist's primary purpose is to sell the project to the council to talk about the benefits and the benefits and the benefits and the benefits. It is not the lobbyist's job to talk about the risk, the potential down side of what would happen if there was a failure and projections weren't met. It's not up to the lobbyist to explain that our constituents here in the city of Austin that use the airport, if there's a failure of a project they would have to pay more. Right? The parking fees might have to go up to pay for a failed loan. So in fact, we do pay if there's a failure of this particular project. So my question is I'm having trouble understanding how you're not acting in a role as a lobbyist. How are you not a lobbyist in favor of the highstar project?

>> I don't know if I have an answer for that one.

>> Zimmerman: I don't either. That's why I asked. I'm concerned about it.

>> As staff we take into consideration the pluses and minuses. We would not be bringing this recommendation forward if we didn't think it was for the overall benefit of the community. Part of our role is to assess what the risks and benefits are and do our best to put them on the table for the council to understand them. I don't think we've ever said in any presentation we've done on this item that there weren't risks with proceeding with and we've tried to outline what those are. We're just saying when you marry those against the potential benefits the community gets, additional airlines, additional routes and additional competition, that those outweigh the potential risk.

[10:00:20 AM]

But ultimately that's a policy call on your part as to whether or not you degree with our analysis -- degree with our analysis of that particular -- agree with that analysis of that risk situation.

>> Tovo: Thank you. That's a good explanation. Mr. Hanson, you have three minutes. After Mr. Hanson will be Mr. Allen.

>> Good morning mayor pro tem and councilmembers. My name is Keith Hanson and I represent Allegiant air. Not all of the airlines are opposed to the opening of the terminal. Allegiant entered the Austin market in 2013, two full years of service in Austin. In our second year we grew "By 200%. We are focused on bringing passengers to Austin. These are tourists and travelers coming to take advantage of all the things that Austin has to offer. They are renting hotels, they are eating in the restaurants, renting cars. In short, they are injecting money into the economy. They are not just merely passing through on their way to some other destination. We serve 107 markets in the United States. We operate more than 80 aircraft. We're not a fly-by-night operation. We've been in business now for 16 years and had 15 quarters of profitability. We have looked at Austin and decided this is a market we want to grow in. Unfortunately, as you know, Austin is gate constrained. There are no Gates available for us to lease in Austin, we can't grow. So the growth I mentioned we had in our second year has effect you'llly ceased unless and until we can get some additional Gates. We know there are plans for new Gates at the Barbara Jordan terminal but those plans are several years down the road.

[10:02:21 AM]

The need for gate capacity is now. It will still exist then I'm sure. Austin is in great situation in terms of airlines wanting to serve. Most of these meetings that I attend we're talking to city councils and airports that don't have these problems. Too many Gates and not enough -- Austin is in a much better position than that. We're here looking for a gray we can grow. We can add more ultra low fares, bring nor

travelers to Austin. We have chosen, unlike some of the other airlines, we've chosen to engage with the airport and with high star in talking about this. All of the airlines learned about the -- this potential deal at the same time. The airport has been more than transparent in putting the information out there for the airlines to learn about and to participate in and we've chosen to be an active engaging member. I can't speak for the other airlines, but we've been very involved with the airport from the beginning. My - my last statement I would say is let's grow the airport, have more Gates, more flights, nor competition. It's better for the community, it's better for -- as you identified, councilman Zimmerman, there's risks involved but I think in this case the risks outweigh the benefits. I'm happy to answer any questions.

[Buzzer sounding]

>> Tovo: Right on time.

>> I appreciate that allegiant is bringing the lower cost -- the ability for people to fly places at lower cost because costs can prohibit people from seeing the world and it's a good thing to be able to travel so I appreciate the work that you are doing and I also get a real strong sense that you all have worked very closely with Mr. Smith and the other staff at the aviation department to put together a good strong proposal.

>> Thank you.

>> Tovo: Other questions? All right. Councilmember Zimmerman.

>> Zimmerman: To be sure, I love the idea, I agree with councilmember pool, we love the idea of having allegiant, great competition, great choices are great.

[10:04:29 AM]

I like the idea the south terminal is being considered. I love everything about it except the terms of having the users of the airport, the constituents be on the hook for risk. So I want allegiant to succeed, but if something went wrong, the economy went south, the stock market completely tanked and airlines have gone bankrupt before. You have a profit motive to keep operating, I want you to succeed, but the allegiant fails, the taxpayers are not on the hook, correct? We're not on the hook. If your airline goes under, we're not on the hook, are we?

>> That's my understanding you are not on the hook and I have not seen anything in the deal that would lead me to believe otherwise. As Mr. Smith mentions, the way airports operates it's on a user basis.

>> Zimmerman: I just want the same deal for highstar. That's all I'm asking for. If something goes wrong and they fail, we're not on the hook for your airline. If it goes under, we shouldn't be on the hook if highstar goes under. That's all I'm asking for.

>> Tovo: Thank you. Mr. Allen. And our last speaker on this item will be Ms. Baden.

>> Thank you, members of the council. I'm going to echo some of the words that the gentleman from allegiant said and I think what he is looking for is certainty. He would like to have some Gates that he can schedule his flights around so that he has some certainty as to what product he can offer the community. And that's exactly what we call the legacy airlines, the ones that are in the Barbara Jordan terminal, we're looking for certainty as well. We have attempted to engage with the airport and the leadership of the airport. We have been -- we have intended to be at the meeting last Friday. After taking a look at all the questions that we had, we deduced that the -- the highstar initiative was a foregone conclusion so we said let's do something different, let's offer a win-win situation.

[10:06:41 AM]

We would like to have the certainty of those carriers that will be operating in the south terminal. So we offered the win-win situation which simply said give us a similar opportunity to have a lease that we didn't ask for a 30-year lease, we asked for a 10-year lease so we could have some certainty. We are

operating at the airport without a last, for the last year. Normally we try to engage airports about a year before the lease expires so that we can go without having a period of time without a lease. We would like to have that certainty as well. American airlines has served this area, this community and city for many, many decades. We invest over \$20 million every year either in salaries and benefits or rates and charges or landing fees. We think that we would certainly step up to the plate and deserve an opportunity to sit with the leadership and get a lease as well. That has not been the case, however. Today we're talking about the south terminal. That will serve about 3% or less of the travelers that actually use this airport. The 97% of the travelers that use the other airlines are currently using those airlines and those airlines do not have a lease. So we would like to have the same courtesy extended to us. We would have little to no objection to the highstar situation. I can't tell you if it's a high-risk operation because there's not one like it in this country, but we would like to have before the highstar lease is executed, we would like to have the same courtesy and have our lease extended as well. I'll take any questions you have.

>> Tovo: Thank you. Thank you for being with us. Ms. Baden, our last speaker.

>> Thank you very much. Councilmembers, I'm Michelle Baden, I am with united airlines and I too like chuck want to echo some of his comments as well as our colleague at allegiant.

[10:08:52 AM]

I want to emphasize that we are very, very interested in working with the airport. We are diligently trying to work with the airport to obtain not only a -- extend a lease and get a lease for all the remaining carriers that serve Austin today, but we want to engage in a dialogue and understand we want to express what our concerns are with the highstar deal, and our concern with the highstar deal are less about they have nothing to do really with, you know, not want be more capacity at the airport. In fact, we're working with the airport now to add capacity at the main terminal, Barbara Jordan terminal. They are really about wanting to understand the terms on which the carriers that might serve that airport, the economic terms that they are going to be offered versus the economic terms that the remaining carriers that serve 97% of the passengers at the airport will be offered and to ensure that they are economically fair and reasonable and nondiscriminatory. And we do have some very serious remaining concerns with the highstar deal as compared to the deals that we might be offered and that is why we chose to offer the airport a -- what we believe would be a win-win situation where the carriers, we could have the remaining carriers could have certainty, we could understand the economic terms that we're going to be offered to us. We could ensure that they were on a level playing field with the terms that the carriers that might serve the south terminal would be offered. That's our simple request. We thought it would be a win-win and that's where we should focus our efforts, understanding that the city does want to move forward with the south terminal. Therefore we are trying to focus on obtaining that lease and we would just really appreciate the time to make that happen so we can get the commitment and feel sure that we aren't going to receive economically inferior terms on our deal versus what our competitors -- terms on our deal versus what our competitors might receive.

[10:11:05 AM]

I'd be happy to answer questions.

>> Tovo: Councilmember Zimmerman.

>> Zimmerman: I want to commend director Smith. He's trying to optimize the Gates that we have and I think it's commendable to try to have flexibility to move those Gates around and accommodate the maximum traffic. Can you explain for us as we're in a policy, you know, role here, we don't dig into the

details and we're not airport experts, but when you talk about the contracts, is part of the ability to have a gate that's proprietary to American or United and they control the gate exclusively?

>> Sure. I'll try my best. There's a variety of models, if you will, throughout the country. Certainly all carriers want to have some certainty of when that any gate, whether it's an exclusive gate or a shared gate or et cetera would be available so we can schedule flights and not have to call passengers and say we're sorry, we're having to change the flight time or cancel the flight. We don't want that and your customers don't want that, Austin doesn't want that. What we have done historically we have had exclusive Gates, however, we have worked with the airport, with director Smith and to install shared gate capability, shared equipment so that other carriers in the valleys, other carriers are able to come in so we have actually as a group worked with the airport and just completed the installation, I believe, is that correct, director, at our Gates so that other carriers can come in and utilize our Gates in those valleys and we're also working with him on the longer term solution which is the extension of -- and addition of Gates at the Barbara Jordan terminal as well.

>> Zimmerman: The point of the question is so we understand the reason you don't have a contract could be connected to the fact that the terminal is very, very, very busy and we're trying to maximize the use of the Gates.

[10:13:14 AM]

Is that not -- what could be the motivation for you not having a contract?

>> I struggle to know what a motivation could be. No, under any agreement you could build in into a contract the shared use of Gates and the ability to share them at other times.

>> Zimmerman: Thank you for stepping up. Help me understand what could be the motivation for not having a contract because I thought it was the flexibility issue because we have so much traffic coming in. We want to utilize our airport resource better.

>> Before Chuck adds whatever he might want to add, you know, there's a balance between flexibility. I think that would be built into the term. Perhaps they wouldn't want to offer a 30-year years, offer a shorter term lease but there's certainty for the airport to having a lease, not just the carriers. You have debt, you have fixed expenses that you need to meet and the carriers, that's how we get paid, we pay the rates and charges on our leases so there's certainty on the financial end to the city to have a lease in effect with all the carriers.

>> I would just add to your comment --

>> Tovo: Please introduce yourself.

>> Chuck Allen with American Airlines. Just to comment on your statement that the airport is very busy, the airport is very busy because we are using those Gates and we're using them all day long. Those passengers, the passengers coming in on the carriers that are serving Barbara Jordan terminal, if it wasn't for the fact we are utilizing those rates at a very high rate, the terminal wouldn't be as busy as it is. The reason the terminal is busy is because of a function of what we are doing, the airlines in the main terminal.

>> Madame Chair.

>> Tovo: Councilmember Pool.

>> Pool: I would make a motion to approve this and send it back to council for additional consideration and approval.

[10:15:16 AM]

>> Tovo: Councilmember Pool moves to recommend this item to the full council. Councilmember Renteria seconds it. Any further discussion on this item?

>>>> Troxclair: I'm sorry if I missed this, but I'm hearing -- all the stakeholders felt like they needed more time to participate so now we have given some more time but still trying to be mindful of the time line of the airport, but I'm still hearing more time is needed. So if we weren't going to approve this today, how much more time would be needed?

>> Tovo: Who is that a question for, councilmember troxclair?

>> Troxclair: I guess for the airlines, yeah.

>> Again, Michelle Baden with united. From the carrier's perspective, a little more time would allow us if we could get the focus and attention of the airport to agree to a lease with the remaining carriers that would help us understand and incorporate some of the -- what we believe are economically favorable terms that the other carriers at the south terminal might receive, we believe we could do that in very short order. We have offered a proposal including terms to the airport already. We believe we could complete that in very short order and then the remaining concerns that the carriers have, a lot of those would be addressed if we could incorporate some of those same favorable terms into an agreement from the remaining carriers.

>> Tovo: Councilmember Renteria.

>> Renteria: I really see this as two different issues and I think we should proceed with what we have on the agenda and then maybe instruct Mr. Smith to work with the -- the other airlines and maybe come back with a report on how the progress is going.

[10:17:16 AM]

>> Tovo:

>> Pool: I agree and the sunshine in front -- the issue is with regard to highstar.

>> Tovo: It sounded like what Mr. Smith was mentioned that is being described as a much longer process and he's willing to continue those discussions with the airlines. So I agree with my colleagues that these are two separate matters. I appreciate all of the -- I appreciate you being here and talking with us about your perspective and your interest, and again, it appears to me there is plenty of time for that to go on. Councilmember pool, are you officially amending your motion or leaving it open?

>> Pool: I'll stay with the original motion and -- and I think you are right, I think director Smith is clear on what his -- what his future -- what the future actions are. Thanks.

>> Tovo: Any other comments? All right. All in favor please signal by raising your hand. That's New Hampshire must on the dais.

-- Unanimous on the dais. I want to note vice chair troxclair joined us a bit ago. Colleagues, we have several more items. Let me note that we have about 24 -- at last count, which just increased. We have at the moment almost an hour's worth of testimony on item 10, the last item on our agenda, the lobbyist provision so we've got about an hour of public comment. We are -- we've got two issues between here and that issue so we are -- let me just say really pressed with time though we've made great progress so far. So let's move directly into item 8, please, the whisper valley.

[10:19:20 AM]

Councilmember Houston, thank you for joining us on this item.

>> And mayor pro tem?

>> Tovo: Councilmember pool.

>> Pool: I might suggest if the folks coming to speak are on the lobby registration reform item, I can provide some additional information about how we plan to proceed coming out of this meeting and then maybe suggest that we -- I don't know how many minutes you were anticipating, but we might suggest that people limit their input to two minutes each. And also follow it up with written testimony

which they can email to all members of the council as well. We will take this item up today, hear public input for whoever is here and also from the people who helped me draft the ordinance. And the ethics review commission will be taking up this item, I hope it's on the agenda. There is a subcommittee in the ethics review commission to take up lobby registration and similar issues, and then we will use the month of September to work through any items that may have arisen and return to the audit and finance committee at the September meeting with hopes to provide the resolution in final draft form to council at the October 1 council meeting, which would be the next day. So that is the -- that's the road map that I have worked up to address the issue. I know that lobby registration is a concern for folks on both sides of the issue, but I also want to just one more time express my -- my strong belief that our city desires transparency and accountability in all matters at the city and next on who -- and folks who come and do business with city hall. I hope to work with everybody on all elements of it so we can all understand what the intentions are and be comfortable with it.

[10:21:23 AM]

Thanks.

>> Tovo: Thank you, councilmember pool. That's our plan of action for today. At this point I'm going to continue to look at the Numbers. I'd like to afford everybody the opportunity to speak for their full three minutes if possible with the request that they consider whether they need to testify today or whether it would be -- whether they are satisfied with testifying at the ethics -- ethics commission on Monday or at another venue. But anyway, colleagues, just please be aware as we hit these next items that we've got a pretty tight time line. Thanks.

>> Does that work? There we go. My name is Bart Jennings, I'm with the Austin water utility here to provide a brief presentation about the whisper chili hills and Indian hills. We're going to show that several of the slides in your packet are just for general reference. As you know, public improvement districts are authorized by the Texas local government code 372 and city council authorized the creation in 201 of the whisper valley and Indian hills proposed development. This particular slide provides additional information about the type of development proposed. The location of the whisper valley and Indian hills pids are essentially near the sh 130 corridor east of director lake and these are geographical locations as pids are. The next slide, slide 4, does a compare and contrast of our standard water and wastewater utility cost reimbursement agreement versus the kind of agreement that's related to these particular pids. In terms of just generally though, the developer in a standard cost reimbursement agreement will obtain a construction loan, they will then use those funds to construct the infrastructure after the city has inspected the structure, accepts it for ownership, operation and maintenance, the city will reimburse the developer for the developer's portion of the infrastructure.

[10:23:42 AM]

Now, particularly to the meat of this particular discussion for today, you have a large 11 by 17 sheet of paper. Councilmember Houston, do you have that available?

>> [Inaudible].

>> I'll walk you through this particular process. It starts with the city authorizing creation of pids in the upper left-hand corner. That was done in 2010. The city then enters into agreements with a developer and the developer is responsible for paying pid bonds and making those timely payments. The city will issue pid bonds, and as you are following the flow chart to the right, there's two types of pid bonds related to whisper valley and Indian hills. The first is not related to cost reimbursement agreement, and the collateral for those bonds is the land. And the bonds are paid by pid assessments to the property owners. Depending upon when the sales of properties are, that could be the developer themselves or an

individual landowner. The other type is cost reimbursement related bonds. The collateral is in this case the city's Austin water utility's cost reimbursement agreement as well as the land and the bonds are paid with city reimbursements. You will see Numbers on this flow chart. This is to show the flow of money. These are hypothetical Numbers. Let's say for example the no one cost reimbursement dollars are \$2 and \$10 related to cost reimbursements. The bondholders purchase the bonds so now there's \$12 essentially available for the construction of infrastructure. The pid bond trustee will release those pid bond proceeds to the developer for construction as directed by the city.

[10:25:47 AM]

So now the developer has a pot of money at \$12 to construct the infrastructure in accordance with city standards. What we will get into just later here is this is where the problem occurs and why we are coming back to council. But in this flow chart of how the reimbursements and the pid bond proceeds will continue on. So let's say that the infrastructure has now been accepted by the city, we've inspected it. It meets all our standards. For that \$2 amount that's related to pid bonds that are not tied as collateral to the cost reimbursement agreement, the developer or the property owner is going to make those annual payments to pay off those -- those portion of the bonds. Those payments, the city acts as on the behalf of the developer and will receive these pid assessments and then will remit those to the trustee who then pays the bondholders. For that amount that is not -- that is part of the cost reimbursement agreement, Austin water utility, the city, after acceptance of the infrastructure will forward the cost reimbursement funds to the trustees on behalf of the developer. So that \$10 then goes to the trustee. The trustee now has the \$12 that was originally issued through bonds and then will reimbursement the bondholders. Additionally, if you follow on the right-hand corner the little red line, the developer then will repay Austin water utility for the developer's portion of reimbursement through the sales of lots. We receive a portion of that. So the reason why we're doing that is what the city has done is essentially paid the entire amount, but the developer needs to pay for their fair share and so it's just a different financing mechanism to where the developer is reimbursing the city for their portion of the infrastructure.

[10:27:48 AM]

And in this particular agreement with whisper valley and Indian hills, 20% of the sales proceeds will come back to the city to reimburse the city for that infrastructure. So the request that we have for city council and to give you a quick little status is that the developer has a \$7.4 million assessment payment due to the city on July 1st. The city has already reimbursed 1.9 million of the 7.4 million that was related to a wastewater interceptor that was reimbursed and that 1.9 was deposited with the trustee behalf of the developer. That remains \$5.5 million that was due July 1st. The developer plans to use city reimbursements to make those pid assessment payments. The developer did not complete the -- the infrastructure projects by July 1st due to construction delays that happened. And so at this point the developer did not pay the \$5.5 million that was due, it remains due. The developer is currently in default. And that the \$7.4 million principal and interest payment on the pids is due December 1st, 2015, to the trustee. So in order to remedy this, we are asking and will be asking city council to make -- allow us to have two amendments to the water cost reimbursement agreement. The first part of that is to change the reimbursement terms on infrastructure from final acceptance to conditional acceptance. For the city a final anticipate -- anticipate answer means the infrastructure has been built, it's been inspected, everything is done, all the paperwork is in and the grass is growing on top of wherever they built the infrastructure.

[10:29:57 AM]

That's final acceptance. Everything is totally done, there's nothing more to be done on the project. Conditional acceptance is everything essentially but the grass. Our experience has been, for example on the \$1.9 million project that -- that was approved and the funds did come over into the trustee, it took one year for the grass to grow because of the drought. They have to do it four times before it actually set. So by moving the contract language from final acceptance to conditional acceptance, we believe very strongly that there is no impact whatsoever on public health and safety, that the infrastructure is going to be fully utilized and is capable of providing the full needs based upon conditional acceptance, and that we're going to have the developer pay a bond for the remaining tasks, which would be essentially vegetation, revegetation bond. The second thing that we're asking for for the water cost reimbursement amendment is to allow to change the payment schedule. In 2010, the Austin water utility was concerned about the cash flow and its capital improvement plan program and wanted to split out reimbursements over multi years just for cash flow purposes. We do not have that concern now. The money to change this from a multi year payment to just our standard 90-day, one-time payment is fine. The money is in our capital improvement plan. By moving this money to the payment schedule from a two-year to a one-time payment does not affect water rates whatsoever, has no rate impact, so we believe these two changes will allow essentially the developer to make those payments earlier -- or the city to reimburse the -- reimburse the developer and have those moneys sent to the trustee prior to the December 1st, 2015 date.

[10:32:04 AM]

This particular little chart shows just very briefly that breakdown of the special assessment that is due, what amounts have already come into play. One thing to notice on the top part of the table that says description, there's a penalty and interest row. Because the developer defaulted on the July 1st deadline to the city, there is an accrual of payments and penalties that are happening and of September 1 it's \$303,000 and some change. The \$7.4 million payment does not include any penalties or interest because that comes directly to the city. In terms of providing a little more comfort and information related to what we expect to happen, there are two projects that are currently pretty close to being well be reimbursable, waterline 1 and waterline 2. The water Lynn 1, what's remaining on it is testing, making some tie-ins to some additional businesses along that 48-inch line. Some minor concrete work and then the required documentation and verification of invoices. Waterline 2 is conditionally accepted already and we're just doing the final little paperwork on it to be able to release funds to the trustee. So to date this particular item has gone to the water and wastewater commission who recommended approval, and that was on August the 12th. Those of you who were in the public utilities committee, we referred that item to this committee on the 19th. After this committee we are planning to go back to the public utilities committee on September 16th, then we are scheduled for city council consideration on the 17th.

[10:34:09 AM]

Assuming that city council approves and authorizes the city manager to go ahead and negotiate and execute an amendment to the cost reimbursement agreement, then the developer will continue to complete the work that he is doing right now on the waterlines within the next 30 to 60 days, and that upon that we'll be able to make a timely payment for the bid bonds by December 1st. And then just as a note, we will be coming back at a later date related to some changes for wastewater agreement for the same pids, whisper valley and Indians hills. That quickly being cans a brief presentation.

>> Tovo: Thank you. A relatively brief presentation on a complicated matter. Thank you for that. Questions? We do have a couple speakers. Shall we hear the speakers first? Mr. Gilleland. Actually you may be our only -- we have two speakers. After Mr. Gilleland will be Mr. Metcalf.

>> Doug lace Gilleland. I'm the managing partner for whisper valley and Indian hills and I appreciate the opportunity to visit with you about these two projects. I have attempted to reach out to all of you to sit down and explain what is a very complicated financial structure on these projects. I can't do justice to that in three minutes. So I'm going to take this time to simply tell you that these are very important projects to east Austin. Whisper valley will be home to 7500 houses. Indian hills will be home to about 1500 families. Between the two projects, we have 4 million square feet of office and retail.

[10:36:14 AM]

This is a huge economic development opportunity. Whisper valley and Indian hills will be the city's first fiber, Google fiber communities. There's a technology story that benefits the residents of these communities as well as the general area. Whisper valley is committed to dedicating 700 acres of open space for our residents. It will be a very affordable community, housing starting in the mid 100s going to the mid 200s. These projects are located along the sh 130 corridor which has been designated by the city as their desired development zone. This is the future of Austin. We've been involved in this project since 2006 when we aligned ourselves to work with the city council at that time to help them fulfill their vision to get land use control for good quality development on the east side. Going back to that point in time, sh 130 was under construction. It was being built in the county. The city had no ability to annex the property out there without providing services. We entered into a development agreement with the city for water extension for almost 12 miles of waterlines. There's six major waterlines that we're working with the city to build in east Austin. These lines will open up not only whisper valley and Indian hills, but thousands of acres of future development. So these are very important lines that are being built. We're in the process of building the first two which we call waterline 1 and waterline 2 which Mr. Jennings referred to today. All of these waterlines are off site. None of these waterlines are actually on our property. We're working with the city using a pid -- pid bonds, and the reason we're using pid bonds is in 2006 the city did not have the finances to build these lines out to the east side.

[10:38:18 AM]

They introduced legislation in 2007 to the state to create special assessment districts. That legislation failed because it did not have the support of most of the landowners out there. It did have our support. [Buzzer sounding] As an alternative to the legislation that failed, we worked with the city to develop the pid bond financing structure. With that, I again will attempt to reach out to every one of you to meet you personally, to answer your questions and hopefully get your support. We would like to report to you not only immediately and leading up to the meeting the 17th, but to continue to report to you as we develop the -- these two communities. Thank you very much.

>> Tovo: Thank you. Councilmember Renteria.

>> Renteria: I want to ask you a question. Did you finally work it out with the rest of the landowners? You said you were having problems --

>> It's been interesting. Each landowner had to make a decision as to whether or not they wanted to work with the city. At that time we were the only ones. Since we have entered into our agreements with pid bonds with the city, there have been a couple of others, some of which you are familiar with like wild horse. But there are some very large tracts that really represent the future for the city and I think those landowners are beginning to see the valley of cooperating with the city for land use control and working on the infrastructure extensions out there. So I think it's headed in the right direction.

>> Renteria: Thank you.

>> But we were the first.

>> Tovo: Thank you. Councilmember Houston.

>> Houston: Thank you, Mr. Gilleland. The reason I'm here today because I was surprised to see this on the agenda and had no conversation with you all since April. And that if it was important to east Austin, I would -- I would have hoped that when you all went into default in July, I would have been the first person that you would contact. But it wasn't. I wasn't. So I'm hear today to learn about what this is and I -- the email that I got is dated August 24th.

[10:40:20 AM]

That was Monday. And so from July till Monday you had a lot of time to come talk to me about the importance of this project to district 1 and so I'm disappointed that that did not happen.

>> May I respond?

>> Tovo: Very briefly.

>> Briefly. I apologize. We do want to meet with you. We did attempt to reach out. We were at the public utility committee last week and we were reaching out to the committee members there. We were placed on this agenda. We were reaching out to these committee members. I did attempt to reach out to you and I'm sorry I didn't reach out to you sooner. You were the first one we met with back in April with this project. We want to work closely with you.

>> Houston: I appreciate that, but from July till August the 24th does not say an intent to work with me. So please understand that I'm available and I need to know more about this before we proceed.

>> Yes, ma'am. And I will follow up with you.

>> Tovo: Councilmember Houston. Thank you so very much for being with us today and for those comments. Our next and last speaker on this item is Mr. Metcalf. Welcome. You have three minutes.

>> Thank you, committee members. I'm going to have a chart put up here that is -- Bart's chart is activate but maybe a little complicated. I know some of the questions that have come up are well, is the city going to pay money that the developer really should have paid. It's kind of small. And the answer to that is no. It was always -- the way this thing has been structured and the reason it got structured this way, there was no way for the city or for the developer to fund the 40 to 50 million dollars of infrastructure it was going to take to open up this part of east Austin.

[10:42:27 AM]

No one had the money. It was just too much money. So the pid bond structure and the cost reimbursement agreement structure is what we all came up with. And this chart maybe tries to simplify it. Money was never supposed to come from the developer for these -- for these subordinate bond improvements. The way the structure works is pid bonds are issued, that's step 1. That money comes down to the trustee. And when the improvements are built, the trustee then pays money that goes directly to the contractors who built the improvements. It never really goes to the developer. The funds never technically flow through the developer. And then once the improvements are -- were built, there was a schedule of which the city was then going to do cost reimbursements. Again, that money didn't go to the developer, it went right to the bond trustee and then the bond trustee pays the money to the bondholders. And so, again, to dispel any thoughts that the developer is now asking for the city to pay money that the developer was supposed to pay, that's not the case. Now, ultimately it's important to note the developer does pay this money back to the city. So the money the city paid to the bond trustee to pay down the pid bond debt gets paid back in step 4 to the city as lot sales happen. So if you follow 1, 2, 3 and 4 on the chart. That's how it works. As for the payment was due on July 1st, originally that

payment was due on November 1st and that payment got accelerated to July 1st by the city. The bond payment is not due until December 1st. It's never been due until December 1st, and the reimbursement payments from the city and the waterlines will be done in such time that there will be no problem making that bond payment.

[10:44:29 AM]

So, again, to finish, we have worked with the city since 2006 to get this infrastructure built. It's been a cooperative effort. We want it to continue to be a cooperative effort. It's an exciting project in east Austin-

[buzzer sounding]

-- And we appreciate you all's support of staff's recommendation to do this.

>> Tovo: Ms. Troxclair.

>> The dates are different. The debt service payment is due based on the marketing documents and how we sold the bonds. So the due date on the principal and interest is December 1st, but in fact we have to fund that to the trustee six days prior to December 1st. So really the money has to flow to the trustee on behalf of the bondholders prior to that date. The July date and the November date were both established in the service assessment plan that is adopted annually with the pid budget. That was adopted in mid-december at the last council meeting. There were public hearings each year associated with the service and assessment plan, and last fall in working with the developer, we already saw construction delays and we were concerned about them and indicated that we needed the date changed to July 1st to make sure we as staff had plenty of time to work through any issues with the council to rectify any problems before we had to make the December 1st payment. These are structured differently. There's two sets of bonds on both whisper valley and Indian hills. Both have senior bonds, as Bart said, that are just backed by special assessments and the land. The subordinate bonds are the ones that we're trying to rectify the problem with now and they were back in addition to the water department.

[10:46:33 AM]

So they are a little different than the other bonds. We don't have -- the reason we're bringing this forward to council is because we don't have the authority to make the reimbursements until they do final acceptance. We don't have the conditional acceptance authority right now so we're looking for that authority to change the timing of the payment so that we can rectify -- the money on these bonds doesn't go directly to the developer, they go from the water department to our treasury department directs the payment to the trustee on behalf of the developer satisfying his special assessment that was due on just 1st. But the moneys actually do not go back to the developer's business, they go straight from our water department funds to the trustee. But I wanted to clarify a couple points there.

>> Tovo: I appreciate that. Vice chair troxclair, then councilmember Houston.

>> Troxclair: So the date was moved from November 1st to July 1st last year by council.

>> Correct.

>> Troxclair: Did the developer agree to that move?

>> We had some discussions with him about it. He didn't like it, but didn't come forward at the public hearing so we did actually change it. To be honest with you, given the time that we've had dealing with this issue now, there's not sufficient time between November 1st and Thanksgiving to have fixed this problem. So in looking back moving that date was a good thing.

>> Troxclair: Because otherwise we would be in the situation on November 1st knowing that --

>> With three weeks. With three weeks to rectify. And our feeling back in November of last year was that if we change the date to July 1st and we couldn't find another alternative, we could ask the water department to change their proposed budget and have them make the debt payment on behalf of -- to satisfy the bondholders.

[10:48:34 AM]

Because the money is ultimately coming from them.

>> Troxclair: So if this is not approved, the city still has the ability to make the payment and not default on the December 1st payment.

>> It would require a budget amendment for the water utility of the 7 -- \$7 million. The \$5.5 million. It doesn't rectify the business deal. And that is -- we're three years into the deal on the bonds and they are 15-year bonds. On the senior bonds 15 year terms, subordinate 5-year terms. We only have this payment in December and the December 16th payment on the subordinate bonds.

>> Troxclair: And then there's another payment that would be due in July of next year?

>> A special assessment payment, and that would -- that would be funded with the same situation with the reimbursements. And so we're doing the water -- we're proposing a water reimbursement agreement change to allow for the change in timing based on conditional acceptance, and as Bart said they will bring back a similar agreement or amendment for the wastewater treatment plant so that we can make partial payments. And we've talked as late as yesterday at 5:00 we ended a meeting with Mr. Gilleland and his staff and we intend to have periodic meetings to work through how we're going to get sufficient funding for that December 2016 payment.

>> Troxclair: So if -- if the developer defaults on the payments next year, what is the liability for the city? How does the city reimburse or make up that money?

[10:50:35 AM]

>> In the pid documents are complex, but basically the city has a fiduciary responsibility to the bondholders to act on their behalf and do everything they can to rectify a default situation, up to and including foreclosure on the land. Foreclosure on the land generally the legal staff is telling me may take up to six months. Therein again supports our July 1st date. However, the developer has said in working with us that if we get to July 1 next year and there's not sufficient money, they are willing to put up an escrow amount. We'll continue to work with them beyond this action to make sure we're in good position for next summer.

>> Troxclair: Worst case scenario, if we are in this situation again and the developer defaults on yet another payment, the city could be in the position of foreclosing on properties that either have been built have have families in them or half built or maybe the land doesn't have anything on them yet?

>> I have to talk about the development schedule. I think -- I don't know that we would have lots -- I don't think we would have homes built on the lots if the lots were sold at that point. So we're not dealing with a situation where we have people living in homes at that point, but certainly the developer could speak more to the scheduling of that.

>> Troxclair: Okay.

>> Tovo: Council Houston.

>> Houston: Thank you. And this could be a question for you. All public improvement indictments, they have the final acceptance versus the conditional acceptance or by doing this will we be changing all --

[10:52:38 AM]

>> My understanding we only have three approved pids. My understanding whisper valley and Indian hills are the only that have reimbursement agreements tied to them. But typically any time a pid is making improvements, they are done to city specifications and city inspections and city accept answers. So that would be somewhat different. We have had some redesign on some of the projects on this and because these assets are actually in many cases the pid improvements are the city's asset at the end of - when they are accepted, they become our asset and we then maintain them. I do think that there's -- the pid financing was a vehicle as they've said for us to finance waterline extensions to this area of town outside of the city limits.

>> Houston: Thank you for all that, but my question is about changing from final acceptance to conditional acceptance. Are we setting a precedent for the next time a developer comes in and wants to develop a public improvement district?

>> They can certainly look back to this one and say I want that term, but each of these pids is structured a little differently and the agreements are all negotiated on a case-by-case basis.

>> Houston: Then the other thing on the back of the -- the recommended for committee action, it says potentially resolves. Help me understand what that means, potentially resolves rather than does resolve the outstanding assessment issues.

>> There's still some outstanding things that the developer has to do. They have to get documents to us. We've got to inspect the property that's been completed on waterline 1, but on waterline 2 there's still a little work left before we will accept it as conditionally accepted.

[10:54:40 AM]

We said potentially because the developer still has to work with us so that certain things can happen, we can make those reimbursements. Waterline 2 is in more of a complete condition. Waterline 1 is my understanding is 98% complete. There's some paperwork that has to be done before it's official and signed off on by the city. So we use the word potentially because it takes action on the part of the city and the developer to close this as well as the council approval.

>> Houston: Thank you.

>> Tovo: Councilmember Renteria.

>> Renteria: Thank you. I just want some information on it, you know, right now the way the agreement is written that you are required 50% of the reimbursement cost, 90 days, and then when you finally accept the infrastructure, the remaining 50% a year later. Why do you all want to change that to 100%? Is there a benefit for us to do it that way?

>> May I answer that please? Bart Jennings, Austin water utility. We believe the advantage is so that the reimbursements can be timely used for the pid payment. There's no harm by shifting that payment schedule.

>> Renteria: And why did you not do that from the beginning? You didn't have the money at that time or --

>> In 2010 when we were doing this agreement, we had some concerns about how capital improvement projects were laid out and we wanted to flatten the cost, the payment schedule out during that time period so that we would reduce any potential impacts for water rates. There have been some projects during that time period that have been delayed and others have shifted to where we can move that payment up and have no impact whatsoever on water rates and be able to fund that fully without having to delay any important projects.

[10:56:56 AM]

So we feel like the timing is right to be able to do that. If it was the situation that we could not do that or there would be a rate impact and we would be coming to you with a different solution, but we believe this solution or part of it changing final to conditional is -- is of benefit to the city overall and does not harm the ratepayers.

>> Renteria: Thank you.

>> Tovo: Mr. Jennings, I have a couple questions and let me just say this is a pretty complicated issue. It was added to our agenda I believe Thursday evening.

>> Yes, ma'am.

>> Tovo: And I -- I am not clear on how we're actually going to get to a resolution or any kind of recommendation here today. And so I look to more colleagues for some guidance on that. Let me run through some of my questions. Again I have more that I'm going to have to resolve with staff between here and when it comes back to council.

>> We'll be glad to meet with you whenever you need.

>> Tovo: Or I can submit them, whatever is most time efficient. Sounds like you've got a few meetings between now and council on this subject. Were there ever -- what we're being asked to do is to do the reimbursement ahead of time. Was there any provision in the agreement that allowed for those repayments ahead of time if the construction was ahead of schedule?

>> No.

>> Tovo: Okay, so as I read the agreement, there was never any contemplation we would pay that second 50% payment in 2015.

>> That's correct.

>> Tovo: Okay. And it's my understanding -- what happens if we don't approve this? What happens next? And I will say I've had some communications with my commissioner on the water and wastewater and she expressed that this concern -- she expressed some comments to me and I've heard some other concerns that this is one of -- you know, are we just keeping going a project that is -- has some financial difficulties.

[10:59:02 AM]

So I guess I need to hear from you, what happens if we don't approve it. And I'll allow you to an opportunity to respond to that to, Mr. Metcalf, but also you've said a couple times this is in the city's best interest. I've heard the alternative, kind of why wouldn't we do this. You know, there's no hardship to the city, but I think I need to understand better what is the benefit to the city of doing this and also, again, what happens if there is not a will on council to allow for this restructuring. >>

>> So the question of what happens if council determines not to approve the request by Austin water to amend the agreement then we would follow the same exact terms that are in play right now. Which would mean that we would do a reimbursement of 50% upon final completion of the infrastructure and then following a year later would be the other 50%. What that would do is there would be -- for the mid bonds that are due, -- the P.I.D. Bonds that are due, there would be an insufficient amount to do that. And we would be looking to Austin water to make those payments out of its budget or the developer would do a cash call or some form of payment to be able to make that timely payment to the trustee on December 1st.

>> Tovo: Have you discussed that second option with the developer?

>> Yes.

>> Tovo: I guess I'll ask the same questions of -- I think you haven't quite gotten to why this is in the best interest of the city to proceed this way. I wonder if you could address that and then I'll ask the same questions of Mr. Metcalf or Mr. Gilleland.

>> Could you restate your question again? I got lost a little bit, I'm sorry.

[11:01:03 AM]

>> Tovo: Sorry, I meandered, I guess. I think you've made the comment that it's not putting the city at risk or Austin water utility at risk, but I guess I want to hear why this restructuring is in the best interest of the city.

>> Because then we don't have to go through the complications and potential impact upon the financial community of how it looks upon the city issuing P.I.D. Bonds. If we can make timely payments, then that issue is moot. In terms of the infrastructure, it's accepted, we can use it, it will be able to provide water service to not only this development, but other neighboring developments as they grow, since this is in the desired development zone. So we don't see this whatsoever as a down side to it because remember going to get infrastructure that we will be able to use to provide additional water service. So from our perspective, from the utility it's just as good whether with we do it now or do it later. But in terms of financial impact on the city overall, the bonding agencies and other financial institutions that look upon the city of Austin we believe it's in the best interest to go ahead and make timely payments.

>> Tovo: Thank you for that response. And either one of you who would like to respond to those issues and I guess in particular I'm talking about what are your plans if this restructuring is not approved and can you give us some sense of the financial of the project.

>> In 2016 and the potential of default, I want to point out that first of all these are reimbursement agreements and they relate to water lines. Water line 1 and water line 2 and they also relate to a sewer line, about a two-mile long sewer line and they relate to a wastewater treatment plant.

[11:03:12 AM]

Water line two is done and they're simply finishing -- there's some paperwork that the city has asked us for on invoices. It just a matter of turning those papers in. We'll probably have those done today or tomorrow. Water line 1 is about 99% done, we're working with the punch list now. We're scheduled to be done by September 24th this year. The reimbursement language provided for 50% of the payment this year and then 50% next year, so once those improvements are completed and accepted then that payment in the second year is not at risk. The projects are done. The project that's two miles long is done and the money is with the trustee. So the only money in question as it relates to next year is the wastewater treatment plant. We're working with the staff right now to get that built. That's a six-million-dollar improvement. What we have said as a developer is if we get -- currently we're scheduled to have that improvement done by next year. If we get to the mid part of the year next year and we are encountering construction issues, then we're very happy to put some type of a bond to assure the city that that bond payment will be made. It's important to know that these payments were to be made from reimbursement to the developer. The timing is the construction. The construction has not gone as timely as anticipated. We're working with the city to resolve that. The decision was to move the payment from December 1 to July 1, as Ms. Hart pointed out, we suggested it last fall that it would probably be a risky decision to move that payment date because construction was not moving as quickly as it should. It was moved. So we're working as quickly as we can to get those projects done and as I said one of them is 100% done.

[11:05:16 AM]

Actually two of them are 100% done. A third one is 99% done. With those reimbursement there's more than enough to make the bond payment in December of this year and there's a significant amount of capital contribution to the payment next year already in place that the tree will have. So I want to dispel

the idea that there's risk or inordinate amount of risk. I have tried to sit down with each one of you. I want to sit down with councilmember Houston as well and explain this. I want to give you assurance that this will be done and this makes a tremendous amount of sense to the city and the developer and we're committed to making things happen for the benefit of east Austin.

>> Tovo: Sir, would you have been able to make the December payment?

>> This year?

>> Tovo: Had it switched it doesn't sound like you would have been able to make the assessment in December either.

>> No, that's not correct. We're very capable of making that payment, but there's a payment due to the bondholders December first. There is more than sufficient funds coming in from the reimbursement agreements with the city, which was always intended to be the source of the payment of those bonds. Those dollars don't come to us as a developer. So the financial model doesn't envision the developer making these payments. It involves the developer getting the construction improvements done. The city accepting those and then a payment made from the reimbursement agreement to the bonds. If for some reason they're not done and if it's required on December 1 for the developer to make the payment, the developer is very capable. We have over \$50 million of cash in this transaction already. There is no question that that bond payment will be made.

[11:07:17 AM]

>> Tovo: That's good to hear. We're back to the issue of the date. Ms. Hart I think you said that payment needs to be in before December 1 for it to be sent on.

>> May I respond?

>> Tovo: Sure.

>> Again, two of the projects are 100% done. One is 99% done. Mr. Jennings makes a very good point. That last percent mostly has to do with revegetation. It doesn't have anything to do with the operation of the water line itself. We are scheduled currently to have water line one done in early September. So the ability for the reimbursement process to take place is in place right now. We're working closely with the city staff and I think the city will agree we will get this done and have more than sufficient funds to make the payment by December 1.

>> Tovo: Thank you. I have one last question. Is it accurate that there is a owe possibilities within the contract for late payments and is that 250,000, is that the amount?

>> Plus interest there. I believe it starts on an ending balance, won at six percent and goes off one percent each month.

>> It does the the slide 7 includes the penalty and interest through September, the month of September is accrued at the beginning of the month.

>> Tovo: Which would that be assessed.

>> Only if it is not paid on July 1st.

>> Tovo: Do you have an expectation of when that would be received.

>> Have not talked to them about that.

>> Tovo: Thank you. Any other questions?

>> I know they're trying to move this along. I want to better understand, if you have the money and you said the developer has \$50 million, it's not an issue of financial ability to pay, but rather that that was not the structure of this particular contract.

[11:09:25 AM]

However on the other hand you have now defaulted on the became. If you have access to the money, why don't you just pay out of the funds that you have. And then once the infrastructure is fully complete, the city would then release the reimbursement and you would be made whole. Right?

>> First of all, the default is a technical default. There has been no default on the payment of the bondholders. There is a movement of the date when those funds were originally expected to be with the trustee. We asked -- our recommendation to the staff was do not bring that before the city council. We knew then last fall that there were construction issues that would require more time than the original plans to finish those construction items. The city moved forward without our consent and moved that date. And we tried to suggest that this issue would -- and I don't fault the city for doing that. I think Elaine has done a tremendous job in trying to carry out her responsibility. It's our position that the funds were to be played from the bonds. And it's our position we need to get those projects done, and there will be more than sufficient funds to pay the bond holders. It was never intended that the developer make those payments. So our feeling is, our obligation is to ensure in December that those bond payments are made. This idea of moving funds into a trustee account, which is an administrative part of staff, is not our obligation. It is our oxygen to get the construction done.

[11:11:26 AM]

Troxclair okay.

>> Troxclair: Okay.

>> Can I expand on what he said a little bit? There is no way these guys can let this thing get foreclosed on. We have a 50-million-dollar investment. There's no loan. This is all cash in this deal. So push comes to shove on December 1st or November 23rd, whatever a payment has to be made and we'll make sure it gets paid. But from the way this deal has been structured from day one, aweren't supposed to make this payment. We were working with the city to get these lines built. It's sort of a joint venture, let's say, get these lines built. And because of construction delays that we could talk for hours about why those happened, the money's not there that was supposed to be in reimbursement. These things were supposed to be done in 2013, 2014. There's money to be in the account right now and it's not and it's through nobody's fault but construction delays and those things happen for a variety of reasons. It's more than just a fundamental fairness thing of we were working on this together and we were never supposed to come out of pocket for this money. And if awu is in a position now to make the payment, they were worried in 2010 that they wouldn't be able to make the full payment this year, but they were always expecting in 2015 to make a payment of at least seven million dollars. And that's all that has to be made. So this is not ultimately shifting dollars that were -- that were supposed to be made in 2016 up to 2015, all the money was supposed to be there and awu was expecting to pay it even back in 2010. So it's not that we can't make the payment because we have to. We will make the payment. We're not going to let this thing go into foreclosure and default.

[11:13:27 AM]

We can't. But this has been sort of a joint venture between us all along and we're just asking for an adjustment to carry that process forward the way we've been working together.

>> Troxclair: So how do you plan to fund the wastewater treatment and I guess the original construction next year?

>> I'll respond to that. Bond funds have already been sold, \$6.6 million is sitting in the trustees account right now. The funds are there to build it. There were two parts -- there's a reimbursement agreement for wastewater. There's two parts to that agreement. One is for a sewer line, the other for a wastewater treatment plant. Five and a half million is set aside for the sewer line. That line is built and in the ground.

The only thing that's left is the treatment plant itself. Bonds have already been sold, the money is sitting in a trustee account right now under the city's supervision.

>> Troxclair: And have you assured the city in writing of your ability to pay next year?

>> The city has not asked us to put anything in -- we've had meetings with Elaine and her staff to discuss what happens if we get to mid part of next year and there's still a concern about the bond payment in December and we've already said to her if we need to put some kind of fiscal to give the city the certainty, we'll be happy to. Again, I want to express that the funds were never envisioned to come from us, but we will give the city the assurance. We're trying to be very cooperative. We want to be positive and cooperative about this because as Mr. Metcalf said it really is a form of joint venture. This is infrastructure. This is 12 Miles of off site infrastructure water lines that will benefit the entire east side of Austin. So this is a cooperative effort and the sewer treatment plant will provide 10 -- up to 10 million gallons a day of which we'll only take a small portion. This is an effort to get infrastructure and spine improvements to the east side and we want to work with the city to get this done.

[11:15:33 AM]

From our perspective this is a minor correction along the way that just recognizes construction delays. That's all this really is.

>> Tovo: Councilmember pool.

>> Pool: I'd be happy to get and get something on the table as far as action. I know there are still people who have questions and I know you will have the opportunity to answer them, but given the time frame that's laid out in front of us and the fact that this has to come also again to public utilities committee, I would go ahead and move that we -- make a motion that we move this forward. I see what my colleagues feel about as far as making a recommendation on the item, but I think we need to move it forward.

>> Renteria: I'll second that.

>> Houston: Discussion? Thank you for that motion. I'm not -- I can't vote anyway, but the issue for me is I don't have -- I don't think we as a committee or as a council has enough information about the risk that the city has and some of the possibility and I would like to have time to have a more in-depth conversation. I'll go to public utilities, but hopefully I can be able to sit down and talk with the developers and staff about some of the concerns that I have. For example, I would like to ask staff after you've been through this public improvement district is this the most fiscally viable way to get infrastructure into a part of town? You don't have to answer that now, but it seems like that this is costing a lot of money and and we have the fiduciary responsibility if something happens. So I'll need to talk with staff as well.

>> Yes, ma'am.

>> Tovo: At this point we have a recommendation just to forward this -- we have a motion to forward this on at this point without a recommendation. I would suggest if we're -- if anyone would like to make a recommendation that we incorporate that into the motion.

[11:17:38 AM]

If we're forwarding it on without a recommendation I think we should articulate some questions or direction to staff that we would like additional information just as councilmember Houston did.

>> Troxclair: I know we're in a tight position because of the timeline, but I sat through the public utilities hearing the other day and those members really felt like this was the best place to make a recommendation because we have been more familiar with p.i.d.'s, especially because we've been talking about the wild horse P.I.D. Here. And this seems to be more of a financial issue than a water

utility issue? So my concern is if we forward it without a recommendation that will go back to public utilities, they'll not know what to do and possibly have to go through this all again and it will end up at council the next day. And council is going to be looking to say why didn't you make the recommendation and we'll have to have this entire conversation all over again. I think if at all possible -- I don't know that I'm prepared to vote today either. I don't know if there is a way for us to call a special meeting in a couple of weeks to vote on this issue or what we can do, but I think that forwarding something from this committee without a recommendation is going to just confuse the situation.

>> Tovo: I agree it doesn't offer a lot of guidance. I'll say for myself I have questions that I would need answered before I could say -- before I could recommend it. I think this will be one of those issues we have to discuss at council because of the time frame.

>> Renteria: I'm almost ready to recommend it move it forward. I've served a mud before and I know some of the risk that -- it's not really a risk to the city itself as a whole. The risk because we have a collateral and we can always reclaim county land. And it sounds like it's almost completely already completed.

[11:19:43 AM]

I don't have any trouble -- problem with releasing that -- taking the staff recommendation to move this forward.

>> Pool: And I do agree I met with Mr. Metcalf and Mr. Gilleland as did my staff when I had to step away and they had the questions answered. I realize it is a complex situation and our timeline is really challenging. I would ask that the parties get together with councilmember Houston as soon as possible and spend the time necessary to review it entirely so that she has a level of comfort that is necessary, but I would agree with councilmember Renteria to go ahead and recommend passage of it.

>> Pool: Are you amending your motion?

>> I am.

>> Tovo: And you are the second. Are you amending your second or you are comfortable with that amended motion?

>> Renteria: Yes.

>> Tovo: Okay. I'll say some of the questions I would like to explore with staff, are there alternatives to this arrangement and what they are. I would like to ask staff to really provide us with some sense of -- since I assume you've reviewed the financials of the deal I would like some additional level of assurance that this is a financially sound deal and that we're not -- we're not accepting any risk, but also that we are proceeding with a path that is viable. And I appreciate very much, Mr. Gilleland and Mr. Metcalf, your responses. And your willingness to assure the city that you would come up with the money if that's what's necessary. And if there's a way to incorporate that, that would certainly make me more comfortable adjusting this because it does seem to me we never intended to make this payment in 2016 and we are accelerating the city's schedule. I think it's fair to ask those questions. I think I have some more, but that's where I am right now. All in favor? Two? Any opposed?

[11:21:45 AM]

Any abstentions? So that may or may not pass with a vote of two --

>> Renteria: Where is the mayor at.

>> Tovo: It does not pass, but we'll forward it on with the information that two committee members voted for it, two abstained, and councilmember Houston expressed her concerns and a request for additional information and direction and I forwarded on my questions as well. Hopefully that will --

some additional information at least for the public utility commission and for council. And we'll continue to work to getting those questions answered. Thank you.

>> Thank you for your time. We appreciate it very much.

>> Tovo: Committee, as I mentioned, we have a long hearing. I should say the meeting is back on the air. It was a long time ago. And the entire meeting, they were not able to get the first part of the meeting on the air, but the entire meeting will be posted online by tomorrow. Mr. Meszaros and our city auditor, are we comfortable if we need to postpone that next -- let me ask the committee. Do we think we can get through the water loss audit in 10 minutes or less? Mr. Meszaros, the director of the water utility is here, so I would like to do that item if we can. If we can get through it in 10 minutes or less. If based on your briefing and your review of the audit if you think we have a lot of questions, then we should probably postpone it. Okay. Let's take up that item, please. Then we'll move right to our lobbyist item. Committee members, I need to get a sense from you if you can stay beyond 12. We have at last count 48 minutes of speakers.

>> This water loss management conduct, the assistant city auditor was Katie Houston and the auditor in charge was Matthew Keegan. Katie will be here for brief presentation and available to answer your questions.

>> Good morning.

[11:23:47 AM]

The objective of this audit was to evaluate the Austin water utility's efforts to mitigate and report water loss. The scope included actions taken to mitigate water loss, but also water loss reports submitted to the Texas water development board. Here you can see a depiction of the water balance model and it's generally divided into two categories, authorized consumption and unauthorized consumption, which is basically water loss. That water loss is then divided into two categories, apparent loss which generally results from inaccurate meters, and real loss, which a result of leaks throughout the system. Apparent loss occurs when water is used by customers but not report and deliver not billed to customers resulting in revenue loss and the real loss is leaks within the system N 2013 Austin water reported losing 10.7% or five billion dollars of the total water input to the system, which had a value of \$6.2 million. This was one of the lowest reported losses as compared to other large Texas cities. Apparent losses are valued at the retail cost of water while relosses are valued at the considerably lower production costs. As you can see here, while apparent losses represent only 20% of the volume of water loss, they make up 74% of the value of that water loss. Due to the valuation differences, the dollar value of apparent water loss is significantly higher for the city than the dollar value of real water loss. While Austin water has implemented several water loss mitigation activities, costly apparent losses related to inaccurate meters have not yet been adequately addressed. The two largest contributing factors are be reported loss and the losses from inaccurate meters. Austin water contracts with two vendors to perform leak detection services of both small and large mains. To address meter inaccuracies, oversight industries and industry groups recommend a proactive meter testing and replacement program.

[11:25:54 AM]

Additionally Austin water last year hired a consultant to review its water operations and this consultant also recommended a proactive meter replacement program for small meters. While Austin water does proactively test the accuracy of large meters, it has only recently initiated a pilot program to test the small water meters. The water utility properly submitted the required water loss reports to the Texas water development board. However, we noted several opportunities to improve this process and enhance the supporting documentation maintained for these reports. Improving Austin water's process

for preparing the water loss report may prepare more time for staff to conduct an analysis and potential strategies to further mitigate water loss. To address these findings we recommend the Austin water utility director implement a proactive small meter replacement program and prioritize and implement the additional recommendations made by that hired consultant last year. We further recommend that they develop and recommend an efficient process for preparing the water loss reports due to the Texas water development board. Management has concurred with these recommendations and I'm happy to answer any questions that you have.

>> Tovo: Super. Thank you for your work on this. Councilmembers? Questions?

>> Pool: I don't have any questions, but I'd be happy to make a motion to approve if that's the --

>> Tovo: To accept the audit.

>> Pool: Yes.

>> Tovo: I'll be happy to second that. Smartphone it looks like has some questions.

>> Houston: No, I want to say thank you for that information. I thought it was very good.

>> Tovo: Thank you. I know this has been an issue that the community has asked lots of questions about in previous years, and so I appreciate the audit and the work and the water utility's plans and current work. All right. Well, I guess it's just the two of us.

>> Pool: We can table a vote on it until our colleagues return.

>> Tovo: I don't think we need to. Do we need to? We'll table a vote on it until they return, but thank you very much.

[11:27:58 AM]

>> Pool: Thanks for coming, Mr. Meszaros.

>> Tovo: Okay. Let's go ahead and table that for just a moment, but Mr. Meszaros, I don't anticipate that we'll have any questions, so I think we'll just -- if you -- feel no need to stay. Thank you for being here.

Okay. Our last item, item 10, is the discussion of the draft resolution regarding lobbyist reform.

Councilmember pool, you provided us with a little summary of the process earlier in the meeting, but I think some members have come in since then, so if you would just give us a one-line overview. And then we will move to our speakers. Our first few speakers are David king, Heidi gerbroct, Jeffrey T, something like tarahue. I can't read the next one, but it might be hank Smith. So that's the order for the first view.

>> Real quick to recapping for those who may not have been in the room earlier today. Our plan is to lay this resolution out today, take input from those who are here who wish to speak Monday the ethics review commission will have this on its agenda and will assign it to a subcommittee for further work through that subcommittee. This committee will then bring back any changes for additional action and input at the audit and finance meeting at the end of September. Then the first council meeting in October, I believe October 1st, this will be on the agenda is my hope. There's been a lot of work by various organizations and government groups in the community on this issue over a long period of time. So to the extent that austinites have been asking us for transparency and accountability, I'm doing what I can to forward that concept on today's agenda and I'm happy to everybody is here to speak.

[11:30:07 AM]

How are we doing on time, madam chair?

>> Tovo: Not that well.

[Laughter]. Let me go ahead and first just as a -- to pull up the last item, so we're going to take a break from lobbyist reform for just a minute. You had made a motion, councilmember pool, to accept the audit. I had the water loss audit. I seconded it. All in favor? And that passes unanimously with councilmember Renteria off the dais. I was asked the question about how we're doing on time. We have

quite a lot of speakers. We just got some additional ones so I need to calculate. I just encourage awful you to take seriously the words that councilmember pool said about there will be other opportunities to talk about this issue and there will be additional conversations. So if you aren't compelled to speak today, you will still have lots of opportunity to communicate with the council. Otherwise we will do our best to hear all of you who are here today. So Mr. King, you're up first.

>> [Inaudible].

>> Tovo: Okay. Then next is Ms. Gerbroct. Welcome.

>> Good morning, councilmembers, I'm with the real estate council of Austin. I appreciate coming to talk to you this morning. I'm going to pass out a letter from our president that basically is much more detailed about our concerns related to this item? I do want to say I appreciate the comments about transparency. It was a surprise to us to find this on the audit and finance committee agenda. We had been following the process in the ethics review commission and understood that that process was ongoing, understanding that they had just renamed their working group after the boards and commissions was transitioned. So it was a surprise to us. I also want to let you know that there probably won't be as many speakers as you have on your list because many of them had to leave. They didn't know about today until Monday and had to try to rearrange their schedules and weren't really able to do that.

[11:32:08 AM]

So we'll do our best to follow along in the process and get our folks here. The gist of our concerns have to do with just how many people this will apply to. It's professional engineers, architects, land planners, permit folks, all kinds of people who genuinely don't have a choice about having to speak to -- to city staff. Adds part of their job they have to put their professional stamp on things. They can't actually get things approved without speaking to city staff. And I think that a homeowner who is getting their bathroom modeled and is hiring an engineer to do it doesn't actually think that they're hiring a lobbyist. As someone who went to school as a lobbyist, I think what they're doing is lobbying. I don't think they have a problem with transparency. I think specifically with regards to land use lobbying, I think having been a city staffer I think maybe we would have a problem with other kinds of lobbying, but not with land use lobbying. You know who the land use lobbyists are. If I said their names you would know what I was talking about. It deserves as long and as much public process as we give to any code revision. So I hope that you take that seriously and think -- let us have our public stakeholder process. So I'm going to hand out the letter now.

>> Tovo: Thank you so very much. Next up is Jeffrey 10ahugh. Sorry about that. You have three minutes. Welcome.

>> Good morning P chair tovo and councilmembers. I'm the vice-president of public policy for the home builders association of greater Austin. I just wanted to say thanks again for allowing us to speak on this issue and I'm coming to speak in opposition of the proposed resolution.

[11:34:08 AM]

The reason why I'm here is because it's going to not just complicate the system, but it's going to limit the participation of really valuable members on some of our boards and commissions. And the real goal of lobbyist registration is to inform in the public of individuals and organizations who are compensated to influence government and governmental officials. What the it shouldn't do is limit or discourage these individuals or organizations from exercising their right to participate in the municipal process here at the city of Austin. I wanted to touch particularly on a couple of sections and the first one is section 1 where the resolution references the elimination of the incidental employment. Heidi behind of spoke about

this a little bit, and as a lobbyist provision it leaves a lot of room for interpretation and in effect it will require individuals such as Hank Smith who was here earlier today to register as a lobbyist. He's one of our members with over 30 years of experience in construction and development. He's also served on numerous committees and commissions for the city and is currently serving as a secretary for the environmental commission. If this section were to be removed as a resolution is suggesting, Hank, who as part of his non-lobbying job duties, he's required to deal with the city for permits and things like that, he would now be required to register as a lobbyist and thus no longer be eligible to serve on the boards and commissions. He's just one example of many individuals who would then be forced to resign and we estimate that it would be anywhere from 10 to 15% that the boards and commissions could potentially lose. And especially now as we're going through the codenext process. We also have expanding a city official and includes consultants and I think the word consultants should be better defined because, you know, if -- I was calling Mr. Zucker, for example, who is a consultant in essence for the city and I was just -- I was just an average engineer, architect or planner with a private group I would now have to register as a lobbyist because Mr. Zucker is a consultant for the city.

[11:36:34 AM]

I think if you were to leave that section and one thing should be considered as to perhaps define it or clarify it. I also have -- the home builder's association also has problems with section three where we redefine municipal questions to include decisions and actions that are discretionary.

[Buzzer sounds] That just expands it way too much because permits, variances, all the things we do are discretionary in nature so it opens it up way too much. So at the end of the day we just urge you to really consider some of the ramifications of expanding that this resolution may have.

>> Tovo: Thank you very much for that feedback. I understand Mr. Smith has left, is that correct? The next up will be Papa Faye. Next up is Ms. McEntire. After that is sis Meyers. And feel free if you're present just to come up so we can get to you immediately afterward. Welcome.

>> Good morning. Mayor pro tem, councilmember pool, my name is Papa Faye and I'm here today to speak on behalf of my colleagues. At a small engineering firm. We are a small group of -- that loves to do engineering design. And see our design built and serving the city. Our two biggest clients are foundation communities and Austin ISD. We don't know the first thing about lobbying, however as part of our work we have to talk about waivers from city staff. This by definition are not significant enough to warrant oversight by land use commissions. And our objective in nature, which is why they should be administrative. We would be overreaching our area of expertise by a large margin if we were to be asked to lobby.

[11:38:34 AM]

In fact, we would not register as lobbyists even if this resolution passed. We would have to hire a lobbyist every time we are [indiscernible] With an applicant that has even the most trivial of waivers processed by the lowest level of staff. Please consider our -- of how this impacts the affordability of housing in our case, but also hundreds of businesslike ours. Thank you.

>> Tovo: Thank you very much. Welcome, Ms. McEntire. And again, next is sis Meyers. After Ms. Meyers is Chris Randazzo. And then Mr. Gillahorn. I understand you have time donated to you, but I will need some help figuring that out.

>> I'm Frances McEntire representing the league of women voters. The league enthusiastically supports this resolution regarding lobbyist reform sponsored by councilmember pool. It updates and changes the current city lobby ordinance which has had no major rewrites since the '70's. There are various ways that citizens can influence our city's governance. Individuals can encourage their district council person

to be for or against an issue or speak to the full council at their regular Thursday meeting. Groups like neighborhood associations and groups of citizens who are like minded about an issue can use various actions to get the council's attention, including a citizens initiative like the one leading to the single member district representation. And then there are those individuals hired by businesses to influence governmental decisions on behalf of their clients. They are called lobbyists. For decades the city has had a governing ordinance setting out rules and regulations for those who are registered as city lobbyists. Many of the lobbyists are experts in their field and provide valuable information for councilmembers.

[11:40:41 AM]

Councilwoman Pool's resolution is a substantial improvement over the current ordinance and clarifies language defining who should register as a lobbyist. It will be more comprehensive and similar to the state of Texas' lobbyist laws. The public will be able to follow the work of the registered lobbyist using transparency not available before. Disclosure and transparency are aspects of city government that the Austin League of Women feels very strongly about. Democracy is defined as a system of government which the power is vested in the people who either rule directly or through freely elected representatives. The League of Women Voters believes that this lobbyist ordinance or update will enhance the public's ability to know how their government works and how their elected officials make their decisions. We encourage the audit and finance committee to review this carefully and recommend it to full council as soon as possible. Thank you.

>> Tovo: Thank you.

>> My name is Sis Meyers. My company is Meyers Consulting LLC. I am registered as a lobbyist with the city and have filed my financial report. I have no employees. I represent the fast food coalition and I make less than you do, which is probably hard to believe. I don't envy you trying to get to know staff, constituents and several hundred registered lobbyists who register an array of clients with specific interests in what you have done, doing or thinking about doing. Client owners, my executive managers and I have met with you to provide factual information about their business. This was necessary because of inaccurate perceptions by city staff and other groups about small locally owned QSR family businesses of Austin and we know feel positive about our relationships with the mayor and council and their staffs. Some general comments about lobbyists. In today's world lobbyists has come to mean advocacy.

[11:42:42 AM]

They are skilled professionals from many walks of life. Some are lawyers. I am not. And many become lobbyists because of lives that have been in and around the political process, business, trade associations, non-profit work or social service organizations. In my case I got my battlefield promotions working for lieutenant governor Bill Hobby and then the state board of education as the deputy commissioner of education and the then manager's team at ICRA and the non-profit world. Lobbyists share key common traits, ability to develop relationships and complex issues and a keen energy for working under pressure or maybe that trait is a personality wart. Because businesses and other organizations recognize the value and need for community outreach, the lobbying component has become an overall business strategy. You are experiencing schedule overload in your new role and I'm sure you would find it difficult to run a business along with serving on the council. So companies have the same problem. They hire someone whose job it is to be a liaison with you while they run their businesses. Many people, most in fact, who hire these people we call lobbyists, are hiring them just to get the work done. They are business leaders who simply don't have the time to do this work themselves. Individual property owners who are not familiar with the various city offices and don't want to deal with the single issue that arises or concerned citizens who need someone to walk them through

what may be happening on an issue that's affecting them. One can only imagine the difficulty in analyzing over 100 agenda items a week and their impact on businesses and residents in his or her district. The lobbyist's role is to be a resource not only for the client, but the elected official and their staff, to assist in answering questions, gathering research and understanding those impacts. Much of modern lobbying is being on the ground, on call intermediary. Then when an issue arises that impacts the client the relationships are already established and the messages and solutions much more readily received and understood. Advocacy is really successful if someone is not [indiscernible]. I think it is interesting that the people who are affected didn't know about this so transparency seems to have been selectively applied and I would urge you to correct that perception and take your time working through this resolution.

[11:44:48 AM]

It truly has some unintended consequences. I was informed early this morning that there are possible other problems that we've not had time to analyze.

[Buzzer sounds] Again, the lobbyist's role it remains for relationships, advocate and provide timely exchanges. A contact point for information if you will. Thank you for your hard work and your time today and I'm happy to answer any questions.

>> Tovo: Thank you very much. Next we have donna Beth McCormick. After Ms. McCormick will be Chris rendosa. Okay next up will be Mr. Gillahorn.

>> I'm donna Beth McCormick and I'm on the ethics commission. I have been the chair of the lobby group working group on the ethics commission and I have a handout of which there's no reason for me to go ahead and say what's on the handout. Other than we know that this lobby commission -- this resolution has a lot of work to be done and we will be glad to do it on the ethics commission. We meet again on Monday for a short meeting with me is another member of the working group, Matt Lamon. And if you have questions I know about ethics commission, we just need to know ahead of time.

>> Pool: I do have a quick question for Ms. McCormick. Knowing that this resolution was laid out today, is there enough time for this resolution to be put on the agenda for Monday?

>> I think that maybe we can put something on the agenda Monday but since I only found out about this meeting less than a week ago, that it has not gone to the working group.

[11:46:55 AM]

We have a new working group because we have a new commission. We had a working group of three. Now we have a working group of four. I'm the only original one still on the working G.O.P. Matt's on the working group and we need to set up a meeting.

>> Pool: That's good. So you will have the month of September to work on that. Our goal is to have the conversations occur during September and then we will revisit the issue at the audit and finance committee meeting at the end of September, the next regular meeting.

>> We'll look at it Monday with our -- at it Monday with our agenda. We have a hearing on Monday. And then we were all bringing our calendars so we can get it on the next working group to get meeting. The last meeting that we had and the first meeting of the new commission we went from seven members to 11 members, and it was an orientation meeting. So none of us have read through this very closely so we have a lot to do.

>> Pool: That's great. And we're happy to have you take the time. I do know that there were two members of the ethics review commission who have been functioning on an ad hoc work group on some of the campaign finance reform efforts that -- the package that I'm working on, but I think that they may

have moved on to other assignments on commissions. So I can understand where with the new group coming together you'll want to organize that.

>> Yes.

>> Pool: That's great.

>> We have a high learning curve.

>> Pool: We appreciate all the good organizing talents and skills that Ms. McCormick has. Matt, I'll glad to see you're part of that group as well and appreciate the good work you've done in the past and will look forward to your input on this in the next few weeks.

>> Thank you.

>> Pool: And going forward.

>> Excuse me. From what we see this this cannot be done in a very short period of time because it's very detailed and we will need to have a lot of thought. Many eyes look at it and many brains look at it.

[11:48:59 AM]

>> Tovo: Thank you. I think we are scheduled to hear from you a little bit too. You are also signed up.

>> I waived my time.

>> Tovo: Okay. Thank you.

>> Troxclair: From the time perspective, so this -- I guess this kind of directs the city manager to come back with a draft ordinance within 30 days. Do you feel like that's enough time for the --

>> No.

>> Troxclair: To review this?

>> No.

>> If we wanted to use the ethics commission and get input from y'all and make sure that when we come back to pass something that we had a comprehensive -- an inclusive process, how much time do you think that would take?

>> I think we will need at least 30 days because it's very, very detailed. We have a lot of information. We have a lot of history that the new members do not know about. And we have a lot of them for the -- for them to read.

>> And councilmember troxclair, if I might add we do have two or three ethics complaints that have been filed before the commission and so that's going to take up a sizeable amount of our time as well. So I think we might need two or three months to fully vet, but that's just an estimate at this point.

>> Okay. Thank y'all for your work on this issue.

>> Tovo: Would you introduce yourself?

>> Matt Lamon with the ethics review commission.

>> Zimmerman: Thank you, mayor pro tem. A quick point of information. I discovered all this less than 24 hours ago. But I want to commend councilmember pool for putting it on the council message board because I discovered it on the council message board and I'm thrilled about that.

>> Tovo: Great. Mr. Gillahorn. Thank you for putting that on there. You have six minutes. Mr. King, you've donated your time. So if you could set the clock for six minutes.

>> And [indiscernible].

>> Tovo: Okay. Mr. Hersh, you're donating to Mr. Gillahorn. Thank you.

>> Thank you, madam chair, councilmembers, thank you for your time today. My name is jack gillahorn, I am here today in my personal capacity. I've been involved in public policy, advocacy since 1979, I guess, at the state level, which is the first session that I lobbied in.

[11:51:06 AM]

So it's been awhile. I'm here today because I think that the city of Austin's lobby ordinance is in dire need of updating and clarification. Everyone in this room is a lobbyist who is not working for the city. It's just a question, frankly, of while you're here to communicate to influence, which ones of us really move beyond our constitutional right of government of where -- to a point in which it's in the public's interest to know who it is that we represent or the issues that we work on or perhaps what we are compensated and the expenditures we make to influence. Because I think that's what the public is asking for these days. And I believe that in the importance of the lobby, that's something that's been part of my life for a very long time, as our job I know that our ability to be effective comes from credibility. And the credibility from the public is going to be gained through transparency. Without a law that is clear and enforceable and has an enforcement mechanism you will never gain the acceptance of the public, which will not only affect the lobby, but also you. And it will destroy our efforts towards having a system that will bring forth transparency and accountability. I don't think that Austin's current ordinance really does much right now. It's ambiguous enough to almost be voluntary. It excludes incidental contact.

[11:53:07 AM]

It doesn't really require any reporting of expenditures because of the way that it's written. It requires that you be compensated in addition to your regular compensation. To trigger registration. It doesn't happen at a level where many policy decisions are recommended. And frankly from a lobby perspective there's no hold harmless on a report where you can correct it if you find it yourself. There's a lot of details in this that I believe could be addressed. It's my hope that this resolution is going to be forwarded to legal so they can begin to work on it. I do in listening to the home builder testimony, to the ethics committee's testimony, I think that we desperately need to make sure that this is done right and that appropriate time is taken. I just think there's no need for it to be drug out in a long, laborious process. There are many lessons here that can be learned, but from state law, and I'm hoping it will be a proceed tow type useful -- prototype useful for the city. I think that your job as council persons is to determine how much transparency you really want in this process. You need to decide who is the lobbyist. You need to decide at what level they need to register. You need to decide what level. And what should be prohibited if anything at the state level. For example, there are prohibited expenditures for lobbyists. For example, cash and loans or transportation and lodging, things like that. What's important to the city that could be included in an ordinance. And what restrictions should apply to communications. Now, I am sympathetic to the ordinance that lobbyists should not be precluded from serving on committees, but I think that's a separate issue that should be taken up from the lobby ordinance itself.

[11:55:16 AM]

And I would hope that you would look at it that way because that's a sticky question. You're either going to have to continue with some sort of prohibition from people that are lobbyists or you need to have a much more robust and clear conflict of interest policy that would address those concerns when people are on those commissions because it is -- it's something that we deal with at the state level and that's where my experience comes from. So I really hope that you will move forward on this. That you will find a good roadmap in what the state has. And that if possible we can have an ordinance that is enforceable, that's clear and that really provides a transparency that builds the confidence and credibility of the public. Thank you very much.

>> Tovo: Thank you very much. Are there questions? Councilmember Zimmerman.

>> Zimmerman: Thank you, mayor pro tem. Really quick question. Thank you for coming. Obviously you have many, many decades of experience in the lobby business. I recognize the gray hair. It's terrific. I've

got some too. Could you talk a little bit about what you said about staff contact. It's my observation being on the council for whatever months these are that the effect and the influence, the power of lobbyists is trivial compared to the influence of city staff. And I just had an example of that with director Smith talking about the highstar deal. It just feels to me like I've got a lobbyist, but he's an employee of the city, but I'm being lobbied, I'm being sold. Could you talk about how you see the effect of city staff and their power as lobbyists?

>> Let me take it a different direction, if I could, councilmember, from just to kind of get started on this. At the state level any communication that a person who is -- that is compensated to communicate over a threshold level with anybody at the state level, I think we're dealing with city staff and externally from people that deal with them as to whether or not there is a process whereby you as councilmembers know which staff members are communicating to influence internally, in fact being inside lobbyists with the city.

[11:57:48 AM]

And from where they obtain their information. I think the concern that's out there is there are lots -- there are many categories of staff that receive information from persons that communicate to influence that it's off the screen. You never know. And I think that's one -- that's one of the things that I would encourage you to look at is to the breadth and scope that you're going to want to take with regard to who is covered in terms of communication. Because right now it's not everybody that works with the city obviously. So I would say that the place to start is identifying who it is at a staff level or board level or whoever it may be has an opportunity to influence the decision that is then taken up to you as councilmembers.

>> Tovo: Thank you, Mr. Gillahorn. Councilmember Houston.

>> Houston: I think that's where you are is where I want to go. Is that it's been my concern that the lobbyists infiltrate, if I may use that word, at the lower staff level, to influence what happens at the city council level. So they don't come and lobby me. They talk to me, but the lobby -- the influence, the pressure is not there, but it's at another level, at the lower staff level. So can you speak to whether this resolution will get to undue influence at that level?

>> Well, I would probably, well, I would probably, as I've always agreed with you on most things, I would take a different Tackett that it's undue influence. I think right now your lobby law doesn't require people to register if that's the person with whom they are communicating. If that's an effective way and don't have to register, there's no way anybody knows it's done. I think a piece of councilmember pool's resolution is to bring in a lot more folks that would trigger registration.

[11:59:51 AM]

And that is the first step towards transparency. You know, the -- lobbyists are great. Without people that provide information to the city or in my case to people that provide information to the state, so much is going lost. I'm an advocate for the lobby. I think it's something people should not be fighting to keep their name off of the lobby list just because they don't want to be called a lobbyist. It's not pejorative although it's painted that way. In my case I would urge that a lot of incidental contacts as they are called under your lobby law right now especially with staff, you know, that will become a trigger. I don't think there's anything wrong with that.

>> Tovo: Councilmember Renteria.

>> Renteria: You brought up about boards and commissions. How does the state handle the so-called lobbyists or people serving on board at the commission at that level? You make a communication, you are triggering a registration. So if -- most of the board -- like take -- pick something, the board of

dentistry, the medical association, the board of veterinary examiners, they are subject to the lobby law. You talk to them, to their staff, it's a communication of influence and subject to registration.

>> Renteria: So you feel they should be able to serve on the commissions and -- and still -- I mean you were bringing up that they shouldn't be precluded --

>> Your question is okay, so you are on the board of dentistry and you are a dentist, you are a veterinary and you are on the veterinary board. The state is through a lot of the sunset procedures that have gone forward have required more and more public members on those bodies as they are going forward, but their conflict of interest provisions that people have to very clearly stay away from anything that is going to influence -- influence them directly.

[12:01:54 PM]

And I think that's -- I think that's something to be looked at. Again, I would encourage you to look at the lobby law distinctly from the separate ordinance that you have with regard to lobbyists not being able to serve on commissions. I understand they are joined at the hip and I'm sympathetic to that, but I think you first have to define who is a lobbyist and then you have to make a decision as to which boards and commissions you say -- that's a separate decision. First define what the lobby laws cover, who it should cover and what you want them to report. If you want them to serve on a board or commission address that particular ordinance.

>> Renteria: Thank you.

>> Tovo: Thank you.

>> Thank you for your time very much.

>> Tovo: We appreciate you being here. So here are the speakers we have remaining. Mr. Roy Whaley is up next. Then we have -- then we have Fred Lewis, who has donated time from kayaba white and marry ingall. After Mr. Lewis Paul Robbins and our last speaker would be Nick Mullinay. So welcome, Mr. Whaley.

>> Could I follow Mr. Lewis?

>> Tovo: Sure. If that's fine with Mr. Lewis. Joyce and Mary still here. Mr. Lewis, you have 12 minutes.

>> I'm going to do my best to half that. I'm Fred Lewis. I'm a local attorney and I've worked on ethics and lobby laws especially at the state level for many years and I've worked with Mr. Gillahorn for many years on these as well. And I'm in support of the resolution.

[12:03:54 PM]

And I want to say I think we have in some ways the city of Austin the worst of all worlds because what you want from a lobby law is you want transparency to the public so they have faith that they know what compensated professional lobbyists are doing. But we have a law that everyone knows is porous, ineffective, which people really don't report and it's not enforced. So our lobby law in my view encourages cynicism. Because we pretend we have transparency when as Mr. Gillahorn so accurately said it's really voluntary. It is written so poorly, if you call someone and say I see you all the time down at the office of city staff and I know you are getting paid, why aren't you being paid, they say the incidental lobby exception. There's no definition. So I think we have to address this issue. It is important to understand that you cannot isolate who should be registered to lobby. From all the elements that are required and how you define them, because people are picking out certain parts without understanding that it's actually about a seven-part definition. It's a person who is compensated over whatever threshold you think is significant to influence, okay, it's not an inquiry, to influence a city official through a direct communication, okay, with the city, to influence a discretionary municipal decision. So, for example, someone getting a routine permit, that is not a discretionary decision. So that is not lobbying.

To make that clear, because this was stated earlier by people who hadn't gotten into the details of the resolution, there is a specific provision suggested in the resolution that a discretionary decision does not include decisions regarding the building technical codes.

[12:06:15 PM]

In other words, life and safety issues. So for example if you you are a plumber or an electrician, you can argue with the city about where that plumbing job is going to be or where the steps are going to be or whatever, but you are not in the lobby law. Okay. So it's important that people understand all of these terms. I wanted to make two points. What is in front of you or is important for you is who should be required to register because they are substantially enough compensated and they are substantially enough active that they are considered lobbyists and should report. And then the second issue is what information is fair for them to report. And what I wanted to tell you is the vast majority of what's proposed in this resolution comes from state law. People are already reporting this information at the state level without any difficulty. They've been doing it for years. So that this is basically a standard modernization and updating of our code. But I do want to say one other thing about -- a couple other things about provisions. The incidental exception. Let me give you a example how poor this language is. If you are regularly employed as an attorney in the city of Austin, and let's say you make \$250,000 a year, and you lobby down at city hall and charge your clients \$100,000, there are people in this city arguing that that is incidental because it's less than half of their time. Now, that person I think most of us would say if we're going to have a lobby law should register. But when you have a provision that says there's an incidental exception and you don't define it, people get to decide for themselves whether they are a lobbyist or not and I've always found people's self-awareness of their own position is pretty limited.

[12:08:19 PM]

The second thing about which is misguided is this notion in our code that if you don't lobby the city council, their aide or department head or assistant department head you are not lobbying. But that's completely naive because there are people in mid and upper management who are overseeing projects who are making essentially all the tough decisions, coming up the chain and you never knew who was involved. And so the state laws and other laws, they don't say lobbying is only the assistant department head, they say it's lobbying a city official or governmental official on a discretionary matter. Okay? And then defines what those terms are. And I won't go into what should be reported. I do want to say two last things. One is there is a conscious decision -- I'll be glad to talk with all of you -- that small-time players are excluded in this resolution from being registered to lobby. There is a \$2,000 a quarter threshold in compensation, 8,000 a year. You can make what you think is the right judgment. It's 200 today. \$200. Is what the threshold is. But, of course, since there's no definition or anything, no one feels subject to it. But it's a decision for you and there's other provisions I could go into which limit the scope of this, but the notion that the trades man is going to have to register to lobby is something that the person making that statement hasn't read the proposal. I want to finish with this. The issue of transparency regarding lobby activity and what they should report is a different issue than who should sit on a committee. And the reason why is because they are different issues and they need to be decided separately. The lobby issue is a transparency issue.

[12:10:22 PM]

The sitting on the committee is a conflict of interest policy. They are different issues. I'm also concerned that what we're going to do is if we lump this together with committee service, all we're going to be talking about is who gets to serve on committees. And we're not going to deal with getting the lobby registration and reporting right and the judgments right related to that. The committee service is a difficult issue and there are a lot of issues related to that, but it is a separate category issue that is separate issues. One last process point for what it's worth. Of course, it's your decision how to proceed. My suggestion would be that -- that you ask the staff to draft up an ordinance for you, it says 30 days, it could be 60, whatever. I don't think they are going to do it in 30 days, but -- and bring it back to you whenever, and then you take the draft ordinance, mark it up, spend whatever amount of hearing time you need, approve whatever you want to approve and send it up to the council, but I wouldn't send a resolution up, get I approved, then have the attorneys do an ordinance and send the ordinance all the way back through. I don't know your process, but that does not seem efficient to me. With that I'll stop.

>> Mr. Lewis, thanks for being here today and thanks for your work on this issue.

>> Sure.

>> Pool: How long have you been working on these kinds of issues and specifically lobbyist registration?

>> 1999. And I've been working with Mr. Gillahorn for just about that amount of time.

>> Pool: Would you say this is a new issue in the community?

>> No. And I think that the state provides a good model, and the thing that is important is we have to realize that we are a large city, that people are lobbying for pay, and that we need to have transparency.

[12:12:35 PM]

That we can't have tens of people running around influence the government for significant amounts of money and no one know about it. That -- that's a town of 100,000. That's not where we are today. So the issues are not hard, there are judgments to be made, that's for you, they are policy decisions, but the basic reporting requirements, the basic parameters of what is a lobbyist, no, they are not difficult issues.

>> Pool: And one last question. How old is the ethics ordinance and the lobbyist registration portions of it?

>> Well, like everything that's 40 years old, it was very good when it was passed. It probably was one of the first in any city in Texas. Probably in the United States. But it has not been significantly overhauled in 40 years and that's why you have a \$200 a quarter threshold for lobbying. Which is, you know, I mean that's when a hamburger costs two dollars or a dollar. So it -- it needs to be fixed. It's generating cynicism actually because we say we have a law and we don't enforce it, it doesn't mean anything, and we don't have transparency. So it's actually worse than having no law because you are breeding cynicism, in my view.

>> Pool: Thank you.

>> Tovo: Councilmember Houston.

>> Houston: Thank you. Mr. Lewis, does the state law define incidental contact?

>> The state law takes a different approach. They used to talk about years ago, I don't know how many, they used to have an incidental exception, they got rid of it. And basically what they talk about is 5% of your compensated time is the trigger, plus some other things, but we found over the years that how much somebody purports to work during a period of time is rather amorphous, and Mr. Gillahorn and I, he can speak for himself, over the years I've come to think just having a monetary threshold is the best way to go because it's clear.

[12:14:44 PM]

It's X amount of money, whatever you think is right and we don't have to argue whether you work an 80-hour week or 20-hour week. Because what some of us think is work and others think is not work.

>> Tovo: Thank you, Mr. Lewis.

>> Thank you.

>> Tovo: Okay. Roy Whaley. After Mr. Whaley, Paul Robbins, Nick and then our last speaker is Melissa Nesland.

>> I would like to be able to say good morning, but it's actually afternoon. And so I would like to say thank you for being here. Not only the committee members, but the other concerned councilmembers that have attended this morning understanding that this is a very important issue. My name is Roy Whaley. I am the conservation chair for the Austin regional group of the Sierra club and in respect to your time I would like to simply say thank you to Mr. Gillahorn and Mr. Lewis, the Austin Sierra club supports this, we want to move forward with it. We do see it as separate issues. The boards and commissions should certainly be separate from this and I would just like to say we very enthusiastically support this and ask you to move it forward. And thank you again for the time that you have put in on this.

>> Tovo: Thank you. And thanks to everyone who stayed. I apologize we're running late but I appreciate you hanging. Mr. Robbins.

>> No apologies necessary. Council, I'm glad you are doing it. I strongly support it. It does not address an issue of mine that some nonprofits are treating boards and commissions as their branch office. In consideration for your time, I'm not going to go through most of my speech. Some of you already know what I think, but I am very concerned that some board and commission members have a conflict of interest.

[12:16:57 PM]

They are being paid by the organization and then they convey that opinion over to a board and commission and the conflict is blatant. So I'm going to recommend three things. One, all nonprofit employees who have lobbied the city must register as public interest advocates. There would be no charge for this and these advocates would include not only C 3s who are nonprofits but C 4s and C 6s. Second, these advocates must declare their funding sources, and I'm not trying to make that overly burdensome. If it's a membership group all they need to say we're member funded and if it's for a nonprofit that gets a grant, they must list that grantor as the funding source, et cetera. And third, no public interest advocate or their household member should be able to serve on a board and commission that their job directly interfaces with. For example, an advocate for parks cannot serve on the parks board, but they can serve on the library commission. Again, in consideration for your time, I've kept it brief. Thank you for your attention.

>> Tovo: Thank you very much, Mr. Robbins. Welcome, Mr. Mullinaeu.

>> I'm here representing a 31-year-old design services firm that's worked in the city of Austin for the past, as I said, 31 years. We have more than 10 offices that are at the city processing applications, processing projects from landscape architects to civil engineers to mechanical and

[12:19:00 PM]

[inaudible] Would be now added to register as lobbyists. Their job as one of the previous speakers referred to this ordinance excludes tradesmen. These people are tradesmen. This is what their job is. This is what they do. In order for them to perform their duties, they have to speak with staff. As we're waiting for comments back from plans, as we're waiting for comments back from submittals and we're not hitting the deadline as the Zucker report clearly stated, our people have to go to city hall or one Texas center to

request responses. What you are asking for is all these people to register as lobbyists because they are trying to perform the duties they are required to do in order to get a project approved. It seems to me that this is a complete failure. It seems to me that what we are asking for is a rule that has an agenda behind it, and that agenda is coming from an interest group that would like more clarity when the rules don't allow them to get what they would like. And by doing that they are now preventing people from actually doing their jobs. That is incredibly troubling for us. The other part of it too is the licensure. These people spending time at the city are licensed professionals. So again what they are doing is they are putting their careers and licensure on the line every time they sign a project and submit it. And by asking them to register as lobbyists and not just affecting our firm but the more than thousands of professionals that do everything from septic design to building design to structural engineering to now come and stand in front of -- and manage that process on a regular basis, on a quarterly basis and report directly as to what they are doing and who they are speaking with seems ludicrous at a time when we're struggling with afford built, with a complicated code certainly very few people in this room understand, that we're forcing one more burden on them.

[12:21:01 PM]

It will only make the process more difficult, more expensive and I would ask this group and especially when people are just finding out about this, people on the ethics committee just finding out about this, this requires more thought. Anything else even similar in the size of this issue we would be talking about four years and now we're trying to do this within a period of months. Thank you.

>> Tovo: Thank you very much. Is anyone else here to speak on this issue? Mr. Schlizer, you will be next.
>> Thank you guys. As many of you know, this is quite personal to me. And I will try to not take it there, but I did just get word from miss ingall that there was a lovely writeup in the statesman and monitor about me and she said I didn't make comments, don't take it personal. I take it personal and I took it personal when she came after me and called me unethical and did a press conference. We went to the ethics committee and proved I was not in violation of that ordinance nor our firm or anyone else. I think this conversation is a different conversation and what I would ask without getting into the merits of the specifics in the resolution or the draft ordinance we've seen from Mr. Lewis and ANC, that we talk about how many times did you mention transparency. Let's talk about transparency, that no one knew this was happening. We asked the ethics commission for an update on the working group a week and a half ago. I have an email that says we'll keep you posted, then we see this. This isn't transparent, this is not the way to do things, this is ironic, this is rip critical. If anything, let's do this right. Let's do this the way these austinities say we should be doing things. Let's have a real conversation. I'm fine with transparency and fine with a conversation but let's do it in the right way.

[12:23:02 PM]

Thank you.

>> Mayor Adler:.

>> Tovo: Thank you for being with us. Mr. Schlizer.

>> Thanks, sorry, just walked in the door so I'm not sure how many topics other people covered on this item, but I would just like to reiterate a couple things. I think the proposed changes are expansive and overbroad by the definition of the term discretionary. I mean I'm down at the city every day or every other day discussing projects, trying to get things approved through the city and I couldn't understand how that would be considered lobbying. Another item is the -- you know, this would probably preclude most of the professionals from being on boards and commissions. I mean I think the goal of having a quality board or commission is that you have people that are experienced and have knowledge of zoning

code and the city's land development code and ordinances and criteria manuals, things like that. So even specifically certain boards limit the number of professionals in the real estate industry that could be on those boards, planning commission has a certain amount that are allowed, environmental board has a certain amount that are allowed. So I think those things are -- those measures are already in place to prevent, you know, a board from being -- a majority of its members to be professionals. But this ordinance would in effect make it so all boards are -- all professionals that work with the city that have knowledge of the city rules and regulations would be considered lobbyists if they talked to city staff. The current requirement I think is if it's an assistant city manager or above, to talk to them, you know, my policy has always been I have a client there with me if I have to talk to anybody above the level of where I would be considered a lobbyist.

[12:25:17 PM]

So right now there's safeguards in place that would I think achieve what the -- the intent of the lobbying ordinance is to achieve, but I couldn't see the costs and expense of having to register every person that works for me as a lobbyist with the city. And then the other thing which since I'm not a lobbyist I don't deal with but there's information about having to report who your clients are and how much you get paid. I'm not sure what the goal is behind that. I mean do I get paid -- how much I get paid to do a project, that's -- the percentage of that is lobbying is like maybe -- well, it's technically at zero, but with this ordinance every time I come down to the city I lobby so, you know, do I have to keep track of how many minutes or hours I spend at the city talking to staff members to get clarification on information or -- or resolve issues. I mean that would be onerous of me to have to keep track of each hour or actually we bill in 15 minute increments so I would have to keep track of every 15 minutes I spend at the city and travel time and that seems very onerous and I'm not sure what that would achieve.

[Buzzer sounding]

>> Thank you.

>> Pool: Thank you for coming and raising that question. We were specific to see if you are seeking information to clarify something that would not constitute lob lobbying. Lobbying is seek to go influence a position and any of your forays into the city just seeking information to clarify would not be covered by this, not considered lobby ING.

[12:27:25 PM]

>> Decision is I have eight pages of comments on a site plan or three pages of comments on a subdivision, so they have to make a decision on whether they clear those comments because on the website it says it's rejected until I clear my comments. So they have to make a decision every time there is a comment to clear that comment. So I'm not -- why you say that's not a decision.

>> Pool: I was using the information that you had provided where you can seek to go clarify information and strictly speaking if you were clarifying information that would not be considered lobbying under this. On the other hand, if you are seeking to influence the decision of the staffer who happens to be at a level below an assistant city manager or department head that would be covered under this proposal.

>> Right. So every time I -- I try to clear a comment, he's got to say yes, you are addressing my comment. So every time I'm dealing with staff that's what we do. We get comments and we have to clear them. So every time we do that or I send my other engineers down there.

>> Pool: Okay. And these are the issues that we want to talk about and we plan to have a fuller discussion on this and I really appreciate you coming and bringing the concerns as I do Ms. Brock and all the folks who came today who have questions about what this means and concerns and we absolutely intend to address them and as we move this issue forward.

>> Tovo: Councilmember Zimmerman.

>> Zimmerman: Thank you, mayor pro tem. Let me ask your opinion on this. I heard seek to go influence a decision. Seeking to influence a decision. About a week ago we had the hr director sitting right here at this table with about 10 power point slides for why it was a bad idea to decide to lower the city manager's pay increase from 3% across the board down to 0.8.

[12:29:26 PM]

10 power point slides from the city H.R. Director to influence the city council to not cut the 3% pay increase. Why would that person not be a lobbyist?

>> Well, if he's a city staff person, I'm assuming --

>> Zimmerman: He's seek to go influence a decision very clearly and articulately --

>> Tovo: I'm going to allow our speaker to decide whether or not he wants to respond to that.

>> Okay.

>> Tovo: You shouldn't feel an obligation to do so.

>> Yeah. Well, I mean the definition of a lobbyist is a person that gets paid by a client to influence somebody. So if your client is the city and the person you are trying to influence is the city, then I don't know, it seems redundant that -- that -- that you would have to register as a lobbyist. I mean everybody -- every interaction, every conversation almost you are trying to influence the other person's decision or thoughts on a particular topic. So the -- the definition I understand the city has is if you get paid over a certain -- if you get paid for that conversation, then you are a lobbyist.

>> Tovo: Thank you.

>> Zimmerman: Thank you.

>> Tovo: Does anyone have -- councilmember Houston.

>> Houston: I just have a comment and I understand all the -- the permenttations, but if it looks like a duck and quacks like a duck it's a duck. We know some people do register and some people don't register so how do we bring those who lobby at all levels of city government, not just those outlined in the ordinance, but those at the lower level, how do we get them to register. So I look forward to having those conversations because we all know who we are talking about and we know that they have undo influence at a level that is not addressed in our current ordinance.

[12:31:33 PM]

So -- so why don't we just say let's try to work together to try to get that resolved in the best way we can and put some enforcements in place so that we -- the people who watch us every Thursday and Monday and Tuesday and Wednesday --

[laughter]

-- Have some comfort that everybody is going to be treated, that their input is just as valued as somebody that's being lobbied to make a decision. That the people who cannot pay to have a lobbyist come represent them have the same opportunity to be heard and listened to as the people that pay a whole lot. I think that's -- we're trying to go to fair and equitable because some people have more influence because they can afford a lobbyist, other people don't have that opportunity. It's about fair and equitable treatment to me. Applause plus. >>.

>> If that was a question.

>> You don't have to sit there and --

>> Tovo: Vice chair troxclair has a question, but councilmember Houston's comments reminded me we have an afternoon full of committee meetings overlapping, we are running overtime and need to wrap up. I think you are the only one on the council who doesn't have --

>> Troxclair: I wanted to follow up with councilmember Houston's comments. She said you want to work together to make sure we can come up with an equitable system and I think that's what we've heard from most of the people here today and knowing Mr. Schlizer and the service he has contributed to the city over the years, I think that's what you were saying in your comments, you want to be part of the conversation, you want to have the ability to contribute to coming up with fair and equitable regulations, but it's --

>> Correct.

>> Troxclair: There's a lot of information in the resolution that's in front of us that outlines very specific things so I think just to let the community members feel like they haven't been involved in the process.

[12:33:34 PM]

>> That's correct, thank you.

>> Tovo: And thank you for your willingness to continue to be involved in that conversation as that moves forward. This is just a beginning of the process. Councilmember pool.

>> Pool: So mayor pro tem, what sort of action would you recommend at this point? We do want to continue moving forward and I do want to engage the community as fully as possible.

>> Tovo: Councilmember, it is your resolution so I think that I'll leave -- I'll leave that to you. I know there were a few questions from community members about whether we were appropriately posted for action today and we have checked with city legal and we are posted for a discussion and action as it fell under that category on our agenda. So it would be -- you've brought us forward a resolution to initiate a draft ordinance and so I leave it to you whether you want to -- whether you are prepared to move forward with that.

>> Pool: I am. I am prepared to make a motion to move forward with a draft ordinance requesting that the city manager prepare the draft ordinance, but I would say I would move it to 60 days. I think I've heard pretty completely from the people here in the room today that a 30-daytime frame is too short. And looking at everyone's calendars, my own included, I think maybe we could all use a little bit of additional breathing space in this conversation. I expect that this will be handled expeditiously, know. I will not be -- I want to continue the momentum on this topic and so when we do have opportunities for public hearings and input, I urge everyone to come and participate and work with us and we will continue to move this issue forward. It's of grave concern to a majority of austinities. I've heard it repeatedly that there are loopholes in the existing ordinance that need to be closed and definitions clarified, and that's my intent.

>> Tovo: Is there a second?

[12:35:36 PM]

>> Renteria: I would second. I have a question also. Is this going to go before the ethics committee for their review?

>> Yes.

>> Renteria: I'll second.

>> Tovo: Just a point of clarification, as I look at the resolution, the first be it -- let's see. No, the last be it therefore resolved clause talks about the draft ordinance coming back to our committee within 30 days. You are changing that to 60 days.

>> Pool: Yes.

>> Tovo: And then the next clause talks about having the city manager come back and report to audit and finance within 60 days alternative approaches. Is that staying the same or is that time line changing?

>> Pool: I would say 90 days on that one, since I'm adding 30 to the first one.

>> Tovo: Okay. Thank you. Any other changes to this resolution before us?

>> Troxclair: Could I maybe make a suggestion if it is amenable to councilmember pool to add in this first therefore be it resolved to the city manager to say city manager is directed to provide a draft ordinance in accordance with this and in coordination with the ethics maybe. My concern is this is incredibly -- I really applaud councilmember pool for taking this on. I think that we have heard in a lot of people today that the ordinances are outdated and that this deserves a second look from the council. The way this is drafted, it's prescriptive. It says increase this, eliminate this and I wish that it was more of an even gauge in a stakeholder process and come back to us in 60 days or something that sent a message to the community that we are moving forward and in an expeditious manner, but that we're not making these decisions from the dais right now, that we want to hear from them and be able to make -- to make these decisions within 60 days.

[12:37:40 PM]

>> Pool: Right.

>> Troxclair: And I too, I know you may have been involved in this issue for a while, I saw this on the message board yesterday as well so it's a lot of information to digest in a short amount of time during the budget.

>> Pool: That's completely fine and that was the intention of the resolution in the first place. The ethics review commission is a part of any review of the resolution so it would be sent there without us specifically directing it, but I'm happy to include stakeholders and ethics review commission in the specific language. That would be in the first be it resolved.

>> Just say and in coordination with --

>> Troxclair: In coordination with the ethics commission and other stakeholders.

>> Pool: That sounds great. Sure.

>> Tovo: Vice chair troxclair, I'm not clear where you are putting that clause.

>> Troxclair: Provide a draft ordinance in accordance with this resolution and coordination ... Within 60 days.

>> Tovo: Okay. Councilmember pool, you and I had an opportunity to talk right before the meeting about potentially adjusting the -- clause 16. Right now the resolution would have the city auditor taking charge of reviewing all the lobbyist registration and compliance materials.

>> Pool: I would --

>> Tovo: I would like to talk about that more but it would seem the city clerk would be the appropriate --

>> Pool: And I having talked with the city auditor a little further on this and the city clerk, it's really an issue of resources no matter which office, frankly, and so that is something we will hammer out. But if -- if it's the will of the body to continue the oversight with the city clerk she that's fine with me, although I would strongly urge that we continue to allow the city auditor to perform her auditing duties in item number 18.

[12:39:47 PM]

>> Tovo: Sure. That makes sense.

>> Pool: Conduct a complete audit at random of a significantly large reg stands so we can ensure compliance.

>> Tovo: We can certainly revisit this is if are those in the community who feel a strong need to have the city auditor. We have such a lot of work for the auditor to do I would hate for them to take on a new area of responsibility if it's not necessary.

>> Pool: Especially since we have the city clerk who normally has that ability. For anyone looking at the ordinance, that's paragraph 16.

>> Tovo: Other questions, comments, suggestions?

>> Troxclair: If it is amenable to councilmember pool, to address -- because I mean I have a lot of questions about some of the specifics that are outlined in the last whereas clause, you know, that goes through in great detail the different codes and changes. Maybe -- maybe it would be a better message to say something like just to consider these. For the city -- let's see, opportunity for the city of Austin to make substantial improvements to its lobbyist disclosure by considering the following -- I think to somebody just reading this it's -- it's -- it may sound like we are directing him to move forward with these changes. And in fact our goal is to direct him to move forward with the stakeholder process that will allow us to make thoughtful changes within 60 days. I'm just concerned about that.

>> Pool: Sure, and I would be happy to work with the city manager to make sure it's really clear.

>> Tovo: I guess I need some clarification then though. It is my expectation that if we pass this resolution that these items would be addressed within the resolution.

[12:41:48 PM]

>> Pool: That's correct. And they are for the consideration of the audited and finance committee as revisions when we get the draft ordinance. There may be some other things that are added and there may be some adjustments to what's in here, but this is our starting place for the conversation we'll have with the ethics review commission, the stakeholders and city staff and folks who have been working on the issue for a considerable period of time.

>> Troxclair: I guess I'm really uncomfortable with something as prescriptive as this when we have heard from the community they have not had opportunity to give input. So I would be much more comfortable initiating a stakeholder process and coming back to us with specific language, but if -- if that is not councilmember pool's intention, then I will just -- I can vote against this here and look forward the the recommendations that do come back from the city manager.

>> Pool: That would be fine.

>> Sounds fair.

>> Tovo: I will say, as I said a minute ago, I see this as a conversation that we're starting and we're initiating, we're initiating some changes that will get an opportunity to be discussed at the ethics review commission and then back here again when the ordinance returns to us and then again at council. So I'm really glad we had such great turnout today and I look forward to hearing from you all throughout the process, but I am very supportive. As so many of speakers have said, many of these changes are long overdue and I believe we can work through this, to you the process to -- through the process to address some of the concerns about potentially capturing people none of us would regard as lobbyist. So I appreciate all the work from councilmember pool and from those of you in the community who have worked on this issue.

[12:43:49 PM]

Other thoughts? Councilmember Renteria.

>> Renteria: I'm going to support -- I appreciate the process that we're going through and we really need to really find out what's really going on and who is doing what in the lobbying. Another thing I really appreciate that we're going to get out of here at a fair, decent time.

[Laughter]

>> Tovo: We did the best we could. Future agenda items -- I apologize. All in favor? All opposed? Any abstentions? That passes with three voting in favor, none in opposition and vice chair troxclair

abstaining. So now we move on to future agenda items. We have a lot. We had to jettison several big items to accommodate this week's agenda so we'll have those coming up next and any other items that come up. Thank you to all the staff and all the community members who stayed for this long meeting. We stand adjourned at 11:00 -- at 12:45.